

Dissenting Report by Coalition Senators

Coalition Senators note in relation to Recommendation 2

1.1 The management of private companies and decisions determined during the course of running their business should be the exclusive remit of that company. Government, or indeed any party, should not sit in subjective judgement to negotiate on, and interfere with, management decisions unrelated to the functions of that party.

1.2 This recommendation would constrain management's capacity and flexibility to effectively function in the market place.

1.3 This recommendation illegitimately impinges on a company's ability, specifically in this case Qantas, to make decisions in order to facilitate the effective management and running of their business.

1.4 It is for this reason that it should not be supported by the Committee and is opposed by the Coalition. An individual or any other business entity should not be subjected to any legislation that removes their pre-eminent and indisputable right to run itself.

1.5 Further, the aviation safety culture is often held up as a benchmark, due in large part to its "no-blame" (sometime called "just culture") approach to encouraging open reporting. Aviation safety management systems encourage, if not require, employees or management at any level to be prepared to highlight an actual or potential safety issue, even if that means interruptions to planned operations until the issue is investigated.

1.6 *The Civil Aviation Act 1988* (Section 28E) place specific requirements upon the holder of an Air Operators Certificate (AOC) in regards to safety. Civil Aviation Orders (CAO) 82.3 and 82.5 supported by Civil Aviation Advisory Publication (CAAP) SMS-1(0) expand on the specific requirements of a safety management system for regular transport operations.

1.7 A CEO or delegated officer (e.g. chief pilot) frequently has to make safety decisions under real-time pressure, often with incomplete information. The long term success and value of Australia's aviation safety depends on such decisions being made with the confidence of knowing that erring on the side of safety will be supported in a no-blame culture. The introduction of the threat of judicial review—some months after an incident by a judge acting with the benefit of hindsight—will compromise Australia's aviation safety for the crews and travelling public.

Coalition Senators note in relation to Recommendation 3

1.8 That a review of the *Fair Work Act 2009* and the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* is currently underway.

This review is being undertaken by Reserve Bank Board Member John Edwards, former Federal Court Judge, Hon. Michael Moore and Professor Ron McCallum AO.

1.9 The Review Panel has received evidence from a significant number of stakeholders and it is anticipated that they will finalise their investigation by the end of May this year.

1.10 In light of this, Coalition Senators believe that another separate examination of the Act as it applies to foreign-based employees on Australian domestic flights duplicates this effort and as such these matters would be better addressed by the Review Panel.

1.11 Notwithstanding the fact that comments of Panel Members made prior to their appointment suggests that the findings of the Review will be unremarkable and predictable, the Coalition remains hopeful that it will recommend solutions to the practical problems caused by the *Fair Work Act* which are increasingly self-evident.

1.12 In that context, the Coalition notes that several stakeholders who have given evidence to the Committee have also provided submissions to the Fair Work Review Panel. Those submissions cover many of the aspects considered by this Committee.

1.13 As such, Coalition Senators believe that it is not appropriate to duplicate these efforts.

1.14 The Coalition Senators do not support the proposed mechanism of making industrial relations changes by stealth under the guise of aviation legislation due to the detrimental effect on aviation safety.

1.15 In conclusion, Coalition Senators oppose Recommendations 1, 2 and 3 of the majority report.

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LP Senator for New South Wales

Senator Sean Edwards
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LP Senator for South Australia

Senator Fiona Nash
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