



**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)

---

**TRANSCRIPT OF PHASE 1 HEARING  
HELD ON 19 JULY 2011 AT GREYMOUTH**

---

**COMMISSION RESUMES ON TUESDAY 19 JULY 2011 AT 10.00 AM**

**WITNESS ON FORMER OATH**

**5 CROSS-EXAMINATION: MR DAVIDSON**

- Q. Mr Murphy, just so you've got sort of a chart of we're I'm trying to go in the next short while. I'm trying to get before the Commission the linkage or otherwise between policy and operational issues around mining and it falls within this Commission's warrant that it is concerned in this phase to be, to look at the recognised practices at the incident date in 10 19 November.
- A. Yes.
- Q. Now my understanding is that your role is to formulate policy advice on occupational safety and health as the department administer, right?
- 15 A. Yes.
- Q. So you're drawing on your knowledge across a whole range of sectors for that?
- A. Yes.
- Q. And to do that you have to know what's going on on the ground?
- 20 A. Absolutely, yeah.
- Q. So you're getting feedback into policy for the formulation of policy from agriculture, marine farming or farming obviously and mining.
- A. Yes.
- Q. And somehow from all those sectors having to come up with policy that works. Am I right that your aim is to be responsive to what is happening 25 on the ground?
- A. Yes, sir.

Q. And so you have to understand what's happening operationally to do that?

A. Yes.

Q. Otherwise an absolute vacuum in coming up with policy?

5 A. Yes, the – it comes from both directions. The operational side provides with information. We also take advice and guidance and direction from Ministers, the Ministers of the day.

10 Q. But to come up with policy that, leave aside the political component of a policy which the Government of the day or the opposition opposes, when you formulate policy you presumably read the signs, the information, the intelligence network that comes to you from each industry?

A. Yes.

1003

15 Q. And who actually does that?

A. The normal channel for that will be – you want me to talk specifically about mining or?

Q. Yes, just tell us who puts information into your policy considerations, from where?

20 A. It comes through the various parts of the operational side who interact with industry, so we have sector advisors who provide us with information, we have in the case of the mining sector we have the steering group who provides information through to their management team which then, if they feel there is a policy issue to be pursued, that  
25 will then come through to the policy team.

Q. Am I right in thinking that that mining steering group is for you a prime instrument of advice as to issues to which policy may be directed?

A. It is a major one, but they don't have a direct line into the policy team, they have a line through their management structure to our team.

30 Q. We'll come back to that group in a moment but when you came to this role you came out of the Ministry of Education and the Ministry of Social Development and Department of Child, Youth and Family?

A. Yes.

- Q. In a previous decade, was that a health and safety role?
- A. No sir.
- Q. And prior to that?
- A. Prior to that I was a social worker.
- 5 Q. A social worker?
- A. And a social work supervisor and manager.
- Q. So, and I'm not trying to load the question, but you're not actually a specialist in health and safety as such?
- A. Absolutely not sir, only in the last three years.
- 10 Q. Have you been trained for that?
- A. For health and safety?
- Q. Yes.
- A. Specifically, no sir.
- Q. So how did you approach your role when you have no background for it?
- 15 A. My role, the reason I was employed was because of my background in policy and in operational policy and in policy development.
- Q. I know you've only been there two years, I think September '08?
- A. Yes, coming up three years now.
- 20 Q. Two years and a bit at the 19<sup>th</sup> of November last year. Where do you look to for your prime advice as you go about your work regarding mining? Where do you look to?
- A. I look to the advisors that they've got in the national office who are in contact with the mining inspectors.
- 25 Q. All right, now presumably you have to have a driver for policy and am I right at least in part in thinking that you look at the Act and you look at the provision for the need for all practicable steps to be taken to protect the work place?
- A. Yes sir.
- 30 Q. That's your sort of footprint for formulation of policy I presume?
- A. That's the touchstone sir yes.
- Q. How do you achieve, the question you ask yourself is how can we by policy achieve the attainment of all practicable steps?

A. Yes sir.

Q. And reasonable, as your evidence indicates at paragraph 16, it's reasonable steps in terms of practicability but that brings to account the harm that may be done by failures?

5 A. Yes sir.

Q. And so catastrophic harm obviously is a correlation between that and the reasonableness of the step that maybe taken?

A. Yes sir.

10 Q. You can't apply the same reasonable test on the facts to mining as you would to an industry with less specific concerns of catastrophic failure?

A. No sir.

15 Q. Now, as I listened to the evidence yesterday it seemed to me that the precipitating factor for most recent changes as they affect mining welfare generally, were the two incidents in 2006 at Black Reef and Roa?

A. Yes sir.

1007

20 Q. And this stimulated the Minister of Labour to ask the department to assess health and safety in underground mines. And am I right that at the end of the day a process which began, if you like, in 2006 by those incidents, we have some resolution in terms of small mines, steps are to be taken in relation to small mines, regulation of those?

A. Yes sir.

25 Q. And employee participation. That's the product of that 2006 or those incidents and the review processes that followed that time?

A. Those were the two critical things. The most significant things were identified, sir.

30 Q. Now Ms Haines who has a brief which is in our records here, has given evidence in her brief that the department has a range of tools to achieve its targets, safety targets, and that range of tools are industry-specific again. You've got different measures of attainment or ways of attainment?

A. They're a mix of generic and industry-specific.

Q. And would you agree with her statement that in the exercise of those tools or use of those tools, there must be a proportionate focus on potential for harm, a proportion of the focus on potential to harm?

A. Yes sir, absolutely.

5 Q. For the record, that comes from paragraph 29 of her brief. Now, with that background I want to turn to the report that was prepared by Professor Gunningham and Mr Neal and which was provided to the department I think on or about the 4<sup>th</sup> of July this year?

A. Yes sir.

10 Q. And you were a participant in the material that went into that report?

A. I had a brief interview with the authors of the report sir, about a 20 minute interview with them.

Q. Did you read the draft report before it came down as a final report?

A. Yes sir.

15 Q. And you had the chance to make comment?

A. Yes sir.

Q. And although I'm going to go into it very briefly in the time I'm allowed here, is it reasonable to say that you identified immediately in this report some very significant gaps in the operational attainment of the policy goals that you set?

20

A. You'll need to refer me to the piece that you're talking about sir.

Q. I'll go to them as I need to, but I just want to ask you the question because I want to know if, when you read this report, you recognised, for example, that you have inspectors in the operational side who are telling the reporters that they are coming up short for lack of resourcing and lack of training?

25

A. Sir.

Q. Now I'll come back to the specifics, but I do need to understand if you registered concern when you read that report?

30 A. Yes sir, absolutely.

Q. And it's premature to have implemented action based on this report, but clearly for you in policy you must be now concerned that operationally

quite apart from what happened at Pike River, there are significant operational issues at which to attend?

A. Sir.

1011

5 Q. And here I do need to understand this statement you made yesterday, "Integration with the operational arm is very important to us." That, am I right, means you have to have detailed knowledge of what's going on in the operational arm and you have to understand it?

A. Sir.

10 Q. Now if we go back to what has come in the evidence already in Robens report. It seems from Professor Gunningham, and its Dr Neal I'm sorry, that New Zealand embarked on a process following Robens, belatedly but with particular enthusiasm, now is that with the knowledge you have a fair comment?

15 A. Yes sir, absolutely.

Q. And the Health and Safety in Employment Act was product of that deregulatory environment. That's what it's all about?

A. Sir.

20 Q. And it seems from these estimate or reporters Gunningham and Neal that in its initial version the Act was stripped, I'm referring to paragraph 46, the page reference for the record is DOL010001001/18, was stripped of some of the key measures recommended by Robens, not least tripartism, that's the three-legged sword, worker participation and an independent executive?

25 A. Yes.

Q. Stripped of those things?

A. Mmm.

30 Q. And it was regarded so the reporters say at paragraph 46 of that page, "Is a necessary evil when the predominant public policy goal was to enhance business competitiveness. Now the report then says that essentially, in paragraph 48, "The department's interpretation of the Act, can we bring up paragraph 48 please, can you see that?

A. Yes.

Q. It places positive duties on employers and other senior officers in their own workplaces effecting the approach that self management in health and safety by business is preferable to relying on visits by inspectors to ensure compliance. “No matter how frequent those visits might be the  
5 duty to ensure the safety of the workplace is placed on employers and others are set out under the Act in regulations and not on the department.” So there’s been a policy choice made here by way of preference there for not to rely on visits by inspectors as the old regime perpetuated. That right?

10 A. It’s not entirely correct sir. I mean that’s the position as envisaged by the legislation sir.

Q. Yes.

A. So the department’s view, and that is an accurate reflection of the department’s view, is based on the legislation not on a policy decision.

15 1015

Q. Right. But if we go to paragraph 52, which is at page 20 of the same document, some senior officers of the department, and it may have been you, tell us, says that a regulator such as the department as it is today would engage with a company as an issue arises and would ask  
20 the questions which are set out in paragraph 52. Second line for example, they encounter methane, an inspector provides advice rather than directing them what to do, the inspector 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 flow in outbreaks?” They might even  
25 suggest where the company might find the outside expertise to enable them to deal with the problem.” Now, that’s the approach that you understand is taken in terms of policy?

A. It’s not a policy position sir, if I can just clarify, you referenced at the start of your questioning around the boundary between policy and  
30 operations. This falls very firmly in the operational policy area so it’s how does, at an operational level, how do they affect to policies, so this is an operational perspective.

Q. Well, as I said before, I'm trying to gain the linkage between the policies that you help formulate and the operations so does that reflect what you understand as the way in which policies are attained?

A. Yes it does.

5 Q. You'll always beat me on policy Dr Murphy, it's not a long suit in mind so please correct me where I stray. I just now want to go onto the linkage between again the policy that comes down and the actual day to day play. Is this unfair to put to you that you really have not had any extensive involvement with mine plans or work programmes in the mining sector?

10

A. No, that's actually correct.

Q. And so have you ever been briefed on the implications of what mine plans are and why they are provided by a company such as Pike River?

15

A. Yes sir I'm aware of that and however it would be fair to say that it's not critical to my role, it's much more significant for the people who are operating the inspectorate and not as critical for the policy people to understand the intricacies of the mine plan.

Q. Well, in the attainment of policy, which is now in the legislation, what do you know at all about the way the mine plans or work plans are in fact processed by the department?

20

A. I know nothing of that sir, it's not in my role.

Q. There's never been a discussion by you with anyone in operations about that?

A. No sir.

25

Q. Were you aware or are you aware for example as to whether anyone within the department looks at mine plans for the purpose of assessing safety and design?

A. I would imagine that they would sir, the regulations do require that plans are lodged with the department and I would expect that the person receiving those would consider them.

30

Q. Well, now if we have a look at the documents which are the minutes of The Mining Steering Group and for the record they are at DOL0020020011/1 and they go through to 27, and this is for the record

Dr Murphy, don't be concerned about the numbers here. We have some information about the way plans and work programmes are dealt with by The Mining Steering Group which you think they would be looking at?

5 A. Yes sir.

**THE COMMISSION:**

Mr Davidson, I'm just concerned at this line with this witness, the next witness is a member of this group. In light of the answers Mr Murphy has already  
10 given that he has no involvement with mine plans I'm just wondering where and what profit there is in this?

**MR DAVIDSON:**

Sir, I rather expected you might ask me that at this stage. My answer is that I  
15 only have one question to put to Doctor Murphy about this and that is this;

**CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

Q. With regard to page 17, as you believe that they would be looking at mine plans, that's what you've said, isn't it?

A. Yes.

20 Q. Page 17, should come up on the screen, you'll see at subheading, "Storage of Plans," there, do you see that?

A. Yes sir.

Q. And you'll see towards the end of the first paragraph, three lines from the end, four lines, "The mining industry uses a package called Vulcan,  
25 Crown Minerals have this system, every year they get a plan showing what the workings will be. They would let us look at theirs if we had the capability." Now do you see that?

A. Yes, sir I do.

1020

30 Q. Now I don't imagine you've read that before or -

A. No, sir.

Q. – or appreciated the implication or inference has been drawn from it. It would seem this is an internal recognition that there's no capability to look at these plans, these work programmes. Do you see that?

5 A. I do see that, sir, and I'm not in a position to comment on it. It's outside my knowledge.

Q. And not a criticism, but this is a group from which you derive much of the information you need as you helped form that policy?

A. Yes, sir.

10 Q. Now I'll leave the topic on this basis that when one reads the minutes which are in I think March and September of 2010 through those pages, it can be seen there that this group does not assess plans either the mining plans or work programmes in the context of safety. You can't say otherwise because you don't know?

A. No, absolutely sir.

15 Q. Now the next point is with regard to the culture of the mine or the culture of any workplace, is it something that you accept generally for health and safety purposes is a vital, if not the vital ingredient of safety?

A. Yes, sir, it absolutely is.

20 Q. And even though you've only been in this job for two years that would've, you'd have learnt that almost on day one I imagine?

A. Yes, sir.

Q. Culture is a hard thing to regulate, isn't it?

A. Yes, it is.

25 Q. And Gunningham and Neal make this point in their paragraphs at 21 and 22 but they identify there what I'm going to put to you is a crucial element of the work you do as you try and link policy and practice when they say in 21, which is at page 12, if you just read that and I'm going to just take you to the second sentence, "At Pike River Coal for example it may be of some concern there was a series of incidents suggesting  
30 there may have been a gap between the company's paper systems and actual practices underground," and then it goes onto the principal point of my question at 22, "These writers, these reporters don't explore safety and culture and relationship between those two at length but they

- say this, 'For present purposes the main point is that it would've been exceptionally difficult for the inspectors to address issues of safety culture because,' and they're my words, "the inspectors visited the mine only occasionally and so only obtained snapshots of what was going on there." Now you'd have read that, that part of the report?
- 5 A. Yes, sir.
- Q. And to make this cross-examination simple, do you accept that that's an accurate description of what the inspectors are able to do? To visit occasionally and just take snapshots of what's going on underground?
- 10 A. Sir, with all due respect I'm not in a position to answer for the inspectorate. I just don't have the knowledge of that, sufficient knowledge of that role.
- Q. Well here are reporters saying that's what they've derived from their discussion -
- 15 A. Yes, sir.
- Q. - with the department, with inspectors, that's what they're telling you. This report's written for you, isn't it?
- A. It's written for the department, sir, and it's written for the Royal Commission.
- 20 Q. Yes. Now if that is so, and we can come to it through other witnesses, it's in very stark contrast to what you heard from Mr Hughes and Mr Bell, isn't it? You heard their evidence?
- A. Yes, I did.
- Q. Well you heard the evidence of the number of inspections for example -
- 25 A. Oh, yes.
- Q. - they made?
- A. Yes, yep.
- Q. The weekly inspections of large mines?
- A. Yes.
- 30 Q. Now I just want to make sure you and I are on the same wavelength on this. This I am putting to you in a sentence exposes the dramatic difference between the system which applied under the dismantled inspectorate and that which is now undertaken?

Q. My comment on that would be that the previous regime was heavily weighted in favour of regular inspection visits and with inspectors taking a very hands on role in terms of day to day management of hazards and risks in the industry, the change that was made was made with a view to  
5 establishing a greater degree of independence of the inspectorate from the mines, from the mine operations, and for mines to take more ownership of their own health and safety issues and to manage them with their own health and safety managers, with consultants if there was a need, and for the inspectorate to take a more enforcement and  
10 advisory role or a less of a daily hands-on or weekly hands-on role.

1025

Q. And in that statement there is an assumption that in the transfer of that responsibility for knowledge and the eyes on the underground mine, there will be an effective transfer to a duty-ower who will carry out an  
15 equivalent task, equivalent role?

A. Yes.

Q. And that's a massive assumption isn't it?

A. I'd no indication sir, that mines are not able to fulfil that role, that mine operators are not able to fulfil their health and safety obligations.

20 Q. Have you read all of this report?

A. Yes sir.

Q. Well it seems that Professor Gunningham and Dr Neal have in fact adverted themselves to the organisational structure within the department at paragraph 32 of the report, and it says there, you see  
25 that? "In mining as in other low frequency, high consequence areas specialist inspectors play a crucial role. However, the current structure is not fully recognising utilising that expertise. Under the mining steering group structure coordination takes precedence over expertise. That priority should be reversed." That would be a matter of concern to you  
30 would it not?

A. It's a matter of concern to the department overall sir yes.

Q. Now I want to explore with you what I'm going to put to you is an inherent problem in the way the Act is administered and as it affects

underground mines, and I want to take you to this report at paragraph 60, which is at page 21. We are going to paragraph 60, which is pages 21 and 22. So looking at 60, "The regulations themselves are a mixture of prescriptive and performance based requirements. Though notably less prescriptive than, for example, the New South Wales comparators. Nevertheless, we are told by longstanding senior departmental officers that in so far as substantial prescription remained the regulations were 'mixing oil with water'. It was gradually realised you can't do it and it's not going to work and so there was a shift to codes of practice and guidelines." Now that's coming from senior ranks within the department and as a person involved with the formulation of policy it's a matter of concern to you I take it?

A. Sir, I've no sense of the context of the person that gave this statement. I'm not able to really comment on it.

15 Q. You understand what is being said there don't you?

A. Oh absolutely yes.

Q. Now if we then look at the codes of practice. They are dealt with and I'll abbreviate this. It's paragraph 61. Indicates a failure of industry to develop its own codes expeditiously. So the Department of Labour put some approved codes of practice in place, but none for the mining sector. In your brief time in the job have you been able to ascertain why that was the case, why the mining sector was excluded from the development of codes of practice at that time?

25 A. It wasn't specifically excluded sir. There were a number of other sectors that didn't have codes of practice developed, but as we said in evidence yesterday and previously, the question of the responsibility for development of codes and of guidance was moved to industry and so there was – the department did take a more hands-off approach to that and we're now thinking that actually we were too hands-off and hence  
30 the recommendations that we should get more engaged in the development of those things.

1030

Q. Well thank you for that because it shortens what I want to ask you. At 61, it relation to there being no approved codes for the mining sector introduced the answer or explanation is attributed principally to resource constraints rather than lack of willingness on the department's part?

5 A. I think there it was more fundamental issues sir. As I say, which was whose role it to develop them. Certainly resource constraints are always an issue but I think the more fundamental question was whose role was it to develop them.

10 Q. Well what happened then, we know we had the Minex codes and guidelines, they came into play, at paragraph 63. And there the tension between, well conflict of interest between industries concerned are minimised costs and the public and work interest in improved occupational safety and health outcomes. That's the tension?

15 A. Yes it is sir. I would say, however, that Minex does have worker representation on its board. There are two EPMU members on the Minex Board. So it's not entirely true to say that it is entirely driven by the mine operators of mine companies.

20 Q. The point is made though isn't it? The point is made to be alert to the tension between the company's aspirations and fundamental health and safety issues?

A. There is a tension there, yes sir.

25 Q. If we look at 64, this is the feedback given these reporters, and the last four lines of paragraph 64, "According to former senior departmental officers we thought Minex would do it, that's with regard to guidelines and advice, that they made trade-offs, there wasn't much punch, we expected too much of industry standard setting." You'd have picked that up fairly rapidly after your appointment to your job?

A. No I didn't sir. It has been drawn to my attention since then.

30 Q. Look at paragraph 67 before I leave this point. And these are the reporters saying that, this is at page 23, "For some time it appeared that the department, the position of the department, perhaps de facto rather than as a matter of formal policy was that it was the industry through Minex that had the capacity to engage in technical standard setting and

guidance document development rather than the department and the department would not make any contribution to such standards or endorsement.” As one of the mines inspectors told us, as for the Minex underground mines code of practice we had no input. We had a look at it. We felt we should go through it properly but we never did.” Again, there’s a disjunct here between the department’s surveillance and contribution to what has been a transfer of responsibility to industry. Stands out a mile doesn’t it?

5  
10 A. Sir, I’m not in a position to comment in terms of, I’m not close enough to the development of the codes. They’re not part my team, our teams of work programme, they are in the operational realm so I’m not in a position to directly comment on that.

15 Q. So anything really operationally that I ask you now, or was going to ask you, such as the senior advisor high hazards extractives is not something of which you are familiar at all?

A. Only tangentially sir.

20 Q. Well I’ll leave that then. Now on this topic, discreet topic, as to the approved codes of practice. At paragraph 70, page 24 of this report it records that in recent years the department’s expresses no enthusiasm for the development of approved codes of practice, whether in mining or other areas. Is that a fair comment?

A. That reflects the comments I made yesterday in my evidence sir I think, yes.

25 Q. And then if we go to paragraph 76, this is the reporters as experts in this area, advising the department before the Commission that these codes of practice have some advantages but the most important thing is that there is a good quality guidance material available. And I want you to go to the last seven lines of paragraph 75?

A. Seventy-five or 76?

30 Q. Seventy-five, sorry 76, beg your pardon. Just read it to yourself first please.

A. Just starting where it says, “The end results,” sir?

1035

- Q. The paragraph reading, "The end result is that a performance," I'll read it, "And systems-based approach that was intended to be underpinned by much more detailed guidance in the form of codes of practice industry guidelines and to a lesser extent regulations remain under developed for too long, in consequence not only some duty holders, particularly small and medium size enterprises, but also inspectors themselves lacked and to a significant extent still lack sufficient guidance in discharging their respective responsibilities." This is nearly 20 years after the Act came into force, isn't it?
- 5
- A. Yes sir.
- 10
- Q. And in this critical and catastrophic industry when things go wrong this report is identifying a major gap between the policy intention expressed in the statute and attainment?
- A. Yes.
- 15
- Q. On the ground?
- A. Yes sir.
- Q. Were you aware of that disjunction before the Pike River explosion on the 19<sup>th</sup> of November last year?
- A. I was aware from the review that we did between 2006, 2008, 2009 that there were issues around the number and quality of the guidance material and hence the recommendations that were supported by the department and the Minister around strengthening the guidance material that was available.
- 20
- Q. And right now, because much is still going on even in respect of the report that began its life in 2006?
- 25
- A. The review began its life in 2006.
- Q. The reviews?
- A. Yes sir.
- Q. Yes, well then the report in 2009?
- 30
- A. Yes.
- Q. And it's going through an iteration now with work being done to amend its particular recommendations?
- A. Yes.

Q. As adopted, we're still some time away, perhaps a couple of years away from even fulfilling those policy objectives derived from that report, are we not?

5 A. No, the two to three sets of guidance are anticipated to be completed in the next few months, the more technical guidance material will probably not be until the middle of next year.

10 Q. All right, now I want to just briefly ask you a couple of questions on resource allocation, by that I mean people allocation, and at paragraph 145, if we go to 144 first and it refers there to an approach with a new focus on harm reduction and improved health and safety outcomes for the 2010/2011 year. "Five industry sectors which were based on analysis of consistently above average fatal and major injury rates and justifying particular attention," mining was not one of those prior to Pike River?

15 A. Yes sir.

Q. So that's working off the statistics of the number of injuries and fatalities in these identified sectors?

A. Yes sir.

20 Q. And because mining is a small industry in terms of numbers, I think there's 450 underground miners?

A. Yes.

25 Q. They turned out to be forestry, agriculture, fishing, manufacturing and construction and if we go to the further part of paragraph 44 we see that, and it emphasises there that, at the top of the page, "The fact that mining wasn't in this group arguably illustrates one of the limitations of a risk-based approach when it comes to an industry prone to low frequency, high consequence events." So the risk profile, according to this paragraph, may not suggest the need for higher investment of regulatory resources even though the consequences are frequently  
30 catastrophic in this industry, it's a numbers game?

1040

A. For the purposes of that particular plan yes sir it was a numbers game and it was, but that wasn't, does not in any way reflect the department's commitment to resource our involvement in mining.

5 Q. I understand that, but the reporters are simply saying that these industries may get specific identification as opposed to a smaller and more catastrophic, potentially more catastrophic consequential industry simply because of numbers.

A. So the decision around the five priority sectors was essentially based on the size of those sectors and the number of injuries –

10 Q. Yes.

A. – and serious harm and fatalities that were occurring in those sectors, that's true. What it doesn't reflect though is that the department still had its commitment to mining. It had just done a review of the regulatory system. It had work programmes through the Mining Steering Group focussing on mining so there were substantial activity going on in the mining sector.

15 Q. Well in paragraph 146 I disclose or display my political naivety by asking you to first of all acknowledge that paragraph, 145 I'm sorry indicates that the question of allocation to the mining sector of two mining inspectors and a senior advisor hazards extractives the question is raised, was that a reasonable one? And the answer is introduced in this way. "In answering this question it must be remembered that resource allocation is a zero sum gain. Had the department determined to deploy more mining inspectors then some other industry sector would have been denied those resources." Is it really that circumscribed by an appropriation that something that's thought to be needed has to be traded off against some other safety issue or objective?

20 A. The reality is for all Government agencies that are working within finite resources that priority setting and priority allocation of resources is an ongoing issue, sir. It's the reality in which we live.

25 Q. On an issue involving the safety of people with consequences such as we see at Pike River, that is still the case?

A. The department's resource is finite, sir.

Q. And your personal response to that in terms of telling me your health and safety objectives?

A. I'm saddened by that, sir, but that's the reality in which we live.

5 Q. Well the other reality with which I wish to close this cross is the resource available to the inspectorate. I know you're not involved in the inspectorate but you are now, particularly after the last few days I guess acutely aware of the difference between the inspectorate function as it was and that which it is today. I take it you are aware of the differences?

10 A. Absolutely, sir.

Q. And if we look at page 46 of this report and at paragraph 148 we see this report or comment made to these experts that the inspection was shorter than the inspectors would have liked. "You should go underground and you should audit, you're looking at two days, but I  
15 didn't have two days. I'd allow the best part of a day at a larger mine. I didn't have time to do an audit." One of the inspectors also made the point that, "In a less resource constrained world a higher inspection rate would be desirable. Under our legislation we're not responsible to make the workplace a safe place from work but more visits would give us a  
20 higher opportunity to spot non-compliance. It's a small shot. You only see what you're seeing on that day but more visits are not practicable. So we have a lack of resource because these men do not have the time to make the inspections as even they would like." That's an example of that expressed view. You see that?

25 A. Yes I do sir.

1045

Q. And then in the next paragraph the point is made, "Even if more resources were available," it goes on to explain at paragraph 149, "There is a severe scarcity of potential mining inspectors and it's  
30 exceptionally difficult to recruit and retain such specialists."

A. True.

Q. So you've got a resource issue and you've got a manning issue in terms of expertise?

A. Sir.

Q. And you have an issue as to the way the function is carried out as well?

5 A. So I accept that. I would, however, draw your attention to what Professor Gunningham and Dr Neal say, the latter part of paragraph 146, where they say that the current inspection rate is not substantially different from those of the two Australian coal mining states, that's New South Wales and Queensland, and more substantial than Tasmania and does not appear to be unreasonable.

10 Q. Yes. I'm not making that comparatively. Fair enough you should make that point. This is from an inspector, a current inspector?

A. Yes, I understand.

Q. In fact the only current inspector.

A. Yes.

15 Q. And on the same vein and finally in this context before I close, paragraph 391, which is at page 108. And these reporters, I should make it plain to be fair to the inspectors who are currently engaged and have been engaged, the inspectors are held by these reporters to be energetic in absolute safety, but the comment is made, "Each of the significant issues dealt with in chapter 6 of their report at Pike River arose because the mine took the initiative to contact the inspector. These issues did not arise, for example, from a proactive visit, a scheduled audit or in response to an accident." Now you understand the inference to be drawn from that comment. The inspectors respond that it did not proactively identify the issues within the mines. Do you understand that?

20

25

A. I understand that sir, but I also am aware that there are other parts of the report that do talk about the number of proactive visits that the inspectors did make.

30 Q. And again to revert to the evidence of Mr Hughes and Mr Bell, they each gave evidence regarding the effect of their proactive visits?

A. Sir.

Q. And what they there identified and how they took it up with the mining company or business?

A. Yes sir.

5 Q. Finally, two very small but important points. At paragraph 456 of this report, before I ask the question, is at page 124. Does your policy concern include an understanding of the training of people in workplaces?

A. Not specifically sir. The training issue is in the mining industry particularly an issue for the industry through EXITO, the industries training organisation.

10 Q. So the process of training and how they do it and what results they achieve, it's not something that you consider is a matter of policy?

A. Not as a matter of policy sir, no.

Q. It could come to you as an issue if it was identified as problematic?

A. Yes.

Q. Is that right?

15 A. Yes sir.

20 Q. See, at paragraph 456 Mr Slonker who was a former mine manager at Pike River, said that with regard to Pike River, fifth line, "Such training, full underground induction did not extend to contractors and this was an area where the company, in his view, failed miserably at least in the time he commenced with Pike River Coal." Now just take that for what it is at the moment, it may be contested, of course, but is that a matter which when you read it, generates in you as a policy person a need for a response, investigation?

25 A. Probably not in a policy response sir. I think I'd be more concerned if I was involved in the industry training organisation that it would require a response.

Q. Finally, at paragraph 426 at page 115, I turn to the question of worker participation. Mr Hampton asked you about this yesterday you'll recall?

A. Yes sir.

30 1050

Q. And the reporters here say, "A number of senior departmental representatives expressed the view that worker participation in Health and Safety New Zealand was immature, that health and safety

representatives commonly lacked a good appreciation of their role and responsibilities and that they rarely made a significant impact on health and safety outcomes.” Goes on to comment about the statutory powers provided for by the Act are seriously underutilised. Now is that a flag to you in terms of policy as to the need for the employee contribution of participation?

A. It’s a flag to me sir that the provisions of the Act are not being taken up and one of the concerns that we identified in the review was exactly that point.

Q. And is it paragraph 428, does that reflect it, is that your understanding. Mr Poynter who’s not in this part of the hearing advised the reporters he’d never been contacted by health and safety representative and took the view that people being elected may be good people but don’t understand the role. Sometimes I hunt them out. The comments you get back is usually, “No, I’m fine,” it’s an artificial environment, you pull them out but their manager’s round the corner so it’s not ideal. It’s not an encouraging perspective is it?

A. No sir that’s his clear experience of, and it’s not encouraging at all.

Q. I just want to put this final proposition to you. Nearly 20 years on from the passage of the Act the philosophical change that it introduced in the case of mining is not reflected, it would seem from this report, in a cohesive and unified response to health and safety issues by the employee, the duty-ower, the company and the regulator. That’s the perspective that one gauged in this report. Would you accept that?

A. That is one perspective sir, yes. I think that the report also has a number of positive things in which it comments, on which it comments to. But, yes, there are still gaps in the regulatory system and there are still gaps in translating that into effective health and safety practice.

Q. Thank you.

**30 CROSS-EXAMINATION: MS MCDONALD**

Q. Mr Murphy, just going back to one or two matters of Mr Davidson was putting to you. He referred you, if we could have back up on the screen

the operational review document, and you were then taken to paragraph 456 of that just a few moments ago. The reference to that document is 0100010001 and the paragraph number was paragraph 446. The page number of the report is page 124 of the report. You were taken by Mr Davidson directly to the sentence starting about four lines down with, "However, according to former mine inspector Nigel Slonker?"

5 A. Sorry, mine manager I think it is, yes.

10 Q. Mine manager sorry. And my friend referred you to Mr Slonker's apparent views about training. Could you just though read out the first couple of the sentences of that paragraph?

15 A. "As regards to training of Pike River Coal employees there was no plausible basis for such action. The company provided workers with a three week induction course before they were permitted underground and there would've been no basis for suggesting that such a programme did not meet the requirements under the Act."

1055

20 Q. And another paragraph, I just want to take you to one or two paragraph where there's perhaps a different view or a little more context which in related paragraphs that you weren't taken to, going back to paragraph 391 on page 108 of the same report, just get you to read out that paragraph there again, Mr Davidson took you to that paragraph but I draw your attention to the last sentence?

25 A. This relates to the inspectors, their dealings with Pike River entitling inspectors to believe that they were with an employer who was voluntarily compliant.

Q. Paragraph 146 on page 45?

A. Yes.

30 Q. Mr Davidson took you to paragraph 145 and then I think he took you to paragraph 148, you yourself picked up a point from paragraph 146, one of the paragraphs in the middle of the two that Mr Davidson took you to?

A. Yes.

Q. Can I take you to 147 please, relating to the number of inspections, could you just read that paragraph out please?

A. "The scheduled quarterly inspections were far from the only contact the inspectors had with the mine, appendix 4 shows the pattern of visits to Pike River Coal by the inspectors and indicated that Mr Poynter was engaged in more frequent visits in response to various incidents and issues, for example, as we explore in more detail in chapter 6, he engaged in a joint visit to the mine in May 2008 over a methane issue and subsequently Mr Firmin visited the mine twice in the few days at that time. There was also a wealth of email and telephone correspondence between the inspectors and the mine, the flavour of which is captured in our discussion in chapter 6."

Q. So is that one of the paragraphs that you alluded to a moment ago when you indicated you'd thought there were other sections of the report that spoke of proactive visits?

A. Yes indeed.

Q. You were again, I think by Mr Davidson, referred to paragraph 68 of the report on page 23 and this is in relation to the Minex issue?

A. Yes ma'am.

Q. But can I take you to the paragraph immediately before that one, paragraph 67?

A. Yes.

Q. No, it was paragraph 67 that was put to you but paragraph 68 that wasn't, I'm sorry.

A. Okay.

Q. So if you could just familiarise yourself with those two paragraphs, we could have both of them up on the screen please.

A. Yes ma'am.

Q. You'd like to comment on, you were taken to 67, would you like to comment on 68?

A. It may be just best if I just read it. "The departmental position shifted when a new senior advisor high hazards extractors was appointed in 2008. It was intended that the senior advisor would liaise actively with

Minex in the development of further codes. However Mr Booyse had told us that initially he'd made little progress in engaging Minex and that the organisation didn't welcome a dialogue with government, nevertheless in his view the position of Minex changed with a change of leadership within Minex and for a period prior to the senior advisor's resignation in February 2011 the prospects for constructive engagement between the public and private sector seemed much more promising."

1100

10 Q. Now, just moving on to a couple of different matters. Yesterday at one point you were asked some questions and gave some answers relating to the ratio of inspectors to the number of mines. Do you remember that?

A. Yes, I do.

15 Q. And I just want - last night looking back at your answer to that which was fine but I think it would be helpful if you were able to just elaborate a little more on the work role or the work that then, the two inspector positions that you referred to, one currently vacant, their responsibilities and the responsibilities of the other inspectorate or other inspectors that you referred to and what work they do?

20 A. Sure, my understanding and Mr Firmin may, is much more – will be much more authoritative on this, is that the two inspectors' primary responsibilities were for health and safety in underground mines, underground coal mines. They did have some wider responsibilities in terms of other mines, surface mines and quarries but that they were supported in their work above ground and with quarries with support from other inspectors who were also involved in those areas of work.

25 Q. But it's fair to say I think, isn't it Mr Murphy, that if a matter, if a serious incident arose the two mining inspectors would be needing to attend to those, not those other –

30 A. Oh absolutely.

Q. - health safety inspectors that you referred to?

A. Yes, absolutely.

- Q. Now can I take you back to a document, and this is again just a context issue really. You were referred by Mr Wilding to the summary of written submissions document, I think it's 0001/10 "Review of workplace health and safety, a summary of written submissions," and I just want to take you to a couple of pages in that. If we could go please to, well the first –
- 5 are you familiar with the document?
- A. I was yesterday.
- Q. You were yesterday. Well we'll find it and bring it up. I think that's the document you were taken to yesterday. Do you remember that?
- 10 A. It's one of the documents, yes.
- Q. Yes, and I just wanted to point out if we go to page 5 of that document, this as I read it, and I'm asking you to confirm your understanding is a document containing a summary of written submissions and there were a number of submitters?
- 15 A. Yes.
- Q. And that screen that's up there, page 5, shows doesn't it that there were 58 submitters?
- A. Yes.
- Q. And if we go to page 10 again please and the particular issue there,
- 20 you'll recall Mr Wilding putting to you related to the heading there half way through the page, "Balancing proactive and reactive inspector functions?"
- A. Yes.
- Q. And I'll just get you to confirm that there appears to have been seven
- 25 submitters who addressed that issue, so seven out of the 58?
- A. Yes.
- Q. And then the second sentence refers, doesn't it to "Some submitters felt that there should be more advisory visits..." et cetera and is your reading the same as mine that that will be some of the seven?
- 30 A. Yes, indeed.
- Q. And can you say or not from your recollection of this summary of submissions that there was a range of views expressed in that document, some positive? I'll take you to page 8 –

A. Yes please.

1105

5 Q. – if that would help. The heading, “Better collaboration and relationship building”. Have a look at that one? The group of submitters cited improved collaboration on a number of different levels between Government agencies, between Government and industry, within industry and within workplaces?

A. Yes.

10 Q. And perhaps don't need the document up for this unless you require it, but the Gunningham report that you were asked a number of questions about, and that's for the record DOL0010020402/1, can you confirm from your knowledge of that document that it is a discussion document in effect, a summation of literature. That fair?

15 A. Are we talking here about the Gunningham report that supported the outcomes of the review?

Q. The literature review?

A. The literature review, yes, yes.

20 Q. And while it refers to a range of views expressed from literature and discusses them, is it fair to say that it is not a document that is conclusory?

A. It was a significant influence in the outcome of the review and the recommendations that we made.

#### **RE-EXAMINATION: MS MCDONALD - NIL**

#### **QUESTIONS FROM COMMISSIONER BELL:**

25 Q. Mr Murphy, taking the section 10 of your statement, can I just ask how many prosecutions have been launched against the mining industry under the current legislation?

A. I don't have that information to hand sir, I'm sorry. We can find you that, sure.

30 Q. I wouldn't mind finding out. Moving on to section 16, I'm just interested in the reasonable practicality of the legislation, the policy side of that.

There's five subsections, 16.1 to 16.5. is there any weighting on those things there?

5 A. They are all to be considered sir. They're not in any ascending or descending order. They all need to be considered to test for the practicability test.

Q. What concerns me is if something like gas monitoring for an underground coal mine was too expensive, would that make it not reasonably practicable?

10 A. No sir. For something as critical as that, you couldn't operate in a mine without. The regulation would absolutely require it.

Q. So this could not be used as a reason for not having a comprehensive gas mining system?

A. No sir.

15 Q. Just another quick one. Section 65 of your statement. It says there it's an offence for an employer to fail to take all practicable steps to ensure that the person appointed as a manager of an underground coal mine holds the required certificate of competence. What happens if he takes all the practicable steps but he still can't find someone? Does that mean the mine can't operate?

20 A. My understanding would be that that would be a breach of the regulations sir, yes.

Q. And the mine could not operate?

A. Yes sir.

**QUESTIONS FROM COMMISSIONER HENRY:**

25 Q. Mr Murphy, I'm assuming as policy manager you've got an intimate knowledge of the Health and Safety Act?

A. We're going to test that, I feel.

30 Q. I was interested in your history of the department's thinking about approved codes of practice, which have received a fair thrashing at this hearing so far.

A. Mmm.

Q. The Act itself, the object of the Act says that the object is to promote the prevention of harm?

A. Sir.

5 Q. And it lists various ways by which that might be done, and one of them is setting requirements that relate to taking more practicable steps and they are flexible to cover the different circumstances. Does that, in your view, refer to the setting of requirements by the department as the administrator?

1110

10 A. It would refer to the setting of regulations that would stipulate requirements which would be very much the department's responsibility. It would extend to other requirements through approved codes or codes of practice which could be done by the department or could be done by industry and similarly with guidance material.

15 Q. There's another part of the Act, I think its section 20 that talks about approved codes of practice?

A. Yes.

Q. And it sets out the process by which they are drafted by the department, the secretary puts them up to the Minister?

20 A. Yes.

Q. The Minister takes time, I assume that in practice the department takes time to get comments from the industry and others and then after a period of time it's signed off and gazetted and that becomes an approved code of practice?

25 A. Yes.

Q. Did I hear you yesterday say that that was not a very good process and if so, if I'm right on that, what are the problems with it?

A. It's not been practice for a number of years to develop full blown approved codes of practice and codes of practice without the Ministerial approval has been the norm largely because of the inflexibility of approved codes once they're established, more so than the process of getting to them. It means that they're very similar in status in some respects to regulations in that to change them then requires a significant

30

amount of rework and codes of practice are able to be more flexibly tweaked and changed without going through the full blown process.

5 Q. Wouldn't a code of practice in itself, even if it wasn't approved, if you'd issued a code of practice wouldn't that require the same amount of rework?

A. Without the Ministerial component, yes sir.

Q. So is the problem the Ministerial component?

A. It adds another dimension to it sir, that's without adding necessarily any additional value.

10 Q. So have you looked to see whether other administrations or even thought about making it part of the secretary's independent statutory function to issue codes?

A. No we haven't considered that yet.

15 Q. A separate topic. I thought I heard you say yesterday that it wasn't the job of the inspector of mines to give advice and that the employer needed to take their own advice, is that a fair summation?

20 A. It is sir, I think the issue around advice is a definitional one to some degree. I think that what the boundary between the inspector providing information and sharing ideas and providing advice is often a very wavy line and I think the intention of the legislation was clearly to ensure that the responsibility for decisions around health and safety rest firmly with the duty holder and with the employer. The inspector is available to assist and to ensure that the employer has information that might help them to make those decisions but the question of advice is one that is strictly speaking now becomes a matter for the employer, to seek their own independent advice rather than seek it from the regulator.

25 Q. Is it a fear that if you give advice, if the inspector gives advice it might transfer the responsibility in some way to the department for example, in a prosecution?

30 A. There's an element of that sir, there is but it is more around the question of where the responsibility rightly sits in the legislative and regulatory framework.

Q. It might be pretty difficult for the employer if there aren't adequate codes of practice and so on to take their own advice, do you think?

A. They would have access I would imagine sir to alternative forms of consultation and advice.

5 Q. You're talking specialist?

A. Yes.

Q. Some specialist advice?

A. Particularly technical specialists.

1115

10 Q. I just want to finish off by making sure I understand the policy reviews that you've been through, because you've done quite a lot of policy reviews since the big review of 2006/2008. That review came out with, as has already been put to you, really part of that was an emphasis on small mines?

15 A. Sir.

Q. And there's an assumption in there somewhere that big mines were able to manage their own affairs without that special help that was to be given to small mines. Is that right?

20 A. Should say that the review didn't start out with a premise of reviewing specifically small mines, it was a review of the regulatory framework as it applied to mining generally and the issues that were identified were more apparent in small mines. And they were issues around scale, they were issues around their access to adequate support and guidance.

25 Q. Is it possible that since the main submitters were large mines that you finished up with a situation where they convinced you that they didn't need regulation or prescription?

30 A. There's a possibility sir. We did test that however with looking at the international jurisdictions and we tested that with Professor Gunningham's analysis as well. So although the submissions were a significant part they weren't the only factor in determining the analysis and the recommendations that were made.

Q. And you did a review in 2009 I understand in which you looked at the strategy to 2015 for health and safety?

A. Yes.

Q. I think Mr Wilding mentioned it to you yesterday?

A. Yes, that was a review of the strategy not a review of specific reference to mining sir.

5 Q. And out of that review this year in March the department issued the national action agenda?

A. Yes sir.

Q. Of 2010 to 2013?

A. Yes sir.

10 Q. And that's the one that I think Mr Davidson talked about with the five priority industries?

A. Yes sir.

Q. Now you issues that in March after the disaster at Pike?

A. Yes sir.

15 Q. Under that strategy the mining sector isn't given the priority treatment that the other sectors are to be given?

A. Sir.

Q. In terms of focus of resources and collaboration and so on, do you still feel comfortable about the mining sector being excluded?

20 A. Not entirely sir, no, not at all. The situation was that the review was done and the recommendations were written towards the end of 2009, the explosion occurred on the 19<sup>th</sup> of November. At that point the document had pretty much been finalised. It was held back obviously in the wake of the explosion and the aftermath while we thought long and  
25 hard about how we now reflected what had happened in the action plan.

In discussions with the Minister we decided that we would proceed with the action plan because the issues facing those industries were still critical and needed to be addressed and that we would not pre-empt any outcomes of the investigation, the Royal Commission, and that we  
30 would await those outcomes before determining what the next work plan and action plan would be, specifically for mining, and that we would deal with that in a way that was specific to mining and not try to wrap it up in

a wider strategy that mining now is going to get its own individual industry attention.

Q. The final question I've got, it's a small one regarding Mr Gunningham's comments about zero some game, which when that was put to you, I'm not sure who put it to you now with everything else going on but you answered in terms of resource allocation and said that the difficulties that Government departments, which I'm very familiar with, where you allocate your resources, where you put the last dollar, given that you never have enough money to do everything that you would like to do. Now in answering it in terms of resource allocation isn't it correct that the department, as with other departments, can allocate money within classes of outputs.

A. Yes, sir.

1120

Q. So it wouldn't be true, would it, that if you were looking for \$100,000 or whatever it was to employ an extra mine inspector you would necessarily have to take it out of the focus, the resources that you're applying to the five priority industries or indeed any other industry.

A. It would, my understanding sir, it would need to come from the baseline, the \$38 million from, that the department has to fulfil its health and safety obligations and so it would come from other parts of that system.

Q. It would come from other parts of that system –

A. Yes.

Q. – it wouldn't necessarily be a frontline person who would be taken out of it.

A. No, it could come from anywhere within that resource allocation.

**QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

**COMMISSION ADJOURNS: 11.21 AM**

30

**COMMISSION RESMES: 11.39 AM****MS McDONALD CALLS****MICHAEL KERRY FIRMIN (SWORN)**

- 5 Q. Mr Firmin, can you confirm that your full name is Michael Kerry Firmin?
- A. Yes.
- Q. And you are currently employed as a health and safety inspector with the Southern Region of the Labour Group Health and Safety with the Department of Labour?
- 10 A. Yes.
- Q. You have made I think three briefs of evidence for this inquiry?
- A. Yes.
- Q. I'm going to ask you to read two of those and simply refer to the third one. Can I take you to your first brief of evidence, which is
- 15 DOL7770010005. I'll just get you to confirm that's your – have you got your brief of evidence in front of you?
- A. Yes, just not sure of the number.
- Q. Don't worry about the number. That's – need to worry about that. If you could perhaps just, in fact if you refer now perhaps to your second brief
- 20 of evidence which is DOL7770010007, and that's your qualifications in this brief of evidence isn't it?
- A. Yes.
- Q. And could you just confirm for me that the reason you completed that second brief of evidence was to provide further information to the
- 25 Commission on your qualifications and your experience?
- A. That's correct.
- Q. Now the first brief of evidence which I'll get you to read shortly, you set out your role as a health and safety inspector and what it involves, but before reading that could I take you please to your qualifications brief of
- 30 evidence, the one ending in 0007, and read that aloud to the Commission?
- A. It's just the qualifications one?
- Q. Yes, if you read that first?

A. "I, Michael Kerry Firmin of Dunedin, inspector, swear I provided a statement for the phase one hearing of this Royal Commission dated 22<sup>nd</sup> of June 2011. This is a supplementary statement to add further detail of my qualifications and experience as other witnesses have made comments in questioning the qualifications and experience of the current HSE inspectors at mines. I have a Bachelor of Science Mineral Technology from the Otago School of Mines (1977) and a Post Graduate Diploma in Health Science, Occupational Health from the Otago University. In 2008 I gained a NEBOSH International General Certificate in Occupational Health and Safety. This is a globally recognised qualification offered by an established independent United Kingdom Examination Board and focuses on international occupational health standards and management systems. In 2010 I completed MINE7033 Minerals Industry Risk Management, a Postgraduate diploma offered by the Minerals Industry Safety and Health Centre of the University of Queensland. Passing this course is deemed by the Queensland Coal Mining Safety and Health Committee to demonstrate adequate compliance in establishing and maintaining risk management as required for the statutory position of mine manager and senior site executive under the Queensland Coal Mining Safety and Health Act 1999 and the Mining and Safety and Health Act 1999.

1143

A. Practical experience. Before becoming a warranted inspector in 1995 I had 15 years experience mining and mining-related industries. While I was studying at the Otago School of Mines between 1974 and 1977 I worked at Peko Underground Mine, Tenant Creek, Northern Territories, Australia. Number 5 Experimental Mine, Underground Gold Mine Rotowaro and the Open Cut Iron Ore operations at Dampia and the Open Cast Mine at Mt Tom Price, Western Australia. After graduating I worked for State Coal Mines and Coal Corporation from 1978 to 1993. I worked at Marne's underground mine and variously as a trucker, clipper, winch man, contract miner, I worked for State Coals, Rock Mechanics Technician as a mechanised miner at the West Underground Coal Mine

before moving to the East Underground Coal Mine where I was a mechanised coal miner, mine deputy, underviewer and coal handling supervisor. It was while working for State Coal Mines I gained six years experience to sit my first class coal mine manager's certificate. After

5 leaving Coal Corporation between 1993 and 1994 I was a jumbo nipper, underground for a mining contractor, Elton Contracting at Telfer Western Australia, a coal handler technician for Solid Energy New Zealand and spent two to three months as mine manager of Moody Creek Underground Coal Mine near Greymouth in New Zealand,

10 which was then privately owned and later owned by Todd Energy. It was at the time New Zealand's largest privately owned underground coal mine employing about 20 people. At 1994 to 1995 I worked as a team leader in refractory specials at Thermal Ceramics in Huntly. This entailed batching high temperature cements for use in steel making and

15 aluminium industries. I hold the following certificates; a first class coal mine manager's certificate 1984, a gas testing certificate current which qualifies me to test gas in underground mines, a New Zealand A Grade Quarry Manager's certificate, a Shotfire Certificate, an A Grade Tunnel Manager's certificate, an approved Handlers of Explosives, expired and

20 a first class Mine Manager's certificate. In summary I have underground experience in board and pillar, scrape and loader, road header and continuous mine operations including mine deputy, underviewer and coal mine manager. I have geotechnical experience in underground coal mines. I have surface experience in crushing, screening, washing and dispatch plant. I have underground hard rock experience as mine

25 labourer, contractor, jumbo nipper and open cast hard rock experience as an engineering assistant. I have explosive experience in underground coal, underground long holes, tunnels and open cut blasting, I have been a machinery operator operating MPV, PETs, light diesel vehicles used underground to transport men and materials. I

30 have operated road headers, shuttle car, front-end loaders, truck and roof boulder, I have completed mines rescue BG174 breathing apparatus run by EXITO, but not part of the rescue team. I continue to

up-skill myself through shorter courses and have completed courses in the following; International Safety and Rating system ISRS, Safety Management Systems and I'm halfway through training to be an ISRS accredited safety order, Australian centre for Geomechanics, ground support and mining courses through Coal Corporation and the Department of Labour such as Train the Trainer, Accident Investigation, Managing and Supervising People, Investigation Skills, Prosecutions, Orico Explosives, Health Monitoring Equipment, Four Wheel Drive, ATV and First Aid.

5

10 Q. I'll take you now to your main brief of evidence. You've got your main brief of evidence in front of you, I think it's fair to say that the matters covered in your more detailed qualification brief are dealt with in a general way in paragraph 4, you probably don't need to read out paragraph 4, I think that's right, isn't it Mr Firmin?

15 A. Yes, it's good, yeah.

1148

Q. So if you come and then start reading please from paragraph, leaving out 4 and start at paragraph 5 and this is your brief of evidence dated the 22<sup>nd</sup> of June 2011.

20 A. I then went through a number of jobs including mine labourer, coal mine manager, and 18 months as team leader in Thermal Ceramics, Huntly, New Zealand. On the 1<sup>st</sup> of July 1995 I was employed by the Ministry of Commerce and appointed a health and safety inspector under the Health and Safety in Employment Act 1992 with the responsibility of inspecting quarries. My duties as an inspector included inspection of quarries for compliance with the Health and Safety in Employment Act and to assist employers and employees to improve safety in quarries, mines and surface coal mines. I have been employed as a health and safety inspector with the Department of Labour since 1998. My health and safety certificate of appointment warrant issued the 3<sup>rd</sup> of October 2006 covers all coal mines, mines, quarries and tunnels. Prior to this I have been issued with a health and safety certificate of

25

30

appointment warrant in 1999 which covered coal mines, surface mines and quarries.”

Q. And tunnels. Did you complete the sentence?

5 A. Oh, sorry, “and tunnels. My role as an inspector involves assisting employers and others to improve workplace safety by providing information and education, carrying out investigations involving workplace accidents and complaints, undertaking routine inspections to see whether or not there has been compliance with the HSE Act and its regulations. Although I am based in Dunedin, I cover the area from  
10 Rakaia River to Bluff. Kevin Poynter and the other health and safety inspector who inspects mines, quarries, and tunnels share inspection of the North Island sites alternating over a six month period. The extractive operations have been risk assessed to determine which sites had most inherent hazards. Recently this internal risk assessment of  
15 tunnels, mines and quarries in our area was updated to include risk management and was used to determine what priority and frequency to do inspections. Underground mines rated in the high risk category because of the inherent hazards that are associated with this work. Methane and the use of explosives were seen as increasing the risk.  
20 The Mining Steering Group which I am part of decided that inspectors would aim to proactively visit underground mines and tunnels approximately every three months, surface mines and high risk quarries every six months and other quarries where time permitted. We would also have discussions by phone or email with mining companies  
25 between those visits. It is very much an open and ongoing relationship with companies. The other mining inspector and I inspect all underground coal and metalliferous and open cast mines, quarries and tunnels. About a year ago the Mining Steering Group decided we would train other health and safety inspectors to inspect quarries and this is a  
30 two year project which is ongoing. On a proactive visit to a mine I would almost always contact the mine in advance to tell him I was going to visit. This is to ensure people were organised to assist me and to take me down into the mine. If it wasn’t arranged in advance I might spend

significant time waiting at the mine while they arranged these things. Generally I would start the visit with a face to face catch up with the mine manager or assistant manager about some of the issues we've emailed about or discussed since my last visit, for example incidents of harm. I would look at the current mine plan to find out what work had been done since my last visit. Some issues might arise out of the mine plan, for example the company might explain problems they'd encountered which led to a change in the plan. My priority was to go underground to do a physical inspection and sight the hazards myself as this would prove the systems were working and I wanted to check the mine was safe. If I had not previously been inducted at the mine there would be an induction process before I went underground. At the control room I was check the Maihak monitoring results and perhaps the gas book. When I went underground I would check out such hazards as ventilation, stone dust, and roof support rib conditions et cetera and trying to get as many of the areas as possible – try to get to as many as the areas as possible, especially the facies of the mine. If I knew from my correspondence with the mine that there had been an issue with a particular hazard I would check that, for example if there'd been an email about with a company that they had put a seal over it working because of a fire I would check the seal. I carried a methanometer with me and would check the gas reading for any areas of heating I went round.

1153

25 A. As I went around I would talk to section managers. I would observe the minders doing tasks. For example, if I went o the face I might watch them bolting the roof or load a few cars of coal. I sometimes ask if the health and safety employee representative, rep, was available and tried to talk to them to see if there were any issues, but they weren't always available on shift. I have only had one health and safety rep raise any issue with me at an underground mine. Sometimes an inspection would include a them inspection where I would focus on a hazard, such as conveyor guarding or stone dusting. I would check on the hazard

30

underground and then went outside, investigate the company was addressing this hazard, ie ask the company to prove to me it had adequately stone-dusted and checking the monitoring results. If I needed further information I would ask the company to send it to me. It wasn't a systematic audit of their own procedures, it was a type of audit of the controls in place to see how the company was managing the hazard. If I didn't an issue I would discuss this with the company and how it dealt with a hazard and what all practicable steps might be under the HSE Act. I would have regard to a number of things. The general guidance of the HSE Act and regulations, the codes of practice, the Minex guidelines and the Australia and New Zealand standards, Australia guidelines and what is best practice by reference to other mines and Australian practices and my own training and knowledge. West Australian regulations were helpful at the metalliferous mines, so was the Australian Minerals Industry Handbook. I would usually spend around four to six hours underground. After the underground inspection I would debrief with the mine manager on anything outstanding from my last visit, anything I had asked them to do or any issues arising from my inspection. We would go over anything coming up and what the company intended to do over the next three months. I always ask the company, "Where are you going next?" I might request them to provide me with further information such as risk assessment reports and Trigger Action Response Plans (TARPS). The total visit might take between six and eight hours. If I had time, particularly if I had travelled to another region, I would try and fit in a visit to a second site such as an open-cut mine, which would usually take one and a half to two hours.

Q. I think that sentence read, "I will try and fit in a visit that day?"

A. That day, okay.

Q. Carry on.

30

#### **WITNESS CONTINUES READING BRIEF OF EVIDENCE**

"That day I will then write up my notes and upload them to the department's INSITE system when next in the office. I also keep a record of phone

conversations I had with the mines companies. I would rarely enter phone calls into the computer system, only when I thought they were a critical part of the inspection. I keep a notebook in which I make handwritten notes of my inspections and most phone calls. Notes on INSITE can be seen by other inspectors. If I had an issue about anything at the mine I want to discuss I would ring other mines inspectors or the high hazard advisor. It was a general inspection issue I want to discuss, such as a machine guard, I might ask one of the other health and safety inspectors. In addition to proactive inspection visits, I also visit mines, quarries and tunnels where there is a report of serious harm or other serious incident. This usually occurs because the company have notified of an incident but occasionally we receive complaints to the office which we investigate. When I am visiting a mine following a serious harm notification my focus is on investigating that incident and hazard and ensuring the company has addressed the hazard and what happened enforcement action should be taken. Sometimes I would supply information to the mines, which I would record in INSITE. Enforcement action. There are a number of enforcement tools available to inspectors under the HSE Act. If I use a prohibition notice under section 41 it stops activity occurring. I can issue an improvement notice under section 39 which forces the company to address the failure within a certain period. The department uses the Braithwaite Triangle which involves looking at the attitude of the employer and determining the appropriate regulatory response. If the company is considered a leader in health and safety issues and highly likely to make changes to fix the failure the issues is dealt with through a negotiated agreement that I make with the company. If the company is unconsidered and uncooperative one of the other enforcement options like a prohibition or improvement notice might be used instead. Companies that we used negotiated agreements to achieve improved performance were the ones that were proactively working to achieve high standards. They recognise that mining is a high risk industry and are usually doing whatever they can to avoid accidents, including cooperating with the inspectors, relying on expert advice and training their workforce. The approach using the mono regulator is also to problem-solve to improve safety. This is a true..."

1158

**THE COMMISSION:**

You need not read that Mr Firmin, thank you.

**5 EXAMINATION CONTINUES: MS MCDONALD**

Q. Thank you Mr Firmin. And in relation to your briefs of evidence can I get you to confirm that your third brief of evidence, which is number DOL7770010008, is – you've got a copy of that there. Can you confirm that that is your brief of evidence? You have signed it, dated the  
10 14<sup>th</sup> of July 2011?

A. Yes.

Q. And the purpose of that brief, which I won't ask you to read, but if you could confirm that that provides information to the Commission in relation to certain accident notifications to the Department of Labour that  
15 were referred to in Dr Elder's evidence?

A. Yes.

Q. Now just a couple of other brief matters. You will recall the evidence given by Mr Hughes last week?

A. Yes.

20 Q. And you will recall in particular in relation to a paragraph in his brief of evidence, I think it was paragraph 33(b) from memory, where he made mention of the fact that you are the person referred to in that paragraph although you're not named in relation to an appointment to a coal mine inspector's position?

25 A. Yes.

Q. Who interviewed you for the coal miner's inspector's position?

A. For the coal mines inspector's position I was interviewed by Robin Hughes. At the time I think he was Chief Inspector of Coal Mines, and Andrew Ready, and I think there was a person probably from  
30 human resources. I'm not sure who that person was.

Q. And Mr Hughes gave evidence that he was not part of that interview panel for your appointment of the position of coal miners inspector. And

just to be clear, did you at any stage apply for a position and were interviewed for a quarry inspector position?

A. Yes I was interviewed for the inspector of quarries. That would have been about three and a half years earlier in June 1995. At that interview  
5 was the Chief Inspector of Mines, Ron King, and the manager of the South Island Rob Storey, and a member from industry who retired. I don't know his name.

Q. And just so it's absolutely clear. There were two positions, quarry miners and coal mine inspector?

10 A. Yes. I think there the quarry position was 1995 and I'm pretty sure the coal mines inspector was 1999.

Q. And Mr Hughes was on the interview panel you've said for the coal mines?

A. Coal mines inspector's job.

15

**MS McDONALD:**

Sir, I've touched on matters that related to a paragraph in Mr Hughes' brief of evidence that are subject to the suppression order. I did that sort of without thinking, although I don't think the matters that I've covered necessarily  
20 transgress the issues that were raised in those paragraphs so I didn't –

**THE COMMISSION:**

Well it just raises the status. It was an interim order that was made. Are you wanting it maintained or?

25

**MS McDONALD:**

Not in relation to that particular paragraph that relates to Mr Firmin, certainly not sir.

**EXAMINATION CONTINUES: MS MCDONALD:**

30 Q. Now the other matter, just for completeness Mr Firmin, can you confirm that while I think it's the case that you have visited the Pike River Mine

you were not the inspector responsible for inspections at Pike River. Is that right?

A. Yes. I remember about the time of the accident I think I would have finished doing the inspections about May or June 2008.

5 Q. And Mr Poynter took over?

A. Mr Poynter was the Inspector of Coal Mines for the coal mine.

**CROSS-EXAMINATION: MR WILDING**

10 Q. Mr Firmin, just to follow on question in relation to your interview for the position of a quarry inspector, who do you say the Chief Inspector of Mines was at that time in 1995?

A. That was Ron King, yeah.

1203

Q. So to the extent to which Mr Hughes might say that he was the Chief Inspector of Mines in that period, do you say that he's wrong?

15 A. No, in those days we had Chief Inspector of Mines, Chief Inspector of Coal Mines and in 1995 I'm not sure who was the Chief Inspector of Coal Mines, could've been Ron, probably was.

20 Q. Could I just turn to the mines inspectors and their place within the department and their number? Am I correct in understanding that the mines inspectors don't form a separate division within the department?

A. That's true, yeah.

Q. And that at the moment you're the sole mines inspector?

A. That's true, yep.

25 Q. And we've heard that Mr Poynter, a former mines inspector has recently left?

A. Yeah.

Q. Presumably he left voluntarily, did he?

A. Yes, I think an opportunity came up and he took it.

Q. Do you know when he gave his notice?

30 A. I think he's been, he's left about two weeks ago and he gave a month's notice as far as I know, just as far as I know.

Q. Do you know what the department's doing about trying to find a replacement for him?

5 A. Yes, they've already advertised. I think that closed quite recently, the Friday or something like that. It was a bit of a, they did do a good job and they were trying to find a replacement quickly or they're going through that process. They haven't got anybody yet.

10 Q. You've referred in your evidence to the role of a mines inspector in relation to inspecting mines. Do you have responsibility under other legislation, for example Hazardous Substances and New Organisms Act?

A. Yeah, I'm a health – I'm a warranted Hazardous Substances and New Organisms inspector.

Q. Are you briefly able to outline what that involves?

15 A. Well in compliance with the, the HASNO Act of the regulations. If we go on site we can look at the hazardous substances under the HSE Act but we can also look at it under the requirements of the other legislation, that's the Hazardous Substances and New Organisms Act.

20 Q. When you say you can go on site, is that limited to the types of operations that you have responsibility for as a mines inspector, in other words mines, quarries and tunnels or does it include other types of operations?

25 A. The warrants are actually open now. I think is that what you mean? So we can go anywhere. The letter of appointment I think that's more in relation of what you can visit, you can inspect so it might restrict other people from going to those places.

Q. So your hazard substances role is broader than just inspecting mines, quarries and tunnels?

A. I guess so, yeah.

30 Q. You've referred to the different regions that you and Mr Poynter, when he was there, were responsible for. Are you responsible for all of the different types of extractives operations that occur within your region?

A. Yes, I sometimes hear that we are coal mines inspectors but, no we have the duties of mines and that's hard rock mines, underground and

open cut and simply with coal mines and open cut tunnel, tunnel operations and quarries. Quarries are the biggest part of that.

Q. Are you able to say how many operations fall within the region for which you are responsible?

5 A. I think I had something like at least 240 quarries, some of them are real small ones which I haven't counted, one hard rock underground mine, one hard rock open cut mine, about three alluvial mines. They start and stop and five open cast coal mines, that's in my area but we're also responsible for the area in the North Island in relation to whatever we're  
10 asked to go to so we tend to just to focus on the hard rock mines and underground mines and the tunnels, the high risk ones are in the North Island.

1208

Q. When you say you're also responsible in relation to the North Island  
15 does that mean that part of your duties include conducting inspections or responding to incidents in relation to extractives operations in the North Island?

A. Yes, that's true.

Q. And is that a responsibility that when Mr Poynter was there was shared  
20 with him?

A. That's right, yes.

Q. Are you able to say how many operations there are in the North Island  
of all types?

A. Well, I think we just concentrated on the high risk ones, so there was  
25 one underground coal mine, there was two underground hard rock mines and I'm not sure, I think there was four or five open cut coal mines, tunnels vary, especially round Auckland, there may be three, four tunnels operating at one time.

Q. How many quarries were there?

30 A. We didn't really get into the quarries but quarries tend to be associated with people so the more population the more number of quarries. I think the total number of quarries in New Zealand is something like 1000.

Q. Is anyone at the moment inspecting quarries in the North Island?

- 5 A. There wasn't anybody for ages or as people left but at the last Mining Steering Group meeting we asked, we ran a training course, we weren't that, it was a response because they weren't getting visited, the general workplace people would do that and so we ran a training course over three days and I think the project was to last for at least a year. It wasn't going to be an ongoing project as far as I knew, perhaps two years, I had heard that it might be canned for this year.
- Q. Just turning to Mr Poynter, are you able to say how many operations there are in the region for which he was responsible?
- 10 A. I think a similar number to mine, to me but he had more underground coal mines and more open cut coal mines. In that particular area there would be a higher number of medium to moderate risk operations but a lower number of low risk operations.
- Q. Is there a plan for how the work that Mr Poynter was responsible for is going to be undertaken while a replacement is being found?
- 15 A. I guess that's yet to be formulated.
- Q. But does that mean at the moment that you potentially have to respond to matters right across New Zealand?
- A. Yes in terms of some of the work, if it was at a mine, open cut mine and it was a vehicle accident, then perhaps with discussions we could let someone else do that which has already happened, but generally, you know, if there was an underground situation, yes, it would be me.
- 20 Q. Just turning to a slightly different topic. I think that you've been present yesterday and last week and you would've heard some evidence given about the salaries and the impact of salaries in relation to mines inspection. Without telling me what your exact salary is are you able to give an indication of the range of salary of a mines inspector?
- 25 A. The health and safety inspector range is something like \$50,000 something to \$76,000.
- 30 Q. Are you able to say how that compares to the range of salaries of someone in the mining industry who has a comparable level of skill and experience?
- A. You mean as an inspector or something?

Q. Well, if an inspector was employed in the mining industry so not as inspector but in a position appropriate to his or her qualifications and expertise, do you know how much that person might get?

5 A. We've heard a few salaries in Queensland and New South Wales, Western Australia, seen some of their salaries, the Northern Territory and those states I think are slightly less or less.

1213

10 Q. But you don't know, for example, how much someone with the qualifications and experience for mines inspector might get if they were employed by a mining company to do a specific job?

A. As a manager?

Q. As a manager for example.

A. Okay, no I'm not sure of the exact (inaudible 12:13:22)

Q. And to whom do the mines inspectors report?

15 A. Well we were, until very recently, we reported to our team leader in the local office, in the regional office but as a result of that internal review we've now started to report to a senior high hazards person, who we've just employed.

20 Q. And when you say, "In the regional office," that means you and Mr Poynter would've reported to different people?

A. Yes.

Q. And did the people to whom you reported have mines expertise?

A. No.

25 Q. And you say that's changed as a result of the recent review and that's the review that we've heard evidence about by Professor Gunningham and Dr Neal?

A. Yes, that's true.

Q. And so now you report to who is it?

30 A. John Kay, he's based in Christchurch I think and does some work up, and time in Wellington head office.

Q. And what's his job title?

A. I think it's senior high hazards advisor. I think he's taken over the job from John Kay, sorry, from Johan Booyse.

Q. When did Johan Booyse leave?

A. About, I'm not too sure, around Christmas time, February or...

Q. When was Mr Kay appointed?

5 A. I'm not too sure either actually, quite recently, maybe two months ago, something...

Q. Does he have specialist mining knowledge?

10 A. He doesn't have a first class ticket. I'm not sure if he's worked underground. I don't think he's worked underground in that capacity but he's worked for Solid Energy and I think he's worked at some mining companies in Australia as some sort of, as a health and safety management role, I'm not exactly sure of his CV.

Q. I presume we can obtain it if need be. If I could just turn to the issue of budgets, and I'll touch on this a couple of times today. But first is, is there a budget for mines inspectors?

15 A. I wouldn't know sorry, yes.

Q. Do mines inspectors have a budget that they can use or that they have to operate within?

A. No, everything is controlled by the team leader or the manager in the office, they hold the budget.

20 Q. And that's a matter outside your knowledge?

A. Yeah, although that's changed now with John Kay, he'd probably have a budget.

25 Q. Could I just turn to other types of inspectors within the department. What are the other types of inspectors who would be involved in inspecting the extractives industry?

30 A. I think they were drawn, they were selected by their managers in each regional office and the people who they thought were suitable were asked to go on a course and they ranged, I think, from a variety of backgrounds. Some of them had been there for a reasonable amount of time, reasonable experience, some reasonably new, some were construction, some were general workplace.

Q. But in terms of inspections of the extractive industry, so let's define matters, underground coalmining, opencast coalmining, tunnels and quarries, that's done at the moment by you?

A. Yes.

5 Q. And part of that would normally be done by quarries inspectors as well?

A. Yes, we used to have quarries inspectors, they would do the quarries.

Q. When did you last have a quarries inspector within the department?

1218

10 A. Probably Alan Best. I'm not sure who was the last to leave. It would have been a few years ago, maybe five years ago.

Q. The department presumably has a range of other types of inspectors, for example, an electrical inspector?

A. We just appointed an electrical inspector yes.

15 Q. "Just appointed." Does that mean it's a new position or a position that had been unfilled?

A. I think it's a new position.

Q. Do you know if that person's role will include inspecting electrical parts of coal mines?

A. I believe it will, yes.

20 Q. When was that appointment made?

A. Probably only four or five months, I'm not sure, yeah.

Q. Who's the person who has been appointed?

A. Jerry Ryan.

25 Q. Have you spoken with Mr Ryan about whether he'll inspect electrical components of coal mines?

A. Yes. He phoned me and organised some – we had some training together. And there was an issue on standards, electrical standards, so he's getting to grip with how electricity works in mines. Hasn't been down a mine yet, but yeah.

30 Q. Are you able to say how his inspections will work be performed?

A. Not really. I get the impression he's going to try and work with the extractive industries. I'm not sure of the exact role.

Q. And there's one electrical inspector, is that right?

- 5 A. I guess so. That could be a guy in Hamilton that was an electrician. He does give advice on electricity and probably does respond to those sorts of things. But I think we do have contractors available as well that we, if we want to bring them in for an accident we got a contractor in the local office.
- Q. Have you ever been involved in doing an inspection of the mine or a mine at the same time as an electrical inspector?
- 10 A. Yeah, we used to have the services of the energy safety service and they would come around and help us do the inspection. They would do the electrical part of the inspection of the mines.
- Q. That electrical safety service was of the Ministry of Commerce and then MED?
- A. Yeah.
- Q. And that's transitioned has it through to the Department of Labour?
- 15 A. It was an agreement where they decided that they would be totally separate and not assist us.
- Q. And the department presumably has mechanical inspectors, so inspectors who look at mechanical issues?
- A. No, we don't have anyone.
- 20 Q. Do you know if it's got inspectors who look at workplace fatigue?
- A. Yes we would have similar people that tend to rest - to focus on those health issues, but of course we all do that as well as general workplace, yeah.
- Q. To your knowledge, have they ever been involved in inspecting the issue of workplace fatigue within an underground coal mine?
- 25 A. No I don't think so.
- Q. And are there inspectors who deal with, for example, ergonomics?
- A. We would all deal with ergonomics, but I guess some people tend to specialise in that area. But we've also got the facility in most offices of a doctor, a departmental medical practitioner you could for advice on those sorts of things.
- 30 Q. That person's not involved in conducting inspections but rather giving advice to the inspectors?

A. Yes. If you wanted to, you could ask them to come with you, you know, had an issue to the...

1223

5 Q. I presume that hasn't happened though insofar as underground coalmining is concerned?

A. There's no reason I couldn't, I have used the DMP at the open cut mine where I am, but there's no reason why if there was an issue we couldn't take somebody from the local office to the coal mine.

Q. And DMP?

10 A. I think its Departmental Medical Practitioner, it's a position under the Health and Safety in Employment Act.

Q. Do you think there'd be benefits in some of these other inspectors, for example, an electrical inspector inspecting the electrical components of a coal mine at the same time as you do?

15 A. I think it's a bit too specialised. I think you would need training, what I can understand, the little bit of training that I've had, it's quite different from the electrical reticulation for outside, not for – in areas not considered coal mines.

20 Q. I'm dealing with a slightly different issue which is whether you think it would be useful for there to be joint inspections so involving both you and for example an electrical inspector together attending a mine, to conducting an inspection?

A. If it's an open cut mine, yes, or I think the underground you'd have to get someone that had more knowledge than an inspector would have in the  
25 Electricity Act type qualifications.

Q. So even if an electrical inspector was going to accompany you underground you think that that electrical inspector would need some specialised knowledge related to the mining industry?

A. For underground coal, yes.

30 Q. Why do you say that?

A. I'm not an electrical engineer but the way that the electricity is reticulated is quite different and the flame-proofing et cetera, it would be totally new to an electrician I think.

Q. Right. Just turning to a couple of other positions or groups. We've talked about the senior advisor, high hazards, what's his role?

5 A. Well, he was an advisor that or the position was an advisor I think to the managers and to us and he was to work, or they were to work with all these industry bodies or around mining, considered mining work.

Q. That was based in Wellington?

A. That was based in Wellington.

Q. And I presume when it was Mr Booyse that he wouldn't have conducted inspections?

10 A. No, he started to become an inspector and then he said he didn't want to do it anymore.

Q. And do you know whether Mr Kay will be involved in conducting inspections?

A. No I don't know, I don't think so.

15 Q. And are you able to describe the nature of the relationship that there was between the mines inspectors and the senior advisor high hazard?

A. Well, Johan had a just purely advisory role and we would talk over things that we'd like to do but he had no budget, no authority. I think that frustrated him in his efforts to try and work with us within the  
20 industry.

Q. When you say things that you'd like to do, what sort of things?

A. Well, sometimes we talked about the Minex guidelines, getting together and forming a joint response to those rather than me just commenting, as an individual it wasn't quite seen right for the department so if we got  
25 together as inspectors and thought this is what we think, perhaps we should give this to Minex, well there was no budget for that, there was no time restraints and what was really required of us was to do the inspections so if he'd been in charge of us then he could've said, "Right, you guys, we'll meet next week and we'll do this."

30 1228

Q. So you wouldn't turn to him for example for specialist underground coal mine advice?

- 5 A. Yes, he had a first class ticket, he worked in mines as manager all over in South Africa. He was hard rock but where he worked it was Alluvial, it was Alluvial gold which had been buried. And above that was a carboniferous layer and he said it was full of methane so he had that background, even though it was in gold.
- Q. Now we heard yesterday about the Mine Steering Group briefly, and you're a member of that?
- A. Yes.
- Q. Are you able to explain why that was formed?
- 10 A. I think it was rumoured at the time of the two fatalities on the West Coast and I think that the manager there, the regional manager, decided it would be a good idea to get us guys together and see if we could sort out any issues because there seemed to be issues in terms of inspections or whatever, so yes.
- 15 Q. I'd like you to turn please to a document DOL0020020011/1, and this should come up on the screen before you. Now we don't have a formal document setting out the role and purpose of the Mine Steering Group but could you please just look at those five bullet points under the heading, "Role," and confirm whether that accurately sets out the role of
- 20 the Mine Steering Group?
- A. Yes, it looks right.
- Q. And how often does that meet?
- A. The plan was, I think, three months, every three months.
- Q. When you say, "The plan?"
- 25 A. It didn't always happen.
- Q. Were written minutes always taken of the meetings?
- A. I think so, yes.
- Q. So there should be written minutes going back to about 2006/2007?
- A. Yes, something like that.
- 30 Q. And are those written minutes circulated to each of the members?
- A. Yes, think so.
- Q. So each member should have a copy of them?
- A. Yes, I guess so.

- Q. And presumably the written minutes would also be stored electronically by the department?
- A. Could be, yes, they should be somewhere. I'm not sure if anyone was really responsible for, I guess someone would've taken over his files.
- 5 Q. Aside from the members of the Mining Steering Group do you know who else the minutes are circulated to?
- A. No, we basically just go through the minutes, have our meeting and any issues taken from that, hopefully to other people, but who actually gets a copy of the minutes, no I don't know.
- 10 Q. There's no formal document that you're aware of which sets out which people, positions in the department should receive a copy?
- A. No.
- Q. Does the Mine Steering Group have a budget?
- A. No, well not as far as I know.
- 15 Q. Is the lack of a budget an issue which has been raised by it?
- A. No I think that the expenses are basically in travelling to get to the meeting and the managers at the office had agreed to let people go to those meetings so it was taken out of the general budget to go to these meetings.
- 20 Q. But I take it if it identifies a need, for example, for training it doesn't have a specific budget which –
- A. No.
- Q. – it can then apply towards that purpose?
- A. Not as far as I know, no.
- 25 Q. If the Mine Steering Group has issues that it wishes to raise at a level higher than it with whom or with which group does it raise those?
- A. Again I don't know. I guess it would depend on that particular issue. I can remember for the third inspector I think that one of the service managers was going to take that to a group, the Westmark Group I think it's called, WSMT Group.
- 30 Q. We might turn to that later on but WSMT, do you know what that stands for?
- A. Strategic Management Team, the W, I'm not sure what the W is, yes.

1233

Q. When you said, "It depends on the type of issue," for example, if the Mine Steering Group had concerns about the regulatory framework, so about the law and regulations and codes of practice, do you know with whom it would raise those?

5

A. No, I think the actual process would be perhaps depend on what we, decide that we would take that to. Shall we give this to policy or shall we take it up you know, it will probably just be discussed there. I don't know the formal process.

10 Q. Do you know whether the Mine Steering Group has ever raised issues in relation to the regulatory framework?

A. I'm not sure on that. I know we discussed it. Johan wanted to get it changed.

15 Q. Have you or can you recall whether other mines inspectors, so inspectors rather than the Mine Steering Group have ever raised issues in relation to the regulatory framework?

A. There's been quite a few things in the regulatory framework that we've wanted to, to have addressed over the years.

Q. Without going into detail at this stage are you able just to list those?

20 A. Well I remember there was the, there was the exemption in the 1995 Regs for rollover protective structures. They wanted that exemption removed from the mines inquiries. There was the business about coal mines inspector – coal mines manager for a small mine which was changed. You could be a deputy and then you'd need to be an underviewer to manage a mine. I can't think of any others at the moment.

25

Q. Can you just explain what the exemption was to which you're referring?

30 A. Well when I joined the department at the Ministry of Commerce in 1995 they were drawing up the regulations for mining for the extractive industries, surface regulations, surface mines and underground mines so when the 1995 regulations came out there was an exemption put in there because they knew that the mining regulations would deal with

that issue then the mining regulations never came into being. This is for surface operations.

Q. And what was the particular exemption?

A. Rollover protective structures on mobile plant.

5 Q. There's an exemption saying that in certain circumstances or for certain operations they weren't required?

A. I think it's had the required, there was a requirement and they said except mines and quarries, straight exemption.

10 Q. Could I just ask you some questions about external relations? If mines inspectors have concerns that are relevant to the role of another regulatory agency, for example Crown Minerals or the Department of Conservation, do they notify that department or agency?

A. Repeat the question?

15 Q. Well if as a mines inspector there was a concern that you might have which would be relevant to the role of another regulatory agency so for example Ministry of Economic Development, Crown Minerals or the Department of Conservation, would you notify it of that issue?

A. Yeah, I think we have to, yeah.

Q. Has that ever been done to your knowledge?

20 A. I think the one we often get into is we have to notify that local authority sometimes if we come across anything that might not comply with the building code that sort of thing but not, not so much in Crown Minerals or Department of Conservation, no.

Q. Have you notified the building authority of any concerns?

25 A. Not myself, no.

Q. Do you know whether there's a written policy that deals with notification of concerns to other regulatory agencies?

A. I think there is, yeah.

Q. Is that something that you've seen?

30 A. No, just that I've heard about. There's quite a few policies but it would be there for me to look at it if I came across something that I was concerned about or, I'd ask other people.

Q. Are you aware of whether any other regulatory agency has ever raised health and safety concerns in underground mining with the Department of Labour?

5 A. We've worked with DOC on a couple I think. Yeah, Lands and Survey, there was an issue there a while back.

1238

Q. Well do you know whether any regulatory agency including the Department of Conservation has ever drawn a health and safety-related issue to your attention or that of another mines inspector?

10 A. Probably not, no.

Q. Have you been given training by the department about the role of other regulatory agencies, for example, the Department of Conservation and the Ministry of Economic Development?

A. No.

15 Q. So would you know whether you have information that might be relevant to their roles?

A. I think just a common sense approach really. If you thought that there was something that might be relevant to them, then you would bring that up.

20 Q. Do you know whether in a mines inspection level, there has ever been an attempt to form an operational link with other regulatory agencies?

A. Yes I think that was one of the things we brought up at the Mining Steering Group quite often, especially Crown Minerals because of their work plan.

25 Q. Can you just explain what was done in that regard?

A. It was brought up a few times at the meetings but I think the last time it was brought up was Johan was going to work with Crown Minerals to try and get in their work plan a lot more information in relation to the mining aspects, which they probably had the power to do under the Crown Minerals Act, so...

30

Q. When say, "in their work plan a lot more information in relation to mining," are you able to expand that for us?

- A. Well for a licence or a permit I think every year they have to submit a work plan to the Ministry of Commerce. So we were hoping to form some sort of relationship with Crown Minerals to get that work plan to include some of the development work in some sort of detail so we could get that for us to look at for design, et cetera of mines or what they were going to do for that next year even if it was an operating mine.
- 5
- Q. So what were you hoping to do if you received that information?
- A. Well it would allude us to any problems, it could do.
- Q. And has that link been established yet?
- 10 A. No, I think Johan was working with that.
- Q. Do you know if that's an issue that Mr Kay is going to continue to try and progress?
- A. I don't know, but I would presume that he would, yeah. I don't know.
- Q. Do you have operational links with the Mines Rescue Trust?
- 15 A. Operational links. What do you mean by that?
- Q. Well, do you have a working relationship with the Mines Rescue Trust?
- A. Not as such, no, but I mean as inspectors I try and go to Mines Rescue, you know, to talk to them and keep in with them because they are a good source of knowledge, yeah.
- 20 Q. How often would you have communication with the Mines Rescue Trust?
- A. The trust or the Mines Rescue office?
- Q. Well, either?
- A. Either. I would say at least once a year, maybe a couple of times a year. I try and go - every visit I'd try and get to - in Huntly I'll try and get to the Mines Rescue, but there's been so much pressure that's one of the ones I tend to leave off. The new guy up there I haven't, I just met, and he's probably been there 18 months.
- 25
- Q. And when you say you try to get to Mines Rescue, where do you mean?
- 30 A. I usually pop into the office and say hello.
- Q. So where is their office?
- A. There's one in Huntly and there's one on the West Coast.

Q. Do you know whether the department has any memorandum of understanding or any other document with Mines Rescue dealing with how they interact in the event of an emergency?

5 A. No, I think that was one thing that Kevin actually brought up recently, that we really need to do a whole management process around that. That was before Pike.

Q. Are you able to say whether there's been any meeting or joint training between the mines inspectors on the one hand and mines rescue on the other hand, as to how to deal with an emergency?

10 A. No, I don't, I'm not aware of any of that training.

Q. What about the police, do you know if there's any memorandum or other document that deals with how the police and the department will interact in the event of an emergency?

A. No, I don't know of any document.

15 Q. I just want to talk briefly about how employees and representatives can raise concerns with the mines inspector and obviously they can raise concerns when they see you going about your inspections. Are they able to raise concerns anonymously?

A. Yes.

20 Q. Does the department have phone numbers that are published that are available to people to ring if they have concerns about health and safety?

A. I guess, in the phone book, you know, where else you might see the number I wouldn't know, I think probably about the only place really.

25 Q. Right, so for example, the department wouldn't have you give out pamphlets to people at mines saying if you've got a health and safety concern just ring us on this number?

A. No.

30 Q. Putting to one side the issue of form enforcement action including considering whether or not to issue improvement or prohibition notices, when concerns are raised by employees at a mine how are they followed up?

A. Raised as a complaint?

Q. Yes, if they raise a concern?

A. Complaints, perhaps if I deal with that, if it would be a formal complaint well then we would go on site generally to investigate that complaint. Sometimes people might just give you, no, I don't want this as a  
5 complaint but can you look at such and such, you know, so they don't want it to the same level.

Q. Have any employees or health and safety representatives, to your knowledge, rung the mines inspectors and made a complaint?

A. Could you repeat that one, did you want specifically health and safety  
10 reps or?

Q. Well, no, I'll deal with it in two parts. To your knowledge have any employees at an underground coal mine ever rung the mines inspectors to say that they have a complaint or concern about health and safety?

A. To my knowledge no, I don't think I have had any from an underground  
15 coal mine.

Q. Has any health and safety representative to your knowledge from an underground coal mine rung and raised a concern?

A. Underground coal mine?

Q. Yes.

20 A. No.

Q. Now, the department gathers statistics in relation to health and safety in underground coal mines, is that correct?

A. They would probably, which statistics do you mean, fatalities or?

Q. Well, what statistics does it gather?

25 A. Okay, then the other part is the requirement under the Regs for an accident register to be sent through every six months.

1248

Q. That's the accident notifications required by section 25 or is it of the Health and Safety in Employment Act ?

30 A. Yes, I think so.

Q. Could I just take you to part of the Mine Steering Group Committee minutes of 10 July 2009. I apologise, it's quite small on screen. There's a heading down the bottom of the page, which is five of eight, headed,

“Notifications.” So it’s the page on the left-hand side of the screen, it’s now been highlighted. First sentence, “Douglas Lynn has finished the final plan for notifications in the mining sector.” Are you able to say what’s meant by, “Notifications?”

5 A. In the past what’s happened is if there was an accident the mine would normally just notify the inspector but that was not how the system worked for the rest of the Department of Labour. So they wanted to bring us in line with the rest of the Department of Labour so if you had notified of an accident you’d ring the 0800 number, I guess complaints  
10 too.

Q. So does that mean that people used to notify accidents directly to you but now they’re going to notify them through the 0800 number?

A. Yes, but what happened in practice was they tended to do both or everything they tended to air to us we kept telling them, “No, you have  
15 to go back to the 0800 number.”

Q. And has that plan now been implemented?

A. Yes.

Q. And presumably it’s in writing so a copy will be available somewhere?

A. Yes, yes.

20 Q. Then says KP, which I presume is a reference to Kevin Poynter, is that right?

A. Yes.

Q. Mentioned a problem that accidents that are not given to health and safety inspector (extractives) may not be: and if you could just read paragraphs 1 through to 4 to yourself. Would it be fair to say that the  
25 upshot of the issue that Mr Poynter was raising was that the recorded statistics might not be accurate for the reasons articulated there?

A. Yes, the danger is because the person is not from a mining background as well that they may not recognise that some of these things that  
30 required under notifications that related just to mining, in other words not serious harm, but that was a matter of training I think so that the managed to work through those issues.

Q. Because the importance of that is identified in the third paragraph down where it says, "JB, and I presume that's Johan Booyse, said that it was important to get this information as it can be used in the accident prevention targeting." And so has that issue now been resolved?

5 A. Well it was largely training in the sense that the people at the 0800 number had to make sure they recorded that information properly and then we could use it. Whether we're using it or not that was something that Johan was going to work on.

1253

10 Q. Well as to the first, do you know whether there's been any review as to whether or not those 0800 people have correctly identified the data?

A. I think generally it's been okay because what tends to happen is they do both, the mines are doing both they tend to give it to us so we wait for the 0800 number to come through so if there was any problems we'd try to sort them out.

15

Q. But to the extent to which people might not do both, ie might not ring you also then that may still be an issue?

A. Yeah, I guess it could.

20

Q. And as to the second matter that you said Mr Booyse was looking at, are those accident statistics ever analysed to see whether there was a pattern of accidents in relation to a particular style of mining?

A. Not as far as I know, we didn't do any of that work.

Q. And so presumably it's not analysed either to see whether there's a pattern of accidents at a particular mine?

25

A. There's usually not enough to get a pattern but if there was quite a few accidents coming from a particular mine then the inspector would probably pick that up I think.

30

Q. We might talk in a bit more detail later about accident notification. Could I just turn to whether and, if so, how the department reviews its mine inspection function. Putting to one side the review that's occurred post Pike River, do you know whether the department has a formal process for reviewing the mines inspection function?

A. No, I don't know. It was in the past was left to the senior advisor to come up with an action plan and our action plan stayed the same basically for the last five years or so.

5 Q. You joined in 1995. Since that time has there been a review of the mines inspection function?

A. I guess we better say 1998 for DOL, since 1998 there was a review I think when we first came over in the first year they sort of got us together and said you know, "How's it all going?" and that was the last I think.

10 Q. That was just after the transition of the –

A. Yeah.

Q. – mines inspectorate group. Was that a formal review?

A. George Munroe run it. I guess he did. It was just basically you know how we're fitting into the office that was about all it was really I think so,  
15 yeah.

Q. Does the department have a system for reviewing its own mines inspection performance when there's a serious injury or fatality in a mine?

A. We review our performance?

20 Q. Mmm.

A. No, I don't think we would, not formally anyway. We'd certainly do it informally.

Q. Does it have a system for reviewing its mines inspection performance when there's a criticism of that function made by for example the coroner or the Courts?  
25

A. I'm sure there is, yeah. That would probably go to the people who deal with that sort of thing and get back to us as it, you know. The department would have some sort of procedure I would think for that. I'm not aware of –

30 Q. So when you say "am not aware of it," it's not a review process that you've been involved in?

A. No.

1258

- Q. Could I just turn to another Mine Steering Group minute and this is ND12 please? Now this is part of the minutes of 31 March 2010, and you'll see that half way down and if we could at least highlight that. There's a statement, "Dave Bellitt gave a presentation in his findings and learning from the Black Reef Mine investigation." Who is Mr Bellett?
- 5
- A. He's a health and safety inspector in the Christchurch office.
- Q. With responsibility for the extractives industry?
- A. Well, with the fatality at Black Reef I think the inspector was taken off that case and Dave Bellitt was seen as a really good investigator and given that responsibility.
- 10
- Q. So he's not someone with mining specific expertise?
- A. No. More investigation skills.
- Q. And that Black Reef tragedy happened in 2006?
- 15
- A. I think so, yeah.
- Q. And is this the first presentation that to your knowledge, was given to the mines inspectors about that?
- A. I think it was kind of like a final sign-off, you know. We'd gone through the Black Reef investigation quite comprehensively and at various stages we would have been given information about that and reports. So this was sort of the final one where he said, "Right that's it, this is what I've learnt and this is what I had to go – went through with the investigation."
- 20
- Q. Early in 2010 though had there been a review of the mines inspection function in relation to or as a result of Black Reef?
- 25
- A. This is the one that we've referred to a few times with the – what we asked industry is it, the review? Yeah.
- Q. Right. But as a result of that and prior to 2010 was there a review by the department about the performance of its inspection function?
- 30
- A. Oh, no I don't think so.

**THE COMMISSION ADJOURNS: 1.02 PM**

**COMMISSION RESUMES: 1.59 PM****CROSS-EXAMINATION CONTINUES: MR WILDING**

- 5 Q. We seem to be missing the screen which is unfortunate because I was just referring to part of it, but we'll continue anyway. For the record we were on summation document number DOL0020020011/12.

**THE COMMISSION:**

Ms Basher has just emerged.

**CROSS-EXAMINATION CONTINUES: MR WILDING**

- 10 Q. And just while that's – there we are. Thank you Ms Basher. This is an extract of the Mines Steering Group minutes which refer to the Black Reef Mine investigation. In the first bullet point down it says, "Dave," being Mr Bellett we assume, "identified inconsistencies and holes in current processes and discussions ensued." Are you able to
- 15 recall what those inconsistencies and holes were?
- A. I'm sorry I can't remember, no.
- Q. He also refers to highlighting process inadequacies. Are you able to recall what they were?
- A. No I'm sorry.
- 20 Q. Mr Firmin, just the fourth bullet point down, noted that file notes regarding inspectors' visits essential. Was there some sort of an issue about whether or not satisfactory notes were being taken by the inspectors at the time of the Black Reef incident?
- A. I think so. I know I'd been there about eight months before and my file
- 25 notes were, what I did wasn't the best really. I need to improve those.
- Q. How do you take file notes?
- A. I find that everyone's got their own way of doing that. I just have a little notebook and scribble down some jotter points and then when I go back after the inspection I write them out fully then as contemporaneous
- 30 notes, writing down as people are talking to me as I'm going around.

1403

- Q. I'm going to take you to a document DOL0020020011/6. This, I think, is an extract from the minutes of 13 September 2010. And under the heading, "General," the third bullet point down is "Johan raised the issue of real-time check sheets and it will require plus minus \$10,000 for a real-time check sheet." I'm just wondering if check sheets are the sorts of things on which notes might be taken. Can you recall what they are?
- 5
- A. No, honestly I can't, I'm not sure what that one was about either.
- Q. There's a reference right above it, "The quarry check sheet was discussed and Clive mentioned that this sheet is to be used for a year before any changes will be made."
- 10
- A. Oh okay.
- Q. Does that perhaps help?
- A. Yes, perhaps that's what it is, yes.
- Q. What's the quarry check sheet?
- 15
- A. It's quite a good little check sheet that I think the Waikato office developed and it's got, the first page is a whole lot of areas of the mine and you tick off whether they've got that or not. And then the next sheet is questions relating to their hazard management and different aspects around the mine and I've put up what sort of score they got. And I think there's a final page which I'm not sure what that relates to, but yes that could be that he's talking about there.
- 20
- Q. And is that specific to quarries is it?
- A. It was. Because we weren't getting round the quarries and they'd given us the general workplace guise for at least one year, maybe two we, they decided they'd use that check sheet and do as many, I think we all had to do 10 audits each, including me and Kevin. And, yes, it was just for quarries although Kevin tried it on a couple of open cast mines as well and it was quite good he said.
- 25
- Q. If I could just take you to another document DOL0020020012/1. This may or may not be the document to which you referred?
- 30
- A. Yes, that's part of it. That's the second page, if you like.
- Q. So we might be able to get both pages on screen. So that's the document to which you refer headed, "Workplace assessment?"

A. Yes, there is actually another page with a little tick box, there's about 50 of them you have to tick and this one gives you a score and this one's graphed, yes.

5 Q. The department can no doubt supply that. And they're used in quarrying but they're not used in underground coalmining?

A. No.

1406

Q. No. And is the department developing a check sheet or its equivalent for use in underground coalmining?

10 A. Not that I know of, no, you've got to almost, you know, that was one of the things Kevin and I were talking about, perhaps getting something similar for the open cut mines, that would fit quite easily and then perhaps the underground.

15 Q. If I could just turn to the issue of training of mines inspectors and we have written material as to certain requirements, so I needn't cover that but do you know whether there's initial training required by the department when an underground mines inspector first joins?

20 A. Yes, the process in a sense for coalmining, you're basically deemed qualified or sufficiently trained for that but in terms of a health and safety inspector role is a general role and you go through that, it takes anywhere between 12 and 18 months usually.

Q. And during that training process are you also involved in conducting inspections?

25 A. I think that would be up to the service manager or your team leader to see that you do that or not.

Q. Without going into any detail are you able just to give us a flavour of the types of topics that that 12 to 18 month training covers?

30 A. I think there's basically three core modules, could be more now but the first one is sort of the Health and Safety Act I think and the interpretation of that, the next one I think is like Machine Guarding, the third one I think is Health and Hazardous Substances or Health, yes, I think that then is the HASNO, you have to do the HASNO training as well.

- Q. Does the department have any policy requiring that inspectors and coal mine inspectors in particular have ongoing professional development?
- A. No, it's hit and miss, whatever you can get.
- 5 Q. So does it require that inspectors have training overseas for example with particular inspectors in Australia?
- A. No, although if you push for it you can get it, I've just got it, got two days.
- Q. You've just got it?
- A. I just had two days a while back, yes, which took a wee while to get, 10
- 10 Q. Where was that?
- A. That was in New South Wales, a couple of coal mines, underground coal mines.
- Q. Was that last year, was it?
- 15 A. No, that was just recently, yes, perhaps training, just going around with another inspector.
- Q. Was that valuable?
- A. It was good.
- Q. Do you think that more training of that type would be useful?
- 20 A. Yes, it would be really good, especially audits, you know, we're not in the area of doing audits at the moment, we're looking at doing it, but to go round with another inspector that's doing an audit would be good value.
- Q. What do you mean by audit?
- 25 A. Well, you know those auditors that came over and audited the mines in New Zealand, a systematic audit, you know, a particular process or particular hazard, even using their own company's procedures to audit them.
- Q. Right, now they audited the four underground mines in New Zealand. Is
- 30 that right?
- A. Yes.
- Q. So for example, they included Roa and Spring Creek?
- A. Yes.

Q. And as I understand it those audits involved several people conducting a systematic audit over several days of the coal mines. Is that correct?

A. No, I think it was just two blokes in Queensland and I think probably only a day, I'm not sure how long they spent at each mine.

5 Q. Right and if we take for example, the Roa Mine would you be aware if they had first a one day familiarisation?

A. Yes, I think they did, yes.

Q. And then there was another day when they went back and conducted the audit?

10 A. Yes.

Q. And then there was more time in the office writing up the reports and that was a fairly comprehensive audit in the sense that it looked at the whole of the systems which the Roa Mine had in place. Is that right?

A. Yes, I think, you know, it was an assessment of the mine.

15 1411

Q. Whereas the way you conduct your inspections, it's really one inspector on one day. Is that right?

20 A. Yeah, I think inspections are important too you know as audits and I think that internal report basically said, "Okay well if you had a choice between the two you should really check the mine first rather than check systems."

Q. Are you able to say whether there are advantages to the types of audits that were conducted on those underground mines following the Pike River tragedy.

25 A. There were advantages?

Q. Whether there were advantages to that type of approach with several inspectors at a time compared to the single inspector approach?

30 A. It's one of the tools you know if you can audit, if you can inspect, if you can look at culture surveys things like that, all the different approaches that you can try and find out what's going on.

Q. If you can, does that mean that at the moment you're not in a position to do that?

- 5 A. Yes, I think we, well we talked about it at the Mine Steering Group meeting that perhaps Johan, Kevin and me would go out and do some audits but again we were, you know there was lack of funding and it was just something that we'd work on once we well could get some funding for that and put into the action plan for next year which we're hoping to get done.
- Q. I think the mining business plan for 2010 and 2011 refers to the aim to conduct a joint audit each year or a joint inspection each year and I'm presuming that that hasn't been put into place?
- 10 A. No, that plan was sort of only finished quite late in 2011.
- Q. Do you know when that plan was issued?
- A. It hasn't really been issued. I think it's really for next year. I think it's actually sort of drawn up during the year and really that plan I think is going to relate, would've related to 2012.
- 15 Q. We've rather diverted from the topic of training and if I can just go back to that briefly and ask for document number DOL0100010001/98 and this is part of the review of the Department of Labour's interactions with Pike River Coal Limited by Professor Gunningham and Dr Neal. If I could just ask you to read to yourself please the indented part of paragraph 346.
- 20 A. Yeah.
- Q. You're welcome to read it if you want to but I'm not going to ask you to but does that fairly describe your views in relation to training?
- A. Yes, I was a bit frustrated there at various times because I wanted a structured professional development rather than just a hit and miss sort of a thing and sometimes people's approach was that, well you know it's the employer's responsibility not yours to identify their own hazards et cetera. You just go and audit them.
- 25 Q. I take it from an earlier response that there's not yet a structured professional development policy in place?
- 30 A. No, no not that I know of.

Q. Just turning to issues of competence testing and critiquing. Are mines inspectors required to demonstrate their competence from time to time and have that reviewed by the department or anyone else?

5 A. I'm not sure what you mean. I guess at the end of the year when you have your review, or your six monthly review and a full yearly review, they have a whole lot of factors that they judge you, to see whether you have achieved or not achieved or exceeded and I guess if you weren't performing it would be noted there.

1416

10 Q. That performance review though isn't a review of the adequacy of the inspections carried out by an inspector?

A. No.

15 Q. Has the department to your knowledge carried out any review aside from post-Pike River as to the adequacy of the inspections carried out by the mines inspectors?

A. No, I wouldn't think so.

Q. And I take it you wouldn't have been involved then in following along another inspector for the purpose of critiquing that inspector's performance?

20 A. No.

Q. No. Could I ask us please to turn to document DOL0020020011/24. And if we could highlight the bottom paragraph, "Inspector's development," downwards. This is page 7 of what appear to be the minutes of the Mine Steering Group of 10 July 2009. And you'll see it describes some training that was to be recommended. First it says, "This had been discussed at the managers meeting on the previous day," presumably meaning training had been discussed. Where it says, "The managers meeting," which group is that?

25 A. That was the managers meeting that, the managers that met at the Mine Steering Group, they'd meet either the day before I think, yes, the day before.

30 Q. Are you involved in that?

A. No, the technical guys, that was Kevin, me and Johan, would meet and they would meet the day before to discuss what they had to discuss about how we worked.

5 Q. So the people at that meeting aren't people with specific mining expertise?

A. No.

Q. And where it says, "While the group would like to recommend a larger amount of training, four areas were to be recommended this year," the group referred to is that group who met the day before is it?

10 A. I suppose so. The group would like to recommend...

Q. Beg your pardon?

A. I'm just trying to read it. I'm not, it's a little bit vague isn't it. While the group would like to recommend a large amount of training, four areas. I'm not sure which group they're referring to, whether they referring to the Mine Steering Group or the previous day one.

15

1420

Q. And it says, "JB," presumably Johan Booyse down the bottom, "To look for opportunities for funding and for appropriate courses et cetera to increase inspectors' development ASAP." I presume it would be correct to infer from that that certainly to your knowledge there is not a budget for training of mines inspectors within the department?

20

A. Yeah, as far as I know.

Q. That was in 2009. I might not need to take you to the next minute in 2010 if you can answer me that. Was that still the case in 2010 that there wasn't a specific budget?

25

A. As far as I know there was no budget, yeah.

Q. And is there a budget now, to your knowledge?

A. Not to my knowledge, yeah. Could be.

Q. But not that you're aware of?

30

A. No. I haven't been told of any training.

Q. Could we please have documents DOL0020020011/16 and 17 please. If we could highlight the top paragraph under "Continuous Professional Development". It starts off by saying, "Mike presented information as

discussed at the CCIM regarding certificates of competence.” First, is the “Mike” a reference to you?

A. Yeah, I’d say so.

Q. And what’s CCIM?

5 A. That was the Conference of Chief Inspectors of Mines.

Q. Can you just describe what they are?

A. The Chief Inspectors of Mines in Australia and New Zealand and Papua New Guinea get together once a year and I must have gone to that meeting. That must have been what was in New Zealand. So they  
10 get together and they discuss the sort of issues that affect chief inspectors such as trying to get one legislation and national mines safety framework. A lot of its Australia stuff, but we're full members of – New Zealand’s a full member of that now.

Q. And does generally one inspector from New Zealand attend that each  
15 year?

A. Generally, yeah. I think this year because we ran it in Rotorua, I think the three of us went to help drive people around and stuff.

Q. But normally it would be just the one?

A. Yeah, just the one, the chief would go to that.

20 Q. It refers in the next sentence to COCs. What are they?

A. Certificates of Competence.

Q. And they are required for the mines inspector?

A. You are required to have your First Class Mine – well, it’s a  
25 recommendation to have a First Class Mine Manager’s Certificate. The newer ones I think – sorry, that’s right, was at the conference they talked about professional development for mine managers and I thought well it probably relates to inspectors as well, and they had to do so many hours of professional development each year.

Q. Do you know if there’s been a time when someone’s been an  
30 underground mine inspector and hasn’t had a First Class Certificate of Competence?

A. No, they've all had them I think except for, you know, in the sense that I think one guy didn't have a New Zealand one but he had a British one.

Q. Now just the final paragraph. "A plan needs to be developed for how (2/3) inspectors will be trained and supported in professional expertise in the next 18 months." Was that plan a plan for the training and support of underground mines inspectors?

5 A. Yeah, that was a proposal.

Q. Has a plan been developed?

A. No.

Q. Are you able to say why not? If you're not that's fine.

A. Yeah.

10 1425

Q. If we could turn to page 17, highlight the paragraph please, "Storage of Plans." I take it that the storage of plans refers to the storage of mine plans that are required to be sent into the department by mine operators?

15 A. Yes.

Q. And so that's an important matter?

A. Yes.

Q. And of course training is an important matter. The first sentence of the last paragraph reads, it's in relation to the debate about keeping mine plans and the costs of that, "Discussion around necessity and cost with value of this system and whether such money would be better used for professional development." Does that really illustrate the position that the mines inspectors were in of having to seek funding and balance it between two important matters, in that case development on the one hand and an appropriate system for storage of mine plans on the other?

20

25 A. Yes.

Q. Could I move on please to a different issue, which is the process of inspecting mines and you've already told us how you go about that but does the department have written procedures that are required to be followed when inspecting mines?

30

A. There'd be written procedures in relation to every work place, a general one.

Q. Right, so they're not specific to the underground coalmining?

A. No.

Q. More specific to the extractive sector?

A. Mmm.

Q. Is that an issue that's been considered to your knowledge?

5 A. No, no.

Q. If we could turn please to the same DOL reference but ending page 1, the third bullet pointed role, "For the Mines Steering Group is to be responsible for improving the consistency of approach by mines inspectors in relation to regulatory checks and visits." I suppose one way of improving consistency might be that joint visit to which you referred. Is that right?

10

A. It would be one way, yes, it could.

Q. Aside from that are you able to say whether the Mines Steering Group has done anything to improve the consistency of an approach by mines inspectors?

15

A. No, not really.

Q. If I could just turn to the types of visits that you might make of premises or operations. In your witness statement I think of 22 June this year you've referred to a proactive visit and that means one which has been initiated by the department, does it?

20

A. Yes.

Q. As a matter of routine essentially?

A. Yes, we've got so many to do each year.

Q. And what's meant by a reactive visit?

25

A. I guess that would be a complaint or an accident investigation.

Q. And in your evidence you indicated that the proactive visits were organised in advance. Do mines inspectors ever carry out inspections without having organised them in advance?

30

A. No but it's up to, you know, the person I guess, we should do more of that. When I first started at Commerce it's got announced but we should do more of that, yes.

Q. How long ago to your knowledge would it last be since there was an unannounced visit?

A. Coal mines or mines or?

Q. Of an underground coal mine?

A. Underground coal mine, none really.

1430

5 Q. So I suppose one of the issues is that if an underground mine operator has knowledge of a visit then the operator might ensure that the mine is operating well on that day?

A. Yeah, that's always a risk I guess. I guess that's true, could be.

Q. Have the mines inspectors given consideration to unannounced visits?

10 A. Yeah, it was something that as a quarry inspector I used to do all the time and then I think there was sort of, well it just developed away from that, somehow we fell away from it.

Q. And just turn to another issue to do with inspection. I think in your witness statement you indicated that a visit to an underground mine might take six to eight hours whereas that to an open cut or open cast might take about one and a half to two hours. Is that right?

15 A. A small one, yeah, a real small one in a two or three band outfit.

Q. Would it be fair to infer from that that the inspection of an underground coal mine is more complex than the inspection of an open cast mine?

20 A. Yeah, I think there's more hazards, you know higher risk.

Q. Are you able to describe the factors that make it more complex?

A. Just all the hazards I guess associated with an underground mine. The fact that you've got you know the atmosphere is limited. The movement around the mine, you're in tunnels, you know the air you're breathing is the air you take down, all that sort of stuff.

25 Q. So there's more to check?

A. Yeah, not just you know getting underground et cetera you know where you get the small open cut you can just drive up and see the manager and go for a you know a walk around the mine, drive round part of the mine. You know the underground miner's mine plans, you start in the office you know get your gear and getting underground all takes time and getting to various places takes time.

30

- Q. And is there a wider range of hazards that might be present in an underground mine compared to an open cast mine?
- A. Yeah.
- 5 Q. And presumably a wider range of things therefore that need to be mitigated?
- A. Yeah.
- Q. And that would include things such as the mitigation ensuring there was proper strata control?
- A. Yeah.
- 10 Q. Proper pre-drainage of methane?
- A. Yes, you might be able to just drain, just get rid of the methane with ventilation rather than methane drainage pipes or?
- Q. And a proper ventilation system?
- A. Yeah.
- 15 Q. Proper gas monitoring system?
- A. Yep.
- Q. Proper communication systems. Sorry, yes?
- A. Yes, yep, sorry.
- Q. Properly placed emergency equipment?
- 20 A. Yep.
- Q. Sufficient number of ingresses and egresses?
- A. Yep.
- Q. And I take it that those matters really need to be incorporated into the design of a mine?
- 25 A. Yes, you want to get those right at the design stage.
- Q. And the health and safety aspects therefore it'd be fair to say are not really able to be separated from the design of a mine?
- A. True, yeah.
- Q. Have you been informed by the department as to whether or not the appropriateness of the design of a mine is considered by any regulatory
- 30 agency aside from the department?
- A. Sorry what was that one?

Q. If the department informed you as to whether any regulatory agency considers the design of a mine and its appropriateness?

A. No, no, I guess that's basically us from a health and safety point of view.  
1435

5 Q. And at what stage does the department become involved during the planning, design and development stage of a mine?

A. If it's a new mine they are required to notify under the regulations. So then that would be sent to the inspector and the inspector would go through the material that's sent in, which would be basically a hazard  
10 management plan and design plan, and normally they'd met you before they started the mine and talk over any issues.

Q. And that's the notification required pursuant to Regulation 8 of the Health and Safety in Employment Mining Underground Regulations 1999?

15 A. Yes.

Q. And is it fair to generalise and say that that notification usually occurs about 14 days before the commencement of the construction?

A. It's up to the employer because there's no time stipulated. Yes, I think I had one recently, it was about a month before.

20 Q. So, particularly in the case of larger mines, by the time the department receives notification presumably the design's already been finalised?

A. Yes, more or less. You could stop it if there was some major issue but, yes, I guess you look at the design and you tend to say, "Okay, well how are we going to manage this design?"

25 Q. Because presumably by that stage most of the construction works would have already been put out for tender as well?

A. Well perhaps, yes.

Q. Has the department ever on receiving notification looked at the contents of the notification and said, "No, sorry this can't go ahead in its current  
30 form?"

A. There'd be nothing to stop the department doing that. But to my knowledge, no, there's not that many mines start up, so...

Q. Am I right in saying that the notification required by that regulation doesn't actually require the department to be provided with detailed information as to the design of the mine?

A. No often they won't give you that, you have to ask for it.

5 Q. Right. So you just get notified that construction's going to happen and then it's left to you to find out when it's going to happen?

A. Yes, I guess so. Sometimes they might invite you out and give you a Powerpoint presentation but, you know, the detail and that we're not involved in.

10 Q. And so in essence the department's role isn't to approve the design of the mine but rather it conducts some inquiries to see what's happening and raises some issues if they're obvious?

A. Yes.

15 Q. Is it a concern that there's no approval of the appropriateness of the design of a underground mine?

A. Yes, it'd be a lot better if they came, if we were more involved in that process and not just that particular part of the process but if they were going into a new area, to develop a new area, a new panel, a new section of the mine, it would be good to be involved at that stage.

20 Q. And being involved at that stage would require some notice being given to (inaudible 14:38:52)

25 A. Yes I guess, but then they would have to run that with you what they were going to do. I guess there becomes dangers of becoming part of the approval process but I guess you could word your involvement in such a way as, "We've noted the plan and we accept that you'll mine it in a safe and efficient manner," or something like that, make sure they take responsibility for it.

30 Q. Could we just turn to DOL0020020011/6. And if you could just read the first five bullet points under the first paragraph. Does that essentially set out what you're required to be notified of?

A. Is that the regulation? Is that how the regulation is broken down?

1440

Q. Yes.

A. Yeah, okay, yeah. But, of course, that's not really enough.

5 Q. No. Well I'm just drawing it to your attention because the next paragraph says, "Additional information is required, for instance ground conditions, depth, method statement, support if applicable." Is that other information which the inspectors say they could usefully receive at that notification stage?

A. Yeah. We often have to go back to them and ask for that sort of information.

10 Q. "Ground conditions" is probably self-evident. By depth, does that mean the depth of the proposed workings?

A. I think yeah, you know, from the surface probably, rather the length of the tunnel, but I think it's probably depth.

Q. Are you able to explain what's meant by "method statement?"

15 A. I guess that's the method you're going to use to actually mine that tunnel.

Q. And "support if applicable," et cetera, what does that mean?

A. I guess that's your roof support.

20 Q. And if we can just turn to the next page ending 7, and the first paragraph. "It was decided that these information can be requested but it is essential to make it clear that the information is not for approval."

A. Yeah.

Q. Is that accurately set out –

A. Yeah.

Q. – the department's approach?

25 A. Yes, I think if you accept approval and say it's approved, then the danger is they say, "Oh, it's been approved. We don't have to do anymore with our health and safety. It's been given an okay by the Department of Labour so we won't do any ongoing hazard management."

30 Q. And you are also required to be sent mine plans on a regular basis?

A. Yeah.

Q. And there's a similar approach taken in relation to that, i.e. the department doesn't approve them?

A. Yes, we don't approve them in a sense. By sending it to the department doesn't mean we've approved it.

Q. So what's the purpose of receiving them?

5 A. You can look at the mine plan and you can look at anything that might give you a concern. It does show where they are going to go for the next year. You look at the ventilation, there's a ventilation plan. So by looking at the plans you can get some idea of what's happening or the ventilation circuit. So its pillar sizes, tunnel widths, panel widths, all this sort of thing. So you might think, "Oh, I've got a concern here," so you  
10 can raise it with the employer.

Q. So what do mines inspectors do on receipt of those plans?

A. Basically then once the mines inspector, usually just the one mines inspector for that area will take the plan and he'll have a look at it to see if there's any safety aspects that he's concerned about.

15 Q. And if there are concerns, what then happens?

A. He'd bring the manager in and discuss it with the manager and clarify any issues or take whatever action needs to be taken.

Q. And are you aware of circumstances where that has occurred following receipt of mine plans?

20 A. No, not really. The mine plans are generally what's already been built, so you've probably been underground so you know the area reasonably well. The area where they are going to mine will be dotted on that plan, so that area you haven't got a lot of information really, but no generally a mine plan is not really enough information. Sometimes - I remember  
25 one time discussing it with somebody and they said the pillar width there was a bit narrow so they brought that up with the manager and he put extra support in one of the roadways.

1445

30 Q. So to be able to effectively consider whether or not there are issues arising from a mine plan you'd actually need a mine plan of what's going to be done over the next for example, year?

A. Yes, you get a dotted version of where they're going to go but you really want to know what controls they're going to put in place and how they're

going to mine it. You want some sort of authority to mine document or some sort of hazard management plan for that particular development.

Q. Do you know if there's been any consideration by the department of requiring that sort of information to be provided?

5 A. Not as such, I guess you could always ask for it, you don't get the plan, you tend to ask people what they're going to do but the only trouble is that plan is submitted once a year and if they deviate from that plan you won't know about it.

Q. When you say the plan is submitted once a year I presume that some  
10 mines will expand more swiftly underground than other mines will?

A. Yes.

Q. So once a year might be sufficient for some mines but other mines you might need to get mine plans on a more regular basis, more frequent basis?

15 A. Yes, I mean that's up to the inspector, they're updated every six months so I mean the mine up the road from me submits their plan every six months.

Q. You may have been here I think last week when evidence was given as to the complexity of large modern underground mines?

20 A. Yes I think so.

Q. And we heard that there are a variety of different specialities that were needed to design a mine. Do you think that the department would need additional types of specialist expertise in order to evaluate the design of a mine from plans?

25 A. When you talk about the design you mean right from scratch, a new mine?

Q. Right from scratch?

A. Yes, you know, like the electrical reticulation, that would be quite a specialist area, all the underground factors and the geology et cetera,  
30 you can't see a heck of a lot from a mine plan, you'd need the whole proposal really to ascertain exactly what was going on in terms of the design.

Q. If I can just now turn to your conduct of the inspections of a mine and you've already described the process you follow but is there any particular philosophy or approach that you use when you inspect a mine?

5 A. I'm not sure what you mean here?

Q. What do you set out to do when you inspect a mine?

A. Well, I guess the amount of time you've got is important, if you live locally and you to the mine quite regularly then you might be looking at different aspects but like the mine at Huntly I tend to do the basics to make sure that the ventilation and roof support are checked out at each phase so it's definitely a mine visit underground but I, you know, if you lived closer then you might pick on whatever issue that has arisen lately, it might be they've got a new diesel bay underground or you might check on the magazine, it would depend if you've got a bit more flexibility with your visit.

10

15

Q. If we take Spring Creek for example, are you familiar with that mine?

A. Reasonably familiar.

Q. In the six hours or so available for an inspection what proportion of the underground workings would you be able to get around?

20 A. Probably all the working places, generally, there's probably only about four or five, working phases in the sense they're producing coal, there might be back buy work, fitters working somewhere else but you might not get to those.

Q. And what underground systems would you be able to realistically look at in that timeframe underground?

25

A. It's not so much a systems thing, it's actually what you physically doing, a physical inspection of that work place. You might look at the deputies, the section manager's reports that he's doing, there'll be a bit of a systems there in terms of what ventilation controls and roof support controls are in place, to see whether they've been done. They generally do carbon monoxide make so you'd look at to see whether that's been done. The roof support, generally we've got extensometers in the roof and they're to monitor those and there's trigger action response plans

30

for those where there's been a reasonable amount of movement, then they've got to do certain things, check to see if that's been done.

1450

5 Q. Would you share the view that you'd be able to look at for example the fact of strata control and whether or not there'd been some movement but you wouldn't be able to assess whether or not the overall design of the strata control was sufficient in all the range of potential circumstances?

A. Sorry I didn't quite catch the first couple of words there?

10 Q. Would you accept the view that in the course of your inspections you'd be able to check that there is strata control, you might even be able to check from sensometers, for example, whether there was some practical issues with it but you couldn't check whether the overall design of the strata control was sufficient for all the likely range of  
15 circumstances?

A. I guess so. You know you, I would imagine at some stage you would've seen the geotechnical assessment of what was required for their strata support so you would have that. If you didn't, if you didn't know what that was then you, well you would ask for that outside so you'd have an  
20 idea of what the overall picture was in terms of you know the geology and the types of support you'd need.

Q. So in the course of your inspection would you look at other documents, for example those Geotech documents?

A. Yeah, well at some stage you would, maybe not that particular visit but  
25 you would, yeah, at some stage you'd think right this time I might do strata support. Can you show me your geotechnical appraisal and your assessment and design?

Q. What are the range of documents that you'd look at?

A. Well you'd usually get a consultant into design their roof support or their  
30 strata support so it comes down generally to standard operating procedures and trigger action response plans in relation to the amount of movement that you would get from your extensometer and it'd be the type of extraction as well. That would be over partial extraction for the

coal mines in Huntly rather than a hydro monitor so the design, that of the partial extraction system that will be written down what the ideal is, what the design is and you could, if you wanted to you could check that with what was actually going on underground.

5 Q. When did you last look at a Geotech report for example in relation to strata control?

A. Two or three years ago I suppose. It wouldn't have changed much since then, before that maybe 18 months and then they had a partial collapse so we suggested that they go back to the strata control to  
10 reassess to see whether the design was adequate.

Q. And without talking about Pike River at that stage, when considering the ventilation system would you also seek to look at ventilation design reports?

A. Well ventilation would, in relation to the fan, what it was designed to do  
15 that sort of thing. If it's designed to produce a certain flow and the difference in pressure you'd be, you could look at that but generally you'd be looking at just a quantity, how much, how many cubic metres per second that a fan's going to deliver and if it's you know in the area that you associated with that type of gassy mine then you'd be  
20 reasonably happy with that.

1455

Q. So you wouldn't go back to the design to look at the overall adequacy of the design of the ventilation system?

A. It's pretty important there, like they'll send you the ventilation plan, that  
25 really is the design, where the air goes and how it moves around the mine, different panels and regulators and over-cast and under-cast and things.

Q. And do you have expertise in ventilation?

A. Just with your first class ticket, that's one of the paper, and after that you  
30 can specialise again in ventilation engineering, but no I haven't done that.

Q. And during your inspections do you look at the accident register that's required to be kept by mine operators?

A. Sometimes.

Q. And those registers are required to record two different types of events aren't they? One is accidents that have caused harm?

A. Yes.

5 Q. And the other is accidents that in different circumstances might have caused harm, correct?

A. Yes.

Q. And that differs from the types of accidents which have to be notified to the department. Is that correct?

10 A. That's right, yes.

Q. Because that's a much narrower category, being essentially serious harm incidents?

A. Yes.

15 Q. Or else events of a type that have been prescribed as requiring notification?

A. Yes.

20 Q. And would it be fair to assume therefore that the accident register required to be kept by companies contains more information and more accidents than that which you'd expect that company to notify to the department?

A. Yes.

Q. By looking at the information contained on the company accident register is it possible to identify with some operators certain trends in relation to accidents or patterns?

25 A. I haven't done that but we often look at the - because they have to notify every six months you get a big sheet, maybe 100-odd accidents, and sometimes you go through that and look for some trends. It's very hard to sort of pick out a trend from that, you really need someone with more time than what we have to go through those and they might be able to do that. I mean you generally do it quickly but, you know.

30

Q. Do you think it would be helpful for the department to receive notification of that broader category of accidents that are required to be kept and recorded by the operator?

A. Yes, we'd get the data but we don't do anything with it really, yes.

Q. So it would be helpful to analyse that?

A. Yes.

Q. Is that something which is being considered?

5 A. I think at various stages we have, yes, we've kind of looked at doing it ourselves but there just hasn't been time.

Q. Do you know whether the department gathers accident compensation information, or claims information, relating to a particular mine and compares that with the accident notification information that the department receives?

10

A. Yes, we do that. I think the managers have got access to that. We have actually had access to that ourselves there for a while. I don't know why we stopped getting that but, yes, you could go through that and you could see if they'd had an accident notified to ACC and whether it should've been notified to us as well.

15

Q. And have those types of circumstances been picked up on?

A. They have been. I haven't personally. There was one in an open cast, in a small quarry but generally I haven't found any myself.

Q. I wasn't clear whether that's still done. Is there a system within the department which requires that to be done?

20

A. I'm not sure. I think it's the manager. The only time I've noticed is, the manager now picks up sometimes in the office and comes in and says, "Oh," so maybe that's the system.

Q. If I could turn please to workplace culture. I think you'd accept that workplace culture is a very important aspect of health and safety?

25

A. Yes.

Q. Has the department given any training to the mines inspectors about how to go about assessing workplace culture?

A. No they haven't. But just recently there's a small document came out on safety culture with a questionnaire in it, which could be quite good -

30

1500

A. No they haven't but just recently there's a small document came out on safety culture with a questionnaire in it, which could be quite good value

to try and use if you can take it round the mine maybe, it's something that was an issue that we wanted to do about six years ago, trying to assess management culture and employer culture.

Q. So this is a questionnaire that gets handed out to people at a mine?

5 A. Yes, well handed out to people, it's a general workplace one, I wanted to change it.

Q. Do you know if that's going to be utilised in underground coalmining?

A. There's no plan as such, that was something that we might be able to bring up at the Mine Steering Group meeting and use.

10 Q. You made reference in your witness statement to health and safety representatives and essentially, as I understand it, a lack of raising of concerns by them?

A. Generally, yes, I mean they generally say, look, there's no problem, like we have good communication with our managers and I haven't really got any issues for you, they all seem quite happy at their workplace actually, you know, I'm not sure why.

Q. Does it surprise you that the health and safety representatives aren't raising concerns or concerns more frequently?

20 A. They say a couple of times that I've spoken to them, "Look if we've got any concerns we raise them with our boss and, you know, they're dealt with then and there."

Q. And when we talk about raising them with the boss, under the Act as I understand it health and safety representatives can raise a matter with the employer and the employer then has to take that into account. Is that right?

25 A. Yes, although are you talking about a written notice, that hazard notice?

Q. Yes.

A. Yes, they can write a hazard notice and if they want to they can notify the inspector about that notice. I've had one.

30 Q. Right.

A. At an open cut coal mine.

Q. And what did you do in response to that?

- 5 A. I said, "Look, okay, I was actually due to go to that place in two weeks time, I'll come and have a look then get in contact with you," which I did, he happened to be shift and he says, "No, it's all been sorted Mike, once I wrote the notice at everything," and the health and safety officer or manager said, "Do you want to come with us on our visit?" So he came round, did the inspection with us.
- Q. Just on another issue, do mines inspectors when conducting their inspections look at the ratio of experienced to inexperienced workers?
- A. No, no, that's a good point though.
- 10 Q. Is that something that's been considered?
- A. I know the company's consider it, it's something that I could audit really.
- Q. In the course of those inspections do the inspectors speak with workers to assess the adequacy of their experience and training for the particular job they're required to do?
- 15 A. You could do it informally of course, I think generally you sort of just have a bit of a chat rather than, you know, you might ask them there about their experience, you sort of talk, if you do talk to somebody it's sort of a general sort of discussion and hopefully if they've got any issues they'll raise them with you.
- 20 Q. Right, there's no formal system for gathering information about the training and adequacy?
- A. No, not really.
- Q. Are you aware whether to your knowledge mines inspectors have ever said to a mine operator that a particular employee has not been adequately trained for the job?
- 25 A. No, not to my knowledge.
- Q. And so I take it from that that to your knowledge the department's never taken enforcement action against a mine operator for having inadequately trained workers?
- 30 A. An accident investigation might identify a lack of training so that that, to my knowledge, I think we have looked quite seriously at training, suggested training but I'm not sure what enforcement action's ever been taken.

1505

Q. Could I just turn to the issue of the frequency of inspections. And at paragraph 10 of your witness statement of 22 June. We don't need to have it on screen, but just for the record DOL7770010005/3. You say  
5 that the extractive operations had been risk assessed to determine which sites had the most inherent hazards?

A. Yeah.

Q. What was the purpose of that risk assessment?

A. Because there was limited amount of resources in the sense of an  
10 inspector's time we thought well we had to justify why we would want to visit certain places more frequently than others, so we did the risk assessment and showed that these places were high risk. That therefore when we came up with that number then we could justify that visit and say that these need to be visited at least, I think that was the  
15 point, at least four times a year. That way we could do some planning and budgeting. The other way the attitude was, "Well, do you really need to go that often because they are well managed?" You know, you look at some coal mines, they are well managed. "Do you really need to go that often?" Well managed and why do we need to go four times a  
20 year, three times a year?

Q. And when we say "four times a year," that was the inspection frequency that was set upon for underground coal mines, is that correct?

A. Yeah, that's right.

Q. I'm just going to call up a document, DOL0020020003/1. It's a  
25 document headed, "Mines, quarries and tunnels – indication of hearing risk." Is this the risk assessment document that's used?

A. Yes, that's right, yeah. And I notice like this year I think we're looking at getting that down to six visits a year.

Q. And this was developed by the department was it?

30 A. This was developed mainly by one inspector. Well we had this for years because we needed to rate the risks of each workplace and then one of the inspectors, John Moran, brought this up to help justify how many times we would visit a place.

Q. And is this designed to look at how often a particular style of mining, for example, underground versus open cast should be inspected or is it designed to look at whether a particular mine should be inspected more often?

5 A. I think a particular mine.

Q. So is this used to assess, for example, whether Spring Creek should be inspected more frequently than Pike River?

10 A. No it wouldn't be that level of accuracy or sophistication. It basically falls very quickly into anything underground is high risk and then moderate risk would be some of the open casts.

Q. And just correct me if I'm wrong, but does it work by simply putting the figure, for example, operation type surface zero, underground 50. If it was underground of 50 in the rating column?

A. Yeah.

15 Q. And you add all of those up, and the total will mean that it will fall into either a low, moderate, significant or high risk category as set out at the bottom?

A. Yeah, and then depending on the severity of risk, then the number of inspections that you hope to do.

20 Q. And when did the inspectors start using this?

25 A. We've always had it in terms of risk, but I think it was probably about three years ago when people at the Mining Steering Group started to challenge, "Well, do you need to go to these places. How long do you need to go there?" And they weren't sort of trying to stop us, just saying, "Well do you need to do this? You need, there's less inspectors why do you need to go to these places this often?" so.

1510

30 Q. And if we look at some of these, for example, Number 8 Management, best practice, mostly effective, not always successful, poor performance, unlawful. Is the information from that derived from your knowledge of the operations as a result of previous inspections?

A. Yeah, it was purely a subjective thing really. It was not sort of for the mines to know about in a sense. It was just something for us that we

could judge whether we needed to go because some of the lower risk operations might be badly managed so they would then be picked up by that school.

5 Q. Are you familiar with an assessment system used in Queensland, the Mine Inspection Planning System, also called MIPS?

A. No.

10 Q. I won't take you to the document but I will read it out for the record. The Department of Labour's Tier 2 paper at paragraph 153 DOL000010001/50 describes the number of inspections carried out in the year to 30 June 1997 as averaging 8.7 inspections per year per underground coal operation. As I understand your evidence the targeted frequency is now four inspections per year?

15 A. It was four. I think this new year, the new plan, the one you talked about the mining plan I think that was six, wasn't it, but we haven't started that yep.

Q. If we put that proposed plan to one side, it's four.

A. Yeah, okay, yeah, four.

20 Q. Are you able to say that, whether there's anything that the inspectors do or any aspect of how they go out, go about their operations that means that that reduced level of inspections offers the same assurance of health and safety as the previous level of 8.7 on average?

A. No, it'd have to be less I think.

Q. But what I'm getting at is there anything that you do which means that four inspections a year now would be sufficient?

25 A. Well it's hard to know what's sufficient. I mean it's a funding issue. That's like I mean I, we did as many as we could. I, well I don't know how you'd determine sufficiency. It's what the Government I guess decide that they want to fund for, how many inspectors. The more inspectors you have the more visits you can do. What's an adequate number?

30

Q. I think Mr Bell rejected the proposition that other communications for example by email or phone –

A. Oh, yeah.

Q. – might mean that inspections don't need to be carried out as frequently.

A. I see.

Q. Were you here when he gave that evidence?

A. Yeah, probably, yeah.

5 Q. Do you have any comment in relation to that?

A. There's nothing better than an underground inspection but, no, you can do a lot of good work by email and phone I think. I mean nothing beats an inspection, no. You know I think if someone sends you a procedure and they say, this is what we're doing and you email that it's you and you email it back and you look at it, that could be a really good thing to do. It may result in saving an accident or whatever but I guess inspections are a core business. I guess you have to say eventually we can't afford that many ,how many that is, you know, what's an adequate number I quite difficult to determine really.

15 1515

Q. You described in your evidence the different enforcement mechanism and the approaches that might be taken. And I won't go over that again but I'd just like to give you an example so that you can explain why a particular approach was taken, if it's within your knowledge. If you could turn please to DOL0020020011/11. If you could look at the top paragraph. First, you'd be familiar with Regulation 23(2) of the Health and Safety in Employment Mining Underground Regulations which set out requirements in relation to egress?

20

A. Right.

25 Q. Is that section 23(2), sorry Regulation 23(2) requirement interpreted by the inspectors as meaning that an underground mine must have two egresses?

A. Yes.

30 Q. Now I just want you to confirm first that the mine referred to in that paragraph is not Pike River?

A. It's not Pike River.

Q. It describes a situation in which a small mine was allowed to operate without a second means of egress as it wasn't practicable for the company to install second access. Are you able –

5 A. That was discussed in detail, and no, an improvement notice was written and they were told to get a second egress.

Q. That was the minutes I think of 31 March 2010. When you say, "A notice was written," do you know when that was written?

A. 2010 I, no, about nine months ago maybe, something like that.

Q. Right.

10 A. Yes, probably October maybe.

Q. Because that reference is in the Mine Steering Group minutes of 31 March 2010, and if I could take you to document ending 7, which is part of the Mine Steering Group minutes of 13 September 2010, so some six months later. And down the bottom it says, "Improvement notice was discussed and possible solutions to the question of a second egress. The inaccessibility of a second egress was discussed in terms of the Chilean and the Christchurch 7.1 earthquakes. Now first I want to make clear for the record that you are not the inspector who was involved in this particular mine. Is that correct?"

20 A. Yes, I was the inspector for this – Kevin went there six months and then I went back six months, yes.

Q. And so when you went back, by that time had an improvement notice been issued?

25 A. I discussed the issue, Kevin brought up the issue and then the feeling was that, no they had to have a second egress. So it was my turn to go back and I said to Johan, "Look, would you support me on this and it looks like have to put an improvement notice on them." And so I went back and talked to him and he said, "Well I'll appeal it if you do that." And we did it, we wrote the notice.

30 1520

Q. There was about a six month gap without one, are you able to –

A. – I see, that would just be between Kevin bringing it up, perhaps I was talking about it and then waiting for the next visit.

- Q. If I could just turn to another issue which is that of guidance when conducting inspections. In Mr Poynter's witness statement he refers to sources of guidance for him as including regulations issued under the Coal Mines Act 1979 which was repealed?
- 5 A. Right so what was the question again, I missed that sorry?
- Q. Well, just first by way of background Mr Poynter's witness statement, paragraph 18, one of the sources of guidance that he uses when conducting inspections can include regulations issued under the Coal Mines Act 1979?
- 10 A. Okay.
- Q. So that's going back a fair way in time?
- A. Yes.
- Q. Do you look at those regulations as well when you conduct your inspections?
- 15 A. Very rarely really, occasionally you might come across something that you go back to the old regulation but I find that you're saying perhaps as an approved code of practice or something, it's a bit hard to use them, it's just a bit hard because the responsibilities are often under the other legislation, there's good stuff in there but, yes.
- 20 Q. I suppose that's what I'm getting at really because you also refer to a broad range of material including quite a lot of Australian material. Is that correct?
- A. Yes.
- Q. And would it be fair to say that one of the reasons you do that is that there's no single New Zealand code of practice that sets out appropriate standards?
- 25 A. Yes, there's very little guidance material in New Zealand so you go looking for it somewhere else.
- Q. I take it it would be helpful to you when carrying out your inspections to have good New Zealand guidance material?
- 30 A. It would but in a sense you would be duplicating what's already there, if you've got a really good guideline that they've produced in another state of Australia I guess it doesn't make much sense to develop your own,

although you might need to adjust that slightly but what would be good is to have say a website and reference to that so that people can go to that guideline, so if for instance refuse chambers, you could say well the guidance can be found at this particular website although sometimes

5 they change and then people could click on that and get that guidance.

Q. Right.

A. Like the MDG guidelines, I think a lot of the companies use those themselves, it's the New South Wales guidelines for coal mines, underground coal mines.

10 Q. Right, in fact I think if we go to document DOL0020020011/25 and this is page 8 of the minutes of the Mine Steering Group meeting of 10 July 2009 and if we can please highlight the paragraph, "Mining Website." Does that reflect the issue to which you have referred, which is JB, presumably Johan Booyse said there is a lack of information on

15 the DOL website for mining and then setting out matters that it could include?

A. Yes, there's been a lack of information there for quite a while.

1525

Q. Do you know whether that issue's been addressed yet?

20 A. I haven't had a look recently to tell you the truth.

Q. One of the roles of the Mines Steering Group is described as, "To assist with departments' development of industry standards, guidelines and operating procedures." Are you able to tell us what it's done in that regard?

25 A. Have you got that? What was it again sorry?

Q. Yes, sorry. Perhaps if we turn to DOL0020020011/1. You'll see that the last role or bullet point is described as, "To assist with departments' development of industry standards, guidelines and operating procedures." Are you able to tell us what the Mines Steering Group has

30 done in that regard?

A. It's been one of a few times and I think they did approach the people within the Department of Labour. Maybe that was that person that was

quoted before, and was - name was there before, and try and get information put onto the website, but I think Johan said it wasn't easy.

Q. Are you able to say whether the Mines Steering Group is currently seeking to develop standards or guidelines or codes?

5 A. Not the Mines Steering Group. I think policy are developing it, yeah. I guess one of the problems perhaps with the Mines Steering Group, we would have liked a senior person to be there to make things happen a bit easier.

Q. Right.

10 A. Yeah.

Q. When you say, "a senior person," what do you mean by that?

A. Well, one of the regional managers used to come along. I think we asked for the senior's boss to come along perhaps and help.

15 Q. When you refer to policy in relation to guidance and standards, have you been consulted about the development of standards and guidance or codes?

20 A. Yes. The one that we have developed from the New South Wales Small Mines Manual. That was sent out to us all recently and asked for comment. When the senior advisor left they put me on their standards committee so I have a small input onto the standards committee, the Australian Standard Committee.

Q. The Australian Standards Committee?

A. Yeah. You know how you the New Zealand standards and Australian standards, yeah.

25 Q. Are you currently being consulted in relation to the development of any codes or standards or guidance by the department?

A. Just that one that was sent out recently for the Small Mines Manual.

Q. Can you just describe what that's for?

30 A. That was a result of the, you know, the Black Reef and the survey and they decided to get some guidance material for small mines.

Q. When is that due to be completed?

A. I understand soon. I don't know much more.

Q. Before moving on just to the last few topics, can I just try and recap the things that, as I understand it then, underground coalmining inspectors do?

**THE COMMISSION ADDRESSES MR WILDING**

5

**COMMISSION ADJOURNS: 3.30 PM**

**COMMISSION RESUMES: 3.45 PM****CROSS-EXAMINATION CONTINUES: MR WILDING**

- 5 Q. Mr Firmin, I just wanted to do a quick recap really just to check that we'd captured all of the various things that a mines inspector does. They inspect underground coal mines?
- A. Yes.
- Q. And then also have responsibilities for inspecting coal mines above ground and quarries and tunnels?
- A. Yes.
- 10 Q. They have also a role under the hazardous substances legislation?
- A. Could I just go back there a little bit? And the underground hard rock and the open hard rock.
- Q. Thank you. Just interrupt me if I've missed things out?
- A. Oh sorry, yeah.
- 15 Q. And I'm sure I will. They have then responsibility under the hazardous substances legislation?
- A. Yes.
- Q. They presumably have to do a number of notes and reports as a result of those two roles?
- 20 A. Yes.
- Q. They also conduct duties by phone and email with mine operators?
- A. Yes. Actually I probably should just add there that they are important and you can do a lot of good things there. I might have under-rated them when I talked to you before.
- 25 Q. Then also have to conduct investigations in relation to breaches of the Act?
- A. Yes.
- Q. And presumably if there's enforcement action taken you need to be involved in the preparation of Court proceedings?
- 30 A. Yes.
- Q. And also attend the Court proceedings and give evidence?
- A. That's right.

Q. You have to consider accident notifications?

A. Yes.

Q. Presume if there are fatalities you'd need to prepare for and appear before a coroner sometimes?

5 A. Yes.

Q. Although we haven't particularly touched on it, you've got an educational role?

A. Yes. You know, you need to keep yourself upskilled so that requires study outside work hours.

10 Q. And also conduct educational visits to mines operators as well. Is that right?

A. Yes, information visits more than perhaps the education that we used to be involved in.

Q. Information visits they are called?

15 A. Yeah, yeah.

Q. And is there a target for the number of those that have to be done each year?

A. Yeah.

Q. How many is that for last year?

20 A. Well I think this year I had 70 compliance assessments and it's 60, I think, information visits, something like that.

Q. And then presumably you have to attend these internal meetings such as the Mines Steering Group meetings?

A. Yeah, and office meetings.

25 Q. Is there any significant activity or task that I've left off that?

A. It's pretty good.

1549

30 Q. And the work at the moment is done by you and was by two mines inspectors and I think the Mine Steering Group has considered the issue of whether there is sufficient mines inspectors?

A. We've brought that up often in terms of sufficient mines inspectors but recently we asked for that third one.

- Q. If I could perhaps ask for document DOL0020020011/21, and these are parts, in fact page 4 of the Mine Steering Group minutes of 10 July 2009, paragraph 3. Questions were asked, “Why a third inspector had not been appointed. Funding had been available for John Wallrund and where had this funding now been placed.” So that was at a time that Mr Wallrund had left presumably?
- 5
- A. He retired, yes.
- Q. Did the Mine Steering Group ever find out what happened to the funding for replacement for him?
- 10 A. What they told us is that there was a mistake, they should have applied to get that position straightaway and it might’ve been kept over, yes.
- Q. And I see from paragraph 5, and the fifth paragraph down, and I’ll just summarise it. At that stage the Mine Steering Group had a concern that the number of personnel available to conduct inspections was not sufficient?
- 15
- A. Yes, I think when John Wallrund left that really put pressure on us. We’d always wanted at least four inspectors and a chief inspector and maybe an advisor. Once we got down to this level it’s a bit tough.
- Q. If we take you to document ending 19 in that same series. This is part of the minutes of the Mine Steering Group meeting of 10 December 2009. And can we see from that under the heading, “Mine inspector vacancy,” that Margaret was preparing a case for replacing John , ready to be taken to the WSMT on 28 January?
- 20
- A. Yes.
- 25 Q. And who’s Margaret?
- A. Margaret Radford, she’s the service manager in Canterbury West Coast.
- Q. And who’s Sheila?
- A. Sheila’s the regional manager for the southern region.
- 30 Q. And the case that was being prepared was a written document. Is that correct?
- A. I don’t know, once Margaret said she’d, you know, that was the end of documentation I saw.

Q. If I could just ask for DOL0020020022/1 to be put on screen. This is a document to WSNT from Department of Labour Mine Steering Group, so that's the group on which you sat, correct?

A. Yes.

5 Q. Dated 12 February 2010. And the purpose is stated, "The purpose of this paper is to provide some context around the current resourcing issues faced by the department in regards to underground mining, open cast mining, tunnelling and quarrying. The situation if left in its current state poses significant political, reputational and service  
10 standard/delivery risks to the DOL. The extractives industry is seen as a high hazard industry?"

A. Yes.

1554

Q. First, have you seen that document?

15 A. I think I might have actually, I'm not too sure though.

Q. Does that paragraph capture your understanding of the concern that the Mines Steering Group had?

A. Yes, I wish we had done that for the previous inspector as well that left.

Q. And if we could turn to page 3 of that document, it says, "DOL data  
20 shows there are approximately," and then it identifies over 950 types of operation and says, "It is the expectation that the current mining inspectors (2) service these various sites both proactive and reactively. It is impossible to provide a full service to each of these sites within the current inspectorate number"?

25 A. Yes, I agree with that.

Q. And those two mining inspectors were you and Mr Poynter?

A. Yes.

Q. I'm not going to go through this document in detail really because it speaks for itself but the overall purpose of that document was to secure  
30 a funding for an additional mines inspector. Correct?

A. Yes.

Q. And that was unsuccessful?

A. So I heard, yes.

Q. You referred to a chief inspector just before.

A. A chief inspector?

Q. Well, referred to an additional inspector, someone to be reported to, if I  
5 could just ask you to turn to DOL0020020011/6, under general first  
bullet point, "Kevin suggested the option of the mines inspector reports  
to a chief mines inspector. A discussion followed and Craig mentioned  
the challenge of budgeting." That is the concept that you referred to  
essentially of having a –

A. Yes, we discussed that amongst ourselves quite often and the service  
10 managers said that they wanted the control in their own area but we  
thought there was big advantages in reporting nationally to a chief  
mines inspector and having somebody who was technically capable at  
that level and had the funding and resources to correct us to whatever,  
audits or any activity that we decided to come up with, combined  
15 inspections, safety, culture surveys, anything that we could come up  
with that would help the department, it might be better sourced with a  
chief inspector.

Q. And that was an extract from the minutes of 13 September 2010 of the  
20 Mines Steering Group and there isn't, is that correct, a plan for a chief  
mines inspector?

A. I'm not sure I can say about that, I think there is.

Q. You're not certain?

A. John Kay did say to me that there was, he was looking at the idea, yes.

Q. If I could take you to another issue and can we have document ending  
25 24 of that same series. This is an extract of the Mines Steering Group  
minutes of 10 July 2009, could we please have up the section two thirds  
of the way down, "Mining Review Consultation?" Can you just read that  
to yourself please?

A. Yeah.

30 1559

Q. The reference to mining review consultation, is that the reference to that  
2006 to 2009 review –

A. Yes.

- Q. - that was referred to yesterday in the evidence of Mr Murphy?
- A. Yes, I think so.
- Q. And it says, "This was discussed, the feeling of the group." And I'll just stop there. "The group" means the Mines Steering Committee?
- 5 A. Yeah I think so, yeah, the Mines Steering Group.
- Q. "The feeling of the group was that the process for feedback on submissions concerned the group because of the limited time for feedback. This reduced the opportunity for quality feedback." Whose feedback is being referred to there?
- 10 A. That's the inspectors' feedback. We were given very little time. In fact, I was out in the field for three days. When I got back I got the email to say, "Could you consult," like I was out in the field so I never got to consult. That's how much time we had.
- Q. So how much time did you have?
- 15 A. There was two days, I think, I had to give them feedback within about two days.
- Q. And that was feedback in relation to that review?
- A. That was in one of the emails, yeah that they'd sent out.
- Q. Did the mines –
- 20 A. I think the feeling was they really wanted industry to take ownership rather the inspectors to take ownership of the consultation. It was an industry document. Well, I don't know that's – I'm not sure why we never got much time.
- Q. Did the Mines Steering Group give feedback?
- 25 A. There was an opportunity, I think just personal emails. I was out of the office when I – that was the only time I think.
- Q. If we could just take apart that section but stay on the same page. Just finally, there's a heading, "Professional and technical issues". The second to last paragraph reads, "JB," presumably Johan Booyse, "said there are issues with the issuing of COCs – presumably Certificates of
- 30 Competence?"
- A. Yeah.

Q. "There needs to be an auditing process by the DOL on the requirements used by EXITO before issuing COCs. This was discussed and a Memorandum of Understanding (MOU) needs to be agreed between DOL and EXITO on this matter." Can you just explain that issue?

A. I'm sorry I can't recall what that one was.

Q. Do you know whether there is an MOU between the department and EXITO?

A. No I don't.

**MR HAMPTON:**

If the Commissioner pleases. Without wanting to prolong matters, one or two discreet areas I would like to ask about and try to keep it pretty contained sir. First, is as to run by Mr Firmin the New South Wales philosophy as already put to a couple of witnesses and see what his view as to that and as to unannounced inspections. Secondly, to look at –

**THE COMMISSION:**

So what's the New South Wales philosophy that you're talking about?

**MR HAMPTON:**

To raise an expectation of visits by inspectors at any time, in effect, sir.

**THE COMMISSION:**

Yes.

1604

**MR HAMPTON:**

And in relation to that I might explore with Mr Firmin as well the New South Wales' visit post Pike in terms of his interaction, if there was any, with the chief inspectors in the New South Wales system. Secondly, on resources I wanted to put from the Gunningham Neal report and it's page 36 the departmental structure under which he sits and get him to explain where the man he actually reports to sits in that structure. Thirdly, and perhaps it

relates to the first topic, the three monthly inspections on notice and in fact put to him the current work plan 2010/2011 for the inspectors which indicates underground coal mines and underground gold mines being treated effectively on the same level of inspection, three monthly and, lastly, I don't think there is  
5 any need to go further on a lot of the matters that Mr Wilding has covered so comprehensively, seeing I started to hear running to ask some questions about, sorry second to last thing, this is the second to last thing, ask some questions about the Spring Creek incidents and in particular cable flashes and that is Mr Firmin's third brief or third proof of evidence that's been provided  
10 and then, lastly, just some general statistics from him that he can as to, since 1998 when he became an inspector of mines improvement noticing any prohibition notices issued by him to underground coalmining, underground mines or coal mine operators. They're the topics, sir.

15 **MR DAVIDSON:**

Your Honour, sir, I, firstly my endorsement was to have him set about the thoroughness and examinations taking place so the matters I have to ask may be further reduced by his questions but they're very limited. They're no more than 10 minutes and the first matter, sir, relates to the resource available to  
20 the inspectors, what technical expertise resource is available to them. Secondly, the dealing with plans and in particular the work plans and, thirdly, a matter raised in Mr Firmin's evidence and referred to in the Gunningham report as to the credibility of the inspectors, how they perceive it, how he perceives it, how it's gained. They're the three matters, sir, and I'll be no more  
25 than 10 minutes.

**MS SHORTALL:**

Your Honour, I would have two topics that I believe also would take me no more than 10 minutes to cover if the Commission was to grant me leave to  
30 ask them. The first topic would involve just several questions to Mr Firmin about the chronology of interactions between the department and Pike River concerning mine development and the second topic would involve showing him just two conclusions that are drawn in the review by

Professor Gunningham and Dr Neal just to ask him whether he agrees with those and as I say I don't think it would take any longer than 10 minutes.

**THE COMMISSIONER:**

5 Sorry, the chronology of interactions?

**MS SHORTALL:**

10 Yes, Your Honour, there has - the Gunningham and Neal report includes an appendix which lays out the chronology of interactions that the department had with Pike River. There's a list of both visits and other interactions, emails phone calls et cetera. Like Mr Firmin has described that he didn't conduct any visits after 2008 but I just wanted to confirm with him several of the details in the reports around the number of visits and interactions that occurred. It would be a very quick line of questioning.

15

**MR NICHOLSON:**

May it please, sir, Commissioners, I seek leave to –

**THE COMMISSIONER:**

20 Sorry, your name?

**MR NICHOLSON:**

Nicholson, sir.

25 **THE COMMISSIONER:**

Thank you, Mr Nicholson, my apologies.

1610

**MR NICHOLSON:**

30 I seek leave just in relation to Mr Firmin's experience in that he left the mine because there's been suggestion in the report that the Department of Labour has received from Professor Gunningham about the adequacy of Pike's management contractors at the time of the mine developed through the Hawera fault. I just want to ascertain whether this witness was actually still

involved in the undertaking inspection of the mine at that stage and if so what his thoughts are on that. I don't think he was there sir but I wanted to clear it off so that I can then later on seek to examine Mr Whittall on the issue but I don't want to have left it and not ask here. I'd anticipate sir probably only  
5 being about two minutes.

**MS MCDONALD:**

Just before the Commissioner confer I wonder if I just might be heard in relation to one matter, well perhaps two matters that my friends have raised.  
10 The matters that Mr Hampton identified, particularly in relation to exploring Mr Firmin's third brief of evidence, I just want to be clear about that. So that material was put in to assist the Commission in relation to matters that were the subject of evidence earlier, well last week, I wouldn't have thought that the matters in that brief fall within the scope of phase one if what Mr Hampton's  
15 contemplating doing is exploring those particular incidents. I just make that observation. And if the matters that my friend, I'm sorry I've forgotten your name.

**THE COMMISSION:**

20 Mr Nicholson.

**MS MCDONALD:**

Would seem to me sir to fall into phase three, realise the matters is before the Commission is but I just wanted to make those points.  
25

**MR HOLLOWAY:**

Further to my friend Ms McDonald, well I don't have a view on the application Mr Hampton has made in relation to Mr Firmin's third statement that concerns some of the recent events at Spring Creek and it was indicated earlier, during  
30 last week sir, that Solid Energy would provide further information about some of those events. We still plan on doing that and would put any further evidence in the coming days. Some of the events are still being investigated sir so we aren't in a position to do that yet but plan on doing so if that assists.

**MR HAMPTON:**

I can put my friends mind, both at ease. I only want to ask about cable flash because it arises in that context. I'm not going to ask the details of the incidents if the Commission pleases. I understand that they both want to respond and there may be some further evidence from the union on that aspect anyhow. But I just wanted to ask on cable flash itself, the definition of, as it were, where it sits within an underground mining ranks.

**10 THE COMMISSION:**

That's the lot? We're just going to retire very briefly. We're not asking counsel to leave, we'll only be a few minutes but we thought rather than having a huddle here we may just have a discussion outside the doors of the Court, so we'll only be a few minutes.

15

**COMMISSION RETIRES: 4.14 PM**

**COMMISSION RESUMES: 4.18 PM**

**THE COMMISSION:**

We are just conscious that Mr Firmin has already been questioned for a  
5 prolonged period and as somebody observed a fairly exacting series of  
questions have already been put to him by Mr Wilding, however Mr Hampton  
you are granted leave in relation to the matters you have raised. The one  
exception is we consider that Mr Firmin has already dealt with the issue of  
10 surprise visits and made perfectly plain what his view is about that and we see  
no profit in that being revisited, either generally or with reference to  
New South Wales given the answers he's already supplied, but your other  
topics concerning check inspectors, resources and the most recent work plan,  
the definition of the cable flash and the statistics in relation to enforcement  
and related notices you may question on. We may be quite stringent about  
15 compliance with the leave term.

1620

**MR HAMPTON:**

Yes I understand, Commissioner.

20

**THE COMMISSION:**

Mr Davidson, likewise your three matters – resources, work plans and the  
credibility issue that identified – you may question on those.

25 **MR DAVIDSON:**

Thank you.

**THE COMMISSION:**

Ms Shortall, your two matters – the chronology of interactions and also the  
30 two conclusions from the internal review, you may question on.

**MS SHORTALL:**

Thank you.

**THE COMMISSION:**

Mr Holloway, you have your two minutes as well.

5 **MR NICHOLSON:**

Nicholson, thank you sir.

**THE COMMISSION:**

Nicholson, I'm sorry.

10

**THE COMMISSION:**

And Mr Holloway, your concern has probably been met by Mr Hampton's response. He is limited to the issue of the cable flash, so it really meets your concern as I understand it?

15

**MR HOLLOWAY:**

Yes. They're not concerns. Really just an indication that that evidence will be forthcoming and to assist the Commission.

20 **THE COMMISSION:**

Yes, well we're well aware of that. Now, Mr Hampton.

**CROSS-EXAMINATION: MR HAMPTON**

25 Q. Mr Firmin, you told us about post-Pike explosion, your visit to New South Wales, your first training as it were, for 10 years I think you said?

A. No.

Q. Or something you'd been asking for for 10 years?

A. Yeah, yeah. I probably should say the department have given me quite a bit of training, yeah.

30 Q. In that visit that you made to New South Wales, did you come across the check inspector's role or the role that the check inspectors play in the New South Wales system?

A. No. I didn't meet the check inspector at all.

Q. You didn't?

A. No.

5 Q. So you haven't had any direct experience yourself with check inspectors?

A. In New Zealand, yeah as the interviewer. At least one time I can remember going around with two check inspectors.

Q. Played a valuable role in those days?

10 A. Yeah. It depended on the check inspector I think, you know, but yeah it was good.

Q. Secondly then, a lot said about resources within the department that you're now in. Karyn I'm sorry it's not one of the documents I told you I was going to use, but if you could get it up, it's the Gunningham recent report, the 2011 report. So it's DOL0100010001, page 36 I think it is.

15 This is described by Professor Gunningham, Dr Neal as being the departmental structure. Does that look right to you, Mr Firmin, once you've had a bit of a look at it?

A. Yes it looks right.

20 Q. You're right down, you and the then Mr Poynter were right down in the bottom left corner here?

A. Yes.

Q. The rung above you, your team leader?

A. Yes.

Q. Not involved in mining as such?

25 A. No.

Q. The role above that, service manager. Not involved in mining as such?

A. No.

Q. The layer above that, regional manager. Not involved in mining as such?

30 A. No.

Q. And then we come back, one, two, three, three tiers above you. Fourth tier, senior advisor, the vacant Mr Booyse. I don't mean it in an offensive way, but the position now vacated by Mr Booyse?

A. Yeah, he was a mining person.

Q. He was a mining person?

A. Yeah. He had no –

Q. And in that – sorry.

5 A. He had no jurisdiction over what we did or a budget or anything like that. He was just an adviser.

Q. So in that whole departmental structure that goes up above Mr Booyse's position, another one, two, three layers I think, perhaps more, no other person in the hierarchy with mining experience?

10 A. No.

1625

Q. And in the bottom right hand corner we have Mine Steering Group, and of the persons two possible chairs plus eight others, possibly with an alternative, perhaps nine others, only the then two inspectors, yourself and Mr Poynter plus Mr Booyse with his experience, are the only ones in that Mines Steering Group with mining experience?

15 A. Yes.

Q. And from what you've been telling Mr Wilding, say for example about the obtaining of a third inspector, those with mine experience in the minority, their voices drowned out?

20 A. We were certainly in the minority when you consider all those people in that group to oversee or look at what the two mines inspectors did, there seemed to be a whole lot of other people there as well but that structure has since changed with the review, Gunningham/Neal review and now I report directly to the senior advisor position.

25 Q. The position vacated by Mr Booyse?

A. Yes.

Q. And is anybody there yet or not?

30 A. Yes, we have John Kay there, I'm not sure how long the appointment is for.

Q. You said in answer to Mr Wilding that the proposed plan for the coming year was to make up to, what was it, six visits a year to underground coal mines?

A. Yes, I think so, yes.

Q. You think so, well can I have put up then please, and this is one I think I did give you notice of, DOL0020010017/1 and 2. Is that the mine sector work plan that we were talking about for the 2010/11 year?

5 A. That is the plan but I think you might have – I don't think that's the latest one. This one doesn't talk about audits either, does it?

Q. You're looking at page 2 at the moment?

A. Yes, I think Mr Wilding had a – did your plan have – I'm not allowed to ask questions.

10 Q. Well, just deal with page 2 then at the moment, "Activity plan for 2010/2011," the boxes that are there, if we could bring them up please. "The mines will be proactively visited as follows," and then we've got, "Underground coal mine, underground gold mine, open cast coal mine and metalliferous mine and quarries." The four types. Do you say that's  
15 changed since, there's been a change to this programme?

A. I'm pretty sure it has, yes, I think it has.

Q. In what respect please?

A. Well, I'm sure we were talking about doing inspections every two months, to be really sure, I remember my manager emailed us with the  
20 changes we would like to see, I think they were put in.

Q. It's the only document I've seen posted by the department that seems to be the work plan. My concern was Mr Firmin that underground coal mines and underground gold mines seemed to be virtually treated in the same way in terms of regulatory of inspections. Has that been the case  
25 historically in your time?

1630

A. We give them very similar inspection regimes where we could in the sense that we were going to, this tends to relate to our visits to the North Island so we're up there for a week so that we'd target right, we'd  
30 first target the coal mine and then the gold mine. Gold mines, coal mines would be, would have more hazards than the gold mine if that's the point you mean, yeah.

Q. They're a far higher risk than a gold mine, aren't they? Coalmining, underground coal mines?

A. Yeah.

5 Q. And that's my point. Isn't it wrong from an inspector's point of view to treat these two in the same way because that was the practical effect wasn't it? If you visited gold mines and coal mines –

**THE COMMISSIONER:**

10 What do you mean Mr Hampton? Are you talking about open cast coal mines or –

**MR HAMPTON:**

Underground coal mines, sir.

**CROSS-EXAMINATION CONTINUES: MR HAMPTON**

15 A. I'd agree with you. Underground coal is more dangerous than underground gold but they're both dangerous. If we can get to them every three months, yes, let's do it or every two months. I wouldn't worry about the difference.

20 Q. Do I take it you accept that underground coal mines, with their additional hazards, ideally should be visited more than once every three months. Is that what you're telling us?

A. We looked at the regime for inspections and, yes, we would like to do them more than three months. We thought, I thought it was two months.

Q. But resources are the problem?

25 A. Yes, and then whether you can actually make it. You could plan to do that but if got reactive work then you might not, might miss it out.

Q. Since 1988 when you became a coal mine inspector, can I ask how many improvement notices under section 39 have you actually issued to underground coalminers?

30 A. I don't know. I did prepare something for general, the Extractive Industries, not that.

Q. Sorry, you did – I'm not –

- A. I didn't specific –
- Q. Yes, well tell me what you're referring to because I don't know what you're referring to?
- A. Okay, I didn't specifically, I always thought that I might ask this question  
5 so I wrote down what I'd done off INSITE site for the last five years but I didn't differentiate between coal, hard rock, quarries.
- Q. Within the last five years can you recall issuing improvement notices to an underground coal mine?
- A. Oh, probably.
- 10 Q. Probably?
- A. Yeah, probably. I'm not sure. To, I, I vaguely, I remember putting the list up and there was 16 prohibition notices for the Extractive Industries in that five years and I get a quick look and three of those prohibition notices were for coal mines, the small underground coal mines.
- 15 Q. I was asking you about improvement notices for a start.
- A. I don't know. I can't help you.
- Q. Have you got statistics at all for improvement notices. Not with me. I could find that out though.
- A. You could find it out.
- 20 Q. If the Commission were interested they could inquire through counsel assisting?
- A. Yeah.
- Q. So the next category was how many, since you started in '98, how many section 41 prohibition notices have you issued to underground coal  
25 mines, you can only tell me at the moment about the last five years?
- A. Yes, our system seemed to only just be able to go back to five years.
- Q. And underground coal mines in the past five years?
- A. Three from memory.
- Q. Sorry?
- 30 A. Three from memory.
- Q. Three from memory?
- A. Yeah.
- Q. I'm sorry I thought you looked it up on the system?

- A. I did but I just wanted to make sure that if I say three I want to be sure. I've had a quick look at the list so I could be wrong.

**THE COMMISSIONER:**

- 5 I wonder if we can resolve this. The request will be made, Mr Hampton, it will be limited to the five year period for the reason that's been given but if you can confer with counsel as to what statistics you're interested in we'll request Mr Firmin to extract them.

1635

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

- Q. The last topic Mr Firmin. And it comes out of the discussion you probably heard last week about cable flashes. You have opined in your third brief of evidence that your view is that cable flashes underground in a coal mine are not notifiable events under Regulation 10. Is that  
15 right?

A. That's right.

- Q. If you have a cable flash, you have a bang and a flash and a flame and the smell of burning don't you?

A. Sometimes.

- 20 Q. Well isn't that a fire by definition?

A. I think fire by definition, if you look for a fire by definition, which becomes almost a technical exercise, a rapid persistent chemical change that releases heat and light accompanied by a flame, especially exothermic oxidation of a combustible substance, burning fuel or other material, I  
25 think the idea of a fire associated with a cable flash is a bit ambiguous to say a fire. I think it's a discharge of electrons, discharge of electricity, so I wouldn't think that would fit very well as a fire.

- Q. The definition you gave the Commission, where did you get that from please?

- 30 A. I think I just googled it.

Q. Sorry.

A. Google.

Q. Googled it, when?

A. I don't know, a couple of days ago.

Q. Couple of days ago. Have you spoken with your Australian equivalents about cable flashes and how they would see those events?

5 A. I spoke with a senior high hazards advisor.

Q. When?

A. Two or three days ago.

Q. In Australia or in New Zealand?

A. New Zealand.

10 Q. In New Zealand. You haven't spoken to your Australia's contemporaries?

A. No.

Q. Your peers in Australia?

A. No.

15 Q. Have you spoken to, for example, the previous chief inspectors, such as Mr Hughes and Mr Bell who we've heard from last week?

A. I heard Mr Hughes', what he thought it was, defined as a fire.

Q. And you disagree with him?

20 A. Yes, I'd like to agree with him because I think they should be notified but I think that the regulation to say a cable flash is a fire and the fact that I haven't been notified by anyone in the industry means the industry haven't determined that they were a fire. And then when I went to the mine to investigate these cable flashes I asked them why they hadn't notified and they said well there wasn't a requirement to and I said,  
25 "Well what about section (b)," and they said, "Well no, it's not a fire." So it's ambiguous and I think really the question should be perhaps brought to the senior advisor and we maybe could get it put into the code of practice or something.

30 **THE COMMISSION:**

I think we've probably exhausted the topic Mr Hampton.

**MR HAMPTON:**

I was just warming up sir, thank you. I've finished thank you Mr Davidson.

**CROSS-EXAMINATION: MR DAVIDSON**

5 Q. Mr Firmin, just so you're aware of it I'm council for the families for  
Pike River. I just want to pick up the three points I've identified to the  
Commission. Today you've used expressions which have attracted my  
attention. I'll give you a couple of examples, "Nothing beats inspections,  
inspections are our core business." Am I right in thinking that you are  
10 the source of this comment, and I've even have it brought up on the  
screen but in the report by Gunninham and Neal at paragraph 148 your  
sited there for the reference, I'll read this in, it's 010001001/46 where  
the reporters say, "These inspections were shorter than the inspectors  
would have liked. You should go underground and you should audit it.  
You're looking at two days but I didn't have two days. I allowed the best  
15 part of a day at a larger mine and I didn't have time to do an audit. That  
is your expressed view to the reporters. Is it the same view you express  
to this Commission?

A. Yes.

1640

20 Q. Secondly, in terms of the resource available to you, and this is, please  
understand it's an open question to you, Mr Bell has referred to the  
situation which applied in earlier times, you came to the board I think in  
1995 with the Minister of Commerce and then 1998 when you  
transferred to the Department of Labour, is that right?

25 A. Yes, 1995 as inspector of quarries.

Q. Now, we heard Mr Bell's evidence of what the chief inspectors were  
able to do, indeed were directed to do under the system that applied  
prior to that time?

A. Yes.

30 Q. And I'm just going to, for the record, record that in paragraph 50 it was  
an important part of the inspector's role to visit the mines regularly and  
the instruction from the Chief Inspector was to go to gassy mines

weekly, small mines monthly, it's a world apart from where your resources and time allowed you to go?

A. That's true, yes.

5 Q. And when you have that time you can do what he described at paragraph 51, you can check all the reports, walk round the mine, talk to the miners and managers, I'll come back to that, and personally carry out gas level checks, you'd look at the ventilation, check the stoppings, return seals, you'd put a six metre pipe through and test the air through the pipe valve, you would discuss with the men and mine managers any  
10 proposed changes that were needed and you would address planning for ventilation for the next stage of the mine. Am I right in thinking that that was far beyond your capacity in terms of time available to you?

A. Yes, perhaps a different role too.

15 Q. It is a different role because it was differently directed, but when you talk about inspections you've referred to the report of Gunningham and Neal to carrying out an audit when you go down the mine, to make a thorough inspection when you carry the knowledge with you of a mine intimately and of the men you need more time and more skills available to you, do you not?

20 A. Than what we have now?

Q. Yes.

A. We would like to have done more in terms of audits and combined inspections and other activity such as perhaps targeting certain things like roof support or ventilation, but again I guess it's the limited  
25 resources thing, how much time do you spend and does the employer take responsibility for that and a Robens' philosophy so, yes, we do as much as we can given the resources.

Q. I'm not asking you about Robens, I'm asking you what you believe as an inspector who endorses the inspection process would like to do?

30 A. Right, well, I'd like to spend as much time as I can at the mine and do as many different things as I possibly can.

Q. Now, secondly, you used the expression, "We thought there was a big advantage in reporting to a chief mines inspector." Who is the, "We?" You and who else?

A. Kevin.

5 Q. Kevin Poynter, and was that because you wanted to have the expertise of someone of high qualifications underground running the ship?

A. Yes partly and lots of other reasons, you know, but yes.

Q. Am I right, you don't actually have five years underground management experience?

10 A. That's true.

Q. And Mr Poynter does have experience underground of that kind, doesn't he?

A. He has, he's more experienced, management experience than me.

15 Q. You're aware that under a different system that five years underground management experience was required for an inspector?

A. It was part of the requirement for someone to apply for the job but I guess they may have appointed someone that didn't have that depending on the interview.

Q. Well, that's a real guess, isn't it?

20 A. Yes.

Q. Mr Bell has given his evidence that that's what was required?

A. It's part of the requirements, yes.

25 Q. Now, the next brief topic is plans, I want to clarify what you've actually said overall here. You were asked about the receipt of plans as the inspectorate, mine plans and also work programmes, they're two different things, aren't they?

A. Yes.

1645

30 Q. And when you were asked the question about who looks at the plans to consider the safety aspect, your answer was you thought basically us from a health and safety point of view. Now when those plans come in, as I understand your answer to Mr Wilding's question there's no time restrictions placed on when they arrive with you measured against when

the working is going to start or the work is going to start? They could arrive the day before. Is that right?

A. Yes. They are submitted every year. You are talking about the projected plan for the next 12 months?

5 Q. Yes, the work programme, yes.

A. Yeah.

Q. So you have mine plans which record the status of the mine -

A. Yeah.

Q. - on an annual basis and you have a work programme as well?

10 A. No. All you get is the projected -

Q. Yes, all right.

A. - development on that plan.

Q. Now, have you ever written back to an applicant or a mining company and said, "This issue I will not endorse. This proposal I will not endorse in this annual plan in the projection?"

15

A. All we would see on that plan is the projected development of the roadways. The work plan you would have to ask them for the work plan if you wanted to comment on it.

Q. Are you aware that work plans used to be submitted by mining companies?

20

A. No.

Q. We'll come back to my question. Have you ever written back to a mining company reporting with plans and said, "This aspect of what you propose to do or what I see in this plan I will not endorse, or I want to have a meeting with you to deal with the health and safety issue?"

25

A. No, but I have looked at the proposals when I've gone to the mine.

Q. So there's no occasion when, as Mr Bell has expressed a view in his evidence, that there are occasions when he would have said, "I will not approve that plan?"

30

A. No, I've never come across that situation.

Q. Am I right in thinking that in some respects you also believe that to gain credibility, you need to have further professional development and training?

A. Yeah.

Q. Am I right also in thinking that is firstly a heartfelt belief that you are in some respects not at the technical skill level you require to address some of the health and safety issues in mines?

5 A. Could you repeat that question?

Q. Do you feel that you lack some expertise in dealing with some technical issues within the mines?

A. I think it would be fair to say lack some expertise, but you can make yourself up with the current state of knowledge, a slight difference.

10 Q. At paragraph 346 of the Gunningham and Neal report, and just for the record it's 01000100198. You're quoted again and you are quoted as saying, "The mines inspectors therefore are particularly disadvantaged under the current training regime, seeing themselves as specialists without a generalist inspectorate," and then there's a piece that's  
15 attributed to you, and I take from that next section, I don't want to read it out, that the approach from management, that is management within the department, is that you just need to check people's systems and any inspector can do that. But when you go to a mine to do ventilation, I need qualifications to ask is it adequate? You have to have continuous  
20 professional development. I need to be competent, up to date with developments. That's what you're saying isn't it, that you have to raise your level of expertise and be trained so you can have credibility when you go into the mine to talk about technical issues?

A. Yeah. I think I agree with that.

25 Q. Well 10 years I think you said you'd been to one - your application to go to one of these advancement courses was granted, once was it?

A. No I think that was. I'd been waiting 10 years to get to go to an Australia mine to visit an Australian coal mine.

Q. But certainly this is your comment and so it's speaking from your –

30 1650

A. Yes, I think the comment, I think the comment was that there was a feeling when I asked for that sort of training why should we train you when we've got, the responsibility lies with the employer to make sure

that their ventilation, that their geotechnics are all adequate so it was hard to actually get someone to approve the request.

5 Q. I'm just going to come back to finish off on a, to bring these topics together. Nowadays when the mine plans are filed with you, have you resolved the questions which are set out in the Mine Steering Group minutes that we've been taken through today, you've been taken to them for some hours now, have you resolved the question of what you're required to do with them?

10 A. Well the problem for us is sometimes people send in the plan and think that that's an approval for our, of their mining procedures et cetera and that's not quite what it's about. It's letting you know what they're going to do in terms of the direction of mining.

Q. Have you decided within your group what you should be doing with them?

15 A. I think it's just been left.

Q. It's just been left?

A. It's just been left to the inspector what he does with it.

#### **CROSS-EXAMINATION: MS SHORTALL**

20 Q. Mr Firmin you've been asked some questions about this independent review of the department's interactions with Pike River which has been referred to as the Gunningham and Neal report, haven't you?

A. Yep.

25 Q. And what I'd like to do, sir, is just show you two statements from that report so for the record if I could get paragraph 410 of the report it's at DOL0100010001/112, it'll come up in a minute, sir, and if I could just have 410 highlighted. Perhaps to save your voice, Mr Firmin, I'll just read this and I'm going to ask you one question on it and this is from the Gunningham and Neal report, I'm reading directly from this independent review. "What did occur at Pike River Coal was that the mine of its own  
30 initiative, an initiative which we see repeated through the period identifies specific issues confronting it and provided detailed justifications for its proposed systems for dealing with those issues. It's

submitted these to the inspectors who then subjected them to detailed expert scrutiny and posed relevant questions. Where they identify the need for additional information or expertise it was provided. The fact that the mine took the initiative of informing inspectors about emerging significant safety issues – testing for methane, ventilation, flameproof equipment, a new hoist and the use of explosives – and provided their proposed systems gave inspectors a measure of confidence that the mine was discharging its duties. Upon receipt of the responses to these questions and modifications, where necessary, what emerged was a statement the...” and I believe that may be a typo being “that,” “...all practicable steps had been taken, a negotiated agreement or a statement that the proposal was prohibited.” And my question to you, Mr Firmin, is whether you agree with that conclusion which is being drawn by the two independent experts here.

5  
10  
15 A. Yes, I think it would, we had a feeling that Pike River were the sort of people that would negotiate an agreement with the way to deal with the agreements, to deal with the issues that we would raise with them because they were, that the type of people that seemed to want to help to –

20 Q. They took safety seriously, sir?

A. They took safety seriously, yeah.

1655

Q. Can I just turn you to paragraph 454 of the same report and for the record it's located at DOL0100010001/123 and it runs onto 124. It'll come up in a minute, Mr Firmin, and perhaps just again to save your voice I'll just read this statement again directly and quoting from the independent review, “To summarise the available evidence suggests that overall the company was responsive to the recommendations of the inspectors and went to considerable lengths to implement them. As Mr Poynter told us, I can't remember them ever saying no, I'm not going to do that.” My question to you Mr Firmin is whether you also agree with that conclusion borne by the independent experts in their review?

25  
30

A. I agree that the company were responsive to the recommendations, they didn't always agree with me but they responded to the extent that I was happy with their answers.

5 Q. Now, up until recently Kevin Poynter was the other health and safety inspector inspecting mines, quarries and tunnels, wasn't he?

A. Yes.

Q. And Mr Poynter has substantial experience in the development of mines on the West Coast, didn't he?

10 A. Yes, well actually I'm not – he was the planning engineer, I'm not that familiar what projects he developed.

Q. Well let me just bring up very quickly Mr Firmin, I just have a couple of questions on this, just for the record I'm referring to a page marked DOL0100010001165 and do you see there Mr Firmin that it's a curriculum vitae for Kevin Poynter?

15 A. Yes.

Q. And if we just come over to the next page, so for the record 166 of the Gunningham and Neal review, there's a section, "Career highlights," do you see that Mr Firmin?

A. Yes.

20 Q. And if we just come, it's about the sixth point down, do you see a reference there to Mr Poynter managing feasibility studies for Spring Creek Underground Mine and gaining Solid Energy and government approval for the development of Spring Creek? You see that sir?

A. Yes.

25 Q. And the next section refers to development and management of Stockton Mine from a small 200,000 tonnes per annual coal mine to two million tonnes per annum making Stockton the largest producing coal mine in New Zealand?

A. Yes.

30 Q. And you'll agree with me Mr Firmin that both Spring Creek and Stockton are on the West Coast?

A. Yes.

Q. Now, you last conducted an inspection of Pike River in 2008, didn't you?

A. Yes.

Q. And Mr Poynter handled the subsequent inspections, is that right?

A. Yes.

5 Q. And do you understand Mr Firmin that a chronology of the department's interactions with Pike River is included as an appendix to Professor Gunningham and Dr Neal's report?

A. Yes.

Q. And that summary includes a list of visits to Pike River, doesn't it Mr Firmin?

10 A. Yes.

Q. And just so I'm clear, Pike River hit coal in October 2008, didn't it?

A. I'm not too sure.

Q. Okay, do you have any reason to believe that's not right sir?

A. No, that's probably right.

15 Q. If we perhaps just bring one page up onto the screen, I'm just going to ask you a couple of questions, it's 141, for the record I'm referring to the page at DOL0100010001/141 and this is the page sir that follows in the report, a heading, "Appendix 4 Summary of Interactions," do you see a heading, "Visits," there?

20 A. Yes.

Q. And I'm not going to ask you to go through all of these Mr Firmin but on my count I counted eight visits in 2008. Do you have any reason to believe that would be wrong?

A. No, I think, oh, in 2008?

25 Q. In 2008 I counted eight visits?

A. In 2008?

Q. Yes.

A. Was there? Okay.

Q. That would be twice the targeted frequency. Is that right?

30 A. Yes.

Q. And again, this is just off my count from this list that was in the independent review done by Professor Gunningham and Dr Neal, I

counted four in 2009. Do you have any reason to believe my count would be off sir?

A. No.

**5 THE COMMISSION:**

Ms Shortall, if he's got no knowledge of those, they're undertaken by somebody else, he can't verify a record and I think we can assume you have counted directly.

**10 MS SHORTALL:**

Thank you Your Honour, I'm just making the point that this is where the visits are laid out.

**CROSS-EXAMINATION CONTINUES: MS SHORTALL**

15 Q. Let me ask you just a couple more questions Mr Firmin. In addition to identifying visits Professor Gunningham and Dr Neal's report also identified other interactions that the department had with Pike River leading in to the November 19 2010 explosion, doesn't it?

A. Yes.

1700

20 Q. Let me just ask about 2008, given that that's when you were still doing some inspections and having interactions. Well actually Mr Firmin, were you still having interactions with Pike River following 2008, even when Mr Poynter started doing visits to the mine?

25 A. Kevin yes, and Johan and I often would discuss what was going on at Pike River so there's be lots of emails et cetera and probably teleconferences et cetera.

Q. Let me just ask you about a couple of questions just on those emails and teleconferences. I think you gave evidence earlier that a lot of good work can be done by email and phone. Do you remember that?

30 A. Yes, I do.

Q. Do you recall, sorry Mr Firmin we'll just pull up, I've got three questions for you, that's it. We're just looking at an example Mr Firmin of the

interactions that are listed in appendix 4 of the Gunningham and Neal report and it's small print I appreciate but you'll see there's a listing of some emails and memos and calls et cetera here. Do you see that?

A. Yes.

5 Q. And again in 2008 I counted up a 116 interactions between the department and Pike River?

A. Okay.

Q. And do you have any reason to believe sir that my count would be incorrect.

10 A. No, there was a lot.

Q. And then your name continued to appear through 2009 and 2010, I counted 69 interactions in 2009. Any reason to believe that would be incorrect?

A. No, that's be correct.

15 Q. And I counted 123 interactions in 2010 before the 19 November explosion. Any reason to believe that would be incorrect sir?

A. No, that'd be correct.

**THE COMMISSION:**

20 Mr Nicholson.

**MR NICHOLSON:**

Sir, I'm delighted to tell you my friend's covered off my questions so I'm happy to sit down.

25 **RE-EXAMINATION: MS MCDONALD – NIL**

**QUESTIONS FROM COMMISSIONER HENRY:**

Q. Mr Firmin, I was interested in your response a few minutes ago that said that somebody said to you, 'Why should we train you when the responsibility lies with the employer?' is that an accurate rendition of  
30 what you said?

A. Yes, I guess perhaps one person or, you know, rather than perhaps the department, yes, but they were the sort of person that was at the meeting who weren't going to support my application.

5 Q. I'm assuming that the Department of Labour has the normal type of performance agreement between you and your manager and that you discuss your performance?

A. Yes.

Q. Halfway through the year perhaps and then have a round up at the end of the year?

10 A. Yes, true.

Q. And in there you would have a training plan I assume?

A. No.

Q. No. Is there any development plan for you in that agreement?

15 A. No. Sometimes the department might have a plan where they're going to put all the inspectors through communication or some training but mining specific, no, and just specific to me, no nothing.

Q. Is there a standard form that is used?

A. I don't think so. And I think if you want some training you apply for it to your manager.

20 Q. So there's no section in there on training and development?

A. There's a section on what has been done.

Q. Yes.

25 A. You record any that you've done but I don't think there's a section for what you want. You can write that in at the bottom. I'd like such and such a training, you know, and put forward a proposal but it's just in the generalised section.

**QUESTIONS FROM COMMISSIONER BELL:**

30 Q. Mr Firmin, I've got a few questions for you. The first question, you mentioned earlier on about training of health and safety inspectors to inspect quarries. You remember that?

A. Yes.

Q. How big a task is it to convert a health and safety inspector into a quarry inspector?

1705

5 A. Well I don't think you can in a sense that we weren't very happy with this idea and it was only sort of a stopgap measure because the quarries just weren't getting inspected so the idea was to keep them away from the quarry faces that they could do a lot of the work around the quarry plant in terms of hazardous substances as well but in terms of guarding, even perhaps some of the mobile plant but inevitably the training sort of  
10 went to a bit about geology and benching et cetera so there was some of that but the target was to, if anyone had an issue with a quarry face that they would ring, that they would bring that to the inspectors with mining experience and we would perhaps make a visit but a couple of times I think Kevin brought up the fact that there was some quarries that  
15 needed visiting but then there wasn't the money for the mines inspector to go there so it's a bit of an issue that and really we weren't that comfortable with it.

Q. My next question is to do with taking it further what Mr Hampton was saying. How many prosecutions have you launched or been involved in  
20 in your time in the inspectorate?

A. I think nine, nine or 10, one failed.

Q. Are any of those underground coal mines?

A. Yes, one, one I think.

Q. And without naming the mine, what was that particular prosecution to do  
25 with without naming the operation?

A. It was a fatality. In the end we couldn't blame the, we couldn't link the fatality to their lack of procedures, following their own procedures so we prosecuted for not following the procedure which was a health and safety issue.

30 Q. Earlier on Mr Wilding was talking about a small mine with no second means of egress?

A. Yes.

Q. Do you remember that part of Mr Wilding's statement?

A. Yes.

Q. Why did you need to wait six months to go back to visit the place again before issuing a prohibition notice or an improvement notice? Couldn't you have done that straight away rather than waiting six months?

5 A. Yes, he could've. I think the inspector went to the mine and wrote them a letter and then he brought it up with them and then he went back and discussed it and the owner hadn't done anything so he'd written a letter, he went back, he hadn't done anything and then it was my next visit I think so he said, "Look he hasn't done so up to you what you do about  
10 it," sort of thing.

Q. And on that same topic I sort of noted that you asked Mr Booyse for his support before you issued that notice. Was there some concern that you hadn't been supported in the past when you were issuing these sort of things?

15 A. No, I think it was more that it was a very small hard rock, underground gold mine and he was trying to so, there was some evidence to say that he might be able to use the stope as a second mean of egress and Johan was much more experienced at it, than I was with underground hard rock so I said, "Well you come in and we'll have a look and make  
20 sure that that's not acceptable. Doesn't sound acceptable to me."

Q. So it was more of an extra bit of technical advice from Booyse –

A. Yeah, yeah.

Q. – rather than a requirement for any support?

A. Yeah.

25 1709

Q. Just finally, you mentioned there's an electrical inspector has been appointed to the group or to DOL but he has no experience with intrinsic safety or flameproof or anything to do with underground coal mines?

A. Nothing.

30 Q. Isn't that an enormous gap to have in an operation where, as you know as well as I know, underground electricity needs to be carefully monitored?

A. It is and it's probably going to take him four or five years to get accountable with working in coal mines I would think and some – a lot of training. I think they're going to use him in other places as well, so it's not just for us.

5 Q. And just finally, you talked about the new high hazards advisor, who also has got I understand, limited underground coalmining experience, I could be – is that the case?

A. From my understanding yes, he's the safety manager person, I haven't seen his CV I'm not a 100% sure. I understand the appointment might  
10 be for a short time.

Q. But he has no statutory role does he? He doesn't have anything –

A. No, none, not an inspector, not –

Q. I'm just trying to work out where he fits into the scheme of things, because if he doesn't have the expertise to provide advice to you, he  
15 doesn't have a statutory role, I'm not even sure what he does?

A. Well without perhaps going too far into how he's been appointed, I understand that it could be just a six month appointment so he can put procedures in place to get somebody. That was what I was told, but he's very good and he might be kept on, I'm not quite sure of his exact  
20 role.

**QUESTIONS ARISING - NIL**

**WITNESS EXCUSED**

**COMMISSION ADJOURNS: 5.11 PM**

## INDEX

CROSS-EXAMINATION: MR DAVIDSON .....	571
CROSS-EXAMINATION: MS MCDONALD .....	592
RE-EXAMINATION: MS MCDONALD - NIL .....	597
QUESTIONS FROM COMMISSIONER BELL: .....	597
QUESTIONS FROM COMMISSIONER HENRY: .....	598
QUESTIONS ARISING - NIL .....	603
<b>MICHAEL KERRY FIRMIN (SWORN).....</b>	<b>604</b>
CROSS-EXAMINATION: MR WILDING.....	614
CROSS-EXAMINATION: MR HAMPTON .....	682
CROSS-EXAMINATION: MS SHORTALL .....	695
RE-EXAMINATION: MS MCDONALD – NIL .....	700
QUESTIONS FROM COMMISSIONER HENRY:.....	700
QUESTIONS FROM COMMISSIONER BELL: .....	701
QUESTIONS ARISING - NIL.....	704