



High Court holds that Queensland Rail is subject to the Fair Work Act 2009 (Cth)

Date: Wednesday April 8, 2015

Today the High Court unanimously held that Queensland Rail is a Constitutional Corporation and as such is covered by the Fair Work Act 2009 (Cth).

In 2013 the then Newman Government passed the Queensland Rail Transit Authority Act 2012 (Qld). The QRTA Act had the effect of transferring all employees of the Government Owned Corporation, Queensland Rail, to the Queensland Rail Transit Authority. The QRTA, which was subsequently renamed Queensland Rail, acts as a labour hire company and supply labour to Queensland Rail Limited for the purposes of operating Queensland public rail network.

The QRTA Act provides that the QRTA had all of the powers of individual, including the power to sue and be sued in its own name. However, the QRTA Act provided by s. 6(2) that the QRTA was not a body corporate. The QRTA Act also provides that the Industrial Relations Act 1999 (Qld) applied to the employment of all QRTA employees.

One of the significant effects of the QRTA Act was to take all of the employees out of the Federal industrial relations jurisdiction and to make those employees subject to the Queensland industrial relations system. This meant the provisions in existing enterprise agreements which provided for job security, no forced redundancy and consultation were of no effect.

On 11 November 2013 Hall Payne Lawyers, acting on behalf of the five rail unions (ETU, ASU, AMWU, AFULE and RTBU) commenced proceedings in the original jurisdiction of the High Court of Australia alleging that the QRTA was, notwithstanding s. 6 (2), a trading corporation within the meaning of the Constitution and that the Fair Work Act 2009 (Cth) applied to all of the QRTA's employees.

On 8 April 2015 the High Court found that there were no reasons to read ss. 51(xx) of the Constitution as only applying to some classes of artificial legal persons. The Court unanimously found that the QRTA had the full character of a corporation and therefore was a trading corporation within the meaning of the Constitution. This meant that the QRTA was subject to the Fair Work Act 2009

(Cth) and that, by virtue of s. 109 of the Constitution, ss 69, 72 and 73 of the QRTA Act and ss 691A-691D of the Industrial Relations Act 1999 (Qld) are invalid in so far as they apply to employees of the QRTA.

The effect of the Court's decision is that the previous government's attempt to transfer the employees out of the Federal industrial relations jurisdiction into the Queensland system and to thereby reduce their terms and conditions failed. The Court ordered that QR pay the unions' costs.

Hall Payne Lawyers has significant experience in running substantial and strategic litigation for unions and their members. Should you require advice please contact [Charles Massyon](#) (07) 3017 2400.
