Chapter 2

Key Issues

2.1 This chapter discusses the key issues raised during the inquiry. It begins by examining the evidence provided through submissions and at the public hearings that relate specifically to the content and implications of the two bills under inquiry. The second half of the chapter discusses some of the broader issues considered in the context of the inquiry and in relation to the industrial action involving Qantas and the relevant unions.

Specific issues raised regarding the bills

2.2 There were a range of views regarding both bills considered in this inquiry but, in general, the airline companies and the Government departments and agencies that provided evidence considered several aspects of the bills to be highly problematic for the airline industry. On the other hand, several unions and individuals that provided evidence stated general support for either one or both bills.

2.3 In relation to the Aircraft Crew Bill, the key issues raised were:

- the bill's extraterritoriality and its problem with enforcement;
- the effects on the competitiveness of airlines in foreign and domestic markets;
- the pay and conditions of overseas based crew;
- the appropriateness of using the *Civil Aviation Act 1988*, the *Air Navigation Act 1920* and Air Operator's Certificates (AOCs) for workplace relations regulation;
- fatigue management and safety; and
- the ambiguity of certain terms and conditions.

2.4 In terms of the Qantas Sale Amendment Bill, the key issues raised were:

- the purpose of the original *Qantas Sale Act 1992* and Qantas' business structure;
- the outsourcing and off-shoring of Qantas labour and facilities (particularly maintenance);
- the make-up of the Qantas board and the injunction clause in the bill; and
- the ambiguity of the bill and difficulties with its implementation.

2.5 These issues are discussed in turn and, where relevant, there is discussion of the new draft amendments proposed by Senator Xenophon.

Aircraft Crew Bill

Extraterritoriality

2.6 A major criticism of the bill raised as part of the evidence to the inquiry was that the Aircraft Crew Bill was extra-territorial in its scope. For example, the Department of Infrastructure and Transport noted that:

> ...the Bill may raise issues with our obligations under international law as it may be seen as imposing Australian employment conditions extra-territorially and may also be inconsistent with Australia's bilateral air services arrangements.[1]

2.7 Virgin Australia raised similar concerns in respect to various aspects of the bill. For example, it claimed that the bill's addition of section 28CA to the *Civil Aviation Act 1988*, regarding New Zealand AOCs with Australia New Zealand Aviation (ANZA) privileges would be 'an attempt to legislate extraterritorially' and raised doubts about whether the bill could be enforced in New Zealand with respect to its Pacific Blue operations.[2]

2.8 In addition, Virgin Australian raised concerns about how the bill would affect the code-sharing arrangements for its long-haul airline V Australia.[3] As its submission explains:

> Adopting a literal interpretation of the Bill, either the proposed section 16A amendment to the *Air Navigation Act 1920*, or the proposed section 28BJ amendment to the *Civil Aviation Act 1988* could apply to code share services offered by V Australia on international sectors operated by our alliance partners, jeopardising a core component of our strategy as outlined above, and accordingly, our long-term competitiveness and sustainability.
>
> We would contend that such a construction, which effectively seeks to regulate employment and aviation safety matters of the countries in which our alliance partners are based, for example, New Zealand, United Arab Emirates and the US, would be both unworkable and unenforceable as these are matters for foreign governments. As noted in the previous section regarding Virgin Australia, it would also be inconsistent with the Bill's purpose of protecting "workplace conditions of foreign or overseas-based flight or cabin crew who are *working on* Australian-owned airlines or their subsidiaries" to extend the Bill's application to the aircraft crew of services operated by foreign airlines with which Australian airlines have a contractual arrangement concerning code share services (emphasis added).[4]

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1 Department of Infrastructure and Transport, *Submission 8*, p. 3.

2 Virgin Australia, *Submission 5*, p. 6.

3 Virgin Australia, *Submission 5*, p. 9.

4 Virgin Australia, *Submission 5*, p. 9.

2.9 The Department of Infrastructure and Transport shares the view that the bill would apply to Australian airlines' code sharing relationships (as well as subsidiary businesses, wet-leases, and minority shareholdings) and that this may significantly risk the capacity of airlines to code share and operate on routes that rely on this arrangement.[5]

2.10 Although the Department of Education, Employment and Workplace Relations provided no comment to the inquiry on the Aircraft Crew Bill's extra-territorial application, it does discuss how the *Fair Work Act 2009* currently applies in some circumstances potentially relevant to the bill:

> Foreign employees engaged outside Australia principally to work overseas, including on international flights to and from Australia, are not covered by the FW Act (see further below). This is consistent with the general principle that the law governing a contract is the law of the place in which the contract is formed. However, work carried out by overseas-based employees on Australian domestic flights can be seen as a separate and distinct part of their engagement that may be covered by the FW Act and relevant modern awards.[6]

2.11 Importantly, the Department also outlined in its submission what it considers to be an appropriate limit for the coverage of the *Fair Work Act 2009*:

> The FW Act should not be interpreted as applying to pilots and crew of foreign airlines operating between two or more points in Australia as part of an international flight, as this would impermissibly interfere with the jurisdiction of another State.[7]

2.12 In light of this issue, it should be noted that the new draft amendments to the Aircraft Crew bill put forward by Senator Xenophon (and subsequently circulated in the Senate), explicitly seek to limit the scope of the bill to domestic aviation operators, through the proposed amendments to the *Fair Work Act 2009*.[8]

Foreign and domestic competitiveness

2.13 In addition to the concerns raised over the extraterritorial scope of the bill and its legal enforcement in foreign jurisdictions, a number of submitters were concerned that the bill would unduly impact on the competitiveness of Australian airlines in foreign markets. Some of these submitters and witnesses outlined the highly competitive nature of the airline industry and the link between the industry's financial performance and the world economy.

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5 Department of Infrastructure and Transport, *Submission 8*, pp 1–3.

6 Department of Education, Employment and Workplace Relations, *Submission 9*, p. 2.

7 Department of Education, Employment and Workplace Relations, *Submission 9*, p. 3.

8 Draft Amendments, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, p. 1.

2.14 In regard to this difficult international environment, Qantas identified the need for its participation in the 'Asian Century' in order to grow as a business to the benefit of shareholders and employees.[9] Furthermore, Qantas stated that it needs to have the 'reciprocal opportunity' to compete in foreign markets on the same terms as foreign and other Australian businesses and that this would be undermined by the bill's requirements to provide relevant overseas-based crew the same wages and conditions as corresponding Australian employees.[10]

2.15 Virgin Australia reiterated the point that the bill will undermine Virgin Australia's future competitiveness in key markets and possible growth opportunities, and that this would also have follow-on effects for Australian jobs.[11]

2.16 These concerns were not just limited to the impact of the bill on the foreign competitiveness of airlines due to the wage and condition restrictions it would have. Some submitters expressed concern that the bill may impact on regional flights which may have different employment conditions to mainline crew.[12]

2.17 This was particularly noted by Qantas in relation to the new draft amendments put forward by Senator Xenophon. As part of his opening statement to the public hearing on 6 February, Mr Alan Joyce stated:

> ...the amendments to the cabin crew bill would not preserve Australian jobs; they would destroy them, especially in regional Australia. As you know, for many years now, we have had a liberalised aviation sector with domestic open skies here in Australia, but this has not led to new or sustained international air services by foreign carriers to many of our regional centres. The fact is the Qantas Group network remains critical to maintaining and growing those direct services. That means, as a business, we need to be strong and profitable to retain sufficient scale in our regional, national and international networks.
>
> Whenever Qantas Group airlines use foreign crew and Australian crew on the same flights, Australian crew operate under Australian wages and conditions and foreign based crews on the terms and conditions of the domicile country where they are employed and where they live. This is standard practice adopted by airlines all over the world. There are a limited number of routes where this occurs within Australia. We call them tag flights, involving a domestic sector of an international flight primarily services Australian regional destinations. These tag flights enable us to [service] regional destinations in Australia such as Cairns and Darwin. If the amendments are passed and the international crews will be treated as Australians in terms of wages and conditions on domestic legs of

9 Qantas Airways Ltd, *Submission 2*, p. 2.

10 Qantas Airways Ltd, *Submission 2*, pp 1–2.

11 Virgin Australia, *Submission 5*, p. 10.

12 Department of Infrastructure and Transport, *Submission 8*, p. 3. See also Virgin Australia, *Submission 5*, p. 8.

> international flights, we will [no] longer be able to viably operate those international services.[13]

2.18 A number of committee members are of the view that Qantas did not provide any further information to back up this assertion, despite requests from the committee.[14]

2.19 The committee also notes that there appear to be no technical or legal definitions of 'tag flight', and therefore no technical or legal requirement to designate certain flights as 'domestic' or 'international'.

The pay and conditions of overseas crew

2.20 A key aspect of the bill is that it intends to remove the possibility of significant pay and condition differences between Australian and foreign-based crew that operate on the same flight. This was criticised by submitters, as outlined above, because of its potential to restrict the international competitiveness of Australian airlines. However, a number of submitters supported the bill because they argued that the differences in Australian and foreign wages and conditions was leading to the off-shoring of Australian jobs in the airlines. There were also serious concerns among some members of the committee about the disparity in pay and conditions between domestic and overseas-based workers.

2.21 For example, the Transport Workers Union of Australia (TWU) stated that it supports the aspects of the Aircraft Crew Bill which seeks through international aviation licences to ensure cabin/flight crew on international flights receive no less favourable pay and conditions than those directly employed by the airline. This was explained with reference to Thai-based cabin crew employed by Jetstar receiving lower pay and working longer hours than Australian-based crew.[15] Qantas disputed the extent of pay differences that had been portrayed in the media in these cases and stated that Qantas/Jetstar Thai crew, for example, are paid 10 times more than the average Thai wage.[16]

2.22 In its submission, the Australian Council of Trade Unions (ACTU) asserted that Qantas, through the use of outsourcing arrangements, is avoiding its 'obligations' to abide by Australia's industrial relations laws while at the same time accepting the 'privileges of holding an Australian airline licence'.[17] The ACTU added that both bills should be supported because:

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13 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 2. Note the bracketed typographical changes are based on correspondence from Qantas Airways Ltd.

14 See for example, Qantas Airways Ltd, *Answers to written questions on notice*, 7 March 2012.

15 Transport Workers Union of Australia, *Submission 7*, pp 13–14.

16 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 5–6.

17 Virgin Australia, *Submission 5*, p. 3.

> ...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.[18]

2.23 The Australian Services Union (ASU) raised general concerns about airline strategies to send operations off shore, and it claimed that Qantas has 'grown its direct overseas workforce at the expense of Australian jobs'. To illustrate this, the ASU provided in its submission a comparison between Australian and New Zealand pay rates for Qantas telesales staff. It claimed that the New Zealand employees are paid significantly less than their Australian equivalents. The ASU also asserted that while it has little data on Qantas (and associated entities) foreign employees, there is a wage gap between Australian aviation workers and those in the developed world.[19] The ASU provided some anecdotal evidence of Australian airlines outsourcing and then off-shoring their call-centre operations.[20]

2.24 The ASU also noted that many of its members would not be covered by the Aircraft Crew Bill because they are not flight or cabin crew. In light of this, the ASU argued that the bill should extend its coverage so that it applies to 'all workers working in connection with the Australian international airline service' rather than just cabin and flight crew.[21]

Use of AOCs for workplace relations regulation

2.25 Some submitters considered the use of AOCs and the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* to regulate workplace relations issues as proposed in the bill to be problematic and inappropriate. Virgin Australia criticised the use of the two Acts as the avenues for pursuing industrial relations outcomes as neither Act is an industrial instrument. It asserted that the appropriate avenue would be the *Fair Work Act 2009* and the relevant modern awards.[22] The Department of Infrastructure and Transport expressed a similar view.[23]

2.26 The Civil Aviation Safety Authority (CASA) submission was especially critical of the bill in this respect and cited a number of problems it would present for CASA as the body that would be likely to enforce the new provisions. As the CASA submission states:

> ...CASA is seriously concerned that the addition of a workplace relations function would oblige CASA to become involved in negotiations between

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18 Virgin Australia, *Submission 5*, p. 3.

19 Australian Services Union, *Submission 6*, pp 3–4 and 6–8.

20 Ms Linda White, Australian Services Union, *Committee Hansard*, 24 November 2011, pp 3–6.

21 Australian Services Union, *Submission 6*, p. 2.

22 Virgin Australia, *Submission 5*, p. 9.

23 Department of Infrastructure and Transport, *Submission 8*, p. 3.

> AOC holders and their employees on pay and working conditions... The perception of CASA as an independent safety regulator could be compromised if it were to become involved in vetting the pay and working conditions of AOC holder's employees.[24]

2.27 CASA was also concerned about the administrative problems of taking on a workplace relations function. For example, CASA stated that the bill could dilute or compromise the 'primacy of CASA's safety-relations obligations'. CASA currently does not have the competence or capability to deal with workplace relations at this level and, even if workplace relations skills could be garnered, it would cause CASA to 'realign its resources' away from the current focus on safety.[25]

2.28 CASA also expressed concern about the constraints the bill would place on its ability to issue or cancel AOCs:

> The proposed amendment invites complex and unprecedented conflicts in relation to the regulatory management of AOCs when pay and conditions are in dispute. Under the current wording of the amendment, CASA could, in certain cases, be left with no option but to refuse to issue (or to cancel) an AOC, on the basis of protracted, unresolved pay and conditions negotiations between the operator (or prospective operator) and its employees. Such a result could hardly be desirable for an employer, employees, shareholders in the relevant company or companies and in many cases, for the flying public.[26]

2.29 The new draft amendments to the bill put forward by Senator Xenophon seek to address these criticisms by proposing amendments to the *Fair Work Act 2009*, rather than the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*.

Fatigue management and safety

2.30 The committee notes that a primary motivation for the introduction of the bill was safety issues associated with fatigue, with particular reference to foreign based crew on flights within Australia.

2.31 Two Jetstar employees, who appeared before the committee in a private capacity, expressed concerns about the length of shifts which may cause fatigue. For example, in regard to Jetstar rostering practices, the witnesses stated that foreign-based crew had little choice but to extend shifts beyond the length that Australian-based crew were subject to:

> **Senator XENOPHON:** ... What is your understanding of that in terms of rostering arrangements? As I understand that there are duty limitations that apply that depend on which agreement you are under in terms of how many extra hours you can do—you can stretch things. Can you try to explain your

24 Civil Aviation Safety Authority, *Submission 3*, pp 4–5.

25 Civil Aviation Safety Authority, *Submission 3*, p. 5.

26 Civil Aviation Safety Authority, *Submission 3*, p. 5.

understanding as to how it works, because it might be that, prime face, the rules are the same but there might be extensions that you can get that vary depending on how you are employed?

Ms Neeteson-Lemkes: The same rules may apply, so to speak, to all flight attendants, but their contract of employment certainly allows different flight attendants to have the capability to extend beyond other flight attendants that would not have the capability to do so.

Senator XENOPHON: Is it your understanding that overseas based flight attendants can be required to work longer hours or to have longer extensions than other flight attendants in the Jetstar Group that are based here in Australia?

Ms Neeteson-Lemkes: Most definitely.

Mr Kelly: Yes.

Senator XENOPHON: Can you give me any examples of that?

Mr Kelly: There is also pressure from their base manager, Nairn, in Thailand. I have befriended a lot of the Bangkok crew. If they do not extend they feel that when they return to Bangkok they will have to deal with her personally.

Senator XENOPHON: Nairn, the woman you refer to—?

Mr Kelly: She is their base manager.

Senator XENOPHON: Who works for TET?

Mr Kelly: Yes.[27]

2.32 The airlines that provided evidence to the inquiry challenged the need for further legislative requirements to manage fatigue in the industry. For example, Virgin Australia told the committee that it was adequately addressing fatigue issues through its use of a fatigue risk management system.[28]

2.33 Qantas's fatigue management systems are subjected to extensive internal and external auditing processes, as well as numerous investigations and staff reporting. As Qantas told the committee on 6 February 2012 in response to questioning about the different conditions for Thai-based crew and Australian-based crew operating on Jetstar flights:

Senator ABETZ: While the wages differ, what about things such as hours of duty, fatigue regulations and other conditions? How do they compare?

Mr Buchanan: That is something we talked about—I think Senator Xenophon asked a lot at the last hearing, in November. The training standards are identical. The rostering practices are identical. We do not treat cabin crew working on any of our services any differently based on where

27 Mr Michael Kelly and Ms Monique Neeteson-Lemkes, *Committee Hansard*, 4 November 2011, p. 18.

28 Virgin Australia, *Submission 5*, pp 3–5.

> they are employed. In fact, talking about our training and fatigue risk management, which got a lot of discussion last time, we have had 12 external audits on our fatigue risk management over the last 12 months, we have done 150 internal audits on our safety management systems and practices, we have done 1,000 investigations and we have had 12,000 reports from staff. This is something we take seriously and are working constantly at.[29]

2.34 Qantas also stated it is consistent in applying its fatigue management systems to both foreign-based crew and Australian-based crew:

> **Senator ABETZ:** I do indeed. Perhaps I could go to page 2 of your submission, Mr Joyce. The third last paragraph says:
>
> The assertion in the Explanatory Memorandum that foreign contracts do not include the same flight duty limitations that apply to Australian crew is simply not correct.
>
> I think that was the basis of your commentary to Senator Xenophon's questioning, but I just want to nail that down absolutely—that you stand by that statement categorically.
>
> **Mr Buchanan:** Absolutely. Any of the constraints that apply under the air operator's certificate around human factors or fatigue risk management apply to crew irrespective of where they are employed and where they are based.[30]

2.35 CASA stated that it was not aware of any 'negative safety trends' regarding AOC holders' foreign based crew. It stated that 'CASA currently regulates flight and duty times for flight crew under Part 48 of the Civil Aviation Orders.'[31]

2.36 Furthermore, CASA articulated its development of a project specifically designed to manage issues of fatigue in the aviation industry:

> CASA has established a project team and working group under the auspices of its Standards Consultative Committee, dedicated to the development of a regulatory framework consistent with the recently adopted ICAO standards. The working group includes representatives of airline operators and flight and cabin crew employee associations alike. Working together with CASA, these representatives will consider the amended SARPs [Standards and Recommended Practices], along with a review of applicable legislation, standards and policies.[32]

2.37 CASA explained the objectives of the project, stating that they are to:

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29 Mr Bruce Buchanan, Jetstar Group, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 34.

30 Mr Bruce Buchanan, Jetstar Group, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 18.

31 Civil Aviation Safety Authority, *Submission 3*, p. 6.

32 Civil Aviation Safety Authority, *Submission 3*, p. 7.

- review the amended ICAO SARPs (as specified in Annex 6 to the Chicago Convention) relating to fatigue management;
- review current CASA standards, as specified under CAR 5.55 and in Part 48 of the Civil Aviation Orders, and CASA's associated policies relating to the management of fatigue;
- propose appropriate amendments to the civil aviation legislation, standards and policies with the goal of achieving a regime that takes account of ICAO recommendations and contemporary, scientifically-based principles, knowledge and experience in fatigue management; and
- to provide essential elements of a comprehensive approach to the management of fatigue risks in critical areas of aviation operations.[33]

2.38 During the hearing on 24 November 2011, CASA was asked to provide an update on the progress of the project in relation to the ICAO guidelines since the evidence it provided in March 2011 to the committee's inquiry into pilot training and airline safety. CASA expressed confidence that it would implement the guidelines regarding fatigue management for flight crew by early 2012 and those for cabin crew by mid-year 2012:

> **Mr McCormick:** ... yes, we have received the guidelines and, yes, we have started to form the working groups. We are taking slightly longer with the flight crew than we thought. That will be early 2012 rather than the end of November 2011, and we are still on track for the middle of the year of 2012 for the cabin crew.
>
> **Mr Hood:** I suppose our resources in the regulator that are experienced and skilled in the fatigue area are currently devoted to the working group working with the unions and operators in relation to the flight crew rules. As soon as we have got those in a shape to put out to public consultation, we will be starting to work on the flight attendant rules.[34]

Ambiguity of the bill

2.39 CASA raised concerns that a number of key terms in the amendment bill are undefined and ambiguous, including the terms: 'no less favourable', 'working in connection with', 'not directly employed and 'directly employed'.[35] CASA also stated that even with these terms defined, it is unclear why CASA would (with respect to clause 1 of schedule 2 and the proposed section 28BJ of the Act) 'have a role in regulating those crew *not* directly employed' by AOC holders but not have this role for those that '*are* directly employed' by AOC holders.[36]

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33 Civil Aviation Safety Authority, *Submission 3*, p. 7.

34 Mr John McCormick and Mr Greg Hood, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 24.

35 Civil Aviation Safety Authority, *Submission 3*, p. 5.

36 Civil Aviation Safety Authority, *Submission 3*, p. 6.

2.40 CASA also stated that the new draft amendments to the Aircraft Crew Bill which seek to prescribe the introduction of fatigue management systems also contain significant ambiguities. Specifically, CASA stated that the terms 'scientific principles', 'relevant personnel' and 'operational experience' which appear in schedule 2 of the new draft amendments would be difficult to enforce unless clearly defined.[37]

Committee view

2.41 The committee acknowledges the difficult environment in which the airline companies affected by this bill operate and is concerned by the development of legislation that may place unnecessary restrictions on the ability of Australian airlines to compete internationally.

2.42 The committee is also very mindful of the concerns of submitters regarding the pay differences between Australian and foreign-based crew on the same flights. The committee recognises that the issue of outsourcing and off-shoring of Australian jobs that may be related to this is something that policy-makers need to address further.

2.43 However, the committee is of the view that the Aircraft Crew Bill is highly problematic and not the appropriate way of regulating its stated aims for several reasons. The committee considers that the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* are not the appropriate legislative instruments for the regulating the workplace relations of employers and employees in the aviation industry.

2.44 The committee is of the view that the Aircraft Crew Bill is extra-territorial in its scope and would be difficult to enforce in practice because of this. The bill also includes a number of key terms that are ambiguous and therefore may have unintended consequences if enacted.

2.45 The committee also notes risks to aviation safety associated with the fatigue of staff working long hours and is concerned by any inconsistencies that may exist in the management of fatigue between foreign based cabin crew and Australian based cabin crew operating on Australian flights.

2.46 The committee accepts the evidence provided by CASA that this would have undesirable implications for it as the body that would administer the amendments and that it could have negative implications for the aviation industry as a result. This would include an inappropriate and unnecessarily complicated linkage between AOCs and the conduct of workplace relations negotiations.

2.47 In terms of fatigue management, the committee notes that CASA already has appropriate mechanisms to manage this issue in the aviation industry. The committee recognises the work undertaken by CASA in conjunction with industry to ensure that the recently adopted ICAO standards are appropriately implemented in Australia. The

37 Civil Aviation Safety Authority, *Supplementary Submission 3*, p. 2.

committee is of the view that issues of fatigue are better managed on this basis rather than through the legislative changes proposed by the bill. It urges that CASA gives a very high priority to ensuring the timely completion of this fatigue management project.

2.48 In terms of the draft amendments proposed by Senator Xenophon to the Aircraft Crew Bill, which were subsequently circulated in the Senate, the committee recognises that these changes address a major criticism of the original bill which was that the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* are not appropriate legislative instruments for addressing workplace relations issues.

2.49 However, on the basis of the evidence received, the committee did not form a view regarding the new draft amendments to the *Fair Work Act 2009*. The committee is mindful that such amendments to the *Fair Work Act 2009* may be more appropriately inquired into by the Senate Standing Committees on Education, Employment and Workplace Relations.

2.50 The new draft amendments to the *Civil Aviation Act 1988* regarding the implementation of fatigue management systems are also problematic and the committee remains of the view that the legislative prescriptions outlined by the proposed amendments are not the appropriate avenue for this.

Qantas Sale Bill

Purpose of the Qantas Sale Act and Qantas' structure

2.51 A key debate arising from the inquiry into the Qantas Sale Amendment Bill derived from conflicting views over the original purpose of the *Qantas Sale Act 1992* (QSA). Qantas argued that the purpose of the QSA was to provide a framework to enable the privatisation of Qantas. Furthermore, Qantas also argued that the QSA clearly distinguishes between the aspects of the bill that apply to Qantas and those that apply to its subsidiaries:

> **Mr Johnson:** We will give you written responses—that is definite—but, just so you understand it, the Qantas Sale Act was drafted primarily to effect the sale of Qantas, the privatisation of Qantas. There were then provisions put into ensure Qantas will continue to operate as an Australian based and Australian designated flag carrier. In the Qantas Sale Act, there was a definition of Qantas, which was Qantas Airways Ltd, and there was a definition of Qantas subsidiaries, which covered all of Qantas's subsidiaries. In the act, where the parliament wanted it to apply to Qantas and its subsidiaries, the act says 'Qantas and Qantas subsidiaries'. In relation to the provision which you were talking about which applies to the protection of Qantas as the Australian flag carrier, the act only applies to Qantas; it does not apply to Qantas subsidiaries. The intent at that point in time was to ensure that Qantas Airways Ltd was protected, but there was no intention at that point in time to restrict Qantas in investing in subsidiaries.
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> **Mr Joyce:** But we actually had a subsidiary.

> **Mr Johnson:** Yes. At that point in time, there was a subsidiary called Australia Asia Airlines, which operated between Australia and Taiwan, and there was a question raised by Senator MacGibbon, who was in the opposition at that point in time, and he had confirmation from government that there was no intention for the act to apply to Australia Asia Airlines.
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> **Senator ABETZ:** So does Qantas accept that it applies to the total group, or would you keep the subsidiaries separate?
>
> **Mr Johnson:** Those particular provisions only apply to Qantas Airways Ltd, just that legal entity.[38]

2.52 This view of the purpose of the QSA in terms of the limits of its application to Qantas' subsidiaries is, in the view of some submitters, a primary reason for the need to pass the Qantas Sale Amendment Bill. In particular, these submitters and witnesses argue that the 'national interest provisions' of the QSA mean that Qantas Group (broadly defined) must be maintained as the national carrier. However, it is argued that the Qantas business strategy of developing and investing in its domestic and international subsidiaries undermines this.[39]

2.53 As a result, these submitters and witnesses claim that the bill would clarify the relationship between Qantas and its subsidiaries, requiring them to remain Australian.[40] Similarly, the ALAEA claimed that Qantas' view that the Qantas Sale Act and Qantas Constitution does not apply to its subsidiaries makes it too easy for Qantas to avoid the QSA restrictions.[41]

2.54 The conflicting claims regarding the purpose of the QSA led directly to a debate over the implications of the Qantas Sale Amendment Bill on Qantas' business structure. Qantas asserted that the impact of the bill would be significant and that the additional requirements of the bill (such as its definition of an 'associated entity'), would require Qantas to dispose of shareholdings in Jetstar Asia and Value Air (Singapore), Jetstar Pacific (Vietnam), Air Pacific (Fiji) and Jetstar Japan (Japan) because they are majority owned by foreign nationals in their respective countries.[42]

2.55 In regard to Jetstar, Qantas was unequivocal that the bill would unfairly subject it to conditions not placed on its competitors:

> Jetstar is a separate legal entity [from Qantas], operating under its own Air Operators Certificate with an independent executive and operational management. Jetstar has also been designated by the Australian Government to operate international air services. Jetstar (as is the case for

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38 Mr Brett Johnson, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 16–17.

39 For example, Australian Licensed Aircraft Engineers' Association, *Submission 12*, pp 5–9 and Australian and International Pilots' Association, *Submission 4*, pp 32–33.

40 For example, Australian Council of Trade Unions, *Submission 10*, pp 9–10.

41 Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 3.

42 Qantas Airways Ltd, *Submission 2*, p. 3.

> any other designated Australian airline) must comply with the provisions of the Air Navigation Act 1947 which, inter alia, requires Jetstar to be majority Australian owned. These requirements ensure that, in order for Jetstar to fully access Australia's air services agreements, it must maintain its head office in Australia and must be able to demonstrate it has a majority of Australian directors and an Australian Chair.
>
> No additional requirements are imposed on other Australian carriers, including Virgin Australia. It is simply not appropriate to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors.[43]

2.56 The Department of Infrastructure and Transport expressed similar concerns, arguing that the bill would likely limit Qantas' international growth and is not likely to increase Qantas' employment opportunities.[44]

Off-shoring and outsourcing of maintenance and labour

2.57 According to some submitters, the investment in, and development of, subsidiaries by Qantas in foreign markets is to the detriment of its Australian operations. In particular, a number of submitters expressed concerns about the potential off-shoring of Qantas maintenance facilities and supported the bill in this respect.[45]

2.58 The ASU notes particular support for Qantas' 'subsidiaries and associated entities to have their principal operations centre located in Australia.'[46]The ASU also asserted that 'Qantas workers need the protection of effective legal regulation against outsourcing and off shoring.'[47]

2.59 The TWU held the view in its evidence to the inquiry that Qantas' restructuring includes aims to 'reduce the Qantas workforce by 1000+ employees', 'abandon the airlines' historical flagship business, Qantas International' and move aviation business to Asian destinations. It asserted that Qantas would then adhere to 'relatively low safety standards in those destinations'.[48]

2.60 In addition, the TWU, expressed concerns about a possible future private equity takeover of Qantas and claimed if it occurred it could lead to the breakup of the airline, off-shoring and major job losses, while providing 'incommensurate rewards'

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43 Qantas Airways Ltd, *Submission 2*, pp 3–4.

44 Department of Infrastructure and Transport, *Submission 8*, p. 5.

45 For example, Australian Council of Trade Unions, *Submission 10*, p.15 and Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 3.

46 Australian Services Union, *Submission 6*, p. 2.

47 Australian Services Union, *Submission 6*, p. 3.

48 Transport Workers Union of Australia, *Submission 7*, p. 2.

for out-going Qantas executives and board members.[49] It was within this context of the future of Qantas' structure (and the issues of outsourcing and off-shoring discussed below) that that at least one submitter raised concerns about apparent increasing trends in the pay of its Chief Executive Officer and other executives of the company.[50]

2.61 In a similar way, the TWU is concerned about outsourcing and off-shoring and claims this may lead to problems of longer hours, worker fatigue, and workplace health and safety problems. The TWU's submission cites a report by Auspoll prepared for the TWU which measured public attitudes to Qantas and its safety and workplace relations. The submission argued that there have been some negative results across a number of indicators of Qantas safety and it lists a number of Qantas' safety incidents in recent years. The TWU is also concerned about security issues at airports due to the use of temporary workers.[51]

2.62 The committee notes that Qantas undertakes over 90 percent of its heavy maintenance in Australia and Virgin Australia and Cobham also undertake some heavy maintenance of their fleet in Australia.[52]

Make up of Qantas board and the injunction clause

2.63 The views regarding the new conditions that the bill would place on the make-up of the Qantas board are divided. Qantas asserted it is not the place for Parliament to determine the make-up of the board of a publicly listed company beyond the restrictions already placed on it.[53] As the Qantas submission asserted, the bill:

> ...proposes that the Australian Parliament determine the composition of the Board of a wholly publicly owned business trading on the Australian Stock Exchange, and dictate the manner and circumstances of key commercial decisions taken by the Board on behalf of shareholders.[54]

2.64 Qantas argued that this would disadvantage Qantas in respect to its competitors who are not subject to such restraints.[55]

2.65 However, some submitters support this aspect of the bill on the grounds it would add appropriate expertise to the board. The AIPA justified it in this way:

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49 Transport Workers Union of Australia, *Submission 7*, p. 5.

50 Transport Workers Union of Australia, *Submission 7*, pp 11–13.

51 Transport Workers Union of Australia, *Submission 7*, pp 19–25.

52 Qantas Airways Ltd, *Submission 2*, p. 3, Ms Jane McKeon, Virgin Australia, *Committee Hansard*, 24 November 2011, p. 10, Qantas Airways Ltd, *Answers to Questions on Notice*, 4 November 2011, p. 22.

53 Qantas Airways Ltd, *Submission 2*, pp 2–3.

54 Qantas Airways Ltd, *Submission 2*, p. 2.

55 Qantas Airways Ltd, *Submission 2*, p. 2.

> We believe that it is critical that the Board is able to bring operational and engineering oversight to the running of the company and, importantly, both those fields of experience bring with them a longer term view than seems to characterise modern business practice.[56]

2.66 The final aspect of the Qantas Sale Amendment Bill that drew comment in the submissions was the proposed changes to the injunction clause of the QSA to provide avenues for shareholders of Qantas to make court applications on the basis of Qantas' obligations under the QSA.

2.67 The Department of Infrastructure and Transport raised concerns that the injunction clause, if extended to allow applications by shareholder members, could allow competitors with small shareholdings in Qantas to make applications against Qantas.[57]

2.68 The Aviation Economics submission stated that the committee needed to be aware that 'there presently also exists a remedy for non compliance with the Qantas Sale Act under the Corporations Act'.[58] In light of this, it urged the committee to consider that:

> ...some Qantas shareholders are concerned that the unintended consequence of proposed changes to the Qantas Sale Act may inadvertently conflict/extinguish existing shareholder remedies available under the Corporation Act.[59]

2.69 However, the Australian and International Pilots' Association (AIPA) represented an alternative view and supported the injunctive relief proposals of the bill in full, on the grounds that 'solely relying on Ministerial intervention is insufficient and that an alternative available to the members provides a more equitable system'.[60] Furthermore, in its supplementary submission, AIPA asserts:

> AIPA notes that some concern has been expressed about the Injunctive Relief provisions regarding the possibility of interfering with various other rights of individual shareholders to take action under the *Corporations Act 2001*. Our understanding is that such other rights as may exist cannot be extinguished or modified unless there is a specific enactment to that effect. There is no such proposal included in this Bill.[61]

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56 Australian and International Pilots' Association, *Submission 4*, p. 32.

57 Department of Infrastructure and Transport, *Submission 8*, p. 4.

58 Aviation Economics, *Submission 11*, p. 1.

59 Aviation Economics, *Submission 11*, p. 1.

60 Australian and International Pilots' Association, *Submission 4*, p. 32.

61 Australian and International Pilots' Association, *Supplementary Submission 4*, p 13.

Ambiguity of the terms of the bill and changing articles of association

2.70 The Department of Infrastructure and Transport was concerned about the ambiguity of key terms such as 'majority of Qantas' heavy maintenance' and 'majority of flight operations and training'. The Department was also concerned that the new draft amendments to the Qantas Sale Amendment Bill put forward by Senator Xenophon did not address these concerns, although some members of the committee note that some difficulties may be able to be resolved, either by refining the primary legislation or providing expanded definitions in the regulations.

2.71 The difficulties in changing the articles of association as a result of the bill's changes to the QSA were highlighted by the Department of Infrastructure and Transport. In its supplementary submission regarding the new draft amendments, the Department noted a problem with the original bill and the new draft amendments:

> Qantas, as a public company, would be required to complete the process of changing its constitution and the revised Bill does not address this, or the possibility shareholders could oppose the amendments.
>
> The Department also notes that the *Qantas Sale Act 1992* requires Qantas's articles of association to include the mandatory provisions from the date of privatisation. The amendment would operate so that Qantas articles would need to have included the new article from the date of privatisation, which is impossible.[62]

New draft amendments proposed by Senator Xenophon

2.72 The AIPA supported the Qantas Sale Amendment Bill but proposed some additional amendments. This included that the proposed subsection 7(1)(ha) and 7(1)(hc), in terms of subsidiaries and associated entities, should be modified in the following way:

> ...the proposed definition for 'associated entity' in subsection 3(1) is modified to refer only to entities that satisfy subsections 50AAA(2) and (3) of the *Corporations Act 2001*, i.e. those entities over which Qantas exerts control.[63]

2.73 The ALAEA proposed a similar narrowing of the definition of 'associated entity' to include associated entities that Qantas effectively controls.[64]

2.74 The AIPA also suggested that there should be the addition of a new definition – 'exercising Australian rights'. According to the AIPA:

> ...exercising Australian rights means using capacity allocated under an Australian or foreign Air Services Agreement to fly to, from or within

62 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

63 Australian International and Pilots' Association, *Submission 4*, p. 31.

64 Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 15.

> Australia or to fly between two or more foreign countries using Australian allocated capacity other than code-share capacity.[65]

2.75 This phrase 'exercising Australia rights' should then be inserted following the term 'any associated entity' in subsections 7(1)(ha) and (hc), which refer respectively to the location of the aggregate of Qantas (and subsidiary) facilities and the majority of aircraft maintenance and flight operations and training of Qantas subsidiaries.[66]

2.76 These suggested amendments were incorporated into the new draft amendment proposed by Senator Xenophon and subsequently circulated in the Senate. These changes were less extensive than those proposed to the Aircraft Crew Bill. As such, Qantas argued that many of the problems of the Qantas Sale Amendment Bill remained.

2.77 The Department of Transport and Infrastructure noted that the new draft amendments would narrow the scope of the bill by affecting fewer of Qantas' airlines. However, it also stated that many of the previous criticisms of the bill remained (including problems of needing to change the Qantas constitution) and noted that:

> ...the requirement for these airlines to conduct the 'majority of their 'flight operations' in Australia could be construed to effectively require these airlines to be primarily domestic operators.[67]

Committee view

2.78 The committee fully supports the role of Qantas as the Australian national airline. It is aware that Qantas operates in a very competitive and difficult international environment and that the aviation industry continues to face significant challenges. The committee is therefore mindful of any adverse effects of the legislative proposals on Qantas's ability to conduct business in this context.

2.79 The committee notes the concerns of some submitters and witnesses regarding the relationship between Qantas' overseas subsidiaries and its Australian based operations. It is particularly concerned about Australian job opportunities being sent off shore. However, the committee is mindful in that in attempting to address these concerns the Qantas Sale Amendment Bill is inappropriately restrictive on Qantas and would have the likely effect of reducing its competiveness in a difficult industry.

2.80 The committee is also concerned that there could be significant practical difficulties arising from the bill which would require changes to Qantas' articles of association. In addition, the committee is concerned that the clause regarding the application for injunctions against the board could potentially be used adversely by a small number of shareholders. The committee is of the view that the Qantas Sale Bill

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65 Australian International and Pilots' Association, *Submission 4*, p. 31.

66 Australian International and Pilots' Association, *Submission 4*, p. 31.

67 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

includes a number of key terms that are ambiguous and therefore may have unintended consequences if enacted.

2.81 The proposed amendments to the Qantas Sale Amendment Bill focus on the definitions of 'associated entity' and 'exercising Australian rights' and therefore seek to clarify the intent of the bill and restrict its scope with respect to some of Qantas' foreign operations. However, the committee remains of the view that this does little to address a number of the concerns regarding the bill as outlined above.

Additional issues raised during the inquiry

2.82 A number of issues relating to the inquiry arose following the controversial action taken by Qantas to lock out its workforce and ground its entire fleet of aircraft. A significant part of the evidence provided by Qantas at the committee's hearings on 4 November 2011 and 6 February 2012 focussed on this episode and the industrial action leading up to it, particularly the reasons behind the decision to ground the fleet and the impact and costs of the action.

The Qantas grounding and lockout

2.83 On Saturday 29 October 2011, Qantas announced it was grounding its aircraft that day, in order to implement a lockout of a number of its employees (effective from 8.00 pm the following Monday). At the public hearing on 4 November 2011, questions were asked of Qantas about who made the decision to lock out employees and ground the Qantas fleet. Mr Alan Joyce, Qantas CEO, stated that as CEO he had the full operational discretion to order both lockout and grounding actions and, in this case, the decision was entirely his. However, he also stated that the decision was endorsed by the Qantas board at a meeting on 29 October 2011.[68]

The reasons for the decision

2.84 Mr Joyce told the committee that the lockout was a response to the continued disruption from protracted industrial disputation with three Unions – the TWU, ALAEA, and the AIPA and a fall in future bookings. Mr Joyce said that the cost to Qantas of both of these developments was significant:

> For example, we do a survey each month asking people their intentions to fly with Qantas: would they consider Qantas for the next trip? Usually internationally five per cent of people would say no; that had risen to: 30 per cent of people were no longer considering Qantas for their international trips—a sixfold increase. On the east coast we have had a similar impact on the domestic market, where we have seen the propensity of people not to travel with Qantas actually doubling or trebling as well. Most importantly, the core corporate market was not travelling with Qantas on the east coast and east-west services because of the uncertainty that was created. I will get you the exact numbers, but it was quite significant. We then came up with a

68 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 9 and 11–13.

> financial number which was: it was costing us $50 million a week for the ongoing uncertainty around the airline, in addition to the disruption caused for each of the actions that were taking place.[69]

2.85 Mr Joyce stated that in the week commencing 17 October 2011, Qantas experienced a massive collapse in its corporate travel bookings. He explained that high-fare flexible fares on the east coast had dropped 40 percent in the week commencing 17 October 2011 and that transcontinental (east-west) and Canberra flights were down 14 and 20 percent respectively on previous years.[70]

2.86 The rationale put forward by Qantas for the lockout and grounding was strongly challenged by other witnesses. TWU National Secretary, Mr Tony Sheldon, told the committee:

> Qantas has both the capability and capacity to turn around and reach a proper employment relations agreement for Australians within this aviation industry and within its operations. On our figures, to deal with the issues of job security and outsourcing, it would cost Qantas an extra 5c on a ticket from Melbourne to Sydney. Qantas will only die if Alan Joyce and Leigh Clifford kill it. One of the things that is particularly pertinent, of course, is the decision that the company took on closing its operations down after notice was given of a lockout of employees. During the hearing in Fair Work Australia the company made it crystal clear—by a press statement initially, by media comment during Saturday evening and Sunday and, finally, in their summations—that if the commission made a decision to suspend industrial action of any of the parties then they would keep the airline grounded. They said to the judiciary, to the travelling public, to the workforce, to the government, to parliament, to the various people within the economy that rely on a robust aviation industry: 'As far as we are concerned, if the court makes any decision other than terminating the industrial action, if it makes a decision to suspend the industrial action for a period of time, then we will not put planes back in the air.' That was a direct confrontation with the decisions of this parliament, the intent of the legislation. It was a direct attack on and a strangling of the Australian economy. 'If you do not take my direction then I will bring economic disaster to this country.'[71]

2.87 Qantas told the committee that the decision to ground the fleet was a response to safety concerns identified as part of a risk assessment undertaken in the course of planning for the lockout. Mr Joyce told the committee that having satisfied itself that there was a risk to airline safety posed by flight crew becoming distracted upon learning of the lockout Qantas decided to err on the side of caution and ground the fleet:

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69 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 16–17.

70 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 17.

71 Mr Tony Sheldon, Transport Workers Union of Australia, *Committee Hansard*, 4 November 2011, p. 35.

Senator ABETZ: And, once again, the only reason for the grounding was the safety factor?

Mr Joyce: Yes, because we are very cautious when it comes to safety...

When we were doing the planning for the lockout—which, as I said, had been done for some weeks, and the planning for this was part of a range of options and a range of scenarios that we were doing—our head of Qantas operations, Lyell Strambi, involved his chief pilot, and his chief pilot did the risk assessment. That risk assessment said that we would have had a problem in keeping the airline flying until the lockout and that once we made the decision we had to ground the airline.

CHAIR: Could I clarify that. You said the reasons for the grounding were safety.

Mr Joyce: No, the reasons for the grounding were the lockout.

CHAIR: Exactly, and that is why I just wanted it clear.

Mr Joyce: Absolutely. The reasons were clearly the lockout. Because the lockout was at 8 pm on Monday, the reason for the immediate grounding was that we felt uncomfortable with the human factors risk that we had between that Saturday decision becoming known and the lockout occurring.

CHAIR: In all fairness, with your 35,000 employees, the reason for the safety or the human factor was stress or something, do you think?

Mr Joyce: No. There are a number of reports by the ATSB and there are a number of reports by other institutions around the world. This is not assuming anything malicious or anything like that; this is distractions. Distractions could actually cause you the problem. There have been various cases around the world where, when it comes to issues on the table, people get distracted and that can lead to human factors issues that can cause you incidents or accidents, and we needed to avoid that. That is why we took a very cautious approach.[72]

2.88 The AIPA disputed Qantas' assessment of the risk to airline safety and expressed confidence that Qantas pilots would have been able to manage any related safety issues following the announcement of the lockout:

CHAIR: ... Do you think that any Qantas captain in control of a Qantas flight would pose a serious safety risk to the passengers hearing about the lockout midair?

Capt. Woodward: Absolutely not. First up, captains have their job legislated under Australian law, and they take that seriously. Secondly, we operate in a crew environment. We have a crew on the flight deck and we practice a thing called crew resource management. We manage crises as a team, whether it is an engine failure or a message from the company saying that the aeroplane is grounded when you land. So the crew would have talked about that, dealt with the issues and moved on. The aeroplane is

72 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 19.

> travelling at eight miles a minute in a very hostile environment. We worry about the safety of the aeroplane first, above all else.
>
> **Senator XENOPHON:** Perhaps I could just clarify that. Chair, you said 'a serious safety risk. Perhaps I could qualify that: would it pose any safety risk?
>
> **Capt. Woodward:** There is no doubt that it would have caused some concern in individual pilots' minds and maybe distracted them initially. One of the things pilots are good at is talking to each other, so there would have been a lot of discussion on the various flight decks of the aeroplanes that were airborne, and you could argue that that would have been a distraction.[73]

2.89 The committee sought evidence from CASA regarding its role in Qantas' decision to ground its fleet. CASA first became aware of the decision to ground the fleet shortly after 1.30pm on 29 October 2011 when the Secretary of the Department of Infrastructure and Transport, Mr Mike Mrdak, advised CASA's Director of Aviation Safety, Mr McCormick, that the government had received notification from Qantas.[74] As noted in CASA's evidence there appear to be a lack of clarity as to the exact nature of the specific safety case for grounding the fleet:

> **Mr McCormick:** ... I spoke to Mr Joyce in Qantas during the afternoon and requested from them their safety case—how they had come to reach this conclusion for the reasons that I just outlined a couple of minutes ago. I did receive one safety case but it was not about the issues that led them to ground the aircraft. It was about a maintenance issue which had occurred a couple of days previously in Brisbane, which is a matter of unexplained damage to aircraft...
>
> As Mr Mrdak said, we did not receive the safety case that led to their conclusion of grounding until 18:04 that evening. Mr Joyce in his speech says:
>
> It bears repeating that the specific driver for immediate grounding of the airline was not related to the airline and fleet health metrics, but rather to the potential human factor threats that might be generated in response to the company announcement of lockout. The grounding which occurred coincident with the announcement to lockout was a conservative measure taken to mitigate a potential increase to risk.
>
> I took that as the definitive explanation as to how they had got to the conclusion. That was in his five o'clock speech announcing this.[75]

2.90 Upon receiving the safety case on the evening of 29 October 2011, CASA stated that it formed two teams – one to examine the safety case in terms of the reasons for Qantas' to ground its fleet and another team to examine the safety of

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73 Captain Richard Woodward, Australian International and Pilots' Association, *Committee Hansard*, 4 November 2011, pp 48–49.

74 Mr Mike Mrdak, Department of Infrastructure and Transport, 24 November 2011, p. 32.

75 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 33

Qantas resuming its flights. In terms of the first team, evidence to the committee suggests that the safety case provided to CASA could have contained more complete information:

> **Mr McCormick:** We looked at it from the point of view that the safety case may not have contained all the information that Qantas had available to them. So it was difficult to be definitive. Could the safety case have been bigger, perhaps have contained more information? Certainly it could be more fulsome. However, Qantas has a track record of conservative operations and conservative decisions...
>
> **Senator XENOPHON:** I want to clarify this... Are you saying that you did not form a conclusion as to the material provided to you for Qantas's safety case? In other words, is it fair to say that you did not come to a conclusion, that it was an ipso facto thing, that Qantas grounded the airline on safety reasons and therefore it must be a valid safety reason rather than coming to an independent conclusion based on the evidence provided to you.
>
> **Mr McCormick:** It was not possible for me to come to an independent conclusion unless I had some confidence that I had all the information that was available to Qantas.
>
> **Senator XENOPHON:** So you did not have all the information that was available to Qantas?
>
> **Mr McCormick:** I do not think the safety case contained all the information that was available to Qantas. As far as Qantas saying, 'We have grounded the airline,' or 'We are going to ground the airline as the AOC holder because of risk X, Y or Z,' once they have taken that decision in a lot of ways it does not matter what I think. It matters a lot what I think before they can go flying again, but the decision they have taken was one that was available to them.[76]

2.91 The committee also heard evidence about the current requirements for AOC holders who may ground their fleet on the basis of safety:

> **Mr McCormick:** If an air operator certificate holder says, 'I am going to ground my fleet because there are safety reasons and I do not think I can manage these risks,' then I am not in a position to say, 'That is not a decision that is available to you.' Nor am I in a position to say that it is totally unreasonable because I may not have all of the facts they have. I do not know the culture of the organisation. I do not know what has been happening. One thing I can say—and which we did say in the case of Qantas—is that if you say to me on a Saturday afternoon or evening that you are going to ground the airline because of the following risks that you do not think you have mitigated, before you can say, 'We are going to go flying again,' you have to you show me that you have now addressed those

76 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 34

> risks. Otherwise, it is a nonsense, which is why we required Qantas to give us a safety case to go back flying again.[77]

2.92 In particular, unless the safety issue falls under the category of a 'reportable matter', there appears to be little formal protocol regarding an AOC holder's requirements to notify CASA prior to grounding its fleet:

> **Senator GALLACHER:** The situation is that regarding our regulator, who monitors our AOC holders and has the power to take action in the event of issues of a serious nature arising, it is not required anywhere that you be notified prior to the decision being made?
>
> ...
>
> **Mr McCormick:** No, they do not have to notify us unless the grounds that have led them to ground the planes are a reportable matter. If they have had a serious incident or if something has happened, they cannot just ring us and say, 'Oh, excuse me, I have just ground the airline,' without giving us the background to that.[78]

2.93 Another key issue regarding the Qantas grounding was the effect it had on the Australian travelling public who fly with Qantas. Qantas conceded that the grounding did have a significant impact and confirmed that 98,000 passengers were affected by the lockout and grounding.[79]

2.94 In addition, Qantas, in what it termed a 'mistake', continued to sell tickets to customers until 8:30 pm Saturday 29 October 2011, several hours after the board had endorsed the decision to ground the airline.[80] Qantas outlined the details of this as follows:

> In the period from 5.00pm to 8:30pm, we estimate 152 passenger segments (or the equivalent of 76 return flights) (out of a total of 1,920 segments) were sold through Qantas.com for travel between 5 pm 29 October 2011 and 2pm 31 October 2011, when Qantas resumed flying.
>
> Qantas is offering compensation including rebooking and refunds without penalty and reimbursement for reasonable out of pocket expenses incurred as a direct result of the Grounding for all customers who were directly affect by the Grounding. This includes customers who booked flights between 5pm and 8.30pm on 29 October 2011.[81]

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77 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 32

78 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 32

79 Qantas Airways Ltd, *Answers to written questions on notice public hearing 4 November 2011*, p. 3.

80 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 14–15.

81 Qantas Airways Ltd, *Answers to Questions on Notice*, 4 November 2011, p. 6.

2.95 Finally, concerns were raised in the inquiry regarding the cost associated with the grounding of the Qantas fleet. Although the overall cost of the decision was not established through the inquiry, some indication of the cost to the airline may be ascertained through the booking of hotel rooms for passengers following the decision to ground the airline. As Qantas stated in relation to 2,800 hotel rooms booked in Los Angeles and Singapore:

> ...those bookings were made at 5.20, after the announcement of the grounding of the airline. For the international bookings, a call was made to a broker, and at 5.30 the domestic hotels were booked.[82]

2.96 The figure placed on the cost of these rooms was later stated as:

> In terms of the average room rates booked for Qantas passengers between 30 October and 1 November, when the grounding happened, the international rate was $190 per room and the domestic rate was $240 per room. The total estimated cost for the accommodation was $1.9 million. The international cost was $1.2 million and the domestic cost was $700,000.[83]

2.97 However, Qantas did claim that the effects of the grounding were far less than the continued cost of other industrial action.[84]

Committee view

2.98 Qantas' decision to lockout its workforce and ground its fleet on 29 October 2011 was highly controversial. The committee is mindful that this action had disastrous implications for Australia. The episode directly affected 35 000 Qantas employees and their families, and impacted significantly on some 98 000 members of the travelling public. The committee is of the view that the repercussions of this on the tourism industry, the Australian economy and Australia's international reputation should not be underestimated.

2.99 In gathering evidence about circumstances that led to the grounding, the committee heard a range of views regarding Qantas' assessment of the airline safety risk posed by the lockout and the need to ground the Qantas fleet as a result.

2.100 The committee notes that there is currently only limited regulatory protocol relating to an AOC holder's decision to ground its fleet of aircraft and that CASA's primary role in the process occurs only after an AOC holder seeks to resume operations after a fleet has been grounded.

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82 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 2.

83 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 24.

84 Qantas Airways Ltd, *Answers to written questions on notice public hearing 4 November 2011*, p. 3.

2.101 In view of the potential for widespread repercussions as a result of a decision to ground its aircraft fleet, as occurred in the case of Qantas' on 29 October 2011, the committee considers that AOC holders should be required to lodge a safety case with CASA prior to a formal decision to ground aircraft.

Recommendation 1

2.102 The committee recommends that the government develop regulations which would require Air Operator's Certificate holders to submit a safety case to the relevant authorities in CASA and the Department of Transport and Infrastructure prior to making a formal decision to ground its fleet of aircraft.

Recommendation 2

2.103 The safety of the travelling public should be the paramount concern for all airlines and the grounding of the fleet should only be considered in the interests of safety. The committee recommends that the Government consider imposing financial penalties if it is proven that an Air Operator's Certificate holder has cited 'safety concerns' without a valid reason.