

**1992**

**THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**QANTAS SALE BILL 1992**

**EXPLANATORY MEMORANDUM**

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



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## **QANTAS SALE BILL 1992**

### **GENERAL OUTLINE**

The Qantas Sale Bill puts in place the necessary legislative and administrative framework for the sale of Qantas Airways Limited by the Commonwealth.

The Bill has four main purposes:

- to ensure that, post sale, Qantas and its subsidiaries (including Australian Airlines and its subsidiaries) are, as far as practicable, subject to legislation consistent with other private sector companies;
- to ensure that, despite the change of ownership, employee entitlements already accrued under Commonwealth legislation in respect of pre-sale service are retained post-sale;
- to provide the basis for necessary debt and capital reconstruction of Qantas in connection with the sale of Qantas - including the assumption by the Commonwealth of Commonwealth-guaranteed debt issued by Qantas prior to the sale of Qantas; and
- to provide legislative backing for the incorporation of national interest safeguards in Qantas' articles of association (the "national interest provisions").

### **FINANCIAL IMPACT STATEMENT**

The prime financial impact arising from the sale of Qantas will be the offset to outlays occurring when the sale receipts are credited to the Commonwealth Public Account. (Estimates of these amounts are not included for reasons of commercial sensitivity.)

The Qantas Sale Bill contains provisions which have financial impacts in three main areas:

- Qantas' debt and capital reconstruction;
- employee matters; and
- exemption from certain Commonwealth, State and Territory taxes, duties and charges.

## **DEBT AND CAPITAL RECONSTRUCTION IN CONNECTION WITH THE SALE OF QANTAS (PART 4)**

### **Clause 14 - Guarantees**

A Commonwealth contingent liability would arise under the Qantas Sale Bill if any guarantees were given by the Commonwealth in relation to obligations of Qantas and its subsidiaries ("the Qantas group") under clause 14 as part of the sale process. In the event that any of the Commonwealth guarantees are called upon, the Commonwealth will be liable for amounts payable under the guaranteed borrowings. The Notes on Clauses (for clause 14) describe in more detail the nature of the guarantees which may be given.

### **Appropriations**

The other provisions contained in Part 4 of the Bill are required principally in connection with the Commonwealth's takeover of certain of Qantas' debts. Taking over debts is equivalent in effect to a recapitalisation of Qantas. This recapitalisation will be recouped through an enhanced sale price for the Commonwealth's equity in Qantas.

Under subclause 15(1), the Minister for Finance may authorise payment for a share subscription to Qantas of up to \$1,400 million - limited by subclause 15(4). The intention is that, from the share subscription, Qantas will pay the Commonwealth to assume Qantas' Commonwealth-guaranteed debt under the terms of an agreement relating to the takeover of guaranteed debt (clause 16 of the Bill). The maximum amount payable as a share subscription exceeds the current value of the Commonwealth-guaranteed debt outstanding (around \$1,100 million) to cover currency variations prior to the debt being taken over.

At current exchange rates, the total interest payments associated with this debt are about \$500 million, payable over time until the last of the debt finally matures in 2001.

Further debt with a principal outstanding of up to \$300 million may be taken over under clause 17. This debt takeover could be used to provide any offset that is considered necessary to counteract the effect on Qantas' profit and loss account of the termination by Qantas of the currency hedge and swap agreements associated with the Commonwealth-guaranteed debt which is to be taken over (clause 16).

Clause 18 of the Bill provides for an appropriation of all amounts (principal, interest and associated expenses) which may be payable under subclauses 16(3) and 17(3) in relation to the debt taken over by the Commonwealth.

See Notes on Clauses concerning Part 4 of the Bill for further explanation.



## **EMPLOYEE MATTERS**

### **Clause 27 - Transitional provisions relating to the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (CERC Act)**

Under this provision, Comcare will remain liable for CERC Act compensation claims arising from work-related injuries of Australian Airlines' employees in regard to the period between 1 July 1989 and when at least 50% of Qantas equity is sold (the 50% sale day) - see explanations under Notes on Clauses on Part 1 of the Bill for further explanation of the different "sale days". The airline has made premium payments to Comcare for that period. Australian Airlines will be liable for injuries for the period prior to 1 July 1989 for which no premiums were paid.

The provision also provides for any adjustments of the premium payable by Australian Airlines which are required because of the sale. It is likely that a refund of part of the premium paid by Australian Airlines will be required. The amount of such a refund will depend on various factors, including when the 50% sale day occurs in the financial year.

### **Clause 29 - Defence Force Retirement and Death Benefits Act 1973**

### **Clause 33 - Superannuation Act 1922**

### **Clause 34 - Superannuation Act 1976**

These provisions enable certain employees of the Qantas group who are either ex-members of the Defence Forces or who were previously "eligible employees" under the Superannuation Acts 1922 or 1976 to continue to qualify for deferred benefits under these Acts. The Commonwealth will continue to be liable to pay deferred benefits to these employees. Where the relevant minimum period of service in 'public employment' has not been completed prior to sale, the 'savings' provisions of the Bill (Part 7) provide for service with the Qantas group beyond its sale to continue to be counted as public employment for the purposes of these Acts. The number of affected employees, while likely to be small, is not known precisely and therefore an estimate of the financial impact of these savings provisions cannot be made.

### **Clauses 45 and 46 - Refund of licence fees and contributions under the CERC Act and the Occupational Health and Safety (Commonwealth Employment) Act 1991**

If Australian Airlines were to apply for a licence under Part VIIIA of the CERC Act, a licence fee would be payable. These licences are issued to Commonwealth authorities to accept liability for payment, and determination, of compensation claims. Clause 45 provides a refund of any fee paid for the portion of the financial year remaining after the 50% sale day. Clause 46 provides a refund on a similar basis for any contribution paid by Qantas or any of its subsidiaries towards the cost of the administration of the Occupational Health and Safety (Commonwealth Employment) Act 1991.

The total amounts payable under these provisions will depend on when the 50% sale day occurs during a financial year.

## **COMMONWEALTH, STATE AND TERRITORY TAXES, DUTIES AND CHARGES**

### **Clause 40 - Exempt Matters**

Clause 40 exempts various transactions associated with the sale of the Commonwealth's shares in Qantas from most Commonwealth, State and Territory taxes, levies, fees, duties and charges. These imposts would otherwise be payable and therefore could adversely impact on the sale proceeds. This provision is estimated to save the Commonwealth potentially in excess of \$15 million.

### **Clause 28 - Commonwealth Borrowing Levy**

Pursuant to the Commonwealth Borrowing Levy Act 1987, the Commonwealth imposes a levy on certain borrowings of Qantas or its subsidiaries by Commonwealth Government business enterprises. The levy is currently set at the rate of 0.125% per annum of the outstanding borrowings.

Clause 28 provides that the levy will not apply following the substantial minority sale day in respect of borrowings of Qantas or its subsidiaries which are not explicitly guaranteed by the Commonwealth. It will also not apply in respect of any debt taken over by the Commonwealth from the day it is taken over. Where any borrowing remains guaranteed following the substantial minority sale day, the levy would remain applicable.

On the basis of the sale date assumptions associated with the table below, the effect will be to reduce the estimated levy payable by Qantas and Australian Airlines (and its subsidiaries) during 1992/93 by some \$0.7 million and by some \$3 million per annum thereafter.

### **TABLE OF FINANCIAL IMPACTS**

The table on the following page has been prepared based on the following assumptions, which are for illustrative purposes only:

- the substantial minority sale day is 1 March 1993;
- the 50% sale day is 1 May 1993;
- the day the Commonwealth takes over Qantas' debt (pursuant to clauses 16 and 17) is 1 May 1993; and
- the 100% sale day is 1 June 1993.

Provision	1992/93 \$ Million	1993/94 \$ Million	1994/95 \$ Million
Cl.14 Guarantees	not known	not known	not known
Cl.15(4) Share Subscription	1,100.0 <sup>(1)</sup>	Nil	Nil
Cl.16 Payments by Qantas	-1,039.1 <sup>(2)</sup>	Nil	Nil
Cl.16(3), 17(3) Debt Repayments	60.0 <sup>(1)</sup>	130.0 <sup>(1)</sup>	130.0 <sup>(1)</sup>
Cl.27, 45, 46 CERC Act <sup>(4)</sup> , OH&S Act <sup>(5)</sup> (Refunds)	-2.2 <sup>(3)</sup>	-6.5 <sup>(3)</sup>	-6.5 <sup>(3)</sup>
Cl.28 Commonwealth Borrowing Levy (reduced receipts)	0.7	3.0	3.0
Cl.29, 33 and 34 DFRDB <sup>(6)</sup> , Commonwealth Superannuation	Not calculable		
Cl.40 State and Territory taxes (estimated)	-15.0	Nil	Nil
<b>Total</b>	<b>Not meaningful as offset by the Qantas sale proceeds.</b>		

## NOTES:

- (1) May be affected by currency fluctuations.
- (2) Value of the Commonwealth-guaranteed debt at historical exchange rates.
- (3) Revenue offset by claims and expenses not incurred.
- (4) Commonwealth Employees' Rehabilitation and Compensation Act 1988.
- (5) Occupational Health and Safety (Commonwealth Employment) Act 1991.
- (6) Defence Force Retirement and Death Benefits Act 1973.

## SUMMARY OF THE QANTAS SALE BILL

The following provides a general summary of the structure and provisions of the Qantas Sale Bill.

### STRUCTURE OF SALE

The final structure of the sale of the Commonwealth's equity in Qantas will depend on the outcome of the current "trade sale" process, which offers individual purchasers the opportunity to acquire a significant equity interest in the airline.

Prospective "trade sale" purchasers could conceivably acquire up to 100% of the equity in Qantas. A subsequent public share offer is planned to take place, controlled either by the Commonwealth (in the case where there is no trade sale or only a minority trade sale) or by the new owners (in the case of a 100% trade sale).

Because of the uncertainty over the amount to be sold in the trade sale and therefore the subsequent amount to be offered to the public by the Commonwealth, the Qantas Sale Bill is flexible enough to cover all possible sale outcomes, including:

- . 100% public float controlled by the Commonwealth;
- . minority (less than 50% equity) trade sale followed by public float of the remaining equity, controlled by the Commonwealth; and
- . 100% trade sale (with a commitment by the purchasers to a later sell down by public float).

The commencement provisions, particularly, take the different possible sale outcomes into account.

### COMMENCEMENT PROVISIONS (PARTS 1 & 2)

Removal of current legislative restrictions on the Qantas group is linked to the sale of threshold amounts - a substantial minority, 50% or more, and 100% - of the Commonwealth's equity in Qantas.

The Bill allows for all provisions, other than those which commence on Royal Assent, to be proclaimed at any point following passage of the Bill. Clause 2(3) allows for a proclamation with a retrospective commencement date. This would be required in the event that the commercial closing of the sale of a substantial minority amount, 50% or more, or 100% of the equity in Qantas eventuates before proclamation is practically possible.

Most of the existing Commonwealth legislation, applying to Qantas because of its status as a Commonwealth-owned entity, is to be removed when a significant

amount of equity has been sold and the Commonwealth is no longer the sole shareholder. The exceptions to early removal of current legislation involve statutes relating to terms and conditions of employment (whose effect will be retained until the 50% sale day) and constitutionally required legislation concerning intra-State aviation (retained until the 100% sale day).

Provisions to be commenced on the sale of a substantial minority interest in Qantas are mostly of an interim nature, to be repealed at the 100% sale date (Part 1 of the Schedule and some clauses in Part 8 of the Bill). Provisions to be commenced at this point (clauses 35 and 37) ensure that Qantas and its subsidiaries are not treated as companies controlled or majority owned by the Commonwealth for the purposes of most Commonwealth legislation unless that legislation specifically refers to the Qantas group.

Once 50% or more equity has been sold, the Commonwealth loses majority ownership of Qantas and, in most cases, could be expected to no longer have a "controlling interest" in Qantas. Thus, without any specific legislative change, this is the point at which most Commonwealth legislation applicable to government business enterprises would normally no longer apply to the Qantas group. However, to avoid any uncertainty, in particular cases, as to when the controlling interest may be lost, the 50% sale day is to be used as a definite trigger for the removal of legislation specific to the Qantas group which relates to terms and conditions of employment.

From the 100% sale date, the post-sale activities of Qantas will, as far as practicable, no longer be covered by any Commonwealth legislation which does not also govern the activities of other private sector organisations. Thus, there will be no government business enterprise legislative provisions (with the exception of certain provisions relating to deferred superannuation benefits - see clauses 29, 33 and 34) which apply to post-sale service of employees of the Qantas group. Any interim amendments commenced on the substantial minority or 50% sale days will be removed at this point, and legislation permitting intra-State flights by Australian Airlines despite its Commonwealth ownership, will be repealed.

### **NATIONAL INTEREST PROVISIONS (PART 3)**

Part 3 of the Bill requires a range of national interest safeguards to be incorporated in Qantas' articles of association. Any future changes to the safeguards will have to be approved by Parliament. The requirement under this part for articles of association covering the safeguards will come into effect when Qantas first becomes aware that any voting shares in Qantas have been acquired by a person other than the Commonwealth (or a nominee of the Commonwealth).

Provision is also made for the Minister with portfolio responsibility (currently the Minister for Transport and Communications) to seek an injunction to enforce these safeguards.

## **DEBT AND CAPITAL PROVISIONS (PART 4)**

The debt and capital provisions in the Bill are designed to assist in the reconstruction of Qantas' finances before the company shifts to the private sector. Reasons for the particular provisions are outlined in the Financial Impact Statement and the Notes on Clauses.

## **EMPLOYEE-RELATED PROVISIONS (PARTS 5 AND 7 AND CLAUSE 42)**

Legislation related to employment by companies within the Qantas group (as Commonwealth-controlled bodies) is to be removed once 50% or more of the equity in Qantas has been sold. Provisions in the Bill will ensure that, despite the change of ownership, employee entitlements already accrued under Commonwealth legislation in respect of pre-sale service are retained post sale.

## **TRANSITIONAL AND SAVINGS PROVISIONS (PART 7)**

While the sale of equity will trigger the removal of Qantas and its subsidiaries from certain legislation, the savings provisions allow for certain pre-sale rights or obligations to continue post-sale - generally only in respect of matters which occurred during the pre-sale period. The principal areas involve obligations to employees and some administrative and legal issues.

## **ADMINISTRATION OF THE BILL**

Many sections of the Bill are the responsibility of particular Ministers, with the Minister involved differing, depending on the provisions concerned. Most of these sections are the responsibility of the Minister for Finance, as the Minister with overall responsibility for the sale of Qantas. The provisions relating to guaranteeing or assuming debts of Qantas or its subsidiaries (clauses 14, 16 and 17) are the responsibility of the Treasurer. Part 3 (national interest safeguards) is to be administered by the relevant portfolio Minister - currently the Minister for Transport and Communications.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short Title

Commencement: Royal Assent

1. Provides for the Act to be cited as the Qantas Sale Act 1992.

#### Clause 2 - Commencement

Commencement: Royal Assent

2. Subclause 2(1) provides for certain clauses to commence on Royal Assent. These are:

- . formal clauses and clauses relating to procedural matters or definitions (clauses 1, 2, 3 and 41 and Part 2);
- . national interest provisions (Part 3);
- . provisions relating to debt and capital reconstruction (Part 4);
- . repeal of the Qantas Empire Airways Act 1948 (clause 24);
- . transitional provisions relating to the Commonwealth Borrowing Levy Act 1987 (clause 28); and
- . exemptions from certain State and Territory taxes and charges (clause 40).

3. Subclause 2(2) allows for the remaining provisions to be proclaimed at any point following Royal Assent. It is intended that these provisions be proclaimed on, or after, the days on which threshold amounts of equity are acquired by persons other than the Commonwealth or its nominees.

4. Subclause 2(3) provides that a Proclamation in relation to a particular provision may fix a day earlier than the day on which the Proclamation is published in the *Gazette*, if that day is not earlier than one of the following days, depending upon the nature of the provision in question:

- . the substantial minority sale day (see clause 4);
- . the 50% sale day (see clause 5);
- . the 100% sale day (see clause 6).

5. The ability to commence certain provisions prior to Proclamation is necessary to enable the provisions to come into effect concurrently with the relevant acquisition being concluded from a commercial point of view (the closing day). It may not be practicable to arrange Proclamation on, or before, the closing day because of uncertainty that an acquisition will be concluded on a particular day. For example, in the case of a trade sale, the closing day may be unexpectedly brought forward.

6. Clause 2(4) provides for the repeal of the interim provisions intended to be commenced on the substantial minority sale day, as well as their repealing provisions, if the former have not commenced on the 100% sale day. This would occur where the sale of all of the Commonwealth's shares in Qantas took place on one day.

7. Clause 2(5) provides for the repeal of the interim provisions intended to be commenced on the 50% sale day, as well as their repealing provisions, in the event that the former have not commenced on the 100% sale day. Again, this would occur where the sale of all of the Commonwealth's shares in Qantas took place on one day.

8. Clause 2(6) places a limit (prior to 31 December 1993) on the period of time within which the provisions contained in the Bill can be commenced. On that date, any provisions which have not commenced are repealed.

### Clause 3 - Interpretation

Commencement: Royal Assent

9. Subclause 3(1) provides definitions of terms used in the Bill.

10. Subclause 3(2) provides a meaning for the term "subsidiary".

11. Subclause 3(3) provides that references to a person acquiring voting shares in Qantas are to be read as including voting shares being issued or allotted to a person.

## **PART 2 - DETERMINATION OF SUBSTANTIAL MINORITY, 50% AND 100% SALE DAYS**

12. This Part provides for the Minister to declare each of the "trigger" sale days. This will remove any ambiguity regarding the date on which a purchaser (or purchasers) acquire the amounts of equity which are intended to trigger particular parts of the Bill. This Part provides the basis for the expressions "substantial minority sale day", "50% sale day" and "100% sale day" used throughout the Bill.



#### Clause 4 - The substantial minority sale day

Commencement: Royal Assent

13. This clause allows the Minister to declare a specified day to be the substantial minority sale day by notice in the *Gazette*. That day is to be the first day on which, in the opinion of the Minister, a substantial minority of voting equity in Qantas has been acquired by a person or persons, other than the Commonwealth or a nominee of the Commonwealth. It is taken to be the "substantial minority sale day" for the purposes of the Bill - see definition in clause 3(1).

14. On or following the substantial minority sale day, it is intended that:

general legislation be removed or modified which:

- refers or applies to Qantas and its subsidiaries by virtue of them being Commonwealth Government business enterprises - clauses 35, 37, 43, 50 and Parts 1 and 2 of the Schedule; and
- refers specifically to Qantas (eg particular references to Qantas aircraft in the general criminal law) or Australian Airlines (Part 2 of the Schedule);

related transitional and "savings" provisions (clauses 28, 30 and 31) will come into effect; and

certain provisions of the Australian Airlines (Conversion to Public Company) Act 1988 will be repealed (Part 2 of the Schedule) and related provisions (clause 39) will be commenced.

15. Some of these provisions are of an interim nature to be repealed following the 100% sale day; other provisions are permanent (see notes on the Schedule).

#### Clause 5 - The 50% sale day

Commencement: Royal Assent

16. A declaration published in the *Gazette* by the Minister under this clause may specify the 50% sale day. This is the first day on which, in the opinion of the Minister, 50% or more of the voting shares in Qantas have been acquired by a person or persons other than the Commonwealth or a nominee of the Commonwealth. It signifies the point at which the Commonwealth no longer has majority ownership of Qantas.

17. The 50% sale day is intended to be the day on which relevant Commonwealth legislation relating to employees no longer applies to the Qantas group of companies. This will ensure that there will be a specific day on which relevant employee-related legislation ceases to apply to Qantas and its subsidiaries.

18. On the 50% sale day, the following provisions are intended to come into effect:

- those provisions related to legislation covering certain terms of employment for employees of Qantas and its subsidiaries (clauses 22, 23, 42, 47, 48 and 49 and Parts 3 and 4 of the Schedule);
- related "savings" and transitional provisions associated with employee and employer rights and obligations arising from pre-sale employment with the airlines (clauses 26, 27, 29, 32, 33 and 34); and
- refund provisions connected with previously applicable employee legislation (clauses 45 and 46).

19. Some of these provisions are of an interim nature to be repealed following a 100% sale; other provisions are permanent (see notes on the Schedule).

#### Clause 6 - The 100% sale day

Commencement: Royal Assent

20. This provision requires the Minister to publish a notice in the *Gazette* specifying the 100% sale day. This is the first day on which, in the opinion of the Minister, 100% of the voting shares in Qantas have been acquired by a person or persons other than the Commonwealth or a nominee of the Commonwealth (the "100% sale day"). It signifies the point at which the Commonwealth no longer owns any equity in Qantas. The notice must be published within 14 days after that event.

21. At that stage, the following provisions are intended to come into effect:

- if required, those provisions which reverse interim amendments which commence on either the substantial minority sale day or the 50% sale day (clauses 36, 38, 44 and 51 and Parts 5 and 6 of the Schedule);
- the repeal of the remaining provisions of the Australian National Airlines Act 1945 and certain provisions of the Australian Airlines (Conversion to Public Company) Act 1988, both of which deal with constitutional requirements in regard to intra-State flights by Australian Airlines and its subsidiaries (clause 25 and Part 7 of the Schedule); and

automatic repeal of any interim provisions and related repeals which have not commenced - see subclauses 2(4), 2(5) and 2(6).

### **PART 3 - REQUIREMENTS REGARDING QANTAS' ARTICLES OF ASSOCIATION**

22. The purpose of Part 3 is to require that the articles of association of Qantas contain certain restrictions or requirements, predominantly related to maintaining the Australian identity of Qantas and ensuring that the requirements of Australia's bilateral air service agreements (under which most of Qantas' international air services are operated) are complied with. These air service agreements require that Qantas remain substantially owned and effectively controlled by Australians. The part also provides a mechanism for the relevant portfolio Minister (currently the Minister for Transport and Communications) to monitor compliance with these provisions and, if necessary, to seek their enforcement by the Federal Court.

#### Clause 7 - Qantas' articles of association to include certain provisions

Commencement: Royal Assent - with effect from the day that Qantas becomes aware that voting shares in Qantas have been acquired by a person other than the Commonwealth (or a Commonwealth nominee). Qantas is required to publish a notice in the *Gazette* within 14 days of that day - see subclauses 7(4) and 7(5).

23. This clause requires that the following national interest safeguards be incorporated into Qantas' articles of association.

- (a) Foreign persons must not have relevant interests in more than 35% of the aggregate value of the issued share capital of Qantas.
- (b) No single foreign person can have relevant interests in shares in Qantas that represent more than 25% of the aggregate value of the issued share capital of Qantas.
- (c) At no time, can the votes attaching to all "substantial foreign shareholdings" be counted in respect of the appointment, removal or replacement of more than one-third of the directors. A foreign person has a "substantial foreign shareholding" if that person has a relevant interest in 15% or more of the voting shares in Qantas. It is intended that votes attaching to substantial foreign shareholdings that have been counted in the past will be taken into account to accommodate the fact that not all directors are appointed at the same time. Subject to any relevant provisions in Qantas' articles of association and (a) and (b) above, foreign shareholders having less than a "substantial foreign shareholding" would not be restricted in their voting rights in relation to the appointment or removal of a director.

- (d) There must be restrictions on the issue, transfer and ownership (including joint ownership) of shares in Qantas so as to prevent breaches of (a), (b) and (c) above. The articles must allow the directors to force the disposal of shares, remove particular directors, refuse to register a transfer of shares and disenfranchise particular shares.
- (e) Qantas' company name must not be changed to a name that does not include the expression "Qantas".
- (f) Qantas must only conduct scheduled international air transport passenger services under its company name or under a registered business name that includes the expression "Qantas".
- (g) The head office of the company must remain in Australia.
- (h) The principal operational centre of Qantas must remain in Australia. That is to be determined by comparing all the facilities in Australia used by Qantas in the provision of its scheduled international air transport services (including facilities such as those for the maintenance and housing of aircraft, catering services, flight operations, training and administration) with such facilities used by Qantas in any other country. That comparison must show that the Australian facilities represent the principal aggregation of these operational facilities of Qantas.
- (i) At least two-thirds of the directors on the board of Qantas must be Australian citizens, as defined in the Australian Citizenship Act 1948.
- (j) The Chairman of any meeting of the main Qantas board must be an Australian citizen. Committees of the board would not be covered by this requirement.
- (k) The Company must not seek incorporation outside Australia.

24. A foreign person is a person who is not an Australian person - see subclause 7(6). "Australian person" is defined to include:

Australian citizens, or persons who are ordinarily resident in Australia as defined in the Foreign Acquisitions and Takeovers Act 1975. Under that Act, a person is taken to be not ordinarily resident in Australia at a particular time unless that person has actually been in Australia for at least 200 days in the previous twelve months and there is no legal limitation on that person remaining in Australia indefinitely;

the Commonwealth, or a State, or a Territory or a nominee or authority of the Commonwealth, or a State or a Territory;

a local government body formed by or under a law of a State or a Territory or a nominee of such a body;

a company incorporated in Australia and substantially owned and effectively controlled by Australian persons (as defined). This definition is broadly in line with the definition of a local company in the articles of association of several other international airlines. It is consistent with the requirements under Australia's bilateral air service agreements under which most scheduled international air services are operated. Thus, the monitoring of Qantas' foreign share register by the relevant portfolio Minister under clause 9 will, in relation to companies, link directly to the requirements under Australia's bilateral aviation agreements; and

a person in the capacity of a trustee or manager of a fund in which the total interests of Australian persons (as defined) represent 60% or more of the total interests in the fund. This is designed to cover the situation where a clear majority of moneys in a fund are invested by Australian persons but the trustee or manager of the fund is a foreign person. This definition will ensure that such a fund is not classed as a foreign person just because the person managing the investments of the fund is foreign. A similar approach was taken in relation to the sale of Commonwealth Bank shares to the public - see section 27K(3) of the Commonwealth Banks Act 1959.

25. Foreign ownership and control through company chains, and the determination of whether a consortium of Qantas shareholders is foreign, are to be determined by establishing whether the level of association involved amounts to a "relevant interest" in particular shares. "Relevant interest" has the same meaning as in Part 1.2 of the Corporations Law, which focuses particularly on whether a person has power to vote in respect of a voting share or has a power to dispose of a share (section 31 of the Corporations Law). Control through indirect means, such as a series of inter-connected shareholdings or via a shareholders' agreement, can result in a person being taken to have a relevant interest in a particular share even if that person is not the registered holder of that share.

26. Subclause 7(6) provides definitions for terms used in clause 7.

Clause 8 - Inconsistent alterations to Qantas' articles of association to have no effect

Commencement: Royal Assent.

27. Subclause 8(1) provides that any special resolution of the company is to have no effect if it would have the effect of altering Qantas' articles of association so that those articles become inconsistent with the provisions required by clause 7 of the Bill.

28. Subclause 8(2) provides that any resolution that would, if acted upon, result in a contravention of the provisions which are required by this Bill to be contained in the articles of Qantas (or would have the effect of ratifying such a contravention) is to have no effect.

Clause 9 - Qantas to maintain a register of shares in which foreign persons have a relevant interest

Commencement: Royal Assent - with effect from the day that Qantas becomes aware that voting shares in Qantas have been acquired by a person other than the Commonwealth (or the Commonwealth's nominee).

29. Subclause 9(1) requires Qantas to maintain a register of shares in which foreign persons have, or are declared by the directors of Qantas to have, relevant interests. The directors must make all reasonable inquiries before declaring shares to be shares in which a foreign person has a relevant interest. The register, or a copy of the register, is to be made available to the relevant portfolio Minister (currently the Minister for Transport and Communications) on request - see subclause 9(2).

30. Subclause 9(3) provides definitions of terms used in the clause.

Clause 10 - Injunctions

Commencement: Royal Assent.

31. Clause 10 provides that where a provision which is required to be contained in the company's articles by this Bill ("mandatory articles") is threatened to be, is being or has been breached by a person, the relevant portfolio Minister is empowered to apply to the Federal Court of Australia for an injunction to restrain the person from engaging in the conduct or requiring the person to do an act or thing. The provision is similar to section 1324 of the Corporations Law. The Court, for example, could be asked to require Qantas' Directors to comply with the requirements of Qantas' articles. The Court will also be able to make other orders which it considers appropriate - see subclause 10(9).

Clause 11 - Delegation by Minister

Commencement: Royal Assent.

32. This clause enables the relevant portfolio Minister to delegate powers under this part (ie under clauses 9 and 10) to a Senior Executive Officer in his or her department.

Clause 12 - Jurisdiction of courts

Commencement: Royal Assent

33. Clause 12 confers jurisdiction on the Federal Court of Australia in relation to matters arising under clause 10.

Clause 13 - This Part to have effect despite the Corporations Law

Commencement: Royal Assent.

34. This clause provides for Part 3 to operate despite any provisions of the Corporations Law. This provision clarifies the relationship between this part and the Corporations Law. It is required because of section 9(1) of the Corporations Act 1989.

## **PART 4 - DEBT AND CAPITAL RECONSTRUCTION IN CONNECTION WITH THE SALE OF QANTAS**

35. The various debt and capital provisions in the Bill are designed to enable the reconstruction of Qantas' finances before the company is sold.

### **Division 1 - Commonwealth guarantees**

Clause 14 - Commonwealth guarantee of certain borrowings

Commencement: Royal Assent.

36. This clause authorises the Treasurer (on the Commonwealth's behalf and in order to facilitate, directly or indirectly, the sale of shares in Qantas) :

- to enter into an agreement before the 100% sale day under which the Commonwealth guarantees the performance of an obligation of Qantas or a Qantas subsidiary in connection with a borrowing undertaken, or a leasing contract entered into; or
- to determine that the Commonwealth guarantees the performance by Qantas or a Qantas subsidiary of such an obligation by way of a determination in writing.

37. Guarantees provided under this clause are not to have effect after the 100% sale day - see subclauses 14(3) and 14(4). Thus, the Commonwealth will not face any contingent liability for any guarantee given under this clause when the Commonwealth is no longer a shareholder in Qantas.

38. The clause is needed to cover contingencies associated with debt refinancing, such as the refinancing of Australian Airlines' commercial paper program prior to sale. This includes the situation where the commercial paper

program is terminated prior to a public float of Qantas to dispose of the remaining equity following a minority trade sale.

39. Where the Treasurer provides a guarantee by way of a determination under clause 14(2), the Treasurer may determine any necessary terms and conditions. Where a guarantee is provided under an agreement, the agreement would establish the terms and conditions.

**Division 2 - Appropriation to enable the provision of share capital to, or the assumption of certain debts in connection with, Qantas**

40. Share subscriptions (ie equity capital injections) by the Commonwealth to Qantas may be needed to effect a recapitalisation of the airline during the sale process. This provision is intended to be used primarily to facilitate the assumption by the Commonwealth of the existing Commonwealth-guaranteed debt of Qantas - see notes on clauses 15 and 16.

41. With the assumption by the Commonwealth of the Commonwealth-guaranteed debt, Qantas will almost certainly need to terminate the associated swap (and hedge) arrangements in order to avoid large unmatched currency exposures. Net losses could result from this termination which would impact on Qantas' profit and loss account. If considered necessary, clause 17 could be used to provide "compensation" in the form of a takeover of additional non-guaranteed debt of the Qantas group (or debt guaranteed by force of clause 14) to neutralise this effect on the profit and loss account. Such a debt takeover would not be accompanied by a matching issue of shares to the Commonwealth by Qantas.

42. The assumption of Commonwealth-guaranteed debt will not necessarily determine the overall level of recapitalisation of Qantas required as part of the sale process. On the one hand, a "one-off" dividend payment or a refund of capital to the Commonwealth could be sought if the Government determined that the debt assumption over-capitalised the airline. On the other hand, in the case of inadequate recapitalisation, the sale of new Qantas shares (along with the Commonwealth's existing shares) or the use of the share subscription provision in clause 15 may be appropriate to provide the actual level of recapitalisation required.

**Clause 15 - Payment for share subscription**

Commencement: Royal Assent.

43. This clause allows the Minister for Finance to authorise payment to Qantas for the Commonwealth to subscribe for shares in Qantas. Such a share subscription must be in order to facilitate, directly or indirectly, the sale of shares in Qantas and must occur on or before the 100% sale day. The maximum payment which may be authorised under this provision is \$1,400 million - see subclause 15(4).



44. Where a payment is authorised under subclause 15(1), the Minister may give Qantas a written direction under subclause 15(2). This direction will specify that an amount must be used either for discharging a particular obligation of Qantas or of a Qantas subsidiary or to pay the Commonwealth under an agreement (covered by clause 16) whereby the Commonwealth agrees to take over certain obligations of Qantas. If the direction is not complied with, the amount subject to the direction becomes a debt due to the Commonwealth - see subclause 15(3). A direction may relate to all or part of the amount subscribed.

Clause 16 - Commonwealth takeover of certain Commonwealth-guaranteed obligations in connection with Qantas

Commencement: Royal Assent.

45. This clause authorises the Treasurer to enter into an agreement to take over an obligation of Qantas or of a Qantas subsidiary which is guaranteed under a Qantas Loan Guarantee Act or a further obligation in connection with such an obligation. The agreement must be entered into on or before the 100% sale day and in order to facilitate, directly or indirectly, the sale of shares in Qantas.

46. The Qantas Loan Guarantee Acts are the Qantas Airways Limited (Loan Guarantee) Acts of 1976, 1978, 1979, 1980, 1984, 1985, 1988 and 1989. As at 30 September 1992, the outstanding principal under the borrowings guaranteed under these Acts amounted to \$1,121 million.

47. An agreement to take over a borrowing pursuant to this clause may provide for the release of any security or undertaking given by Qantas as a condition of a guarantee under the terms of the relevant Act. There will no longer be any requirement for Qantas to provide any security or undertaking to the Commonwealth because the Commonwealth will be responsible for the financial obligations under the relevant borrowings.

48. Subclause 16(3) enables the Treasurer to authorise the payment of money to discharge the Commonwealth's obligations under the agreement entered into under subclause 16(1). The obligations may either be paid as they fall due or terminated and paid out.

Clause 17 - Commonwealth takeover of certain obligations in connection with Qantas other than those referred to in section 16

Commencement: Royal Assent.

49. This clause authorises the Treasurer, on behalf of the Commonwealth, to enter into an agreement to take over an obligation of Qantas or of a Qantas subsidiary. The obligation must not be one to which clause 16 applies and the aggregate principal outstanding, as defined in subclause 17(5), of the obligation or obligations at the time of assumption must not exceed \$300 million - see subclause

17(4). The agreement must be entered into on or before the 100% sale day and only to facilitate, directly or indirectly, the sale of shares in Qantas.

50. This provision could be required either to recapitalise Qantas or, if considered necessary, to provide an offset to the accounting losses which Qantas may experience as a result of the termination by Qantas of certain currency swap or hedge agreements entered into in connection with the Commonwealth-guaranteed debts to be assumed under clause 16.

51. Subclause 17(3) enables the Treasurer to authorise the payment of money to discharge the Commonwealth's obligations under an agreement entered into under subclause 17(1). The obligations may either be paid as they fall due or be terminated and paid out.

#### Clause 18 - Appropriation

Commencement: Royal Assent.

52. Funds required for share subscriptions (clause 15) and the payment of obligations assumed by the Commonwealth (clauses 16 and 17) are appropriated from the Consolidated Revenue Fund.

#### Clause 19 - Application of the Loans Securities Act 1919

Commencement: Royal Assent.

53. This clause provides that sections 5A, 5B, 5C and 5D of the Loans Securities Act 1919 apply to any debts which are taken over by the Commonwealth under clauses 16 or 17. The intention of the clause is to allow any overseas borrowings taken over by the Commonwealth under clauses 16 and 17 to be managed in the same manner as other Commonwealth overseas borrowings covered by the Loans Securities Act.

### **Division 3 - Miscellaneous**

#### Clause 20 - Anything done under this Part taken not to be a form of Commonwealth finance.

Commencement: Royal Assent.

54. This clause is to make clear that the financial arrangements associated with the sale of Qantas are not a form of Commonwealth finance for the purpose of certain Commonwealth Acts.

55. It ensures that the effect of any share subscription, debt takeover or guarantee under Part 4 does not lead to any inference that Qantas or a Qantas subsidiary is a company which is financed wholly or substantially, directly or indirectly, by the Commonwealth.

Clause 21 - This Part to have effect despite the Corporations Law

Commencement: Royal Assent.

56. This clause enables Part 4 to operate despite the Corporations Law. This provision clarifies the relationship between this part and the Corporations Law. It is required because of section 9(1) of the Corporations Act 1989.

**PART 5 - AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) REGULATIONS**

57. This Part amends the Regulations made under the Long Service Leave (Commonwealth Employees) Act 1976 ("LSL(CE) Act") which prescribe the companies to which that Act applies.

Clause 22 - Principal Regulations

Commencement: By Proclamation. This provision and clause 23 are intended to commence as 50% sale day provisions. Savings and transitional provisions will also commence on the same day to preserve employee benefits under the LSL (CE) Act (clauses 26 and 32).

58. This clause defines the term "Principal Regulations" to mean the Long Service Leave (Commonwealth Employees) Regulations.

Clause 23 - Schedule 1A

Commencement: See clause 22.

59. Clause 23(1) omits reference to Australian Airlines from the relevant schedule to the Principal Regulations. Hence, employees of Australian Airlines will no longer be covered by the LSL (CE) Act following the 50% sale day. See clauses 26 and 32 for transitional and savings provisions.

60. Clause 23(2) ensures that the amendment of the Principal Regulations does not prevent the Governor-General from further amending or repealing those Regulations.

## **PART 6 - REPEAL OF THE QANTAS EMPIRE AIRWAYS ACT 1948 AND THE AUSTRALIAN NATIONAL AIRLINES ACT 1945**

### Clause 24 - Repeal of the Qantas Empire Airways Act 1948

Commencement: Royal Assent

61. This clause repeals the Qantas Empire Airways Act 1948 which approved the purchase by the Commonwealth of certain shares in Qantas Empire Airways Limited. This Act has no on-going effect.

### Clause 25 - Repeal of the Australian National Airlines Act 1945

Commencement: By Proclamation. It is intended that this provision and the related Part 7 of the Schedule be commenced as one of the 100% sale day provisions.

62. The Australian National Airlines Act 1945 was substantially repealed by the Australian Airlines (Conversion to Public Company) Act 1988. This clause would repeal the balance of the Act which assists to ensure that intra-State flight operations by Australian Airlines and its subsidiaries as Commonwealth business enterprises are constitutionally valid. These provisions will no longer be required once the Commonwealth ceases to have any direct or indirect interest in Australian Airlines.

## **PART 7 - TRANSITIONAL AND SAVINGS PROVISIONS**

63. Transitional and savings provisions continue or modify certain obligations of Qantas and its subsidiaries. They also allow for the completion of matters commenced pre-sale and provide for the attribution of certain employee benefits associated with pre-sale service that would otherwise be foregone because of the sale.

64. The savings provisions also recognise the post-sale service of specific categories of employees as public employment for the purposes of qualifying for certain deferred pension benefits.

### Clause 26 - Transitional long service leave provisions relating to employees of Australian Airlines

Commencement: By Proclamation. The provision is intended to commence as one of the 50% sale day provisions and will coincide with the commencement of clause 23, which removes Australian Airlines from the ambit of the LSL(CE) Act and clause 32, which preserves existing long service leave entitlements.

65. Australian Airlines' employees currently accrue long service leave entitlements (3 months for every 10 years service) under the LSL(CE) Act.

66. For most employees, pre-sale service of less than 10 years will not normally qualify for any long service leave entitlement under the LSL(CE) Act.

67. To ensure equity, clause 26 provides that when those employees either complete 10 years service with the Qantas group or cease to be employees in circumstances under which LSL(CE) Act entitlements would have applied had Part 5 of the Bill not been enacted, this Bill will ensure long service leave benefits at the LSL(CE) Act standard are provided in relation to service before the 50% sale day.

68. The long service leave credits will be calculated in accordance with the LSL(CE) Act as at the commencement of this clause. Long service leave associated with post-50% sale day service with the airline will accrue in accordance with the long service leave regime applicable to the Qantas group after that time. Qantas group employees presently accrue long service leave at the same rate as that provided in the LSL(CE) Act even though the Qantas group (other than Australian Airlines) is not subject to that Act.

69. Thus, under this clause, an Australian Airlines' employee with 9 years service as at the 50% sale day could be granted long service leave of 9/10 of 3 months once the employee has served 10 years with the Qantas group. The employee's long service leave entitlements relating to service after the 50% sale day will accrue and be credited according to the long service leave regime in operation after the 50% sale day.

#### Clause 27 - Transitional provisions relating to the CERC Act

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 50% sale day provisions.

70. Clause 48 of the Bill has the effect of revoking the declaration of Australian Airlines as a Commonwealth authority for the purposes of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (the "CERC Act"). That clause is intended to be proclaimed with effect from the 50% sale day.

71. Paragraph 27(1)(a) is intended to ensure that the provisions of the CERC Act (ie the rights and obligations of the employees, the airline and Comcare) continue to apply in respect of claims arising from injuries suffered by employees of Australian Airlines prior to Australian Airlines ceasing to be a Commonwealth authority for the purposes of the CERC Act ("terminating event").

72. In addition to providing that the CERC Act continues to apply in respect of claims arising from injuries sustained prior to its commencement, this clause makes specific provision for particular sections or parts of the CERC Act to continue to operate as required in respect of such injuries and claims. These specific references are not intended to limit the general application of paragraph 27(1)(a).

73. Paragraph 27(1)(f) provides for Division 4A of Part VII of the CERC Act (which relates to premiums) to continue to apply to Australian Airlines. This is to allow for any excess premium paid by Australian Airlines or shortfall payable to be adjusted as a result of the terminating event. It is likely that a refund of premium would be required where Australian Airlines has paid a premium for a full financial year but the terminating event occurs before the end of the financial year.

74. Subclause 27(3) requires that the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare) be notified of the amount of pay, or salary or wages paid to employees of Australian Airlines for that part of the financial year ending on the day before clause 48 commences. Clause 48 is intended to commence on the 50% sale day. The actual wage and salary bill is relevant to the calculation of any refund of premium to Australian Airlines or amount payable to Comcare (as provided for in paragraph 27(1)(f) of the Bill).

75. Subclause 27(4) makes any amount of premium payable by Australian Airlines, which remains unpaid 60 days after the commencement of the section (50% sale day), a debt due to the Commonwealth and payable to Comcare.

Clause 28 - Transitional provisions relating to the Commonwealth Borrowing Levy Act 1987

Commencement: Royal Assent.

76. This provision provides that Qantas or a Qantas subsidiary is not liable to pay any levy imposed by the Commonwealth Borrowing Levy Act 1987 in respect of any borrowing not explicitly guaranteed by the Commonwealth under an Act (including debts guaranteed under clause 14 of this Bill) following the substantial minority sale day.

77. It is intended that the levy will continue to be payable in respect of any debts which are the subject of explicit Commonwealth guarantees, whether those guarantees exist at the time the provision commences or whether they are given subsequently (under clause 14 of this Bill, for example). The levy will not apply to any debt once it is taken over by the Commonwealth pursuant to clauses 16 or 17.

78. The provision does not apply in relation to any levy paid or payable in respect of any earlier period.

Clause 29 - Saving - DFRDB Act

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 50% sale day provisions.

79. This clause relates to the Defence Force Retirement and Death Benefits Act 1973 (the DFRDB Act). Current employees of Qantas and its subsidiaries who were formally members of the Defence Force and who have elected to take deferred DFRDB benefits are required to complete an aggregate of 20 years (in most circumstances) in the Defence Force or in subsequent public employment to enable benefits to be paid.

80. In the absence of specific action, an employee who has not served the required period prior to the Commonwealth ceasing to have a controlling interest in Qantas would lose his or her entitlement to the benefits available under the DFRDB Act.

81. Subclause 29(1) is intended to enable former members of the Defence Force who:

- are employed by Qantas or a Qantas subsidiary on the 50% sale day,
- had deferred their benefits under the DFRDB Act, and
- were accruing service in public employment with Qantas or a Qantas subsidiary,

to count employment with Qantas or a Qantas subsidiary as public employment even after the 50% sale day.

82. These employees would be entitled to their deferred benefits if they complete the required years of service with the Qantas group (or in other public employment).

83. Subclause 29(3) also ensures that any period of employment with Qantas or a Qantas subsidiary which would have been eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act (which allows for the preservation of rights of contributing members who cease to be members of the Defence Forces) prior to the 50% sale day, continues to be regarded as such for the purposes of a person qualifying for deferred benefits. Part 3 of the Schedule would ensure that any service after the 50% sale day is not taken to be a period of eligible employment.

Clause 30 - Saving - DPP Act

Commencement: By Proclamation. It is intended that this provision be commenced as one of the substantial minority sale day provisions.

84. This clause ensures that the Director of Public Prosecutions Act 1983 ("DPP Act") continues to apply to acts or omissions that occurred prior to the substantial minority sale day and that civil remedies in relation to those matters can continue to be pursued. The provision is required because of the amendment to the DPP Act in Part 1 of the Schedule which removes Qantas and its subsidiaries from the ambit of the DPP Act on the substantial minority sale day, for acts or omissions that occur after that day.

#### Clause 31 - Saving - Judiciary Act 1903

Commencement: By Proclamation. It is intended that this provision be commenced as one of the substantial minority sale day provisions.

85. This clause is intended to ensure that the Australian Government Solicitor (the "AGS") will, post sale, continue to be able to act on behalf of Australian Airlines in relation to proceedings which were commenced prior to the commencement of the section. The AGS may also continue to act where a certificate has been given by the Secretary to the Attorney-General's Department or a person holding a Senior Executive Service office in that department to the effect that instructions were given by Australian Airlines prior to the commencement of the section. Such a certificate is conclusive evidence unless the contrary is established.

#### Clause 32 - Saving - Long Service Leave Act

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 50% sale day provisions and will coincide with the commencement of clause 23 (removing Australian Airlines from the ambit of the LSL(CE) Act) and clause 26 (transitional long service leave provisions).

86. This clause ensures that accrued long service leave credits, arising from pre-sale service with Australian Airlines under the Long Service Leave (Commonwealth Employees) Act 1976 are retained post-sale.

#### Clause 33 - Saving - Superannuation Act 1922

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 50% sale day provisions.

87. Similarly to clause 29 concerning the DFRDB Act, this clause ensures that employees of Qantas or a Qantas subsidiary on the 50% sale day are to be able to complete the required period of service in public employment (20 years in most cases) in order to qualify to obtain deferred benefits under the Superannuation Act 1922.



88. Thus, employees who elected to preserve their superannuation rights (and deferred their benefits) under the Superannuation Act 1922 will be able to continue to count employment with the Qantas group after the 50% sale day as public employment for the purposes of the Act.

#### Clause 34 - Saving - Superannuation Act 1976

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 50% sale day provisions.

89. Employees of the Qantas group who ceased to be members of the Commonwealth Superannuation Scheme before reaching a total of 5 years contributory membership, may qualify to defer their pension benefits if they remain in public employment for the balance of the 5 year period.

90. Similarly to clause 29 (DFRDB Act) and clause 33 (Superannuation Act 1922), this clause ensures that employees who have elected to preserve their superannuation pension benefits are able to continue counting post-sale service with the Qantas group as public employment and thus retain their eligibility for deferred pension benefits.

91. Subclause 34(3) also provides that any period of employment with Qantas or a Qantas subsidiary which would have been regarded as eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976 (which allows for the preservation of rights of persons ceasing to be eligible employees) prior to the 50% sale day continues to be regarded as such for the purposes of the person qualifying for deferred benefits. Part 3 of the Schedule would ensure that any service after 50% sale day is not taken to be a period of eligible employment.

### **PART 8 - OTHER PROVISIONS RELATING TO THE SALE OF QANTAS**

#### Clause 35 - Qantas and its subsidiaries not to be public authorities

Commencement: By Proclamation. It is intended that this interim provision be commenced as one of the substantial minority sale day provisions. In the event that the provision has not commenced by the 100% sale date, it will be repealed by clause 2(4) of the Bill.

92. This clause is to avoid any doubt arising during the sale process about the status of Qantas and its subsidiaries.

93. It declares that, in the absence of a law expressly providing otherwise, neither Qantas nor any of its subsidiaries are to be taken to be Commonwealth authorities, established for a public purpose or for a purpose of the Commonwealth or to be public authorities or instrumentalities or agencies of the Crown for the

purposes of a law of the Commonwealth, a State or a Territory unless that law expressly provides otherwise.

94. The clause is not intended to suggest that, prior to its commencement, Qantas or any of its subsidiaries were such authorities.

#### Clause 36 - Repeal of section 35

Commencement: By Proclamation. It is intended that this provision be commenced as one of the 100% sale day provisions. In the event that clause 35 has not commenced by the 100% sale day, this clause would be repealed by clause 2(4) of the Bill.

95. This clause repeals clause 35. Following the sale of 100% of the Commonwealth's shares in Qantas, the status of Qantas and its subsidiaries will be beyond doubt.

#### Clause 37 - Qantas and its subsidiaries not to be controlled etc. by the Commonwealth

Commencement: By Proclamation. It is intended that this provision be commenced as one of the substantial minority sale day provisions. In the event that the provision has not commenced by the 100% sale day, it will be repealed by clause 2(4) of the Bill.

96. This clause provides that for the purposes of any Commonwealth laws other than this Bill, the Corporations Law, a law relating to taxation or a law amended by Part 1 or 3 of the Schedule, Qantas and its subsidiaries are not to be taken to be controlled by the Commonwealth or majority owned by the Commonwealth unless the relevant law expressly provides otherwise.

97. The provision is particularly intended to cover new laws, similar to those which are referred to in Part 1 of the Schedule, which would otherwise cover Qantas and its subsidiaries by virtue of Qantas being majority owned or controlled by the Commonwealth.

98. This provision will ensure the preservation of the intent of the amendments in Part 1 of the Schedule that Qantas be treated legislatively in the same way as any private sector business, as far as practicable, following the substantial minority sale day (except in relation to employee entitlements).

#### Clause 38 - Repeal of section 37

Commencement: By Proclamation: It is intended that this provision be commenced as one of the 100% sale day provisions. In the event that clause 37 has not commenced by the 100% sale day, this clause will be repealed by clause 2(4) of the Bill.

99. This clause repeals clause 37. Once 100% of Qantas is sold, the Commonwealth will clearly no longer own or control Qantas.

Clause 39 - Australian Airlines not to be established by or under an Act

Commencement: By Proclamation. It is intended that this provision be commenced as one of the substantial minority sale day provisions.

100. This clause is intended to ensure that Australian Airlines is not to be taken to be established by or under an Act.

101. The clause ensures that the operation of the Australian Airlines (Conversion to Public Company) Act 1988 does not result in certain laws applicable to bodies established by or under an Act being applicable to Australian Airlines.

102. The provision does not affect the operation of any law prior to the commencement of this clause. In particular, it is not intended to affect the conversion of the Australian National Airlines Commission (a statutory body) to Australian Airlines Limited (an incorporated company) which occurred pursuant to the Australian Airlines (Conversion to Public Company) Act 1988.

Clause 40 - Exemption from State and Territory taxes and charges

Commencement: Royal Assent.

103. This provision exempts from State and Territory taxes, fees (other than fees under the Corporations Law), duties, levies and charges, a variety of transactions relating to the Commonwealth's disposal of its equity interest in Qantas, including:

- . the transfer of the Commonwealth's shares in Qantas to another person and any agreements relating thereto;
- . the issue or allotment of shares by Qantas to the Commonwealth or another person while the Commonwealth retains any voting shares in Qantas; and
- . the capital or debt reconstruction transactions provided for in Part 4 of the Bill.

104. The intention of the provision is to achieve, in respect of each of these transactions, a result which will enhance the return to the taxpayers generally from the sale of the Commonwealth's shares in Qantas. The exempt matters are all connected with the sale process and would occur in the period during or leading up to the Commonwealth disposing of all of its shares in Qantas.

105. An example of a situation where the return from the sale could be reduced in the absence of such a provision is where stamp duty is levied by a particular State or Territory in relation to the transfer of the Commonwealth's shares in Qantas and therefore the amount which a purchaser would be prepared to pay for those shares is potentially reduced. Imposts applicable to transactions associated with the sale, such as the capital and debt reconstruction transactions, could also either reduce the value of Qantas or indirectly increase the costs associated with the Commonwealth's disposal of its equity interest in Qantas.

106. The Minister for Finance, or the Secretary to the Department of Finance or an authorised delegate (who must be a member of the Senior Executive Service) may certify that a matter is exempt or has been done because of, or for a purpose connected with or arising out of, a specified exempt matter. Such a certificate is conclusive evidence of that matter unless the contrary is established.

107. The Minister may publish a notice in the *Gazette* declaring that the exemption does not apply in relation to a particular impost.

#### Clause 41 - Regulations connected with the sale of Qantas

Commencement: Royal Assent.

108. This provision enables regulations to be issued pursuant to this Bill which include a declaration that they are connected with the sale of Qantas. If the Governor-General is satisfied that this is the case, the regulations commence retrospectively on particular sale days (ie substantial minority sale day, 50% or 100% sale days). This is to enable necessary regulations to commence on the same day as the related provisions of this Bill, in the event that it is not practicable to have the regulations commence on the relevant sale day.

#### Clause 42 - Cessation of certain mobility rights

Commencement: By Proclamation. This provision is intended to commence as one of the 50% sale day provisions.

109. This clause extinguishes the mobility rights of employees of Qantas and its subsidiaries under Part IV the Public Service Act 1922 and the repealed Officers' Rights Declaration Act 1928. Access to mobility arrangements under Part IV of the Public Service Act 1922 has not been available to new staff at Qantas since 1986 and Australian Airlines since 1988. However, it is possible that Qantas or its subsidiaries still have staff who had acquired mobility rights, before these dates, and whose rights had been preserved. The most significant element of these mobility rights was the opportunity to have special consideration given to re-appointment to the Australian Public Service in the event of redundancy. Very few employees, if any, will be affected.

Clause 43 - Section 70AH of the Audit Act 1901 not to apply to Qantas or a Qantas subsidiary

Commencement: By Proclamation. It is intended that this interim provision be commenced as one of the substantial minority sale day provisions. In the event that the provision has not commenced on the 100% sale day, it will be repealed by clause 2(4) of the Bill.

110. This clause provides that section 70AH of the Audit Act 1901 does not apply to Qantas or a Qantas subsidiary. This section of the Audit Act relates to the manner in which salaries of employees of certain Commonwealth controlled bodies may be paid.

Clause 44 - Repeal of section 43

Commencement: By Proclamation. This provision is intended to commence as one of the 100% sale day provisions. In the event that clause 42 has not commenced by the 100% sale day, this clause will be repealed by clause 2(4) of the Bill.

111. This clause repeals clause 43. The Audit Act requirement regarding the payment of salaries does not apply to private sector companies. The exemption from the operation of section 70AH of the Audit Act 1901 is therefore not required after the sale is concluded.

Clause 45 - Refund of licence fee paid under the CERC Act

Commencement: By Proclamation. It is intended that this provision will commence as one of the 50% sale day provisions.

112. Part VIIIA of the CERC Act allows licences to be granted to certain Commonwealth authorities to enable them to administer, determine or retain liability for workers compensation claims under the CERC Act. This clause provides for a pro-rata refund of a licence fee payable under section 107R of the CERC Act in the event that Australian Airlines is granted a licence prior to it ceasing to be a Commonwealth authority under the CERC Act (by amendment of the relevant declaration under clause 48 which is intended to commence on the 50% sale day).

Clause 46 - Refund of contribution paid under the Occupational Health and Safety (Commonwealth Employment) Act 1991 ("OH&S Act")

Commencement: By Proclamation. It is intended that this provision will commence as one of the 50% sale day provisions.

113. Part 3 of the Schedule provides that Qantas and its subsidiaries will cease to be Commonwealth authorities for the purposes of the OH&S Act on the 50% sale day. Clause 46 provides for a refund of a contribution if that occurs part way through a financial year where the relevant company has paid a contribution under section 67H of the OH&S Act in respect of the administration of that Act.

Clause 47 - Qantas and its subsidiaries not to be eligible or relevant bodies for the purposes of the Superannuation Benefits (Supervisory Mechanisms) Act 1990

Commencement: By Proclamation. This provision is intended to commence as one of the 50% sale day provisions.

114. This clause removes the reference to Qantas and its subsidiaries from certain declarations made under the Superannuation Benefits (Supervisory Mechanisms) Act 1990. Following the 50% sale day, it is intended that this Act cease to apply to the Qantas group. Generally applicable superannuation provisions will continue to apply after sale.

Clause 48 - Amendment of declaration under the CERC Act

Commencement: By Proclamation. This provision is intended to commence as one of the 50% sale day provisions.

115. This clause removes the reference to Australian Airlines from the declaration under the CERC Act identifying the airline as a body corporate to which the CERC Act applies. Following the 50% sale day, it is intended that Australian Airlines will be required to comply with generally applicable workers' compensation legislation.

Clause 49 - Amendment of declaration under the Superannuation Act 1976

Commencement: By Proclamation. This provision is intended to commence as one of the 50% sale day provisions. At the same time, Part 3 of the Schedule removes Qantas and its subsidiaries from the definition of "approved authority" in the Superannuation Act 1976.

116. This clause deletes reference to Australian Airlines from the declaration under the Superannuation Act 1976 identifying the airline as an approved authority to which the Act applies. Following the 50% sale day, it is intended that employees of the airline no longer be eligible to contribute to the Commonwealth Superannuation Scheme. Regulations are to be separately introduced pursuant to the Superannuation Act 1976 with the intention of ensuring that these employees do not lose the superannuation benefits that they will have accrued under this scheme prior to the 50% sale day.

Clause 50 - Application of the Trade Practices Act 1974

Commencement: By Proclamation. It is intended that this interim provision be commenced as one of the substantial minority sale day provisions. In the event that the provision has not commenced by the 100% sale day, it will be repealed by clause 2(4).

117. This clause declares that Qantas and its subsidiaries are subject to the Trade Practices Act 1974 in the same manner as other companies in which the Commonwealth does not have a controlling interest.

118. This clause (and clause 51) is not intended to imply that Qantas or any Qantas subsidiary is not, or was not, either before or after commencement of the relevant sections, a corporation subject to the Trade Practices Act 1974.

Clause 51 - Repeal of section 50

Commencement: By Proclamation. It is intended that this provision will be commenced as one of the 100% sale day provisions. In the event that clause 50 has not commenced by the 100% sale day, it will be repealed by clause 2(4) of the Bill.

119. This clause repeals clause 50. Once the Commonwealth has disposed of its equity in Qantas, the manner of the operation of the Trade Practices Act 1974 is beyond doubt and the provision can be repealed. Qantas and its subsidiaries will continue to be subject to the Trade Practices Act 1974 in the same way as other private sector companies.

## SCHEDULE

120. Qantas and its subsidiaries (including Australian Airlines and its subsidiaries) are presently subject to a range of statutes by virtue of their Commonwealth ownership. It is intended that they be removed from the ambit of most of the applicable legislation (with the notable exception of employee-related statutes) on the substantial minority sale day. This will ensure that legislation which applies specifically to Commonwealth Government business enterprises does not apply to Qantas or its subsidiaries once there is any significant private ownership. This accords with the Government's intention that Qantas and its subsidiaries be treated by Commonwealth legislation consistently with private sector enterprises from that point on.

121. On the 50% sale day, the Commonwealth will no longer own a majority of shares in Qantas. This will trigger the removal of legislation covering Qantas and its subsidiaries which relates to terms and conditions of employment. This defined "trigger" will remove doubt in instances where it would otherwise be uncertain precisely when in the sale process such legislation would cease to apply. This uncertainty arises in the case of statutes which rely on the Commonwealth having a controlling interest in a company, which can still be the case in some circumstances when the Commonwealth owns less than 50% of the shares.

122. After the 100% sale day when legislation permitting intra-State flights by Australian Airlines is repealed, the post-sale activities of the Qantas group will, as far as possible, not be subject to Commonwealth legislation which does not also govern the activities of private sector organisations. Any interim amendments which were commenced on or after either the substantial minority sale day or the 50% sale day will also be repealed (by Parts 5 and 6 of the Schedule) thus removing spent provisions from the relevant Acts.

123. In the event that on the 100% sale day either Part 1 or Part 3 of the Schedule has not commenced, that Part and its countervailing Part (Part 5 or 6) are repealed by subclauses 2(4) and 2(5) of the Bill.

### **PART 1 - INTERIM AMENDMENTS TO BE MADE ON OR AFTER SUBSTANTIAL MINORITY SALE DAY**

124. These amendments are to be made to statutes which do not relate to terms and conditions of employment and which apply to Qantas (and its subsidiaries) as Government owned or controlled companies.

125. This Part contains amendments of an interim nature which are to be commenced at the substantial minority sale day and are repealed by Part 5 of the Schedule which is intended to commence on the 100% sale day.



126. Acts to be amended are:

*Archives Act 1983*  
*Audit Act 1901*  
*Australian Federal Police Act 1979*  
*Australian Heritage Commission Act 1975*  
*Australian Protective Service Act 1987*  
*Civil Aviation Act 1988\**  
*Crimes (Aviation) Act 1991\**  
*Crimes (Superannuation Benefits) Act 1989*  
*Director of Public Prosecutions Act 1983*  
*Environment Protection (Impact of Proposals) Act 1974*  
*Federal Airports Corporation Act 1986\**  
*Freedom of Information Act 1982*  
*Naval Defence Act 1910\**  
*Ombudsman Act 1976*  
*Prices Surveillance Act 1983\**  
*Public Accounts Committee Act 1951*  
*Public Works Committee Act 1969*  
*Radiocommunications Act 1983\**  
*Resource Assessment Commission Act 1989*

\* These Acts have general application but, in respect of certain matters, have a broader or modified application in respect of companies which are majority owned or controlled by the Commonwealth. It is this extended or modified application only which is removed by the amendments in Part 1 of the Schedule. Where the Act would be applicable to a privately owned company, it will continue to be applicable to Qantas and its subsidiaries.

## **PART 2 - PERMANENT AMENDMENTS TO BE MADE ON OR AFTER SUBSTANTIAL MINORITY SALE DAY**

127. This Part provides for permanent amendments (ie amendments which are required to operate beyond the 100% sale day) to Acts to ensure that (other than in relation to employee-related matters) Qantas and its subsidiaries are not subject to legislation specifically covering Commonwealth Government business enterprises, or are not specifically referred to because of their Commonwealth ownership.

128. Acts to be amended are:

*Administrative Decisions (Judicial Review) Act 1977*  
*Australian Airlines (Conversion to Public Company) Act 1988*  
*Australian Heritage Commission Act 1975*  
*Civil Aviation (Carriers' Liability) Act 1959*  
*Crimes (Currency) Act 1981\**  
*Crimes (Hostages) Act 1989\**  
*Crimes (Internationally Protected Persons) Act 1976\**  
*Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990\**

*Nuclear Non-Proliferation (Safeguards) Act 1987\**  
*South Pacific Nuclear Free Zone Treaty Act 1986\**

- \* These remaining amendments omit specific references to Qantas' aircraft as 'Commonwealth aircraft' (or similar expression) in definitions used in relation to the term 'Australian aircraft'. In most cases, Qantas aircraft would continue to fall within the definition of Australian aircraft in these Acts for other reasons.

129. This Part is intended to be commenced by Proclamation from the substantial minority sale day.

### **PART 3 - INTERIM AMENDMENTS TO BE MADE ON OR AFTER 50% SALE DAY**

130. Part 3 of the Schedule contains certain amendments of an interim nature, relating to terms and conditions of employment, which are intended to commence from the 50% sale day. Removal of Qantas, Australian Airlines and their subsidiaries (where applicable) from the ambit of this legislation will result in treatment consistent with that of private sector enterprises.

131. These interim amendments are to be repealed by Part 6 of the Schedule which is intended to be proclaimed once the 100% sale day is reached.

132. Acts to be amended are:

*Affirmative Action (Equal Employment Opportunity for Women) Act 1986\**  
*Commonwealth Employees' Rehabilitation and Compensation Act 1988*  
*Defence Force Retirement and Death Benefits Act 1973*  
*Human Rights and Equal Opportunity Commission Act 1986\*\**  
*Industrial Relations Act 1988\*\**  
*Merit Protection (Australian Government Employees) Act 1984*  
*Occupational Health and Safety (Commonwealth Employment) Act 1991*  
*Public Service Act 1922*  
*Sex Discrimination Act 1984\*\**  
*Superannuation Act 1976*  
*Superannuation Act 1990*  
*Superannuation Benefits (Supervisory Mechanisms) Act 1990*

- \* This amendment will have the effect of making this Act applicable to Qantas and its subsidiaries rather than the Equal Employment Opportunity (Commonwealth Authorities) Act 1987 which currently applies.

- \*\* These Acts operate in respect of private as well as Commonwealth-owned bodies. They currently have a broader or modified operation in relation to Qantas and its subsidiaries. These amendments remove that operation to ensure that the Acts apply to the Qantas group consistent with private sector companies.

#### **PART 4 - PERMANENT AMENDMENTS TO BE MADE ON OR AFTER 50% SALE DAY**

133. This Part provides for permanent amendments to Acts relating to employee matters (which are not to be repealed on 100% sale day).

134. These are Acts which could continue to cover the airlines regardless of the amount of equity owned by the Commonwealth. This Part is intended to be commenced by Proclamation on the 50% sale day.

135. Acts to be amended are:

*Australian Airlines (Conversion to Public Company) Act 1988*  
*Industrial Relations Act 1988*  
*Superannuation Act 1990*

The repeal of section 33 of the Australian Airlines (Conversion to Public Company) Act 1988, combined with clause 42 of the Bill, will remove Public Service mobility rights previously available to some employees of Australian Airlines.

136. The amendment to paragraph 5(3)(c) of the Industrial Relations Act 1988 removes specific references to the relationship between Australian Airlines and Qantas and their respective flight crew officers which extended the meaning of 'industrial dispute' for the purposes of that Act.

137. The amendment to the Superannuation Act 1990 is intended to ensure that Australian Airlines does not automatically become an 'approved authority' (and therefore fall within the coverage of the Public Sector Superannuation Scheme) by virtue of Australian Airlines having been an 'approved authority' for the purposes of the Superannuation Act 1976 when the Superannuation Act 1990 commenced.

#### **PART 5 - AMENDMENTS TO BE MADE ON OR AFTER 100% SALE DAY REVERSING AMENDMENTS MADE BY PART 1 OF THE SCHEDULE**

138. Part 5 reverses the amendments made on the substantial minority sale day under Part 1 of the Schedule. Once the Commonwealth no longer holds any equity in Qantas, companies in the Qantas group will no longer fall within the definitions of Commonwealth authority (and the like) in the Acts which were amended by Part 1 of the Schedule. Part 1 amendments can therefore be repealed.

139. Acts to be amended are:

*Archives Act 1983*  
*Audit Act 1901*  
*Australian Federal Police Act 1979*

*Australian Heritage Commission Act 1975*  
*Australian Protective Service Act 1987*  
*Civil Aviation Act 1988*  
*Crimes (Aviation) Act 1991*  
*Crimes (Superannuation Benefits) Act 1989*  
*Director of Public Prosecutions Act 1983*  
*Environment Protection (Impact of Proposals) Act 1974*  
*Federal Airports Corporation Act 1986*  
*Freedom of Information Act 1982*  
*Naval Defence Act 1910*  
*Ombudsman Act 1976*  
*Prices Surveillance Act 1983*  
*Public Accounts Committee Act 1951*  
*Public Works Committee Act 1969*  
*Radiocommunications Act 1983*  
*Resource Assessment Commission Act 1989*

**PART 6 - AMENDMENTS TO BE MADE ON OR AFTER 100% SALE DAY  
REVERSING THE AMENDMENTS MADE BY PART 3 OF THE  
SCHEDULE**

140. Part 6 reverses the amendments made on the 50% sale day under Part 3 of the Schedule. Once the Commonwealth no longer holds any equity in Qantas, companies in the Qantas group will no longer fall within the definitions of Commonwealth authority (and the like) in the Acts which were amended by Part 3 of the Schedule. Part 3 amendments can therefore be repealed.

141. Acts to be amended are:

*Affirmative Action (Equal Employment Opportunity for Women) Act 1986*  
*Commonwealth Employees' Rehabilitation and Compensation Act 1988*  
*Defence Force Retirement and Death Benefits Act 1973*  
*Human Rights and Equal Opportunity Commission Act 1986*  
*Industrial Relations Act 1988*  
*Merit Protection (Australian Government Employees) Act 1984*  
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*Public Service Act 1922*  
*Sex Discrimination Act 1984*  
*Superannuation Act 1976*  
*Superannuation Act 1990*  
*Superannuation Benefits (Supervisory Mechanisms) Act 1990*

**PART 7 - PERMANENT AMENDMENTS TO BE MADE ON OR AFTER  
100% SALE DAY**

142. Act to be amended is:

*Australian Airlines (Conversion to Public Company) Act 1988*

143. This Part provides for permanent amendments to the Australian Airlines (Conversion to Public Company) Act 1988 (the Conversion Act) to omit provisions which, for constitutional reasons, and with State endorsement, enable Australian Airlines and its subsidiaries to operate intra-State flights. These provisions will be retained while the Commonwealth holds shares in Qantas to ensure that no constitutional doubt exists that either Australian Airlines or its subsidiaries can operate intra-State services. As a private sector enterprise, there is no constitutional barrier to Qantas or its subsidiaries operating intra-State flights and, hence, the relevant provisions of the Conversion Act will no longer be required once the Commonwealth ceases to hold any shares in Qantas.

144. It is intended that this provision be commenced by Proclamation on the 100% sale day.

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