FEDERAL CIRCUIT COURT OF AUSTRALIA

AUSTRALIAN LICENCED AIRCRAFT ENGINEERS ASSOCIATION v QANTAS AIRWAYS LIMITED *[2013] FCCA 592*

Catchwords: INDUSTRIAL – Workplace determination – interpretation of *Licenced Aircraft Engineers (Qantas Airways) Limited (Workplace Determination) 2012* – where workplace determination included a 'job security clause' and a consultation clause – where applicant introduced a new maintenance procedure called Maintenance on Demand (MoD) – where MoD resulted in fewer checks being performed by line maintenance engineers (LAMEs) on certain aircraft but not in the removal of those checks – where introduction of MoD resulted in 30 redundancies in June 2012 – whether redundancies announced in November 2012 related to introduction of MoD – where 'job security' clause first appeared in an Enterprise Bargaining agreement between the parties – whether checks carried out by LAMEs constituted maintenance functions for the purpose of the 'job security' clause – whether introduction of MoD removed functions of LAMEs – whether 'job security' clause prevented the introduction of MoD – whether applicant breached "job security" clause of workplace determination – whether applicant required to consult with respondent about decision to implement MoD – where applicant required to consult with respondent about the effect on employees of introduction of MoD and measures to avert or mitigate the adverse effects of such a change – where consultations did take place but broke down – where focus of consultations was the presentation of the MoD system and the expression of interest process for voluntary redundancies – whether number of redundancies determined prior to consultations – whether proposed redundancies subject to consultation – whether respondent otherwise failed to consult about effects of the change – whether respondent failed to consult in regard to redundancies announced in November 2012 – where information requested by applicant for the purpose of consultations – whether information requested constituted relevant information for the purpose of the consultation clause – whether requested information provided or not – whether respondent breached consultation clause – whether respondent's actions constituted breach of s.280 of the *Fair Work Act 2009* (Cth).

Legislation:
Fair Work Act 2009 (Cth), ss.280, 418, 424, 545(2)

Cases cited:
Application by Minister for Tertiary Education, Skills, Jobs and Workplace

Relations [2011] FWAFB 7444
AFMEPKIU v Qantas Airways Limited [2001] FCA 547
CEEEIPP and Allied Services Union of Australia v QR Limited [2010] FCA 591
Seaman v First Mildura Irrigation Trust (1994) 55 IR 360

Applicant:	AUSTRALIAN LICENCED AIRCRAFT ENGINEERS ASSOCIATION
Respondent:	QANTAS AIRWAYS LIMITED
File Number:	SYG 1477 of 2012
Judgment of:	Judge Raphael
Hearing date:	4, 5, 6, 7, 8 March 2013 5 April 2013
Date of Last Submission:	5 April 2013
Delivered at:	Sydney
Delivered on:	24 June 2013

REPRESENTATION

Counsel for the Applicant:	Mr A Moses SC, Mr D Mahendra
Solicitors for the Applicant:	Australian Licensed Aircraft Engineers Association
Counsel for the Respondent:	Mr F Parry SC, Mr S Meehan
Solicitors for the Respondent:	Ashurst Australia

ORDERS

The Court Declares:

(1) That in failing to consult with the applicant upon its decision contained in a letter from Susan Bussell dated 16 February 2012 to make approximately 30 LAME positions redundant, the respondent was in breach of Cl. 47.2 of the Licensed Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012. The Respondent is thus in breach of s.280 of the *Fair Work Act 2009* (Cth).

(2) That in failing to provide the applicant with information concerning details of leave (leave availability) in each line maintenance cost centre the respondent was in breach of Cl. 47.2.3 of the Licensed Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012. The Respondent is thus in breach of s.280 of the *Fair Work Act 2009* (Cth).

The Court Orders:

(1) Otherwise proceedings be dismissed.

(2) Parties to bring in Short Minutes of Order for interlocutory steps relating to the hearing on penalty including providing an agreed hearing date between 13 and 15 August 2013 inclusive.

FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT SYDNEY

SYG 1477 of 2012

AUSTRALIAN LICENCED AIRCRAFT ENGINEERS ASSOCIATION
Applicant

And

QANTAS AIRWAYS LIMITED
Respondent

REASONS FOR JUDGMENT

Introduction

2. This proceeding brought in the Fair Work jurisdiction of this court has two streams. The first requires the court's interpretation of clause 11 of the *Licenced Aircraft Engineers (Qantas Airways) Limited (Workplace Determination) 2012*[1] which clause has been referred to throughout the proceeding as the "job security clause". The second stream requires the court to determine whether or not the respondent contravened clause 47.2 of the WD when it allegedly declined to provide relevant information requested by the applicant and failed to genuinely consult with the applicant in relation to the implementation of a work system known as Maintenance on Demand.[2]

[1] "WD"
[2] "MoD"

3. The applicants are seeking from the court relief by way of final injunctions pursuant to s.545(2) of the *Fair Work Act* (Cth)[3] and penalties as follows:

> "1. An order granting a final injunction pursuant to section 545(2) of the Act to stop the contravention by the Respondent of clause 11 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012*.
>
> 2. An order granting a final junction pursuant to section 545(2) of the Act to stop the effects of contravention by the Respondent of clause 11 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012*.
>
> 3. An order granting a final injunction pursuant to section 545(2) of the Act requiring the Respondent to provide all relevant information about the implementation of the MoD system as sought by the Applicant in correspondence referred to in paragraphs 24, 24 and 28 of the Amended Statement of Claim filed on 4 January 2013 in accordance with the Respondent's obligations in clause 47.2 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012*.
>
> 4. An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against the Respondent for its contravention of clause 11 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012* in or around February 2012.
>
> 5. An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against he Respondent for its contravention of clause 11 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012 in or around November 2012.*
>
> 6. An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against the Respondent for its contravention of clause 47.2 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012 in or around February to June 2012.*
>
> 7. An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against the Respondent for its contravention of clause 47.2 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012 in or around November 2012.*
>
> 8. An order that the pecuniary penalties in orders 4, 5, 6 and 7 be paid to the applicant in accordance with section 546(3)(b) of the Act."

4. The primary effect of the introduction of MoD was to make approximately thirty positions for the engineers represented by the

[3] "The Act"

applicants redundant. These licensed engineers are known in the aircraft industry as "LAMEs". Whilst it is accepted that none of the thirty positions which were lost required compulsory redundancy, it is said that there would be a flow-on effect in other areas of Qantas' operation manned by LAMEs that will experience rationalisation in the future. In particular it is said that the closure of the heavy maintenance facility in Avalon led to forced redundancies which could have been alleviated had the line maintenance positions claimed to be no longer required after the introduction of MoD still existed. The flaw in this argument is that if MoD had not been introduced 28 of the 30 positions would have remained filled.

5. The applicant claims that on a proper construction of the job security clause, Qantas' action in introducing MoD was a breach of its obligations under that clause. Qantas argues that the introduction of MoD did not breach the clause and it was permitted under the WD to put it into effect with the consequential reduction of workforce numbers.

6. The second stream of claims arose out of the consultation between Qantas and the ALAEA over the implementation of MoD. The applicant claims that Qantas was obliged under the WD and other procedures by which it was bound, in particular the Qantas Engineering Procedures Manual, to provide information to the ALAEA, that it requested such information and that such information was not forthcoming. The applicants also claim that the consultation that did occur was not the type of consultation envisaged by clause 47.2 of the WD because it did not provide the ALAEA with an opportunity to consult about the implementation of MoD including whether it should be implemented and/or how it should be implemented. The ALAEA argues that the information requested was relevant and necessary for proper consultation to occur.

7. In response to these claims the Court proposes to proceed under the following headings:

   (1) The evidence relating to the job security clause.

   (2) The interpretation of the job security clause and findings on alleged breach.

(3) The evidence relating to consultation and requests for information.

(4) Findings on alleged breaches of clause 47.2 of the WD.

(5) Conclusion and relief

8. However, before commencing with these topics it is well to say something about the work practice known as MoD. Prior to implementation of MoD, which commenced on 13 June 2012, all aircraft in the Qantas fleet received what is known as a "Check 1 procedure" carried out by LAMEs whenever an aircraft landed in a port. Under the MoD procedures imposed by Qantas two types of newer aircraft, the Boeing 738 and the Airbus A330, were not required to undergo a Check 1 at each transit. Instead the Check 1s would be limited to the first flight of the day and flights known as ETOPS, which are flights where an aircraft will be at some point in excess of one hour's flying time on one engine from the nearest appropriate airport. Whilst ETOPS are more limited for domestic flying they are present in 100% of flights overseas where two-engined aircraft are used. There were a number of stated rationales for the introduction of MoD which will be discussed in more detail later in these reasons. It was accepted by both parties that the ability to conduct MoD arose from improvements to aircraft which no longer required the high level of line maintenance that was required some decades ago. The evidence is that the ability to conduct MoD for these two types of aircraft has existed for some time and is conducted by other airlines. It is not suggested that this is a novel improvement that has only recently been incorporated into aircraft manufacture. It follows from the introduction of MoD that there will be less work for LAMEs to do if no Check 1s are required at every transit for B738 and A330 aircraft.

Evidence relating to the job security clause

9. The job security clause first appeared in workplace agreements between Qantas and the ALAEA in an Enterprise Bargaining Agreement known as "EBA IV" [1998 – 2001].

10. Mr Farnham, who was the Industrial Relations Manager of the ALAEA from 1981 to 2003, swore two affidavits in these proceedings. He told

that he was involved in negotiating EBA IV. Mr Farnham had the overall carriage of the negotiations for EBA IV on behalf of the ALAEA with Mr Melhuish, the then Federal Secretary, and was assisted by other industrial officers and delegates. The negotiators for Qantas included Peter March, Dennis Ratcliffe and Peter Roughy as well as Bruce Deahm, the General Manager of Line Maintenance.

11. Mr Farnham told that Qantas had proposed new procedures for line maintenance in a package to be called "The Workchange Project". He explained that this was a series of measures altering how specific engineering and maintenance functions involved in the receipt and dispatch of aircraft undertaking domestic flights were being carried out. He explained that the changes related to tarmac procedures for the receipt and dispatch of these aircraft including standard checks, wing walks, refuelling and walk-around checks. Previously, this work had involved the employment of two LAMEs and the effect of the proposals was the work which remained to be done by LAMEs would be done by only one. This caused concern about job security and the proposal was referred to the Australian Industrial Relations Commission[4] where it was delegated to Commissioner Wilks. The ALAEA organised a series of inspections of aircraft handling procedures, both within Australia and in the United States. Mr Farnham deposed that throughout late 1997 and early 1998 it became apparent that the effects of the work change project on the engineering and maintenance functions of employees to be covered by EBA IV were not going to be finalised prior to the expiration of EBA III. On 22 December 1997 Mr Farnham wrote to Mr Deahm making certain proposals that the ALAEA was prepared to accept subject to endorsement by its members but then stated:

> "As previously enunciated the Association will not agree to:
>
> Permanent nightshift for LAMEs
>
> Roster changes without agreement
>
> Forced redundancies
>
> …

[4] "AIRC"

It was further proposed that if agreement is arrived at any proposed trial should involve all major ports and all aircraft types and the efficiency saving resulting from the work practice changes should be sufficient to constitute EBA IV."

12. Mr Farnham gave evidence that Mr Deahm told him that he had spoken to Qantas IR and that he could assure Mr Farnham that there would be no forced redundancies as a result of work changes going through the AIRC. Commissioner Wilks ordered a trial of the work change procedures. The ALAEA wanted to have an agreement on job security before other issues such as profitability et cetera were discussed. The ALAEA gave a draft job security clause to Qantas for its consideration for insertion in EBA IV. Qantas responded with a clause of its own and, eventually, a clause agreed for insertion. The insertion of the clause at Clause 8 of Part B of the EBA, being the Enterprise Bargaining Provisions, comes immediately after Clause 7. Both clauses are reproduced below:

7. Workchange Project

a) The parties have agreed to accept the recommendation of the Australian Industrial Relations Commission of 10 March 1998 to implement a trial of the Domestic Line Maintenance Workchange Project in accordance with the terms of Commissioner Wilks' recommendation. Following the completion of the trial, the parties shall seek to reach final agreement on introduction of the workchanges. Where agreement cannot be reached between Qantas, the ALAEA and affected ALAEA members on any matter associated with the Project, the parties agree that Commissioner Wilks shall determine any outstanding matters and the AIRC's decision shall be accepted by all parties.

b) The parties agree that finalisation of the Line Maintenance Workchange Project, when taken in conjunction with previous initiatives and agreements reached by the ALAEA in respect to Heavy Maintenance, shall enhance the job security of employees covered by this Agreement.

8. Job Security

The parties to this Agreement recognise that the major factor influencing job security for Qantas employees are forces external to Qantas.

The parties therefore recognise that some factors which affect the Company's business performance are beyond the control of Qantas or are factors over which Qantas has little control. Subject to these factors, Qantas commits to retain the existing engineering and maintenance functions of employees covered by this Agreement.

> For its part, Qantas shall seek to remain competitive and seek to ensure that job security for employees covered by this Agreement shall be maintained for the duration of the Agreement, and the ALAEA in turn commits to continue to cooperate on issues which improve the Company's productivity, efficiency and overall profitability."

13. Mr Farnham, who was present at the negotiations when Clause 7 was agreed and accepted, said under cross-examination that work change involved new work practices to improve the productivity of line maintenance activities. He agreed that the four parts of EBA IV should be read together in accordance with Clause 3(c) and that there was a specific section, Part D, dealing with redundancies. In regard to Clause 7 Mr Farnham stated that parties envisaged that it might not be possible to reach final agreement on the work change proposals and that if there was no agreement the matter would be arbitrated by Commissioner Wilks. In response to questioning from the respondent, Mr Farnham said that he did not think that the agreement enhanced job security of employees but those were the words that Qantas wanted in the agreement and so in the spirit of trying to conclude the EBA they were accepted by the ALAEA. So far as he was concerned, the most important thing was that there should be no redundancies during the life of the agreement as a result of the work-change project. But in his mind job security was a free standing concern and did not arise solely out of the work-change project.

14. Mr Farnham was questioned on the inclusion of the redundancy part of the agreement. His evidence was that this was a long standing part of the arrangements between Qantas and the ALAEA and was merely copied over from EBA III into EBA IV. There was a requirement for a redundancy clause because even though it was not expected that there would be any forced redundancies there may well be voluntary redundancies and the provisions applied to them as well. Mr Farnham told that he believed Clause 8 stated that job security for employees would be maintained for the duration of the agreement and that there would be no forced redundancies. It seems to me that Mr Farnham's evidence is particular to the negotiations for the clause in the context of EBA IV and the introduction of the work-change project. He accepted the assurance of Mr Deahm that there would be no forced redundancies resulting from that project which would seem to limit Qantas' ability to make redundancies utilising the second paragraph of Clause 8. There

were no forced redundancies during the lifetime of EBA IV as a result of the work-change project. What this tells us about the meaning of the clause some fifteen years later is a different question. EBA IV and the work-change project were endorsed by Qantas LAMEs by a margin of 77.4 to 22.6% in a vote cast by 75% of the total LAME workforce.

15. The job security clause has remained in EBAs between the applicant and the respondent since EBA IV with no major amendments. It was contained in EBA V, EBA VI and EBA VII.

16. Mr Ratcliffe, who was the industrial relations manager of Qantas from 1995 to 1999, gave evidence of the process by which the job security clause came to be inserted into EBA IV from Qantas' position. The exhibits to his affidavit show that the first draft of the clause produced by the ALAEA was very close to final version although it did not contain the preamble. The Qantas proposal was in different form:

> **"Job Security**
>
> **Draft Clause**
>
> The parties to this agreement recognise that the major threat to job security for Qantas employees comes from forces external to Qantas.
>
> The parties recognise that fierce competition, increasing deregulation and falling yields are issues over which Qantas has little control.
>
> To improve job security the parties commit to cooperate on those issues over which they have influence to:
>
> - Improve efficiency;
> - Increase profitability; and
> - Participate in an on-going process to contain costs within Qantas.
>
> Within those areas where it exercises influence the ALAEA commits to positively cooperating with Qantas Management to achieve these objectives.
>
> Subject to externally forced requirements for change, in return Qantas Management insofar as it exercises influence commits for the term of this agreement to retaining the existing Engineering & Maintenance functions of ALAEA members within Qantas where the parties continue to act within the spirit of this commitment."

It will be seen that the final clause is much closer to that produced by the ALAEA originally.

17. Mr Ratcliffe noted that at the same time that Qantas was negotiating EBA IV with the ALAEA it was also negotiating the *ACTU/SBU (Qantas Airways Limited) Enterprise Agreement* IV with the ACTU and various unions and that the negotiators for the unions, in particular the AMWU had made a claim for a job security clause. Mr Ratcliffe stated that in relation to these job security clauses he intended to give Qantas as much flexibility as possible to make changes to its business in the future (at [22] of his affidavit) and certainly the draft produced by Qantas would have gone much further towards that end than the one eventually agreed. Interestingly, the ACTU/SBU EBA IV is in identical terms to the ALAEA EBA IV save that the word "function" replaces the word "functions" in the second paragraph. This may have been a clerical error or there may be good reasons for it given that it covered employees of many different types. No evidence was addressed to this difference in the two clauses. Whilst it was Mr Farnham's evidence that the reason for the insertion of the job security clause in the ALAEA agreement was the forthcoming introduction of the work-change project, Mr Ratcliffe disputes this and suggests that the instigating factor was the fear in the mind of the ALAEA that Qantas might commence to outsource its engineering operations. He believed that this was the concern of the ACTU/SBU unions with whom he was negotiating. In this regard I prefer the evidence of Mr Farnham because his recollection is clear that it was the workchange project. Furthermore, the juxtaposition of clauses 7 and 8 of EBA IV tends to support that view. I am prepared to accept Mr Ratcliffe's evidence that it was outsourcing that influenced the ACTU and its negotiators to include the clause in their agreement but that is not the agreement with which this court is dealing.

18. Mr Purvinas, the Federal Secretary of the ALAEA, gave evidence that when negotiations began for a new enterprise agreement in August 2010 the union had obtained feedback from its members that indicated that future job security was a very high priority for them. Members were kept advised of the progress of negotiations by written notices. One was issued on 16 February 2011 that states relevantly:

> "The main focus of the recent discussions have focussed on two areas. The first issue is that of Job Security, which is number one on our agenda, and includes retention of existing job functions and opportunities to maintain newer aircraft types."

19. Mr Purvinas' evidence continued with references to the Qantas' attitude to job security that he witnessed during negotiations at Fair Work Australia. He makes reference to statements by Ms Sue Bussell, the Qantas Executive Manager of Industrial Relations, and Mr Ian Oldmeadow, an Industrial Relations Consultant to Qantas to the effect that the job security clause was problematic and contentious and one upon which Qantas sought "closure". Mr Oldmeadow directly associated the job security clause with maintenance on demand. On 23 March 2011 Mr Purvinas issued another notice to members which said relevantly under the heading "Job Security":

> "Without doubt this is our number one priority."

And under the heading "Line Maintenance" he stated:

> "In the current agreement we have a clause to retain our existing job functions. We are seeking that clause be enhanced by describing the functions the clause refers to. In particular we want listed matters relating to aircraft handling and the carrying out of pre-flight safety checks. When presented with this claim Qantas explained that they wanted to "keep the options open" and went on to explain the benefits of exploring opportunities such as a LAME on demand system they are developing. In our view LAME on demand sounds like a system to make LAMEs redundant so the airline can be converted to a low cost model." [5]

20. In 8 August 2011 another notice was sent which dealt with maintenance on demand. The notice stated relevantly:

> "The ALAEA has rejected these changes and advised the airline that we think them to be unsafe. We have highlighted to them that an existing clause in our current Agreement titled *"Job Security"* says in part - *"Qantas commits to retain the existing engineering and maintenance functions of employees covered by this Agreement"*.

Qantas claimed that the clause doesn't really mean that.

21. It is notorious that when negotiations for a new enterprise agreement became mired, the unions took protected industrial action. On 31 October 2011 Qantas locked out its employees in an employer response industrial action. The result was that the bargaining period between the

[5] "p5 of SP3 Affidavit of

applicant and the respondent was terminated pursuant to s.424 of the Act in the proceedings known as *Application by Minister for Tertiary Education, Skills, Jobs and Workplace Relations* [2011] FWAFB 7444.

22. From 1 to 21 November 2011 the parties entered into a post industrial action negotiating period of 21 days. The negotiations were intense, Mr Purvinas deposes that:

> "[17] On or about 20 November 2011, I, in an attempt to reach agreement during the post-industrial action negotiating period, indicated that the Applicant's claims for further commitments on job security would not be pressed. The 20th of November 2011 was the penultimate day on which negotiations could occur before the matter proceeded to arbitration before Fair Work Australia.
>
> [18] On or about 21 November 2011, the final day on which negotiations could occur before the matter went to arbitration, representatives of the Respondent indicated that the Respondent was not prepared to retain the then-current job security clause in the agreement. Representatives of the Applicant, including myself, protested the Respondent adopting such a stance. After further discussions, it was agreed by Mr Oldmeadow and Ms Bussell of Respondent that the then-current job security clause would be retained in the new agreement.
>
> [19] This was the first time, to my knowledge, in over a year of negotiations that the Respondent had fully committed to the retention of the then-current job security clause.
>
> [20] I considered that the Respondent's commitment to retain the job security clause protected the existing job functions of employees who would be covered by the Workplace Determination.
>
> [21] I understood this to be a compromise. I understood that the Respondent had agreed to preserve the existing functions of the employees who would be covered by the Workplace Determination in return for the Applicant withdrawing claims for additional commitments relating to job security."

23. Mr Purvinas issued a notice on 25 November 2011 to members which stated relevantly:

> "With regards to Job Security it has been agreed that the current Job Security clause 11 will remain unchanged. That is the retention of existing job functions subject to factors within the airlines [sic] control."

24. Whilst clause 11 was included in the determination it was followed immediately by clause 12 which is in the following form:

"12 Productivity Agreement

Employees covered by this Workplace Determination and their representatives, including union representatives, commit to cooperate with Qantas regarding new processes and work practices in order to improve the efficiency and productivity of the LAME workforce."

25. The court has received no evidence that indicates that Qantas and the ALAEA had a mutual understanding of the meaning and extent of the job security clause. I infer from the evidence that Qantas was aware of the very restrictive meaning that the ALAEA sought to put upon it and did not like it. On the other hand they may have been comforted by the fact that the union withdrew their demand for a clause which spelt out in specific terms the functions of the LAMEs and they would have had in mind the decision that North J gave in *AFMEPKIU v Qantas Airways Limited* [2001] FCA 547 when in respect of the job security clause in that union's agreement which was in identical terms to the one being considered, his Honour said:

"[63] This latter issue is a question of construction which raised issues similar to those which have been addressed in respect of clause 15 of EBA III. The applicants emphasised that the commitment of Qantas was to retain the existing engineering and maintenance functions. That is to say, the promise was not limited to the retention of existing jobs. Qantas on the other hand pointed to the fact that the clause is headed "Job Security" and that subject matter was mentioned several times throughout the clause. Further, the functions which were to be retained were expressed as "functions of employees". This form of expression suggested that the clause was concerned not with engineering and maintenance functions as such, but those functions as performed by existing Qantas employees.

[64] As with the protocol to clause 15 in EBA III, the text of clause 3 is capable of bearing each of the meanings contended for by the parties. The extrinsic evidence adduced in relation to the construction of EBA III was also relied upon in relation to EBA IV. As concluded in pars 54-56 of these reasons, that evidence failed to establish the objective intentions of the parties, and is thus also of little assistance in understanding the scope of clause 3 of EBA IV.

CONCLUSION

[65] It follows from the foregoing analysis that each of the clauses relied upon by the applicants is ambiguous. There are cogent arguments in favour of the constructions proposed by each of the parties.

[66] In this proceeding, the applicants bear the onus of showing that the construction for which they contend is correct. They have failed to establish that either of clause 15 of EBA III or clause 3 of EBA IV has a "plain meaning" which conforms to the interpretation they advance. Rather, the language and structure of both clauses is ambiguous and susceptible of multiple interpretations. In order to resolve the ambiguity, the parties have adduced evidence of background facts. However, the evidence of background facts does not resolve the inherent ambiguity of clause 15 of EBA III or clause 3 of EBA IV. It does not, on the balance of probabilities, establish as a matter of fact that the parties to EBA III or EBA IV intended the relevant clauses to operate in the way contended for by the applicants. It follows that the application must be dismissed."

26. As I am satisfied that there was no mutual understanding as to the meaning of the clause it is for the court, using the principles of interpretation of contracts as they apply in the industrial sphere, to provide one or to indicate, as North J did, that this cannot be done.

The Interpretation of the Job Security Clause and Findings on Alleged Breach

27. The parties to this workplace determination are both sophisticated players in the industrial arena. They have regularly been involved in industrial disputes and so it is not surprising that there was a large measure of agreement as to the correct approach to the construction of a provision of a workplace agreement. The applicant's articulation is short and is found at [58 – 64] of its outline of submissions:

"[58] The principles of agreement construction on which the applicant relies are well established in authorities such as *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* and applied in the context of industrial instruments in authorities such as in *Amcor Limited v Construction, Forestry, Mining and Energy Union*.

[59] The following relevant principles will be relied on by the Applicant.

[60] The clause is to be interpreted so as to give effect to its plain and ordinary meaning in the industrial context and construed having regard to the subject matter and text of the instrument as a whole: *Amcor, Construction, Forestry, Mining and Energy Union v John Holland Pty Ltd*.

[61] Narrow or pedantic approaches to interpretation are misplaced, the search is for the meaning intended by the framer(s) of the document: *Kucks v CSR Ltd*.

[62] The history of a provision, specifically the time when it was made and circumstances at the time supply the best and surest mode of interpreting a provision: *Andrew John Short v FW Hercus Pty Ltd*.

[63] If the clause is ambiguous or susceptible to more than one meaning extrinsic evidence is admissible to resolve the ambiguity: *Codelfa* at 352. There have also been judgments holding that ambiguity is no longer a pre-condition to the admission of extrinsic evidence as background to an agreement.

[64] Such evidence is confined to matters known to both parties at the time of making the industrial instrument: *AFMEPKIU & Ors v Qantas Airways Ltd* and may include facts such as antecedent negotiations and conduct, previous drafts and correspondence between the parties: *Moshirian v University of New South Wales.*"

28. The respondent is more expansive in its quotation from the relevant cases but these quotations are helpful in understanding the approach the court proposes to take:

"[22] The Determination, although an instrument made by Fair Work Australia pursuant to its powers under s.266 of the *Fair Work Act* 2009, adopts the provisions advanced by the parties as reflecting the agreement they had reached. Accordingly, for the purpose of interpreting the Determination, principles of interpretation relevant to certified agreements and awards are apposite. […]

[23] The correct approach to the construction of a provision of a certified agreement requires consideration of the language of the particular instrument understood in the light of the industrial context and purpose of the instrument, and the legislative background against which the agreement was made; see *Amcor Limited v Construction, Forestry, Mining and Energy Union* [2005] HCA 10; (2005) 222 CLR 241; (2005) 214 ALR 56; (2005) 79 ALJR 703; *Shop Distributive and Allied Employees' Association v Woolworths SA Pty Ltd* [2011] FCAFC 67; *Kucks v CSR Ltd* (1996) 66 IR 182.

[24] Provisions of agreements should be read and interpreted in accordance with their context, and it is permissible to have regard to the history of relevant provisions to ascertain the true and intended meaning. Context may appear form the text of the agreement taken as a whole, its arrangement and the place in it of the provision under construction. It is not confined to the words of the relevant agreement surrounding the expression to be construed. It may extend to *'… the entire document of which it is a part or to other documents with which there is an association'*. It may also include *'…ideas that gave rise to an expression in a document from which it has been taken' – Short v FW Hercus Pty Ltd* (1993) 40 FCR 511 at 518 per Burchett J; *Australian Municipal, Clerical and Services Union v Treasurer of the Commonwealth of Australia* (1998) 80 IR 345 per Marshall J.

[25] In *Short v F W Hercus Pty Ltd* (supra) Burchett J said at 517 – 518:

> *"No one doubts you must read any expression in its context. And if, for example, an expression was first created by a particularly respected draftsman for the purpose of stating the substance of a suggested term of an award, was then adopted in a number of subsequent clauses of awards dealing with the same general subject, and finally was adopted as a clause dealing with that same general subject in the award to be construed, the circumstances of the origin and use of the clause are plainly relevant to an understanding of what is likely to have been intended by its use. It is in those circumstances that the author of the award has inserted this particular clause into it, and they may fairly be regarded as having shaped his decision to do so.*
>
> *The context of an expression may thus be much more than the words that are its immediate neighbours. Context may extend to the entire document of which it is a part, or to other documents with which there is an association. Context may also include, in some cases, ideas that gave rise to an expression in a document from which it has been taken. When the expression was transplanted, it may have brought with it some of the soil in which it once grew, retaining a special strength and colour in its new environment. There is no inherent necessity to read it as uprooted and stripped of every trace of its former significance, standing bare in alien ground. True, sometimes it does stand as if alone. But that should not be just assumed, in the case of an expression with a known source, without looking at its creation, understanding its original meaning, and then seeing how it is now used. Very frequently, perhaps most often, the immediate context is the clearest guide, but the court should not deny itself all other guidance in those cases where it can be seen that more is needed."*

[26] In *Moshirian v University of New South Wales* [2002] FCA 179 Moore J stated at [26]:

> *"The historical use and purpose of a particular clause, particularly one which has arisen from past debate and adjudication, is a matter which may well fall within the actual knowledge of both parties or be sufficiently notorious such that it becomes a pertinent guide to the presumed intentions of the parties who have elected to include the clause in a new award or agreement."*

[27] In *Kucks v CSR Ltd* (1996) 66 IR 182 at 184 Madgwick J stated:

> *"It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more*

> *concerned with expressing an intention in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon. Thus, for example, it is justifiable to read the award to give effect to its evident purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. And meanings which avoid inconvenience or injustice may reasonably be strained for."*

[28] The above passage in *Kucks* was expressly approved by Kirby and Callinan JJ in *Amcor v CFMEU* (2005) 222 CLR 241 at 271 and 282-283. In *Amcor*, Callinan J also stated at 283:

> *"It is important to keep in mind therefore the desirability of a construction, if it is reasonably available, that will operate fairly towards both parties."*

…

[31] In *Van Effern v CMA Corporation Limited* [2009] FCA 597 Tracey J stated at [37]:

> *"Guidance as to the construction of industrial instruments may also be obtained by reference to principles which courts apply to the construction of commercial contracts.*

[32] There is a general rule applicable to the construction of contracts that a court will apply a presumption that the parties did not intend its terms to operate unreasonably, see, for example, *L Schuler AG v. Wickman Machine Tool Sales Ltd* [1974] AC 235, *Australian Casualty Co Ltd v. Federico* (1986) 160 CLR 513 at 520, *Petters Hotel Managmeent Pty Ltd v. Hotel Capital Partners Ltd* [2004] NSWCA 114 at [66] per McColl JA.

[33] Therefore, where a particular construction would achieve an unreasonable result, the court will be reluctant to accept that this was intended by the parties, see *TCM Channel 9 Pty Ltd v. Hayden Enterprises Pty Ltd* (1989) 16 NSWLR 130 at 146. The more unreasonable the result a party's construction would produce, the more unlikely it is that the parties would have intended it; see *Peppers Hotel Management v. Hotel Capital Management* (supra) at [69].

[34] If language is open to two constructions, the construction that will be preferred is that which will avoid consequences which appear to be capricious, unreasonable, inconvenient or unjust, even though the construction adopted is not the most obvious or the most grammatically accurate; see *Australian Broadcasting Commission v. Australasian Performing Rights Association Ltd* (1973) 129 CLR 99 at 109-110 per Gibbs J. See also *Amcor v. CFMEU* (supra) at 283 per Callinan J.

> [35] If detailed semantic and syntactical analysis of a written contract leads to a conclusion that flouts business common sense the contract must be made to yield to business commonsense; see Gleeson CJ, Gummow and Haynee JJ in *Maggbury P/L v. Hafele Aust P/L* (2001) 210 CLR 181 at 198, citing Diplock LJ in *Antaios Compania Naviera SA v Salen Rederiena AB* [195] ACT 191 at 201. Commercial contracts should be construed as to be given a sensible commercial operation; see *Australian Broadcasting Commission v. Australasian Performing Rights Assn Ltd* (1973) 129 CLR 99 at 109; *Hyde and Skin Trading Pty Ltd v. Oceanic Meat Traders Ltd* (1990) 20 NSWLR 310 at 313-314; *Vodaphone Pacific Ltd v. Mobile Innovations Ltd* [2004] NSW CA 15 per Giles JA at [64]; *Australasian Meat Industry Employees Union (WA Branch) v Woolworths Limited (2007); [2007] FCAFC 201* at [19]-[21] per Siopis J; *Van Efferen v CMA Corporation Ltd* [2009] FCA 597 at [37]."

29. Utilising the principles expressed above, the court is of the view that the clause is not ambiguous and that it is capable of interpretation. However, notice must be taken of the context in which it appears. When it first appeared in "EBA IV" it was in the context of a proposal to carry out a work-change project. It did not prevent the carrying out of that project and there was direct reference to that project in the preceding clause of the agreement. There is no doubt that if one construes the word "functions" within the clause as relating to the tasks of a LAME those tasks were changed by the work-change project. When the clause came to be inserted into the WD it was not preceded by a clause relating to MoD, but MoD was very much in the air at the time. The clause was succeeded by one that made direct reference to new processes and work practices which I take to be a guarded reference to MoD.

30. The court is of the view that the words *"Qantas commits to retain the existing engineering and maintenance functions of employees covered by this workplace determination"* in the context of the agreement, and the ALAEA's acceptance of the clause in that form and not in its proposed form setting out the tasks of its members, was not a commitment to setting the current work practices and functions of LAMEs in amber. It seems to the court that the words are wide enough, within their context, to allow for the changes proposed by MoD. It is to be remembered that the implementation of MoD in its current form does not actually remove any functions from LAMEs. It cuts down their frequency. Check 1s are still conducted, just not as often. They are still conducted by LAMEs. The clause does not make

any mention of redundancy or maintaining job numbers and one would have expected it to if it were to have the meaning ascribed to it by the ALAEA. Both the ALAEA and Qantas were acutely aware that redundancies are always a possibility in an industry that is subject to the vagaries of the economy, fashion (by which I mean the attractiveness of destinations) and technological change. That is why there are specific clauses in the agreement relating to it.

31. The court should make some further comment upon the clause. "Job Security" cannot be defined as the maintenance of existing numbers and tasks. "Job Security" encompasses the continued employment of an engineering workforce. The clause itself seeks to address that by requiring a commitment from the employees to cooperate on issues in improving productivity and efficiency and overall profitability. It is only in that way that real job security, meaning the continued employment of engineers can be maintained. The court would also note that even if "Job Security" meant no forced redundancies (which it does not believe it does because sometimes even forced redundancies are necessary to maintain an engineering function or capacity) there were no forced redundancies from the implementation of MoD. Thirty positions were declared redundant, two of them were currently unfilled and twenty-eight of them were lost through voluntary redundancy. The ALAEA argued that the loss of those thirty jobs contributed to forced redundancies elsewhere particularly in heavy maintenance in Avalon from where redundant workers could not be transferred to line maintenance because of this loss of jobs. However, if the loss of jobs had not taken place the twenty-eight workers would still be employed and people from Avalon would not be able to transfer into those line maintenance positions.

32. The court should make it clear that the references in clause 11.1 to *"Forces external to Qantas"* or in clause 11.2 *"Factors over which Qantas has little control"* are not matters which have been taken into account in coming to its conclusions. The aircraft in question, whilst being more modern than much of Qantas' fleet, have been utilised for some years. The manufacturer's recommendation concerning line checks is not new. As Qantas admits they have been implemented by most other airlines utilising these aircraft for some time. Qantas' reason for introducing MoD was explained in a press release by Mr

Joyce, the CEO, when presenting the half year results for Qantas on 16 February 2012. He said in regard to line maintenance:

> *"3) Doing line maintenance more efficiently*
>
> The third area of focus is doing daily line maintenance tasks more efficiently.
>
> Last year I spoke about the need for our Qantas aircraft maintenance processes to accord with new technologies and new regulations.
>
> We don't maintain cars the way we used to; nor should we maintain aircraft like we did even ten years ago.
>
> So Qantas Engineering is now proceeding with what is known as Maintenance on Demand for new general aircraft across our line maintenance operations.
>
> We will be consulting on the impact of this decision with the relevant stakeholders.
>
> Maintenance on Demand means that our well qualified engineers will not be conducting aircraft checks that are not required.
>
> This will bring our practice into line with both the manufacturers' guidelines and Civil Aviation Safety Authority regulations.
>
> It will allow our engineers to be assigned to aircraft that require attention."

33. Mr Joyce's comments were taken up by Mr Gavin Harris, the head of line maintenance operations, in an email to executives on 16 February 2012:

> "3. I have made a decision to implement Maintenance on Demand (MoD). This means the removal of transit checks on B738 and A330 aircraft where the maintenance system allows it. This will align our maintenance practices to the CASA (and hence Qantas) approved System of Maintenance and this will also bring Qantas into line with the aircraft manufacturers' design principles. Our competitors use MoD in various forms and we would remain at a competitive disadvantage if we did not embrace the opportunities which new technologies present. This decision relates to MoD only – no decision has been made in relation to R&D at this stage."

These announcements cannot fall within any reasonable definition of factors over which Qantas has little control or external forces.

34. In summary, the court is of the view that the clause is clear in its terms; taken within its context, in particular its juxtaposition to clause 12, it constitutes a commitment by Qantas to retain an engineering and

maintenance capacity within its own organisation. The court does not believe that the clause will permit the closing down of Qantas' engineering and maintenance divisions and their outsourcing to another entity or entities unless this was a matter beyond Qantas' control. In order to allow Qantas to maintain these functions, the employees covered by the agreement must accept work practice changes which improve productivity, efficiency and overall profitability. MoD is one such change. The court is of the view that there has been no breach of the agreement by Qantas in the introduction of MoD and will not grant the relief sought by the applicant in relation thereto.

Alleged breaches of Clause 47.2 of the Workplace Determination

35. On 16 February 2012 Mr Joyce, in his announcement on the half-yearly results, indicated that a decision had been taken to implement MoD. On the same day Mr Harris sent an email confirming that he had made a decision to implement maintenance on demand (as extracted at [32] of these reasons). The email in which this announcement was made continued:

> "We have contacted your union and will be consulting with them about this decision, the impacts of the decision and the processes we will be following to mitigate those impacts."

36. This consultation was required by Clause 47 of the WD which is in the following form:

> "47 **INTRODUCTION OF CHANGE**
>
> 47.1 Qantas' duty to notify
>
> 47.1.1 Where Qantas has made a definite decision to introduce major changes, including changes in minor ports, production, program, organisation, structure or technology that are likely to have significant effects on employees, Qantas shall notify the employee who may be affected by the proposed changes and at the request of the affected employee(s) the Association.
>
> 47.1.2 "Significant Effects" include termination of employment, major changes in the composition, operation or size of Qantas' workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities, or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to

other work or locations and restructuring of jobs. Provided that where this Workplace Determination makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effects.

47.2 Qantas' duty to consult

47.2.1 Qantas shall consult with the employees affected and at the request of the affected employee(s) the Association or other employee representative, inter alia, the introduction of the changes referred to in clause 47.1, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union or other employee representative in relation to the changes.

47.2.2 The consultation shall commence as early as practicable after a firm decision has been made by Qantas to make the changes referred to in clause 47.1.

47.2.3 For the purpose of such consultation, Qantas shall provide to the employee's [sic] concerned and at the request of the affected employee(s) the Association or other employee representative, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that Qantas shall not be required to disclose confidential information the disclosure of which would be inimical to his/her [sic] interests."

37. In the Amended Statement of Claim the applicants plead breaches of Clause 47.2 of the WD in the following way:

"41. Further, the Respondent's conduct and actions as referred to in paragraphs 18 to 33 and 39A above constitute a breach of clause 47.2 of the Workplace Determination in that the respondent has:

a. failed to provide all relevant information about the implementation of the MoD system as requested by the Applicant in the correspondence referred to in paragraphs 23, 24 and 28 above; and

b. failed to genuinely consult with the Applicant as referred to in paragraph 27 above."

38. Paragraphs 18 to 33 and 39A of the Amended Statement of Claim are in the following form:

"[18] On or about 16 February 2012, Mr Joyce announced that the Respondent would proceed with introducing MoD.

Particulars

Transcript of speech by Mr Joyce on 16 February 2012

[19] On or about 16 February 2012, Qantas Engineering staff received an email from Qantas Engineering's Head of Line Maintenance Operations, Mr Gavin Harris. The email stated that the Respondent had made a decision to implement MoD and such changes would involve the removal of transit checks on B738 and A330 aircraft.

Particulars

Email from Mr Harris dated 16 February 2012

[20] On or about 16 February 2012, Ms Sue Bussell, the Respondent's Executive Manager of Industrial Relations, telephoned Mr Stephen Purvinas, Federal Secretary of the Applicant. During the telephone conversation Ms Bussell informed Mr Purvinas that certain changes to the maintenance of aircraft were being made and the Respondent wished to consult with the Applicant about the impact of the changes to Qantas Engineering staff.

[21] On or about 16 February 2012, Ms Bussell wrote to Mr Purvinas stating that the Respondent had made a decision to implement MoD in relation to the Qantas fleet of Airbus 330s and Boeing 737-800s and, as a result of the decision, approximately 30 LAME positions would be made redundant.

[22] On or about 22 February 2012, the Respondent convened a meeting between representatives of the Applicant and the Respondent to begin consultation over the proposed implementation of MoD.

[23] At the meeting of 22 February 2012, at subsequent consultation meetings on 2, 7 and 22 March, and in writing, representatives of the Applicant requested a number of documents to enable the consultation to progress.

Particulars

Correspondence dated 24 February 2012 and 6 March 2012

[24] The documents requested by the Applicants related to adherence to the Qantas Engineering Procedures Manual ('QEPM') chapter 1-00-006 which specifies how change is to be managed within the Respondent's engineering division. The QEPM is part of the Qantas Quality System, which must be adhered to in order to satisfy Qantas' approval under reg 30 of the Civil Aviation Regulations 1988 (Cth). The requirement to comply with the QEPM is also relevant to compliance with the Qantas Airways Maintenance Control Manual

('MCM'). The procedures specified in the MCM have been implemented to satisfy Qantas' regulatory obligation under Civil Aviation Order 82.5 (Cth) for the implementation of a Safety Management System.

Particulars

Chapter 1-00-006 of the QEPM.

[25] On or about 22 March 2012, Ms Bussell sent a letter to Mr Purvinas denying that the Respondent was obliged to provide the documentation sought by the Applicant.

Particulars

Correspondence dated 22 March 2012

[26] On or about 23 March 2012, the Applicant's Assistant Federal Secretary received an email from Mr Gavin Harris of the Respondent attaching a document outlining the proposed amendments to the Respondent's procedures and manuals in preparation for the introduction of MoD.

Particulars

Email from Mr Harris dated 22 March 2012

[27] On or about 8 May 2012, the Applicant wrote to the Respondent asserting a breach of clause 11 of the Workplace Determination due to the implementation of MoD and the failure by the Respondent to genuinely consult over its implementation.

Particulars

Correspondence dated 8 May 2012

[28] On or about 9 May 2012, the Applicant wrote to the Respondent regarding the Respondent's failure to abide by mandatory internal processes of the Respondent in relation to change management with respect to MoD and requested copies of the relevant documents.

Particulars

Correspondence dated 8 May 2012

[29] On or about 21 May 2012, the Applicant received correspondence from the Respondent in response to the Applicant's correspondence of 8 and 9 May 2012.

Particulars

Correspondence dated 21 May 2012 (two letters)

[30] On or about 21 May 2012, the Applicant received correspondence from Ms Bussell of the Respondent stating that the Respondent had concluded a consultative review of Heavy Maintenance operations and that the Respondent would close its Tullamarine Heavy Maintenance facility and also reduce positions at its Avalon Heavy Maintenance facility. In total the correspondence revealed that 552 positions would be made redundant by the Respondent.

Particulars

Correspondence dated 21 May 2012

[31] On or about 22 May 2012, engineering staff of the Respondent received an email from Gavin Harris entitled "Announcement – Maintenance on Demand Cutover Date". The email stated that MoD would begin in the early hours of June 13 2012. The email summarises the changed requirements for performing pre-flight checks after 12 June.

Particulars

Email from Mr Harris dated 22 May 2012

[32] On or about 8 June 2012, the Applicant sent a copy of a draft Application and Statement of Claim to the Respondent asserting that the Respondent's implementation of MoD would constitute a contravention of clause 11 of the Workplace Determination. The Applicant invited the Respondent to desist from the impending contravention of the Workplace Determination.

Particulars

Correspondence dated 8 June 2012

[33] On 13 June 2012, the Respondent implemented the MoD system.

[39A] At the meeting on 13 November 2012, the Applicant's representatives were informed, in relation to the redundant positions in Sydney, that approximately half of these positions would be those of Licenced [sic] Aircraft Maintenance Engineers covered by the Workplace Determination. The Respondent did not consult with the Applicant prior to its decision to make the positions redundant."

39. The applicant divides its claim for pecuniary penalty in respect of the alleged breaches between actions occurring between February to June 2012 and in November 2012.

"[6] An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against the Respondent for its contravention of clause 47.2 of the *Licenced Aircraft Engineering (Qantas Airways Limited) Workplace Determination 2012* in or around February to June 2012.

[7] An order imposing a pecuniary penalty pursuant to section 546(1) of the Act against the Respondent for its contravention of clause 47.2 of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012* in or around November 2012."

40. The division of the allegations and requests for relief in the application is not only temporal but also between what can be described as a general obligation to consult and some specific requests for information which, it is alleged, was not provided. In regard to the general obligation to consult, the applicant states in its closing written submissions:

"[5.9] Despite consultation obligations (pursuant to the Workplace Determination) not arising until the decision had been made to implement MoD, the Respondent was still obliged to provide the Applicant or employees covered by the Workplace Determination a bona fide opportunity to influence the decision maker in relation to the decision to implement MoD and/or how it would be implemented.

[5.10] Once the Respondent had made a decision to introduce a major change, clause 47.1.1 required the Respondent to notify the employees who may be affected by the **proposed** changes (emphasis added). Clause 47 clearly contemplates a situation where although the employer has made a definite decision to implement a change, the employees are provided with an opportunity to influence that decision including whether or not the decision should in fact be implemented (it being a proposed change) and how it should be implemented.

[5.11] The evidence clearly demonstrates that the Respondent made its decision on the implementation and how the implementation would occur (that is, by making 30 positions redundant) and then sought to 'consult' by simply informing the Applicant and its members of the impact of the decision (TR08.03.13 at page 392 line 27 to page 393 line 4). That is not 'genuine consultation'. The Applicant had no opportunity to influence the decision as to whether or not MoD would be implemented and/or how it would be implemented (including whether the implementation of MoD did in fact requite 30 positions to be made redundant). The evidence in these proceedings revealed that discussions with affected Line Maintenance employees would involve "consultation only" (TR07.03.13 at page 342 line 9 to 16) and that briefings directly to LAMES were carried out to for the purpose of "giving everybody an understanding of what their

requirements were under the new model" (TR08.03.13 at page 355 line 11 to 30)."

41. In support of these submissions the ALAEA relies heavily on what fell from Logan J in *CEEEIPP and Allied Services Union of Australia v QR Limited* [2010] FCA 591[6]. At [44] his Honour opined:

> "[44] Such cases have proved influential in the Australian Industrial Relations Commission (industrial commission) for the guidance they offer as to what a requirement to "consult" entails: *Construction, Forestry, Mining and Energy Union v Newcastle Wallsend Coal Company Ltd* (C2758 Dec 1533/98 S Print R0234) (Full Bench); *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Vodafone Network Pty Ltd* (C2001/5770 PR911257) (Cmr Smith); *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Optus Administration Pty Ltd* AW791910 Print L4596) (Cmr Smith). The apprehension in the industrial commission that these cases were of assistance was not, with respect, misplaced. They serve to confirm an impression as to the content of an obligation to "consult" evident from the dictionary meaning of the word. A key element of that content is that the party to be consulted be given notice of the subject upon which that party's views are being sought before any final decision is made or course of action embarked upon. Another is that while the word always carries with it a consequential requirement for the affording of a meaningful opportunity to that party to present those views. What will constitute such an opportunity will vary according the nature and circumstances of the case. In other words, what will amount to "consultation" has about it an inherent flexibility. Finally, a right to be consulted, though a valuable right, is not a right of veto."

and explained those views at [45]:

> "[45] To elaborate further on the ordinary meaning and import of a requirement to "consult" may be to create an impression that it admits of difficulties of interpretation and understanding. It does not. Everything that it carries with it might be summed up in this way. There is a difference between saying to someone who may be affected by a proposed decision or course of action, even, perhaps, with detailed elaboration, "this is what is going to be done" and saying to that person "I'm thinking of doing this; what have you got to say about that ?". Only in the latter case is there "consultation". That this is the sense in which "consultation" is used in the QR Agreements is evident from cl 36.1 of the Traincrew Agreement."

[6] "*Queensland Rail*"

42. But the clause that Logan J was considering was considerably different to that found at clause 47 of the WD. The *Queensland Rail* clause was in the following form:

> "[36] Consultation
>
> 36.1 For the purposes of this agreement, consultation is a process:
>
> - Aimed at getting individuals or groups to suggest or respond to proposals to be implemented without at the same time giving up management rights to make the final decision in these matters. It provides an opportunity to present a point of view or state an objection and
>
> - Involves the timely exchange of relevant information so that the parties have the actual and genuine opportunity to influence the outcome."

43. It is, regrettably, not entirely clear to me the extent to which the applicant is making a claim that in order to comply with the requirements of clause 47.2 any consultation held with Qantas would have to provide the ALAEA with an opportunity to persuade the company that it should not go ahead with the introduction of MoD. To the extent that they are seeking to make this argument it is one that the court must reject based upon the very clear wording of the agreement. This is not the wording that appears in QR, it is unique to the Qantas agreement and it makes it quite clear that no consultation commences until a decision has been made. The consultation that is envisaged by the agreement is on the matters set out in clause 47.2.1 and is essentially consultation in order to avert or mitigate the prejudicial effects of the decision that had already been made. On these subjects the views expressed by Logan J in QR are relevant and apt and it is therefore necessary to turn to the evidence relating to the consultation to assess whether or not it did take place and was genuine consultation.

The evidence relating to consultation and request for information

44. On 16 February 2012 Ms Susan Bussell, the Executive Manager Industrial Relations, wrote to Mr Purvinas concerning the announcements that had been made that day by Mr Joyce. The letter included the following:

- "**Line maintenance operations – Maintenance on Demand**

A decision has been made to implement Maintenance on Demand on Qantas' fleet of Airbus 330s and Boeing 737-800s. No decision has been made in relation to Receipt and Dispatch at this stage. As a result of this decision, approximately 30 LAME positions will become redundant."

The letter continued:

"As discussed with you this morning, we would like to meet with ALAEA representatives as soon as possible in order to establish appropriate consultation arrangements in relation to these decisions, and I will liaise with you or your office to make those arrangements."

Mr Purvinas responded to Ms Bussell in a letter of 24 February 2012. It is necessary to set out this letter in full because it sets the tone for the discussions that then took place and the breakdown in relations between the parties which led to these proceedings:

"**Maintenance on Demand Consultation**

Dear Sue,

On Tuesday this week ALAEA Officials were invited to meet with Qantas Management to discuss changes under a program Qantas has advised us will be implemented called Maintenance on Demand. At that meeting we were formally notified that the removal of LAMEs from certain job functions would lead to 30 redundancies.

I draw your attention to clause 55.2 of the Qantas LAME WD 2012 and the fact that it appears Qantas has announced that retrenchments will occur, including the breakdown of numbers per port, prior to discussing all aspects with the employees nominated Representatives (the ALAEA). In doing so, Qantas appears to be in breach of the Qantas LAME WD 2012 covering our members.

Additionally as stated on Tuesday, Qantas further appears to have advanced beyond step 3D of the Change Management Procedure contained in the Qantas Engineering and Maintenance Procedures Manual. In particular, at this stage Qantas do not have the commitment of the Stakeholders that we represent required by step 3D. I will formally advise you in writing when our commitment is made.

It seems to me that the Qantas LAME WD 2012 and the CASA-approved Change Management Procedure contain similar, if not identical requirements for the consultation with stakeholders to occur prior to decisions, such as were recently announced, being made or implemented. In the current circumstances, it appears that Qantas may have "jumped the gun" to some extent.

When read in wider context with other parts of the Qantas LAME WD 2012 and Qantas Change Management Procedures, it is clear that the following principles apply:

- Consultation is the first step and its manner shall be agreed
- Job security shall be a primary objective of both parties
- Qantas is to retain existing job functions
- The employees are to co-operate with the company to create efficiencies
- Potential redundancies shall be mitigated through any available means

On Tuesday it was agreed that a committee would be established for the purpose of consultation regarding MOD. The ALAEA representatives on the Committee will be led by Vice President Wesley Bell. I kindly ask that further correspondence be addressed via Gary Norris at our office addressed to Wesley. At this stage Wesley is finalising other Representatives to assist him on the Committee and will wait on your advice in regard to meeting arrangements for the Committee.

However, at this stage I think it would be beneficial to formally advise you that we will be seeking as much information as is possible form Qantas regarding these changes. Despite what seems to a [sic] problem with the consultation phase, we will assume that Qantas are generally following the appropriate industrial relations and change management procedures as laid in the Qantas LAME WD 2012 and Engineering and Maintenance Procedures Manual. That being the case, we will, as a starting point, be requesting access to documents relating to the scope, reasons for, impact of and human factor effects of the change including:

- Any document related to Step 1 a) and b) of the Qantas Engineering Change Management procedure
- The Project 8 Blocker document regarding MOD
- The Impact Statement related to MOD
- Any documents that identify the ways in which peoples tasks and interactions will change
- Any document related to the human factors implications of the change

Access to these documents will allow us to be sufficiently informed to ensure that future discussions and consultation take place both efficiently and constructively allowing us to understand and have confidence in the way in which Qantas are managing change within the business. Of course, full and frank disclosure is important because incorrect assumptions contained within the modelling may reduce the need for LAME redundancies.

> Beyond that we raise concerns that MOD may lead to a reduced level of defect reporting by Qantas Tech Crews should they perceive that Engineering support is not readily available at a particular port. Qantas already operate through a number of Australian ports where no pre-flight check takes place. We formally request that Qantas provide data on the level of defect reporting through these ports as opposed to other ports where pre-flight checks are currently carried out.
>
> We look forward to your nomination of a time to meet regarding Maintenance on Demand consultation and request that no further steps be taken toward redundancy of the employees in regard to this change until further notice.
>
> Steven Purvinas
> Federal Secretary"

45. The letter of 24 February was written after a meeting between Mr Harris and others and representatives of the ALAEA including Mr Purvinas. As the respondent notes in its submissions there was discussion at this meeting about the proposed changes to line maintenance operations and Mr Harris explained the consultation process going forward. Mr Purvinas accepted that Mr Harris gave an outline of the impact of the proposals on the Sydney line maintenance jobs. It was at this meeting that it first became clear that the ALAEA was seeking to include within the consultation process procedures for consultation contained in Qantas' Change Management Procedures – itself contained within what was known as the Qantas Engineering Procedure Manual[7] – which were also referred to in the letter to Ms Bussell. Although Qantas later took the view that information requested by the ALAEA pursuant to the QEPM was not its entitlement, because it was not a stakeholder, the evidence certainly reveals that the process for implementing MoD was implemented in accordance with the QEPM. The ALAEA was not named as a stakeholder in the change management plan but "people" were and some of the "people" who negotiated with Qantas were nominated to that position by the union.

46. On 2 March 2012 another meeting took place between representatives of the ALAEA and Qantas managers including Mr Harris, Ms Bussell and Mr Deck. Mr Harris gave evidence that he explained what the changes to line maintenance operations meant. He presented an overview of the changes and stated as a reason for them that Qantas

[7] "QEPM"

needed to ensure that its industry practice aligned to CASA and its manufacturer's requirements, and to regain a competitive edge. At the request of Mr Vasta he took the meeting through the entire program for MoD. He identified the sections of the QEPM that would need to be amended and discussed the nature of the amendments. He deposed that at the meeting the following took place with regard to the redundancies:

> "[65] During this meeting Mr Vasta and Ms Bussell had a discussion in words to the effect of:
>
> Mr Vasta: Are you saying that a decision has already been made?
>
> Ms Bussell: Yes. The CEO has announced the decision in relation to fleet changes and MoD.
>
> Mr Vasta: Have the redundancy numbers been set?
>
> Ms Bussell: We are consulting with you in relation to the EOI process. This allows us to gather information for the redundancy process.
>
> Mr Vasta: It seems like the Company has already made its decision.
>
> Ms Bussell: The consultation process is clearly set out in the EBA. We are required to work with the union in relation to looking for volunteers, retaining the correct skill set, etc."

47. On 6 March 2012 Mr Purvinas wrote to Ms Bussell under the heading "Meeting Follow Up". The letter contained a list of documents that it was seeking:

> "**Meeting Follow Up**
>
> Dear Sue,
>
> Last week ALAEA Representatives met with Qantas for the purposes of consultation regarding Maintenance on Demand and aircraft retirements. At that meeting Qantas requested that we put in writing to you documents that will be required by us for further constructive discussion. At this stage the documents we seek include -
>
> - The draft document detailing how Qantas intends to implement Maintenance on Demand to be provided by Tim Deck.
> - Draft copies to changes in the QEPM, MCM, AAOP, Check sheets, Fuelling sheets and manuals.
> - Information related to any contractors working in Line Maintenance.

- Details on predicted labour requirements and assumed to be critical to the way in which Qantas calculated future labour requirements.

- Details on billable hours for towing and how the hours are recorded or booked in Line Maintenance.

- Details on the forecast Line Maintenance 2012 budget (for comparison with the $404M 2011 figure) and information on how the budget hours are calculated.

- Details on how seconded hours are treated in relation to each cost centre.

- Details of the last review of standard hours versus defect rectification and OEM data.

- Details of available leave (leave liability) in each Line Maintenance cost centre.

- Costings for carrying out all A380 C checks and details of rectification hours on C checks that have already taken place.

- Details on the price a delay costs each minute for each aircraft type including how the costs are calculated.

- Details on the total labour hour requirements per cost centre, the split between mechanical and avionics and the split between aircraft types.

- A copy of the 5 year plan for Qantas Engineering.

- Data on the level of defect reporting through unmanned Qantas ports within Australia where pre-flight checks are not currently conducted as compared to manned ports (raised in previous letter on MOD).

At several meetings and also in writing we have requested copies of the project 8 Blocker document that needed to be prepare by the appropriate Qantas managers in relation to these two projects. For us it is essential that these documents be produced for consideration as they would contain information on the extent of change encompassed by each project, cost benefits the airline is seeking, risks, constraints and safety aspects considered by the project manager. This should be the starting point of discussion and along with the impact statement will provide vital information required by us to help Qantas make change work. So long as Qantas plays hide and seek with the actual documents behind these changes, we will have difficulty giving our approval as stakeholders by these changes, and subsequently Qantas, will be in breach of the SMS we will be calling for corrective action and/or the removal of the Qantas Air Operators Certificate."

Steven Purvinas
Federal Secretary"

48. On 7 March 2012 Mr Harris convened a further meeting with representatives of the ALAEA when he again presented an overview of the MoD model that would be implemented. That was done by way of a PowerPoint presentation and the parties at the meeting went through the other requests for documents made in Mr Purvinas' letter of 6 March 2012. Some of the categories of information requested did not relate to the implementation of MoD but rather to the fleet retirement program. However, the documents requested in the second dot point were given. Qantas maintained that it gave all relevant information required under the third dot point, it gave information relation to the fourth dot point as it related to MoD.

49. Qantas did not give information relating to the fifth dot point because that was not impacted by MoD. Qantas argued that the information requested in the sixth dot point was a confidential budget document that they were not required to provide. In regard to the seventh dot point the evidence was that there were discussions about secondments, the ALAEA wanted to know how many staff had been seconded out and thus how many would be left to do the work but Qantas indicated that that was not relevant to MoD. The request contained in the ninth dot point was dealt with by Mr Harris saying that there had been no changes to standard hours and that in any event this information was commercial in confidence. Details of available leave, the ninth dot point, were discussed. Qantas maintained that the tenth dot point related to heavy maintenance and not MoD. Qantas considered that the eleventh dot point was not relevant although there was a discussion upon it. Qantas felt that details of the five-year plan, if there had been such a document, were confidential. Qantas did not provide the documentation in regard to the last dot point which the union thought was important because it might indicate that under-reporting could occur with the introduction of MoD.

50. There was a further meeting between Qantas and the ALAEA on 22 March 2012. Another presentation about MoD changes was given and a copy of the presentation was provided to the ALAEA representatives together with a copy of the detailed draft procedure changes relevant to the introduction of MoD. These were explained by Mr Deck.

51. It was clear by this time that the parties had different views about the consultation and what it was intended to achieve. The letter below sets out to put Qantas' position clearly to the ALAEA:

> "Dear Steve
>
> **Re: Consultation on MoD and Fleet Reduction**
>
> I refer to recent meetings between representatives of the ALAEA and Qantas, regarding Qantas' decision to introduce Maintenance on Demand (**MoD**) and bring forward the retirement of certain aircraft from the 747-400 (**Fleet Reduction**).
>
> **Purpose of consultation**
>
> For the avoidance of doubt, this consultation is being undertaken in accordance with clause 47 (Introduction of Change) of the *Licenced Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012* (**Determination**). Relevantly, clause 47 imposes obligations on Qantas to:
>
> a) Consult with employees and, where requested, their employee representative, in relation to:
>
> I. the introduction of MoD and the Fleet Reduction;
>
> II. the effects which MoD and the Fleet Reduction are likely to have on employees; and
>
> III. measure to avert or mitigate the adverse effects of such changes on employees;
>
> b) during such consultation, give prompt consideration to matters raised by the employees and/or their employee representative; and
>
> c) for the purpose of consultation, provide all relevant information (subject to confidentiality/commercial sensitivity) about MoD and the Fleet Reduction, including:
>
> I. the nature of the changes proposed;
>
> II. the expected effects of the changes on employees; and
>
> III. any other matters likely to affect employees.
>
> It is clear from the structure and content of clause 47, that:
>
> a) the purpose of consultation is to ensure that employees and their representatives are informed regarding the three matters outlined at (a) above, and that Qantas gives prompt consideration to matters raised by the employees and/or their union in relation to those three matters; and

b) Qantas is only required to provide information (subject to confidentiality/commercial sensitivity) that is relevant to the three matters outlined at (a) above.

For the sake of completeness, I note that the current consultation process also accords with Qantas' obligations under clause 55 (Redundancy) of the Determination. However, the provisions of clause 55 do not materially add to Qantas' obligations to consult or otherwise provide information in accordance with clause 47 of the Determination.

Change Management Procedures

It is apparent from your correspondence and from our recent discussions that you misapprehend the current consultation process as occurring under Qantas' internal change management procedures, such as the Qantas Management System (**QMS**) of QEPM Chapter 01-00-006. This is not the case.

With respect, Qantas does not recognise the ALAEA as a stakeholder with whom it has any obligation to consult under any internal change management procedures. This is the case whether the ALAEA purports to act in its capacity as a registered organisation of employees, or its assumed role as an employee representative for the purposes of Qantas' change management procedures.

Furthermore, Qantas does not accept the ALAEA's assertion that its approval is required (either in the ALAEA's capacity as a registered organisation of employees, or its assumed role as an employee representative for the purposes of Qantas' change management procedures) before Qantas is able to implement its decisions regarding MoD and the Fleet Reduction (or any other decision).

Your requests for information

You have previously asserted that the ALAEA's approval to implement the changes referred to above, among other changes which Qantas also announced on 16 February 2012), will not be provided unless and until Qantas has provided a range of information, including information regarding Qantas' compliance with its change management procedures and documents produced under them. This assertion is repeated in the final paragraph of your letter dated 6 March 2012.

Your assertion is misplaced for the reasons outlined above. In our view, most the [sic] materials you have requested do not fall within the scope of information Qantas is required to provide in accordance with the Determination. It follows that, other than as required under applicable Determination provisions, Qantas is under no obligation to provide information in response to the questions set out in your letter of 6 March 2012, or to provide the ALAEA with copies of documents prepared in accordance with internal change management procedures.

Notwithstanding this, we look forward to continuing our consultation with you in accordance with applicable provisions of the Determination. We will of course

continue to provide you with information which is relevant to that consultation process.

Sue Bussell
Executive Manager, Industrial Relations"

52. On 23 March 2012 Mr Harris emailed Mr Vasta, one of the ALAEA representatives, attaching a PDF outlining the proposed procedure changes that were discussed at the meeting and suggested a further meeting on 28 March 2012. That meeting did not take place, and on 30 March Simon Brown of Qantas wrote to Mr Purvinas proposing a meeting on 4 April 2012. Mr Purvinas replied in an email of 1 April:

"From: Steve Purvinas [purvinas@bigpond.com]
Sent: Sunday, 1 April 2012 9:46 AM
To: Simon Brown; Wesley Bell
Cc: 'Gary Norris; Sue Bussell; Gavin Harris; 'Executives'; 'Peter Somerville';
Subject: RE: MoD Consultation

Hi Simon,

The ALAEA are concerned that the consultation meeting format is not working. We have sat with you on several occasions and the airline only answers selected questions, are providing limited information and has not abided by its own CASA approved Safety Management System procedures. We have received correspondence from Qantas indicating that the meetings would be confined to industrial matters only whilst regulatory obligations regarding change management are still outstanding. As these matters effect the safety of our members and persons who fly with Qantas, we consider it essential that all steps be followed in accordance with these guidelines prior to any industrial consultation. Beyond that I have been advised by the ALAEA Federal Executive that the industrial consultation should be carried out in written format.

At this stage we understand that 100's of your employees who would be affected by any proposed maintenance on demand change have advised you in writing that they have not given a commitment to the change as required by the Qantas safety management system. For ease of purpose they have also nominated the ALAEA to undertake the consultation on the Technical aspects of the change, a nomination made in accordance with Qantas procedures but rejected by the airline. With the airline unwilling to discuss critical safety management system steps with us, it would be required for the airline instead to consult and gain a commitment from those individuals separately.

Please advise us in writing (or email) when that commitment is given or if Qantas would like us to act as the central point for the Technical negotiations.

Cheers
Steve Purvinas
ALAEA
Federal Secretary"

53. Qantas attempted to set up further meetings in early April 2012 but these did not eventuate. On 17 April 2012 an email was sent from the vice president of the ALAEA to Mr Harris stating:

"Gavin

The ALAEA position is that further consultation regarding MoD should be carried out in writing. I request that anything Qantas would like presented to us this Wednesday be presented in a letter to the ALAEA Federal Secretary who will respond with questions and comments also in writing.

Wesley Bell"

54. On 27 April 2012 Mr Harris wrote to Mr Purvinas noting that some meetings had taken place, that others had been cancelled and made reference to the requirement for consultation to be carried out in written format. The letter continued:

"Introduction of MoD

During the initial consultation meeting on 2 March 2012, Qantas representatives explained in detail the model of MoD, which Qantas has decided to implement. A document was handed to the ALAEA which explained the model in some detail and a copy of the model contained in that document is attached to this correspondence.

During a meeting with the ALAEA on 22 March 2012, Qantas presented and handed over the detailed draft procedure changes relevant to the introduction of MoD. A number of issues were raised and discussed during this meeting and specific issues raised by ALAEA representatives have been addressed. Furthermore, on 23 March 2012, I emailed the Assistant Secretary of the ALAEA a soft copy of the procedures discussed the day before, with requisite amendments marked up for ease of reference. These included copies of:

- QEPM 3-10-037: Inspection Policy
- QEPM 3-25-012: Form 553 – Process Control Router
- QEPM 3-25-016: Form 943 – Tech Log
- QEPM 3-30-005: Line Maintenance Procedures and Routines
- QEPM 3-30-006: Check Certification in the Aircraft Technical Log

- QEPM 9-28-010: Fuelling Procedures and Cautions
- Q91-00-008: B738 Technical Log, Return to Service and Maintenance Release
- MCM 40-15-005: Use of Qantas Aircraft Technical Log (Form 943)
- MCM 40-15-010: use of Qantas Cabin/In-flight entertainment log (Form QF20896)
- MCM 40-18-005: Line Maintenance Procedures and Routines
- N37-838 Check 1: B738 Check 1
- Q32-05-001 (CK1/CK2): A330 CK1/CK2 Sign-Off

Since the above procedures were provided to the ALAEA, a change to QEPM 3-30-005 has been identified in regards to monitoring the Check 2 on B738 and A330 aircraft. A marked-up copy of the further amended QEPM 3-30-005 is attached.

Likely effects of MoD on employees

During the initial consultation meeting on 2 March 2012, Qantas representatives advised the ALAEA's officials and delegates that the introduction of MoD would result in a total of 30 redundancies, as follows:

- Sydney Domestic Terminal 12 LAMEs
- Melbourne MLO 10 LAMEs
- Brisbane LMO 4 LAMEs
- Adelaide LMO 4 LAMEs

These numbers were calculated by reviewing our manpower models and removing the time a LAME was allocated to the aircraft to perform a Check 1, as this check will no longer be required by the approved CASA Maintenance System.

The timing of these redundancies will coincide with the introduction of MoD, which we anticipate will be in or around late May/June 2012. We will notify you as soon as practicable after we have set dates for the introduction of MoD.

Measures to avert or mitigate the effects of MoD on employees

In order to ascertain measures to avert or mitigate the effect of these redundancies, Qantas engaged in a non-binding expression of interest process commencing on 5 March and closing on 25 March 2012.

As a result of this process, we have identified that the required staff reductions will be achieved by acceptance of voluntary redundancies and that no employee will be compulsorily retrenched as a result of the introduction of MoD. In this regard, more

LAMEs have sought voluntary redundancy than are affected by the introduction of MoD and Qantas is currently engaged in a selection process which ahs regard to the criteria set out at clause 55.7 of the Determination.

We will soon be holding discussions with those LAMEs whose application for voluntary redundancies will be accepted and formal notice of termination will follow those discussions.

Yours sincerely,

Gavin Harris
Head of Line Maintenance"

55. On 9 May 2012 Mr Purvinas wrote to Mr Harris. The letter commences:

"Re: Consultation on 'Maintenance on Demand'

Dear Gavin,

On the 27th April 2012 the ALAEA received correspondence form yourself outlining the intentions of Qantas to implement changes to Line Maintenance. Although consultation meetings over the proposal have taken place, we have found that Qantas has not given genuine consideration to, or even responded to, many of our concerns or questions. As discussed, we have concerns that the proposal may affect safety, the regulatory obligations of our members and the Industrial Agreements we are required to comply with. As the matter may end in litigation, we would expect the notes of each party from these meetings to vary causing confusion for an independent person trying to arbitrate an outcome to the dispute. For these reasons we have elected to continue the consultation in writing.

The Qantas proposal represents a major change to the manner in which aircraft will be maintained. We have expressed numerous safety concerns with the way it is to be introduced and operate. These concerns are supported by the CASA-required Qantas Management System which outlines detailed and sequential steps required by the airline to manage change. Without explaining your system to you, it should go without saying that Qantas supports not only the existence of these procedures but also their strict application and adherence. Our members also acknowledge their importance and the regulatory obligation of each Qantas employee to strictly comply with them. If our members were aware that procedures had not been followed but disregarded those breaches and continued to work regardless, they may jeopardise their LAME licences, the safety of themselves and others.

When considering changes posed by the airline it is important to assess the change in the context of the other changes that are currently taking place. When combined, multiple changes may have a significant effect on the Qantas Group operation. The factors involved in a possible move to a maintenance on demand system should

therefore not be viewed in a vacuum. The Qantas Management System ('QMS') recognises these principles and is required to be followed. We have raised this with you during consultation meetings and it appears that matters we have raised have been disregarded and information we have sought has not been forthcoming. It is as if Qantas are undertaking meaningless consultation post decision when it is clear that this step should have occurred prior to any decision being made.

Specifically change of this nature is a managed process as defined in the Qantas Management System. In Qantas Engineering this requires compliance with QEPM 1-00-006 ('QEPM'). Pursuant to the QEPM change must be managed in a stepped process to avoid flaws or system failures being embedded into new procedures. The input of all parties must be considered and a commitment gained from them before the decision to implement is made."

The letter continues with a request for documentation which is followed by this paragraph:

"When provided to the ALAEA these documents will be forwarded to the stakeholders for their consideration. We will give Technical advice to them and they will advise you when their commitment to the change is given. Until you have a commitment from all stakeholders, we will be requesting all members not take part in changes as it would have them breaching Qantas procedures underpinned by CASA and other legislation.

…."

56. Mr Harris responded to Mr Purvinas on 21 May 2012:

"Dear Steve

Consultation on MoD

I refer to your letter dated 9 May 2012, and note your assertion that Qantas' compliance with its internal change management policies is not an industrial matter. Notwithstanding this assertion, on 8 May 2012, Qantas received correspondence from your Industrial Officer, Mr Lincoln Amos. In that correspondence, Mr Amos clearly seeks to draw some nexus between Qantas' change management policies and its industrial obligations under the *Licensed Aircraft Engineers (Qantas Airways Limited) Workplace Determination 2012.*

It concerns me that the ALAEA is seeking to use Qantas' internal change management policies to further an industrial agenda. In this regard, I note that Mr Amos' letter sought precisely the same information as sought in your letter of 9 May 2012. I decline your request for that information for the same reasons set out in Ms Bussell's letter to Mr Amos dated 21 May 2012.

…

> We have continued to brief our staff on the upcoming changes. These briefing sessions took place following the consultation meeting between Qantas and the ALAEA on 7 March. They were conducted in each port by either Tim Deck of the relevant port manager. Port managers continue to discuss these changes regularly in adhoc [sic] and toolbox discussions.
>
> At those sessions we have provided similar information as that which we provided to the ALAEA, which includes a detailed understanding of the procedure changes.
>
> …
>
> Accordingly, we will soon be advising staff that the implementation date of MoD will take effect from 12 June 2012 at 1700UTC for both B737-800 and A330 aircraft types. In the meantime we will continue to provide relevant information to our employees for their consideration and feedback.
>
> Again I welcome the opportunity to meet with representatives of the ALAEA on this matter."

57. The ALAEA sought to prevent the introduction of MoD on 12 June 2012 by industrial action. Proceedings were brought in Fair Work Australia under s.418 of the Act. Vice President Watson made orders requiring the industrial action to stop or not occur. On 12 September 2012 the Full Bench of Fair Work Australia headed by Justice Bolton refused to grant leave to the ALAEA to appeal the decision of Deputy President Watson. MoD has been in operation since 12 June 2012.

Findings on alleged breaches of Clause 47.2 of the WD

58. The first question to be answered is whether there was any obligation on Qantas to consult with the ALAEA on the decision to commence MoD. Aligned to that question is whether or not the union had any right to veto the introduction of MoD based upon the QEPM. In this regard although the union appears to have started out making the claim to Qantas that it was a stakeholder under the QEPM, in its latest correspondence with Qantas it indicated that it would only advise its members, the stakeholders. This touches on the conflation of rights under the QEPM and rights under the WD. These proceedings are brought as an alleged breach of clauses in the WD, not as a breach of the requirements of the QEPM. There has been a conflation of the two. Qantas has sought to draw a distinction between the reason for the requirements for consultation under the QEPM and under the WD. In

respect of the former it is a function of the safety and regulatory obligations imposed upon the airline. In the latter it is a purely industrial matter. The court believes that a clear distinction should be made between the two requirements and that it is not appropriate for the union to argue that a breach of the QEPM constitutes a breach of the WD. The court accepts that some documentation that might have been requested for the purposes of investigating whether the QEPM procedures were being carried out might also be relevant to the consultation and provision of information requirements in the WD. But it is for the ALAEA to show what these are. The court would also indicate that in its view the consultation is a two way street. Both parties have to commit to it. Both parties must make a genuine effort to carry it out. A party requesting information must explain why that information is relevant and the party from whom the information is requested must provide relevant information or explain why it is not relevant or why it comes into some other category that relieves it of the requirement to provide it.

Did Qantas fail to consult with the ALAEA in regards to the effects of the implementation of MoD and thereby breach clause 47.2.1?

59. It is the court's view that the requirement for consultation under the WD did not extend to consultation about the decision to introduce MoD. This is clear on the wording of Clause 47. However, the court is of the view that the implementation of MoD about which consultation **is** required includes any decision relating to the effects of that implementation such as redundancies. Was there consultation of that type?

The ALAEA Position

60. A difficulty the court has in answering this question is the shifting of positions that is apparent from the submissions and the evidence as discussed above. It appears that throughout the consultation period between the announcement being made on 16 February 2012 and the implementation of MoD on 12 June 2012, ALAEA took the stance that Qantas had failed to consult about the introduction of MoD itself. So

much is clear from the communications and interactions between the applicant and the respondent.

61. Mr Purvinas agreed under cross-examination that the position of ALAEA at the meeting of 21 February 2012 was that all changes to line maintenance were caught by the Qantas Change Management processes (see [T178]). Whilst Mr Purvinas stated that ALAEA did not have the power to direct Qantas that the changes could not be made, he confirmed that it was the ALAEA's position that Qantas could not make the changes without the agreement of the ALAEA and employees (see [T179]). This conforms with Mr Harris' account of the 21 February 2012 meeting and the exchange that he attested took part between himself and Mr Purvinas:

> "Mr Purvinas: Are you aware of the Change Management Procedure?
>
> [Mr Harris]: Yes
>
> Mr Purvinas: Are you aware of the requirement to get the agreement of stakeholders under the procedure?
>
> [Mr Harris]: Yes
>
> Mr Purvinas: Do you consider the ALAEA to be a stakeholder?
>
> [Mr Harris]: No. the CMP is an internal document which deals with our internal processes. The ALAEA is not a stakeholder under the procedure.
>
> Mr Purvinas: We disagree with your position. We are a stakeholder and you don't have our agreement to make these changes as required by the CMP."[8]

62. Mr Purvinas' correspondence is also indicative of this understanding of the scope of the consultations. In his letter of 24 February 2012 Mr Purvinas notes that the announcement that retrenchments would occur had been made, "prior to discussing all aspects with the employees [sic] nominated Representatives (the ALAEA)", and that "in doing so, Qantas appears to be in breach of the Qantas LAME WD [Workplace Declaration] 2012 covering our members".[9] However, he goes on to note:

[8] Mr Harris' affidavit of 9 November 2012 at [58].
[9] Mr Purvinas' Affidavit of 17 September 2012, SP13

> "It seems to me that Qantas LAME WD 2012 and the CASA-approved Change Management Procedure contain similar, if not identical requirements for the consultation with stakeholders to occur prior to decisions, such as were recently announced, being made or implemented. In the current circumstances, it appears that Qantas may have jumped the gun to some extent."

63. Likewise, in his letter of 9 May 2012 to Mr Harris (extracted above at [54]), Mr Purvinas refers to the "possible move to maintenance on demand", and submits that "the input of all parties must be considered and a commitment gained from them before the decision to implement is made".

64. This understanding of the scope of the consultation is also evident in the affidavit itself. Mr Purvinas attests at [31] that had the information requested been provided, it would have assisted him in attempting to demonstrate "why the decision to implement the MoD was wrong". This suggests that Mr Purvinas' interpretation of the consultation period was that it could affect the decision to implement MoD itself, although, as the court has found, that decision had already been properly made.

The Qantas Position

65. The applicant now argues that Qantas failed to consult in relation to the effect of the introduction of MoD on employees and in particular to the 30 redundancies; an obligation the existence of which Qantas acknowledges. However, the evidence before me suggests that Qantas had decided that the introduction of MoD would result in the redundancy of 30 employees and that this was not open to genuine consultation.

66. That consultation would be required following the introduction of MoD was recognised by Qantas as early as November 2011, the date of the Change Management Plan.[10] Contained in this document, at attachment 3, is a document titled "Stakeholder Management Plan". The document is a table which, in relation to LMO employees may be abridged as follows:

[10] Applicant's bundle of documents, Tab 1.

Stakeholder	How Impacted	Degree of Impact	Method
Internal			
LMO employees	Involved with change process Agreement NOT required	High	Unlikely to have full agreement. • Post decision consultation is required under EBA. • Informal discussions prior to decision. • Formal roadshows post decision • Formal consultation with union representatives required under EBA • Unlikely to agree therefore consultation only

67. It is of note that the final two dot points were removed from a later draft of the document (amended 4 June 2012), but neither Mr Harris nor Mr Deck knew why this removal had occurred [T308].

68. Mr Harris was led through the November 2011 document and agreed that it was Qantas' position that it did not require the agreement of employees to implement MoD.[11] He also noted that the last dot point, "Unlikely to agree therefore consultation only" meant:

> "It means we're unlikely to get agreement from our employees wholeheartedly that this change is something that they want to do. And we will be advising that – or keeping them abreast or consulted along the way, of the change.
>
> What does that mean? Unlikely to agree, therefore, consultation only – what was being envisaged by consulting them only – to do what?---Well, just to - - -
>
> Just consulting them - - -?---Well, consulting them means telling them what we're doing, seeking their feedback – making changes as required, post-decision."[12]

Mr Deck in turn gave his interpretation of the last dot point:

> "And you will under the heading, in the final column, unlikely to have full agreement. There is a final dot point, "unlikely to agree, therefore consultation only." You see that?---Yes.

[11] Transcript T277.
[12] Transcript T278.

> What does that mean, that they're unlikely to agree, therefore consultation only. What do you mean consultation only?---Consultation is talking to the employees, letting them know what we're doing, listening to what their concerns are and – and, I suppose, trying to put mitigators in place around some of those.
>
> And then go ahead and do it anyway if you can't convince them?---I – I don't think we took that attitude.
>
> Really? You don't think or you don't know?---Well, I didn't take that attitude.
>
> You didn't take that attitude?---No."

69. Although Mr Deck went on to confirm that he was not responsible for the consultations, this understanding of the consultations suggests that there may have been some leeway for a change in position on Qantas' part in regard to the impact or effect of the introduction of MoD. Whilst these responses are perhaps not entirely convincing, they do evince an understanding that consultation would involve a certain degree of malleability in regard to the effect of the change on employees.

70. That the roadshows referred to in the Stakeholder Management Plan took place is confirmed by Mr Deck in his affidavit of 9 November 2011, in which he affirms [at 30]:

> "Prior to the implementation of MoD, I conducted roadshow briefings with Operations Managers, Port Managers, Duty Maintenance Managers and Senior LAMEs in which I provided an overview of the changes that would occur as a result of the implementation of MoD. During the briefings, participants were encouraged to ask questions, raise scenarios or concerns and to provide general feedback."

He then lists the location of the roadshows and the dates on which they were held before noting:

> "During these consultation meetings employees raised suggestions in relation to the process for implementation of MoD. I considered this feedback and made changes to particular procedures required for the implementation of MoD as a result of employees' suggestions."

71. Mr Deck goes on to note that Port Managers conducted crew briefings using the same presentation he had used, and that he had regular discussions with Port Managers about those briefings in which they reported back to him questions and issues that had been raised at the

meetings. Mr Deck was questioned about the consultations under cross-examination:

> "… Thank you. If you then go to the next page, which is the communications plan, you will see the last entry on that page. This is at page 9, your Honour:
>
> MOD presentations to share plan for MOD implementation and discuss the model that we will be adopting.
>
> That was the purpose assigned to you, it would appear, to develop the content from 12 March; is that right?---That's correct.
>
> And that's an accurate understanding of what you were doing?---What we shared was the presentation that was given to the ALAEA on I think it was 7 March.
>
> Okay. Thank you. Now, did you hold any briefings or face to face consultation meetings with LAMEs who weren't port managers, operations managers - - -?---I did.
>
> - - - and senior LAMEs in relation to the changes?---I held consultation meetings with senior LAMEs and duty maintenance managers.
>
> […]
>
> In relation to the briefings and road shows that you refer to at paragraph 30 of your affidavit, is this the case, with the exception of Sydney Domestic, only one meeting is held at each port; is that right?---That's correct."
>
> […]
>
> And is this the position, as I understand it, and correct me if I'm wrong: the road show involved you, I think as you said earlier, conducting briefings with port managers, operations managers, senior LAMEs and, I think, duty managers; is that right?---That's correct.
>
> And then, in turn, your understanding is – this is your understanding – that the port managers and operation managers subsequently conducted briefings and had interactive workshops with duty maintenance managers and senior LAMEs; is that right?---They continued to do the briefings to the other crews on other shifts.
>
> So they've been involved down to those individuals having discussions with LAMEs?---No, I don't think we did that at this stage.
>
> Okay. And these port briefings and workshops, do you know when they took place? If you don't know, say so?---No, I don't know.
>
> Now, there was a briefing tracker that was prepared during this period; is that right?---The briefing tracker, I believe, was more closer to implementation when we – we did take actually all the staff through the – the changes, including the LAMEs.

Yes. That is, closer to - - -?---Closer to - - -

- - - the actual kick-off date?---Correct.

Okay. And, again, I'm not being critical because, of course, by that time CASA had approved the change and, really, what was occurring there was basically just telling people what the mechanics or the change was going to involve?---That was, yes, giving everybody an understanding of what they – what their requirements were under the new model.

[...]

Thank you. Now, when you read the briefing tracker, did it indicate, when you were reading them, that some people were raising concerns or queries at the briefings which were not being responded to?---I wasn't aware that they weren't being responded to. I – I was receiving emails from port managers, and I was responding to those emails, and – and I was copying all the other port managers in so we had a consistent view of answers to those questions.

Okay. Sitting here today, you – is this right? To be fair to you, you wouldn't be able to recall if there were some concerns or queries that were raised during the briefings that were not responded to, you wouldn't know, for instance, because you weren't there; correct?---No. That's correct.

Okay. Thank you. And the best evidence of that would be those people who were conducting the briefings on behalf of Qantas, I assume, at those meetings?---That's correct, yes.

Okay?---We also had an internet site that we had – that staff were able to - - -

Log onto?--- - - - anonymously ask questions, and we answered them on the internet.

On the intranet?---Intranet, yes."

72. This suggests that Qantas was seeking to actively engage in consultation to mitigate the effects of the change, as opposed to simply managing the change in a dictatorial fashion. However, evidence about the content of the consultation meetings that occurred between the ALAEA and Qantas is scant. It is readily apparent that the ALAEA did not accept that the consultation process should exclude issues to do with change management and the implementation of MoD – it being the ALAEA's position that Qantas could not implement MoD without first consulting it. However, it would appear that Qantas was seeking to engage on industrial issues resulting from the change. So much is clear from an email of Mr Purvinas to Qantas representatives including

Simon Brown, Wesley Ball, Ms Bussell and Mr Harris in which he states:

> "We have received correspondence from Qantas indicating that the meetings would be confined to Industrial matters only whilst regulatory obligations regarding change management are still outstanding." [GH15, p266]

73. It is also evident, from the presentations that Qantas gave to the ALAEA and from the updates to its LAME employees, that from an early stage Qantas was seeking to put in place its voluntary redundancy process. Mr Harris states that the first meeting between Qantas and the ALAEA, on 21 February 2012, was partly to discuss the consultation process going forward. Mr Purvinas' account of this meeting relates only to the documents that were sought by the ALAEA at the meeting [see Affidavit of Mr Purvinas at [29]]. Mr Harris' first Line Maintenance Update to LAMEs in relation to the changes followed on 24 February 2012 (see [GH8]). This update confirms that the expression of interest process had been discussed at the first meeting between the ALAEA and Qantas; under the heading "Key points from the meeting include", Mr Harris states:

> "We confirmed that we will soon commence a process for staff to express an interest in redundancy in Sydney, Brisbane, Melbourne and Adelaide." [GH8, p 111]

74. He concludes the update by indicating that employees may seek a redundancy estimate prior to the commencement of the expression of interest process and noting that a number of support options were available to employees. Attached to the email was an information sheet for Line Maintenance Operations Employees. This explains the ability to seek a redundancy estimate and also the other support options being provided:

> "What other support will be provided?
>
> - For those employees who wish to explore the option of voluntary redundancy we will provide you with information and support services to enable you to make an informed and effective decision. Information and support services will include:
> - Payroll – understanding your redundancy estimate and tax implications
> - Superannuation – understanding your superannuation estimate, future membership options and tax/retirement options.

- Staff Travel – Understanding the impact of your staff travel benefits if you take voluntary redundancy

- Financial Advice – free and independent financial advisory service which will assess your current financial situation and future goals and provide you with expert advice and planning.

- Planning for retirement – Development session aimed at discovering what to expect if you are planning to retire." [GH8, p112]

75. Likewise, the expression of interest process was a subject of discussion at the 2 March 2012 meeting between Qantas and the ALAEA. Mr Harris sent a second update to employees which referred to that meeting stating:

> "We advised the ALAEA that the Expression of Interest process will commence on Monday 5 March and will close on 25 March. The expression of interest process is important as it will give us information which will assist us in mitigating the impact on affected areas." [GH8, p113]

76. What is not clear is the extent to which Qantas undertook consultations in regards to the expression of interest process. Indeed, prior to its commencement, there is little evidence going to the nature of the discussions relating to it. The language used in the above extracts – at first instance that Qantas "confirmed" with the ALAEA that it would be commencing the expression of interest process, and at second instance that Qantas "advised" the ALAEA of the commencement date – suggests that the process itself was not the subject of consultation. Whether this points to an unwillingness to consult on the process is unclear. It would be pure speculation to conclude as such, as, on the other hand, there is no indication in the evidence before me that the ALAEA were not content with the process. Their objections were targeted elsewhere.

77. What is clear is that the expression of interest process was designed to mitigate the effects of the introduction of MoD, if not to avert them. It removed the possibility of compulsory redundancies and provided employees with advice about possible redundancies, including financial advice [see slides at GH11]. The process was put into effect on 5 March 2012; and it was explained to operations managers, port managers, duty maintenance managers and senior LAMEs through briefings conducted by Mr Deck throughout March and April, and

subsequently to other LAMEs through crew briefings conducted by port managers. It is apparent that employees were given for a to raise concerns with Mr Deck about the implementation of MoD (see affidavit Mr Deck at [31-32]), through crew briefings and also an intranet forum [T356]; however, no evidence of those questions or responses were submitted in evidence and Mr Deck could not recall any of the concerns or queries raised [T356]. It is also apparent that the process was successful in sourcing employees willing to become voluntarily redundant prior to the breakdown of consultations between Qantas and the ALAEA [See annexure GH17 to Mr Harris' affidavit: letter from Mr Harris to Mr Purvinas dated 27 April 2012].

78. However, it is of concern that the resort to redundancies does not appear to have been open to consultation. Indeed, the evidence suggests that the number of redundancies itself was fixed from the time that Qantas made the decision to implement MoD. The court must therefore consider whether Qantas failed to consult in regards to this effect of the implementation of MoD in that respect.

79. Although earlier communications suggested that the introduction of MoD may result in redundancies, the first indication that the changes announced by Qantas on 16 February 2012 would result in redundancies appears in Mr Joyce's announcement itself. Mr Joyce, speaking of the affect of multiple changes on Qantas employees generally noted that:

> "We anticipate there will be 500 positions affected by the immediate changes that we have announced today.
>
> …
>
> The jobs that are going have become structurally redundant.
>
> The various reviews I have announced will need to be worked through their consultation processes, but they are also likely to have implications for jobs in due course.
>
> Our objective is to minimise compulsory redundancies, so we will be considering a range of options including: voluntary redundancy or redeployment…"

80. On the same day an email was sent by Mr Harris to Qantas engineering staff alerting them to the changes announced by Qantas, including the

decision to implement MoD (email at SP11 of Mr Purvinas' affidavit, at GH7 of Mr Harris' affidavit). The email includes MoD under a list of effects on Line Maintenance; however, it does not specify any estimated number of redundancies, though the other two changes listed do include estimates of the number of workers affected. But after listing those effects he noted:

> "We have contacted your union and will be consulting with them about this decision, the impacts of the decision and the processes we will be following to mitigate those impacts.
>
> We will take reasonable steps to minimise compulsory redundancies and mitigate the impact on affected staff. Some of the options we will be exploring include:
>
> - EOI for voluntary redundancies
> - Redeployment opportunities within Qantas and the broader Qantas Group
> - External redeployment facilitated by establishing a "Career Transition Centre".
> - Other options will be considered on a case by case basis, such as LWOP and job swaps
> - We will offer one on one counselling, financial planning, resume writing, interview training, skills matching etc
> - We will consult with your union with a view to exploring other mitigating options"

81. On its own this email does not suggest that Qantas had come to any conclusion about the numbers of redundancies it foresaw as necessary as a result of the introduction of MoD. On the other hand, the letter of Ms Bussell (extracted at [44] above), also sent on 16 February, does note:

> "As a result of this decision [to introduce MoD], approximately 30 LAME positions will become redundant."

82. I assume this letter to have been referred to by Mr Harris when he stated that the union had been contacted. I believe that Ms Bussell's letter indicates that the decision had been made that redundancies would result, but the use of the word "approximately" arguably suggests that the number was not yet finalised and might form a part of the consultations that were to follow.

83. In Mr Harris' evidence of a conversation between Ms Bussell and Mr Vasta at the 2 March 2012 meeting. Mr Harris recounts (in his first affidavit at [65]):

> "During this meeting Mr Vasta and Ms Bussell had a discussion in words to the effect of:
>
> …
>
> Mr Vasta: Have the redundancy numbers been set?
>
> Ms Bussell: We are consulting with you in relation to the EOI [expressions of interest] process. This allows us to gather information for the redundancy process.
>
> Mr Vasta: It seems like the Company has already made its decision.
>
> Ms Bussell: The consultation process is clearly set out in the EBA. We are required to work with the union in looking for volunteers, retaining the correct skill set, etc."

84. It seems to me that this response did not answer the question as to whether the number of redundancies had been set, but rather goes to they way in which those redundancies will be met through the EOI process. This EOI process was covered in a presentation by Qantas to the ALAEA's representatives, including Mr Purvinas, at a subsequent meeting on 7 March 2012 [GH11]. While a number is not assigned to redundancies in evidence about this meeting, what is apparent from this evidence is that redundancies would occur.

85. The approximation of 30 voluntary redundancies appears again in slides of a presentation given to the ALAEA on 22 March 2012. The presentation includes the following table headed "EoI update – last week of the three week process: Support and information sessions started last week in impacted ports" [Annexure GH12]:

Ports	Target for LAME	Progress
SDT	12	5
MEL	10	35
BNE	4	20
ADL	4	4
Total	30	

According to Mr Harris this meeting was attended to by Mr Vasta of the ALAEA among others, and Mr Deck and Mr Oldmeadow of Qantas (see Mr Harris' first affidavit at [70]).

86. Mr Harris confirmed under cross-examination that as at 16 February 2012 it was Qantas' position that 30 LAME positions were to be made redundant:

> "Well, on 16 February, were you – was it in your mind that as a result of these changes that were going to be implemented, that 30 LAME positions would become redundant?---That's – that's what – that's correct. There was – there was a reduction in demand as a result of these changes, which equated to 30 LAME positions.
>
> Because less time would be required by engineers to perform these checks; therefore, you wouldn't need as many LAMEs operating; correct?---That's correct.
>
> Okay. And who came up with the 30 number?---We – we – we – I – I - - -
>
> No, no .....?---The team came up with the number.
>
> Yes. Was it you or was it IR who came up with 30?---No, it was the – it was our project team who did the analysis."[13]

87. Mr Harris' evidence as to how the number 30 was reached, was less than convincing. He attested that the number was arrived at through "time movement analysis" – that as less time would be required for checks, less people would be required to perform the checks (see [T295]). This analysis was not performed by Mr Harris himself, but by others. He stated that he would have "challenged" the figure of 30 redundancies when it was arrived at, but could not recall what he would have said. Though he could not recall whom he had in fact spoken to, he stated that he would have spoken to Mr Deck about the figure, and that he believed he had agreed with the figure because it had not changed.

88. Mr Deck, in turn, noted that he was aware of the announcement of the requirement for 30 redundancies, but noted that he was not responsible for the analysis or the figure. That responsibility lay with Mr Kieren Duck, according to Mr Deck.[14]

89. Finally, Ms Bussell confirmed under cross-examination that Qantas had decided upon the number of redundancies at the time of the decision to implement MoD. At [T393] the following exchange took place:

[13] Transcript T294.
[14] Transcript T372

"…And am I right also to assume, in respect of the definite decision that had been made, the definite decision that had been made not only related to the implementation of maintenance on demand but also the number of positions to be made redundant as communicated in your letter, that is, we've identified 30 positions that are to be made redundant; correct?---That's correct, yes.

Yes. And that wasn't something that was going to be a roll-back, that is, this was going to happen; correct?---The – that's what the business plan had identified.

Yes?---Yes.

And that's what happened?---How that would occur or where - - -

Yes?--- - - - might – might have been the subject for - - -

Yes. But it was going to happen. It was – 30 had to go; there's no dispute about that. At the time you wrote your letter - - -?---That was certainly true.

- - - that was the issue; correct?---Yes, that's correct.

Yes. And that wasn't an issue that was up for grabs in terms of the consultation process as far as Qantas was concerned?---It's a bit hard to answer that if – because - - -

Well, I want to put it to you – I want to put it to you bluntly - - -?---Yes.

- - - that that was never a matter that was up for grabs as far as Qantas was concerning during the consultation process - - -?---I think it was open to the ALAEA to – if – if there had been real discussion about that, to – to put a – a counter position, but I think the business had put together a business case that indicated that the procedures - - -

But you're being told – you're being told in whatever briefings you got that, before you wrote the letter of 16 February, this is the business unit decision, and as part of that decision 30 positions were going; correct?---That's correct.

And you stated very clearly in your letter, to be fair to you, as a result of the decision, that is, the decision to implement, which was not negotiable, that approximately 30 positions will become redundant; correct?---That's correct.

That's what you were saying; correct?---That's right.

And that's really – again, to be fair to you, that's the consistent approach that Qantas took in respect of the consultation process; correct?---And – and - - -

Ms Bussell?---Yes, that's correct."[15]

[15] See T393-394.

90. I am satisfied, on the strength of this evidence, that despite the apparent ambiguities in communications between Qantas and the applicant – communications which were vetted by IR and legal teams[16] – the redundancies were a foregone conclusion, regardless of the consultation process that would occur. I believe that Qantas approached the consultation in regards to redundancies as a means to assess who would be willing to make themselves voluntarily redundant and to inform LAMEs of their rights and opportunities in this respect. Consequently, even though the ALAEA approached the consultations in a negative manner, due to their belief that the decision to implement MoD had itself been incorrectly made, I am satisfied that Clause 47.2.1 was breached in that Qantas did not genuinely consult with the applicant in regards to the decision to make 30 LAMEs redundant, that being an effect of the introduction of MoD on employees.

91. Before turning to the allegations of individual failure to provide relevant information required by Cl 47.2.3 of the WD the court should point out the restricted nature of the finding made above. It relates to a failure to properly consult over one (albeit very serious) effect of the 'changes', the loss of 30 LAME positions. It is not a finding that there was a general failure to consult. The court's view of the evidence is that Qantas did make a genuine effort to consult about other matters including, importantly, methods of mitigating the effect of the redundancies by the EOI proposals. Difficulties arose because of the view taken by the ALAEA to those consultations. The union thought that it had the right to approve the introduction of MoD through use of the Qantas Change Management Procedures. It thought it had the right to preliminary discussions before the decision to introduce MoD was made. These views pervaded the negotiations and led to the 23 March 2013 email requesting that all further negotiations be in writing. The parties were moving upon parallel but different tracks. Qantas was committed to consultation through the WD procedures, the union through Qantas' internal change management procedures. This resulted in an effective breakdown in the consultation and industrial action. But a breakdown does not signify that no consultation took place or that Qantas was not committed to genuine consultation in those areas where it believed it was required. The court is of the view

[16] See T293-294.

that Qantas was so committed and did to the extent made possible by the attitude of the union carry out such consultation in an appropriate manner. If the consultation was not completed the blame must lie with the ALAEA.

The individual documents and information requested by the ALAEA

92. The applicant claims that the respondent breached clause 47.2.3 of the Workplace Determination by not providing all relevant information. In its final written submissions the applicant identified the following requests for information as having not been provided:

> "(a) Any document related to Step 1 a) and b) of the Qantas Engineering – Managing Change procedure from QEPM 1-00-006.
>
> (b) The Project 8 Blocker document regarding MoD.
>
> (c) The Impact Statement relating to MoD.
>
> (d) Any documents related to the human factors implications of the change.
>
> (e) Data on the number of defects reported by Tech crew in aircraft Technical Logs inbound and outbound of unmanned ports over a period of time.
>
> (f) Information related to any contractors working in Line Maintenance.
>
> (g) Details on predicted labour requirements assumed to be critical to the way in which Qantas calculated future labour requirements.
>
> (h) Details on billable hours for towing and how the hours are recorded or booked in Line Maintenance.
>
> (i) Details on the forecast Line Maintenance 2012 budget (for comparison with the $404M 2011 figure) and information on how the budget hours are calculated.
>
> (j) Details on how seconded hours are treated in relation to each cost centre.
>
> (k) Details of the last review of standard hours versus defect rectification and OEM data.
>
> (j) Details of available leave (leave liability) in each Line Maintenance cost centre.
>
> (m) Costings for carrying out all A380 C checks and details of rectification hours on C checks that have already taken place.

(n) Details on the price a delay costs each minute for each aircraft type including how the costs are calculated.

(o) Details on the total labour hour requirements per cost centre, the split between mechanical and avionics and the split between aircraft types.

(p) A copy of the 5 year plan for Qantas Engineering.

(q) Details of changes that the Executive General Manager of Engineering has flagged beyond this "stage one" proposed change."

93. A table was attached to the submissions with three columns headed "Information Requested", "Description" and "Reason requested". I am sympathetic to the respondent's submission that the entries in the column headed "Reason requested" are hearsay or not supported by evidence that was not given before me. The respondent submitted that the reasons given were not referenced to evidence before the court [(Outline of closing submissions at [175] – [179]). Indeed, none of the entries found thereunder refer to evidence before me that relates to the reason the ALAEA had requested the information sought. Furthermore, the letters requesting the information do not put forward the reasons given in the annexure document. Mr Purvinas' letter of 24 February, which includes the requests for (a)-(d) above, states:

> "Access to these documents will allow us to be sufficiently informed to ensure that future discussions and consultation take place both efficiently and constructively allowing us to understand and have confidence in the way in which Qantas are managing change within the business. Of course, full and frank disclosure is important because incorrect assumptions contained within the modelling may reduce the need for LAME redundancies." [SP13]

94. This broad reason for information does not correlate with the targeted reasons provided in the annexure. Mr Purvinas' letter of 6 March which included the requests (e)-(f) above stated:

> "…Qantas requested that we put in writing to you documents that will be required by us for further constructive discussion."

And proceeded to list the documents without giving specifics as to their relevance. The letter also reiterated the request for the Project 8 Blocker document, before stating:

> "For us it is essential that these documents be produced for consideration as they would contain information on the extent of change encompassed by each project, cost benefits the airline is seeking, risks, constraints and safety aspects considered by the project manager. This should be the starting point of discussion and along with the impact statement will provide vital information required by us to help Qantas make change work."

95. Again, this lacks the specificity contained within the annexed document. Mr Purvinas, under cross-examination, agreed that he had attended a meeting following that letter in which the dot-points were gone through in detail [T182]. Ms Bussell gives an account of this occurring at that meeting in her affidavit of 8 March 2013, in which she gives several accounts of Mr Purvinas' reasons for requesting some of the documents. Whilst this suggests that the ALAEA may have expressed its reasons for requesting each document at that point in time, there is nothing in the transcript or Ms Bussell's affidavit to suggest that the reasons given to Qantas actually corresponded to those appearing in the Annexure A.

For example, in relation to point (f) above, the table states:

> "This was necessary to assist in determining if current staffing levels would need to be adjusted if MOD was introduced."

Whereas, Ms Bussell recalls Mr Purvinas stating words to the effect of:

> "This goes to redeployment."

In relation to point (h) the table states:

> "This was necessary to help correlate all of the ALAEA's existing functions so it could measure the true impact of the loss of work**.** **"**

Whereas Ms Bussell recalls Mr Purvinas stating words to the effect of:

> "It is relevant to labour demand and FTE calculations."

96. While I cannot grasp where the content of the "Reason requested" column comes from, it may not be necessary to come to a conclusion on this point, in any case, because the applicant, in response to the respondent's concerns, submitted that there was no requirement upon the applicant to put forward subjective views as to the relevancy of the information. Rather, the applicant submitted that the court's role is to

objectively consider whether or not the information, which was requested, is relevant to the consultation and should have been provided (see [T454-454]). That is the course which I intend to follow.

97. I propose, therefore, to deal with each request for information in turn to assess the information's relevancy to the consultations, whether or not the information was or was not provided and consequently whether clause 47.2.3 was breached. Such an approach should also account for the applicant's contention that the respondent's approach to the documents has shifted from one of commercial confidentiality – which would bring the information within the scope of the exception in clause 47.2.3 – to the position that the information was in fact provided.

98. The evidence does suggest that such a shift has occurred over the course of these proceedings. While there is no evidence of a reply to Mr Purvinas' letter of 24 February 2012, Ms Bussell attested in relation to several of the requests for information that Qantas had informed the ALAEA that they were not relevant (see first Affidavit of Sue Bussell at [40] and second affidavit of Sue Bussell at [7], [9], [14], [15], [17], [18] and [19]) and that other information was confidential (see Second affidavit of Sue Bussell at [10], [12]). This position is in contrast with the respondent's closing submissions that the information requested was in fact provided even if the documents were not. However, if the court examines the documents and the evidence of information that was provided, without recourse to the applicant's subjective reasons for requesting them nor to the respondent's subjective reasons for not providing documents, this should allow the court to come to a conclusion as to whether the respondent breached its obligations under the clause.

99. Several issues make this an unenviable task. Firstly, some of the information requested is simply not before me which leaves me to speculate as to whether the requested information would be relevant. Secondly, the reasons that were given for seeking the information are not always clear. Thirdly, the reasons for the refusal to provide certain information or documents are not always clear. Finally, it is not always clear what information was in fact provided.

100. The reasons that these issues have arisen are perhaps less opaque. The document at Annexure A was provided in response to my suggestion

that such a document would assist me in coming to a conclusion as to whether a breach had occurred in regards to the provision of information. The agreement to provide such a document resulted in the applicant not going through each request one by one with Ms Bussell, who was responsible for the decision to provide documents to the applicant. Unfortunately, for the reasons stated above, the document that has been provided at Annexure A of the applicant's final submissions is of little assistance. In addition to this, Ms Bussell's evidence about the provision of information, both in affidavit form and given under cross-examination, is confusing – partly because of the nature of the questions asked of her and partly because of the responses given [see T293-310].

101. It would appear from that evidence that whilst Ms Bussell was in charge of the provision of information or documents this was done in consultation with her team and that she did not personally have a complete understanding of all of the documents that were sought. For example, the documents relating to the change management plan were not given, for the reason that the change management plan was seen as an internal document not related to the effect of the implementation of MoD. Ms Bussell stated that she had not, at that time read over the relevant steps of the change management plan, but noted that there was a discussion with her team about whether any such documents did relate to the impact of the change on employees [see T403-404].

Request A: Any document related to Step 1 a) and b) of the Qantas Engineering – Managing Change procedure from QEPM 1-00-006

102. The first request of Mr Purvinas' 24 February 2012 letter was the subject of some controversy before the court. The respondent submitted that such a request was too wide in the circumstances such that it was more akin to discovery as opposed to a request for information to further consultations. Step 1 of the Qantas Engineering – Managing Change Procedure, found at Annexure GH18 of Mr Harris' affidavit, states:

> "Consider the reason and nature of the change and its intended outcome."

It contains the following description:

> "IDENTIFY THE NEED FOR CHANGE: Identifying the need for the change and establishing the context is to be carried out when the initial change is being considered."

Step 1 a) and b) appears to be a reference to two of three key activities, being:

> "a. Establish the background and context that frame the case for change including a description of the current situation; objectives, intended outcome and the proposed change.
>
> b. Develop the case for change, which includes the reasons and purpose for the change; the statement of need and the scope and the boundaries of the change."[17]

103. The applicant states of Step 1 a) and b) in its Annexure A document that, "It requires Qantas to generate documents establishing the background and context that frame the case for change…"; however, the respondent contests this (at [T469]). Whilst it may be inferred that documents containing such information would be created, there is nothing in the wording of Step 1 a) and b) that actually requires those documents to be 'generated'.

104. In any case, I accept that the duty imposed by clause 47.2.3 has rightly been identified as one of providing information, not documents. The respondent referred the court to the judgment of Keely J in *Seaman v First Mildura Irrigation Trust* (1994) 55 IR 360. In that case the following clause, which bears a striking resemblance to clause 47.2, was considered:

> "21 - INTRODUCTION OF CHANGE
>
> …
>
> Employers Duty to Discuss Change
>
> (b) (i) The employer shall discuss with the employees affected and the relevant Union "inter alia", (sic) the introduction of the changes referred to in subclause (a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the relevant Union in relation to the changes.

[17] Affidavit of Mr Harris, Annexure GH 18 at p 355.

(ii) The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (a)(i) hereof.

(iii) For the purposes of such discussion, the employer shall provide **in writing** to the employees concerned and the relevant Union all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests."

105. Keely J held at [67] that such a clause did not impose an obligation upon the respondent to provide copies of all documents relating to the changes and opined:

> "The duty imposed by the sub-clause is narrower than the obligation in court proceedings to give discovery of documents. The provision requires the employer to supply to the employees and the union in writing (as distinct from orally) all relevant information."

106. I note that clause 47.2 of the present Workplace Determination is distinct in that it relates to consultation and not discussion, and that the duty to provide information was not restricted to written communication. Indeed clause 47.2.3 omits the words "in writing" found in the clause considered by Keely J. I am satisfied that the same principle should apply, and that a breach should not be found to occur for the lack of provision of documents in accordance with such a broad, discovery-like request.

107. Should I be wrong in finding that no breach has occurred simply on the nature of the request, I believe it could equally be inferred that the information likely to result from Step 1 a) and b) has been provided to the applicant through the communications and discussions that did occur. Indeed, some of the background and intended outcomes were addressed in Mr Joyce's announcement of 16 February. Mr Joyce opened his announcement with the economic factors driving change at Qantas: the reshaping of global finances and the transition in the Australian economy in particular. He also noted some of Qantas' objectives in changing to MoD; such as, to improve line maintenance efficiency, to bring Qantas' practice into line with the manufacturer's guidelines and CASA regulations (see extract at [31] above). Whilst

the applicant disagreed with such objectives, it is worth noting that these are the same objectives which appear in the Project 8 Blocker to be discussed below.

108. The evidence before me of the discussions that did occur between Qantas and the ALAEA also seems to indicate that Qantas provided the information referred to in Step 1 a) and b). In regards to the first meeting following the announcement, Mr Harris attested (at [58] of his first affidavit) that:

> "On 21 February 2012 I attended a meeting with representatives of the ALAEA. The first thing that we discussed at this meeting were the proposed changes to line maintenance operations as a result of changes to the Qantas fleets and the introduction of MoD. I discussed what these changes meant for line maintenance operations at a high level and explained the consultation process going forward"

Mr Harris includes at attachment GH8 a letter sent to line maintenance employees which related to the 21 February 2012 meeting, noting:

> "**Key points from the meeting include.**
>
> …
>
> - We discussed the decision to implement Maintenance on Demand and the impact on positions in Sydney Domestic, Brisbane, Melbourne and Adelaide
>
> - We confirmed that we will soon commence a process for staff to express an interest in redundancy in Sydney, Brisbane, Melbourne and Adelaide
>
> **Why do we need to change?**
>
> - We are working in a highly competitive industry and our work practices need to be more efficient.
>
> - We need to focus our highly skilled engineers on maintenance work for which they are highly trained
>
> - We need to align our maintenance checks with that required by the aircraft manufacturer and the CASA approved Maintenance System
>
> - We need to match or exceed work practices of our competitors
>
> - We need to do it now "

109. Mr Purvinas' evidence of this meeting related to the ALAEA's stance in not agreeing to the changes, but did not go to the content of the discussions about the changes. It must be noted that the first letter requesting information followed this meeting.

110. At the 2 March 2012 meeting, it would also appear that information requested relating to Step 1 a) and b) was provided. Mr Harris attested that he presented an overview of the change to MoD and said words to the effect of:

> "The reason for these changes is that we need to align to industry practice and ensure we align to CASA and our manufacturer's requirements. We also need to maintain a competitive edge." (affidavit at [64]).

111. Beyond the reasons given, Mr Harris attests that he was requested to "go through the entire program of MoD" and that he proceeded to go through how the program would work. Mr Purvinas was not present at the meeting and his evidence as to the information that was passed on to him from the meeting was unconvincing. Under cross-examination the following exchange occurred (at [T180]):

> "Did [Mr Vasta] report to you that that meeting dealt with a range of issues regarding maintenance on demand?---I don't recall.
>
> He didn't give you a written report of that meeting?---I don't recall.
>
> See, Mr Harris will say that there were a lot of questions asked and answered in that meeting. You don't know anything about that?---I just don't recall at the moment."

112. At this point Mr Purvinas was alerted to the fact that he had given a series of responses that he did not recall the events following the 2 March 2012 meeting and that in such circumstances Mr Harris' evidence would be preferred. It must be noted that Mr Vasta, who attended the meeting on behalf of the ALAEA, did not give evidence before me. I am of the opinion that I must accept that the details of MoD were discussed in depth at the 2 March 2012 meeting.

113. Evidence relating to the next meeting on 7 March 2012 also suggests that the relevant information was discussed. Mr Harris attached to his first affidavit (at GH11) the slides that formed a part of the 7 March 2012 meeting. These included the following information under the heading "Rationale":

> "Maintenance on Demand
>
> New Gen aircraft technology supports an operating procedure which removes the need for an engineering check before every flight.
>
> MoD means that transit checks will only be conducted as required by the System of Maintenance on first flight and TOPS sectors for A330 and B738 aircraft.
>
> MoD aligns Qantas with our CASA approved System of Maintenance, manufacturer's guidelines an removes a competitive disadvantage.
>
> Engineers can get focused on using their skills to carry out aircraft checks required by the manufacturer and fixing aircraft defects, enabling us to improve the product and hence the customers [sic] experience."

114. This also suggests to me that the information relevant to Step 1 a) and b) of the Qantas Engineering – Managing Change procedure from QEPM 1-00-006 was provided by Qantas to the ALAEA. In all of the circumstances, I am satisfied that on the balance of probabilities the information requested in regards to Step 1 a) and b) was provided by Qantas and that there was no breach in regards to this information.

Request B: The Project 8 Blocker

115. Whereas Steps 1 a) and b) do not on their face require the production of documents, as the Respondent noted in final submissions [T469], Step 1 c) does require the production of the Project 8 Blocker document "in accordance with QEPM 1-00-010". This forms the second piece of information requested in the letter of 24 February 2012. It was established under cross examination that the reference to '8 Blocker' is not a reference to the project itself, but to the format of the document [T273]. The respondent agreed with the applicant's assessment of the document, in the Annexure A table, as being "a succinct summary of the project" [T471]. It was not provided to the applicant until subpoenaed during these proceedings [T470]. However, the respondent submitted that the applicant has failed to show what information contained within the document was not provided to it.

116. Certainly, on its face, the Project 8 Blocker (at Tab 1 of the Applicant's tender Bundle) contains no information that one would expect had not previously been given orally to the ALAEA which would advance the applicant's position in consultation about the effect of the

implementation of MoD. The respondent contended that the applicant, having had the document for the purpose of these proceedings, gave no evidence about what was contained in the document that had not been provided to it in consultation meetings. I find some force in this argument, as it would appear from the document itself that it contains information that one would have expected to have been divulged. It does not contain any "in confidence" information: indeed, much of the information contained within the blocks was publically announced. For these reasons I cannot be satisfied to the required standard that the respondent failed to provide the information and thus a breach occurred.

Request C: The Impact Statement relating to MoD

117. There was some debate regarding the description of this document given by the applicant. The applicant, in its Annexure A table gave the following description, "[t]his document sets out the risks of implementing MoD." The respondent queried this definition and noted that impact statements were defined in the QEPM annexed to Mr Dent's affidavit [at TD1, p4] as follows:

> "An impact statement must be produced to determine the impact of the change on existing polices, procedures, processes, products and services and controlled documentation. This will include legislation or company requirements and standards; and interrelated policy, procedures, processes and documentation."

118. The respondent went on to note that the impact statement was contained within the Applicant's tender bundle as it had been provided under subpoena. Indeed, it appears at point 2 of the MoD Change Management Plan [Applicant's bundle: tab 1] and states in full:

> "This change has been assessed as per the Qantas Group Safety Change Management Guidelines.
>
> Benefits
>
> A summary of the benefits that the new procedures will deliver is described below:
>
> - Flight Operations will continue to perform the pre flight check each transit however duplication of this check by the LAME is removed. This is a technology driven business change, as the manufacturers' and QF maintenance System only

requires a daily check (Check 2) and a first flight check (Check 1) be carried out each day. ETOPS checks will continue to be performed as required

- Completion of the A330 fuel record sheet will transition to Flight Crew which will free up engineers to focus on aircraft maintenance tasks

- Enabling these changes reduces the number of persons on the ramp thereby improving overall safety in potential hazardous areas on the tarmac

Scope

- To align current maintenance practices with the maintenance/servicing practices of our competitors so that LAMEs can focus on fixing aircraft for which they have been highly trained

- QEPM/AAOP/MCM procedures for inclusion of Maintenance on Demand

- Minor Maintenance Amplification for all QF aircraft- Check 1, Check 2, Departure Servicing Routine (DSR), ETOPs checks and fuelling procedures

- Overnight workloads in Maintenance Ports – ADL, MEL, SDO, SIO, and BNE

- The change should consider Human Factor issues – including but not limited to working hours, fatigue management, rosters and transition to the new work practices

- Related People / HR issues

- Risk Assessments covering the ongoing operation and the transition process

- Line Maintenance process improvement

Out of Scope

- Receipt and Dispatch of aircraft

- Aircraft towing

- Transition to Part 145 and Part 66 Regulations.

Assumptions

- The required resources will be available when necessary

- There will be no changes to the stated objectives

Constraints

- Availability of Key Resources during the Development & Implementation Phases

- Resistance by the Unions to the change
- External dependencies
- Number of Redundancies
- Overnight workloads in Maintenance ports: ADL, MEL, SDO, SIO and BNE
- Projected growth in PER
- Concurrent BAU activities
- Costs

Related Activities

- Marlin introduction
- AA change processes
- Part 66 implementation
- Fleet reduction
- QE internal approval process review"

119. I struggle to see how this impact statement corresponds to the definition contained within the QEPM beyond the first dot point under the heading "Benefits"; however, as it appears in the Change Management Plan in the place that corresponds to the second step of the QEPM, I assume that it is the final impact statement relating to the introduction of MoD. The document does highlight that the implementation of MoD may affect work hours and overnight workloads in maintenance ports. And it identifies that the number of redundancies, external dependencies and overnight workloads were seen as constraints; however, it does not identify in any detail *how* those issues constituted constraints to the implementation of the change. I can perceive that having the document may have assisted in directing discussions to such issues, but as the respondent noted in final oral submissions, it is unclear what information in the document was not given during the consultation meetings that were held [T472].

120. The onus is upon the applicant to establish that a breach of clause 47.2.3 occurred. I am not satisfied it has done so in light of the matters discussed above.

Request D: Any documents related to the human factors implications of the change

121. As with the request for any document related to Step 1a) and b) of the QEPM, the respondent argued that this request is too broad in the circumstances to engender a breach of clause 47.2.3 of the WD. The respondent also submitted orally that the request does not identify the information that is sought [T472-3]. I am sympathetic to both of those submissions.

122. In my opinion, the request is clearly too broad. How Qantas was to interpret such a request meaningfully is difficult to grasp. The CASA defines "human factors" as:

> "…the scientific discipline concerned with the understanding of interactions among humans and other elements of a system and the profession that applies theory, principles, data and other methods to design in order to optimise human well-being and overall system performance."[18]

123. Taking this definition into account, the request would appear to encompass the entire purpose of the consultations: the effect of the introduction of MoD on LAMEs. This is perhaps why the requests for information in the letter of 6 March 2012, following the second meeting between Qantas and ALAEA on 2 March 2012, became more specific. Indeed, some of those requests perceivably relate to human factors – such as information relating to contractors, labour requirements, treatment of seconded hours and leave availability. Mr Harris attested that on 2 March 2012 he gave an overview of the changes announced by Mr Joyce, including Maintenance on Demand (Mr Harris' first affidavit at [63]). He noted that he was asked by Mr Vasta to go through 'the entire program for MoD' and that he did so. Whilst the exact content of the meetings of 21 February 2012 and 2 March 2012 is not clear, it can be reasonably assumed that the way in which LAMEs would be affected by the change arose. If it was not, I have heard no evidence as to that fact. The evidence was directed at the failure to provide documents, but that, as I have said is not the criteria.

[18] http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_100994 , accessed 11 June 2013.

124. For the above reasons, I cannot be satisfied on the information before me that Qantas' response to this request resulted in a breach of clause 47.2.3.

Request E: Data on the number of defects reported by Tech crew in aircraft Technical Logs inbound and outbound of unmanned ports over a period of time

125. The was the first of the requests made in Mr Purvinas' letter of 6 March 2012. It would appear that such information could only relate to the decision to implement MoD, not the effects of its implementation on LAMEs. The applicant's table also states that part of the reason for this information being requested was that it was "necessary to gauge the likelihood of defects/issues being missed post MoD (by comparing average defects/issues detected at ports at which no LAMEs were stationed to ports at which they are) [and] for ALAEA to properly consult as to whether 30 redundancies were in fact required"; however, there is no evidence of that reason being given by ALAEA previously. In cross-examination of Mr Purvinas the following reason was given:

> "And the defect reporting in unmanned ports, they took the position that the data wasn't relevant to the introduction of MoD because MoD only affected manned ports, didn't they?---No, they said that they don't have a problem with the defect reporting in unmanned ports, whereas we had carried out a private study which showed that when an aircraft flies to an unmanned port, it is – it would only have nine per cent of the defects recorded, as opposed to 91 per cent of the defects to a manned port. And we thought that this was very relevant because an unmanned port, that is, a port where no maintenance on – where maintenance on demand effectively had already been introduced, because there's no engineers to check the aircraft, we knew that there was a problem with aircraft transiting through bases without seeing aircraft engineers carrying out pre-flight safety checks. We knew that from our private study, but we needed to formalise that so that we could put a position to Qantas to that the airline would be less safe if they went down the path of MoD." [T186]

126. It would seem to me that the motivation was more likely to be related to the efficacy of MoD as opposed to the then currently employed maintenance system, and not in relation to the effect on employees of the change.

127. There was some evidence put forward by Qantas, in any case, that the issue was dealt with during the meeting on 7 March 2012. Ms Bussell

included in her affidavit of 8 March 2013 the following account of discussions on this point during the 7 March 2012 meeting:

> "[…] we had a discussion in words to the following effect:
>
> [Ms Bussell]: Why is this relevant?
>
> Mr Harris: MoD is not being introduced in unmanned ports.
>
> Mr Purvinas: We believe that pilots and cabin crew are not reporting in unmanned ports and therefore they are waiting until they get back to manned ports.
>
> [Ms Bussell]: We do not accept this is the case. They have obligations under the regulatory framework and we don't believe that pilots would do that and fly unsafely.
>
> Mr Harris: We don't have evidence that pilots are doing anything other than flying in accordance with their obligations.
>
> Mr Harris went on to explain some more technical details in relation to this issue but I do not now recall what he said.
>
> Mr Purvinas: Karratha is an example. They are waiting until they get back to Perth.
>
> [Ms Bussell]: We will talk to Flight Ops about this." (at [19])

And Mr Harris stated in cross-examination:

> "I recall being asked a question about defect reporting rates in manned versus unmanned ports. I believed I dealt with it on the day. That's a matter that Mr Purvinas and I have fundamentally different views on, and I've subsequently dealt with it, I think, in writing." [T323]

Indeed, Mr Purvinas included a similar request in a letter of 9 May 2012 to Mr Harris. The request in that letter was couched in the following form:

> "I have been advised by employee stakeholders that in order to consider the changes proposed by the airline they will require copies of the following documents (some of which have been requested on numerous occasions) –
>
> …
>
> - Documents that will determine the number of defects reported to Tech crew in aircraft Technical Logs inbound and outbound of unmanned ports over a period of time

…

> When provided to the ALAEA these documents will be forwarded to the stakeholders for their consideration. We will give Technical advice to them and they will advise you when their commitment to the change is given."[19]

128. Whilst this suggests that Mr Purvinas was not satisfied with Qantas' response to that date, it also evinces a change in the ALAEA's perception of its role in the consultations, and again suggests that the information was being requested to approve the change itself and not to mitigate the effects of the change.

129. Indeed, the letter goes on to express the ALAEA's concerns about the implementation of MoD and cites two examples of perceived shortcomings in ports that have no LAME checks:

> "The ALAEA as an organisation has concerns that implementation of new MoD procedures would give Technical and Cabin crew less access to maintenance personal [sic]. We have stated these concerns at meetings with you and Qantas seemed to disregard our concerns and sought some examples. The attached compliance breaches from recent weeks are typical of information received from members that are directly related to the removal of LAMEs from some Australian ports.
>
> The first instance outlines a defect on aircraft VH-VYF Log Seq 383 reported into Syd on 26-04-2012. It was noted that on arrival the ACARS dumped the out an [sic] off times. The ACARS print however shows that the defect related to the Melbourne-Hobart sector. This defect should have been reported at Hobart where it occurred however no Qantas LAMEs are based in Hobart and for some reason the defect appears to have been withheld for one sector.
>
> The second instance relates to a popped circuit breaker in what appears to be a lighting circuit during a flight to Karratha. The crew reset the circuit breaker in consultation with maintenance watch who were located more than 2000 miles away. There is no record of either crew or maintenance watch personal [sic] identifying the cause of the popped breaker, it simply appears to have been reset disregarding Qantas procedures that are in place to protect the safety of Qantas aircraft. The presence of a LAME at Karratha would have had the correct procedures followed."

130. Mr Purvinas went on to request an investigation of those incidents and again stated that if Qantas implemented the procedures without regard to its policies on change management, the ALAEA would direct members "not to participate in the activity". Mr Harris' reply, at [GH20], restated Qantas' position that the consultations did not relate

[19] Letter from Mr Purvinas to Mr Harris at GH19.

to the change management policies, and went on to respond to the two issues Mr Purvinas had raised. That reply states:

> "With regard to the first incident you raised relating to VH-VYF log seq 383. My investigation has revealed the following facts. There was "nil defects" reported in the tech log seq 382, the MEL-HBA sector. On arrival into Sydney the crew reported the "ACARS dumped the out and off times" as you pointed out. We have spoken to Flight Ops and can confirm that there was no defect evident to the operating crew into Hobart. Our investigation has also revealed that this type of message is generally an error message driven by missing, corrupted or incorrect data sent to a ground station after the flight has finished. This can occur across multiple aircraft at different times. There is no requirement for technical crew to acknowledge, review or go searching for these particular messages.
>
> It is not a safety of flight issue and does not impact on any other operational systems on the aircraft. It is information used on a ground based recording system for flight crew operational hours.
>
> In relation to the other incident you raised, a popped circuit breaker on a lighting circuit during a flight to Karratha. We have been unable to obtain the specific information as you have not provided this. Notwithstanding this it is important to point out that both the Flight Administration Manual and the Qantas Engineering Procedures Manual (QEPM) allows for certain circuit breakers to be reset in-flight in consultation with Maintenance Watch.
>
> The incidents referred to above occurred in non-maintenance ports. The introduction of maintenance on demand (MoD) has no impact on non-maintenance ports. I can point to numerous examples where technical crew have made sound operational decisions to carry out air returns en route to an unmanned port as a result of defects that have occurred. Your concern that the introduction of MoD will give Technical and Cabin Crew less access to maintenance personnel is simply unfounded.
>
> As we have stated on numerous occasions during the consultation process with the ALAEA, the introduction of MoD in maintenance ports will ultimately free up LAME's to react to defects reported by crew."

131. It seems to me that this response indicates that Qantas was willing to provide information when prompted with specific requests.

132. In conclusion, I am not satisfied that the ALAEA made clear at any point that its reason for requesting data on the number of defects reported at unmanned ports related to the effect of the change to MoD on LAMEs. I find it unlikely that the requested information was provided. However, in the absence of the information before me, I am not convinced that it would have proven relevant to consultation about

the 30 redundancies. To find otherwise would be purely speculative. I am not satisfied that Qantas breached clause 47.2.3 due to its presumed lack of provision of this information requested.

Request F: Information related to any contractors working in Line Maintenance

133. This was the third of the dot points in Mr Purvinas' letter of 6 March 2012. Ms Bussell was taken to that letter in cross examination and asked about this information. She stated:

> "We provided the information, in fact, at the meeting on 2 March, to Mr Vasta, that Mr Purvinas didn't attend. But, as best we were able in that meeting, we were – engineering management advised Mr Vasta"

There was then some clarification about the date upon which date this issue was raised on. The cross examination continued:

> "Ms Bussell: No, I […] I'm saying that the matter had been raised in 2 March. It was one of the 44 questions that Mr Vasta asked. Then we got this letter on the 6th, with what the ALAEA saw as, in essence, outstanding from the meeting of 2 March. So the list had somewhat reduced. And then, at 7 March, Mr Purvinas referenced this letter of 6 March and we, in essence, went through and discussed where we were up to with each of these issues.
>
> Mr Moses: Yes. And with regard to contractors - - -?---
>
> Ms Bussell: With regard to contractors, we had provided that general information at the meeting of 2 March, and we reinforced it at 7 March. We did see it as relevant, and that with the – I think the answer at the time was, with the exception of some in-flight entertainment contractors, there were no other contractors in line maintenance."

In her cross examination Ms Bussell stated:

> "With regard to contractors, we had provided that general information at the meeting of 2 March, and we reinforced it at 7 March. We did see it as relevant, and that with the – I think the answer at the time was, with the exception of some in-flight entertainment contractors, there were no other contractors in line maintenance."

The court notes, however, that this lead to an objection and the decision to allow a further affidavit from Ms Bussell, which did not include this

information. The point was not returned to in cross-examination on the later affidavit.

134. In her affidavit of 8 March 2013, Ms Bussell deposed that this request was raised successively at the 2 March and 7 March 2013 meetings. She attested at [5] that the following exchange took place at the 2 March 2012 meeting:

> "Mr Harris: We don't believe we have any contractors in Line Maintenance. If you think there are any let us know.
>
> Mr Clark: We do have some in IFE.
>
> Mr Harris: But they are subject to contract."

And at [6] she attested that, at the 7 March 2012 meeting she stated in regards to the same request:

> "This was covered at the last meeting. If there is any we will have to consider this if we don't get enough expressions of interest for voluntary redundancy."

To which, she attested, Mr Purvinas replied with words to the effect of: *"This goes to redeployment"*. This suggests to me that the ALAEA had conveyed to Qantas that this information would be relevant to the issue of managing the redundancies and, indeed, that Qantas too saw the issue as relevant to the consultations.

In his cross-examination, Mr Purvinas stated (at [T181]) that he could not recall Mr Vasta informing him after the 2 March 2012 meeting that Qantas was unaware of there being contractors in line maintenance and requesting the ALAEA to let Qantas know.

Finally, when Mr Harris was pressed on his recollection about this issue he stated at [T322-3]:

> "Well, I recall on 2 November, with Mr Vasta, I suggested that we had no contractors working for us, and I took the – we thought the question was related to employees who were employed as contractors. On 7 March, I think Purvinas asked us that question again, because it appeared in his letter. We had a long conversation about contractors. He alluded us to some people we've got engaged in third parties as contractors. Panasonic and Jetstar in Hobart were two examples he raised. And then there was a long conversation about the relevance of those in legitimate mitigations, given they were third party commercial agreements. We felt we dealt with it on – dealt with that matter on the day."

135. It is surprising that Qantas could not affirmatively state that it had no contractors in line maintenance and requested such information from the ALAEA, especially after the issue had been brought to their attention in the 2 March 2012 meeting. However, I have no evidence before me that the information provided by Qantas was inaccurate, and it is perhaps telling that the same issue was not raised again in Mr Purvinas' 9 May 2012 letter. I believe that on the face of the evidence before me, I can only conclude that there was no additional information to provide. I do not believe that Qantas breached its obligations in regards to this information.

Request G: Details on predicted labour requirements assumed to be critical to the way in which Qantas calculated future labour requirements

136. Apart from the difficulty of the phrasing of this request, it is conceivable that knowledge of the predicted future labour requirements would assist the ALAEA in its consultations. It could have been used to seek transfers to areas where there was a demand for labour. However, when the issue arose at the 7 March 2012 meeting and the relevancy of the request was brought into question Ms Bussell recalled Mr Purvinas stating words to the effect:

> "It is relevant to the calculation of FTEs [Full-time employees]."

Ms Bussell then attested (at [8]):

> "Mr Harris had already advised the ALAEA during the 2 March meeting of the approximate retirement dates of aircraft and this would have an employee impact of approximately 14 FTEs per hull. We subsequently gave further information to the ALAEA regarding the basis of the calculation for the reduction of headcount for both MoD and fleet retirements in letters dated 5 April 2012 and 27 April 2012."

137. Under cross-examination Mr Purvinas stated that the request went to both fleet retirements and to the introduction of MoD [T183]. He stated the purpose of the request was:

> "to work out how the required manpower would be determined by the airline for their future labour needs, and whether they would have enough staff to acquit their work"

The following exchange then took place:

> "But in a way, they had already told you where they had worked out their numbers from, or you were aware of it, the 14 - - -?---Yes.
>
> - - - FTEs per hull. you were aware of that, weren't you?---Yes, but we didn't believe them.
>
> Right, so they told you their predicted labour requirements, but you didn't believe them?---No, because quite often, when we go to meetings with Qantas, they will put up PowerPoint presentations and explain that they have this work to do, or they have certain functions to equip. but it doesn't add up with the information we're getting from our members on the shop floor." [T183]

138. The evidence therefore suggests that future labour requirements were discussed and that Qantas did provide the requested information but it was not believed by the ALAEA. However, without any evidence of the ALAEA's estimates of labour requirements nor of Qantas' projected requirements before me it would be highly speculative to conclude that the information that Qantas did provide the ALAEA was inaccurate or deficient. This alleged breach is not made out.

Request H: Details on billable hours for towing and how the hours are recorded or booked in Line Maintenance

It is clear that this information was not provided by Qantas. According to Ms Bussell, who queried the relevance of this request at the 7 March 2012 meeting, Mr Purvinas stated words to the effect:

> "It is relevant to labour demand and FTE calculations."

139. The respondent submitted that this indicated that this issue was therefore "blurred" with that of fleet retirements and labour demand, for which it claimed information was provided [T475]. Whilst the information requested may be relevant to such concerns that does not exclude potential relevance to the introduction of MoD. However, as the respondent submitted, Mr Purvinas agreed under cross-examination that MoD would not directly impact on towing [T183]. Without having a clear understanding of how towing fits in to line maintenance, I find it difficult to conceive of any indirect effect that MoD may have on towing either. This information has not been put before me. Nor have I been given any indication as how access to details on billable hours for towing and how those hours were recorded would grant the ALAEA

any advantage in the consultation process. In those circumstances I cannot find a breach of clause 47.2.3.

Request I: Details on the forecast Line Maintenance 2012 budget (for comparison with the $404M 2011 figure) and information on how the budget hours are calculated

140. As Mr Purvinas confirmed (at [T183]), Qantas took the position that this information was confidential. The applicant took issue with this position in these proceedings on the basis that Ms Bussell, who communicated the confidential nature of the information, stated that she was not aware of the details of the forecast line maintenance budget because she had never looked at it, and that she did not know how the figures are arrived at.[20]

141. The respondent argued that Qantas was not under an obligation to give "every bit of material" about its future plans (at [T476]) and that the obligation to consult related to an immediate decision and not "about what future decisions or the future changes might be planned."

142. I was not in a position to see the forecast line maintenance budget and to compare it to the stated 2011 figure. The only financial information before the court that is potentially relevant on this point is that of Qantas' half-year financial overview up to 30 June 2012, including man power and staff related expenditure.[21] However, with MoD introduced on 12 June 2012 this figure cannot be said to reflect any projections Qantas may have made.

143. I cannot be satisfied on the basis of the evidence put to me that future budgeting is relevant to the decision to make 30 LAMEs redundant immediately. If there is a relevant nexus it was not explained to me. Again I have not been satisfied by the applicant that the failure to provide this information constituted a breach.

[20] ALAEA final submissions at [5.17(d)].
[21] Qantas Data Book, at annexure GH1 to Mr Harris Affidavit of 9 November 2012.

Request J: Details on how seconded hours are treated in relation to each cost centre.

144. Mr Purvinas attested under cross examination that this issue was:

> "in relation to Qantas' ability to acquit work with what we thought to be, and we sought details on this, about how many staff had actually been taken out of their department, and were no longer available to acquit the future work needs that we had sought as well, along with the towing and all of the other issues that make up the daily routine for these people, when so many people were seconded out and unable to acquit this work." [T183-4]

When asked whether the ALAEA had a particular interest in secondees having access to the EOI process, he stated (at [T184]):

> "Look, we would have asked generally if all staff have access to voluntary redundancies, so that jobs could be backfilled. I don't specifically recall saying that we need to know that people who were seconded can have a VR package."

145. Mr Parry first put to Mr Purvinas that it was Qantas' position that the information was not relevant [T184]. Mr Purvinas replied:

> "And we responded by saying that it is relevant, because we need to know what the future labour needs of the airline are, so that we know that the work can be acquitted safely, and so that we could establish the impact on our members."

146. This does suggest that the ALAEA's concern in relation to this information related, at least in part, to the effect of the introduction of MoD on its members. Unfortunately there was no further discussion with Mr Purvinas on this point about whether Qantas did provide the relevant information.

147. In contrast, Qantas' position subsequently became that the information had been provided. Ms Bussell affirmed in her affidavit of 8 March 2013, that the concern raised in relation to secondments at the 2 March 2012 meeting, by Mr Vasta, was that secondees would not have access to the EOI process. She stated that at the 7 March meeting, in response to that query, Mr Harris stated words to the effect that:

> "Mr Harris: Costs for long term secondments are allocated to the relevant cost centre, for example the secondees to Marlin are allocated to the Marlin Project. Secondees will be offered an opportunity to participate in the EOI for voluntary redundancy."

148. She also stated under cross-examination that when Mr Purvinas was asked what that information was for he "indicated he wanted to know whether secondees were being charged to Gavin Harris' cost centre or elsewhere" and that this was answered (see [T402]).

149. The applicant submits, against assertions that this information was provided, that Ms Bussell's letter of 22 March 2012 contradicts such assertions. That letter (extracted in full at [50] of these reasons) states:

> "In our view, most the [sic] materials you have requested do not fall within the scope of information Qantas is required to provide in accordance with the Determination. It follows that, other than as required under applicable Determination provisions, Qantas is under no obligation to provide information in response to the questions set out in your letter of 6 March 2012, or to provide the ALAEA with copies of documents prepared in accordance with internal change management procedures."

150. Whilst this paragraph of the letter seems to confirm Mr Purvinas' account of Qantas' position in relation to the information, and information generally, it is not conclusive on the secondees issue. To find otherwise I would have to find that Qantas' later submissions were inventions. I do not believe there is sufficient evidence to draw that conclusion. I do not believe that it is in doubt that the letter of 6 March 2012 was discussed in depth at the 7 March 2012 meeting and that some of the information requested was given and is no longer in dispute. And it is of note that the same complaint was not made in relation to Ms Bussell's responses relating to contractors in line maintenance. Perhaps because those responses came before the swearing of her second affidavit and her second cross examination. It is likewise of note, though not conclusive, that the request for this information did not feature in Mr Purvinas' letter of 9 May 2012 (Annexure SP 20 to Mr Purvinas' 17 September 2012 affidavit).

151. I am not satisfied on this evidence that Qantas breached its obligations in regards to the provision of this information.

Request K: Details of the last review of standard hours versus defect rectification and OEM data

152. There is very little evidence about the treatment of this request. In cross-examination of Mr Purvinas it became apparent that standard hours related to the time it takes for functions to be performed [T184].

I can perceive that the relevance of this information might have gone to a calculation of the time to be saved when checks were removed and hence to a calculation of the required manpower following the removal of the checks, though there is no evidence that this was put before Qantas. However, I am also conscious, as the respondent claimed to the ALAEA [T184], of the possibility that defect rectification information may be confidential in the sense that its disclosure would be inimical to its interests, resulting in such information falling within the exception in clause 47.2.3.

153. In regard to the standard hours information, it is apparent that the ALAEA had been informed at the meeting on 7 March 2012 that there had been no changes to the standard hours. Ms Bussell states in her second affidavit that:

> "Mr Harris said words to the effect of:
>
> This is commercial in confidence and we're not providing it.
>
> Mr Clark then said words to the effect of:
>
> We have not changed the standards."

And, in cross-examination of Mr Purvinas, the following exchange took place:

> "And I suggest to you that at this meeting, Mr Harris made it clear to you there had been no changes to standard hours, right?---He may have said that."

154. On the basis of the evidence before me, it appears that the ALAEA accepted the confidential nature of the information relating to defect rectification. In regard to standard hours, I cannot be satisfied that the requested information was not provided.

Request L: Details of available leave (leave liability) in each Line Maintenance cost centre

155. Again there is a discrepancy between the table annexed to the Applicant's final submissions and the reasons given in evidence before me. Mr Purvinas, under cross-examination, agreed that this matter had been discussed on 7 March 2012 [T185]. He was asked whether the

issue was relevant only in the case that the allotted number of voluntary redundancies was not met and that compulsory redundancies were required. Mr Purvinas replied:

> "No, the immediate particular relevance was to determine whether staff members were accruing large amounts of leave, and being worked too hard and in breach of fatigue management policies at the airline and other aspects. And we sought the information so we could establish, again, how Qantas would acquit its future labour needs, and whether they would do that by not allowing people to take leave."

156. It is apparent from Ms Bussell's 8 March 2013 affidavit that Qantas took the approach that such information may be relevant in the case that compulsory redundancies were required. She attested (at [13]):

> "I said words to the effect:
>
> > We will provide it if it becomes necessary. At the moment we are going through an EOI process [for voluntary redundancies]. We think we will get enough volunteers but if we don't we will have to look at how we mitigate."

157. In my opinion, if the information was considered to be relevant to mitigating the effect of the introduction of MoD in the case that the Qantas-assigned-number of voluntary redundancies was not met, then it is difficult to see how this would not have been relevant had the requirement for 30 redundancies itself been in issue – as I have found it should have been. It is evident that Qantas was prepared to provide the information at some point, hence I am not prepared to find that the information fell within the exception found in clause 47.2.3.

158. What is also evident from Ms Bussell's statement is that the information was not provided. In the circumstances, I believe that relevant information which should have been provided was not provided. In this instance there was a breach of clause 47.2.3.

Request M: Costings for carrying out all A380 C checks and details of rectification hours on C checks that have already taken place

159. Qantas took the position that this information was not relevant to the introduction of MoD, given that the change to MoD did not apply to A380 aircraft. This position was specifically conveyed to the ALAEA

at the 7 March 2012 meeting. According to Ms Bussell, the following exchange took place at that meeting:

> "[Ms Bussell]: Why is that relevant to line maintenance?
>
> Mr Purvinas: I'm asking about this because line maintenance employees affected can perform A380 C checks as discussed in the heavy maintenance meeting yesterday.
>
> Mr Clark: This came out of consultation on heavy maintenance and should be kept in that forum because it's a heavy maintenance decision." (Affidavit of Sue Bussell, 8 March 2013 at [14])"

160. It would appear from this that Mr Purvinas was suggesting that the information could be used to inform discussion about possible transfer of LAMEs into heavy maintenance. There is no evidence going to whether or not Mr Purvinas acquiesced to Qantas' suggestion. However, Mr Purvinas agreed in cross-examination (at [T185]) that A380 C checks were a heavy maintenance activity.

161. It is of note that the reason given by Mr Purvinas, according to Ms Bussell's account, is, to a degree, in line with the 'reason requested' column of the applicant's table annexed to its final submissions – though that table makes the unsupported claim that such work was already being performed by line maintenance employees. Whilst I can perceive that the possibility of LAMEs working in other fields may have assisted in consultation about the need for redundancies, the evidence relating to this request for information and to the information itself is too sparse to come to any solid conclusion about its relevance or confidential nature. Without more, I cannot be satisfied as to its relevance. I do not believe it can be concluded that Qantas breached clause 47.2.3 in regards to this request for information.

Request N: Details on the price a delay costs each minute for each aircraft type including how the costs are calculated

162. This is another broadly phrased request, which appears to stretch beyond the aircraft in question and into commercially sensitive territory. Indeed, Qantas appears to have taken the view that the information was irrelevant. Though, what emerged from the cross-examination of Mr Purvinas is not particularly enlightening on the subject:

> "Again, Qantas took the position – there was discussion of the matter, and Qantas took the position that it wasn't relevant?---Like I said, Qantas said that nearly everything here was not relevant and commercial in confidence, but we disagreed with that, and argued on each of these points why it was relevant." [T185]

163. I do not believe that this information was relevant to the effect of the introduction of MoD. Ms Bussell attested as to the following in regards to the discussion about this request at the 7 March 2012 meeting, when Mr Purvinas was questioned about the relevance of the request:

> "[Ms Bussell]: How is this relevant?
>
> Mr Puvinas: You can keep surplus LAMEs to deal with delays as an emergency response group.
>
> Mr Harris: It wouldn't work because you wouldn't necessarily have the right people with the right licences or skill sets. It's not an effective way of managing the business.
>
> Mr Purvinas did not challenge this response."

164. This seems to suggest that the information was seen to go towards the ability to keep LAMEs in employment, however, there is no other evidence to support this. Likewise, as the respondent submitted (at [T478]) there is no evidence that this information even exists. In addition, I note that the applicant's annexed table – while again positing a reason for the request that appears to have no evidentiary backing – effectively states that the reason this information was sought was for the purpose of assessing whether MoD should be implemented and makes no mention of the effect of the implementation on employees. Without any other evidence before me about this request, or the information sought, I am unable to find any breach in regards to the lack of its provision.

Request O: Details on the total labour hours requirements per cost centre, the split between mechanical and avionics and the split between aircraft types

165. This appears to be another broad request for information. Once more, the evidence before me in relation to this request for information is

scant. When it was suggested to Mr Purvinas that this information related particularly to fleet retirements, he replied:

> "It's relevant to both the fleet retirements and the MOD issue." [T185]

But no further questions were put to him about the information in regard to how it was relevant to the MoD issue.

166. Ms Bussell's evidence on point was that a conversation in words to the following effect took place at the 7 March 2012 meeting:

> "Mr Purvinas: How many avionics guys will you need after MoD? Will you be targeting avionics for redundancy?
>
> Mr Harris: The FTEs are based on the same distribution of LAMEs and AMEs as currently. LAME selection will be along the same avionics and mechanical mix where possible."

She stated that this response was not challenged by Mr Purvinas.

167. I again note that the applicant's table does not refer to the effects of the implementation of MoD on employees in its column of reasons for the request. I do not believe that I can positively conclude that Qantas breached its requirement to provide information on the basis of the evidence before me in relation to this request.

Request P: A copy of the 5 year plan for Qantas Engineering

168. The debate in relation to this request for information was somewhat beguiling. Qantas' position was that it did not know whether such a document existed, but that if such a document did exist it would not be relevant. I am surprised that at this late stage Qantas was unable to confirm whether such a document existed or not. But there is no conclusive evidence before me that such a document does exist. The applicant seeks to prove the existence of the document in its final submissions annexure A table by reference to Mr Joyce's announcement on 16 February 2012 where Mr Joyce stated:

> "The fourth pillar of our five year plan is to ensure a **Strong and Viable Business**."

169. However, this statement comes under the heading: "**Qantas International five year plan**". This seems to contradict any argument

that the plan referred to could have related to any five-year plan for Qantas Engineering.

170. It was put to Mr Purvinas that Qantas' position during the consultations was that Qantas did not know whether such a document existed, and that it would be commercially confidential and irrelevant [T186]. Mr Purvinas replied:

> "Look, they said – they said it's not relevant. And I'm not sure about the commercial in confidence aspect of it."

Ms Bussell attested, in her affidavit of 8 March 2013, that she had addressed this request at the 2 March 2012 meeting with words to the effect of:

> "A five year plan, if there is one in Engineering, would be a forward looking document at a high level document and not relevant to these decisions."

171. I am not sure that the high level of a document would necessarily make it commercially confidential or that its forward-looking nature would necessarily render it irrelevant to discussions as to the effect on employees of the introduction of MoD at that time. I find unconvincing applicant's unsupported assertion, in its reason requested column of its Annexure A table that:

> "This was necessary to determine the effect of the change. For example, was it the first step of a number of significant changes?"

and I am sympathetic to the objections put forward by the respondent on this point in closing oral submissions that:

> "this is not an exercise of looking at everything that might happen in the future. This is an exercise of consulting in respect of the implementation of a definite decision. If there are to be significant changes in the future, they would almost certainly be caught by the definite decision provisions and be dealt with consistently with the obligations. But this isn't an opportunity to then start looking into the future and every decision that might be made going forward."

172. Again the evidence before me as to the relevance of this document is inconclusive. However, this dilemma is compounded by the fact that I am not satisfied that the document exists at all. In such circumstances, I cannot find that Qantas breached clause 47.2.3 in regards to this request.

Request Q: Details of changes that the Executive General Manager of Engineering has flagged beyond this "stage one" proposed change

173. It is apparent to me, from the wording of this request alone, that it goes farther beyond the scope of the consultations than the previous request for the elusive five year plan for Qantas Engineering. I find no assistance in the speculative nature of the applicant's annexure A table's the reason for the request:

> "This was necessary to determine the effect of the change. For example, was it the first step of a number of other significant changes? Would the changes lead to redundancies down the track when combined with other changes? Would it increase the amount of work available for LAMEs so that immediate redundancies were not required?"

174. It is clear to me that this amounts to no more than speculation. There was no evidence before me about this request for information, including evidence of the existence of such information. I cannot find any breach on Qantas' part for failing to provide it.

The November 2012 Announcements

175. The applicant also seeks orders imposing pecuniary penalties for breaches of clauses 11 and 47.2 in relation to redundancies that came about in November 2012 (Amended Application at [5] and [7], cited at [2] of these reasons).

The applicant states at [38-39A] of its Amended Statement of Claim:

> "38. On or about 8 November 2012, the Respondent announced that a large number of positions would soon become redundant from their engineering operations. These redundancies included up to 204 positions in Sydney Line Maintenance and some 263 from the Heavy Maintenance Facility at Avalon, which is staffed by both employees of the Respondent and Forstaff Aviation Pty Ltd, a contractor to the Respondent. The redundancies are, in part, the result of the Respondent's implementation of the MoD system.
>
> 39. On 13 November 2012 and 26 November 2012 the Applicant's representatives attended meetings with representatives of the Respondent at the Respondent's premises in Mascot to discuss the proposed redundancies referred to in paragraph 38 above.

> 39A. At the meeting on 13 November 2012, the Applicant's representatives were informed, in relation to the redundant positions in Sydney, that approximately half of these positions would be those of Licenced [sic] Aircraft Maintenance Engineers covered by the Workplace Determination. The Respondent did not consult with the Applicant prior to its decision to make the positions redundant."

Although these remedies are presented in a manner that indicates the breaches occurred in November 2012, there has been very little evidence on point, and it seems to me that they have been argued as flow-on breaches resulting from Qantas' actions in relation to the introduction of MoD.

176. The applicant submitted that staff who had taken up voluntary redundancies as a result of the introduction of MoD could have taken up the later redundancy as a result of the November 2012 announcements and therefore relieved others of the need to. However, the applicant agreed that for the court to make that finding would require the drawing of inferences and speculation (see [T466]). Indeed, I am not satisfied that the further redundancies related to the introduction of MoD. Nor am I convinced that if the 30 redundancies had not occurred those positions would have allowed for the number of redundancies in November 2012 to have been reduced, for the simple reason that the 30 positions would have remained filled. Ms Bussell gave evidence (at [T411-12]) that one possible way to mitigate the effects of the November 2012 redundancies was for a swap to occur between centres, however, as the person swapping would have to agree to redundancy, the total number of redundancies would be unaffected.

177. The only evidence in relation to the consultations relating to the November 2012 redundancies comes from the cross-examination of Mr Purvinas, and it seems to indicate that consultations had taken place and were still underway in regards to the announcement of those redundancies (at [T196]):

> "[Mr Parry]: With regard to more recent announcements in November - - -?---Yes.
>
> - - - concerning changes to – I think your statement of claim brings in announcements that took place in November that are going to affect the – there's potential redundancies; right?---Yes. We're in discussion with Qantas at the moment about further redundancies.

> Yes. That's – I just wanted to establish that you are in discussions with Qantas about the redundancies. And, indeed, as I understand it, there was a meeting last week discussing these matters?---Yes.
>
> And there are discussions going on of other options to mitigate the redundancies?---There are.
>
> And they might include forced leave or shorter hours or so forth?---We're discussing those matters at the moment.
>
> Yes. They're up in the air at the moment, and they will be a matter that this – is there further meetings organised?---I don't know. There will be, though."

178. There is nothing to indicate that the number of redundancies was fixed prior to the consultations. Ms Bussell attested that she was not involved in determining that number (at [T411-412]) or that information requested in relation to those consultations has not been provided. In these circumstances I can find no breach of clause 47.2 in relation to the November 2012 redundancies. In so far as the alleged breach of clause 11 is concerned with regard to these redundancies, it seems to me that my findings in regard to Qantas' obligations in respect of that clause apply equally in relation to these redundancies. To the extent they are the result of a predetermined policy they are a matter that should be discussed by way of consultation. But the evidence is they are being discussed and those discussions have not concluded, so I cannot make a finding of breach of clause 47.2.

179. For the above reasons, I am unable to provide the relief sought in relation to [5] and [7] of the Amended Application.

Conclusion and relief

180. After a lengthy hearing and even lengthier perusal of the documentation, I have found that the applicant has not established that the respondent was in breach of the Workplace Determination by failing to consult when it made the decision to implement MoD. I have found that it did breach the determination when it determined, without consultation, that 30 LAME positions should be made redundant upon the implementation of MoD. I have also found that Qantas breached clause 47.2.3 of the WD when it failed to provide information concerning details of leave (leave availability) in each line maintenance

cost centre. It will be therefore necessary to hold a further hearing on penalty for these two breaches, the first of which seems to be clearly more serious than the second. Because of the splitting of the case in this way it is necessary for the court to make declarations in respect of the breaches found and these are contained in the "Orders" section of this decision. A party to a workplace determination that contravenes a provision of it is thereby in breach of s.280 of the Act and such a contravention is a civil penalty provision to be dealt with under Part 4-1 of the Act.[22]

I certify that the preceding one hundred and eighty (180) paragraphs are a true copy of the reasons for judgment of Judge Raphael

Associate:

Date: 24 June 2013

[22] The Act, s.280 Note 1.