Qantas Sale Bill 1992

Date Introduced: 4 November 1992
House: House of Representatives.
Portfolio: Finance

Purpose
To provide for the sale of Qantas in three stages; impose conditions on the articles of association of the private company; and to allow certain financial transactions by the Commonwealth to facilitate the sale.

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 capital and the reluctance of the Government to provide them with this additional capital which could be used for other purposes. 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 `at this time';

* legislation would be introduced to prevent the Commonwealth's equity in Qantas from falling below 51%;

* foreign ownership of Qantas would be restricted to 35% (lower limits applied for Australian Airlines);

* the sale would involve two processes, a sale of interests 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 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 route and allowing Qantas to operate on domestic flights in Australia. Pending agreement with the New Zealand government, this stage is due for completion in 1993. The next stage is to involve, pending agreement, the creation of a single market in Australia and New Zealand, so that all Australian and New Zealand operators could operate in either country. It was also announced that Qantas would be allowed to acquire equity in Australian Airlines.

The next 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 (the sale has been completed) and that 100% of Qantas, and its subsidiary Australian Airlines, would be sold. Again, the sale will involve two stages, a trade sale and a public float and 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 A final change to the 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. Currently, the major bid appears to be from British Airways, which proposes to acquire 25% of Qantas and arrange a consortium of investors to take a further 24%. The remaining 51% is likely to be offered at the public float.
Main Provisions

Clauses 4 to 6 provide for the Minister to declare certain sale days. They are:

* substantial minority sale day: the day on which a substantial minority of voting shares in Qantas was acquired by a person other than the Commonwealth;

* 50% sale day: the day on which 50% or more of such shares were acquired;

* 100% sale day: the day on which 100% of such shares were acquired.

The articles of association of the privately owned Qantas are dealt with in Part 3 of the Bill. The articles are to include, 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;

* requiring the principal operational centre of Qantas to be in Australia; and

* preventing Qantas from being incorporated outside Australia.

'Foreign person' is defined to be:

* a person who is not an Australian person, which is an Australian citizen or resident;

* the Commonwealth, a State or Territory or their nominee or an authority of such a body or their nominee;

* a local government body or their nominee;

* a corporation that is incorporation in Australia and is substantially owned and effectively controlled by one of the above bodies; or

* a trustee or manager of a fund in which the above entities have 60% or more of the total interests (clause 7).

Clause 8 provides that resolutions by Qantas to alter the above restrictions will have no effect. In addition, clause 10 provides that if an attempt is made to contravene the articles contained in clause 7 the Minister may seek an injunction restraining such activity.

The above provisions will overrule any inconsistent provision of a Corporations Law of a State or Territory (clause 13).

The debt and capital of Qantas is dealt with in Part 4 of the Bill. Clause 14 provides that the Treasurer may guarantee borrowings by Qantas where they occur before the 100% sale day and they are to facilitate the sale of Qantas. Such guarantees are not to continue beyond the 100% sale day.

Similarly, clause 15 provides that the Minister for Finance may issue a total of $1.4 billion on or before 100% sale day for payment to Qantas for shares that are to be issued to the Commonwealth, or a nominee of the Commonwealth, to facilitate the sale. In relation to such a payment, the Minister may direct that the funds be used to discharge a particular obligation, including an obligation that the Commonwealth has taken over under clause 16. In this case, the funds are to be paid to the Commonwealth.
On or before the 100% sale day the Treasurer may, to facilitate the sale, take over an obligation that has been guaranteed by the Commonwealth under an Act listed in clause 16 (the clause lists eight Acts under which guarantees were given). As well, an agreement to take over such a liability may include the Commonwealth releasing any security given by Qantas (clause 16). Other obligations are dealt with in clause 17, which allows the Treasurer to take over obligations of Qantas or a subsidiary of Qantas. The maximum amount of obligations that may be taken over under this provision is $300 million.

Again, the above provisions will overrule any inconsistent provision of a Corporations Law of a State or Territory (clause 21).

The effect of clause 23 is that employees of Australian Airlines will no longer be covered by the Long Service Leave (Commonwealth Employees) Act 1976. Clause 26 contains transitional provisions that apply in such circumstances and provides that accumulated long service leave entitlements and credits are to continue to apply. A person who continues as a Qantas employee may take long service leave after reaching 10 years service and if the person has less than 10 years service and ceases to be an employee they will have the option to have their entitlement paid out.

Clauses 27 to 34 (other than clause 28) also contain transitional provisions and continue the application of various Acts to Qantas and its subsidiaries in relation to entitlements, acts and omissions that occur before a terminating event occurs (generally where Qantas ceases to be a Commonwealth authority - see clause 35- or an eligible Commonwealth employer). The provisions will maintain existing rights and obligations while Qantas or its subsidiaries remain a Commonwealth authority and while employees remain Commonwealth employees (e.g. superannuation and compensation entitlements).

Clause 28 provides that the Commonwealth Borrowing Levy Act 1987 will not apply to borrowings where: the borrowing is not guaranteed by the Commonwealth under an Act (this will apply from the substantial minority sale day); where the Commonwealth takes over an obligation (to apply from the time the obligation is taken over); or from the time the Commonwealth ceases to guarantee a borrowing. (The levy applies to all borrowings by authorities, including Qantas, covered by the Act.)

Clause 35 will make it clear that Qantas and its subsidiaries are not public authorities from the substantial minority sale day, while clause 37 will deem these bodies not to be controlled by the Commonwealth from this date. Both provisions will be repealed from the 100% sale day.

Clause 40 provides that State or Territory tax is not payable in respect of exempt matters. Basically, these are matters connected with the conversion of Qantas to a private company and include the issue or sale of shares before the 100% sale day; the transfer of shares by the Commonwealth; or the release of a security under clause 16.

Clauses 45 and 46 provide for refunds of payments made for workers compensation in respect of Commonwealth employees for the period during which Qantas ceases to be a Commonwealth authority, and therefore to employee Commonwealth employees.

The Schedule to the Bill contains seven Parts that contain 76 amendments to various Acts. The effect of each Part is described below.

Part 1: This Part will remove Qantas and its subsidiary from definitions of Commonwealth authority so that although partly Commonwealth owned, Qantas and its subsidiary will not be treated as such an authority. This will remove them from provisions relating to Commonwealth bodies. The amendments will apply from the substantial minority sale day.

Part 2: Amendments contained in this Part will remove Qantas aircraft from the definition of Commonwealth aircraft contained in a number of Acts. As a result, such aircraft will fall within the standard definition of Australian aircraft. The Part will operate from the substantial minority sale day.

Part 3: Amends a number of Acts from the 50% sale day. The amendments will have the same effect as those in Part 1.

Part 4: This Part will remove special provisions relating to mobility of public service employees; industrial relations; and Commonwealth superannuation coverage and will commence on the 50% sale
Part 5: This Part will repeal the amendments contained in Part 1 from the 100% sale day. The amendments contained in Part 1 will no longer be necessary as Qantas cannot be able to be a Commonwealth authority after the 100% sale day.

Part 6: This will perform the same function as part 5 in relation to amendments contained in Part 3.

Part 7: Amendments in this Part will amend the Australian Airlines (Conversion to Public Company) Act 1988. The amendments reflect the status of Qantas and its subsidiary as a private company and will commence on the 100% sale day.

References

Bills Digest Service
Parliamentary Research Service

3 December 1992

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

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