



## **Indemnity costs awarded when court finds ‘right of entry permit holders’ wrongly charged with trespass**

**Date: Tuesday June 4, 2019**

In what our clients have described as a “landmark victory”, Hall Payne Lawyers has successfully defended an unprecedented attack by the Queensland Police Service on union officials’ statutory right of entry in Queensland.

On 17 December 2018, four union officials from three different unions attended the worksite of a recalcitrant employer for the purpose of investigating suspected safety contraventions. Each union official held valid right of entry permits in accordance with the *Fair Work Act 2009* (Cth) and the *Work Health and Safety Act 2011* (Qld).

### **Employer refuses union officials’ entry to worksite**

Upon arriving at the workplace, the union officials advised the employer that they were seeking to enter the worksite in accordance with s.117 of the WHS Act and provided their entry notices, as required by s.119. The employer refused to allow the union officials to enter the worksite and demanded that they leave immediately.

The union officials called the regulator, Workplace Health and Safety Queensland (‘WHSQ’), and asked for WHSQ inspectors to attend the worksite. The employer contacted the Queensland Police Service several times and demanded that police officers be sent to the worksite to remove the union officials.

### **Police assert union officials are trespassing; despite valid right of entry permits**

Several police officers arrived at the worksite and sided with the employer from the moment they arrived. The police officers asserted that the union officials were trespassing, despite refusing to view their entry permits and/or consider any explanation that was provided by the union officials. The police officers had formed their views despite not giving the experts, WHSQ, an opportunity

to intervene.

WHSQ inspectors arrived a short time later but were told by the employer and a police officer to leave before the matter was resolved. This is despite a memorandum of understanding being executed by the Queensland Police Service and the Office of Industrial Relations which confirmed that WHSQ is the appropriate authority to deal with the matter at hand.

## Union officials ultimately arrested

The police officers then incorrectly tried to argue that the union officials' right to remain at the worksite had ceased because the WHSQ inspectors had left. The union officials rightly stood their ground and were ultimately arrested. They were then each charged with one count of trespassing, before being transported to a watchhouse and placed in a locked cell for several hours. They were later released on onerous bail conditions which we successfully had removed less than 48 hours later.

Despite several attempts by Hall Payne to explain the relevant industrial legislation to the prosecution, the arresting police officers refused to withdraw the charges against the union officials and asserted that the charges related to unlawfully *remaining* at the workplace; not *entering*. The union officials' matters were then heard together in a three day hearing in the Brisbane Magistrates Court before Magistrate Wendy Cull.

## Police evidence found to be demonstrably untrue

During the hearing the conduct of the police officers was heavily scrutinised.

It was revealed that, before giving the union officials any opportunity to explain what their right of entry permits allowed them to do, one police officer made comments such as, "*why are your industrial laws above our laws?*" and "*you are the ones doing things wrong today, not us*". The police officer was later embarrassed in court when he initially denied that he made those comments, only to be forced to admit to his conduct a few minutes later after viewing a video recording.

Another police officer claimed that he did not make any notes in his official police notebook on the day. He was later confronted with a video recording that depicted him taking notes in his police notebook. The Court ultimately found his evidence was untruthful on that basis.

Perhaps most embarrassingly for the Queensland Police Service, two police officers gave evidence about which union official they had each arrested. The police officers had earlier presented sworn statements containing their versions of events and they were both adamant that they had arrested the person that was identified in their statements. After watching a video recording of the arrest, the police officers were forced to admit that they had each arrested the wrong person.

In what can only be described as a scathing judgment that described some police evidence as "*naïve and concerning*", Magistrate Cull struck the charges out on the basis that the defendants, our clients, had "no case to answer". Her Honour made her finding on four bases, which included:

1. the prosecution was unable to establish that a provision in the *Summary Offences Act*, which provides a defence for the offence of trespass for union officials *entering* a workplace in accordance with their entry permits (s.11(3)), did not apply to *remaining*;

2. the prosecution was unable to prove that the union officials *unlawfully* remained at the worksite when they were asked by the employer to leave;
3. the prosecution was unable to disprove any argument that the union officials had exercised an “honest claim of right” when they remained at the premises; and
4. the prosecution had failed to establish that the police officers had discharged their powers in accordance with the *Police Powers and Responsibilities Act* before arresting the union officials, which has potentially rendered the arrest and detention of the union officials to be unlawful.

The prosecution case against the union officials was so flimsy it did not even proceed to the point where the Magistrate had to make findings about whether the charges had been proven beyond reasonable doubt. It was dismissed immediately after the close of the prosecution case.

## **Application for costs**

Hall Payne Lawyers subsequently made an application for costs. On 4 June 2019 Magistrate Cull issued a costs certificate that required the Queensland Police Service to pay \$85,000.00 in legal costs; which we understand to be the highest costs order that has ever been made against the Queensland Police Service in the Magistrates Court of Queensland.

The statutory right of entry regime plays a significant role in ensuring that Australian workers are protected from imminent risks to their health and safety, and attacks on their lawful entitlements, by employers who think they are above the law. Hall Payne Lawyers will continue to play our part for the union movement by ensuring that such important rights for union officials remain protected at all costs.

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