



ACCR INVESTOR BRIEFING

SEPTEMBER 2018
QANTAS (ASX: QAN)

AGM: 26 October 2018, Brisbane

ACCR AUSTRALASIAN
CENTRE FOR
CORPORATE
RESPONSIBILITY

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.

OVERVIEW

ACCR has requisitioned two resolutions for discussion at the AGM of Qantas Airways Limited (Qantas) this year. In addition to the procedural resolution recommending a change to the company's constitution in order to enable advisory resolutions, ACCR has filed a resolution requesting enhanced human rights due diligence and disclosure to shareholders in respect of forcible transfer activities conducted by Qantas on behalf of the Australian Department of Human Affairs (the Department).

Qantas have indicated in discussions with ACCR that they provide forcible transportation services to the Department. ACCR invited Qantas to clarify the nature and extent of this service provision, such as detailing the routes flown, and the risk management processes they have in place, however this invitation has been declined multiple times over the engagement period.

As at the time of publication of this briefing, Qantas has failed to disclose information sufficient to equip shareholders to evaluate the risk profile of their forcible transportation activities. This is the context in which ACCR has presented resolution 5.2, which calls for heightened disclosure to shareholders, for discussion at Qantas' 2018 AGM.

Summary of 2018 Qantas resolutions

Resolution	Type	Issue	Threshold	Page
5.1	Special	Change to company constitution	75%	2
5.2	Ordinary	Human rights due diligence	Contingent on 5.1 + 50%	2-9

RESOLUTIONS AND COMMENTARY

Resolution 5.1 – special resolution to amend our company's constitution

Shareholders request that the following new clause 5.10 be inserted into our company's constitution:

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 5.1

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 statement.

Resolution 5.2 - Ordinary resolution on Human Rights Risks

Shareholders request that:

1. *the Board commit to engaging a heightened due diligence process in relation to any involuntary transportation activity in which it is involved as a service provider to the Australian Department of Home Affairs (the Department);*
2. *the Board commission a comprehensive review of our company's policies and processes relating to involuntary transportation (Human Rights Review), with a specific focus on risk and responsibility according with our company's commitment to aligning its business with the the UN Guiding*

Principles on Business and Human Rights;

3. *the Board prepare (at reasonable cost and omitting confidential information) a report describing the completed Human Rights Review, to be made available to shareholders on the company website prior to any further involvement in removal or involuntary transportation activity as a service provider to the Department.*

Commentary to Resolution 5.2

Risks for commercial airlines contracting to the Australian Department of Home Affairs ('the Department') to forcibly transport asylum seekers are acute.

Given the lack of clarity around Qantas' service provision to the Department, this briefing note assumes that Qantas performs some forcible transportation services on both deportation and involuntary domestic transfer routes. In ACCR's assessment, such activities would expose Qantas to material, unnecessary and uncommercial risks.

Risks to airlines involved in forcible transportation fall into four interrelated categories:

1. **Human rights risks**, through transgressing a company's responsibility to respect human rights as set out in the UN Guiding Principles on Business and Human Rights (UNGPs) and voluntarily adopted by Qantas;
2. **Brand and reputational risks**, through undertaking conduct with is misaligned with core brand values;
3. **Workplace safety risks**, through exposing workers to potential physical and moral injury; and
4. **Litigation and liability risks**, relating to civil harms suffered by workers, passengers and persons transported involuntarily by Qantas.

The nature of these risks is elaborated upon in this note. The combination of these risks, and the inadequacy of Qantas' response in the face of escalating community concern highlight deficiencies in the company's approach.

Qantas has made no argument that screening forcible transportation contracts out of their network would cause the company any financial or other harm. Instead, Qantas' resistance to implementing an enhanced

disclosure and due diligence regime is justified by the Qantas board with reference to a stated concern about “undermining the integrity of the judicial process.” This concern is unfounded, and is addressed below under the heading: “Response to statement of Qantas board.”

Ongoing public exposure of human rights abuse risks a loss of consumer confidence, which can have a negative impact on shareholder value, particularly in the highly competitive airline space. Shareholders have an interest in receiving information about what the company is doing to prevent implication in future controversies.

It should be noted that investors have their own responsibility to conduct due diligence, including in respect of human rights impacts. Present disclosures by Qantas are insufficient to enable shareholder due diligence to occur.

Legal context for forcible transportation

A detailed legal briefing by the Refugee Advice and Casework Service (RACS), provided to Qantas in August is included at Attachment A. In summary, Australia’s domestic 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, explicitly provides that the requirement to remove unlawful non-citizens arises regardless of any non-refoulement obligations that may exist. The introduction of this section represents a significant and deliberate step by Australia away from honouring our international obligations and means that the Department is obligated to attempt to remove certain people

seeking asylum regardless of whether they have credible protection claims.

Various international legal authorities have found that Australia’s system of mandatory, indefinite detention of asylum seekers offends the international legal prohibition against arbitrary detention.¹ Just this month, new UN High Commissioner for Human Rights Michelle Bachelet described Australia’s detention system as “an affront to the protection of human rights”.²

In addition, it is well known that the Department uses involuntary domestic transfers between places of detention as a tool to further isolate people in the detention system and impede their ability to access legal advice and community support.³ Therefore, commercial airlines can and should refuse to conduct such activities.

Where the Department seeks to contract Qantas to perform a service that is instrumental to the Department’s ability to inflict systemic harm to individuals, such as transfer to places of arbitrary detention, in order to manage risk and protect shareholder value Qantas must have some risk management process in place to ensure they can refuse.

Risk matrix

1. Human Rights Risks

Corporations involved in facilitating the transport of asylum seekers and refugees are exposed to a number of human rights risks, including:

- Facilitating the refoulement of refugees and asylum seekers who have been prevented from making an application or where

¹ See for example: Human Rights Council Working Group on Arbitrary Detention (2018). *Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018: Opinion No. 20/2018 concerning William Yekrop (Australia)*, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_20.pdf, viewed 24th September 2018; Australian Human Rights Commission (2014). *The Forgotten Children: National Inquiry into Children in Immigration Detention*, p.11, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf, viewed 24th September 2018.

² OHCHR (2018). *Opening Statement by UN High Commissioner for Human Rights Michelle Bachelet to the 39th session of the Human Rights Council*, <http://www.unic.org.in/pressrooms/opening-statement-by-un-high-commissioner-for-human-rights-michelle-bachelet-to-the-39th-session-of-the-human-rights-council/>, viewed 24th September 2018.

³ See Appendix B; Australian Human Rights Commission (2017). *Inspection of Yongah Hill Immigration Detention Centre: Report*, <https://www.humanrights.gov.au/sites/default/files/document/publication/17.12.XX%20YHIDC%20inspection%20report.pdf>, viewed 24th September 2018.

country conditions have deteriorated significantly from when the application was first made.

- Facilitating the separation of families seeking asylum in contravention of CROC, Article 9 of which provides that States will ensure that a child is not separated from their parents. Article 10 explicitly states that ‘applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.’ The ICCPR also prohibits arbitrary interference with the family, in Article 17 and 23.
- Facilitating transport between sites of arbitrary detention.

For a detailed legal briefing outlining the human rights risks stemming from the inadequacy of domestic mechanisms see *Appendix B: RACS Briefing Note – Airlines and People seeking asylum in Australia*.

2. Brand and reputation risk

With Qantas’ brand premised on diversity, inclusion and respect for human rights, escalating activism in this area poses an unnecessary material brand risk, which may lead to corrosion of shareholder value.

Public concern regarding the complicity of airlines in removals processes is a growing area of physically disruptive activism globally. In Australia:

- On 9th August, refugee groups protested outside Qantas offices in Sydney and Melbourne. These groups are coordinating social media campaigns targeting Qantas.

- Getup! gathered 17,299 signatures to a petition launched in August 2018 regarding the involvement of Qantas and Virgin in removals.⁴
- The #hometobilo campaign launched a separate petition calling on Qantas and 11 other airlines to commit to not deporting a Tamil family to danger. They gathered 15,129 signatures.⁵ This is in addition to their petition calling on Peter Dutton to stop the deportation of that family, which gathered almost 140,000 signatures.
- A public statement regarding airlines involved in deportations was signed by human rights organisations and trade unions, as well as well-known actors, singers, lawyers, and academics. Mark Seymour of Hunters and Collectors described the airlines involvement in deportations as “publicly toxic and no place for corporate endorsements” in media statements.⁶ International music star MIA publicly endorsed the statement in September 2018.⁷
- In 2015, a Qantas flight was disrupted due to onboard protests against the forced transfer of a Tamil asylum seeker.⁸
- Father Rod Bower, Anglican Parish of Gosford, updated the billboard outside his church to state “Qantas, Please don’t help Dutton deport to danger”. The image was shared over 200 times and had over 700 reactions on facebook, it was shared over 280 times on twitter and had 500 likes.⁹

Globally, UK activists have targeted British Airways over its sponsorship of LGBT events, claiming that its involvement in deportations is at odds with the values of these events and

⁴ See:

<https://www.getup.org.au/campaigns/refugees/stop-airlines-deporting-to-danger/stop-airlines-deporting-to-danger?t=NOMJXSOAo>

⁵ See: https://www.change.org/p/qantas-fly-these-queensland-born-sisters-home-to-biloela-not-to-danger?recruiter=862402445&utm_source=share_petition&utm_medium=facebook_link&utm_campaign=share_for_starters_page

⁶ Bruce-Smith, A. (2018). “Aussie rock royalty slams Qantas’ refugee deal as ‘publicly toxic’”, *Ten Daily*, 16th August 2018, <https://tendaily.com.au/news/australia/a180815knf/aussie-rock-royalty-slams-qantas-refugee-deal-as-publicly-toxic-20180815>, viewed 7th September 2018.

⁷ Davidson, H. (2018). “Rapper MIA urges Australian airlines to refuse forced deportations”, *The Guardian*, 22nd September 2018,

<https://www.theguardian.com/australia-news/2018/sep/22/rapper-mia-urges-australian-airlines-to-refuse-forced-deportations>

⁸ Doherty, B. (2015), “Passenger protest on Qantas flight delays forced transfer of Tamil asylum seeker”, *The Guardian*, 2nd February 2015, <https://www.theguardian.com/australia-news/2015/feb/02/passenger-protest-on-qantas-flight-delays-transfer-tamil-asylum-seeker>, viewed 7th September 2018.

⁹ See: https://scontent-syd2-1.xx.fbcdn.net/v/t1.0-9/42178390_2068444553186167_117894515812990976_n.jpg?_nc_cat=100&oh=6303879e7e91dac2b65de8e420bbd810&oe=5C6101C7

their promotion of human rights.¹⁰ While in Israel, over 100 pilots have signed onto a statement publicly committing to not be involved in deportations of refugees.¹¹

3. Workplace Safety Risks

Removal procedures by commercial airlines represent workplace safety risks for crew, passengers and asylum seekers, predominantly due to disruptive actions by protestors and deportees. Global unions and employer representatives have made statements regarding the safety risks posed to front line staff and passengers by forced removals and transfers:

Michael Lamberty, Lufthansa spokesperson commented on the decisions made by a number of German pilots to refuse to carry deportees:

The decision not to carry a passenger is ultimately made by the pilot on a case by case basis. If he or she had the impression that flight safety could be affected, he must refuse to transport the passenger.¹²

In explaining their decision to campaign against airline involvement in family separations in the USA, President of the Association of Flight Attendants, Sara Nelson, stated:

We expect this issue could continue to escalate and tensions rise when passengers or crew experience even the appearance onboard of children separated from their

families. This can become a safety and security issue, which makes it all the more important that airlines provide as much information as possible to crews in order to ensure a safe working environment for Flight Attendants and passengers.¹³

Actions by security guards have also led to a number of deportee deaths on commercial flights during forced removals:

- November 2017: An Algerian man lost consciousness following a struggle with police on a flight to deport him from Denmark. He died in hospital 2 days later.¹⁴
- In 2010, Jimmy Mubenga died after being restrained on a British Airways flight by G4S security guards.¹⁵
- The Institute of Race Relations detailed 9 deaths linked to forced removals on flights. Including one incident where police officers were ultimately charged with “torture of a prisoner resulting in death”.¹⁶

4. Litigation and liability risk

In addition to litigation risk stemming directly from incidents such as those outlined above, secondary litigation risk is due to individuals witnessing injuries and deaths on commercial flights. For example, in 2015, a British Airways employee sued G4S for over £100,000 for psychiatric injuries due to her witnessing the death of a deportee on a British Airways flight.¹⁷

¹⁰ Abbot, D. and Lammy, D. (2018). “BA unfit to sponsor Pride while deporting gay asylum seekers”, *The Guardian*, 3rd August 2018, <https://www.theguardian.com/world/2018/aug/02/ba-unfit-to-sponsor-pride-while-deporting-gay-asylum-seekers>, viewed 7th September 2018.

¹¹ See: https://act.zazim.org.il/act/pilots_en/

¹² DW (2018). “German pilots refuse to carry out deportations”, *DW*, 7th December 2017, <https://www.dw.com/en/german-pilots-refuse-to-carry-out-deportations/a-41638832>, viewed 24th September 2018.

¹³ Jansen, B. (2018). “American, Frontier, Southwest and United Airlines refuse to transport immigrant children separated from parents for government”, *USA Today*, 20th June 2018, <https://www.usatoday.com/story/news/2018/06/20/airlines-refuse-fly-immigrant-children-separated-parents/718654002/>, viewed 24th September 2018.

¹⁴ The Local (2017). “Algerian man dies after Denmark deportation flight struggle”, *The Local*,

24th November 2017, <https://www.thelocal.dk/20171124/algerian-man-dies-after-denmark-deportation-flight-struggle>, viewed 24th September 2018.

¹⁵ Lewis, P. and Taylor, M. (2010). “Deportee asked for help on flight before dying, witness says”, *The Guardian*, 15th October 2010, <https://www.theguardian.com/uk/2010/oct/15/deportee-help-flight-dying-witness>, viewed 7th September 2018.

¹⁶ IRR (2003). *Analysis: Deaths during forced deportations*, <http://www.irr.org.uk/news/analysis-deaths-during-forced-deportation/>, viewed 24th September 2018.

¹⁷ Cheston, P. (2015). “Flight attendant suing G4S after seeing deportee die on British Airways flight”, *Evening Standard*, 30th September 2015, <https://www.standard.co.uk/news/uk/flight-attendant-suing-g4s-after-seeing-deportee-die-on-british-airways-flight-a2958966.html>, viewed 7th September 2018.

As evidenced in the case of *Kamasee v. Commonwealth of Australia and Ors*, a legal relationship with the federal government does not protect companies from litigation. In this class action, over 1600 detainees who had been held at the Manus Island detention centre at some point between 2012 and 2014 made a claim for negligence and false imprisonment against Commonwealth of Australia and its contracted service providers, G4S Australia (**G4S**), and Transfield Services (Australia) Pty Ltd (now called Broadpectrum Services Pty Ltd) (**Broadpectrum**). The plaintiffs were awarded \$70 million plus costs in a negotiated settlement.¹⁸

Urgency of action

Forced removals are likely to increase significantly from the end of 2018, primarily due to refusals in the so-called “legacy caseload” cohort, and amongst TPV renewals.

Legacy Caseload

The “legacy caseload” refers to that a large cohort of people seeking asylum who arrived by boat in 2012 and 2013, many of whom had been statutorily barred from making an asylum application until 2016. In May 2017 Minister for Home Affairs Hon Peter Dutton announcing an application deadline of 1st October 2017. Asylum seekers who did not apply by this deadline would be automatically refused protection. The UNHCR stated that these changes “**create a significant risk that individuals’ claims for protection may not be adequately nor accurately considered**, giving rise to the possibility of refugees being returned to persecution (refoulement) in violation of Australia’s international obligations ...”.¹⁹ To date 18,657 applications in the so-called “legacy caseload” have been processed, with 5,342 refusals. Extrapolating from this figure, over 8000 people refusals can

be expected from the total cohort of 30,947 applications.²⁰

Temporary Protection Visas (TPVs)

From mid-2018, temporary protection visas (TPVs) that have durations of 3 or 5 years will expire. People seeking asylum must re-apply for protection prior to the expiry of TPV. Any person who does not re-apply for protection prior to their TPV expiring will be barred from making a valid re-application – potentially leading to removals of people that have already been declared refugees by the Department of Home Affairs.

¹⁸ See: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2017/537.html>; ABC (2017). “Former Manus Island detainees paid \$70 million in compensation”, *SBS News*, <https://www.sbs.com.au/news/former-manus-island-detainees-paid-70-million-in-compensation>, viewed 24th September 2018.

¹⁹ UNHCR (2018). *Factsheet on the Protection of Australia’s so-called “Legacy Caseload” of*

Asylum-Seekers, <http://www.unhcr.org/en-my/5ac5790a7.pdf>, viewed 24th September 2018.

²⁰ Department of Home Affairs (2018). *IMA Legacy Caseload: Report on the Processing Status and Outcomes*, <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/ima-legacy-caseload-report-july-2018.pdf>, viewed 24th September 2018.

Engagement with company:

- In early 2018, ACCR and Refugee Advice and Casework Service (RACS) made two meeting requests to Qantas to discuss the potential business risk due to Qantas' involvement in assisting the Australian government with deportations. These were refused.
- Qantas agreed to a meeting with ACCR and RACS in July 2018, which took place in early August 2018. At this meeting:
 - ACCR outlined the business risks in assisting the government with removal services, highlighting the materiality of Qantas' brand to its value. ACCR informed Qantas that shareholder resolution activity was likely if Qantas did not take steps to enhance disclosure of its risk processes.
 - RACS detailed the current legal and policy regime for refugees and asylum seekers in Australia and in offshore detention, noting the inadequacy of domestic mechanisms for human rights to be upheld.
- Both ACCR and highlighted global precedents for airlines withdrawing from involuntary deportations in accordance with international human rights law.
- Qantas representatives stated that they were unable to provide a decision at the meeting but asked RACS and ACCR to provide a more detailed, written legal briefing, suggested text for a public commitment and resolution text. These were provided to Qantas shortly after the meeting. Qantas did not provide a substantive response to either information provided in the meeting or the additional information provided subsequent to this meeting.

Response to statement of Qantas board

Qantas board statement	ACCR Response
Detail of Qantas human rights commitments	Making commitments on paper is different to the delivery of those commitments in a company's operations.
<i>"the Government and courts are best placed to make decisions on the legal immigration status of individuals seeking to remain in Australia."</i>	As per the RACS legal briefing attached, the Department cannot be seen as a competent authority against legal standards on the human rights of asylum seekers. In addition, the rights of asylum seekers to access the Australian judicial system are severely constrained by the operation of the Migration Act's privative clause at s474.
<i>"Where individuals have been the subject of an application to remain in Australia that has been denied, it is not the role of airlines or private enterprise to further adjudicate on these proceedings, particularly as information used in determination processes is not publicly available."</i>	As per the RACS legal briefing and above, <ul style="list-style-type: none"> - many of these people have not had access to a sufficient process; and - screening out contracts that pose business risk to Qantas does not in any way re-adjudicate proceedings. To suggest that it does is misguided or disingenuous.
<i>To do so would undermine the Australian Government, the judicial system and their processes. This view is supported by the United Nations Guiding Principles on Business and Human Rights, which outlines that 'business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes'.</i>	This is ill-conceived and takes an interpretation of the UNGPs that is unsupported by relevant authorities. The Australian judicial system is one of the most robust in the world and is not under threat by any business decision Qantas may take in this regard. On deportation routes that no Australian commercial airline services (such as to Colombo, Sri Lanka) the Department charters flights or uses air force planes.

Media reporting

- Airlines under pressure over deportations, *SBS News*, 9th August 2018
- Airlines under pressure over deportations, *The Daily Telegraph*, 9th August 2018
- Airlines under pressure over deportations, *The Courier-Mail*, 9th August 2018
- Airlines under pressure over deportations, *The Advertiser*, 9th August 2018
- Airlines under pressure over deportations, *The Mercury*, 9th August 2018
- Airlines under pressure over deportations, *Geelong Advertiser*, 9th August 2018
- Airlines under pressure over deportations, *News.com.au*, 9th August 2018
- Airlines under pressure over deportations, *Gold Coast Bulletin*, 9th August 2018
- Activists want Qantas to stop transporting asylum seekers and refugees, *Stuff NZ*, 9th August 2018
- Qantas, Virgin Pose 'Extraordinary' Risk To Brand By Deporting Refugees: Rights Groups, *Ten Daily*, 9th August 2018
- Airlines under pressure over deportations, *Weekly Times Now*, 9th August 2018
- Qantas, Virgin targeted over role in refugee repatriation, *Sydney Morning Herald*, 9th August 2018
- Qantas and Virgin pressured to refuse to take part in removal of asylum seekers, *The Guardian*, 9th August 2018
- Airlines in Australia face increasing pressure over refugees, *Mashable*, 9th August 2018
- Australian airlines under pressure not to comply with deportation orders, *ABC RN*, 9th August 2018
- Airlines under pressure over deportations, *The West Australian*, 9th August 2018
- Airlines under pressure over deportations, *The Australian*, 9th August 2018
- Pressure mounts on airlines to stop deportations, *BTN News*,

- [Protestors Want Qantas and Virgin Airlines To Stop Deporting Asylum Seekers](#), *Vice*, 9th August 2018
- [Qantas and Virgin pressured to refuse to take part in removal of asylum seekers](#), *Exec Review*, 9th August 2018
- [Qantas and Virgin pressured to refuse to take part in removal of asylum seekers](#), *Yahoo! Singapore Finance*, 9th August 2018
- [Qantas and Virgin pressured to refuse to take part in removal of asylum seekers](#), *Yahoo Finance UK*, 9th August 2018
- [Can activists really push Qantas and Virgin into standing against the government?](#), *Crikey*, 9th August 2018
- [Aussie airlines face criticism over role in refugee deportation](#), *Travel Weekly*, 10th August 2018
- [Stopping deportations by blocking flights](#), *The Nation*, 21st August 2018
- [Aussie rock royalty slams Qantas' refugee deal as "publicly toxic"](#), *Ten Daily*, 21st August 2018
- [Arts stars join deportation push](#), *Yahoo! New Zealand*, 16th August 2018
- [Lainie Anderson: Preventing au pair's deportation shows the immigration system's a joke](#), *The Advertiser*, 1st September 2018
- [Sri Lankan asylum seekers forcibly deported from Australia despite torture risk](#), *The Guardian*, 11th September 2018
- [Rapper MIA urges Australian airlines to refuse forced deportations](#), *The Guardian*, 22nd September 2018