

**Embargoed until 2.00pm Thursday 28 April 2011**



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

**UNDER THE COMMISSIONS OF INQUIRY ACT 1908**

**IN THE MATTER OF THE ROYAL COMMISSION ON THE PIKE  
RIVER COAL MINE TRAGEDY**

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**MINUTE NO 2: POST PRELIMINARY HEARING**

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**28 APRIL 2011**

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## **Introduction**

1. At the preliminary hearing on 5 April the Commission indicated that it would consider and respond to a range of suggestions and concerns raised by participants at that time. This minute does so.

## **Phases One – Context; and Phase Four – Policy Aspects**

2. Subsequent to the preliminary hearing Counsel for the New Zealand Police, supported by Counsel for the families, raised a new suggestion. This concerned moving forward the New Zealand related aspects of Phase Four into Phase One.
3. In essence the proposal was to expand Phase One to include:
  - an assessment of any tension between New Zealand mining law, and other (including conservation and environmental) law, and;
  - an examination of the resourcing provided to, and the administration and implementation methods of, the New Zealand mining regulatory agencies.

Thereby Phase Four would be confined to establishing the situation in the selected overseas countries; followed by a comparative evaluation exercise.

4. The Commission is persuaded to adopt this suggestion.

## **Revised List of Issues**

5. A revised List of Issues is included with this minute. Some submissions on the content of the list have been taken up. The major changes relate to the expansion of Phase One (with consequential changes to Phase Four).
6. Otherwise, there are only limited changes to the List. The Commission considered that a number of the suggestions effectively sought a more detailed expression of the issues. This is not seen as necessary. We repeat the observation contained in the background section of the Provisional List that the issues "... should be read in a broad, and non-limiting, manner".
7. In response to submissions that the issues should be expanded to cover the information which was available to search and rescue personnel on arrival at the mine on 19 November 2010, a new issue has been included in Phase Two, as issue 2.8.

## **Sequencing of the Phases**

8. The Commission is not persuaded that there is any workable alternative to the four-phase hearing plan previously outlined. Despite

the range of suggestions raised by different participants, no common view emerged as to a suitable revised format.

### **The Hearing Timetable**

9. The Commission has concluded that the initial timetable for the filing of evidence and the public hearings requires revision.
10. The expansion of Phase One to include the additional elements identified above means that further preparation time is required for this Phase. More generally, the volume of evidence proposed to be filed by participants is greater in extent than originally anticipated.
11. With reference to the Phase Three hearings, information from the Police/DOL investigations will feed into the Commission's Inquiry once that information is available. The investigations are still some distance from completion. DOL's application to the District Court for an extension of the time to lay charges gives rise to further uncertainty.
12. The solution to these issues is not clear. The Commission considers that it must work through these difficulties before setting dates for the Phase Three hearing.
13. The revised timetable for the first two Phases is as follows:  
  
Phase One.  
Evidence to be received by the Commission:  
- relating to issues 1.1 to 1.6 and 1.13 to 1.18 no later than 6 May  
- relating to issues 1.7 to 1.12 no later than 3 June  
Hearings in the weeks commencing 11 and 18 July.  
  
Phase Two.  
Evidence to be received by the Commission: no later than 1 July  
Hearings in the weeks commencing 5, 12 and 19 September.
14. A number of participants questioned the time estimate for Phase One. The two weeks allowed by the Commission reflects the nature of the evidence in this phase. The evidence mainly comprises factual information from the regulatory agencies, or concerning the history of the mine. Issues relating to whether the mine as developed was safe, and compliant, fall into Phase Three rather than Phase One.
15. The hearing timetable for Phases Three and Four will be set as soon as the Commission is in a position to do so. Completion of the Police/DOL investigations, and decisions about charges, will necessarily affect the timing of the Commission's decision.

### **Glossary of Mining Terms**

16. The glossary filed by Counsel for Solid Energy will be provided to participants once comments have been received and considered. The glossary will then become a resource for use throughout the Inquiry.

## **Reply Evidence**

17. The Commission accepts the case for allowing reply evidence. However, the primary means of providing evidence to the Commission will continue to be through the filing of witness statements by the due date.
18. Participants who wish to provide reply evidence will need to seek leave to do so and file the intended witness statement with the leave application. These requirements will be further detailed by practice note.

## **Hearing Plan**

19. The Commission is not persuaded of the need for a preliminary hearing before each phase of the public sittings. However, a hearing plan will be circulated in advance of the hearing weeks. The plan will detail the order in which witnesses are to be called, the order of cross-examination and any other relevant matters.
20. To facilitate the preparation and circulation of the hearing plan it is essential to allow a sufficient lead in period between the filing of evidence and the hearings. Applications to cross-examine and to file reply evidence will need to be determined before the plan can be finalised. Provision is made for this in the revised evidence and hearing dates for Phases One and Two.

## **Filing of Evidence**

21. The Commission proposes to adopt an electronic evidence management system, and will issue a practice note as soon as practicable setting out the details of that system, and the required format for the filing of evidence.
22. In the interim those intending to file evidence for Phase One are asked to provide both a hard copy and electronic copy of the evidence. The preferred format is a "Summation iBlaze" briefcase, but the Commission will also accept individual pdf files for each document filed. If any party is in doubt as to the appropriate format for the electronic filing of evidence for Phase One, please contact the Commission.

## **Live Streaming of Hearings**

23. The Commission has received a joint proposal from TVNZ and TV3 to provide live streaming of the Commission's hearings on the internet. It is understood that subject to technical issues the service would commence on the first day of the Commission's hearings and provide close to live coverage of the public hearings. It is anticipated the service would continue for the duration of the Commission's hearings, subject to the service remaining feasible. The live streaming would be limited to the public aspects of the hearings and would not include, for example, any closed session or "chambers" discussions, or any suppressed evidence.

24. TVNZ and TV3 are of the view that such a service cannot realistically be provided unless the usual restriction on filming members of the public present in the courtroom is relaxed. Both companies have undertaken not to focus on members of the public, and state that any identifiable filming of those in the public gallery would be limited to background images filmed as an unavoidable consequence of filming the proceedings.
25. The Commission proposes to allow live streaming as indicated, subject to:
- i) its general media guidelines (which will be promulgated in a future practice note);
  - ii) a ten-minute delay to allow any issues of suppression to be raised;
  - iii) a confirmed undertaking that identifiable images of those in the public gallery will not be shown other than as an unavoidable consequence of filming the hearings.
26. If any participant objects to this proposal, please advise the Commission in writing by 20 May 2011.

### **Remote Monitoring of Hearings**

27. It is understood that a number of parties and counsel may wish to monitor the hearings in Greymouth from elsewhere. Three things may facilitate such remote monitoring:
- i) the Commission intends to release the transcript of each day's hearings on its website as soon as practicable after each day;
  - ii) if the live streaming proposal from TVNZ and TV3 proceeds, it will be possible for counsel to monitor the public aspects of the hearings via that live feed;
  - iii) it is proposed to release key documents for each hearing via the Commission's website.
28. These matters may be sufficient to allow parties and counsel to monitor proceedings from elsewhere. At the preliminary hearing, counsel for URS NZ Ltd, Russell McVeagh, raised the possibility of TVNZ and TV3 providing a "private" live streaming service to counsel, which would include all aspects of the hearings, including "chambers" hearings or closed sessions. It is not known at this stage whether the television companies would be in a position to provide such a service, or what it would cost. If any party or counsel wishes to investigate that possibility further, please notify the Commission who will facilitate contact with the appropriate parties.

## **Index to Joint Legislative Framework Paper**

29. On 27 April 2011 Crown Law provided parties and interested persons with a copy of the index of topics to be included in the “joint legislative framework” paper to be filed by the Department of Labour, Department of Conservation, Ministry of Economic Development and Ministry for the Environment in relation to the Phase One hearing. The provision of this index had been discussed at the preliminary hearing. A copy of the index is also included under cover of this Minute.

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