

Case Law update

Workplace Investigations – reviewable decisions

November 2019

A recent judgment of the Queensland Supreme Court¹ contains valuable lessons for those involved in workplace investigations into allegations of misconduct.

The case concerned a judicial review application by the applicant, a cardiologist at a Brisbane hospital, in respect of an investigation report produced by accountants retained by the relevant Hospital & Health Service (HHS), and consequent decisions made by that HHS to suspend him due to various alleged administrative failings on his part. The accountant respondents argued that the provision of their report was not a reviewable decision for the purposes of the *Judicial Review Act 1991* (Qld). Justice Applegarth found otherwise, holding that the provision of the report was a condition precedent to the HHS's decision to suspend the applicant under the *Hospital and Health Boards Act 2011*. In doing so, Applegarth J was quite critical of the investigation report compiled. The judgment contains a helpful analysis of when an investigation report will be regarded as a final and operative "decision" for the purposes of judicial review.

His Honour also found that the HHS's decision that the applicant was liable to discipline under the *Public Service Act 2008*, as well as the decision to suspend him from duty, were reviewable decisions. A further decision inviting the applicant to show cause why he should not be disciplined was not regarded as a reviewable decision. The case is also noteworthy for the lengths Justice Applegarth went in in encouraging the parties to resolve the matter.

Comments

The case provides helpful assistance as to what constitutes a 'decision' under the JR Act, as well as valuable lessons for those compiling workplace investigation reports as to the care needed in reaching findings of fact.

Gilshenan & Luton are recognised experts in the area of workplace investigations, criminal law, and professional misconduct. We conduct investigations for private and public sector agencies, and act for those the subject of such investigations.

For further inquiries or assistance, please contact Glen Cranny, Managing Director, Gilshenan & Luton Legal Practice, on 3361 0240 or gcranny@gnl.com.au.

¹ *Walters v Drummond & Ors* [2019] QSC 97.