

Workplace Relations Act 1996

**Rule 41(2) Dispute Resolution Pre Reform Agreement
s.170LW**

**Australian Licenced Aircraft Engineers Association &
Qantas Airways Limited**

C2006/1153

WITNESS STATEMENT OF GARY JOHN NORRIS

1. My name is Gary John Norris, and [REDACTED]. I am currently employed by the Australian Licenced Aircraft Engineers Association ("ALAEA") as the Senior Industrial Officer in its Federal Office at Bexley, Sydney, NSW.
2. I have conducted research by method of document searches of the ALAEA files and discussions with the previous Industrial Manager Brian Farnham who is now engaged by the ALAEA as a Consultant and Vinko Vulin an ALAEA Federal Councillor who worked in Perth during the relevant period. As a result of that research I say as follows.

History of Awards and Agreements Perth

3. On or about February 1986, the unions in the airline industry had agreed with Qantas Airways Ltd (“**Qantas**”), Australian Airlines Ltd (“**Australian**”) and Ansett on the provisions for the working of the 38 hour week. Qantas had its own award the “Licenced Aircraft Engineers (Qantas Airways Ltd) Award 1982” [L0003] and Ansett and Australian were respondents to the “Licenced Aircraft Engineers (Domestic Airlines) Award 1982” [L0002]. The agreement was then reflected under each award as an agreement pursuant to section 28 of the Conciliation and Arbitration Act 1904. The agreements contained the formula for working out of hours of work and 20th days. *A true copy of that agreement is attached and marked “GN1.”*

4. On or about March 1988, Vinko Vulin commenced employment with Australian Airlines Ltd at Perth Airport. The roster in place was an 8 hour seven day roster.

5. On or about mid April 1988, the Australian Conciliation and Arbitration Commission certified an agreement “Licenced Aircraft Engineers (Australian Airlines) 12 Hour Shift Agreement, 1988 [L079] for part settlement of the dispute C. No. 3223 of 1981. The agreement was to effect the introduction of 12 hour shifts in “Australian” by means of trial, see Clause 4 of GJN 1. Clause 4 also provided provisions if the trial was unsatisfactory the either party could withdraw and if the trial was satisfactory the ALAEA may seek shift patterns of up to 12 hours duration for other LAMEs employed by Australian Airlines at agreed ports. *A true copy of that agreement is attached and marked “GN2.”*

6. During 1988 the Australian Airlines LAMEs (Domestic LAMEs) at Perth negotiated with “Australian” a new roster consisting of a mix of 10 hour, 12 hour and 7.6 hour shifts. Vinko Vulin was one of the employees who voted on the extended hour roster in October 1988.

7. On or about 21st October 1988, Perth ALAEA members signed a letter addressed to the Federal Secretary of the ALAEA notifying him of the proposed new roster. The letter

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was sent to the ALAEA Federal Secretary. *A true copy of that correspondence is attached and marked "GN3."*

8. On or about late December 1988, the ALAEA Senior Industrial Relations Officer had written to "Australian" about the proposed extended hours roster. *A true copy of that correspondence is attached and marked "GN4."*
9. After the Perth vote to accept the roster the ALAEA identified some Award problems with introducing the agreed roster in that "Perth" had not been included in the agreement (GN2.).
10. On or about 27th January 1989, ALAEA members at Perth were informed by ALAEA correspondence of the progress of the 12 Hour Shift matter. *A true copy of that correspondence is attached and marked "GN5."*
11. On or about 4th February 1989, the extended hours roster commenced at Perth for the "Australian" Domestic LAMEs.
12. On or about the 17th April 1989, the Commission varied the Twelve Hour Shift Agreement (GN2.) pursuant to the Industrial Relations Act 1988 Conciliation and Arbitration Act 1904 s.59. *A true copy of AIRC Print H7557 the agreement variation is attached and marked "GN6."*
13. On or about 7th August 1989, the "Licenced Aircraft Engineers (Qantas Airways Ltd) Award 1982" [L0003] Award was varied to include a new provision for Shift Work Clause 14(d) inserted by V021. The wording of clause 14(d) contains similar if not exact terms to the "Qantas Airways Ltd Enterprise Agreement IV" Part C General Conditions of Employment – Clause 12.8.2. *A true copy of that Award L0003 is attached and marked "GN7."*

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14. During 1991 the ACTU and Qantas and Australian Airlines were discussing terms of the proposed merger of Qantas and Australian Airlines. The Qantas LAMEs worked an 8 hour roster and the "Australian" LAMEs worked the agreed extended hours roster.
15. On or about the 4th July 1991, the "Licenced Aircraft Engineers (Domestic Airlines) Award 1982" [L0002] was varied and consolidated and became known as the "Licenced Aircraft Engineers (Domestic Airlines) (Consolidated) Award 1991". It contained provisions under Clause 9 –Hours of Duty – Shift Work in particular Clause 9(d) similar or exact to the "Qantas Airways Ltd Enterprise Agreement IV" Part C General Conditions of Employment – Clause 12.8.2. The consolidated award also contained a Clause 42 "Supersession of "Licenced Aircraft Engineers (Domestic Airlines) Award 1982" which in part, preserved previous "rights, obligations or liabilities". *A true copy of that Award L0002 is attached and marked "GN8."*
16. On or about 7th October 1992, the "Australian" LAMEs became covered by the Australian Airlines Ltd Enterprise Bargaining Agreement 1992. Appendix 1 of that agreement sets out the "Principles to Govern Qantas/Australian Merger". Appendix 2 of that agreement, Clause III –"Variable Hours" contains provisions, in regard to the working of extended hours shifts up to 12 hours. *A true copy of that agreement is attached and marked "GN9."* In part it states:

"In the absence of agreement, current arrangements will continue."
17. On or about 23rd October 1992, the Commission certified the "Qantas Enterprise Agreement 1992".
18. During 1993, "Australian" LAMEs, became employees of Qantas as a result of the Qantas and Australian Airlines merger. At that time the 12 Hour Roster Agreement (GN2.) transmitted to Qantas pursuant to s.149(1)(d) or 149(4)(a)(ii) of the Industrial Relations Act 1988. The "Australian Airlines Ltd Enterprise Bargaining Agreement 1992" transmitted to Qantas in respect of "Australian" employees pursuant to s.149(2)(c) Industrial Relations Act 1988.

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19. In June 1994, the International and Domestic rosters were changed to a common roster for both terminals. As part of the negotiations Domestic LAMÉs changed to suit operations on the conditions that there was no financial loss and maintained the basic structure of the extended hour roster. The roster changed to 5 days on 5 days off 10hr day shift 11 hr night shift. The proposed roster was voted on by ALAEA members in both terminals and accepted by the ALAEA. *A true copy of that agreed roster is attached and marked "GN10."*
20. On or about 10th August 1994, various matters in relation to the Qantas/Australain merger including Perth issues were discussed before Commissioner Palmer in C No. 21775 of 1994. Commissioner Palmer issued a recommendation in Transcript to the parties. *A true copy of that extract from Transcript is attached and marked "GN11."*
21. As a result of that Recommendation, Perth International ALAEA members put forward proposals to Qantas in regard to the merging of engineering at Perth. In part it proposed the formulation of "a roster similar or the same as domestic LAMÉs extended shift roster". *A true copy of that proposal is attached and marked "GN12."*
22. The ALAEA and Qantas met and entered into negotiations over the "Line Maintenance – International & Domestic Integration". During one of those meetings a document showing the status of negotiations was tabled to assist the parties resolve issues. *A true copy of that document is attached and marked "GN13."*
23. On or about 24th January 1995, Qantas LAMÉs which now included the ex-"Australian" LAMÉs became covered by the "Qantas Airways Limited Enterprise Agreement II (December 1994 – June 1996)". *A true copy of that document is attached and marked "GN14."*
24. On or about the 21st March 1995, Qantas and the ALAEA signed a "LAME Integration – Perth Extended Hours Shift Roster Agreement". The agreement's Clause 2 enabled a trial for 24 weeks commencing from 26th March 1995 with further provisions stating "It is agreed that if the proposal proves unsatisfactory anytime during the trial period to

either party then leave is reserved for either party to withdraw." *A true copy of that agreement is attached and marked "GN15."*

25. On or about the beginning of September 1995, as a result of the successful trial the 12-hour 4 day on 4 day off roster was again voted on by Perth ALAEA members and accepted by a valid majority. As agreed the roster applied to both domestic and international workforces, and agreed to by the ALAEA. That 12hour roster continued until 22nd November 2006. *A true copy of that agreed roster is attached and marked "GN16."*
26. On or about 4th December 1996, the Qantas Airways Ltd Enterprise Agreement III was Certified by the AIRC. *A true copy of that agreement is attached and marked "GN17."*
27. On or about 22nd September 1998, the "Qantas Airways Ltd Enterprise Agreement IV" was Certified by the AIRC. *A true copy of that agreement is attached and marked "GN18."*
28. On or about 9th January 2002, the "Licenced Aircraft Engineers (Qantas Airways Ltd) Enterprise Agreement V" was Certified by the AIRC. *A true copy of that agreement is attached and marked "GN19."*
29. On or about 17th October 2003, the "Licenced Aircraft Engineers (Qantas Airways Ltd) Enterprise Agreement VI" was Certified by the AIRC. *A true copy of that agreement is attached and marked "GN20."*
30. On or about 21st March 2005, the "Licenced Aircraft Engineers (Qantas Airways Ltd) Consolidated Award 1994" was varied by the AIRC as part of the award simplification process. *A true copy of that agreement is attached and marked "GN21."*
31. On or about 1st July 2005, the "Licenced Aircraft Engineers (Qantas Airways Ltd) Enterprise Agreement VII" was Certified by the AIRC. *A true copy of that Award is attached and marked "GN22."*

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Qantas Proposed Change to 12 Hour Roster Agreement

- 32. On or about 24th July 2006, I first became aware of Qantas proposals to change the agreed extended hours roster in Perth.
- 33. Since that time I have been providing industrial advice as required by the Federal Secretary for local Perth ALAEA Representatives and ALAEA Federal Executive members.
- 34. On or about 7th September 2006, I was forwarded a copy of a memorandum issued by Dick Hayes Qantas Manager ACS WA, advising of Qantas intentions to introduce an 8 hour roster if a 10.9 hour roster proposal was not agreed to. *A true copy of that memorandum is attached and marked "GN23."*
- 35. I was informed by Vinko Vulin, that the ALAEA Perth Site Representatives formed a Perth ALAEA Roster Committee. The roster committee were canvassing the staff and were tabulating their issues over the roster proposal into a document.
- 36. On or about 2nd October 2006, Vinko Vulin informed me of correspondence the Perth Roster Committee had forwarded to Dick Hayes in reply to his Memorandum of the 5th September 2006 and forwarded to me a copy of the Roster Committee correspondence. Vinko Vulin also requested me to provide advice on the application of the relevant Qantas EBAs regarding the proposed roster changes. *A true copy of the Roster Committee correspondence is attached and marked "GN24."*
- 37. On the 9th of October 2006, I forwarded my advice to Vinko Vulin in a Memorandum. *A true copy of that memorandum is attached and marked "GN25."*
- 38. On the 9th of October 2006, I was informed that a ballot of Perth members rejected a proposal to implement a 10.9 hour roster with 3 votes for the proposal and 53 against.
- 39. On the 9th of October 2006, the ALAEA Federal Office at Bexley Sydney NSW received a facsimile from Qantas Group General Manager Industrial Relations Sue Bussell, in

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response to the Roster Committee's correspondence (GN22.). *A true copy of that Qantas correspondence is attached and marked "GN26."*

40. On or about the 11th October 2006, I was made aware of correspondence by Qantas' Murray Harris Group General Manager Aircraft Customer Services proposing introduction of the 8 hour roster. *A true copy of that Qantas correspondence is attached and marked "GN27."*
41. Later that day the Federal Secretary directed and authorised me to send correspondence to Qantas under his hand placing the matter in dispute. *A true copy of that correspondence is attached and marked "GN28."*
42. On 16th October 2006, I, the Federal Secretary and ALAEA Perth Representatives including Vinko Vulin attended a meeting with Qantas management at Coward Street Mascot to discuss the Perth roster issue.
43. On the 17th October 2007, the Federal Secretary sent correspondence to Qantas regarding the "Proposed Review of the Perth Roster". *A true copy of that correspondence is attached and marked "GN29."*
44. On the 17th October 2007, the Federal Secretary issued a Notice to Perth members entitled "12 Hour Roster Update". *A true copy of that Notice is attached and marked "GN30."*
45. On or about 3rd November 2006, Dick Hayes sent an email to Perth LAMEs notifying of the posting of the 8 hour roster. I was supplied with a copy of that email. *A true copy of that email is attached and marked "GN31."*
46. On or about 6th November 2006, the ALAEA received correspondence from Qantas regarding the Perth rosters. *A true copy of that correspondence is attached and marked "GN32."*

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47. On or about 7th November 2006, the ALAEA Federal Secretary directed and authorised me to send correspondence to Qantas under his hand which in effect notified Qantas of the intention for the ALAEA's members to work as normal on the 12 hour roster. *A true copy of that correspondence is attached and marked "GN33."*
48. He also directed and authorised me to send out a Notice to ALAEA members under his hand. *A true copy of that Notice is attached and marked "GN34."*

Section 496 Orders and Subsequent Events

49. On the 13th November the ALAEA received a copy of an application to the AIRC by Qantas for orders to stop industrial action. *A true copy of that Application is attached and marked "GN35."*
50. On the 14th November 2006, the hearing in matter C2006/3319 was held before Commissioner Raffaelli in Sydney. I appeared in that matter as advocate for the ALAEA as directed by the Federal Secretary.
51. During proceedings I cross-examined Qantas Perth Manager Dick Hayes and in particular questioned him on whether or not the "12 hour Roster Shift Agreement" would cease. See PN410 to PN414 of Transcript. *A true copy of that Transcript is attached and marked "GN36."*
52. On or about the 15th November 2006, Commissioner Raffaelli issued Orders. In compliance with those Orders the Federal Secretary directed and authorised me to issue a Notice under his hand to Perth members in compliance with those Orders. *A true copy of that Notice including the Orders is attached and marked "GN37."*
53. On or about the 17th November 2006, the ALAEA received correspondence from Qantas' Group General Manager Industrial Relations Sue Bussell headed "Industrial Action at the Perth ACS". *A true copy of that correspondence is attached and marked "GN38."*

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54. On or about the 21st November, the Federal Secretary directed and authorised me to, under his hand, reply to the Qantas correspondence of the 17th November 2006, which I did. *A true copy of that ALAEA correspondence is attached and marked "GN39."*
55. On or about the 22nd November 2006, the Federal Secretary directed and authorised me to, under his hand, send further correspondence to Qantas raising further issues with the implementation of the 8-hour roster and compliance with the AIRC Orders. *A true copy of that correspondence is attached and marked "GN40."*
56. Sometime later but before the 23rd November 2006, I was informed by the Federal Secretary that our members in Perth including DMMs were confused over a document issued by Qantas. I was provided with a copy of a Qantas publication headed "Aircraft Customer Services –Frequently Asked Questions". The document contained erroneous information not in compliance with the relevant EBA provisions. *A true copy of that document is attached and marked "GN41."*
57. On or about the 23rd November 2006, the Federal Secretary directed and authorised me to, under his hand, send a Notice to members at Perth to clarify the ALAEA's view of the application of the relevant agreements. *A true copy of that is attached and marked "GN42."*
58. On or about the 24th November 2006, the ALAEA received correspondence from Qantas' Group General Manager Industrial Relations Sue Bussell headed "Perth ACS – AIRC Orders – C2006/3319". *A true copy of that correspondence is attached and marked "GN43."*
59. On or about the 25th November 2006, I was informed by the ALAEA Federal Secretary in words to the effect:
"Qantas is requiring the Duty Maintenance Managers in Perth to work a 12 hour roster".
I advised the ALAEA Federal Secretary in words to the effect:
"I don't think they can without our agreement. I am of the view that Qantas' own evidence and submissions before Raffaelli was that the agreement had ceased when they

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introduced the 8 hour roster and as a result of the effect of the Orders issued by Commissioner Raffaelli. The ALAEA hence the Duty Maintenance Managers no longer have an agreement to work a 12 hour roster as Qantas has withdrawn from that agreement and therefore the "employees" must work the 8 hour roster. There were no exclusions in that order. But there is an alternative argument that Qantas may be prevented from withdrawing from the agreement in the first place and all our members in Perth should still be working the 12 hour roster as the EBA is silent on what you do if you already have a written extended hours agreement. It (the EBA) does address what you can do if you don't have agreement in the first place and that is the 8 hour roster stays in place. Seems to me unless an agreement made under an enabling clause in the EBA, or award, for example 12.8.2 for rosters, has termination provision or sunset date or the agreement is jointly dissolved then no one party can withdraw unless agreed, similar to common law contract for goods and services. If the extended hours roster agreement does still stand then maybe the appropriate forum to change it is the EBA negotiations as the Agreement stands under the EBA provisions. To complicate matters I'm not sure whether or not the Perth Extended hours roster agreement is actually an "Old IR Agreement" under the Workchoices Act and if so Raffaelli's Orders confer a new right or obligation and could fall over as the Commission has no power under Workchoices to vary an old IR agreement."

The Federal Secretary replied in words to the effect:

"Well, I want you to prepare a letter for me to Qantas and tell them we confirm that the 12 hour agreement has been withdrawn and if they want an extended hours roster for the DMMs they'll have to negotiate with us."

60. On or about the 30th November 2006, as directed and authorised and under his hand, I sent correspondence to Qantas. *A true copy of that correspondence is attached and marked "GN44."*
61. I was aware the ALAEA Federal Secretary took steps to advise Perth DMM's and Qantas that the ALAEA required Perth DMM's to work an 8 hour roster.
62. The company have not posted an 8 hour roster for Perth DMM's to work.

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63. On or about the 5th December 2006, I received by fax a copy of a letter sent to the DMMs by Qantas' Group General Manager Murray Harris headed "Roster Arrangements – Perth ACS". *A true copy of that correspondence is attached and marked "GN45."*
64. Various levels of dispute resolution have taken place since November 2006 to resolve the various rostering issues in Perth including conciliation before the Australian Industrial Relations Commission.
65. On the 26th of March 2007 the ALAEA advised AIRC Vice President Watson that they would prefer a Recommendation be issued by the Commission regarding the issue of rosters for Perth DMM's. Qantas asked for the matter to be arbitrated so further evidence could be submitted before a decision was made on the matter.
66. On or about the 28th of March 2007, I was advised by the ALAEA Federal Secretary in words to the effect:

"The ALAEA Federal Executive passed a resolution yesterday affirming its intention to take all legal steps to ensure that the DMM position in Perth reverted to an 8 hour roster along with the other Perth ALAEA members. The decision was made in the interest of current and future Perth DMM's, current and future acting Perth DMM's, Perth members and the membership of the ALAEA as a whole."

SWORN by the above named Deponent) At) in the State of, this) Day of before me:) A Justice of the Peace/ Solicitor (Signature of Deponent)
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A Solicitor / Justice of the Peace