



**Royal Commission on the Pike River Coal Mine Tragedy**  
**Te Komihana a te Karauna mōte Parekura Ana Waro o te Awa o Pike**

**UNDER**

**THE COMMISSIONS OF INQUIRY ACT 1908**

**IN THE MATTER OF**

**THE ROYAL COMMISSION ON THE PIKE RIVER COAL  
MINE TRAGEDY**

Before:

The Honourable Justice G K Panckhurst  
Judge of the High Court of New Zealand

Commissioner D R Henry

Commissioner S L Bell

Commissioner for Mine Safety and Health, Queensland

Appearances:

K Beaton, S Mount and J Wilding as Counsel Assisting

S Moore SC, K Anderson and K Lummis for the New Zealand Police

N Davidson QC, R Raymond and J Mills for the Families of the Deceased

S Shortall, D MacKenzie, R Schmidt-McCleave and P Radich for certain  
managers, directors and officers of Pike River Coal Limited (in  
receivership)

C Stevens and A Holloway for Solid Energy New Zealand

K McDonald QC, C Mander, A Williams and A Boadita-Cormican for the  
Department of Labour, Department of Conservation, Ministry of Economic  
Development and Ministry for the Environment

G Nicholson and S Stead for McConnell Dowell Constructors

G Gallaway, J Forsey and E Whiteside for NZ Mines Rescue Service

N Hampton QC and R Anderson for Amalgamated Engineering, Printing  
and Manufacturing Union Inc

J Haigh QC and B Smith for Douglas White

J Rapley for Neville Rockhouse

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**TRANSCRIPT OF PHASE THREE HEARING  
HELD ON 17 NOVEMBER 2011 AT GREYMOUTH**

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Level 14, Prime Property Tower, 86-90 Lambton Quay, Wellington  
P O Box 5846, Lambton Quay, Wellington 6145  
Email: [pikeriver@royalcommission.govt.nz](mailto:pikeriver@royalcommission.govt.nz)  
Freephone (NZ only) 0800 080 092

**COMMISSION RESUMES ON THURSDAY 17 NOVEMBER 2010 AT 10.00 AM****KEVIN FREDRICK POYNTER (RE-SWORN)****CROSS-EXAMINATION: MR RAPLEY**

- 5 Q. Mr Poynter, I've just got a few questions. I act for Mr Rockhouse and I'm just going to focus on issues dealing with Mr Rockhouse. He was the safety manager at Pike River Coal, as you're aware?
- A. I am aware.
- 10 Q. And when you first arrived and carried out your inspections or proactive visits as you called them, was Mr Kobus Louw the mines manager?
- A. He was.
- Q. And during those inspections you told us you went underground with Mr Kobus Louw?
- A. That's correct.
- 15 Q. On one of those inspections with Mr Louw, did Mr Rockhouse accompany you?
- A. I can't recall, yeah, maybe once, maybe once.
- Q. Because you told us yesterday, I think from memory, it was about seven proactive visits you made to Pike River?
- 20 A. That's correct.
- 1003
- Q. And I understand you only actually met with Mr Rockhouse on one or two occasions during those proactive visits?
- A. The contact with Neville was usually as a result of either an incident or if I was seeking an accident report or there'd been any delays that I would follow that up with Neville.
- 25 Q. Yes.
- A. And the other contact I have with Neville was through his work with the safety group that he was working so hard to try and get operational.
- 30 Q. Yes, and now how did you find Mr Rockhouse to deal with on safety issues?
- A. I found Neville to be competent and open and very easy to talk to.

- Q. So your contact was with him by the emails or actually meeting with him because of a specific incident, but on the proactive visits where you're carrying out your inspections, in the main you were with the mine's manager weren't you?
- 5 A. Yeah the mine manager or who – if the mine manager was particularly busy on that day he might delegate someone to do the underground visit with me.
- Q. And often, well on most of the occasions of those seven proactive visits you didn't get to see Mr Rockhouse did you?
- A. It's hard to say I didn't see him. What – if you mean did I go and talk to him
- 10 or...
- Q. Yes.
- A. Yeah I might've observed him or passed him in the office area and spoke to him but not in a specific manner.
- Q. Do you recall on one occasion you came into his office with some Department
- 15 of Labour people from Wellington and Mr Rockhouse was going to show you his health and safety systems on the computer?
- A. That may well have been with Mr Booyse and Mr Richard Steele.
- Q. And he wasn't able to do that because there was a problem with the server or the computer, it didn't operate properly, do you remember that?
- 20 A. I do vaguely recall that, yes.
- Q. You did a number of inspections of the mine when Mr Whittall was acting as a mine manager?
- A. Yes.
- 1006
- 25 Q. And Mr Rockhouse didn't accompany you on any of those inspections, did he?
- A. Not that I recall.
- Q. Am I right that you didn't have the opportunity to go into Mr Rockhouse's office?
- A. No, no.
- 30 Q. And sit down with him and chat to him really about health and safety issues?
- A. Would you repeat the question? Are you saying I didn't have the opportunity or I was stopped from doing it?
- Q. No, you didn't have the opportunity to do that.

A. Timing-wise?

Q. Yes.

5 A. You know, by the time you've travelled to the mine and do your visit and return home it's a four day outfit, so you tended to focus on trying to get your underground visit completed as the priority, rather than spend a lot of time on the surface before you go underground.

Q. Yes.

A. So I think from a timing point of view and the limited time that we had, it reduced that opportunity.

10 Q. Because from everything you've told us, you did these proactive visits. It took three or four hours of your time to be underground?

A. Try to.

15 Q. Yes. And carry out your inspections. So was it the case you just didn't have the time to really meet with him and sit down in his office and ask him about were there any issues or problems?

A. We were always under time constraints. Everything we did, we were under time constraints. We had to try and manage our time as best we could.

Q. Because there wasn't a situation where you were able to do that, was there? Go into his office and –

20 A. We didn't do that, no.

Q. Looking back at it now and if you were given more time and resources, do you think that it would be a very important thing to do for an inspector to sit down for a period of time, an hour or two, in a health and safety manager's office and just really talk through any issues that might need to be aired?

25 A. A lot of mines may not have a health and safety officer, so I don't think in specific reference to sitting down with a health and safety officer, I think in terms of a mixture of interactions with the mines that includes some form of formal audited systems, along with some inspections, validating the health and safety systems. If I can add to that, that that is also the prime  
30 responsibility of the employers and the company to do that and I think if we come to the point where all reliance on ensuring our systems are compliant with the law as on a visit from a regulator then our systems aren't working.

1009

Q. By that I mean you've told us you'd often try and seek out the men –

A. I understand what you're saying.

Q. – and the reason I take it was so that you could get another feel for how things were at the company by talking to the men. Is that fair?

5 A. That's correct.

Q. And you also told us you would seek out the health and safety representatives which are the miners that are on the safety committee. Is that right?

A. If they were there and I was able to talk to them, yes.

10 Q. And that's because they were a worker involved in what was happening and had that extra role of health and safety. Is that correct?

A. Yes.

Q. So you wanted to talk to them because they might take up the opportunity to raise any concerns or issues with you?

A. Correct.

15 Q. And again it's no criticism it's - I'm trying to look at other ways to do things. Given that you're dealing with the mine manager or management, carrying out your inspections, do you think another component should be also to be actively engaged with the health and safety manager and sit down with him or her?

20 A. All information that we can gain from anybody on the site is useful and as I say at Pike we have a health and safety manager that - other mines, they don't necessarily have them so specifically if you're saying if I could've spent more time with Neville would that have been helpful, the answer to that would've been likely, yes.

**CROSS-EXAMINATION: MR HAIGH**

25 Q. Mr Poynter I act for Doug White. You had a very open relationship with him?

A. I did.

1012

Q. And you would acknowledge that he was extremely focussed on safety?

30 A. Mr White came from a safety background and my interactions with him, certainly from day one, indicated to me that he had in his mind a strong safety focus, and that's what I've –

Q. Well that's – he demonstrated it?

- A. That's the perception I had initially and there were things that he did that started to demonstrate that, yes.
- Q. Now I want to take you back to April the 8<sup>th</sup> of last year, and your proactive visit to the mine, you recall that?
- 5 A. Yes.
- Q. And I think you went underground with Mr Lerch and Doug White?
- A. Correct.
- Q. Are you aware that at that time Mr Lerch was the statutory mine manager?
- A. I was.
- 10 Q. And you've told us how you expressed concern about the second egress, that is, the Alimak rise as being adequate?
- A. What I said was that I didn't consider that it was –
- Q. A good permanent solution?
- A. A good permanent solution.
- 15 Q. Yes, and I'm quoting you on that from your Insite's record. We can call it up, but I can probably easily just read it out to you. Your finding after that meeting was, and I quote, "Second means of egress exists but not permanent solution. Action plan requested and given onsite, to be monitored." Correct?
- A. On where?
- 20 Q. Onsite.
- A. I wasn't given an action plan.
- Q. No, I'm quoting – do you want to call it up on the computer?
- A. It's all right.
- Q. It ends, "01", the last five numbers, "0155/2". Are you referring to your brief?
- 25 A. The notes that I made on the day, that's a summary note. The notes that I made on the day is, "I raised the second means of egress and was told that this had been raised by the workforce. Second means is up a shaft which is 120 metre climb. I visited the shaft and observed a wire lanyard fitting in the Alimak rise and was informed that this exists in the shaft. People exiting
- 30 through here require a safety harness. Requested a copy of their programme for installing a second intake and emergency lines and safety chamber." I wasn't given that onsite and that's an error in my system. The first plan I got for a secondary means of egress was in November.

- Q. Right. It's not an error on your part because what I read out to you was that, "The action plan was requested and given onsite", which I took to mean the request. You then go on to say, "To be monitored". In any event, you didn't get the plan –
- 5 A. Sorry, I thought you were suggesting that I'd been given the plan.
- Q. No, no, no.
- A. No. Well, I wasn't and – but I did request it. Can I also add, there is no minimum standard.
- Q. No, I appreciate that.
- 10 A. There is no minimum standard and the law talks about sufficient outlets and I did – whilst you could argue that it was an egress, you could climb up it, you could get out the top, very difficult, so – but you could argue in a sense in a Court of law that it was an egress.
- Q. I appreciate all that Mr Poynter, and I think you alluded to that yesterday.
- 15 A. Thank you.
- 1016
- Q. Right, so having visited the mine and viewed the second egress, I think your evidence was yesterday that both Mr White, Mr Lerch and yourself agreed that there was a need for a permanent solution which would be another walkout
- 20 egress, correct?
- A. In April?
- Q. Yes.
- A. Yes.
- Q. So you requested the plan and then in your brief you refer to the fact that there was a letter you wrote to Pike River sometime after the 8<sup>th</sup> of April requesting that plan, but you can't locate that letter, correct?
- 25
- A. That's correct.
- Q. In any event a plan was sent to you but it was the wrong plan, correct?
- A. The only plan I received was the plan or the –
- 30 Q. Emergency response plan?
- A. No, it was a test of the emergency response plan and the actions that were required.
- Q. And as you've recorded, that was not the plan that you'd asked for?

- A. That's correct.
- Q. And I've got here the document where you've told us that you couldn't open the plan or the letter so you wrote back by email to Neville Rockhouse and he sent it to you in a PDF, correct?
- 5 A. Correct.
- Q. And you must have read it and realised it wasn't the plan that you had asked for?
- A. Correct.
- Q. Now you didn't follow that up and presumably because of your workload and the next time it pops it head up is in August, correct?
- 10 A. Correct.
- Q. So in August you visit the mine and go underground for one of your proactive meetings or investigations?
- A. That is correct.
- 15 Q. And you went down underground with Doug White, correct?
- A. Yes.
- Q. And you both view on that occasion the Alimak rise and stood below or round about the ventilation shaft?
- A. Thereabouts.
- 20 Q. And you would agree that you followed up effectively what you'd said in April namely that it wasn't a permanent solution but it was adequate?
- A. No, I never ever said it was adequate.
- Q. All right, well do you agree you used the words it met the minimum standard, words like that?
- 25 A. My view was that it was an egress but it wasn't adequate.
- Q. No, I hear what you say, but do you agree that you told Mr White that in the circumstances it met the minimum requirement –
- A. I never told Mr White it met –
- Q. Just wait please, that you told him that it met the minimum requirement of –
- 30 A. I did not tell Mr White it met the minimum requirements.
- Q. We'll get along a lot easier if you just wait until I finish the question please.
- A. Okay sir.



Q. You really have answered it in any event. So you say you never said to him that it met the minimum requirements?

A. No I didn't.

5 Q. I've spoken to him overnight and his evidence will be that you did say that, so do you say he's got it wrong?

A. What I'm saying is, he's misinterpreted what I have said at the site. My view has always been that in a legal challenge, the way the legislation was written, it could stand up as being a second means of egress, but it wasn't adequate for the plan of the mine. They had no other immediate solution and whatever  
10 solution was decided on was going to take time and it was always going to take time for the mine to be able to drive another means of egress.

Q. Right.

A. And what I was really trying to work through with Mr White and he agreed with me all the way through, that the second means of egress was required, was to  
15 get at that stage to get a plan and a timeline so that I had something that I could, in concrete, that we could actually work at.

Q. I understand. So what do you say you did tell him, just in general terms that this will do until we get a permanent solution? It's difficult to recall and I'm not being critical, I just need to know if you can clarify what was said.

20 A. I don't believe I ever said that it was adequate otherwise I wouldn't have been asking repeatedly for another means of egress and at no stage did Mr White, Mr Lerch or indeed any of the management team I spoke to suggest to me that it was adequate, that they needed to put in another one. There was no other immediate solution to the problem.

25 1021

Q. So you don't accept that you said words to the effect, "It meets the minimum requirement?"

A. I don't.

30 Q. Now Neville Rockhouse gave evidence to the Commission that once Mr White came back from that August meeting he asked what the inspector's view was of the second, of the Alimak rise as a second egress and that Mr White said that you believed that it met the minimum standards in the interim?

A. I wasn't party to that conversation and I can't –

Q. All right, well can we have a look at your Insite record for that meeting and would you like to have that pulled up on the computer, or perhaps it may help?

A. Got it.

Q. Ms Basher can you call it up thanks, DOL3000070169/3. Do you recognise  
5 that Mr Poynter as being your Insite report dated the 12<sup>th</sup> of August?

**WITNESS REFERRED TO DOCUMENT DOL3000070169/3**

A. It is, sir.

Q. And can we focus please Ms Basher on paragraph 4 and so we can see there  
10 it reads, "The existing second egress is through the shaft. This allows the  
evacuation of employees one at a time up the ladderway. While this meets the  
minimum requirement, it is agreed that a new egress should be established as  
soon as possible." That's what you wrote?

A. I accept that's what I wrote and I explained that in my brief of evidence. The  
15 discussion that I recall having with Mr White was around about was it  
adequate? Because there's no minimum standard. I do not believe –

Q. Why did you write, "This meets the minimum requirement"?

A. Well, I don't believe that we had a discussion as to whether it met the minimum  
requirement.

Q. So how did that come to be in your report?

20 A. It's a word that was used in a internal report for myself. It's an unfortunate  
word. It's not what I meant.

Q. All right, well then you wrote to Mr White on 31 August, again following on from  
that meeting and this is DOL3000070170/1, please Ms Basher. This also was  
put to you yesterday but I just want to ask a couple of questions.

25 **WITNESS REFERRED TO DOCUMENT DOL3000070170/1**

1025

Q. At paragraph 4 please, if you could enhance that? Sorry, I've given you the  
wrong, is that 0170/1? That's the last five digits. It's 33B. If you could  
enhance paragraph 4 please and this is your letter to Mr White following the  
30 visit and it reads, "Given the plans for the commencement of co-extraction in  
the increased mine personnel population underground it is agreed that the  
existing second egress should be enhanced by the completion of another

egress as soon as possible. Please provide a plan and a timeline for this work." Correct?

A. Correct.

5 Q. And I'm sorry I know you were asked this yesterday but I've forgotten what your answer was. What did you mean by enhanced?

A. There needed to be another second egress.

Q. No reference there to it not meeting the minimum requirements, is it?

A. No there isn't any mention there about not being adequate.

10 Q. And then after the November the 2<sup>nd</sup> meeting, the site meeting or during the course of the site meeting, you were given the plan which you'd actually been asking for I think since April?

15 A. That's correct. On the exit from the mine Steve Ellis retrieved the plan off Mr White's desk and handed it to me. I had a very brief discussion with Mr Borichevsky about where they were at with the design of the rescue chamber and I exited the site.

Q. Now that's not a long report and I won't get it pulled up, you remember it. Would you like to have another –

A. No, it's not a long report.

20 Q. It's two pages and there's attached to it some drawings of a proposed second walkout egress. When did you read that for the first time?

A. When I returned to my office.

Q. And you've told us that you formed the view that it wasn't sufficient and you wanted the second egress to be completed before the first hydro panel went into production?

25 A. I see when I looked at the plan I noted that the timing of the completion of the second egress was about the same time as the plan commencement of the first full extraction panel at Pike. That concerned me that there would be conflicting priorities and I wanted to, at some stage I was going to go back and see Doug and sit down and firm up on the plan and see exactly what the benchmarks were going forward.

30

Q. And so did you regard this second egress issue as a priority?

A. I did regard it as a priority prior to any further extraction.

Q. And something you'd want to deal with promptly?

A. Yes.

Q. Well have you got your brief of evidence there? Paragraph 283 please?

**WITNESS REFERRED TO BRIEF OF EVIDENCE PARAGRAPH 283**

A. Yes.

5 Q. Now it seems from that and the following three paragraphs down to 286 that following your receipt of the plan on the 2<sup>nd</sup> of November you wrote to Mr White on the 3<sup>rd</sup> of November on another issue, you wrote to him on the 4<sup>th</sup> of November on another issue and on the 8<sup>th</sup> of November you wrote to Mr White again on another issue, correct?

10 A. That is correct.

Q. And none of those letters contained any concerns about the plan for the second egress, the second walkout egress, correct?

A. That's correct.

1030

15 Q. If it was of such high priority, and I appreciate you had a lot on your plate and you were unhappy about the plan, why didn't you indicate that to Mr White in one of those letters over the next three or four days?

A. It would've taken me some time, even though it was a short report, to formulate a view and formulate a plan to work through in my own mind with Mr White on  
20 how we were going to achieve the outcome. You won't know this, but in that period in November, I was required by the Department to be a first response person at a fatality on a farm, so in addition to trying to do what I was doing here with my mining responsibilities I was also dealing with issues around a fatality on a farm, and it took me away from my work, and yes, I followed up on  
25 those two things, and I hadn't followed up on the completion timeline of the second egress, but it was in my plan to do so. Aside from that, I had no doubt that from the discussions we were having that it was a plan and that was Mr White was committed to.

Q. Yes, but it's your criticism or concerns about the plan which I've asked you  
30 about. Would it be fair to say that this is just an after-thought by you?

A. I think that's an unfair suggestion, sir.

**CROSS-EXAMINATION: MR RAYMOND**

Q. Mr Poynter, I want to ask you initially please about the mine steering group that you were a member of, and perhaps Ms Basher, if you could pull up first, DOL0020020011/1?

**5 WITNESS REFERRED TO DOCUMENT DOL0020020011/1**

Q. The group was established, as we can see there in line 2 in 2006, and aimed to meet quarterly. Did it meet quarterly during the time that you were involved?

A. Intermittently rather than quarterly.

Q. And its membership as per the third paragraph is made up of mines inspectors,  
10 the senior advisor and relevant operational managers?

A. Yes.

Q. Did that change?

A. No, not to my knowledge, there was only two mines inspectors, which was myself and Michael, but...

15 Q. And did you feel that the group, the membership of that group, was the right collection of individuals to form a mines steering group?

A. I've long held the view, sir, and I've expressed it on a number of occasions while I was with the Department, both within the Department and also externally, people that I respected in industry such as Mr Bell, that the mining –  
20 that we needed to be working in a structure under a chief inspector. I didn't believe the control by a steering group was an appropriate way to be controlled. From our point of view, we were the two technical people at any of those meetings and the rest of the people at those meetings were departmental people at various levels.

25 Q. When you say, "control", was this steering group actually controlling the conduct of the inspectors or was it offering guidance and support?

A. It was designed to offer guidance and support, but it had some control in that it determined, or finally determined what our actions were going to be for the year. They formulated the mining.

30 1035

Q. The role is set out there in this document I put up. I won't read it, but can you just go through those five bullet points and confirm that that was your understanding of the role?

A. Look sir, I'm not 100% sure of the purpose, it was in existence when I started.

Q. Okay.

A. And I don't recall going through this document.

5 Q. I want to take you to some minutes of those meeting to illustrate what was discussed over the years from when you became involved until virtually up to the date of the explosion of Pike River. The first document Ms Basher is the same number but ending with /20. So first of all just to familiarise yourself with this document Mr Poynter, it's the minutes of the Steering Group meeting 10 July 2009 in Christchurch and you'll see that you were an attendee at that meeting?

10 A. Yes.

15 Q. Now you discussed a range of issues at these meetings and I'm not going to go through all of them but there's a couple of topics which seem to crop up at virtually every meeting through to September 2010 which I want to draw your attention to. So firstly Ms Basher on the page ending 21 under the subheading, "Business plan," if we can focus on the second, third and fourth paragraphs. So firstly, agreement was reached at this meeting in July 2009 that you'd follow the American standards and the Queensland standards of visiting underground sites every three months. Do you recall that?

20 A. I recall this, yes.

Q. You mentioned yesterday in your evidence that in Queensland the inspections of underground coal mines was monthly and in some cases even more than that if it was high risk mine, do you recall that yesterday?

A. I did.

25 Q. Which is it? Three months as per this document or monthly in Queensland? Do you know?

A. I don't know.

Q. But in any event, from that date you had all agreed that three monthly for New Zealand was going to be adequate within the resources you had?

30 A. I'm not sure whether we all agreed.

Q. Did you disagree?

A. We have often been in a position where we disagreed with Mining Steering Group, but have had to follow the outcomes.

Q. When you say, 'we,' do you mean you and Mr Firmin?

A. Oh myself and Mr Firmin.

Q. So the second item then which I draw your attention to are questions being asked about a third inspector being appointed. Do you see that?

5 A. Yes.

Q. And funding had been available for John Walrond is it?

A. John Walrond yes.

Q. Walrond, and where had this funding now been placed. So it was a recurring topic as we'll see about the third inspector coming on board? It's something  
10 that you were pushing for?

A. Absolutely. Personally I thought we needed four.

Q. And the third point there under this business plan is that you had pointed out, "KP," I assume being you that, "In Tasmania before the Beaconfield accident, the chief inspector of mines had written to his Minister stating he was not in a  
15 position to provide an adequate inspection service with the resources at his disposal." Was the purpose of you raising that with the Mine Steering Group to illustrate that you did not believe you had adequate inspectors to provide the service required of you?

A. That is correct.

20 Q. And was there sympathy for that view amongst the Steering Group?

A. The discussion was around, it ended up being around the funding and where the funding had disappeared and they'd have to re-justify the position, and so on one hand, there was like an acceptance that yes we need to get a third one but we don't have the funding and how are we going to get the funding, and so  
25 I think there was an acceptance that we needed the third one, but somewhere in that process there seemed to be an issue more about where they're getting the funding.

1040

Q. The fourth point Ms Basher is the next paragraph, if you could highlight that  
30 please, where it's recorded here at least that, "There was agreement that there was a risk that adequate inspection and other services could not be maintained with the personnel available." So there was at least agreement on that?

A. There was.

- Q. And that was in July 2009. Did that view change amongst the group?
- A. It certainly never changed for myself and Mr Firmin.
- Q. And then the fifth point I draw to your attention, Ms Basher, under the subheading, "Human resources," on that page, the problems of how to address the required inspections, given the resources of the Department of Labour were discussed, see that? First line.
- 5 A. First line?
- Q. Yes.
- A. Yes.
- 10 Q. Was there a solution to that problem, given that there was only two of you doing all the tunnels, quarries and mines? Or was it just make-do?
- A. What date is this one?
- Q. The same date, same meeting.
- A. Okay.
- 15 Q. We're still on 10 July 2009.
- A. There was a solution with respect to the quarries. I didn't think it took place until 2010 though, but other than that, it was, for my part, it was business as usual and we just had to get on with the job as best we could.
- Q. Ms Basher, /23 please, under the heading, "Inspections," if you could highlight inspections please? It's recorded again as previously discussed, "Inspections every three months," and you and Mr Firmin, "Should conduct joint inspections once per year to ensure the same standards and advice is being applied and familiarise with operation, in case called to an incident." Do you recall that discussion?
- 20 A. I do recall that discussion.
- Q. Did that happen? Did you and Mr Firmin, after this meeting –
- A. No we didn't.
- Q. Sorry?
- A. We didn't. It was –
- 30 Q. Why is that?
- A. Probably a funding issue from – it wasn't able to be organised.
- Q. Was that a –
- A. It was quite difficult to organise a visit.



Q. Sorry?

A. It was quite difficult to actually organise a visit outside of our own areas and whilst – my team leader was – whilst I had less difficulty with Mike, I had more difficulty with some of the funding issues, so both with the timing issues that we  
5 both had, trying to fit in all the inspections, we just couldn't seem to get the approval to do joint visits.

Q. So it was a funding issue and also a logistics issue? Or was it primarily a funding issue?

A. Well, I think it was primarily a funding issue and logistics, but it's difficult. I  
10 can't give you an answer because those joint visits didn't occur because Michael and I didn't try to do them.

Q. They didn't occur because you didn't try to do them?

A. That's right.

Q. Is that –

A. We attempted to have joint visits, but they weren't able to be done for differing  
15 reasons.

Q. Okay. Ms Basher, the next page please, /24, the bottom of that page, under  
the heading, "Inspectors' development," there was a discussion about  
continuing to improve your education or training in the four items there, "Rock  
20 mechanics, risk assessment in mining, tunnel boring and explosives." Do you remember that discussion?

A. I remember that discussion. We also discussed other items such as ventilation  
update, which was something I was very keen to do.

Q. And which of those four items did actually eventuate before you left the  
25 inspectorate?

A. I think that in 2009, Michael got to go on the risk assessment and mining  
course.

Q. We'll come to that. You didn't do it and none of these other courses were  
made available to you?

A. No.

1045

Q. On top of the next page Ms Basher, /25 and we'll come back to this later in my  
questioning Mr Poynter but do you have or it's recorded here in these minutes,

“Audit tools were also discussed. Such tools were seen as valuable for inspectors and clients for auditing operations?”

A. Correct.

5 Q. That was a view shared by all of the group or was it being pushed by you and Mr Firmin?

A. It was a view that was shared by myself and Michael.

Q. And again was the balance of the group sympathetic to that request?

A. There would've been members within the group that were sympathetic, yes.

10 Q. Did you feel other than this steering group that you had any other voice for getting these sorts of things made available to you or was the steering group the limit of your communication with the more senior?

A. The reality was, apart from our team leader and our regional manager, the steering group was the one place we were able to air the issues that we were coming up against.

15 Q. Now rather than take you to the next two meetings which I have the minutes of in December 2009 and March 2010 you would agree, I take it, that the same sorts of issues which we've just gone through were discussed at those meetings?

A. I would agree.

20 Q. And again as each three or four months went by little progress seemed to be made on the items that we've just discussed. There was no real advancement on training, no real advancement on the third inspector, in fact none. Professional development stagnated, there was always discussion about what to do with plans and where they should be stored or what use you should make of them. You recall that?

25

A. Yeah, there was a lot of discussions about plans.

Q. And as at 31 March it's recorded and I can take you to it but it's there in the minutes. “Still no action about a new inspector, Mike was requesting additional training and so on.” Do you agree with that?

30 A. I'd agree with that.

Q. Ms Basher if I could just take you briefly please to /18 of this bundle of minutes. It's a meeting on 10 December 2009 and again you'll see that you were present. At page 19 Ms Basher under the heading mine inspector

vacancy, /19, there's a reference to the mine inspector vacancy and the inspectors being at risk, particularly with underground mining. Do you see in the second sentence, "We are at risk, particularly with both underground mining and quarrying." Can you expand on that please Mr Poynter?

5 A. It's just the, it's about the whole process that I was trying to explain over the last two days where as two individuals trying to do everything we could to get to as many places as we could that we felt we needed to try and get to. So the whole thing was about trying to provide an adequate service and with two people, we were just unable to get around all of the mines.

10 Q. The risk you're referring to though, is that risk in the industry because you are unable to do your job to the level that you would've liked or risk to yourselves as inspectors as being essentially exposed to the sort of scrutiny you're being exposed to now?

15 A. At the time it was more about the risk within the industry and the fact that we were doing, the least visits we do the least likely it is you're going to pick up a non-compliant event. Subsequent to this event occurring and subject to some of the reviews that I have been subject to, it was clear there was a risk to Michael and I as well.

20 Q. Ms Basher if we could go please to /11 and these are the minutes of 31 March 2010 Mr Poynter where you were present and the top paragraph if that could be highlighted please? "Kevin highlighted a problem with mines access at "blank" and advised that in the meantime he'd allowed the small mine to operate without a second means of egress as it wasn't practicable for the company to install secondary access. He asked for the groups view of his  
25 decision." What mine was that?

1050

A. It was a small gold mine in the North Island.

Q. So definitely not Pike River that you were talking about?

A. No.

30 Q. This is the gold mine that you were talking about yesterday in your evidence?

A. Correct.

Q. And you had a discussion with the group. Was that around regulation 23 and the difficulties with the interpretation of that section?

A. It was.

Q. And yesterday you said that this lack of a second means of egress had been in existence for 10 years, is that right?

A. Around about 10 years at this mine, yes.

5 Q. Do you think that with that issue, which was clearly taxing you such that you discussed it with your colleagues and with the issue that you were the next month to confront at Pike River when you had your April visit, that it might've been prudent to indeed take the step towards having clarification or legal input around the interpretation of regulation 23?

10 A. Well, we did take that step as part of the process of this discussion, a scenario was sent through our legal people to ask them for an interpretation on whether or not all practicable steps meant that you could have one egress and take a whole lot of practicable steps and would that comply, but we never got a definitive answer from our legal branch.

15 Q. Did you give the specifics of the Pike River scenario to your legal branch, or was it a general enquiry?

A. No, I didn't because there was a lot of work going on with this small gold mine. There was a determination finally made in August to issue an improvement notice at this mine which was immediately challenged and then a whole legal process was underway, at the same time as I was dealing with the issues with Pike, I did have a discussion with Johan Booyse. Johan's view would be that in effect that the law that we had that we were working with is flawed and what we should be requiring people as they do in their country, is to have two means of egress in fresh air, because a means of egress in a return is always going to create a risk.

20

25

Q. Okay, so that discussion was being had in the early part of 2010, certainly at this meeting in March 2010?

A. Yes.

Q. Did you and Mr Booyse consider what proactive steps you could take to ensure that that change was made, so that you clarified the regulation?

30

A. Apart from asking the question of our legal branch and getting back a reply that really didn't give us the answer, we hadn't taken that any further with anybody else, no.

- Q. And finally on this sequence, I'll just take you to the last minutes, /2 Ms Basher, 13 September 2010, so not long before the explosion, and almost a couple of years after the – well, not quite, just over a year or so after the meeting we started with. You'll see on page 1, still the discussion about storage of mine plans and concern or ambiguity about the reasons you received those plans, is that right?
- 5
- A. The question was asked, we receive mine plans that, on a six-monthly and 12-monthly basis, and the question was raised, you know, why do we receive them, what are we going to do with them, you know, and what's our legal responsibility when we receive a mine plan? Is it for information purposes? Is it for us to actually go through and do a review and see if there are any fundamental issues within the plan that need to be addressed? If that was the case, then there were other things that you would want to have on the plan that weren't required to be on the plan, so there was a discussion around that and seeking some legal, or some clarity around exactly what it is as an inspector I am supposed to do when I receive one of these plans.
- 10
- 15
- Q. Was it of concern to you Mr Poynter generally that this far into your role, and Mr Firmin having done it a number of years before you, that amongst this steering group at the senior level there was still clearly confusion about what you were to do with something as fundamental as mining plans?
- 20
- A. Yes there was concern for me.
- 1055
- Q. If you could look at the next page please, Ms Basher /3, the sixth bullet point down there is again as late as September 2010 questions being raised about how often you will visit the mines whereas I thought that that had been sorted back in July the previous year? Was there still confusion about that?
- 25
- A. I don't think there was confusion. I think the question was about what we were going to do in 2010/2011. There was certainly no confusion on mine and Michael's part.
- 30
- Q. Okay. And the next bullet point, "What does the operational policy mean for deployment of our resources?" Can you expand on what that's a reference to?
- A. I can't actually because I don't know what that discussion was about. I think there was some operational policy changes going on and there was some

structural changes going on and I think as best I can remember is that it was about –

5 Q. Ms Basher /5 please, second bullet point, there's still discussion about the workload of the current inspectors, still only you and Mr Firmin as we know, "To be included once frequency of underground visits has been established." So you just said that in your mind and Mr Firmin's mind you knew what your plan was but the Mine Steering Group still seemed to be suggesting that that is yet to be established, is that right?

10 A. It appears so from the minutes of this meeting, yes. I don't recall that from the meeting.

Q. It suggests a disconnect between Mr Firmin and yourself and the balance of the group about what was required of you and what was understood to be your role at that time doesn't it?

A. It does appear that way.

15 Q. Ms Basher /7 under the heading, "Certificate of competence," if that could be highlighted please. Now you have in your evidence already talked about your concerns about competence and here this paragraph refers to changing the criteria for certificate of competence would involve a regulatory change and it implies a lengthy process to convince the Minister to change the regulations. 20 This seems similar in nature to the regulation 23 issue, that on some of these matters it just all seemed a bit too hard to make progress and make change where that was necessary?

A. It seemed extremely difficult from the position that we were at, which was really as a health and safety inspector and that's the level that we were looked at. 25 There are many layers of management between us and policy and senior management and trying to push these issues beyond our Mine Steering Group was very difficult.

Q. That's all on those minutes. If we could turn to another topic about your inspections and you have given a lot of evidence about that already which we 30 don't need to traverse again other than unannounced visits or impromptu visits generally. You have said in your evidence that you found it valuable to have the mine manger present and therefore pre-arrange visits, correct?

A. That's correct.

Q. Do you see the value in unannounced visits which to a layperson seems obvious, which we can go through those things but what's your view on that?

A. My view is that unannounced visits would be extremely useful and I've already attended one since I've been in Australia. I found it extremely useful. I went  
5 with a fellow inspector as part of my training and induction I guess and we went to a mine site and arrived there at 6.40 at night on a Saturday evening and it wasn't a proactive inspection, it was actually a response to a mine worker complaint.

1100

10 A. So it was a good process to go through and I thought it was extremely valuable and there were a number of issues that were identified on that visit that are being dealt with now. So, from the point of view that we had limited time, limited visits and the point of view that it was better to have access to the people that could make the change if you're finding something wrong, and the  
15 fact that our general approach was voluntary compliance, it was much easier to go through an announced visit, rather than unannounced. We didn't specifically develop a plan to say we're never going to do unannounced visits, but it just hadn't featured in the plan. Having had the discussion about unannounced and being on an unannounced visit, I think they can prove to be  
20 a very valuable tool.

Q. And one of the reasons for that would be that you'd get an insight into the mine without an interviewer or a manager or a deputy, whomever saying -

A. Not necessarily, because in Australia they have – sorry.

Q. I'm not sure if you're pre-empting my question but there's no opportunity at that  
25 morning meeting to say, "Mr Poynter's coming, Mr Firmin's coming. Tidy up the hoses"?

A. True.

Q. "Put away the rubbish. Make sure that you've got your sensors on your belt." Whatever it might be?

30 A. Yeah.

Q. A cynical view would be that human nature, such as it is, that that will inevitably happen when they know that you're coming. Would you agree with that?

A. That could happen.

Q. With your experience in Queensland, which I know is in its early stages and with the experience you've had so far, coupled with what you've heard Mr Firmin say about unannounced visits, it's something that you would  
5 commend to this Commission as a positive step in the future?

A. Yes. It would be.

Q. When you took responsibility for Pike River over from Mr Firmin, you discussed in your evidence a handover and you went to the mine on that day with Mr Firmin, I think it was in May 2008, thereabouts? Is that correct?

10 A. That's correct.

Q. And you didn't go underground though on that occasion. You went to the washery?

A. That's correct.

Q. So you hadn't been into the workings of the mine with the previous inspector to  
15 have essentially a test run, see how he does it and look at the processes?

A. Not in that particular mine, no, but we did go underground at Spring Creek. At that stage, the mine was still in the tunnelling development phase, so it was basically a tunnel with some of the development of the coal sump area.

Q. So you didn't see much value in just walking to the end of a tunnel and back  
20 out again?

A. We probably could have done that and there might have been value in it but the process, we were visiting a number of mines over a week, which was probably Mike was allocated time to do this with me and so we were trying to get to as many as possible.

25 Q. Now, Mr Firmin would've told you as you visited the mine and you drove there together no doubt, and left, about what his views were on Pike River and his approach to inspections at the mine?

A. We had a discussion around some of those things, yes.

Q. And you said in your evidence yesterday that you were told, presumably by  
30 Mr Firmin that the managers there were, "Reasonably competent," and they tried to adhere to best practice. Do you remember that evidence you gave?

A. Yes.

Q. So was it Mr Firmin who told you that?



A. Probably.

Q. It seems logical, no-one was going to pass that on to you, were they, in that context?

5 A. There's – I mean you've been in the mining industry for 30 years, in and around the Coast, that you also get information from other people that suggest those things.

Q. Do you think that view that was passed to you tainted the manner in which you approached Pike River and you went in there with preconceived views?

A. I'd like to think that it didn't.

10 1105

Q. Would you accept, is it –

15 A. I like to make my own assessments of things. Nothing I saw certainly in the early phases indicated to me that in general we were following the, in general they were responsive when we raised issues so the general philosophy that I was being encouraged by the Department of voluntary compliance seemed appropriate.

20 Q. Well we might come back and test your view on that with what you know now. Before we do that, just generally on safety culture at Pike River, you I think have probably accepted this already in your questioning from Mr Wilding but is it the case that you now accept that with such infrequent visits and without auditing and without the sort of discussions that Mr Rapley was asking you about with someone like Mr Rockhouse and all those things that we've discussed, that it's very difficult, if not impossible for an inspector such as yourself to really get under the skin of an organisation and understand the  
25 underlying health and safety culture?

A. I've accepted that.

Q. Have you read Ms Kathleen Callaghan's evidence filed for this Commission?

A. No I haven't.

Q. You haven't?

30 A. I haven't, no. I've read a lot submissions but I haven't had the chance to read that.

Q. She in her evidence discusses something called human factors theory. Have you heard about that, human factors?

A. We spent a bit of time talking about human factors when we do the G-MOON course which is the risk assessment course and spent a bit of time looking at human factor analysis and failure analysis so I'm now aware of it, yes.

Q. Is that since you've been in Queensland that you've become aware of it?

5 A. Yes.

Q. So you weren't aware of it at the time that you were carrying out inspections at Pike River. Is that right?

A. That's correct.

10 Q. And from what you understand of it now you would agree that the aim of human factors as a scientific approach is to understand and improve competence and safety at work and it addresses key questions, doesn't it, about why the seemingly smart people who presumably care about their own safety keep on making the same mistakes. Why don't people do the right thing, why do the same mistakes keep happening. It's an understanding of why that might be, is that right?

15

A. That's correct.

Q. Do you feel now with the benefit of hindsight that had you known about human factors, the scientific approach, that it might've assisted you in the manner in which you approached your inspection duties as an underground mine inspector?

20

A. I accept with the benefit of hindsight that there were other ways I could've managed some of the issues that I was confronted with at Pike River. That's not to say necessarily that taking an alleged sort of, or a prescriptive approach with a lot of improvement notices et cetera would necessarily make the changes that might've prevented what happened here. However, it does seem to me that given the knowledge that I have as a result of the enquiry and with what I was presented with yesterday, that an alternative approach may have been more beneficial.

25

Q. In terms of recognising repetitious incidents and seeing a developing pattern emerge in an organisation and in particularly here at Pike River, do you feel that with the resources you had and the time you had that there was any ability for you to be able to pick up on a pattern of repeat poor health and safety process?

30

- A. I think to pick a pattern up you have to actually have access to not only the accidents that have caused harm or serious harm which is what we got reported, you have to have the near misses, the high potential incidents that occur in a mine so that you're able to put those into some sort of database and analyse and try to determine if that in fact is the case.
- 5
- Q. It's very hard, isn't it, to just have a couple of Eastlight folders of documents of incident registers?
- A. It is.
- Q. And hazard reports and try and discern a pattern?
- 10 A. It is.
- Q. You'd agree that you need it to be done with a software package and you can punch in keywords and see what the incident pattern is before you can make any sense of it?
- A. Yes.
- 15 Q. Would you agree with that?
- A. I'd agree with that.
- 1110
- Q. Is that something which takes place in your work now in Queensland?
- A. I'm not sure of exactly how the data is collated and distributed, but there are some very good monthly reports that come out of our office in Brisbane that gives a picture of at least what is happening in the industry and what the primary issues are that the industry's facing. I'm not sure whether, or if we're doing internal other analysis on the basis of looking at a mine and looking at all the incidents that are occurring at a mine and then trying to do some analysis.
- 20
- 25 That may be going on, but I don't know.
- Q. And in terms of you looking at incident books or things of that nature, you've acknowledged that the information sent to you, I think in January 2010 by Mr Couchman, you didn't read? Is that right?
- A. I didn't, no.
- 30 Q. In the Gunningham and Neal report, at page 384, there is a reference to the incident books and this is said by the authors of that report, "Although most incidents reported in this fashion were slips, trips and falls, which did not merit major attention, the perusal of the incident book nevertheless might provide

them with insights as to which aspects of safety management had not been satisfactorily developed. Mr Firmin indicated at interview that they” – presumably you as well – “examined the incident book on a regular basis for precisely this purpose.” It’s simply incorrect insofar as you’re concerned, isn’t it?

5

A. No, it’s not.

Q. It’s not correct?

A. I haven’t – I didn’t make a general purpose, or I didn’t generally go and look at incident books. In fact with the bigger mines they don’t have incident books, they have computerised systems, so it’s really a case of asking them to provide you with the printouts.

10

Q. But that passage which I’ve just read to you is wrong, isn’t it?

A. Well, Michael said, “we”, I’m not sure what that meant. At some of the smaller mines, sir, they have a small book with the incidents record in it and we might, I might look at those, but –

15

Q. Yes, but that report was specifically in relation to Pike River.

A. Okay.

Q. And that you and Mr Firmin regularly received and perused the incident book.

A. No.

20

Q. You’re saying no to that. Okay. Now, Mr Poynter, you have given evidence about the considerable pressure that you were under and we all understand that, and the workload issues which compounded and you couldn’t take on more work, and I don’t think there would be a person in this room that’s criticising you for the situation that you found yourself in, but if you were able to view the situation objectively and with the benefit of hindsight now, do you think that that pressure which was accumulating on you, day in/day out, led to you potentially compromising on the decisions that you were making in relation to your underground inspections and in particular, Pike River?

25

A. I think, the pressure would create the situation where you may start prioritising what you were going to do or what you’re going to investigate, so if you’re having a particularly difficult time, or a lot of work on, you may well instead of following up, or investigating a particular accident, you might ask a mine to

30

investigate that accident, because priority-wise you're not going to be able to get there to do it. So, in that way, I think it could have an impact.

1115

5 Q. To perhaps illustrate that point you said in your evidence at paragraph 102 to 104 that I think it was Mr - well I can't remember the mine manager but it was, "3 February 2009 the vent shaft collapsed and it's a notifiable incident and you were advised of it." You recall that?

A. (no audible answer 11:15:16)

10 Q. And it's notifiable no doubt because its important, ventilation is key and that you'd be expected in normal circumstances properly resourced, to respond to that as quickly as possible, inspect the scene, speak to those involved and make sure that corrective measures were put in place, is that fair?

15 A. I did go the next day that I was advised to it, and went down the shaft, inspected it from the top. I didn't, because of the difficulty of getting to the top of the shaft, we didn't go underground. I talked to the managers' onsite about what was going on underground, but didn't visit underground. So I did respond but I didn't –

Q. I'm not sure you've got that sequence right Mr Poynter, at least according to your signed brief. The paragraph 102, if you'd like to refer to it.

20 **WITNESS REFERRED TO PARAGRAPH 102**

Q. It was Kobus Louw who called you on 3 February, informed you of the incident and in paragraph 104 page 20 you say, "On 12 February I visited the Pike mine."

A. That's right.

25 Q. So it's a full nine days later.

A. Sorry, no you're right. I didn't immediately respond but I did respond.

30 Q. Yes. The point I'm making though as I'm sure you see Mr Poynter about the potential to compromise when you were under resourced and under pressure is highlighted by that example isn't it? You would have preferred and in best practice you would have attended as you just said that you thought you did the next day, not nine days later? Is that right?

A. Oh I would've preferred to have been able to respond faster, yes.

Q. Now we've heard – I've mentioned the plans that the Department received. To what extent did you study the mine plan for Pike River and gain an appreciation of what was intended with which panels were to be extracted first?

5 A. Is this the plan I received on the 2<sup>nd</sup>?

Q. I'm just asking generally.

A. Generally?

Q. What extent did you familiarise yourself with Pike River's mining plan?

A. It was changing on a very regular basis so the last plans that I'd received was, 10 I think, in May 2010. I had no other plans from that date and the plans that I had in May 2010 were different from what the plan was as it existed in 2011 – in November. There'd been a number of changes.

Q. Well we know that attention was redirected to what became known as the, 15 "Bridging panel," which was the panel where the hydro-monitor was and the goaf was at the time of the explosion?

A. Yes.

Q. Did you consider or discuss with anyone from Pike River or have any concerns 20 about the fact that that bridging panel was being mined with the hydro-monitor in a location which was close to the working headings, close to the vent shaft and therefore the underground motor, close to pit bottom in coal where the electrics were. Was that a topic that you discussed?

A. No it wasn't.

Q. Is it – I know you said yesterday you haven't had hydro-monitoring experience 25 yourself directly for some 20 years or so, but obviously familiar with it in the industry.

A. I'm familiar with some of the...

Q. Of course. Was it of concern to you that that work, which we know can be 30 problematic was being brought so close to the workings of the mine, the headings and motors and such ahead of what was originally scheduled?

A. It's really hard to think about this given what's occurred.

1120

Q. Yes.

- 5 A. I'm trying to think about it in hindsight, without the benefit of hindsight. I felt that as it was described to me as a test panel, it's been called in here a bridging panel. I'm not sure where that name comes from but it was always called a test panel, when it was first described to me, as a panel to prove up the equipment they had, the guzzler and the monitor arrangement they had which was different to Spring Creek's. Provided they were able to manage the risks, then it didn't particularly concern me where the position was.
- 10 Q. There will be evidence as I understand it that it would've been preferable to have had that test panel as you call it or that bridging panel at a greater distance from where it was. Would you agree with that?
- A. I'm aware that there is expert evidence to say that.
- Q. Is that a view that you would share?
- A. With the benefit of hindsight, yes.
- 15 Q. Okay, and just moving to another topic and it's one that you will be getting sick of but one that you will appreciate from the families' perspective is a particular concern to them, and it's the second means of egress. My friend, Mr Haigh has asked you number of questions on that this morning, so I can short-circuit some of it. When you first went there in April 2010, you said that you were aware, and I think your notes reflect that this issue had been raised by the workforce, is that right?
- 20 A. Correct.
- Q. Was that raised directly with you?
- A. Not directly with me. It was part of a discussion I had underground. I'm not sure whether it was Doug or Mick Lerch that might have told me.
- 25 Q. And can you expand on what that concern was?
- A. Only that they were concerned that as an egress it wasn't suitable.
- Q. An egress was reasonably at the forefront of your mind, given the discussion you'd just had in March about the other mines?
- A. Correct.
- 30 Q. You said as at April, part of the plan was to use the shaft as a second means of egress so it effectively it was an interim solution. You all agreed that long-term, something better had to be done. Is that a fair summary?
- A. Correct.

Q. The concern that you'd appreciate the families have is what about the interim? What about that period before the second means of egress was drilled? Where were the men to go then in the event of an emergency which blocked the primary egress?

5 1123

A. The one risk that the second means of egress and the return up the shaft, the only risk that that covered off was if the main intake airway got blocked for some reason. The event of an underground fire or spontaneous combustion event or an explosion, the vent shaft would've been the venting for the...

10 Q. For the fumes and the fire and the smoke and so on. That's the point though isn't Mr Poynter. If there was an explosion, if there was a fire and if there was a blockage, there was no second means of egress, was there?

A. No there was not.

Q. When –

15 A. If you are asking and the benefit of hindsight, it would've been better to have used enforcement action through the process that may well be the case. The focus I had was trying to get a solution and the solution was to get the company to voluntarily put in that second means of egress. It was always going to take time.

20 Q. Again you will see the glaring problem with that, is that this interim period is entirely unsatisfactory for the families now when the men had no second means of egress from when you visited in April until the time of the explosion. Waiting for a drive to be put through, it's not satisfactory, was it?

A. No.

25 Q. When you visited it in April 2008 you saw the lanyard wire and you recognised and it was discussed that a safety harness would be required if men were to go up the egress, correct?

A. Correct.

Q. Did you see any safety harnesses at the foot of the shaft?

30 A. No.

Q. Were you aware that any were readily available?

A. No I wasn't.



Q. Have you heard the evidence from Mr Rockhouse that there were in fact only eight harnesses, four of which were kept in the engineering department to service the shaft and four in his office?

A. I'm aware of that evidence now.

5 Q. Again and I'm not intending to be critical but the sort of discussion that Mr Rapley was referring to before about meeting a health and safety manager like Mr Rockhouse might've revealed that problem?

A. It may have.

1126

10 Q. When you said in your evidence yesterday that you expressed the view that technically people could climb out and therefore technically it might've been argued as to an egress and you said in your view it wasn't suitable, it's correct isn't it that you didn't take any steps to really ascertain whether someone could climb out?

15 A. No, I didn't climb up it myself. I took the word of Mr White and Mr Lerch that people had climbed up there and for maintenance purposes.

Q. You also have said in evidence that in the event of a blockage and therefore as you've acknowledged the egress not being able to be used, the men should go to the fresh air base and you said yesterday, "or a refuge". You know there was no refuge?

20 A. I know there was no refuge. There was a fresh air base. There was a plan for a refuge. I spoke to Mr Borichevsky about that plan on the 2<sup>nd</sup> of November. He said that the design was almost complete and he said that he would forward it to me.

25 Q. So again, is this in the future there might be somewhere for them to go, but at that time there wasn't?

A. Correct.

Q. You also mentioned yesterday that you thought there was compressed air in the fresh air base, although I think you might've said you weren't sure?

30 A. I said I wasn't sure, yep.

Q. There wasn't. There was a compressed airline on the opposite side of the drift from the entrance to the Slimline shaft, obviously something that wasn't discussed by your response?

A. It wasn't, no.

Q. In terms of the size of the fresh air base, you've agreed it would've been about 10 by 5.3 and might've accommodated 20 to 30 men in the event of an emergency. Did you turn your mind to what would happen if there was a  
5 changeover of men, and up to 50 or more men requiring the services of the fresh air base?

A. No, I didn't.

**COMMISSION ADJOURNS: 11.28 AM**

**COMMISSION RESUMES: 11.46 AM****CROSS-EXAMINATION CONTINUES: MR RAYMOND**

- 5 Q. Mr Poynter, yesterday Mr Wilding carefully took you through a number of documents which clearly you hadn't seen before which revealed certain matters to you. You'll recall that, I'm sure?
- A. I do.
- Q. And amongst those were some gas readings which illustrated methane levels as at 7 and 8 October 2010, taken from the surface of the auxiliary fan shaft. Do you remember that?
- 10 A. Yes.
- Q. And the sensor is at the top. Have you confirmed that?
- A. Yes.
- Q. And there were spikes at or above 2.5% and of course, some below?
- A. Yes.
- 15 Q. And you said that that would be notifiable as uncontrolled gas incidents?
- A. I said I had an opinion.
- Q. That was your view?
- A. That I thought that they should be notifiable events.
- Q. What is the correlation between, and you may not be able to answer this, so please say so. What is the correlation between readings taken at the top of the shaft and the atmosphere below? To that, I am referring to the extent it might be diluted and what we can take, if anything –
- 20 A. What you can do is you can do a calculation based on 102 cubic metres of air flowing through the mine. You can do a calculation on how much methane is in that airflow, based at 2.5% methane and then you can do a calculation of the normal flow out of the mine and you can actually make a calculation as to what the extra methane was that was vented over that short time period. So depending on the length of the event or whether it's a one second spike because the readings are in metres per second, whether it is a short event or a
- 25
- 30 long event, you can actually calculate what the extra methane is over and above over what would normally have been venting from the mine. So you can do a calculation of the quantity.

Q. And you indicated yesterday that if it was at that level at the top, it would've been higher below?

A. Definitely higher in the returns, yes.

5 Q. If you had been notified of these incidents and you had been provided with the methane levels which we now know were available, what would've you done?

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10 A. It's really difficult to answer 'cos you've got all this information now and it would be very easy to say, I would've tore out the mine and dealt with it. I think in the first instance I'd have been asking for some analysis or some trending analysis to show me what was going on. I'd be asking for an explanation of what was causing it because there could be a number of reasons that it occurred and I most definitely would've visited the mine with respect to that particular issue.

Q. Just confirming, you hadn't seen any gas readings as part of your inspection role. Is that right?

15 A. But other times I had, on the way through the control room I might've had a look at the printout, had a look at any gas readings that might've been on, I haven't made any notes of that so I can't give you any specifics. But certainly in around this time I hadn't been in the control room.

20 Q. That being so, obviously there was no discussion about gas readings, Mr Bell, Mr Harry Bell whom you referred to when I started this cross-examination is someone you respect, said that it was part the, the primary role of an inspector's duties, at least in his day to inspect what he calls "the gas book" to ascertain what is happening on that front. Is that something that was ever drilled into you or instilled into you by anyone as an important thing you should do as a matter of practice?

25 A. We didn't have a process by, we didn't have a design process for doing inspection, we didn't have a tool. In Queensland we have a tool called an Instruction Inspection Guide which we can utilise to do specific inspections of certain primary principle management issues but as such we didn't have such a tool. I guess at some of the smaller mines I would pull out their deputy's book because it would be a book, have a bit of a read of it and sign it. But it becomes much harder when you get a mine the size of East Mine or Spring Creek or Pike where there is such a vast amount of paperwork that you

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would be confronted with to start trying to go through it. I think it would, with the way modern systems are being used through computerised systems, I think it's a much harder process than being able to bring up the gas book and just having a look through the gas book.

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A. I think it comes back to what I've said earlier about having a balance between doing structured audits around all of those principal hazards to make sure they're being managed and physical inspections and someone has to provide the resources for that to be able to happen because it'll never happen with just two inspectors, it's impossible.

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Q. No.

A. We mustn't forget either, the primary responsibility because we still only get snapshots, the primary responsibility for all this must lie with the employers. They're the ones with the data and the information and...

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Q. Yes, just before I move on you mentioned in your evidence this morning that inspections of the mines by you and Mr Firmin was done quite within the time allocated. Who was that time allocated by? In other words, did someone at the Department of Labour approve the plan?

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A. No, I guess we self-allocated time and whilst we might be required to do I think my last year's target was 50 proactive inspections of mines, I tended to try and do as many proactive inspections as I could possibly fit in and in some case I guess that may have resulted in being spread a bit thin.

Q. As I said, a number of documents were shown to you and you'd agree they were revealing to say the least?

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A. They were quite revealing.

Q. A range of serious incidents or incidents over a relatively brief period which you were not aware of and they're just the ones that have been shown to you and in response to that you said, "More or less, any of these issues have a high potential for an incident, and for future, as in Australia, we should deal with it as it happens. These issues need to be out so we can see them and deal with them." Remember that answer?

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A. I remember that answer.

Q. That in a sense sounds reactive as opposed to proactive. Was that what you were intending to convey?

A. I wasn't intending to convey that it should be reactive. I mean when I'm talking about incidents, these were non – that some of these incidents may have been like an unsafe act but there was no injury, so it's like a near miss and the fact that there was no injury it may have been just purely a factor of luck as opposed to control. So

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A. So all of those near miss incidents that have a high potential outcome, get reported as individual high potential incidents, both to the Department and also to the site safety and health rep, that's what the Act requires the senior site executive to do, so it's a much more open process because there's like dual notification straight away of something that might've hurt, didn't hurt somebody, but might have actually caused somebody a significant –

Q. When you say, "Get the issues out there" it's with a view to pre-empting or looking for patterns in pre-empting a future accident or injury?

A. That's what I'm saying, yes.

Q. Do you think now that had there been the ability to audit, you would have increased the ability to discover potentially serious issues?

A. I would hope that an in-depth audit would be capable of picking up issues that were highlighted to me. I hadn't done auditing and I haven't done the auditing course, which is something that I will be required to do as part of my development, but I guess it depends on the style of audit and the style of auditor, so there's a whole lot about getting an effective audit done and then drilling down through the processes to make sure that the hazard, or the risk in my new terminology is managed and is at an acceptable level.

Q. Do you agree that it's a failure in the current Department of Labour system not to have an audit process?

A. I believe it's something that should be developed for the future, yes.

Q. Finally, I just want to take you through the shotfiring issue, which you've given evidence about. The need for shotfiring in New Zealand has reduced in recent years, primarily due to mechanisation, would you agree with that?

A. That's correct. In the large mines, yes.

- Q. There's an issue in New Zealand about the type of explosive to use because we can only get P1 explosive. P meaning "permitted".
- A. Correct.
- Q. And that is for use in stonework in a mine?
- 5 A. Correct.
- Q. And that's due to its high velocity of detonation, correct?
- A. Correct.
- Q. And Pike River Coal was using shotfiring, partly due to its inadequate machinery which was either breaking down or not fit for the purpose, is that
- 10 your understanding?
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- A. No, shotfiring was being used because there was stone and/or because in the incident that occurred around November was because the ventilation speed wasn't sufficient to get the methane away from - when the cutter head sumped
- 15 in, the methane would build around the cutter head and they couldn't get – there wasn't enough air to clear it so in that respect, they voluntarily prohibited the use of the roadheader and went back to shotfiring, using P1.
- Q. If in coal, if P1 is to be used in coal, it's only for a single shot. Would you agree with that? Yes or no okay.
- 20 A. Not necessarily, because if I can just explain a little bit about P1, it's not just a New Zealand problem.
- Q. We'll come to that and if you need to be re-examined on that and if you want to qualify your answer, do so, but I'm trying to get to another point. Mr Bell has said and I'm putting to you that if in coal, it's generally understood in the
- 25 industry that it's for a single shot?
- A. Within New Zealand industry, that's generally understood, yes.
- Q. Yes. Pike River Coal however, was doing multiple shotfiring with P1 in coal?
- A. Correct.
- Q. And whilst men were underground at pit bottom and stone?
- 30 A. Later on, but at that time, they were exiting the mine.
- Q. Now, you entered into correspondence as the Gunningham and Neal report shows, from about August 2009, with Mr Slonker, about multi-shotfiring during a shift in the mine?

A. Correct.

Q. And you raised questions and entered into dialogue on it with Pike River Coal, correct?

A. Correct, and my fellow inspectors.

5 Q. And that was initially in stone as you've said and then it progressed for a time into coal by November 2009?

A. Correct.

Q. And you had said by 14 December 2009 that the British standards should apply and that it should be prohibited?

10 A. Correct.

Q. There was then extensive dialogue between you and Pike River and Mr Elith, E-L-I-T-H, on this issue, essentially was it safe to shotfire with P1 with men still in the mine at pit bottom and you raised issues about concussion and issues about an explosion?

15 A. Correct.

Q. And that's all against a backdrop, isn't it, of a clear directive from Mr Firmin on this very issue that there could be no multiple shotfiring with P1 in coal in a gassy mine?

A. Correct.

20 Q. Have you read Mr Bell's evidence for this phase?

A. I have.

Q. And you'd agree that it's obvious that there are risks of an uncontrolled explosion with P1 in coal?

A. I'd like to qualify my answer. P1 is an issue not only in New Zealand but also  
25 in Australia. In Queensland there is no restriction on the use of P1 in coal. It's covered by a safe operating procedure that the mine must – sorry, a standard operating procedure and a risk assessment. There has been quite a major change in the construction of the product. When the TM2 test was done at the Buxton testing station, which is no longer in existence, it was done on a nitro-glycerine-based explosive. They're now providing – all our explosives that we  
30 get today are emulsion-based so there's been a lot of major changes. We have no legislation in NZ that controls this as it stands today and one of the problems we had was the only sort of evidence we were able to find or the only



information we managed to find was some information from India and then I managed to get a hold of the British code of practice. In the event, the final outcome became that – my advice anyway was that if Pike believed they had taken all practicable steps with respect to shotfiring from the point of safety, which had been backed up by their expert advice, then at the end of the day we weren't going to prohibit that.

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Q. And you said there was no regulation on it in New Zealand but there was, as you know?

10 A. In the past, yes.

Q. The Coal Mines Regulations 1939?

A. Yes.

Q. And that was repealed when the OSH legislation came in, all the old Acts and regulations went out?

15 A. Correct.

Q. And did you know that at that time there was liaison with lawyers for the Commerce, the Ministry of Economic Development or Commerce about what to do in those circumstances and best practice?

A. No.

20 Q. Do you accept that generally as a matter of best practice inspectors and mine managers were using the old regulations as a guide?

A. I think in recent times people have been looking overseas for their standards. For example...

25 Q. So well the answer to the question I put to you, that were you aware that during the time you were involved at Pike River reference was still being made to the old regulations as best practice. Single shotfiring in coal?

A. No I wasn't.

30 Q. Mr Bell has said in his evidence that any discussion of the sort that you were engaging in about whether it was safe to have multiple shotfiring in coal with P1 was pointless and absurd 'cos the only safe place is in fact outside of the mine. What do you say to that?

A. We were presented with evidence to the contrary for that.

Q. So Mr Firmin changed his mind?

A. I guess so.

Q. Do you agree that that presents difficulties to the industry, you issue a directive, you are clear that you don't P1 explosives in coal with multiple shotfiring and then with a bit of dialogue with a corporate who wants to engage that activity you change your mind?

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A. No we didn't change our mind.

Q. Well Mr Firmin did?

A. What we did is we said that you're able to remove people from the hazard or the risk then we would allow it. So if you could go right outside the mine, you know, if that was deemed to be the place of safety you could use it. If you're a large mine and you're able to withdraw to a place that may not have been outside of the mine but was able to shown to be a place of safety then it could be used and we were aware that it's being used in solid coal and other jurisdictions. So, and it's a different product. This product at that, hasn't had enough testing. I'm aware there was some testing done just recently that showed that whilst there was some failures it was very close, the emulsion base explosives was very close, the P1 emulsion was very close to the old nitro-glycerine P5. So it's not quite as black and white as you're painting it sir and I'm not sure whether Mr Bell's aware of those changes or not but.

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Q. Well I suspect he'd say that he is but prefers to go by the best practice long established in New Zealand by adhering to the old regulations and indeed what Mr Firmin directed. In any event Gunningham and Neal at paragraph 288 of their report appeared to conclude that these exchanges that you had with Pike River Coal and its expert, amongst other things helped to reinforce the need for rigorous dust control procedures. Were you aware of that from the reports, I'm sure you've read?

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A. Yes.

Q. Yet I suggest there's nothing new in that, is there? Every miner is aware of the need for rigorous dust control?

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A. Yes.

Q. And that inadequate stone dusting management was repeatedly raised by you at Pike River Coal, wasn't it, where I think Mr Wilding pointed to two incidents in his cross-examination yesterday but it's referred to four times in your brief,

22 January 2010, 12 August 2010, and in the 2<sup>nd</sup> and 4<sup>th</sup> of November, correct?

A. Correct.

Q. It was a repetitious issue, wasn't it?

5 A. I guess the disappointing thing for me is that I didn't identify the specific places I was talking about. I was talking about dust control in general but whenever I did visit a face that was shotfiring they tended to be very well stone dusted and it was by virtue of the standard operating procedure that they using for shotfiring. Now in saying that I've got no understanding of what it was like the  
10 day after I was there or the day before.

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Q. Did you speak directly to workers about the stone dusting and its adequacy?

A. I don't recall doing so.

Q. Were you aware of the non-availability of equipment for stone dusting?

15 A. I was aware that they didn't have a stone dusting machine for the return and Mick Lerch talked to me about that and was in the process of purchasing one.

Q. Were you aware of the use of detonators to explode the stone dust bags?

A. No, I wasn't.

Q. The use of plastic bottles to hand shake the dust out?

20 A. No.

Q. Had you been aware of those matters, would that have been of concern to you?

A. On their own, I guess yes.

25 Q. Now after this dialogue that you had with Pike River, they continued to use P1 in multiple shotfiring in coal, didn't they?

A. They did up until the end of June when multiple shotfiring using P1 was completely excluded from Pike River.

Q. That was after Mr White wrote to you on 21 June 2010 about the incident where the face had collapsed during shotfiring?

30 A. That's correct.

Q. And there had been the firing of multiple shots, hadn't there?

A. On re-reading the letter that Mr White sent me, it appeared that he was firing a simultaneous shot, which is three shots at one time.

- Q. Do you agree that it's always clear in the industry that single shotfiring is one shot, not a series of single shots simultaneously?
- A. I would agree.
- Q. And the risk of firing across a whole face simultaneously is the high production  
5 of gas and dust?
- A. Correct.
- Q. And a coal fall?
- A. It depends on the conditions in the coalface.
- Q. And clearly that would put men at serious risk if there was a coal fuel or gas  
10 and dust, potentially?
- A. It's all very dependent. I mean, it has that potential, I agree.
- Q. You said that you re-read that letter recently. Does that change the evidence which you've given that you said in your brief that, "The actions that Mr White took, you regarded as being entirely appropriate. Are you resiling from that?
- 15 A. The actions that I was referring to is the way he dealt with it and that was the way he dealt with the incident itself by how he cleared it, how he cleaned it and the subsequent action which was the complete banning of multi-shotfiring using P1 in coal.
- Q. You wouldn't for a second endorse, would you, multiple shotfiring  
20 simultaneously across the face as what happened?
- A. No, no.
- Q. You'll have to say no for the record.
- A. I did say no.
- Q. Sorry, I thought you just shook your head.
- 25 A. Can I just add this? This P1 is quite a complicated issue and we did a lot of work trying to work through it and not just with Pike, but also with the other coal mines that were experiencing exactly the same problems and what we were trying to do is determine what was a safe way for us all to move forward. The subsequent meetings that were held, I was, unfortunately I wasn't able to  
30 attend them. I ended up attending my grandson's funeral, so there was other things happening at the time that meant that I wasn't able to go. It appeared to us as inspectors that what was actually happening apart from the three shots at once, the simultaneous firing isn't something that we would condone, but the

way in which shotfiring was taking place at Pike didn't pose an unacceptable risk using, where they were being placed and that was based in evidence around experts that provide us, provided Pike the comfort of that –

Q. That was Pike River experts?

5 A. Yeah, in saying that, I was extremely pleased when Mr White took the action he took to review the standard operating procedure against, again against a British Standard, and we had no right to impose the British Standard on industry. We can only say that it's a practicable step and that's what we're saying. Here's a practicable step from a country that did the original testing  
10 and that actually says that you mustn't use P1 in solid coal, so that's suggesting that if you've got a cut in a face rather than a solid face of coal, that P1 could be used in those circumstances. So, what we tried to do in the teachings that we have is I guess we were trying to be a modern regulator and responding to a major issue that was affecting all of industry. We felt that we  
15 had done enough research to be comfortable with what was happening was not posing an unacceptable level of risk to people.

Q. And the end result was that P1 can be used in coal so long as the workers retreat to a safe place –

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20 A. Not designated by the shotfire which is you know, 100 metres around the corner, which is a scenario, but it might normally have happened in a non-gassy mine but to a place of safety that's designated, so it was somewhere that they could actually show would not cause an unacceptable level of risk to people. So that was the end result with respect to multi-shotfiring without –  
25 that was the end result for Pike. The end result for all other mines unless they can do the same work and prove to the Department that they had a place of safety that was in fact not going to pose an unacceptable level of risk to men, that they would have to exit the mine if they were going to try and do multi-shotfiring in coal. So for example, Roa did single shotfiring because they didn't  
30 have the ability to or the time to be able to remove themselves out of the mine to do the multi-shotfiring so – and at that stage I think they were the only other mine that was using explosive extensively.

**CROSS-EXAMINATION: MR HAMPTON**

- 5 Q. Mr Poynter, you're in a bit of a unique situation in that you've over your years you've experienced mining in New Zealand under the old regime before the new health and safety regime came in. You've been an inspector here in New Zealand as you've told us and you're now in Queensland fulfilling the same sort of role. Two things about that then, first, training as an inspector here in New Zealand compared with your training that you're currently undergoing in Queensland, without going into chapter and verse, just an overview of one against other?
- 10 A. I think there was a general acceptance when I started here in New Zealand, Kevin's got his first class mine manager's ticket. He's got a considerable amount of experience, we'll teach him to be a health and safety inspector, a general workplace qualification and really leave him to get on and do the job. On my arrival in Queensland, within three weeks of arrival I was on my G3 or
- 15 G-MOON risk assessment course, which is a requirement for all inspectors.
- Q. Just pause there, that's something you couldn't get in New Zealand?
- A. It was something that we'd asked for and I possibly would've got on it this year. So I got on the G3 course, I'll be expected to do a mine's rescue unit, a MIMS unit which is a emergency management system, like it's not CIMS but it's
- 20 specifically around mines.
- Q. Yes we had that explained at Phase Two thank you.
- A. Yes okay so there's a series of core training courses that I'll be required to attend until I'm able to carry out the full duties of an inspector in Queensland. They're identified and I'm working through those at the moment or trying to.
- 25 Q. And that's pretty much full-time doing that?
- A. I'm getting other jobs to do as part of it but it's enhancing my learning. For example, the issues around – I was asked to write a structured inspection guide about the notification of the mine management structure that's required under Queensland law and to do that I had to go through the legislation,
- 30 identify exactly what it is the employer of the senior site executive has to supply and then put that into a structured inspection guide, so that when these things come in you can actually say yes, they've met all these parts. So that was designed to give me some understanding of that part of the law. I've been

doing some small inspections, some investigations that are outside of being taught or sat alongside and mentored in the writing of mine record entry, which is something we do after every mine visit, so it's quite different and encouraging.

5 Q. And over what period of time rough enough will you be doing this training?

A. I expect it's probably, given the commitments I've had in getting back here, I suspect it's probably going to take me another six months but I would've expected if I hadn't had these commitments that we would've been trying to get completed sometime between early December and March, but I think it will be a bit longer.

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Q. So roughly six, nine months or something if this happened in the -

A. I would say so.

15 Q. Okay, and your previous experience as a mine inspector in New Zealand, your three or so years, that doesn't short-circuit any of that at all?

A. Absolutely not and I guess Queensland Inspectorate want to make their own assumption of my competency.

Q. Of your, yeah.

A. Yeah.

20 Q. So it's cheese and chalk really, isn't it?

A. Yes.

Q. New Zealand and Queensland, right. I'll come back to what you said about the mine entry reports. I'll come back to that shortly.

A. Okay.

25 Q. The second general thing I wanted to ask you about though is employee health and safety representatives' engagement in health and safety in New Zealand as opposed to Queensland that you're now experiencing.

A. Yeah.

Q. In New Zealand, can I perhaps preface it?

30 A. Yeah, yeah, yeah, that's right.

Q. So that's what I'm going to talk about. Preface it by just saying or drawing your attention to, it's the Gunningham/Neal review and we'll put it up if needs be,

DOL0100010001/116, para 4 to 8, and while it's coming up I'll start reading it, if you would Ms Basher, thank you.

**WITNESS REFERRED TO DOCUMENT DOL0100010001/116**

- 5 Q. "The inspectors expressed doubts about the value of their interactions with safety representatives. Mr Poynter told us that he didn't make efforts to contact health and safety, – he did make efforts, sorry, "To contact health and safety representatives but he rarely learned anything of value from such interactions. He'd never been contacted by a health and safety representative, and took the view that, 'People being elected may be good people.' I don't understand the role. Sometimes I hunt them out. The comments I get back is usually, 'No, I'm fine.' It's an artificial environment if you've fallen out if their manager was round the corner, so it's not ideal." Was that generally the situation in New Zealand, or at least as with Pike?
- 10 A. I think it was generally the situation that I found. It's what I've found. It is my opinion of what I was being confronted with throughout the mines right throughout the country.
- 15 Q. And particularly in Pike though, did it strike you that there was a lack of formal workers' representation in terms of health and safety?
- A. I can't answer that because we're not notified who the health and safety reps are and when you go inside, you ask, "Is there a health and safety rep onsite today?" and the answer may be no, or they might be on another shift or whatever, so there's no –
- 20 Q. You didn't even know who the health and safety reps were at Pike?
- A. Well, indeed at most mines.
- 25 Q. All right.
- A. Unless you make enquiries.
- Q. And were you aware at Pike in particular that there was a, through the management, an anti-union attitude? Anti the EPMU attitude?
- A. I hadn't detected it in any conversations I had with any of the managers.
- 30 Q. If you had, would that have been of concern to you?
- A. Only if I thought it was getting in the way of health and safety.
- Q. Right, and it has that ability to do, hasn't it?
- A. It could do, yes.



Q. Well, I'll ask you that, because I want you to have a look, ROCK0003 please Ms Basher?

**WITNESS REFERRED TO DOCUMENT ROCK0003**

5 Q. It's a matter I canvassed with Mr Whittall a little at the end of Phase Two but see the opening three lines of an exchange of emails between Mr Whittall and Mr Rockhouse, Mr Whittall writing, "Neville, I agree and understand." It's the 28<sup>th</sup> of November 2009, "The union was never involved and doesn't come into consideration. Please do not use, "Union," in the same sentence as anything at Pike. Our relationship and the way we communicate is between us and our  
10 employees." It's a fairly strong attitude about unionism, isn't it?

A. Yes it is.

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Q. If you'd known of that in the background at Pike, would it have been of concern to you?

15 A. If a mine is effectively communicating with every worker at the site, but not necessarily through the union, they may well still be able to fulfil their requirements.

Q. But going back to that quote from Gunningham and Neal with Pike, your contacts with health and safety representatives if you knew who they were,  
20 was pretty unsatisfactory, wasn't it?

A. Not just Pike really, everywhere.

Q. But keeping it on Pike in particular, that quote I read you from Gunningham and Neal was about Pike, wasn't it?

A. Actually I'm not 100% sure. When we went through the interview, whether  
25 some of the questions were around dealings in general or dealings specifically, some of them were definitely dealing specifically around Pike and some were, you know, how did you do your job, so.

Q. Well let's contrast it with, and I don't want to occupy a lot of time because we can get the detail but your experience in Queensland, albeit over a short period  
30 of time where we have what might be called check inspectors ISHRs, aren't they, which Industry Safe –

A. Yes, SSHR, site safety health reps. They also have industry safety and health reps which are full-time safety and health reps that are employed by the union.

5 So I think the process that they've developed in Queensland is, I think it's  
unique in that it's a very open process in that I talked earlier about the mine  
record entry so some of the things I've been asked about here today, in  
Queensland if I'd written a mine record entry around the second egress for  
10 example, after a visit and what the circumstances were, when that mine record  
entry at Pike River, it would've had to have been posted on a notice board  
publicly for everybody to see so it's a very open process. So when an  
inspector visits a mine there are a number of things that happen. If I'm going  
to a mine, if an inspector visits a mine the first thing he says is, "Please notify  
15 the site safety health rep?" which is a requirement of the SSE. The SSE must  
tell, sorry, SSE is the senior site executive. He must tell the site safety rep that  
an inspector's coming so what's being taught is you actually remind them of  
the duty even though you don't have to because it's law. So the first thing is  
the site safety rep knows your coming. So if he's on an odd shift and he wants  
20 to see you he can actually come over and be there. The second thing is under  
Queensland law they have provided specific functions under the Act for a site  
safety and health rep and those functions, and I'll try and recall them, I don't  
think this is my exam yet but to inspect workplaces to identify if there's an  
unacceptable level of risk. So a site safety rep can go and make an  
inspection.

25 Q. So just pause there a moment. The sorts of things you discuss say with  
Mr Wilding yesterday, these sort of near misses the sort of things contained in  
Mr Couchman's audit reviews and your PHIs and so on, those sort of things  
that weren't drawn to your attention in Pike with the sort of system we're talking  
about here are likely to get picked up and reported, aren't they?

30 A. Well they will be 'cos a high potential incident, a high potential incident or any  
absence from work through illness or injury is required to be reported to the  
site safety and health representative. So when a high potential incident occurs  
it's reported (1) to the senior site executive reports it to an inspector, but he  
must also report it to the site safety and health rep so it does make for a very  
open and transparent health and safety management process where the  
regulator and the men at the mine are learning the same information at the  
same time.

Q. And gives the ability for the men at the mine to have a voice through the representatives quite clearly?

A. Well their specific functions that the site safety rep has to fulfil and those are around inspection, review of documents, investigation of worker complaints and to detect any unsafe practices or issues within the mine and if he does, if he finds the workers rep can, if he finds something that is posing an unacceptable level to risk to men he can stop mining in a place or the whole mine if it's an issue that affects the whole mine. He does have that power but he must only use that power for safety purposes.

5 Q. For safety reasons, yes?

A. And if he's found to be doing otherwise, he can be removed by the Minister.

Q. Yes, I understand. Just the one thing you told us today about the unannounced visit as a response to a mine worker's complaint, would that come through that sort of system, up through the representative?

15 A. It didn't actually come through the representatives, it came directly from a mine worker to the Department. The district inspector determined that he felt that we should respond immediately given that it was a Saturday afternoon and we did so. It was about a three and a half hour drive to get to the mine which is why we arrived at 6.30 at night.

20 Q. In your time as an inspector in New Zealand did you ever have a mine worker approach you with a complaint?

A. Yeah, I have.

1230

Q. Not in Pike?

25 A. Not at Pike.

Q. So, you see the Queensland system, its compulsory involvement of health and safety representatives in the way you – they are described as being remarkably more useful and safe than the New Zealand system, I take it?

A. I think the openness – no, even the mere fact that you have to put the inspector's note or your visit on a public notice board is, I think it's a really powerful tool, because if somebody sees an inspector's note and they think, he hasn't seen or isn't aware of all the issues, the option of, or the option of going

30

through your site safety and health rep or directly to the Department could be utilised to actually make the inspector aware.

Q. You would've had previous experience in New Zealand prior to the new legislation of check inspectors in New Zealand?

5 A. I have.

Q. Worked satisfactorily?

A. I think at times the duties of a check inspector got a little mixed up and –

Q. It went from health and safety into industrial, didn't it?

A. Yes, and at certain stages I can recall check inspectors being used to rule on whether you got a wet time or not.

Q. But in the Queensland model, that can't occur. It's a focus on health and safety?

A. That's right. If it's detected it's happening, then there's a process whereby you go through that you can actually have that, even though he's elected by the workers, he can be removed.

Q. And having had the experience you've had in Queensland, do you think something similar should be imported into the New Zealand –

A. I think it's a very positive step.

Q. And I also take it from a couple of things that you've discussed yesterday that you're in favour of the bringing back of a chief inspector of mines to get rid of that dysfunctional aspect you talked about yesterday?

A. I am and I have been saying so for a number of years.

Q. And whether the mines inspectorate remains within the Department of Labour or otherwise, it should be some sort of autonomous unit within that department, is that the position?

A. I think that would be very useful for them, you know, situations where you want a situation where your chief inspector can say, these are the actions we're going to take, this is the way we're going, without too much fear that he's stepping outside of a much larger controlling body.

Q. And to also discern from what you've discussed yesterday and again this morning say on issues of egress and of use of explosives and standards of stone dusting and so on, that you would see a place in New Zealand for a far more prescriptive approach in terms of regulations and codes of practice?

5 A. I think it needs to be balanced. You know, Queensland, don't have, you know, there's a perception that we have a lot of prescriptive legislation and in comparison to New Zealand I guess that's true, but I think – and this is my perspective, I haven't – I'm not professing to be an expert, but what I've seen from the studies I've been doing, is that Queensland identified there were some principle hazards that they didn't believe should be left in the performance area –

Q. So absolute standards are laid for those?

10 A. So, there were some prescriptive areas around principle hazard management plans which are ventilation, gas management, methane, emergency egress, spontaneous combustion and strata control, so they put quite a bit of prescriptive requirement around those. Quite a bit of prescription around the use of electricity underground, but there is still this aspect of performance management, because it's the responsibility of the company to develop its own safety and health management system and once they've developed that, developed the rules by which they're going to operate, the standard operating procedures, it then actually becomes law and you could actually use the company's own rules in a prosecution, and that's my understanding.

1235

20 Q. But you see some usefulness from New Zealand perspective to have those core features that you've talked about being subject to rather more prescriptive regulation than present?

25 A. If you use the second means of egress as an example, if we think people should have two means of egress, let's just say there should be two means of egress –

Q. If fresh air?

A. Yeah, and if we think somebody should have a first class ticket, at least just say, they don't say all practicable steps. It just seems a nonsense

30 Q. Just a couple of things arising from things you mentioned yesterday, changeover stations in a irrespirable atmosphere is a risky activity and you said, "Certainly it isn't the only place in New Zealand when that is expected to be done." Are there other underground mines in New Zealand where we have

this changeover occurring or possible changeover occurring in irrespirable atmosphere?

A. There are other mines where that potential could exist. There's at least a gold mine that I'm aware of where that could occur.

5 Q. Coal mines, underground coal mines?

A. Sorry I'm just going through, it's been over – sometimes I've been down some of them, possibly not.

10 Q. The other point I want to take up from what you said yesterday was about second egress and the concern that you expressed at page 3082 about you saying, "Absolutely aware of that and we have other mines in New Zealand that have their second means of egress in a return," and you were asked, "Underground coal mines?" Answer, "Underground coal mines that have their second means of egress in a return." How many underground coal mines in New Zealand have their second means of egress in a return please  
15 Mr Poynter?

A. Two.

Q. Can you name them please?

A. Spring Creek at Greymouth and a smaller mine known as Roa.

Q. Roa, both on the coast?

20 A. Both returns, Roa's quite complicated because they've got two mines either side of a creek and they're just developing an area now where they've got a one intake and one airway, one return.

Q. Just some three documents I want to put to you very quickly, just and I'm conscious of time, Ms Basher if I could have please DAO00208157/1 & 2.

25 **WITNESS REFERRED TO DOCUMENT DAO00208157/1 & 2**

30 Q. Now you visited Pike on the 2<sup>nd</sup> of November 2010. I just want to look at the last two or so weeks before the explosion. You visited on 2<sup>nd</sup> November and paragraph 270 of your evidence you said this, "After speaking with Doug White I then went underground with Steve Ellis who I recall was the production manager. I noted an improvement in standards generally in the area of the mine I visited. I didn't visit all areas of the mine. Some of the housekeeping had improved and I observed the general tidiness. I put this down to the experience of people like Doug White and Steve Ellis in mines. What I put up

on there is some email correspondence between initially Mr Couchman and then involving Mr White, 9<sup>th</sup> of November relating to the PRCL health and safety committee meeting on the 8<sup>th</sup> of November. Now I understand you will never have seen these sorts of exchanges I take it Mr Poynter and you had  
5 seen the health and safety committee minutes?

A. That's correct no I haven't seen any, no.

Q. In the first paragraph there you'll see a line that starts, "I have intervened and instructed Rob Ridl to nominate a tradesman as a representative." Would that indicate to you a lack of proper participation by employees when the company  
10 is taking over and putting someone in the place?

1240

A. You're asking me to make a comment on a single line in a letter, it may be perceived that that's what this letter is telling us but unless I'm aware of all of the facts I can't say that that's the case.

15 Q. I won't ask you to make the judgement then. But just going through, about halfway down just incident 1103, I want to put things in here that seem to have been discussed at that meeting. Can we highlight half way down the first page please Ms Basher, the paragraph, incident 1103 please? And it's about an injury to Mr Davidson but the point I want to take you to is the latter part. "He  
20 said that he tried to take it out of service..." this is juggernaut, "...that this was removed, the machine was pressed back into service, this needs to be investigated thoroughly as to why an out of service machine was put back into service without being repaired." That would be a concern to you as an inspector?

25 A. It would be a concern.

Q. And was never drawn to your attention?

A. No.

Q. The remainder of points, availability of warm wet weather gear, now it maybe a small one but that's see the next paragraph down, availability of warm wet  
30 weather gear mentioned?

A. Yes.

Q. Then more importantly perhaps third, the sentence that starts, "Firehoses are not being wound up and are being left lying on the floor." If we could highlight

that, have we got it, have we, thank you. "They are seeking clarification on what is happening with the management of the firehoses. Management of firehoses will not start, tardy lazy practices." A concern?

A. The line above it, "The people are having trouble getting PPE" is a concern.

5 Q. Right. This is a meeting six days after your inspection. I just want to take you back to what you said at paragraph 14 of your brief where you concluded by saying, "The Department's mining inspection plans didn't require or plan unannounced inspections and at Pike River I never detected any suggestion that any attempt had been made especially, treat the mine in anticipation of an  
10 announced visit." Might rather give the impression, starting to read through this note, that perhaps some tidying up does occur when you turn up?

A. Maybe it does, I can't make that assumption from this note.

1243

15 Q. The bottom of that first page, "Concerns at the fact there are often no drift runners left at the face during the one hour changeover period. If an evacuation was declared at this time, it would seriously impede evacuations. There are on numerous occasions when there are no drift runners available. The availability of drift runners would not prevent a mine evacuation." Of concern, given the length of that drift?

20 A. It's of concern, yes. I mean at –

Q. Yes. Never drawn to your attention?

A. You could. That's right. You could walk out but it's a long walk.

Q. Is it an HBI?

A. What the?

25 Q. The lack of drift runners. The lack of transport?

A. Look, I don't know. If it was part of the evacuation procedures to have a drift runner available then potentially, yes.

Q. Okay.

30 A. If evacuation was expected to be by foot, then no, I mean it's – you have to be aware of all of the facts but –

Q. Top of the second page, "Concerns were raised about what appears to be a shortage of fans and vent cans for ventilation. Fans seem to be running to too



many headings and diluting ventilation efficiency. There is no shortage of fans. Better sequencing will address the vent can issue." Concern?

A. Yes.

Q. Drawn to your attention?

5 A. No.

Q. Six. "The availability of new dust masks seems to have dried up. Can they continue please?" Concern?

A. It's a PP issue. They should be available.

Q. Next paragraph, "Models of safety. Eye glasses currently used be reviewed."  
10 Leave that. Next one, "Toilet is too far away," and there's a discussion about the portaloo and so on. Of concern to you as to toilet facilities underground?

A. Yes. Some mines don't have toilets underground and you might not want to go where they are used. Some of the smaller mines.

Q. If you could highlight please, Ms Basher, the entry that starts, "Concerns were  
15 raised about the availability of the controllers at times." "On several occasions, they'd tried to raise them on the dak or the phone and they had had no reply. The control room is manned 24/7. If these events can be documented at the time it happened, they can be investigated." It must be of considerable concern, mustn't it?

20 A. It is.

Q. None of these drawn to your attention?

A. No they weren't.

Q. Proper health and safety representatives properly empowered and regulated, this sort of thing shouldn't get through, not in this way, should it?

25 A. I would expect that many of these issues in a Queensland environment would be known to the regulator.

Q. Number 10, "No flashing of light or alarm at the portal." I won't go any further with that, and then number 11, "Availability of drinking water." "No fresh drinking water available, and they were using, apparently using water from a  
30 hose that was to drink from." Concern?

A. If it wasn't potable water, yes.

Q. The week before the explosion, two documents that I want, three documents I want to put to you, 11<sup>th</sup> of October, 11, of November, DAO, please Ms Basher,

DAO00105127, which is a – 127/12, sorry, my apologies. It's a Valley Longwall drill operator's report. You see the date, 11<sup>th</sup> of November 2010?

A. Yes I see the date, 11/11/2010, yes.-

5 Q. Now, there are some issues there. The one I focus on, conscious of time, at the entry time, 12.30, "Activity delay 18, duration, 390 minutes," that's six and half hours, "No power/cable cut by loader." That's a cable flash incident, isn't it?

1248

10 A. It may be, it may not be. You can cut a cable without necessarily incurring a flash. What the electrical inspectors do in Australia, and I had a conversation with one about this, is they determine that if you cut a cable and there's a flash, it's an HPI and reportable. If you cut a cable and there's no flash and on inspection there are exposed conductors, it's reportable. If there isn't exposed conductors, it's not reportable.

15 Q. So that would've been – so you can't tell on its face whether it was reportable or not. That's what you're saying?

A. Yeah, but under our legislation – that's Australian legislation, under our legislation it's not a notifiable event.

Q. If there was a cable flash though, it would be?

20 A. If there's a flash, it would be a debate whether a flash is a fire, which you have to notify, but at the end of the day, it's definitely a sparking, it's certainly an ignition source.

Q. Were you ever told of any cable flashes in relation to Pike?

A. No.

25 Q. All right, well then the last document, Mr Wilding had you look at, and if I could put it up for a moment please, DAO.001.00534, pages 13 and 14, please, Ms Basher, 18<sup>th</sup> of November.

**WITNESS REFERRED TO DOCUMENT DAO.001.00534/13 and /14**

30 Q. And we were particularly looking at the second page, "ABM place not stone dusted, at least 15, 20 metres of roadway." Do you see that? That's the portion on the second page that Mr Wilding drew to your attention, wasn't it?

A. Yes.

Q. Further down though, do you see written in, half-way down that page, "What was the root cause of this event?" Can you highlight that please Ms Basher, thank you. And the answer written in there, "Focus has been put on metres, standards not followed." That would be a concern to you, wouldn't it?

5 A. It would. I must tell you that I was part of the interview team that interviewed Mr Bisphan and I became aware of this. I'm aware of the circumstances that it occurred in.

Q. But the general proposition, production over safety would be a concern?

A. The general proposition, yeah, the general proposition is that the shift before  
10 cut 20 metres and didn't stone dust.

1251

Q. And that putting production over safety would be of concern as an inspector wouldn't it?

A. It would, yes it would.

15 Q. Yes. Same day please Ms Basher DAO.011.20987/1

**WITNESS REFERRED TO DOCUMENT DAO.011.20987/1**

Q. Which is a Pike River coal shift electrical report. At the top entry, "Work done delay cause." Can we highlight those first three lines in that section, both the  
20 "Work done," and the, "Work to be done." "Called to ABM, calibrate ABM too much gas pull back and all okay." And then under, "Work to be done," "Faulty, no time for investigating because of production." Same day, same shift, same machine, correct?

A. I'm not sure I didn't see what the shift was for the other one. That says,  
25 "Nightshift on the 18<sup>th</sup> of the 11<sup>th</sup>." So, it might be a different shift but just the same, it's an issue.

Q. Well I'm saying – I may have jumped ahead in saying, "Shift," but same day on the same machine ABM?

A. You know, if you've got a faulty methane detector and there's no time to fix it because you're producing, there is a problem, yeah.

30 Q. Yes.

**CROSS-EXAMINATION: MS SHORTALL**

- Q. Let me start with a couple of smaller matters. Mr Rapley asked you earlier today whether you did a number of inspections when Mr Whittall was the mine manager, do you recall that line of questioning?
- 5 A. I recall the question.
- Q. Are you aware that Mr Whittall was not the mine manager at Pike at all at any point during 2010?
- A. I have to refer to my notes. There was a period where a number of different mine managers came through and they were, because they were getting their
- 10 New Zealand ticket, Peter covered with his mine manager's ticket and that was 2009, so 2010 we went from Nigel Slonker to Mick Lerch to – the other way, Mick to Nigel to Doug. I, look I'd have to refer but if you're telling me he wasn't a nominated mine manager in 2010 then I'll accept that.
- Q. Now Mr Wilding showed to you yesterday a series of charts that appeared to
- 15 reflect spikes and gas readings over certain days in October of 2010 and they've been referred to briefly again today, you recall those charts?
- A. I do.
- Q. Now as reflected on unique identifier on those documents which won't mean anything to you I know Mr Poynter, the charts weren't produced out of
- 20 company files and so I just wanted to clarify a couple of matters with you. You don't know how the charts were put together do you?
- A. I do not.
- Q. Or by who?
- A. No.
- 25 Q. You don't know what checks were made to ensure that the underlying data was accurate do you?
- A. I do not.
- Q. You don't know whether the underlying data is accurately reflected on the charts do you?
- 30 A. I do not.
- Q. You don't know when the charts were put together do you?
- A. No.

Q. Or who may have been aware of the gas readings over the October days noted do you?

A. No I don't.

5 Q. Now from the time you became the Department's health and safety inspector for Pike in July of 2008 until November 2010, you went underground at Pike at least 10 times, right?

A. Seven proactive inspections and maybe two information type visits with people. Seven, eight, nine and maybe one with the accident.

10 Q. And as you entered the mine on these occasions you would have seen that Pike didn't have a main fan as a forcing fan at the mine entry, right?

A. I did.

Q. And none of the other underground coal mines that you inspected in New Zealand had a forcing fan at their entrance did they?

A. No.

15 1256

Q. How many of the mines that you've inspected to date in Queensland have a forcing fan at their entrance?

A. I haven't inspected any coal mines in Queensland at this point in time.

20 Q. Are you aware of any coal mines in Queensland that have a forcing fan at their entrance?

A. No, I'm not.

Q. You never suggested to Mr Whittall or anyone at Pike that Pike's main fan should be installed as a forcing fan at the mine entry, did you?

25 A. Did I suggest that they should install one as a forcing fan at the main entry, no I didn't.

Q. And when you visited the Pike Mine am I correct that you would travel up and down the tunnel in a diesel vehicle called a drift runner?

A. Sometimes I'd go in and out in the drift runner, sometimes we walked out.

30 Q. And you never said to Mr Whittall or anyone else at Pike that the company should fit it's diesel vehicles with gas detectors that would shut the engine off in the presence of methane levels greater than 1.25%, did you?

A. In relation to where they were working or?

Q. You never said to Mr Whittall or anyone at Pike that the company should fit any of its vehicle diesel vehicles with gas detectors that would shut the engine off in the presence of methane greater than 1.25%, did you?

A. To Mr Whittall, I don't recall saying anything to Mr Whittall about it.

5 Q. Let's move to your visit on the 26<sup>th</sup> of November and I think at that point you were part of an energy safety service visit. Is that right Mr Poynter?

A. The energy safety service was doing an inspection. I was accompanying him.

Q. And do you recall that by November of 2008 the tunnel had been driven and the access road to where the vent shaft was to be installed was in the process  
10 of being driven?

A. I do.

Q. I'd like to take you and Ms Basher if we could just pull up map 1, I'd like to take you to a map that's been located in the company files and just ask whether you recognise it? I'll just wait for that to come up. This is a map just to orientate  
15 you Mr Poynter showing the state of development as at the 7<sup>th</sup> of November 2008. So about two and a half weeks before your visit.

#### **WITNESS REFERRED TO MAP**

1259

Q. And my question to you is whether this is consistent with your recollection of  
20 the state of the mine's development at the time of your visit on the 26<sup>th</sup> of November 2008?

A. So can you explain to me Ms Shortall how much drivage – it's very hard to see here, so what is this little bit of drivage at the bottom here, is that what it's saying was completed?

25 Q. Well, instead of perhaps me answering your question, sir, let me just ask you whether that what's reflected on this map, is it consistent with your recollection generally of the state of development?

A. The general layout is consistent, but I can't see how far on the map these drivages had been completed to.

30 Q. Well, let me ask some questions perhaps without getting into the distance of the drivages if that's easier, given the difficulty in reading the map –

A. My recollection is they had just gone around the corner. That was my recollection and that's what I'm looking for on the plan.

Q. Well, actually, perhaps I should produce this plan as an exhibit, Commissioners, because I believe it's not yet been made available on summation?

**EXHIBIT 31 PRODUCED – PLANS OF PIKE RIVER COAL**

5 Q. And when you say to me, Mr Poynter, that you recall they'd just gone around the corner, what do you mean by that?

A. They were heading towards the area where the shaft was going to be.

Q. And just looking at exhibit 31, do you have any reason to believe that that drivage towards where the shaft would be installed is not reflected by the longer imagery in the middle of the map on the left-hand side of exhibit 31, heading up towards PRDH31?

A. Sorry, I missed part of the question, someone coughed and I'm a little bit hard of hearing.

Q. That's all right sir, let me put it to you again. Just in terms of establishing on this map the drivage that was heading up towards where the ventilation shaft was to be installed, would it be consistent with your understanding that it's reflected by the line or the tunnel that's in the middle of the map on the left-hand side of exhibit 31 leading up towards what's marked as PRDH31?

A. Yes.

20 Q. Do you have any reason to believe you didn't see a copy or version of this map at exhibit 31 at the time or around the time of your November 2008 visit?

A. I saw half of this.

Q. Which half did you see?

A. The half of the plan. I didn't see the operational notes side.

25 Q. So you didn't see the piece on the right-hand side where there's a note made about the escapeway?

A. No.

Q. Do you recall having a discussion during your November 2008 visit about the mines plan as to an escapeway?

30 A. No.

**COMMISSION ADJOURNS: 1.02 PM**

**COMMISSION RESUMES: 2.01 PM**

**MR WILDING ADDRESSES THE COMMISSION – GAS CHARTS**

5 **MR WILDING:**

Sir there was just a matter raised by Ms Shortfall with Mr Poynter in relation to the authenticity of certain documents bearing the summation number CAC0112/1 being

–

10 **THE COMMISSION:**

Well we're talking about the gas charts that were questioned on before lunch?

**MR WILDING:**

15 Yes we are sir. Those were compiled and they were no more than a compilation of documents filed by Pike River Company Limited and directors and officers through Minter Ellison. Ms Shortfall has been provided with a copy of those documents as filed by her and I understand from Ms Shortfall that she accepts the authenticity of those as company records.

20 **THE COMMISSION:**

So what was referred to yesterday wasn't in the same form as filed, it was a compilation to show a succession of days.

**MR WILDING:**

25 Yes, well what was filed sir was filed under a series of different summation numbers, a different summation number for each day and this was just a convenient compilation of those.

**THE COMMISSION ADDRESSES COUNSEL – SITTING LATE**

30

**MS MCDONALD ADDRESSES THE COMMISSION**



**CROSS-EXAMINATION CONTINUES: MS SHORTALL**

Q. Just before the break Mr Poynter I was asking you some questions about a map which had a reference to a ladderway and I understand you didn't see back in November 2008 that part of the map, which was exhibit 31, so I want to  
5 move on and put to you that in fact you had known months earlier that Pike planned to use an escape ladderway in the ventilation shaft, in fact since around July 2008, is that right?

A. It was common knowledge that there was going to be an egress for a period of time in the shaft.

10 Q. And in fact back in July 2008 there was talk about the design of that escapeway being discussed with you specifically wasn't there?

A. With Michael Firmin.

Q. Well let me just pull up the document Ms Basher at DOL3000040047

**WITNESS REFERRED TO DOCUMENT DOL3000040047**

15 Q. And this Mr Poynter is an email exchange you'll see at the top dated the 15<sup>th</sup> of July 2008 from John Walrond to both yourself and Mr Firmin copied to Mr White. Do you see that?

A. I do see that.

Q. And if I can just bring you to the last paragraph of that email starting with the  
20 language, "They plan," and to give some context and to try and move through this a little bit more quickly, I understand that this email was sent by Mr Walrond following a meeting at McConnell Dowell head office with Farra Engineering concerning the shaft and if we can just bring Ms Basher that last paragraph starting, "They plan to install..." Do you see there Mr Poynter a  
25 reference to Mr Walrond and I'm reading from the document, "I advised Joe Edwards to discuss this with you Kevin before finalising design." And the precursor is, "They plan to install a vertical escape ladder with platforms at nine metre intervals." Do you see that?

A. I see that.

30 1405

Q. Do you recall discussing the vertical escape ladder with platforms at intervals with either Joe Edwards or anyone else around July 2008?

A. I don't recall actually having a discussion with it, but I do recall this email.

Q. Do you have any reason to believe that it wasn't discussed with you Mr Poynter?

A. Only that I don't recall it.

5 Q. Do you recall receiving a separate email from Mr Walrond about a week later where again it's noted that Joe Edwards was planning to discuss issues of the escape ladderway design with you?

A. Yes.

Q. Do you have any reason to believe that the specific design wasn't discussed with you?

10 A. I don't recall it. There was a discussion way back when I first started about what would be preferable as an escapeway but I don't recall having discussions around this time. The more pressing focus was the design of the shaft and the equipment that they were going to use within the shaft with respect to the stage platform.

15 Q. Let's move on to your visit on the 9<sup>th</sup> of October 2009. Now do you recall that by that time the mine had developed to include more roadways?

A. Yes it had.

Q. And if I could bring up a document Ms Basher, it's at map 2.

**WITNESS REFERRED TO MAP 2**

20 Q. Now Mr Poynter this is a map located in company files showing the state of development at the 14<sup>th</sup> of October 2009 so five days after your visit and just for the record perhaps I could seek to produce this as exhibit 32?

**EXHIBIT 32 PRODUCED – PRC PLAN**

25 Q. Is the map at exhibit 32 consistent with your recollection with the state of the mine's development around the time of your underground visit on the 14<sup>th</sup> of November 2009?

A. As best as I can recall back that far. The mine was probably, looked something like this.

1408

30 Q. Do you have any reason to believe that you didn't see a copy or version of this map at exhibit 32 around the time or during your October 2009 visit?

- A. I received some maps from a Mr Slonker, with respect to some of the driveage that was being done and some of the ventilation issues that were being experienced and I think it was in conjunction with doing some shotfiring.
- 5 Q. Were there other occasions during the time that you were the inspector for Pike that you received maps from the company?
- A. There would've been.
- Q. And what did you do with those maps?
- A. It depends whether they were for information purposes or whether I had requested them to have a look at a particular design. It's not an inspector's
- 10 responsibility to approve plans.
- Q. Did you keep copies of those plans?
- A. Most of them were sent electronically and they would've been kept as an electronic copy.
- Q. And where would they be kept as an electronic copy?
- 15 A. Somewhere in the database of the Department of Labour.
- Q. Is that the Insite previously known as the Workbench?
- A. No.
- Q. It's another database?
- A. It was kept as a file in my system. All of those were provided back to the
- 20 Department of Labour.
- Q. Did you ever keep copies of maps in hard copy, paper files?
- A. I only ever received one hard copy plan from Pike River, which was in May.
- Q. Of which year, sir?
- A. 2010.
- 25 Q. I'll just stay on this exhibit, 32, when you visited on the 9<sup>th</sup> of October you were able to walk, if I just orientate myself, on the second box down on the right-hand side of exhibit 32, do you see the tunnel coming into the, off the right-hand side of the map?
- A. Yes.
- 30 Q. Yes, and so when you visited on the 9<sup>th</sup> of October 2009, you were able to walk into the stub marked 600MM ventilation hole, was that right?
- A. Yes.
- Q. Do you recall that the hole at the front of the stub is PRDH36?

- A. No I don't.
- Q. Do you see that marked on the map at exhibit 32?
- A. Is that the stub there by the, where the ventilation fan is sited?
- Q. Yeah. Do you see that there's a stub where there's a reference, 600MM  
5 ventilation hole?
- A. Yes, yes.
- Q. It's at the – you see that on the map Mr Poynter? And then just above that, there is a yellow line and the language) is written, "Gas drainage line, connected to PRDH36," Do you see that?
- 10 A. Yes.  
1411
- Q. And my question to you is whether you recall that PRDH36 was at the front of this stub, which is otherwise marked 600mm ventilation hole?
- A. No, I don't recall that.
- 15 Q. Do you recall that the 600mm ventilation hole is otherwise known as the Slimline shaft?
- A. Yes.
- Q. And just so I'm clear, you'd agree with me that the map shows the gas drainage line connected to PRDH36, right?
- 20 A. As best I can see, the yellow line on this map that's in front of me's quite indistinct, but I accept that.
- Q. So would you agree with me Mr Poynter that the gas drainage riser was installed in the same stub as the Slimline shaft at least at the time of your 9 October 2009 visit?
- 25 A. Yes.
- Q. In fact the gas drainage riser had been installed around March or April of 2009, do you recall that?
- A. I'm not sure of when it was installed, but...
- Q. Do you have any reason to believe that's not correct, sir?
- 30 A. I've got no data in front of me to say otherwise.
- Q. And you understand that the gas drainage riser had not been moved before the time of the 19 November 2010 explosion, right?
- A. That's correct.

Q. In fact you visited underground at Pike on at least seven separate occasions following installation of the gas drainage riser in the same stub as the Slimline shaft and before the 19<sup>th</sup> of November 2010, didn't you?

A. I did.

5 Q. And you never said to Mr Whittall or anyone else at Pike that the gas drainage riser should be relocated, did you?

A. I did not.

Q. And you never suggested to Mr Whittall or anyone else at Pike that a suction unit be installed on the gas drainage riser, did you?

10 A. I did not.

Q. Now let's go to your visit underground on the 22<sup>nd</sup> of January 2010 and you've said in your written evidence that this visit was arranged after you contacted the mine manager, Mick Lerch, wanting an update on mine plans and an underground visit, do you recall that?

15 A. I recall that.

Q. So let me, Ms Basher ask you to please bring up map 3?

**WITNESS REFERRED TO DOCUMENT MAP 3**

Q. This is a map located, Mr Poynter, in company files showing the state of development at 19 January 2010, so just three days before your visit and again because this one is not yet available on summation, I would just seek to produce it as exhibit 33.

20

**EXHIBIT 33 PRODUCED – PRC PLAN 19 JANUARY 2010**

Q. Mr Poynter, is exhibit 33 consistent with your recollection of the state of development at the time of your underground visit on the 22<sup>nd</sup> of January 2010?

25

A. As best as I can recollect.

Q. Do you have any reason to believe you didn't see a copy or version of this map at exhibit 33 at around the time of your January 2010 visit?

A. No, I don't.

30 Q. And by now the mine roadways are just starting to be formed in coal, aren't they?

A. They had made a start in coal, yes.

Q. In fact, do you recall Mr Poynter that the majority of the mines roadways were formed in coal after January 2010?

A. They were, except in April, they had the stone graben.

Q. Now by the 22<sup>nd</sup> of January 2010, the intake airways were operational, weren't they?

5

A. They were.

Q. And those are shown on the intake ventilation roadways on the map at exhibit 33, right? You see those?

A. Yes.

10 1415

Q. And is shown on the map at exhibit 33 the gas drainage pipeline was running along some of the intake ventilation roadways, right?

A. That's correct.

Q. And you walked down those roadways during your underground visit to Pike on the 22<sup>nd</sup> of January 2010, right?

15

A. I may have walked, I may have driven, I don't know.

Q. Well there was nothing to stop you seeing the gas drainage pipeline running along the intake ventilation roadways as you conducted your underground inspection on the 22<sup>nd</sup> of January 2010, was there?

20

A. There wasn't. Are you suggesting that as an inspector that I was, things, are you suggesting that things are only going to happen here if an inspector raises them?

Q. I'm just asking you a question whether you were, there was nothing to stop you seeing them and I think you've answered that sir.

## 25 THE COMMISSION ADDRESSES MS SHORTALL

### CROSS-EXAMINATION CONTINUES: MS SHORTALL

Q. So let me take you, Ms Basher, if we could pull up DAO.031.00002?

### WITNESS REFERRED TO DOCUMENT DAO.031.00002

Q. And this is a version of a current mine plan as at the 19<sup>th</sup> of November 2010 about which Mr Whittall gave evidence in Phase One and just so you know Mr Poynter was re-produced in response to a request from the Commission that it include the heading names and my question to you is whether you

30

recognise this plan which I'll seek to have produced as exhibit 34, sorry, it's already in, it's the DAO number, so I don't need to do that. Do you recognise this plan is generally showing the layout of the mine around the time of your last visit, just two weeks before the explosion on the 19<sup>th</sup> of November?

5 A. It's likely that the extraction area would've been smaller but it's the general layout.

Q. By extraction area, can you just show me where on the map you thought could be smaller?

A. It's the end of the hydro-panel, where you've got the word Waratah guzzler.

10 Q. And can you identify on this map the area known as Spaghetti Junction?

A. I can identify the area known as Spaghetti Junction.

Q. And where is that on this map?

A. Spaghetti Junction's down by where the return goes to the fan, just behind substation SS601, it's in that area.

15 Q. And the drift runner at the time of your November visit dropped you off around Spaghetti Junction and then picked you up from that location. Is that right?

A. The reality is, I don't recall exactly where I got dropped off and picked up.

Q. Now I think you said earlier that you would generally spend three to four hours underground. Is that right?

20 A. It would depend on the visit and depend on the time that I had.

Q. Do you recall how long you spent underground during your November 2010 visit?

A. I don't.

Q. Any reason to believe it was any shorter than three to four hours?

25 A. It would probably three hours from the time I got into the mine and the time I got out.

Q. Mr Poynter do you recall which way you walked during your 2 November 2010 visit?

A. No I don't Ms Shortall.

30 Q. Now you've given evidence that Mr Ellis was with you, right?

A. Yes.

Q. And I also act for Mr Ellis and I'm instructed that, well actually let me just bring up a map and if it's not consistent with your recollection I won't ask you any

further questions on it and I'll just see if it refreshes your recollection. It's at map 7 and it's an identical version of the map we've just looked at but it's highlighted with what I understand I'm instructed from Mr Ellis is his recollection and we can put this in by way of reply to assist the Commission,  
5 his recollection of the area that you walked, or that he walked with you on the 2<sup>nd</sup> of November 2010.

1420

Q. Just the highlighted route on this map, which I'll seek to have produced as exhibit 34 refreshed.

10 **EXHIBIT 34 PRODUCED – MAP OF PRC WITH HIGHLIGHTED ROUTE**

A. Well it doesn't show us going into the hydro section, which we did.

Q. And that was my question to you. Do you recall going into the hydro section?

A. We absolutely went into the hydro section and we stood alongside the Waratah guzzler. There was a process whereby we had to isolate those things prior to  
15 going in advance, so that I could inspect the goaf and we also walked to where the – we went and had a look at a roadheader operating and I think it was probably the roadheader in RH01.

Q. In terms of the path that you walked to get access to the roadheader and up to the panel, does looking at exhibit 32 in the highlighted part there refresh your  
20 recollection at all as to the way you walked to get up there?

A. It doesn't. I know that we didn't go up to the continuous miner place, 'cos I was told it wasn't working on the day.

Q. Now at the time of 2 November 2010 visit, there were fixed gas sensors in the locations identified in the map at 34, is that right?

25 A. At 34?

Q. Sorry, well I'm calling it exhibit 34. The map that you have in front of you shows some fixed gas sensors. Do you recall being aware that there were fixed gas sensors in locations?

A. I was aware that there were fixed gas sensors. I couldn't, I can't recall the  
30 exact locations of them.

Q. Do you recall walking past methane sensors during part of your 2 November 2010 visit?



A. The only methane sensor that I recall from that day is the methane sensor that was on the monitor, where the monitor operator worked from.

Q. Well no one at Pike ever denied you access to inspect Pike's gas sensors in its mine, did they?

5 A. No they didn't.

Q. And no one at Pike ever denied you access to inspect the calibration records for Pike's gas sensors, did they?

A. No.

10 Q. And no one at Pike ever denied you access to inspect the maintenance records for Pike's gas sensors, did they?

A. No they didn't.

Q. And no one at Pike ever denied you access to information about the maintenance of the gas sensors, did they?

A. No they did not.

15 Q. And no one at Pike ever denied a request from you for information about the number and placement of gas sensors, did they?

A. No they did not.

Q. And no one at Pike ever denied a request from you for information about the type of sensors in use, did they?

20 A. They did not.

Q. And as a health and safety inspector, you're able to require the production of documents or other information, aren't you?

A. I can.

#### **THE COMMISSION ADDRESSES MS SHORTALL**

25 1425

#### **CROSS-EXAMINATION CONTINUES: MS SHORTALL**

30 Q. Now Mr Wilding asked you yesterday Mr Poynter if you'd ever raised any concerns with Pike about the construction or quality of its stoppings and you responded that, "They appeared to be standard, bored and bratticed. Do you recall that?"

A. I made that statement, yes.

- Q. And then you added, "That they could have been better." Those were your words used yesterday and my question to you is that you didn't say that to Mr Whittall or anyone at Pike before the 19<sup>th</sup> of November 2010 did you?
- 5 A. I never raised it as an independent issue, no. I think I've already said that in a previous statement Ms Shortall.
- Q. Now I just want to ask you a couple of questions about the fresh air base at the base of the Slimline shaft. Do you recall that that was installed since around March 2010?
- A. It would be about that time.
- 10 Q. And you visited underground at Pike on at least three separate occasions following installation of the fresh air base at the base of the Slimline shaft and before the 19<sup>th</sup> of November 2010 didn't you?
- A. That's correct.
- Q. And you said yesterday that you'd actually been in the fresh air base at Pike hadn't you?
- 15 A. I have.
- Q. Now by January 2009, I just want to go back in time. The main vent shaft had been dug and the mine had scheduled the installation of a hoist to allow both sides of the shaft to be supported, right?
- 20 A. Correct.
- Q. And in connection with this installation you and Mr Firmin arranged for the then senior inspector Mr Walrond to meet with the design engineers, Farra Engineering in Auckland, right?
- A. That's correct.
- 25 Q. And that's touched on in the email that we talked about earlier from July 2008?
- A. That's correct, yes.
- Q. And that meeting went ahead as you recall?
- A. As I recall, I asked for Mr Walrond to do it because he had experience in the sinking of a shaft in an area that I was not quite familiar with.
- 30 Q. And no one from Pike River was present at that meeting were they?
- A. I don't know who was at the meeting, I can have a look at the minutes and see who attended. I'm not sure, but certainly John Walrond was there and the designers.

Q. Are you able to recall one way or another whether the company was there?

A. No, I'd have to look at the minutes of the meeting.

Q. Well let me just take you to those just to clarify that. Ms Basher if we could pull up DOL3000040012/4

**5 WITNESS REFERRED TO DOCUMENT DOL3000040012/4**

Q. Do you recognise this document as a summary set of minutes from the meeting in Auckland about the event shaft construction?

A. Yes it's a summary set of minutes between Farra Engineering Design, John Walrond and...

10 Q. And as you look at who was present which is identified in the top paragraph on this document Mr Poynter, does that refresh your recollection that no one from the company was present?

A. I can see there's no one from the company present.

15 Q. And the design of the hoist to allow both sides of the shaft to be supported, it was actually agreed with the Department wasn't it?

A. The Department reviewed the design to ensure that we were comfortable with it, the final design was something that was the responsibility of Farra Design. We don't approve designs. It's not part of our role. We got involved in an early stage because it made sense to work with the engineer and designer about some of the issues that we felt were necessary in the design work and we were just trying to satisfy ourselves that the things that we would've been concerned about were being ticked off in the design.

20 Q. Well the Department actually accepted the design that Farra Engineering presented didn't it?

25 A. I'm not sure what particular wording was used, but from the point of view of the Department and the inspectors, our right or role to do approvals of plans was removed with the change of the legislation.

Q. If I could just Ms Basher please have brought up the document at DOL3000040011/2, the second page of that document.

**30 WITNESS REFERRED TO DOCUMENT DOL3000040011/2**

1430

Q. And Mr Poynter, do you recognise this document as a letter sent by Mr Walrond to McConnell Dowell on the 25<sup>th</sup> of July 2008, do you see that?

A. Yes.

Q. And if I could just draw your attention to the second paragraph of that letter, and I'm just reading from the document, "I had some discussion with our two South Island mining inspectors and can advise that we accept the design that  
5 Farra Engineering has presented along with matters raised in the meeting notes." Do you see that?

A. I can see that. It doesn't say we approved it though.

Q. It says, "accepted" doesn't it, sir?

## 10 THE COMMISSION ADDRESSES MS SHORTALL

### CROSS-EXAMINATION CONTINUES: MS SHORTALL

Q. Let me just move, and I believe this line of questioning should be okay, move to the collapse of the vent shaft over several days starting in early February 2009. Do you recall that, Mr Poynter?

15 A. Yes I recall, the vent shaft collapsed.

Q. Right, and do you recall requesting information from the mine manager in February 2009, Mr Louw, about the installation of the Alimak shaft?

A. I did.

Q. And I understand from your evidence, your written evidence, that it's your  
20 position that the Department had no input into the final decision for the installation of the Alimak shaft –

A. That's correct.

Q. That's your position, isn't it?

A. Absolutely.

25 Q. And I just want to confirm with you that you knew that a ladderway was planned to be installed in the Alimak section?

A. Yes.

Q. And you actually spoke with Mick Bevan at Pike in April 2009 about the size of the Alimak, about it being 2.5 by 2.5 metres in size?

30 A. I was provided data also by Mr Slonker on safe standard operating procedures and a few other items that I was not aware of, not familiar with an Alimak shaft

and I wanted to see what the standard operating procedures were for the people that were working in it.

5 Q. Now you've said in your evidence that you raised the issue of the second means of egress during your 8 April 2010 visit to Pike and you met with Mr White and Mr Lerch during that visit. You've confirmed that to Mr Haigh this morning?

A. Correct.

10 Q. Thank you. And you've said at the time, this is in your written evidence and I just want to explore this with you that, it was your view, "That a prohibition or improvement notice had the possibility of failing if Pike River challenged it in Court, because technically a person could climb up a shaft and exit the mine." Do you recall that from your written evidence?

A. Yes, I recall that from my written evidence.

15 Q. But no one at Pike said to you that the company would challenge this matter in Court, did they?

A. Nobody at Pike said to me that they would challenge it. I've said all the way through my evidence that at no stage did Mr White, Mr Lerch, or any of the officials that I talked to indicate to me that they weren't prepared to put in a second means of egress.

20 Q. And given your dealings with Pike, Mr Poynter, you didn't really have any reason to believe that Pike would challenge it in Court, did you?

25 A. I'm not sure of the relevance of your question. I was looking at the clause. I was considering what action I might be able to take and I came to the conclusion that if I did take action and it was challenged, then I believed it had a potential to fail. And I raised that in my – that was in my Insite note and a discussion that I had.

Q. With who?

A. With Johan Booyse.

1435

30 Q. Now following 8 April 2010 visit you asked Mr White and Mr Lerch to send you a copy of their programme for installing the additional walkout egress, right?

A. Yes, that's correct.

- Q. And as you've explained this morning when Mr Rockhouse sent you those documents a few days later you didn't have what you requested. That's right, isn't it?
- A. That's right.
- 5 Q. Now you didn't contact Pike immediately and ask for the documents you wanted, did you?
- A. No I didn't Ms Shortall.
- Q. You didn't even do so in the days or weeks following, did you?
- A. No I did not.
- 10 Q. In fact although you had interaction with Pike over the next several months it was not until four months later, during a visit on the 12<sup>th</sup> of August 2010, that you followed up on this matter, was it?
- A. No it was not.
- Q. It wasn't of such concern to you that you followed up sooner, was it?
- 15 A. I have already conceded in this courtroom that given all the information that was available, could've been available to me, that I was unable to make a judgement of the actions that might've been appropriate. I've conceded that there may have been an alternative route given the other incidences that we're now aware of that I could've taken. I can't change that. So to suggest to me
- 20 that I just stopped being concerned about it is incorrect. There are other things that I was doing all through that period including in June dealing with a loss of a grandson. So I find it a little bit rich to be suggested to me that I just wasn't following up 'cos I wasn't concerned about it.
- Q. Now even on the 12<sup>th</sup> of August Mr Poynter you didn't raise the second egress
- 25 point until the end of your inspection, did you?
- A. That's correct.
- Q. And in your August 2010 letter to Mr White it was the last issue or lowest priority, number four in your letter sent to the company. Isn't that right?
- A. So you're suggesting that when I write a letter I've got to prioritise the most
- 30 important one at the top and the least important at the bottom? I think, I just don't think that's a fair statement. Because it was on the bottom of the letter it was least priority. It should've been the highest priority to Pike River. They're the ones in control of the workplace Ms Shortall, not the inspectors.

- Q. Well I'm just going to put to you that notwithstanding that you're in contact with Pike about matters during the intervening period, it was then another two and a half months during your 2 November 2010 visit that you followed up to obtain the memo Mr Poynter. That's right, isn't it?
- 5 A. I was aware that they were in the process of putting a plan together. I'd had a conversation with Mr White and he expressed what seemed to be a reasonable supposition that there are alternatives available than the 700 metre stone drive, they were working on it, they were developing a plan to look at what was the fastest and quickest way to get a second means of egress. On
- 10 that basis I waited for Mr White to present that plan to me. In August when I put, "I want a timeline and a plan" it was so that I had something in writing to show that there was a commitment to complete this. The long term view would've been to get quite specific stages for the development of that so that it could be monitored.
- 15 Q. I'd just like to come to your notes just for a couple of questions Mr Poynter. In your written brief you refer to having a concern after the shaft collapsed, as to how long it would take to drive another access at the mine. Do you recall that in your written brief?
- A. Correct.
- 20 Q. But that's not mentioned anywhere in your notes of that 8 April 2010 visit, is it?
- A. I've also conceded in the court that I'm not the best note taker when I'm visiting a mine.
- 1440
- Q. But the Department's position, the department that you worked for at the time
- 25 is that if it's worthwhile making a mental note of something, it's worthwhile making a written note isn't it? That's the Department's position.
- A. I believe that is so.
- Q. And in fact, that precise language is used in the Inspectors' Manual of Best Practices, isn't it Mr Poynter?
- 30 A. It is in respect to investigation.
- A. And there's no mention in the notes of your 12 August visit of the concerns that you've now talked about before this Commission, concerning the second means of egress, are they?

A. In my notes, other than a jot, no.

Q. And the Department emphasises to inspectors the importance of making out a written record, right?

5 A. That is a requirement. I tended to put my written record into my Insite notes and that way I had an electronic copy. I didn't have a notebook that I was going to lose. The notebooks we use underground get covered in coal and dirt. It's not the easiest environment to walk around and take contemporaneous notes.

10 Q. Well, the type of concerns that you've been talking about to the Commission aren't reflected in your Insite notes either, are they sir?

A. I believe they are.

Q. Where?

A. What concern are you talking about?

Q. Well let's take –

15 A. The time that it was going to take to drive?

Q. Yes.

A. No they're not.

20 Q. What about the concern that you've talked about before the Commission that the shaft did not provide a suitable second egress from the mine. Where is that in your Insite notes? It's not in your handwritten notes, so where is it in Insite?

A. In the Insite note and my letter to Mr White, I stated that a second egress needs to be completed.

25 Q. And I don't want to stay on this point for much longer Mr Poynter, but you would agree with me that in that letter, the 30 or 31 August letter that Mr Haigh showed to you this morning, there's no words written there to the effect, the specific effect, that the shaft didn't provide a suitable second egress from the mine, is there?

A. Those words are not specifically written in my letter.

30 Q. And do you recall, and I can bring it up if it will assist, but I'm conscious of time, that the Department's manual for inspectors specifically states and I'm quoting and for the record, this is at DOL3000100001/243, "Information that is not



written down is subject to the vagaries of memory, whereas written notes are permanent." Do you recall that from the manual sir?

A. Not specifically, but I expect that something like that could well be written.

5 Q. Now, you answered some questions yesterday about how the Health and Safety in Employment Act provides inspectors with broad powers, including issuing improvement, prohibition and infringement notices, right?

A. Correct.

Q. And we've confirmed that you never issued any of those notices against Pike River, right?

10 A. We have confirmed that.

Q. But you were prepared to deploy those tools if appropriate, weren't you?

A. I was.

15 Q. In fact, you would've issued a prohibition notice on the roadheader after the gas ignitions in November 2008, wouldn't you, but the mine had already addressed the issue. Do you recall that?

A. The mine had already voluntarily withdrawn the machine from the face.

Q. And you certainly issued lots of improvement notices on other mines, didn't you?

A. I have issued improvement notices and prohibitions and warnings.

20 Q. And one of the functions of inspectors in section 30 of the Health and Safety in Employment Act is to take all reasonable steps to ensure that the Act is being complied with, right?

A. Correct.

25 Q. And you would agree with me, wouldn't you, Mr Poynter, that it wouldn't have been a reasonable step to note in Insite that you believed the vent shaft met minimum standards if the Act wasn't being complied with, would it?

1445

30 A. I'm trying to think of an answer Ms Shortall. If I haven't followed policy then I have followed policy in that instance. There is no minimum standard. Discussions I've had throughout this has been about the fact that when you look at the term, "egress," and you have the debate around, "Can you egress the mine via that shaft," the answer to that is, you can climb up it with some severe difficulty. So if you say is it an egress, can you egress out of it, the

answer is, yes you can but it's really difficult and with the plans that the mine had in place for development, it wasn't a suitable means for that mine for the purposes of the developments that they were going to do in the future. I've said that a number of times.

5 Q. On the 16<sup>th</sup> of July in 2009 you accompanied the Minister of Labour Kate Wilkinson on an underground visit at Pike didn't you?

A. I did.

Q. And this visit occurred four weeks after completion of the installation of the Alimak, right?

10 A. It did.

Q. So you knew on the 16<sup>th</sup> of July 2009 that if the drift became blocked and the Minister needed to escape the mine she would've needed to climb the Alimak and a bench shaft right?

A. So did the people that took us down Ms Shortall. They had prime  
15 responsibility to ensure if people are entering their mine that it's safe to do so.

Q. And you didn't say to the Minister or anyone else on that visit that the visit shouldn't go ahead in those circumstances did you?

A. No, and neither did Mr Whittall when we had a meeting prior to going underground.

20 Q. You didn't call off the visit did you?

A. No I didn't.

Q. You didn't think it was unsafe to go underground that day did you?

A. I didn't think it was unsafe to go underground that day.

Q. Now you were here yesterday when Mr Firmin – actually it would've been on  
25 Tuesday now I think when Mr Firmin gave evidence, right?

A. Not for all of Mr Firmin's evidence, no.

Q. Well Mr Firmin said that just two of the underground coal mines that he inspected before the 19<sup>th</sup> of November 2010 had underground refuge chambers, East Mine and Spring Creek and my question to you, I just have a  
30 couple of questions on this, did any of the other mines that you inspected have underground refuge chambers before the 19<sup>th</sup> of November 2010?

A. Only the two mines Mr Firmin talks about.

Q. Do you know whether Spring Creek had started hydromining before Solid Energy installed a refuge chamber at that mine?

A. I don't know, it was before my time as an inspector.

5 Q. Prior to the 19<sup>th</sup> of November 2010 had you been inside the refuge chambers at East Mine and Spring Creek?

A. I have.

Q. How did the fresh air base at Pike compare to those refuge chambers?

10 A. It was totally different in that they were solid structures, Spring Creek had CaBER sets which is an oxygen supply that when you went into the chamber you could don your CaBER set and then look to self-evacuate. There's a lot of debate about the use of refuges in underground coal. I'm aware of the debate. The general feel I think within the industry is that evacuation is always the best option and that using a refuge would probably be the least preferred option but at those two mines they determined they would have a refuge bay.

15 Q. Now the comparison between the fresh air base at Pike and your knowledge of the refuge chambers at East Mine and Spring Creek didn't cause you to exercise any of your powers as to Pike did it?

A. No it didn't.

20 Q. Now Mr Wilding showed you some work order forms yesterday as to which someone had written a note, "Not done," do you recall that?

A. I recall that.

1450

25 Q. Do you understand that the work order system used by Pike runs sequentially such that approximately 17,000 separate work orders have been generated by November 2010?

A. I think I've already said that I wasn't fully aware of all of the systems that Pike were running with respect to their maintenance systems and their recordings.

30 Q. Well, just in connection with the three that you were shown, that said "Not done", are you aware of any coal mine in New Zealand that has 100% completion for work orders?

A. No, I'm not.

Q. What about in Australia?

- A. I've been there four months, Ms Shortall, I haven't had time to do anything like that.
- Q. You just don't know, sir?
- A. I don't know.
- 5 Q. And you would agree with me that it's possible with respect to the three that you were shown yesterday that the equipment may not have been inspected such that the work order may not have been done because the equipment wasn't even in service?
- A. That's possible and it may have been not signed-off as done simply because  
10 there was a glitch in the system and it wasn't signed off. There are lots of reasons why a work order won't be signed-off. I was shown them and asked if I was aware of the documents. The answer is no, I wasn't aware of the documents.
- Q. Now, you were also shown other reports yesterday in which health and safety  
15 issues were noted. Do you recall that, a series of reports?
- A. I recall a series of reports.
- Q. Would you agree with me Mr Poynter, that the fact that those issues were noted, there's a record of those issues, is evidence that a health and safety system was in existence?
- 20 A. It's evidence that there was recording going on of the incidents occurring, it didn't appear to provide the evidence that the issues that were being raised were being dealt with.
- Q. On the face of it, it's my point –
- A. On the face, that's exactly what it showed.
- 25 Q. There was nothing on the face of those documents that could tell you one way or another, whether those issues weren't addressed by the company, was there?
- A. Of the documents I saw, there was nothing that said whether or not those issues were addressed.
- 30 Q. It's possible that they could've been, isn't it sir?
- A. And it's also possible that they might not have been.
- Q. But it's possible that they could have been, would you agree with that –
- A. It is possible they could've been addressed.

Q. Now Mr Wilding also showed you an investigation report for March 2009 that included language about a systemic failure across several departments at Pike. Do you recall that?

A. I recall the document that was shown to me.

5 Q. Do you recall Mr Poynter that in March of 2009, Pike was still hiring staff to fill its departments?

A. That's correct.

Q. Do you recall that the project was still in a relatively early phase?

A. It was in a relatively early phase.

10 Q. You don't have any reason to believe, do you Mr Poynter, that any systemic failures identified across departments in March 2009, still existed well over a year and a half later in November 2010, do you?

A. I don't.

15 Q. Now, when you conducted inspections at Pike, alongside the mine manager you were the most qualified person onsite, right?

A. I'm not quite so sure about that Ms Shortall. There were a lot of people onsite and it depends on what you're talking. If you're talking about qualifications on underground mining, I had a first class mine manager's certificate, that was granted in 1985. There may well have been people that had much more  
20 knowledge than I did and expertise in their specific areas, so I think it's a qualitative answer that I had a first class mine manager's certificate. I didn't have a degree. I think Mr White might have a degree as well, but I don't.

Q. And when you conducted your underground inspections at Pike, you exercised your discretion about what matters to explore and what to inspect, didn't you?

25 A. Yes, Ms Shortall.

Q. You exercised your discretion about what matters, to the extent to which you would expect matters, didn't you?

A. I did use my discretion.

30 Q. And although you were asked lots of questions yesterday about matters you say weren't brought to your attention, no one at Pike ever refused you access to information, did they?

A. No, and neither did they offer it.

Q. No one at Pike stopped you asking questions or probing matters, did they?

A. No, they didn't.

Q. Rather the decisions about the extent to which you probed Pike, and sought detail, were made by you, right?

5 A. They were on the basis of the information that I was using to make that decision and again, I conceded that I did not have all of the information to make the decisions I was making.

1455

Q. And decisions about whether you looked at issues like methane drainage or emergency preparedness were made by you, right?

10 A. That is correct.

Q. And you were a warranted health and safety inspector such that you had a duty to take all reasonable steps to ensure that the Health and Safety Employment Act was being complied with, right?

A. I was.

15 Q. And you took that duty seriously didn't you Mr Poynter

A. I did.

Q. And you understood that people were relying on you?

A. I did. They were also relying on the employer to provide a safe place of work where the primary responsibility under the Health and Safety Act lies. The  
20 primary responsibility for the health and safety of any work site lies with the employer and as an inspector I have said in this court I had limited views of the mine. It's a snapshot, it's like going down and taking a camera picture and I can only determine the actions that I'm going to take on what I see and what I hear and what I know and the data that I had was the data I used to make my  
25 decisions.

Q. And you made decisions about what data you sought, didn't you sir?

A. Yes I did.

Q. Now when you conducted underground inspections at Pike the fact that there were only two Department of Labour inspectors and you considered I think  
30 your words to the Commission have been, "That the structure was dysfunctional," that didn't impact the quality of your inspections when you were underground at Pike, did it?

A. It had an impact on the amount of time that I was able to spend at any one site.

- Q. Well I'm asking about the Pike site. Do you believe that the fact there were only two inspectors and –
- A. I believe I did the best job I was able to do at Pike when I did an underground inspection, based on the information that I had.
- 5 Q. And my question to you Mr Poynter is whether you take the position that the fact there were only two inspectors and that you considered the structure to be dysfunctional, did that impact the quality of your inspection work when you were underground? I understand it may have affected your follow-up and those sorts of things.
- 10 A. Yeah.
- Q. But when you're underground, did it impact the quality of what you were doing?
- A. I don't think it impacted on the quality of what I was doing where it may have had an impact, the structure that I'm talking about now is where I had an issue that I was a little unsure about it made it more difficult for me to go somewhere and get it resolved. Because then we were left in the position of Michael and I having to talk to each other and make some sort of decision that it wasn't reasonable for us to have to make. By having a chief inspector of mines, we would've had a structure whereby we could've sat down with a chief inspector, I could've raised issues if I had concerns and they could've been much easier
- 15 for us to resolve.
- Q. You didn't inspect Pike's mine any differently to any other mine that you were inspecting at the same time, did you, Mr Poynter?
- A. No.
- Q. You didn't give Pike any light treatment, did you?
- 25 A. No.
- Q. You applied the same standards as you did to all the other mines you're inspecting at the time, right?
- A. Yeah, with the exception of a particular mine that was resistant to voluntarily compliance.
- 30 Q. But that wasn't Pike, was it?
- A. That was not Pike.

Q. Now during the course of your evidence yesterday you talked about being given an impossible task. I think they were your words, by the Department, as the sole inspector with oversight of health and safety at the Pike Mine, right?

A. No, not at the Pike Mine Ms Shortall.

5 Q. It'd be helpful if you could explain what you meant by that reference?

A. I was saying that to expect two inspectors to deal with the size and workload that we were confronted with was unreasonable. It was almost an impossible task to do, we were doing three-monthly visits, they were snapshots and it was the same for Pike, was the same for Spring Creek, it was the same for  
10 East Mine, tunnels in Auckland, they were getting a visit probably every six months, probably less of a hazard but they were getting visits. The opencast, a thousand quarries, you know, it was just an impossible task.

Q. Now you mentioned several times in your evidence yesterday being part of the investigation team. Do you recall that?

15 A. In the very early phase, yes.

Q. And what do you mean by that, "in the very early phase"?

A. After, when the Department of Labour started the investigation phase post 19 November –

20 **OBJECTION: MS McDONALD (15:00:12)**

1500 LP

Q. – in the very early phase?

A. After, when the Department of Labour started the inspection, the investigation phase post-19 –

25 **OBJECTION: MS MCDONALD (15:00:12)**

**THE COMMISSION ADDRESSES MS SHORTALL**

**WITNESS STOOD DOWN**

30

**LEGAL DISCUSSION – COMMISSION AS CHAMBERS**

1521



**CROSS-EXAMINATION CONTINUES: MS SHORTALL**

Q. Mr Poynter I was actually at the point of, I was on the last page of my questioning when we took the break there and I'm happy to complete my questions there. So thank you for your time.

5 A. Thank you.

**CROSS-EXAMINATION: MR NICHOLSON**

Q. Mr Poynter so I'm counsel for McConnell Dowell. When you were being questioned yesterday by my learned friend Mr Wilding, he asked you about whether you ever had occasion to look at documents held by contractors at  
10 Pike River. Do you remember that?

A. Yeah, that's correct.

Q. And for the record that was at page 3114 of the transcript. Now your answer to Mr Wilding suggested that you never looked at contractors documents and I just wonder whether that's a very strong statement or whether you might've  
15 looked at them on some occasions?

A. It's possible I looked at them on some occasions. I guess on some respect we looked at contractors documents and we looked at the Farra vent shaft design so that maybe that's fair.

Q. Because McConnell Dowell hadn't filed their Phase Three evidence yet but  
20 when they do, that evidence is going to say that on at least one occasion in 2010 you went down to their office at the Pike Mine site and looked at some documents down there. Do you remember doing that?

A. Not specifically I, can you tell me what the documents were?

Q. You looked at, well their evidence is going to be that you looked at some  
25 shotfiring tickets?

A. As part of the HSNO audit that we did, we did go into the McConnell Dowell office and we did inspect, indeed look at shotfiring tickets as part of that audit process.

**QUESTIONS FROM COMMISSIONER HENRY:**

30 Q. I just wanted to ask you a quick question about the Braithwaite triangle Mr Poynter. Your colleague mentioned it several times, I asked him a question

about it, Mr Firmin. Is that something that you had training on when you were with the Department of Labour?

A. I'm aware of it. There is, it's, was part of a presentation about how to try and scale where a company was. I'm not sure whether I followed the Braithwaite model to the letter and some of my assumption may have been more about what I had, what I was perceiving and what sort of documentation I was looking at when documentation was provided to me to determine whether we were dealing with a compliant company.

Q. Did you have any training on it as such, how you use it?

10 A. No, not that I recall sir.

Q. Did you have any suggestions from your supervisor or anyone else that it should be of the core of your approach as a modern regulator or that it should guide your thinking?

A. I can't remember that specific discussion coming up in any reviews that I ever had.

1525

**QUESTIONS FROM COMMISSIONER BELL:**

Q. Mr Poynter, good afternoon. Just a few questions from me, you said yesterday when you issued, if you were issuing a prohibition notice that you would need to get approval from a more senior officer. Was that always the case?

A. No, this was in respect of Pike River. I mean the problem with issuing – it was specifically about issuing one over the shaft, so I'd have had to determine what activities I was going to stop and if I was going to stop a mine working, so you're actually completely prohibiting part of the mine or part of the activity underground, it would've had to have been pushed up to another manager because I was going to have an impact on that company and it was greater than maybe stopping the use of a particular machine, or a bench saw.

Q. So you wouldn't have been worried about getting support from higher up. Would you have been concerned that that support wouldn't have been forthcoming?

A. With the mine, with the profile that Pike River had, I did have concern that I wouldn't have got the support.

Q. Just another matter, are you happy with quarries being inspected by non-mining personnel, that have had some sort of basic training?

A. The short answer is, no. But I was happier for them to be inspected by those people than not get inspected at all. Basically the primary inspection would've  
5 been around the plant that was being used, so we were at least making sure that the plant was appropriately guarded and the plant was reasonably appropriate for the task that was undertaken. The idea was if there were any concerns or anything they noted in the faces or the operation that they had concerns about, they would come back and use us as mentors. It was not a  
10 preferable option. For me, the preferable option would be employ some people who've got quarry qualifications to do the inspections.

Q. And just finally, you talked about certificates of competency. This is maybe a bit of a difficult question for you, do you think they're too easy to get in New Zealand?

A. I'm about to get into big trouble. I think the unit standard process is probably very good, so you've got, you've at least defined the skills that are required for each of the qualifications. I think personally where it falls over is that you might get your 21 competencies, but there's no actual test of that retention of the 21. As you pass each one you get a tick in the box and you get to the end, you  
20 present all the ticks and a letter from your manager to say that you're a suitable person and the ticket's issued. I've always been in favour of some sort of independent review to determine whether a person actually understands what it means to manage either an underground mine or to be a deputy or to be, just you really need to understand whether they've retained all that information and they're able to put it into practise in either an oral exam,  
25 which is what they do in Queensland and what we used to do here.

Q. So do you think it would be worthwhile having some sort of liaison with a board of examiners in another jurisdiction to give some sort of benchmarking if you like of COCs over here?

A. It could well be. I understood that there had been some benchmarking done at  
30 some stage between the jurisdictions and EXITO. I'm not sure of that, you'd have to make that enquiry with EXITO.

**QUESTIONS FROM THE COMMISSION:**

Q. Just a couple of things Mr Poynter, first of all, paragraph 267 of your witness statement, if you could just turn to that?

**WITNESS REFERRED TO WITNESS STATEMENT**

5 1530

Q. Just the final sentence, in order to make sense of what you're discussing in that paragraph about the vibration monitor on the main fan, is that final sentence correct when you say that Mr White advised you he believed the vibration limits were set too low. Should it have been too high?

10 A. Yes Your Honour it should've been too high. The issue was the fan was allowed and they kept it running even though there was evidence of vibration but –

Q. I don't know we need to go into it because I do understand what you said apart from the last sentence.

15 A. Yes.

Q. So it's just a typo really?

A. Yeah.

Q. Yes now secondly, you were shown a considerable number of documents yesterday by Mr Wilding which you weren't familiar with. On one view of it apart from the technical aspects that many of those documents were dealing with, it might be thought that they also provided an insight into the culture within the Pike River Mine. Did you think that in relation to them?

20 A. It could, you'd have to follow through each incident and see where the incident got to. I think it showed that the reporting of incidents is what's happening and there was a system capturing them but just on the data that was shown to me, it appeared that the implementation or the next phase was either missing off the documentation, so it may have been completed or it may have been signed off but –

25 Q. Yes well what I'm more directing you to is whether many of the events which are reported in those documents did not shed light on prevailing culture within the mine. Did you not form a view about that as you...

30 A. I think it does give you an insight to – you'd have to look at the events and do some analysis I think sir. They may be a series of individual occurrences.

You'd have to pull them out and collect them into the various boxes to see whether we were dealing with a whole lot of either human failures or whether we're dealing with institutional failure or whether it was, I'm trying to think of a name of the other, it's either an institutional, intentional...

5 1533

Q. Well given, for example, the instances of bypassing and also the writing in some of those reports where some of the authors were plainly frustrated, if not despairing about what was happening, are you surprised that you had not picked up on any of that in any of your discussions with men in the mine as you made inspections?

10

A. I am sir.

Q. Looking back, is there anything that you can think of which might explain why you hadn't picked up on that or people had not chosen to confide in you about the sort of concerns they were writing about in some of the reports?

15

A. I have thought about why that might be. Personally, I have always found myself, I have always thought of myself as being approachable. I never hid from anybody that I was a mines inspector. It was, my personal phone number's in the phonebook. I was very easy to find. I really haven't been able to come up with an explanation as to why that would be.

20

Q. Just so we have a better sense of it. In a typical visit, did you invariably talk to men in the mine away from whoever was escorting you on the day or did it only happen occasionally?

25

A. Usually we were able to get a situation where I could be left with the workers for a short period of time. Not purposefully saying to manager, "Look, go away. I want to talk to the men," but you know, quite often when the manager's underground or your escort, there will be issues that will be raised by the men and he'll say, "Oh, look, I just need to go," so that leaves me either in a workplace or a crib room. It was quite useful to catch people in there, when they were having crib and you could sit down and just have a general conversation with them, but –

30

Q. So in general, would you get to speak to one or two, or how many people?

A. Well a workface could have five or six or seven men in there. Crib room could have up to 10, so you know, it wasn't one or two people. It could be a group of people. So you know, it could be six, seven eight people in a visit.

1536

**5 QUESTIONS ARISING – NIL**

**WITNESS EXCUSED**

**COMMISSION ADJOURNS: 3.36 PM**

**COMMISSION RESUMES: 3.54 PM****MS McDONALD CALLS****ALAN COOPER (SWORN)**

- 5 Q. Mr Cooper, is your full name Alan Cooper?
- A. Yes it is.
- Q. And you've completed a brief of evidence, I think, dated the 21<sup>st</sup> of October 2011. Is that correct?
- A. Yes.
- 10 Q. And that's a true statement of your evidence?
- A. Yes it is.
- Q. Do you have a copy of that brief with you?
- A. Yes.
- Q. And just by way of introduction, I think you're employed, aren't you, as practice leader, health and safety practice department with the Department of Labour?
- 15 A. Its health and safety practice development, yes.
- Q. Sorry, did I misread that, sorry. And that's I think a level five position within the organisation. Is that right?
- A. Yes, it's an advisory role.
- 20 1556

**CROSS-EXAMINATION: MR WILDING**

- Q. Mr Cooper, if I could turn first to the issue of the training and ask you just to say, what are the high hazard industries that the Department's responsible for?
- A. There'd be a number of industries that could be classified as high hazards.
- 25 The two particular industries that we're paying attention to would be the oil and gas industries and the coalmining industries. The Department has made a decision to establish a high hazard unit to address those particular industries. I think it would be fair to say that there would be other industries around the country such as chemical that could arguably fall into a high hazard category.
- 30 Q. Has the Department got a project to assess what are the high hazard industries?

A. At this stage the high hazard unit is to cover the oil and gas industries and the coal industries, and there were some early discussion about how we might assess what further scope there might be to consider a high hazard approach for other industry areas.

5 Q. Just looking at the current situation, do the inspectors of the industries currently identified as high hazard receive specialist training focussing on those industries prior to their appointment as an inspector?

A. No, the training for receiving a certificate of appointment as a health and safety inspector is not focussed on any specific coalmining activity.

10 Q. So you would be aware then that based on the evidence the Commission's received, underground coalmining inspectors don't receive training or assessment in relation to the Health and Safety in Employment (Underground-Mining Regulations) 1999 as part of their certification?

A. No they don't.

15 Q. Why not?

A. The primary focus on the warrant training has been around a range of skills and health and safety factors which exist across a number of industries and understanding the legislation and powers. Having listened to the evidence over the last few days, I would acknowledge that it would seem that there should be some training that covers the underground mining regulations, as it is clear, from the inspectors, from what they've said that some additional interpretation about how those regulations might be applied would've been of benefit to them.

1559

25 Q. Would it be fair to infer that it was assumed that the fact that a underground coal inspector had a first class mine manager's ticket, was considered to be sufficient specialist expertise for the job of inspecting?

A. It would be fair to say that with regard to understanding the technical and mining-specific issues that they would deal with as an inspector, that a high level of value was put on that qualification. I would note that the Department did also have the role of senior advisor mining and the way in which the Department operates would leave open the opportunities to contract any additional advice but I accept that that was on an as needed basis. We may

30



seek some written information in relation to the high hazard role being developed.

Q. Has the Department carried out an assessment of the training that is required for inspectors of high hazard industries?

5 A. At this stage, there hasn't been an assessment, although it is the intention of the Department that the method of operation will become more focussed towards systems audit and therefore from that, it is clear that those inspectors should be trained in systems audit and as previously acknowledged, we need to look at some specific training and guidance regarding those regulations.

10 Q. Do I take it then that the Department hasn't looked at the type of training that is given to those responsible for health and safety oversight in the civil aviation context?

A. The Department of Labour doesn't cover the civil aviation industry.

15 Q. Well, I understand that. My question is directed at whether or not it's considered the type of training given to those responsible for oversight of those, that industry, to help them better understand the training that their inspectors might need.

A. At this time I'm not aware of any such consideration. The high, I would note that the high hazard unit recruiting process is currently happening and that  
20 would be a clear starting point to assess what training is needed.

1602

25 Q. So accepting that this may be looked at by the high hazard unit, does that mean that certainly up to the Pike River tragedy, the Department hadn't given consideration to the nature of the training given by regulators to underground coalmining inspectors in overseas jurisdictions?

A. If such consideration was given, I would've expected that would've been by the senior advisor for high hazards and I'm not aware of whether that was done.

Q. You would be familiar with some of the experts in high hazard regulation and theory, for example Dr Andrew Hopkins?

30 A. Yes, I am.

Q. And from the human factors perspective, of course, Dr Callaghan?

A. Yes.

Q. Does the Department have within it, experts in the health and safety regulation of high hazard industries?

A. There'd be a number of our staff who have a level of understanding but to my knowledge, no one who would hold themselves out to be an expert in that field.

5 Q. So does that mean that the Department will need to have or contract experts to assist it to design an appropriate training regime?

A. I don't believe that's a decision that I could commit to, but certainly the Department has in the past contracted experts in various regulatory fields to assist in developing staff.

10 Q. You've already drawn attention to the lack of training in relation to auditing. Do you also agree that the underground coal mine inspectors don't, as part of their departmental training, receive training in risk assessment?

A. The approach taken by the Department is more focussed towards supplying the hierarchy of controls. Risk assessment models are not generally promoted  
15 by the Department of Labour, but it is my understanding that one of the inspectors had been sent for a risk assessment course that was specific to the mining industry.

1605

Q. Yes, Mr Firmin gave evidence to that effect?

20 A. That's correct.

Q. You would be familiar with the concept of lead indicators?

A. Yes I am.

Q. And also of high potential incidents?

A. Yes.

25 Q. I take it you would accept that overseas regulation of high hazard industries from the health and safety perspective is moving increasingly towards focusing on matters such as lead indicators, high performance indicators, auditing?

A. Certainly the health and safety industry is shifting towards that focus on leadership and culture. I would not be able to say specifically what overseas  
30 regulators have done to deal with that from a regulatory perspective.

Q. Is your understanding of the evidence that you have listened to over the last few days to the effect that the coal mine inspectors don't tend to focus on those sorts of matters, lead indicators, high potential incidents and auditing?

A. It's clear from the evidence that they have not and I would say that given the normal operating model of the Department I would not expect that they would have.

5 Q. So would you agree that there's a divergence then between the matters that they focus on in the course of their inspections and modern or the most modern health and safety methodologies?

A. Yes as I said I agree that with regard to a, at high hazard industry that the method of assessment should shift towards an audit based approach, a systems audit based approach.

10 Q. So does that mean you do accept that there's a divergence between that modern regulation of high hazard industry and the approach that has been taken towards inspecting Pike River?

A. I accept that there is a divergence, yes.

15 Q. Is that a divergence that the Department has had any system in place for trying to identify, not just in relation to coal mine inspection but in relation to inspection of any workplace?

A. The Department has over the past few years given consideration to its regulatory approach. There has been in a general sense considerable discussion with regard to concepts of modern regulation. As a Department we are aware of the challenge in determining how we actually prioritise and focus our work and we have had projects running to think about that in a broader context of how we actually determine which of the matters that are brought to our attention are actually responded to and what the nature of response would be given the differences or the different types of situations that are reported. It is quite broad-brushed, but certainly an underlying concept of that is that the response that we give has to take into consideration such matters as the nature of the industry and the Department's business priorities.

1610

30 Q. But would it be fair to say that the divergence to which we've been referring wasn't one that was picked up by the Department prior to the Pike River tragedy?

A. Certainly from my perspective the particular issues around underground coalmining were not something that was in my focus and had not been raised with me to actually focus on.

Q. Ms Basher could I please ask for CAC0111/5

5 **WITNESS REFERRED TO DOCUMENT CAC0111/5**

Q. This is page 4 of the Department of Labour's mining and extractives business plan 2008/2009 Mr Cooper and you'll see the second to last box on the page says, "The mining fatal incident frequency rate (FIFR) compares unfavourably with other New Zealand workplaces as well as with mines in developed  
10 overseas countries." The Commission now has quite a lot of information about accident rates that has been provided by the Department. Is that type of information considered when assessing the extent in nature of the training that inspectors are required to have?

A. I am unable to say. I have not been involved at that level with the training  
15 content when it was first established.

Q. You are one of those who has a role or responsibility in relation to training?

A. Yes, I provide a level of advice and support to the learning management team and recently that has been specifically around the areas of investigation  
interviewing.

20 Q. So in the course of your work with the Department, have you been aware of this type of information about incident rates in the underground coalmining industry?

A. I believe I may have seen this document after the Pike River explosion but certainly I haven't looked at the specific data around coalmining industries and  
25 with that level of focus.

Q. So just if we give a fairly colloquial example, has the Department ever said "Look we seem to have a high level of accident rates in the underground coalmining industry. Is our training in our enforcement systems right?"

A. I'm not aware of whether those discussions have occurred but I would say that  
30 I was not part of the Mine Steering Group and I'm not completely familiar with all of the work being done by the senior advisor in extractors.

Q. I presume that you're familiar with the Braithwaite triangle about which we've heard over the last few days?

A. Yes I am.

Q. And you've read some of Braithwaite's texts?

A. Yes and the Department of Labour has taken that particular model and modified it to what they refer to as a diamond model.

5 Q. And would you agree that that model may be of assistance in enabling a department to assess the type of approach that it wishes to take to enforcement?

A. Yes, it – certainly that model has been discussed in a lot of meetings and it was my understanding that the model was more of a conceptual model to think  
10 about how the Department sets its priorities and general approach. However, having listened to the evidence I can fully appreciate why Kevin and Michael believed that they were intended to use it in a more decision making way.

1615

Q. You would agree that it's not designed as a practical tool to assist inspectors in  
15 making enforcement decisions in relation to particular workplaces?

A. I personally believe that there would need to be some sophisticated analysis before you could determine where someone sat in that model and therefore what sort of compliance response should result.

Q. You'd need a sophisticated and also accurate understanding of the workplace  
20 practises of the particular entity before you could begin to apply that model?

A. Yes, I agree with that.

Q. Of course, you're familiar with the guidance, practice notes, policies and procedures that the Department publishes to assist inspectors?

A. Yes.

25 Q. And, I take it you can confirm that there isn't any such written documentation which focuses particularly on the inspection of underground coal mines?

A. There's certainly none within the standard database that I'm aware of.

Q. How does the Department assess whether or not inspectors in a particular industry might benefit from some sort of written guidance or policy procedural  
30 practice note?

A. Issues may arise in various ways. It could be that a practice note is a result of a high profile Court decision. It may be an external relationship issue being raised which would be the case with the practice note related to health and

safety representation. Equally a practice note could be developed as a result of concerns being elevated through the frontline staff to National Office.

5 Q. And what would be the route that those concerns would have had to have been elevated by the coal mine inspectors under the regime in place in early 2010?

A. Given the structure in place at that time, it may have come through their management line, team leader, service manager, or alternately it could've been raised through the mining steering group.

10 Q. To your knowledge, has the issue of providing written guidance to the coal mine inspectors been one that was considered by the Department prior to the Pike River tragedy?

A. I'm not aware of the issue being raised, but I just repeat, I was not part of the mining steering group and I'm not completely aware of the work programme for the senior advisor.

15 Q. As you would've observed over the last few days, we've seen some of the written policies of the Department in relation to improvement notice, prohibition notice, prosecutions infringement notice, written warnings?

A. Yes.

20 Q. And you would be aware that those policies and practice notes don't give clear guidance or examples of how they should be applied in the specific context of underground coalmining?

A. Yes, those policy guidance notes were designed to apply across all health and safety inspection.

1620

25 Q. Would you share the view that some of those policy practice note documents in relation to the enforcement, so written warning, improvement, prohibition, prosecution and infringement, contain inconsistency in relation to each other?

30 A. I am aware that there is a number of those policy and operation procedures which need to be updated and that one of the issues I'm generally aware of is that as new notices, or new policy documents had been produced in the past, others weren't necessarily amended to reflect the new policy, so yes, I am aware in general there is an issue with consistency across some of those documents.

Q. How is that being addressed?

A. It's one of the areas that I identified for attention, was to update the internal policy guidance. Some provisional scanning was done of those documents to determine which ones were completely out of date, which ones needed  
5 updating or amending and perhaps which documents had been effectively superseded. The scanning work was done but that work hasn't been resourced for a while now. It was part of a broader consideration of ensuring that the internal policy guidance appropriately aligned with the "*Keeping Work Safe*" document which was published, which is the Department's external  
10 document, relating to how we enforce the Health and Safety in Employment Act.

Q. Could I just turn to a slightly different topic of the tools available to inspectors. I think there are 140 inspectors in New Zealand?

A. Approximately.

15 Q. And how many workplaces?

A. The latest figure the Department tends to use is close to half a million.

Q. It's clearly not going to be possible for the inspectors to inspect all of those?

A. No.

Q. You'd agree, I presume that safety is a continuum, with a range from unsafe to  
20 safe?

A. Yes.

Q. And the Department can't assure itself of the safety of all workplaces?

A. Absolutely.

Q. Do you agree that the inspectors need tools to help them identify what  
25 workplaces have the greatest risks and hazards from a health and safety perspective?

A. I believe that the Department needs a tool that determines where we actually focus our priorities and the regulatory approach that we would actually apply. I don't agree that that should be left to an individual inspector to make those  
30 judgements.

Q. Well, I suppose there are a number of levels. There's the need for the departmental tool. Would you agree that when you get to the level of an inspector, an inspector will need a tool to help him or her identify and prioritise

the workplaces that that person's going to be inspecting, which have the greatest risk or hazard?

5 A. Again, I think that if you make the split between how we react to the approximately 11,000 notifications we receive annually and the areas in which we aim to have some proactive intervention, that essentially, it should be the Department's tool to try and actually provide some intelligence or data which sets some priorities for particular businesses within an industry.

10 Q. So if a coal mines inspector is allocated a region in which there are, for example, 30 underground and opencast coal mines for which he or she is responsible, is your view that that inspector should have a tool to help identify and prioritise which of those workplaces present the greatest risk and hazard?

A. I would hope that with the high hazard approach that the resources of the team which would include an analyst, would assist the inspector in making those judgements.

15 1625

Q. Has the Department looked at any of the tools used overseas for example, a tool MIPS used in Queensland?

A. I can say that I have not but again it is an area which may have been looked at by the senior advisor.

20 Q. Just a different topic. Does the Department have a system for assuring itself that when carrying out inspections inspectors identifying and then addressing the appropriate issues?

25 A. The approach that's taken by a Department is one of management supervision and it's agreed to which the team leaders verify and work through with the inspectors what they're workload is and the way in which they've conducted particular inspections.

Q. And at the moment putting to one side what will happen with the high hazards unit that means oversight by a generalist who may not have been an inspector?

30 A. Well in the case of both Michael and Kevin their manager or team leader were both people who are or have been health and safety inspectors and to use the terminology, yes, they would've been generalist health and safety inspectors.



Q. I turn to a different issue. You would be aware from the evidence filed by the Department for about a year from when Mr Poynter was first employed until when he received his certification on the 18<sup>th</sup> of June 2009 he was responsible for the conduct of inspections at the Pike River Mine?

5 A. Yes.

Q. Is there any policy or practice note or similar within the Department that prevents trainee inspectors from inspecting workplaces?

A. There is no specific documented policy.

10 Q. Without going into the detail of them at this stage are there other trainee inspectors who you're aware of who are inspecting workplaces or have been over the last year or so?

15 A. In other industries? I would not expect that it would be normal for a trainee inspector to go to do a compliance assessment visit without supervision. There may be occasions that a trainee might go and make some small enquiry, carryout some work and it is expected that they would make it clear to the duty-holders they're dealing with that they do not hold a certificate of appointment.

Q. Does the Department have a formal mentoring or peer review structure for inspectors?

20 A. The Department in, I believe, June of last year introduced a new learning management system. The new learning management system for obtaining a certificate of appointment incorporates online learning modules, courses attended by the trainee and a structured field assessment component. There is a process in place for investigation files to be peer reviewed and while  
25 there's some local variations often the assessment work and the data entered onto Insite is peer reviewed in some areas as well.

1630

Q. Can you just explain the field assessment to which you referred?

30 A. So as the trainee inspector has completed the online modules and attended the course, when they go back to their office they have a coach assigned for them and they work through some particular exercises and there's some observations with regard to key skills and that has to be signed off by the coach as them having demonstrated competency.

Q. So this doesn't actually involve an experienced inspector going out and observing the way a trainee inspector conducts an inspection?

A. Yes I'd imagine it would involve just that.

Q. Right, you'd imagine?

5 A. The coach should be experienced, the person who signs off the competency should be experienced in what they are observing and signing off.

Q. But they do go out and observe the conduct of an inspection by the trainee?

A. That is the intention. There's some aspects which can be simulated, obviously in some interview situations it would be inappropriate to have the trainee  
10 conducting an evidential interview for the purpose of assessment.

Q. Could I just turn to some statistics in relation to underground mining and Ms Basher please may we have DOL7770010009/28

**WITNESS REFERRED TO DOCUMENT DOL7770010009/28**

15 Q. This document is page 27 of some written responses by the Department of Labour to questions of the Commission setting out the details of prohibition and improvement notices issued by inspectors for 2005 through to August 2011. And this information was gathered specifically in response to those questions. Does the Department gather and analyse data about the use of enforcement mechanisms by inspectors?

20 A. I'm not in a position to answer whether that has been done at any stage. I haven't seen any such data or analysis.

Q. Do you know whether the Department's undertaken any benchmarking of the use of enforcement mechanisms in New Zealand compared to overseas?

A. I'm not aware of any such benchmarking.

25 Q. Well would you agree that in your role it would be helpful for you to know and we'll put it in context, the extent to which underground coal inspectors were making use of the enforcement mechanisms available to them?

A. In my role it is certainly useful to understand the way in which various tools are used. I'm certainly aware of some internal work that we did to look at a  
30 comparative use of compliance tools across different offices and some work that we've done with regard to the use of the infringement notice tool.

Q. You're not aware of any in relation to underground coal mine inspection?

A. I'm not aware of anything specific to underground coalmining inspection.

Q. If we can have a look at this document, you'll see that table 8, "Prohibition notices," the second down reads, "Effective systematic method of identifying reviewing hazards, and there has been one prohibition notice issued in 2007." Can you see that?

5 A. Yes.

1635

Q. And if we look at table 9, "Improvement notices," that same subject, "Effective systematic method of identifying, reviewing hazards" you will see there have been two improvement notices issued in 2005 and 2007?

10 A. Yes.

Q. Is that the sort of information which might give the Department an indication of the extent to which coal mine inspectors were identifying and acting on systemic issues?

15 A. I would expect that it would be more likely that the particular hazards which had not been identified would be the subject of an improvement notice. Certainly, I would have anticipated perhaps more improvement notices for lack of systems. The prohibition notice, without seeing what it was issued for, is of interest. I would've expected the prohibition notice to be more likely relating to the particular hazards which existed and created the likelihood of harm rather than the underlying system failure.

20

Q. Has the Department undertaken any work to your knowledge to identify the extent to which the coal mine inspectors were able to pick up and act on systemic hazards?

A. Again, I'm not aware of that work, but I could not say that hasn't been done.

25 Q. Are you aware that since 2005, the Department has undertaken only two prosecutions in relation to underground mines?

A. I was not aware of the number being two, but I knew that it was a very low number.

30 Q. Ms Basher, I wonder if we can move to page 29 of that same document please? This is the written answer from the Department setting out that and you will see that of those two, in paragraph 68, the first one involved an injury?

A. Yes.

Q. And the second one, paragraph 69, in 2008 involved a fatality?

A. Yes.

Q. And you would also agree that the Health and Safety in Employment Act focuses not only on events which have caused injury but events that might in other circumstances have caused injury?

5 A. Yes, that's correct.

Q. Would you agree that the Department tends not to prosecute for breach of the Act unless there has been an injury or fatality?

A. I agree that in most cases the prosecutions relate to matters where there has been serious harm, but also I would say that over recent years the Department  
10 has increased its focus on matters where there's a potential for harm and there has been an increasing number of occasions in which we have taken prosecutions where serious harm has not occurred.

1640

Q. So has the Department given consideration to whether it's got the balance right  
15 in enforcing or not enforcing where there has been a serious breach of the Act that has not resulted in serious harm or fatality?

A. With regard to the work that I referred to, that is considering how we prioritise our work and how we respond, it is my opinion, which I've expressed that we need to have a clearer focus on potential for harm, rather than what has been  
20 a traditional focus on the actual degree of harm that been -has resulted.

Q. I presume that would include gathering more data about incidents in which there is potential for harm?

A. And in the first instance, certainly it's about not discounting an investigation purely on the degree of harm. I believe that it involves more robust preliminary  
25 consideration of how the Department will respond and I also believe it involves a more detailed consideration of potential harm during the investigation process.

Q. Just the final matter, you would be aware that since January 2009 inspectors have had an initial responsibility for electrical inspections of workplaces?

30 A. Yes.

Q. Did the Department carry out an assessment of the extent to which underground coal mine inspectors would be able to effectively carry out such inspections?

A. I'm not aware. I know that there was considerable amount of work carried out by policy people within the Department. I'm not aware that the specific challenges around underground coal mines were considered at that time.

5 Q. Ms Basher, if we could please have a look at that same document, page 28? Look at table 9 please, the second row, "Electrical safety," and this is improvement notices and you will see that including and since 2009, there has only been one improvement notice issued for electrical safety and that was in 2010?

A. Am I looking at the correct line? Is it 2005, you have 26?

10 Q. Yes, then 2006, you have one. 2007, one?

A. Right, yeah.

Q. 2008, seven?

A. And 2010 just one, that's correct.

Q. That's right. 2009, zero?

15 A. Yeah.

Q. 2010, one, 2011 zero?

A. Yes.

Q. And if you look up at table 8 above it, you will see that there have been no prohibition notices issued for electrical safety?

20 A. Yes.

Q. Subsequent to taking over responsibility for electrical safety inspections, did the Department assess the extent to which inspectors were taking enforcement action in relation to electrical issues?

25 A. I don't believe the Department has but then I would note that the Department's policy approach had that preference for negotiated agreement.

Q. Had it undertaken any work to identify whether inspectors were able to pick up on electrical safety issues?

A. Again, I'm not aware of any assessment of the inspectors at that level.

1645

30 **THE COMMISSION ADDRESSES COUNSEL – APPLICATIONS FOR CROSS-EXAMINATION OF WITNESS – ALL GRANTED**

**CROSS-EXAMINATION: MR HAMPTON**

- Q. Mr Cooper, you have said about recruitment, the high hazards unit and recruitment to that?
- A. Yes.
- 5 Q. The Department's presently looking for a chief mines inspector?
- A. That's correct.
- Q. But as I read the prescription for it or the advertisement for the prescription for it, it hasn't got a prerequisite in it that that person has had to have had underground coalmining experience. Is that right?
- 10 A. I am not sure what document you're referring to but I certainly, from my understanding, believe that we are looking for is a person with underground coalmining experience.
- Q. Has that been made a necessary prerequisite to that person taking up that position?
- 15 A. I would have to check the job description before I could answer that absolutely sir.
- Q. Well perhaps you could make that available to the Commission because I haven't got the full job description in front of me. Would you do that?
- A. I certainly can arrange that. The job description's had to be developed for this
- 20 role to be advertised.
- Q. Given what you've heard over the last few days, would you agree with me that it seems that there is need for the chief mining inspector to have had previous underground coalmining experience, underground coalmining being the most hazardous of the mining that's in the country?
- 25 A. That a chief inspector position, I share that view personally. I would qualify it just by saying that from a regulatory point of view I also believe that as well as having experienced coalmining people there are a range of skilled people within the Department who could be used to add value during various assessments and inspections.
- 30 Q. The second point, sir I won't be long. Given Mr Poynter's evidence particularly this morning, do you see the need to look at, particularly in relation to such a high hazardous area as underground coalmining, the need for rather more prescriptive regulations in those core areas that Mr Poynter spoke of?

- A. Given my role in the Department, sir, I don't feel I can really comment from a policy perspective. But having listened to the evidence of Kevin, I have a view that at the point where you are regulating, the regulation should be as clear and prescriptive as possible.
- 5 Q. So you'll take those views back to the Department no doubt?
- A. Yes certainly, I will share those views but as I say, sir, that's not my role to necessarily influence any outcome.
- Q. You're not policy, okay. Just the last issue then that I wanted to raise with you. Just your paragraph 21 of your brief, have you got it there with you?
- 10 A. Yes sir.
- Q. It's when you talk about the March 2010 practice note issued telling people how to engage, your inspectors how to engage with health and safety reps?
- A. Yes.
- 1650
- 15 Q. Now that comes out of the part 2A amendment to the Act. Those sections 19(a) through to 19(i) which relate to engaging with health and safety representatives doesn't it?
- A. That's correct.
- Q. Particularly 19(b) which has the general duty to involve the employees in
- 20 health and safety?
- A. Yes.
- Q. Yes, that came into force 5<sup>th</sup> May 2003 didn't it?
- A. Yes it did.
- Q. Can you tell us why it took nearly seven years, or you may not be able to reply,
- 25 to bring down guidance to how your inspectors should engage with health and safety reps?
- A. I would describe it as refreshed guidance. In 2003 when the legislation was enacted there was guidance by way of policy and operating procedures for staff. Also across a number of other policy and operating procedures and as
- 30 an example the one relating to improvement notices, the reference to involving employment representatives is made. During – the reason for this particular guidance was discussions with external parties and a concern by the Department that the perhaps we were not doing that as consistently and

frequently as we could because it is the Department's view that health and safety representatives are important to providing health and safety workplaces.

Q. So what external agency or persons drew this to your attention please?

5 A. There was some approach from unions with regard to how the Department was dealing with sort of involving health and safety representatives during its workplaces investigations and visits.

Q. Right.

A. And I think a point of difference with the practice note is the fact that we are also seeking to speak to representatives when we investigate.

10 Q. And can I suggest to you from the union's point of view, it was not so much as how you were dealing with but rather not dealing with health and safety representatives. That was the point wasn't it?

A. I would agree.

Q. Yes.

15 A. That was the concern expressed that at least some of our inspectors were not.

**CROSS-EXAMINATION: MR DAVIDSON**

Q. Mr Cooper, you've I presume read the Gunningham and Neal report have you?

A. It was some time ago sir, yes I have.

Q. You have read it?

20 A. Yeah.

Q. You're not listed as a contributor to the report, to the authors are you?

A. No I'm not.

Q. Were you involved in making any preparation of any submission or material to the authors?

25 A. No I was – sat in on one telephone conference towards the end of the process and it was after most of the interviews had occurred, but I had very little input to that.

Q. In your evidence you have referred to the question of audit and the Commission has heard the evidence that even if they had wanted to do so, the inspectors were not trained in audit and you'd have known that?

30 A. That's correct.



Q. And in your evidence you say in paragraph 19 that, "An audit process requires more time and resources than an inspection. An audit to be effective would also require full co-operation of the duty-holder."

A. Yes.

5 Q. Now the authors of Gunningham and Neal, two points about that. The first is the authors of Gunningham and Neal talk at paragraph 407, I even bring it up, "They speculate whether general safety system audits would have made a difference to the Pike River disaster." Do you understand the difference between general safety systems audits and specific audits, focussed audits?

10 A. I'm not completely clear on how you would draw that distinction.

1655

Q. What those authors conclude is that, "General audits can throw up items which might otherwise be overlooked because of the randomness of them." Do you understand that?

15 A. Yes.

Q. These authors go on to say, "On the other hand, it's hard to imagine that an inspector would not have chosen to audit this mine's systems for methane, flameproof equipment, ventilation and its explosives." And it says further, and is shown in chapter 6, "These safety systems were detailed and extensive and the inspectors did subject them to rigorous scrutiny and revisions." Did you know enough about the process that the inspectors, before this Commission began sitting, to conclude to that effect that the inspectors were subjecting these systems, including ventilation and methane, to rigorous inspection?

25 A. With regard to the work methods of the health and safety inspectors and extractors?

Q. Yes.

A. I was not aware of how they worked.

Q. Or that they did? You were not aware that they did or didn't undertake such rigorous scrutiny, I presume?

30 A. I was not aware of what their approach was.

Q. Now, you heard the evidence and there's been a question put to you about a great deal of material which counsel, Mr Wilding, put to Mr Poynter over the

past two days. I think you've sat at the back of this Court and you've listened to that, haven't you?

A. Yes, or out at the back, on the speaker.

Q. Yes. And so you heard or saw evidence about the, for example the near hit register?

5

A. Yes.

Q. The deputies' reports?

A. Yes.

Q. A lot of material which Mr Poynter had not seen?

10

A. Yes.

Q. Did that surprise you?

A. No, it didn't surprise me.

Q. And may I be so bold as to suggest that that is explained by the answer you've given to the Commission today, when you were asked a similar question and you said you would not expect that the inspectors would see that material under the normal operating model they would see these. Do you remember that answer? Under the normal operating model, you would not expect the inspectors to have seen the sort of documents I've just referred to?

15

A. Across the range of our inspectors, I'm aware that there are some of our inspectors who would, because of their particular background or training opportunities that they may have had, would look at systems at some level of detail. But I am also aware that the elements of systems that are covered in training and that inspectors I would expect would normally look at would be the method for identifying hazards and the hazard register and probably the record of accidents for that site, and that's the serious harm accidents and in many cases rather than the near hit.

20

25

Q. Well, whether it's the near hit, or what other register, as I understood your evidence, you were referring to what you said today, "was a normal operating model". Are you party to the creation of some "normal operating model" as to what inspectors will look at or not look at?

30

A. The existing training material provides guidance to inspectors on how they would go about assessment.

Q. Does that training material tell the inspectors what they should look for or give any guidance at all, for example when we look at near misses, near hits?

A. While I cannot categorically say that there aren't inspectors who would, it's my view that the training given to inspectors and the guidance given to inspectors  
5 would not guarantee that that level of detail was looked at.

Q. Well, isn't one of the precepts with which you're concerned in your role, you're a practice leader, as I understand it, health and safety practice development, examination of discrepancies between systems which are established by companies, safety systems and the performance under those systems. Isn't  
10 that one of your considerations, one of your professional skills?

1700

A. As a practice leader and part of a small team of practice leaders, I had been involved in identifying some areas where work should be done in my opinion. That has to go through obviously to some management approval in prioritising  
15 which is outside of my control and the project's then proceeded in a priority order.

Q. Well, I'm putting a question really, not just for the Commission generally, but so the families can understand this, given the evidence you've heard in the past few days, whatever the systems were said to be with regard to, for example,  
20 methane, what everyone could read within the company's operating procedures, isn't it critical that the inspectorate, which is part of your group can examine those intended procedures against actual performance?

A. It is my opinion and I would say that while I have had a view for some time that there should be more audit focus within the Department, particularly as a result  
25 of having accompanied the Australian auditors around the audit of the other coal mines in New Zealand, it is my view that audits of the complex systems that exist within the larger coal mines is a vital step to understand safety.

Q. And so I'm not leaving the question half-answered, thank you for that, the audit of that system would include the systems that are intended to apply, measured  
30 against the performance that is achieved?

A. Absolutely, and my reference to the co-operation of the mine is really that the auditor needs to be able to speak to people at various levels of the

organisation to establish their understanding of the system and how effectively the system has been communicated.

5 Q. Now that, I take it, is what you mean by your paragraph 19, expressed rather a little differently, that an audit process requires more time and resources than an inspection and to be effective would require the full co-operation of the duty-holder?

A. Yes, that's correct.

Q. And that means from your last answer I take it, access to anyone the auditor wishes to speak with?

10 A. That is the ideal for an audit, yes.

Q. Well you've been round with, as I understand your last answer but one, with an Australian team –

15 A. Two Australian mining professionals who were brought to New Zealand to carry out the independent audits of the other coal mines operating in New Zealand, underground coal mines.

Q. And there did you observe what you understood was Australian audit practice?

A. The audit and the scope of the audit was influenced by the Australian practice in Queensland. My understanding is it was not a rigid application of that. There was clear focus on what we refer to as the principal hazards.

20 Q. Right, so we've established that you, for your part, whatever influence you can bring to bear in the management and training of inspectors will be pushing for audit as being essential?

A. And the Department of Labour, in establishing the high hazard unit has an intention to increase its, or move its focus towards audit for those industries.

25 Q. Now, is a leg of your training or supervision of inspectors, and I confess I don't know how much you actually do with them but you're the practice leader, does it include advising or discussing with the inspectors, the follow-up on matters which are identified as requiring a health and safety response? So pointedly, within a mine, if the inspectors identify a hazard which has been reported and whether it be a minor or a serious consequence, does your training or your  
30 involvement with the inspectors include the way that that matter is followed up by the company? Does it include that at all?

A. Are you asking specifically about my role?

1705

Q. What you know was the role or intended role of the inspectors?

A. I'm sorry, I'm not clear on your question. Could you ask that again please?

5 Q. Take the example of the inspector identifying a hazard as a result of an incident report for example?

A. Yes.

Q. The company's recorded it and the inspector somehow gets to see it?

A. Yes.

10 Q. It involves a safety issue. My question is, does your understanding of the inspector's role include following up the company response to that issue to see how the problem is resolved?

A. It's my expectation that significant hazards which are raised would be followed up with the company, yes.

15 Q. Does it have to be significant hazards? Isn't the point whether or not the inspectors or the company is following through a procedure to resolution of the issue, whatever it is?

20 A. If the, during a visit a matter has been raised and there is a level of agreement between the inspector and the duty-holder I would expect that there would be follow up to verify that the duty-holder has done what they committed to do, yes.

Q. So to do that the inspector then, in that follow up has got to know there's an incident that was to be followed up?

A. Yes, they can't follow up what they don't know about, sir.

25 Q. Now briefly then in conclusion, Dr Callaghan is about to give evidence to this commission. Have you had dealings with her before?

A. I know Kathleen Callaghan and I have attended a few presentations of hers and have on one occasion been in a meeting at the Department of Labour with Kathleen.

30 Q. Now part of her evidence is to do with the examination of culture within a workplace?

A. Yes.

Q. And in fact I think the Department's got a website with a whole question of culture examined there, hasn't it?

A. Yes.

Q. And you for your part, as I read your brief, understand the significance of culture?

5 A. I wouldn't proclaim to be an expert but I do understand the significance of culture for ensuring safety in places of work. Culture and safety leadership.

Q. I think somewhere in the Gunningham and Neal report there's a comment about systems which can be audited and culture which eats systems for breakfast. Remember that somewhere?

A. Yes I read that comment.

10 Q. Now it's put rather colloquially but you understand the import of that, you can have the best systems in the world but the way in which the culture of the organisation runs is crucial?

A. Yes, from a regulator point of view though that doesn't mean that we bypass attention to the systems.

15 Q. You're all for audit and you're all for culture. Is that right?

A. The challenge is to work out the best approach that a particular circumstance or the industry that we're dealing with and clearly for a high hazard industry it is my opinion that audit which examines whether systems are being applied is a sound approach. Expecting an inspector just to go into the mine and carryout  
20 an inspection to determine whether it appears things are okay has limitations.

Q. Now finally I just want to touch on this topic. Dr Callaghan has read the Gunningham/Neal report as a like circumscribed document, in itself, to see what the Department in conveying information to the writers said about itself. Have you looked at the report from that perspective?

25 A. No I hadn't.

Q. Because she'll be coming to it I'll just make the reference briefly to paragraph 208 of her evidence and for the transcript it's FAN00042/56 and she examines the Department's own if you like internalised assessment of the way it goes about its work and is going to talk about some, what she says are  
30 acknowledgements of problems within the Department. One of those is at paragraph 208B where the writers have received information and really there's no capacity or expertise to be more than standards facilitators. That's the

extent to which the Department and the inspectors can contribute in this area.  
Now did you read that passage of the report?

A. Yes I know that passage of the report.

1710

5 Q. Yes and you agree with it?

A. Sir I don't know who provided that information or the full context with which that was said but I'm not directly involved in the standard setting process.

Q. Right.

A. But my personal view is that while there's benefits and huge value in having  
10 industry involved in developing standards, the Department of Labour should only endorse what is good practice and we should be ensuring that it's not just a matter of industry writing what is convenient practice.

Q. So you should scrutinize what they're coming up with?

A. Absolutely.

15 Q. And a couple of other points, first of all it's quite clear from the inspectors' evidence that a shortage of time to do what they would like to have done has been in their minds for a long time? You've read that?

A. Yeah I read that. I was not personally aware of those communications before reading the Gunningham and Neal report.

20 Q. Yes, were you aware that that was the view they hold?

A. No.

Q. Did you get any of the Mine Steering Group minutes?

A. No I didn't.

Q. Were you aware of what the inspectors have complained of is the very high  
25 workload?

A. I was not aware of the specific issues being raised by the mine's inspectors prior to this inquiry.

Q. Can you explain to the Commission why that would not come to you?

A. I think it's to understand my role as being an advisor in National Office that  
30 contributes to all - some various projects and provides a level of support and guidance to frontline staff, I'm not part of the regional management and I was not part of the specific management group for the inspectors. Some matters do get brought to my attention. Other matters would not. There's no formal

mechanism that would ensure that everything came to my attention and nor should there be.

5 Q. All right, that's a different layer then I understand that. Are you involved in the development, practice development of the inspector's way of work? Are you involved at all with that?

A. Yes I am.

Q. You would be concerned if that work then to ensure that just like the people underground or in any workplace, that there's no overload, they're not overworked? That must be fundamental to your role?

10 A. It's fundamental to – when we're developing practice is to ensure that what we're developing is achievable within the resource we've got and so particularly I would reference the work we're doing with regarding to prioritising our work and some work we've been doing with regards to investigation quality. We're mindful to the fact that you can't increase the quality  
15 expectations with regard to investigations until you're clearer about how you're going to prioritise which matters are investigated. So, for example, at the moment the Department has 11,000 notifications. Of those we record in our system that 6000 of those matters are investigated so the range of intense to the investigation is quite significant, so developing a quality approach to  
20 investigation, we are definitely mindful of how achievable that will be for the inspectors.

Q. I'll just come back to my question. I'm not concerned with investigations as such.

A. Mhm.

25 1715

Q. That's a huge number you've referred to.

A. I gave that by way of example, sir.

Q. Yes. You are part of a practice development. You are head of the practice development?

30 A. No, I'm not head of practice development.

Q. What is your role, team leader?

A. My role is called practice leader health and safety practice development. If I can explain the structure –



Q. No, it's okay. I'm just coming to a question. You have inspectors who are complaining of a high workload and not being able to do what they want to do. You've heard the evidence and read the evidence?

A. Yes, I've heard that.

5 Q. They are carrying out a function which requires a high level of observation and vigilance?

A. Yes.

10 Q. That is exactly the kind of setting in which both the inspectorate should be staffed properly in terms of qualification and adequately in terms of number to avoid an excessive workload, is it not?

A. Clearly there has to be a match between the resource and the work that's expected. I would have said that that's about exploring not only the frequency with which works done, but also the method that's used.

Q. And finally, the quality of the work, which is the key element, isn't it?

15 A. Yes.

**QUESTIONS FROM COMMISSIONER HENRY:**

20 Q. Mr Cooper, my questions are mainly management and strategic questions that go wider than underground coalmining but only for the purpose of shedding light on what we have to consider in relation to underground coalmining. Your job as practice leader, as I understand it, is to give advice and support to the learning management team, to assist with the quality of work of inspectors generally?

A. Yes.

25 Q. And to look for new practices and guidance which will assist and improve the effectiveness of the inspectors?

A. Yes, that's correct.

Q. That covers the 140 inspectors?

A. Yes. But I would note that I am one of a team doing that.

Q. Yes.

30 A. There is an equivalent practice leader based in the regions, each of the regions. There were four regions. One of those positions was vacant for a

long time. As a result of restructure we're now reduced to three regions, but there's effectively four of us who do this work.

Q. And how far down the organisation are you if we count the Chief Executive as level 1?

5 A. I'm level 5, within the interim structure that's in place for the labour group.

Q. And the inspectors that we heard from over the last couple of days, they're level 7, is that right?

A. Yeah, that would be about right, yes.

Q. And you mentioned when Mr Wilding raised the Braithwaite diamond with you, which is a method of an approach, that really it wasn't, if I understood you correctly, it wasn't a guide for individual decision-making, it really is something where the Department requires a departmental-wide tool based on that in order to carry out inspections and other work effectively?

A. That's certainly how I understood it to be the intended use for that tool, yes.

15 Q. Well, this Commission asked about this tool, the Braithwaite diamond last July and we were advised by the Department of Labour in these terms, I'll just read it to you. It came to the Commission through the Crown law office, so the person reporting to us is one of the Crown counsel at the Crown law office. "Department of Labour advise that this concept" – that's the Braithwaite diamond – "sits at the heart of the Department's modern responsive regulatory approach. Essentially, it involves the inspector identifying what motivates a particular employer using the right tool, service support or regulatory intervention, for the job and knowing when to use different engagement approaches. DOL also advise me that the model is a thinking tool to guide the inspectors' regulatory practice and they are encouraged to apply the Braithwaite framework in their planning and day to day engagements." You agree with that statement?

1720

A. I struggle with the concept of that being a decision-making tool for inspectors. It's my personal view. I don't believe that there is sufficient information that inspectors have access to, to use it in that way.

Q. Yes, there's insufficient information to place the employer or the company in the triangle?

- A. Yes.
- Q. Yes. That's what you're saying?
- A. Yes.
- Q. Yes. Now, the high hazard unit that you're currently setting up, when you set  
5 up a new structure, it takes time for it to become effective?
- A. Yes.  
And at the moment you don't have the two chief inspectors for that high hazard unit?
- A. No not yet.
- 10 Q. And I understand you are in the course of advertising again for those positions. Is that right?
- A. I wasn't aware of that, sir. I'd have to check.
- Q. Assuming that we had the people today, how long would it be in your experience before that new unit would become effective?
- 15 A. Sir, I have never been directly involved in establishing a new unit of that nature. I would only be guessing to answer that, sir.
- Q. Right. Would you agree that it couldn't be effective within a short period of time?
- A. I would. I would've thought it would've been a number of months, sir, before it  
20 could be effective.
- Q. Yes, now Mr Wilding also asked if, in looking at practice, you were taking account of what other agencies in New Zealand and overseas might do. I think he mentioned Civil Aviation?
- A. Yes.
- 25 Q. There is quite a number of Government agencies that have similar problems in regard to auditing or investigating, inspecting and so on. How much contact with those other agencies do you have then?
- A. Personally, I have relatively limited contact. I have had some contact with CAA and less with Maritime New Zealand.
- 30 Q. Have you had any contact with the Accident Compensation Corporation?
- A. With regard to establishing our systems or audits, I haven't directly discussed with them but I am aware of their audit processes, sir.

- 5 Q. Now, my understanding is they already have an audit process and it involves a modern approach toward it, including questionnaires of the employer and these are health and safety audits that they carry out and depending on their rating of the employer, of the company, determines how much discount the company gets?
- A. I am aware of the programme, sir.
- Q. Yes. I have as a health and safety person outside of the Department been involved in preparing for such an audit?
- 10 A. So they've already done some of the work, have they not, which would be relevant to what you're trying to do?
- Q. I think that there is some merit in looking at those programmes. I believe that one of the challenges is to ensure the people involved in the audit have sufficient actual industry knowledge and experience that they can ultimately determine whether what is within the system actually represents safe practice, good practice and that the practices that are occurring at the operational end of
- 15 the business are appropriate.
- 1725
- Q. We've heard I think evidence from the inspectors that in regard to underground coalmining anyway that they weren't able for various reasons to ensure that
- 20 the company Pike River was compliant with the Act. Do you remember that?
- A. I'm sorry, I'm not aware of that evidence sir.
- Q. My question really relates to and this maybe a level above where you're sitting but normally the Department's risk and audit committee, one of things that they would have to look at is how the Department ensures that the legislation which
- 25 it's administering is being complied with. Are you aware of that?
- A. No I'm not sir.
- Q. And similarly the external auditor routinely asks at the external audit, "How do you ensure that the legislation for which you are responsible is complied with?" and that is then reported through the normal process through Parliament. Do
- 30 you understand that system?
- A. Yes I'm aware of those systems but I'm not directly involved with those systems, sir.

Q. The final question really is, you've been with the Department of Labour quite a while and you've done various things I see. What I've been puzzling over is, what is the impediments in the Department which have led to a situation where the inspectors have been complaining for quite some time about their difficulties and yet there's been no apparent movement by the Department to meet those concerns prior to the 19<sup>th</sup> of November, what are those impediments in your view?

A. Sorry, I'm not sure, sir, that I'm - have enough information to make a clear judgement on that. It does seem to me however that the communication and management lines would've been challenging, both for the managers and the staff involved with that particular arrangement.

Q. I suppose putting it another way, how do I at level 7 have my voice heard at level 1?

A. It's certainly my experience with the Department of Labour as an inspector that actually there are a number of forums and opportunity where I was able to express an opinion and that I have generally found that while not everything that I have suggested or said has been necessarily agreed with or followed through but I have generally found within the Department that I've been given a good hearing.

Q. Do you think in relation to their complaints that part of the problem may have been just simply a lack of understanding of the criticality and particular dangers of the underground coalmining industry?

A. I don't believe I know enough to comment on that sir.

#### **QUESTIONS FROM COMMISSIONER BELL:**

Q. Mr Cooper, good afternoon. I'm just going along with one of Commissioner Henry's questions. Did you look at any overseas jurisdictions to do with the risk assessment such as Queensland, New South Wales, WA in terms of the processes they have in place there already?

A. As I've said before the focus of the Department has not been on risk assessment models and the focus has been in New Zealand regarding the application of hierarchy of controls rather than using the consequence and likelihood framework. I have a personal view that given the fact that risk

assessment models are used in a number of industries, not just the underground coalmining industry that actually our inspectors should receive more training in that area and they should understand how the hierarchy of controls can be applied within a risk management framework.

5 Q. I must say I'm perplexed when there's four practice leaders and only one mines inspector for some period of time. It just seems to me incredible that there can be so much management for so few people?

A. I mean obviously I can't comment on how those particular decisions were made with regard to resourcing but I would say I don't, can consider myself as  
10 management and I actually believe that the team that I work with provide useful support to frontline people who work across a range of industries, sir.

1730

Q. No I'm not being critical of you personally, I'm just saying there's no one to give support to, there's only one inspector there.

15 A. With respect the team that I work with sir gives support to 140 inspectors across all industries in New Zealand.

Q. I understand. You also talked about the Department using a risk tool to work out its inspection protocols if you like, but there was no one really in the Department proper with any mining expertise to work out what a risk protocol  
20 or a risk inspection system should be for the mining industry. How would that work in practical terms?

A. With regard to establishing a high hazard's unit sir I think that's one of the key challenges when that unit is put together is to establish how in the first instance we can start to make those determinations. Clearly if there is no available data  
25 then we'll take time before that data base is built and reliability will build with time.

Q. So that high hazard unit will in effect be the people that will be doing that –

A. Within the high hazard unit there will be role which is an analyst role dedicated to the high hazard unit.

30 **QUESTIONS FROM THE COMMISSION:**

Q. I'm just wanting to get something clear Mr Cooper, you're one of four practice leaders?

A. Yes.

Q. You're based in Wellington and the other three that you now have are in the regions?

5 A. Yes, sir practice leaders focussed on health and safety, we have practice leaders who give the advice and support with regard to the other service streams but yes, there's three in the regions.

10 Q. What I'm trying to understand is the sort of concerns that the mines inspectors were voicing and which they've given evidence about over the last few days, should those concerns have found their way to somebody within your practice management team?

15 A. Yes and having listened to the evidence sir, that's something that I feel I need to put my mind to, while I understand the concerns expressed with regard to mining expertise, I do feel that there are a number of people within the Department who could've offered support and guidance with regard to particularly struggling with complex enforcement decisions.

Q. Well I'm just trying to understand, Mr Firmin and Mr Poynter obviously had their say at the steering committee meetings.

A. Yes sir.

20 Q. Should those concerns have come to you in Wellington or to one of the regional practice leaders?

A. If the concerns were with regard to of a practice nature, how we carry out our work, yes I believe they should've.

Q. And was there somebody within that team of four that should have heard of those concerns or what was the structure?

25 A. So the structure was essentially there was four regions across New Zealand. Each region had within it a person assigned as a practice leader. The practice leader is available to provide advice and support, which is normally accessed through a team leader or service manager, but frequently individual inspectors approaching the practice leader directly. If the practice leader felt that they  
30 were unable to assist we also have a team of technical support people in national office covering such matters as occupational science, occupational health, engineering and beyond that sir, if there was a need to gather expertise

that didn't sit within the Department, the approach would be to contract that in to meet a need.

Q. Well we approach it with a direct proposition. You didn't get the steering committee minutes, you didn't see them?

5 A. No I didn't sir.

1735

Q. Do you know whether somebody within the practice leader team did?

A. Not to my knowledge.

Q. So, so far as you are aware the problem may have been that this committee  
10 was, this group, steering group was meeting, the concerns were being expressed that they weren't finding their way to your level 4 is it?

A. Five.

Q. Five, level 5 team?

A. As far as I am aware, they weren't finding their way to anyone in the practice  
15 team, but since November, I am aware that some of those matters were raised at a management team meeting, a management team level, which was the Wisnet Group and I am aware that one of those issues that was raised at that level was with regard to the potential need for another inspector, but I was not aware of that at the time.

20 Q. So what, the last couple of days has been a bit of an eye opener for you?

A. I certainly –

Q. Although you've had advance notice?

A. I've had advanced warning, but listening and watching (inaudible 17:36:22) and  
25 Michael give evidence with regard to the challenges to them in doing their job has been an eye opener for me, yes.

**QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

**THE COMMISSION ADDRESSES MR DAVIDSON**

30 **COMMISSION ADJOURNS: 5.38 PM**



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