



# WHO INVESTIGATES WHAT?

## SCOPING MINING SAFETY INVESTIGATIONS

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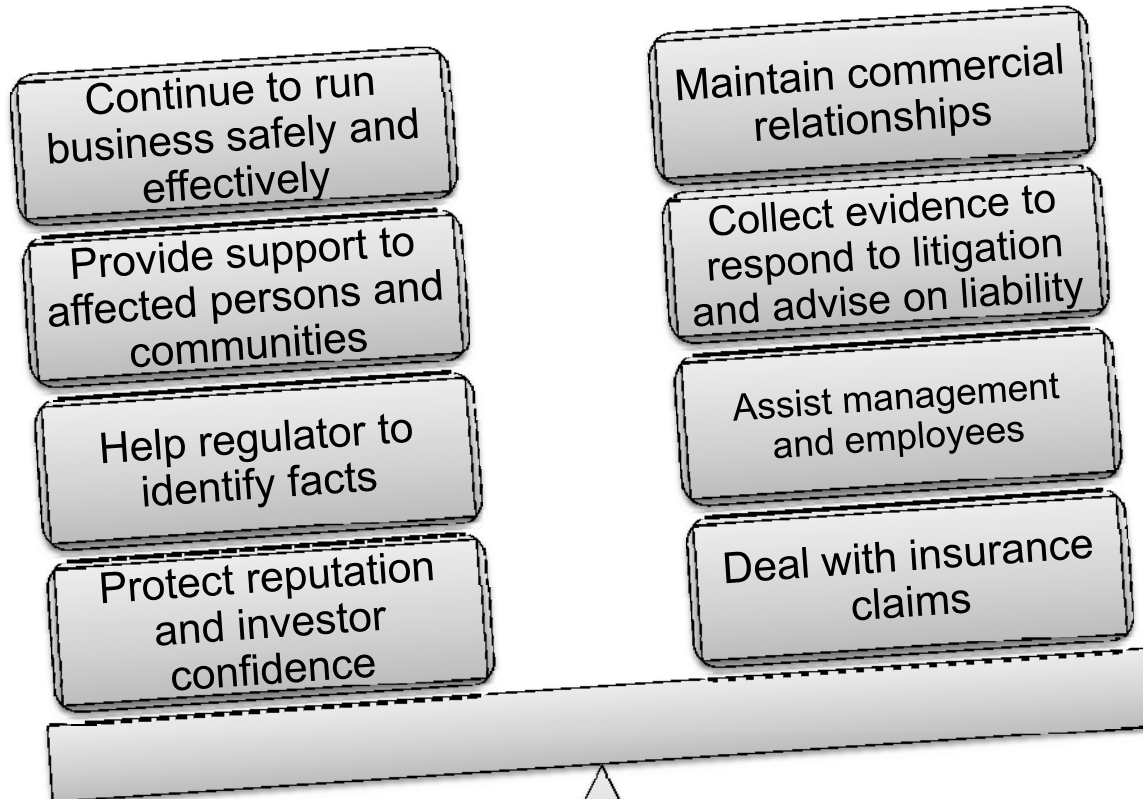
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# OVERVIEW

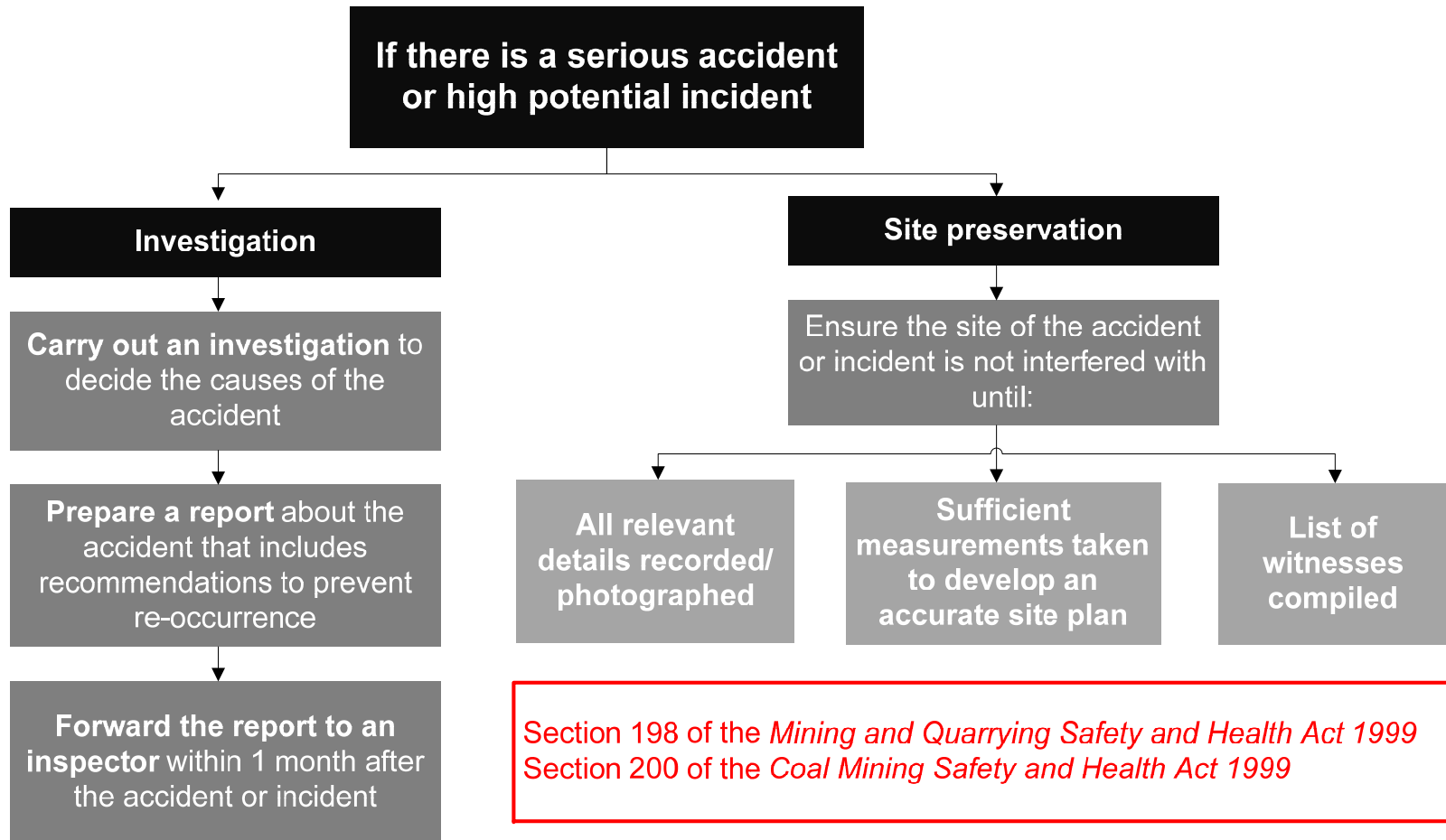
1. WHAT ARE THE PURPOSES OF INVESTIGATIONS?
2. STATUTORY REQUIREMENT TO INVESTIGATE
3. WHAT NEEDS TO BE DISCLOSED?
4. USING LEGAL PROFESSIONAL PRIVILEGE
5. WHO IS THE REGULATOR?
6. WHO ELSE DO YOU NEED TO REPORT TO?

## WHAT ARE THE PURPOSES OF INVESTIGATIONS?



**Strategically managing the investigation process does not mean hiding information**

## STATUTORY REQUIREMENT TO INVESTIGATE





## WHAT NEEDS TO BE DISCLOSED TO THE MINES INSPECTORATE?

- “the causes of the accident or incident”
- “recommendations to prevent the accident or incident occurring again”
- if required by the inspector, “a document to which the person has access that relates or is related to the person’s obligations under the Act”

(even where that information incriminates the person or company)

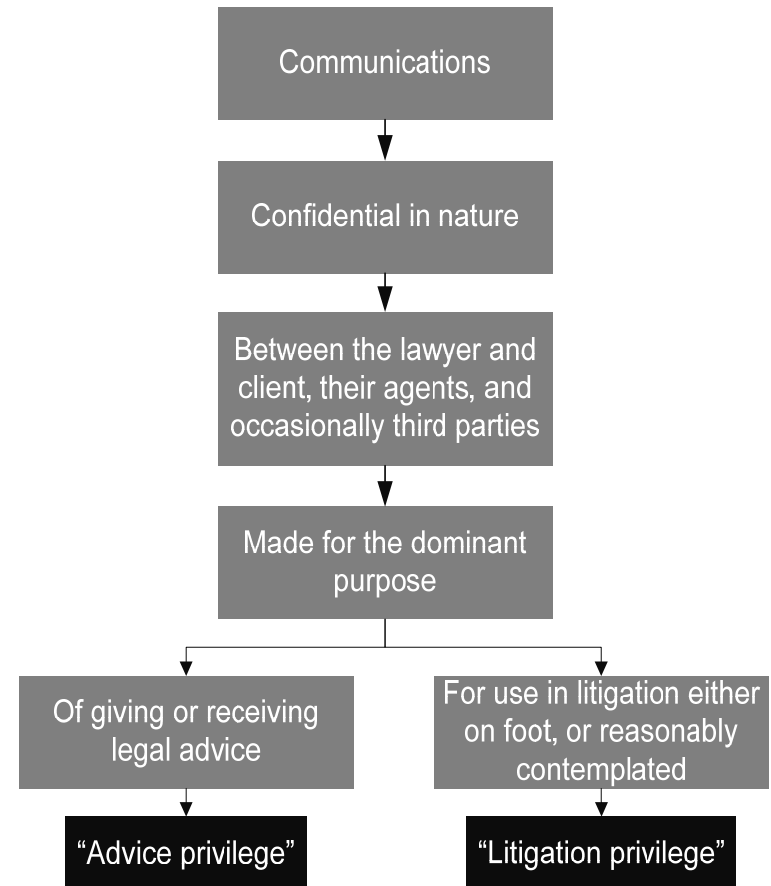
## WHAT DOES NOT NEED TO BE DISCLOSED TO THE MINES INSPECTORATE?

- privileged communications
- deeper systemic issues beyond “the causes of the accident or incident”

## WHY HAVE A PRIVILEGED INVESTIGATION?

- allows a “warts and all” investigation into the causes of an incident
- can limit exposure to claims or potential prosecution
- allows businesses to manage the flow of information to the regulator

## WHEN DOES PRIVILEGE ARISE?





## CASE STUDY – *THOMAS V POWERCOR*

- Powercor was sued by parties who had been affected by the Horsham Black Saturday fire in 2009
- Class action plaintiffs sought discovery of expert reports commissioned by Powercor's lawyer
- The expert reports were obtained for normal business purposes
- Privilege was not upheld because the dominant purpose was not responding to anticipated litigation



## WHO NEEDS TO BE NOTIFIED?

### EXAMPLE 1:

While working on an underground distribution box at a coal mine, an electrician received a minor burn to his right wrist when an arc flash occurred due to contact between the ends of the incoming circuit breaker cables.

Mines  
Inspectorate ✓

Electrical Safety  
Office ?

Work Health and  
Safety  
Queensland ✗

Internal reporting ✓

ASX ?

Insurer ?



## WHO NEEDS TO BE NOTIFIED?

### EXAMPLE 2:

The collection tank on a vacuum truck that had been cleaning up petroleum waste products exploded when en route to Mackay to dispose of the waste. A bystander was injured and some environmental contamination occurred.

Petroleum & Gas  
Inspectorate



Work Health and  
Safety Qld



Environmental  
Protection Agency



National Heavy  
Vehicle Regulator



ASX



Insurer



## WHO ELSE DO YOU NEED TO DEAL WITH?

### EXAMPLE 3:

A study indicates that on-site construction work has resulted in elevated atmospheric asbestos levels in a nearby camp occupied by workers and their families.

Family

Employees

Contractors

Unions

Media

Group companies

Class action  
plaintiffs

Coroner

Experts



## INDUSTRY SAFETY AND HEALTH REPRESENTATIVE

### COAL MINING SAFETY AND HEALTH ACT 1999

#### 118 Functions of industry safety and health representatives

(1) An industry safety and health representative has the following functions—

(d) to ***participate in investigations into serious accidents and high potential incidents*** and other matters related to safety or health at coal mines;

1. The function of ISHRs to “participate in investigations” allows ISHRs to make submissions to a company’s investigations
2. However, companies do not need to include ISHRs as part of their investigation teams for privileged internal investigations or investigations for the regulator under s 200 *CMSHA*

## INDUSTRY SAFETY AND HEALTH REPRESENTATIVE

### COAL MINING SAFETY AND HEALTH ACT 1999

#### 119 Powers of industry safety and health representatives

- (1) An industry safety and health representative has the following powers—
  - (a) **to make inquiries about the operations of coal mines...**
  - (b) **to enter any part of a coal mine at any time** to carry out the representative's functions, if reasonable notice of the proposed entry is given...
  - (c) **to examine any documents** relevant to safety and health held by persons with obligations under this Act...

ISHRs have a wide range of powers which allows them to conduct their own investigations.

However, they must not perform a function or exercise a power... other than for a safety and health purpose: s 117 *CMSHA99*



# Questions?