SUPREME COURT OF QUEENSLAND

CITATION:	*Andrews v Qld Racing Limited (No 2)* [2009] QSC 364
PARTIES:	**RE QUEENSLAND RACING LIMITED** **WILLIAM BERNARD ANDREWS** (plaintiff) **v** **QUEENSLAND RACING LIMITED** ACN 116 735 374 (defendant)
FILE NO/S:	BS 9471 of 2009 BS 12551 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	13 November 2009
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2009
JUDGE:	McMurdo J
ORDER:	**In 9471 of 2009:** **1. The respondent Queensland Racing Ltd is restrained from acting upon any shortlist provided by Northern Recruitment Pty Ltd in the process of the selection and appointment of directors to take place in 2009.** **2. There be liberty to apply.**
CATCHWORDS:	CORPORATIONS – CONSTITUTION AND REPLACEABLE RULES – GENERALLY – where the Constitution provides that the Independent Recruitment Consultant is to prepare a shortlist of no less than four director candidates – where the Consultant had been erroneously instructed to limit the shortlist to four candidates and provided a shortlist accordingly – where the Consultant was issued with revised instructions that the shortlist was to contain a minimum of four candidates but nonetheless reverted with the same four candidates – where the Consultant had apparently collaborated with the company in previous proceedings but about which there was no positive finding as to independence – whether the Consultant lacked independence – whether the Consultant was affected by bias

Corporations Act 2001 (Cth), s 201H, s 249G, s 1319, s 1322

Belchier v Reynolds (1754) 3 Keny 87; 96 ER 1318, cited

Andrews v Qld Racing Limited [2009] QSC 338, cited

Bernhard Schulte GmbH & Co KG v Nile Holdings Ltd [2004] 2 Lloyd's Rep 352, cited

Fylas Pty Ltd v Vynal Pty Ltd [1992] 2 Qd R 593, applied

Legal & General Life of Australia Ltd v A Hudson Pty Ltd [1985] 1 NSWLR 314, applied

Macro v Thompson (No 3) [1997] 2 BCLC 36, applied

Minister for Immigration and Multicultural Affairs v Jia Legeng (2001) 205 CLR 507, applied

COUNSEL: A Crowe SC, with P D Lane for Queensland Racing Limited and Hanmer
D Kelly SC, with K O'Gorman, for Andrews

SOLICITORS: Cooper Grace Ward for Queensland Racing Limited and Hanmer
McCullough Robertson for Andrews

[1] These are further applications in the dispute between Mr W B Andrews and Queensland Racing Limited ("QRL"). He is one of five founding directors of QRL. According to its Constitution, two of them must retire at the first annual general meeting of the company, which is scheduled for 17 November 2009. He wishes to be reappointed. He sued QRL seeking declarations and injunctions complaining that QRL had not followed its Constitution in the process of selecting directors to fill the two vacancies. After a two day trial, Margaret Wilson J upheld some of his complaints and he was granted some of the relief which he had claimed ("the judgment).[1]

[2] Her Honour found that the process had gone awry in the preparation of a shortlist of candidates to fill these vacancies. A shortlist had been provided to QRL by an entity called Northern Recruitment, acting by its director Mr Mark Wilson. It was declared that that shortlist had not been prepared in compliance with the Constitution of QRL and it was ordered that QRL was not to act upon it. It was further ordered that QRL was to undertake the selection process according to the Constitution and "based upon the twenty-six (26) applications for appointment to the Board of QRL received by Northern Recruitment as at 29 May 2009". Those orders were made after publication of her Honour's findings. The orders made were in the terms of Mr Andrews' filed claim and counsel then appearing for Mr Andrews did not seek any other order.

[3] Mr Andrews now seeks injunctions to prevent any further participation by Northern Recruitment or Mr Wilson. On 4 November 2009 Northern Recruitment furnished another shortlist. It is identical to the shortlist which it submitted to QRL on

---

1 *Andrews v Qld Racing Limited* [2009] QSC 338.

18 June 2009 and which was the subject of her Honour's orders. Mr Andrews seeks an order that QRL not act upon this shortlist.

[4] There is also an application by QRL. It seeks various orders for the abridgement of time for the taking of steps in the selection process as required by the Constitution. The necessity for such orders was raised with her Honour when judgment was given and it was then indicated that such an application would be made. The orders sought by QRL are not resisted by Mr Andrews, although the precise timing of the required steps would depend upon the outcome of his application. If Northern Recruitment's latest shortlist is also to be disregarded, clearly that will add to the time required.

Mr Andrews' application

[5] The relevant provisions of the Constitution of QRL are set out in the previous judgment and they need not be repeated here.[2] The error found by her Honour was in the step required by cl 17.3. That required the preparation of a shortlist of the applications received in response to QRL's advertisement. The shortlist was to be prepared by the so-called Independent Recruitment Consultant. That term is defined by cl 1.1 of the Constitution as meaning "an independent recruitment Consultant engaged by the Board of the Company". Clause 17.3 further provided that the number of candidates on the shortlist was to be decided by the Consultant but that the "shortlist shall be no less than the number of director positions plus two".

[6] In the judgment, it was found that Northern Recruitment had not prepared the shortlist according to cl 17.3, because Mr Wilson had prepared it "on the basis that it was to contain a maximum of four names".[3] It was further found that Mr Wilson acted upon this basis because he was instructed to do so by QRL's employed solicitor, Ms Murray. Her Honour rejected the evidence of Mr Wilson and Ms Murray that he or she well understood that the shortlist could contain more than four candidates.

[7] Under a heading "Whether Mr Wilson acted independently" her Honour identified the two complaints then made by Mr Andrews.[4] The first was that he had acted upon QRL's instruction to limit the shortlist to four persons, about which her Honour noted that she had already found that fact. Secondly, Mr Andrews alleged that Mr Wilson had acted at the direction of QRL's chairman, Mr Bentley. That allegation was rejected.[5] In the present hearing there was some debate as to whether it was found that Mr Wilson had not acted independently. With respect the reasons for judgment are clear, and it was plainly found that he had not acted independently in that he had acted upon Ms Murray's instruction to limit the shortlist to four names.

[8] Under the heading "Whether Mr Wilson was partial" another argument for Mr Andrews was discussed by her Honour. This focussed upon Mr Wilson's extraordinary questions when interviewing the candidate Mr McGruther. It was

---

2 [2009] QSC 338 at [7]-[9].
3 [2009] QSC 338 at [55].
4 [2009] QSC 338 at [56].
5 [2009] QSC 338 at [59].

concluded that Mr Wilson had not "demonstrated partiality by asking these questions".[6]

[9] Her Honour also rejected Mr Andrews' argument that Mr Wilson failed to apply the relevant selection criteria, saying that:

> "[67] I am satisfied that Mr Wilson did have regard to these criteria, and that the persons on the shortlist he prepared did satisfy these criteria. As he explained in his evidence, he looked for more than satisfaction of these criteria – he looked for suitability, too. His doing so was perfectly proper."

That evidence as to suitability is critical for this application, as I will discuss.

[10] QRL had counterclaimed for relief under s 1322 of the *Corporations Act* 2001 (Cth). Her Honour dismissed the counterclaim, at least because the requirement of s 1322(6)(c), that no substantial injustice had been or was likely to be caused to any person by the preparation of the shortlist, was not satisfied.[7] Reference was made to s 1322(6)(a)(ii) and the need for proof that all persons involved in the contravention had acted honestly for that provision to be engaged. But no finding was made in that respect.[8]

[11] Upon publishing the Reasons for Judgment on 23 October 2009, her Honour told counsel that she had come to the conclusion that relief should be granted in accordance with paras 1, 2 and 5 of the amended claim and that there ought to be no order under s 1322. She invited submissions as to the precise terms of the orders. Counsel then appearing for Mr Andrews said that no orders other than according to those paragraphs of the amended claim were sought. Nothing was said about the further involvement of Mr Wilson. Nor had any submission been made at the hearing as to whether Mr Wilson should be involved if another shortlist was to be prepared.

[12] On the following Monday, 26 October, the solicitors for Mr Andrews wrote to the solicitors for QRL to suggest that an application be made to ASIC or to the court for an extension of time in which to hold the annual general meeting, so as to enable QRL "to undertake the director selection process afresh and in compliance with cl 17. …" On the following day, QRL's solicitors replied as follows:

> "1. Our client is aware that, as the matter currently stands, it is required to comply with the orders made last Friday, 23 October 2009 by Justice Wilson.
>
> 2. Whilst we welcome your client's suggested proposal for moving forward, with respect, it is a matter for our client as to how it complies with the orders made by Her Honour …
>
> 3. In any event, our client will be making an application to the Court shortly. In this application, our client will be asking the court to make various orders for the alteration to the

---

6 [2009] QSC 338 at [64].
7 [2009] QSC 338 at [86].
8 [2009] QSC 338 at [84].

timeframes set out in clause 17 of the Constitution. As your client is a member of Queensland Racing Limited, he will be given notice of this application.

4. In compliance with the orders made by Justice Wilson, we have already requested that the Independent Recruitment Consultant provide the Shortlist to our client. Attached is a copy of our letter to Northern Recruitment (without attachment). …"

They attached their letter of 26 October to Mr Wilson. Because the present application is critical of that letter it is necessary to set it out in full:

"As you are aware, we act for Queensland Racing Limited (QRL).

Judgment of Justice Wilson

1. On 23 October 2009, Justice Wilson made the following orders regarding the selection of directors for the board of Queensland Racing Limited for the 2009 year:

   (a) A declaration that the Shortlist has not been prepared in compliance with clause 17 of the QRL Constitution.

   (b) An injunction restraining QRL, by its Chairman, from announcing at the Annual General Meeting scheduled to take place on 17 November 2009 the election of two Directors purportedly selected in reliance upon or by reference to the Shortlist; and

   (c) An injunction requiring that QRL undertake the selection of the Directors to fill the vacancies created by the retirements of Mr Andrews and Mr Lambert in compliance with clause 17 of the QRL Constitution based upon the twenty-six (26) applications for appointment to the Board by QRL received by Northern Recruitment as at 29 May 2009.

2. We attach a copy of the reasons of Her Honour which were delivered on 23 October 2009. You should read these reasons in full.

Your instructions

3. It would appear from the orders made by Her Honour that, in accordance with clause 17 of the QRL Constitution, you are required to prepare a Shortlist in compliance with clause 17(3), based upon the 26 applications which you received as at 29 May 2009. Would you please prepare this Shortlist as soon as possible?

4. In preparing the Shortlist, you should note that in accordance with clause 17.3 of the QRL Constitution:

   (a) the number of director candidates on the Shortlist is to be decided by you;

   (b) the Shortlist is to contain no less than the number of director positions plus two. In the circumstances where there are two vacant positions, your shortlist must contain a minimum of four Director Candidates. There is no maximum.

5. In determining the persons to be placed on the Shortlist, you can take into account all of your previous investigations. We specifically draw your attention to paragraph 67 of Her Honour's reasons where Her Honour said:

   "I am satisfied that Mr Wilson did have regard to this criteria and that the persons on the shortlist he prepared did satisfy this criteria. As he explained in his evidence, he looked for more than satisfaction of this criteria – he looked for suitability too. His doing so was perfectly proper".

6. Further, you should note that Her Honour has not said in her reasons that any Shortlist provided in accordance with cl.17.3 must have more than four persons. However, in exercising your discretion, you should not feel that you are limited to four.

7. In the circumstances, if in your judgment you believe other people are suitable to be placed on the Shortlist, then these persons should be included on the Shortlist.

Can you please advise us of your fee for the preparation of the Shortlist.

We look forward to receiving your Shortlist as soon as possible."

[13] Mr Andrews is critical of para 5 of that letter to Mr Wilson, in that he was told that he could "take into account all of the your previous investigations". It is said that this encouraged him not to consider his decision afresh. Reliance is also placed upon the solicitors' reference to para 67 of the judgment. In essence, it is said that this has unduly constrained Mr Wilson and prevented his forming the independent view required by cl 17.

[14] On 28 October, Mr Andrews' solicitors wrote to object to the appointment of Mr Wilson's company. Three points were advanced. The first was that "the ongoing retainer of the Independent Recruitment Consultant [was] a matter for determination of the Board", rather than simply for the consideration of its Chairman or its solicitors. That complaint was not argued in this application,

presumably because, as I will discuss, the board has since ratified the appointment. Secondly, the terms of the instructions were complained of, corresponding with the argument which I have just discussed. Thirdly, there was the complaint now argued that Mr Wilson and his company should not be involved.

[15] Further correspondence passed between the solicitors, in which the present debate was rehearsed. But QRL's solicitors also wrote again to Mr Wilson. In a letter dated 28 October, they wrote:

> "… As you are aware, the court has ordered that our client undertake the process for the selection of directors to its board in compliance with clause 17 of its Constitution. Our client feels that it needs to comply with this order forthwith.
>
> It would assist our client in complying with this order if the Shortlist was prepared and provided to it by the end of this week.
>
> You should take as much time as you need to perform your duties as an Independent Recruitment Consultant to compile the Shortlist.
>
> If you are unable to prepare the Shortlist by the end of this week, can you please let us know when the Shortlist will be finalised."

On 3 November 2009 they wrote again to Mr Wilson to advise that the board of QRL that morning had resolved that Northern Recruitment "is to continue with its appointment as the Independent Recruitment Consultant for the selection of directors for the 2009 year".

[16] On the following day, 4 November, Mr Wilson provided his further (but identical) shortlist. He wrote as follows:

> "I am writing to inform you of my progress in compiling a shortlist for consideration in the selection of new Directors for Queensland Racing.
>
> I have taken the time to familiarise myself with the judgement delivered by Justice Margaret Wilson and following on from your instructions via Cooper Grace Ward, would like to submit details of the following candidates for consideration in the role of Directors for Queensland Racing.
>
> In submitting these names I am mindful of the requirement under the terms of the Constitution that I am required to submit a minimum of four names, but not be limited by a maximum.
>
> During the trial I believe that my decision to rely upon two sets of criteria, the first being eligibility and the second being suitability, were clearly acknowledged by Justice Wilson in her judgement.
>
> For the sake of clarity I would like to indicate that all seven candidates who were originally interviewed and considered for the role as Directors with Queensland Racing were found to be eligible

under the eligibility criteria but only four in my professional judgment were found to be suitable.

Nothing during or subsequent to the trial has convinced me that the facts of the matter have changed.

An additional step I have taken in light of the extremely adverse publicity received both before, during and subsequent to the trial in the media, has been to ascertain the continued interest of the nominated candidates in pursuing election as Directors.

I have spoken to each of the Directors on the 29th October at the following times:

Wayne Milner	9.15am	…
Neville Stewart	9.30am	…
Brian O'Hara	9.50am	…
Bradley Ryan	10.16am	…

Each of the candidates was once again, very engaging and individually have indicated both a willingness and determination to continue to be considered for election as Directors of Queensland Racing.

Three candidates who are considered eligible but have been deemed unsuitable Messrs McGruther, Millican and Andrews will not be nominated. My reasons following on from the initial interviews were detailed both in documents tendered to the court as witness statements by both parties solicitors and barristers and given that they are now in the public domain I don't believe it is necessary to reiterate the reasoning.

On one final point, I had acknowledge [sic] before the trial and during the trial that I was concerned with the amount of time that this overall activity has taken, that if one of the candidates had to withdraw for any reason, that there was no provision under the Constitution as to what we would do. In this case, however, I am comfortable with the decision to only proceed with the four candidates because each seems quite able and willing to proceed and there should be a relatively small time horizon over which this decision is finalised negating the need to allow for additional candidates.

In my opinion, the four candidates nominated are far and away the most suitable and it would serve no useful purpose to revisit any of the other candidates who registered applications or the additional candidates who enquired but did not pursue with a formal application.

For the sake of clarity, were we to require additional candidates over and above the required minimum of four for the shortlist, I would

> probably need to go to the group who enquired but did not register a formal application although this may prove problematic under the guidelines that were issued regarding timing originally.
>
> I trust that this correspondence fulfils your requirements for the submission of a shortlist in accord with Justice Wilson's requirements.
>
> For the record, I have undertaken this exercise solely at my own discretion without reference or consultation with other parties as to what I was required to do."

[17] As was said in the judgment, the Constitution takes effect as a contract between the company and each member and the company and each director, and Mr Andrews is contractually entitled to have the process for the appointment of directors followed according to cl 17. That is further required by the orders made by the judgment. As QRL appears to accept, a further shortlist had to be produced by someone who was not affected by bias or partiality.

[18] One part of Mr Andrews' case is that Mr Wilson was not independent, at least by the time of his second shortlist. His lack of independence is said to be apparent from these circumstances. First, there is the finding that he did not act independently of QRL. It was found that he was not independent insofar as he acted on the instruction to limit the shortlist to four names. But they were not his instructions after the judgment. The fact that he acted on that instruction from Ms Murray, in the context where she was a lawyer and he was not, would not of itself indicate a more general lack of independence.

[19] It is argued that Mr Wilson acted in a manner which "aligned himself with QRL's position in the litigation". Reference is made to evidence given in the previous hearing by Ms Murray, to the effect that she and one of QRL's present solicitors discussed with Mr Wilson a proposed response to correspondence which had threatened the proceedings which were subsequently commenced and determined. Reference is also made to what her Honour found to be his inaccurate evidence that he had not felt confined to a shortlist of four names. It is apparently suggested that this evidence was given in order to assist QRL's defence of those proceedings. This argument also refers to his evidence at the trial as to the opinions which he had formed about Mr McGruther and Mr Andrews. But no findings were made in relation to the truth of that evidence.

[20] I am not persuaded that Mr Wilson lacked independence this time around, in the sense of being independent from QRL's side of this dispute with Mr Andrews. It is not insignificant that no finding of such partiality was made by her Honour, and yet the present argument for a finding of partiality is based upon what happened prior to or during that trial.

[21] The further argument for Mr Andrews is that the preparation of the second shortlist was affected by bias. There is said to have been a prejudgment by Mr Wilson and the existence of a conflict of interest and duty, in that it was in his interest to adhere to his previously expressed opinion as to who should not be on the list. The argument on the facts was that there was actual bias, although counsel for

Mr Andrews said that a finding of apparent bias would suffice. That last proposition was debated and it should be discussed.

[22] On Mr Andrews' case, QRL and its members have contracted within the Constitution to incorporate the rules of natural justice to the process under cl 17, such that there should be no reasonable apprehension that the Independent Recruitment Consultant is biased.

[23] However, QRL argues that this impermissibly introduces principles of administrative law to a contractual context. It accepts that the Consultant under cl 17.3 must be unbiased. But it argues that apprehended bias, absent a finding of actual bias, would not invalidate the conduct under cl 17.3. That submission is supported by several decisions concerning the position of an expert whom parties to a contract have agreed will determine a matter between them, such as a valuer.

[24] In *Legal & General Life of Australia Ltd v A Hudson Pty Ltd*,[9] McHugh JA said that parties must abide by the decision of such a valuer unless it plainly appeared that the valuer had been "guilty of some gross fraud or partiality". *Macro v Thompson (No 3)*[10] concerned the operation of the Constitutions of companies which contained pre-emption clauses under which shares would be sold by some members to others at a fair value to be fixed by the auditors. One side of the dispute challenged the auditors' valuation on several bases, including that the auditors were partial to the other side. Robert Walker J held that:

> "… When the court is considering a decision reached by an expert valuer who is performing a quasi-judicial function, it is actual partiality rather than the appearance of partiality that is the crucial test."[11]

That was followed in *Bernhard Schulte GmbH & Co KG v Nile Holdings Ltd.*[12]

[25] The question is one of the proper construction of this Constitution. In effect, it is whether it requires the Consultant acting under cl 17.3 to be not only unbiased, but free of apparent bias. I am not persuaded that the implication for which Mr Andrews contends is warranted. The element of business efficacy is provided by an implication limited to a requirement that the Consultant be unbiased.

[26] In his letter of 18 June 2009 to QRL, Mr Wilson wrote that of the 26 applicants, seven "clearly stood out" in certain respects and each of the seven had been invited to be interviewed. He wrote that of the seven candidates, four of them had further qualities which the other three did not. He did not say that the other three, or indeed any other candidate, were unsuitable.

[27] However, his evidence at the trial went further. In his evidence-in-chief, in a passage set out in the judgment,[13] he said that although some candidates not on his shortlist were eligible, no candidate was suitable apart from those four he had listed. The relevant passage appears in the judgment and there is no need to repeat it here.

---

9 (1985) 1 NSWLR 314 at 331 quoting *Belchier v Reynolds* (1754) 3 Keny 87 at 91; 96 ER 1318 at 1319.

10 [1997] 2 BCLC 36.

11 [1997] 2 BCLC 36 at 65.

12 [2004] 2 Lloyd's Rep 352 at 372.

13 [2009] QSC 338 at [47].

The unequivocal opinion of Mr Wilson was that none but the four on his list was suitable for appointment or, if it be different, suitable for inclusion on his shortlist.

[28] At that hearing, there was apparently no investigation as to the merit of that opinion. There was no finding made, or apparently sought, to the effect that Mr Wilson had erred in his assessment of unsuitability. Accordingly, there was nothing within the judgment to suggest to Mr Wilson that if he were to be asked to prepare the new shortlist, he should reassess the suitability of other candidates by some different criteria or information. It was not said that he had overlooked something about one or more candidates or that there was some further information which he should obtain.

[29] Unsurprisingly then, QRL's solicitors instructed Mr Wilson in the terms for which the complaint is now made, by saying that he could "take into account all of [his] previous investigations". So it was not suggested to him that he should ask any of the candidates omitted from his previous list about the matters upon which he had assessed that candidate as unsuitable for appointment.

[30] Again unsurprisingly, Mr Wilson made no further enquiry as to any other candidate. He interviewed each of the four who had been on his list but he did not seek to interview again any of the others. He referred to Messrs McGruther, Millican and Andrews as three candidates who "have been deemed unsuitable". That was a reference to his conclusion expressed in the witness box. He said that it was unnecessary to give reasons for their exclusion from the second list, because "my reasons following on from the initial interviews were detailed both in documents tendered to the court as witness statements …" He said that:

> "it would serve no useful purpose to revisit any of the other candidates who registered applications or the additional candidates who enquired but did not pursue with a formal application".

In essence, his reasoning in the preparation of the second list was simply that nothing had arisen since the hearing which was relevant to the opinions he had expressed about the unsuitability of the other candidates.

[31] In my view it plainly appears that he has not attempted what would have been the difficult exercise for him of revisiting his so strongly stated and unequivocal opinions. He has not attempted to do that partly because he was not asked to do so and indeed was instructed in terms which suggested that this would be unnecessary. It is further explained by the absence of any criticism in the judgment of his assessment of other candidates. His work in the preparation of this shortlist seems to have been limited to a consideration of whether the four successful candidates were still ready and willing.

[32] Had he attempted to rethink his opinions on the unsuccessful candidates, I accept the argument that, with an interest in his own professional standing, he would have been unwilling to change his opinions strongly stated in the witness box. Short of conceding that he was quite wrong to have held those opinions, or that in truth he had never held them, he could not include any other name on his new list.

[33] The order required preparation of a list by reference to all 26 applications. In my conclusion that has not occurred and could not properly occur if Mr Wilson was involved. In any real sense, his state of mind was "one so committed to a

conclusion already formed as to be incapable of alteration".[14] The ground for this further application is established. There should be orders declaring that this present list is not to be acted upon and that a further list should be prepared without the participation of Mr Wilson or his company.

[34] A formal objection was taken by QRL to the present application. It was said that it should not have been brought within the proceedings tried by her Honour, but instead by new proceedings. That objection, if valid, could have been overcome by the immediate filing of new proceedings or even by an undertaking to do so. However, that is unnecessary because in my view the application is able to be brought within the same proceeding. As McPherson SPJ said in *Fylas Pty Ltd v Vynal Pty Ltd*,[15] a judgment or order that expressly reserves to parties a liberty to apply can be varied on an application pursuant to such leave in

> "so far as may be necessary for the purpose of working out the actual terms of the order so as to make it more efficacious in matters of detail."

What will be ordered on this application is effectively the third order made by her Honour with the detail as to the non involvement of Northern Recruitment.

QRL's application

[35] This is an application by QRL and one of its directors, Mr Hanmer, brought under s 249 G, s 1319 and s 1322(4)(d) of the *Corporations Act* 2001 (Cth). Orders are sought for the abridgement of time for steps in the selection process.

[36] The Constitution requires that the shortlist be prepared not less than five months prior to the annual general meeting. The latest date for that meeting, absent any order, is 30 November 2009. As I have said, there is a meeting scheduled for next Tuesday, 17 November. The shortlist is to be provided to members for consideration not less than four months prior to the annual general meeting and the Selection Committee must be convened at least eight weeks prior to the annual general meeting. The decision of the Selection Committee then takes effect from the close of the next annual general meeting, at which the Chairman is to announce the election of those directors selected. Clearly it is impossible to comply with the orders made on 23 October and the orders made in the present judgment without some further orders under the Act.

[37] The proposal is that the meeting scheduled next Tuesday go ahead, save in relation to the appointment of directors, and that there be a second annual general meeting on 21 December 2009. Counsel referred to s 201H of the *Corporations Act* which provides that directors may appoint other persons as directors in order to make up a quorum for a directors' meeting. It is proposed then that the two outgoing directors would retire at the end of the meeting next Tuesday and that the Board would comprise the remaining three together with their two appointees until 21 December. Orders for the abridgement of time for the steps required by cl 17 are proposed in order to permit the selection process to be completed by then.

[38] A possible complication in this proposal is that the meeting proposed on 21 December would become the second annual general meeting for the purposes of

---

14 *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at 532 per Gleeson CJ and Gummow J.

15 [1992] 2 Qd R 593 at 598.

cl 15 of the Constitution. In turn that would affect what constitutes the third and fourth annual general meetings for the purposes of clauses 15.4 and 15.5. The proposed orders submitted after the conclusion of yesterday's hearing attempt to meet this by an order under s 1322(4)(d) that two directors are not required to resign

> "at the conclusion of the second AGM to be held [on 21 December 2009] and that the requirement for two directors to resign at the second AGM will be extended to the annual general meeting to be held by QRL in or about November 2010".

That would not meet the complication involving the third and fourth annual general meetings.

[39] Another way of meeting this difficulty is to adjourn next week's annual general meeting until 21 December. That would require an extension of the time within which to hold the annual general meeting. But at least if other business could be disposed of next Tuesday and the meeting then adjourned to 21 December, there is unlikely to be any adverse effect upon the company or any other interested person. The two outgoing directors would hold office until the completion of that annual general meeting, consistently with cl 15.6. In the circumstances I will hear further submissions as to the appropriate orders.