THE FUTURE OF THE FLYING KANGAROO

Dissenting Report by Senators Xenophon and Madigan

1.1 The bills at the centre of this inquiry aim to address serious issues within Australia's aviation sector, and in particular with our national flag carrier Qantas.

1.2 Australians need to think seriously about what has happened recently in the aviation industry, but more importantly, what they want to see happen in an industry in which Australia's deep involvement reaches back at least as far as the Wright Brothers. The Qantas Group, with its extensive domestic and international operations, together with its 30,000 employees, plays a key role in Australia's national economy and identity. The 29 October 2011 grounding of Qantas illustrates just how important Qantas is, and the flow-on effects that any disruption to Qantas operations can have.

1.3 The Majority Report fails to grasp the significance of the underlying problems for Australian aviation and employment. We are very concerned that the Committee, by not supporting the bills or offering alternative means of addressing these pressing issues, has not dealt with the problems in this area and has wasted the opportunity to take action.

1.4 Since the passage of the *Qantas Sale Act* in 1992, there have been many changes in the way Qantas operates, and those changes have accelerated in recent years under current management. There is no doubt that the aviation industry globally operates in a tough commercial environment. Qantas remains an iconic brand, but that status appears to have come under pressure as a direct result of the actions and strategies of current management.

1.5 The creation of Jetstar and the emphasis of the low cost carrier model has seen Jetstar's rapid rate of growth outstripping its parent. Expansion via an Asian base was promoted as the saviour of Qantas by CEO Mr Joyce at the November hearings, but as recently as last week, it seems those plans have been shelved.[1] Increased off-shoring, the use of cheap labour on domestic flights, labyrinthine leasing arrangements and dark predictions about Qantas International (emanating from Qantas management itself) have all cast shadows over our national carrier.

1.6 There are serious concerns that the *Qantas Sale Act* does not prevent Qantas from selling off Jetstar, for instance to a private equity company. This could then lead to a situation where the original parent company is under direct competitive threat from its former subsidiary. The irony of a sold-off subsidiary airline (Jetstar), originally nurtured by its parent (Qantas), cannibalising Qantas market share and jobs is self-evident. The fact that there are current Qantas management who supported the

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1 Matt O'Sullivan, 'Joint talks fail in Qantas Asia bid', *Sydney Morning Herald*, 10 March 2012.

failed and potentially disastrous private equity takeover deal of Qantas in 2007 is a potential concern.

1.7 A recent article in the *Sydney Morning Herald* criticised Qantas' Asian expansion, stating that:

> ... [I]t was a plan that was never going to fly. For it was first and foremost a threat – and a hollow one at that – to [Qantas'] own workforce rather than a legitimate blueprint to turn around the company's fortunes.
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> If there was any strategy involved in the plan, it was purely as part of an ideological battle over trade unionism in general and Fair Work Australia in particular, which culminated in management shutting down operations for almost three days last November.

The article continues:

> But the Asian option addressed none of those factors, and Joyce now presides over an organisation where industrial relations could best be described as toxic while his customers, disillusioned and jaded, have begun walking across the terminal to rival Virgin Australia.
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> ...
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> It would be unfair to label the abandoned Asian plan as half-baked for it never reached that stage. There was no oven, no cake tin and certainly no ingredients.[2]

1.8 The recent dismissal of 150 catering staff in Adelaide gives credence to the criticisms of the way Qantas management deals with their employees. Reports in *The Australian* indicate that staff were not told of their redundancies before the media was informed,[3] which would seem to demonstrate an apparent lack of regard for the employees.

1.9 The grounding of Qantas by the unilateral action of Mr Joyce on 29 October 2011 starkly exposed how important Qantas is to the nation's economy and international reputation. All Australians must question whether the power to create such an impact on our national interest should rest with the CEO (with ratification from the Qantas Board), who could see no other acceptable courses of action. The fact that Qantas operations are governed in part by the *Qantas Sale Act* provides a mechanism for the clear link between Qantas operations and the national interest to be reframed.

1.10 These bills are not an attempt to limit Qantas' ability to operate, but are one mechanism to ensure that, on one hand, our national interest is protected for the future, while on the other, Australian international airlines behave appropriately in the Australian labour market.

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2 Ian Verrender, 'Back to basics for Joyce & Co', *Sydney Morning Herald*, 13 March 2012.

3 Verity Edwards and Sophie Gosper, 'Qantas staff shocked as hopes crushed', *The Australian*, 17 February 2012.

1.11 We acknowledge that there have been specific concerns raised in relation to the structure of the bills. However, we believe that they have either largely been addressed through the proposed amendments or, with stakeholder cooperation, could easily be addressed with expanded definitions or through subordinate legislation. Unfortunately, those amendments have not been the subject of any sufficient examination. The Committee has failed to acknowledge the impact of Australian airlines seeking to move more and more of their maintenance and operations offshore, and operating overseas-based crew members under comparatively poor working conditions on what are in effect domestic flights.

1.12 We are concerned that time constraints only allowed the Committee to offer a limited opportunity for submitters to consider the amendments to these bills and to provide further information to the Committee. That opportunity was only matter of days and, for those members of the public who relied on the Committee website to alert them, less than a week. As such, we consider the evidence relating to the proposed amendments, as discussed in the report, is not comprehensive, and the effect of these amendments has not been fully explored.

Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011

1.13 The *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* aims to ensure that overseas-based crew flying domestic legs on Australian airlines are not employed under less favourable pay and conditions than if they were employed under Australian domestic contracts. In response to specific concerns raised during the inquiry, Senator Xenophon has circulated amendments to the bill, which instead amends the *Fair Work Act 2009* to remove any ambiguity and ensure that these crews come under its jurisdiction.

1.14 We are concerned that the Committee has not made a strong statement about the employment practices of Jetstar as exposed in the previous Inquiry on flight standards and training and during this Inquiry. Despite evidence raised in the 6 February 2012 hearing, the Committee's report makes no mention of the fact that Jetstar has been under investigation by the Fair Work Ombudsman in relation to the employment of cadet pilots and foreign-based cabin crew. The report also fails to mention that, as a result of these investigations, Jetstar has since capped the number of domestic routes its overseas-based crew can fly and has provided additional remuneration for some of those overseas-based cabin crew employed by Jetstar over the last two and a half years on those domestic operations, vindicating some of the concerns that are reflected in the bill.[4]

1.15 We are very concerned that the Fair Work Ombudsman sees this issue as serious enough to merit investigation, but the Committee does not propose a specific

4 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 6 February 2012, p. 5. Please note references to Hansard refer to the official version.

legislative remedy to address this problem, given that the evidence of the Department of Education, Employment and Workplace Relations (DEEWR) was quite equivocal about how the *Fair Work Act 2009* may (or may not) apply to these non-Australian overseas-based cabin crew.[5]

1.16 Evidence provided by two Jetstar employees (appearing in a personal capacity), Mr Michael Kelly and Ms Monique Neeteson-Lemkes, gave specific examples of the problems caused by overseas-based crew operating under different standards to Australian-based crew.

> **Mr Kelly:** My average days are anywhere between 12 and 14 hours, but I have extended up to 21.
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> **Senator XENOPHON:** Is that with a dispensation?
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> **Mr Kelly:** We do not fall under a union, so there is just pressure. We have to bring the aircraft home. The cabin crew just have to bring the aircraft home.
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> **Senator XENOPHON:** And for the Thai based flight crew?
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> **Mr Kelly:** I think they can go up to 24 hours.
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> **Ms Neeteson-Lemkes:** Twenty-four hours is correct.[6]

1.17 From both a safety and an industrial relations standpoint, this is unacceptable. It also indicates that some airlines are able to take advantage of non-unionised workforces, which has the effect of circumventing Australian pay and conditions.

1.18 In its supplementary submission to the Committee, AIPA also raised concerns about possible immigration issues relating to overseas-based crew operating on domestic legs of internationally-tagged flights.[7] Senator Xenophon has since asked questions in the Senate of Minister Ludwig, in his capacity as Minister representing the Minister for Immigration and Citizenship in the Senate, in relation to this issue. We are concerned that there may be a loophole in the *Migration Act* that allows Australian airlines to use overseas-based crew on what should more properly be considered domestic flights. Because the flights are notionally continuation sectors of flights that originate overseas, crew members are granted access to Australia under Crew Travel Authorities. The special purpose visas to which these Crew Travel Authorities relate do not carry the same restrictions in relation to disadvantaging Australian workers as, for example, 457 visas. Furthermore, we find the silence of the Committee on these matters even more surprising, given that the circumstances that this bill seeks to address seem similar to those that led to the introduction of the *Migration Legislation Amendment (Worker Protection) Act 2008.*

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5 DEEWR, *Committee Hansard,* 24 November 2011, p. 19.

6 Mr Michael Kelly and Ms Monique Neeteson-Lemkes, private capacity, *Committee Hansard,* 4 November 2011, p. 67.

7 Australian and International Pilots Association, *Supplementary Submission 4*, p. 3.

1.19 In response to Senator Xenophon's questions in the Senate, Minister Ludwig stated:

> [T]hese special purpose visa crew arrangements are only suitable for international airlines bringing crew into Australia, but they are not intended for international crew to operate in a purely domestic sector in Australia.[8]

1.20 It is extremely concerning that the definition of domestic and international flights for the purposes of granting visas seems to be dependent on flight numbers. These numbers are allocated to flights by the airlines themselves. There appear to be no regulations that require airlines to designate certain flights as domestic or international. This lack of regulation could allow airlines to use this ambiguity to designate flights in a certain way. It would seem reasonable that these designations should be in line with cabotage rules: for example, international airlines are not able to pick up and drop off domestic passengers between domestic destinations, although they are allowed to extend international flights to domestic destinations if they are dropping off international passengers. Logically, it would follow that any flight following these rules should be designated as international, and as soon as a domestic passenger boards the plane to fly to a domestic destination, the flight should be designated as domestic.

1.21 It is vital that the Parliament introduces legislation to determine how flights should be designated, or that this is determined by CASA. It is not appropriate for this designation to be left to the whim of the airlines. This legislation needs to apply across all relevant Acts, including the *Fair Work Act* and the *Migration Act.* It would be naive to believe that this lack of consistency is not causing Australian job losses through the use of foreign-sourced labour.

1.22 Mr Joyce also indicated that the enforcement of the amended *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* would force the Qantas Group to end some of its international services. He said:

> If the amendments are passed and the international crews will be treated as Australians in terms of wages and conditions on domestic legs of international flights, we will not longer be able to viably operate those international services.[9]

1.23 Given that cabin crew costs have been estimated at less than 10 percent of aircraft operating costs,[10] it is hard to see how increasing the pay and conditions for domestic legs would blow these costs out of proportion. The failure of Qantas to provide further information to the Committee strengthens the case that Mr Joyce's

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8 Minister Joe Ludwig, *Senate Hansard*, 8 February 2012, p. 47.

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

10 Joe A Scaria, 'IBS to help airlines to cut crew management cost', *The Economic Times*, 15 January 2010.

comments lack credibility. It would have been appropriate for the Committee to discuss this further in the report.

1.24 In the absence of hard facts to support Mr Joyce's alarmist claims, the only reasonable conclusion to be drawn is that Mr Joyce is scaremongering. It beggars belief that that the viability of these international services to and from Darwin and Cairns is dependent on the cost structure of the domestic flights to those cities, for which there is no apparent shortage of demand.

Recommendation 1

1.25 That the government introduce legislation relating to the definition of domestic and international flights, and that this legislation is enforced as part of a whole-of-government approach, with particular reference to the *Fair Work Act 2009* and the *Migration Act 1958*.

Recommendation 2

1.26 In the event that the *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* is not passed, the relevant government authorities examine the application of the *Fair Work Act 2009* and the *Migration Act 1958* in relation to work carried out by overseas-based employees on Australian airlines, with particular reference to domestic legs of flights tagged as international flights, and make the necessary legislative changes to ensure these employees are operating under appropriate conditions.

1.27 The amended *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* also now includes a requirement for holders of Australian Air Operators Certificates to have fatigue-management systems in place.

1.28 While we note the criticism about ambiguity in terminology directed at the proposed legislation, it should be recorded that the terminology was directly sourced from the ICAO documents that form the foundation of aviation fatigue management. In particular, ICAO provides the following definition from their newly released Doc 9966 'Fatigue Risk Management Systems: Manual for Regulators' 2011 Edition:

> A Fatigue Risk Management System (FRMS) is defined as:
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> A data-driven means of continuously monitoring and managing fatigue-related safety risks, based upon scientific principles and knowledge as well as operational experience that aims to ensure relevant personnel are performing at adequate levels of alertness.[11]

1.29 If there are genuine departmental concerns about ambiguity, these ought to be passed on to ICAO.

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11 International Civil Aviation Organisation, Fatigue Risk Management Systems: *Manual for Regulators*, 2011, p 1-1.

1.30 We would like to note the contributions from Mr Michael Kelly and Ms Monique Neeteson-Lemkes, Jetstar flight attendants who appeared before the Committee's 4 November hearing in their personal capacities. Once again, the serious repercussions of cabin crew fatigue were discussed. It appears that there are still a number of outstanding issues to be dealt with, which were originally raised in the Committee's previous inquiry into aviation safety.

1.31 In relation to fatigue risk management, we note Mr Buchanan's assertion, made during the hearing held on 4 November 2011, that:

> 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.[12]

1.32 However, there are no requirements on AOCs in relation to fatigue risk management for cabin crew, and the requirements regarding human factors relate to training.[13] Therefore, there are presently no 'constraints' under the AOC for Jetstar to apply to crew in relation to fatigue management, regardless of where the crew are based. We would go further and note that the evidence available to the Committee suggests that, of the human factors principles outlined in the CASA advisory material on Safety Management Systems, that it is unclear to what extent such principles have been fully implemented and put into practice by Jetstar. These principles include:

- adopt a holistic and integrated approach;
- put the people at the centre of the system;
- account for human variability;
- ensure transparency of organisational processes and actions;
- take account of social and organisational influences;
- involve staff and respect and value their input;
- encourage timely, relevant and clear two-way communication; and
- ensure fairness of treatment (e.g. the 'just culture' concept).[14]

1.33 The Committee has noted that CASA is currently working on formulating guidelines for fatigue management. We would like to make several observations. First, the ICAO guidance is about process rather than prescription. It requires that there be provided a prescriptive alternative to FRMS as a form of safety net, but leaves the formulation of the prescription to individual states. It is this formulation of the prescription that is testing all aviation regulators, including the FAA and EASA, and we expect CASA to be no different. Second, although Senator Xenophon based

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12 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 4 November 2011, p. 18.

13 See Civil Aviation Order 82.5 subsections 2 and 2A.

14 Civil Aviation Advisory Publication CAAP SMS-2(0) *Integration of Human Factors (HF) into Safety Management Systems (SMS)*, January 2009, p. 3.

the FRMS implementation dates in the bill on the CASA evidence, we are now concerned that the timeline proposed by CASA is particularly ambitious. There is therefore a high risk that managing fatigue in cabin crew will be constantly deferred. The fact that the Regulatory Reform project, originally scheduled for completion in 18 months, is now in its sixteenth year is not a reassuring sign for the legislative protection of cabin crew. Finally, the Fatigue Management for Aviation Industry Personnel page of the CASA website has been labelled "being updated and are unavailable" for many months and possibly more than a year. It would be helpful to see some information released to the public as a matter of urgency.

1.34 We are disappointed that the Committee was unable to appropriately consider and form a view on the amendments to this bill. It would have been very helpful to have these amendments appropriately scrutinised, and to allow a longer period for feedback. The Committee has acknowledged the issues this bill is trying to address, but has not offered an alternative approach to address these important issues in its recommendations.

Qantas Sale Amendment (Still Call Australia Home) Bill 2011

1.35 The Committee also raises the issue of the application of the *Qantas Sale Act*, and discusses the "conflicting claims regarding the purpose of the QSA."[15] However, the Committee does not acknowledge the need to address these conflicts or offer any recommendations to do so. Importantly, we are not persuaded that the Qantas assertions about the purpose of the *Qantas Sale Act* are correct (in effect, that the Act is no longer relevant and that its principal purpose was only to facilitate the sale of Qantas).[16] We also believe that the Committee's reporting of only the Qantas view in detail to the exclusion of dissenting opinions is inappropriate, as it gives a false impression that the Committee approves of that view. These fundamental conflicts must be resolved so that the Act can be appropriately applied. This ambiguity could, in the long term, allow Qantas to take action that would otherwise be considered to be against the intention and spirit of the Act. Qantas' view is based on the presumption that the *Qantas Sale Act* was never intended to apply to subsidiaries. That has not been established in law.

1.36 The principal aim of the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* is to require Qantas to continue the bulk of its heavy maintenance, training and operations management in Australia. The proposed amendments narrow the focus of the bill to ensure it applies only to Qantas, and Australian international airlines in which Qantas has a controlling share. These amendments also address any issues of extra-territorial application of Australian law. We are concerned that the full impact of these amendments on the bill has not been adequately considered by the Committee.

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15 See paragraph 2.54 of this report.

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

1.37 On 6 March 2012, *The Australian* reported that Qantas expects a 60 percent drop in labour demand over the next five years. This is the equivalent of 870 jobs.[17] Qantas has stated that this drop is the result of new maintenance systems and aircraft that require less work, in addition to the fact maintenance on the A380 will not be occurring in Australia. Qantas also states that it has still to make a decision about where maintenance for the 787s will be carried out, although it is unlikely to be in Australia:

> **Mr Joyce:** We have always been clear. It will not be economic for us to do the A380 or the 787 maintenance in Australia, because it takes a long time for that to occur for them. There are very low levels of maintenance needed on those aircraft.[18]

1.38 These circumstances, if combined with the ability to offshore even more work, would mean a massive reduction in heavy maintenance in Australia. Qantas has already begun the process of dismantling part of that heavy maintenance capability.[19]

1.39 It is also important to note the issue of critical mass for maintenance planning, where it is estimated that between 12 and 14 older technology planes and as many as 20 new technology planes are needed to make heavy maintenance economically viable. If Qantas moves other maintenance offshore and phases out their 747s, their maintenance activities in Australia could become totally unviable once the 767 fleet has gone and as the 747 numbers reduce. This could provide Qantas with the trigger to move everything other than line maintenance offshore, resulting in heavy job losses.

1.40 The Committee notes Qantas' comments in their submission that they are the only airline to do any heavy maintenance in Australia.[20] However, statements provided by Virgin Australia during the 24 November hearing state that it conducts approximately 83 percent of its maintenance in Australia, including heavy maintenance.[21] Qantas itself also acknowledged in answer to a Question on Notice[22] that Cobham is another airline that conducts all of its heavy maintenance in Australia. While we acknowledge that the Committee has noted in its report that other airlines undertake heavy maintenance in Australia, it would have been useful for the Committee to note that it was provided with factually incorrect information by Qantas, and that Qantas did not formally seek to correct this.

1.41 We acknowledge the concerns raised by submitters about the structure of this bill. However, the question remains: what do we want for the future of this iconic airline, and for the 30,000 Australians it still employs? It seems incongruous for the

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17 Steve Creedy, 'Qantas to cut maintenance workers', *The Australian*, 6 March 2012.

18 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 26.

19 Ben Schneiders, "1000 Qantas jobs 'at risk in state," *The Age*, 2 March 2012.

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

21 Ms Jane McKeon, Virgin Australia, *Committee Hansard*, 24 November 2011, pp 10–13.

22 Answers to Questions on Notice, 4 November 2011, p. 22.

Government to say that, on one hand, they want to retain the *Qantas Sale Act 1992* in its current form, while on the other hand they ignore the intent of the legislation.

1.42 We note the concerns raised by the Department of Infrastructure and Transport regarding the difficulties in changing the articles of association as a result of the bill's changes to the *Qantas Sale Act*.[23] While the prospective application of this legislation would be easily achieved, the structure of the *Qantas Sale Act* in regards to the company's constitution and any future amendments is problematic and needs to be addressed.

1.43 We also note the Department of Infrastructure and Transport's concerns that the requirement to have the majority of 'flight operations' in Australia could effectively require airlines to become primarily domestic operators.[24] This concern has since been addressed through an alteration in the proposed amendments to the bill, which were circulated in the Senate prior to the Committee's report. It would have been appropriate for the Committee to take this into account.

Recommendation 3

1.44 That the Government conduct an urgent and independent review into the operations of the Qantas Sale Act 1992 in order to determine whether the Act as it stands is still achieving its original aims, and whether it should be strengthened.

Grounding the Qantas Fleet

1.45 The Committee also raised the matter of the Qantas lockdown and subsequent grounding. We agree with the Committee's comments about the seriousness of these actions, but we believe the Committee's recommendation should go further.

1.46 We agree that airlines should have a reasonable basis for safety concerns when making the decision to ground planes. For this very reason, it is vital that airlines are able to ground immediately and without notice.

1.47 Instead, it would be more practical to allow airlines to immediately ground a fleet, but then require them to prove to CASA and/or the Australian Transport Safety Bureau (ATSB), within a certain timeframe, that they had reasonable proof that this grounding was necessary for safety reasons. If they are unable to prove this, a series of penalties should apply. The airline would then have to apply to CASA in the usual way before the fleet was allowed to resume operations.

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

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

1.48 This approach would not endanger the public, and would also go some way towards preventing airlines from grounding a fleet for other reasons, such as an industrial dispute, where those concerns did not present a genuine safety issue.

1.49 We believe it is disingenuous in the extreme for Qantas to suggest that its pilots, who take their responsibilities very seriously, would be so distracted by the news of the lockout as to cause a safety incident.

Recommendation 4

1.50 That the Government develop regulations that would require AOC holders, notwithstanding any other existing reporting requirements, within two weeks after grounding a fleet, to provide information to CASA and/or the ATSB that proves the AOC holder had reasonable proof that the grounding of the fleet was necessary for safety reasons. The regulations should include penalties for AOC holders who are not able to provide reasonable proof.

Financial Reporting

1.51 It is also important to expand on the issue of profitability in relation to Jetstar Asia. During the 6 February hearing, Senator Xenophon referred to an article by Scott Rochford in the *Sydney Morning Herald*, which suggested that Jetstar Asia's profits relied on revenue earned from aircraft it was leasing to Jetstar Australia.[25] Senator Xenophon also raised an interview between Qantas Head of Corporate Communications Olivia Wirth and ABC's Matt Peacock, in which Ms Wirth stated that Jetstar Pacific was 'very close to break even.'[26]

1.52 In the 6 February hearing, Mr Buchanan disagreed that Jetstar Asia was reliant on the leasing arrangements for profit, and that Jetstar Pacific's performance was "normal for a start-up operation."[27]

1.53 A discussion about the leasing arrangements between Qantas and Jetconnect in the same hearing also led to confusion, with Mr Joyce initially incorrectly attributing fuel costs to a figure in Jetconnect's account.[28] He later corrected this, explaining that the wet lease arrangement between Qantas and Jetconnect in the following way:

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25 Scott Rochfort, 'Subleases to sister help struggling Jetstar Asia post $4.5m profit,' *Sydney Morning Herald*, 19 January 2009. See Mr Bruce Buchanan, Jetstar Group, and Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, pp 8–10.

26 Matt Peacock and Olivia Wirth, *Background Briefing*, 8 December 2011.

27 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 6 February 2012, pp 9–10.

28 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 11.

> **Mr Joyce:** The Qantas group purchases aircraft and allocates them to Jetconnect business, and the Jetconnect business operates those aircraft and charges them back.[29]

1.54 It appears that there is a significant lack of clarity in the way leasing arrangements are reported for the purposes of financial reports. Mr Joyce also stated:

> **Mr Joyce:** Yes. But this is all put back into Qantas's mainline books. We do consolidate them back in. We are not saying that Jetconnect is making $11 million as a stand-alone entity that is completely different from Qantas. It is allocated back into the Qantas resource, because it is part of the Qantas network.[30]

1.55 Effectively, it appears that Qantas purchased aircraft and leased them to itself, therefore allocating both the cost of the lease and the profit of providing the lease to itself as well.

1.56 These apparently convoluted and labyrinthine commercial arrangements may well demonstrate how an airline could, hypothetically, use a similar arrangement to move profits and losses between its entities. It would be appropriate for ASIC or a similar regulatory body to examine whether the provisions relating to reporting the profits and losses from such arrangements are adequately transparent and accountable.

Recommendation 5

1.57 That the Government require ASIC or another relevant regulatory body to examine the requirements relating to financial reporting of aircraft lease arrangements, and whether such arrangements provide an appropriate level of transparency and accountability.

1.58 We also note the questions Senator Xenophon raised during the 4 November hearing in relation to accounting standards. We believe that there needs to be stricter standards into how profits and losses are attributed within the Qantas Group, especially in relation to Accounting Standard AASB8, which applies to other parts of Qantas operations. This is particularly concerning when figures which have not been publicly released are used to make a specific case about one part of the Qantas Group. In fact, the job losses announced by Qantas last year appear to hinge on such assertions. The reported losses of Qantas International are not subject, in themselves, to the same standard as other parts of Qantas operations, such as Freight and the Frequent Flyer program. We refer to the exchange below:

> **Senator XENOPHON:** But is it not the case that, when you assert that Qantas international has lost $216 million in the last year, there is no accounting standard that applies to it in terms of the AASB8 that applies to the actual divisions listed in the Qantas annual report?

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29 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 23.

30 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 22.

> **Mr Joyce:** As I said, it is part of our internal process. Our auditors do look at that and the auditors have confirmed that they are accurate representations of the losses that Qantas international incurs. The auditors have reviewed it.
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> **Senator XENOPHON:** But it is not subject to the accounting standard?
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> **Mr Joyce:** It is not subject to the accounting standard, but it is subject to an audit review and the audit review has taken place in the organisation and the auditors are comfortable with that performance.
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> **Senator XENOPHON:** Because it is not the subject of an accounting standard, which you have acknowledged, isn't the way you allocate costs and revenue to Qantas international a subject of considerable judgment by you?
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> **Mr Joyce:** No, it is not. The way we allocate costs and manage each individual business is through standard terminology and mechanisms that a lot of airlines around the world use. It is standard practice. We do have a whole series of systems within the group to use and a whole accountancy of how individual segments and individual routes perform. We base it on the user pays model. We base it on the model that has a whole series of contracts between segments. As we would with any other airline around the world, those are contracted and negotiated between segments at the reference end—what each segment uses and then we charge the segments for what actually takes place. It is a very comprehensive, detailed process that has been there for years. We are absolutely comfortable—our accountants there, the management there, the previous management there—that the $200 million represents a true and accurate picture of what Qantas international is losing.[31]

1.59 However, the fact that the Accounting Standard does not specifically apply to Qantas International does cause concern over the assertions made by Qantas as to the extent of Qantas International's losses, given that these were the basis for Qantas moving its centre of gravity to Asia (although those plans have recently been abandoned).

The Cannibalisation of Qantas by Jetstar

1.60 In the 6 February hearing, the exponential growth of Jetstar was raised. On 4 December 2005, in an interview with Alan Kohler on *Inside Business*, former Jetstar CEO Geoff Dixon stated that he did not think Jetstar would ever be more than 20 percent of the size of Qantas.[32] Currently, Jetstar has 86 aircraft compared to Qantas' 198, which means that Jetstar is now approximately 43 percent of the size of Qantas. Given that Jetstar plans to increase its fleet to 131 aircraft by 2014, this could see Jetstar grow to over 60 percent of the size of Qantas. The obvious concern is that

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31 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 3.

32 Alan Kohler and Geoff Dixon, *Inside Business*, 4 December 2005.

Qantas' subsidiary will cannibalise its parent, and that Qantas will eventually exist only as a shell. The question needs to be asked whether the subsidiary becoming bigger than the parent is a true reflection of the international business environment, or more the result of avoiding the intent of the *Qantas Sale Act*.

1.61 Jetstar's rate of growth is also concerning from a different angle. In July last year, the *Sydney Morning Herald* reported that Jetstar was planning to increase its fleet in the Asia-Pacific to over 400 by 2020.[33] This would require a compound annual growth rate of approximately 40 percent. In contrast, the International Air Transport Association (IATA) estimates a CAGR of 5.9 percent for international passengers and 5.7 percent for domestic.[34] Given these figures, it seems unrealistic to say at the least that Jetstar would be able to achieve the intended growth, without needing to find substantial amounts of capital from its Australian operation and from other investments. It is highly unlikely that Jetstar Australia's operation could ever fund that expansion.

1.62 We acknowledge the Committee's work on these issues. However, we are concerned that this is the second recent inquiry into aviation matters, and that both of these inquiries have highlighted serious issues within the industry. We believe that the Committee has failed to adequately address issues of ongoing concern, and by not offering alternatives to the bills before the inquiry, the Committee is in effect turning a blind eye to the practices and commercial strategies that are currently occurring.

1.63 We also acknowledge the work done by the Australian Greens on these issues, and support their additional comments to the Committee's report.

Recommendation 6

1.64 That the Government commission an urgent, comprehensive review of the Australian aviation industry, to be conducted by an independent person or party with relevant experience, with particular reference to safety and competition issues, as well as the long term viability of the industry.

Recommendation 7

1.65 That the bills be passed with proposed amendments.

33 Reuters, 'Jetstar to invest $470m in Singapore hub', *Sydney Morning Herald*, 18 July 2011.

34 IATA, available online at: http://www.iata.org/pressroom/pr/pages/2011-02-14-02.aspx

Senator Nick Xenophon
Independent Senator for South Australia

Senator John Madigan
DLP, Victoria