REASONS FOR DECISION

Fair Work Act 2009
s.424—Industrial action

Application by Queensland Rail Transit Authority T/A Queensland Rail
v
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Australian Rail, Tram and Bus Industry Union
(B2026/339)

DEPUTY PRESIDENT LAKE BRISBANE, 3 APRIL 2026

Application to suspend or terminate protected industrial action - endangering life etc – application dismissed

[1] On 31 March 2025 at 10:48pm, Queensland Rail (Queensland Rail) filed an application under s.424 of the *Fair Work Act 2009* (the **Act**). The application seeks to suspend protected industrial action threatened or impending by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (ETU) and the Australian Rail, Tram and Bus Industry Union (RTBU).

[2] I held a hearing on 2 April 2026. I determined to hold the hearing on a more urgent basis than the 5 days required under the Act as the industrial action noted in the application would occur between 1 April 2026 and June 2026, with the majority of the action proposed to take place between 1 April 2026 and 7 April 2026.

[3] Queensland Rail was represented in the hearing by Mr Christopher Murdoch KC with Mr Pawel Zielinski. The ETU was represented by Mr Charles Massy. The RTBU was represented by Mr Leo Saunders. Given the potential effect of the industrial action on Queenslanders, I invited a submission from the Hon. Jarrod Bleijie, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations. The Deputy Premier provided a submission and was represented in the hearing by Mr Adrian Duffy KC.

[4] I provided an *ex tempore* decision dismissing the application at the conclusion of the hearing. I advised the parties that I would provide written reasons as soon as possible.

[5] In brief, the background is as follows.

[6] Queensland Rail and the unions have been engaged in bargaining since January 2026 for 6 replacement enterprise agreements. The three agreements covering members of the unions

which are relevant to this application are the *Queensland Rail Train Control Enterprise Agreement 2023* (the *Control Agreement*), the *Queensland Rail Network Enterprise Agreement 2023* (the *Network Agreement*) and the *Queensland Rail Rollingstock and Operations Enterprise Agreement 2023* (the *Rollingstock Agreement*).

[7] On 5 March and 6 March 2026, the RTBU and ETU applied for protected action ballot orders (PABOs) in respect of bargaining for the replacement agreements above. Those orders were granted by Deputy President Wright and Deputy President Hampton.

[8] On 24 and 27 March 2026, the RTBU and ETU notified of an intention to take protected industrial action under those PABOs. The protected industrial action which was the focus of this application were work bans.

Relevant principles

[9] Section 424 of the Act provides:

> **FWC must suspend or terminate protected industrial action--endangering life etc.**
>
> Suspension or termination of protected industrial action
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> The FWC must make an order suspending or terminating protected industrial action for a proposed enterprise agreement that:
>
> (a) is being engaged in; or
> (b) is threatened, impending or probable;
>
> if the FWC is satisfied that the protected industrial action has threatened, is threatening, or would threaten:
>
> (c) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or
> (d) to cause significant damage to the Australian economy or an important part of it.
>
> (1) The FWC may make the order:
>
> (a) on its own initiative; or
>
> (b) on application by any of the following:
>
> (i) a bargaining representative for the agreement;
> (ii) the Minister;
> (iia) if the industrial action is being engaged in, or is threatened, impending or probable, in a State that is a referring State as defined in section 30B or 30L--the Minister of the State who has responsibility for workplace relations matters in the State;
> (iib) if the industrial action is being engaged in, or is threatened, impending or probable, in a Territory--the Minister of the Territory who has responsibility for workplace relations matters in the Territory;
> (iii) a person prescribed by the regulations.
>
> Application must be determined within 5 days
>
> (3) If an application for an order under this section is made, the FWC must, as far as practicable, determine the application within 5 days after it is made.

> Interim orders
> (4) If the FWC is unable to determine the application within that period, the FWC must, within that period, make an interim order suspending the protected industrial action to which the application relates until the application is determined.
> (5) An interim order continues in operation until the application is determined.

Identifying the protected industrial action

[10] The first step in a s.424 application is to identify whether protected industrial action is either being engaged in, or is "threatened, impending or probable". The Full Bench stated in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v NSW Electricity Networks Operations Pty Limited as Trustee for NSW Electricity Networks Operations Trust T/A Transgrid* [2024] FWCFB 365 ('*CEPU v Transgrid'*):

> [43] It follows that the first step must be to isolate what protected industrial action is being engaged in or is threatened, impending or probable. Whether consequences of the type referred to in s 424(1)(c) or (d) are threatened by the protected industrial action can only be assessed after the relevant protected action is precisely identified. As Buchanan J observed in AIPA v FWA, there may be a question as to whether the likely impact of each form of protected industrial action must be considered in isolation. However, it cannot be doubted that, at the very least, the assessment called for by s 424(1)(c) or (d) is confined to the protected industrial action which, taken collectively, the Commission has found is being engaged in or is threatened, impending or probable. Any threatened unprotected industrial action is irrelevant.

[11] Queensland Rail has received notices from the RTBU and ETU of the following actions.

Control Agreement

[12] In respect of the Control Agreement, the protected industrial action notified of is the following:

- For members located at the Rail Management Centre (RMC), the Rail Centre 1 (RC1) and Townsville control centres: a ban on the working of overtime commencing at 00:01 hours on 1 April 2026 and ending at 00:01 hours on 1 June 2026.
- For members located at the Rail Management Centre (RMC): The nature of the industrial action is a number of periodic bans on the working of any shift with a board contact time in excess of 6 hours, with periodic bans to apply between 1 April 2026 and 5 June 2026.

[13] On 1 April 2026, there was a ban on movement of Coal and Mineral trains for a twenty-hour period. By the time of the hearing, the ban on movements of coal and mineral trains had concluded (and would not be protected if it continued).

Network Agreement

[14] In respect of the Network Agreement, the protected industrial action notified of (and which the Applicant submits satisfies the requirements of s.424(1)(c)) is the following:

- a ban on electrical switching including (but not limited to) High Voltage isolation, Low Voltage isolation and circuit breakers, excluding Electrical Control Officers, on Thursday 2 April 2026, Friday 3 April 2025, Saturday 4 April 2025, Sunday 5 April 2026 and Monday 6 April 2026;

- a ban on performing call outs in the Wide Bay region between Thursday 2 April 2026 and Saturday 4 April 2026;

- a ban on performing call outs on Sunday 5 April 2026 and 6 April 2026.

[15] I note in relation to the RTBU, the union also notified of a 24-hour stoppage of work between 00:01 on 7 April 2026 and 00:01 on 8 April 2026 for members in the Brisbane and Wide Bay, and 00:01 on 8 April to 00:01 on 9 April 2026 for members in Mackay. Curiously, the Applicant did not submit that this proposed action posed a threat to life, health, safety or welfare of the population.

Rollingstock Agreement

[16] In respect of the Rollingstock Agreement, the protected industrial action notified of (and which the Applicant submits satisfies the requirements of s.424(1)(c)) is the following:

> (i) a ban on turning on, shutting down and/or restarting rollingstock on Tuesday 7 April 2026;
> (ii) a ban on electrical switching including (but not limited to) High Voltage isolation, Low Voltage isolation and circuit breakers, on Tuesday 7 April;
> (iii) a ban on entering live electrical enclosures (Low Voltage and High Voltage) on Tuesday 7 April 2026.

[17] Each of the s.414 notices submitted by the ETU includes an undertaking with the same wording:

> The CEPU undertakes to ensure that in an emergency situation where there is a risk to personal health and safety and where no other workers are available, CEPU members will be available to perform work. CEPU members will not engage in industrial action that would endanger the life, personal safety, health or welfare of the population or part thereof.

[18] Queensland Rail also received notices under s.414 from the PPTEU, the CFMEU, the AMWU and APESMA. The notice by APESMA involves a separate agreement, the *Queensland Rail Administrative, Professional and Technical Enterprise Agreement 2023*. The s.414 notices by the other unions are for the replacement agreements for the *Control Agreement*, the *Network Agreement* and the *Rollingstock Agreement*. This means that the protected industrial action by the PPTEU, CFMEU and AMWU would also be suspended if the protected industrial action by the RTBU or the ETU were suspended.

[19] I am satisfied that the RTBU and ETU notified of industrial action which, if taken, would constitute employee claim action which meets the requirements of s.409 of the Act. The

protected industrial action is threatened in the sense written notices have been issued, as outlined above. The requirement of s424(1)(b) is met.

[20] In relation to the safety undertakings given by the ETU, Queensland Rail has stated:

> Queensland Rail notes that the ETU's notices include safety undertakings. Queensland Rail contends that those safety undertakings are insufficient to address the threats identified in this application, and the undertakings are not determinative of whether the Commission can itself be satisfied that the notified protected industrial action is threatening or would threaten to endanger the life, the personal safety or health, or the welfare, of the population or part of it.

[21] It was submitted in the hearing that the safety undertakings are meaningless and defective for two reasons. Firstly, the undertaking is limited to an "emergency" and there may be a difference of opinion about whether something is an emergency. Secondly, the Applicant states that the wording of the undertaking is vague where it simply refers to "CEPU members will not engage in industrial action that would endanger the life, personal safety, health or welfare of the population or part thereof".

[22] This leads the Commission to the issue identified by the Full Bench in *CEPU v Transgrid* with respect to the "Extended Safety Commitment" in that matter:

> [45] As to the first matter, the statutory context is as follows. Industrial action taken by members of the CEPU will only be protected industrial action if, relevantly, it is 'employee claim action'. Employee claim action must, among other things, satisfy the common requirements set out in ss 413 and 414 and the additional requirements set out in s 409 of the FW Act. The common requirements for protected industrial action include that the notice requirements in s 414 must have been met in relation to the industrial action.29 Section 414(1) requires that, in relation to employee claim action, notice must be given of 'the action' to the employer of the employee. The notice must specify the nature of the action and the day on which it will start. Industrial action which is not notified will not be protected action.
>
> [46] The only protected industrial action that was alleged to be threatened, impending or probable at the time of the Second Decision was that set out in the notices issued by the CEPU on 9 August 2024. Those notices provided notice of stoppages and bans all of which were described as 'subject to the Safety Commitment described below'. The language conveys that the notified industrial action did not include action that would result in non-compliance with the Extended Safety Commitment. Indeed, that was the obvious purpose of including the Extended Safety Commitment in the notices. To the extent that employees engaged in industrial action which involved non-compliance with the Extended Safety Commitment, the action would fall outside the industrial action of which notice had been given and thereby be unprotected.
> …
> [56] For those reasons, if industrial action were to be taken by members of the CEPU which did not comply with the Extended Safety Commitment, the action will fall outside the notified protected industrial action. It is appropriate to add that the CEPU rejects the assertion that it or its members will not comply with the Extended Safety Commitment. The CEPU refers to evidence given by its officials to the effect that emergency work or work in relation to a declared incident will be performed. It is not necessary to determine whether those submissions should be accepted. The issue is whether the Deputy President was satisfied that the consequences of the type referred to in s 424(1)(c) of the FW Act were threatened because of the prospect of conduct that would involve breaches of the Extended Safety Commitment.
> …
> [61] In our opinion, there is no doubt the Deputy President was satisfied that consequences of type set out in s 424(1)(c) of the FW Act were or would be threatened because he was concerned that members of the ETU would not comply with the Extended Safety Commitment. Given that industrial action taken in defiance of the Extended Safety Commitment would not be protected industrial action having regard to

> the terms of the notices of protected industrial action, the Deputy President erred in considering the prospect of such action in forming the state of satisfaction called for by s 424(1)(c) of the FW Act.

[23] It was argued by Mr Massy that the same principles in the *CEPU v Transgrid* decision can be applied to the undertakings in this matter. It is not necessary for me to express a concluded view on this issue. However, I note I agree with Mr Massy. Even though the safety undertakings are not as well worded in this matter as they were in *CEPU v Transgrid*, it is evident that the purpose of including the safety undertaking in the notice is to identify the limits of the industrial action. Therefore, if the ETU did take the protected industrial action in a way that contravened the safety notice, that would be unprotected industrial action.

Notices under s.471(4) of the Act

[24] Queensland Rail has not engaged in employer response action (and has not notified of such action). Queensland Rail has, however, given notice that it will not accept partial performance in respect of some of the notified protected industrial action. Notice was given on 30 March 2026 in respect of the ban on moving Coal and Mineral trains (which has now ceased). In respect of the protected industrial action for the Network Agreement, the following email correspondence was sent on 31 March 2026:

> This is an important update for staff covered by the Network Enterprise Agreement (EA). The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Electrical Division Queensland and Northem Territory Division ("ETU") has notified Queensland Rail that **members who are covered by the Network EA may participate in Protected Industrial Action from Thursday, 2 April 2026.**
>
> Queensland Rail gives notice, in accordance with section 471(4) of the Fair Work Act 2009 (Cth) that, for eligible employees choosing to participate in the below Protected Industrial Action, which constitutes a partial work ban (**Partial Work Ban**), that because of the ban:
>
> The employee will not be entitled to any payments for a day on which the employee engages in the Partial Work Ban; and
>
> Queensland Rail refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties.

Endangerment of the life, the personal safety or health, or the welfare, of the population or of part of it?

[25] I am conscious of the Buchanan J's comments in *Australian and International Pilots Association v Fair Work Australia* [2012] FCAFC 65:

> [128] There remains one further matter to be addressed. Section 424 empowers FWA to make an order terminating or suspending "protected industrial action" as identified in s 408. Necessarily, that imports a limitation which confines attention to the particular protected industrial action in question. That is because protected industrial action must satisfy s 409, s 410 or s 411, and also the common

> requirements in s 413. Those requirements include notice of the nature of the action and when the action will commence (s 414(6)). It follows, in my view, that separate consideration must be given to each of the protected industrial actions which is to be terminated or suspended — i.e. each which has been notified. That may not mean that each must be considered in isolation but that is a question for another day.

[26] The Applicant's submissions and evidence did clearly distinguish between the various work bans for each of the Control, Network and Rollingstock Agreements.

[27] In summary, the Applicant argues that the protected industrial action will endanger the life, personal safety, health or the welfare, of the population of Queensland for the following reasons (as noted in the application):

> (A) vulnerable customers, such as passengers with mobility impairments and passengers who rely on services to attend pre-arranged medical appointments;
> (B) regional customers who rely on trains to access health services provided in metropolitan areas;
> (C) customers who rely on trains to travel to and from work, including essential workers;
> (D) customers who rely on trains for safe travel late on Friday and Saturday nights;
> (E) create a risk of over-crowding on stations, which also has the potential to create additional security and safety issues; and
> (F) cause the cancellation or delay of freight deliveries, which may have adverse consequences (including food shortages and increased food prices) for the Relevant Populations (see further below)

[28] I was surprised that little evidence was provided in relation to the proposed impacts to welfare which seemed of great significance, such as the suggestion of food shortages, or the suggestion that pedestrians or people driving may cross at a level crossing with a signal fault (which could result in serious injury or death if the person collides with a train). The Applicant simply referred to the intermodal services probably carrying refrigerated grocery products for Coles and Woolworths north from Brisbane and the alternative would road transport, noting that there is a huge disparity between the carrying capacity of the two methods and there probably not being truck availability to meet the demand.[1] Evidence was given by Mr Gray that freight services to Cairns over the Easter long weekend would be stopped in any event by planned track closures. In relation to level crossings, I note it was stated in evidence that Queensland Rail would inform Queensland Police in relation to an unsafe level crossing.

[29] As was established in *Ambulance Victoria v Liquor, Hospitality and Miscellaneous Union* [2009] FWA 44, "endanger" and "welfare" are not defined terms. They are given their ordinary meaning.

Evidence of Rob Hill

[30] Mr Hill is an Executive General Manager of SEQ.[2] Mr Hill gave evidence that on the Citytrain network the number of trips per day in the week of 23 March 2026 were:

> (a) 1,117,906 per day on weekdays (increase of 2.6% from prior week); and
> (b) 137,273 per day on weekends (increase of 7.9% from prior week).[3]

Overtime bans and bans on contact time in excess of 6 hours

[31] Mr Hill surmises that more people are currently using the train network due to the increased fuel costs at present.[4] In relation to bans on contact time in excess of 6 hours, Mr Hill's evidence was that this removes the ability of Queensland Rail to extend shifts from 6 to 8 hours to cover a temporary absence (such as sick leave).[5] Mr Hill gave evidence that the risk of board closure arises where in a higher level of absenteeism.

[32] Mr Hill accepted under cross-examination that board closures are temporary. Mr Hill accepted that there is some contingency built into the roster through relief personnel.

[33] Mr Hill, under cross-examination gave evidence that there was no plan for overtime or to extend shifts from 6 to 8 hours on 2 April 2026. Rather, those measures are to be used to cover Mr Saunders, counsel for the RTBU suggested that Queensland Rail could defer a shift to cover a future absence instead of closing boards. Mr Hill accepted this.

[34] In relation to overtime bans, Mr Hill said this posed an issue on weekends, as low levels of overtime are used throughout the week.[6] Again, Mr Hill suggested that the work ban impacted on Queensland Rail's flexibility, which *may* cause cancellations of services if boards cannot be covered.[7]

Rollingstock work bans

[35] In relation to the work bans for rolling stock, Mr Hill's evidence was that it would impact on the planned maintenance schedule.[8] The effect would be that there would be a need to prioritise "reactive maintenance" over planned maintenance.[9] Mr Massey, stated that, in relation to the rollingstock work ban the reason why the employees would not be performing work is because they do not require them to perform their role if they will not perform all the requirements of their role. It was accepted that there was some work they could perform. However, I accept the submission that the work bans cover a substantial part of the role - a ban on turning on, shutting down and/or restarting rollingstock on. Queensland Rail has made arrangements for rail replacement buses. Mr Hill accepted that mitigation measures are in for unscheduled or unplanned disruptions generally, as disruptions are part and parcel with operating a rail network.

Ban on electrical switching

[36] Electrical switching involves isolating circuits so that work can be safely performed. Mr Hill gave evidence that the electrical switching is required for signal faults, which occur regularly across the network.[10] These faults typically take 20 to 40 minutes to rectify.[11] Switching is also required for OHLE faults, which usually require 6 to 8 hours to fix.[12] As to the consequences of a fault not being able to be fixed, Mr Hill gave evidence that a ban on switching could result in extended outages. For passenger trains, this may result in delayed or cancelled services, it could result in trains being without power, which will cause the air conditioning to turn off and may mean passengers become stuck and have to be evacuated.

[37] In relation to the bans on switching, Mr Hill accepted that there has to be a fault in order for the ban to have any effect on the network. He further accepted that not all faults require employees to engage in switching. Further, in order for the bans to have the effect alleged there would have to be no employee (or contractor) available to do the switching. I note the ETU has provided contact numbers of delegates for Queensland Rail to call.

[38] In relation to boom gate faults, it was accepted that when a boom gate faults, it "fails safe" meaning it will default to being closed. Further, if the boom gate fault was going to take some time to prepare, then traffic control would be organised to prevent people crossing. Mr Hill accepted under cross-examination that the protected industrial action would not prevent Queensland Rail from putting in place traffic control measures.

Scott Cornish

[39] Mr Cornish gave evidence that employees in the wide bay area as signal electrician were currently taking protected industrial action.

[40] Mr Cornish is a Group Executive at Queensland Rail and is the Head of Regional. He gave evidence in relation to the Townsville Control Centre and RC1.

[41] Mr Cornish gave evidence that the tilt train from Rockhampton to Brisbane is sometimes referred to as the hospital service because it transports so many people to Brisbane for medical treatment. Mr Cornish gave evidence that Queensland rail consults with Queensland Health in relation to scheduling for the tilt train.

[42] In relation to freight services, Mr Cornish gave evidence that closures of boards may impact on the movement of freight containing coal as well as perishable goods for suppliers such as Coles and Woolworths.

[43] Mr Cornish gave evidence that the concerns were caused by a high level of absenteeism. He accepted that "bring forwards" could be used, subject to the fatigue rules. I note that an additional requirement would also apply, being whether the train controller was qualified and competent to use that board.

[44] Mr Cornish gave evidence that the ability to use bring forwards would be exhausted within seven days if overtime could not be used. Mr Cornish accepted that he did not know how many would refuse an overtime shift. He gave evidence that on 1 April 2026, 10 people refused overtime and 2 people were sick on 2 April 2026, which required them to use "bring forwards". When pressed in cross-examination, he maintained that his estimate of 7 days for board closures was a realistic assessment, but that he could not guarantee how many people would be sick on a given day.

Rollingstock work bans

[45] When asked about how significance of a ban on shutting down or restarting rollingstock, Mr Cornish gave evidence that the ban of shutting down locos could potentially do damage to the freight locomotive (loco) or burn diesel. With the ban on turning on locos, that may impair the ability of Queensland Rail to provide services. Mr Cornish accepted under cross-

examination that employees engaging in a partial work ban still means employees could perform some but not all of their duties. They could still perform other work on locos. He accepted that the reason they are not performing all their duties is because of Queensland Rail's direction that they will not accept employees performimg a limited range of duties whilst receiving full pay; that is Queensland Rail has not accepted employees partial performance of work.

[46] Mr Cornish said the ban on electrical switching for rollingstock would have a knock-on impact for maintenance as the faults may not be able to be repaired without isolation and restarting.

Dean Helm

[47] Mr Dean Helm gave evidence as Acting Deputy Director-General of the Queensland Department of Transport and Main Roads.

[48] Mr Helm gave evidence that if train services are cancelled, there would be a requirement for a substantial number of customers to make trips by alternative means, exacerbating road congestion.[13] Mr Helm gave evidence that 30 to 50 additional buses would be needed for a full network closure.[14]

Rory Kilpatrick

[49] Mr Kilpatrick is employed at Queensland Rail as General Counsel. He gave evidence as follows in relation to bargaining:

- In relation to the Agreements:
    - the union parties have made over 450 bargaining claims;
    - Queensland Rail has made 43 claims; and
    - as at 27 March 2026, there have been 18 claims agreed.[15]

[50] Mr Kilpatrick gave evidence that Queensland Rail is experiencing record high patronage.

[51] An order for production was made at the request of the RTBU for the underlying data upon which Mr Kilpatrick based his claims. That data is set out below and relates to CityTrains:

UNWEIGHTED COUNTS (SINGLE RESPONSE)		FY23 Count	FY24 Count	FY25 Count	FY26 YTD Count
S9. Can you please tell us the main reason you took this [MODE] trip?	To or from your main place of work	1770	1363	1004	542
	For business reasons (e.g. work meeting or event)	517	448	320	189
	To or from school, university, TAFE, or similar	**250**	**246**	**109**	**34**
	For recreational / social reasons	2628	2016	1821	821
	To go shopping	309	199	191	125
	For a medical appointment	**715**	**563**	**479**	**335**
	Other (Please type in)	638	544	519	403
	To attend a sporting event	0	0	13	33
	To attend another type of event	0	0	214	459
	For childcare of school drop off / pick up	0	0	3	8
	TOTAL	**6827**	**5379**	**4673**	**2949**

UNWEIGHTED DATA		FY23 %	FY24 %	FY25 %	FY26 YTD %
S9. Can you please tell us the main reason you took this [MODE] trip?	To or from your main place of work	25.93%	25.34%	21.49%	18.38%
	For business reasons (e.g. work meeting or event)	7.57%	8.33%	6.85%	6.41%
	To or from school, university, TAFE, or similar	**3.66%**	**4.57%**	**2.33%**	**1.15%**
	For recreational / social reasons	38.49%	37.48%	38.97%	27.84%
	To go shopping	4.53%	3.70%	4.09%	4.24%
	For a medical appointment	**10.47%**	**10.47%**	**10.25%**	**11.36%**
	Other (Please type in)	9.35%	10.11%	11.11%	13.67%
	To attend a sporting avent	0.00%	0.00%	0.28%	1.12%
	To attend another type of event	0.00%	0.00%	4.58%	15.56%
	For childcare of school drop off / pick up	0.00%	0.00%	0.06%	0.27%
	TOTAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

[52] Mr Kilpatrick accepted that it would be less likely that people would use the rail network to get to school or work over the Easter weekend.

Union witnesses

[53] Mr Darren Wood, Organiser for the ETU, Mr Ren Clinton, Train Controller and RTBU delegate, Mr Stephen Gray, Train Controller and Mr Lucas Kennedy, Industrial Officer for the RTBU gave evidence.

[54] Mr Clinton and Mr Gray challenged the estimate of 7 days before a board would be required to close. They however agreed that a board may need to be closed in Townsville if controllers continue to be brought forward

[55] In *Coal & Allied Operations Pty Ltd v Construction, Forestry Mining and Energy Union* (1998) 80 IR 14 Giudice J held:

> "6.4 Causative of harm to specified public interests: ''. . . is threatening to . . . endanger . . . or to cause damage to . . .''
>
> *In the context, the verb ''is threatening to'' may be given its ordinary meaning in the sense of giving an ominous indication of being the source or cause of a relevant danger or damage. The industrial action must itself be giving ominous indication of being the direct or reasonably proximate cause of effects that are productive of, or are likely to be productive of a relevant danger, peril or damage to welfare or the economy. The phrase imports the temporal element of the circumstance by using the present continuous to require satisfaction as to there being a threatening situation contemporaneous with the exercise of jurisdiction. In the context, the words ''to*

> *endanger'' and ''to cause'' each import a direct relationship, and a relatively high degree of causative impact in producing the specified danger or damage. ...*
> ...
> *The ordinary meaning of the expression ''the welfare of the population'' is a general invocation of the considerations that go to the well being of the total number or body of the inhabitants of Australia. Any application of the expression to action threatening to endanger the welfare of a ''part of'' the population must give adequate meaning to the generally inclusive character of the total number or body of the inhabitants inherent to the term ''population''. There is a grammatical infelicity in the wording of the paragraph. Danger to the life, or to the personal safety or health, of "a part of the population", instead of to individuals, appears a cumbersome form of expression. But that awkwardness is no barrier to giving the reference to the part of the population its more collective meaning when it is found in the expression 'welfare of the population'. Moreover, despite the generality of the concept 'welfare of the population' the phrase 'is threatening to endanger' imports a requirement for there to be a danger or peril to welfare. There needs to be a basis upon which it is reasonable to conclude, on an assessment of matters of fact and degree, that the collective welfare is in peril or danger."* [16]
>
> (emphasis added)

[56] The causative nexus created by the words "threatening to… endanger" has been subsequently applied to applications under s.424(1)(c) as well as 424(1)(d).

[57] In *Transit Australia Pty Ltd v Transport Workers' Union of Australia* [2011] FWA 3410, Commissioner Asbury (as she then was) dismissed an application under s.424. The protected industrial action in that matter was said to affect school buses, which the applicant contended would pose safety risks for children. The Commissioner concluded:

> [31] On the basis of the evidence before me, customers of Transit have access alternative bus services. School children in particular, have an alternative bus service that is dedicated to undertaking school runs. With respect to the numbers of students carried, I accept the evidence of Mr McMurray, who has direct knowledge on this point. Further, I am of the view that the impact of the industrial action will be further minimised by the fact that Transit will have an opportunity to provide information to the travelling public.
>
> [32] The evidence establishes that the travelling public will be inconvenienced by the industrial action. However, it is well established in the case law that more than inconvenience is required before the power to suspend or terminate protected industrial action on the grounds in s.424(1)(c) would be exercised by the Tribunal. There is also a requirement to balance inconvenience to the travelling public against the rights of drivers to take protected industrial action to support or advance their claims.

[58] In *Application by Perrottet* [2018] FWC 632 Senior Deputy President Hamberger suspended protected industrial action for 6 weeks on the basis that the action would endanger the welfare of a larger number of people in Sydney.[17] The Senior Deputy President heard evidence that the action in the form of partial work bans and 24-hout stoppages (taken by

employees of Sydney Trains and NSW Trains) would increase congestion on roads, people not being able to get to and from school, overcrowded trains leading to agitation, people not being able to attend medical appointments, possible effects on elective surgeries and emergency department wait times.

[59] As was noted by Deputy President Cross in *Application by NSW Trains* [2022] FWC 1746, the matter before Senior Deputy President Hamberger involved a 24-hour stoppage of work. Deputy President Cross said:

> I do not consider that the above conclusions from *Re Sydney Trains* assist in the consideration of this matter. The proposed action considered in *Re Sydney Trains was* a proposed 24-hour stoppage and overtime bans. The bans considered in these proceedings are somewhat more nuanced, involving limitation but not cessation of services, and bans designed to hinder and frustrate Sydney Trains and NSW Trains in the management of their systems.

[60] Deputy President Cross found:

> [139] I find that no part of the protected action of the Unions (either individually or together), or the totality of the protected action of the Unions (either individually or together), that is challenged in the Applications has threatened, is threatening, or would threaten to endanger the life, the personal safety or health, or the welfare, of the population or of part of it, or cause significant damage to the Australian economy or an important part of it.

[61] In *Application by Australian Rail, Tram and Bus Industry Union* [2023] FWC 1903, which involved an application by the union to suspend a lockout by the employer, but by the time of the hearing the Commissioner was considering an indefinite strike by employees. Commissioner Crawford dismissed an application for an order suspending protected industrial action on the basis that:

> [63] I cannot be satisfied on the evidence before me that the indefinite strike is threatening, or would threaten, to endanger the safety or welfare of the train travelling public in New South Wales. The evidence provided by the RTBU has not demonstrated that either of the incidents relied upon by the RTBU constitute breaches of safety that could enliven the operation of s.424(1).
>
> [64] I also consider there is merit to Qube's submission that the evidence in this case does not meet the description of 'being the direct or reasonably proximate cause of effects that are productive of, or are likely to be productive of a relevant danger, peril or damage to welfare or the economy.' In this case, the threat relied upon by the RTBU will only eventuate if Qube decides to adopt, or based on the RTBU's case, continues adopting, unsafe operating procedures in response to the RTBU's indefinite strike. Given there are strict laws regulating the operation of the rail network across Australia, I do not consider the evidence establishes it is 'probable' that this will occur.

[62] In *Australian Rail Track Corporation v ARTBIU and ASU* [2023] FWC 1636. Commissioner Crawford was satisfied that the proposed industrial action would endanger the

welfare of a population of New South Wales. The Commissioner reached this conclusion on the basis of the proposed industrial action being "likely to" jeopardise the supply of electricity to businesses and homeowners, as well as causing disruption to the supply of perishable goods. While there are factual similarities between these matters and the matters raised by Queensland Rail, an important thing to note is that the Commissioner's order suspending the industrial action was made on a consent basis, without the unions seeking to be heard.

[63] It was submitted on behalf of the unions, that it is significant that Queensland Rail began preparing for this application approximately two weeks ago. I do consider that it is significant in terms of how I should view the evidence. I certainly have nowhere near the level of evidence which was provided in *Application by Perrottet* [2018] FWC 632 which included modelling by the NSW Treasury, and evidence from the Department of Health and the Department of Education regarding the effects on medical appointments and children getting to school. Senior Deputy President Hamberger could comfortably conclude in that case that train services would stop on one day. I cannot make such a finding. The highest the evidence gets is that there may be service cancellations, disruptions, or the closure of a control board.

[64] It is relevant to make reference to what happened on 1 April 2026 with the bans on moving coal and mineral trains. That protected industrial action is not the subject of this application as it is no longer threatened, impending or probable. However, it is relevant to how the approach to this application is made. In terms of the disruptions to services on 1 April 2026, I consider that those disruptions were directly caused by Queensland Rail's s.471(4) notice, rather than the protected industrial action itself. Queensland Rail is lawfully entitled to take that approach but at the same time, any alleged threat to health, welfare or safety of the population which is directly or proximately caused by Queensland Rail's own s.471(4) response to the notices of industrial action cannot be subject to a s.424 application. It would be different if Queensland Rail had taken employer response action.

[65] Queensland Rail provided evidence that it is experiencing record highs in the number of people using its services. It can be comfortably inferred, as Queensland Rail suggested, that this is the result of the current price of fuel. However, Queensland Rail also provided specific evidence that in a recent week, on the weekend, there were 12% of the number of trips taken compared to the weekdays. This is significant because for the Network Agreement, the ban on switching and performing call outs is to occur between 2 April 2026 and 6 April 2026, over the Easter long weekend. Therefore, the suggestion of overcrowding on trains does not arise in my view. If signal faults did occur over the weekend, and it cannot be predicted when they will occur, this is likely to occur during a time when there is low patronage. I accept the Applicant's submission that if there were a number of faults which could not be fixed quickly, this could have an effect on services into next week. However, the effects are speculative, and I note that mere inconvenience is not sufficient.

[66] I am not satisfied that any of the protected industrial action threatened will threaten to endanger the health, wealth or safety of the population of Queensland (and the populations of South East Queensland and regional Queensland more specifically). The evidence of the possible effects is speculative and relies on assumptions of higher absenteeism due to personal leave over school holidays. On Queensland Rail's own evidence, there are significantly lower numbers of passengers on the weekends. It could be reasonably inferred that the same conclusion would apply to the Easter long weekend. Further, Queensland Rail has mitigation

measures in place for service disruptions in any event. The purported inability of Queensland Rail to provide these mitigation measures including rail replacement buses was speculative and was not quantified with precision in order for me to be satisfied that a threat occurred. As was pointed out by counsel for the ETU, the purported effects of the protected industrial action rely on assumptions of many things going wrong in a cascade of failure, concurrent with ETU members refusing to perform their duties.

[67] Suspending protected industrial action is not to be done lightly. It is not to be used as a bargaining tactic to frustrate the lawful action of unions. That there were serious implications of the protected industrial action notified was understood by the unions. The employer had been on notice for weeks that protected industrial action was a possibility.

[68] In exercising my direction under s.424, I have also considered the lengthy notice given to Queensland Rail of the protected industrial action (7 days) and the ability of Queensland Rail to mitigate the effects of protected industrial action. As is established by the authorities, more than inconvenience is required and the protected industrial action should be the being "the direct or reasonably proximate cause of" the threat to the welfare, safety or health of the population, as opposed to the actions of the employer in issuing a notice that they will not accept partial performance (which is not protected industrial action).

[69] In saying that, I note that inconvenience to members of the public is no small thing at a time like this. As was noted in the submissions of the Minister, the Prime Minister on Wednesday encouraged Australians to use buses and trains due to the current fuel crisis. Record numbers of people are using the trains. As was submitted in evidence by Queensland Rail, over one million customers use Queensland Rail trains on a weekday. For that reason, I strongly urge the parties to take these matters seriously and be conscious of the effects of extended negotiations and industrial action, not just on the parties themselves, but on the wider community.

[70] I have requested the parties attend an urgent s.240 conference with me next week on **8 and 9 April 2026**. There are approximately 500 claims for 6 proposed agreements. Without a change in process and pace, bargaining will become untenable for Queensland Rail, diverting resources and energy from providing a safe cost-efficient network. The parties must accept that in the current climate an extended period of bargaining stretching over months with industrial action occurring from both sides will not be seen favourably by the population. There needs to be a concerted effort to have an agreed timeline and a process for resolving each of the claims in an efficient manner and move towards an in-principle agreement. To this end, I have further requested the attendance of a representative of the Queensland government, so that the parties can better understand each other's positions, and particularly the budgetary position of the government.

[71] The section 424 application is dismissed. I Order accordingly.

DEPUTY PRESIDENT

Appearances:
C Murdock KC with P Zielinski for the Applicant, instructed by Minter Ellison
C Massy for the First Respondent, instructed by Hall Payne Lawyers
L Saunders for the Second Respondent, instructed by Maurice Blackburn
A Duffy KC for the Hon. Jarrod Bleijie, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, intervening, instructed by Minter Ellison

Hearing details:
2 April 2026
Hearing via Microsoft Teams

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[1] Statement of Scott Cornish at [60]

[2] Digital Hearing Book page 71

[3] Digital Hearing Book page 73

[4] Ibid

[5] Digital Hearing Book page 79

[6] Digital hearing Book Page 80.

[7] Digital Hearing Book page 80.

[8] Ibid page 80.

[9] Ibid

[10] Ibid 82.

[11] Ibid 82

[12] Ibid

[13] Hearing Book 289

[14] Ibid 290

[15] Ibid 17

[16] *Coal & Allied Operations Pty Ltd v Construction, Forestry Mining and Energy Union* (1998) 80 IR 14, 32-33.

[17] *Application by Perrottet* [2018] FWC 632