



AUSTRALIAN COUNCIL OF TRADE UNIONS

**SUBMISSION TO THE SENATE
ECONOMICS COMMITTEE**

Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

March 2007

Introduction

1. The ACTU is the peak body for Australia's union movement with 51 affiliated unions and employee associations. The ACTU has significant union representation within the airline industry and within the Qantas Corporation of companies. The vast majority of employees of Qantas are union members.
2. The ACTU supports the proposed changes to the *Qantas Sale Act 1992* (the "Qantas Sale Act). The *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007* (the "Amendment Bill") resolves a number of glaring inadequacies in the Qantas Sale Act.
3. These brief submissions only deal with the matters directly raised by the Amendment Bill. There are a range of related issues concerning other provisions of the Qantas Sale Act, other Acts and the bid by Airline Partners Australia (APA) to take over Qantas Airways Limited. The ACTU's opposition to the APA takeover bid is well documented.

Scope of Bill

4. The description of the Bill as:

"A Bill for an Act to protect Jetstar from foreign ownership and ensure jobs and operations stay in Australia, and for related purposes";

underplays the scope and impact of the proposed amendments.

5. The proposed amendments clearly include all associated entities of Qantas. The ACTU supports the scope of the amendments and believes they are necessary to ensure the intent of the Qantas Sale Act is met.
6. 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.
7. 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. Such a course of action is, in the opinion of the ACTU, more likely than not should the Airline Partners Australia bid for Qantas succeed.
8. The ACTU does not accept the assertions by some that Qantas will always be an Australian controlled company with its operations overwhelmingly based within Australia.
9. There is no legal or market based rationale behind such assertions. Indeed the shift is away from Australian based and controlled operations. Should the APA bid for Qantas succeed, Qantas will have a debt to equity ratio of at least 25:75 and possibly as high as 20:80. The vast majority of the funds being used to fund the Qantas purchase are borrowed funds from overseas. The rights and interests of these overseas borrowers are recognised in the structure of the APA bid.

The National Interest

10. It is in the national interest that the Qantas Sale Act be amended to ensure it not only covers Qantas, but all its associated entities.
11. It is also in the national interest to ensure the Australian flag carrier operates its services principally within Australia, has its head office in Australia and has two-thirds of its Directors as Australian citizens.
12. 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 sole operators flying to regional and remote regions within Australia.
13. Qantas and Qantas Defence Services undertake strategic defence services for and on behalf of the Federal Government. The skills and facilities required to provide these strategic defence services are in many instances only held within the Qantas Group. The proposed amendments to the Qantas Sale Act will limit the ability of current or future owners of Qantas to move these strategically important services overseas.
14. Qantas is a major training provider in Australia and currently employs approximately 500 apprentices. The aviation, transport and manufacturing industries rely on Qantas as a feeder of trained workers. The proposed amendments to the Qantas Sale Act are supported by the ACTU.

Specific amendments to end of section 9:

5(a)

It is appropriate that the head office of Qantas and each associated entity is located within Australia. The ACTU supports the proposed amendment.

5(b)

The ACTU supports the proposed amendment that requires Qantas any associated entity to have its principal operations located in Australia.

The ACTU recognises that the services named are provided as examples only.

The ACTU submits that for the purpose of the Qantas Sale Act, the term 'associated entity' should have the same meaning as that found in section 50AAA of the *Corporations Act 2001*.

Under section 50AAA one entity is an associated entity of another entity (or the principal) if a range of conditions are met. These include effective control tests where they are a related body corporate or where there is a quantifying investment.

5(c)

The ACTU supports the proposed change to ensure that two-thirds of the directors of Qantas and its associated entities are Australian citizens.

5(d)

The ACTU supports the proposed change that would require the presiding director at a board meeting to be an Australian citizen.

Should the APA private equity bid succeed the requirements of 5(c) and 5(d) will not apply.

6

The ACTU supports the anti-avoidance provisions proposed.

CONCLUSION

15. It is often argued that the worth of the Qantas brand will ensure Qantas' operations will remain principally within Australia. The importance of Qantas as an Australian based national fly carrier, operating defence and economically important services is generally recognised. These important components of Qantas' operations are not necessarily valued by the market. Should Qantas fall into private hands, the level of disclosure will be dramatically reduced.
16. In such an environment the proposed amendments are reasonable and do not impose hardship on the company whilst ensuring a national benefit. The ACTU welcomes the proposed changes to the Qantas Sale Act.
17. Should the Senate Economics Committee wish to discuss these submissions further, the ACTU would welcome such an opportunity.