



**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: K Beaton, S Mount and J Wilding as Counsel Assisting  
S Moore SC, K Anderson and K Lummis for the New Zealand Police  
N Davidson QC, R Raymond and J Mills for the Families of the Deceased  
S Shortall, D MacKenzie, R Schmidt-McCleave and P Radich for certain managers, directors and officers of Pike River Coal Limited (in receivership)  
C Stevens and A Holloway for Solid Energy New Zealand  
K McDonald QC, C Mander, A Williams and A Boadita-Cormican for the Department of Labour, Department of Conservation, Ministry of Economic Development and Ministry for the Environment  
G Nicholson and S Stead for McConnell Dowell Constructors  
G Gallaway, J Forsey and E Whiteside for NZ Mines Rescue Service  
N Hampton QC and R Anderson for Amalgamated Engineering, Printing and Manufacturing Union Inc  
J Haigh QC and B Smith for Douglas White  
J Rapley for Neville Rockhouse

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**PHASE THREE HEARING**  
**HELD ON 14 NOVEMBER 2011 AT GREYMOUTH**

**OPENING STATEMENT OF S MOUNT FOR THE COMMISSION**

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**MR MOUNT:**

May it please the Commission, today we start the hearing process for Phase Three of the Commission's inquiry. In terms of hearing time this is the largest phase of the inquiry. It is designed to deal with a series of important issues, including the immediate cause of the explosions at the mine, of course in particular, the first explosion on the 19<sup>th</sup> of November 2010, the health and safety systems at Pike River Mine, the management and operational practices of Pike River Coal Limited, the steps taken by the company to ensure that employees and contractors understood and complied with their health and safety obligations, any impediments to health and safety and external oversight of health and safety at the mine.

These issues are spelled out in more detail in the list of issues which is available on the Commission's website. Although that document is not a hard edged constraint on the Commission's hearing process, it does provide a point of reference and a focus for the inquiry.

The scope of the Phase Three issues is significant. The Commission has now received between 65,000 and 70,000 documents, the vast majority of which relate to Phase Three issues. I understand that the police and the Department of Labour have between them spent in the region of 50,000 hours investigating this tragedy, including recorded interviews with more than 260 people together with other investigations and expert analysis. Understandably that has generated a very large amount of material and we are expecting that the police and the department will shortly file approximately 25,000 pages of material from their investigation files with the Commission. Meanwhile at the Commission the work of analysing the material that has been filed to date is continuing. I might say that much of the Commission's work takes place outside the public hearings and so it should not be assumed that because a matter is not dealt with at a public hearing phase, it has not been given attention by the Commission.

In terms of the hearing plan, Phase Three is scheduled to take six weeks of hearing time and is itself broken into three blocks of two weeks each and so we have two weeks scheduled this month, two weeks in December and two weeks in February.

These November hearings will broadly deal with two topics, the oversight of health and safety at the mine by the Department of Labour and the topic hydraulic mining or hydromining.

The hearing plan for these two weeks was designed in large part to accommodate the possibility of prosecutions by the Department of Labour. From the start of this Royal Commission it has been known that there was a possibility of charges being laid against a variety of potential defendants and on Thursday last week that occurred when the Department of Labour filed 25 charges against three parties. Other Commissions of Inquiry both in New Zealand and in other countries, have been delayed or hampered by parallel criminal processes. But I am pleased to say that there is no proposal for this Commission to delay its processes because of the charges laid last week.

Those charges are summary only, which means there is no prospect of any jury trial and as a result no risk of prejudicing any potential jurors. And in terms of content, although there is some obvious overlap, the Commission's focus is not on whether there have been any breaches of the criminal law, but to a very large extent on broader issues, including systemic questions and of course, on the question of how to prevent similar tragedies in the future. At the same time, The Commission must and will continue to do all it can to ensure fairness to all those involved in this inquiry, whether they be defendants or not.

The current charges have been laid by the Department of Labour, and although the police and the Department of Labour have co-operated throughout the investigation process, the police investigation is a separate investigation and that investigation is ongoing. Unlike the Department of Labour the police do not have any time limit for laying of charges and that does create some possible implications for the Commission. For example, it means that some witnesses may continue to assert a privilege against self-incrimination and may decline to answer some questions. That issue is unavoidable and will be dealt with if and when it arises.

The programme for this week focuses on external oversight of health and safety at the Pike River Mine. The Commission has previously looked at issues 1.9 to 1.12 as part of Phase One. Those issues identified the regulatory agencies with responsibility for mining activities and mining land. They include the Ministry of Economic Development, the Department of Conservation, the Regional Councils, the District Councils and the Department of Labour. We also looked at the resources provided to those agencies and in general terms, the structures and the methods used by those agencies.

This week, we'll focus in particular on the oversight of health and safety issues by the Department of Labour and we'll look at the methods used by the Department to facilitate and enforce compliance with the Health and Safety in Employment Act, the nature of the interactions between the Department of Labour and the company, any complaints made to the Department about health and safety issues at the mine, the co-ordination between the Department of Labour and other regulatory agencies and external performance reviews or audits following the tragedy.

Next week we will look generally at the topic of hydromining and you will recall from Phase One that hydromining was the proposed method of coal extraction at Pike River from at least the late 1990s. You will also recall that hydromining had started at Pike in September of 2010 on what was officially a trial basis in what was known as a bridging panel. On the information available to the Commission, it appears that hydromining was an activity at Pike that carried with it particular risks and particular hazards that warrant attention. It's too soon to say whether hydromining did or did not contribute to the first explosion on the 19<sup>th</sup> of November 2010, but clearly it is an area that warrants examination. Understandably there were a number of people involved in the design, installation, management and operation of the hydromining systems at Pike and we will hear from three of them and in a few moments I'll speak more about their particular areas of evidence.

That will leave for the December caring phase issues related to company management and governance including the company's approach to managing hazards and risks, the health and safety systems in place at the mine and the

mechanisms to ensure that employees and contractors complied with their health and safety obligations. In February it is intended that we will focus more directly on the immediate cause or causes of the explosions and on mine systems more generally. Detailed hearing plans for the remaining phases of or sections of Phase Three will be made available as soon as practicable. The likelihood is, in light of the fact that evidence continues to be filed, the likelihood is that the detailed hearing plans will be released perhaps a week or so before each block of hearings.

We are scheduled to hear from nine witnesses over the next fortnight and I'll give a very brief thumbnail sketch of each of the nine. The first witness is Michael Firmin. He is a health and safety inspector with the Department of Labour and he gave evidence in Phase One. He had a number of interactions with Pike including visits to the mine between 2005 and 2008.

He will give evidence about those interactions, the strategies adopted and his involvement with various health and safety issues, including his suggestion that a refuge chamber be installed in the stone drive during the development stage, methane management, improvement notices to contractors and other issues.

The second witness is Kevin Poynter. He is currently a mining inspector with the Queensland mining inspectorate but was previously health and safety inspector for the Department of Labour and for a two-year period he was responsible for inspecting the Pike River mine. Like Mr Firmin, he will give evidence of his interactions with Pike, including visits between 2008 and shortly before the first explosion on the 19<sup>th</sup> of November 2010. His communications with Pike River over that period and some particular matters that he considered, including frictional admissions in 2008, the collapse of the ventilation shaft in February 2009, multi-shotfiring and the second means of egress. He will also give evidence of the Department's response to various serious harm notifications made by Pike.

The third witness is Alan Cooper. He is the practice leader of health and safety practice development for the Department of Labour. His role includes giving advice and support to health and safety inspectors and contributing to the development of

new practices and guidelines for inspectors. His evidence gives an overview of all of the Department's recorded interactions with Pike and an explanation of the policy, practice and systems that have formed those interactions.

The fourth witness is Dr Kathleen Callaghan. She is a medical doctor specialising in occupational and environmental medicine. She is also the director of the Human Factors Group at the University of Auckland Medical School. She has been asked by counsel for the families of the Pike River Mine victims to reflect on a snapshot of health and safety information made available to her and to review a report by Professor Gunningham and Dr David Neal SC, for the Department of Labour. The Gunningham and Neal Report was a review of the interactions between the Department of Labour and the Pike River Mine. Professor Gunningham is from the ANU, where he is co-director of the National Research Centre for Occupational Health and Safety Regulation.

David Neil is a senior counsel in Victoria, in other words he's a practising lawyer, a former law reform Commissioner and author of several books with extensive experience in health and safety matters. Their report concluded among other things that the performance of the mines inspectors at Pike was commendable, but that one area of improvement for the department would be to incorporate safety systems audits in their oversight. For her part, Dr Callaghan expresses a number of conclusions from her perspective as a human factors specialist which draws heavily on an understanding of human psychology and how that affects safety issues.

Next there is David Stewart. Mr Stewart is a mining consultant with Minserv International Limited, a mining consultancy business. The Commissioners will recall that in 1998 he was the author of one of the pre-feasibility studies for the Pike River Mine which was commissioned by New Zealand Oil and Gas. In late 2009 or early 2010 he was asked by Pike to carry out a number of tasks at the mine, including audits for statutory compliance. He visited the mine for that purpose on a number of occasions in March and April 2010 and he will give evidence about the main matters that he noted as part of those audits.

We will then turn to the topic of hydromining, and the first witness is Mr Craig Smith. He is the general manager of Underground Operations for Solid Energy and you'll recall he gave evidence at the last phase, before this Commission. He has particular experience in hydromining in New Zealand and he has been asked by the Commission to give evidence including a general introduction and overview of hydromining, the use of hydromining in New Zealand and overseas, the expertise involved, a description of the risks that are specific to hydromining, the steps taken by Solid Energy to use hydromining safety at Spring Creek and also an underground visit to Pike River which was made by four Solid Energy employees on the 3<sup>rd</sup> of November 2010.

Next we have the proposed evidence of Masaoki Nishioka, he's commonly referred to as Oki. Mr Nishioka is a highly regarded expert in hydromining, who has around 40 years experience in mining systems in seven countries. In this country he was the key advisor for Solid Energy for the commissioning of the hydromining system at the Strongman mine in the 1990s and he assisted with the commissioning of the hydromining system at Pike River in 2010. He was onsite at Pike between July 2010 and the 20<sup>th</sup> of October 2010. His written statement is critical of the hydro monitor system at Pike in a number of respects and he left the mine site in October 2010 because of concerns that he held.

The next witness is George Mason who is an employee of Pike River Coal (in receivership). He held the role of hydro co-ordinator of the mine from August 2010 and he will describe the state of the hydro project at the time that he arrived in August, the development of the operation between August and late September 2010, the equipment that was used at Pike for hydromining, the structure of the goaf area on the 18<sup>th</sup> of November 2010 (the goaf area of course being that area that remains after the coal has been extracted) and various other issues relating to hydromining at Pike River.

And finally Steven Wylie, who is also an employee of Pike River Coal (in receivership) and formerly an employee of Spring Creek, began as a deputy at Pike in February 2009. In early October 2010 he became a hydro monitor deputy which

was around the time that Pike moved into 24-hour seven day a week hydro monitor operations. He will describe the operation of the hydro monitor in his experience. Some of the differences between the Pike River and Spring Creek operations and the activities on the night shift in the early hours of the morning on the 19<sup>th</sup> of November 2010.

I will now say a few words on the topic of publicity and media comment, which is a topic which was addressed by the Commission in a minute to participants last week. The Commission's terms of reference give it the power to sit in private but in fact the Commission has gone to some lengths to ensure that its processes are open to the public and transparent. As a result the Commission's procedures have been live-streamed on the Internet. Daily transcripts are available on the website. Witness statements and other documents have generally been provided to the media at hearings and we have taken a number of other steps to ensure that the media and the public are well informed of the Commission's processes.

At the preliminary hearing the Commission specifically said that it welcomed the involvement of the media and it also made a request for co-operation, noting that public comment on evidence or concerning witnesses is not appropriate. In the same vein, witness statements have been made available to participants in the inquiry in advance of hearings, but with an implied undertaking of confidentiality. The reason for that implied undertaking of confidentiality in the lead up to a hearing phase is that witnesses need an assurance that they can submit evidence to the Commission freely and they will have an opportunity to seek publication restrictions at a hearing if that is required. Equally, other parties who may be affected by witness statements need to know that they will have an ability to seek appropriate orders at a hearing if necessary before a statement is made public. And it is also important that any publication of a witness' evidence takes place once affected parties have had an opportunity for cross-examination.

Generally the Commission has received considerable co-operation from parties, but recently it appears that a participant in the process unfortunately did prematurely release a witness statement to the media without authorisation. That sort of breach



can have real consequences for the Commission. For example, it is possible that some witnesses might be dissuaded from participating in the process and I might say that we have already been contacted by at least one witness who has expressed his concerns about premature release of his witness statement into the public arena. There is also a risk that others might not be as candid as they would be otherwise, because of the risk of premature publicity.

For those reasons it is perhaps timely to reiterate the Commission's request for co-operation and respect for its processes.

Looking ahead to Phase Four, you will recall that after the preliminary hearing, some aspects of Phase Four were brought forward into Phase One, namely an assessment of any tensions between mining law in New Zealand and other laws including environmental and conservation laws and also the examination of the resourcing and structures of the regulatory agencies that I have already referred to. That left the remainder of Phase Four as largely a comparative exercise with overseas countries.

The Commission's analysts are currently working on that exercise together with other forward looking policy aspects of the inquiry. Currently, hearings are not envisaged for Phase Four, that is witness hearings of the sort we are about to hold this week. That does not mean that input from participants is not welcome. Indeed, assistance from those most likely to be affected is likely to enhance the robustness of the Commission's ultimate recommendations and to that end I can say that at an appropriate time the Commission does anticipate signalling its thinking on policy aspects of the inquiry and inviting comment. That may involve, in particular, inviting comment from those participants most likely to be affected. In the meantime input from participants on Phase Four and policy issues is welcome at any time and does not need to wait for the end of Phase Three.

In terms of final submissions, I can indicate that the Commission's present intention is to invite final written submissions by the 16<sup>th</sup> of March and that there will also be an opportunity for oral submissions.

The Commission is, of course, conscious that the 12 month anniversary of the tragedy at Pike River is this Saturday and this will be a difficult time for many. The Commission intends no disrespect to be sitting at this time. It is required by the terms of reference to deal with complex and difficult issues and to report as soon as reasonably practicable, and it has been asked repeatedly by those closest to this event, to find the truth. The Commission is required to balance those imperatives.

In closing, it is appropriate to acknowledge once again the co-operation, the industry, and the patience of all of those involved in the process so far as we begin this next phase of the Commission's inquiry.

**THE COMMISSION:**

Thank you Mr Mount. That means we are in a position to proceed with the evidence of Mr Michael Firmin, and I take it Ms MacDonald that you're in charge of that?

**THE COMMISSION:**

Can you just indicate, how is it proposed to deal with his evidence from your perspective?

**MS MACDONALD:**

Sir, very briefly I'm simply proposing if it suits the Commission, to introduce Mr Firmin, refer to his written material, his written statement. He doesn't propose to read that unless the Commission wants him to. I have discussed those matters with Mr Wilding and then as I understand it, Mr Wilding will ask his questions and the matter will flow from there. I won't be very long myself with Mr Firmin. He's – I'm certainly happy for him to read his brief if that would assist the Commission, but I had understood that wasn't necessary.

**THE COMMISSION:**

Well, the Commission does not require that it be read certainly. There are a number of applications already been filed in relation to cross-examination and there may be additional oral ones, I do not know, but I'm just wondering whether the appropriate

course – Mr Wilding, you're to cross-examine Mr Firmin from the Commission's perspective, aren't you?

**MR WILDING:**

Yes, I am sir.

**THE COMMISSION:**

I think we may adopt the course of calling for any additional oral applications after Mr Wilding has cross-examined, unless any counsel have any difficulty with that, and there also, I have a note of four counsel who filed a written application already but would likewise come to those after cross-examination by counsel assisting?