aipa
Advancing the interests of our members and the profession

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Australian & International Pilot's Association Submission to Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 Senate Inquiry

The Australian & International Pilot's Association (AIPA) is the union representing airline pilots who fly for Qantas and the Qantas owned subsidiary airlines. AIPA's particular interest in the Closing the Loopholes amendment relates to the misuse of labour hire provisions by employers. Qantas is among the worst offenders in weaponising labour hire provisions. Two recent Qantas initiatives - *Project Sunrise* & *Project Winton* – illustrate this process of weaponisation. This weaponisation undermines the fundamental power balance between employer and employee that the Fair Work Act was originally intended to enshrine. We believe it is in the national interest that the amendment be passed through the Senate.

Who we are

AIPA represents over two thousand airline pilots who fly for Qantas and the Qantas owned subsidiaries – Jetstar, Network Aviation, Qantaslink and Express Freighters Australia. The association came into being after the Qantas pilot's division of the Australian Federation of Air Pilot's broke away in 1981. AIPA is a democratic organisation, governed by a forty-member Committee of Management (CoM) directly elected by the membership. This CoM elects a nine-member Executive. The association employs approximately fifteen staff members who are based in the association's office in Mascot, Sydney. Qantas pilots are a highly unionised workforce. AIPA enjoys ninety five percent density in Qantas mainline.

Example one – "Project Sunrise"

In 2019 AIPA and Qantas were engaged in enterprise bargaining for a new Long Haul Pilot's Enterprise Agreement. Inextricably intertwined with this process was Qantas flagship initiative *Project Sunrise*. *Project Sunrise* was Qantas' effort to acquire a fleet of ultra-long-range aircraft. Such aircraft would allow Qantas to become the first airline to offer ultra-long-haul flights to the Australian travelling public. For example, *Project Sunrise* would facilitate direct Sydney to London flights, replacing the existing Sydney to Perth, Perth to London arrangements. Two aircraft were under consideration – the Boeing 777 and the Airbus 350. Once the A350 was selected, Qantas identified an acceptable industrial outcome in enterprise bargaining as the "last remaining gap in the Project Sunrise business case" (QAL, 2019).

In February 2020 then Qantas International CEO Tino La Spina wrote to AIPA advising that if AIPA did not agree to the salary and terms of employment proposed by the Company, the Company would bypass the AIPA bargaining team and put the proposed agreement directly to the pilot body for a vote. Mr La Spina then wrote to pilots stating:

"We have informed AIPA (and are now informing you) that if we are unable to secure a new long-haul agreement with our pilots that meets the Sunrise investment case within Airbus' time frame, we will be left with no viable alternative but to have Sunrise flying performed by a new employment

entity that can provide the cost base we need for this important business opportunity." (Ironside, R. 2020)

The threat could not be clearer – either accept Qantas' terms or face the consequences.

It should be emphasized that the decision by Qantas to threaten the creation of a "new employment entity" was not taken as a last resort after protracted negotiations and intractable conflict with pilots. Rather it came as a surprise attack, even though negotiations were progressing at a reasonable pace given the complex nature of the issues. Contemporaneous communications reflect the fact that by September 2019 (only five months before Qantas threatened to create a "new employment entity") Qantas had still not revealed to AIPA whether the Boeing 777 or the Airbus 350 would be chosen for *Project Sunrise*. As then AIPA President Mark Sedgwick reflected in his September 2019 member update, each aircraft "would have unique and discreet implications for pilots' terms and conditions which adds complexity to the process." Mr. Sedgwick also reflected that the "extreme distances" pilots would be expected to fly raised genuine safety concerns related to crew fatigue. Whilst cognisant of Qantas' commercial imperatives, AIPA was determined not to rush such important considerations. In this same update, Mr. Sedgwick spoke of AIPA working "closely and cooperatively with Qantas, as it has always done".

It should also be understood that Qantas' threat did not simply relate to future A350 "Sunrise" flying. It was clearly understood by all involved that over time (i.e., as older aircraft were retired) the relevance of the Long-Haul Pilot's Enterprise Agreement would slowly but steadily decline.

By February 2020 Qantas had followed through on its threat to unilaterally cease negotiations with AIPA. Pilots voted on the proposed agreement, with the threat of a "new employment entity" being created and given the 350 flying if they did not accept the offer.

Against this backdrop, AIPA's President Mark Sedgwick wrote to pilots on 6 March, 2020:

"As you know, the negotiation for LHEA10 including Project Sunrise A350 flying ceased on 28 February 2020. If pilots reject the current LHEA offer, we know that future negotiations will not include terms and conditions for A350 aircraft. There is unfortunately nothing illegal in the path Qantas is taking. Qantas has also said there will be a single round of voting on the LHEA where it includes the A350. We consider this threat as being credible, and the consequences as being high risk regardless of the likelihood. Qantas have confirmed against that they will use an 'alternative employment entity' to perform the flying it the first-round vote is negative."

AIPA's then Vice President, Brad Hodson, expressed similar sentiments:

"Like all Qantas pilots, I am thoroughly disgusted by the threat to outsource A350 flying. Unfortunately, the so called "Fair Work" Act permits this type of action. Regardless of the outcome of the upcoming vote, the relationship between Qantas management and the pilot body is now simply toxic."

"At present, there is obviously great concern in the pilot body around what rights pilots have under the law and relevant agreements to prevent outsourcing. The Act, in layman's terms, does not allow terms that prohibit engaging contractors or outside hire. This is why in the 2011 'Secure our Flying' campaign, we demanded "terms and conditions no less favourable". That is, a contracted worker on a Qantas aircraft would have similar working, pay and conditions."

AIPA recognised Qantas strategy as an existential threat to collective bargaining with Qantas. Sedgwick explained to members that:

“As matters have significantly changed in recent weeks, the priority for new now is this – **preserving the industrial strength that comes from the unity of all long-haul pilots under the single Long Haul Enterprise Agreement, that includes the terms and conditions on offer for the A350.** We have tried to achieve this in bargaining however with negotiations now over, it can only be achieved via a majority yes vote.”

“**I am appalled by the Company tactics, however, in my view the choice is clear now for pilots to accept the deal and move to fight another time.”**

Brad Hodson expressed the situation thus:

“This ultimately highlights the industrial regime in Australia and the fact that the contracting out of work is permissible. The current situation long haul pilots find themselves in, is invidious. You can accept an inferior deal and stay united or roll the dice and fight the outsourcing threat. The latter option in my view had very significant downside risks and poor prospects of success.”

With little meaningful alternative available to them the majority of Qantas’ long-haul pilots voted to accept the Company’s offer.

Example two – *Project Winton*

“It’s déjà vu all over again.” – Yogi Berra, American baseball player

Just as *Project Sunrise* oversaw the acquisition of A350 aircraft, *Project Winton* sought to replace the ageing B737 short haul fleet with new A320 aircraft. In the context of *Project Winton* Qantas required an amendment to the Qantas Short Haul Pilot’s Enterprise Agreement (which at that time only referred to B737 aircraft). Rather than simply transfer existing short haul pilots onto the new aircraft with the same salary and conditions, Qantas once again issued an ultimatum. Short Haul Pilots were told that if they did not agree to vary the existing agreement on the terms dictated by Qantas, the A320 aircraft and associated flying would be given to Network Aviation. Network Aviation is a wholly owned subsidiary of Qantas, traditionally focused on facilitating Western Australian FIFO mining operations. Whilst Network is a bona fide wholly owned subsidiary, rather than a sham “new employment entity”, the *Project Winton* experience reinforces Qantas’ willingness to exploit loopholes to circumvent honest, straight forward negotiations between employer and employees.

Example three – Jetconnect

Qantas has a long history of using sham subsidiaries to undercut pay and conditions. In 2009 AIPA took Qantas to the Fair Work Commission in response to the Company’s misuse of their wholly owned, New Zealand based subsidiary Jetconnect. Through what could only be described as a “sham contracting” arrangement Qantas had trans-Tasman flights (previously operated by Qantas Short Haul pilots) operated by “Jetconnect” pilots being paid thirty percent less than their colleagues at Qantas mainline. The ACTU described the dispute as a “test case” on the use of shell corporations to offshore work. In a two-to-one decision, the FWC ruled that Qantas’ use of Jetconnect was legal.

By 2017 Jetconnect was back in the headlines, with Qantas’ announcement they were converting seven of their B737 aircraft, from New Zealand registration to its Australian operating licence, whilst still employing New Zealand pilots. Qantas spokesperson Andrew McGinnes said: “By registering these aircraft in Australia instead, we could make much better use of this down time by flying domestic sectors in between flying to New Zealand”. Former Qantas pilot Keith Tonkin captured the

mood of many of his colleagues when he said: “There’s always a concern that one thing could lead to another – that more pilots from New Zealand are operating aircraft registered in Australia, and that means that pilots who live in Australia and who are trained in Australia may miss out on jobs” (Hatch, P. 2017).

AIPA’s perspective

The parameters of the industrial relations and political economic landscape in Australia are of course well known. The political right, in close association with corporate Australia, advocates for individualism in industrial relations and emphasizes the societal benefits of a larger role for free markets with a subsequently smaller role for government. The political left, in close association with the trade union movement, advocates for collectivism in industrial relations and emphasizes the benefits of a larger role for government in society, with a subsequently smaller role for the market. This debate is very often robust and rigorous. It is complex. It often involves relatives rather than absolutes. Nevertheless, the debate normally remains within the well-known parameters outlined above. The overwhelming majority of Australians accept the old axiom that “the truth lies somewhere in the middle”. Australians desire a sensible balance be struck in the industrial relations and political economic spheres. Qantas’s behaviour over the past twenty years has not remained within the traditionally accepted parameters of the debate. Nor have they felt any need to adopt even the appearance of an even-handed approach to managing the competing interests of shareholders and employees.

Since their privatization in 1993 by the Keating Labor government, Qantas have mastered the art of walking down both sides of the street simultaneously. Despite their transition from government ownership to private ownership, Qantas has willingly received significant government subsidies at the taxpayers’ expense. They truly are the masters of “privatizing profits and socializing losses”. Despite legislated protection against foreign ownership, Qantas has undercut their Australian workforce by employing foreign cabin crew on less than $3 per hour; protectionism for Qantas, free trade for employees. In perhaps their most audacious move yet, Qantas has been exploiting loopholes in the Fair Work Act which enable it to have worked performed by “labour hire” employees, even though the “labour hire” is a wholly owned subsidiary of Qantas and Qantas is the firm’s only customer.

The Fair Work Act sought to restore a sensible balance between the individualist and the collective interest in industrial relations. It enshrined employees fundamental right to bargain collectively with their employer. This right, however, is only activated when a majority of employees in a workplace vote in support of collective bargaining. Even then trade unions only act as bargaining representatives for their financial members. Employees are entitled to appoint their own bargaining agent or even represent themselves. Furthermore, under the Fair Work Act all collective agreements must contain an Individual Flexibility clause, allowing individual employees to negotiate alternative arrangements with their employer. The Fair Work Act enshrines the right of employees to take industrial action. However, this right is tempered by the requirement that industrial action only take place during a bargaining period and that the actions to be taken are approved by the Fair Work Commission. Furthermore, there is no requirement that the employer’s response to industrial action be proportionate. Qantas’ 2011 grounding of the entire domestic and international mainline fleet in response to limited protected industrial action.

AIPA shares the spirit of maintaining a sensible balance between the individualist and the collective, and between the interests of capital and labour. AIPA is a strong advocate for an “interest based” approach to enterprise bargaining. AIPA has often initiated discussions centering on how employees can collaborate with their employer to generate productivity increases from which salary increases and other improved conditions can be funded.

Unfortunately, Qantas has cynically sought to exploit loopholes in the Fair Work Act that allow it to undermine their employees fundamental right to bargain collectively. The Company’s ability and willingness to deliver ‘take it or leave it’ ultimatum’s across the bargaining table, backed by the threat of creating a “new employment entity”, neutralizes any meaningful ability to employees had to bargain collectively. For a one-hundred-year-old company to create a “greenfields agreement” for their pilots is an absurdity. Qantas was created by pilots – Australian Flying Corps veterans Paul McGinness and Hudson Fysh. Pilots have obviously been the essential component of the Qantas workforce for the entirety of it’s existence. Such blatant misuse of Australia’s industrial relations legislation cannot be allowed to continue.

No one becomes a Qantas pilot by accident. Flying for Qantas represents the pinnacle of a pilot’s career. Qantas pilots have worked their way up the civil aviation ladder, often starting out flying for regional airlines or other small scale aviation operations. Only after logging a considerable number of flying hours would a pilot be considered for a career with Qantas. A significant number of Qantas pilots are recruited after being honourably discharged from the Royal Australian Air Force – a testament to the intense training and operational requirements of military aviation. Qantas pilots – AIPA’s members –demonstrate hard work, tenacity, and commitment to achieve the position of which they are justly proud. Flying is more than just a job. It is a passion – and a serious responsibility. Every time an AIPA member goes to work they take hundreds of people’s lives into their hands. In exchange for accepting this serious duty, pilots expect to be fairly remunerated. They also expect to be treated with respect and common decency.

The selection process for Qantas pilots has always been competitive – as it should be. Only the best deserve to fly for the national carrier. However, Qantas is now seeking a race to the bottom on wages, rather than a race to the top on merit. Such an approach is disrespectful to pilots, their families, and to the heavy burden of the safety critical role that pilots carry every time they step onto the flight deck.

Recommendation

AIPA welcomes the government’s proposed ‘Closing the loopholes’ amendments to the Fair Work Act. The requirement that labour hire employees be engaged on the say income and conditions as their permanent counterparts will prevent the weaponisation of labour hire arrangements, whilst still providing employers with labour supply flexibility when a genuine need arises. In AIPA’s view this is not some much an advancement of employee rights as a reinforcement of the original right to collective bargaining that the original 2009 legislation sought to enshrine.

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Sources:

Hatch, Peter *Qantas pilots fume over move to fly Australian planes with Kiwi crew* The Age 7 December 2017

Ironside, Robyn *Qantas 'threat' to pilots spurs progress in talks* The Australian 21 February 2020

Ironside, Robyn *Qantas issues ultimatum to force Project Sunrise deal* The Australian 13 February 2020

The Official News Room of Qantas Airways Limited *Qantas Update on Project Sunrise – 13 Dec 2019* Qantas Airways Limited 13/12/2019