



**Royal Commission on the Pike River Coal Mine Tragedy**  
**Te Komihana a te Karauna mō te 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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**PRACTICE NOTE NO. 1**

**12 May 2011**

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## **General**

1. The rules in this practice note apply to the Royal Commission Inquiry into the Pike River Tragedy.
2. The Inquiry will be conducted subject to the Commissions of Inquiry Act 1908, the provisions of any practice notes and such rulings as the Commission may make in the absence of a specific rule of practice.
3. The Commission may amend any practice note or waive compliance with the terms of a practice note, as the Commissioners deem necessary to ensure that the Inquiry is fair, open, thorough and timely. ("the operating principles".)

## **Evidence**

### Provision of Evidence to the Commission

4. The primary means by which participants may provide input into the Inquiry is by filing evidence statements, documents and submissions (together called "evidence") no later than the date advised by the Commission as the deadline for the receipt of evidence in relation to each of the hearing phases.
5. The evidence filing dates for Phases One and Two are contained in Minute No. 2 of the Commission and the evidence dates for subsequent phases will be advised as they are set.
6. All evidence filed with the Commission must comply with the technical requirements set out in Practice Note No.2.
7. Evidence statements from witnesses which are filed with the Commission should:
  - a) be formatted in numbered paragraphs,
  - b) include an index and subject matter headings if the statement is more than five pages in length, and
  - c) incorporate chronologies, schedules and other such aids to economy as are appropriate.
8. Evidence statements of witnesses filed with the Commission will need to be endorsed:

"This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence for the purposes of the Royal Commission Inquiry into the Pike River Tragedy",

followed by the signature of the witness and the date.

### Institutional Reports

9. Given the Commission's power to receive evidence which would not ordinarily be admissible, institutional reports containing a narrative of events and circumstances may be filed. Evidence of this kind will be appropriate where the participant is a department, or other body, and the

information is derived from multiple sources to establish a history or chronology of relevant actions of that entity.

10. Such institutional reports may be made by a single witness on behalf of others, or jointly; but the report will need to identify who has original knowledge of discrete parts of the subject matter.

#### Reply evidence

11. Parties or interested persons may file reply evidence in response to evidence already filed ("other evidence") with the leave of the Commission obtained upon filing a leave application within 10 working days of the other evidence becoming accessible on the secure website, or no later than 10 working days prior to the commencement of the hearing to which the evidence relates, whichever is the earlier.
12. A leave application, accompanied by a statement of the intended reply evidence, will need to show:
  - i) why the substance of the other evidence was not anticipated prior to its being filed, and
  - ii) that the other evidence may adversely affect the interests of the applicant if the reply evidence is not received, or that reception of the reply evidence is otherwise in the interests of justice.

#### Oral Evidence at the Hearings

13. The Commission will determine which witnesses are also to be called to give oral evidence at the hearings. If participants consider that a particular witness should be called to give oral evidence, a written request to this effect should be given to the Commission at the time the evidence statement of the witness is filed, including the reasons, the parts of the evidence to which the request relates, and a time estimate for the oral evidence.
14. The decision to call a witness, or not, will reflect the significance of their evidence, whether the evidence appears to be inconsistent with other evidence and whether the evidence may adversely affect the interest of anyone.
15. Oral evidence at the hearings will be taken on oath or affirmation.
16. Where a witness is called to give oral evidence, their evidence will be led by counsel who represents the relevant participant, or by counsel assisting if the participant is unrepresented.
17. The nature and extent of the oral evidence will be subject to the direction of the Commission given in light of the factors set out in rule 14.

#### Cross examination

18. Cross examination of witnesses will be by leave of the Commission. Counsel for parties and interested persons may apply for leave within 10 working days of the evidence statement of the relevant witness becoming accessible on the website, or no later than 10 working days prior to the commencement of the hearing to which the evidence relates, whichever is the earlier.

19. At the time of filing the leave application with the Commission, the applicant shall serve a copy of the application on the participant whose witness is the subject of the application.
20. Applications for leave will need to identify the reasons why leave is sought, explain in outline the areas of evidence which the applicant wishes to explore in cross examination and provide a time estimate.
21. Leave may be sought in relation to a person who is not the maker of an institutional report, but who is identified as the appropriate witness pursuant to rule 10.
22. An oral application for leave to cross-examine may be made at the hearing where a party or interested person is taken by surprise by the oral evidence of a witness, or where some other exigency justifies an oral application.
23. Counsel assisting may question witnesses who provide oral evidence in order to test or elucidate such evidence.
24. Ordinarily, counsel assisting will question a witness after other counsel have cross-examined, but the Commission may vary the order of examination in the interests of fairness.

#### Re-examination

25. Re-examination of a witness by counsel who called the witness, or counsel assisting, will be permitted, subject to the direction of the Commission as to the scope and extent of the questioning.

### **Procedural Matters**

#### Interpretation

26. Without limitation, "procedural matters" includes objections to the production, or use, in the Inquiry of documents; admissibility and privilege issues; and any issues relating to the conduct and smooth running of the Inquiry.
27. A participant who intends to raise a procedural matter should, as soon as is conveniently possible, write to counsel assisting the Commission identifying the issue, the contentions and the outcome sought.

#### Resolution

28. If possible, counsel assisting and counsel for the participant (or the participant in person) will resolve the procedural matter on mutually acceptable terms confirmed in writing.
29. If a negotiated resolution is not reached the procedural matter will be considered by the Commission and resolved by a ruling made on the papers, or at a public hearing if the matter is unsuited for more summary determination.

#### Form of Application

30. Leave applications (to file reply evidence or to cross examine witnesses) and requests for a witness to give oral evidence may be made informally by letter, or memorandum, addressed to the Commission.
31. Procedural matters may be raised with counsel assisting by letter or memorandum.

#### Service

32. Participants need not serve leave applications or procedural requests on other participants as a matter of course, save for applications seeking leave to cross examine a witness (see Rule 18).
33. However, where a leave application or procedural matter raises an issue which is of obvious concern to a particular participant (or participants), service should be effected on that participant(s) with advice of service provided to the Commission.
34. Where the Commission considers that some or all participants should be aware of an application or a procedural matter, notice of it will be provided via the Commission's secure website.

#### Hearing Plan

35. After the filing of evidence by participants for each hearing phase and the determination of oral evidence requests and cross examination applications, a hearing plan will be published by the Commission no later than five working days prior to the commencement of the hearing.
36. The hearing plan will describe the arrangements for the hearing; including the timetable for oral evidence, the nature and extent of such evidence and the cross examination rights accorded to parties and interested persons.

#### Suppression

37. Subject to the operating principle that the Inquiry is to be conducted in an open manner, the Commission may make a suppression order in relation to particular evidence, or the details of a witness, if publication would be contrary to the interests of justice.
38. Because the hearings will be subject to "live"streaming, suppression applications will need to be made prior to the evidence being given, or immediately after it is given.

#### Media Coverage

39. Media coverage of the hearings is governed by the Commission guidelines annexed to this Minute which are based on the In Court Media Coverage Guidelines 2003.

Issued by  
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