Qantas Sale Amendment Bill 1993

Date Introduced: 2 September 1993
House: House of Representatives
Portfolio: Finance

Purpose
To extend from 31 December 1993 to 30 June 1995, the repeal date for provisions of the Qantas Sale Act 1992 (the Principal Act) which have not commenced operation.

Background

Brief History of Sale of Qantas: 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 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 Airlines 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. Pending agreement, the next stage is to involve 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 of Qantas and Australian Airlines will 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 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.
On 4 November 1992 the Government introduced the *Qantas Sale Bill 1992*. The Principal Act received the Royal Assent on 21 December 1992. Basically, the Principal Act provides for:

* the sale of Qantas in three stages (Sections 4-6 provide 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%: the day on which 100% of such shares are again likewise acquired.); and

* 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, 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 $665 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. 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.

It is reported in *The Canberra Times* of 3 July 1993, that the Federal Opposition's spokesperson on privatisation said the Qantas sale ... had been subject to a long list of postponements and muddles and if the Government were wrong on the re-scheduling Qantas might end up being sold at a bargain basement price.

It is reported in *The Australian Financial Review* of 4 August 1993, that ... a senior bureaucrat from the Department of Finance, Mr Harold Heirich, strongly criticised Qantas for making major revisions to its forecasts over a short period, for having unreliable financial systems and for producing budgets which misled the Government about the airline's performance.

**Subsection 2(6) Repeal Date:** The principal amendment proposed by this Bill is to subsection 2(6) of the Principal Act. Subsection 2(6) provides:

If a provision of this Act has not commenced before 31 December 1993, the provision is taken to have been repealed on that day.

To date, sections 22, 23, 25-27, 29, 32-34, 36, 38, 44-49 and 51 and Parts 3-7 of the Schedule to the Principal Act have not commenced operation. Basically, these sections relate to the terms and conditions of employment of Qantas employees. For example, sections 27 to 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 legislative effect of subsection 2(6) of the Principal Act on the sections that have not commenced is that they will be taken to have been repealed on 31 December 1993. The practical effect of subsection 2(6) is the removal of certain Qantas employee employment rights, entitlements and obligations. Clause 4 of this Bill proposes to resolve this problem by extending the repeal date from 31 December 1993 to 30 June 1995. The proposed amendment is directly attributable to the Government's decision of 2 July 1993 to reschedule the float of the remaining 75% of Qantas from
1993-94 to 1994-95. The proposed amendment would not have been necessary had the Government proceeded with the float of the remaining 75% of Qantas before the end of the 1993-94 financial year, as originally announced.

**Main Provisions**

**Commencement Date:** This Bill will have effect from 10 March 1993 (clause 2).

**Extension of Repeal Date:** Clause 4 will extend the repeal date for provisions of the Principal Act which have not commenced operation from 31 December 1993 to 30 June 1995.

**End Notes**


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