Qantas Group Submission to the Productivity Commission's Inquiry into the Workplace Relations Framework

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1. INTRODUCTION

1.1 Background

This submission is made in response to a number of issues raised in the Productivity Commission Workplace Relations Framework: Issues Papers 1-5. The matters addressed in this submission are based on our experience of over 20 years of enterprise bargaining and our broader human resource management experience. It should be noted that some of the submissions made here were made to the Fair Work Review in 2012.

Qantas has experienced a range of challenges during the operation of the Fair Work Act. This paper sets out Qantas' submissions and suggestions for reform in respect of the following areas of the workplace relations framework:

- Safety Nets
- Bargaining Framework
- Employee protections

This submission is made on behalf of the Qantas Group. The Qantas Group comprises a number of companies, the most prominent of which are:

- Qantas Airways Limited;
- Jetstar;
- Qantaslink;
- QCatering;
- Qantas Freight; and
- Qantas Frequent Flyer.

A list of all the controlled entities is provided at page 101 of the Qantas Annual Report 2014.

The Qantas Group has approximately 30,000 (full time equivalent) employees of which over 90% are employed in Australia. The Qantas Group is highly unionised. It has 50 Enterprise Agreements (EAs) and regularly deals with the following unions:

- AIPA (Australian and International Pilots Association)
- AFAP (Australian Federation of Air Pilots)
- ALAEA (Australian Licenced Aircraft Engineers Association)
- AMWU (Australian Manufacturing Workers' Union)
- APESMA (Association of Professional Engineers, Scientists and Managers Australia)
- ASU (Australian Municipal Administrative, Clerical and Services Union)
- AWU (The Australian Workers' Union)
- CEPU (Communications, Electrical, Electronic Energy, Information, Postal, Plumbing and Allied Services Union of Australia)
- FAAA Long Haul (Flight Attendants Association of Australia Long Haul)
- FAAA Short Haul (Flight Attendants Association of Australia Short Haul)
- NUW (National Union of Workers)
- TWU (Transport Workers' Union of Australia)
- United Voice (formerly known as the Liquor Hospitality Miscellaneous Workers' Union - LHMWU)

A list of EAs is included at Attachment A.

1.2 The Airline Industry

Airlines are low margin, labour intensive and highly competitive businesses. As a direct result of Australian Government policy, Qantas is more exposed to the competitive nature of the industry than many other international carriers. Successive federal governments have supported an 'open skies' policy and majority foreign owned airlines have been granted access to the domestic Australian market.

The long term impact of 'open skies' has been a progressive decline in Qantas' share of the international market, which has declined over the last two decades from 40% to 24.3% [15.6% QAI & 8.7% JQ per BITRE (Nov14)]. The international market is not a level playing field; it includes both state owned and state sponsored airlines and many airlines that operate in jurisdictions with relatively de-regulated labour markets.

The travelling public have undoubtedly been the beneficiaries of this level of competition. Over the last 40 years international airfares have reduced by approximately 85% measured against CPI and by approximately 90% measured against Average Weekly Earnings (AWE), (lowest return economy fare available). The lowest return Sydney to London fare on Qantas represented 21 weeks of AWE in 1965, 3.5 weeks in 1995 and 1.7 weeks in 2009.

Within the domestic market new entrants also enjoy a cost advantage, further increasing competitive pressure on Qantas Airways Ltd as the 'legacy' carrier. The domestic market is intensely competitive and there is a long history of domestic operators failing, including notably Compass 1 and 2 and Ansett.

Airlines are highly vulnerable to exogenous factors or 'shocks' and typically airlines provide a poor return on capital. Even though Qantas has been much more successful than most legacy carriers, we made a negative return on assets in FY13/14 and for the last 10 years have made an average return on invested capital below our cost of capital.

Labour costs are a key differentiator between airlines and a key determinant of success or failure. In the Qantas Group labour costs vary between approximately 20% - 30% of total costs (Source Qantas Data Books[1]). Consequently cost control and industrial relations outcomes and the overall labour market regulatory framework are central to the business.

2. RESPONSE TO ISSUES RAISED IN ISSUES PAPER 2 – SAFETY NETS

2.1 National Employment Standards

The Federal Parliament determines the National Employment Standards (NES). However, under the current Modern Award system applications can be made to the Fair Work Commission (the FWC) for enhancement of Award provisions and tangentially the NES. For example, the ACTU has recently lodged an application with the FWC seeking that employees returning from parental leave would have the right to

[1] In FY 14 Labour Costs were 19% this reflects the Asset Write Down.

request to work part time with a more onerous test on employers who refuse such a request, than that contained in the NES. The effect of the ACTU application if granted would be to translate an enhanced NES provision into all Awards.

We consider the minimum National Employment Standards appropriate. However, given the focus of the system on encouraging enterprise bargaining, it seems anomalous that the FWC, in addition to being able to determine Award standards, also has the capacity through Modern Award review processes to enhance the NES beyond that determined by Parliament. We consider that the NES should be the preserve of Parliament and that Awards should not be able to be changed to enhance the NES.

In this context we note that some Modern Awards continue to have provisions 'above' the NES as a result of history and we do not propose that these provisions should be removed. However, they should not be able to be further enhanced by the FWC.

2.2 The Award System

Qantas supports an Award system. Qantas is covered by Modern Awards including the:

- Air Pilots Award 2010 [MA000046];
- Aircraft Cabin Crew Award 2010 [MA000047];
- Airline Operations - Ground Staff Award 2010 [MA000048];
- Clerks - Private Sector Award 2010 [MA000002];
- Professional Employees Award 2010 [MA000065];
- Manufacturing and Associated Industries and Occupations Award 2010 [MA000010];
- Road Transport and Distribution Award 2010 [MA000038]; and
- Road Transport (Long Distance Operations) Award 2010 [MA000039].

Further simplification

Award coverage is determined by the nature of the employer and the work performed by the employee. Rates of pay for work of the same skill, responsibility and knowledge levels are intended to be consistent across Awards. When Awards were simplified and then modernised, all Award classifications levels should have had rates that could be linked back to the 'trade rate'. However, neither simplification nor modernisation achieved consistency in the way in which classifications are defined, with some still being described by function (e.g. drivers by size of vehicle), some by skill sets and task examples (clerical jobs) and others by training requirements (Trade classifications, Nurses etc.).

Further, there is still complexity in ascertaining the coverage of Awards and associated classifications. For example, it is not clear which Award applies to catering workers in Airport catering facilities. Similarly, there is complexity in Awards such as the Road Transport and Distribution Award 2010 that distinguishes between 'warehouse' employees and 'drivers', when often these functions are performed interchangeably.

In our view to encourage compliance and to assist employers in understanding their award obligations and employees in understanding their entitlements further work needs to be undertaken on reducing the number of Awards and clearly expressing the work covered by the Award and the boundaries between Awards. Given this, Qantas

suggests that the current number of Modern Awards be further reduced and the classification descriptors broadened so that there is less uncertainty for employers and employees in determining the coverage and application of the relevant Modern Award.

3. RESPONSE TO SPECIFIC ISSUES RAISED IN ISSUES PAPER 3 – THE BARGAINING FRAMEWORK

3.1 Better Off Overall Test

Qantas has negotiated enterprise agreements for over 20 years. It currently has 50 Enterprise Agreements. For the purpose of the Better Off Overall Test (BOOT), the Qantas Group is currently covered by two enterprise Awards (continued application of the two enterprise Awards is subject to pending decisions by a Full Bench of the FWC) and eight Modern Awards. Significant resources are devoted to lodging documentation supporting an application for approval of an Enterprise Agreement (EA), particularly in relation to application of the BOOT.

In our view employers who have passed the BOOT for an EA should not be required to continually repeat the BOOT exercise on renewal of that EA, but should be able to rely upon a Statutory Declaration that states that the EA meets the BOOT, without the need to provide significant detail on provisions that are 'under' or 'over' the Award. However, an affected party would always have the right to challenge the application for approval at that time (but not subsequently). Further, to provide certainty for employers and employees, once an EA is approved the parties should be able to proceed as if it is a valid EA. To provide certainty to employers and employees the impact of any challenge to an approved EA should only have a prospective effect and relate only to the issue concerned.

There also needs to be greater consistency in application of the BOOT. We have had experience of some FWC members applying a line-by-line test and others applying a global test. Additionally, the term 'Better off Overall' is a misnomer. Legally employers must meet the Award and the NES. There should not be a requirement in the Act that an EA has to be more beneficial than an Award in order to be approved.

3.2 Good Faith Bargaining

In the view of Qantas, the good faith bargaining provisions in the Fair Work Act do not need to be supplemented by further prescriptive rules.

The Group has some experience with bargaining in overseas jurisdictions. In particular, our experience of the more prescriptive good faith bargaining provisions under the otherwise simple and flexible New Zealand legislation has been that these provisions tend to lead to a focus on process at the expense of expedition and outcomes. The good faith bargaining obligations also, prior to the recent amendments to the New Zealand legislation, seriously inhibited an employer's ability to communicate directly with its employees.

3.3 Notice of employee representational rights

The FWC has recently clarified that the notice of employee representational rights (which an employer must issue to employees at the very start of bargaining) must not deviate from the content prescribed by the *Fair Work Regulations 2009* (Cth) and, if it does, the FWC is unable to approve the agreement – even if the notice was issued

months or years before employees were requested to vote on the agreement. See *Peabody Morrvale Pty Ltd v Construction, Forestry, Mining and Energy Union* [2014], FWCFB 2042.

The period of bargaining can extend for a considerable length of time and the costs of administering an employee vote can be high, in circumstances where the notice is often prepared by personnel who are not legally trained. Qantas is of the view that there should be legislative reform to afford the FWC with the discretion to decide whether deficiencies in the notice prevent the agreement from being approved after taking into account:

(a) the views of the employer;
(b) the views of the bargaining representatives;
(c) the views of the employees to be covered by the agreement; and
(d) evidence (if any) that an employee who would be covered by the agreement has been disadvantaged by the deficiency with the notice.

3.4 Period of operation

Currently an enterprise agreement can operate for a maximum duration of four years before it nominally expires. As bargaining for an enterprise agreement can be prolonged (taking years in some cases), Qantas is of the view that an employer and its employees should be able to agree to a longer nominal period of operation of up to five years. There are circumstances where business and employees benefit from the certainty that a five-year Agreement provides.

3.5 Multiple bargaining representatives

In Qantas' view, the ability for an unlimited number of bargaining representatives to be appointed by employees in respect of a proposed EA under the Fair Work Act has not improved bargaining outcomes for Qantas or its employees. This is because:

(a) there is currently no time limit on when a new bargaining representative can be appointed (even if the negotiations have been progressing for some time) which has the potential to significantly slow or frustrate the bargaining process;

(b) claims which are raised by individual bargaining representatives are often particular to the circumstance and experience of an individual employee (or a very small number of employees) and are not reflective of the views of the broader workforce as communicated by their bargaining representatives. In these cases, it is not appropriate or feasible for the claims to be enshrined in an EA; and

(c) the appointment of multiple bargaining representatives increases the time and cost associated with bargaining, especially for employers with geographically dispersed employees. It can also delay the finalisation of a new EA.

While bargaining orders have the potential to address some of the issues raised above, such orders cannot increase the likelihood, that claims raised by individual bargaining representatives who lack the support of the broader workforce, will ultimately be reflected in an agreement approved by the requisite majority of employees who will be covered by the agreement. As a first step, Qantas recommends that the bargaining notice has the capacity to fix a reasonable period in which nominations to be a bargaining representative must be submitted.

3.6 Content of Bargaining

Productivity

In Qantas' view, there should not be an express requirement for parties to bargain in respect of 'productivity' and/or include a productivity clause in an EA, for the following reasons:

- such a requirement intrudes on the responsibility of the employer to determine the content of its EAs (provided the NES and BOOT requirements are met and majority employee support is obtained). If enterprise bargaining were to mandate consideration of productivity, this would amount to a form of regulation on the capacity of the business to make decisions that meet the needs of the business;

- it assumes that the FWC is equipped to review the productivity impact of initiatives included (or not included) in EAs;

- a requirement to justify wage increases through identified productivity initiatives is likely to lead to a requirement that work practice changes be inserted as a term of an EA – which by intruding on management discretion and broadening the scope of agreement, will in many cases be the very antithesis of facilitating productivity improvements (see comments on 'permitted matters' below);

- as a general concept, productivity bargaining rewards the least efficient work groups who have the most to trade away;

- it encourages unions to resist change until it is 'paid for', and then to drip feed the changes that are agreed;

- in the context of an annual adjustment of award rates through the national wage bench, unions could perceive productivity bargaining as relating to increases over and above the standard award wage increase, rather than as the means to pay for it;

- it assumes that productivity is a commonly understood term that can be readily measured and quantified in EAs; and

- that an increase in productivity will lead to commensurate increases in profitability and capacity to pay.

Airlines are a very good example of an industry where substantial productivity gains have been distributed to the broader community by way of lower airfares. This has been driven by the competitive nature of the industry.

Productivity in the airline industry as in most industries comes from a wide range of sources, including capital investment, new technology and changed labour practices. Often the changes to labour practices are incidental to or inseparable from investment in new equipment and technology and are required in order to meet the market. For example in airlines new aircraft, kiosk check-in, automated baggage check-in, internet booking, new aircraft maintenance requirements, conveyor belts for loading aircraft, and improving technology for air traffic control all enhance airline productivity and lower labour unit costs.

How productivity is distributed must be the preserve of the business as it meets competitive challenges. At the macro level, the dramatic fall in airfares has been to the benefit of all workers and the economy. To impose a requirement for productivity to be considered in enterprise bargaining will raise employee (and union) expectations that productivity should be distributed as higher wages – regardless of the longer term needs of the business, its customers and shareholders.

Permitted matters

In 2011 Qantas was faced with three strategically positioned unions (TWU, ALAEA, AIPA) using protected industrial action (PIA) to attempt to prevent Qantas using contract labour and/or to use Qantas enterprise agreements to set the rates in labour hire firms ('site rates') or set rates in subsidiaries or service providers or direct investment decisions (e.g. building a new hangar to perform maintenance). These claims led to PIA. In addition, at least one union (AIPA) has lobbied for further legislative change that would directly interfere in the labour arrangements made within the Group. This experience is detailed further in the case study below.

It should be noted that this negative experience relates to a small number of powerful unions that represent a minority of Group staff. This is in contrast to previous enterprise bargaining experience, and recent experience, where the Group has successfully negotiated EAs with most unions, covering a traditional range of terms and conditions, usually without industrial action.

The key issue for Qantas is not how to use the provisions of the Fair Work Act to enhance productivity, but rather how to resist the attempts by a number of unions to use the provisions of the Fair Work Act to control business strategy and to obstruct change – and thus negatively impact on productivity.

The Fair Work Act restricts terms that can be included in EAs to the 'permitted matters' set out in s.172(1) of the Fair Work Act, namely:

- matters pertaining to the relationship between an employer that will be covered by the agreement and that employer's employees who will be covered by the agreement;
- matters pertaining to the relationship between the employer(s), and the employee organisation(s), that will be covered by the agreement;
- deductions from wages for any purpose authorised by employees who will be covered by the agreement; and
- how the agreement will operate.

The Explanatory Memorandum to the *Fair Work Bill 2009* (Cth) made it clear that the reference to 'matters pertaining' was intended to retain the formulation established in case law and ensure that matters that:

- clearly fall within 'managerial prerogative';
- are outside the employer's control;

- are unrelated to employment arrangements; or
- are not subject to bargaining and industrial action.

In our view this is not effective. The removal of 'prohibited content' in the Fair Work Act combined with:

- The FWC not being required to consider whether specific terms are 'permitted matters' at the approval stage;
- a lack of clarity about what constitutes 'permitted matters'; and
- that a claim for a non 'permitted matter' is not of itself a bar to protected industrial action;

has rendered s.172(1) ineffective.

In Qantas' experience, employee associations in EA bargaining routinely seek restrictions that if agreed would fetter business strategy, and obstruct change – and thus negatively impact productivity. A clear example of this is claims on the use of contractors or labour hire (the total prohibition of which is not a permitted matter) under the guise of 'job security' clauses (which may be found to be permitted matters).

Qantas suggests that the Productivity Commission recommend that s.172(1)(a) be amended, so as to prevent parties from seeking terms which place any restriction on an employer's capacity to enter into arrangements with third parties, including in respect of the provision of labour or which would in effect seek to regulate the terms and conditions of employment existing in a third party. This will, among other things, remove the current ambiguity surrounding job security clauses, which restrict an employer's use of contract labour.

The extent to which the anti-competitive provisions of the Australian Consumer Law currently apply, or should apply, to the issue of 'permitted matters' raises in turn issues of timeliness. Prosecution of claims under anti-competitive provisions can take many months or years to conclude. If reform in this area was to be considered by the Productivity Commission, careful consideration would need to be given to whether the legal remedy proposed would deliver a sufficiently timely resolution in the context of enterprise bargaining.

Case Study

Qantas in 2011 faced three major industrial disputes, the most intractable components of which were union bargaining claims that sought to regulate, control and reduce Qantas access to third party labour and or business services and to control Qantas business strategy and the opportunities for the business to improve productivity. As these claims could not be conceded by Qantas without putting the business at risk, the outcome was an intractable dispute with damaging industrial action that left Qantas with no choice but to respond to the unions' industrial action with a proposed lock out. Qantas believes that these union claims owed their genesis to the removal of the prohibited content provisions from the Fair Work Act.

The ALAEA, representing licensed aircraft engineers made claims that included the building of a fully tooled and staffed new heavy maintenance facility, restrictions on third party labour providers and restrictions on Qantas' access to productivity improvements, including restricting access to the benefits conferred by technological and regulatory changes. The claims also sought to exclude other unions' members from undertaking certain new functions.

The TWU, representing predominantly ramp and baggage handlers, claimed explicit controls and constraints on Qantas' use of contractors to provide labour.

AIPA, representing Qantas long haul pilots sought to use the current legislation to in effect regulate the terms and conditions of employment of employees who work for other companies, whether associated entities or not. The relevant triggers for the application of the clause would be the use of a codeshare number by an associated entity, or the use of a Qantas designator or livery by any company.

The long haul pilot claim also sought to:

- Override or supplement terms and conditions for persons not covered by the proposed enterprise agreement, even though such terms were already set under applicable agreements approved by FWA (as it was then);

- Override or supplement terms and conditions set for employees of other companies, who are engaged in and reside in another country and who work under contracts set in accordance with the country of residence and citizenship (including New Zealand, Singapore and the USA).

Qantas believes that the purpose of the claims made by each of these unions was to restrict Qantas' freedom to implement its business strategy, including the development of multiple differentiated brands. Its actual economic and business impact, if conceded, would have been to weaken Australian based airlines relative to their international competitors and partners.

3.7 Protected Industrial Action

Deduction of pay

Qantas considers that the removal under the Fair Work Act of the mandatory four-hour minimum deduction of pay for protected employee industrial action (PIA) has significantly changed the balance in bargaining, especially for service-based industries. The four-hour rule was originally applied to ensure that when employers were faced with industrial action, the employer was not then coerced into paying employees what they had lost because of industrial action.

The current rule under the Fair Work Act is that deduction must occur for any industrial action, thus it cannot be 'paid back'. However, there is no prescribed minimum and complex formulas have to be calculated by the employer and applied to bans that have a partial impact on an employee's work. In service based industries, bans that do not involve stoppages can also be very damaging to the business without any real countervailing consequence for employees.

Deduction of pay for partial work bans

If the employer fails to deduct pay for protected industrial action, the Fair Work Ombudsman can prosecute the employer. The ALAEA during the 2011 dispute in Qantas provided an extreme example of how the current rules can be exploited. In this dispute, the union notified a one-minute stoppage, knowing that the complexity and administrative cost of making the required one-minute deduction from pay would exceed the actual amount of the deduction, while also exposing the employer to the risk of prosecution for any error in calculating the numerous deductions involved.

A further issue arises under the Fair Work Act in relation to partial work bans[2], when employees refuse to perform some, but not all, of their duties. Currently employers are compelled to make some form of deduction for partial work bans. They must give written notice to the relevant employees that they intend to either:

- deduct a proportional amount; or
- not accept any work performed by the employees during the ban and not pay the employees any amount for the period of the ban.

This requirement is particularly onerous for employers where employees engage in a work ban that does not prevent the employees from performing their normal duties (or, if so, only to a limited extent) but where it is extremely difficult (or cost prohibitive) to calculate and administer the deduction.

Given this, Qantas suggests that the Productivity Commission recommends that employers should have the discretion whether or not to deduct a proportion of an employee's pay for engagement in a partial work ban. Further, Qantas submits that if an employer exercises its discretion to deduct an amount, it may deduct 25% for any partial work ban that impacts on the performance of normal duties (which will remove

[2] Overtime bans are treated differently under the Act and are not considered to be "partial work bans." The issue of Overtime bans is not considered here, although the Fair Work Act provisions cause problems for employers in the context of unprotected industrial action and "overtime bans."

the need to calculate the impact of the partial work ban), but that any deduction above 25% must be proportionate to the impact of the partial work ban, assessed on an objective basis.

Withdrawal of notification of industrial action

Another tactic used by both the ALAEA and the TWU in Qantas in 2011, was to repeatedly notify a stoppage and then cancel the action at the last minute, after schedules had been recut, passengers advised and other staff disrupted from their normal rosters. Such behaviour caused significant loss of revenue and cost to Qantas, inconvenienced customers and other staff and came at no cost to the union or its members directly involved in the 'action'. As one example of this tactic, the TWU notified a two-hour stoppage for all airports to take place between 16:00 to 17:59 on 7 October 2011. The notice was subsequently withdrawn, but the timing of the notification and withdrawal still meant that this 'action' by the TWU affected 4,343 passengers and resulted in the cancellation of 17 flights and the rescheduling of 19 other flights. As a second example, the ALAEA provided separate notices of four-hour stoppages at different times of the day in Brisbane, Sydney and Melbourne. Each of these notices was subsequently withdrawn but this 'action' by the ALAEA affected 8,318 passengers and resulted in the cancellation of 38 flights and the re-scheduling of 27 flights. The average delay for re-scheduled passengers was 95 minutes.

In the 2011 disputes this 'reversal' action was also coupled with public threats of more significant action in the future, causing a loss of confidence in Qantas' reliability and a reduction in forward bookings. Lists of the short duration and notified and then cancelled notices of PIA are included at Attachments B (ALAEA PIA), Attachment C (TWU PIA) and Attachment D (AIPA PIA).

Qantas had limited ability to respond to these events under the Fair Work Act. Employer response actions under the Fair Work Act are:

- locking out employees. However, an employer must first establish that the withdrawal of the notice constitutes industrial action 'by a bargaining representative' (a threshold issue which has not yet been conclusively determined). Even if this threshold issue could be overcome, a lock out exposes employers to employee response action (i.e. industrial action of any kind that can commence immediately on the provision of written notice) which can quickly escalate industrial disputes and prevents employers from contingency planning for industrial action;

- standing down employees. However, the stand down provisions in the Fair Work Act cannot be utilised as the withdrawal of a notice does not currently fall within the definition of "industrial action" which allows an employer to utilise the stand down provisions; or

- deducting pay. However, 'industrial action' has to occur which is not the case when a notice of action is withdrawn at the last minute.

The scope for some unions to use the current provisions of the Fair Work Act in the ways described above and the limited response available to employers under the Fair Work Act, supports an argument for a rebalancing of the Act.

Given the above, Qantas suggests, that in the circumstances where the issuing and subsequent unilateral withdrawal of a notice of industrial action causes an employer to

incur costs, such as where the employer has taken reasonable defensive action (e.g. incurred costs of a contingency plan such as re-cutting a schedule), the Productivity Commission recommends that the employer is then entitled to:

- deduct from the wages of employees covered by the relevant protected action ballot order, an amount equal to the duration of the defensive action (which may be longer than the notified action where it has ramifications beyond the notified period) and that this will not expose the employer to employee response action; and/or

- Stand down the employees covered by the relevant protected action ballot order because they cannot usefully be employed as a consequence of the defensive action.

Damaging statements by employee associations

It is not uncommon for employee associations to make statements in the media that industrial action which has not yet been notified will occur and will have a certain effect. The intent of such statements is to impact negatively on customers and damages the employer's brand without employees incurring any losses. Such statements are not considered to be 'industrial action' and therefore, there is no recourse under the Fair Work Act. These statements are also often coupled with damaging comments, which in the Qantas experience, has often centered on safety issues.

Given this, in our view there should be limits on claims surrounding industrial action that can be made by employees and their representatives regarding the effect of industrial action, unless that action has been notified to the employer in accordance with the Fair Work Act, and that there is a reasonable basis for the statements. Often the effect of industrial action is overstated in an effort to obtain greater industrial leverage and / or cause damage beyond that which would be caused by the actual industrial action. There is very little if any relief available to a corporation in respect of such conduct. For example, where damaging statements are made about a corporation as part of an industrial agenda, defamation is not an option.

Identification of employees covered by a protected action ballot order

Where a protected action ballot specifies a group of employees by reference to the membership of an employee association, it can be difficult (or impossible) for an employer to determine whether an individual employee is covered by the ballot and therefore entitled to participate in the protected action authorised by the ballot as employers do not generally have knowledge of whether an individual employee is a member of the relevant employee organisation or not. This creates issues regarding the deduction of pay following the taking of industrial action.

Given this, Qantas suggests that the Productivity Commission recommends that the Australian Electoral Commission be required to provide the employer with a copy of the roll used for the ballot, once the ballot had been conducted and the action approved by the FWC.

3.8 No extra claims

Historically, 'no extra claims' clauses were inserted into industrial agreements in order to prevent employees from taking industrial action in pursuit of claims during the life of

the agreement (as no statutory bar existed). Whilst a statutory bar was introduced in 2006, these clauses are still present in many agreements today.

As parties to an EA are taken to have been aware of the legislative context in which the agreement has been made, courts in recent times have attempted to ascribe meaning to these clauses. See for example the Toyota decisions.[3]

Most recently, the FWC has suggested that these clauses could prevent or restrict an employer's exercise of reasonable managerial prerogative, even in circumstances where the matter in issue is not covered by the agreement and had not been the subject of bargaining between the parties.[4]

An example of this in the Qantas Group, is where the ALAEA sought to use a no extra claims clause to prevent Jetstar from introducing a new allowance to be paid to employees who were not eligible to be their members.

Given these concerning outcomes, Qantas suggests that the Productivity Commission recommend that a provision be inserted into the Fair Work Act, which renders 'no extra claims' clauses of no effect (similar to non-permitted matters).

4. RESPONSE TO SPECIFIC ISSUES RAISED IN ISSUES PAPER 4 – EMPLOYEE PROTECTIONS

4.1 Transfer of Business – Associated Entities

Qantas provides a good example of the bureaucratic hurdles facing large companies that seek to provide employees with opportunities across a range of related entities. Qantas has long standing arrangements, in some cases included in industrial agreements, for staff to apply for positions between entities. This includes pilots moving from Qantas to Jetstar, pilots and cabin crew moving between QantasLink and Qantas and customer service and engineering and supervisory staff moving between entities. Under the Fair Work Act, Qantas has been required to make numerous costly and resource intensive applications to the FWC for orders to prevent the transfer of instruments in these circumstances. In some cases, staff have lost opportunities as a direct result of these provisions because of the time periods involved in seeking union cooperation in any approach to the FWC. No Qantas application has been rejected; equally each application takes considerable resources to process for what, in all cases, are voluntary moves. It is a clear example of the Fair Work Act restricting flexibility.

However, even this complex process is now in doubt. Up until recently, Qantas and its associated entities could manage the risk of an instrument transferring from one entity to another, by the new entity making employment conditional on a s.318 order being granted by the FWC, that the employee's instrument would not transfer to the new entity. However, two very recent single Member decisions of the FWC have indicated

[3] *Marmara v Toyota Motor Corporation Australia Limited [2013] FCA 1351; Toyota Motor Corporation Australia Limited v Marmara [2014] FCAFC 84.*

[4] *Australian Municipal, Administrative, Clerical and Services Union v North East Water [2014] THE FWC 6922; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) v Fonterra Australia Pty Ltd [2015] FWC 1486.*

similar orders sought by other employers were beyond the jurisdiction of the FWC (on the basis that the FWC was required to establish a jurisdictional fact).[5] These decisions may have very serious ramifications for employees of the Qantas Group wishing to secure employment with an associated entity as explained above.

If it is the case that the Fair Work Act prevents the FWC from making a s.318 order in respect of a conditional offer of employment, Qantas and its related entities will have no choice but to cease offering employment to employees currently employed by other entities within the Group to ensure that the integrity of enterprise specific arrangements is maintained. Qantas is able to provide further evidence in camera respect of this matter.

Given the above discussion, Qantas strongly suggests that the Productivity Commission recommends that the concept of a transfer of employment occurring between associated entities be removed in instances where the employee consents to the transfer.

Obligation to redeploy

The above developments also have ramifications for Qantas in respect of the 'genuine redundancy' provisions of Part 2-3 of the Fair Work Act. Under those provisions, if Qantas determines that it no longer requires an employee's job to be performed by anyone because of changes in the operational requirements, it is then required under s.389(2) of the Fair Work Act to redeploy the employee to an associated entity, if it is 'reasonable in all of the circumstances' and it intends to rely on a defense of 'genuine redundancy' in response to any unfair dismissal application brought by the employee.

However, any such redeployment will likely result in a 'transfer of business' and the consequent transfer of the employee's industrial instrument to the associated entity.

Where this is undesirable, the associated entity would ordinarily make employment conditional on a s.318 order issued by the FWC. However, if this is no longer available for the reasons identified above, then the associated entity will have no option but to refuse to facilitate the redeployment in order to avoid the transfer (as it is expressly permitted to do so under s.341(5) of the Fair Work Act). Yet, this refusal would potentially preclude Qantas from relying upon the 'genuine redundancy' defense to any unfair dismissal application brought by the employee, if a Tribunal concluded that redeployment was reasonable in all of the circumstances even though the associated the entity had refused the transfer.

In order to resolve these tensions, Qantas suggests that the Productivity Commission recommend that for the purposes of s.389(2) of the Fair Work Act, redeployment is not 'reasonable in all of the circumstances' if such redeployment would likely give rise to a transfer of business and the relevant associated entity exercises its legal right to rely upon the exemption in s.341(5) of the Fair Work Act to avoid the transfer, unless the Fair Work Act allows the employee to consent to the transfer as recommended above.

4.2 General Protections

The current adverse action provisions are an impediment to business transformation for established firms within Australia. In our observation, these provisions do far more

[5] *Lend Lease Engineering Pty Ltd and others* [2014] FWC 5499; *ABnote Australasia Pty Ltd* [2015] FWC 1032.

than protect individuals from discrimination on the basis of union or non-union membership. These provisions in effect, favour new market entrants and/or the provision of goods or services by overseas companies over established companies seeking to become more competitive.

Under the Fair Work Act, if an employee:

- establishes that he or she has suffered 'adverse action' by his or her employer;
- establishes that he or she has a protected attribute (e.g. a 'workplace right'); and
- asserts that the adverse action occurred because of the protected attribute,

then the onus of proof shifts to the employer to prove that the workplace right did not form any part of the employer's reasoning to take the adverse action against the employee. It is generally not a common idea under our system of justice, that a person is assumed guilty and then required to prove innocence. In our view reverse onus should be removed, particularly because of the broadening of the Fair Work Act in relation to this issue.

It is often difficult for an employer to point to objective evidence, which demonstrates that the relevant decision maker(s) did not have regard to any unlawful factors when engaging in the adverse action even in circumstances where, in truth, the decision maker(s) did not have regard to any such factors. This is particularly difficult where there is a temporal (but not causal) relationship between the protected attribute (e.g. the employee has made a 'complaint') and the adverse action.

This has the effect of unduly fettering management discretion where the administrative burden and/or possibility of an expensive (and inherently risky - given the reverse onus) legal challenge overrides the management decision to be made.

Given this, Qantas supports the 'sole or dominant' test, which requires that the unlawful factor was the 'sole or dominant' reason why the employer engaged in the adverse action. In Qantas' view, this test balances the need for employers to explain the reasons why they have engaged in adverse action with the issues raised above.

4.3 Right of entry

Entry for an ulterior or collateral purpose

Permit holders seeking access to an employer's premises for the purpose of investigating a suspected contravention of the Fair Work Act or a term of a Fair Work instrument have the right to require the employer to allow the permit holder to inspect (and make copies of) any record or document that is directly relevant to the suspected contravention, provided that the relevant requirements are met (see s.482 of the Fair Work Act).

Qantas has had experience of a union seeking a range of commercial documents, under the guise of Right of Entry, in circumstances of opposition by the union to commercial decisions being made by Qantas.

In Qantas' experience, there are circumstances where the suspected contravention on which a permit holder is relying to justify the entry is not clearly articulated by the permit holder. Despite this, the rights of the employer to challenge the entry despite

this failure to articulate the suspected contravention are, at best, uncertain. Qantas suggests that the Productivity Commission recommends that in a situation where an employer is not certain of the precise parameters of the suspected contravention, the employer has the right to decline provision of the document(s), pending the FWC determining the relevance of the documents to the claimed breach.

4.4 Permission for legal representation

Section 596 of the Fair Work Act requires the FWC to satisfy itself of certain factors before it can grant a party permission to be represented by a legal representative where the legal representative is not employed by the party or an employer association and is not a bargaining representative.

Qantas submits that it is a basic tenet of procedural fairness that a corporate entity be able to elect to be legally represented in contested legal (or quasi legal) proceedings where there is the potential for unfavourable orders to be awarded against it. One approach could be permission should be granted in the first instance and only revoked on evidence before the FWC that the employer's legal representation will impair the employee's capacity to put their case.

Another reason for this is that Qantas and its associated entities simply do not have the resources for personnel to personally appear before the FWC or Court and be adequately prepared in all proceedings in which it is a party.

Cases in the FWC do not reflect the resources required to manage processes for the management of industrial disputes and other matters that may involve conciliation/meditation and/or hearings in external tribunals. At any one time, Qantas will have in excess of 100 matters involving external tribunals and/or internal investigative processes pre-potential litigation. Qantas currently has eight employees dealing with all industrial matters, including these matters.

For example from March 2014 – March 2015:

- Number of other matters listed in FWC (disputes; adverse action; Fair Work Ombudsman): approximately 53 listed matters;
- Number of threatened litigation in any jurisdiction: approximately 84 claims;
- Number of other matters external litigation matters (AHRC; NSW ADT etc.): approximately 21 listed matters.

Therefore, any refusal by the FWC to grant Qantas legal representation places significant strain on its internal resources and effectively prevents it from managing this workload in the most efficient way possible. Legal representation from the Qantas perspective is about expeditiously and effectively dealing with the all the issues that Qantas has to deal with in respect of these matters. Further, the uncertainty surrounding the granting of permission (which is often determined on the day of the hearing) has the effect of increasing the time and costs associated with preparing for the hearing of a matter as both Qantas personnel and Qantas' legal representatives need to be prepared that they may need to appear at the hearing.

Given this, Qantas suggests that the Productivity Commission recommend that s.596 of the Fair Work Act be removed.

4.5 State and Federal legislative overlap

There are several important areas where State and Federal legislation deal with the same subject matter in respect of the employment relationship, but not on identical terms such that it imposes considerable additional compliance burdens on employers – especially where those employers operate in multiple jurisdictions. As Qantas operates in a number of jurisdictions across Australia, it is particularly sensitive to these issues. Prominent examples include:

- Long Service Leave – currently employee Long Service leave entitlements are governed by State legislation. The legislation is not uniform and varies in numerous ways including in respect of the quantum of the entitlement, the period of service after which the entitlement arises and restrictions regarding the way the leave can be taken. Given this, Long Service Leave is complex to administer across a national workforce. Ideally, Long Service Leave would be included in the NES. At the very least employers should be able to implement a single State Long Service Leave regime through enterprise agreements;

- General Protections provisions – the Fair Work Act provides avenues for employees to pursue claims against their employer in respect of adverse action allegedly taken because of a protected attribute of the employee. However, these provisions often overlap with specialised areas of legislation and therefore simply provide an additional forum for employees to litigate matters for which there is a specific cause of action in existing legislation. For example, an employee (or prospective employee) who alleges that he or she has suffered adverse action from his or her employer (or prospective employer) on the basis of his or her race or disability, could also seek legal recourse under the *Racial Discrimination Act 1975* (Cth) or the *Disability Discrimination Act 1992* (Cth), respectively. In Qantas' view, the Fair Work Act should not provide employees with legal recourse in respect of employer conduct which does not result in the employee's dismissal where such recourse is already provided for in existing legislation; and

- Occupational Health and Safety (OHS) – The Fair Work Act does not currently overlap with the various work, health and safety regimes, and safety issues that are often raised in the context of enterprise bargaining. In Qantas' view, there should be no capacity for parties to seek terms in an EA that deal with OHS matters (directly or indirectly) in circumstances where this is not content regulated by the Fair Work Act and the FWC does not have expertise in this area.

As a national employer, the Qantas Group faces significant complexity in applying differing State Workers Compensation.

An example is the interaction of annual leave and a period of workers compensation. Section 130 of the Fair Work Act restricts workers from accruing leave whilst on workers' compensation, unless permitted by the relevant workers' compensation legislation. The position is reasonably clear in most states that annual leave does not accrue. However, the application of s.130 of the Fair Work Act and its interaction with State based workers compensation legislation is not free from doubt.

Last month, the Federal Circuit Court rejected Anglican Care's claim that the NSW Workers' Compensation Act was not permissive legislation. The employer had argued

the Act's s.49, which said workers' compensation was payable even while workers received leave benefits, did not itself create the entitlement to accrue leave.

Judge Sylvia Emmett applied a beneficial construction to find s.49 did more than "merely not prevent" the worker from receiving leave entitlements, but "expressly provides the opportunity" to do so and so "permits" the accrual of leave while on workers' compensation.

The main employer argument is that accruing leave whilst not performing work and receiving compensation payments is an unreasonable impost on the employer and compensation provider. It may also reduce the incentive to rehabilitate and return to work when a paid leave alternative continues to accrue.

Anglican Care is appealing the decision. We understand that the decision, if upheld, may have ramifications for other state jurisdictions where the right to accrue such entitlements, is uncertain following the introduction of s.130 of the Fair Work Act.

Attachment A

List of Qantas Group Workplace Agreements

ENTERPRISE BARGAINING AGREEMENT TITLE	
1.	Australian Services Union (Qantas Airways Limited) Agreement
2.	Q Catering Limited Enterprise Agreement
3.	Qantas Airways Limited (National Union of Workers) Enterprise Agreement
4.	Qantas Airways Limited (AWU, AMWU, CEPU) Enterprise Agreement
5.	Qantas Airways Limited (AWU, AMWU, CEPU) Brisbane Base Maintenance Agreement
6.	Qantas Airways Limited (AWU / United Voice) Enterprise Agreement
7.	Licensed Aircraft Engineers (Qantas Airways Limited) Enterprise Agreement
8.	New South Wales Nurses' Association (Qantas Airways Limited) Enterprise Agreement
9.	Flight Attendants Association Of Australia – Short Haul Division (Qantas Airways Limited) Enterprise Agreement
10.	Flight Attendants Association Of Australia – International Division, Qantas Airways Limited and QF Cabin Crew Australia Pty Limited Enterprise Agreement

11. Qantas Airways Limited & QCatering Limited – Transport Workers Agreement
12. Professional Engineers (Qantas Airways Limited) Enterprise Agreement
13. Qantas Airways Limited Pilots (Long Haul) Workplace Determination 2013
14. Qantas Airways Limited Pilots (Short Haul) Enterprise Agreement 2014
15. Qantas Airways Limited (Technical Salaried Staff) Enterprise Agreement
16. Australian Services Union / Qantas Information Technology Limited (Managers & Technical Consultants) Enterprise Agreement

SUBSIDIARY BUSINESSES

ENTERPRISE BARGAINING AGREEMENT TITLE
17. Jetstar / The Australian Municipal, Administration, Clerical and Services Union Agreement
18. Jetstar Airways Pilots Agreement
19. Jetstar And Flight Attendants' Association of Australia Enterprise Agreement
20. Jetstar Airways Stores Agreement
21. Jetstar Airways Engineering and Maintenance Agreement

22. Team Jetstar FAAA
23. Jetstar Airways Engineering & Maintenance Certified Agreement
24. Eastern Australia Airlines Aircraft Maintenance Engineers And Trades Assistants Agreement (Tamworth)
25. Licenced Aircraft Engineers Eastern Airlines Tamworth Engineering Base Enterprise Agreement
26. Eastern Australia Airlines – Sydney Aircraft Engineers Enterprise Agreement
27. Eastern Australia Airlines Pty Limited Flight Attendants Enterprise Bargaining Agreement
28. Eastern Australia Airlines Pty Limited Pilots Enterprise Agreement
29. Eastern Australia Airlines Pty Limited and Australian Service Union Enterprise Agreement
30. Eastern Airlines Pty Limited Group 2 Ground Staff Enterprise Agreement
31. Licenced Aircraft Engineers Sunstate Airlines Enterprise Agreement
32. Sunstate Airlines Pty Ltd Flight Attendants' Enterprise Bargaining Agreement
33. Sunstate Airlines (Qld) Pty Limited Pilots Enterprise Agreement
34. Sunstate Airlines (Qld) Pty Limited and Australian Services Union Enterprise Agreement
35. Sunstate Airlines (Aircraft Engineers) Enterprise Agreement
36. Network Turbine Solutions Pty Ltd, NTS Ramp Services Enterprise Agreement

37.	Network Turbine Solutions Cabin Crew Enterprise Agreement
38.	Network Turbine Solutions Pilots Enterprise Agreement
39.	Network Turbine Solutions Engineers Enterprise Agreement
40.	Qantas Road Express Operations (Drivers) Agreement
41.	Qantas Road Express Operations (Ops) Agreement
42.	Express Freighters Australia Operations Pty Ltd
43.	Snap Fresh Pty Limited Agreement
44.	AaE ASU Business Development Agreement
45.	AaE TWU Business Development Agreement
46.	Qantas Ground Services Pty Limited Ground Handling Agreement
47.	Unite/Cabin Crew UK
48.	Jetconnect Long Haul Flight Attendants Collective Agreement
49.	Jetconnect Short Haul Flight Attendants Collective Employment Agreement
50.	Express Ground Handling Enterprise Agreement

Attachment B

ALAEA PIA-Short duration action and action notified and then withdrawn

Notice#	Date of commencement	Time of Action	Participants	Nature of Action	Status
1	Monday, 4 July 2011	The first two hours of any regularly rostered shift that commences between 0100 and midday of that day	All ALAEA LAME members who are rostered to commence work in Melbourne Line Maintenance.	A two hour work stoppage.	Notice withdrawn (PIA not taken)
2	Ongoing from Monday, 4 July 2011 and until further notice	From 2AM.	All ALAEA LAME members from all sections across Australia.	Partial ban on overtime	Notice withdrawn (PIA not taken)
3	Tuesday, 5 July 2011	The first two hours of any regularly rostered shift that commences between 0100 and midday of that day.	All ALAEA LAME members who are rostered to commence work in PER Line Maintenance.	A two hour work stoppage.	Notice withdrawn (PIA not taken)
4	Wednesday, 6 July 2011	The first two hours of any regularly rostered shift that commences between 0100 and midday of that day.	All ALAEA LAME members who are rostered to commence work in BNE Line Maintenance.	A two hour work stoppage.	Notice withdrawn (PIA not taken)
5	Thursday, 7 July 2011	The first two hours of any regularly rostered shift that commences between 0100 and midday of that day.	All ALAEA LAME members who are rostered to commence work in ADL Line Maintenance.	A two hour work stoppage.	Notice withdrawn (PIA not taken)
6	Thursday, 7 July 2011	The first two hours of any regularly rostered shift that commences between 0100 and midday of that day.	All ALAEA LAME members who are rostered to commence work in DWR Line Maintenance.	A two hour work stoppage.	Notice withdrawn (PIA not taken)
7	Sunday, 17 July 2011	2000	LAME member from MEL	30-minute stop work meeting.	PIA taken and concluded (30 mins pay deducted)
8	Friday, 15 July 2011	1000 AM local time in each location	All LAME members Australia wide.	One-minute stoppage.	PIA taken and concluded (1 min pay deducted)
9	Thursday, 25 August 2011 to Friday, 16 December 2011	At the commencement of shift for any individual working a night shift on the designated day in that	Line and base maintenance – different days of the week according to location.	On hour stoppages. NOTE: To prevent disruption of Qantas flights, ALAEA	PIA taken and ongoing (1 hr pay deducted). "Offer" of covering own PIA with overtime at

		location.		members (primarily those ending dayshift) will be available to work overtime to cover all stoppages. The ALAEA office will be available to assist in coordination of overtime for this purpose.	penalty rates not taken up.
10	Monday, 10 October 2011	1600	All LAME members who will be covered by the proposed Agreement, who are rostered to work in Brisbane.	A four (4) hour work stoppage.	Notice withdrawn (PIA not taken)
11	Monday, 10 October 2011	1500	All LAME members who will be covered by the proposed Agreement, who are rostered to work in Sydney.	A four (4) hour work stoppage.	Notice withdrawn (PIA not taken)
12	Monday, 10 October 2011	1700	All LAME members who will be covered by the proposed Agreement, who are rostered to work in Melbourne (Tullamarine).	A four (4) hour work stoppage.	Notice withdrawn (PIA not taken)
13	Tuesday, 18 October 2011	0800-1200 (midday)	All LAME members who will be covered by the proposed Agreement who are rostered to work in Adelaide.	A stop work meeting.	Notice withdrawn (PIA not taken)

Attachment C

TWU PIA - Short Duration Action and Action Notified and then Withdrawn

Notice#	Date of commencement	Time of Action	Participants	Nature of Action	Status
1	Tuesday, 20 September 2011 to Thursday, 22 September 2011	7.00am (20 Sept) to 6.59am (22 Sept) EST, Sydney 3.30pm (20 Sept) to 3.29pm (22 Sept) EST, Canberra 7.00am (20 Sept) to 6.59am (22 Sept) EST, Melbourne 7.00am (20 Sept) to 6.59am (22 Sept) EST, Hobart 10.30am (20 Sept) to 10.29am (22 Sept) ADL local time, Adelaide 6.00am (20 Sept) to 5.59am (22 Sept) DAR local time, Darwin 5.00am (20 Sept) to 4.59am (22 Sept) PER local time, Perth 6.00am (20 Sept) to 5.59am (22 Sept) EST, Brisbane 8.00am (20 Sept) to 7.59pm (22 Sept) EST, Townsville 9.00am (20 Sept) to 8.59pm (22 Sept) EST, Cairns 7.00am (20 Sept) to 6.59am (22 Sept) (local time), Other Ports	All TWU members employed by Qantas Airways Limited	Higher Duties Bans - TWU members will not perform higher duties for a period of 48 hours commencing, 20 September 2011.	Bans withdrawn.
2	Tuesday, 20 September 2011 to Thursday, 22 September 2011	7.00am (20 Sept) to 6.59am (22 Sept) EST, Sydney 3.30pm (20 Sept) to 3.29pm (22 Sept) EST, Canberra 7.00am (20 Sept) to 6.59am (22 Sept) EST, Melbourne 10.30am (20 Sept) to 10.29am (22 Sept) ADL local time, Adelaide 5.00am (20 Sept) to 4.59am (22 Sept) PER local time, Perth 6.00am (20 Sept) to 5.59am (22 Sept) EST, Brisbane	TWU members employed by QCatering Limited	Higher duties ban – TWU will not perform higher duties for a period of 48 hours commencing at the times indicated. Paperwork bans –	Bans withdrawn.

Notice#	Date of commencement	Time of Action	Participants	Nature of Action	Status
				TWU will not perform paperwork required for the QAD system for a period of 48 hours commencing at the times indicated. Bans and limitations on job functions – TWU members will not login to the QAD system for a period of 48 hours commencing at the times indicated.	
3	Thursday, 29 September 2011	Two hour stoppage from: 11.00am AEST 9.00am ADL/DAR 9.00am PER	TWU Delegates employed by Qantas Airways Limited and Q Catering Limited – (52 employees nominated by name)	2-hour stop work meeting.	Withdrawn.
4	Friday, 7 October 2011	4.00pm and ending 5.59pm local time, all ports.	TWU members employed by Qantas Airways Limited and Qcatering Limited	Two- hour stop work	Withdrawn
5	Tuesday, 25 October	TWU members will stop work for a period of one (1)			

Notice#	Date of commencement	Time of Action	Participants	Nature of Action	Status
	2011	hour, as follows: QANTAS AIRWAYS LIMITED & Q CATERING LIMITED Port Dom/Int'l/All Action Commences* Brisbane All 7.00am Melbourne All 8.00am **times for each port are local times.*	TWU members employed by Qantas Airways Limited AND Q Catering Limited.	One (1) hour stop work.	Withdrawn
6	Wednesday, 26 October 2011	TWU members will stop work as follows: QANTAS AIRWAYS LIMITED & Q CATERING LIMITED Port Dom/Int'l/All Action Commences Sydney All 3 hours 7.00am Canberra All 1 hour 4.30pm Cairns All 1 hour 7.00am	TWU members employed by Qantas Airways Limited and Q Catering Limited.	Work stoppages.	Withdrawn

Attachment D

AIPA PIA Table

Notification #	Date of commencement	Time of Action	Participants	Nature of Action	Status
1	Ongoing from Friday, 22 July 2011 and until further notice	From 8am	All AIPA Qantas Long Haul pilots	1. The performance of work in a manner different from that in which it is customarily performed. 2. Bans on compliance with Qantas policy (excluding safety and regulatory matters) by bans on compliance with Qantas passenger announcements statements, and use of substituted AIPA authorised passenger announcements.	Ban on compliance with policy on passenger announcements has been activated and is ongoing.
2	24 July 2011 (23 July GMT)	Between 5.30am and 5.40am AEST (8.30pm and 8.40pm GMT) revised to [8.30pm and 8.40pm British Summer Time (BST)] as per correspondence dated 20 July.	Captain A	Stop Work meeting for 2 minutes; and Work Stoppage for 2 minutes	PIA was taken by Capt A and salary deduction for the PIA has been implemented.
3	Saturday, 23 July 2011	From 12.01am to 11.59pm	Captain B	A ban on working days off.	PIA was taken by Capt B no salary deduction
4	Friday, 29 July 2011	Flight from Hong Kong to Melbourne (QFA0030)	Ban by Capt C on Qantas' uniform policy of wearing Qantas caps and ties	Unlimited number of indefinite or periodic bans on compliance with Qantas	Ban on uniform policy was activated although Capt C did not perform

Notification #	Date of commencement	Time of Action	Participants	Nature of Action	Status
			(including s4.15 *Flight Crew Uniform Dress Standards* of the Flight Administration Manual on flight from Hong Kong to Melbourne (QFA0030) on 29.07.11 and substitution with AIPA's uniform policy of not wearing Qantas caps; and wearing AIPA approved ties. (AIPA Long Haul members)	uniform policy (excluding safety, security and regulatory matters) that is substituted with an AIPA uniform policy (as in place from time to time).	the duty as QF declined to accept part performance of Capt C's duties in relation to Notification 5 (see below)
5	Friday, 29 July 2011	Flight from Hong Kong to Melbourne (QFA0030)	Bans and limitations by Capt C on extending tours of duty on the flight from Hong Kong to Melbourne (QFA0030) scheduled for Friday, 29 July 2011. (AIPA Long Haul members)	Bans and limitation on extending tours of duty	Ban has been activated but Capt C did not perform the duty as QF served notice on Capt C that it would not accept partial performance of his duties. Capt C maintained his right to enact the bans thereby refusing to perform his full range of duties and did not operate. QF deducted from his pay the value of the duty and the following duty that he did not perform.
6	Friday, 29 July 2011	Flight from Hong Kong to Melbourne (QFA0030)	Working to rule by Capt C on the flight from Hong Kong to Melbourne (QFA0030)	Work to rule	See 5 above.

Notification #	Date of commencement	Time of Action	Participants	Nature of Action	Status
			scheduled for Friday, 29 July 2011 by not extending past the flight deck duty time limits in relation to the associated crew compliment. (AIPA long haul members)		
7	2 September 2011	8.00am	All AIPA Qantas Long Haul Pilots	Ongoing campaign of bans on the '15-4' sign on requirement. (1) Pilots undertaking the industrial action will ban the '15-4' sign on requirement. (2) The first pilot to take the action after the date and time of commencement of this action will be Captain D. Captain D is currently scheduled to perform pattern DM02 on Sunday, 4 September 2011. (3) AIPA will provide Qantas 72 hours' notice of any subsequent action to be performed by	Capt D reported sick prior to the time that the ban was due to be commenced and did not commence the ban. The ban has not been activated and the time for activating the ban has expired.

Notification #	Date of commencement	Time of Action	Participants	Nature of Action	Status
				either Capt D or any other pilot(s) taking this action and will rely upon this notice in taking further action of the kind described herein.	
8	Monday, 12 September 2011		All AIPA Long Haul Pilots	Unlimited number of indefinite or periodic bans on compliance with Qantas uniform policy (excluding safety, security and regulatory matters) that is substituted with an AIPA uniform policy (as in place from time to time). Ban on Qantas' uniform policy of wearing Qantas ties and substitution with AIPA's uniform policy of wearing AIPA approved ties.	Ban commenced 12 September 2011, is ongoing and is gradually being observed by pilots after a slow start.
9	3 September 2011	8.00am	AIPA Long Haul Pilots	Limitation on certain job activities, including but not limited to a ban on using the Qantas electronic media such as SMS messaging and the *qfflightcrew.com* website. Details for first scheduled	Ban was activated by Flight Officer A and is ongoing. No salary deduction was necessary. The ban only applies to Flight Officer A.

Notification #	Date of commencement	Time of Action	Participants	Nature of Action	Status
				action under this Notice: 1. Pilots undertaking the industrial action will ban the use of the SMS message facility and the *qfflightcrew.com* website. 2. The first pilot to take the action from time and date of commencement of this action will be Flight Officer A. 3. AIPA will provide Qantas three working days' notice of any further pilot(s) taking this action and will rely upon this notice in taking further action of the kind described herein.	