Chapter 1

Introduction

1.1 On 6 March 2014, the Senate referred the provisions of the Qantas Sale Amendment Bill 2014 to the Senate Economics Legislation Committee for inquiry and report by 24 March 2014.

1.2 The Bill would repeal Part 3 of the *Qantas Sales Act 1992,* thereby removing ownership and other restrictions that apply specifically to Qantas.

1.3 As the Explanatory Memorandum notes, Section 7 of Part 3 of the Qantas Sale Act, as it currently stands, imposes the following restrictions on the foreign ownership of Qantas:

(a) total foreign ownership of Qantas is not to exceed 49 per cent;

(b) ownership by a single foreign investor is not to exceed 25 per cent; and

(c) aggregate ownership by foreign airlines is not to exceed 35 per cent.[1]

1.4 Part 3 of the Act also imposes additional restrictions on Qantas' operations, including:

(a) the makeup of the board of directors;

(b) the use of the name Qantas;

(c) the location of its head office;

(d) the place of incorporation; and

(e) the location of facilities that support its international operations.

1.5 The Bill also amends the *Air Navigation Act 1920* to allow Qantas to be included in the definition of an Australian international airline, 'meaning that Qantas will be subject to the same regulatory framework, including foreign ownership limits, as other "Australian international airlines".'[2]

1.6 Currently, under the Air Navigation Act foreign persons can own up to 49 per cent of Australian international airlines other than Qantas, with no restriction on foreign ownership for Australian domestic airlines, subject to consideration by the Foreign Investment Review Board. The Bill would remove the exclusion of Qantas from the Air Navigation Act's definition of an Australian international airline, thereby aligning Qantas' ownership restrictions with all other Australian international airlines.

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1 Explanatory Memorandum, Qantas Sale Amendment Bill 2014, p. 1. More precisely, Part 3 of the Act requires that Qantas include these restrictions in its articles of association.

2 Explanatory Memorandum, p. 1.

1.7 As the Explanatory Memorandum notes, if the Bill is passed Qantas' international operations will also remain subject to certain designation criteria in order to access negotiated air traffic rights under Australia's international air service agreements, namely that:

(a) the airline must be substantially owned and effectively controlled by Australian nationals;

(b) at least two-thirds of its Board members must be Australian citizens;

(c) the Chairperson of the Board must be an Australian citizen;

(d) the airline's head office must be in Australia; and

(e) the airline's operational base must be in Australia.[3]

Background

1.8 Qantas was a government-owned company privatised in stages between 1992 and 1995. The Qantas Sale Act, enacted as part of the privatisation process, contained 'national interest safeguards' intended to maintain the 'basic Australian character' of Qantas and to ensure that Qantas' status as an internationally recognised Australian flag carrier was not threatened.[4] These safeguards included specific restrictions on foreign ownership of Qantas.

1.9 Qantas' international operations compete with many airline companies. Domestically, Qantas' current major competitor is Virgin Australia, which commenced operations in Australia in 2000 as Virgin Blue. Virgin is not subject to the foreign ownership and other restrictions that specifically apply to Qantas, although it is subject to the requirements of the Air Navigation Act.

1.10 On 27 February 2014, Qantas announced an Underlying Profit Before Tax loss of $252 million and a Statutory Loss After Tax of $235 million for the six months ended 31 December 2013.[5]

1.11 Qantas explained this 'significant deterioration in earnings' during the half year with reference to what its Chief Executive Officer, Mr Alan Joyce, called 'some of the toughest conditions Qantas has ever seen.' With respect to the international market, Mr Joyce highlighted growth in international airline capacity in recent years:

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3 Explanatory Memorandum, p. 1. These eligibility requirements are also explained in the Department of Infrastructure and Regional Development's *Guidance Note—International Airline Licences*, p. 2, http://www.infrastructure.gov.au/aviation/international/files/20140109-IAL_guidance_notes.pdf.

4 The Hon. Ralph Willis MP, Minister for Finance, Second Reading Speech, Qantas Sale Bill 1992, House of Representatives Hansard, 4 November 1992, pp. 2588-2590.

5 Qantas, 'Qantas Group Financial Results,' media release, 27 February 2014, http://www.qantasnewsroom.com.au/media-releases/qantas-group-financial-results.

> Australia has been hit by a giant wave of international airline capacity, with a 46 per cent increase in competitor capacity since 2009—more than double the global increase of 21 per cent over the same period.[6]

1.12 With regard to the domestic aviation market, Mr Joyce pointed in particular to the ability of Virgin Australia to access capital from foreign airline shareholders and introduce additional capacity into the market, despite running at a loss:

> The Australian domestic market has been distorted by a current Australian aviation policy, which allows Virgin Australia to be majority-owned by three foreign government-backed airlines and yet retain access to Australian bilateral flying rights.
>
> Late last year, these three foreign-airline shareholders invested more than $300 million in Virgin Australia at a time when, as Virgin reported to the ASX on 6 February, it was losing money. That capital injection has supported continued domestic capacity growth by Virgin Australia despite its growing losses.[7]

1.13 In his appearance before the committee, Mr Joyce explained the relationship between the increased capacity in the domestic market and the recent decline in Qantas' profitability:

> Qantas is actually making money domestically and Jetstar is making money domestically. It is not making as much money as it used to in the past, and the reason is that we have a competitor that is losing a significant amount of money by adding a significant amount of capacity. In fact, if you take both of our competitors, Tiger Airways—which has operated in this market since 2008, for seven years—have lost money every year that they have operated; they have lost over $250 million, not making a single profit over that period of time. Virgin, since 2009, has lost $400 million in the domestic market. It does not matter how good you are as a company, how good your brand is, how good your service is. If you have two competitors that are willing to lose so much money over a period of time, that is going to put your operation under pressure and has put our operation under pressure. Qantas and Jetstar are not making as much money as they used to.[8]

1.14 The 27 February 2014 statement from Mr Joyce also noted that Qantas was already undergoing its 'biggest ever transformation,' having cut costs by 19 per cent over the last four years. However, according to Mr Joyce this transformation had proven insufficient, and therefore Qantas 'must now take actions that are unprecedented in scope and depth.'

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6 Qantas, 'Qantas Group Financial Results,' media release, 27 February 2014, http://www.qantasnewsroom.com.au/media-releases/qantas-group-financial-results.

7 Qantas, 'Qantas Group Financial Results,' media release, 27 February 2014, http://www.qantasnewsroom.com.au/media-releases/qantas-group-financial-results.

8 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, Tuesday, 18 March 2014, p. 8.

1.15 The Bill is intended to offer relief to Qantas by allowing it to operate under the same regulatory conditions as other Australian-based airlines. As the deputy Prime Minister and Minister for Infrastructure and Regional Development put it in his second reading speech:

> The purpose of the bill is to remove the regulatory handcuffs that apply to Qantas but to no other Australian-based airline—including in relation to accessing foreign capital.[9]

Financial impact

1.16 According to the Explanatory Memorandum, the Bill will have no financial impact.[10]

Regulatory Impact Statement

1.17 The Explanatory Memorandum notes that a detail-stage regulation impact statement has not been completed. An exemption has been granted by the Prime Minister.[11]

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9 The Hon Warren Truss MP, Deputy Prime Minister and Minister for Infrastructure and Regional Development, *House of Representatives Proof Hansard*, 6 March 2014, p. 1.

10 Explanatory Memorandum, p. 1.

11 Explanatory Memorandum, p. 1.