

**DISPUTE RE RELOCATION OF CANNING VALE 3-4 URBAN TANKER
FIREFIGHTING APPLIANCE
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2021 WAIRC 00085

CORAM : COMMISSIONER T B WALKINGTON

HEARD : WEDNESDAY, 17 MARCH 2021, TUESDAY, 16 MARCH 2021

DELIVERED : FRIDAY, 26 MARCH 2021

FILE NO. : C 25 OF 2020

BETWEEN : UNITED PROFESSIONAL FIREFIGHTERS UNION OF
WESTERN AUSTRALIA
Applicant
AND
DEPARTMENT OF FIRE AND EMERGENCY SERVICES;
FIRE AND EMERGENCY SERVICES COMMISSIONER
Respondents

CatchWords : Interim orders; Conciliation; s 44 Compulsory conference;
Preconditions of the Commission to make orders considered;
Operational decisions and industrial impacts

Legislation : *Industrial Relations Act 1979 (WA)*

Result : Interim Order issued

Representation:

Counsel:

Applicant : Ms R Cosentino (of counsel)
Respondent : Mr J Carroll (of counsel)

Solicitors:

Applicant : Francis Burt Chambers
Respondent : State Solicitor's Office

Cases referred to in reasons:

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

The Director General, Department of Education v The State School Teachers' Union of WA (Inc) [2011] WAIRC 00058; (2011) 91 WAIG 166

Western Australian Prison Officers' Union of Workers v The Minister for Corrective Services [2014] WAIRC 00349; (2014) 94 WAIG 575

Reasons for Decision

- 1 The United Professional Firefighters Union of Western Australia (**Union**) applied to the Western Australian Industrial Relations Commission (**Commission**) to assist in the resolution of a dispute with the Department of Fire and Emergency Services (**DFES**). The dispute concerns the relocation of a 3-4 Urban Tanker Firefighting Appliance (**3-4 Appliance**) currently at the Canning Vale Career Fire and Rescue Station (**Canning Vale**) to the Cockburn Career Fire and Rescue Station (**Cockburn**).
- 2 The construction of Cockburn is anticipated to be completed soon and once commissioned DFES wishes to move the 3-4 Appliance to Cockburn along with at least 12 firefighters to crew the appliance.
- 3 The Union contends that DFES has not engaged in genuine consultation and challenges the merits of the decision and the management of associated employment and industrial matters arising from the decision to relocate the 3-4 Appliance.
- 4 The Department of Fire and Emergency Services and the Fire and Emergency Services Commissioner (**respondents**) submit that consultation has occurred. On 2 February 2021 the respondents notified the Union of its view that the consultation process had concluded, and it intended to commence preliminary steps in implementing its decision to relocate the 3-4 Appliance. At a conciliation conference on 12 February 2021 the Union sought interim orders to prevent the relocation of the 3-4 Appliance. The interim orders sought are:
 - I. Until further Order, DFES and the FES Commissioner must not, pending the resolution of the dispute (whether by direct discussions between the parties, conciliation or arbitration), act upon or implement its decision to relocate the 3-4 and the firefighters who crew and operate this appliance, from the Canning Vale Fire Station to the Cockburn Fire Station.
 - II. There be liberty to apply on 48 hours' notice.

Powers and Requirements or Pre-Conditions for Issuing Interim Orders

- 5 The Commission has jurisdiction to issue the interim orders sought pursuant to s 44(6) of the *Industrial Relations Act 1979* (WA) (**IR Act**) in particular:
 Section 44(6)(ba) and s 44(6)(bb) of the IR Act provides:
 - (6) The Commission may, at or in relation to a conference under this section, make such suggestions and give such directions as it considers appropriate and, without limiting the generality of the foregoing may —
 - ...
 - (ba) with respect to industrial matters, give such directions and make such orders as will in the opinion of the Commission —
 - (i) prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved that matter; or
 - (ii) enable conciliation or arbitration to resolve the matter in question; or
 - (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter in question;
 - and
 - (bb) with respect to industrial matters —

- (i) give any direction or make any order or declaration which the Commission is otherwise authorised to give or make under this Act; and

...

- 6 Section 44(6)(ba) is in imperative terms, the pre-conditions that require more than the Commission to form an opinion that is consistent with s 44(6)(ba); it requires the Commission to give directions or make such orders with respect to industrial matters that will in the opinion of the Commission enable conciliation or arbitration to resolve the matter in question *The Director General, Department of Education v The State School Teachers' Union of WA (Inc)* [2011] WAIRC 00058; (2011) 91 WAIG 166.

Questions to be Determined

- 7 In deciding whether to issue the interim orders sought by the Union, the first question is to determine whether the orders sought are in relation to a conciliation conference.
- 8 Secondly, I must decide if the matter in question concerns an industrial matter under s 7 of the IR Act.
- 9 If I decide the first two questions in the affirmative, I must decide if staying the relocation of the 3-4 Appliance will prevent the deterioration of industrial relations until conciliation or arbitration proceedings resolve the matter in question; or enable conciliation or arbitration to resolve the matter in question or encourage parties to exchange or divulge attitudes or information which would assist in the resolution of the matter in question.

Orders Must be in Relation to a Conciliation Conference

- 10 Following the application pursuant to s 44 of the IR Act, representatives of the Union and representatives of DFES attended two conciliation conferences. The subject of the conciliation concerned the merits of the relocation of the 3-4 Appliance and the associated industrial impacts for the workforce. At the second conciliation conference the Union gave notice of its intention to seek interim orders to stay the relocation of the 3-4 Appliance. The interim orders sought are a consequence of conferences under s 44 of the IR Act not resolving the matters in dispute.
- 11 DFES submitted that the FES Commissioner, was not a party to the conferences and therefore the Commission could not bind the FES Commissioner to an interim order to stay a decision he had made.
- 12 Subsequently the FES Commissioner joined as a party to these proceedings and this objection was not pressed.
- 13 The joining of the FES Commissioner to these proceedings has the effect of the FES Commissioner submitting to the jurisdiction of this Commission and that the matters in question are in relation to a conference.

Orders Must be in Relation to an Industrial Matter

- 14 The decision to relocate the 3-4 Appliance is central to the dispute between the parties. The location of resources is subject to s 25 of the *Fire Brigades Act 1942* (WA) and s 11 of the *Fire and Emergency Services Act 1998* (WA) which provides the FES Commissioner the statutory function of control of fire brigade premises, fire brigades and the management of emergency services. The location and relocation of fire resources and equipment is an operational decision of the FES Commissioner.

- 15 Operational decisions of statutory authorities in the exercise of statutory powers should only be called into question in cases of breach of industrial principle and the Commission should only intervene if it is persuaded that the proposed exercise of the statutory power is industrially unfair. *Western Australian Prison Officers' Union of Workers v The Minister for Corrective Services* [2014] WAIRC 00349; (2014) 94 WAIG 575 [20] - [21] (Kenner C).
- 16 The respondents' staffing profile and locations of staff are directly linked to the appliances and the requirements for the operation of the appliance. The relocation of an appliance results in change for those currently assigned to work with the appliance, either in the location of their work or assignment into the relief pool, and where there is an overall reduction in the number of people at the current station a change in the distribution of tasks and duties. The industrial implications of the relocation of an appliance include the terms and conditions of employment, the manner in which work is conducted and safety at work. The Union contends there is a dispute concerning the terms and condition of its members, particularly the location of work and arrangements to transfer members to Cockburn and those that remain at Canning Vale including Urban Search and Rescue division (USAR). The dispute also concerns the safety of employees because of the respective resources available at Canning Vale and Cockburn to attend high risk emergency situations.
- 17 The Commission is of the view that the matter before it is an industrial matter as it relates to several significant issues pertaining to the employment relationship between the Union and the respondents.

Orders Must Assist in Resolution of the Matter in Question

- 18 To determine if the orders sought will assist in the resolution of the matter in question through an exchange of attitudes or information or conciliation or arbitration an assessment of the engagement of the parties in any of these processes to date is necessary.
- 19 The Union contends that whilst there has been some engagement, the process of consultation has not been genuinely conducted by the respondents, has been flawed and there remains things to be done that may resolve the matter in question through genuine consultation between the parties, further conciliation processes or ultimately arbitration. The Union submits the flawed consultation process has resulted in a poor decision that has adverse industrial impacts. The Union says the flaws can be cured by providing a further period of time for further consultation, conciliation or arbitration.
- 20 The respondents contend that a process of consultation involving Union representatives and employees affected has been undertaken, that the issues of the merits of the relocation and the process for managing the impacts to the employees have been adequately canvassed. The respondents submit that an interim order to stay the decision is not required and would be an unwarranted intervention in the functions and responsibilities of the FES Commissioner.

Consultation – Principles

- 21 Where there is an obligation to consult, that consultation must be real and not merely perfunctory. Employees and the Union should be given a meaningful opportunity to influence the decision.
- 22 The obligation to consult is not measured only on the occurrences of consultation. The obligation incorporates a qualitative element.

- 23 In *Communications, Electrical, Electronic, Energy Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited* (2010) FCA 591 [43] – [45] Logan J considers the meaning of ‘consultation’:

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 from 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 R 0234) (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* AW91910 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.”

Consultation - Application

- 24 In this case the subject matter concerns the merits of the decision to relocate the 3-4 Appliance along with industrial impacts for employees that arise from the relocation of an appliance from one fire station to another.
- 25 The issue of the relocation of the 3-4 Appliance was first raised by DFES on 21 October 2021. The occasion was an informal meeting set up for the newly appointed Assistant Commissioner Broomhall (**AC Broomhall**) to meet the officials of the Union. It was attended by the Union’s Secretary Mr Tim Kucera, President Mr Kevin Jolly and Industrial Officers, Mr Tom Noland and Ms Katherine O’Hara. At the conclusion of the meeting AC Broomhall referred to the relocation of the appliance in a manner that inferred that the FES Commissioner had decided to relocate the 3-4 Appliance and that AC Broomhall was giving the Union a ‘heads up’ about the decision.
- 26 The respondents submit that following this informal advice, a process of consultation with the Union and the affected employees was undertaken.
- 27 In assessing the qualitative aspects of consultation in this matter, guidance can be taken from the documentation of the outcomes of the consultation and the evidence of the parties in these proceedings:
 - On 27 November 2020 AC Broomhall wrote to the Union to formally notify of the relocation of the 3-4 Appliance. Contained within the correspondence is a summary of the consultation events undertaken up to that date.
 - On 7 January 2021, the respondents provided the Union with a document titled ‘Analysis of 3.4UT Placement Canning Vale and Cockburn CFRS’.
 - On 8 January 2021, the respondents emailed the Union with a list of issues raised at a meeting on 22 December 2020.
 - On 15 January 2021, the Union provided feedback that resulted in the respondents making two amendments and requested responses to several questions concerning the industrial impacts that would arise from the relocation.
 - On 2 February 2021, the respondents provided responses to several questions posed by the Union.
- 28 In the correspondence dated 27 November 2020, different terms are used to describe the status of the relocation of the 3-4 Appliance. The term ‘prospect of the relocation’ is used in relation to a meeting dated 21 October 2020, then ‘advise of likely relocation’ along with ‘notifying and consulting with’ in relation to a meeting with employees on 27 October 2020; the term ‘announce the likely relocation’ is used in relation to a meeting with employees on 29 October 2020; the phrase ‘reiterated that the Department would be relocating the 3.4UT to Cockburn CFRS when that station is commissioned’ is used in relation to a meeting held on 4 November 2020; the terms ‘to communicate the intention to relocate’ is used in relation to a meeting on 5 November 2020; in relation to a meeting on 13 November 2020 the phrase ‘discussed the relocation’ is used and the term ‘further consult’ is used in reference to a future

meeting scheduled for 3 December 2020. The letter concludes with an invitation ‘to meet to discuss the proposed changes’.

- 29 The letter’s recitation results in confusion. It appears that there had been a firm decision to relocate the 3-4 Appliance in October 2020 and then some adjustment to the language used to convey the decision as an intention in response to the Union’s objections.
- 30 AC Broomhall’s written statement submitted in these proceedings recites events of the process of consultation consistently using the term ‘proposed relocation’ or ‘proposal’. I find the language of this statement to be carefully crafted with the benefit of hindsight for the purposes of these proceedings.
- 31 I prefer to consider the correspondence dated 27 November 2020 to determine the status of the respondents willingness to re-consider, in the context of the consultation with the Union, the relocation of 3-4 Appliance. When asked to explain the change in language between 21 October 2020 and 29 October 2020, AC Broomhall stated that the FES Commissioner had decided about the location of the 3-4 Appliance and that the respondents were open to talking about other issues.
- 32 In relation to the meeting with employees at Canning Vale on 29 October 2020 and a meeting of employees at Cockburn on 5 November 2020, AC Broomhall states that on 27 October 2020 he advised the Assistant Secretary of the Union of these meetings. The respondents submit that it was open for a representative of the Union to attend these meetings. The respondents say that the Union cannot complain about the consultation process given it chose not to attend. I find that the respondents notified the Union about meetings with employees for which it had determined the date and time. The process of genuine consultation ought to incorporate consideration of the Union’s views in setting up of such meetings. It is not correct to infer some failure on the part of the Union representatives to participate in the meetings in the circumstances set out.
- 33 On 7 December 2020, the Union sought the assistance of the Commission to resolve the dispute with the respondents over the industrial impacts of the relocation of the 3-4 Appliance. A conciliation conference took place on 15 December 2020. Following the conference, the parties met and exchanged information by email.
- 34 On 22 December 2020, a meeting between the Union and the respondents was held at which the Union shared its views and asked questions concerning the relocation of the 3-4 Appliance and the impacts on staff. The respondents undertook to provide a response to the Union. This is a document in an email to the Commission from the respondents.
- 35 On 7 January 2021, the respondents provided the Union with an ‘Analysis’ document which sets out the respondents rationale and anticipated benefits of the relocation of 3-4 Appliance. There were some amendments following feedback from the Union. In his evidence AC Broomhall agreed that the amendments would not change the decision to relocate the 3-4 Appliance because it had been made anyway. The additions were made to address the Union’s concerns and they made the Analysis more complete.
- 36 On 8 January 2020, an email containing informal notes of the issues raised by the Union, Canning Vale staff and DFES at a meeting on 22 December 2020 was sent to the Union from DFES. The Union was invited to inform the author, as soon as possible, if any of the matters ‘have not been addressed subsequently’. The respondents say that this supports their contention that there has been adequate consultation and the lack of a response from the Union means they are entitled to consider the issues had been resolved.

- 37 Subsequently, DFES provided the Union with the Analysis document that addressed some of the matters raised at the 22 December 2020 meeting. The Union was invited to provide feedback and the Union raised several questions concerning the industrial impacts of the relocation. DFES provided a brief response to these questions along with a statement that it considered consultation had concluded. It is not clear what is meant by 'have not been addressed subsequently'. The timeframe is open ended and given the provision of the Analysis document, which incorporated some of the issues raised at the meeting of 22 December 2020, and the invitation to submit feedback it cannot be said that the Union failed to respond and that consultation on those matters had concluded.
- 38 On 15 January 2021, the Union sent through several questions concerning the Analysis and the respondents responded to the questions by email. The respondents response on 2 February 2021 consists of brief responses. The respondents contend the brief responses are adequate because the detail would be known by the Union and the issues had previously been discussed with the Union's representatives.
- 39 The respondents say that the Union's questions in the email dated 15 January 2020 were recycled and the Union already knew the answers. In his evidence AC Broomhall stated that 'We knew that the Union were not going to agree no matter what we said'. Given this AC Broomhall considered it was not necessary to provide fulsome responses. The respondents submit that on 4 November 2020 at a meeting between representatives of the Union and DFES, the President of the Union stated that the Union would not agree to the relocation of the 3-4 Appliance. The respondents say the Union's position articulated on 4 November 2020 framed the flavour of the consultation.
- 40 In my view this statement would frame the flavour of the consultation. Similarly, the statement made by AC Broomhall to the President of the Union on 21 October 2020 that the FES Commissioner had decided that the 3-4 Appliance would be relocated to Cockburn has framed the flavour of consultation. AC Broomhall was clear that the FES Commissioner had decided sometime between 21 October 2020 and 29 October 2020 to relocate the 3-4 Appliance. AC Broomhall's knowledge of this decision would also frame the flavour of consultations.
- 41 In my opinion the adoption of entrenched opposed positions has resulted in a deterioration of industrial relations between the Union and the respondents. This has created a barrier to the resolution of several matters in question.
- 42 It is not disputed that the issues raised by the Union are important. In the absence of evidence of the content of previous discussions or a documented plan for the management of industrial and employee implications of the relocation of the 3-4 Appliance I consider the response to be inadequate and flawed. The email response informs the Union that a process of employer-initiated transfers (EIT) will be used to transfer firefighters to Cockburn. In evidence adduced in these proceedings the respondents clarified that this would only occur in the event vacancies remained following other processes, including calling for volunteers to transfer. The respondents say that the Union would have known this case because it was discussed at a meeting of staff at Canning Vale, not with the Union, and that this is a process that has always been followed. Given the respondents had directed the Union to the specific section of the guidelines that set out the EIT process the Union likely took it that the respondents had made a decision to do this. I consider the responses were cursory, dismissive, and flawed, particularly in light of the statement in the email that the Department considers the consultation process is concluded and intend to commence preliminary steps to implement the relocation.

- 43 The respondents say the Union is aware that several matters they have raised cannot yet be answered as the processes adopted may result in different scenarios. There is no evidence of the consideration of the different scenarios nor a plan to manage the human resource management concerns that arise from the choice or selection, and the timing, of the possible processes involved.
- 44 There is an established forum for consultation between the parties, DFES and the Union's industrial relations meeting or commonly referred to as the 'IR Ops' meeting. A meeting occurred on 21 October 2020. The matter of the relocation of the 3-4 Appliance was not on the agenda. The respondents explain the omission because AC Broomhall wanted to discuss the matter with the Union's President on an informal basis first. AC Broomhall says that the IR Ops meeting tends to be a lot more detailed and is concerned with standard business. Following the informal discussion with the Union's President, AC Broomhall says he was left with the impression that the Union's President held concerns and expected the Union would be consulted on this matter. It is not known why the issue was not referred to a future ordinary or extraordinary meeting of the IR Ops meeting. Given the unfolding of this dispute, a forum that consists of detail and the standard business of workplace relations may have had benefit for both parties. At a minimum, the process and content of consultation would have been documented.

Consultation Conclusions

- 45 My assessment is that the FES Commissioner had made a definite decision in October 2020 that the 3-4 Appliance would be relocated to Cockburn and that he would not reconsider this decision. The merits of the relocation continue to be an issue for the Union. My assessment of the evidence is that the respondents had documented their reasons for and benefits of the relocation in the Analysis however the data contained in the report is incorrect and requires review.
- 46 The question of the entitlement of the Union to challenge the merits of the FES Commissioner's decision concerning the relocation of the 3-4 Appliance remains open and may, ultimately be decided through arbitration or other proceedings.
- 47 The documentation of the outcomes of consultation are minimal. The documentation of the industrial relations considerations arising from the relocation is almost non-existent. That which exists is cursory and dismissive of the Union's concerns.
- 48 On the evidence it is not possible to conclude that the quality of the consultation has been that which could be said to be genuine and influence decision making.

Enable Conciliation or Arbitration to Resolve the Matter in Question

- 49 In these proceedings the respondents filed supplementary evidence in response to several matters raised in the evidence of the Union's witnesses. The respondents' evidence is that at least five of these matters had not previously been raised by the Union. In response to the Union's evidence the respondents also provided further evidence it describes as explanation or elaboration for accuracy of these matters. These matters warrant further consideration by the parties with a view to resolving the matters through discussion, conciliation or arbitration.
- 50 It is also clear from the evidence that the respondents consider the consultation to be adequate because they hold a presumption that the Union representatives would have knowledge of particular matters as a result of their previous experience/s. An assumption about the

knowledge of another party does not permit an exemption from the obligation to consult and, where the adequacy of consultation is challenged, demonstrate the quality of consultation.

- 51 The exchange of evidence adduced in these proceedings suggests further dialogue between the parties may resolve their differences or clarify and narrow the issues in dispute. In their respective evidence, the Union has raised several matters and the respondents have provided a response to some of these matters. This is a starting point for an exchange between the parties as to the differences in view with the object of each party understanding the other's perspective and one party then being comfortable to modify its position. If this is not attained, then the matter/s may be referred for arbitration.
- 52 In my opinion further discussions, conciliation or arbitration will assist in the resolution of the matters in question and prevent the deterioration of the relationship between the parties.

Proposed Interim Orders

- 53 In my opinion further discussions, assisted through further conciliation, concerning the industrial implications, including the terms and conditions of employment and the risk to the safety of those firefighters directly impacted and any indirectly impacted will prevent the further deterioration of the relations between the parties.
- 54 The respondents' view that it considers the consultation process is concluded and its intention to commence a process to effect the relocation means that interim orders are necessary to preserve the status quo to enable further consultation, conciliation or arbitration.
- 55 The evidence is that Cockburn is not yet operational and at least two important features of the facility are yet to be installed. There is no evidence as to the anticipated timeframe for the installation of these facilities. It is acknowledged that the 3-4 Appliance cannot be relocated until the facility is finalised.
- 56 As observed in *Communications, Electrical, Electronic, Energy Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited*, consultation cannot enable a veto and consistent with the decision in *Western Australian Prison Officers' Union of Workers v The Minister for Corrective Services* any intervention by this Commission ought to be based on considerations of industrial principles. The consultation process to date has been flawed and the management of industrial issues have not been adequately considered. This flaw means there remains an industrial dispute that may be resolved through conciliation or arbitration proceedings. However, the process for conciliation cannot be an open ended one that effectively provides a veto and requires a mechanism to bring the matters in question to a resolution. This may be provided by the parties reaching agreement within a specified period or the Commission exercising powers pursuant to s 44(9) of the IR Act.

Proposed Interim Orders

- 57 In my opinion an interim order be issued to stay the transfer or relocation of staff to Cockburn for a period of four weeks to enable the parties to resolve the dispute concerning the industrial impacts of the relocation of the 3-4 Appliance through conciliation.
- 58 Accordingly, an interim order now issues.