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Advancing the interests of our members and the profession

AUSTRALIAN SENATE

Rural Affairs and Transport Legislation Committee

Submission by the **Australian and International Pilots Association**
on the **Qantas Sale Amendment (Still Call Australia Home) Bill 2011**

AUSTRALIAN AND INTERNATIONAL PILOTS ASSOCIATION

SUBMISSION TO THE AUSTRALIAN SENATE RURAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

ON THE

QANTAS SALE AMENDMENT (STILL CALL AUSTRALIA HOME) BILL 2011

EXECUTIVE SUMMARY

AIPA welcomes the opportunity to provide the Senate and the Australian public with our views on the legislative amendments proposed in the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*.

It is critical to this Inquiry that there is a widespread public and political recognition that AIPA is highly motivated to see Qantas succeed in a business sense so that we, directly, and more broadly the rest of Australia, benefit from that success.

However, AIPA, in combination with what we believe to be the majority of the Australian public, is committed to see the success of this great Australian business occur with the minimum leakage of contributions to the Australian public purse, employment opportunities, skills development, national infrastructure and national reach in time of emergency.

There has been a spate of recent announcements about Qantas shifting its 'centre of gravity' to Asia. Qantas has linked the abandonment of major routes to Europe and the subsequent fleet and employment reductions to the need to free up capital to create Asian businesses. AIPA believes that the intention of the so-called 'national interest' protections in Part 3 of the *Qantas Sale Act 1992* ('*QSA 92*') was to prevent exactly this sort of 'refurbishment' of a classic Australian icon.

The choice for Parliament is a simple: you must choose to take positive action to reassert the public expectation of a strong national flag carrier in Qantas or to look the other way while a high risk strategy with our national icon is played out in the business 'bone yard' of Asia. There will not be another chance to get this right.

The Historical Background of the *Qantas Sale Act 1992*

AIPA has undertaken a detailed analysis of the history of the *QSA 92* from information available from the public record. We believe that any changes to the legislation can only come from understanding the context of the expectations of the Australian public that precipitated the original Act.

AIPA believes that this history shows that there was never a contemplation that Qantas might lose its pre-eminence as Australia's national carrier or that the majority of its operations would be conducted from foreign countries using other names and businesses.

Much has been said about the impact of subsidiaries in previous debates regarding the statutory interpretation of Part 3 of the *QSA 92*, both in terms of the drafting and of the intended consequences. AIPA has no doubt that this will form part of the Committee's deliberations, as this is the basis upon which Qantas claims that it can create multiple and complex business subsidiaries while avoiding the intent of the *QSA 92*.

AIPA is concerned about the consequences of a strict literal statutory interpretation of an Act which we believe was framed and enacted in an economic and business climate distinctly different from that which exists today.

AIPA does not believe that, when the QSA 92 was enacted, there was any contemplation that Qantas, as the national flag carrier and the only company included in many of the aviation treaties and bilateral arrangements by name, would ever spawn a subsidiary that would conduct scheduled international passenger services in parallel or instead of Qantas.

AIPA firmly rejects the contrary assertions of Qantas management that Parliament consciously considered and excluded future subsidiaries, indeterminate in scope and nature, from the controls of the *QSA 92*. Consequently, our assertion is that the more recently expressed view that the *QSA 92* does not apply to subsidiaries is an unintended consequence that should not be allowed to persist.

The 2007 Senate Inquiry

A golden opportunity to review the changing application of the *QSA 92* appeared when APA made a bid to buy Qantas in December 2006.

At the Inquiry, AIPA raised the question of whether Jetstar (in this case) was sufficiently removed from Qantas to avoid a breach of subsection 7(1)(f) of the *QSA 92.* AIPA does not believe that the Committee adequately explored the distinction between the legality of Qantas "conducting" international operations through a second party and the broader question of the applicability of the *QSA 92* to subsidiaries.

AIPA is also of the view that the Inquiry did not fully address the fundamental issue of whether a subsidiary, created by the diversion of the physical and intellectual capital of an entity required by law to remain with a majority physical presence in Australia, should be free to take those physical assets elsewhere.

This was the basis of Senator Barnaby Joyce's comments about "them shelling the company out through a subsidiary", which is beginning to look prophetic. Qantas International is shedding routes as well as 1000 Australian jobs while the company transfers route capacity and aircraft to Jetstar entities and creates more overseas businesses.

Does this indicate the beginning of the end of Qantas as an international airline?

Qantas As An International Airline

The public and political perception of Qantas, and most particularly of Qantas as Australia's primary international airline, remains substantially unchanged since the decision to privatise Qantas.

While the Government has been actively pursuing liberalisation of foreign ownership rules, it has no intention of dismantling the *QSA 92*. The most recent Government statement on the Australian aviation landscape, the 2009 Aviation White Paper, reinforces the primacy of Qantas in Australian international operations.

But there is a rather large "elephant in the room" that highlights the risk of presumption and the perishability of legislation:

THERE IS ABSOLUTELY NO COMPULSION ON QANTAS TO CONDUCT INTERNATIONAL OPERATIONS!

The surviving "national interest" provisions of the QSA 92 are contained in Part 3. There are only two provisions strictly related to the operational conduct of Qantas, neither of which require Qantas to do anything other than ensure that the "articles of association" (the Constitution) contain certain prohibitions and requirements. But even those prohibitions and requirements do not compel Qantas to conduct international operations. They have effect:

1. only if Qantas chooses to engage in international air transport operations; and subsequently:

    a. only if those operations are scheduled; and

    b in regard to the Qantas name, only if the operation involves the carriage of passengers.

While AIPA believes that it is highly unlikely that Qantas would cease conducting scheduled international air transport operations, it is nonetheless an option legally open to the management and something the Senate Committee should carefully note.

If the 'exclusion of subsidiaries' argument is substantiated by the Parliament (by choosing not to amend the *QSA 92*), then it would be possible to conduct all scheduled international air transport operations with an entity that does not bear the Qantas brand.

In the context of our discussion on the effectiveness of the *QSA 92*, it appears to us that international code-sharing arrangements between Qantas and its subsidiaries and associated entities provide a platform for Qantas to shrink back from being an 'operating carrier' to becoming predominantly a 'marketing carrier'.

While AIPA is unclear on what legal limitations may or may not exist, Qantas might even be able to relinquish its International AOC altogether, but still issue tickets in its own name for international flights on its subsidiaries in the same way as Qantaslink (which does not hold an AOC) does domestically. Improbable as that scenario may seem, it appears to us that the *QSA 92* would still be satisfied legally, even though the international business would mainly consist of just a call centre and associated IT facilities.

AIPA believes that the burning question now, as it was in 2007 and in 1992, is whether strictly legal compliance with the QSA 92 will satisfy the political and public expectation of protecting the survival of Qantas as Australia's pre-eminent national carrier.

Furthermore, should we believe that the financial performance of Qantas International is as parlous as was so precipitately revealed to justify the organisational changes?

Opacity of Qantas Financial Arrangements

AIPA has been concerned about the financial data that has been quoted by Qantas management to justify the most recent round of shrinking Qantas. AIPA members know at firsthand how the load factors look and there certainly hasn't been any collapse in ticket pricing, so it seems very natural to be sceptical. We also wonder about how the continuous disclosure requirements of s674 of the *Corporations Act 2001* were met, given that the outcome is certainly market sensitive. But there are broader issues to consider.

If the corporate strategy is to continue to shrink Qantas International while using the 'goodwill' and infrastructure to support the subsidiaries, then choosing to allocate the costs to Qantas International and a disproportionate share of the revenue to the subsidiaries will support the public rationale for change. It is also something of a self-fulfilling outcome once the shrinkage takes hold, aided by a continuing lack of investment in the product.

AIPA is not convinced that the push into the Asian adventures is a result of losses on other routes. Instead, we believe that the diversion of almost all new aircraft and investment from Qantas to Jetstar is simply a strategic choice to pursue the Jetstar low cost model. Qantas cannot compete in the full service market at a time when the management has starved it of the necessary investment in fuel efficient aircraft and a modernised product offering.

Is the *Qantas Sale Act 1992* Achieving What Was Originally Intended?

In our considered view, **no**. AIPA strongly asserts that the text of the *QSA 92* is not adequate to achieve its original purpose and for that reason, we welcome the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* and this Inquiry.

AIPA applauds Senators Xenophon and Bob Brown for attempting to address the facilities protection clauses, the experience requirements for the Board and the ability for members to seek injunctive relief. We support the thrust of the Bill and have proposed some minor changes to better target the 'national interest' protections.

Conclusions

AIPA has concluded that the original intentions that gave rise to the *QSA 92* are not being honoured. We do not believe that Parliament ever envisaged a redistribution of the capital of Qantas through a series of subsidiaries that were not subject to the same constraints as that placed on the parent organisation.

AIPA believes that the creation of the various subsidiaries has not been uniformly about exploring market opportunities and that business has and is being transferred from Qantas to those subsidiaries.

AIPA concludes that the national interest arguments that shaped the *QSA 92* remain essentially unchanged today. We believe that they warrant a much more extensive debate in the context of current Government philosophies.

AIPA concludes that none of the wholly-owned subsidiaries is in any way independent of Qantas. The level of control exerted over the joint ventures is not reflected in simple consideration of the level of investment.

AIPA concludes that, unless there is appropriate Government intervention, Qantas may be deliberately shrunk while allocated capacity is transferred to both onshore and offshore subsidiaries. Once any bilateral agreements that still specifically mention Qantas are renegotiated, there will cease to be any guarantee that Qantas will remain involved in international operations.

AIPA does not believe that the Qantas contribution to Australia's national interests will be replicated by its unrestrained offspring. We also believe, even in the current Government context of trade and business liberalisation, that national infrastructure and security considerations must be revived in this debate.

AIPA concludes that it is possible to balance the heritage and business requirements of Qantas, including creating an investment mechanism that prevents the deliberate cannibalisation of the parent by the progeny.

Recommendations

AIPA recommends the Senate Rural Affairs and Transport Legislation Committee explore fully the issues raised in our submissions and those of the other stakeholders and provides the impetus for Government to redress the current situation.

AIPA recommends the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*, with minor amendments as we have suggested, be adopted as a sound foundation upon which to begin the renovation of the *QSA 92*.

SUBMISSION TO THE AUSTRALIAN SENATE
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INTRODUCTION

AIPA welcomes the opportunity to provide the Senate and the Australian public with our views on the legislative amendments proposed in the Qantas Sale Amendment (Still Call Australia Home) Bill 2011.

It is critical to this Inquiry that there is a widespread public and political recognition that AIPA is highly motivated to see Qantas succeed in a business sense so that we, directly, and more broadly the rest of Australia, benefit from that success. However, AIPA, in combination with what we believe to be the majority of the Australian public, is committed to see the success of this great Australian business take place with the minimum leakage of contributions to the Australian public purse, employment, skills development, national infrastructure and the national reach in time of emergency.

AIPA is particularly aware that Qantas and its employees live in a dynamic and changing world of aviation as well as a changing world of business. We offer our considered advice to the Committee against the backdrop of the national interests of prosperity, influence and security for all Australians.

While there have been many changes in the national and international environment since the enactment of the *Qantas Sale Act 1992* (*'QSA 92'*), we do not believe that the underlying public and political sentiment has changed very much at all. There is no dispute that its original enactment was singularly focused on maintaining Qantas as the internationally-renowned Australian icon airline once it passed from public to private ownership. We have little doubt that the unique place held by Qantas in the Australian psyche, recently reaffirmed by the Government, would generate the same concepts of 'heritage listing' if the transfer from public to private ownership was taking place today.

AIPA has steadfastly maintained the view that Qantas management strategies and motivation have been increasingly divergent from those in play in the 1990s. We believe that it has now reached the point that the current Board and Executive management of Qantas no longer regard Part 3 of the *QSA 92* as evidence of a legacy that they have been honoured to uphold on behalf of all Australians, but merely as a legislative impediment to the creation of a multinational aviation business that conducts most of its business in South and East Asia.

There has been a spate of recent announcements about Qantas shifting its 'centre of gravity' to Asia. Qantas has linked the abandonment of major routes to Europe and the subsequent fleet and employment reductions to the need to free up capital to create Asian businesses. AIPA is in no doubt that Qantas management has taken the wraps off a long term strategy to feed its Asian entities off the slowly shrinking feedlot that was once a successful international business.

Critically, AIPA believes that the intention of the so-called 'national interest' protections in Part 3 of the *QSA 92* were intended to prevent exactly this sort of 'refurbishment' of a

classic Australian icon. We strongly believe that the tenor and the scope of the Parliamentary debates surrounding the history of Australia's deregulation of aviation supports the notion that no one ever conceived of the day when Qantas would be "shelled out through subsidiaries" as has been slowly building up in recent times.

AIPA contends that the Parliament needs to more broadly consider the emerging evidence of the intentions of the current Qantas management. We passionately believe that Qantas is distinguishable from other aviation businesses and that the original intent of Part 3 of the *QSA 92* to impose supervening protections for this iconic business is as valid today as it was 19 years ago.

Unfortunately, AIPA believes that those protections, developed in a significantly different aviation and business context, have lost their strength in a world of financial engineering where businesses are no longer developed as long-term productive entities but more as tradable commodities for short term gain. We also believe, even in the current Government context of trade and business liberalisation, that national infrastructure and security considerations must be revived in this debate.

AIPA is very highly motivated to protect the livelihoods of our members and other workers within the Qantas workforce. But that is only part of the story. In a recent briefing sent to all members of the current Parliament, we made the following declaration:

> "AIPA is committed to:
>
> - sustaining, developing and expanding careers in professional aviation in Australia;
> - consultative and cooperative engagement with like-minded management teams to further the benefits of aviation for all stakeholders;
> - ensuring that safety and technical standards are upheld and that aviation businesses can flourish in a sensible and focused regulatory regime; and
> - participating openly, honestly and forthrightly in all activities to achieve these aims."[1]

In that spirit, we have developed this submission to assist the Committee in its consideration of the extremely complex and wide ranging issues that underlie the apparent simplicity of the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*. We hope to show that there is every good reason for the Parliament to re-examine the intention of the *QSA 92*, to re-establish the 'national interest' protections for Australia's investment in Qantas and to properly provide for the continuing contribution to Australia's economy and security that comes from a strong and vibrant Qantas in the vanguard of Australian aviation.

THE BABY ELEPHANT IN THE ROOM

AIPA fully expects Qantas management to dismiss our interest and support for the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* as motivated purely as an industrial tactic in support of the current negotiations. While it is very important to our members for us to find ways to get Qantas management to bargain in good faith, the negotiations are a very separate side-play to far more significant issues related to where the current management of Qantas is taking our company.

This Inquiry will have NO effect whatsoever on any extant negotiations. AIPA has never expected otherwise.

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1 AIPA, 2011, Briefing for Members of the 43rd Parliament: *Help Us Keep Qantas An Australian Success Story*, 21 August *Success Story*, 21 August

Equally, AIPA has no agenda to damage Qantas as is often alleged - to do so would be counter-productive for the welfare of our members and the many other loyal staff who every day try to make the business work. Importantly, our suggestions about the future legislative changes are not about forcing Qantas to abandon successful businesses or preventing overseas investment - they are about providing an investment balance in Australia and in Australian employees.

THE STRUCTURE OF OUR SUBMISSION

We would like to begin with the historical background of the *QSA 92* before examining the key issue of whether national interest policy development for the *QSA 92* included a contemplation of subsidiaries. We then look at the subsidiaries that were created, apparently without the Minister seeking injunctive relief, and their role in framing the debate in 2007 when the sale of Qantas was a real possibility.

We will look at the circumstances and outcomes of the 2007 Senate Inquiry before moving to an examination of possible future scenarios for the future geographical structure of Qantas international operations. The complexities of international capacity allocations and the way that market share can be traded and protected will be briefly touched upon to complete the background to the fundamental question of whether the *QSA 92* in its current form is achieving the original intent.

We will then offer our views on the specific amendments proposed in the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*, including a possible means of reconciling the existence of international subsidiaries with the need for a suitable investment balance that respects the special position that Qantas holds in the Australian economy.

THE GENERAL CONTEXT OF THE *QANTAS SALE ACT 1992*

One of the difficulties that we all face is that of accurately portraying the context within which Part 3 of the *QSA 92* was framed and enacted. It is essential for us to understand the intended outcomes as much as it is for us to understand the drafting of an Act which has proven to be relatively stable law, despite being born during one of the most turbulent times in Australian aviation policy development.

The *QSA 92* was one of the final steps in the deregulation of aviation in Australia that largely began with the release in 1987 of the Hawke Government's aviation policy statement "Domestic Aviation: A New Direction for the 1990s"[2]. One of the enabling Acts for that policy was a close ancestor of the *QSA 92*: the *Australian Airlines (Conversion to Public Company)Act 1988*. The Hansard commentary[3] [4] identified the issues facing Australian Airlines:

> "The major factors necessary to ensure Australian Airlines provides effective competition in the post-1990 deregulated environment are the removal of constraints on its management, flexibility and effectiveness, and the provision of an adequate capital base."[5]

and records the excitation of the privatisation debate as well as the nexus between the two Government airlines, Australian and Qantas:

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2 Gareth Evans, 1987, *Domestic Aviation: A New Direction for the 1990s*, Ministerial Statement, 07 October

3 Senate Hansard, 16 December 1987 and 17 February 1988

4 House Hansard, 24 February 1988

5 Mr Jenkins, House Hansard, 24 February 1988, p576

> "What about Qantas Airways Ltd, one may ask? Is Qantas also to be allowed private equity capital? Is it to be privatised? Could it be invited to provide some domestic competition? Could we rectify the problem that is now emerging by having Qantas operate as a domestic airline as well as an international airline-that is to a greater extent than it does with its so-called interlining access?"[6]

While the *Australian Airlines (Conversion to Public Company) Act 1988* was not about privatisation, it was about strengthening Australian Airlines for open competition with a dominant Ansett Airlines when the Two Airline Policy was to be abolished in 1990. There was bipartisan agreement that the normal constraints on public expenditure and public sector borrowing had left both Australian Airlines and Qantas seriously undercapitalised and uncompetitive.

By the time that domestic deregulation actually took place, Government policy on privatisation had shifted considerably. Prime Minister Hawke announced to the House on 08 November 1990:

> "I wish to announce today a series of decisions affecting telecommunications and aviation, decisions which will help turn these industries into world class performers. These decisions are yet another instalment of the Government's drive for micro-economic reform, a process that is creating a more dynamic and efficient Australian economy, an economy that can take on and compete with the world's best…"
>
> "This month marks the beginning of deregulation, with the abolition of the two airlines agreement…"
>
> "As a result of our decision to terminate the agreement, we see new services, lower prices, a new airline-hard evidence of the value of the decision to Australian consumers. In order to strengthen the hand of current and future entrants into domestic aviation, and in order to provide an appropriate environment for the sale of Australian Airlines and part of Qantas Airways Ltd, the Government has decided to lift the foreign investment limits relating to investment in Australian domestic airlines by foreign airlines servicing Australia from 15 per cent to 25 per cent for an individual holding, and to 40 per cent in aggregate; and maintain a stable policy environment for aviation for the remainder of this Parliament…"
>
> "The sale of 100 per cent of Australian Airlines and 49 per cent of Qantas will strengthen them and enable them to provide much improved services to Australians and Australian businesses. They will be recapitalised. They are likely to form strategic partnerships. In all, they will be more competitive, and this nation will be better off as a result…"
>
> "Special arrangements will apply to the part sale of Qantas. In order to accord with our bilateral air service agreement, the foreign investment limit in Qantas will be set at the generally accepted international benchmark of 35 per cent.
>
> In addition, although Qantas will remain as our single designated international passenger carrier for the foreseeable future, the Government recognises that-with the success of our reforms of international charter programs for air freight-there is a potential role for a second designated freight carrier…"[7]

Some 15 months later in February 1992, Prime Minister Keating announced a further shift in aviation policy as part of his "One Nation" statement:

> "With tonight's Statement a new Australasian air transport policy is unveiled. It brings cheaper and more efficient air services within Australia and abroad. It binds Australia and New Zealand in a truly competitive environment. Qantas will at last carry domestic passengers, and our

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6 Mr McPhee, House Hansard, 24 February 1988, p591

7 Prime Minister Hawke, Ministerial Statement on Transport and Telecommunications Reform, House Hansard, 08 November 1990, page 3595

established domestic airlines will fly international routes. The Government expects that Australian and Ansett Airlines will be operating across the Tasman by 1993 at the latest."[8]

Then, on 02 June 1992, Prime Minister Keating announced the final plank of aviation policy preceding the *QSA 92*:

> "In the One Nation policy the Government, in quite an historic change of policy, decided that it would remove the aviation specific restrictions on equity investment between Australian operators. It said it would recognise that the Australasian aviation markets are small and that there would be an opportunity for the industry to reorganise itself and allow for the privatisation of Qantas and Australian Airlines to continue with greater certainty. There would be more terminal access and so on. Today, in an historic decision, the Government has approved the sale of Australian Airlines to Qantas. It has also endorsed the sale of 100 per cent of the combined airline…"
>
> "These decisions were taken by Cabinet last night and agreed to by Caucus this morning. The main factor bearing on the Government's decision was the increased value placed on the synergistic benefits which will result from operating the domestic carrier and Qantas together. A sale agreement will be signed tomorrow between Qantas and the Government under which Qantas will pay $400m for 100 per cent of Australian Airlines. The Government is then proposing to offer 100 per cent of Qantas to the market by way of a float or trade sale and will retain a golden share to provide for national safeguards as required..."
>
> "…we are now also providing a basis upon which Qantas can become a proper international company with a secure domestic base and we are, by legislation, establishing a commission which will then allocate international routes to other domestic airline companies to develop a second carrier or more carriers. Obviously, Ansett will be a bidder for some of those routes and Melbourne will be the location for the headquarters of a second international carrier."[9]

It therefore seems uncontroversial to conclude that the creation of a competitive environment through deregulation of domestic aviation and the adoption of a multi-designation scheme for Australian international operations was based on a presumption that Qantas/Australian and Ansett would both survive the increased competition and, moreover, that Qantas would remain as the dominant Australian flag carrier.

Prime Minister Keating's reference to the Government proposal to "retain a golden share", in hindsight a control measure of far greater versatility than legislation, reinforces AIPA's view that thoughts of Qantas losing its pre-eminence as Australia's national carrier were incomprehensible at the time.

QANTAS SUBSIDIARIES IN THE 1990s CONTEXT

Much has been said about the impact of subsidiaries in previous debates regarding the statutory interpretation of Part 3 of the *QSA 92*, both in terms of the drafting and of the intended consequences. AIPA recognises that the absence of a reference to "subsidiaries" in a clause of the *QSA 92*, which is surrounded by other clauses which do make such a reference, is judicially taken to indicate a deliberate intention on the part of the drafter to limit the scope of that clause.

However, AIPA is now even more concerned than we previously expressed in our submission[10] in 2007 to the Senate Economics Committee about the consequences of literal statutory interpretation of an Act which we believe was framed and enacted in an economic

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8 Prime Minister Keating, Ministerial Statement: *One Nation*, House Hansard, 26 February 1992, page 264

9 Prime Minister Keating, House Hansard, 02 June 1992, page 3316

10 AIPA, 2007, Submission 10 to the Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 09 March

and business climate distinctly different from that which exists today. Before we discuss those consequences, we would like to highlight some contextual issues that go to the perishability of the original drafting. They are the effects of Commonwealth ownership, the focus on limiting foreign ownership, the operational restrictions, the unique circumstances of Australia-Asia Airlines and what AIPA concludes was the real context of the early 90s.

The Subsidiaries as Commonwealth Statutory Bodies

In the period that preceded the drafting of the *QSA 92*, both Qantas and Australian Airlines as Commonwealth statutory bodies had a number of wholly-owned subsidiaries. Unlike the subsidiaries of private companies, the subsidiaries of Qantas and Australian Airlines had complex interactions with normal business law on the one hand and the additional constraints of being Commonwealth statutory bodies or Government Business Enterprises on the other.

While in his Second Reading speech on the *Qantas Sale Bill 1992*, the Minister for Finance, Mr Willis, mentioned the national interest safeguards first:

> "The Bill also reflects key sale requirements relating to the national interest safeguards required with the sale of 100 per cent of Qantas, the recapitalisation of Qantas, the reconstruction of its debts in preparation for the impending change of ownership and the terms and conditions of employment for its staff. The vast bulk of the Bill is concerned with the removal of both airlines from the ambit of a variety of Commonwealth legislation so that, post sale, the expanded Qantas group will be treated the same as other private sector enterprises generally."[11]

the Explanatory Memorandum placed them last.

This sequencing in the Explanatory Memorandum says much about the primary focus of the Bill. The majority of the Explanatory Memorandum relates to the disentanglement from the legislative constraints of Commonwealth statutory bodies, drawing on the experience from the *Australian Airlines (Conversion to Public Company) Act 1988*.

While the national interest safeguards set out in Part 3, as the only legacy clauses intended to survive for the foreseeable life of Qantas, were of utmost importance, their treatment only accounts for just over 4 of the 39 pages of the Explanatory Memorandum. We will look at the two parts of the national interest safeguards, foreign ownership and the operations/facilities restrictions separately.

Foreign Ownership

AIPA believes that the relative brief treatment of the national interest safeguards in the Explanatory Memorandum reflected a belief that those safeguards, which mostly related to foreign ownership and Board control of Qantas Ltd, were widely understood and accepted and thus could be drafted quite simply in a world where future challenge or circumvention would be unconscionable.. Even the debate of the Qantas Sale Amendment Bill 1994 was focused on the ownership and control issue rather than the operations or facilities issues:

> "…Qantas as we know it now, with 25 per cent British Airways investment and a float where up to 35 per cent of the company can be held by foreign shareholders and the remainder of it spread within Australia, does open up the organisation to dominance by a single major shareholder. I have made the point before that you do not need 51 per cent to be the dominant decision maker in the business. British Airways, with 25 per cent, is expected to be the tail, not the dog. I have strong fears that, given the composition of Qantas, given where we are going and given the tough and long established attitude of dirty tricks that has been

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11 Mr Willis (Minister for Finance), House Hansard, 04 November 1992, Page 2588

practised by British Airways in the past, we will have to be extremely careful to ensure that Qantas does not become a British Airways managed operation in this part of the world.

…

It is not without some substance that I sound that warning. The Qantas that we know, the Qantas that is now the major domestic and international operator of this nation, must and should remain under the control of Australians and Australian decision makers and not be subject to decision making processes and management decisions of British Airways."[12]

From the financial perspective, there appears to have been no need to include reference to subsidiaries in matters of 'relevant interest' to shares or the Board structure in Qantas Ltd, since the subsidiaries were majority or wholly-owned and were not publicly traded.

Restrictions on the Conduct of International Operations

But what was, or was not, in the minds of the drafters when it came to framing those clauses of section 7 of the *QSA 92* that referred to the conduct of international operations and the provision of related infrastructure?

There was essentially no Parliamentary debate on this element at all, strongly suggesting that the dissolution of the accumulated capital of Qantas through multiple foreign subsidiaries was NOT on the agenda.

Much emphasis has been placed in more recent times on the relevance of subsidiaries[13] to the operation of subsection 7(1)(f) of the *QSA 92*:

"(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"; and…"

However, as we pointed out previously, all focus was on Qantas as the national flag carrier. Although Ansett was expected to develop an international capability, that was clearly going to occur in the face of competition from a strengthened Qantas and the opening of Australian routes to other international airlines. Australian Airlines did have a number of subsidiaries operating under domestic Air Operator's Certificates (AOCs) on regional routes, but neither they nor their parent were equipped, experienced or even likely to consider international operations.

AIPA believes that there are very strong grounds to to support the view that it would have been totally illogical, both operationally and corporately, for Qantas to cannibalise its own market share with a full service subsidiary in that environment. Importantly, the emerging low-cost carrier (LCC) operations were pure domestic plays and their future success was far from assured. Even as late as 2002, there were serious doubts as to the viability of LCC international operations.[14]

In regard to the facilities restrictions, the specific inclusion of the example in subsection 7(1)(h) of the *QSA 92* established the 'limited offshoring' message:

"(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

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12 Mr Peter Morris, House Hansard, 06 December 1994, Page 4040

13 See ss3.3 -3.12 of the Senate Standing Committee on Economics Report of the *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, March 2007

14 Centre for Asia Pacific Aviation, 2002, *Is There A Low Cost Airline Model? - and will it work in this region?* Aviation Analyst Asia Pacific, Issue 37, March 2002.

> 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…" [emphasis added]

AIPA believes that the use of the construction "any other country" did not envisage a simple country by country comparison, but rather that the "taken in aggregate" provision intended a simple majority of infrastructure to reside in Australia rather than elsewhere.

The Taiwan Connection

Only one of the Qantas subsidiaries, Australia-Asia Airlines, conducted international airline operations at that time. Considerable emphasis was placed on the significance of this by Qantas in its submission to the Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*:

> "…It was a conscious decision not to apply Part 3 to Qantas subsidiaries as this would have affected the operation of Australia Asia Airlines Limited which was the Qantas subsidiary operating international services in 1992 between Australia and Taiwan. The intention of Parliament is clear from the Second Reading Speech in the Senate on 7 December 1992 in which Senator MacGibbon made the following statement:
>
> > "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."
>
> While the above deals with the requirement that Qantas Airways Limited operate scheduled international services under the name "Qantas", it clearly enunciated that the Government did not intend Part 3 to apply to subsidiaries."[15]

AIPA contends that the reliance that Qantas placed on Senator MacGibbon's speech[16] was ill-founded and certainly, given that it was an anecdote from an Opposition Senator rather than a policy statement from a Government Minister, not determinative. If we briefly return to the Second Reading speech on the *Qantas Sale Bill 1992*, the Minister for Finance, Mr Willis, also said:

> "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."[17] [emphasis added]

AIPA asserts that the critical references in the debate about subsidiaries are those emphasised in the Hansard extract above. The 'national interest safeguards' were never threatened by the special circumstances of the direct air services to Taiwan.

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15 Qantas, Submission 6 to the Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 09 March 2007

16 Senator MacGibbon, Senate Hansard, 07 December 1992, page 4267

17 Mr Willis (Minister for Finance), House Hansard, 04 November 1992, Page 2588

Australia-Asia Airlines

Australia-Asia Airlines was a political, operational and business anomaly created under Commonwealth control to suit a unique circumstance. While particularly convenient in any debate about subsidiaries from the Qantas perspective, AIPA strongly believes that it is disingenuous at best to believe that "the exception confirms the rule".

A series of exchanges between Senator Hill and the Minister for Foreign Affairs and Trade, Senator Gareth Evans, reveals the differences between the operations of Qantas and Australia-Asia Airlines. On 04 December 1989, Senator Evans said:

> "…We would very much like to see the establishment of a direct Australia-Taiwan air link. However, any consideration of that has to take place against the background of Australia's acceptance, as I have just said, of the PRC Government as the sole legal government of China and our acknowledgment of its claim that Taiwan is a province of China…"
>
> "…So far as specific negotiations are concerned, Australia-Asia Airlines, which is a fully owned subsidiary of Qantas Airways Ltd, has been negotiating with Taiwan interests with a view to reaching agreement on commercial arrangements. In the absence of an official air services agreement, such arrangements could permit the introduction of non-scheduled services between Australia and Taiwan. Those commercial negotiations are continuing and are fully supported by the Australian Government."[18] [emphasis added]

and on 12 November 1990, Senator Hill offered:

> "…I would also like to raise the issue of the ongoing sorry saga of the direct commercial air links…"
>
> "…The best information that I have been able to get to the contrary is that there are still major hurdles in the way of that link which this Government is trying to develop involving a subsidiary of Qantas to avoid the flag carrier issue…"
>
> "…Australian producers, of course, have got to tranship through Singapore and through Hong Kong …for on-passage to Taipei, because the Australian Government has accepted the requirement of Beijing that an Australian national airline is not to land in Taipei."[19] [emphasis added]

and later Senator Evans confirmed:

> "…our acceptance…of the PRC as the sole legal Government of China, and our respective acknowledgment of Taiwan as a province of China, means that no Australian Government can conclude a government to government air service agreement with Taiwan; nor could a flag carrier such as Qantas Airways Ltd or Taiwan's China Airlines operate a direct Australia-Taiwan service. Such a service could be established only on the basis of a commercial arrangement."[20] [emphasis added]

We further understand that the operations of Australia-Asia Airlines may not have been classified as 'scheduled international air transport passenger services' under the *Air Navigation Act 1920*, thus avoiding any *QSA 92* issues with the 'airline' name.

AIPA therefore contends that nothing about the operations of Australia-Asia Airlines could reasonably have been construed as jeopardising the letter or intent of the *QSA 92*.

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18 Senator Gareth Evans (Minister for Foreign Affairs and Trade), Senate Hansard, 04 December 1989, Page 3755

19 Senator Hill (Leader of the Opposition in the Senate), Senate Hansard, 12 November 1990, Page 3897

20 Senator Gareth Evans (Minister for Foreign Affairs and Trade), Senate Hansard, 12 November 1990, Page 3900

Furthermore, AIPA contends that it is highly likely that the Departmental officers who drafted the *QSA 92* were well aware that the achievement of the 100% sale point would obviate the need for Australia-Asia Airlines as an operating entity, since Qantas, then free of any Government ownership, would be able to access Taiwan under its own brand without further impediment. Australia-Asia Airlines ceased operations exactly in accordance with that situation.

Our Take on the Subsidiaries Argument

The foregoing information leads us to conclude that there was no need to include subsidiaries in the drafting of Part 3 and, in particular, section 7 of the *QSA 92*.

AIPA does not believe that, at the time of policy development, there was any contemplation that Qantas, as the national flag carrier and included in many of the aviation treaties and bilateral arrangements by name, would ever spawn a subsidiary that would conduct scheduled international passenger services in parallel or instead of Qantas.

The operating arrangements for Australia-Asia Airlines very carefully did not fit that description and thus were never going to fall within the ambit of the *QSA 92*.

AIPA firmly rejects the contrary assertions of Qantas management that Parliament consciously considered and excluded future subsidiaries, indeterminate in scope and nature, from the controls of the *QSA 92*. Consequently, our conclusion is that the more recently expressed view that the *QSA 92* does not apply to subsidiaries is an unintended consequence that should not be allowed to persist.

QANTAS INTERNATIONAL PASSENGER OPERATIONS SUBSIDIARIES IN THE 2007 CONTEXT

Nearly a decade after the enactment of the *QSA 92*, Qantas began an international operations experiment, based on its domestic experience with National Jet Systems, designed to reduce its cost base by starting new operations with 'greenfields' industrial agreements. We don't know whether any discussion took place between Qantas and the Government about the propriety of subsidiaries in the context of the *QSA 92* or, if it did, whether the Government acquiesced to the literal legal interpretation of the Act. In any event, there does not appear to have been any attempt or threat of the Minister seeking injunctive relief , at least in the public records.

Regardless, the Qantas international structure began a dramatic shift. Following the shutdown of Australia-Asia Airlines in 1996, Qantas continued to operate international flights solely under the Qantas Airways Ltd AOC until 2001. In that year, Qantas revived Australian Airlines and created Jetconnect in New Zealand. In 2004, Jetstar Asia was launched in Singapore and in 2005 Jetstar Airways, the Australian domestic carrier, commenced international operations.

We will examine those changes a little more deeply.

Australian Airlines

Australian Airlines was established in 2001 and began operating as an all-economy, full-service international leisure carrier on 27 October 2002. Qantas negotiated a cost base

some 20% below the Qantas rates[21] and there seems little doubt that the operation was a pathfinder for later low-cost carrier (LCC) international operations. Australian Airlines operated until 30 June 2006, when it ceased operations in its own name in favour of Jetstar international operations. It was shut down completely at the end of August 2007.

Jetconnect

Jetconnect was started in June 2001, originally as a cabin crew labour hire company. The following year, it morphed into an airline and commenced NZ domestic flight operations under the Qantas brand in October 2002. In September 2003, Jetconnect commenced trans-Tasman services on behalf of Qantas. The pilots were New Zealand residents, based and trained in New Zealand and the aircraft were leased from Qantas[22]. The domestic operations were taken over by Jetstar on 10 June 2009.

Jetstar Asia

Jetstar Asia is different from the other wholly-owned subsidiaries in that it is a joint venture. It was launched in 2004 as a partnership between Qantas (49 per cent), Singaporean businessmen Tony Chew (22 per cent) and FF Wong (10 per cent) and the Singapore government's investment company, Temasek Holdings (Private) Limited (19 per cent). It received its Air Operator's Certificate from the Singapore government on 19 November 2004. The airline differentiated itself from its competitors by flying anywhere within a five-hour radius from Singapore.[23]

Jetstar Airways

The airline was established by Qantas in 2003 as a wholly-owned LCC domestic subsidiary. Qantas had previously acquired Impulse Airlines and operated it under the QantasLink brand from 2001 onwards, but following the decision to launch a LCC, re-launched the airline under the Jetstar brand. Domestic passenger services began on 25 May 2004 and international services to Christchurch, New Zealand, commenced on 1 December 2005.[24]

Ministerial Oversight of Subsection 7(1)(f) of the *QSA 92*

In an earlier section related to the drafting of the *QSA 92*, we made the point that "much emphasis has been placed on the relevance of subsidiaries to the operation of subsection 7(f) of the *QSA 92*". However, it is pertinent here to note that this emphasis was being made in 2007 in the context of the Airline Partners Australia Ltd (APA) bid for Qantas and the related Senate Inquiry: there is absolutely no evidence in the Parliamentary records of any debate about subsidiaries and the ambit of subsection 7(f) in 2001 when Australian Airlines was established to conduct international operations on behalf of Qantas!

Subsection 7(1)(f) of the *QSA 92* states:

> "(f) prohibit Qantas from conducting scheduled international air transport passenger services under a name other than:
>
> (i) its company name; or

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21 Mr Peter Sommerville, Senate Committee Hansard, Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 13 March 2007, page E27

22 Fair Work Australia, *Australian and International Pilots Association v Qantas Airways Limited and Jetconnect Limited* (C2009/11363), [2011] FWAFB 3706, page 3

23 Wikipedia, *Jetstar Asia Airways*, accessed 04 October 2011

24 Wikipedia, *Jetstar Airways*, accessed 04 October 2011

(ii) a registered business name that includes the expression "Qantas"; and…"

AIPA provided the 2007 Senate Inquiry with a copy of a legal advice that related in part to the legal nuances of "conducting" an activity[25] through a second party, particularly in regard to the level of independence of the subsidiary or associated entity. In pertinent part, that advice stated:

> "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 somewhat 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 within 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…"
>
> "50. …For example, all of the Jetstar directors are executives employed by Qantas, Qantas adopts a similarly patriarchal attitude towards Jetstar (…) 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."[26]

AIPA is surprised that there is no easily obtained evidence of Ministerial or Departmental interest in this issue when Qantas first decided to experiment with Australian Airlines in 2001. It seems incomprehensible to us that Qantas would have adopted a "sleeping dog" approach to this issue, given that any suggestion of evading the constraints of the *QSA 92* would have resulted in highly damaging controversy, both politically and publicly. However, the answer to that issue may only be found within the records of the responsible Department or Qantas, records that are beyond the reach of AIPA.

Within the immediate context of the 2007 Senate Inquiry, AIPA noted two contemporaneous Ministerial comments:

> "9. In recent times, both the Minister for Transport and Treasurer have publicly stated that the Qantas Sale Act does not apply to Jetstar.
>
> Minister Vaile in the Australian Financial Review 8/2/07:
>
> *The advice given to the government was that as Jetstar operates in its own right, the provisions of the Qantas Sale Act do not apply. "While Jetstar is owned and operated by Qantas, it is a separate legal entity, is managed largely independently and operates in its own right," a spokesman for Mr Vaile said.*
>
> 10. Treasurer Costello in the Australian Financial Review 9/2/07:

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25 Mr Peter Sommerville, *op. cit.*, page E28

26 A.J. Macken & Co, Joint Opinion, *Australian & International Pilots Association re Jetstar and Sale of Qantas*, 26 February 2007, pages 13-15

Mr Costello confirmed that Jetstar was not subject to the Qantas Sale Act which obliges the airline to keep most of its operations in Australia. "The thing is that Qantas, which is the national carrier, is subject to the Qantas Act," Mr Costello said. "There's no Jetstar Sale Act because Jetstar didn't exist until quite recently, nor was it ever a government airline, nor was it ever a national carrier."[27]

AIPA notes that both quotes contain significant errors of fact.

The Minister for Transport appeared to have ignored the wealth of evidence that showed that Jetstar was anything but independent in regard to its corporate governance. The differences in operating procedures, flight standards, uniforms, etc were (and are) cosmetic differences in any serious examination of corporate independence. This issue of independence reappears in other contexts.

The Treasurer was clearly misinformed about Jetstar's status as a "national carrier", since Jetstar at that time held an International Airline Licence (IAL) issued pursuant to section 12 of the *Air Navigation Act 1920* and was allocated bilateral capacity by the International Air Services Commission (IASC) as a designated Australian carrier.

On reflection, AIPA concludes that it is likely that two issues (other than underlying political philosophy) drove this commentary: first, that the legal advice on the *QSA 92* as statute law would normally confirm that conclusion and, second, that the political advice would be not to revisit the Parliamentary intent as, by then, the potential breaches were well established - "the horses had already bolted". What is clear is that the Government of the day was not about to get caught up in anything that was likely to derail the Qantas sale, unless it was something that was inarguably illegal. [28]

AIPA is forced to ask the question; was the 'bolting' of the Qantas subsidiary 'horses' actually evidence of the failure of Ministerial (or presumably the Department of Transport acting on the Minister's behalf) oversight in upholding the intent of the *QSA 92*? If so, would the morphing of that failure into a change of political intent be in the best interests of Australia?

THE 2007 SENATE INQUIRY

A golden opportunity for review of the changing application of the *QSA 92* appeared when APA made a bid to buy Qantas in December 2006. The bid included a significant involvement of Texas Pacific Group (TPG), whose track record in mergers and acquisitions excited considerable disquiet about the future of Qantas.

But review did not come easily in the changed political environment.

The First Attempt

Senator Bob Brown attempted to raise a Senate Inquiry into the proposed sale of Qantas on 07 February 2007. His motion was defeated 35 to 34. However, the debate touched upon issues that involve national interest principles which AIPA believes have still to be adequately addressed. Senator Brown said:

> "(2) That the following matters be referred to the Economics Committee for inquiry and report by 20 March 2007:
>
> …

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27 AIPA, 2007, *Op. cit.*, page 4

28 Mr Howard (Prime Minister), House Hansard, 26 February 2007, page 28

(c) the need to improve and clarify the regulatory environment covering commercial arrangements which affect the national interest to allay community concerns and provide investment certainty; and

(d) any other related matters."

"…Our parliament has a responsibility to thoroughly investigate the terms of the takeover and to be satisfied that it is indeed in the national interest."[29]

and

"It is our responsibility to act on this now, to move expeditiously, to have the inquiry rapidly put into place, to have the information put before the public so that the public - not least those 38,000 employees of Qantas - can have a say in the fate of this great iconic Australian company, this flagbearer for Australia right around the world."[30]

Senator O'Brien replied, in part:

"From Labor's point of view, Qantas is a crucial economic asset as well as a national icon…"

"…It is noteworthy that the Airline Partners bid for Qantas includes commitments to: remain Australia's national flag carrier, with no intention to break up the airline; continue to employ and train thousands of Australians, with no intention to change Qantas's existing strategy of continuing maintenance operations in Australia and creating globally competitive maintenance operations; continue its commitment to regional Australia, with no intention to reduce regional services; continue to operate under the same laws and regulations that apply today, including those restricting foreign ownership; continue to provide practical assistance to Australians in times of emergency; and retain Qantas's highly recognised and regarded brand and logo…"[31]

and, most pertinently:

"There is a matter which, I must say, gnaws at me. I have had occasion to look at matters such as the Qantas Sale Act and the processes that apply in relation to the operations of Qantas, and I had a look at the Qantas press releases about the creation of Jetstar international. Qantas were announcing that that was their new low-cost international operation. There was a problem with that, and the problem was that the Qantas Sale Act and their own memorandum of association, as I understand it, require that any international operations of Qantas be conducted under the Qantas brand. But this is an operation that is operating as Jetstar international.

How is that done without breaking the act?

I am not a legal expert, but probably because Qantas have made arrangements with two citizens of another country to have them own 51 per cent, with Qantas to provide all of the aircraft, services and staff, as I understand it, for Jetstar international. What that tells me is that we need to be particularly cautious about legal arrangements that are in place and commitments that are given, and to understand them fully.

I think the Australian public would like to be assured that, if commitments are given, they are watertight commitments. I think they would like the Senate to look at arrangements which are put in place and make a judgement as to whether they can be circumvented, perhaps in the way that Qantas has found to be able to get out of the obligation to operate Jetstar international as a Qantas brand. That probably is being done for good commercial reasons but, without that arrangement as to ownership, it would breach the Qantas Sale Act. The intent of the Qantas Sale Act was that Qantas operating internationally would be the national flag carrier - it would have that kangaroo on the tail and it would retain that very distinctly Australian flavour."[32] [emphasis added]

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29 Senator Bob Brown, Senate Hansard, 07 February 2007, page 123
30 *Ibid.*, page 125
31 Senator O'Brien, Senate Hansard, 07 February 2007, page 125
32 *Ibid.*, page 126

It is noteworthy that the statements by the Minister for Transport and Regional Services and Deputy Prime Minister, Mr Vaile, and the Treasurer, Mr Costello which revealed the Government's position on the exclusion of subsidiaries from the ambit of the *QSA 92* happened to coincide with the Senate rising for two weeks. Unfortunately, during the Senate recess, no one in the House pursued Senator O'Brien's incisive observations.

The Second (Successful) Attempt

Following the Senate recess, Senator Fielding heralded his concerns[33] with the impending sale of Qantas on 26 February 2007 and introduced the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* the following day. His main concerns were:

> "…The Treasurer has subsequently confirmed that Jetstar is not subject to the Qantas Sale Act but, despite this, it appears the government will do nothing about it.
>
> That is not good enough.
>
> Family First believes it is a huge concern that there is nothing to prevent Jetstar being sold off to overseas buyers, and jobs and operations being sent offshore, if the Qantas takeover succeeds. Securing Australian jobs for workers and their families is Family First's top priority. Qantas has made huge profits through its budget carrier Jetstar and plans to further drive down costs, particularly labour costs, to reap even bigger returns. It does not take much imagination to see Jetstar sending jobs and operations offshore where labour costs are cheaper.
>
> Michael Ryan, a pioneer of low-cost air travel with Ryanair, was recently asked his thoughts about Qantas and Jetstar and told the Bulletin:
>
> > 'I would imagine that what they are trying to do is put as many of Qantas' routes into Jetstar [as possible].'
>
> Qantas workers and their families are very concerned at this possibility. Cutting costs to the bone might deliver huge profits, but they should not be at the expense of Australian workers and their families…"

and

> "…Qantas has reaped huge profits by transferring its routes to the much leaner Jetstar. Jetstar's international operations have grown quickly and it now flies to Cambodia, Hong Kong, Indonesia, Japan, Malaysia and eight other countries. Most of the 70 new planes Qantas has ordered will go straight into Jetstar, which will move further into Asian markets and is reportedly considering flying to Europe and the United States mainland…"[34]

On 01 March 2007, on the recommendation of the Selection of Bills Committee, the Senate referred the bill to the Standing Committee on Economics for inquiry. The Economics Committee subsequently received ten submissions (of which nine were published) and took slightly over 4.5 hours of testimony. The Report was published on 20 March 2007.[35]

The Independence of Jetstar

AIPA attempted to raise the issue of whether Jetstar (in this case) was sufficiently removed from Qantas to avoid a breach of subsection 7(1)(f) of the *QSA 92*:

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33 Senator Fielding, Senate Hansard, 26 February 2007, page 151

34 *Ibid.*, page 152

35 Senate Standing Committee on Economics, Report of the *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 20 March 2007 at http://www.aph.gov.au/Senate/committee/economics_ctte/completed_inquiries/2004-07/qantas/report/index.htm (accessed 23 September 2011)

> **"Mr Somerville** - Yes, and certainly Qantas have made that clear. One of the key elements, though—and it has certainly come through in Mr Walker's advice, which I have given you in that bundle of documents—is whether Qantas are conducting the subsidiary. It may be, for example, a partly owned Qantas subsidiary. I think it has often been mentioned about Jetstar Asia. In terms of the Qantas Sale Act, Jetstar may not be conducting that subsidiary, but the three directors of Jetstar are Geoff Dixon, Peter Gregg and Mr Johnson, the general counsel. The Qantas board make announcements and decisions about aircraft purchases. They have made it clear they do not cannibalise each other's routes. It is clear to us that Qantas are relevantly conducting this subsidiary and are caught by the Qantas Sale Act." [36]

However, there were no witnesses available to provide advice or explanation from either the Attorney-General or the Solicitor General. Neither the Hansard of the Inquiry nor the Report provide any comfort that the Committee adequately explored the distinction between the legality of Qantas "conducting" international operations through a second party and the broader question of the applicability of the *QSA 92* to subsidiaries.

AIPA believes that this issue remains unresolved. We also believe that the concerns expressed during the 2007 Inquiry about future behaviour have proved to be particularly prescient.

The Level Playing Field

Both Qantas and APA submitted a 'level playing field' argument to the Inquiry. From Qantas:

> "No additional requirements are imposed on the other Australian designated international carrier, Virgin Blue, or are likely to be imposed on any new entrant who may become an Australian designated international carrier. It is not appropriate to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors and were, at the enactment of the Qantas Sale Act, only intended to apply to Qantas."[37]

and from APA":

> "…We also believe that any approach needs to create equality of regulation with other Australian designated international carriers outside of Qantas. All we are asking for here is a level playing field with Virgin Blue or any other party that may become an Australian designated international carrier."[38]

AIPA views this argument as a classic example of the logical fallacy known as *post hoc ergo propter hoc*, which translates from the Latin as "*after this, therefore because of this*".

The creation of totally controlled subsidiaries that allow Qantas to conduct international operations under other brands was, and in our view continues to be, contrary to the *QSA 92*. We also believe that it was an entirely ridiculous proposition for APA/Qantas, having apparently escaped censure from diminishing the stature and reach of the Qantas brand by transferring business to the subsidiaries, to then suggest that it would have been unfair for Parliament to re-impose the original intent of the QSA 92 by strengthening those provisions intended to ensure that the majority of the operational infrastructure remained onshore.

The Inquiry Report touches upon this matter, but only by way of record without analysis:

> "3.58 Qantas submits that no additional requirements are imposed on the other Australian designated international carrier, Virgin Blue, or are likely to be imposed on any new entrant who may become an Australian designated international carrier. Therefore, it is not appropriate

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36 Mr Peter Sommerville, *Op. cit.*, page E28

37 Qantas, *Op. cit.*, page 2

38 Mr David Coe, Senate Committee Hansard, Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 13 March 2007, page E15

> to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors and were, at the enactment of the Qantas Sale Act, only intended to apply to Qantas. Mr Swan from the Australian Workers Union suggested that it is appropriate for additional conditions to apply to Jetstar on the basis that Virgin Blue does not have the reach or significance of the Qantas Group, nor does it provide the services or have the historical background and cultural identity of Qantas."[39]

AIPA is of the view that the Inquiry did not fully address the fundamental issue of whether a subsidiary, created by the diversion of the physical and intellectual capital of an entity required by law to remain with a majority physical presence in Australia, should be free to take those physical assets elsewhere. This was the basis of Senator Joyce's comments about "them shelling the company out through a subsidiary".[40]

Furthermore, it seems to us that the clear Government support for the takeover bid extended to the point of viewing those *QSA 92* requirements that were in addition to those imposed on other designated Australian carriers under the *Air Navigation Act 1920* as being no longer justified in the national interest and thus overly constraining on the competitiveness of Qantas:

> "3.63 The committee also questions the appropriateness of seeking to impose by force of legislation a number of significant restrictions on the operations of what is now a private company. These restrictions, if passed, would apply to Qantas and its subsidiaries only, and not to its competitors, potentially threatening its future viability and its ability to compete in a vigorously contested market."[41]

This adoption by the Committee of the APA/Qantas 'level playing field' argument was, in AIPA's view, not consistent with the public expectation.

The Deed of Undertaking

AIPA believes that the so-called Deed of Undertaking, which was a commercial agreement between APA and the Commonwealth, became the primary justification for avoiding any deep investigation into the application and continued effectiveness of the *QSA 92*.

Despite the doubts expressed regarding the lasting value of such a Deed, the Committee concluded that:

> "3.62 The committee is also of the view that the Deed of Undertaking entered into between the Government and Airline Partners of Australia renders the bill unnecessary."[42]

And so, on the promise of no off-shoring, no job losses and a Qantas growth strategy, it came to pass.

Despite that outcome, AIPA believes that there are two very good reasons to revisit the Deed: first, because it allegedly reflected the Qantas Board and Executive strategy for the Qantas Group; and second, because it provides an historical comparison between what apparently gave the Government great comfort in 2007, albeit never implemented, and where we find ourselves today.

The Inquiry Report provides the following:

> "…Key provisions of the Deed relevant to the bill, include undertakings that:

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39 Senate Standing Committee on Economics, *Op. cit.*, page 21

40 Senator Joyce, Senate Committee Hansard, Senate Standing Committee on Economics *Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, 13 March 2007, page E31

41 Senate Standing Committee on Economics, *Op. cit.*, page 22

42 *Ibid.*, page 22

- Qantas and Jetstar Airways brands will be maintained both locally and internationally (paragraph 5.5(a) of the Deed of Undertaking);
- Qantas and Jetstar Airways will expand internationally and within Australia to provide a sustainable mix of full service and value based offerings in line with market needs (paragraph 5.5(d));
- the Qantas Group (defined in the Deed to include Qantas and its subsidiaries) will offer an integrated network of international, domestic and regional air transport services (paragraph 5.5(e));
- the Qantas Group will support regional capacity growth and regional network improvement in line with market needs (paragraph 5.5(f));
- the current review of Qantas Engineering's maintenance, repair and overall operations will continue, 'with a view to building on existing capabilities for wide and narrow body maintenance to create an onshore, globally competitive in-house operation' (paragraph 5.5(g));
- the Qantas Group's track record of offering competitive conditions, jobs growth, career opportunities and extensive apprenticeship training will continue in line with market conditions (paragraph 5.5(h)); and
- the facilities used by the Qantas Group (including facilities for maintenance, catering, training and administration) in the provision of scheduled services must represent the principal operational centre for the Qantas Group when compared with those located in any other country (paragraph 5.1(h)).”[43]

and further:

> “Clause 2.3 of the Deed affirms APA's statements in relation to the acquisition of Qantas, including that it:
>
> - plans to keep the Qantas and Jetstar brands and has no intention to break up the airline;
> - has no intention to reduce regional services; and
> - supports Qantas' existing strategy of continuing maintenance operations in Australia.[44]

It was noteworthy that the Minister for Transport and Regional Services and Deputy Prime Minister and the Treasurer publicly stated that they had negotiated the Deed with APA[45] and presumably had prevailed upon APA to expand the facilities clause of the *QSA 92* to include the whole Qantas Group, particularly quoting Jetstar, despite their public stance on the inapplicability of the *QSA 92* to subsidiaries. Belt and braces?

Mr David Coe, as a Director of APA, gave evidence to the Committee on the Deed of Undertaking. Perhaps, given the recently announced route reductions and the loss of 1000 Australian jobs, Mr Coe’s most lasting (and ironic) statement may well be:

> “**Mr Coe** - The way to ensure job security is through growth of the airline. Geoff [Dixon] and his management team have stated that. At the APA level we have stated that. No business has ever been shrunk to greatness, and it is not the intention of the APA consortium to do anything other than grow both the product offering and the availability of jobs for Qantas and Jetstar.” [emphasis added][46]

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43 *Ibid.*, page 7
44 *Ibid.*, page 8
45 *Ibid.*, page 7
46 Mr David Coe, *Op.cit.*, page E19

SO WHERE DOES THAT LEAVE US NOW?

After one of the most expeditious Senate Inquiries ever conducted into aviation matters, the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* lapsed. The *QSA 92* remains unchanged. However, none of the risks identified in the submissions or oral evidence to the 2007 Senate Inquiry have been mitigated in any way. Any comfort that may have been drawn from the APA Deed of Undertaking evaporated when the bid failed. The faith in Qantas management displayed by the investment community is reflected in the drop in the share price from $5.26 to $1.44.

Senator Joyce's reference to "shelling the company out through a subsidiary" is beginning to look prophetic. Qantas International is shedding routes as well as 1000 Australian jobs while the company transfers route capacity and aircraft to Jetstar entities and creates more overseas businesses. In the words of Qantas CEO, Alan Joyce:

> "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 it 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."[47]

This is an articulation of the classic *QSA 92* circumvention that AIPA and others feared and foreshadowed in 2007, but which was dismissed as fanciful by APA, Qantas and the Senate Economics Committee.

The announcement gave rise to some clear commentary, for example from Matt O'Sullivan:

> "ALMOST three years after he took the reins, the chief executive of Qantas, Alan Joyce, has taken the biggest gamble of his career. It is also one of - if not *the* - biggest bets in Qantas's 90-year history."
>
> "...But it will fundamentally change the Flying Kangaroo, increasing its focus on its low-cost offshoot Jetstar."
>
> "It is a high risk strategy. Setting up a premium airline in the backyard of key rivals such as Singapore Airlines and Cathay Pacific will provoke a strong competitive response.
>
> Joyce knows only too well the difficulty of operating in Asia. The problems he has had in gaining a foothold in Vietnam through its joint venture, Jetstar Pacific, are a case in point. It also raises questions about whether Qantas has the resources in-house to pull it off in Asia, where the cultural and political hurdles are high."[48]

and from compatriot Elizabeth Knight:

> "Qantas is about to give birth to two joeys - young energetic babies cheaper to maintain than their mother. They will get to feed on the lush pastures of the Asian market and grow up to become the next generation of the airline's business.
>
> Their older brother Jetstar is now seven years old and doing a lot of the work once done by the older Qantas kangaroo.
>
> In theory there is nothing wrong with commercial evolution but there is risk associated with playing with the very strong Qantas brand name - which has a long tradition for service and safety."

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47 Mr Alan Joyce, Building a Stronger Qantas speech, 16 August 2011, at http://www.qantas.com.au/regions/dyn/au/publicaffairs/details?ArticleID=2011/aug11/Speech (accessed 30 September 2011)

48 Matt O'Sullivan, *Joyce has no choice but to push into Asia*, Sydney Morning Herald, 17 August 2011

> "It's easy to see how those employed under the Qantas international brand would be worried that the new, and yet-to-be named, premium operation would cannibalise their airline in much the same way Jetstar took the leisure traffic away from Qantas domestic operations seven years ago."
>
> "Joyce wants to reduce the amount of capital invested in Qantas International - which is sitting at 39 per cent of the group's capital.
>
> Much of this will be achieved by deferring the delivery of six of the airline's new A380 aircraft by five to six years.
>
> The larger question is whether the creation of a new premium pan Asian airline will ultimately spell the demise of the Flying Kangaroo operating internationally."[49] [emphasis added]

So there is clearly an awareness in the business of the risks and the direction in which Qantas management is taking the airline. But it is the final quote that concerns AIPA the most, for the very reason than it is insightful and very possible. We would like to bring some focus on why that may come about.

QANTAS AS AN INTERNATIONAL AIRLINE

It is abundantly clear from all of the Parliamentary debates and media commentary that the public and political perception of Qantas, and most particularly of Qantas as Australia's primary international airline, remain substantially unchanged since the decision to privatise Qantas.

While the Government has been actively pursuing liberalisation of foreign ownership rules, it has no intention of dismantling the *QSA 92*. The most recent Government statement on the Australian aviation landscape, the 2009 Aviation White Paper, reinforces the primacy of Qantas in Australian international operations:

> "…Consistent with international reform efforts, Australia has been negotiating 'incorporation and principal place of business' criteria into its bilateral agreements wherever possible. These criteria are focussed on where an airline is based and which country has effective regulatory oversight of the airline rather than on who owns the equity of the company. To date, Australia has negotiated principal place of business criteria into 32 of its 70 bilateral agreements (with some clauses including modifications at the request of the other country).
>
> The Australian Government will continue to seek principal place of business criteria in all our bilateral agreements to ensure our airlines can take advantage of consolidation opportunities and equity alliances with other international carriers.
>
> The Government recognises, however, the special position Qantas holds in the Australian aviation landscape, and indeed the wider Australian business and cultural psyche. The Government will not change the 49 per cent foreign ownership restriction for Qantas. This restriction, combined with other provisions of the Qantas Sale Act, ensures that Qantas remains Australian.
>
> The Government has reviewed the additional 25 and 35 per cent restrictions on Qantas, and has decided to remove them. Removing them will not affect Qantas's operations, nor provide any incentive or disincentive for Qantas to change its percentage of non-Australian-based staff or operations. It will, however, enable Qantas to enter into more substantial equity partnerships with foreign airlines than is currently the case. The other requirements in the Qantas Sale Act relating to Qantas' management and operational base and the composition of the Board will be retained."[50]

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49 Elizabeth Knight, *Playing with the Qantas brand comes with risks*, Sydney Morning Herald, 17 August 2011

50 Commonwealth of Australia, 2009, *The National Aviation Policy White Paper: "Flight Path to the Future*, page 47

But there is a rather large "elephant in the room" that highlights the risk of presumption and the perishability of legislation:

THERE IS ABSOLUTELY NO COMPULSION ON QANTAS TO CONDUCT INTERNATIONAL OPERATIONS!

The Sale Act Restrictions

The surviving relevant provisions of the *QSA 92* are contained in Part 3, the so-called "national interest" provisions. As we pointed out earlier, the majority are related to foreign ownership and control restrictions. There are only two provisions strictly related to the operational conduct of Qantas, those set out in subsections 7(1)(f) and (h)[51]:

> "(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"; and"

and

> "(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; …" [emphasis added]

Neither of these two provisions require Qantas to do anything other than ensure that the "articles of association" (the Constitution) contain certain prohibitions and requirements. But even those prohibitions and requirements do not compel Qantas to conduct international operations. They have effect:

1. only if Qantas chooses to engage in international air transport operations; and subsequently:
   a. only if those operations are scheduled; and
   b in regard to the Qantas name, only if the operation involves the carriage of passengers.

While AIPA believes that it is highly unlikely that Qantas would cease conducting scheduled international air transport operations, it is nonetheless an option legally open to the management.

If the exclusion of subsidiaries argument is substantiated by the Parliament (by choosing not to amend the *QSA 92*), then it would be possible to conduct all scheduled international air transport operations within Jetstar by shrinking Qantas back to a solely domestic operation. After an appropriate period to avoid any adverse consequences of the Transfer of Business provisions of the *Fair Work Act 2009*, Jetstar could create a subsidiary that provided full-service scheduled international air transport passenger operations subject only to the *Air Navigation Act 1920*. In a further Machiavellian twist, it could be named 'Qantas' without any risk of resurrecting the *QSA 92* restrictions.

While this scenario may be somewhat fanciful, additional spice may be added to the situation when the current Inquiry is able to clarify that the current arrangements for the allocation of Australian international capacity can be, and are currently being, used to protect market share within the Qantas Group.

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51 *Qantas Sale Act 1992*, s7

For the absence of doubt, AIPA is not questioning the propriety of these arrangements, since that is quite properly the prerogative of the IASC, the Department of Infrastructure and Transport (DIT) and the Australian Competition & Consumer Commission (ACCC). However, a brief discussion will continue the examination of the possible consequences of an outdated *QSA 92* in the hands of the current Qantas management.

The Allocation Of International Capacity

General

The allocation of international capacity is somewhat 'Jekyll and Hyde': it appears to be relatively simple in concept but it devilishly complex in application. The Department of Infrastructure and Transport provides the following introduction:

> **"What is the bilateral system?**
>
> Before an airline can operate international services to another country, the government must first negotiate a treaty level agreement with the destination country's government. These treaties are known as bilateral air services agreements.
>
> The Australian Government has negotiated over 68 bilateral air services agreements and associated arrangements. These agreements allow our airlines to offer the range of services that they do today.
>
> Bilateral air services agreements/arrangements contain provisions on;
>
> - **Traffic rights** - the routes airlines can fly, including cities that can be served within, between and beyond the bilateral partners.
> - **Capacity** - the number of flights that can be operated or passengers that can be carried between the bilateral partners.
> - **Designation, Ownership and Control** - the number of airlines the bilateral partners can nominate to operate services and the ownership criteria airlines must meet to be designated under the bilateral agreement. This clause sometimes includes foreign ownership restrictions.
> - **Tariffs** - i.e. prices. Some agreements require airlines to submit ticket prices to aeronautical authorities for approval (it is not current practice for Australian aeronautical authorities to require this), and
> - Many other clauses addressing competition policy, safety and security.
>
> The result is that international aviation is regulated by a complex web of over 3000 interlocking bilateral air services agreements…"[52]

Freedoms of the Air

The 'traffic rights' (also known as 'freedoms of the air') and the associated 'capacity' are the areas where significant complexity arises. ICAO officially recognises five 'freedoms of the air' and notes another four that are or may be included in agreements.[53] These freedoms not only address 'to' and 'from' rights between partner countries, but also various internal and "behind' or 'beyond' rights to third countries. Chapter 3 of the Aviation Green Paper[54] provides diagrammatic assistance in explaining how these 'freedoms' are allocated in various Air Service Agreements.

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52 Department of Infrastructure and Transport, *the Bilateral System - How International Air Services Work*, at http://www.infrastructure.gov.au/aviation/international/bilateral_system.aspx (accessed 05 October 2011)

53 ICAO, Doc 9626 *Manual on the Regulation of International Air Transport*, Part 4

54 Commonwealth of Australia, 2008, *Aviation Green Paper: "Flight Path to the Future*, Figure 3.1

Code-sharing

A further complication is then overlaid upon the allocated 'traffic rights' by the use of 'code-sharing'. The European Commission Director General for Competition, among other regulators[55], has examined the competition effects of code-sharing and the Final Report provides us with an introduction to code-sharing that is adequate for this present discussion:

> "3.4 In its most basic form, a code-share agreement simply allows for a flight operated by one carrier (which will offer the flight for sale under its own code or designator and associated flight number, such as 'XY1234'), also to be marketed by another carrier, under that other carrier's code and flight number (e.g. 'PQ5678'). The carrier operating the flight (in this case, carrier with code 'XY') is known as the "operating carrier", while the carrier marketing the flight under its own code (in this case 'PQ') is known as the "marketing carrier". [emphasis added]
>
> 3.5 In principle there is no limit to the number of marketing carriers on any one flight, although Global Distribution System (GDS) system limitations restrict the number to 11...
>
> 3.6 The carrier that issues tickets to the passenger for a journey involving a code-share flight is known as the "ticketing carrier". Where the complete journey does not involve a third carrier, the ticketing carrier will generally be the same as the marketing carrier (unless the ticket is issued by the operating carrier itself, in which case no code-sharing is involved). Where a third carrier is involved in a passenger's journey, the carrier issuing the ticket may, in some cases, be neither the operating nor the marketing carrier, but part of the journey may, nevertheless, be booked under the marketing carrier's code for a flight operated by the operating carrier. This can cause problems in revenue settlement if the operating carrier, which in general accepts the ticket coupon for carriage on the flights that it operates (or equivalent electronic ticketing procedure), has no interline relationship with the ticketing carrier. [emphasis added] [56]

The *International Air Services Commission Act 1992* ('*IASCA 92*') requires code-sharing to be allocated capacity[57] in a similar manner to operating capacity and DIT advises airlines proposing to market seats and/or cargo capacity to and from Australia under code-share arrangements with another airline that they also require an IAL.

Transfer of Qantas Capacity to Jetstar

While we have not deeply researched the history of international capacity allocation to Jetstar once it became a Designated Australian International Airline, in many cases it would have been able to take up unused capacity. However, in other cases, Qantas has sought the transfer of Qantas allocated operating capacity to Jetstar and then sought approval to code-share on that re-allocated operating capacity. This is permissible under the *IASCA 92* provisions for wholly-owned subsidiaries:

> "4.1 The *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:
>
> (i) the carrier;
>
> (ii) a wholly-owned subsidiary of the carrier; and,

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55 The IASC website information on code-sharing was prepared in 1996/7 when widespread co-operative arrangements between airlines were in their infancy.

56 European Commission Director General for Competition, 2007, *Competition Impact of Airline Code-Share Agreements*, pages 7-8

57 *International Air Services Commission Act 1992,* Section 7

(iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier." [58]

[Note: The *IASCA 92* provisions regarding wholly-owned subsidiaries create an interesting contemporaneous juxtaposition with the *QSA 92,* given that, at least in terms of capacity allocation, the parent and the subsidiary are treated as if they were one operation.]

Using the commencement of Jetstar operations to Japan as an example, the following extracts from Determination [2006] IASC 103 and Decision [2006] IASC 209 (which were conjointly published) illustrates our point about protecting market share within the Qantas Group while Qantas itself is shrunk:

> "1.1 On 12 April 2006, Qantas applied for an allocation of 2.4 B767-200 equivalent units of capacity per week on the Japan route to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the Japan route ... Qantas proposes to code share on Jetstar's services.
>
> 1.2 Qantas advised in its application that a total of 10.5 B767-200 equivalent units of capacity per week are required to operate the services. Qantas indicated that, in addition to the 2.4 weekly units applied for, 8.1 units were planned to be exercised under existing allocations to Qantas. This capacity would be available for Jetstar operated services through various developments in Qantas-group Japan operations including the withdrawal of services by Australian Airlines and lesser use of capacity by Qantas than had been planned.
>
> 1.3 Qantas sought variations … to permit the capacity to be used in joint services between Qantas and any wholly-owned subsidiary of the Qantas group." [emphasis added]

and

> "4.2 ... The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on the New Zealand route (Decision [2005] IASC 2006). Jetstar is now an established international carrier, having operated services on the New Zealand route since December 2005. This means that there is public benefit arising from the use of the entitlements on the Japan route. The Commission will allocate the capacity sought by Qantas.
>
> …
>
> 4.5 The Commission has considered the issue of code sharing between Qantas and wholly-owned subsidiary companies on several occasions in relation to operations by Australian Airlines, another Qantas subsidiary, including on the Indonesia route - see Decision [2003] IASC 207. Similar decisions were made in respect of applications for code sharing on the Malaysia and New Zealand routes ([2003] IASC 205, and [2005] IASC 2006 respectively).
>
> 4.6 The Commission's position in those cases was that Qantas and Australian Airlines operated in different markets which best matched their product and cost structures and they would be unlikely to compete on price even where both carriers operated on the same route. The Commission concluded that there can generally be expected to be no lessening of public benefit from authorising the parent airline code sharing with the subsidiary airline. The Commission considers that the same conclusion is applicable in relation to code sharing between Qantas and Jetstar and will authorise code sharing between Qantas and its wholly-owned subsidiaries."[59]

AIPA is concerned that this competitive analysis is somewhat flawed. Australian Airlines was just a 'minnow' compared to the Qantas 'whale' and the route structure was designed on a no-compete basis. Jetstar on the other hand is on a trajectory to outgrow its parent and, as the domestic market shows, is often directly competitive with Qantas. The IASC needs to

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58 [2006] IASC 103/[2006] IASC 209, at http://www.iasc.gov.au/determinations_decisions/files/2006/2006iasc103.pdf (accessed 05 October 2011)

59 *Ibid.*

revamp its proforma paragraphs justifying decisions that most often merely reflect that there are just no other applicants!

Transfer of Qantas Capacity to Jetconnect

AIPA believes that the subsidiary rule applies to Jetconnect as well, even though it is a New Zealand company and all the economic benefits of employment (and taxation) accrue to New Zealand. It is treated as a Qantas subsidiary in capacity allocations[60], in contrast with the separate listing of Jetstar. We believe that Jetconnect is a classic case of transferring business to an offshore entity, despite any *QSA 92* intentions, and it could become Qantas' chosen carrier for routes that transit New Zealand.

AIPA is concerned about the deliberate misinformation that Qantas chooses to place in the public arena about the "independence" of Jetconnect as a New Zealand company. The same argument is often put about the other subsidiaries.

However, the Qantas evidence to the Senate Standing Committee on Rural Affairs and Transport Inquiry into Pilot training and Airline Safety including Consideration of the Transport Safety Investigation Amendment (Incident Reports) Bill 2010[61] leaves absolutely no doubt that the "directing mind and will"[62] of all of the Qantas and Jetstar subsidiaries, including Jetconnect, is Mr Alan Joyce, the CEO and Managing Director of Qantas.

That same evidence underlines the fact that none of the subsidiaries could reasonably be considered to be independent and therefore it is entirely reasonable for AIPA to conclude that their operations are being "conducted" by Qantas contrary to both section 7(1)(f) of the Qantas Sale Act and paragraph 1.1(b) of the Qantas Constitution. The issue of the independence of Jetconnect was directly addressed in another jurisdiction, that of a Full Bench of Fair Work Australia, where Senior Deputy President Drake stated:

> "I have concluded that there are unlikely to be many situations where a subsidiary is controlled to a greater extent than that by which Jetconnect is controlled by Qantas."[63]

Transfer of Qantas Capacity to Jetstar Asia

A more recent transfer of capacity seems a little more sinister. As part of the announced fleet, route and employment reduction announced by Qantas, mainline flights from Australia to Bangkok have been reduced to once per day and Australian capacity has been transferred from Qantas to Jetstar Asia, which, importantly, is a minority-held joint venture that is a Designated Singapore international airline.

The following extracts from the IASC Determination on the Thailand routes illustrate some other complexities in bilateral agreements while showing how Qantas can affect another business transfer arrangement to an offshore subsidiary:

> "1.1 On 18 August 2011 Qantas applied for an allocation of fourteen frequencies per week to be used for third country code share services between Singapore and Thailand. Under the code share agreement, Qantas plans to place its code on additional Jetstar Asia services. Qantas has requested the period of the determination be five years."

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60 See the New Zealand entry, Northern Summer 2011 Timetable Summary, page 19 at http://www.infrastructure.gov.au/aviation/international/files/NS_2011_TT_Summary.pdf (accessed 21 September 2011)

61 Mr Alan Joyce, Senate Committee Hansard, Senate Standing Committee on Rural Affairs and Transport *Inquiry into Pilot training and Airline Safety including Consideration of the Transport Safety Investigation Amendment (Incident Reports) Bill 2010*, 25 February 2011, page RA&T8

62 see *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705

63 Fair Work Australia, *Op. cit.*, at 119

and

> "**2 Provisions of relevant air services arrangements**
>
> 2.1 Under the Australia -Thailand air services arrangements, the designated airlines of Australia may enter into code share arrangements with any other airlines provided the appropriate route and traffic rights are available. The Register of Available Capacity shows that there are no services per week available to Australian carriers to engage in code share services with third country airlines. However the arrangements provide that, when this capacity is exhausted, carriers can convert available capacity which is not code share capacity into available additional code share services on the basis that one unused B747 equivalent service equals one third country code share frequency. In this instance there are currently 16.05 B747 equivalent services available for allocation."

and further

> "3.4 Paragraph 15(2)(e) of the Act specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. The Commission has previously authorised code sharing by Qantas with Jetstar Asia on the Thailand route.
>
> …
>
> 3.6 The delegate, on behalf of the Commission, will allocate the capacity as sought by Qantas to be used for third country code share services on the Thailand route."[64]

AIPA recognises that Qantas code-shares with many airlines, consistent with international airline practice. However, this practice is predominantly arranged with unrelated entities and would normally attract little comment. But should it be the same case when dealing with subsidiaries and associated entities?

In the context of our discussion on the effectiveness of the *QSA 92*, it appears to us that international code-sharing arrangements between Qantas and its subsidiaries and associated entities provide a convenient platform for Qantas to shrink back from being an 'operating carrier' to becoming predominantly a 'marketing carrier'.

While AIPA is unclear on what legal limitations may or may not exist, Qantas might even be able to relinquish its International AOC altogether, but still issue tickets in its own name for international flights on its subsidiaries, in much the same way as Qantaslink (which does not hold an AOC) does domestically. Improbable as that scenario may seem, it appears to us that the *QSA 92* could still be satisfied legally, even though the international business would mainly consist of just a call centre and associated IT facilities.

AIPA believes that the burning question now, as it was in 2007 and in 1992, is whether strictly legal compliance with the *QSA 92* will satisfy the political and public expectation of protecting the survival of Qantas as Australia's pre-eminent national carrier?

Furthermore, should we believe that the financial performance of Qantas International is as parlous as so precipitately revealed to justify the organisational changes?

OPACITY OF QANTAS FINANCIAL ARRANGEMENTS

AIPA has been concerned about the financial data that has been quoted by Qantas management to justify the most recent round of shrinking Qantas. AIPA members know at firsthand how the load factors look and there certainly hasn't been any collapse in ticket

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64 [2011] IASC 112, at http://www.iasc.gov.au/determinations_decisions/files/2011/2011iasc112.pdf, accessed 22 September 2011

pricing, so it seems very natural to be sceptical. We also wonder about how the continuous disclosure requirements of s674 of the *Corporations Act 2001* were met in regard to that $200 million "loss", given that the outcome is certainly market sensitive. But there are broader issues to consider.

We are concerned that the Parliament and the Australian public accept at face value any management statement which apparently justifies organisational change. They do so, as there is no mechanism that forces real transparency in complex conglomerate businesses like Qantas. Unfortunately, as so often happens, the community trust is misplaced when such pronouncements are later shown to be a mere cover for opportunistic and manipulative business activities.

AIPA does not seek to interfere in business practices that in normal circumstances would, and should, be the discretionary prerogative of management. However, few businesses face the issue of managing subsidiaries that are competitive industrially as well as operationally, particularly where the establishment and continuity of the subsidiaries are leveraged off the capital and infrastructure of the parent. It is ironically unhelpful that the highly detailed and product-specific cost and revenue attribution that presumably guides management decisions is not available to the workforce.

Acceptance by the workforce of financial justification of organisational changes requires mutual trust and management credibility, relationships that arise only through positive engagement by management with staff at all levels of the organisation. If the timing of organisational change coincides with industrial negotiations, the burden placed on management to engage in good faith increases considerably. Demonstrably, that burden has been shrugged off, rather than accepted.

The possibility that the announced organisational changes are aimed predominantly at forcing industrial restructuring is something to be resolved elsewhere. However, another basis to question whether the "shrinking Qantas" scenario is more real than not stems from the emerging opacity of evidence to support the announced losses which, purportedly, are driving those changes.

As we said in our recent briefing to all Parliamentarians:

> "AIPA believes that the media campaign conducted by Qantas surrounding its "crash or crash through" negotiating stance was, and continues to be, a smokescreen to obscure the consequences of the planned move to reduce Qantas to a token operation satisfying the Qantas Sale Act while seeking more beneficial tax and regulatory environments in foreign countries.
>
> AIPA has attempted to get accurate information on the International operations that Alan Joyce, without any supporting data, has trumpeted as "losing $200 million per year". Ironically, International operations is NOT a business segment that Qantas segregates in its public accounts and the cost attribution processes between Qantas and Jetstar business segments are well hidden behind the "corporate veil". Additionally, it is likely that the now separate reporting of the "highly profitable" Frequent Flyer business includes revenue that would normally flow to the Qantas International business."[65]

AIPA understands that Qantas is at liberty to elect how to segregate its business units for financial reports and it can separately elect how to allocate costs and revenue between those same entities. It can do so in such a way that it does not breach its requirements to report to the Stock Exchange, the Australian Tax Office or any other corporate regulator. We also believe that this discretion allows Qantas to distort the true relative performance of

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65 AIPA, 2011, *Op.cit.*, page 1

the various business units, simply because it doesn't change the bottom line of the Group in its consolidated reporting.

If the corporate strategy is to continue to shrink Qantas International while using the 'goodwill' and infrastructure to support the subsidiaries, then choosing to allocate the costs to Qantas International and a disproportionate share of the revenue to the subsidiaries will support the public rationale for change. It is also something of a self-fulfilling outcome once the shrinkage takes hold, aided by a continuing lack of investment in the product. This latter point is emphasised by the diversion of increasing numbers of B787 aircraft from Qantas to Jetstar.

Notwithstanding the recent order for 110 new Airbus A320 aircraft, there is no such lack of commitment for, or investment in, the Jetstar franchise:

> 'Mr Joyce told the Australia Pacific Aviation Outlook Summit that the airline's review of its international operations would aim to keep Qantas Australia's leading premium airline while strengthening the focus on alliances, reviewing non-performing business segments and expanding in Asia.
>
> "Change is always tough," he said. "But the competitive challenges we face make major change essential and our commitment to the change process is absolute.
>
> "I believe we have a major opportunity to go beyond the natural limitations of our market size and geography, to become a champion Australian company in a globalised region and world."
>
> Mr Joyce reiterated the airline's interest in Asia and China and pointed to Jetstar's rapid expansion in the region.
>
> He said there was also an enormous opportunity to leverage the mainline carrier's excellence in brand management, aviation safety and other skills.
>
> And in what appears to be a reference to a potential Asian full-service airline, Mr Joyce said the company saw continuing opportunities for the Jetstar model and "lessons to be learned for Qantas".'[66]

But the publicly available accounts do not allow us to answer, for example, the following questions:

- Are the true costs of the Qantas intellectual and physical infrastructure utilised by Jetstar attributed to Jetstar?
- Are the costs of aircraft ownership equitably allocated, either directly or by commercial rate internal attribution?
- Are the costs of all single use facilities such as A320 simulators attributed to Jetstar?
- How are the costs and revenues allocated for multi-sector flights including regional, domestic and international sectors?
- How are the costs and revenues allocated for multi-sector flights including Qantas and Jetstar international sectors?
- How are the costs and revenues allocated for multi-sector international flights involving Qantas and Jetstar code-share sectors?
- How are Frequent Flyer reward points for purchased airline tickets attributed?
- How is the revenue for Frequent Flyer reward airline tickets attributed?
- How do the direct operating costs of Qantas and Jetstar A330 flights compare?

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66 The Australian, *Qantas International faces 'tough' changes, warns chief executive Alan Joyce* , 20 Jul 2011

- What are the differentials for the input costs of Qantas and Jetstar A330 flights?
- For each route and in aggregate, is the revenue over the last two years, based on load factors, average ticket price, ancillary revenue and Frequent Flyer contributions in combination, insufficient to offset the costs specifically associated with the conduct of International air transport operations by Qantas Airways?
- Is it more profitable to code-share on subsidiaries rather than operate flights?
- Are regional fares a true reflection of costs or are they being used to subsidise the international subsidiaries?

AIPA recognises that much of the information required to answer these questions is commercially sensitive and therefore would not reasonably be available to the public. However, the questions are articulated to identify the sort of information required to make an informed judgement on the announced losses in Qantas International, as well as to touch upon the complex arrangements that allow managers to distort relative performance between business units.

Importantly, AIPA is raising this issue of financial opacity in the context of the deliberate shrinking of Qantas, both as an industrial strategy and as a means of freeing Qantas from any possible shackles imposed under the *QSA 92* in its current form.

IS THE *QANTAS SALE ACT 1992* ACHIEVING WHAT WAS ORIGINALLY INTENDED?

In our considered view, **no**.

When the Keating Government resolved to privatise a key national asset, an asset that provided significant employment but also significant contributions to the national infrastructure, skills base, defence capability and projection of sovereign power, the so-called national interest provisions reflected that transferring the business to the private sector came with the 1992 version of a "heritage listing". Fortunately for Australia, the Howard Government's attempt to undermine that 'heritage listing' failed with the APA bid.

AIPA is concerned that insufficient attention has been paid to the potential diminution of the Qantas contribution to the above-mentioned national infrastructure, skills base, defence capability and projection of sovereign power . The 2007 Inquiry Report provides the following:

> "3.41 Other contributors to the inquiry raised a variety of other possible consequences of allowing maintenance jobs in particular to go offshore. For example, the ACTU submission expressed concern about the possibility of Qantas' strategic defence services being moved overseas. Similarly, the Australian Workers' Union (AWU), in its submission, was particularly concerned about the future of maintenance apprenticeships and their impact on Australia's defence capability. It notes the skill shortages apparent in engineering and licensed aircraft engineering mechanic trades and states that these shortages have the potential to fundamentally undermine the nation's defence capabilities at a time when the country is increasingly engaging in international theatres of operation. Further, its submission highlights the role of Qantas Defence Services which provides maintenance, repair and overhaul of military aircraft, engines and avionics. The Australian Manufacturing Workers' Union (AMWU) also focussed on the importance of Qantas apprenticeships."[67]

We believe that future arrangements where the majority of activity occurs in the subsidiaries will never replicate the current contribution of Qantas in these areas: there is no compulsion

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67 Senate Standing Committee on Economics, *Op. cit.*, page 7

to seek Australian maintenance or use Australian training facilities and the aircraft sequestered in foreign joint ventures will become part of foreign governments' emergency assets rather than ours. AIPA has no doubt that the potential loss of maintenance and maintenance training skills will be more deeply addressed in other submissions, as will the immediate risks that offshore maintenance may bring[68].

But consider that Jetstar (and others) prefer to conduct their training overseas - the facilities and, importantly, the pilot training infrastructure would not be available to Australia in time of emergency. The necessary investment in pilots and other crew members may well end up furthering foreign interests well before us, just as the basing of aircraft in foreign countries may well prevent them being used to supplement the resources of the RAAF in times of both civil and military emergencies. Civil supplementation is very much an important part of the Australian military contingency plans and, in the absence of formal arrangements such as the US Government's Civil Reserve Air Fleet[69], we may well find ourselves with fewer aircraft, aircraft we can't maintain here or a significant reduction in reserve pilot training capacity. AIPA believes that these issues require careful examination.

Less than two years ago during the development of the Aviation White Paper, the present Government considered Qantas equity issues in the context of the contemporary market, and made the following conclusion:

> "The Government recognises, however, the special position Qantas holds in the Australian aviation landscape, and indeed the wider Australian business and cultural psyche. The Government will not change the 49 per cent foreign ownership restriction for Qantas. This restriction, combined with other provisions of the Qantas Sale Act, ensures that Qantas remains Australian". [70]

This once in a generation review of Australia's strategic aviation policy, in effect, recommitted the Government to the 1992 policy.

However, what is not as clear to us is whether the Government accepts the flaws in the *QSA 92* that we have extensively examined in the preceding pages or considers that the existing text is adequate. AIPA strongly asserts that it is not adequate.

For that reason, we welcome the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* and this Inquiry.

THE *QANTAS SALE AMENDMENT (STILL CALL AUSTRALIA HOME) BILL 2011*

AIPA applauds Senators Xenophon and Bob Brown for attempting to address the facilities protection clauses, the experience requirements for the Board and the ability for members to seek injunctive relief.

Aggregated Facilities

AIPA notes the concern raised at the 2007 Inquiry that the use of the term "any country" in subsections 7(1)(h) and the proposed (ha) may be interpreted as being satisfied by a comparison of the facilities of each foreign country with those in Australia in isolation from the total aggregated overseas facilities. Such an interpretation may well lead, in time, to the

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68 See Joan Lowy, *FAA inspections fault Philippine repair station*, Bloomberg Businessweek, 21 June 2011

69 See US Air Force, *Civil Reserve Air Fleet*, at http://www.amc.af.mil/library/factsheets/factsheet.asp?id=234 (accessed 26 September 2011)

70 Commonwealth of Australia, *Op. cit.*, page 47

Australian facilities becoming only a small part of a multinational offshore conglomerate. That is counter to what we believe is the necessary national interest provision to keep Qantas Australian.

AIPA suggests that replacement of "any other country" with "all other countries" would clarify the original intent.

Subsidiaries and Associated Entities

AIPA finds itself in a vexed situation with regard to subsidiaries[71] and associated entities[72].[73]

In the first instance, we do not believe that the *QSA 92* was enacted with the thought of a subsidiary consuming the parent. In the second, we recognise that modern airline economics support the provision of "no frills" services as an alternative to (but not replacement of) full service airlines. In the third instance, we represent a majority of the pilots in each of the Qantas entities domiciled in Australia that are internally competing for operational employment, despite having not been engaged in the advent of the subsidiaries. Lastly, we recognise, with some reservations, the business sense in engaging in emerging markets through subsidiaries and associated entities such as Jetstar Japan.

We initially supported the inclusion of 'associated entities' to pick up those entities that were effectively controlled by Qantas as a minority shareholder but fell short of the definition of a 'subsidiary'. However, AIPA now recognises that the scope of the *Corporations Act 2001* definition is broader than practically required to curb 'shelling out' and 'offshoring' behaviours. We recognise that it would be unreasonable to impose constraints on minority joint ventures where compliance is impractical and, in some foreign countries, potentially illegal.

In consideration of emerging market investments, AIPA has formed the view that off-shore entities that operate internationally, other than to and from Australia or operating 'behind' or 'beyond' flights using Australian designated capacity, are not in any practical sense replacing Australian jobs. Further, we consider that the 'aggregated facilities' clause sufficiently constrains the diversion of excessive amounts of capital that would otherwise be available to grow the Australian business.

AIPA therefore considers that the facilities protection clause in the proposed subsection 7(1)(ha) and the services protection clause in the proposed subsection 7(1)(hc) would be satisfied if three modifications were made:

1. the proposed definition for 'associated entity' in subsection 3(1) is modified to refer only to entities that satisfy subsections 50AAA(2) and (3) of the *Corporations Act 2001*, i.e. those entities over which Qantas exerts control[74];
2. a new definition is included in subsection 3(1) of "**exercising Australian rights** means using capacity allocated under an Australian or foreign Air Services Agreement to fly to, from or within Australia or to fly between two or more foreign countries using Australian allocated capacity other than code-share capacity"; and
3. the phrase "exercising Australian rights" is inserted following "any associated entity" in subsections 7(1)(ha) and (hc).

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71 See Section 46 of the *Corporations Act 2001*

72 See Section 50AAA of the *Corporations Act 2001*

73 The definition of 'associated entity' includes subsidiaries, but we have chosen to retain the redundant expressions for clarity in situations not directly linked to the Corporations law.

74 See Section 50AA of the *Corporations Act 2001*

Further Amendment

In considering how best to deal with the issue of international subsidiaries being used to 'shell out' Qantas International, AIPA believes that there needs to be some form of balancing mechanism developed that prevents Qantas management from withdrawing, for all intents and purpose, all investment in Qantas for the benefit of subsidiaries and associated entities. Given that AIPA believes that the plethora of subsidiaries and associated entities were created despite the intent of the *QSA 92*, we do not support reciprocal protection for those other bodies.

We recognise that the relative demand for full service and no-frills international operations within the available Australian capacity will vary and has yet to reach any measure of equilibrium. We also recognise that there may well be some convergence of product offerings. While further examination is clearly necessary so that some appropriate metrics are developed, AIPA proposes that Qantas be constrained to invest in Qantas International to the extent that the combined subsidiaries and associated entities exercising Australian rights cannot, for example, offer more than twice the seat capacity or employ more than three times the number of flight crew. These examples are solely to illustrate the concept of an investment balancing mechanism.

AIPA proposes that such a mechanism could be inserted as a new subsection 7(1)(fa) that explicitly authorises the creation of subsidiaries and associated entities but which includes appropriate metrics to maintain an equitable investment regime.

Board Experience

AIPA supports the proposed amendment. We believe that it is critical that the Board is able to bring operational and engineering oversight to the running of the company and, importantly, both those fields of experience bring with them a longer term view than seems to characterise modern business practice.

Injunctive Relief

AIPA supports the proposed amendment. We believe that solely relying on Ministerial intervention is insufficient and that an alternative available to the members provides a more equitable system.

CONCLUSIONS

AIPA has concluded that the original intentions that gave rise to the *QSA 92* are not being honoured. We do not believe that Parliament ever envisaged a redistribution of the capital of Qantas through a series of subsidiaries that were not subject to the same constraints as that placed on the parent organisation.

AIPA believes that the creation of the various subsidiaries has not been uniformly about exploring market opportunities and that business has and is being transferred from Qantas to those subsidiaries.

AIPA concludes that the national interest arguments that shaped the *QSA 92* remain essentially unchanged today. We believe that they warrant a much more extensive debate in the context of current Government philosophies.

AIPA concludes that none of the wholly-owned subsidiaries is in any way independent of Qantas. The level of control exerted over the joint ventures is not reflected in simple consideration of the level of investment.

AIPA concludes that, unless there is appropriate Government intervention, Qantas may be deliberately shrunk while allocated capacity is transferred to both onshore and offshore subsidiaries. Once any bilateral agreements that still specifically mention Qantas are renegotiated, there will cease to be any guarantee that Qantas will remain involved in international operations.

AIPA does not believe that the Qantas contribution to Australia's national interests will be replicated by its unrestrained offspring. We also believe, even in the current Government context of trade and business liberalisation, that national infrastructure and security considerations must be revived in this debate.

AIPA concludes that it is possible to balance the heritage and business requirements of Qantas, including creating an investment mechanism that prevents the deliberate cannibalisation of the parent by the progeny.

RECOMMENDATIONS

AIPA recommends the Senate Rural Affairs and Transport Legislation Committee explore fully the issues raised in our submissions and those of the other stakeholders and provides the impetus for Government to redress the current situation.

AIPA recommends the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*, with minor amendments as we have suggested, be adopted as a sound foundation upon which to begin the renovation of the *QSA 92*.

aipa

Advancing the interests of our members and the profession

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