

Chapter 3

Conclusions and Recommendations

3.1 The committee recognises that the Aircraft Crew Bill and the Qantas Sale Amendment Bill received a mixed response from the stakeholders that provided evidence to the inquiry. Although the committee does not agree with those submitters and witnesses who supported the bills, the committee recognises that they raised a number of legitimate concerns with respect to the broader public policy issues that are addressed in the bills. In particular, the committee considers the issues discussed below to be of importance.

3.2 The committee notes the concerns of a number of submitters about the future off-shoring of Australian jobs in the aviation industry. It is particularly mindful of the difficulties of keeping airline maintenance employment on-shore and is concerned by airline business strategies that may constrain future Australian employment opportunities in the industry.

3.3 The committee is also mindful of the concerns raised by submitters regarding the pay differences between Australian and foreign-based crew on the same flight and recognises that addressing this issue was a significant motivation for the Aircraft Crew Bill being introduced into Parliament.¹

3.4 The committee is aware of the risks to aviation safety associated with the fatigue of staff working long hours and was 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.

3.5 The relationship between Qantas' overseas subsidiaries and its Australian based operations was another key aspect of the inquiry as the committee examined the implications of the Qantas Sale Amendment Bill's for Qantas' obligations under the *Qantas Sale Act 1992*.

3.6 The impact on the Australian economy and on Qantas' workforce and customers caused by the grounding of the Qantas fleet 29 October 2011 became an important development during the inquiry. As a result, the committee considered these issues in terms of the broad context within which the Qantas Sale Amendment Bill would operate if enacted.

3.7 While the committee was mindful that these issues need to be addressed, it is of the view that the bills before the inquiry are flawed in a number of respects and are

1 See, for example, Senator Xenophon, 'Second Reading Speech for the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011', *Hansard*, 17 August 2011, pp 4697–4698.

not the appropriate mechanisms for achieving positive outcomes for the aviation industry and its workforce.

3.8 The committee is concerned that the Aircraft Crew Bill is extra-territorial in its scope and would be difficult to enforce in practice because of this.

3.9 The committee accepts the evidence provided by some submitters that the Aircraft Crew Bill has the potential to be unduly restrictive on the operations of Australian airlines in foreign markets. Given the highly competitive nature of the aviation industry, the committee is of the view that the consequences of the bill in this respect would be detrimental to Australia's international aviation operators.

3.10 The committee is of the view that the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* are not the appropriate legislative instruments for regulating the workplace relations of employers and employees in the aviation industry. It accepts the evidence provided by CASA that this would have undesirable implications for CASA 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 or the settlement of workplace relations disputes.

3.11 Furthermore, the committee is of the view that CASA already has appropriate mechanisms to manage safety issues in the aviation industry (such as fatigue) that may arise from workplace relations practices. The committee recognises the work undertaken by CASA and the existing regulations regarding fatigue management. It also notes the continued development of the fatigue management project by CASA in parallel with the International Civil Aviation Organization.

3.12 The committee urges CASA to accord this project a high priority and ensure the timely implementation of these fatigue management standards. The committee is of the view that issues of fatigue are more appropriately managed on this basis rather than through the legislative changes proposed by the bill.

3.13 The Qantas Sale Amendment Bill relates to a number of issues that the committee considered in relation to Qantas' structure and planned business strategy. The grounding of the entire Qantas fleet as part of industrial action during the inquiry highlighted some of the issues relevant to the bill, including job security and the off-shoring of Qantas facilities.

3.14 However, the committee is mindful that in attempting to address these concerns the Qantas Sale Amendment Bill is inappropriately restrictive on Qantas and would risk reducing its competitiveness in a difficult industry.

3.15 The committee is also concerned that there could be significant practical difficulties arising from the bill requiring changes to Qantas' articles of association. The bill does not address the need for Qantas shareholders to accept the changes to Qantas' constitution that would be required by the changes to the articles of association. In addition, the committee is concerned that there is a risk that clauses 5

and 6 of the bill, regarding the applications for Court injunctions, could be used against Qantas by various small groups of shareholders with vastly different motives.

3.16 The committee is of the view that both bills include a number of key terms that are ambiguous and therefore may have unintended consequences if enacted. This includes terms which are not clearly defined in the bill and do not have a generally accepted single meaning. However, 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.

Draft amendments proposed by Senator Xenophon

3.17 As part of the inquiry the committee agreed to consider draft amendments to both bills put forward by Senator Xenophon and called for public comment on these additional amendments.²

3.18 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 is of the view that this does little to address a number of the concerns regarding the bill outlined above. In particular, the committee remains mindful of the potentially adverse effects of the bill on Qantas' ability to conduct business in a competitive manner in overseas markets and may restrict those bodies covered by the draft amendments to being essentially domestic operations.

3.19 The proposed changes to the Aircraft Crew Bill would remove workplace relations issues from the bill's amendments to the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* and proposed changes to the *Fair Work Act 2009*. The committee recognises that these changes address a major criticism of the original bill that the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* are not appropriate legislative instruments for addressing workplace relations issues.

3.20 The changes included in the new proposed amendments to the *Civil Aviation Act 1988* regarding the implementation of fatigue management systems are problematic and not supported by the committee. While the committee is still mindful of the importance of managing fatigue to maintain aviation safety standards it is of the view that the legislative prescriptions outlined by the proposed amendments are not the appropriate avenue for this.

3.21 However, the committee remains concerned with the issue of pay and conditions of foreign-based employees on the domestic legs of flights that are 'tagged' as international services. The committee received evidence from the Department of Education, Employment and Workplace relations regarding a level of ambiguity about

2 Note: these amendments were introduced into the Senate on 13 March 2012 and contain several differences to those published on the committee's website as outlined in Chapter 1.

the extent of the coverage offered by the *Fair Work Act 2009* and the relevant modern awards for work carried out by foreign-based employees on Australian domestic flights. The committee considers that these provisions would benefit from further examination.

Recommendation 3

3.22 The committee recommends that the relevant government authority examines the application of the *Fair Work Act 2009*, and the relevant modern awards, for work carried out by foreign-based employees on Australian domestic flights (particularly the domestic legs of international flights) in order to clarify how the current regulatory regime applies to these workers and whether any legislative changes are required.

Recommendation 4

3.23 The committee recommends that the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 not be passed.

Recommendation 5

3.24 The committee recommends that the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 not be passed.

Senator Glenn Sterle

Chair