



**Submission to the**

**Senate Rural Affairs and Transport Legislation**

**Committee**

**Inquiry into the**

**Air Navigation and Civil Aviation Amendment**

**(Aircraft Crew) Bill 2011**

**Qantas Sale Amendment (Still Call Australia Home)**

**Bill 2011**

**28 October 2011**

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## Executive Summary

1. Civil aviation laws grant Australian airlines a number of privileges, including exclusive access to certain international air routes. In return, Australian airlines are required to be Australian owned, controlled, based, and responsible to Australian safety authorities. Traditionally, the holder of the licence was also required to observe Australian labour laws, and to be responsible to crew for the payment of their wages. However, recently, Qantas has been avoiding this obligation by 'subcontracting' routes to wholly-owned foreign-based subsidiaries. This sham arrangement has meant that it has been able to enjoy all of the privileges of holding an Australian airline licence, with none of the obligations. These abuses need to be checked. We support the proposed amendments to the licence requirements under the *Civil Aviation Act* and the *Air Navigation Act*.
2. Moreover, Qantas is in a special position, given that it remains regulated by the *Qantas Sale Act*. The intention of the Act is clearly to ensure that Qantas remains a truly Australian airline, with its international division operated from Australia. The practice of subcontracting routes to subsidiaries, and establishing major offshore hubs, also threatens to undermine the spirit of this legislation. We support amendments to clarify the intent of the original legislation.
3. In addition to dealing with particular abuses, the Bills should be supported because they encourage Australian airlines to invest in jobs and skills in Australia (and creating additional jobs downstream); protect critical infrastructure and national security interests; and help maintain high safety standards in Australian aviation.

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## **1. Introduction**

- 1.1 The ACTU is the peak body for unions representing employees working for Qantas and in the aviation sector more broadly.
- 1.2 We congratulate Senator Xenophon for sponsoring the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* and Senators Xenophon and Brown for sponsoring the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* and welcome the opportunity to provide comment on these Bills to the Senate Rural Affairs and Transport Legislation Committee.
- 1.3 We note that the Senate Inquiry into the Amendment Bills will consider issues of:
- Pay and working conditions;
  - Effect on Australian jobs (due to use of overseas based crew); and
  - Safety (including fatigue).

and make our comments accordingly.

## **2. Recent developments in the Australian domestic and international aviation industry**

- 2.1 Since the enactment of the *Civil Aviation Act* in 1920, the domestic and international aviation industry has undergone considerable change.
- 2.2 In 1992 the *Qantas Sale Act* allowed for the sale of 49% of the national government owned airline and removed the barrier against Qantas (and other) Australian international carriers operating domestic services in Australia. Around the same time, the Government opened up domestic travel routes to overseas based airlines. The demise of the Ansett Australia airline further opened up opportunities for overseas based airline companies to establish a presence in the Australian domestic and international markets.
- 2.3 The globalisation of the industry has fostered much more complex operational structures; with the emergence of sophisticated international airline alliances, joint ventures, codeshare arrangements and partnerships, facilitated by inter- governmental treaties, aimed at maximising airlines' capacities to provide full global services to a greater pool of travelling public.
- 2.4 In addition to foreign based international airline services operating to and from Australia, a number of Australian based airlines now operate both domestic and international services from a wide range of terminals across Australia.<sup>1</sup>
- 2.5 In tandem with the increased globalisation of air operations, the Australian airline industry has also embraced more complex employment structures, establishing partial or fully-owned subsidiaries based within and outside of the nation, engaging foreign based employees, outsourcing work and using contract labour.

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<sup>1</sup> Qantas Airways, Jetstar Airways, Virgin Australia, Virgin Pacific Blue, Tiger Airways Australia, Strategic Airlines, (Regional Airline, Airnorth, also provides a domestic (charter) service and limited flights from Australia to East Timor) and a number of Australian based air freight services operate domestic and international routes including Heavy Lift Cargo, Tasman Cargo and Express Freighters.

The globalisation and increased complexity of Australian airline operations and corporate structures has diminished the reach of existing Australian aviation legislation to regulate the operations and employment arrangements of Australian owned airlines operating within and out of Australia.

The *Air Navigation Act*, *Civil Aviation Act* and the *Qantas Sale Act* were drafted to protect the Australian national interest, in terms of economic security and the welfare of the Australian people including investment in employment opportunities, skills development, infrastructure, national security and safety. However, the drafters of these Acts could not have envisaged the growth in size and sophistication of Australian airline services operating in the modern global aviation industry.

The ACTU supports the amendment Bills in view of the need to update the capacity of the *Air Navigation Act*, *Civil Aviation Act* and the *Qantas Sale Act* to effectively regulate and protect Australian interests in the modern Australian aviation industry.

### **3. The Qantas group**

Since its inception in 1920, as the Queensland and Northern Territory Aerial Service, providing joy flights and runway taxi services, Qantas has undergone extraordinary expansion.

The Qantas group<sup>2</sup> is now ranked the 18<sup>th</sup> largest company in Australia. In 2011, it generated \$15 billion in revenue<sup>3</sup>, more than \$500 million in profit, and employed 32,695 employees.<sup>4</sup>

Qantas owns a fleet of 254 aircraft and provides services to 184 destinations in 42 countries through a series of over 20 code share partnerships in Australia, Asia, the Pacific, the Americas, Europe and Africa.<sup>5</sup>

Along with this expansion, the Qantas Group has undergone concomitant growth in the complexity of its operations, structure and corporate arrangements. The Qantas Group now has some 126 subsidiaries based both in Australia and in countries outside of Australia (some fully owned, some partially owned); 8 associated companies based in various countries outside Australia (partially owned from 21% to 46%) and 4 joint ventures based in Australia (50% owned).<sup>6</sup>

Since the sale of the government's shares in Qantas, the nature of Qantas's operations and ownership have changed considerably. Qantas is now 49% foreign owned and operates domestic air services in a number of foreign countries. Its subsidiaries, Jetstar Asia, Jetstar

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<sup>2</sup> The Qantas Group includes the companies of Qantas Airways (Qantas), Jetstar Airways (Jetstar), Eastern Australia Airlines and Sunstate Airlines.

<sup>3</sup> IBIS World Company Report Qantas Airways Limited Premium Report 30 June 2010, 15.

<sup>4</sup> Ibid (including employees of subsidiaries under control of the Qantas Group).

<sup>5</sup> Ibid; Wikipedia, Qantas, fleet, destinations, partnerships, code share arrangements: pp.3-5.

<sup>6</sup> Ibid.

Pacific and Jetconnect provide low cost domestic air services across a number of Asian and Pacific countries.<sup>7</sup>

The *Five Year Transformation Plan* announced by the Qantas CEO in August 2011, identified further strategic use of Asia based hubs and foreign based partnerships.<sup>8</sup> Qantas' commercial interests are now entrenched well beyond Australian borders.

The Qantas Group has been able to use its global and corporate expansion to minimise its employment costs; recruiting crew either through the airline's own overseas-based subsidiaries or through third parties in a foreign country. These off-shore airline operations are able to employ crew on lower wages and conditions under the industrial laws of the country in which the service is based.

Qantas has already established operations in Asia, the Pacific and New Zealand through Jetstar Asia, Jetstar Pacific, Jetconnect subsidiaries all employing foreign based crew on lower rates of pay and conditions.

This not only results in inequitable wages and conditions for employees performing the same work for the same company, it undermines Australian employees' wages and conditions.

For example, Australian based Qantas flight and cabin crew can earn up to twice as much as their Bangkok based counterparts employed by Jetstar Asia performing the same duties. Australian based Qantas A380 flight attendants earn around \$69,746- twice as much as their counterparts employed by Singapore based Jetstar Asia, who earn \$35,000 per annum.<sup>9</sup>

It has been reported that Thai cabin crew (employed by a 37% Qantas owned labour hire company based in Bangkok) working on Australian Jetstar routes, are employed on contracts which provided base salaries of just 14,000 baht (\$400 per month) and effectively no limit on hours of duty.<sup>10</sup>

Average earnings for a flight operations officer in Indonesia is A\$338 per month, in Thailand between A\$391-\$490 per month compared to the minimum rate for an Australian airline officer of A\$2,430 per month.<sup>11</sup> The current minimum annual base rate for Qantas call centre agents in New Zealand is NZ\$31,000-34,000 compared to A\$40,245-\$45,673 for Australian workers.<sup>12</sup>

The potential to replace Qantas employees with cheaper labour undermines the job security of its Australian based workers. Access to such significantly cheaper labour is an easy way for Australian companies to cut costs, a strategy Qantas has pursued in recent times.

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<sup>7</sup> Also note Qantas' newly announced joint venture, Jetstar Japan.

<sup>8</sup> Qantas Airways Limited, ASX announcement "Building a Stronger Qantas, August 2011

<sup>9</sup> The Qantas Enterprise Agreement provides a salary of A \$103,373 for a first officer with at least 10 years' experience. The Jetstar Asia terms provide A \$57,000 for a first officer with at least 10 years' experience.

<sup>10</sup> Sunday Tasmanian, 12 June, 2011

<sup>11</sup> ILO, 2006.

<sup>12</sup> Airline Officers Rates of Pay, Levels 3 and 4, First Increment, Australian Services Union (Qantas Airways) Agreement 9.

The overall growth in the Qantas group over the past decade has been in foreign jobs, not Australian jobs. In fact, there has been a steady decline in the number of Australian based Qantas employees. The number of full time equivalent employees at Qantas has dropped from 35,520 in 2005 to 32,490 in 2010- a loss of approximately 3030 full time jobs. The latest in a series of redundancies was the September 2011 announcement of 1,000 job cuts across the Qantas group.<sup>13</sup>

#### 4. Sham corporate structures

In a recent Fair Work Australia full bench majority decision, Qantas' wholly-owned New Zealand based subsidiary, *Jetconnect*, was held not to be bound by *the Qantas Shorthaul Pilot's Award (2000)* even though:

- Jetconnect is a wholly owned subsidiary of Qantas;
- The aircraft are leased by Jetconnect to Qantas;
- The aircraft bear Qantas livery;
- The flights are tagged as Qantas ;
- The flight schedules, routes and destinations are determined by Qantas;
- All administration is conducted by Qantas, including payment of employees;
- Employees wear Qantas uniforms and have Qantas staff numbers; and
- Qantas is responsible for all ticketing and marketing.<sup>14</sup>

Jetconnect employs about 600 staff, including about 100 pilots, on cheaper New Zealand dollars. Pilots receive about 30% less than their Australian counterparts, with the remainder of the workforce paid about 40% less. Despite being registered in New Zealand as a domestic New Zealand operation, Jetconnect has increasingly taken over the trans-Tasman flights previously operated by Qantas, so that Jetconnect now flies more than two thirds of all Qantas trans-Tasman flights.<sup>15</sup>

The majority of the Fair Work Australia Full Bench rejected the union's invitation to "lift the corporate veil" on the Qantas offshore arrangement accepting Qantas and Jetconnect's argument that the degree of Qantas control over operational and employment matters of Jetconnect was '*entirely consistent with the parent-subsidiary relationship and the wet lease capacity services contract between Qantas and Jetconnect.*'<sup>16</sup>

However, agreeing with the unions, Senior Deputy President Lea Drake, in her minority ruling, found that Qantas had "total control" of Jetconnect and that Qantas had set up the New Zealand operation as "smoke and mirrors" necessary to achieve Qantas's purpose "to reduce costs by reducing the costs of pilots while still operating its trans-Tasman route".<sup>17</sup>

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<sup>13</sup> Qantas Airways Limited, ASX announcement "Building a Stronger Qantas, August 2011.

<sup>14</sup> *Australian and International Pilots Association v Qantas Airways Limited and Jetconnect Ltd [2011] FWAFB 3706*, 6 September 2011, paras 11, 12

<sup>15</sup> *Ibid*, paras 13,14. Note, the AIPA is currently considering appeal options for this decision.

<sup>16</sup> *Op cit*, *Australian and International Pilots Association v Qantas Airways Limited and Jetconnect Ltd [2011]* paras 20, 22

<sup>17</sup> *Op cit*, *Australian and International Pilots Association v Qantas Airways Limited and Jetconnect Ltd [2011]* paras 21, 129

At the same time that Jetconnect was taking over Qantas trans-Tasman routes, displaced Qantas Pilots were given the option of taking leave without pay and seeking employment with Jetstar on lower wages.

In another example, in March 2011, Qantas subsidiary, Jetstar New Zealand began offering employment contracts to cadet pilots in the Australian operations of Jetstar. The cadets were employed under individual employment contracts which were inconsistent with a number of conditions of the *Air Pilots Award 2010*.

The common law contracts of the New Zealand based cadet pilots provided for an annual wage of NZ\$42,000 (A\$32,500). The cadets were obliged to repay their training costs at A\$10,500 per annum for six years. If they left the company before then, they were required to repay the training costs, plus a penalty of A\$21, 00.00. Despite being hired in New Zealand, the cadet pilots flew Australian routes.<sup>18</sup>

The establishment of Jetconnect was clearly an artificial corporate arrangement to avoid the Australian legal award obligations of the *Qantas Shorthaul Pilot's Award (2000)*.<sup>19</sup>

The ACTU has consistently opposed strategies adopted by Australian companies to use corporate structures in conjunction with off-shoring, to replace existing local employees with cheaper labour.

The ACTU supports the proposed *Qantas Sale Act (Amendment) Bill* to the extent that it seeks to redress the balance between Qantas' corporate expansion and the interest of Australian public, and in particular those who work for the company.

The Bill amends the original *Qantas Sale Act*, to recognise the role that Qantas subsidiaries, related entities and complex corporate partnerships now play in the operation of the company and its capacity to promote Australia's national interests.

We have concerns that the current and future directions laid out by the Qantas group are contrary to the national interest. The Qantas corporate growth strategy is built on the profits to be made entering a growing Asian market and access to lower wages and conditions for foreign based workers. Whilst all Australians are supportive of Qantas' corporate growth, this strategic direction is not consistent with the interests of the Australian aviation industry or the public interest.

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<sup>18</sup> In May 2011, unions commenced legal action to achieve coverage of the Jetstar cadets in the *Air Pilots Award 2010*. In September 2011, following conciliation proceedings, Jetstar agreed to employ the cadets under the Jetstar Airways Pilots Agreement 2008.

<sup>19</sup> Op cit, *Australian and International Pilots Association v Qantas Airways Limited and Jetconnect Ltd [2011]* paras 17, 18, 19



## 5. The national interest

As a former national airline, still reaping the rewards of community investment and government support, Qantas's obligations extend beyond those of other businesses.

In moving the Qantas Sale Bill, the then Minister for Finance guaranteed that Australians would not lose on their investment in the national airline when it was privatised and that *"the fundamentals of the national Interest safeguards needed to be enshrined in the legislation, which included "maintaining the basic character of Qantas."*<sup>20</sup>

These fundamentals of the national interest include a commitment to Australia's political, social and economic interests, national security, essential services and infrastructure, aviation safety, and the welfare of the Australian people.

The expectation that Qantas fulfils its reciprocal national obligations, is still strongly felt amongst the Australian public, who continue to regard the airline as a national icon.

Community expectations of Qantas extend to decent corporate behaviour, including its employment relations policies. A June 2011 *Auspoll* Report found that two thirds of respondents were proud to have Qantas as Australia's national airline and 83% believed the company should employ people under conditions that Australians would find acceptable wherever the airline operates.

Public opinion polling conducted by the Australian and International Pilots Association (AIPA) found that 83% of respondents thought that Qantas Pilots should operate Qantas flights, or at the very least, non-Qantas pilots operating Qantas flights should be paid Qantas terms and conditions.<sup>21</sup>

Conversely, the general community and shareholders expressed concern at the 2011 Qantas Annual Report disclosure of a combined 62% pay increase for Qantas Executives (taking executive packages to a ratio of 140:1 to Qantas worker's wages), despite simultaneously reporting poor shareholder returns and announcing 1,000 job cuts.<sup>22</sup>

Qantas has reaped the rewards of its historical origins as a national carrier, supportive governments, dominant market share, loyal community and dedicated employees. Consequently, it has had a head start compared to many other airlines due to its established lion's share of the Australian market. Qantas receives approximately 73.5% of the total domestic airline industry revenue.<sup>23</sup> From 2009 to 2011, the Qantas Groups profit before tax grew from \$100m to \$552 million, a fivefold increase. Its operating cash flow also experienced a 55% increase to about \$1.8billion.<sup>24</sup> For the financial year 2010-11, Qantas'

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<sup>20</sup> Qantas Sale Bill 1992, Second Reading Speech, Mr Willis at [www://parlinfo.aph.gov.au](http://www.parlinfo.aph.gov.au)

<sup>21</sup> AIPA commissioned poll by 'Your Source', 2011

<sup>22</sup> Qantas Airways Ltd, Preliminary Final Report Year Ended 30 June 2011, Underlying Profit Before Tax Announcement, 24 August 2011

<sup>23</sup> IBIS World Company Report Qantas Airways Limited, Premium Report, 30 June 2010, p. 18

<sup>24</sup> Qantas Airways Ltd, Preliminary Final Report Year Ended 30 June 2011, Underlying Profit Before Tax Announcement, 24 August 2011

passenger revenue increased by 10% and freight markets by 3% and ancillary passenger revenue (frequent flyer programme) grew by 50%.

The IBIS World Company Report notes the Qantas Group profitability as volatile over the years in line with the aviation sector world-wide, however, *“profit simply remaining above zero made the Qantas Group a success compared with the world’s other major airlines.”*<sup>25</sup>

However, Qantas has clearly articulated that its growth strategy is based on expansion into domestic and international services based in foreign countries. This does not promote a commitment to the local Australian aviation sector or the national interest.

The Unions share Senator Xenophon’s concern that Qantas may be using a ‘strategy of private equity sell off by stealth’ by transferring losses across Qantas group to its international operation to substantiate its argument that the international operation is making a loss, justifying the need for further off-shoring of international operations.<sup>26</sup>

This strategy flies in the face of decent corporate behaviour of a national icon and is the reason behind the growing unease amongst Qantas employees regarding their employer’s level of commitment to them and their job security.

The amendments proposed by the *Qantas Sale Act (Still Call Australia Home) Bill 2011* attempts to restore some of the legislative intent to preserve Qantas’ *“basic character” as a national airline* by ensuring Qantas’ operation base also includes those of its subsidiaries and associated entities and also by increasing its accountability to Australian shareholders.<sup>27</sup>

## **6. Employment**

The loss or diminution of Qantas international services based in Australia will affect Australia’s capacity to provide employment opportunities in the aviation industry.

In 2008, in response to rumours of a foreign takeover bid for Qantas, the Hon Anthony Albanese MP restated that *“the Government is committed to growing a strong Australian-based aviation industry and Qantas is a key part of Australia’s aviation future.”*<sup>28</sup>

If the framework of aviation legislation continues to turn a blind eye to the increased use of foreign workers, Australian airlines will continue to invest in foreign based operations and infrastructure and foreign direct and indirect employment opportunities, at the expense of investing in the growth of a strong Australian aviation industry. Australia’s aviation future, including employment opportunities and skills development, will continue to stagnate.

The Australian aviation industry provides significant ground based employment opportunities including engineering and maintenance, customer services, catering,

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<sup>25</sup> Ibis World Company Report Qantas Airways Limited Premium Report 30 June 2010, p.18

<sup>26</sup> [www.news.com.au/business/xenophon-attacks-qantas-in-senate-August 24, 2011](http://www.news.com.au/business/xenophon-attacks-qantas-in-senate-August-24,2011)

<sup>27</sup> The amendment allows applications to the court (for injunctions) by 100 shareholder members or shareholder members who hold at least 5% of the shares in Qantas.

<sup>28</sup> Office of the Hon Anthony Albanese MP, Media Release, December 3, 2008

information technology services, baggage handling, emergency services and a variety of administrative roles.<sup>29</sup>

The *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* specifically requires that Qantas, its subsidiaries or any associated entities base the majority of their heavy maintenance operations in Australia. This would assist to stem the flow of skilled aircraft maintenance, engineering and technical work offshore by encouraging investment in local employment opportunities.<sup>30</sup>

Qantas has also been steadily out-sourcing (both on and off-shore) various head office functions including administrative and technology functions as well as ground services operations. In the last decade over 1,000 Australian based Qantas IT jobs have been off-shored.<sup>31</sup>

The amendment requiring the majority of Qantas' or its subsidiaries' principal operational centres to be based in Australia will also help stem the flow of head office and allied ground based work to overseas based subsidiaries.

Ensuring the viability of the local aviation industry also promotes significant indirect employment opportunities, including for example, in tourism, hospitality, cargo and freight services, manufacturing and construction. In fact, it is estimated that, for each person directly employed by an airline in Australia, 5 more jobs are created as a consequence. Tourism contributes almost 5% of our national GDP, and air travel delivers 99% of tourists to our shores.<sup>32</sup>

When the ACCC declined, including on public interest grounds, to authorise the Qantas Limited and Air New Zealand merger, the Commission identified that the public interest test under the Trade Practices Act 1974 included "the expansion of employment in efficient industries as a public benefit".<sup>33</sup>

The ongoing viability of Australian based Qantas operations is manifestly in the national interest and for the public benefit.

## **7. Skills development**

The government National Aviation Policy White Paper specifies the importance of retention and development of skilled and experienced employees in the sector. This cannot happen if recruitment and training is conducted off-shore.

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<sup>29</sup> In the financial year ending June 2009, the aerospace industry contributed over \$1.56 billion to the economy, making it the largest contributor within the Transport equipment manufacturing industries – Manufacturing Skills Australia: statistics for the Aerospace industry as at April 2011.

<sup>30</sup> For example, Qantas's maintenance facilities employ more than 6,300 workers in Australia, and is the major employer of airline maintenance and licensed airline maintenance engineers in Australia.

<sup>31</sup> Australian Services Union Submission to the Rural Affairs and transport Committee of the Australian Senate, October 2011.

<sup>32</sup> Australian Government, National Aviation Policy, White Paper, December 2009, p.31

<sup>33</sup> Tim Grimwade, ACCC General Manager, Adjudication Branch correspondence to the AMWU; 28 May, 2003

The aerospace training, skills development and qualifications framework has been specifically designed to meet the competency requirements identified by CASA.<sup>34</sup> In addition, there are identified current skill shortages for both avionics and mechanical aircraft maintenance engineers.<sup>35</sup> Further offshoring of maintenance engineering training will result in a further drift of apprentices and loss of skilled personnel.

For example, Qantas shut down its RB211 engine maintenance shop in Sydney several years ago, transferring the work to a facility in Hong Kong. Qantas and other airlines have experienced significant RB211 failures in recent years, and the engine is now under surveillance by Qantas and CASA. In closing down its facility which specialised in this type of engine, Qantas has lost its ability to make necessary safety adjustments and modifications in a timely manner.

The amendment requiring that Qantas, its subsidiaries or any associated entities, to maintain their principal training operations in Australia, will encourage local investment in skills development and training.

For example, Qantas has recently announced the purchase of 110 new A320s. The heavy maintenance servicing of these new planes will be required approximately 5 years after they commence service. The *Qantas Sale Act Amendment Bill* will encourage Qantas to develop the Australian engineering capacity required to service its fleet modernisation rather than develop this capacity in New Zealand or Asia.

## **8. National Security**

As the national airline, Qantas historically fulfilled a role of an airline aligned with the Australian national security and essential services.<sup>36</sup>

In 2008, the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government restated this role, announcing that “... a *National airline is important- not just to the economy, but also for Australia’s national security.*”<sup>37</sup>

Australian civil society relies on Qantas in times of national emergency and disaster to have an effective and responsive capacity, for example Cyclone Tracey, Timor and in the aftermath of the 2002 Bali bombings Qantas transported emergency personnel, supplies and services as well as evacuating wounded and deceased citizens.

In addition, the Department of defence is heavily geared toward the civil aerospace industry delivering its mechanical and engineering capacity.<sup>38</sup> Qantas Defence Services, formed in

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<sup>35</sup> Manufacturing Skills Australia; National Skill Shortage report, June 2011

<sup>36</sup> For example, during the Second World War, Qantas maintained vital air links and provided critical services to the allied forces and the airline’s services to Japan began on behalf of the Royal Australian Air Force.

<sup>37</sup> Office of the Hon Anthony Albanese MP, Media Release, December 3, 2008

<sup>38</sup> The Aerospace Industry Action Agenda reports a substantial growth in defence demand in the aerospace sector: Action Agenda- Defence procuring- Industry scoping Workshop Issues paper, DISR, Canberra; 12 September 2001

1999 to support air defence capacity, employs approximately 500 people and provides support to a range of major Australian Defence Force capability systems.<sup>39</sup>

The defence force's reliance on Qantas requires them to be in Australia and have the skills and person hour capacity to deliver, including a commitment to developing Australian based aircraft maintenance engineering resources, investing in training apprentices and skills development across its workforce.

The focus on expansion into Asia, at the expense of investment in local infrastructure and continued off-shoring of local operations will diminish the national capacity to ensure the provision of critical infrastructure and essential civil services in Australia.

The *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* will ensure Qantas maintains at least core infrastructure and trained personnel to fulfil this role.

## 9. Safety

In presenting the *Air Navigation Bill* in 1920, the then Assistant Minister for Defence, Sir Granville Ryrie, outlined the need for legislation to protect the national interest of the Australian people with respect to airline safety because, *"At present there is nothing to prevent persons flying any machine they like, no matter what brand or make; there is no power to insure that the machines shall be [...] airworthy. Further, there is nothing now to prevent the owner of any machine taking hire from passengers for flights, and this, of course, is a real menace to the public..."*<sup>40</sup>

Obviously, there have been many significant developments in the requirements of aviation regulation since 1920, and it is appropriate to revisit the capacity of the legislation to sufficiently regulate the safety of the public and promote the national interest.

Aviation employees' terms and conditions have a direct impact on the quality of an airline's operations and its capacity to meet Australian safety and service standards. A strong aviation industry which attracts and retains skilled workers also has an immediate impact on safety.<sup>41</sup>

Senator Xenophon's explanatory memorandum to the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* specifically highlights the importance of regulating flight and duty time limitations.

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<sup>39</sup> Including the Lockheed C-130H Hercules and P-3 Orion, the Boeing B737-700IGW and Bombardier Challenger CL604 Special Purpose Aircraft, Sikorsky S-70A-9 Black Hawk, BAE Hawk 127 and the EADS CASA KC-30A Multi Role Tanker Transport

<sup>40</sup> Sir Granville Ryrie, Assistant Minister for Defence, *Air Navigation Bill 1920*, Second Reading Speech, House of Representatives, Monday 22 November 1920.

<sup>41</sup> For example, surveys into airline accidents identify that 12% of major accidents world-wide are due to maintenance deficiencies.

Overseas based employment contracts for flight and cabin crew are not subject to the same duty limits as those on Australian contracts; often allowing long hours and shifts which can be extended past what would be considered safe in Australia.<sup>42</sup>

In its consideration of the *Transport Safety Investigation Amendment (Incident Reports) Bill 2010*, the Senate Rural Affairs and Transport References Committee recommended that CASA should expedite necessary changes to the regulations governing flight and cabin crew as per the International Civil Aviation Organisation (ICAO) fatigue guidelines as a priority, or alternatively, amend the *Civil Aviation Act (1998)* to include cabin crew fatigue risk management under CASA's regulatory oversight.<sup>43</sup>

The *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill* aims to protect Australian safety standards by ensuring that Australian based airlines and their subsidiaries and partners who operate regular scheduled flights for that airline, maintain the same terms and conditions which apply to the Australian airline. These terms and conditions (such as flight duty limitations) constitute part of the Australian aviation safety regulation matrix.

## **10. The Bills**

We agree with Senator Xenophon that *"it is not acceptable that a crew member can be employed by an Australian airline, flying on an Australian plane, and be employed under workplace conditions and receive pay that we would consider unacceptable in Australia."*<sup>44</sup>

The ACTU supports the amendments proposed by the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* which provide that that flight crew and cabin crew working in connection with regular public transport operations of Australian international airlines, and who are not directly employed by the airline, receive wages and conditions of employment that are no less favourable than they would have received if they were directly employed by the airline.

We note that the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* does not extend to ground-based airline operations, however, we take this opportunity to point out that the extensive wage gap also exists between Australian and foreign based ground crew.

Schedule 1 of the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill* amends the *Air Navigation Act 1920 (Cth)* to place a new condition on the International Aviation Licences (IALs) held by Australian international airlines. The condition requires the airline to ensure that flight and cabin crew, working in connection with a scheduled international air service of the airline, who are not directly employed by the airline, receive wages and

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<sup>42</sup> *Lateline* investigatory report, ABC, July 2011

<sup>43</sup> Senate Rural Affairs and Transport References Committee, Report on the *Transport Safety Investigation Amendment (Incident Reports) Bill 2010*, Recommendations 20 and 21, pp.ix-x.

<sup>44</sup> Air navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, Second Reading Speech, 17 August 2011

conditions of employment that are no less favourable than they would have received if they had been directly employed by the airline.<sup>45</sup>

The Bill ensures that this condition also applies to an IAL held by a subsidiary or associated entity of the Australian international airline. An associated entity is defined by s.50AAA *Corporations Act 2001*, and includes cases where the principal controls, or has significant influence over the associate or where the operations, resources or affairs of the principal are material to the associated entity as well as where the associate controls, has significant influence over or investments in the principal.<sup>46</sup>

These amendments ensure that the basic regulation of wages and conditions affecting the safety and quality of service, which are relevant to the granting of an IAL by Australian regulatory authorities, are consistent across any subsidiaries, partners or other associated entities that airline may engage to operate services on its behalf.

Schedule 2 of the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill* amends the *Civil Aviation Act 1988* to place a new condition on all AOCs which require the holder of the AOC to ensure that flight crew and cabin crew working in connection with regular public transport operations of the holder of the AOC, and who are not directly employed by the holder of the AOC, receive wages and conditions of employment that are no less favourable than they would have received if they were directly employed by the holder of the AOC.

The amendments proposed by the *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* requiring Australian international airlines to pay the same wages and conditions of employment to employees of its subsidiaries and associated entities, will mitigate the incentive to engage in use artificial corporate structures in order to access cheaper labour offshore, at the expense of Australian jobs.

The *Qantas Sale Act (Still Call Australia Home) Bill 2011* requires Qantas, its subsidiaries or any associated entities to have its principal operational centre (on aggregate) based in Australia. These amendments clarify the intention of the original Qantas Sale Act. This legislation will encourage Qantas to maintain a truly Australian airline, rather than moving offshore.

The proposed amendments to the *Qantas Sale Act* will also encourage Qantas to maintain some ongoing investment in Australian ground based operations and employment opportunities for Australian workers.

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<sup>45</sup> Schedule 1, *Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011*. Note (1) Australian international airline includes a designated airline under a bilateral treaty and (2) conditions of employment includes flight and duty times.

<sup>46</sup> "An entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies." See ss.50AA and 50AAA *Corporations Act 2001* (Cth)

## 11. Conclusion

The future of the Australian aviation industry is in jeopardy unless relevant aviation legislation is amended to protect Australian interests

It is clear that the *Air Navigation Act (1920)*, *Civil Aviation Act (1988)* and the *Qantas Sale Act (1992)* no longer provide adequate protection of the national interest given the complex, globalised modern aviation sector.

The proposed amendments update the legislative framework to ensure the application of Australian legal principles in relation to employment, safety and the national interest, apply more relevantly to the modern structure of the aviation sector.

To this end, the ACTU supports the *Air navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011* and the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011*, which recognise and address the role that subsidiaries, related entities and complex corporate partnerships now play in the operation of modern Australian aviation industry.

The aviation sector is unique in terms of the interrelatedness of employment regulation with aviation safety and the national interest. This is especially the case for Qantas, whose history is inextricably linked with its role as the national carrier.

It is critical that the overarching legal framework for the aviation industry be updated in order to ensure decent employment and safety standards, the ongoing viability of the local aviation sector and the promotion of Australian interests.