

1994

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

SENATE

QANTAS SALE AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,  
the Hon Kim C Beazley, MP)



THE  
GOVERNMENT  
OF  
WEST AUSTRALIA  
DEPARTMENT OF  
AGRICULTURE  
AND  
FISHERIES  
BUREAU OF  
AGRICULTURAL  
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GENERAL  
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## QANTAS SALE AMENDMENT BILL 1994

### OUTLINE

The *Qantas Sale Act 1992* put in place the necessary legislative and administrative framework for the sale of Qantas Airways Limited by the Commonwealth. The Government has announced that the sale of its remaining 75 per cent equity in Qantas will take place in the first half of 1995. The purpose of the Qantas Sale Amendment Bill is to update the *Qantas Sale Act 1992* to reflect developments since that Act was passed.

In summary, the Bill addresses the following matters:

- consequential amendments to allow Qantas to participate in the Australian Stock Exchange's new electronic system for registering share transfers (CHESS);
- variation of provisions protecting employees' accrued long service leave entitlements to ensure consistency with other Acts relating to asset sales;
- extension of the Sale Act's sunset clause by two months to 31 August 1995 to provide for the contingency that, because the sale timetable may be very tight, particularly if the sale is conducted after the May 1995 Budget, it may not be possible to complete all necessary arrangements by 30 June 1995;
- amendment of the *Air Navigation Act 1920* to confirm that the controls on foreign shareholdings in Australian international airlines do not apply to Qantas which is subject to its own controls in the Qantas Sale Act.

The Bill also contains a small number of technical provisions.

### FINANCIAL IMPACT STATEMENT

None of the amendments in the Bill affect the primary financial impact arising from the sale of the Government's remaining equity in Qantas which will be the reduction in outlays occurring when the sale receipts are credited to the Commonwealth Public Account. No direct or indirect costs would be imposed on the Commonwealth or other parties.

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### NOTES ON CLAUSES

#### Clause 1 - Short Title

Commencement: Royal Assent

1. This clause is self explanatory.

#### Clause 2 - Commencement

Commencement: Royal Assent

2. In general, the Act commences on receiving the Royal Assent. Amendments made by the Schedule to provisions of the *Qantas Sale Act 1992* ("QSA") which have not yet commenced commence immediately after the commencement of the relevant provision of the QSA. See particular items for details.

#### Clause 3 - Schedule

Commencement: Royal Assent

3. This clause is self explanatory.

### SCHEDULE

#### PART 1 - AMENDMENT OF THE QANTAS SALE ACT 1992

##### Division 1 - Introduction of the Clearing House Electronic Subregister System

#### Items 1 to 4

Commencement: Royal Assent

4. Items 1 and 2 omit the requirement that Qantas include in its articles of association restrictions on transfers of shares in Qantas. As a result, the Act would mandate only that Qantas impose restrictions on the issue and ownership of shares in the company to prevent foreign persons (in aggregate) or individual foreign persons having relevant interests in the specified percentages of the total value of the issued share capital of Qantas (25% for individuals and 35% in aggregate). Items 3 and 4 remove the related requirement that Qantas' articles confer power on the directors to refuse to register a transfer of shares so as to enforce these requirements.

5. These amendments ensure that the articles of Qantas conform with s.1109L of the Corporations Law. This section provides that "the issuing body in relation to a quoted security or quoted right must not refuse or fail to register, or give effect to, a proper SCH [Securities Clearing House] transfer of the security or right." It is necessary that Qantas conform with this provision of the Corporations Law in order that it may be

eligible to participate in the Clearing House Electronic Subregister System (CHES). Eligibility to participate in CHES is currently also a prerequisite for obtaining listing and quotation of Qantas and its securities on the Australian Stock Exchange.

6. The QSA will continue to require that Qantas' articles impose restrictions on ownership and issue of shares which result in foreign persons having relevant interests in Qantas shares. These requirements will be enforced by limitations on new share issues and by the directors of Qantas having a power to disenfranchise or require the sale of shares.

## **Division 2 - Change to the short title of the Commonwealth Employees' Rehabilitation and Compensation Act 1988**

### **Items 5 to 11**

Commencement for items 5 and 6: Royal Assent

Commencement for items 7 to 11: immediately after commencement of the provision which is amended.

7. These items replace references to the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* with references to the Act under its new short title *Safety, Rehabilitation and Compensation Act 1988*. The QSA also contains references to the abbreviation "CERC Act" which are to be altered to "SRC Act". There are different commencement dates for items 5 and 6 because they amend the definition in section 3 which has already commenced whereas the other items amend provisions which have not yet commenced. These amendments are technical only and have no substantive effect.

## **Division 3 - Long service leave**

### **Items 12 and 16**

Commencement for item 12: Royal Assent.

Commencement for item 16: immediately after commencement of section 32 of the QSA.

8. These items correct a technical inconsistency between the definition of Long Service Leave Act in section 3 and that term as used in section 32. Following the amendment, references to the Long Service Leave Act throughout the QSA will mean that Act immediately before the commencement of Part 5 of the QSA (which is the provision which excludes Australian Airlines from coverage under the Long Service Leave Act). Item 12 commences from the Royal Assent because it amends section 3 of the QSA which has already commenced.

### **Items 13 and 14**

Commencement: immediately after commencement of section 26 of the QSA.

9. These items remove the existing description of long service leave credit in section 26 (3) of the QSA and insert new subsections (3) and (3A) and make consequential changes to other parts of section 26.

10. The proposed new subsections provide as follows:

- new subsection (3) relates to long service leave credit for long service leave granted under section 26(1) of the QSA. The long service leave credit is effectively the credit the person had immediately prior to commencement of Part 5 of the QSA (which excludes Australian Airlines from coverage under the Long Service Leave Act) calculated as if the employee had been retrenched at that time.
- new subsection (3A) relates to payments granted in lieu of long service leave under section 26(2) of the QSA. In this case the long service leave credit calculated under the proposed new subsection 26(3) is to be reduced by any long service credit already used.

11. Following the amendment, these provisions will be consistent with equivalent provisions contained in section 19 of the *CSL Sale Act 1993*.

#### **Item 15**

Commencement: immediately after commencement of section 26 of the QSA.

12. This item amends subsection 26(8) of the QSA which deals with payments for long service leave credits on the death of an employee who has dependants. The amendment makes it compulsory rather than discretionary to make a payment to a dependant in such circumstances. Following amendment, the effect of the provision will be consistent with the equivalent provision in subsection 18(2) of the *CSL Sale Act 1993*.

#### **Division 4 - Sunset clause**

#### **Item 17**

Commencement: Royal Assent

13. Section 2(6) of the QSA currently provides that any provisions of the QSA which have not commenced on 30 June 1995 are repealed. This item would alter the date to 31 August 1995. The change to the legislative sunset date is to provide administrative flexibility in relation to the public share offer scheduled to open in the April/May 1995 period, particularly if it is decided to hold the float following the 1995 Budget. In that event, the share issue could be launched in mid-May 1995 with the objective of completion several days prior to 30 June 1995. If this occurred, it may not be administratively possible to arrange, before 30 June, for proclamation of provisions of the QSA which are intended to commence following the offer.

**Division 5 - Technical corrections****Items 18 to 20**

Commencement: immediately after commencement of the provision which the relevant item amends.

14. Items 18 and 19 correct technical errors in the QSA. Item 20 omits amendments to the *Radiocommunications Act 1983* which has now been repealed.

**PART 2 - AMENDMENT OF THE AIR NAVIGATION ACT 1920****Item 21**

Commencement: Royal Assent

15. Qantas is excluded from the definition of "Australian international airline" so as to clarify that the provisions in the *Air Navigation Act 1920* which impose foreign ownership restrictions upon Australian international airlines do not apply to Qantas. Foreign ownership of Qantas is dealt with in the *Qantas Sale Act 1992*.