

The Senate

Standing Committee on Economics

Qantas Sale (Keep Jetstar Australian)
Amendment Bill 2007

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Senate Standing Committee on Economics

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Chapter 1

Introduction

Background

1.1 The Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007 was introduced into the Senate on 27 February 2007 by the Leader of the Family First Party (Senator Fielding).

1.2 On 1 March 2007, on the recommendation of the Selection of Bills Committee, the Senate referred the bill to the Standing Committee on Economics for inquiry and report by 20 March 2007.¹

1.3 Senator Fielding told the Senate that the legislation is 'to protect Jetstar from foreign ownership and help stop jobs and operations from going offshore'.² The bill proposes to amend the Qantas Sale Act to place additional obligations on Qantas to ensure that:

- Qantas and associated entities (ie Jetstar) continue to locate their head offices and facilities such as catering and maintenance in Australia;
- two thirds of the boards of Qantas and associated entities are Australian citizens; and
- an Australian citizen presides over any meetings of the boards of directors.

1.4 The bill would also prohibit Qantas and associated entities from seeking to avoid these requirements.

Conduct of the inquiry

1.5 The committee advertised the inquiry in the *Australian* newspaper on 7 March 2007 and invited written submissions by 9 March 2007. Details of the inquiry were placed on the committee's website. The committee also wrote to a number of organisations and stakeholder groups inviting written submissions.

1.6 The committee received ten submissions. These are listed in Appendix 1. A public hearing was held in Canberra on 13 March 2007. Witnesses who presented evidence at this hearing are listed in Appendix 2.

1.7 The committee thanks those who participated in this inquiry.

1 Selection of Bills Committee, *Report No. 3 of 2007*, dated 1 March 2007.

2 Senator Fielding, Second Reading Speech.

Structure of the report

1.8 Chapter 2 of the report provides background information to the bill and the Qantas Sale Act. It also canvasses contemporary media reports and comment relating to the proposed sale of Qantas. Chapter 3 covers the evidence received by the committee in submissions and at the public hearing.

Chapter 2

Background

Introduction

2.1 Late in 2006, a private equity consortium, Airline Partners Australia Limited (APA), announced that it proposed to acquire Qantas Airways Limited (Qantas). APA's proposed acquisition of Qantas must comply with the *Qantas Sale Act 1992* (the Act). However, some persons and organisations have expressed concerns about the implications of the proposed takeover for Qantas subsidiaries, particularly Jetstar Airways.

2.2 The Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007 (the bill) seeks to address these concerns. This Chapter provides some background material in order to give context to the bill and the issues raised in submissions. First, it gives an outline of the provisions of the bill and the national interest safeguards in the Qantas Sale Act. It then looks at the implications of the proposed Qantas sale for Jetstar as identified in the media and briefly outlines proceedings established to consider aspects of the proposed sale. Finally, it examines the Deed of Undertaking signed by the Government and Airline Partners Australia.

Provisions of the bill

2.3 The bill seeks to add additional subsections to section 9 of the Qantas Sale Act to require Qantas to ensure that:

- Qantas and associated entities (that is, Jetstar)¹ continue to locate their head offices and facilities such as catering and maintenance in Australia (proposed paragraphs 9(5)(a) and (b));
- at least two-thirds of the boards of Qantas and associated entities are Australian citizens (proposed paragraph 9(5)(c)); and
- an Australian citizen presides over any meetings of the boards of directors of Qantas or associated entities (proposed paragraph 9(5)(d)).

2.4 Proposed subsection 9(6) would also prohibit Qantas and associated entities from seeking to avoid these requirements.

2.5 The bill's provisions mirror to some extent the 'national interest safeguards' in Section 7 of the Act except they place requirements on Qantas to ensure certain things in relation to itself and its associated entities, whereas Section 7 specifies various provisions (the 'mandatory articles') that must be included in Qantas' articles of

1 Proposed subsection 9(8) provides that 'associated entity' is to be determined in the same manner as that question is determined under the *Corporations Act 2001*.

association. The committee will now turn to the Qantas Sale Act and will also consider the national interest safeguards in the Act.

Qantas Sale Act 1992

2.6 The Qantas Sale Act contains the legislative and administrative framework that enabled the sale of Qantas.² It took account of different possible outcomes for the sale process, including the fact that varying levels of ownership could be sold during the 'trade sale' process prior to the ensuing public float.

2.7 The Act also reflects key sale requirements relating to the following:

- national interest safeguards required with the sale of 100 per cent of Qantas;
- recapitalisation of Qantas;
- reconstruction of its debts in preparation for the change of ownership; and
- terms and conditions of employment for its staff.

2.8 The bulk of the Act is concerned with the removal of both Qantas and Australian Airlines from the ambit of a variety of Commonwealth legislation so that, post sale, the expanded Qantas group would be treated the same as other private sector enterprises generally. The part of the Act that continues to be relevant today and by which Qantas is bound is Part 3 which contains the 'national interest safeguards'.

Part 3—Requirements regarding Qantas' articles of association

2.9 Section 7 in Part 3 of the Act, specifies certain provisions that must be included in Qantas' post-sale articles of association. Currently,³ these:

- impose restrictions on the issue and ownership (including joint ownership) of shares in Qantas so as to:
 - prevent **foreign persons** from having relevant interests in Qantas shares that represent in total, more than 49 per cent of the total value of issued share capital of Qantas (paragraph 7(1)(a));
 - prevent **foreign airlines** from having relevant interests in shares in Qantas that represent, in total, more than 35 per cent of the total value of the issued share capital of Qantas (paragraph 7(1)(aa)); and
 - prevent **any one foreign person** having relevant interests in shares in Qantas that represent more than 25 per cent of the total value of the issued share capital of Qantas (paragraph 7(1)(b)).

2 Second Reading Speech, Minister for Finance, the Hon. Ralph Willis, 4 November 1992, House Hansard p. 2588.

3 Section 7 has been amended several times since the Act was passed in 1992. The most significant amendments are contained in the *Qantas Sale Amendment Act 1995*.

Other provisions that must be included in the articles of association include provisions:

- limiting the number of foreign directors (at least two-thirds must be Australian citizens) (paragraph 7(1)(i)) and denoting who can vote for them (paragraph 7(1)(c));
- requiring that the director presiding at a meeting of the board of directors is an Australian citizen (paragraph 7(1)(j));
- preserving the name of 'Qantas' in the company name (paragraph 7(1)(e)); and for the company's scheduled international air transport passenger services (paragraph 7(1)(f));
- stipulating that Qantas' head office be located in Australia (paragraph 7(1)(g)) and that it be incorporated within Australia (paragraph 7(1)(k)); and
- requiring the principal operational centre for Qantas facilities used in the provision of scheduled international air transport services (eg facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration) to be in Australia (paragraph 7(1)(h)).

Proposed Qantas sale

2.10 In February 2007, APA lodged a bidder's statement setting out the terms of its offer for Qantas. This offer closes on 3 April 2007 (unless extended or withdrawn).⁴ APA made a commitment in its bidder's statement that Qantas will remain majority Australian-owned and controlled, as required by the Qantas Sale Act.

2.11 Although the Qantas Sale Act places a number of restrictions on Qantas, including restrictions on foreign ownership and control, some have raised concerns about the application of the Qantas Sale Act to Qantas subsidiaries such as Jetstar.

About Jetstar Airways

2.12 Jetstar describes itself as 'Australia's and Singapore's low fares airline for Australia and Asia-Pacific'.⁵ Jetstar's Australian operation is wholly owned by Qantas, but is managed separately and operates independently. Jetstar's Australian headquarters are in Melbourne. Jetstar's intra Asian operation is a Singapore-based partnership which includes Qantas.⁶

4 <http://www.airlinepartnersaustralia.com.au/> (accessed 6 March 2007); see also Trevor Chappell, 'Qantas soars on takeover bid: Private group targets icon' *The Canberra Times*, 23 November 2006, p. 17.

5 Jetstar, 'Our Company', at <http://www.jetstar.com/about-us/our-company.html>, (accessed 6 March 2007).

6 Qantas, 'About Qantas – Our company – Subsidiary companies - Jetstar' at: <http://www.qantas.com.au/info/about/subsidiaries/index> (accessed 5 March 2007).

2.13 Jetstar started flying within Australia in May 2004, and within Asia just over six months later. It began international long haul flights from Australia to Asia in November 2006.⁷

Application of the Qantas Sale Act to Jetstar

2.14 Media reports suggest that the requirements of the Qantas Sale Act do not apply to subsidiaries of Qantas, including Jetstar.⁸ Legal advice given to the government indicates that, although Jetstar is owned and operated by Qantas, it is a separate legal entity, managed largely independently and operates in its own right. The advice concluded that, as a result, the provisions of the Qantas Sale Act do not apply to Jetstar. The Department of Transport and Regional Services confirmed this at the public hearing.⁹

2.15 If the provisions of the Qantas Sale Act do not cover Jetstar, there is a concern that Jetstar could be used as a device to move jobs and operations offshore.¹⁰ In his second reading speech to the bill, Senator Fielding stated his concern that:

...there is nothing to prevent Jetstar being sold off to overseas buyers, and jobs and operations being sent offshore, if the Qantas takeover succeeds.¹¹

2.16 For example, it has been reported that unions are fearful that Qantas will use Jetstar on regional services, and hire cheaper overseas-based cabin crew to staff Jetstar's international service. Similarly, there are concerns that conditions imposed on Qantas to keep maintenance operations in Australia would not apply to Jetstar.¹²

Related proceedings

2.17 The Australian Competition and Consumer Commission has examined the proposed Qantas takeover. It did not oppose the proposed acquisition, on the basis that it would be unlikely to substantially lessen competition in any relevant market (which would be in contravention of section 50 of the *Trade Practices Act 1974*).¹³

7 Qantas, 'About Qantas – Our company – Subsidiary companies - Jetstar' at: <http://www.qantas.com.au/info/about/subsidiaries/index> (accessed 5 March 2007).

8 Matthew Drummond, 'Qantas bid loophole to test Costello', *Australian Financial Review*, 8 February 2007, p. 1; also David Crowe and Matthew Drummond, 'Jetstar loophole row heats up', *Australian Financial Review*, 9 February 2007, p. 5.

9 *Proof Committee Hansard*, 13 October 2006, pp. 48–49. [Mr Mrdak]

10 Matthew Drummond, 'Qantas bid loophole to test Costello', *Australian Financial Review*, 8 February 2007, p. 1.

11 *Senate Hansard*, 27 February 2007, p. 31.

12 Mark Skulley and Matthew Drummond, 'Pilots throw a legal spanner in the works', *Australian Financial Review*, 26 February 2007, p. 9.

13 See ACCC Media release, 1 March 2007, 'ACCC not to oppose proposed acquisition of Qantas Airways Limited by Airline Partners Australia Limited', at: <http://www.accc.gov.au/content/index.phtml/itemId/781807> (accessed 6 March 2007).

2.18 The Federal Court is also currently considering the application of the Qantas Sale Act to Jetstar. On 26 February 2007, the Australian and International Pilots Association launched legal proceedings in the Federal Court alleging that Jetstar's international services breach the Qantas Sale Act. More specifically:

The Federal Court proceedings allege that Jetstar's fast-growing international services breach section 7(f) of the Qantas Sale Act, which prevents Qantas from operating scheduled international passenger services under any brand other than Qantas.¹⁴

2.19 The timeline of this case is unclear, although the Australian and International Pilots Association is apparently seeking to have it brought forward.¹⁵

Deed of Undertaking

2.20 The Foreign Investment Review Board (FIRB) has considered the proposed acquisition under the *Foreign Acquisitions and Takeovers Act 1975* and reported to the Treasurer. Based on the FIRB's report, the Treasurer concluded on 6 March 2007 that 'there are no objections under the Foreign Acquisitions and Takeovers Act or foreign investment policy for the bid to proceed'.¹⁶

2.21 At the same time, the Treasurer and Minister for Transport and Regional Services announced that they had negotiated and received a legally enforceable 'Deed of Undertaking' from APA.¹⁷ Key provisions of the Deed relevant to the bill, include undertakings that:

- Qantas and Jetstar Airways brands will be maintained both locally and internationally (paragraph 5.5(a) of the Deed of Undertaking);
- Qantas and Jetstar Airways will expand internationally and within Australia to provide a sustainable mix of full service and value based offerings in line with market needs (paragraph 5.5(d));
- the Qantas Group (defined in the Deed to include Qantas and its subsidiaries) will offer an integrated network of international, domestic and regional air transport services (paragraph 5.5(e));

14 Mark Skulley and Matthew Drummond, 'Pilots throw a legal spanner in the works', *Australian Financial Review*, 26 February 2007, p. 9.

15 Matthew Drummond, 'Jobs 'may still be lost'', *Australian Financial Review*, 7 March 2007, p. 10.

16 The Hon Peter Costello MP, Treasurer, Transcript of Joint Press Conference with the Hon Mark Vaile MP, Deputy Prime Minister and Minister for Transport and Regional Services, Parliament House Canberra, 6 March 2007, p. 1.

17 The Hon Peter Costello MP, Treasurer, media release, 6 March 2007, 'Qantas Airways Ltd', <http://www.treasurer.gov.au/tsr/content/pressreleases/2007/009.asp> (accessed 7 March 2007); The Deed is at: http://www.treasurer.gov.au/tsr/content/downloads/009_Attachment.pdf (accessed 7 March 2007).

- the Qantas Group will support regional capacity growth and regional network improvement in line with market needs (paragraph 5.5(f));
- the current review of Qantas Engineering's maintenance, repair and overall operations will continue, 'with a view to building on existing capabilities for wide and narrow body maintenance to create an onshore, globally competitive in-house operation' (paragraph 5.5(g));
- the Qantas Group's track record of offering competitive conditions, jobs growth, career opportunities and extensive apprenticeship training will continue in line with market conditions (paragraph 5.5(h)); and
- the facilities used by the Qantas Group (including facilities for maintenance, catering, training and administration) in the provision of scheduled services must represent the principal operational centre for the Qantas Group when compared with those located in any other country (paragraph 5.1(h)).

2.22 Clause 6 of the Deed provides for the Commonwealth to enforce the Deed in the event of a possible breach.

2.23 Clause 2.3 of the Deed affirms APA's statements in relation to the acquisition of Qantas, including that it:

- plans to keep the Qantas and Jetstar brands and has no intention to break up the airline;
- has no intention to reduce regional services; and
- supports Qantas' existing strategy of continuing maintenance operations in Australia.

Chapter 3

Evidence in relation to the bill

3.1 Generally, submissions received from unions and associations support the bill, although some made suggestions for its amendment. Qantas Airways Limited and Airline Partners Australia Limited consider that the bill is unnecessary because of safeguards that already apply to Qantas and Jetstar in legislation and government policy. Furthermore, they consider that the binding Deed of Undertaking signed by the Government and the private equity bidders broadens the coverage of existing legislation to embrace all aspects of Qantas including its subsidiary Jetstar. However, some contributors to the inquiry dispute the efficacy of clauses in the Deed and also whether its terms are in fact enforceable.

3.2 The committee was conscious of the terms of reference referred to it by the Senate - that is, the Senate referred the bill and not a more wide ranging inquiry about the merits or otherwise of the private equity bid for Qantas. Therefore, in this Chapter, the committee focuses on considering the evidence as it applies directly to the bill with a view to assisting the Senate to decide whether or not it should pass the bill.

3.3 Accordingly, the committee first considers whether the bill is necessary. To do this it asks whether the Qantas Sale Act already applies to Jetstar and other Qantas companies. It then turns to the question of whether other legislation or the Deed of Undertaking make the bill redundant. Next the committee looks at the broad scope of the bill and whether it will in fact do what it purports to do. In this section the committee particularly focuses on the effects of the phrase 'associated entity', which appears at a number of lines in the bill.

3.4 The committee then turns specifically to provisions of the bill in proposed subsection 9(5) of the Qantas Sale Act and discusses the evidence received in relation to: the location of offices and facilities; and foreign ownership issues of the Qantas Group. Finally, the committee touches on other drafting issues raised in submissions and draws its conclusions, making a recommendation to the Senate about whether or not to pass the bill.

Does the Qantas Sale Act apply to Jetstar and other Qantas companies?

3.5 This bill is intended to impose similar national interest safeguards on Qantas' associated entities to those imposed on the Qantas parent company through Section 7 of the Qantas Sale Act. It is therefore based on the assumption that the Qantas Sale Act does not currently apply to Jetstar and other Qantas companies. As noted above, this bill would not be necessary if associated companies were already encompassed by the Qantas Sale Act.

3.6 The majority of evidence received by the committee, including advice from the Department of Transport and Regional Services, is that the Act does not extend to

subsidiaries such as Jetstar. However, this is a view not held by all contributors to the inquiry.

3.7 For example, the Transport Workers Union of Australia (TWU) asserted in its submission that 'it has always been Parliament's intent for Qantas companies to be subjected to the terms and character of Section 7' of the Qantas Sale Act.¹ The TWU submits that the bill should 'close the loophole that would let Qantas, under any ownership structure, circumvent the intent of Parliament in passing the Act'. The TWU argues that if the Parliament were to pass the bill, the matter would be beyond question.

3.8 The alternative viewpoint is taken by Qantas which argues that at the time the Qantas Sale Act was passed it was open to Parliament to impose the requirements in the Act on Qantas Airways Limited and its subsidiaries. However 'it was a conscious decision not to apply Part 3 to Qantas subsidiaries as this would have affected the operation of Australia Asia Airlines Limited which was the Qantas subsidiary operating international services in 1992 between Australia and Taiwan'.²

3.9 The committee noted that Part 3, which contains the national interest safeguards, does not refer to Qantas subsidiaries. Mr Brett Johnson, General Counsel, Qantas, pointed out at the public hearing that the Qantas Sale Act defines both 'Qantas' and 'Qantas subsidiary' and that the term 'Qantas subsidiary' is used in a number of places in the Act. Mr Johnson argued that the then Government had been specific about where it intended the Act to apply to subsidiaries:

There is a definition of Qantas which states 'Qantas' is 'Qantas Airways Ltd'. There is a definition right below that of 'Qantas subsidiary', and that is any Qantas subsidiary as defined by the Corporations Act. In other parts of the act where the government intended it would apply to Qantas and its subsidiaries, the words 'Qantas' and 'Qantas subsidiaries' are used.³

3.10 The Australian and International Pilots Association (AIPA) agrees that the Act does not apply to Qantas subsidiaries, and told the committee it had legal advice which confirms this view.⁴ The AIPA was therefore concerned that the safeguards in the Qantas Sale Act could be avoided by Qantas transferring its business to a subsidiary such as Jetstar. The AIPA accordingly supports the bill, believing that it would protect 'employees, Qantas and the public'.⁵

1 TWU, *Submission 4*, p. 4.

2 Qantas Airways Limited, *Submission 6*.

3 *Proof Committee Hansard*, 13 March 2007, p. 10.

4 *Opening Statement*, Tabled 13 March 2007, paras 15-18.

5 AIPA, *Submission 10*, p. 1.

3.11 The AIPA also informed the committee that one of its members had commenced an action in the Federal Court to clarify the intent of the Qantas Sales Act.⁶

3.12 Representatives of the Department of Transport and Regional Services advised the committee that in their opinion, the Qantas Sale Act does not apply to Jetstar or other Qantas subsidiaries. Questioned further about whether this meant that Qantas could shift its operations to a subsidiary like Jetstar and move those operations offshore, representatives said that this was not the case:

Jetstar will always have to operate within the parameters of the Air Navigation Act and the requirements for an Australian international airline licence to be designated as an Australian carrier. If Jetstar were seeking to operate as an Australian international carrier and to be designated as an Australian international carrier, its operational base would have to be in Australia; its head office would have to be in Australia. ...To operate as an Australian international carrier it must meet the requirements of the Air Navigation Act and the government's requirements in relation to airline licensing and designation.⁷

Is the bill necessary?

3.13 Submissions and witnesses were divided about whether the bill was necessary. On one side, the unions and associations see the possibility of Qantas using Jetstar to avoid the restrictions in the Qantas Sale Act, and that therefore the bill is important to prevent that from occurring. The adequacy of the Deed of Undertaking, as well as its enforceability, were also canvassed in submissions and at the hearing. On the other side, APA and Qantas argue that the protections proposed by the bill already exist both in legislation and Government policy. Further, the Deed of Undertaking provides legally enforceable undertakings by the private equity partners.

Legislative protections

3.14 Mr Somerville of the AIPA told the committee that there is a possibility of Qantas shifting operations to Jetstar.⁸ He asserts that the process of Qantas transferring assets and business to Jetstar has already begun:

...as routes transfer from Qantas to Jetstar; as we find that Australian Airlines wet leasing is now flying white aircraft with red trails. I am not sure if you have flown on any of those flights, but I wonder if you have been able to notice that difference. This is not something that is going to happen overnight; it will happen over a period of time. It is not a matter of whether the Australian public could seriously countenance it. If it happens

6 *Opening Statement*, Tabled 13 March 2007, para 19.

7 *Proof Committee Hansard*, 13 March 2007, p. 49. [Mr Mrdak]

8 *Proof Committee Hansard*, 13 March 2007, p. 25.

in steps, it can certainly happen, and it is already happening. It does not need to be done in a big bang way.⁹

3.15 When Senator Fielding questioned Qantas about the transfer of seat capacity to Jetstar, Group General Manager, Mr Hawes told the committee that it is by the diversification and flexibility of the Jetstar product that Qantas has been able to increase jobs and it is part of the Qantas competitive strategy to continue the Jetstar growth:

But to say that that is avoiding or seeking to get around the Qantas Sale Act is not a correct proposition either. There is a flexibility there which the company is clearly pursuing, but it is pursuing that within a regulatory environment which requires that the Jetstar operations be majority Australian owned and take place in Australia.¹⁰

3.16 Qantas stated that 'while Qantas has no objection, in principle, to the intention of the bill, it is just not required. Qantas did not establish Jetstar with the intention of circumventing the provisions of the Qantas Sale Act.'¹¹

3.17 Qantas argues that the protections that exist in the Qantas Sale Act already ensure that the majority of facilities used by the Qantas Group in its international operations are in Australia.¹² Specifically in relation to Jetstar, Mr Hawes told the committee that although it is an important and growing part of the Qantas Group it will never be the same size as Qantas and therefore the bill is not required. Qantas also stressed that Jetstar was not established in 2004 with the intention of circumventing the Qantas Sale Act and the vast bulk of Jetstar's employees and the facilities used to support its operations are based and will continue to be based in Australia:

Jetstar is a wholly owned Australian incorporated subsidiary operating valued based services predominantly to leisure destinations. It is an integral part of the Qantas group growth strategy. Jetstar's success in the Australian market has enabled its model to be extended and adapted to operate internationally, including, as from last November, on long-haul international routes.¹³

3.18 Additionally, to operate international services, Jetstar must be designated by the Australian government to be permitted to use Australian air service rights.¹⁴ It must comply with the provisions of the *Air Navigation Act 1920*, which amongst other things, requires it to be 51 per cent Australian owned. As well as the requirements of the Air Navigation Act, Australia's international air services agreements require that

9 *Proof Committee Hansard*, 13 March 2007, p. 25.

10 *Proof Committee Hansard*, 13 March 2007, p. 4.

11 Qantas Airways Limited, *Submission 6*.

12 *Proof Committee Hansard*, 13 March 2007, p. 3.

13 *Proof Committee Hansard*, 13 March 2007, p. 2. [Mr Johnson]

14 *Proof Committee Hansard*, 13 March 2007, p. 2. [Mr Johnson]

Jetstar be either substantially owned and effectively controlled by Australians, or incorporated and have its principal place of business in Australia, or a combination of these criteria.

3.19 Jetstar must continue to meet these requirements to be designated by Australia and accepted by other countries as an Australian carrier. These provisos ensure that it can access the full complement of Australian and international air service agreements. Mr Johnson, General Counsel, Qantas, told the committee that as an absolute minimum, Jetstar must maintain its head office in Australia, have a majority of Australian directors and an Australian chair. He considers that these requirements cover three of the four provisions proposed by the bill.

3.20 Mr Mrdak, Deputy Secretary, Department of Transport and Regional Services, told the committee that 'there is some uncertainty about whether the provisions in the bill as currently drafted do anything more than what is already being provided for under the existing legislation and under the deed of undertaking in terms of ensuring that the company is looking to grow the business and that the statutory obligations are being met.'¹⁵

Deed of Undertaking

3.21 A number of witnesses were critical of the Deed of Undertaking. The AIPA argued that it 'adds very little, is virtually meaningless and gives few, if any additional safeguards to the Qantas Sale Act.'¹⁶ Mr Somerville, General Manager, AIPA raised the issue of the Deed's enforceability as a concern. He argued that the stated intentions of APA in the Deed are not fully reflected in Clause 5¹⁷ which is the undertakings section of the document. Further, Additional Undertakings in Clause 5.5 are phrased in terms of 'plans and strategies'. Mr Somerville suggests that these additional undertakings are 'plainly unenforceable'.

3.22 Mr Somerville told the committee that the bill is an important means of safeguarding the sale of Qantas.¹⁸

3.23 Mr Swan, National Industrial Officer, Australian Workers Union, stated that the 'APA deed is manifestly inadequate'.¹⁹ He considers that the Deed is largely a recitation of undertakings or obligations that are mandated by the Qantas Sale Act, however, it also includes some 'troubling caveats'. In particular he is concerned about future apprenticeships programs whose provision will depend on 'market conditions', a term that concerns Mr Swan:

15 *Proof Committee Hansard*, 13 March 2007, p. 51.

16 *Opening Statement*, Tabled 13 March 2007, para 12.

17 *Proof Committee Hansard*, 13 March 2007, p. 19.

18 *Proof Committee Hansard*, 13 March 2007, p. 16.

19 *Proof Committee Hansard*, 13 March 2007, p. 40.

It is certainly not a legal term that one can readily point to precedence on.²⁰

3.24 One of the issues raised about the Deed is that it is only binding upon the named parties, that is APA, TrusteeCo and the Government.²¹ Once APA and TrusteeCo relinquish their controlling interest in Qantas, the Deed will have no effect.

3.25 Airline Partners of Australia Limited (APA) asserts in its submission that the Deed of Undertaking is in substantially the same terms as the proposed amendments to the Qantas Sale Act contained in the bill.²² It therefore precludes the need for additional legislation to protect Australian jobs and operations as the bill proposes.

3.26 Although the Deed expires at the point where APA no longer has a controlling interest in Qantas, Mr Johnson, Qantas General Counsel, suggested that this provides the Government with flexibility and an ability to adjust the undertakings to changed conditions because it will have an opportunity under foreign investment and other guidelines to review any requirements that it considers appropriate.²³ The committee notes that the Air Navigation Act and other legislation will continue to apply.

3.27 Representing the Department of Transport and Regional Services, Mr Mrdak stated that the Deed provides more extensive reporting obligations on the company in relation to its activities than those that are currently in place with Qantas,²⁴ and in some cases the reporting provisions go further than what would be expected from a publically listed entity.²⁵ He said that this will provide the Department with a basis for advising government on meeting the statutory obligations under the Qantas Sale Act.

Scope of the bill – associated entities

3.28 The bill seeks to impose requirements on Qantas and 'each associated entity'. The use of the term 'each associated entity' is included to ensure that the bill applies not just to Qantas, but also Jetstar and any other company associated with Qantas. Clause 8 of the bill provides that associated entities are to be determined in the same manner as that question is determined under the *Corporations Act 2001*.

3.29 However, some contributors to the inquiry considered that the use of this term may have unintended consequences, extending the reach of the bill beyond Jetstar to

20 *Proof Committee Hansard*, 13 March 2007, p. 40.

21 AMU, *Submission 9*, p. 7.

22 APA, *Submission 2*, p. 2.

23 *Proof Committee Hansard*, 13 March 2007, p. 6. Mr Mrdak, DOTARS makes a similar point at *Proof Committee Hansard*, 13 March 2007, p. 50.

24 *Proof Committee Hansard*, 13 March 2007, p. 50.

25 *Proof Committee Hansard*, 13 March 2007, p. 52.

companies with whom Qantas has a more tenuous association. This consequence appears to arise out of the definition of 'associate' in the Corporations Act.²⁶

3.30 The APA for example advises that the bill provides an extremely wide definition that 'goes much further than that required to meet the stated purposes of the bill'.²⁷ The APA suggests that the restrictions in the bill could apply to many Qantas associated entities to whom application of the restriction would be inappropriate and unintended. It provides the following examples of companies that would be caught by the bill's provisions:

Orangestar, a company based in Singapore that operates two subsidiary airlines, Jetstar Asia and Valuair, in which Qantas has only a 45% ownership interest, and Air Pacific Limited, Fiji's national carrier, in which Qantas has a 46.3% interest.²⁸

3.31 Consequently, APA argues that the proposed restrictions in the bill may unnecessarily restrict Qantas' investment in offshore airlines and other businesses, and would cause undue disruption to the existing legitimate business activities of off-shore entities in which Qantas has invested.²⁹ The APA claims that this would restrict Qantas' growth, including employment growth opportunities. APA considered that the bill should be amended to replace references to 'associated entity' with a reference to 'Jetstar Airways'.³⁰

3.32 In its submission and evidence, Qantas also took issue with the use of the term 'associated entities'. It considers that if the bill is enacted, it 'runs the real risk of forcing Qantas to materially change its current operations'.³¹ Not only would the current drafting force Qantas to dispose of its shareholdings in Air Pacific Limited and Orangestar, but it would also have to cease operation of its wholly-owned New Zealand incorporated subsidiary, Jetconnect Limited, and a number of other operations in which it has an interest:

If enacted, the bill would require Qantas to cease this operation.

In addition, Qantas has a 46.3 per cent interest in Air Pacific Ltd, Fiji's national carrier, and a 45 per cent shareholding in Orangestar, a Singapore company with two low-cost subsidiary airlines, Jetstar Asia and Valuair, which may be associates. If these companies are associates of Qantas, the

26 Section 50AAA of the Corporations Act describes a number of criteria under which an entity is considered to be an associated entity of another entity, including that the principal entity has a qualifying investment in the other entity and has significant influence over the associate.

27 APA, *Submission 2*, p. 2.

28 APA, *Submission 2*, p. 2.

29 APA, *Submission 2*, p. 3.

30 *Proof Committee Hansard*, 13 March 2007, p. 11 [Mr Coe].

31 Qantas Airways Limited, *Submission 6*.

current drafting would force Qantas to dispose of these shareholdings. Qantas is sure that this is not the intent of the legislation.³²

3.33 Representatives of the Department of Transport and Regional Services also commented on the use of the words 'associated entities' and the range of companies that could be affected:

Firstly, our view is that by using the words 'associated entities' it probably captures entities not intended by the bill. We have some concerns about the use of the wording 'associated entities' because potentially, as it is drawn from the Corporations Act, it encompasses much more than wholly-owned subsidiaries of Qantas; it potentially captures entities which Qantas has an investment in but which it may not control...From our perspective, I do not envisage it would be the parliament's view that it would be seeking to limit Qantas's ability to invest in Australia and offshore. Australian companies are investing offshore to the benefit of the country. So I think the issue of 'associated entities' is unclear.³³

3.34 The Australian Council of Trade Unions (ACTU) however supports the approach in the bill, submitting that: 'It is proper that the provisions of the Qantas Sale Act cover the Qantas Group and all entities under the control of the Qantas Group'.³⁴

Location of offices and facilities

3.35 Another aim of the bill, as articulated in its long title, is to ensure Qantas group jobs and operations stay in Australia. The proponent of the bill, Senator Steve Fielding, also made it clear that this was his intention in his second reading speech:

Family First believes it is a huge concern that there is nothing to prevent Jetstar being sold off to overseas buyers, and jobs and operations being sent offshore, if the Qantas takeover succeeds. Securing Australian jobs for workers and their families is Family First's top priority. That is why Family First is introducing legislation today to protect Jetstar from foreign ownership and help stop jobs and operations from going offshore.³⁵

3.36 A range of organisations, including the Australian and International Pilots' Association (AIPA), the Australian Licenced Aircraft Engineers' Association (ALAEA) and the several unions that made submissions, shared concerns that the Qantas Sale Act in its current form would allow whoever controlled Qantas to establish a new entity and subsequently shift to it resources, licences and other rights, leading to a loss of Australian jobs amongst pilots, people who maintain aircraft and among a wide range of others who provide services to the airline industry such as catering.

32 *Proof Committee Hansard*, 13 March 2007, p. 3. [Mr Johnson]

33 *Proof Committee Hansard*, 13 March 2007, p. 51.

34 ACTU, *Submission 1*, paragraph 6.

35 *Senate Hansard*, 27 February 2007.

3.37 Supporting the objectives of the bill, individual submitters also raised a number of particular concerns about the implications of allowing jobs to go offshore. For example, the Australian and International Pilots' Association told the committee that:

From our perspective, there certainly is the issue of maintaining employment and maintaining jobs relevantly in Australia. We also see that there is an issue in historical terms. The Australian public and the Australian government have contributed very strongly to Qantas.³⁶

3.38 The committee noted that there has been considerable employment growth in Australia within Qantas over recent years:

For the Qantas group as a whole, in the period since September 11, 2001, and at a time when many airlines in the industry stabilised or went backwards, Qantas grew employment by several thousand. As part of that growth, since May 2004 Jetstar itself has added about 1,600 people—initially, 1,000 or so with the domestic operations, and then the rollout to international has added about 550. The group strategy that has been pursued has resulted in considerable investment and growth in employment of several thousand people.³⁷

3.39 While acknowledging that Qantas 'is the safest airline in the world', the Australian Licenced Aircraft Engineers' Association (ALAEA), explained its support for the bill's objectives in these terms:

The importance to safety of having maintenance carried out in Australia is my prime concern for being here today. Secondary to that would be the employment and livelihoods of our members.³⁸

3.40 The ALAEA representative made a number of allegations (some of which were refuted by Qantas in a document tabled at the public hearing) about substandard maintenance work practices allegedly observed in some overseas maintenance facilities and the adequacy of training of persons conducting maintenance operations in overseas facilities. The committee has not had any opportunity to test the veracity of these claims, and observes that at the time of writing, Qantas has not had any opportunity to respond in detail to the ALAEA evidence. On this basis, the committee is not able to give them any credence as an argument for supporting the bill.

3.41 Other contributors to the inquiry raised a variety of other possible consequences of allowing maintenance jobs in particular to go offshore. For example, the ACTU submission expressed concern about the possibility of Qantas' strategic defence services being moved overseas.³⁹ Similarly, the Australian Workers' Union

36 *Proof Committee Hansard*, 13 March 2007, p. 21. [Mr Somerville]

37 *Proof Committee Hansard*, 13 October 2006, p. 3. [Mr Hawes]

38 *Proof Committee Hansard*, 13 March 2007, p. 28. [Mr Purvinas]

39 ACTU, *Submission 1*, paragraph 13.

(AWU), in its submission, was particularly concerned about the future of maintenance apprenticeships and their impact on Australia's defence capability.⁴⁰ It notes the skill shortages apparent in engineering and licensed aircraft engineering mechanic trades and states that these shortages have the potential to fundamentally undermine the nation's defence capabilities at a time when the country is increasingly engaging in international theatres of operation. Further, its submission highlights the role of Qantas Defence Services which provides maintenance, repair and overhaul of military aircraft, engines and avionics. The Australian Manufacturing Workers' Union (AMWU) also focussed on the importance of Qantas apprenticeships.

3.42 Qantas was dismissive of concerns that Qantas and Jetstar would be sold to overseas interests and facilities transferred overseas:

The vast bulk of Jetstar's employees and the facilities used to support its operations are based and will continue to be based in Australia. Against this background, the concerns expressed by Senator Fielding in his second reading debate speech about Jetstar being sold off to overseas buyers are unfounded. They run counter to the Qantas group's strategy of retaining and growing the complementary Qantas and Jetstar businesses.⁴¹

3.43 In relation to heavy maintenance outsourced overseas, Qantas representatives noted that all but 10 per cent of heavy maintenance checks are conducted in Australia:

Typically, in excess of 110 heavy maintenance checks are done per year and around 10 per cent would be done offshore. As Brett indicated, that has been happening for a number of years. If you were to build a facility footprint capable of handling the peaks and troughs and the overflow, you would find that there would be underutilised capacity for a large part of the year. It is a more efficient way to handle the peaks by making some use of offshore maintenance.⁴²

3.44 Qantas also tabled a document at the public hearing in which it outlined its ongoing commitment to investment in maintenance and engineering facilities in Australia. In this document, Qantas stated the following:

The Qantas Group operates one of the largest aircraft engineering and maintenance organisations in the Asia Pacific region; and

- employs more than 6,000 people in maintenance facilities in Australia
- is one of the few airlines in the world with its own industry training program

40 AWU, *Submission 8*, p. 5.

41 *Proof Committee Hansard*, 13 March 2007, p. 2. [Mr Johnson]

42 *Proof Committee Hansard*, 13 March 2007, pp 9–10. [Mr Hawes]

- continues to invest in engineering and maintenance training – in January 2007, there were about 400 apprentices employed under the airline’s certified trade program
- has invested \$300 million in facilities and training over the last 5 years through:
 - in August 2005 commenced investment of more than \$10 million to establish a Centre of Excellence for the maintenance of Rolls Royce RB211 engines in Sydney
 - in 2005 completed a new \$85 million maintenance hangar in Brisbane
 - continues to support Australia’s defence needs. In February 2007 Qantas Defence Services signed a contract with the RAAF to provide support services for their fleet of A330 Multi Role Tanker aircraft.⁴³

3.45 In its submission, Qantas told the committee that in recent months it had opened a new \$29 million A320 maintenance facility in Newcastle. Qantas described this as 'an investment that will create additional skilled jobs and apprenticeship opportunities'.⁴⁴

3.46 APA states in its submission that its Deed of Undertaking provides that Australia will remain the principal operational centre for the scheduled international air transport services provided in aggregate by the Qantas Group (which includes Qantas and Jetstar).⁴⁵

3.47 When questioned about the importance of job security as an issue, Mr Coe of APA responded that the way to ensure job security is through growth of the airline:

The way to ensure job security is through growth of the airline. Geoff and his management team have stated that. At the APA level we have stated that. No business has ever been shrunk to greatness, and it is not the intention of the APA consortium to do anything other than grow both the product offering and the availability of jobs for Qantas and Jetstar.⁴⁶

Shortcomings in the drafting of the bill

3.48 While supporting the general objectives of the bill in relation to ensuring that Qantas jobs remained in Australia, the AIPA and the ALAEA cast doubt on whether the bill as worded would achieve that objective. In particular, these organisations identified the phrase 'taken in aggregate' in proposed paragraph 9(5)(b) as the source of these problems.

43 Qantas supplementary submission, p. 3.

44 Qantas, *Submission 6*.

45 APA, *Submission 2*, p. 2.

46 *Proof Committee Hansard*, 13 March 2007, p. 14.

3.49 The AIPA said that the wording of proposed paragraph 9(5)(b) would permit 'substantial off-shore leakage of jobs in associated entities and suppliers of their facilities'. AIPA submitted that the wording compares Australian operations and those in any one particular country, which:

...would permit, for example, 25% of the facilities to remain in Australia and 75% to go off-shore, spread between 5 countries with 15% in each country, so that the principal operational centre for any associated entity would remain located in Australia as required.⁴⁷

3.50 The AIPA recommended that proposed paragraph 9(5)(b) be amended to:

...ensure that the Australian facilities, when compared to facilities in all other countries, represent the principal operational centre for the associated entities of Qantas.⁴⁸

3.51 The ALAEA raised a similar concern about the words 'taken in aggregate':

To maintain the intention of this bill, to ensure that jobs and operations stay in Australia, we would feel it appropriate to change a few words in 2(5)(b). Instead of saying 'the facilities taken in aggregate which are used', we would prefer the bill to state 'each of the facilities which are used by Qantas'. That way the facilities can be taken as a single unit and ensure that only 50 per cent of any particular facility can be sent overseas. This would cater for Qantas's current requirement to send overflow work to other maintenance facilities around the world.⁴⁹

Foreign ownership issues

3.52 One of the bill's objectives is to protect Jetstar from foreign ownership. Implicit in its provisions is an assumption that there are not currently sufficient safeguards to prevent Jetstar from being sold to non-Australian interests. However Qantas and APA consider that the foreign ownership of Jetstar is adequately restricted under existing Commonwealth legislation and policy, and that further legislative restrictions are unnecessary and would in fact place an unfair burden on Jetstar in comparison to its competitors.

3.53 The bill is intended to ensure that the foreign ownership restrictions in the Qantas Sale Act would apply to Jetstar. These are more stringent than those applying from other sources, as detailed by Mr Mrdak of DOTARS:⁵⁰

There are additional provisions in the Qantas Sale Act that apply to foreign ownership that do not apply to other Australian international carriers. For

47 AIPA, *Submission 10*, p. 6.

48 AIPA, *Submission 10*, p. 6. Note that AIPA also recommended that the equivalent provision in the Qantas Sales Act (paragraph 7(1)(h)) be amended in the same way.

49 *Proof Committee Hansard*, 13 March 2007, p. 28. [Mr Purvinas]

50 *Proof Committee Hansard*, 13 March 2007, p. 48.

instance, under the Qantas Sale Act there is a requirement that foreign airlines can own no more than 35 per cent of shares in Qantas and that no one individual foreign entity can hold more than 25 per cent of shares in Qantas. Those provisions do not exist in relation to other Australian international carriers.

3.54 However, as Australian international airlines, both Jetstar and Qantas are subject to the *Air Navigation Act 1920*. The foreign ownership limitation in section 11A of the Air Navigation Act imposes a 49 per cent restriction on foreign ownership.

3.55 Other restrictions on foreign ownership also exist. As nationally-designated carriers, Qantas and Jetstar benefit from bilateral air service agreements which give them access to certain international routes. This access is dependent on ownership restrictions which require that the international carrier must be substantially owned and effectively controlled by nationals of the designating country. Mr Mrdak told the committee that:

The Air Navigation Act covers all of the licensing and designation requirements for all Australian international carriers...we do set requirements in relation to Australian carriers that not only must foreign shareholdings be no more than 49 per cent but at least two-thirds of the board members must be Australian citizens, the chairperson of the company must be an Australian citizen, the airline's head office must be in Australia and the airlines operational base must be in Australia. They are requirements the government sets in issuing an international airline licence and also in designating an airline capable of operating under Australia's designated bilateral agreements. Those provisions apply to all carriers applying for an international airline licence, apart from Qantas, which has provisions on top of that under the Qantas Sale Act in relation to its operations.⁵¹

3.56 APA also cites the Government's foreign investment policy and powers under the *Foreign Acquisitions and Takeovers Act 1975* as providing sufficient protection from foreign ownership of Jetstar. Accordingly, APA submits that the foreign ownership of Jetstar is adequately restricted under existing Commonwealth legislation and policy, and that further legislative restrictions in this regard are therefore unnecessary.⁵²

3.57 Similarly, Qantas states that fears of Jetstar being sold to overseas buyers are unfounded and run counter to the Qantas Group's strategy of retaining and growing the complementary Qantas and Jetstar businesses.⁵³

3.58 Qantas submits that no additional requirements are imposed on the other Australian designated international carrier, Virgin Blue, or are likely to be imposed on

51 *Proof Committee Hansard*, 13 March 2007, p. 48.

52 APA, *Submission 2*, p. 2.

53 Qantas Airways Limited, *Submission 6*.

any new entrant who may become an Australian designated international carrier. Therefore, it is not appropriate to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors and were, at the enactment of the Qantas Sale Act, only intended to apply to Qantas.⁵⁴ Mr Swan from the Australian Workers Union suggested that it is appropriate for additional conditions to apply to Jetstar on the basis that Virgin Blue does not have the reach or significance of the Qantas Group, nor does it provide the services or have the historical background and cultural identity of Qantas.⁵⁵

Other drafting issues

3.59 Proposed subsection 9(6) in the bill prevents any scheme to avoid the provisions of the Qantas Sale Act from having effect. In its submission, APA states that the subsection 'appears to be closely based on section 38A of [the *Foreign Acquisitions and Takeovers Act 1975*]' but it proposes a different threshold for the application of the provision.⁵⁶ APA submits that the term 'material purpose' in the subsection is imprecise. Further, it asserts that the provisions in the Qantas Sale Act are of sufficient clarity to render an anti-avoidance provision of the type proposed in the bill unnecessary.

Conclusions and recommendation

3.60 The committee notes that while there was discussion as to whether Qantas and Jetstar would become foreign owned and controlled if the consortium bid was successful it is clear that while Qantas and Jetstar remain airlines operating Australian international services they must remain Australian owned and controlled in accordance with legislative and regulatory requirements.

3.61 The committee is of the view that this bill contains a number of serious shortcomings. In particular, the scope of the bill is unclear, and if passed in its current form, it is likely to result in a number of unintended and unforeseen consequences. The bill also seeks to provide protections that are already in operation by virtue of the Air Navigation Act and the bilateral air service agreements.

3.62 The committee is also of the view that the Deed of Undertaking entered into between the Government and Airline Partners of Australia renders the bill unnecessary.

3.63 The committee also questions the appropriateness of seeking to impose by force of legislation a number of significant restrictions on the operations of what is now a private company. These restrictions, if passed, would apply to Qantas and its subsidiaries only, and not to its competitors, potentially threatening its future viability

54 Qantas Airways Limited, *Submission 6*.

55 *Proof Committee Hansard*, 13 March 2007, pp 43–44.

56 APA, *Submission 2*, p. 3.

and its ability to compete in a vigorously contested market. As such, the bill may perversely bring about that which it seeks to prevent, the loss of Australian jobs.

Recommendation

3.64 **The committee recommends that the Senate reject the bill.**

Senator the Hon Michael Ronaldson
Chair

SENATOR JOYCE'S COMMENT

Economics Committee Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

QANTAS is not just another airline, it's an airline which has grown out of the benefaction and support of the Australian Government and the Australian people over a long period of time and the benefaction from the Australian people continues in the protections that are afforded QANTAS on such things as the trans-Pacific route and the fact it has a virtual monopoly on so many regional routes.

The inception of QANTAS becoming a public company was based in full knowledge of the premise of the QANTAS Sales Act. Any purchase of shares, or an investment in the company, which ignores this fact ignores the whole history of how the right to purchase shares in QANTAS came about.

QANTAS with its subsidiaries, quite obviously, is in the national interest in staying wholly based and operated in Australia. Any ability for the new owners of QANTAS to circumvent this process would quite obviously be pursued as it would allow greater cost cutting measures and therefore a greater return on their investment.

This position is exacerbated by the fact that on conclusion of a purchase by a private equity company the control exerted by those who provided the finance will be far in excess of any nominal share holding. The reasons for this are that provision of such a gigantic amount of debt, on what is predominantly an asset built on goodwill and cash flow, requires the integrity of the value of the asset to be maintained by its return on investment rather than an evaluation of a bricks and mortar asset, which would be in the case of many other securitisations of debt.

I agree with the findings of the report which states the current context of the bill is confusing and needs to be improved. However, I absolutely agree with the intent of the bill which is to capture the possible diminution of the Qantas Sales Act by the utilisation of subsidiaries which are technically under the QANTAS Sales Act although they are covered as an 'airline' under other acts.

My strong belief is that if you truly believe in the authenticity of intent of the QANTAS Sales Act you must believe that it would cover airlines that were progenitors of and controlled by QANTAS.

In summary, I would support any competent piece of legislation which brought this outcome about and I conclude where I started; the genesis of QANTAS, the reason there are shares to purchase in QANTAS is by reason of the QANTAS Sales Act so the argument that requirements which make them conform in their entirety with the QANTAS Sales Act is an inhibitor is an anomaly because it is not historically correct.

A handwritten signature in black ink, appearing to be 'Barnaby Joyce', written in a cursive style.

Barnaby Joyce
The Nationals Senator for Queensland

FAMILY FIRST DISSENTING REPORT

Inquiry into the Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

Securing Australian jobs for workers and their families

Securing Australian jobs for workers and their families is FAMILY FIRST's top priority. That is why FAMILY FIRST introduced the Bill, to protect jobs in Jetstar and other associated entities from being sent overseas.

Australian workers need job security because that ensures their families have peace of mind.

FAMILY FIRST was startled at the inquiry to hear Qantas admit "... all jobs within Qantas are under review ...".

There is a loophole that allows Qantas to avoid the *Qantas Sale Act*

Currently the *Qantas Sale Act* forces Qantas to keep jobs and operations in Australia. But the Act does not apply to associated entities like Jetstar and Australian Airlines.

Qantas has been transferring more and more of its seats to Jetstar, because of Jetstar's lower costs and higher profits. Associated entities like Jetstar are not covered by the *Qantas Sale Act* and can be used to move Australian jobs offshore.

It makes no sense for different parts of Qantas to have different rules applied to them.

Parliament should resolve this situation

It is vital that the Parliament clarifies the scope of the *Qantas Sale Act* to ensure Qantas does not use corporate restructuring to avoid its restrictions.

The Bill should be passed with some amendments

FAMILY FIRST recommends the Bill be passed with amendments to ensure a majority of Qantas and associated entity jobs stay in Australia.

This can be done by deleting from clause 5(b) the words "any other country" and replacing them with "all other countries". There should also be a similar and complementary amendment for section 7(1)(h) of the *Qantas Sale Act*.

Introduction

Securing Australian jobs for workers and their families is FAMILY FIRST's top priority. That is why FAMILY FIRST introduced the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*, to protect jobs in Jetstar and other Qantas associated entities from being sent overseas.

Currently the *Qantas Sale Act* forces Qantas to keep jobs and operations in Australia. But the Act does not apply to associated entities like Jetstar and Australian Airlines.

These subsidiaries can be used to move Australian jobs offshore and that is something FAMILY FIRST wants to stop.

That is why FAMILY FIRST has introduced legislation to amend the *Qantas Sale Act* to close this loophole and ensure that restrictions that apply to Qantas – including rules about maintenance, training and administration – also apply to Jetstar and other associated entities like catering.

It is relatively easy for Qantas to push operations into associated entities with a lower cost base like Jetstar. There is extensive evidence this is happening, even at the expense of Qantas-badged services' growth and profit.

In another case, Qantas is using associated entity Australian Airlines to cut costs on Qantas-badged services. Jetstar may also end up flying aircraft on behalf of Qantas under Qantas colours, completing the corporate manoeuvre to achieve lower cost flights with fewer Australian workers and lower conditions.

FAMILY FIRST'S Bill is an anti-avoidance measure, to stop Qantas from seeking to avoid the *Qantas Sale Act* by moving Qantas operations to Jetstar and other associated entities.

It makes no sense for different parts of Qantas to have different rules applied to them.

FAMILY FIRST's interest in this issue was prompted by the proposed takeover of Qantas by Airline Partners Australia, but even if the takeover fails, the issue remains and the Bill will continue to be important.

The Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

The *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* is to ensure that the requirements listed for Qantas' articles of association in the *Qantas Sale Act* also apply to Qantas associated entities.

The Bill does this by using an anti-avoidance provision and four other provisions which mirror clauses in the *Qantas Sale Act*.

The Bill names Jetstar in its title as the most prominent of those associated entities, but the Bill is not limited to Jetstar. The Bill refers to "associated entities" rather than

specific entities or subsidiaries to ensure the provisions of the *Qantas Sale Act* cannot be avoided by a change of name or a corporate restructure.

This is the important point highlighted in one of the submissions:

A failure to make the proposed amendments simply renders the [Qantas Sale] Act impotent. To deny passage of this Bill is to deny the effect of the Act against simple corporate restructuring.¹

FAMILY FIRST welcomes Qantas's statement that it has "... no objection in principle to the intentions of the Bill."²

Current regulation

Current regulation of Qantas relevant to the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* consists of the *Qantas Sale Act 1992*, the *Air Navigation Act 1920*, policy and the Deed of Undertaking signed earlier this month.³ The coverage is not adequate to keep jobs in Qantas associated entities in Australia, which is why the *Qantas Sale Act* must be amended.

Qantas Sale Act 1992

The *Qantas Sale Act* was passed in 1992 following the Government's decision to sell 100 per cent of the Qantas Group. The Act sets out a range of conditions that must be included in Qantas' articles of association to maintain the Australian character of Qantas.⁴

The legislation applies to Qantas and not to other carriers because Qantas is Australia's national carrier and a national icon. A number of witnesses testified to Qantas' importance to Australia:

As our national carrier, Qantas and the Qantas Group cannot just be regarded as another public/private company. As the national carrier it has bestowed on it significant rights and, we say, responsibilities through the granting of Air Service Agreements by the Australian Federal Government. The Company could not operate to its current extent without these rights and so conversely it has to and does expect regulation by the Federal Government in the national interest.⁵

1 Australian Manufacturing Workers' Union, *Submission 9*, page 2.

2 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E5;

3 Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia, dated 6 March 2007, by Airline Partners Australia Limited and Aurora Holdco Pty Limited.

4 Mr Willis, Minister for Finance, *House of Representatives Hansard*, 4 November 1992, page 2588.

5 Australian Services Union, *Submission 7*, page 8.

Virgin Blue, when you look at its position in the Australian aviation industry compared with the Qantas group of companies, it does not have the reach or significance, nor does it provide the services or have the historical background and the cultural identity that Qantas has.⁶

Qantas is an economically strategic company. The existence of the Qantas Sale Act is evidence of this. Qantas and its subsidiaries, including Jetstar, play a vital role in the Australian transport industry and the economy as a whole. In many cases Qantas, its subsidiaries and Jetstar are often the sole operators flying to regional and remote regions within Australia.⁷

The conditions to be included in Qantas' articles of association include restrictions on foreign ownership to 49 per cent of Qantas; limits on foreign airlines owning more than 35 per cent; limits to prevent any one foreign person owning more than 25 per cent; ensuring the head office of Qantas is in Australia; prohibiting Qantas incorporating outside Australia; requiring that a minimum of two thirds of directors be Australian citizens; requiring that the chair of the meeting of directors be an Australian citizen; and ensuring the principal operational centre for Qantas be in Australia.

The *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* also applies these conditions to Qantas associated entities.

Australians do not know the difference between Qantas and the Qantas Group. As far as the public is concerned, Qantas is Qantas. But Qantas claims there is a big difference and the *Qantas Sale Act* only applies to one part of the Qantas Group – Qantas Airways Limited.⁸

Jetstar does not appear to regard itself as separate to Qantas, leaving its representation during this inquiry to Qantas Airways Limited.

Other Qantas associated entities, which also did not offer their own positions to the Committee, include Australian Airlines, Jetconnect, Air Pacific Limited, Orangestar which runs Jetstar Asia and Valair, Australian Air Express, Express Freighters Australia and Qantas Flight Catering.⁹

Qantas claims it was the Australian Parliament's intention that the *Qantas Sale Act* would not apply to associated entities.¹⁰ As evidence, it points to the comments of one Member of Parliament – an Opposition Member, Senator David MacGibbon. Qantas also points to the fact the relevant Minister did not respond to Senator

6 Mr Swan, Australian Workers Union, *Committee Hansard*, 13 March 2007, page E43.

7 Australian Council of Trade Unions, *Submission 1*.

8 Qantas Airways Limited, *Submission 6*, page 1.

9 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, pages E3 and E8.

10 Qantas Airways Limited, *Submission 6*, page 1.

MacGibbon's comments.¹¹ In fact, Senator MacGibbon's comments were his interpretation of a conversation with "two advisers from the Department", not ministerial advisers or the Minister.¹² Senator MacGibbon also referred to one particular subsidiary rather than the general issue of subsidiaries.¹³

The evidence that Qantas relies on is flimsy and it is extremely difficult to believe its claims.

The Australian and International Pilots Association has taken a dispute over the interpretation of the *Qantas Sale Act* to the Federal Court, to determine if the legislation applies to subsidiaries.¹⁴

Given there is doubt on this matter, it is appropriate that the Parliament clarifies the issue by passing the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* to ensure jobs are kept in Australia.

Air Navigation Act 1920

The *Air Navigation Act* is the overarching legislation that:

... covers all of the licensing and designation requirements for all Australian international carriers ... foreign shareholdings [must] be no more than 49 per cent ... at least two-thirds of the board members must be Australian citizens, the chairperson of the company must be an Australian citizen, the airline's head office must be in Australia and the airlines operational base must be in Australia ... Those provisions apply to all carriers applying for an international airline licence, apart from Qantas, which has provisions on top of that under the *Qantas Sale Act* ...¹⁵

But these requirements are not necessarily as strict as the Department implies:

One lawyer said there are a range of factors relevant to whether an airline can hold the relevant licence. 'My understanding is it has never been the case that any one of them is absolutely mandatory so that if you didn't quite meet some targets but you could demonstrate strength in a number of other factors you could continue to [hold a licence],' he says. This would mean

11 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E6.

12 Senator MacGibbon, *Senate Hansard*, 7 December 1992, pages 4256-4260.

13 Mr Somerville, Australian and International Pilots Association, *Committee Hansard*, 13 March 2007, page E19.

14 Mr Somerville, Australian and International Pilots Association, *Committee Hansard*, 13 March 2007, page E21.

15 Mr Mrdak, Department of Transport and Regional Services, *Committee Hansard*, 13 March 2007, page E48.

Jetstar could possibly shift maintenance, catering and training jobs overseas, but stay incorporated in Australia, and have its head office here.¹⁶

It is also interesting to note that "Australia and New Zealand are the only countries which permit wholly foreign owned domestic carriers."¹⁷

The Department of Transport and Regional Services also indicated that the laws on where an airline's operational base and head office should be located are likely to be weakened in the near future:

We are one of those countries that have been looking, as part of a liberalisation process, at introducing clauses such as principal place of business and those sorts of provisions. But they are not yet established in all our bilaterals. At this point, a carrier could not operate and exercise Australian traffic rights without having its operational base and its head office in Australia.¹⁸

Given the comments of the Department that the location of an Australian international airline's operational base and head office will soon be up for grabs, the *Qantas Sale Act* must be amended to ensure Qantas does not use its corporate structure to shift jobs overseas.

Deed of Undertaking

It was generally agreed in evidence to the Committee that the Deed of Understanding has a limited lifespan and will only last as long as Airline Partners Australia has a controlling interest in Qantas.¹⁹

That is unlikely to be long as private equity companies tend to sell off assets they have purchased in less than five years.²⁰

Corporate lawyer Janet Whiting writes that the requirements of the Deed need not be passed on to a new buyer:

... if Airline Partners or Aurora disposed of their interests in Qantas to third parties (who were Australian and so did not offend the foreigner restrictions

16 Drummond, M, Pilots creating turbulence for Qantas bidders, *Australian Financial Review*, 26 February 2007, page 60.

17 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E9.

18 Mr Mrdak, Department of Transport and Regional Services, *Committee Hansard*, 13 March 2007, page E49.

19 For example: Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E6; Australian Manufacturing Workers' Union, *Submission 9*, page 7.

20 Drummond, M, Private equity warned about selling airline on, *Australian Financial Review*, 8 March 2007, page 9.

in the legislation nor require Foreign Investment Review Board approval), the purchasers would not be bound by the undertakings.²¹

The undertakings given in the Deed largely mirror current legislation. There is mention of Jetstar, but not the broader issues of associated entities. The Deed also includes a number of additional undertakings that are unenforceable:

One senior corporate lawyer, who declined to be named because his firm is involved in the deal, said these obligations [the 'additional obligations' in the deed of undertaking] could be strictly complied with provided that at the time of signing the deed, Airline Partners honestly believed they were true. But once the deed was signed, Airline Partners would be free to change its plans.²²

The Australian Manufacturing Workers' Union also held grave concerns about the usefulness of the Deed:

The deed provides no real protections for Australian jobs that cannot be avoided through corporate manoeuvres. It is also avoidable through transmission of ownership of the Qantas Group. Nevertheless, to the extent that the deed does purport to provide some protections for the Australian airline industry, those protections should be contained in legislation, not private contract.²³

There is also a good deal of scepticism that the Australian Government would act to enforce the Deed:

... the government has also arranged undertakings on other big mergers and takeovers involving companies including Arnotts, BHP, Brambles and Rio Tinto without ever following up on the undertakings with enforcement action.²⁴

"Similar promises [to the deed] were extracted when Ansett was sold to Air New Zealand, and soon afterwards jobs were offshored," said Ingrid Scott, ASU Victorian state secretary.²⁵

The Committee received a detailed analysis from the Australian and International Pilots Association, setting out the difficulties of enforcing the Deed.²⁶

21 Whiting, J, On a deed, a wing and a prayer, *Australian Financial Review*, 8 March 2007, page 63.

22 Drummond, M, Private equity warned about selling airline on, *Australian Financial Review*, 8 March 2007, page 9.

23 Australian Manufacturing Workers' Union, *Submission 9*, page 3.

24 Crowe, D, Promises aplenty, but hard to enforce, *Australian Financial Review*, 7 March 2007, page 10.

25 Ingrid Scott, Australian Services Union Victorian state secretary in Drummond, M, Jobs 'may still be lost', *Australian Financial Review*, 7 March 2007, page 10.

26 Australian and International Pilots Association Opening Statement and analysis of the Deed, tabled at the Committee Hearing on 13 March 2007.

Transfer of Qantas seats to Jetstar and other lower cost entities

Qantas has been transferring more and more of its seats to Jetstar, because of Jetstar's lower costs and higher profits. As one reporter wrote, "Jetstar's ... behind the improvements in all of the key measures of Qantas's performance and its falling cost base."²⁷

Qantas told the Committee that:

Jetstar has enabled a growth in leisure based operations also in Australia. It is not competing directly head to head with Qantas, but it is recognising that in certain market segments there is growth potential that could be realised if operated with the Jetstar model.²⁸

Such a description implies Jetstar is targeting a fairly limited market. But increasingly the international airline market is not a business market. And Jetstar's sights are not limited to the leisure market as evidenced by the new StarClass business class service on Jetstar which is designed to attract business travellers to the airline.

Michael Ryan, co-founder of pioneer low cost airline Ryanair commented on the Qantas strategy:

I would imagine that what they [Qantas] are trying to do is put as many of Qantas' routes into Jetstar [as possible].²⁹

Australian observers have been pointing to this trend for a number of years.

Where a year ago Jetstar wasn't going to be allowed to harm Qantas, Dixon now says, 'Jetstar has an incredible future in value based air travel. It is not to be constrained in any way.' ... In the past year [Qantas] has admitted significant yield migration away from Qantas domestic pointing to the flood of cheap fares from Jetstar that were supposed to be only bad for competition.³⁰

Continuing along this theme:

The conclusion that can be readily drawn ... and supported by some public comments from Qantas chief executive officer, Geoff Dixon, is that it is worth more to Qantas to use Jetstar to lower its costs and curb Virgin Blue than any dilution of main line revenue. In bulk terms, Jetstar's 12 per cent market share by the end of June was at the expense of Qantas, which

27 Hall, J, Consortium's eye on the Jetstar prize. *Australian Financial Review*, 9 February 2007, page 65.

28 Mr Hawes, Qantas, *Committee Hansard*, 13 March 2007, page E6.

29 Michael Ryan, co-founder of Ryanair in Tabakoff, N, Cut to the Chase, *The Bulletin with Newsweek*, 20 February 2007, page 36.

30 Sandilands, B, Local airlines manoeuvre for growth, *Aviation Business Magazine*, October 2005, page 16.

withdrew in large measure or in full from a range of what it declared to be leisure routes, handing them over to Jetstar.³¹

More recently, one commentator has argued that the Airline Partners Australia takeover deal

... is predicated on Qantas growing. The only place that can happen, with a company altering scale, is outside of Australia. And the only platform that can happen from, is Jetstar. Why? First, because Jetstar's cost base is made so wonderfully competitive because Dixon & Co don't have to deal with Qantas' 13 unions. And second, because all the growth in the airline business is in the discount airspace.³²

As a result of this conscious strategy by Qantas to move more and more seats to Jetstar, "... travellers should expect to find themselves increasingly on Jetstar aircraft, rather than the familiar Flying Kangaroo, whether on local routes or to overseas destinations."³³

Experience with Qantas subsidiaries Australian Airlines and Jetconnect demonstrates that Qantas can also use restructuring and subsidiaries to achieve lower cost base flights under its own colours.

The Committee heard evidence that Qantas is now operating flights that appear to be normal Qantas flights, but which have lower cost crews from other Qantas subsidiaries:

Australian Airlines was set up and operated for some period of time. On 30 June last year it was closed down. Essentially, if you remember, Australian had its own livery—its own uniforms, its own call signs. At 1 July this year, it became Australian Airlines wet leasing and it has now commenced to fly Qantas mainline aircraft, white with red tails with Qantas uniforms on Qantas routes. The company achieved a 20 per cent reduction in cost base because the same terms and conditions of employment apply ... given the model that has evolved through Australian Airlines and its use as a wet leasing arrangement for Qantas mainline, in our view, it is highly likely that that will occur with Jetstar.³⁴

Jetconnect was described to the Committee by those appearing for Qantas as "... a wholly owned New Zealand incorporated subsidiary ...which operates scheduled

31 Sandilands, B, 'Low cost' dominates in Australia's skies, *Aircraft and Aerospace*, August 2005, page 28.

32 Stevens, M, Jetstar set for take-off as Qantas must grow. *The Australian*, 8 March 2007, page 21.

33 Nancarrow, D, Smooth takeover for Qantas, *The Bulletin with Newsweek*, 7 March 2007.

34 Mr Somerville, Australian and International Pilots Association, *Committee Hansard*, 13 March 2007, page E20-21.

international air transport services as it operates 737 services on the Tasman and in domestic New Zealand on behalf of Qantas.³⁵

Jetconnect provides flights under Qantas colours within New Zealand and between New Zealand and Australia. The company also provides cabin crew for Jetstar flights between New Zealand and Australia.³⁶

As aviation commentator Ben Sandilands explained a couple of years ago:

What took off as Jetstar in May 2004 is [Geoff] Dixon's and [Peter] Gregg's vehicle for a total reconstruction of the culture, processes and profitability of the sometimes overlapping territories of Qantas international, Qantas domestic, Qantas Cityflyer, Qantaslink (jet), Qantaslink (turboprop), Australian, JetConnect, Jetstar and the so far hapless Jetstar Asia.³⁷

Qantas is using what space it can find around the rules to maximise its profit. The Australian Council of Trade Unions argues that:

If left unchanged, the Qantas Sale Act, does not restrict those controlling the Qantas Group from establishing a new entity and subsequently shifting resources, licences and other rights to the new entity and consequently avoid the provisions of the Qantas Sale Act.³⁸

It is vital that the Parliament clarifies the scope of the *Qantas Sale Act* before its provisions are made meaningless by corporate restructuring to avoid its restrictions.

Jobs and conditions

Australians workers need job security because that ensures their families have peace of mind. Unfortunately Australians who work for Qantas and its associated entities do not enjoy job security.

FAMILY FIRST was startled at the inquiry to hear Qantas executives admit "... all jobs within Qantas are under review ...".³⁹

We already know the attitude of Qantas CEO Geoff Dixon about his workers and job security. Mr Dixon has said that his workers should be grateful to have jobs!⁴⁰ Further, he has said profits are more important than workers and their families:

35 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E3.

36 Jetconnect recruitment site - <http://www.bfound.net/login.aspx?CoId=261&rq=3>

37 Sandilands, B, Local airlines manoeuvre for growth, *Aviation Business Magazine*, October 2005, page 15.

38 Australian Council of Trade Unions, *Submission 1*.

39 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E7.

40 Rochfort, S, 'Be grateful', says Qantas chief as axe sharpened, *The Age*, 19 August 2005.

I sometimes get criticised for this, but I have always seen shareholders as our most important stakeholders. I know some CEOs say look after your customers, look after your employees, and the returns for shareholders will follow. I do the exact opposite.⁴¹

Representatives of maintenance workers told the hearing about their involvement in an ongoing review:

From subsequent discussions that I and our delegates have been directly involved in with regard to the ongoing review of maintenance and engineering in the Qantas group, I can say categorically—and the Seabury consultants that were engaged by Qantas have said so quite bluntly—that their recommendation to the Qantas board is to offshore the whole lot. We are struggling to save Australian jobs in maintenance and engineering.⁴²

Another maintenance worker representative revealed his concern that more maintenance work would go offshore:

I met with Mr Dixon—along with Bill Shorten, the National Secretary of the AWU, and Doug Cameron, the National Secretary of the AMWU—in December ... He did mention that if we can come down to somewhere close to within five per cent of the costs at the Asian facilities then we would keep maintenance onshore. But from that statement I assume that if we cannot match that he is going to make a decision, or the board will make a decision, to send maintenance offshore based purely on cost and not safety.⁴³

Qantas has regularly threatened its workers with job cuts:

Dixon says that if Singapore Airlines is allowed into the Pacific, it could induce Qantas to review its engineering and maintenance operations in Australia. Dixon says the company employs 6000 professional engineers and their equivalents, but the cost structure makes that part of its business less efficient. The veiled threat is that if Singapore enters the market, Qantas might be forced to shut up shop, sack up to 6000 workers, and outsource its maintenance work to the likes of Air New Zealand.⁴⁴

Qantas executives at the hearings stated:

The act does not require [Qantas] to maintain a majority of facilities in Australia but in reality a majority of facilities are in Australia.⁴⁵

41 Flying Hazards: Geoff Dixon - Qantas. *CEOFORUM Magazine*, December 2005. <http://www.ceoforum.com.au/article-detail.cfm?cid=6292>

42 Mr Swan, Australian Workers Union, *Committee Hansard*, 13 March 2007, page E43.

43 Mr Purvinas, Australian Licensed Aircraft Engineers Association, *Committee Hansard*, 13 March 2007, page E26.

44 Ferguson, A, Troubled flight, *Business Review Weekly*, June 30 – July 6 2005, page 16.

45 Mr Johnson, Qantas, *Committee Hansard*, 13 March 2007, page E9.

The jobs are not only valued by the workers and their families, but by many others who have related and dependent employment:

The direct dependence of over 6000 employees on these [maintenance] operations, as well as a multiplier effect of these jobs of at least 2-3 times, shows the devastation that would be wreaked at places like Geelong and Bankstown, as well as Sydney, Melbourne and Brisbane generally, should these jobs become too much of a burden for a highly leveraged Qantas to bear.⁴⁶

Protecting jobs for Australian workers and their families is the number one reason for FAMILY FIRST's Bill.

FAMILY FIRST believes there is more to running a business than making a profit. Companies like Qantas and its associated entities have an obligation to the communities they serve.

Amendments

A number of amendments have been proposed to strengthen the Bill and FAMILY FIRST is happy to consider each of those amendments.

The most significant comments in submissions and from witnesses were on the following key clause of the Bill, which expands the coverage of the legislation to "associated entities", based on words used in the *Qantas Sale Act*:

(5) Qantas must ensure that:

...

(b) the facilities taken in aggregate which are used by Qantas and by any associated entity in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), located in Australia, when compared with those located in any other country, represent the principal operational centre for Qantas and its associated entities;

Those giving evidence agreed with the intent of the clause, but thought it would not achieve its purpose.

The Australian and International Pilots Association pointed out that:

This would permit, for example, 25% of the facilities to remain in Australia and 75% to go off-shore, spread between 5 countries with 15% in each country, so that the principal operational centre for any associated entity would remain located in Australia as required. Instead, the Bill should be amended to ensure that the Australian facilities, when compared to facilities

46 Australian Manufacturing Workers' Union, *Submission 9*, page 4.

in all other countries, represent the principal operational centre for the associated entities of Qantas.⁴⁷

The Australian Licenced Aircraft Engineers Association stated that:

If such words [in the bill] are accepted then Qantas management will be able to shift all maintenance of its fleet offshore so long as half of the remaining (non engineering) combined facilities remain in Australia. We consider the likelihood of Qantas accepting this option would be high and today information was received in our office showing that Qantas has started advertising internally for engineers and aircraft planners (who plan aircraft maintenance work) to move to Asia.⁴⁸

The Australian Services Union, representing workers in areas such as check-in, load control, call centres and clerical and administrative tasks like finance, information technology and human resources, stated that:

The ASU believes that it is important to strengthen the Qantas Sale Act 1992 to include provisions to maintain Australian jobs. The current proposed provision, which takes the facilities in aggregate as the benchmark for keeping jobs in Australia, at best preserves 50% plus one of the Group jobs in Australia if the Qantas Group jobs are in Australia and one other country. The more countries that have Qantas Group jobs the less jobs are required in Australia. The provision also does not in fact specify which jobs are preserved. There is also nothing in the provision which would maintain particular classes of jobs in Australia, for example in call centres, administration, finance or maintenance. All of these jobs could be offshored and yet Australia could still be the principle operational centre for the Qantas Group and the aggregate of jobs in the Group could be still in Australia.⁴⁹

The Australian Manufacturing Workers' Union also pointed out that aircraft leasing arrangements could affect the calculation of the undefined "principal operational centre":

There is a failure ... [shared] with the Act – to define a 'principal operational centre'. Does the principal operational centre exist in Australia 'when compared with any other country' because no one other country has aggregate Qantas operations compared with Australia. Even on the best possible reading, that it is the aggregate in all other countries that must be compared with Australia, what happens when Qantas leases aircraft with a lease that includes maintenance of that aircraft offshore? It is not a Qantas operation at all which maintains that aircraft, so it never comes into the 'principal operational centre' equation ... the AMWU believes that to ensure the continued effective operation of maintenance facilities in Australia that a definition of principal operational centre be adopted. The term 'principal

47 Australian and International Pilots Association, *Submission 10*, page 6.

48 Australian Licenced Aircraft Engineers Association, *Submission 3*, page 7.

49 Australian Services Union, *Submission 7*, page 10.

operational centre' must mean *the facilities that conduct the planned, routine, primary and ancillary maintenance of the current and future operational fleet of Qantas and its subsidiaries are located in Australia.*⁵⁰

FAMILY FIRST agrees the Bill should be amended to ensure that more than half of the jobs in Qantas and associated entities remain in Australia. FAMILY FIRST has also considered more prescriptive amendments which would ensure a majority of particular types of jobs remain in Australia. But this would take the amendments away from the original approach of the *Qantas Sale Act*.

FAMILY FIRST recommends amendments to ensure a majority of Qantas and associated entity jobs stay in Australia. This can be done by deleting from clause 5(b) the words "any other country" and replacing them with "all other countries". There should also be a similar and complementary amendment for section 7(1)(h) of the *Qantas Sale Act*.⁵¹

Conclusion

PROTECTING Australian jobs for workers and their families is FAMILY FIRST's top priority which is why FAMILY FIRST believes the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* must be passed by the Parliament with amendments.

Senator Steve Fielding
Leader of the FAMILY FIRST Party
FAMILY FIRST Senator for Victoria

50 Australian Manufacturing Workers' Union, *Submission 9*, page 8.

51 Australian and International Pilots Association, *Submission 10*, pages 6, 9.

APPENDIX 1

Submissions and Additional Information Received

Submission Number

Submitter

1	Australian Council of Trade Unions (ACTU)
2	Airline Partners Australia Limited (APA)
3	Australian Licenced Aircraft Engineers Association (ALAEA)
4	Transport Workers Union of Australia (TWU)
5	Not Published
6	Qantas Airways Limited
6a	Qantas Airways Limited
6b	Qantas Airways Limited
7	Australian Services Union (ASU)
8	The Australian Workers' Union (AWU)
9	Australian Manufacturing Workers' Union (AMWU)
10	Australian & International Pilots Association (AIPA)

Additional Information

1. Document tabled by Australian & International Pilots Association (AIPA) at public hearing on Tuesday, 13 March 2007
2. Supplementary Submission 6a tabled by Qantas Airways Limited at public hearing on Tuesday, 13 March 2007
3. Qantas – Address by Margaret Jackson, Qantas Chairman, Citigroup Australia and New Zealand 4th Annual Investment Conference tabled at public hearing on Tuesday, 13 March 2007

APPENDIX 2

Public Hearing and Witnesses

Tuesday, 13 March 2007 – Canberra

BAINES, Ms Claire, Delegate
Australian Services Union

COE, Mr David, Director
Airline Partners Australia Ltd

CONNOLLY, Mr Scott James, Senior Airline Official
Transport Workers Union of Australia

DIONYSOPOULOS, Mr Jim, Union Delegate
Transport Workers Union

DOHERTY, Mr John, Executive Director, Aviation and Airports Business Division
Department of Transport and Regional Services

HAWES, Mr David Charles, Group General Manager
Government and International Relations
Qantas Airways Ltd

JOHNSON, Mr Brett Stuart, General Counsel
Qantas Airways Ltd

JUSTO, Ms Jo, National Industrial Officer
Australian Services Union

MRDAK, Mr Michael, Deputy Secretary
Department of Transport and Regional Services

PURVINAS, Mr Stephen Ross, Federal Secretary
Australian Licensed Aircraft Engineers Association

SOMERVILLE, Mr Peter Thomas Harold, General Manager
Australian and International Pilots Association

SWAN, Mr Benjamin Charles, National Industrial Officer
Australian Workers Union

THORPE, Captain. Peter James, Member of Committee of Management
Australian and International Pilots Association

