

Case Law update

A recent Supreme Court decision has considered the rights of an Industry Safety & Health Representative (ISHR) to participate in workplace investigations

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In the recent case of *Woods v Newman*¹, the Queensland Supreme Court considered the right of an elected Industry Safety & Health Representative (ISHR) under the *Coal Mining Safety and Health Act 1999* (the “Coal Mining Act”) to take part in investigations into serious accidents and high potential incidents.

Under the *Coal Mining Act*, inspectors can conduct a variety of investigations, including requiring persons to attend and answer questions on relevant matters. Under the same Act, an ISHR has a number of functions, including “to participate in investigations into serious accidents ... and other matters related to safety or health at coal mines”. The Act does not give an ISHR an express power to attend and question persons at compulsory examinations conducted by an inspector.

In this case the ISHR asserted a right to attend and participate in the compulsory examination of a witness by an inspector. The Supreme Court had to consider whether the ISHR’s legislative function of participating in investigations conferred an implied right or power to participate in the process of questioning a witness.

Justice Applegarth of the Supreme Court ultimately ruled, as a matter of statutory construction, that the legislation did not confer upon an ISHR an express power to attend, ask questions or otherwise participate in a compulsory examination process under the Act. His Honour held that to read the “participation” function that broadly was not necessary to achieve the purposes of Act, and to confer such a right upon an ISHR had the potential in some circumstances to impede, delay or otherwise prejudice the conduct of an examination of witnesses. His Honour held that:

“In circumstances in which the legislature has not provided expressly for the ISHR to have power to attend, ask questions and otherwise participate in the [compulsory examination] process, but might easily have done so, I am

¹ *Woods v Newman, Chief Inspector of Coal Mines* [2020] QSC 10

disinclined to interpret the Act as impliedly conferring such a power. Instead, the extent to which inspectors allow other persons to be present and participate in the process should be governed by the proper exercise by the inspector of his or her powers. This includes the exercise of a judgment about whether the presence of such a person is likely to facilitate or impede the process of investigation. Such a decision should accord fairness to the person who is under compulsion to attend and answer questions."

Whilst decided in a specific legislative context, the decision is nonetheless instructive in respect of rights asserted by workplace delegates who seek specific involvement in investigations by statutory inspectors.

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.

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