

ACTU Submission

Senate Economics Legislation Committee

Qantas Sale Amendment Bill 2014



1. Introduction

- 1.1 The ACTU is the peak body for unions representing the 33,256 employees working for Qantas, the aviation sector and the 165,000 related jobs which flow from Qantas as Australia's national airline.
- 1.2 We welcome the opportunity to comment on the Qantas Sale Amendment Bill 2014.
- 1.3 We note that the Senate Inquiry into the Bill will consider:
 - The effect of the proposed amendments on the aviation sector and the broader Australian economy;
 - The detail and impact of the legislation , including any impact on other legislation; and
 - The opportunities the amendments will provide for Qantas to increase its competitiveness through the harmonisation of Australia's aviation regulatory framework.
- 1.4 The primary focus of our submission is to bring to the Committee's attention the significant effect the proposed Bill will have on Qantas employee's jobs, the 165,000 jobs which flow from Qantas' operations in Australia and the benefits of a viable national airline for all Australians.

2. Executive summary

- 2.1 The ACTU opposes this Bill in its current form and recommends that the Committee reject it.
- 2.2 In proposing this Bill, the Government is saying it doesn't care if whether Qantas jobs stay in Australia or not. It will not protect Australian jobs or the National interest. But it will allow foreign governments to buy major shareholdings in our airline and insist on protecting their jobs by offshoring Qantas work to their country.
- 2.3 This Bill reflects a weak approach to government, one which takes no responsibility to fight for Australian jobs, skills, investment, infrastructure, national security and essential services.
- 2.4 This Bill is predicated on the presumption that a level playing field can be created in the aviation sector. We refute this predication. Qantas competes with airlines that receive various forms of assistance from their governments in order to promote their countries' national interests. Without similar government assistance, there is no level playing field for Qantas in the global aviation sector.
- 2.5 Part 3 of the Qantas Sale Act currently enshrines three key principles designed to protect the Australian national interest, namely that:
 1. Qantas maintain an Australian identity and the majority of its facilities in Australia;
 2. Total foreign ownership of both Qantas domestic and international operations be limited to 49%; and
 3. Foreign ownership by a foreign airline not exceed 35% and of an individual foreign entity not exceed 25%.

- 2.6 The amendments proposed by this Bill do not merely seek to increase the capacity for Qantas to access foreign capital. This Bill also removes the provisions of the QSA which ensure Qantas remains majority Australian owned and supports local employment and infrastructure investment.
- 2.7 Should the changes outlined in this Bill be carried, the result will be:
1. Unlimited (100%) foreign ownership of Qantas domestic operations;
 2. No requirement on Qantas to maintain a majority of its facilities in Australia; and
 3. The probable 'breaking up' of the Qantas Group, with serious consequences which may affect the viability of the airline's business model, including the possible cessation of Qantas international operations altogether.
- 2.8 Without a requirement for Australian majority ownership (51%) of Qantas and that at least the majority of Qantas facilities be kept in Australia, there will be no checks and balances to the wholesale exporting of Qantas jobs in Australia to foreign interests.
- 2.9 There is a strong national interest in ensuring a viable Australian airline which maintains a true Australian identity and supports local employment and investment.
- 2.10 If the Committee is convinced the business case of Qantas warrants adjustments to the foreign ownership provisions of the QSA, it must be satisfied that those financial benefits could not be provided to Qantas by simply repealing the restrictions a foreign airline owning more than 35% and an individual foreign entity owning more than 25% of Qantas, whilst maintaining the overall restriction of 49% total foreign ownership and a requirement that the majority of facilities remain in Australia.
- 2.11 The Committee must be satisfied that the QSA could not be amended in this manner, which provides Qantas with the benefit of access to greater foreign capital without eroding the national interest, including jobs growth, skills development, economic investment, national security, essential services and infrastructure and the welfare of Australian people.

3. Recent events

- 3.1 In 2012, the Virgin Group restructured the airline, splitting its domestic and international services into separate divisions. As the Air Navigation Act 1920 (ANA) requires only Australian international airlines be 51% Australian owned, the restructure allows Virgin's domestic airline, operating Australian domestic routes, to be 100% foreign owned, a matter which has attracted significant criticism from Qantas.
- 3.2 Virgin's domestic arm is around 85% foreign owned with Etihad (19.9%), Air New Zealand (23%) and Singapore Airlines (19.9%) the major stakeholders. Etihad is 100% government owned, Air New Zealand and Singapore Airlines are both majority government owned.
- 3.3 Qantas maintains the investment of these foreign airlines into Virgin is geared toward an aggressive challenge to Qantas' share of the domestic aviation market. Both airlines are making a loss as a result of this competition, but due to renewed levels of foreign investment, it would appear that Virgin has deeper pockets.¹

¹ Share issue December 2013

- 3.4 Following Qantas' ASX announcement of substantial losses for the first half of 2013, the airline's credit rating was downgraded to junk status, seriously impacting on Qantas' ability to access investment funds and cash flow.
- 3.5 In 2013 Qantas approached the government for assistance, seeking support similar to the letter of comfort or a debt guarantee. Despite initial positive comments from the Treasurer, indicating that Qantas, as our National carrier was a 'special case', the Coalition has, to date, refused to provide either a letter of comfort or a debt guarantee. Instead, it proposes to 'level the playing field' for Qantas by repealing Part 3 of the Qantas Sale Act 1992 (QSA).
- 3.6 Qantas CEO, Alan Joyce has consistently stated that the airline's preferred mode of assistance is a letter of comfort or a debt guarantee, as this would enable the airline to maintain an investment grade credit rating, reducing the costs of accessing cash flow whilst it made a number of structural and operational changes aimed at reducing costs and improving competitiveness.
- 3.7 Repealing Part 3 of the QSA raises more challenges than benefits for Qantas in the short-medium term. Qantas would need to secure suitable investors and would incur significant additional costs should it restructure the airline along the lines of Virgin, which would involve further lengthy and costly applications for separate Air Operating Certificates.

4. The Bill will have a negative effect on Qantas' viability and the Australian aviation sector

- 4.1 Australia's bilateral treaty arrangements can only be accessed by an "Australian" carrier, requiring the international arm to maintain 51% Australian ownership and an "Australian character". This would mean the international operations would no doubt be spun-off into a separate entity, so that the domestic operations could be 100% foreign owned and capitalised.
- 4.2 Such a restructure would allow Qantas' domestic arm to be sold off entirely. This would have significant effect on the capacity of Qantas to vertically integrate its domestic and international operations, and may have a damaging effect on the viability of the airline's existing business model, including that Qantas international operations cease altogether.

5. Without significant government investment or support, a 'level playing field' for Qantas in the global aviation cannot exist.

- 5.1 The Government asserts that repealing Part 3 of the QSA will 'level the playing field' for Qantas. The suggestion of a 'level playing field' has so far been presented by the Coalition government in terms of the two airlines which have Australian Air Operating Certificates, Qantas and Virgin Australia.
- 5.2 Without significant government investment or support, a 'level playing field' for Qantas in the global aviation cannot exist. Qantas cannot compete with the significant number of government owned or majority government owned competitor airlines that receive various forms of government assistance. For example, of Virgin's foreign owners, Etihad is 100% government owned, and Air New Zealand and Singapore Airlines are both majority

government owned. China Southern, China Eastern, Air China and Thai Airways are 100% government owned. Malaysia and Qatar Airlines are majority government owned.

- 5.3 Many more of Qantas' competitor airlines receive substantial benefits from their governments such as tax exemptions and capital injections. For example, in 2001 Air New Zealand received NZ \$885million from, in 2010 JAL received YEN350billion capital and a YEN600 loan from their governments, in 2010 Thai Airways received government funding to reduce its debt to equity ratio and Malaysia Airlines received a US\$600 share purchase from their government.
- 5.4 In addition, the majority of countries have limits on foreign ownership in *both* their international and domestic airline operations.²
- 5.5 These countries provide financial support to their national airlines and maintain restrictions on foreign ownership because it serves their national interest. This national interest includes encouraging jobs growth, skills development, protecting political, social and economic interests, national security, essential services and infrastructure, aviation safety, and the welfare of its people.
- 5.6 If the Committee is convinced adjustments to the foreign ownership provisions of the QSA are warranted, then the Government must demonstrate why this Bill could not do that by simply repealing the restrictions on 35% by a foreign airline and 25% by an individual foreign entity. Why does this Bill also propose to allow 100% foreign ownership of Qantas domestic and remove the requirement that the majority of Qantas jobs stay in Australia?
- 5.7 In other words, the government must justify why it is proposing to allow foreign owners of our national airline to offshore Qantas jobs to boost employment in their countries but our government will not protect Qantas jobs in Australia.

6. Repealing Part 3 of the QSA would mean losing the requirement to keep jobs in Australia

- 6.1 Repealing the entirety of Part 3 of the QSA would remove, in particular the requirement under S.7(1)(h), that the principal operation centre for Qantas and the majority of its facilities (such as, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration) must be located in Australia.
- 6.2 This will remove protection against foreign owners directing all employment to foreign countries. For example, the majority of Virgin airline's heavy maintenance is conducted in New Zealand, its major foreign shareholder. This will result in Australia's aviation future, including employment opportunities and skills development, to wither and die.
- 6.3 We have already discussed the possible risks to the business model this Bill represents for the viability of Qantas operations. It is conceivable, that the Australian people could find themselves with no Qantas domestic or international airline services in the near future.
- 6.4 On 7 March 2014, Tony Abbott conceded that repealing Part 3 of the QSA would result in Qantas jobs going off shore, saying it " may be regrettable but never the less it is the best way to guarantee Australian jobs for the long term." ³

² See Appendix A

- 6.5 We do not see how the wholesale exporting of Qantas jobs to foreign interests, and jeopardising the business model of the airline can guarantee any Australian jobs for the long term.
- 6.6 If it is the view of the Government that in order to attract foreign capital, repeal of the requirement that Qantas maintain its Australian based operating structure is necessary to attract foreign investors to Qantas, then this Bill is fundamentally flawed as it sacrifices the national interest for a private corporate interest.

7. The National interest

- 7.1 Amending the provisions of the QSA must be balanced against the need to protect the National interest. The fundamentals of the national interest include a commitment to Australian jobs, infrastructure, its political, social and economic interests, national security and essential services and the safety and welfare of the Australian people.
- 7.2 In moving the Qantas Sale Bill, the then Minister for Finance, guaranteed that Australians would not lose on their investment in the national airline when it was privatised and that “the fundamentals of the national Interest safeguards needed to be enshrined in the legislation, which included maintaining the basic character of Qantas.”⁴
- 7.3 It is incumbent on the Government to justify why the QSA should not be amended in a manner which provides Qantas with the benefit of access to greater foreign capital without eroding the national interest, in particular direct and related employment, skills development, national security, essential services and infrastructure, aviation safety, and the welfare of Australian people.

8. Direct employment

- 8.1 Qantas has reaped the rewards of its historical origins as a national carrier, supportive governments, dominant market share, loyal community and dedicated employees. Consequently, it has had a head start compared to many other airlines due to its established lion’s share of the Australian market. Qantas receives approximately 73.0% of the total domestic airline industry revenue.⁵
- 8.2 The expectation that Qantas fulfils its reciprocal national obligations is still strongly felt amongst the Australian public, who continue to regard the airline as a national icon. This includes Qantas’ role as a significant employer of Australians.
- 8.3 Qantas employs 33,256 people, including engineering and maintenance, customer services, catering, information technology services, baggage handling, emergency services and a variety of administrative roles. It conducts the majority of its heavy maintenance in Australia and operates call centres in Hobart, Melbourne and Brisbane. Qantas is also a major employer in parts of regional Australia.

³ Sydney Morning Herald, Govt to repeal Qantas sale Act; <http://news.smh.com.au/breaking-news-national/govt-to-repeal-qantas-sale-act-20140303-33uvg.html> at 7 march 2014

⁴ Qantas Sale Bill 1992, Second Reading Speech, Mr Willis at [www://parlinfo.aph.gov.au](http://www.parlinfo.aph.gov.au)

⁵ IBIS World Company Report Qantas Airways Limited, Premium Report, 30 June 2013

- 8.4 However, unions have long held concerns that the current and future directions laid out by the Qantas group is built on the profits to be made entering a growing Asian market and access to lower wages and conditions for foreign based workers. Thousands of Qantas jobs have been out-sourced or off-shored in the past decade, in particular various head office, administrative and technology functions, engineering, maintenance and other ground services operations.
- 8.5 In February 2014, Qantas announced 5,000 further job cuts across the Qantas group.⁶ Conversely, Qantas executives have enjoyed massive pay increases (taking executive packages to a ratio of 140:1 to Qantas worker's wages), despite simultaneously reporting poor shareholder returns and announcing further job cuts.⁷ This has resulted in growing unease amongst Qantas employees (half of whom earn less than \$50,000 per annum) regarding their employer's level of commitment to them and their job security.
- 8.6 We have no doubt that, should the requirement under S.7(1)(h) that the principal operation centre for Qantas and the majority of its facilities in Australia be removed, Qantas will not hesitate to allow further off-shoring and out-sourcing of Australian jobs.

9. Related employment opportunities

- 9.1 Ensuring the viability of the local aviation industry also promotes 165,000 indirect employment opportunities, including for example, in tourism, hospitality, cargo and freight services, manufacturing and construction. Tourism contributes almost 5% of our national GDP, air travel delivers 99% of tourists to our shores and Qantas spends \$6billion with Australian suppliers every year.⁸
- 9.3 Removing S.7(1)(h) of the QSA will undermine the local employment opportunities of 165,000 Australians across a wide range of related industries.

10. Skills development

- 10.1 The National Aviation Policy White Paper specifies the importance of retention and development of skilled and experienced employees in the sector. Further offshoring of maintenance engineering training will result in a further drift of apprentices, loss of skilled personnel and the loss of a long term capacity to sustain a viable local aviation industry.

11. National Security and essential services

- 11.1 As the national airline, Qantas has historically fulfilled a role of an airline aligned with the Australian national security and essential services. Australians rely on Qantas in times of national emergency and disaster to have an effective and responsive capacity. For example, Qantas has transported emergency personnel, supplies and services and evacuated wounded and deceased citizens devastated by the 2002 Bali bombings, the Boxing Day Tsunami, the Christchurch earthquakes, the Japanese Tsunami and the Queensland floods.
- 11.2 Rural Australians rely on Qantas to maintain regional routes which connect their communities and sustain local business and employment.

⁶ Qantas Airways Limited, ASX announcement February 2014.

⁷ Qantas Airways Ltd, Preliminary Final Report Year Ended 30 June 2011, Underlying Profit Before Tax Announcement, 24 August 2011

⁸ Australian Government, National Aviation Policy, White Paper, December 2009, p.31

12. Safety

- 12.1 Qantas has an unparalleled safety record. This is due, in no small part, to the airline's highly skilled, trained and dedicated employees. These employees have had the benefit of a legislative framework in Australia which supports a culture of high safety standards in aviation. It is clear that strong local aviation laws and decent terms and conditions of employment have a direct impact on the quality of an airline's operations and its capacity to meet Australian safety and service standards.⁹

13. Conclusion and Recommendations

- 13.1. Without government investment or support, a 'level playing field' for Qantas in the global aviation cannot exist. Qantas cannot compete with the significant number of government owned or majority government owned competitor airlines that receive various forms of government assistance in order to promote their national interests.
- 13.2. It is in this context that the Qantas Sale Act exists to protect the Australian national interest, including employment opportunities, skills development, infrastructure, national security and safety and welfare of the Australian people.
- 13.3. The amendments proposed by this Bill do not merely seek to increase the capacity for Qantas to access foreign capital. This Bill also removes the provisions of the QSA which ensure Qantas remains majority Australian owned and supports local employment and infrastructure investment.
- 13.4. Should the changes outlined in this Bill be carried, the result will be:
1. Unlimited (100%) foreign ownership of Qantas domestic operations;
 2. Wholesale loss of Australian jobs due to the removal of the requirement on Qantas to maintain a majority of its facilities in Australia; and
 3. The probable 'breaking up' of the Qantas Group, with serious consequences which may affect the viability of the airline's business model and cease international operations altogether.
- 13.5. This Bill is patently contrary to the national interest.
- 13.6. The Government has not demonstrated why the QSA could not be amended to assist Qantas to access increased foreign capital by simply repealing the restrictions on 35% by a foreign airline and 25% by an individual foreign entity.
- 13.7. Any amendments to the QSA aimed at providing Qantas with greater access to foreign capital can and must do so without compromising the national interest.
- 13.8. The Bill should be rejected.

⁹ For example, surveys into airline accidents identify that 12% of major accidents world-wide are due to maintenance deficiencies.

APPENDIX A

Government Intervention in International Airlines

International Airlines	Government Ownership	Other
Virgin Australia Owners		
Etihad	100 per cent Government owned	No income or corporate taxes, capital gains tax, fringe benefits taxes, payroll or general consumption taxes paid in UAE.
Singapore Airlines	Majority Government owned	Accelerated Tax Depreciation on aircraft.
Air New Zealand	Majority Government owned	2001: Air New Zealand received a NZ\$885 million capital injection from the NZ Govt.
Asian Carriers		
China Southern	Majority Government owned	
China Eastern	Majority Government owned	
Air China	Majority Government owned	
JAL	Majority privately owned	2010: JAL received YEN350 billion of capital from a state controlled investment fund and YEN600 billion line of credit from financial institutions.
Malaysia Airlines	Majority Government owned	US\$900 rights issues of which two thirds subscribed by government.
Thai Airways	100 per cent Government owned	2010 Recapitalisation program to reduce debt to equity ratio.
North America		
United Airlines	Majority privately owned	Chapter 11 bankruptcy allowed complete restructure.
Delta	Majority privately owned	Chapter 11 bankruptcy allowed complete restructure.
Air Canada	No Government ownership	In 2009 Air Canada received a CA\$250 million loan from government owned Export Development Corporation.
Other		
Qatar	50 per cent Government owned/50 per cent privately owned	No income or corporate taxes, capital gains tax, fringe benefits taxes, payroll taxes or general consumption taxes paid in Qatar.
Brazil	Limits on foreign investment is 20 per cent by single foreign entities and/or individuals.	As for international airlines.
Canada	25% voting interest, including by foreign airlines.	As for international airlines.
Chile	A single foreign entity and/or individual can purchase up to 100%.	As for international airlines.
China	40% with 25% for foreign airlines and 25% for single foreign entities or individuals.	As for international airlines.

International Airlines	Government Ownership	Other
Egypt	40% for scheduled airlines; no limit for charter airlines	As for international airlines.
EEA members & Switzerland	Up to 100% may be owned by States or nationals from the EEA.	As for international airlines.
Fiji	49%	49%
India	49%, but no ownership by foreign airlines permitted.	As for international airlines.
Indonesia	49% including by foreign airlines	As for international airlines.
Japan	33% including by foreign airlines	As for international airlines.
Korea	Less than 50% by foreign companies, individuals and airlines.	As for international airlines.
Malaysia	49% including by foreign airlines.	As for international airlines.
Mexico	25%	As for international airlines.
New Zealand	Up to 49% may be held by non-New Zealand nationals. Each foreign airline restricted to 25%, and foreign airlines in total restricted to 35%.	No restriction on foreign investment.
Philippines	40% if investment is for a Philippines airline operating both international and domestic services.	As for international airlines.
Qatar	The financial law allows foreign purchases of up to 20% of Qatari companies listed on the Qatar Stock Exchange.	As for international airlines.
South Africa	Maximum 49% may be held by foreign entities.	As for international airlines.
Taiwan	49% with a limit of 25% for single foreign entities or individuals.	As for international airlines.
Thailand	49% including by foreign airlines.	As for international airlines.
United Arab Emirates	No fixed policy	N/A
USA	25% voting interest, including by foreign airlines. Investors from open-skies countries can have a non-voting equity interest of up to 49%.	As for international airlines.



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