

FEDERAL COURT OF AUSTRALIA

Muffet v Qantas Superannuation Limited [2024] FCA 39

File number: NSD 747 of 2023

Judgment of: **YATES J**

Date of judgment: 1 February 2024

Catchwords: **SUPERANNUATION** – appeal from a determination of the Australian Financial Complaints Authority (AFCA) – where AFCA determined that the first respondent’s calculation of the applicant’s defined benefit was fair and reasonable

Legislation: *Corporations Act 2001* (Cth) ss 1053, 1055, 1057
Superannuation Act 1976 (Cth)

Cases cited: *Reeves v Nulis Nominees (Australia) Ltd (Trustee)* [2022] FCA 627

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Commercial Contracts, Banking, Finance and Insurance

Number of paragraphs: 64

Date of hearing: 15 November 2023

Counsel for the Applicant: Mr V Bedrossian SC

Solicitor for the Applicant: Mr E Dalgleish, Australian and International Pilots Association

Counsel for the First Respondent: Ms D Hogan-Doran SC and Mr D Fuller

Solicitor for the First Respondent: King & Wood Mallesons

Counsel for the Second Respondent: Mr J Burnett

Solicitor for the Second
Respondent:

Becketts Lawyers

ORDERS

NSD 747 of 2023

BETWEEN: **PETER MUFFET**
Applicant

AND: **QANTAS SUPERANNUATION LIMITED (ACN 003 806 960)**
First Respondent

**AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY
LIMITED (ACN 620 494 340)**
Second Respondent

ORDER MADE BY: **YATES J**

DATE OF ORDER: **1 FEBRUARY 2024**

THE COURT ORDERS THAT:

1. The appeal be dismissed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

YATES J:

INTRODUCTION

1 This is an appeal pursuant to s 1057(1) of the *Corporations Act 2001* (Cth) (the **Act**) from a determination of the second respondent, Australian Financial Complaints Authority Limited (**AFCA**), in relation to the calculation of a defined benefit payable to the applicant, Mr Muffet, under the superannuation fund called the Qantas Superannuation Plan (the **Fund**). The first respondent, Qantas Superannuation Limited (**QSL**), is the trustee of the Fund.

2 The applicant was employed by Qantas Limited (**Qantas**) as a commercial airline pilot. By reason of his employment, he became a member of the Fund. The applicant ceased his employment with Qantas on 6 December 2020, whereupon he became entitled, under the terms of the Trust Deed constituting the Fund, to a defined benefit. In broad terms, the defined benefit was required to be calculated by reference to the applicant’s Final Average Salary (a defined term).

3 QSL determined the quantum of the applicant’s defined benefit by reference to an “annual” period comprising 26 fortnights—being 52 weeks or 364 days. The applicant contends that this calculation is wrong because his entitlement should have been based on the days in a year—being 365 days or, if a leap year, 366 days.

4 The applicant complained to AFCA that he had been financially disadvantaged by QSL’s calculation. AFCA made a determination that QSL’s decision was fair and reasonable.

5 The applicant appeals from this determination.

THE AFCA SCHEME

6 A person may make a complaint relating to superannuation to AFCA if the complaint is a complaint that the trustee of a regulated superannuation fund has made a decision relating to a particular member of the fund that is or was “unfair or unreasonable”: s 1053(1)(a) of the Act.

7 In making a determination of a superannuation complaint, AFCA has all the powers, obligations, and discretions that are conferred on the trustee who made the decision to which the complaint relates: s 1055(1)(a). AFCA must affirm a decision if satisfied that the decision, in its operation in relation to the complainant, was fair and reasonable in all the circumstances:

s 1055(2)(a). However, if AFCA is satisfied that the decision in its operation in relation to the complainant is unfair or unreasonable, or both, it may vary the decision or set it aside, in which case it may either substitute a decision for the decision that is set aside or remit the decision to the person who made it for reconsideration in accordance with any directions or recommendations: s 1055(4) and (6).

8 AFCA must not make a determination of a superannuation complaint that would be contrary to law or the governing rules of the regulated superannuation fund: s 1055(7)(a) and (b).

9 A party to a superannuation complaint may appeal to this Court on a question of law from AFCA's determination of the complaint: s 1057(1).

THE NOTICE OF APPEAL

10 On 21 July 2023, the applicant filed a notice of appeal from a tribunal (dated 20 July 2023) raising four grounds of appeal. Only the first three grounds are pursued:

1. In affirming the decision of Qantas Superannuation Limited ("Trustee"), in its capacity as trustee of the Qantas Superannuation Plan ("Fund"), that was the subject of Mr Muffet's complaint in AFCA case number 810979, the Australian Financial Complaints Authority ("AFCA") erred in law:
 - a. by making a determination that was contrary to law and contrary to the governing rules of the Fund; and
 - b. consequently, by acting contrary to s 1055(7) of the *Corporations Act 2001* (Cth) and beyond its statutory jurisdiction and/or power.
2. Further to Ground 1 above, AFCA erred in law by construing the trust deed of the Fund ("Trust Deed") as conferring a discretion upon the Trustee as to the method of calculation of Mr Muffet's financial entitlements, whereas AFCA ought to have concluded that there was an objectively ascertainable and correct method of calculation of benefits required to be undertaken by the Trustee in respect of Mr Muffet's entitlements.
3. Further or in the alternative, AFCA erred in law by reaching the conclusion that the Trustee's decision was fair and reasonable (and thus by reaching a conclusion that the state of affairs identified by s 1055(2) of the *Corporations Act 2001* (Cth) had been satisfied) in circumstances where:
 - a. there was no evidence that the Trustee's decision was fair and reasonable; and
 - b. the only available conclusion was that the Trustee's decision was unfair or unreasonable (or both) in its operation in relation to Mr Muffet.

RELEVANT PROVISIONS OF THE TRUST DEED

11 The Trust Deed provides for the rules of the Fund, which are organised into Articles.

12 The applicant’s cessation of employment with Qantas entitled him to a Retrenchment Benefit: Article 10.7(a). This benefit is calculated in accordance with Article 23.8. It is a lump sum equal to the sum of the Member’s Accrued Retirement Benefit and the Supplementary Benefit (both defined). The relevant component for the purposes of this appeal is the Member’s Accrued Retirement Benefit. Article 23.1A provides that this benefit is “18% of Final Average Salary for each year of Credited Service”.

13 This leads one to the definition of Final Average Salary in Article 1. Relevantly to the applicant (who is a Member of Division 3), this is defined as:

For Members of Division 3:

The greater of:

- (i) where the Member has been a Member for at least three (3) complete Financial Years, the highest average annual Superannuation Salary calculated over any consecutive three (3) complete Financial Years in the most recent ten (10) year period; and
- (ii) the average annual Superannuation Salary calculated over the most recent period of three (3) years.

provided that in the case of a Member who has been an Officer in part time Employment at any time, for the purpose of determining average annual Superannuation Salary only, Superannuation Salary will be deemed to be the equivalent full time Superannuation Salary.

14 Financial Year is defined in Article 1 as:

The period of twelve (12) calendar months ending on the last day of June each year or such other period as the Trustee may from time to time determine.

15 In the present case, para (ii) of the definition of Final Average Salary applies.

16 This, then, focuses attention on the meaning of Superannuation Salary which, relevantly, is defined in Article 1 as (at para (b)(v) of the definition):

- (b) Subject to paragraph (f) and paragraph (g) below, the salary to be used for superannuation purposes for a Member in Division 3, Division 3A, Division 4 or Division 6 who is:

...

- (v) a member of Long Haul Technical Aircrew, shall be base pay equivalent to 170 hours per 56 days in accordance with the International Airline Pilots Agreement (1986) or the International Airline Flight Engineer Officers Agreement (1988), as applicable, plus supervisory and training allowances, but exclusive of overseas pay and any other allowances.

17 The International Airline Pilots' Agreement (1986) (referred to in the above definition) (the **IAPA**) was replaced by various agreements (and a determination), the most recent being the Qantas Airways Limited Pilots (Long Haul) Enterprise Agreement 2020 (the **Enterprise Agreement**). Relevantly, the Enterprise Agreement provides a mechanism for calculating pay based on 56-day "bid periods". These are periods for which pilots can "bid" for "lines" of flying, which Qantas allocates to pilots based on their seniority and various other allocation rules. Qantas is required to pay pilots on a fortnightly basis. Therefore, for each 56-day period, there are four pay periods ($14 \times 4 = 56$). The point of present importance is that, by definition, the applicant's Superannuation Salary is based on a particular payment structure, namely fortnightly pay with reference to 56-day pay periods. His Superannuation Salary is not a specific annual amount.

18 Article 2.2 provides:

Member's Superannuation Salary shall be advised to the Trustee by the Company at the date of entry to the Plan and at each subsequent date on which it is required for the purposes of the Plan.

19 Article 2.1(a) provides:

If any question or dispute arises on the interpretation of the Rules or the incidence or application of any rights, benefits, duties or liabilities arising under the Rules, the decision of the Trust shall, subject to Rule 2.6, be binding upon all Members and the Company, subject always to such remedies as any Member or Company may have at law.

CALCULATING THE APPLICANT'S FINAL AVERAGE SALARY

20 Pursuant to Article 2.2, Qantas advised QSL of the applicant's appropriate fortnightly salary (i.e., the fortnightly equivalent of 170 hours in a 56-day bid period). In determining the applicant's Final Average Salary, QSL then calculated the applicant's annual Superannuation Salary as 26 times his fortnightly salary, on the basis that there are 26 fortnights in a 52 week year. The adoption of a factor of 26 was a business rule that QSL applied in respect of all Members whose salaries were provided as fortnightly salaries. QSL calculated the applicant's Final Average Salary to be \$218,400.83.

21 The basis for the applicant's complaint that this calculation is financially disadvantageous to him is that 26 fortnights represent only 364 days ($26 \times 14 = 364$) in a given calendar year or financial year.

22 As put in the applicant's written submissions in chief:

Whilst the quantum of financial disadvantage is not life-changing, the Applicant is concerned to ensure that the Trustee properly performs its functions in respect of the Fund's members, including many thousands of employees of Qantas Limited (and its related entities).

23 On 23 March 2021, the applicant complained to QSL that his Superannuation Salary had not been calculated in accordance with the Trust Deed and that this had the effect of reducing his Final Average Salary. Having received no satisfaction from QSL, the applicant lodged a complaint with AFCA on 23 June 2021. In that complaint he argued that his Superannuation Salary should be calculated on the basis of 365.25 days per year.

24 The applicant initially maintained this argument in his written submissions in chief in this appeal. He contended that his Final Average Salary should have been calculated by reference to 365.25 days per year ($365.25 \div 14 = 26.0893$ fortnights). Therefore, according to the applicant, his annual Superannuation Salary should have been calculated by a factor of 26.0893 fortnights, not 26 fortnights.

25 However, in his written submissions in reply, the applicant changed his case to argue that QSL should have calculated his annual Superannuation Salary by determining a daily amount derived from the Superannuation Salary as advised by Qantas, and then applying that amount to the number of days in each year, either 365 days or 366 days, depending on the years chosen for the calculation of his Final Average Salary. In the applicant's case, one of the years was a leap year (Year 3). In Annexure 1 to his written submissions in reply, the applicant calculated his Final Average Salary to be \$219,206.79, using this methodology.

26 AFCA determined the applicant's complaint by finding that QSL's method of calculating the applicant's Final Average Salary was fair and reasonable and that its decision not to recalculate the applicant's benefit entitlement was fair and reasonable in its operation in relation to the applicant, in all the circumstances.

27 AFCA reasoned that it was QSL's responsibility to annualise the applicant's Superannuation Salary based on Qantas's advice as to the applicant's fortnightly salary. AFCA said that there are no provisions in the Trust Deed specifying how "annual" remuneration is to be calculated in circumstances where there is not an exact number of pay periods in a year (the number of days in a year, including an additional day every four years, is not exactly divisible by 7, 14 or 28). It therefore falls to QSL, as trustee, to adopt a method of annualising Superannuation Salary that is fair and reasonable.

28 In finding that QSL's annualisation method was fair and reasonable, AFCA said:

There are multiple possible ways to determine FAS, which is the subject of this complaint. Although AFCA must stand in the trustee's shoes in making a determination, AFCA's role is only to decide if the trustee's decision under review was fair and reasonable. Where the trustee has a discretion, a range of decisions may be fair and reasonable, and AFCA must affirm the trustee's decision if it is within this range. See section 1055(2) of the Corporations Act 2001, in section 3.2 of this determination.

I am satisfied the trustee's method of annualising salary, by multiplying superannuation salary by 26:

- is consistent with the 56-day bid period used to determine base superannuation salary;
- is a commonly used method of determining annual amounts based on fortnightly payments.
- has historical application; and
- is fair and reasonable

I am satisfied the calculation method used by the trustee to determine FAS under the trust deed is fair and reasonable.

29 AFCA therefore affirmed QSL's decision not to recalculate the applicant's benefit entitlement.

THE APPLICANT'S SUBMISSIONS

Grounds 1 and 2

30 The applicant submits that the Trust Deed sets out a defined method for calculating Final Average Salary and that the difficulty or simplicity of the calculation is irrelevant. As defined in the Trust Deed:

- (a) the applicant's Superannuation Salary is a monetary amount *equivalent* to 170 hours of pay per 56 days plus allowances;
- (b) the applicant's Final Average Salary is calculated by reference to his average annual Superannuation Salary (including by reference to Financial Years);
- (c) a Financial Year is defined as the period of 12 calendar months ending on the last day of June each year or such other period as QSL may from time to time determine.

31 The applicant submits that there is only one correct construction of the Trust Deed and no discretion was conferred upon QSL in respect of the determination of his annual Superannuation Salary. Further, the applicant submits that AFCA is prohibited from exercising any power under s 1055 of the Act in a manner that would endorse a breach of the Trust Deed.

Ground 3

32 The applicant submits that AFCA’s determination that QSL’s decision was fair and reasonable was not supported by evidence and was a manifestly unreasonable conclusion to reach. He contends that the determination involved an error of law because the calculation made by QSL was “obviously wrong”. He contends that there was no evidence that performing “the correct calculation” was an administratively difficult exercise (assuming that to be a relevant consideration). The applicant submits that, given the terms of s 1055(2) and (4) of the Act, AFCA was foreclosed from affirming QSL’s decision.

QSL’S SUBMISSIONS

33 QSL submits that:

- (a) while “Superannuation Salary” is defined in the Trust Deed, “annual Superannuation Salary” is not defined;
- (b) the applicant’s “Superannuation Salary is not an annual amount or, indeed, an actual salary paid to the applicant but “the salary to be used for superannuation purposes” (in other words, a notional amount) which is referable to the applicant’s “base pay equivalent to 170 hours per 56 days” (in other words, a particular pay structure) in accordance with certain agreements, plus certain allowances;
- (c) the Trust Deed therefore contemplates that a calculation is to be performed to convert the applicant’s notified Superannuation Salary into an annual amount in order to determine his Final Average Salary, but does not specify a method of doing this; and
- (d) there is more than one method of calculating the applicant’s annual Superannuation Salary that is consistent with the Trust Deed.

ANALYSIS

34 The applicant’s case in relation to Grounds 1 and 2 proceeds on the basis that, notwithstanding the Trust Deed’s silence on the matter, there is only one way to annualise his Superannuation Salary. The difficulty for the applicant is that, in support of his own case, he has advanced two different methods of calculation.

35 The first method of calculation is to adopt the fixed reference point of 365.25 days to determine the factor (26.0893) that is to be applied to his fortnightly salary, as advised by Qantas, to

calculate the annual amount. This is the way the applicant put his case to AFCA and, initially, the way he put his case in this appeal.

36 The second method of calculation, and the one ultimately advocated by the applicant, is to take his fortnightly salary, as advised by Qantas, divide that salary by 14 to arrive at a daily rate, and then apply that daily rate to the number of days in the calendar year, depending on whether the year is a 365 day year or a 366 day year.

37 Another method is, of course, the method that QSL adopted, which is to recognise that the applicant's base pay structure was fortnightly payments, and then recognise that there are 26 fortnights in a 52 week year.

38 A further method would be to simply use the actual number of calendar days in each Financial Year or each year for which the annual Superannuation Salary is to be calculated, and annualise based on these days ($365 \div 14 = 26.071$ fortnights or $366 \div 14 = 26.143$ fortnights (in a leap year)).

39 A still further method would be to use the actual number of calendar days in each Financial Year or each year for which the annual Superannuation Salary is to be calculated, derive an average number of days for these years (either 365 days or 365.333 days if a leap year is included), and then annualise based on these days ($365 \div 14 = 26.071$ fortnights or $365.333 \div 14 = 26.095$ fortnights).

40 The first question that arises in this appeal is whether the method adopted by QSL (i.e., to use an annualising factor of 26 fortnights) was a determination of the applicant's annual Superannuation Salary for the relevant three year period that was contrary to the terms of the Trust Deed? I am not persuaded that it was.

41 The Trust Deed is silent on the method to be used in performing this calculation. The method of calculating a Member's annual Superannuation Salary is a matter that falls within the trustee's decisional freedom. That freedom is constrained by the requirement that the method yields what, properly, can be described as the Member's "annual Superannuation Salary" for each year in the applicable three year period referred to in the definition of Final Average Salary. However, there is nothing in the Trust Deed that indicates that there is only one method of calculation available to the trustee. Further, there is nothing in the Trust Deed that requires the trustee to perform a calculation that takes the step of calculating a daily amount from the Superannuation Salary that is notified to it before proceeding to calculate an annual amount.

In the case of a Member in the applicant's position, any of the methods noted above is a method that answers the description of the Member's "annual Superannuation Salary".

42 The method that QSL adopted is supported by para (b)(v) of the definition of Superannuation Salary which specifically refers to a 56-day base pay structure, being 4 fortnights (it being borne in mind that, under the relevant agreements covered by para (b)(v), the Member is paid fortnightly). As QSL put the matter in its written submissions:

The annual conversion method applied by QSL reflects the reality of how the Applicant was paid (on a fortnightly basis) and how his work was scheduled (over 56-day bid periods). Those pay and work cycles are not amenable to analysis in terms of fraction of a week (or day).

43 In its submissions, QSL also referred to provisions in:

- (a) the IAPA where certain allowances are based on 364 days;
- (b) the Enterprise Agreement in which pilots allocated to certain positions are paid a salary that includes a component based on 364 days;
- (c) the Air Pilots Award 2020 in which certain monetary allowances are based on the minimum salary for a Captain of a certain type of aircraft divided by 52 weeks; and
- (d) the *Superannuation Act 1976* (Cth) in which the definition of "annual rate of salary" for employees entitled to a weekly rate of pay is the weekly rate multiplied by the factor of 52 (the equivalent of 364 days).

44 These provisions were relied on as exemplifications of where, in calculating annual sums, whole figures are used, based on the notion that a year is 52 weeks or 364 days. QSL submits, and I accept, that these examples support the contention that the approach adopted in relation to calculating the applicant's annual Superannuation Salary is a practical one that is recognised in an industrial context.

45 In his submissions, the applicant placed particular emphasis on the use in the definition of "Final Average Salary" of the word "annual", and the word "complete" in relation to the defined term "Financial Years", to support his contention that the Trust Deed requires a calculation based on a daily rate applied across the relevant three year period.

46 I am not persuaded that these expressions have the significance which the applicant attributes to them. The word "annual" simply begs the question of how the annual amount is to be calculated. It does not direct how that is to be done. The word "complete" adds nothing other

than to emphasise that a partial year is not in contemplation. The definition of “Financial Year” (see above) simply defines the yearly period by reference to which the Member’s annual Superannuation Salary is to be calculated but does not prescribe how the “annual” amount is to be calculated.

47 In oral submissions, the applicant took the Court to provisions of the IAPA and the Enterprise Agreement in an endeavour to illustrate that each agreement contemplates that daily amounts might need to be calculated. However, these provisions only refer to calculating a daily amount when there is a need to do so (i.e., because a pay or allowance calculation has to be made for part of a 56-day pay period). This does not detract from the significance of the fact that under the IAPA and the Enterprise Agreement the base pay is fortnightly pay based on 56-day pay periods.

48 With reference to Grounds 1 and 2 of the appeal, I do not accept that AFCA misconstrued the Trust Deed. I do not accept that it made a determination that was contrary to law or acted contrary to s 1055(7), as the applicant contends. While AFCA used the word “discretion” to describe the manner of exercise of QSL’s obligation to determine the applicant’s annual Superannuation Salary, it is clear that AFCA was not using “discretion” in any sense other than to explain that an exercise of business judgment was involved in order for QSL to arrive at an amount that yielded the applicant’s “annual Superannuation Salary” for the purposes of, and in accordance with, the Trust Deed.

49 These conclusions dispose of Grounds 1 and 2 of the appeal.

50 As to Ground 3, I am not persuaded that AFCA’s determination (that QSL’s decision was fair and reasonable) involved an error of law on the basis that AFCA’s determination was “manifestly unreasonable” or “not supported by relevant evidence”, or because QSL’s calculation of the applicant’s annual Superannuation Salary was “incorrect” or “obviously wrong”.

51 It is appropriate to commence by noting that, in light of the matters discussed above, QSL’s calculation of the applicant’s annual Superannuation Salary was not “incorrect” or “obviously wrong”. It follows that AFCA’s determination is not, itself, tainted by any such error.

52 As to AFCA’s determination of the fairness and reasonableness of QSL’s decision in all the circumstances, a number of matters should be borne in mind.

53 First, in determining a superannuation complaint, AFCA’s task is not simply to supplant the decision under review with its own decision. The actions available to it under s 1055(6) of the Act (for example, to vary a decision or to set aside and substitute a decision) only become available if it decides, positively, that the decision the subject of the complaint is, in its operation in relation to the complainant, unfair or unreasonable or both.

54 Secondly, the inquiry as to whether a decision is fair and reasonable or, alternatively, unfair or unreasonable or both, does not commence from any presumption about fairness or reasonableness.

55 Thirdly, “fair and reasonable” for the purposes of s 1055(2) of the Act posits no technical standard beyond that conveyed by the ordinary meaning of those words considered in the context of the decision under consideration: *Reeves v Nulis Nominees (Australia) Ltd (Trustee)* [2022] FCA 627 (*Nulis*) at [64]. The same can be said of “unfair” and “unreasonable” in s 1055(4) of the Act.

56 Fourthly, fairness and reasonableness in all the circumstances do not entail a decision that is the optimum or most advantageous or most beneficial decision for the person whose interests are affected by the decision. To hold otherwise would be to distort the ordinary meaning of “fair” and “reasonable”.

57 Fifthly, as Nicholas J observed in *Nulis* at [65], in an appeal from AFCA’s determination to this Court, the Court does not embark on any consideration of whether the decision that was before AFCA was fair and reasonable. The appeal to the Court is “on a question of law”. Therefore, so far as reasonableness is concerned, the only question that could be before the Court in that regard is whether AFCA’s determination of the complaint was legally unreasonable, and therefore beyond AFCA’s power.

58 The applicant seeks to enliven legal unreasonableness by arguing that there was “no evidence” before AFCA that would justify its determination that QSL’s decision was fair and reasonable in its operation in relation to the applicant, in all the circumstances.

59 This ground cannot succeed when two matters are understood. The first is that, as I have emphasised, QSL’s calculation was not contrary to the Trust Deed. It was an appropriate calculation of the applicant’s annual Superannuation Salary for the purpose of determining his Final Average Salary. For this reason alone, it is difficult to conceive of QSL’s decision to calculate the applicant’s annual Superannuation Salary by applying a factor of 26 to his notified

fortnightly salary—which, as I have said, was a business rule that QSL applied to all Members’ salaries supplied to it as fortnightly salaries—as being, of itself, unfair or unreasonable in its operation in relation to the applicant.

60 The second is that the nub of the applicant’s “no evidence” argument is that QSL’s calculation of his annual Superannuation Salary was disadvantageous to him because a more favourable calculation could have been performed. Therefore, according to the applicant, AFCA could only regard QSL’s decision to calculate his annual Superannuation Salary in the way it did as unfair and unreasonable, there being “no evidence” to the contrary (i.e., there being no evidence that QSL’s decision was fair and reasonable).

61 I do not accept that this is the correct way of approaching the issue. In substance, there is no “no evidence” ground. As I have said, in considering whether QSL’s decision was fair and reasonable, AFCA did not need to be satisfied that the calculation that QSL was entrusted to perform yielded an optimal or the most advantageous or most beneficial outcome for the applicant. The only question for AFCA was whether QSL’s decision to adopt the methodology it did was fair and reasonable in all the circumstances. AFCA was satisfied that it was because of the matters I have recorded at [28] above. These are rational justifications for arriving at that conclusion. Beyond disputing that QSL’s decision to use a factor of 26 was fair and reasonable, the applicant does not suggest that these considerations are factually inaccurate.

62 Whilst I have some sympathy for the applicant’s position, I am not satisfied that AFCA’s determination was legally unreasonable or otherwise affected by error.

63 For these reasons, I am not satisfied that Ground 3 of the appeal is established.

DISPOSITION

64 The appeal will be dismissed.

I certify that the preceding sixty-four (64) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Yates.

Associate: 

Dated: 1 February 2024