

Labor Senators' Dissenting Report

1.1 The *Qantas Sale Act 1992* was put in place to protect the national interest at the time of the Keating Government's sale of Qantas and Australian Airlines.

1.2 We know that the Deputy Prime Minister and the current Minister responsible for aviation, Warren Truss MP, said this less than five years ago when Labor proposed modest changes to foreign ownership rules for Qantas (while still retaining the 49 per cent cap on foreign equity):

The Government's decision to allow a single foreign investor to own 49 per cent of Qantas would deliver effective control to a foreign investor, including possibly a competitor airline. Loss of effective Australian control could leave Australia without an airline primarily committed to our interests. What safeguards will be put in place for the Australian flying public, particularly those in regional areas?¹

1.3 We also know that the current Treasurer, the Hon Joe Hockey MP, had similar qualms:

Well this is something I have previously been on the record about. Very concerned about any dilution of Australian control of Qantas. Qantas has, over the years, tried to increase foreign investment in the airline. We have been very concerned for a number of reasons. First and foremost, Qantas is an Australian icon and Qantas undertakes significant tasks in the national interest and there have been numerous examples where Qantas—an Australian-owned airline and an airline that relies heavily on government regulation has undertaken tasks in the national interest. Our experience has been that when companies have majority foreign ownership or majority foreign control—not necessarily the same thing—but when they have majority foreign control, then it actually has an impact on the social responsibilities of those companies here in Australia.²

1.4 Both the Deputy Prime Minister and the Treasurer have been singularly unconvincing as to what has changed in four years.

1.5 Indeed, in recent weeks, both have openly canvassed alternatives to this bill, which they both know is highly unlikely to pass the Senate any time soon.

1.6 On 5 December last year, the Deputy Prime Minister said of this bill:

If the Labor Party is interested in looking at changes to the Qantas Sale Act well then they should talk to us. And then we might be able to come to some kind of an arrangement. But it's not even a subject that can be talked about because it would simply be a waste of time and political energy when it's obvious that I think the majority of the Australian people and certainly

1 The Hon Warren Truss, press release, 16 December 2009, <http://www.warrentruss.com/press.php?id=1520>.

2 The Hon Joe Hockey MP, doorstep interview, 16 December 2009, <http://www.joehockey.com/media/transcripts/details.aspx?s=59>.

the majority of the people elected to the Parliament at the present time—especially in the Senate—do not favour that course of action.³

1.7 On several occasions, the Treasurer also flagged his equivocating views on how the Government should relate to Qantas.

Qantas calls for Government Assistance

1.8 The reason that the Qantas Sale Act is proposed for amendment is the Government's decision to press this as its sole response to recent requests for immediate assistance from Qantas.

1.9 On 13 February 2014, Qantas Chief Executive Officer and Managing Director, Mr Alan Joyce, said this of what he wanted of the Government:

[We] recognise there is little political and community appetite for changing the Act in the short term. We have encouraged the government to look for other solutions to address the uneven playing field as it stands right now. We think there are appropriate solutions that would not create precedents and would not come at a cost to taxpayers.⁴

1.10 On 27 February 2014, Qantas announced its half-year results, and a series of concrete actions aimed at addressing its interim half-year underlying loss of \$252 million. These were part of a pre-announced plan to achieve \$2 billion in cost savings to turn the business around, including a plan to reduce staff numbers by an additional 4000 over the 1000 announced in December.

1.11 Four days later, the Prime Minister, Deputy Prime Minister and Treasurer announced that the Government would not extend a debt guarantee to Qantas, and would focus on repeal of Part 3 of the Qantas Sale Act, while making Qantas an Australian international airline for the purposes of the *Air Navigation Act 1920* (ANA). The effect of these changes would be to reduce the relevant legislative requirements on Qantas to one: a 49 per cent foreign ownership cap on Australian international airlines (section 11A, ANA).

1.12 Part 3 (section 7) of the Qantas Sale Act includes the following requirements of the airline:

- Equity: three co-existing constraints –
 - (a) foreign ownership no higher than 49 per cent of issued capital (this is replicated in the ANA insofar as international operations are relevant);
 - (b) foreign airlines' aggregate ownership not to exceed 35 per cent of issued capital; and
 - (c) a single foreign person/entity holding not to exceed 25 per cent of issued capital.

3 The Hon Warren Truss, doorstep interview.

4 Mr Alan Joyce, speech to Tourism and Transport Forum Friends of Tourism Event, 13 February 2014, <http://www.qantasnewsroom.com.au/media-releases/alan-joyce-speech-to-tourism-and-transport-forum-friends-of-tourism-event?print=1>.

- At least two-thirds of the Board must be Australian, including the Chair.
- Qantas name must be used for international services.
- Head office to be located in Australia.
- That 'of the facilities, taken in aggregate, which are used by Qantas in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), the facilities located in Australia, when compared with those located in any other country, must represent the principal operational centre for Qantas'.

Protecting Australian Jobs

1.13 Mr Joyce's responses to questions about the future employment of Qantas staff raised significant concerns:

Senator STERLE: About 9.8. Mr Joyce, if section 7 of the Qantas Sale Act is repealed, is it not the case that any job that can be done offshore will be done offshore, and these full-time jobs will be lost to Australia forever?

Mr Joyce: Could you repeat that.

Senator STERLE: If section 7 of the Qantas Sale Act is repealed, is it not the case than any job that can be done offshore will be done offshore, and these full-time jobs will be lost to Australia forever?

Mr Joyce: That is not the case.

Senator STERLE: Exactly how many jobs could have sent overseas? Have you done some sums?

Mr Joyce: No. I think what we have said is that the plans we have to turn the business around constitute us making 5,000 people redundant and protecting the 27,000 jobs we have within the group. We have a \$2 billion cost reduction program—

Senator STERLE: Sorry to interrupt, but I have limited time. I understand what you have said. I just want you to be as succinct—

Mr Joyce: I am—

Senator STERLE: as you can. Have you or any of your crew done the sums on how many jobs will be lost offshore.

Mr Joyce: I will finish the answer to the question. The 5,000 jobs we have outlined are jobs that disappeared as a consequence of the changes we talked about on maintenance and the changes we have been talking about in head office—

Senator STERLE: While we are on maintenance, do you have any sums on how many maintenance jobs will be gone?

Mr Joyce: Yes—

Senator STERLE: And how many—

Mr Joyce: We have talked about the closure of Avalon and we have talked about the line maintenance roles—

Senator STERLE: So how many jobs?

Mr Joyce: Avalon has 300 jobs and that closes this week. Then we have line maintenance jobs, which disappeared. They are now being done offshore. There are 300 jobs that we announced—

Senator STERLE: But if the Qantas Sale Act legislation goes through to repeal the part you want gone, will any additional jobs in the maintenance area go offshore?

Mr Joyce: We have no more plans for that.

Senator STERLE: No more than the 300 that was announced with the closure of Avalon?

Mr Joyce: That is right. What I am saying to you, and I think we said last Friday, is that this is all about making sure that Qantas has the same flexibility of our competitor—

Senator STERLE: I fully understand that and you did say that—

Mr Joyce: There is some misinformation about what our competitor does. Our competitor has all of its heavy maintenance done offshore and Qantas needs the same flexibility.

Senator STERLE: I am trying to work with you, Mr Joyce. I am happy to call you back to the Rural and Regional Affairs and Transport References Committee if we cannot get through it. I would like to give you the opportunity to get it all done and dusted—

Mr Joyce: I hope you would respect the fact that I have probably turned up to these committees more than any other CEO in the country has. We are giving plenty of time to the Senate in terms of answering the questions, but at the same time I would ask at the same time that you respect our ability to give full answers to the questions and not have them—

Senator STERLE: I am working with you and I fully respect that. That is why I am asking you, without all the additional comments, that if you would come straight to the question I would greatly appreciate it.

CHAIR: Senator Sterle, if you have a question, please ask it.

Senator STERLE: I am trying, thank you Chair. What about flight crew. If jobs were offshore or if the Qantas Sale Act provisions were repealed, how many flight crew jobs would go offshore?

Mr Joyce: We do not have any numbers for those.

Senator STERLE: Any other people from catering, management or call centres?

Mr Joyce: Again, I will give the same answer for all of those.

Senator STERLE: None at this stage that you can identify?

Mr Joyce: Yes.⁵

Concerns over a potential Qantas restructure

Senator STERLE: Have you modelled scenarios on how many jobs could be sent overseas without the repeal of the provisions?

Mr Joyce: Sorry, no. Again, it is the same thing.

Senator STERLE: Would it be possible for Qantas to replicate the business structure of Virgin Australia, and have investigations taken place into restructuring Qantas in light of the proposed repeal of section 3 of the Qantas Sale Act?

Mr Joyce: Sorry, I do not understand that question.

Senator STERLE: Can Qantas replicate the business structure of Virgin Australia if the provisions are repealed?

Mr Joyce: I think the answer to that is that it clearly can be, if the provisions are repealed.

Senator STERLE: What are the barriers to Qantas Domestic copying the approach taken by Virgin?

Mr Joyce: The same barriers that Virgin have, which is that we have a process that has to go through FIRB for any investment that comes in. FIRB still has to approve the foreign investor. Then we have to still be subject to the Air Navigation Act, which means that the structure would have to be in place to allow no more than 49 per cent foreign ownership of the international business, to protect its traffic rights.

Senator STERLE: Are there any other barriers?

Mr Joyce: Can you think of anything else, Andrew?

Mr Finch: No. The designation point for international business remains, but, again, we would expect the same rules that apply to Virgin to apply to us.

Senator STERLE: Are you able to inform the committee of how long it took Virgin to establish its current structure?

Mr Joyce: It started the process two years ago. I think the—

Mr Finch: They announced it in February 2012. I think it was implemented about two months later, so not very long.

Senator STERLE: Two months?

Mr Finch: From memory.

Senator STERLE: What investigations has Qantas undertaken into splitting the airline into a domestic arm and an international arm in light of the proposed repeal of section 7 of the Qantas Sale Act?

Mr Joyce: Qantas manages its business as a domestic and international arm already. As you know, we have a CEO of the domestic arm and we have a CEO of the international arm. We have a management structure, an organisation and profitability and reporting that is based on the two different segments. We already report in that way.

Senator STERLE: So nothing would change?

Mr Joyce: Sorry, nothing would change with respect to?

Mr Finch: I thought the question was what plans we have.

Mr Joyce: We are saying that we already have a business that is structured that way.

Senator STERLE: Nothing else would change?

Mr Joyce: Sorry?

Senator STERLE: There would be no additional actions?

Mr Joyce: If what?

Senator STERLE: If the bill is repealed and if you want to split the domestic and international arms—

Mr Joyce: I think we are going into hypotheticals. At the moment, I do not know what will happen into the future with relation to Qantas. I am saying that there is a domestic and an international arm today. This is all about giving Qantas the same flexibility that Virgin has both in ownership and in the structure. That is what we are talking about here, that it is a level playing field and the repeal of part 3 of the act provides a way of giving that level playing field

Senator GALLACHER: Just a point of clarification. What we are trying to establish is how you will exercise your bilateral arrangements to international designations and retain the 49-51 in the international segment?

Mr Joyce: We are saying that this is all about the level playing field. Our competitor has done that and has a structure—

Senator GALLACHER: We understand that. We just want to know how you are going to do it?

Mr Joyce: It is hypothetical. We have not got any plans. We have not got any firm ideas about what Qantas would do. It is having the ability, if need be, to have access to the same structure.

Senator STERLE: Would there be any difference in sharing assets such as airport terminals, catering and maintenance facilities or reservation systems staff if there was a division, or if you are granted the repeal?

Mr Joyce: Again, it is going into the hypotheticals about what would happen. A lot of those parts of our business are already structured that way. As you know, the A380 and the 747 maintenance is done offshore. It is not done in Australia, so it does not share the same facilities.

Senator STERLE: The bill is going to be put to the Senate in the very near future, so it is not really a hypothetical.

Mr Joyce: When it comes to the business and the way it is structured, a lot of the business is already split into the two parts anyway.

Senator STERLE: I am not going to put words in your mouth. Are you saying to the committee that there will probably be no changes?

Mr Joyce: No, I am saying that. I am saying I do not know what the future holds and I am saying that Qantas needs the same flexibility as its competitor to manage its domestic and international businesses the same way its competitor can. I am all about talking about the flexibility that this act gives us in making sure that we have a level playing field with Virgin.⁶

Concerns over how Qantas Assets will be divided between the International and Domestic Arms

Senator STERLE: I will ask you this one and I hope you do not refer to it as being hypothetical. What about the use of aircraft if the bill goes through? Would there be a change in the use of aircraft between the international and the domestic?

Mr Joyce: You need to understand our business. The aircraft are already positioned differently between domestic and international. What you are saying already happens. The A380s do not fly domestically. The 747s do not fly domestically. The A330s that we will have for international are particular aircraft. They are going to be the A330-200s that will fly the international markets. Then the 300s and 738s only fly domestically, apart from Jetconnect operation in New Zealand which operates across there. The fleets are already divided into international and domestic. Going to your previous question—

Senator STERLE: You have made that clear. I am sorry, I have the chair watching me.

Mr Joyce: To answer your previous question when you asked about airports. Again, as you know, we operate mostly out of domestic and international airport terminals, so it is already divided that way.

Accessing an Air Operating Certificate

Senator STERLE: You have answered that. How long will it take to get an air operating certificate for the new arm of the airline if you are granted a repeal?

Mr Joyce: We had already started that process.

Senator STERLE: You have started?

Mr Joyce: We had started that process some time ago as part of the accountability and responsibility for having an international and domestic division. But that has been paused and is stopped at the moment.

Senator STERLE: How long do you think will take?

Mr Joyce: It will probably take us another six to nine months to do.

Questions over pre-made plans to demerger the airline

Senator STERLE: What would be involved in moving staff between the Australian owned international arm and the foreign owned domestic arm?

And what does Qantas believe the likely impact on wages and working conditions will be?

Mr Joyce: Again, that is hypothetical and no work has been done on that.

Senator STERLE: I cannot squeeze blood out of a stone, but thank you. Would staff move to a greenfield arrangement or would staff be moved to a brownfield arrangement should the demerger go ahead?

Mr Joyce: Again, you are hypothesising.

Senator STERLE: Mr Joyce, I understand, and I am very well aware of the Senate's rules, but you are pushing for the repeal of the sales act and I would assume that there has been some work done. You would not just sit back and see what happened if the Senate ticked off on it and then start work. That is my belief.

Concerns over Future Employment arrangements for Qantas staff, Greenfield/Brownfield Agreements

Senator STERLE: You made that very clear to us in Sydney. You also made very clear in Sydney that it is a preference for flexibility for Qantas to have part-time workers. So if you have gone to the extent of making it very clear for the reference committee of rural, regional and transport that you wanted to 'de-full-time' a lot of the work force for flexibility, one would have thought that you would have a tower full of HR and IR experts who would have put some thought around what sorts of agreements you were going to want them employed on.

I will put words in your mouth: I do not think for one minute, Mr Joyce, that you would want to continue the same employment arrangements if you were seeking that flexibility to 'de-permanentise' the workforce.

Mr Joyce: I think you are making assumptions that are not valid—

Senator STERLE: Okay, if I am proved right, Mr Joyce—

Mr Joyce: You are making assumptions that are not valid, Senator.

Senator STERLE: Tell us, which is better for Qantas in terms of the employment arrangements: brownfields or greenfields?

Mr Joyce: I do not know.

Senator STERLE: Okay, You know, Mr Joyce, when I was organising with the TWU I wish your IR people were as evasive as well, because it would have been so much easier.

CHAIR: Senator—

Senator STERLE: I am allowed to say that; I am allowed because I had a connection there. They tried to sue me. All right? That does not matter, we got over most of that stuff!

Concerns over future potential investors in Qantas and potential barriers to investment

Senator STERLE: Mr Joyce, if section 7 of the Qantas Sales Act is removed, who does Qantas believe would be the most likely investors?

Mr Joyce: As we said to your committee last week, there have been lots of investors in the past and over time that has changed. We have had dialogue with Singapore Airlines about a possible merger. We have had dialogue with British Airways and we have had dialogue with a lot of different carriers. Our partners over time changed, the strength of partners over time changed. I just note there that to my mind there would be airlines and companies that would be interested in Qantas. But again, it is speculation until we understand what happens with the Qantas Sale Act.

Senator STERLE: All right, Mr Joyce, could you—

Mr Joyce: Again, I am assured that given the amount of partners that we have around the globe, the interest that there is in the Australian market and the attractiveness of this brand name that there is not going to be a shortage of people interested in the company.

Senator STERLE: Would you be able to inform the committee of maybe the key concerns of likely buyers?

Mr Joyce: I think the likely buyers of Qantas are going to have the same issues under the Qantas Sale Act today. The issue that buyers would have are the limitations that they would have eventually in being able to invest in Qantas.

Senator STERLE: But if that section of the act is removed, are there any likely barriers for the buyers?

Mr Joyce: Obviously, you have the further approval process that the buyers would have to go through, which is going to apply potentially to a lot of the partners that would like to buy into Qantas.

Senator STERLE: And I would assume that they would want some board positions too, but that is me asking that. Would that be the case?

Mr Joyce: Well, British Airways had 25 per cent of Qantas when it was privatised. They had two board positions at the time, so the history has already been established on that.

Senator STERLE: All right. Is there anything in the Qantas—

Mr Joyce: I will point out again, coming back to where our competitor is: in terms of our competitors, Virgin, Singapore, Air New Zealand and Etihad will all have board seats, probably with the CEOs of each of those carriers being represented on the board. That has been the standard practice I think in relation to our competition.

Senator STERLE: Is there anything in the Qantas/Emirates agreement that would that would prevent or discourage another foreign investor, in particular an airline taking a stake in Qantas?

Mr Joyce: I think the agreement with Emirates is commercial-in-confidence and I cannot divulge the details of that.

Senator STERLE: I expected that.⁷

Concerns over effective protections as claimed by the Government

1.14 In announcing his approach, the Prime Minister said (as indeed he said in the House of Representatives) that:

Now, as I understand it, the Air Navigation Act does put some requirements on Australian-based international carriers – they do have to have 51 per cent Australian ownership, they do have to have their headquarters and the substance of their business based in Australia. So, obviously under what we are proposing, Qantas international would remain in every sense an Australian airline. Qantas domestic, should there be a distinction, would remain a substantially Australian airline.

1.15 This statement is not correct. Evidence from the Department and Qantas patently demonstrated that. While the ANA does require that an ‘Australian international airline’ have no more than 49 per cent foreign ownership, it is silent on any other pre-conditions that pertain to Australian character: for instance, those pertaining to a requirements on location of the airlines’ headquarters, composition of its board and matters relating to the location of operations.

1.16 The Department of Infrastructure and Regional Development does apply specific criteria when designating ‘Australian international airline’ status. This criteria includes:

- 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;
- the airline's operational base must be in Australia.

1.17 However, when questioned as to whether these conditions could be changed as a matter of Departmental policy or at the request of Minister, the Department confirmed that this would be the case. This is an important point, as it demonstrates that after the repeal of Section 7 of the Qantas Sale Act, the key conditions which ensure Qantas jobs remain in Australia and that Qantas retain an essentially Australian character will no longer be codified in law, but open to change without notice by the Minister or Department.

1.18 If the repeal of Section 7 of the Qantas Sales Act were to be successful it is clear that there would be little effective legislative protection from the significant off-shoring of a large number of Qantas jobs.

Resolving key business issues with Qantas

1.19 This inquiry has heard and read testimony and submissions from Qantas, a range of its unions, the Department of Infrastructure and Regional Development and others. It is fair to say that views on the way forward for Qantas are strongly-held and varied. This included criticism of the response of management at Qantas to the circumstances they have experienced, criticism of airline restructurings and regulatory responses, and different views on how to serve the national interest.

1.20 Under questioning, Mr Joyce also indicated that there had been no investigations into how Qantas would respond to the repeal of Section 7 of the Qantas Sale Act, no investigations into how the airline would seek to restructure itself as a result and importantly, no investigations into how the repeal would impact employment conditions. On the question of the number of job losses resulting from the repeal, Mr Joyce responded that he ‘could not rule anything in or out’. This statement again underlines our concern that the repeal of the Section 7 of the Qantas Sale Act will result in significant job losses.

1.21 Furthermore, the argument that repealing Section 7 of the Qantas Sale Act would fundamentally resolve the business issues Qantas is experiencing is unconvincing and inconsistent. As articulated to the inquiry several times, Qantas is losing money because it is likely in an unsustainable airfare pricing war with Virgin Australia. Putting the rhetoric of ‘unshackling Qantas’ aside, repealing Section 7 of the Qantas Sale Act will not fundamentally change this dynamic.

1.22 If access to capital is an issue for Qantas, and permitting access to foreign capital was the key, it was not articulated why Qantas could not access this capital from Australian sources. Availability of domestic capital sources has not been articulated as a problem, either in the instance of Qantas or in discussions more broadly about the Australian economy. With over \$1.6 trillion dollars of capital invested by Australians in domestic superannuation funds, it is difficult to make the argument that capital for domestic investment is scarce.

1.23 It is more likely the case that the falls in the Qantas share price, as well as market opinion of the potential future profitability of the airline, explain any reluctance to invest in Qantas.

1.24 These fundamental business issues will not be addressed by the repeal of Section 7 of the Qantas Sale Act.

1.25 The Australian Council of Trade Unions submission scopes the wide array of foreign government support for airlines. Key Qantas competitors, including Emirates, Etihad and Singapore Airlines are all majority government owned. The Qantas Sale Amendment Bill makes no difference at all to this. For all the discussion of levelling the local airline playing field, there has been little examination of the playing field internationally.

Conclusion

1.26 It is clear that the national interest is not served by now repealing Section 7 of the QSA. Reasons for this include that with the passage of the Bill:

- there will likely be significant job losses;
- it will not resolve the fundamental business issues Qantas faces;
- Qantas may lose its essentially Australian character; and
- it will not result in the creation of a ‘level playing field’ as key Qantas competitors will still remain majority or substantially foreign government owned or backed.

1.27 Changing our aviation regulatory environment warrants more than a Bill introduced as a political tactic. Labor has been, and remains open to discussion with the Government about real, honest and effective solutions and reform to Australia's aviation sector. This Bill does not represent that.

1.28 The last thorough examination of the Australian aviation sector was the Labor Government's Aviation White Paper of 2009. That concluded a year-long consultation process with all industry stakeholders.

1.29 One recommendation from that process, not taken up at the time by the then Opposition, now Government (see the quotes at the start), was the proposal to relax the intermediate restrictions on foreign ownership—that is, the 35 per cent and 25 per cent caps. This is an option that has been available for almost five years that may now be able to progress.

1.30 Due to the concerns listed above, Labor supports keeping Qantas Australian, and will be opposing wholesale repeal of Part 3 of the QSA.

Senator Glenn Sterle
Senator for Western Australia

Senator Alex Gallacher
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