



**Australian Government**

**Department of Infrastructure and Regional Development**

**Secretary**

Contact: *Stephen Borthwick*

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Dear Dr Dermody

**Inquiry into the Qantas Sale Amendment Bill 2014**

Thank you for your letter of 7 March 2013, inviting the Department of Infrastructure and Regional Development to make a submission to the Senate Economics Legislation Committee inquiry into the Qantas Sale Amendment Bill 2014.

The Department has prepared the attached submission to assist the Committee in its deliberations.

The Department would be happy to discuss the information contained in this submission.

Yours sincerely

Mike Mrdak

19 March 2014

## Department of Infrastructure and Regional Development Submission to the Inquiry into the Qantas Sale Amendment Bill 2014

### *Regulatory framework*

The Department of Infrastructure and Regional Development has overall carriage of policy issues regarding the aviation industry. The Government's key policy objective for the aviation industry is to ensure that the industry can grow in an environment that is safe, competitive and productive.

Australia's international airlines are subject to restrictions on the level of foreign ownership.

Foreign ownership levels in Qantas are governed by the *Qantas Sale Act 1992* (QSA), which limits total foreign ownership to 49 per cent. In addition, intermediate limits apply so that aggregate ownership by foreign airlines is limited to 35 per cent and ownership by any single foreign shareholder is limited to 25 per cent. Under the QSA, these limits apply to the whole Qantas business, including both international and domestic operations.

Foreign ownership restrictions on other Australian international airlines are governed by the *Air Navigation Act 1920* (ANA), which stipulates no more than 49 per cent of the total value of the issued share capital of the airline can be held by foreign persons.

The QSA also imposes other restrictions on Qantas' operations, including restrictions on the makeup of the board of directors, the use of the name Qantas, the location of the head office, place of incorporation, and the location of facilities that support its international operations.

Foreign investment in international airlines is not only limited by statute. International air services agreements impose ownership and control restrictions to ensure only airlines belonging to the countries party to the agreement can access the traffic rights granted under the agreement. International airlines wishing to access Australia's negotiated air traffic rights must be 'designated' by the Government and standard designation criteria are applied to ensure the airline meets the relevant ownership and control requirements under the agreements. Similar designation criteria apply for foreign airlines seeking to access their home country's air traffic rights.

Under the designation criteria, Australian airlines seeking designation are required to demonstrate that:

- at least two-thirds of the Board members must be Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline's head office must be in Australia;
- the airline's operational base must be in Australia; and
- no more than 49 percent of the total value of the issued share capital can be held by foreign persons.

Further information on these criteria can be found on the Department's website:  
< <http://www.infrastructure.gov.au/aviation/international/memorandum.aspx#design>>.

Neither the designation criteria nor the ANA foreign ownership restrictions apply to domestic airlines operating in Australia, which can be up to 100 per cent foreign owned (subject to approval under the *Foreign Acquisitions and Takeovers Act 1975*).

### ***Purpose of the Bill***

The purpose of the Bill is harmonise Australia's aviation regulatory framework by amending the QSA to remove the foreign ownership and other restrictions that apply to Qantas but do not apply to other airlines based in Australia.

The Bill repeals Part 3 of the Act and thus removes the foreign ownership and other restrictions applying specifically to Qantas.

The Bill also amends the ANA to ensure that Qantas, in relation to its operation as an international airline, will come within the definition of an Australian international airline, meaning that Qantas will be subject to the same regulatory framework, including foreign ownership limits, as other 'Australian international airlines'. To achieve this result, the Bill removes the express words in the current ANA which have excluded Qantas from the operation of the ANA provision.

### ***Impact of the Bill on the aviation sector***

The Bill will increase Qantas' ability to compete in the domestic and international aviation market and provides business flexibility for Qantas consistent with other airlines based in Australia.

Removing foreign ownership restrictions under the QSA would allow greater levels of ownership by a single foreign investor (up to 49 per cent) and greater levels of aggregate ownership (combined limit of 49 per cent) by foreign airlines in Qantas. Foreign investment would continue to be subject to Foreign Investment Review Board consideration under the *Foreign Acquisitions and Takeovers Act 1975*.

While the Bill would also remove other restrictions in the QSA, Qantas, like other Australian international airlines, would continue to be subject to the designation criteria and the provisions of our air services agreements which require:

- at least two-thirds of the Board members must be Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline's head office must be in Australia;
- the airline's operational base must be in Australia; and
- no more than 49 percent of the total value of the issued share capital can be held by foreign persons.

Qantas will also remain subject to a number of other legislative requirements including the *Fair Work Act 2009*, the *Corporations Act 2001* and civil aviation safety regulations.

Because no other Australian airlines are subject to the QSA, the Bill will not directly impact upon any other airlines in the industry. Qantas' main domestic competitors have publicly indicated their support for the Bill as it will allow all Australian based airlines to compete on an equal footing.

***Impact of the Bill on other legislation***

Aside from the amendments to the QSA and the ANA, the Bill has no impact on other legislation.