

QUEENSLAND COAL MINING BOARD OF INQUIRY

Coal Mining Safety and Health Act 1999

Establishment of a Board of Inquiry Notice (No 01) 2020

Before:

Mr Terry Martin SC,
Chairperson and Board Member

Mr Andrew Clough,
Board Member

At Court 17, Brisbane Magistrates Court
363 George Street, Brisbane QLD

On Wednesday, 5 August 2020 at 10am
(Day 2)

1 THE CHAIRPERSON: Yes, Mr Rice?

2

3 MR RICE: Mr Martin, a list has been prepared of documents
4 either referred to directly in the course of evidence
5 yesterday or relevant to it, and that list has been
6 distributed to the parties. Might I then formally tender
7 the documents referred to on the list and pass it up and
8 invite the Board to receive those documents?

9

10 THE CHAIRPERSON: Yes. Thank you. Those documents with
11 the relevant exhibit numbers will be admitted into
12 evidence.

13

14 MR RICE: Thank you. I recall Peter Newman.

15

16 <PETER ANTONY NEWMAN, on former oath:

17

18 <EXAMINATION BY MS HOLLIDAY CONTINUING:

19

20 MS HOLLIDAY: I'm just conscious of the fact that the
21 counsel at least for the CFMEU isn't on the screen
22 presently. I just don't want there to be any issue later
23 on if I start my questioning.

24

25 THE CHAIRPERSON: Thank you, Mr Crawshaw.

26

27 MS HOLLIDAY: Q. Mr Newman, one of the key issues that
28 is being explored in this tranche of hearings is the
29 inspectorate's engagement with site and industry safety and
30 health representatives. Can you firstly give an overview
31 of what engagement the inspectorate has with site safety
32 health representatives?

33

34 A. The engagement with the site safety and health
35 representatives is in two areas - in the first instance,
36 associated with inspections or audits that are undertaken
37 by inspectors on the mine sites. When an inspector gives
38 notification of an inspection, the SSHR is notified by the
39 SSE of the inspector's attendance on site.

39

40 As a matter of course, the inspector will liaise with
41 the SSHR on site if they are on shift and available for
42 that day, and invariably the mines, in my experience, make
43 those persons available. That interaction is for the
44 inspector to understand any issues the SSHR may have that
45 they are dealing with on the mine site, and those
46 discussions are generally held between the inspector and
47 the SSHR outside of the management of the mine's

1 attendance.

2

3 Q. In terms of engagement with SSHRs outside of an
4 inspection, what engagement levels are there?

5 A. So outside of that, the CFMEU hold on an annual basis
6 the SSHR conference. This year COVID-19 obviously
7 curtailed that, but prior to COVID-19 coming along I was
8 invited by the ISHR to attend that, which I accepted and
9 accepted a role of presenting to that conference and
10 interacting with SSHRs in that forum.

11

12 Q. Turning to the engagement with the industry safety and
13 health representatives, what engagement does the
14 inspectorate have with persons holding that title?

15 A. Again, there are a number of different engagements.
16 I suppose coming in to this role, I made - as part of my
17 process of moving in to any new role, looking at the first
18 hundred days and meeting with stakeholders, and in this
19 instance coming in to this role, obviously one of the very
20 important stakeholders are the ISHRs and the CFMEU as
21 representatives of a number of coal mine workers in the
22 industry, so on December 17 I met with the ISHRs and the
23 CFMEU in their offices in Mackay to give them a background
24 of myself, understand their backgrounds and talk through my
25 mode of operation and my first hundred days as to what
26 I was intending to do, and discussed, as part of that,
27 engagement on an ongoing basis.

28

29 The other forums which are held on a regular basis
30 where myself and the ISHRs are in attendance and have
31 opportunity to engage is as members of the CSMHAC, as
32 members of the Board of Examiners, and I recently had
33 a two-day session with the Board of Examiners, of which one
34 of the ISHRs was in attendance, so again there is plenty of
35 opportunity for dialogue with related matters for those
36 forums and outside of that.

37

38 The other engagement is associated with any inquiries
39 they have for myself or the inspectors where there are
40 matters that are of concern to them through their
41 inspections or complaints that they receive from coal mine
42 workers that they investigate, and matters that require the
43 interaction by an inspector with the senior site executive
44 if the ISHR or, in fact, the SSHR on site is unable to get
45 a satisfactory outcome for the matter that they have raised
46 with the SSE, then they will refer those matters to, in the
47 first instance, generally the regional inspector for them

1 to allocate resources to investigate the matter.

2

3 Q. Are you talking about a process that is actually
4 legislatively provided for under section 121 of the Act?

5 A. That's correct.

6

7 Q. And that under subsection 121(2) of the Act, that what
8 occurs is that the ISHR formally notifies the inspectorate
9 that their issue hasn't been addressed?

10 A. That's correct.

11

12 Q. Then an inspector is tasked to investigate?

13 A. Investigate, and if they find the case to be valid,
14 the inspector will then issue directives to that matter.

15

16 Q. Are you aware that in fact a directive has been issued
17 as a result of that 121 process during the time that you
18 have been chief inspector?

19 A. Yes. Back in January, at one of the mines, such an
20 inquiry had been made. An inspector was allocated to
21 review the safety and health management system as it
22 referred to the matter in question, and, as a result of
23 that review/investigation by the inspector, a directive was
24 issued to the mine to bring that matter to an acceptable
25 level of risk.

26

27 Q. If I can move on, then, to the affidavit of
28 Jason Hill, which is HJL.001.001.0001, at 0005 - sorry,
29 this may be my issue. It is HLJ.001.001.0001 at 0005. The
30 numbering is written two different ways, my apologies. If
31 we can go to 0005, at paragraphs 25 to 36 of Mr Hill's
32 statement, he refers to Oaky North mine and an election
33 process that happened in relation to their SSHR. At
34 paragraph 27 he describes it that he was involved - this is
35 Mr Hill - in a dispute with the inspectorate and the SSE
36 regarding that election. Would you describe what occurred
37 as a dispute?

38 A. In my own mind, I would not see it as a dispute.
39 There has been ongoing dialogue between the parties with
40 respect to the election at Oaky North mine.

41

42 Q. Can you explain to the Board what the function of the
43 chief inspector is when there is an election of the SSHR?

44 A. When an SSHR position becomes vacant on an existing
45 mine, the SSHR - sorry, the SSE, the employees or the
46 employees' representatives can make - or make application
47 to hold the election for the replacement of the SSHR or

1 SSHRs at the mine and describe how that election is to be -
2 the description of how that election is to be undertaken is
3 clear in the legislation.

4
5 Q. So at sections 12K and 12L of the regulations, it
6 provides for what your role is in terms of that election?

7 A. That's correct.

8
9 Q. What happened on this occasion that Mr Hill mentions?

10 A. On this occasion, the branch of the CFMEU at
11 Oakly North mine made application, as did the SSE make
12 application, to hold the election.

13
14 In considering the two applications and the
15 circumstances at the mine with respect to the
16 representation at the mine, which I am led to believe is
17 a mine that has a proportion of coal mine workers
18 represented by the CFMEU and a proportion of mine workers
19 who are not represented by the CFMEU or any other body, the
20 mine recommended that they - or applied for them to hold
21 the election using an independent body, the Australian
22 Electoral Company, to facilitate the election, and I made
23 a decision and gave approval for the election to be held in
24 the manner by which the SSE had outlined and made me aware
25 that that process had been a process used previously at the
26 mine successfully. I drew their attention to, as I do with
27 all the SSR - sorry, the SSEs or that body, the CFMEU, as
28 to their obligations under the legislation with respect to
29 how that election is to be undertaken.

30
31 Q. Did anyone make a complaint to you about the election
32 process itself?

33 A. In the way of a formal complaint, no.

34
35 Q. So what is contained within paragraph 36, that Mr Hill
36 is concerned that the SSE misled the chief inspector - you
37 were unaware of that?

38 A. No. Mr Hill did, both verbally through a phone
39 discussion subsequent to the election, make me - or
40 indicate that he believed the SSE had misled me with
41 respect to the election having been undertaken in that
42 manner in the past.

43
44 Q. But you had seen no evidence of that?

45 A. I had seen no evidence of that.

46
47 Q. If I can take you to paragraphs 39 to 46 of the

1 statement, Mr Hill describes the quarterly meetings that
2 used to take place between the ISHRs and the inspectorate.
3 You referred earlier in your evidence to a meeting that you
4 had with the ISHRs in their office on 17 December 2019.
5 That's referenced at paragraph 40 by Mr Hill. What did you
6 inform the ISHRs in relation to when meetings were going to
7 occur and if they were going to occur?

8 A. I informed them that my mode of operation, as
9 I mentioned before, was to engage with stakeholders, both,
10 as I say, in terms of ISHRs who undertake a very important
11 role within the industry, the industry itself and my
12 inspectorate, and obviously the community.

13
14 The issue with respect to holding quarterly meetings
15 with the ISHRs I saw as something which was probably too
16 frequent in terms of the competing demands on the
17 inspectorate with respect to the matters that I discussed
18 yesterday but that I did see there being a need and
19 requirement for us to get together on a regular basis,
20 albeit that may be every six months or so.

21
22 Q. When you said that you didn't see any need for it to
23 be as frequent, I take it that that is because there are
24 also other methods by which you do communicate with the
25 ISHRs and not just at what was a quarterly meeting?

26 A. As I discussed before, there are a number of other
27 forums. In my time in the role, I don't believe there has
28 been a case where I haven't had a phone call or an email
29 from an ISHR that has not been responded to. So they do
30 have access to the inspectors, and I know that the ISHRs do
31 communicate on a regular basis with inspectors in terms of
32 particular concerns they may have on a particular mine site
33 to make them aware of it.

34
35 Q. So when, at paragraph 41, Mr Hill says that you made
36 no effort to reinstate them, do you accept that criticism?

37 A. I only accept the criticism on the basis of it being
38 a quarterly meeting. In terms of having the dialogue with
39 the ISHRs, I do not accept it.

40
41 Q. And you have already indicated that you propose to
42 have meetings but just not as frequently as they were
43 occurring in the past?

44 A. That's correct. I mentioned some of the forums. The
45 other interactions which occur with my inspectorate are
46 around the recognised standards committee and the
47 subcommittees that both the ISHRs and the inspectors

1 participate in.

2

3 Q. In relation to a subcommittee of CSMHAC, can you tell
4 the Board a little bit about that and also the ISHRs on it?

5 A. It goes to two areas. One is from an ISHR
6 perspective, the subcommittees of the recognised standards
7 that are made up of both industry - they are tripartite
8 bodies, and some of those sessions - some of those
9 subcommittees meet for a day or a couple of days on
10 a regular basis to discuss either revisions or new
11 standards. So, again, there is plenty of opportunity
12 during those meetings - while there is a subject matter
13 that is being discussed, there are always out-of-session
14 opportunities for ISHRs to meet with the inspectors in
15 those areas.

16

17 Further and more to the stakeholder engagement with
18 the CFMEU is a subcommittee of CSMHAC that I chair
19 associated with the UQ recommendations that the
20 Commissioner commissioned for a review of the effectiveness
21 of the legislation. So, again, I'm meeting on a regular
22 basis with both QRC and the CFMEU with respect to matters
23 on the legislation.

24

25 Q. Moving on to the functions of ISHRs in comparison to
26 the functions of inspectors, in terms of the functions of
27 the inspectors under the legislation in relation to serious
28 accidents and high potential incidents at coal mines, and
29 in particular subsection 128(h) of the Act, what is the
30 inspectorate's function in relation to investigating?

31 A. The inspector's function is to investigate serious
32 accidents and fatalities and high potential incidents.

33

34 Q. Comparing, then, what the legislature has set out in
35 terms of the function of the ISHRs in the Act at 118(1)(d),
36 what is their function in relation to investigations?

37 A. The function of the ISHR with respect to
38 investigations is to participate in those investigations.
39 They do have another function with respect to
40 investigations, but that is associated with the
41 investigation of complaints made to them by coal mine
42 workers.

43

44 Q. At paragraph 51 of Mr Hill's affidavit, he states
45 that:

46

47 *The Inspectorate no longer allows us to*

1 gather evidence at the same time that they
2 do.

3
4 That's the first part of paragraph 51. If it was the case
5 that the inspectorate didn't allow the ISHRs to gather
6 evidence, why would that be?

7 A. Well, the inspector - the inspectorate is charged with
8 the responsibility for investigating serious accidents.
9 Part of that process is the gathering of evidence. Both
10 the gathering of the evidence, which comes in many forms,
11 can at a later date be used, may well be used, for
12 compliance action and/or prosecution, so the manner in
13 which that evidence is gathered has to be done in a
14 particular way so as not to compromise any future
15 prosecution that may result from the investigation.

16
17 Q. So it is nothing to do with a deterioration in any
18 relationship?

19 A. There is absolutely nothing. It's certainly not
20 a personal issue. It's not an issue with the ISHRs, who,
21 as I have said, have a very important function within the
22 industry. It is around making sure that the inspectorate
23 undertake the investigation using the processes and
24 procedures that ensures that no evidence is compromised.

25
26 Q. Similarly in relation to coercive interviews, at
27 paragraph 52 Mr Hill says that the ISHRs have no idea when
28 the inspectorate is conducting coercive interviews. Why is
29 it, if that's the case, that the inspectorate hasn't
30 informed the ISHRs as to when coercive interviews are being
31 conducted?

32 A. Again, it is in relation to the investigation being
33 undertaken in the correct process and procedures required
34 that those interviews and any evidence coming out of those
35 interviews is not compromised with respect to any future
36 potential prosecution that may result from the
37 investigation.

38
39 Q. At paragraph 53 Mr Hill says that in his belief "the
40 ISHRs have been completely pushed out of the investigation
41 process". Do you accept that?

42 A. No, I don't.

43
44 Q. Can you explain what the ISHRs' function of
45 participating in an inspectorate's investigation may
46 involve?

47 A. Typically the ISHR will attend the site for a serious

1 accident. The inspectors - or in the first instance,
2 Queensland Police will have charge of the site. Once that
3 is discharged to the inspectorate, the scene is obviously
4 secured. The investigating lead in terms of the
5 investigation and the principal investigation officer will
6 then have a meeting with the SSE and the operator of the
7 mine, and the ISHRs are invited to those meetings so as to
8 outline what the process will be for the investigation to
9 be undertaken at the mine.

10
11 It is not a - the ISHRs are given, in a managed way so
12 as not to disturb any evidence at the scene, access to the
13 scene to make their own observations, and they participate
14 in so much as they can offer either advice or potentially
15 persons of interest that the investigation team may wish to
16 consider with respect to interviews associated with the
17 investigation.

18
19 There have been, in my time in the role, circumstances
20 where those persons of interest that have been suggested by
21 either the ISHRs or, in fact, the CFMEU have been provided
22 to the inspectorate for their consideration for interviews
23 with respect to a serious accident investigation. So there
24 are a number of ways in which the ISHRs participate in
25 those investigations.

26
27 Q. In relation to paragraph 54, Mr Hill says that they
28 haven't been given the opportunity to photograph or test
29 evidence. Can you explain again that if that has occurred,
30 why they haven't been given or afforded that opportunity to
31 photograph or test the evidence?

32 A. Well, again, this goes back to my earlier point that
33 the collection of evidence and the process for the
34 collection of evidence so as not to compromise any future
35 compliance or prosecution is critical for a successful
36 investigation and potential prosecution to be successful.

37
38 Q. At paragraphs 57 to 63 there is an example provided by
39 Mr Hill where he says that he was deprived access to the
40 incident scene. Firstly, he says that when the ISHRs
41 arrived, the inspectorate had started to cover it with
42 a tarpaulin. That's at paragraph 58. Can you explain why
43 it was necessary for the inspectorate to cover the incident
44 scene with a tarpaulin?

45 A. Well, as the affidavit in point 58 describes, the
46 inspectorate had started to cover it with a tarpaulin
47 because it looked as though it was going to rain. So the

1 inspectorate were covering the scene to protect the
2 evidence from a weather event which did not exist at the
3 time of the incident.

4
5 Q. So clearly it wasn't being done in any way to obstruct
6 the ISHRs, rather, to preserve the integrity of the scene?

7 A. Absolutely. And subsequent to that, the ISHRs were
8 given access to the scene once the weather event had gone
9 and the tarpaulin removed from the scene.

10
11 I am aware at the time that there was some
12 consternation that all the ISHRs could not attend the scene
13 as a collective, and, again, that was about the
14 investigation lead and the principal investigation officer
15 ensuring that evidence was not disturbed any more than it
16 could be by people attending the scene. So persons were
17 being taken - the ISHRs were being taken in one at a time.

18
19 Q. That answered my next question, that essentially
20 whilst they couldn't go in collectively, they were
21 permitted to go in individually?

22 A. That's correct.

23
24 Q. I'm going to jump ahead a little bit to paragraph 100.
25 Mr Hill states in the second paragraph that:

26
27 *More recently, the Inspectorate has often*
28 *started its investigation regardless of*
29 *when the ISHRs arrive and [they] are often*
30 *confronted with evidence [having been*
31 *removed by that time].*

32
33 In terms of why it would be necessary to start an
34 investigation prior to the arrival of the ISHRs, why would
35 that be?

36 A. Well, one obvious reason is the time frame at which
37 the ISHR may arrive at the site. I am not aware of any
38 occasions in which an investigation has proceeded at such
39 a speed that evidence has been collected and removed from
40 the scene prior to an ISHR arriving at the scene in a
41 timely manner.

42
43 Q. But, again, it's nothing personal; it's just the way
44 in which it has to function to --

45 A. Absolutely. If there is a risk of evidence being
46 disturbed or affected by some condition at the scene, the
47 investigating officer will collect that evidence prior to

1 whatever circumstance, external circumstance, may occur, be
2 it geotech, weather, whatever, to secure that evidence in
3 the appropriate manner.
4

5 Q. If I can take you back to paragraph 66, it speaks of
6 the fact that it has completely stopped - the inspectorate
7 facilitating access to a site if an SSE is resisting their
8 entry. What do you have to say in relation to
9 paragraph 66?

10 A. Certainly in my tenure, there have not been any
11 instances that I am aware of where an ISHR has been refused
12 entry to a mine site. In my discussions with my regional
13 inspectors and other inspectors who have been with the
14 inspectorate for a number of years, they cannot recall any
15 instance where they have had to intervene with respect to
16 an ISHR not having access to a site.
17

18 Q. If I can take you to paragraphs 67 and 68 - and there
19 is an attachment to Mr Hill's affidavit, JH-2 - you would
20 be aware that the regional inspector, Stephen Smith, sent
21 an email on 17 February 2020 stipulating that mine record
22 entries would from that time forward only be provided as
23 per subsection 173(3) of the Act to the SSE and the
24 operator; is that correct?

25 A. That's correct.
26

27 Q. Is that the reason why it was done, because that is
28 what this legislation says must occur?

29 A. The underlying reason is that the legislation requires
30 us to send the mine record entry to the SSE and the
31 operator, and, further, that the legislation requires us to
32 ensure confidentiality with respect to matters that the
33 inspectorate bring to the attention through such MREs.
34

35 As I mentioned before in terms of coming into the role
36 and engaging with the various stakeholders, of which an
37 important stakeholder is my inspectorate, one of the
38 matters which had been occurring was that the email list
39 for distribution of mine record entries was very extensive,
40 to not only ISHRs but corporate headquarters of a number of
41 mining companies and other SSEs, to the extent that some
42 SSEs were not receiving the MREs that were being posted to
43 them, to the extent that we've introduced now the
44 requirement for them to acknowledge receipt of.
45

46 So thank you to Mr Smith for doing so, but my
47 instruction to Inspector Smith was to make that

1 notification to SSEs with respect to the distribution of
2 mine record entries only going to the SSE and the operator,
3 as was required by the legislation and, in turn, from
4 a confidentiality perspective.
5

6 That doesn't say that the mine record entry is not
7 available to the ISHRs. Again, this is not a personal
8 issue against ISHRs or any other party, but the mine record
9 entry, as is required, has to be posted on to a noticeboard
10 at the site, to which both the SSHR and the ISHR have
11 access, and one of the discussions that was had with the
12 ISHRs was that they use those mine record entries to plan
13 their inspections and matters that they would concentrate
14 on based on what the mines inspector had seen during their
15 previous inspection.
16

17 That facility is still available to them through the
18 posted MRE at the site, the mine record at the site, and
19 any relationship they have with the SSHR on site that
20 I assume they notify that they are coming to site and can
21 talk about the issues that were raised by the inspector on
22 their last visit.
23

24 Q. Mr Woods, who is also an ISHR, says in his statement
25 that the reason for the change was because of him losing
26 a Supreme Court application - that was his belief. That is
27 not correct in actuality?

28 A. No, and if my memory serves me right, the notification
29 sent out by Inspector Smith was in fact prior to that
30 Supreme Court decision, so it had nothing to do with it.
31

32 Q. Being handed down?

33 A. Being handed down, yes.
34

35 Q. In relation to conflict of interest of inspectors -
36 and I will take you to paragraphs 90 to 92 - Mr Hill
37 details there a conflict of interest between an inspector
38 and an SSE at a particular mine. Mr Hill details that it
39 was in fact the inspector that told him about the conflict,
40 and that is how he became aware of it. Is one of the ways
41 in which one manages conflict to let persons know about the
42 conflict and that it exists?

43 A. That is correct, and the conflict in this matter, the
44 inspector also notified me of that conflict when I came in
45 to the role. Again, as you say, part of a process of
46 managing conflict is to make parties aware of that
47 conflict.

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Q. That inspector is not in the same region as the mine at which he has the relationship --

A. That is correct. He is in the southern area of the basin.

Q. How is the conflict otherwise managed?

A. Whether it is in the case of this inspector, if there is a serious accident or incident or an investigation and there is conflict with respect to inspectors having either a personal relationship or having worked at that mine previously, they are conflicted out with respect to undertaking or being involved in the leading of an investigation.

Q. Mr Hill mentions at paragraph 91 that he has seen the inspector's name on notification forms as being the inspector notified about HPIs involving gas exceedances. Can you explain how that occurred and what happens to manage that conflict?

A. While during the week if an HPI occurs, the site will contact one of the local inspectors. On the weekend, we have a roster that involves all bar two inspectors, being myself and the deputy, for the taking of calls over the weekend period, so they are on-call inspectors for the 48 hours of the weekend. In this instance, the said inspector was the on-call inspector at the weekend. That HPI would then be transferred to another inspector to follow through either on the weekend, if that inspector believed it needed to be dealt with on the weekend, or on the following Monday at our morning meeting.

Q. Thank you. In relation to paragraph 108, Mr Hill says that the inspectorate doesn't keep the ISHRs updated regarding matters they are investigating. We've already touched on this, in any event, but in relation to when you can update them about an investigation, do you do so?

A. The updating in terms of the investigation would only be to the extent of the process that is being undertaken at the time, such as that halfway through the investigation we are continuing to interview witnesses or we are in the process of compiling our nature and cause report. So in that broad aspect, if inquiries are made, if it's to that level, we would provide feedback in terms of where the investigation is.

With respect to any details of the investigation, as

1 I have previously said, that would not be shared in case it
2 compromised any further compliance or prosecution that
3 might take place.

4
5 Q. Those are the only questions I have in relation to
6 Mr Hill's affidavit.

7 A. Sorry, just reading through 108 there, it says:

8
9 *Prior to the breakdown in the relationship*
10 *between the ISHRs and the Inspectorate, we*
11 *used to call each other and tell them*
12 *things that we had heard.*

13
14 I refute that there is a breakdown in the relationship.
15 While any relationship needs both parties to believe there
16 is one, I accept that the ISHRs may have a different view,
17 but from my perspective there is enough interface between
18 the inspectorate and the ISHRs in, as I say, the forums we
19 have that that relationship has certainly not broken down,
20 and the ISHRs - even as early as Monday of this week, just
21 prior to my Monday morning meeting, an ISHR contacted one
22 of my inspectors about something that they had heard
23 concerning a matter on a mine, to which one of my
24 inspectors is now responding. So I refute the comment made
25 in the first sentence of 108.

26
27 Q. Can we move on to Mr Woods' affidavit. It is
28 WST.001.001.0001. I'm not going to take you through this
29 paragraph by paragraph --

30 A. Thank you.

31
32 Q. -- because a lot of this we have already addressed,
33 but in relation to paragraph 63, can you explain the ways
34 in which there are in fact reviews of notifications of
35 serious accidents and high potential incidents, contrary to
36 what is suggested there at paragraph 63?

37 A. I will answer that in two ways. First, in terms of
38 individually, I'm certainly aware that mining companies
39 review serious accidents and high potential incidents at
40 coal mines, both at their own coal mines and at other coal
41 mines, as provided - as I've mentioned, there are
42 periodicals that we make industry aware of.

43
44 In terms of the inspectorate, as I described
45 yesterday, we certainly review high potential incidents and
46 serious accidents on a weekly basis at my weekly meeting,
47 and also on a monthly basis at my leadership meeting, we

1 review the previous month in terms of any potential trends
2 that we believe need attention, supplementing the weekly
3 meetings.
4

5 In terms of the collective, in terms of ISHRs, the
6 inspectorate and the company, the commissioning of Dr Brady
7 to undertake a review of the last 20 years of both serious
8 accidents and high potential incidents and the submission
9 of his report and the subsequent workshops, presentations
10 and soon-to-be podcasts associated with the findings of his
11 report is very much demonstration of a process of reviewing
12 of serious accidents and high potentials at a forensic
13 level.
14

15 THE CHAIRPERSON: Q. So does that involve the industry
16 reps or not?

17 A. In terms of the report itself, the dissemination of
18 that report was given to a number of - was given to CSMHAC.
19 There has been a webinar with respect to the findings of
20 it. He has made presentations to employee representatives.
21 He was to present to the annual health and safety
22 conference at which CFMEU and other employees are present.
23 And the series of podcasts that he is making associated
24 with the report involved interviews with not only the
25 regulator and myself but also the CFMEU. I know he -
26 because I changed batons, as we went into the booth, with
27 Stephen Smyth from the CFMEU, the president of the CFMEU.
28 So to that point, yes, there has been, to my knowledge,
29 a fair amount of involvement and discussion of the outcomes
30 of that review with those parties.
31

32 Q. The outcome of the reviews, but is there a process
33 involving the industry representatives in reviewing
34 notifications of serious accidents, et cetera?

35 A. With respect to the ISHRs?
36

37 Q. Yes.

38 A. I don't know what process they have to do it
39 internally. In terms of a process whereby the ISHRs meet
40 with the inspectorate and companies, I'm not aware of such
41 a process.
42

43 THE CHAIRPERSON: Thank you.
44

45 MS HOLLIDAY: Q. In paragraph 67, Mr Woods states that
46 the inspectorate --

47 A. Sorry, could I - just on reflection, the only - the

1 one area that that process does occur, as I mentioned
2 yesterday, is in CSMHAC, where I do present the performance
3 of the industry with respect to HPIs that have occurred in
4 the industry in the preceding three months between each of
5 those CSMHAC meetings. So at those meetings are company
6 representatives in terms of QRC representatives, there are
7 CFMEU representatives and the inspectorate, so there is the
8 opportunity for discussion on those HPIs at that forum.

9
10 Q. At paragraph 67, Mr Woods states that the inspectorate
11 and the ISHRs generally only investigate fatalities and
12 incidents that involve very serious injuries. I'm only
13 interested in the inspectorate's role in that. Is it
14 accurate to say that the inspectorate only investigates
15 fatalities and incidents that involve very serious
16 injuries?

17 A. No, that's not correct.

18
19 Q. In relation to what is investigated by the
20 inspectorate?

21 A. There are certain HPIs - well, all HPIs are
22 investigated. The depth to which they are investigated
23 will go from an inquiry back to the operator, as
24 I mentioned yesterday, through to a full investigation.

25
26 Q. Are you aware that Mr Stone actually addressed that at
27 paragraph 78 of his statutory declaration?

28 A. That's correct.

29
30 Q. You were asked a series of questions yesterday in
31 relation to changes the inspectorate has recently
32 implemented in relation to its handling of HPIs and it will
33 implement into the future as well, and you have provided
34 a statutory declaration along those lines. That was the
35 driver for those changes being implemented and also the
36 plans for future implementation into the future?

37 A. As I mentioned earlier this morning, in coming in to
38 any role - and this one included - I undertake a typical
39 100-day plan. That plan involves engagement with
40 stakeholders. Those stakeholders in this instance included
41 my inspectorate, having one-on-one sessions with each of
42 the inspectors for between one and two hours; the CFMEU, in
43 terms of the meeting I had, as I mentioned, in December;
44 the operators, in terms of meeting with a number of CEOs
45 with respect to their view of the regulator and matters
46 that pertain to their operations; meetings with my
47 counterparts in New South Wales, the chief inspector in

1 New South Wales, and understanding how they dealt with
2 various matters.

3
4 As a result of that engagement with the stakeholders,
5 there were a number of issues which came to my attention
6 that by the end of the three months I started to implement
7 plans to change some of the matters which had been brought
8 to my attention, and be it through benchmarking or
9 otherwise, I found better ways that we should be doing
10 things.

11
12 That included the functional reporting of inspectors.
13 It included the review and changing of the way in which
14 high potential incidents are reported to the inspectorate
15 and the development of a business plan for a central
16 assessment unit that Mr Stone referred to yesterday, which
17 reflects what I see as a benchmark way of doing it that our
18 brothers and sisters across the border use.

19
20 That then, in terms of those matters, became a stage
21 one exercise. In order to do that, there is obviously
22 a requirement for budgetary considerations, so in the first
23 six months of the previous financial year that business
24 plan was put together to justify the expenditure of
25 replacing our existing reporting system, but there was
26 a need to do some modifications in the interim, because all
27 IT projects take far longer than they are supposed to. So
28 in the interim, we started putting in place the changes
29 which are now afoot with respect to the changes to Lotus
30 Notes, the recording by inspectors of HPIs as part of the
31 overall improvement that came about from the interface or
32 the engagement with those stakeholders.

33
34 The fact that Mr Brady came along at Christmas with
35 a report that said we should be doing it as well was just
36 music to my ears, because the budgetary priorities then
37 ensured that that money was available to us.

38
39 Q. Moving on to another topic, under the system that
40 existed during the terms of reference period, if you wanted
41 to conduct a review of the number of HPIs in relation to
42 methane exceedances at a particular mine, how would the
43 system have been able to be utilised for you to undertake
44 that process?

45 A. In its rawest form, Lotus Notes, while there has been
46 commentary in terms of its age and the need for change,
47 does have some basic smarts about it. So if I want to

1 know --

2

3 (The audio dropped out to remote locations)

4

5 THE CHAIRPERSON: We might have an adjournment.

6

7 **SHORT ADJOURNMENT**

8

9 THE CHAIRPERSON: We are right to go, I understand.

10

11 MS HOLLIDAY: What I will do is repeat the last question.

12

13 Q. Moving on to another topic, under the system that
14 existed during the terms of reference period, if you wanted
15 to conduct a review of the number of HPis in relation to
16 methane exceedances at a particular mine, how would the
17 system have been able to be utilised for you to undertake
18 that process?

19

20 A. As described yesterday, the source of truth is
21 contained within Lotus Notes, in the incident database.
22 Lotus Notes, while we are looking to replace it, does have
23 some good features. One of those features is that we are
24 able to search by mine for HPis, directives, MREs, audits.
25 So in terms of doing a review of a series of HPis for
26 a particular mine, the relevant form 1As, 5As and any other
27 attachments would be collected from the mine area. We
28 would then go into the mine record entries, again looking
29 up for that particular mine, and it lists all the mine
30 entries that have been made at that mine.

30

31 Q. So there is the capacity to --

32

33 A. There is the capacity to sort by mine, and very
34 quickly, and pull that information out. That information
35 would then be printed off or contained electronically and
36 put up on a screen, and the relevant inspectors that are
37 listed both for the form 1As and also the MREs, obviously,
38 and directives - we would then bring those inspectors in to
39 discuss the HPis and any common matters that were found
40 across the various HPis and any actions which had been
41 taken associated with those HPis and the result of any
42 inspections and follow-up with respect to the controls that
43 the mine had informed us that they were implementing and
44 had been verified when those inspections had been
45 undertaken.

45

46 MS HOLLIDAY: Mr Martin, I have no further questions.

47

1 THE CHAIRPERSON: Thank you. Mr Rice?

2

3

<EXAMINATION BY MR RICE:

4

5

MR RICE: Q. Just a couple of things, Mr Newman. You mentioned that so far as SSHRs are concerned, they are made aware of an inspector's visit and some dialogue is engaged in. I take it that the SSHRs have the opportunity to accompany an inspector on the visit; is that so?

6
7
8
9

A. They do, yes.

10
11

12

Q. That happens, regularly?

13

14

15

16

A. Depending on the mine and the - yes, it's - I say that, depending on the mine, whether the SSHR is actually on shift or otherwise, but there is no reason why the SSHRs aren't able to accompany the inspector.

17

18

19

20

21

22

23

24

25

If I can, I should say that it doesn't mean that in all cases the inspector would be accompanied by the SSHR. The inspector may determine that they want to do an inspection with the open-cut examiner or a supervisor, but there is still the interface with the SSHR, if they are on shift, with respect to any matters that they have or, in fact, the outcomes and the close-out meeting that the inspector has with the SSE.

26

27

28

Q. For each inspection, there will be an MRE created - that's the system, is it not?

29

30

31

32

Q. And that gets sent to the mine for inclusion in the mine record; correct?

33

34

35

36

37

Q. If I understand you correctly, that is currently the means by which the SSHRs can acquaint themselves with the outcome of that inspection?

38

39

40

41

42

43

A. If they weren't in attendance, yes.

44

45

46

47

Q. Previously, is it the case - and when I say "previously", I'm talking about prior to February 2020 - were the SSHRs on an email list? Was there a wide email distribution list for MREs?

A. To be honest, I can't comment with respect to SSHRs. The ISHRs were on that list.

Q. Are you aware of a decision that was made not to

1 continue to include ISHRs on an email list of MREs?
2 A. As per my previous comments this morning, yes, there
3 was an email sent out by Inspector Smith, on my
4 instruction, with respect to removing - let me put it
5 another way, of emphasising our obligation to send those
6 MREs to the SSE and operator, and that others that had been
7 on an extensive email list, including ISHRs and other
8 company representatives, be they on site or off site, that
9 in future they would only be sent to the SSE and operator
10 as required by the legislation.

11
12 Q. I understand what you say about the requirement of the
13 legislation, but having regard to the ISHRs' function, was
14 there any particular reason to exclude them from that email
15 list and, in lieu of that, require them to go to the mine,
16 some hours' drive away, to view any MREs?

17 A. Well, as I mentioned, there is not a requirement for
18 them to go to the mine to view those MREs. The posting of
19 MREs to other parties besides the SSE and operator does
20 provide a - may damage the ability of the inspectorate to
21 discharge their function of not widely distributing
22 a document that is to be a confidential document. It is
23 there to go into the mine record entry.

24
25 As I explained before, an ISHR does have
26 a relationship with the SSHR on that site, and as was
27 outlined in the email, if the SSE chooses to send it to his
28 corporate people or to the ISHR on request, that is
29 something for the SSHR rather than the inspector.

30
31 Q. Do I discern, in essence, two reasons: one is that it
32 is not required to be distributed to ISHRs under the
33 legislation?

34 A. That's right.

35
36 Q. Number one. And number two, you took the view that it
37 was, in a sense, a confidential document?

38 A. That's correct.

39
40 Q. Those are the two reasons?

41 A. That's right.

42
43 THE CHAIRPERSON: Q. In what way would it be
44 confidential? Don't you post it on a noticeboard?

45 A. It is posted on a noticeboard at the mine site.

46
47 Q. Yes, at a location where the industry representative

- 1 goes regularly; is that right?
2 A. The ISHR?
3
4 Q. Yes.
5 A. Yes.
6
7 Q. So if it is a safety matter, why wouldn't you share it
8 with the industry representative?
9 A. Because of our obligations under the legislation.
10
11 Q. Being?
12 A. To maintain confidentiality and to --
13
14 Q. But what is confidential about it, Mr Newman?
15 A. It is a document that is going in to the SSE - it is
16 the result of an inspection that is submitted to the SSE,
17 as we are obliged to do, for them to include in their mine
18 record. The distribution of that is then a matter for the
19 SSE, not for the inspector.
20
21 Q. Have you received legal advice on this, that it is
22 a confidential document that shouldn't be shared with the
23 industry representative?
24 A. Me personally, no, I have not.
25
26 Q. Well, has the inspectorate, or is this your
27 interpretation of confidentiality?
28 A. It is the - as the chief inspector, it was an
29 instruction I gave with respect to what I believe is both
30 the requirement for it to go, as I say, to the SSE and
31 there have been other matters that have been - where
32 matters have been posted with respect to the mine record
33 entry where confidentiality of information has been put in
34 question.
35
36 Q. That may well be so, but the obligation under 173(3)
37 is to ensure that the mine operator and the site senior
38 executive get the reports that are made by the inspector
39 and others, including the industry safety and health
40 representative. The obligation is to supply, perhaps as
41 a matter of natural justice, to the operator and the SSE
42 such reports. It does not mandate that you can't send it
43 to the ISHR, does it?
44 A. I take your advice on that, but the --
45
46 Q. Well, it's not a matter of advice.
47 A. As I say, the initial matter that brought this to my

1 attention was the fact that there was an extensive list of
2 persons that the mine record entry was being sent to, to
3 the effect that the SSE and operator were not in all cases
4 receiving the mine record entry, requiring confirmation
5 from those SSEs and operators that they had in fact
6 received it. In no way was I preventing, looking to
7 prevent, the ISHR or any coal mine worker having access to
8 the mine record entry that had been submitted to the SSE
9 and operator, by the very fact that it is posted on the
10 mine noticeboard.

11

12 Q. Quite. The point that I am really addressing is why,
13 in the interests of safety and sharing information about
14 matters of safety, would you not include the industry
15 representative whose very function is to help out in
16 relation to mine safety?

17 A. I don't see that I'm impeding that.

18

19 Q. Well, you are certainly not enabling it, as it was
20 before.

21 A. I have a view that there is ample opportunity for
22 both - and as I've mentioned, there is ongoing dialogue
23 between the ISHR and my inspectorate and myself with
24 respect to any matters that the ISHR may have with respect
25 to safety matters - health and safety matters on their mine
26 site.

27

28 Q. Yes, all right. Since I have interrupted Mr Rice,
29 I will just ask this matter as well. In relation to
30 section 118(1)(d), the industry representative has the
31 function to participate in investigations into serious
32 accidents and high potential incidents and other matters
33 related to safety or health at coal mines. Given what you
34 have said when answering questions from Ms Holliday, how do
35 you envisage that the industry representatives participate
36 in such an investigation? What do you see as their
37 participation? So far, and I may have misheard, but
38 I think you were questioned about them taking photographs,
39 and you said, "Well, they can't do anything that may impede
40 an investigation, because it may impede the prosecution."
41 So what, then, can they do? What is their participation
42 that they can achieve to fulfil their obligation under
43 section 118?

44 A. They are able - and it is facilitated by the
45 investigation team, their access to the site of the
46 incident so they can provide advice as they see it from
47 what they observe at the scene.

1
2 Q. So they can access the scene and provide advice to
3 whom?

4 A. To the investigation team, as they have with respect
5 to matters that they believe should be considered by the
6 investigation team, to the point of, as I mentioned,
7 potential coal mine workers that the investigation team may
8 like to interview as part of the investigation, because
9 those coal mine workers have reported to or advised the
10 ISHR or, in fact, the SSHR of matters of concern that
11 resulted in the incident that the inspectorate may not be
12 aware of. That is one aspect.

13
14 Others may be associated with other activities that
15 are related to the incident at the mine that the
16 investigation team may well be unaware of that coal mine
17 workers or, in fact, the SSHR or the ISHR may have been
18 aware of because of their presence at the mine or
19 inspection of the mine at that time or, in fact, previous
20 to that occasion.

21
22 Q. One would think that they would pass on that
23 information, in any event. You didn't need a serious
24 accident to cause that to ensue.

25 A. One would hope so.

26
27 Q. So, so far we have accessing the scene and giving
28 advice to the inspectors and perhaps nominating witnesses,
29 things of that nature?

30 A. Yes.

31
32 Q. Anything beyond that?

33 A. Not that comes to my mind.

34
35 Q. What about the inspectorate, then, does it share
36 evidence with the industry representatives to see what
37 their view is as a result of knowing what you know?

38 A. Only if there is a view that in sharing that evidence,
39 it will not compromise the investigation.

40
41 Q. How do you see that sharing that evidence might
42 compromise the investigation?

43 A. I think it's a difficult question to answer in general
44 terms. It's very much specific to the actual
45 investigation - or the event, I should say.

46
47 Q. I suppose the fundamental problem may be if they share

1 the information with those under investigation, perhaps?

2 A. That's right.

3

4 THE CHAIRPERSON: Yes, Mr Rice.

5

6 MR RICE: Q. Mr Newman, you were a party to some
7 litigation with Mr Woods earlier this year, I think?

8 A. That's correct.

9

10 Q. You would recall that and the details of it, would you
11 not?

12 A. Yes.

13

14 Q. The upshot by way of a judgment from the Supreme Court
15 was, in effect, to point out the limitations of the powers
16 of the industry representatives?

17 A. That's correct.

18

19 Q. Acknowledging that and having regard to some questions
20 put to you by the Chairperson, would you see any merit in
21 some form of protocol or memorandum of understanding being
22 devised as between the inspectorate and the ISHRs to try to
23 advance, in the interests of safety, how both functions
24 might best be performed in the interests of safety?

25 A. In general terms or in respect to the process of
26 investigation?

27

28 Q. The process of investigation and how they might fit
29 into the investigative function which they have, but having
30 regard to their limited powers. I appreciate what the
31 limits of the legislation are, don't get me wrong, but I'm
32 just querying whether you would see some merit in, in the
33 interests of safety, engaging in a formal protocol or
34 memorandum of understanding between the inspectorate and
35 the industry representatives so that roles could be clearer
36 and perhaps more satisfactory?

37 A. I think that the requirement for an understanding of
38 how all stakeholders involved in an investigation are dealt
39 with is a matter which could well be served in terms of
40 documentation within the inspectorate's investigation
41 process so that it is clear for the investigating officers
42 how that engagement occurs both for ISHRs, for SSEs and, in
43 fact, for other parties, including the bereaved families of
44 persons that have been seriously injured or killed in the
45 industry.

46

47 Q. It's not really clear at the moment, is it, how both

1 those roles can be performed amicably and fruitfully?

2 A. That's correct. So my point is that, yes, there is an
3 opportunity for the regulator to outline for all
4 stakeholders how that should occur with respect to an
5 investigation so that it is clear on particularly the
6 investigating officers as to the process, and, in fact,
7 myself.

8
9 So one of the protocols, again from my observations
10 coming in to the role, is that the regulator, as in the
11 chief or others, hadn't met with bereaved families to take
12 them through the process of investigation and the reasons
13 why investigations take the time they do. So that has now
14 been in place and needs to be documented so that when
15 I move on, hopefully my successor does the same thing.

16
17 Q. You would accept, I think, that the union itself has
18 a legitimate interest, on behalf of its members, to
19 ascertain details of cause so that it can communicate with
20 bereaved families or families of injured workers?

21 A. At the appropriate time, yes, but I should say that
22 some of those bereaved families were not - their spouses
23 were not members of the union, and they are entitled to
24 exactly the same process of understanding an investigation
25 process.

26
27 MR RICE: I don't have anything further, thanks,
28 Mr Martin.

29
30 MR CLOUGH: Q. Mr Newman, I have a couple of questions
31 on the same topic but in terms of the notification of high
32 potential incidents. I believe Mr Smith said that there
33 was a distribution of the form 1As within the inspectorate;
34 that's correct?

35 A. That's correct.

36
37 Q. Are the industry safety and health reps included on
38 that distribution list?

39 A. No, in so much as they are notified by the SSE.

40
41 Q. I fully understand that. I wanted to ask you whether
42 there would be any merit in actually including them on the
43 distribution list. Given there is a requirement for the
44 SSE to inform them as well, I couldn't personally see any
45 confidentiality issues there. Do you have a view on that?

46
47 MS HOLLIDAY: Could I just check whether it would be

1 a requirement for the mine or the inspectorate by virtue of
2 that question?

3
4 MR CLOUGH: It is a requirement of the SSE - sorry,
5 I probably didn't phrase it properly. I understand it is
6 a requirement of the SSE to inform the industry safety and
7 health reps.

8
9 Q. I'm just wondering if you have a view on whether or
10 not it would be a good practice for the inspector to also
11 share the form 1As.

12 A. The form 1As are the forms which are supplied by the
13 SSE to the ISHR, so it would just be a duplication.

14
15 Q. That's the same form, is it?

16 A. Yes.

17
18 Q. Okay. I wasn't aware of that. Thank you. Following
19 on from the questions I asked Mr Stone yesterday in terms
20 of lagging and leading indicators - he deferred the answer
21 to yourself. At the moment, the Queensland Mines and
22 Quarries Safety Performance and Health Report has a strong
23 focus on lost time injuries frequency rates. I'm just
24 curious what ideas you might have in terms of potential
25 lead indicators that could be used - not to replace the lag
26 indicators but to maybe give a more complete picture. Have
27 you given any thought to that?

28 A. There are a number of areas which we currently use as
29 lead indicators. I suppose my view of the lead indicators
30 is that they are indicators that have the purpose of both
31 encouraging further communication with respect to safety
32 and health matters and encourage - provide feedback to coal
33 mine workers with respect to outcomes of investigations,
34 for example - sorry, inspections.

35
36 Such things are - while directives are issued where it
37 is found that the safety and health management system is
38 found to be ineffective in some manner, the number of
39 directives that are being issued against a mine will, in
40 itself, influence the frequency at which an inspector will
41 undertake inspections at that mine through a structured
42 inspection guide or structured audit guideline. So
43 a positive performance indicator is one which drives
44 behaviour, be it from the regulator or from the industry.

45
46 I'm aware of a number of the lead indicators, such as
47 safety observations which are undertaken by a number of

1 mining companies, and to that end, an inspection by an
2 inspector has the components of a safety observation, for
3 example. The outcomes of those safety observations, again
4 be they positive or areas of improvement, become a lead
5 indicator in the industry.
6

7 In a similar manner, from an inspectorate perspective,
8 the inspection, the directives, the substantive conditions
9 or, in fact, recommendations that the inspector may give
10 and the scoring of the structured investigation guide or
11 audit again is a lead indicator on the performance of the
12 mine, so it is something which influences the behaviour of
13 the inspectorate in terms of their matters that they will
14 address when going to a mine, either frequency or the
15 subject matter that they are looking at.
16

17 Q. So that actually leads me to the next question, and it
18 is in relation to the term "critical controls", which
19 I know doesn't exist in the legislation, but I'm assuming
20 you have heard that term?

21 A. Yes, I have.
22

23 Q. Do you have a view there is scope to maybe incorporate
24 the notion of critical controls into perhaps the
25 regulations to support principal hazard management and
26 whether or not there isn't scope in the future to maybe use
27 audits of critical controls as a lead indicator for the
28 industry?

29 A. Yes. Yes, I agree. In fact, last year some of the
30 inspectors undertook some training in terms of critical
31 controls, critical risk and critical controls, and looking
32 at the ICMM guidelines that some mines or some
33 organisations have adopted and others have not, and the
34 principal hazard management plans are certainly an area
35 where those controls should be outlined for the operation.
36

37 As an inspectorate, we are - I mentioned about
38 liaising with my counterpart in New South Wales and we are
39 working with the inspectorate down there in terms of
40 developing critical control inspection processes and audit
41 processes as a way forward.
42

43 MR CLOUGH: Thank you. I don't have any more questions.
44

45 THE CHAIRPERSON: Mr Newman, thank you. I won't excuse
46 you at this stage. You may have to get another run later
47 in the year, perhaps, but thank you.

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<THE WITNESS WITHDREW

MR RICE: I will recall Mr Smith.

THE CHAIRPERSON: Yes, thank you.

<STEPHEN DONALD SMITH, on former affirmation:

<EXAMINATION BY MR RICE CONTINUING:

MR RICE: Q. Mr Smith, you will need a copy of your declaration. Could Mr Smith have SST.001.002.0001. You have it there. Do you have it there, Mr Smith?

A. I do.

Q. Thank you. We were talking yesterday about the inspectorate's role in the process of reviewing and responding to HPI notifications, so I would just like to continue that a bit more. We had started with the first of the HPIs at Grasstree as an illustration. I would just like to continue a bit with that.

Just to acquaint you or to allow you the opportunity to refresh your memory about that event, you have given a description of what it involves at paragraph 46 of your statement. You might want to read that again just so you can recall that to mind. That was the incident where there was, in effect, it turns out, a burst radiator hose that was fixed to a compressor that was feeding a Venturi, as I understand it. Do you recall that event?

A. I recall reviewing it, yes.

Q. I want just to take you to the form 5A for that event. If I could bring up that document, it is AAMC.001.006.0463. The more important parts are on the next page. You can see them there on 13 and 14. You see reference there at section 13, Mr Smith, to the compressor having tripped out due to a radiator hose failure that, in effect, produced the methane spike. Are you with me?

A. Yes, I'm with you.

Q. You notice at section 14 that there is reference to the maintenance intervals for compressors and what is described as critical gas drainage plant, and also the mine manager's description of hazards includes the second sentence, referring to the gas drainage being already at

1 full capacity for various reasons. Do you see that?

2 A. I do.

3

4 Q. And then over the page, on page 3, there is a list of
5 incident causes, which includes, under "Absent or failed
6 defences":

7

8 *The plant was at capacity and with no*
9 *redundant capacity to meet any failures.*

10

11 Do you see that?

12 A. I do.

13

14 Q. On one level, this incident is referable to a burst
15 radiator hose, which can be rectified by procuring another,
16 presumably; correct?

17 A. I would expect so, yes.

18

19 Q. I appreciate you didn't manage this HPI, but you have
20 looked at it since and you are in a senior position, so
21 I will ask you: would it be of concern to an inspector to
22 observe that the mine manager has acknowledged that the gas
23 drainage was already at full capacity and, furthermore,
24 that it had no redundant capacity to meet any failure, to
25 meet any contingency?

26 A. What would concern me is if they hadn't identified
27 that. It seems to me, as I read the form 1A and the
28 form 5A, that the mine has clearly identified that they are
29 at capacity with their gas drainage and that they are
30 vulnerable to maintenance breakdowns.

31

32 Q. This very incident demonstrates their vulnerability,
33 doesn't it?

34 A. That's right, it does.

35

36 Q. The whole system was held to ransom, in effect, by
37 a radiator hose?

38 A. By the failure of a hose, that's right.

39

40 Q. But in terms of mining, drawing on your experience, is
41 it a concerning situation for the operation of a mine that
42 its goaf drainage is operating at maximum capacity, with no
43 redundancy to meet any contingencies?

44 A. I would think it was unwise for the mine to continue
45 to operate like that for an extended period, because they
46 will continue to get failures which will stop their
47 operation and create other risks as well.

- 1
2 Q. This is a single incident and not a series, but from
3 what I understand, you, as an inspector responding to this,
4 would be satisfied, would you, to see that the mine has
5 identified the issue with its goaf drainage in this
6 instance?
7 A. I would be very pleased that they have identified that
8 they are at capacity and they're struggling, yes, and they
9 need to factor that in to their actions going forward.
10
11 Q. The action that is proposed, at section 25, is to
12 improve the maintenance of compressors.
13 A. Yes.
14
15 Q. Does that satisfy you, as an inspector, that the mine
16 is appropriately addressing that issue?
17 A. It is a step that they can take immediately to limit
18 the opportunity for another maintenance failure to occur,
19 so it's an immediate step.
20
21 Q. Would you be satisfied that, having taken that
22 immediate step, from a response point of view there was
23 nothing more required of the inspectorate?
24 A. Certainly not immediately, no.
25
26 Q. Would you be more concerned if there was a series of
27 events in which inadequate goaf drainage was a factor -
28 a contributing cause, I mean?
29 A. I would become more concerned, yes. The more that
30 happened, the more concerned I would become, yes.
31
32 Q. Can I take you then, again looking at process, to what
33 in fact was a series of events with related causes, and I'm
34 referring to the matters that you have summarised generally
35 from paragraph 69 of your declaration. Just have a look at
36 that.
37 A. Oh, right, yes.
38
39 Q. In preceding paragraphs, you have gone through
40 a sequence of events and made some comments by reference to
41 each one, but it may be more convenient to deal with your
42 summary treatment of them from paragraph 69. Are you aware
43 of the sequence that I'm taking you to?
44 A. Yes, I believe so.
45
46 Q. There were eight, I think, HPIs occurring between
47 22 February and 11 April 2020.

- 1 A. That's correct.
2
- 3 Q. Seven of them between 20 March 2020 and 11 April
4 2020 - so quite close together, do you accept?
5 A. Yes, I do.
6
- 7 Q. In terms of your summary of those events, and indeed
8 the others, in paragraphs 70 and 72 you have split the HPIs
9 in two categories. One is the four goaf falls.
10 A. Yes.
11
- 12 Q. You identified six of the 12 being by reference to
13 movement of equipment at the face. Can I suggest to you
14 that of the eight incidents between February and April
15 2020, one of them involved a goaf fall and another six
16 involved the issue of movement of equipment at the face.
17 A. Yes, yes.
18
- 19 Q. In relation to both those categories, you have
20 identified in paragraphs 71 and 73 that in both cases you
21 would be particularly interested in information that you
22 list, including ventilation and drainage factors that might
23 have contributed to the exceedance?
24 A. Yes.
25
- 26 Q. Did you hear Mr Newman earlier explain to the inquiry
27 what capability was available in Lotus Notes for review of
28 a series of HPIs?
29 A. Unfortunately I was actually out of the room, but - if
30 I may?
31
- 32 Q. Yes.
33 A. In order to review HPIs in Lotus Notes, I can access
34 the mine, I can find the HPIs by date order for the mine
35 and I can search that information and identify HPIs related
36 to gas exceedances or methane exceedances. I can then use
37 that information to go to each of those in the incident
38 database and have a look at each one. That incident
39 database contains the inspector's input. The first bit is
40 summarised on the two pages that we talked about yesterday.
41
- 42 Q. The incident notification, yes.
43 A. Then there are a number of other tabs in that
44 particular area, and included in there is access to the
45 form 1A and the form 5A.
46
- 47 Q. Is there anything to indicate, from what you have

- 1 seen, that any review was undertaken of these eight HPis
2 having similar or overlapping causes, the ones that I've
3 identified to you? Was there any review of them as a group
4 as such by you or any inspector?
- 5 A. When I reviewed these, I noticed that the first ones
6 were dealt with by Inspector Brennan, and Inspector Brown
7 was involved, the first three in March, and then the second
8 two, later in March, were also, I believe, reported to
9 Inspector Brennan. Both of those inspectors had
10 follow-up - well, had discussions with the mine at the time
11 of the reporting of the HPis and some follow-up, if I --
12
- 13 Q. We can look at the incident notifications, but it is
14 apparent, isn't it, that across the eight, they were
15 notified to perhaps four different inspectors?
- 16 A. I think at least two that I know of, possibly --
17
- 18 Q. Well, the incident notification forms will tell us.
19 A. Will tell us who. Exactly, that's correct.
20
- 21 Q. But what I was really asking you is that this is
22 a clear case where there is a repeat scenario?
- 23 A. Yes.
24
- 25 Q. Involving, as it turns out, a total of eight, all
26 recording exceedances at a particular sensor, was it not?
- 27 A. Yes.
28
- 29 Q. Which you know as the 243A sensor?
- 30 A. No.
31
- 32 Q. Well, that's I think what the mine called it.
33 A. Yes, they did.
34
- 35 Q. You didn't call it that?
- 36 A. No.
37
- 38 Q. Okay, I understand. But it was a series in the sense
39 that it had at least that in common?
- 40 A. Yes.
41
- 42 Q. What I was asking you was whether you know that eight
43 HPis having occurred in a series within a short period of
44 time, whether anyone, after the conclusion of that series
45 took it upon themselves to review the available information
46 and make an assessment of what, if anything, needed to be
47 done about it from the inspectors' point of view?

1 A. One of the outcomes of those particular HPIs, along
2 with some HPIs that occurred at another mine, had resulted
3 in a very close examination of the purpose of the sensor
4 that was recording these HPIs.

5
6 Q. Just to clear that up, you identified along the way
7 that the location of this sensor didn't, as you interpreted
8 it, meet the requirements of section 243A; correct?

9 A. That's correct.

10
11 Q. And to cut a long story short, you suspended
12 operations at Grasstree mine for that reason; is that
13 right?

14 A. That's correct.

15
16 Q. Just to be clear about that - we will go to the mine
17 record entries if necessary, but you may well recall this -
18 you issued a suspension directive on I think 14 April?

19 A. I think that's correct, yes.

20
21 Q. But then withdrew that suspension later the same day?

22 A. No. No, I withdrew that particular directive some
23 weeks later. I issued the first directive on or about the
24 14th, and then I issued a second directive, which
25 essentially replaced it, on I think 16 April. I had made
26 a comment in what we call the postal mine record entry
27 that - I had made an assumption about the location of
28 a detector based on my experience in longwall mining in
29 another State as well as my experience during inspections
30 here, and that statement was factually incorrect. The
31 directive itself was accurate, but a sentence in the postal
32 mine record was factually incorrect.

33
34 Q. But for how long was the mine suspended from
35 operations, do you recall, or would the mine record entries
36 tell us?

37 A. They will tell you. It was suspended - if I recollect
38 correctly, it was suspended on the 14th, and I think
39 I initially agreed that they had satisfied the directive
40 that same day and then asked them for some more information
41 and, on examination of that information and in consultation
42 with others, determined that things were not quite as
43 I anticipated. Consequently --

44
45 Q. So you suspended them again on the 16th?

46 A. -- I suspended them a second time. That was another
47 error present.

- 1
2 Q. That was all to do with the location of this sensor
3 and whether it was compliant with the regulations?
4 A. Yes, that's correct.
5
- 6 Q. Rather than a review of all of the contributing causes
7 to the underlying HPIs; am I right?
8 A. That's right, because one of the interesting things
9 for me with regard to those events was that, along with
10 another mine that I was looking at, what I noticed at
11 Grasstree was that the HPIs were reporting at that
12 particular sensor and not at another sensor.
13
- 14 Q. Not at any other sensor?
15 A. Not at any other sensor, no. And the other mine that
16 I was looking at, the data was the opposite, which I found
17 quite curious at the time I was collecting it.
18
- 19 Q. We know that with this series, the sequence is to
20 receive form 1As within 48 hours of the occurrence, but
21 then the form 5As come in up to a month later; correct?
22 A. Correct, yes.
23
- 24 Q. The form 5A is in part, as we have seen, supposed to
25 identify causes and preventative actions; correct?
26 A. That's correct.
27
- 28 Q. Would you mind saying what is the role of the
29 inspector in reviewing the form 5A, as you see it?
30 A. The role as I see it is to look at the form 5A and
31 compare it, compare the detail, if you like, with the
32 previous form 1A to note if there are any substantial
33 changes between the two, if you like, to see if it accords
34 with what you thought was the case and also to see if the
35 mine appears to have done, say, enough of an investigation
36 to be comfortable that they didn't require further
37 encouragement to investigate or, indeed, I guess, in an
38 extreme case, as to whether an inspector of mines might
39 need to be involved in an investigation.
40
- 41 Q. Does the form 5A come back to the inspector to whom
42 the matter has been allocated for management?
43 A. Yes.
44
- 45 Q. In a case of a series --
46 A. When they are received by different inspectors, they
47 will go to the different inspectors, yes.

- 1
2 Q. So if there are, say, three or four in this instance,
3 the form 5As will go back to those three or four people?
4 A. That's right.
5
6 Q. To perform the kind of task that you described?
7 A. To --
8
9 Q. But there being eight of them in a sequence --
10 A. Yes.
11
12 Q. -- do you know whether there was anyone who came along
13 and reviewed all eight for what they revealed?
14 A. No, I did not allocate anybody to do that, and it is
15 only as a consequence of this inquiry that I have been
16 through them all, as such. One point I would make with
17 those particular exceedances that I found interesting was
18 that it was the only sensor to measure an exceedance.
19
20 Q. What is the significance of that to you in reviewing
21 what happened?
22 A. In terms of - it pictures to me, I guess, the severity
23 of the exceedance in terms of sensors further outbye not
24 being triggered. It indicates the size, indicates the
25 severity, in my mind.
26
27 Q. Are you saying that these exceedances were less severe
28 than they might have been had other sensors outbye made
29 similar recordings?
30 A. Had an outbye sensor achieved similar sorts of levels
31 or, in fact, the prescribed levels, that would have said to
32 me that the exceedance was larger and more sustained than
33 was recorded on this sensor. So the location of the
34 sensor - one of the things for mine is that the goaf of
35 a longwall will continuously express - almost continuously
36 express methane of some quantity, and the location of this
37 sensor places it very close to the path that that methane
38 can take.
39
40 Q. And you took that into account?
41 A. That's one of the reasons, when I look at these, that
42 I say I understand what's going on with it. I can see why
43 the sensor would potentially receive that level of methane.
44 And when the sensors outbye don't rise to anywhere near
45 a significant level, I take some comfort that all it is is
46 the goaf stream being able to move a little bit in the
47 roadway as it heads outbye.

1
2 Q. Having gone through the forms 5A - and I won't put
3 them up and go through them one by one unless we need to -
4 did you observe that amongst the contributing causes for
5 I think six of the eight occasions, the mine manager quite
6 candidly pointed out that there were issues with the
7 performance of goaf drainage?

8 A. The main point I picked up was that there was a goaf
9 I think in almost every case, and I think the reference
10 back in the one in February, that a goaf hole was yet to
11 come on line, and that goaf hole not being available to
12 remove methane from the goaf adds to the possibility of an
13 exceedance.

14
15 Q. Put it this way: if in a series of reports about an
16 HPI a mine manager pointed out on a repeat basis that there
17 was an issue with the capacity and performance of goaf
18 drainage, so that, to use your words from your declaration,
19 it was in some sense inhibited or inadequate, would that be
20 the kind of flag that would warrant some further response
21 from the inspectorate?

22 A. Yes, it would, but balanced with the location of the
23 exceedance.

24
25 Q. Yes.

26 A. Had the detectors further outbye been responding
27 similarly to the detector in the canopy, I agree with you,
28 then there would be a red flag, if you like, for the mine
29 that they need to examine the availability of goaf drainage
30 on this particular longwall. But because the exceedances
31 were happening only on the canopy sensor, or not
32 registering on any of the other detectors, then, yes, it's
33 contributing to the - it may well be contributing to the
34 exceedance.

35
36 Q. I understand what you say about this particular
37 sequence and the influence of the single sensor, which
38 I think you have pointed out was apt perhaps to pick up
39 goaf stream gas; is that what you are saying?

40 A. Yes.

41
42 Q. But in the event that these methane exceedances, being
43 a group of eight, are, in effect, managed by perhaps four
44 inspectors, what opportunity is there within that system of
45 scrutiny to pick up the fact that there is a repeat
46 contributing cause across a series of eight?

47 A. There's the process by which the notifications are put

1 into the system and distributed to all the inspectors up to
2 and including the chief and the deputy chief, myself as the
3 regional, so there is opportunity for all inspectors, when
4 they get the opportunity to read the emails, to have
5 a look.

6
7 There is also - depending upon, and I did not go into
8 this detail, in terms of whether they occurred on the
9 weekend or during the week, but, again, if they were close
10 to or over a weekend, that group of HPis are reviewed of
11 a Monday and then brought to the attention of the group.

12
13 Let me say that in the majority of cases, mines
14 inspectors are very forthright people, and if they have
15 a concern about a mine, they are not frightened to express
16 it to other inspectors and to the management team. It is
17 a capacity of mines inspectors that we seek, in fact, that
18 when they see something that is concerning, they will
19 express that concern to the group.

20
21 Q. Without detracting from the value of your
22 collaboration as a group, am I right that there is no
23 systematic way in which it emerges, across a series like
24 this, that there is a repeat contributing factor, such as
25 goaf drainage capacity?

26 A. No, only by virtue of that collaborative discussion,
27 that I receive two HPis and there was a goaf hole that did
28 not come on line, and you as another inspector hear me
29 talking about it or see it and go, "I've just got two
30 exceedances as well for the same reason. Perhaps we should
31 speak."

32
33 Q. Is there a problem, though, that inspectors come and
34 go? We heard Mr Newman say that you are expected to spend
35 at least three days on the road, so that you are not in the
36 office to talk to each other, nor perhaps available to even
37 go to the weekly meetings?

38 A. That is true, although with modern technology, most of
39 the inspectors - and particularly in these current fraught
40 times with COVID-19, the inspectors, some who I would not
41 have expected to be so adept at utilising technology, have
42 become very proficient at joining the meeting via the
43 technology that is available to us today. That is of
44 course no guarantee that they will actually cross paths
45 necessarily, but we also have telephones, and, as I say,
46 inspectors are in the main very forthright people, very
47 prepared to - quite prepared to raise their concerns with

1 other inspectors.

2

3 Q. Tell me, should there be some in-built alert in the
4 system to ensure that it comes to attention that there is
5 a series of eight matters with overlapping contributing
6 causes and not rely so much on word of mouth?

7 A. It would be nice to do that, yes. I'm not sure of the
8 capacity of the system to do that and I know there have
9 been some significant changes that when I look at them,
10 I ask myself, "Why didn't I think of that?" As Mr Newman
11 mentioned, just the ability, when you put a notification
12 in, for it to tell you how many recent ones, just like
13 that, there have been. But exactly the capacity of the
14 system to be able to flag something and distribute it
15 automatically, I think it still requires the human
16 intervention.

17

18 Q. Perhaps both working in conjunction; correct?

19 A. Yes.

20

21 Q. Can I ask you one thing, and I will take you to one of
22 the forms 5A just at random, because they are all in the
23 same format. Could I call up AAMC.001.006.0219. I just
24 want you to tell me, say by reference to section 1 - I am
25 interested throughout this document, and we see even
26 further down the page that there are various code numbers
27 with descriptions. Do you see the codes?

28 A. I can.

29

30 Q. Are they inspectorate codes or departmental codes?

31 A. I have to admit, I have never asked the question.
32 I've never asked the question. I look at the heading as
33 "Machinery and (mainly) fixed plant" and then the number,
34 "Other plant and machinery" and there is another number, so
35 I presume that they are codes to do with our system. It's
36 not something that I would use myself.

37

38 Q. Your lack of familiarity with it suggests that it
39 doesn't have any particular utility; would that be right?

40 A. I would hesitate to make a comment, I really would.

41

42 Q. What I was really getting to was whether this system
43 of coding that appears throughout the document, in fact, on
44 every page, creates some sort of parameters for reporting;
45 is that what it does, do you know?

46 A. No, I don't know.

47

1 Q. Well, if you don't know, it is not used by you, is it,
2 in that way?
3 A. No, it is not used by me in that way.
4
5 Q. And not used by others that you know of?
6 A. I --
7
8 Q. You don't know?
9 A. I don't know. My understanding is that the form 5A is
10 input by the mine into a form that is on the department
11 website.
12
13 Q. That's how it comes to you?
14 A. It is sent in to the department and it is - it also -
15 it appears in our system at Mackay or at Rockhampton in the
16 administration area, and the personnel in the
17 administration area send it on to the inspector. So how it
18 actually - this is how I see it when I open the email.
19
20 Q. These codes don't play any part in your review
21 function --
22 A. Not that I'm aware of.
23
24 Q. -- of looking at the form 5A?
25 A. Not that I'm of aware of, no. I simply look at the
26 text.
27
28 Q. Do you know whether they have any relevance to some
29 higher-level analysis of HPIS, such as Mr Newman was
30 describing yesterday for analysis and dissemination and so
31 forth?
32 A. They may well do. They may well do. They may well go
33 into the system that the statisticians access to pull data
34 from to create the dashboards that they produce. I'm
35 sorry, for some things I'm singularly incurious.
36
37 Q. That's okay. If that's the limit of what you know,
38 that's the way it is.
39
40 MR CLOUGH: Sorry, Mr Rice, I might be able to assist on
41 this. I believe it is probably the National Mine Safety
42 Framework. This is my understanding from when I was with
43 the regulator, that there is a national database.
44 I suspect that code is to actually link this report to the
45 national database.
46
47 MR RICE: All right. Thank you.

1
2 I know there are other HPIs from other mines,
3 Mr Smith, but I was more interested in speaking with you
4 about process, and I think we have probably done that.
5 Thank you.

6
7 THE CHAIRPERSON: Yes, Mr Holt.

8
9 **<EXAMINATION BY MR HOLT:**

10
11 MR HOLT: Q. Mr Smith, my name is Saul Holt. I'm one of
12 the barristers for the Anglo entities who have been given
13 leave to appear. I will take you through some similar
14 issues that have been raised with you, but if we can start
15 all the way back at the initial process where there has to
16 be a verbal notification to an inspector of an incident
17 that amounts to an HPI, so you understand that process?

18 A. Yes.

19
20 Q. You were asked some questions that were perhaps going
21 to the sort of informality of that process. What I would
22 like to just tease out with you is the benefits of that
23 process and why it is designed to work in the way that it
24 works. It might seem an odd way to do it, but let me just
25 remind you. You are aware of the form 1A, obviously
26 enough?

27 A. Yes.

28
29 Q. You are aware, because it says it on the form, that
30 the form 1A is not a mandated form, that is, one that is
31 provided in the regulation?

32 A. That's correct.

33
34 Q. It is one that is designed by the inspectorate in
35 order to assist coal mine operators to be able to comply
36 with their obligations under the Act?

37 A. That's my understanding, yes.

38
39 Q. Also, it provides some very helpful kind of educative
40 material and explanatory material to assist them in that
41 process?

42 A. That's my understanding.

43
44 Q. To kind of understand where the inspectors are coming
45 from from their end?

46 A. Yes.

47

1 Q. On the last page of that - I will bring one up in a
2 moment, but for present purposes - there is a note about
3 the oral report, which says:

4
5 *A HPI must be reported directly to an*
6 *inspector. A message left on a phone does*
7 *not satisfy the legislation. Ring around*
8 *until you speak with an inspector.*
9

10 That's what you expect --

11 A. Yes, absolutely.

12
13 Q. -- those people with that statutory obligation at the
14 mine to do?

15 A. Yes.

16
17 Q. The reason for that, of course, is that the
18 inspectors, like yourself, are very experienced, highly
19 qualified people who are very used to dealing with these
20 kinds of issues?

21 A. Yes.

22
23 Q. It is critically important, isn't it, that there is
24 that initial conversation with the early data available so
25 that you and your colleagues can make good decisions and
26 ask the right kinds of questions about what is going on at
27 the mine site at that particular point in time?

28 A. Yes.

29
30 Q. Indeed, very helpfully, you explain at paragraph 18 of
31 your statutory declaration the kinds of things you ask -
32 the location of the sensor reading showing the exceedance,
33 and obviously - actually, before I get into the detail of
34 that, can I just put this proposition that might come out
35 of the things that you were saying to my learned friend
36 Mr Rice. While all HPIs are important, not all HPIs are
37 equal, that is, you have to really drill into them to
38 figure out what is going on and what the appropriate level
39 of response is?

40 A. That's correct.

41
42 Q. In order to do that, the kinds of questions you ask
43 are what the location of the sensor showing the exceedance
44 is, where the longwall equipment was, as you have noted -
45 that's right?

46 A. That's correct.

47

- 1 Q. The position of the shearer - yes?
2 A. Yes.
3
- 4 Q. The performance of the ventilation system at the time?
5 A. Yes.
6
- 7 Q. Recent experience with the goaf - that's how good the
8 drainage is going at that particular point in time or how
9 it's falling, those sorts of issues?
10 A. That's correct, yes.
11
- 12 Q. And the relevant atmospheric or barometric pressure?
13 A. Yes.
14
- 15 Q. Because quite apart from the daily barometric cycles
16 that Mr Rice was asking about, it is known, isn't it, that
17 significant depressions or lows can create real problems in
18 terms of barometric pressure and the behaviour of methane?
19 A. They can.
20
- 21 Q. As you have said, those types of questions indicate
22 whether the cause of the HPI is understood at the mine and,
23 if so, whether the mine is taking the necessary steps to
24 manage it?
25 A. That's correct. One thing, if I may?
26
- 27 Q. Of course.
28 A. Very often, the questions are not needed to be asked,
29 because the information just comes.
30
- 31 Q. I imagine that's partly the development of an
32 understanding between the inspectors in an area and the
33 local mine operators about the kinds of things that are
34 important?
35 A. Yes.
36
- 37 Q. But also because of your common kind of training and
38 experience - you have 40 years in mining - you all know
39 what is important to be able to make those kinds of initial
40 assessments?
41 A. Yes.
42
- 43 Q. Then the idea of the form 1A is that with the benefit
44 of 24 hours, which is what you get to fill it in, it is
45 intended to capture that information but also ensure that
46 it is correct, having had the benefit of time to look at
47 gas readings and the like?

1 A. That's right.

2

3 Q. So whilst one can well understand a concern about
4 different inspectors getting information at different
5 times, is it the case that from your perspective as
6 a regional inspector, it is actually just much more
7 important that that initial conversation happens with
8 a real person who happens to be available at that point in
9 time?

10 A. It is. It's essential.

11

12 Q. I know our learned friend ultimately this morning
13 suggested that there was a benefit of both collaboration
14 and data systems, but, with respect, might we get the
15 impression that your office, with the number of inspectors
16 that it has, is pretty collaborative and does look to share
17 information and learnings from those kinds of reports?

18 A. Yes.

19

20 Q. Can we pull up, please, a form 1A just to identify
21 a couple of aspects of it. Mr Operator, might we have
22 AAMC.001.006.0454. This is a form 1A from that incident
23 that our learned friend Mr Rice was talking to you about
24 with the compressor hose failure on 28 July 2019, just so
25 we are on the same page.

26 A. Yes.

27

28 Q. Might we zoom in on section 1, Mr Operator, just for
29 my eyesight. Thank you. We can see there a note as to who
30 has made the initial oral report. That is there Mr Kelvin
31 Schiefelbein. You can see that?

32 A. Yes.

33

34 Q. He has also, as he was obliged to do under the
35 legislation, made the report, and it says precisely to whom
36 he has made it, in terms of which inspector?

37 A. That's correct.

38

39 Q. So anyone coming back later and looking at the 1A can
40 go, "Well, Geoff took this one. I can talk to Geoff and
41 find out what the detail of this is"?

42 A. That's right.

43

44 Q. Then we have Jason Hill not noted, but you would know
45 that he was an ISHR?

46 A. Yes.

47

- 1 Q. And then also Mr Jim Hoare, an SSHR, notified pretty
2 shortly afterwards?
- 3 A. Yes.
- 4
- 5 Q. Then if we come down, the form also tells you what
6 kind of HPI we are talking about?
- 7 A. It does.
- 8
- 9 Q. If we keep scrolling down, please, to the detail of
10 the incident, again, what we can see here are exactly the
11 answers to the kinds of questions that might be relevant
12 that you have described asking or not even needing to ask
13 because the person who is telling you might understand that
14 stuff pretty well?
- 15 A. That's right.
- 16
- 17 Q. So here we can see the gas has exceeded 2.5 per cent,
18 which is obviously the standard set by the regulation in
19 the general body of the roadway?
- 20 A. Yes.
- 21
- 22 Q. Factors there noted - reduced performance of goaf
23 drainage due to goaf borehole deterioration and failure of
24 a compressor unit?
- 25 A. Yes.
- 26
- 27 Q. Abnormal increase in gas make due to strata movements
28 in the caved area on that occasion?
- 29 A. Yes.
- 30
- 31 Q. Barometric low in the afternoon was a steeper change
32 than normal?
- 33 A. Yes.
- 34
- 35 Q. Failure of a compressor and a Venturi set on the goaf
36 drainage hole was pivotal to the exceedance?
- 37 A. Yes.
- 38
- 39 Q. Gas peaked at 2.96 per cent but was diluted to below
40 2 per cent in the mains return. That kind of a body of
41 information allows you to understand, doesn't it, as you
42 explained in your statutory declaration, that, firstly, why
43 this happened is understood; is that right?
- 44 A. That's right, yes.
- 45
- 46 Q. And, secondly, that that is being done in terms of the
47 identification of precisely those kinds of factors that you

1 were telling us about before?

2 A. Yes.

3

4 Q. And all of this within 24 hours of the incident
5 occurring?

6 A. Yes.

7

8 Q. Could we just scroll to the next page, please. Now,
9 not required, as I understand it, and in fact I think
10 sometimes a bit awkward in terms of the data capacity of
11 the systems you have, but nonetheless here a print-out of
12 the gas readings at the time to assist the inspector to
13 understand the veracity of the information that he or she
14 is otherwise being given?

15 A. That's right.

16

17 Q. Again, you would expect and, indeed, you would have
18 the capacity to read and understand that material to ensure
19 that it is telling the same story as you are otherwise
20 being told?

21 A. Yes.

22

23 Q. Thank you very much. Again, there is some greater
24 detail there about the issue and the incident, also
25 indicating that once the low barometer event had passed and
26 the compressor was repaired, those readings were then back
27 well within 2 per cent, in fact?

28 A. That's right, and key to me on that particular form is
29 production stopped at 1.9 and not restarted until under
30 1.75.

31

32 Q. And you would understand that that stopping at 1.9 is
33 an alarming choice - I don't mean alarming in that sense,
34 a choice made about when to alarm the sensor at
35 1.9 per cent that the miner makes in terms of its --

36 A. The mine makes the decision to take an action at that
37 point.

38

39 Q. Under its TARPs, as you would understand it?

40 A. Based on their experience in their conditions.

41

42 Q. Exactly. And you know that Grasstree is commonly
43 described as a gassy mine?

44 A. Yes.

45

46 Q. That's not said in any way to remove responsibility
47 for the management of that gassy mine, but nonetheless your

1 understanding is that what the mine does is it sets its
2 sensors so that, at 1.9, production stops and, indeed, some
3 of the power is cut even at that point?

4 A. Yes, for the full details, I would have to look at
5 a bunch of emails over time, but in general my
6 understanding is that they have particular points at those
7 sensors where, for example, the shearer may be unable to
8 pass a particular point on the face when the methane has
9 reached a particular level, and then if it continues to
10 rise, it might be turned off. There are various scales at
11 different mines on how they manage that thing, and that's
12 their experience.

13
14 Q. And that's really the point here, isn't it, that the
15 way the system works is that that obligation is well and
16 truly on the statutory role holders in the mine, and your
17 job is to inspect and also to ensure that you are looking
18 at this material and being satisfied that those steps are
19 being appropriately taken?

20 A. Yes.

21

22 Q. But ultimately when you are dealing with these kinds
23 of situations, it is also with the benefit, isn't it, of
24 yours and the collective knowledge of the way in which
25 those mines are operating in any particular environment?

26 A. Yes.

27

28 Q. In that sense, you were talking about having to go
29 back and review a bunch of emails, and that's right, isn't
30 it, because there are regular and ongoing communications
31 over time about exactly these kinds of issues that are
32 being raised?

33 A. Yes. They continue today.

34

35 Q. Just while we are on that one, because our learned
36 friend Mr Rice made some reference to it, that is, the fact
37 that one of the features that was identified in this
38 situation where there was a failure of the compression hose
39 was the fact that the goaf plant had got to the point of
40 its limit; there was no additional capacity or redundancy
41 in the goaf plant?

42 A. That's correct.

43

44 Q. What that is really saying is that there was no
45 additional redundancy at that point to remove any more
46 methane from the goaf to try to reduce that extrusion of
47 methane which is necessarily occurring from the goaf wall?

1 A. That's correct.

2

3 Q. I understand. At least perhaps by the absence of
4 a question about it, there was no reference to this: you
5 are aware of and indeed referred in your statement to the
6 fact that an inspector by the name of Brennan, on the next
7 mine inspection that occurred, specifically followed up
8 this earlier issue?

9 A. That's correct.

10

11 Q. Your expectation would be, I am sure, that the mine
12 and the statutory role holders within the mine, when they
13 had obviously very frankly identified an issue of this
14 kind, would be very focused on resolving it?

15 A. Yes.

16

17 Q. Are you aware in fact that significant steps were then
18 taken to increase the capacity of the drainage plant - of
19 the goaf plant that was available?

20 A. No, I'm not personally aware of that, but --

21

22 Q. We can deal with that with other witnesses. You would
23 expect the mine not just to go, "Oh, that's all right,
24 we'll leave it here"?

25 A. No, that's right, and I would expect that
26 Inspector Brennan would have made things very clear to me
27 if he was unhappy with the outcome of his discussions at
28 the mine.

29

30 Q. You would be aware also, I'm sure, or if not
31 specifically aware, not surprised by, the notion that this
32 mine, Grasstree in this case, but indeed all of the Anglo
33 mines that we deal with here, operate a learning from
34 incidents protocol or process or standard?

35 A. Yes.

36

37 Q. Such that quite apart from the 1A and 5A process, you
38 would expect the mines to have a sophisticated in-house
39 process for reviewing exactly what happened to come up to
40 these kinds of HPIs and exceedances and to take appropriate
41 steps at both a micro level and a macro level to be able to
42 deal with those issues?

43 A. I would expect that, absolutely.

44

45 Q. Thank you. Those LFI reports - were you aware of
46 their existence before this hearing?

47 A. The L?

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Q. LFI reports, the learning from incident reports that Anglo produces itself.

A. No.

Q. In any event, your expectation is that when Inspector Brennan, or indeed if it had been you or anyone else, was at the mine asking about that, those are precisely the kinds of things that he would be told, the sorts of steps that the mine was taking to deal with exactly those kinds of issues?

A. I would.

Q. We will talk about that LFI process with another witness later. You noted, and indeed our learned Mr Rice took you to it, in paragraph 4 of your statutory declaration - it's probably not surprising to anyone, even on day 2 of this inquiry:

The mine site environment is a complex one involving multiple levels of interactions between hazards, individuals, safety and control measures and other factors that all need to be managed to reduce risks on site to an acceptable level.

A. Yes.

Q. That obligation to reduce risks on site to an acceptable level lies with particular statutory role holders who operate on the site?

A. It does.

Q. When we deal just with methane in that sense, for the very reason you have identified, managing methane levels on the longwall is one of the main tasks of an underground coal miner; right?

A. Yes.

Q. That's because there will always be methane, especially in the Bowen, when you are that far down in these coal seams, because they're gassy coal seams?

A. And it's an essential part, funnily enough, of the safety.

Q. It is, because you need to have methane, a lot of methane, further back in the goaf to prevent oxygen and

- 1 those kinds of issues arising?
2 A. That's correct.
3
4 Q. The balance here always is trying to have methane away
5 from the face so that as little as possible is coming on to
6 the longwall; right?
7 A. That's correct.
8
9 Q. And you do that by way of goaf drainage, as we have
10 been discussing?
11 A. Yes.
12
13 Q. Both pre-drainage and ongoing drainage?
14 A. Yes, yes.
15
16 Q. And also by your ventilation systems?
17 A. Yes.
18
19 Q. You have ventilation officers - we are going to hear
20 from one later today, Braedon Smith, who you might know
21 from Grasstree?
22 A. Right.
23
24 Q. Whose job it is, in effect, to be constantly
25 monitoring and managing that ventilation system; yes?
26 A. Yes.
27
28 Q. Again, your expectation is, quite apart from the 1As
29 and the 5As, that those people with those statutory roles
30 would be performing those jobs consistent with their
31 qualifications, skill sets and experience?
32 A. Yes.
33
34 Q. Nonetheless, if I can put it this way, given the range
35 of issues that we have talked about already that can affect
36 methane on the longwall - let's just run through them.
37 Goaf falls is an example; yes?
38 A. Yes.
39
40 Q. Goaf falls are an expected and necessary part of
41 longwall mining, right?
42 A. Yes, they are.
43
44 Q. In fact, you want them to happen?
45 A. They must happen.
46
47 Q. One of the - well, they must as a matter of physics,

- 1 absolutely, but one of the issues is that they sometimes
2 take a little time; you can have delayed goaf falls?
3 A. That's right.
4
5 Q. Especially early on in a panel?
6 A. Yes.
7
8 Q. Because we can see the roof can hang for a bit of
9 time?
10 A. Yes.
11
12 Q. Indeed, you have seen in some of these events - I
13 won't go through them all in detail, but what we see in
14 some of these events is I think in one in particular, very
15 early in the longwall it did seem that that is exactly what
16 had happened?
17 A. Yes.
18
19 Q. The roof had held up for a bit and had then collapsed?
20 A. Yes.
21
22 Q. And that creates bigger extrusion of methane onto the
23 longwall?
24 A. It creates the opportunity for it, yes.
25
26 Q. Absolutely, and as you say in your statutory
27 declaration, what that can do is to force methane over and
28 onto a sensor, which can cause an exceedance?
29 A. Yes.
30
31 Q. Again not suggesting for a moment that that's normal
32 or regular or okay, but it creates an HPI which is
33 a learning opportunity as well, to figure out why that has
34 happened in that particular environment?
35 A. Yes.
36
37 Q. On that particular occasion. If we look, then, at the
38 particular HPIs we are dealing with here - that is, the
39 four that you attribute, and in fact the mine also
40 attributed to goaf falls - there were goaf falls together
41 with another problem, in effect, on each occasion?
42 A. Yes.
43
44 Q. So on one occasion there was the compressor hose
45 together with a goaf fall?
46 A. Yes.
47

- 1 Q. On another there was that goaf fall at the start of
2 a new longwall, so that created that opportunity for
3 a bigger extrusion of methane, which is pretty hard to deal
4 with?
5 A. Yes.
6
- 7 Q. On a third one, there was a communications failure,
8 a coms systems failure which contributed?
9 A. That's right.
10
- 11 Q. And in respect of each of those, you were satisfied on
12 your review that the miner - so Grasstree on this
13 occasion - had identified what factor was partnering with
14 the goaf fall that occurred, and had taken steps to address
15 and deal with that issue?
16 A. Yes.
17
- 18 Q. Again, I suppose yesterday we were talking at a more
19 philosophical level with other witnesses about the Brady
20 reforms which you are familiar with, or the Brady report?
21 A. Yes.
22
- 23 Q. And what Dr Brady described, building on the work of
24 others, was that HPIs shouldn't be seen as a failure
25 per se, but as a learning opportunity, because they are
26 a real life way of identifying a hazard or a combination of
27 factors in a mine at a particular point in time which you
28 might not otherwise have been able to find?
29 A. That's certainly true.
30
- 31 Q. And I guess these are kind of good examples of that,
32 right? We've got a goaf fall plus a coms failure?
33 A. Yes.
34
- 35 Q. We might not have known that just by conducting
36 a theoretical risk assessment, but we know it because we
37 have an HPI with a good process --
38 A. Yes.
39
- 40 Q. -- to understand how to do it. Thanks. So again,
41 those complexities - goaf falls, also floor blows, which
42 you would be familiar with?
43 A. Yes.
44
- 45 Q. That's where, if we take Grasstree or Moranbah as an
46 example, or any of these mines, I suspect, there is often
47 a seam that sits just below the seam that is being mined?

- 1 A. Yes.
2
3 Q. And indeed one that often sits just above the one that
4 is being mined?
5 A. Yes.
6
7 Q. They can be challenging to drain?
8 A. Yes.
9
10 Q. Because often they are small or they might be
11 incomplete?
12 A. That's it, yes.
13
14 Q. Difficult to get out?
15 A. They move.
16
17 Q. Yes, and often those problems can manifest in
18 different ways on different longwalls?
19 A. That's correct.
20
21 Q. Or at different parts on the same longwall?
22 A. That's correct.
23
24 Q. Often because of geological issues that might arise?
25 A. The - absolutely.
26
27 Q. And again, because it is not like a laboratory setting
28 where you just dial the methane to less than 2.5, the job
29 of the controls, the principal hazard management plans, the
30 presence of really smart people with good qualifications,
31 is to constantly be learning from that and balancing the
32 various mechanisms that they have to deal with those
33 issues? But it is a complex environment to do that in?
34 A. Absolutely.
35
36 Q. Can we then turn to - I will turn to the actual HPIs
37 that were in issue here, and as I understand what you did
38 for the purposes of your statutory declaration, given your
39 seniority and the nature of your regional inspector role,
40 you were able to look back at the records of all of
41 these --
42 A. That's correct.
43
44 Q. -- HPIs for Oaky North - but I won't talk about that -
45 Grasstree and Moranbah --
46 A. Yes.
47

1 Q. -- and to identify themes and patterns and issues and
2 to determine whether these were HPIs that were categorised
3 and dealt with in an appropriate way by the department and
4 by the mine?
5 A. Yes.
6
7 Q. Dealing then briefly with, firstly, Moranbah North,
8 there was one relevant HPI over this period that you
9 reviewed?
10 A. That's correct.
11
12 Q. And that was a floor blow, as we have just been
13 discussing before?
14 A. That was a contributing factor identified in the
15 reports, yes.
16
17 Q. What you identified from your review of the material
18 was that, that having occurred, the controls that were in
19 place on the site in fact worked, in the sense that
20 production stopped, the coal mine workers were removed?
21 A. Yes.
22
23 Q. And no-one got back on until everyone was satisfied
24 that the gas levels had reduced back down to normal?
25 A. Yes, and the work that was necessary to do that took
26 place.
27
28 Q. And then, again, in terms of identifying how to deal
29 with that in future, given that it related at least in
30 significant part to a floor blow, the kinds of things you
31 would have expected the miner to do were things like
32 increasing the number of floor touches that were being
33 done, which are ways of attempting to drain gas from an
34 underlying seam?
35 A. Yes.
36
37 Q. And, again, a perfectly sensible way of dealing with
38 that known issue of a seam that might sit below the seam
39 that you are mining?
40 A. Yes.
41
42 Q. Then if we can deal with Grasstree for a moment,
43 because we have a greater number, but, with respect,
44 I agree with my learned friend that they are quite well
45 understood in categories, aren't they, the Grasstree HPIs?
46 A. Yes, I believe so.
47

1 Q. Just before we get into the detail of that, you are
2 aware, I take it - well, you may or may not be aware - that
3 in terms of the senior leadership team on that site,
4 Damien Wynn, Kelvin Schiefelbein, Tim McNally and
5 Braedon Smith, all four of those have First Class Mine
6 Managers Certificates of Competency?

7 A. Right.

8

9 Q. You may not know that. But if you accepted it from me
10 to be so --

11 A. Yes, I do.

12

13 Q. -- that's a pretty highly qualified workforce in a
14 senior leadership team?

15 A. Yes.

16

17 Q. And in terms of your inspections and the inspections
18 that your colleagues do, you have access to and the
19 capacity to inspect and review principal hazard management
20 plans, the safety plans on site, all of those kinds of
21 documents and processes that exist?

22 A. We do.

23

24 Q. And you do that diligently and regularly?

25 A. I believe so.

26

27 Q. Again, by way of example of this idea of communication
28 between the inspectorate and the site and why it works
29 well, we can see in this case, in relation to some changes
30 of ventilation plan that flowed from some of the HPIs at
31 Grasstree, for example, a sharing of the changed
32 ventilation plan with the relevant inspector by the
33 ventilation officer at the time?

34 A. Yes.

35

36 Q. Is that the kind of thing that you think you would
37 endorse as being good practice, those kinds of
38 conversations?

39 A. I would endorse and expect it.

40

41 Q. Now, you have identified and reviewed 12 HPIs which
42 involved methane exceedances - that is, measures on sensors
43 that were above 2.5 per cent in the general body?

44 A. That's correct.

45

46 Q. As we have already identified, eight of those were
47 exceedances which occurred in one sensor alone?

- 1 A. That's correct.
2
- 3 Q. And on each one of those occasions, not in any other
4 sensor in any other place that was mandated by the
5 regulations?
6 A. That was required to have one, yes, that's correct.
7
- 8 Q. If I can call it the "canopy sensor", does that make
9 sense?
10 A. It does.
11
- 12 Q. That's because you will be aware all of the Anglo
13 underground mines, but focusing here on Grasstree, put
14 a sensor effectively up in the canopy of the last chock?
15 A. That's correct.
16
- 17 Q. Now, ultimately, your conclusion was that that didn't
18 comply with the new section 243A?
19 A. That's correct.
20
- 21 Q. But, in any event, they had put it there.
22 A. That's correct. Yes.
23
- 24 Q. And once it became clear that you considered that it
25 didn't comply, what they did was to put a new sensor in
26 with the right settings to comply with that provision,
27 ultimately?
28 A. My understanding is they calibrated an existing sensor
29 that was in the right location --
30
- 31 Q. Yes.
32 A. -- to the correct settings for the regulation --
33
- 34 Q. Exactly.
35 A. -- and maintained the canopy sensor at its settings
36 and at its location.
37
- 38 Q. Yes. When you say they changed the settings on the
39 one that already existed and was in a location that you
40 were comfortable with, that meant changing the settings so
41 that it alarmed --
42 A. It met the regulation requirements.
43
- 44 Q. -- at 2 per cent?
45 A. Yes.
46
- 47 Q. But they left the canopy one in at that point?

1 A. Yes.

2

3 Q. And as you record in your statement, that's because,
4 as you understand it, that was their choice to do that: it
5 certainly wasn't a directive of the department --

6 A. No.

7

8 Q. -- or required by legislation or anything of that
9 kind?

10 A. It is not.

11

12 Q. But by that point there had in fact been a number of
13 measures of exceedances which had been these very HPIs we
14 have been talking about, up in that canopy sensor and that
15 canopy sensor alone?

16 A. Yes.

17

18 Q. From a miner's perspective, from the role holder or
19 the miner's perspective, I imagine you can completely
20 understand that they have their own obligations in terms of
21 risk management and safety?

22 A. Certainly.

23

24 Q. And having identified a spot where there were
25 exceedances, the responsible thing to do was to leave the
26 canopy sensor there until they properly understood the
27 nature of the gas that they were dealing with there?

28 A. Yes, I would expect also that it would be a part of
29 their gas monitoring PHMP, which is a part of their safety
30 and health management system, which is by way of that
31 legislation.

32

33 Q. And, in any event, this canopy sensor was in a
34 location that you hadn't regularly seen sensors at all
35 previously?

36 A. Never seen before.

37

38 Q. And quite high up, particularly at Grasstree, under
39 the canopy for the purposes of protection?

40 A. Yes.

41

42 Q. And, indeed, the suggestion was, a theory at least
43 that was working was that you said that the goaf stream, so
44 the actual body of methane which was necessarily being
45 extruded from the longwall, might have been being directed
46 into that area?

47 A. If the - yes, if there is a movement in pressure, if

1 there is an opportunity for the ventilation to drift across
2 towards it, yes.

3

4 Q. Your expectation again would be that, having
5 identified that, the mine would work really hard to try to
6 figure out how to avoid that newly discovered pocket of
7 potential exceedance, in effect.

8

9 THE CHAIRPERSON: Mr Smith, could you just speak up a
10 little bit louder?

11

12 THE WITNESS: Yes, sorry. Yes, I would expect that.
13 I would like to add, though, that in my experience, what
14 putting the detector in that location did, or does, is
15 assist the industry to confirm what actually happens at
16 that point of the longwall tailgate on a regular basis with
17 regard to methane.

18

19 Ordinarily, my previous experience in that particular
20 area is that the information has been gained generally from
21 a portable gas detector carried by a statutory official,
22 and that is an intermittent measure.

23

24 MR HOLT: Q. And more than that, there are places that
25 person can't go; right?

26 A. There are places they should not go.

27

28 Q. And this is probably one of them. But, again, it is
29 a good process, right? It is a good learning opportunity,
30 what has occurred, in that sense?

31 A. I personally am very pleased to see it there.

32

33 Q. And you may or may not be aware, but, for example,
34 there seems to have been some success with the use of
35 a Sherwood curtain to attempt to avoid those kinds of
36 exceedances occurring in that location?

37 A. I have noted on a few of the HPIs over time the
38 mention of the Sherwood curtain, yes.

39

40 Q. Just so we are all clear, our learned friend was
41 asking you some questions about the fact that there was
42 also a clear factor in these HPIs which was the way in
43 which the chocks were being moved?

44 A. Yes.

45

46 Q. What is described in the reports as being the
47 staggering of the chocks?

- 1 A. Or the batching of the chocks.
2
3 Q. The?
4 A. Batching.
5
6 Q. I think "rabbiting" was used at one stage, but you
7 know these phrases better than me. But the idea is
8 basically when you move a bit of the longwall forward, kind
9 of as a group of chocks at once, then it might leave a bit
10 of a gap?
11 A. Yes.
12
13 Q. And what was found essentially was that when you did
14 that, in combination with the existence of the canopy
15 sensor, when those two things came together it at least
16 increased the likelihood of that exceedance?
17 A. That's my understanding.
18
19 Q. And what you saw, though, through the course of your
20 review of these HPIs and the documents associated with it,
21 was the mine take steps to firstly automate that process,
22 to avoid that occurring?
23 A. Yes.
24
25 Q. And then there was an occasion where there had been
26 instructions given but a particular crew didn't seem to be
27 aware of those instructions?
28 A. That's my understanding, yes.
29
30 Q. And then again, as you would expect, improvements made
31 by the mine to ensure that couldn't happen again?
32 A. Yes.
33
34 Q. By way of communications and so on?
35 A. Yes.
36
37 Q. And all of that is just that continuous learning
38 process?
39 A. Inspector Brennan I believe was involved in some
40 discussions with regard to the knowledge base of crews and
41 the effectiveness of the communication to crews.
42
43 Q. That kind of two-way communication about those kinds
44 of issues between your inspectors and a mine is exactly
45 what you think should happen in practice?
46 A. Yes.
47

1 Q. Just finally, then, on that issue, our learned friend
2 was talking about the need to look at patterns rather than
3 just individual events?

4 A. Yes.

5

6 Q. But again, at the risk of sounding repetitive, the
7 primary obligation for ensuring risk sits with the miner?

8 A. That's correct.

9

10 Q. And in this case, you would expect that the learning
11 from incident process would take into account all of those
12 events?

13 A. I would.

14

15 Q. And you would also expect that the mine would be
16 involved in some sophisticated work around identifying what
17 kind of causal factors might have come into play in this
18 regard?

19 A. I would.

20

21 Q. And again, when your inspectors go to the mine site
22 and conduct these processes, you expect, and indeed have,
23 cooperation and sharing of information which allows these
24 kinds of processes to be confidently proceeded with?

25 A. Yes.

26

27 MR HOLT: That's the questioning, thank you, Mr Martin.

28

29 THE CHAIRPERSON: Could I just ask who will be questioning
30 Mr Smith. Mr Roney, do you have anything?

31

32 MR RONEY: No, I don't, Chairperson.

33

34 THE CHAIRPERSON: Mr Crawshaw, I assume you do?

35

36 MR CRAWSHAW: I have some questions. Not a great many.

37

38 THE CHAIRPERSON: All right. Ms Holliday, will you be a
39 little while?

40

41 MS HOLLIDAY: Not at this stage, no.

42

43 THE CHAIRPERSON: Mr Crawshaw, how long do you think you
44 would be going?

45

46 MR CRAWSHAW: Maybe 10 minutes.

47

1 THE CHAIRPERSON: All right. Look, I think we might take
2 the usual luncheon adjournment, in any event. Mr Smith,
3 you will have to come back after lunch, I'm afraid.
4 All right. Thank you. We will adjourn until 2.15, please.
5

6 **LUNCHEON ADJOURNMENT**
7

8 THE CHAIRPERSON: Yes, Mr Crawshaw?
9

10 **<EXAMINATION BY MR CRAWSHAW:**
11

12 MR CRAWSHAW: Q. Can you hear me, Mr Smith?

13 A. Yes, I can.
14

15 Q. I just want to ask you a few questions. Firstly, one
16 of the tools in the inspector's armoury in investigating
17 incidents or accidents is to have coercive interviews under
18 section 157 of the Act; is that right?

19 A. That's correct.
20

21 Q. Indeed, I don't know whether this is outside your
22 jurisdiction, but the inspectorate is currently in the
23 process of conducting such interviews in relation to the
24 serious accident at Grosvenor mine on 6 May this year,
25 which is the subject of this inquiry?
26

27 MS HOLLIDAY: Mr Martin, if I could just interrupt at this
28 point, I'm not quite sure where this line of questioning is
29 going, but the key issues in relation to this tranche of
30 proceedings is not going to explore, as I understand it,
31 the nature and cause of the serious accident or, indeed,
32 the high potential incidents relating to Grosvenor for good
33 reason, and that's because the investigation is ongoing.
34 As I said, I'm unsure where this line of questioning is
35 going. If it is going to ask about coercive interviews
36 that may or may not be presently being conducted in
37 relation to the serious accident, in my submission, it's
38 outside the scope of these key issues.
39

40 THE CHAIRPERSON: Yes. Mr Crawshaw, you are aware of
41 that, I take it?
42

43 MR CRAWSHAW: Yes. It's not a line of questioning. It
44 was one question. I'm not taking it any further.
45

46 THE CHAIRPERSON: Sorry, what is the question you wish to
47 ask?

- 1
2 MR CRAWSHAW: I was just asking whether there are coercive
3 interviews under section 157 being conducted in relation to
4 the Grosvenor mine accident at this point in time.
5
- 6 THE CHAIRPERSON: I don't think it is relevant to this
7 tranche of evidence, not that it's terribly remarkable, but
8 you can easily ask that another time.
9
- 10 MR CRAWSHAW: It's no big issue.
11
- 12 THE CHAIRPERSON: All right. If you would move on,
13 thank you.
14
- 15 MR CRAWSHAW: Yes.
16
- 17 Q. I understand at least the current practice, correct me
18 if I'm wrong, is that ISHRs aren't told when employees are
19 being interviewed under section 157; is that right?
20 A. My understanding is that is right.
21
- 22 Q. Can you just tell me the reason for that?
23 A. Because - my understanding is the interviews are
24 arranged by the investigating inspector with the parties
25 that are going to be subject to the compelled interview.
26
- 27 Q. When you say "the parties", if we're talking about
28 production workers, for example, who are the parties to the
29 interview?
30 A. The coal mine worker.
31
- 32 Q. And so you don't see the need to tell the ISHRs when
33 that is occurring?
34 A. No, I don't.
35
- 36 Q. Can you just tell me what the reason for that is?
37 A. My reason for that is that if I am the investigating
38 officer, I am managing the investigation on behalf of the
39 RSHQ now, and that's where my responsibilities lie. If
40 I am compelling a witness, that is between me, as the
41 investigator, and the witness.
42
- 43 Q. But the fact is that you do tell the company that the
44 employee works for that the interview is taking place,
45 don't you?
46 A. You will have to forgive me, Mr Crawshaw, I haven't
47 actually conducted any coercive interviews in Queensland,

1 but it is my understanding, from observing the practice,
2 that in order to organise witnesses, the investigator will
3 utilise the resources available at the mine in order to
4 communicate the desire to interview coal mine workers
5 employed at that mine.

6

7 Q. That is, as you understand, what the inspectors that
8 report to you do?

9 A. That's correct.

10

11 Q. So the only information that such inspectors need from
12 the coal mine employer is the contact details; isn't that
13 the case?

14 A. We certainly do need the contact details of the coal
15 mine workers, yes.

16

17 Q. In order to interview them?

18 A. That's correct.

19

20 Q. But you don't need to tell the company any more than
21 that in terms of when interviews are going to take place
22 and where the interviews are going to take place?

23 A. From my observations, interviews can take place in any
24 number of locations - sometimes at the mine, sometimes in
25 our offices, sometimes in other locations, depending upon
26 the availability and location of the witness and any
27 support that the witness required.

28

29 Q. What I'm suggesting to you is that you tell the
30 company when the interviews are going to take place - not
31 you personally, but your inspectors tell the company when
32 the interviews are going to take place and where they are
33 going to take place?

34 A. And I think you would find, I would suggest,
35 Mr Crawshaw, that that is for convenience of organising the
36 access to the coal mine workers.

37

38 Q. There is no need for it other than convenience?

39 A. That would be my understanding, yes.

40

41 Q. Indeed, if you were going to stick to your rationale
42 by which you don't tell the ISHRs about the time and place
43 of the interview, you wouldn't be telling the companies
44 about the time and place of the interview, either?

45 A. If we are making use of the company's resources to get
46 into contact with the coal mine workers and to give them
47 a time and a location for the interview - as I said, they

1 may in fact take place at the mine - then we would need to
2 tell the mine the location and the time proposed.

3

4 Q. Well, there is no need for those interviews to take
5 place at the mine, is there?

6 A. At times, with the FIFO workforce, it is far more
7 convenient for the coal mine worker to be interviewed at
8 the work site than it is to make other arrangements.

9

10 Q. But it's not necessary, is it?

11 A. It may be necessary, Mr Crawshaw, in order to
12 facilitate an expedient interview with the coal mine
13 worker.

14

15 Q. It is a matter of convenience, as you previously said?

16 A. And it's to expedite the investigation.

17

18 Q. If I could just move on, could this document be shown
19 on the screen, HLJ.001.001.0049. Do you recognise that
20 document, Mr Smith?

21 A. I do. I do.

22

23 Q. You heard Mr Newman give some evidence about that
24 document today?

25 A. I did.

26

27 Q. Did you send that --

28 A. I did.

29

30 Q. I hadn't finished, but did you send it at Mr Newman's
31 direction?

32 A. Yes, I did, I sent it with his permission.

33

34 Q. When you say "with his permission", was it your idea
35 to send this document?

36 A. I was certainly involved in discussions about it, and
37 I think I probably nominated myself to compose it.

38

39 Q. What were the discussions about it, in terms of their
40 subject matter?

41 A. When I shifted to Mackay and became involved in the
42 role as the regional inspector, I became aware that the
43 reports of inspections and directives were being
44 distributed on quite a comprehensively long distribution
45 list that included - that in my mind was not in compliance
46 with the - sorry, was more than was actually required by
47 the legislation, and rather than have my administrative

1 staff composing and sending emails to an enormous group of
2 people and tracking the receipt of those emails to a whole
3 group of people who are not mentioned in the legislation,
4 I was quite content to put this together and send it out.
5

6 Q. So from your point of view, this circular was sent as
7 a matter of relieving the administrative burden on staff?

8 A. That was a benefit of sending the circular.
9

10 Q. What was the other benefit? Was there another
11 benefit?

12 A. The main reason for sending the circular is, as
13 I understood, the legislation required me as an inspector
14 to provide reports of my inspections to the SSE and the
15 operator at the mine.
16

17 Q. I notice you didn't mention confidentiality as one of
18 the reasons there. Was that part of your motivation?

19 A. I think when I look at the legislation and it obliges
20 me to send a report of my inspection to the SSE and to the
21 operator, that's the extent of my obligation as an
22 inspector. What happens to the document after that, if it
23 turns up on the front page of The Australian, it's not
24 there because I put it there; it has turned up there some
25 other way, and I would like to be in a position where I've
26 complied with my obligations under the legislation and have
27 no possibility of perception that I may have facilitated
28 anything else.
29

30 Q. Are you suggesting that under the previous practice,
31 one of these MREs turned up on the front page of
32 The Australian?

33 A. No, no, I'm not, but what I'm saying is that once I -
34 when I looked at the distribution list going out to so many
35 different groups that weren't SSEs or operators,
36 I considered it unwise that we continue that practice.
37

38 Q. Sorry, who are these groups?

39 A. We lose control - we lose control of the --
40

41 Q. Who are these groups you're worried about?

42 A. Various lists - SSEs were providing various
43 distribution lists that suited their operation to have the
44 reports of inspections sent to. As the chief inspector
45 mentioned, we were finding it very difficult to actually
46 get confirmation that the people that were obliged to
47 receive it were actually receiving it. One way to assist

- 1 us in that process is to limit the number of people we send
2 it to.
3
- 4 Q. If I could just come back to the question I asked you,
5 was confidentiality one of your concerns?
6 A. Control of the document is my concern and ensuring
7 that the control of the document is managed appropriately.
8 My obligation is to control the document to the SSE and the
9 operator. It's also --
10
- 11 Q. So I take it confidentiality wasn't one of your
12 concerns?
13 A. It's not an overriding concern.
14
- 15 Q. Was it a concern at all?
16 A. In as much as the ability to control the distribution
17 of the document on the distribution list that I first saw,
18 yes, it would be a concern.
19
- 20 Q. You didn't say it was a concern in this circular that
21 you sent out?
22 A. No.
23
- 24 Q. Have you ever said it is a concern of yours before?
25 A. Not particularly that I recall, no.
26
- 27 Q. Can I just ask you - you talked about the
28 administrative burden. You are the regional inspector for
29 one area in Queensland, aren't you?
30 A. I am.
31
- 32 Q. So in terms of a circular like we've just - that we've
33 just seen, did that circular go beyond your area?
34 A. Yes, it did.
35
- 36 Q. How many such MREs would have gone out since that
37 circular, for example, in the last six months,
38 approximately?
39 A. That's February, so six months. It would be between -
40 well, I would estimate between 100 and 200, possibly more.
41
- 42 MR CRAWSHAW: I'll just move to another topic, and
43 I apologise, Mr Martin, I think I'm going beyond the
44 10 minutes I suggested.
45
- 46 THE CHAIRPERSON: Yes. That's why I adjourned at the
47 normal time, Mr Crawshaw.

1
2 MR CRAWSHAW: Q. Mr Smith, in carrying out your duties
3 in the coal mining inspectorate, have you ever actually
4 seen a risk assessment produced by a labour hire company?
5 A. Not that I can recall, no.
6
7 Q. Can I ask you the same question about contractors
8 generally: have you ever seen a risk assessment produced
9 by a contractor?
10 A. Yes, I have, I believe so.
11
12 Q. How often has that occurred?
13 A. That's a difficult question to answer.
14
15 Q. Well, do you actually have a firm recollection of
16 seeing such a risk assessment?
17 A. I can't say that I've got a firm recollection of the
18 last time I saw a contractor's risk assessment.
19
20 Q. All right, I won't take the matter any further. It
21 would be a rare occurrence, wouldn't it, for you to see
22 a risk assessment from a contracting company?
23 A. It's not a regular event at all, no.
24
25 Q. You heard yesterday Mr Newman say that there were two
26 unannounced inspections, during the period covered by the
27 terms of reference, of the Oaky North mine. Do you
28 remember that?
29 A. Yes.
30
31 Q. Did he get that information from you?
32 A. No, I don't think he did.
33
34 Q. Have you put your mind to that question, apart from
35 hearing it yesterday from Mr Newman?
36 A. I'm sorry, Mr Crawshaw, to what question?
37
38 Q. The question of whether there were any unannounced
39 inspections at the Oaky North mine.
40 A. No, I have not.
41
42 Q. Can you tell us whether you have any knowledge as to
43 whether such inspections have occurred during the period
44 covered by the terms of reference?
45 A. My knowledge would be based on what I heard the chief
46 inspector say yesterday.
47

- 1 Q. In your statement at paragraph 32, when you are
2 talking about inspections, you refer to engaging with mine
3 workers. It is broader than that. You talk about engaging
4 with mine workers both on site and via correspondence. Do
5 you see that?
- 6 A. In paragraph 32, where the mine record entries --
7
- 8 Q. Yes. Just for the screen, it is SST.001.002.0005. Do
9 you see that at paragraph 32?
- 10 A. Yes, I do.
11
- 12 Q. When you talk about engaging with mine workers there,
13 you are talking about, I suggest, engaging with the
14 management of the coal mine companies at the particular
15 mine?
- 16 A. That will certainly be one of the groups that those
17 mine record entries I reviewed indicated that the
18 inspectors engaged with at the mine. They also, as
19 I recall, engaged with mine workers at the mine in their
20 mine record entries.
21
- 22 Q. So when you used the term "mine workers" just now, you
23 were talking about production workers, coal miners?
- 24 A. Coal mine workers cover everyone at the mine.
25
- 26 Q. All right, well, can I just ask you this: you have
27 looked at these mine entry records relevant to this
28 particular inquiry, I take it?
- 29 A. Yes.
30
- 31 Q. And what I want to suggest to you is that the normal
32 situation is that your inspectors don't engage with
33 production workers without management representatives being
34 present?
- 35 A. I don't agree with that supposition, no.
36
- 37 Q. You do that on the basis of your analysis of the mine
38 entry records, do you?
- 39 A. And my experience conducting inspections and my
40 experience accompanying other inspectors on inspections.
41 I have personally engaged coal mine workers without the
42 presence of mine management, and I've seen other inspectors
43 do the same.
44
- 45 Q. This is in an underground mine?
- 46 A. In an underground mine, yes.
47

1 THE CHAIRPERSON: Q. And you are talking in Queensland
2 at the moment, Mr Smith?

3 A. I am.

4

5 THE CHAIRPERSON: Yes, thank you.

6

7 MR CRAWSHAW: Q. What I want to suggest to you is that
8 the norm in an underground mine is that you would make any
9 inspection with a member of management present.

10 A. Certainly it is my experience that a member of the
11 management will accompany an inspector. They have
12 accompanied me on inspections. That has not prohibited me
13 in any way from speaking to coal mine workers without them
14 present when I've wished to.

15

16 Q. But the member of management would know when you were
17 talking to those workers?

18 A. They may and they may not. It depends on the
19 circumstance at the time.

20

21 Q. Have the mine entry records that you have analysed
22 been produced to the inquiry - the mine entry records
23 relevant to the time period at these mines?

24

25 MS HOLLIDAY: Mr Martin, Mr Smith wouldn't know the answer
26 to that. It is correct that they have been, but he
27 wouldn't know that.

28

29 THE CHAIRPERSON: Right. Okay, thank you.

30

31 MS HOLLIDAY: It is the ones within the terms of the
32 production notice and the ones that are referred to in
33 Mr Smith's statement that have been produced to the Board
34 and that are now part of the public book.

35

36 THE CHAIRPERSON: Yes, thank you.

37

38 MR CRAWSHAW: Q. I want to suggest to you - I won't take
39 you through them all - that the ones that you have referred
40 to in your statement have a member of management present in
41 each of the inspections that were conducted.

42 A. That would not surprise me.

43

44 MR CRAWSHAW: Yes, no further questions.

45

46 THE CHAIRPERSON: Thank you. Mr Roney, you have
47 something?

1
2 MR RONEY: I do, thank you.

3
4 <EXAMINATION BY MR RONEY:

5
6 MR RONEY: Q. Mr Smith, I just want to ask you a couple
7 of questions that arose out of some questions Mr Crawshaw
8 just asked you. He asked you whether you had ever seen
9 a risk assessment by a labour hire company, and then he
10 asked you about contractors in a similar question. Now, he
11 didn't tell you what he meant by the term "risk
12 assessment", but it is the case, isn't it, that within the
13 coal mining industry there would be a multiplicity of forms
14 of risk assessments that might be conducted?

15 A. There is numerous risk management tools, yes.

16
17 Q. Some of them might be at a high standard - for
18 example, the development of safe operating procedures?

19 A. Yes.

20
21 Q. They are a form of risk assessment, aren't they?

22 A. Usually involved in preparing that.

23
24 Q. Typically when those SOPs, as they're called, are in
25 development, they would be developed in consultation with
26 coal mine workers?

27 A. Correct.

28
29 Q. That's part of the required process, is it not?

30 A. That's part of the required process.

31
32 Q. And to the extent that any coal mine workers who were
33 on site were labour hire supplied employees, there is no
34 reason to think, is there, that they would not be
35 participants in that process?

36 A. I've no reason to think they would be excluded.

37
38 Q. You have never seen them excluded; you have never
39 encountered an example of them being excluded?

40 A. Not that I'm aware of, no.

41
42 Q. As far as you have observed, the employees, coal mine
43 workers, who have been supplied under labour hire
44 arrangements participate within given mines as if they were
45 employees of the coal mine operator?

46 A. That's my understanding, yes.

47

1 Q. At another level, we have other kinds of risk
2 assessment, one of which is commonly called a JSA or
3 a similar type of document, where the particular task is
4 analysed by a group of workers to identify the risks and
5 how to manage those risks?

6 A. That's correct.

7
8 Q. We don't need to give it a particular title, but let's
9 just call it a "JSA" for present purposes. In your
10 experience, you would have seen, I dare say, very many such
11 examples?

12 A. Yes.

13
14 Q. There would be hundreds of JSAs, if not more, done in
15 any given mine in any given week, would there not?

16 A. That would be my expectation, yes.

17
18 Q. How about your experience, have you crossed paths with
19 the reality?

20 A. Yes, I have.

21
22 Q. And is that the reality?

23 A. The reality that I have encountered is that JSAs are
24 regularly available if I ask to see a JSA.

25
26 Q. If labour hire staff were part of a working group in a
27 particular mine, they would not only be expected to but
28 would indeed participate in the conduct of a JSA as part of
29 that working group?

30 A. That's correct.

31
32 Q. And in those circumstances, they would be performing
33 an analysis of risk and identifying the ways in which it
34 could be managed?

35 A. They would.

36
37 Q. If those JSAs existed, they would be held within the
38 mine's records?

39 A. They certainly should be.

40
41 Q. They are required to be, aren't they, by law?

42 A. Yes.

43
44 Q. And then below that, just to give a further example,
45 there are individual ways in which - I should rephrase
46 that - there are ways in which individual workers, coal
47 mine workers, might assess risks themselves for

1 a particular task they're doing?
2 A. That's correct, Take-5 or SLAM.
3
4 Q. To do a Take-5, for example, you fill out a series of
5 little questions for yourself to ask yourself if you have
6 looked at particular things and you have identified
7 controls?
8 A. That's correct.
9
10 Q. There is no reason to think, is there, the labour hire
11 company supplied staff would not engage in that practice in
12 the same way as their mine operator employed co-employees
13 would?
14 A. It's my experience that they do engage the same.
15
16 Q. It may be that Mr Crawshaw's question involved a much
17 more narrow concept, which is a risk assessment by a labour
18 hire company about its own operations, but let's assume the
19 question was about the activity of the coal mine workers
20 that they were supplying under a particular arrangement.
21 Now, it is true to say, isn't it, that insofar as risk
22 assessments were conducted by any of those labour hire
23 staff in relation to the tasks they were to perform on
24 site, they certainly were records kept of such assessments
25 having been conducted, and you would have seen such
26 records?
27 A. Yes.
28
29 MR RONEY: Thank you, Mr Martin.
30
31 THE CHAIRPERSON: Yes. Mr Rice?
32
33 MR RICE: Nothing further, thank you, Mr Martin.
34
35 MS HOLLIDAY: Sorry, if I could just ask some questions of
36 the witness, please?
37
38 THE CHAIRPERSON: Sorry, Ms Holliday, I thought that you
39 said no earlier, and I forgot to go back to you.
40
41 MS HOLLIDAY: I said that I wouldn't have many questions.
42
43 THE CHAIRPERSON: I beg your pardon.
44
45 MS HOLLIDAY: And that's still the situation. There are
46 only a few questions.
47

1 THE CHAIRPERSON: Thank you.

2

3 <EXAMINATION BY MS HOLLIDAY:

4

5 MS HOLLIDAY: Q. In relation to the questions that
6 Mr Crawshaw asked you about Oaky and whether there had been
7 any unannounced inspections during the terms of reference
8 period, Mr Operator, can the witness please be shown
9 RSH.002.350.0001. This is a mine record entry, Mr Smith -
10 that's correct?

11 A. That is correct.

12

13 Q. The top right-hand corner will give you the date of
14 the inspection; is that correct?

15 A. That's correct.

16

17 Q. Under the heading of "Activity Date". Then under the
18 heading of "Activity Type", it will tell the reader whether
19 the inspection was announced or unannounced; that's
20 correct?

21 A. That's correct.

22

23 Q. This was a mine record entry for an inspection that
24 took place on 15 October 2019; is that correct?

25 A. That's correct.

26

27 Q. It was an unannounced inspection; that's correct?

28 A. That's correct.

29

30 Q. And that was at Oaky North underground mine; that's
31 correct?

32 A. That's correct.

33

34 Q. It tells you who was present during the inspection at
35 different times; that's correct?

36 A. That's correct.

37

38 Q. And it actually lists there the SSHR, Mr Joe Barber?

39 A. That's correct.

40

41 Q. It tells you further down the page what actually
42 occurred during the underground inspection. You can see
43 the heading there, the third paragraph from the bottom,
44 "Underground Inspection"?

45 A. That's correct.

46

47 Q. It in fact says who accompanied the inspector on the

- 1 underground inspection.
2 A. That's correct.
3
4 Q. On that occasion, he was accompanied by Mr Brigden?
5 A. That's correct.
6
7 Q. As the shift supervisor, the SSHR?
8 A. That's correct.
9
10 Q. And also Michael Downs, the underground mine manager?
11 A. That's correct.
12
13 Q. You were asked questions in relation to whether or not
14 inspectors speak to mine workers in the absence of
15 management, and you indicated that it was your personal
16 experience that in fact that does occur?
17 A. That's correct.
18
19 Q. Prior to being appointed as the regional inspector,
20 you were an inspector of mines?
21 A. I was.
22
23 Q. For a period of over two years; is that correct?
24 A. Almost.
25
26 Q. 2017 to mid 2019 - just over two years?
27 A. October 2017.
28
29 Q. So give or take, two years?
30 A. Close.
31
32 Q. It was a regular part of your duties to conduct
33 inspections over that period of almost two years?
34 A. Yes, it was.
35
36 Q. When you would undertake inspections, on occasion you
37 would speak to coal mine workers, or I should say mine
38 workers?
39 A. I would.
40
41 Q. In the absence of management?
42 A. I would.
43
44 Q. Mr Holt asked you a question in relation to whether or
45 not you were aware of - and he used the acronym - LFI
46 reports, learning from incident reports.
47 A. He did.

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Q. You answered him that you weren't aware of those.

A. I did.

Q. If I called them by the name of an investigation report or an ICAM report or a 201 report, have you heard of those documents?

A. I have heard of those, yes.

Q. To ensure that we are referring to the same document, I will take you to one example. Mr Operator, could the witness be taken to AAMC.001.001.0691. You will see there that it has a big heading "Learning From Incidents"?

A. It does.

Q. Presumably that's the reason why it was referred to as an LFI report. Have you seen such reports and do you call them "investigation reports"?

A. I have.

Q. Finally, in relation to coercive interviews, you were asked a series of questions by Mr Crawshaw about that and, in particular, whether or not an ISHR should be routinely informed, as I understand his questioning, of coercive interviews and when they are to take place. Your answer was that you didn't see the need for it. Can I give you the opportunity in relation to that, in terms of your answer of not seeing the need for it - is there a range of reasons why it may not be prudent or good practice to inform an ISHR as to when a coercive interview is to take place?

A. I see the investigation process as something between the inspector doing the investigation and the parties involved in the event and the witnesses thereof. So I form a fairly narrow view, I guess, that if I identify somebody that I would wish to compel to answer questions, I'm focused on them and not on anyone else, so I would be most interested and only interested in obtaining their testimony.

Q. Of course an ISHR has a role in an investigation to participate in an investigation. In terms of it extending to being informed of when coercive interviews are being held, why may there be reasons why that is not prudent?

A. I would like the - I think my answer to that is simply that the opportunity to interview a witness without the opportunity for their testimony, their evidence - without

1 the opportunity for their evidence to be coloured in any
2 fashion may require a speedy process, and I believe there
3 should be nothing getting in the road of the investigator
4 getting that process effected.
5

6 So having to communicate with other parties with
7 regard to my plan to interview somebody I see as
8 unnecessary, and in some cases in order to ensure that
9 I get the witness as soon as possible, if you like, after
10 the event and without any likelihood of their evidence
11 being coloured in any way by communications with others,
12 I would just like to keep it between me and them.
13

14 MS HOLLIDAY: I have no further questions, Mr Martin.
15

16 THE CHAIRPERSON: Thank you. Ms Holliday, you were
17 framing the question in terms of why wouldn't Mr Smith
18 inform the ISHR about a coercive interview, about when it
19 was going to take place. Did you mean to include in that
20 the fact of there going to be a coercive interview with
21 that person?
22

23 MS HOLLIDAY: Yes.
24

25 THE CHAIRPERSON: Q. And you understood that, Mr Smith,
26 did you, that what you were being asked was why would you
27 not tell the ISHR that you were going to conduct a coercive
28 interview with a certain specified person? Did you
29 understand that that was the question?

30 A. I believe so, yes.
31

32 THE CHAIRPERSON: All right. Thank you. It's not just
33 the timing of it. The fact of it.
34

35 MS HOLLIDAY: If I expressed myself ineloquently, that is
36 my error. It was when, in terms of the fact of it
37 occurring, not just the time of it, but the fact of it
38 occurring.
39

40 THE CHAIRPERSON: Yes, thank you.
41

42 THE WITNESS: If I may, one of the powers of an inspector
43 is to require a person to answer questions, and at times
44 that power may be needed to be exercised at short notice.
45 So from my perspective, I would not like to have an
46 impediment placed between me as an inspector and my ability
47 to compel a witness. I think that's counterproductive - or

1 could potentially be counterproductive to the investigation
2 process and potentially counterproductive to the witness as
3 well.

4
5 THE CHAIRPERSON: Yes, thank you. Mr Clough, anything?

6
7 MR CLOUGH: No, I have no questions.

8
9 THE CHAIRPERSON: Mr Smith, thank you for your attendance.
10 I won't excuse you, either. That's not a threat, but you
11 may be back at some stage.

12
13 **<THE WITNESS WITHDREW**

14
15 THE CHAIRPERSON: Yes, Mr Rice?

16
17 MR RICE: I call Kelvin Schiefelbein.

18
19 THE CHAIRPERSON: Mr Smith, I meant to say that you and
20 Mr Newman are free to leave at any stage. It's just that
21 you may be recalled, that's all.

22
23 **<KELVIN SCHIEFELBEIN, sworn:**

24
25 **<EXAMINATION BY MR RICE:**

26
27 MR RICE: Q. Sir, is your name Kelvin Schiefelbein?

28 A. That's correct, yes.

29
30 Q. Have I pronounced your name correctly?

31 A. Yes, that's good, thank you.

32
33 Q. Mr Schiefelbein, you are the underground mine manager
34 at Grasstree mine?

35 A. That's correct, yes.

36
37 Q. First appointed, I think, on 18 September 2017 by
38 Mr Hobson?

39 A. That's correct, yes.

40
41 Q. You first acquired a First Class Mine Manager's
42 Certificate back in 1986; am I right?

43 A. That's right, yes.

44
45 Q. Can you give us a rundown on your experience as
46 a statutory officer since then?

47 A. Okay, counting back from Grasstree, then. I've been

1 at Grasstree as the underground mine manager for three
2 years. Prior to that, I worked at the Carborough Downs
3 mine, which was owned and operated by Vale and ultimately
4 sold to Fitzroy, about two and a half years, and six months
5 with Fitzroy. Prior to that, I was at the Austar mine down
6 in New South Wales, as the underground mine manager in that
7 mine, for about 18 months.

8
9 Prior to that, back at the Moranbah North mine,
10 I occupied various roles in that mine, some of it as a mine
11 manager, some of it as a longwall superintendent, some as
12 a superintendent of ventilation gas, some as
13 a superintendent of tech services and some as the
14 ventilation officer at Moranbah North.

15
16 Q. So have you worked in the industry continuously since
17 you got your first class certificate in 1986?

18 A. Yes, except you might count seven years in Tasmania
19 different to that. So prior to Moranbah North, I worked in
20 Tasmania, still in a mining industry but in a processing
21 plant. That's a hot metals plant making manganese from
22 ore.

23
24 Prior to that, I was working at the Gordonstone mine
25 as the safety manager and, prior to that, at Cook Colliery,
26 and there I worked various positions from a miner to
27 a deputy to the under-manger to the deputy mine manager.
28 Basically, that's about it. Prior to that, I was in the
29 coal owners managers cadet scheme for three years working
30 at various mines, one in the Bowen Basin at Cook Colliery
31 and the other two in the Ipswich fields.

32
33 Q. You've been around a long time. Would it be fair to
34 say you have seen significant changes in the technology
35 pertaining to underground mining since 1986?

36 A. Yes, very much so, yes.

37
38 Q. There has been reference already to a couple of
39 factors, one being the depth of mining and the other being
40 increased production rates. Are they two major features
41 over the timeframe --

42 A. Yes, they are two major ones, yes. Production has
43 increased dramatically, depth of mining, and of course gas,
44 which comes with the depth of mining, has increased as
45 well.

46
47 Q. I suggested those two matters to you. Are there any

1 others that you would want to draw attention to?
2 A. Oh, just of course there's workplace reforms. The
3 type of strata control used in mines has changed
4 considerably from early days to now. Longwalling of
5 course - when I first started, it wasn't in Australia, so
6 longwalling has come along.

7
8 Q. Since you first acquired a First Class Mine Manager's
9 Certificate, longwalling had been introduced into Australia
10 after that?

11 A. Yes, generally, yes, in the Queensland scene. There
12 were already longwalls in New South Wales, but in the
13 Queensland scene and with my experience, the Central
14 Colliery was bringing on a longwall in the - '89,
15 I believe, '88, '89. And at Cook Colliery, we got our
16 first longwall there about that same period.

17
18 Q. Perhaps that raises a question that you would be well
19 placed to help us with. Given those technology changes,
20 including something as fundamental as the introduction of
21 longwall mining, how do you, as a certified first class
22 mine manager, keep your skills up and keep your knowledge
23 base up so far as these technological advances are
24 concerned?

25 A. Well, back in those days, we had a whole mine that had
26 not seen a longwall before, and they brought in some
27 expertise from over in the UK to teach everyone on site,
28 including myself as a deputy mine manager at the time,
29 about longwalling and how it runs and all that sort of
30 thing.

31
32 Q. Provided by the operator, is that --

33 A. Yes, that's right, yes.

34
35 Q. By the operator of the mine?

36 A. Yes, McIlwraith were operating that mine, and that's
37 the way they went about that introduction, yes.

38
39 Q. Would that fit the description of on-the-job training
40 or was it something more formal than that?

41 A. They had formal workbooks and all that sort of thing
42 to go through. They had to teach people who had not used
43 extensive hydraulic systems how the hydraulic systems
44 worked, how to maintain it, how pressures worked on
45 a longwall, what lemniscate linkages - the whole process of
46 longwalling had to be taught.

47

- 1 Q. Is there any system of ongoing education that you need
2 to keep up with to keep an accreditation?
3 A. Yes. In the current era, in the Mine Managers
4 Association - I go to all their CPD meetings to keep myself
5 abreast of the industry and any changes.
6
7 Q. Well, I can tell you that lawyers are familiar with
8 the requirement that they must do a certain number of hours
9 or they don't get a practising certificate.
10 A. That's correct, yes.
11
12 Q. Is your participation in that kind of thing voluntary
13 or compulsory, such as we lawyers are used to?
14 A. It is voluntary in the sense - it's not compulsory.
15 It's not that you have to attend. In the New South Wales
16 scheme, you have a period of time, about five years, to
17 maintain your number of hours. If you were to go outside
18 that period, then you would no longer have your
19 certificate. Queensland are --
20
21 Q. To make sure I understand you, there is such
22 a mandatory system in New South Wales, you're saying?
23 A. I understand Queensland are heading along a similar
24 path, except it just hasn't been tabled yet.
25
26 Q. I asked you with reference to your own position as
27 a mine manager. Does the same apply in terms of ongoing
28 education, do the requirements or lack of them apply to
29 other statutory officials?
30 A. Yes, correct. In the Queensland context, they are now
31 going about doing ventilation officer training, and there
32 is a process rolling out for that. In the Queensland
33 context, there are mine manager and SSE forums that the
34 inspectorate run from time to time. This is apart from the
35 Mine Managers Association that I attend.
36
37 Q. Just to be clear, having got your First Class Mine
38 Manager's Certificate in 1986, I understand that you have
39 undertaken these educational processes for various reasons,
40 but so far as the operation of any compulsory system is
41 concerned, you could continue without any further training,
42 if you so chose, since 1986 through to the present?
43 A. Yes.
44
45 Q. It's theoretically possible?
46 A. Theoretically you could do that, yes.
47

- 1 Q. But to keep up with your job, I suppose, the operator
2 wants you to keep your skills up?
- 3 A. That's correct. I don't think you could go through
4 the system without being found, if you were not of
5 knowledge and not of current capacity.
6
- 7 Q. Found, in what way do you mean?
- 8 A. When you do, for example, your Standard 11 training or
9 when you get appointed, you have to be interviewed by the
10 people on site that have appointed you. There are listed
11 qualifications that go into your section 55 appointments
12 that people have to check and validate. They would look at
13 your resume, and at point of hire - there's various means
14 that they determine you are adequate and suitable to do the
15 tasks.
16
- 17 Q. So if you take a new job, for example, at Grasstree,
18 you have to satisfy the relevant people that you have the
19 necessary competency?
- 20 A. Correct, yes.
21
- 22 Q. And in the course of that, you might want to
23 demonstrate you have done some training for this, that or
24 the other?
- 25 A. That's right, yes, there's certificates and --
26
- 27 Q. Is that the check and balance in the system as it
28 works at the moment?
- 29 A. Yes, there is, yes.
30
- 31 Q. You would be well familiar, I'm sure, with the
32 mandatory requirements so far as the ventilation system is
33 concerned in sections 343 and 344 of the Queensland
34 regulation?
- 35 A. Yes, broadly, yes.
36
- 37 Q. In particular, you would be aware that it mandates
38 compliance with the ventilation system to achieve
39 a concentration of methane of no more than 2.5 per cent?
- 40 A. That's correct, yes.
41
- 42 Q. And it doesn't permit any exception to that, save for
43 the sudden and temporary increase which is brought quickly
44 back under control?
- 45 A. That's correct, yes.
46
- 47 Q. You are well aware of that, I'm sure?

- 1 A. Yes, mmm-hmm.
2
3 Q. To achieve that at a mine like Grasstree, is it
4 correct to say that it is not only a matter of the workings
5 of the ventilation system but that that system needs to be
6 supported by gas drainage?
7 A. That's right, yes.
8
9 Q. Both pre-drainage and post-drainage; correct?
10 A. That's right, there are two sorts.
11
12 Q. To assist the ventilation system to achieve
13 compliance?
14 A. Correct, yes.
15
16 Q. Both systems taken together qualify, in your mind, as
17 critical controls for the hazard of methane?
18 A. Yes, I believe so, yes.
19
20 Q. And of course there are a number of principal hazard
21 management plans for Grasstree mine?
22 A. Yes.
23
24 Q. They may not be in the forefront of your mind, but
25 would you have at least a working knowledge of their
26 operation?
27 A. Well, say, in that field, there is a gas management
28 one, a ventilation one and a methane drainage one.
29
30 Q. Yes, correct. You may be aware of this much, that
31 each of them declares its objective in similar terms?
32 A. Mmm-hmm.
33
34 Q. Which is to ensure that the principal hazard to which
35 the plan relates is predicted, assessed and controlled?
36 A. Correct, yes.
37
38 Q. That's consistent with meeting the mandatory standard
39 of compliance of the ventilation system; correct?
40 A. Yes.
41
42 Q. The principal hazard plan really has to be in those
43 terms so that it is in accordance with the mandatory
44 requirements of the ventilation system?
45 A. Correct, yes.
46
47 Q. Thank you. I want to ask you, is meeting the

1 mandatory requirement of the ventilation regulation that
2 I mentioned in practice achievable or is it only
3 aspirational?

4 A. No, it is achievable, yes. Yes.

5

6 Q. A related question is this: methane exceedances, that
7 is, occurrences of noncompliance --

8 A. Yes.

9

10 Q. -- in excess of 2.5, et cetera, are they an inevitable
11 part of underground coal mining or not?

12 A. No, they are not inevitable. If the system is working
13 effectively, it won't occur, yes.

14

15 Q. You were involved in reporting on I think all of the
16 HPIs at Grasstree with which this inquiry is concerned?

17 A. That's correct, yes.

18

19 Q. So on that subject, could I start by asking you for
20 some details about the reporting process as it applies to
21 you and as it operates at the mine.

22 A. Okay.

23

24 Q. Let's assume that there is an occurrence of an
25 exceedance. It doesn't matter for the moment what the
26 cause is. Do I understand correctly that there is a gas
27 management TARP that sets out who is to notify whom and
28 then what is to happen in that event?

29 A. That's right, there is a TARP that would specify some
30 arrangements for notifying. The gas management TARP also
31 has other actions, but, yes, there is a bit there to ensure
32 notification goes, yes.

33

34 Q. Am I right that you are supposed to be informed by the
35 mine senior official, who is in turn informed by somebody
36 else, and so it goes up the line?

37 A. That's correct, yes.

38

39 Q. I think you are supposed to inform the SSE; is that
40 right?

41 A. That's right, yes.

42

43 Q. And that's what you do?

44 A. Yes.

45

46 Q. In terms of your acquiring information of an event, is
47 that how it ordinarily occurs, that you get information

1 from the mine senior official?

2 A. Yes, generally that's the case. There might be the
3 odd case where I'm watching some screen live and notice it,
4 actually see it, and there might be some other cases where
5 I've looked through a trend and found an area that was
6 close to the limit and required to check into it and find
7 that it was an exceedance. Generally speaking, that's the
8 way it is - a control room operator or a deputy would
9 detect it and then notify the MSO, who would notify me.

10

11 Q. You raised this in your answer just previously: in
12 what locations do you have access to the kind of gas
13 readings that might register an exceedance?

14 A. In my office, I have a big screen that runs the SCADA
15 system - the Citect system is the brand name - and I can
16 look at all of the trends available on that system.
17 I normally set it up so I can see the trends I'm looking
18 for. Also, just out of my office, in the general area
19 between the managers, there is another such screen. In
20 fact, a lot of the managers use those sorts of screens in
21 their offices to see live how the mine is operating.

22

23 The control room, of course, has that set up
24 throughout, and that system is also down in the maingate
25 drive, say, on the longwall, where the operators there can
26 see it. The MSO has a similar one in his office as well.
27 The system is a software base, so you can bring it up on
28 PCs or on iPads, et cetera, from remote locations as well.

29

30 Q. Without going into too much detail, does it simply
31 display the current reading or does it display a trend?

32 A. The screens are made very pictorial and graphic to
33 indicate how a piece of plant is operating. They have
34 icons or flash-ups or pop-up screens that indicate when
35 things go into alarm, and down the bottom they can indicate
36 by red and colours when things are in an alarm.

37

38 Q. Do you get an audible alarm in your office?

39 A. No, the system is not audible in that respect in that
40 area, no.

41

42 Q. One of the things, I gather, that is to be done once
43 an incident occurs is to form what is called an incident
44 control team?

45 A. Yes.

46

47 Q. Can you explain what that is?

1 A. Yes, when an incident requires people to be formed
2 into a process to deal with a problem, we have various
3 names for them - an incident management team, incident
4 control team, et cetera - but basically a group of people
5 who have direct control of it form and have a meeting and
6 discuss the issues and the objectives and some actions to
7 take.

8

9 Q. Is there a typical composition of such a team?

10 A. Not as typical - yes, you want a senior person in
11 there, you want an expert in there. If we are talking
12 about gas, so I'm going to want the VO in there, I'm going
13 to have myself in there, you're going to have some people
14 such as the gas drainage superintendent or one of his
15 people in there; and if we're talking about gas
16 exceedances, MSO is typically involved, because we need to
17 have his insight into the underground operations; in a
18 longwall, a longwall superintendent or a coordinator or
19 someone from the longwall in that mid-management area.
20 Yes.

21

22 Q. Is this team something that is brought together to
23 deal with the immediate issue, or at a higher level to
24 discuss the implications of it?

25 A. Mostly for the immediate issue.

26

27 Q. We have seen that it seems to be a standard process
28 for someone, usually the ERZ controller, to complete an
29 initial incident form, I think it may be called?

30 A. That's right, yes.

31

32 Q. Is that part of this process or is that something --

33 A. No, that's a different process, yes.

34

35 Q. Workers I think are also required to complete a form
36 of statement; if they were the ones at the face at the
37 time, they set down what they saw and did?

38 A. Yes. We use the term an "incident kit" on site, which
39 has the incident form, which fills out the details and
40 people who were involved and tries to identify some causes
41 and some immediate actions that need to be taken. That
42 incident kit also requires people who were directly
43 involved to make statements, and there are statement
44 templates to fill out and suchlike.

45

46 Q. What is the purpose of that process?

47 A. To ensure that there is a structured process for

1 investigating incidents.

2

3 Q. You might just tell us, then, what the functioning of
4 the incident control team is? I think you mentioned you
5 would expect to be part of it?

6 A. To deal with the issue of the actions of the TARPs, to
7 ensure that if the TARPs that make statements - that they
8 can go into action and to identify some corrective actions
9 that might need to be taken regarding these issues of, say,
10 a gas exceedance.

11

12 Q. What would you do typically, meet in your office or at
13 the coalface?

14 A. We have ICT rooms that are set up with whiteboards and
15 screens and things like that to help facilitate it, but if
16 it is not available because people are remote, then we
17 would go and fill it out as an email and write out the
18 actions and those sorts of things for people.

19

20 Q. And that action would be taken, what, as soon as
21 possible after the event, as soon as practicable?

22 A. Yes, as soon as practicable, yes.

23

24 Q. Same shift, typically?

25 A. Typically, that's the target, yes.

26

27 Q. There is another action required under the
28 legislation, and that's to make a verbal notification of an
29 exceedance, being an HPI, to an inspector?

30 A. Mmm-hmm, yes.

31

32 Q. I think, again, for all of the instances at Grasstree,
33 perhaps save for one, that you were the original notifier?

34 A. Correct, yes.

35

36 Q. Could you tell us from what sources you gather the
37 information you need to engage in dialogue with an
38 inspector?

39 A. Yes. So if I'm on site, I walk around our control
40 room, but if I'm off site and remote, then I will get the
41 information off control room with the location, time, the
42 percentage of the gas, et cetera. I can also log on and
43 use the Citect system to find some information myself, if
44 I need to, but basically it's through the control room.
45 The initial call is mostly from the MSO, but sometimes he
46 doesn't have all of the information, so I do most often
47 have to fetch the full information off the control room

1 operator, in the end.

2

3 Q. You set about researching, do you, in that way --

4 A. That's right, yes.

5

6 Q. -- to get enough information to --

7 A. Yes, there's what they refer to in the regulations as
8 the primary details, but I need to have the time, the
9 location, for gas exceedances the reading, the peak
10 reading, the duration, those sorts of descriptions, and the
11 cause.

12

13 Q. I suppose because you would expect to be asked about
14 those things?

15 A. That's right, yes. They will need to be notified of
16 that, yes.

17

18 Q. Do you aim to try to identify what immediate controls
19 are to be applied to the situation so that you can inform
20 an inspector?

21 A. That's correct, yes. It doesn't say it in the
22 regulations, but that's basically the point of it, that you
23 can then talk to the inspector or the ISHRs and advise them
24 of the incident and have a brief discussion about what was
25 the cause, so to speak, yes. Usually, the discussion also
26 involves a bit of question and answer time so that we can
27 validate what we understand from each other and also they
28 can offer any advice or commentary about what they have
29 experienced from other mines or add their experience or
30 direction, yes.

31

32 Q. It makes it a more meaningful conversation --

33 A. That's correct, yes.

34

35 Q. -- if you can identify and discuss controls that you
36 are going to apply; would that be right?

37 A. That's right, yes.

38

39 Q. The next stage is the form 1A?

40 A. That's correct, yes.

41

42 Q. I think we will find that in Grasstree's case, the
43 form 1A is submitted to the inspectorate via an email from
44 Mr Wynn?

45 A. That's correct, yes.

46

47 Q. Would it be fair to say that you would prepare such

- 1 a thing for him?
2 A. Generally, yes, that's right, yes.
3
4 Q. Did you do so on the occasions --
5 A. I think in every case we've got here, I have, yes.
6 Oh, no, Tim McNally was the mine manager on some occasions,
7 but the underground mine manager prepares it for him, yes.
8
9 Q. Even so, I suppose that is a means by which the SSE is
10 informed of the content of the occurrence?
11 A. That is one of the methods, yes.
12
13 Q. What are the others?
14 A. You call him or email him or contact him in some way,
15 yes. A lot of the time at the mine, HPIs or gas
16 exceedances HPIs - they're sent out on the updates directly
17 from the control room. They send out a two-hourly update
18 of the status of the mine, and any occurrences such as
19 incidents, accidents and that sort of thing are in those
20 updates. The MSO also sends out an end of shift update,
21 where he would record anything. Any incidents that are
22 significant that need to be reported straight away -
23 generally they're sent out to all Grasstree users directly.
24
25 Q. By what means?
26 A. Email.
27
28 Q. Email?
29 A. Yes.
30
31 Q. And the two-hourly update, the SSE has access to that?
32 A. That's correct, yes.
33
34 Q. On a continuous - well, is it sent to him two hourly
35 by email or by what means?
36 A. It is sent out to Grasstree users, everyone that's on
37 the list, and he is on the list, of course, yes. We have
38 other user groups too, such as the SLT group - that's your
39 senior management team - so that significant incidents can
40 be sent directly into that group as well.
41
42 Q. The third stage of notification is the form 5A, and
43 I think again in every instance that we are looking at, you
44 have prepared or at least signed off on --
45 A. Yes, I send them in. It's an online system, so you
46 fill it out online, and then when you press "Submit", it's
47 submitted, yes.

- 1
2 Q. Each of the forms 5A that we are concerned with were
3 submitted under your name?
4 A. That's correct, yes.
5
6 Q. Does that mean that you compiled it?
7 A. Yes, I compiled them, I filled them out, yes.
8
9 Q. You type it out, fill out the fields?
10 A. That's correct, yes. There are portions that you type
11 out or copy and paste pieces out of the form 1A, for
12 example, of the incident description, and there are
13 drop-down boxes in portions of it to select classifications
14 in various parts of the document.
15
16 Q. By the time you come to do that, up to a month may
17 have elapsed?
18 A. Mmm-hmm.
19
20 Q. Are there any additional sources of information that
21 you would refer to that may have emerged in the course of
22 that month, or have regard to?
23 A. Yes, during the month, the green form, of course, has
24 been processed, with some updates. Also I get updates --
25
26 Q. The green form, sorry?
27 A. The incident report form you initially referred to.
28
29 Q. Yes. So you would have regard to that?
30 A. Yes, that's right. Those sorts of incidents get
31 reported at our daily MOS meeting. It's an acronym name,
32 but it is a daily review of operations meeting where all
33 incidents get reported to. There are also updates that you
34 get off the V0 primarily, with gas exceedances. He is my
35 direct report regarding ventilation and gas, and therefore
36 any matters that sort of pop up due to findings in the
37 investigation or findings as he starts to go through the
38 LFI process come back to me. I also inquire how things are
39 going.
40
41 Q. With the LFI?
42 A. Yes, that's right.
43
44 Q. So if the LFI team is working away on its job --
45 A. Yes.
46
47 Q. -- would you collaborate with one or more team members

- 1 to see what they have discovered, if it is relevant to your
2 completion of a form 5A?
- 3 A. Collaboration to a limited respect. I generally let
4 them head along and do their investigation and might relate
5 mostly to the VO, who is the technical expert in it, to let
6 them run their course, to keep it as a separate process,
7 basically, yes.
8
- 9 Q. Would the information that you would take into account
10 typically include the green form that you have described?
11 A. That's right.
12
- 13 Q. And the workers' statements?
14 A. Yes, they are attached to the green form.
15
- 16 Q. Gas data, if need be?
17 A. Generally - I might answer a different way - in
18 preparation for filling out the form 5A, I will contact the
19 safety department and get hold of the now-completed green
20 form and any attached documents that are there with that
21 and contact the VO or the people doing the LFI and ask if
22 the form has been finished, if that process has been
23 finished; if it hasn't been finished, just get an update
24 off them as to what they have been finding, what the
25 generality is of it.
26
- 27 I also know just from my position in the organisation
28 through what's happening day to day the actions we took
29 regarding the incident and then how it worked with crews
30 and how effective it is, or not, or whether we had to in
31 fact change the original control again, for example. You
32 see, you get a lot of information from different sources,
33 is probably a broad description that captures that, yes.
34
- 35 Q. The standard form of LFI that appears to be in use at
36 Grasstree has a sign-off list.
37 A. Mmm-hmm.
38
- 39 Q. You are not on it?
40 A. Correct, yes.
41
- 42 Q. Neither were you in any case, I think, part of the LFI
43 team?
44 A. That's correct, yes.
45
- 46 Q. Is there some reason that you would not participate in
47 that kind of process as a team member?

- 1 A. There isn't a limit or a rule or such thing like that.
2 It's more about just work coursing, that the mine manager
3 can deal with the here and now, and the team can head away
4 without influence or any other such thing and complete an
5 LFI, and they report to their technical department head,
6 et cetera, so that that department becomes quite engaged in
7 the solution, yes.
8
- 9 Q. The relevant department being?
10 A. The tech department --
11
- 12 Q. Technical services?
13 A. For most gas ones, yes.
14
- 15 Q. Technical services, is it?
16 A. Technical services, yes.
17
- 18 Q. Is that Mr McNally's area?
19 A. Yes, at times he has been the tech services manager,
20 yes.
21
- 22 Q. In terms of informing yourself about the results of
23 the LFI - I presume you would be interested?
24 A. That's right, yes. So there's discussion, too. When
25 the LFI's approaching the action plan, they have to get
26 managers' approval for the actions. Depending on what
27 resources are required, they might be heading to the tech
28 services manager, but for operational aspects, such as
29 process controls, ventilation set points, alarm set points
30 that ultimately get coursed through me, they will come and
31 discuss them beforehand, before they become actions.
32
- 33 Q. What about communication of the LFI to coal mine
34 workers, other than the upper management that you have
35 referred to?
36 A. They are mostly just communicated back through shift
37 briefs or back through the process that the LFI has
38 established, for example, this item might be actioned with,
39 "This new process change needs to be communicated to coal
40 mine workers", for example.
41
- 42 Q. But the content of the LFI itself, if a worker was
43 interested or concerned about what has been found --
44 A. Yes.
45
- 46 Q. -- to have been the cause and what preventative action
47 is contemplated, where would he or she go to find that?

1 A. He would have to inquire about it in the time period
2 that we are talking about. We have recently decided to
3 change that and are now running an LFI presentation, say,
4 monthly to coal mine workers. They generally get a monthly
5 safety one at the moment, which talks about all accidents,
6 which includes a lot of the LFIs, but we have now observed
7 that we want to put these gas exceedances into that forum
8 as well.

9

10 Q. So this is a more recent development?

11 A. Mmm-hmm.

12

13 Q. That you are having a monthly LFI meeting?

14 A. That's right.

15

16 Q. That's perhaps not the correct term, but --

17 A. Roll-outs, we call them, yes, safety roll-outs and
18 things like that.

19

20 I might just jump back a bit, too. There is a missing
21 part in there, too. When a HPI occurs on site, such as
22 a gas exceedance, it immediately goes on to the MSO's shift
23 brief. We have a table there of any incidents that have
24 occurred on each week of the tour and any HPis, including
25 gas exceedances, and we shiftly talk to all of the
26 incidents and incidents that have occurred, about what
27 happened with them, what's the actions that were taken,
28 what we basically need to know now, yes.

29

30 Q. The SSE is on the sign-off list for the LFI.

31 A. Yes.

32

33 Q. Do you know, is that the means by which he informs
34 himself of that outcome?

35 A. He is a bit like me. He has inquired of them as it
36 goes, but ultimately as a complete report, that's when he
37 gets it, yes.

38

39 Q. Can I just take you to one of the forms 5A and use it
40 for discussion.

41 A. Okay, thank you.

42

43 Q. In fact, it is the first one. Could you please bring
44 up AAMC.001.006.0463.

45 A. Excuse me, I might have to change my glasses for
46 reading. Where's my bag, sorry? I've just got a set of
47 glasses in here. Okay, yes.

- 1
2 Q. You may recall this incident?
3 A. Mmm-hmm.
4
5 Q. Mundane as it is in a sense, that there was a failure
6 of a radiator hose. The effect of that was to impact on
7 goaf drainage?
8 A. Yes.
9
10 Q. It caused an HPI, with an interruption to production.
11 I think there were several hours lost?
12 A. Correct, yes.
13
14 Q. That in itself would be concerning, would it not?
15 A. It absolutely was, yes.
16
17 Q. You remember this incident?
18 A. Yes, mmm-hmm.
19
20 Q. Perhaps for that reason?
21 A. Yes.
22
23 Q. One of the features that you describe on page 3, if we
24 could go two pages forward - in the top half of the page,
25 you have set out the causes there, and of course the
26 immediate thing was that the compressor had a failure with
27 the radiator hose?
28 A. That's right, yes.
29
30 Q. You mentioned also that the barometer was falling and
31 the strata of the longwall was issuing more gas than
32 normal?
33 A. Mmm-hmm.
34
35 Q. Accepting that that was so, are they not features that
36 ought to be, as the principal hazard management plan says,
37 assessed, predicted and controlled?
38 A. Yes. Yes, they are predicted. In this case, they
39 have exceeded them. Predictions for these management plans
40 are done by consultants using best practices; they
41 determine what the gas contents of the various stratas and
42 seams are. They look at production rates. A lot of it is
43 based though - what I'm getting to, is based on averages.
44 When you have a circumstance of a falling barometer and an
45 increased gas make in a particular area and a shortfall
46 from another thing, you can end up with the three problems
47 presenting on top of each other, and that can head towards

1 a gas exceedance.

2

3 Q. Does that not raise the question of the need for
4 reserve capacity?

5 A. That did.

6

7 Q. In post-drainage?

8 A. Yes. In that LFI, it concluded towards that, that we
9 were running at capacity and that this needed to be dealt
10 with, yes.

11

12 Q. It is prudent, is it not, to have reserve capacity to
13 meet this very scenario, that there might be on
14 a particular day a concurrence of incidents?

15 A. Yes.

16

17 Q. That are known to be likely to occur at some point but
18 happen to come together?

19 A. Yes, the systems are overdesigned so that they have
20 reserve capacity, but the --

21

22 Q. I'm sorry to interrupt you. Is there some rule of
23 thumb factor of reserve?

24 A. No, not that I know of like that, no.

25

26 Q. Like 50 per cent or something?

27 A. No, not that I would refer to, no.

28

29 Q. Is the extent of reserve capacity something that is
30 assessed on a panel-by-panel basis, or what?

31 A. Yes, somewhat, maybe a group of panels together, but
32 you would have some technical experts, for example, that
33 look at, like I said, the gas content in the strata. They
34 look at the mine's production planning rates and determine
35 the likely outputs and then assess and give us advice about
36 what capacity we need.

37

38 Q. That kind of advice and analysis and prediction from
39 consultants, et cetera, is that part of the process of risk
40 assessment leading towards the second workings SOP?

41 A. Yes, that's right, yes. That's where it channels
42 into, yes.

43

44 Q. So you are confirming for me that that kind of advice
45 does feed in to that process?

46 A. That's correct, yes.

47

1 Q. The desirable requirements for gas drainage - whatever
2 they might be specified as for a particular longwall, no
3 doubt it is a costly exercise to implement it; fair to say?

4 A. Fair to say. Very, very true, yes.

5

6 Q. Is there some budgeting exercise that goes with the
7 assessment and implementation of recommendations for goaf
8 drainage?

9 A. Yes, the mine plans well ahead like that. We have an
10 XPAC program - it's a software that looks at the production
11 rates and tonnage, and that is what the consultants use to
12 determine the gas make per tonne and what they call
13 a specific gas emission, SGE, to predict what the gas
14 drainage requirements will be. Yes, it's all worked out,
15 engineered mathematically, and then budgets are worked out
16 to see whether we have that design capacity. These sorts
17 of plans are done years in advance to determine that we
18 have a suitable mine operating plan.

19

20 Q. And costed?

21 A. And costed, yes, budgeted, yes.

22

23 Q. Is the budget allocation for pre-drainage done at site
24 level or is it done by the Met Coal company, or where, do
25 you know?

26 A. It is primarily done on site in the preparation of
27 a budget, but the Met Coal group, the Brisbane head office,
28 has oversight and review of that. There are routine
29 meetings, budget meetings, those sorts of things, where all
30 parts of the business that require funding, capital,
31 et cetera, have to be reviewed, and when it is gas drainage
32 or ventilation, there is a department that reviews that
33 expenditure and those predictions and reviews the - and
34 even helps supply the consultants' reports et cetera.

35

36 Q. The consultants' reports and the ultimate result of it
37 being by way of a recommendation?

38 A. Correct, yes.

39

40 Q. For a certain level of gas drainage?

41 A. Certain level, yes.

42

43 Q. That's done at site, I understood you to say?

44 A. Yes, that's right. It's accepted at site, the
45 consultant's report. The budgets - there is review by the
46 Brisbane office, there is a review by site people. Then
47 a budget gets prepared on site and presented to the company

- 1 for acceptance, yes, and funding.
2
- 3 Q. So all the planning and the cost of it is worked out
4 at site level?
5 A. Yes.
6
- 7 Q. And then it goes upwards?
8 A. Yes.
9
- 10 Q. For approval?
11 A. Correct, yes.
12
- 13 Q. Not the other way around?
14 A. That's right, yes.
15
- 16 Q. Just getting back to this form which is still on
17 display, you have included as your preventative action that
18 this was a one-off failure, which perhaps in a sense it
19 was, because it was a blown radiator hose?
20 A. Yes.
21
- 22 Q. But there was rather more action taken, was there not,
23 than to enhance the maintenance of the compressors?
24 A. That's right. Yes, there were other practices
25 undertaken to prevent an occurrence, apart from just fixing
26 the radiator hose, yes.
27
- 28 Q. You didn't feel the need to include details of that in
29 this part of the form?
30 A. No, this form is a form 5A. It's not an LFI. It's
31 not an incident report. It's a database, basically, to
32 advise the government of incidents that have occurred on
33 site and to classify it into things.
34
- 35 Q. But there would be an interest, wouldn't there, in
36 completing it fully so that the inspectorate who is going
37 to review it can be satisfied that appropriate action is
38 taking place?
39 A. Yes, I would expect so.
40
- 41 Q. Would that be fair to say?
42 A. Yes, I would expect so.
43
- 44 Q. Is that the approach you take?
45 A. That's the approach I take. I try to fill it out as
46 clearly and accurately as a snapshot of what we believe at
47 the time.

- 1
2 Q. No holds barred, so to speak?
3 A. No holds barred.
4
5 Q. Warts and all?
6 A. What I was trying to say is it's not a comprehensive
7 investigation that arrived at root causes and ultimate
8 redesign, et cetera. It is a snapshot of the incident. It
9 selects a number of drop-down boxes. There is only a very
10 small portion of it that has some free text in it, and then
11 once you have put the free text in, then you choose the
12 codes you see to the right to break that free text down
13 into classifications.
14
15 Q. Those matters that are on display, the causes, they
16 are all free text that you have input; am I right?
17 A. Yes.
18
19 Q. And so on for each of the forms of this type?
20 A. That's right, yes. So, yes, when I fill out that
21 line 25 there, I've filled out to say that that's what I've
22 seen and observed at the mine as the current status of the
23 actions, yes.
24
25 Q. To take this instance, we know there was a burst
26 radiator hose that had a consequence, which was an
27 inadequately performing goaf drainage system?
28 A. Mmm-hmm.
29
30 Q. That produced a methane exceedance, commenced the
31 reporting process, et cetera. Could that be viewed as
32 anything other than a failure of critical control, critical
33 control being goaf drainage?
34 A. That's right, the goaf drainage has exceeded its limit
35 in that aspect, yes.
36
37 Q. I will ask you again: could it be anything else than
38 a failure of critical control?
39 A. No, it is as it's listed, too, a failure of the
40 maintenance of the compressor. I'm not getting what you
41 are trying to ask, exactly.
42
43 Q. I suppose, to be fair to you, I am proceeding from the
44 point - and I think you accepted earlier on in the piece --
45 A. Yes.
46
47 Q. -- that ventilation and gas drainage are two of the

1 critical controls of methane?

2 A. Okay, I get where you are coming from now. Okay, yes.

3

4 Q. My question was on the premise that methane drainage
5 is a form of critical control, and however mundane the
6 cause, as in this instance a radiator hose, the result, can
7 I suggest, could only be viewed as a failure of a critical
8 control?

9 A. Correct, yes, yes.

10

11 Q. In that scenario, is that something that warrants
12 escalation with the SSE, or by whatever systems that you
13 have, that there has been such a failure and to what extent
14 and in what way it needs to be addressed?

15 A. Yes, I believe there was an escalation to the SSE in
16 this case, and ultimately some more blower plants were
17 purchased for subsequent longwalling.

18

19 Q. We will get to the details of that a bit later today
20 or tomorrow, but you are quite right.

21 A. Yes, mmm-hmm.

22

23 Q. Those actions that you have referred to and I have
24 said we will get more detail from others, they occurred -
25 although this particular longwall, which I think was 909,
26 had maybe a couple months more of production? Have I got
27 that right?

28 A. No, I don't think so. It's equivalent length to the
29 previous one.

30

31 Q. I suppose I'm assuming that because 808 commenced
32 I think about mid October, longwall 909 was completed; is
33 that not correct?

34 A. Yes, 909 got completed. Then 808 started.

35

36 Q. I was just drawing attention to the fact that, in
37 reality, quite a range of things was done, including
38 purchase of new equipment, even though this longwall,
39 because this occurred in July, had no more than maybe three
40 months of production left?

41 A. That's right, yes. And I will also add in, 909 is at
42 a different SGE type rating, in that it requires more gas
43 drainage from it because of its location depth-wise and its
44 overlying seams and its total length. The 808 block is
45 a shorter block and less depth and less gas, so it has
46 a lower requirement. Nonetheless, the mine sees that we
47 have got a 910 to come and increased capacity is required.

- 1
2 Q. I will skip over a couple of the HPIs that pertain -
3 I think one pertains to a goaf fall first caving, and so
4 forth. Then I think you would be well aware there was
5 a cluster of, in all, eight exceedances between late
6 February and 11 April?
7 A. Mmm-hmm.
8
9 Q. You know the ones I'm referring to?
10 A. Yes, that's right, yes.
11
12 Q. They all pertain to the canopy sensor on chock 197?
13 A. Yes.
14
15 Q. I dare say you have a pretty reasonable memory of the
16 problems that arose because of that?
17 A. That's right, I remember those, yes.
18
19 Q. Can I just take you firstly to the gas TARPs. The
20 first one is, if I could, Mr Operator, ACM.002.001.0244.
21 I want to zoom, if possible, on the middle of the page.
22 "Orange - Level 3" is what I was interested in, and we see
23 an inclusion there in the orange section with a little
24 yellow box, which refers to the TG roadway sensor?
25 A. Mmm-hmm.
26
27 Q. That became known as either the 243A sensor or the
28 zero metre tailgate sensor, did it not?
29 A. That's right, yes.
30
31 Q. If we could go to the bottom of the page, having noted
32 that block, and if we could highlight the bottom, we see
33 some dates at the very bottom, in the box at the bottom.
34 This TARP apparently is issue number 14?
35 A. That's right, yes.
36
37 Q. Is that the issue date, 21 January?
38 A. Yes, that's right, yes.
39
40 Q. So would it be correct to say that this TARP was
41 issued with the yellow box referring to the tailgate
42 roadway sensor to account for the introduction of the
43 regulation in January 2020?
44 A. That's correct, yes.
45
46 Q. And, in particular, the introduction of section 243A
47 of that regulation?

- 1 A. That's correct, yes.
2
- 3 Q. The zero metre tailgate sensor was the one - well, was
4 it installed in the location on the canopy which it assumed
5 for the purpose of compliance with that regulation?
6 A. Yes, it was, yes.
7
- 8 Q. It wasn't there before?
9 A. No, it wasn't there before, no.
10
- 11 Q. I know there were disputes as to whether it was in the
12 correct location or not, but putting that aside, why was
13 that location chosen?
14 A. There was an offsite team that was formed regarding
15 the new regulations, or the new amendments as they come
16 out, and high-level meeting up above site talking with the
17 inspectorate, et cetera. Many of the mining companies,
18 after the legislation was introduced, had meetings with the
19 inspector; I think even the Coal Council too; also QRC had
20 meetings with them as well. Nonetheless, Anglo's meetings
21 concluded that, as a group standard, we would go about
22 putting the sensor on the canopy tip in that location.
23
- 24 Q. Was there another sensor located outbye within the
25 400 metre limit?
26 A. That's right.
27
- 28 Q. Was there another sensor in that location at this
29 time?
30 A. Yes, there is another sensor out on the return roadway
31 in the C heading. That's how the mine had been operating.
32 We have been operating with a sensor in the return airway
33 for some time. We found that as an improvement to the gas
34 exceedance issue that the mine had been operating with.
35
- 36 Q. But am I correct that that - what's the correct
37 expression for it, the outbye sensor?
38 A. The outbye sensor, if we use that term, yes, that's
39 fine.
40
- 41 Q. Okay. It was in place?
42 A. Yes.
43
- 44 Q. And it was within the geographical limits of that
45 regulation?
46 A. That's correct, yes.
47

1 Q. Being 400 metres?

2 A. Yes.

3

4 Q. And it could have been the one that was configured in
5 the way required by 243A?

6 A. Yes.

7

8 Q. But it was not, was it?

9 A. No, it wasn't, no.

10

11 Q. Why was that?

12 A. Because we had decided as a group to go with the tip
13 canopy one as the one to comply with the regulations. We
14 already had the other ones outbye, speaking generally for
15 Anglo, but now speaking specifically for Grasstree. The
16 one outbye was doing a good job at controlling production.
17 It ceases production whenever we exceeded 1.9 per cent, and
18 therefore why take it away?

19

20 It also limited other issues that might arise from gas
21 coming out of the C heading, which the new regulation, in
22 our case, would not have dealt with. Just as a general
23 principle, we were introducing change. And we have
24 a system that's working. This sensor is going in in
25 addition. Therefore, we haven't increased risk by reducing
26 control.

27

28 Q. Given, as you say, that you are not increasing risk,
29 would there have been a risk assessment as such for the
30 placement of this?

31 A. No, there wasn't a risk assessment done as such,
32 because it was a regulatory change, a prescription, yes.
33 In that space, too, having them both dealt with that issue
34 of changing fundamentally the controls that the mine was
35 running with.

36

37 Q. If I could go to a more recent version of that TARP,
38 which is ACM.002.001.0249 - we don't seem to have that one.
39 I don't want to put you at a disadvantage, but since we
40 apparently can't display it, can I just tell you something
41 from it, and chances are you'll agree. It effected
42 a change on about 9 April 2020 by way of configuring three
43 sensors, being the zero metre tailgate sensor, the tailgate
44 roadway sensor and the dogleg sensor, all three of them to
45 trip electrical supply to the armoured face conveyor and
46 longwall shearer cutters?

47 A. Correct, yes.

- 1
2 Q. So between January and April, it seems, there was only
3 the zero metre sensor that was configured to trip as per
4 regulation 243A?
5 A. Correct, yes.
6
7 Q. And then come 9 April, there was a change to configure
8 three. Were the tailgate roadway sensor and the dogleg
9 sensor both within the 400 metre limit for the purpose of
10 section 243A at that time?
11 A. That's what started to occur at that time. There was
12 also --
13
14 Q. Yes, because of the retreat?
15 A. Yes. We were coming towards the take-off area, and
16 the 400 metres was now starting to be impinging on the
17 dogleg sensor. We didn't discuss earlier on the earlier
18 one that there was also a dogleg sensor installed, apart
19 from the one that was at the 400 metres in the return.
20
21 Q. Back in January, it might have been more than
22 400 metres away; would that be right?
23 A. That's right, it's kilometres away, yes.
24
25 Q. Was that change in configuration made because of the
26 dialogue, shall we say, with the inspectorate over the
27 choice of the canopy location for the 243A sensor?
28 A. That's correct. At that time, there was also dialogue
29 with the inspector that they were ruling that the canopy
30 sensor was not a valid sensor and that the sensors had to
31 be located further away from the longwall, to keep it very
32 simple, but we were also in the case where we were heading
33 towards take-off, and these sensors were now all within the
34 400 metres, anyway.
35
36 Q. The timing, on the face of it, is a little bit curious
37 in as much as the inspectorate suspended operations?
38 A. That's correct.
39
40 Q. But not until the 16th?
41 A. Yes.
42
43 Q. Does this indicate that there had been a configuration
44 that would have complied with the regulation back on the
45 9th?
46 A. Yes, that's right, yes. When we were initially
47 looking at the regulation or the amendment when it came

1 out, I called some meetings on site with the V0 and the
2 electrical engineering manager and longwall people, and we
3 discussed what we were going to do. Also, at that time,
4 these offsite meetings started to occur at higher levels.
5

6 Q. How high?

7 A. This would be Anglo's principal operations manager and
8 our --
9

10 Q. Mr Britton?

11 A. -- yes, Mr Britton, and technical people and a team
12 that he has assembled, including the technical head, some
13 site people to meet with and discuss these issues. So two
14 processes were occurring in parallel. We had a plan B, so
15 to speak, in that we would configure the roadway sensor to
16 2 per cent trip or we would go with what was decided by the
17 higher-level meetings. Ultimately, we went with what was
18 decided, yes, at the higher-level meetings.
19

20 Q. The sensor caused problems, is it fair to say, in the
21 sense that it recorded a number of exceedances?

22 A. A number of exceedances occurred. It identified -
23 I'll also chuck in it identified a hazard that we didn't
24 know existed at that time, either.
25

26 Q. That was the benefit of it - or one benefit of it?

27 A. It was a benefit, in the end, yes.
28

29 Q. Mr Smith, who was on the LFI team, may have made
30 a recommendation that the sensor be moved. Do you know
31 whether that occurred?

32 A. No.
33

34 Q. The zero metre sensor, I mean?

35 A. The zero metre sensor - there was some correspondence
36 and discussion that, "Well, you don't need that sensor
37 there any more. Why are you keeping it?" The reason we
38 were keeping it is because of the number of exceedances
39 that had occurred that had found a hazard that we weren't
40 aware of until the sensor had been placed.
41

42 Q. Although there is, I think it's fair to say, some
43 consensus that it was picking up some layering, do you go
44 along with that theory?

45 A. Yes, that's right, it was the absence of readings on
46 other sensors in the area, being the tailgate drives, and
47 absence of any peaks being seen on the roadway sensor

1 further outbye outlined there was a layering from a sensor
2 point of view, from the ERZ controllers who would go to
3 inspect it after there had been an exceedance. They would
4 observe general body in the area to be suitable and
5 layerings to be found.

6

7 Q. Nonetheless, I'm sure you are aware the ventilation
8 system requires that the ventilation officer minimise
9 layering?

10 A. That's right, yes.

11

12 Q. And this was telling you where layering occurred, was
13 it?

14 A. That's right.

15

16 Q. So you have to deal with it. Is that the approach
17 that was taken?

18 A. That's the approach that was taken. It was, we can't
19 remove that sensor, because we have found a hazard there
20 and it's tripping the plant when that hazard occurs.

21

22 Q. There were a number of efforts to try to rectify the
23 problem of the repeated exceedances?

24 A. Mmm-hmm.

25

26 Q. A number of them were reported as involving in part,
27 or perhaps in large part, the order of advance of the
28 shields?

29 A. Mmm-hmm.

30

31 Q. Are you able to explain how the order of advance of
32 the shields was effecting a high reading on occasions and
33 how that order of advance was altered to deal with that?

34 A. Yes. Okay, so in the tailgate area, there are shields
35 and they advance one at a time, so if their order is in a
36 staggered arrangement, they can create or exaggerate the
37 pressure difference across them to draw gas from behind the
38 shields into the front area.

39

40 Q. So are you able to explain, or if you can't, I dare
41 say Mr Smith can --

42 A. Yes, mmm-hmm.

43

44 Q. -- just how changing the order of advance was intended
45 to rectify that?

46 A. Yes, probably good to go with Mr Smith. But the
47 shields, if they advance from tail back towards the main in

1 a fan arrangement, the back one first, then the next, then
2 the next, then the next, then the next, they keep the clean
3 air on the advancing face of the gap between the shields,
4 and gas tends not to issue out.

5
6 When the shields are advanced from the maingate
7 towards the tailgate, where the front one is advancing
8 beyond the one that is now behind, it creates a leeward
9 aspect to the shield arrangement and gas can be drawn out
10 behind the leeward side.

11
12 Q. So is the preferable order in that scenario the fan
13 advance that you mentioned?

14 A. Is to keep them in order, yes, as that. There were
15 other circumstances found, when we studied it in more
16 detail, that the computer could batch up the shields in
17 different ways, or the men operating the computer could
18 batch up the shields in different ways that could create
19 other staggered patterns as well.

20
21 Q. The point was reached by 11 April that there had been
22 eight of these, and in the forms that you completed you
23 were telling the inspectorate that the advancing shields
24 was a component of the problem?

25 A. Mmm-hmm.

26
27 Q. We don't see any more HPIs at least during the period
28 of this inquiry, for which the closing date is 6 May?

29 A. Mmm-hmm.

30
31 Q. So can you confirm that there were none between
32 11 April and 6 May?

33 A. That's right, yes.

34
35 Q. Was the problem effectively fixed?

36 A. No. There is a period that we have shifted the
37 longwall in the middle of that as well.

38
39 Q. I'm sorry, I don't understand that.

40 A. Okay. We do not have an operating longwall from when
41 the longwall 808 finished to when the longwall 910 started,
42 so there is also a period in there where there wasn't an
43 operating longwall.

44
45 Q. Talking about 808?

46 A. Okay, from an 808 point of view, after these changes
47 were made, the problems did diminish and go away, yes.

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47

Q. Can I take you to a few of the forms 5A for that period concerning this block of events. The first of them, Mr Operator, is AAMC.001.006.0219. This is apparently a form 5A that you submitted on 7 April?

A. Mmm-hmm.

Q. It pertains to the event that occurred - it's the first of the three that occurred on 20 March?

A. Yes.

Q. If we look on page 2 at section 14, you see that the second sentence you have included there makes reference to goaf drainage wells performing poorly?

A. Mmm-hmm.

Q. Just take note of that. Then on the next page, if we enlarge the top half, you make a further reference to a goaf drainage well performing poorly due to distance between the wells?

A. Mmm-hmm.

Q. Leaving aside the issue of order of advance of shields, was goaf drainage an issue at this time for that longwall?

A. Yes, in most of these occasions, especially on this - events that happened one, two, three in the one day, there was a goaf hole which hadn't come on, hadn't caved in the routine method or routine style. See, the longwall is mining through the strata low down, and the goaf holes have been drilled, predrilled from the surface, and as the longwall mines under them, they cave. We call that coming on. They have broken through, and now the extraction of the gas can draw the methane away from the longwall face.

In this, on this day, the 20th, the next goaf hole was virtually straight above but hadn't caved through. It wasn't draining, it wasn't giving the gas drainage need that we had, and so we were suffering high gas at that tailgate area.

Q. You really needed that hole to be online?

A. That's right. We needed it to have come online. The strata hadn't caved through yet. What that does in that case, though, is it creates the scenario of richer gases near that tailgate area.

1 Q. It would not have been the only well online, though,
2 would it?

3 A. No, it is not the only well online.

4

5 Q. You have several, don't you?

6 A. There are many goaf holes that are draining at the
7 time. A goaf hole will drain between, say, 600 and
8 1,200 litres a second, and we're draining more like 14,000
9 litres out of the goaf, so it is not the total play of goaf
10 drainage. There are many other holes. But because of its
11 location being very close to the tailgate, the gas that it
12 would have captured is far closer to the mining operation
13 and is more easily affected by pressure changes, by the
14 swirling effects at the intersections and the cut-through
15 alignments. Those sorts of things all exaggerate its lack
16 of being there, yes, as far as gas issue is, yes.

17

18 Q. Nonetheless, with a number of other holes being in
19 operation, would there have been a means of increasing
20 their extraction, on the basis, I assume, it was known that
21 this particular hole hadn't yet come online?

22 A. No, we generally don't do that. We do that as far as
23 is practical, but we don't operate like that, where we try
24 to make immediate adjustments like that. The way the mine
25 more so operates is the holes are all set at the reading
26 they will normally be at. The next one back is already set
27 at maximum, not at a reduced volume that could have been
28 increased, and the one that's about to come on already has
29 vacuum applied to it, so that the second it cracks open, it
30 will start to draw methane. It doesn't - we don't have -
31 the one that's the next one back isn't throttled back.
32 It's always running at its capacity, anyway.

33

34 Q. I understand.

35 A. Yes.

36

37 Q. It would be known, nonetheless, wouldn't it, that this
38 hole had not come online? You could see from measuring
39 that it is not recording, I assume?

40 A. No, it doesn't have a real-time output like that on
41 those holes. They are inspected by site people that go
42 around periodically through the day and determine that they
43 will come on.

44

45 Q. Is there no other means than by having someone go
46 around and inspect to determine whether an important
47 borehole is actually working?

1 A. At this point in time, technology-wise, no. That's
2 basically the way we operate - manual inspections of the
3 new holes that are coming on.

4
5 Q. So is it correct that from what you say, it was
6 perhaps not known then that this hole was not operating?

7 A. That's correct, yes.

8
9 Q. You couldn't make some contingency?

10 A. That's right. These are some of the things you
11 discover after the exceedance occurs. You ask around and
12 find out, you know, "Was the next hole online yet?" "No."
13 "Okay." That's one of the findings you find out.

14
15 Q. Is that a deficiency in the knowledge base to conduct
16 mining operations, that you don't know that this borehole,
17 which is necessary to --

18 A. Oh, I don't believe so. That's the way the mine has
19 operated for numerous years, and many other mines operate
20 the same way.

21
22 Q. They may do. I suppose I'm really questioning whether
23 that's sufficient.

24 A. It's something we could look at and potentially
25 improve, and it does get talked about at times, about
26 having real-time monitoring of all of the plant. But
27 volume is actually what we want, and monitoring it won't
28 make the strata cave in any earlier or won't make the hole
29 come on any earlier than it would have. It just enables
30 you to see that case more clearly.

31
32 Q. It would put you in a state of awareness?

33 A. Yes, that's right.

34
35 Q. That you didn't have the drainage capacity that you
36 thought you had?

37 A. You get the awareness by other means.

38
39 Q. How?

40 A. The trends on the Citect computer show that the
41 background gas levels around the tailgate could be
42 increasing because the next hole hasn't come on yet.

43
44 THE CHAIRPERSON: Q. So you do get some notice of
45 something unusual there?

46 A. That's right, yes.

47

1
2 Q. Would that trigger an inspection of the borehole?
3 A. It could do in the day. In the night, no.
4
5 Q. You said there were regular inspections of the
6 boreholes?
7 A. Mmm-hmm.
8
9 Q. What do you mean by that? Did you say daily?
10 A. Yes, daily; half-daily would be the minimum. And for
11 holes that are due to come on or we are looking for it,
12 about two-hourly.
13
14 MR RICE: Would that be a convenient time, Mr Martin?
15
16 THE CHAIRPERSON: I was wondering about making up a bit of
17 time. I don't know. Does anyone have a difficulty with
18 that? Nothing too outrageous, but are you right for a
19 little while?
20
21 THE WITNESS: Yes, I'm fine, yes.
22
23 MR RICE: Q. Well, could we go to the next of these.
24 Actually, it may not be necessary. Perhaps I can just tell
25 you, although I'm not going to try to put you at
26 a disadvantage. You put in another form 5A for the next
27 incident, which actually occurred a couple of hours after
28 the first, on 20 March?
29 A. That's right, yes.
30
31 Q. I think you actually put in three forms 5A within
32 about half an hour of each other on this particular day?
33 A. That's right, yes.
34
35 Q. You might remember that?
36 A. Yes.
37
38 Q. Once again you referred to the goaf drainage capacity
39 being less than needed?
40 A. Mmm-hmm.
41
42 Q. Is that a reference to the same issue?
43 A. Same issue, yes, that's right. I might clarify.
44 Earlier you talked about total volume. This wasn't about
45 total volume, this was about capacity local to that
46 tailgate area.
47

- 1 Q. You said, with respect to this second incident on
2 20 March, that goaf drainage capacity of the gas well was
3 barely meeting demand?
4 A. Mmm-hmm.
5
- 6 Q. Is that a reference to the same problem?
7 A. That's the same problem.
8
- 9 Q. With this particular hole?
10 A. With that hole, yes.
11
- 12 Q. The third one, the third form 5A, relates to the third
13 incident on 20 March, and again you made reference to the
14 goaf drainage well barely meeting demand?
15 A. Yes.
16
- 17 Q. Given that these forms relate to the incidents on the
18 same day, were you referring to the same issue?
19 A. The same issue, yes.
20
- 21 Q. Just going forward a little bit to the event that
22 occurred some days later on 25 March, you put in a form 5A
23 about it. Could I have that, please, Mr Operator, it is
24 AAMC.001.006.0324. On page 3 of that, in section 14, you
25 speak again about the spacing between goaf drainage wells
26 causing less than adequate supply?
27 A. Mmm-hmm, yes.
28
- 29 Q. After five days, presumably the retreat has advanced
30 by, what, how many metres?
31 A. Over 50 metres, yes.
32
- 33 Q. Well, insofar as you refer to spacing and so forth,
34 given that we are five days on and perhaps 50 metres on,
35 are you referring to the same issue that you described
36 earlier, or something different?
37 A. Basically the same issue. The boreholes, these
38 vertical boreholes, the goaf drainage wells, are 50 metres
39 apart, and in a few days' time, basically the same scenario
40 is beginning to occur again, meaning the last hole isn't
41 drawing gas close to the tailgate and the gas issues around
42 the tailgate are starting to recur.
43
- 44
- 45 Q. But this isn't an incident, is it, where the hole that
46 you were expecting to be operating but hadn't caved -
47 that's not the scenario that's applying here?

1 A. It is similar in its result. It is not the same
2 exactly, in the previous one, we were virtually under
3 a hole that hadn't caved yet. In this case, we are on to
4 the next hole, but it hasn't - we haven't mined under it,
5 it is still ahead of us, and the gas extraction is still
6 not as - it is the same scenario, the gas extraction isn't
7 suitable; it is barely meeting capacity requirements, yes.

8
9 Q. I realise that these reports were triggered by this
10 particular sensor.

11 A. Mmm-hmm.

12
13 Q. But, nonetheless, the course of the investigation
14 exercise has revealed, has it not --

15 A. That's right, yes.

16
17 Q. -- important things concerning the capacity of goaf
18 drainage and some issues about it; is that fair to say?

19 A. That's correct. Yes, that's correct. That's fair to
20 say, and one of the items that gets discussed, budgeted as
21 per previous discussion, is the borehole spacings that get
22 predrilled for the longwalls.

23
24 Q. Well, if that is a continuing problem, what measures
25 are there to address it?

26 A. Okay, we at the mine do a PDOC plan, which is - it
27 documents the post-drainage borehole spacing and predicts
28 it ahead for the mine, so it gets to be signed off in
29 advance. Because these holes are drilled in advance of the
30 longwall's retreat. So the hole spacing design gets drawn
31 up by the gas drainage superintendent and given to the tech
32 services manager, the mine manager, et cetera, to endorse,
33 sign off.

34
35 Q. Yes, I think I understand.

36 A. Yes.

37
38 Q. But as and when issues emerge with the spacing --

39 A. That's right, yes.

40
41 Q. -- are there measures that can be taken to address it?

42 A. Yes.

43
44 Q. On an immediate or short-term basis?

45 A. Yes, but they are not as quick and as suitable as an
46 immediate fix. We could pull the drill rig back and try to
47 drill new holes ahead of the longwall, but they would only

- 1 be good for the next situation; they wouldn't be able to be
2 drilled in direct remedy to the situation that we have
3 right there and then.
4
- 5 Q. What is the direct remedy, then?
6 A. The direct remedy is to continue to mine and cave the
7 next hole. Also, if --
8
- 9 Q. Knowing that you don't have - or that you have goaf
10 drainage that is barely meeting capacity?
11 A. That's right.
12
- 13 Q. You continue to mine; is that what you are saying?
14 A. That's right, yes, but put in some management approach
15 to it about that, whether it might be to not mine during
16 the barometric low; that might be to reduce the shearer
17 speed; that might be other controls that will reduce the
18 gas output.
19
- 20 Q. Did any of that occur on 25 March when this incident
21 occurred or subsequently?
22 A. No, no, because the primary cause was seen to be the
23 shield advance again and the alignment advance again.
24
- 25 Q. Yes, but there could be any number of causes --
26 A. That's correct, yes.
27
- 28 Q. -- why you might need that goaf drainage?
29 A. Yes.
30
- 31 Q. It so happens that the order of advance of shields was
32 one of them?
33 A. That's right, yes.
34
- 35 Q. But it could equally have been something else,
36 couldn't it? You might have had, I don't know, one of the
37 many events that causes an increase in gas make?
38 A. That's right, but the observed controls were to - also
39 I neglected to mention the Sherwood curtain was also
40 placed, and we found that to be the most suitable control
41 for preventing the gas layering occurring at the canopy
42 sensor.
43
- 44 Q. Well, because these holes are predrilled --
45 A. Yes.
46
- 47 Q. -- at a predetermined distance --

1 A. Yes.

2

3 Q. -- and one of them doesn't come online for whatever
4 reason --

5 A. Mmm-hmm.

6

7 Q. -- from what you say - I don't want to be unfair - is
8 there not much that can be done about that?

9 A. It would be fairly accurate to say that. In some
10 cases, the boreholes don't come on at all and you have to
11 mine on to the next one without it. If that were to occur,
12 then this is where we adopt approaches of not mining during
13 the barometric low, of reducing the shearer speed, reducing
14 the output. It's not always the case that the barometer is
15 having such lows that cause the problem to manifest itself
16 in that way.

17

18 Q. So are you saying that what you do is you mine
19 carefully, perhaps selectively?

20 A. That's right, yes.

21

22 Q. Is that the basic approach?

23 A. That's right, yes.

24

25 THE CHAIRPERSON: Would that be a convenient time?

26

27 MR RICE: I have one more, then I will be finished.

28

29 Q. Whilst we are on a roll, Mr Schiefelbein, we will
30 finish it, shall we?

31 A. Yes, okay.

32

33 Q. Mr Operator could I have document AAMC.001.006.0390?
34 This is the last of the events on 11 April for which you
35 submitted this form.

36 A. Yes.

37

38 Q. If we go to page 3 in the top half of the page, this
39 is perhaps a bit of a different instance, inasmuch as it
40 seems to have involved a goaf fall?

41 A. Mmm-hmm.

42

43 Q. And you offer the opinion that it was local short-term
44 gas layering?

45 A. Mmm-hmm.

46

47 Q. You make mention under "Absent or failed defences"

- 1 that the goaf drainage system and ventilation system have
2 not had sufficient control.
- 3 A. Mmm-hmm.
- 4
- 5 Q. Is that anything to do with the borehole spacing issue
6 that you raised in a number of previous reports?
- 7 A. Yes, somewhat, yes. It is, yes.
- 8
- 9 Q. Same kind of issue?
- 10 A. Yes, same kind of issue, just stating it in a
11 different light, yes.
- 12
- 13 Q. So the remedy for this was to fix up the order of
14 advance of the shields so as to make a more effective
15 shield - am I right - for the gas?
- 16 A. Yes, to prevent the gas wanting to leak, yes.
- 17
- 18 Q. Do you know whether your more careful and more
19 selective mining was applying in the operation of the mine
20 between, say, 20 March, when this was first uncovered, and
21 11 April?
- 22 A. No, that wasn't the main aspect identified and used.
23 The main aspect identified and used was firstly to install
24 better location of flaps and ventilation devices to dilute
25 the gases that would --
- 26
- 27 Q. But it wasn't working on a repeated basis, was it?
- 28 A. It worked on a number of shears between the events,
29 and worked very well. There was no instances and very low
30 readings. So it can and did work. But when the situation
31 recurred, that we are near cut-throughs, the boreholes
32 hadn't come on, the gas increased in concentrations behind
33 the shields, the problem came back and remanifested, yes.
34 So it --
- 35
- 36 Q. Would it have - I'm sorry. Would it have been prudent
37 to undertake the more careful and more selective mining
38 approach, in conjunction with attempting to fix the order
39 of advance of shields, to address this recurrent issue?
- 40 A. Possibly. The three controls that we were working on
41 and identified, though, as our main three, were the flaps
42 and ventilation devices, the shields advance and the
43 Sherwood curtain - were the main three that gave the most
44 significant advantage, yes.
- 45
- 46 Q. Was that so that production would not be slowed?
- 47 A. No, because their control was more effective and more

1 direct and could be observed right there at the job.
2
3 Q. I suppose the difficulty with that is the recurrence
4 of the exceedances for essentially the same cause?
5 A. Yes.
6
7 Q. If that's not working, perhaps you might have tried
8 something else?
9 A. Mmm-hmm.
10
11 Q. Instead of or in addition to?
12 A. Yes. Yes. Yes, there is --
13
14 Q. But that wasn't done?
15 A. The selective mining, if I was to put it in a scale of
16 effectiveness, I would put it further down in ranking of
17 effectiveness than installing the ventilation devices and
18 getting the shields under control and installing a Sherwood
19 curtain. All of those three are more dynamic and more
20 effective in preventing the gas coming through the shields
21 and migrating to the canopy than a selective mining method.
22
23 MR RICE: Okay. I think I've finished, Mr Martin.
24
25 THE CHAIRPERSON: Thank you, Mr Rice. Just to get an idea
26 of witnesses for tomorrow, could I get an indication of
27 cross-examination of this witness. Mr Roney, are you
28 having anything? No?
29
30 MR RONEY: No.
31
32 THE CHAIRPERSON: Ms Holliday?
33
34 MS HOLLIDAY: Yes, I will be 15 minutes.
35
36 THE CHAIRPERSON: Thank you. Mr Crawshaw? Perhaps we
37 have lost him.
38
39 MR CRAWSHAW: No, no, sorry. I was just un-muting.
40 I will just get instructions overnight, but I don't think
41 I will be very long at all.
42
43 THE CHAIRPERSON: All right. Mr Holt?
44
45 MR HOLT: Fifteen or 20 minutes, I would expect.
46
47 THE CHAIRPERSON: Okay, thank you. All right. We will

1 adjourn until 10am, thank you.
2

3 **AT 4.37PM THE BOARD OF INQUIRY WAS ADJOURNED**
4 **TO THURSDAY, 6 AUGUST 2020 AT 10AM**
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