

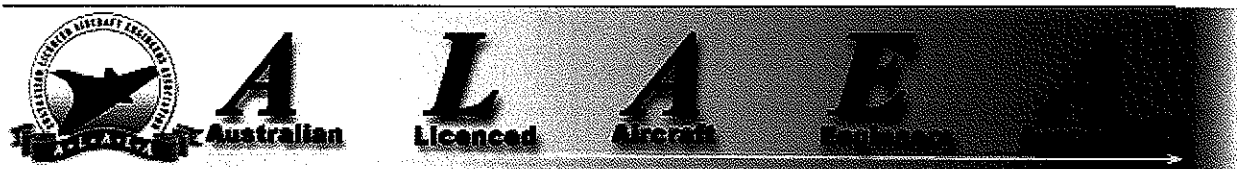
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Submission to the Rural Affairs and Transport Committee

Qantas Sale Act (Still Call Australia Home) Amendment Bill 2011

October 2011

1. Preamble

The Australian Licenced Aircraft Engineers Association (ALAEA) represents certifying Licenced Aircraft Maintenance Engineers throughout the Australian domestic, international, regional and General Aviation industries.

About the ALAEA

The ALAEA is an organisation founded in 1960 to advance the professional, technical and industrial interests of Aircraft Maintenance Engineers who are licensed by the Civil Aviation Safety Authority (CASA) to certify for work performed on aircraft within Australia. Currently the ALAEA has 4200 members employed in all sectors of the industry – in the major airlines as well as in regional operations and the general aviation sector. The motto of the ALAEA is:

"To undertake, supervise and certify for the safety of all who fly".

The ALAEA would be pleased to appear before the Committee to answer any questions the Committee might have regarding this Submission and to provide further evidence and amplification if requested.

2. Executive Summary

While this submission deals exclusively with the Qantas Sale Act (Still Call Australia Home) Bill 2011 the ALAEA supports the proposed amendments to the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011.

The ALAEA supports, subject to certain matters dealing with the issue of associated entities of Qantas Airways Ltd, the provisions of the Qantas Sale Act (Still Call Australia Home) Bill 2011.

The submission describes aircraft maintenance in Australia and the role of Licenced Aircraft Maintenance Engineers.

It then outlines the National Interest safeguards that formed the basis of the privatisation of Qantas including the retention of operational facilities, jobs and skills in Australia so far as the provision of scheduled international air transport services are concerned.

The submission then describes Qantas' attitude that neither the Qantas Sale Act or the Qantas Constitution applies to subsidiaries of Qantas and we go on to make the point that, if Qantas is correct in this attitude, it would be absurdly easy for Qantas to shift its operations into a subsidiary and thereby avoid the Qantas Sale Act entirely.

If Qantas is correct in its attitude then the ALAEA submits there is a direct and imminent threat to Australia's traditionally higher standards of aircraft maintenance and the employment, training and strategic benefits attributable to Qantas operations. This is demonstrated by Qantas recent record in offshoring maintenance.

Finally, the ALAEA supports the proposed bill subject to a narrowing of the definition of 'associated entity' to include associated entities that Qantas effectively controls.

3. Aircraft Maintenance and Licenced Aircraft Maintenance Engineers

For the purposes of the Committee it is relevant to explain the two levels of maintenance carried out by both Qantas and Jetstar.

3.1 Types of Aircraft Maintenance

Daily safety inspections are carried out by licenced engineers in conjunction with general servicing functions such as replenishing engine oils, fuelling of aircraft, troubleshooting and rectification of identified faults. These lighter checks would provide employment for approximately half of ALAEA's members in Australia. This form of maintenance is often referred to as 'Servicing' and is generally carried out during the day to day operation of the aircraft.

Heavier checks are carried out according to the airlines' CASA-approved system of maintenance at specified intervals based on flight hours and cycles at intervals of up to 6 years. These checks are carried out in aircraft hangars or Heavy Maintenance facilities and take from 5 days to 6 weeks to complete and in normal circumstances it is these heavier checks that are referred to as 'Maintenance'.

In the industry 'Servicing' is commonly referred to as "Line Maintenance" and 'Maintenance' as "Heavy Maintenance".

Qantas currently utilise three Heavy Maintenance facilities in Australia. The Tullamarine site carries out maintenance on the 737 fleet and Brisbane maintains the 767 and A330 fleets, supplemented by outsourcing to Hong Kong and Singapore. The Avalon site is predominantly used for 747-400. The Sydney site was Australia's biggest aircraft maintenance facility and carried out Heavy Maintenance checks on 747 and 767 aircraft and some A330 work. The Sydney Heavy Maintenance B767 facility closed in November 2004 and moved to a new Qantas hangar in Brisbane. Qantas closed the remaining B747 Sydney Heavy Maintenance facility in May 2006 with the loss of 256 Licenced Aircraft Engineer positions and several hundred additional support staff. Jetstar has a small hangar in Newcastle which acquits some A320 work.

3.2 Licenced Aircraft Maintenance Engineers [LAMEs]

There are only two types of licenced personnel in the aviation industry – LAMEs and pilots. The key nature of the work they perform and the responsibilities they bear are reflected in the fact of being licensed.

When a LAME certifies work, he/she is certifying to say that the work carried out has been properly carried out in accordance with the correct manuals, the correct procedures were

followed, the correct tools were used, that the appropriate checks and tests were carried out, that the component or system is fully and correctly functional, and the aircraft is airworthy, that is - safe to fly.

Aircraft maintenance engineers typically require three levels of training, Basic Training, Advanced Type Training, and Specialised or Specific Training.

- Basic training is the first step to becoming an aircraft engineer. There are several training schemes ranging from national vocational training to international standardised training.
- Advanced Type Training is focused on the aircraft type to be maintained and the training programme involves significant practical tasks on the aircraft type in question.
- Specialised or Specific training is qualifying for a specialised task/s such as welding, composite repair, Boroscope inspections.

To progress to becoming a LAME in addition to the above the AME must complete further training and competency assessment.

4. Qantas Sale Act

As might be imagined, even at today's almost 20 year remove, the privatisation of Qantas caused deep concern with the Australian public, Qantas employees, industry and for many politicians on both sides of politics. As a result of these concerns, the privatisation proceeded only on the basis of certain National Interest safeguards. These are chiefly reflected in mandatory provisions contained in the Qantas Constitution including requirements as to the ongoing use of the 'Qantas' name, an obligation to maintain a majority of facilities used in the provision of scheduled international air passenger services in Australia, requirements that Qantas remain incorporated in Australia and two-thirds of directors must be Australian citizens.

The then Minister of Finance, Ralph Willis in his second reading speech said:

"The Bill also reflects key sale requirements relating to the national interest safeguards required with the sale of 100 per cent of Qantas . . .

National Interest Safeguards

The fundamentals of the national interest safeguards, referred to earlier, need to be enshrined in legislation.

These safeguards are important to maintain the basic Australian character of Qantas, as well as to ensure that Qantas's operating rights under Australia's various bilateral air service agreements and arrangements with other countries are not put under threat. Once in legislation, these safeguards will not be subject to the whim of the Government of the day.

Thus, the Bill requires that Qantas's Articles of Association must contain provisions which will ensure that: Qantas's main operational base and headquarters remain in Australia; that the name of Qantas is preserved for the company's scheduled international passenger services; that the company be incorporated in Australia; that at least two-thirds of the board of Qantas be Australian citizens; that the chairman of the board also be an Australian citizen; and, in particular, that total foreign ownership is not to exceed 35 per cent.

The Bill will also require Qantas's articles to specify that no single foreign interest can exceed 25 per cent of the equity of Qantas. Qantas's articles will be required to provide directors with wide powers to act, including to deny registration or to force the disposal of shares held by foreigners, to ensure the 35 per cent foreign ownership limit and the 25 per cent limit on single foreign interests are not breached."

The ALAEA contends that retaining Qantas' main operational base in Australia encompassed the aim of benefiting airline safety by so doing. The traditionally higher Australian standards of aircraft maintenance were more likely to be continued if requirements in regard to facilities were included in the Qantas Sale Act and Qantas Constitution.

In a practical sense, the benefits of retaining Qantas' Australian base included that it provided valuable employment and training opportunities for engineers (and other groups), it complemented and supplemented Australia's defence capability and was available to support Australian citizens in distress overseas or at home.

In a broader sense, Qantas also contributes to the Australian economy on many levels from direct employment that sees about 32,000 Australian jobs through to the beneficial effects of facilitating business generally and supporting jobs in tourism, mining and associated industries.

5. Qantas' Attitude in Regard to the Qantas Sale Act and the Qantas Constitution

As long ago as 2004, the then Qantas CEO Geoff Dixon was agitating for the repeal of the Qantas Sale Act. The Age on 27 May 2004 reporting that in *"Addressing the National Press Club, Mr Dixon also renewed Qantas's campaign to convince the Federal Government to repeal the Qantas Sale Act and allow higher foreign ownership levels in the airline."*

However, Qantas has been markedly quiet in regard to the Qantas Sale Act of recent times. On 26 October 2011, the ALAEA wrote to Alan Joyce seeking assurances on behalf of its members who are shareholders that the new Asian strategy announced on 24 August 2011 would not breach the provisions of the Qantas Sale Act including by shifting the bulk of Qantas' facilities used in the provision of scheduled international air transport services away from Australia (Attachment 1).

Mr Joyce replied on 26 October 2011, stating that, as Qantas would not be "conducting" either the new premium airline or the joint venture in Japan, then the Qantas Sale Act was not relevant. He also took the opportunity to re-state Qantas' position that neither the Qantas Sale Act nor the Qantas Constitution applies to subsidiaries of Qantas (Attachment 2).

The subsidiary position has been consistently stated by Qantas including in the course of litigation in 2007 where Qantas stated that the Qantas Sale Act only applies to Qantas Airways Ltd.

6. The Qantas Subsidiary Issue

The Qantas subsidiary issue has been mentioned on many occasions over the last 6 years that I am aware of. It last specifically arose during the Management Buy-out (or Private Equity bid) funded by Airline Partners Australia in 2006.

Put simply, if Qantas and Mr Joyce are correct and the Qantas Sale Act does not apply to Qantas subsidiaries then Qantas could simply avoid the Act by transferring the assets and business of Qantas into a subsidiary company.

In the 2007 Senate Inquiry into the "Keep Jetstar Australian" bill, the Australian and International Pilots Association had incorporated into the Hansard an opinion by Bret Walker SC that contradicted Alan Joyce's assertion. Mr Walker made the simple point that, if subsidiaries were not bound by the Qantas Sale Act, it would be absurdly easy to subvert the Act. In his view, it could not be the intention of the parliament for this to occur.

A copy of Mr Walker's advice is attached as Attachment 3.

Of course, there may be many intermittent points on the spectrum determining which subsidiaries or associated entities of Qantas may be bound by the Qantas Sale Act. For example, it could be that wholly owned subsidiaries are bound or it could extend to include associated entities that Qantas exercises actual or effective control over or it may be an entity that Qantas has an interest in.

That issue will be addressed later in this submission but a quick example will illustrate the issue. Qantas currently has a 49% interest in the operations of Jetstar Asia with the other 51% being held by Choo Tek Wong, a long time Qantas associate. As journalist Ben Sandilands wrote in the blog *Plane Talking* on 7 February 2011:

On paper, Jetstar Asia is majority owned by the Choo Tek Wong but almost all the capital required in the restructuring of the airline's ownership in 2009 came from Qantas. This is not a criticism of the deal, but it is important to ask what would have happened if Singapore Airlines for example were to give me 99.9 per cent of the money needed as a suddenly incredibly wealthy Australian national to purchase 51 per cent or more of Qantas so that it could in effect take control of the carrier.

This is an example, if the allegation is true, of a situation where Qantas is likely to have effective (or even actual) control of Jetstar Asia but still allows Qantas' to claim that they are not "conducting" scheduled international air transport services. The Qantas claim is based on the fact that Qantas is a minority shareholder in Jetstar Asia even though they appear to exercise effective control.

In the submission of the ALAEA, the position that Qantas takes in this regard and its extension in the recently announced strategy to create a new airline based in Singapore or Kuala Lumpur and a joint venture with Japan Airlines and Mitsubishi Corporation in Japan, makes it crystal clear there is a direct and imminent threat to undermine the National Interest safeguards in the Qantas Sale Act.

In particular, the ALAEA is concerned that the safeguards in relation to airline safety and employment benefits are being undermined at this very moment.

7. Airline Safety

Australia has traditionally upheld higher standards of aircraft maintenance than other comparable countries and Qantas has been at the forefront of this. There is no doubt that Qantas' commitment to excellence is largely reflected in its outstanding safety record. Qantas' current proposals to develop new airlines off-shore and likely decision to have the A380 and B787 heavy maintenance also done off-shore will cause significant loss of employment in Australia and represents, in the ALAEA's view, a threat to Australia's traditionally higher aircraft maintenance standards.

The ALAEA is alarmed at a continuing trend which sees Qantas seeking to cut costs through off-shoring of maintenance at, what we say, is the expense of sensible safety risk management. If Qantas' view of the Qantas Sale Act is correct then Qantas can continue to shift assets to subsidiaries or entities they effectively control and be able to offshore maintenance and safety standards of Qantas operations.

Of course, the loss of aircraft maintenance work overseas also provides an easy excuse for Qantas to avoid committing to further capital expenditure in Australia as it reduces its workforce and cuts back on training thus causing an ever diminishing spiral as more and more work cannot be done in Australia due to lack of facilities and manpower.

In Australia, depending on aircraft size, it would be normal at any one time that between 40-80 engineers both licenced and unlicenced would be working on the aircraft at a heavy maintenance facility. It has been discussed between the ALAEA and Qantas management that the correct mix of licenced to unlicenced engineers should not drop below 30% licenced. Thus, for each LAME supervising, inspecting, checking and certifying for his/her

own he/she would do likewise for the work of up to 3 others. This mix has proven to be effective for quality assurance and efficiency purposes.

There is an increasing trend among airlines to out-source maintenance to third world countries and increasing anecdotal evidence as to the lower level of quality of work being carried out at those facilities. The amount of work outsourced from Australia can be significant, for example a "D" Class Maintenance Check on a B747- 400 aircraft ranges from 45,000 to 70,000 man-hours of work.

ALAEA members have visited the two current facilities in Asia maintaining Qantas and Jetstar aircraft. At the Manilla facility, where A330 aircraft are maintained (and subsequently A380 aircraft) they reported that at any one time only 2 Licenced engineers are working alongside 44 unlicenced engineers. These 2 locally employed licenced engineers are required to check and certify for their own work and that of 21 others at the same time. It is virtually impossible to check the quantity and quality of that work to a sufficient assurance standard.

The Singapore site that has been maintaining a constant stream of Qantas 747 aircraft since May last year will have up to 60 engineers working at any one time of which a maximum of 5 are licenced. The 5 locally employed licenced engineers are required to check and certify for their own work and that of 11 others at the same time.

In addition, the ALAEA submitted at the 2007 Senate Inquiry into the "Keep Jetstar Australian" bill that, from time to time, LAMEs in Singapore are required to supervise the work of prisoners brought in from Singaporean prison to supplement the workforce as free labour working on aircraft.

Over the years, a number of incidents relating to maintenance errors in Asian facilities have been reported to ALAEA. A typical report by a member was:

"I observed an unlicenced engineer being handed a job card by his supervisor to carry out an inspection of wiring behind cargo area panels. In the Sydney Heavy Maintenance facility I was aware that this task would take around 4 hours. The unlicenced engineer returned 30 minutes later with the card signed by him and asked the Supervisor to

certify for his work. The Supervisor was overseeing the work of over a dozen other engineers concurrently and did not have enough time to check the work. I decided to have a quick look myself only to find that the cargo area panels that needed to be removed to carry out the inspection had not been moved and the work not done.'

Further:

'Six avionics AMEs performing certification tasks without a LAE (Licence Aircraft Engineer) rostered on.'

Another example of the threat to airline safety that off-shore maintenance can bring is in regard to the closure of the Qantas Sydney engine line in 2009. From the time of the introduction of the B747-400 up until July 2009, Qantas maintained and overhauled all its RB211 engines for B747 jumbo jets in its Rolls Royce centre of excellence Sydney engine line facility. Qantas established world records for reliability in longest engine hours on wing for its Rolls Royce engines, fuel efficiency and Rolls Royce used Qantas experience to improve its RB211 engines.

In the early part of 2009 Qantas commenced the implementation of a shutdown of its Rolls Royce engine overhaul facility after making a cost cutting decision to outsource its RB211 (including the A380 Trent 900 overhaul work) to HAESL in Hong Kong. 360 Australian engine engineering jobs were lost. This cost cutting approach sacrificed some of Qantas' control over its own product in that it handed over the safety and security of its engines to a facility with joint owners including Singapore Airlines and Cathay Pacific Airlines.

Fundamentally Qantas has taken the risk to sacrifice its control over the safety of its product for a perceived cost reduction by handing over its RB211 and Trent 900 engine work to Hong Kong and Singapore.

In this regard it's helpful to review a series of incidents that occurred over the last year or so:

- On 13th August 2010, the USA FAA issued an airworthiness directive for Rolls Royce RB211 Trent 900 engines, the engines used by Qantas, Singapore Airlines and Lufthansa on their Airbus A380 aircraft. In part the directive said "Rearward movement of the IP turbine would enable contact with static turbine components and would result in loss of engine performance with potential for in-flight shut

down, oil migration and oil fire below the LP turbine discs prior to sufficient indication resulting in loss of LP turbine disc integrity."

- On 30th August 2010, a Qantas B747 jumbo powered by Rolls-Royce RB211 engine with a Trent variation had an 'uncontained failure' with one of its engines shortly after it left San Francisco and had to turn back.
- On the 4th November 2010, a Qantas A380 powered by Rolls Royce RB211 Trent 900 engines had a massive "uncontained" engine failure after take-off from Singapore and returned safely to Singapore.
- On 5th November 2010, a Qantas Boeing 747-400 made an emergency landing after leaving Singapore due to another Rolls Royce RB211 engine failure. Passengers on board the flight said they heard a bang and saw smoke coming from the aircraft's engine minutes after takeoff.
- 15 January 2011 – QF 11 departing Sydney had an RB211 fail and returned to Sydney.
- 19 May 2011 – a Qantas 747-400 out of Bangkok was forced to return after an RB211 engine failed.
- On Saturday July the 16th 2011, QF 64 departed Johannesburg with the South African Rugby team on board. Shortly after takeoff the aircraft experienced a failure of an RB211 and returned to Johannesburg.
- On Sunday 16th October 2011, a Sydney-bound Qantas Airways Boeing 747 jumbo jet VH-OJS returned to Bangkok due to an engine problem. The flight QF2 was carrying 356 passengers and had been flying for an hour after taking off from Bangkok when "there was a bang and some vibrations were felt through the aircraft", Qantas spokesman Luke Enright said. ALAEA Federal Secretary Steve Purvinas said at the time in the media *"Qantas told us at a briefing in February this year about the potential failure of RB211 turbine blades. The details on all the RB211 failures is available. Qantas believe it's a known problem with a blade that has a weak point at its root. There is a known modification to fix it. Qantas can't carry out the modification immediately because they have closed their Sydney Rolls Royce Engine shop in 2009. They can't get the engines done in Asia because the shops up there are full. It appears they've elected to continue flying with the known problem. If this is not an example of a cost driven reduction in safety, I will eat my hat."*

In the words of Ben Sandilands in the Plane Talking blog on 17 October 2011:

Last night's problem that lead to the QF2 shutdown is reported as being in the third stage compressor, which is the area where the engine maker has conceded there is a problem which is being addressed by a modification program.

The particular issue for Qantas is that in closing down an engine shop which specialised in this type it lost its ability to make the necessary modifications in a more timely manner.

The RB211 unit powers Qantas 747-400s which makes the remotest long distance flights in the world, between Sydney and Johannesburg, as well as one of the more remote routes across the Pacific between Australia and Los Angeles.

. . .

The RB211 engine issue highlights the need for Qantas to consider more than theoretical savings in decisions that affect operational safety and reliability.

As such, it is up there with the stupidity of its decision in the late 90s to ban the use of full reverse thrust for 747s landings, one of the prime causes for the crash landing of QF1 on a golf course adjacent to the old Bangkok airport in 1999.

In ALAEA's submission, Qantas' continuing off-shoring of aircraft maintenance is likely to have an adverse impact on airline safety in Australia and, so far as it will require to keep the bulk of its heavy maintenance facilities in Australia, the Qantas Sale Act (Still Call Australia Home) Bill 2011 will assist in retaining those traditionally higher Australian standards.

8. Employment

8.1 Qantas Direct Contribution to Employment

At its peak, direct employment in Qantas was 35,520 full time employees in 2005. This total included 2001 LAMEs. In 2011 Qantas employed 32,629 FTEs including 1600 LAMEs. A reduction from 2005 to 2011 of approximately 8% in FTEs and a reduction in LAME employees of 25%.

Already Qantas has announced that this number will be reduced by 1000 and, with the plans to shift resources to the new Asian strategy in manner that Qantas says is not constrained by the Qantas Sale Act, further job losses will inevitably follow.

8.2 *Qantas Contribution to Training and Skills*

Qantas has consistently been the major employer of engineering apprentices over an extended period of time. Currently, Qantas employs 41 first year, 83 second year, 97 third year and 101 fourth year apprentices, Qantaslink employs 15, Jetstar 23 and these go on to form the major cohort of engineers for both licenced and unlicenced engineers in Australia.

A major concern of the the ALAEA is that, as Qantas off-shores its heavy maintenance in particular, training opportunities will diminish across the sector and the shortage of aircraft engineers will be made significantly worse.

8.3 *Qantas Contribution to Australia's Defence Capability*

Qantas with its large long range aircraft capability e.g. B747, and A380 enables the defence forces to deploy throughout the world by complementing and supplementing the RAAF transport capability. Qantas passenger-carrying capability enables the RAAF Hercules aircraft to be used mainly for equipment deployment significantly raising the efficiency of deploying military resources.

In addition Qantas provides services to the defence capability through maintenance of aircraft. Qantas Defence Services Pty Ltd a wholly owned subsidiary provides aviation maintenance services and support to the Australian Defence Force including the Australian Governments Special purpose aircraft fleet, the RAAF's Hercules and tanker fleet and the ADF's fighter and helicopter fleets. Recently QDS carried out the A330 tanker conversion project in its Brisbane Heavy Maintenance A330 tanker facility.

The capability to perform work like the A330 tanker conversion comes from the facilities, tooling, knowledge and skills base of Qantas heavy maintenance. If Qantas continues to reduce this capability, as seems apparent, the opportunity to attract high tech defence joint ventures into Australia particularly for large high technology aircraft will be lost as will the jobs that go with them.

9. Qantas Claims in Regard to Qantas International Losses

Qantas CEO Alan Joyce throughout 2011 has been claiming in the media and reporting to shareholders that the Qantas International business is losing \$200million per year. The ALAEA has contested these claims by Mr Joyce and wrote to Qantas asking 61 questions regarding the Qantas International operations and Jetstar's impact. To date Qantas has not answered any of the questions. These questions need to be answered by Qantas so there is full understanding of the shareholders Govt and employees of the actual situation.

A copy of the questions is attached as Attachment 4.

10. Specific Comments on the Qantas Sale Act (Still Call Australia Home) Bill 2011

Subsection 3(1)

The ALAEA submits that the definition of associated entity contained in the Corporations Act, 2001 is too broad for the current purposes. The unintended effect of such a broad definition would see the Act covering entities that Qantas has a minor interest in including, as an example, a 5% interest in a catering business.

Alternatively, the ALAEA proposes that the relevant definition should be limited to entities over which Qantas has effective control. This is, of course, in addition to subsidiaries of Qantas. In ALAEA's understanding, this would capture arrangements such as Qantas has with Jetstar Asia as referred to on pages 7-8 of this submission.

After Paragraph 7(1)(h)

Subject to the comments made above, the ALAEA is supportive of this amendment.

In the ALAEA's submission, this is the key amendment ensuring that the National Interest safeguards in the Qantas Sale Act are maintained.

After Paragraph 7(1)(i)

The ALAEA is supportive of this amendment.

Subsection 10(1) and (2)

The ALAEA is supportive of this amendment.

Attachment 1 is behind this coversheet

ALAEA

**Submission to the Rural Affairs and
Transport Committee**

**Qantas Sale Act (Still Call Australia
Home) Amendment Bill 2011**

26 October 2011

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Dear Mr Joyce

Re: Qantas - A New Spirit (the New Spirit Strategy)

As you are aware, the Association represents 1600 Licenced Aircraft Maintenance Engineers employed by Qantas Airways Ltd (Qantas) and associated entities. Many of the Association's members (including me) are shareholders of Qantas, (Qantas employee shareholders).

I am writing to you on behalf of the Qantas employee shareholders about your announcement dated 16 August, 2011 entitled Building a Stronger Qantas, (and outlining the New Spirit Strategy) and the Qantas Data Book released to the Australian Stock Exchange on 19 September, 2011 (the Qantas Data Book).

On 16 August, you made the following announcements.

"The Qantas Group will be establishing a new low cost carrier in Japan in partnership with Japan Airlines and Mitsubishi." (Page 5)

"Jetstar Japan will launch domestic Japanese services by the end of next year, growing to a fleet of 24 aircraft over the first few years." (Page 5)

"Today I can confirm that Qantas intends to invest in a new premium airline based in Asia. This joint venture airline will have a new name, a new brand, new aircraft and an exciting new look and feel. The airline will not be called Qantas but will leverage all our Qantas know-how, making the most of our excellence in brand management, aviation safety, customer experience, finance, marketing, and our valuable corporate customer relationships." (Page 6)

"For the first time in our history Qantas intends to fully participate in the benefits of an Asian aviation hub."(Page 6)

"Our expansion into Asia provides openings for our people to capitalize on their Qantas training and experience overseas." (Page 10)

We could find no statements in the Qantas Data Book which shed any further light on these statements. The obvious implication of the announcement is that, over a period of time,

"To undertake supervise and certify for the safety of all who fly."

Qantas will conduct the majority or all its scheduled international air transport services through an entity which will not be called Qantas based in Asia and the principal operational centre for Qantas' international services will not be in Australia.

Our members as Qantas employee shareholders are entitled to full details of Qantas' plans and an explanation of how the New Spirit Strategy complies with the mandatory provisions of the Constitution of Qantas. The Constitution is a contract between each shareholder and Qantas, by virtue of the *Corporations Act, 2001*. The employee shareholders are entitled to be satisfied that Qantas is not embarking on a strategy which is in breach of the Constitution, particularly when the mandatory provisions are required to safeguard the national interest in Qantas as Australia's designated national carrier.

The purpose of mandatory provisions of the *Qantas Sale Act, 1992* is to require that the Constitution "*contain certain restrictions or requirements, predominantly related to maintaining the Australian identity of Qantas*" (Explanatory Memorandum for the Qantas Sale Bill).

The *Qantas Sale Act* contains provisions which safeguard the national interest.

"These safeguards are important to maintain the basic Australian character of Qantas, as well as to ensure that Qantas's operating rights under Australia's various bilateral air service agreements and arrangements with other countries are not put under threat. ...Qantas Articles of Association must contain provisions which will ensure that Qantas's main operational base and headquarters remain in Australia..." (Minister's Second Reading Speech, 4 November, 1992).

Accordingly, Section 7 of Part 3 of the *Qantas Sale Act* provides, *inter alia*, as follows:

- (1) *The articles of association of Qantas must, on and from the day on which Qantas first becomes aware that a person, other than the Commonwealth or a nominee of the Commonwealth, has acquired voting shares in Qantas:*
 - (f) *Prohibit Qantas from conducting scheduled international air transport passenger services under a name other than:*
 - (i) *its company name; or*
 - (ii) *a registered business name that includes the expression "Qantas"*
 - (h) *require 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;*

Section 7 is reproduced in the Constitution of Qantas in compliance with the *Qantas Sale Act*. Significantly, section 13 of the *Qantas Sale Act* states that Part 3 of the *Qantas Sale Act* (which contains section 7) "*has effect despite any provision of the Corporations Act*

2001." The mandatory provisions of the *Qantas Sale Act* restricting the manner by which Qantas provides scheduled international air services are constitutional restraints on the exercise of Qantas' powers.

If the New Spirit Strategy is in breach of the mandatory provisions of the Constitution, not only will the directors be in breach of their duties to the company but contracts giving effect to the strategy will be void. Third parties dealing with Qantas will not be able to rely on the provisions of the *Corporations Act 2001* validating the acts of a company in breach of internal limits on the company's powers.


The limited information provided in public statements about the New Spirit Strategy suggests that, if implemented, it will breach the mandatory provisions of the Constitution. It appears that Qantas will no longer provide scheduled international services under the Qantas name as a distinctly Australian operation with its principal operating centre in Australia.

It is no answer to these concerns that Qantas will continue to provide domestic services under the Qantas name with its principal operating centre in Australia. The mandatory provisions of the Constitution are concerned with international services which must be analysed as a separate operation.

Nor can it be seriously suggested that Qantas will not breach its Constitution if it implements the New Spirit Strategy through subsidiaries or joint venture vehicles. It is clear from the public announcements that the New Spirit Strategy is the way Qantas intends to provide international services in the future.

The employee shareholders are entitled to answers to these important questions. We look forward to hearing from you prior to close of business on 2 November 2011.

Yours sincerely



Steve Purvinas
Federal Secretary

Attachment 2 is behind this coversheet

ALAEA

**Submission to the Rural Affairs and
Transport Committee**

**Qantas Sale Act (Still Call Australia
Home) Amendment Bill 2011**

Chief Executive Officer
Alan Joyce



26 October 2011

Mr Steve Purvinas
Federal Secretary
Australian Licenced Aircraft Engineers Association
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Dear Mr Purvinas

Qantas Sale Act (QSA)

I refer to your letter dated 26 October 2011 which included certain allegations that Qantas is not in compliance with its obligations under the QSA and the Qantas Constitution (Constitution).

Qantas and its Directors are very aware of their obligation to comply with the QSA and the Constitution and have taken no action and do not intend to take any action which breach those obligations.

Qantas proposes to enter joint ventures in Asia which will operate local airlines. Each of those joint ventures must be substantially owned and effectively controlled by nationals of the country in which the airline is based. If this is not done, those airlines will not be able to be designated to operate as carriers of the relevant country.

As those airlines will be substantially owned and effectively controlled by nationals of the country in which the airline is based, it will be the relevant minority owned joint venture, not Qantas, which will be conducting the relevant services. Qantas proposes to codeshare with these airlines as it currently does with many other foreign carriers.

In these circumstances, neither the QSA nor the Constitution are relevant.

Even if it were possible for Qantas to own a majority of one of the proposed non-Australian airlines, neither the QSA nor the Constitution apply to operations conducted by subsidiaries.

I trust this has answered your questions.

Yours sincerely



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Chief Executive

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Attachment 3 is behind this coversheet

ALAEA

**Submission to the Rural Affairs and
Transport Committee**

**Qantas Sale Act (Still Call Australia
Home) Amendment Bill 2011**

AIPA 6

AUSTRALIAN & INTERNATIONAL PILOTS ASSOCIATION
RE JETSTAR AND SALE OF QANTAS

JOINT OPINION

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AUSTRALIAN & INTERNATIONAL PILOTS ASSOCIATION

RE JETSTAR AND SALE OF QANTAS

JOINT OPINION

1. Our instructing solicitors act for the Australian & International Pilots Association (AIPA). AIPA is a professional organisation of pilots and flight engineers employed by Qantas Airways Limited (Qantas) and its subsidiaries (Australian Airlines Limited, Jetstar Airways Pty Limited (Jetstar), Eastern Australia Airlines Pty Limited and Sunstate Airlines (QLD) Pty Limited).
2. AIPA is concerned about the operation of international flights under the name "Jetstar". More specifically, AIPA is concerned that Jetstar may increase its international flights at the expense of conventional Qantas flights. AIPA is concerned about these matters because pilots and flight engineers flying for Jetstar are employed on significantly less attractive conditions than pilots and flight engineers flying on conventional Qantas flights.
3. Further, AIPA is concerned about the takeover offer from Airline Partners Australia Limited (APA), and wishes to either prevent this takeover from proceeding or ensure that it proceeds subject to certain conditions. The reason for the concern is that, because APA is paying a substantial premium for ownership of Qantas, it is thought that it is likely that APA will have a greater need to increase the low-cost Jetstar operations at the expense of the high-cost Qantas operations. Further, under APA control Qantas is more likely to sell off Jetstar, which would most likely result in Jetstar growing at the expense of Qantas.
4. We have been asked to address the following questions:
 - (a) Does the operation of international flights under the name "Jetstar" contravene section 7 of the *Qantas Sale Act 1992* (Qantas Sale Act), or an equivalent provision of the articles of association of Qantas?
 - (b) If so, what remedies may be available to AIPA or its members?

Background facts

5. In the beginning of 1992, Qantas was owned by the Commonwealth Government. Qantas operated international flights under the name "Qantas". Qantas also operated flights to Taiwan under the name "Australia-Asia Airlines". It appears that the reason for the existence of "Australia-Asia Airlines" was political, concerning China's unwillingness to allow the same carrier to serve both China and Taiwan.
6. In 2002, a wholly owned subsidiary of Qantas (Australian Airlines Limited) launched international services under the name "Australian Airlines". This was a low-cost airline which offered all-economy cabins and flew to what are described as "leisure destinations" (i.e. on routes dominated by tourist traffic rather than business traffic). The current Qantas website describes the launch of Australian Airlines in the following terms¹:

Qantas' [sic] launches new international subsidiary airline under the historical name of 'Australian Airlines'.

7. In 2004, Qantas formed a new airline "Jetstar", which was operated at least in part through a wholly owned subsidiary Jetstar Airways Pty Limited. The Qantas website describes this event in the following way²:

Qantas launches new domestic low cost carrier 'Jetstar'.

8. In December 2005, Jetstar began to fly to New Zealand.
9. In 2006, Jetstar began to fly to various other international destinations, being Honolulu, Denpasar, Phuket, Osaka, Bangkok and Ho Chi Minh City. Also in 2006, Australian Airlines ceased its operations.
10. AIPA is not privy to the details of the contracts and other arrangements between Qantas and Jetstar. However, a consideration of matters known to AIPA and matters in the public domain suggests that there is a considerable degree of integration between Qantas and the Jetstar operations. For example:
 - (a) In a Qantas media release of 14 December 2005, it is stated that the "Qantas Board" had selected the Boeing 787 as the cornerstone of its domestic and international fleet renewal, with 65 of the aircraft "for Qantas mainline and Jetstar" for delivery from 2008. Mr Dixon is quoted as saying that "One of our

¹ About Qantas - Our company - History - Qantas through the years

² Ditto

clear priorities is for Jetstar to be ready for international operations by early 2007, with the fastest possible transition to new technology, more efficient aircraft". The release quotes Mr Dixon as making various other comments about the plans for Jetstar.

- (b) A separate flyer from Jetstar, picturing the B787, states that: "As a member of the Qantas Group, Jetstar yesterday chose the 787 Dreamliner... as the cornerstone of its future international operation. This decision further underpins the commitment to safety, quality and innovation that has marked the Qantas Group story over the past 85 years".
- (c) A speech by Mr Joyce, CEO of Jetstar, on 4 November 2004 (a copy of which was released by Jetstar) sets out some of the history of the formation of Jetstar. He says: "In August 2003 the concept of a new LCC [low cost carrier] was being promoted around Qantas where we pulled together a project team to... see if it could make sense. The decision to go with the former Impulse Airlines... as the base to enable a business plan and model to be brought together -- took dramatic steps before being put to the Qantas Board. The Board approved the process and signed off on a billion dollar A320 fleet decision although internal management debate about the model and the potential direction of Jetstar was fascinating... Just under a year ago, on 1 December 2003, Qantas CEO Geoff Dixon outlined our name and proposed livery. From there things have moved awfully quickly". He later referred to Jetstar unveiling its latest operating plans for Cairns "in unison with the overall Qantas Group. Qantas announced the new Cairns-Sydney and Cairns-Melbourne direct flights by Jetstar, offering more than 350 additional seats per week into Cairns on these routes from January 2005". He then went on to state the commitment of the "Qantas Group" to Cairns, and refers to Jetstar services as part of the overall investment which the Qantas Group provides to the Cairns community. He later refers to "We at Qantas...". He concludes by observing that "Jetstar was established by Qantas, and done so by seeking to adapt the best features of some of the world's leading low fare carriers, so that Qantas could seek to sustainably grow or further enter existing or indeed new markets within Australia to stimulate VFR or leisure travel".
- (d) In a speech given on 7 April 2005 to the American Chamber of Commerce (a copy of which was released by Jetstar), Mr Joyce, CEO of Jetstar, referred to Mr Dixon as "our Qantas Group chief". He refers to the "Qantas Group through Jetstar" having a sustainable airline operation to the Gold Coast. He later refers to the introduction of the ability of Jetstar passengers to earn Qantas frequent flyer points, and states: "We have now adopted a cost

effective and practical approach through the successful Qantas rewards program to further improve the Qantas Group's overall pitch to an important customer segment". He refers to Jetstar's profit as a "central plank of Qantas Group's continuing domestic and regional aviation strategy to deliver appropriate product, service and economics in each market segment". He records that Jetstar is part of "Qantas Group's treasury program which maintains a level of hedging on aviation fuel...". He states that "Any future decisions on an expansion of Jetstar's network... will be made within the coming months and is subject to approval by Qantas".

- (c) The last matter in the previous paragraph was confirmed by the Qantas media release of 8 December 2005, which said that the Board of Qantas had approved the establishment of a new long haul value based airline under the Jetstar brand, and that the Qantas Board had called a special meeting to further consider its long term fleet plan and to discuss purchases, including the new aircraft for Jetstar's international operations. Mr Dixon said that "Our aim for the Group is to expand in our traditional markets with Qantas and to expand in new markets with the most suitable product, be it Qantas or Jetstar". The balance of the release contains comments by Mr Dixon and Mr Joyce about both Qantas and Jetstar.

- 11. In the Target's Statement by Qantas to APA dated 12 February 2007, Jetstar is discussed on numerous occasions, including the following:

- (a) On page 9, in the section headed "Profile of Qantas", it is stated that:

Qantas has two major flying businesses and a diverse range of airline-related businesses... The flying businesses are split into two major brands: Qantas, the full service brand, and Jetstar, the value-based brand...

Jetstar was formed to offer lower cost services...

- (b) In the expert's report, included by Qantas as part of the Target's Statement, the following appears (at page 47 of the document):

Qantas has a number of operating divisions but the reality is that it is largely operated as a single integrated business.

- (c) Also in the expert's report, there is reference on page 63 to Qantas having a "two brand strategy", being Qantas and Jetstar.

- (d) In the expert's report, there is discussion on page 92 of Jetstar being likely to "absorb routes from Qantas full service domestic where Qantas finds it difficult to generate a sufficient return".
12. In the Qantas 2006 Annual Report, Jetstar is discussed on numerous occasions, including the following:
- (a) On page 4, in the report of the CEO and Chairman, there is reference to the "company's fundamentals" being strong, "with... a new airline in Jetstar that has driven strong revenue growth and industry benchmark cost containment".
 - (b) On page 5, in the same report, there is reference to Qantas ordering 4 new aircraft, "two for Jetstar and two for Qantas", and "the first 12 of our new B787s are earmarked for Jetstar's new international service".
 - (c) On page 8, in the same report, it is stated: "We have announced that we will employ staff on Australian Workplace Agreements where that is the right approach. This has already happened in two of our businesses -- Jetstar, with its long haul international cabin crew, and Express Freighters Australia with its pilots".
 - (d) On page 12, under the heading "Qantas International - Network Developments", it is stated that Qantas has operated services to Bali which "will progressively transition to Jetstar after it begins international services in December 2006".
 - (e) Pages 18 - 21 of the report concern Jetstar.
 - (f) On page 39, Mr Joyce is listed in the "Executive Team", and appears again on page 62 in the table of remuneration for "key management executives".
13. From this material, it appears that whilst it may be the case that Jetstar is to some extent an independent operation, it was established by Qantas to enable the Qantas Group to conduct low cost operations, its services are operated in a manner which is complementary to ordinary Qantas services, and major strategic decisions as to the operation of Jetstar, including the purchase of aircraft and the routes that it will fly, are taken by the Qantas Board rather than the board of Jetstar.
14. In this regard, the material set out above is unsurprising. It simply reflects the commercial reality that corporate groups of wholly owned subsidiaries frequently will act in a unified manner under the control of the parent company, with all significant decisions made by the parent company.

15. We are instructed as to the following additional matters relevant to the integration of Qantas and Jetstar:

- (a) Jetstar utilises numerous Qantas-employed pilots on leave of absence;
- (b) Qantas frequent flyers can redeem their points on Jetstar flights, and earn points on some Jetstar tickets;
- (c) Jetstar uses various Qantas services, including Qantas maintenance, Qantas catering and Qantas fuel supplies;
- (d) the three directors of Jetstar, Messrs Dixon, Gregg and Johnson, are all executives of Qantas. Mr Dixon is the Qantas CEO, Mr Gregg is the Qantas CFO, and Mr Johnson is the Qantas General Counsel. Mr Dixon and Mr Gregg are also directors of Qantas; and
- (e) Mr Joyce, the CEO of Jetstar, was a former executive of Qantas. His title was Group General Manager Network (responsible for Network Strategy, Network Analysis, Schedules Planning and Schedules Variation), before he was promoted in 2003 to a position within Qantas known as "Executive General Manager Low Cost Carrier". This was the role he occupied for the period of the formation of Jetstar.

Analysis

16. Section 7(1)(f) of the Qantas Sale Act relevantly provides that:

The articles of association of Qantas must, on and from the day on which Qantas first becomes aware that a person, other than the Commonwealth or a nominee of the Commonwealth, has acquired voting shares in Qantas:

...

(f) prohibit Qantas from conducting scheduled international air transport passenger services under a name other than:

(i) its company name; or

(ii) a registered business name that includes the expression "Qantas"...

17. "Qantas" is defined in section 3(1) of the Qantas Sale Act as "Qantas Airways Limited, as the company exists from time to time (even if its name is later changed)". There is no definition of "scheduled international air transport passenger services".

However, the ordinary meaning of this term is reasonably clear. What is less clear is what is meant by "Qantas... conducting" such services.

18. Section 7(1)(f) of the Qantas Sale Act does not take effect as a prohibition on conducting specified services. Rather, it takes effect as an obligation on Qantas to include a prohibition in its articles of association. Thus any issue of statutory construction arises in an unusual context.

19. However, regard must also be had to section 8 of the Qantas Sale Act. Section 8 relevantly provides:

(1) *A special resolution of Qantas that would, apart from this subsection, have the effect of altering Qantas' articles of association so that the articles would not comply with section 7 is to have no effect.*

(2) *A special resolution or resolution of Qantas that:*

(a) *would, if acted on and apart from this subsection, result in a contravention of the mandatory articles; or*

(b) *would, apart from this subsection, ratify an act or omission that contravenes the mandatory articles;*

is to have no effect.

20. Section 10 of the Qantas Sale Act provides for the granting of injunctions by the Federal Court of Australia at the suit of the Minister restraining a contravention, attempted contravention, or involvement in a contravention, of the mandatory articles (i.e. those specified in section 7).

21. It is reasonably clear that the relevant statutory obligation (being the obligation to include certain provisions in the articles of association) is an obligation on Qantas alone, rather than on Qantas and its subsidiaries. We say this for the following reasons:

- (a) Qantas is defined as "Qantas Airways Limited", rather than Qantas Airways Limited and its subsidiaries. The term "Qantas subsidiary" is separately defined in section 3(1) to mean:

a body corporate that is a subsidiary of Qantas.

(Section 3(2) further provides that the question of whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the *Corporations Act 2001*). The term

"Qantas subsidiary" is used in many sections of the Qantas Sale Act, but not in section 7.

- (b) The phrase "the articles of association of Qantas" appears in the opening words of section 7(1), being a subsection which applies on and from the day on which Qantas becomes aware that a person other than the Commonwealth has acquired voting shares in Qantas. The Commonwealth owned shares in Qantas, rather than its subsidiaries.
 - (c) Other sub-paragraphs of sub-section 7(1) contain provisions that are clearly directed to Qantas, rather than its subsidiaries, such as restrictions on ownership of shares in "Qantas" and a restriction on Qantas changing "its company name to a name that does not include the expression 'Qantas'".
22. However, this does not resolve the issue for determination in this opinion.
23. The relevant articles of association of Qantas are found in the Qantas Constitution (the Constitution). The first paragraph of the Constitution provides as follows:

1.1 Name

- (a) *The name of the company is 'Qantas Airways Limited'.*
 - (b) *The name of the company must contain the expression 'Qantas', and for so long as Qantas conducts scheduled international air transport passenger services it must do so under its company name or under a registered business name that includes the expression 'Qantas'.*
24. The first question which we have been asked requires us to consider whether this paragraph complies with the obligation under section 7(1)(f) of the Qantas Sale Act. Paragraph 1.1(b) of the Constitution is framed as an obligation, whereas section 7(1)(f) requires the Constitution to contain a prohibition. We do not think that this, of itself, prevents the Constitution from complying with the requirements of the Act. An obligation to conduct a service under a given name is equivalent to a prohibition on conducting the service under any different name.
25. Otherwise, paragraph 1.1(b) uses equivalent language to the statutory language in s.7(1)(f). This does not determine the question of whether the Constitution complies with the Qantas Sale Act. If a particular term in the statute has a wide meaning, but the same term in the Constitution has a narrow meaning, then it may be that Constitution does not comply with the statute. However, we are also of the view that the interpretation of the Constitution should be approached on the basis that it was intended to give effect to the statutory requirements and should, unless the contrary

intention is clearly evident, be interpreted in a manner consistent with the meaning of the statutory obligation. This is reinforced by notations in the Constitution referring to the relevant parts of the Qantas Sale Act.

26. The precise meaning of the phrase "Qantas... conducting scheduled international air transport passenger services" in s.7(1)(f) is ambiguous. In particular, it is not entirely clear whether the phrase is limited to activities carried on by Qantas itself, or whether it would, for example, extend to activities organised, procured, directed and supervised by Qantas but also carried out by some other person, such as a subsidiary of Qantas. In these circumstances, reference may be had to extraneous material to ascertain the purpose of the Act (in order to construe the section in a manner consistent with that purpose)³, to confirm the ordinary meaning⁴, or to determine the meaning⁵.
27. The Explanatory Memorandum for the original Bill says the following about Part 3, in which section 7 is located:

The purpose of Part 3 is to require that the articles of association of Qantas contain certain restrictions or requirements, predominantly related to maintaining the Australian identity of Qantas and ensuring that the requirements of Australia's bilateral air service agreements (under which most of Qantas' international air services are operated) are complied with. These air service agreements require that Qantas remain substantially owned and effectively controlled by Australians. The part also provides a mechanism for the relevant portfolio Minister (currently the Minister for Transport and Communications) to monitor compliance with these provisions and, if necessary, to seek their enforcement by the Federal Court.

28. This summary of the requirements of the air service agreements ("that Qantas remain substantially owned and effectively controlled by Australians") appears to relate to other provisions of section 7, rather than s.7(1)(f). Likewise, the object of "maintaining the Australian identity of Qantas" does not appear to relate to s.7(1)(f), but rather to other provisions of s.7(1) concerning ownership of shares, location of Qantas facilities, and the like.

³ Acts Interpretation Act s.15AA

⁴ Acts Interpretation Act s.15AB(1)(a)

⁵ Acts Interpretation Act s.15AB(1)(b)

29. We have not been briefed with all of the bilateral air service agreements that were current at the time that the Qantas Sale Act was enacted. It is possible that a consideration of those agreements might explain the concern with the name "Qantas". For example, if the agreements conferred landing rights or other rights upon "Qantas", then it might be in the national interest to ensure that the airline called "Qantas" continued to operate international services. A non-exhaustive examination of some agreements suggests that this is an important topic which requires further investigation. For example, the agreement between Australia and the United States of 10 January 1980⁶ makes specific reference to "Qantas". An example is provided by the following clause:

(C) Neither party shall challenge, before 1 November 1979, the existing combination service frequency levels for QANTAS and Pan American Airways, and the proposed levels for Continental Airlines, that is, QANTAS - 7, Pan American - 9, Continental - 4, weekly round trips.

30. Other agreements refer only to a "designated airline", and identify this as:

an airline or airlines which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the route or routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party.⁷

31. In each case, it is possible that the maintenance of the "Qantas" name is of some significance to Australia.

32. Of section 7, the Explanatory Memorandum states:

This clause requires that the following national interest safeguards be incorporated into Qantas' articles of association:

- (e) Qantas' company name must not be changed to a name that does not include the expression "Qantas".*

⁶ <http://www.austlii.edu.au/au/other/dfat/treaties/1980/2.html>

⁷ See <http://www.austlii.edu.au/au/other/dfat/treaties/1956/6.html> (the Japanese agreement) as amended by <http://www.austlii.edu.au/au/other/dfat/treaties/1939/17.html>.

- (f) *Qantas must only conduct scheduled international air transport passenger services under its company name or under a registered business name that includes the expression "Qantas".*

33. Apart from the possible accrual of rights under international agreements (discussed above), it is not immediately apparent how the requirement that Qantas must only conduct scheduled international air transport passenger services under its company name or under a registered business name that includes the expression "Qantas" is a "national interest safeguard", unless it was thought that the Qantas brand was so important to Australia that it was in the national interest that it be preserved.
34. In his second reading speech (4 November 1992, House Hansard p 2588) the Minister said:

National Interest Safeguards

The fundamentals of the national interest safeguards, referred to earlier, need to be enshrined in legislation.

These safeguards are important to maintain the basic Australian character of Qantas, as well as to ensure that Qantas's operating rights under Australia's various bilateral air service agreements and arrangements with other countries are not put under threat. Once in legislation, these safeguards will not be subject to the whim of the Government of the day.

Thus, the Bill requires that Qantas's Articles of Association must contain provisions which will ensure that: Qantas's main operational base and headquarters remain in Australia; that the name of Qantas is preserved for the company's scheduled international passenger services; that the company be incorporated in Australia; that at least two-thirds of the board of Qantas be Australian citizens; that the chairman of the board also be an Australian citizen; and, in particular, that total foreign ownership is not to exceed 35 per cent. [emphasis added]

35. The passage in bold is consistent with the observations above concerning the possible accrual of rights in the name of "Qantas" under the bilateral air service agreements, but does not identify this consideration in terms.
36. During the debate following the second reading speech (11 November 1992, Hansard p 3168), Mr Beale said:

I suggest to the Minister for Finance that the Government should amend the Bill in the Senate in two other ways. It should be amended to make it clear that

the Government can at any time use the Qantas organisation or assets for national security or defence purposes. The second thing that I suggest to the Minister is in the context of clause 7(1)(f). There should be some modification to that clause. As I understand it, Qantas flies to Taiwan under the name Australia-Asia Airlines. If it continued to do that, it would be demonstrably in breach of clause 7(1)(f), so some modification needs to be made to the Bill to ensure that Qantas' interests are protected in that way. [emphasis added]

37. Mr Jull then said (11 November 1992, Hansard p 3174):

The honourable member for Bruce also mentioned the Australia-Asia airline that operates into Taipei. He referred to the Qantas Sale Bill. I refer to clause 7 (e) and (f) under part 3 of that Bill. Under section (e) the explanatory memorandum says:

Qantas' company name must not be changed to a name that does not include the expression "Qantas".

I think we need some clarification of that because that Taipei market is an expanding market and there are some tremendous opportunities there. I would hate to see any access to that market diminished purely because of an oversight in that Bill.

38. The relevant text of the Bill's second reading speech in the Senate (12 November 1992, Hansard p 2851) is materially identical to that in the House.

39. During debate in the Senate (7 December 1992, Hansard p 4256), Senator MacGibbon said:

When I was preparing the material for this speech, I was very interested to talk to two advisers from the Department. ...

Part 3 deals with the requirement for the airline to trade under the name of Qantas when operating international services. I did raise the matter of Australia Asia Airlines with the advisers and I am assured that that will not be in any conflict with the provisions of the Act. Australia Asia Airlines is the subcompany set up by Qantas to trade with Taiwan. [emphasis added]

40. There is no further reference to what became section 7(1)(f).

41. The Explanatory Memorandum and the parliamentary debates do not provide any clear guidance as to the purpose of section 7(1)(f). However, the reference in the

Explanatory Memorandum to Qantas's operating rights under Australia's various bilateral air service agreements is consistent with a concern to preserve rights accrued to Australia, via Qantas, under those agreements.

42. The statements by Mr Beale, Mr Jull and Senator MacGibbon suggest a desire to ensure that the Act did not prohibit the existing arrangements in relation to Australia-Asia Airlines, but as these are all statements by the opposition they do not shed much light on the intention of the framers of the legislation.
43. However, the fact that the Act was passed at a time when a subsidiary of Qantas was operating an international air transport passenger service under a name which did not include the expression "Qantas", particularly in circumstances where the issue was raised on more than one occasion in the parliamentary debate referable to the Bill, suggests that s.7(1)(f) should be given a construction which would avoid the immediate prohibition of the existing state of affairs.
44. On the other hand, if s.7(1)(f) of the Act was construed such that it did not touch any operations of subsidiaries of Qantas, then it would be absurdly easy to avoid the constraint imposed by the sub-paragraph. Qantas could simply migrate any or all of its flights to a subsidiary (such as Jetstar). This would be inconsistent with the evident purpose of the provision to safeguard the national interest, including through the preservation of rights which Australia (through Qantas) has pursuant to international agreements. A construction which would permit Qantas to sidestep with ease the statutory restriction should be avoided if possible.
45. The factors referred to in the previous two paragraphs may, in a given case, point in opposite directions. It is necessary to construe section 7(1)(f) having regard to the ordinary meaning of the language, the evident purpose of the provision, and the possibly contradictory considerations discussed above.
46. In our view, the mere fact that an international air transport passenger service was carried out by a Qantas subsidiary would not, of itself, mean that Qantas was conducting such a service. For example, if Qantas was to purchase a majority shareholding in an existing international airline in circumstances where the existing airline continued to operate its services completely independently of Qantas, without any involvement of Qantas management or the Qantas board, then it is difficult to see how Qantas would be "conducting" the services in any relevant sense. This view is consistent with the evident purpose of the Qantas Sale Act. The Act is not concerned with limiting the investment activities of Qantas.
47. The position may be different if Qantas is directing, managing or supervising the conduct of the services operated in part by a subsidiary. In those circumstances,

Qantas may be seen to be "conducting" the services within the ordinary meaning of that term. Such an approach is consistent with the need to ensure that Qantas cannot, by the mere device of establishing a subsidiary, have the conduct in a practical sense of services which fall outside the ambit of the statute (and consequently the Qantas Constitution).

48. In the present case, the limited facts which we have strongly suggest that Jetstar is not an independent operation. The board of Qantas makes significant decisions as to the operation of Jetstar, including the determination of routes and the purchase of aircraft. These two matters alone are so significant to the overall operation of an airline, that Qantas may be seen to be "conducting" the services otherwise operated by Jetstar. However, the material available to us goes further. It indicates that Qantas approaches Jetstar not as an investment, but as a means by which Qantas can operate low cost services and increase those services, including at the expense of existing Qantas operations. The conduct of Jetstar is part of the strategy of Qantas to extract the maximum benefit from different market segments (what Qantas refers to as the "two brand strategy") and is an integral part of Qantas' approach to conducting business in both the domestic and international arenas.
49. Close to conclusive evidence in this regard may be produced by an examination of Qantas board papers, because they may reveal a crossing of the line between the Qantas board receiving information about a subsidiary, and making decisions for the operation of that subsidiary. We note that some of the media releases issued by Qantas are strongly suggestive that this line has been crossed - for example, the media release of 14 December 2005 stating that the Qantas board had decided to purchase certain aircraft for Jetstar.
50. A useful comparison, by way of analogy, may be made with cases considering whether a holding company owes a duty of care to employees of its subsidiary. In *CSR Limited v Wren*⁸, the Court of Appeal concluded that CSR Limited owed a duty of care to employees of its wholly owned subsidiary Asbestos Products Pty Limited. Factors which were relied upon in support of this conclusion included:
 - (a) that CSR, through some of its employees, in fact controlled and supervised the factory operations of Asbestos Products;
 - (b) that Asbestos Products' board of directors were all staff members of CSR;

⁸ (1998) 44 NSWLR 463

- (c) that it appeared from CSR's annual report and newsletters that it adopted a patriarchal attitude towards its subsidiaries. For example, in an annual report it was stated that: "Production in all the factories of *our* Building Materials Division has been maintained..."; and
- (d) that CSR had approved the purchase of certain equipment used by Asbestos Products.

Analogous factors are present in the case of the Qantas/Jetstar relationship. For example, all of the Jetstar directors are executives employed by Qantas, Qantas adopts a similarly patriarchal attitude towards Jetstar (in the Qantas materials set out above), and it appears that the Qantas board has made decisions concerning the purchase of aircraft for Jetstar.

- 51. In our view, Qantas is "conducting" the services offered under the Jetstar brand within the meaning of both section 7(1)(f) of the Qantas Sale Act and paragraph 1.1(b) of the Qantas Constitution.

Remedies

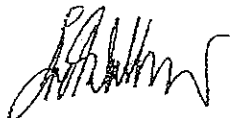
- 52. The right conferred by the Qantas Sale Act to seek an injunction against conduct constituting a contravention of the Qantas Constitution⁹ is a right given to the Minister alone.
- 53. There is no reason why a member of Qantas would not be able to bring an action to enforce the Qantas Constitution as a contract between the member and Qantas. Section 140(1)(a) of the *Corporations Act* 2001 provides that a company's constitution has effect as a contract between the company and each member. The Constitution is enforceable in the same way as any other contract. We understand that many of the members of AIPA are also members of Qantas.
- 54. It is possible that declarations might also be available. The power of the Court to grant declarations is undoubtedly very wide. However, we would consider it inappropriate to seek bare declarations. A Court may well consider that a bare declaration that Qantas was in breach of its Constitution, without any associated injunctive relief, would not be sufficient to quell the controversy between the parties because it would not bring the conduct to an end or otherwise resolve the dispute. This may be sufficient grounds for a Court to exercise its discretion to decline to grant any

⁹ Section 10, Qantas Sale Act

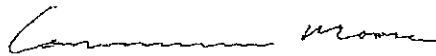
declaration¹⁰. Further, we would query the point of seeking a declaration in the present case, where an injunction would be the operative remedy.

55. An injunction in the present case may have very serious consequences. The practical effect would be to prevent the operation of the Jetstar international business under its present name, being a major business with many employees which has been operating for over a year. Nevertheless, given that the relevant member would be seeking to enforce what is effectively a negative covenant of the Qantas Constitution, the injunction should prima facie be granted whatever the inconvenience¹¹. Although the famous passage in *Doherty* should not be applied without qualification as to the possible application of equitable defences such as laches or acquiescence¹², the prima facie position is that the injunction should be granted¹³.
56. However, we note that the obvious commercial and industrial consequences of closing down Jetstar's international operations (including the consequences for members of AIPA employed by Jetstar) mean that any litigation seeking to enforce the Qantas constitution involves a problematical step.

Chambers



Bret Walker



Cameron Moore

26 February 2007

¹⁰ cf. *Forster v Jododex* (1972) 127 CLR 421

¹¹ *Doherty v Allman* (1878) 3 App Cas 709 at 719-20

¹² Meagher, Gummow and Lehane, *Equity: Doctrines and Remedies*, 4th ed. at [21-195]

¹³ *J C Williamson Ltd v Lukey and Mulholland* (1931) 45 CLR 282 at 299; *Dalgety Wine Estates Pty Ltd v Rizzon* (1979) 141 CLR 552 at 576; *BHP v Hapag-Lloyd Aktiengesellschaft* [1980] 2 NSWLR 572 at 581-582; *Maggbury Pty Ltd v Hafele Australia Pty Ltd* (2002) 210 CLR 181 at [74], [102]

Attachment 4 is behind this coversheet

ALAEA

**Submission to the Rural Affairs and
Transport Committee**

**Qantas Sale Act (Still Call Australia
Home) Amendment Bill 2011**

10 August 2011



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Dear Sue

Qantas International costs analysis

As stated in a number of forums, the ALAEA is extremely suspicious of recent public statements made by Qantas Management regarding the profitability of certain parts of its business. Of particular interest are the recent comments claiming that Qantas International lost \$200 million last year. Given that the Qantas Group's Annual and Financial reports includes the Qantas Domestic and International businesses and QantasLink in the "Qantas" segment, it is difficult for investors to ascertain whether the comments about Qantas International's losses are either accurate or true.

Despite this, during Enterprise Agreement negotiations Qantas Management have been using these statements as evidence that supports their arguments about the need for change. Whilst the ALAEA has been more than willing to discuss change, we do not support change based on public statements made by Qantas Managers without supporting data. In addition, we suspect that many of the changes sought may in fact detract from productivity and ultimately lead to a less profitable business.

The truth or otherwise of these public statements is not one that we can accurately assess right now. For us, this exercise is like searching for a needle in a haystack as the Qantas Group's business is complex and extensive. What we do know is that our members have reported instances where it appears the Qantas segment – and Qantas International in particular – is subsidising the non-Qantas segments of the business. For example, occasions where services have been provided by Qantas and charge sheets completed only for those same charge sheets not to be processed. For us this is a signal that something is taking place that may lead to one part of the business appearing more profitable than another.

After airing these concerns publically, we have been contacted by over 100 Qantas employees from store persons to former Executive General Managers with similar concerns. While an adequate response may be able to be provided by Qantas to many of these questions, until all have been completely answered and checked, we will continue to disbelieve statements made in the media by Qantas Management about Qantas

International being a loss making part of the business. This is especially the case when we see data indicating consistent International load factors above 80% even with the highest bracket of airfares within the Industry.

So we can evaluate the situation more accurately, we formally request answers to the following questions along with access to the accounts of the business to determine the accuracy of any statement provided. Generally we are referring to the accounts of the business for the 2010 and 2011 financial years unless expressly stated otherwise. These are initial questions only and in some cases will lead to follow up questions.

General Questions

1. How much did each segment of the Group pay and what amount was allocated to each segment, for advertising in FY 2011? What amount was paid by or allocated to the Qantas International business?
2. On the Qantas finger Brisbane at Gate 25, Qantas Crews have been unable to dock when all other gates were taken. Gate 25 in some cases was not being used for several hours but the aircraft and passengers have waited, burning Jet fuel in the process until another bay was free. Why was this gate in the Qantas Brisbane finger not available for Qantas use? Are there any other Gates in Qantas fingers that Qantas weren't able to regularly use?
3. In regard to aircraft owned or leased by the Qantas segment of the Group, what were the lease costs charged or allocated to each other segment when those aircraft were leased or sub-leased to that other segment in FY 2011?
4. How much did each segment of the Group pay and what amount was allocated to each segment for upkeep of the Qantas intranet and all its parts such as the directory in FY 2011? What amount was paid by or allocated to the Qantas International business?
5. How much did each segment of the Group pay and what amount was allocated to each segment, for Directors, Executive Directors and Group Executives remuneration in FY 2011? What amount was paid by or allocated to the Qantas International business?
6. We understand that Jetstar equipment was held in Qantas storage areas (formerly QCD). How much did Jetstar pay and what amount was allocated to Jetstar for the cost of storage in FY2011?
7. How much did each segment of the Group pay and what amount was allocated to each segment for 'Group Security' in FY 2011? What amount was paid by or allocated to the Qantas International business?
8. When a Qantaslink or Jetstar passenger uses the Qantas Club or Chairman's lounge facilities, what processes ensure that the cost is re-couped from those parts of the business?

9. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of Oldmeadow Consulting and associated entities for FY 2011? What amount was paid by or allocated to the Qantas International business?
10. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of staff car parking for FY 2011? What amount was paid by or allocated to the Qantas International business?
11. How much did each segment of the Group pay and what amount was allocated to each segment for the administrative costs of fuel hedging for FY 2011? What amount was paid by or allocated to the Qantas International business?
12. How has Qantas charged other parts of the Group for ground services equipment use?
13. What part of the business paid the expense for the two managers seconded to Jetstar Pacific who were kept under house arrest? Who paid for the other managers who went up to rescue them?
14. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of consultant's fees, including Bain and Co., reviewing the overall business in FY 2011? What amount was paid by or allocated to the Qantas International business?
15. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of sending senior executives to appear before Senate inquiries, including their legal representation and associated costs for FY 2011? What amount was paid by or allocated to the Qantas International business?
16. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of the Crisis Control Centre on 5th floor QCC2 in FY2011? What amount was paid by or allocated to the Qantas International business?
17. Please confirm whether all Group aviation fuel bills get charged to the Qantas segment. How much did each segment of the Group pay and what amount was allocated to each segment, for the cost of fuel for FY 2011? What amount was paid by or allocated to the Qantas International business? What processes were used to charge each part of the business for its fuel use?
18. How much did Jetstar pay or what cost was allocated to Jetstar, for the use of Qantas Long Haul Route manual supplement information?
19. Who paid the bill for ACARS use and what cost was allocated to each segment of the Group? What amount was paid by or allocated to the Qantas International business?

20. Has Jetstar ever used Qantaslink check in counters at T2 Sydney? If so, how much did they reimburse Qantaslink for that use?
21. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of insuring the Group aircraft fleet for FY 2011? What amount was paid by or allocated to the Qantas International business?
22. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of production and distribution of the Annual Report and the cost of the Annual General Meeting for FY 2010? What amount was paid by or allocated to the Qantas International business?
23. Which part of the business pays the wages of the ground staff in Bali?
24. Who paid for the self-check in units, their installation and upkeep?
25. In 2009 Qantas admitted that it has "*seconded employees and various support services*" to Jetstar Asia. How many employees were seconded in FYs 2008, 2009 and 2010. Who paid their wages?
26. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of refuelling the Group's ground equipment in FY2011? What amount was paid by or allocated to the Qantas International business?
27. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of maintaining Qantas Group airbridges in FY2011? What amount was paid by or allocated to the Qantas International business?
28. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of jointly used conveyor belts and associated costs in check-in areas in FY2011? What amount was paid by or allocated to the Qantas International business?
29. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of the General Manager Group Government and Industrial Affairs salary in FY 2011? What amount was paid by or allocated to the Qantas International business?
30. From the December 31st 2010 half year report, what made up the \$520 million of intersegment revenue received by Qantas?
31. From the December 31st 2010 half year report, what made up the \$98 million of intersegment revenue received by Jetstar?

Maintenance Related

32. At outstations where any Qantas Group A330 aircraft flew, who have the spare A330 parts used been billed to?
33. Who is paying for the \$21 million refurbishment of Hangar 245 that will predominantly house 787's?
34. Why were LAMEs told not to fill out form 2350's (customer billing sheets) when additional work or equipment is required on non- Qantas mainline aircraft? How much was charged to Jetstar through this process in FY2011?
35. The following appears in the Jetstar manuals -

JETSTAR AIRWAYS HAS BEEN SPONSORED BY QANTAS AS AN EQUALISED MEMBER OF THE IATP SPARES POOLING AGREEMENT. JETSTAR AIRWAYS DOES NOT PROVIDE ANY SPARES FOR THE POOL BUT RELIES UPON QANTAS FOR THEIR PROVISION. THE POOLING SYSTEM WILL BE OPERATED BY QANTAS ON BEHALF OF JETSTAR AIRWAYS IN ACCORDANCE WITH THE PROCEDURES SET DOWN IN THE QANTAS E&M PROCEDURES MANUAL (CHAPTER 4-60-005) AND RELATED DOCUMENTS.

What do Jetstar pay for this service?

36. In Perth and Darwin from time to time check in staff are required both Qantas and Jetstar uniforms. Who pays their wages?
37. Has Jetstar used the Qantas Maintenance Watch for their A330? How much were they charged for this use in FY2011?
38. Is Jetstar charged for the compilation and distribution of work packages by Qantas planners for the Jetstar A330 transits and overnight work in domestic and international ports?
39. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of Engineering Manager Rod Pullbrook's salary in FY2011? What amount was paid by or allocated to the Qantas International business?
40. Has any Qantas tooling been sold or transferred to Jetstar. How much paid to Qantas or what cost was allocated to Jetstar for the tooling?

Crewing

41. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of Sim, Emergency Procedures and medical training for

Tech and Cabin Crew in FY2011? What amount was paid by or allocated to the Qantas International business?

42. Has any part of the business been required to send Tech crew overseas for training because Australian facilities were being fully utilised? If so, which part, what was the cost and how much did each segment of the Group pay and what amount was allocated to each segment in FY 2011? What amount was paid by or allocated to the Qantas International business?
43. When Tech and Cabin Crew are required to pax to another port for duty, what processes are used to allocate costs between the different segments?
44. When Qantas Long Haul Crews fly Domestic sectors, does Qantas Domestic pay their wages?
45. What was the financial cost to mainline of transferring aircraft to Jetstar and Qantas carrying a pilot surplus for the last 3 years?
46. How much did each segment of the Group pay and what amount was allocated to each segment for the cost of Jetstar NZ cadets staying in hotels in Australia in FY 2011? What amount was paid by or allocated to the Qantas International business?

Freight

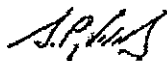
47. How much did each segment of the Group pay and what amount was allocated to each segment, for the cost of QF AKE baggage containers, including upkeep, in FY2011? What amount was paid by or allocated to the Qantas International business?
48. Have there been times where the Group has been required to hire containers from other operators due to shortages? If so, what part of the business bears the expense or hire charge?
49. How much did each segment of the Group pay and what amount was allocated to each segment for the legal fees, fines and associated costs of the freight cartel issue from FYs 2006-11? What amount was paid by or allocated to the Qantas International business?
50. Do Qantas pay a fixed price for Cargo space on any Jetstar service? If so, how much revenue did they earn from the cargo and how much did they pay for the space?
51. If Qantas pay a fixed price for Cargo space on Jetstar services, when that space is not used, do they get revenue back from Jetstar?
52. How much did each segment of the Group pay and what amount was allocated to each segment, for the cost of Freight Sales and Reservations Department and staff

in FY2011? What amount was paid by or allocated to the Qantas International business?

53. Did Qantas pay a fixed price to Jetstar to carry freight on flights to Japan and other areas that saw those flights cancelled due to natural disasters? If so was the money paid back?

Flight sharing

54. Did Qantas buy a fixed number of seats on Jetstar/Qantas codeshare flights operated by Jetstar in FY2011? If so how many did they buy and what price was charged? What load factor did Qantas have on these purchased seats? If Qantas didn't sell the seats, could Jetstar then sell them? If Jetstar sold the seats how was the revenue dealt with?
55. For cancelled Jetstar flights, was this revenue refunded to Qantas?
56. Did Jetstar buy a fixed number of seats on Jetstar/Qantas codeshare flights operated by Qantas in FY2011? If so how many did they buy and what price was charged? What load factor did Jetstar have on these purchased seats? If Jetstar didn't sell the seats, could Qantas then sell them? If Qantas sold the seats how was the revenue dealt with?
57. When Jetstar took over the Cairns-Darwin-Singapore route replacing the QF 61/62, was an agreement struck which saw Qantas pay a fixed sum in revenue for use of that service annually?
58. When a delay on a QF aircraft is incurred whilst waiting for passengers from other parts of the business, who pays this cost?
59. What amount was paid to Qantas each time they were chartered to fly services to recover stranded Jetstar passengers?
60. Does Qantas have an agreement between the various parts of the Group dealing with Disruption Handling including, but not limited to, the cost to be paid or allocated for carrying disrupted passengers?
61. When a passenger purchases a Qantas ticket but flies on Jetstar, how is the revenue from ancillary charges paid or allocated between Qantas?



Stephen Purvinas
Federal Secretary