VIRGIN AUSTRALIA

SUBMISSION TO SENATE ECONOMICS LEGISLATION COMMITTEE INQUIRY INTO THE QANTAS SALE AMENDMENT BILL 2014

Virgin Australia welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee's inquiry into the Qantas Sale Amendment Bill 2014 (the Bill).

In accordance with previous public statements, Virgin Australia supports the repeal of the provisions of the *Qantas Sale Act 1992* (Cth) (QSA) which place unique regulatory restrictions on Qantas Airways (Qantas). This aspect of the QSA is outdated and reflects a period of transition in Australian aviation associated with the deregulation and privatisation of the industry. Virgin Australia also considers legislation for individual companies to be undesirable in a competitive market. Through the removal of Part 3 of the QSA and amendments to the *Air Navigation Act 1920* (Cth) (ANA), the Bill will create an industry-wide legislative framework for the regulation of foreign investment in Australia's international airlines and remove foreign investment restrictions in relation to Qantas' domestic operations.

The policy allowing up to 100 per cent foreign ownership of domestic airlines was put in place in 1991 as part of the Hawke/Keating Government's microeconomic reforms. It recognised that the need for majority Australian ownership was relevant only in the case of international airlines, where it was required to qualify for access to rights under bilateral air services agreements, and that from a practical perspective the majority of functions required to support the operation of a domestic airline will be necessarily located in Australia, ensuring local employment.

As a result of the amendments proposed by the Bill, the unique restrictions the QSA places on interests in Qantas that may be held by a single foreign person including foreign airlines (25 per cent) and foreign airlines in total (35 per cent) will no longer apply. Irrespective of whether these restrictions are impacting Qantas in practice today, they represent a signal to foreign capital which may influence decisions regarding investment in the airline. Aviation is a highly capital-intensive industry and Australia is a relatively small capital market in a global context. Restrictions in the QSA regarding use of the Qantas name and the ability of a foreign person holding more than 15 per cent of the voting shares in Qantas to appoint directors will also be eliminated.

It is important to note, however, that Qantas' operations as an international airline will continue to remain subject to a 49 per cent limit on foreign shareholdings under section 11A of the ANA. In addition, a number of restrictions in the QSA continue to be reflected in national interest criteria which Australian international airlines must satisfy in order to secure designation under Australia's bilateral air services agreements with foreign governments, including:

- at least two-thirds of the Board members must be Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline's head office must be in Australia; and
- the airline's operational base must be in Australia.

If Qantas wishes to continue to be designated under Australia's air services agreements in order to serve international markets, it must adhere to both the ANA and the national interest criteria noted above. Accordingly, the repeal of Part 3 of the QSA will not see Qantas relocate its head office or operational base overseas. This demonstrates that the effect of Bill, while

important in terms of the potential signals it may provide to the market and the investor community, will be limited in scope in practicality given the restrictions that apply to all Australian international airlines.

There is no obligation under the QSA for the facilities which support Qantas' domestic operation to be located in Australia, in recognition of the fact that it would be logistically impossible for any Australian airline to conduct domestic services from an offshore base. Furthermore, it would be highly inefficient as well as impractical for Qantas to undertake any significant proportion of its operations from Australia (both domestic and international) with staff domiciled overseas, precluding the possibility that the Bill would result in the transfer of skills or loss of jobs overseas. Virgin Australia also notes that the Bill would have no impact on the obligations Qantas has, in common with all other Australian employers, under the *Fair Work Act 2009* (Cth) and the *Migration Act 1958* (Cth).

It is also relevant to note that all proposals for foreign investment in Australian airlines, both domestic and international, are also subject to scrutiny by the Foreign Investment Review Board (FIRB).

Although it may have been operationally and economically efficient for Qantas to conduct all of its aircraft heavy maintenance in Australia when it had a fleet consisting solely of B747s and B767s, the lack of critical mass in several aircraft types in the current Qantas fleet is likely to prevent all such aircraft maintenance being conducted in Australia, based on cost considerations. The maintenance requirements of new generation, modern aircraft are also significantly lower compared to earlier aircraft models. The amendments proposed by the Bill will have no impact on the commercial realities associated with aircraft maintenance.

In addition, the vast majority of any airline's aircraft maintenance activities consist of day-to-day line maintenance requirements, which are carried out while aircraft are in service. It would be logistically impossible to send aircraft overseas to have routine line maintenance conducted. Accordingly, the Bill will not trigger a shift to more of Qantas' aircraft maintenance being conducted overseas.

Any suggestion that the Bill would have an impact on Qantas' safety outcomes is unfounded. The Chicago Convention imposes on each member State the responsibility for compliance with standards and practices related to safety, including regulatory oversight of its national carriers. The Civil Aviation Safety Authority (CASA) develops and enforces the safety standards which Australian carriers are required by law to observe, regardless of where aircraft maintenance is conducted. Provided Australian airlines meet the requisite CASA standards, there is no logical reason to expect that a decision to conduct some aircraft maintenance activities offshore will result in sub-optimal aviation safety outcomes.

The operations of Virgin Australia, as an airline that has never been subject to the unique restrictions imposed on Qantas under the QSA, provide clear evidence of the practical implications of the proposed Bill. Virgin Australia employs 9,500 staff, 95 per cent of whom are based in Australia. We continue to invest in the development of skills which benefit the Australian aviation industry, including through the establishment of a pilot cadet scheme and an engineering apprenticeship program. Virgin Australia conducts 75 per cent of our aircraft maintenance in Australia and owns or leases facilities across the country, including airport terminals, maintenance hangars, simulators and training and call centres. As Tourism

Australia's major Australian airline partner, we invest millions of dollars in marketing Australia overseas.

Virgin Australia also has a proven ability to support Australians in times of need, having mobilised resources at short notice to redeploy capacity to assist tens of thousands of travellers stranded during the Qantas grounding in 2011 and when Air Australia went into administration in 2012. We have provided relief flights and offered assistance to support recovery operations following natural disasters. These factors demonstrate the importance of Virgin Australia as a national carrier and highlight the significant contribution we have made, and will continue to make, to the nation's aviation infrastructure.

The amendments proposed by the Bill will harmonise the regulations applicable to Australia's airlines, with the result that Qantas will become subject to the same regulations as Virgin Australia. If we have successfully grown and strengthened our Australian presence under these regulations, there is no logical reason to expect that the amendments proposed by the Bill, in themselves, will have any impact on Qantas' presence in or commitment to Australia. A similar point can be made in relation to Jetstar Airways (Jetstar), as an airline which is not subject to the QSA. Jetstar has progressively expanded its operations, both domestic and international, since 2004, in contrast to Qantas which has scaled back its international network.

If Qantas chooses to adjust the level of its Australian operations, this will occur as the result of a strategic or management decision unrelated to the changes proposed by the Bill. In any event, as noted above, the national interest criteria applicable to Australian international airlines seeking designation under Australia's air services agreements, as well as efficiency and matters of practicality, significantly limit the scope for Qantas to move its operations offshore or decrease its local workforce.

As a vast island continent with geographically dispersed population centres, Australia is heavily reliant on aviation to underpin economic activity and maintain social links. It is therefore essential to establish policy settings and a regulatory framework which promotes a safe, fair, competitive and productive Australian-based aviation industry. Virgin Australia is of the view that the proposed Bill supports this objective.