

The Senate

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Economics  
Legislation Committee

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Qantas Sale Amendment Bill 2014 [Provisions]

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# Senate Economics Legislation Committee

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# 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.<sup>1</sup>

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"'.<sup>2</sup>

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.<sup>3</sup>

## 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.<sup>4</sup> 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.<sup>5</sup>

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](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>.



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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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

### **Financial impact**

1.16 According to the Explanatory Memorandum, the Bill will have no financial impact.<sup>10</sup>

### **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.<sup>11</sup>

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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.

## Chapter 2

### Views on the Bill

2.1 The committee received evidence from a range of groups and individuals, including Qantas and Virgin Australia, unions and professional associations representing Qantas employees, and the Department of Infrastructure and Regional Development.

2.2 Several key issues were covered in the course of the inquiry, including:

- (a) the nature of the challenges facing Qantas, and whether the Bill provides an appropriate and optimal response to these challenges;
- (b) the effect the proposed amendments to the Qantas Sale Act might have on Australian-based Qantas jobs;
- (c) the impact that offshoring of maintenance work—which some witnesses argued would likely increase should the Bill be enacted—might have on passenger safety;
- (d) the ways in which Qantas could be restructured (particularly in terms of its domestic and international operations) should the Bill be enacted; and
- (e) whether foreign ownership of Qantas could potentially damage Australia's national interest.

### Views on the problems facing Qantas

2.3 There was some agreement between supporters and opponents of the Bill about the nature of certain problems facing Qantas, if not necessarily on the solutions to those problems.

2.4 In particular, Qantas and several of the unions that gave evidence to the committee were in agreement that Virgin Australia was using its access to capital from foreign state-owned corporations to finance losses incurred in its pursuit of a greater share of the domestic aviation market.

2.5 For its part, Qantas told the committee that the primary threat to its future was the fact that Virgin Australia's strategy was backed financially by three foreign government-owned airlines, which collectively had a 70 per cent stake in Virgin Australia:

Right now in our core domestic market Qantas faces a manifestly un-level playing field, which threatens our future prospects. Three foreign airlines, all totally or majority government owned, have taken 70 per cent ownership of Virgin Australia. Late last year they poured more than \$300 million into the airline to bankroll continued major capacity increases into the market by Virgin at a time when Virgin was making significant losses. This is a

strategy directed at weakening Qantas and promoting the interests of Virgin's foreign owners.<sup>1</sup>

2.6 The Qantas Engineers' Alliance (made up of the Australian Manufacturing Workers' Union (AMWU), the Australian Workers' Union and the Electrical Trades Union) put the matter more bluntly still, and suggested that Virgin Australia was engaged in a 'predatory price war' with Qantas. The Qantas Engineers' Alliance argued that the ownership structure of Virgin Australia:

... is anti-competitive, unsustainable and occurring with the aid of foreign governments prepared to sustain ongoing losses in the pursuit of market share with the end aim being the removal of a strong, well-respected competitor in Qantas.<sup>2</sup>

2.7 The Qantas Engineers' Alliance continued by arguing that Virgin was, in practice if not in a strictly legal sense, dumping excess capacity into the domestic aviation market:

The new and clearly excessive capacity being placed into the domestic aviation market [by Virgin] at a loss is clearly not market driven. It is being done to undermine the competitiveness and viability of the Qantas group.<sup>3</sup>

2.8 While there was general (although not universal) agreement that the discounting and capacity competition between Qantas and Virgin were key contributors to Qantas' current difficulties, a number of submitters argued that problems at Qantas were also a result of poor management decisions.

2.9 For instance, Colonial Airways, while acknowledging that Qantas has suffered as a result of Virgin's ability to utilise foreign capital to finance losses in the competition for market share, also pointed to problems arising from Qantas business decisions. These decisions included (but were not limited to) aircraft selection and 'unproven forays and costly business expeditions into Asia that the Qantas Group pursued through Jetstar and other subsidiaries in recent times.'<sup>4</sup>

2.10 The Australian Services Union (ASU), meanwhile, rejected the suggestion that restrictions on foreign ownership had contributed to Qantas' difficulties:

Advocates of the proposed reforms often argue that Qantas is disadvantaged by the restrictions on foreign ownership. They contend that Qantas has difficulties raising capital. We dispute this argument. As one of the world's most successful airlines, Qantas has never had any trouble raising capital

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1 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 1.

2 Qantas Engineers' Alliance, *Submission 7*, p. 11.

3 Qantas Engineers' Alliance, *Submission 7*, p. 12. Also see Mr Matthew John Murphy, National Industrial Officer, Electrical Trades Union of Australia, *Proof Committee Hansard*, 18 March 2014, p. 36.

4 Colonial Airways, *Submission 1*, pp. 4–8.

when required. Qantas is presently below the foreign ownership threshold of 49%. It has only come close to the exceeding the threshold on one occasion (the [Airlines Partners Australia] private equity bid). This indicates that sufficient local capital is available.<sup>5</sup>

### ***Committee view***

2.11 The committee acknowledges that there are a range of factors that have contributed to Qantas' current difficulties, some of which may be a matter for the Qantas board and Qantas shareholders. The committee believes that regardless of what other factors may have contributed to Qantas' difficulties, it cannot be denied that the Qantas Sale Act, as it currently stands, forces Qantas to compete on an un-level playing field. The amendments the Bill would make to the Qantas Sale Act would level the playing field, and enable Qantas to compete in an environment free of unreasonable and outdated regulatory impediments, including impediments to accessing foreign capital.

### **Amending the Qantas Sale Act to 'level the playing field'**

2.12 The Qantas Sale Act applies only to Qantas and imposes certain conditions on the airline. As noted earlier, Part 3 of the Act contains the ownership restrictions that apply to Qantas. The repeal of this part of the Act, together with related amendments to the Air Navigation Act, would allow Qantas to operate on equal terms with Virgin Australia.

2.13 The committee heard a range of different views regarding whether the Bill would be effective in levelling the playing field in the Australian aviation sector.

2.14 For its part, Qantas argued that since the Qantas Sale Act became law in 1992, 'the domestic and international aviation landscape has changed significantly without matching changes to the regulatory or policy framework.' Appearing before the committee, Mr Joyce argued that the proposed amendments to the Qantas Sale Act would allow Qantas to compete in the aviation market on an equal footing with its competitors:

A decision has now been taken by this government to ask the parliament to amend the Qantas Sale Act. We support this as a means to level the playing field; as we state in our submission, Qantas is prevented by the act from competing on equal terms to those of our competitors. This is without precedent elsewhere in the economy and is without parallel in the global aviation industry. To our knowledge, no other business in Australia's economy is competitively handicapped in this manner.<sup>6</sup>

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5 Australian Services Union, *Submission 10*, p. 4.

6 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 1.

2.15 The Regional Aviation Association of Australia wrote that it 'supports legislative change that will enable Qantas to raise capital in a manner that places it on a level playing field with its international and domestic competitors.'<sup>7</sup>

2.16 While critical of some aspects of the Bill, the Australian and International Pilots Association (AIPA) nonetheless maintained that amending the Qantas Sale Act 'is necessary to level the playing field among Australian international airlines if the Virgin restructure is not to be publicly examined.'<sup>8</sup>

2.17 The AIPA expressed support for removing the limit on foreign ownership from the Qantas Sale Act in its written submission. Even so, during its appearance before the committee, the AIPA added that the removal of the 49 per cent limit on overall foreign ownership:

...warrants further investigation beyond just that provided by a Senate inquiry. We would prefer to see that examined in more detail, and that is why we have suggested that, before the 49 per cent is abolished, it be examined by an agency over a longer period, with more resources devoted to it.<sup>9</sup>

2.18 The ASU argued that the Bill would not create the 'level playing field' in the aviation sector that the government was seeking:

If the government truly wants to 'level the playing field in aviation' in Australia the solution does not lie in the Qantas Sale Act. Stricter negotiations focussing on the national interest and job creation in Australia, as part of the government negotiated Air Services Agreements would level the playing field. So [too] would imposing ... job creation requirements on foreign carriers flying domestically.<sup>10</sup>

2.19 The Qantas Engineers' Alliance argued that no 'level playing field' exists in the aviation market, which is distorted by 'massive government intervention and ownership.'<sup>11</sup>

2.20 Similarly, the Australian Council of Trade Unions (ACTU) told the committee that because of the unusual nature of the aviation industry, wherein money is often invested 'with a different set of return expectations from those of a conventional investor in a normal industry,' any concept of a level playing field in the aviation market was essentially 'illusory':

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7 Regional Aviation Association of Australia, *Submission 11*, p. 1.

8 First Officer Nathan Safe, President, Australian and International Pilots Association, *Proof Committee Hansard*, 18 March 2014, p. 23.

9 First Officer Nathan Safe, President, Australian and International Pilots Association, PCH, p. 25.

10 Australian Services Union, *Submission 10*, p. 9.

11 Qantas Engineers' Alliance, *Submission 7*, p. 7.

If this bill were carried in its current form, it would not release the corporation into a perfectly functioning capital market where it would be able to raise money. It would release it, as I think Mr Joyce effectively confirmed in his remarks tonight, into a market where it is able to seek capital from foreign-owned airlines, most of which are directly or indirectly owned by foreign governments. So that is not releasing the business into a normally functioning global capital market. People are invested in airlines for different reasons: they are invested in them because they fit into a broader package of assets in terms of an aviation business; they are invested in them for strategic national interest; there are clearly some vanity projects in the Middle East that are unrelated to commercial returns; and there are cases where governments have made the investment as part of the national interest explicitly. ... So our core position really is that, if we are going to rescind legislation which deals with creating an Australian controlled, located and, essentially, operated airline, we need to do so cognisant of the capital market into which we are releasing that business.<sup>12</sup>

2.21 As well as allowing higher levels of foreign ownership overall, the Bill would also remove the 25 per cent limit on ownership by a single foreign investor and the 35 per cent limit on aggregate ownership by a foreign airline. It should be noted, however, that under the proposed amendment in the Bill to the Air Navigation Act and in compliance with Australia's various air service agreements, Qantas would still need to be substantially owned and effectively controlled by Australian nationals if it were to operate international air services.

2.22 The measure to remove the 25 per cent and 35 per cent limitations was broadly supported by those witnesses who addressed it directly. For example, the AIPA argued that these limits 'serve no useful purpose and should be repealed.'<sup>13</sup>

2.23 The ACTU, meanwhile, suggested that if the intent of the Bill was to improve Qantas' access to foreign capital, it should be asked why this could not be achieved by only repealing the 25 per cent and 35 per cent rules. This would, it argued, have 'the effect of giving them additional access to foreign capital, including large shareholdings from foreign airlines without creating the series of collateral effects which have been complained about—the loss of Australian control and the loss of Australian location with respect to jobs and activities.'<sup>14</sup>

2.24 Asked if the Bill would achieve its objective of delivering a level playing field in the aviation sector, the Department of Infrastructure and Regional Development told the committee that it would. The Department suggested it would do so:

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12 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 29.

13 First Officer Nathan Safe, President, Australian and International Pilots Association, *Proof Committee Hansard*, 18 March 2014, p. 23.

14 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 29.

... by removing the restrictions that are contained within the Qantas Sale Act and placing the Qantas Group under the regulatory construct of all of the rest of the aviation legislation, including the Air Navigation Act...<sup>15</sup>

### ***Committee view***

2.25 As noted above, the committee believes that the Qantas Sale Act imposes unreasonable and outdated impediments on Qantas, and forces it to compete on an un-level playing field. The committee acknowledges that some witnesses were of the view that Qantas' access to foreign capital could be adequately improved simply by removing the 25 per cent limit on ownership by a single foreign investor and the 35 per cent limit on aggregate ownership by foreign airlines. However, the committee believes that removing these limits alone would only go some way toward correcting the distortion created by the Qantas Sale Act, given other aspects of Part 3 of the Act are a disincentive to potential investors. In order to properly level the playing field, and enable Qantas to compete without unreasonable and outdated regulatory restrictions, it is necessary to repeal Part 3 of the Qantas Sale Act in its entirety, including the 49 per cent limit on foreign ownership.

### **The future of Qantas jobs**

2.26 A key item of discussion in submissions and during the public hearing was the potential impact of the Bill on Australian jobs at Qantas.

2.27 Qantas indicated that the repeal of Part 3 of the Qantas Sale Act would provide it with greater workforce flexibility, telling the committee that the Qantas Sale Act as currently drafted denied Qantas the ability that Virgin has to undertake a large part of its operations (such as heavy maintenance and call centre work) offshore.<sup>16</sup>

2.28 The ACTU, meanwhile, argued that the repeal of the Qantas Sale Act would remove any restriction on the 'wholesale exporting of Qantas jobs in Australia to foreign interests.'<sup>17</sup> The ACTU suggested to the committee that around 10,000 jobs across the Qantas group could be offshored. Asked why Qantas might want to offshore these jobs, the ACTU responded that it would allow Qantas to conduct parts of its operations in a lower wage environment:

So it is explicitly a process of seeking to cut the wages of the people performing the work. It is a process of risk transfer from the parent

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15 Mr Andrew Wilson, Deputy Secretary, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 48.

16 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 2.

17 Australian Council of Trade Unions, *Submission 5*.



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corporation to another corporation and eventually to the people performing the work. That is the economic logic of outsourcing, in essence.<sup>18</sup>

2.29 The ACTU clarified that the figure of 10,000 jobs only referred to jobs within the Qantas group itself. In its submission, the ACTU also noted that Qantas' operations support a further 165,000 indirect employment opportunities in a range of industries, and many of these jobs would also be put at risk in the event the Bill was enacted.<sup>19</sup>

2.30 The ASU contended in its submission that over the past decade Qantas had moved to offshore a sizable number of Australian jobs, and suggested Qantas 'has evidenced a clear intention to offshore Australian jobs where they see a commercial advantage.' The ASU further argued that:

...without the restrictions imposed by the Qantas Sale Act, this trend would accelerate and more skilled jobs would be lost offshore. The Qantas Sale Act has succeeded in preserving Qantas and Qantas-owned and operated companies as Australian entities.<sup>20</sup>

2.31 Virgin Australia, however, noted that despite never having been subject to the restrictions contained in the Qantas Sale Act, it had developed a business with 9,500 employees, 95 per cent of whom were based in Australia. Virgin also noted:

There is no obligation under the [Qantas Sale Act] 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).<sup>21</sup>

2.32 The Department of Infrastructure and Regional Development explained to the committee that there was already considerable scope for jobs to be located offshore under the Qantas Sale Act at it currently stood:

There is a provision in the Qantas Sale Act that relates specifically to the international services, and it says that of the facilities, taken as a whole, if you look at the facilities that are in Australia compared to what are in other

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18 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 32.

19 Australian Council of Trade Unions, *Submission 5*, p. 6.

20 Australian Services Union, *Submission 10*, p. 4.

21 Virgin Australia, *Submission 6*, p. 2.

countries then you have to say that Australia is the principal base. For better or for worse, that allows considerable scope for outsourcing at the moment. We do not see that there would be a substantial change in the outsourcing in what is proposed.<sup>22</sup>

### ***Maintenance jobs***

2.33 One area of particular interest in the inquiry was the potential impact the Bill might have on the amount of maintenance that Qantas undertakes on its planes in Australia as opposed to maintenance that it undertakes offshore.

2.34 The Qantas Engineers' Alliance argued that repeal of Part 3 of the Qantas Sales Act would substantially reduce Qantas' commitment to maintaining heavy maintenance activity in Australia:

If Qantas were to adopt a similar hybrid domestic-international structure to that of Virgin it could be reasonably expected that any major foreign airline involved in the Qantas takeover would seek to absorb Qantas' maintenance activities into that of its own global supply chain.<sup>23</sup>

2.35 Mr Joyce explained that due to improved technology, the requirements for maintenance on newer aircraft were not as great as they had been for earlier generations of aircraft, and this helped explain why Qantas was scaling down or closing certain maintenance operations in Australia.<sup>24</sup>

2.36 Mr Joyce further explained to the committee that as the Qantas fleet had been updated, it had been necessary to consolidate its heavy maintenance operations at its Brisbane facility.<sup>25</sup> The Australian Licenced Aircraft Engineers Association acknowledged that, from what it had seen on the ground, there was no indication that Qantas intended to close down the Brisbane heavy maintenance facility.<sup>26</sup>

2.37 Mr Joyce also told the committee that Virgin Australia undertakes its heavy maintenance offshore, 'and Qantas needs the same flexibility.'<sup>27</sup>

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22 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 42.

23 Qantas Engineers' Alliance, *Submission 7*, p. 13.

24 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, pp. 2–3.

25 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, pp. 2–3

26 Mr Stephen Purvinas, Federal Secretary, Australian Licenced Aircraft Engineers Association, *Proof Committee Hansard*, 18 March 2014, p. 18.

27 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 4.

2.38 Virgin Australia argued that 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.'<sup>28</sup>

2.39 Virgin Australia, meanwhile, explained that the measures in the Bill were unlikely to have a significant impact on Qantas' decisions on where to undertake its maintenance work:

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.<sup>29</sup>

### ***Skills and training***

2.40 Several witnesses also argued that Qantas' contribution to Australia's pool of skilled manufacturing workers would be threatened by passage of the Bill.

2.41 In its submission, the AIPA suggested that the architects of the Qantas Sales Act did not want the contribution Qantas made to the national store of technical knowledge and skills to be 'at the mercy of commercial expediency in the hands of short-sighted opportunists.'<sup>30</sup>

2.42 Questioned about the apprenticeship programs of Qantas and Virgin, the AMWU (appearing as part of the Qantas Engineers Alliance) suggested that whereas Qantas had a solid apprenticeship and traineeship program, Virgin did not. It also stressed that the apprenticeships offered by Qantas produced highly skilled

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28 Virgin Australia, *Submission 6*, p. 2.

29 Virgin Australia, *Submission 6*, p. 2.

30 Australian and International Pilots Association, *Submission 8*, p. 5.

manufacturing workers.<sup>31</sup> However, Virgin Australia reported in its submission that it was investing 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.<sup>32</sup>

### ***Committee view***

2.43 The committee shares community concerns about the recent job losses announced by Qantas, but also maintains that the best way to protect Australian jobs at Qantas is to ensure the airline has a viable future. To achieve this, it is necessary to remove the unreasonable regulatory restrictions currently imposed by the Qantas Sale Act and, in doing so, level the playing field in the Australian aviation sector.

2.44 Further, the committee is not convinced that there is an inevitable link between higher levels of foreign ownership and the ratio of local to foreign jobs. Indeed, the committee believes that the example of Virgin Australia, where 95 per cent of employees are Australian based, is instructive in this regard.

### **Safety concerns**

2.45 One of the more contentious issues regarding the proposed amendments was whether the offshoring of maintenance work—which some witnesses argued was a likely outcome of the bill—might have a detrimental impact on passenger safety.

2.46 The Australian Licenced Aircraft Engineers' Association (ALAEA) argued that the proposed amendments would increase the likelihood of more aircraft maintenance being undertaken offshore, and this would in turn increase the risk to passenger safety.<sup>33</sup>

2.47 The Qantas Engineers' Alliance also suggested the repeal of Part 3 of the Qantas Sale Act would lead Qantas to shift more maintenance work offshore nations with a lower cost of operations, and that this would undermine safety outcomes:

Given that the primary reason Qantas seeks to offshore maintenance is to cut costs by employing cheap labour, and cheap labour is to be found in developing countries, it is of grave concern that safety performance will increasingly be determined by regulatory structures and institutions in countries where these structures are understandably not as well developed or monitored as in Australia. If we cannot trust tap water is safe to drink in developing countries, it is reasonable to hold concerns regarding the quality

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31 Mr Matthew John Murphy, National Industrial Officer, Electrical Trades Union of Australia, *Proof Committee Hansard*, 18 March 2014, p. 31.

32 Virgin Australia, *Submission 6*, p. 2.

33 Australian Licenced Aircraft Engineers Association, *Submission 9*.

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of safety when it comes to aircraft maintenance performed in these same countries.<sup>34</sup>

2.48 In its appearance before the committee, Qantas labelled arguments that the Bill would have negative safety implications as 'blatant fear mongering':

It is playing the safety card as a tool of industrial relations. This committee needs no reminder of the absolute Qantas commitment to safety and our exemplary track record of delivering it. The majority of Qantas's maintenance is done in Australia. Our A380s and our 747s are maintained overseas. Regardless of geography, all of our maintenance is done at facilities approved by CASA and to Qantas's high standards.<sup>35</sup>

2.49 Qantas also provided the committee with a direct response to the ALAEA's claims, and argued that given there were multiple failsafe procedures in place, suggestions that 'any mistake [in aviation maintenance] is a potential catastrophe is alarmist and deeply irresponsible.'<sup>36</sup>

2.50 Mr Joyce told the committee that claims that 'in some way that the maintenance that has been done offshore by Qantas is in some way less or high risk or has damaged safety in any way—is absolutely false.'<sup>37</sup> He subsequently added:

... if you regard heavy maintenance being done in Australia as an important consideration for you when you pick an airline, then the only airline you should travel on is the Qantas crew. Virgin does all its heavy maintenance offshore—it does it in Singapore; it does it in New Zealand—and, despite what was said last week, a lot of the maintenance is done in Singapore. So, if you regard that as important, then fly Qantas. But our experience is—and I think the experience of a lot of Australians that fly on foreign airlines is—that there are a lot of safe airlines that do maintenance offshore, and the standards of these maintenance facilities are world-class offshore. You can do heavy maintenance in Asia or in Europe of the same quality as you can do in Australia.<sup>38</sup>

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34 Qantas Engineers' Alliance, *Submission 7*, p. 19.

35 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, pp. 1–2.

36 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 2. Qantas tabled its response to ALAEA's claims during the public hearing on 18 March 2014. The Qantas document is available as 'additional information' on the inquiry webpage:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Qantas\\_Sale/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Qantas_Sale/Additional_Documents).

37 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 13.

38 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 13.

2.51 In its submission, Virgin Australia rejected as 'unfounded' any suggestion that the passage of the Bill would have a detrimental impact on Qantas safety outcomes. Virgin Australia pointed out that:

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.<sup>39</sup>

### ***Committee view***

2.52 The Committee believes the Civil Aviation and Safety Authority (CASA) to be a highly effective and professional organisation. As such, the Committee has a high degree of confidence that CASA's work in developing and enforcing safety standards for Australian carriers, regardless of where those carriers undertake their maintenance work, disproves any link between maintenance work being undertaken overseas and aircraft passenger safety.

### **The ownership structure of Qantas**

2.53 As noted in the Explanatory Memorandum, if the Bill is enacted Qantas' international operations 'will still remain subject to designation criteria in order to access negotiated air traffic rights under Australia's international air service agreement.' These criteria include that the airline be substantially owned and effectively controlled by Australian nationals, and have its head office and operational base in Australia.<sup>40</sup>

2.54 Referring to the requirement that an Australian international airline must be substantially Australian owned and controlled, the Qantas Engineers' Alliance speculated that the Bill would lead Qantas to split into two different entities—one domestic and the other international.<sup>41</sup>

2.55 Likewise, the AIPA suggested in its submission that if the bill is passed in its current form, Qantas could 'replicate the Virgin restructure and, subject to Foreign Investment Review Board (FIRB) approval, sell off up to 100% of Qantas Domestic.'<sup>42</sup>

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39 Virgin Australia, *Submission 6*, p. 2.

40 Explanatory Memorandum, p. 1.

41 Qantas Engineers' Alliance, *Submission 7*, p. 4.

42 AIPA, *Submission 8*, p. 7.

2.56 The ACTU, meanwhile, told the committee that if Qantas were to become majority foreign owned, it would:

...need to spin off the international airline. They would need to do that in one of two ways. You would have either the sort of artifice that Virgin is engaged in—that has some history; it is effectively what Ansett did to create an international airline when it had a foreign dominated shareholder registry—or you would have what is said to be the case, which is this spun-off international airline which it is said that Australians would be keen to own, although they have not been so keen to recapitalise the domestic business, which has been the most profitable element of the business as a whole. That does not make sense.<sup>43</sup>

### ***Virgin Australia's compliance with the Air Navigation Act***

2.57 During the hearing, there was some discussion about whether Virgin Australia was in practice circumventing the requirement in the Air Navigation Act that an Australian international airline be majority Australian-owned. Several witnesses argued that this was the case, and by extension that Qantas could replicate this approach should the Bill be enacted.

2.58 For example, the AIPA contended that relationship between Virgin Australia Holdings (the foreign-owned domestic arm of Virgin Australia) and Virgin Australia International Holdings (the Australian-owned international arm), demonstrated Virgin's intent to effectively work around the Air Navigation Act:

The listed entity still exists as one entity but it is split—and some would call it a sham—artificially into an international division and a domestic division. I think the shares in the international division were priced at something like one-millionth of a cent. There is a contract that operates between the international and the domestic division that allows Virgin to build up the foreign ownership in the domestic division to anywhere up to 100 per cent because wholly domestic airlines can be 100 per cent foreign owned, like Tiger was until it was purchased by Virgin, and then they restrict the ownership of the artificial international arm to 49 per cent or less in order to access the air service agreements.<sup>44</sup>

2.59 Similarly, the ACTU contended that Virgin's Australian-owned international arm was, in effect, an 'artifice' that was dependent for its existence on Virgin's foreign-owned domestic arm.<sup>45</sup>

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43 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 29.

44 First Officer Nathan Safe, President, Australian and International Pilots Association, *Proof Committee Hansard*, 18 March 2014, p. 27.

45 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 30.

2.60 An argument along similar lines was put forward in an online article by Michael Janda (*The Drum*, 6 March 2014), and that article was the subject of discussion at the hearing. In his article, Mr Janda argued that Virgin Australia has been able to exploit a loophole in the Air Navigation Act, so that the foreign owned Virgin Australia Holdings (the ASX listed company) is effectively able to control the holding company for its international operations, Virgin Australia International Holdings, despite the foreign ownership restrictions in section 11 of the Air Navigation Act. Mr Janda suggested that Virgin Australia International Holdings:

...does not exist, except on a bit of paper at ASIC's offices, and with the minimum indicia of corporate life to tick the regulator's boxes. Its sole purpose is to provide the legal edifice that defeats the Air Navigation Act's restriction of foreign ownership of in Australian international airlines to 49 per cent.<sup>46</sup>

2.61 Asked to respond to Mr Janda's interpretation of the rationale underlying Virgin Australia's ownership structure, the Department of Infrastructure and Regional Development told the committee that it did not agree with the contention that the foreign-owned Virgin Australia Holdings is, in practical terms, in control of the Australian-owned Virgin Australia International Holdings. The Department told the committee that in fact Virgin Australia International Holdings has an independent board and independent chairperson, who control the ongoing direction of the company.<sup>47</sup> On notice, the Department provided further information, including that Virgin Australia Holdings provides 'long term economic and operational support to [Virgin Australia International Holdings] through service and funding agreements.'<sup>48</sup>

### ***The 'facilities, in aggregate' provision of the Qantas Sale Act***

2.62 Some witnesses also argued that the requirement in the Qantas Sales Act that the 'facilities, taken in aggregate' that support Qantas' international operations must be located in Australia (Section 7(1)(h)) should be retained or better reflected in the Air Navigation Act. As the AIPA explained to the committee, the Air Navigation Act does not itself contain such a requirement, but instead contains a head of power (at section 13) for specific licencing regulations. The requirement that an Australian international airline have its 'operational base' in Australia is contained in a

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46 Michael Janda, 'An Act of foreign ownership trickery,' 6 March 2014, *The Drum*, <http://www.abc.net.au/news/2014-03-05/janda-an-act-of-foreign-ownership-trickery/5299048>.

47 Mr Andrew Wilson, Deputy Secretary, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 43.

48 Responses to questions on notice asked at a hearing held in Canberra on 18 March 2014, received from the Department of Infrastructure and Regional Development on 20 March 2014, p. 1.



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Department of Infrastructure and Regional Development Guidance Note, rather than within the legislation itself.<sup>49</sup>

2.63 For this reason, the ASU argued that the Air Navigation Act would provide a poor substitute for the Qantas Sale Act, at least in terms of protecting Australian jobs:

If the Qantas Sale Amendment Bill 2014 is successful, the only legislative protection for Australian jobs will be found in the *Air Navigation Act 1920*. This Act does not sufficiently protect Qantas as an Australian airline. The *Air Navigation Act 1920* restricts foreign ownership of Australian international airlines to no more than 49% of the total value of shares. However, it does not require an airline maintain a head office and operation base in Australia. It does nothing to protect Australian based catering, flight operations, training, administration or housing and maintenance of aircraft. All this may be offshored under this Act. The Qantas Sale Act, Part 3, Section 7(1)(h) provides important legislative protection that ensures Qantas' maintains an operational base in Australia.<sup>50</sup>

2.64 The ALAEA also recommended retaining the 'facilities, taken in aggregate' requirement, arguing that its repeal would remove any limit on the offshoring of maintenance work.<sup>51</sup>

2.65 The AIPA, meanwhile, opposed the repeal of the provision unless the Air Navigation Act was amended to include 'incorporation, principal place of business and effective regulatory control' requirements. The AIPA explained that whereas the Qantas Sale Act is highly prescriptive, the regulatory requirement that an Australian international airline's 'operational base' be in Australia was poorly defined and subject to the discretion of the Secretary of the Department of Infrastructure and Regional Development.<sup>52</sup>

2.66 The AIPA further suggested to the committee that:

...the Productivity Commission should really look at those policy settings so that, when we remove section 7(1)(h) from the Qantas Sale Act, we have a very good idea of what the likely impact will be. At the moment we are proposing to remove it, but I do not think we really know what the consequences will be.<sup>53</sup>

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49 Australian and International Pilots Association, *Submission 8*, p. 2. The Guidance Note is available here: [http://www.infrastructure.gov.au/aviation/international/files/20140109-IAL\\_guidance\\_notes.pdf](http://www.infrastructure.gov.au/aviation/international/files/20140109-IAL_guidance_notes.pdf).

50 Australian Services Union, *Submission 10*, p. 4.

51 Australian Licenced Aircraft Engineer Association, *Submission 9*, p. 21.

52 Australian and International Pilots Association, *Submission 8*, pp. 4, 7; First Officer Nathan Safe, President, Australian and International Pilots Association, *Proof Committee Hansard*, 18 March 2014, p. 23; McKerras, *Proof Committee Hansard*, 18 March 2014, p. 26.

53 First Officer Nathan Safe, President, Australian and International Pilots Association, *Proof Committee Hansard*, 18 March 2014, p. 24.

2.67 The Department of Infrastructure and Regional Development explained to the committee that the Department's Guidance Notes reflected the requirements that were set out in Australia's international air service agreements:

It is the bilateral air services agreements that outline what requirements each party needs to meet in designating our respective airlines. Those bilateral air services agreements are treaty level agreements. Once they have gone through the domestic treaty processes, including consideration by [the Joint Standing Committee on Treaties], and enter into force, then they are legally binding and they create specific legal obligations on the Australian government to ensure that in designating an Australian airline under the bilateral air services agreement they meet these designation criteria. The guidance notes are designed to ensure that, in exercising our legal responsibilities under that agreement, the airlines meet certain criteria, which removes a semblance of doubt about whether or not the airlines meet those criteria.<sup>54</sup>

2.68 The Department further told the committee that paragraph 7(1)(h) of the Qantas Sale Act was 'a sort of expanded version' of the requirement under the Australian Navigation Act that an Australian international airline must have its 'operational base in Australia.' The 'operational base' requirement was, therefore, essentially the same as the facilities provision in the Qantas Sale Act, although the latter 'spells it out in a bit more detail.'<sup>55</sup>

### ***Committee view***

2.69 The committee acknowledges concerns expressed by various witnesses regarding the repeal of paragraph 7(1)(h) of the Qantas Sale Act. However, the committee agrees with the Department of Infrastructure and Regional Development that the regulatory requirement that an Australian international airline must have its operational base in Australia achieves much the same effect.

2.70 The committee also notes that Australian carriers seeking designation as an Australian international carrier must satisfy requirements set out in Australia's air service agreements. This means, as the Department of Infrastructure and Regional Development sets out in its International Air Services Information Memorandum, that Australian carriers seeking designation are 'required to demonstrate their capability to comply with the provisions of Australia's bilateral air service agreements including the requirement that they are substantially owned and effectively controlled by Australian nationals.'<sup>56</sup>

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54 Mr Stephen Borthwick, General Manager, Aviation Industry Policy, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 43.

55 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 43.

56 Department of Infrastructure and Regional Development, International Air Services Memorandum, <http://www.infrastructure.gov.au/aviation/international/memorandum.aspx>.

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## National interest considerations

2.71 A number of witnesses raised the issue of whether Qantas' ability and willingness to provide support during times of national emergency might be undermined should Qantas become foreign owned.

2.72 The Qantas Engineers' Alliance suggested that during periods of national emergency 'it is vital that Australia can call upon a national carrier that is dependable and ubiquitous in the domestic and foreign aviation markets.'<sup>57</sup>

2.73 In its submission, Virgin Australia noted that it too had made itself available to serve the Australian national interest in times of need:

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.<sup>58</sup>

2.74 During the public hearing, the Department of Infrastructure and Regional Development was asked if the Bill would have any impact on the Government's ability to impress Qantas resources during a national emergency. Specifically, the Department was asked if section 67 of the *Defence Act 1903* would have the same application if the Bill passed and Qantas subsequently became foreign owned.<sup>59</sup>

2.75 On notice, the Department explained that section 67 of the Defence Act (under Part IV—Special powers in relation to defence) deals with the registration and impressment of vehicles, and does not mention Qantas. It states:

The owner of any vehicle, horse, mule, bullock, aircraft, aircraft material, boat or vessel, or of any goods, required for naval, military or air-force purposes, shall, when required to do so by an officer authorized in that behalf by the regulations, furnish it for those purposes, and shall be recompensed therefor in the manner prescribed, and the owners of any vehicles, horses, mules, bullocks, aircraft, aircraft material, boats or vessels may be required by the regulations to register them periodically.

2.76 The Department further explained that section 67 applied equally to Virgin Australia and Qantas. It also noted that the Department was aware of no instance in

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57 Qantas Engineers' Alliance, *Submission 7*, p. 20.

58 Virgin Australia, *Submission 6*, p. 3.

59 Senator Sterle, *Proof Committee Hansard*, 18 March 2014, p. 46.

which this provision of the Defence Act had been invoked in order to require Qantas to provide its aircraft for assistance.<sup>60</sup>

2.77 The Department also reminded the committee that, even should the Bill be passed, Qantas' international operations would still need to be majority Australian-owned.<sup>61</sup>

2.78 Other issues relating to how the sale of Qantas might impact the national interest were also raised during the inquiry. For example, asked about the risk of Qantas being sold off 'a la Ansett' in the instance the Bill was enacted and a foreign private equity investment was made in Qantas, the ACTU responded:

There is, clearly, considerable risk associated with a key national asset. We have not talked about this tonight, but I think it is important to make the point that domestic aviation in Australia is important because we are a very large decentralised continent. It is an essential service. We do not have things like high-speed rail. We do not live close together. Transcontinental and intercity aviation is extremely important to the Australian economy and our standard of living. We are a long way from anywhere else. You cannot drive to the next country. International aviation is important to us.

There is a national interest associated with this. The history of private equity investments in businesses which are associated with the national interest is quite poor. They borrow, essentially, against the company's own balance sheet to buy the thing, break it up, strip the assets, get out and cash out. That is the business model. It is not about actually running an airline.<sup>62</sup>

2.79 As Qantas pointed out, in the instance the Bill passed, any investment by a foreign airline or state owned company in Qantas would still be subject to FIRB approval. Mr Joyce told the committee:

Even with this part of the act removed, the FIRB protections are going to be there, so no matter who the foreign entity is they would have to [go] through a FIRB approval process. That was always going to be held up in the national interest and that is still a hurdle that has to be overcome.<sup>63</sup>

2.80 Qantas itself made the point that it makes an important contribution to Australia's national interest, but argued this contribution would not be affected by the Bill:

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60 Responses to questions on notice asked at a hearing held in Canberra on 18 March 2014, received from the Department of Infrastructure and Regional Development on 20 March 2014, p. 2.

61 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Regional Development, *Proof Committee Hansard*, 18 March 2014, p. 48.

62 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 18 March 2014, p. 37.

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

Qantas is important to Australia's strategic interests and makes a major contribution to employment across the whole of the economy; maintaining a unique skill base; and driving significant benefits to the regional economy. Qantas provides these benefits on a scale that cannot be replicated elsewhere in the economy and will not be diminished by the proposed changes to the *Act*.<sup>64</sup>

### ***Committee view***

2.81 The committee recognises the important contribution that Qantas has made and continues to make to Australia in times of national emergency and crisis. The committee notes that Virgin Australia has also made significant contributions to Australians in need in recent times. The committee is confident that Qantas can and will continue to help out in times of need if the Bill is passed, irrespective of the levels of foreign investment in Qantas.

2.82 The committee also acknowledges the important role that Qantas plays in the Australian economy. Indeed, the very importance of Qantas requires that the government act to level the playing field in the Australian aviation sector by repealing Part 3 of the Qantas Sale Act, thereby helping to secure a strong and viable future for the airline.

### **Recommendation 1**

**2.83 The committee recommends that the Bill be passed.**

**Senator David Bushby**  
**Chair**

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64 Qantas, *Submission 4*, pp. 1–2.



# 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?<sup>1</sup>

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.<sup>2</sup>

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

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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.<sup>3</sup>

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.<sup>4</sup>

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.

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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.<sup>5</sup>

## 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.<sup>6</sup>

### **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 believed 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.<sup>7</sup>

## **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**  
**Senator for South Australia**

# Australian Greens' Dissenting Report

## Views on the Bill

1.1 The Australian Greens believe this inquiry into the Qantas Sale Amendment Bill 2014 was useful from the perspective of collecting evidence from Qantas' management and the unions representing Qantas workers regarding the potential impacts on jobs if the proposed legislation is passed.

1.2 The Australian Greens believe that the overriding factor when determining whether or not to support the proposed legislation should be its direct impact on jobs.

1.3 The Australian Greens agree that there are a number of problems facing Qantas, but these problems are more complex than simply a lack of foreign ownership. A much more comprehensive response, beyond simple deregulation, is required from government.

1.4 The Australian Greens believe that Qantas senior management has serious questions to answer around certain financial and strategic decisions. The request by senior management to amend the *Qantas Sale Act 1992* should not be simply implemented by the Australian parliament.

1.5 We reject some of the commentary from some committee members that the financial and strategic direction of Qantas is a "matter for shareholders" and the Qantas board. Qantas' history, contemporary significance as a national carrier, size in terms of domestic employment (it employs 33,000 local workers) and the fact that it has been proactively requesting federal government support mean that these issues are of pertinence to this inquiry and to the parliament more generally.

### *Views on the problems facing Qantas*

1.6 A number of submissions highlighted issues in the domestic aviation market and pointed to potential poor decisions made by Qantas' management, which could have contributed to its current financial situation.

1.7 The submission by Colonial Airways points out that Qantas holds 65 per cent of the domestic aviation market.

1.8 The submission argues that "Qantas' losses also rose and compounded dramatically here due to the inconceivable and poorly timed withdrawal and handoff of lucrative international routes and national markets."

1.9 The submission quotes aviation consultant Mr Oliver Lamb, who said that "Qantas had made an error by slashing international services from Brisbane, Melbourne, Perth and Adelaide in the past two years, allowing foreign airlines to capture its market share" and "Qantas has spent a lot of money on ventures in Asia, and Jetstar, at the expense of its international network."

1.10 Colonial Airways summarises these comments as "the crux of the very reason Qantas has moved backwards."

1.11 These sentiments are supported by the submission from the Australian Licensed Aircraft Engineers Association (ALAEA).

1.12 In its submission ALAEA suggests that Qantas' management has made a number of strategic errors. They argue that this is possible "as the Qantas Board does not contain any person who has worked or been promoted from an operational aviation profession (Pilot, Engineer, Flight Attendant, Baggage handler, customer services, etc)."

1.13 The ALAEA submission lists a number of potential areas where poor management decisions have led to financial losses, and like Colonial Airways, includes Jetstar Asia as a prominent factor.

1.14 The Australian Services Union (ASU) submission supports the view that a lack of financial capital isn't the main issue facing Qantas:

Advocates of the proposed reforms often argue that Qantas is disadvantaged by the restrictions on foreign ownership. They contend that Qantas has difficulties raising capital. We dispute this argument. As one of the world's most successful airlines, Qantas has never had any trouble raising capital when required. Qantas is presently below the foreign ownership threshold of 49%. It has only come close to the exceeding the threshold on one occasion (the [Airlines Partners Australia] private equity bid). This indicates that sufficient local capital is available.

### ***Jobs***

1.15 As noted in the committee's majority report, "Qantas indicated that the repeal of Part 3 of the Qantas Sale Act would provide it with greater workforce flexibility, telling the committee that the Qantas Sale Act as currently drafted denied Qantas the ability that Virgin has to undertake a large part of its operations (such as heavy maintenance and call centre work) offshore."

1.16 Submissions from the ASU and the Australian Council of Trade Unions (ACTU) argued that Qantas already has implemented an offshoring strategy and would take further steps to offshore more jobs if given the opportunity, for example by repealing Part 3 of the Qantas Sale Act.

1.17 The fact that Qantas still retains the flexibility for up to a further 10 per cent foreign ownership, under current rules, suggests the issue is more complex than "more foreign investment."

1.18 The current situation, along with evidence presented to the committee, suggests that the most likely situation if Part 3 of the Qantas Sale Act is repealed is a more comprehensive takeover of Qantas by either an individual foreign government owned airline or a conglomerate of foreign government owned airlines.

1.19 It is almost inevitable that if such a situation were to occur, a stream of Australian job losses would follow, as the new owners would have essentially no incentive to retain jobs in Australia.

***"A level playing field"***

1.20 An issue repeated a number of times by Qantas senior management, as well as by government Senators, was the need for "a level playing field".

1.21 In its submission Qantas stated that:

A decision has now been taken by this government to ask the parliament to amend the Qantas Sale Act. We support this as a means to level the playing field; as we state in our submission, Qantas is prevented by the act from competing on equal terms to those of our competitors.

1.22 As pointed out in the majority report, The Qantas Engineers' Alliance argued that no "level playing field" exists in the aviation market, which is distorted by "massive government intervention and ownership."

1.23 The ACTU submission went further and stated that the concept of a level playing field was essentially "illusory" due to government intervention.

1.24 Given the above, it is important to point out that by creating a "level playing field" Qantas is essentially arguing for the right to be bought and owned by foreign government owned airlines in the same way Virgin is.

1.25 While that may be a priority for Qantas management, there is strong evidence that this is not in the interests of the Australian public to have Australia's national carrier and largest domestic airline by market share bought and run in the interests of foreign governments.

***Summary***

1.26 Evidence presented to the committee by a number of witnesses and submissions make a compelling case that poor management decisions have impacted on Qantas' current financial situation.

1.27 Evidence presented to the committee makes it clear that if Part 3 of the Qantas Sale Act was repealed, the most likely outcome would be an effective takeover of the airline by one, or a group of, foreign government owned airlines. If that was to occur, it would very likely lead to an exodus of jobs and investment in this country.

1.28 In terms of a level playing field, it seems somewhat disingenuous to argue, as Qantas and government senators have, that in the context of an aviation industry dominated by government-run airlines that operate in the interests of domestic tourism and wider economics needs, the only appropriate response for the Australian government is to fully deregulate the domestic industry and set up Qantas for a full foreign takeover.

**Recommendation 1**

**1.29 That the bill not be passed.**

**Recommendation 2**

**1.30 That the Senate seriously considers any options presented to the Senate Rural and Regional and Transport Affairs Committee inquiry into Qantas into how the government can provide assistance to Qantas that will protect jobs, wages and conditions of Qantas' workers, that will provide international and domestic services to the Australian public, and that are in the national interest.**

**Senator Lee Rhiannon  
Senator for New South Wales**

**Senator Peter Whish-Wilson  
Senator for Tasmania**

# Dissenting Report by Nick Xenophon, Independent Senator for South Australia

1.1 The views in this Dissenting Report can be summarised as follows:

- a. Qantas is in a crisis largely of its own making, due to its failed foray into Asia with its Jetstar Asian operations;
- b. Current Australian accounting rules do not prevent cost-shifting from one part or entity of a group to another;
- c. It appears that CEO Mr Alan Joyce, the Chairman Mr Leigh Clifford and the Board have lurched from one failed strategy to another;
- d. Rather than amending the *Qantas Sale Act 1992*, which as proposed could lead to a massive offshoring of jobs, changes to the *Air Navigation Act 1920* should be considered to address the ambiguities that are best demonstrated in the current Virgin Australia structure and its international operations; and
- e. The Open Skies policy needs to be critically examined, as there appears to be no other nation that has such an open slather approach to aviation.

1.2 At the outset, I believe it is vital to place this bill in its proper context. Qantas has been struggling as a business since at least 2009<sup>1</sup>, and there has yet to be any substantial improvement. My strong view is that before the government takes any action to alter the current legislative environment or to offer any other assistance we need to have a full understanding of the reasons behind Qantas' difficulties. Any measures put in place without this understanding may end up being merely a costly band-aid solution, or even no solution at all.

1.3 I have said publicly that I have serious concerns about the management of Qantas, and in particular about decisions made by Mr Joyce and members of the Board, and in particular the Chairman Mr Leigh Clifford, in relation to the future of the company. I note that others, including the government, have said this is a matter for shareholders; however, if the government is considering taking action to assist Qantas, then clearly this becomes a matter for the government and for the people of Australia, on whose behalf the government is acting.

1.4 The issues relating to Qantas' management strategy are many and complex. Australian accounting standards and the structure of the Qantas Group mean it is often difficult to get a full understanding of its financial operations. I hope this will be addressed in greater detail through the current Senate Rural and Regional Affairs and Transport Committee's inquiry into Qantas' future as a strong national carrier supporting jobs in Australia.

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1 Qantas Annual report 2009, p. 11.

1.5 In particular, my concerns centre around the apparent focus on the Jetstar brand at the expense of Qantas. This includes the rapid growth of the Jetstar fleet (now estimated to be nearly 60 per cent the size of Qantas' fleet) and suggestions of cost-shifting between the arms of the business to make Jetstar appear more profitable, and Qantas International less so. I note that under current Australian accounting and corporate governance rules, this level of cost-shifting within group accounts is permissible.

1.6 Tied in with this is the establishment of the Jetstar brands in Asia, and in particular Jetstar Hong Kong, which has not yet received regulatory approval to operate. This has resulted in the airline's nine Airbus planes being stranded in France and unable to fly, at an estimated cost of \$3 million a month.<sup>2</sup> There are also questions regarding leasing arrangements between Jetstar in Asia and the Qantas Group, and whether they are structured so as to deliver a profit to the Asian carriers. In a hearing for the Senate Rural and Regional Affairs and Transport Committee, Mr Joyce justified criticism of Jetstar Hong Kong by comparing it to that levelled at Jetstar Australia when it was being established:

But the same comments were made in relation to Jetstar, the same comments that it was not going to work. It did lose money in the first year when we set it up, but in 10 years Jetstar Australia has contributed over \$1 billion in profits to the group. It has been an amazing success story because of the entrepreneurial nature of the group. In the Asian ventures that we have, I have absolutely no doubt that the Japanese venture in particular is going to be similarly successful for the Qantas group.<sup>3</sup>

1.7 It is impossible to deny, however, that Jetstar Australia was established in a very different financial climate, both globally and within the Qantas Group. I would hope that Mr Joyce has acknowledged this and has not based his strategy on the assumption that what worked in 2003 will work now.

1.8 I also feel it is important to note Mr Joyce's inconsistencies in recent months. His appeals for government support have included an amendment to the Air Navigation Act to bring Virgin Australia under the same foreign investment requirements as Qantas, a repeal of the Qantas Sale Act, and a debt guarantee. His comments regarding the impact of the carbon tax on Qantas have also varied, firstly saying that it was not to blame for the company's problems and then reversing his position just two days later.<sup>4</sup> I am concerned that these inconsistent messages may demonstrate a serious confusion and a lack of strategic direction within Qantas.

1.9 While I believe many of Qantas' difficulties are due to its management, I also acknowledge the challenges posed by Australia's aviation sector as a whole. These

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2 Matt O'Sullivan and Adele Ferguson, 'Mayday', *Sydney Morning Herald*, 1 March 2014.

3 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, Senate Rural and Regional Affairs and Transport Committee *Proof Committee Hansard*, 14 March 2014, p. 49.

4 Ellen Whinnett 'Qantas switch on carbon tax blame', *Herald Sun*, 6 March 2014.



include our geographical location, tax and regulatory arrangements, comparative costs on operators, and the 'Open Skies' policy. There has been little current research done into the effects of these issues on Australian airlines, and as such almost no data or information can be relied on to make informed policy decisions in this area. In particular, the Open Skies policy was brought into effect in the late 1990s and has not been reviewed or considered since. Its impact on Australian airlines, which anecdotally is quite significant, has never been properly evaluated.

## **Recommendation 1**

**1.10 That the government, as a matter of urgency, consult with industry and relevant bodies to formulate terms of reference for a comprehensive review of Australia's aviation sector, including the Open Skies policy, and its impact on operators and consumers, to be undertaken by the Productivity Commission.**

1.11 I also believe some clarification about the provisions in the bill is required. As the committee report states, Qantas is currently subject to the foreign ownership restrictions outlined in the *Qantas Sale Act 1992*, and is exempt from meeting the requirements in the *Air Navigation Act 1920*. This Bill would remove those foreign ownership provisions, among others, from the Qantas Sale Act, and consequential amendments in the bill would repeal Qantas' exemption from the provisions in the Air Navigation Act. The Government's stated intention of this is to 'level the playing field' by allowing Qantas to be subject to the same rules as other Australian operators and to allow Qantas to access greater levels of foreign investment.

1.12 It is important to note, however, that Qantas as a whole would still be bound by the 49 per cent foreign ownership cap for Australian airlines under the Air Navigation Act, although the investment caps on individual foreign investment in the airline would be removed. Qantas would only be able to circumvent the 49 per cent rule and access further investment if it were to restructure and separate its international arm from its domestic arm, similar to the restructure of Virgin Australia. Qantas has not committed either way to such a restructure. I note that the committee report states:

In order to properly level the playing field, and enable Qantas to compete without unreasonable and outdated regulatory restrictions, it is necessary to repeal Part 3 of the Qantas Sale Act in its entirety, including the 49 per cent limit on foreign ownership.<sup>5</sup>

1.13 It is important to note that the bill itself does not repeal the 49 per cent limit; only a restructure of Qantas would enable them to access greater amounts of foreign investment through their domestic arm (not the international).

1.14 I note that one view, put forward by Qantas itself, is that Australia's national interest will still be protected if Qantas can circumvent the 49 per cent limit because any application for foreign investment must be approved by the Foreign Investment

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5 Majority committee report, p. 6.

Review Board.<sup>6</sup> However, it is important to note that Qantas has in the past been critical of FIRB's oversight of foreign investment proposals for Virgin Australia.<sup>7</sup> Whether these concerns have been addressed, or are simply no longer relevant if Qantas can have equal access to foreign investment, remains unclear.

1.15 The bill does, however, repeal provisions requiring Qantas to maintain the majority of its operations in Australia. It could be argued that this is the real endgame for the management and Board, and the discussion around foreign ownership is largely a furphy, as the repeal of this provision would allow them to shift as much of their operations offshore as is practical.

1.16 It is important to note that the Air Navigation Act, to which Qantas would be subject if the bill were passed, does not contain provisions relating to principal place of business or majority operations. An associated Departmental Guidance Note states that an airline must have its head office and operational base in Australia to access an International Airline Licence (and therefore Australia's bilateral air services agreements). However, no definitions of 'head office' or 'operational base' are included. Further, as the provisions are not in the legislation or even regulations, there is some doubt as to whether they can be appropriately enforced.

1.17 The committee is correct when it states there is not an inevitable link between loss of Australian jobs and foreign investment, but I believe it would be very unusual for there not to be a link between allowing businesses to move operations offshore and the loss of Australian jobs.

1.18 Evidence provided to the committee by the Australian and International Pilots Association (AIPA) also outlined the possible failures in the Air Navigation Act as a result of reliance on this Departmental Guidance Note rather than appropriate regulations or legislation. As AIPA pointed out, while the foreign ownership restrictions are enshrined in the Act (at least relating to international airlines), there is nothing equivalent in the legislation to require the majority of an Australian international airline's operations to remain in Australia.

1.19 The most obvious example of the gaps in the legislation is the Virgin Australia restructure that occurred in 2012, where Virgin Australia created a separate, non-listed private company to act almost as a 'placeholder' for its international business. Virgin Australia International Holdings (VAIH) has been designated an Australian international airline by the Department for the purpose of the Air Navigation Act as it meets the 49 per cent foreign ownership cap and the other requirements set out in the Guidance Note.

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6 Mr Alan Joyce, Chief Executive Officer and Managing Director, Qantas, *Proof Committee Hansard*, 18 March 2014, p. 2.

7 Steve Creedy, 'Virgin's capital success irks Qantas', *The Australian*, 13 December 2013.

1.20 An article by Michael Janda and published on *The Drum* earlier this month echoes the concerns laid out in AIPA's submission.<sup>8</sup> As Janda points out, VAIH may meet the requirements of the Act, but while it does have its own Board of Directors, it does not have its own management, its own aircraft or any of the crew, maintenance, HR or customer support resources that an international airline could reasonably be expected to have. Instead, it is wholly reliant on the resources owned and operated by Virgin Australia Holdings, the domestic arm of the business which, under the *Air Navigation Act*, can be wholly foreign-owned.

1.21 Some may say this is merely good business practice: that is, seeking out any available opportunity for a 'better deal', but it has created a serious precedent in the industry. To date, Virgin Australia has maintained its principal place of business and the majority of its employees in Australia, but there is opportunity under the Act for it to offshore a significant portion of its domestic business, which is in turn supporting the international arm, without breaching the Act. While the extent to which this is practical for a domestic airline is debateable, there is no denying the capacity, or loophole, is there.

1.22 This has worrying implications for Qantas if this bill should pass. If Qantas were free to replicate Virgin Australia's structure under the Act, we could potentially see a one hundred per cent foreign-owned Qantas Domestic with full operating control over a Qantas International that is little more than a sham company allowing foreign interests access to Australia's bilateral air services agreements. It is also worth noting that Jetstar as it stands could potentially access this loophole, as it has never been confirmed whether it is fully covered by the Qantas Sale Act.

## Recommendation 2

**1.23 That, consistent with the findings of the Productivity Commission inquiry in Recommendation 1, the Government amend the *Air Navigation Act 1920* to close existing loopholes and ensure the Act is consistent with its objectives.**

1.24 Ultimately, the purpose behind this bill should be to ensure that Qantas returns to profitability while providing the greatest benefit to Australia. There is no guarantee, or even vague assurance, that the measures in this bill will achieve that result; in fact, they are likely to lead to greater offshoring of jobs without addressing the core issues facing Qantas. Unless problems with the current management are addressed and the systemic failures within the aviation sector are corrected, then this bill will simply be a very expensive failure. Whatever solution is proposed, it must involve more than the repeal of some parts of the Qantas Sale Act if we do not want to face more, even worse, problems down the track. There is no short term fix to this issue, and the government must abandon this legislation until it has a full grasp of the underlying problems and how they should be addressed.

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8 Michael Janda, 'An Act of foreign ownership trickery', 6 March 2014: <http://www.abc.net.au/news/2014-03-05/janda-an-act-of-foreign-ownership-trickery/5299048>

**Recommendation 3**

**1.25 That the bill not be passed.**

**Senator Nick Xenophon  
Independent Senator for South Australia**

# **APPENDIX 1**

## **Submissions received**

<b>Submission Number</b>	<b>Submitter</b>
1	Colonial Airways
2	Aviation Economics
3	Department of Infrastructure and Regional Development
4	Qantas Airways Limited
5	Australian Council of Trade Unions
6	Virgin Australia
7	Qantas Engineers' Alliance
8	Australian and International Pilots Association
9	Australian Licenced Aircraft Engineers Association
10	Australian Services Union
11	Regional Aviation Association of Australia
12	Dr John Weldon

### **Answers to questions on notice and additional information**

- Responses to questions on notice asked at a hearing held in Canberra on 18 March 2014, received from Qantas on 20 March 2014.
- Responses to questions on notice asked at a hearing held in Canberra on 18 March 2014, received from the Department of Infrastructure and Regional Development on 20 March 2014.
- Responses to questions on notice asked at a hearing held in Canberra on 18 March 2014 and additional information received from the Australian Licenced Aircraft Engineers Association on 20 March 2014.

## **Tabled documents**

**CANBERRA, 18 March 2014**

- Document tabled by Senator Sean Edwards.
- Document tabled by Qantas.

## **APPENDIX 2**

### **Public Hearings and Witnesses**

**CANBERRA, 18 MARCH 2014**

EVANS, Mr Gareth, Chief Financial Officer, Qantas

FINCH, Mr Andrew, General Counsel, Qantas

HRDLICKA, Ms Jayne, Jetstar Group Chief Executive Officer, Qantas

JOYCE, Mr Alan, Chief Executive Officer and Managing Director, Qantas

PURVINAS, Mr Stephen, Federal Secretary,  
Australian Licensed Aircraft Engineers Association

MacKERRAS, Captain Dick, Technical, Safety and Regulatory Affairs Adviser,  
Australian and International Pilots Association

SAFE, First Officer Nathan, President, Australian and International Pilots Association

LYONS, Mr Tim, Assistant Secretary, Australian Council of Trade Unions

MURPHY, Mr Matthew, National Industrial Officer,  
Electrical Trades Union of Australia

THOMPSON, Mr Glenn, Assistant National Secretary,  
Australian Manufacturing Workers Union

TKALCEVIC, Ms Belinda, Industrial Officer, Australian Council of Trade Unions

BORTHWICK, Mr Stephen, General Manager, Aviation Industry Policy,  
Department of Infrastructure and Regional Development

DOHERTY, Mr John, Executive Director, Aviation and Airports,  
Department of Infrastructure and Regional Development

WILSON, Mr Andrew, Deputy Secretary,  
Department of Infrastructure and Regional Development

