



**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  
J Haigh QC for Douglas White  
J Rapley for Neville Rockhouse  
S Moore SC, K Lummis and K Anderson for the New Zealand Police  
N Davidson QC, R Raymond and J Mills for the Families of the Deceased  
S Shortall, R Schmidt-McCleave and A Gordon 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 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 and E Whiteside for NZ Mines Rescue Service  
N Hampton QC and R Anderson for Amalgamated Engineering, Printing and Manufacturing Union Inc  
T King and C Baker for The Coal Association of New Zealand/Straterra Incident  
R Wilson for New Zealand Council of Trade Unions  
J Kay for MinEx

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**TRANSCRIPT OF PHASE FOUR HEARING  
HELD ON 2 APRIL 2012 AT GREYMOUTH**

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**COMMISSION RESUMES ON MONDAY 2 APRIL 2012 AT 09.36 AM****THE COMMISSION ADDRESSES COUNSEL****5 SUBMISSIONS: MR MOORE:**

May it please the Commission, since the 11<sup>th</sup> of July 2011 when this Royal Commission first sat to seek evidence, there've been 48 days of hearing and 10 sitting weeks during which 5318 pages of transcript have accumulated, additionally 57 witnesses, including those who have given evidence more than once appeared in person and a further 200 plus have presented their evidence in written briefs. The supporting and other documentation received by this Commission is vast. That high level of detail is no more than it should be. Twenty-nine men lost their lives in the depths of the Pike River Coal Mine and but for the courage, tenacity and perseverance of Daniel Rockhouse that number could well have been 31. These men were husbands, partners, fathers, sons, brothers, nephews, cousins, friends and on Friday the 19<sup>th</sup> of November 2010 like hundreds of thousands of other New Zealanders that day, they set off for work. They, and those around them, shared the legitimate expectation that they would return home safely, but they didn't. Many of those who waited for them on that dreadful day in November and the harrowing days which followed have sat in a dignified and solemn vigil behind us in this courtroom and theirs has been an enduring tribute to the lives of the 29. The police have filed comprehensive written submissions and I shan't repeat them.

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The purpose of this oral submission is to draw on key themes which have emerged in the course of the hearing and which focus on the role of the police in managing and co-ordinating the response to this disaster. No further lives were lost and when measured against the lengthy international catalogue of failed rescue attempts which themselves have ended in tragedy and the deaths of rescuers, in that sense the operation was undoubtedly successful, but the purpose of this inquiry has also exposed certain shortcomings on the part of various parties who were thrown so unexpectedly into the maelstrom of

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the post-explosion events of Pike River. This is neither the place nor the time for being unduly defensive or blindly engaging in patch protection and heaven forbid that there might be a repetition of 19 November 2010, but if there ever was we owe it to the sacred memory of the 29 men that the risks of repetition will through this careful process be greatly diminished and that much has been learned about how to do things better, so I propose to deal with a number of discrete matters in the following order. I shall start with the CIMS model, how it was deployed and whether it was deployed consistently at Pike River and I'll discuss the lead agency status, the response co-ordinator and the Wellington layer, the incident controller including how the incident controller should be appointed, who it should be and where they should be situated and I'll conclude with dealing with the families.

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Before I embark on that process I seek to touch on the context and context is everything. The Pike River mining disaster was the latest large multiple fatality incident in New Zealand since Cave Creek in 1995 where 14 died. Before that was Erebus in 1979 where 257 died and before that Strongman in 1967 where 19 perished. So it was on any international or national scale a disaster of massive proportions and that it was followed just three months later with Christchurch seems almost inconceivable. Whatever mechanisms were put in place to manage the emergency response required an organisation capable of co-ordinating multiple disparate agencies, develop and prioritising strategies, identifying and securing the necessary resources both locally and internationally as well as dealing with survivors and families, the media, the Coroner and as the operation evolved, recovery. And those challenges would be daunting enough for any agency, but there were factors peculiar to Pike River which added to the complexity not the least of which was the remoteness of the site and the complications around communication, the terrain and the weather and it presented a unique range of challenges.

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I turn now to CIMS generally. New Zealand's co-ordinated incident management system emerged as a result of the collaborative process between relevant emergency services that began in 1997 and the 1998

manual which was born of that process remains current. It reflects comparable international standards and best practice and its wonderful utility lies in the fact that in the New Zealand paradigm it's well understood across all central and local Government agencies. The essence of CIMS is its control and co-ordination of an incident in a manner which is proportionate to the nature and scale of the emergency.

At page 25 of the manual it expressly provides that CIMS can be expanded or contracted to manage any type of size of incident. It's noteworthy that before the Canterbury earthquakes and the Pike River Mine tragedy, CIMS have not been deployed at any scaled up emergency. Pike River was the first large scale victim tragedy in New Zealand for many years. Close on its heels followed the February Christchurch earthquake and a number of lessons drawn from the Pike River tragedy experience were applied by the police in Christchurch with great success.

So, was the emergency management model deployed at Pike consistent with CIMS? The short answer in the police's submission is yes but with qualifications. Both Assistant Commissioner Nicholls and Superintendent Knowles told this Commission that CIMS is deliberately designed to be flexible. The size and complexity of the emergency incident determines the structure of the management system implemented and it was Assistant Commissioner Nicholls who described it as a framework, not a straightjacket.

What was rolled out at Pike was an organisational and command structure largely consistent with CIMS. Mr Ken Singer, Deputy Chief Inspector of Coalmines of Queensland and Mr Darren Brady and I apologise, Mr Brady's christian name was misspelled through the course of police submissions, but manager of SIMTARS arrived at the site on the morning after the explosion. Both men are recognised international experts. They are onsite sharing shifts until their departure on, their departure 12 days later and the value of their opinions rests in their independence and objectivity.

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On the question of the emergency response model adopted at Pike Mr Singer observed the police adopted an incident management structure similar to that used in most underground coal mines in Queensland. I am also of the belief  
5 that this structure is consistent with best practice in emergency management. The principle is management by objectives for a structure that allows a single point of accountability and to control and command through functioning teams. I just pause here for a moment and just enquire of The Commission the extent to which you wish me to actually recite the sources of that information. I've in  
10 fact given these to counsel assisting if it's of help but –

**THE COMMISSION:**

I think you can rest assured Mr Moore that all three Commissioners have read the submissions.

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**MR MOORE:**

Right.

**THE COMMISSION:**

20 And are aware of the content and there is no need at all for that form of assistance. Perhaps it would be helpful if I endeavoured to articulate I think what the concern is about whether CIMS was applied in this case. Reading the manual, going back to it as you did a moment ago, it contemplates that there will be an incident controller who will have command and control of the  
25 incident itself and the booklet actually uses the words that there will only be one even in a situation where there are multiple agencies involved in the search and rescue effort and I noted you've informed us that this is the first occasion when CIMS has been used in a situation of multiple agency involvement.

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**MR MOORE:**

No, multiple fatality involvement. Multiple agency involvement, it has been used plenty of times.

**THE COMMISSION:**

Well you used the word or the phrase scaled up.

5 **MR MOORE:**

Yes.

**THE COMMISSION:**

What did you mean by that?

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**MR MOORE:**

I meant that there was a necessity to engage a strategic level at response co-ordinator.

15 **THE COMMISSION:**

Right.

**MR MOORE:**

20 And I'm going to be moving on to develop that because as I also apprehend, there may be a concern about the engagement of that layer but more particularly the relationship between that layer and the incident controller.

**THE COMMISSION:**

25 There is. Well if I can just carry on. So the first point is a single incident controller who has command and control and that there be only one, even where there are multiple agencies and the responsibility of that person is to not only command and control but to approve the incident management plan which is proposed by the incident management team.

30 A further core principle is that the incident control point should be approximate to the incident, that there should only be one and in fact there's a note in the document to the effect that this is critical in a situation where you have multiple agencies involved in the operation. Then thirdly, of relevance for

present purposes, it is of course accepted that the manual anticipates that there will be incidents, operations particularly those where there are multiple incidents occurring or an incident of this kind which is of sufficient complexity, where a response co-ordinator is required. But I think our reading of the  
5 manual is that that person co-ordinates from a distance and the concern that has arisen in light of what occurred at Pike River and some of the criticisms which have been expressed as to the detail of the search and rescue effort is that because of the way the structure was raised by the police, the core principles of CIMS were not followed. Instead of having that situation of an  
10 incident controller who was truly in command and control of the event listening to an incident management team and approving or not an incident action plan rather than had a structure where there were these three levels, mine, Greymouth, Wellington, with decision-making to occur ultimately on some very key matters in Wellington.

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And the difficulty is reconciling that essential structure with the requirements of CIMS. We hear what you say that it's intended to be flexible but does it permit the degree of flexibility that was exerted here where effectively the incident controller in Greymouth, not at the mine site, did not have command  
20 and control but rather was referring matters to Wellington.

**MR MOORE:**

Well I hope I develop that in what I'm about to say. I believe I have anticipated those points, whether they provide answers which satisfy the  
25 Commission or not of course is a different matter but I think I have focussed on those issues so if I might continue to develop it.

**COMMISSIONER BELL:**

Mr Moore, can I ask a question if I may? When CIMS was being developed  
30 you mentioned before, was Mines and Rescue involved in that development?

**MR MOORE:**

I don't believe so. The collaborative parties are actually listed at the front of the manual itself and I don't see Mines Rescue mentioned in that group.

**5 COMMISSIONER BELL:**

Should they have been involved do you think?

**SUBMISSIONS CONTINUE: MR MOORE**

Well with the benefit of hindsight, bearing in mind what we're dealing with here  
10 the answer has to be yes. Although critical of some aspects of the system  
implemented, Mr Brady compared Queensland's MEMS with CIMS and said,  
"I guess the structure is not that different to what we've seen displayed  
previously. I guess it's parallel to the CIMS model." Mr Jim Stuart-Black, the  
15 national manager of special operations in the New Zealand Fire Service who  
has a background in national and international emergency management  
disaster response told the Commission that during the Pike River emergency  
the fire service operated within the same framework supporting the police and  
other agencies. He said this was delivered within the CIMS organisational  
structure and consistent with CIMS principles.

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At page 28 of the CIMS manual there's reference to multi-incident response.  
The model referred to in this section applies to very large or complex single  
agency incidents. There may be a need for high level response co-ordination.  
The formation of the high level structure is necessary because the control  
25 function will quickly become swamped if it does not have the high level  
support. The high level management structure will be primarily concerned  
with the systematic acquisition and prioritisation of resources in accordance  
with requirements imposed by hazard or impact of each incident or  
emergency and the next is the important words, "Note this high level structure  
30 does not include an operations function but only co-ordination, planning,  
intelligence and logistics. Incident controllers of individual incidents may  
maintain control of their incidents."

Pike was both a very large and very complex incident. Superintendent Knowles described it as, "In 34 years of policing he'd never worked in an operation that had been so complex and intense in any context of what he'd done." Assistant Commissioner Nicholls described it as complex, large, particularly challenging, potential for multiple fatalities. It was very, very difficult." Undoubtedly it called for the appointment of a response co-ordination.

Figure 8 on page 28 of the manual sets out in diagrammatic form the role of the response co-ordinator in cases where the sheer size or complexity of the incident calls for a higher level management structure. It's apparent from the manual that the high level structure does not contemplate an operations function. That is the role of the incident controller who maintains control of the incident.

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The response co-ordinator operates in a co-ordination planning intelligence and logistics role. Page 35 of the manual sets out the roles and responsibilities of the response co-ordinator, the primary responsibility being to provide strategic direction, support and co-ordination to incident management teams to the extent that there is any inconsistency between the language contained in the manual and the structure implemented. The police say that manual is not and was never intended to be interpreted strictly or prescriptively.

Given the enormity of what confronted the police and others on 19 November, it was inevitable that this was a case where there was a need for higher level response co-ordination, which could deal with planning, intelligence logistics et cetera. Furthermore, because of the national and international dimension which the emergency necessarily engaged, the only appropriate location of the response co-ordinator was in Wellington. Amongst the roles of the response co-ordinator are liaison and resourcing. In this large scale and intensely complex emergency there was an immediate and constant need to consult with other departmental heads, responsible and interested Ministers,

senior departmental officials and CEOs, the diplomatic core, liaison with senior officials and other comparable emergency agencies, securing national and international resourcing and an example, just a practical example of the last was the securing of the Floxal which required identifying an available unit  
5 in Australia, arranging its urgent transport across the Tasman, clearing its arrival through customs and bio-security, arranging special transport and getting permits because of its oversized status. These functions could not in any logical or sensible sense be carried out at the site or even in Greymouth. It was a role which properly was performed out of Wellington.

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However, it is accepted in evidence and was by both, Assistant Commissioner Nicholls and Superintendent Knowles, that there were operational decisions which were made at the response co-ordinator's high strategic level which should or more properly should have been left to the incident controller. And  
15 on that question Superintendent Knowles said, "As incident controller I feel that I could've and should've made some of those operational decisions at Greymouth." He went further and said, "Routine decisions in relation to drilling, holes, utilisations of robots and such like should be the domain of the incident controller." In relation to his decision making role, Superintendent  
20 Knowles explained, "I think if we look to the future, I believe the person sitting in my position should have operational responsibility in decision-making, there's no doubt about that, but I can't change time. But having said that, there remain two key questions I would not be comfortable making as one man. That is the sealing of the mine where there's a possibility of people  
25 being alive and secondly putting people underground. They are decisions that need collective wisdom to be made and I feel it's unfair to have an incident controller, no matter who they are, solely making that decision."

The police Phase Two evidence quoted above emphasises that for any future  
30 serious underground coalmining incident, a police incident controller should have full authority for all decisions other than those that have direct potential to cause risk to life. The police's position is that the emergency management model deployed for Operation Pike was a variation of the usual CIMS model,

but the variation was still consistent with the flexibility of the framework. That is also the view of the national commander of the fire service, Mr Hall, who said, "In my opinion the CIMS principles are intended to enhance the management of emergency incidents and CIMS was complied with as long as  
5 there was clarity about both decision making and roles between the response co-ordinator and the incident controller. The arrangements made by the police were not typical in terms of a conventional CIMS approach, but the system is sufficiently flexible to accommodate this adaptation by the police."

10 The police say the variation of the framework was necessary given the size and complexity of the incident itself. However, for the future the police accept all decisions other than those directly posing risk to life should be made by the incident controller.

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15 **COMMISSIONER BELL:**

Mr Moore, can I ask another question?

**MR MOORE:**

Please do.

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**COMMISSIONER BELL:**

You're talking that the incident controller to still remaining a police officer. Will that officer or officers be having any familiarisation with mining, underground coalmining particularly?

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**MR MOORE:**

I deal with that directly later in my submissions. The short answer to that is, yes they should, they must.

30 **COMMISSIONER BELL:**

Are you talking about MEMS before in the fact that Mr Brady said there was a similarity between MEMS and CIMS isn't it fact that in MEMS incident controller is not a policeman?

**MR MOORE:**

Yes, it is, but I do deal with that later on these submissions as well. I deal with that point directly.

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**COMMISSIONER BELL:**

I just get back to my first point. So is CIMS going to be reviewed with the input from the NZMRS from the New Zealand Mines and Rescue?

10 **MR MOORE:**

That's my understanding.

**COMMISSIONER BELL:**

It is –

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**MR MOORE:**

CIMS is presently being reviewed in any event. That's my understanding.

**COMMISSIONER BELL:**

20 And New Zealand Mines Rescue's involved with it?

**MR MOORE:**

I would imagine so. I, I can't tell you that for certain but –

25 **COMMISSIONER BELL:**

Well you may be tell us in writing.

**COMMISSIONER BELL:**

Well Mr Gallaway doesn't, is indicating not.

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**MR GALLAWAY:**

Well it's not.

**MR MOORE:**

Not, okay, well –

**COMMISSIONER BELL:**

5 Isn't that a flaw, we're back to where we started?

**MR MOORE:**

I'm sorry, may I just for a moment?

10 **COMMISSIONER BELL:**

Yeah.

**MR MOORE:**

15 Yes, and I'm just reminded that as part of that process they're waiting for what this Commission says about CIMS and it would be premature and I think dangerous to suggest that CIMS should be, or a new model of CIMS come out before we've heard what you have to say about it.

**COMMISSIONER BELL:**

20 Well I accept that but I'm just arguing that we – you should at least involve NZMRS when you're doing it.

**MR MOORE:**

25 Well you're not going to get disagreement from me on that.

**COMMISSIONER BELL:**

Yes, I just don't see it anywhere in your submission here.

**MR MOORE:**

30 No.

**COMMISSIONER BELL:**

Even saying you're going to involve them later, it doesn't appear here anywhere.

5 **MR MOORE:**

No.

**COMMISSIONER BELL:**

So that's an omission.

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**MR MOORE:**

Sorry?

**COMMISSIONER BELL:**

15 That's an omission on your part, is it?

**MR MOORE:**

Well it may be. Your point about the involvement with the incident controller and mining experience, I am developing later in these submissions.

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**COMMISSIONER BELL:**

Thank you.

**SUBMISSIONS CONTINUE: MR MOORE**

25 The approach which I have described is independently supported by Solid Energy's crisis and emergency response arrangements for the Huntly East Mine which uses the CIMS structure for managing an event. As with the CIMS framework applied in Operation Pike, Solid Energy New Zealand model provides for first possibility of more than one decision  
30 maker during a response effort. The incident controller and crisis co-ordinator have significant authority for making decisions and directing staff and secondly an oversight role called the Senior Management Group which is responsible for decision making at the strategic level. During a crisis the

Senior Management Group provides leadership, strategic oversight and direction to the crisis co-ordination team and ensures the response is consistent with overarching ethics of the organisation. They also monitor the potential for longer term reputation and financial impacts. As discussed the police submission is that critical decisions involving risk to life should be authorised at a high strategic level. It is accepted immediately that this submission would appear to be inconsistent with the general proposition that the CIMS framework limits the response co-ordinator's role under the CIMS model to non-operational functions as set out in page 28 of the manual. The reality is that there will always be discussions with those around the incident controller, above the incident controller and with other agencies over decisions that could end the lives of those underground or their rescuers. Even an officer of Superintendent Knowles' seniority and experience in emergency management was uncomfortable about assuming responsibility on his own for decisions of that order. Where the issue is the sealing or otherwise inertising of the mine, there needs to be certainty that no one underground has survived. Quite apart from the moral and emotional weight implicit in such a decision, there is also the exposure to criminal and civil liability. It was not a responsibility which Superintendent Knowles wished to assume on his own. Given the number of men missing underground and the inevitable consequences which sealing and inertising the mine would have on survivability it's a decision which is properly reserved to the most senior levels of the agency.

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25 **COMMISSIONER HENRY:**

Mr Moore, could I just ask you on the point, you've said several times quoting Mr Knowles about, "As one man I didn't feel comfortable with making that decision or making that decision on my own," which is understandable, but doesn't the CIMS model itself mean that the incident controller is not making that decision without considerable advice from the incident management team and the other experts involved.

**MR MOORE:**

Yes, it's not so much the input of the advice which would inform the decision, it is more the making of the actual decision himself.

5 **COMMISSIONER HENRY:**

Yes.

**MR MOORE:**

10 That is carrying the responsibility of the weight of the decision rather than engaging others around.

**COMMISSIONER HENRY:**

Yes, but isn't that the point of having the incident controller under CIMS?

15 **MR MOORE:**

It may well be. I mean I certainly accept that the incident controller engaging other experts around them is able to make and carry the responsibility of decisions, it is just that this particular decision, which is to some extent peculiar to the facts of this case, but this particular decision which goes to the question of life or death is one which requires at least the imprimatur of those more senior, because one of the things about CIMS is that not only does it create the structure that allows agencies to interact with each other, but it maintains the control structure of those individual agencies within that structure so an incident controller in the police paradigm, for example, will still be consulting with those more senior to them, particularly in those decisions which are significant.

25 **COMMISSIONER HENRY:**

30 Doesn't CIMS, isn't the principle of CIMS, an important part of it is that the command and control structures of individual agencies are maintained, but the incident management team led by the incident controller have effectively taken off their uniforms and are engaged in bringing the whole thing together

so that the command and control of the police for, example, requires a separation from the incident controller which is hard to see in this case.

**MR MOORE:**

5 Yes, well I'm not sure I agree with you Commissioner Henry on that issue.

**COMMISSIONER HENRY:**

I mean you haven't mentioned in the submission much at all about the difference between control and command.

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**MR MOORE:**

No.

**COMMISSIONER HENRY:**

15 No, which is an inherent part, one of the strong points of CIMS as we read it.

**MR MOORE:**

I would still maintain that under that model, however, there was still control and command.

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**COMMISSIONER HENRY:**

Of?

**MR MOORE:**

25 Of the incident controller and the team. The incident controller, being a member of the police, still operates within the command structures of the police so that he still has access and should have access both above and below in terms of the Crown structure.

30 **COMMISSIONER HENRY:**

Yes.

**MR MOORE:**

It still doesn't prevent him though from, or in any way, eroding his ability to be able to control the incident.

5 **COMMISSIONER HENRY:**

Well do you, in your submission, are you accepting the distinction between control and command as explained in the manual.

**MR MOORE:**

10 Yes.

**COMMISSIONER HENRY:**

That's the bit I don't understand. You are?

15 **MR MOORE:**

Yes.

**COMMISSIONER HENRY:**

20 Okay, so in this case the decision, after all the decision we're talking about here, this is a rescue of people underground, is inevitably going to be life or death type decisions, isn't it? Is that accepted?

**MR MOORE:**

25 Well all of the decisions, to a greater or lesser extent are going to have that implication.

**COMMISSIONER HENRY:**

The decision to enter –

30 **MR MOORE:**

Yes, definitely.

**COMMISSIONER HENRY:**

- is going to be a very important decision so what you're saying, if I understand you right, is that any future incident of this nature where an underground coal mine, the incident controller will not be in charge of the decision that really counts.

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**MR MOORE:**

Not the ultimate decision.

10 **COMMISSIONER HENRY:**

Well the decision that really counts?

**MR MOORE:**

Yes.

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**COMMISSIONER HENRY:**

So we'll have three levels as I understand it. There'll be the mine, somewhere else such as Greymouth, Wellington, three levels. Each level will have its own group of experts and the decision will float or be forwarded through those three levels, is that what you're saying for the future?

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**MR MOORE:**

In relation to that decision, yes.

25 **COMMISSIONER HENRY:**

In relation to that decision, given that some other decisions would stay further down?

**MR MOORE:**

30 Undoubtedly, I've conceded that. I accept that totally.

**COMMISSIONER HENRY:**

And is it the police position that that will enable decisions on this key point of entry to be made fast enough to make any difference in a fast moving situation?

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**MR MOORE:**

Absolutely. The alternative are the Life Extinct certificates issued by the Coroner if you're talking about re-entry and the evidence in relation to the turnaround time of those is just a question of hours once – I mean the Coroner needs to be satisfied that the evidence which would support the issuing of a Life Extinct Certificate but the turnaround time for that was literally just a matter of hours at the most.

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**COMMISSIONER HENRY:**

My final question if may is just on this point of decision to re-enter, the crucial decision. Have the police contemplated in any of this review that they've done having the equivalent of target action response points that we've heard. In other words, you provide in advance the conditions where the incident controller can make the decision without it having to come back up the line?

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**MR MOORE:**

Can I just first of all go back to your question about the entry of the mine? As far as the entry of the mine was concerned, particularly on the 24<sup>th</sup> which was the key date, Superintendent Knowles was actually at the mine at that time. He went up to the mine for that purpose, so he as not remote at that time, so there was no question of a difficulty in terms of communication at that point. May I think about your answer and perhaps get back to it in a moment.

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**THE COMMISSION:**

Which raises another point Mr Moore, and that is that the Commissioner's indicated that leave will be granted if people want to respond to matters that are raised in the hearing in writing.

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**MR MOORE:**

Well I think my concerns, this is actually a very important question and I want to make sure that the answer that I give it is fully informed and that the Commission has the information it needs rather than just a response.

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**THE COMMISSION:**

Well I'm just publicly confirming that you have the ability to do that in writing rather than orally in the short time that's available to you.

10 **COMMISSIONER BELL:**

Can you just clarify for me Mr Moore sorry, that you are in fact – because I'm not aware of any other jurisdiction anywhere that has this three tier system to do with, say, a mine entry after a problem. So you are still proposing the police will have to refer to mine re-entry issue to someone in Wellington arguably. I'm happy to take that in writing so I'll leave it with you but I just find it –

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**MR MOORE:**

Well I think the answer – I mean the answer I'm bound to give you based on the submissions I've been making is in that narrow area the answer is yes.

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**SUBMISSIONS CONTINUE: MR MOORE**

Now if I can turn now to the police's lead agency. The CIMS manual is economical in its reference to lead agency. It simply describes the role as the organisation with the legislative or agreed authority for control of an incident. The manual notes that amongst the key tasks of the incident controller is to report to the lead agency.

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The 2005 West Coast civil defence emergency management group plan identified the police as the probable lead agency in relation to structural collapse in mines. The Mines Rescue Services standard form documents for callouts identify the options for lead agency to be either the police or the fire service. This is consistent with Mr Watts' own evidence before the

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Commission when he said that the lead agency for any underground mining incident of the scale of Pike River should be the New Zealand Police. The New Zealand Fire Service in its submission observed that given the scale of the incident and the likelihood of fatalities from the outset, there was an expectation that the police would be the lead agency. It also observed that it was appropriate for the incident to be scaled up from the outset involving the establishment of a national structure with the appointment of a response co-ordinator anticipating a multi-agency response. It would appear that the families have a preference that the lead agency role should be retained by the police but with the police being prepared to delegate responsibility of the incident controller to an agency with relevant specialist industry experience. It's noteworthy that in oral evidence Pike River Mines management supported the view that the police were best resourced to assume the lead agency role and that evidence came from Mr White.

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As observed in the evidence, and confirmed in the police submissions, the New Zealand Police are agnostic on the question of whether in any particular emergency they should be lead agency. What then are or should be the core qualities which define what the lead agency should be and the attributes of it. These were listed by Lesley Haines to the Department of Labour and she listed five, and they were independence, no conflict of interest, a proven ability to lead the development and execution of an appropriate strategy using all available resources, the infrastructure and resources to sustain a 24 hour a day operation of this nature over a lengthy period and ideally industry knowledge. She recognised that in a small country of New Zealand's size with a small mining industry, there was no single organisation which satisfied all conditions. To that list might also be added any special responsibilities imposed by statute, by the Coroners Act, financial viability, in other words deep enough pockets to sustain a long and expensive operation. The general convention is the state agencies assume this function, the police, fire service, Maritime New Zealand, Ministry of Health. The Department of Labour, in its submission, observed the police as lead agency were very effective in establishing a logistical support operation interacting the support agencies

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such as DOL and DOC and utilising the resource of other departments such as MFAT and customs as needed. On the question of cost it would seem rather odd that an organisation which was not leading the operation would nevertheless be liable for the costs of requisitions which itself did not  
5 authorise or mightn't even agree with.

The police as incident controller. The role of the incident controller under CIMS is described as the person who has primary responsibility for managing a particular incident. This will entail control across organisations as well as  
10 command within the home organisation.

Key tasks are then listed. This role is very much a wider task than just being in charge of the IMT. In an operation of this magnitude other key functions necessarily included dealing with the families, the public through media liaison and dealing with high level political interests, but it also required high level  
15 skills and understanding of how other emergency agencies work and co-ordinating them within the structure. This is very important and something which the police and other emergency organisations understand. The positions adopted by other parties in their final submissions are that, for  
20 example Mines Rescue observes the incident controller should be a mining expert because an underground coalmining emergency is a technical and complex scene and it requires specific expertise and knowledge. Mines Rescue believe the statutory mine manager is the best person to lead the IMT because it has the best knowledge of the site and this information is  
25 invaluable.

1020

In the event the statutory mine manger is unable to fill the role of the incident controller, Mines Rescue believes the chief inspector of mines should be able to appoint an appropriately qualified statutory mine management team.  
30 EPMU defer to the submissions of Mine Rescue but state they've read and agree with the families.

Solid Energy states that the incident controller should be the mine operator as specific expertise in underground coalmining is essential to allow decisions and actions to be prioritised and made quickly. The families generally support the Solid Energy position except on the issue of the incident controller being the mine operator. The Department of Labour are of the view that the police should take the role of incident controller, the mine manager take the role of incident manager with responsibility for leading the rescue and recovery activities within the mine. The Department of Labour does not consider the new chief inspector should take a lead role in search and rescue.

10

The fire service says that to focus on the operational structure is to miss the point.

15

An enduring theme which permeates many of the submissions is that underground mining industry experience is a core skill required in an incident controller. While that view has considerable merit in relatively modest underground coalmining emergencies the police question whether any agency other than the one with experience in the management of major emergency responses involving large numbers of potential fatalities, enabled to sustain a long-term and intense operation is properly qualified. The importance of the question of scale is well illustrated by what happened and who took the incident controller role in to relatively coalmining fatalities.

20

25

In March 2006 two men were trapped in water which flooded the Black Reef Mine also known as Tiller's Mine. One man drowned before he could be rescued, the other was saved. The whole operation took 14 hours. Mines Rescue was the incident controller and the police supported them as lead agency. September of that same year a miner was killed in a fall at Roa Mine. The rescue and recovery operation occupied four hours. Again Mines Rescue was incident controller and the police supported as lead agency. These two incidents resulted in a much closer and more effective collaborative relationship being forged between Mines Rescue and the police on the West Coast.

30

The scale of Pike put this operation on a completely different footing. Twenty-nine men missing, the need to sustain a 24 hour operation over days, co-ordinating and marshalling hoards of people on and around the site, liaising with families and media and the list goes on. Other than the police the suggested options for incident controller in the present case included the Pike River Mine management, but it was plain that Pike River's management were inappropriate for this role. Indeed the families' submission puts it succinctly when it records, "On the issue of whether the incident controller should or should not be the mine operator, the families do not support Solid Energy's view. The experience of the Pike River disaster illustrates the point, with the mine's multiple failures and having failed to prevent an explosion in a new and supposedly state of the art mine, putting the very same entity in the role of incident controller under CIMS would've been antithetical."

Mr White the mine manager appeared highly qualified to run and manage an emergency operation. His qualifications and experience are listed in his brief. Key and relevant elements of that experience include the fact that he had experience in mining in Scotland, Australia, New Zealand where he held roles of mine manager and mining engineer. He held a first class ticket in underground coalmining. He was a former deputy inspector of mines in Queensland. He had 32 years mining experience, 13 years experience as a member of the Queensland Mines Rescue. He was a former head of Queensland's level 1 organising committee with the state level emergency response under MEMS. And in addition to all of the above he'd been trained in emergency response in underground coalmines.

No matter how well qualified the manager might have been Mr White's perceived connection with the senior levels of the company whose acts and omissions may have contributed to the emergency in the first place, would make him in the police's submission an inappropriate choice for incident controller. It's also noteworthy that three members of management present at

the time of the explosion including Mr White on the 19<sup>th</sup> took more than 40 minutes to realise the gravity of what happened despite a wealth of signs around them.

1025

5 Mr White even expressly declined Daniel Duggan's suggestion that Mines Rescue might be called. Pike River Coal's management were not appropriate for this role. Another alternative would be the Department of Labour. It's plain on the evidence as at 19 November there was no one within the department at that point who had the relevant skills and experience to lead an operation of  
10 this magnitude. The Department of Labour in their submissions have said, they do not consider that the new chief inspector should take a lead role in mine search and rescue operation as occurs in Australia. However, the department must remain able to exercise its statutory powers and duties to intervene where necessary. Mines Rescue submission is that the statutory  
15 mine manager should assume this role, in the event that the statutory mine manager is unable to fill the role, Mines Rescue believes the chief inspector of mines should be able to appoint an appropriate qualified statutory management team during an emergency if the chief inspector decides that the statutory mines manager does not have the capacity or capabilities to  
20 continue with the management of the emergency event. The difficulty with that submission has already been noted in the context of the mine management but furthermore valuable time and energy would be wasted if an additional appointment needed to be appointed who themselves might not be able to be proved able.

25

I turn now to the question of mining experience and the incident controller. It has been a common thread in the course of the hearings that the incident controller should have relevant underground coalmining expertise. The police submission is the choice of incident controller must focus on the nature and  
30 scale of the emergency, not just its type. The effective leader of the operation in the form of the incident controller in an emergency of the dimensions of Pike must have skill and experience in large scale emergency management. There is no substitute for practical on the job experience. No amount of

simulation training or practical drilling can ever prepare anyone, no matter how many letters they might have after their name for the real thing. It is proven ability to be able to perform quietly, objectively and competently in real life emergencies involving life and death which counts. However, as Superintendent Knowles readily accepted, he would've been assisted by having someone with mining experience sitting at his elbow. He agreed it would be something he would do differently in the future. A question was put of him, "It would've been of enormous aid for you to have had someone beside you of the kind I've just described, that is someone with mining experience?" His answer was, "Look I have no doubt, if I could redo it again I certainly would, yes sir." The vast resource available across the Tasman is invaluable. A heartening generosity and speed with which those with relevant skills from Queensland and New South Wales arrived at Pike River was astonishing and it could well have been more effectively utilised by the incident controller and the police accept this. There is no reason why Superintendent Knowles could not have had access to and used as his advisor a suitably qualified expert possibly from Australia. This would've relieved the complications of explaining technical terms and assisted in smoothing the processes around evaluating action plans. He did, of course, throughout the period worked very closely with Messrs Whittall, Ellis and White, all of whom had extensive experience and knowledge of the mine and of mining. But certainly to have someone with independent experience, able to assist and sit at the elbow of the incident controller if the incident controller was a police officer, would be welcomed. There has also been said that underground coalmining is such a unique industry that the application of generalised models of emergency response are wrong. Underground coalmining emergencies need their own set of customised protocols. While it is accepted that underground coalmining is very complex and specialised, the police caution against creating a unique bespoke underground coalmining exception to the generally understood principle of emergency management in this country. The New Zealand industry is but a spec in comparison with Australia where the industry boasts an annual revenue of about \$30 billion. Now that's not to say safety standards here should be any lower or that

emergency response should be any less vigilant or effective. Indeed the contrary. But we have our own emergency response system which continues to service well. It can be improved, it will be improved and I have already listed a number of areas where in the police submission improvements can be made without radical change to what are well worn and well understood structures within the emergency management context. But the variability of emergency events is infinite. Whether it's a simple road crash or mass aviation fatalities. A cruise liner sinking after hitting a well chartered offshore reef with trapped passengers aboard will engage a myriad of different agencies, some of which undoubtedly regard their industry as unique, whether they are navy divers, experts in maritime safety, ecologists, occupational health and safety experts or experts in hazardous substances.

The question is whether underground coalmining is sufficiently special and different in terms of what the correct emergency response model should be, that it justifies in this country a different from the one which has worked well in the past and since the lessons of Pike River well since. It may be reminiscent of babies in bath water.

1032

So where should the incident controller be situated? The final question on this topic is this. There's no question that ideally the incident controller should have been located at the mine site. Superintendent Knowles accepted that if he could have been segregated from the emotion and turmoil of the IMT in forward command, he could've operated from there. And his actual words to Commissioner Bell in response to question were, "I would have been more comfortable to be there if that segregation was possible and had been arranged." As it was he travelled up to the mine most days. He expressed no concerns that the separation made the review of action plans and risk assessments difficult, but his location and the Greymouth Police Station was not just to insulate him from the emotion. It allowed him to undertake his other duties in terms of meeting with the families. He could hardly ask them to drive to and from the mine twice a day to meet with them, given the family first principle which the police espouse to.

Communication was also a major issue. Cellphones didn't work and he needed to be immediately accessible 24 hours a day. His duties to inform the public through the media also required his presence in Greymouth. He also  
5 liaised regularly with Wellington, with diplomats, officials and politicians. In the end the decision as to location involved a compromise. No location was perfect. On balance it was decided to opt for Greymouth. In hindsight whether that was the right decision or the wrong decision will be a matter for this Commission.

10

I turn to the families. This is dealt with in chapter 10 of the police submissions. Throughout the operation the police adopted a family first policy. Superintendent Knowles, despite his frantic workload, accepted his responsibility of the families by conducting meetings twice a day. As the  
15 family submission notes, it's difficult to extract a common thread from a statement filed by the families but certainly one of the lessons which was subsequently applied in Christchurch, and in the subsequent ballooning tragedy in Carterton, is that a focussed and dedicated approach to family liaison can be highly successful.

20

However, whether his approach to the families found favour or not, there could be no doubting Superintendent Knowles' sincerity that he did his very best in fraught and highly emotionally charged circumstances. His demeanour while giving evidence was true testament to this. What appears to  
25 have been virtually unanimously applauded is the effectiveness of the welfare assistance. Much of the credit for this rests with the executive who implemented the scheme which has since been rolled out nationally and there is a newly created role of national victims' services manager. This has applied much of what the police learned from Pike River and apply to the later  
30 tragedies. So despite the relative formality which properly surrounded the proceedings of this Royal Commission, the overwhelming grief and profound sense of loss felt by the families and the friends of the 29 men has been palpable from start to finish. There can be no finer nor more sincere tribute to

their memory than the making of recommendations by this Royal Commission which will not only improve the health and safety of those who daily toil underground but will also more generally serve to enhance the principles and efficacy of emergency management in New Zealand, thank you.

5

**COMMISSIONER HENRY:**

Mr Moore, have the police conducted any independent review of –

**MR MOORE:**

10 I can only just hear you, I'm sorry.

**COMMISSIONER HENRY:**

I'm sorry, have the police conducted any independent review of what happened at Pike and in regard to how they performed and the structures that they used?

15

**MR MOORE:**

They have undertaken a review using a police officer unconnected with the events of Pike River.

20

**COMMISSIONER HENRY:**

Yes, my question was have they conducted an independent review?

**MR MOORE:**

25 If the use of the word "independent" means someone beyond the auspices of the police, the answer to that is no, not to my knowledge.

**THE COMMISSION:**

Mr Moore, just a couple of things. You touched very briefly on the reference to the Coroner at the time when survivability was confronted and obtaining a certificate that life was extinct. Are we to take it that the police in a comparable situation would likewise consider that as something that had to be done in relation to –

30

**MR MOORE:**

I don't believe that it is something which has to be done but if it is done it certainly resolves any issues about the need for higher level engagement in  
5 that question.

**THE COMMISSION:**

Well I don't understand from the Coroners Act on what basis that certificate is given, let alone that there's any need for it to be obtained and it may be a  
10 matter which is better reserved to be dealt with in writing but I think it would be helpful to know just what the police view is concerning the need for that as opposed to why they did it in this instance, whether it is seen as something which is a prerequisite to the final decision. And perhaps in a like category, there's been brief reference to some discussions which have apparently  
15 occurred subsequent to Phase Two, would it be possible for us to have a better indication of what has transpired and whether there's been any progress made and who's been involved?

1039

**MR MOORE:**

20 Is that apropos the question of the model?

**THE COMMISSION:**

Well all of these issues. There's obviously particularly a big range of views concerning who should assume the role of incident controller and we were  
25 told I think at the end of Phase Two that this was something that was likely to be the subject matter of discussion, I'm just not altogether sure of what has in fact occurred in just the very brief resume that may be of assistance to us.

**MR MOORE:**

30 Well I can certainly provide that. I can confirm that those discussions are still taking place and certainly within the police. That whole issue is –

**THE COMMISSION:**

Well I think we're more interested to know whether there's been any dialogue with other agencies who -

5 **MR MOORE:**

Certainly.

**THE COMMISSION**

10 Yes. Finally Mr Moore, I'm conscious of the fact that we've pressed you a good deal about the structures that we used here and whether they fitted the model, the CIMS model. We don't overlook the fact that the police performed a major logistical role in relation to Pike and whilst there's a considerable difference of opinion about many of the aspects that we've already talked about in the last hour or so, the fact is that there is universal support for the  
15 police's performance in relation to that logistical role in particular in its, in fulfilling its responsibility as lead agency and I just acknowledge that, that is underscored in a number of the submissions and is certainly not lost on the Commission.

20 **MR MOORE:**

Well I'm grateful for that public statement.

**SUBMISSIONS: MR GALLAWAY:**

May it please the Commission, if I can perhaps commence by picking up what the Commissioner has just said in relation to the police's co-ordination role and simply concur from Mines Rescues point of view that it was done well and  
5 that Mines Rescue acknowledge that contribution as well.

I wanted to start very briefly by simply referring to the document that's been filed by Mr Watts in relation to a request from counsel assisting and that was just in relation to the second means of egress and I simply wanted to say that  
10 the document that's been filed I hope clarifies any issues. It's a further statement of Mr Watts in relation to how a memorandum dated 9 September 2009 came into existence. That was simply as a result of the fact that there were discussions between the Mines Rescue people who worked at Pike on the basis that changes were afoot there but they wanted to  
15 have some system in place if the vent shaft was to be used as the second means of egress and it was in that light that that document was put together. I have assumed that no other issues arise from that but if they do then no doubt responses can be given in writing at a later date.

Turning then to the submissions that have been filed on behalf of Mines Rescue, paragraph 9 on page 4 highlights the fact that obviously two of the biggest issues during the operation at Pike River were those of survivability and of sealing the mine and reference is made to the fact that the Mines Rescue Service began considering those issues early in the piece and  
25 on page 5 of the submissions there is reference to a conversation between Mr Devlin from Coal Services and Mr Watts which simply confirmed that Mr Watts had shared his views with Mr Devlin as to the survivability of the men early in the piece. And against that, the Commission heard evidence from at paragraph 11, "Witnesses such as Mr Ellis, Assistant Commissioner  
30 Nicholls and Superintendent Knowles.

1044

So against that at paragraph 11 of the submissions, the Commission heard evidence from for example Assistant Commissioner Nicholls that his view was

that there would've been survivors trapped underground until the 24<sup>th</sup> of November. He believed that there was a possibility that they were still alive and he based that on what he described as an amalgam of information. Firstly, the fact that Mr Rockhouse and Mr Smith had self-rescued and when  
5 questioned about how that fact linked into his belief about survivability, Assistant Commissioner Nicholls said, "Well I had no reason to believe that no one else might have survived the blasts and weren't waiting to be rescued. There was, the mine management were very positive about this and I thought they had the best knowledge of the mine and in my view were amongst the  
10 best place to give us an opinion about survivability," and the Commission heard evidence also from the Assistant Commissioner that in forming that view that men may still be alive, he was listening to the comments of Mr Whittall in the media and relying on them as well. The Mines Rescue Service said of course that they did not agree with this evidence and Mr Watts  
15 was asked about his views on survivability and in the passage from the transcript on page 6 of the Mines Rescue submissions the reasons for why Mines Rescue believe that survival was unlikely after the first explosion are given. First, that it was a very small mine. Secondly, it was a very large explosion that lasted for 52 seconds. Thirdly, that the workforce was trained  
20 to self-escape. They were trained to self-escape in the first instance, not to barricade themselves in. Fourth, that all men had self-rescuers available to them as belt worn units and those units, we heard, lasted for 30 minutes. There had been no communications from within the mine apart from Mr Rockhouse's initial phone call. There had been no communications from  
25 within the Slimline shaft from 8.00 pm on the 19<sup>th</sup> of November when the radio had been lowered down there by Mines Rescue personnel.

And then over the page reference was made by Mr Watts to the atmosphere in the mine and the high readings of carbon monoxide again meaning that  
30 survivability was unlikely. So Mines Rescue have made a fairly comprehensive assessment based on, in my submission, were comprehensive factors that survivability was unlikely but trailing alongside that were the police relying on what Mr Whittall was saying in the media and the

fact that a couple of men had escaped. So, in my submission the position in relation to the issue and the information that was being put was unsatisfactory and that decisions in relation to survivability or the issues should have been considered far earlier by the incident management team with discussions and decisions being made as a result of that. That in my submission is a convenient time to turn to paragraph 17, page 35 of the Mines Rescue submissions.

**COMMISSIONER BELL:**

10 Mr Gallaway, sorry before you go on, so Mr Watts never, I'm just clear in my mind, never spoke to Commissioner Nicholls or any of the senior police with his view?

**MR GALLAWAY:**

15 He wasn't there at all times of course, sir. He was there for 12 hours a day or whatever. My understanding is that the Mines Rescue people were talking at the site about survivability.

**COMMISSIONER BELL:**

20 At the IMT?

**MR GALLAWAY:**

No, outside the IMT. I think that the evidence was that it was difficult to have discussions of that nature in the IMT because of the size of them, but the Commissioner will recall that there was evidence given of Mr Stewart from Mines Rescue talking to Mr Bellett in relation to survivability and sealing and them being told really that there was no prospect of that sealing taking place until the Department of Labour were satisfied that there was no prospect at all of survivability. So my recollection of the evidence is that Mines Rescue felt unable to push the issue hard and I think on reflection with an IMT structure with fewer people that was well organised and focussed on the issues, those issues would come out far faster, sir, and one of the other issues that was raised was the lack of parallel planning that was taking place and survivability

and sealing I think it was highlighted were issues that should've been discussed by the IMT much earlier in stages with planning take place from the outset in relation to them.

5 **COMMISSIONER BELL:**

So do you think an incident control with mining experience may have asked Mr Watt directly?

**MR GALLAWAY:**

10 I have no doubt about that, sir. It's speculation but Mines Rescue's position is of course that an incident controller should be a person with mining experience and that I think it's inconceivable that a person with that experience wouldn't have addressed those issues from early in the piece, sir.

15 **COMMISSIONER BELL:**

Thank you.

1051

**SUBMISSIONS CONTINUE: MR GALLAWAY**

20 So turning then to paragraph 35 and looking at the three tiered system which has already been the subject of some questions from the Commission, Mines Rescue's position is that it didn't work effectively and I think it would be fair to say that it is surprising, in my submission, to still have the police advocating a system such as this in relation to another disaster.

25 I've, in the submissions, highlighted some of the areas where Mines Rescue says that the three tier system fell down. The first of those, and really it was in relation to the distribution of information, from the mine itself to Greymouth and then up to Wellington and decision making with that information having been provided and the first example of that was the fact that the police in  
30 Greymouth were not aware, just looking at paragraph 36, there were a number of occasions when critical information was not passed from forward command base at the site through to incident control in Greymouth, and I've referred there to the video evidence of the explosion and I asked Assistant

Commissioner Nicholls when he became aware that there was video footage of the explosion and it was I think 72 hours after the initial explosion. I suggested to the Assistant Commissioner that this was a critical piece of information that he would've expected to have been aware of and he agreed that that was the case and the next example I've referred to is at paragraph 37 and that was in relation to the issues of survivability. Where the situation was that the New South Wales Rescue and the New South Mines Rescue Services had formed a view that the men had died quickly but in Wellington they weren't aware of that. And so whilst Assistant Commissioner Nicholls said that the issue of survivability could not be dealt with quickly and that's at paragraph 38 of the submissions, again, in my submission this highlights the need for that parallel planning to take place from the outset and that survivability should have been one of the issues that was considered quickly. Another issue simply to highlight the point in relation to the communication failures was that of there being, whether or not there were rescue chambers down within the mine and that's referred to at paragraph 39 and again Assistant Commissioner was asked, "Were you aware by the Tuesday that there were no rescue chambers at Pike?" and his response was at that time that he thought that there were and he accepted, and of course that information was being conveyed by Assistant Commissioner Nicholls to the expert overseas, Mr Giannato so through a series of mistakes and a lack of communication, even the experts overseas were being given information that wasn't correct. So my respectful submission is that the three tier process simply did not work efficiently and should not be used in the future.

25

Just to deal at this point with the questions that were put to my learned friend Mr Moore in relation to CIMS. It seems to me that CIMS is ideal in terms of a response which involves the police, St John Ambulance, the fire service and so on but once in a mining situation, there seem to be a failure by the police to recognise the need for specialist knowledge and for specialist people to be involved.

30

**THE COMMISSION:**

Well the problem may well be Mr Gallaway that there'd be no pre-planning.

**MR GALLAWAY:**

5 By the mine itself sir?

**THE COMMISSION:**

Well by everybody. The fact of a mine disaster, given New Zealand's history,  
was on the cards and it's always easy, of course, to be wise after the event  
10 but this was a complicated issue as to how to run this search and rescue  
exercise and regrettably the agencies that pitched in with immediate and  
commendable determination to do everything they possibly could were doing  
so without the basis of a platform to work from because there had been no  
pre- planning or sufficient or pre-planning for an exercise of this size and – or  
15 else we may not be here debating certain of the differences of opinion that we  
are.

**MR GALLAWAY:**

And that's acknowledged sir, indeed.

20

**SUBMISSIONS CONTINUE: MR GALLAWAY**

I do want though, if I may to just deal with the issue of re-entry that was raised  
in a question and the police's position that that is an aspect that still should be  
relayed from, to Greymouth if there is someone in Greymouth and up to  
25 Wellington for a final decision. My respectful submission sir is that whilst the  
police say that that's appropriate, first because of the gravity of the decision  
but secondly because it is a narrow decision, it is of course the only decision  
that really matters at the time to the men in the mine, their families and so on.  
So Mines Rescues position remains as put in its evidence that does not favour  
30 relaying decisions in relation to the entry of the mine out beyond the incident  
management team and it of course as the Commission heard, Mines Rescue  
has an ultimate right of veto through the general manager being able to say, if

he disagrees with a decision to deploy he is able to say that he disagrees with it.

1058

5 But ultimately these decisions have to be made quickly and in circumstances that will change quickly and the Mines Rescue position remains as put in its evidence that those decisions must be made by the incident management team.

10 At page 38 of the submissions paragraph 80, I have referred to the model that was put forward and that of course was exhibit 30 by Mines Rescue and Mines Rescue favoured a model that really adapted, was adapted from the MEMS system employed in Queensland. I should make it clear that Mines Rescue do not want to be the lead agency or incident controller. They think that the lead agency should be the police for all of their logistic and  
15 organisational skills. I've set out at paragraph 81 who would comprise that team under a MEMS structure, there would be the incident controller. That person in the Mines Rescue's submission should be the statutory mine manager. If not, it should be a person appropriately qualified with a first class ticket, but the key is that it must be a person with considerable mining  
20 experience.

Secondly a company executive would be on that incident management team, the general manager of operations for example, a senior member of the police, a member from the Department of Labour, ideally their chief mines  
25 inspector, a member from Mines Rescue, being a senior official, a planning co-ordinator, an operations co-ordinator and again the police coming in at that level as logistics co-ordinator.

30 NZMRS at paragraph 83 of the submissions does not believe that the incident controller needs to be from the same agency as the lead agency. The police can be the lead agency but the incident controller can come from the mine company itself. It disagrees with the police evidence that the incident controller must come from the lead agency and it believes that the statutory

mine manager is the best person to lead the IMT because it has the best knowledge of the site and this information is invaluable, if of course there are circumstances which prevail which make it inappropriate for the statutory mine manager to be the person in charge of an incident then it should be as I've submitted a person with a first class ticket or similar qualifications to the statutory mine manager.

At paragraph 86 of my submissions, I've simply highlighted the conclusions in relation to the three tier system and the Mines Rescues view of that. And again I simply want to highlight what was said at paragraph 92, "Where after a mining accident MZMRS believes decisions need to be able to be made onsite by the incident controller," and this of course was not the case for Pike. It strongly believes that for future events a more effective and robust IMT structure is required. And again, I simply summarise that MEMS is the favoured model by the Mines Rescue Trust.

If I can turn then to paragraph 114 of the submissions on page 48, I've simply highlighted the conclusion that I've made in those submissions that there was no window of opportunity for NZMRS to enter the mine. The gas results prohibited a safe entry and this was the evidence of witnesses such as Messrs Devlin, Brady and Watts and Mr White of course made it clear from the outset that no one was to enter the mine at that time and I simply wanted to make that point here today that there was no window of opportunity.

In terms – I'm just seeing if I can abbreviate these a little further. The issue of the families at page 84, page 176 was dealt with and the Commission will recall that Mr Watts was asked to speak to the families during the crisis and declined to do so based on his view that he knew many of the men down the mine. He knew many of the families and he did not want to cloud his judgement by being in front of them and talking at such a difficult time. It is Mines Rescue's submission that again, Mr Watts was not the appropriate person to go and speak to the families, but Mines Rescue of course acknowledges that it is vital that in a situation like this that the families are

given information from people who truly understand what is happening at the mine and that a robust incident management structure should be able to determine quickly who that person is and when they can meet with the families to convey what is going on up there. So the issue of communication  
5 with the families is recognised as being critical.

1105

The only question I suppose or only area of disagreement is who is the appropriate person to do that and in Mines Rescues submission it's vital that the general manager remains up on site involved with the teams working up  
10 there.

**COMMISSIONER BELL:**

Mr Gallaway, are you now saying that Mines Rescue will be involved in providing a face to the families, maybe not the front person but involved.  
15

**MR GALLAWAY:**

Happily, I think sir that Mines Rescue would be happy to provide information to a mining person who could then go and speak to the families. I think that's, it's acknowledged that one of the things that happened in this case  
20 through no ill-will on behalf of anybody, sir, it seems to me is that a lot of the information that was provided was inaccurate or not up to date or that the families felt that they weren't getting the right sort of information and if Mines Rescue can help in that regard by telling them as part of the aspect of the communication that's given what's happening from their point of view, they  
25 will happily to do, sir.

**SUBMISSIONS CONTINUE: MR GALLAWAY**

At page 87, I simply looked at the comparatives between the regulatory systems and its Mines Rescue's position that the only comparatives that are  
30 needed to be referred to are New South Wales and Queensland rather than looking further afield.

I then talked at page 89 or written about the mining features that prevail in New Zealand from a legislative point of view and at page 204, paragraph 204 refer to the fact that the Mines Rescue Trust Act was introduced after the Coal Mines Act and repealed and the Trust was then established. If a review  
5 of the Act takes place and its Mines Rescue's position is that it should it will need to be considered whether Mines Rescue Trust remains a charitable trust or whether it's simply established by legislation.

Just looking briefly at the legislation as it exists now, paragraph 206, the  
10 current Act simply defines the statutory obligations of the Mines Rescue Trust as being the establishment of rescue stations, and there are of course two, and the maintenance of rescue stations and the purchase of real property goods and services. So in many respect the Mines Rescue Trust has evolved in spite of the legislation which is sparse to put it mildly.

15

The Mines Rescue Trust believes that the further definition of the core functions is required and expansion and it looks to New South Wales and Queensland as being the starting point for how that could be done.

20 In terms of levies, I set out the background to how the Mines Rescue Trust is funded. It comes from the levies that were enshrined in statute in 1972 in the case, in 1992 rather, "In the case of an underground coal mine the sum is calculated at the rate of 40 cents per tonne of coal mined from the mine. In the case of an opencast mine the sum is calculated at a rate of 20 cents per  
25 tonne of coal. If the mine has been worked as an underground coal mine previously and 10 cents if it never has been." And in return for paying the levy the levy payer is entitled to the core services from the Mines Rescue Trust, and in the submissions between paragraphs 209 and 215 or 16 I've simply referred to the fact that because that amount hasn't changed over a long  
30 period of time the amount of the levy, but costs have gone up and so on, then Mines Rescue is effectively funding itself largely from the other, the training mechanisms and things that it runs as opposed to from the levy that it receives. So at paragraph 217, I have referred to a suggested new system in

relation to what Mines Rescue say should be the case. In New Zealand it would like to implement a new model for its funding as the current levy system is insufficient and Rescue Trust has been suffering a shortfall for the last five years. Under the proposed new system similarly to New South Wales and Queensland an annual budget for Mines Rescue Services would be forwarded to the Board of Trustees which is of course made up of representatives from the industry for approval. Once the budget for the year had been set and approved the board would then set the levy required for the year. The Mines Rescue Trust would like the flexibility and the formula to set the levy whether this is on a coal production or a charge per employee basis and each year the budget would be approved, the levy set and then mine operators would be informed of the structure of the ensuing year.

Paragraph 219, "To meet the shortfall between the lump sum and the costs required for the trust to operate, a levy based on a charge, a rate charged on tonnes of coal produced or per employee in each mine would be required. This would've been useful for Pike River miners. The operator was not being charged a levy until it began to produce coal but it still enjoyed the use of the Mines Rescue Services," and my understanding is that the Pike had paid \$16,000 in levies at the times of this disaster.

So the key feature at paragraph 220 from Mines Rescue's point of view is to have flexibility with the levy formula and not have a prescribed formula and figure in the Act so it means that the amount can be assessed after consultation with the mining industry which, given the size of the New Zealand industry, would in my submission be a straight forward task. And then there are suggested means in which operators who were not paying a levy could be dealt with and so on. I don't see any need to highlight those here today.

1112

There is then reference at page 232, paragraph 232 for additional regulatory changes and 233, "In its Phase Four brief, the Rescue Trust only addressed aspects of the regulations which apply to the operation and running of Mines Rescue as well as the changes that the Rescue Trust would like to see

occur to the regulations in order to incorporate critical aspects which relate to Mines Rescue. The current regulations do not make any reference to ERMPs. The Rescue Trust believes that the regulation should have some prescription about what should be in an emergency response management  
5 plan, what they should provide for in the event of an emergency, for example matters such as self-escape, aided rescue, emergency exercises and facilities for NZMRS should be addressed in each coal operator's plan. And the Rescue Service believes that some of those matters should be enshrined in the regulations and I've referred to those at paragraph 236.

10

At paragraph 244, just a couple of further matters that I would like to highlight. The first relates to certificates of competency and there the Rescue Trust agrees that the certificates and the components making them up are adequate as the basis of a training and assessment curriculum. It strongly believes  
15 however at paragraph 246 that there is a need for a final overall assessment of each applicant applying for a certificate of competency before the issue of a relevant certificate is granted, the Trust considers that the major shortfall in the current system is a lack of scrutiny and assessment of a candidate's overall practical knowledge and ability to take up the responsibilities that are  
20 inherent within a statutory management role and its proposed that a board of examiners be put together consisting of three people with the requisite experience who would then have a opportunity to question people prior to a certificate of competency being awarded and that suggestion is then carried over at paragraph 251 into the Trans-Tasman mutual recognition agreement  
25 where again it's suggested that for Australian candidates coming to New Zealand they should also face the board of examiners and have a similarly robust process.

And then in conclusion if I could say that the Mines Rescue Service and  
30 Mines Rescue Trust would like to reassure the Commission and the families that they remain committed to doing whatever they can to assist with the recovery of the men's remains within the mine. The events which occurred on 19<sup>th</sup> of November were a tragedy. The New Zealand mining community is

small, numerous people and particularly the families of the men who lost their lives continue to be affected by this tragedy. Every single member of the Mines Rescue Service and Trust have felt a considerable degree of frustration at the fact that Mines Rescue Services has not been able to get into the mine, 5 there have been many obstacles along the way and the financial constraints of Pike River including the receivership have meant that there has been an overwhelming sense of bureaucracy throughout the operation. But, I do reiterate Mr Watts' closing comments when he gave his evidence that Mines Rescue Service will continue to do whatever it can to assist with the 10 recovery of the men's remains.

#### **THE COMMISSION ADDRESSES MR GALLAWAY**

**COMMISSION ADJOURNS: 11.16 AM**

**COMMISSION RESUMES: 11.34 AM****THE COMMISSION:**

5 First of all just a comment on the Mines Rescue Trust Act, the Commissioners have asked me to say that we will look at that. We appreciate that it's out of date. We'll have a look at it from the policy perspective.

**COMMISSIONER HENRY:**

10 A question to you on the statutory mine manager being the incident controller by the default position anyway as I understood you to say, the police submission gives several reasons why that shouldn't be so. First that it would be novel for a private sector person to be commanding what in this case has turned out to be millions of dollars of Government money. Secondly, that there could be a conflict of interest in regard to potential criminal liability or in  
15 regard to wishing to preserve an asset, a commercial interest. And thirdly, that that person doesn't have the expertise to manage something of this size. What does the Mines Rescue Service say about those points that the police have made?

**20 MR GALLAWAY:**

Well my instructions are sir that the initial position is that once there is an incident it is the statutory mine manager who has to take control and implement the emergency response plan. Once it became clear that there was an incident of this gravity or scale, then it may well be accepted that the  
25 mine manager at that time is not the appropriate person to deal with it and I think there was flexibility in the model suggested by the Mines Rescue Service that the inspector could appoint someone with the appropriate skills. The reality is sir I'd suggest that it comes down to scale and to what unravels. In some instances my submission is that it will be appropriate for a statutory  
30 mine manager to be in charge of an incident and others, it will become reasonably clear from an early stage that that's not appropriate and my submission is that the model has to have some flexibility around the appointment of that person, some careful consideration being given to what is

appropriate and that should involve considerations at a high level by the inspector I'd suggest. So in summary, horses for courses and the statutory mine manager to acknowledge is not going to be the appropriate person in all cases.

5

**COMMISSIONER HENRY:**

Final question from me, it may have been touched on before but is Mines Rescue Service working with the police and other emergency services now on a new tested approach?

10

**MR GALLAWAY:**

No sir it's not.

**COMMISSIONER HENRY:**

15 And why's that?

**MR GALLAWAY:**

There has been no consultation to my knowledge in relation to it. It may touch on the basis of what Mr Moore said that people are awaiting the outcome of this inquiry, or the Commission. There has certainly been in the past as I understand it some collaboration between the police and Mines Rescue and I talk about the Black Reef incident in 2006 where a miner died and another miner was rescued and as a result of that incident there were some steps put in place so that police in the Greymouth area could be educated for want of a better word about mine environments. That doesn't go into the sort of detail that we face in the Pike situation that a gassy mine and the sort of complications that come from that. I suggest also sir possibly arising out of the views put at this Royal Commission that there is a divergence of views and that the sooner police and Mines Rescue can be brought together with other agencies to talk, then there will presumably be a better understanding of each party's views with the better outcome for everyone.

20

25

30

**COMMISSIONER BELL:**

Mr Gallaway, just a couple of questions on numbers. I'm just reading your position on, in paragraphs 227 onwards there. Does NZMRS not think about having some sort of controlled amount of numbers for Mines Rescue would be beneficial rather than relying on people volunteering?

**MR GALLAWAY:**

It's always been reluctant sir to interfere with the voluntary nature of it. Its felt and this was discussed by the trustees in some detail in preparation for this that in the past in New Zealand there has never been a need to conscript if I can put it that way, people into the service, that there have always been enough by way of volunteers.

1140

I suppose that NZMRS would welcome some sort of backstop position that in the event that there were problems getting volunteers, they had some mechanism in which they could approach mine owners and require numbers, but the trustees felt reluctant, sir, to have that enshrined in statute against a background where there has never been a problem getting people to be involved in the organisation and they feel that if they were forced to change in that way then people would come along less willingly than they do now as volunteers where they are passionate about what they do. So I suppose a stick at the end, sir, if volunteers can't be found would be helpful but Mines Rescue Service does not want a system where people are required to be there as of now.

25

**COMMISSIONER BELL:**

So you're sort of proposing that the emergency, the Mines Emergency Response Plan should contemplate a number of people trained in mines rescue.

30

**MR GALLAWAY:**

That's right, sir, yes.

**COMMISSIONER BELL:**

But if they don't do that then your backstop is to go to the inspectorate or to –

**MR GALLAWAY:**

5 To go to the inspectorate, sir, yes exactly and then the inspectorate's control is in relation to the emergency response plan and how many members there are and so on exactly.

**COMMISSIONER BELL:**

10 Yes, thank you.

**THE COMMISSION:**

Mr Gallaway, I'm just looking at your written submission, paragraphs 95, 96.

15 **MR GALLAWAY:**

Yes, sir.

**THE COMMISSION:**

20 Ninety-five deals with the decision making and would seem to espouse a conventional CIMS approach where the incident management team makes recommendations and the incident controller exercises a command function.

**MR GALLAWAY:**

Yes, sir.

25

**THE COMMISSION:**

But then 96 I cannot quite reconcile with what you've said in 95 because you there seem to be saying that nonetheless it may be appropriate for sealing and survivability to be referred elsewhere which I take it is to Wellington.

30

**MR GALLAWAY:**

That's a reference, sir, I think to the issues of whether well both of those issues involve life and death effectively. The Rescue Services' view was that

it would not have an objection to the involvement of, and other parties such as the Coroner if it was felt desirable, but that decisions like that had to be envisaged from the outset so that there were no delays and no – one of the problems where, sir, was that it was felt that survivability was not really  
5 addressed in Wellington until some time after the explosion. If under the planning operational components that are put forward under the system proposed by the Mines Rescue Services then issues about survivability and sealing would be considered from the outset of an incident like this.

10 **THE COMMISSION:**

Well that's a separate issue, isn't it? It's another one which you've addressed elsewhere but –

**MR GALLAWAY:**

15 Yes.

**THE COMMISSION:**

– where are you saying the ultimate decision has to be made? What are you saying in 96? If you're simply saying the incident controller should have the  
20 ability to consult with his superiors but retain the decision making that may well fit within the model but if you're suggesting that –

**MR GALLAWAY:**

That is what's being said, sir. I mean these issues are not easy in terms of –  
25

**THE COMMISSION:**

No, of course not.

**MR GALLAWAY:**

30 – of the scale of this incident, and I suppose that what Mines Rescue, they don't want to be dogmatic on the issue, sir. Their first feeling is that those decisions should be able to be made by the incident management team to the incident controller and the incident controller can consult with whichever

people he or she sees as being appropriate, but if there is a feeling amongst others, sir, that on a matter of this scale that there should be other measures put in place, Mines Rescue doesn't want to be dogmatic and say that's completely inappropriate but it's first position is it should be made by the  
5 incident management team to the incident controller.

**THE COMMISSION:**

Thank you, that's all. Ms McDonald?

**SUBMISSIONS: MS MCDONALD:**

As the Commission pleases, I just wanted to start by taking this opportunity to acknowledge the families and their loss and to thank them on behalf of the departments that we represent for the very respectful way they have engaged with counsel, our witnesses and in particular the inspectors who came along to give evidence. It's not the Crown's intention in oral submissions to canvass the history and development of the mine, rather I will speak to the involvement of the Department of Labour with Pike River Mine and Mr Mander will address the role of the Department of Conservation with the Ministry of Economic Development, nor does the Crown intend to address the Commission orally on the nature or adequacy of the Health and Safety systems at the mine. The Crown has filed the Department of Labour's investigation report and various findings from that report were summarised in the department's written submissions. That report was the culmination of the largest ever occupational health and safety investigation in New Zealand and as Mr Murray stated in his evidence to the Commission the investigation involved 13 full-time members of the investigation team for some nine months, gradually reducing over time to four members. There interviews of approximately 276 people, a huge amount of requested material received from Pike River Coal was analysed as well as the engagement of five core mining experts from Australia and specialist advice from seven other experts. The department and the police have filed a large amount of evidence with the Commission.

The Department of Labour and the Australian and New Zealand experts it engaged identified the nature of the explosion and the most likely set of conditions and contributing factors that led to it.

1147

At the request of the Commission the department presented evidence from two Australian experts it had engaged David Reece and Tony Reczek on their conclusions as to the possible causes of the explosion. In brief, I'll just summarise those conclusions, the conclusion of the investigation following advice from the experts is that the first explosion is likely to have been a methane explosion with an estimated of volume of pure methane at between

600 cubic metres and just over 1000 cubic metres but likely 1000 cubic metres or more. One of the experts consulted by the department, Professor Dave Cliff and Darren Brady have characterised it as a large weak methane explosion and that was in the recently released minute of their  
5 discussion with the Commission.

There are only a few locations in the mine that could potentially contain the volume of methane required to fuel the explosion without a gradual build up of methane being detected by the sensor at the top of the ventilation shaft and  
10 with a plausible mechanism to provide the motor force to rapidly release or expel the methane in the required volume before it was detected by the ventilation shaft monitor. The most likely source of methane is therefore the hydro extraction panel one, which had a large volume of methane in the goaf which could have been released by a roof collapse. The gas could be diluted  
15 to within the explosive range by the normal ventilation system in combination with the failure of the brattice stopping at three cross-cut. It is possible but less likely that the ABM heading is the source of the methane as gas build-ups had recently been experienced in that area. There was possibly a recirculation of air occurring and an accumulation of methane could've arisen  
20 from localised ventilation failure or from the gas borehole that was intersected in the ABM heading. There is a possibility a diesel vehicle engine was the ignition source although this would rely on the safety circuits of the vehicle having failed or not being activated. The most likely ignition source for the methane was electrical, however, the department's work on this issue is ongoing as the Commission knows. The department's investigation report  
25 into electricity systems at Pike River Mine remains in draft and the department is still in discussions with electrical experts following the receipt of information from Rockwell Automation on the VSDs. The written submissions filed on behalf of the directors and officers of Pike contain various statements  
30 regarding the health and safety systems in Pike and the actions of the company and other parties. Many of these statements are explicitly rejected by the departments both on the basis of evidence before this Commission and the department's investigation. I do not propose to engage with those

statements in oral submissions and I rely instead on the content of the investigation report. The investigation concluded that there were numerous breaches of the Health and Safety in Employment Act and 25 charges have been laid against the company, Mr Whittall and Valley Longwall Drilling  
5 Proprietary Limited. Throughout the Commission process the department has sought to protect the integrity of the investigation and any resulting prosecution and the department appreciates the Commission's sensitivity to this concern. The prosecution process is ongoing, the department is currently providing disclosure of his documents to the defendants. No pleas have been  
10 entered as yet and no hearing date has been set.

I now would like to turn to the role of the department and in particular the inspectorate. The HSE Act places primary responsibility on employers and other duty holders to manage hazards in their workplace. Employers are  
15 required to have in place an effective method to systematically identify hazards and to take all practicable steps to eliminate, isolate or minimise them. The department acknowledges that it could have done more in terms of the structure and resources supporting the inspectors and that in hindsight different enforcement action could have been taken on the second egress and  
20 regard to stone dusting. However, it cannot be overlooked that the employer is responsible for ensuring a safe workplace for employees and other workers. The department inspectors are tasked with assisting employers to ensure they provide a safe workplace and monitoring compliance with the legislation. Inspectors were encouraged to focus on voluntary compliance by employers  
25 and use negotiated agreements and appropriate circumstances rather than enforcement action. Further, much of the extensive evidence now before the Commission of problems at Pike River were not known by the Department of Labour as it was not notified by the company and nor would it be apparent during inspection necessarily. Department inspections concluded that the  
30 company did not comply with the HSE Act in several ways.

I turn to the regulatory framework. As several submitters have made clear New Zealand's health and safety regulatory framework is based on a tripartite

regime. The three pillars being a responsible employer, workplace participation and an engaged regulator. In addition to the statutory obligations of the Act, the Mining Regulations place specific obligations on employers in respect of the management of the mine. The Mining Administration

5 Regulations contain mandatory competent standards for a range of critical safety roles in the operation of the mine, including the requirement that a mine manager be appointed to manage the operation and supervise the health and safety aspects of the operation personally on every day on which any employee is at work. The regulations require that a competent person must

10 examine before the start of each working shift and at suitable times during each working shift all areas in which employees will be present and other accessible areas and eliminate, isolate and minimise specific hazards. Under the act inspectors have functions which include helping employers, employees and others to improve safety at work, places at work and ascertaining and

15 taking steps to ensure whether or not the act is being complied with. The inspectors have powers to issue an improvement notice requiring an employer to take action on a hazard by a specified date or a prohibition notice which stops works continuing. Although inspectors have powers of entry and people are obliged to assist and not to obstruct an inspector, an inspection visit only

20 offers an inspector a snapshot of what is occurring at the mine. The inspector's ability to assess health and safety conditions at the mine will be affected by the quality of the information provided by the employer and employees or able to be seen or requested by the inspector. Consistent with the regulatory framework and its statutory responsibilities the Department of

25 Labour strives to work with employers in a constructive way to ensure workplaces are safe and rather than simply meeting minimum standards, demonstrate best practice. For example, the Department of Labour inspectors are expected to require the employer or duty holder to explain how they have met the all practical steps requirements in a given set of

30 circumstances and then must determine whether they consider the employer is doing enough to control a particular hazard. The department's policies provide that where the employer is not complying with the Act but has shown

a willingness to comply, where appropriate the inspector will seek to achieve compliance voluntarily through a negotiated agreement.

1155

5 Currently the department has no role in planning or design of the mine. Under the Mining Underground Regulations an employer commencing operation must notify the inspector of the location and nature of the operation not less than 14 days before commencing or before installing a shaft or winder. Notification is all that is required. The inspector has no power of approval over the plan or installations. An employer must make a plan of the mine or  
10 tunnel which is updated every six months and provided to the inspector after initial completion and every 12 months after that. But again the regulations do not specify any action to be taken by the department on receipt. When a mine becomes a workplace the department's statutory powers can be used if any person is breaching the Act or the regulations made under it.

15

I now turn to the inspector's involvement at Pike River. The Department of Labour staff had initial involvement with Pike River Mine in 2002. The department inspectors had more frequent interactions with Pike River and its contractors from 2007 on as the mine development expanded. The  
20 department has filed a timeline of its interactions with Pike River Coal during the development of the mine. The inspectors had regular contact with Pike River by phone, email and in person about events at the mine. The department's mining steering group had an expectation that proactive inspections of underground coalmines would occur every three months.  
25 Mr Firmin and Mr Poynter gave evidence that they were often not able to meet this due to their workloads.

Mr Firmin was for a period, before Mr Poynter's appointment, the sole mines inspector and Mr Poynter was often the first responder for serious non-mining  
30 workplace accidents on the West Coast.

However, in addition to the proactive inspections the inspectors also visited Pike River as part of accident investigations and for familiarity visits. From

1 January to 19 November 2010 the inspectors had conducted four proactive site inspections at Pike River Mine. One has no inspection and three investigation visits. The proactive inspections usually took around five to six hours and involved a visit underground, review of the working faces and  
5 discussions with the tunnel manager and mine manager or a senior interviewer and staff. The visits often concluded with a discussion with the manager where the parties agreed on the steps to be taken to address any issue that had been identified and this could be followed by letter as a negotiated agreement.

10

The inspectors were focused on physical inspections of the hazards at the mine but did discuss, sometimes at length with Pike River Coal, how it would manage this hazards, for example through standard operating procedures and TARPs and the adequacy of those documents. Examples there are the  
15 discussions on all practicable steps when mining the drift through the Hawera Fault and the mines shotfiring procedures. Under the Act, responsibility for health and safety lies with the employer as I've said and they choose how to mitigate a particular hazard. As Kevin Poynter stated and referring to a passage in his evidence, "In most cases we might make a  
20 suggestion on how they can control the hazard but if they determine there is a better way that they can control the hazard, it is their responsibility to make the decision. Pike River Coal employed experts for advice on dealing with particular hazards.

25 When Pike River Coal presented expert advice that the risk of a hazard been abated or eliminated the inspectors found it difficult to challenge this. Much of the information before the Commission regarding deficiencies or hazardous events at Pike was not notified by Pike River Coal to the Department of Labour or was not in the normal course of an inspection available to be seen  
30 by the inspectors. Some of this information was not even know by the mine manager. The Department of Labour did not commission audits of Pike River's hazard management systems and records. The inspectors were

not trained to do so. They were not expected to do so by the department and they did not have the time or resources to do so.”

5 As Mr Poynter stated before the Commission, “The 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 I had was the data I used to make my decisions.”

10 And later he said, “We are one person trying to get information from a series of absolute so-called experts and then we, as a regulator are being set up and I know it’s appropriate you look at our role and we’re now looking and saying, well you know, should the regulator be able to see all this and make a decision and it’s almost an impossible task. Our responsibility but most of the stuff you’ve showed me today clearly lies with the people who had the information, that had the control of the workplace, that were there 24 hours a day seven days a week. As an inspector you’ve made the point, I had seven inspections here over two and a half years and it’s impossible to see all of this”

20

The inspectors considered that Pike River Coal would complete the compliance steps agreed between the parties although there could be negotiation prior to that point on how Pike River would fulfil the obligation to take all practicable steps. Mr Poynter, the primary inspector in 2010 gave evidence that he gave Doug White the benefit of the doubt that he would do as requested without enforcement action. Independent health and safety auditor Dave Stewart gave evidence that he also considered Pike was making the changes he recommended.

25

30 In the course of the hearings the inspector said that with the benefit of hindsight and having seen the additional evidence before the Commission he could have taken further enforcement action on stone dusting and in regard to development of a second egress rather than rely on voluntary compliance in

negotiated agreements. It is noted however that at the time of the explosion both stone dusting and the development of the second egress were the subject of active discussion for compliance between Pike River Coal and the inspectorate, that the inspectorate had not signed off on the status quo remaining and that Pike River Coal were telling the inspectorate of the measures they intended to take to achieve compliance.

These issues are relevant to the Commission's assessment of the department's regularity oversight at Pike but there is no evidence to suggest that they are relevant to either the cause of the explosion or the men's ability to self-rescue. That is not to minimise in any way the importance of this issue, these issues or to overlook what these issues indicate of the department's enforcement approach.

1202

The department acknowledges that the approach taken failed to achieve a sufficiently effective response from the company on stone dusting and the second egress. The department considers early involvement in the assessment of draft principal hazard management plans and advance of operations and ongoing engagement with principal hazard management together with the removal of the all practicable steps standard from regulations where appropriate and we'll deal with this later. Those things will assist in avoiding a recurrence of this situation.

The department recognises that the management structures and resources available to the inspectors did not effectively support the inspectors and the work they were doing at Pike River Mine and has taken steps to remedy this, including by the establishment of a specialist high hazard unit with additional inspectors, including a chief inspector and additional resources in support. Again I'll deal with that in more detail shortly.

30

I want to turn now to the Gunningham and Neal Report. The department commissioned a report, known as the Gunningham and Neal Report, after the Pike River tragedy to independently document and assess its regulatory

performance in respect of Pike River Mine. The reviewers were to evaluate the department's systems and processes to ensure appropriate matters were raised and followed up and the support for and management of the employees carrying out the regulatory role. While the findings of the report have been criticised by some submitters, it must be remembered that the report was based upon information available to the department at the time, essentially what had been available to the inspectors. The writers did not have the information available to the Commission such as Pike River Coal's methane readings and calibration records. Their task was to consider the appropriateness of the department's interactions with Pike River Coal from a regulatory sense rather than to review the technical content of those communications or Pike's compliance with the legislation. The writers are not mining experts, but they are acknowledged experts in regulatory functions who specialise in occupational safety and health and have significant experience in the mining area. The writers interviewed two former mine managers and health and safety manager Neville Rockhouse but not Peter Whittall, the mine health and safety representatives or representatives from EPMU.

**20 THE COMMISSION:**

Ms McDonald, the point from our perspective is really where does this report now stand? Isn't it the situation that effectively given what the report writers did not see and given the terms of reference under which they operated, what weight can now be placed on the conclusions reached in the report.

25

**SUBMISSIONS CONTINUE: MS McDONALD**

I take your point, sir. I think the Commission can only rely on the report to the extent that it is supported by or bears out what you have heard through the course of detailed evidence. That does have to be read, obviously very much subject to the very specific evidence that this Commission has heard. It was commissioned at an earlier stage and for the purposes that I've indicated but all of those qualifications will obviously bear on the weight that you can give it and I just really got two more matters, two more comments to make in relation

to it. It endorsed the general thrust of the department's regulatory approach noting that the department's regulatory approach is consistent with that envisaged by the Act. It also concluded that the inspectors frequently interacted with Pike and required Pike to engage in systematic analysis of specific hazards and that the scrutiny they brought to the mine's safety issues at Pike undoubtedly served to raise safety standards but all of those matters before the Court, sir, are certainly subject to the evidence that you have heard.

10 The report went on and identified a number of priority areas in which the department could improve its performance including increased regulatory guidance for mine operators, the structuring of the inspectorate and the ability of inspectors to conduct orders. The steps the department has taken to strengthen the regulatory environment and its operational approach are examined in its written submissions and I will deal with some of them shortly.

**COMMISSIONER BELL:**

Ms McDonald can I ask you a question?

20 **MS McDONALD:**

Certainly, sir.

**COMMISSIONER BELL:**

The high hazard you mentioned before, it's exclusively focussing on mining, well the petroleum side obviously is separate –

**MS McDONALD:**

Extractors and petroleum and I am going to come to talk about that in a little detail shortly.

30

**COMMISSIONER BELL:**

Okay, so you won't have a situation where an inspector there will be off investigating a fatality in a non-mining area?

**MS McDONALD:**

In a non-mining area, not as far as I know.

5 **COMMISSIONER BELL:**

Like Mr Poynter was talking about investigating a tractor fatality or something while he was a mines inspector. That can't happen now. Is that what you're telling me?

10 **MS McDONALD:**

That's, as I believe the situation to be. By the time I get to that part of my submissions I'll be able to give you a definite answer.

**COMMISSIONER HENRY:**

15 Ms McDonald before you leave Gunningham and Neal, if you're about to do that, you said that the report was restricted in the sense that Gunningham and Neal could only look at what was available to the inspector.

**MS McDONALD:**

20 I don't know that I said quite that. I said the effect of what they ended up looking at was material that ended up being effectively what the inspectors had.

**COMMISSIONER HENRY:**

25 Yes, it's the material the inspector chose to look at, not the material that was available to the inspector because I think you've already covered the point that –

**MS McDONALD:**

30 I take your point, sir, yes.

**COMMISSIONER HENRY:**

– that what they looked at was quite limited.

**MS McDONALD:**

Yes, I accept that, sir.

5 **COMMISSIONER HENRY:**

Yes, okay, thanks.

**SUBMISSIONS CONTINUE: MS McDONALD**

I wish to turn now to the department's involvement in the search and rescue  
10 operation. The department had a support role under the CIMS model. It  
provided technical and expert information and advice about mining and safety  
issues to assist the decision-makers. The incident controller under CIMS has  
overall responsibility for managing the response to the incident with the first  
15 priority always being the safety of emergency responders and the public. The  
department saw its role as supporting the incident controller's ability to  
manage that priority effectively, initially through advice and assistance with  
planning on site and later through assistance with risk assessments. The role  
was the subject of explicit early discussion with police.

1209

20 The department was also acutely aware of the power of the inspectors to  
prohibit any activity intended in the search and rescue, if it was likely to cause  
harm to any person. The HSE Act and the department's responsibility under  
that Act cover the work of the search and rescue and recovery operations in  
its own right, in addition to the safety of the 29 miners. The department's  
25 mines inspector, Kevin Poynter, the first department employee to arrive at the  
mine post-explosion arrived at around 7.30 pm on the 19<sup>th</sup> of November.  
From that time the department maintained a daily presence at the mine and  
was available on a 24 hour basis in Greymouth. Two inspectors with  
specialist mines expertise and familiarity with the mine were available at the  
30 site and were two of the seven people at the mine with a first class mine  
managers certificate, together with the senior advisor high hazards who had a  
South African mine managers certificate and was experienced in hard rock  
mining and a senior HSE inspector. One of the inspectors was trained in

Mines Rescue and had trained Mines Rescue brigadesmen, although was not a member of Mines Rescue team himself. In addition a senior manager went to Greymouth to support the inspectors and co-ordinate with national office. The suggestion that the Department of Labour lacked expertise to assist in the search and recovery efforts at Pike is strongly rejected and is not borne out by the evidence. The police and the department have been criticised because of frustration at what was ultimately an unsuccessful search and rescue effort and there are three criticisms that I want to now turn to address in particular.

10

The first is the allegation that its role was confused or it assumed a decision making role. The department staff did seek to make clear the department's role was to assist the police and this was understood by the incident controller. It is not accepted that the department sought to control the process or that parties thought that department was in charge. It is accepted that the department's role was not well understood by some parties and this confusion was added to by some loose language in early communications from the Department of Labour staff which stated the department was approving actions at the mine. It is likely the confusion arose from the department's statutory responsibility to prohibit an action that might cause harm and the view that prior approval from the department meant that a prohibition notice would not be issued. The department's statutory powers and duties require it to intervene when necessary to prevent serious harm in order to protect the safety of workers caught up in the accident and those involved in the rescue and recovery efforts. That responsibility should not be minimised.

25

The second allegation is the allegation relating to the risk assessment process. The Commission has heard evidence from the department and other parties about the risk assessment process which changed several times over the rescue and recovery operation and there has been criticism that the process adopted was time consuming and bureaucratic. The department considers that much of that criticism is unfair. Initially proposals were developed by small groups at the mine which sometimes included the

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department inspectors which were taken back to the IMT briefings for decisions. The process was then formalised into a risk assessment model and on Monday the 22<sup>nd</sup> of November the police requested the department to assist in a formal way with risk assessments. From Wednesday the

5 24<sup>th</sup> of November police advised the department it did not need risk assessment assistance and so the department only provided such advice if there was a specific request from police. The department staff in Greymouth reviewed each risk assessment as quickly as reasonably possible, including on occasions through the night. The perception that the department held up

10 risk assessment seems to have resulted in part from incorrect information as to when the department received those assessments or when it was delivered to the police. The risk assessment process existed to ensure rescue and recovery activities at the mine were done safely and any risk or hazards were being identified and managed or eliminated. For a risk assessment to be of

15 any use it must be of sufficient quality and clearly set out the situation, objectives and method of execution. As Ken Singer said in his written evidence, the risk assessments coming from the mine were a variable quality. The department made suggestions to the risk assessment processes which were adopted by the police and the department's input improved the process

20 and thus safety in the rescue efforts.

The suggestion that the review process was pedantic and that a risk assessment was rejected due to a spelling mistake were shown in the Phase Two hearings to be without foundation. The department does,

25 however, consider that the risk assessment process could have been streamlined and in particular that three levels of decision making at the mine, in Greymouth and in Wellington was not necessary. Two levels of decision making for significant decisions would have provided for desired objective decision making.

30

The third allegation relates to the impact on decision making as to survivability, sealing the mine and contingency. The department maintains that in the absence of information about gas levels and the atmosphere in the

mine, there was no window of opportunity for a rescue at the mine prior to the second explosion. It appears all the major parties have taken a similar position in their closing submissions. The Commission has heard various and conflicting evidence as to assessments of possible survivability after the first explosion and the impact of this on any discussion regarding sealing of the mine. Some of the parties have suggested the department and police delayed sealing the mine with the implication has led to the second explosion on the 23<sup>rd</sup> of November. This criticism is rejected.

1215

10 The evidence has shown that on Saturday the 20<sup>th</sup> of November there was discussion among some participants at the mine, including at the 9.00 pm ITM meeting about options to fully or partially seal the mine and the department inspectors indicated they had the power to issue a prohibition notice to stop any activity which had the potential to cause harm to the possible survivors underground. At or following the IMT, the Mines Rescue Service clarified to a Department of Labour inspector that the partial sealing could maintain life if survivors remained. At that time various experts and participants including Steve Ellis and the police as incident controller considered there was a possibility of men surviving the initial explosion and there was no serious discussion of sealing the mine.

Assessments of survivability were hampered by a lack of clear information as to what was happening within the mine including whether a fire was burning. No reliable readings came for borehole 43 until the morning of the 24<sup>th</sup> of November. The option of sealing the mine was never seriously discussed at an IMT meeting and Mines Rescue did not raise at the IMT its view there were unlikely to be further survivors. No risk assessment or even a serious proposal was put to the Department about the possibility of sealing the mine.

30 On Thursday the 25<sup>th</sup> of November after the second explosion a meeting was held at the mine to discuss the options for sealing the mine and the police requested a formal decision be made as to whether there was a chance anyone may have survived the second explosion. The department inspectors

were present at both those meetings. That discussion resulted in a paper from Ken Singer on the likelihood that the men had died. Mr Singer's paper was signed off by the Coroner on the 27<sup>th</sup> of November.

5 The department's inspectors advocated for the mine to be sealed quickly after the assessment on survivability was made and the third explosion occurred and a fire was apparent in the mine. The department maintains the view as does police as I understand it that sealing the mine could not occur while there was a chance of any person being alive in the mine. The department  
10 considers that with the benefit of hindsight the formal process of parties assessing survivability could have commenced earlier. This is not to say that it is likely a formal decision that there was no survivors in the mine could have been made earlier or prior to the second explosion. In light of the various opinions held as to the potential for survivability, the serious implication of a  
15 decision there were no survivors and the very limited data available as to the conditions in all parts of the mine. Even if a decision on survivability had been taken earlier and a decision made to seal the mine and the sealing completed, Mr Devlin and Mr Brady gave evidence that sealing would not necessarily prevent a second explosion.

20

I just want to turn now to the future direction of mine search and rescue operation and the department's comments on that issue. As set out in the department's Phase Four paper it considers that the prime duty for emergency preparedness should reside with the mine operator and the department  
25 proposes new regulations requiring mines to develop emergency response plans and to test emergency preparedness procedures through audit and review processes and regular mine site exercises. The police as lead agency were very effective in establishing a logistical support operation interacting with support agencies such as the Department of Labour and the Department  
30 of Conservation and utilising the resources of other departments such as MFAT and customs as necessary. The police ability and experience in leading a multi-agency response of this nature enabled the necessary

expertise, equipment and material to be quickly gathered from New Zealand and overseas.

5 Clear leadership within an agreed co-ordination process is necessary for post-incident search and rescue operations. The Department of Labour considers this could be done through firstly the police taking the role of incident controller within the overarching CIMS framework with responsibility for co-ordinating the activities of the various support agencies. Secondly, the mine manager assuming the role of an incident manager with responsibility for  
10 leading rescue and recover activities within the mine as specified in the mines incident management plan. And thirdly, the Department of Labour as health and safety regulator being represented on the incident management team to provide advice and if necessary exercise a power of veto to prevent serious harm to any trapped miners and to staff involved in the search, rescue and  
15 recovery operation.

The department does not consider that the new chief inspector should take a lead role in mine search and rescue operations as occurs in Australia. However, the department is obliged to exercise its statutory powers and duties  
20 to intervene where it considers it necessary to prevent serious harm in order to protect the safety of workers caught up in the accident and those involved in the rescue and recovery efforts.

**COMMISSIONER BELL:**

25 Why don't you think the chief inspector should be involved in having a lead role? What's the reason behind that please?

**MS MCDONALD:**

30 Well I think the main and this is elaborated in the Phase Four paper and in the written submissions I think but the main reason is that the view is that the police should take the lead role as incident controller for the reasons that I've indicated and also as the other part of the reason relates to the department seeing its role better as being there to provide advice and assistance and to

exercise as I've said, the power of veto should it need to if there's a risk to safety. And beyond that, the department doesn't see itself as being the right agency to lead and supports the view that the police should take –

**5 COMMISSIONER BELL:**

But surely an experienced chief inspector would have something to add or offer at a mine emergency?

**MS MCDONALD:**

10 I'm not suggesting for a minute they wouldn't have something to add and to provide advice and assistance and expertise, but not to lead the operation.

**THE COMMISSION:**

Can we just go back to your paragraph 183.2 of your written submission,  
15 you're dealing with who might hold the positions in terms of the CIMS model and you've said as you have just repeated that the police would be the incident controller.

**MS MCDONALD:**

20 Sir could you just give me that paragraph number again I'm sorry.

**THE COMMISSION:**

183.2 in the written submission.

1222

25 **MS McDONALD:**

Yes, sir.

**THE COMMISSION:**

So the previous proposition, police to take over the role of incident controller is  
30 to be repeated orally and then the mine manager to assume the role of incident manager. Where does that term derive from, that label?

**MS McDONALD:**

It's not a term that's in the CIMS framework, as I understand it, but the manual, so the manual doesn't actually say incident manager but the role would fit, in our submission, within the operations function under the incident controller so in our view it's consistent with the CIMS framework. It's just, that term doesn't feature in the framework.

**THE COMMISSION:**

Well that's why I'm just wanting to be clear about this. You're effectively saying that the mine manager should be the operations manager under CIMS.

**MS McDONALD:**

Yes, that is in effect that I'm, what we're saying. The operations functions would be carried out by the mine manager.

15

**THE COMMISSION:**

Right.

**MS McDONALD:**

Or could be carried out by the mine manager.

**THE COMMISSION:**

And a related point that has been touched upon already by virtue of your reference to the risk management or risk assessment process rather, at your paragraph 200 through to 202, talking specifically of risk assessment you accept and make the concession that three levels of decision-making, mine, Greymouth and Wellington is not necessary, but then under the next heading, "Utilisation of onsite expertise," paragraph 202 at the tail end, you say in hindsight that the incident controller should've had more decision-making ability and that two levels of decision-making for significant decision would've provided the desired objective decision-making. So are you saying that the model or the structure as developed at Pike is acceptable so long as you cut out the middle tier so that you have a combination of incident controller onsite

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30

making decisions but the escalation of crucial decisions to Police National Headquarters as well?

**MS McDONALD:**

- 5 That's as I understand it, sir. The two, that the incident controller onsite would have ultimate responsibility and it wouldn't need to be escalated.

**THE COMMISSION:**

- 10 Well that's why I'm asking, because I'm just reading 202, "In hindsight more routine decision-makings could've been delegated to the incident controller rather than dealt at a national level and that two levels of decision-making for significant decisions would've provided the desired objective decision-making." That seems to contemplate clearly a split between the two.

15 **MS McDONALD:**

It may not be as expressed as well as it could've been and this might be something we might need to come back and just clarify very briefly in another paragraph, but my understanding of the position is that Wellington would be the level that would be taken out of the decision-making.

20

**THE COMMISSION:**

Sorry, so the secondary decision-making would be at Greymouth level?

**MS McDONALD:**

- 25 Well if that was where the incident controller was, yes, sir.

**THE COMMISSION:**

Well if you want to revisit it, by all means.

30 **MS McDONALD:**

I may need to if I've said something that doesn't line up with what it should.

**SUBMISSIONS CONTINUE: MS McDONALD**

Yes, I was just moving on to deal with the future direction, yes, just finally on this topic. The department's position is that changes could be made to the role of Mines Rescue, of the Mines Rescue Trust Act which it is responsible  
5 for administering to better define the legislative basis for Mines Rescue Service including funding, governments and powers.

Moving then to the post emergency steps, the department has filed an institutional statement on its knowledge of the steps taken to make the mine  
10 safe and as to activities at Pike River Mine since December 2011. The department has been clear with the receivers of the company throughout, that is it not the department's role to provide details, detailed instructions on how re-entry should occur or to sign off on proposed plans for re-entry but that before any staged entry is attempted, the department would like to be advised  
15 of the proposed entry and the work method adopted. It has advised that if the department considers the work at the mine created an unacceptable risk to people including through deficient processes for the assessment and management of hazards, the department will consider issuing an improvement or prohibition notice. The inspectors have been making periodic visits to  
20 assess the safety of the working being carried out and have had ongoing discussions with mine manager Steve Ellis, the receivers, and Mines Rescue regarding the management of hazards. Following recent visits to the mine by inspectors the chief inspector has advised the mine manager that due to the unique situation at the mine and the need to proceed with the utmost caution  
25 to protect the safety of those who may ultimately be involved in the recovery efforts, the department requires the company to present a full and completed project proposal to the inspectors along with verification of the proposed processes by the company's expert panel. The chief inspector advised that if the company proceeded without the required information the department  
30 would consider issuing a prohibition notice. Discussion between the company and the department on the material subsequently provided is ongoing.

I want to now turn to the policy aspects for the future and these of course are dealt with in the Phase Four paper.

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5 First mining regulation and recognised practices. The Department of Labour has begun making changes and it's answered the Commission's report to its regulatory oversight of underground coalmining in New Zealand. Many of the submitters have urged the Commission to look to the Queensland regulatory scheme for best practice. The departments agree that from both a health and safety perspective and a permitting perspective the Queensland regulatory  
10 scheme, as well as New South Wales, are useful comparators. However, a policy must of course be seen as a product of and prescription for the social, political and environmental context in which it operates. It cannot be avoided that New Zealand produces the equivalent of approximately 2% of the Queensland coal production and 3% of New South Wales coal production.  
15 New Zealand has a small size coal industry, a complex geological mining environment with the possibility of a variety of mining conditions within a small geographic area.

A single Government owned operator which dominates the industry, difficulty  
20 in retaining technical management and mining personnel against overseas pay rates. As at October 2011 approximately 450 people were directly employed in underground coalmining in New Zealand. There are additional employees in opencast mining, hard rock mines and quarries. New Zealand's coal industry is expected to remain a small percentage of our overall  
25 economic activity. The Department of Labour supports the retention of performance based health and safety legislation in New Zealand as in the HSE Act. However, the department recognises that the management of major hazards of underground mining requires a level of attention to controls for the hazards that is not required in other sectors. As such, underground mining  
30 warrants a differentiated regulatory approach to that used for other sectors. The department also recognises the three pillars of support model is best practice for workplace health and safety involving as it does employer responsibility, worker involvement and an engaged regulator. The department

submits that the three pillars could be enhanced by adding prescription to the mining regulatory arrangements, strengthening provisions for worker involvement and supportive workplace cultures and ensuring an active and engaged regulator.

5

The department proposes a substantive review of the existing Underground Mining Regulations with an eye to the following changes. One, requiring operators of proposed underground mines to provide draft principle hazard management plans for identified hazards for the regulator to assess before operations begin. Secondly, requiring operators to have documented health and safety management systems aligning with practice in the Australian mining states and requiring operators to take a consistent approach to the management of hazards and to develop systems to address them. Thirdly, prescribing emergency preparedness requirement for operators including that they make arrangements in advance of incidents by training workers, completing drills and liaise with Mines Rescue Service and other emergency services and the inspectorate before any emergency and fourth, stricter controls on specific mining hazards such as methane, strata control and ventilation. This includes a move away from the all practicable steps test in the regulations to make requirements clearer for operators and others. The department recognises there has been a lack of guidance material available to mine operators on meeting their obligations under the Act and has moved to provide clearer guidance pending any report from the Royal Commission.

25 A document to assist small mines to create health and safety systems is being developed and the department has been discussing with the industry a proposed technical guide for underground coalmining. This will assist mine operators to determine what taking more practical steps is in the management of hazards. The department also will advise the sector on which overseas documents it will accept where there is not a New Zealand code or guidance material available. The department considers that an effective employee participation process can and should be achieved by mine operators within the HSE Act and that any further regulatory changes for employee

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participation will be ineffective unless supported by institutional, procedural or other changes to support the work of health and safety representatives and encourage employee participation in the workplace.

5 In particular the department notes that some of the powers proposed by advocates for check inspectors already exist with elected and trained representatives. The ability to issue hazard notices and support of employees as they exercise their right to refuse unsafe work. The department's view is that what is needed is increased support to encourage the uptake and  
10 utilisation of those rights and processes already in existence and that this could be promoted through an approved code of practice for employee participation in the sector. The department also proposes a new competency requirement for elected health and safety representatives in underground mines. The third pillar of the stool is the active and engaged regulator. The  
15 deployment of scarce public resources across all workplace sectors is a major challenge for any regulatory agency. There are approximately half a million business enterprises employing over two million people to do work in millions of places around New Zealand which are subject to the provisions of the HSE Act. This prioritisation of the department's regulatory efforts does have  
20 potential implications on industries like mining which in general have low frequency of incidents but where the consequence of an incident can be catastrophic. The department also recognises that the management structure and resources available to the inspectors prior to the explosion hampered their ability to inspect Pike River Mine. Pending the Commission's report the  
25 department has taken steps to remedy this

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I now turn to the high hazard unit. The department has set up a high hazard unit to strengthen the department's engagement in the mining sector and to deliver differentiated regulatory approach, a differentiated regulatory approach  
30 that I've referred to. The new high hazard unit is located in national office and it comprises a chief inspector for both the extractives and petroleum and geothermal subsections, three specialist extractive inspectors, three specialist petroleum and geothermal inspectors, a business analyst and a standard

setter. The health and safety inspectors, inspectors for extractives report to the chief inspector but will continue to be based regionally. The consolidation of the department's extractives activities and the elevation of the function within the department's management hierarchy will provide stronger links  
5 between the inspectors and those in the mining sector and with other Government agencies. It will also enable more co-ordinated professional support for and co-ordination of the inspectors.

Support staff are located within the units so that the inspectors are better  
10 resourced to undertake their day to day activities. The department recognises as did its inspectors at the hearing that its HSE inspectors do not as a rule have expertise in all areas of underground coalmining. Given the size of the New Zealand coal industry and inspectorate, it is not realistic to employ full-time experts in for example electricity and underground coal mines. The  
15 department is instead sourcing expert advice from the Queensland and New South Wales mining regulators and private sector providers to provide technical support to inspectors for a range of areas including mechanical, electrical, ventilation and geotechnical services. The appointment of a business analyst to the high hazard unit and the adequate administrative  
20 support will provide for the management of information flows into the unit and the analysis of that information to underpin the unit's work. It will also enable the analysis of operational data to identify emergent patterns that point to potential areas of failure in the workplace or sector. The importance of systematic data collection, collation and analysis in the tracking of health and  
25 safety performance and trends was recognised by the department's witnesses at the hearing and in the department's own internal review of its approach to high hazard industries.

The appointment of a standard setter also provides a resource to work closely  
30 with the extractive sector, health and safety counsel minutes to expedite the development of updated codes of practice. It is the department's view that there is no single, simple solution to addressing the issue of regulatory effectiveness. The high hazard unit is being set up with an emphasis on

constructive involvement with operators to ensure they develop effective health and safety management systems. Inspectors are receiving additional training to enable them to select the regulatory interventions to address the particular workplace issue.

5

In its Phase Four paper the department proposes increased regulator involvement at all stages of the development and operation in underground mines. This could include actively engaging with MED in relation to the Ministry's assessment of permit applications under the Crown Minerals Act, assessing draft principle hazard management plans before operations commence and ensuring operators meet requirements to maintain auditable health and safety management systems. This is consistent with the proposals in the Crown Minerals Act discussion document which Mr Mander will address shortly for an assessment of an applicant's health and safety and environmental policies, capability and record in the initial stages of a permit allocation process.

The Crown rejects the suggestion of two of the submitters that New Zealand's mining inspectorate should be out-sourced to an Australian regulator. Such a suggestion raises issues of constitutionality and accountability and potentially creates a greater gap between the activities of the Government agencies considering permitting, land access, environmental factors and health and safety. The department does however consider that much can be gained from greater co-operation with the Australian mining states at a regulatory and operational level. The Department of Labour review of the mining regulations aims to produce regulatory requirements which are consistent with those of the Australian mining jurisdictions, including the alignment of the definitions of safety critical events. This will allow New Zealand to benefit from the mining industry infrastructure and expertise of the Australian jurisdictions and recognises both the small size of the New Zealand mining sector and the flow of mining industry companies and staff between the countries.

Finally at the end of the day the company had the responsibility of ensuring it provided a safe workplace for its employees and contractors at Pike River Mine. It was the party with the control and knowledge of the hazards and risks at the mine and the party with the ability to make the necessary changes.

5 Throughout the Commission's processes the Department of Labour has addressed the criticisms made of it, acknowledge where it could have done better and implemented changes to remedy deficiencies identified. Pending the Commission's report the department has sought expert advice from Professor Quinlan on the ongoing development of mining regulation in  
10 overseas jurisdictions and on current international best practice. As outlined in the Phase Four paper it drew from that advice. The findings of the department's investigation into the practices at Pike River Mine and its own expert policy and operational advice to consider how the three pillars of health and safety in New Zealand can be strengthened. It looks forward to engaging  
15 with the Commission over the coming months on those proposals.

**THE COMMISSION:**

There are some questions – sorry Mr Mander is going to address?

20 **MS MCDONALD:**

The Department of Conservation issues and the issues arising for MED but I wasn't sure whether you wanted to address the Department of Labour's questions to me now or at the end of the entire presentation.

25 **THE COMMISSION:**

Now.

**COMMISSIONER HENRY:**

30 What I was thinking while you were talking Ms McDonald was whether there was anything in the pipe as I can't remember them and I didn't hear anything that you said which dealt with the strategic effects of this disaster on the Department of Labour, I'll explain what I mean. At the moment would the

department accept that prior to Pike it lost its focus on the risks posed by underground coalmining.

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**MS McDONALD:**

5 Sir, that's not a question that I would be able to ask off, answer off the cuff. I would need and would want to take the opportunity to get instructions on that before addressing the Commission on it so if that's suitable I'd like to come back to the Commission on that.

10 **COMMISSIONER HENRY:**

Well perhaps I'll put it more broadly, at the moment the department has a national action strategy which is Multi Year. It was issued in March 2011 after the Pike tragedy but probably I think we had it in, so it was written before the tragedy and that strategy picked out five industries under which the department would enter into if you like a partnership with to work on in  
15 improving their compliance and mining wasn't one of them and the reason why it wasn't one of them appears to be that the data that the Department of Labour uses is lag data, frequent injuries and all that kind of thing so I guess my question is setting up the high hazard unit may well be commendable but  
20 is there a more fundamental look being taken by the department in how it devises its strategy, not just for underground coalmining, not just for high hazard industries but right across the workplace scene.

**MS McDONALD:**

25 I suppose there are two answers to that really or the answer is in two parts, one is yes the department has throughout the time of this Commission certainly been looking at it and looking at its strategy very, very closely and I'm aware of that but moving forward, the changes which are being brought in and implemented now are only very much in their infancy as the Commission  
30 appreciates and there's still a lot of work to be done and a lot of engagement with policy, policy people on how the department will operate and how it will assess its future strategy. Those are matters that the department will, I am confident, look at and certainly hearing that comment from you will encourage

it do so, I'm sure, sir, and any comments that the Commission make. I'm sure the department will be continuing to engage with the Commission's staff over the next few months on these matters.

5 **COMMISSIONER HENRY:**

One of the things the Commission will have to grapple with I guess is the machinery of Government issue at the moment. The high hazard unit, if we focus down on that level as part of the department, the suggestions have been various suggestions have been floated around about where it might go  
10 outside the department. I think in your own brief you talk about stand, you know the, you reject the idea of standalone unit on the grounds of organisational focus is, it may be a positive for a small unit but it loses other synergies I think you put it. Does, has the department examined the question  
15 in any depth of having an independent Crown entity responsible for running and which is running high hazards which is, gets its funding through its parent department?

**MS McDONALD:**

I'm not aware that that has been considered at all, sir, no. I may be wrong  
20 and, but I don't, I have not heard that that's been considered.

**COMMISSIONER HENRY:**

So, similarly, with the, you might like to tell us later how the department sees the, the department itself has now been folded into a super department, how it  
25 sees its ability to maintain focus on this area during what will be I guess quite a –

**MS McDONALD:**

Period of change.  
30

**COMMISSIONER HENRY:**

– a time of turmoil, yes.

**MS McDONALD:**

Yes, it would be appropriate I think for us to put something in writing to the Commission in light of those changes.

**5 COMMISSIONER HENRY:**

Finally, just going back to Gunningham and Neal, is it the department's position that Gunningham and Neal reflects, having gone through these weeks of looking at evidence, that the inspectors could have looked at, but for whatever reason and I'm not blaming them on this, they didn't do so, but you  
10 were asked the question about what weight can we put on Gunningham and Neal, isn't it a fact that we can put hardly any weight on it.

**MS McDONALD:**

Well it's not really for me, I don't think, to suggest what weight you can put on  
15 it. I accept that there are all sorts of qualifications that go with it that have been identified through the course of the submissions that I have made and the discussion I've had with the Commission this morning. I'm not sure I can add a great deal more really, sir. It's a matter for the Commission.

**20 COMMISSIONER HENRY:**

All right, okay thanks for that.

**COMMISSIONER BELL:**

Ms McDonald, I listened to the high hazard unit you asked me to do for further  
25 clarification. I've just got a couple more questions there. So the high hazard unit is separate from the normal work by a health and safety inspectorate to the extent that they only focus on the mining/extractive industries?

**MS McDONALD:**

30 Yes, and I have had some elaboration that I have on the answer that I gave on that issue earlier and the position is that they only respond to mining, coal tunnels and metalliferous.

**COMMISSIONER BELL:**

And you said before that the, they reported a chief inspector who's based in Wellington but they're based regionally which is what is to be expected. Do they report it regionally as well or do they just report to the chief inspector?

5 You know what I mean, do they report to a regional manager or do they just, is it –

**MS McDONALD:**

No, just to a chief inspector, sir.

10 1249

**COMMISSIONER BELL:**

Okay, thank you. you mentioned earlier on that DOL accepted that the inspectorate could've been more stringent maybe with respect to the second means of the egress, stone dusting but you sort of left out things like  
15 ventilation, mining practices, gas monitoring and there was a fair raft of things they didn't, they sort of left out as well, rather than just those two sort of simple things. Is that a fair statement?

**MS McDONALD:**

20 Well it's a hard statement to respond to because the Commission's heard evidence and I suppose my answer to it would be, really depends what the situation was at the time that a coal mine inspector was inspecting the mine and I made the point that the, and as was the evidence I think of Mr Poynter that what they saw when they went was a snapshot and I've made the  
25 acknowledgements about the resourcing and the this is perhaps the support that more resourcing and more support that could've been given to them which would've enabled them to be more proactive and do more visits which would've in turn enabled them to pick up on things that weren't picked up on.

**COMMISSIONER BELL:**

30 Yes, I accept what you're saying and the only point I'm making is I would expect an inspector to look at the ventilation every time he goes to a mine. He can pull a very simple piece of equipment out of his pocket or her pocket

and measure the ventilation. So I would've expected that to be done. Just on another matter, how many codes of practice have now been developed for the mining industry? I'm aware the evidence before was one, maybe one was almost done. Have any more been done recently, do you know?

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**MS McDONALD:**

Can I just check, my colleagues may know the answer to that? I'm not aware, we're, sir, we can't, we're not aware of any others. If that's wrong again sir, that can come back to the Commission in a communication.

10

**COMMISSIONER BELL:**

Thank you. I read in evidence from (inaudible 12:51:05) admitted, this comparison between the mining industry in Australia and the mining industry here being such a small thing here but –

15

**MS McDONALD:**

Yes.

**COMMISSIONER BELL:**

20 Unfortunately underground coalmines, no matter how big or small they are, all have the same risks and they have to be regulated to the same level. I mean this is - I'm just putting the question to you. Is it reasonable to expect that DOL will do that, will regulate underground coalmines to the same standard they'd been regulated anywhere else, because there is no alternative because  
25 they are the same?

**MS McDONALD:**

Well the processes that are being put in place are certainly DOL's answer to the issues that have been identified and there attempt to provide regulation to  
30 the best standard that they believe is possible. So the answer is yes, sir.

**COMMISSIONER BELL:**

Okay. Now just finally the evidence we saw before talked about safety representatives at the various mine. Do the DOL inspectors now liaise with those people when they turn up at the mine site, do they ask to see them?

5

**MS McDONALD:**

I understand so, yes. It's certainly the intention.

**THE COMMISSION ADDRESSES MR MANDER - TIMINGS**

10 **COMMISSION ADJOURNS: 12.52 PM**

**COMMISSION RESUMES: 1.50 PM**

**COMMISSIONER BELL:**

5 Just a couple of points of clarification, the figures we have in front of us show about a thousand quarries, metal mines, coal mines and tunnels around New Zealand, so are they all going to be the responsibility of the three guys in the high hazard unit.

**MS McDONALD:**

10 As I understand it, yes, they are sir. That's, I think it's five.

**COMMISSIONER BELL:**

Five people, sorry okay.

15 **MS McDONALD:**

Well five people, yes.

**COMMISSIONER BELL:**

20 So is there a process in place now to risk assess those operations to work out how to inspect them with such a small number of people.

**MS McDONALD:**

To, how to carry out those, the inspections of those mines?

25 **COMMISSIONER BELL:**

Yes.

**MS McDONALD:**

30 Yes, there is. If you require more information about that I can probably file something, sir, sure.

**COMMISSIONER BELL:**

That'd be good thank you. Are there any other high hazard industries that should fall into the H, the high hazard unit? I mean there's other stuff in New Zealand, chemical plants, all sorts of things that have similar sort of hazards to mines in terms of fires and explosions.

**MS McDONALD:**

Well I believe an assessment of that nature was undertaken at the time that the high hazard unit was set up and the view was reached that the new recovering areas that I've indicated was sufficient.

**COMMISSIONER BELL:**

Was enough. Okay, thank you.

**15 SUBMISSIONS: MR MANDER**

Yes may I please the Commission, I firstly address the Commission on the role of the Department of Conservation before turning to the considerations relating to the Ministry or Economic Development. As the Commission is aware, Pike sought to mine on Crown owned land held under the Conservation Act which is managed and administered by DOC. The land in question is adjacent to the Paparoa National Park and some of the mine's activities, including the planned emergency mine exits and some surface monitoring activities were to take place in the National Park. The National Park is Crown land administered by DOC under the National Parks Act which is commonly called Schedule 4 land. Mining on conservation land is not unknown in New Zealand. The West Coast's conservancy of DOC contains significant commercial and mining activity.

As at 2011 there were 82 operational mining access arrangements, including nine operational opencast coal, five operational underground coal mines and 283 other commercial activities, including hydro schemes and quarries.

Mining activity requires the consent of the land owner or occupier. As the Ministry of Conservation is effectively the owner of the land, Pike was required to obtain an access arrangement granted by the Minister under section 61 of the Crown Minerals Act. Under section 61 the key issue for the Minister in determining whether to grant the access arrangement is whether the proposed partial safeguards and the compensation package were sufficient to outweigh concerns that the application is inconsistent with the conservation purposes for which the land was held.

10 Pike first applied to DOC for a mining access arrangement in 1993, resubmitted an amended application in 2000 and the access arrangement was granted by the Minister of Conservation in 2004. Pike was required to provide mining feasibility studies on the likely environment or effects of the mining and DOC engaged experts, including Dr Murray Cave to assess this.

15 DOC was concerned about protecting the conservation values of the land, particularly in relation to the risk from vegetation clearance, earthworks, contaminated water and subsidence.

The access arrangement authorised Pike to have access for a term of 20 25 years to approximately 400 hectares of conservation land. Access to approximately 390 hectares of land under which coal was situated and for surface access to approximately 10 hectares for the purposes of underground mining and surface related operations. The access arrangement required Pike to obtain an annual authority to enter and operate from DOC and provide 25 an annual work plan for the West Coast conservator's approval.

Over time the access arrangement was varied seven times for matters such as additional drill holes, mine extension and additional tree felling and approximately 140 variations to the annual work plans were approved. Pike would prepare the draft variation and DOC would provide comments to Pike 30 prior to the formal request being submitted. No application Pike made for a work plan variation was ever refused by DOC with the exception of one

application which was more appropriately dealt with and it was approved as a variation to the access arrangement.

In assessing an application for an access arrangement, DOC does not consider whether the proposal adequately addresses health and safety risks.

5 DOC officials are not experts in mine safety or hazard management. The access arrangement proceeds on the basis health and safety issues are the responsibility of the mine operator and clause 22 states that the permit holder must comply with the obligations in the Health and Safety in Employment Act.

10 Over the life of the mine Pike did supply DOC with several draft versions of its emergency response plan, as it was required to do as part of the access arrangement. Pike was responsible for the content of the plans and for their implementation and DOC did not review the safety content of the plan although Craig Jones of DOC did review the plans and provide feedback,  
15 including corrections where there were factual errors such as outdated contact numbers and the like.

The annual work plan submitted to DOC included references to the proposed ventilation shafts and emergency exits and the potential surface effects of  
20 these operations. The construction of a second egress was included in the plan from 2005 when it was indicated to be via an adit into the Pike stream valley.

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DOC's approval of the construction was requested under the 2008/09 plan  
25 and was granted. DOC was aware the mine was developing slower than expected but had no role in pushing planned action along, such as on the planned emergency exits. Rather, it gave permission for these to be built and would monitor compliance with conditions that were designed to mitigate any surface effects once the intended action was commenced.

30

It appears that some myths about DOC constraints on Pike's activities came into being and were commonly held and I wish to take the opportunity to address some of these. Firstly at no time in the negotiations did Pike raise

with DOC the possibility of using open cut mining at Pike River. The evidence is clear on this point and none of the major parties to this Commission contend otherwise. The company appeared to be fully committed to underground hydromining and that is what the application for an access arrangement sought the Minister's consent to do. Secondly, some witnesses before this Commission have referred to Pike not completing drillholes necessary for resource information because of conditions DOC placed on the company. This is rejected. The evidence produced by DOC was that all of Pike's applications for drillholes were approved by DOC and no one has produced evidence to the contrary. Indeed prior to approving the access arrangement in 2004 DOC requested more holes be drilled so that more data was available and insisted on a further drilling programme.

When Pike wanted permission for a new drillhole it needed only to discuss the matter with DOC and include it in a work plan or work plan variation. Thirdly there has been some discussion about trial mining and the hydro panel at Pike River Mine. This is covered in the Crown's written submissions and in the paper on trial mining filed by DOC. The access arrangement contains special provisions for trial mining and slope angles which were based on Dr Cave's advice in relation to testing and setting maximum levels for subsidence. Effectively what was being trialled for the purpose of the access arrangement was the subsidence effects of coal extraction at maximum panel width.

In 2006 and 2007 Pike suggested instead commencing with what were described as bridging panels and a commissioning panel so that it would undertake some extraction prior to trial mining. Pike's precise intentions with respect to these panels changed over time and several amendments to these documents were approved by DOC during 2010. In September 2010 DOC approved a further variation to the bridging panel design doubling the length of the bridging panel of bridging panel 1 from 150 metres long to 300 metres long and widening it by 15 metres. Pike was by now seeking to do only the one bridging panel and then to proceed directly on to the commissioning

panel. DOC's concern in this process was to ensure any subsidence at the surface was assessed and this was why maximum levels of surface subsidence for each panel were set.

- 5 The fourth matter, DOC rejects the allegation that its limited in-house mining knowledge led to increased expenditure by the company, delay and effected designs decisions including multiple drilling from one site. Rather, the length of time before approval was given was because of the nature and scale of the proposed mine, the challenges, the complex geology posed, the party's ability  
10 to respond to the detailed and technical issues, the number of experts consulted and the amount of time taken in discussion of these technical issues.

When a mine is on public conservation land, DOC as land owner for the  
15 Crown is required to address all of the factors set out in section 61 of the Crown Minerals Act and for Pike's application that meant adequately assessing those environmental factors. Pike was aware of this and it is apparent understood and accepted this was part of developing a mine on conservation land. The evidence of Craig Jones and Dr Murray Cave and as  
20 indeed is apparent in the correspondence between the parties filed by DOC from that evidence, it's apparent that Pike did not always initially supply the necessary information to allow DOC to make a fully informed decision and this is perhaps best shown by the example already given whereby DOC needed to  
25 seek the Minister's approval in 2010 to require more drillholes when the company initially refused to do so and required DOC to go to the Minister to confirm that that was indeed the case. In addition to this there were, at times, slow delivery of information on environmental effects and of assessments or calculations of required financial safeguards.

30 In terms of DOC's involvement in the rescue and recovery efforts, it is to be noted that DOC did play a role as land owner, that DOC made it clear to Pike and police that DOC's priority was the safety of the miners and that it would respond to any requests immediately on a 24 hour basis. DOC gave the

police as incident controller approval for a number of actions outside of the access arrangement including approvals for track cutting and clearance for new drill pads and for the sighting of telecommunications equipment DOC provided operational support at the mining site during the rescue and recovery  
5 with approximately 50 staff rostered to assist at the site over December 2010 through into January 2011.

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This included air operations management to ensure safety, gas level monitoring and surface staff tasks in the difficult terrain at the mine site, such  
10 as cutting access tracks to strategic locations, cutting and repairing drill pads and sampling points and laying out the Floxal tubing and gas monitoring lines to sampling points. DOC as landowner continues to have an ongoing involvement with the mine although its direct operational assistance ceased at the end of January. Just briefly in reference to resource consents. In addition  
15 to agreement of DOC as the landowner a mining permit holder must obtain the necessary resource consents for the activities they wish to conduct on the land such as consents under the Resource Management Act. The relevant local authorities for Pike River Mine were the West Coast Regional Council, Grey District Council and the Buller District Council, the last for the emergency  
20 exits through the escarpment. Pike obtained a number of resource consents for water discharge and the Commission has heard evidence from Colin Dall of the West Coast Regional Council on this matter. Although the adequacy of the intended measures to prevent potential adverse affects to public health and safety is a relevant factor in the consent decision process, workplace  
25 health and safety is not under the legislative scheme. I wish now to turn to the role of the Ministry of Economic Development. MED had dealings with Pike because the coal that it sought to mine is on Crown-owned land. MED through its New Zealand Petroleum and Minerals branch is responsible for managing the allocation or rights through permits to the Crown's mineral  
30 estate under the Crown Minerals Act. Not all coal is owned by the Crown and the New Zealand Petroleum and Minerals has no jurisdiction over privately owned coal resources. Over the last 50 years a number of coal licences, exploration and mining permits have been issued in respect of the Pike River

area as set out in the department's tier 2 paper. At the time of the explosion Pike River Coal held a mining permit which had been granted in 1997 and extended in '98 and 2000 and a petroleum exploration permit which covered part of the area of the coalmining permit. Pike applied for the petroleum exploration permit in order to assess the amount of coal seam gas that could be extracted from the mine to generate electricity for use within the mine beyond the three-year work plan period. It is important to reiterate the basis on which mineral permits are granted under the Crown Minerals Act. The Crown Minerals regime recognises that the Crown has an interest in maximising the economic returns from the resources it owns and allows others exploit. Consequently the regulatory arrangements relating to the efficient allocation of rights in respect of Crown-owned minerals are different from some other regulatory regimes in that they are primarily focused on enabling the Crown to realise and maximise the value of its resource through aligning its interests with those of the private sector by allowing the Crown to obtain financial return. This contrast with a large number of other regulatory arrangements which focus on constraining activities to prevent a range of general harms. In granting a permit the Minister is required under section 22 of the Act to act consistently with the relevant minerals programme. At the time Pike was granted a permit this was the 1996 coal programme. The programme sets out core criteria to be considered such as whether a coal deposit has been delineated, whether there is an acceptable programme and whether the permit application area is appropriate. In considering these criteria the Minister will take into account but not be limited to technical and geological criteria as well as where the proposed mining operations are in accordance with good exploration or mining practice and as that concept is understood in the context of the coal programme. It does not involve approval of the mine design nor of health and safety systems at the mine. The coal programme emphasises that regulation of health and safety and the environment are beyond the scope of the CMA and the coal programme and this is something which is presently being examined as I will get on later to discuss. That situation was a product or is a product of New Zealand's legislative history. The reforms in the early 1990s regarding coal resource

management separated the allocation of Crown-owned minerals from health and safety and environmental matters. That health and safety and environmental considerations now being regulated by legislation that covers all mining activities whether or not the minerals are Crown-owned. The policy reasons for this including avoiding of the said conflict of interest by the regulator was felt may, as was felt would be the case if ministers were obligated to consider both maximising return for the Crown together with environmental factors and other consideration. In particular the policy history highlights what may have been perceived as the conflicting responsibilities of the former mining inspectorate setting and enforcing environmental conditions on mining health and safety resource management collecting royalties and liaising with local authorities. A one act, one authority principle for the implementation of health and safety led to the transfer of health and safety responsibility in mining to the Department of Labour in 1998. The way in which these interests are thus regulated in the Crown Minerals Act, the Resource Management Act and the Health and Safety Act has been set out in the Phase One papers filed by the departments.

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It follows from this legislative framework that New Zealand Petroleum and the minerals does not receive from the permit applicant or recipient informations specifically designed for informed decisions in relation to environmental or health and safety aspects of the mining operation. The information filed by applicants is set out in regulations under the Crown Minerals Act. The operator files a work programme which the Commission may recall Mr Sherwood an employee of the New Zealand Petroleum and Minerals gave evidence about and who described it as essentially a proposal to extract the resource. The applicant files a description of the land and the mine plan, which is a cadastral map of the relevant mine area rather than anything approaching a plan showing mine design. As emphasised by Mr Sherwood the sort of plan that New Zealand Petroleum and Minerals would expect to be provided would be what he described as a plan of workings. A plan of workings is useful to a resource geologist such as Mr Sherwood because it

shows the extent of mine workings at a particular stage. That is what is proposed and then the actual extent of resource extraction.

5 As further explained by Mr Sherwood in evidence such plans are not full mine plans which show all mine workings, geological features, levels, ventilation systems and electrical installations. Nor are they in the nature of forward operating plans which would show areas to be worked and production schedules and also have plans for maintenance, ventilation control, gas management and other material requirements and the like.

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As Mr Hughes and Mr Bell acknowledged in the hearings, this plan shows entirely different information to the sorts of plans as prescribed and provided to the old mining inspectorate under the 1979 Act and which are now provided the Department of Labour under the mining underground regulations.

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I turn now then to the future. Many of the above mentioned features which I have detailed of the Crown Minerals Act regime or as the Commission will be aware under active of a consideration in the review of the Crown Minerals Act review, for which a discussion document has recently been released for public comment. That document was released on 7 March this year and a copy of it has been filed with the Commission. The Crown Minerals Act review and the discussion document are driven by three objectives. Encouraging the development of Crown owned minerals so that they contribute more to New Zealand's economical development, streamlining and simplifying the regime where appropriate and importantly for the purposes of this Commission, better co-ordinating the regulatory agencies with a view to more stringent health, safety and environmental standards and exploration and production.

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The Crown Minerals Act review proposes a tiered approach to permitting differentiating between different activities with different risk profiles and better distinguishing between obligations placed on day to day management and permit holders. The Crown Minerals Act review proposes the better

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co-ordination between the health and safety functions and the Act's permitting regime which it is hoped could provide a higher level of health and safety and the environmental assurance during all stages of exploration and production. This would provide an early identification of demonstrably underperforming applicants, reduce the likelihood of what's described as fellow acreage, that is where a Crown Mineral's permit is awarded to a party that's unable to meet the requirements of other consents and permissions needed to commence exploration or production and provide an initial point of co-ordination between regulatory agencies.

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Two operational models are set out in the consultation document for consideration. The first being one of what's described as pre-qualification and the second being one of assessment during exploration permit application. Firstly the pre-qualification model. Under the pre-qualification model, parties wishing to bid for permits for what are termed tier 1 activities which includes coal permits would be required to pre-qualify before they were eligible to lodge a prospecting or exploration permit application. This process would act as an initial assessment of an applicant's health and safety credentials before they were able to formally participate in a permit application process under the Act.

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As part of this pre-qualification process applicants would be required to supply high level information regarding their health, safety and environmental frameworks to the Ministry of Economical Development. This could include environmental health and safety policies, independently verified environmental or safety management systems, possibly a copy of a recent safety case from a project undertaken in another jurisdiction, the company's intentions regarding memberships of groups and schemes that would deal with emergencies, a description of the company's process safety and environmental track record and evidence of the applicant's approach to the management of major accident hazards and environmental risk.

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Under the pre-qualification model it is proposed that the Department of Labour would review the health and safety information and an agency with appropriate expertise in environmental resource management would review

the environmental information. The Department of Labour could also contact the safety regulator in another jurisdiction to confirm an operator's performance with the respect to the management of major accident hazards. Those agencies would then advise the Ministry of Economic Development as to whether on the basis of the information provided there is any reason the company should not be allowed to participate in a permit application process.

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The department would then make a decision about whether to prequalify applicants on the basis of agencies' joint advice. Where companies were not approved through the prequalification process the party would be invited to reapply for prequalification once they had addressed what the cause or causes of non-approval.

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It is considered that if an applicant is not operating or is unable to operate at a sufficient level to meet New Zealand's health and safety standards in environmental practices then it is better to establish that early on in the process through this type of prequalification system. Once prequalified under the proposed process, companies would be eligible to apply for prospect and exploration permits under the Act for a period of five years. At the conclusion of that period a new assessment process would be required. This proposal is intended to ensure that health, safety and environmental practices remain appropriate as company circumstances, exploration and production methods change over time. That is the first option.

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The second option that is set out for discussion in the paper is that of assessment during exploration, during the exploration permit application itself. Option two involves an assessment of the applicant's health and safety capability during the evaluation of permit applications. Currently the Ministry of Economic Development examines applicant's technical and financial capability when evaluating permit applications. This option would see the existing process wide, to also include an evaluation of health and safety capabilities and environmental factors. As with the prequalification model, such an approach would require the appropriate regulatory agencies to review

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the Health and Safety in Employment information and make a recommendation to the Ministry. The information required from applicants would include the same sort of information as in the prequalification option, however specific information could also be sought if it was particularly relevant to the activity or location for which the applicant was concerned. This approach would have the benefit of enabling location specific factors to be considered in the assessment of health and safety capabilities and environmental factors.

Both options that I've outlined would be additional to the requirements of the current health and safety regime and environmental consents as they are presently required to be undertaken under the legislative scheme.

A further proposal concerns annual work programme review meetings. Again this is set out in the Crown Minerals Act review discussion document and it would apply for work programmes in respect of tier one permits which I emphasise again would include coal and would include a requirement for an annual review meeting with the Ministry and possibly other departmental officials. The purpose of the annual review meeting would be to provide a more hands on and co-ordinated means of monitoring the permit holder's progress against work programme commitments. It would be a feature of permit management throughout exploration, appraisal and mining stages. If adopted, the annual review could also provide a sensible way of enabling ongoing co-ordination between permit holders, MED and other regulatory agencies by inviting those agencies, such as Department of Labour, the regional, the relevant regional council and if the land was on public land, public conservation land it would include DOC with a particular interest in activities to participate in the review meetings as required. As an example, annual review discussions during the appraisal phase of development, that is when a discovery has been made but a production plan has not been finalised. During that appraisal phase, an annual review could consider platform or mine designs and usefully address health and safety aspects of

potential designs well ahead of commissioning, as well as in addition to the Ministry of Economic Development's primary interest and resource recovery.

5 The MED considers that annual work programme review meetings could provide a good way of ensuring co-ordinated regulation throughout the life of a tier one activity without placing any significant additional burden on permit holders.

10 Turning to the issue of better co-ordination between agencies, it is the department's belief that there has already been a considerable increase in information sharing occurring between government departments and agencies involved in the regulatory arrangements in mining industry in New Zealand. However, the Crown Minerals Act review contemplates more co-ordinated management of petroleum and mineral activities by the relevant government  
15 agencies. Proposals for earlier assessment of health and safety in employment matters and annual review meetings for tier one operations are two examples.

20 The discussion document also proposes to make legislative amendments to provide greater clarity as to when information received by a government agency which may include a local authority about a permitted or proposed petroleum or mineral operation can be shared with and used by other agencies that have functions and powers that apply to those petroleum and mineral operations such as to the Department of Labour, DOC, and other local  
25 authorities.

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30 Since the Pike River Coal Mine tragedy in November 2010, new lines of communication have been established between New Zealand Petroleum and Minerals and the Department of Labour, the intention of interacting more closely in relation to the administration of mining permits, site visits and the assessment of applications for mining permits particularly in respect of underground mines. New Zealand Petroleum and Minerals has increased its interaction and engagement with a number of agencies with a view to

establishing stronger relationships with them, including the Ministry for the Environment, the Environmental Protection Agency EPA, DOC and various regional authorities and councils. New Zealand Petroleum and Minerals has also sponsored two cross-Governmental client workshops with a focus on health and safety and operational best practice and these workshops will be ongoing. New Zealand Petroleum and Minerals has established an inter-agency steering group shared by its general manager and which includes second tier management representatives from the Department of Labour, DOC, Ministry for the Environment, EPA and the Ministry of Agriculture and Forestry. This steering group's main function is to ensure that there is an end to end approach across all agencies to petroleum and mineral extraction ensuring that resources are operationally in the right place and that best practice continues to be adopted. The terms of reference for the steering group are currently being finalised and will be made available to the Commission once that is done. In terms of the status of the discussion document it needs to be pointed out that by its nature it is a discussion document. It is not Government policy but rather an indication of where the Government tends to head and upon which it's seeking the public and stakeholders views. It is standard practice to start a policy process with a discussion document of this kind. The discussion document is out for public consultation and remains open for submissions until the 20<sup>th</sup> of April. Public submissions will be considered and analysed and then a cabinet paper developed outlining the proposed policy for cabinet approval. The Minister hopes to introduce a bill by 1 July and have it enacted by the end of this year. The Ministry of course will keep the Commission apprised of the policy as it reaches key milestones such as following cabinet decisions and the introduction of the bill and the discussion document itself, it is mindful of and it recognises the need to co-ordinate its progress with the workings of the Commission. There was some reference earlier to the re-organisation of various relevant Government agencies. The Prime Minister has announced that the Ministry of Economic Development and the Department of Labour together with the Ministry of Science and Innovation and the Department of Building and Housing will be combined in the new Ministry of business,

Innovation and Employment from the 1<sup>st</sup> of July 2012. The departments will update the Commission on any proposals that will impact on the area of interest to the Commission as they occur and are made known but presently counsel is not in a position to provide the Commission with any details. In  
5 conclusion it may be, and it is, a trite observation but it needs to be formally acknowledged that it is essential to take what can be learned from the tragedy at Pike River Mine in order to build a stronger workplace safety culture, and a more effective regulatory framework. The Government has started on this process with the establishment of the high hazard unit, DOL's policy proposals  
10 for changes to the regulation of mining health and safety and the proposal in the Crown Minerals Act discussion document for better co-ordination between health and safety and environment regulatory functions and the permitting regime during all stages of exploration and production of Crown-owned minerals. As previously mentioned the department's will keep the  
15 Royal Commission advised of policy development in the upcoming months and looks forward to engaging with the Royal Commission on these issues and potential regulatory and operational changes. May it please the Commission.

20 **COMMISSIONER HENRY:**

Mr Mander I just wanted to discuss the proposals that you mentioned for the future in relation to Pike. If those proposals had been in place at the time that Pike River was given its, well was coming for its permits. I'd just like to discuss what would've happened. It would first of all, as I understand it be a  
25 tier 1 application. Now Pike didn't have any experience in coalmining and neither did New Zealand Oil and Gas. How would the pre-application, the pre-certification proposal work in that case or would it not work?

**MR MANDER:**

30 Well speaking as counsel, because I haven't discussed this with anyone at the Ministry of Economic Development but I would assess the situation as being that the very fact that they did not have any track record, the fact that they didn't have any experience, as corporate entities, would be a factor that would

be taken into account under that type of scheme. No doubt then, there would be an assessment of the people and personnel involved, and how that lack of corporate experience was to be overcome.

5 **COMMISSIONER HENRY:**

Yes, have you ever heard the expression “bait and switch” in bidding?

**MR MANDER:**

I can't say I have, sir.

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**COMMISSIONER HENRY:**

No, it's where you put various people forward but you never actually bring those people forward in the end. It just strikes me it's probably more likely that they would go into the second category. Would you agree? Whereby as they go along they would get their approvals rather than a pre-certification.

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**MR MANDER:**

Yes.

20 **COMMISSIONER HENRY:**

Is it when I, my recollection of the evidence from the Ministry for Economic Development was they didn't look at the technical capacity of Pike to do this job.

25 **MR MANDER:**

That's my recollection of the evidence, sir, yes.

**COMMISSIONER HENRY:**

Yes, and they assume that because Oil and Gas were the parent company that that was good enough.

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**MR MANDER:**

I'm not sure what assessment they made as to the involvement of New Zealand Oil and Gas.

5 **COMMISSIONER HENRY:**

So in this case they would probably come into the second part and that would require an ongoing surveillance I guess.

**MR MANDER:**

10 Yes, sir.

**COMMISSIONER HENRY:**

Thanks, I understand it now I think.

15 **THE COMMISSION:**

Yes, thank you Mr Mander I have no further questions from the Commission. Now Mr King representing the Coal Association of New Zealand and Stratterra.

**MR BAKER:**

20 My name's Chris Baker and I was going to make some introductory remarks.

**THE COMMISSION:**

Sorry, Mr Baker?

25 **MR BAKER:**

Chris Baker.

**THE COMMISSION:**

Thank you, and then?

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**MR BAKER:**

And Tony King. So my name's - thank you very much for the opportunity to appear at this Commission. My name's Chris Baker, I'm the chairman of the

Coal Association of New Zealand and the CEO of Strattera which is an industry group representing the mining industry coal and metals, the broader mining industry. Tony King is the, who was commissioned by the Coal Association to prepare the report, that is our submission to this Commission  
5 and we put in place a process in to inform the preparation of that report whereby we consulted why the, particularly amongst the coal, underground coal sector in the country, but also more broadly. Our report and this submission was initiated as a review of regulations following the Pike River tragedy. The terms of reference for the report considered the New Zealand  
10 regulatory regime and assessed this regime as well as the Queensland and New South Wales regimes. In initiating the report and the assessment, we recognised that change was necessary. Whatever views of what was appropriate in terms of regulations held by the industry prior to the Pike River tragedy, change was clearly necessary. We also recognised that such a  
15 review was necessary regardless of the findings of this Royal Commission. Safety is fundamental to our industry. If we can't provide a safe work environment we will not and should not be in business. Employees must reasonable expect to return home after their work. With that context the Coal Association commissioned the work that produced the report that we have  
20 submitted to this inquiry. We've had, we've taken an operational perspective in carrying out this work and, as already noted, the work included broad consultation within the industry. I now ask the author, Tony King, to speak to the report and to the recommendations that we made.

25 **THE COMMISSION:**

Yes thank you Mr Baker. Mr King?

**SUBMISSIONS: MR KING**

Our comments today are confined to policy matters. The existing Health and Safety Act has been in force for nearly 20 years now. It has been a major driver for improved safety, particularly in the area of high frequency, low consequence events. This Act moved particularly in the mining industry the, at least in the section of responsibility for safety from the skill of an individual miner squarely onto employers through the duty to take all practicable steps. There was less change, however, in terms of high consequence events as these were already clearly accepted as being the role and responsibility of a company and management.

The coalmining regulations under the Health and Safety Act are somewhat brief, narrow and a mixture of performance standards and prescriptive standards. In the meantime regulation is evolved in Australia to require the site specific application of processes to develop appropriate safety management plans, systems and procedures. In this country, however, those requirements were only an inferred requirement ie that is one way of demonstrating that all practicable steps were being taken by an employer.

The industry therefore tend to develop with a little consistency across different employers and between employers in the New Zealand regulator and between New Zealand and Australia. The Coal Association submits that the retention of the Health and Safety Act combined with a complete overhaul of the New Zealand underground coal regulations is required to lift standards to a consistently high level to standardise processes across the industry and to introduce commonality of approach and practice between New Zealand and Australia.

This latter point is increasingly important. There are currently three operating underground coal mines in New Zealand, I should say only three. Solid Energy make extensive use of Australian advisors and staff. The next mines to start operations are likely to be Terrace Mine which has been purchased by a group of Australian based mining professional and Bathurst

resources which has announced the development of an underground mine in the Buller using two Australia contracting firms. Many miners, professionals work in Australia between the countries and there's no reason to believe that this trend will not continue.

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Moving to the proposed regulatory changes. It's important that regulatory changes are based on objective evidence of what works rather than in response to any possible desire by some parties for a return to prescriptive regulations. In this regard the categorisation of regulatory approaches is helpful and in particular the use of, and the relative merits of prescriptive regulations, general duties obligations, performance standards and process standards. Our submission is that a mainstream act imposing general duties, as is the current act, combined with process and performance standards as regulations will produce the best outcome.

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Process standards for example are a requirement to develop and implement and maintain a major hazard management plan for methane and be universally applied. The outcome from the application of the standard will vary according to the specifics of each mine it is applied to. Within New Zealand small sample of underground coalmines there are wide varieties of scale, mining method, mine layout, gassiness, a propensity for spontaneous combustion, physical access, complexity of geological structures and other factors. It's important that each mine focuses resources and effort on what hazards it has and not on those not present. Process standards facilitate this and (inaudible 14:39:46) and completes the required to prepare plans to be commensurate with the complexity and scale of the mining operations.

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Mines inspection. In our written submission we've supported a separate New Zealand mines inspectorate based on the high hazards unit at the Department of Labour but possibly within another Government department. Other submitters have suggested outsourcing this function to the Queensland mines inspectorate. These may be different ways of achieving the same end,

namely an inspection and an enforcement function that is well resourced, staffed with competent experienced people with knowledge of New Zealand conditions and methods, well connected with Australian regulators and able to transfer expertise into the New Zealand industry. We note that while  
5 regulations especially process and performance based regulations could be universal. The critical element is to apply them to the specific situation at each mine and that requires capable professionals at those mines and inspectors auditing and enforcing the plans produced by the processes who have an appreciation and familiarity with the sites.

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What would be a concern would be for inspections to be performed by overseas based inspectors who rotate through the role and do not build up history and familiarity with the people and situation at each mine. While we need Australian expertise on the processes, we need expertise on the  
15 New Zealand specific factors that would determine the detail of the plans arising from the processes.

Worker participation. Submitters including the coal association and the EPMU have included supporting evidence of the value of worker participation. We  
20 reiterate the position on page 16 of our submission that OSH outcomes are closely related to the level of trust between workers and management. We submit that if the CANZ proposal were implemented there would be a large degree of commonality between the mechanisms proposed by the EPMU and the Coal Association. The association proposes using the provisions of the  
25 health and safety Act, the existing provisions for elected health and safety representative, and bolstering that by requiring employers as part of their health and safety management plan to establish an effective worker participation regime. We envisage that that would include training, access to people, that's both management and the workforce, provisions relating to time  
30 available, payment for training and so on, much as set out in the EPMU's appendix 1. Including it as part of the health and safety management plan rather than by statute allows operations to develop their own variations to suit their circumstances whilst still having the force of a review audited and

enforceable management plan. Where a union has a significant involvement at a site, one would expect that to flow through to the plan. Where there is little or no union presence there is still a need for effective worker participation and this proposal provides for that.

5

Assessment of applicants for mining related permits. CANZ wishes to comment on the assessment of applicants for mining related permits. We submit that the current regime is appropriate and that mining competency is only assessed when applied for a mining permit and for the purposes of ensuring resources are allocated to a party who are likely to actually operate a mine. It's important to note that not all minerals including coal in New Zealand are Crown minerals. There are extensive areas of privately owned coal including in the Waikato, King Country and Southland coalfields. A regime that relies on assessing safety capability at the stage of issuing a mining permit will miss any projects that are based on private minerals. For this reason regulatory safety capability controls need to apply, in our view to the impending mining activities regardless of mineral ownership and not the Crown Mineral's permit application allocation process.

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Approval of mine plans. We note the evidence of Impac Services at page 10 and the families noting that long-term safety is heavily influenced by decisions made during the design process. There is a risk however of creating a de facto safety case regime if an operator has to put up a detailed proposal including mine plans and management plans for approval to operate before mining can start. However the current regime of a brief notice period and submission of a mine plan that has little if any regulatory review appears inadequate when considering how to ensure mine safety in the future. The Australian examples are understood to require a more detailed mining plans and management plans to be submitted with the opportunity for the inspectorate to intervene if they see fit, but not approved as such. The effectiveness of this method is likely to depend on the skill and capacity of the inspectorate to address proposals. Longer notice periods and the opportunity

for early engagement with the regulator during the development of mining plans should assist.

5 So in summary and put simply, CANZ supports the retention of the Health and Safety Act combined with a complete revamp of the coalmining regulations, that these should be based on process and performance standards where each mine will develop its own focused, relevant to sites specific safety management plan. Those plans should be consulted on and reviewed by the regulator, implemented, audited and enforced, worker participation should be  
10 entrenched, comprehensive and codified at each mine. Enforcement should be by a regulator that is well resourced, informed and connected to the Australian scene. And that prior to mining starting mine plans, management plans and overall operator competency will be reviewed by the regulator during defined pre-start processes.

15

**THE COMMISSION:**

If I may say so on behalf of the Commission, it's a very succinct and clear submission that you have written for which we are grateful.

20 **COMMISSIONER BELL:**

You talked about outsourcing mines inspectors, possibly from Australian jurisdictions but then I think you said that you didn't want to see Australian mines inspectors inspecting mines here?

1446

25 **MR KING:**

No, we, the Coal Association wasn't advocating that. We were noting that some other submitters had and while we understand what was trying to be achieved in terms of the resource and experience and capability of those people I guess the cautionary note we have is how you could ensure that you  
30 have inspectors who are here consistently and are able to build up some knowledge of the local operations and the local people and not become, sort of, a second best activity which is a side line of another regulator. I'm not suggesting for a moment that Queensland would do that but I, you know, I

think there are practical issues around that proposal that would need to be thought through carefully.

**COMMISSIONER BELL:**

- 5 Do you think there'd be a problem getting enough local people to do that, enough local skilled mining people to fill that role you're talking about?

**MR KING:**

- 10 Of a high hazard unit or an – yeah. I think it will be a challenge. I think that the status of that group needs to be rebuilt. The inspectorate used to be a role and a place where mining professionals were happy to go and spend part of their career. That's changed significantly over the last 20 years, but there is the opportunity to perhaps rebuild that. But I think it will be challenging and it'll always be difficult for the Government to match the pay and conditions that  
15 are available in the private sector.

**COMMISSIONER BELL:**

- 20 Is it a risk that you've got this enormous mining industry over the horizon that's expanding at the moment at a pretty fast rate, that that industry in Western Australia and New South Wales and Queensland will basically pick up just about anybody that can have any mining skills at all and pay them better money and take them over to Australia?

**MR KING:**

- 25 Well the New Zealand industry exists in that environment now and has found ways of making it attractive for people to stay here.

**COMMISSIONER BELL:**

- 30 I think you're going to find it's going to move to another level over the next couple of years with, in one jurisdiction, eight new underground coalmines coming on through.

**MR KING:**

Yes, well I, all the New Zealand industry can do is try and offer competitive employment conditions and packages, you know, and perhaps build on the local connections and family connections which are present here which seems  
5 to keep a lot of people here.

**COMMISSIONER BELL:**

You talk about worker participation and you talked about trust being a key component and I agree with what you said there. How does that happen  
10 though? How do you encourage that to happen?

**MR KING:**

Through leadership and action over a sustained period of time, through genuine, offering genuine opportunities for involvement of the workforce of  
15 every level and being seen to act on it, I think it's not rocket science, it's just plain good management.

**COMMISSIONER BELL:**

You're right, it's not rocket science, but in a lot of places it doesn't work. What  
20 about work participation in non-union mines. How would you see that working?

**MR KING:**

Well our submission is that as part of the health and safety management plan  
25 at any mine, they need to build on the provisions in the Health and Safety Act and add onto that their own provisions which relate to people being given time off work training, the opportunity to encourage management and the work force as required and that would be a written plan that would be part of the overall health and safety management plan for the mine. So inspectors  
30 visiting the mine would be able to audit against that plan and ensure it is being implemented.

**COMMISSIONER BELL:**

So the inspector would in effect regulate it?

**MR KING:**

5 As they would any other part of the health and safety management plan.

**COMMISSIONER BELL:**

And I just want to, did I get the - you don't favour any sort of prescriptive legislation at all? Is that what I'm hearing or am I not hearing that right?

10

**MR KING:**

Well I think it depends very much on the specifics of where it is applied. In principle no but I can see that there's some value in prescription even around some of the process regulations. You know, as an example the requirement for principle hazard management plans in Queensland is very, it's a very bold, almost terse regulation requiring the creation of those. If you look at New South Wales, they're actually reasonable prescriptive about what elements must go into each of those plans, as well as some performance standards as well. So I think in the right place they can provide some useful guidance.

20

**THE COMMISSION:**

I have a couple of questions, Mr King. I don't know whether you'll want to grapple with the first one but I couldn't help but notice that in the introduction to your paper at page 4 you refer to the establishment of a working group to oversee the development of the policy paper that you've spoken to a moment ago and it had seven members on it. Four of whom were from Solid Energy who we're told support the notion of contracting out the inspectorate function perhaps to the Queensland Inspectorate, where as your paper despite that majority of Solid Energy people on it, opts in favour of a local inspectorate. Can you tell us how that's come to pass or do you not know?

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**MR KING:**

The working party that we referred to was a group of people who had responsibility across those different countries and we sat down in about October or November of last year and worked our way through a whole series  
5 of issues in a reasonably structured way to come up with a position that we have and that's flowed through into the submissions that we've made. I guess in parallel to that and perhaps you need to address the question to Solid Energy in due course, they formed a different view but I'd come back I guess to the point I made earlier that I think we're trying to achieve the same  
10 end in terms of the skill and capability of the regulator function and it's perhaps how that can be achieved and questions being asked about whether it's possible to actually resource an effective inspectorate in New Zealand is a good one, and one that the Commission probably needs to form a view on rather than me.

15 1453

**THE COMMISSION:**

The same introduction you refer to having had a full one-day workshop involving key members of the industry in order to – as I apprehended obtain support for the proposals that you've written about. Can you just tell us about  
20 that? How many there? What sort of workshop are we talking about?

**MR KING:**

They were drawn from the members of the Coal Association for the purpose of formulating a Coal Association position, not a whole industry position.  
25

**MR BAKER:**

Sir if I could just add there.

**THE COMMISSION:**

30 Yes.

**MR BAKER:**

There were representatives from – there were representatives from MinEx and the tunnellers and MinEx represents the broader miner industry so we did seek that broader input, but the focus has always been underground coal as  
5 the immediate concern.

**THE COMMISSION:**

I've already commented on the fact that it's a very clear submission you've filed, there's just one matter, at page 13 your addressing in the middle of the  
10 page the issue of the situation of contractors and you quote from a text written by Professor Gunningham where it's said the most effective means of driving improvements in relation to health and safety among contractors is, "The direct application of pressure from the larger companies that employ those contractors." Obviously written from an Australian context, but what are you  
15 saying there? What does that mean because I don't know how familiar you are with the evidence, but it is something of a theme in this case that there seem to be quite a marked difference between the training and control over contractors at Pike as opposed to the training and control of the Pike workforce. So what is meant by the direct application of pressure?

20

**MR BAKER:**

My understanding is that what is meant there is that the employers of contractors have a very high degree of influence over what and how those contractors operate and if a company wants to require a contracting firm to  
25 adopt particular methods or processes for safety activities by that company then it can simply require it. There's no more complex process required other than a contractual obligation in the interim that it is implemented.

**THE COMMISSION:**

30 By the way you are excused if having completed speaking to your submission you seek to leave, anybody's at liberty to do so. Now we are to hear next from Mr Kay on behalf of MinEx.

**SUBMISSIONS: MR KAY**

Yes if it pleases the Commission, may I firstly introduce myself. I've been working as a health and safety professional in the coal industry since 1990 until 2006 that was in Australia in both Queensland and in New South Wales.

5 In 2006 when I returned to New Zealand I worked with Solid Energy until 2010 as a health and safety manager. In the period from 2006 until 2010 I was also the Coal Association representative on the MinEx Health and Safety Council and in the years from 2010 to 2011 I was chairman of the MinEx Council. So I now work for myself undertaking contract work, I'm no longer a member of the  
10 MinEx Council, however, in view of my long association with the coal industry and with the Council I was asked to assist in the preparation of this submission and to present it today.

1458

MinEx was established to represent and co-ordinate the minerals industry in  
15 its efforts to improve health and safety in the industry and has been operating in this capacity since 2005 and MinEx would like to thank the Commission for the opportunity to participate in the hearing and for considering our views on directions for future change. In making its submission MinEx has confined itself to future policy aspects. We are of course aware that there are a  
20 number of matters before the Commission that are very important that we have not provided comment on, however we believe that these matters are already ably addressed by other submissions including submissions by companies and organisations such as the EPMU and Solid Energy both of whom are members of MinEx and by the Coal Association. These  
25 submissions are well researched as has already been noted and comprehensive and we do not believe that MinEx can add value by commenting separately on all matters already covered in them although there is inevitably a degree of overlap. Because not all of these submissions are in agreement on, and in different circumstances MinEx may have tried to provide  
30 some sort of co-ordinated or mediated response, however in this instance we have taken the view that it is important that these organisations should be left to present their views independently to the Commission.

The Commission has our written submission and it's not our intention to repeat the material included in it, however we would be happy to make any additional comment that may be helpful.

- 5 In (c) I propose to comment briefly on a number of other submissions that are relevant to the views that we have put forward. It is notable that despite some differences there remains a high degree of commonality in the views expressed by submitters as to the direction that New Zealand needs to take in reforming its regulatory structure to make our industry safer. We'd like in particular to comment on these areas of commonality.

The regulatory framework, there is strong consensus that a major review of our framework is required and most submissions support close alignment between New Zealand and Australia and some submissions favour Queensland in particular. As described in our submission, MinEx also supports this alignment. We make no case for supporting any state's jurisdiction in particular and would instead support close examination of all jurisdictions, with the aim of taking the best aspects from each of them. We would disagree with adopting overseas legislation without appropriate scrutiny by the New Zealand Government and the New Zealand industry. We believe that this scrutiny is necessary to ensure, firstly, that any new legislation is suitable to our particular situation and, secondly, to ensure we have the required understanding of the changes and a commitment to the changes.

25 The change process needs to be led by the department on behalf of the government and must involve close collaboration with the industry. This collaboration is an ongoing requirement and MinEx strongly supports the formation of a tripartite organisation as exists in Queensland for example with the coalmining safety and health advisory committee. Ideally this group would be formed at an early stage following the Commission to oversee the change process that we believe will inevitably follow and after that should continue to support the ongoing need for review and improvement.

This organisation should ensure not only that the required changes are implemented but also that they occur within a defined timeframe. They must ensure that the impetus for change that exists today is not lost with the passage of time as had been the experience in New Zealand in the past.

5

The Health and Safety in Employment Act and regulations, like MinEx most of it supports the retention of the HSEA as the overarching legislation governing health and safety in the industry with the focus for reform being on the need for more comprehensive regulations governing the underground coalmining sector in particular. As described by MinEx, CANZ and other submitters, the new regulations should incorporate process and performance based standards for major processes and hazards. In this regard we note and endorse also the comments made by ICAM and Gold regarding the danger of a one size fits all approach to regulating underground mining. Instead the regulatory requirements imposed on miners must reflect the particular hazards inherent in their particular sector.

The high hazards unit, like MinEx, most submissions comment on the need for a well resourced qualified inspectorate albeit different approaches are suggested for getting there. For example we note Solid Energy's recommendation for the New Zealand inspectorate function to be contracted out to Queensland. MinEx agrees that some form of partnering arrangement with an overseas inspectorate is necessary to enable the unit to respond to the big challenge ahead of becoming an effective inspectorate. We believe that the best arrangement is likely to be something less than the full contracting out option. It will, however, certainly include and enhance liaison between New Zealand and Australia inspectorates and by liaison we include regular communications, common training, staff exchanges, conferences et cetera. We note that in a small way this has already commenced with the secondment of Gavin Taylor to the chief inspector role and with the audit carried out during 2011 by Tim Watson from the Queensland inspectorate and Brett Garland the senior manager from Queensland.

It is important that any arrangements along these lines facilitates a strong working relationship between the regulator and the New Zealand industry rather than impedes it, in a way, as this may be the case with an overseas based inspectorate.

5

With regard to the resourcing of the inspectorate, we reiterate our submission that the current Department of Labour plan for three qualified inspectors plus a chief inspector with two other support staff is in our view a minimum requirement that has not yet been achieved. In its current situation where  
10 there is a backlog of training and other work required such as in the development of standards and audit tools, almost certainly the current resourcing is insufficient. We note also the activities by the high hazards unit appear to focus on the underground coal sector with a lot less attention, probably insufficient attention than given to other, to surface operations.

15

Safety case, in its submission MinEx does not support the imposition of a safety case regime.

1505

However submissions by the EPMU, Impac Services and others refer to the  
20 need of what the EPMU calls a partial safety case approach whereby private start up of an underground operation formal approval is required from the regulator based on an assessment of the operations planning processes and its safety systems. MinEx agrees with this type of scrutiny and believes arguably that the regulator already has the ability to make this kind of  
25 assessment albeit at the moment the regulations only require 14 days' notice of start up. MinEx would support making this requirement clearer and more formalised as proposed by the EPMU and others. Mine manager qualifications - our submission refers to a consultation that was undertaken during 2010 by MinEx on the qualification requirements for the issue and  
30 retention of management certificates of competency. The focus of that consultation was on the competency requirements for quarry managers, however, the wide discussion that that consultation prompted indicated a fairly clear direction of support from the mining industry generally for changes and

these changes included expanding and enhancing the range of competencies required for managers to include qualifications in risk management and health and safety management systems development, maintenance and auditing. Secondly, requiring holders of certificates of competency to undertake ongoing professional development as a requirement for renewing certificates and thirdly, strengthening the competency assessment process to include an oral examination and we note that the requirement for an oral examination was referred to earlier today by the Mines Rescue Service. Codes of practice, a question was asked earlier today on the numbers of codes of practice that apply to the mining industry, the answer to that is there's a total of approximately 20, there's about five that apply to the underground sector and 15 that apply to the surface sector. All of these codes of practice have been developed and published by MinEx not by the department although the department did have a small involvement in the early days in getting them underway. And we note comments by the Department of Labour on plans to, on their plans to produce guidelines in future and we repeat our submission that it is imperative that they engage with industry in this process, ideally under the auspices of the tripartite organisation that I referred to earlier.

General and finally, the Pike River tragedy has undoubtedly been a wake-up call for the whole New Zealand minerals industry. We do not believe that this necessarily indicates an across the board problem with health and safety management because we know that there are a number of operations that have worked very hard to achieve good standards and are achieving good standards. Nevertheless at an industry level we recognise an overall need for improvement. This need is not confined to our industry alone and in this regard we note and commend to the Commission thoughtful submission by Impac Services on the general state of health and safety performance in New Zealand. For MinEx this has raised the question of how we as an organisation can step up to the challenges of the future. We know that this will include closer collaboration in future with Government and this has already commenced, that we recognise that there are other matters that we need to address such as our resourcing, our funding, our priorities. These

matters are all under review and in this process we are actively looking at examples of other similar industry organisations in New Zealand and elsewhere. MinEx would like to provide the Commission on behalf of the minerals industry with an assurance that there is a strong commitment from the industry to achieve improving on health and safety standards and a strong commitment to support in whatever way required the change process which we believe will arise as an outcome of this Royal Commission, thank you.

**COMMISSIONER HENRY:**

10 Thank you Mr Kay. Just one question about codes of practice and I know that your comments have been looking at the future but a guide to the future is sometimes the past and it's been quite a poor performance, hasn't it, in regard to issuing approved codes of practice and we heard at the beginning a suggestion that the industry might be partially responsible for that. Do you, without defending yourselves on that, do you think that you've got the capacity, if the Department of Labour and the other Government organisation really start to produce codes of practice at the rate that's needed, have you got the capacity to, has MinEx to contribute to that process?

**MR KAY:**

20 As, yes Commissioner, I – the answer, the short answer to that is yes we do, there is tremendous will from the industry to contribute to that process. The production of those documents requires the expertise that industry can contribute. We have to be part of that process. We do need to work with the Government. We don't need to start from a blank sheet, a lot of that documentation is available to us from overseas and we would be silly not to use that so yes, we do, you know, we learn from others and we take the best so we do need to do that and yes, we do need to step up to ensure that our performance in this regard is better in the future than it has been in the past. I should say as well that the efforts of MinEx in the past has not been towards approved codes of practice, it's been towards having unapproved codes of practice and there are reasons why we prefer those. They're easier to maintain, to review and to change et cetera and we believe nearly as effective

if all parties use them as they're intended to be used. We did start out trying to have approved codes of practice and that process foundered and that's why ultimately we resorted to effectively going on alone and not – just having these unapproved documents.

5 1512

**COMMISSIONER BELL:**

Mr Kay, so just dealing with codes of practice. So at the moment there's one approved code of practice and there's 20, well 19 other ones that are unapproved is that –

**MR KAY:**

No, none of the codes of practice that we produced are approved.

15 **COMMISSIONER BELL:**

So the one that's approved is from the department?

**MR KAY:**

I'm not sure what one that's referring to Commissioner.

20 **COMMISSIONER BELL:**

Is it going to be a big job to get from where you are to an approved code?

**MR KAY:**

25 Only in the sense that there's a legislative process required to do that and those processes seem to move slowly. It's – I mean the codes of practice that we currently have need a review, they need to probably be better documents than they are at the day, today, we fully admit that. But, after undertaking that level of review we would simply need to move it through the legislative  
30 process and it would just be a question of how quickly that takes place.

**COMMISSIONER BELL:**

Are you aware that there's a whole raft of new codes of practice coming through the National Miners Safety Framework in Australia, they'll be put out in July?

5

**MR KAY:**

I didn't know it was July, but I knew that they were pending.

**COMMISSIONER BELL:**

10 Because they're already there I'm – it's just an opportunity to pick what you want out of them. Just on the competency assessment, we've had evidence to this Commission where people have come from Australia where they've failed first class tickets on more than one occasion and picked up a first class ticket here in a matter of weeks. I mean what's MinEx think about doing about  
15 that?

**MR KAY:**

Yes we are concerned about that. somebody with – Well there is that aspect there where the person doesn't already have a first class ticket when they  
20 arrive here and there's the other aspect where somebody comes from Australia already with a first class ticket and that's a concern so they simply have to demonstrate familiarity with our laws and then the certificate is awarded in New Zealand. We believe that they should also demonstrate familiarity with our conditions and our mining methods. So I think that needs  
25 to be added to the process and yes it is of concern to us that if our standards for granting those certificates are easier or lower than they are in Australia that would be definitely of concern to us.

**COMMISSIONER BELL:**

30 Finally, you mentioned coal mining safety and health advisory committees which, as you're aware we have in Queensland, would they report to the Minister? Would that be the way they'd operate here?

**MR KAY:**

That would be my expectation, but to be honest we haven't gone to that level of detail of thinking how that structure would work. We believe, I guess, in the concept of the tripartite approach and having some sort of overseeing group that supports and endorses the process. But, whether it reports directly to the Minister or to a head of department, I'm not sure what would be most appropriate.

**COMMISSIONER BELL:**

Do you think it's important to give those sort of committee the sort of teeth that it needs to be able to do things?

**MR KAY:**

It needs teeth, I – yes we would agree with that.

**THE COMMISSION:**

Thank you Mr Kay, both for the submission and equally thank you for the Coal Association one that we've just heard Mr King. You may not be aware but the submissions are being transcribed and it will be of some help to us to have your endeavour at the commencement of your submission to analyse the areas as you put it of commonality that exist between submissions, because like you we've noticed that there is that quite high degree of agreement in quite a number of areas. So it will certainly be of value to have your exercise in doing that little analysis reduced to writing and that will be available to us within 12 hours or so. So, we are most grateful for your submission.

**COMMISSION ADJOURNS: 3.16 PM**

**COMMISSION RESUMES: 3.35 PM****SUBMISSIONS: MR NICHOLSON**

5 You will have received and reviewed the written submissions that  
McConnell Dowell have prepared. I don't propose to go through those in  
detail for you this afternoon. At the outset McConnell Dowell has asked me to  
place on the record its sadness at the loss of the 29 miners and contractors  
and to record its condolences to the families of the men. From me and my  
team you can pass that on as well.

10

Now McConnell Dowell had four men leave the mine three minutes before it  
blew up. It recognises the good fortune of that and is grateful that its men are  
still with us. As a responsible corporate citizen McConnell Dowell felt that in  
light of that it was important that it contribute to this Royal Commission and  
15 provide all the assistance it has been able to do. It's filed evidence in all of  
the first three Phases although none of its witnesses have been required to  
attend here and actually give evidence in person. It's also made some written  
submissions on some of the issues that the Commission has identified in  
order to help place its work into the proper context and to invite the  
20 Commission to make some certain factual findings.

Largely Commissioners, McConnell Dowell's role is relevant to the context  
section of your investigation and not particularly to the causes of the explosion  
or the future. You'll see from the written synopsis that as for the future  
25 McConnell Dowell will respect and respond to whatever you and the industry  
can come up with. Now McConnell Dowell was a contractor at the mine and it  
was a significant contractor through the period 2006 to 2008 while it was  
responsible for the development of the main drift tunnel in the pit bottom and  
the stone area. It was a lesser role through 2009 and 2010 once Pike took  
30 control of the mine, moved into the coal measures and really started to look at  
coal production and development.

McConnell Dowell's job as a tunneller and stone was really to give Pike River access to the coal seam. It's important for you though to remember that at all times all of the major development design decisions were made by Pike River and really the documentation in the evidence is clear on that, back as far as  
5 2005 if not before when Pike River went out to tender to the market saying it had designed a mine that was going to have one main access tunnel start, a vertical ventilation shaft and then at a later date it was going to add more walk-out drifts through the western escarpment. The key to remember, that all design decisions were being made by Pike River and not McConnell Dowell.

10

At the time of the explosion McConnell Dowell was really acting as a service provider and so it was being asked to tunnel through stone, just driving roadways, providing other assistance and support to Pike River, just like a lot of the other contractors working underground. The evidence which  
15 McConnell Dowell has filed with the Commission sets out in reasonable detail the nature and extent of its activities and I don't propose to go through them with you this afternoon. McConnell Dowell does though invite the Commission to make certain factual findings. The first one is that Pike River was responsible for the design of the mine including the location of the  
20 tunnels, services and the ventilation shaft and as I said, the tender and contract documents and the evidence of a variety of witnesses have all substantiated that.

The second finding I'd like you to make is that McConnell Dowell followed best  
25 practice and was a competent and safe contractor while completing its work under the tunnel contract and the latest services contract. And in my submission it is again a range of evidence available to you to support that proposition. Michael Firmin from the Department of Labour called McConnell Dowell, "Prudent, practical and safe." URS who were asked at the conclusion  
30 of the tunnel contract to assess the quality of the work for Pike River told them that it was done to international best practice standards and the strength of the tunnel supports actually exceeded requirements. It's telling Commissioners that while McConnell Dowell had effective control of the

tunnel through its development, they did 460 hours of work and there were only three serious incidents. It's my submission that that was a commendable record.

5 Next finding we'd invite you to make is that work developing the ventilation shaft using the raised bore and subsequently an Alimak raise was designed by Pike River but it was completed safely by McConnell Dowell and the Alimak contractor. There's been some evidence given to you by Gary Jones and the reasons set out in the written synopsis I invite you to reject that  
10 evidence. It's not supported by any other evidence. McConnell Dowell invites you to conclude that Pike River Coal was responsible for the provision and maintenance of adequate ventilation underground including in areas where McConnell Dowell was deployed.

15 You've heard a lot of evidence about the ventilation system, the fans, the control of it by Pike River's statutory officials as a contractor working in the mine, McConnell Dowell had no control or involvement in that. And I also invite you to find that McConnell Dowell had nothing to do with Pike River's coal extraction programme and activities. As I've said McConnell Dowell were  
20 tunnellers in stone, that's what they do. They were not coalminers, they had no involvement in the hydro-extraction or in those working deep in the mine where this tragedy appears to have occurred.

A couple of other witnesses have in passing made statements which  
25 McConnell Dowell has considered to be inaccurate and misleading and I invite the Commission for the reasons set out in the written synopsis to tread carefully when considering the evidence of Harry Bell about the development of the main drift tunnel through the Hawera Fault and recall that he wasn't there at the material times when he's making statements about it.

30 1542

Similarly to remember that Mr Renk who had some concerns, subsequent evidence from I think Mr Edwards confirmed that actually Mr Renk had misunderstood the position and that the assessments and calculations in

ventilation for loss of use of that time were fine. There was also some speculation by Neville Rockhouse that possibly on the 19<sup>th</sup> of November McConnell Dowell employees might not have taken their tags off the tag board and that might've been part of the confusion that arose in the hours after the explosion or as subsequent evidence demonstrated I think it was Mr White in particular confirmed it to the Commission that wasn't the case, all McConnell Dowell employees had properly and prudently removed their tags from the tag board when they'd come above ground. The problem lay with people within Pike River.

10

Now it's with sadness that McConnell Dowell has to say it has no understanding or idea why the mine exploded. We've seen the evidence given by Grant McLean as to the recollection of the men underground. None of them saw anything that they thought was unusual that day. Nobody that they spoke to communicated any concerns to them that day and when they left the mine they had no idea how lucky they were about to become.

15

Now I'm happy to answer any questions that you may have Commissioners, but otherwise all I would look to do would be seek to reserve the ability to apply for leave to reply to others if anything crops up in accordance with your minute dated 12<sup>th</sup> – 27<sup>th</sup> March.

20

**COMMISSIONER HENRY:**

Albert Houlden gave evidence, was he a McDowell Employee?

25

**MR NICHOLSON:**

He was, yes.

**COMMISSIONER HENRY:**

He gave evidence that he was extremely concerned about conditions and indeed left because of them.

30

**MR NICHOLSON:**

He gave evidence that he raised concerns, that's true sir, and those were I think six incidents that he identified all which were mattered, really within the providence of Pike River or which were reported up to Pike River. Mr Houlden  
5 also gave evidence that he was very satisfied with the behaviour of his employer McConnell Dowell and he didn't say to the Commission that he'd in fact conveyed particular concerns to McConnell Dowell beyond the specific incidents which had been elevated to the Pike River deputies.

10 **COMMISSIONER HENRY:**

My second and final question is just about shotfiring. The evidence we've had has suggested that shotfiring, I might be putting this too strongly, but almost routinely damaged stoppings and we've had evidence about important, how important those stoppings are. That seems a strange, to a lay person like me,  
15 it seems a strange situation where you have an important ventilation control device which is damaged by McConnell Dowell when they're doing their shotfiring.

**MR NICHOLSON:**

20 I think it's, was different at different times, Commissioner, so that when you're firing shots in particular areas the fumes have to go somewhere and so if there is a stopping, a temporary stopping in close proximity to that then inevitably the force of the fumes is actually going to push past it and so if you like at the 19<sup>th</sup> of November as a particular example, the shot fired that  
25 afternoon there was a known stopping in a cross-cut, and so McConnell Dowell prudently went and stationed a man in that area, rolled up the, the stopping so that it was not going to be damaged, once the fumes are gone then be able to roll it back down again. There was also then the system in place with Pike River whereby the Pike statutory deputies have a  
30 responsibility to go and check all of the stoppings around the mine after the blast to make sure that they're okay with McConnell Dowell checking in the immediate vicinity of where they were, so I think there was prudent systems in place to deal with what was a known and unavoidable problem.

**COMMISSIONER HENRY:**

So your view is that that of McDow's view is that that was an unavoidable problem.

5

**MR NICHOLSON:**

Yes, Commissioner, to the extent that the fumes have to go through those areas and so –

10 **COMMISSIONER HENRY:**

Yes.

**MR NICHOLSON:**

15 - we've got a stopping that wasn't able to be temporarily lifted up or moved then it was going to take some of the percussive force and need to be checked and if need be repaired.

**COMMISSIONER HENRY:**

20 And why, just remind me, why were they shotfiring? Why weren't they just tunnelling?

**MR NICHOLSON:**

25 The, as I understand it, Commissioner the strength of the stone is such that the method is used is drill and blast so it is blowing it up to be able to remove it. The machinery was too strong for the machinery to be able to actually rip it out using another method.

**COMMISSIONER HENRY:**

30 So the tunnelling machinery wouldn't cope with the conditions.

**MR NICHOLSON:**

As I understand it.

**COMMISSIONER BELL:**

Mr Nicholls, just a couple of things. Section 100 of your, paragraph 100 of your statement talk about, well McConnell Dowell could indeed raise issues with PRC about the adequacy and ventilation of volume in the headings when it was working, it had no ability to direct PRCL. How high up the organisation did your people complain about the ventilation?

**MR NICHOLSON:**

The evidence before you is that on a shift by shift basis, when ventilation was being raised with deputies. There's also evidence from Grant McLean that it was being elevated up into the production meetings being led by the sort of I think the mine manager officer attending or otherwise the, Steve Ellis and the people in his position so to that level saying, "Listen there's been a problem, we aren't able to do our work at our phase, we've had to withdraw. What are you going to do?"

**COMMISSIONER BELL:**

But I mean it's –

**MR NICHOLSON:**

And I think being fair that's –

**MS SHORTALL:**

Are you saying Steve Ellis?

**MR NICHOLSON:**

No, no, I'm not saying Steve Ellis.

**MS SHORTALL:**

Well you just said Steve Ellis.

30

**MR NICHOLSON:**

Sorry, I'm saying people at the Steve Ellis level. I can't remember if it's the operations manager or people leading the production meetings anyway.

**COMMISSIONER BELL:**

- 5 So it wasn't an ongoing concern for you that these ventilation problems kept occurring though because if you look at, I'm just looking through your statement, it occurred more than one time, didn't they?

**MR NICHOLSON:**

- 10 I think McConnell Dowell's understanding, sir, was that ventilation was a rational commodity within the mine just like it is with an oil mine and that it was really a matter for Pike River to determine who got how much. McConnell Dowell worked within that.

1549

- 15 They worked with the deputies and so when the deputies told them this is how much you get, they will keep working when they couldn't, if they couldn't work anymore because the ventilation was insufficient, they'd pull out and tell the deputy.

**20 THE COMMISSION:**

Mr Nicholson, I well appreciate that your role throughout the enquiry has been to protect the reputation and actions of McConnell Dowell and I of course understand and respect that. It's a company that's obviously got extensive experience in underground tunnelling?

25

**MR NICHOLSON:**

Yes sir.

**THE COMMISSION:**

- 30 What, probably the biggest in the country in that?

**MR NICHOLSON:**

I couldn't tell you sir, I'm sorry.

**THE COMMISSION:**

5 And of course you were there from, well the company rather was there from  
beginning till end as you've emphasised a moment ago, to within minutes of  
the explosion. Something I have struggled with is that despite the quantity of  
evidence that the Commission has heard about issues that existed  
underground in relation to ventilation, methane and stoppings and so on,  
10 perhaps Mr Albert Houlden's evidence aside, there is very little in the way of  
concern expressed by McConnell Dowell although it played an active role and  
you're submission refers to its involvement in the health and safety committee  
but there's really little or no input into its assessment of what was happening  
in the mine –

15

**MR NICHOLSON:**

Well I think sir that –

**THE COMMISSION:**

20 Now I just simply struggle with that and I'm just making an observation.  
Whether you want to comment on it or not is up to you?

**MR NICHOLSON:**

My response sir, would be as a, is a divide really within the mine between the  
25 coal measures and the stone measures and so when you've got a contract  
like McConnell Dowell who was working very much in stone, with a very  
limited role to play in coal, it isn't a position to comment on what was being  
done up in those areas, in the areas where McConnell Dowell was working, I  
think it's acknowledged through the evidence, were things always perfect?  
30 No. Did McConnell Dowell always have faith in the range of the Pike River  
people, that things were changing, Doug White for example, there's evidence  
from McConnell Dowell before the Commission that they thought he made a  
positive difference. When they were raising issues, sometimes they were

slow in getting responses but as a contractor there's not all that much you can do other than raise the issue up and then if nothing gets done about it, pull out and that's what they were doing.

5 **THE COMMISSION:**

All right, thank you. By the way Mr Nicholson, I note your reservation and I think you do have a time credit, I haven't timed you closely but you must have a time credit so we'll keep note of that.

10 **MR NICHOLSON:**

Thank you, sir. If I may sir, I'll return back over there so Mr Holloway can sit with Mr Stevens.

**MR STEVENS:**

15 Commissioners I have had put onto paper some condensed matters that I've wished to talk to and I can distribute them and refer that if that assists, it just might make it easier for you sir, I'm in your hands.

**THE COMMISSION:**

20 Are you referring to your synopsis of final submissions?

**MR STEVENS:**

Yes, sir.

25 **THE COMMISSION:**

We already have it.

**MR STEVENS:**

Fine. But I've got copies for my friends if that -

30

**THE COMMISSION:**

Well by all means.

**SUBMISSIONS: MR STEVENS**

Thank you, sir. I will work from that document sir and that really condenses what was in the submission as filed on the 16<sup>th</sup> of March. And I think understandably sir start with noting Solid Energy records its thought in those submissions and again today for those personally affected by and who continue to be affected by this tragedy and there is an acknowledgement that that has been harrowing for the families and perhaps sir, just as an observation the way that, in those circumstances, that they have dealt with that has been in my submission exemplary and warrants being acknowledged, sir. I don't think I need repeat why Solid Energy is before the Commission but if I can move to a matter that was actually raised by Dr Elder at the outset. Your Honour and that was what occurred at Pike in our submission back on 19 November 2010 was not an accident in the sense, it was neither unforeseeable nor unpreventable and there had been certainly back at that time some suggestions that it was, there was simply some very tragic alignment of the planets but the risks of methane, of source of ignition in underground coal mines is something that was well understood and it should be able to be mined, that's coal should be able to be mined on the West Coast including using hydraulic mining methods and should be able to be mined safely.

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Based on the evidence given to the Commission, Solid Energy considers and this is set out in its full submission, that the tragedy resulted from failures within Pike River Coal Limited and was contributed to by the Department of Labour's inspectorate not being adequately resourced or operating in a way that would allow it to recognise the risks present at Pike and respond with appropriate measures. And against that context therefore our recommendation are sir that, firstly, the Department of Labour's role as the inspectorate for underground coal mines be contracted out to an existing experienced, skilled and mature overseas regulator and perfectly, and preferably sir the Queensland Mines inspectorate. And secondly, that New Zealand adopt, but under the umbrella of the Health and Safety and Employment Act, a completely new set of regulations for underground

coalmining that are consistent with international best practice and accordingly are adapted from the Queensland Coal Mines Safety and Health Regulations, and parts of the corresponding Act the Queensland Coal Mines Safety and Health Act 1999.

5

Now perhaps just at that juncture Commissioners I can respond to, I'm conscious that you asked Mr King why there was a difference between the Coal Association and Solid Energy and I certainly endorse, and I know that Solid Energy would, Mr King's response about that we're trying to achieve the same ends of a skilled and appropriately resourced regulator. And I note sir that the same people were involved in the considerations of the Coal Association back in October and then from Solid Energy's point of view right through until the filing of its submission in the mid March. And I think sir, without having taken instructions, that the preference would have certainly been and commenced by being that it would be preferable to have a fully resourced New Zealand inspectorate and that that would be sustainable, but I think sir that Solid Energy has come to the view that given the competition that it already faces without the matters that Commissioner Bell has raised to Mr King of increasing competition, the flow of employees across the Tasman, the commonality in terms of moving towards dual qualified people on both sides of the Tasman, the other matters that particularly Commissioner Bell has raised of that, the risks are the same no matter whether you mine in Queensland or here in the Buller in the West Coast or in the Waikato or wherever, that really a sustainable appropriately skilled and resourced inspectorate is better to be contracted out.

25

**THE COMMISSION:**

Mr Stevens, how realistic is this argument? A, is the New Zealand Government going to buy into the idea, and B, hardly lies in my mouth, but is Queensland going to want the task? I think they might have quite a bit on their plate as it is.

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1600

**MR STEVENS:**

I think as to A sir, the Government might be materially influenced by your recommendations and that the reality is that New Zealand needs to be able to contract in or replicate those skills that have been canvassed in this  
5 Commission that are you know, are fully resourced and expect it would have the Department of Labour for instance today in its submission referred to there being 13 first class coal manager, underground coalmine managers in New Zealand. So if that's the sort of – and they need to be managers that would have the – could achieve on an ongoing basis the – have the manner  
10 within the industry and be able to work with the industry. I think that that has been, that is a very big challenge going forward. As to whether Queensland would accept it, well sir we know that Mr Gavin Taylor whose involvement has been welcome, he's been here on a seconded basis, that also there were the audits done shortly after Pike of all the New Zealand mines and it is going to  
15 be I think sir more easily achieved to have an appropriately resourced inspectorate if it can be contracted out.

**COMMISSIONER HENRY:**

Could I ask you Mr Stevens, I'm not sure what you mean by contracting out.  
20 Can you just expand on how that would work?

**MR STEVENS:**

The submission sir was that the high hazards unit would be retained and there would certainly be New Zealand staff within that dealing with the underground  
25 coalmining industry in New Zealand but that those resources and including assistance from inspectors and from specialists to include people that have qualifications and things like electrical engineering, ventilation would be sourced from it is suggested preferably Queensland and part of – and that aligns also with our submission in terms of the regulations that would to a  
30 large degree be adopted by Queensland and also MEMS. Have I answered you question because I'm not trying to avoid it?

**COMMISSIONER HENRY:**

Partly, if I understand you correctly, you're saying that there would be a high hazard unit or whatever the ultimate form is which would be under the control of whatever Government agency, New Zealand Government agency is relevant at the time and that it would draw on, it would have some expertise –

**MR STEVENS:**

Yes sir.

**10 COMMISSIONER HENRY :**

But it would draw extra expertise from let's say Queensland or New South Wales or wherever but which is different from saying contracting out which that's more like contracting in if you see what I mean, the resources.

**15 MR STEVENS:**

Yes I do see what you mean sir but if we look at the position that applies today, it is that the chief inspector is on secondment from Queensland and I think the challenges of being able to establish a fully resourced and efficient coalmines inspectorate in New Zealand under the high hazards unit and in a market which is effectively or rapidly becoming a single market is a very big ask.

**COMMISSIONER HENRY:**

So jumping ahead a unit is to be properly resourced with people being paid market salaries in this larger market, is it Solid Energy's position that it's prepared to pay levies to the extent that will fund such a market?

**MR STEVENS:**

I don't have specific instructions on that sir but what I can say is that my consistent instructions is that Solid Energy has consistently said that it would invite and encourage any changes which produce real benefits in terms of health and safety in underground coalmines and I can come back formally on your question sir if you'd like me to.

**COMMISSIONER HENRY:**

Do you see any problem with contracting out, contracting in let's not quibble over the terminology, do you see any problem with maintaining our  
5 sovereignty in that situation?

**MR STEVENS:**

Not on the basis that it is still a New Zealand high hazards unit that would be undertaking that sir and it is part of an alignment of also our regulations of  
10 what's proposed, of the safety systems and that's not uncommon in other areas as well, competition law, there's quite a number of examples where there is effectively parallel provisions between New Zealand and Australia so this is not as perhaps as radical as it might first appear in terms of issue of sovereignty but without in any way being pejorative sir, that might be the  
15 wrong end of the telescope to be looking through if the starting point is what achieves the best results for health and safety as opposed to starting with issues of sovereignty and I don't mean that argumentatively, but I think that was part of how Solid Energy got driven to this position and as I said just before, ideally the preference would've been to have a New Zealand based  
20 fully resourced inspectorate.

1607

**COMMISSIONER HENRY:**

One final question on this, the high hazard unit will require strategic direction.

**MR STEVENS:**

Yes.

**COMMISSIONER HENRY:**

And that direction has to come from a wider perspective than just the high  
30 hazard unit. Do you – and it goes to the whole question of accounting to Government for performance and so on, do you see any problem in a contracting in/contracting out proposal with the strategic direction, not what

they do day to day, but the strategic direction of the unit. Who would be responsible for that under your proposal?

**MR STEVENS:**

5 I think I do get to that subsequently sir, but in the notes that have been just handed up and I'm happy to deal with it now, if I come to the – at paragraph 38 the proposed tripartite oversight, and Solid Energy's recommended such oversight of the regulatory regime for mining in its implementation and while New Zealand is small scale, and that presents  
10 challenges it nevertheless sees just the gap that I think that you're referring me to sir. And so on the assumption that the Department of Labour is unlikely to have the resources or focus necessary, it's suggested that it be a tripartite arrangement between workers, between Government agencies and between the operations and that that would include organisations such as MinEx.

15

**COMMISSIONER HENRY:**

But the regulator couldn't take direction from a tripartite organisation in the end, could it?

20 **MR STEVENS:**

No.

**COMMISSIONER HENRY:**

So who would get the direction on your proposal?

25

**MR STEVENS:**

Well that's, with respect, no different from their position now in my submission sir. I mean ultimately it's for the Ministry and for the Minister, but it would be surprising if those decisions and considerations weren't informed by the sort  
30 of body that I've just suggested. So again I don't think that this is unique and that is not in any way trying to contract away our sovereignty.

**COMMISSIONER HENRY:**

I raise sovereignty because it's been raised with us, it's not something which I personally would describe it or see a problem with, but I do see a problem as we speak with the strategic direction of the organisation which has to remain within New Zealand control obviously. Then of course there's other considerations such as maintaining our own critical mass of expertise and developing that expertise. We can't just leave it can we to outsiders to maintain that expertise for us?

**10 MR STEVENS:**

No we can't sir, but if I can deal with the first leg of that of the strategic direction, I think and our main submissions are – includes a section on this that that might be enhanced and informed by what is the issues confronted by a much bigger industry in Australia and what we're really driving for sir is to keep up to date with what is international best practice and frankly our ability to do that with the size of our industry, in my submission is exceptionally challenging and far from being hindered is assisted by being involved with and part of the developments and best industry practice in Australia. So, while the concept on its face might seem challenging, I submit that in practice it's actually a real benefit.

1612

And we've had examples put to the industry representatives, for instance today, in terms of things like codes of practice and I suppose that ties in with also that we are not proposing a separate piece of legislation. We certainly are regulations but not going back to a separate underground mining piece of legislation alone because we think that that will not keep abreast of what will doubtless be continuing and improving standards in the industry, as with any industry.

**COMMISSIONER HENRY:**

30 Well thanks very much for that, thank you.

**COMMISSIONER BELL:**

Sir, I've got a few comments, as you may not be surprised to hear?

**MR STEVENS:**

5 I'm not sir.

**COMMISSIONER BELL:**

These matters haven't been discussed with the Queensland Government so I'm not really in a position to comment on in any detail.

10

**MR STEVENS:**

Mmm.

**COMMISSIONER BELL:**

15 But I am interested in your viewpoint in that, or putting forward, keeping in mind when the current chief inspector has closed your operation now on more than one occasion, it seems to be a pretty particularly courageous stance to take.

**MR STEVENS:**

20 Actually I believe sir it was only on one occasion and perhaps I can just add that on that occasion when that was lifted we nevertheless did not recommence until Solid Energy was satisfied that changes that were implemented would be effective. But that matter sir, this proposal was made,  
25 informed by what you've just put to me. So Solid Energy is not shy of, and in fact is welcoming a strong efficient well-resourced regulator.

**COMMISSIONER BELL:**

30 That's my next question. So you're now in favour whereas we've heard evidence earlier that you didn't see much value in the previous inspectorate from Mr Smith. You're now saying that you are in favour of a strong inspectorate?

**MR STEVENS:**

I think that that's – I take issue, if I may sir, and I might come to a piece of transcript that's not in the submission as to that fairly reflecting Mr Smith's view. It's Solid Energy's consistent position, Mr Smith, Dr Elder, has been  
5 that the inspectorate is part of the armoury for health and safety but that, it's an important point, that Solid Energy is the party that is primarily responsible for its health and safety and must be. So for instance, in Mr Hampton's submission it talks somewhat harshly about Mr Smith's view in terms of impromptu inspections but his real issue was that the inspectorate would not  
10 tell him why they were there and what he's saying is, "We have to know if there's an issue." You know, if it's just an impromptu inspection, so be it, but if it's an unannounced inspection for a reason, and that reason is not told to us, that is a problem. But Solid Energy there may be issues as to the value of the inspectorate in the past but they have never, I don't believe sir, suggested that  
15 there shouldn't be an inspectorate and that it shouldn't be properly resourced and affective. And the evidence also is that they have their own independent audits and inspections by, well from some well known people sir within your own jurisdiction. So they rely on several matters but primarily they say they're responsible for, and they're including all of Solid Energy, not just  
20 management, employees as well, for a safe workforce.

**COMMISSIONER BELL:**

Thank you.

**MR STEVENS:**

I think sir I could skip to paragraph 10, and continuing the theme of high hazards unit and some of the debate that you've received on that, we accept that while our focus has been on underground coalmining the recommendations of some parties and particularly Impac's submissions.  
30 1617

Dr Kathleen Callaghan New Zealand Council of Trade Unions have wider application and we certainly don't oppose, and it's not our position to, for the Commission to be taking a broader view and it agrees that whatever lessons

can be learned from the Pike River tragedy should not be restricted to merely underground coal mines. Solid Energy's focus is understandably though on underground coal mines because it's a core part of its business and in my submission, sir, it has valuable expertise to offer. Whether or not a wider  
5 review of the Health and Safety in Employment Act is administered in force to take place, Solid Energy submits its recommendations should be considered if they're likely to significantly improve confidence in the safe and healthy, the safety and health.

10 **THE COMMISSION:**

I'm just wondering whether these paragraphs don't entail a misapprehension, Mr Stevens. Our focus is likewise on coalmining but I think that the experts that you've referred to have simply advocated the view that this is an organisational disaster which happened to occur in the context of the mining  
15 industry.

**MR STEVENS:**

Correct.

20 **THE COMMISSION:**

And that we should not as a Commission lose sight of the fact that there were lessons here which, although directly applicable to the coalmining industry, are important beyond that industry and indeed to all hazardous industries in the country and that's the message I think they're suggesting.

25

**MR STEVENS:**

Yes.

**THE COMMISSION:**

30 That is not to say that our focus has moved more broadly. It's really a focus on coalmining but accompanied by a realisation that the issues may have much more general application so I don't think there's a problem there.

**MR STEVENS:**

Yes, no and I think sir on that we absolutely agree, yes. Commissioners you will have seen that we're also advocating and consistent I think, sir, with your comment just to me that HSEA is retained as the umbrella piece of legislation and I think we've actually had an exchange on that already but that that would then have some subordinate legislation in the sense of regulations and so that really takes me to paragraph 17, sir, that amongst the parties that have made phase four submissions to the Commission there appears to be broad support for New Zealand promulgating new regulations which are developed from in large part the Queensland regulations. This is certainly the position that we arrived at and I think I've explained that process between October and March when there has been and, sir, there has been very considerable focus on this at all levels at Solid Energy and I can assure the Commission of that right across the board and literally including the board. Dr Callaghan has submitted greater alignment with Australia is essential. Solid Energy's thinking includes that in terms of the Queensland regulations the risk management system based approach is consistent with both international best practice and the legislation and framework of the national mine safety framework. The progress with national mine safety framework is too uncertain for New Zealand to wait and I appreciate that Commissioner Bell might be far more informed on that than we are, but in any event any nationally consistent regime able to be agreed in Australia is likely to look and feel and adopt quite a lot of the Queensland regulations that really we're saying that we should not wait for that to occur and again it's identified by Dr Callaghan there are safety advantages from having a consistent way of doing things given the mobility of the mining workforce and we believe that adopting a regime similar to Queensland regulations will assist with the recruitment of safe workers. We believe that there are some adjustments that need to be made in respect of the Queensland regulations in the Act in order to convert them into regulations under our Health and Safety in Employment Act which are appropriate for New Zealand. It's not, we say, an impossible task and it could be undertaken by a technical advisory group which would include the appropriate government expert industry and employee representatives.

**THE COMMISSION:**

Could we just be clear about that Mr Stevens?

**MR STEVENS:**

5 Yes.

**THE COMMISSION:**

10 You refer to both the Queensland regulations and Act but you've already said that Health and Safety in Employment Act, the New Zealand one would remain the parent –

**MR STEVENS:**

Yes the –

15 **THE COMMISSION:**

- Act if you like. Are you contemplating we might import the Act from Australia as well look at their regulations?

**MR STEVENS:**

20 Yes, that was I think, sir, covered in the, in our appendix but it is limited to one or two provisions of that Act needing to be adopted to enable the regulations to work. It is certainly not suggested -

**THE COMMISSION:**

25 I see, okay.

**MR STEVENS:**

– as a wholesale adoption of the Queensland Act. The focus is on the regulations.

30

**THE COMMISSION:**

Yes.

**MR STEVENS:**

But when you move up from them, sir, there are some limited provisions in the Act that would be required.

5

**THE COMMISSION:**

To make the regulations workable?

**MR STEVENS:**

10 Yes.

**THE COMMISSION:**

Okay, Mr Holloway seems to have a good understanding of this. Could he perhaps give us a reference in due course as to just where we need to marry up the two?

15

**MR STEVENS:**

He can, sir, and there'll be a part at the end if time allows where I'll be asking Mr Holloway to add to these submissions. So I think really, sir, that that probably takes me to paragraph 21, "If Solid Energy disagrees with the Department of Labour submission that New Zealand should go it alone with a bespoke regulatory response to the Pike River tragedy, the department only employs a handful of mining specialists and most or possibly all of whom have an operational focus.

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25 1624

It's submitted that the resources to reinvent the wheel simply do not exist and even if they did, it would be better used in other ways. Nor are New Zealand mining conditions so different that a unique regulatory framework is required and Solid Energy agrees with the MED submission that there are certain basic technical principles, design parameters and risk factors that apply to any coalmine and I think that with respect echoes Commissioner Bell's question this morning that the same risks exist irrespective of one's scale. The Department of Labour has submitted that the harmonisation of law can take

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more than a decade. This is not what is required or what Solid Energy is proposing. Harmonisation is a fundamentally different process from adaptation of an overseas regular, regulatory or legislative model which does not necessitate negotiations between states and for example, New Zealand's competition law statutes are based on equivalent Australian regime and Personal Properties Securities Act and Privacy Act owe much to Canadian legislation and it's not our submission to suggest that the slow process of harmonisation be progressed but rather the quicker adoption of best practice and we had settled upon the Queensland model for that.

10

However well intentioned and hard working the Department of Labour mines inspector it was at the time of the Pike tragedy not adequately resourced or operating in a way that allowed it to recognise the risk present at Pike and respond with appropriate measures. Based on the subsequent evidence given to the Commission by both Kevin Poynter and Michael Firmin, Solid Energy disagrees with many of the opinions expressed in the Gunningham and Neal report and I think that's been sufficiently canvassed today.

The Department of Labour's response to the Pike tragedy including setting up the new high hazards unit – sorry was the new high hazards unit, Solid Energy welcomes the additional investment in mines inspection that the high hazard unit represents and notes the positive influence of Gavin Taylor's temporary appointment. And perhaps sir if I can just pause here and say again that if the impression was that Solid Energy did not welcome a strong inspectorate that was I assure you erroneous. Nevertheless, as part of its final submission Solid Energy's carefully considered the characteristics of best practice mines inspectorate and where the high hazard units the most sustainable or suitable way of meeting the challenges of that. Underground coalmining is a particularly specialised industry for which good workers are in very high demand and Solid Energy's view, the high hazard unit sitting within a super Ministry will always struggle both to attract people of the type required and to employ a sufficient number of people with a wide enough range of expertise.

30

We do not believe that a resource challenge mine inspectorate which is nevertheless able to seek external advice from technical experts on a case by case basis will ever be as good as full service mines inspectorate. So I turn to  
5 paragraph 28, it's also relevant the importance of the relationship with the mines inspectorate as capable of building with mine operators and the EPMU has suggested that Solid Energy is opposed to the mines inspectorate or to unannounced inspections. It's not our position sir and I would with respect wish to refer the Commission to just a couple of pieces of transcript which  
10 were not in our final submission and it starts at page 3431 and it's the evidence of Craig Smith and it's both some of his evidence-in-chief and his cross-examination and with your leave sir I'd like to just remind the Commission of that starting at line 4 of 3431. And the question was, "I think that there was a subsequent meeting. Can you confirm with John Kay,  
15 Paul Hunt, Bill Cowley and Lincoln Smith and yourself?" And that's the meeting with the Department of Labour and Mr Smith goes on and then it was, "And at that meeting what if anything did you ask about what motivates the visits?" These were the impromptu visits. "Well I was keen to clarify a couple of things. The first was that I made it clear to Mike and John Kay that it was  
20 their prerogative to visit the mine whenever they felt the need to and as frequently as they felt the need to and that they, and that we would do our best to facilitate that and make that as efficient as possible but I did say that we don't have, if these visits can happen anytime around the clock but if they're unannounced that there would be inevitably be a delay while the  
25 transport and personnel were made available. So that was the first thing I want to make clear was that it was his prerogative but if it was unannounced there would be inevitable delay for him as he needed to understand that was not designed to frustrate, it was just a fact of life." He goes on then be asked, "And the other issue that I discussed was I was very keen to understand what  
30 was motivating the visits." And he was asked, "Why do you want to know that?" and the answer I think is important sir, "It's very concerning you know, we have a culture and a system where we actively encourage and facilitate people communicating any issue they have either with their supervisor or their

supervisor's supervisor or direct to the production manager or direct to the manager or direct to me or if all of those fails, through the safety steering group, so there are a number of avenues for people to actually raise issues and if they weren't raised, raising them through this process then that was of concern. The second concern was that if there were issues that we weren't aware of then that was a hazardous situation and we needed to understand confidentially if it needed to be if there were personnel problems then we needed to battle with those and I encouraged Mike, that's Mike Firmin to share with me what his concerns were and I'm afraid I didn't get any sense actually about whether it was any of those reasons or whether it was purely a desire for him to carry out an impromptu inspection for the sake of it." And he continues on later down that page of 3432 at line 23, "The only restriction is that they needed to be accompanied. They're not licensed or qualified to walk down or drive a machine down into the pit on their own. So they need to be accompanied by a Solid Energy staff person who's qualified to do so. But other than that we take the instructions from the inspectors we ask him where he wants to go, what he wants to see and it's entirely his call as to he wishes to talk to," and then a couple of pages on sir at 3444 and 3445 in cross-examination by Mr Hampton.

20 1631

"Mr Smith, did I pick up something akin to indignation or at least resistance to the idea of impromptu visits by the mines inspector to Solid Energy Mines. Am I correct or incorrect in that?" and the answer, "Well no not indignation, I think we are an open book, I think as far as the way we practice our mining and Solid Energy's operations an while we understand the need of the Department of Labour to satisfy themselves that everything is going on, on all operating shifts and to respond to bits of information they may have received. As a first pass I suppose I am a little bit indignant that the inspector does not take into account our effort as he designs his visit and shares with us his motivations." And that is the only reference by Mr Smith to indignation and is with respect although it's repeated in the EPMU submissions it is them putting indignation to Mr Smith. And he goes, the questioning goes on, "So because you say you've got a good record that means that in your view mines

inspectors should come on impromptu visits?” “No I didn't say that.” “Well what do you say, what are you saying please?” “I'm saying that the, that the bottom line for us is that the inspector is able to do what he wishes to do and that we will take whatever steps we can to facilitate his inspections. We're

5 trying to create an open relationship with all of our staff so that people understand their responsibilities and those responsibilities are to report hazards, report incidents, report non-compliance, right through the management team, right through the organisation, if that's not happening then we want to know about it and if people feel that they can't actually report

10 hazards or report non-compliances for whatever reason, we want to know about it.” And he continues on at some length and it includes, sir, the concern that if there was some disclosure to the inspectorate we didn't need to know the details of by whom but we should at least know what the hazard was that might be concerning the inspectorate 'cos we need to know it and that leads

15 sir to the, and I would wish to raise it 'cos it only got filed on Friday, but it was the – not sure if the inspectors have seen the survey by the Jonah Group which was independently taken at Spring Creek Mine. It was a survey of 126 people and it was done independently and it was as to the safety culture at that mine and with respect it paints a very different picture and I could just

20 get through some of the answers with your leave, sir, to that. There were in total Jonah Group undertook a survey involving 119 questions and the options if they were applicable were Strong Disagree, Disagree, Mixed, Agree, Strongly Agree. And I'd start with question 11 and this is in direct contradiction to the submissions put forward by EPMU. Question, “I believe

25 my superior is really committed to safety” and it's the bottom reading there that is the Spring Creek and the benchmark is the Jonah Groups surveys over nine years. And 93% agree that their supervisor is committed or strongly committed and only mixed of 7% and none disagree. The next one please 13,

30 “My supervisor really tries to reduce the risk levels as much as possible.” 91% agree, 9% are mixed, none disagree and I'm not in picking these out saying that the results are perfect but this is I think an objective assessment of the attitude to a safety culture and it's one that we voluntarily do and encourage. 23, “My superior follows up issues when they promise to do so.”

There is 1% disagree, 13% mixed, 86% agree. Next please 26, Ms Basher. "I know where to go in the case of emergency." 98% I'm sorry – do you have 26 Ms Basher, thank you. 98% there agree, 2% are mixed. The next one is 40 and 41, the next two. "I know how and when to report an incident." Again everybody, well 96% agree or strongly agree and only 4% are mixed, none disagree. And as to whether it's hard to report an incident, sorry, "That it isn't hard to report an incident." Again 93% agree it isn't hard, 5% are mixed, and 2% disagree. The next one please at 56, "That it's important..." I'm sorry sir, I became aware of this in response to a statement of evidence that was filed by Mr Bolderson, so at 56, "It's important to report minor incidents because we can learn from them." And again 97% agreement or mixed and therefore only 3% disagree. 58 please Ms Basher. "It's important to report hazards because we can learn from them." 99% agree, 1% mixed. At 72, "People in my team usually intervene if one of us is working unsafely." 87% agree or strongly agree they'd intervene, 10% mixed and only 3 wouldn't.

1638

Next one, and I choose this one deliberately because of the issue of contractors that have been raised, and to the best of my knowledge it's the only one that doesn't total up to 100%, that happens to be 101 but I presume that's part of the statistics. Contractors are expected to follow the same safety practices as employees, 90% agreement, 5% mixed, 6% disagree. Next one, next two please, 91 and 92, I'm confident to intervene if I see someone behaving unsafely, 100% neither agree or mixed only 5% mixed, no one disagrees. And in terms of an intervention being an obligation, not an option, an identical result. And finally, I would report or raise a safety hazard even if it doesn't directly affect me, 98% agree or are mixed with only 6% of that being mixed. Now I raise that sir in final submissions because it is linked to the criticisms that are raised through the statement recently filed by Mr Hampton and in terms of their submissions.

30 **THE COMMISSION:**

Mr Stevens, what percentage of employees responded and what's the margin for error?

**MR STEVENS:**

I don't know but I'm happy to ascertain that. But I know that the number sir that responded –

**5 THE COMMISSION:**

126.

**MR STEVENS:**

126, and the breakdown is also given in the survey. So, for instance, 55% of  
10 the respondents were mine workers, 16% maintenance workers, 14% supervisors. So I take that as representative but I will happily ascertain that information for you sir. And I note obviously that's an independent survey.

**SUBMISSIONS CONTINUE: MR STEVENS**

15 When I come to the employee participation and representation I think that is partly reflected by that survey but I will have Mr Holloway talk to that section of the submissions. I've dealt with the tripartite oversight, which is at paragraph 38. Perhaps can I note though paragraph 39 in the synopsis in terms of the interaction between safety and health and other laws relevant to  
20 mining. In broad terms Solid Energy's view is that the different policy objections and functions of mine inspectorate, the resource allocator, that's New Zealand Petroleum and Minerals, the landowner and the environmental regulator, should not be duplicated. It's noted above Solid Energy supports the imposition of safety and health threshold by the mines inspectorate before  
25 mining starts. It also supports measures that reduce the likelihood of resources being unproductively tied up or sterilised by undercapitalised or incompetent users and Solid Energy also supports looking at ways of making regulatory process more joined up but not double-up.

30 Can I turn then please to underground mine emergencies and I think that here we do have, with respect, quite a divergence with the police. And the position that we come to is that MEMS should be adopted. Our conclusion is that, and

it sets sincerely, despite the good intentions and hard work that, by the police and other agencies, that the conduct of the emergency operation, the search rescue recovery operation was suboptimal and we strongly believe that management of any future underground coal mine emergency is likely to be

5 similarly so optimal unless changes are agreed, and in particular so that the incident controller is a senior underground coal mine expert who's got familiarity with the mine, present at the site of the emergency, and empowered to control the incident. And our written submission, and I don't intend to repeat that but there are a number of instances, we say, where critical issues

10 were not addressed. And you heard instances in the evidence, such as Mines Rescue having to be Googled, questions about Australian Mines Rescue personnel arriving and who were they, what were they, what was their objective, why did they have 500 kg of luggage, things like that.

15 To achieve what we are seeking we therefore recommend the adoption of MEMS. We endorse the face for submission by Alan Thompson. And the police's concern at losing command of resource, with respect, we say is all founded. Solid Energy understands that the purpose of CIMS is to promote agreed framework for controlling an incident and just as where the police

20 operate under a local authority incident controller during an earthquake, command remains vertical within each participating agency. We had quite a lot of that this morning. In the event that Solid Energy does not agree that the police implemented CIMS at the Pike incident, and I list some particular concerns from the police submission on paragraph 45, and given the time sir,

25 might I take those as read but could I perhaps just use an analogy. If a Cook Strait ferry got into strife I don't –

1644

**THE COMMISSION:**

Well can I just interrupt you Mr Stevens. Mr Stevens, you've got a time

30 allocation of an hour and you know, you're entitled to that. If need be we'll sit on to hear from Mr Holloway a little while after 5 o'clock to complete Solid Energy's submissions so there's no need to miss things out and that's –

**SUBMISSIONS CONTINUE: MR STEVENS**

Well I'm obliged to that, sir, then I will, because I am conscious of the time, I will go back then to paragraph 44 if I may. Solid Energy does not agree that the police implemented or followed CIMS during the Pike River incident. The degree to which the standard incident management principles were departed from at Pike is indicative in Solid Energy's submission of how difficult indeed impossible it was for the police to adapt to an emergency which, with respect, they did not understand. And an anecdote in terms of that was that on the Tuesday afternoon they, you might recall that the West Virginia Department of Homelands Securities were emailing and the police were considering in response to that and I think it was 5 o'clock on the Tuesday how many rescue bases there were and what the air pressure was within the Pike Mine. Now any competent underground miner would have just known that that was of no use and the individual while he lead a team in terms of emergencies such as Upper Big Branch it transpired had no mining qualifications and yet repeatedly you see and I will mispronounce his name if I attempt to but Mr Giannato was referred to as someone that was providing invaluable advice. With greatest respect, it, that cannot have been. That was a mine where people were sheltering I think some four kilometres away from where the explosion took place. I'm sorry, that was Sago but it's nevertheless representative of some of the very fundamental issues, the issue of survivability and Solid Energy has noted the following aspects of the police submission was quite acute concern. Firstly the incident management team still seems to be regarded as amorphous committee albeit that they say it's to be kept to a minimum. That risk of life decisions instead of being made by the incident controller should be made at a high strategic level and by an unidentified person but "possibly engaging the commissioner of police" and whatever that might mean. That it's regarded as acceptable in some circumstances to implement a forward command which makes operational decisions and possibly even accommodates the incident management team while the incident controller is elsewhere. That the risk assessments must take place at the forward command, to be peer reviewed by separate experts on behalf of the incident controller, to be peer reviewed by yet more separate experts on behalf of the

response co-ordinator and the case of decisions reserved to the strategic level. And the fact that the police have made these recommendations indicates to Solid Energy that the nature of underground coalmining emergencies remains fundamentally misunderstood. Very quick decisions  
5 maybe required to preserve life. A large building fire is a much better analogy than a search and rescue operation despite the relevant calm above ground, the situation within the Pike Mine was extremely dynamic, complex and dangerous and in Solid Energy's view it is not sufficient to be a professed expert in generic emergency management which is what the police  
10 undoubtedly have. Solid Energy doubts that the New Zealand Fire Service would appoint a police emergency management expert to control a large and complex building fire with people trapped in it.

1649

Particularly where that police officer indicated an intention to seek  
15 independent expert advice on all risk of life decisions before deferring such decisions to another but more senior police officer elsewhere who would seek separate independent expert advice. We also reject with respect the suggestion of a conflict of interest. Expertise must override that in any event. We reject it absolutely and an analogy take if a Cook Strait Ferry was in strife,  
20 the suggestion that the area commander would be helicoptered on to the ferry and take over the control from the captain would be frankly absurd. You would continue to have the master of the vessel controlling that crisis and that we say is critical in terms of underground coalmine emergencies, that you must have that expertise at the site.

25

Solid Energy has considered but does not support the alternative proposed by the Department of Labour of appointing an incident manager. Such a structure would be much more contrary to CIMS than appointing a non-lead agency incident controller. And in reality, all important decisions would likely  
30 remain divorced from those in the best position to make them. Incidents like Pike River are thankfully rare. In Solid Energy's views it is impractical to expect anyone other than miners who live and breathe the mine and the mine where they work in to train to the point of being in the same or better place to

make the kind of decisions which are required during underground coalmine emergencies. And might I add, decisions that are required urgently. That I repeat is not a criticism of both or should it detract from the sincerity and the efforts that the police undertook at Pike and it should not be interpreted like that. And there are one or two other things in response to my learned friend Mr Moore SC's submissions today, with respect I don't think you cannot call an (inaudible) the crisis and emergency response arrangements for East Mine to support the police's position. That is attached as attachment 3 to the evidence of Mr Barry Bragg. I've got the reference for the record, SOL38400/03.

It is I think also with respect somewhat telling secondly that experts assisting the Pike emergency on the West Coast with first class tickets and this is in the evidence of Craig Smith at 381667.001. "They were Steve Bell, Greg Duncan, Robin Hughes, Ian Judd, Kevin Patterson, Craig Smith, Dave Stewart." None of those were on those panels of expert advisors. Seven first class tickets who were on the spot. Multiple tertiary qualified people in addition are listed in that annexure to Mr Smith's evidence.

One other thing that I think is and should perhaps be noted is that in the Solid Energy model for the crisis co-ordination team take over the responsibility for communications, not the incident controller. Again, no criticism of the intentions and how hard the police worked but the incident controller we say needs to be at the site and solely focused on the emergency occurring at the site.

And perhaps last I just note although my friend didn't raise it, but it was in one of the early pieces of evidence a suggestion calling (inaudible 16:53:33) the Policing Act 2008 with respect, that Act does not grant any expressed powers and certainly not for what is proposed.

There are a couple of other matters before I hand over to Mr Holloway who will deal with the issue of chief inspectors and also a couple of matters in reply

in respect of the evidence on behalf of certain directors and officers and that's the issue around sealing the mine. Can I please correct the quote at 18.16 of our written submission? There is a misquote there of the Robin Hughes statement.

5

**THE COMMISSIONER:**

18.16?

**SUBMISSIONS CONTINUE: MR STEVENS**

10 Correct sir and if I could just refer to the briefs of both firstly Steve Bell but secondly Robin Hughes and they were filed on behalf of Mines Rescue Services. Mr Bell's is MRS0021 for the record and Mr Hughes is MRS0008/6. And if I can just briefly read two quick passages firstly from Mr Steve Bell who is one of those people with a first class certificate and who was at Pike and it was about the 1.00 pm ICM meeting on the 21<sup>st</sup> of November where he says, this is in respect of the view expressed there that there was a continuous fire within the mine and he said at paragraph 27,  
15  
1656

20 "We explained that the consequences would be great. Essentially the whole mine would start burning, including melting the chemical resins holding the mine roof box, roof falls were therefore likely to occur." And they then asked if he, Robin Hughes and Craig Smith could assess the situation and they came back to the meeting at 6 o'clock that night on the Sunday, and his evidence is this. "There was at the ICM held at 6.00 pm Craig Smith, Rob Smith,  
25 Doug Bird, and I were all present from MRS. Doug White and Steve Ellis were both present from Pike. We explained that the mine should be sealed by blocking the airways from the intake and return and the air compressor should be left running so that there was a source of fresh air in the mine in case there was still somebody alive inside. We emphasised the importance of reacting  
30 quickly before the situation got out of hand and a second explosion occurred, which would diminish the possibility of recovering bodies. The IMT kept emphasising that it was a rescue, even at this late stage." And then two paragraphs later, at 31, "The IMT was interrupted by Dave Bellett and

Johan Booyse from the Department of Labour. They stated that they had been talking with Crown lawyers who said the decisions to seal the mine would not be able to be made by the mine manager Doug White or the IMT. Any decision about sealing the mine would need to be made at a higher level and it would have to go to Crown lawyers in the first instance. They said no decision granting approval to seal would be made until there was clear evidence that there was zero life in the mine. We tried to ask DOL exactly what was meant by this but it was an impossible position and Craig Smith tried to explain that there was no way anyone could prove that there was zero life. We did not get any further explanation from the Department of Labour and we knew that our plan to eliminate the fire by sealing the mine was not going to happen.” And very briefly Robin Hughes, at paragraph 32 on MRS0008/6, “The IMT were asked the consequences of the coal catching fire. Steven Bell and I explained the consequences were grave because the fire may spread and the heat would damage the roof supports, roof bolts and cables resulting in an extensive roof collapse.” And I both correct that and site that in relation to the expertise that is required in such an emergency for such a fundamental issue, which I say was not considered. And the Department of Labour in its submission today suggested that it was supporting the sealing of the mine promptly when it became aware that zero life was possible. But with respect, there was the Ms McBreen-Kerr’s email on Monday the 29<sup>th</sup> of November, 10 days on, which talked about and was propounding the do nothing option. Ten days on and I think that was certainly after the second explosion if not the third.

25 1659

Now that comes to I think, while there’s a lot in common that we agreed with in terms of the EPMU, the issue of check inspectors, I propose that Mr Holloway deals with that and there’s also some issues that we would like to respond to in terms of the evidence of, sorry, the submissions of Ms Shortall where we say there’s no evidence to support that. I would also like to reserve our position, I note that for instance in the course of this afternoon a document by the Department of Labour has gone on to the website, that for instance, we

30

would like to consider sir. But if there's nothing further other than those matters I propose to pass to Mr Holloway.

**SUBMISSIONS: MR HOLLOWAY:**

Commissioners before I turn to check inspectors, you did raise the issue of there being one or two parts of the Coal Mining (Safety and Health) Act, the Queensland Act which may need to be looked at in order to develop a set of  
5 New Zealand regulations which are based on the Queensland Regulation but still work as coherent whole and I wouldn't propose to run through everything because there is an appendix to the final written submissions, but purely by way of example there are a number of definitions contained in the Act which the regulations simply don't function without cross-reference to.

10

Another example would be that the Act sets out various notices which parties need to give to the inspectorate and so provisions like that would need to be considered in order by those developing a set of New Zealand Regulations in order to make sure that what we end up with as a functioning whole. So that's  
15 where we're coming from on that.

In relation to check inspectors which is as one matter in which Solid Energy's view diverges from the EPMU and some others, our synopsis commences at paragraph 32 and we say that the final submissions on behalf of the EPMU  
20 and Solid Energy are largely in agreement on a wide variety of issues and that that's a good thing. Chief inspectors being an exception, however, we do agree absolutely with the theory, the academic support for and the practice of employee participation, employee representation and the importance of workplace safety culture. And accepting that and those things being the goal,  
25 the issue in our submission, the thing which needs to be considered, is how best to achieve that goal. Our recommendation for the future is very similar or even the same as what Mr King has already spoken about earlier today and that is that the new regulatory regime we are proposing includes the requirement that a mine safety and health management system provides for  
30 employee participation and representation and that the regulations underpinning that set a range of minimums of things which those plans must have. That would provide a framework which was transparent, auditable which the inspectorate could immediately turn to and assess an organisation

against. This requirement would operate in conjunction with the existing Health and Safety Act provisions including Part 2A the right to refuse work and the ability to issue hazard notices et cetera.

- 5 The evidence which we agree with is that employee participation and representation improves safety and health outcomes.

1704

The next step of selecting check inspectors as the tool for achieving that is, in our submission, not strongly supported by evidence. And I'll discuss that  
10 briefly with you. In relation to check inspectors there is evidence from Dr Callaghan which is, "I remain unclear as to how a check inspector or equivalent increases diagnostic accuracy." And the way I understand that is the ability to identify problems and respond appropriately. There is a statement referred to by Professor Gunningham which is evidence based  
15 research suggests that it is, "Where active involvement of workers is underpinned by legal entitlements to perform OSH functions and to receive training and information that is the most effective way of improving OSH outcomes." This is not, it is submitted, this does not, it is submitted, mean necessarily check inspectors. Solid Energy's recommendation is to put in  
20 place the same types of legal entitlements, albeit via a different framework, from the check inspector regime which has been promoted by some other parties. Professor Quinlan says, "There is a case for establishing a system of district and mine site check inspectors with appropriate training and powers. And we accept that there is a case for better providing for employee  
25 representation and participation and that check inspectors are one method of achieving that. But that is a different proposition from concluding that check inspectors are the best way, or the only way to achieve that. And lastly on the evidence, Professor Walters says, "There is an absence of robust research studies that have focussed specifically on these forms of worker  
30 representation, ie check inspectors in coalmines." He does, however, go on to say, "And we concede that the role and practice of these trade union representatives and additional powers vested in them have been commented on extensively and favourably." The existence, however, in our view of such

comment and opinion and support of check inspectors, while accepted doesn't make it the only answer. We are not going to say, and we don't say, that check inspectors add no value because that is clearly not the case. What Solid Energy is saying is that the same advantages of check inspectors, and potentially better advantages, can be secured by promoting and ensuring employee participation and representation in another way.

1707

**THE COMMISSION:**

Just so I've got this clear. You're responding at the moment to a list of experts relied upon by, in Mr Hampton's submission –

**MR HOLLOWAY:**

Both Mr Hampton and the Council of Trade Unions, sir, yeah.

**THE COMMISSION:**

So, yes, okay thank you.

**MR HOLLOWAY:**

The main point sir is that these experts, and we accept their expertise, all identify the same thing which we do which is the advantages to be secured from employee representation and participation. The next step of check inspectors hasn't actually been studied directly. My understanding is that's a concession made by those experts. They certainly offer views in favour of them. Our point I guess sir is that the same advantages can be secured in another way and we would submit a better way.

The short point is Commissioners, and this is in paragraph 37 of our synopsis that we can agree to disagree with the EPMU on that point, but it is submitted that nothing has been identified which makes check inspectors an inherently better solution than what has been proposed by Solid Energy.

And the last step really is to talk briefly about what Solid Energy's concerns are with the check inspector regime as opposed to what it is proposing and

this is in our written submissions, but briefly we consider that the union's check inspector regime as being promoted has the potential to make safety and health less of a collective endeavour by becoming a focal point for any unrelated industrial conflict and secondly undermining the engagement that every employee should have with safety and health matters and that was a matter touched upon by Dr Elder in his evidence. The most important relationship between mine operators and mine workers in a coal mine is and must be around safety. The last thing Solid Energy wants is for that relationship and teamwork to be corroded or undermined by conflating it with unrelated issues.

The very last and brief matter Commissioners, is that it's covered in our synopsis were a few limited submissions in relation to factual findings.

**15 THE COMMISSION:**

Paragraph 51?

**SUBMISSIONS CONTINUE: MR HOLLOWAY**

Correct sir. The submissions on behalf of certain directors, officers and managers of Pike River Coal Limited draw some conclusions, we say from the evidence, that can and should be disagreed with. Paragraph 1.1.32 of those submissions state, "Moreover, although Dr Elder claimed that the company had done, "Insufficient coal seam and geological investigation work, he conceded under cross-examination that he had little, if any, basis for this sweeping assertion." No reference to this alleged concession is provided by way of a footnote, but for the record we say Dr Elder did not resile from his opinion during cross-examination and Solid Energy stands by it now.

To clarify Dr Elder's evidence, which has perhaps in some cases been misunderstood or taken the wrong way, from the information available to Dr Elder and his team at the time, he formed the view that Pike River would be a mine under pressure as a consequence of insufficient planning and information the West Coast environment and overoptimistic goals. Being a

mine under pressure does not necessarily mean an unsafe mine, or a mine with poor operational management. Dr Elder was explicit that he had never been in a position to form a specific view on the status of the safety management practices at Pike River. The purpose of Dr Elder's evidence was to explain to the Commission, from the perspective of a New Zealand coal mining company chief executive, some of the challenges that PRC faced. Whether or not PRC's officers met those challenges is a matter for the Commission.

1712

10 With reference to paragraph 8.1.7 of my friend Ms Shortall's submissions, Solid Energy fails to see how its own safety and health performance is relevant to the opinion expressed by Dr Elder. Similarly, with reference to paragraph 7.2.13 the cross-examination of Craig Smith did not change Solid Energy's institutional view that Mr Mason appeared out of his depth and that the company was trying to extract coal without fully understanding the conditions or investing in the necessary development in infrastructure. Again unreferenced by footnote is the statement in paragraph 7.2.13 that Mr Wylie accepted that there were no significant differences between Spring Creek and the company. We say significant differences always existed between Pike River and Spring Creek and if this statement is an accurate reflection of Mr Wylie's evidence, which is not accepted, that evidence in our view is wrong.

25 Finally Commissioners Solid Energy does not understand why paragraph 8.2.11 of my friend's submissions refer to a newspaper article about an alleged incident in preference to the best evidence given to the Commission by Paul Hunt and indeed the Department of Labour about that same incident.

30 **COMMISSIONER HENRY:**

My questions are about check inspectors. My understanding is there are two sorts, the site check inspector concept and the area check inspector.

**MR HOLLOWAY:**

Yes sir.

**COMMISSIONER HENRY:**

5 In regard to the site check inspector concept, does it necessarily require that person to be representing the union? In regard to the site check inspector is that person representing in some way the union or union members only under your understanding?

10 **MR HOLLOWAY:**

I can only give my understanding of the proposals which have been put forward but I understand that it would be a union representative, is that correct? Representing everyone but from the union.

15 **COMMISSIONER HENRY:**

Elected by the union?

**MR HOLLOWAY:**

Correct.

20

**COMMISSIONER HENRY :**

Members of that site?

**MR HOLLOWAY:**

25 Correct sir unless I've got that wrong Mr Hampton. So at the moment sir the proposal by Solid Energy is to have still elected representatives and indeed that is what happens at the moment and there is an engagement is my understanding with the EPMU about electing representatives on to the health and safety and health steering committee at the moment sir.

30

**COMMISSIONER HENRY:**

So what is the actual concern you have? I mean you've told us that you want to take the Queensland regulations pretty well wholesale. When you get to

this bit, you don't want to take this bit. What is the actual concern you have with the proposal?

**MR HOLLOWAY:**

5 There are two separate issues there sir. Firstly it is not Solid Energy's position to take the Queensland regulations wholesale. Quite clearly there in our view need to be adaptations. It shouldn't be for Solid Energy to dictate if its proposal were to be taken forward by everyone what the answer should be. There needs to be a conversation about - the stakeholders about what the  
10 regulatory regime should look like. Our view is the sensible starting point is to the Queensland regulations and our analysis has been to show that something which looked like that would work for New Zealand. In relation to the check inspector part of that, in our submission it isn't a piece of the puzzle that if removed the entire regime stops functioning, that there's another way of  
15 meeting the needs around employee representation and participation and to support Mr King's submission, what we propose is infinitely more flexible than something tried in a statute or a regulation that different organisations of different scale, dealing with different circumstances provided they meet regulated minimum standards, can design their own way of meeting the  
20 objectives of employee participation and representation.

1717

So there is in our written submissions reference to what Solid Energy understands is, and in some cases, the way in which the check inspector regime can become mixed up with industrial issues and present challenges  
25 around that in Australia and detract from the collective team work approach which we say should exist in relation to safety and health matters.

**COMMISSIONER HENRY:**

So do you think there is evidence from the Australian experience of check  
30 inspectors going beyond their health and safety responsibilities and in some way influencing let's say an industrial dispute?

**MR HOLLOWAY:**

My friend is going to say that we have nothing but anecdote and in a sense that's true because we have not put in evidence on this point and didn't see this as probably the right forum to do that but if you'll take it from the lawyer's  
5 sir, my client's view is, the answer to that question is yes. But I can't take it further than that without having evidence to refer to.

**COMMISSIONER BELL:**

Just on the check inspectors. Isn't it possible to legislate so if they do get  
10 involved in industrial matters they can be dismissed or removed from mines, as happens in Queensland?

**MR HOLLOWAY:**

Yes.  
15

**COMMISSIONER BELL:**

Well wouldn't that address some of your concerns?

**MR HOLLOWAY:**

20 Certainly it would address some of the concerns. I don't think that and I can say it doesn't change Solid Energy's view that what it's proposed is a better solution but I can't say no to that question.

**COMMISSIONER BELL:**

25 Well would it surprise you that I have very little evidence that there's any – that that's actually happening in Queensland in terms of industrial interference?

**MR HOLLOWAY:**

30 You're better placed than me sir. I'm not going to disagree with you.

**COMMISSIONER BELL:**

Well I can assure you that's the case.

**MR HOLLOWAY:**

I'm not going to disagree with you.

**5 THE COMMISSION:**

I'm sure this argument is going to be growing legs tomorrow.

**MR HAMPTON QC:**

I won't come sir.

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**THE COMMISSION:**

I don't – I hold out nil hope that we're going to have any agreement about it, but your argument effectively Mr Holloway is that using a mine's health and safety management plan as the basis for prescribed requirements of worker participation is preferable, that enjoys the benefit of flexibility and regardless of what has just been said you hold some concerns that a requirement for check inspectors carries some risks as well?

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**MR HOLLOWAY:**

20 Correct sir, and perhaps I can add just one thing to that which is probably in our view the most important thing is to identify the policy problem which is to say – identify employee participation and representation as a good thing and then the discussion around how we meet that goal is a complex one. There are undoubtedly different views, those views can be based on anecdote  
25 experience, ideology, a range of things, but perhaps if that is a debate that needs to be played out then another forum for that in terms of allowing the parties to have the opportunity to put their concerns more fully would be appropriate.

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30 I know that there is certainly that expert evidence which supports concluding the benefits for employer representation and then gives the opinion for the next step of saying we think check inspectors are good thing. But it would be

good to hear from those experts more fully as to why for example they've selected that tool.

**THE COMMISSION ADDRESSES COUNSEL**

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**COMMISSION ADJOURNS: 5.22 PM**