The Senate

Rural and Regional Affairs and Transport Legislation Committee

Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011

Qantas Sale Amendment (Still Call Australia Home) Bill 2011

March 2012

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Abbreviations

ACTU	Australian Council of Trade Unions
AIPA	Australian and International Pilots' Association
ALAEA	Australian Licensed Aircraft Engineers' Association
ANZA	Australia New Zealand Aviation
AOC	Air Operator’s Certificate
ASU	Australian Services Union
ATSB	Australian Transport Safety Bureau
CASA	Civil Aviation Safety Authority
ICAO	International Civil Aviation Organization
QSA	*Qantas Sale Act 1992*
SARP	Standards and Recommended Practice
TWU	Transport Workers Union of Australia

LIST OF RECOMMENDATIONS

Recommendation 1

2.102 The committee recommends that the government develop regulations which would require Air Operator's Certificate holders to submit a safety case to the relevant authorities in CASA and the Department of Transport and Infrastructure prior to making a formal decision to ground its fleet of aircraft.

Recommendation 2

2.103 The safety of the travelling public should be the paramount concern for all airlines and the grounding of the fleet should only be considered in the interests of safety. The committee recommends that the Government consider imposing financial penalties if it is proven that an Air Operator's Certificate holder has cited 'safety concerns' without a valid reason.

Recommendation 3

3.22 The committee recommends that the relevant government authority examines the application of the *Fair Work Act 2009*, and the relevant modern awards, for work carried out by foreign-based employees on Australian domestic flights (particularly the domestic legs of international flights) in order to clarify how the current regulatory regime applies to these workers and whether any legislative changes are required.

Recommendation 4

3.23 The committee recommends that the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 not be passed.

Recommendation 5

3.24 The committee recommends that the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 not be passed.

Chapter 1

Background of the Bills

Introduction

1.1 This inquiry reviewed and reported on two bills before the Senate: the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 (the Aircraft Crew Bill) and the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 (the Qantas Sale Amendment Bill).

1.2 The Aircraft Crew bill was introduced to the Senate on 17 August 2011 by Senator Nick Xenophon. The Aircraft Crew Bill proposes amendments to the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The bill was referred to the committee for inquiry on 18 August 2011.

1.3 The Qantas Sale Amendment Bill was introduced to the Senate on 25 August 2011 by Senator Nick Xenophon and Senator Bob Brown. The Qantas Sale Amendment Bill seeks to amend the *Qantas Sale Act 1992*. On 14 September 2011, the Senate Selection of Bills Committee referred the Qantas Sale Amendment Bill to the Rural Affairs and Transport Committee for inquiry and report by 2 November 2011.

1.4 The committee decided to extend the reporting date to 21 November 2011 and inquire into the Qantas Sale Amendment Bill and the Aircraft Crew Bill concurrently. The reporting date was subsequently extended date to 22 March 2012.

Conduct of the inquiry

1.5 The committee provided information about the inquiry on the committee's website and advertised the inquiry in *The Australian* newspaper on 31 August 2011 (following the referral of the Aircraft Crew Bill) and again on 28 September 2011 (following the referral of the Qantas Sale Amendment Bill). Following the referral of each bill the committee wrote to stakeholders to invite submissions.

1.6 The committee received 14 submissions (including one *in camera* submission) which are listed in Appendix 1. The committee held three public hearings in Canberra on 4 November 2011, 24 November 2011 and 6 February 2012. A list of witnesses is included in Appendix 2 and Hansard transcripts are posted on the committee's website.

1.7 In January 2012, the committee agreed to post draft amendments to both bills proposed by Senator Xenophon on the committee's website and call for public comment. It also wrote to relevant stakeholders asking for supplementary submissions regarding this material. The committee received five supplementary submissions regarding the draft amendments.

1.8 The draft amendments were introduced into the Senate on 13 March 2012 with an additional clause compared to the amendments posted on the committee website. The comments made in submissions to the inquiry refer to the draft amendments as posted on the committee website in January 2012.

Acknowledgements

1.9 The committee is thankful to those organisations and individuals that made submissions and to witnesses who appeared at the public hearings for the contribution they have made to the inquiry.

A note on references

1.10 The references in this report are made to individual submissions that were received by the committee. The references to the Hansard made in this report are of the proof transcript and page numbers between it and the official transcript may vary. The Hansard transcripts of the committee's hearings and all public submissions made to the inquiry can be found on the committee's website.

Scrutiny of Bills Committee

1.11 The Senate Standing Committee for the Scrutiny of Bills considers whether bills before the Senate trespass unduly on personal rights and liberties and related matters. The Senate Standing Committee for the Scrutiny of Bills made no comment on either bill considered in this inquiry.

Overview of the Aircraft Crew Bill

1.12 The Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 will require that Australian airlines and their subsidiaries provide pay and conditions for overseas-based flight and cabin crew operating on their flights that are no less favourable than if they were directly employed by the Australian airline. As outlined in the Explanatory Memorandum to the bill, the inquiry was to consider issues of safety (including fatigue), pay and working conditions and the effect on Australian jobs due to the use of overseas-based crew by Australian airlines and their subsidiaries.[1]

1.13 In order to achieve its objectives, Schedule 1 of the bill amends the *Air Navigation Act 1920* to place a new condition on the international aviation licences held by Australian airlines or the subsidiaries or associated entities of Australian airlines. The bill seeks to add two new sections, 16A and 16B, to the *Air Navigation Act 1920* as follows:

> Section 16A applies to international licences held by Australian airlines. It states that a condition of the licence is that the licence holder must ensure

1 *Explanatory Memorandum,* Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, pp 2–3.

> that flight crew and cabin crew who are not directly employed by the licence holder and who are working in connection with an international flight operated by the airline, must receive wages and conditions that are no less favourable than they would have received if they were directly employed by the airline.
>
> Section 16B applies to international licences held by subsidiaries or associated entities of an Australian airline, as defined by the *Corporations Act 2001*. It states that a condition of the licence is that the licence holder must ensure that flight crew and cabin crew working in connection with an international flight operated by the licence holder to and/or from Australia receive wages and conditions of employment that are no less favourable than if they had been directly employed by the Australian airline in control of the subsidiary or associated entity.[2]

1.14 In addition, Schedule 2 of the bill seeks to amend the *Civil Aviation Act 1988* to place a new condition on all new and existing Air Operator's Certificates (AOCs). It does this by creating a new section 28BJ for the Act:

> ...which states that it is a condition of an AOC that the holder of the AOC must ensure that any flight or cabin crew working in connection with the regular operations of the airline and who are not directly employed by the airline receive wages and conditions that are no less favourable than they would have been if the crew had been directly employed by the airline.[3]

1.15 Finally, the bill also seeks to amend certain New Zealand AOC holders' conditions by adding a new section 28CA to the *Civil Aviation Act 1988*:

> ...which applies to New Zealand AOCs with ANZA privileges, where the New Zealand AOC belongs to a subsidiary or associated entity of an Australian airline (as defined in the *Corporations Act 2001)*. This section states that ANZA privileges will not be granted by Australia unless the holder of the AOC ensures that all flight crew and cabin crew working in connection with the regular operations of the airline receive wages and conditions that are no less favourable than they would have received if they were directly employed by the Australian airline controlling the subsidiary or associated entity.[4]

Overview of the Qantas Sale Amendment Bill

1.16 The Qantas Sale Amendment (Still Call Australia Home) Bill 2011 seeks to amend the *Qantas Sale Act 1992*. The bill proposes a number of changes to Qantas' articles of association to add a number of new requirements regarding Qantas'

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2 *Explanatory Memorandum*, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, pp 2–3.

3 *Explanatory Memorandum*, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, p. 3.

4 *Explanatory Memorandum*, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, p. 3.

operations and the make-up of the Qantas board, as discussed below. The bill also inserts a definition for 'associated entity' into the Act, in line with section 50AAA of the *Corporations Act 2001*.

1.17 A main feature of the bill is to change some of the requirements for Qantas regarding the location of its facilities, training and maintenance operations. The bill seeks to achieve this by omitting '(for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration)' from paragraph 7(1)(h) from the *Qantas Sale Act 1992*, and inserting the following provisions after 7(1)(h):

> (ha) require that Qantas ensure that, of the facilities, taken in aggregate, which are used by Qantas subsidiaries and any associated entities in the provision of scheduled international air transport services, the facilities located in Australia, when compared with those located in any other country, must represent the principal operational centre for the subsidiary or associated entity; and
>
> (hb) require that the majority of heavy maintenance of aircraft and the majority of flight operations and training conducted by, or on behalf of, Qantas is conducted in Australia; and
>
> (hc) require that the majority of heavy maintenance of aircraft and the majority of flight operations and training conducted by, or on behalf of, Qantas subsidiaries and any associated entities is conducted in Australia.[5]

1.18 The bill also seeks to add certain experience and expertise requirements to the make-up of the Qantas board of directors. After paragraph 7(1)(i) of the *Qantas Sale Act 1992*, the bill adds the conditions for Qantas board membership:

> ...that at least one of the Directors of Qantas has a minimum of 5 years' professional flight operations experience and that at least one of the Directors has a minimum of 5 years' aircraft engineering experience.[6]

1.19 Currently the Qantas Sale Act only allows an application to the Court for injunctions by the Minister. The bill seeks to extend this to allow for applications to the Court by 100 shareholder members or shareholder members who hold at least 5 percent of the shares in Qantas. To achieve this, the bill adds the following amendment to both subsection 10(1) and 10(2) of the *Qantas Sale Act 1992*:

> After "application of the Minister,", insert "100 shareholder members or shareholder members who hold at least 5% of the shares in Qantas,".[7]

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5 Qantas Sale Amendment (Still Call Australia Home) Bill 2011.

6 *Explanatory Memorandum*, Qantas Sale Amendment (Still Call Australia Home) Bill 2011, p. 2.

7 Qantas Sale Amendment (Still Call Australia Home) Bill 2011.

1.20 The above change creates clause 5 and clause 6 of the Qantas Sale Amendment Bill, respectively. According to the bill's Explanatory Memorandum this will have the following implications:

> Clause 5 provides that the Court may, on the application of the Minister, 100 shareholder members or shareholder members who hold at least 5 percent of the shares in Qantas, restrain Qantas from engaging in particular conduct, such as a contravention of mandatory articles (section 7 of the Act) or section 9 (which requires Qantas to maintain a register of shares in which foreign persons have a relevant interest), and require them to do a particular act or thing.
>
> Clause 6 provides that, if Qantas or any other person has refused or fail to comply with the mandatory articles under section 7 of the Act, the Court may, on the application of the Minister, 100 shareholder members or shareholder members who hold at least 5 percent of the shares in Qantas, require Qantas or that person to do that particular act or thing.[8]

Draft amendments proposed by Senator Xenophon

1.21 In January 2012, the committee posted draft amendments to the two bills under inquiry on the committee website and wrote to relevant stakeholders to call for comment. The due date for the submissions was set at 6 February 2012. The discussion below is based on the draft amendments as they appear on the committee's website. Those amendments were the basis for the additional evidence provided to the inquiry.

1.22 The new amendments to the Aircraft Crew Bill would replace all the bill's previously proposed amendments to the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* regarding workplace relations issues with proposed amendments to the *Fair Work Act 2009*.

1.23 To achieve this the draft amendments would substitute the existing schedule 1 of the Aircraft Crew Bill with a new schedule 1 making the following changes to the *Fair Work Act 2009:*

> **1 Section 12 (after the definition of *agreed to*)**
>
> Insert:
>
> ***aircraft operating crew*** means any person who:
>
> (a) is on board an aircraft with the consent of the operator of the aircraft; and
>
> (b) has duties in relation to the flying or safety of the aircraft; and
>
> includes a person:
>
> (c) who is conducting a flight test; or

8 *Explanatory Memorandum*, Qantas Sale Amendment (Still Call Australia Home) Bill 2011, pp 2–3.

(b) who is conducting surveillance to ensure that the flight is conducted in accordance with the regulations; or

(c) who is in the aircraft for the purpose of:

(i) receiving flying training; or

(ii) practising for the issue of a flight crew licence.

2 Section 12 (after the definition of *Australian-based employee*)

Insert:

Australian domestic aviation means activities conducted in Australia in the support or conduct of commercial aviation operations that carry passengers whose flight begins and finishes at an aerodrome located in Australia.

Note: In this context, ***Australia*** includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see paragraph 17(a) of the *Acts Interpretation Act 1901*).

3 Section 12 (after the definition of *Australian-based employee*)

Insert:

Australian domestic aviation operator means the person, organisation or enterprise engaged in, or offering to engage in, Australian domestic aviation.

4 Section 12 (definition of *flight crew officer*)

Repeal the definition.

5 After section 13

Insert:

13A Extended meaning of *national system employee* in relation to Australian domestic aviation

For the purposes of this Act, any non-national system employee performing work in Australian domestic aviation is taken to be a national system employee.

6 Subparagraph 14(1)(d)(i)

Repeal the subparagraph, substitute:

(i) aircraft operating crew; or

7 At the end of subsection 14(1)

Add:

or (g) an Australian domestic aviation operator who directly benefits from work performed in Australian domestic aviation by a non-national system employee, regardless of the absence of a direct employment relationship.[9]

1.24 There is also a new amendment proposed to the *Civil Aviation Act 1988* under the Aircraft Crew Bill requiring Air Operator's Certificate (AOC) holders to implement fatigue management systems for cabin and operating crew by 30 June 2012, for flight crew by 31 December 2012, and various other staff by 30 June 2013. To achieve this the draft amendment would omit items 1 to 3 of schedule 2 of the

9 Draft Amendments, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011.

Aircraft Crew Bill and substitute a new section 28BJ into the *Civil Aviation Act 1988* as follows:

> **28BJ Management of fatigue**
>
> (1) The holder of an AOC must at all times monitor and manage fatigue-related safety risks, based on scientific principles and knowledge as well as operational experience, and take all reasonable steps to ensure that relevant personnel are performing at adequate levels of alertness.
>
> (2) The holder must have a system for management of fatigue-related safety risks for cabin crew and other operating crew in place by 30 June 2012.
>
> (3) The holder must have a system for management of fatigue-related safety risks for flight crew in place by 31 December 2012.
>
> (4) The holder must have a system for management of fatigue-related safety risks for operational support staff, including but not limited to schedulers, dispatchers, flight operations managers and continuing airworthiness managers, in place by 30 June 2013.[10]

1.25 The draft amendments put forward by Senator Xenophon to the Qantas Sale Amendment Bill focus on definitional changes in order to clarify the intent of the bill. The two key terms are 'associated entity' and 'exercising Australian rights' which would be defined as follows:

> ***associated entity*** means an entity that satisfies subsection 50AAA(2) or (3) of the *Corporations Act 2001*.

1.26 And:

> ***exercising Australian rights*** means using capacity allocated under an air services agreement to fly to, from or within Australia or to fly between two or more foreign countries using Australian allocated capacity other than code-share capacity.

1.27 As a result, the following changes (labelled (3) and (4)) to the bill are proposed:

> (3) Schedule 1, item 3, page 3 (lines 13 to 19), omit paragraph 7(1)(ha), substitute:
>
> (ha) require that Qantas ensure that, of the facilities, taken in aggregate, which are used by Qantas subsidiaries and any associated entities exercising Australian rights in the provision of scheduled international air transport services, the facilities located in Australia, when compared with those located in all other countries, must represent the principal operational centre for the subsidiary or associated entity; and
>
> (4) Schedule 1, item 3, page 3 (lines 23 to 26), omit paragraph 7(1)(c), substitute:
>
> (hc) require that the majority of heavy maintenance of aircraft and the majority of flight operations and training conducted by, or on behalf of, Qantas

10 Draft Amendments, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011.

> subsidiaries and any associated entities exercising Australian rights are conducted in Australia.[11]

1.28 The new amendments circulated in the Senate on 13 March 2012 largely reflect the draft amendments above. There was the inclusion of an additional change to the Qantas Sale Amendment Bill, amendment 4, which according to the Explanatory Memorandum:

> ...amends the existing paragraph 7(1)(hb) to clarify that it applies to flight operations management, rather than to flight operations as a whole.[12]

1.29 This was also reflected in amendment 5 which proposes to qualify 7(1)(hc) in a similar way.[13]

Structure of the report

1.30 The report consists of three chapters. This first chapter outlines the conduct of the inquiry and provides an overview of the Aircraft Crew Bill and the Qantas Sale Amendment Bill. It also outlines the draft proposed amendments put forward by Senator Xenophon as part of the inquiry. Chapter 2 is the main body of the report and considers the provisions of each bill and the committee's view in this regard. In addition, this chapter examines a number of key issues that were developed in the broader context of the inquiry, including the events and decisions surrounding Qantas' grounding of its entire fleet of aircraft on 29 October 2011. Chapter 3 of the report provides the committee's conclusions and the recommendations that neither the Aircraft Crew Bill nor the Qantas Sale Amendment Bill be passed.

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11 Draft Amendments, Qantas Sale Amendment (Still Call Australia Home) Bill 2011.

12 *Supplementary Explanatory Memorandum for Amendments*, Qantas Sale Amendment (Still Call Australia Home) Bill 2011, p. 1.

13 *Supplementary Explanatory Memorandum for Amendments*, Qantas Sale Amendment (Still Call Australia Home) Bill 2011, p. 1.

Chapter 2

Key Issues

2.1 This chapter discusses the key issues raised during the inquiry. It begins by examining the evidence provided through submissions and at the public hearings that relate specifically to the content and implications of the two bills under inquiry. The second half of the chapter discusses some of the broader issues considered in the context of the inquiry and in relation to the industrial action involving Qantas and the relevant unions.

Specific issues raised regarding the bills

2.2 There were a range of views regarding both bills considered in this inquiry but, in general, the airline companies and the Government departments and agencies that provided evidence considered several aspects of the bills to be highly problematic for the airline industry. On the other hand, several unions and individuals that provided evidence stated general support for either one or both bills.

2.3 In relation to the Aircraft Crew Bill, the key issues raised were:

- the bill's extraterritoriality and its problem with enforcement;
- the effects on the competitiveness of airlines in foreign and domestic markets;
- the pay and conditions of overseas based crew;
- the appropriateness of using the *Civil Aviation Act 1988*, the *Air Navigation Act 1920* and Air Operator's Certificates (AOCs) for workplace relations regulation;
- fatigue management and safety; and
- the ambiguity of certain terms and conditions.

2.4 In terms of the Qantas Sale Amendment Bill, the key issues raised were:

- the purpose of the original *Qantas Sale Act 1992* and Qantas' business structure;
- the outsourcing and off-shoring of Qantas labour and facilities (particularly maintenance);
- the make-up of the Qantas board and the injunction clause in the bill; and
- the ambiguity of the bill and difficulties with its implementation.

2.5 These issues are discussed in turn and, where relevant, there is discussion of the new draft amendments proposed by Senator Xenophon.

Aircraft Crew Bill

Extraterritoriality

2.6 A major criticism of the bill raised as part of the evidence to the inquiry was that the Aircraft Crew Bill was extra-territorial in its scope. For example, the Department of Infrastructure and Transport noted that:

> ...the Bill may raise issues with our obligations under international law as it may be seen as imposing Australian employment conditions extra-territorially and may also be inconsistent with Australia's bilateral air services arrangements.[1]

2.7 Virgin Australia raised similar concerns in respect to various aspects of the bill. For example, it claimed that the bill's addition of section 28CA to the *Civil Aviation Act 1988*, regarding New Zealand AOCs with Australia New Zealand Aviation (ANZA) privileges would be 'an attempt to legislate extraterritorially' and raised doubts about whether the bill could be enforced in New Zealand with respect to its Pacific Blue operations.[2]

2.8 In addition, Virgin Australian raised concerns about how the bill would affect the code-sharing arrangements for its long-haul airline V Australia.[3] As its submission explains:

> Adopting a literal interpretation of the Bill, either the proposed section 16A amendment to the *Air Navigation Act 1920*, or the proposed section 28BJ amendment to the *Civil Aviation Act 1988* could apply to code share services offered by V Australia on international sectors operated by our alliance partners, jeopardising a core component of our strategy as outlined above, and accordingly, our long-term competitiveness and sustainability.
>
> We would contend that such a construction, which effectively seeks to regulate employment and aviation safety matters of the countries in which our alliance partners are based, for example, New Zealand, United Arab Emirates and the US, would be both unworkable and unenforceable as these are matters for foreign governments. As noted in the previous section regarding Virgin Australia, it would also be inconsistent with the Bill's purpose of protecting "workplace conditions of foreign or overseas-based flight or cabin crew who are *working on* Australian-owned airlines or their subsidiaries" to extend the Bill's application to the aircraft crew of services operated by foreign airlines with which Australian airlines have a contractual arrangement concerning code share services (emphasis added).[4]

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1 Department of Infrastructure and Transport, *Submission 8*, p. 3.

2 Virgin Australia, *Submission 5*, p. 6.

3 Virgin Australia, *Submission 5*, p. 9.

4 Virgin Australia, *Submission 5*, p. 9.

2.9 The Department of Infrastructure and Transport shares the view that the bill would apply to Australian airlines' code sharing relationships (as well as subsidiary businesses, wet-leases, and minority shareholdings) and that this may significantly risk the capacity of airlines to code share and operate on routes that rely on this arrangement.[5]

2.10 Although the Department of Education, Employment and Workplace Relations provided no comment to the inquiry on the Aircraft Crew Bill's extra-territorial application, it does discuss how the *Fair Work Act 2009* currently applies in some circumstances potentially relevant to the bill:

> Foreign employees engaged outside Australia principally to work overseas, including on international flights to and from Australia, are not covered by the FW Act (see further below). This is consistent with the general principle that the law governing a contract is the law of the place in which the contract is formed. However, work carried out by overseas-based employees on Australian domestic flights can be seen as a separate and distinct part of their engagement that may be covered by the FW Act and relevant modern awards.[6]

2.11 Importantly, the Department also outlined in its submission what it considers to be an appropriate limit for the coverage of the *Fair Work Act 2009*:

> The FW Act should not be interpreted as applying to pilots and crew of foreign airlines operating between two or more points in Australia as part of an international flight, as this would impermissibly interfere with the jurisdiction of another State.[7]

2.12 In light of this issue, it should be noted that the new draft amendments to the Aircraft Crew bill put forward by Senator Xenophon (and subsequently circulated in the Senate), explicitly seek to limit the scope of the bill to domestic aviation operators, through the proposed amendments to the *Fair Work Act 2009*.[8]

Foreign and domestic competitiveness

2.13 In addition to the concerns raised over the extraterritorial scope of the bill and its legal enforcement in foreign jurisdictions, a number of submitters were concerned that the bill would unduly impact on the competitiveness of Australian airlines in foreign markets. Some of these submitters and witnesses outlined the highly competitive nature of the airline industry and the link between the industry's financial performance and the world economy.

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5 Department of Infrastructure and Transport, *Submission 8*, pp 1–3.

6 Department of Education, Employment and Workplace Relations, *Submission 9*, p. 2.

7 Department of Education, Employment and Workplace Relations, *Submission 9*, p. 3.

8 Draft Amendments, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011, p. 1.

2.14 In regard to this difficult international environment, Qantas identified the need for its participation in the 'Asian Century' in order to grow as a business to the benefit of shareholders and employees.[9] Furthermore, Qantas stated that it needs to have the 'reciprocal opportunity' to compete in foreign markets on the same terms as foreign and other Australian businesses and that this would be undermined by the bill's requirements to provide relevant overseas-based crew the same wages and conditions as corresponding Australian employees.[10]

2.15 Virgin Australia reiterated the point that the bill will undermine Virgin Australia's future competitiveness in key markets and possible growth opportunities, and that this would also have follow-on effects for Australian jobs.[11]

2.16 These concerns were not just limited to the impact of the bill on the foreign competitiveness of airlines due to the wage and condition restrictions it would have. Some submitters expressed concern that the bill may impact on regional flights which may have different employment conditions to mainline crew.[12]

2.17 This was particularly noted by Qantas in relation to the new draft amendments put forward by Senator Xenophon. As part of his opening statement to the public hearing on 6 February, Mr Alan Joyce stated:

> ...the amendments to the cabin crew bill would not preserve Australian jobs; they would destroy them, especially in regional Australia. As you know, for many years now, we have had a liberalised aviation sector with domestic open skies here in Australia, but this has not led to new or sustained international air services by foreign carriers to many of our regional centres. The fact is the Qantas Group network remains critical to maintaining and growing those direct services. That means, as a business, we need to be strong and profitable to retain sufficient scale in our regional, national and international networks.
>
> Whenever Qantas Group airlines use foreign crew and Australian crew on the same flights, Australian crew operate under Australian wages and conditions and foreign based crews on the terms and conditions of the domicile country where they are employed and where they live. This is standard practice adopted by airlines all over the world. There are a limited number of routes where this occurs within Australia. We call them tag flights, involving a domestic sector of an international flight primarily services Australian regional destinations. These tag flights enable us to [service] regional destinations in Australia such as Cairns and Darwin. If the amendments are passed and the international crews will be treated as Australians in terms of wages and conditions on domestic legs of

9 Qantas Airways Ltd, *Submission 2*, p. 2.

10 Qantas Airways Ltd, *Submission 2*, pp 1–2.

11 Virgin Australia, *Submission 5*, p. 10.

12 Department of Infrastructure and Transport, *Submission 8*, p. 3. See also Virgin Australia, *Submission 5*, p. 8.

> international flights, we will [no] longer be able to viably operate those international services.[13]

2.18 A number of committee members are of the view that Qantas did not provide any further information to back up this assertion, despite requests from the committee.[14]

2.19 The committee also notes that there appear to be no technical or legal definitions of 'tag flight', and therefore no technical or legal requirement to designate certain flights as 'domestic' or 'international'.

The pay and conditions of overseas crew

2.20 A key aspect of the bill is that it intends to remove the possibility of significant pay and condition differences between Australian and foreign-based crew that operate on the same flight. This was criticised by submitters, as outlined above, because of its potential to restrict the international competitiveness of Australian airlines. However, a number of submitters supported the bill because they argued that the differences in Australian and foreign wages and conditions was leading to the off-shoring of Australian jobs in the airlines. There were also serious concerns among some members of the committee about the disparity in pay and conditions between domestic and overseas-based workers.

2.21 For example, the Transport Workers Union of Australia (TWU) stated that it supports the aspects of the Aircraft Crew Bill which seeks through international aviation licences to ensure cabin/flight crew on international flights receive no less favourable pay and conditions than those directly employed by the airline. This was explained with reference to Thai-based cabin crew employed by Jetstar receiving lower pay and working longer hours than Australian-based crew.[15] Qantas disputed the extent of pay differences that had been portrayed in the media in these cases and stated that Qantas/Jetstar Thai crew, for example, are paid 10 times more than the average Thai wage.[16]

2.22 In its submission, the Australian Council of Trade Unions (ACTU) asserted that Qantas, through the use of outsourcing arrangements, is avoiding its 'obligations' to abide by Australia's industrial relations laws while at the same time accepting the 'privileges of holding an Australian airline licence'.[17] The ACTU added that both bills should be supported because:

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13 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 2. Note the bracketed typographical changes are based on correspondence from Qantas Airways Ltd.

14 See for example, Qantas Airways Ltd, *Answers to written questions on notice*, 7 March 2012.

15 Transport Workers Union of Australia, *Submission 7*, pp 13–14.

16 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 5–6.

17 Virgin Australia, *Submission 5*, p. 3.

> ...they encourage Australian airlines to invest in jobs and skills in Australia (and creating additional jobs downstream); protect critical infrastructure and national security interests; and help maintain high safety standards in Australian aviation.[18]

2.23 The Australian Services Union (ASU) raised general concerns about airline strategies to send operations off shore, and it claimed that Qantas has 'grown its direct overseas workforce at the expense of Australian jobs'. To illustrate this, the ASU provided in its submission a comparison between Australian and New Zealand pay rates for Qantas telesales staff. It claimed that the New Zealand employees are paid significantly less than their Australian equivalents. The ASU also asserted that while it has little data on Qantas (and associated entities) foreign employees, there is a wage gap between Australian aviation workers and those in the developed world.[19] The ASU provided some anecdotal evidence of Australian airlines outsourcing and then off-shoring their call-centre operations.[20]

2.24 The ASU also noted that many of its members would not be covered by the Aircraft Crew Bill because they are not flight or cabin crew. In light of this, the ASU argued that the bill should extend its coverage so that it applies to 'all workers working in connection with the Australian international airline service' rather than just cabin and flight crew.[21]

Use of AOCs for workplace relations regulation

2.25 Some submitters considered the use of AOCs and the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* to regulate workplace relations issues as proposed in the bill to be problematic and inappropriate. Virgin Australia criticised the use of the two Acts as the avenues for pursuing industrial relations outcomes as neither Act is an industrial instrument. It asserted that the appropriate avenue would be the *Fair Work Act 2009* and the relevant modern awards.[22] The Department of Infrastructure and Transport expressed a similar view.[23]

2.26 The Civil Aviation Safety Authority (CASA) submission was especially critical of the bill in this respect and cited a number of problems it would present for CASA as the body that would be likely to enforce the new provisions. As the CASA submission states:

> ...CASA is seriously concerned that the addition of a workplace relations function would oblige CASA to become involved in negotiations between

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18 Virgin Australia, *Submission 5*, p. 3.

19 Australian Services Union, *Submission 6*, pp 3–4 and 6–8.

20 Ms Linda White, Australian Services Union, *Committee Hansard*, 24 November 2011, pp 3–6.

21 Australian Services Union, *Submission 6*, p. 2.

22 Virgin Australia, *Submission 5*, p. 9.

23 Department of Infrastructure and Transport, *Submission 8*, p. 3.

> AOC holders and their employees on pay and working conditions... The perception of CASA as an independent safety regulator could be compromised if it were to become involved in vetting the pay and working conditions of AOC holder's employees.[24]

2.27 CASA was also concerned about the administrative problems of taking on a workplace relations function. For example, CASA stated that the bill could dilute or compromise the 'primacy of CASA's safety-relations obligations'. CASA currently does not have the competence or capability to deal with workplace relations at this level and, even if workplace relations skills could be garnered, it would cause CASA to 'realign its resources' away from the current focus on safety.[25]

2.28 CASA also expressed concern about the constraints the bill would place on its ability to issue or cancel AOCs:

> The proposed amendment invites complex and unprecedented conflicts in relation to the regulatory management of AOCs when pay and conditions are in dispute. Under the current wording of the amendment, CASA could, in certain cases, be left with no option but to refuse to issue (or to cancel) an AOC, on the basis of protracted, unresolved pay and conditions negotiations between the operator (or prospective operator) and its employees. Such a result could hardly be desirable for an employer, employees, shareholders in the relevant company or companies and in many cases, for the flying public.[26]

2.29 The new draft amendments to the bill put forward by Senator Xenophon seek to address these criticisms by proposing amendments to the *Fair Work Act 2009*, rather than the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*.

Fatigue management and safety

2.30 The committee notes that a primary motivation for the introduction of the bill was safety issues associated with fatigue, with particular reference to foreign based crew on flights within Australia.

2.31 Two Jetstar employees, who appeared before the committee in a private capacity, expressed concerns about the length of shifts which may cause fatigue. For example, in regard to Jetstar rostering practices, the witnesses stated that foreign-based crew had little choice but to extend shifts beyond the length that Australian-based crew were subject to:

> **Senator XENOPHON:** ... What is your understanding of that in terms of rostering arrangements? As I understand that there are duty limitations that apply that depend on which agreement you are under in terms of how many extra hours you can do—you can stretch things. Can you try to explain your

24 Civil Aviation Safety Authority, *Submission 3*, pp 4–5.

25 Civil Aviation Safety Authority, *Submission 3*, p. 5.

26 Civil Aviation Safety Authority, *Submission 3*, p. 5.

understanding as to how it works, because it might be that, prime face, the rules are the same but there might be extensions that you can get that vary depending on how you are employed?

Ms Neeteson-Lemkes: The same rules may apply, so to speak, to all flight attendants, but their contract of employment certainly allows different flight attendants to have the capability to extend beyond other flight attendants that would not have the capability to do so.

Senator XENOPHON: Is it your understanding that overseas based flight attendants can be required to work longer hours or to have longer extensions than other flight attendants in the Jetstar Group that are based here in Australia?

Ms Neeteson-Lemkes: Most definitely.

Mr Kelly: Yes.

Senator XENOPHON: Can you give me any examples of that?

Mr Kelly: There is also pressure from their base manager, Nairn, in Thailand. I have befriended a lot of the Bangkok crew. If they do not extend they feel that when they return to Bangkok they will have to deal with her personally.

Senator XENOPHON: Nairn, the woman you refer to—?

Mr Kelly: She is their base manager.

Senator XENOPHON: Who works for TET?

Mr Kelly: Yes.[27]

2.32 The airlines that provided evidence to the inquiry challenged the need for further legislative requirements to manage fatigue in the industry. For example, Virgin Australia told the committee that it was adequately addressing fatigue issues through its use of a fatigue risk management system.[28]

2.33 Qantas's fatigue management systems are subjected to extensive internal and external auditing processes, as well as numerous investigations and staff reporting. As Qantas told the committee on 6 February 2012 in response to questioning about the different conditions for Thai-based crew and Australian-based crew operating on Jetstar flights:

Senator ABETZ: While the wages differ, what about things such as hours of duty, fatigue regulations and other conditions? How do they compare?

Mr Buchanan: That is something we talked about—I think Senator Xenophon asked a lot at the last hearing, in November. The training standards are identical. The rostering practices are identical. We do not treat cabin crew working on any of our services any differently based on where

27 Mr Michael Kelly and Ms Monique Neeteson-Lemkes, *Committee Hansard*, 4 November 2011, p. 18.

28 Virgin Australia, *Submission 5*, pp 3–5.

> they are employed. In fact, talking about our training and fatigue risk management, which got a lot of discussion last time, we have had 12 external audits on our fatigue risk management over the last 12 months, we have done 150 internal audits on our safety management systems and practices, we have done 1,000 investigations and we have had 12,000 reports from staff. This is something we take seriously and are working constantly at.[29]

2.34 Qantas also stated it is consistent in applying its fatigue management systems to both foreign-based crew and Australian-based crew:

> **Senator ABETZ:** I do indeed. Perhaps I could go to page 2 of your submission, Mr Joyce. The third last paragraph says:
>
> The assertion in the Explanatory Memorandum that foreign contracts do not include the same flight duty limitations that apply to Australian crew is simply not correct.
>
> I think that was the basis of your commentary to Senator Xenophon's questioning, but I just want to nail that down absolutely—that you stand by that statement categorically.
>
> **Mr Buchanan:** Absolutely. Any of the constraints that apply under the air operator's certificate around human factors or fatigue risk management apply to crew irrespective of where they are employed and where they are based.[30]

2.35 CASA stated that it was not aware of any 'negative safety trends' regarding AOC holders' foreign based crew. It stated that 'CASA currently regulates flight and duty times for flight crew under Part 48 of the Civil Aviation Orders.'[31]

2.36 Furthermore, CASA articulated its development of a project specifically designed to manage issues of fatigue in the aviation industry:

> CASA has established a project team and working group under the auspices of its Standards Consultative Committee, dedicated to the development of a regulatory framework consistent with the recently adopted ICAO standards. The working group includes representatives of airline operators and flight and cabin crew employee associations alike. Working together with CASA, these representatives will consider the amended SARPs [Standards and Recommended Practices], along with a review of applicable legislation, standards and policies.[32]

2.37 CASA explained the objectives of the project, stating that they are to:

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29 Mr Bruce Buchanan, Jetstar Group, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 34.

30 Mr Bruce Buchanan, Jetstar Group, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 18.

31 Civil Aviation Safety Authority, *Submission 3*, p. 6.

32 Civil Aviation Safety Authority, *Submission 3*, p. 7.

- review the amended ICAO SARPs (as specified in Annex 6 to the Chicago Convention) relating to fatigue management;
- review current CASA standards, as specified under CAR 5.55 and in Part 48 of the Civil Aviation Orders, and CASA's associated policies relating to the management of fatigue;
- propose appropriate amendments to the civil aviation legislation, standards and policies with the goal of achieving a regime that takes account of ICAO recommendations and contemporary, scientifically-based principles, knowledge and experience in fatigue management; and
- to provide essential elements of a comprehensive approach to the management of fatigue risks in critical areas of aviation operations.[33]

2.38 During the hearing on 24 November 2011, CASA was asked to provide an update on the progress of the project in relation to the ICAO guidelines since the evidence it provided in March 2011 to the committee's inquiry into pilot training and airline safety. CASA expressed confidence that it would implement the guidelines regarding fatigue management for flight crew by early 2012 and those for cabin crew by mid-year 2012:

> **Mr McCormick:** ... yes, we have received the guidelines and, yes, we have started to form the working groups. We are taking slightly longer with the flight crew than we thought. That will be early 2012 rather than the end of November 2011, and we are still on track for the middle of the year of 2012 for the cabin crew.
>
> **Mr Hood:** I suppose our resources in the regulator that are experienced and skilled in the fatigue area are currently devoted to the working group working with the unions and operators in relation to the flight crew rules. As soon as we have got those in a shape to put out to public consultation, we will be starting to work on the flight attendant rules.[34]

Ambiguity of the bill

2.39 CASA raised concerns that a number of key terms in the amendment bill are undefined and ambiguous, including the terms: 'no less favourable', 'working in connection with', 'not directly employed and 'directly employed'.[35] CASA also stated that even with these terms defined, it is unclear why CASA would (with respect to clause 1 of schedule 2 and the proposed section 28BJ of the Act) 'have a role in regulating those crew *not* directly employed' by AOC holders but not have this role for those that '*are* directly employed' by AOC holders.[36]

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33 Civil Aviation Safety Authority, *Submission 3*, p. 7.

34 Mr John McCormick and Mr Greg Hood, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 24.

35 Civil Aviation Safety Authority, *Submission 3*, p. 5.

36 Civil Aviation Safety Authority, *Submission 3*, p. 6.

2.40 CASA also stated that the new draft amendments to the Aircraft Crew Bill which seek to prescribe the introduction of fatigue management systems also contain significant ambiguities. Specifically, CASA stated that the terms 'scientific principles', 'relevant personnel' and 'operational experience' which appear in schedule 2 of the new draft amendments would be difficult to enforce unless clearly defined.[37]

Committee view

2.41 The committee acknowledges the difficult environment in which the airline companies affected by this bill operate and is concerned by the development of legislation that may place unnecessary restrictions on the ability of Australian airlines to compete internationally.

2.42 The committee is also very mindful of the concerns of submitters regarding the pay differences between Australian and foreign-based crew on the same flights. The committee recognises that the issue of outsourcing and off-shoring of Australian jobs that may be related to this is something that policy-makers need to address further.

2.43 However, the committee is of the view that the Aircraft Crew Bill is highly problematic and not the appropriate way of regulating its stated aims for several reasons. The committee considers that the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* are not the appropriate legislative instruments for the regulating the workplace relations of employers and employees in the aviation industry.

2.44 The committee is of the view that the Aircraft Crew Bill is extra-territorial in its scope and would be difficult to enforce in practice because of this. The bill also includes a number of key terms that are ambiguous and therefore may have unintended consequences if enacted.

2.45 The committee also notes risks to aviation safety associated with the fatigue of staff working long hours and is concerned by any inconsistencies that may exist in the management of fatigue between foreign based cabin crew and Australian based cabin crew operating on Australian flights.

2.46 The committee accepts the evidence provided by CASA that this would have undesirable implications for it as the body that would administer the amendments and that it could have negative implications for the aviation industry as a result. This would include an inappropriate and unnecessarily complicated linkage between AOCs and the conduct of workplace relations negotiations.

2.47 In terms of fatigue management, the committee notes that CASA already has appropriate mechanisms to manage this issue in the aviation industry. The committee recognises the work undertaken by CASA in conjunction with industry to ensure that the recently adopted ICAO standards are appropriately implemented in Australia. The

37 Civil Aviation Safety Authority, *Supplementary Submission 3*, p. 2.

committee is of the view that issues of fatigue are better managed on this basis rather than through the legislative changes proposed by the bill. It urges that CASA gives a very high priority to ensuring the timely completion of this fatigue management project.

2.48 In terms of the draft amendments proposed by Senator Xenophon to the Aircraft Crew Bill, which were subsequently circulated in the Senate, the committee recognises that these changes address a major criticism of the original bill which was that the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* are not appropriate legislative instruments for addressing workplace relations issues.

2.49 However, on the basis of the evidence received, the committee did not form a view regarding the new draft amendments to the *Fair Work Act 2009*. The committee is mindful that such amendments to the *Fair Work Act 2009* may be more appropriately inquired into by the Senate Standing Committees on Education, Employment and Workplace Relations.

2.50 The new draft amendments to the *Civil Aviation Act 1988* regarding the implementation of fatigue management systems are also problematic and the committee remains of the view that the legislative prescriptions outlined by the proposed amendments are not the appropriate avenue for this.

Qantas Sale Bill

Purpose of the Qantas Sale Act and Qantas' structure

2.51 A key debate arising from the inquiry into the Qantas Sale Amendment Bill derived from conflicting views over the original purpose of the *Qantas Sale Act 1992* (QSA). Qantas argued that the purpose of the QSA was to provide a framework to enable the privatisation of Qantas. Furthermore, Qantas also argued that the QSA clearly distinguishes between the aspects of the bill that apply to Qantas and those that apply to its subsidiaries:

> **Mr Johnson:** We will give you written responses—that is definite—but, just so you understand it, the Qantas Sale Act was drafted primarily to effect the sale of Qantas, the privatisation of Qantas. There were then provisions put into ensure Qantas will continue to operate as an Australian based and Australian designated flag carrier. In the Qantas Sale Act, there was a definition of Qantas, which was Qantas Airways Ltd, and there was a definition of Qantas subsidiaries, which covered all of Qantas's subsidiaries. In the act, where the parliament wanted it to apply to Qantas and its subsidiaries, the act says 'Qantas and Qantas subsidiaries'. In relation to the provision which you were talking about which applies to the protection of Qantas as the Australian flag carrier, the act only applies to Qantas; it does not apply to Qantas subsidiaries. The intent at that point in time was to ensure that Qantas Airways Ltd was protected, but there was no intention at that point in time to restrict Qantas in investing in subsidiaries.
>
> **Mr Joyce:** But we actually had a subsidiary.

> **Mr Johnson:** Yes. At that point in time, there was a subsidiary called Australia Asia Airlines, which operated between Australia and Taiwan, and there was a question raised by Senator MacGibbon, who was in the opposition at that point in time, and he had confirmation from government that there was no intention for the act to apply to Australia Asia Airlines.
>
> **Senator ABETZ:** So does Qantas accept that it applies to the total group, or would you keep the subsidiaries separate?
>
> **Mr Johnson:** Those particular provisions only apply to Qantas Airways Ltd, just that legal entity.[38]

2.52 This view of the purpose of the QSA in terms of the limits of its application to Qantas' subsidiaries is, in the view of some submitters, a primary reason for the need to pass the Qantas Sale Amendment Bill. In particular, these submitters and witnesses argue that the 'national interest provisions' of the QSA mean that Qantas Group (broadly defined) must be maintained as the national carrier. However, it is argued that the Qantas business strategy of developing and investing in its domestic and international subsidiaries undermines this.[39]

2.53 As a result, these submitters and witnesses claim that the bill would clarify the relationship between Qantas and its subsidiaries, requiring them to remain Australian.[40] Similarly, the ALAEA claimed that Qantas' view that the Qantas Sale Act and Qantas Constitution does not apply to its subsidiaries makes it too easy for Qantas to avoid the QSA restrictions.[41]

2.54 The conflicting claims regarding the purpose of the QSA led directly to a debate over the implications of the Qantas Sale Amendment Bill on Qantas' business structure. Qantas asserted that the impact of the bill would be significant and that the additional requirements of the bill (such as its definition of an 'associated entity'), would require Qantas to dispose of shareholdings in Jetstar Asia and Value Air (Singapore), Jetstar Pacific (Vietnam), Air Pacific (Fiji) and Jetstar Japan (Japan) because they are majority owned by foreign nationals in their respective countries.[42]

2.55 In regard to Jetstar, Qantas was unequivocal that the bill would unfairly subject it to conditions not placed on its competitors:

> Jetstar is a separate legal entity [from Qantas], operating under its own Air Operators Certificate with an independent executive and operational management. Jetstar has also been designated by the Australian Government to operate international air services. Jetstar (as is the case for

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38 Mr Brett Johnson, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 16–17.

39 For example, Australian Licensed Aircraft Engineers' Association, *Submission 12*, pp 5–9 and Australian and International Pilots' Association, *Submission 4*, pp 32–33.

40 For example, Australian Council of Trade Unions, *Submission 10*, pp 9–10.

41 Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 3.

42 Qantas Airways Ltd, *Submission 2*, p. 3.

> any other designated Australian airline) must comply with the provisions of the Air Navigation Act 1947 which, inter alia, requires Jetstar to be majority Australian owned. These requirements ensure that, in order for Jetstar to fully access Australia's air services agreements, it must maintain its head office in Australia and must be able to demonstrate it has a majority of Australian directors and an Australian Chair.
>
> No additional requirements are imposed on other Australian carriers, including Virgin Australia. It is simply not appropriate to impose on Jetstar (and Qantas' other associated entities) conditions which are not imposed on its competitors.[43]

2.56 The Department of Infrastructure and Transport expressed similar concerns, arguing that the bill would likely limit Qantas' international growth and is not likely to increase Qantas' employment opportunities.[44]

Off-shoring and outsourcing of maintenance and labour

2.57 According to some submitters, the investment in, and development of, subsidiaries by Qantas in foreign markets is to the detriment of its Australian operations. In particular, a number of submitters expressed concerns about the potential off-shoring of Qantas maintenance facilities and supported the bill in this respect.[45]

2.58 The ASU notes particular support for Qantas' 'subsidiaries and associated entities to have their principal operations centre located in Australia.'[46]The ASU also asserted that 'Qantas workers need the protection of effective legal regulation against outsourcing and off shoring.'[47]

2.59 The TWU held the view in its evidence to the inquiry that Qantas' restructuring includes aims to 'reduce the Qantas workforce by 1000+ employees', 'abandon the airlines' historical flagship business, Qantas International' and move aviation business to Asian destinations. It asserted that Qantas would then adhere to 'relatively low safety standards in those destinations'.[48]

2.60 In addition, the TWU, expressed concerns about a possible future private equity takeover of Qantas and claimed if it occurred it could lead to the breakup of the airline, off-shoring and major job losses, while providing 'incommensurate rewards'

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43 Qantas Airways Ltd, *Submission 2*, pp 3–4.

44 Department of Infrastructure and Transport, *Submission 8*, p. 5.

45 For example, Australian Council of Trade Unions, *Submission 10*, p.15 and Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 3.

46 Australian Services Union, *Submission 6*, p. 2.

47 Australian Services Union, *Submission 6*, p. 3.

48 Transport Workers Union of Australia, *Submission 7*, p. 2.

for out-going Qantas executives and board members.[49] It was within this context of the future of Qantas' structure (and the issues of outsourcing and off-shoring discussed below) that that at least one submitter raised concerns about apparent increasing trends in the pay of its Chief Executive Officer and other executives of the company.[50]

2.61 In a similar way, the TWU is concerned about outsourcing and off-shoring and claims this may lead to problems of longer hours, worker fatigue, and workplace health and safety problems. The TWU's submission cites a report by Auspoll prepared for the TWU which measured public attitudes to Qantas and its safety and workplace relations. The submission argued that there have been some negative results across a number of indicators of Qantas safety and it lists a number of Qantas' safety incidents in recent years. The TWU is also concerned about security issues at airports due to the use of temporary workers.[51]

2.62 The committee notes that Qantas undertakes over 90 percent of its heavy maintenance in Australia and Virgin Australia and Cobham also undertake some heavy maintenance of their fleet in Australia.[52]

Make up of Qantas board and the injunction clause

2.63 The views regarding the new conditions that the bill would place on the make-up of the Qantas board are divided. Qantas asserted it is not the place for Parliament to determine the make-up of the board of a publicly listed company beyond the restrictions already placed on it.[53] As the Qantas submission asserted, the bill:

> ...proposes that the Australian Parliament determine the composition of the Board of a wholly publicly owned business trading on the Australian Stock Exchange, and dictate the manner and circumstances of key commercial decisions taken by the Board on behalf of shareholders.[54]

2.64 Qantas argued that this would disadvantage Qantas in respect to its competitors who are not subject to such restraints.[55]

2.65 However, some submitters support this aspect of the bill on the grounds it would add appropriate expertise to the board. The AIPA justified it in this way:

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49 Transport Workers Union of Australia, *Submission 7*, p. 5.

50 Transport Workers Union of Australia, *Submission 7*, pp 11–13.

51 Transport Workers Union of Australia, *Submission 7*, pp 19–25.

52 Qantas Airways Ltd, *Submission 2*, p. 3, Ms Jane McKeon, Virgin Australia, *Committee Hansard*, 24 November 2011, p. 10, Qantas Airways Ltd, *Answers to Questions on Notice*, 4 November 2011, p. 22.

53 Qantas Airways Ltd, *Submission 2*, pp 2–3.

54 Qantas Airways Ltd, *Submission 2*, p. 2.

55 Qantas Airways Ltd, *Submission 2*, p. 2.

> We believe that it is critical that the Board is able to bring operational and engineering oversight to the running of the company and, importantly, both those fields of experience bring with them a longer term view than seems to characterise modern business practice.[56]

2.66 The final aspect of the Qantas Sale Amendment Bill that drew comment in the submissions was the proposed changes to the injunction clause of the QSA to provide avenues for shareholders of Qantas to make court applications on the basis of Qantas' obligations under the QSA.

2.67 The Department of Infrastructure and Transport raised concerns that the injunction clause, if extended to allow applications by shareholder members, could allow competitors with small shareholdings in Qantas to make applications against Qantas.[57]

2.68 The Aviation Economics submission stated that the committee needed to be aware that 'there presently also exists a remedy for non compliance with the Qantas Sale Act under the Corporations Act'.[58] In light of this, it urged the committee to consider that:

> ...some Qantas shareholders are concerned that the unintended consequence of proposed changes to the Qantas Sale Act may inadvertently conflict/extinguish existing shareholder remedies available under the Corporation Act.[59]

2.69 However, the Australian and International Pilots' Association (AIPA) represented an alternative view and supported the injunctive relief proposals of the bill in full, on the grounds that 'solely relying on Ministerial intervention is insufficient and that an alternative available to the members provides a more equitable system'.[60] Furthermore, in its supplementary submission, AIPA asserts:

> AIPA notes that some concern has been expressed about the Injunctive Relief provisions regarding the possibility of interfering with various other rights of individual shareholders to take action under the *Corporations Act 2001*. Our understanding is that such other rights as may exist cannot be extinguished or modified unless there is a specific enactment to that effect. There is no such proposal included in this Bill.[61]

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56 Australian and International Pilots' Association, *Submission 4*, p. 32.

57 Department of Infrastructure and Transport, *Submission 8*, p. 4.

58 Aviation Economics, *Submission 11*, p. 1.

59 Aviation Economics, *Submission 11*, p. 1.

60 Australian and International Pilots' Association, *Submission 4*, p. 32.

61 Australian and International Pilots' Association, *Supplementary Submission 4*, p 13.

Ambiguity of the terms of the bill and changing articles of association

2.70 The Department of Infrastructure and Transport was concerned about the ambiguity of key terms such as 'majority of Qantas' heavy maintenance' and 'majority of flight operations and training'. The Department was also concerned that the new draft amendments to the Qantas Sale Amendment Bill put forward by Senator Xenophon did not address these concerns, although some members of the committee note that some difficulties may be able to be resolved, either by refining the primary legislation or providing expanded definitions in the regulations.

2.71 The difficulties in changing the articles of association as a result of the bill's changes to the QSA were highlighted by the Department of Infrastructure and Transport. In its supplementary submission regarding the new draft amendments, the Department noted a problem with the original bill and the new draft amendments:

> Qantas, as a public company, would be required to complete the process of changing its constitution and the revised Bill does not address this, or the possibility shareholders could oppose the amendments.
>
> The Department also notes that the *Qantas Sale Act 1992* requires Qantas's articles of association to include the mandatory provisions from the date of privatisation. The amendment would operate so that Qantas articles would need to have included the new article from the date of privatisation, which is impossible.[62]

New draft amendments proposed by Senator Xenophon

2.72 The AIPA supported the Qantas Sale Amendment Bill but proposed some additional amendments. This included that the proposed subsection 7(1)(ha) and 7(1)(hc), in terms of subsidiaries and associated entities, should be modified in the following way:

> ...the proposed definition for 'associated entity' in subsection 3(1) is modified to refer only to entities that satisfy subsections 50AAA(2) and (3) of the *Corporations Act 2001*, i.e. those entities over which Qantas exerts control.[63]

2.73 The ALAEA proposed a similar narrowing of the definition of 'associated entity' to include associated entities that Qantas effectively controls.[64]

2.74 The AIPA also suggested that there should be the addition of a new definition – 'exercising Australian rights'. According to the AIPA:

> ...exercising Australian rights means using capacity allocated under an Australian or foreign Air Services Agreement to fly to, from or within

62 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

63 Australian International and Pilots' Association, *Submission 4*, p. 31.

64 Australian Licensed Aircraft Engineers' Association, *Submission 12*, p. 15.

> Australia or to fly between two or more foreign countries using Australian allocated capacity other than code-share capacity.[65]

2.75 This phrase 'exercising Australia rights' should then be inserted following the term 'any associated entity' in subsections 7(1)(ha) and (hc), which refer respectively to the location of the aggregate of Qantas (and subsidiary) facilities and the majority of aircraft maintenance and flight operations and training of Qantas subsidiaries.[66]

2.76 These suggested amendments were incorporated into the new draft amendment proposed by Senator Xenophon and subsequently circulated in the Senate. These changes were less extensive than those proposed to the Aircraft Crew Bill. As such, Qantas argued that many of the problems of the Qantas Sale Amendment Bill remained.

2.77 The Department of Transport and Infrastructure noted that the new draft amendments would narrow the scope of the bill by affecting fewer of Qantas' airlines. However, it also stated that many of the previous criticisms of the bill remained (including problems of needing to change the Qantas constitution) and noted that:

> ...the requirement for these airlines to conduct the 'majority of their 'flight operations' in Australia could be construed to effectively require these airlines to be primarily domestic operators.[67]

Committee view

2.78 The committee fully supports the role of Qantas as the Australian national airline. It is aware that Qantas operates in a very competitive and difficult international environment and that the aviation industry continues to face significant challenges. The committee is therefore mindful of any adverse effects of the legislative proposals on Qantas's ability to conduct business in this context.

2.79 The committee notes the concerns of some submitters and witnesses regarding the relationship between Qantas' overseas subsidiaries and its Australian based operations. It is particularly concerned about Australian job opportunities being sent off shore. However, the committee is mindful in that in attempting to address these concerns the Qantas Sale Amendment Bill is inappropriately restrictive on Qantas and would have the likely effect of reducing its competiveness in a difficult industry.

2.80 The committee is also concerned that there could be significant practical difficulties arising from the bill which would require changes to Qantas' articles of association. In addition, the committee is concerned that the clause regarding the application for injunctions against the board could potentially be used adversely by a small number of shareholders. The committee is of the view that the Qantas Sale Bill

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65 Australian International and Pilots' Association, *Submission 4*, p. 31.

66 Australian International and Pilots' Association, *Submission 4*, p. 31.

67 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

includes a number of key terms that are ambiguous and therefore may have unintended consequences if enacted.

2.81 The proposed amendments to the Qantas Sale Amendment Bill focus on the definitions of 'associated entity' and 'exercising Australian rights' and therefore seek to clarify the intent of the bill and restrict its scope with respect to some of Qantas' foreign operations. However, the committee remains of the view that this does little to address a number of the concerns regarding the bill as outlined above.

Additional issues raised during the inquiry

2.82 A number of issues relating to the inquiry arose following the controversial action taken by Qantas to lock out its workforce and ground its entire fleet of aircraft. A significant part of the evidence provided by Qantas at the committee's hearings on 4 November 2011 and 6 February 2012 focussed on this episode and the industrial action leading up to it, particularly the reasons behind the decision to ground the fleet and the impact and costs of the action.

The Qantas grounding and lockout

2.83 On Saturday 29 October 2011, Qantas announced it was grounding its aircraft that day, in order to implement a lockout of a number of its employees (effective from 8.00 pm the following Monday). At the public hearing on 4 November 2011, questions were asked of Qantas about who made the decision to lock out employees and ground the Qantas fleet. Mr Alan Joyce, Qantas CEO, stated that as CEO he had the full operational discretion to order both lockout and grounding actions and, in this case, the decision was entirely his. However, he also stated that the decision was endorsed by the Qantas board at a meeting on 29 October 2011.[68]

The reasons for the decision

2.84 Mr Joyce told the committee that the lockout was a response to the continued disruption from protracted industrial disputation with three Unions – the TWU, ALAEA, and the AIPA and a fall in future bookings. Mr Joyce said that the cost to Qantas of both of these developments was significant:

> For example, we do a survey each month asking people their intentions to fly with Qantas: would they consider Qantas for the next trip? Usually internationally five per cent of people would say no; that had risen to: 30 per cent of people were no longer considering Qantas for their international trips—a sixfold increase. On the east coast we have had a similar impact on the domestic market, where we have seen the propensity of people not to travel with Qantas actually doubling or trebling as well. Most importantly, the core corporate market was not travelling with Qantas on the east coast and east-west services because of the uncertainty that was created. I will get you the exact numbers, but it was quite significant. We then came up with a

68 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 9 and 11–13.

> financial number which was: it was costing us $50 million a week for the ongoing uncertainty around the airline, in addition to the disruption caused for each of the actions that were taking place.[69]

2.85 Mr Joyce stated that in the week commencing 17 October 2011, Qantas experienced a massive collapse in its corporate travel bookings. He explained that high-fare flexible fares on the east coast had dropped 40 percent in the week commencing 17 October 2011 and that transcontinental (east-west) and Canberra flights were down 14 and 20 percent respectively on previous years.[70]

2.86 The rationale put forward by Qantas for the lockout and grounding was strongly challenged by other witnesses. TWU National Secretary, Mr Tony Sheldon, told the committee:

> Qantas has both the capability and capacity to turn around and reach a proper employment relations agreement for Australians within this aviation industry and within its operations. On our figures, to deal with the issues of job security and outsourcing, it would cost Qantas an extra 5c on a ticket from Melbourne to Sydney. Qantas will only die if Alan Joyce and Leigh Clifford kill it. One of the things that is particularly pertinent, of course, is the decision that the company took on closing its operations down after notice was given of a lockout of employees. During the hearing in Fair Work Australia the company made it crystal clear—by a press statement initially, by media comment during Saturday evening and Sunday and, finally, in their summations—that if the commission made a decision to suspend industrial action of any of the parties then they would keep the airline grounded. They said to the judiciary, to the travelling public, to the workforce, to the government, to parliament, to the various people within the economy that rely on a robust aviation industry: 'As far as we are concerned, if the court makes any decision other than terminating the industrial action, if it makes a decision to suspend the industrial action for a period of time, then we will not put planes back in the air.' That was a direct confrontation with the decisions of this parliament, the intent of the legislation. It was a direct attack on and a strangling of the Australian economy. 'If you do not take my direction then I will bring economic disaster to this country.'[71]

2.87 Qantas told the committee that the decision to ground the fleet was a response to safety concerns identified as part of a risk assessment undertaken in the course of planning for the lockout. Mr Joyce told the committee that having satisfied itself that there was a risk to airline safety posed by flight crew becoming distracted upon learning of the lockout Qantas decided to err on the side of caution and ground the fleet:

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69 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 16–17.

70 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 17.

71 Mr Tony Sheldon, Transport Workers Union of Australia, *Committee Hansard*, 4 November 2011, p. 35.

Senator ABETZ: And, once again, the only reason for the grounding was the safety factor?

Mr Joyce: Yes, because we are very cautious when it comes to safety...

When we were doing the planning for the lockout—which, as I said, had been done for some weeks, and the planning for this was part of a range of options and a range of scenarios that we were doing—our head of Qantas operations, Lyell Strambi, involved his chief pilot, and his chief pilot did the risk assessment. That risk assessment said that we would have had a problem in keeping the airline flying until the lockout and that once we made the decision we had to ground the airline.

CHAIR: Could I clarify that. You said the reasons for the grounding were safety.

Mr Joyce: No, the reasons for the grounding were the lockout.

CHAIR: Exactly, and that is why I just wanted it clear.

Mr Joyce: Absolutely. The reasons were clearly the lockout. Because the lockout was at 8 pm on Monday, the reason for the immediate grounding was that we felt uncomfortable with the human factors risk that we had between that Saturday decision becoming known and the lockout occurring.

CHAIR: In all fairness, with your 35,000 employees, the reason for the safety or the human factor was stress or something, do you think?

Mr Joyce: No. There are a number of reports by the ATSB and there are a number of reports by other institutions around the world. This is not assuming anything malicious or anything like that; this is distractions. Distractions could actually cause you the problem. There have been various cases around the world where, when it comes to issues on the table, people get distracted and that can lead to human factors issues that can cause you incidents or accidents, and we needed to avoid that. That is why we took a very cautious approach.[72]

2.88 The AIPA disputed Qantas' assessment of the risk to airline safety and expressed confidence that Qantas pilots would have been able to manage any related safety issues following the announcement of the lockout:

CHAIR: ... Do you think that any Qantas captain in control of a Qantas flight would pose a serious safety risk to the passengers hearing about the lockout midair?

Capt. Woodward: Absolutely not. First up, captains have their job legislated under Australian law, and they take that seriously. Secondly, we operate in a crew environment. We have a crew on the flight deck and we practice a thing called crew resource management. We manage crises as a team, whether it is an engine failure or a message from the company saying that the aeroplane is grounded when you land. So the crew would have talked about that, dealt with the issues and moved on. The aeroplane is

72 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 19.

> travelling at eight miles a minute in a very hostile environment. We worry about the safety of the aeroplane first, above all else.
>
> **Senator XENOPHON:** Perhaps I could just clarify that. Chair, you said 'a serious safety risk. Perhaps I could qualify that: would it pose any safety risk?
>
> **Capt. Woodward:** There is no doubt that it would have caused some concern in individual pilots' minds and maybe distracted them initially. One of the things pilots are good at is talking to each other, so there would have been a lot of discussion on the various flight decks of the aeroplanes that were airborne, and you could argue that that would have been a distraction.[73]

2.89 The committee sought evidence from CASA regarding its role in Qantas' decision to ground its fleet. CASA first became aware of the decision to ground the fleet shortly after 1.30pm on 29 October 2011 when the Secretary of the Department of Infrastructure and Transport, Mr Mike Mrdak, advised CASA's Director of Aviation Safety, Mr McCormick, that the government had received notification from Qantas.[74] As noted in CASA's evidence there appear to be a lack of clarity as to the exact nature of the specific safety case for grounding the fleet:

> **Mr McCormick:** ... I spoke to Mr Joyce in Qantas during the afternoon and requested from them their safety case—how they had come to reach this conclusion for the reasons that I just outlined a couple of minutes ago. I did receive one safety case but it was not about the issues that led them to ground the aircraft. It was about a maintenance issue which had occurred a couple of days previously in Brisbane, which is a matter of unexplained damage to aircraft...
>
> As Mr Mrdak said, we did not receive the safety case that led to their conclusion of grounding until 18:04 that evening. Mr Joyce in his speech says:
>
> It bears repeating that the specific driver for immediate grounding of the airline was not related to the airline and fleet health metrics, but rather to the potential human factor threats that might be generated in response to the company announcement of lockout. The grounding which occurred coincident with the announcement to lockout was a conservative measure taken to mitigate a potential increase to risk.
>
> I took that as the definitive explanation as to how they had got to the conclusion. That was in his five o'clock speech announcing this.[75]

2.90 Upon receiving the safety case on the evening of 29 October 2011, CASA stated that it formed two teams – one to examine the safety case in terms of the reasons for Qantas' to ground its fleet and another team to examine the safety of

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73 Captain Richard Woodward, Australian International and Pilots' Association, *Committee Hansard*, 4 November 2011, pp 48–49.

74 Mr Mike Mrdak, Department of Infrastructure and Transport, 24 November 2011, p. 32.

75 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 33

Qantas resuming its flights. In terms of the first team, evidence to the committee suggests that the safety case provided to CASA could have contained more complete information:

> **Mr McCormick:** We looked at it from the point of view that the safety case may not have contained all the information that Qantas had available to them. So it was difficult to be definitive. Could the safety case have been bigger, perhaps have contained more information? Certainly it could be more fulsome. However, Qantas has a track record of conservative operations and conservative decisions...
>
> **Senator XENOPHON:** I want to clarify this... Are you saying that you did not form a conclusion as to the material provided to you for Qantas's safety case? In other words, is it fair to say that you did not come to a conclusion, that it was an ipso facto thing, that Qantas grounded the airline on safety reasons and therefore it must be a valid safety reason rather than coming to an independent conclusion based on the evidence provided to you.
>
> **Mr McCormick:** It was not possible for me to come to an independent conclusion unless I had some confidence that I had all the information that was available to Qantas.
>
> **Senator XENOPHON:** So you did not have all the information that was available to Qantas?
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> **Mr McCormick:** I do not think the safety case contained all the information that was available to Qantas. As far as Qantas saying, 'We have grounded the airline,' or 'We are going to ground the airline as the AOC holder because of risk X, Y or Z,' once they have taken that decision in a lot of ways it does not matter what I think. It matters a lot what I think before they can go flying again, but the decision they have taken was one that was available to them.[76]

2.91 The committee also heard evidence about the current requirements for AOC holders who may ground their fleet on the basis of safety:

> **Mr McCormick:** If an air operator certificate holder says, 'I am going to ground my fleet because there are safety reasons and I do not think I can manage these risks,' then I am not in a position to say, 'That is not a decision that is available to you.' Nor am I in a position to say that it is totally unreasonable because I may not have all of the facts they have. I do not know the culture of the organisation. I do not know what has been happening. One thing I can say—and which we did say in the case of Qantas—is that if you say to me on a Saturday afternoon or evening that you are going to ground the airline because of the following risks that you do not think you have mitigated, before you can say, 'We are going to go flying again,' you have to you show me that you have now addressed those

76 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 34

> risks. Otherwise, it is a nonsense, which is why we required Qantas to give us a safety case to go back flying again.[77]

2.92 In particular, unless the safety issue falls under the category of a 'reportable matter', there appears to be little formal protocol regarding an AOC holder's requirements to notify CASA prior to grounding its fleet:

> **Senator GALLACHER:** The situation is that regarding our regulator, who monitors our AOC holders and has the power to take action in the event of issues of a serious nature arising, it is not required anywhere that you be notified prior to the decision being made?
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> ...
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> **Mr McCormick:** No, they do not have to notify us unless the grounds that have led them to ground the planes are a reportable matter. If they have had a serious incident or if something has happened, they cannot just ring us and say, 'Oh, excuse me, I have just ground the airline,' without giving us the background to that.[78]

2.93 Another key issue regarding the Qantas grounding was the effect it had on the Australian travelling public who fly with Qantas. Qantas conceded that the grounding did have a significant impact and confirmed that 98,000 passengers were affected by the lockout and grounding.[79]

2.94 In addition, Qantas, in what it termed a 'mistake', continued to sell tickets to customers until 8:30 pm Saturday 29 October 2011, several hours after the board had endorsed the decision to ground the airline.[80] Qantas outlined the details of this as follows:

> In the period from 5.00pm to 8:30pm, we estimate 152 passenger segments (or the equivalent of 76 return flights) (out of a total of 1,920 segments) were sold through Qantas.com for travel between 5 pm 29 October 2011 and 2pm 31 October 2011, when Qantas resumed flying.
>
> Qantas is offering compensation including rebooking and refunds without penalty and reimbursement for reasonable out of pocket expenses incurred as a direct result of the Grounding for all customers who were directly affect by the Grounding. This includes customers who booked flights between 5pm and 8.30pm on 29 October 2011.[81]

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77 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 32

78 Mr John McCormick, Civil Aviation Safety Authority, *Committee Hansard*, 24 November 2011, p. 32

79 Qantas Airways Ltd, *Answers to written questions on notice public hearing 4 November 2011*, p. 3.

80 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, pp 14–15.

81 Qantas Airways Ltd, *Answers to Questions on Notice*, 4 November 2011, p. 6.

2.95 Finally, concerns were raised in the inquiry regarding the cost associated with the grounding of the Qantas fleet. Although the overall cost of the decision was not established through the inquiry, some indication of the cost to the airline may be ascertained through the booking of hotel rooms for passengers following the decision to ground the airline. As Qantas stated in relation to 2,800 hotel rooms booked in Los Angeles and Singapore:

> ...those bookings were made at 5.20, after the announcement of the grounding of the airline. For the international bookings, a call was made to a broker, and at 5.30 the domestic hotels were booked.[82]

2.96 The figure placed on the cost of these rooms was later stated as:

> In terms of the average room rates booked for Qantas passengers between 30 October and 1 November, when the grounding happened, the international rate was $190 per room and the domestic rate was $240 per room. The total estimated cost for the accommodation was $1.9 million. The international cost was $1.2 million and the domestic cost was $700,000.[83]

2.97 However, Qantas did claim that the effects of the grounding were far less than the continued cost of other industrial action.[84]

Committee view

2.98 Qantas' decision to lockout its workforce and ground its fleet on 29 October 2011 was highly controversial. The committee is mindful that this action had disastrous implications for Australia. The episode directly affected 35 000 Qantas employees and their families, and impacted significantly on some 98 000 members of the travelling public. The committee is of the view that the repercussions of this on the tourism industry, the Australian economy and Australia's international reputation should not be underestimated.

2.99 In gathering evidence about circumstances that led to the grounding, the committee heard a range of views regarding Qantas' assessment of the airline safety risk posed by the lockout and the need to ground the Qantas fleet as a result.

2.100 The committee notes that there is currently only limited regulatory protocol relating to an AOC holder's decision to ground its fleet of aircraft and that CASA's primary role in the process occurs only after an AOC holder seeks to resume operations after a fleet has been grounded.

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82 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 2.

83 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 24.

84 Qantas Airways Ltd, *Answers to written questions on notice public hearing 4 November 2011*, p. 3.

2.101 In view of the potential for widespread repercussions as a result of a decision to ground its aircraft fleet, as occurred in the case of Qantas' on 29 October 2011, the committee considers that AOC holders should be required to lodge a safety case with CASA prior to a formal decision to ground aircraft.

Recommendation 1

2.102 The committee recommends that the government develop regulations which would require Air Operator's Certificate holders to submit a safety case to the relevant authorities in CASA and the Department of Transport and Infrastructure prior to making a formal decision to ground its fleet of aircraft.

Recommendation 2

2.103 The safety of the travelling public should be the paramount concern for all airlines and the grounding of the fleet should only be considered in the interests of safety. The committee recommends that the Government consider imposing financial penalties if it is proven that an Air Operator's Certificate holder has cited 'safety concerns' without a valid reason.

Chapter 3

Conclusions and Recommendations

3.1 The committee recognises that the Aircraft Crew Bill and the Qantas Sale Amendment Bill received a mixed response from the stakeholders that provided evidence to the inquiry. Although the committee does not agree with those submitters and witnesses who supported the bills, the committee recognises that they raised a number of legitimate concerns with respect to the broader public policy issues that are addressed in the bills. In particular, the committee considers the issues discussed below to be of importance.

3.2 The committee notes the concerns of a number of submitters about the future off-shoring of Australian jobs in the aviation industry. It is particularly mindful of the difficulties of keeping airline maintenance employment on-shore and is concerned by airline business strategies that may constrain future Australian employment opportunities in the industry.

3.3 The committee is also mindful of the concerns raised by submitters regarding the pay differences between Australian and foreign-based crew on the same flight and recognises that addressing this issue was a significant motivation for the Aircraft Crew Bill being introduced into Parliament.[1]

3.4 The committee is aware of the risks to aviation safety associated with the fatigue of staff working long hours and was concerned by any inconsistencies that may exist in the management of fatigue between foreign based cabin crew and Australian based cabin crew operating on Australian flights.

3.5 The relationship between Qantas' overseas subsidiaries and its Australian based operations was another key aspect of the inquiry as the committee examined the implications of the Qantas Sale Amendment Bill's for Qantas' obligations under the *Qantas Sale Act 1992*.

3.6 The impact on the Australian economy and on Qantas' workforce and customers caused by the grounding of the Qantas fleet 29 October 2011 became an important development during the inquiry. As a result, the committee considered these issues in terms of the broad context within which the Qantas Sale Amendment Bill would operate if enacted.

3.7 While the committee was mindful that these issues need to be addressed, it is of the view that the bills before the inquiry are flawed in a number of respects and are

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1 See, for example, Senator Xenophon, 'Second Reading Speech for the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011', *Hansard*, 17 August 2011, pp 4697–4698.

not the appropriate mechanisms for achieving positive outcomes for the aviation industry and its workforce.

3.8 The committee is concerned that the Aircraft Crew Bill is extra-territorial in its scope and would be difficult to enforce in practice because of this.

3.9 The committee accepts the evidence provided by some submitters that the Aircraft Crew Bill has the potential to be unduly restrictive on the operations of Australian airlines in foreign markets. Given the highly competitive nature of the aviation industry, the committee is of the view that the consequences of the bill in this respect would be detrimental to Australia's international aviation operators.

3.10 The committee is of the view that the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* are not the appropriate legislative instruments for regulating the workplace relations of employers and employees in the aviation industry. It accepts the evidence provided by CASA that this would have undesirable implications for CASA as the body that would administer the amendments and that it could have negative implications for the aviation industry as a result. This would include an inappropriate and unnecessarily complicated linkage between AOCs and the conduct of workplace relations negotiations or the settlement of workplace relations disputes.

3.11 Furthermore, the committee is of the view that CASA already has appropriate mechanisms to manage safety issues in the aviation industry (such as fatigue) that may arise from workplace relations practices. The committee recognises the work undertaken by CASA and the existing regulations regarding fatigue management. It also notes the continued development of the fatigue management project by CASA in parallel with the International Civil Aviation Organization.

3.12 The committee urges CASA to accord this project a high priority and ensure the timely implementation of these fatigue management standards. The committee is of the view that issues of fatigue are more appropriately managed on this basis rather than through the legislative changes proposed by the bill.

3.13 The Qantas Sale Amendment Bill relates to a number of issues that the committee considered in relation to Qantas' structure and planned business strategy. The grounding of the entire Qantas fleet as part of industrial action during the inquiry highlighted some of the issues relevant to the bill, including job security and the off-shoring of Qantas facilities.

3.14 However, the committee is mindful that in attempting to address these concerns the Qantas Sale Amendment Bill is inappropriately restrictive on Qantas and would risk reducing its competiveness in a difficult industry.

3.15 The committee is also concerned that there could be significant practical difficulties arising from the bill requiring changes to Qantas' articles of association. The bill does not address the need for Qantas shareholders to accept the changes to Qantas' constitution that would be required by the changes to the articles of association. In addition, the committee is concerned that there is a risk that clauses 5

and 6 of the bill, regarding the applications for Court injunctions, could be used against Qantas by various small groups of shareholders with vastly different motives.

3.16 The committee is of the view that both bills include a number of key terms that are ambiguous and therefore may have unintended consequences if enacted. This includes terms which are not clearly defined in the bill and do not have a generally accepted single meaning. However, some members of the committee note that some difficulties may be able to be resolved, either by refining the primary legislation or providing expanded definitions in the regulations.

Draft amendments proposed by Senator Xenophon

3.17 As part of the inquiry the committee agreed to consider draft amendments to both bills put forward by Senator Xenophon and called for public comment on these additional amendments.[2]

3.18 The proposed amendments to the Qantas Sale Amendment Bill focus on the definitions of 'associated entity' and 'exercising Australian rights' and therefore seek to clarify the intent of the bill and restrict its scope with respect to some of Qantas' foreign operations. However, the committee is of the view that this does little to address a number of the concerns regarding the bill outlined above. In particular, the committee remains mindful of the potentially adverse effects of the bill on Qantas' ability to conduct business in a competitive manner in overseas markets and may restrict those bodies covered by the draft amendments to being essentially domestic operations.

3.19 The proposed changes to the Aircraft Crew Bill would remove workplace relations issues from the bill's amendments to the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* and proposed changes to the *Fair Work Act 2009*. The committee recognises that these changes address a major criticism of the original bill that the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* are not appropriate legislative instruments for addressing workplace relations issues.

3.20 The changes included in the new proposed amendments to the *Civil Aviation Act 1988* regarding the implementation of fatigue management systems are problematic and not supported by the committee. While the committee is still mindful of the importance of managing fatigue to maintain aviation safety standards it is of the view that the legislative prescriptions outlined by the proposed amendments are not the appropriate avenue for this.

3.21 However, the committee remains concerned with the issue of pay and conditions of foreign-based employees on the domestic legs of flights that are 'tagged' as international services. The committee received evidence from the Department of Education, Employment and Workplace relations regarding a level of ambiguity about

2 Note: these amendments were introduced into the Senate on 13 March 2012 and contain several differences to those published on the committee's website as outlined in Chapter 1.

the extent of the coverage offered by the *Fair Work Act 2009* and the relevant modern awards for work carried out by foreign-based employees on Australian domestic flights. The committee considers that these provisions would benefit from further examination.

Recommendation 3

3.22 The committee recommends that the relevant government authority examines the application of the *Fair Work Act 2009*, and the relevant modern awards, for work carried out by foreign-based employees on Australian domestic flights (particularly the domestic legs of international flights) in order to clarify how the current regulatory regime applies to these workers and whether any legislative changes are required.

Recommendation 4

3.23 The committee recommends that the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 not be passed.

Recommendation 5

3.24 The committee recommends that the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 not be passed.

Senator Glenn Sterle

Chair

Dissenting Report by Coalition Senators

Coalition Senators note in relation to Recommendation 2

1.1 The management of private companies and decisions determined during the course of running their business should be the exclusive remit of that company. Government, or indeed any party, should not sit in subjective judgement to negotiate on, and interfere with, management decisions unrelated to the functions of that party.

1.2 This recommendation would constrain management's capacity and flexibility to effectively function in the market place.

1.3 This recommendation illegitimately impinges on a company's ability, specifically in this case Qantas, to make decisions in order to facilitate the effective management and running of their business.

1.4 It is for this reason that it should not be supported by the Committee and is opposed by the Coalition. An individual or any other business entity should not be subjected to any legislation that removes their pre-eminent and indisputable right to run itself.

1.5 Further, the aviation safety culture is often held up as a benchmark, due in large part to its "no-blame" (sometime called "just culture") approach to encouraging open reporting. Aviation safety management systems encourage, if not require, employees or management at any level to be prepared to highlight an actual or potential safety issue, even if that means interruptions to planned operations until the issue is investigated.

1.6 *The Civil Aviation Act 1988* (Section 28E) place specific requirements upon the holder of an Air Operators Certificate (AOC) in regards to safety. Civil Aviation Orders (CAO) 82.3 and 82.5 supported by Civil Aviation Advisory Publication (CAAP) SMS-1(0) expand on the specific requirements of a safety management system for regular transport operations.

1.7 A CEO or delegated officer (e.g. chief pilot) frequently has to make safety decisions under real-time pressure, often with incomplete information. The long term success and value of Australia's aviation safety depends on such decisions being made with the confidence of knowing that erring on the side of safety will be supported in a no-blame culture. The introduction of the threat of judicial review—some months after an incident by a judge acting with the benefit of hindsight—will compromise Australia's aviation safety for the crews and travelling public.

Coalition Senators note in relation to Recommendation 3

1.8 That a review of the *Fair Work Act 2009* and the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* is currently underway.

This review is being undertaken by Reserve Bank Board Member John Edwards, former Federal Court Judge, Hon. Michael Moore and Professor Ron McCallum AO.

1.9 The Review Panel has received evidence from a significant number of stakeholders and it is anticipated that they will finalise their investigation by the end of May this year.

1.10 In light of this, Coalition Senators believe that another separate examination of the Act as it applies to foreign-based employees on Australian domestic flights duplicates this effort and as such these matters would be better addressed by the Review Panel.

1.11 Notwithstanding the fact that comments of Panel Members made prior to their appointment suggests that the findings of the Review will be unremarkable and predictable, the Coalition remains hopeful that it will recommend solutions to the practical problems caused by the *Fair Work Act* which are increasingly self-evident.

1.12 In that context, the Coalition notes that several stakeholders who have given evidence to the Committee have also provided submissions to the Fair Work Review Panel. Those submissions cover many of the aspects considered by this Committee.

1.13 As such, Coalition Senators believe that it is not appropriate to duplicate these efforts.

1.14 The Coalition Senators do not support the proposed mechanism of making industrial relations changes by stealth under the guise of aviation legislation due to the detrimental effect on aviation safety.

1.15 In conclusion, Coalition Senators oppose Recommendations 1, 2 and 3 of the majority report.

Senator the Hon. Bill Heffernan
LP Senator for New South Wales

Senator Sean Edwards
LP Senator for South Australia

Senator David Fawcett
LP Senator for South Australia

Senator Fiona Nash
NATS Senator for New South Wales

Minority Report by the Australian Greens

1.1 The Australian Greens agree with the comments made in the dissenting report submitted by Senators Xenophon and Madigan.

1.2 The plans by Qantas management to offshore and outsource key elements of its operations have caused consternation amongst the Qantas workforce and travelling public. When the Qantas workforce sought through bargaining to ensure some degree of job security, Qantas management responded with a lockout of its workforce and the grounding of its fleet and passengers. There remain questions to be answered by Qantas management concerning its grounding and lockout during October 2011. There is concern that Qantas management is looking to export Qantas to a world of lower cost, lower services and lower safety. The justification by the company's senior management for the grounding was disproportionate and extreme when measured against the campaign the unions and workforce were running to preserve Australian jobs and maintenance contracts.

1.3 Partly in response to the Qantas industrial dispute, Adam Bandt MP, the Australian Greens Member for Melbourne, introduced a Private Member's Bill - the Fair Work Amendment (Job Security and Fairer Bargaining) Bill 2012. The bill provides that employers must give the same amount of notice – 72 hours – before a lockout of employees as employees must give of any industrial action, and to allow Fair Work Australia (FWA) when deciding to terminate protected action to have regard to whether it considers that a purpose of the lockout was to make any application more likely to succeed. The bill seeks to prevent employers from using Qantas-style lockouts as an industrial tactic.

1.4 The Job Security and Fairer Bargaining Bill also introduces a mechanism for FWA to make orders that are "proportionate" to the industrial action. At present FWA can suspend or terminate all industrial action even if only one part is causing significant damage. The Bill would give FWA the ability to suspend or terminate specific parts of the industrial action and allow others to continue. For example, in the case of the Qantas industrial dispute, pilots wearing non-uniform ties were not causing significant damage, yet their industrial action was terminated.

1.5 The intent of the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 being considered by the Committee is to provide some security to the Qantas workforce and its passengers, and ensure Australia’s national interest is taken into account by Qantas management. Qantas is our national carrier and it should live up to its marketing slogan of being "the spirit of Australia" and demonstrate a commitment to Australian jobs, and the skills of our workforce.

Senator Bob Brown
Senator for Tasmania

Senator Scott Ludlam
Senator for Western Australia

THE FUTURE OF THE FLYING KANGAROO

Dissenting Report by Senators Xenophon and Madigan

1.1 The bills at the centre of this inquiry aim to address serious issues within Australia's aviation sector, and in particular with our national flag carrier Qantas.

1.2 Australians need to think seriously about what has happened recently in the aviation industry, but more importantly, what they want to see happen in an industry in which Australia's deep involvement reaches back at least as far as the Wright Brothers. The Qantas Group, with its extensive domestic and international operations, together with its 30,000 employees, plays a key role in Australia's national economy and identity. The 29 October 2011 grounding of Qantas illustrates just how important Qantas is, and the flow-on effects that any disruption to Qantas operations can have.

1.3 The Majority Report fails to grasp the significance of the underlying problems for Australian aviation and employment. We are very concerned that the Committee, by not supporting the bills or offering alternative means of addressing these pressing issues, has not dealt with the problems in this area and has wasted the opportunity to take action.

1.4 Since the passage of the *Qantas Sale Act* in 1992, there have been many changes in the way Qantas operates, and those changes have accelerated in recent years under current management. There is no doubt that the aviation industry globally operates in a tough commercial environment. Qantas remains an iconic brand, but that status appears to have come under pressure as a direct result of the actions and strategies of current management.

1.5 The creation of Jetstar and the emphasis of the low cost carrier model has seen Jetstar's rapid rate of growth outstripping its parent. Expansion via an Asian base was promoted as the saviour of Qantas by CEO Mr Joyce at the November hearings, but as recently as last week, it seems those plans have been shelved.[1] Increased off-shoring, the use of cheap labour on domestic flights, labyrinthine leasing arrangements and dark predictions about Qantas International (emanating from Qantas management itself) have all cast shadows over our national carrier.

1.6 There are serious concerns that the *Qantas Sale Act* does not prevent Qantas from selling off Jetstar, for instance to a private equity company. This could then lead to a situation where the original parent company is under direct competitive threat from its former subsidiary. The irony of a sold-off subsidiary airline (Jetstar), originally nurtured by its parent (Qantas), cannibalising Qantas market share and jobs is self-evident. The fact that there are current Qantas management who supported the

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1 Matt O'Sullivan, 'Joint talks fail in Qantas Asia bid', *Sydney Morning Herald*, 10 March 2012.

failed and potentially disastrous private equity takeover deal of Qantas in 2007 is a potential concern.

1.7 A recent article in the *Sydney Morning Herald* criticised Qantas' Asian expansion, stating that:

> ... [I]t was a plan that was never going to fly. For it was first and foremost a threat – and a hollow one at that – to [Qantas'] own workforce rather than a legitimate blueprint to turn around the company's fortunes.
>
> If there was any strategy involved in the plan, it was purely as part of an ideological battle over trade unionism in general and Fair Work Australia in particular, which culminated in management shutting down operations for almost three days last November.

The article continues:

> But the Asian option addressed none of those factors, and Joyce now presides over an organisation where industrial relations could best be described as toxic while his customers, disillusioned and jaded, have begun walking across the terminal to rival Virgin Australia.
>
> ...
>
> It would be unfair to label the abandoned Asian plan as half-baked for it never reached that stage. There was no oven, no cake tin and certainly no ingredients.[2]

1.8 The recent dismissal of 150 catering staff in Adelaide gives credence to the criticisms of the way Qantas management deals with their employees. Reports in *The Australian* indicate that staff were not told of their redundancies before the media was informed,[3] which would seem to demonstrate an apparent lack of regard for the employees.

1.9 The grounding of Qantas by the unilateral action of Mr Joyce on 29 October 2011 starkly exposed how important Qantas is to the nation's economy and international reputation. All Australians must question whether the power to create such an impact on our national interest should rest with the CEO (with ratification from the Qantas Board), who could see no other acceptable courses of action. The fact that Qantas operations are governed in part by the *Qantas Sale Act* provides a mechanism for the clear link between Qantas operations and the national interest to be reframed.

1.10 These bills are not an attempt to limit Qantas' ability to operate, but are one mechanism to ensure that, on one hand, our national interest is protected for the future, while on the other, Australian international airlines behave appropriately in the Australian labour market.

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2 Ian Verrender, 'Back to basics for Joyce & Co', *Sydney Morning Herald*, 13 March 2012.

3 Verity Edwards and Sophie Gosper, 'Qantas staff shocked as hopes crushed', *The Australian*, 17 February 2012.

1.11 We acknowledge that there have been specific concerns raised in relation to the structure of the bills. However, we believe that they have either largely been addressed through the proposed amendments or, with stakeholder cooperation, could easily be addressed with expanded definitions or through subordinate legislation. Unfortunately, those amendments have not been the subject of any sufficient examination. The Committee has failed to acknowledge the impact of Australian airlines seeking to move more and more of their maintenance and operations offshore, and operating overseas-based crew members under comparatively poor working conditions on what are in effect domestic flights.

1.12 We are concerned that time constraints only allowed the Committee to offer a limited opportunity for submitters to consider the amendments to these bills and to provide further information to the Committee. That opportunity was only matter of days and, for those members of the public who relied on the Committee website to alert them, less than a week. As such, we consider the evidence relating to the proposed amendments, as discussed in the report, is not comprehensive, and the effect of these amendments has not been fully explored.

Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011

1.13 The *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* aims to ensure that overseas-based crew flying domestic legs on Australian airlines are not employed under less favourable pay and conditions than if they were employed under Australian domestic contracts. In response to specific concerns raised during the inquiry, Senator Xenophon has circulated amendments to the bill, which instead amends the *Fair Work Act 2009* to remove any ambiguity and ensure that these crews come under its jurisdiction.

1.14 We are concerned that the Committee has not made a strong statement about the employment practices of Jetstar as exposed in the previous Inquiry on flight standards and training and during this Inquiry. Despite evidence raised in the 6 February 2012 hearing, the Committee's report makes no mention of the fact that Jetstar has been under investigation by the Fair Work Ombudsman in relation to the employment of cadet pilots and foreign-based cabin crew. The report also fails to mention that, as a result of these investigations, Jetstar has since capped the number of domestic routes its overseas-based crew can fly and has provided additional remuneration for some of those overseas-based cabin crew employed by Jetstar over the last two and a half years on those domestic operations, vindicating some of the concerns that are reflected in the bill.[4]

1.15 We are very concerned that the Fair Work Ombudsman sees this issue as serious enough to merit investigation, but the Committee does not propose a specific

4 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 6 February 2012, p. 5. Please note references to Hansard refer to the official version.

legislative remedy to address this problem, given that the evidence of the Department of Education, Employment and Workplace Relations (DEEWR) was quite equivocal about how the *Fair Work Act 2009* may (or may not) apply to these non-Australian overseas-based cabin crew.[5]

1.16 Evidence provided by two Jetstar employees (appearing in a personal capacity), Mr Michael Kelly and Ms Monique Neeteson-Lemkes, gave specific examples of the problems caused by overseas-based crew operating under different standards to Australian-based crew.

> **Mr Kelly:** My average days are anywhere between 12 and 14 hours, but I have extended up to 21.
>
> **Senator XENOPHON:** Is that with a dispensation?
>
> **Mr Kelly:** We do not fall under a union, so there is just pressure. We have to bring the aircraft home. The cabin crew just have to bring the aircraft home.
>
> **Senator XENOPHON:** And for the Thai based flight crew?
>
> **Mr Kelly:** I think they can go up to 24 hours.
>
> **Ms Neeteson-Lemkes:** Twenty-four hours is correct.[6]

1.17 From both a safety and an industrial relations standpoint, this is unacceptable. It also indicates that some airlines are able to take advantage of non-unionised workforces, which has the effect of circumventing Australian pay and conditions.

1.18 In its supplementary submission to the Committee, AIPA also raised concerns about possible immigration issues relating to overseas-based crew operating on domestic legs of internationally-tagged flights.[7] Senator Xenophon has since asked questions in the Senate of Minister Ludwig, in his capacity as Minister representing the Minister for Immigration and Citizenship in the Senate, in relation to this issue. We are concerned that there may be a loophole in the *Migration Act* that allows Australian airlines to use overseas-based crew on what should more properly be considered domestic flights. Because the flights are notionally continuation sectors of flights that originate overseas, crew members are granted access to Australia under Crew Travel Authorities. The special purpose visas to which these Crew Travel Authorities relate do not carry the same restrictions in relation to disadvantaging Australian workers as, for example, 457 visas. Furthermore, we find the silence of the Committee on these matters even more surprising, given that the circumstances that this bill seeks to address seem similar to those that led to the introduction of the *Migration Legislation Amendment (Worker Protection) Act 2008.*

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5 DEEWR, *Committee Hansard,* 24 November 2011, p. 19.

6 Mr Michael Kelly and Ms Monique Neeteson-Lemkes, private capacity, *Committee Hansard,* 4 November 2011, p. 67.

7 Australian and International Pilots Association, *Supplementary Submission 4*, p. 3.

1.19 In response to Senator Xenophon's questions in the Senate, Minister Ludwig stated:

> [T]hese special purpose visa crew arrangements are only suitable for international airlines bringing crew into Australia, but they are not intended for international crew to operate in a purely domestic sector in Australia.[8]

1.20 It is extremely concerning that the definition of domestic and international flights for the purposes of granting visas seems to be dependent on flight numbers. These numbers are allocated to flights by the airlines themselves. There appear to be no regulations that require airlines to designate certain flights as domestic or international. This lack of regulation could allow airlines to use this ambiguity to designate flights in a certain way. It would seem reasonable that these designations should be in line with cabotage rules: for example, international airlines are not able to pick up and drop off domestic passengers between domestic destinations, although they are allowed to extend international flights to domestic destinations if they are dropping off international passengers. Logically, it would follow that any flight following these rules should be designated as international, and as soon as a domestic passenger boards the plane to fly to a domestic destination, the flight should be designated as domestic.

1.21 It is vital that the Parliament introduces legislation to determine how flights should be designated, or that this is determined by CASA. It is not appropriate for this designation to be left to the whim of the airlines. This legislation needs to apply across all relevant Acts, including the *Fair Work Act* and the *Migration Act.* It would be naive to believe that this lack of consistency is not causing Australian job losses through the use of foreign-sourced labour.

1.22 Mr Joyce also indicated that the enforcement of the amended *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* would force the Qantas Group to end some of its international services. He said:

> If the amendments are passed and the international crews will be treated as Australians in terms of wages and conditions on domestic legs of international flights, we will not longer be able to viably operate those international services.[9]

1.23 Given that cabin crew costs have been estimated at less than 10 percent of aircraft operating costs,[10] it is hard to see how increasing the pay and conditions for domestic legs would blow these costs out of proportion. The failure of Qantas to provide further information to the Committee strengthens the case that Mr Joyce's

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8 Minister Joe Ludwig, *Senate Hansard*, 8 February 2012, p. 47.

9 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 2.

10 Joe A Scaria, 'IBS to help airlines to cut crew management cost', *The Economic Times*, 15 January 2010.

comments lack credibility. It would have been appropriate for the Committee to discuss this further in the report.

1.24 In the absence of hard facts to support Mr Joyce's alarmist claims, the only reasonable conclusion to be drawn is that Mr Joyce is scaremongering. It beggars belief that that the viability of these international services to and from Darwin and Cairns is dependent on the cost structure of the domestic flights to those cities, for which there is no apparent shortage of demand.

Recommendation 1

1.25 That the government introduce legislation relating to the definition of domestic and international flights, and that this legislation is enforced as part of a whole-of-government approach, with particular reference to the *Fair Work Act 2009* and the *Migration Act 1958*.

Recommendation 2

1.26 In the event that the *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* is not passed, the relevant government authorities examine the application of the *Fair Work Act 2009* and the *Migration Act 1958* in relation to work carried out by overseas-based employees on Australian airlines, with particular reference to domestic legs of flights tagged as international flights, and make the necessary legislative changes to ensure these employees are operating under appropriate conditions.

1.27 The amended *Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011* also now includes a requirement for holders of Australian Air Operators Certificates to have fatigue-management systems in place.

1.28 While we note the criticism about ambiguity in terminology directed at the proposed legislation, it should be recorded that the terminology was directly sourced from the ICAO documents that form the foundation of aviation fatigue management. In particular, ICAO provides the following definition from their newly released Doc 9966 'Fatigue Risk Management Systems: Manual for Regulators' 2011 Edition:

> A Fatigue Risk Management System (FRMS) is defined as:
>
> A data-driven means of continuously monitoring and managing fatigue-related safety risks, based upon scientific principles and knowledge as well as operational experience that aims to ensure relevant personnel are performing at adequate levels of alertness.[11]

1.29 If there are genuine departmental concerns about ambiguity, these ought to be passed on to ICAO.

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11 International Civil Aviation Organisation, Fatigue Risk Management Systems: *Manual for Regulators*, 2011, p 1-1.

1.30 We would like to note the contributions from Mr Michael Kelly and Ms Monique Neeteson-Lemkes, Jetstar flight attendants who appeared before the Committee's 4 November hearing in their personal capacities. Once again, the serious repercussions of cabin crew fatigue were discussed. It appears that there are still a number of outstanding issues to be dealt with, which were originally raised in the Committee's previous inquiry into aviation safety.

1.31 In relation to fatigue risk management, we note Mr Buchanan's assertion, made during the hearing held on 4 November 2011, that:

> Any of the constraints that apply under the air operator's certificate around human factors or fatigue risk management apply to crew irrespective of where they are employed and where they are based.[12]

1.32 However, there are no requirements on AOCs in relation to fatigue risk management for cabin crew, and the requirements regarding human factors relate to training.[13] Therefore, there are presently no 'constraints' under the AOC for Jetstar to apply to crew in relation to fatigue management, regardless of where the crew are based. We would go further and note that the evidence available to the Committee suggests that, of the human factors principles outlined in the CASA advisory material on Safety Management Systems, that it is unclear to what extent such principles have been fully implemented and put into practice by Jetstar. These principles include:

- adopt a holistic and integrated approach;
- put the people at the centre of the system;
- account for human variability;
- ensure transparency of organisational processes and actions;
- take account of social and organisational influences;
- involve staff and respect and value their input;
- encourage timely, relevant and clear two-way communication; and
- ensure fairness of treatment (e.g. the 'just culture' concept).[14]

1.33 The Committee has noted that CASA is currently working on formulating guidelines for fatigue management. We would like to make several observations. First, the ICAO guidance is about process rather than prescription. It requires that there be provided a prescriptive alternative to FRMS as a form of safety net, but leaves the formulation of the prescription to individual states. It is this formulation of the prescription that is testing all aviation regulators, including the FAA and EASA, and we expect CASA to be no different. Second, although Senator Xenophon based

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12 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 4 November 2011, p. 18.

13 See Civil Aviation Order 82.5 subsections 2 and 2A.

14 Civil Aviation Advisory Publication CAAP SMS-2(0) *Integration of Human Factors (HF) into Safety Management Systems (SMS)*, January 2009, p. 3.

the FRMS implementation dates in the bill on the CASA evidence, we are now concerned that the timeline proposed by CASA is particularly ambitious. There is therefore a high risk that managing fatigue in cabin crew will be constantly deferred. The fact that the Regulatory Reform project, originally scheduled for completion in 18 months, is now in its sixteenth year is not a reassuring sign for the legislative protection of cabin crew. Finally, the Fatigue Management for Aviation Industry Personnel page of the CASA website has been labelled "being updated and are unavailable" for many months and possibly more than a year. It would be helpful to see some information released to the public as a matter of urgency.

1.34 We are disappointed that the Committee was unable to appropriately consider and form a view on the amendments to this bill. It would have been very helpful to have these amendments appropriately scrutinised, and to allow a longer period for feedback. The Committee has acknowledged the issues this bill is trying to address, but has not offered an alternative approach to address these important issues in its recommendations.

Qantas Sale Amendment (Still Call Australia Home) Bill 2011

1.35 The Committee also raises the issue of the application of the *Qantas Sale Act*, and discusses the "conflicting claims regarding the purpose of the QSA."[15] However, the Committee does not acknowledge the need to address these conflicts or offer any recommendations to do so. Importantly, we are not persuaded that the Qantas assertions about the purpose of the *Qantas Sale Act* are correct (in effect, that the Act is no longer relevant and that its principal purpose was only to facilitate the sale of Qantas).[16] We also believe that the Committee's reporting of only the Qantas view in detail to the exclusion of dissenting opinions is inappropriate, as it gives a false impression that the Committee approves of that view. These fundamental conflicts must be resolved so that the Act can be appropriately applied. This ambiguity could, in the long term, allow Qantas to take action that would otherwise be considered to be against the intention and spirit of the Act. Qantas' view is based on the presumption that the *Qantas Sale Act* was never intended to apply to subsidiaries. That has not been established in law.

1.36 The principal aim of the *Qantas Sale Amendment (Still Call Australia Home) Bill 2011* is to require Qantas to continue the bulk of its heavy maintenance, training and operations management in Australia. The proposed amendments narrow the focus of the bill to ensure it applies only to Qantas, and Australian international airlines in which Qantas has a controlling share. These amendments also address any issues of extra-territorial application of Australian law. We are concerned that the full impact of these amendments on the bill has not been adequately considered by the Committee.

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15 See paragraph 2.54 of this report.

16 Qantas Airways Ltd, *Submission 2*, p. 3.

1.37 On 6 March 2012, *The Australian* reported that Qantas expects a 60 percent drop in labour demand over the next five years. This is the equivalent of 870 jobs.[17] Qantas has stated that this drop is the result of new maintenance systems and aircraft that require less work, in addition to the fact maintenance on the A380 will not be occurring in Australia. Qantas also states that it has still to make a decision about where maintenance for the 787s will be carried out, although it is unlikely to be in Australia:

> **Mr Joyce:** We have always been clear. It will not be economic for us to do the A380 or the 787 maintenance in Australia, because it takes a long time for that to occur for them. There are very low levels of maintenance needed on those aircraft.[18]

1.38 These circumstances, if combined with the ability to offshore even more work, would mean a massive reduction in heavy maintenance in Australia. Qantas has already begun the process of dismantling part of that heavy maintenance capability.[19]

1.39 It is also important to note the issue of critical mass for maintenance planning, where it is estimated that between 12 and 14 older technology planes and as many as 20 new technology planes are needed to make heavy maintenance economically viable. If Qantas moves other maintenance offshore and phases out their 747s, their maintenance activities in Australia could become totally unviable once the 767 fleet has gone and as the 747 numbers reduce. This could provide Qantas with the trigger to move everything other than line maintenance offshore, resulting in heavy job losses.

1.40 The Committee notes Qantas' comments in their submission that they are the only airline to do any heavy maintenance in Australia.[20] However, statements provided by Virgin Australia during the 24 November hearing state that it conducts approximately 83 percent of its maintenance in Australia, including heavy maintenance.[21] Qantas itself also acknowledged in answer to a Question on Notice[22] that Cobham is another airline that conducts all of its heavy maintenance in Australia. While we acknowledge that the Committee has noted in its report that other airlines undertake heavy maintenance in Australia, it would have been useful for the Committee to note that it was provided with factually incorrect information by Qantas, and that Qantas did not formally seek to correct this.

1.41 We acknowledge the concerns raised by submitters about the structure of this bill. However, the question remains: what do we want for the future of this iconic airline, and for the 30,000 Australians it still employs? It seems incongruous for the

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17 Steve Creedy, 'Qantas to cut maintenance workers', *The Australian*, 6 March 2012.

18 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 26.

19 Ben Schneiders, "1000 Qantas jobs 'at risk in state," *The Age*, 2 March 2012.

20 Qantas Airways Ltd, *Submission 2*, p. 3.

21 Ms Jane McKeon, Virgin Australia, *Committee Hansard*, 24 November 2011, pp 10–13.

22 Answers to Questions on Notice, 4 November 2011, p. 22.

Government to say that, on one hand, they want to retain the *Qantas Sale Act 1992* in its current form, while on the other hand they ignore the intent of the legislation.

1.42 We note the concerns raised by the Department of Infrastructure and Transport regarding the difficulties in changing the articles of association as a result of the bill's changes to the *Qantas Sale Act*.[23] While the prospective application of this legislation would be easily achieved, the structure of the *Qantas Sale Act* in regards to the company's constitution and any future amendments is problematic and needs to be addressed.

1.43 We also note the Department of Infrastructure and Transport's concerns that the requirement to have the majority of 'flight operations' in Australia could effectively require airlines to become primarily domestic operators.[24] This concern has since been addressed through an alteration in the proposed amendments to the bill, which were circulated in the Senate prior to the Committee's report. It would have been appropriate for the Committee to take this into account.

Recommendation 3

1.44 That the Government conduct an urgent and independent review into the operations of the Qantas Sale Act 1992 in order to determine whether the Act as it stands is still achieving its original aims, and whether it should be strengthened.

Grounding the Qantas Fleet

1.45 The Committee also raised the matter of the Qantas lockdown and subsequent grounding. We agree with the Committee's comments about the seriousness of these actions, but we believe the Committee's recommendation should go further.

1.46 We agree that airlines should have a reasonable basis for safety concerns when making the decision to ground planes. For this very reason, it is vital that airlines are able to ground immediately and without notice.

1.47 Instead, it would be more practical to allow airlines to immediately ground a fleet, but then require them to prove to CASA and/or the Australian Transport Safety Bureau (ATSB), within a certain timeframe, that they had reasonable proof that this grounding was necessary for safety reasons. If they are unable to prove this, a series of penalties should apply. The airline would then have to apply to CASA in the usual way before the fleet was allowed to resume operations.

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23 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

24 Department of Infrastructure and Transport, *Supplementary Submission 8*, p. 1.

1.48 This approach would not endanger the public, and would also go some way towards preventing airlines from grounding a fleet for other reasons, such as an industrial dispute, where those concerns did not present a genuine safety issue.

1.49 We believe it is disingenuous in the extreme for Qantas to suggest that its pilots, who take their responsibilities very seriously, would be so distracted by the news of the lockout as to cause a safety incident.

Recommendation 4

1.50 That the Government develop regulations that would require AOC holders, notwithstanding any other existing reporting requirements, within two weeks after grounding a fleet, to provide information to CASA and/or the ATSB that proves the AOC holder had reasonable proof that the grounding of the fleet was necessary for safety reasons. The regulations should include penalties for AOC holders who are not able to provide reasonable proof.

Financial Reporting

1.51 It is also important to expand on the issue of profitability in relation to Jetstar Asia. During the 6 February hearing, Senator Xenophon referred to an article by Scott Rochford in the *Sydney Morning Herald*, which suggested that Jetstar Asia's profits relied on revenue earned from aircraft it was leasing to Jetstar Australia.[25] Senator Xenophon also raised an interview between Qantas Head of Corporate Communications Olivia Wirth and ABC's Matt Peacock, in which Ms Wirth stated that Jetstar Pacific was 'very close to break even.'[26]

1.52 In the 6 February hearing, Mr Buchanan disagreed that Jetstar Asia was reliant on the leasing arrangements for profit, and that Jetstar Pacific's performance was "normal for a start-up operation."[27]

1.53 A discussion about the leasing arrangements between Qantas and Jetconnect in the same hearing also led to confusion, with Mr Joyce initially incorrectly attributing fuel costs to a figure in Jetconnect's account.[28] He later corrected this, explaining that the wet lease arrangement between Qantas and Jetconnect in the following way:

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25 Scott Rochfort, 'Subleases to sister help struggling Jetstar Asia post $4.5m profit,' *Sydney Morning Herald*, 19 January 2009. See Mr Bruce Buchanan, Jetstar Group, and Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, pp 8–10.

26 Matt Peacock and Olivia Wirth, *Background Briefing*, 8 December 2011.

27 Mr Bruce Buchanan, Jetstar Group, *Committee Hansard*, 6 February 2012, pp 9–10.

28 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 11.

> **Mr Joyce:** The Qantas group purchases aircraft and allocates them to Jetconnect business, and the Jetconnect business operates those aircraft and charges them back.[29]

1.54 It appears that there is a significant lack of clarity in the way leasing arrangements are reported for the purposes of financial reports. Mr Joyce also stated:

> **Mr Joyce:** Yes. But this is all put back into Qantas's mainline books. We do consolidate them back in. We are not saying that Jetconnect is making $11 million as a stand-alone entity that is completely different from Qantas. It is allocated back into the Qantas resource, because it is part of the Qantas network.[30]

1.55 Effectively, it appears that Qantas purchased aircraft and leased them to itself, therefore allocating both the cost of the lease and the profit of providing the lease to itself as well.

1.56 These apparently convoluted and labyrinthine commercial arrangements may well demonstrate how an airline could, hypothetically, use a similar arrangement to move profits and losses between its entities. It would be appropriate for ASIC or a similar regulatory body to examine whether the provisions relating to reporting the profits and losses from such arrangements are adequately transparent and accountable.

Recommendation 5

1.57 That the Government require ASIC or another relevant regulatory body to examine the requirements relating to financial reporting of aircraft lease arrangements, and whether such arrangements provide an appropriate level of transparency and accountability.

1.58 We also note the questions Senator Xenophon raised during the 4 November hearing in relation to accounting standards. We believe that there needs to be stricter standards into how profits and losses are attributed within the Qantas Group, especially in relation to Accounting Standard AASB8, which applies to other parts of Qantas operations. This is particularly concerning when figures which have not been publicly released are used to make a specific case about one part of the Qantas Group. In fact, the job losses announced by Qantas last year appear to hinge on such assertions. The reported losses of Qantas International are not subject, in themselves, to the same standard as other parts of Qantas operations, such as Freight and the Frequent Flyer program. We refer to the exchange below:

> **Senator XENOPHON:** But is it not the case that, when you assert that Qantas international has lost $216 million in the last year, there is no accounting standard that applies to it in terms of the AASB8 that applies to the actual divisions listed in the Qantas annual report?

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29 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 23.

30 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 6 February 2012, p. 22.

> **Mr Joyce:** As I said, it is part of our internal process. Our auditors do look at that and the auditors have confirmed that they are accurate representations of the losses that Qantas international incurs. The auditors have reviewed it.
>
> **Senator XENOPHON:** But it is not subject to the accounting standard?
>
> **Mr Joyce:** It is not subject to the accounting standard, but it is subject to an audit review and the audit review has taken place in the organisation and the auditors are comfortable with that performance.
>
> **Senator XENOPHON:** Because it is not the subject of an accounting standard, which you have acknowledged, isn't the way you allocate costs and revenue to Qantas international a subject of considerable judgment by you?
>
> **Mr Joyce:** No, it is not. The way we allocate costs and manage each individual business is through standard terminology and mechanisms that a lot of airlines around the world use. It is standard practice. We do have a whole series of systems within the group to use and a whole accountancy of how individual segments and individual routes perform. We base it on the user pays model. We base it on the model that has a whole series of contracts between segments. As we would with any other airline around the world, those are contracted and negotiated between segments at the reference end—what each segment uses and then we charge the segments for what actually takes place. It is a very comprehensive, detailed process that has been there for years. We are absolutely comfortable—our accountants there, the management there, the previous management there—that the $200 million represents a true and accurate picture of what Qantas international is losing.[31]

1.59 However, the fact that the Accounting Standard does not specifically apply to Qantas International does cause concern over the assertions made by Qantas as to the extent of Qantas International's losses, given that these were the basis for Qantas moving its centre of gravity to Asia (although those plans have recently been abandoned).

The Cannibalisation of Qantas by Jetstar

1.60 In the 6 February hearing, the exponential growth of Jetstar was raised. On 4 December 2005, in an interview with Alan Kohler on *Inside Business*, former Jetstar CEO Geoff Dixon stated that he did not think Jetstar would ever be more than 20 percent of the size of Qantas.[32] Currently, Jetstar has 86 aircraft compared to Qantas' 198, which means that Jetstar is now approximately 43 percent of the size of Qantas. Given that Jetstar plans to increase its fleet to 131 aircraft by 2014, this could see Jetstar grow to over 60 percent of the size of Qantas. The obvious concern is that

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31 Mr Alan Joyce, Qantas Airways Ltd, *Committee Hansard*, 4 November 2011, p. 3.

32 Alan Kohler and Geoff Dixon, *Inside Business*, 4 December 2005.

Qantas' subsidiary will cannibalise its parent, and that Qantas will eventually exist only as a shell. The question needs to be asked whether the subsidiary becoming bigger than the parent is a true reflection of the international business environment, or more the result of avoiding the intent of the *Qantas Sale Act*.

1.61 Jetstar's rate of growth is also concerning from a different angle. In July last year, the *Sydney Morning Herald* reported that Jetstar was planning to increase its fleet in the Asia-Pacific to over 400 by 2020.[33] This would require a compound annual growth rate of approximately 40 percent. In contrast, the International Air Transport Association (IATA) estimates a CAGR of 5.9 percent for international passengers and 5.7 percent for domestic.[34] Given these figures, it seems unrealistic to say at the least that Jetstar would be able to achieve the intended growth, without needing to find substantial amounts of capital from its Australian operation and from other investments. It is highly unlikely that Jetstar Australia's operation could ever fund that expansion.

1.62 We acknowledge the Committee's work on these issues. However, we are concerned that this is the second recent inquiry into aviation matters, and that both of these inquiries have highlighted serious issues within the industry. We believe that the Committee has failed to adequately address issues of ongoing concern, and by not offering alternatives to the bills before the inquiry, the Committee is in effect turning a blind eye to the practices and commercial strategies that are currently occurring.

1.63 We also acknowledge the work done by the Australian Greens on these issues, and support their additional comments to the Committee's report.

Recommendation 6

1.64 That the Government commission an urgent, comprehensive review of the Australian aviation industry, to be conducted by an independent person or party with relevant experience, with particular reference to safety and competition issues, as well as the long term viability of the industry.

Recommendation 7

1.65 That the bills be passed with proposed amendments.

33 Reuters, 'Jetstar to invest $470m in Singapore hub', *Sydney Morning Herald*, 18 July 2011.

34 IATA, available online at: http://www.iata.org/pressroom/pr/pages/2011-02-14-02.aspx

Senator Nick Xenophon
Independent Senator for South Australia

Senator John Madigan
DLP, Victoria

APPENDIX 1

Submissions Received

Submission Number	Submitter
1.	Australian Airline Pilots' Association (AusALPA)
2.	Qantas Airways Ltd
3.	Civil Aviation Safety Authority (CASA)
4.	Australian and International Pilots' Association
5.	Virgin Australia
6.	Australian Services Union
7.	Transport Workers Union of Australia (TWU)
8.	Australian Government Department of Infrastructure and Transport
9.	Australian Government Department of Education, Employment and Workplace Relations
10.	Australian Council of Trade Unions (ACTU)
11.	Aviation Economics
12.	Australian Licensed Aircraft Engineers' Association (ALAEA)
13.	Ms Monique Neeteson-Lemkes

Additional Information Received

- Received on 16 November 2011, from Australian and International Pilots Association (AIPA). Answers to Questions taken on Notice on 4 November 2011;
- Received on 22 November 2011, from the Qantas Group. Answers to Questions taken on Notice on 4 November 2011;
- Received on 8 December 2011, from the Qantas Group. Answers to written questions on notice following the public hearing on 4 November 2011;
- Received on 17 December 2011, from the Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority (CASA). Answers to a written questions on notice from the Committee;
- Received on 19 December 2011, from the Civil Aviation Safety Authority (CASA). Answers to Questions taken on Notice on 24 November 2011;

- Received on 20 December 2011, from Virgin Australia. Answers to Questions taken on Notice on 24 November 2011;
- Received on 13 February 2012, from the Department of Education, Environment and Workplace Relations (DEEWR). Answers to Questions taken on Notice on 24 November 2011;
- Received on 12 March 2012, from the Qantas Group. Answers to written questions on notice following the public hearing on 6 February 2012.

TABLED DOCUMENTS

- Tabled by Mr Alan Joyce, Chief Executive Officer, Qantas Group on 4 November 2011 in Canberra. Opening statement;
- Tabled by Senator Nick Xenophon on 4 November 2011 in Canberra. Letter from Mr Tony Wheelens, General Manager, Group Government and Industry Affairs, Qantas to Ms Sue McIntosh, Executive Director, International Air Services Commission, dated 11 October 2011 regarding Renewal of Commission Determinations;
- Tabled by Ms Jane McKeon, Group Executive, Government Relations, Virgin Australia on 24 November 2011 in Canberra. Opening statement;
- Tabled by Mr Mike Mrdak, Secretary, Department of Infrastructure and Transport on 24 November 2011 in Canberra. Opening statement;
- Tabled by Senator Xenophon on 6 February 2012 in Canberra. Copy of *Jetconnect Limited, Financial Report for the year ended 30 June 2011*.

APPENDIX 2

Public Hearings and Witnesses

4 November 2011 – Canberra, ACT

- BUCHANAN, Mr Bruce Eaton, Group Chief Executive Officer Jetstar Group, Jetstar/Qantas Group
- BURNS, Mr Michael, General Counsel, Transport Workers Union of Australia
- JACKSON, Captain Barry Stewart, President, Australian and International Pilots Association
- JOHNSON, Mr Brett Stuart, General Counsel, Qantas Airways Limited
- JOYCE, Mr Alan, Chief Executive Officer, Qantas Airways Limited
- KELLY, Mr Michael John
- MacKERRAS, Captain David Murray (Dick), Technical, Safety and Regulatory Affairs Adviser, Australian and International Pilots Association
- MITROPOULOS, Mr Jim, Senior Delegate, Transport Workers Union of Australia
- NEETESON-LEMKES, Ms Monique Naiyana
- OEI, Mr George, Delegate, Sydney International Transport Baggage, Transport Workers Union of Australia
- PURVINAS, Mr Stephen, Federal Secretary, Australian Licensed Aircraft Engineers Association
- SHELDON, Mr Tony, National Secretary, Transport Workers Union of Australia
- SOMERVILLE, Mr Peter, General Manager, Australian Licensed Aircraft Engineers Association
- WOODWARD, Captain Richard Noel, Vice President, Australian and International Pilots Association

24 November 2011 – Canberra, ACT

- ANASTASI, Mr Adam, Chief Legal Officer,
  Civil Aviation Safety Authority
- BELL, Mr David, Acting Branch Manager, Bargaining and Coverage,
  Workplace Relations Legal,
  Department of Education, Employment and Workplace Relations
- BORTHWICK, Mr Stephen, General Manager, Aviation Industry Policy,
  Department of Infrastructure and Transport
- FULTON, Mr Skip, Project Management Specialist, Safety Systems,
  Virgin Australia
- HOOD, Mr Greg, Executive Manager, Operations,
  Civil Aviation Safety Authority
- HOWARD, Mr Grant, Safety Systems Inspector,
  Civil Aviation Safety Authority
- KOVACIC, Mr John, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Education, Employment and Workplace Relations
- Le MARE, Mr Nicholas, General Manager, Workplace Relations,
  Virgin Australia
- McCORMICK, Mr John, Director of Aviation Safety,
  Civil Aviation Safety Authority
- McKEON, Ms Jane, Group Executive, Government Relations,
  Virgin Australia
- MRDAK, Mr Mike, Secretary,
  Department of Infrastructure and Transport
- O'SULLIVAN, Mr Jeremy, Chief Counsel, Workplace Relations Legal,
  Department of Education, Employment and Workplace Relations
- WHITE, Ms Linda, Assistant National Secretary,
  Australian Services Union
- WOLFE, Mr Jim, Acting Executive Director, Aviation and Airports,
  Department of Infrastructure and Transport

6 February 2012 – Canberra, ACT

- BUCHANAN, Mr Bruce Eaton, Chief Executive Officer,
  Jetstar Group
- JOHNSON, Mr Brett Stuart,
  Qantas Airways Limited
- JOYCE, Mr Alan, Chief Executive Officer,
  Qantas Airways Limited