



**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 14 JULY 2011 AT GREYMOUTH**

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**COMMISSION RESUMES ON THURSDAY 14 JULY 2011 AT 10.00 AM**

**WITNESS ON FORMER OATH**

**5 CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

- Q. Mr Hughes, I want to pick up several topics with you to close off this morning and one is the question of competence of workers, it's a topic which you deal with at paragraph 12 of your brief of evidence, and you refer there to the judgement as to whether mine workers are competent to carry out their duties being the responsibility of mine management. You add the comment that the inspectorate was invariably involved when a mine worker presented himself as a candidate for a statutory certificate, so anyone wanting a gas certificate, for example a competency certificate, would in one way or another come through to the attention of the inspectorate?
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- 15
- A. That's correct sir.
- Q. Now am I right in thinking that in former days, and not that many years ago, there were not so many independent contractors or contractors working in the mines as there are now?
- 20
- A. That's a fair statement. Going back not too many years ago there were virtually no contractors in mines.
- Q. My understanding is that going back some years, perhaps 15, 20 years even that recently that much of the work now done by contractors would be done by what were called shift men?
- 25
- A. That's correct sir.
- Q. And they were the miners who had reached the end of their hard physical work in the mines?

A. Not entirely, some of the contract work that's being carried out now is physical mining of tunnel and stone driving, things like that, it's changed in its substance I guess over the years but generally yes, the back-buy work sir work sir shipment would have traditionally, or the people known the shipment, would have traditionally been those who carried out that work.

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Q. So with the advent of contractors into the mines the same question arose as to testing confidence and knowledge for working in the mine and that must have brought an influx of people who did not have the historical background of mine working?

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A. That was my observation sir, yes.

Q. So what was the response, whether of the inspector or otherwise to this group of people who came to more modern mining methods as contractors, the training?

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A. I'm not aware of any response from the inspectorate sir.

Q. As to the training of those people to work underground?

A. I can only speak from the experience that we subject those people to in Solid Energy. The people who come to us, contractors who come to us to work underground go through exactly the same induction as any other mine worker that we may employ as an employer of Solid Energy. So the training is exactly the same. It's an induction that takes around about two weeks.

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Q. Well I want you to come to a document that was filed only last week, it's this review of the Department of Labour's interactions with Pike River Coal Limited. You have seen this before, I think?

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A. I have seen it sir, yes. I haven't gone through it or read it or not too familiar with the contents on it at all.

Q. And I think the reference, the confirmation is 0100010001. And I would like to have brought up please paragraph 456, which is at page 124 of that document. I'll just set the question in this. Before I ask the question I want to set this report in context so that it's fair to everyone involved in this?

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A. Yes, I understand that.

Q. This report is called, "A Review of the Department of Labour's Interactions with Pike River Coal Limited." And this was presented to the families in advance of it going onto the website as a courtesy by the Department of Labour last week, so the chance to read it before it came onto the website. And it's important to recognise that the report made by two Australian experts is drawn only from a group of people who cooperated with them. And expressed there are a number of people who did not, for various reasons -

10 A. Yep.

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Q. – provide information and that's really important because Pike River did not, and it's not a criticism that they did not at all by me, all right. Now this paragraph 456, if you just read it please and we all can do that but in the fifth line, fourth line there's a section which reads, "However according to former mine manager, Nigel Slonker, such training for underground induction did not extent to contractors and this was an area where the company has for you failed miserably at least at the time he commence with Pike River Coal," and I want to ask you, you don't know about Pike River so my question does not relate to that specific comment but in your – it sounds from your last answer that contractors within your knowledge at the mine with which you are involved receive exactly the same training as the mine workers?

A. That's correct, sir.

25 Q. Do you have any concerns about the knowledge of contractors as to safe practices as opposed to those of the miners themselves?

A. I do have some misgivings at times, sir, yes.

Q. Is that systemic or based on specific?

A. It's based on specific incidents.

30 Q. Can this Commission draw anything from that as to how those things may be avoided?

A. I would prefer not to proceed with it, sir, because one of incidents is still under investigation at the mine site.

- Q. Now the second leg of the competence question is, refers to the evidence to be given by Mr Bell about the old Schools of Mines and am I right in thinking that you believe that in place of the old Schools of Mines there is in place now training modules and programmes which overall attempt to replicate the work of the old Schools of Mines?
- 5 A. Yes, sir, but I would like to add the comment that it took many years for anything even resembling the Schools of Mines to be put in place. It was a long, long time before there was anything available to that level.
- Q. I think the last School of Mine was the Reefton School. Is that right?
- 10 A. Yes, sir.
- Q. And was that, the last director was Jim Billitho?
- A. Yes, sir.
- 1010
- Q. So what happened in the lag between the closing of the Schools of Mines and, as you referred to, before something was put in place, filled in as it were?
- 15 A. For lesser certificates it fell upon those of us who held senior positions in the mines around the country. Mine managers and inspectors to conduct ad hoc mining classes. I can remember conducting them myself as far back as 1980. I certainly participated in some of the ones conducted by Harry Bell and there are others that I recall such as Rex Brown, Bill Brazil, Tom Brazil conducting those sorts of things. They're ad hoc. During that period and I think it was somewhat later, the Technical Correspondence Institute set up some very good mining courses and that came a little bit later and that continued until the event of the Extractive Industries Training Organisation.
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- 25
- Q. Mr Bell's evidence is that the dedicated mining school set the standards and all exams were set and accessed through the Coal Mines Board of Examiners?
- 30 A. That is correct.
- Q. So what's the replication of that today or the equivalent?
- A. It's – doesn't have an equivalent because there is no Board of Examiners. The Extractive Industries Training Organisation they

facilitate the training and they issue the certificates. Its unit standard based rather than being examination based, so that once a person completes the list or schedule of unit standards for a statutory certificate he's issued that certificate for that examination.

5 Q. Yours is the more recent knowledge to that of Mr Bell, so I want to read you a paragraph in his evidence, paragraph 81(B). "The change to written and take away open-book exams very much concerns me. My experience of this educational process is that much of the information provided by some students comes from the Internet. I am extremely  
10 concerned that some students do not understand what they produce and there is no method for checking of that understanding. Previously we had written and oral exams. During the oral exam we would find out whether the student fully understood what they had written."

A. That's a fair comment sir. I, I share that concern as well because quite  
15 often under unit standard process a person's given a, an assignment if you like to go away and complete that to the best of his ability. Now that assignment can certainly be done with the assistance of Internet or with open-book or however they want to produce it. Under the Board of Examiners a person was subjected to a three or four hour examination  
20 without the benefit of recourse to reference material and they were marked on whatever the outcome of that exam was and pending that outcome they were subjected to an oral examination which may last up to two hours. Personally, and like Harry, I was very much in favour of that system because it – what it did was put the candidate under duress or under some pressure or under some stress and would, in some  
25 degree, replicate what he's going to be subjected to in his professional working life.

Q. Do you have knowledge of other jurisdictions as to whether any element of the oral examination still takes place?

30 A. No sir I don't.

Q. It's Mr Bell's evidence that in fact failures were common including for quite senior positions?

A. Yes there were.

Q. Including manager's positions?

A. Yes there were.

Q. And that failure was frequently associated, more associated with the oral examination?

5 A. There were very few candidates for first class mine manager's certificates that ever got through without failing. In fact I can't recall any that ever did it.

Q. They had a dry run?

A. They failed one part of it at some stage.

10 Q. And you clearly regard the rigor of that testing examination process as valuable?

A. Absolutely.

Q. Was that a matter in which you made comment as the system changed? We know you made submissions which I'll come to in a moment. Was that a matter in which you made express submission?

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A. I'm sorry sir I'm not sure in what context you're referring to there.

Q. Well when the oral examination fell out of the qualification process. Was that a matter on which anything was said, was there any protest, any comment made at the time?

20 A. There was. There was a feeling from, I think, within the inspect – both from Harry and myself, I remember quite clearly there was a feeling that the loss of examiners there may be a loss somewhere in the examination process and the ability to get suitable candidates through that process, whereas with by using unit standards people could be examined again and again until they fell out the other end with the appropriate certificate.

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Q. Now, I want to move to the topic you've discussed at the beginning of your paragraph 18. You've referred there to the introduction of the Resource Management Act 1991, transferring the responsibility for work programme approvals from the inspectors of coal mines to the regional councils. Firstly, do I understand what you are meaning there by work programme approvals?

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- A. Work programme approvals are a multifaceted document. They deal with resource consents to a degree, the disturbance of land, certainly the plans of intended development of a coal mine, without referring to the document sir I can't go on under that head but I do recall, I might be anticipating your question, I'll just stop there and let you –
- 5 Q. I'll carry on, well you pick up the point again in your paragraph 39 where you say – you introduced the paragraph this way, “In my opinion this is manifested as follows; the creation of a statutory mechanism whereby work programme approvals are made by officials who lack a basic
- 10 knowledge of coal mine design.” And you used then the work programme approval by regional authorities. Your comment is that when you checked with the West Coast Regional Council a few days ago that council's process is on compliance with resource consents rather than sound mining practice, right?
- 15 A. That's correct and that's basically what I would expect from them sir.
- Q. Well, it's fair to say that they simply don't retain specialist mining knowledge within their ranks, do they?
- A. No they don't. I specifically asked that question, whether they had somebody there to do that.
- 20 Q. Have you ever come across a council ever responding, in a safety sense, to a work programme approval application?
- A. No sir, they wouldn't presume to do so.
- Q. Then where have you ever come across a response from any authority to a work programme or a mine plan from any of the authorities to whom those are sent?
- 25 A. Sir, I went to the mine this morning to obtain a file under that very heading, under the work programme submittal and approval and I didn't see any response going back for 11 years, the last response I saw was over my own signature.
- 30 Q. We're talking about Spring Creek as such?
- A. Spring Creek and really back to the Strongman 2 days as well.
- Q. It's a broad range of questions and I'm trying to make sure I capture the point, I'm trying to discern whether there has ever, to your knowledge

since the abandonment of the old inspectorate, been a response from any official body to a mine plan or a work programme commenting on safety?

5 A. Yes there has sir, because during my period as an inspector post the demise of the Coal Mines Act 1979 I provided those responses.

Q. And that was in the transitional period after you – is that in the transitional period?

A. In both the transitional period and post transitional period.

Q. And were you carrying on then doing what you did as a chief inspector?

10 A. Yes I was sir.

Q. But since that time and I think when you refer to the resignation of the chief inspector in your evidence you're talking about yourself, aren't you?

A. I am, yes.

15 Q. Since that time and you moved to a new position in the industry, to my question has there ever been a response as a matter of safety?

A. Not to my knowledge sir, not in the information that I had.

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20 Q. And one part of Mr Bell's evidence refers to the this very thing where he says there are circumstances in which he would not have approved mine plans and did not approve mine plans. And that was the old inspectorate system wasn't it?

25 A. The old inspectorate system sir was varied in some ways. It depended really on what the conditions of the license required you to do. Generally with mine plans we would endorse them and approve, sorry not approve them, but we'd endorse them for forwarding on to the secretary for approval and the secretary would be unlikely to approve them without that endorsement.

30 Q. Now I want to come down to that section of your evidence which deals with the transition period. And in paragraph 19 you refer to the 1998, when all inspectors who held warrants under the 1992 Act were transferred to OSH in the Department of Labour. And you refer to the Minister of Commerce at that time, it's stating that, 'Safety in the

coalmining industry would not be compromised by the move.” As I understand it, from your evidence yesterday, you expressed your opposition to that?

A. Yes I did sir.

5 Q. And you were in the company of Bill Brazil and – well Bill Brazil and Harry Bell also expressed their opposition?

A. Harry certainly did. It was some years after Bill had died. Bill’s activity around the position I guess of the mines inspectorate preceded that. That was up till 1995.

10 Q. Now I say you were kind enough to provide me with a copy of Mr Bell’s letter, which I didn’t have this morning. We can come to it during his evidence but that is the letter written at the time to which you refer –

A. That’s correct.

Q. – in this transitional period?

15 A. Yes.

Q. And I take it that, putting it simply, that statements of assurance like that from the Minister that safety would not be compromised by the move was one with which you disagreed?

A. I felt it was meaningless.

20 Q. Meaningless. And that is what you mean I take it in your paragraph 24 when you refer to the considerable opposition indeed for the proposed merger from the personnel directly affected by the decision and by the extract of industries at large, not just coal?

A. That’s correct sir. The comment there is really relative to the operators  
25 of mines, quarries, tunnels, coalmines, which is the extractive industries at large. They didn’t know where they’re heading in terms of inspection. They were used to having inspectors appointed under the Acts and Regulations that regulated their industries. The fact that they’d lost those Acts and Regulations with the repealing, or the introduction of the  
30 Health and Safety in Employment Act left some trepidation in the industry.

Q. I think in your evidence, and I don't have my finger on it, but you refer to some confusion in the industry after the repeal of the 1979 Act and through to the 1988 end of transitional period.

5 A. That's correct sir. It was a case of, "What happens now, where do we go from here?" There was quite some concern because I fielded those concerns myself.

Q. I picked up one sentence in particular from your paragraph 21 which reads, "The industry felt that they needed greater certainty than that offered by the Act." That captures really the sense of something not  
10 right?

A. Exactly. Could I just elaborate a little bit there if I may sir?

Q. Please.

A. The Health and Safety in Employment Act has a clause there saying, "Take all practicable steps." There was considerable confusion within  
15 an industry what those practicable steps were, how far were they to go, what were they to do, because – particularly in the coalmining industry, the industry which I'm most familiar, those practicable steps were spelt out under the Regulations very clearly. And when they were taken away the industry practitioners who are wondering, "What now." As an  
20 inspector at the time, and I took advice on it that we were advising mine operators those Regulations would continue as a practicable step, and that's how we applied them. And that was the mechanism really that we used to try and satisfy some of the concerns that are out there.

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25 Q. Now I want to come just now to the inspectorate and the role of the inspector and the change under the OSH system. I'm not asking you any questions about any individual inspector and I make that plain, but you have referred in clear terms in your own evidence to a number of instances where you considered the appointments did not effectively  
30 meet or comply with the standards that you would've expected of the appointee. You've talked about that and I don't want to go into the individual cases?

A. No, sir, not with the standards that I would've expected. The standards that are laid down by the government agency with a responsibility for employing those people.

5 Q. You have a section of your brief at paragraph 32, "We refer to the Ministry of Commerce job description dated 1995 which has a work experience specification for appointment as an inspector of coal mines and a personal quality as an attribute section for appointment"?

A. Yes, sir.

10 Q. In your evidence at paragraph 22 you said that those who transferred over, those – sorry, those inspectors recruited directly by the Department of Labour, not transferred, were bound by OSH policies and with a single exception did not satisfy the person specification that has evolved as a result of a number of Commissions of Inquiry?

A. That's correct, sir.

15 Q. Now that person specification, how does it relate to the personal qualities and attributes provision that you've set out in paragraph 32?

A. That is part of that person specification. That was one of the attributes that was put forward by the officials of Commerce and preceding that by the Ministry of Energy.

20 Q. If I can put it this way, it's quite a, it looks relatively innocuous until you read carefully into that personal qualities and attributes section because it's a very testing examination of a person's ability, response to pressure obviously, how far they can go, how far they would go an in particular making judgments to make what are called sound decisions?

25 A. Yes, sir, and importantly the respect that they would command an industry, that's the comment on-standing I think.

Q. Have you had any experience of appointments made, the appointments process, applying that test that's here, this persons test or person test?

A. I'm not sure of the question, sir. Have I had experience?

30 Q. Well I'm thinking back to the inspectorate days under the old -

A. Yep.

Q. – inspectorate system and how the evolution came from management to inspector to chief inspector and there was a hierarchal system?

A. Mhm.

Q. And it was a contestable system, wasn't it?

A. Yes, it was.

5 Q. Mr Bell I think on his first, one of his first appointments was subject to a fire person content, rigorous?

A. Yes, not unusual.

10 Q. And what I'm assuming, but please correct me if I'm wrong, is that that process under the old inspectorate system shook out with a great deal of knowledge of the individual concerned, the qualities that person would have in particular the matter you've referred to that of respect in the industry?

A. That's correct, sir.

15 Q. And what I'm looking for is to how things have been run since the change from the old inspectorate to appointments as inspectors of coal mines applying the test that you've referred to, the person test. How's it done?

A. I think I've referred in my brief, sir, about the difficulty that most recently the Department of Labour but prior to that the Ministry of Commerce have had in attracting a suitable range of candidates.

20 Q. I can understand that, for the reasons you give regarding salaries in particular, that it's not seen as an attractive position nor of therefore of sufficient seniority in that sense?

A. Mhm.

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25 Q. But when a candidate does show up what I'd like to know, if you can help either from direct or indirect knowledge, is what kind of – do you know anything about the process that is actually undertaken for the appointment?

30 A. No sir, I haven't participated in that process for many years. In fact I've never participated in the process with the inspector of coal mines.

Q. Now I'll come to two more topics to raise with you. The first is that of the role of the health and safety inspector and to use the word that's come into the inquiry so far, the extent to which the inspectors are proactive

as opposed to reactive. Now, again with reference to this review commissioned by the Department of Labour there are some paragraphs, paragraph 52 and 53 at page 20 of the report. Paragraph 52 refers to a regulator and that regulator was what's called the modern regulator and the report in this paper were trialled by senior officers when engaged with a company as an issue arises, and because not everyone can read this or perhaps they can now, on an issue arising they would ask, "What does this issue represent in terms of the need for health and safety management systems from this company going forward, for example, they encounter methane, the inspector provides advice rather than to start directing them what to do, might ask have you got a system to manage gas outbreaks, is it adequate, how are you going to deal with the risks we know will come from these outbreaks, we might even suggest where the company might find the outside expertise to enable them to deal with the problem." The comment is, "This is a reasonable and sophisticated interpretation of the department's responsibilities under the Act." Firstly, does paragraph 52 reflect what you understand to be the actual role undertaken by the inspector under the present system?

20 A. I think it is sir, yes, I think that's the way it's operated these days.

Q. And can you give a short comparison of that with the role of the inspectorate when you were chief inspector?

A. I am very, well, I will say we would assist in finding a solution to the problem. If there was a problem with ventilation or gas in a roadway we would offer a suggestion how it could be rectified and come with a consensus conclusion with the mine manager, rather than posing the problems.

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30 Q. I want to move to associated topic, and I'll ask please to bring up paragraph 60 which begins at page 21 and goes to page 22 so perhaps we could look at the beginning, I'll take you to paragraph 60 first from page 21, now this refers to the regulations that have come down, those regulations that are brought down specifically to the industry. "Described here is a mixture of prescriptive and performance based

requirements, those notably less prescriptive than for example the New South Wales comparators. Nevertheless we are told by longstanding senior departmental officers that insofar as substantial prescription remained the regulations were given the principle and performance based nature of the Health and Safety in Employment Act mixing oil with water. It was gradually realised you can't do it and it's not going to work so there was a shift to codes of practice and guidelines." Just pausing there, do you have any response or comment on that statement?

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10 A. I'm just trying to find which paragraph you're at.

Q. Paragraph 60, everything is from paragraph 60 here.

A. I don't know what they're getting at.

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15 Q. So I'm sorry to drop this on you, so I'm not going to ask you to try and discern what they are saying, we'll come back to them.

A. I'm struggling with the context of it really.

20 Q. It may be easier then to look at paragraph 61. It turns – referring to Codes of Practice. Now I won't read the whole paragraph out, but you'll be able to scan it quickly enough, the – my question relates to the development of Codes of Practice and this comment is that, "The failure of industry to develop its own codes expeditiously prompted the Department of Labour to put in place a substantial number of its own approved Codes of Practice." So first question, were you aware of initiatives by Industry to develop Codes of Practice?

25 A. Yes sir some years ago I'm aware that MINEX set out to develop Codes of Practice, but I think through changes of personnel that fell by the wayside.

30 Q. The point of my question is the next sentence, "No approved Codes of Practice have been introduced in the mining sector and this can be attributed principally to resource constraints rather than any lack of willingness on the department's part." Does that accord with your understanding?

A. Yes it is. That's sort of what I was alluding to in my previous comment about losing people on the ground who actually do it.

5 Q. And if you read on in that paragraph, the last paragraph, "The departmental officers have told the reporters that we might have been standard setters in the past and the functional expertise may lie within the agency but we now see ourselves as standards facilitators because we don't have the capacity and expertise to be more." Does that accord with your understanding?

A. That's fair comment, yep.

10 Q. Now I'll ask you to look at paragraph 66, the last matter here I wish to refer you to, which is at page 23 and to realise that I haven't been referring, as I should, to the references DOL0100010001/23. Now this is a comment that's been made to the reporters that there's a quite widespread perception that the MINEX developed standards are  
15 inadequate and one would have expected the department would engage with MINEX in code development and then goes on to talk about gaps or inadequacies in the standards. First question for you is, the MINEX developed standards, what comment do you have about this and the quality of those?

20 A. Spring Creek don't consciously utilise them. We operate within a huge range of safe operating procedures that have been developed on the site which are very specific to all mining activities.

Q. Do you know about the MINEX developed standards to make any comment about them?

25 A. No sir I don't.

Q. Now finally Mr Hughes, you made a conclusory paragraph to paragraph 40 of your brief and you refer to recommendations from previous inquiries and you've named a number and this of course is not the list of accidents in mines, but where you're drawing on the recommendations  
30 that have emerged and you make the comment at the bottom of page 16, paragraph 40, "It is unlikely those recommendations have lost their validity." So I take that to mean that they're all still good, they're still good valid recommendations that should still have application?

A. That's correct sir, I read through some of those recommendations just in the past few days and applied them to what's happening in mining today and I believe they did.

5 Q. Now the reason that it's important, the rest of your paragraph is not just to this Commission and to the families, but to the whole industry is that your view expressed in the same paragraph is that many of the recommendations have not been embraced to the extent intended and now there's an associated or inevitable lost of corporate memory in industry and Government. Now you're referring to the  
10 recommendations that were made.

A. Yes.

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15 Q. Can you with your vast experience indicate the sort of recommendations that were made, and clearly you're referring to repeated recommendations, that have not been, there's been no response, adequate response?

A. Yes sir. I'd refer you, I think, to early in my brief of evidence where I referred to the recommendation that came out of the Commission of Inquiry in the explosion at Brunner Mine in 1896, which then suggested  
20 that all inspectors should be qualified by experientially and academically. The Commissions of Inquiry that I refer to there, I haven't referred to the whole lot of them, they're just the ones that have under their head somewhere a reference to the inspectorate, and I think the only other one I've quoted in my brief is the Strongman explosion in  
25 1967 where the Commission directed that the inspectorate be reinforced to meet the gravity of the task that rests upon it.

Q. From the same paragraph you're already emphasising the point that coalmining cannot be regarded as, "The same as any other industry?"

A. Exactly sir.

30 Q. It can't be lumped into a general hazardous occupation safety programme?

A. In my opinion sir, no.

Q. One of the reasons that you seem to attribute to the key learning from the past being ignored or consigned to history is said to be a certain arrogance that assumes modern mining technology as superseded and somehow resolved the problems of the past. Could you expand on that please?

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A. Yes sir. In some ways there's a perception that the way that modern mining technology has developed has superseded some of the basics, like ventilation roof support, things like that. We had better methods of doing it or think we have better methods of doing it till something goes wrong. So certainly the recommendations under that head are still valid in my opinion. That is the reason that I made that comment.

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Q. In essence do you believe that however it is structured, however it's named, what is missing and what is not been the appropriate response from these other reports is someone, some people who by experience and character and qualification know all about the mines and relate to those who work there in the context of safety?

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A. That's right sir.

**CROSS-EXAMINATION: MS MCDONALD**

Q. Mr Hughes could I just ask you first to confirm, as I assume is the case, that you have read the Tier 2 papers for the Department of Labour, filed by the Department of Labour and the MED. You read those documents?

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A. No madam I haven't.

Q. You haven't?

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A. I'm not aware which documents you're referring to.

Q. Well they're titled Tier 2 paper and they're prepared by the various departments?

A. No, I don't receive those papers.

Q. You haven't seen those. Well the reason I raise that with you, and I won't pursue the questions now, was that I was going to suggest to you that much of the information that you gave yesterday has been set out in those papers. And I'm specifically referring there to the history of the

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changes, both in the structure and in the legislation. But perhaps we won't, we'll look at the matter in a different way if you haven't read those papers. You would accept, I think, from what you've said already over the last couple of days that there are a range of factors that have

5 influenced and led to the changes that we've been talking about?

A. Yes, there are, that's really the thrust of what I've been saying.

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Q. And you might be able to confirm for us, indeed it's referred to in those papers, but you will probably know from your own knowledge that

10 there's been a decreasing or there was a decrease in mining activity in New Zealand in the period I think 1985 to 1990?

A. Yes, there was ma'am.

Q. And that resulted of course in a contraction in the size of the industry?

A. Yes, it did, madam.

15 Q. And you've already mentioned to some extent the changes that came about as a result of the introduction of the Resource Management Act?

A. I have.

Q. And in essence what happened there was the responsibility for setting and policy, or setting and policing I suppose, environmental regulation

20 moved to local authorities?

A. That's correct.

Q. And again that led to downsizing in the inspectorate, didn't it?

A. I don't know if it was specifically for that reason, madam.

Q. Well in part that resulted in the size of the inspectorate dropping

25 because part of what they did changed?

A. That's probably a fair comment, yes.

Q. Also a number of roles relating to training to moved to the EXITO, didn't it?

A. Yes, it did about '92 round about that time.

30 Q. And without getting into the particular detail of it, in a general sense would you accept from me this proposition that the new legislative regime and the new system that came into play placed or changed the emphasis so that the primary obligation for health and safety matters,

and I emphasise the word “primary obligation” moved to the company or the organisation?

A. Or the employer.

Q. Yes.

5 A. That’s implicit in the Act.

Q. Yes. With your experience, Mr Hughes, you would accept wouldn't you that a culture of or trying to develop a culture of no blame and working with a company or an employer to get co-operation over issues related to health safety is important?

10 A. It’s very difficult but it’s important. It takes a long time to achieve.

Q. Transparency and openness between an inspectorate and an employer or company important?

A. I could probably, I’d prefer to drop down a level and transparency and openness between the employer and the employee, madam –

15 Q. Yes.

A. – I’d expect the same thing, extent to government agencies with employers as well, yes.

Q. Because all of those things are likely, aren't they, to lead to better management of risk?

20 A. One would expect so, yes.

Q. And it follows from that that openness about problems or risks mean that they’ll be more likely to be readily identified rather than hidden?

A. That's correct, ma'am. It's, if I just may expand a little bit there, it is a very long process to achieve that.

25 Q. It takes a long time.

A. It does because to break down the traditional employer/employee suspicions can't be done overnight.

Q. Did you hear Dr Elder talk about some of these matters the other day by any chance or read his evidence?

30 A. I read most of Dr Elder’s brief. I am aware of most of the content of it but the specific item you're getting at I don't know yet.

Q. No, that was really dealt or elaborated anyway –

A. Yeah.

Q. – during the course of the questioning –

A. Yeah.

Q. – but you weren't here for that. We've heard on a number of occasions from the witnesses that have given evidence so far that modern day  
5 mining is a complex business and highly technical calling for a lot of expertise?

A. Correct.

Q. And it would follow from that that it is difficult, isn't it, to get all of the necessary expertise in one person?

10 A. I'd suggest almost impossible.

1050

Q. Could you also confirm for me that, as I understand it, there are a relatively small number of people in New Zealand who hold a First Class Coal Mines Certificate, I see from the documents that it is 13 and two of  
15 those are Mr Firmin, who we are yet to hear from and Mr Poynter, who you will know?

A. I don't know the numbers ma'am, I know there are not very many holders of that certificate in New Zealand.

Q. And from that small group of people that hold that certificate that pool  
20 really provides people for both mine managers and the inspectorate, doesn't it?

A. Yes it does ma'am.

Q. You might be able to confirm for me, if you can't it's fine, but that both Mr Firmin and Mr Poynter hold that first class certificate?

25 A. To the best of my knowledge yes, they do.

Q. Now, I just want to ask you Mr Hughes one or two questions that relate to the aspect of the evidence yesterday that was subject to a suppression order, so if I could just indicate that now for the technical people in the courtroom.

30 **EVIDENCE SUBJECT TO INTERIM SUPPRESSION ORDER DELETED**  
**END OF SUPPRESSION ISSUE**

Q. During the course of your evidence yesterday Mr Hughes, you spoke about inspectors giving advice?

A. I did madam.

Q. And you will have read the briefs of evidence I assume of Mr Firmin and Mr Poynter?

A. Yes I have madam

5 Q. And I'll take you to the paragraphs if we need to, but perhaps if can just put this question to you, you'll recall reading in those documents or that evidence the nature of the information and education that those inspectors provided to the companies?

A. Could you just take me to the paragraph please ma'am?

10 Q. Yes. We start with – perhaps we'll start with Mr Poynter's brief of evidence which is DOL7770010006.

A. I've got the brief in front of me.

Q. You've got that there?

A. Yep.

15 Q. If you look from paragraphs, I suppose 19, paragraph 19 Mr Poynter talks about, "After completion of an underground check he'll debrief and discuss with mine managers any issues and concerns." Do you see that?

A. Yes I do. The first sentence I'm –

20 Q. Paragraph 19?

A. Yep.

Q. He talks in that paragraph about how he goes about that, then paragraph 20 talks about ongoing communications.

A. Yes.

25 Q. If I have any concerns about the development plans I will raise those concerns and pose questions and probe the answers given?

A. Yes that's what I would expect of any competent inspector.

30 Q. It goes on paragraph 23 and 24, to talk about his visits in paragraph 23; you might like to note that because I'll come back to that later. He says there, "Probably visit West Coast underground mines up to seven times each year including both proactive and reactive visits?"

A. Yes I can't comment on that ma'am.

Q. But that's what you would expect?

A. My expectation would be greater than that as you've probably heard from the evidence that I gave yesterday. But, if that's, that's what the standard is being seen as, well yes.

5 Q. And of course when you're talking about your expectation under – or under what you might've done under the previous regime as opposed to now, to be fair?

A. That's correct madam and under the direction of the chief inspector, because he generally dictated that he wanted a greater frequency at the mines. And it was normally a greater frequency rather than a lesser  
10 frequency.

Q. And then paragraph 24 Mr Poynter talks about establishing a very open and effective line of communication with the mining industry. So that, that's his comments and if we look at Mr Firmin on issues of communication and his brief of evidence is DOL777001005 and if you  
15 look round about paragraphs 20 following, cast your eye over those paragraphs, you'll see I think a very similar sort of description of communication?

A. Yes I do madam.

Q. So you'd accept from that evidence, whether you call it advice or not,  
20 there is obviously at least from those inspectors' communication, information being given, education?

A. Certainly communication and information being given. In the context of education I'm a little unsure how that applies, but I'll accept that.

Q. And if we come then to document CLO0010012842 –

25 A. You've lost me there madam.

Q. If you just pause it'll come up on the screen for you. It's a reference to section 30 of the legislation and if we can go through to section 30. I don't have a page reference I'm sorry.

A. Functions of inspectors are you looking for ma'am?  
30 1100

Q. Yes. I'll just get a page reference so it can come up on the screen, about page 50 I think. Under the, "Functions of Inspectors," subsection A, it says there doesn't it, "That the functions of an inspector

are to help employers, employees and other persons to improve safety at places of work and the safety of people at work by provided information and education?"

A. That's what it says, yes.

5 Q. No reference there to, "Advice?"

A. No there's not.

10 Q. Now just moving back if I can for a moment to the issue of visits or inspections. You've already commented on what Mr Poynter said in that regard. If I can take you then to the tier 2 DOL paper, which is DOL0000010001, and it's page 79, and it'll come up on the screen for you, now it's actually page 80. And this is document that you indicated before you hadn't seen and I accept that. I just really want to bring it up on the screen and show you there.

15 **LEGAL DISCUSSION (11:04:19) – DOCUMENTS TO BE PUT ON LAPTOP FOR PRESENTATION**

**CROSS-EXAMINATION CONTINUES: MS MCDONALD**

Q. All I want to do Mr Hughes is take you to paragraph 295 of that document and just show you there that the reference to the visits to Pike River, a total of 21 times from 2004 to 2010. Do you see that?

20 A. Yes, I do.

1105

Q. That was the only matter I wanted to take you to. Now just a different question, yesterday I think it was you were talking about cable flashes?

A. I don't think I was. I think it got raised by counsel somewhere, yes.

25 Q. Yes, you were answering some questions about it?

A. Yep.

Q. And as I recall what you said yesterday, you said that they were notifiable?

A. Yes, they are.

30 Q. Could you just help me in terms of what part of, it's Reg 10, isn't it of the regulations and the number there is CLO0010012967? So these are the Health and Safety in Employment (Mining Underground) Regs 1999

and if we go through to Reg 10, it's up on the screen now, could you just tell me which subsection it falls under?

A. B madam.

5 Q. Any fire or spontaneous heating. So you're saying that every cable flash results in a fire?

A. Every cable flash by definition has flames so it is a fire.

Q. And is that a view that's universally held in your experience by inspectors?

10 A. I can't comment on that. I don't know. I don't know whether it's the inspector's view or not.

Q. And what about in terms of the companies or the employers, how is this provision, in your experience, interpreted by the organisations in terms of notifying flash cables and concluding, as you have, that it falls under subsection B?

15 A. I normally provide that advice, ma'am.

Q. So you can't comment on – what's the incidence of reported flash cables in your experience? Is there many?

A. It is more than one.

Q. In your experience?

20 A. In my experience, yes.

Q. I think you had a hand in drafting those regulations, didn't you, Regulation 10?

A. Yes, I did madam.

**OBJECTION: MR HAMPTON (11:08:08)**

25

**MR HAMPTON:**

Commissioners please, I want to be clear about this. Is it the department's view that cable flashes are not notifiable? I want to be clear about this because I find that extraordinary if that is the case.

30

**MS MCDONALD:**

I'm asking a question because – I'm simply asking a question of the witness and getting his opinion on what category or what subsection it fell under, sir. I don't think I can – I don't propose to take the matter any further.

**CROSS-EXAMINATION CONTINUES: MS MCDONALD**

5 Q. Now moving to a different topic altogether, plans.

A. Yes, ma'am.

10 Q. Now I want to start by just making sure we're all talking about the same thing. Can you confirm that the plan that gets submitted or got submitted under the Coal Mines Act 1979 was in terms of section 43 and we'll bring that up on the screen and that's MED00100203 and it's page 41 and if you have a look at that, that's the plan of land to accompany application for coalmining licence under the 79 Act, familiar with that?

A. I'm familiar with it, yes.

15 1110

Q. Actually it would be helpful if you just read out subsection 1 because I want to take you to another provision?

20 A. "Every application for a coalmining licence should be accompanied by a plan that has the land delineated and identified on it by reference to the area of land and its legal description and by reference to its location in relation to cadastral boundaries, survey monuments, topographical features or existing coal mining rights as the case may require."

25 Q. So that's the plan that gets submitted with an application for permit or for a licence under the old system and it's before any development work really has started, isn't it?

A. Generally ma'am yes, this was for a coalmining licence, it may have changed slightly for a mining permit, I don't know.

Q. I'll come to that.

A. Okay.

30 Q. I'll take one step at a time, and in your experience that would have been a fairly high level general topographical land type plan. Agree with that?

- A. It really consisted of a bit more than that. We were given or had up to date cadastral maps in the inspectorate office for public reference in addition to topographical maps. The main reason being was to avoid any overlaps on licence applications so it just saved a lot of toing and froing if you like to ensure that the applicant had got his boundaries right when he put the application in rather than overlapping somebody else.
- 5
- Q. But, I think you really just touched on it there by saying making sure that he's got his boundaries right. We're talking there about a land plan, aren't we, a fairly high level land plan?
- 10 A. Yes we are.
- Q. Not a detailed plan about the mine design or the development of mines?
- A. No, nothing to do with that at all.
- Q. No. Now, if we come then to plan that's submitted under the new process to Crown Minerals, the equivalent plan that's submitted for the purposes of a permit and it's CLO0010010, it's the Crown Minerals Act, section 23 which is page 107. That's a provision which says, "Every application for a permit shall be in a prescribed form?"
- 15
- A. Yes.
- Q. And if we go to the prescribed form which is another number MED0100010004, pages 3 and 4, that's the application for permit, isn't it Mr Hughes?
- 20
- A. Yes it is.
- Q. And if you go down that page a bit there's something there that says, "Land description," then underneath that it says, "Plan, attach two copies?"
- 25
- A. Yes.
- Q. And if we go to the next page, the notes relating to that application under the heading, "Land", if you just have a look, do you see that heading?
- 30
- A. Yes I do.
- Q. And if you read that first couple of paragraphs to yourself and my question is it's essentially the same requirement as existed under section 43 of the Coal Mining Act in terms of the nature of the plan?

A. That's correct ma'am.

Q. So that's a plan that goes in for a permit. We come now then to what's been referred to as six monthly plans, because that's a different sort of plan, isn't it?

5 A. I think yesterday ma'am we talked about six monthly and 12 monthly plans depending on the tonnage of the mine. I think we established then the step between 12 monthly and six monthly was the production of 12,000 tonnes of coal.

1115

10 Q. That's right. But, whether we are talking about a six monthly or 12 monthly, it's a different plan to the permit plan, isn't it?

A. Absolutely, yeah totally different.

Q. And the application plan. And that was dealt with under the old legislation in section 150 and 151 of the Coal Mining Act?

15 A. I'll take your word for that.

Q. And if – I'm sorry to do this, but if we go to the Coal Mining Act at section 150, MED001002003, page 105. And I don't want to get you to trawl through all of those, but those sub-sections under section 150 set out the nature of the plan and the things that it needs to show, does it?

20 Boundaries and –

A. That's correct yep.

Q. And the equivalent of that now is the Underground Regs, isn't it, in terms of the description of the plan for that same –

25 A. Insofar as what's required to be shown on the submitted plan madam, yes.

Q. And that's the number there is CLO0010012967, Regs 11 to 13, yes Health and Safety Regs. And if we go through to the next page please. Regulation 13, the details of the – to be included in the plans. Are you familiar with those?

30 A. Absolutely.

Q. And they, for intents and purposes, are the same aren't they as the requirements for the equivalent plan under the Coal Mines Act?

A. Yes they are ma'am.

Q. And the responsibility for the six monthly, 12 monthly or the administration I suppose of that legislation of those plans falls with the Department of Labour doesn't it, whereas the application for permit lies with Crown Minerals?

5 A. That's correct.

Q. So there's really no material difference is there between – in terms of the plans that I've been talking about here, between the old system and the new system –

A. No there –

10 Q. – in terms of the requirements?

A. In terms of the content on those plans, no there's not ma'am.

Q. And just to be absolutely clear, the permit plan doesn't contain the sort of detail that's required in the six monthly, 12 monthly development plans?

15 A. The plan that accompanies the permit –

Q. Yes.

A. – is an entirely different plan showing –

Q. Much more high level?

A. Yes, showing entirely different information.

20 **RE-EXAMINATION: MR STEVENS**

Q. Can I just please start with some of the matters that my learned friend Ms McDonald raised with you Mr Hughes.

**MR STEVENS ADDRESSES THE COMMISSION – MR HUGHES'**

25 **EVIDENCE FROM YESTERDAY**

**RE-EXAMINATION CONTINUES: MR STEVENS**

Q. Mr Hughes can I please read back to you a piece of your evidence yesterday.

A. Yes sir.

30 1120

Q. And it's on page 279 of the transcript of yesterday and it was an answer to questions from Mr Hampton and it dealt with responsibility for safety.

And the question was, “Was that also the case through and under the Coalmines Act 1979 that the operator of the mine had a main opportunity to ensure that it was healthy and safe?” And your answer was, “The manager of a mine is the paramount official at the mine. That’s been reinforced many times in many forums. Having proactive inspectorate during that regime made no difference to the responsibility of the person in charge of that mine. There is no suggestion that an inspector of coal mines could you usurp that responsibility simply by his presence at the time.” So the next question, “Right, so under both regimes there was either the operator or the manager who had main responsibility for ensuring health and safety at the mine?” And your answer, “That’s correct sir.” I’m sorry, those were questions from Mr Wilding I’m sorry. Ms McDonald put to you this morning that the new legislative regime have changed emphasis so primary obligation for health and safety moved to the employer. So my question is, “Is it your view that the primary obligation shifted or always was with the mine operator?”

A. Sir, I think there is still provision in the Act for the primary responsibility for an operation to sit with the mine managers through, I won’t take the time to refer to the section, but it talks about a person in charge of a place of work. Whether or not that’s a primary responsibility or not, I don’t know. The ultimate responsibility obviously sits with the employer but primary responsibility sits with that person in charge of a place of work. I think that’s how it’s couched under the Act.

Q. Sorry, I perhaps haven’t made it very clear Mr Hughes. Under both the old regime and the new regime what is your view as to whether the employer had the primary obligation for safety?

A. Under the old regime are we talking about the, say the employer being the person employed the mine manager, is that what we’re referring to?

Q. Yes, it could be?

A. Yes, okay. At a mine site to me the employer couldn’t have the primary responsibility for safety because it can’t be there on a day to day basis.

It must be the mine manager and I feel exactly the same way about in applying the Health and Safety in Employment Act.

## **MR STEVENS ADDRESSES THE COMMISSION – SUPPRESSION ISSUE**

### **5 RE-EXAMINATION CONTINUES: MR STEVENS**

Q. Could I ask please sir that the feed be stopped, I wanted to turn to the questions on paragraph 33.3. Mr Hughes, you were asked this morning some questions regarding your paragraph 33.3 and as I understand it you'd said your involvement and the person concerned at that paragraph was in the capacity of Inspector of Quarries. Is that correct?

A. That's correct sir.

Q. In that same paragraph you expressed an opinion that the person concerned did not meet the person specifications and his appointment would not have been possible under earlier jurisdictions.

A. That's correct sir.

Q. I understood your evidence to be that that was directed at being an Inspector of Coalmines?

A. Yes, that's right.

1125

Q. And what please were those concerns that the personal specifications would not have been possible?

A. The main thing that I was concerned about was the lack of experience as a coal mine manager. I'm aware that the person referred to there had some experience as a coal mine manager. I think it was somewhat less than two months at a small West Coast underground mine. I'm not aware that he had any experience beyond that. The importance of that is that at that level of management, a person must be able to discuss with senior officials and others on authoritative matters related to mining and also has sufficient standing in the industry which to me is gained by experience as a mine manager.

Q. That's all I wish to ask on that matter sir.

### **END OF SUPPRESSION ISSUE**

Q. My learned friend, Ms McDonald, put to you the topic of whether inspectors should give advice and I don't want to misquote it but that was the broad context that I took her questions to be directed towards. Is it possible to have section 30 of the Health and Safety in

5

A. Sir, I have the clause in front of me if you are having difficulty.

Q. I am having some difficulties. I wonder if section 30 could be highlighted please. Section 30(a) are you familiar with that, Mr Hughes?

A. Yes, sir, I am.

10

Q. And specifically to help employers, employees and other persons to improve safety at places of work, the safety of people at work by providing information and education.

A. I see that, sir, yes.

1130

15

Q. Can I now please ask that document, and my friend did refer to it, DOL0100010001 and that's the review of the Department of Labour's interactions with Pike River Coal and the page is 127 and the paragraph is 464, the first half of that. Mr Hughes, if I can just – this document was put to you and it was work that we understood that the Department of Labour, or a review that was undertaken of the inspectors, amongst other things, their interaction with Pike River Coal, can I just read the start of 464, "To summarise the inspectors and their interactions with Pike River Coal did not seek to involve the formal provisions of the law, while at first sight this might suggest some laxity of perhaps undue acquiescence with the company's interest there is no suggestion that in practice this was the case. On the contrary, inspectors used advice, persuasion and negotiation for good effect and in almost all circumstances achieved their safety objectives without recourse to either administer of notices or enforcement action." Now, as a former

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25

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A. Yes sir, I think I outlined that in my brief.

Q. Sorry, to what extent did you consider it was your job?

**THE COMMISSION ADDRESSES MR STEVENS****CROSS-EXAMINATION CONTINUES: MR STEVENS**

Q. Mr Hughes, did you consider that part of your role under section 30 that I've referred you to?

5 A. Yes sir.

Q. You gave some figures yesterday on underground workers who have gas testers certificates of competence, I think you said, on average there was 71% at Spring Creek, you didn't know about other mines. Can you say whether or what the likely percentage would have been of underground workers holding that certificate of competence back when you were an inspector?

10

A. Yes sir, I would suggest between 10 and 20%.

**QUESTIONS FROM COMMISSIONER BELL**

Q. Mr Hughes, I'm asking these questions on the viewpoint that you are an ex chief inspector and the code of compliance manager at Spring Creek so I'd ask you to cover both of those options when you are answering please. Just for my clarification a requisition, was that the precursor of a prohibition or improvement notice?

15

A. It did a lot more than that I feel sir. It actually recorded the fact that you had been to the mine, where you'd been in the mine, anything you'd seen in the mine and anything that was required to be done. I suppose broadly you could call it the precursor or the prohibition notice or an improvement notice, yes.

20

Q. Do you see it as unusual for a large gassy mine to have no compliance action of any sort taken over a period of five years?

25

A. That occurred to me when I read the previous note sir, that over a period I think from 2004 to 2011 or something like that, there was no notices issued over 21 inspections. I found that very unusual.

Q. When you were an inspector did you carry out any unannounced inspections and had you been subjected to any at Spring Creek in recent times?

30

A. I don't recall having been subjected to unannounced inspections during my period as a mine manager at any time in New Zealand. When I was an inspector, yes, I did occasionally carry out unannounced inspections. Because of some of those small operations it was very difficult to get in touch with the mine managers. I don't recall ever having carried out an unannounced inspection to a large gassy mine.

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1135

Q. What evidence does an inspector leave at the mine to demonstrate that he has in fact visited the mine and if he's issued any compliance notices how is that tracked to make sure they're dealt with?

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A. I spoke briefly about that yesterday, sir. The, under the Coal Mines Act we were required to leave a written notice of our inspection. That was the requirement that came out of two Commissions of Inquiry, most recently the Commission in 1967 to leave a record that we'd actually visited the mine. Those notices would be filed by the mine owner and there'd also be a copy kept by the inspector. The notices, if there was any requisitions on them, would be followed up by letter to the mine operator and if there was a requisition there on the following follow up visit, which may only be some days later, a check would be made to make sure that that defect had been rectified.

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Q. Have any compliance notices been issued to Spring Creek in recent times?

A. I'm aware of a prohibition notice having been issued on the 29<sup>th</sup> of June in respect of a frictional ignition.

25

Q. Are safety alerts or other information devices used by the mines as predicative to disseminate important safety information either in your time or today?

A. I don't recall any recent ones, sir. In my time we used to get them via the CCIM in Australia and disseminate those to the industry.

30

Q. Does a mines inspector need the respect of the mine manager to do his or her job and what happens if he hasn't got that respect?

A. I believe it's very important to have the respect or the credibility of the industry in order to discharge that otherwise it does affect the inspector's credibility if you like.

5 Q. This is probably a harder question, but do you have an opinion as to the numbers that there should be in today's New Zealand mines inspectorate, coal mine inspectorate?

A. No, I don't.

10 Q. What do you think of the term "practicable steps" with reference to underground coalmining electrical and gas safety matters? I'm sort of asking on the basis that methane is methane wherever it is.

A. That's right, sir, and to me the term "practicable steps" is like making a piece of rope. How long do you want the bit of rope to hang yourself with because to cover all practicable steps is almost an impossibility, there'll always be something that you may miss or be unable to cover and we've seen that time and time again both here and in Australia.

15 Q. So you think that some level of prescription is needed or useful within coalmining regulations for underground coal mines?

A. That's certainly my opinion sir, yes.

20 Q. Just a last couple of points, what do you think are the benefits of a capable mines inspector providing a mentoring role? I know you've discussed this in some of your evidence, a mentoring role to the mining industry?

A. I think it's a desirable thing and I think it was certainly a very applicable thing and going back some years certainly when there were small mine operators in the area both in the Grey Valley and the Inangahua District and Buller mines being run by people with lesser certificates who didn't so much rely on the inspector to provide advice were very keen to see the inspector come by and I'm sure my colleague Harry Bell will elaborate on that.

30 Q. Just one final question, I'm interested in the way EXITO operates today and I noted you mentioned in your evidence the term "professional conversation" and I was just wondering how it's decided whether this professional conversation takes place and whether it's required or not?

A. I'm uncertain sir. I relinquished my warrant as an EXITO assessor some years ago when I became manager at Strongman Mine.

**QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

5 **COMMISSION ADJOURNS: 11.40 AM**

**COMMISSION RESUMES: 11.58 AM**

**MR DAVIDSON ADDRESSES THE COMMISSION**

10 **MR DAVIDSON CALLS**

**HENRY WALTER BELL (SWORN)**

Q. Mr Bell good morning, your full name is in fact Henry Walter Bell?

A. That's correct.

Q. You're known to all and sundry as Harry?

15 A. That's correct.

Q. And it's not in your evidence but you were born in 1933?

A. Correct.

Q. In your 68<sup>th</sup> year. What we are going to do – first of all I'd like you to record that which is not in the brief, you are also one of the family's in that Allan Dixon who died in the mine, is your nephew?

20

A. That's correct.

Q. And what we're going to do is you're going to read your evidence through without interruption and then come back for some supplementary evidence as the Commission directs, we may lead that.

25 A. Thank you.

Q. So would you just read first please the qualifications and experience which you hold under section A of your evidence on page 1.

A. (A) Qualifications and Experience. First Class Mine Managers Certificate. Underviewers Certificate of Competency, Deputies Certificate of Competency, Mine Gas Testing Certificates, "A" Grade

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Quarry Managers Certificate, A Grade Tunnel Managers Certificate, Proficiency and Certificate of Proficiency in Mine Rescue Work, the longest serving member of the Mines Rescue (33 years), past Chairman of the Mines Rescue Trust Committee. OSH Inspector of Health and Safety Act Inspector and member of the Mining and Quarrying and Tunnelling committee, re-writing regulations for the new OSH legislation. EXITO registered assessor, mining tutor, Member of the Board of Examiners of Coal Mines.

5

Q. Now I'm going to lead you in the next section Mr Bell, working backwards from today, you've been a mining consultant from 2000 to 2010?

10

A. Correct.

Q. And I'm simply going to pluck out some of the other references. You worked for Solid Energy at the Terrace Mine in Reefton from September 2008 to October 2009 where you were mine manager?

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A. That's correct.

Q. And supervised for them in the same mine in 2006?

A. That's correct.

Q. Under (J) you were acting inspector of coal mines and tunnels for the West Coast and Huntly areas until a full-time replacement was found?

20

A. That's correct.

Q. Between June and November 2001. Between '99 and 2000 you worked for Downer Construction New Zealand Limited on the Vector or Mercury Energy supply tunnel in Auckland City and you had responsibility for the overall production on three sites, 250 men, 24 hour a day, seven day a week basis.

25

A. That's correct.

Q. Go down to (N), you were Chief Inspector of Coal Mines for New Zealand 1992 to 1994, directly responsible to the Minister of Commerce, formerly the Ministry of Energy for ensuring all mines operating in New Zealand conform to the Coal Mines Act and Regulations in terms of safety, licensing, environmental concerns. You

30

attended the Chief Inspector's Safety meetings in Melbourne in 1992 and Darwin 1993.

A. That is correct.

1203

- 5 Q. Under (o), as Inspector of Coal Mines and Inspector of Quarries and Tunnels for the Bay of Plenty, under (A)(o)(i) you were responsible for ensuring all mines operating in north island complied with the Coal Mines Act and Regulations in terms of safety licensing and environmental concerns, and for quarries and tunnels in the Bay of
- 10 Plenty under the Mining, Quarrying and Tunnelling Act and Regulations. Next, you transferred in 1983 from Greymouth to Huntly because of your expertise in gassy spontaneous combustion mines. You visited Newcastle and Wollongong areas to study for plan and introduction of longwall mining. You wrote a set of rules for single entry driveage to be
- 15 used in longwall development. They were released by the Ministry of Energy one week per month in 1987 as a mining consultant for the Japanese/Greymouth Coal Company venture. Over the page, go down to item R. You were the mine manager at Denniston in Westport for three years, 1971 to 74, State Coal Mines. Manger of three mines at
- 20 escarpment Whareatea in Sullivan, employing 280 men in total and you were a tutor at the School of Mines in Buller. To you, you were the Superintendant of mines at the Mines Rescue Station at Ohai in Southland in 1967 to '69, five large underground mines in this area, moderately gassy and liable to spontaneous combustion. And there you
- 25 finalised your First Class Mine Managers Certificate and you were a tutor for the School of Mines and tutor for first aid. (v) You were the Mine Underviewer at Liverpool Number 3 Colliery Greymouth 1966, 1967, Team leader Mines Rescue, Strongman Mine Disaster. In 1967 you record an explosion occurred at the nearby Strongman Mine killing
- 30 19 men. You were chosen as team leader for recovery of bodies in the ventilation of a section of the mine affected. Previously you were Mine Deputy at the Strongman Colliery in Greymouth in 1965 and 1966 and you accepted the position after being approached by senior officials

of the Mines Department to train and study for the First Class Mine Managers Certificate. Go to the last section Z. You began your career as a rope boy in 1948 at the Liverpool Number 2 Colliery Greymouth, State Coal. By 1949 working underground trucking and horse driving.  
5 And you graduated then through all phases of underground mining, shift work, building stoppings, et cetera, and became a face miner in 1953. And you were one of the top producing miners at Liverpool.

A. That's correct.

10 Q. That's the short capsulation. Now would you read your evidence please straight through without qualification from paragraph 1, section (B) thank you?

1206

15 **WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1, SECTION B**

A. Part 1, Pike River Mine. Summary of my involvement with the Pike River Mine. I was first involved with the Pike River Mine when Grant Mycvich of the tunnelling contractors, McConnell Dowell, Macdow as they're called, requested that I informally review tender documents  
20 for the construction of the Pike River Coal Mine tunnel. My next involvement was in June 2006 when I extracted coal samples from the outcrop, the blasting and sampling took place over a period of three weeks. Then for an approximate eight month period commencing in September 2007 I was employed by Macdow as a part time tunnel  
25 supervisor at the Pike River Coal Mine (the mine). I was involved in supervising the blasting for construction of the tunnel until I went overseas in April 2008. At that point the tunnel had not reached the Hawera fault. When I returned to New Zealand six weeks later I was told I was not required by Macdow as blasting had temporarily ceased.  
30 Instead I took up a position with Solid Energy New Zealand as the mine manager at the Terrace Mine in Reefton where I worked from September 2008 until October 2009. The next time I was involved with the mine was in or around December 2008 when the Macdow tunnel

superintendent rang me to express concerns about the number of ignitions occurring during the tunnelling and sought my advice. Samples taken at the Pike River in 2006. I was asked to extract coal samples prior to the development of the mine. The sampling process  
5 involved being flown in by helicopter on Department of Conservation land to sample and readily available to the coal outcrops. It was apparent to me that if Pike River Coal Limited (PRC) had been allowed to extend the road two or three kilometres further they could have reached the coal outcrops and gone straight in at that point. This would  
10 have been less expensive, quicker and a far safer mine. It would have been safer because there would have been no need for the long single entry tunnel through this very difficult ground. However, I do not know anything about the negotiations between Department of Conservation and PRC at the time or why the decision was made not to extend the  
15 road and access the seam where the outcrops were accessible.

Q. Mr Bell, we'll just pause there and I'll reverse course from what I indicated. You want to add to that paragraph, having read further material and been flown over the mine site, that you were not suggesting that the Department of Conservation had disallowed what  
20 you would have thought was a preferable route, there was no application made to that effect?

A. No, that's quite correct.

Q. And you would also add to that that having flown over that ground you recognised the practicalities of access in maintaining a road to that  
25 higher position site would be problematical?

A. That's correct.

Q. So you qualify that paragraph of your evidence in that way?

A. That's correct.

Q. Right, go on to paragraph 8?

30 A. "The top five metre layer of the 14 metre coal seam underlying the island sandstone rock which is a green layer high in sulphur. I was told by Jonny McNee, the geologist for Pike River Coal, to take samples from five metres down only so there would be no sulphur in the samples

taken. I do not know how these non-representative samples were used. They did not reflect the standard of coal that would be available from the mine. In my opinion it would have been very difficult to supply coal as per those samples from the underground mine. In the case of an open  
5 cast mine such as Stockton, which is on the same seam, it is possible to keep checking the coal which has been extracted to ensure the coal containing the high sulphur has separated from the high standard coking coal and does not go in to make steel.

10 1210

A. However, in an underground mine the extraction of top class coking coal from high sulphur coal is extremely difficult because if the mid-seam coal is taken out during extraction the top coal will fall and the top sulphur coal will then contaminate the whole product. Johnny McNee,  
15 the Pike River coal geologist, suggested to me that the mining operation could involve removing the good coal and then the miners could allow the five meter layer of sulphur contaminated coal to collapse down with the roof and just lie in the mine. I advised Johnny McNee that that would not be possible in an underground mine to just leave coal lying around  
20 because the weight of the roof stone would create a thermal reaction, the coal will then eventually catch fire with this process being increased by the iron sulphites in that coal. Johnny McNee discussed other options with me which he said was being considered for dealing with the two types of coal, this was to bring out the high sulphur coal along a 10  
25 kilometre pipeline to a separation destination. The pipeline will then have to be closed, cleaned out and remove all traces of sulphur and then the good coal could be piped out. That would've been very difficult, time consuming and expensive method of bringing out coal and possibly not viable. I became very concerned at the expense and approach  
30 being taken to developing this mine. When approached by friends who were considering investing in the mine I advised them not. The expense was one factor but the approach which troubled me was the sulphur problem created by the coal with sulphur content for steel making. I do

not know what eventually decided about dealing with the sulphur coal but Macdow put in a conveyor belt to ring out the stone and initially that also brought out coal. Eventually a pumping system was put in to slurry the coal the coal out. The system is complicated as the water has to be taken out and then come back into the mine. Frank Taylor, a surveyor involved with assisting Pike River Coal and getting initial consent, told me that the Pike line was designed by an Australian engineer on coal production estimates of 650,000 tonnes of coal per year. Later I was surprised to hear Gordon Ward previous CEO of Pike River coal mines state that the system could extract 1.3 million tonnes a year. Development of the tunnel and the ventilation shaft, Grant Mycvich of Macdow asked me to revive tender documents for the new Pike River tunnel development. I noted at this time that two of the exploratory bore holes were omitting methane gas at 10 cubic metres per tonne of coal. I have not been able to source copies of the original tender but to the best of my memory the tender referred to putting up a ventilation shaft in the stone and creating an intake and a return by way of two drive entries through the Hawera fault. I will check this against the records when it becomes available. In or around September 2007 I started work as a part-time shift supervisor with Macdow at the mine. I continued in that role until I went on an overseas holiday in April 2008. There were three shift supervisors who worked eight hour shifts around the clock and all needed A grade tunnel certificates so they could manage all the shot firing during the tunnel process. In or around April 2008 I was shocked when Joe Edwards, Macdow's engineering superintendent told me that at a meeting with the Pike River management he had been advised that the intention was now to proceed with one drive through the fault. There was no longer to be a ventilation shaft in the stone which would have provided an adequate ventilation circuit and instead construction of that ventilation shaft was to be delayed until they went into the fault and into the methane gassy scene. I told Joe Edwards that the single drive entry was not tenable for safety reasons and that the tunnelling needed to be stopped for entering

the fault until the ventilation issue was resolved. I told Joe that if I was still the Chief Inspector of Coal Mines I would not let them go through the fault with a single drive under any circumstances. Joe felt this was an extreme position but as I said to him PRC did not seem to understand the seriousness of the gas risks they were now, and how essential ventilation was even at this early stage.

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A. The tunnel was around about 1.5 kilometres long at that stage and my calculations, the shot firing fumes were taken one hour to exit the portal as the mine air was moving at about point five metres per second. Ventilation at this velocity could never have dealt with methane. If ventilation is not fast enough then the methane just dissipates out of the air, hits the roof and rolls back up the tunnel away from the portal. There is not exact rule for venting methane as various factors need to be applied but I suggested that because of the size of the tunnel and the air needed to be moving at a minimum of two or two and half metres per second in those conditions. The ventilation ducting at the time was 1.4 metres in diameter. This may have been sufficient for the stone drive work as it needed only to shift the shot firing fumes only but it would not handle methane which does not move downhill easily. Even at these early stages the ducting was under extreme velocity pressure and we regularly had to renew the ducting, back-buy and was splitting and continually sowing up leaks. Joe Edwards told me that he would immediately speak to PRC management and at his request I drew up plans for improving the ventilation system. I drew up two options to deal with these problems but I never learnt of any response to those plans. The two options I suggested were that two metre ducting be fitted from the surface rather than the 1.4 metre as this would provide twice the volume of air. This ducting should enter the second stub down the drift. With a Board and Brattice stopping fresh air could be established in that stub so that three or four fans could be set up in there, two 1.4 metres ductings would then be taken to the face. The tunnel would still be utilised as the return but the fans would be protected from any methane

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passing back down the return and there would not trip out because they would be in fresh air. The second one was the extracting fans be placed on the ribs just above the pit bottom before the fault. These would suck methane out through a single 1.4 metre pipe which would transport the gas all the way out of the tunnel in the lay flat ducting. The tunnel would then not be polluted by return air. A risk with this option is that if the return air did reach 1.25% then the fans would be tripped out. Obviously the air in the tunnel should never be at that level. About three weeks before I left to go on an overseas trip Joe Edwards told me that he had spoken to PRC and that they had agreed my concerns were valid and they would make sure that the ventilation was effective. Shortly before I left I was aware that no action had been taken and I was so concerned about the situation that I spoke directly to the technical manager for Pike River Coal, Udo Renk. I told him that it would be nonsensical madness, as I described it, to go through the fault with a single drive entry because of the gas risks. This was particularly important in this mine because the sluggish ventilation which existed and the uphill design of the tunnel made the essential removal of ventilation gas even more difficult. There was no doubt in my mind that a ventilation circuit had to be set up before driving through the fault. Udo Renk told me that he was aware of the problem and he would ensure that the ventilation would be improved. About this time I spoke to Kobus Louw, the mine manager, about information that I had received that Pike River Coal intended only to shotcrete the tunnel where it went through the fault to reinforce it. They had already reduced the roadway profile through the fault because of the problems they were having with the fault breccia. I pointed out that Rolled Steel Joists sets had been made up by Macdow to support the tunnel through the fault. In my opinion these were essential in the circumstances. I noted to Kobus that shotcreting would not withstand an earthquake in such a major fault line as this was the only egress the men would be trapped. In addition because they had narrowed the roadway profile at this point the risk was even more extreme. At that time I was not thinking of the obvious risk to

the tunnel of an explosion at that weak point. I am aware that around that time Macdow were processing through the fault, Kobus Louw resigned and went back to South Africa. 2009. About December 2008 Les Tredennick who was the tunnel superintendant for Macdow and who had been my immediate boss, telephoned me to say that the boys working in the drive were very upset at the number of ignitions taking place.

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A. Les said they had been attending ignitions in the past fortnight, I was extremely concerned and I said I would contact the mines inspector immediately. I rang the inspector and told him the information given me by Les Tredennick and my concerns. The inspector told me that only one ignition had been reported to him. I said that this information was extremely concerning and that he should stop the work immediately until the ventilation issue had been improved to his satisfaction. I told the inspector that he could tell the mine staff that I was the whistle blower as I was furious and alarmed that this had happened after the warnings and discussion prior to me going to Bhutan. He thanked me for passing on information and said he would deal with it straight away. I asked Tim McKay the mine administrator to listen to this call because I wanted independent evidence that I'd made the call on such a serious matter.

Part Two, Mining in New Zealand. A brief history of mining in New Zealand. Coal mining in New Zealand started in the late 1800s; the Brunner seam as it is known was discovered by Thomas Brunner, outcropping in Grey River Valley. In the late 1800s coal was found in the Buller areas of Millerton, Stockton and Denniston. This was the same Brunner seam that extended through the Paparoa Ranges. This seam contained a high grade coking coal which was mined initially by the Brunner Mine, Wallsend Mine and the Tynside Mine. The Brunner Mine itself had a disaster explosion in 1896 killing 65 men and later the Dobson Mine was developed in this area. I understand that a sub-issue identified by the Commission is the history of mine explosions which would have caused multiple fatalities in New Zealand and the details I

have of any recommendations from inquiries into these events. I have attached as document 1 a list of New Zealand mine explosions which caused multiple fatalities with a brief summary of the findings. Coal was also found in the Kaitangata, Otago and Southland areas. The Kaitangata Mine had an explosion in 1876 resulting in 34 deaths. In Southland coal was worked in the Nightcaps and Ohai Districts, this coal was a good domestic coal being sub bituminous. There is a vast deposit of lignite coal in Oamaru, Gore and the Maitua areas. Coal was also worked at Shags Point which is now finished. In the Greymouth area coal was found and worked at Runanga, Rewanui, 8 Mile Valley, 10 Mile Valley and small deposits at Fox River, Charleston and Heaphy's in the Buller Gorge. The coal in the Runanga area has numerous seams. For example, the Brunner, Dunollie, Upper Rewanui which has got five seams, A, B, C, D and E being all bituminous coal and the Lower Rewanui also have five seams for example, the McCauthers, Ramages, Kimbel, Morgan and the Lower Morgan. All these being high grade coking coals. In the Blackball area, apart from small private mines, there was the Blackball State Mine and the Roa State Mine. There were small deposits worked randomly at Murchison, Owen River, Puponga and the Collingwood areas. Reefton has the geological phenomenon of having coal and gold in the same areas. The Reefton coalfield has four main seams, mainly 1, 2, 3 and 4 seams. The number 4 seam was the deepest seam and the highest calorific value. This coal is sub bituminous and is a perfect domestic coal. Gold mining is still active in Reefton now with prospects of advancing into more old areas. The north island's main coal deposits are in the Waikato, namely Huntly, Rotowero, Pukemiro, Glen Afton, Glen Massey, Waiakokau and Meremere. In the King Country coal has been worked at Ohura, Bennydale, Whitawhenu, Mokau and Pirongia. Up north coal was discovered and worked in Kawakawa, Kamo and the Whangarei area. The majority of those area mines were worked by hand methods, ie pick and shovel and as a result the advance rate was slow so the amount of methane liberated was minimal. Since the 1950s part mechanisation

and hydro-mining improved the miner's workload and higher tonnages have been produced with less manpower. After the Brunner Mine disaster in 1896, the Commission of Inquiry demanded that a coal mines inspectorate be established similar to that in Britain.

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A. This gave another pair of experienced eyes overlooking management's safety issues. The Health and Safety in Employment Act 1992 ["the Act"] eroded this away as the current OSH inspectors are neither experienced nor carry out regular underground inspections which was  
10 the whole reason for their establishment. In my opinion since 1992 coal mines have in effect been largely self-regulated with people who are driving for production links to establish appropriate safety regimes. Supervision of mines in New Zealand prior to 1992. I began inspecting coal mines in 1977 when I was appointed inspector of coalmines for  
15 West Coast and Canterbury. I was responsible for ensuring that all mines operating in the South Island conformed with the Coal Mines Act and Regulations in terms of safety, licensing and environmental concerns. I also saw an important aspect of my role being to provide mining advice and expertise on the day to day mining operation to the  
20 mine managers and the miners. There were usually six inspectors in total when we operated, depending on which mines were active at that time. For example, in the early 1980s there was one inspector in Huntly, two in Westport, two in Greymouth, and one at Dunedin with a chief inspector of mines based in Wellington having overall supervision.  
25 Later the chief inspector of mines was domiciled in Hamilton to be nearer the action. It was an important part of the inspector's role to visit mines regularly. There was a written instruction from the chief inspector to visit each large gassy mines weekly, small mines monthly, and opencast mines six weekly. On those visits the inspector would check  
30 all the reports, walk around the mine, talk to the miners and the managers and personally carrying out gas level checks. In particular he were to pay attention to the ventilation. (a) He would check the position of auxiliary fans to ensure there was no recirculation; check all the

5        stoppings visually to ensure they were in good repair; in every return  
seal he would – it's not quite right, he would insert, but there would be a  
six metre pipe through the seal and he would test the air through the  
pipe valve. This is now covered by a the Maiheke sampling tubes; we  
10        would always discuss with the men and the mine manager any  
proposed changes that were need; and we would address planning for  
the ventilation for the next stages of development. I saw my role as an  
inspector as similar to that of a mine consultant. I always checked  
everything myself and I had discussions with the miners and mining  
15        management about the conditions in the mine and about safety. As the  
inspectors were experienced miners themselves the miners and the  
mine managers would seek information and advice from us.  
Discussions were open and generally very positive. We did not see our  
role as punitive but rather as supportive and advisory and critical to  
20        safety. An example of the importance of having experienced mine  
inspectors is my experience of the Huntly Mine in the 1980s. In 1983 I  
was transferred to the Huntly mines in the Waikato as this was expected  
to be the biggest producer of coal at that time. Initially Huntly had been  
non-gassy as they were shallow but when Huntly West and East mines  
25        were developed they were deep and gassy mines. The officials working  
at the Huntly mines were not used to gassy mines. When I went to  
Huntly I found there were a lot of problems with gas testing and a limited  
knowledge of the officials there in relation to gas. Many of the officials  
had the relevant gas testing certificates but they had no experience of  
30        gassy mines. These gas testing certificates had to be renewed every  
five years but they were renewed purely on a basis of an eyesight test.  
After the Strongman Mine explosion in 1967 the new Garford safety  
lamps had been introduced into New Zealand. The previous safe lamps  
would explode internally at 5% of methane. There was no way of  
measuring the gas when there was an explosion in the lamp so the gas  
level was just recorded as plus 5%. The new Garfield lamps enabled  
the miner to extract an air sample by the use of a small vacuum suction

socket. The socket was inserted in the lamp and could measure methane gases of up to 20% with some accuracy.

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5 A. On my arrival at Huntly it quickly became apparent to me that although the lamps had been introduced for some time, nobody knew how to read them correctly. I discussed the safety lamps with the Chief Inspector of Mines at that time was Jim Connew and training was put in place for me to train all the mining officials with the new lamps. A further example of the decision making which was required of an inspector's position is shown when I was called to the Huntly West Mine where a fire had been out of control. I presided over the sealing of this fire and gave the mine manager written instructions that no personnel were allowed underground and the mine surface portal areas were to be fenced off. This proved the correct decision as the mine blew up 36 hours later causing extensive underground and surface damage. Dangers in legislation, qualifications and experience of the inspectors up to 1993, prior to the Act coming into force the inspectors went down each large gassy mine every week. These were experienced miners trusted by the miners and the mine managers. Neither the miners nor the managers would take shortcuts as they knew the inspector would be coming every week to walk through the mine and everything would be checked. Since OSH, Department of Labour (DOL) took over in 1992 the calibre of the inspectors had slipped dramatically and because the mine inspections are few and far between and the management and men are left to self regulate. I believe the miners need, and I have always needed that other pair of eyes looking over them and looking out for them. I address the organisational structure of the agencies, the lines of responsibility and accountability, delegations and the job descriptions and performance agreement of relevant personnel in New Zealand. Under the Coal Mines Act in respect they had to have at least five years' experience of managerial experience of an underground coal mine and be the holder of a First Class New Zealand Mine Manager's Certificate. This has not been continued under Department of Labour. It is clear

from what has happened and what I know of the gas issues at Pike that the inspectors are not experienced in gassy mines themselves or in the mine management of gassy mines. One reason for the non-appointment of experienced inspectors could be that Department of Labour lowered the inspector of coal mines salary and I understand that this was because the salaries were previously higher than their branch managers. You cannot get highly experienced miners to do that job on such low pay when you consider the incomes available from mining. Under the Coal Mines Act 1979 all mining licences and privileges were handled by the licensing division. All applications were sent through to the coal mines inspector in that particular mining district. He would review the application, check for any previous mining which had taken place there and inquire into the suitability of the applicant to see if he was technically and financially sound to be granted a licence. The inspector had to be supplied with a six monthly plan and a plan of the applicant's development intentions which the inspector would comment on if necessary. This is now done by Crown Minerals without any support from people on the ground with the appropriate experience and qualifications to understand mine plans. This was always a recipe for disaster. The Pike plans should, in my view, never have been approved and would not have been approved as they were used prior to that new legislation. Auditing rather than inspecting, the OSH system set up numerous regulatory forms detailing checks and reporting which need to be ticked off by the miners. In my experience these forms were often just ticked without checks having been carried out. The inspector would then audit these forms and would have no way of knowing whether or not the checks had actually been carried out. Under the Act new roles were created for tunnels inspectors and quarry inspectors in addition to mines inspectors. These new inspectors roles were heavily directed towards auditing rather than carrying out inspections. The OSH inspectors would go to the office of the mine and review the reporting sheets completed by the miners and the health and safety officers. They were required to tick off that the reports had been completed.

There was no provision for the inspector to check the conditions in the mine themselves or to ensure that the reports had been completely corrected by speaking to the miners. It was certainly a requirement that the new inspectors went to the mines, however, for example

5 Kevin Poynter the current OSH inspector of mines had at one point to cover Buller, Greymouth, Huntly and Canterbury.

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A. This meant covering four mines in Buller, four in Greymouth and six in Huntly, two underground and four open cast. The Ohai, Mataura,

10 Nightcaps, Otago and Canterbury mines were covered by the Mines and Tunnels Inspector based in Dunedin. It would just not be possible to inspect that number of mines regularly as inspections should be made. During that year I was acting as mine manager in Reefton, September 2008, October 2009. I saw Kevin Poynter twice. Once when he went

15 down the mine with me driving him. He would not have had time to walk around the mine and the other time was when he came through to introduce a new inspector and at that time he did not go into the mine. When Bill Taylor was offered the inspector's position in 2002 he held a Scottish mine manager's ticket but had not managed underground

20 mines. I was asked to take the role of mines inspector for the South Island while Bill transferred to New Zealand. I was offered a salary which was quite inadequate for the work and responsibilities and very much less than my retirement salary. While carrying out this temporary role I was told by the Department of Labour that the department would not fund me, as there was no budget, to stay in

25 motels while I was travelling to inspect mines. I was told that my role now was to do more audits of the check lists to ensure they had been completed and make fewer inspections of the mines. I was fully aware, as I believe that everyone else with experience, that the very nature of

30 mining meant that the men did what they considered to be necessary checking. There was a list to be ticked, it would regularly be ticked without reference to the actual requirement on the list. The risk is obvious. I said that if I was to carry out the role then I would need to

continue to inspect the mines and talk to the men otherwise it was not possible for me to do the job as it had to be done. Reactive as opposed to proactive management. The requirements of the HSEA seemed to shift the health and safety focus for which I was familiar. There was no requirement to ensure that the people with relevant experience and competence, advise or support the mining operation. Instead there is an auditing emphasis and as an investigative and perhaps punitive role after the event. Too late. In my opinion this lack of intervention at Ahern's tunnel and the Black Reef contributed to these deaths. I have strong views about what I know about Pike River but much more needs to be known of the facts before I would express my considered view. At Ahern's tunnel the owner Mick Ahern was tunnelling, pipe-jacking, hydraulically pushing pipes through to form a tunnel, through a rubbish tip to make a culvert underneath. He was using non-flameproof gear and was not aware that there was an issue of methane gas. Methane production is a known risk at rubbish dumps and methane venting pipes are often installed to release the methane and stop the build-up. It is believed that either Ahern's illegal 240 volt lighting set up he used or the gas cutting equipment may have caused the explosion which killed him. The other worker engaged had just gone outside and was not injured. The tunnel was inspected prior to the accident by the DOL Mines and Quarry Inspector. Robin Hughes, who was at that time chief inspector of coal mines, had to go and report on this fatality. I believe the Ahern fatality and the drowning at Black Reef mine and possibly the Pike River disaster can be attributed in some part to human error and lack of experience of the inspectors and lack of regular mine inspections. I do not know how many underground inspections were carried out at Pike River. I managed the Terrace Mine at Reefton for one year and one inspection was made by the inspector. There was a reluctance to advise and enforce safety matters. Occupation Health and Safety inspectors are not allowed to give advice or be involved in decision making. This is a management prerogative. An experienced inspector of coal mines should have immediately understood the risks and the

preventable actions necessary at Ahern's tunnel and Black Reef and prevented the accident from happening. A reactive instead of proactive approach is not appropriate for health and safety in the underground coalmining industry. Lack of detail and enforceable requirement in the regulations. The Coal Mines Act and the Coal Mines Regulations, Licensing Regulations, Electrical Regulations were repealed by the Health and Safety in Employment Act 1992.

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A. Because the Regulations under the HSE Act did not cover certain items we were told by the (then) Department of Commerce lawyers to us the repealed legislation as best mining practice. The previous Regulations were specific. The new HSE Regulations are mainly not. While they require all practical steps they no longer say what those steps are. Given my history with the mines I was extremely concerned at the reduced requirements of the HSE Act and Regulations. As just one example, a previous requirement was that in the event that a mine manager was away for three days or more he was required to appoint in his place a person with similar mining experience and qualifications. That appointment had to be approved by the inspector. Under the HSE Act a manager is required only to appoint someone he considers to be competent, even if that person is not qualified. This makes no sense to me. A person might be qualified but incompetent, but to be competent you must be qualified. Further concerns. I have concerns about the following issues. The closing of the dedicated mining schools and training through the polytechs. This is because (a) a dedicated mining school set the standards and exams are all set and assessed to the Coal Mines Board of Examiners. The chief inspector of coal mines, who was always an experienced miner, was the chairman of the board and had a deep understanding of health and safety in that industry. The board set the standards and exams annually based on what they as experienced miners considered essential knowledge and bringing to account history and then current knowledge of underground conditions. The individual mines could not decline to put their employees through

these exams and set their own requirements, as they do today. There was a nationwide standard which bore no relationship to individual judgment, nor financial constraint. The change to written and takeaway open book exams very much concerns me. My experience of this educational process is that much of the information provided by some students comes from the internet. I am extremely concerned that some students do not understand what they have produced and there is no method of checking on their understanding. Previously we had written an oral exam and during the oral exam we could find out whether the student fully understood what they had written. The appointment of mining managers with mining degrees who need only one year's mining face experience before acting as a mine manager is also relevant. Most of the students work in the mine during their university holidays and gain practical experience. I consider they should do part of that practice year as a deputy or an underviewer so they gain an understanding of management underground and may be able to gain respect from the workforce. This is critical. A mine manager without respect is ineffectual. To gain respect requires that the men observe underground skills and knowledge and concern held for them by their managers. Previously the Coal Mines Board of Examiners would ensure that non-New Zealand trained mining managers prior to appointment would go through a professional conversation. This would take place with two experienced New Zealand managers or inspectors who could judge their competence and have the experience to do so. New Zealand mining conditions geologically are the most problematical in the world. Overseas mine managers must prove, show an awareness of this and a willingness to educate themselves on the conditions here. In the current environment PRC, for example, is able to elect whether or not to pay for its overseas officials to participate in a professional conversation. Exclusion of coal mining from the HSE Act. When the HSE Act came into force in 1992 the decision was made that the marine and aviation industries not come under the new legislation but retain separate controls. Many of us in the coalmining industry requested that

coalmining also be managed separately from HSE. We did this by writing to the Minister of Energy, tell him that it won't work. Our reasoning was that you cannot audit a mine on paper. You need to go underground and make direct observations on a regular basis.

5 1245

A. The change in the system removed the authority of the inspector and left the health and safety choices at the will of the individual mine owners. In short, a consistent approach which would reasonably ensure that standards were set and met was abandoned. This was a recipe for disaster. Conclusion. I provide this brief without access to records and evidence of Pike River's operation other than those documents I would have available through my own contacts, discussion with counsel for the family as they have sought my assistance. And speaking with many who have knowledge of the Pike River. This phase one brief is thus restricted to systematic and specific planning and development issues within my knowledge. I have knowledge of other facets of development and operations which direct or derive from others on which I will make comment on other phases of the inquiry. I am relying on my memory to some degree and will review this evidence as reports and other evidence becomes available to me. To the extent I give expert advice – expert evidence, I acknowledge that I have been informed of and I have the Codes of Conduct for expert witnesses under the High Court Rules and understand to abide by them and have done so in this brief.

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## 25 **THE COMMISSION ADDRESSES WITNESS**

### **EXAMINATION CONTINUES: MR DAVIDSON**

Q. Mr Bell there's one or two other matters which we can deal with shortly that have arisen in the course of the hearing so far, relevant to your evidence and there are a couple of corrections to make. The first point I want to deal with, however, going to have brought up on the screen a letter to the Ministry of Energy dated 23 October 1997 under

30

FAM001231097001 and this is a letter I'd ask you to record that it's a [Ex 6] copy of the letter you wrote to the Ministry of Energy on that day?

A. Yes.

Q. I don't think you've seen it for a while, in fact until this morning?

5 A. No. No, that's right.

Q. Mr Hughes produced it.

A. That's right, I'm grateful for Robin for finding the copy 'cos I'd lost mine.

10 Q. Well now we're back on song and you referred to this in your brief in general terms, and the letter will speak for itself, but you've read it again and does that still reflect the views that you hold today?

A. Certainly. I anticipated it.

15 Q. Now I don't want to read the whole letter out obviously for the record we're not allowed to, but I want to pick out a couple of points in here. In the second paragraph – well the purpose of the letter is stated in the first paragraph, you wanted the Mine Inspection Group (MIG) to stay with the Ministry of Commerce instead of going to the Labour Department that was the purpose of the letter?

A. Correct.

20 Q. And this is coming at the end of the transition phase in relation to mining, correct?

A. Yes, yes.

Q. And you immediately raised the point that the inspectors underground have to have five years experience as a mine manager before qualifying for the inspectorate?

25 A. Correct.

30 Q. You then went on to refer to the repealed legislation as to the practicable experience or practical experience required for a person before they could even sit for a certificate of competency under the Act and a minimum of eight years underground before you could even begin to be considered as an inspector. That was the thrust of your letter?

A. Correct.

Q. The letter then seems to move to the fact that within the Ministry of Commerce there were experienced inspectors who didn't want to go

down in status for – in monetary reward and salary and you then refer to some matters which I needn't take you to but essentially they were a dispute between the State Services Commission and the Labour Department relating to – which included reference to mine inspectors higher salaries than those of the Labour Department. Right?

5

A. Correct.

Q. We go over the page and you then said, "Mining is an entirely different industry to shops and factories and the coming of the 1992 Act did not change this." You seem to make a point that Marine and Aviation Industries were left out of the Act in 1992 and you say the mining industry should also have been left out.

10

A. Exactly, yes.

1250

Q. Did you express that view at that earlier time when the legislation came through in the mining industry?

15

A. Not, not only me but, but all the inspectors. We had meeting after meeting about it. We complained and, but nobody listened. They'd already made their minds up I think.

Q. And then in the fourth paragraph on the second page you refer to the mines inspector with background experience being called on to make judgment in certain areas that may be contrary to regulations and dispensation not given lightly and hard and fast rules were drawn up to safely achieve the situation -

20

A. Correct.

Q. – submission. You take a bit of a dig at the inspectors in the fourth to last paragraph that reading from the papers they seem to, in your view, thrive on prosecutions and then you make a comment in the penultimate paragraph, "It's my understanding that if mines inspectors go to labour they'll do so to reduce salary. I can tell you if that happens you will not get the calibre of inspectors this industry demands."

25

30

A. Correct.

Q. Now on that last point, first of all I have to produce that thank you as exhibit C.

**MR MOUNT ADDRESSES THE COMMISSION – PRODUCTION OF EXHIBITS**

**5 EXHIBIT 6 PRODUCED – COPY OF MR BELL’S LETTER**

**MR DAVIDSON:**

I should explain that the letter in the copy form I was given this morning, sir, the second page was faded to the point it was very hard to read. It’s been  
10 retyped to make part of the exhibit.

**EXAMINATION CONTINUES: MR DAVIDSON**

Q. Mr Bell, in the area of correctional qualification your paragraph 61 has referred to the experience of five years’ experience of managerial experience underground coalmining and to hold a First Class  
15 New Zealand Mine Manager’s Certificate and you said that hasn’t continued under DOL. Now you have since read details of the qualifications in particular of Mr Poynter?

A. That’s right.

Q. And you’ve observed I think that he has had more experience  
20 underground than you had understood?

A. That’s right, I, I knew Kevin managed the Stockton open cast for quite a few years but I didn’t realise that he had that, according to his CV, a couple of years in Huntly as an under-viewer. I remember Kevin being there but I didn’t think he was there for two years but however I accept  
25 that.

Q. So you qualify your evidence to that extent?

A. Yes.

Q. Now on the same topic, you heard this morning Mr Hughes refer to the personal aspect of the qualifications for inspectorate positions?

30 A. Mmm.

Q. Now you have referred in your evidence to the process by which appointments were made and how one evolved through managership to inspectorate –

A. Yes.

5 Q. – to chief inspectorate?

A. Yes.

Q. I put it that Mr Hughes agreed that they were often contested positions?

A. That's right.

Q. Yours was a contested appointment I think. Can you explain that?

10 A. Yes, when a mine manager's or inspector's job become vacant, it was advertised in the public service circular and I was the mine manager at Denison and because Denison was a non gassy mine it was, it was lower down on the scale for managers and the mine manager for Strongman Number 1 came up and of course myself and others applied.  
15 I didn't expect to get it because there was other guys were senior to me, not in me mining experience but senior to me on the graded ladder, as you like. But anyway, I ended up with the job and I had five appeals against me, three of them were squashed. One of the guys was given the same salary as me and the other guy took the appeal and of course  
20 the State Coal Mines Under Secretary who appointed me he defended the appeal and he lost so I got the job. And then of course I went from there to the inspectorate.

1255

25 Q. Now related to a lot of the evidence to date, and Mr Hughes this morning, there has been a question raised of not just the qualifications, which you have referred, but also the personal qualities and attributes of an inspector, for an inspector.

A. That's correct.

30 Q. And in Mr Hughes evidence he's referred to what's called, "The person specifications for appointment as an inspector of coal mines." How was the question of the personal suitability of an inspector gauged when you were an inspector yourself and involved in the appointment of inspectors. What were you looking for?

- 5 A. Well it was normally the Under Secretary of Mines and the head admin officer and the chief inspector would get the applications for the inspectors job and they would go through them and they would look if one of the applicants had vast experience in gassy mines for arguments sake, and one was spon com, and other guys might have had more [spontaneous combustion] experience but hadn't been in a gassy mine they'd give it to the guy with the gassy mine experience. That happened regular.
- 10 Q. Now Mr Hughes referred to the need for the inspector to have the respect of the men underground?
- A. Yes, most important, most important.
- Q. How did you go about gauging that if you're one of those who was involved in appointing inspectors. How did you measure that, or how did you know it?
- 15 A. Well generally the mining industry's not that big and we all sort of knew one another and we sort of could form those opinions. I mean you get some mine managers, inspectors that get on with people and you get some that don't so it makes your job harder if you don't. I'm not saying that you've got to give into them or anything but if they respect you your job runs smoother and better, for them and yourself.
- 20 Q. When you were an inspector were you ever concerned about giving direct advice as to what should be done in terms of a plan or remedial work?
- A. Yes, I, as, as I said earlier I, I was the manager of Strongman and then I got the inspector's job in that district and the particular manager who was there at the time put his plan into me of his proposed developed for the next year like Pike was mandatory in those days and I noticed, I noticed on it that on one of my inspections with the under-viewer going round the mine with the under-viewer that he was going to split the two main rope road pillars, the rope road being the haulage in those days and I thought, geez you know so I, I just told the manager that he didn't have it on his thing and I would never, ever agree to it and when I got back to my office in Greymouth the office lady said to me, "Oh, you've
- 25
- 30

got to ring the chief inspector in Wellington,” so I rung the chief inspector and he said, “You've got a bit of a problem at Strongman Harry,” and I said, “Well not really,” and I told him and he said, “Oh, well good on you,” he said, “That’s what, that’s what we want.”

5 Q. You had the power?

A. Oh, yes.

Q. And you did exercise it?

A. Oh, yes, yeah. I mean splitting, splitting pillars on the main rope road is, that’s your –

10 Q. Not done?

A. No, no.

Q. Now I want to come to an aspect that came up through Dr Newman’s evidence and to get a point of the question clear, stratigraphic analysis was not part of your game when you were underground, was it, as such?

15

A. No, no, we -

Q. You weren’t in seam drilling?

A. Yeah, part of our, our, one of the subjects in our exams was geology but it wasn’t up to the standard of Jane Newman or any of them but we, we had the basic knowledge of geology.

20

Q. When you listened to her evidence yesterday and you saw the split seams with the sandstone in between.

A. Mhm.

1300

25 Q. She referred to the circumstances in which the risks associated with thinking you've hit the bottom of the coal but beneath that lying another seam intersected in the sandwich by the sandstone seed?

A. Yes.

Q. And not knowing how that sandstone held in the sandwich would end or where it would end and she talked about some gas risk associated with those intersections, all right?

30

A. Yes.

Q. Now, you worked in the area of these seams?

A. Yes.

Q. In a number of mines?

A. Yes.

Q. Were you aware of that variation in the underground structures?

5 A. Yes, well the Strongman explosion in Greens Number 2, above Greens  
Number 2 is Greens Number 1 and when they developed there they  
thought it was the stone floor and they developed Greens Number 1 and  
they pillared it, then they found out that the coal lived under that, what  
they thought was their floor was just a big split of stone like Jane  
10 Newman explained, so then they developed Greens Number 2 and they  
started to pillar it of course and then in the 19<sup>th</sup> of January in 1967 they  
had the mine explosion in that section and all us rescue men, we knew  
what happened because we then could see it but the Commission of  
Inquiry didn't come up with a – they come up with two scenarios. They  
15 said, yes, it was probably a malpractice in shotfiring, which it was, don't  
worry about that, it was, but they said it could've been gas come down  
from the top seam down the fault and that's what Jane Newman's  
talking about. If you get splits in seams that's the problem you get.

Q. And the fault is a major contributor to the possibility of gas coming  
20 surprisingly at you?

A. Yeah, we commonly call a fault in a gassy mine a gas reservoir because  
the country is ruptured and all the methane can get into all those cracks  
and fissures and then when you go into a fault it's very normal to get a  
lot of methane and outbursts.

25 Q. Now that, we'll come to it in a moment, a couple of questions, but that  
answer in part is an explanation or to do with what you say you were  
concerned with approaching the harbour of fault when you were working  
with Macdow directly?

A. Very concerned, very concerned I was, yes.

30 Q. Now, just to get towards the end of this part of the supplementary, in  
your evidence at paragraph 8 in talking about the Pike River Coal  
sampling you undertook you referred at paragraph 8 to the top  
five metre sample or layout of the 40 metre coal seam underlying the

island sandstone rock, which is a marine layer high in sulphur. Doctor Newman referred to the quartz, do you recall her evidence?

A. Yes I heard that, yes.

Q. And does that ring a bell with you, you know the quartz in this layer?

5 A. Yes because the Dobson Mine which is the same seam, the same island and sandstone roof, had two explosions and the inquiry, I think it was about 1935, there was eight men killed in the first one, and the inquiry into that was that they had a major roof fall and the roof falling into ports in the sandstone sparked and ignited the methane and blew  
10 the mine up. Now, the second time was in the mid 1950s and fortunately it was on a weekend and there was no one underground and the mine blew up and there was nobody underground underground and it was put down to the same thing, frictional sparking from, from the falling roof because two lumps of quartz striking together give a very  
15 incandescent heat that's enough to set off methane.

1304

Q. And apart from those incidents you referred to, have you come across such sparking from quartz interaction in other situations? Have you seen it on other occasions?

20 A. No. No I haven't to be honest, no. No. Although what Jane Newman talks about the acid water in the quartz and the, the road header at the pipe that was sparking and igniting the methane all those – that's the same thing, but instead of two lumps of quartz it was the cutting head of the road header that was causing the sparks.

25 Q. Now how do you – how did you address that risk of sparking from quartz sandstone or quartz layered deposits collapsing? How did you address it?

A. Well I would – it's not for me to say, but I think if I was going to – if the mine sold and however takes it over, they've got to –

30 Q. Talk about it generally, not about this particular case. Just generally, how to address the issue?

- A. Well, the road headers ought to continue, have a good water sprays on them that's supposed to allay that, that sparking, but obviously at Pike River the sprays weren't working or something because the...

**5 THE COMMISSION ADDRESSES MR DAVIDSON - TIMING**

**COMMISSION ADJOURNS: 1.07 PM**

**COMMISSION RESUMES: 2.00 PM****THE COMMISSION:**

Mr Davidson, just before you continue you've identified these three further  
5 topics, the first one is the hydraulic mining issue and we have no difficulty with  
that, it's a general issue that has been raised and of some significance. The  
other two issues as we understood from what you said before lunch, the first  
concerning what you've termed the shatter zone associated with the fault, the  
Hawera fault and then the reference to documentation to do with  
10 McConnell Dowell as I understood it. They both seemed to us to be matters  
which are concerned with the construction of the drift about which Mr Bell has  
given quite a bit of evidence and about which he said he's intending to add to  
that evidence in the context of phase three and at a time when he has  
accessed all of the records. We're really questioning whether it isn't best that  
15 his further contributions on those two aspects are not deferred.

**MR DAVIDSON:**

Yes, sir, I accept that and we're walking a line always between the two  
phases. I'm sorry I haven't got right to the edge of it. The last point, sir, can  
20 be disposed of, not substantively through the witness, it's just that he's given  
evidence that he provided plans to McDowell, he gave them the plan which  
he's referred to in evidence. The point simply was for him to confirm, which  
he can do right now, is that they do exist when they held by Mr Tredennick of  
McDowell, that was the only point I want to make, nothing more than that so,  
25 sir, I can do it from the bar. The other point –

**THE COMMISSION:**

These are the two options you're talking about?

**MR DAVIDSON:**

Yes, sir, the two things he put, yes, the two options so that exists and can  
come into phase three.. The question of the shatter zone was a word which,

an expression which is familiar to Mr Bell and it's to do with faulting generally and to do with what Dr Newman was talking about at the intersections where the seams have the faults and it's highly relevant to what's going to come I accept in phase three but it relates to what she said as to the ability to work  
5 within the proximity to faults so if I can put that just as a general proposition, sir, I would like to, but...

**THE COMMISSION:**

Yes.

10 **CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

Q. We'll deal with that now Mr Bell. I'm not asking you to comment on the specifics of the Pike River Mine but you have introduced in discussion with your counsel with counsel for the families, the expression shatter zone and am I right in thinking that is a, it is generally a zone within  
15 proximity to a fault in which there is a specific response from the miner? Can you just explain to the Commission please what you mean by the shatter zone and what you do when you confront it?

A. Yeah, when you get a major fault like the Hawera fault it ruptures the ground, could be 100 metres, 50 metres away from it and it rakes it up and cracks it and then the inherent methane that's always in the coal  
20 finds its way into there and our term if you like is we class as a gas reservoir so when you're approaching a fault you've always got to be careful in a gassy mine situation that you're going to get a lot more methane and possibly outbursts.

25 1405

Q. And is the shatter zone the area which has a relationship to the fault?

A. Yes, yes, it can be either side or just one side depending on whether it's reverse or not or a normal fault.

Q. Reverse or?

30 A. Or a normal.

Q. Normal?

A. Yeah.

Q. So you have to work that out, where it is?

A. Yeah, with the Hawera fault's a reverse fault, yes.

Q. And what if any precautions do you take in that shatter zone?

5 A. Well, you've got to be very careful about the extra methane you're normally going to get, I understand that when they drove through the fault they didn't get as much methane as they expected but once they got in the shatter zone, the proof's there, they got all those ignitions. Is that what you want to know?

10 Q. Yes thank you. Now, the last matter very briefly, Dr Elder gave evidence about the hydraulic extraction process. Have you had direct dealings with the hydraulic extraction?

A. Well, certainly sir.

15 Q. And in his evidence he refers at paragraph 28.2, "That by intent and design hydraulic extraction creates massive disruption to the subsurface condition. The objective being to remove as much coal seam as possible, vertically and horizontally." Do you agree with that?

A. Yes I do.

20 Q. He then comments on the consequences being, and I'll just summarise them, "Loss of support to overlying ground," that's the first thing. "Major changes in ground stress distribution and loss of strength." And thirdly, "Large releases of gas when the coal extracted and from the goaf." Do you agree with all those three?

A. I do, yes.

25 Q. So what are the particular responses needed to the ground stress and gas stress in relation to hydraulic mining, different from the ordinary continuous mining practice?

30 A. Well, in my brief you may remember I talked about being released one day a month for the Japanese Greymouth coal joint venture and the head Japanese mining engineer was a chap called Rock Adachi or Rakura Adachi, but we all called him Rock. Brilliant mining man and he told me that when they were doing hydraulic mining in Japan if the monitor, when it starts up the water shoots out, it brings out copious amounts of methane or if they get a fall the fall wafts the methane out

and they lost a man, although the monitor is there and the guy working, it's all done by hydraulic hoses, he's working the levers to make the wand to up and down and around, it asphyxiated him so they had to then put the operator in a glass bubble, perspex bubble with his own air, that was their practice and this can happen if you get a major fall when you've got a big opening or, what's the other thing I was going to say, yeah, and like the Terrace Mine at Reefton was on a smaller scale than Pike or Spring Creek but at Reefton all they makes is a blackdamp, which is a deficiency in oxygen and quite often when they got a fall blackdamp would come out and you could feel it, you know, the oxygen might drop down to about 17% or some, you know, you're puffing a bit but it clears, you know, so if you don't understand hydraulic mining these are things you've got to know.

**THE COMMISSION:**

15 There are three parties that have leave to question. Is there any agreement about order?

**MS SHORTALL:**

Your Honour, I'm happy to go first if that helps, I've spoken with Ms McDonald and I understand that's acceptable to her.

**CROSS-EXAMINATION: MS SHORTALL**

Q. Mr Bell, just before I begin I'd like to just offer my condolences to the loss of your nephew sir.

A. Thank you.

25 Q. Now, five years ago Mr Bell in June 2006 you spent three weeks at Pike River extracting coal samples from the outcrop, that's right?

A. Correct.

1410

30 Q. And then in September 2007 sir you started work for McConnell Dowell on a part-time basis as a shift supervisor at Pike River, right?

A. Correct.

Q. And you stopped doing this part-time work seven months later, I think you said, when you went overseas in April 2008, right?

A. That's correct.

Q. And you've not done any work at Pike River since have you?

5 A. Only some lectures in their training room. Just about a month prior to the explosion I went there for two Fridays and -

Q. And you provided some lectures to some of their staff?

A. Yes, health and safety lectures, or self rescues, all that sort of stuff, yes. Mr White asked me come and do it.

10 **CROSS-EXAMINATION: MS MCDONALD**

Q. Mr Bell, just a couple of matters. If I can put the matter to you this way. Just reading your brief of evidence and hearing you speak this morning is it fair to say that the main thrust of your concerns lie with the changes, the legislative changes and the corresponding changes in the system rather than a criticism of individuals. Is that fair?

15

A. Yes, I'd say, I'd say it is fair, yes.

Q. Thank you. Now you have - in your brief of evidence you've spoken about, sorry just bear with me, I'll find the particular number, your paragraphs 35 and 36. Have you got that there?

20

A. I have.

Q. You talk there about an incident in December 2008 relating to a number of ignitions and you raising an issue with Mr Poynter?

A. That's right.

25

Q. Now this may be a matter that can be dealt with more fully later on in the inquiry but I just wanted to ask you, have you had an opportunity of reading or looking at the review, the operation review document on the -

A. I've seen, I have seen parts of it, yes.

30

Q. And if we can bring that up, it's number DOL0100010001 and I'm looking from page 65. And the document from paragraph 211 through to about 235 deals with that incident. Have you read that?

A. I can, yes.

Q. You have read that?

A. Yes, I can read it now.

Q. It's quite a few pages?

A. Yes, but I have read it prior, yes I have.

1413

5 Q. Right and without going through it in a lot of detail because people can read it themselves, but the point is that incident or that concern was dealt with in this report, obviously?

A. Yeah, yes it was. Yes.

10 Q. And the upshot if you go to page 71 at paragraph 235, do you want to read – perhaps just have a look at that. in summary, “Gas ignitions caused by inadequate ventilation were reported to Mr Poynter, this was a serious issue and Mr Poynter advised that the mine would now fall within the definition of a gassy mine under the Regulations. The mine carried out an investigation, the result was that the use of the road header was stopped and the mine reverted to drill and blast with personnel removed from the mine. In view of the mine’s decision there was no basis for Mr Poynter to use a prohibition notice.” And then it goes on and points to the notation there. Did you have regard to the detail that had been set out in this – well you wouldn't have seen this analysis when you prepared your brief of evidence would you?

15

20

A. No, no I didn't, but I've got to say that I was the one that was informed by Les Tredennick and I, I rung Kev – Kevin Poynter and I are personal friends, don't worry about that, but I rung Kevin Poynter and I told him all about how I wanted them to change their ventilation and he listened to me and he thanked me very much. And I said, “Kevin I'll give you a wee bit of advice,” I said, “Stop them bloody mining until they fix the ventilation.” And he thanked me very much and then I heard on the grapevine like you get in mines, that all he'd done was get them to take the, the road header out because it was causing the ignitions. But, the core problem was the ventilation. The methane shouldn't have been there. And then I note, I note later on that they did say the ventilation was a problem and I'd told them that six months ago before it happened.

25

30

Q. And if you go back to page 70 of the document, paragraph 231, it records there, doesn't it, that –

A. 231, yes.

5 Q. – Mr Poynter wrote again saying that he had only received advice on two ignitions and then Mr Low replying saying, “Don't know you fed you that information, two ignitions, but I've been told subsequent by a number of people that there were at least 10,” and then Mr Low coming back saying, “I don't know where you got that information,” and then –

A. He got it from me.

10 Q. – the – yes.

A. Yeah, and I believe Les Tredennick he doesn't tell lies.

Q. All right, but without getting into the detail, the point I'm wanting to make with you is the issue is dealt with quite fully in this operational review, isn't it, the details?

15 A. Yes, yes. I agree with that.

Q. Now the only other matter I just wanted to take you to was some clarification. Paragraph 63 and 64 of your brief, where you are talking about plans, and we've had some evidence about this so I might be able to do this in a fairly shorthand way, but do you, do you accept that the –  
20 that under both the old system and the new system that a plan, a very high level land plan was submitted with the application for licence or permit?

A. Yes.

Q. And that's a land plan? A topographical plan?

25 A. Yes, I heard you ask Robin Hughes that and I, I agree with that, that's right.

Q. So if you heard me ask Mr Hughes that, do you agree with the matters that I put to Mr Hughes and his acceptance of those – that analysis of the way the legislation describes the plans?

30 A. Yes, I do, yes.

Q. Because in your paragraph 63 and 64 and it's probably just the way that it's been drafted, it seems to merge the two types of plans, but you, you accept there are two quite distinct types of plan?

A. Yes I do, but I'd like to say that I've – I resigned from chief inspector in '93 and I'll be honest because of the OSH Act, I just couldn't see it working and I resigned, so what actually happened after that I didn't take much notice of. So if I said yes or no I might be wrong, so...

5 Q. That's fine Mr Bell, thank you very much.

1418

**CROSS-EXAMINATION: MR WILDING**

10 Q. If we could have summation number FAM0001/15. And Mr Bell if I could ask you to look at the last sentence of the top paragraph, which is a continuation of paragraph 61 where you say essentially that it's clear to you that inspectors are not experienced in gassy mines or mine management of gassy mines?

A. Mmm.

15 Q. Do I infer from that that you think that it's important that inspectors who inspect gassy mines should have had working experience in gassy mines?

A. Yes. I can qualify that quite simply. I mean I could see they were going to have a problem, no-one would listen to me, Joe Edwards wouldn't. He went to Pike River, they said, "Oh we'll fix the ventilation," they didn't do nothing. If you read Joe Edwards evidence you'll see where they changed fan, they put fans in the middle, the ductings were bursting with the pressure. They were trying to fix the ventilation but they couldn't because it wasn't adequate right from the start. That's my argument.

20 Q. Well I'll just stop you there. What I'm interested to know is whether you think that an inspector who inspects a gassy mine should have had practical working experience in a gassy mine?

A. Oh, yes, yes. If you remember in my brief I got transferred to Huntly for that reason because the mines there had turned gassy. And I can follow on by saying that I refused to go to Huntly because all the inspectors were on the same salary so what they done they called me the senior inspector to get over it and that's the only reason I went to Huntly because I appeal that the guy who was getting my job for

30

East Coast Canterbury wasn't good enough to go to Huntly but he was getting the same salary as me. So, yeah, I can qualify it by saying that.

Q. Why do you say that an inspector inspecting a gassy mine needs to have had practical experience working in a gassy mine?

5 A. Well that's where you learn how to handle the gas.

Q. And do you think that that's something which can't be learnt, for example through an academic qualification?

A. No you can't learn that through an academic – you can read about and that but unless you've physically been there and done that it doesn't sink in. I can be honest about that.

10

Q. If I can take you to paragraph 65 of that same page. As I understand it, and correct me if I'm wrong, one of your points here is that under the OSH system there are forms that miners have to tick off and that they sometimes don't?

15 A. Yes. They have restart checks for vehicles, lockdown checks when they lock them down, and although – I'd like to say that we have had people from Pike River who have been interviewed by the family lawyers and myself, I've been present, that know all about this. I personally don't really know but they say that the guys hop on the vehicles and just fill them in when they want.

20

Q. I won't go into that. But your point is that miners sometimes tick off things on regulatory forms without actually having done the work required?

A. That's right. In my day we hand-writ our reports, we hand-writ them, now they just tick, tick, tick and they just do it, 'cos it's simple.

25

Q. How do you say a mines inspector's able to check whether the work on those forms have been done?

A. He has to take it for granted that it has been done. He wouldn't know.

Q. In your day did you check whether or not what was written on the predecessor to those forms was done?

30

A. Yes, that's one thing you always, you always read the previous deputies report or underviewer or whatever he happened to be, you always read that so you knew what – and we always put the barometer and the

temperature up top 'cos in a gassy mine if the barometer's dropping you get ready to get more gas. And these are the things that you, that we always done and you always done it in your own handwriting and you signed it and you don't sign things if it's not correct. That's my opinion.

5 1423

Q. So when you were a mine's inspector your assurance that the work had been done came as a result of the detail having been written out on the form as opposed to a form simply being ticked?

A. Yes, yeah I feel and I know that it did work better that way.

10 Q. Could I take you please to summation page ending 16 and paragraph 70? You've said there and I'll paraphrase that you were told your role was to do more audits and make fewer inspections.

A. That happened to me twice.

Q. Right.

15 A. When I was in Huntly, the mining business manager he was called George Munroe, he rung me and then while I was – just before I retired in Huntly and he said, "Harry you're doing too many inspections. I want you to do more audits." I said, "I'm sorry George I've been doing inspections all me life, I'm finishing shortly and I'm still going to do them." And then when I leave for Christchurch, Margaret Radford, after  
20 I've been there after a month, she rung me up and said that they never had a budget for me to go to Westport or Reefton and stay in a motel, so that's why it's there.

Q. Now this was about 2002?

25 A. Yes that's right, yes.

Q. Are you able to recall the frequency of the inspections that you were doing at that time?

A. I never changed, I done exactly what I'd always done.

Q. So how many would that be per year or how many per month?

30 A. Well put it this way, I – Reefton had probably, there's a lot of small mines, probably about seven or eight I suppose at that time. So I drive up to Reefton, which takes just over an hour, I'd do a couple of mines, stay the night, the next day I'd do three mines, stay the night, do the

other three, then I'd go through the Buller Gorge and do Heaphy's Mine and New Creek and then I would stay in Westport and I'd go to Stockton. Stockton was a whole day. That's a big mine and then the next day I go to a motel, the next day I go up to Dennison and I think –  
5 the impression I got although I'm only guessing was that he sort of wanted me to drive to Reefton do a mine and drive back again. The next day do the same again and I just, you know...

Q. At that time, were you also having communications with mines by telephone and email and letter?

10 A. I don't use a computer so I never, I never emailed, but yes certainly phone.

Q. Would you agree with the proposition that increased communication by phone or email or correspondence may reduce the need to visit a mine so frequently?

15 A. No, I don't, I can't agree with that, probably old-fashioned, but I can't agree with that.

Q. Why can't you agree with that?

A. Well that's your job, you're inspector of mines, you go inspect them. the name of it tells you what you got to do. Unless they're going to call  
20 them audited mines, I don't know.

Q. Could I take you please to summation ending 17, paragraph 78? You've, in essence, made a criticism as I interpret it, that the Health and Safety Regulations don't say what steps are required. Is that correct that's a criticism of yours?

25 A. That's a criticism, yes.

Q. And so I take it from that that you think that somewhere there has to be a document setting out what steps are required to make certain aspects of a mine safe. Is that correct?

A. Dead right and then they're normal in regulation so that that's it, there's  
30 no...

Q. Are you familiar with what's meant by Industry Codes of Practice?

A. I am.

Q. Do you think that gap can be filled by Industry Codes of Practice?

A. Well in, in my day it was regulations and managers rules and I presume you could get a comparison between mangers rules and codes of practice, but, I, I suppose it could be, but they're not mandatory codes of practice.

5 1428

Q. Would your concern therefore be that whatever's set out to fill those gaps has to be mandatory?

A. Provided what's happened I think so, yes.

10 Q. Have you had any involvement in the development of any of the industry codes of practice?

A. No but I did do one for the Chief Inspector's conference in Darwin. They asked me to do a code of practice on self rescuers which I did. That's the only one I've done.

15 Q. If I can take you please to summation document ending 18, paragraph 81(iv), and could you please just read 81(a)(iv) and then perhaps just explain what's meant by that?

A. "Closing of dedicated," is that what you want me to read, it out?

1430

20 Q. No, just to yourself where it starts, "The individual mines could not decline."

A. Yes, I've been involved in maybe four or five professional conversations, these are mining managers or underviewers or tunnel managers that have come from overseas and to gain a New Zealand certificate they go through a professional conversation and they present their CV and talk about it and we ask questions and we decide whether or not we consider they have got similar standards to New Zealand And we ask questions and Pike River has brought in quite a few South Africans and even Australian officials and I don't, I think there is a trans-Tasman agreement between us so it didn't matter too much with Australian ones  
25  
30 but we still went through it but the ones from South Africa and who they reap from Germany. They had to go through it in great detail and at the end of it myself, my colleague and Liz Barrett-Cohen who she sort of not invented this but she's the one that runs these professional

conversations she would sit on it as well and then we would decide whether we thought the candidate was okay. In most cases we found them wanting on a couple of things so we'd make them do the EXITO exam say for ventilation or whatever it was, they weren't you know considered up to standard.

5

Q. So is your concern there that senior level staff, for example at the managerial level?

A. Mhm.

Q. Aren't assessed to ensure that they have a sufficient knowledge of New Zealand mining conditions, New Zealand geology, New Zealand law?

10

A. Well the only exception that I know was Doug White. I didn't even know Doug White had even started. He just came and started and no one examined him as far as I know.

15

Q. Without getting into that though, does that correctly identify the concern that there's not enough assurance that overseas managers or senior mine staff have sufficient knowledge of New Zealand mining conditions?

A. Not geologically, no, no, that's, that's our biggest problem in New Zealand.

20

Q. And would you say that there needs to be a system to ensure that senior or overseas people do have sufficient knowledge?

A. Yes, I agree with that.

**MR HAMPTON:**

25

I wondered if I might be precocious enough to ask for leave to cross-examine or examine in three particular and hopefully quite narrow areas if the Commissioner pleases. The first would be as to Mr Bell's view as to a cable flash and whether he sees that as a notifiable event. The second would be as to his view about three monthly inspectorate visits on notice. The third would be, and it follows on from the other, the three legged stool and in particular the leg of the chief inspectorate.

30

**LEAVE GRANTED TO CROSS-EXAMINE**

**CROSS-EXAMINATION: MR HAMPTON**

Q. Mr Bell, you've heard the conversation with the Commission?

A. Certainly.

5 Q. The first area to raise with you, a cable flash underground in a gassy mine, whether under the - well, let's do it in two parts, under the old Mining Act and regulations a notifiable event to the inspectorate?

A. Certainly, it's a flame underground.

Q. It's a flame underground?

10 A. Fire or flash or whatever you like but it's got the possibility of igniting methane or coal dust.

Q. Yes. Under the new regime, particularly regulation 10 of the Underground Mining Regulations and that's the shorthand for it, a notifiable event?

A. Yes, it's, it's about two or three down if I remember right, yes.

15 1435

Q. Secondly there's going to be evidence, and there already is some evidence about the inspectorate currently doing or aspiring to do three monthly visits to coal mines on notice and indeed it's enshrined in the mining sector work plan for 2010/2011, I'll just give you the reference, 20 it's DOL0020010017/2, that's the work plan 2010/2011, so there's no problem with my friend for the department that this hasn't been drawn to their attention. Given your experience over the years three monthly visits on notice as an inspector, your view as to that, adequacy of that?

A. Rubbish.

25 Q. Why do you say rubbish sir?

A. Well, three months is far too long and notifying them you're coming makes it worse. I mean when I was in Huntly I used to sneak out and go back shift and all sorts because that's, you know, I know, it's a no.

Q. Sneak out and go back shift?

30 A. Mmm.

Q. I'm sure the Commissioners will understand back shift, they've been educated now but I haven't, what's a back shift?

A. Afternoon shift.

- Q. Afternoon shift. So would your view be, or how would you view the New South Wales Inspectorate view that I put yesterday and I gave you the reference yesterday as being DOL0100010001, page 46, "The assessment regime should include a sufficient pattern of announced, unannounced and back shift inspections to detect non-compliance with acceptable standards at any site and on any shifts other than day shifts, an expectation should be created that a mine may be visited at any time." Your view of that philosophy?
- 5
- A. I completely agree with it, yes.
- 10 Q. Over your years of experience in the mine, right up from when you started to today, has your view on that changed?
- A. Can you repeat that?
- Q. Has your view on that changed over the years that you've been doing this work in the mines?
- 15 A. No it hasn't changed, no, no.
- Q. So it holds as good today as it did when you started out?
- A. That's right, yes.
- Q. Notwithstanding these advances and so called scientific mining methods?
- 20 A. No, it's the more regular and the unannounced ones are the ones you want because when I was up the Ten Mile Valley in a wee private mine we'd see a light coming and it'd be the inspector.
- Q. That was the first you knew it was coming?
- A. Yeah.
- 25 Q. No chance to put the house in order?
- A. Oh, mine was always in order.
- Q. One other aspect and my friend Ms McDonald touched on it today in talking to Mr Hughes, communication between inspectors and those in the mine should cover in particular operators and managers, what about the ordinary workers, the miners themselves, what level of communication should there be between inspectors and workers?
- 30
- A. I can only speak for myself but I always talked to everybody, everybody round the mine. Usually told a yarn or two.

Q. And were you an inspector in the days when check inspectors existed?

A. Certainly.

1440

5 Q. Communication with chief inspectors, when you were doing inspections?

A. Certainly. I've had them go round with me.

Q. Why?

10 A. Well I went to Liverpool number 3, I can remember this vividly and the manager was Charlie Cotton and the chief inspectors were Norman Torrick and Tony Mangin and they used to do a monthly check around the mine. And they said, "Do you mind if we come around with you," and I said, "It's okay with me but ask the manager," and Charlie agreed and they came around, the four of us went around the mine.

Q. And the value of that is what, in your mind?

15 A. Extra pair of eyes looking at things. That's the big thing about it. I mean you can't self-regulate mines like they're doing now 'cos, okay I know Solid Energy have very good, we've heard Dr Elder, they've got very strict health and safety things but, you know, when you're just production based it's, well it's...

20 Q. Have you a view about the bringing back of chief inspectors as the suitability of that?

A. Certainly. It worked good in the old days and I don't know why it was changed. But they -

25 Q. Apart from the accompanying you as you've said as an inspector what did you see the value of chief inspectors in the old days when it worked good?

30 A. Well apart from times like they went round on their own, but they always wrote a report. And I remember one instance that the Huntly West Mine the chief inspectors gave me a report after their examination and they were concerned about one of the haulage roads. We never had mesh in those days, just butterfly straps and bolts.

Q. Just pause a moment. What was the expression you used, "The hauling?"

A. The haulage road. Yes, it was the belt haulage road, yes, conveyor belt haulage road.

Q. Thank you.

5 A. And they had in their thing that from a certain cross cut to the next one they thought the roof was very bad. So I went with the interviewer and one of the chief inspectors Bob Poaroa came with us and I grabbed a pick and sound the roof, they don't do that now. That's what we always done. And I determined, yes it was, because all the W-straps were buckling and that and they put RSJ sets up under that section, before it  
10 fell in.

Q. All right, just pause a moment. There's a couple of things. Was there an obligation then for chief inspectors to keep reports, make reports and keep them?

A. Oh yes, oh yes they always made reports.

15 Q. And were they made available to you as a mines inspector?

A. Yes they were, that's how I learnt about – I was, yeah, I was inspector then, that's right, yes, yes.

Q. And so you see value in that system?

A. Yes, the manager got a copy naturally and we would read it, we went to  
20 the mine the manager would have all those books and that would be one of them we'd look at.

Q. So the extra pair of eyes that you speak of?

A. That's right.

Q. And the three-legged stool as a concept?

25 A. It's fallen over, there's only two on it.

Q. What's the bit that's missing?

A. Our union participation I suppose.

Q. And the owner and management leg's still there, what do you say about the second leg, the Government regulatory inspectorial leg?

30 A. Well Mr Davidson circulated my letter I wrote I think, you can get your own, what I thought of the Government at the time.

Q. That's your 1997 letter?

A. Yes.

Q. It speaks for itself, I don't want to go through it I think.

A. Yes.

**COMMISSIONER BELL:**

5 Q. Mr Bell I've just got one question for you. I note in your document, section 81, part (d), I'm just talking about these professional conversations and the capacity for PRC, for example, is able to elect whether or not to pay for its overseas officials to participate. Can you explain that a bit further for me?

A. 81(b).

10 Q. (d), sorry (d). The final sentence there.

A. Yes, I see, over the page.

1445

Q. Can you explain that a bit further for me?

A. 81(b).

15 Q. D. The final sentence there?

A. I see over the page. Just the last sentence, is that right?

Q. Yes.

A. "In the current environment PIC for example is able to elect whether or not to pay for its overseas officials." Yes well as I said earlier I interviewed quite a few in a professional state – professional conversations, I know Dave, Dave Stewart done some and the only one that wasn't done was Doug White. Now I know Doug White, he's a brilliant manager and a great inspector and but I just don't know why he wasn't given one. The last one I took was Mick Lurch who was an  
20 Australian manager and I spent a day with him and, and I think that's  
25 what they're getting at there. They seem to choose who they wanted to, to get done.

Q. Sorry for the clarification, every overseas mine manager coming into New Zealand must have a professional qualification?

30 A. Yes, but, there's – I'm not quite sure, but there's some trans-Tasman agreement has come in very recently that allows New Zealand/ Australians to interchange.

**THE COMMISSION:**

Q. Mr Bell can you help me with two matters. When Mr Wilding was questioning you a moment ago about the use of codes of practice.

A. Yes.

5 Q. You referred to in your day and regulations and what you termed, "manager's rules."

A. Yes.

Q. Is a new one to me? What are manager's rules?

10 A. Well the manager sets his own rules for that mine. I actually learnt it when I was over in Australia on things. The Australian managers have always had manager's rules for that particular mine and if a manager got transferred from that mine to another mine, the new manager would look at those rules that were, you know, applicable to that mine. So you could say, in a way, they were sort of codes of practice, but that's not what they were called anyway.

15 Q. So these would be things that were not covered by regulation, but nonetheless were essential standards –

A. Yes, that's right. There weren't mandatory.

Q. – that the manager saw for his particular mine?

20 A. That's right, yes.

Q. At the risk of being a bit personal, you've mentioned the impact of salary a few times on decisions you made during the course of your career. I just wanted to get a feel for what you're talking about, I hope the figures would be meaningless, but I notice for example that it was 1977 when you finished as mine manager at Strongman and first became an inspector -

25 A. Yes.

Q. – on the West Coast was it?

A. It was, Greymouth, West Coast, Canterbury.

30 Q. And are we to understand that the salary scale at that time for the inspectorate was such that it was an attractive proposition to actually give up your job as a mine manager and become an inspector?

- A. That's right, the grading for the hierarchy if you like, when you got to top, top management which was Strongman, you had two options. You either went to a district manager or an inspector and it just happened that when I'd been at Strongman about three and a half years or  
5 whatever, inspector's job come up so I applied for it and got it.
- Q. What, an appreciable increase in salary? Meaningful –
- A. Yeah, well it was in those – it's probably only about 1500 bucks a year, it doesn't sound much now, but it was, was quite handy in those days.
- Q. By comparison when you went back in the early 2000s, 2001 was it?
- 10 A. Two, to work for OSH?
- Q. Yes.
- A. Yes, 202.  
1450
- Q. How did you judge the salary then?
- 15 A. Yeah, well, completely honest about it, when I retired as chief inspector I was on \$74,000. That was good money in those days and when Margaret Radford rung me, I was in Huntly then, she rung me and said that this new inspector couldn't start for three months and would I help them out and relieve for three months and I said, "Yes, I'll help you out,"  
20 and she said, "We'll start you on \$45,000." I said, "No you won't, unless you pay me what I retired on I'm not interested." She said, "I can't afford to pay you that," I said, "That's all right." Anyway she rung me the next night and said she cleared it with –
- Q. We don't need to go into all the detail.
- 25 A. She cleared it with head office.

**QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

**MR MANDER CALLS****ALAN MILLETT SHERWOOD (AFFIRMED)**

Q. Mr Sherwood, would you state your full name to the Commission please?

5 A. Alan Millett Sherwood.

Q. And are you a senior geologist in the New Zealand Petroleum and Minerals branch at the Ministry of Economic Development?

A. That's right sir.

Q. And have you worked for that department since 2006?

10 A. That's right sir.

Q. And I think you've described yourself as a resource geologist, is that correct?

A. Correct sir.

Q. Mr Sherwood, have you got with you today a copy of your CV?

15 A. I do sir.

Q. Perhaps if the Commission pleases, if that could just be produced as an exhibit. I have copies for counsel that can be distributed. So, just as a [Ex 7] synopsis of your qualifications and experience can you confirm that you hold a Bachelor of Science degree, a Master of Science degree with honours, a Master of Philosophy, all those degrees being in geology?

20

A. That's right sir.

Q. And I understand from 1974 through to 1979 you worked as a coal exploration geologist for New Zealand Geological Survey at Huntly and that you were head of the Coal Geology section of New Zealand Geological Survey in Lower Hutt between the years 1980 and 1990?

25

A. That's right.

Q. During the 80s you undertook some consulting work for Pike River Coal on the resources of the Pike River coalfield?

30

A. I did.

Q. In '95 through to 2006 did you work as an independent consultant for a number of businesses and entities including Geosphere Limited, Crown

Minerals, Institute of Geological and Nuclear Sciences Limited and the Ministry of Research Science and Technology?

A. That's right sir.

5 Q. Now, Mr Sherwood can you confirm that you have made two statements of evidence for the purpose of these proceedings, for the record MED7770010001 and MED7770010006?

A. I can confirm that.

1455

10 Q. And have you assisted in the preparation of MEDs part of the joint legislative framework paper prepared by Government agencies?

A. I have.

Q. And have you also been involved in the preparation of MEDs so called tier 2 and tier 3 papers filed with the Commission which address the issues listed for the purposes of phase one?

15 A. I have.

Q. And again for the record, those documents being MED10001 and MED20001 respectively.

**CROSS-EXAMINATION: MR WILDING**

20 Q. Mr Sherwood, you didn't have any involvement at the application stage of the mining permit for Pike River Coal?

A. No, I didn't.

Q. But you have reviewed that file and as a result of that review you were able to talk to that process?

A. Yes, certainly.

25 Q. Could I just turn first to the structure of the branch which you work which is the New Zealand Petroleum and Minerals Branch, was that formerly known as Crown Minerals?

A. That's right.

Q. When did that name change occur?

30 A. Very recently, sir.

Q. This year?

A. Yes.

Q. Did what the branch does change at the same time?

5 A. Operationally, no, there is a transition from the way that that Crown Minerals was structured into a new structure that has been addressed by a capability review but inevitably that's something that hasn't been completed. There's a phase to undergo and we're in the middle of that now.

Q. You were involved in assessing permit applications?

A. That's right.

Q. How many people within the branch were involved in that assessment?

10 A. In the minerals team which covers minerals and petroleum there have been six to seven people and a manager involved in that and we're in a build phase on that as a result of the restructuring.

Q. When you say "in a build phase" to what level of people?

15 A. People come and go, sir, and at the moment we're recruiting at the bottom end if that's what you're referring to, new graduates and people without too much experience at this stage but there's also some managers being brought in to populate the new structure.

Q. What's the range of expertise of the people involved in assessing permitting applications?

20 A. In general there's an imbalance towards inexperience at present.

Q. Does that mean that within their particular specialty they are less experienced and presumably younger?

A. That's correct.

Q. And what is the specialty, for example yours is geology?

25 A. The specialities are in the other commodities that the Crown regulates, most of which are gold, iron sand and the other commodities that the Crown permits.

Q. So within that Crown team assessing applications there isn't expertise in for example mine design?

30 A. No, sir. Most of the expertise is in a knowledge of geology and of resources because that's what we allocate but not in terms of mine design and their operation.

Q. And I will take it from that there's also no one there whose got expertise in relation to health and safety?

A. No, sir.

5 Q. And if we can just talk about the process itself. It's correct that no one can prospect or explore or mine for coal without first obtaining a permit?

A. If the resource is Crown owned, that's correct. If the resource is privately owned, they don't need any permission or permits from us.

1500

10 Q. And in relation to mining, that permit must be obtained before the construction of the mine commences?

A. Before the extraction of any resource commences yes sir.

Q. Right, does that mean some construction work could begin?

A. In theory sir.

Q. In theory?

15 A. I think somebody wouldn't undertake the expense and risk of starting a construction without a mining permit to finish it off sir.

Q. And although the power to grant permits is reposed in the Minister, I presume that that's delegated to officials within the department?

A. That's correct.

20 Q. And so many of those officials would both give advice and then be responsible for signing off on a permit application?

A. There's a single official within the group that has that delegated authority.

Q. Who's that?

25 A. At the moment it's Kevin Rowlands.

Q. And what's the position occupied by him?

A. He's, at the moment, manager of the petroleum unit because at the moment we have a transitional manager who would normally have that delegation in an acting capacity.

30 Q. And when permit applications are being assessed, that's with reference to what are known as minerals programmes, is that correct?

A. That's correct.

Q. And are there two programmes?

- A. There was a programme, a 1996 programme for coal and a 1996 programme for minerals other than coal, they have now been amalgamated into a single programme. Both programmes are still operational against the permits to which they were granted.
- 5 Q. Right, so that means the coal programme 1996 is still effective for permits that were granted pursuant to that?
- A. That's correct.
- Q. And that is only so long as the permit holder hasn't elected to change to the new programme, is that correct?
- 10 A. And change to the new programme in its entirety sir.
- Q. And that new programme is the Minerals Programme 2008?
- A. That's right.
- Q. Do either of those programmes require consideration of health and safety?
- 15 A. No they do not.
- Q. Is health and safety a consideration at any stage of the granting process?
- A. No it's not sir.
- Q. Do either of those programmes require consideration of the design of a mine?
- 20 A. Only insofar as a work programme that's sufficient to meet the criteria of the programme is affected by that.
- Q. We might come back to that. When permits are granted, they can be granted subject to conditions?
- 25 A. Yes and most permits have conditions on them.
- Q. Can you just outline, very briefly, the standard range of conditions
- A. The generic conditions is usually a work programme which is – can be summarised as the right to extract a resource by varying techniques. The description is usually quite general, it might be by open cast methods, it might be by underground methods. There may be a production, minimum production figure, an average production figure of that sort. There may be then conditions to report. There may be a more expansive work programme that has more detail around it attached to
- 30

that permit. So there's various ways in which a permit document can be, can be set.

Q. And none of the conditions, presumably, would ever relate to health and safety either?

5 A. They do not sir.

Q. Just in relation to Pike River Coal, it's the coal's programme that applied 1996, at the time at which that permit was being assessed.

A. That's right.

Q. And that's the programme that still applies?

10 A. Yes.

Q. And when the permit was first granted it required mining within a period of five years from the date of issue, is that correct?

A. That's correct.

Q. And it was later extended to seven years?

15 A. That's right sir.

1505

Q. Has there been any change in the approach taken to the granting of permits since 1996/1997?

20 A. It's a general question sir but I think we would say that industry standards have changed so that what we are given by way of application has changed, similarly we have probably changed with that to have a greater expectation of matters that we would consider in the grant of a permit.

25 Q. I might talk later about that but when you say information has changed, does that mean that you might get information in more detail than you used to?

A. Yes.

Q. And is it your expectation that you would be provided with more detailed information?

30 A. Yes sir.

Q. Are you able to describe the process that's following nowadays when assessing a permit application?

A. From the beginning of application?

Q. Yes.

A. An application would reach us, we would assess it for a small number of basic matters such as a map of the permit area, that is simply a spatial stent of what's being applied for, a fee, that there is a work programme to consider and the land is available for permitting, in other words it's not permitted by somebody else, it would be lodged in our permitting system and an acknowledgement sent to the applicant that we have done so and the application has been accepted. That would then trigger the processes of iwi consultation, it would trigger the process of plotting the application area within our computerised GIS and it would trigger the process of a technical assessment by a geologist of the application.

Q. And am I right in understanding that nowadays you use a template to assist you with that process?

A. Yes sir.

Q. What's the purpose of that template?

A. The template sets out in a quite detailed way the provisions of the programme against which an application is assessed and so in many ways it does assist the technical assessment of the application against the criteria that needs to be considered that lead to a grant or a recommendation to grant or decline the application.

Q. Could I just turn to those criteria under the coal programme please, and can we have up on screen summation MED0010070001/73 and 74. That's the paragraph on the left hand side, 8.12 of the Coals Programme 1996 and does that set out the circumstances in which a permit must be granted?

A. Yes sir.

Q. And then on the other page, paragraph 8.13 sets out factors that must be taken into account in assessing whether to grant a permit?

A. That's right.

Q. And 8.12(e) refers to the requirement for an acceptable or approved work programme. Are you able to explain what a work programme is?

A. A work programme is essentially a proposal to extract the resource and that boils it down to its simplest consideration.

Q. Are you able to outline briefly the type of information it might cover?

A. It would cover delineation for the resource, that there is a resource in fact to be extracted and it would cover a proposal that covered the general way in which the resource would be extracted. Obviously at the first level that would be division of open cast as against underground mining, it could be both. It would set out a general method of mining. It would set out the area that was proposed to be mined so that we could judge it against the resource that the applicant knew about and that we might know about by other means, and so on.

10 1510

Q. And although I'm referring to the Coal Programme 1996 is there a similar requirement under the Minerals Programme 2008?

A. There is.

15 Q. And if we look again at paragraph 8.1(2)(e) it requires that the work programme be in accordance with good mining practice?

A. That's right.

Q. And is it the case that if an exploration permit is being sought then that work programme must be in accordance with good exploration practice?

A. That's right.

20 Q. And that good mining or exploration practice is a concept which applies to the Minerals Programme 2008 as well?

A. That's right.

25 Q. And is it also the case that if a permit is being upgraded from, an exploration permit for example to a mining permit that upgrade cannot occur unless the programme is in accordance with good mining practice?

A. That's a concept applied sir, yes.

Q. So good mining practice is a key concept?

A. It is sir.

30 Q. If we could just go please to summation document MED0010070001/108. And am I right that this section, section 14 of the '96 programme sets out a partial definition of good explorational mining practice?

A. Yes.

Q. And would it be fair to say that there's no difference between the definition but used under that programme and the definition that's applied under the Minerals Programme 2008?

5 A. That's fair to say.

Q. And it's a point which we've already referred to but for completeness. Paragraph 14.1 says that, "It should be noted that this section does not address those good explorational mining practice components which are not relevant to the functions of the Crown Minerals Act 1991. In particular this includes those aspects of good explorational mining practice concerning health and safety matters and environmental matters?"

A. That's right.

Q. So the Ministry's view is that health and safety matters are not for it?

15 A. That's our guidance on that sir, yes.

Q. And that environmental matters are also not for it?

A. That's correct.

Q. Could I just ask you to look at the first four bullet points under paragraph 14.1 on that same page, sorry, 14.4 sorry. Is it fair to say that they have a focus on the activity that is being proposed or conducted?

20

A. Yes sir, the work programme.

Q. Right. In assessing those matters could you tell me whether accounts taken of certain aspects of the design of a mine, and I'll list them for you, whether or not there is sufficient strata control?

25 A. Wouldn't consider that, no.

1515

Q. What about whether or not there's pre-drainage of methane?

A. We wouldn't consider that.

Q. What about whether it's intended that there be draining of methane during the operation of the mine?

30

A. We wouldn't be looking at that, sir.

Q. Nor presumably the ventilation system?

A. No.

Q. Nor the gas monitoring system?

A. No.

Q. Nor whether there's a communication system?

A. No.

5 Q. I won't go on, but that level of detail isn't a matter that the Ministry involves itself with?

A. It's not a matter of resource allocation, sir.

10 Q. Could we please have beside that page the next page ending 109? Could you look at the last bullet point on page 90 so 14.4 the final bullet point and then the first bullet point on the next page? Is it fair to say that they have a focus on the applicant or the contractor and that person's skills, training, experience and ability?

A. Yes, they do.

15 Q. When assessing those would I be right then to assume that the Ministry doesn't assess whether or not that person has the skills, training or experience necessary to ensure that a mine will be designed so as to be healthy and safe?

A. We don't consider those matters, sir.

20 Q. How does the Ministry assess the skills, training and experience of the applicant?

25 A. I think in the first instance their track record is the easiest pathway into judging that so that somebody who is an established operator that we knew about would make it particularly easy. For somebody that we knew nothing about we would ask for quite a lot of information to establish the credentials of the applicant.

Q. When you say you'd ask for information, from whom?

A. From the applicant, sir.

Q. Would you seek to obtain information from any other regulatory agency?

A. I can't think of any instance where we have sought that, sir.

30 Q. Are you able to describe how the good exploration or mining practice requirement was assessed in the case of the Pike River application for a mining permit?

A. The file doesn't let me see any particular way in which that was addressed except that the assessment of the application does note that all matters in the programme were considered in the recommendation to grant the permit.

5 Q. But you couldn't find anywhere on the file indicating where or how that consideration took place in so far as that good mining requirement is concerned?

A. No, sir.

10 Q. Are you able to explain how the distinction is drawn between health and safety aspects of good exploration in mining practice and the non-healthy health and safety aspects and I say that because the crux of some of the evidence we've heard thus far is that health and safety is an integral part of mine development and design?

15 A. I think that's as you've inferred, sir, that's very difficult to answer because at the end of the day when you get into the business of actually operating a mine, the two become inseparable, however our key consideration is the allocation of a resource to mine and so we are precluded by the programme from considering the health and safety aspects of the same information that might contribute to that.

20 1520

Q. Has the Ministry given you any guidance about where that distinction is drawn?

A. We're guided by the application experience of the assessors and perhaps some other things sir. It's a little bit of case by case there.

25 Q. Are you able to express a view about whether it would be helpful for the Ministry to have access about – access to information bearing on the health and safety aspects of a mine and deciding whether or not a permit should be granted?

30 A. I think that's outside the scope of the application, but the consideration could go the other way.

Q. If we could look at summation page ending 109, and just paragraph 14.5 please. The first sentence of paragraph 14.5 is to the effect that when determining whether an application's in accordance with good

exploration or mining practice, the Minister may obtain expert advice. Do you know whether the Minister or Ministry has ever obtained expert advice on that in relation to a particular permit?

5 A. Yes quite recently we've gone outside for additional expert advice on particular aspects of an application.

Q. And that's when, presumably, the application raises issue which fall outside the expertise of those assessing it?

A. Or we want a peer review of something that was particularly important or complex.

10 Q. And the second sentence of that paragraph, says, "The Minister may also refer to industry guidelines, standards, codes, principles and practices related to good exploration or mining practice." Do you know whether there are any guidelines, standards, codes, principles and practices related to good exploration or mining practice?

15 A. There are many sir.

Q. And do you refer to those in the course of assessing permit applications?

A. We would occasionally yes.

20 Q. Do those include aspects of design of a mine which appear on health and safety?

A. No sir.

Q. Do you know whether the Minister or Ministry have ever considered promulgating codes relating to that aspect?

A. No sir.

25 Q. Do you know whether there's ever been any liaison between the Ministry and the Department of Labour in relation to the types of guidelines, standards, codes, et cetera that it refers to?

A. Not particularly sir, no.

30 **MR HAMPTON:**

Sir, I rise to my feet, the second last question, the answer doesn't make it clear sir whether, no "He doesn't know," or no, "No such application has been

made. It was a equivocal answer to whether it's ever been sought, with respect, and I think it should be clarified for the record sir.

**THE COMMISSION:**

Mr Hampton would you like to interpose a question? What's your concern?

5

**MR HAMPTON:**

Well my friend asked whether he knew whether advice had been sought on a – with the Minister, it asked for the Ministry had asked for a code to be promulgated, and the reply was no and it wasn't clear from the answer whether he was answering no he didn't know, or no that had never been sought sir. That's the short point.

10

**MR WILDING:**

I can do that, I thought that the answer was no he didn't know.

15 1525

**CROSS-EXAMINATION CONTINUES: MR WILDING**

Q. Do you know whether the Ministry has ever sought for any guidelines, standards, codes related to good mining practice to be promulgated?

A. We didn't have discussions on those matters sir.

20 Q. So that's a matter outside your knowledge if it did happen?

A. Yes.

Q. And do you know whether the Ministry has ever considered whether it's definition of good exploration and mining practice differs from that used by other regulatory agencies?

25 A. I've never been involved or have no knowledge of whether we've measured that concept against other practices, no.

Q. Could we please turn to same document, summation number ending 74. If I could just take you to paragraph (j) which is in fact 8.12(j) which is a requirement, "That the Minister is satisfied that the permit applicant will comply with and give proper effect to any permit granted." How does the Minister or Ministry conduct that assessment?

30

- A. Very broad question to deal with but we'd want to be satisfied that the applicant was capable of carrying out with work programme that was proposed is the key consideration and so once again somebody that we knew well, we could have more confidence in, somebody that we might have less confidence in we would probe to see how competent they were to us to give proper effect to their work programme.
- 5
- Q. Does that involve consideration of their ability to effect a work programme within a certain timeframe?
- A. It could do, yes.
- 10 Q. Does that involve consideration of the financial ability of the applicant to give effect to that work programme?
- A. Yes sir.
- Q. I might turn to that shortly, I just want to take you to paragraph 8.13, now paragraph 8.13 sets out factors that the Minister has to take into account in assessing applications. Is that correct?
- 15
- A. That's right.
- Q. And are those same factors also taken into account under the Minerals Act 2008?
- A. Yes.
- 20 Q. It says that factors the Minister will take into account, but not limited to?
- A. Correct.
- Q. Does that mean there are other factors that are taken into account as a matter of routine?
- A. Not as a matter of routine.
- 25 Q. But there are sometimes other factors taken into account?
- A. Yes sir.
- Q. Are you able just to give us an indication of the range of those?
- A. I think the best way to answer that might be that because New Zealand's coal deposits are so variable there may be some particular aspects of exploiting them. That could mean that we will consider other matters. They could be matters of land access, matters of land ownership and the like.
- 30

Q. Can I just take you through some of those factors listed and the first one is the geology of the mining permit application area. What level of detail was the Ministry interested in in relation to that requirement?

5 A. I think the important thing to consider in answering that is that the list of factors that are bullet-pointed there are matters to consider against the three considerations in the heading paragraph under which they sit, which are whether there's been a delineation of a resource, whether there's an acceptable work programme or whether the area applied for is appropriate and so the list is a consideration of those factors against –  
10 of the matters under the bullet points against those three considerations.

1530

Q. So those three matters at the commencement of 8.13 narrow significantly the, for example, geological factors that might be considered?

15 A. They do.

Q. When assessing, for example then if we take number 4, estimates of coal resources, inferred, indicated and measured in coal reserves mineable in situ, recoverable and marketable. Your interest is whether there's enough information to delineate a resource at that level of  
20 certainty as opposed to whether there is a sufficient amount of information to properly plan and design a mine?

A. The two are fairly related. One being the key to the other but, yes, and that's the most important factor to be considered against the judgment of whether a resource has been delineated or not.

25 Q. But for example, you would've heard, because you were here as I understand it, evidence earlier on this week about the level of geological information and whether or not it was sufficient. Your concern at this stage isn't whether that geological information is in sufficient detail to enable the mine plan to be designed?

30 A. All of these things are related sir and the level of geological information obviously affects the way a mine will be designed. It also affects the categorisation of coal resources in whatever classification scheme is used to describe what's been discovered.

Q. Well perhaps we can put it in a specific context then. Pike River, what was the level of geological information that you had?

5 A. The application was based on 13 drill holes, considerable amount of geological mapping and interpretation of those results over a period of something like 20 years.

Q. Was that information sufficient to enable a mine to be designed?

A. I don't believe so sir.

Q. Right. But it was considered sufficient basis, back then, for evaluating whether or not a permit should be granted?

10 A. I think it, I think it was enough to get it over the line because a resource had been delineated.

1533

15 Q. At the commencement we talked about there having been a change in approach and the expectation now being that there would be more detail provided and more detail would be wanted. Would the level of information that there was for Pike River back in 1997 be enough to get it over the line nowadays?

20 A. If I was assessing an application with that level of information I would probably ask some questions about what that information was telling the applicant and how sure they were of what that information was telling him.

Q. And we've heard some talk about for example split seams and you'd be very familiar with those?

A. Yes, sir.

25 Q. Did the information provided by Pike River include detail about split seams?

A. No, it didn't.

30 Q. And if I could take you to the fifth bullet point and the sixth bullet point which talk about the closed mining operations in various respects and just for really certainty, once again those aren't directed at any consideration of the design of the mine or health and safety?

A. They can't ignore the design of the mine but my guidance on looking at those matters is helped by another part of the programme, sir.

Q. Which part of the programme is that?

A. That's under 8.17 in the programme, sir, which asks that the work programme provide a general overview and an outline of proposals and indicative long-term mining plans. That sort of language sir.

5 Q. If I could take you please to the third bullet point from the bottom, which is directed at project economics, particularly financial viability and technical constraints how is that assessed?

A. It's usually assessed through a mining feasibility study, sir.

**COMMISSION ADJOURNS: 3.36 PM**

10

**COMMISSION RESUMES: 3.55 PM****CROSS-EXAMINATION CONTINUES: MR WILDING**

- 5 Q. We had just turned Mr Sherwood to the ninth bullet point project economics, particularly financial viability and technical constraints and I think you'd indicated that that's normally assessed with reference to a feasibility study, is that right?
- A. That's right.
- Q. What is the expertise of the person within the branch or Crown Minerals as it was in the case of Pike River, who assesses that aspect?
- 10 A. Then or now sir?
- Q. Beg your pardon?
- A. At the time of grant or now sir?
- Q. At the time of assessing a permit application, so back in 1997.
- A. There was a senior person in Crown Minerals who'd had considerable coal exploration and coalmining geology experience, but I don't believe he was intimately involved in assessing the application. Other than him I don't think, so far as I know, that there was a lot of coal exploration and mining experience in Crown Minerals at the time.
- 15
- Q. Back then, was that bullet point assessed by anyone with expertise in the economics of coalmining?
- 20 A. I don't believe so.
- Q. What about nowadays?
- A. I think that's answered in two ways sir, that we expect a great deal of that information in detailed mining feasibility studies, we evaluate it to the best of our ability and if we feel there's matters we need to consider that are outside of that expertise we would go outside to other experts for peer review.
- 25
- Q. So to your knowledge has the Ministry sought external advice about whether or not the project economics and this is for any application you can recall, have been right?
- 30 A. That the economics of a, of an application were that the proposal was economic?

Q. Yes.

A. Yes sir.

Q. From what sort of person would they seek that? A person what expertise?

5 A. Generally a mining engineer, but the way that we would deal with that would depend very much on the applicant's own peer review process which is, is common practice today for them indeed to seek external and independent review.

10 Q. Can I just list some types of expenses which might be incurred in the course of the construction and operation of a mine to see whether they are matters that would be taken into account when accessing the economics? Would the cost of the design of the mine be taken into account?

15 A. We'd expect a general indication of capitalisation as a rule, but for an existing operation we – because new permit applications can be for extensions outside an existing operation, it can require a new permit, that we wouldn't necessarily require very much information at all assuming – we would make the assumption that it was an economic operation otherwise they wouldn't seek to continue it.

20 Q. Right.

A. That's at one end of the spectrum sir.

Q. Right. So, would that mean, for example, that if someone made an application for a mining permit, you wouldn't give consideration to whether or not the staffing costs were sufficient?

25 A. We wouldn't look at that detail sir.

Q. Right, nor whether the costs associated with strata control were sufficient?

A. We wouldn't look in that sort of detail.

30 Q. I won't go through a list of things at that level of detail then. And that was the case both under the coals programme 1996 and also nowadays?

A. The same provisions apply sir.

1600

Q. Is account taken of the project timeframe when assessing the economics?

A. We look at the proposition of when mining is intended to start but we wouldn't particularly look at the relationship between project economics and start up time.

5

Q. And I presume you also wouldn't take into account then for example, the likely market price of the resource?

A. No sir.

Q. And in the case of Pike River Coal's application, am I right in understanding that there hadn't been a full feasibility study done at the time at which the application was assessed?

10

A. That's correct.

Q. What level of feasibility study had been done?

A. A proposition was put forward in the application with a general indication of the way in which the deposit would be worked but there wasn't anything that I would call a feasibility study with the application.

15

Q. And did your review of the notes disclose any consideration of that material?

A. The mining feasibility study was done in 2000 sir.

20

Q. What information was provided in relation to project economics?

A. Nothing in the application that I know of sir.

Q. Could I just turn to a different issue which is that of reassessment. After a permit has been granted is there ever reassessment of those matters referred to in paragraph 8.13?

25

A. In general, no.

Q. If the Ministry became aware for example, that some of the information in the application was wrong, taking an example that the gas readings were significantly higher than that set out in the application, would that ever cause a reassessment?

30

A. No it wouldn't.

Q. And what about if there's been an event for example, a significant cave in, would that cause a reassessment?

A. It wouldn't because that wouldn't be a breach of the work programme of the permit.

5 Q. Could I please ask you to turn to summation document ending 76. The highlighted part is part of paragraph 8.21 of the Coals Programme 1996 and it sets out a requirement for a detailed work statement and mine plan to be provided annually. Is that a requirement that's also imposed under the Minerals Act 2008?

A. The Minerals Programme, yes sir.

Q. And I'll just read you the centre part of that paragraph.

10 1605

Q. And I'll just read you the centre part of that paragraph. "A detailed work statement and mine plan which is prepared by the permit holder annually can take into account results to date and enables the secretary to monitor that the recovery of the coal resource is in accordance with good explorational mining practice." Are you able to just outline the level of detail provided in the work statement which is filed for that purpose?

15 A. The work statement is filed on the vehicle of something called form 14. It lists the criteria that the annual work statement must address according to the Regulations. It provides for summaries of the work that is done to date. A requirement is to supply a mine plan. And by that I mean an outline of workings. It requires a tabulation of resources and reserves and that's sent to us and it's lodged into our systems.

20 Q. And when we say, "A mine plan," is that at a, and I do know that you've submitted a couple of examples, but is that required to be at a level of detail which shows, for example, the ingresses, the egresses?

25 A. It would show those, yes.

Q. Would it show the ventilation systems?

A. No it wouldn't.

30 Q. Things such as methane drainage lines?

A. No, it's not a plan that shows how the mine is being operated and the infrastructure inside the mine.

Q. Right. It's for high level resource purposes?

A. It's for high level resource purposes sir, yes.

Q. That sentence suggests that having received those the secretary can monitor that the recovery of the coal resources in accordance with good explorational mining practice, how is that done?

5 A. Good exploration of mining practice is as long as a piece of string sir. And the way in which we look at it is with regard to the work programme, which is to mine coal, and it's to maximise the recovery of resource rather than to look at the particulars of the way a mine is run and operated.

10 Q. Well perhaps another way, what's the process that you follow when you receive the detailed work statement and mine plan?

A. We just ensure that that information is given and we don't now go back to the permit holder and approve anything that has been put before us.

Q. So it's the fact that the information's been sent into you that's important?

15 A. It is. It meets the compliance standard of supplying an annual work summary according to the conditions of the permit and the Regulations.

Q. Are you aware that annual work plans are also required to be submitted to the Department of Conservation and the Regional Council where conservations land's concerned?

20 A. I am, yes.

Q. Do you receive those?

A. No sir, only when the same plans are supplied for those different purposes.

Q. Right.

25 A. And obviously a plan that exceeds our purposes is satisfactory.

Q. But you don't seek those plans either?

A. No.

30 Q. And when you say, "A plan that exceeds your purposes", does that mean that the plan required by conservation and the council's is normally in more detail than the plan that you had received?

A. The one that the inspectors receive should be a lot more detailed than that that we require because it's a plan of a working mine and all its infrastructure.

Q. And the Act includes a power conferred upon the minister to revoke a permit?

A. Yes sir.

1610

5 Q. What does the Ministry do to inquire into whether there are ever circumstances that might justify revocation of a permit?

A. The test for revoking a permit is quite high and I don't know of any coalmining permit or licence that's been revoked for non-compliance in any way.

10 Q. Does the Ministry have a system for assessing whether or not there's non-compliance that might justify revocation?

A. We don't have a system for that, no, sir.

Q. Do you know whether, for example, it receives or seeks coroners' reports in relation to fatal accidents in a mine?

15 A. I happen to have read coroners' reports on recent fatalities, sir, but not by way of a requirement of my, of executing the Act or the programme but because I expect to be informed on matters like that going on in the industry.

Q. And I'm presuming therefore that you also wouldn't receive for example  
20 accident statistics from any source?

A. No, we don't.

Q. Could I turn to another issue which is visits of mine. Does the Ministry ever visit the operations in respect of which a permit's been granted?

A. Yes, we do.

25 Q. What's the purpose of those visits?

A. The purpose is, differs between exploration permits and mining permits. For exploration permits there are quite formal work programmes that are, if you like, easy to monitor. For mining permits, because the work programmes are quite generic and quite general our purpose is very  
30 much familiarisation with the operation but not from the point of view of an inspection of any sort. It's also to maintain relationships with permit holders and generally be involved in their business to the extent that we're not at arm's length.

- Q. I'm assuming, and I don't want to be repetitive, that one of the purposes isn't to look at health and safety because that's seen as the province of the Department of Labour?
- A. We're not competent to do so, sir.
- 5 Q. If in the course of a visitation something came to your attention which was a health and safety concern, would the Ministry notify that to the Department of Labour?
- A. I think we would, sir, but I'm not sure I'd recognise one if I saw it.
- Q. Is there any target for the number of visits that might occur either across  
10 the department or in relation to specific mines?
- A. Not in relation to specific mines. We're expected to make a number of site visits to both exploration permits and mining permits each year but we don't have a target to inspect each mine on a regular interval.
- Q. Am I right in understanding the target last year would have been 50  
15 visits for the branch or unit as it was?
- A. I think that's right, sir, yes.
- Q. And that target wasn't met. Is that right?
- A. I don't think it was, sir.
- Q. And that's across all of the operations in respect of which permits are  
20 granted?
- A. That's right.
- Q. Can you give a broad indication of how many operations might be covered?
- A. We, just in coal, sir, we have 50, about 50 coal exploration permits and  
25 about I think it's 70 coalmining licences and coalmining permits.
- Q. But when we say that there was a target of 50 across all operations, that's not just coal operations?
- A. That's cross-minerals as a whole, sir, within which coal is included.
- Q. Are you able to give a broad indication of how many operations there  
30 are across all permits?
- A. Off hand I'm not sure of the figures, sir.
- Q. How often might a mining operation expect to be visited?
- A. We wouldn't visit each mine once a year, sir. It would be less than that.

Q. Are you able to say how many visits there were to Pike River?

A. There were two.

1615

5 Q. And that would've been two since, presumably the exploration permit was granted back in the early 90s?

A. That – I think that's right sir.

Q. And just finally, although the answer to this may now be apparent, do you have co-operational links with any other regulatory agencies? By you, I mean at the permit assessment level.

10 A. No we don't.

**THE COMMISSION:**

Are you wanting to ask something Mr Hampton?

**MR HAMPTON:**

15 I seek leave sir to ask about, particularly about resources in the department we're talking about. Who does do the visits and more importantly perhaps, who it is who does the assessment of the permit applications, how experienced geologists there are to do them and how many they've got on their table.

20 **THE COMMISSION:**

How many?

**MR HAMPTON:**

How many they've got in front of them at any one time.

25 **THE COMMISSION:**

We're just struggling at the moment Mr Hampton to think that we haven't heard about those topics. Is...

**MR HAMPTON:**

30 Well you've heard about – I'm sorry sir, Mr Sherwood has told us that there's an assessment made of mining applications, permit applications, I just want to

know how many geologists are available inside the department to do those assessments and what is the extent of the workload is for that person or persons.

**THE COMMISSION:**

5 Yes proceed.

**CROSS-EXAMINATION: MR HAMPTON**

Q. Mr Sherwood you've heard the question, you've told us about how permit applications are subject to assessment. That's done by a geologist is it?

10 A. That's right.

Q. And within your department how many experienced coal geologists are there available to do those assessments?

A. One sir.

Q. You?

15 A. Correct.

Q. And at this stage, how many permit applications have you got on your desk awaiting your assessment?

A. We get – if I can elaborate the answer a little sir, we get very few mining applications, mining permit applications. I don't think we've got any  
20 mining permit applications on hand at the moment for coal. I think we have about in the order of 15 coal exploration permit applications and inevitably a number of change applications as well sir.

Q. And in terms of the inspections and visits that you've just been telling Mr Wilding about, who do they fall upon?

25 A. For coal it would be me sir.

**RE-EXAMINATION: MR MANDER – NIL**

**QUESTIONS FROM COMMISSIONER HENRY:**

Q. You mentioned an applicant's track record.

A. Yes sir.

30 Q. Do you mean the track record in that particular industry?

A. Yes I do.

Q. So if the applicant had a track record in another industry, even a very good track record, that wouldn't count?

5 A. I think it would count sir because it would show that they were able to get to grips with the sort of technical knowledge that was needed to execute a different business. In other words they would know what they knew and what they didn't know and to extend the answer sir, we'd want to know what other technical expertise they might be engaging.

1620

10 Q. You mentioned the annual work statement and planning in answer to Mr Wilding, would it be unkind of me to say it sounds as if having received it you'd file it away?

A. That's not too far from the truth sir.

15 Q. The coal programme you've told us specifically says that health and safety is not something to which you direct your attention?

A. That's right sir.

Q. Who drafts the coal programme?

A. I think my colleague Mr Robson will be able to answer that far better than me sir because he's been deeply involved in the process.

20

**QUESTIONS FROM COMMISSIONER BELL:**

Q. I have one very minor question Mr Sherwood. When you're considering your geological assessment are you looking at spontaneous combustion propensity for coal?

25 A. No sir.

Q. Wouldn't that be a factor in terms of the viability of the mine if it was constantly going to catch fire all the time?

A. Yes it would.

**QUESTIONS ARISING: MR MANDER – NIL**

30 **WITNESS EXCUSED**

**MR MANDER CALLS****ROBERT NOEL ROBSON (SWORN)**

Q. Can you state your full name please?

A. Robert Noel Robson.

5 Q. And are you the Manager Petroleum and Minerals Policy in the New Zealand Petroleum and Minerals Division, formerly Crown Minerals at the Ministry of Economic Development?

A. I am.

10 Q. And do you hold a Bachelor of Science degree and a Master of Science with honours in geology from the University of Auckland and are you also finalising a research thesis for a PhD degree in economic geology from the University of Melbourne?

A. Yes.

Q. I understand you've worked at MED since 2003?

15 A. I have.

Q. And prior to your present position you were the Manager Petroleum and Minerals Policy of the Crown Minerals Group at MED?

A. I was.

20 Q. And is it correct that in that role you were responsible for, amongst other things, the preparation of the Minerals Programme for Minerals (Excluding Petroleum) 2008, the so called Minerals Programme?

A. Yes.

Q. And is it also correct that for a short period last year you were the acting manager of the Minerals Permitting Unit?

25 A. I was.

Q. Now, have you completed a evidence statement which has been filed with the Commission, MED777001005/1?

A. I have.

30 Q. And have you also assisted in the development of MED's section on the joint paper, the joint legislative paper CLO10001 and indeed the Ministry's Tier 2 and Tier 3 papers, MED101 and 2001?

A. Yes.

**CROSS-EXAMINATION: MR WILDING**

Q. Mr Robson, you were responsible for the preparation of the Minerals Programme for Minerals (Excluding Petroleum) 2008?

A. Yes I was.

5 Q. And you just heard the evidence of Mr Sherwood and that's what we've been referring to as the Minerals Programme 2008?

A. Mmm, indeed.

1625

10 Q. And presumably the Minister does so following some advice from the Ministry that would be appropriate for a programme to be prepared?

A. Yes.

Q. Once the Minister gives that direction that a programme be prepared what's the process that's then followed?

15 A. The process is outlined in the statute between sections 12 and sections 20 and what that means is that the new programme or a replacement programme, if a programme's been around for 10 years, as the existing minerals programmes had been, is drafted and into that draft is inserted the policy changes that the Government wishes to see take place. And then that draft minerals programme is publicly notified, so in major papers and and so on it sent to all iwi in the country. So in affect all public agencies and the public at large and iwi have a chance to see the proposal before them. There is a period of 40 working days to receive submissions from any interested party and then the Ministry goes through a process of careful consideration of those submissions and a report is prepared on the recommendations to any changes to that draft minerals programme and that's provided to our Minister and then there is a Cabinet process of sign-off to that document. And if those, depending on what particular changes are made at that stage they'll be made and there'll be a revised draft put out for public information and then there'll be a final Cabinet process and sign-off in council by the Governor General. And at that stage the new programme or the replacement programme takes effect.

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30 Q. Is there consultation with the industry in the course of that?

A. Yes, there is.

Q. How's that done?

A. It is done during the period of the 40 working days public consultation.

Q. But how do you go about that industry consultation?

5 A. We'll come to arrangement to hold a face to face meeting with different industry organisations and they'll provide us with their views orally. And following that their views will come to us in a formal manner by written submission.

10 Q. Is there consultation with other regulatory agencies which may be involved in or affected by the permits that are granted by the Crown, minerals?

A. Yes there is.

Q. How does that occur?

15 A. It occurs in two stages. It occurs at the Cabinet paper stages. So we will seek input from other agencies about how the policies may affect them and what's set out in the Cabinet paper. And secondly, any Government agency has the chance to see the draft when it's publicly notified.

20 Q. Does that process involve the regulatory agencies assessing whether there are any omissions from the programme that should be included?

A. Omissions did you say?

Q. Mmm.

A. Yes, we could receive that advice from any number of interested agencies.

25 Q. Does it involve consideration of whether or not there might be any regulatory gaps?

A. If we're informed that there are regulatory gaps then we'll take that into consideration.

Q. Right.

30 A. And there is of course a chance to rectify that.

1630

Q. Might come back to that issue. Section 5(c) of the Crown Minerals Act 1991 confers a number of functions on the Minister, includes in 5(c), the

function of monitoring the effect and implementation of minerals programmes and minerals permits, has the Minister or Ministry monitored the effect of the Coals Programme 1996 and its implementation?

5 A. Well my view on how that programme is being monitored is that, well as far as the policy area goes we have taken note of where the programme may have been in effect of where industry may have raised an objection throughout its operation because of one clause or another or whether any other person may have such as iwi.

10 Q. Is there any formal process for monitoring the effect of the minerals programmes?

A. No, there's no formal process other than keeping a data base of issues and addressing those issues when the programme comes up for review.

15 Q. Could we please have summation document MED0010070001/10? Could we please have paragraph 10 in particular? Now I've already asked Mr Sherwood some questions about whether the Ministry involves itself with health and safety and environmental issues and he said, "No." Rather than repeat those series of questions, do you agree with the views that he expressed?

20 A. In my, in the Ministry's views we don't take those matters into consideration in the functions that we perform under the Crown Minerals Act.

25 Q. Now if I can just read the last half of that paragraph or part of it, "Prior to undertaking prospecting exploration or mining activities, a permit holder needs to ensure that any necessary consents under the Resource Management Act 1991 or the Health and Safety in Employment Act 1992 or any relevant regulations made in accordance with these Acts are obtained." That seems to suggest that a person might need to obtain consents under the Health and Safety in  
30 Employment Act. Would you agree that that's one of the suggestions?

A. Yes, it does. It does say that.

Q. Appreciating that you were not the person who was involved in drafting this, are you able to say whether prior to making that statement the

Ministry would have clarified with the Department of Labour whether or not any consents were required from it prior to undertaking any prospecting exploration or mining activities?

A. No, I'm not in a position to confirm that.

5 Q. Can you tell us whether, when the 2008 Minerals Programme was being drafted, the role of the Department of Labour was ever checked with it?

A. No, the role of the Department of Labour was never checked with it and that's because the Ministry had a firm view that health and safety matters in employment were not within the scope of the Act that we  
10 operate under.

1635

Q. I understand that. My point is whether or not anyone checked what the Department of Labour's view was?

A. No, no-one did.

15 Q. Do you know whether the Ministry, either by itself or in conjunction with any other agency, took any steps to ensure that the health and safety aspects of a mine were assessed by a regulatory agency prior to the development of a mine?

A. No I, I don't believe that it did because those issues were outside the  
20 scope of the Act.

Q. Are you familiar with a document called, "Comparative Review of Health, Safety and Environmental Legislation for Offshore Petroleum Operations?"

A. I've read it, yes.

25 Q. Could we please have CAC0011/41? And could we please highlight the first two paragraphs under 3.5.1.1. Now this is a review, Petroleum Operation Regulation obtained by the Ministry, is that correct?

A. Yes it is.

30 Q. And the crux of paragraph 3.5.1 is that the review is considered that there was a legislative gap in relation to health and safety information at the time of granting permits and they say this, and this is the first paragraph under 3.5.1.1, "With respect to health and safety (including

process safety) this means that the permit is granted before any level of assessment is made of a permit holder's health and safety credentials, experience or potential performance in the event of major accidents or environmental pollution incidents. It would appear logical that this gap in information prior to the grant of a petroleum firm it should be remedied." That is presented as a legislative gap. This report was only issued in September 2010. Are you able to say whether the issue identified there, has ever been considered by the Ministry in respect of coal exploration or mining permits?

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10 A. Currently the Ministry's reviewing the recommendation that this goes to, but I'm not aware that, that thinking has gone as far as coal permits to date.

Q. I asked Mr Sherwood some questions about operational interfaces with other agencies at the permit assessment level, I'd like to ask you a similar question, but in the context of document MED0010070001/10. This part of the minerals programme for coal from 1996, paragraph 10 in the paragraph we referred to earlier, but the centre of the paragraph has the statement with respect to Resource Management Act and the Health and Safety in Employment Act that the provisions of these two Acts compliment those of the Crown Minerals Act 1991. Given that those two Acts were seen to complement each other do you know whether the Ministry did anything to put in place an operational interface between the Ministry and the departments responsible for those two Acts?

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25 A. As far as the Ministry for the Environment goes I'm not aware of any, well, I guess in MOU, but I am aware that during the 90s up to about 1998 by virtue of the fact that the inspectorate resided with the Ministry of Commerce there wasn't any MOU between Commerce and Labour.

30 1640

Q. And since then?

A. I'm not aware of any formal relationship that exists other than the fact that we can pick up the phone and speak to people there anytime we like.

5 Q. But that's not done at the permit assessment stage with the Department of Labour?

A. Well, you're talking now about an operational matter and I don't process permits.

10 Q. I asked Mr Sherwood some questions about guidelines and codes and I'll ask you because you might have some knowledge that he wasn't privy to.

A. Yes.

Q. Do you know whether the Minister or the Ministry has ever taken any steps towards the development of guidelines and codes insofar as good exploration or mining practice is concerned?

15 A. Yes, the guidelines are set out in both minerals programmes.

Q. That's the extent of it though, that which is apparent in those programmes?

A. Well, I can't see why one wants to develop a code in context of the Act.

20 Q. Are you able to say whether the Ministry has considered whether its view of good exploration or mining practice differs from that of for example, the Department of Labour?

25 A. Yes. In my view that the main difference is that the elements, the health and safety elements, particularly work place health and safety, are not considerations within the framework of good exploration and mining practice that the Ministry has in the minerals programmes. I'm sure they are in the context of health and safety, in fact I would say that they wouldn't be considering good exploration and mining practice, they would be considering best practice in terms of work place safety.

30 Q. Just finally Mr Robson could I turn to a document by Macquarie Capital headed, "Issues identified by the industry affecting the exploration and development of the New Zealand Minerals Estate." Are you familiar with that?

A. Perhaps not, could you just –

Q. It's a document prepared in May 2010 by Macquarie Capital as to the industry's view with issues that affect the exploration of mining in New Zealand and it was arranged by Martin Jenkins who had been engaged by the MED.

5 A. I'm not familiar with that document. I think I've read it but of recent times.

Q. Perhaps I'll ask you a couple of questions in relation to it and if you're unable to answer it we'll try and deal with it in a different way.

A. Certainly.

10 1645

Q. If we could have please paragraph 3.5. This document of May 2010 describes essentially industry identifying four key weaknesses in relation to allocation of permits. The second of those is, "There is lack of defined regulations or criteria for evaluating permit applications, creating uncertainty." Are you familiar with that?

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A. Yes.

Q. Are you able to say what the response by the Ministry is to that issue?

A. I cannot give you a response that, you know, I can't give you a Ministry response for it but I can give you my own response because to give you a Ministry response I'd have to go and talk obviously to other people there.

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Q. Understood. If you're comfortable giving us your response please do.

A. But, you know, on first reading with that I would not share that view at all. Now if we read it it is about regulation and criteria well for evaluating permit applications. Well in fact you could be reading policy for evaluating permit applications and in fact we have two minerals, well there's a range of minerals programmes, there's two operating under petroleum, the '95 and 2005 programme and New Zealand is one of the few countries in the world that actually has a formal policy document to be considered in the grant of allocated permits. So many other countries have quite streamline legislation and within that legislation simply the decisions that the Minister is required to make are set out.

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No policy guidelines are wrapped around them at all. So I take a different view.

5 Q. As a result of that comment in paragraph 3.5 has the Ministry undertaken any assessment of whether or not the criteria is sufficiently defined?

A. Yes. What you're looking at is one of the many documents that currently feed into a work stream that has come out of the Government's Petroleum Action Plan. And that's the review of the Crown Minerals Act, it's pertinences, it's regulations and programmes to see if they are, I guess, sufficient to deal with minerals and petroleum in New Zealand currently and going forward.

10 Q. Well I might refer to the next bullet point down and then ask you to say what's been done about that, if anything, in the context of that work stream. The next key weakness identified is some permits are allocated to parties without understanding the financial or technical ability of the applicant to deliver the work programme suggested. Is that issue being assessed in the context of the work streams to which you have referred?

A. Yes it is.

20 Q. How is that being addressed?

A. That will be addressed during consultation with the industry when the next consultation paper around the review of the Act. So the Act is being reviewed and the timing will be to go out with a new policy and the Regulations at the same time and to gauge industries response to that. So that matter should be dealt with during that course.

25 Q. When is that?

A. The current timing of the review, at the moment there is a report back from our Ministry to Cabinet about the end of August and it goes to the scope of the review of the Act and also the timeline going forward. And subject to Cabinet's review on the scope and the timeline we expect to have another perhaps holistic round of consultation early next year, probably around February.

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Q. That fourth key weakness, Crown Minerals allows permits to be granted with inadequate or unrealistic (and unachievable) work programmes. Is that a matter also being considered in the context of that work stream to which you've referred?

5 A. No, I can't confirm that. I would have thought that that submission will be picked by the operational area of New Zealand Petroleum Minerals, particularly the petroleum group. Do I agree with it, no.

Q. The next sentence suggests that there is, "A lack of appropriate technical and commercial experience within Crown Minerals to effectively evaluate the matters above." Has that been considered by the Ministry?

10 A. Yes, in fact in some ways that's fair comment and that is the subject of one of the other work streams coming out of the petroleum action plan and that's the capability review of the regulator and so currently that's gone to looking at how efficiently we are able to conduct our business both in an operational level and a policy level and the outcome of that is, as you probably know, is the morphing of Crown Minerals into what's called New Zealand Petroleum Minerals which is a different animal entirely. It is or is to have a very strong commercial focus to it and so we're in the process of gradually employing people with a strong commercial focus in their skill base, particularly up at the top.

20 Q. If I could take you to the same document please, summation number ending 15. The fourth bullet point down has a concern that reads as follows, "Enforcement of permits and allowing flexibility without good reason was raised an issue. Accordingly there is a perception that enforcement could be strengthened." Is that issue of enforcement of terms of permits been considered as a result of this?

25 A. Yes, it is in terms of the review of the Crown Minerals Act. It's one of the issues that are giving, that are being given careful consideration and so how that may pan is with a capability review and more people on the ground there will simply be more people power to look at compliance, to come to grips with it and there may also, there's also a view that we

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may need to strengthen some of the enforcement provisions in the Act, perhaps some of the penalty provisions.

**COMMISSIONER BELL:**

5 Q. Mr Robson, just in your statement, section 21, do you think you're aware the process applied to assessing the Pike River mining permit application was different to our current practice to the extent that no template was applied by the geologist." Could you expand on that a little bit please?

10 A. Is this in my evidence, sir?

Q. Yes.

A. Could I take a minute to go to it?

1655

Q. Section 21.

15 A. Yes what I'm referring to here is in general a permit is granted subject to it being consistent with the policies, the provisions in the relevant minerals programme. Now there are slight differences between the two – the 1996 programme and the 2008 programme which would operate today if we got that application today. But I do not believe that they are  
20 of material significance. What is different is that in order to assist the geologists, take into account and have regard properly to all matters listed in that minerals programme so that the decision itself is robust, we now use a template system. There is an example of a template attached to my evidence and that sets out the gateways to the Act that  
25 have to be crossed and also the particular matters that need to be considered, chapter and verse, so that nothing is missed.

**RE-EXAMINATION: MR MANDER**

Q. I wonder if we could just have document MED100010001/14, it's the last one that my friend Mr Wilding was referring to. It's the Macquarie  
30 Capital report and I think it would be page 5 of the electronic document. I just want to get some context about the report, just below the box there's a reference, "Martin Jenkins had been engaged by MED to

perform an agency capability review to ensure that MED is well placed to facilitate the achievement of the Government's goal of maximising gains from New Zealand's petroleum resources. So was this report developed for the purpose of the Government's petroleum initiatives?

5 A. This report was, as I understand it, developed for the purpose of the agency capability review which was one work string falling out of the petroleum action plan.

10 Q. And at 1.2 it states, "Macquarie performed this review by interviewing current former and potential oil, gas and coal industry players in relation to their views on investment and development of New Zealand's oil, gas and coal resources, focusing on oil and gas?"

A. It did.

15 Q. I think the next page, page 6, there's a list of the participants and am I right in understanding that the findings of the report backs that were referred to by my learned friend, various criticisms or observations in relation to the permitting programme, they represented feedback from those participants and not in relation to coal? Sorry just start again. It represented the summary of the feedback from those who were interviewed by the consultants?

20 A. Yes it does.

Q. So there was no input from any other agencies or interested parties or anything of that type?

A. Not that I'm aware of. I don't even see any mineral players on that list.

1700

25 Q. I think just to be clear we do have Solid Energy there, don't we, listed?

A. Yes, there it is.

30 Q. You also referred to the, described as the comparative review of health, safety and environmental legislation for offshore petroleum operations, that's document CAC001-001-041. Now, I wonder if we could go to page 40 of that document, it's paragraph 3.5.1. Under the heading, "Resource allocation," and the reviewers state, "Currently the MED Crown Minerals decision to allocate a permit for petroleum prospecting

exploration or mining does not by law require or enable any consideration of HSE issues prior to the grant of such permits.”

A. Yes, that’s a correct statement in my view but I'm not a lawyer.

5 Q. Well, that’s what I was going to ask you, does that accord with your understanding of the evidence you've given today?

A. It does.

10 Q. And similarly towards the beginning of the document, I think it will be page 2 of the electronic document, next page, page 3, if we look at E4 under, “Recommendations,” do the reviewers recommend that the Ministry of Economic Development Crown Minerals be legally empowered to require and consider relevant HSE information including strategic environmental assessments at the resource allocation stage insofar as it relates to offshore petroleum operations?

A. Yes they certainly do.

15 1703

**WITNESS EXCUSED**

**COMMISSION ADJOURNS: 5.05 PM**