

9 March 2007

By Electronic Transmission

The Secretary
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: economics.sen@aph.gov.au

Dear Mr. Hallahan,

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

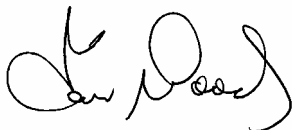
Thank you for your letter dated 6 March 2007 inviting submission from the Australian and International Pilots Association (**AIPA**) to the inquiry into the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*.

Pilots support the amendments proposed by the *Qantas Sale (Keep Jetstar Australian) Amendment Act 2007*. These proposed amendments will remove ambiguity and ensure that the Qantas Sale Act (**QSA**) continues to apply to all Qantas Group entities, as this Association believes is clearly its spirit and intent.

The Bill will reinforce the provisions of the QSA, thereby restoring the certainty that parliament intended underpin the operations of a strategic national asset. This amendment, which will provide protection for employees, Qantas and the public, is manifestly undertaken in the national interest.

Please contact me if AIPA can provide any further information, clarification or assistance to the Committee.

Yours sincerely,



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President

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Encl. (3)

Qantas Sale (Keep Jetstar Australian)

Amendment Bill 2007

SUBMISSION TO SENATE ECONOMICS COMMITTEE

1. Introduction

1. The Australian and International Pilots Association (**AIPA**) is the professional Association representing pilots and flight engineers employed by Qantas Airways Ltd and its wholly owned subsidiaries ("the Qantas Group") in airline operations within Australia and around the world. AIPA represents over 2,300 professional airline transport category flight crew and is the largest professional pilot body in Australia.
2. AIPA has encouraged various governments to consider flight crew [pilots and flight engineers] to be a specialist quality control mechanism that ensures safety remains at the centre of aviation decision making. This safety mechanism promotes the national interest by facilitating the diffusion of the world's highest operational standards, developed over 85 years of airline operations, throughout the Australian aviation industry, including within the lower experienced Low Cost Carrier (**LCC**) sector.
3. AIPA highlights that national airline transport category operations are not simply just another business activity. Qantas is a strategic national asset that has both business goals and serves critical social integrations functions/obligations. Pilots therefore strongly believe that the Qantas Group has many stakeholders in addition to its executives and shareholders or owners

2. The Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

4. The Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007 ("the Bill") has been proposed as an amendment to the Qantas Sale Act, 1992 ("the Act").
5. The stated aim of Senator Fielding in introducing the Bill is to ensure Jetstar continues to be Australian controlled and jobs are retained in Australia. His second reading speech contained the following:

"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.

Earlier this month, the Government admitted there was a loophole in the Qantas Sale Act which means the legislation does not apply to Qantas subsidiaries like Jetstar.

The Treasurer has subsequently confirmed that Jetstar is not subject to the Qantas Sale Act, but despite this, it appears the Government will do nothing about it."

6. AIPA supports Senator Fielding's intention and the Bill but believes certain changes to the Bill are necessary to ensure Senator Fielding's intention is carried out.

3. Background to the Bill

7. This inquiry takes place against the background of the proposed takeover of Qantas Airways Ltd by Airline Partners Australia and the focus that the proposed takeover has brought to the legislative and regulatory environment the Qantas Group operates in.

8. The Act contains certain provisions in regard to national interest and other considerations that were deemed important on the privatization and subsequent sale of Qantas. In the context of the proposed takeover, a significant issue has emerged in regard to whether the Act has a substantive application to Qantas and its subsidiaries including Jetstar.
9. In recent times, both the Minister for Transport and Treasurer have publicly stated that the Qantas Sale Act does not apply to Jetstar.

Minister Vaile in the Australian Financial Review 8/2/07:

The advice given to the government was that as Jetstar operates in its own right, the provisions of the Qantas Sale Act do not apply. "While Jetstar is owned and operated by Qantas, it is a separate legal entity, is managed largely independently and operates in its own right," a spokesman for Mr Vaile said.

10. Treasurer Costello in the Australian Financial Review 9/2/07:

Mr Costello confirmed that Jetstar was not subject to the Qantas Sale Act which obliges the airline to keep most of its operations in Australia. "The thing is that Qantas, which is the national carrier, is subject to the Qantas Act," Mr Costello said. "There's no Jetstar Sale Act because Jetstar didn't exist until quite recently, nor was it ever a government airline, nor was it ever a national carrier.

11. While Qantas has publicly stated that the Act does apply to any of its subsidiaries as recorded in the Australian Financial Review 8/2/07:

"The Qantas Sale Act applies to Qantas. It does not apply to Qantas subsidiaries."

12. ***If the Minister, Treasurer and Qantas are correct in this, it would be a disaster for both the national interest and Qantas because the safeguards in the Act can be avoided by Qantas simply transferring its business to a subsidiary such as Jetstar.***

13. To prevent the owners of Qantas being able to avoid the Act by such a strategy, or by use of a holding company, amendments should be made to the Act.

4. Specific Amendments Proposed in the Bill

14. AIPA makes the following submissions in regard to the Bill:

(5) Qantas must ensure that:

(a) the head office of Qantas and each associated entity is located in Australia;

Comment:

15. That Qantas maintains its head office in Australia is required by reference to mandatory articles of association in s.7 (1) (g) of the Act and it is not necessary to repeat in the Bill.

16. AIPA supports reference to each associated entity maintaining its head office in Australia.

Recommendation:

17. In sub-section 9(5) (a) remove the words "Qantas and" and following the word "entity", insert the words "of Qantas".

(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;

Comment:

18. Provisions in regard to the principal operational centre of Qantas being in Australia is required by reference to mandatory articles of association in sub-section 7(1)(h) of the Act and it is not necessary to repeat in the Bill subject to the further submissions at Paragraph 31 and following.
19. As it stands, the proposed wording of the Bill permits substantial off-shore leakage of jobs in associated entities and suppliers of their facilities. The test is a comparison between the Australian operations and those in any **one** particular country.
20. 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.
21. Instead, the Bill should 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.

Recommendation:

22. Delete the words "any other country" and substitute the words "all other countries".

(5) Qantas must ensure that:

...

(c) at all times, at least two-thirds of the directors of Qantas and the directors of each associated entity are Australian citizens;

(d) at a meeting of the board of directors of Qantas and of a meeting of the board of directors of each associated entity, the director presiding at its meeting (however described) is an Australian citizen.

Comment:

23. AIPA supports the proposed new subsections 9(5) (c) & (d). However, the proposal should be further amended to require that not only at least two-thirds and the presiding director be Australian citizens but they also be Australian residents.
24. In addition, subsection 9(5) (d) should be amended such that the relevant citizenship and residency qualifications be required for all meetings and not just "a meeting".

Recommendations

25. In sub-section 9(5) (c) after the word "citizens" add the words "and are resident in Australia".
26. In sub-section 9(5)(d):
 - delete the first occurrence of the words "a meeting" and substitute the words "all meetings";
 - delete the second occurrence of the words "a meeting" and substitute the words "all meetings";
 - after the word "citizen" add the words "and resident in Australia".

(6) Qantas and each associated entity must not, directly or indirectly, enter into, commence to carry out, or carry out any scheme if it would be concluded that the person or any of the persons who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for a material purpose of avoiding the application or operation of any provision of this Act

(including any of the mandatory articles), and any such scheme will have no force or effect.

Comment:

27. AIPA supports this provision but proposes that that there be no requirement for a "material purpose" but that it simply be *a* purpose of the scheme to avoid the provisions of the Act. If necessary, we can address the Committee on the issue of materiality.

Recommendation:

28. Delete the word "material".

(7) In this section, *scheme* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

(8) In the section, whether an entity is an associated entity of Qantas is to be determined in the same manner as that question is determined under the *Corporations Act 2001*.

Comment:

29. AIPA has no comment on these provisions.

5. Additional Amendment to the Act

30. Section 7(1) (h) of the Act provides that the Qantas articles of association must:

(h) Require that of 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;

Comment

31. The submissions made earlier at Paragraph 19, 20 and 21 are repeated and adopted in relation to Subsection 7(1)(h) of the Act.

Recommendation:

32. Delete the words "any other country" and substitute the words "all other countries".
33. We thank the Committee for the opportunity to make these submissions.

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