



AVIATION ECONOMICS

By Electronic Transmission
3 November 2011

Senate Standing Committees on Rural Affairs and Transport
PO Box 6100
CANBERRA ACT 2600

Email: rat.sen@aph.gov.au

Dear Senators,

**Re: Aircraft Crew Bill 2011; Still Call Australia Home Bill 2011
Inquiry**

Aviation Economics is a boutique private company registered to provide aviation related economic advice to aviation unions and not for profit community organisations seeking to formulate an informed opinion regarding aviation issues pertinent to their particular area of interest. It has been brought to our urgent attention by concerned Qantas shareholders that the above inquiry is framed in the belief that:

- *'Currently the Qantas Sale Act only allows an application to the Court for injunctions by the Minister. The bill extends this to allow for applications to the Court by 100 shareholder members or shareholder members who hold at least 5 percent of the shares in Qantas.'*

While this is correct with respect to enforcing compliance in accordance with the Qantas Sale Act, the Senate Standing Committee on Rural Affairs and Transport needs to be aware that there presently also exists a remedy for non compliance with the Qantas Sale Act under the Corporations Act. I.e. An aggrieved shareholder can seek enforcement of the intentions of the Qantas Sale Act by bringing an action seeking to enforce Qantas' compliance with Qantas Sale Act matters contained in the company's Articles of Association.

In 2007 the author of this submission was then President of The Australian and International Pilots Association (AIPA) and the applicant for Qantas pilots in the Federal Court Proceeding No VID 160 of 2007, a case alleging that Qantas Airways Limited was not complying with its Qantas Sale Act obligations as laid out in its Articles of Association. Despite senior counsel's view that the proceedings would be successful if left on foot, AIPA under new leadership,

decided to withdraw funding for the case. The attached document [AIPA QSA 2007] provided by A J Macken & Co states inter alia:

- *the proceeding was properly brought;*
- *in Senior Counsel's view Qantas was clearly in breach of the Qantas Sale Act;*
- *the proceeding gave AIPA and its pilot members some leverage against further and potentially more serious breaches of the Qantas Sale Act adversely affecting job security and career progression of Qantas pilots; and*
- *the discontinuance of the present proceeding would not prevent the commencement of a fresh proceeding by a qualified plaintiff if Qantas moves to take advantage of the discontinuance.*

Aviation Economics acknowledges that the Senate Standing Committee on Rural Affairs and Transport is considering a bill to enhance Qantas shareholder ability to enforce Qantas' compliance with the Qantas Sale Act and broadly supports measures being considered. Nonetheless some Qantas shareholders are concerned that the unintended consequence of proposed changes to the Qantas Sale Act may inadvertently conflict/extinguish existing shareholder remedies available under the Corporation Act and trusts that the Committee will be careful not to recommend changes to the Qantas Sale Act that may also diminish existing shareholder rights.

Aviation Economics wishes to thank the Senate Standing Committee on Rural Affairs and Transport for the opportunity to make known its concerns about the assumed framework for the Aircraft Crew Bill and the Still Call Australia Home Bill and trusts that the Committee will find the above information helpful.

Yours Sincerely

**Captain Ian Woods
Executive Director**

www.aviationeconomics.com.au

From: A. J. Macken & Co.
Sent: Tuesday, 22 September 2009 3:23 PM
To:
Cc:
Subject: Qantas Sale Act Case Discontinuance

22 September 2009

Legal Professional Privilege Applies

To : Captain Ian Woods : ian.w.woods@gmail.com
c.c. Captain Barry Jackson, AIPA : barry.jackson@aipa.org.au

Dear Ian,

Re: Qantas Sale Act Case Discontinuance

A Notice of Discontinuance was filed in the Federal Court of Australia on 21 September 2009 as instructed in accordance with the direction given to you by AIPA COM.

Qantas finally signed its consent to the written Notice of Discontinuance on that day having earlier sought to have you consent to the dismissal of the proceeding.

You rightly refused the request of Qantas as dismissal would imply that the proceeding was wrongly brought. Dismissal would enable Qantas to represent to the Minister and Parliament, to Investors and to the Industry, that the Federal Court of Australia had dismissed a legal challenge to alleged breaches by Qantas Airways Limited of its obligations under the Qantas Sale Act, a public law of the Commonwealth of Australia.

Discontinuance of the above proceeding does not operate as a release by you or anyone else of the cause of action on which the proceeding was founded.

In the event that Qantas, released from the immediate threat represented by the discontinued action, moves to displace still further mainline flight operations in favour of a Qantas subsidiary or to sell Jetstar operations wholly or partly out of the Qantas Group, the possibility exists that a fresh proceeding could be commenced by a Qantas pilot/shareholder.

What is more likely, in the short term, is that Qantas may make more vigorous efforts to procure the amendment of the Qantas Sale Act. It may be the proceeding which has now been discontinued was seen as an obstacle to that course.

We have no information as to what led AIPA COM to see the discontinuance of the proceeding as being advantageous to AIPA or Qantas Pilots. Both Senior Counsel retained by you and (we believe) Qantas Airways Limited were of the view that the proceeding if left on foot would be likely to succeed.

That this was Qantas' view appears from the anxiety shown by Qantas to have the proceeding discontinued before 22 September 2009 on which day the Federal Court of Australia was to rule upon your standing (entitlement) to bring the proceeding.

You were anxious to have that hearing proceed on 22 September 2009 and Qantas was equally anxious to have the hearing not proceed.

AIPA was however entitled under its agreement with you to direct you to discontinue the proceeding, as you have now done.

If Qantas used threats of financial disadvantage to AIPA or its pilot members to persuade AIPA to give that direction it would be open to severe public criticism, particularly as coinciding with disclosure this day in media reports of the scale of payments made to Qantas and Jetstar executives : see Fin. Review (22 September) at pages 3, 17, 22, 44 and 62.

We formally confirm our advice :

- the proceeding was properly brought;
- in Senior Counsel's view Qantas was clearly in breach of the Qantas Sale Act;
- the proceeding gave AIPA and its pilot members some leverage against further and potentially more serious breaches of the Qantas Sale Act adversely affecting job security and career progression of Qantas pilots; and
- the discontinuance of the present proceeding would not prevent the commencement of a fresh proceeding by a qualified plaintiff if Qantas moves to take advantage of the discontinuance.

Yours sincerely,

Tony Macken
A J Macken & Co.