

Conduct of the inquiry

Establishment of the commission

On 29 November 2010, Prime Minister John Key announced the decision to establish a Royal Commission on the Pike River Coal Mine Tragedy. Its function was to investigate the tragedy and provide a report to the governor-general.

Cabinet approved the terms of reference and appointments to the commission on 13 December 2010 (CAB Min (10) 45/11). Justice Graham Panckhurst was appointed the commission's chair with David Henry and Stewart Bell appointed as commissioners.

The commission was given broad terms of reference (see Volume 1) that required it to examine and report on the causes of the explosions, and the consequent loss of life, as well as the adequacy of the regulatory regime, its administration including the mines inspectorate and the search, rescue and recovery operation.

Biographies of the commissioners are available in Appendix 3.

The establishment of the commission coincided with parallel inquiries undertaken by the coroner, the Department of Labour and the police.

By the end of December 2010, two barristers, James Wilding and Simon Mount, were appointed as counsel to assist the commission. A third, Kerryn Beaton, was appointed in May 2011.

The commission's executive director (Anne Carter) began work on 1 January 2011 (until 17 May when a new executive director – Vanessa Johnson – took over the role). The commission was initially Christchurch-based and moved into offices there in January 2011. The Canterbury earthquake on 22 February 2011 forced relocation to Wellington in early March, which delayed the commission's work.

Participation, process and procedure

The commission established processes and procedures tailored for the needs of the inquiry. Its terms of reference, and the parallel criminal investigations, posed special challenges.

Participation

An expression of interest process was used to identify intending participants. During January 2011 advertisements seeking expressions of interest were placed in New Zealand and Australian newspapers.

By the nominated date, 18 February 2011, over 60 expressions of interest had been received.

The expressions of interest were categorised into groups, and applicants given 'standing' – the ability to participate in the inquiry – at three different levels:

1. **Parties** – those who had a substantial and direct interest in the subject matter of the inquiry.
2. **Interested persons** – entities or people who satisfied the commission that they had an interest in the inquiry over and above that of the general public.
3. **Witnesses/submitters** – people who did not fall into the above categories but were likely to have evidence or information relevant to an aspect of the terms of reference.

Expressions of interest continued to be received throughout the life of the commission. By the end of the inquiry, 110 participants, some of them organisations representing multiple individuals, had been accorded standing.

The list of participants is available in Appendix 4.

Process

On 5 April 2011 the commission conducted a preliminary hearing in the Greymouth District Court to outline its intended approach to the inquiry and to allow for input from participants. Before the hearing the commission issued a minute that described its intention to divide the inquiry into four phases and included a provisional list of the issues the commission intended to focus on.

After the preliminary hearing the provisional list of issues was revised. The final list of issues is in Appendix 6.

The four phases as finally constituted were:

Phase One – Context covered mining law and practice, the interaction of mining law and other law, the New Zealand mining inspectorate, and the geography, conception, approval, design and development of the Pike River mine.

Phase Two – Search and rescue covered all aspects of the search, rescue and recovery operation, including the immediate cause of death of the 29 men, with a focus on what should be changed for the future.

Phase Three – What happened at Pike River? focused on the cause of the explosions, the company's operational, management and governance practices, and the regulatory oversight provided by the mining inspectorate at Pike River.

Phase Four – Policy aspects involved submissions relating to the whole inquiry:

- comparison of mining law and practice and environmental considerations in New Zealand and overseas;
- consideration of the future shape of the New Zealand mining inspectorate; and
- a comparison of overseas models.

Preliminary hearing 5 April 2011

On, 4 April 2011, the eve of the hearing, the commission met representatives of the families of the 29 men. This gave the commissioners and other members of the commission an opportunity to mix with and meet family members before the first hearing.

During the hearing, the commission outlined the procedures it planned to follow and received feedback from participants. It then finalised its processes and drafted rules of procedure designed to facilitate the conduct of the inquiry.

Evidence

Participants were invited to file evidence and relevant documents in tranches, reflecting the four phases of the inquiry. This written evidence was the primary source of information used to respond to the terms of reference. It was, however, supplemented in a number of ways.

The commission's analysts evaluated the written evidence and, where required, it was supplemented by additional evidence provided on request, or sometimes in response to compulsion notices or written questions by the commission. In addition approximately 90 interviews were conducted by the commission's investigator or counsel assisting, including several in Australia with experts, consultants and others who had knowledge relevant to the inquiry.

The commission used two Australian experts to help analyse and interpret information on such issues as gas analysis, mine rescue plans, best practice health and safety systems and some others.

The commission also met with Australian experts to discuss the explosion, and with and representatives of government agencies in relation to policy.

The written evidence received by the commission was assessed to determine who should be called to give oral evidence at the public hearings. Witnesses were selected according to criteria that included the significance of the evidence, whether it conflicted with other evidence and whether it might adversely affect the interests of anyone.

The written evidence was made available electronically to participants,¹ as were the commission's practice notes, minutes and hearing plans. Participants could access, through a secure website, the 'core' documents identified by the commission as crucial to participation in the hearings. They could also request access to documents or all evidence by way of an electronic 'briefcase' of documents from the commission's Summation evidence management system.

Communications

From the outset, the commission felt it essential that its process and progress were open to the scrutiny of the media and the public. Transparency was promoted in various ways.

The commission's public website <http://www.pikeriver.royalcommission.govt.nz> was its key channel to New Zealanders and people overseas and a regular e-newsletter also provided updates to the public. The public hearings were a further focal point; there was media access throughout the hearings, which were live streamed over the internet.

Family liaison and assistance for employees and contractors

The commission ensured that the families of the 29 men were informed about the progress of the inquiry. Counsel representing the families facilitated this, often following liaison with their counterparts, counsel assisting the commission.

The Focus Trust, a Greymouth organisation that provided services and support to the Pike River families, was another key liaison point for feedback from and communication with the families.

As with other participants, families received official communications from the commission and had access to information and evidence on the secure website. They also had access to the commission's public website, and many chose to receive the commission's e-newsletter.

Two lawyers, Kathryn Dalziel and Lisa Hansen, were appointed to provide information and advice to assist employees and contractors at Pike River to participate in the commission if they wished to do so.

Procedure

The commission's procedural requirements were notified by the electronic distribution of minutes, practice notes and hearing plans to all participants. These were also publicly available.

A minute contained information relating to procedure, hearings, evidence and many applications of participants.

A practice note set out the commission's rules of practice and requirements in relation to filing evidence, the conduct of the public hearings and obtaining access to the secure website, among other matters.

A hearing plan provided advice of the witnesses to be called at the public hearings and related details.

On 16 August 2011 the commission held a conference with counsel to discuss Phase Three due to issues arising from the concurrent Department of Labour and police investigations.

In total, 15 minutes and four practice notes were issued. These were made available on the commission's public website.

¹ Allowance was made for a small amount of suppressed or confidential evidence.

² Ibid.

Hearings



Figure A.1: The commission in session at Greymouth District Court

All the oral hearings were held in Greymouth, the community most directly affected by the tragedy. It was also the most convenient location as numerous witnesses were West Coast residents, as were many of the family members who regularly attended the hearings.

Hearings provided an opportunity to clarify or shed new light on evidence gathered. They also provided a forum for evidence to be aired in the public domain – sometimes for the first time since the tragedy occurred.

The commission sat for 51 hearing days, including the preliminary and final submissions hearings, over a period of 12 months.

Venue

The Greymouth District Court provided a convenient and appropriate hearing venue. With an average of 40 family members and members of the public attending each day, the need to refer to documents, video and image files, and the requirement to accommodate the commission, counsel for participants and the media, the court building had the necessary space, technology and parking.

The commission thanks the Ministry of Justice and the Greymouth District Court staff, particularly Cassandra Jones, who was registrar during the hearings, for their role in facilitating the hearings and supporting the commission.

Arrangements

Information technology – desktop monitors, on-screen projection and specialised document management software – used in the hearing room allowed counsel, the commissioners and the witnesses to view and call up evidence from documents filed with the commission.

Daily transcripts prepared by the Ministry of Justice’s National Transcription Service were available from the commission’s website by 6:00pm on the day of each hearing. More than 5700 pages of transcript were generated during the hearings. The speed and quality of this service were invaluable.

Hearings were live streamed over the internet by TVNZ and TV3 News. A media centre and access to a pool media feed from the hearing was provided within the courthouse to media representatives. Media who attended the hearings were, on application, also provided with copies of the witness statements and access to key documents.

The commission acknowledges the commitment from media organisations to coverage of its work. It also appreciates the contribution of TVNZ and TV3 in providing a pool media feed and live streaming from the hearings, and that of the New Zealand Press Association and The Press for providing pool media photography.

Witnesses

Fifty-one people appeared as witnesses at hearings in Greymouth, including a number of experts, family members and Pike workers who travelled from overseas to appear. Options for video-conferencing were available but not used.

All witnesses had a prepared witness statement. They took an oath or affirmation before giving evidence. Some read their evidence in full; others were led through it. Witnesses were questioned by counsel assisting and, with leave, by counsel representing other participants. The commissioners also asked questions.

Ten suppression and management orders were made by the commission during the public hearings. Eight remained in place at the end of the inquiry.

Under the Commissions of Inquiry Act 1908 witnesses had the right to decline to answer questions to avoid self-incrimination. The commission scheduled witnesses and ordered the phases in an endeavour to limit the need for claims of privilege. Some witnesses exercised their right to not answer certain questions.

Twenty-six compulsion orders were issued under provisions of the act.

DATE COMPULSION ORDER ISSUED	WHO	PURPOSE
20 April 2011	Pike River Coal Ltd, Dipak Agarwalla, John Dow, Arun Jagatramka, Sanjay Loyalka, Stuart Natrass, Raymond Meyer, Antony Radford, Surendra Sinha, Peter Whittall, Gordon Ward, Douglas White, Michael Lerch, Graeme Duncan, Denis Wood, James Ogden	To obtain information and copies of documents
12 May 2011	Douglas White	Appear as witness
2 June 2011	John Dow	Appear as witness
9 June 2011	Neville Rockhouse	Appear as witness
15 July 2011	Department of Labour	To obtain information gathered by the department in pursuance of its statutory powers
4 August 2011	Stephen Ellis	Appear as witness
27 October 2011	Stuart Natrass	Appear as witness
10 November 2011	Antony Radford	Appear as witness
6 December 2011	Petrus (Pieter) van Rooyen	Appear as witness
15 December 2011	Graeme Duncan	Appear as witness
13 February 2012	Robb Ridl	Appear as witness

Figure A.2: Compulsion orders issued

Phase One – Context

Hearing dates: Monday 11 July to Friday 22 July 2011

Phase One examined the New Zealand regulatory environment, the mining inspectorate and the geography, conception, approval, design and development of the mine.

Five chronologies summarising information from some of the more than 30,000 documents received in evidence during this phase were prepared by the commission and distributed in advance to participants and the media and made available to the public on the commission's website.

These chronologies covered the following topics:

1. New Zealand Mining and Coal Production Profile
2. Pike River Coal Ltd: Permits, Access Arrangement and Resource Consents
3. Pike River Coal Ltd: Financial/Company
4. Pike River Coal Ltd: Board, Management and Workforce
5. Pike River Coal Ltd: Mine Development.

Twelve witnesses gave evidence over 10 sitting days.

The following witnesses were called:

- Dr Donald Elder, Chief Executive Officer, Solid Energy New Zealand Ltd
- Dr Jane Newman, Geologist, Newman Energy Research Ltd
- Robin Hughes, former Chief Inspector of Coal Mines
- Henry (Harry) Bell, former Chief Inspector of Coal Mines
- Alan Sherwood, Senior Geologist, Ministry of Economic Development
- Robert Robson, Manager Petroleum and Minerals Policy, Ministry of Economic Development
- Colin Dall, Consents and Compliance Manager, West Coast Regional Council
- Craig Jones, Community Relations Officer (Concessions), Department of Conservation
- Mark Smith, Director, West Circle Ltd, contracted to Department of Conservation
- James Murphy, Workplace Health and Safety Policy Manager, Department of Labour
- Michael Firmin, Health and Safety Inspector, Department of Labour
- Peter Whittall, Chief Executive Officer, Pike River Coal Ltd (in receivership).

Phase Two – Search and Rescue

Hearing dates: Monday 5 September to Friday 23 September 2011

Phase Two examined the search, rescue and recovery operation at Pike River. Twenty-seven witnesses gave evidence over 15 sitting days.

The witnesses called were:

- Nigel Hughes, Detective Senior Sergeant, New Zealand Police
- Mattheus Strydom, former Electrician, Pike River Coal Ltd
- Daniel Rockhouse, former miner, Pike River Coal Ltd

- Douglas White, former General Manager, Pike River Coal Ltd
- Neville Rockhouse, former Safety and Training Manager, Pike River Coal Ltd
- Glenville Stiles, trainer contracted to New Zealand Mines Rescue Service
- John Taylor, Project Investigations Manager, Solid Energy New Zealand Ltd
- Adrian Couchman, former Safety Training Co-ordinator, Pike River Coal Ltd
- Daniel Duggan, former Control Room Officer, Pike River Coal Ltd
- Grant Nicholls, Assistant Commissioner, New Zealand Police
- Gary Knowles, Superintendent, New Zealand Police
- Darren Brady, Manager, Safety in Mines Testing and Research Station (SIMTARS), Queensland
- Timothy Whyte, Industry Safety and Health Representative, Construction, Forestry, Mining and Engineering Union, Australia
- Seamus Devlin, State Manager, New South Wales Mines Rescue, Australia
- James Stuart-Black, National Manager, Special Operations, New Zealand Fire Service
- Stephen Ellis, Statutory Mine Manager, Pike River Coal Ltd
- Susan (Lesley) Haines, Deputy Chief Executive, Labour Group, Department of Labour
- Trevor Watts, General Manager, New Zealand Mines Rescue Service
- Lauryn Marden, family
- Tara Kennedy, family
- Sonya Rockhouse, family
- Carol Rose, family
- Martin Palmer, family
- Richard Valli, family
- Bernard Monk, family
- Craig Smith, General Manager, Underground Mines, Solid Energy New Zealand Ltd
- Peter Whittall, Chief Executive Officer, Pike River Coal Ltd (in receivership).

Phase Three – What happened at Pike River?

Hearing dates: Monday 14 November to Thursday 24 November 2011,

Monday 5 December to Friday 9 December 2011, Wednesday 8 February to Friday 17 February 2012

Eighteen witnesses gave evidence over 22 sitting days.

The November 2011 hearing examined the performance of the mines inspectorate and hydro mining at the mine. All Phase Three hearings examined systemic issues.

The witnesses called were:

- Michael Firmin, Health and Safety Inspector, Department of Labour
- Kevin Poynter, former Health and Safety Inspector, Department of Labour
- Alan Cooper, Practice Leader, Health and Safety Practice Development, Department of Labour
- Dr Kathleen Callaghan, Director, Human Factors Group, Faculty of Medicine, University of Auckland

- David Stewart, Mining Consultant, Minserv International Ltd
- Craig Smith, General Manager, Underground Mines, Solid Energy New Zealand Ltd
- Masaoki Nishioka, Consultant, Seiko Mining and Construction Ltd
- George Mason, former Hydro-Mining Co-ordinator, Pike River Coal Ltd
- Stephen Wylie, Deputy, Pike River Coal Ltd (in receivership).

On 10 November 2011 the Department of Labour laid charges under the Health and Safety in Employment Act 1992 against Pike River Coal Ltd (in receivership), VLI Drilling Pty Ltd (Valley Longwall) and Peter Whittall. The commission considered it inappropriate to require Mr Whittall to provide further evidence while he awaited determination of the charges.

The December 2011 hearing examined Pike River Coal Ltd's health and safety systems and safety culture.

The witnesses called were:

- Adrian Couchman, former Safety Training Co-ordinator, Pike River Coal Ltd
- Albert (Alan) Houlden, former leading hand, McConnell Dowell Constructors Ltd
- John Dow, former Chair, Pike River Coal Ltd
- Neville Rockhouse, former Safety and Training Manager, Pike River Coal Ltd.

The February 2012 hearing examined the immediate causes of the first explosion on 19 November 2010.

The witnesses called were:

- Brett Murray, General Manager, National Services and Support, Department of Labour
- David Reece, Australian mining consultant and expert adviser to the Department of Labour
- Anthony Reczek, Australian electrical engineering consultant and expert adviser to the Department of Labour
- Douglas White, former General Manager, Pike River Coal Ltd
- Petrus (Pieter) van Rooyen, former Manager, Technical Services, Pike River Coal Ltd.

Phase Four – Policy aspects and submissions

Phase Four covered submissions on all phases and policy issues, in particular mining-related issues, and search and rescue practice, which, in light of the Pike River tragedy, require a changed approach.

The commission posed a series of questions (see Appendix 7) on which it sought the input and views of participants.

The final submissions hearing held in April 2012 allowed participants to express their views on policy matters in a public forum.

The commission also consulted government agencies in New Zealand as it developed its policy perspectives and recommendations.

Final submissions

Hearing dates: Monday 2 April 2012 to Wednesday 4 April 2012

The commission received final written submissions from participants on all factual questions, and in relation to policy

aspects and recommendations. Those who wished to speak to their written submission did so at a final public hearing in Greymouth.

Sixteen participants spoke in support of their written submission through counsel or a spokesperson:

- Certain directors, officers and managers of Pike River Coal Ltd (in receivership)
- Coal Association of New Zealand (supported by Straterra Inc)
- Department of Conservation
- Department of Labour
- The families of the Pike River deceased
- McConnell Dowell Constructors Ltd
- MinEx Health and Safety Council New Zealand
- Ministry for the Environment
- Ministry of Economic Development
- New Zealand Amalgamated Engineering, Printing and Manufacturing Union.
- New Zealand Council of Trade Unions
- New Zealand Mines Rescue Service
- New Zealand Police
- Neville Rockhouse, former Safety and Training Manager, Pike River Coal Ltd
- Solid Energy New Zealand Ltd
- Douglas White, former General Manager, Pike River Coal Ltd.

A judicial review

On 18 July 2012 certain former directors and officers of Pike applied to the High Court at Wellington (CIV-2012-485-1441) to judicially review decisions of the commission not to reconvene the public hearings to hear evidence from new witnesses and not to permit access to the final report before it was given to the governor-general. Prior access was sought to protect fair trial rights in relation to a pending prosecution. The applicants also sought an interim order to prevent delivery of the report before the judicial review applications were determined.

The application was dismissed.

The final report

The terms of reference required the commission to report by 31 March 2012. An extension to 28 September 2012 was sought and granted on 7 February 2012 (CAB Min (12) 3/1). A further extension to 30 November 2012 was sought and granted on 27 August 2012 (CAB Min (12) 30/7)

The initial extension was required largely to enable additional evidence to be received and taken into account from the parallel inquiries conducted by the Department of Labour and the New Zealand Police. This, including an investigation report by the Department of Labour, became available to the commission in late 2011, after charges were laid and the further evidence was publicly examined, particularly at the hearing in February 2012. The further extension was to accommodate the judicial review application and consequential resourcing implications.

The commission records its appreciation to both the Department of Labour and New Zealand Police for their co-operation in making available evidence obtained in their investigations.