BILLS DIGEST

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Qantas Sale Amendment Bill 1995

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Qantas Sale Amendment Bill 1995

Date Introduced: 10 May 1995
House: House of Representatives
Portfolio: Finance
Commencement: On Royal Assent

Purpose

To increase the limit on foreign ownership in Qantas from 35% to 49%.

Background

The history of the sale of Qantas and Australia Airlines

In September 1990 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 airlines to raise substantial additional capital and the Government's 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 the Commonwealth's equity in Qantas 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. While the Task Force asked for initial expressions of interest by July 1991, 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. Major changes to aviation policy included allowing all Australian and New Zealand airlines to compete on the Trans-Tasman route and allowing Qantas to operate domestic flights in Australia.

On 2 June 1992, the Government announced a further major policy change: Qantas would acquire Australian Airlines for $400 million (the sale was completed on 14 September 1992) and 100% of Qantas, and its subsidiary Australian Airlines, would be sold. The sale of Qantas and Australian Airlines was to be in two stages, a trade sale and a public float. It was 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 that a single foreigner could hold in Qantas was reduced from 35% to 25%. 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. Parts of the Bill commenced on 21 December 1992 but some sections were to commence on proclamation. In brief, the Qantas Sale Act 1992 (the Principal Act) provided that:

- The sale of Qantas was to be in stages. Sections 4-6 provided for the Minister to declare the substantial minority, 50% and 100% sale days.

- From the first day after a person other than the Commonwealth acquired voting shares in Qantas, the articles of association were to include provisions

  - preventing foreign persons from owning more than 35% of the issued capital;
  - preventing an individual foreign person 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 and principal operational centre of Qantas 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. The Minister also 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 on the basis that its financial consultants and Chairman of the Board of Qantas had advised 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 announcement of 2 July 1993 that the float of the remaining 75% of Qantas would be rescheduled from 1993-94 to 1994-95. There were also consequential amendments to transitional provisions affecting the terms and conditions of employment of Qantas employees.

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." The Minister stated that the 1995 timing was likely to maximise proceeds to the Commonwealth and Qantas was expected to be well positioned to benefit most from a sale at that time.

On 31 January 1995, the Government announced that it had "decided to give itself more flexibility to ensure it produces the best sale outcome from the float of Qantas" and that "given current market conditions, it would be better to ... go to the market between mid-May and mid-July."

On 9 May 1995 the Minister for Finance announced that the Government intended to introduce legislation to increase the foreign ownership limit of Qantas from 35% to 49%. The present Bill was introduced the following day.

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

- the Government's decision of 8 November 1994 not to proceed with plans for the establishment of a common aviation border around Australia and New Zealand;
- the Trade Practices Commission's approval, with attached conditions, of a profit and revenue sharing alliance between Qantas and British Airways on the Australia, London corridor;
- the establishment of a share ownership scheme for Qantas employees;
Main Provisions

Qantas Sale Amendment Bill 1995

Clause 1 omits 35% from the principal act and substitutes 49%. It thus permits foreign persons as defined by clause 5 to own up to 49% of Qantas.

Clause 2 provides that the articles of association of Qantas must provide that foreign airlines cannot own more than 35% of the total value of the issued share capital of Qantas.

Clause 3 provides that any one foreign person cannot own more than 25% of the total value of the issued share capital of Qantas.

Clause 4 inserts further definitions into the act from the Air Navigation Act 1920 and the International Air Services Commission Act 1992, i.e. aircraft, air service, another country, Australian international airline, Australian territory, bilateral arrangement, charter operation, foreign airline, etc. Foreign airline is defined as "means an air transport enterprise other than:

(a) an Australian international airline; or
(b) Qantas; or
(c) an air transport enterprise offering or operating an air service solely within Australia".

Clause 5 substitutes a new definition of foreign person as meaning:

"(a) a foreign airline: or
(b) a person (other than a foreign airline) who is not an Australian person."
Endnotes

6. Ibid.

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