

Inquiry into Commonwealth Bilateral Air Services Agreements

Submission to the Senate Select Committee on Commonwealth
Bilateral Air Service Agreements.

September 2023

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Australia's Bilateral Air Services Agreements

Introduction

International aviation is a key driver of Australia's economy, supporting the growth of tourism, business and trade.

The COVID-19 pandemic and border restrictions has been the most devastating external shock to international aviation in its history, but the industry is bouncing back.

Australia has one of the most open international markets in the world. We have agreements with over 100 countries and open capacity access arrangements with our seven current biggest international arrival markets: New Zealand, China, US, UK, Japan (excluding Haneda), India and Singapore.

Bilateral agreements are achieved at Government to Government level through treaties and supplemented through Memorandums of Understanding and exchanges of letters signed by Government aviation officials.

In essence these agreements outline and provide access rights for international airlines of both countries.

In the Aviation Green Paper, the Government has indicated that through bilateral negotiations, it intends to continue to seek to advance Australia's national interest including looking to enhance Australia's international aviation capability, and access to key international passenger and freight markets.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts' (the Department) key roles in relation to bilateral air services are:

- to provide advice to the Australian Government on proposed negotiating mandates for bilateral negotiations with other countries; and
- to conduct negotiations with other countries aviation officials to seek agreement on new or updated air services arrangements, consistent with mandates approved by the Minister for Infrastructure, Transport, Regional Development and Local Government.

Approval of mandates for each individual bilateral negotiation is a matter for the Minister for Infrastructure, Transport, Regional Development and Local Government.

International Air Services Framework

The Chicago Convention of 1944 sets up the framework for international civil aviation. The Convention enshrines the principle of sovereignty over the airspace above the state's territory and confirms that scheduled international air services cannot operate without special agreements between governments.

Markets for international air services are closed until and unless governments agree between them to open the market, through bilateral air services agreements. Even then, this exists only to the extent the governments agree to open the market.

Bilateral air services agreements are treaty level, legally binding and enforceable agreements that allow for scheduled international air services between countries.

These agreements and their supporting Memoranda of Understandings (MoUs) agreed by aviation officials, specify the numbers and types of services and traffic rights that airlines of both countries are allowed to operate.

Capacity is negotiated on a reciprocal basis as part of an approach which focusses on progressive liberalisation benefitting our tourism and trade interests, as well as leveraging better access and opportunities for Australian airlines.

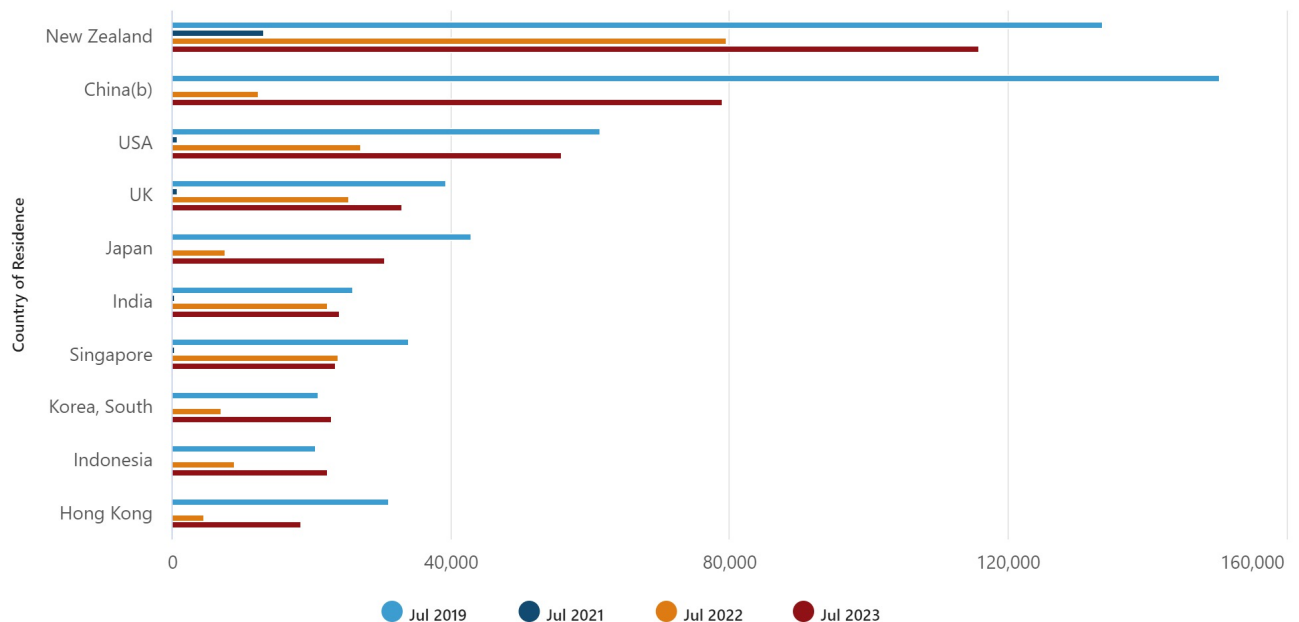
The bilateral air services agreement system which countries around the world have kept outside the General Agreement on Trade in Services processes, remains the fundamental means of advancing international aviation rights. Numerous efforts to progress multilateral aviation agreements in multilateral fora have generally not been successful given a wide disparity of international views on air services agreement policy approaches.

Air Services Agreements

Australia has one of the most open international markets in the world.

We have agreements with over 100 countries and our open capacity access agreements cover the top seven source countries for visitor arrivals to Australia in July 2023 representing just over half of international passengers and flights coming into Australia.

2.2 Short-term visitor arrivals, Australia - top 10 source countries(a)



Source: Australian Bureau of Statistics, Overseas Arrivals and Departures, Australia July 2023

For other agreements, the policy of successive Governments has been to negotiate bilateral agreements that provide 'capacity ahead of demand'.

This approach has meant that airlines have the ability to plan to access future routes subject to their own commercial considerations and subject to meeting the safety and security requirements of both countries. In only a handful of cases, airlines are unable to access sufficient capacity under the bilateral arrangements to meet their commercial requirements.

The Department publishes a list of all Australia air services agreements on our website – in the section entitled: [Australia's air services agreements & arrangements](#). Copies of the treaty text can be found on the DFAT Treaties Database.

The Agreements set the overarching legal framework for services between two countries. Key provisions include designation of airlines, application of national laws, airlines' rights to establish offices, deploy staff, remit currency, customs duties, safety and security frameworks, and the routes that may be operated.

In order to enter into force, Air Services Agreements are required to undergo [Australia's treaty making process](#), including approval of Ministers, Federal Executive Council approval, tabling in the Parliament and consideration by Joint Standing Committee on Treaties.

Supporting Memorandum of Understanding (MOU) are used to outline detailed commercial opportunities between countries. In the lead up to consideration of MOU aeronautical authorities of both countries seek their respective Minister's approval for their respective negotiating mandates.

MOU's are generally signed between 'aeronautical authorities' and can include, capacity entitlements (number of seats or frequency of services), code share rights and traffic rights for airlines of both countries.

MoUs are not made public as they can contain confidential commercial information, however the key aspects of our MOU's (i.e. the capacity entitlements) are made available to stakeholders as required.

Air services negotiations

Bilateral agreements are negotiated between Governments by Government officials.

Requests for updated or new air services arrangements are put forward by the aviation authority of one country to another – this could be through a formal letter or informal discussions.

The Department seeks agreement from the Minister for Infrastructure, Transport, Regional Development and Local Government on negotiating positions for future bilateral talks.

Markets are prioritised factoring in a range of factors including, but not limited to, stakeholder support and whether provisions in current agreements remain appropriate.

Attached are updates on capacity available for Australian international airlines after completion of air services negotiations ([Attachment 1](#)) and for foreign airlines ([Attachment 2](#)).

Forward program of negotiation priorities

The Australian Government establishes a bilateral air services forward negotiating program to deliver on the Government's policy agenda for international aviation. The forward work program is not publicly available.

While Australia may have a specific priority or position that we are seeking to progress in our air services arrangements, some of our bilateral partners may have different priorities and different views.

Any negotiations require both bilateral partners' agreement, and Australia cannot unilaterally make changes to air services agreements. Many other countries (and their airlines) are still recovering from COVID-19 and may not yet be ready to negotiate increased bilateral air services arrangements.

The Department consults widely with Australian stakeholders including airlines, airports, tourism bodies, state governments and other departments in developing advice to the Minister on the proposed program.

Allocating Australian Capacity

Australian capacity is allocated by the International Air Services Commission (IASC), an independent statutory authority. Its determinations of capacity entitlements are made to existing and prospective Australian international carriers for the operation of scheduled international services. The IASC's role is set out in the *International Air Services Commission Act 1992*.

Once an Australian airline is allocated capacity and they meet Australia's safety and security requirements they can begin operating scheduled international services to that market.

Operating services to Australia

Airlines make their own commercial decisions on whether to operate air services, irrespective of the opportunities that exist in bilateral air services agreements. In order to operate direct services to Australia, foreign airlines must meet Australia's regulatory safety and security requirements.

This includes holding a [Foreign Air Transport Air Operator's Certificate \(FATAOC\)](#) from the Australian Civil Aviation Safety Authority (the aviation safety regulator) and seeking an approved [Transport Security Program](#) from the Department of Home Affairs.

If these approvals are obtained, foreign airlines can then apply to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts for an [International Airline Licence](#). Details of the requirements to obtain a licence are available on the Department's website.

The Department publishes on its website a [summary of International airline approved timetables](#) following the start of the Northern Winter and Northern Summer timetable periods.

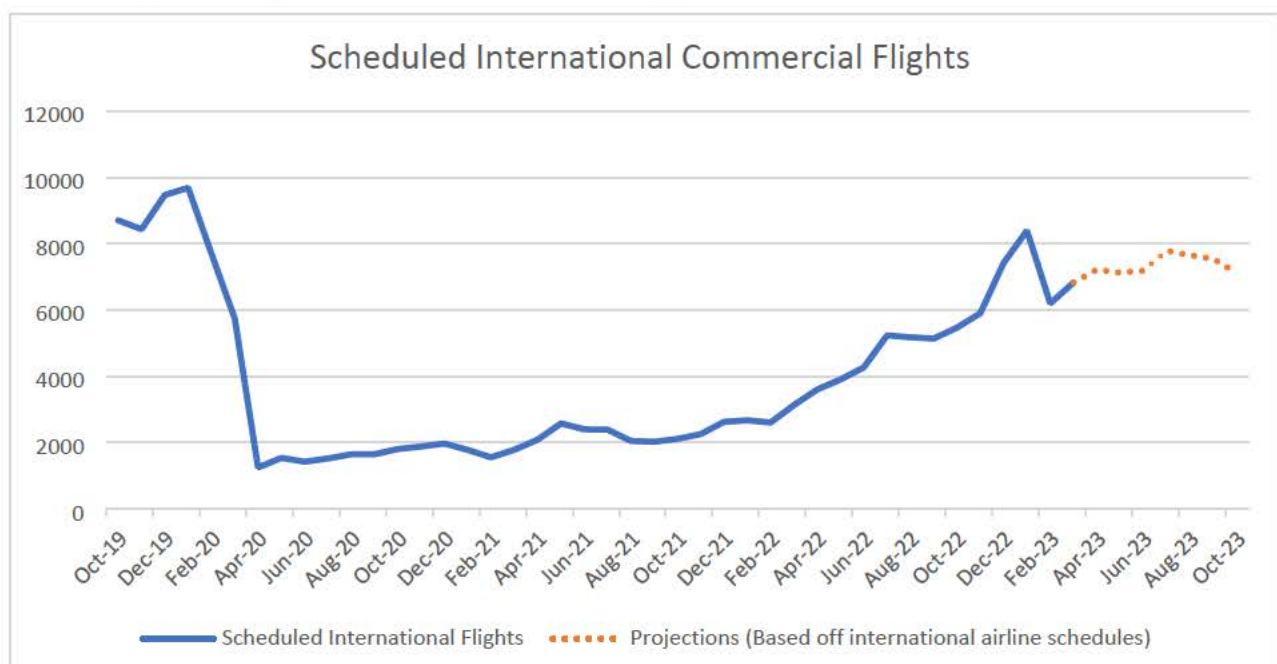
Consultations and Settlement of Disputes

Bilateral air services agreements generally include a clause of Consultation and Settlement of Dispute. Either country can request consultations in relation to a number of Articles in the agreements, generally including Designation and authorisation, Revocation or Suspension of Opening Authorizations, Aviation Security and Safety. These consultations are required to begin within a period of 60 days, unless agreed otherwise.

Should a dispute arise in relation to the interpretation or application of the Agreement, which cannot be settled between the bilateral countries, air services agreements also include a Settlement of Dispute Clause which is submitted to an arbitral tribunal.

Aviation recovery and capacity

The number of scheduled international passenger flights to Australia are projected to return to around 91 percent of pre-COVID levels by the end of September 2023.



In terms of the number of airlines, 61 international airlines (57 passenger and 4 cargo) are now operating to Australia, a return to pre-COVID levels, compared to just 34 airlines at the peak of COVID-19.

Already this year two new airlines, T'Way Air (Korea) and VietJet Air (Vietnam), have commenced services to Australia for the first time.

Australia has gone from 2.9 million passengers for the year ended March 2022 to 25.5 million passengers for the year ended March 2023. This is still short of the 40.5 million for the year ended March 2020.

While international airlines continue to recover and schedule additional capacity there are a number of markets that are already operating above pre-COVID levels. This includes Fiji, Sri Lanka, UK and India.

The Australia – India market in particular has shown strong growth with Air India doubling services to Australia and Qantas significantly re-entering the Indian market.

Seat utilisation for international services to and from Australia for the January – March quarter 2023 is high at more than 88% for outbound and 78% for inbound flights.

There is a lot of available capacity under many of our current bilateral air services agreements that are not being used by Australian or foreign airlines.

1,857 international flights operated into Australia in the first week of September 2023. It is expected that global international passenger traffic will return to pre-COVID-19 levels over the next twelve months as airlines announce new flights and this additional demand stimulates competition and encourage more competitive air fares on international routes.

We will have our next indicator of how our international aviation recovery is continuing to progress when we receive the international airline timetables for the next international timetable period commencing at the end of October this year.

Air Services Agreements since 2016

The Department holds air services negotiations and exchanges of correspondence with countries in accordance with the priorities established, as outlined above and as opportunities arise.

Since 2016 a number of major open access agreements have been put in place, including with China and India, as well as significant capacity increases to a number of markets including the United Arab Emirates, Malaysia, Philippines, South Korea and Vietnam.

Challenges remain in progressing Australia's international bilateral aviation policy, for example previous attempts by Australia to achieve a more open access type agreement with the EU have not progressed, while talks with some countries since 2016 did not always lead to updated or increased air services arrangements.

There was also a major pause to bilateral air services negotiations for several years due to COVID (2020-2022).

In the second half of 2022, with the re-opening of most international borders, a doubling of capacity available under our bilateral air services arrangements was negotiated with our Pacific Island neighbours Samoa and Tonga, providing additional capacity for multiple Australian airlines. This was put into effect through an updated MOU and exchange of correspondence respectively between aeronautical agencies.

Conclusion

The recent Aviation Green Paper proposes that the Australian Government continue the current 'Capacity ahead of demand' approach and negotiate 'Open Skies' style agreements to bilateral air services negotiations where it is in the national interest and can be bilaterally agreed.

This approach has already facilitated strong growth in our international aviation markets pre-COVID and is expected to do so as the market recovers over the short, medium and long term.



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

ATTACHMENT 1

Growth Potential for Australian Airlines

September 2023

Existing Bilateral Markets

Markets served by an Australian airline during the Northern Summer 2023 season

Market	Capacity limit ¹	In use ²	Available	Growth potential ³
Canada	Majors*: 9,000 seats	708 seats	8,292 seats	1171%
	Others: Open	0 services	Unlimited	Unlimited
Chile	4,000 seats	944 seats	3,056 seats	324%
China	Open	2,079 seats	Unlimited	Unlimited
Cook Islands	3,000 seats	1,440 seats	1,560 seats	108%
Fiji	Majors: 6,900 seats	6,899 seats	1 seat	0%
	Others: Open	0 services	Unlimited	Unlimited
Hong Kong	Majors: 70 services	12 services	58 services	483%
	Others: Open	0 seats	Unlimited	Unlimited
India	Majors@: Open	1,785 seats	Unlimited	Unlimited
Indonesia	Majors*: 25,000 seats	24,913 seats	87 seats	0.3%
	Others: Open	7,200 seats	Unlimited	Unlimited
	ERP ⁴ : 2,500	0 seats	2,500 seats	-
Italy	7 services	3 services	4 services	133%
Japan	Open	21 services	Unlimited	Unlimited
	Haneda: 21 services	21 services	0	0%
New Caledonia	2,400 seats	870 seats	1,530 seats	176%
New Zealand	Open	40,723 seats	Unlimited	Unlimited
Papua New Guinea	3,520 seats	1,044 seats	2,476 seats	237%

Market	Capacity limit ¹	In use ²	Available	Growth potential ³
Philippines	Manila & Clark: 10,700 seats Others: Open	2,079 seats 0 seats	8,621 seats Unlimited	415% Unlimited
Samoa	2,000 seats	1,226 seats	774 seats	63%
Singapore	Open	14,566 seats	Unlimited	Unlimited
South Africa	Majors: 21 services Others: Open	7 services 0 services	14 services Unlimited	200% Unlimited
South Korea	9,500 seats	2,231 seats	7,260 seats	326%
Thailand	Majors [#] : 20,000 seats Others: Open	5,429 seats 0 seats	14,571 seats Unlimited	269% Unlimited
Timor-Leste	21 service	7 service	14 services	200%
Tonga	Majors: 1,600 seats Others: Open	348 seats 0 seats	1,252 seats Unlimited	360% Unlimited
United Kingdom	Open	5,047 seats	Unlimited	Unlimited
United States	Open	15,953 seats	Unlimited	Unlimited
Vanuatu	Majors [*] : 4,000 seats Others: Open	880 seats 0 seats	3,120 seats Unlimited	354% Unlimited
Vietnam	Majors: 42 services Others: Open ERP ⁴ : 7 services	6 services 0 services 0 services	36 services Unlimited 7 services	600% Unlimited -

¹ All figures are on an 'each way, each week' basis. Sub-limits may apply in some markets. 'Majors' refers to Australia's major gateway airports of Sydney, Melbourne, Brisbane and Perth.

^{*} 'Majors' refers to Australia's major airports of Sydney, Melbourne (including Avalon), Brisbane and Perth.

[#] 'Majors' refers to Bangkok, Phuket, Utapao and Chiang Rai

@ 'Majors;' refer to Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad

² Capacity utilisation is the maximum figure for September / October based on approved timetables as at 11 September 2023.

³ 'Growth potential' is calculated as the ratio of available capacity to capacity in use.

⁴ The Enhanced Regional Package (ERP) provides additional capacity in agreed markets (up to a limit) for services that operate via or beyond to a point in Australia other than Sydney, Melbourne, Brisbane and Perth.

Unserved Markets

Markets without Australian airline operated services during the Northern Summer 2023 season

Market	Capacity limit ¹	Market	Capacity limit ¹
Argentina	2,800 seats	France	3 services
Austria	Open	Germany	25 services
Azerbaijan	Majors: 7 services Others: Open	Greece	Majors: 7 services Others: Open
Bahrain	Majors: 12 services Others: Open	Hungary	Majors: 7 services Others: Open
Bangladesh	5 services	Ireland	Majors: 7 services Others: Open
Belgium	Majors*: 7 services Others: Open	Israel	Majors: 7 services Others: Open
Brazil	14 services	Jordan	Majors: 7 services Others: 7 services ERP ² : 7 services
Brunei	Majors: 27 services Others: Open	Kenya	Majors: 7 services Others: Open
Cambodia	Majors: 7 services Others: 7 services ERP ² : 7 services	Kiribati	Majors: 7 services Others: Open
Cote d'Ivoire	Majors: 7 services Others: Open	Kuwait	Majors: 7 services Others: 7 services ERP ² : 7 services
Croatia	7 services	Laos	Majors: 7 services Others: 7 services ERP ² : 7 services
Cyprus	Larnaka & Pafos: Open	Lebanon	2 services
Czech Republic	Majors: 7 services Others: Open	Macau	3 services
Denmark	2,800 seats	Malaysia	Majors: 42,100 seats Others: Open
Egypt	Majors: 7 services Others: Open	Malta	Majors: 2 services Others: Open
Mauritius	Majors: 7 services	Qatar	Majors: 28 services

Market	Capacity limit ¹	Market	Capacity limit ¹
	Others: Open		Others: Open ERP ² : 7 services
Mexico	Majors#: 4 services Others: Open	Saudi Arabia	Riyadh & Jeddah: 6 services Dammam: Open
Morocco	Majors@: 7 services Others: Open	Serbia	Majors: 7 services Others: Open
Myanmar	Yangon: 7 services Others: Open	Seychelles	Majors: 7 services Others: Open
Nauru	Majors*: 7 services Others: Open	Solomon Island	Majors: 2,000 Others: Open
Nepal	Kathmandu: 7 services Others: 28 services	Spain	Madrid & Barcelona: 7 services Others: Open
Netherlands	2,800 seats	Sri Lanka	Majors: 16 services Others: Open
Nigeria	7 services	Sweden	2,800 seats
Niue	500 seats	Switzerland	Open
Norway	2,800 seats	Taiwan	Open
Oman	Majors: 4 services Others: Open ERP ² : 7 services	Türkiye	Majors: 7 services Others%:
Pakistan	4 services	United Arab Emirates	Majors: 168 services Others
Palau	1,200 seats	Timor-Leste	21 services
Peru	7 services	Tonga	Majors: 1,600 seats Others: Open ERP ² : 7 services
Poland	Majors: 2,800 seats Others: Open	Zimbabwe	1,600 seats

¹All figures are on an 'each way, each week' basis. Sub-limits may apply in some markets. 'Majors' refers to Australia's major gateway airports of Sydney, Melbourne, Brisbane and Perth.

* 'Majors' refers to Australia's major airports of Sydney, Melbourne (including Avalon), Brisbane and Perth

#. 'Majors' refers to Mexico City, Guadalajara, Monterrey and Cancun.

@ 'Majors' refers to Casablanca, Marrakech, Agadir and Rabat.

% 'Others' refers to Samsun Carsmaba, Nevsehir Kapadokya and Gaziantep

²The Enhanced Regional Package (ERP) provides additional capacity in agreed markets (up to a limit) for services that operate via or beyond to a point in Australia other than Sydney, Melbourne, Brisbane and Perth.



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

ATTACHMENT 2

Growth Potential for Foreign Airlines

Published: April 2023

Existing Bilateral Markets

Markets served by a foreign airline with their own aircraft during the Northern Summer 2023 season

Market	Capacity limit ¹	In use ²	Available	Growth potential ³
Brunei	Majors: 23 services	5 services	18 services	360%
	Others: Open	0 services	Unlimited	Unlimited
Canada	9,000 seats	4,186 seats	4,814 seats	115%
Chile	4,000 seats	3,040 seats	960 seats	32%
China	Open	17,042 seats	Unlimited	Unlimited
Fiji	Majors: 7,900 seats	7,900 seats	0 seats	0%
	Others: Open	332 seats	Unlimited	Unlimited
Hong Kong	Majors: 70 services	66 services	4 services	6%
	Others: Open	0 services	Unlimited	Unlimited
India	Open	5,120 seats	Unlimited	Unlimited
Indonesia	Majors: 25,000 seats	12,811 seats	12,189 seats	95%
	Others: Open	0 seats	Unlimited	Unlimited
	ERP ⁴ : 2,500 seats	0 seats	2,500 seats	-
Japan	Open	4 services	Unlimited	Unlimited
	Haneda: 21 services	21 services	0 services	0%
Malaysia	Majors: 36,500 seats	27,576 seats	8,924 seats	32%
	Others: Open	2,581 seats	Unlimited	Unlimited
Mauritius	Majors: 7 services	2 services	5 services	250%
	Others: Open	0 services	Unlimited	Unlimited
Nauru	Majors: 7 services	3 services	4 services	133%

Market	Capacity limit ¹	In use ²	Available	Growth potential ³
	Others: Open	0 services	Unlimited	Unlimited
New Caledonia	2,400 seats	1,422 seats	978 seats	69%
New Zealand	Open	34,434 seats	Unlimited	Unlimited
Papua New Guinea	3,520 seats	2,303 seats	1,217 seats	53%
Philippines	Majors: 10,700 seats	8,892 seats	1,808 seats	20%
	Others: Open	0 seats	Unlimited	Unlimited
Qatar	Majors: 28 services	28 services	0 services	0%
	Others: Open	7 services	Unlimited	Unlimited
	ERP ⁴ : 7 services	7 services	0 services	0%
Republic of Korea	Majors: 9,500 seats	7,631 seats	1,869 seats	24%
	Others: Open	0 seats	Unlimited	Unlimited
Singapore	Open	48,999 seats	Unlimited	Unlimited
Solomon Islands	Majors: 2,000 seats	576 seats	1,424 seats	247%
	Others: Open	0 seats	Unlimited	Unlimited
Sri Lanka	Majors: 14 services	10 services	4 services	40%
	Others: Open	0 services	Unlimited	Unlimited
Taiwan	Open	6,570 seats	Unlimited	Unlimited
Thailand	Majors: 20,000 seats	9,660 seats	10,340 seats	107%
	Others: Open	0 seats	Unlimited	Unlimited
UAE	Majors: 168 services	91 services	77 services	85%
	Others: Open	0 services	Unlimited	Unlimited
United Kingdom	Open	1,512 seats	Unlimited	Unlimited
United States	Open	13,806 seats	Unlimited	Unlimited
Vanuatu	Majors: 4,000 seats	1,530 seats	2,470 seats	161%
	Others: Open	0 seats	Unlimited	Unlimited
Vietnam	Majors: 42 services	29 services	13 services	45%
	Others: Open	0 services	Unlimited	Unlimited
	ERP ⁴ : 7 services	0 services	7 services	-

¹All figures are on an 'each way, each week' basis. Sub-limits may apply in some markets. 'Majors' refers to Australia's major gateway airports of Sydney, Melbourne, Brisbane and Perth.

²Capacity utilisation is the maximum figure based on approved timetables as at the start of the Northern Summer 2023 scheduling season.

³'Growth potential' is calculated as the ratio of available capacity to capacity in use.

⁴The Enhanced Regional Package (ERP) provides additional capacity in agreed markets (up to a limit) for services that operate via or beyond to a point in Australia other than Sydney, Melbourne, Brisbane and Perth.

Unserved Markets

Markets without own-operated foreign airline services to Australia during the Northern Summer 2023 season

Market	Capacity limit ¹	Market	Capacity limit ¹
Argentina	2,800 seats	Egypt	Majors: 7 services Others: Open
Austria	Majors: 5,600 seats Others: Open	Ethiopia	7 services
Azerbaijan	Majors: 7 services Others: Open	Finland	2,800 seats
Bahrain	Majors: 7 services Others: Open	France	3 services
Bangladesh	5 services	France (Polynesia)	7 services
Belgium	Majors: 7 services Others: Open	Germany	25 services
Brazil	14 services	Greece	Majors: 7 services Others: Open
Cambodia	Majors: 7 services ² Others: 7 services	Hungary	Majors: 7 services Others: Open
Colombia	Majors: 7 services Others: Open	Ireland	Majors: 7 services Others: Open
Cook Islands	3,000 seats	Israel	Majors: 7 services Others: Open
Cote d'Ivoire	Majors: 7 services Others: Open	Italy	7 services
Croatia	Majors: 7 services Others: Open	Jordan	Majors: 7 services ² Others: 7 services
Cyprus	Majors: 14 services Others: Open	Kenya	Majors: 7 services Others: Open
Czech Republic	Majors: 7 services Others: Open	Kiribati	Majors: 7 services Others: Open
Denmark	2,800 seats	Kuwait	Majors: 7 services ² Others: 7 services

Market	Capacity limit ¹	Market	Capacity limit ¹
Laos	Majors: 7 services ² Others: 7 services	Peru	7 services
Lebanon	2 services	Poland	Majors: 2,800 seats Others: Open
Macau	3 services	Russia	2 services
Malta	Majors: 2 services Others: Open	Samoa	2,000 seats
Mexico	Majors: 4 services Others: Open	Saudi Arabia	Majors: 4 services ² Others: Open
Morocco	Majors: 7 services Others: Open	Serbia	Majors: 7 services Others: Open
Myanmar	Majors: 7 services Others: Open	Seychelles	Majors: 7 services Others: Open
Nepal	Majors: 7 services Others: Open	Spain	Majors: 7 services Others: Open
Netherlands	2,400 seats	South Africa	Majors: 21 services Others: Open
Nigeria	7 services	Sweden	2,800 seats
Niue	500 seats	Switzerland	Open
Norway	2,800 seats	Timor-Leste	21 services
Oman	Majors: 4 services ² Others: Open	Tonga	Majors: 1,600 seats Others: Open
Pakistan	7 services	Turkey	7 services
Palau	1,200 seats	Zimbabwe	1,600 seats

¹All figures are on an 'each way, each week' basis. Sub-limits may apply in some markets. 'Majors' refers to Australia's major gateway airports of Sydney, Melbourne, Brisbane and Perth.

²The Enhanced Regional Package (ERP) provides additional capacity in agreed markets (up to a limit) for services that operate via or beyond to a point in Australia other than Sydney, Melbourne, Brisbane and Perth.