Caution:
This Digest was prepared for debate and should not be taken as a complete guide to the legislation which may incorporate subsequent amendments.

Qantas Sale Amendment Bill 1994

Date Introduced: 16 October 1994
House: Senate
Portfolio: Finance
Commencement: The amendment concerning the repeal date for provisions of the Qantas Sale Act 1992 which have not commenced will commence on Royal Assent. The amendment to the Air Navigation Act 1920 will commence on Royal Assent. The other amendments, which are largely of a technical nature, commence either on Royal Assent or immediately after the commencement of the relevant provision of the Qantas Sale Act 1992.

Purpose

To extend from 30 June 1995 to 31 August 1995 the repeal date for provisions of the Qantas Sale Act 1992 which have not commenced.

Background

The history of the sale of Qantas and Australian Airlines goes back to September 1990 when it was announced that 100% of Australian Airlines and 49% of Qantas would be sold. The reason given for the sale was the need for both operators to raise substantial additional capital because of competing fiscal priorities. Details of the sale arrangements were announced in April 1991 and included:

- the airlines would remain separate entities and Qantas would be prohibited from investing in Australian Airlines "at this time";
- legislation would be introduced to prevent Commonwealth's equity in Qantas from falling below 51%;
foreign ownership of Qantas would be restricted to 35% in order to retain the airlines status as an internationally recognised Australian flag carrier (lower limits applied for Australian Airlines);

the sale would involve two processes, a sale of equity to the trade and a public float of any remaining interests.¹

The sale was to be handled by the Task Force on Assets Sales within the Department of Finance and a relatively quick sale was anticipated. The Task Force asked for initial expressions of interest by July 1991. However, the process was delayed and no final list of bidders had been prepared by February 1992.

In February 1992, the Prime Minister delivered the *One Nation* statement which contained modifications to aviation policy and the proposed sale. Major changes included allowing all Australian and New Zealand airlines to compete on the Trans-Tasman routes and allowing Qantas to operate on domestic flights in Australia.

The next major change was announced by the Prime Minister on 2 June 1992. The major elements of the announcement were that Qantas would acquire Australian Airlines for $400 million and that 100% of Qantas, and its subsidiary Australian Airlines, would be sold. The sale of Qantas and Australian Airlines was to involve two stages, a trade sale and a public float. It was initially expected that the trade sale would be largely completed by the end of 1992 with the public float occurring in the first half of 1993.²

Another change in policy occurred in November 1992 when the amount of equity in Qantas that could be held by a single foreigner was reduced from the 35% previously announced to 25%. Subsequently, the date for the trade sale was moved from 30 November 1992 to 9 December 1992.

On 4 November 1992, the Government introduced the Qantas Sale Bill 1992. The Bill received the Royal Assent on 21 December 1992. Basically, the *Qantas Sale Act 1992* (the Principal Act) provided for:

* The sale of Qantas in three stages. (Sections 4-6 provided for the Minister to declare certain sale days. They are the substantial minority sale day, the day on which a substantial minority of voting shares in Qantas are acquired by a person or persons other than the Commonwealth; the 50% sale day, the day on which 50% or more of such shares are likewise acquired; and the 100% day, the day on which 100% of such shares are again likewise acquired.

* The imposition of conditions on the articles of association of the private company, and the allowance of certain financial transactions by the Commonwealth to facilitate the sale. The articles of association of the privately owned Qantas are dealt with in Part 3 of the Principal Act. The articles include:

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• from the first day after a person other than the Commonwealth acquires voting shares in Qantas, provisions preventing foreign persons from owning more than 35% of the issued capital;
• preventing an individual foreign person from owning more than 25% of the issued capital;
• restricting foreign shareholders from voting for more than one third of the Directors and requiring at least two thirds of Directors to be Australian citizens;
• requiring Qantas to continue to have a company name, and operate under a name that includes the name Qantas;
• requiring the head office to be located in Australia; and
• preventing Qantas from being incorporated outside Australia.

On 17 December 1992, the Minister for Finance announced that Cabinet had approved the sale of a 25% stake in Qantas to British Airways for $655 million. In addition to announcing the sale of a 25% stake in Qantas to British Airways, the Minister announced that the "Government and British Airways have agreed to a recapitalisation for Qantas of $1.35 billion at the time of settlement", and that "arrangements are proceeding for the float of the remaining 75% of Qantas, which is scheduled to be undertaken before the end of the financial year."

On 2 July 1993, the Minister for Finance announced that the Government had decided that the float of the remaining 75% of Qantas would be rescheduled from 1993-94 to 1994-95 as it was expected that with the recovery out of recession gathering pace, a better sale price could be obtained if the sale process was delayed. Thus, the Minister said "the Government had decided to reschedule the Qantas float on the basis of strong advice from its financial consultants and the Chairman of the Board of Qantas", and that "advice demonstrated that the Government would obtain substantially better value from the float if it is postponed to 1994-95."

On 2 September 1993, the Government introduced the Qantas Sale Amendment Bill 1993. This Bill gave legislative effect to the Government's 2 July 1993 announcement that the float of the remaining 75% of Qantas would be rescheduled from 1993-94 to 1994-95. The principal amendment extended from 31 December 1993 to 30 June 1995, the repeal date for provisions of the Principal Act which had not commenced operation. Basically, the provisions of the Principal Act which have not commenced operation relate to the terms and conditions of employment of Qantas employees. For example; sections 27-34 (other than section 28) contain transitional provisions which continue the application of various Acts to Qantas and its subsidiaries in relation to employee entitlements, acts and omissions that occur before a terminating event occurs (generally where Qantas ceases to be a Commonwealth authority, or an eligible Commonwealth employer). The practical effect of the sunset coming into effect is the removal of certain Qantas employee employment rights, entitlements and obligations.
On 4 July 1994, the Government announced that the "public float of the Government's remaining 75% equity in Qantas will take place in the first half of 1995." Rationale given by the Minister for the Government's decision included that the 1995 timing is likely to maximise proceeds to the Commonwealth and Qantas is expected to be well positioned to benefit most from a sale at that time.

Qantas and Government aviation policy affecting Qantas has been the subject of considerable media attention and debate in recent months. The principal areas of attention and debate concerned:

- the Government's decision of 8 November 1994 to not proceed further with initiatives directed towards the establishment of a common aviation border around Australia and New Zealand, in particular, the granting of additional "beyond rights" for Air New Zealand International flights operating via Australian ports and the granting of Australian domestic air service licenses to New Zealand airlines;
- the Trade Practices Commission denial of authorisation to an Agreement between Qantas and British Airways to fix prices, schedules and capacity on routes, between Australia, Asia and Europe; and
- the establishment of a share ownership scheme for Qantas employees.

The major amendment proposed by this Bill is to extend from 30 June 1995 to 31 August the repeal date for provisions of the Principal Act which have not commenced operation. The rationale provided by the Minister in the Second Reading Speech for the extension is that:

"The Government has not yet settled on a date for the public share offer but wishes to leave open the option of conducting it after the conclusion of the May Budget. In that event, the sale timetable will be very tight and it may prove difficult to complete all necessary administrative arrangements by 30 June. To ensure that the Government has sufficient flexibility with regard to all its options, the Bill provides that the legislative sunset clause be extended by two months to 31 August 1995."

Main Provisions

Amendments to the Qantas Sale Act 1992

The effect of items 1 and 2 of the Schedule to the Bill is to remove the requirement that Qantas include in its articles of association restrictions on

- the transfer of Qantas shares so as to prevent foreigners owning more than 35% of the issued capital; and
- the transfer of Qantas shares so as to prevent an individual foreigner owning more than 25% of the issued capital.

The effect of Item 4 is to remove the power of the directors of Qantas to refuse to register a transfer of shares to a person.
The rationale given in the Explanatory Memorandum for the above amendments is to ensure that the articles of Qantas conform with section 1109L of the Corporations Law. Section 1109L provides:

*The issuing body in relation to a quoted security or a quoted right must not refuse or fail to register, or to give effect to, a proper SCH transfer of the security or right.*

The reference in section 1109L of the Corporations Law to "SCH" is a reference to the Securities Clearing House. It is argued by the Government in the Explanatory Memorandum that it is necessary that Qantas conform with section 1109L in order that it may be eligible to participate in the Clearing House Electronic Subregister System (CHESS), and that eligibility to participate in CHESS is also a prerequisite for obtaining listing and quotation of Qantas and its securities on the stock exchange. A more succinct rationale for the amendments is given by the Minister in the Second Reading who says that:

*because these powers [those proposed to be removed by the amendments] are inconsistent with the CHESS rules which facilitate unrestricted electronic transfer and settlement in shares, it is proposed that the Act [the Principal Act] no longer require the articles to impose restrictions on the transfer of shares to give effect to the foreign ownership limit.*

While the proposed amendment remove restrictions on the transfer of Qantas shares they do not remove the requirements that Qantas include in its articles of association restrictions on the issue and ownership of Qantas shares to prevent foreigners from owning more than 35% of issued capital, and restrictions on the issue and ownership of Qantas shares to prevent an individual foreigner from owning more than 25% of issued capital.

The effect of item 17 is to extend from 30 June 1995 to 31 August 1995 the repeal date for provisions of the Principal Act which have not commenced.

**Amendments to the Air Navigation Act 1920**

Section 11A of the *Air Navigation Act 1920* deals with foreign shareholdings in Australian international airlines. The principal effect of section 11A is to give the Minister power to require the articles of an Australian international airline to restrict the issue, transfer and ownership of shares in the airline so as to:

- prevent foreign airlines from collectively owning more than 35% of issued capital; and
- prevent an individual foreign airline from owning more than 25% of issued capital.

The term "Australian international airline" is defined to mean an international airline that may be allowed to carry passengers or freight, or both, under a bilateral arrangement as an airline designated by Australia to operate a scheduled international air service.
The effect of item 21 is to exclude Qantas from the definition of "Australian international airline". The rationale given by the Minister in the Second Reading Speech for the amendment is that:

Qantas is subject to its own controls under the Sale Act, it was not intended that the Air Navigation Act measures should also apply to Qantas. However, as the wording of the Air Navigation Act is ambiguous, it will be amended to confirm that this measure does not apply to Qantas.

Endnotes

6. Ibid.

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This Digest does not have any legal effect. Other sources should be consulted to determine the subsequent official status of the Bill.


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