Chapter 2

Views on the Bill

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

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

(a) the nature of the challenges facing Qantas, and whether the Bill provides an appropriate and optimal response to these challenges;

(b) the effect the proposed amendments to the Qantas Sale Act might have on Australian-based Qantas jobs;

(c) the impact that offshoring of maintenance work—which some witnesses argued would likely increase should the Bill be enacted—might have on passenger safety;

(d) the ways in which Qantas could be restructured (particularly in terms of its domestic and international operations) should the Bill be enacted; and

(e) whether foreign ownership of Qantas could potentially damage Australia's national interest.

Views on the problems facing Qantas

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

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

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

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

> strategy directed at weakening Qantas and promoting the interests of Virgin's foreign owners.[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

The future of Qantas jobs

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

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

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

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

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

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

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

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

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

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

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

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

> There is no obligation under the [Qantas Sale Act] for the facilities which support Qantas' domestic operation to be located in Australia, in recognition of the fact that it would be logistically impossible for any Australian airline to conduct domestic services from an offshore base. Furthermore, it would be highly inefficient as well as impractical for Qantas to undertake any significant proportion of its operations from Australia (both domestic and international) with staff domiciled overseas, precluding the possibility that the Bill would result in the transfer of skills or loss of jobs overseas. Virgin Australia also notes that the Bill would have no impact on the obligations Qantas has, in common with all other Australian employers, under the *Fair Work Act 2009* (Cth) and the *Migration Act 1958* (Cth).[21]

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

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

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

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

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

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

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

Maintenance jobs

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

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

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

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

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

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

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

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

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

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

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

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

2.38 Virgin Australia argued that it would be 'highly inefficient as well as impractical for Qantas to undertake any significant proportion of its operations from Australia (both domestic and international) with staff domiciled overseas, precluding the possibility that the Bill would result in the transfer of skills or loss of jobs overseas.'[28]

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

> Although it may have been operationally and economically efficient for Qantas to conduct all of its aircraft heavy maintenance in Australia when it had a fleet consisting solely of B747s and B767s, the lack of critical mass in several aircraft types in the current Qantas fleet is likely to prevent all such aircraft maintenance being conducted in Australia, based on cost considerations. The maintenance requirements of new generation, modern aircraft are also significantly lower compared to earlier aircraft models. The amendments proposed by the Bill will have no impact on the commercial realities associated with aircraft maintenance.
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> In addition, the vast majority of any airline's aircraft maintenance activities consist of day-to-day line maintenance requirements, which are carried out while aircraft are in service. It would be logistically impossible to send aircraft overseas to have routine line maintenance conducted. Accordingly, the Bill will not trigger a shift to more of Qantas' aircraft maintenance being conducted overseas.[29]

Skills and training

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

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

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

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

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

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

manufacturing workers.[31] However, Virgin Australia reported in its submission that it was investing in:

> …the development of skills which benefit the Australian aviation industry, including through the establishment of a pilot cadet scheme and an engineering apprenticeship program.[32]

Committee view

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

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

Safety concerns

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

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

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

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

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

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

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

> of safety when it comes to aircraft maintenance performed in these same countries.[34]

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

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

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

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

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

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

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

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

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

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

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

> The Chicago Convention imposes on each member State the responsibility for compliance with standards and practices related to safety, including regulatory oversight of its national carriers. The Civil Aviation Safety Authority (CASA) develops and enforces the safety standards which Australian carriers are required by law to observe, regardless of where aircraft maintenance is conducted. Provided Australian airlines meet the requisite CASA standards, there is no logical reason to expect that a decision to conduct some aircraft maintenance activities offshore will result in sub-optimal aviation safety outcomes.[39]

Committee view

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

The ownership structure of Qantas

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

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

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

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

40 Explanatory Memorandum, p. 1.

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

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

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

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

Virgin Australia's compliance with the Air Navigation Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Department of Infrastructure and Regional Development Guidance Note, rather than within the legislation itself.[49]

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

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

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

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

2.66 The AIPA further suggested to the committee that:

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

National interest considerations

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

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

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

> Virgin Australia also has a proven ability to support Australians in times of need, having mobilised resources at short notice to redeploy capacity to assist tens of thousands of travellers stranded during the Qantas grounding in 2011 and when Air Australia went into administration in 2012. We have provided relief flights and offered assistance to support recovery operations following natural disasters. These factors demonstrate the importance of Virgin Australia as a national carrier and highlight the significant contribution we have made, and will continue to make, to the nation's aviation infrastructure.[58]

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

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

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

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

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

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

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

which this provision of the Defence Act had been invoked in order to require Qantas to provide its aircraft for assistance.[60]

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

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

> There is, clearly, considerable risk associated with a key national asset. We have not talked about this tonight, but I think it is important to make the point that domestic aviation in Australia is important because we are a very large decentralised continent. It is an essential service. We do not have things like high-speed rail. We do not live close together. Transcontinental and intercity aviation is extremely important to the Australian economy and our standard of living. We are a long way from anywhere else. You cannot drive to the next country. International aviation is important to us.
>
> There is a national interest associated with this. The history of private equity investments in businesses which are associated with the national interest is quite poor. They borrow, essentially, against the company's own balance sheet to buy the thing, break it up, strip the assets, get out and cash out. That is the business model. It is not about actually running an airline.[62]

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

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

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

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

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

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

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

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

Committee view

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

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

Recommendation 1

2.83 The committee recommends that the Bill be passed.

Senator David Bushby
Chair

64 Qantas, *Submission 4*, pp. 1–2.