FEDERAL COURT OF AUSTRALIA

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited [2010] FCA 591

Citation:	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited [2010] FCA 591
Parties:	**COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA, AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION, AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION, AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION and AUSTRALIAN FEDERATED UNION OF LOCOMOTIVE EMPLOYEES, QUEENSLAND UNION OF EMPLOYEES v QR LIMITED, QR PASSENGER PTY LTD and QR NETWORK PTY LTD**
File number:	QUD 33 of 2010
Judge:	**LOGAN J**
Date of judgment:	11 June 2010
Corrigendum:	13 July 2010
Catchwords:	**INDUSTRIAL LAW** – Workplace Agreements – Obligation to "consult" with employees in respect of proposals to be implemented that will impact on "terms and conditions of employment" – Whether changes as a result of restructuring after announcement of the partial privatisation of businesses operated by government owned and controlled corporations will impact "terms and conditions of employment" – Consideration of whether and when obligation to "consult" arises – Consideration of content of the obligation to "consult" **Held**: Obligation to consult arose and was contravened by government owned corporations
Words and Phrases:	"consult" – "impact" – "proposal to be implemented" – "terms and conditions of employment"

Legislation:

Constitution (Cth) s 51
Australian National Railways Commission Sale Act 1997 (Cth)
Corporations Act 2001 (Cth)
Fair Work Act 2009 (Cth) ss 539, 546, 784, 786
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)
Industrial Relations Act 1988 (Cth) s 170GA
Judiciary Act 1903 (Cth) s 39B
Property Law Act 1974 (Qld) s 48
Workplace Relations Act 1996 (Cth) s 668

Government Owned Corporations Act 1993 (Qld) ss 5, 6, 76, 88, 89, 114, 115, 438
Railways Act 1863 (Qld)
Railways Act 1914 (Qld) ss 6, 8
Transport Infrastructure Act 1994 (Qld) s 219
Transport Infrastructure Amendment (Rail) Act 1995 (Qld)
Transport Infrastructure (Railways) Act 1991 (Qld) ss 2.1, 2.7, 3.3, 3.4, 8
Anti-Discrimination Act 1977 (NSW)
Rail Company Act 2009 (Tas)

Railways Act 1921 (UK)
Railways Act 1993 (UK)
Transport Act 1947 (UK)
CN Commercialization Act 1995 (Can)

Government Owned Corporations Regulation 1993 (Qld)
Government Owned Corporations Regulation 2004 (Qld)
Government Owned Corporation Amendment Regulation (No. 1) 2007 (Qld)
Government Owned Corporations (Bundaberg Port Authority Wind-Up) Regulation 2007 (Qld)
Government Owned Corporations (QR Limited Restructure) Regulation 2008 (Qld) ss 10, 11

Cases cited:

Allders International Pty Limited v Anstee (1986) 5 NSWLR 47 considered
Amcor Ltd v Construction, Mining, Forestry and Energy Union (2005) 222 CLR 241 cited
Australian Meat Industry Employees Union v Coles Supermarkets Australia Pty Ltd (1998) 80 IR 208 cited
Bonella v Wollongong City Council [2001] NSWADT 194 considered
Kucks v CSR Ltd (1996) 66 IR 182 applied
Construction, Forestry, Mining and Energy Union v Newcastle Wallsend Coal Company Ltd (C2758 Dec 1533/98 S Print R0234) cited
Communications, Electrical, Electronic, Energy,

Information, Postal, Plumbing and Allied Services Union of Australia v Vodafone Network Pty Ltd (C2001/5570 PR911257) cited
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Optus Administration Pty Ltd (AW791910 Print L4596) cited
Food Preservers' Union v Wattie Pict Ltd (1975) 172 CAR 227 considered
Port Louis Corporation v Attorney-General of Mauritius [1965] AC 1111 applied
Sinfield v London Transport Executive [1970] 1 Ch 550 applied
Termination, Change and Redundancy Case (1984) 294 CAR 175 considered
Termination, Change and Redundancy Case (No 2) (1984) 295 CAR 673 considered
TVW Enterprises Ltd v Duffy (No 2) (1985) 7 FCR 172 considered

Quick & Garran, *The Annotated Constitution of the Australian Commonwealth* (1901 ed, Legal Books Reprint, 1976)

Date of hearing:	23, 27, 28 and 30 April 2010 4 and 10 May 2010
Date of last submissions:	7 May 2010
Place:	Brisbane
Division:	FAIR WORK DIVISION
Category:	Catchwords
Number of paragraphs:	155
Counsel for the Applicants:	Mr R Kenzie QC with Mr W Friend
Solicitor for the Applicants:	Hall Payne Lawyers
Counsel for the Respondents:	Mr J Murdoch SC with Mr D Pratt
Solicitor for the Respondents:	Minter Ellison Lawyers

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
FAIR WORK DIVISION **QUD 33 of 2010**

BETWEEN:	**COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA** **First Applicant**
	AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION **Second Applicant**
	AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION **Third Applicant**
	AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION **Fourth Applicant**
	AUSTRALIAN FEDERATED UNION OF LOCOMOTIVE EMPLOYEES, QUEENSLAND UNION OF EMPLOYEES **Fifth Applicant**
AND:	**QR LIMITED** **First Respondent**
	QR PASSENGER PTY LTD **Second Respondent**
	QR NETWORK PTY LTD **Third Respondent**

JUDGE:	**LOGAN J**
DATE OF ORDER:	**11 JUNE 2010**
WHERE MADE:	**BRISBANE**

CORRIGENDUM

1. On page 55 of the Reasons for Judgment at paragraph 148, it should read "The detailed nature and extent of the consultation required under these clauses will vary" instead of "The detailed nature and extent of the consultation required under these clauses".

I certify that the preceding one (1) numbered paragraph is a true copy of the Corrigendum to the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 13 July 2010

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
FAIR WORK DIVISION **QUD 33 of 2010**

BETWEEN: **COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA**
First Applicant

AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION
Second Applicant

AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION
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JUDGE: **LOGAN J**
DATE OF ORDER: **11 JUNE 2010**
WHERE MADE: **BRISBANE**

THE COURT DECLARES THAT: on or about but not later than 22 January 2010 each respondent contravened a civil remedy provision for the purposes of s 539 of the *Fair Work Act 2009* (Cth) in that each contravened a term of a transitional instrument or instruments applicable to it, the said term and respectively applicable instrument or instruments being that or those particularised in the Schedule.

THE COURT ORDERS THAT:

1. The applications are adjourned to 21 June 2010 at 10:15 for further hearing.

THE SCHEDULE

LIST OF APPLICABLE AGREEMENTS AND TERMS AND RELATED RESPONDENTS

Name of Agreement	**Employer**	**Consultation Clause**
QR Limited Traincrew Union Collective Workplace Agreement 2009	QR Limited	36
QR Ltd Coal and Regional Freight Logistics Union Collective Workplace Agreement 2009	QR Limited	74
QR Limited Regional Freight and Coal Rollingstock Production Union Collective Workplace Agreement 2009	QR Limited	79
QR Regional Freight and Coal Support Union Collective Workplace Agreement 2009	QR Limited	13
QR Corporate - Shared Services Union Collective Workplace Agreement 2009	QR Limited	13
Civil Maintenance Union Collective Workplace Agreement, Asset Services Group, QR Limited	QR Limited	5.1
Electric Control Operators Union Collective Workplace Agreement 2009	QR Limited	9.1
Facilities Union Collective Workplace Agreement 2009	QR Limited	5.1
Infrastructure Projects Union Collective Workplace Agreement 2009	QR Limited	24
QR Services - Support Union Collective Workplace Agreement 2009	QR Limited	5.1
Rollingstock and Component Services Union Collective Workplace Agreement 2009	QR Limited	47
Trackside Systems Union Collective Workplace Agreement 2009	QR Limited	76

QR Passenger Pty Ltd Citytrain Network Stations Union Collective Agreement 2009	QR Passenger Pty Ltd	74
QR Passenger Pty Ltd Customer Service Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	55
QR Passenger Pty Ltd Long Distance Train (On Board Services Technician) ("OBST") Union Collective Workplace Agreement	QR Passenger Pty Ltd	75
QR Passenger Pty Ltd - Passenger Operations Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	77
QR Passenger Pty Ltd Rollingstock Assets Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	84
QR Passenger - Traincrew Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	41
QR Passenger Pty Ltd Transit Services Union Collective Agreement 2009	QR Passenger Pty Ltd	72
QR Network Pty Ltd "Start Up" Union Collective Workplace Agreement 2009	QR Network Pty Ltd	2.3

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules. The text of entered orders can be located using Federal Law Search on the Court's website.

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
FAIR WORK DIVISION **QUD 33 of 2010**

BETWEEN: **COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA**
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Third Respondent

JUDGE: **LOGAN J**
DATE: **11 JUNE 2010**
PLACE: **BRISBANE**

REASONS FOR JUDGMENT

Introduction

1 This case has its origin in an announcement made by the Queensland Premier, the Honourable Anna Bligh MP, on behalf of the State Government, on 8 December 2009. The

Premier announced that day that the freight and coal businesses presently operated within a group of government owned rail corporations were to be transferred to a new company to be known as "Queensland National" shares in which were to be offered to the public in mid 2010. At the same time it was announced that the existing business known as "QR Passenger" would remain in government ownership with that business to be operated in the future by a newly created, government owned corporation, called "Queensland Rail". It was also stated that this new Queensland Rail would retain ownership of the existing publicly owned track network and that, "those employees who construct and maintain the non-network will remain in the government owned Queensland Rail business".

2 Collectively, the respondent corporations (the QR employers) are the employers of the many thousands of employees (the better part of 15,000) who work for them within the rail businesses described in the Premier's announcement. The QR employers are respectively parties to various federally registered union collective agreements (the QR Agreements) made under the then *Workplace Relations Act 1996* (Cth). Those agreements each contain a clause which obliges the employer "to consult with affected employees and, at their election, their nominated representatives, over any proposed changes that will have an impact on employees' terms and conditions of employment".

3 The applicant trade unions are each registered organisations of employees under the *Fair Work Act 2009* (Cth) (Fair Work Act). They allege that, in the interval which passed between 8 December 2009 and 22 January 2010:

(a) there were proposed changes evidenced by and flowing from the State Government's announcement of 8 December 2010 which will have an impact on employees' terms and conditions of employment;

(b) the QR employers had, by 22 January 2010, determined to implement those proposals;

(c) the QR employers did not consult, as they were in the circumstances obliged, with their employees; and

(d) as a consequence, the QR employers have breached the QR agreements respectively applicable to them such that they should be ordered to pay pecuniary penalties

pursuant to s 546 of the Fair Work Act (s 39B of the *Judiciary Act 1903* (Cth) is also called in aid insofar as declaratory relief is sought).

4 For their part the QR employers allege:

(a) no obligation to consult had by 22 January 2010 arisen because there had not by then been a proposal that would have an impact on employees' terms and conditions; and

(b) if, which is denied, they were under any such obligation:

(i) they did consult with employees during that period in a way which discharged that obligation; and

(ii) this proceeding is, in any event, premature in that, at the time of its commencement in February this year, the processes of consultation were not then complete such that it cannot be held that they have failed, at the time alleged, to comply with their consultation obligation.

5 The applicant trade unions contend that 22 January 2010 is a critical date because on that day some thousands of employees received an individual letter from their existing employer inviting them to terminate their existing employment and offering them alternative employment each with effect from 1 July 2010 or such other date as may be determined in the context of the Queensland Government's public share float.

6 Section 546 of the Fair Work Act provides for the imposition of a pecuniary penalty by the Court in respect of a contravention of a "civil remedy provision". Section 539 of the Fair Work Act defines what constitutes a "civil remedy provision". Items 2 and 16 of Sch 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (the Transitional Provisions Act) have the effect that each of the QR Agreements now operates, for the purposes of the Fair Work Act, as a transitional instrument. Item 2 of Sch 16 to the Transitional Provisions Act provides that a person must not contravene a term of a transitional instrument. Item 16 in that Schedule makes that Item 2 obligation a "civil remedy provision" for the purposes of s 539 of the Fair Work Act. Those Items operate so as to permit an application to be made by a registered organisation to the Court under s 546 for a

contravention of a civil remedy provision constituted by the alleged contravention of the QR Agreements.

7 These reasons for judgement address whether or not it should be concluded that the QR employers have breached the union collective agreements as alleged. If breaches are established it will then be necessary separately to hear submissions from the parties with respect to penalty and ancillary orders.

Queensland Rail

8 A study of Queensland legislation since the time of Queensland's being constituted in 1859 as a body politic separate from the then colony of New South Wales discloses that the ownership and operation of railways has historically been regarded by its Parliament as an activity of government. The extent to which these have been regarded as exclusive activities of government has varied. Historically, exceptions to exclusivity were to be found in the ownership and operation of light rail networks associated with the sugar industry. In more recent years there has been provision for accreditation of non-Queensland government related rail operators under legislative manifestations of national competition policy agreements between Commonwealth and State governments.

9 That Queensland and other States were, at the time of Federation, owners and operators of railways is an assumption which underlies two provisions of *The Constitution*, s 51(xxxiii) (the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State) and s 51(xxxiv) (railway construction and extension in any State with the consent of that State). In describing the background to these provisions at the time of the Federation debates, Quick & Garran noted, *inter alia*, that, "[i]t was also perceived that the railways were valuable assets, associated with and forming the main tangible security for the public debts of the colonies" (Quick & Garran, *The Annotated Constitution of the Australian Commonwealth*, (1901 ed, Legal Books reprint, 1976), pp 643-644, §220).

10 It is instructive in light of the current Queensland partial privatisation announcement to contrast the prevailing position in Queensland and the other then Australian colonies at Federation with the then prevailing position in the United Kingdom, which had seen the development of railways by a myriad of private sector companies. By 1921 there were 120 of

them which were grouped into four by the *Railways Act 1921* (UK). Not until 1948 with the nationalisation of those four companies pursuant to the *Transport Act 1947* (UK) did railways pass into public ownership in the United Kingdom. The resultant British Rail was, in turn, progressively privatised under the *Railways Act 1993* (UK).

11 The *CN Commercialization Act 1995* (Can) provided for the continuance of the Canadian National Railway Company under the Canada's business corporations legislation and for the issuance and sale of the shares in that company, hitherto held by a Minister on behalf of the Canadian Government, to the public

12 The *Australian National Railways Commission Sale Act 1997* (Cth) offers an Australian legislative example of the disposal of a publicly owned railway operator. The *Rail Company Act 2009* (Tas) is a recent Australian legislative example of the converse, an acquisition by a State of a hitherto privately owned and operated rail business.

13 These legislative examples from elsewhere in Australia and from abroad assist in keeping a sense of proportion about the Queensland Government's announcement of 8 December 2009. Viewed through the prism of the Queensland experience to that date in relation to rail operation and management, evident from the legislative history I set out below, the State government's decision did harbinge radical change. The type of change proposed was not unknown. In a relative sense, that change, though radical enough, was less so than the legislative examples I have given in that it did not presage the complete withdrawal either of government from railway operation or the converse.

14 The legislation to which I have referred, as with, to give another example, Queensland's legislative manifestation of national competition policy agreements in respect of rail industry competition, each represent political value judgements. So, too, does Queensland's partial privatisation decision. This case is not concerned with the wisdom or otherwise of that political value judgement.

15 The means by which public ownership and operation of railways has been effected in Queensland has changed over the years according to trends in public sector administration.

16 The earliest Queensland legislative provision in respect of railways is the *Railways Act 1863* (Qld). This and other colonial and early post-Federation legislation with respect to the public ownership and operation of railways were repealed and their various provisions were consolidated by the *Railways Act 1914* (Qld). That Act provided (s 6) for the appointment by commission by the Governor-in-Council of a Commissioner for Railways. The Commissioner for Railways was answerable to a Minister administering the legislation and responsible for the operation, maintenance and development of the State's railway system. For that purpose, the Commissioner was constituted as a corporation sole representing the Crown (s 8).

17 This position prevailed for most of the twentieth century. The Railways Act 1914 was repealed by the *Transport Infrastructure (Railways) Act 1991* (Qld) (Transport Infrastructure Act) but the corporation sole constituted under s 8 of that Act was, by s 2.1, continued in existence as a body corporate under the name "Queensland Railways". That body corporate represented the Crown (s 2.7). Responsibility for the exercise and discharge by Queensland Railways of the powers conferred and the functions and duties imposed on it by the Transport Infrastructure Act was, under Part 3 of that Act, consigned to a Board. I note that the Board was obliged "**to consult** with the Minister on matters of policy of or affecting Queensland Railways" (s 3.3(a)), (emphasis added). Where the Minister was satisfied that it was in the public interest to give a direction, the Board was subject to Ministerial direction (s 3.4).

18 The regime established by the Transport Infrastructure Act had a comparatively short life. That Act was repealed by the *Transport Infrastructure Amendment (Rail) Act 1995* (Qld) (Transport Infrastructure Amendment (Rail) Act). The Transport Infrastructure Amendment (Rail) Act 1995 made extensive amendments to the *Transport Infrastructure Act 1994* (Qld) in relation to rail infrastructure planning and the management and operation of railways. The amendments also made provision for the accreditation of railway managers and for the operation of rolling stock by accredited railway operators.

19 The amendments followed the establishment under the *Government Owned Corporations Regulation 1993 (Qld)* made under the *Government Owned Corporations Act 1993* (Qld) (GOC Act) of "Queensland Rail" as a "candidate GOC". As amended by the Transport Infrastructure Amendment (Rail) Act, the Transport Infrastructure Act 1994 gave the following functions to Queensland Rail:

Functions

76. The functions of Queensland Rail are—

(a) to establish, maintain, manage and operate, or arrange for, rail transport services and infrastructure; and

(b) to provide or arrange for ancillary services or works that are necessary or convenient for the effective and efficient maintenance, management and operation of—

(i) rail transport services; and

(ii) rail transport infrastructure; and

(iii) other rail infrastructure; and

(c) to do other things that are incidental or complementary to the performance of its functions or are likely to enhance the provision of—

(i) rail transport services; and

(ii) rail transport infrastructure; and

(iii) other rail infrastructure; and

(d) to perform any other functions conferred on it under an Act or a regulation.

20 The Transport Infrastructure Amendment (Rail) Act 1995 also contained elaborate transitional provisions in relation to the previous regime under which these functions had been undertaken. One of these, which became s 219 of the Transport Infrastructure Act 1994, granted interim accreditation to Queensland Rail as a railway manager and railway operator in the following way:

(1) Queensland Rail is taken to be accredited as the railway manager for a railway that—

(a) was, immediately before the commencement, built or being maintained by the previous rail corporation; or

(b) is built or maintained by Queensland Rail before this section expires.

(2) Queensland Rail is taken to be accredited as a railway operator for a railway on which—

(a) immediately before the commencement, the previous rail corporation was operating rolling stock; or

(b) rolling stock is operated by Queensland Rail before this section expires.

The "previous rail corporation" for the purposes of this provision was Queensland Railways.

21 By 2010 and following further amendments to the Transport Infrastructure Act 1994 and much subordinate legislation under the GOC Act the functions given to Queensland Rail in 1995 by the then s 76 of that Act had, by the present s 438, come to be given to a public company known as QR Limited, the first respondent in these proceedings. Section 438 of the Transport Infrastructure Act 1994 provides:

438 Function

(1) The function of QR Limited is to provide comprehensive transport services

and services ancillary to those services, whether in or outside Queensland or Australia.

(2) Without limiting subsection (1), the function includes—
- (a) the provision of passenger and freight transport services; and
- (b) the provision of consultancy and training services relating to transport services; and
- (c) establishing, maintaining and arranging for the provision of transport infrastructure; and
- (d) doing anything likely to complement or enhance the function or something mentioned in paragraphs (a) to (c).

(3) QR Limited is taken to have had the function from when Queensland Rail became a GOC.

(4) This section does not limit the functions of QR Limited.

22 Now, QR Limited is declared to be a GOC under Schedule 2 of the *Government Owned Corporations Regulation 2004* (Qld) (Government Owned Corporations Regulation 2004). The process by which QR Limited came to be declared under that regulation requires an analysis of various amendments made to the Government Owned Corporations Regulation 2004 during 2007. Prior to 29 June 2007, Queensland Rail was recognised as a statutory GOC under Div 8 of the Government Owned Corporations Regulation 2004. This regulation was amended in 2007 by the *Government Owned Corporation Amendment Regulation (No. 1) 2007* (Qld), which changed the name of "Queensland Rail" to "QR" by inserting a new s 28A. On 27 September 2007, through the *Government Owned Corporations (Bundaberg Port Authority Wind-up) Regulation 2007* (Qld), Div 8 was deleted and "QR Limited ACN 124 649 967" was inserted into Schedule 2 of the Government Owned Corporations Regulation 2004 as a GOC for the purposes of the Government Owned Corporations Act, where it remains in the current reprint.

23 QR Passenger Pty Ltd (QR Passenger) and QR Network Pty Ltd (QR Network) are each subsidiaries of QR Limited. The parent company and its subsidiaries are each Government Owned Corporations (GOC). A GOC, as defined by s 6 of the GOC Act:

> is a government entity that is:
> (a) established as a body corporate under an Act, or the *Corporations Act 2001* (Cth); and
> (b) declared by regulation to be a GOC.

24 A "government entity" is defined by s 5 of the GOC Act in the following way:

> A ***government entity*** is—
> (a) a government company or part of a government company; or
> (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
> (c) a department or a division, branch or other part of a department; or
> (d) a GOC Act entity; or

(e) an entity prescribed by regulation.

In turn, a "government company" is defined by s 2 of the GOC Act to mean "a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the State".

25 The origins of QR Passenger and QR Network appear to lie in a restructuring of QR Limited in 2008 so as to transfer its hitherto passenger and network business units to separate, subsidiary legal entities. This change was effected by the *Government Owned Corporations (QR Limited Restructure) Regulation 2008* (Qld). Interestingly, that regulation made changes to the employment status of those QR Limited employees hitherto employed within those business units by deeming them to become employees of QR Network or, as the case may be, QR Passenger: see s 10 and s 11 respectively.

26 The mechanism under the GOC Act for the State's beneficial ownership of the stock or shares in the capital of a "government company" is to vest those shares equally between the Minister administering that Act (the Treasurer) and the relevant "portfolio Minister". A "portfolio Minister" is nominated to that role by the Premier with the general position being that the portfolio Minister will be the Minister for administrative responsibility for the field in which the GOC will operate: see s 6, GOC Act. In this fashion, a duarchy of ultimate Ministerial control of a GOC is established. As a consequence, currently, the Honourable Andrew Fraser, Treasurer and Minister for Employment and Economic Development and the Honourable Rachael Nolan, Minister for Transport are the shareholding Ministers of QR Limited

27 The Board of a GOC consists of persons nominated by the Governor in Council: s 89 GOC Act. While that Board is given broad managerial powers in respect of the GOC (s 88), it is, in respect of both the GOC and its subsidiaries, in exceptional circumstances and in the public interest, of which the shareholding Ministers are the arbiters, subject to Ministerial direction, see s 115 GOC Act. The Board may also be directed by the shareholding Ministers to cause the GOC and its subsidiaries to comply with State public sector policies: see s 114 GOC Act. A "consultation" obligation with the Board is imposed on the shareholding Ministers prior to the giving of such directions.

28 It was no part of the applicant trade unions' case that the GOC Act obliged the State Government directly to consult with the workforce of the QR employers. As is evident from the foregoing analysis, such consultation obligation as the State Government had under the GOC Act in respect of the decision announced by the Premier on 8 December 2009 was an obligation to consult with the Board of QR Limited.

29 The QR employers contended that neither their status as a GOC nor the fact that the motivation for their actions after 8 December 2009 was that State Government decision (and therefore a decision of the shareholding Ministers) had any relevance to such consultation obligation, if any, as they had under the QR agreements. The correctness of this submission depends upon the level of abstraction at which one views any such obligation.

30 The submission is correct in this general sense. Subject to the GOC Act, all obligations and rights arising from the *Corporations Act 2001* (Cth) apply to a GOC. Similarly, subject to considerations arising from the extent to which QR Limited and its subsidiaries can be said to represent the State for the purposes of *The Constitution* (a subject unnecessary to consider in this case) all applicable rights and obligations arising under Federal law, including those under the Fair Work Act, apply to a GOC.

31 Having regard to the announcement made on 8 December 2009 and in the events which transpired, it does not follow from this general position that the present status of each of the QR employers as a GOC is *necessarily* irrelevant to a consideration of whether a consultation obligation under the QR agreements arose before 22 January 2010.

32 The announcement made that day contemplated the breaking up, either for sale to private investors or, as the case may be, for retention in exclusive public ownership, of the various businesses presently operated by QR Limited and its subsidiaries as a group. As the foregoing historical analysis demonstrates, QR Limited and its subsidiaries are the direct successors in law of a State government official, the Commissioner for Railways, first appointed almost 150 years ago. Further, that succession was not just a legal entity succession but also a functional succession. Corollaries of the announcement, made manifest by the letters sent on 22 January 2010, were that thousands of workers presently employed by entities under the ultimate control and direction of the State were invited to cease that employment and to take up new employment with a different, private sector employer which

was to undertake functions hitherto undertaken in the public sector. The announcement therefore represented, for Queensland, a radical break with the past. The present status of QR Limited and its subsidiaries forms a necessary part of the background matrix of facts and legal relationships to the allegations made by the trade union applicants. The relevance of that status cannot be dismissed out of hand. Rather, it depends on the true construction of the consultation clauses in the QR agreements, particularly the phrase, "proposed changes that will have an impact on employees' terms and conditions of employment".

The QR Agreements

33 There are, in all, 20 union collective agreements referred to in the statement of claim. A table which lists those agreements and identifies both the consultation clause concerned and which of the QR employers is a party to that agreement is Annexure 1.

34 Each of these agreements is federally registered. They are what might be termed "stand alone" agreements in the sense that they do not specifically refer to an underlying award. The industrial instrument which applied in the absence of the QR agreements was the Queensland Rail Award – State 2003 (State Award). At the time when the QR agreements were registered federally, this award took effect as what was known as a "Notional Agreement Preserving a State Award".

35 Because the consultation clause in each of the QR agreements was identical and because other clauses also regarded as material in the agreements were in substantially similar form the parties chose to focus their attention on one particular agreement on the understanding that conclusions reached as to its construction would have application across the whole range of the QR agreements. I agree that this is a convenient way to approach that subject.

36 The agreement selected was the *QR Limited Traincrew Union Collective Workplace Agreement 2009* (the Traincrew Agreement). Such provision as that agreement makes in respect of consultation is found in cl 36.

37 The clause which makes provision in respect of consultation is cl 36, which is in these terms:

36 Consultation

36.1 For the purposes of this Agreement, consultation is a process:

- Aimed at getting individuals or groups to suggest or response to proposals to be implemented without at the same time giving up management's 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.

The Company will not be obliged to disclose confidential information if that disclosure is contrary to the Company's interests.

36.2 The Company will consult with affected employees and, at the employees' election, their nominated representatives, over any proposed changes that will have an impact on employees' terms and conditions of employment. The matters over which the Company will consult include, but are not limited to:

- termination of employment
- changes in the composition, operation or size of the Company's workforce, or in the skills required
- the elimination or reduction of promotion opportunities, job opportunity or job tenure
- the alteration of hours of work
- the need for retraining or transfer of employees to other work or locations
- the restructuring of jobs.

36.3 However, the Company is not required to consult over individual workplace/performance issues (see Clause 38).

36.4 The Company will consult:

- At the local level, if the proposed change is not expected to affect any other part of the Company
- At the business group or Company level where the change is expected to impact on employees more broadly.

36.5 The process of consultation will include:

- The timely provision in writing of all relevant information, including details of the change, the likely effects on employees, the reasons for the proposed change and, where relevant, a proposed implementation date
- Discussion on measure to avert or mitigate any adverse effects on employees
- Provision of reasonable resources, including work time, for employees to fully participate in the consultation process
- Genuine consideration of employees', and at the employee's election, their representatives' suggestions, ideas and contributions
- Genuine opportunity for employees and, at the employee's election,

their representatives to affect the outcome.

36.6 Where the Company makes a final decision in relation to the matter subject to consultation, the Company will notify the affected employees and, at the employee's election, their representatives in writing. This notification will include final details of the proposed change and an implementation date. The implementation date will not be earlier than 5 working days from the date of the notification, unless safety concerns demand otherwise. In such cases, the notification will be signed by senior Company management.

36.7 If, however, at the conclusion of this consultative process, concerns continue to exist regarding the matter subject to consultation, the employees, and at the employee's election, their representatives will have 5 working days in which to issue a notice of dispute. This notice of dispute will be issued in accordance with Step 3 of the Dispute Resolution Procedure.

36.8 **Traincrew Agreement Consultative Committee**

A Freight Traincrew Agreement Consultative Committee will be established to review the implementation of the Agreement at regular intervals.

38 In the course of submissions, reference was made to two other clauses in the Traincrew Agreement, cl 41 and cl 42:

41 Managing Surplus Employees

41.1 The Company is committed to maximising permanent employees' security of employment, but it operates in a rapidly changing, competitive environment where security of employment is increasingly linked to winning and retaining work.

41.2 This requires a continuous review and re-alignment of how we deliver products and services to our customers. The objective is to maximise the application of available resources including staffing and infrastructure, while considering changing customer needs or organisational priorities.

41.3 This may mean changes to employment arrangements. Where this occurs it is the parties' intent to pursue security of employment for permanent employees through re-skilling and/or retraining and/or redeployment opportunities. The intent is to provide long-term sustainable employment for employees whilst acknowledging that the flexibility the Company requires may often require changes to people's jobs.

41.4 To support these commitments the parties agree that where there is a reduction in staffing requirements not associated with natural attrition, then there will be no forced redundancies and no forced relocation.

41.5 An employee will not unreasonably reject retraining, transfer and/or redeployment. Transfer will apply as defined in the relevant Company policies as amended from time to time.

41.6 Where a fixed-term engagement extends for more than 2 years or involves more than 5 consecutive fixed-term engagements at the same location, the employee is to be engaged/converted to permanent employment with the

condition that the employee will be subject to involuntary redundancy and termination payments as provided in the relevant Comp any policies as amended from time to time.

41.7 Where an engagement as set out above extends more than 4 years the employee is to be engaged/converted to permanent employment without involuntary redundancy.

42 Transmission Of Business

42.1 The parties acknowledge that Part 11 – Transmission of Business Rules, of the WRA sets out the legislative framework with respect to how this Agreement will be bind a successor, assignee or transmittee of the Company's business.

42.2 Where a business is transmitted from the Company to another employer, as contemplated by the WRA (in this clause called the "transmittee") and an employee who:

(a) At the time of such transmission was an employee of the Company in the business transmitted; and
(b) Was covered by the provisions of this Agreement; and
(c) Who immediately becomes an employee of the transmittee;

Then where:

(d) The employee's service and accrued and unused leave entitlements with the Company are assumed by the transmittee; and
(e) The employee is offered employment on terms and conditions no less favourable than the employee currently enjoys;

the employee will not be entitled to payment on account of any leave, severance, redundancy, period of notice or any other entitlement on termination of their employment with the Company.

39 There was no disagreement between the parties as to the principles which attend the construction of an industrial agreement. The following observation made by Madgwick J in *Kucks v CSR Ltd* (1996) 66 IR 182 at 184, which is frequently cited with approval, encapsulates those principles:

> 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. For reasons such as these, expressions which have been held in the case of other instruments to have been used to mean particular things may sensibly and properly be held to mean something else in the document at hand. (Emphasis added)

Though Madgwick J had made these observations in relation to the construction of an award, Northrop J in *Australian Meat Industry Employees Union v Coles Supermarkets Australia Pty Ltd* (1998) 80 IR 208 at 212, having cited them with approval, considered that they applied even more strongly in the case of the construction certified agreements. Why this remark of Northrop J is so apt in the case of an industrial agreement is, in my opinion, underscored by the passage which I have emphasised in the observations made by Madgwick J. The starting point must always be the language employed by the parties to an industrial agreement but industrial context and purpose are always relevant when construing that language, as Gleeson CJ and McHugh J highlighted in their joint judgement in *Amcor Ltd v Construction, Mining, Forestry and Energy Union* (2005) 222 CLR 241 at [2].

40 I commence first with the text of cl 36 and the ordinary meaning of the word "consult".

41 The Oxford Dictionary gives the primary meaning of "consult" when, as the agreement does, used as a verb as, "[t]o take counsel together, deliberate, confer; also said of a person deliberating with himself" (Oxford English Dictionary, 2nd Edition, Online version). No different meaning for the word is supplied by Australian idiom, (q.v. the definition in Macquarie Dictionary Online). The word is plainly not used in cl 36 in the sense of deliberating with one's self.

42 The imposition of a requirement for one party to consult with another is hardly unique to industrial instruments. I have already made passing reference to coincidental examples of requirements to "consult" in the course of setting out the history of legislative provision in Queensland with respect to railways. A search of current Commonwealth legislation discloses no less than 572 provisions imposing a requirement on a Minister or other official or agency to "consult". In turn, as a study of reported cases discloses, these are but Australian exemplars of a requirement widely employed in a range of public administration applications by the parliaments of the United Kingdom and elsewhere in the Commonwealth of Nations.

43 Thus, in *Port Louis Corporation v Attorney-General of Mauritius* [1965] AC 1111 at 1124 the Judicial Committee observed of a consultation obligation in an ordinance in respect of measures to alter local government boundaries that: "[t]he nature and object of consultation must be related to the circumstances which call for it" and "The requirement of

consultation is never to be treated perfunctorily or as a mere formality. The local authority must know what is proposed; they must be given a reasonably ample and sufficient opportunity to express their views or to point to problems or difficulties; they must be free to say what they think." These observations as to what was entailed in a requirement to consult commended themselves, in the different context of their use in broadcasting legislation, to Toohey J when a judge of this Court in *TVW Enterprises Ltd v Duffy (No 2)* (1985) 7 FCR 172. His Honour pithily remarked (at 178), "Consultation is no empty term." That same sentiment is evident in the following passage from the judgement of Sachs LJ in *Sinfield v London Transport Executive* [1970] 1 Ch 550 at 558 concerning a consultation obligation which attended a power to alter bus routes:

> It is apposite first to mention that Mr Francis emphasised not once but several times that whatever be the true construction of section 22(3) [which contained the consultation requirement] and whatever order this court might make, it was in the end the executive and no one else who made the decision. If that was intended to intimate that the executive merely looked on consultations as being an opportunity for those consulted to make ineffective representations, it would represent an approach that, to put it mildly, cannot be supported. Consultations can be of very real value in enabling points of view to be put forward which can be met by modifications of a scheme and sometimes even by its withdrawal. I start form the viewpoint that any right to be consulted is something that is indeed valuable and should be implemented by giving those who have the right an opportunity to be heard at a formative stage of proposals – before the mind of the executive becomes unduly fixed.

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.

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.

46 On the authorities in relation to the construction of industrial instruments, the context in which a word is used, whatever may be its ordinary meaning, is an important consideration. As to that, the QR employers submitted that, "the vast, geographically spread nature of [their] workforce and the fact of its government ownership and implications of that ownership – can be taken to be well known to all of the negotiating parties when the QR agreements were negotiated, and is therefore part of the 'industrial context' which can be taken into account". I agree. Yet even though these factors were well known, the Traincrew Agreement provided for consultation.

47 For the applicant trade unions the submission was made that the "industrial context" against which cl 36 fell to be construed also included that it was a clause addressing the subject of change in the workplace. So it is. Such clauses, it was submitted, had a heritage in Australian industrial law which could be traced to the Termination, Change and Redundancy Cases (TCR Cases) in the industrial commission – *Termination, Change and Redundancy Case* (1984) 294 CAR 175 and *Termination, Change and Redundancy Case (No 2)* (1984) 295 CAR 673 (TCR Case (No 2).

48 The applicants did not submit that this heritage meant that the clause should be construed as if its wording was the same as commended itself to the industrial commission in

the TCR Cases. Rather, recalling that the concept about consultation about change was at the heart of cl 36, the origins of such clauses in Australian industrial law assisted, they submitted, in deciding whether the clause has a narrow or a broad scope. The applicant unions' submission was that it would be antithetical to the heritage of a clause of this type to afford it a narrow scope of operation.

49 As to this submission, the QR employers acknowledged that the Queensland Industrial Commission had, in 1987, declared a policy of supporting the introduction into State awards of the same TCR clause as had been settled federally in the TCR Cases. In conformity with that Queensland Industrial Commission policy decision the State Award had included a standard TCR clause (cl 4.10). However, the QR employers drew attention not only to the stand alone nature of the QR agreements but also to differences in the wording as between that standard TCR clause and cl 36.

50 These differences were summarized in the following way:

(a) a difference in the quality of the proposed change which is required before the obligation is triggered:

(i) under the standard TCR clause, what is required is a proposal for *major change* in production, program, organisation, structure or technology which is *likely* to have a *significant effect* on employees;

(ii) under the QR agreements the obligation is triggered when there is a proposed change that *will* have an *impact* on employees' *terms and conditions of employment*.

(b) the clause require consultation with different classes of employees:

(i) under the TCR clause, the obligation requires the employer to notify the employees who *may* be affected by the proposed changes and the union or unions);

(ii) under the QR agreements the obligation is to consult with *affected employees* (and, if they elect, their nominated representatives).

[Emphasis by the QR employers in their submissions]

51 The QR employers acknowledged that there were also similarities between cl 36 and the TCR clause in the State Award such that it was likely that the parties to the Traincrew Agreement had consulted that award when negotiating the terms of cl 36 (eg the definition of "significant effects" as defined in the TCR clause seems to have provided the inspiration for the various dot point items which appear in cl 36.2).

52 It is not necessary for the purpose of construing cl 36 of the Traincrew Agreement to engage in comparative linguistic analysis as between that clause and a standard TCR clause to the end of determining whether the reach of each clause is identical. Especially that is so having regard to the level of abstraction at which the applicant trade unions put their submission in relation to the utility of the TCR Cases. That there were differences in language as between a standard TCR clause and cl 36 was a given in that submission. The point made was that the TCR Cases represented a watershed in Australian industrial law.

53 Prior to the TCR cases, there had not been *any* general, formal provision in respect of the management of change in the workplace in Australian industrial instruments, as opposed to isolated examples (TCR Case at 194-195). The final form of what became the standard TCR clause was settled following further submissions to the industrial commission and reflected an acceptance by the commission that there should be an express obligation for employers to discuss with employees and their union or unions measures to avert or mitigate the adverse effects of the employer's decision: TCR Case (No 2) at 688.

54 Now, such kind of provision, in one way or another, is routine. In that routine and with the passage of time there is a risk that the reasons why it was considered both necessary and desirable that there should be general provision in modern times in industrial instruments with respect to the management of change in the workplace may be forgotten. The applicant trade unions' submission was that a recollection of these reasons was important in understanding the industrial context in which cl 36 fell for consideration and hence in construing that clause. As I understood it, a further and not unrelated reason for the reference to the TCR Cases was that they assisted also in understanding the purpose of clauses making provision with respect to the introduction of change in the workplace.

55 The claim advanced by the Australian Council of Trade Unions (ACTU) in the TCR Case, as the name by which that case is popularly known indicates, extended beyond the question as to whether there should be general provision in Federal awards in respect of the introduction of change in the workplace. It also addressed the subjects of provision in respect of termination of employment and redundancy. One of the authorities upon which the ACTU relied, which the industrial commission chose to cite (TCR Case at 177) in describing the general background to the claim as a whole, was *Food Preservers' Union v Wattie Pict Ltd* (1975) 172 CAR 227 (Wattie Pict Case) in which Gaudron J, then a presidential member of the commission, had made the following statement:

> Primarily employment is the chief source of income for Australian families. Its interruption must be attended either by financial hardship or the fear of it. Employment is also part of a worker's daily routine and society; disruption of that routine and social contact necessitates a reorganization of an important aspect of a person's life. Long term employees may also find themselves with a competitive disability as a result of opportunities foregone in the continuous service of their employers.

56 In the TCR case the industrial commission made further reference to the Wattie Pict Case when addressing the subject of whether there should be general provision in awards in relation to unfair dismissals. That is only to be expected for the Wattie Pict Case was decided in that context. What is significant for present purposes in understanding the industrial context in which a clause like cl 36 falls for consideration and also its purpose is that the sentiments evident in her Honour's statement were regarded by the industrial commission as desirably noted as part of the general background to *all* of the claims made in TCR Case. While, in the TCR Case, the ACTU did not succeed in the detailed breadth of its claims, it did succeed, materially, in securing acceptance by the industrial commission that there should be some general provision, against the background which the commission had noted, in respect of the introduction of change in the workplace.

57 What I take from this is that, in construing any clause in an industrial instrument which addresses the subject of change in the workplace, the industrial context, having regard to their heritage of such clauses in the TCR Case, necessarily includes an understanding of the central importance of employment as a source of income for most Australian families. It is not just in the interruption of employment that at least the fear of financial hardship and loss of settled daily routine and the society of the workplace described by Gaudron J may arise. The introduction of change in a workplace, be it occasioned by advances in technology, restructuring, reorganisation or otherwise can also engender such fears in workers.

58 It is evident from that part of the TCR case in which the industrial commission expressly addressed the subject of "Introduction of Change" (TCR Case at 194 -196) that the commission regarded provision for consultation and the resultant exchange of views between employer and employees or their representatives as a way of ensuring that such fears were not held in ignorance and that such changes, if introduced, took into account the views of employees as to how this might be done, including done with the minimum possible disruption to their lives. In this fashion, the purpose of such clauses is also exposed.

59 Then National Labour Advisory Council (NLAC) Guidelines played an influential role in persuading the industrial commission that there was a need to make some general provision in respect of consultation in the event of decisions to implement change in the workplace. Those guidelines had been formulated with particular reference to technological change but the industrial commission cited them with approval in support of the decision it made to introduce a clause which, "covers not only technological change, but any change in an enterprise which is likely to significantly affect employment, irrespective of the cause of that change" (TCR Case at 194). Included in the passages from the NLAC guidelines which the industrial commission chose to quote was this (TCR Case at 196):

> As to consultation, those same Guidelines state:
>
> > The arrangements for consultation may vary with regard to the type and extent of the change being made, or the needs of particular situations, but the employer should always seek to afford the appropriate trade union officials and/or other recognized employees' representatives an opportunity to express their views on the employment effects associated with a technological change.
> >
> > These consultations might include proposals for the possible transfer of employees, training and retraining arrangements, methods and conditions of restructuring jobs. It will also be necessary to discuss the best method of informing employees of the results of the discussions.

The point of setting out this passage is not that it can in any way serve as a substitute for the language employed in cl 36 of the Traincrew Agreement for it plainly cannot. Rather, having regard to the ordinary meaning of the word "consult", already discussed, it serves to demonstrate that the industrial commission was not, in the TCR case, adopting an idiosyncratic meaning of that word. Nor, having regard to cl 36.1 especially, did the parties to the Traincrew Agreement use the word "consult" in any idiosyncratic way.

60 Neither the applicant trade unions nor the QR employers submitted that separate assistance was to be gained in the construction of cl 36 of the Traincrew Agreement by reference either to Article 13 of the International Labour Organisation (ILO) Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer (Australian Treaty Series 1994, No 4 – ILO Convention No 158) or to the related ILO Termination of Employment Recommendation, 1982 (No 166 – ILO Recommendation No 166). ILO Recommendation No 166 was adopted by the ILO at the same conference which adopted ILO Convention No 158.

61 Article 13 of ILO Convention No 158 is directed to the situation where an employer contemplates terminations for reasons of an economic, technological, structural or similar nature. In that situation, it provides, inter alia, that the employer is to "give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for *consultation* on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment" (emphasis added).

62 Regard to the TCR Case discloses that ILO Convention No 158 and ILO Recommendation No 166 formed part of the material upon which the ACTU generally relied as supporting its claim for the introduction generally into Federal awards of provisions in respect of termination, change and redundancy. Further, in reciting the particular submissions made by the ACTU in support of a clause in respect of the introduction of change in the workplace, the industrial commission noted (TCR Case at 195) that one of the indicia relied upon by the ACTU as to a need to introduce such a clause in Federal awards in Australia was "ILO standards". However, it was from the NLAC guidelines, rather than from any ILO standard, that the industrial commission chose to quote in explaining why it proposed to approve the introduction of the standard TCR clause with respect to the introduction of change in the workplace.

63 At the times when the TCR cases were decided ILO Convention No 158 had not entered into force in Australia. That did not occur until 26 February 1994. Thereafter, it has been variously taken up into Federal industrial legislation prevailing from time to time q.v. s 170GA and Schedule 10, *Industrial Relations Act 1988* (Cth): s 668 and Schedule 4, *Workplace Relations Act 1996* (Cth) and ss 784 and 786, *Fair Work Act 2009* (Cth). ILO

Convention 158 had also been taken up in Queensland industrial legislation in relation to termination of employment at the time when the QR agreements were made: Div 2 of Pt 4 of ch 3 of the *Industrial Relations Act 1999* (Qld).

64 It was submitted on behalf of the QR employers that there is no evidence that either ILO Convention 158 or ILO Recommendation 166 played any particular role in the negotiations that led to the Traincrew Agreement and, in particular, in the drafting of cl 36. That is true, although I doubt that it is just coincidence that resulted in "termination of employment" being the first of the circumstances instanced under cl 36.2 in which the parties to the Traincrew Agreement envisaged that such "consultation" for which that agreement provided would occur.

65 On 10 March 2009, the ILO published a document entitled *Note on Convention No. 158 and Recommendation No. 166 concerning termination of employment* (ILO Note; copy available online at the ILO website: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_100768.pdf). The ILO Note offers guidance with respect to the meaning and intended purpose of provisions of ILO Convention No 158 and ILO Recommendation 166. Included (at p 12) in the commentary in the ILO Note in respect of article 13 of ILO Convention 158 is the following statement:

> In August 2005, the International Finance Corporation's Good Practice Note on Managing Retrenchment stressed the importance of consultations to both the development and the implementation of a retrenchment plan. The Good Practice Note states that "*without consultation, companies run the risk of not only getting key decisions wrong, but also of breaching legal rules and collective agreements and alienating workers and the community. Workers can often provide important insights and propose alternative ways for carrying out the process to minimize impact on the workforce and the broader community*"
> [Footnote reference omitted, emphasis added]

66 In the result though, there is no direct link between cl 36 of the Traincrew Agreement and ILO Convention 158 and ILO Recommendation 166 such as would counsel construction of cl 36 in accordance with the interpretation of Art 13 of ILO Convention 158. Nonetheless, each is a provision with respect to consultation in the context of a contemplated or proposed termination of employment (although the consultation obligation in cl 36 ranges more widely than just proposed terminations). The observation which I have emphasised in the passage quoted from the ILO Note offers, by analogy, a compelling rationale in relation to the importance of consultation.

67 Having regard to that rationale, to the purpose of the clause and to the industrial context of cl 36, especially in light of its heritage in Australian industrial law, it would be inappropriate to construe that clause narrowly.

68 It was submitted on behalf of the QR employers that a feature of cl 36 was that consultation was not required unless the employer had made a definite decision to bring about change.

69 There is a distinct difference between a "proposal" to bring about change and a "definite decision" to bring about change. The former has about it a provisional quality; the latter does not. Regard to dictionary definitions of the word "proposal" bears this out. As used as a noun and in the context of cl 36, the definitions which are most apt for "proposal" are "a suggested or intended plan, scheme, or course of action; *spec.* one submitted formally for consideration" (Oxford English Dictionary, Online Edition) and "a plan or scheme proposed" (Macquarie Dictionary, Online edition). Insofar as "proposed" is an element of the latter definition, it carries with it the meaning of "put forward or suggested as something to be done" (Macquarie Dictionary, Online edition). So understood, the use of the word "proposal" is in complete accord with a clause directed to the subject of "consultation". The construction for which the QR employers contend is not. A definite decision of one sort or another should follow consultation, not precede it (as to this, see also cl 36.6).

70 Further, a "proposal" is not to be equated with a detailed plan. A detailed plan may certainly amount to a proposal but something well short of that, as the dictionary definitions of the word bear out, may constitute a proposal. The word admits of a level of generality, of a strategic concept, not just operational plans.

71 A definite quality is not, as the QR employers also submitted, supplied by the words "to be implemented" in cl 36.2. These form part of a composite phrase "proposals to be implemented". I readily accept that the word "proposal" must not be read in isolation. The words "to be implemented" distinguish the class of proposal with which cl 36 is concerned from "proposals" which have not progressed, and may never have progressed, to the point of being proposed for implementation. Further, "to be implemented" introduces an element of futurity, not finality. One of the purposes of consultation is to receive suggestions not only

about how to implement a proposal but also whether, on reflection, it should be implemented at all.

72 It is evident from the first sentence in cl 36.2 that the obligation to consult arises in respect of "proposed changes that will have an impact on employees' terms and conditions of employment". In the first sentence is to be found the general consultation obligation to which the employer is subject.

73 The second sentence of cl 36.2 appears to have been inserted to alert the reader in a non-exhaustive way to types of proposed changes which might give rise to the consultation obligation for which the first sentence of cl 36.2 provides. However, the mere existence of a proposal in respect of one of those examples will not give rise to a consultation obligation unless the other elements of that obligation, as specified in the first sentence are present, ie the proposal must be one "to be implemented" and also one which "will have an impact on employees' terms and conditions of employment".

74 The use of the possessive plural "employees'" in cl 36.1 in relation to "election" and "terms and conditions" ought also to be noted. So far as drafting practice is concerned, the general contemporary position in respect of deeds, contracts and other instruments is that, subject to any contrary intention, the singular includes the plural and vice versa: s 48 *Property Law Act 1974* (Qld). A contrary intention is evident in cl 36, in my opinion. Clause 36.3 expressly excludes from the scope of the consultation obligation "individual workplace/performance issues", referring the reader to cl 38. Clause 38 is concerned with individual workplace issues. There is a consistent use of the plural elsewhere in cl 36 (the references to "employee's" in cll 36.5, 36.6 and 36.7 are each, in context, typographic errors). Further, the references to consultation at "local level" or, as the case may be, "business group" or "Company" level in cl 36.4 suggest an ascending order of plurality, not an obligation that commences with an individual.

75 It is envisaged in cl 36.6 that the process of consultation will be brought to an end when the employer has made a final decision with respect to the matter which was the subject for consultation. Inferentially, another way in which consultation would be brought to an end is if, having been invited to consult, either the employees concerned or, at their election, their representatives either notify that they do not wish to express any view or, having done so and

the employer wishes to consult further, signify that they do not wish further to be heard. Another way in which, inferentially, the process of consultation for which the clause provides would end would be if, having provided information and provided reasonably for consultative discussions (or some other means of consultation), neither the employees nor, if they so elected, their representatives attended those discussions.

76 It is clear from the way the clause is cast that cl 36 is concerned only with proposals to be implemented which emerge from the employer, not with any which are instigated by an employee or an industrial organisation representing that employee.

77 It was common ground between the parties that the expression "terms and conditions of employment" should be read broadly. I agree. Having regard to the purpose and to the industrial context, that is consistent with the beneficial ends, discussed above, to which this clause and those of its type are directed.

78 In support of their submission that the expression should be broadly construed, the QR employers referred to a decision of the New South Wales Administrative Decisions Tribunal, *Bonella v Wollongong City Council* [2001] NSWADT 194 in which it fell to that tribunal to construe the expression as it appeared in s 25(2)(a) of the *Anti-Discrimination Act 1977* (NSW). The use of the expression in that Act and in cl 36 is similar in the sense that each is used in provisions directed to beneficial ends. The case does therefore provide assistance by analogy. The tribunal (at [39] – [41]) made the following observations with respect to the expression "terms and conditions of employment":

> 39 It is necessary to determine what is meant by the words "terms or conditions of employment" in section 25(2)(a). Employment relationships are legally complex. Whilst the core of every employment relationship is a contract of employment, it is rare for that contract alone to be the source of all legal rights and obligations possessed by an employer and an employee (*see Concut Pty Ltd v Worrell* (2001) 75 ALJR 312 at 315). As Professors McCallum and Pittard indicate: "The sources of legal obligation in an employment relationship in Australia can include express and implied terms under a contract of employment, collective agreements, statutes, industrial awards and even custom and practice" (R McCallum and M Pittard, *Australian Labour Law: Cases and materials* 3rd ed, Sydney: Butterworths, 1995 at page 15).
>
> 40 At common law, the *terms* of a contract are "the components of obligation assumed by the parties" under, and to, the contract (N Sneddon and M Ellinghaus, *Cheshire and Fifoot's law of contract,* 7th Australian ed, Sydney: Butterworths 1997 at page 324). There can, of course, be express and implied

> terms. There are two sub-categories of terms: conditions and warranties. A condition is an essential term (a breach of which justifies termination), whereas a warranty is a non-essential or subsidiary term (*see* Sneddon and Ellinghaus at page 743). Thus, it appears that the phrase "terms or conditions of employment", as used in section 25(2)(a), should be given its everyday meaning, rather than its technical meaning in contract law, for if these words are to be given their technical legal meaning it does not appear to make a lot of sense to refer, in the alternative, to all of the components of obligation under a contract (the terms), and then only to those components of obligation which are essential (the conditions). This construction is supported by observations made by Lee J in *Allders International Pty Limited v Anstee* [1986] 5 NSWLR 47 at 55 when considering the breadth of an earlier, and slightly differently worded, form of section 25(2)(a). He stated:
>
> > In my view the Tribunal was correct in its finding, the expression "terms and conditions of employment which he affords him" being not restricted to the matter of the terms of contract of employment, but being designed to encompass as well, all those demands and requirements, and benefits and concessions in the actual employment which the employee must comply with or can accept as the case may be.
>
> 41 What is intended, we believe, by the words "the terms or conditions of employment which the employer affords the employee" is all of the legal rights given to an employee, and all of the legal obligations cast upon employer, by the various sources identified by Professors McCallum and Pittard in the quotation reproduced in paragraph 39. To limit the operation of section 25(2)(a) to the actual contract which underpins every employment relationship would be to ignore the reality that the contract alone is rarely (if ever) the source of all rights and obligations possessed by an employer and an employee. As the High Court decision in *Byrne v Australian Airlines Limited*; (1995) 185 CLR 410 reveals, the provisions of an industrial instrument, which by force of statute may govern a particular employment relationship, do not automatically become terms of the individual contract of employment which also governs that relationship. Consequently, to limit the words "the terms or conditions of employment" to the actual contract which exists between an employer and an employee would be to exclude most of the provisions of relevant awards and enterprise agreements from the ambit of section 25(2)(a). We do not believe that was the intention of the legislature, for section 25(2) as a whole appears designed to extend to all instances of the employment relationship where the parties have legal rights and obligations.

79 "Terms and conditions of employment" in cl 36.2 of the Traincrew Agreement is, in my opinion, to be similarly construed. I am particularly attracted to the observation made by Lee J in *Allders International Pty Limited v Anstee* (1986) 5 NSWLR 47 at 55, quoted by the tribunal. His Honour observed of the expression that, apart from the terms of the contract, it was "designed to encompass as well, all those demands and requirements, and benefits and concessions in the actual employment which the employee must comply with or can accept as the case may be". To this I would add that the source of those "demands and requirements,

and benefits and concessions" may be nothing more than custom and practice, rather than a term of a contract or applicable industrial instrument but it would nonetheless fall within the expression "terms and conditions of employment", given that the clause is not to be construed narrowly. Further, inherent features of the employment to which the Traincrew Agreement relates would likewise and for the same reason fall within the expression. Materially, those features presently include that the employment is with an employer within the public sector, an employer wholly owned by the State and managed by a board ultimately subject to political direction is an inherent feature of that employment.

80 Reference needs also to be made to the phrase "will impact on" which appears in cl 36.2. "Impact" when used as a verb can have the meaning "to have a (pronounced) effect on" (Oxford English Dictionary, Online Edition). This, in context, is the sense in which the word is used in cl 36.2. That the obligation is to consult with "affected employees" confirms this. Part of the context in which "impact" appears is that it is juxtaposed between "will" and "upon" in cl 36.2. The word "will" lends both a definite element and an element of futurity, the latter already present from the fact that the clause is concerned with a "proposal". Insofar as there is a definite quality in the phrase, derived from the use of the word "will", it carries with it a requirement for a correspondingly greater likelihood of effect on employees' terms and conditions than if the word "may" had been used.

81 "Will" is separately used in conjunction with "consult" in cl 36.2. When so used it is used in an imperative sense. The first sentence of cl 36.2 is cast in the language of obligation, not aspiration.

The period in question – 8 December 2009 to 22 January 2010

82 To understand how events evolved after the partial privatization announcement was made by the Premier on behalf of the State government on 8 December 2009 it is necessary to go back in time to June of that year. Further, though, on the applicant trade unions' case, 22 January 2010 is a critical date in terms of manifesting an alleged finality of decision-making, the QR employers contend that it is but a point on a continuum, not the end of a period during which such consultation obligation, if any, to which they were subject ought to have been discharged.

83 The parties agreed on a chronology of events relevant to their respective arguments. This chronology details events which occurred before, during and after the period in question. That chronology forms Annexure 2 to these reasons for judgment. I refer in the body of these reasons only to the more significant of these events in the body of these reasons.

84 I had the benefit of hearing from a number of senior officers of the QR employers who played key roles in the reaction of those companies first to the June 2009 announcement and then to the December 2009 announcement. While the ultimate questions as to whether the QR employers were subject to a consultation obligation as provided for in the QR Agreements and, if so, whether they breached that obligation were controversial the actual course of events as related by these witnesses and as revealed by their affidavits the contemporaneous documents exhibited to their affidavits was not. I have drawn extensively on these in making the following findings. I have also drawn upon the evidence which I received from a number of QR employees who gave evidence in the applicant trade unions' case.

85 On 2 June 2009 the Premier had announced that the State government was planning to sell the coal business and was investigating options to sell the bulk freight, inter-modal, retail and regional freight businesses then operated within the group of government owned corporations of which the QR employers were members. It was also announced that the QR passenger business would not be privatized. A degree of imprecision then attended precisely what was to comprise the "coal business" and the "passenger business".

86 This announcement might be termed a "proposal" but it was not then one "to be implemented". There was, correctly, no suggestion by the applicant trade unions that the announcement triggered a consultation obligation on the part of the QR employers arising under the QR Agreements.

87 The announcement of 2 June resulted in the initiation of contingency planning within the QR employers as well as the participation of certain senior staff in what was known as the Passenger Rail Assessment Working Group (PRAWG).

88 The PRAWG comprised members from QR Passenger, the Queensland Department of Transport and the Queensland Treasury. QR Passenger was represented at a managerial level

(Mr Paul Scurrah, the then Executive General Manager of QR Passenger was one member) only. There was no representation on this committee either from the workforce generally or from their representatives, eg from any of the applicant trade unions. The PRAWG met weekly between 11 November 2009 and 16 December 2009. Its purpose was to work through issues associated with the restructure both as foreshadowed in June and then as announced in December 2009 and related distribution of assets.

89 Another body formed during the contingency planning that occurred after June was the People Resourcing Team (PRT). The PRT was formed in November 2009. Its membership comprised:

(a) Mr Scurrah;

(b) Mr John Stephens, the Chief Human Resources Officer of the group which comprised the QR employers;

(c) Mr Darren Hooper, that group's Manager of Workplace Relations;

(d) Ms Cathy Heffernan, General Manager, People, Performance and Capability, QR Passenger; and

(e) Ms Kathrina Bryen, General Manager, Strategic Services and Support.

Each of these persons was a senior manager within that group of companies. As with the PRAWG the membership of the PRT never included representation from the wider workforce or from a trade union.

90 The role of the PRT was to consider and to deal with employee issues arising from the partial privatisation both as originally foreshadowed in June and as announced in December 2009. Its most intense work occurred in the period after the December 2009 announcement and leading up to the dispatch of offers of employment on 22 January 2010. The members of the PRT based their decision-making on the following principles (the PRT principles) as formulated by them and approved by a high level steering committee formed within the QR employers to oversee the implementation of the State Government's announcement:

(a) no forced redundancies;

(b) no forced employee transfers ("transfer" as between entities was to occur by way of termination by resignation of existing employment and the making and taking up of offers of new employment);

(c) fair and equitable allocation based on the resource needs of each of the businesses before and after partial privatization;

(d) each of the new businesses were to be "set up for success".

91 The QR Agreements each contained a clause which provided that, "where there is a reduction in staffing requirements not associated with natural attrition, then there will be no forced redundancies and no forced relocation" (eg cl 41.4, Traincrew Agreement).

92 On the afternoon of 8 December 2009 a meeting of the Management Committee was held. The Management Committee is made up of the QR employers' Executive General Managers (one for QR Passenger, the other for QR Network), Group General Managers, General Managers of each business unit and some other key managers. In all, some 84 persons are members of the Management Committee.

93 That meeting was addressed by the Chief Executive Officer of QR Limited, Mr Lance Hockridge. Mr Hockridge told this meeting of the Premier's announcement. He said that managers needed to have face to face discussions with employees, to receive their feedback and questions, keep them informed about the sale and of other ways to get information (such as speaking to their manager or HR adviser, contacting either by telephone or email an employee "Hotline" which was to be established concerning the proposed sale or visiting a website concerning the sale which was to be established on the intranet then in existence within the group comprising the QR employers). He also mentioned, *inter alia*, the need for open and honest communication with the workforce and that the PRT would be working on the allocation of staff as between the proposed new Queensland Rail and the float vehicle, the proposed new QR National. An "Information Pack" was distributed at this meeting to the members of the Management Committee.

94 The information pack was prepared within the QR employers' corporate communications unit. It formed part of a wider communications plan prepared by that unit in

the lead up to the announcement on 8 December 2009. The PRT had input into the development of this communications plan.

95 The thinking at the highest levels of management in relation to the ramifications for the wider workforce of the QR employers of the announcement of 8 December 2009 is revealed by the contents of the "Information Pack". Part of that information pack is a document headed Management Response"; another was a joint media release of 8 December 2009 by the Chairman of QR Limited, Mr John Prescott AC and Mr Hockridge. These documents encapsulated the initial managerial response of the QR employers to the announcement. Neither expressly reveals any perception of a need, arising from the QR Agreements, to consult with employees or their representatives arising from the Premier's announcement or the QR employers' decision to implement that announcement.

96 The information pack could not possibly have been drafted in the short time that elapsed on 8 December 2009 between the Premier's announcement and the Management Committee meeting. Its preparation was but part of the preparatory steps that the QR employers took in advance of the announcement. Another part of that preparation was the constitution of the PRT. I infer that the QR employers must have settled upon, prior to 8 December 2009, the policies to be followed by the PRT and must have decided no later than 8 December 2009 that the PRT's commencement of its tasks, along with the holding of the Management Committee meeting, the distribution of the information pack, the wider dissemination of the media release in it and initiation of other communication measures such as the hotline, the sale website and related intranet link and the inquiry number would all be triggered by the announcement.

97 I note that the media release in the information pack does contain a statement, attributed to Mr Hockridge, that, "he would consult closely with stakeholders during the process". I did not have the benefit of hearing evidence from Mr Hockridge as to whether, insofar as "stakeholders" included employees, his reference to consultation arose from a personal perception of an obligation to consult under the QR Agreements. Any such personal perception would be inconsistent with the basis upon which the QR employers defended the trade unions' application.

98 The email, hotline and sale website facilities to which Mr Hockridge referred were set up shortly after he delivered his briefing to the Management Committee. The sale website was regularly updated. Care was taken by the QR employers to monitor, analyse and respond to queries that were made either by email or via the Hotline. Where answers had a generic relevance the opportunity was taken to use the sale website or existing regular corporate newsletters to publicise such answers.

99 Also shortly after briefing the Management Committee, Mr Hockridge, Mr Scurrah and other senior managers embarked upon an extensive programme of personally attending and presenting briefing sessions for employees and making themselves available to answer questions at these meetings. These sessions were termed "road shows". Such meetings were not confined to Brisbane but included major regional centres of employment within the QR employers' group. In conjunction with this and at the instigation of the highest levels of management within the QR employers individual managers sought to brief individuals about the consequences of the announcement of 8 December 2009.

100 In the course of these "road shows" notes were taken of questions asked by employees and of responses which were given. Mr Stephens gave details of these in the course of his evidence. One such question queried whether employees would be involved in the process of decision-making with respect to the allocation of positions and personnel as between the new Queensland National and the new Queensland Rail. The answer given is revealing. The question and answer were as follows:

> Will employees be involved in the decision?
> Answer: **The people resourcing team will have a first crack at this**, and at the end of January we will get feedback from individuals. [Emphasis added]

In this reference to "first crack" in this answer one finds an accurate reflection of the policy of the QR employers.

101 The notes of these "road show" questions and answers together with PowerPoint presentations used in conjunction with briefings were promptly posted by the QR employers to the sale web site. They thereby became available for all QR employers' employees to read on the intranet via the link to the sale web site.

102 Each QR employee had a unique identification number which allowed them to log on to the intranet. While not each and every employee had an individually issued computer

linked to the intranet, the QR employers maintained at depots and other outposts shared access computer terminals which were available to employees individually to log on to the intranet. Further, for those employees who had home computers linked to the internet it was possible by the use of an individual identification number to log on to the QR employers' intranet and thereby gain access to the sale web site. Though such shared access terminals were available, the extent to which it was feasible for an employee to access them in paid time depended on individual work demands. For example, a train crew member might only have limited time between when reporting for duty at a depot and then setting off for a shift's work on a train. Other employees were able readily to access the sale website and frequently did.

103 I have no doubt that both in the period between 8 December 2009 and 22 January 2010 the QR employers genuinely made extensive and intensive efforts progressively to provide their employees with information as to the course of developments which followed the State Government announcement. Nor do I have any doubt that these efforts continued after 22 January 2010. Further, there is every reason, based on the behaviour to date of the QR employers, to expect that such efforts will continue.

104 For all that, neither the decision to form the PRT, nor maintain it in existence after 8 December 2009, nor to settle the PRT principles, nor how such principles should be applied in practice in terms of allocation of positions as between the new Queensland Rail and the new QR National and in terms of the identification of particular persons to fill these positions were put to the wider workforce of the QR employers or any representatives thereof, be they unions or otherwise, for participation or submission of views before managerial decisions were made. More fundamentally, whether to embark upon the partial privatisation process as announced on 8 December 2009 at all was never after that date put to the wider workforce of the QR employers by or on behalf of their boards of management.

105 In the period between 8 December 2009 and mid-January 2010, by both written and also oral communications, the QR employers advised their employees that an allocation process was underway and that they would be informed of the results of this by the end of January 2010. It is not necessary to particularise these communications.

106 During this period no employee of his or her own motion suggested to the QR employers an alternative process of allocation of positions and personnel than the use of the PRT. In any event, the position of the QR employers, as revealed by the answer quoted above, was that the PRT would "have the first crack" at such decision making. No disputes about that disposition were notified to the QR employers under the provisions of the QR Agreements during this period.

107 By mid-January 2010, after much intensive work which included consultation with and feedback from various line managers within the QR employers the PRT had made decisions as to which positions ought to remain with the proposed new Queensland Rail and which ought to be created within the new QR National. In some instances this was an easy task given the announcement on 8 December 2009 as to which businesses were to be retained and which were to be operated by the new QR National. In other instances the task was a complicated one. This was because, within the QR employers' group there were some services which were provided on a whole of group basis rather than just within a particular business operated either by QR Limited or, as the case may be, a particular subsidiary. Also decided by mid-January 2010 by the PRT was the separate but not unrelated task of identifying who should fill these positions.

108 Also by mid-January 2010 decisions provisionally made earlier that month by the PRT had been put to and then approved by the high level steering committee (of which Mr Hockridge was a participating member), formed within the QR employers, which had overall responsibility for the implementation of the State Government announcement of 8 December 2009. There was no representation of the wider workforce of the QR employers on this steering committee. That committee did not seek separately to consult with employees or their representatives before making this approval decision. Nor did it ever seek so to do before making a decision with respect to allocation of positions and personnel.

109 At the time when the PRT's initial, provisional allocation decision was approved by the steering committee some staff members were unallocated as a result of a need for the PRT to give further consideration to some residual allocation questions. The PRT had resolved these by 18 January 2010. An updated allocation summary prepared by the PRT and templates (of which more shortly) of letters to convey resultant positional and personnel

allocation decisions were put to and approved by the steering committee that day (with Mr Hockridge participating by telephone).

110 After this final steering committee decision with respect to allocation prior to the dispatch of template letters had been made the QR employers sought to meet with various trade unions having rights of representational coverage in respect of their employees. The decision to do this was not made as a result of any request so to do by any particular employee or group of employees. It was an initiative of Mr Stephens and Mr Tim Conroy, the General Manager of Workplace Relations (HR). These gentlemen commenced seeking to arrange separate meetings with the respective unions on 19 January 2010. It proved possible for them to meet with representatives of the Australian Services Union (ASU) on 21 January 2010 and then on, 22 January 2010, separately with representatives of the Australian Rail, Tram and Bus Industry Union and the Australian Federated Locomotive Union of Employees. In the result, they held a conjoint meeting on 22 January 2010 with representatives of the Electrical Trades Union and the Australian Manufacturing Workers' Union.

111 While I accept Mr Conroy's account of the course of these meetings, it is not presently necessary to detail that account. In none of these meetings was the detailed allocation of positions and personnel as put to the steering committee by the PRT and approved by the steering committee on 18 January 2010 put to a union, much less coupled with a request for feedback concerning the same by a particular future date prior to the dispatch of the template letters. At each meeting the QR employers gave to the union representatives a general briefing concerning the structures of the new Queensland Rail and the new QR National. In light of experience gained in delivering this briefing at the meeting with the ASU representatives, the form of briefing in later meetings was modified so as to include a visual aid to the structural briefing.

112 On 21 January 2010 another meeting of the Management Committee of the QR employers was specially held. It took place at Rail Centre 1 in Brisbane. Another "Information Pack" was prepared for the use of committee members in dealing with subordinates in the aftermath of the dispatch of the template letters advising positional and personnel allocation decision to affected individuals.

113 Included in this information pack was a series of anticipated employee questions of management together with responses to such questions. These responses are the approved responses of the QR employers to these anticipated questions. They accurately described either process or, as the case may be, corporate policy. What those answers reveal is significant. I therefore set out the anticipated questions and approved responses in full:

> **Q. How was this decision** [a placement decision] **made?**
>
> Since the Government announcement outlining the operations and responsibilities of QR National and Queensland Rail, significant work has been undertaken to determine the functions and resources required in each business. This includes the people requirements.
>
> The People Resourcing Team, comprised of Policy Committee members, HR representatives, together with the Senior Executives from business units, made the position placement decisions to ensure that both businesses have the people capability for success.
>
> **Q. Why haven't I been asked to accept a position like people going to Queensland Rail?**
>
> The only people who were offered positions were those required to change from one employer to another. For the most part this applies to those who currently work for QR Limited or QR Network Pty Ltd whose position is required in Queensland Rail.
>
> If you were not offered a position within Queensland Rail it is because your position is required in QR National or because your position already resides in QR Passenger Pty Ltd.
>
> **Q. What happens if I don't want to go to the company I have been allocated to?**
>
> - If you are a current employee of QR Passenger Pty Ltd you are already part of the organization that will become part of Queensland Rail. Your employer is not changing and there is not ability to transfer to QR National.
> - If you are an employee of QR Limited or one of its subsidiary companies (apart from QR Passenger Pty Ltd) you are already part of the group of companies that will become QR National. If your position is required in QR National this is simply a continuation of your current employment. There is no option to transfer to Queensland Rail.
> - If you currently work for QR Limited or QR Network Pty Ltd and your position is required in Queensland Rail but you do not accept the offer, you will remain with your current employer. However, your position will be transferred to Queensland Rail. Consideration will be given to other options for you. These options may include making suitable employment arrangements within QR Limited and subsequently QR National.
>
> Q. **Why has my position been placed in Queensland Rail and not my team**

mate's position?

Queensland Rail and QR National require two workforces that include the skills and experience to make both a success. In some cases it made business sense for whole teams to stay together, and in other cases both businesses required these skills and experience. In these cases, the members of those teams have been allocated between the businesses. The People Resourcing Team together with the Senior Executives from business units determined the individuals and teams placed in each company to ensure that both businesses have the people capability for success.

Q. Who am I working for until the separation of Queensland Rail from QR Limited on 1 July 2010

You will continue to work for your current employer.

It is possible some transitional arranges may be put in place prior to enable you to start performing duties reflective of your allocated company.

Some employees who have accepted an offer to go to Queensland Rail may formally transfer earlier than the date of separation if all parties, QR Limited, QR Passenger Pty Ltd and the employee, agree.

Q. When will I know who I'll be reporting to after the changes?

The organisational structures are still in the process of being determined. We understand that this is important to you and we will advise you as soon as possible.

Q. What happens with the Workplace Agreements and any pay increases?

You will continue to be covered by your existing workplace agreement whether you remain with your current employer or you accept a transfer. You will receive pay increases in line with your workplace agreement.

Q. I am a contract manager and have been offered a position in Queensland Rail. What happens to my contract?

The terms and conditions of your contract will continue to apply.

Q. I'm on a secondment in one company, but my position has been placed in another. Do I stay in my secondment or do I have to go back?

Unless otherwise directed, your secondment will continue in its current terms. Your position placement however was based on your substantive position.

Q. When will the new CEOs and Boards be announced?

These are decisions for the Queensland Government and must be finalised prior to separation.

Q. Will there be any Voluntary Redundancies?

There will be no voluntary redundancies as a result of the position placement

process.

Q. If I am on higher grade, what happens to my higher grade payment?

If you continue to act in the higher grade you will commence to receive the higher grade payment.

Q. Can I still move between the new companies if jobs are advertised? Will my benefits move with me as they do today?

Following the separation of Queensland Rail, employees of one business who wish to apply for jobs in the other will be treated as external applicants. In such circumstances benefits do not transfer.

Q. Who will be located in Queensland Rail and QR National?

The State Government has announced that Queensland Rail will include the passenger service business and assets, including ownership of the metropolitan rail networks. It will also retain regional freight networks. They have indicated that the coal, freight and infrastructure businesses will be separated into QR National.

For many people this will mean they simply remain doing their job within the business in which they currently work.

However for some people it is not clear, especially for those that currently service more than one business in areas such as corporate and shared services.

Q. What does the sale mean to the traincrew transfers that currently occur between QR Limited and QR Passenger?

Your current Workplace Agreement provide for transfers to occur within and between QR Limited and QR Passenger in accordance with the Traincrew Transfer Guidelines. This means that the transfer arrangements will continue to apply for QR National and QR Passenger for the life of your current Workplace Agreement.

Q. Which employees are covered by the Queensland Government two year employment guarantee?

Permanent employees based in Queensland covered by workplace agreements.

Beyond this period we expect both organisations to continue to grow and diversify with strong jobs growth to service increasing demand in our passenger, coal and our freight markets.

Q. When will the two year employment guarantee start?

The State Government has confirmed that for those employees who will be part of Queensland Rail as a Government Owned Corporation the two year guarantee will being when the separation of the business occurs. The target date for separation of the Queensland Rail business is 1 July 2010.

For those employees who will be part of QR National – the two year period will being at the time of the public float. This is expected to occur by December 2010.

Q. What will happen to my entitlements?

Entitlements such as sick leave, annual leave and long service leave will be transferred to Queensland Rail or QR National.

Q. What will happen with my superannuation with the changes?

Employees will maintain their existing superannuation arrangements. This includes those employees who currently hold a "defined benefits" account. For those employees who will be part of QR National – a process will be put in place that will enable employees to continue their existing superannuation arrangements with QSuper after the public float.

Q. What happens with rail passes for those employees in the new QR National?

There will be no change for QR National employees to the QR rail pass benefits currently provided to employees for a period of two years from the time of float.

Q. Will there be a round of voluntary redundancies offered?

There are currently no plans to offer voluntary redundancies.

Q. Do QR Passenger employees have to move to Ipswich?

The State Government has announced that the administrative headquarters for Queensland Rail will over time relocate to Ipswich. The Government has assured all current QR Passenger staff that this process will be staged and carried out in close consultation with employees.

The final mix of jobs and people numbers has not been determined at this time. Executive staff and employees living in the Ipswich will be the first consideration, though no timeframe has been established.

Queensland Rail will maintain a Brisbane CBD presence and will continue to be a major employer in the Brisbane region.

Q. Privatisation has failed in other states. Why will it work here?

This method for privatization is different. The State Government has chosen a simple, integrated model which will not see our organisation broken into lots of different pieces. The method they have chosen has worked around the world. Canadian National, for example was privatised in 1995, and has since become one of the leading railroads in North America.

Q. Where can I get further information?

A toll-free Employee Enquiry Hotline has been established and operates between 7am and 6pm. The number is 1800 755 175. Employees can also email questions to: employeehotline@qr.com.au.

Q. What does a sharemarket float involve?

A sharemarket float or initial public offering (IPO) will involve the sale of shares in QR National on the Australian Stock Exchange. The float is not expected to take place until the last quarter of 2010 so nothing will change overnight.

However there is a lot of work to be done to prepare the company for its listing on the stock exchange including due diligence and development of a prospectus and financial information.

Q. Who will invest in QR National?

Many investors including superannuation funds will be eager to buy shares in a publicly listed QR National.

It will be an attractive investment because of its national scale, its strong market position and the growth opportunities available.

Quality, integrated rail companies are historically very attractive to transport market investors.

In North America the Canadian National and Conrail floats were both very successful in the last couple of decades.

More than 11,000 employees of Canadian National became shareholders in the initial float providing them with a direct investment in the company's future success.

Q. Who will be eligible for the employee share offer?

The State Government has indicated that all eligible, permanent employees transitioning to QR National will be offered a $1000 parcel of free shares in QR National.

In addition to the share allocation transferring employees will be given the opportunity to purchase additional shares on a discounted basis up to the value of $4000.

Q. Will I lose any of my leave accruals at the end of the 2 year guarantee period?

No – what you have accrued in your sick leave, annual leave and long service will go with you no matter which company you are in and they will not be taken off you at the end of the 2 year period. You will continue to be able to access your accruals.

Q. What happens to current Employees in Transition?

There is no change to the management of current employees in transition. The current applicable HR policy and case management approach applies. Each employee in transition will also be allocated into a company as is the case for every employee.

Q. What happens when staff are on secondment?

Employees on secondment will be allocated to one of the companies on the basis of their substantive position. Any temporary arrangements such as secondments and higher grade will need to be considered at the time. The continuation of any of these arrangements will require the arrangement of the employee, the employer of their substantive position and the employer of their temporary position.

Q. Will my workplace agreement continue to apply to me or will it be renegotiated?

Your workplace agreement will continue to operate and is not affected by the government decision.

Q. What does the 2 year guarantee mean for EBA negotiations?

Permanent employees working in Queensland covered by workplace agreements have the Government's two year employment guarantee. For employees in Queensland Rail the guarantee begins with the separation of Queensland Rail from the QR group of companies – target date June 2010. For those employees who will be part of QR National – the guarantee will begin two years from the time of the public float – by December 2010.

Q. What happens to apprentices?

The restructure of the QR Group will not have any negative affects on the terms of your apprenticeship. As a part of the restructure all employees (including Apprentices) will be allocated to either the new Queensland Rail Government Owned Corporation or QR National. Regardless of the Company into which you are allocated, all of the terms and conditions that currently apply to you as an Apprentice will continue to apply to you after the restructure and separation.

114 As mentioned, in conjunction with this decision-making by the PRT and the steering committee, template advisory letters were prepared. These were settled by the QR employers' human resources and workplace relations staff. It is not necessary to reproduce each template. One template letter, the type received by most employees, advised that there was not to be a change in their existing employment. The method of offer adopted where a need was identified for there no longer to be a particular position in one of the QR employers and for there to be a new position created in the new Queensland Rail was identical. About 3460 employees received such letters. The template example which I have chosen is one which makes an offer to terminate employment with QR Network upon the commencement of employment with QR Passenger (the new Queensland Rail) and offers a position in the new Queensland Rail. The example chosen includes both the covering letter and the pro forma acceptance or rejection of offer which was attached to it:

[COVERING LETTER]

22 January 2010

Dear …..

IMPORTANT INFORMATION – PLEASE ENSURE THAT YOU CAREFULLY READ THIS LETTER

THE SALE AND ITS EFFECT ON YOU

Background

As you know, the Queensland government has announced its intention to sell parts of QR Limited and to retain ownership of the passenger services together with a number of associated network and service businesses. The Government has also decided that QR Passenger is to be separated from the QR Group of companies and will become known as Queensland Rail. This separation is expected to occur on 1 July this year. Later in the year, QR Limited will become known as QR National and will be listed on the Australian Stock Exchange in what is known as an "Initial Public Offering" (IPO).

Along with many of my colleagues I participated in an extensive communication process explaining the Government's decision to employees. This occurred late last year through face-to-face briefings and the provision of other information. At that time we made a commitment that we would, by the end of January, provide you with specific information about your placement in either Queensland Rail or QR National.

The contribution of our people is valued is critical to the future success of both companies. It is important to ensure that both QR National and Queensland Rail have the workforce capacity required to operate effectively and efficiently after the separation. Accordingly it is necessary to transition some of the functions and employees of QR Limited and QR Network Pty Ltd to QR Passenger Pty Ltd (Queensland Rail).

The effect on you

As discussed above, to ensure the ongoing effective operation of QR National and Queensland Rail it is necessary to transfer some employees from the current employer (QR Limited or QR Network Pty Ltd) to employment with QR Passenger Pty Ltd (Queensland Rail).

A People Resourcing Team, together with your current executive, has considered this issue and concluded that your position and accordingly your employment should be transferred. This means that it is intended that you will transfer your employment to a business that will be retained in Government ownership.

This letter is an offer to transfer your employment to QR Passenger Pty Ltd. The decision on whether or not to accept this offer to transfer is yours to make. You have until **19 February 2010** to make your decision. It is appropriate to outline to you the legal aspects of this transfer of employment and its effect on you and your terms and conditions of employment if you accept this offer.

Should you agree to transfer, you will commence employment on the date of the creation of Queensland rail as a Government Owned Corporation. As you know, the Queensland Government has indicated its intention for this to occur on 1 July 2010.

This remains the target and if this date changes you will be advised.

By accepting this offer you will by notice, terminate your employment with QR Network Pty Ltd upon the commencement of your employment with QR Passenger Pty Ltd (Queensland Rail). By agreement between yourself, QR Limited and QR Passenger Pty Ltd you may transfer your employment on an earlier date.

You will be employed by QR Passenger Pty Ltd in the position, classification and wage level at which you are permanently appointed immediately prior to your transfer. Unless you are currently doing so you will not be required to serve a period of probation on commencement with QR Passenger Pty Ltd.

Upon the commencement of your employment with QR Passenger Pty Ltd all of your current leave accruals and your length of service will transfer with you. All of your current terms and conditions of employment will be transfer with you. As you are employed under a Workplace Agreement your Workplace Agreement will transfer with you and QR Passenger Pty Ltd (and subsequently Queensland Rail) will be obliged to apply the terms of that Workplace Agreement to you. The transfer of your Workplace Agreement is required by the *Fair Work Act 2009*.

Your superannuation arrangements will continue and will not be affected by the transfer.

Should you refuse this offer of transfer and it still remains necessary to transfer your position, consideration will be given to other options for you. These options may include making suitable employment arrangements within QR Limited and subsequently QR National.

You will recall that the Government announced that the administrative headquarters for Queensland Rail will be relocating to Ipswich. The Minister for Transport has subsequently announced that, without agreement, no positions will be relocated for at least two years from the date of separation (expected to be July 2010).

In that two-year period, the Government has also committed to closely consulting with staff and their unions as well as Queensland Rail management to identify the specific functions that will be relocated.

You can be assured that if you accept a transfer and your new position is subsequently identified as one that will be relocating to Ipswich, your individual needs and circumstances will be considered and we will work closely with you to find an alternative arrangement should this be necessary.

A voluntary relocation program will be available during this two-year period for staff who would like to make the move sooner and where it makes sense to do so from a business perspective. Likewise, some of Queensland Rail's key executive team will establish a presence in Ipswich during this time.

Irrespective of the Ipswich relocation your work location may change in the future as a result of the business needs of Queensland Rail. Should that occur any rights you hold in that regard are unaffected by your transfer to QR Passenger Pty Ltd and subsequently Queensland Rail.

Actions Required

You are required to advise of your decision to accept or reject this offer to transfer

your employment to QR Passenger Pty Ltd by no later than 5.00pm 19 February 2010. To do this you must complete one of the forms attached to this letter and post it using the enclosed envelope.

Failure to post a form by the above time will mean that you have rejected this offer to transfer your employment to QR Passenger Pty Ltd. Should this offer be rejected the position required in QR Passenger Pty Ltd may be offered to other employees of QR Limited.

If you accept this offer to transfer your employment you are required to authorise the transfer to QR Passenger Pty Ltd for your personal details currently held by QR Limited. This authorisation is included in the relevant form attached to this letter.

Should you require further information as part of our broader consultation with employees, please do one or more of the following:

- talk to your manager
- contact your HR team in your business area
- send an email with your questions to employeehotline@qr.com.au
- phone the Employee Enquiry Hotline on 1800 755 175

Looking ahead

This is an exciting time of the history of our Company. While no doubt there will be a range of challenges, the changes to the QR Group provide enormous opportunities for our Company into the future.

Queensland Rail will be a large multifaceted business with the scope to expand to meet Queensland's growing population with strong revenue streams from the regional freight and passenger networks. It will have the people talent, capability and resources to deliver services of the highest calibre – in commuter and long distance markets: network access services and rolling-stock and infrastructure maintenance and construction.

Looking forward the skills, experience and commitment of the 6900 Queensland Rail employees will ensure that it will be a modern, customer-focused company and an Australian leader in its field.

Thank you for your valuable service and contribution to the success of QR Limited (and its predecessors) and whatever your decision, we wish you every success in your future career with Queensland Rail or QR National.

You will be kept informed of further developments surrounding the separation of QR Passenger Pty Ltd from the QR group of companies.

Lance Hockridge Chief Executive Officer QR Limited	Paul Scurrah Executive General Manager QR Passenger Pty Ltd

[ATTACHED PRO FORMA ACCEPTANCE OR REJECTION OF OFFER]

ACCEPTANCE OF TRANSFER OF EMPLOYMENT

Date …….

To Chief Executive Officer QR Limited
Executive General Manager QR Passenger Pty Ltd

I, (Please print full name)

First Name/s	
Surname	
Service Number	

hereby accept the offer for my employment to be transferred to QR Passenger Pty Ltd commencing on the date of the creation of Queensland Rail as a Government Owned Corporation. It is understood that by written agreement I may transfer my employment before the creation of Queensland Rail as a Government Owned Corporation.

I accept the offer on the terms contained in the letter to me dated 22 January 2010.

In accepting this offer I hereby give notice to QR Network Pty Ltd that my employment will terminate effective upon the commencement of my employment with QR Passenger Pty Ltd (Queensland Rail).

I authorise QR Limited/QR Network Pty Ltd to provide to QR Passenger Pty Ltd my personal file and/or any other relevant written person information.

_____
SIGNATURE

PLEASE POST THIS ACCEPTANCE USING THE ENCLOSED ENVELOPE BY NO LATER THAN 5.00PM 19 FEBRUARY 2010

REJECTION OF OFFER TO TRANSFER

Date ……..

To Chief Executive Officer QR Limited
Executive General Manager QR Passenger Pty Ltd

I, (Please print full name)

First Name/s	
Surname	
Service Number	

hereby reject the offer to transfer my employment to QR Passenger Pty Ltd.

_____
SIGNATURE

**PLEASE POST THIS REJECTION USING
THE ENCLOSED ENVELOPE BY NO LATER THAN 5.00PM
19 FEBRUARY 2010.**

115 The covering letter, in both the "background" and "effect on you" portions accurately reflects the policy, process and decisions of the QR employers leading up to the dispatch on 22 January 2010 of thousands of individually directed letters in the template form appropriate to the decision taken as to a position to be filled in the new Queensland Rail or, as the case may be, the new QR National. The 19 February 2010 response date was chosen by the PRT and approved by the steering committee on behalf of the QR employers on the basis that it allowed what was considered to be a reasonable time for a recipient to respond to the offer and also on the basis of a lead time sufficiently in advance of the then anticipated 1 July 2010 date of effect. Built into that lead time so far as the QR employers were concerned was the contingency of having to make consequential decisions depending upon the responses to the individual offers.

116 None of the offers so made was tentative or provisional (contrary to a submission made on behalf of the QR employers). That is apparent on the face of the letters themselves.

117 As it happened, in a relatively small number of cases, responses to these offers resulted in the withdrawal of a particular offer and, in some cases, the making of a revised or different offer. Ms Bryen related such instances in her affidavit. They were as follows:

Changes based on employee feedback – Rockhampton Payroll Allocations

118 A team leader in Rockhampton contacted Ms Bryen directly by telephone about the allocation of Rockhampton based payroll staff.

119 Originally, six employees in the Rockhampton payroll section were allocated to Queensland Rail and 14 were allocated to QR National. Given that the expected number of employees of Queensland Rail in Central Queensland was expected to be between 250 and 300, there was concern from employees that there would not be sufficient workload to sustain six payroll employees.

120 Ms Bryen discussed this concern with the relevant managers who went back to the allocation as made by the PRT and approved by the steering committee and assessed if an imbalance was there in relation to the payroll function in Rockhampton. The relevant

managers had discussions with the team leader and other staff. After working the issues through these managers realised that there needed to be changes in the allocation. Mr Hooper and Ms Bryen met with the relevant managers and, as a result, offers of employment to four permanent staff to transfer to Queensland Rail were rescinded and letters were sent out advising that they would be able to stay with QR National (which had a workload to sustain them). The employees concerned were satisfied with this change and accepted that they would now be allocated to QR National.

Changes based on employee feedback – Operations Planner in Network

121 On 28 January 2010, Mr Matt Dall, an Operational Planner in QR Network, sent an email to the HR Manager and HR Senior Advisor for his business, respectively Ms Leisa Warn and Mr Lance Edwards, in which he indicated a preference to go to QR National after receiving a letter of offer to transfer to Queensland Rail.

122 Mr Dall had recently started work in a new position with QR Network but had previously worked for QR Passenger and it was on the basis of this role that he was allocated. Discussions took place with the relevant managers and as a result, Mr Dall had his offer to Queensland Rail rescinded and was advised he would be employed by QR National.

Changes based on employee feedback – Rollingstock & Component Services employee

123 On 29 January 2010, Ms Bryen received an email from Ms Bec Sala, the HR Advisor of Rollingstock & Component Services (RACS), about an employee, Mr Daryl Nutley. Mr Nutley was on secondment from RACS Ipswich to RACS Redbank at the time of allocation.

124 Mr Nutley had initially been allocated to QR National on the basis of his seconded position when, in fact, he should have been allocated on the basis of his substantive position. This was confirmed and, as a result, Mr Nutley was subsequently made an offer of employment with Queensland Rail which was where the rest of RACS Ipswich had been allocated. Mr Nutley accepted this offer.

Changes based on employee feedback – Health & Fitness team

125 On 3 February 2010, Ms Bryen received an email from Mr Alan Brookbanks, General Manager HR, QR Services, regarding some concern over the appropriate allocation of case

managers from the Health and Fitness Teams to Queensland Rail. The concern was to ensure there was not an imbalance in the case management workload. It was recommended that the allocation for Ms Lynice Mayes to QR National be changed to Queensland Rail.

126 Ms Bryen discussed the issue with Ms Cathy Heffernan (PRT member for Queensland Rail) and it was agreed that there was an imbalance in the staffing of rehabilitation case management staff. As a result, a decision was made to make an offer of employment with Queensland Rail to Ms Lynice Mayes. This offer was accepted.

Changes based on employee feedback – Transferring at Higher Grade level

127 The issue of transferring at an employee's substantive versus higher grade level was the subject of repeated feedback which was received both from the Hotline and from 8-9 am briefing sessions held for what was termed within the QR employers "the Offer Group" (those who received template letters). The QR employers' initial position was that employees accepting a transfer to Queensland Rail would transfer at their substantive rate and than an assessment would be made by Queensland Rail as to whether the acting higher grade needed to continue.

128 Ms Bryen was at various briefing sessions and heard a number of employees say that they were concerned that they would have to drop back to their substantive rate. This issue was discussed by her with Mr Darren Hooper and Ms Cathy Heffernan in the PRT and it was decided to change the QR employers' position. Mr Scurrah approved the position that employees accepting a transfer to Queensland Rail could do so at their higher grade rate for the fixed period of the higher grade period. It would then be at the end of this period that a review would take place as to whether the higher grade needed to continue.

129 This change in position was drafted into a question and answer and placed on the sale website and in an email from Mr Scurrah to the Offer Group on 10 February 2010.

130 The PRT commenced the process of collating responses to the offers made by the letters of 22 January 2010 as soon thereafter as responses started to be returned. In the days following the 19 February 2010 deadline the PRT finished collating these responses.

131 In the result, the QR employers received almost 99% acceptances to offers to transfer to Queensland Rail.

132 The PRT arranged for employees from whom no response had been received by 19 February to be contacted by the relevant business HR heads to determine the reason for an absence of response. Based on reasons elicited by this follow up inquiry some employees were granted an extension of time within which to respond to the offer letters. Whether to grant an extension of time was considered on a case by case basis by the PRT.

133 Employees who rejected their particular offer were sent a letter on 4 March 2010 confirming their rejection of the offer to transfer to Queensland Rail. These employees were advised that, on that basis, there would be no change to their employer and the terms and conditions of their employment. QR Limited and QR Network determined at that time that each company would consider further options for each such employee and the employee concerned would be consulted over any future proposals that were developed which may affect that employee.

134 The PRT met with the relevant Executive General Managers and heads of HR in each company in the first week of March 2010 to discuss what Ms Bryen termed "potential staffing capacity" which she explained to mean "person 'x' had rejected the offer – is there a need to find a person 'y' to replace them and if so who should that person be, taking into consideration capability requirements". After these discussions, a second round of letters were set out in the form of either:

(a) a 're-offer' letter, which was sent to approximately 18 staff extending the time for accepting or rejecting the initial letter of offer; or

(b) a letter of offer of employment with Queensland Rail, which was sent to approximately 13 employees who had not been made a first round offer.

Were the consultation clauses applicable and were they breached?

135 In summary, the QR employers submitted:

(a) the decision to appoint the PRT was an exercise of managerial discretion;

(b) until those employees who, consequentially, were identified and became the subject of an offer to terminate existing employment and take up employment with the new Queensland Rail and the new QR National no "consultation" with anyone could commence – no employee was, until then "affected" in terms of cl 36;

(c) the PRT did not "propose" anything, its role being merely advisory;

(d) to the extent that there was any proposal to "transfer" positions, any such proposal was conditional that accepting the offer to resign their existing position and to take up the offered position in Queensland Rail or QR National, there being no relevant distinction between position and person occupying the same.

136 It was further submitted on behalf of the QR employers that the letters sent on 22 January 2010 evidenced no impact on employees' terms and conditions. Either an employee maintained their existing employment or, in so far as an offer was made to change the same ("transfer"), that offer was made on the same "terms and conditions" as their existing employment.

137 The alternative submission made on behalf of the QR employers was that, if any consultation obligation arose in the period between 8 December 2009 and 22 January 2010, the extensive, progressively delivered communications to their employees and the related provision by various means for feedback from employees constituted consultation in terms of cl 36 and its counterparts.

138 In the further alternative it was submitted that the final organisational structure of the new Queensland Rail and the new Queensland National was not complete as at 22 January 2010 and could not be complete until the results of the offers made that day were known. Only thereafter, it was submitted, could consultation in terms of cl 36 and its counterparts take place.

139 The applicant trade unions' submission was put at a quite different level of abstraction. Their submission was that the immediate reaction of the QR employers to the Queensland Government's announcement of 8 December 2009 itself evidenced proposed changes to be implemented which had the following features:

- Their businesses were to be reorganised, restructured and split as necessary to accommodate the government's announcement of 8 December 2009.
- The respondents would adopt a process whereby they would identify positions in QR Network and QR Limited for transfer to QR Passenger – meaning that those positions would no longer be required within QR Ltd and QR Network.
- The identification of those positions would be undertaken as a management decision without any involvement from employees or their representatives.
- There would be no voluntary redundancies offered and employees would not be asked to volunteer for transfer from one company to another.
- After positions were identified by management employees would be offered the option of terminating their existing employment and transferring to new employment with QR Passenger in the transferred position.
- The transfer of position and the offer referred to would be identified to employees by late January 2010.
- The employees would be given about four weeks to decide whether or not to accept the transfer.
- The process of selection of positions would be informed by principles identified by management.
- The selection of positions and transfer of employees' employment would be undertaken by the organisational structure of QR Passenger was determined.
- Employees would be given the chance to provide feedback on the PRT decisions after notification thereof at the end of January when they were provided with contractual documents.

140 The applicant trade unions' further submission was that this proposal did have an impact upon employees' terms and conditions of employment:

(a) Positions were to be identified which were no longer to be required by an existing employer and new positions with a different employer were to be offered.

(b) The career prospects of all employees were affected because of the substantial change in the size and nature of the employer for which they then worked.

These, it was submitted, were the very types of proposals expressly identified in cl 36.2 of the Traincrew Agreement. That clause, it was submitted, extended just as much to proposals for change to be brought about with the agreement of an employee as it did to changes brought about by the direction of an employer. The duty to consult, it was submitted, arose in respect *all* employees, such was the nature and extent of the organizational change proposed. It arose, so it was submitted, as soon as the QR employers determined on or shortly after 8 December 2009 to embark upon the proposal identified by the applicant trade unions. Breaches of the consultation clauses by the respective employees occurred, so it was submitted, on or about but not later than 22 January 2010 when the QR employers implemented that proposal by the dispatch of the letters of 22 January 2010.

141 My conclusion is that the QR employers became subject to an obligation to consult under the QR Agreements as soon as they decided on 8 December 2009 to give effect to the State Government's announcement. In so doing they initiated a proposal for change that would affect the terms and conditions of each and every one of their employees. A final decision to implement that proposal is evidenced by the sending of the template letters on 22 January 2010 to their employees. In respect of what was, in terms of Queensland experience, evident from the legislative history discussed above, a radical proposal for change, the QR employers failed, utterly, to honour the consultation clauses in the QR Agreements by which they were respectively bound.

142 The reaction of the QR employers to the State Government's announcement of 8 December 2009 was Pavlovian. In adopting that announcement, they were thereby proposing to implement changes that would, in terms of the QR Agreements by which they were bound, "have an impact on employees' terms and conditions of employment". This did not feature in their decision with respect to the announcement. "Employees' terms and conditions of employment" is not, for the reasons given, to be narrowly construed. In adopting the State Government's announcement the QR employers were adopting as a proposal to be implemented a proposal for radical change of the most fundamental kind in the terms and conditions of all of their employees. In effect, a group in public ownership and control for almost a century and a half was proposed to be broken up with major business parts passing into private ownership and control. Working within a group of companies under that public ownership and control formed part of the terms and conditions of each and every employee with the group constituted by the QR employers. Also as part of the breaking up of the group, thousands of existing positions with an existing employer were no longer required and thousands of new positions with a new employer were required.

143 That change, inherent in the adopted proposal, was evident at the outset from its very contents and at the last in the contents of the information pack prepared for the special Management Committee meeting held in January 2010. One of the approved answers to anticipated questions (set out above in full) was this:

> **Following the separation of Queensland Rail, employees of one business who wish to apply for jobs in the other will be treated as external applicants. In such circumstances benefits do not transfer.**

Another was this:

For many people this will mean they simply remain doing their job within the business in which they currently work.

For many people the proposed change did mean that they remained doing their job within the business within which they currently worked but that business was no longer to be but a component part of a group of businesses each operated by an employer owned and controlled by the Queensland Government. For thousands of others, they would not even work in the same business any longer. This answer concealed rather more than it revealed. Further, this was never *just* a transmission of business matter (qv cl 42 and its counterparts).

144 The boards of the QR employers, the chief executive officer of QR Limited, the Executive General Managers of QR Passenger and QR Network and the members of the Management Committee were not free uncritically to give effect to the proposal adopted as a sequel to the announcement of what was, in substance, a decision of the shareholders of the companies they managed. Each of the QR employers was bound, in the circumstances, to consult with their employees in respect of the proposal as adopted. If that introduced a lag into the State Government's aspirational timetable the QR employers were duty bound by the QR Agreements to introduce that lag, however much the shareholding Ministers may have clamoured otherwise. There is no evidence that the QR employers ever drew a need to consult to the attention of those Ministers.

145 "Consultation", as Toohey J remarked, is no empty term. Of course finality of decision-making rested with boards of management to whom a unanimous Ministerial shareholder decision had been communicated. That does not mean that the QR employers were excused from compliance with the QR Agreements. Well may it have been that employee consultation about the partial privatisation itself may have been unlikely to alter that announced position but it does not follow that how it was to be implemented was a sterile subject. Further, it is not for an employer bound by a clause such as cl 36 to make *a priori* assumptions about the outcome of consultation. As cl 36.1 states a genuine opportunity to influence the outcome must be extended. Here, the QR employers made no *a priori* assumption about consultation. They did not consult at all.

146 What occurred in the period between 8 December 2009 and 22 January 2010 was managerially dictated furtherance of the proposal adopted on 8 December 2009. On 8 December 2009 that proposal had, or between then and 22 January 2009 came to have, each

of the features described in the applicant trade unions' submission and set out in paragraph 139 above. In respect of none of these was there consultation with employees. Benign dictatorship is not to be equated with consultation. On the subject of which positions were to be abolished, which retained and which created, as well as who was to fill the same or how to go about the process of deciding such matters the QR employers did not just have the "first crack", they had the only crack prior to the making of a final decision. When on 18 January 2010 the steering committee approved the PRT decision it made a final decision, as evidenced by the form of the template letters which were dispatched on 22 January 2010. That is so in respect of letters which communicate a decision not to offer alternative employment just as much as it is in respect of letters which invite agreement to termination of existing employment and offer alternative employment. As I have already held, they were neither tentative nor provisional.

147 In the period prior to the adoption on 8 December 2009 of the State Government's proposal the QR employers were perfectly at liberty to engage in contingency planning and to do so without any consultation with employees. There was at that stage nothing "to be implemented". The selection of a PRT model and formulation of guiding principles were legitimate subjects for managerial contingency planning. What happened though is that these, along with all facets of the adopted proposal, were treated as part of a managerially dictated continuum without any pause for consultation prior to the making of the final decision in January 2010.

148 Clause 36 and its counterparts did not dictate any fixed method of consultation, only its broad nature and extent and that it had to offer a genuine opportunity to influence the outcome, the final decision. The clauses are designed to operate in respect of a wide variety of changes that will affect employees' terms and conditions. That necessarily introduces an element of flexibility. The detailed nature and extent of the consultation required under these clauses. Here, the changes proposed were radical and affected an entire workforce spread across the QR employers. It is nothing to the point that that workforce is great in number and decentralised. It was just such a workforce in respect of which the QR employers subscribed to the QR Agreements. It was for the QR employers to design and implement such methods and means of consultation as would offer employees a genuine opportunity to influence the outcome of the proposal to be implemented. The feedback methods adopted on and from 8 December 2009 and up to 22 January 2010 offered an opportunity for questions to be

answered as to a process already settled upon, the progressive deliberations of which were the subject of consultation only with such managers as chosen by the PRT. Only they had an opportunity to influence any outcome from that body. Further, insofar as the PRT formally put its decision to the steering committee for approval, the steering committee did not separately extend to employees any opportunity to influence outcomes before making its approval decision.

149 Even if, contrary to my conclusion that the decision to adopt and act on and from 8 December 2009 constituted the adoption of a "proposal to be implemented" which impacted on employees' terms and conditions, one were to regard the PRT decision as approved by the steering committee in January 2010 as the adoption of a proposal to implement change as evidenced by the proposed template letters to employees there was never any consultation in advance of the dispatch of these letters. Nor was there anything provisional about this decision as so approved. It was not subject to consultation. The letters did not communicate a provisional decision. The responses made to these letters were the acceptance or rejection of offers, not evidence of consultation. The time for consultation as required by the agreements had passed. That thereafter some changes were made by the QR employers to their earlier decided position is relevant and remarkable only in that it highlights at the very minimum what might have been the benefits of prior consultation. That there may have been other such benefits was, I also thought, evident in some of the comments made by trade union representatives at the meetings conducted between 19 January 2010 and 22 January 2010.

150 Lest it be thought otherwise, I should emphasise that the latter observation does not carry with it any conclusion that cl 36 and its counterparts automatically obliged the QR employers to consult with the applicant trade unions. They did not. Consultation of that type only became obligatory if requested by employees. An absence of consultation of this type did not form part of the case sought to be made against the QR employers. Of course, there was nothing in cl 36 which prevented the applicant trade unions from canvassing with employee members the making of such a request or, for that matter, the QR employers encouraging the making of such a request as part of a consultation stratagem.

151 These are, of course, civil penalty proceedings with all that entails in terms of not making findings of fact on the basis of inexact proofs or indirect references. However, none of the events in neither the chronology nor the evidence to support the same had a

controversial quality. There was certainly a degree of idiosyncratic thinking evident in the evidence of some of the quite senior officers of the QR employers as to whether the abolition and creation of positions had occurred and, if so, was a separate, even if separate but not unrelated, part of the deliberations and outcome of the PRT process but further to detail and analyse that is but a diversion. However one approaches matters, the PRT was maintained in existence on and from 8 December 2009 in the absence of consultation with employees and its decision as approved as to the fate of thousands of positions and persons was never the subject of consultation with employees.

152 For these reasons then my conclusion is that on or about but not later than 22 January 2010 each of the QR employers contravened a civil remedy provision for the purposes of s 539 of the Fair Work Act in that each contravened a term of a transitional instrument or instruments applicable to it, the said term and applicable instrument being that or those particularised in Annexure 1 to these reasons for judgment.

Declaratory relief?

153 The granting of declaratory relief is discretionary.

154 I have already referred to the purpose and rationale which underpins a consultation clause in respect of proposed change in the workplace. The TCR Cases evidence that the industrial commission regarded the insertion generally into Federal awards of a clause in respect of consultation in the event, materially, of proposed change in the workplace as desirable in the public interest. In this case the QR employers and the trade union parties to the QR Agreements saw fit, in their own interests and those of the employees governed by those agreements, to make their own provision in respect of consultation in the event of proposed change in the workplace. Especially in respect of what for Queensland was an historic and radical proposed change that will affect thousands and thousands of employees and is in respect of a vital means of transport for commerce and industry and citizen alike, the wider community has a major interest in the occurrence of consultation, given the purpose and rationale for such clauses. The QR Agreements are not mere private contracts. The obligation to comply with their terms is a matter of Federal law. To contravene a term of those agreements is not to expose oneself to a civil liability for damages for breach of contract but to be in jeopardy of the imposition of a pecuniary penalty and the further relief

for which the Fair Work Act provides. There is a strong public interest in the granting of declaratory relief.

155 There will therefore be declarations in terms of the conclusions as to contraventions reached. I shall hear the parties on the subject of whether to make civil penalty orders under s 546 of the Fair Work Act.

I certify that the preceding one hundred and fifty-five (155) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 11 June 2010

ANNEXURE 1

LIST OF COLLECTIVE AGREEMENTS

Name of Agreement	Employer	Consultation Clause
QR Limited Traincrew Union Collective Workplace Agreement 2009	QR Limited	36
QR Ltd Coal and Regional Freight Logistics Union Collective Workplace Agreement 2009	QR Limited	74
QR Limited Regional Freight and Coal Rollingstock Production Union Collective Workplace Agreement 2009	QR Limited	79
QR Regional Freight and Coal Support Union Collective Workplace Agreement 2009	QR Limited	13
QR Corporate - Shared Services Union Collective Workplace Agreement 2009	QR Limited	13
Civil Maintenance Union Collective Workplace Agreement, Asset Services Group, QR Limited	QR Limited	5.1
Electric Control Operators Union Collective Workplace Agreement 2009	QR Limited	9.1
Facilities Union Collective Workplace Agreement 2009	QR Limited	5.1
Infrastructure Projects Union Collective Workplace Agreement 2009	QR Limited	24
QR Services - Support Union Collective Workplace Agreement 2009	QR Limited	5.1
Rollingstock and Component Services Union Collective Workplace Agreement 2009	QR Limited	47
Trackside Systems Union Collective Workplace Agreement 2009	QR Limited	76
QR Passenger Pty Ltd Citytrain Network Stations Union Collective Agreement 2009	QR Passenger Pty Ltd	74
QR Passenger Pty Ltd Customer Service Union	QR Passenger Pty Ltd	55

Collective Workplace Agreement 2009		
QR Passenger Pty Ltd Long Distance Train (On Board Services Technician) ("OBST") Union Collective Workplace Agreement	QR Passenger Pty Ltd	75
QR Passenger Pty Ltd - Passenger Operations Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	77
QR Passenger Pty Ltd Rollingstock Assets Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	84
QR Passenger - Traincrew Union Collective Workplace Agreement 2009	QR Passenger Pty Ltd	41
QR Passenger Pty Ltd Transit Services Union Collective Agreement 2009	QR Passenger Pty Ltd	72
QR Network Pty Ltd "Start Up" Union Collective Workplace Agreement 2009	QR Network Pty Ltd	2.3

ANNEXURE 2

DETAILED CHRONOLOGY OF EVENTS

Date	Event
02.06.09	Queensland Government announces intention to privatise parts of QR business
02.06.09	Email from Lance Hockridge to QR staff Subject: Major announcement: sale of QR assets
02.06.09	Email from Paul Scurrah to 'PDL QR Passenger Services (Restricted)' Subject: Message from QR Passenger EGM – re sale of QR assets
06.10.09	Email from Lance Hockridge to QR staff Subject: Sale update
13.10.09	RTBU Circular – 'Queensland Not For Sale/Rail Not For Sale Campaign Update'
26.10.09	Australian Services Union News – 'ASU Survey Confirms Members Opposition to Privatisation'
29.10.09	Email from Lance Hockridge to QR staff Subject: Sale update
29.10.09	Australian Services Union News – 'QCU calls for halt to government sell off spin'
November 2009	People Resource Team (PRT) endorsed by QR to consider and manage employee issues arising out of the proposed asset sale
06.11.09	Email from Wendy Green (RTBU) to members Subject: Queensland Not for Sale
20.11.09	Australian Services Union News – 'QR Corporate & Shared Services ASU Update'
24.11.09	Australian Services Union News – 'Unions Officially Launch the "Qld Not Sale" Campaign "Walker Report"'

Date	Event
November 2009 – March 2010	'Change group' meetings began
December 2009	Issue 14 'Fusion' – Shared Services Group GGM's Column advising employees about where to obtain further information about sale announcement
08.12.09	Martin Moore end-of-year briefing to SSG staff in Rockhampton
08.12.09	Queensland Government announcement of privatisation of parts of QR business
08.12.09	Letter from Anna Bligh to Lance Hockridge enclosing Government Announcement
08.12.09	Email from Lance Hockridge to QR staff Subject: Government announces QR decision (enclosing Premier's letter)
08.12.09	Special Management Committee Meeting convened in response to the Government Announcement - attendees of the meeting received Management Committee Information Pack
08.12.09	Sale Website went 'live'
08.12.09	Lance Hockridge posted a video on the QR Intranet regarding the Government Announcement
08.12.09	Tim Conroy telephoned David Smith (ASU) to advise of the Government Announcement - discussion of proposed Ipswich relocation
08.12.09	Meeting between Kathrina Bryen, Darren Hooper, Carol-Anne Nelson and Employee Hotline Operators to brief them on prepared Q&A script
08.12.09	Project Management Group Meetings begin
08.12.09	Meeting between Darren Hooper and Brendon Gibson to discuss provisional identification of roles within QR National and Queensland Rail
08.12.09	RTBU Circular – 'Re: Government thinks privatisation can be sold with a bribe'

Date	Event
08.12.09	Australian Services Union News – State Government Announces Its Decision For The Sale Of Queensland Rail
09.12.09	Employee Hotline commenced
09.12.09	Email from Allyson Madsen to 'PDL QR Network Level 4 Mgrs' Subject: Information Kit for Managers (enclosing Management Information Kit)
09.12.09	Email from Gavin Reynolds to various employees Subject: CEO Visit
09.12.09	CEO Roadshow begins
09.12.09	CEO Roadshow – presentation in Rockhampton (RACS depot and Office of station)
09.12.09	Email from Michael Carter to QR Network staff Subject: Message from EGM - QR Business Sale
09.12.09	Email from Lance Hockridge to QR staff Subject: Paul Scurrah endorsed as interim CEO of the new Queensland Rail
09.12.09	Video presentation by Paul Scurrah uploaded on QR Intranet
09.12.09	Email from Paul Scurrah to 'PDL QR Passenger Services (Restricted)' Subject: EGM Update: Government announced QR decision
10.12.09	CEO Roadshow – presentation at Redbank
10.12.09	CEO Roadshow – Lance Hockridge and John Stephens presentation at Brisbane Convention Centre - Q&A included discussion of allocation process and Ipswich relocation
10.12.09	Presentation by Paul Scurrah at Mayne Depot in Bowen Hills to deliver a briefing to QR Passenger employees

Date	Event
10.12.09	Weekly Notice (number 48 of 2009) enclosing Lance Hockridge message to staff about the Government decision and a copy of the Premier's letter
10.12.09	Email from Gordon Leech to Tracy Holmes Subject: RE: Sale Process/Announcement Meetings with Staff
10.12.09	Email from Lance Hockridge to QR staff Subject: Update from staff briefings (enclosing Q&A)
10.12.09	Email from Paul Scurrah to 'PDL QR Passenger Services (Restricted)' Subject: EGM Update: Government announcement regarding Ipswich relocation
10.12.09	Email from 'Regional Freight Communications' to 'PDL Regional Freight' Subject: QR Sale Announcement – Regional Freight Roadshow
10.12.09	Email from Robert Moffat (GGM South East Queensland QR Network) to 'PDL SEQ Division' Subject: Arrival of Queensland Rail
10.12.09	Email from Dave Wotton to Employee Hotline Subject: SELL OUT
10.12.09	Email from Employee Hotline to Dave Wotton Subject: RE: SELL OUT
10.12.09	Video conference presentation by Tim Ripper - attended by William Batten
11.12.09	CEO Roadshow – presentation at Portsmith (Cairns)
11.12.09	CEO Roadshow – presentation at Townsville
11.12.09	CEO Roadshow – presentation at Oracle House
11.12.09	Regional Freight Roadshow presentation at Rockhampton

Date	Event
11.12.09	Email from Dave Wotton to Employee Hotline Subject: RE: SELL OUT
11.12.09	First meeting of PRT to discuss staff allocation
11.12.09	Paul Scurrah meets with Minister for Transport, Rachel Nolan, regarding Ipswich relocation feedback
11.12.09	Gordon Leech delivered closing address at in-service training to Network Controllers in Rockhampton - attended by Stephen Peacock.
11.12.09	Email from Gordon Leech to Tracy Holmes Subject: RE: Sale Process/Announcement Meetings with Staff
11.12.09	RTBU Circular – Bligh Government Happy to Attack QR Workers
14.12.09 – 17.12.09	Initial meetings between PRT and EGM and HR Business leads of each business unit
14.12.09	Meeting between PRT and Martin Moore to discuss SSG and Finance people allocation process
14.12.09	CEO Roadshow – presentation at Shamrock (Mackay)
14.12.09	CEO Roadshow – presentation at Emerald
14.12.09	CEO Roadshow – presentation at Barcaldine
14.12.09	CEO Roadshow – presentation at Gympie
14.12.09	Email from Grant Nawrath to Gracemere employees FW: Rockhampton GM visit – Gracemere (enclosing invitation to meeting on 15 December 2009)
14.12.09	Email from Darren Hooper to Gwen Durham in response to email from Dave Wotton to Employee Hotline Subject: FW: SELL OUT
14.12.09	Email from Employee Hotline to Dave Wotton

Date	Event
	Subject: FW: SELL OUT
15.12.09	CEO Roadshow – presentation at Bundaberg
15.12.09	CEO Roadshow – presentation at Mackay
15.12.09	CEO Roadshow – presentation at Maryborough West
15.12.09	CEO Roadshow – presentation at Hervey Bay
15.12.09	Email from Lance Hockridge to Tim Carroll in response to Tim Carroll email of 8 December 2009 Subject: RE: Sale of QR and Employment Guarantee
15.12.09	Email from Lance Hockridge to Steven Clare in response to Steven Clare email of 10 December 2009 Subject: RE: QR float
15.12.09	Email from Lance Hockridge to Michael Martin in response to Michael Martin email of 10 December 2009 Subject: RE: QR Sale
15.12.09	Email from Lance Hockridge to Paul Ryan in response to Paul Ryan email of 10 December 2009 Subject: RE: ARG????
15.12.09	Email from Lance Hockridge to Ian Garrad in response to Ian Garrad email of 11 December 2009 Subject: RE: Feedback on sale update
15.12.09	Email from Lance Hockridge to Dominic Fox in response to Dominic Fox email of 14 December 2009 Subject: RE: sale qr
15.12.09	Presentation by Mark Williams (GM of Travel & Tourism Sales) and Cathy Heffernan at Gracemere Depot
15.12.09	Martin Moore video message uploaded onto Sale Website

Date	Event
15.12.09	CEO Diary Extract – Paul Scurrah Interim CEO Queensland Rail
15.12.09	Letter from John Stephens to QR Group Apprentices about no impact on terms and conditions of apprenticeship
16.12.09	Presentation by Paul Scurrah at Mayne Depot in Bowen Hills to deliver a further briefing to QR Passenger employees
16.12.09	CEO Roadshow – presentation at Roma
16.12.09	CEO Roadshow – presentation at Toowoomba, attended by Dave Wotton
16.12.09	CEO Roadshow – presentation at Fisherman Islands
17.12.09	CEO Roadshow – presentation at Mayne
17.12.09	Paul Scurrah meets with Minister for Transport, Rachel Nolan, regarding Ipswich issues
17.12.09	Weekly Notice (number 49 of 2009) enclosing Lance Hockridge update on staff briefings held in 24 hours since Government announcement, Q&A and CEO Diary extract
17.12.09	Email from Lance Hockridge to QR staff Subject: Staff visits continue
17.12.09	Email from Paul Scurrah to QR staff Subject: Update on the Ipswich Relocation
18.12.09	CEO Roadshow –presentation at Gladstone
18.12.09	CEO Roadshow –presentation at Callemondah
18.12.09	Letter from John Stephens to QR Group Adult Apprentices about no impact on terms and conditions of apprenticeship
18.12.09	'*the Week'* Issue 49 enclosing Lance Hockridge update, Paul Scurrah update and Frequently Asked Questions
18.12.09	Email from Ian Dall (GM Coal Systems) enclosing 'Coal Systems News – Edition Ten'
18.12.09	Sunshine Depot Meeting

Date	Event
21.12.09	Email from Lance Hockridge to Colin Kay in response to Colin Kay email of 16 December 2009 Subject: RE: Sale regarding 25 yr pass
21.12.09	Email from Lance Hockridge to Gerard O'Donoghue in response to Gerard O'Donoghue email of 17 December 2009 Subject: RE: POSITIVE FEEDBACK FOR LANCE
22.12.09	CEO Roadshow – presentation at Newcastle
22.12.09	Frank Gabriel presentation to Banyo Depot staff (including Peter Lawrence)
22.12.09	Email from John Stephens to QR staff Subject: Process for identifying future positions for staff
23.12.09	CEO Diary Extract – Thanks for a great year (enclosed in Weekly Notice dated 14 January 2010)
29.12.09	Email from Lance Hockridge to Mark Grandfils in response to Mark Grandfils email of 18 December 2009 Subject: RE: QR Sale Feedback
05.01.10	Meeting between John Stephens, Mike Carter (acting CEO) and David Smith and Justine Moran (ASU) (re: Employment and Industrial Relations Plan)
05.01.10	PRT meetings with EGMs and HR business leads regarding proposed allocations
Early January 2010	Presentation by John McDonald at Sunshine Depot attended by William Roach
08.01.10	Message from John Stephens, CHRO – Process for Identifying Future Positions for Staff loaded to website
12.01.10	QR National Steering Committee meeting

Date	Event
12.01.10	Meeting between Paul Scurrah, Theo Taifalos (GGM Customer Service) and David Smith and Justine Moran (ASU) regarding potential Ipswich relocation issues
13.01.10	EGM QR Services Update – Lindsay Cooper referring to the placement process and that letters will be sent to employees advising them of their allocation
14.01.10	Email from John Stephens to 'PDL Management Committee' Subject: PEOPLE RESOURCING TEAM – EMPLOYEE ALLOCATIONS
15.01.10	Email from John Stephens to QR staff Subject: Position placement nearing finalisation
15.01.10	'*theWeek'* Issue 1 enclosing John Stephens update 'Position placement nearing finalisation'
18.01.10	QR National Steering Committee meeting
19.01.10	Email from Stacey Luxford to 'PDL QR Network Brisbane and Toowoomba Staff' Subject: QR Network Forum with Mike Carter
20.01.10	GGM QR Services Asset Services Update – John Pistak regarding allocation letters being sent out and where to obtain more information
21.01.10	Coal Systems Management Meeting in Brisbane
21.01.10	RTBU Circular – 'QR Management Allocation of Employees to Companies'
21.01.10	Special Management Committee Meeting. ' Position placements – Manager's information pack' provided
21.01.10	Meeting between QR and ASU representatives
21.01.10	Update from Marcus McAuliffe (EGM Coal) Subject: All Coal employees' to be employed by QR National, late 2010

Date	Event
	Regarding 'transfer' of a Coal employee's employment to QR National.
21.01.10	Extract from Weekly Notice (Number 2 of 2010) enclosing John Stephens update 'Position placement nearing finalisation'
22.01.10	Email from John Stephens to QR staff Subject: Update on placement letters
22.01.10	Email from Chae Parker to 'PDL QR Network (Restricted)' Subject: Message from the Acting EGM [Tim Ripper]: Queensland Rail and QR National Allocation letters Regarding allocation letters and discussions with managers
22.01.10	Meeting between QR and RTBU representatives to discuss sale and placement process
22.01.10	Meeting between QR and AFULE representatives to discuss sale and placement process
22.01.10	Meeting between QR and ETU/AMWU representatives to discuss sale and placement process
22.01.10	Letter from Allen Hicks (ETU) to Tim Conroy
22.01.10	Letter from Allen Hicks (ETU) to 'All members Queensland Rail' Subject: Letters of Transfer to QR National & Letters of offer to QR Passenger
22.01.10	Email from Karen Arthur (AMWU) to Catherine Taggart enclosing letter from Andrew Dettmer to Lance Hockridge
22.01.10	Letters from QR sent to employees regarding their employment. Placement letters sent
27.01.10	Letter from Lance Hockridge to Andrew Dettmer (AMWU)
27.01.10	Letter from Tim Conroy to Jason Young (ETU)

Date	Event
27.01.10	Email from 'Regional Freight Communications' to 'PDL Regional Freight' Subject: Message from EGM QR Freight (Ken Lewsey) Regarding the posting of allocation letters and where to obtain further information.
27.01.10	Email from John Stephens to Offer Group employees Subject: Further Information for Employees with Offers of Transfer (enclosing Q&A)
27.01.10	Email from Liz Packer to Darren Hooper Subject: Samantha Edwards
27.01.10	Group General Manager's Blog – 'Setting up for Success' providing SSG and Finance employees information on placement process
28.01.10	Extract from Weekly Notice (Number 3 of 2010) advising QR staff of allocation letters being posted to home addresses
28.01.10	Email from Michael Carter to 'PDL QR Network (Restricted) Subject: Message from the EGM – QR Network Placement Process Union Briefing (enclosing PowerPoint presentation) Regarding presentation to unions about placement process. (Note - message is dated 27 January 2008)
28.01.10	Shared Services Update – More information about the placement process
28.01.10	GGM QR Services Infrastructure Projects Update – Rob Green regarding letter of offer and where to get more information about the placement process
28.01.10	GGM QR Services Asset Services Update – John Pistak regarding allocation letters being sent out and where to obtain more information
28.01.10	Meeting between QR and Joint Union representatives
29.01.10	EGM QR Services Update – Lindsay Cooper regarding allocation letters being sent out and that employees' managers will be discussing the letter

Date	Event
	with them
29.01.10	Tim Conroy and Ken Bacon meet with David Smith (ASU)
29.01.10	Queensland Council of Unions Circular entitled 'Combined Rail Unions Update for Queensland Rail Members' (enclosing template letter to QR)
29.01.10	Email from Kathrina Bryen on behalf of John Stephens to Offer Group Subject: Ask your questions of the People Resourcing Team
29.01.10	Email from Bec Sala to Kathrina Bryen regarding allocation of Daryl Nutley. Subject: Placement Letter: Daryl Nutley (sn 9895)
01.02.10 – 19.02.10	8am meetings commenced
February 2010	Issue 15 'Fusion' – Shared Services Group GGM's Column regarding placement process from SSG and Finance employees
01.02.10	Email from Suzanne Holt to Angela Richardson (cc Cathy Heffernan, Darren Hooper and Kathrina Bryen) Subject: RE: Placement Letter: Daryl Nutley (sn 9895)
01.02.10	Banyo Depot Meeting conducted by Wayne Stewart
02.02.10	Email from John Stephens to Offer Group employees Subject: Update 2 - Further Information for Employees with Offers of Transfer
02.02.10	Email from Grant Nawrath to Gracemere employees Subject: Presentation by Senior Management 4th Feb 1900
03.02.10	Letter from William Batten to Lance Hockridge (altered template QCU letter)
03.02.10	Email from Gwen Durham to Darren Hooper in response to question to Employee Hotline from Simon Overland on 29 January 2010
03.02.10	Email from Alan Brookbanks to Cathy Heffernan, Darren Hooper and

Date	Event
	Kathrina Bryen (cc Brendan Cleaver and John Pistak) Subject: Health and Fitness team to QLD Rail
04.02.10	Email from Paul Scurrah to Offer Group employees Subject: Update 3 - Further Information for Employees with Offers of Transfer
04.02.10	Template letter from Lance Hockridge and Paul Scurrah in response to template QCU letter (enclosing QR response to employees' questions)
04.02.10	Email from Tony Burns to Kathrina Bryen, Darren Hooper, Michael Pullinger, Ross Graham and Martin Moore Subject: Allocations Update
04.02.10	Presentation at Gracemere depot
05.02.10	'*theWeek*' Issue 4 outlining the proposed high level structure and the people who will be acting as heads of the business units of Queensland Rail
05.02.10	Tripartite Meeting between Government, QR and QCU
05.02.10	Lance Hockridge Update - Creating QR National and Queensland Rail and the establishment of an Integration Management Office
05.02.10	CEO Diary Extract – Creating QR National and Queensland Rail and the establishment of an Integration Management Office
05.02.10	Email from Susan Hurley to various employees including Frank Gabriel Subject: Proposed Schedule – The New Queensland Rail (enclosing timetable)
05.02.10	Letter from Lance Hockridge and Paul Scurrah to William Batten in response to template QCU letter (enclosing QR response to employees' questions)
05.02.10	Queensland Rail Information Session – Dutton Park Depot
06.02.10	Queensland Rail Information Session – Brisbane City (3 sessions)

Date	Event
08.02.10	Queensland Rail Information Session – Stuart Depot
09.02.10	Letter from Tim Conroy to Barry Leahy and QCU representatives following tripartite meeting on 5 February 2010
09.02.10	Letter from Peter Simpson (ETU) to Lance Hockridge and Paul Scurrah Re: Offers of Employment with QR Passenger Pty Ltd
09.02.10	Letter from William Batten to Lance Hockridge regarding outstanding questions raised in letter dated 3 February 2010
10.02.10	Email from Paul Scurrah to Offer Group Subject: Further Information for employees with offers of transfer Summarising the main points that were covered in the CEO Offer Group Roadshows and written answers to Frequently Asked Questions
11.02.10	Proceedings filed
11.02.10	Extract from Weekly Notice (Number 5 of 2010) enclosing CEO Diary extract of 5 February 2010
11.02.10	Queensland Rail Information Session – Mayne Depot
11.02.10	Queensland Rail Information Session – Toowoomba Depot
11.02.10	Email from Jane Grey (on behalf of David Smith ASU) to David Meloni Subject: ASU response re Offers of Employment with QR Passenger (enclosing letter dated 11 February 2010 from David Smith to Lance Hockridge and Paul Scurrah)
11.02.10	Email from David Meloni to ASU members FW: ASU response re Offers of Employment with QR Passenger
11.02.10	Australian Services Union News – Stop Press – Unions Seek $660,000
12.02.10	Tripartite Meeting between Government, QR and QCU

Date	Event
12.02.10	EGM QR Services Update – Lindsay Cooper reminding employees of 19 February 2010 deadline
12.02.10	Queensland Rail Information Session – Redbank Depot
12.02.10	Queensland Rail Information Session – Ipswich Depot
12.02.10	Queensland Rail Information Session – Sunshine Depot
12.02.10	Queensland Rail Information Session – Maryborough Depot
12.02.10	CEO Diary Extract – Update on position placements
12.02.10	Email from Lance Hockridge to QR staff Subject: Update on position placement
12.02.10	Letter from Lance Hockridge to Peter Simpson (ETU)
12.02.10	Letter from Paul Scurrah to Peter Simpson (ETU)
12.02.10	Letter from Paul Scurrah to David Smith (ETU)
12.02.10	Letter from Lance Hockridge to David Smith (ETU)
12.02.10 (Note – incorrectly dated 19.07.10)	'*theWeek*' Issue 5 enclosing Paul Scurrah announcement about his presentations to Offer Group employees
15.02.10	Letter from Lance Hockridge and Paul Scurrah to William Batten in response outstanding questions
15.02.10	Email from Lance Hockridge to Offer Group regarding letters of offer
16.02.10	QCU Circular – Update on Offer Process: Important Advice to Members
16.02.10	Memorandum from David Lassen to Lance Hockridge and Paul Scurrah Subject: Transfer of employment
16.02.10	Email invitation to attend Allocation Q&A Sessions by Martin Moore for SSG and Finance employees

Date	Event
17.02.10	Email from Ian Dall – GGM Coal Systems Subject: Message from Ian Dall – Changes to Commercial Services
17.02.10	Martin Moore briefing sessions in Brisbane regarding placement process
18.02.10	Paul Scurrah Presentation to Level 3, 4 and 5 managers within QR Passenger, QR Services, QR Network and QR Corporate with letters of offer
18.02.10	Letter from Lance Hockridge and Paul Scurrah to Peter Lawrence acknowledging receipt of acceptance of transfer of employment to Queensland Rail
18.02.10	Memorandum from Warren Mallett to Lance Hockridge and Paul Scurrah Subject: Transfer of employment
19.02.10	Response date for offer group
19.02.10	Memorandum from Eugene Maurice to Lance Hockridge and Paul Scurrah Subject: Transfer of employment
19.02.10	Quarterly Business Consultative Forum
19.02.10	'*theWeek*' Issue 6 enclosing Paul Scurrah update outlining the principles for establishing the Queensland Rail structure
22.02.10	Email from Lance Hockridge to QR staff Subject: Proposed structure for QR National
22.02.10	CEO Diary Extract – Proposed structure for QR National
23.02.10	Queensland Rail Information Session – Bundaberg Depot
24.02.10	Email from 'Organisational Communications' to various Rockhampton staff Subject: Invitation to sales and performance update today

Date	Event
24.02.10	Lance Hockridge presentation entitled 'Sales and Performance Update' at Rockhampton
25.02.10	Weekly Notice enclosing CEO Diary extract of 22 February 2010.
26.02.10	Template letter to QR Limited employees who were 'conditional acceptances' from whom no rejection form was received
26.02.10	Template letter to QR Network employees who were 'conditional acceptances' from whom no rejection form was received
26.02.10	EGM QR Services Update – Lindsay Cooper regarding proposed executive structure for QR National and Queensland Rail
26.02.10	'*theWeek*' Issue 7 enclosing Paul Scurrah update regarding acceptance rate of Offer Group
02.03.10	RTBU Circular – Rally Against the Government Privatisation Plan: 9th March 2010 (enclosing flyer and map)
02.03.10	PRT meeting with EGMs/GGMs
03.03.10	ASU Union News – ASU Supports a Special State Conference
03.03.10	Template letter from Lance Hockridge and Paul Scurrah regarding Second Round Offer of position with Queensland Rail
03.03.10	Martin Moore briefing sessions in Rockhampton regarding placement process
03.03.10	Meeting between Darren Hooper, Des Kluck, Robert Moffat and Eugene Maurice, David Lassen and Warren Mallett
04.03.10	PRT meeting with EGMs/GGMs
04.03.10	Email from Lance Hockridge to QR staff Subject: QR National and the Initial Public Offering (IPO)
04.03.10	CEO Diary Extract – QR National and the Initial Public Offering
04.03.10	Template letter from Lance Hockridge regarding confirmation of rejection of offer of position with Queensland Rail by QR Network employee

Date	Event
04.03.10	Template letter from Lance Hockridge regarding confirmation of rejection of offer of position with Queensland Rail by QR Limited employee
05.03.10	Template letter from Lance Hockridge and Paul Scurrah regarding re-offer of position with Queensland Rail
10.03.10	Martin Moore briefing sessions in Townsville regarding placement process
10.03.10	Email from Dellia Biggs to Martin Moore Subject: Placement
11.03.10	Email from Gregory Shephard to Martin Moore regarding placement
11.03.10	Email from Martin Moore to Gregory Shephard (cc Ross Graham) Subject: Re:
11.03.10	Email from Martin Moore to Paul Gurtner Subject: FW: Greg Shephard Question from Townsville
11.03.10	Email from Martin Moore to Paul Gurtner Subject: FW: Placement
11.03.10	Weekly Notice (number 9 of 2010) Enclosing IPO Fact Sheet
12.03.10	Email from Lance Hockridge to Leon Collett in response to Leon Collett email Subject: Response
12.03.10	Email from Lance Hockridge to David Newport in response to David Newport email of 23 February 2010 Subject: RE: Question for CEO regarding future policy of QR National
17.03.10	Email from Martin Moore to Paul Gurtner Subject: RE: business case

Date	Event
17.03.10	Email from Martin Moore to Paul Gurtner Subject: RE: business case
18.03.10	Email from John Stephens to all staff Subject: A message from the Chief Human Resources Officer – Sale Update
26.03.10	Response date for extended offers
30.03.10	Response date for second round offers