

# Pike River Royal Commission

## Minute for Preliminary Hearing

### Introduction:

1. This minute is for the information of persons attending the preliminary hearing of the Commission on 11am, Tuesday 5 April at the Greymouth Courthouse. It contains an outline of issues which will be raised at the preliminary hearing, so that feedback may be provided, if necessary.
2. There are two annexures to the minute:
  - a. a schedule which lists those who provided expressions of interest and the standing they have been provisionally accorded by the Commission, and
  - b. a provisional list of issues.
3. The minute is being sent to all parties who provided an expression of interest and to others who the Commission considers may have an interest in the inquiry. It is also available on the Commission's website at [www.pikeriver.royalcommission.govt.nz](http://www.pikeriver.royalcommission.govt.nz)
4. Following the Christchurch earthquake on 22 February 2011 the Commission no longer occupies an office at SBS House in Christchurch. Alternative office space was not available in the Christchurch area. The Commission has relocated to Prime Property Tower, 86-90 Lambton Quay, Wellington.
5. The format for the preliminary hearing will be:
  - The announcement of appearances
  - Introductions, and an opening statement from the Chair
  - Submissions from or on behalf of persons who seek a change in standing
  - Submissions on process issues.

The hearing is scheduled to conclude no later than 2.00pm.

### Standing Determinations:

6. Three levels of participation in the inquiry have been recognised by the Commission:
  - i. Parties,
  - ii. Interested persons,
  - iii. Witnesses/submitters.Parties and interested persons are entitled "to appear and be heard at the inquiry"<sup>1</sup>: either personally or by Counsel<sup>2</sup>. Both parties and interested persons may be liable for costs<sup>3</sup>.
7. The distinction which the Commission has drawn between parties and interested persons is that parties are those whose actions may be called in question or who otherwise have a substantial and direct interest in the subject matter of the

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<sup>1</sup> S4A(1) Commissions of Inquiry Act 1908

<sup>2</sup> S4A(3) Commissions of Inquiry Act 1908

<sup>3</sup> S11 Commissions of Inquiry Act 1908

inquiry. Interested persons are entities or persons who have satisfied the Commission that they have a particular interest in the inquiry over and above that of the general public<sup>4</sup>. Their interest may require that they participate in some aspects of the inquiry but not others.

8. The standing of witness/submitter has been given to persons who are likely to have evidence or information of relevance to the Terms of Reference. The Commission intends to contact each person to determine the appropriate manner to receive their input. This may be by written report or witness statement alone, while some persons may be called to give oral evidence at a public hearing as well. This standing does not provide the entitlement to appear and be heard at the inquiry, nor may witnesses /submitters be liable for payment of costs. Members of this group will be kept informed of the progress of the inquiry so that their evidence, information or submissions may be provided to the Commission by the due date for filing of evidence relating to each phase of the inquiry (see para 10).
9. The decisions upon standing contained in the schedule are provisional. They are based solely on the information contained in a person's expression of interest form. Anyone who is dissatisfied with the decision in their case may make a submission to the Commission seeking a change in their standing. A submission may be made orally at the preliminary hearing or in writing to the Commission at The Pike River Royal Commission, P O Box 5846, Lambton Quay, Wellington 6011.

#### **The Four Phases:**

10. The Commission intends to stage the inquiry in four phases. These are:

##### Phase One: Context

The contextual phase comprising the New Zealand regulatory environment (Term of Reference (e)). The geography, conception, approval, design and development of the mine.

##### Phase Two: Search and Rescue

The Cause of the Loss of Life. The search, rescue and recovery operations. (ToR(b) and (d)).

##### Phase Three: What happened at Pike River?

The cause of the explosions. The Company's operational and management practices. Regulatory oversight (Terms of Reference (a) (c) and (g)).

##### Phase Four: Policy Aspects

The regulatory requirements and recognised practices that govern mining. How such requirements and practices interact with conservation, environmental and other requirements. The resourcing for, administration and implementation of mining, and mining land laws and recognised practices. The comparison of these matters to the situation in other countries (Terms of Reference (e)<sup>5</sup>(f)(g) and (h)).

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<sup>4</sup> S4A(1) Commissions of Inquiry Act 1908

<sup>5</sup> The New Zealand regulatory environment will be explored at Phase One of the inquiry, but it is also the starting point for Phase Four of the inquiry.

11. The processes adopted for the various phases may differ. For example Phase One is intended as a scene setting exercise. The relevant regulatory bodies will provide an overview of the New Zealand regulatory environment, including recognised practices. The history of the approval process and of the mines subsequent development to the date of the tragedy will then be recorded. Counsel assisting will amply and clarify the evidence as necessary. Cross examination should not be required.
12. Phases Two and Three focus upon the rescue response, and why the tragedy occurred. The issues relevant to each phase are numerous, and the need to hear evidence from a wider range of witnesses is anticipated. This is reflected in the hearing time allocated to each phase.
13. Phase Four is more policy focussed. Extensive expert advice will be required in relation to some aspects. A procedure designed to isolate areas of expert agreement, and disagreement, will be adopted. The hearing for this phase will be adapted to fit the subject matter.

**Provisional List of Issues:**

14. The Introduction to the List of Issues describes its purpose and its provisional nature. Any suggestions for additions or other changes to the document are welcome and will be considered.

**Evidence and Hearing Timetable:**

15. Witness statements and information relevant to each phase of the inquiry will be filed with the Commission in advance of the hearing time allocated to that phase. The statements and information will be assessed by the Commission and decisions will be made concerning which witnesses need to also give oral evidence at the subsequent hearing.
16. The witness statements and information filed with the Commission will comprise evidence in the inquiry save where the basis on which material is provided, or its content, precludes its reception. The evidence will be available to participants. Arrangements for the storage of, and for accessing the evidence, will be the subject of further advice in due course.
17. The evidence of witnesses required to appear at a public hearing will be led by counsel for the appropriate party or interested person or, in the absence of counsel, by Counsel Assisting where necessary. Cross examination will be by leave and on terms determined by the Commission. Guidance in relation to these aspects will be provided by a practice note.
18. The present timetable for the filing of evidence and information, and for the public hearings, is as follows:

Phase One: Evidence no later than 6 May  
Hearings in the weeks commencing 23 May and 30 May.

Phase Two: Evidence no later than 10 June  
Hearings in the weeks commencing 4 July, 11 July and 18 July.

Phase Three: Evidence no later than 1 July

Hearings in the weeks commencing 8 August, 15 August, 22 August, 29 August, 12 September, 19 September, 26 September and 3 October.

Phase Four: Evidence no later than 16 September  
Hearings in the weeks commencing 25 October and 31 October.

**Sitting Arrangements:**

19. The hearings will be conducted in the Greymouth No. 1 Courtroom. The Commission recognises the need to structure sitting times in a way that will enable participants to travel to and from Greymouth at the start and end of each hearing week.
20. The commencement time on a Monday will be 11.30am and on each Friday the Commission will not sit beyond 1.00pm. If these times are not workable they will be reviewed.
21. Otherwise the Commission will sit daily from 10.00am to 5.00pm; with a lunch adjournment from 1.00-2.00pm.

**General:**

22. Further information will be provided in the course of the Chair's opening statement at the preliminary hearing. The Commission will also provide further advice concerning its processes as and when necessary.
23. The Commission invites participants to file memoranda by Wednesday 30 March 2011 identifying any issues they wish to raise at the preliminary hearing.

Produced by  
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