

UNDER

THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF

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

TRANSCRIPT OF PRELIMINARY HEARING

Before: The Honourable Justice G K Panckhurst, Judge of the High Court of New Zealand and
Commissioner D R Henry CMNZ and
Commissioner S L Bell, Commissioner for Mine Safety and Health, Queensland

Date of hearing: 5 April 2011

Appearances: J Wilding and S Mount as Counsel Assisting
N Davidson QC and R Raymond for the Families of the Deceased
S Moore and K Anderson for the New Zealand Police
C Mander and A Gane for the Department of Labour,
Department of Conservation, Ministry of Economic Development and Ministry for the Environment

N Hampton QC and R Anderson for the New Zealand Amalgamated Engineering, Printing and Manufacturing Union Inc (EPMU)

S Shortall for Pike River Coal Limited (in receivership)

G Galloway and J Forsay for the Mines Rescue Trust

M Heron for URS NZ

T Stephens for NZ Oil and Gas

J Billington QC and P Woods for Rockwall Automation

R Buchanan for the NZ Fire Service Commission

R May for Valley Longwall International Pty Ltd

R Wilson for NZ Council of Trade Unions

J Bayley for NZ Coal and Carbon Ltd

B Latimour for Coal Services Pty Ltd

G King and D Butler for the Pike River Contractors and Suppliers Group

C Stevens and A Brown for Solid Energy NZ Ltd

G Nicholson and S-L Stead for McConnell Dowell Contractors

D Wood for Leonard Richardson

P Hall for Gary Campbell

5 **JUSTICE PANCKHURST:**

Good morning everyone. I am Justice Graham Panckhurst and the chair of the Pike River Royal Commission. This is of course the first public hearing of the Inquiry. As you all know we are here because of the tragic loss of 29 men in the mine. It is only appropriate therefore that we commence the hearing with a time
10 for reflection. So I am going to ask everybody to stand and observe one minute of silence as an opportunity for quiet reflection about the loss of the men and as well the loss that their families continue to suffer as a result. Could you please stand.

ONE MINUTE SILENCE OBSERVED**JUSTICE PANCKHURST:**

5 Thank you everyone. The hearing this morning will comprise, first of all some
introductions in relation to the Commission itself followed by an opening
statement from me and then I will call for counsel to make their appearances
followed by submissions concerning any issues relating to the standing of
parties and interested persons and others for the purposes of the Inquiry and
10 that stage will then be followed by submissions from counsel in relation to
process issues which we are grateful have already been foreshadowed in large
measure as we apprehended it in the memorandum that had been filed. So first
of all the introductions, just to add a little more about myself, I'm a High Court
Judge based in Christchurch. I've been in that position for the last 15 years and
15 therefore known to many of the counsel who are here today. For the present
and indeed for the foreseeable future I am working on a full-time basis in relation
to this inquiry. My two colleagues to my left and right will now briefly introduce
themselves starting with Commissioner Henry who is sitting on my left.

20 COMMISSIONER HENRY:

Thank you, Mr Chairman. Good morning everybody. My name is David Henry.
My background is Government management. I am a former Commissioner of
Inland Revenue and a former Chief Executive of the Electoral Commission. I've
spent quite a number of years also as a consultant involved in reviewing
25 Government agencies. I might say that, despite my accent, I came to
New Zealand 48 years ago. Thank you.

JUSTICE PANCKHURST:

And to my right is Commissioner Bell and he likewise will introduce himself.

30

COMMISSIONER BELL:

Thank you, Chairman. Good morning, ladies and gentlemen. I'm currently the
Commissioner for Mine Safety and Health for the State of Queensland in
Australia and my background for the last 30 years has been involved in the

investigations of mine fires and explosions. I'm also responsible for the mines inspectorate in Queensland as well as the explosives and portraying the gas inspectorates.

5 **JUSTICE PANCKHURST:**

I was intending as well to introduce Ms Anne Carter who is the executive director of the Commission and I can't for the moment – Ms Carter is on secondment working fulltime for the Commissioner as our, as I've said, as our executive director and she is therefore responsible for the day-to-day
10 administration of the Commission. She has ordinarily a senior official in the Department of Internal Affairs and it is that Department of Government which provides the administrative support to this Commission and indeed to other Commissions of Inquiry. Although a Commission is appointed by the Government, the Commissioners are completely independent of Government
15 influence and that is an important point which we make at the outset.

The purpose of this Inquiry: of course no one can reverse the tragic events of the 19th of November last. What this Inquiry can do is to address and endeavour to answer three main questions. What happened at the mine? Why
20 did it happen and what can be done to prevent it happening again? We trust that these are the three shared objectives of all who proposed participate in the work of the Commission. Another fundamentally important point to be made at the outset is that this is an Inquiry, it is not a Court case. As it happens we are using a courtroom for the public hearings but that is a matter of convenience or
25 perhaps, in reality, more a matter of necessity because of course in using a courtroom we have all of the capabilities which are inbuilt and which we may need to use in the course of the hearings, including screens and the like.

No one is on trial. There are no sides. No one will win or lose at the end of the
30 process. Indeed as Commissioners we cannot determine legal rights and liabilities. A Commission of Inquiry is charged with the responsibility of inquiring into the matters raised by its terms of reference and also the responsibility to report to the Government. In short our job is to find out what happened, why and what must change for the future good. In terms of approach the

Commission intends to adopt processes and conduct the Inquiry in a manner which is fair, open, thorough, but also expeditious. We seek the active cooperation of all participants throughout the inquiry.

5 Counsel assisting the Commission will have a central role in this regard and they are James Wilding and Simon Mount who are sitting in counsel's benches on our right side as we look and they will enter an appearance with other counsel a little later in the hearing. Their role is to represent the public interest. They will endeavour to facilitate the work of the Commission. They have full authority to
10 act on behalf of the Commissioners in resolving practical procedural issues and so we urge counsel and participants in general to discuss issues of this nature with the Commission's counsel. Indeed, we anticipate that most procedural questions will be able to be resolved in this manner and short of the need for our intervention.

15

At the hearings counsel assisting will be the voice of the Commission. In performing that role we expect that their approach will be an impartial one. As to our powers as a Commissioner of Inquiry we have a number of powers to find by statute. These include, for example, powers in relation to the obtaining of
20 relevant documents and to compel, if necessary, the attendance of witnesses. It is not our intention to use their powers in the first instance. As I have already said, we will seek cooperation but the powers will be used if the need arises. Because this is an Inquiry our procedures will differ from those in an ordinary Court case. I shall mention some of the important differences.

25

Evidence will be gathered from a number of sources. Unlike a Court case, where the Judge effectively receives whatever evidence the litigants present, a Commission must control the evidence gathering process. We shall therefore call for relevant documents from a number of sources. We will also receive
30 information and submissions from those in the witness submitters group. Others who consider they have material which is relevant to the subject matter of the Inquiry may contact the Commission and they too will be assisted, if necessary, and listened to. The relevance and value of all this information will be assessed. Material which is considered both relevant and useful will be stored in the

Commission's electronic information system and will be available as material for the Commissioner's consideration. As previously advised, those who have been accorded the standing of parties and interested persons will be invited to file witness statements containing evidence in relation to the four hearing phases.

5 The Commission may also obtain evidence of its own accord.

Evidence from these sources will likewise be stored on the information system. The Commission may receive evidence which would not be admissible before a Court. We shall of course utilise this power where appropriate. But it's
10 existence should not be seen as an invitation to provide material based on rumour, speculation or unreliable hearsay. All of the information which we receive will be managed electronically to the greatest extent possible. The details of the information system are still under consideration.

15 The aim is to provide open access to materials stored on the information system so that participants know what evidence is available to the Commissioners, but access to the system will be subject to some terms and conditions. These will apply to material which is sensitive but which must be available to parties and interested persons and perhaps to some witnesses and submitters on a "need to
20 know" basis in advance of the hearings.

Evidence of the hearings, after the filing of witness statements by the participants, the Commission will determine which witnesses also need to give oral evidence at a public hearing. Counsel for those witnesses will lead the
25 evidence or, alternatively, if counsel are not available, counsel assisting may do so. Cross-examination of witnesses will be by leave. If a witness is critical of the actions of someone else, or if their evidence is significantly contradicted by other evidence, leave to cross-examination will be granted. Counsel will normally be permitted to re-examine witnesses whom they have lead. These
30 aspects and others will be further clarified by a practice note issued by the Commission.

Expert evidence will be filed with the Commission as in the case of other evidence. If there is competing expert evidence, we anticipate the use of

pre-hearing processes, which will seek to establish the actual extent of any disagreement. Then oral evidence from, and the cross-examination of, experts will be confined to those areas of disagreement, while areas where there is common understanding and agreement will not need to be explored at public
5 hearings.

Evidence recording will be by the normal in-Court FTR system, which counsel will be familiar with, and I should have explained at the outset that today's proceeding is being recorded. So those who may be taking notes can rest
10 assured that a transcript will be available although it may be a day or so away. At the public hearings there will be a short delay in the evidence becoming available to the participants, about the same turnaround as you are familiar with in the Courts. The record of each day of the hearings will be posted to the information system at the end of the day.

15 As you know, our hearing timetable involves 15 weeks of scheduled sittings, from late May to the end of October. This reflects the Commission's present view as to the likely time requirement for the public hearings, and that time estimate also takes into account the special processes which I have mentioned.
20 Finally with regard to procedure, the Commission will issue a practice note or, if need be, practice notes in advance of the first public hearings. It is not our intention that our processes will be particularly proscriptive in nature, rather we consider there is a need to maintain flexibility so that in conducting the inquiry we may adapt our procedures to meet any complications that may arise.

25 I turn next to the work programme. To this point the Commission has largely been focused upon process issues. You have received from us the provisional list of issues. I want to repeat and stress that that document is indeed a provisional one. It is based on the terms of reference and the Commission's
30 best assessment of the material it will need to see and the evidence it will need to hear to complete its work. We have endeavoured to be thorough but no doubt there are omissions and perhaps other deficiencies in the list. If so, please write to the Commission and tell us of your concerns. They will be considered. Counsel in many cases have raised matters and so have some of

the witnesses and submitters in the material filed in advance of today's hearing and I likewise give the commitment that the suggestions contained in that material will be fully considered.

5 The list of issues prejudices nothing. As Commissioners I give the assurance that we have open minds on all of the matters into which we are required to inquire. It is necessary to update you as to some actions that have been undertaken in the last month or so. Last month the Commission made a familiarisation visit to the Pike River Mine. We were flown over the general area
10 in order to see the ventilation shaft and other relevant features and we were shown the mine buildings, the portal and the coal processing area. Later that day the Commissioners and counsel who are assisting us were taken into the Spring Creek mine with the help and assistance, needless to say, of Solid Energy officials and we are grateful for their help. Our objective was to
15 gain some appreciation of what working underground entails to enable us to better understand and assess the evidence that we will hear in the course of the Inquiry.

Only last night we met the family members. This was an opportunity for the
20 members of the families to put a face to our names. From the Commission's perspective we were able to pay our respects in person and also hear of some of the day-to-day issues which the families face in the aftermath of their tragic losses.

25 The order in counsel by which the Commission was established late last year requires us to report and I quote, "as soon as practicable but no later than 31 March 2012." Our planning for the Inquiry has been based on this requirement. Our aim is to complete the hearing process before the end of the year. This will allow a period for writing the report. As you know our terms of
30 reference are very broad. This led us to the view that the only practical course was to divide the work into four parts. These are phase 1 which we have termed context. It is intended to provide the Commission and participants with an overview of New Zealand Mining Law and Practices as well as a detailed history of the development of Pike River through to its working situation in

November 2010. The aim of this phase, the context, is to set the scene for the phases which will follow.

5 Phase 2 is entitled, "Search and Rescue" and covers the cause or causes of the loss of the men's lives and all aspects of the search recovery – sorry, search, rescue and recovery operation.

10 Phase 3 is termed, "What happened at Pike River?" This is the heart of the Inquiry into what happened and why. It is important to note that the actions of the regulators, including the Department of Labour will comprise an essential part of this phase.

15 Finally, phase 4 termed or headed, "Policy aspects," is more forward looking. The Commission is required to report on whether New Zealand Mining Law clashes with other law including that relating to conservation and environment. We must also consider the resourcing for and work of the agencies responsible for the administration of mining law in this country and then, finally, in that phase a comparison is to be made of the New Zealand situation and that of other mining countries.

20

I made a plea a few moments ago for the cooperation of participants throughout the term of the Inquiry. That will be a period obviously of several months. I also explained that the Commission is not empowered to determine legal rights and liabilities of individuals or other entities. That does not mean, however, that an Inquiry such as this does not have the potential and the capacity to occasion serious harm to the reputations of those whose actions maybe under scrutiny. It is important therefore for all of us to reserve judgment until everyone affected has had a proper opportunity to be heard.

25
30 While the Inquiry is in progress, public comment on the evidence or concerning witnesses is not appropriate. Comment or criticism can, of course, be made at the hearings where those affected have an opportunity to defend themselves, but comment beyond that should not occur. Again, this is an area where the Commission has a coercive power, which it will use if all else fails. Anyone may,

of course, comment or criticise as they see fit following publication of the Commission's report.

5 I said also that one of the Commission's objectives it to ensure that the Inquiry is conducted in an open manner. The involvement of the media, therefore, is welcome.

10 Looking forward to the phase hearings in relation to the evidence, arrangements will be made to accommodate media representatives at those hearings. As required, a media officer will be on hand. In-Court coverage of the Inquiry will be permitted if sought, and subject to application being made. Terms similar to those in the media guide to in-Court reporting will apply.

15 If a demand exists, the proceedings will also be shown on a screen in the Court assembly area.

20 The Commission likewise asks for the co-operation of the media throughout the Inquiry. We request that the privacy of witnesses outside the courtroom be respected, and in particular we ask of you, members of the media, that you respect the privacy of family members who attend or participate in the Inquiry.

25 That brings me to the next element of the hearing, the opportunity for counsel appearing to announce themselves. For convenience, we shall do that essentially in the order in which counsel are seated, although there may be some departures, and starting with counsel for parties and then followed by counsel representing interested persons. I will refer to the parties and interested persons by name and then counsel are invited to stand and introduce themselves in the normal way.

30 First of all, counsel representing the families please.

MR DAVIDSON:

Your Honour, the Commissioners, Nick Davidson with Richard Raymond, Jessica Mills and Colin Smith.

JUSTICE PANCKHURST:

New Zealand Police?

5 **MR MOORE:**

Yes may it please the Commission, my name is Simon Moore and I appear with Ms Anderson. Also assisting the police is Ms (inaudible 11:34:10).

JUSTICE PANCKHURST:

10 Thank you Mr Moore. Counsel assisting?

MR WILDING:

Yes, may it please the Commissioners, counsel's name is Wilding. My learned friend Mr Mount and I appear as counsel to assist.

15

JUSTICE PANCKHURST:

Thank you. The Crown, which includes the Department of Labour, the Department of Conservation, the Ministry of Economic Development, and the Ministry for the Environment.

20

MR MANDER:

Yes, may it please the Commission, my name is Cameron Mander. I appear with Mr Gane who represents the Department of Labour.

25 **JUSTICE PANCKHURST:**

Thank you Mr Mander. The New Zealand Amalgamated Engineering, Printing and Manufacturing Union Incorporated.

MR HAMPTON:

30 Yes, thank you Commissioners, please, Hampton. With me I have indeed a third member, Mr Andrew Little, and Mr Rowan Anderson.

JUSTICE PANCKHURST:

Pike River Coal Ltd in receivership.

MS SHORTALL:

May it please the Commission, my name is Stacey Shortall.

5 **JUSTICE PANCKHURST:**

Thank you, Ms Shortall. The Mines Rescue Trust.

MR GALLOWAY:

10 Yes, may it please the Commission, my name is Galloway and I appear with Mr Forsay.

JUSTICE PANCKHURST:

Mr Galloway, thank you. URS Ltd.

15 **MR HERON:**

May it please Your Honour and may it please the Commissioners, my name is Heron. I'm here with the Chief Executive Officer of URS New Zealand Ltd. Thank you.

20 **JUSTICE PANCKHURST:**

Yes, thank you, Mr Heron. Rockwall Automation.

MR BILLINGTON:

25 If the Commission pleases, my name is Billington I appear with Mr Woods.

JUSTICE PANCKHURST:

Thank you Mr Billington. The New Zealand Fire Service Commission.

MR BUCHANAN:

30 As the Commissioners please, my name is Robert Buchanan and I appear for the Fire Service and also for the West Coast Rural Fire Authority. Those parties have also retained Karen Clark QC as leading counsel who is not here today.

JUSTICE PANCKHURST:

Mr Buchanan, thank you. Valley Longwall International Pty Ltd.

MR MAY:

May it please the Commission, my name is May.

5

JUSTICE PANCKHURST:

Mr May, just while you're on your feet can I just check something. The name of the company on occasions includes Pty, on others it does not. Do you know what the correct –

10

MR MAY:

The correct name includes the Pty, sir.

JUSTICE PANCKHURST:

15 It does, thank you. The New Zealand Council of Trade Unions.

MR WILSON:

Your Honour, members of the Commission, my name is Wilson. I appear on behalf of the council.

20

JUSTICE PANCKHURST:

Yes, thank you, Mr Wilson. New Zealand Coal and Carbon Ltd.

MR BAYLEY:

May it please the Royal Commission, counsel's name is Mr Bayley.

JUSTICE PANCKHURST:

5 Thank you. Coal Services Pty Ltd.

MR LATIMOUR:

May it please the Commission, my name is Latimour and I appear for Coal Services.

10

JUSTICE PANCKHURST:

Thank you. Pike River Contractors and Suppliers Group.

MR KING:

15 As it pleases the Commission, King appearing together with my learned friend Mr Butler.

JUSTICE PANCKHURST:

20 Thank you. Now if we can just clarify this, Mr King. As I understand it, you represent not only the contractors and suppliers group but also five individuals, Messrs Colligan, Smith, Markland, Cole and Moynihan.

MR KING:

Correct, sir.

25

JUSTICE PANCKHURST:

And is there some division as between you and Mr Butler or is a joint role that you'll be –

30 **MR KING:**

It's a joint role, sir.

JUSTICE PANCKHURST:

Thank you. Solid Energy NZ Ltd.

MR STEVENS:

May it please the Commission, counsel's name is Craig Stevens. I appear for Solid Energy New Zealand Ltd. I have present but not as counsel, general
5 counsel for the company and company secretary, Mrs Alison Brown.

JUSTICE PANCKHURST:

Thank you, Mr Stevens. McConnell Dowell Constructors Ltd.

10 **MR NICHOLSON:**

May it please the Commission, counsel's name is Grant Nicholson with Mrs Stead.

JUSTICE PANCKHURST:

15 Thank you, Mr Nicolson. Now, Mr Leonard Richardson is a witness and submitter.

MR WOOD:

Counsel's name is Wood, sir. I appear for Dr Richardson.
20

JUSTICE PANCKHURST:

Thank you Mr Wood. Mr Gary Campbell who –

MR PAUL:

25 May it please the Commission, Paul and Cook for Mr Campbell.

JUSTICE PANCKHURST:

Now is there an appearance for New Zealand Oil and Gas?

30 **MR STEPHENS:**

There is sir. My name is Stephens. I appear for New Zealand Oil and Gas Ltd.

JUSTICE PANCKHURST:

Thank you Mr Stephens. And also MinEx Health and Safety Council. There's
5 no appearance. The reason I ask is that a memorandum was filed this morning
or perhaps late yesterday by a Mr White for the council and I was unsure
whether there would be an appearance. Now out of an excessive caution is
there anybody who contemplated entering an appearance who I have not called
upon? Thank you. Right we can move on to issues relating to the standing of
10 participants. In anticipation of today we have received already and considered
indeed a number of written requests for changes in relation to the provision
standing determinations which were communicated to you a week or two ago.
So I propose to now announce some changes to the standing determinations
that were previously made. The first is, in effect, a correction Straterra
15 Incorporated and the Coal Association of New Zealand filed I think a joint
expression of interest and when we made the determination earlier it was
overlooked that they were separated entities who required a separate decision.
We now recognise that both enjoy the standing of interested persons.

20 Coal Services Pty Limited was provisionally placed in the witness submitter
group. They, in writing, sought to be classified or reclassified as an interested
person and that application is granted.

Ms Shortall, you may be able to help me with this. We've had, in your
25 memorandum, I think some observations that three directors of the company are
not listed as interested persons. The intention of the Commission was to
include those directors within the description that was used in the earlier
determination which extended to current and former officers of Pike River
Coal Limited so that the intention of our earlier decision was to accord standing
30 to the three directors you've named by virtue of that generic, if you like,
description. If that is not satisfactory well please let us know and we will revisit it
but that was our intention.

The New Zealand Fire Service Commission whom you've entered in appearance, Mr Buchanan, sought the addition as interested persons of three entities, being the West Coast Fire Authority, the New Zealand Fire Service as opposed to the New Zealand Fire Service Commission and also the
5 National Rural Fire Authority. We have considered those applications. They are granted and those three entities will be added to the interested persons list and, lastly, Mr Hall your application on behalf of Gary Wayne Campbell seeking standing as an interested person has likewise been granted.

10 Now may I just check with counsel assisting, Mr Mount, is there any other matter relating to the standing issues that we have already, you've already considered and made recommendations to us.

MR MOUNT:

15 Mr Chairperson, those are the only matters that have been brought to our attention at this stage.

JUSTICE PANCKHURST:

We anticipate there will be some further additions, probably to the interested
20 persons list. Expressions of interest were called for in Australia using the services of Commissioner Bell who of course has intimate knowledge of the industry publications in that country. Those expressions of interest closed last Friday. There have been, I understand, persons who have sought to be accorded standing before the Inquiry. So there will be a need for a revised list
25 which will be published, including contact details for any new people who have been accorded standing. This is also I think a convenient point, I think again it may have been you, Ms Shortall, who asked the question in the course of your memorandum what was meant by the word "participants," as used by the Commission in the preliminary documents which were issued in anticipation of
30 today's hearing. We meant to convey by that, anybody who has been ordered standing in any of the three groups to which I have previously referred.

Now, is there anybody present who wants to be heard in relation to an outstanding issue affecting their standing before the Inquiry? If there's nobody

who seeks to be heard in that regard, we can then move on to general submissions.

5 I should also mention for the benefit of counsel that, as I understand it, the proceedings today are being “live-streamed,” which doesn't mean quite what it might sound like. Apparently, the proceedings are being shown but with a 10 minute delay, and I mention that in case something should be said in the course of submissions which is a cause for concern and might occasion an application from counsel, you need to be forewarned of that complication.

10

So we can now embark upon general submissions. First of all, can I thank everyone who has filed memoranda in advance of the hearing. Can I also thank quite a number of witnesses and intending submitters who have filed, in the main, email communications to the Commission indicating their likely areas of interest and the sort of contributions that they propose to make during the course of the Commission's work. Needless to say, we have considered the memoranda which have been filed. It follows that counsel need only speak to the memoranda as they see appropriate, but I am not endeavouring to cut off anyone.

20

We are conscious there may also be matters arising from the memoranda filed by other counsel, and this is an opportunity to either associate yourselves with the suggestions of others or, if need be, distance yourself from submissions or suggestions which other counsel may have made.

25

I am hoping that perhaps some issues to a degree have been clarified in the course of the Commission's opening statement.

30

I think it's necessary to say at the outset that it is not our intention to endeavour to resolve issues in the course of today's hearing. Frankly, we face some issues which appear almost intractable at the moment. In any event, it is not feasible for three Commissioners sitting in this forum to determine matters as we go along. We shall, instead consider and reach our decisions as soon as we are able. It may also prove to be the case that it is advisable for counsel assisting to

engage in some further dialogue with counsel for parties and interested persons before we endeavour to address some of the more difficult matters that have been raised. As soon as we are able, we will respond to your various concerns and suggestions, whether by practice note, a minute of the Commission or
5 otherwise.

Now, with those preliminary comments in mind I then now propose to call on counsel in the same order as appearances were announced. Please be aware that transcribers will need to be able to hear you, and it would also be helpful
10 for the purposes of the record if each speaker mentions their name before they speak, although I will probably have mentioned it already. Anyone who does not have immediate access to a microphone can move forward to the third bench away from us and I trust that Mr Heron or Mr Stevens or somebody will make space available so that the microphone nearest to them may be used by other
15 counsel.

MR DAVIDSON:

Thank you sir, Commissioners, I propose to try and distil the memorandum that we filed on behalf of the families and to reflect the memoranda which have been
20 filed by the parties, some of which we received as late as yesterday and I only want to say one thing in introducing the position of the families and that is something about the role they perceive for themselves to understand the representation that we propose to provide. Their intent is to get to the truth, whatever that maybe, so it parallels precisely what this Commission has said
25 intends to do, is charged with doing. They also are to a family determined to learn what must be done to prevent a recurrence of this kind and to prevent a recurrence of any circumstance which even short of being a cause of the explosion on the 19th of November is relevant to the safety of people who work underground. Mining goes on and it of course is planned and they see their
30 participation and their vested interest in this Commission as reflected in the outcome by way of recommendation having identified cause in this case. They are not there to make a case. The families are not coming before the Commission to present any particular case. They understand their role to be to assist the Commission and I say that because there was a suggestion at least in

one of the memoranda filed that they are, as it were, conducting an investigation of their own. That is not true and I wish to give the light of that immediately. What has happened reflects the resources available to them. They have a team of lawyers known to the Commission but they have no investigators and they

5 have no expert witnesses available to them except to the extent those people provide a voluntary assistance. But what they have got is, and we know this now, is a huge resource of people who have come to them and through them to us as counsel because they know we represent the families and so whether it be by way of a natural sympathy for those families or by a determination in this

10 community to assist in getting to the cause and remedial measures required, they have come to us and we have now conducted in our own way something approaching 100 interviews with various people and it goes on. Our perception then of this, and our submission with regard to the timetable and the approach the Commission adopts is influenced by how we can assist with those people

15 coming before the Commission if their evidence is relevant and for that purpose the essential theme of our submission to you at this stage is the need for cooperation between counsel for the various parties and interested persons, so for example if we believe we have evidence which is relevant to an issue of consequence it's our intent to make sure it comes before the Commission

20 whether we call it or preferably the counsel for the Commission call it so that is the task which we have set ourselves at the present time.

There was some information or some evidence that we want to present on behalf of the families because it goes so much to the families' own interests

25 reflecting their losses and I have identified or we have identified in a memorandum one aspect of that and that is the central West Coast figure of Mr Harry Bell who come before this Commission through all phases both in phase 1 as to the change in the regime which applies to mining in New Zealand as to factoring the development phase and as to the conclusions which maybe

30 drawn. So we are determined not to extend this Commission but to try and synthesise with other counsel, not just Commission counsel but other parties, and we're very conscious that the largest resource and information now rests in the hands of the Department of Labour, the police and Pike River itself and we don't have access to that material so we seek the cooperation, as I'm sure other

parties do and as will Commission counsel, to obtain that and to make sure it's not unnecessarily duplicated when it comes before you.

5 There are of course in setting an agenda for this Commission or a timetable, inherent problems in the phasing and we have identified those in our memorandum and what I now propose to submit, we're looking for solutions not to raise obstacles of course. We hope this may be of some assistance. I will address this in phase 1 and speak to the question of documents with Mr Raymond's assistance shortly to encompass all phases. When we look at
10 the list of issues for phase 1, it is divided into two parts and the first, in parts 1.1 to 1.6, appear on their face to be matters largely of record. What are the recognised practices? There may be debate about that because as we understand the position recognised practices can differ and some parties may maintain they differ according to their own particular requirements of a particular
15 mine. But when we move to the second part of phase 1 which is 1.7 to 1.12, which includes the development of a mine, and in particular 1.11 and 12, the history of design development and construction of the mine and its associated system and the state of development and layout at the incident date. We have an issue which we have raised in the memorandum and that is how far
20 evidentially do we take those last two points because read strictly, on the state of development at the incident date, purely in terms of plans and where things were, would not necessarily reflect the events that were occurring around the 19th of November and immediately before. For example, the question of gas, what was observed? How it was reported? How it was dealt with? So there is
25 an issue about what that is intended to encompass and it's particularly relevant in terms of moving then to the search and rescue phase.

Our submission is that 1.12, if it is to be followed, if phase 1 is to be followed by search and rescue, then a critical feature is knowing exactly what was apparent
30 or should have been apparent to the police in charge of the operation, Mines Rescue in terms of their knowledge in assisting the police, in particular those parties, at the time they came to the mine. If it is only a matter of record of what existed, where the headings lay and so forth, it seems to us that it's going to miss a crucial element of the assessment of the way the rescue and recovery

process then took place. So we see that and it's referred to in several memoranda as an essential part of 1.12 which should be expressly identified and accepted as part of the phase.

5 **JUSTICE PANCKHURST:**

May I interrupt you, Mr Davidson, at that point. You're right, this is a theme which appears in memoranda of several counsel. I have explained why the Commission has divided the Inquiry into the four phases and the reasons for that I guess are blindingly obviously. We recognise at the same time that the
10 four phases are not hard-edged. It is not possible to neatly put into four completely separate compartments. The four component parts that are covered by our terms of reference and I think the example you have just given is a good one. The intention was that the context phase, phase 1, would be confined to essentially a narrative account pertaining to the mine but, as you've rightly
15 pointed out, that could logically exclude valuable information about gas readings at the date of the incident itself which is essential information for phase 2. So our answer would be that evidence of that kind can come in phase 1 because it is something which is a matter of record and therefore suitable for a narrative account if you like, and because it is of such importance to the phase that is
20 presently scheduled to immediately follow it.

I think the other point that needs to be made is a more general one, and that is that although we have somewhat artificially divided the work of the Commission into the four component parts, ultimately the evidence adduced in relation to all
25 four parts will be before us and we will borrow, as necessary, from each part in order to reach our conclusions and write our report, so that from our perspective eventually we will have all of the material. I know your concern is a slightly different one and that is that there may be an inhibiting effect in relation to one phase if information has not come out of a prior phase, but I think that is
30 answered by the observation that these should not be regarded as hard-edged divisions.

MR DAVIDSON:

Thank you sir, well that – with that indication the point of concern is met with
5 regard to phase 1. As to the positioning, sir, it's not only our submission, of
course, but Search and Rescue should come further down the line, but the point
just raised meets that to some degree. Our central point was that to assess the
search and rescue, as the terms of reference require now as issued, requires
10 the fullest knowledge possible. We recognise, however, there is another point
here at play and that is that one can't judge the performances of people, not that
this is a judgment but it's certainly measuring of actions and responses by
evidence which is derived later from an evaluated process. We do recognise
that. But we believe that the fullest position on the facts should be established
15 before phase 2 is attempted, and that is why we, along with others, have made
the submission that phase 3 should come forward before phase 2. We
recognise there are serious inhibitions or inhibitors to that, which I'll
acknowledge publicly in a moment, but in part, the matter just discussed, sir,
with you will meet that to a degree.

20 Now then as to the rest of phase 1, we have made a short submission regarding
timing. If we just look at the matters raised in phase 1 issues 1.7 to 1.12, there's
a lot in this. If this is a three week hearing time of four days, which is what we've
got each week, 12, effectively, 12 working days, it seems to us it's a long stretch
without knowing all the evidence that will be available. But our understanding is,
25 for example, just dealing with the matter raised, namely, what was the gas
situation in the mine the two days before 19 November, for example, it's more
than that, but just those two days, there would be a number of witnesses on that
issue alone. So I'm just raising that the 12 days to deal with all these issues
seems a long stretch, and particularly in the second part of phase 1.

30

I'm sorry it was, yes, it was only 10 days, but we're saying three weeks might be
short served but it is my submission. Twelve days would be still too short, even
over three weeks, and that's based in part on speaking to other parties about
their intentions which, of course, have to run past the filter of relevance and the,

or relevance by this Commission, so that's our position. Other parties will have other positions on that, on that issue.

5 We welcome, however, the indication in Mr Mander's memorandum, and it's paragraph 7, of the ability to provide a commentary and a narrative here with the departments involved providing such in phase 1. It seems to us hugely helpful to cut through the first part of phase 1.

JUSTICE PANCKHURST:

10 Well I hesitate to do so, but can I interrupt you again? It's my intention when Mr Mander speaks, to ask him to explain the exercise that has already been undertaken by Crown Law in advising the departments and ministries and the work that has been completed and what further work will be undertaken by those four entities because we have noted that quite a number of parties have
15 indicated an intention to provide evidence in relation to the regulatory environment part of phase 1. We had hoped that in the main that burden would be carried by the four departments and that hence there would only be a need for supplementary evidence from other participants and that might, one would think, most likely lie in the areas of practice and codes and so on which may not
20 be as well known and recorded as are the laws and regulations of mining.

MR DAVIDSON:

Yes, well we very much intend to follow behind on that as most parties will.

25 **JUSTICE PANCKHURST:**

Yes.

MR DAVIDSON:

30 So that takes me, with regards to phase 1, sir, to our schedule 2 to our memorandum which as to the provisional list of issues has sought the addition of paragraph 1.11 specific elements of the history of design, development and construction which we regard on the information we have to date as being a very important parts of your consideration and they seem to arise in this phase because they go to the way the mine was at the 19th of November. There is in

the second paragraph of the schedule 2 a request made by us to introduce a new paragraph 1.13 with regard to the financial history relevant to the development by the company. Tracking through the phases of development including capital raising, meeting targets, including bonuses and so forth, which we see as very much part of the immediate and relevant history in this phase. No party seems to have responded negatively to that proposal, sir, so I make it to the Commission and it may be that each of the elements there are seen as implicit in other issues which you have identified earlier. We ask that they be identified specifically.

10

That, sir, now takes me to the question of documents and although I wish to make some brief submissions with regard to phases 2, 3 and 4, I wonder now if I may ask Mr Raymond to address you on this. We are the party that has sought to coordinate with others with regard to the documents and so we've provided what looks like a fairly detailed index of documents in categories. The purpose of the categories in our schedule 1 is, after consideration by others and by the Commission, is if it works it allows a place for people to assess the documents that are relevant that they may be holding and to allocate them to these categories. So whether that's the right dictionary or not we're not sure but that's our proposal and, as Mr Raymond will develop, we have these categories where they fit with the terms of reference and where they fit with the sub-issues so parties have a cross reference point immediately as to relevance. So may I have Mr Raymond do that, sir, and come back to my brief submissions to finish.

25 **JUSTICE PANCKHURST:**

Yes.

MR RAYMOND:

Sir, thank you. Well as Mr Davidson has indicated that first schedule seeks to put the documents into various categories related to the terms of reference and to the various provisional sub-issues which the Commission has identified. The families' position is that all of the documents have relevance to the entire Inquiry and should in one form or another and there are different ways it might happen be produced for the benefit of the Commission and parties. So far as we are

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aware, Commissioners, no party has resisted the proposed production of those documents or the categories of them, either in memoranda or in the discussions we have sought to have with a number of counsel which I hasten to say hasn't been all of them but a number of counsel that we've been able to speak to in the
5 time available. There has generally been wide support for the general categories.

Acknowledging what you indicated earlier, sir, about not wishing to direct any party or oblige by order party to produce documents, we had in mind putting
10 forward to you a proposal which might see those documents come before the Commission in a logical way and that is that the parties who intend to file evidence or who may ultimately be directed to give evidence by the Commission if need be, indicate and they intend to give evidence, for any particular phase, should file and serve on the Commission by a specified date a list of the
15 categories of documents they hold relevant to that phase testing their relevance by reference to the sub issues which you have put forward. The Commission could then receive all of those lists of documents not in a typical litigious sense, not a list of documents in that sense, but the categories of documents, a list of categories of documents and the counsel for the Commission with the
20 assistance no doubt of counsel for the parties could identify what I've termed the primary provider of that category of documents to produce for that phase and if there is a gap in the relevant documents for that phase then another party be asked to plug that gap and provide the further documents which the primary provider has been unable to supply for whatever reason and in that way we
25 avoid replication of documents and there's a logical process to identifying which party has them and should produce them and that those documents then be made available to the digital repository that you have referred to an be accessed by parties subject to whatever terms and conditions might be appropriate and in this way we see that full disclosure of all of those relevant documents is made
30 without replication.

We also support, sir, the early identification of key documents as Mr Forsay and Mr Gallaway have outlined in the Mines Rescue Trust memoranda that it would be very helpful to the parties to have at an early stage before the process I've

just described a bundle of the key core documents which would benefit all parties in working from the same basis so that is an up to date plan of the mine as at 19 November indicating all of the relevant bore holes, whether pieces of equipment were of relevance and so on detailing what staff were working at that
5 time and in the preceding shifts and what their roles were and so on as outlined in the Mines Rescue Trust memoranda. We strongly support that as a sense of the course we'll take early on so we've discussed that process of filing of a proposed category of documents which might be available to each party for each phase with a number of counsel and it so far has found general support
10 but obviously I'm not speaking for those parties but that is the proposal, sir.

MR DAVIDSON:

Sir, the other matters I wish to raise are really preliminary only because we've had discussion with some other key parties in the Inquiry as to how we can go
15 forward from here. I don't wish to make any submission further on phase 2, except to say this, that trying to gauge from others what evidence they may call proves extremely difficult. We really have no idea how many witnesses may be advanced in phase 2 at all so assessing time really is the broadest guess but as to phase 3 which as Your Honour has said is the heart of this Inquiry, here the
20 families one way or another will ensure that significant evidence will come before the Commission.

The problem we're now facing which we have to address from in terms of timetabling is that quite apart from the announcement by the
25 Department of Labour yesterday that they were seeking an extension of time within which to lay charges, health and safety for each of the charges, we have always understood the shadow of an investigation or prosecution lay across this Commission and that is not only the Department of Labour but also the police investigation and our position reduces to this. We have an opportunity of course
30 to oppose an application for an extension of time in the District Court by the Department of Labour. We haven't settled on our position in that regard but we have a very grave concern that if a Department of Labour prosecution were to commence, then that of itself, or even an investigation which was leading towards a prosecution, would see a number of parties in one way or another

affecting the smooth running and complete running of this Commission, and it would occur clearly in one of at least two ways. One is that in terms of any self-incrimination, and, secondly, in terms of a public broadcasting of information relevant to a potential prosecution and I suppose, thirdly, in the investigators' book, then the airing of issues under investigation while interviews under caution are still taking place or sought creates a massive problem for the investigator prosecutor.

We have come out of our position on the Department of Labour's stance already in our memorandum as you will have seen. The families find it –

JUSTICE PANCKHURST:

Paragraph 31?

15 MR DAVIDSON:

Yes sir. Just because the public have not heard this obviously, the families have the gravest concern that a health and safety prosecution could, if taken to the point of this Commission stepping aside from consideration of the cause of the explosion, lead to delays which not only are unacceptable in themselves while the prosecution rends its way through a hearing process and perhaps an appellate process, but also it could have a most undesirable result of this Commission not reporting on an event the cause of which is unknown in respect of mining which continues to take place in this region and elsewhere and, therefore, would directly affect delivery of recommendations and findings, sir, relevant to the safety of people underground now.

Now we have identified that from the police perspective there is another argument to make which we have had the chance to discuss with Mr Moore this morning and he will address you on that. Now the police position could lead to a different response by us for the families, but it's not for me to anticipate that.

To put it simply sir and Commissioners, we do not want to see this Commission, this Inquiry, derailed or delayed, and we will do all we can within the bounds of

fair process to others, if they face investigation and potential prosecution, to see it continues.

5 So that is our position with regard to the progress, sir, Commissioners. I can't attempt to assess how phase 3 would run in time, other than to say that looking at the witnesses we know should come before this Commission, there would be at least four or five weeks of evidence identifiable by us and not necessarily called by us but identifiable by us. So, if that's called counsel for the Commission and other witnesses to that, eight weeks does seem to be a pretty
10 bold estimate, with respect.

I don't think, sir, I can add anything more until we hear from other parties at this stage. I know there are some inventive ideas around to get around the problems with phase 3, the cause of the explosion, including advancing phase 4
15 up into phase 1 or associated with phase 1, and then dealing with phase 2, and that would seem to avoid a direct confrontation between process issues to do with the cause of the explosion and any investigation or prosecution, but we're prepared to consider that from the families' perspective. Sir.

20 **JUSTICE PANCKHURST:**

Mr Moore.

MR MOORE:

25 Yes, thank you sir. Simon Moore for the police. I raise three matters. I don't think that I need to go through the memorandum which we filed, the three matters which, however, do emerge from that, that I do wish to raise. The first one arises out of paragraph 5 of our memorandum, which really relates to Terms of Reference B, which is the cause of loss of life. At the moment that's phase 2 and two weeks are set aside for that and I find myself in agreement with my
30 friend Mr Davidson on that estimate. I would have thought probably three weeks, but that will be determined and influenced by and on a considerable extent, sir, by the extent to which the findings of the Coroner and/or part of this Commission's determinations. At the inquest there were only two witnesses called.

JUSTICE PANCKHURST:

I take it you know, Mr Moore, we will receive that evidence from the Coroner.

5 **MR MOORE:**

Yes.

JUSTICE PANCKHURST:

10 Whether there is anything more that can usefully be added, the Commission does not presently know. Short of re-entry into the mine and recovery of the men, it may be that there is no further evidence but that is simply an impression not intended to stop anybody who considers that they have evidence that should be put before the Commission.

15 **MR MOORE:**

Exactly, sir, and that's the reason I have raised it. I mean it's quite apparent from the evidence given by Tasman District Police Commander Superintendent Knowles what the evidence he was relying upon was and it's quite apparent from the findings of the Coroner what he determined.

20

Next, sir, are paragraphs 8 to 11 of our submission which is a suggested phasing of the Inquiry and the timelines and I do need to put the police's position as clearly as it's possible to put it. The police investigation and the police as a principal lead agency with extensive powers and responsibilities of investigation are only partway through what can only be described, sir, as a massive criminal investigation. The police are committed to assisting this Commission as much as humanly possible but there will be some operational demands on them which, at least to some extent under the present timelines, may make – may create some difficulties. The police's emphasis at the moment is to collect, marshal, analyse and examine evidence relating to the deaths of the 29 men. And so it's a homicide investigation of huge proportions and to give an indication to the Commission of quite what that means I'm instructed that to date over 200 witnesses have been interviewed, literally thousands of pages already of transcript. Another 170 to about 200 witnesses are yet to be interviewed. There

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are at least 20 witnesses who are presently offshore and there is a police team leaving to interview those in Australia and elsewhere. There are senior Pike River executives yet to be interviewed. The indications are at least 20 of those. There is already a growing body of witnesses who will need to be re-interviewed
5 on the basis of information which the police have received as a result of their inquiries to date. So there is already a re-interview process taking place.

There's also the need to sequence interviews and that's something which requires careful management. There are obviously some interviews which need
10 to precede other interviews and that is because it's necessary to have a sound factual basis on which subsequent interviews can be drawn. Some interviews will obviously need to proceed under caution. I'm advised that the computer phase has only just commenced with the Pike River computers being cloned, five servers and the Electronic Crime Laboratory estimates there are
15 approximately 30 million documents in that phase alone. I'm not sure what documents they're talking about, whether they're talking about individual phases and obviously it's impossible for that to be done in a manual way but it does give some kind of indication at the sort of volume we're talking about. The volume of Greymouth operational files, those were files which have been filled with
20 information, filled with investigations and reports relating to the local phase. I am advised there were about 40 eastlights of that material. There's also the police national headquarters oversight files. Those have been brought together and will be coalesced with the Greymouth operational files and at least at this stage none of the email tracking, literally thousands of documents which were
25 meant to be separately downloaded and printed a part of that.

Over recent weeks I have spent considerable time with the senior police involved in the investigation attempting to obtain for the Royal Commission a
(inaudible 12:26:32) submitted when the bulk of the police's investigation will be
30 completed. I am advised that that is likely to be a date sometime in August. Obviously this creates difficulties for the commencement of phase 2, the search and rescue phase where the filing in at least the present stage the evidence is to be completed by the 10th of June and the evidence taking place for three weeks from the 4th of July and the commencement of phase 3 where the filing of

evidence is due to commence on the 1st of July. Again in the same spirit as my learned friend, Mr Davidson, looked at options as to how we might be able to manage that. One option, and I accept, that it may not be one which is particularly palatable to the Royal Commission is whether we could perhaps
5 place the present phase 4 after phase 1. Now I can understand why phase 4 is sitting where it is. That's certainly one option. The other issue obviously is that the police will do whatever needs to be done to assist the Commission subject to the over-riding requirement that they need to ensure the integrity of a major homicide investigation is maintained.

10

The third point is covered in paragraphs 12 to 16 of a memorandum which writes the timeframe for the search and rescue and recovery operation and I raise this because at paragraph 2.4 of the Royal Commission List of Issues it seeks the chronology of events and actions from the time of the first explosion to
15 the present time. Now if what is sought by the Royal Commission is a simple chronology that should pose no real difficulties but if what is meant by the present time is a detailed documentary analysis of every aspect of the rescue and recovery phase right up until present it does create some very real difficulties at least from the police perspective in terms of collecting, collating,
20 and analysing material which falls outside the time spectrum that the police are concerned with –

JUSTICE PANCKHURST:

Mr Moore, can I interrupt you?

25

MR MOORE:

Yes.

JUSTICE PANCKHURST:

30 We have had a preliminary discussion at least about this. I can indicate this much, that the provisional list of issues does contemplate that the situation will be looked at through to the present time. That reflects the fact that re-entry into the mine and recovery of the mine remains a very live issue so far as the families are concerned. But that said, the evidence that we anticipate will be

required will be at different levels of detail for different periods so while intense evidence or intensive evidence rather will be required in relation to the period that immediately followed the first and subsequent explosions, rather less detail will probably be required moving forward.

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MR MOORE:

Well that's reassuring and I can finish there.

JUSTICE PANCKHURST:

10 And also in that regard a number of parties have broached the subject of producing evidence in a form which might not strictly accord with the Evidence Act, supplying what has been both termed overview evidence or a statement of evidence is another phrase that's been used, both of those are encouraged by the Commission. If evidence is brought and produced in a
15 summarised form in the first instance, that will be received, given our powers to do so, if there are defects or problems in receiving evidence in that way, it can then be looked at.

MR MOORE:

20 That's helpful, thank you. So perhaps by way of summary, sir, we can see how we can proceed in relation to phases 1 and 2. At the present stage the timing for 2 is very tight from, from again from a police perspective. There is the issue of whether phase 4 can be brought forward. I recognise there are difficulties with that too, sir. I think the real issue which we all must confront and I think
25 everyone is realistic in this, is how we're going to deal with phase 3, bearing in mind the state at least of the police investigation at the moment and the way in which useful evidence can be put before this body. That may need to be examined on a witness by witness basis and cogent reasons given to the Royal Commission as to those witnesses who at least, if we're talking about a
30 period before the completion of the investigation phase, can be put before the Royal Commission. Unless there's anything in particular that I can assist you with that's all I propose to say.

JUSTICE PANCKHURST:

Mr Mander.

5 MR MANDER:

May it please the Commission. Perhaps if I can address the main issue and the most difficult issue which, in my submission, has been raised this morning and that is the police, so the joint police and DOL inquiry which is presently in train. I wish to endorse the submissions that have been made by Mr Moore this
10 morning. The investigation is an extremely large one, it's complex and difficult and it is going to create difficulties, in my submission, in terms of the timing of the phases as set out in the draft programme. Having said that, the department wishes it to be placed on record, particularly the Department of Labour, it affects the Department of Labour only in this regard, that it would seek to cooperate
15 with other counsel and with the Commission in an endeavour to work through that difficulty if it is possible and I'm not sure what particular types of arrangements could be negotiated or could be arrived at in an attempt to facilitate progress as it relates in particular to phase 3 but I do wish it to be recorded that the department would be committed to any such initiatives.

20

The other observation that I would wish to make in respect of the DOL/Police inquiry, is that it ought not to be qualified in any way in my submission that the product of that investigation ultimately will feed into this Inquiry, and it needs to be the best material unqualified in any way in order to assist this Commission of
25 Inquiry to do its task to its fullest extent.

In terms of some sort of time scale for the completion of the criminal investigation, the OSH investigation, such as an estimate of time can be given at this present time, it equates to what my learned friend Mr Moore has indicated to
30 the Commission, mid-August. However, mid-August would only be in terms of the completion of the inquiries. From that point on there would obviously have to be a period of time allowed for the analysis of the fruits of the investigation and, of course, most importantly, time for the, effectively, the exercise of

prosecutorial discretion, and that is something which cannot be, in my submission, rushed.

5 Having regard to this difficulty, the departments would be able to work to a rearranging of the phases, which would put phase 4 forward, phase 1 and then phase 4. However, I appreciate and acknowledge the logic and the reasoning for placing phase 4 at the end having regard to the matters that would have been covered in the preceding three phases.

10 It should also be noted that in respect of phase 2 that that potentially would raise issues relating to an OSH investigation in terms of rescue procedures, in terms of emergency processes that may have been, may or may not have been in place, and those are things that may potentially touch upon the OSH remit of investigation. However, I would also acknowledge that those discreet matters
15 ought to be able to be ring-fenced in terms of phase 2, and if there are any particular inquiries relating to the prejudicing or any particular matters that would lead to the prejudicing of the OSH inquiry in that respect, they could be identified and hopefully worked around.

20 Mr Chairman, you raised the topic of the work that is being undertaken to date by the government agencies and my learned friend Mr Davidson touched upon it. For the record, the agencies have been undertaking work to produce a joint report which outlines the legal and regulatory framework as it presently exists and as it existed at the end of last year. The work that is being undertaken can
25 be divided into two. First of all, a prescriptive outline or detail of the present regulatory framework, no one single agency or department has responsibility across the board of that regulatory regime. The Departments of Labour and Conservation and the Ministry of Economic Development together are providing a joint overview.

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The second part of that piece of work involves the creation of a timeline showing the way in which the present regulatory structure has come to be what it is today and that narrative of the development of the present regulatory environment will be supplemented by original documentation, policy documents, departmental

reports and the like, original documentation which will show the way in which as a result of policy changes over the years the system has evolved what it is today. So that work is presently underway and indeed is considerably advanced and hopefully will be of assistance to the Commission and indeed to all parties.

5

JUSTICE PANCKHURST:

Can I ask, Mr Mander, you've heard the observation that I made earlier that a number of the memoranda that we've received indicate there are participants who are contemplating making a contribution in this area to input into the regulatory framework. In light of what you've just outlined is it possible to provide in advance an index of what will be included in the work undertaken jointly by these four agencies, government agencies. That I should have thought would provide to other participants the indication of what, if anything, they may need to contemplate in order to supplement this over-arching exercise which is being undertaken through Crown Law Office.

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MR MANDER:

No, I see no difficulty in that, sir, whatsoever, some type of skeletal outline as to the contents of that material.

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JUSTICE PANCKHURST:

Yes, and index of – I will leave it with counsel who are assisting us to perhaps follow through but the availability of that at a reasonably early stage would hopefully help if it's possible.

25

MR MANDER:

No, I don't anticipate that being a difficulty at all, sir. One matter that has been raised by the agencies in its memorandum relates to the provision of information and the way in which confidential or sensitive information is to be handled and in the memorandum the issue has been raised and the suggestion made to the Commission that some guidance, perhaps from counsel assisting ultimately, as to the way in which those types of issues are dealt with according to a uniform process may be of some assistance. So directions in that regard as to how

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those potential issues might be resolved, in my submission, would be a useful topic to address.

5 Just turning back to the provision of evidence relating to the regulatory framework, paragraph 7 of the agencies' memorandum, a proposal that is made in terms of advancing work in that area in terms of amplifying and clarifying information provided in phase 1, is the proposal that a panel of departmental witnesses be made available. Rather than perhaps calling each witness individually, I just raise for consideration the possibility of providing a panel of
10 witnesses in order that when that person's knowledge or expertise comes to a conclusion, immediately there is another individual available who can answer the particular questions or inquiries rather than the need to call a series of witnesses one after the other.

15 Finally, I just wish to acknowledge the suggestion that has been made by counsel for the families as to the need to get hold of certain core documentation, and it is acknowledged that the agencies are largely the repository of that type of information, and I just wish it to be placed on the record that the departments would wish to work in a co-operative way in order to make that type of
20 information available.

JUSTICE PANCKHURST:

Mr Hampton.

25 **MR HAMPTON:**

Hampton. First in a general way, as will have been understood from the memorandum filed, counsel for the union have been working relatively close by the counsel for the families. There is a complimentary aspect. There are a number of members of the union that died underground and in that respect, to a
30 considerable extent, the union's interests are in accord with those enunciated by Mr Davidson earlier on today. There's one thing that the union wants to see out of all this if the Commissioners please, is a significant increase in the safety and health standards required for working in mines in New Zealand especially in underground coal mines and I emphasise "underground coal mines" because

that in itself, as the evidence no doubt will disclose in due course and, of course, I defer to your fellow Commissioner, Commissioner Bell and his knowledge in the matter, underground coal mining is a very considerably different animal to the mining of other metals. So having that introduction, the likely evidence to be
5 called in relation to phases from the union, and that's subject to what we've just heard from Mr Mander because that will be useful in regard to phase 1, was probably going to be on phase 1 and certainly on phase 4, but may be some, some matters in phases 2 and 3, but that's really waiting to see how things fall out.

10

There is mention in the memorandum, Commissioners please, about the order of phases and as outlined in paragraph 2.3, concern about phase 2 proceeding phase 3. I don't intend to take it further here. I've made the note there in that paragraph. What is of some concern, however, is the suggestion that's been
15 made on before of the police and the various departments here today, that phase 4 should follow phase 1. I suggest that's a rather sort of hollow exercise. Unless, with respect, the Commissioners know the defects and deficiencies that might be perceived within the present regulatory environment it's a bit hard to come to sensible conclusions in phase 4 with the greatest of respect. I won't
20 say more than that if the Commissioner's pleased but it seems to me to really be putting the cart before the house if we get to phase 4 before we, before you have come to view as to especially phase 3.

25

The enlarged or the suggestion that phase 1, as made by Your Honour to Mr Davidson a little earlier on, that latter questions and issues in phase 1 that to my mind with the greatest of respect, if the Commissioners please, raises the issue of the possibility of the need for cross-examination at least in some parts of phase 1 and I just signal that as mentioned in the memorandum.

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There are really two other matters that I wish to touch on, one of which has been mentioned or both of which have been mentioned in the memorandum, one is the actual logistics of the evidence and how it's going to be called. With the greatest of respect can I raise this as a proposition perhaps for counsel to think about and counsel assisting to think about as well that after the initial, one's

tempted to use the word “dumping of the evidence” at the deadline of a particular phase, there’s got be some assessment and discernment processes gone through both by the Commissioners by counsel assisting and by other counsel. You’ve indicated and I think it’s in paras 15 to 17 the process in a
5 general outline but with the greatest of respect it seemed to be useful to having accumulated all the evidence likely for a particular phase and view the Commissioners having determine what you think is the relevant materials to have a, some sort of preliminary conference then as to what evidence you see as important, who’s likely to call it, whether it be counsel for particular parties or
10 for counsel assisted, by counsel assisting so that everybody then can have a view as to how, a better view as to how the process within that phase is going to proceed and probably obviate the need that’s been mentioned in some of the memoranda about the need to recall witnesses or call evidence in rebuttal. I make it as a suggestion that might better control the evidential processes. That
15 might mean something of a blow out in the timeframe between evidence being deposited and the start of a particular phase.

The other matter that I mentioned and it has been raised in the memorandum 3.1 and 3.2 I think it is, the union has been making certain inquiries in
20 jurisdictions other than New Zealand because the union’s position is and it maybe in common with some others that to some extent and some areas of particularly about underground coal mining in New Zealand and regulation thereof we have something of a loss of a generation of knowledge, a 20 year gap, but in going overseas and particularly to Australian jurisdictions it is evident
25 that there is a body of expertise and material that’s available there that it seems that counsel for the union and the union itself would be useful for the Commission and the same particularly within the states of Queensland and New South Wales and again I give deference to the knowledge that
30 Commissioner Bell brings in terms of Queensland but some of that expertise the people who hold it take the view that they would rather have a non-partisan role which I think with respect, or I submit with respect, is important and that they would see them rather more willing to give evidence to this Commission if they were being invited by the Commission itself or being led by counsel assisting the Commission rather than individual parties and just as an instance I give the

name of the Director of Mining Safety Operations in New South Wales, your fellow Commissioner I suggest may know him, Mr Rob Regan, who is in that –

JUSTICE PANCKHURST:

5 Rob who?

MR HAMPTON:

Rob Regan, R-E-G-A-N, sir. Who is in that category of which I have spoken who would rather be approached and give evidence and from the little I know of
10 him and what he can say, his evidence would be of considerable value and I suggest that there are others in that category and no doubt I can talking to counsel assisting but I raise it as a matter of some genuine concern as to that type of evidence which should properly be placed before this Commission. But they are the matters, sir, the rest is in the memorandum in any event, sir.

15

JUSTICE PANCKHURST:

Thank you, Mr Hampton. Ms Shortall.

MS SHORTALL:

20 May it please the Commission, Stacey Shortall, Minter Ellison Rudd Watts for Pike River Coal Ltd (in receivership). Commissioners, I would like to speak to four issues. I will try and do so as briefly as possible and not repeat some of the matters addressed in our memoranda of counsel that I believe have been helpfully addressed by comments made initially by Your Honour. The four
25 issues are in turn the company's financial position, the request as to documents that has been articulated by, in particular, counsel for the families, the issue as to parallel proceedings given the joint police and Department of Labour inquiry that also has been raised here today and finally several procedural matters.

30 So taking these four items in turn, let me start with the company's financial position. As the Commissioners will know the company was placed into receivership on the 13th of December last year, a little more than three weeks after the 19 November 2010 explosion within the company's main asset, its underground coal mine in the Paparoa Ranges here on the West Coast. That

explosion led to the tragic loss of 29 employees and contractors and caused all of the company's mining and trading activities to cease. As a result the company had no source of revenue or current cash flow and the company was unable to continue its normal operations. This financial situation is unchanged.

5 The company remains committed to the fullest extent that it is able to getting answers to causes, to questions about the causes of the explosions and what happened on the 19th of November and Mr Chairperson started today by articulating three objectives – what happened at the mine, why it happened and what can be done to prevent it happening again and the company, its receivers,
10 its directors, its officers, its managers and its employees are committed to the fullest extent that they can to assisting this Commission in getting answers to those questions. The company is cooperating already with other pending investigations including the Department of Labour and the police, again to the fullest extent that it can. It previously cooperated fully with the Chief Coroner's
15 Inquiry.

The issue before us today is not one of desire, rather the issue is that the company does not currently have the financial resources that would be required for it to generate the type of material such as written witness statements and
20 document compilations that counsel assisting the Royal Commission has requested from it. I should emphasise that this reality in no way reflects a desire of the company, a desire of the receivers, its directors, officers, managers or employees, rather then situation is an unfortunate consequence of explosions within the company's main asset. The company sought funding assistance from
25 the Royal Commission but was informed that that inquiry should be directed elsewhere. To date the company has unfortunately been unable to secure alternative funding to enable it to prepare written briefs or to prepare documents for use at hearings in the manner sought. Based on its current financial resources the company currently anticipates being able to have legal
30 representation at some of the hearings. The company will also do all that it can to seek to have its employees, officers and directors comply with any summons for testimony or documents that may be issued by the Commission. While committed to assisting the Royal Commission, the company regrets that it does not simply have the financial resources that would be required in order for it to

participate in a manner that it has been requested to do, and I submit that position to you all today for your consideration.

JUSTICE PANCKHURST:

- 5 Well can you give us a better indication please? You've just said that you do anticipate the ability to participate in some aspects of the hearing. What's the situation in relation to phase 1?

MS SHORTALL:

- 10 What I think I said, Mr Chairperson, is the company anticipates being able to have legal representation present at some of the hearings. So if we were to take phase 1, given its current resources the company does not anticipate being able to prepare any witness statements to be filed in advance to the extent that the Commission calls witnesses that are current company employees, officers or
15 directors. It will do everything that it can to encourage those people to appear and to provide evidence and, if requested, to produce documents in advance as well.

JUSTICE PANCKHURST:

- 20 What, then, is the company's approach to phase 3?

MS SHORTALL:

- Based on our current funding, the company's position would be the same, Mr Chairperson. Absent funding support, the company simply doesn't have the
25 financial resources required to put together written witness briefs or compilations of documents in advance.

JUSTICE PANCKHURST:

- Well, the Commission's work programme was really prepared on the basis that
30 there would be active involvement of the company, particularly in relation to phase 3 and, indeed, in relation to other phases as well.

MS SHORTALL:

I understand, Mr Chairperson, and to the extent that the company is able, it is continuing to explore alternative funding sources to the extent that it can secure any additional funding. The position I'm outlining today may change, but it is the
5 position as of today.

JUSTICE PANCKHURST:

Yes.

10 **MS SHORTALL:**

That leaves me, Commissioners, to the point made in particular by counsel for the families around documents and the categories of documents that parties may seek to have made available. Again, I feel it only appropriate to note that while the company seeks to make itself available to co-operate to the fullest
15 extent, its ability to assist in that process may be limited by its current financial resources.

Turning to the third issue that I noted, the parallel proceedings, given the joint Police and Department of Labour inquiry, I simply want to note today that as
20 mentioned in our memoranda, the company seeks to ensure that witnesses' rights including the right to invoke the privilege against self-incrimination to the extent ever needed when testifying before the Royal Commission is something that may happen and that the company will be mindful of at the appropriate time.

25 Finally, just on several procedural matters. I noted that there were submissions made in particular by Solid Energy around a common list of terms. To the extent that the company is able to assist the Commission by providing comments on those types of means, common list of terms, for example, that could assist with the process, it will do so. That's the submission I have unless you have any
30 questions.

JUSTICE PANCKHURST:

Now the Mines Rescue Trust, Mr Gallaway.

MR GALLAWAY:

Yes, Galloway sir. I can be very brief. The document management and service of documents, sir, I think has already been addressed by the Commissioners. I just echo Mr Hampton's comments in relation to additional parties, and in the memorandum that we filed, sir, I have referred to Simtars and the Queensland Mines Rescue, which will be parties well known to Mr Bell and to the Commission. They may well, of course, have filed an expression of interest now, I don't know, but –

10 **JUSTICE PANCKHURST:**

Yes, I think that matter is probably in hand as we speak.

MR GALLAWAY:

Indeed, thank you sir, and then finally sir was the only – the only other issue was in relation to core documents where we have suggested that a core bundle be put together sooner rather than later. I hear Mr Raymond's comment supporting that. I don't have or haven't heard any criticism of that suggestion, sir. The idea behind it of course is that people start to use the right phrases and terminology and work off the right document so for that reason, sir, it's submitted that if that could be done sooner rather than later it would be beneficial.

JUSTICE PANCKHURST:

Well certainly the Commission's intention that there will be, as it's been put, a core bundle of documents we're also committed to the view that there has to be a common index which is available to everybody and which enables the information system about which I've briefly spoken to be utilised to the best advantage so that relevant documents and evidence can be called up in relation to issues and phases as required at all stages of the Inquiry. The details of the information system are something with which we are centrally involved at the moment. Mr Mount, counsel assisting, is the person who is best equipped to speak about that if people want to have input.

MR GALLAWAY:

Thank you, sir, I don't have any other submissions.

JUSTICE PANCKHURST:

USR Limited, Mr Heron.

5 MR HERON:

Yes, may I please the Commissioners, thank you, Heron for USR. Just in terms of the memorandum filed obviously is very short and no issues raised. In terms of documents we support Mr Raymond's formula, happy to comply with that. I ask the Commission whether you would consider the possibility of reply
10 evidence. It arises for USR because we may have something to say at phase 3 but it really depends on what others say and if there was a possibility of reply evidence that would certainly be welcome. Could I ask again for consideration of the possibility of a continuing the live-streaming that we have throughout the hearing? The reason for that is for counsel and even parties to monitor the
15 hearing from a distance during those phases that we're not required to be here would certainly be useful for us to the extent that USR and I expect others would be willing to participate or contribute if there was a requirement to do that both financially and technologically so we're certainly interested in that. In terms of delay, I appreciate all the difficulties. USR is certainly much more interested I
20 learning and prevention and I'm sure the Commission is alive to the contrary view that's put before you by the police and the Crown but we would certainly rather that this process took precedence, but Your Honour knows far better than I the difficulties with that and, finally, could we ask that there be some consideration to restriction on use of documents or commercially sensitive or
25 confidential documents just in the ordinary course one would expect some restriction around that. Thank you, those are my submissions.

JUSTICE PANCKHURST:

Can I just comment on - you've made I think a similar point to one made by
30 Mr Hampton in his memorandum on behalf of the union concerning reply evidence. I acknowledge it's something which has not been broached and anything that we have issued to date it's a serious suggestion, important suggestion and worthy of serious consideration and so thank you.

MR HERON:

Thank you, sir.

JUSTICE PANCKHURST:

5 Rockwell Automation, Mr Billington.

MR BILLINGTON:

No, I have nothing to add at this stage, thank you very much Commissioner.

10 **JUSTICE PANCKHURST:**

Now the New Zealand Fire Service Commission, Mr Buchanan.

MR BUCHANAN:

Robert Buchanan, the Fire Service claimed an important supporting role in the –
15 maybe I should move over to a microphone so I can be heard?

JUSTICE PANCKHURST:

I think you should and could you start afresh because you haven't been picked
up by the transcribers.

20

MR BUCHANAN:

Robert Buchanan for the Fire Service Commission and the other fire authorities.
Fire Service played a major support role in the response to the disaster so
phase 2 is the part of the inquiry which is – in respect of which the Fire Service
25 will be able to provide the most assistance. However, the Fire Service and the
Commission also have an interest and a role to play I think in respect of phase
1, the regulatory environment, and phase 4, including the international practices
around fire safety in mines even though it's not an area of the Fire Service's
responsibility. So, it's helpful to have the submissions this morning from the
30 Crown and the police in relation to the ability to coordinate and cooperate and I
can give an indication to the Commissioners that the Fire Service will cooperate
fully with the efforts in that respect.

There was one point which was raised in the memorandum to the Commissioners which I'd just like to touch on briefly and it related to phase 2. We are broadly comfortable with the approach of the phasing but made the comment about the linkage within phase 2 between the cause of the loss of life and the search, rescue and recovery operation. The linkage appears possibly premature and could – we've made the point as well that it could possibly be unhelpful in terms of having a chilling effect on the evidence that might be provided. I think perhaps moving on beyond that point and into the dimension that's been raised about the possible restructuring of the phases in order to deal with the timing difficulties, the suggestion that we've made about perhaps removing the cause of the loss of life from phase 2 and enabling it to be purely a factual inquiry might help the Commission in terms of dealing with that aspect as a factual aspect but leaving the cause of loss of life issue to be a floating issue which the Commission can deal with at any stage as it goes.

15

So I just wanted to raise that point, grateful for the indication in relation to the ability to file evidence by summary or by overview. That's certainly an issue for the Fire Service because there were a large number of personnel who were involved will work with counsel assisting to identify the key witnesses who are the best people to have briefs of evidence prepared for them and then to appear. We also support the position in respect of the documentation and comfortable about where the submissions are leading to today so thank you.

20

JUSTICE PANCKHURST:

25 Valley Longwall International Pty Ltd. Mr May, isn't it?

MR MAY:

That's correct, thank you, Your Honour, members of the Commission. You have our memorandum which raised effectively an efficiency concern with document provision. I just wanted to say that that can certainly be met entirely by the points put forward by Mr Raymond for the families and Valley Longwall will endorse the submissions on this point.

30

JUSTICE PANCKHURST:

I hope you're being heard. I think it's okay. Now the New Zealand Council of Trade Unions Mr Wilson.

5 **MR WILSON:**

That's correct, sir, Wilson. Sir, the council's primary focus will be on phase 4 but possibly phase 1 and I can be brief by endorsing each of the points made by Mr Hampton relating to concern about phase 2 preceding phase 3, concern about phase 4 following phase 1, the possible need for cross-examination in
10 respect in phase 1 and the processes for calling of evidence. Thank you, sir.

JUSTICE PANCKHURST:

New Zealand Coal and Carbon Ltd, Mr Bayley.

15 **MR BAYLEY:**

It's Bayley, sir, yes. There's just one point I wish to raise. In my memorandum it was flagged that my client may wish to provide evidence in relation to issues 1.1 to 1.6. Now I just note that that may not be necessary depending on the content of the overview to be provided by all Government agencies in relation to those
20 issues.

JUSTICE PANCKHURST:

Thank you. Mr King, Pike River Contractors and Suppliers Group and also the five individuals who I identified earlier.

25

MR KING:

Yes, thank you, Your Honour the - dealing with the five individuals they were all persons who worked underground at the mine in different capacities but some of them were very senior, very important roles. They have all been the subject of a
30 police investigation, Department of Labour investigation. Two of them have already been interviewed in interviews that took some four hours. The interviews are unusual because they are brought under effectively so many different hats. It's explained to them at the beginning, this is for the Coroner, it's for the Commission, it's for the police and it's for the Department of Labour so

those five people are, we consider very significant and are persons of, who face the prospect of course of this parallel proceedings which has been talked about and we're anxious to ensure first and foremost that their rights are properly protected and that they are afforded proper representation in the Commission.

5 The Pike River's contractors and suppliers group is a collective of some 61 individual businesses that provided contracting services. I say in the memorandum that 14 of the men that died in the tragedy were employees, in fact of course it's 13 not 14, but they were of course the employees, the colleagues and the friends of members of that group. I've set out in the
10 memorandum the interests that they have because not only are they emotionally affected but of course their businesses are also the subject of scrutiny through the Department of Labour and they are as anxious as everybody to ensure that the lessons that can be learned are learned and that processes are put in place to minimise the risk of anything like this happening again and it's noted that the
15 interests that they have looks forward because in the event of the mine ever reopening which is of course very much on the cards if the sales go through and so on, they are likely to be engaged in providing those services in the future. Well an issue, the only issue I really want to add to identifying those matters relates to the issue of funding and it's set out in the bottom that requests had
20 been made for funding, certainly for the five individual men. Counsel's been present at their interviews and will be present at the upcoming interviews. At the moment we've received a rather unsatisfactory response from the Attorney General in that regard and we will be taking that up so I simply alert that to the Commission at this point in time. It's not something that this Commission has
25 direct guidance over but of course what we would like to see is recognition that the persons that we are representing are very much interested parties that had a very significant contribution to make. It had been anticipated that detailed witness statements would be provided to the Commission, certainly from the five individual men but also from other members of the contracting and suppliers
30 group. The level of participation perhaps in a similar situation to Pike River Coal itself really depends on the funding being available to do that. So I simply identify those issues.

JUSTICE PANCKHURST:

Mr Stevens, Solid Energy New Zealand Limited?

MR STEVENS:

5 Yes, may I please, the Commissioners, firstly and simply for the transcript
Craig Stevens because I note there are two counsel with the same surname. I
don't intend to repeat what's in my memorandum, sir, but can I respectfully
speak to the phasing. I support particularly Mr Nigel Hampton QC in terms of
10 what he said about both the phasing of 2 and 3, but importantly can I add please
a brief comment in terms of concerns at the suggestion that phase 4 might
follow phase 1 and I respectfully remind the Commissioners that of the four
matters that it is, that the Commission is required to report on, and I appreciate
you'll be well aware of that, there is at (d) whether any changes or additions
15 should be made to relevant laws and practices. In my respectful submission
that cannot be addressed by counsel or witnesses without being informed by
what is intended in phases 2 and 3 so that's the only matter I'd wish to submit
on but respectfully I would be concerned and I am confident that my client would
be if phase 4 were to immediately follow phase 1. Thank you, sir.

20 JUSTICE PANCKHURST:

Mr Stevens, just before you leave, can I just raise the glossary with you. First of
all, we're grateful for your having seized the initiative and had that document
prepared and provided. Has it been circulated to other participants in the
Inquiry?

25

MR STEVENS:

I think to the families and to Mr Hampton but otherwise only – and to counsel
assisting. To the best of my knowledge not to anyone else ahead of it being
annexed to my memorandum, sir.

30

JUSTICE PANCKHURST:

The provisional view that we have is that a glossary is required. However, it is
essential that it's content be the subject of common agreement and so hence my
questions as to how broadly it has been circulated to date. We're likely to

proceed down the path of ensuring that it is looked more generally and that's there's the opportunity for input and that it would then become a document that can form an essential component on the information system and that participants would use the glossary in relation to material provided to the
5 Commission.

MR STEVENS:

Yes, I certainly anticipate that, sir.

10 **JUSTICE PANCKHURST:**

Thank you. Now McConnell Dowell Constructors Ltd, Mr Nicholson.

MR NICHOLSON:

May it please Your Honour and Commissioners. I don't propose to address the
15 matters raised in my memorandum but there's perhaps just two points to raise with you. Now the first one is in relation to the suggestion about the collation of documents. The McConnell Dowell's position is that in broad terms the approach advanced by Mr Raymond is acceptable, subject to one potential tag, sirs, and that is that McConnell Dowell's view is that it is very much the role of
20 Pike River Coal and perhaps the Department of Labour and police, which have also been collating documents from all the parties who have cooperated with the various investigations that those two bodies have been undertaking, who should we look to in the first instance to adduce their documents to the extent that there are gaps and the Commissioners require assistance from McConnell Dowell we
25 will of course provide it, but it's very conscious of the significant time commitment that's already had to be invested in searching for and producing materials to the Department of Labour and police and would seek to avoid the duplication of that effort if at all possible.

30 The only other issue to address is really in relation to the sequencing and I take the point of my learned friend's as to the difficulties of potentially changing it but McConnell Dowell shares the concerns of Pike River Coal and some of the others about, including the police and the Department of Labour, about the sequencing difficulty when those regulatory inquiries are proceeding. So I'd just

like to endorse Ms Shortall's comments in particular in relation to that. Unless there's anything further, I've got nothing further to add.

MR LATIMOUR:

5 Mr Chairman, I wonder if I might address the Commission at some point. I was missed out in the order. Latimour for Coal Services, sir. I hadn't filed a memorandum which is maybe why the list you're currently doing is –

JUSTICE PANCKHURST:

10 Yes, well my apologies, Mr Latimour. I have a note of your name. Would you like to come forward now and ensure that you're speaking into a microphone so that you can be recorded?

MR LATIMOUR:

15 Thank you sir. As I announced, I appear for Coal Service Pty Ltd. I haven't filed a memorandum because, sir, the issue of whether my client was noted as an interested person was only in the last week sorted out and so I wasn't in the paperwork and hence I didn't have the material in time to take instructions and provide a memorandum so I'm indicating no discourtesy there, that just to clarify
20 the position. The Commission will be aware that Coal Services is an industry owned company in New South Wales which provides a number of services to the industry there including mine rescue services and when the explosion occurred at the Pike River Mine, several personnel from Coal Services came to assist the New Zealand mine rescue people and other involved in the situation
25 so that my client will have three people who were present at relevant times and they will be, again, they will provide evidence in relation to matters in phase 2 and matters in phase 3. I just want to signal but not create as a complication, the fact and it's relevant the points that other counsel have made in their memoranda that the evidence that my client witnesses would have would be
30 about matters that occurred obviously around the time, including the second and subsequent explosions, and their evidence would be relevant both to phase 2 and to phase 3. What I intend to do is to continue to liaise with counsel assisting to make sure that what the Commission wants and intends in terms of division between the two phases is maintained, but it may mean a slightly

artificial dividing up, if you will, of some of the evidence that Coal Services can provide, but I can't see any other way of dealing with it in the practical sense.

JUSTICE PANCKHURST:

5 You have heard the observation I made some while ago that we don't regard the phases as hard-edged in the sense that evidence has to be strictly within it. If there is a natural overlap and the convenient course is to adduce the evidence in one block but in the knowledge that it may have to be considered in two phases so be it.

10

MR LATIMOUR:

Yes, and I'm obliged to the Commission for that indication. And then the final matter which, can I flag, is in relation to some of the issues including in phase 4, of course, the Commission has indicated an interest in comparisons between
15 overseas jurisdictions and, of course, my client potentially would have evidence or information to provide to the Commission on those broader questions. What I intend to do is to ask counsel assisting where there may be evidence from my client that's wanted on those broader issues because the three witnesses who will definitely give evidence may not be the right people from within my client
20 organisation to best the Commission and so that's - and Mr Bell in particular in relation to the Australian situation and experience will obviously have a much closer idea of what he, as a member of the Commission, might want the Commission to hear on those broader issues. So I simply indicate that rather than volunteer it, I will try through counsel assisting to inquire as to what the
25 Commission would be interested in receiving. Thank you.

JUSTICE PANCKHURST:

I'm sorry Mr Latimour for missing you out earlier. There's nobody else in a like situation I trust, right.

30

Now, Mr Wood you're appearing for Mr Leonard Richardson who is a witness submitter. Is there anything you want to say on his behalf?

MR WOOD:

No sir, he – I haven't filed a memorandum and, of course, perhaps I should.

JUSTICE PANCKHURST:

5 Yes, I think you should.

MR WOOD:

Dr Richardson is a submitter only, sir, and I haven't filed a memorandum. I'll just provide background and indicate what he will say. He is a senior member of the
10 University of Canterbury History Department. His specialist areas are New Zealand history, and particularly industrial relations and mining. He's very - he is well regarded and has been a visiting fellow in West Virginia among other areas, which is a similar coal mining area. His submissions to you will be along the lines that the present coal mining industry in New Zealand is very similar to
15 the formative stages of mining in New Zealand and at the time of the beginning of coal mining in this country. He's very knowledgeable about the disasters at Kaitangata, Brunner and Huntly between 1878 and 1912. He'll give indications as to why that changed and he'll also indicate most cogently I think why the industry is now very similar to its formative stage rather than what he would
20 term the safer stages of the development of the industry in the middle of the last century. It seems to me that he may be particularly cogent with respect to the context issues and particularly subparagraphs 1 and 2 of the Commission's memorandum as well as perhaps 4.3 at the concluding stages. Whether that's done orally or whether it's presented in written form I will leave to the
25 Commission perhaps. I'll discuss with counsel assisting.

JUSTICE PANCKHURST:

Well it will not be done orally, Mr Wood. The normal course will be observed of seeking evidence and your submission in written form and then a decision taken
30 as to whether it should be supplemented by oral evidence as well.

MR WOOD:

Well that evidence will be presented in written form. It's up to the Commission as to how it's received.

JUSTICE PANCKHURST:

Thank you. Now Mr Hall?

5 MR HALL:

I don't wish to be heard, thank you, Your Honour.

JUSTICE PANCKHURST:

10 If there anybody else who wishes to be heard in any matter? There are a couple of memorandum that were filed very late on behalf of New Zealand Oil and Gas and MinEx Health and Safety Council. There were no confirmation of whether there would be appearances for either body and I take it there are no.

MR STEPHENS:

15 Sir, there is an appearance for New Zealand Oil and Gas but no issues which I wish to raise.

JUSTICE PANCKHURST:

20 I see. I'm sorry, thank you, Mr Stephens. Thank you for your patience. I just wanted to confer with my colleagues as to whether there are any matters that needed to be raised. There are not. We do not see a need either for anything in reply unless there is something that is of real consequence that somebody thinks –

25 **FTR audio stops at 13:34:19**

INQUIRY ADJOURNS: 1.36 PM

30