

1993

**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

QANTAS SALE AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for Finance,
the Honorable Ralph Willis, MP)**

QANTAS SALE AMENDMENT BILL 1993

GENERAL OUTLINE

The *Qantas Sale Amendment Bill 1993* amends the *Qantas Sale Act 1992* ("the Principal Act") to take account of legislative requirements arising because of the deferral of the proposed public share offering (PSO) of the Commonwealth's remaining equity interest in Qantas Airways Limited, and to remove any doubt that the original drafting of the Principal Act did not adequately preserve the legislative coverage of existing employees under various Commonwealth employee-related Acts.

Automatic Repeal Date

The *Qantas Sale Act 1992* provides for certain legislative changes to come into effect progressively on the substantial minority sale day, the 50% and the 100% sale days. It also provides for any unproclaimed legislation extant on 31 December 1993 to be automatically repealed on that date. The substantial minority sale day provisions commenced by proclamation on 10 March 1993.

In the absence of any legislative action, the deferral of the Qantas PSO from October/November 1993 to 1994-95 would mean the automatic repeal of the 50% and 100% sale day provisions in the Principal Act on 31 December 1993, in place of their commencement on the appropriate sale day.

This would have the effect that all of those provisions would then require re-enactment prior to the Qantas PSO. In addition, effective from 31 December 1993, Qantas group employees would no longer be covered by legislation which is referred to in Part 3 of the Schedule to the Principal Act, such as the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. It is intended that airline employees should remain covered by such Commonwealth employee-related legislation until the 50% sale day.

This premature inadvertent removal of rights and entitlements would occur because section 37 of the Principal Act, which commenced on 10 March 1993, provides that Qantas and its subsidiaries are not to be taken to be controlled or majority-owned by the Commonwealth for the purposes of Commonwealth legislation, except in relation to specified legislation, including those Acts amended by Part 3 of the Schedule to the Principal Act. It is this exemption which allows Qantas group employees to remain covered by Commonwealth employee-related legislation until the 50% sale day. In the absence of an amendment to section 2(6) of the Principal Act, Part 3 of the Schedule to that Act would be repealed with effect from 31 December 1993. Accordingly, Qantas and its subsidiaries would be taken not to be controlled or majority-owned by the Commonwealth with effect from that day. Majority-ownership or control by the Commonwealth is one of the criteria for coverage under the Acts referred to in Part 3 of the Schedule to the Principal Act.

As a result, to avoid the need to re-enact provisions which have not yet commenced and to ensure that airline employee benefits are not altered with effect from 31 December 1993, the Bill amends section 2(6) of the Principal Act to provide that sections which have not yet been proclaimed will not be automatically repealed until 30 June 1995. This will allow for the Qantas PSO to occur, as planned, in 1994-95.

Minor Amendment

A minor amendment is also proposed to section 37 of the Principal Act to avoid doubt about the intended operation of the section.

FINANCIAL IMPACT STATEMENT

The *Qantas Sale Amendment Bill 1993* up-dates the financial information relating to employee matters which was contained in the Explanatory Memorandum for the *Qantas Sale Act 1992*. The information contained in the Bill has been adjusted to take account of the new timing of the Qantas PSO and changes to the numbers of airline staff covered by Commonwealth or State compensation legislation since the sale of Australian Airlines to Qantas Airways Limited.

Actual amounts will depend on when the 50% sale day occurs. The following table assumes, for illustrative purposes, that the 50% sale day occurs mid-way through 1994-95.

Provision	1994-95 \$ million	1995-96 \$ million
Cl. 27, 45, and 46 CERC Act ⁽⁴⁾ , OH&S Act ⁽⁵⁾ (Refunds)	-4.6 ⁽¹⁾⁽³⁾	-9.2 ⁽²⁾⁽³⁾
Cl. 29,33, and 34 DFRDB Act ⁽⁶⁾ , C'wealth superannuation	Not calculable	

TOTAL **Not meaningful as such costs will be offset by the Qantas sale proceeds.**

Notes:

- (1) Part year effect of refund of premiums and levies paid by Australian Airlines to Comcare under the CERC and OH&S Acts.
- (2) Full year effect of refund of premiums and levies paid by Australian Airlines.
- (3) Actual annual premium rates vary, depending on the previous year's claims.
- (4) *Commonwealth Employees' Rehabilitation and Compensation Act 1988* now called the *Safety, Rehabilitation and Compensation Act 1988*.
- (5) *Occupational Health and Safety (Commonwealth Employment) Act 1991*.
- (6) *Defence Force Retirement and Death Benefits Act 1973*.

NOTES ON CLAUSES

Clause 1 - Short Title

Commencement: 10 March 1993.

1. Provides for the Act to be cited as the *Qantas Sale Amendment Act 1993*.

Clause 2 - Commencement

Commencement: 10 March 1993.

2. This clause deems the Act to have commenced on 10 March 1993 ("the substantial minority sale day"), on which date 25% of the Commonwealth's previous 100% equity interest in Qantas Airways Limited was sold and on which date a number of provisions in the Principal Act were proclaimed.

Clause 3 - Principal Act

Commencement: 10 March 1993.

3. This clause provides for the *Qantas Sale Act 1992* to be the Principal Act.

Clause 4 - Commencement

Commencement: 10 March 1993.

4. This clause amends section 2(6) of the Principal Act to allow the date of automatic repeal for provisions which have not commenced, to be changed from 31 December 1993 to 30 June 1995. This will enable the 50% and 100% sale day provisions in the Principal Act to be retained until required for the anticipated sale of the Commonwealth's remaining equity interest in Qantas in 1994-95.
5. The 50% sale day provisions relate to terms and conditions of employment, including *inter alia* :
 - removal of airline employees from Commonwealth employee-related legislation covering certain terms of employment (eg, long service leave, certain mobility rights, Commonwealth superannuation arrangements, employee rehabilitation and compensation, occupational health and safety); and
 - savings and transitional provisions relating to the post-sale retention of certain employer and employee rights and obligations arising from pre-sale employment with the airlines (eg, the retention of accrued long service leave entitlements and workers compensation entitlements).

6. The 100% sale day provisions cover:

- reversal of any interim provisions commenced on the substantial minority sale day (10 March 1993) or the 50% sale day. Interim provisions are provisions which are only required to operate until the sale process is completed. They are designed to ensure that effective from the substantial minority sale day - or, for employee-related matters, the 50% sale day - Qantas and its subsidiaries are treated as far as possible in the same manner as other companies for the purposes of Commonwealth legislation. Once the sale is complete, they will no longer be required and accordingly are to be repealed.
- repeal of remaining provisions which deal with constitutional requirements in regard to intra-State flights by Australian Airlines and its subsidiaries; and
- automatic repeal of any interim provisions and related repeals which have not commenced because the timing of the 50% and 100% sale days (if they coincide) obviates the need for interim provisions.

7. Another consequence of the amendment to section 2(6) of the Principal Act will be to avoid employee rights and benefits under certain Commonwealth legislation being removed with effect from 31 December 1993 rather than the 50% sale day. Section 37 of the Principal Act, which commenced on 10 March 1993, provides that Qantas and its subsidiaries are not to be taken to be controlled or majority-owned by the Commonwealth for the purposes of Commonwealth legislation, except in relation to specified legislation, including the Acts amended by Part 3 of the Schedule to the Principal Act. It is this exemption which allows Qantas group employees to remain covered by Commonwealth employee-related legislation until the 50% sale day. In the absence of an amendment to section 2(6) of the Principal Act, Part 3 of the Schedule to that Act would be repealed with effect from 31 December 1993. Accordingly, Qantas and its subsidiaries would be taken not to be controlled or majority-owned by the Commonwealth with effect from that day. Majority-ownership or control by the Commonwealth is one of the criteria for coverage under the Acts referred to in Part 3 of the Schedule to the Principal Act.

Clause 5 - Qantas and its subsidiaries not to be controlled, etc. by Commonwealth

Commencement: 10 March 1993.

8. It is intended that the legislation referred to in Part 3 of the Schedule to the Principal Act should remain applicable to employees of Qantas and its subsidiaries on its terms (ie, without section 37 altering the position) until the 50% sale day. This clause amends section 37 of the Principal Act to remove any doubt about the position which may have arisen because Part 3 of the Schedule to that Act has not yet commenced. It effectively alters the reference to legislation "amended" by Part 3 of the Schedule to legislation "referred" to in Part 3 of the Schedule.



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