

1992

**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

QANTAS SALE BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on behalf of the Government

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



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QANTAS SALE BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

AMENDMENTS TO CLAUSES 7 AND 9 OF THE QANTAS SALE BILL

OUTLINE

The amendments proposed by the Government are of a technical nature.

The national interest safeguards in clause 7 of the Qantas Sale Bill which limit ownership and control of Qantas by foreign persons operate by reference to the concept of "relevant interest" as set out in Division 5 of Part 1.2 of the Corporations Law.

As explained in paragraph 25, page 15 of the Explanatory Memorandum for the Qantas Sale Bill, the intention of the use of the term "relevant interest" is to determine whether a person has power over voting rights or disposal of the shares in question.

Without any limitation to the current reference to the Corporations Law, the use of the concept of "relevant interest" could have the unintended effect of deeming shares in Qantas held by certain "associates" of Qantas (such as, a Qantas subsidiary through which an employee share ownership plan is operated) to be shares in which a foreign person has a relevant interest - regardless of whether the foreign person controls the voting rights attaching to, or the disposition of, the shares in question. Those unintended effects arise by virtue of section 33 of the Corporations Law which is in Part 1.2 of that Law.

In practical terms, this unintended effect could arise if Qantas conducted an employee share ownership plan (ESOP) through a subsidiary of Qantas. Section 33 of the Corporations Law would have the effect that if any foreign buyer held more than 20% of the shares in Qantas, it would be taken to have a relevant interest in any shares in Qantas which an associate of Qantas owned. As a subsidiary of Qantas, the ESOP company would be an associate of Qantas and therefore all of the shares which it owned would be treated as shares in which the foreign buyer has a relevant interest. The individual foreign buyer could potentially exceed the 25% limit when the ESOP shares are added to its shares. This could mean that a foreign trade sale purchaser would be limited to something less than 25% in order to accommodate a Qantas ESOP. The overall 35% limit could also be exceeded which could require the forced disposal of shares.

The proposed amendments ensure that in determining whether a foreign person has a relevant interest in shares in Qantas, section 33 of the Corporations Law is not to be considered. The remaining provisions of Division 5 of Part 1.2 of the Corporations Law - which focus on control over the voting rights attaching to, and

the power to dispose, of a share - would continue to be operative and would achieve the desired intention of tracing foreign ownership and control through company chains or shareholders' agreements.

FINANCIAL IMPACT STATEMENT

The amendment has no direct financial impact. However, if it is not made it could either limit the amount of equity which could be sold to foreigners at the trade sale stage of the Qantas sale below the proposed percentage limits or prohibit certain forms of employee share ownership.

NOTES ON CLAUSES

- (1) This inserts a new definition of "relevant interest" into clause 7 of the Qantas Sale Bill. It excludes the effect of section 33 of the Corporations Law which determines whether foreign persons have relevant interests in particular shares for the purposes of paragraphs 7(1)(a), (b) and (c) of the Bill.
- (2) Deletes the previous definition of "relevant interest" in clause 7.
- (3) This inserts a new definition of "relevant interest" into clause 9 of the Qantas Sale Bill. It excludes the effect of section 33 of the Corporations Law in determining which shares in Qantas are required to be referred to in the register of shares in which a foreign person has an interest.
- (4) Deletes the previous definition of "relevant interest" in clause 9.