



**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**

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

Appearances: J Wilding, S Mount and K Beaton as Counsel Assisting  
S Moore QC, K Anderson and K Lummis for the New Zealand Police  
K McDonald QC, C Mander, T Smith and A Boadita-Cormican for the Department of Labour, Department of Conservation, Ministry of Economic Development and Ministry for the Environment  
N Davidson QC, R Raymond and J Mills for the Families of the Deceased  
S Shortall, I Rosic and D MacKenzie for certain managers, directors and officers of Pike River Coal Limited (in receivership)  
C Stevens and A Holloway for Solid Energy New Zealand  
N Hampton QC, R Anderson and A Little for Amalgamated Engineering, Printing and Manufacturing Union Inc  
G Gallaway and J Forsey for Mines Rescue Service  
G Nicholson and S Gilmour for McConnell Dowell Constructors  
P Jagose for Valley Longwall International Pty Ltd  
F Tregonning for Pike River Coal Limited (in receivership)

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**TRANSCRIPT OF PHASE 1 HEARING  
HELD ON 18 JULY 2011 AT GREYMOUTH**

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**COMMISSION RESUMES ON MONDAY 18 JULY 2011 AT 1.02 PM**

**COMMISSION PANCKHURST ADDRESSES THE COMMISSION**

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**MR MANDER CALLS**

**MARK DUNCAN SMITH (AFFIRMED)**

Q. Could you state your full name to the Commission please?

A. Mark Duncan Smith.

10 Q. And you're an engineer who resides in Hokitika. Is that right?

A. That's correct.

Q. Now Mr Smith can you confirm that you prepared a statement of evidence filed with the Commission, document number DOC777001005/1

15 A. I can, yes.

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Q. And can you confirm that the contents of that statement are true and correct?

A. Yes, I can.

20 Q. And you have that document with you today and can you read it please to the Commission?

A. Certainly. Perhaps I should just skip to paragraph 3 since we've done the introductions. Is that okay? Would you like me to restate my name?

Q. No, if you start at paragraph 1 please?

25 A. Okay, sure. "My name is Mark Duncan Smith. I'm an engineer and I live in Hokitika. I am the director and majority shareholder in West Circle Limited, an engineering consultancy based in Hokitika that provides environmental auditing, management system development,

computer modelling and project management services. The company has been contracted by the Department of Conservation for my services as liaison officer in respect of the Pike River Coal Mine since March 2005. I hold a Bachelor of Engineering Honours in natural resources engineering from the University of Canterbury and graduated in 1989. I have had extensive experience in the forestry sector and in particular off Highway Road building for various purposes. My curriculum vitae's at tab 2.52 of the doc Tier 2 paper."

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Q. That's doc number – sorry, Commission number DOC0010020088.

10 A. "I'm authorised to give this evidence on behalf of DOC. My role in respect of issues relating to the Pike River Mine is liaison officer for DOC and Pike River Coal and is provided for in clause 49 of the access arrangement. I am also the liaison officer for Oceana Gold's mine at Reefton and have held that role since July 2005. I have set out a  
15 summary of my role in relation to the Pike River Mine below. (a) It was funded by the permit holder; (b) I reviewed annual work plans and other documentation under the access arrangement or in respect of resource consent requirements or otherwise and provided advice and made recommendations to the conservator; (c) I monitored compliance with  
20 (1) the work plans, (2) the access arrangement, (3) any other requirements of the conservator, (4) the restoration plan and ongoing restoration works regarding successful, progressive and long-term restoration and rehabilitation of the mine site and the land, (d) the contract provided that I was to liaise effectively and autonomously with  
25 the permit, the department, territorial authorities, other external consultants, insurance companies and bondsmen. I could call on additional external consultants with special advice on matters reasonably raised by the permit holders, mining and mining operations carried out under the access arrangement with the prior agreement of  
30 the permit holder and the conservator. The focus was on above ground effects of the mining operation. The main environmental concerns were vegetation clearance, earthworks, contaminated water and subsidence. Other issues of concern to DOC were pest control, birds and one rare

plant species. Over the years I have had frequent contact with both DOC and Pike staff and considered that I have a good relationship with both. With DOC my main contacts were the mining officer, Craig Jones, the mining team leader Campbell Robertson prior to 2006 and the community relations manager, Chris Hickford. With Pike I dealt mainly with the project manager, Les McCracken, and the environmental manager, Ivan Liddell. The emphasis of my role has changed over time as the Pike project progressed. At the start there was almost nothing on site, then over time the road, the seven bridges, the amenities area, the portal, the tunnel archway and the coal preparation plant were built. During the construction phase I was on site two to three days a week when the tunnelling started in late 2006 I had less input as there was little to monitor or check on the surface so my involvement on site reduced to two or three days a month.

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A. Over the two years prior to the explosion I only visited the site about once a month. I attended liaison meetings which to begin with were approximately once every fortnight alternating between Pike's Greymouth office and the mine site. The meetings were often attended by DOC staff, usually Craig Jones, the mining officer, in that regard I mean the minutes were written by Pike, usually Ivan Liddell the environmental manager, distributed for comment and confirmed at the following meeting. The minutes were then distributed within both organisations. Prior to the liaison meeting on the 16<sup>th</sup> of November 2010 Craig Jones, Bruce Pryor, Paulette Birchfield from West Coast Regional Council and I were taken on a visit to the coalface. I had been underground in the mine before on the 10<sup>th</sup> of February 2009 and I was interested to see the mine in operation and the development since my previous visit. The main purpose of our visit was to see the hydro-mining of the first bridging panel. My impression while underground was that there was a steady breeze in the tunnels due to the ventilation, there was also a lot of activity around the roadheader where coal was being directly discharged into a sluicing channel.

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During the last two years of the mine's development the liaison meetings were held monthly, mostly at the mine site in conjunction with a site inspection. The meetings kept us in touch on a regular basis and were an opportunity to discuss and deal with issues as they arose. Effectively they were about how the work at the mine was progressing and the issues that were of interest to DOC that arose out of that. Sometimes pending work plan variations were raised by Pike at the liaison meetings in terms of what was pending over the next month, but often Pike would not give much warning about what was coming up in terms of their future work plan variations. Often work plan variations were required for unexpected events, for example, a tree needing to be felled or trimmed where there was a risk of it falling on a building, a road or a power line. When work plan variations were requested the process was that Pike would send me a draft and I would then comment on it and forward my comments back to Pike. An updated work plan variation application would then be sent to me. I would then recommend approval to the mining officer who would provide further input and I would go back to Pike and advise if DOC had any issues. DOC would either recommend approval of the work plan variation and draft the approval document and seek a decision or Pike would come back with a further revised application which would then get approved by the same process. As an illustration of how issues were dealt with in early 2010 Pike, DOC and I discussed subsidence monitoring and planning for this. A work plan was then developed by Pike and tabled for approval by DOC, we then discussed issues at two liaison meetings and Pike considered other options and prepared a revised work plan which was put to DOC for consideration then approved. My role was to ensure that relevant issues were dealt with from DOC's point of view, comment on relevant work plans, monitor compliance and provide Pike with updates on the status of any issues DOC was handling. As an example the construction of the site B water intake and pump structures involved potential earthworks and streambed disturbance. I was involved in discussing options for construction of the intake to minimise

effects, reviewing the work plan for this and monitoring compliance with the plan during construction.

5 Q. If you just pause there. The rest of the statement sir relates to just a short summary of the witnesses involvement post 19 November and need not be read. Just one matter of clarification Mr Smith, you refer to the mining officer in your statement, that's a reference to Craig Jones, is that right?

A. Yes it is.

10 **MR MANDER ADDRESSES THE COMMISSION – REMAINDER OF STATEMENT**  
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**EXAMINATION CONTINUES: MR MANDER**

Q. So firstly Mr Smith, was it practical to build a road to vent shaft or further into the coalfield?

15 A. No I don't believe it was and that was because the terrain was very steep and geologically unstable. On a steep slide slope the amount of earthworks required to build a road in that vicinity increased significantly. The costs would have also been significantly higher and that unstable terrain required a lot more support works that would have  
20 required retaining walls and the like and because of the steep slopes, water control would have definitely been an issue as well. There was also known to be significant large rock hazards in that area so in my opinion I don't believe it, it was practical to build a road further in than what it currently was constructed to.

25 Q. Now was a track to the vent shaft ever considered?

A. Yes I believe it was. Pike had a few discussions about tracks with us and we, but we never received a written application from them for a track. They were considering a track as a means of access to the vent shaft site or as an emergency egress for personnel if they'd come up the  
30 vent shaft and were stuck there, and that would have been used in the event that a helicopter couldn't access the site, for example, in, you know, stormy weather or at night and they still needed to get people out.

They also considered building an emergency shelter near the vent shaft and having that there so that they could house people and give them shelter and food, first aid, blankets, bunks, communication equipment, whatever they needed at that site rather than having them walk out on a track. And I believe that that plan for a shelter on the site was also dependent on the facilities that they would have planned for at the second emergency egress that they were looking at and depending what they could fit on that site would depend on what they constructed at the vent shaft site. So it was – those things were certainly considered in the overall assessment of whether a track or a shelter or what form that, that might take, those activities. I also note that it was possible to walk out of the vent shaft site without the track and that that had been done but it was apparently a three or four hour tramp in quite hard country so it would have been difficult.

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15 Q. All right, and were foot tracks considered on the – anywhere else within the rest of the coalfield?

A. Yes, there were tracks considered. There's quite a few tracks constructed between drill sites. Pike would often use old drill sites as helicopter landing pads and then build another drill site further away and will also have water take survey points, the vent shaft and other campsites dotted around. So there were tracks constructed between those facilities.

20 Q. And that's between which facilities?

A. Well, between – it would depend on what the facilities were in the area but between drill sites, between campsites and drill sites, between the vent shaft and the campsites. So there was a whole lot. There was not sort of any rule but there wasn't between, just between drill sites. It just depended on where personnel needed to get between these facilities. Sometimes these – they were pretty generally rough routes requiring minimal earthworks and vegetation clearing. Then sometimes they were just routes through the tussock.

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30 Q. The normal means of access to such sites?

A. Would be helicopter preferably ahead of tracks.

Q. And that's because of what?

A. Well, because it was difficult to cut tracks and they would often only have a short term usage so a lot of effort required, and it was much more, it's much quicker and easier to just locate people in a helicopter where that was possible. It was just weather-dependent really.

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Q. Now, in relation to drill sites, we've heard evidence that they were approximately 10 metres by 10 metres for the drill site, but was that the whole of the area that was used?

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A. No, because with each drill site the drillers would also need a campsite to camp in so they would have a little hut that was flown in by helicopter that they would camp in. So there would be the drill platform and the drill rig, the campsite with the drillers hut and also we'd need a helicopter landing pad so that they could land the helicopter and people could get in and out of it. Often the equipment was brought in with sling-loads from a helicopter but we still needed to be able to land helicopters. So there's essentially three components to any drill site and we would try and use existing cleared areas, like old drill sites or existing helipads rather than cut new ones for each drill site required so it was a combination of things to minimise the impact of vegetation clearing.

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Q. And when old drill sites were used would a track then be cut from that site to the new drill site?

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A. Yes, as I just described before there'd be tracks cut, if required. I mean if it was in tussock we wouldn't need to cut a track but often we would need to cut a track between sites.

Q. And just to round off this evidence Mr Smith, can you confirm that in March of this year DOC was contracted by the receivers of Pike River to establish a 6.5 kilometre all-weather foot access track to the vent shaft?

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A. Yes it was.

Q. And that's now been completed?

A. Yes it has, yes.

Q. And the purpose of that was what?

A. Foot access to the vent shaft for gas monitoring primarily I believe, after the explosion.

**CROSS-EXAMINATION: MS BEATON**

5 Q. Mr Smith you started your role as liaison officer in March 2005, so well after the access arrangement had been finalised?

A. That's correct, yes.

10 Q. You said in your witness statement at paragraph 6(e) that you had the ability in your liaison role to be able to call on additional external consultants for specialist advice on matters reasonably raised by the permit holders mining and mining operations carried out under the access arrangement?

A. That's correct, yes.

Q. Was that ever required in the course of your liaison with Pike River Coal Limited?

15 A. I didn't personally end up calling on them. What tended to happen was that either DOC or Pike would call in those experts themselves and so rather than have me in the loop contracts would just be let to either Pike or DOC directly.

20 Q. Can you give us an indication briefly of what types of issues the external consultants were required to address?

A. The two examples I can think of would be for subsidence monitoring. Pike engaged a specialist subsidence monitoring person to, or subsidence production person, to work on that aspect. And also DOC engaged a water specialist to look at AMD issues.

25 Q. Which is acid mine drainage?

A. That's correct, yes.

30 Q. You've said in your statement that your role was effectively to assess or liaise between DOC and the company on the above ground effects of the mining programme. Do I take it that on issues, for example, set out in the special conditions to the access arrangement regarding the emergency response plan that it wasn't part of your role to audit or assess the plan that the company produced?

A. We would certainly have a look at that plan when we were reviewing the annual plan and that emergency response plan formed part of our annual plan check. We would have a cursory look at it to make sure that it was complete and that it included the things listed in the access arrangement that it had to include but we weren't safety experts and we weren't auditing or analysing at any great detail.

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Q. How did issues of health and safety play a part in your role, or did they at all?

A. Well I believe that health and safety was inextricably linked to a lot of things. It's very difficult to separate environmental issues, health and safety issues and production cost issues on a lot of things we were looking at. For example, if we were clearing a drill site certainly there were safety considerations in which trees had to come down to enable safe access for helicopters. We wouldn't want overhanging trees over the drill rib or people operating but they were also offset with environmental considerations.

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A. So we wouldn't want to fell, you know, lots of large Rimu trees for example just to put a drill rig in a certain location, so between Pike and DOC and the drillers were would try and work out, and the helicopter operators, we would try and work out an optimum solution that allowed the job to be done safely while protecting the environment and being cost effective and meeting the driller's requirements for a drill site that suited their purposes, so it's hard to separate those things completely but certainly safety wasn't our primary focus. We were there to look at environmental effects.

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Q. Turning briefly please to annual work plans and your role in relation to that. As I understand it you were involved in initial discussions with the company regarding an annual plan including discussion and any suggestions that you might have and a draft went to the mining officer, Craig Jones, there may well have been further discussion and then ultimately it went to the conservator, Mike Slater for approval?

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A. That's correct, yes.

Q. Just for completeness I think once approval is given then what's called an authority to enter and operate was granted?

A. That's correct, yes.

Q. And that was on an annual basis generally?

5 A. Yes.

Q. Presently though post the explosion is it on a monthly basis?

A. We have a situation at the moment where there's a rolling authority to enter and operate because Pike's still working on their 2010 to 2011 work plan.

10 Q. Right and just so we're clear, the work plans filed by Pike River generally went from about December 2010, the latest one, through to December of 2011?

A. That's correct, yes.

15 Q. We've heard evidence that there were a number of variations to Pike River Coal Limited's annual plans. Am I right that these variations would be sought, for example, when there would be masses unexpected, for example, as you said before, a tree having to be felled, is that the situation? That wasn't planned for?

20 A. Yeah, there was a range of situations, that's certainly one of them, when unexpected, you know, like a safety hazard might arise for example, a tree might blow over or become a hazard but there were other situations often in the annual plan, at the time of writing the annual plan you might be a year away from undertaking an activity and the design information and the studies required on the ground to plan and set up that activity weren't in place so we would write in the annual plan that, or require  
25 Pike to write in the annual plan, that further detail would be provided prior to undertaking the activity and so the variations would be – the information would be tabled as a variation to the work plan just to provide the extra detail when the design information was available. That  
30 kept the main document lighter too.

Q. Can you recall whether there were any variations that related to the second egress that was proposed by Pike River?

A. There were no detailed plans submitted on a second egress to DOC that I'm aware of. It was only in the annual plan as a "to do" item.

5 Q. What about in relation to the ventilation shaft, were there variations required to the annual plan as a result of what occurred to that in February 2009?

A. Yes there were.

Q. I think that was when the issues of collapse occurred?

10 A. Yes. I don't recall exactly what the variations were for following the collapse but because most of the surface infrastructure and activities were already planned and approved at that point. The collapse was underground so really unless there was any effect, there may have been extra trees required in order to fly the concrete in, I can't recall.

15 Q. So would it be part of DOC's role, through you as liaison officer, to have any involvement in discussion or planning for example as to how a ventilation shaft was to be constructed?

A. Yes, where the potential surface effects, we would definitely have discussions with Pike on that, so when they were considering different options for construction of the vent shaft we were certainly involved in talking about that and the effects of each different option.

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Q. Were there any variations to annual plans, do you recall, in relation to drill holes, vertical drilling, surface drilling?

25 A. I don't recall any variations as such. There, other than that – the drill holes were only mentioned as a number of holes to be drilled in the coming year in the annual work plan and so for each drill hole we would expect a detailed work plan for the drill hole and that, yes, is technically a variation so we would've had variations on those, yes.

30 Q. And in the way you gave your evidence before I take it that you were actually involved hands on with a lot of the occasions when surface drilling occurred?

A. Yes, yeah, I would be present for felling and construction of a drill platform normally.

Q. And when the company decided to conduct some further drilling, obviously there would've been a particular location that the company was interested in drilling down underground. Just how much of an involvement did you have in terms of the actual location of a drill hole?

5 A. Essentially Pike would propose options to us and say, "Look we need to drill a hole in this location. Is that okay?" and often we would go, fly to the site and, with a driller and a helicopter operator and a Pike environmental person or geologist and carry out a site inspection and see what the values were on site, what the issues were and between all  
10 of us we might tweak the site slightly or shift it depending on what suited to come up with an acceptable solution for everybody so that was kind of how it used to work and then we'd formalise that in a written plan and get it approved by DOC.

Q. Were there any situations where there wasn't able to be agreement  
15 between the company and you on behalf of DOC?

A. No every drill hole that Pike applied for we approved.

Q. Was there any discussion that you were aware of where the company, I'm sorry, sought to do further drilling if there was no formal application made for example, was there any discussion that you're aware of?

20 A. Sorry, can you just repeat that question? I've lost my –

Q. Sorry it was a dreadful question. To your recollection, short of a formal application for further drilling, was there any other discussion of which you were a part regarding the need for further drilling?

A. No.

25 Q. Can you comment on how much cost to do this surface drilling? How much it would've cost a company like Pike River?

A. I believe it was in the order of \$100,000 per drill hole or per site I should say and I'm not sure exactly. A site might have three drill holes on it for example and I couldn't give you a breakdown of it but roughly \$100,000  
30 for a single hole.

Q. And how long does it take for a drilling, for a drill hole to be completed?

A. That would depend. If they were taking core samples it might take two or three weeks. It just, it depended on the nature of the ground they

were going through. Hard rock took longer. There might be issues or drill rods that stuck or various operational things but in that sort of order.

Q. And you said –

A. Up to six weeks.

5 Q. Sure, and you said earlier that there would be the need for the parts of the drilling rig and other equipment to be helicoptered in as well as staff obviously. In terms of any permanent effects what would they have been post drilling?

10 A. Permanent effects are reasonably minor. There's a lot of alpine vegetation in the coalfield and that's very slow growing so if a drill site was cleared in the alpine scrub zone it might take 80 or 100 years before it grew back so permanent sort of is a bit, how long's a piece of string, but something in that order so I mean we would, I would do an assessment after the drilling operation and measure out the effected area on the ground, how much earth was disturbed, plants that were  
15 disturbed and work out a compensation area for DOC to then bill Pike for compensation for those drill holes.

Q. And how big is an actual drill hole?

20 A. I think as Jane Newman indicated about 10 metres by 10 metres, so half the size of this room for example roughly.

Q. Is the actual drill hole itself?

A. Oh, sorry the drill hole itself. I think they're, depending on the drill rods are using sort of 80 to 120 millimetre type range. There's several different sorts they use.

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Q. And once the drilling and the samples have been obtained, those drill holes are capped as I understand it. Is that right?

A. Yes, yeah, they're grouted and/or capped depending on what, what's left in the hole at the end.

30 Q. To your knowledge, is there any maximum limit, whether formal or informal, for drill holes in conservation land?

A. No, but would generally go on about a 10 by 10 metre area.

Q. Sorry, perhaps I wasn't clear. In terms of the overall number of drill holes that a company such as Pike River could use?

A. No, there's no restriction that I'm aware of.

5 Q. I want to move now to please to the issue of trial mining. There are a number of specific conditions, as you know, on the access arrangement requiring the company to undergo a trial mining period, and I take it that was because of concern over the risk of subsidence and the ability as to how that could be properly monitored and dealt with?

A. Correct.

10 Q. Am I right that the trial mining became a three phase approach in the terms of a bridging panel, then a commissioning panel and then a trial mining panel?

A. Yes that's correct yes. That was done with agreement from the Department.

15 Q. Can you remember when that was, that approach changed to that?

A. Well from memory it was late 2009, probably September-ish. It was a process we went through. It wasn't, it didn't just happen on one day.

Q. Was there a formal variation to the plan, do you recall or not?

A. I don't recall, sorry.

20 Q. And can you recall why it was that there was this change of approach?

A. There were several reasons from memory. The first one was that Pike came to get some coal out early, it's an extraction, and for cash reasons. They also came to test their hydro monitor equipment. The trial panel as marked in the access arrangement is a long way from pit bottom so they would have had to mine roads a long way to actually get  
25 to the trial panel area.

Q. If I just pause you there. I think we're going to bring up in front of you on the screen a copy of the four year plan that – do you have it in front of you there on the screen in front of you?

30 A. I don't yet, but –

Q. Oh, you don't.

A. Someone could help us with that.

**MS BEATON:**

Sir, I can indicate to the Commission that in fact the projector itself is not working but the screens were. We had assumed that the witnesses would be as well. I'm sorry about that. Perhaps if I can give you a copy.

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**THE COMMISSION:**

Well is there any reason why the witness can't go down to counsel's bench where there is a microphone and view a screen there. Is that an option or a?

10 **MS BEATON:**

That is an option sir, or else I can give him an actual hard copy and we can do it that way perhaps, thank you.

**MR HAMPTON ADDRESSES THE COMMISSION:**15 **EXAMINATION CONTINUES: MS BEATON**

Q. So you have that plan in front of you which was produced as exhibit 9 I think on Friday. You will have seen that before I take it?

A. Yes I have.

Q. And am I right that the, that the area that you're discussing, the trial panels, which was initially proposed by the company, are those in the green and yellow in the top, the middle of the top of that plan?

20 A. That's correct, yes.

Q. But that the bridging panel that had actually commenced was the red portion that we see in the mid-bottom right of the plan in, in the red?

25 A. Yes, that's correct.

Q. And is that the general area I think that you yourself and Craig Jones and some others were taken on the 16<sup>th</sup> of November?

A. Yes it is.

Q. But I think you were telling us for the reasons that you were aware of, that this new three phase approach was going to be taken to the trial mining. You mentioned costs. Were there other factors?

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A. Yes. It was a – one of the things we discussed was a sort of a conservative approach to developing the mine and the trial panels, and one of the major impacts we expected the mine to have was on surface subsidence on conservation land.

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A. So we were quite in favour of the three-phase approach, starting off with a very narrow bridging panel first and then Pike would have a chance to assess how the geology behaved and we could do some subsidence monitoring if – and we didn't expect any but if there was some we would get an early indication with this very small panel. Then if they moved to the second phase of the commissioning panel, which was essential a wider or double the width panel, that gave us another staged approach where we could again get information about how the strata behaved, how the subsidence worked on the surface and what the effects might be without going to a full-scale trial panel. And then the last phase was to go to a full-scale trial panel. And I guess Pike were interested in that approach too because the access arrangement had a whole lot of requirements that the trial panels would trigger.

15 Q. Yes.

20 A. Once they had started those they would have to produce a whole lot of reports and detailed information about subsidence and geological behaviour, which I think they were happy to do and they would've had to do as part of the bridging and commissioning panel as well but perhaps to a lesser extent.

25 Q. Right, so there still would've been that requirement for notification and monitoring that is set out in quite significant detail in the access arrangement?

A. Yes. And there's a subsidence management plan which we were involved in, in developing with Pike and those requirements are all set out in that as well.

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Q. Do you understand Mr Smith that once they got to the third phase of this proposal that the trial mining panels would still be in the same location as shown on this map or were they to change?

5 A. No, I believe they were there because - they were originally set up to be there because of the vegetation types on the surface and because it was in a tussock and low scrub zone it would be much easier to assess the effects of subsidence on the surface without the trees interfering, what you could see, and without any risk of forest toppling over. So that's I believe why those trial panels are where they are located.

Q. So that was still intended to be the trial mining location?

A. Yes it was.

10 Q. Whose idea was it to have this three-phased approach to the trial mining?

A. Pike River proposed that to the department.

15 Q. And you said, I think earlier, that that was approved or effectively agreed to by the department. Can you tell me during the course of that liaison and those discussions was the fact that that would mean that extraction of coal was occurring without this proposed second egress being completed? And I take it that's simply because, the road as we can see there marked in the red, just wouldn't have existed at that point?

20 A. That's correct. And the second egress wasn't something that myself or DOC considered as part of that. From our point of view that was up to Pike to manage that issue and do as they saw fit in that regard.

Q. And did Pike ever raise that issue directly with you or anyone else from DOC to your knowledge?

25 A. Well we were certainly aware that they had an intension to build a second egress. They'd given us an indication of where it might be and that they were working towards that and planning for that and they'd done some initial surface investigation of that location but we were essentially waiting for them to table a work plan for that activity with us.

30 Q. And you're aware, I know, that in the 2008/2009 work plan and then 2009/2010 work plan there was an indication there from Pike that they intended to construct that roading and that second exit in that 12 month period?

A. Yes that's correct.

Q. And that they proposed to file, or to submit further plan approval or the documentation required for that to occur?

A. That's correct, yes.

Q. Which didn't as I understand it in either of those years?

5 A. That's correct, yes.

Q. As I understand part of your role, and you've said so in your statement, is to actually monitor compliance with the annual plans and the access arrangement. When there was, as we know in relation to the second egress, effectively a non-compliance with the work plan, what if anything was the outcome from your perspective in terms of monitoring, what did you do?

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A. We would raise it with the company, with Pike and in almost every case they would address the issue and get it back into compliance if you like. That was the general approach.

15

Q. So where for two years there had been a proposal that the second egress would be constructed, hadn't been and I'm conscious that 19 November intervened at the end of that plan, were you involved specifically in discussions about that second egress?

20 A. No, I think that example is slightly different because – I may have mis-answered your question before, but where an activity hadn't occurred we wouldn't require it to occur. If this sort of example happened a lot the mine was much slower in its development than was originally planned. The road was, you know, it took a lot longer to build, everything took a lot longer to build than was in the original plan and so if things weren't built from the department's point of view it wasn't really an issue so we didn't require them to then, you know, hurry up and build it by the end of X year, that was really an issue for their scheduling, their project scheduling.

25

30 Q. Finally, I just wanted to ask a few questions about the use or the intended use by Pike of the ventilation shaft as a potential emergency exit and I know that you're aware of the fact that there was a change of wording and perhaps emphasis used by the company over the course of

the five work plans that were filed prior to the 19<sup>th</sup> of November, and what I mean by that is a reference initially by the company as the shaft not being considered suitable as an emergency exit and in later years the wording changed to not being suitable as a permanent emergency exit. At the time that that wording changed were you aware of the change in emphasis contained within those plans or not?

A. Yes I was.

Q. Was there discussion about it with Pike River?

A. I don't recall specifically but in all likelihood there was. We would've been interested in what their alternative plan was.

Q. And do you recall what that was?

A. The alternative plan to an egress from the vent shaft was essentially the egress that's shown in this map you've provided or in a similar layout, that layout changed a few times but it's essentially the same thing.

15

**MR HAMPTON:**

I seek leave if I may sir just to ask a couple of questions in relation to the plan which I think is formally exhibit 8, it's been so marked, that's the one that was up on the screen. First, I want to understand who was involved in these discussions about the change of approach. Secondly, where the second egress would physically have emerged, come to the surface, the terrain there and thirdly, when was it that this proposed second egress was first shown in the annual work plans, I'm not absolutely certain when that was sir.

20

**THE COMMISSION:**

Leave granted.

25

**CROSS-EXAMINATION: MR HAMPTON**

Q. In answer to Ms Beaton you've told us about this change of approach to where the trial mining was to take place. Who were the actual persons involved in the discussions that were had over this change of approach?

30

1350

- 5 A. Well I can't speak for Pike because there would've been a lot of internal meetings and things within the company to make that change, but from DOC's point of view it would've been myself, Craig Jones, Ivan Liddell the environmental manager for Pike. There was a subsidence expert, John St. George from the University of Auckland who prepared technical information and recommendations on this, to Pike and that information was provided to us and there may have been the Pike technical managers as well at the time but I don't recall who that was at the time.
- 10 Q. And this you've told us, was over a period of time, approximately how long?
- A. Three or four months probably.
- Q. And can you put a time on that, those three or four months? When?
- A. From memory I believe it was mid to late 2009 so something like July to September 2009.
- 15 Q. And do you know from your contact with Pike whether Pike were talking to other agencies or Government departments about this change of approach?
- A. No, I don't. I know that at some point there was an intention to involve the West Coast Regional Council in the subsidence discussions and we were very nearly at that point where they were going to be invited to come on board as part of the subsidence working group which is specified in the access arrangement.
- 20 Q. Can you help us on two aspects of this second egress shown on the plan? Do you recall when it was first shown on these annual work plans, which of the work plans?
- 25 A. Not, not specifically. It may have been shown in the 2009/2010 that would've been the earliest from my recollection but I, sorry I can't recall. I'll have to go back through the old plans and check.
- Q. You would have them all in your records?
- 30 A. Yes, DOC would.
- Q. DOC would?
- A. Yep.

Q. So between yourself and DOC you'd be able to supply to the Commission, if it was required, the record of when this second egress first showed up in DOC's records?

A. Certainly.

5 Q. Looking at the plan where the second egress is shown, do you know physically where it would've emerged, what sort of country it would've emerged into?

10 A. I haven't visited the site but Pike described it as being near the bank of Pike stream and just upstream of the vent shaft by a few hundred metres and on a steep sided hill on a, probably on a terrace with steep, in steep country so it would've been limited ground and –

Q. Limited ground meaning what?

15 A. Well limited space to flat area, ground area to build anything so it would essentially have come out of the hillside onto the, onto the small terrace where they could've located some emergency equipment or whatever was needed at that point. These are all the things we were waiting and expecting the plan for, all this detail to come from Pike at the time of the explosion.

20 Q. So you never had seen any actual plans of how physically access was to be had from the outside to that second egress?

A. No, the only description we've got is, is it were to be a barred door to prevent access and with, with mesh on it as well so that birds couldn't go into, into it but other than that we have no detail at all.

25 Q. When you realised in the course of these discussions that if there was a change of approach that meant the second egress wouldn't be reached and built or the place for it to be reached wouldn't be reached or a place for it to be built wouldn't be reached, sorry. Did you or DOC raise any concerns about that with the company?

30 A. Well the only scheduling information that we had was what's shown on this plan.

1355

Q. Yes or no. Just answer the question please. Did you raise any concerns on behalf of yourself and/or DOC with the company about the second egress not being built?

A. No.

5 Q. Can I ask why not?

A. Because the only scheduling information we had showed that these things are all to be built in the same year and the detail of exactly when that timing was we weren't aware of so we couldn't really comment plus I had no reason to be concerned. We are not underground miners. We had no knowledge or experience on which to base any concerns in that regard so we didn't raise any concerns.

10

**RE-EXAMINATION: MR MANDER - NIL**

**QUESTIONS FROM THE COMMISSION:**

15 Q. Just one matter I was going to ask you about Mr Smith. Did you have any reason to liaise at all with the local Department of Labour Mining Inspector?

A. No, none at all.

Q. Do you know him?

A. No I do not.

20 **QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

**MS MCDONALD CALLS****JAMES RICHARD MURPHY (AFFIRMED)**

Q. Can you confirm then please that your full name is James Richard Murphy?

5 A. Yes I can.

Q. You are from Wellington and you are employed by the Department of Labour as the Workplace Health and Safety Policy Manager?

A. Yes indeed.

10 Q. And can you just confirm for me that that involves responsibility for the formulation of policy advice for the Government on the Occupational Safety and Health legislation that's administered by the Department of Labour?

A. Yes.

15 Q. How long have you been in your current role?

A. Just shy of three years.

Q. And I think you have had 10 years' previous experience in policy and operational policy positions with the Ministry of Education and the Ministry of Social Development, is that right?

20 A. Yes indeed.

Q. Now can you also confirm that you have had some management responsibility in the development of the Department's or the joint Government paper presented for this Commission? That right?

25 A. Yes, it's a joint paper, Tier 1 paper and also the Department's Tier 2 and Tier 3 papers.

1400

30 Q. And the Tier 2 paper for the record is DOL0000010001, and just while the number's coming up for the Tier 3 paper I'll get you to confirm that you also are aware, are you, of the operational review document that's been submitted to this Commission?

A. Yes.

Q. And that number for the record is DOL0100010001. Just in relation to that operational review document are you able to just briefly for the

Commission indicate the purpose of that report and who completed that review?

5 A. Yes, the report was commissioned by the department after the explosion with a purpose of reviewing the department's operational interactions with Pike River with a view to provide information to the Royal Commission and also for any internal learnings that might be had from having the work reviewed independently. It was done by two Australian experts, Professor Neil Gunningham and Dr David Neal.

10 Q. And just to read into the record that Tier 3 paper that I mentioned earlier is number DOL0000020001. Now could you confirm Mr Murphy that you've completed a brief of evidence on this inquiry?

A. Yes.

Q. Have you got a copy of that with you?

A. Yes I have.

15 Q. And that brief I think is dated the 20<sup>th</sup> of June 2011?

A. Yes.

Q. Can you confirm that the contents of that document are true and correct?

A. Yes I do.

20 Q. I'm not going to ask you to read it and I think if you stay there please and answer any questions, thank you.

A. Thank you.

**CROSS-EXAMINATION: MR WILDING**

25 Q. Mr Murphy, aside from the policy unit do you belong to any other committees or groups relating to health and safety?

A. No sir.

Q. If I could just turn to the department's health and safety function. Does that cover all of the workplaces in New Zealand?

A. Yes it does.

30 Q. How many workplaces?

A. In the region of 450,000.

Q. Do you know roughly how many employees are covered by those?

A. In the region of two million.

Q. And does the department have any system for identifying the industries or sectors that have the highest injury rates?

5 A. We use information that is drawn from a number of sources, from the departments own data, also from ACC data and from Stats New Zealand from the injury chart book. So we have a number of sources we draw to gather information.

Q. Are you able to tell us what the result of that work is in terms of the injury rates for certain industries?

10 A. There is generally recognised that there are five industries that are over-represented in the injury, deaths and serious injuries. Those are the construction sector, the agriculture sector, manufacturing, fishing and forestry.

Q. Where does mining come in relation to those?

15 A. It doesn't feature in those. It comes further down the list but obviously what we do know is that when things go wrong in mining they're often catastrophic.

Q. Has there been any work done to your knowledge about the injury rate in relation to mining?

20 A. Work done in the sense of?

Q. Work done in the sense of working out the injury rate of the mining industry?

A. They do, yes there is. The same processes are used for a range of industries and the mining industry is one of those that is counted.

25 Q. Do you know the accident rate within the mining industry?

A. Not without reference to the documents, no.

1405

30 Q. Could I just take you to a document and ask you to clarify something. It is CAC0004/28, this is appendix 1 to a document called, "The Work Place Health and Safety Strategy for New Zealand to 2005," published in June 2005 by the Department. Are you able just to describe the purpose of that document?

A. Sorry, I have nothing on the screen at the moment.

**MR WILDING ADDRESSES THE COMMISSION – WITNESS MOVES TO COUNSEL BENCH FOR VIEWING DOCUMENT**

**CROSS-EXAMINATION CONTINUES: MR WILDING**

A. Sorry, could you repeat?

5 Q. With apologies for the inconvenience, you should have a document before you headed “Appendix 1, Key Statistics for Work Related Disease and Injury in New Zealand?”

A. Yes.

10 Q. Now that is the first appendix to a document provided or published at least by the Department called, “The Work Place Health and Safety Strategy for New Zealand 2015,” June 2005?

A. Yes.

Q. Are you able first just to describe the purpose of that Work Place Health and Safety Strategy?

15 A. The strategy is to focus government and other agencies and interested parties in prioritising and working towards reducing the work toll in New Zealand and it sets out priorities for a 10 year work programme and interventions.

Q. If I could just ask you to look at the right hand column of appendix 1?

20 A. Yes.

Q. The third to bottom bullet point says, and I will read it, “The highest injury incident rates are in the mining industry, construction industry, and agriculture, forestry and fishing sector.” That seems to suggest that as at June 2005 the mining industry was included within the industries that had the top five accident rates?

25

A. The issue there is one of difference in interpretation of account. What this is, is a ratio per numbers of people in the industry, the figures and the reference I gave you earlier related to overall numbers of injuries and accidents in terms of numbers of people harmed, whereas this figure relates to the ratio between the numbers of people working in the industry, so the fact that mining for example has only around 1000 people working in the industry overall and only around 450 working in

30

underground mining would explain the difference in the way in which the numbers are interpreted or used.

Q. But it is within the top five in terms of the accident rate per employee?

A. Yes.

5 Q. Do you know whereabouts it figures in that top five?

A. Not off hand, no.

Q. Could I just ask you to outline some aspects of the policy unit that you manage. How many people in that unit?

A. It's a slightly moving feast but around 11 or 12 at any one time.

10 Q. And they all report to you?

A. Yes.

Q. And to whom do you report?

A. I report to a general manager who's also responsible for employment and immigration policy.

15 Q. And how many people within the policy unit are policy advisors?

A. In the unit overall or just in my team?

Q. In the unit overall?

A. I would say probably, in our group there's probably about 45.

1410

20 Q. Can your policy unit decide the issues that it wishes to focus on?

A. Not of its own volition. It can have conversations with ministers around what it's, what the Government's priorities are.

Q. Does that mean that it generally gets directed to look at specific issues?

A. It's a iterative process I would say, ministers are obviously looking for  
25 advice. They're looking for information on how they might direct their energies and resources and the energies and resources of their agencies so they would look to us for advice but ministers would make final decisions.

Q. Does it have any role in providing internal policy advice?

30 A. Yes.

Q. What is that role?

A. It's a role we, obviously the Department of Labour has a strong operational focus and so our engagement with our operational arm is

very important to us both as an information source to us to determine where we need to prioritise our policy resource but also from the point of view of working with them to operationalise policy so that policy decisions are turned into working realities on the ground.

5 Q. What does it do to ensure that its policy advice reflects issues that are raised at a grassroots operational level?

A. We establish work programmes jointly with them. We establish agreed priorities across the operational side and the policy side and then we seek to engage with ministers in finalising a work programme.

10

### **THE COMMISSION ADDRESSES MR WILDING – WITNESS MOVES BACK TO WITNESS BOX**

#### **CROSS-EXAMINATION CONTINUES: MR WILDING**

Q. Does the policy unit include, as a function, identifying regulatory gaps?

15 A. Yes, it does.

Q. Could I just ask you some questions about the relationship between the policy and operational functions in a bit more detail. First, is the relationship currently the same as that back in November last year?

A. The relationship is much the same, although the structure has changed.  
20 Prior, at the time of the explosion in November the policy and operational parts of the organisation in relation to health and safety were part of the same group. They were both part of the workplace group. A structural change occurred on the 1<sup>st</sup> of December which separated those two, separated the policy function from the operational function so  
25 the policy function now sits with a separate group.

Q. I just want to look at how policy issues are raised. Are you aware of a group called the Mine Steering Group?

A. Yes, I am.

Q. Are you able to describe its role briefly?

30 A. Only brief in that it was an operation, it is and was an operational function which I didn't relate to personally. Its role was for people involved in mining inspection group inspections to come together with

the mining specialists and the relevant operational managers to consider and develop a work programme for mining inspection and related activities and reported to a leadership group within the old workplace services which is now currently the labour group.

5 Q. How would that Mine Steering Group raise policy issues?

A. They would raise them through their management channels. They would raise them first of all in the, presumably in their mining, in the steering group itself and they would be escalated then through to the workplace services leadership team who would then make a decision as to whether or not that was something to be raised at a policy level.

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1415

Q. And would it then be that team that would raise it as a policy issue with your unit?

A. Yes.

15 Q. And how would the mines inspectors raise policy issues?

A. Again, through that channel.

Q. But starting first with them, then raising it with the Mines Steering Group?

A. Yes.

20 Q. And you're aware of the position called the senior advisor high hazard?

A. Yes.

Q. Can you briefly describe that position?

A. It was a position that was created in 2007 I understand to provide additional technical and specialist advice and support to mines inspectors.

25

Q. And how would the specialist advisor raise policy issues?

A. Through, well I guess through initially the, to test their thinking, with the Mining Steering Group and then up through the channels that I've just described.

30 Q. Without going into detail at this stage, are you able to list for us the policy issues that have been raised by any of those three, the Mines Steering Group, the mines inspectors, and the senior advisor high hazard?

- A. To my knowledge there haven't been any. There's been none raised with me.
- Q. And when you say, to your knowledge, does that mean to your knowledge going back to when you started?
- 5 A. Yes.
- Q. And you started in 2008?
- A. September 2008.
- Q. You haven't checked to see whether there were any raised prior to then?
- 10 A. We undertook as I assume you'll get to at some point, the review between 2006-2009, so there would have been discussions with people involved on the operations side of mining in that review, but since the conclusion of that review I am not aware of any other issues having been raised.
- 15 Q. I'm still just wanting to explore some of these various structures. There's a body called the Workplace Health and Safety Council?
- A. Yes.
- Q. Are you able to describe what its function is?
- A. That's a tripartite council made up of representatives from Government, from employers through Business New Zealand, and through workers through the New Zealand Council of Trade Unions. It's a representative body who have a responsibility for monitoring the workplace health and safety strategy and providing independent advice to Government, to the
- 20 Minister of Labour on health and safety issues.
- 25 Q. And when was that formed?
- A. From memory, it's about five years ago.
- Q. And do you attend its meetings?
- A. Yes.
- Q. In what capacity do you do that?
- 30 A. I attend as the policy manager for health and safety in the department. The department provides the secretariat to the council and we also provide advice and papers to the council periodically.
- Q. And how often does it meet?

A. It's scheduled to meet quarterly. In the last year it only met three times. The fourth meeting was cancelled because it coincided with around the election time, but it's generally scheduled to meet four times a year.

5 Q. Is that a body before whom the issue of health and safety in mining could appropriately be raised?

A. Yes.

Q. Has it ever been raised before that committee?

A. Not in my time, and having checked back through the records, no it doesn't seem to have been except obviously since the explosion.

10 Q. Are you able to give us a flavour of the issues that have been raised since the explosion in relation to underground coalmining before that council?

1420

15 A. Council's met just the once, well no sorry, it's met twice since then. It met last Thursday but of course I was here so I wasn't able to attend that meeting so I don't know what the nature of the discussion was there. The previous meeting there were obviously expressions of concern of what had happened and a request to be kept in touch and briefed on the outcomes of the investigation and any other changes or  
20 any other activity that the department was undertaking. It will be fair to say also that the CTU representatives were, you know, raising sort of issues of the levels of worker participation, as they had in previous submissions, and so they were also concerned about workers in the industry.

25 Q. I presume that minutes of that will be available?

A. Yes, they're available on the department's website.

Q. Does that body have the power to commission work or research?

A. Yes.

Q. Has it done so?

30 A. No.

Q. If I could just turn to another committee, the National Occupational Health and Safety Advisory Committee. Are you familiar with that?

A. Yes.

Q. And is that known as NOHSAC for short?

A. Yes.

Q. When was that formed?

5 A. Haven't got the documents in front of me but I think it was somewhere around 2004.

Q. And what was its composition?

A. It was essentially composed of academics and researchers with health and safety interests and backgrounds.

Q. And what was its role?

10 A. To undertake research and again as an advisory body to Government.

Q. Was it independent?

A. Yes.

Q. So it could decide what areas it wished to focus on?

A. Yes it could.

15 Q. Do you know whether any of its work focused on the extractive sector?

A. Not specifically, no. Sorry, yes I do know that it didn't specifically.

Q. And I understand that that's been abolished?

A. Yes it was wound up probably two years ago now.

Q. Are you able to say why?

20 A. When the Government changed about three years ago they did a fairly widespread review of various advisory groups that had been set up under the previous administration and they decided that it was more appropriate to rather than have a standing committee establishing its own research agenda that it will be more appropriate to have a work  
25 commissioned on a as needs basis and not have a standing committee to do that piece of work.

Q. Since then has work been commissioned on an as needs basis?

A. Yes it has, yes.

Q. When we say, "Work," what sort of work do you mean?

30 A. Pieces of research. As an example, we've been doing some research on occupational health surveillance systems. We've also been doing some research on, it's like social sort of issues in workplaces, workplace bullying, fatigue, those sort of issues.

Q. And that's research that is directed by Government is it?

A. It's directed by Government through the department, yes.

Q. Are you able to give us an idea of the volume of research that was undertaken by NOHSAC?

5 A. They produced, I think, around 12 reports from memory. So they undertook a fair volume of work during their life.

Q. Are you able to say whether anything's been done to utilise that research?

1425

10 A. A number of things have been, and now are being, applied. We are developing an occupational health surveillance system which was first recommended by NOHSAC, that will be, we're just putting the finishing touches to that model this year and it will be implemented next year. It's probably the most significant in recent times and there are a number of  
15 others but I'm not familiar with – I couldn't recite them off the top of my head right now.

Q. But its research isn't being lost, it's still being used?

A. No, that's right.

Q. Could I just turn to the transition of the mining inspector and group to the  
20 department in 1992 to 1998 and I know you weren't involved in that but you did have of course managerial responsibility for the department's response to this Commission. Are you able to describe the estimates of the costs and cost savings from prior to the transition?

A. I can give you some ball park figures, I think there was around three and  
25 a half million in the previous MIG regime and that reduced when the transition came over to the Department of Labour to somewhere around two and a half million. The three and a half million was funded from a levy specifically on mine operators and on the industry. That ceased at the time of the transition and the current funding is from general  
30 appropriations from the health and safety levy that is charged on all employers so there is no longer a mining specific levy.

Q. How did those cost savings come about?

- 5 A. As I understand it they came about because the scale and scope of the work of the inspectorate under the MIG had been significantly reduced and there were seen to be some cost savings likely to be applied by having the health and safety covered entirely by the Department of Labour.
- Q. When you refer to this scale and scope of the work, was part of that essentially referring to Crown Minerals taking over some of the functions and other functions then done under the Resource Management Act?
- 10 A. Yes and subsequently then other functions being undertaken by the Extractors Industries Training Organisation as well.
- Q. Are you able to say whether prior to that transition there was an estimate of the benefits and disadvantages attached to it?
- 15 A. There was considerable debate I understand around the time of transition and the transition did take an extensive period of time because of the difficulties and the challenges of negotiating a satisfactory transition.
- Q. Are you able to tell us what the estimated benefits were?
- A. Are you talking dollars or are you talking about?
- Q. No, I'm talking about benefits in terms of ensuring health and safety?
- 20 A. The change was premised on the fact that the one Act, one responsibility or one authority sort of principle which was that health and safety under the HSC legislation will be best managed in a single agency with prime responsibility, that that agency was the department.
- Q. When you refer that that's essentially New Zealand's adoption of the Robens model?
- 25 A. Yes.
- Q. So in terms of the regulatory regime a hierarchy starting with the Health and Safety in Employment Act supported then by regulation, then supported by approved codes of practice?
- 30 A. Mhm.
- Q. And presumably then supported by other less formal guidance?
- A. Forms of guidance, yes.

Q. And that hierarchy was presumably the hierarchy which it was intended to enact and have put in place?

A. Yes.

1430

5 Q. In advance of the transition, do you know whether there was any identification of any potential disadvantages in terms of ensuring health and safety of workers?

A. There was quite a strong lobby of opinion around the potential loss of, the sole focus in this and the expertise of the previous mines  
10 inspectorate.

Q. You say "lobby," lobby by whom?

A. By people in the industry and by people who were current, who were inspectors in the mining inspection group in the, in Commerce.

Q. What did the department do in relation to that lobbying?

15 A. The departments effectively, well in terms of the lobbying I mean it did, the issue is really around how we're going to implement the system once the decision was made. It was one of implementation rather than making any decisions around responding to the lobbying. It was a question of the department had the responsibility and it was then the  
20 responsibility to implement the new system.

Q. So in implementation, how did the department respond to the concerns which were identified by those doing the lobbying?

A. Well first of all the, significant number of the people who had previously been doing the work in the mining inspection came over to the  
25 department and so that level of expertise was still available to the department and subsequently we have retained specialist mining inspectors within the department.

Q. When you say "a significant number came over," that was at the initial stages of the transition?

30 A. Yes.

Q. And a significant number also left –

A. They did.

Q. – towards or by the end of the transition?

A. Yes, indeed.

Q. And when you say you've retained specialists, are you able to say how many specialist underground coalmining inspectors there were at the end of the transition, so 1998?

5 A. The numbers are, depending which documents you read the numbers are a little bit variable but generally seven was, is an indication of the numbers that came over.

Q. When you say "came over" –

A. Came over –

10 Q. – in 1998?

A. Yes.

Q. And in 1999 do you know how many there were?

A. No.

Q. And how many are there now?

15 A. Two.

Q. Has there been any work done by the department to ascertain whether the ratio of inspectors to the number of mines is the same as it used to be under the Mining Inspectorate Group regime?

20 A. When I say there are two, I mean I think what we're saying here are there are two underground mining inspectors. There are a significant number of other inspectors who have responsibility for some of the other functions that were a part of the old mining inspectorate you know for tunnels, for quarries and for open cast mines so there are more generalists able to operate in those areas as well.

25 Q. Just to perhaps repeat or rephrase my question. Do you know whether the department has done any work to ascertain whether the ratio of inspectors to the number of mining operations is the same now as it was at the time of that transition?

30 A. In terms of the comparisons, no, I'm not sure about that but I do know there has been quite a lot of assessment done in terms of whether or not the current deployment is adequate for the existing number of underground mines and the decision has been, yes, that it is adequate for that purpose bearing in mind that we're not really comparing apples

and apples with the level, the responsibilities that inspectors had under the old regime to their current role.

Q. Can you just explain a bit more about what work has been done in that regard?

5 A. In relation to assessing whether or not the current two inspectors is sufficient for the four underground mines. Is that, sorry is that the question?

1435

10 Q. Well, whether the number of inspectors is sufficient for the number of operations for which they are responsible?

A. The bulk of that work has been done not in the policy unit. It's been done in the operational side, so I don't have that detail I'm sorry.

15 Q. Do you know whether at the end of that transition of the Mining Inspectorate Group to the department, there was a post-transition review of whether the costs and benefits were realised?

A. There'd been a number of reviews. I'm not sure whether that was a specific part of that review.

Q. When you say, "a number of reviews," are you able to just explain what reviews there have been?

20 A. I'll just need to refer to my brief if I may. There was a review in the year 2000, which led to amendments to the HSE Act. Sorry, this was not specific to mining, and then there was the review in 2006, 2008, 2009.

25 Q. But you're not aware whether there was any specific review directed at the issue of whether the estimated costs and benefits of the transition to the Mining Inspectorate Group were in fact realised?

A. No.

30 Q. I just want to look at the period immediately after that transition, and given the difficulty with the screen, I'll perhaps read out what is quite a short paragraph from the department's Tier 2 paper, 10 May 2011, paragraph 165, and the summation number is DOL000001001/52?

A. Sorry, can you give me the paragraph number again please?

Q. Paragraph 165. Just while it's coming up I'll read you the short paragraph. Paragraph 165. "The number of serious harm notifications

from the sector to the inspectorate rose steadily during the period 1999 to 2005. The department's principal response was to support the establishment of Minex, the National Health and Safety Council for the New Zealand Minerals Industry." Do you have that paragraph before you?

5

A. Yes I do.

Q. Now if I could just clarify something first. The reference to "serious harm notifications," is presumably a reference to the notifications required pursuant to section 25(2) of the Health and Safety in Employment Act?

10

A. I think it's 25(3), but yes.

Q. And that requires notification of serious harm incidents. Subsection (2)(b) also includes as matters to be notified accidents of a kind or description required by regulations made under section 21. In 1999 the Health and Safety in Employment (Mining-Underground) Regulations were issued and regulation 10 of that set out a variety of types of accidents which had to be notified?

15

A. Yes.

1440

Q. Are those accidents also included in the serious harm notifications to which you have referred in paragraph 165?

20

A. Not necessarily, no, because there are a number of things that needed, there was an obligation to report under the Regulations that don't result in accidents.

Q. So 165, the reference to serious harm notifications is to, serious harm notifications aside from those that were also required to be notified pursuant to the 1999 Regulations?

25

A. I'm sorry, no, can you go back again and read, ask the first question again because I may have given you the wrong answer to that?

Q. The issue is, does the serious harm notification referred to there –

30

A. Yes.

Q. – include the notifications that from 1999 were also required as a result of Regulation 10 of the Mining, Underground Regulations?

A. Yes, sorry I misunderstood your question, yes.

Q. It does include those?

A. Yes.

5 Q. You have said that the principle response is to support the establishment of Minex, and when I say, "You," I mean the department. Are you able to say why that was chosen as the principle response?

10 A. The issue I think at that time was seen to be that there was a gap in the regulatory framework which was around having established the Regulations in '99 the next tier within the regulatory framework was around codes of practices and guidelines and so the question of the establishment of Minex to provide the mechanism to develop those codes of practice and guidelines was seen to be a significant piece of the framework that was missing and therefore that was where the energy needed to go.

15 Q. Well I think when we talked about the hierarchy before we talked about it as having the Health and Safety in Employment Act, then the Regulations, then approved codes of practice and then guidance?

A. Yes.

20 Q. So would the next tier not have been considering the issuing of approved codes of practice?

25 A. The approved codes of practice have a particular definition and require Ministerial approval. They are a part of the framework that is not widely used. There are probably under 20 approved codes of practice right across all industries at the moment. There hasn't been one for at least the last 10 years. Generally speaking the reason for that has been that approved codes of practice do take a long time to develop. They are also very difficult to change, requiring Ministerial decision-making. So what the practice has become over recent years has been to develop codes of practice which effectively have the same sort of effect in terms of setting out an industry expect - you know, what's recognised as industry codes but without the formality of Ministerial approval.

30 Q. You've raised a couple of issues there. One is the long time in relation to approved codes of practice and the other is the same effect?

A. Mhm.

Q. Are you able to say when the Minex codes of practice were issued?

A. Minex has issued one code of practice in relation to mining and a number of guidance documents underneath that.

5 Q. And do you know when the Minex code of practice was issued?

A. I think it was in 2008.

Q. So three years after the end point of this increasing notification period?

A. Minex was formed in 2006 and that was, so I came, yes, fairly swiftly after that period of time.

10 Q. And when you say that codes of practice have the same effect as an approved codes of practice, can we just look at this specific example. Minex is an industry group, is that correct?

A. Yes.

1445

15 Q. So it represents the views of the industry as opposed to the views of the workers within an industry?

A. I'm not sure they would accept that, the development of their code of practice and their guidance would need to reflect engagement with the work force.

20 Q. Well, do you know whether workers in an industry are entitled to be or are actually members of Minex?

A. No, I'm not, I don't know about that.

25 Q. In assessing whether or not a code of practice might have the same effect as an approved code of practice did the department assess the extent to which codes of practice might fairly represent the rights and duties of both employers and employees?

A. The – sorry, can you repeat that question?

30 Q. Do you know whether the department assessed whether or not the Minex code of practice fairly represented the rights and duties of both employers and employees?

A. The department doesn't actually approve the code of practice, it's essentially an industry in consultation but the department doesn't approve the code of practice.

Q. But presumably for the department to take the view that a code of practice has the same effect as an approved code of practice, it must undertake some assessment of whether or not that's the case in the context of a specific code?

5 A. Yes.

Q. How does it do that?

A. It does that by engaging with Minex and also with interested parties to determine its view. It's used by the department as, if you like, the demonstration of all practicable steps as an indication of adherence to a code of practice, would be the decision, would be the thing that the department would assess as against all practicable steps to ensure a safe work place.

10

Q. Do you know whether there was a review by the department of the Minex code?

15 A. There would've been but it wouldn't have been in through the policy group, it would be through the operations side.

Q. So I presume you're not in a position to say whether the Minex code had the same effect that for example, an approved code of practice might?

A. It's generally recognised as having that same effect.

20 Q. You're not in a position to say in relation to the Minex code?

A. No.

Q. I want to stay really around that timeframe. In 2006 there were then two deaths in underground coalmining as a result of two different tragedies. Is that correct?

25 A. That's true.

Q. And that led to the review that you referred to earlier I think as the 2006 to 2009 review?

A. Yes.

Q. And although that review was called the 2006 to 2009 review as I understand it the single regulatory change recommended occurred in 2010?

30

A. Yes.

Q. Are you able just to explain why that review took that period of time?

A. The review was pretty much concluded in 2008. The initial report back to the Minister with the outcomes of that review occurred late in 2008 at a time when there was an election and a change of government and so the findings and the papers were then reconsidered by the incoming government in early 2009.

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1450

Q. Does the department assess the priority which should be afforded to reviews such as that review?

A. Yes.

10

Q. And what's the process it has for assessing that priority?

A. It's essentially what's, if it's a Minister's priority it's the department's priority, and so the assessment of the priority given to it in 2006 was that it was directed by the Minister. It was to be a thorough look at the system so there was a balance to be had between speed and between thoroughness and so a two-year period of time to review, to consult, to consider, to put - have public consultation processes is not unusual.

15

Q. Do you know whether in assessing that priority regard was had to that increasing rate of serious harm notifications to which we referred earlier?

20

A. Yes.

Q. And did the department have any reason to believe that that increasing rate would not continue to increase?

A. No.

25

Q. Do you know whether in assessing that priority, regard was had to the fact that mining was in the top five industries in terms of the injury rate as referred to in Appendix 1 of the Workplace Health and Safety Strategy?

A. Yes.

30

Q. The regulatory impact statement at the time that the regulation was introduced or just prior in 2010, said in respect of that regulation, and its DOL0010020482/4, that overall the estimated impacts are slight and the potential safety benefit is significant as it could avoid a tragedy similar to one of the fatalities in 2006. In assessing the priority to be afforded to

that review, was regard had to the seriousness of the consequences which it was sought to be prevented?

A. Yes.

Q. And so what was the priority that was allocated to it?

5 A. To the review or to the implementation of the regulatory change?

Q. To the review?

A. To the review, the – it was a major piece of work on the policy work programme and had the appropriate resource allocated to it, a dedicated resource.

10 Q. What was the resource allocated to it?

A. The resource was a senior advisor working full-time on that piece of work supplemented by a significant amount of manager input and support from other members of the team.

15 Q. It was responding to the fatalities in 2006. Did the department set a time frame within which the review must be completed?

A. It precedes me so I don't know whether that was the case, but no I'm sorry I can't say.

Q. Could I just turn please to the sources of information for that review, and perhaps if you could outline what the sources of information were?

20 A. Could I - I will need to refer to my brief if I may.

Q. Certainly.

A. Perhaps if I -

1455

25 **THE COMMISSION:**

Q. Where are you?

A. I'm on, I'm at paragraph 156.

**CROSS-EXAMINATION CONTINUES: MR WILDING**

30 A. And it's actually covered in my detail in the Tier 2 paper on page 68 of the Tier 2 paper.

Q. I think you're probably looking at paragraph 263 are you?

A. Yes.

Q. On DOL0000010001/72. I do appreciate you weren't directly involved at that initial stage –

A. No.

Q. – but what were the sources of information?

5 A. The sources of information were essentially our engagement with sector people, our own mining inspectors, a cross-section of industry parties including Solid Energy, EPMU the miners' union, and Minex the extractive sector health and safety council. We also undertook a review of international jurisdictions, similar international jurisdictions to develop  
10 a consultation document, subsequently discussion document, which raised a number of options for improving health and safety outcomes in the industry.

Q. How were the mines inspectors involved in that review?

15 A. I wasn't around at the time so I couldn't say what the process was but they would've been consulted and had their views sought.

Q. Are you aware of whether they expressed any concern in relation to the process?

A. No, I'm not aware of that.

20 Q. Are you able to say whether there was any consideration of their mines inspection reports?

A. No, I'm not aware of that sorry.

Q. Do you know whether the Mine Steering Group was involved in the review?

A. Yes, it would've been.

25 Q. And in terms of the involvement of employees, if I could just ask DOL0010020323/7 to be called up.

A. Do I need to come down and review that?

**COMMISSION ADJOURNS: 2.59 PM**

**COMMISSION RESUMES: 3.16 PM****CROSS-EXAMINATION CONTINUES: MR WILDING**

- 5 Q. Mr Murphy the page you have before you DOL0010020323/7 is page 7 of the Summary of Public Submissions on the discussion paper improving health and safety hazard management in the underground mining industry and that was one of the documents in that 2006 to 2009 review?
- A. Yes.
- 10 Q. And am I correct in understanding from that table that the worker representation on that was, the fourth from the bottom EPMU, third from the bottom NZCTU and then two workers. Is that correct?
- A. That's correct.
- 15 Q. Did the department undertake any work to ascertain what percentage of workers in underground mining were represented by those four?
- A. No, not specifically, except that recognising that the EPMU is the recognised union for mine, that covers mining. But we didn't check how many miners are members of the EPMU.
- Q. How was the participation of workers sought?
- A. Through the union and through the CTU and through a public consultation process. So it was a public consultation process that was open to anybody to submit.
- 20 Q. When you say, "Public consultation," was that by way of public advertisement in a paper?
- A. Yes, yes.
- 25 Q. Was there any consideration of public forums or employee forums?
- A. I wasn't around at the time so I couldn't say. I don't know the answer to that I'm sorry.
- 30 Q. When conducting this type of process does the department do anything to assure itself that the responses are properly representative of the group being focused on?

A. Sort of in general terms, yes. I think in terms of the specifics of this particular situation we would recognise that EPMU was the recognised Miners Union and would be speaking for miners.

1520

5 Q. Do you know whether, as part of that review process, there was any consideration of the accidents and serious harm notifications?

A. Yes there would've been.

Q. Do you know whether it involved any analysis of the accident and serious harm incidents in large and small mines?

10 A. My understanding was that the analysis showed that the issues of concern were primarily in small mines. I haven't got the data in front of me but that was where the representations under the information would indicate that that was the biggest problem.

15 Q. Does that mean that there will be a document somewhere which shows that there was an analysis of the types and natures of accidents across all coal mines, both large and small?

A. I would imagine that would be the case but I haven't seen it myself.

Q. Are you in a position to say whether one of the sources of information was accident compensation accident information?

20 A. Yes it would be.

Q. If I could just turn to the recommendations following that review, am I right in understanding that there were two recommendations, one was directed at increasing regulation of small mines?

A. Yes.

25 Q. And small mines meant those with fewer than eight workers. Is that correct?

A. I think the definition we used was fewer than 15 workers underground at any one time.

30 Q. And the other recommendation was directed at employee participation. Is that correct?

A. Yes, there were more than two recommendations actually but those are the two primary ones.

Q. Are you able to say why, aside from the employee participation recommendation, there weren't any recommendations that encapsulated larger mines?

5 A. Well, there were recommendations that encapsulated larger mines but they weren't for regulatory change, they were more round development of technical guidance and developing more systematic approaches to managing health and safety but they were to be progressed through guideline development rather than through regulatory change.

10 Q. When you say guideline development you mean industry codes of practice?

A. Well, industry, not specifically codes of practice but industry developed guidelines, developed in conjunction between the department, the industry and employee organisations.

15 Q. When you refer to other recommendations I wonder if we could have DOL0010020445/11?

A. Yes, I've now got that.

Q. And when we talk about a recommendation encapsulating larger mines do you mean that contained in paragraph 3.2?

A. Yes, that's one of them.

20 Q. And this is the ministerial briefing paper of 2 July 2009 which I presume was the paper which contained the recommendations. Is that right?

A. Yes.

25 Q. Could we have beside that please the next page, so summation number ending 12. When you say that's one of them are you able just to show us where the others are?

A. As you see from the one on page 10, recommendation 3 was for the Minister to agree in principle to develop a regulation requiring the operation of smaller mines to document their health and safety system and hazard management plans.

30 1525

A. The Minister did not agree to that, but what she did agree to was to effect the changes by way of guidance. There was the agreement to raise the level of managerial competency required for small

underground coal mines. That was recommendation 4, which was agreed. And then to agree that the department should address worker and union concerns about quality of employee participation in underground mining by improving the information and promotion of the employee participation framework in the Health and Safety in Employment Act 1992.

5

Q. But my point is that with the exception of the employee participation, the recommendations are directed at smaller mines and don't encompass non-small mines. Is that a fair comment?

10

A. There is an earlier noting recommendation number 2, which talks about note the Department of Labour's mining operational work programme already underway includes work with key stakeholders to develop technical guidance, including guidance about systematic approach to health and safety management. So that relates to all mines.

15

Q. And that was noting something which was going to be done?

A. Yeah, so that was again a guidance to be done, developed through guidance.

20

Q. If we could take you please to paragraph 34 of the same document summation ending 7? Paragraph 34 says, "The role policy debate lies between the two other options for improving a systematic approach, whether to regulate for a documented system or to address inconsistent practices in smaller mines by way of guidance or an ACOP?"

A. Yes.

25

Q. First, what is meant by a documented system or document safety system?

A. It's a system whereby the company would outline their systems and processes for managing their health and safety risk.

Q. So it's more significant than just a health and safety manual?

A. Yes.

30

Q. And New Zealand law doesn't require that?

A. No.

Q. And ACOP means approved codes of practice?

A. Yes it does, yeah.

Q. If I can take you please to paragraph 36. The first sentence there, “Professor Gunningham’s research indicates that requiring a documented safety system is an international best practice option for underground mining in general. However, the research raised a question about whether a regulated system is the best option to improve health and safety practice for SMEs in general.”

5 A. Yes.

Q. First, who is Professor Gunningham?

10 A. Professor Gunningham, Neil Gunningham, is an academic and researcher in Australia who is well-known for his work in regulatory systems and particularly in high hazards and mining in particular.

Q. And SMEs?

A. Small and medium-sized enterprises.

15 Q. Isn’t it implicit in his sentence there that an international best practice option for non-SMEs for underground mining would be to have a documented safety system?

A. Yes.

Q. Are you able to say why that wasn't recommended?

20 A. The scale of most mining operations in New Zealand is significantly smaller than they are for the Australian mines and so for, generally for pretty much all of New Zealand’s mining operations, in Australian terms they’d be considered small.

Q. If I could take you to paragraph 38 please? If you could just read that to yourself?

25 A. Yes.

1530

30 Q. And the crux of that is that the department was going to take into account the potential use of documented health and safety systems when reviewing other areas such as high hazard facilities in energy safety. Is that a fair comment?

A. Yes.

Q. Why did it decide, if it did in fact decide, not to include in those industries to be reviewed the larger underground coalmines?

A. Sorry, can you repeat that question?

Q. Why did it not decide, if it did indeed decide, not to review in future their use for underground coalmines, of a large scale at least?

A. I don't think we have actually made that decision.

5 Q. But at that time there wasn't a decision made that there would be a review of that issue with respect to large mines?

A. No.

Q. And that's still undecided?

A. Yes.

10 Q. If I could take you back to paragraph 36 please. The second sentence refers to Professor Gunningham's research, "He cited the 2007 Digging Deep Research by the New South Wales Mine Safety Advisory Council which found that particularly for the smaller sites regulation and enforcement by inspectors was a major driver for implementing an occupation health and safety management system." First, are you able to say whether Professor Gunningham's view in that regard was fed back to the mines inspectors?

A. The mines inspectors have access to this information.

Q. Do you know whether it was drawn to their attention?

20 A. I've no reason to suppose it wouldn't be but I personally didn't do that.

Q. Given the emphasis that seems to be there placed on enforcement by inspectors do you know whether there was any reconsideration as a result of that to the approach taken to enforcement?

A. I'm not sure that that will be the case because I think that the department would've always recognised that the role of inspectors was significant in enforcement in all underground coalmines. So I don't think that what Professor Gunningham was saying would be new to the inspectorate.

25 Q. If I could take you to summation page ending 12 of that same document. This is recommendation six, "Agree that the department should address worker and union concerns about the quality of employee participation in underground mining by improving the information and promotion of

30

the employee participation framework in the Health and Safety in Employment Act 1992?"

A. Yes.

Q. Are you able to just tell us how that was implemented?

5 A. Well it's still in progress of being implemented so the work is being done currently. That has involved some international, a look at what's happening internationally, current developments in that area, a discussion paper is being developed and we'll be being consulted with worker representatives over the next couple of months.

10 Q. When did that work start?

A. Work started about six months ago.

Q. Post the Pike River tragedy?

A. Close to, I'm not sure whether it was immediately preceding or immediately post.

15 1535

Q. If I could just take you please to another page in that, which is summation ending 13, its appendix 1, paragraph 5. First to Crown Minerals and it says, "They, being Crown Minerals also carry out regular site visits to mines." Are you able to say whether Crown Minerals was  
20 consulted before the comments about what it does were made?

A. No, I can't confirm that I'm sorry.

Q. Would it be usual to consult with another Government department before making comments in a paper such as this about what that other Government department did?

25 A. Absolutely, yeah.

Q. If I could just turn to an earlier step in this review process and this time a briefing paper of 16 February 2007 and if we could have on screen please summation DOL0010020261/5 and beside it /6. Are you familiar with the briefing paper of 16 February 2007?

30 A. It does precede me but I have seen it.

Q. It is part of this same review process. If you could just read to yourself please paragraphs 17 and 18. Would you agree that the crux of those

paragraphs is that first it thought that there was some ambiguity or lack of clarity in the regulations, yes?

A. My sense of reading that is that it's actually less, it's more about the term, the duplication of the same sort of standard and the regulations as it is in the Act rather than, that's the way I'd read that.

Q. Well –

A. That it was more a duplication.

Q. – it says in paragraph 18, “To improve the clarity and reduce ambiguity, the all practicable steps references could be removed from some of the regulations which set particular requirements (in some cases it would be retained). The above statement,” and it refers to the preceding paragraph, “would change to every employer shall make a plan of every operation.”

A. Yes.

Q. Has that been done?

A. No.

Q. Are you able to explain why, if the department had identified that as an issue in 2007, it then didn't feature as an issue in the briefing paper of 2 July 2009 and the recommendations contained in that?

A. My assumption, and it is only an assumption, is that on further testing it was felt that the requirement was less ambiguous than it was at first thought and that the wording was still clear enough to be able to be interpreted.

Q. But just for the record, you don't know?

A. No.

Q. If you could just look at paragraph 20, just read that to yourself.

A. Yes.

1540

Q. So the department identified then three things which it said could result in improvements. One was providing more details (prescriptive) standards for how certain requirements are to be met and you agree that that didn't seem to be reflected in the briefing paper of 2 July 2009 an in particular its recommendations?

- 5 A. I think what we've got here are ideas at an early stage of development which found their way into the consultation and discussion document, when then through that process would have been tested and so it wouldn't be surprising that all the things that were identified as potential areas in 2007 may not have, after that process, come through into final recommendations.
- Q. When you say consultation does that mean, and rather than taking you laboriously through each of those three, that there wouldn't have been sufficient agreement by those who had made submissions?
- 10 A. That these ideas, among others, would've been tested in that process and there would have been differing views and in final analysis they didn't come through as being recommended.
- Q. So I take it those three matters there, and the second and third just for the record, increasing monitoring and conformity requirements and third, increasing notification requirements for high risk activities, haven't been addressed in the sense that there's been no change in that regard?
- 15 A. There's been no regulatory change, no. I should just say the first around the more detailed standards, the issue there is more around the vehicle for doing that whether or not that is through regulation or whether that's through guidance.
- 20 Q. This was in 2007, has that issue been resolved yet?
- A. No.
- Q. Just while we're talking about timing, can I turn to a different issue which is the promulgation of regulations. As I understand it from the department's Tier 2 paper, paragraph 173, probably don't need it on screen but for the record it's summation number 0000010001/54, it was noted that from 1992 to 1996 the mining industry was without any sector specific regulation. Correct?
- 25 A. Yes.
- 30 Q. And then when there was regulation in 1996 that was by way of Health and Safety in Employment (Mining Administration) Regulations which were issued on 11 August 1996?
- A. Yes.

Q. And what they did essentially was reinstate the competency requirement that was in place prior to the introduction of the Health and Safety in Employment Act?

A. Yes.

5 Q. And that meant that the industry was still without prescriptive regulation regarding specific hazards?

A. Yes until 1999.

10 Q. That's right, until the mining underground regulations of 1999. So we have timeframes of over three years and over six years in relation to the introduction of each of those two pieces of regulation. Was a substantial amount of that timeframe attributable to a lack of accord between the industry on the one hand and workers on the other regarding whether there should be regulation and the content of that?

15 A. That was certainly part of it. I think there was also some uncertainty for the regulator in terms of what would be the appropriate levels of prescription or appropriate levels of regulation versus guidance and codes of practice so I think all three parties I think were struggling a little bit at that time to determine what the appropriate level of regulation would be for the industry. It wasn't just in relation to mining it will be fair to say. It was an issue that was felt across a range of industries.

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1545

Q. Does the department have a system for dealing with a lack of accord between industry and worker groups so as to ensure that the promulgation of, for example, regulations isn't delayed or stymied?

25 A. The system is really one of engagement, one of consultation, and one of testing the views of the parties against what is understood as best practice. We will test that with other international jurisdictions and ultimately we'd recommend then to a particular course of action to Government, some of which may mean Government being faced with conflicting advice from other concerned parties. There would also be attempts to, in certain situations, to see what level of consensus can be arranged for over time.

30

Q. Can I just try and ascertain the weight that might have been attached to a couple of documents during this process. One of the documents is a report of the Labour Committee First Session Forty-fourth Parliament 1996 titled, "Inquiry into the Administration of Occupational Safety and Health Policy". Are you familiar with that?

A. Can you repeat the reference please? I haven't got it in front of me so it's a bit hard –

Q. "Inquiry into the Administration of Occupational Safety and Health Policy", Report of the Labour Committee.

A. Of what year again, sorry?

Q. 1996? It is -

A. I'm familiar with it but I'm not sort of having it in front of me no it's...

Q. It is covered in the responses for which you had managerial responsibility. I wonder if perhaps I could take you to a particular page, DOL0010010023/5? Now this is the report, not the Government response which dealt with certain recommendations. It says, and it's the last paragraph highlighted before you. "In general, it has to be accepted that there are a few specific industries/workplaces which may require their own, at least partly prescriptive, regulations (for example, mining)." Are you able to say what impact that comment had or might have had on the speed with which hazards-specific regulations were developed?

A. No, I'm sorry I can't say what weight would have been given to this in that process.

Q. It may be a similar position for the next document but I'll put it for completeness. Could we have exhibit 3 I think it is please, and perhaps page 17?

1550

Q. Probably won't have seen this but correct me if I'm wrong, it's a document that the Ministry of Commerce titled, "Review of the Recommendations from the Wardens Inquiry into the accident at Moura Number 2 Mine Queensland on Sunday August 7 1994?"

A. No I'm sorry I haven't seen this.

- Q. The second to last paragraph reads, "The Review Committee recommends that due to the high level of risk to employers arising from mines fires and explosions, specific regulation dealing with these matters be urgently addressed." This was in 1996, so again three years  
5 before hazards specific regulation came in?
- A. Yes.
- Q. Are you in a position at all to say what weight, if any, that had in terms of the speed with which regulations were developed?
- A. No I'm sorry I can't answer that.
- 10 Q. Could I turn please to a different issue, which is the development of approved codes of practice. And you gave us a brief outline before but can you just describe the processes by which they're developed?
- A. They're developed in consultation with the department with industry stakeholders, employers and unions, workers and they're submitted  
15 through to the Ministry of Labour for endorsement and for promulgation.
- Q. And I presume that one of the roles of the department is to give advice to the Minister about whether or not an approved code of practice should be developed?
- A. Yes.
- 20 Q. And if the Minister agrees then the department's role would be to develop that?
- A. Yes.
- Q. And so one of the functions of the department would be to identify whether there's a need for an approved code of practice?
- 25 A. Yes.
- Q. And there isn't an approved code of practice in relation to underground coalmining?
- A. True.
- Q. Do you know whether the department has ever made  
30 a recommendation to the Minister that there be an approved code of practice developed for underground coalmining?
- A. No.
- Q. No you don't know or, no there has never been a recommendation?

A. No I don't know of a time where there's ever been recommendation, certainly not in my period of time, last few years.

5 Q. And if there was it wasn't something that came to your attention in the course of your managerial responsibility for the department's response to the Royal Commission?

A. No.

10 Q. Are you able to say whether the mines inspectors or Mine Steering Group for high hazards advisor have ever expressed a view about whether an approved code of practice should be developed for the underground mining industry?

A. No in my time they haven't.

15 Q. Are you able to say whether there's been consultation in relation to other regulatory agencies, for example Crown Minerals or the Department of Conservation or ACC as to whether or not an approved code of practice should be developed for the underground mining industry?

A. Again, not since I've been here in the last three years.

20 Q. Is that an issue which is being considered as a result of the Pike River tragedy, the issue being the development of approved codes of practice?

25 A. Not specifically, although obviously in the light of events the department will be considering any and all options really around strengthening the framework depending on the outcomes of the Commission and the work that we're doing currently to review again the current framework and our operational practice.

Q. I suspect again this is probably before your time and therefore outside your knowledge but with that caveat I'll raise it anyway. If we could have on screen please summation document DOL0010010023/5.

1555

30 Q. Could I ask you please just to read the centre two paragraphs starting with, "Codes were universally seen as valuable."

A. Yes.

Q. Do you know whether, in response to that, the department issued codes of practice?

A. Sorry, can you date this document again for me please?

5 Q. Sorry this is, "The inquiry into the administration of occupation of health and safety policy of 1996." It's the report of the labour committee rather than the Government response?

10 A. Yeah, my understanding is that the response to this was the establishment of Minex and that the industry was to with the establishment of Minex was to develop the codes and the guidance would support them.

15 Q. That was about a decade later, but accepting that you weren't involved at that stage, that's not a criticism. Is it within your knowledge as to whether as a result of this, and this is back in 1996, the department reassessed the administrative and technical resources that it had available for the development of codes?

A. I'm not aware of what was happening at the time. I'm just aware that in 2007 there was some additional resource put into that for, and development of standards and guidance material so in the intervening years, no I don't know.

20 Q. Well if we move forward perhaps to something slightly more contemporary which is the workplace health and safety strategy for New Zealand 2015 published on June 2005. If we could have please CAC0004/16 and if we could highlight that part and I'm sorry this hasn't come through very clearly but action number 4 of the department is, 25 "Develop, review, align and evaluate standards and guidance (such as codes of practice and guidance) within the legislative frameworks of the HSE Act and the Hazardous Substances and New Organisms Act so that they are clear, relevant and effective"?

A. Yes.

30 Q. Are you able to tell us how that action was implemented?

A. The department set up its, set up a discrete team of people to do this in 2007. There is, the department has around 1500 standards, guidance

material documents so there is a team of people working on that suite of guidance material updating, reviewing and so it's an ongoing process.

1600

5 Q. How does the department decide the particular industries upon which it's going to focus?

A. Generally speaking that's used through – they have essentially a triage system where they look at the various elements to it being, what are the industries that are the priority industries and those were the ones that we talked about earlier and also looking at the legacy guidance material as to how old it is, how relevant it still is, how much practices in particular in industries and workplaces have changed so what's the level of involvement, sorry, what's the need for refreshing, renewing or in fact in some cases deleting standards and guidance material so all those things would be taken into consideration in setting the priorities and determining what gets done when.

10

15

Q. Do you know if underground coalmining featured in that?

A. It's currently featuring in that, absolutely, yes.

Q. In what way?

A. The current guidelines are being reviewed and new guidance material is being developed.

20

Q. For underground coalmining?

A. Yes.

Q. What guidance material is there?

A. What guidance material is there, they're the Minex guides.

25 Q. So once again not a department document?

A. No.

Q. Still at quite a systemic level could we turn please to the review of the Workplace Health and Safety Strategy for New Zealand to 2015, CAC0001/16. If we could highlight the paragraphs under the heading, "Knowledge." This is part of the summary of the submissions of the review conducted in 2009 of that 10 year strategy?

30

A. Yes.

Q. And under the heading, "Knowledge," there's reference to standards and guidance published by the Department of Labour were often incomplete or out of date. "Numerous submitters said that a lack of up to date guidance, approved codes of practice and other standards is a significant barrier to businesses meeting their legal obligations and as such is a barrier to the implementation of the strategy." Are you able to say what the department has done in response to that issue?

A. As I've outlined in my earlier response, the establishment of the standards team in 2007 was driven by the recognition by the department of these issues and they are now working their way through those standards and guidance material to update them and refresh.

Q. Although I think you'll probably give the same ultimate answer to the next question I'll refer to it really just for the record. If we could have document CAC0002/24, this is a 2008 document prepared by NOHSAC, to which we referred earlier, a report to the Ministry of Labour, the efficacy of RHS instruments. If you could perhaps just read to yourself those three paragraphs?

A. Yes.

1605

Q. Now do you agree that the crux of those comments again is concern about the lack of approved codes and guidance?

A. Yes.

Q. And would I assume that essentially that is being responded to by way of this work that was started in 2007?

A. Yes. I guess in the specific situation of underground mining by the role of Minex as well and the industry and the terms of development of guidance material and an approved code or codes of practice.

Q. It refers there to issues as including a combination of a lack of resources (financial and technical). Have more resources been put into the development of approved codes?

A. In sort of the development of codes and standards, yes absolutely. Sorry, what was the date of this NOHSAC report?

Q. This is 2008?

A. Actually since then no. I mean the additional resource was put in a year ahead of that and so that would be at the same level as would have been the case in 2008.

Q. This refers to a lack of technical resources?

5 A. Mmm.

Q. Do you know whether the department has reassessed its technical expertise to provide approved codes and guidance?

A. That was done as well in 2007.

Q. And what was the result of that?

10 A. Well with results specifically in relation to the, into mining was the establishment of the specialist high hazards technical advisor. There were three other technical advisors in other industries appointed at the same time.

Q. And the Department hasn't issued any new approved codes since when, in any area?

15

A. I think probably since the late '90s, I think, about '98-'99.

Q. Now down the bottom of that page of the same 2008 document, are four issues identified. A lack of criteria for prioritising the development of codes, inconsistent development methods, difficulties in reaching consensus when developing approved codes, difficulties in removing outdated OHS instruments once approved. Are you able to say whether they have been addressed in the context of this 2007 work?

20

A. Yes I can and I think certainly there are now, there is a greater degree of consistency in the ways in which we're using developing guidance material and reviewing it. As I say, we haven't been developing approved codes and one of the reasons for that was that final bullet point or final point there was around the difficulties in removing outdated instruments once approved, which is one of the reasons why we are not currently developing approved codes and just going for codes and guidance material because they are easier to update and they are easier to keep fresh.

25

30

Q. What's the difficulty to which you're referring updating an approved code?

A. It's generally the additional requirements about ministerial approval.

Q. Just how long does that take?

A. There isn't – well it's variable really and I think it just creates an additional sort of layer of, dare I say, bureaucracy.

5 Q. Is there written documentation available setting out the policies and procedures relating to this 2007 work to which we've referred?

A. There is an annual work programme for the standards team.

1610

10 Q. But do you know, for example, whether there's a written policy that could be supplied setting out the criteria for prioritising the development of codes?

A. Not sure about the development of codes but certainly the review and maintenance of codes. I'm not sure whether there is something there around the development of codes.

15 Q. Just before we leave this document, if we can turn to the next page ending summation number 25, in brief top sentence. "Another factor identified is a disconnect between the professional disciplines and government agencies." Are you aware of that issue?

A. I'm not aware of the context here that we're talking about.

20 Q. It's a continuation of that list, so it's just other issues that have impacted on the development or non-development of codes and guidance material. If it's an issue you're not aware of we'll move on?

A. No, I'm aware there's always room for improvement in the relationships and the connects between government agencies and other  
25 organisations, there is room for continuous improvement in those areas.

Q. Could I just turn to a different issue, that of New Zealand Standards. Are you able just to explain the purpose very briefly?

A. I probably should sort of qualify this by saying that this is not my area of expertise.

30 Q. Right.

A. And the standards setting arrangements within the organisation are dealt with in the sort of operational sort of part of the organisation so I'm not familiar with their practices in any detail.

Q. Right, well thank you for that. Would you be in a position to know whether the department has ever sought the development of New Zealand standards in relation to underground coalmining or any aspect of that?

5 A. No I'm not aware of that.

Q. Can you please go to CAC0001/10. This is part again of the summary of written submissions of the 2009 review of the workplace, health and safety strategy for New Zealand for 2015. And halfway down under the heading, "Balancing proactive and reactive inspection functions," is the following. "Feedback about the role of the department's inspectorate covered a range of views. Some submitters felt there should be more advisory visits to business by health and safety inspectors with the aim of suggesting and supporting improvements in practice. However other felt that more enforcement visits were needed," and it continues on. Are you in a position to explain the department's policy approach to advisory visits?

10

15

A. It's more an operational policy sort of issue but as you would be aware, the emphasis in the legislation is around employer responsibility for their workplaces and for the role of the inspector sort of changed significantly with the introduction of the legislation and so the responsibility for inspectors now to provide advice is now not recognised as a primary role. That sort of advice is a matter for employers to obtain independently of the regulator but I'm mindful that inspectors do provide suggestions and engage with employers around how they might best met their obligations.

20

25

1615

Q. Given that feedback has that policy issue been reconsidered to your knowledge?

A. The policy of the role of the –

30 Q. In relation to advisory visits?

A. We're starting to get into sort of the operational area now which I'm not close enough to be able to comment but the issue of the role of the inspector in a more proactive sense as opposed to the enforcement

after an event there is a balance to be had and the inspectors still do a significant amount of proactive work. Whether that extends to advice is another matter.

5 Q. To the extent to which the legislation doesn't expressly require the giving of advice, is that a matter that has ever been considered by your policy unit?

A. The issue has really been canvassed a number of times in terms of the change of emphasis in the role of the inspector vis-à-vis, the role of the employer in ensuring health and safety in the workplaces so the view  
10 that the department has is at this stage is that the balance is appropriately covered in the legislation and articulated in the legislation.

Q. That's not a matter that your unit has ever considered though for the purpose of giving advice to the minister?

A. Not in recent times.

15 Q. I was going to ask you some questions arising from that document in relation to proactive and reactive functions but once again would they be more for the operational side rather than you?

A. Yes, they would.

20 Q. Just to another issue which is that of information sharing between state agencies. Has your unit ever looked at whether or not the legislation allows for the sharing of information relevant to health and safety between the other state agencies who might hold information bearing on that?

A. There'd be no barrier as far as I would be aware.

25 Q. So it's something which could be effected at an operational level?

A. Yes.

Q. Another issue, are you aware that one of the possibilities is that no regulatory agency is required to approve the plan and design of an underground coal mine?

30 A. Yes.

Q. Is that an issue which has ever come to the attention of your unit?

A. No, not in my time anyway.

Q. I asked you at the beginning about the identification of regulatory gaps and that was a function that you indicated your unit had?

A. Mmm.

Q. Is that the sort of matter that might be regarded as a regulatory gap?

5 A. Yes, I would say it would be.

Q. But to your knowledge it's not a regulatory gap that's been identified by the unit yet?

A. No.

10 Q. Final two issues, first are you aware of the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999?

A. Yes.

Q. Now they require that for essentially offshore petroleum installations there be what's described as a safety case?

A. Yes.

15 Q. Are you familiar with that concept?

A. Yes.

Q. Are you able just to describe it briefly?

20 A. It's a requirement for the operators to describe the safety systems, the safety processes around the design and the operation of the facility and to have those submitted to the regulator.

Q. Do you know whether that's been looked at in relation to underground coal mines?

A. It was one of the specific issues that was consulted on in the review between 2006, 2009.

25 Q. But didn't form a recommendation?

A. No, the recommend – there wasn't a recommendation to introduce it for mining, no.

1620

Q. Are you able just to précis why that was?

30 A. It was felt to be still an emerging regulatory tool. It hadn't been used in mining anywhere else that we were aware of. The issues why it was introduced particularly in the offshore petroleum industry I understand

was more to do with the environmental risks associated with that particular industry.

Q. That review was two years ago. Has the use of a safety case been looked at since in relation to underground coalmining?

5 A. It's being looked at again as we speak, we're seeking further advice internationally about that.

Q. Just finally, you'll be aware that the maritime and aviation industries have their health and safety administered separately?

A. Yes.

10 Q. Has the possibility of a separate administration regime for underground coalmining been considered by the department?

A. No.

**CROSS-EXAMINATION: MR HAMPTON**

Q. Mr Murphy, just on the safety case –

15

**THE COMMISSION:**

Mr Hampton, I don't know that you have got leave at the moment.

**MR HAMPTON:**

20 I'm sorry sir, I thought I had it in writing earlier on sir.

**THE COMMISSION:**

You do, yes, I'm sorry, I am looking at the plan and you are right, my apologies.

25

**MR DAVIDSON:**

Sir, I don't have leave but I should claim now in making an oral application.

**THE COMMISSION:**

30 Sorry Mr Hampton, if you'd like to resume.

**CROSS-EXAMINATION CONTINUES: MR HAMPTON**

5 Q. Just on safety case and it falls within sir the general purview of the leave allowed, on safety case, if I could have DOL0010020323/9 and this was the part of the Ministerial briefing paper that Mr Wilding referred you to earlier. The submitter feedback there about the safety case regime?

A. Yes.

Q. EPMU, the union were supportive of the idea of safety case, weren't they?

A. Yes they were.

10 Q. More than supportive, they were strongly advocating for it to come in?

A. Yes they were.

Q. And it's the middle paragraph on that page that summarises that, union submitters, it's about halfway down, "Union submitters supported the safety case option alongside worker check inspectors." You see that paragraph?

15

A. Yes.

Q. Would you agree that consistently over the period that you've gone back looking, the 20 odd years since the Health and Safety in Employment Act came into force, the union have consistently advocated for regulations that are prescriptive, both as to hazards and as to processes in the underground mining industry?

20

A. Yes, I would accept that.

Q. And certainly have consistently supported the retention of the inspectorate in the form that it used to be, the mines inspectorate, the government inspectorate in the form it used to be, haven't they?

25

A. Yes, absolutely.

Q. But they've often been a lone voice, isn't that the case? It's a rhetorical matter.

A. That's right.

30 1625

Q. A couple of things though just arising out of your evidence today. I thought the Department was down to one inspector, Mr Firmin? Mr Poynter has left hasn't he?

A. Yes he has.

Q. Well have we got two inspectors or one?

A. Sorry we've got one inspector right now. We've got one vacancy. Mr Poynter did leave a few weeks ago.

5 Q. Were you here last week Mr Murphy?

A. For the latter part of, for Thursday and Friday I was here.

Q. You would have been aware from what you heard on Thursday-Friday, that apparently mine plans, plans for underground mines are received by the Department and go, amongst other things, to the Mining Steering  
10 Group?

A. Yes.

Q. Is it a concern of yours as to what happens with those plans or is that operational rather than your sector?

A. It is very operational, yes.

15 Q. Do you know whether alongside the mine plans that does the department get the sort of annual work plans that we've heard about on Friday and again this morning or earlier on today that DOC seem to get?

A. Again, that was with – if they were to come to the department they'd go to the operational arm. I wouldn't see them I'm sorry sir.

20 Q. You don't know?

A. So I don't know sir.

Q. Turning for a moment to codes of practice and discussion about that. There are no ACOPs for underground mining at the present time?

A. No.

25 Q. There hasn't been since the change of the regulatory regime?

A. No.

Q. Can I have up please some evidence that was given on behalf of the union by Mr Drezner, EPMU0006/15, paragraphs 54 and 55?

A. If it does help Mr Hampton, I think I do know the paper that you're  
30 referring to.

Q. I'll start reading it if I may. We have it now. Paragraph 54, "Various attempts have been made over the years by industry participants to develop a code of practice in place of an ACOP. A draft code of

practice for underground mining and tunnelling was produced by New Zealand Minerals Industry Association in April 2000. An industry code of practice for underground mining and tunnelling was also produced by Minex in 2009.” If I just go down to – do you agree that that occurred?

5

A. Yes indeed, yeah.

Q. Fifty-five, “It is understood by EPMU that a number of other organisations, including Solid Energy, have developed draft codes of practice. It is important to note that a widely accepted code of practice for underground mining does not exist.” Do you agree with that statement?

10

A. No I don't think I do. I think the Minex code is recognised generally as being the code of practice for the industry.

1630

15 Q. All right. “The EPMUs position has consistently been that any agreement on a code of practice should be in the form of an approved code of practice with the involvement of the Department of Labour and that a code of practice produced exclusively by employers, organisations will not provide appropriate guidance on these factors.” Pausing there. You would be aware that that's the union position that's been put to the department on a number of times over the years isn't it?

20

A. Yes sir.

Q. “It is of note that neither draft code, those are the two that I referred to earlier, makes any reference to employee representation in any form.”

25

Do you agree that that is so?

A. I have no reason to think it wasn't so sir if that was in the – I haven't seen the document in recent times but I've no reason to doubt that, that's true sir.

30

Q. “At the time the Minex Code of Practice was developed the EPMU made the decision to withhold support for the code. The EPMUs decision was based on the absence of any employee participation and the code lacked detail.” Are you aware that that was the reason that the EPMU would not support that draft code?

- A. Yes sir.
- Q. So when you said earlier that the Minex code was generally recognised, recognised by whom please?
- A. By the industry and by the inspectorate.
- 5 Q. Any employees support it?
- A. Obviously not from the union sites sir.
- Q. Any other employees support it?
- A. I don't know sir.
- Q. Beg your pardon?
- 10 A. I don't know.
- Q. Come to your evidence please at paragraph 109, which will be DOL777001003, sorry, if we can. Rather than putting it up I'll ask questions off the paper. Have you it in front of you Mr Murphy?
- A. Yes I do sir.
- 15 Q. Paragraph 109, it ends /15. You comment at the start of that paragraph about the initial delays in development of regulations. And in the second sentence you say, "Initially the accepted view was that most of the provisions contained in earlier enactments or regulations would be reinstated in support of the Act?"
- 20 A. Yes sir.
- Q. Now that was across employer, employee, inspectorate wasn't it, the accepted view?
- A. That's the way I would have interpreted that sir, yes.
- Q. Then you go, "However, over time this was seen to be unnecessary. May I inquire, seemed to be unnecessary by whom?"
- 25 A. In this context I think that means the department sir.
- Q. Certainly not the union's view was it?
- A. No sir.
- Q. Was it employers view at that time?
- 30 A. Look I obviously wasn't around during that discussion so I can only assume, I'm interpreting this as being the department's view sir.

1635

Q. And it goes on to say, “Over time this was seen to be unnecessary and even unfeasible. Unfeasible in what respect?”

5 A. I think unfeasible in the sense that the regulation, the previous level of prescriptions were inconsistent with the principles and the, of the new legislative framework.

Q. The Robens approach?

A. Yes.

10 Q. But if you didn’t have approved codes of practice and approved guidance underneath in your Robens approach, what protections were there?

15 A. I think as we heard earlier today and last week, sir, there is recognition that there was a gap in the framework between 1992 and 2006 initially and then 2000 and – sorry, 1996 and 1999 when the regulations came into force. What we heard last week if I recall was that at an operational level the inspectorate and people involved, workers and industry, were still tending to use the previous framework and the previous legislation and regulations as the test for all practicable steps so I, but I do entirely accept your point.

20 Q. Surely the old Act and regulations and the guidance they gave should have remained feasible until you had ACOPs and proper guidance in place underneath?

A. I think what I’m saying, sir, is that to all intents and purposes those were still being used as the default position.

25 Q. I’ll move, I don’t – we’ve spent enough, in many respects about policy and so but I do want to have a look at the 06 to 08 review where the department commissioned and I think in your, it starts in your brief at about, the relevant part that I want to talk to starts at about paragraph 162. In 162 you say, and this is at the briefs with the summation /23 at the top of it, “Before making final recommendations the department consulted its technical expert in mining.” Who was that person please?

30 A. At that time that would probably have been Johan Booyse.

Q. And did he make a report on this at all, on this aspect?

A. Not to my, not a written report sir I don't think. I may stand corrected on that. I don't know for sure.

Q. The department commissioned a review by Professor Gunningham?

A. Yes, sir.

5 1640

Q. And he reported in June 2009, and it's the document DOL0010020402/1. Have you a copy of - if we can get it up, thank you. Two things in particular out of this report if I may, Mr Murphy. First, in terms of hazards if we could go to the document with the page that ends  
10 /6 which is under the heading, "Contextual advice regarding technical standards," and the second paragraph down, if I could highlight that please, "Nevertheless," just read that if you would, I should read it aloud, "Nevertheless there is still a valuable role for prescription in general and technical standards in particular in adducing a minority of hazards  
15 concerning which there is no or very few viable alternatives to applying a particular tried and tested method to control risk. Such standards may have particular value with regard to highly technical issues such as those involved in electrical and mechanical engineering. In the case of mine safety many jurisdictions still rely heavily on technical standards with regard to those two areas in particular." Did the department take  
20 heed of that particular part of Professor Gunningham's report formulating its views?

A. Yes it did and yes it is still. There is work currently underway to develop technical standards for underground mining.

25 Q. When might we expect something to emerge from the department about such issues and what form will it take?

A. They will take the form of guidance material and standards and I'm told that these may take a year or more to produce.

Q. A year from hence?

30 A. As I understand sir, yes, bearing in mind again this is not my area of responsibility so I'm not able to be definitive other than to report what I've been told.

Q. I just want to get it right, we're two years on from this report now and you tell this Commission that it's going to take another year to get some guidance out of the department about these technical issues. Is that it?

A. That's what I'm saying sir, yes.

5 Q. Is that satisfactory sir?

A. I'm not in a position to comment on that sir, I'm sorry.

Q. Professor Gunningham also was asked to review the literature about employee participation, wasn't he?

A. Yes indeed.

10 Q. And in talking about both hazards and about employee participation Professor Gunningham commented on the fact that, at least a couple of times in his report at page 3, at the bottom of the page, the last paragraph, a couple of times and in particular at this page he refers to the most advanced Australian states, that's in terms of mine safety regulatory framework as being New South Wales and Queensland?

15 A. Yes.

Q. And he says, "What is distinctive about those two is the extent to which they have regulated specifically in relation to OHS management systems and imposed requirements relating to major principle hazard management plans, such an approach has a great deal to recommend it and approximates best practice."

20 A. Yes sir.

Q. Does that go alongside the other quote I put in front of you earlier, that you're working on it?

25 A. Sir, we're not actually working on regulating for these specific issues that Professor Gunningham talks about.

Q. What did you decide about that suggestion that that approach in New South Wales and Queensland has got a great deal to recommend it and approximates best practice?

30 A. We did suggest, we did recommend to the Minister that we do regulate for regulating around management systems. The Minister decided that she would rather have that done by way of guidance rather than by way of regulation.

1645

Q. And what guidance has come down?

A. We are still working on that sir.

Q. When will that be forthcoming?

5 A. By the end of this year.

Q. So two and a half years on?

A. Yes sir.

Q. In relation to this review by Professor Gunningham, you say at paragraph 171 of your evidence, in paragraph 1, subpara 1, or I should go to 170 first. In 170 you say, "In relation to the concern about the adequacy of employee participation the department didn't recommend check inspectors' approach advocated by the union and employee submitters. 171. The reasons for this were (1) the literature did not confirm it as a best practice option for mining." That's what you say?

15 A. Yes sir.

Q. The literature that you refer to there is the literature reviewed by Professor Gunningham?

A. Yes sir.

Q. Have you recently gone through Professor Gunningham's report, that one that we still have up on screen or part of it. Have you recently gone through it, the June 2009 report?

20 A. I did about three months ago sir.

Q. Can you tell me where in that report Professor Gunningham concludes that the literature does not confirm check inspectors as best practice for mining?

25 A. Sir, I haven't got that in front of me. I can't begin to hazard a guess.

Q. All right. Well can I have please that document at page 15/15 please, and the next page I probably need then up as well, 15 and 16 thank you. Do you see at the bottom of that page 15, Professor Gunningham writing, "There is a considerable literature (though very little of it with regard to underground mining) which suggests that worker participation in the identification, assessment and patrol of workplace hazards is fundamental to reducing work-related injury." And then further on page

30

16, "Turning to the literature the large majority of empirical studies in Western Europe, which again barely touch on the mining industry specifically." The literature is largely quiet isn't it on mining and check inspectors?

5 A. Yes.

Q. So how do you draw a conclusion that the literature didn't confirm. It's simply silent on it isn't it?

A. Yes, that, that would be fair comment, yes.

10 Q. Well, isn't it a little over-egging to put a positive spin on it, say it didn't confirm. It didn't do it either way did it Mr Murphy?

A. No, that's fair comment sir, but you know the comment there was that it – there wasn't evidence to suggest that it was a best practice option. That was the point we were making.

15 Q. In fact, Professor Gunningham throughout that report endorses enhanced employee involvement doesn't he?

A. Absolutely. As does the department sir, and as does the legislation.

1650

Q. And Professor Gunningham in the sort of instance I've already referred you to in that report refers to both Queensland and New South Wales –

20 A. Yes.

Q. – as being best practice?

A. Yes.

Q. Both of which include in their regimes chief inspectors?

A. Sir.

25 Q. Was that drawn to the Minister's attention?

A. Yes sir.

30 Q. So the Minister's – just before I go to the Minister's response. Can I take you to paragraph 172 of your evidence, the summation reference /26. In paragraph 172 starts with, "The Ministry of Economic Development's Tier 2 paper describes the earlier legislation, including workmen's, inspectors and workmen's national inspectors that were authorised by the Coal Mines Act." Do you see that?

A. Sir.

- Q. The next sentence, "The 2006 review noted the existence of the earlier provisions but did not draw conclusions on how effective the provisions were?"
- A. Sir.
- 5 Q. Did nobody turn their mind back to what it was like pre the abolition of the old Coal Mines Act, did nobody do a review of that?
- A. Yes sir we did but what we're saying is that the evidence was not clear as to what the benefits accrued were from the previous regime compared to the current regime.
- 10 Q. In doing that review did you, for example, speak to former Department of Labour check inspectors of mines like Mr Harry Bell, Mr Robin Hughes?
- A. Their views were already well known to us sir.
- Q. As being supportive of chief inspectors?
- 15 A. Yes sir.
- Q. What was the hindrance to accepting their views as chief inspectors and inspectors going back a long time about the effectiveness of chief inspectors?
- A. I'm sorry sir, can you ask the question again?
- 20 Q. Well Mr Bell and Mr Hughes were in favour of chief inspectors?
- A. Yes.
- Q. And they had long experience as mines inspectors and then as chief inspector?
- A. Yes.
- 25 Q. What was the impediment to accepting their views as to the utility, the usefulness of chief inspectors?
- A. I mean with respect to those gentlemen sir it was also known that they would have favoured a return to the old regime as well.
- Q. The old inspectorate?
- 30 A. The old inspectorate and the old regulatory and legislative framework and so we're now operating in a different regulatory space.
- Q. So new room, sweeping clean and tidy?
- A. No, those are your words sir, not mine.

Q. Well the end result, if I can come to it, of the Gunningham Report and then the briefing paper to the Minister in July '09 was the Ministerial release of November '09, which is I think probably mentioned in your paragraph 175. "The Minister of Labour rejected a proposal to regulate to require small mines to formally document their safety hazard management processes. Instead the Minister agreed to increasing available guidance?"

A. Yes sir.

1655

10 Q. And as part of that, was there a letter put out by the Minister DOL0010020462 of 12 November 2009?

A. No, sir, that was actually a letter that went out in my name.

Q. In your name sorry. After the ministerial decisions has been made?

A. Yes, this was a letter that went to the submitters, to the review sir.

15 Q. Can we have in particular /2 please, page 2, under the heading if those two paragraphs under the heading, "Minister's decision, employee participation," the minister considers that that existing legislative framework under the HSE Act already provides a good basis for effective employee participation. She does not agree to a regulatory change to introduce check inspectors, nor for an improved code of practice for employee participation specifically in the mining sector. The minister has agreed that the department should engage with the mining sector to develop a strategic approach to improving employee participation which could involve formal or informal guidance with practical information on how the H and SE Act applies. What has been done to develop that strategic approach?

20

25

A. That's still in development, sir. The department is working on that currently and has a discussion document. It will be discussing with the sector and union representatives in the next month.

30 Q. What state was that, guidance as at November last year when Pike blew?

A. That was, that work hadn't been started at that point, sir.

Q. A year on and you hadn't started on it. Is that what you're telling us?

A. Sorry, sir, say again.

Q. A year on from this note –

A. Yes, sir.

Q. – and you hadn't started on it?

5 A. That's right.

Q. That's what you're telling us?

A. That's what I'm saying, sir, yes.

Q. The department has recently got a further report from Professor Gunningham and Dr Neal I think it is DOL0100010001. Have you got that with you Mr Murphy?

A. No I've got it in my bag sitting over there, sir.

Q. We've got it on camera. I think the page numbers correspond with the summation number so if I could have 116 please. I just want to look at paragraphs 427 to 429 if you could highlight those three please, 427 starts, "These generally negative views are consistent with the findings of the mining review on approving health and safety hazard management in the underground mining industry which express concern as to the quality of employees' participation in health and safety in mines and on the lack of procedural guidance on employee participation."

1700

A. It also pointed to a tight labour market resulted in fewer employees, experienced in hazard management being available. 428. The inspectors expressed doubts about the value of their interactions with safety representatives. Mr Poynter told us that he did make efforts to contact health and safety representatives but that he rarely learned anything of value from such interactions. He'd never been contacted by a health and safety representative and took the view that people being elected maybe good people. They don't understand the role. Sometimes I hunt them out. The comments I get back is usually, "No, I'm fine." It's an artificial environment. You pull them out but their manager is around the corner so it's not ideal." Mr Firmin also told us that safety representatives rarely made much of a positive contribution.

Do those passages give you concern about, from the Department of Labour's perspective, about employee participation in these matters of health and safety in underground mining?

5 A. Absolutely. I think if health and safety representatives are not being supported in their workplace and they're not contributing to the health and safety in the health and safety environment then that is a matter of real concern.

Q. There's a real culture problem there isn't there?

A. Residing?

10 Q. In a mining industry that at present considers health and safety as a top-down issue rather than being involvement of all and sundry?

A. I mean organisational culture is usually influential in ensuring that people feel, workers particularly feel as if they've got a contribution to make, and that does come from the top sir yes.

15 Q. I just wanted if I could, to refer you to a Workplace Services Practice Note Health and Safety issued by the Department of Labour, numbered 2010/001 and its document reference is EPMU0012 issued March 2010. Mr Anderson tells me he thinks that's the number. He's not sure. If I'm wrong then I'll leave the issue if we can't find it. I'll just quote it for the  
20 moment if the Commission's pleased. Are you aware of the practice note we're talking about Mr Murphy?

A. No I'm not sir. That will –

Q. That would be operational?

A. That will be operational

25 Q. Probably better off to ask Mr Firmin about it.

**THE COMMISSION:**

Mr Davidson, you're wanting leave.

30 **MR DAVIDSON:**

Yes I am sir.

**THE COMMISSION:**

What issues are we talking about?

1705

**MR DAVIDSON:**

5 Sir, it really stems from one proposition, but it's in five parts and it's not  
lengthy but it is this. It stems from the fact that Thursday week last, as I've  
advised you sir, we received a report made by Professor Gunningham and in  
it we learned of information that we do not have access to in any other form.  
And the material we see has given rise to considerable concerns for the  
10 families relevant to this phase and I think probably the answer to a question  
given by Mr Murphy today identifies it when he said that the integration of the  
policy arm of the department with the operational is very important to us. And  
what I want to explore sir is the policy that has been set and described,  
including Ms Haines brief of evidence very briefly, and who's not giving  
15 evidence in person here against the provisions of the report. Firstly, in  
relation to the achievement of policy with which Mr Murphy will be concerned.  
And secondly, with regard to the internal response of the department to the  
linkage between the policy and operational to which Mr Murphy contributed.  
He's one of the person's who reportedly who spoke to Professor Gunningham  
20 and Mr Neal. And then sir I want to pick up the points already made with  
regard to the Mining Steering Group has come up in evidence through a  
number of witnesses now, in relation to that group's role in considering the  
safety of plans, either annual or working plans. So that in those three ways sir  
I seek leave on matters which of great importance to the families.

25

**COMMISSION PANCKHURST ADDRESSES COUNSEL – TIMING OF  
WITNESSES****COMMISSION ADJOURNS:****5.08 PM**

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