SUPREME COURT OF QUEENSLAND

CITATION:	*Anglo Coal (Capcoal Management) Pty Ltd v Reynoldson* [2016] QSC 52
PARTIES:	**ANGLO COAL (CAPCOAL MANAGEMENT) PTY LTD** (applicant) **v** **NEIL REYNOLDSON, INSPECTOR OF COAL MINES** (respondent)
FILE NO:	SC No 845 of 2016
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	15 March 2016
DELIVERED AT:	Brisbane
HEARING DATE:	26 February 2016
JUDGE:	Ann Lyons J
ORDER:	**Application refused.**
CATCHWORDS:	INDUSTRIAL LAW – INDUSTRIAL REGULATION OF PARTICULAR INDUSTRIES – COAL INDUSTRY – OTHER MATTERS – where the applicant operates a mine and sought to reduce the number of rest breaks for its workers – where the *Coal Mining Safety and Health Act* 2001 (Qld) and the *Coal Mining Safety and Health Regulation* 2001 (Qld) regulate how a mine operator is able to amend its safety and health management system which includes its fatigue and worker fitness provisions – where the mine operator, through its site senior executive, is obliged to prepare draft fitness provisions and consult with a cross-section of coal mine workers – where the site senior executive is obliged to obtain further information and advice and consult again with the cross-section if agreement cannot be reached – where the cross-section of workers of the applicant did not reach unanimous agreement regarding the proposed number of rest breaks – where the applicant submits that "agreement" only requires a majority of the cross-section rather than unanimous agreement – where the applicant submits that once the obligatory consultation and drafting process has occurred, the legislative regime has been complied with and no further consultation is necessary – whether the unanimous agreement

of the cross-section is required before the draft fitness provisions can be incorporated into a mine operator's safety and health management system – whether the mine operator is only obliged to complete the legislative drafting and consultative process once

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – PURPOSIVE APPROACH – PARTICULAR CASES – where the applicant operates a mine and sought to reduce the number of rest breaks for its workers – where the *Coal Mining Safety and Health Act* 2001 (Qld) and the *Coal Mining Safety and Health Regulation* 2001 (Qld) regulate how a mine operator is able to amend its safety and health management system which includes its fatigue and worker fitness provisions – where the mine operator, through its site senior executive, is obliged to prepare draft fitness provisions and consult with a cross-section of coal mine workers – where the site senior executive is obliged to obtain further information and advice and consult again with the cross-section if agreement cannot be reached – where the cross-section of workers of the applicant did not reach unanimous agreement regarding the proposed number of rest breaks – where the applicant submits that "agreement" only requires a majority of the cross-section rather than unanimous agreement – where the applicant submits that once the obligatory consultation and drafting process has occurred, the legislative regime has been complied with and no further consultation is necessary – whether the unanimous agreement of the cross-section is required before the draft fitness provisions can be incorporated into a mine operator's safety and health management system – whether the mine operator is only obliged to complete the legislative drafting and consultative process once

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – WORDS TO BE GIVEN LITERAL AND GRAMMATICAL MEANING – PARTICULAR CASES – where the applicant operates a mine and sought to reduce the number of rest breaks for its workers – where the *Coal Mining Safety and Health Act* 2001 (Qld) and the *Coal Mining Safety and Health Regulation* 2001 (Qld) regulate how a mine operator is able to amend its safety and health management system which includes its fatigue and worker fitness provisions – where the mine operator, through its site senior executive, is obliged to prepare draft fitness provisions and consult with a cross-section of coal mine workers – where the site senior executive is obliged to obtain further information and advice and consult again with the cross-section if agreement cannot be reached – where the cross-

section of workers of the applicant did not reach unanimous agreement regarding the proposed number of rest breaks – where the applicant submits that "agreement" only requires a majority of the cross-section rather than unanimous agreement – where the applicant submits that once the obligatory consultation and drafting process has occurred, the legislative regime has been complied with and no further consultation is necessary – whether the unanimous agreement of the cross-section is required before the draft fitness provisions can be incorporated into a mine operator's safety and health management system – whether the mine operator is only obliged to complete the legislative drafting and consultative process once

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – TO GIVE OPERATION AND EFFECT TO ACT – where the applicant operates a mine and sought to reduce the number of rest breaks for its workers – where the *Coal Mining Safety and Health Act* 2001 (Qld) and the *Coal Mining Safety and Health Regulation* 2001 (Qld) regulate how a mine operator is able to amend its safety and health management system which includes its fatigue and worker fitness provisions – where the mine operator, through its site senior executive, is obliged to prepare draft fitness provisions and consult with a cross-section of coal mine workers – where the site senior executive is obliged to obtain further information and advice and consult again with the cross-section if agreement cannot be reached – where the cross-section of workers of the applicant did not reach unanimous agreement regarding the proposed number of rest breaks – where the applicant submits that "agreement" only requires a majority of the cross-section rather than unanimous agreement – where the applicant submits that once the obligatory consultation and drafting process has occurred, the legislative regime has been complied with and no further consultation is necessary – whether the unanimous agreement of the cross-section is required before the draft fitness provisions can be incorporated into a mine operator's safety and health management system – whether the mine operator is only obliged to complete the legislative drafting and consultative process once

Coal Mining Safety and Health Act 2001 (Qld), s 6, s 7, s 13, s 25, s 32, s 41, s 42, s 62

Coal Mining Safety and Health Regulation 2001 (Qld), s 10(1)(c), s 10(1)(d)(i), s 10(1)(d)(ii)(A), s 10(1)(d)(ii)(B), s 10(1)(d)(ii)(C), s 10(1)(e), s 10(2)(a)(ii), s 42(1), s 42(2), s 42(5), s 42(6), s 42(6A), s 42(7A)

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355; [1998] HCA 28, applied
Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Management) Pty Ltd (2007) 168 IR 210; [2007] QSC 382, cited
Construction, Forestry, Mining and Energy Union v Oaky Creek Coal Pty Ltd [2003] QSC 33, considered

COUNSEL:	G A Thompson QC for the applicant A C Freeman for the respondent
SOLICITORS:	Ashurst Australia for the applicant Crown Law for the respondent

The Issue

[1] The applicant operates a mine in the Bowen Basin. In 2014 it sought to amend the Personal Fatigue Procedure at the mine to reduce the number of rest breaks for workers during a 12.5 hour shift from three to two. The applicant now seeks a declaration that an agreement has been reached with the coal mine workers in accordance with s 10(1)(c) of the *Coal Mining Safety and Health Regulation* 2001 (Qld) ("**the Regulation**").

Background

[2] The applicant's mine, known as the Capcoal Surface Operations Coal Mine (Ex German Creek), is located near Middlemount Queensland which in the Bowen Basin.

[3] In 2014 the Mine's Site Senior Executive ("**SSE**"), an employee of the applicant, commenced reviewing and updating the controls in place for personal fatigue at the Mine. In August 2014 a personal fatigue fitness risk assessment was produced and in December 2014 a ballot was held with the coal mine workers and a majority was reached regarding the criteria for the assessment of workers for fatigue.

[4] Various meetings were then held with a cross-section of 19 coal mine workers between October 2014 and April 2015 concerning the applicant's draft updated Personal Fatigue Procedure. This draft Procedure was based on the risk assessment prepared in August 2014. Changes were then made to the draft Procedure to incorporate suggestions by coal mine workers. There remained a few areas of disagreement. Specifically, two members of the cross-section disagreed with a proposal that workers be provided with two rest breaks instead of the current three rest breaks on a 12.5 hour shift.

[5] A report, commissioned by the applicant, was subsequently produced by fatigue experts Shiftwork Solutions. This report supported the provision of two rest breaks in a 12.5 hour shift. In April 2015, a final draft of the updated Personal Fatigue Procedure was presented to the cross-section of 19 workers along with the report of Shiftwork Solutions. There was no disagreement regarding the final draft; the two members who had previously voiced their disagreement did not attend the meeting.

[6] The SSE subsequently signed the updated Personal Fatigue Procedure on 12 June 2015 and implemented it into the applicant's safety and health management system. It appears that, after consultation with the Industry Safety and Health Representative ("**ISHR**") who inspected the mine, the SSE was informed that it was the ISHR's view that there remained disagreement with the cross-section of workers regarding the number of rest breaks on a 12.5 hour shift.

[7] Following this, a complaint was made by the ISHR and, in July 2015, the respondent, Inspector Neil Reynoldson, issued a "mine record entry" outlining the findings of the investigation into the complaint. This mine record entry required the Mine to conduct a revision of the updated Personal Fatigue Procedure to take into account the findings of the investigation which included, *inter alia*, the SSE's inclusion of matters, namely rest breaks, for which consensus was not reached with the cross-section of workers.

[8] On 13 and 14 August 2015, a further cross-section of 30 coal mine workers was organised to work through the issues raised by Inspector Reynoldson. Consensus was reached regarding all matters except for the number of breaks allowed on a 12.5 hour shift. Ultimately six workers disagreed that two rest breaks on a 12.5 hour shift was sufficient. Following this consultation, the Personal Fatigue Procedure was again updated to integrate all new agreed matters and was uploaded into the SHMS. The issue of rest breaks was not included but was instead noted that it was currently the subject of disagreement and that the status quo of three rest breaks remained for the time being.

[9] On 5 November 2015 the SSE sent a letter to Inspector Reynoldson advising that sufficient agreement regarding rest breaks for the purposes of s 10(1)(c) of the Regulation had been reached through 24 workers agreeing with only 6 workers disagreeing:[1]

> "Of the 30 members of the cross-section present, 24 agreed and 6 disagreed with my proposed measure that there be 2 rest breaks in a 12.5 hour shift. On that basis, agreement about this measure has been reached with the cross-section of workers for the purpose of section 10(1)(c) of the CMSH Regulation and accordingly, it is my intention to implement the measure within the safety and health management system 'fitness provisions' for the Mine as soon as possible.
>
> Could you please confirm by reply that the Department is satisfied that for the purposes of section 10(1)(c) of the CMSH Regulation, a majority agreement has been obtained with respect to the measure and that the measure can be implemented forthwith. In the event that the Department has a contrary view, could you provide reasons for same, including the Department's position with respect to whether unanimous agreement or majority agreement is required in order to satisfy the requirements in section 10(1)(c) of the CMSH Regulation."

[10] On 16 December 2015, Inspector Reynoldson issued the Department's response to the SSE's letter of 5 November 2015. The Department's view is that unanimous approval of

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[1] Exhibit AJ-25 to the affidavit of Andrew Job affirmed 18 January 2016.

the cross-section was required in order to satisfy the requirements in s 10(1)(c) of the Regulation and to implement the measure within the applicant's SHMS:[2]

> "In communication from SSE Job on 5/11/15, he asked whether a majority agreement or unanimous agreement is required in section 10 (1) (c) of the Regulation.
>
> …
>
> - Section 42 of the Regulation, when read with s.10 of the Regulation, does not enable an SSE to finalise fitness provisions where the steps in s.10(1)(d)(ii)(A) and (B) have been undertaken but there is still disagreement about legal or technical issues
>
> …
>
> Anglo should seek their own legal advice about this matter.
>
> The Department's view is that:-
>
> 1. The non-application CMSHR s10 (1) (d) (C) as stated in CMSHR 42 (6) results in a stalemate / status quo situation until consensus is achieved.
> 2. A change in legislation may be an option to address the specific situation in this correspondence …"

[11] The applicant filed its originating application on 21 January 2016 seeking a declaration that agreement with the coal mine workers had been obtained with respect to rest breaks for the purposes of compliance with the Regulation.

[12] On 17 February 2016, the ISHR applied to be joined to the proceeding as a second respondent pursuant to r 69(1)(b)(ii) of the *Uniform Civil Procedure Rules* 1999 (Qld). This was opposed by the applicant but consented to by the respondent. The application was heard, and refused, by me on 25 February 2016.

The Legislative Framework

[13] The Regulation is made under the *Coal Mining Safety and Health Act* 2001 (Qld) ("**the Act**").[3] The Act "focuses on the standards of safety and health that must be met and allows the mine operator to use the most appropriate methods and technology to achieve these standards."[4] In particular, s 6 of the Act states the objects as follows:

> "**6 Objects of Act**
>
> The objects of this Act are—
>
> (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
>
> (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and

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2 Exhibit AJ-28 to the affidavit of Andrew Job affirmed 18 January 2016

3 *Coal Mining Safety and Health Act* 2001 (Qld) s 282(2), sch 2.

4 The Hon T McGrady, Minister for Mines and Energy (24 March 1999) *Queensland Parliamentary Debates*, Vol 349 at 734, cited in *Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Management) Pty Ltd* (2007) 168 IR 210, 212 [4] (Martin J); *Construction, Forestry, Mining and Energy Union v Oaky Creek Coal Pty Ltd* [2003] QSC 33, [3] (Fryberg J).

(c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation."

[14] Section 7 lists how the objects are to be achieved. It provides, *inter alia*:

"**7 How objects are to be achieved**

The objects of this Act are to be achieved by—

(a) imposing safety and health obligations on persons who operate coal mines or who may affect the safety or health of others at coal mines; and

(b) providing for safety and health management systems at coal mines to manage risk effectively; and

(c) making regulations and recognised standards for the coal mining industry to require and promote risk management and control; and

…

(f) providing for inspectors and other officers to monitor the effectiveness of risk management and control at coal mines, and to take appropriate action to ensure adequate risk management …"

[15] Further, s 32(1) of the Act provides that the objects of the Act are sought to be achieved through cooperation between coal operators, SSEs and coal workers. Section 32(2)(b)(ii) states that the cooperation is to be achieved at a "coal mine level" by involving coal mine workers in the management of risk at the Mine.

[16] Section 13 defines the meaning of consultation:

"**13 Meaning of *consultation***

Consultation with coal mine workers is discussion between the site senior executive or supervisors and affected coal mine workers about a matter with the aim of reaching agreement about the matter."

[17] The SSE is defined as the most senior officer employed or otherwise engaged by the coal mine operator for the coal mine who is located at or near the coal mine and who has responsibility for the coal mine.[5] The SSE is responsible for the development and implementation of a single safety and health management system ("**SHMS**") for the Mine.[6] The applicant, the operator of the Mine, is obliged to ensure that the SSE develops and implements a SMHS for the Mine[7] and cannot operate without one.[8] The operator is also obliged to audit and review the effectiveness and implementation of the SMHS to ensure the risk to persons from the coal mining operations is at an acceptable level.[9]

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5 *Coal Mining Safety and Health Act* 2001 (Qld) s 25.
6 *Coal Mining Safety and Health Act* 2001 (Qld) s 42(c).
7 *Coal Mining Safety and Health Act* 2001 (Qld) s 41(1)(e).
8 *Coal Mining Safety and Health Act* 2001 (Qld) s 41(2).
9 *Coal Mining Safety and Health Act* 2001 (Qld) s 41(1)(f).

[18] Division 3 of the Act deals with safety and health management systems. Section 62(1) defines a SHMS as a "system that incorporates risk management elements and practices that ensure safety and health of persons who may be affected by coal mining operations." It must be an "auditable documented system that forms part of an overall management system that includes organisational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining a safety and health policy"[10] and must be "adequate and effective to achieve an acceptable level of risk".[11]

[19] Under Part 6 headed "Fitness for work", s 42(1)(a) of the Regulation requires a SHMS to provide for controlling the risks at the Mine associated with personal fatigue. Specifically, the SHMS must provide for, *inter alia*, the "maximum and length of rest breaks in a shift".[12] The provisions of the SHMS that deal with personal fatigue are defined as "fitness provisions".[13]

[20] Section 42 of the Regulation outlines the process for how the fitness provisions are to be developed and implemented. A SSE is required to:

1. consult with a cross-section of workers at the mine;[14] and

2. comply with s 10 of the Regulation, other than s 10(1)(a) and s 10(1)(d)(ii)(C), as if a reference in s 10 to a "standard operating procedure" was a reference to the "fitness provisions".[15]

[21] In his submissions, counsel for the applicant has conveniently set out the provisions of s 10 of the Regulations "marked up" in accordance with the requirements of s 42(6) and I shall adopt that adaptation of s 10 which is as follows:

> "**10 Developing standard operating procedures**
>
> (1) The site senior executive must ensure the following steps are taken in developing ~~standard operating procedures~~ [**fitness provisions**] for management and controlling hazards at the mine—
>
> ~~(a) the site senior executive must consult with a cross-section of the mine's coal workers involved in carrying out a task under the proposed standard operating procedure to identify the hazards associated with the task and ways of controlling the hazards;~~
>
> (b) the site senior executive must prepare a draft ~~standard operating procedure~~ [**fitness provisions**] and give a copy of it to the coal mine workers with whom the site senior executive consulted;

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[10] *Coal Mining Safety and Health Act* 2001 (Qld) s 62(2).
[11] *Coal Mining Safety and Health Act* 2001 (Qld) s 62(3).
[12] *Coal Mining Safety and Health Regulation* 2001 (Qld) s 42(2)(d).
[13] *Coal Mining Safety and Health Regulation* 2001 (Qld) s 42(8).
[14] *Coal Mining Safety and Health Regulation* 2001 (Qld) s 42(5).
[15] *Coal Mining Safety and Health Regulation* 2001 (Qld) s 42(6).

(c) if the coal mine workers agree with the draft ~~standard operating procedure~~ [**fitness provisions**], the site senior executive must prepare it as the final ~~standard operating procedure~~ [**fitness provisions**];

(d) if the coal mine workers do not agree with the draft ~~standard operating procedure~~ [**fitness provisions**]—

(i) for a disagreement that is not about a legal or technical matter—the site senior executive must decide the disagreed matter and prepare the final ~~standard operating procedure~~ [**fitness provisions**]; or

(ii) for a disagreement that is about a legal or technical matter—the site senior executive must—

(A) obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter; and

(B) after consulting with the workers about the information or advice, prepare a further draft ~~standard operating procedure~~ [**fitness provisions**] and give a copy of it to the workers; and

~~(C) if the workers disagree with the further draft—decide the disagreed matter and prepare the final standard operating procedure fitness provisions;~~

(e) the site senior executive must include the final ~~standard operating procedure~~ [**fitness provisions**] in the mine's safety and health management system.

(2) The site senior executive must ensure—

(a) the final ~~standard operating procedure~~ [**fitness provisions**] accords with—

(i) all matters agreed, under this section, between the site senior executive and coal mine workers; and

(ii) the site senior executive's decision, under this section, on any disagreed matters; and

(b) a record is kept of the disagreed matters."

[22] It would seem to me therefore that the process requires:

1. the SSE to prepare draft fitness provisions and give a copy of them to the *cross-section* of coal mine workers; (my emphasis)

2. if agreement is reached with the coal mine workers, then the fitness provisions are finalised and implemented into the SHMS;

3. if disagreement results in relation to any proposed measure, then the SSE must determine whether it is a legal or technical matter;

4. if the disagreed matter is not a legal or technical matter, then the SSE decides the disagreed matter and the fitness provisions are finalised and implemented into the SHMS; and

5. if the disagreed matter is a legal or technical matter, the SSE must obtain further information or advice, must consult with the cross-section of workers about the further information and advice, must prepare updated draft fitness provisions and must give a copy of it to the workers.

[23] This application essentially requires a determination as to whether:

1. the Regulation requires the unanimous agreement, or simply a majority agreement, of a cross-section of coal mine workers in relation to a measure proposed to be included in a Mine's Personal Fatigue Procedure; and

2. whether the prescribed process of consultation with the coal mine workers is only required to occur once, following which the Mine's Personal Fatigue Procedure is able to be implemented regardless of remaining disagreement.

What sort of agreement is required?

[24] The first issue is whether, for the purposes of s 10(1)(c) of the Regulation, unanimous agreement is required from the cross-section of workers about a legal or technical matter or if a majority of workers will suffice.

Applicant's submissions

[25] The applicant submits that a requirement of unanimity is absurd and unreasonable because of the potential for the SSE to be put into an "unending loop" if a minority of the cross-section will not agree, for whatever reason.[16] That is, if agreement cannot be reached pursuant to s 10(1)(c), then the SSE is continuously obliged to obtain further information or advice, consult with the workers, update the draft fitness provisions and seek to reach agreement. It submits that this would frustrate the statutory object of the Act. Further, it submits that a grammatical and ordinary meaning is to be adopted unless there is an absurd result, as discussed by McMurdo P in *Grice v State of Queensland*,[17] and that such a manifestly absurd and unreasonable result arises in this case. Likewise, such a construction does not accord with the purposive approach to statutory interpretation.[18] Counsel for the applicant also argues that there is a further inconsistency when one looks at s 10(2)(a)(ii) which refers to the potential for disagreed matters.

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[16] Applicant's outline of submissions dated 26 February 2016, [19]-[20].
[17] [2005] QCA 272, [9].
[18] See, for example, *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 335, 381 [69], 384 [78].

[26] Particular reliance is placed on the role and obligations of the SSE, who has responsibility for the Mine under the Act, and the fact that consultation with coal mine workers is simply defined in s 13 as a discussion between the SSE and affected coal mine workers with the *aim* of reaching agreement rather than specifying a concluded agreement. Furthermore, the SSE has a statutory obligation in any event pursuant to s 42 to ensure that any risk is at an "acceptable' level.[19]

[27] It is argued that it could not have been the intention of the Regulation that the process in s 10 and the implementation of the fitness provisions could depend upon the chance composition of the cross-section of workers selected. Counsel argues that the object of ss 10 and 42 is about the process of involving workers in the management of risk and does not require unanimity of the cross section consulted particularly when consultation as defined does not require agreement. It is argued that if unanimity was obligatory then the Regulation would have required the SSE to consult with all the workers and not simply a cross-section.

[28] Further reference is then made to s 42(6) and s 42(7A) where the Regulation requires a greater level of input from the coal mine workers where the fitness provision affects an assessment of workers. In this case there has to be input from a majority of workers at the mine, instead of a cross-section of workers, but unanimity is not required.

[29] It is also argued that s 10 in its use of the wording "agree" and "disagree" treats the cross-section of workers as a single block as one party to the agreement and the SSE as the other party. Accordingly the Regulation does not require the SSE to reach agreement with each individual worker. Furthermore, interpreting s 10(1)(c) as requiring unanimity prevents the SSE from performing his statutory role.

What does Regulation s 10 require?

[30] The purposive approach to statutory interpretation was outlined in *Project Blue Sky Inc v Australian Broadcasting Authority*[20] in the following terms:

> "The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'. In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ pointed out that 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'. Thus, the process of construction must always begin by examining the context of the provision that is being construed.
>
> A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict

[19] Applicant's outline of submissions dated 26 February 2016, [23].
[20] (1998) 194 CLR 355, 381-382 [69]-[71] (McHugh, Gummow, Kirby and Hayne JJ).

> must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court 'to determine which is the leading provision and which the subordinate provision, and which must give way to the other'. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.
>
> Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was 'a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent'." (footnotes *omitted*)

[31] When one considers the regulatory regime which governs safety and health in coal mines it is clear that one of the stated objects of the Act is to protect the safety and health of those affected by coal mining operations. Further, the Act contains the requirements that the risk of injury or illness be at an acceptable level and that there be monitoring of the effectiveness of the regulatory regime. The Act then specifies how those objects are to be achieved including the imposition of obligations on those who operate coal mines, the provision of safety and health management systems and the imposition of regulations and standards for risk management and control.

[32] An important aspect of those objects is the requirement for safety and health representatives to represent the safety of coal mine workers. There is also no doubt that the Act seeks cooperation between owners, safety and health representatives and workers. In this regard I do not accept the applicant's submission that there would always been an inevitable loop as that submission presumes there will be no change of position as a result of consultation and negotiation whereas that is the very process the regime encourages.

[33] As Fryberg J noted in *Construction, Forestry, Mining and Energy Union v Oaky Creek Coal Pty Ltd*[21] the safety and health management system is of central importance and the vast majority of topics for which provision must be made in a system are set out in the Regulation. His Honour also noted that "[o]ne of them, provision for controlling the risks associated with personal fatigue, is of particular importance."[22] It is also clear that when one considers the Act and Regulation as a whole, these important provisions in relation to fatigue will not change without the express and unanimous agreement of the mine workers who are required to be consulted under the Act.

[34] Accordingly, when one considers the objects of the Act and the clear meaning of the words, I consider that "agree" in s 10(1)(c) of the Regulation means unanimous agreement

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[21] [2003] QSC 33.

[22] *Construction, Forestry, Mining and Energy Union v Oaky Creek Coal Pty Ltd* [2003] QSC 33, [8].

and not majority agreement because such an approach gives effect to the legislative purpose and intent. I agree with the respondent's submission that when one considers the effect of s 42(6) on s 10, it is to deliberately exclude the powers of the SSE to overrule any disagreement coal mine workers have in relation to provisions about personal fatigue management because of the paramountcy of safety. Whilst s 10(1)(d)(ii)(C) allows the SSE to effectively override disagreements in some circumstances with respect to standard operating procedures, there is no doubt that s 42(6) limits that ability by clear words with respect to fitness provisions.

[35] Significantly, at no point are the words "agreement with a majority of workers" used in s 10 of the Regulation whereas those words are specifically used in other sections of the Regulation, namely ss 42(6A), (7) and (7A) in relation to the establishment of the criteria for the assessment of workers. In my view, those provisions expressly set out when a *majority* agreement is considered to be sufficient. As the words "agreement with majority of workers" have not been used in s 10 one cannot, in my view, infer such an approach when one considers the plain meaning of the word "agree" as it appears in the section.

[36] I consider that s 42(6) specifies that unanimity is required if there is to be a change to the safety and health management system in that all the workers consulted must agree. This is particularly so given that it is only a cross-section of workers who are required to be consulted, and not all workers. The fact that it is only a cross-section of workers reinforces, in my view, the conclusion that the section requires a unanimous agreement and not simply a majority agreement. The fact that an agreement of a majority of workers is sufficient when there has been consultation with the entire workforce is discussed by Martin J in *Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Management) Pty Ltd*[23] and also supports an argument that a smaller consultation group means total unanimity.

[37] Furthermore, the fact that, for the purpose of fitness provisions, s 10(1)(d)(ii)(C) has no application and is effectively "struck out", means that a SSE has no power to resolve disagreed matters and therefore a SSE can only provide a *final* (my emphasis) draft if there is no actual disagreement amongst the cross-section of workers consulted. If there is no unanimous agreement the existing provisions clearly remain in place.

Does the Consultation Process only occur once?

[38] I turn now to the second issue and the question whether the prescribed process of consultation with the coal mine workers is only required to occur once, following which the Mine's Personal Fatigue Procedure is able to be implemented regardless of remaining disagreement.

[39] Counsel for the applicant argues that the SSE is not required to go back through the whole meeting, information and advice process because that is confined to the first draft only. Once the steps required by the Regulation (outlined in paragraph 22) are completed, the SSE has satisfied their obligations under s 10. The object of the Act, in having a cross-section of workers *participate* in developing the fitness provisions, has thereby been

[23] (2007) 168 IR 210.

satisfied. Furthermore, the SSE is then left to comply with their obligations under the Act to minimise risk to coal miners.

[40] In this regard Counsel argues that the language of s 42(6), which provides "in developing the fitness provisions, the site senior executive must comply with section 10, other than section 10(1)(a) and (d)(ii)(C), as if a reference in the section to a standard operating procedure were a reference to the fitness provisions" has the effect of relieving the SSE of compliance with the obligations imposed by s 10(1)(a) because the SSE is separately obliged to comply with s 42(5). In addition, relieving compliance with s 10(1)(d)(ii)(C) means the SSE is no longer obliged to decide the disagreed matter

[41] Counsel argues that it is not consistent with the objects of the Act for the SSE to repeatedly be required to go through the whole process again, including obtaining further information or advice.

[42] In this regard I consider that when one analyses the regime outlined in s 10, it is clear the way in which the section is structured means that there needs to be an agreement of the coal mine workers before one can refer to a draft fitness provisions as the "final". Section 10(1)(c) refers to the workers agreeing with the "draft" and it is only then that the section provides that the SSE must prepare that draft as the "final". Whilst the SSE can decide a disagreed matter if it is not about a legal or technical matter and prepare "final" fitness provisions, the section expressly provides that if there is disagreement about a legal or technical matter the SSE has to prepare a "further draft".

[43] Accordingly, if one simply analyses the words of the section, the words "further draft" are referred to in s 10(1)(d)(ii)(B) and not the word "final fitness provisions". Put simply, the process needs to continue, more than once if necessary, until agreement is reached.

[44] I agree with the submission of Counsel for the respondent that there is a deliberate curtailing of the SSE's powers in s 10 by the operation of s 42(6) which in my view is done by clear words.

Order

[45] The application is refused.