

Qantas Investor Briefing

Qantas Group Limited (ASX:QAN)

AGM date and location: 25 October 2019, Adelaide.

Overview

ACCR has requisitioned two resolutions for discussion at the AGM of Qantas Group Limited (QAN) this year. In addition to a standard procedural resolution recommending a change to the company's constitution in order to enable advisory resolutions, ACCR has filed an ordinary resolution seeking a review of the company's policies and processes relating to involuntary transportation undertaken as a service provider to the Australian Government's Department of Home Affairs.

About ACCR

The [Australasian Centre for Corporate Responsibility](#) is a philanthropically-funded NGO that monitors the environmental, social and governance (ESG) practices and performance of ASX-listed companies. We undertake research and highlight emerging areas of business risk through private and public engagement, including the filing of shareholder resolutions.

About Mercy Investment Services, Inc.

International co-filers Mercy Investment Services, Inc. are a US based asset management program for the Sisters of Mercy and its ministries. The program works for systemic change in the areas of non-violence, racism, environment, concern for women, and immigration through socially responsible investing.

Resolutions and commentary

Resolution 1 - Special resolution to amend our company's constitution

To insert into our company's constitution the following new clause 32.4:

Member resolutions at general meeting

The shareholders in general meeting may by ordinary resolution express an opinion, ask for information, or make a request, about the way in which a power of the company partially or exclusively vested in the directors has been or should be exercised. However, such a resolution must relate to an issue of material relevance to the company or the company's business as identified by the company, and cannot either advocate action which would violate any law or relate to any personal claim or grievance. Such a resolution is advisory only and does not bind the directors or the company.

Commentary to Resolution 1

It is well understood that a special resolution is required under Australian law in order for ordinary resolutions on ESG risk to be put to a vote. All of our comments are contained in our supporting statement¹.

Resolution 2 - Ordinary resolution on Human Rights Risks

Shareholders request that the Board commission a review of our company's policies and processes relating to involuntary transportation (**Review**) undertaken as a service provider to the Department of Home Affairs. Given our company's

¹ Qantas Notice of Meeting 2019

<https://investor.qantas.com/FormBuilder/Resource/module/doLLG5ufYkCyEPjF1tpgyw/file/agm/notice-of-meeting-2019.pdf>

commitment to aligning its business with the UN Guiding Principles on Business and Human Rights (**UNGPs**), shareholders recommend that the UNGPs be used as a basis for the Review.

A report describing the completed Review should be prepared at reasonable cost and omitting confidential information, and made available to shareholders on the company website by 30 June 2020.

Commentary to Resolution 2

This resolution is a modification of one raised by ACCR at last year's AGM². It is tailored to assist Qantas by constraining parameters for the Review sought, so that limited disclosures, pertinent to the examination of risk, can be made to shareholders.

Qantas has a contract with the Department to provide various airline services, including the involuntary transportation of refugees and asylum seekers. This transportation occurs between sites of immigration detention (onshore and offshore), as well as in instances of deportations from Australia. A Review of Qantas' policies and processes in relation to these activities will assist the company to anticipate, and ultimately avoid or mitigate, any associated adverse human rights impacts.

Example of conduct

We understand that on 19 September an asylum seeker was transferred by Qantas between two places of detention on a Melbourne-Perth flight QF485. We understand that the intended transfer to Yongah Hill Immigration Detention Centre, a remote facility, would have removed them from support networks in Melbourne and adequate access to required psychiatric services. We understand that they are currently detained in Perth as a result of a court injunction. The willful isolation and reduction of critical support for a highly vulnerable person seeking asylum is abuse, for which the Department of Home Affairs is centrally responsible, and which Qantas has been party to facilitating. We have asked Qantas for confirmation of their role and have not had a response.

Qantas acknowledges that the 'Transportation of persons in custody at the request of Government' is one of its five most 'salient human rights risks'³. Qantas does not have a process in place to mitigate these specific risks⁴, and serious information gaps remain in relation to our company's involvement in involuntary transportation.

Human rights due diligence is the cornerstone requirement of UN Guiding Principles on Business and Human Rights (UNGPs), a standard that Qantas committed to in 2017⁵. The UNGPs note that business enterprises have a responsibility to avoid adverse human rights impacts in their operations, and that this responsibility exists 'over and above compliance with national laws'.⁶ The UNGPs note that to meet their responsibilities, business enterprises should 'have in place policies and processes appropriate to their size and circumstances' (15), including 'a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights' (15b), and '(p)rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute' (15c).

Qantas' representatives made consistent statements to ACCR in two meetings this year that Qantas had not undertaken and was not planning to undertake human rights due diligence as per the UNGPs. Qantas represented that it has assessed commercial risks, including operational, legal and reputational considerations of undertaking involuntary transportation activities. However, Qantas has not disclosed the results of this commercial risk assessment to shareholders. Qantas has

² Resolution 6, <https://www.asx.com.au/asxpdf/20181026/pdf/43zntq3srwqb2h.pdf>

³

<https://www.qantas.com/au/en/qantas-group/acting-responsibly/our-governance.html#targetText=Ensuring%20Board%20commitment%20to%20the.responsibilities%20and%20reporting%20lines%3B%20and>

⁴ Our company's Non-Negotiable Business Principles, which are set out in the company's 2019 Code of Conduct and Ethics, include a commitment to 'proactively manage risk' and to 'safeguard the Qantas Group's reputation, brands, property, assets and information'.

⁵ <https://www.qantas.com/au/en/qantas-group/acting-responsibly/our-governance.html#enhancing-human-rights>

⁶ United Nations, Office of the High Commissioner, 2011, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' available at: <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>, 13.

noted that it does 'not receive detail relating to the immigration status of an individual'⁷ being transported on behalf of the Department, and has confirmed that it does not request this information, even though it is entitled to do so under the Department's guidelines on carriage of persons in custody.⁸ Qantas has declined to provide details on the nature of its contractual arrangements with the Department, and has not disclosed (or assessed) the revenue associated with involuntary transportation.

Insufficiency of Australian immigration system against compliance with human rights standards

Numerous international authorities have found that Australia's refugee law system contravenes international human rights law in a number of respects. Centrally, section 197C of the *Migration Act 1958* (Cth), which was introduced in 2014, provides that the requirement to remove unlawful non-citizens from Australia is not limited by Australia's *non-refoulement* obligations under the *Refugee Convention*. Hence the Australian legal system can no longer be relied upon to ensure compliance with international human rights law.

As the Refugee Advice & Casework Service (RACS) has noted, significant human rights risks can arise from commercial airlines' participation in the forced transportation of refugees and people seeking asylum, including: those who have been unreasonably barred from making a temporary protection application; families which are being separated; those who face deportation to countries whose conditions are deteriorating; those suffering from prolonged and arbitrary detention; those at risk of deportation where non-refoulement obligations have not been correctly considered⁹.

Further to this, the International Transport Workers Federation (ITF) has become 'increasingly concerned about the role of commercial airlines in forced deportations', and the adverse impacts that this has on front-line airline staff¹⁰, who are often struggling with their own opposition to these activities. The ITF notes that involuntary transportation activities are often highly controversial, and may involve protests and resistance from deportees, increasing risks for all.

Qantas' response

Qantas has frequently stated that 'The Group's position is that the Government and the Australian Courts are best placed to make decisions on the legal immigration status of people seeking to remain in Australia. It is not the role of airlines to adjudicate on complex immigration decisions'¹¹. ACCR is not suggesting that Qantas should be tasked with assessing the refugee status of any individual. This resolution seeks to address a related, but separate issue – that Qantas has identified – that its provision of services to the Department of Home Affairs necessarily involves salient human rights risks, and the company has not yet developed or disclosed a commensurate process to manage these risks. Such processes do not require companies to act as legal adjudicators on any individual cases. Instead, they require companies to adequately manage the risks to their own operations and to rights holders. The OECD is clear that due diligence processes 'are not intended to shift responsibilities from governments to enterprises', but rather 'that each enterprise addresses its own responsibility with respect to adverse impacts'¹² (p. 17). This resolution encourages Qantas to review the policies and processes which are currently in place in relation to one specific issue.

7

<https://www.qantas.com/au/en/qantas-group/acting-responsibly/our-governance.html#targetText=Ensuring%20Board%20commitment%20to%20the.responsibilities%20and%20reporting%20lines%3B%20and>

⁸ <https://www.homeaffairs.gov.au/about/transport-security/aviation-security/movements-persons-custody>

⁹ Refugee and Advice Casework Service, August 2019, *Briefing note: Qantas and the deportation or forced movement of people seeking asylum and refugees*.

¹⁰ <https://www.airport-technology.com/features/forced-deportations-commercial-airlines/>

11

<https://www.qantas.com/au/en/qantas-group/acting-responsibly/our-governance.html#targetText=Ensuring%20Board%20commitment%20to%20the.responsibilities%20and%20reporting%20lines%3B%20and>

¹² OECD 2018, *OECD Due Diligence Guidance for Responsible Business Conduct*, <http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>, p. 17.

Qantas's Board responded to the above resolutions in its notice of meeting 2019¹³, recommending votes against both resolutions. ACCR wrote to Qantas representatives on 12 September 2019, seeking clarification on inconsistencies and gaps in information within the notice of meeting. This is outlined in the table below:

| Contingent Resolution - Human Rights Risks, The Board's response | ACCR clarification |
|--|---|
| <p>"The Group has invested heavily in technology and resources to mitigate the risk of adverse human rights impacts, within its operation and across its supply chain. The Group has committed to align our policies and practices with the UNGPs. The Group will continue to evolve our broader human rights program in line with international standards and the Group's corporate responsibility strategy."</p> | <p>Qantas' website states that the 'transportation of persons in custody at the request of Government' is one of the top five salient human rights risks. The UNGPs require that 'business enterprises seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services'. Qantas has not disclosed to shareholders what specific prevention and mitigation measures it has "heavily" invested in, specifically in relation to this salient risk.</p> |
| <p>"The Group has completed an independent assessment of the Groups salient human rights issues as per guidance issued by the UNGPs."</p> | <p>The guidance provided by the UNGPs situates human rights due diligence as a core tool for the discharge of corporate responsibility to respect human rights. Qantas representatives made consistent statements to ACCR in two meetings this year that Qantas had not undertaken, and was not planning to undertake, a human rights due diligence review as per the UN Guiding Principles. Qantas represented that it assessed commercial risks, including operational, legal and reputational considerations and specifically rejected ACCR's recommendation that a human rights due diligence process be put in place with respect to its provision of services to the Department of Home Affairs. Furthermore, mere identification of human rights risk is not equivalent to an "assessment". Nor does it demonstrate how salient risks are being managed through prevention and mitigation measures. We request that the contents of any independent assessment be disclosed to shareholders.</p> |
| <p>"The Group has established a dedicated sustainability team that focuses on the wider sustainability strategy."</p> | <p>This is commendable, however not directly relevant to Qantas' management of human rights risks associated with involuntary transportation.</p> |
| <p>"The Group has broadened our stakeholder engagement with investors, shareholders, non-government organisations (including ACCR), to better understand their perspectives on the role of the aviation industry in the protection of human rights."</p> | <p>The outcomes of this stakeholder engagement are unclear. Qantas has not articulated how these perspectives have informed its approach to the identification, prevention and mitigation of human rights risks associated with involuntary transportation.</p> |
| <p>"The Group has participated in a number of key events, including the Global Compact Network Australia."</p> | <p>Qantas has not articulated how participation in these events tangibly impacts upon its management of human rights risks associated with involuntary transportation.</p> |
| <p>"The Group has been a key sponsor of the International Air Transport Association's June 2018 Annual General Meeting Resolution that denounced human trafficking and reaffirms airlines' commitment to support governments and law enforcement to prevent human trafficking through awareness raising, staff training and reporting suspicious behaviour."</p> | <p>This is commendable, however not directly relevant to Qantas' management of human rights risks associated with involuntary transportation.</p> |
| <p>"The Group has held focus sessions with Professor John Ruggie who was instrumental in establishing the UN Global Compact and is the author of the UNGPs."</p> | <p>Qantas has not articulated the outcomes of these focus sessions, including how these have informed Qantas' approach to the UNGPs or to the management of human rights risks associated with involuntary transportation.</p> |

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¹³ https://investor.qantas.com/FormBuilder/_Resource/_module/doLLG5ufYkCyEPJF1tpgyw/file/agm/notice-of-meeting-2019.pdf, pp. 13-