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 Friday, 21 August 2020 at 10am
(Day 13)

1 THE CHAIRPERSON: Yes, Mr Hunter.
2
3 MR HUNTER: May it please, I call Greg Dalliston.
4
5 **<GREGORY ALLAN DALLISTON**, sworn: **[10am]**
6
7 **<EXAMINATION BY MR HUNTER:**
8
9 MR HUNTER: Q.   Mr Dalliston, could you please tell us
10 your full name?
11 A.   Gregory Allan Dalliston.
12
13 Q.   And you're now retired?
14 A.   Yes.
15
16 Q.   But were you a district union inspector and
17 subsequently an industry safety and health representative
18 for a period of 25 years, commencing in 1993?
19 A.   Yes.
20
21 Q.   You've worked your whole life in mine safety, apart
22 from your very early days, when you were working as
23 a miner?
24 A.   Yes.
25
26 Q.   Did you start in the mining industry as a cadet mine
27 manager?
28 A.   Yes, I started as a cadet mine manager, studied my
29 manager's ticket with the Queensland Minerals Council.
30
31 Q.   Was that at Box Flat?
32 A.   Yes, and then at New Hope and then back at Box Flat.
33
34 Q.   In 1976, did you start working actually as a miner?
35 A.   Yes.
36
37 Q.   Did you work there as a miner until it shut down in
38 1987?
39 A.   Yes, that's right.
40
41 Q.   Did you then take a job at Central Colliery?
42 A.   Yes.
43
44 Q.   Was that the first underground longwall coal mine in
45 Queensland?
46 A.   Yes, it was.
47

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1   Q.   Did you get your deputy's ticket whilst working there?
2   A.   Yes. I'd already done my deputy's courses, units of
3   competency, while I was at Box Flat, but because I was
4   there more than seven years they ran out, so I did them
5   again while I was in Middlemount and then went and sat my
6   third class ticket, deputy's ticket.

8   Q.   Now, after working at Central Colliery, did you move
9   to Southern Colliery when it started?
10   A.   Yes.

12   Q.   But in 1993 were you elected as the district union
13   inspector?
14   A.   Yes, December.

16   Q.   Is that the role that subsequently became, after the
17   new Act, the industry safety and health representative?
18   A.   Yes, that's right.

20   Q.   So from 1993 onwards, how many ISHRs were there,
21   including yourself?
22   A.   When I was elected in December 1993 there was only
23   two, Matt Best and Bill Allison, and I became the first
24   of - the union started with three, and then for a little
25   while during the downturn, unfortunately Matt passed away
26   and so we had two, and a relief, and then back to three.
27   It's been three since then until when I finished, and it's
28   three now.

30   Q.   Shortly after you became a district union inspector,
31   we had the explosion at Moura No. 2?
32   A.   Yes.

34   Q.   In August 1994. Were you, as part of your role as
35   district union inspector, involved in the investigation?
36   A.   Yes. I was the union representative, the ISHR, on the
37   investigation with two inspectors to gather all the
38   documentation before the inquiry started.

40   Q.   Were you in fact on site when the second explosion
41   occurred?
42   A.   Yes, on the Tuesday lunchtime.

44   Q.   Can you tell us about the way in which you worked with
45   the inspectorate in the investigation of the Moura No. 2
46   explosion?
47   A.   Yes. When we first got there, so it happened - the

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1   explosion happened on Sunday night just before midnight.
2   I got the phone call at home. I was packed, actually ready
3   to go to Collinsville that day, so I already had my bags
4   packed to go on a flight. The other two district union
5   inspectors and myself talked over the phone and then the
6   union chartered us a flight and we flew straight in to
7   Moura.
8
9   We went to the mine and introduced ourselves to the
10 IMT, which was headed up by the inspectors, and then one
11 stayed in the IMT - that was Billy Allison at the time -
12 and my role was to go and talk to some of the mine workers
13 that were at the mine to see what happened, because no-one
14 knew exactly what had happened. They just knew we'd had an
15 explosion.
16
17   We talked to those, took a lot of notes, so we took
18 interview notes, but it wasn't statements, and that led us
19 to find out what they believed had happened and then we
20 went and did a document search to find some documents to
21 take in to the inspectorate, because no-one knew what had
22 happened. The company wasn't saying it was an explosion -
23 well, they weren't saying what it was. So we found those
24 documents.
25
26   After that, after the second explosion, Rob Regan was
27 the general manager of the Moura operations. Him and
28 myself - the chief inspector declined to make the decision.
29 We had to make the decision to seal the mine, so that was
30 made by me, as the ISHR - well, as the district union
31 inspector, and the general manager from the mine.
32
33   Then we left town for a day. It was pretty - it
34 wasn't very good to be there. Then we went back and we
35 started - after the memorial service we started and
36 confiscated documents, or the inspectors confiscated
37 documents, and we copied them all, three copies - one for
38 the company, one for the union and one for the
39 inspectorate - to put up, to start using as evidence for
40 the inquiry.
41
42 Q.   So you had a collaborative working relationship with
43 the inspectorate?
44 A.   Yes, except for a couple of periods in the middle when
45 different chief inspectors took over, I had that for nearly
46 the whole 25 years I was the ISHR.
47

1   Q.   Sorry, I'm talking about at Moura in particular --
2   A.   Oh, yes, definitely, it was --
3
4   Q.   -- it was collaborative?
5   A.   Yes.
6
7   Q.   I suppose my next question was going to be, was that
8   your experience throughout your career as an ISHR, that you
9   had a collaborative working relationship with the
10   inspectorate?
11   A.   Most of the time we did. Like I said, it depended on
12   who the chief inspector was and what - when they came into
13   the role, what they thought they wanted. But usually after
14   a while, when they saw what we did and how we assisted,
15   then we gradually went back to the same working
16   relationship most of the time.
17
18   Q.   When there was a serious accident, or particularly one
19   involving a fatality, how many of the ISHRs would be
20   involved in working collaboratively with the inspectorate?
21   A.   We had a process where the three of us would attend,
22   and first off when I started we were all based in Ipswich
23   and Brisbane, and then gradually there was one based in
24   Emerald, one in Mackay, and now there's two in Rockhampton
25   and one in Mackay. So depending on where you were, someone
26   would get there first. But the three of us would go to
27   site. Over probably the last 10 or 15 years, my first
28   role, because I come out of Brisbane, has been while I'm on
29   a plane to fly there to do the document list up, to help
30   develop that.
31
32   When we get to site, the three of us have
33   a discussion. One will be the lead investigator, so
34   they'll go with the department, with the inspectorate. The
35   second one will come in and help get the document list, and
36   they'll help gather documents or talk to some of the
37   workers, because they'll come and talk to us a bit more
38   freely than other people. The third person usually is
39   a representative.
40
41   Once we set those three roles, then that's the role
42   you keep. So the third person will actually assist with,
43   whether people are in the union or not in the union, if
44   they want some assistance, when they're going in for
45   interviews and statements and stuff, that person will be
46   there - the person that explains the process and that to
47   them.

1
2 Q.   What about particularly if there have been fatalities
3 or serious injuries, what role does the union or any of
4 those three people that you've spoken about play with
5 respect to the families of injured workers?
6 A.   Yes, that's a hard part of the job. Mostly the
7 company won't say much about what's happened because -
8 well, they don't want to put anything there straight off.
9 The inspectorate, especially over the last probably
10 10 years, with starting to look at whether they prosecute
11 or not, don't really say a real lot as well, so it's
12 usually the ISHRs who go and sit with the family, whether
13 they're - like I said, whether they've been a union member
14 or not a union member. We used to go - and on a fair few
15 occasions I've taken some of the photos that we get from
16 there, don't take the ones that will upset them, but you
17 take them to explain what their partner or husband or
18 father was doing.
19
20   What happens, you usually try to explain to them,
21 especially someone in a mining accident - usually they die
22 straightaway, most of the time, so you explain to them that
23 the person passed pretty quickly, wasn't suffering.
24
25   Then you do that a few times. So, like, when
26 Ian Downes was killed with the rib fall at Grasstree,
27 I went down to the funeral in New South Wales, because they
28 were fly-in fly-out workers, and I did a presentation for
29 all his co-workers. It was actually after the service at
30 the crematorium. Then I did one for his father and
31 brother, and then I did one for his wife and three
32 daughters. So I did three. Then you make yourself
33 available if they want to ask more questions later on.
34
35 Q.   I believe you were watching the evidence that was
36 given by some of the current ISHRs in the first week of
37 these hearings, and you heard some evidence given about the
38 way those men had experienced difficulties in their
39 dealings with the inspectors in terms of access to an
40 incident scene and that sort of thing.
41 A.   Yes.
42
43 Q.   How does the experience that they describe sit with
44 the way you worked with the inspectorate when you were in
45 the role?
46 A.   Well, we had a problem when Stephen Cave was killed
47 with a tyre at Moura, at Dawson mine. The company didn't

1   notify us very fast - well, didn't tell us at all; we found
2   out off the radio. And then when we got there, the company
3   didn't want to share documents with either us or the
4   inspectorate. It was pretty hard. The police actually had
5   that site, because it was on the surface, it was an
6   open-cut mine, so the police are more comfortable going to
7   those ones. They don't seem to go to the underground
8   accidents a real lot. They attend the mine, but in the
9   open-cut they're in their element, they can see everything.
10
11   So, yes, that one was pretty bad. So we didn't get -
12   so we had to ring the chief inspector and actually say,
13   "Mate" - Russell Albury it was. We said, "We're not
14   getting any information out of here. We're going to
15   initiate a prosecution under our powers under the Act for
16   the mine company interfering or not assisting us in doing
17   our job."
18
19   There have been a couple like that. But in other
20   ones, the company and the inspectorate let us get in and do
21   the job.
22
23   Q.   What, in your view, do ISHRs bring to the
24   investigative process that assists inspectors?
25   A.   The first thing is we know most of the workers at the
26   mine. You mightn't remember their names all the time, but
27   you know them by sight or you know the people that are
28   there. You know usually the site safety and health rep.
29   There's been a couple of occasions where we haven't known
30   who they were. So we talk to those people. A lot of them
31   will come and talk to us. Even in the Dysart, the dozer
32   rollover, Tom [sic] Houston, one of the staff people
33   actually came and spoke to us to ask about the process.
34   Same at Grasstree. They had two fatalities within about
35   seven months, and the person in charge of the shift had
36   been on both of them, and I knew him, so I sat with him to
37   try and help him feel more comfortable and make sure that
38   he got his part out of the road as quick as he could.
39
40   So we do that. We usually know a fair bit about the
41   documents when we go in the mine, so what SOPs and stuff
42   are in place. And, yes, a lot of workers come and talk to
43   us more than they'll talk to the company or the
44   inspectorate if something's happened.
45
46   Q.   You mentioned documents a little earlier when you were
47   talking about preparing a document list on the flight up to

---

1   the mine. What were you referring to there?
2   A.   The department, when Greg Rowan was the chief
3   inspector for a while, developed an accident investigation
4   process manual, and it had a pile of attachments to it. So
5   there was a statement form, there was a document list,
6   there was - when you took any documents, there was another
7   list. So with the government's permission or with the
8   inspectorate's permission, we copied those and changed the
9   top of those to our logo, so we had exactly the same forms
10   as them.

12   A document list is, work out what documents out of the
13   safety and health management system that you think you want
14   to see, because we don't need to see the whole lot. So if
15   it's a strata control issue, then we'll look at the safety
16   management system, the training records, and you'll go
17   through the legislation and work out which sections of the
18   legislation are relevant to that type of incident, and
19   you'll ask for the documents around those areas. So we do
20   a list up.

22   We get to site. Up until probably 12 months ago,
23   when we had the spate of fatalities - well, more than
24   12 months, I've been retired 12 months, probably 18 to
25   20 months ago - we used to share that list with the
26   inspectors, and we'd usually put it up on a whiteboard. So
27   they'd have a list, we'd have a list, and if it was the
28   same document we were after, we'd try to make sure they
29   were the same, so when the company got the list, they knew
30   they were looking for one document, not two different ones.

32   Q.   Was that state of affairs still happening at the time
33   that you retired?
34   A.   No. It stopped near the end. When Russell Albury was
35   sick and finished as chief inspector, then we only had one
36   chief inspector across metals and coal for a while, so that
37   didn't happen then. And then, depending on which inspector
38   went to the accident site or which investigating officer,
39   because they have an ex-policeman that goes with them, but
40   we had a pretty good working relationship with Smith out of
41   Mackay and the new one out of Rockhampton.

43   Generally we'd share whatever they let us share.
44   They'd be told by some people above them what they could
45   give us and what they couldn't, but depending on which
46   inspector was there, how they went - some of them didn't
47   like us being in the role and some didn't mind.

1
2   Q.   I want to ask you about training. Training is
3   something that, in addition to your role as an ISHR, you've
4   been heavily involved in throughout your career?
5   A.   Yes.
6
7   Q.   In particular, after the inquiry into the Moura No. 2,
8   you were on a working group that was set up in response to
9   the warden's recommendations?
10   A.   Yes. I was on two. There were five working groups.
11   I was on number 1, which was safety management systems,
12   because there wasn't any safety management systems, no
13   Australian standards or anything back then. So we looked
14   at what - we introduced safety management systems into the
15   underground mines after that, in 1996, and I was on the
16   re-entry and sealing, number 2, and then I was on the
17   working party - Matt Best was on task group 3 for training
18   but I was on one of the subgroups that did the ground work
19   for them.
20
21   Q.   After the Act - that is, the 1999 Act - was passed,
22   the Coal Mining Safety and Health Advisory Council was
23   established?
24   A.   Yes.
25
26   Q.   And you were appointed to that council?
27   A.   Yes, the original council, yes, in 1999.
28
29   Q.   Was that council's role, at least initially, to work
30   out what competencies were needed?
31   A.   Yes. In 1999, when the Act was promulgated, only two
32   parts were. That was the section for the advisory
33   committee and the section for the boards of inquiry that
34   replaced the mining warden. So the first one, the advisory
35   committee had to look at all the positions that were called
36   up in the Act or the regulations and work out what
37   competencies would be required, and there's a list of those
38   on the advisory council's - or the committee now - website.
39
40   Q.   Were you involved in identifying and recommending what
41   those competencies should be?
42   A.   Yes. At that time, I was chair of the Queensland
43   Mining ITAB, Queensland Mining Industry Training and
44   Advisory Board.
45
46   Q.   Queensland Mining Industry Training and Advisory
47   Board?

1   A.   Yes.

2

3   Q.   And that's now the Resource and Infrastructure
4   Industry Skills Council?
5   A.   Yes, now it's a national committee, the RII Skills
6   Council.

7

8   Q.   You became deputy chair of that organisation - that
9   is, the Resource and Infrastructure Industry Skills
10   Council?
11   A.   I was deputy chair of that for a fair while, because
12   the rule there was that it had to be an employer's
13   representative being the chair, and then that changed. In
14   the last six months I was working, I was the chair for the
15   last six months.

16

17   Q.   That was until you retired, about this time last year.
18   A.   Yes, I actually kept that role until after I retired
19   and then Stephen Watts has taken my place on there.

20

21   Q.   Can I talk about the training for coal mine workers.
22   A.   Yes.

23

24   Q.   I don't want you to go into a history of coal mine
25   worker training since 1974, but, in particular, I'm
26   interested in what has changed in terms of the way coal
27   mine workers are trained particularly today, as opposed to,
28   for example, perhaps back in 1999 and the years that
29   immediately followed the legislation?
30   A.   Yes. In 1990, around then, there was a piece in the
31   regulations on training, under the 1925 Coal Mining Act,
32   and there was an approved training scheme. So instead of
33   recognised standards like they have now, there was actually
34   documents the government approved, or the chief inspector
35   approved, and there was an approved training scheme, one
36   for open-cut and one for underground workers, and it stated
37   the things you had to have for induction; it stated the
38   things that you had to have for other tasks, like basic
39   lifting and handling, safety around machines, that type of
40   stuff. They were all stated in an approved training
41   scheme, and that was compulsory.

42

43   Back then, the national competencies were just being
44   developed, so I sat on those when I was at Central Colliery
45   on, like, continuous miner, gas, ventilation. Then after
46   that, in 2001 when the new Act came in, and regulation -
47   well, the Act and regulations started, section 82, or the

1   part in the regulations for training, and that called up
2   the approved - the national competency standards, and they
3   were compulsory to be used.
4
5   Induction in the mid to late 1990s, so about 1995
6   onwards, we had some problem with contractor training and
7   the level of training they were getting, which wasn't the
8   same as what the workers got. The workers would do
9   probably 10 days underground induction, nearly two weeks,
10   before they started at the mine - or when they started at
11   the mine, they'd do the induction at the mine. But
12   contractors were only doing a couple of days. So we
13   approached the chief inspector, and that's when the generic
14   induction came into place. I sat on that and helped
15   develop the induction program for open-cut and underground
16   workers.
17
18   That was required by legislation to be used, by
19   a letter by the chief inspector that was sent out
20   Brian Lyne. Then gradually, probably when the downturn in
21   the industry came, inductions had dropped off a lot. RTOs
22   started delivering induction in classrooms at the
23   Gold Coast or in Ipswich or Mackay, Rockhampton, and people
24   would go and do their induction training there, not even
25   seeing the mine site before they went to start at the mine.
26
27   Q.   What's your view about the adequacy of that?
28   A.   I was on the committee that helped put Recognised
29   Standard 11 together, and that, in the back, actually
30   states the national competencies - there's six national
31   competencies for underground and five for open-cuts that
32   should be picked up as part of your induction, and you're
33   not supposed to work at the mine in a role until you've
34   done your induction.
35
36   The RTOs saw it as cash coming in, and they shortened
37   up the inductions. Depending on which company wanted it
38   and how fast, you could do your induction in two to
39   three days.
40
41   Q.   Are there any mandated competencies under the
42   regulation for coal mine workers?
43   A.   Under the advisory committee, all coal mine workers
44   have to have - it's RII I think it's 201, RIS201, so it's a
45   risk management competency. All workers have to have that.
46   That's called up by the advisory committee. But then under
47   the regulations, it says there has to be a training needs

1   analysis done, and you're supposed to meet those.
2
3   In Recognised Standard 11, it does say it in the back,
4   but it doesn't call them mandatory, and a lot of the mines,
5   while they do some of them, aren't doing all those.
6   There's six units you should have that it recommends for
7   induction for underground.
8
9   Q.   Perhaps we could bring up, Mr Operator, the witness's
10   statement, which is DGR.001.001.0001, and if we can go to
11   page 4, please. Could we zoom in on paragraph 24, please.
12   You say towards the end of that paragraph that some change
13   is needed to mandate the components of Recognised
14   Standard 11.
15   A.   Yes.
16
17   Q.   You refer to regulation 82(3) of the Coal Mining
18   Safety and Health Regulation. What are you talking about
19   there? What should happen?
20   A.   Well, at the moment the Recognised Standard 11
21   recommends those competencies that should be done in the
22   induction, but as you would have heard from some of the
23   inquiry, a recognised standard you can do equal to or
24   better than, and how do you know if it's equal to or better
25   than? If there's a competency that is required, then
26   I believe it should be stated in a regulation like the old
27   approved training scheme used to state, so then there's no
28   mistake, you must do these competencies.
29
30   Q.   In terms of the competencies of ISHRs, we know that
31   you held a deputy's ticket. In a general sense, what sort
32   of level of competency did the ISHRs hold throughout your
33   time in that role?
34   A.   Everyone had to hold a deputy's ticket. You had to
35   hold a deputy's ticket to actually even nominate for the
36   election. And then after that, the union, CFMEU, provided
37   us training.
38
39   When the new risk management units came out, there was
40   a - so a deputy's ticket is a Certificate IV in the AQF
41   level, but we were supplied some training in the
42   Certificate VI, risk management unit of competency. We
43   were also offered to go and do the legislation and safety
44   management system course. I think in my statement, on
45   page 5 --
46
47   Q.   Could we go over the page, please, Mr Operator, to the

```
 1     top of --
 2     A.    At line 29.
 3
 4     Q.    You set out those competencies there at (a) to (d)?
 5     A.    Yes.  So they were the competencies that the union
 6     offered us to be able to go and do, so we did - a 6 means
 7     it's - the first number is the AQF level, so 6 is mine
 8     manager's or the SSE's level.  So we did the "Establish and
 9     Maintain the Risk Management".  When I did that, it was
10     about six months doing night-time study and then one week
11     at university, so it was a university unit.
12
13          The "Establish and Maintain the Workplace Health and
14     Safety Management System" - that's a unit that someone in
15     the mine management structure has to hold, because the
16     safety management system is the main part of your
17     legislated documents on site.
18
19          RIIUND 693D, "Manage Operate and Maintain the Mine
20     Ventilation System" - that's a level 6 unit, and we were
21     offered, and most of us have gone and done that - I didn't
22     finish mine.  I didn't get all the assignments finished.
23     But that course was over about two years and you spent one
24     or two days every three months with face-to-face tutorials
25     up at Rocky under John Brady.
26
27          So in your deputy's ticket, you get the basic
28     mine ventilation - well, not "basic", but you understand
29     mine ventilation and gases and spontaneous combustion, but
30     in this one it is how to operate the system, so how do you
31     design a ventilation system, what the gas monitors are for,
32     what different types of monitors do.
33
34          The last one is ICAM "Incident Causal Analysis".  So
35     we all did - there's only one accident investigation unit,
36     that's the one that the site safety and health reps and
37     supervisors do.  There's no other one in the package, in
38     the national package.  But the ICAM training is then, after
39     you gather your information, how you - the causal analysis
40     you do after that.  So you gather all the information first
41     and then you do the causal analysis on the incident.
42
43          The other one that's missing off there is "Emergency
44     Response", and we also did the manager's level emergency
45     response unit.  That was usually run by New South Wales
46     Mines Rescue, but Queensland Mines Rescue have run some of
47     those as well.
```

1
2   So emergency response, ventilation, risk management,
3   safety management systems, and accident investigation at
4   the manager's level. So it's nearly half the manager's
5   ticket.
6
7   Q.   In addition to your role in investigating incidents,
8   did you also in your career play a role in auditing safety
9   and health management systems at particular mine sites?
10 A.   Yes. When safety management systems came into place,
11 before the current legislation, so pre-2001, after Moura in
12 1996, when the report was released, underground mines had
13 to start moving to safety management plans, hazard
14 management plans and safety management systems, before the
15 Act actually changed to that for every mine.
16
17   The mines department used to go out - they developed
18 an audit tool which they based off the Australian standard
19 for auditing, but they took out - it had 20 components, and
20 they took two out so it had 18 components. There would be
21 a team led by an auditor, first off, from outside the
22 department, but taught us how to audit, and then some
23 inspectors and an ISHR, and we'd go and do an audit on
24 safety management systems at the mine.
25
26 Q.   How long would that process take - firstly, actually
27 being on site, how long would you spend on site doing an
28 audit?
29 A.   We would go to site as a team and get inducted and
30 then spend up to five days looking for what documents we
31 believed we needed, depending on which part of the audit
32 you were doing. Then you'd go away and develop audit tools
33 against those. That would take - well, it took me a week.
34 I don't know how long it took anyone else. Then you'd go
35 back in a couple of weeks after the first visit and you
36 would be there for a week to do interviews. You'd send an
37 interview list out and you'd interview people from
38 training, from safety, from management, the workers,
39 statutory officials. That would be another week.
40
41   Then at the end of that week, you would all sit down
42 as a group and do a close-out meeting for the company to
43 tell them the things that you found you believe were good
44 and the things you believed could do with additional work.
45 Then the inspectorate would write the final report, which
46 includes your part of your report, and that would be part
47 of the mine record entry for the mine.

1
2   All up, it would take probably five people and up to
3   one month, so 20 days per person, so 100 man days.
4
5   Q.   Was that a process that continued throughout your
6   career as an ISHR?
7   A.   No. Some of the mining companies didn't like the
8   ISHRs being on there because the workers told us a fair few
9   things and they got into the reports and they didn't like
10   some of that, so a couple of companies approached the
11   government and we were taken out of the audit process.
12
13   Q.   In your view, should those audits be something that is
14   reinstated?
15   A.   Whether they do that type of audit and involve the
16   ISHR or not doesn't really matter, although, if you read
17   the Act and it says the Act is supposed to be - how you
18   achieve the objects of the Act is by cooperation, and at an
19   industry level, "cooperation" means the use of the ISHR, so
20   to me, yes, the Act says that's what you should do.
21
22   But the safety management systems - doing an
23   inspection is a one-off thing. You might just go and look
24   at something for one day or you might find a couple of
25   things when you are going around the mine. But, really, if
26   we're going to base the legislation on safety management
27   systems, then there needs to be a proper audit process to
28   audit the safety management systems.
29
30   Even though in section 64, and in the obligations of
31   the operator in the Act as well, it says about
32   effectiveness audits - one, most companies refuse to let us
33   look at those as an ISHR; and, two, the ones we have seen
34   don't seem to be an effectiveness audit, they seem to be
35   a compliance audit, which doesn't go back and look at are
36   the hazards being controlled to the best, to the acceptable
37   level of risk, which is as low as reasonably achievable.
38   They are more saying. "We say we will do this. Do we do
39   this?" I believe that, yes, audits should be a process
40   that should be in place from outside the mine to look at
41   their safety management systems.
42
43   Q.   How frequently should these audits occur, in your
44   view?
45   A.   They're a lot of work. So if the mine or the operator
46   is doing their effectiveness audit, and they are doing the
47   reviews as they should do as they change things at the

1   mine, then probably one every five years, with how much
2   work there is and how many mines there are to do, and
3   depending what hazards are at the mine - some underground
4   mines have a lot more principal hazards than open-cut mines
5   have. So open-cut mines might have explosives and trucks
6   and a few things, but underground mines have gas, strata
7   control, vehicle interaction, so there's a number of
8   different areas you'd have to look at.

10   Q.   Can I move to the Board of Examiners. It was
11   established under the 1925 Act and continued under the 1999
12   Act.
13   A.   Yes.

15   Q.   Did you sit on the Board of Examiners for 20 years
16   from 1998 until June this year - a bit over 20 years?
17   A.   Yes. I didn't apply for - it's an appointed term.
18   The government appoint you. And with some of the things
19   that were going on at the board over the last 18 months,
20   two years, I decided that I didn't really want my name
21   attached to that anymore and I didn't apply to be
22   reappointed.

24   Q.   One of the things we've heard about recently is the
25   numbers, and I mean small numbers, of people who are
26   attempting to gain first class certificates of competency.
27   What was your experience in terms of the numbers of people
28   who sought to get a first class ticket?
29   A.   Probably over the last 10 years, but definitely since
30   about 2014, until now, I think we only had about - it might
31   have been five or six, would have been all the first class
32   tickets that the board issued.

34   The failure rate, even though they passed their
35   competencies that they had to pass to come, and then a law
36   exam, the failure rate on the orals was about 50 per cent.
37   Some people came to try and sit a first class ticket and,
38   in the meantime, the company would appoint them as the SSE,
39   and so they never came back and did their ticket again,
40   because they already had the top job at the mine, so they
41   didn't think they needed to go and get the first class
42   ticket.

44   I believe that the course that the Queensland Minerals
45   Council run, which enabled people to come from the shop
46   floor, so from deputies and those type of people, and get
47   your manager's ticket, your first class and your second

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1    class ticket, was a good system.  Because in Queensland,
2    since the TAFEs closed, I don't know, about 20 years ago,
3    it's really hard to get in to do those courses, because
4    there's a limited number of people - only a minimum number
5    of people want to do it, and so there's not many places
6    that offer that.
7
8        In New South Wales you can still get it through TAFE,
9    whereas in Queensland you can't.  So it would be worth
10   having a course like that.
11
12       Some of the mining companies have started picking some
13   of the people - Stephen Watts, who replaced me as the ISHR,
14   he was working at Anglo and he's working on his first class
15   certificate now, at the moment.  So there is ability, but
16   you have to be picked by the company.  You can't just go
17   and ask and get in the list.
18
19   Q.   What are the success rates for people who attend the
20   first class exam, what have they been over the years?
21   A.    That's what I said.  The oral, to get through the
22   oral, the failure rate is around 40 to 50 per cent.  That's
23   first attempt.  I think the last person that sat was from
24   Oaky Creek, Oaky North, and he got his ticket first go.  So
25   he did his second class ticket, then came back and did his
26   first class after that and passed it first go.
27
28   Q.    Those failure rates, were they constant throughout
29   your time, the 20-odd years that you were on the Board of
30   Examiners?
31   A.    Yes.  The deputy's pass rate was a lot higher.  Well,
32   it was at least 60 - between 60 and 70 per cent would get
33   through the deputy's oral first go.  Under-managers was
34   a little bit less than that and managers a bit less than
35   that.  But the law exam was the first thing, and you have
36   to do your units of competency that are mandated and then
37   you have to sit a written law exam for the board, and the
38   failure rate on that - SSE's failure rate was 60 per cent
39   fail, not pass, so only 40 per cent passed.
40
41       Even the second attempt, only until recently we had
42   the same exam.  So when you came back the second and third
43   time, you still got the same exam, and yet we had people
44   fail three times, the same exam, same questions.
45
46   Q.    Does that say anything to you about the sort of
47   training that those people are receiving?
```

1   A.   Yes, it does. You can tell when you mark - the Board
2   of Examiners set the exams. I wrote the first lot of law
3   exams when then the legislation changed, and then we marked
4   them as well. You could tell when you marked the exam
5   papers how they go through the exam and the words they use
6   whether they have had any training.
7
8   Mark Parcell runs a course. He gives you little
9   things like rhymes so you can remember obligations and
10   things like that. A lot of them will write that on the
11   front of their paper when they get their five-minute
12   perusal time, and you can tell that they've had the
13   training, and most of those people that have been to those
14   courses seem to get through a lot easier.
15
16   Q.   You said Mark Parcell?
17   A.   Yes.
18
19   Q.   Were you involved on the board in assessing people for
20   the SSE's certificate of competency or ticket, whatever
21   it's called?
22   A.   Yes. They only get a letter. At the moment for coal
23   SSEs, all they have to do is apply, they sit a law exam,
24   and then that's it. They get a letter saying they've
25   passed the law exam. There is a competency called up by
26   the advisory committee, which is the risk management,
27   level 6 risk management unit. It used to be only level 3,
28   the same as safety reps, but it was changed.
29
30   The other competency that's required to be held is by
31   someone in the management structure - a letter the chief
32   inspector sent out, and I believe that needs changing.
33   Section 82 of the Act says that you have to use the
34   endorsed components of the coal training package, so that's
35   the units of competency, the career path and the assessment
36   guidelines. And one of the units of competency, which is
37   up there, is "Establish and Maintain the Workplace Health
38   and Safety Management System". The obligation of the SSE
39   is to develop and maintain.
40
41   So I really can't see how - and I was going to legally
42   challenge it before I left - SSEs don't have to hold that
43   unit of competency, because that's - that whole thing they
44   have to do is look after the safety management system.
45
46   Q.   I suspect it might be argued that an SSE could
47   discharge that obligation by having someone on site who did

1   have that competency?
2   A.   There's a piece in the Act that says you can't
3   discharge your obligation - you can't give them away. You
4   can have other people do your work for you, but it's still
5   your obligation to make sure.
6
7   Q.   Just so I understand this, what competencies does
8   someone have to have to be an SSE? Do they need to have
9   a deputy's ticket?
10   A.   No.
11
12   Q.   A second class ticket?
13   A.   You don't need any mining qualifications at all. All
14   you have to have is the risk management unit of competency
15   and pass the law exam. You're not supposed to give
16   technical direction, under section 60 of the Act - they're
17   not supposed to give technical direction to the first class
18   manager, the manager who controls the mine, unless they
19   hold a first class ticket.
20
21   Q.   So the underground mine manager has to have a first
22   class ticket?
23   A.   Yes.
24
25   Q.   What if the underground mine manager is away from
26   site, is there --
27   A.   That's another issue.
28
29   Q.   I'll just ask you the question. Who fills in for the
30   UMM and what qualifications do they need to have?
31   A.   Under section 60(8) of the Act, it says that if the
32   first class manager's away or absent from the mine,
33   a person with a first class or second class or deputy's
34   ticket can be in control of the mine. So the manager is
35   not always there. They do other stuff. They're looking at
36   running, managing and operating a mine, and especially on
37   the back shifts. There used to be an under-manager in
38   charge who had a second class ticket, under the old Act.
39   That was withdrawn, removed, and now you can have either
40   a first or a second or a deputy's ticket.
41
42   Some mines use deputies. I was in charge of the mine
43   on weekends when I was at Southern. But it depends on the
44   level of experience you've got - between a deputy that's
45   had their ticket for a little while and hasn't done much or
46   a deputy that's been at a few mines and understands the
47   operation - I don't believe a deputy should be in charge.

1   I believe that the minimum should be at least a second
2   class ticket, because the deputy, in the units of
3   competency, applies the units of competency, the
4   under-manager implements, and the manager establishes.
5
6   When you look at the second level, AQF5 level - and
7   some mines have trained their deputies that they have doing
8   that job in the specific hazards they've got, so if they
9   have strata control and gas hazards, they train them in the
10   deputy's and the under-manager's units in those areas, but
11   some don't. But the legislation is pretty clear, it allows
12   for any of the three.
13
14   Q.   In your view, is that sufficient, that someone who has
15   merely got a deputy's ticket should be able to act in place
16   of the UMM, in the absence of the UMM?
17   A.   Well, like I said, I don't think it is, because you
18   can get a deputy and you can get a deputy. And usually if
19   they've got a good deputy, they'll have them at the face or
20   they'll have them looking after projects, so it's usually
21   the leftover one that might look after the shift, which is
22   not a good idea.
23
24   Q.   You mentioned the law exam. Can I ask you about that
25   law exam in the context of people who have got competencies
26   that they've acquired outside of Queensland?
27   A.   Yes. Mutual recognition.
28
29   Q.   Let's say someone has a first class ticket or
30   certificate of competency that they've acquired in
31   New South Wales and they come to Queensland. Are they
32   required to sit an exam that demonstrates that they're
33   familiar with the legislative regime in this State?
34   A.   Until the current chief inspector took over, whenever
35   it was, last year some time, they had to have a law exam
36   and pass the law exam in Queensland legislation.
37
38   At the last Board of Examiners meeting, they made the
39   decision that you don't need it anymore, that the SSE at
40   the mine should determine whether you're competent or not.
41   So, yes, they don't have to have it.
42
43   The other problem we have is that in New South Wales,
44   a first class mine manager's ticket actually allows them,
45   in New South Wales, to then be an under-manager, so
46   a deputy - and a deputy, a ventilation officer and even an
47   open-cut examiner, so an open-cut mine, could be at an

1   underground mine. Under mutual recognition, then we're
2   supposed to recognise that.
3
4   The Queensland board has challenged and we've asked
5   the minister to go and talk to New South Wales about
6   changing that, but we have challenged the Mutual
7   Recognition Act twice. The board has actually refused to
8   issue a ticket to someone from another State, Western
9   Australia and South Australia, and been successful in
10 court. So, yes, it was a bit disturbing when I heard
11 a couple of weeks ago that the law exam has been taken
12 away.
13
14   The other thing is the Board of Examiners, before
15 I left, actually made a decision for SSEs that they would
16 have to sit an oral. So even though they don't have to
17 hold any mining qualifications, they would have to sit an
18 oral, and the Act says that the board can determine what
19 level the SSE should be at. That was changed last year.
20
21   What we suggested was that they came and sat an oral
22 at least on safety management systems and on risk
23 management processes. That was agreed. It was voted. It
24 wasn't unanimous, but it was voted by the board. And that
25 would have been over a year ago, and it hasn't been
26 implemented yet.
27
28   But for metalliferous, if you have a metalliferous
29 SSE's ticket, depending on the size of the mine, there are
30 actually mining competencies you must hold by, I think it
31 was June this year just gone - they had a two-year period
32 to get those. So metalliferous require competencies,
33 mining competencies, for SSE. Coal doesn't.
34
35 Q.   Can I ask you about inspectors. You're aware of the
36 way the Act in its original form was drafted and passed?
37 A.   Yes.
38
39 Q.   That is, if we go to page 11, please, and zoom in on
40 the top half of the page. You can see there at the top of
41 the page the original section 126 prescribed minimum
42 qualifications for inspectors, which required
43 a professional engineering qualification relevant to coal
44 mining operations from an Australian university or
45 equivalent, and appropriate competencies and adequate
46 experience.
47 A.   Yes.

1
2   Q.   That was, though, amended to the section 126 in its
3   current form, which is set out a little further down the
4   page, and the minimum requirement is that the person in the
5   CEO's opinion has appropriate competencies and adequate
6   experience to effectively perform an inspector's functions.
7
8   Now, what's your view about the change to the
9   requirements which would appear to make it easier for
10   a person to qualify as an inspector?
11   A.   That was changed when Henry Palaszczuk was the
12   minister for mines. So it was a while ago. The chief
13   inspector at the time opposed it, but it didn't matter, it
14   got changed. It had to do back then that there wasn't
15   a lot of spare people with first class certificates, mine
16   manager's tickets, and so it was easier to fill the
17   vacancies in the inspectorate if you didn't have to have
18   it.
19
20   The issue was also then raised, we've raised that
21   a number of times through the ISHRs and the CFMEU and the
22   advisory committee, and they've changed the requirements
23   for inspectors. There was review of the inspectorate,
24   which I sat on, and a report issued, and it had a table of
25   competencies that believed inspectors should sit at
26   different levels.
27
28   The reason that some of the inspectors got made
29   inspectors was mainly to do with the pay, and to keep their
30   inspectors - if you were an inspection officer and then you
31   got made an inspector, it was a higher rate of pay, but you
32   didn't have to step up in any competencies. So it helped
33   retain some of the good inspectors they had, but it lowered
34   the bar on the competency requirements for them.
35
36   Q.   So this was the system that used to be the case:
37   there were inspection officers?
38   A.   Yes.
39
40   Q.   And then there were inspectors?
41   A.   Yes.
42
43   Q.   What do you say to this proposition, that the change
44   really reflects the reality that people with the sorts of
45   qualifications referred to in the original section 126 are
46   unlikely to be attracted by the pay that is available as an
47   inspector?

1   A.   No, it's not right. Depending on - some people use it
2   for a career progression so they go in there and work as an
3   inspector for a while because it gives them a broader range
4   of experience than what they get in the mine. Some go
5   there because of the lifestyle, that they can live in town
6   instead of living in a mining town, and just travel out to
7   do their jobs. And some of - well, for the last few years,
8   some of the older people that were getting near the end of
9   their career would go and work in the inspectorate and
10   finish their career off there, so it was probably not as
11   much pressure on them as an SSE or a mining manager,
12   especially at an underground mine, but they were still part
13   of the industry and still assisting in looking after mine
14   worker safety.
15
16   When the Act was changed, so it was not the last
17   election, the one before, there was a set of - a review of
18   Act and regulations going up to parliament, but the
19   election was called and so it got stopped because of the
20   period where they can't make any changes.
21
22   There was a report done by the mining legislation
23   scrutiny committee that actually suggested that inspectors,
24   especially chief inspectors, should hold a relevant first
25   class ticket. That was a recommendation from that
26   committee. After the election, that legislation, the same
27   legislation, went back to the committee again, because it
28   was a new government, even though it was still a Labor
29   Party government, and they gave it to the education
30   scrutiny committee, not the mining scrutiny committee, and
31   three recommendations - the third one was the first class
32   ticket - disappeared from the report. So it hasn't been
33   put back up.
34
35   We have raised it with the minister about how we
36   believe it should be put back in.
37
38   Q.   Does this situation raise this possibility, that
39   someone who was an inspector who doesn't have, for example,
40   the same qualifications as a person with whom they're
41   dealing at a mine might nonetheless be attempting to give
42   a direction under the Act to someone who is much more
43   highly qualified than them about how to operate a mine?
44   A.   Yes, that can happen, and some people might argue that
45   the ISHR only has a deputy's ticket and they can give
46   a directive to the mine manager to stop operations, but you
47   have to have a reasonable belief and show what that belief

1   is. We don't tell them how to fix it. We only tell them
2   to stop. And then they make the decision as to what
3   actions they take to fix it.
4
5   Whereas an inspector has eight directives, and some of
6   those directives are giving instructions on how to fix
7   something, rather than to stop the work. So there could be
8   that perception, but the inspector's got the power to issue
9   those directives, whereas the rest of the legislation says
10   you can't tell a manager what to do unless you've got
11   a first class ticket.
12
13   Q.   In terms of access that the ISHRs have to information
14   held by the department, does the department hold data on
15   HPIs that from time to time it would be of assistance to
16   the ISHRs to be able to see?
17   A.   Yes, definitely. We approached the department on at
18   least four occasions, because I spoke to Stewart Bell, when
19   he was commissioner, Paul Harrison, when he was
20   commissioner, Gavin Taylor, when he was chief inspector,
21   and Peter Minahan, when he was overseeing the department,
22   about access to that.
23
24   At the moment, the ISHRs have to be told about HPIs.
25   That's the legislation requirement. But then we have to go
26   and set our own database up to keep those things, whereas
27   the government already keep a database which has got
28   exactly the same information in, and they've got more
29   resources than us. So it would be easier if you could
30   access that, and then you could have a look at trends in
31   different HPIs, you could look at whether they've been
32   happening across the State.
33
34   The other thing is mine record entries as well. We
35   used to be sent those, and I believe, since I finished, the
36   department has made a decision not to give the mine record
37   entries to the ISHRs. That's another set of documents
38   which are a public document, you can see it at the mine
39   site, but if you're preparing to go and do your inspection,
40   I used to look at all the HPIs for the last six months, the
41   mine records for the last six months, and then I'd develop
42   what I was going to look at - unless I had a complaint -
43   I'd develop the rest of the things that I wanted to look at
44   based on those things and then I'd go do my inspection. So
45   you'd do a structured inspection. Whereas if you just turn
46   up and have to try to read them, it interferes with how
47   effective your role can be.

1
2   Q.   You're aware, aren't you, that the equivalent of an
3   ISHR in metalliferous mines is a position that's funded by
4   the government?
5   A.   Yes, district workers representatives.
6
7   Q.   Whereas in the coal industry, they're union positions?
8   A.   Well, the district workers rep is still a union
9   position, it's just they're paid by the government. When
10   the Act was changed, the AWU, who look after metalliferous
11   mines, actually were prepared to give that role away, and
12   the people at the time that were doing the jobs were
13   getting to retirement age, and they approached the
14   government and they actually paid out three of the four of
15   them, so the government paid out a redundancy.
16
17   The deal with that was that we were going to lose our
18   ones from coal as well, but we managed to talk to
19   Mr McGrady and keep that position. They work out of
20   a government office. They wear - up until recently they
21   used to wear government clothes. They drive a government
22   car and they get paid by the government.
23
24   Probably the only thing I like about their role is
25   that they have access to the government computer, so they
26   have access to all those documents, but they don't have to
27   have any competencies. They don't have to have a third
28   class or a deputy's ticket or anything. There's a list of
29   names given by the AWU, and the minister picks the four off
30   that list. So they're appointed by the minister, whereas
31   we're elected by the union and paid by the union.
32
33   The government used to give us, when I first started -
34   I think it was $12,000 per person, so it was 24, and we
35   asked, when the third one started, to make it $36,000
36   a year. That money was supposed to go towards training.
37   We had our own gas detectors. I don't think any of the
38   inspectors have their own gas detectors. The union
39   inspectors have their own gas detectors they take to the
40   mines with them.
41
42   The other thing was we used some of that money, or all
43   that money mostly went to the site safety and health reps
44   training. So I believe, if you work in the government
45   office, you're seen like a bottom tier of government
46   inspectors, rather than in 1937, when the district union
47   inspectors came into the Act, they were there to check -

1   they were to check inspectors. So they checked on the
2   government and they checked on the companies, because most
3   of the time then, with a first class ticket, the companies
4   and the inspectors were very close.
5
6   So that has been our role. The other thing is it
7   gives the workers a representative they can feel more
8   comfortable talking to.
9
10   Q.   We know from other evidence that union coverage in the
11   coal mining industry has declined, and we've heard evidence
12   I think that union workers, as in union members who are
13   coal mine workers are, at least at Grosvenor, in the
14   minority. Do the ISHRs differentiate between union members
15   and non-union members in terms of how they respond to
16   safety issues?
17   A.   I didn't. You've got to remember as an ISHR your
18   responsibility is looking after the health and safety of
19   all coal mine workers and that includes staff as well. Not
20   many of them are in a union. Even the SSE at times you
21   have to help, and I have had to help an SSE at a mine with
22   some discussions when he gave directions to a first class
23   mine manager. The manager actually got put off because he
24   didn't follow the SSE's direction. So I'd go and help
25   represent a mine manager.
26
27   So representing everyone - if someone gets hurt at
28   a mine or an accident happens at a mine, you don't know if
29   that person is a union member or not a union member, and it
30   could hurt everyone. If you have an incident where someone
31   does something wrong, it doesn't just mean that they'll
32   hurt union members or non-union members, it's anyone that
33   could get hurt.
34
35   The only difference probably is how you go about
36   investigating a complaint from them. A lot of the labour
37   hire and contractors, I've had a few phone calls where
38   they've actually hidden their number when they ring me, so
39   I can't see the number. I ask their name and they tell you
40   a name but you don't know if it's them or not, and they'll
41   make a complaint.
42
43   The other thing is they ask you not to use their name,
44   and we don't usually use names, anyway, when we're
45   investigating an incident or a complaint, but it's not hard
46   to work out who they are, because if there's been an
47   incident at a mine involving truck 776, then the company

1   knows who was driving truck 776, so it's not - it's not
2   really a foolproof system.
3
4   The issue for me is they don't go to the site safety
5   and health reps a lot, the labour hire and contract people.
6
7   Q.   Do you know why not?
8   A.   A few of them have told me because the only time they
9   can access them is at site, and if they're seen talking to
10   them at site, then they know where the complaint came from,
11   so they'd rather ring us and do it. Then we have to go
12   back through that process. We go to the site safety and
13   health rep and ask them, "Has this incident happened at
14   your mine? Are you aware of it?" Might even talk to the
15   manager on the phone and ask them whether they are aware of
16   the incident.
17
18   So there's only a little bit of difference in how you
19   deal with the investigation of the complaint, but the other
20   part, like I said, it's hard to get back to someone because
21   they don't tell you who they are. So you can go and
22   investigate the incident, but if you want to go further,
23   you've got no proof that it happened because you don't even
24   know who to talk to.
25
26   THE CHAIRPERSON: Q.   And why do you understand that
27   occurs? Why are they so secretive?
28   A.   Well, it's pretty obvious that they fear for getting
29   put off. And there's been examples where labour hire
30   people have reported an incident or not reported an
31   incident at a mine site, and then the labour hire company
32   gets told, "We don't want that person back at site any
33   more." So the SSE or the manager doesn't sack them, but
34   they don't let them come back on their mine site. Whereas
35   if it's a permanent worker, there's a process they have to
36   follow, so they have to put them through a disciplinary
37   procedure or whatever else. But if they're a labour hire
38   person, they just say, "We don't want that person back on
39   site", and you don't see them again, and more than likely
40   that person won't get a job with - that labour
41   hire person - at that same company if they've got a few
42   mines.
43
44   But section 275AA in the Act, which is the clause for
45   not being able to take action against people --
46
47   Q.   Reprisal.

1   A.   Yes. That was put in due to a person, a site safety
2   and health rep, being attacked for raising safety issues.
3   That's why it's a double A. It was an add to the Act after
4   the Act was started. That was at Gregory mine. We had to
5   fight to get that clause put in and fight to keep that
6   person's job. He was a safety rep that was actually going
7   and raising safety issues, and he still got action taken
8   against him. I could give you at least six or seven.
9
10   I got challenged as an ISHR by two mining companies.
11   They wanted me to be removed from my position for raising
12   safety issues at their site. So it doesn't just stop at
13   labour hire workers, but labour hire workers seem to be the
14   ones that fear the most about it.
15
16   MR HUNTER: Q.   To your knowledge, has anyone ever been
17   successfully prosecuted for an offence against 275AA?
18   A.   Not that I'm aware of. I think there's one case
19   that's out there now where a person was at an open-cut mine
20   that - they changed it around. He raised a safety issue,
21   and then they changed it that he didn't fill the form out
22   right, so they sacked him for not filling the form out
23   right, not for raising safety issues, but I believe that's
24   going to court still now.
25
26   Q.   There's just one last point I want to raise with you,
27   and it's not addressed in your statement, but it arises out
28   of some evidence you heard Gavin Taylor give yesterday.
29   You've seen a transcript of the evidence that he gave,
30   I take it?
31   A.   Yes, I was reading the transcript this morning, plus
32   I watched some yesterday.
33
34   Q.   In particular, you might recall that he was asked some
35   questions by Mr Clough about the response times of methane
36   sensors, and you might recall that the evidence that he
37   gave was that a methane sensor would have knocked the power
38   off, to use the vernacular, within I think he said
39   milliseconds and then at one stage said nanoseconds. To
40   your knowledge, is that correct?
41   A.   No.
42
43   Q.   How long does a methane sensor take, in a general
44   sense, to cut the power?
45   A.   My understanding is between 2 and 10 seconds. It's
46   not instantaneous. Even though the legislation says
47   instantaneous, it's not. By the time it lapses, it's

1   probably about that. Like I said, I didn't finish the
2   ventilation officer's course, but, from my understanding,
3   that's about how long they take. We did a fair bit of
4   research on that when we wrote the legislation and changed
5   the legislation around gas monitors, where we increased the
6   methane level from 1.5 per cent to 2 per cent, because they
7   sit on the machine, so they're probably quicker than if a
8   person read and then went and did something with a
9   hand-held gas detector. That's the reason we changed the
10 gas levels when we rewrote the legislation. But, yes,
11 they're not instantaneous.
12
13 MR HUNTER: They are the only questions I had.
14
15 THE CHAIRPERSON: Yes, thank you, Ms Dann?
16
17 MS DANN: No questions.
18
19 THE CHAIRPERSON: Mr Trost?
20
21 MR TROST: No questions.
22
23 THE CHAIRPERSON: Mr Crawshaw?
24
25 MR CRAWSHAW: No questions, thank you.
26
27 **<EXAMINATION BY MS HOLLIDAY:**
28
29 MS HOLLIDAY: Q.   Mr Dalliston, if we can return to the
30 evidence you were giving in relation to training.
31 A.   Yes.
32
33 Q.   More particularly, in relation to the availability of
34 training courses.
35 A.   Mmm-hmm.
36
37 Q.   You mentioned in your statement about Simtars.
38 A.   Yes.
39
40 Q.   Tell me at any stage if you're not aware of things
41 because of changes that have happened since you ceased
42 either being an ISHR or on the Board of Examiners, but
43 you're aware, aren't you, that Simtars conducts scoped
44 courses, in consultation with industry, in relation to
45 spontaneous combustion, gas ventilation and gas drainage?
46 A.   Yes. Not as often as they used to do them, and the
47 costs I believe have changed and the access to them is

```
 1      harder.
 2
 3      Q.   I don't expect, again, for you to know numbers, but
 4      they also conduct a First Class Mine Manager's Certificate
 5      course as well?
 6      A.   Yes, in conjunction with the ventilation officer's
 7      course that they run.
 8
 9      Q.   And whilst there were no people enrolled in that First
10      Class Mine Manager's Certificate course last year, there's
11      three this year.  Would you be aware of those numbers?
12      A.   No, I wasn't aware of those numbers.
13
14      Q.   But they also, as you said, do the ventilation
15      officer's course, and there have been 13 people enrolled in
16      that over the past two years?
17      A.   Yes, sponsored by mining companies.
18
19      Q.   And there are over 499 persons enrolled in the brake
20      testing delivery course this year.  So there is the
21      availability of competency courses; do you accept that?
22      A.   Depends who you are.  The reason I put that in my
23      statement was I did sit on the Coal Mining Advisory
24      Committee, and when the downturn in the industry came, then
25      most of the RTOs bailed out of mining training because
26      there wasn't the numbers, so it wasn't a viable business.
27
28         What we suggested was - and it came from some of the
29      mining companies as well - Adam Garde, who unfortunately
30      has passed away now, but he was mine manager, and he sent
31      a letter to the advisory committee recommending that we
32      look at - that Simtars should be the first point of call
33      for that type of training.
34
35         When they used to do the spontaneous combustion
36      two-day and three-day courses for coal mine workers and
37      managers, they used to go to site and do some of those, or
38      you could access that.  Since they became a fee-for-service
39      organisation, then it's harder for the normal person to get
40      in and do that.  You have to be a selected few to get in to
41      their courses, because how much their charge to get their
42      fee for service back, and the numbers they need, are
43      usually done through mining companies selecting who they
44      want to put in there.  That's what I was talking about.
45
46      Q.   They conduct face-to-face training rather than some of
47      these RTO providers that do more of a desktop analysis,
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1   which might, I guess, explain somewhat the cost of the
2   course?
3   A.   Yes, they do. My issue is, and it was the advisory
4   committee's issue as well at the time, that Simtars, when
5   they were started, were a part of the department, and the
6   department gets money or the government gets money from
7   royalties and from other stuff, and therefore rather than
8   losing all the RTOs at a time when there's a downturn, if
9   Simtars were able to offer that training so more people
10   could access it, we might have more people coming through
11   the statutory positions.
12
13   And because they're a government thing, the government
14   make their money out of the royalties from mining, we
15   suggested they should probably put something back in to
16   that type of training. It's a specialist lot of training;
17   you can't get it from just about anywhere. And they have
18   the resources out there with gas chemists and those type of
19   people of people to actually deliver it, rather than an RTO
20   might deliver risk management, might deliver first aid, and
21   all of a sudden he's delivering ventilation, which he knows
22   not a lot about.
23
24   Q.   The fact that, and I only gave you some of the
25   numbers, I gave you 499 in 2020 for the brake testing
26   delivery course.
27   A.   That's a specialised course as well.
28
29   Q.   But in terms of numbers, there's over 1,200 people
30   that have been involved or enrolled in those competency
31   courses over the past two years. It's clear that there is
32   access for those persons to competency courses through
33   Simtars?
34   A.   A large number of those figures you've just given me
35   were probably the people that have to do the dust
36   monitoring course, because all underground mines have to
37   have those people. I was part of the advisory committee
38   that said that the only people who should deliver that
39   training was Simtars, because it was the only way to ensure
40   a quality delivery of training, whereas we couldn't ensure
41   that with the RTOs. So a lot of people have been trained
42   through that.
43
44   So what I'm saying is, specialised training, yes,
45   they've been getting it, but the spon com course and stuff
46   they used to run when I was working and was in industry are
47   nowhere near the numbers that we used to have before.

1
2   Q.   And, indeed, in terms of the numbers for persons
3   sitting the first class competency, it's too low, isn't it?
4   A.   It is. We need as many people that are competent,
5   that can gain that qualification to get it, because whether
6   you're working as a manager or whether you have that
7   knowledge and you're working in a mine, you have to be safe
8   because you understand the environment around you.
9
10   Q.   I think you gave the numbers, but can you accept there
11   are only two persons from 2014 that have attained that
12   first class certificate of competency, as per the Board of
13   Examiners. There was one in 2019-20 and one in 2014-15,
14   according to their records.
15
16   In terms of, then, the available pool for inspectors,
17   there's a table in the most recent report, when you were
18   still on the Board of Examiners, that sets out the
19   demographic of the first class certificate holders and
20   breaks it down into their age.
21   A.   Yes.
22
23   Q.   You'd know that there is no record kept by the Board
24   of Examiners in terms of whether those persons are still
25   involved in the industry in Queensland?
26   A.   That's right. Until we put maintenance of competency
27   in, we're not going to be able to have records to say who's
28   alive or not alive anymore, or who's practising or is not
29   practising.
30
31   Q.   All you can do is add up the columns and figure out
32   that that is the maximum?
33   A.   Yes.
34
35   Q.   But recognising the fact that the figure would be less
36   than that because of people who, because of age, are no
37   longer in employment or are no longer in the industry. So
38   when one adds up those columns, it comes to about 160
39   maximum, so people who are under the age of 80, that hold
40   a first class certificate, according to the records of the
41   board, with that proviso that they may not even be in the
42   industry anymore.
43
44   Now, the inspectorate has 18 inspectors. So if one
45   considers that as a percentage, if there was going to be
46   a requirement that inspectors hold first class
47   certificates, you're looking at a large percentage of the

1   eligible persons, aren't you, that have first class
2   certificates in Queensland?
3   A.   Yes, but it depends on what the inspector's doing. If
4   the inspector's only doing open-cut mines, then an open-cut
5   examiner's ticket would be more sensible than a first
6   class, and therefore it wouldn't have to be all inspectors
7   have a first class ticket. If they're looking after
8   underground mines, where the risks are higher and more
9   complex, then if you're going to be an inspector and you're
10   going to be able to do what they do, then I believe they
11   should have a ticket. It's not that hard for the
12   government to run training for them. They own Simtars.
13
14   Q.   It's not just the training, is it? You have to have
15   sufficient experience to also hold a first class ticket?
16   A.   Most of the inspectors would hold the required time in
17   the industry and experience. It's just they haven't got
18   the knowledge and skills component.
19
20   Q.   So if you look at the composition of the inspectorate
21   as it is today, 11 of the 13 mining inspectors hold the AQF
22   level 5 or 6, and there has never been a chief inspector
23   that hasn't held a first class certificate - Chief
24   Inspector of Mines that hasn't held a first class
25   certificate. Do you accept that?
26   A.   You've got one now.
27
28   Q.   Sorry? Mr Newman doesn't hold a first class
29   certificate?
30   A.   The metalliferous inspector doesn't hold a first class
31   certificate, and he sits on the board, which is outside the
32   requirements of the Act.
33
34   Q.   I said the Chief Inspector of Mines, Mr Newman.
35   A.   Coal mines.
36
37   Q.   Coal mines, yes, so Mr Newman. There has never been
38   a Chief Inspector of Coal Mines that hasn't held a first
39   class certificate?
40   A.   No. Due to people that people have put on there.
41   There was discussion about not having one, but there has
42   been a lot of pressure put on people in government to make
43   sure that stays in place. It was a recommendation out of
44   the Mount Mulligan disaster, which is a hundred years next
45   year.
46
47   Q.   In terms of the legislative requirement, the

1   practicality, though, or the reality, is that there has
2   never been a Chief Inspector of Coal Mines that hasn't held
3   a first class certificate of competency?
4   A.   That's right.
5
6   Q.   You speak at paragraph 68 of your statement - you have
7   a copy in front of you, but we'll bring it up on the screen
8   as well. It's DGR.001.001.0011. At paragraph 68 you say
9   that an inspector with no certificates of competency can
10   lift a directive given by an experienced ISHR who does hold
11   a certificate of competency.
12   A.   Yes.
13
14   Q.   You're obviously well aware of the provisions of the
15   Act. You've been providing those for the assistance of the
16   Board this morning. There is no provision where an
17   inspector can lift a directive. Only the chief inspector
18   can review and lift a directive. You'd know that,
19   Mr Dalliston?
20   A.   Yes, that's the person that signs off on it. The
21   inspector does the work of looking at whether it's to be
22   lifted or not.
23
24   Q.   The legislature provides the criteria, and the
25   legislature details that a review is conducted by the chief
26   inspector only, that's the only statutory enabling
27   provision for that to occur; you accept that?
28   A.   Yes.
29
30   Q.   And he is the only one that can lift a directive given
31   by an ISHR; you accept that?
32   A.   Yes, he has to sign off on the - setting aside the
33   directive. But I have had an inspector without
34   qualifications review one of my directives, and then the
35   chief inspector signed off on his review. It's happened to
36   me.
37
38   Q.   Well, that's your personal view as to what occurred,
39   but given the requirements of the legislation --
40   A.   The chief inspector has to sign off.
41
42   Q.   That's right, and so the chief inspector has to be
43   satisfied, pursuant to the legislation, to lift the
44   directive?
45   A.   Yes.
46
47   Q.   You also detail that, in your view, the inspectorate

1   is very hesitant to issue directives?
2   A.   Yes.
3
4   Q.   You would have seen - or correct me if you haven't -
5   that there's material that has been provided to the Board
6   of Inquiry that there have been 1,955 directives issued by
7   department over a 10-year period?
8   A.   No, I didn't see that.
9
10   Q.   Mr Dalliston, that's your personal view, that
11   inspectors are hesitant to issue directives, but do you
12   accept that the statistics demonstrate otherwise?
13   A.   No.
14
15   Q.   You don't consider --
16   A.   It's not just my view. It's my work experience that
17   tells me that, because if you read a mine record entry and
18   they put "SCP", an SCP is not called up by any legislation.
19   So a substandard condition or practice, when there are
20   eight directives to be used - and that's why they've got
21   eight directives as powers - they can issue a directive in
22   a different manner to still have work being conducted or
23   things reviewed, and those directives aren't all being
24   used.
25
26   Q.   In terms of your personal view, it obviously comes
27   from your work experience, your collective experience, so
28   you draw on the fact that SCPs are issued, but you would
29   have to be aware, wouldn't you, that again there are
30   legislative provisions around the power to issue
31   directives?
32   A.   Yes.
33
34   Q.   And there has to be satisfaction to requisite levels
35   before those directives can be issued, otherwise they'll be
36   subject to challenge?
37   A.   Sorry?
38
39   Q.   Do you accept that? Well, there has to be a belief of
40   the inspector --
41   A.   Reasonable belief, yes.
42
43   Q.   -- depending on the nature of the directive that's
44   being issued, that either the risk won't reach an
45   unacceptable level or it has already reached an
46   unacceptable level, for example - I'm just giving you two
47   examples under 166 and 167.

1   A.   Mmm.

2

3   Q.   So there's an occasion where an SCP might be issued
4   because it's thought, in the mind of the inspector, that
5   that is sufficient to solve the issue that the mine has at
6   that particular time, and in other cases, 1,955 cases in
7   the last 10 years, a directive is issued instead because
8   that firmer hand is required. Do you accept that?
9   A.   No, because I helped sit on the legislation
10   development, when we wrote the legislation, and that's why
11   there's eight directives there for inspectors to use. SCPs
12   aren't mentioned anywhere. If they issue a directive,
13   there's legal requirement of what action has to be taken
14   for a directive. There's no such thing as an SCP in the
15   legislation.

16

17   Q.   But they have issued 1,955 directives over that period
18   of time, demonstrating the fact that that body of
19   legislative tool is often used by an inspectorate. Do you
20   accept that?
21   A.   So 2,000 in 20 years?

22

23   Q.   No, no, in 10 years.
24   A.   In 10 years?

25

26   Q.   Mmm-hmm. That's 20 a year.
27   A.   Yes. How many mines are there in the State -
28   60-something?

29

30   Q.   So your personal view is that that is insufficient; is
31   that correct?
32   A.   Yes.

33

34   Q.   In terms of the fact that there has been a request
35   from ISHRs to access the inspectorate's HPI and incident
36   database - and you will be pleased to hear this, that under
37   the system that's currently under development, that will
38   occur for ISHRs and for industry, to get access to that
39   database. That will assist, won't it, in terms of the
40   ISHRs and the inspectorate having a tool by which it can be
41   commonly considered, the HPIs that have been --
42   A.   Yes, that's good.

43

44   Q.   And also for industry to look at that database as
45   well. So, for example, a Glencore mine could look at an
46   Anglo mine, to look at the HPIs and to look at trends?
47   A.   Well, that's good, because that's what they should be

1   doing when they do a risk assessment to determine what can
2   happen with that hazard, so that's a good improvement.
3
4   Q.   And to learn from the LFI process as well?
5   A.   Yes.
6
7   Q.   You touched on the role of the inspectorate and the
8   relationship with the inspectorate, and you mentioned
9   earlier in your evidence about the fact that things had
10 changed since there were the prosecutions that the
11 inspectorate has to investigate and then consider whether
12 or not a prosecution is to be brought within that 12-month
13 time period.
14 A.   Mmm-hmm.
15
16 Q.   You'd recognise, from your depth of experience and
17 also the boards that you've sat on and your role as an
18 ISHR, that there has to be that integrity to a prosecution
19 and that, at times, will mean there has to be limited
20 access to the scene - you'd accept that?
21 A.   No.
22
23 Q.   So if, for example, there has been a fatality - and
24 this was an example that was given by the ISHRs - and there
25 had to be a tarpaulin placed over the scene to preserve it
26 because of the fact that there was about to be an inclement
27 weather event, do you accept that there has to be
28 a restriction of access to the scene at that point in time?
29 In other words, it has to be preserved so that persons can
30 then, the following day when the weather is no longer
31 inclement, take photographs and things of that nature? Do
32 you accept that?
33 A.   Yes, that's right, there will be times when you need
34 to limit how many people can go in an area. I've done an
35 accident investigation myself where the skid marks had to
36 be covered up because the rain was coming, so we got as
37 many photos as we could straightaway, and then we had to -
38 so yes. But that doesn't mean that you don't participate
39 in an accident investigation or you're not allowed into the
40 scene at all.
41
42 Q.   That's not what I was suggesting. There will be,
43 though, times where in order to preserve any future
44 prosecution, there have to be limitations around, and
45 I gave the example of access to a scene, and that it --
46 A.   That's a different question than what you put to me
47 before. You put where you've got to cover something up so

1   you can preserve evidence.
2
3   Q.   But that is access to the scene at that point in time.
4   A.   But access to the scene - two things in an
5   investigation. One thing in an investigation is to gather
6   the evidence. The next part after that is causal analysis
7   to then decide whether you're going to prosecute or --
8
9   Q.   We hadn't got there yet.
10   A.   They're two different things.
11
12   Q.   Exactly. So just listening to my question, we were
13   just talking about at that stage access to the scene. I'm
14   not going to go through every step, I was just providing an
15   example that, indeed - and as Mr Newman said, it's nothing
16   personal; it's just the fact that in order to preserve the
17   integrity of the investigation and any future prosecution,
18   there have to be decisions made?
19   A.   Once again, that's not - you were talking about
20   preserving the evidence; now you're talking about limiting
21   being able to get a prosecution. The evidence is the
22   evidence. Anyone can see the evidence and get the
23   evidence. It's the causal analysis you do later to show
24   nature and cause that will lead to a prosecution, not the
25   photos and the evidence you gather first off. But if they
26   seize something - we don't have the powers to seize, the
27   inspectors do, and they seize it and take it away - we
28   don't get the report back, then, on what they've found,
29   because they've seized it. So how do you do an
30   investigation when you can't get told what the black box
31   said inside it, like, how many hours the machine had, or
32   something like that? That's the type of evidence that's
33   been held back in the last 18 months that wasn't held back
34   before.
35
36   Q.   The legislation, Mr Dalliston - and you would be well
37   aware of this - speaks about, under 118D, that the ISHRs
38   are to assist in an investigation.
39   A.   Yes.
40
41   Q.   The actual conducting of the investigation and the
42   responsibilities that come with that are, pursuant to
43   legislation, given to the inspectorate. So the ISHR's role
44   is different - you'd accept that - by virtue of legislation
45   in an investigation?
46   A.   Yes, it is, but recently the department have changed
47   their attitude to where they're keeping the ISHRs out of

1   the investigations. Some of those investigations, like
2   frictional ignition - it mightn't be a fatality, but
3   a frictional ignition - the inspectors have not taken any
4   action and the ISHRs have had to do the investigation to
5   actually make that mine safe.
6
7   Q.   When did you retire, Mr Dalliston?
8   A.   Twelve months ago Sunday.
9
10   Q.   So in terms of, you say, over the last 18 months,
11   obviously you can speak personally for the first six months
12   of that --
13   A.   I meant the 18 months I was working.
14
15   Q.   You meant the 18 months you were working?
16   A.   Yes, my last 18 months, sorry.
17
18   Q.   So we're talking now two and a half years ago, if
19   I can add up correctly.
20   A.   I'm talking up to one year ago, yes. So the 18 months
21   before that.
22
23   Q.   We might be at cross-purposes here. You retired
24   12 months ago?
25   A.   Yes.
26
27   Q.   And you're talking in the 18-month lead-up to that
28   12-month period, so we're now talking two and a half years
29   from today's date?
30   A.   Up to 12 months ago as well.
31
32   Q.   Yes, so two and a half years to 12 months ago?
33   A.   Yes.
34
35   Q.   So that would have to be the period that you have
36   personal knowledge of that you can inform the Board of
37   Inquiry about?
38   A.   Yes. I've only had hearsay since then. I've had
39   a lot of people ring me when incidents or fatalities have
40   happened, but I haven't been to the site, so I can't say.
41
42   Q.   It is just that the evidence that has been given is
43   that there was a change since the chief inspector was
44   appointed. That was the personal view of ISHRs. But in
45   terms of your evidence, it's happened for a longer period
46   than that; it's been for two and a half years?
47   A.   Since Russell Albury left as chief inspector.

1
2   Q.   There will be on occasions, won't there, in order for
3   there to be a robust relationship, points of difference
4   between the inspectorate and the ISHRs?
5   A.   Oh, definitely.
6
7   Q.   And there will also be a period of time by which, when
8   any person gets appointed to a position, there is a period
9   for a rapport to be built - and when I say "a rapport",
10   I still mean a robust-natured rapport - you'd accept that
11   as well?
12   A.   Yes.
13
14   Q.   In fact, in your evidence earlier you said that often
15   when there's a change in chief inspector, it takes some
16   time for the relationship to develop?
17   A.   Yes. Just on the question you asked me before about
18   some of my other information, I only finished up on the
19   Board of Examiners two months ago, so some of the stuff
20   from there I have still been current in doing work, but not
21   going to mine sites. So I've been dealing with the current
22   chief inspector.
23
24   Q.   On the Board of Examiners?
25   A.   Yes.
26
27   Q.   My own maths has been corrected, quite embarrassingly.
28   1,955 directives in 10 years is approximately 200 a year,
29   not 20 a year, so clearly that is substantially more -
30   I can't remember whether you said that or I said that. It
31   was probably me.
32   A.   No, you said it.
33
34   Q.   Okay, thank you. So is your view still the same, that
35   200 directives a year being issued by the department
36   pursuant to the statutory provisions is somehow then not
37   fulfilling fully their function that the statute gives them
38   in terms of directives?
39   A.   I don't think it should be based on numbers. I look
40   at how many SCPs and other things they've identified and
41   issued rather than using directives. So I don't base it on
42   whether there's 200 or 500. If something's wrong,
43   something's wrong and it should be acted on. You might
44   issue 10 in one year and you might issue 300 in another
45   year, but --
46
47   Q.   You just don't like these SCPs; that seems to be --

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 1    A.    I just don't believe the inspectors are using the
 2    powers they're given under the Act, yes.
 3
 4    Q.    Well, they clearly are using the powers they're given
 5    under the Act?
 6    A.    Not all of them.
 7
 8    Q.    In terms of SCPs, you don't see a place for those, in
 9    your personal opinion?
10    A.    Not when there are directives that do the same job and
11    have a legal standing.
12
13    Q.    Finally, in relation to audits, you were talking about
14    what used to happen in relation to the safeguard audits and
15    that it was your personal belief that this stopped
16    occurring because of action by the mine?
17    A.    Yes.
18
19    Q.    Once again, it's difficult when it's personal belief,
20    but that's obviously your impression, but could the reality
21    have been very different, and that is that the
22    inspectorate, after consideration and consultation, in fact
23    instituted what's called a structured audit guide, so
24    structured audits happen in relation to each of the mine
25    sites.  Are you aware of what's called a structured audit
26    that's undertaken --
27    A.    Yes, I was talking to an inspector last week who was
28    complaining to me about their structured audits.
29
30    Q.    In relation to structured audits - you are clearly not
31    an auditor, Mr Dalliston?
32    A.    Yes.  I am an auditor.
33
34    Q.    You are an auditor?
35    A.    Yes.
36
37    Q.    You have a Bachelor of Commerce degree?
38    A.    No, I've got an audit qualification that allowed me to
39    do those audits.  I actually helped train --
40
41    Q.    I'm not saying that you didn't have --
42    A.    So that's an auditor.
43
44    MR HUNTER:    The witness should be allowed to answer the
45    question and explain what his qualifications are in this
46    respect.
47
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 1      THE CHAIRPERSON:   Yes, all right.
 2
 3      THE WITNESS:   I don't have a degree in auditing, but
 4      I have an audit qualification which means I am an auditor.
 5      I don't know if you mean a financial auditor or something
 6      like that.  I can't do that.
 7
 8      MS HOLLIDAY:   Q.   I'm not saying that you didn't have the
 9      requisite experience to go out onto the mine site and look
10      at the safety and health management system.  But, rather,
11      in terms of the change that has occurred between what
12      occurred, in your words, decades ago, to what occurs now in
13      terms of the structured audit - that was the point that
14      I was making in terms of the fact that you're not an
15      auditor in terms of the person that is consulted to
16      determine the best way in which audits should happen of
17      a safety and health management system for a mine?
18      A.   We did the audit training with the inspectorate and
19      then after that I helped some of the inspectors who
20      couldn't pass their audit course to pass their courses.  So
21      we have been trained.  And there was also training for site
22      safety and health reps.  The union provided training for
23      ISHRs, and we ran it in conjunction with an external
24      trainer, audit training for site safety and health reps.
25      So I have got a qualification on my wall at home that says
26      I can audit safety and health management systems.  There
27      used to be food auditors, safety and health management
28      system auditors, financial auditors - so I have the safety
29      and health management system one.
30
31      Q.   But in terms of a change that has occurred away from
32      the safeguard audits to what's called a structured audit -
33      and the figures you may not know of, but there are
34      60 targeted for this year - the focus on conducting
35      a sample of matters regularly in a safety and health
36      management system, rather than every component once every
37      five years, would you defer to the expertise of an auditor,
38      and I mean a person that has a degree in commerce and has
39      the necessary experience to then be classified as an
40      auditor, as to the appropriateness of that structured audit
41      rather than the safeguard audit as being the appropriate
42      way in which to audit the safety and health management
43      system of the mines?
44      A.   From the audits I saw before I left the industry, no.
45      One day by one person to do an audit is not an audit as far
46      as what we were taught to do and the quality.
47
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1   MS HOLLIDAY: Mr Martin, I have no further questions.
2
3   THE CHAIRPERSON: Thank you. Before you take your seat,
4   when you spoke about the 2,000 directives, that's across
5   which mines?
6
7   MS HOLLIDAY: That is in the most recent statutory
8   declaration of Mr Newman and it's at paragraph 24. I'll
9   take some instructions in relation to whether that is all
10   mines across Queensland or whether there are some
11   limitations to it. It may be that I will take those
12   instructions over the morning adjournment.
13
14   THE CHAIRPERSON: All right, thank you. Mr Roney, how
15   long will you be?
16
17   MR RONEY: I wouldn't be more than 10 minutes, but I'm
18   happy to come back after a break if that suits you.
19
20   THE CHAIRPERSON: I think we might do the 10 minutes and
21   see how we go.
22
23   **<EXAMINATION BY MR RONEY:**
24
25   MR RONEY: Q.   Good morning, Mr Dalliston. I just wanted
26   to ask you a couple of questions on a relatively narrow
27   topic. In paragraph 90 of your statement - you won't need
28   to bring it up - you say a lot of contractors and labour
29   hire workers are union members; about a third of the
30   State's coal mine workers who are union members are
31   contractors and labour hire workers.
32   A.   Yes.
33
34   Q.   Now, are you able to say that because you have access
35   to membership numbers that are kept within the records of
36   the CFMEU?
37   A.   I don't have access to the records as far as an ISHR,
38   because those records are kept by the secretary and the
39   president. But up until I finished work - we have a board
40   for management which meets every quarter, and every quarter
41   there's a report on how many union members we have, how
42   many are State members, which means they're not part of
43   a lodge at the mine. So I was still a member of the union
44   till I finished, but I wasn't a member of Southern Colliery
45   any more, because it was shut, so I was a State member, and
46   labour hire and contractors, because they're not under the
47   EBA at that mine, can't be a lodge member, but they're

1   a State member. That's where I got those figures from,
2   would have been --
3
4   Q.   Reporting through the board management?
5   A.   Through the board management, yes.
6
7   Q.   And it's reasonable to assume that those figures that
8   were passed on in those meetings were accurate?
9   A.   I believe so, because that's how the union make their
10   money to pay us, is by getting out there and trying to get
11   members.
12
13   Q.   An associated question, which isn't the one you
14   answered in paragraph 90, is what proportion of labour hire
15   workers are members? So you've given us the proportion
16   that's part of the total membership, but would it be right
17   to say that if you went to a labour hire force, for example
18   at Grosvenor mine, where we had the substantial component
19   of the workforce which is of labour hire sourcing, one
20   might find that half of the labour hire force are union
21   members?
22   A.   I couldn't tell you what Grosvenor have got as far as
23   percentage. The percentage we had was how many union
24   members we've got altogether and how many of those are
25   State members, so that was where that came from.
26
27   Q.   So you're not able to help us with those numbers?
28   A.   No.
29
30   Q.   Does the CFMEU or its newly entitled badging have the
31   capacity to survey its members?
32   A.   Yes, we've done some surveys. Done safety surveys,
33   done surveys on women in mining, done surveys on drugs and
34   fatigue.
35
36   Q.   You've told the Board about what you've seen to be
37   some examples of labour hire workers who are more likely to
38   fear for their jobs if they raise safety concerns?
39   A.   Yes.
40
41   Q.   Is that statement the result of any survey that the
42   CFMEU has ever conducted of its membership on that issue?
43   A.   I don't know if they did a survey on that. We did
44   have Professor Walters, I think he was, an Englishman, came
45   out and actually did a survey on safety in mines and
46   interviewed mine workers, the site safety and health reps,
47   ISHRs, a couple of years ago and wrote a report.

1
2   Q.   But you don't recall anything that came out of that
3   work that identified, as a result of any survey of the
4   membership, whether there were concerns held by labour hire
5   workers who were union members about their job security?
6   A.   I think there might have been, but I can't remember
7   exactly.
8
9   Q.   So would it be fair to say, then, that the view that
10   you've expressed about them being likely to fear for their
11   jobs is just a personal perception of yours from having
12   done your job for as long as you have?
13   A.   And from the people that ring me up that ask - that
14   make complaints and ask me. I still got one yesterday.
15   I got a HPI report yesterday. I told them, "Well, check
16   the phone list." But people still ring me up about those
17   matters and then I pass them on to the current ISHRs.
18
19   Q.   I'm quite certain that you've dealt with many concerns
20   expressed over a long period about safety concerns. The
21   one I'm really focused on, though, is whether particular
22   labour hire workers have said to you, "I fear for my job if
23   I am seen to be talking to Greg Dalliston or any other
24   ISHR" or report safety concerns generally?
25   A.   Yes, during inspections, we actually go round, like
26   especially at open-cuts, because it's easier driving
27   around, and we stop at the crib hut and talk to the workers
28   there. And you ask the management person that's with you
29   not to come, so that they can have an open and honest
30   discussion about any safety issues they've got, so they
31   don't know exactly which person it was. And they'll tell
32   you that they don't want their names - they don't want to
33   be seen telling you, but if they're in the crib hut, and
34   they can - as a group - they'll report the safety things to
35   you, but they're worried about their jobs.
36
37   Q.   So they've said to you, "We don't want to be seen
38   talking to you"?
39   A.   They'll talk to me in a group, but as an individual
40   they don't want to be seen talking to me, usually. Some
41   people, not all.
42
43   Q.   The reference that you've given to the fear that's
44   held and also to the reluctance to speak is to do with
45   a one-on-one type discussion between one worker and
46   yourself in your ISHR role?
47   A.   Yes, or when they make a complaint, like I said.

1   They'll ring me up. When the lady made a complaint to me
2   about the survey that Anglo put around about women, she
3   made a complaint. She sent me a copy of the document, but
4   I couldn't tell who she was. She blocked her number on the
5   phone. And then she rang me back a couple of days later to
6   find out what I'd done. I couldn't ring her back.
7
8   Q.   You mentioned the example of people using blocked
9   numbers. Is that the only example that you can recall now,
10   the woman that --
11   A.   No, that's just one. I don't usually answer blocked
12   calls, but I started having to answer blocked calls because
13   there was that many people trying to get hold of me that
14   you didn't know who they were.
15
16   Q.   The union certainly has a very strong view, doesn't
17   it, and has made that view known for a long time, that
18   union members are to identify any safety concerns they have
19   and to report them within the mine?
20   A.   Yes. Anyone should be doing it, not just union
21   members.
22
23   Q.   Quite, but I'm just now focused on what the union has
24   really reinforced to its own membership.
25   A.   Yes.
26
27   Q.   Putting aside anyone else's activity. And certainly
28   the union encourages any of its members to report any
29   safety concerns that they have to the union itself?
30   A.   Yes.
31
32   Q.   And to persons in your position, when you held it, as
33   the ISHR?
34   A.   Yes.
35
36   Q.   And to the SSHRs?
37   A.   Well, we ask them to follow a process, same as the
38   company, that they raise it with their supervisor, they
39   raise it with their site safety and health rep, if they
40   can't get it addressed there, and then raise it with the
41   SSE. But in a lot of cases they won't. They'll raise it
42   with their supervisor, which is usually their deputy, and
43   then next thing will be talking to one of us.
44
45   Q.   So would you accept that certainly since the Moura
46   No. 2 disaster and the inquest and the legislative changes
47   after that, there has been a significant change in the

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 1    attitude that's to be found no coal mines in terms of
 2    identifying and managing risk?
 3    A.   Oh, yes and no.  Just after Moura, like Frank
 4    Windridge put in his report, for the first 10 years
 5    everyone was on the ball and doing everything, but now some
 6    people have dropped the ball a bit, but with the risk
 7    assessments --
 8
 9    Q.   I am being specific now about identifying and
10    reporting safety concerns?
11    A.   Oh, reporting HPIs and stuff?
12
13    Q.   Yes.  Not just HPIs but --
14    A.   Incidents?
15
16    Q.   -- any kind of safety concern that a worker has, they
17    are expected and required by law to report it?
18    A.   Yes.
19
20    Q.   And that's something that, in your experience, usually
21    happens?
22    A.   Yes.  We find out about a few that haven't been
23    reported, but generally I'd say - well, the department and
24    ourselves went out and put a big push on to make
25    companies - that's why the HPIs went up so high.  It wasn't
26    that we were having more, it was that they started
27    reporting better because there was pressure on them to
28    report.  But there's still times when people, if there's
29    a minor incident, won't say anything.
30
31    Q.   It would be fair, wouldn't it, to conclude from what
32    you've told us about people ringing you up with blocked
33    numbers and wanting to remain anonymous, that it would be
34    useful if there was a process in place within a particular
35    mine or a workforce for you to be able to make an anonymous
36    complaint or refer an anonymous concern, or refer a concern
37    anonymously?
38    A.   Yes, it would be useful.  The union used to have
39    a process like that.  We had a hotline thing when
40    John Maitland was in charge and - it just overran us,
41    because people were ringing up complaining about every
42    trivial little thing.  Whereas they should have been
43    addressing some of them and getting them fixed at site,
44    that was a lot better, but if someone didn't like someone,
45    you'd get complaints.  So it could make a lot of work, but
46    people need to be able to make - rather than have anonymous
47    ones, why don't we make a process so they can raise safety
```

1   issues without fear?
2
3   Q.   So that would be the primary goal?
4   A.   Yes.
5
6   Q.   To have it all open and transparent?
7   A.   Yes. If it's anonymous, how do you investigate it?
8
9   Q.   As an accessory to that process, it would be useful to
10   have an anonymous whistleblower-type mechanism?
11   A.   It would be useful if people reported safety issues
12   and there was action taken against those people, for the
13   incident that occurred, that there was a process. And the
14   union actually put one up through the advisory committee,
15   but it never went anywhere, I don't think. If you get
16   investigated for a breach of the legislation, which is
17   mostly what you do if you're a mine worker and you've done
18   something wrong, then you've breached your obligation under
19   section 39, a lot of times the company will get rid of you,
20   but if it's the manager that breaches the obligation, they
21   get a directive or something else.
22
23   I think Glencore started a process, but through the
24   CFMEU there was a flow chart put up about if an
25   investigation is done on a breach of legislation, an
26   alleged breach by a coal mine worker, then inspectors
27   should look at that report and make sure that the
28   investigation was actually done in a fair and valid manner,
29   that there was something there, before action is taken
30   against them, because a worker loses a $100,000, $150,000
31   job, whereas we've had fatalities and stuff, and you go to
32   court and the company doesn't get that much fine.
33
34   Q.   Just finally, one of the things that you mentioned in
35   response to one of Mr Hunter's questions was that there
36   were examples of labour hire persons who were told not to
37   come back to site --
38   A.   Yes.
39
40   Q.   -- and you don't see them again, paraphrasing your
41   answer. The examples that you're thinking of when giving
42   that answer, were they examples where there was some power
43   in the SSE or the mine operator to summarily dismiss people
44   without a disciplinary process?
45   A.   I don't know what the industrial - ISHRs, by the Act,
46   have to be only safety and health, so I don't know what
47   industrial process was in place, but all I know is that

1   I know of at least one deputy that's actually been -
2   a labour hire deputy was told, "Don't come back" by the
3   company, so the company don't want you, whereas if you're
4   a permanent employee, then you've got some processes.
5
6   I don't know what happens when a labour hire person is
7   actually told, "Don't come to site." The labour hire
8   company take whatever action they take when he or she is
9   gone, but as far as being on the site, they're not on the
10   site any more, so they're not working at that mine. That's
11   all we see.
12
13   MR RONEY: Thank you.
14
15   THE CHAIRPERSON: Thank you. Mr Hunter?
16
17   MR HUNTER: I have no further questions.
18
19   THE CHAIRPERSON: Mr Clough?
20
21   MR CLOUGH: Q.   Yes, Mr Dalliston, just a couple of quick
22   ones, and I'm going to try to see if I can't assist in
23   clearing up this audit question. The qualification you
24   did, was that a qualification that fits into the Australian
25   Qualifications Framework?
26   A.   Yes, I got a statement of attainment for it, so it
27   must have been. It was run by Sharon Carvolth who used to
28   run the audits for the department, and all the government
29   inspectors did that same course, whatever that was, because
30   back then, that's how I did it; I did it with the
31   inspectorate. And then I helped one of the inspectors out
32   of Mount Isa who couldn't pass it - I sat with him and
33   groomed him up so he could go back and pass it the next go
34   round.
35
36   Q.   Do you remember the title of the qualification?
37   A.   No, I don't. I could look it up for you.
38
39   Q.   Would it have been lead auditor for occupational
40   health and safety management systems?
41   A.   Yes, that's the second one. There's an auditor, and
42   then there's a lead auditor, and they're different. So,
43   yes, I've got both of those.
44
45   Q.   Is the qualification actually designed to audit the
46   system against the Australian Standard 4801?
47   A.   Yes, because when you do the exam, you have to quote

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1   all the pieces out of the Australian Standard. It's an
2   open-book exam.
3
4   Q.   If an organisation was seeking accreditation against
5   4801, that's the sort of person who would actually do the
6   audit of their safety and health management system?
7   A.   Yes, I believe so.
8
9   Q.   That's my first question. The second question is in
10   regard to first class tickets, and we heard that there have
11   only been two first class tickets issued in Queensland
12   since 2014. I'm not asking you to answer whether you know
13   that or not, that was the evidence that was given.
14   A.   I'm not sure if that's the right number or not, but
15   I know there's a few that sat it and failed it in that
16   period of time. I could give you names, but I won't.
17
18   Q.   We heard evidence earlier on this week that there have
19   been four New South Wales tickets mutually recognised over
20   that same period. It would appear, well, I'm certainly
21   aware, that one of the candidates was actually in
22   Queensland, went to New South Wales, did the ticket and
23   came back and got it mutually recognised. I'm interested
24   in your opinion why somebody would do that.
25   A.   Because the New South Wales process is different to
26   ours - to the board's. I'm not on the board any more.
27   Over the last six to eight years, our Queensland Board of
28   Examiners has actually put a lot of rigour into making sure
29   all our processes are documented, so if we had a challenge,
30   we can show that we've given fair and valid assessment.
31
32   The New South Wales system is a bit easier. The board
33   wrote to the minister, Minister Lynham, and actually asked
34   him to talk to New South Wales about that issue to try and
35   get the processes aligned. MCAC, which is the Australian
36   Mining Competency Advisory Committee, which also has New
37   Zealand sit on it, which I sat on until last June, their
38   job is to try to align the competencies, to make them
39   similar. But the New South Wales process, you can go down
40   and do a written law exam, a part A and a part B, so it's
41   mining and law, and then - so you don't have to have all
42   the rest of your competencies.
43
44   So I know of some people that have gone to New South
45   Wales to get their ticket because they believe it's easier
46   than coming through our process, and that's a concern
47   because they're still managing - the other thing is I got

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 1    a letter from the Board of Examiners thanking me for my
 2    service when I finished, and the chair actually put in
 3    there that he believed that most of the people that are
 4    working in Queensland in the current time would have come
 5    through under the time I was on the board, and I wrote
 6    back, because I was a bit disappointed at that statement
 7    because nearly half the people that sit - that manage mines
 8    in Queensland at the moment I believe don't have
 9    a Queensland ticket.  They've got a mutual recognition of
10    an overseas ticket or a New South Wales ticket.
11
12         To me, that's a concern.  Our oral is four hours, and
13    that's the main part of the assessment.  Even though you've
14    got your competencies, the oral is a four-hour process with
15    three of your peers sitting there, and you get scenarios.
16    So you get a scenario on ventilation and some gas and some
17    strata control, same as if you were at the mine.  You don't
18    just do ventilation and then go and look at gas, it's all
19    together.  So the scenario combines those things to see how
20    you would react to a combination of those units.
21
22         The New South Wales oral - and I believe Mr Sleigh
23    said yesterday sometimes they're only 45 minutes, so they
24    must say g'day to you and say goodbye to you.
25
26         Ours are four hours, and we've had a couple go over
27    four hours.  We've had some complaints that some went for
28    five hours.  But it's a very robust process and there's
29    been a number of people that have failed the first class
30    ticket that are actually working as SSEs in Queensland.  So
31    they've stepped up to the next level and haven't come back
32    to have another go.
33
34    Q.   I think you might have already answered the question
35    in terms of whether or not the first class ticket process
36    in Queensland shouldn't be a written technical paper and an
37    oral.
38    A.   I don't believe so.  I think you should have done your
39    written assessment when you do your units of competency,
40    because - and that's one of the things that's a bit
41    concerning.  Some of the RTOs give you little assignments
42    and stuff, but at level AQF6 you should be able to
43    demonstrate a knowledge, and to do that you have to write
44    a fair bit of stuff, whereas I know I've done half of those
45    units, I've done 6 out of the 10 units, and you don't have
46    to write that much.  So you're not explaining very much in
47    there at all.  Whereas when you have a scenario and a bit
```

1 of pressure on you to make decisions in the oral, I believe
2 that's a better process.
3
4   And it would even be better still - no-one asked me
5 a question on that - Simtars, who have got the virtual
6 reality, if they made that a bit better and spent some
7 industry money into it, like New South Wales have got, we
8 could do our orals in a simulated scenario rather than just
9 asking questions, so that would even be better still.
10
11 MR CLOUGH: Thanks, Mr Dalliston. I have no more
12 questions.
13
14 THE CHAIRPERSON: Mr Dalliston, thank you for your
15 evidence. You are excused.
16
17 **<THE WITNESS WITHDREW**
18
19 THE CHAIRPERSON: We will adjourn until 10 past 12.
20
21 **SHORT ADJOURNMENT**
22
23 MS O'GORMAN: Mr Martin, before I call the next witness,
24 I submit tender list K from 20 August and ask that those
25 documents be entered as exhibits.
26
27 THE CHAIRPERSON: The items listed on this tender list
28 marked K will be admitted into evidence.
29
30 MS O'GORMAN: Mr Martin, I call the next witness,
31 Ben Lewis.
32
33 **<BEN HUDSON LEWIS, affirmed:**   **[12.10pm]**
34
35 **<EXAMINATION BY MS O'GORMAN:**
36
37 MS O'GORMAN: Q.   Mr Lewis, your full name is Ben Hudson
38 Lewis?
39 A.   That's correct.
40
41 Q.   You're the regional director of One Key Resources Pty
42 Ltd?
43 A.   That's correct.
44
45 Q.   You work out of an office here in Brisbane?
46 A.   Yes.
47

1   Q.   You understand that in the course of giving evidence
2   this afternoon, what we're interested in is the nature of
3   the contractual relationship between One Key, on the one
4   hand, and Anglo, as you refer to them, on the other hand,
5   being in particular the Anglo mines at Grosvenor, Grasstree
6   and Moranbah North?
7   A.   Yes.
8
9   Q.   And, flowing on from that contractual relationship,
10   any implications that may arise for workers at those mines?
11   A.   Yes.
12
13   Q.   Yesterday you provided to the Board, didn't you,
14   a 16-page statement?
15   A.   Yes, correct.
16
17   Q.   Mr Operator, can I ask that that statement be put up,
18   please. It's document identification number
19   LBE.001.001.0001. Mr Lewis, that's the first page of the
20   statement that you provided to the Board?
21   A.   Yes, it is.
22
23   Q.   I'm going to take you to some different parts of that
24   statement in an effort to elicit a little bit more detail
25   about the matters that you have given evidence about there
26   and to seek to clarify some of the matters that you've
27   spoken of. Mr Operator, could we go, please, to page 0003.
28   On some of the paragraphs on this page, Mr Lewis, you speak
29   of the employee contracts - that is, the contracts between
30   One Key and various workers - as being either casual
31   contracts, maximum term contracts or permanent contracts.
32   A.   Correct.
33
34   Q.   I want to ask you some questions about the details of
35   those. Might we start, please, with paragraph 21.
36   Mr Operator, is it possible to zoom in to that paragraph?
37   Thank you. Here, I think, Mr Lewis, you're talking about
38   the enterprise agreement as it relates to the maximum term
39   contracts that might be entered into between you and
40   various employees; is that right?
41   A.   Yes.
42
43   Q.   You set out there a number of different entitlements
44   that maximum term employees benefit from.
45   A.   Yes.
46
47   Q.   And in fact it's the case, isn't it, that each of

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 1      those are picked up in your maximum term contracts?
 2      A.   Correct.
 3
 4      Q.   So to be quite clear, an employee who is subject to
 5      a maximum term contract is entitled to paid leave in the
 6      following areas - firstly, annual leave?
 7      A.   Yes.
 8
 9      Q.   Personal or carer's leave?
10      A.   Yes.
11
12      Q.   Compassionate leave?
13      A.   Yes.
14
15      Q.   Long service leave?
16      A.   Yes.
17
18      Q.   Public holiday leave?
19      A.   Yes.
20
21      Q.   Accident pay?
22      A.   Yes.
23
24      Q.   And superannuation?
25      A.   Correct.
26
27      Q.   Can we go up slightly into your statement to
28      paragraph 18.  In particular, I'm interested in the last
29      sentence there.  You say:
30
31          So the fixed term employees at Grosvenor
32          essentially have a tenured job as long as
33          One Key has a contract.
34
35      A.   Yes.
36
37      Q.   What I understand you to mean by that is that the
38      maximum term contracts for your employees are aligned with
39      the contract term that One Key has entered into with
40      Grosvenor?
41      A.   Exactly, yes.
42
43      Q.   So, for example, we know that in recent times there
44      was an extension of the contract between One Key and
45      Grosvenor?
46      A.   Yes.
47
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 1      Q.   For a period of I think two years?
 2      A.   Correct.
 3
 4      Q.   And consequent upon that, One Key either extended or
 5      had its maximum term employees enter into contracts which
 6      reflected that period of time?
 7      A.   Exactly right, yes.
 8
 9      Q.   Can I suggest to you, though, that it's probably not
10      entirely accurate to say that as a result of those maximum
11      term contracts being aligned to the contract period between
12      One Key and Anglo, that those employees are necessarily
13      tenured for that period of time?
14      A.   I'm not sure.  What do you mean, sorry?
15
16      Q.   Let me ask it another way.  Employees who have entered
17      into maximum term contracts with One Key can have those
18      contracts terminated by One Key at any time during the life
19      of that contract with the giving of the requisite notice?
20      A.   Correct.  That's right, yes.
21
22      Q.   So if we can turn to the period of time that must be
23      given or the period of notice that must be given, it's the
24      case, isn't it, that pursuant to those maximum term
25      contracts, if a worker has been employed by One Key for
26      less than one year, their contract can be terminated upon
27      the giving of one week's notice?
28      A.   Correct.
29
30      Q.   That's, of course, subject to the requirement that if
31      that worker is over 45 years of age, they must be given an
32      extra week?
33      A.   That's right, yes.
34
35      Q.   But leaving aside that particular situation, a worker
36      employed for less than one year can have their contract
37      terminated on one week's notice?
38      A.   Yes.
39
40      Q.   At any time during the life of that contract?
41      A.   Correct, yes.
42
43      Q.   If the employee has been working for a period of
44      between one and three years, the notice period is two years
45      [sic]?
46      A.   Two weeks.
47
```

1   Q.   Thank you. And if the employee has been working more
2   than three years but less than five, it's three weeks'
3   notice?
4   A.   That's correct, yes.
5
6   Q.   We know, don't we, that you haven't had employees at
7   Grosvenor mine for a period of five years yet?
8   A.   That's right, yes.
9
10   Q.   So if the contract was to be terminated for an
11   employee at Grosvenor, the period of notice that need be
12   given would be no longer than three weeks' notice?
13   A.   That's right, yes, excluding the 45-year-old age
14   clause, yes.
15
16   Q.   In which case it would become four weeks?
17   A.   Yes.
18
19   Q.   We've talked about, then, the maximum term contracts
20   that are in existence. Can we turn now to the casual
21   contracts, because that's another form of employment
22   arrangement that might be entered into between you and your
23   employees?
24   A.   Yes.
25
26   Q.   Perhaps if we go to paragraph 22, please, Mr Operator,
27   we can see that you've set out there, haven't you,
28   Mr Lewis, the enterprise agreement clauses which are
29   relevant to those who are employed under a casual contract?
30   A.   Yes.
31
32   Q.   In fact it's the case, isn't it, that each of those
33   clauses are picked up in the individual contracts, casual
34   contracts?
35   A.   Correct, yes.
36
37   Q.   Just to be quite particular, it's the case, isn't it,
38   that an employee who is subject to a casual contract is
39   entitled to long service leave?
40   A.   Yes.
41
42   Q.   And accident pay?
43   A.   Correct.
44
45   Q.   And superannuation?
46   A.   Yes.
47

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 1      Q.    But nothing else?
 2      A.    That's correct.
 3
 4      Q.    None of those other categories that we talked about as
 5      applying to those who are subject to a maximum term
 6      contract?
 7      A.    That's right, those other categories of paid leave,
 8      yes.
 9
10      Q.    You might be picking up the distinction here, of
11      course, that those who are subject to a casual contract are
12      entitled to take, for example, sick leave, but that's on an
13      unpaid basis?
14      A.    Correct, yes.
15
16      Q.    So what I am interested in is paid leave entitlements.
17      A.    Right.
18
19      Q.    I think you confirmed for us that they're limited to
20      those three categories that I've discussed with you?
21      A.    Yes, that's right.
22
23      Q.    The long service leave entitlement is an entitlement
24      of 13 weeks' pay, isn't it?
25      A.    I'm not sure off the top of my head, but --
26
27      Q.    All right.  If I was to suggest to you that the
28      contract suggests it is 13 weeks' pay after an aggregate of
29      eight years' service, you would accept that that would be
30      accurate?
31      A.    Yes, yes.
32
33      Q.    And that the accident pay allows for pay which
34      reflects the gap between workers compensation entitlements
35      and the employee's rate of pay?
36      A.    Correct, yes.
37
38      Q.    With respect to those who are subject to a casual
39      contract, their termination is shorter again than that
40      which applies to the maximum term contract, isn't it?
41      A.    Yes.
42
43      Q.    And in fact those employees who are subject to
44      a casual contract can have their employment terminated on
45      one hour's notice?
46      A.    That's correct.
47
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1     Q.    Can we go up, please, to paragraph 17 on page 3.
2     There you spell out the fact that there's a clause in your
3     enterprise agreement that provides for a casual conversion,
4     which means that if a casual employee is deemed a regular
5     casual employee, which means they've been working on
6     a regular basis for the preceding 12 months, they can, upon
7     their request, ask to have that employment converted to
8     either employment on a fixed term basis or as a permanent
9     employee?
10    A.    Correct.
11
12    Q.    That request must be acceded to by One Key?
13    A.    Yes.
14
15    Q.    However, it's up to One Key whether or not the casual
16    employment is converted to permanent employment or
17    employment subject to the maximum term contract?
18    A.    Yes, that's correct.
19
20    Q.    Can I ask you how many employees who started out
21    subject to a casual contract have made that request to move
22    to either permanent employment or employment subject to
23    a maximum term contract?
24    A.    Yes, to the extent of my knowledge, none.
25
26    Q.    No workers?
27    A.    Correct.
28
29    Q.    On that point, you would know, of course, that the
30    clause that we've talked about is contained in clause 8.13
31    of the enterprise agreement?
32    A.    Yes.
33
34    Q.    Do you accept from me that it - that is, that clause -
35    is not picked up and inserted into the casual contract?
36    A.    I don't know off the top of my head, but I will take
37    it from you if that's the case, yes.
38
39    Q.    If you accept from me that that is the case for
40    present purposes, that clause 8.13 is not spelled out
41    anywhere in the casual contract, how is it that one of your
42    employees who is employed under a casual contract would
43    know that they have this ability, after 12 months'
44    employment, to ask to have their employment arrangement
45    converted from casual to permanent or, indeed, maximum
46    term?
47    A.    It's my experience that most of our employees are very
```

1   familiar with the enterprise agreement under which they're
2   engaged, and One Key in particular has had a fair bit of
3   attention around its enterprise agreements recently, so the
4   terms and conditions of the agreement, I would say, are
5   quite widely known by the majority of the workforce.
6
7   Q.   Can I see if I can understand that a bit better.
8   You've mentioned some attention around the enterprise
9   agreement. You're not talking, though, about the current
10   enterprise agreement, the 2018 agreement that we're talking
11   about, are you? You're talking about earlier enterprise
12   agreements?
13   A.   That's correct.
14
15   Q.   I'm just interested in this clause 8.13 in the present
16   enterprise agreement. Are you able to give us any
17   indication of how it is that your employees are aware that
18   they could take advantage of clause 8.13?
19   A.   Apart from outlining that that is the instrument that
20   applies early in the piece in their employment contracts,
21   I don't believe that there's probably any other reference
22   to it in their employment contracts.
23
24   Q.   When you say "outlining early in the piece a reference
25   to the enterprise agreement", you're talking about the fact
26   that at the beginning of the casual contract, there's
27   a glossary of terms?
28   A.   Yes.
29
30   Q.   It's made quite clear, of course, that the contract is
31   supplementary to the enterprise agreement?
32   A.   Yes, that's correct, yes.
33
34   Q.   I'm just interested to know whether, to your
35   knowledge, there's any practical way that an employee
36   reading that contract, unless they went back to the
37   enterprise agreement, would have drawn to their attention
38   that after 12 months' service they could ask to have their
39   employment converted? Is there a practical way?
40   A.   Not that I'm aware of, no, no.
41
42   Q.   So when you say that to your knowledge no-one who is
43   the subject of a casual contract has converted their
44   employment from that sort of arrangement through to
45   a maximum term contract or a permanent employment contract,
46   I take it that you're not able to say whether that's
47   because they knew about that ability and chose not to take

1   it up, or whether they're just not aware of it?
2   A.   That's correct, I'm not able to say on that.
3
4   Q.   Can we go, please, to paragraph 70, because you pick
5   up a little later in your statement some matters relevant
6   to these contracts.
7   A.   Yes.
8
9   Q.   At paragraph 70, you can see there that you confirm
10   the matters that we've been talking about, that is, that
11   your employees might be taken on as either casual, maximum
12   term or permanent employees?
13   A.   Yes.
14
15   Q.   You say there that the categories of employment that
16   your employees might enter into are dependent on the
17   requirements for those sites at a particular point in time
18   as well as taking into consideration the worker's
19   preference and the demand in the market. I'm just
20   interested to understand precisely what that means in real
21   terms. I can see that the first one would necessarily be
22   whether or not one of the mines says to your organisation,
23   "Look, we want you to fill the manning schedule with casual
24   employees or with maximum term employees." Do I have that
25   right?
26   A.   No, no. What I'm referring to there is the
27   requirements of the vacancies. I think a little bit
28   earlier in the statement there, that relates to the typical
29   tenure of the vacancy that might be available, if it's
30   anticipated to be a long-term vacancy or something that's
31   more short term in nature.
32
33   Q.   I understand. So it won't be that the mine specifies
34   which type, but more so the duration of the work required
35   to be done?
36   A.   Of the opportunity, yes.
37
38   Q.   The second one you say is that you take into
39   consideration the worker's preference. Can I ask you
40   whether, to your knowledge, anyone who is currently subject
41   to a casual contract wants to be on a casual contract?
42   A.   I can't say definitively about that, because some
43   vacancies were only offered as a casual vacancy. But if
44   there is a longer-term vacancy available, it's no concern
45   for me, really, whether it's filled on a casual basis or
46   a fixed term basis, and the differentiator in that is the
47   rate of pay.

1
2   As you mentioned before, the different entitlements
3   for paid leave and other things for the different
4   categories of employees - the casuals get a 25 per cent
5   premium, if you will, in their rate of pay to cover for
6   some of those things, and that is often a distinguishing
7   factor for potential employees. It's the same job, and one
8   rate of pay is higher than the other, depending on the type
9   of engagement.
10
11   Q.   Are you able to say what proportion of vacancies
12   notified to you by one of the Anglo mines is long-term
13   vacancy versus short-term?
14   A.   I can't say definitively, but it does change over time
15   and obviously through cycles in the market. When we
16   extended the contract period, obviously an opportunity for
17   anybody that wanted to go from a casual basis to a fixed
18   term basis was available, and I'm not sure how many took
19   that up, but it wasn't many because of that.
20
21   Q.   How was that communicated to your casual workforce?
22   A.   There was extensive correspondence sent out around
23   what was happening, and we went through quite a structured
24   process in terms of that extension and therefore the
25   relevant administration around contracts that needed to
26   occur because of it.
27
28   Q.   So are you saying that what happened was that once
29   One Key was notified that your contract with Anglo was
30   being extended for two years, you specifically told your
31   workforce, and specifically your casual workforce, that
32   they could at that point in time elect to have their
33   employment converted to a maximum term contract?
34   A.   Yes.
35
36   Q.   Finally, in that paragraph, you talk about one of the
37   variabilities being the demand in the market. Can you just
38   explain to us how that might factor in to the equation?
39   A.   Sure. I just referenced then the cycles in the
40   market.
41
42   Q.   Yes.
43   A.   We've had - and this isn't necessarily specific only
44   to these mines that we're talking about here but across the
45   mining industry in Queensland in particular. As the market
46   fluctuates, that worker's preference for which one they go
47   on sometimes moves one way or another, depending on the

---

1   state of the market. So if there's a boom on, if you will,
2   and people are quite sure that their jobs will be open for
3   a long time, they'll take the casual option with the higher
4   rate of pay over the fixed term option, and vice versa when
5   the market sort of goes the other way.
6
7   Q.   I suppose in a related way to the questions I've just
8   been asking you, do you know whether any employees have
9   gone from being One Key employees to direct employees of
10   Anglo at any of the three mines that we're interested in?
11   A.   Yes. Yes, I can't tell you exact numbers, but, yes,
12   that's not an uncommon occurrence.
13
14   Q.   How does that come about?
15   A.   My understanding is that vacancies in the mine owner's
16   own permanent workforce become available from time to time,
17   and those vacancies are known to the workforce and they go
18   through the normal application process that the owner
19   operator of the mine would have, and because they're
20   experienced on site, they know the site processes and
21   things like that, they often get those roles.
22
23   Q.   Are you able to say, for example, how many went from
24   being a One Key employee last year to being a direct
25   employee of Anglo?
26   A.   I can't off the top of my head, but we would be able
27   to get that information. We track that in our database.
28
29   Q.   Finally, in relation to your contracts, whether
30   they're casual contracts or the maximum term contracts that
31   we've been talking about, are you able to say whether those
32   contracts are fairly standard across the industry or
33   whether they're unique in some way to One Key?
34   A.   I'm not able to say. I don't get great visibility
35   over other providers' contracts. I will say that we've
36   sought legal counsel and advice on the structure of those
37   to make sure that they're fit and proper for use. I can't
38   comment on other people's contracts.
39
40   Q.   I understand. I want to turn now to the manning
41   schedule that you get issued with by Anglo. To orient us,
42   we might go to page 5 of Mr Lewis's statement, please,
43   Mr Operator, and perhaps in particular to about
44   paragraph 31.
45
46   Before I take you specifically to that paragraph,
47   Mr Lewis, do I understand from your statement generally

1   that what happens is that Anglo provides One Key with
2   a manning schedule, which sets out the number of roles
3   required to be filled, the types of qualifications that
4   need to be held by those put forward in those sorts of
5   roles, and perhaps the length of work or length of time
6   that that role is anticipated to be required at one of the
7   mines? Is that the sort of thing you're asked to do?
8   A.   Yes, correct, yes.

10   Q.   I take it from your statement that that's a live
11   document, that's something that just evolves over time; you
12   don't get given different manning schedules at different
13   times?
14   A.   That's correct, yes.

16   Q.   Let's go to paragraph 31, then, please, because you
17   talk about the fact that at Grosvenor, where we know you
18   supply the vast majority of the workforce underneath deputy
19   level, One Key, you say, provides a float of surplus staff?
20   A.   Yes.

22   Q.   You talk about that float of surplus staff being in
23   the order of 8 to 10 per cent over and above what Anglo
24   needs at any one point in time at that mine?
25   A.   Correct.

27   Q.   I'm just interested to understand what happens to that
28   float.
29   A.   Yes.

31   Q.   What are they doing if not deployed at Anglo?
32   A.   Just for clarity, the manning schedule that we're
33   provided outlines the skills that are required and the
34   numbers and those sorts of things for every shift. Given
35   that our workforce is extensive at Grosvenor and there are
36   people that, for instance, are fixed term and can take
37   leave, and obviously people get sick and there's normal
38   natural attrition and things like that, there is always an
39   element of absenteeism or unavailability for that manning
40   schedule.

42   For instance, if it's 400 workers, we would never be
43   able to fill 400 on any given day, because people would be
44   unavailable for whatever reason, so we do need to carry
45   that float so that 400 shifts, if you will, are filled each
46   and every day. That's why we have that little bit of float
47   to account for unavailability or natural attrition or a gap

1   in the manning somewhere.
2
3   Q.   But if you have a certain number of the full
4   complement deployed at Anglo, would that mean that you do
5   necessarily have left over 8 to 10 per cent of that number
6   who you have on your books but are not presently deployed?
7   Is that how it works?
8   A.   Yes, but it's on a day-by-day basis. So people are on
9   leave, they advise us they're going to take two weeks'
10   leave off. We use those float, if you will, to backfill
11   those gaps. There are always, you know, people away and
12   absentees to ensure that that float element is working. So
13   there's not people sitting at home, so to speak, waiting to
14   be called up. There's not that.
15
16   Q.   You say at paragraph 34, and we've already made
17   reference to this, that the manning schedule is a living
18   document that is regularly updated?
19   A.   Yes.
20
21   Q.   As I understand it, One Key has had employees at
22   Grosvenor for a period approaching five years; is that
23   correct?
24   A.   Yes.
25
26   Q.   Presumably over that time there have been ebbs and
27   flows in the number of workers that Anglo has required you,
28   One Key, to supply to it?
29   A.   Yes.
30
31   Q.   When those numbers go up, I anticipate from what
32   you've said in your statement that you access your database
33   or you put out a call perhaps for people who are interested
34   to fill the vacancies that you have available; is that
35   correct?
36   A.   Correct, yes.
37
38   Q.   What happens when the numbers go down?
39   A.   When the numbers go down, obviously it's a sensitive
40   situation and we work closely with the client to understand
41   the timing of that and the exact numbers of that so that we
42   can manage the workforce and the manning schedule
43   accordingly. When it goes down, we have had to downsize
44   the workforce sometimes to match that current demand. And
45   that element that have been downsized, for whatever
46   reason - we endeavour to find work for them elsewhere.
47   That is not always possible, but we do do that in terms of

1 keeping them engaged with One Key. We can potentially put
2 them to other clients and things like that.
3
4 Q.   If we can leave that end of the process to one side
5 for the moment.
6 A.   Yes.
7
8 Q.   I'm interested to get an understanding from you as to
9 how often over the last five-year period, or a little less
10 than five-year period, you've been notified by Anglo that
11 you need to downsize the workforce that you are supplying
12 to Anglo?
13 A.   From my recollection, there would be two probably
14 significant events where we've had to downsize in numbers
15 more than one or two. It's been, yes, one or two events
16 over that period that relate to mine procedures, production
17 levels and things like that.
18
19 Q.   Yes, I understand. We've heard evidence so far in
20 this hearing that there are going to be times when
21 production ramps up and times when production is slower,
22 and we understand the ebbs and flows. Can you help us,
23 though, to understand, when you say "two significant
24 events", the sorts of numbers that are involved?
25 A.   From my recollection, they're probably in the volume
26 of about 20 to 40, depending on the circumstances, or the
27 two events I'm talking about there. One was closer to 20
28 and one was closer to 40.
29
30 Q.   Are you able to say on both of those occasions how
31 much notice you were given by Anglo that you could
32 therefore pass on to your own employees?
33 A.   Not off the top of my head, but I know it wasn't
34 instantaneous, so there was an element, but I don't
35 remember off the top of my head.
36
37 Q.   Are you able to be any more precise? I appreciate
38 you're saying you don't know off the top of your head any
39 more precise than not instantaneous. Would it have been
40 months?
41 A.   No. It would be weeks, a couple of weeks, perhaps.
42
43 Q.   How would you, then, go about making the decision as
44 to which of the 20 or 40, or whatever the precise number
45 was, of your workforce would be deployed from the site?
46 A.   Yes. There's two main factors that are involved in
47 that. One is the nature of the downsizing, so the

1   department, for instance, if they're stopping development -
2   well, we're going to have to take from the development
3   crew, not from somewhere else in the mine.
4
5   The second part of that is we do periodical
6   performance reviews on our employees, and the process that
7   we go through there would be review what manning we've got
8   and if anyone has had performance issues or anything else,
9   we would probably look to keep our more experienced, more
10 professional employees in our workforce. So we look to use
11 that as a tool as well.
12
13 Q.   You've said, to your memory, there are two significant
14 events that you can recall. Are you able to give us an
15 idea of what years they occurred?
16 A.   It's from memory alone. I believe it would have
17 been - 2018, I believe, was probably the most significant
18 one. That was a change to the development plan, so we had
19 to remove about 40, I think it was, development operators.
20
21 Q.   And the other one that you spoke of --
22 A.   It was before that. I can't remember exactly, I'm
23 sorry.
24
25 Q.   Your workers, presumably, not least because some of
26 them have been there for a number of years, are aware that
27 from time to time Anglo might reduce the number of roles
28 that they require you to fill?
29 A.   Yes.
30
31 Q.   When you're making the decision as to the workers that
32 you do stand down on an occasion like that, does whether or
33 not those workers are subject to a casual contract as
34 opposed to a maximum term contract feature into your
35 decision-making process at all?
36 A.   Depending on the nature of the role and how long term
37 the stand-down, if you use that term, might be for. If
38 it's open ended, no, it probably wouldn't. If it was
39 a temporary-type arrangement, well, yes, we might look at
40 the casual pool first, given that that's the nature of
41 casual, to remove them and then bring them back perhaps at
42 a later stage.
43
44 Q.   You've talked about these two significant events. In
45 relation to those ones, were you as One Key notified
46 whether they were going to be temporary events or more
47 open-ended events?

1   A.   Yes, yes.
2
3   Q.   And what were they in each case?
4   A.   They were for the foreseeable future.
5
6   Q.   You did mention as a separate category to those two
7   significant events that from time to time there might also
8   be a lowering of requirement of numbers by, I think you
9   said, just one or two?
10   A.   Yes.
11
12   Q.   How frequently does that happen?
13   A.   Not that often. The scenario I'm thinking about there
14   is when some of our people may have been filling gaps that
15   sit in the Anglo permanent manning, and they haven't got
16   round to, for whatever reason, filling those gaps, and then
17   they do and our person isn't successful in getting that;
18   it's filled by a permanent role, and then that would be one
19   or two people at a time may --
20
21   Q.   On those occasions, does whether or not a worker is
22   subject to a casual contract or a maximum term contract
23   feature into your decision-making process about which one
24   to let go?
25   A.   I can't comment on that. I don't know. Because it's
26   so specific to the skill, you know, if there was lots of
27   people in the role, it may do. If it was one specific -
28   you know, a specific role, specialist role, if you will,
29   there might only be one person to pick from.
30
31   Q.   You - that is, One Key - do employ permanent
32   employees, don't you?
33   A.   Yes.
34
35   Q.   Do I understand that none of those permanent employees
36   are deployed at any of the Anglo mines?
37   A.   Yes, that's correct.
38
39   Q.   Why is that?
40   A.   In order for us to employ permanent employees and
41   onhire them to clients, we need to have commercial
42   arrangements in place where our client accepts the
43   additional cost and obligation that comes with hiring
44   a permanent worker. We don't have that in a lot of
45   circumstances, but we do have some clients that have that.
46
47   Q.   But not Anglo?

```
 1        A.    Correct.
 2
 3        Q.    I want to move now to ask you some questions about
 4        monitoring of your workers' compliance with Anglo's SHE
 5        requirements at the three mines.
 6        A.    Yes.
 7
 8        Q.    To do that, we might turn, please, Mr Operator, to
 9        page 0008.  Here, Mr Lewis, you can see about a third of
10        the way down you commence providing us with some
11        information about the training of One Key workers and touch
12        on the fact that your employees deployed at an Anglo mine
13        must comply with Anglo's policies and procedures and, in
14        particular, the SHE requirements?
15        A.    Yes.
16
17        Q.    The safety, health and environment requirements
18        subject to all of the workers at Anglo?
19        A.    Yes, that's right.
20
21        Q.    As I understand it from your statement, it's accepted
22        as between Anglo and One Key that it's Anglo who holds the
23        responsibility for training One Key employees in those SHE
24        requirements?
25        A.    That's correct.
26
27        Q.    And also Anglo who has the responsibility for
28        monitoring that compliance?
29        A.    Yes.
30
31        Q.    That being the case, I'm just interested to understand
32        paragraph 60, if we could perhaps zoom in on that,
33        Mr Operator.  There you say that there is a reporting
34        process in place between you and Anglo which includes the
35        exchange of information so that One Key can ensure that the
36        workers continue to comply with the requirements, policies
37        and standards at the relevant site.
38        A.    Yes.
39
40        Q.    Given what you've just told us about it being Anglo's
41        obligation to ensure compliance and to monitor that
42        compliance, what are you referring to there?
43        A.    It is Anglo's responsibility to monitor and ensure
44        that compliance.  However, One Key, as the mine workers'
45        employer, are responsible for some of the tickets and
46        inductions and medicals, and things like that, for our
47        employees.  What I'm referring to there is if, for
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1   instance, someone is coming up close to their medical
2   renewal date, it's our responsibility to ensure that they
3   get that, and we pay for that. So we get appropriate
4   notice, and we will be in contact with the employee and go
5   about organising a refresher for the medical.
6
7   Q.   So you're not saying there in paragraph 60 that
8   One Key accepts any responsibility for ensuring One Key's
9   employees' compliance with Anglo's SHE requirements or
10   policies or procedures on site?
11   A.   That's correct, yes, I'm not saying that. It's more
12   of a - working in complementary to help and aid that
13   occurring.
14
15   Q.   In paragraph 64, at the bottom of that page and over
16   to the top of the next, you make reference to the fact that
17   you've been asked to indicate whether or not Anglo has
18   audited One Key to ensure that One Key has complied with
19   Anglo's SHE requirements. You make reference there to an
20   audit occurring in December 2019.
21   A.   Yes.
22
23   Q.   Can you give us an idea of how frequently those audits
24   occur?
25   A.   They occur from time to time. It's not a structured
26   time frame, but they do occur, on average, every year or
27   so.
28
29   Q.   Just a little further down that page at paragraph 66,
30   you make reference to a Site Safety Audit.
31   A.   Yes.
32
33   Q.   You say that site safety audits are conducted
34   annually.
35   A.   Yes.
36
37   Q.   That's an audit process that sees a One Key
38   representative go out to the site - let's pick Grosvenor as
39   an example - go out to Grosvenor and do an audit to ensure
40   the safety of the site; is that correct?
41   A.   Yes, that's correct.
42
43   Q.   Mr Operator, could we keep that on the screen but also
44   bring up, please, the document with the identification
45   number OKR.003.017.0001. Can we see there, Mr Lewis, the
46   Site Safety Audit document that you attached to your
47   statement?

1   A.   Yes.
2
3   Q.   Let's go through this, because I think it might help
4   us to get a bit of an appreciation of what's involved in
5   a Site Safety Audit, as described in your statement.
6   A.   Yes.
7
8   Q.   Can we see that this is a Site Safety Audit done at
9   Grosvenor on 20 January 2020?
10   A.   Yes, that's correct.
11
12   Q.   You say that these are done annually. I presume
13   annually at each mine?
14   A.   Yes.
15
16   Q.   Off to the right-hand side of the row that contains
17   the date is a place for entry of the time that the audit
18   was conducted. It's blank here, but are you able to give
19   us an indication of how long this audit took?
20   A.   It will occur over several hours on site. In this
21   instance, Rachael, our safety manager, went to site and
22   went through this across the course of a day on site up at
23   Grosvenor.
24
25   Q.   If we could go down, please, to the box labelled
26   "3. HSEQ Management System", please, Mr Operator, and if we
27   could zoom in on that box, so Mr Lewis can see the writing.
28   The first question asked there is:
29
30   *Is there a documented Site Specific*
31   *HES/WHS/OHS Management Plan? Structure?*
32
33   A.   Yes.
34
35   Q.   Obviously Rachael Small has indicated that, yes, there
36   was.
37   A.   Yes.
38
39   Q.   Can I ask you to explain to us, please, how someone in
40   Rachael's position goes about, firstly, identifying that
41   there is a documented plan of that nature and assessing
42   that?
43   A.   Yes. In the instance of coal mines in Queensland,
44   there is obviously a HSE management plan and system in
45   place. This document is one that we use for all our
46   clients in all jurisdictions. So in the case of a coal
47   mine operator in Queensland, I think certainly in the

1   company now, it's well known that there obviously is one,
2   and it's spoken about often and documented everywhere. In
3   terms of identifying is there one, it's probably a pretty
4   easy question to answer in the case of coal mines in
5   Queensland.
6
7   Q.   If we go down to the next question, the question is:
8
9   *Does the plan document specific HSE*
10   *responsibilities?*
11
12   Again, the answer given is "yes".
13   A.   Yes.
14
15   Q.   Are you able to tell us - and perhaps I should check,
16   do you have first-hand knowledge of how these site safety
17   audits are completed?
18   A.   No, I haven't done one myself in many years and not
19   with One Key, so, no, I haven't.
20
21   Q.   It may be that you can't answer the question, then,
22   and I certainly don't want you to be guessing or
23   anticipating what might happen in best practice. Are you
24   able to tell us in what level of detail someone like
25   Ms Small would go through the document in place at the
26   mine?
27   A.   No, not to outline any level of detail, no.
28
29   Q.   Again, if we go down to box 4 - and it may be that the
30   answer simply is that you don't know, given what you've
31   told us about your lack of personal experience of these
32   audits, but you can see there that the second question
33   asked in that section is:
34
35   *Is there a documented method of reporting*
36   *HSE issues or hazards on site? Is this*
37   *communicated to all workers?*
38
39   Obviously we can all see that the answer has been checked
40   off as being "yes".
41   A.   Mmm-hmm.
42
43   Q.   Is it the case that you're not able to say how that
44   was looked at, whether it was assessed in detail, whether
45   a copy was kept on file, that kind of thing?
46   A.   Yes, I'm not able to say in detail what happened
47   there.

1
2   Q.   If we go over to the next page, please, Mr Operator,
3   page 0002, there is a question in the box labelled
4   "5. One Key Staff", which asks:
5
6   *Are any foreseeable operational changes*
7   *likely to occur on site that are likely to*
8   *affect the One Key workforce in the next*
9   *12 months?*
10
11   A.   Mmm-hmm.
12
13   Q.   Obviously the answer at that point in time, that is
14   January of this year, was "no". As we know, the events of
15   6 May 2020 at Grosvenor did in fact trigger an operational
16   change of a significant nature.
17   A.   Yes.
18
19   Q.   Are you able to give us some idea of what that
20   operational change at Grosvenor has meant for your
21   workforce: are they still there; what jobs are they doing;
22   have any of them been asked to stand down, that kind of
23   thing.
24   A.   Yes, certainly. Obviously with the exception of the
25   injured workers, who have been receiving treatment, the
26   rest of the - the bulk of the workforce have gone through
27   a number of different phases since that time. Obviously
28   there was a lot of restrictions imposed immediately post
29   the incident around who could and couldn't go to site and
30   whether there was work to be done and things like that.
31
32   But all of our workforce are still engaged and
33   deployed to site, although over the period of the months
34   since the incident there has been occasion where sometimes
35   they've just been paid to stay at home, and that has been
36   reached obviously through a commercial agreement between us
37   and Anglo, and that was Anglo's intent, to ensure that they
38   still got paid and things like that.
39
40   More recently, there has been a graduated return to
41   site, if I can call it that, as various restrictions and
42   work tasks were moved around on site, and we've now got
43   a situation where the majority of the workforce is rotating
44   back to site on a systematic basis. They're not
45   necessarily performing their normal week-on, week-off
46   roster, but they might go week on on site, week off, then
47   a week at home being paid, then a week off and then go back

1   the following week for their cycle. They're trying to
2   rotate everybody through so that they remain engaged and
3   familiar with what's happening at site and kept in the
4   group of their co-workers and things like that.
5
6   Q.   So do I understand from that answer that all of the
7   workers who were deployed at Grosvenor prior to 6 May are
8   still being paid, regardless of whether they're actually
9   there on site doing work or at home, the same as they were
10   prior to 6 May?
11   A.   Yes, that's right.
12
13   Q.   As of today, what's your workforce's understanding as
14   to how long that arrangement is going to continue?
15   A.   At this stage, it's for the foreseeable future.
16   That's what we've been advised by Anglo, and that's what
17   Anglo has advised the workforce through toolbox talks and
18   the like, and that's where we know it to be at this stage.
19
20   Q.   Nothing more definitive than that, I take it - than
21   for the foreseeable future?
22   A.   Yes, that's right.
23
24   Q.   You're not in a position to have given your workers,
25   up until today's date, any guarantee as to how long their
26   employment at Anglo will continue?
27   A.   That's right.
28
29   Q.   Are you having workers approach you - and I don't
30   necessarily mean you personally, but approach One Key - on
31   a fairly regular basis asking what's happening or how
32   secure their jobs are?
33   A.   It has been asked. It's probably on an infrequent
34   basis, because the communication coming through site
35   leadership, Anglo's leadership team, on those return to
36   work meetings and toolbox talks is comprehensive, so
37   they're fully aware of what the current state of play is.
38
39   MS O'GORMAN: Mr Martin, I am aware of the time. I still
40   have a little bit longer to go.
41
42   THE CHAIRPERSON: Is everyone happy to sit on until 1.15
43   at least? Any difficulty there? We'll go on until then.
44   Thank you.
45
46   MS O'GORMAN: Thank you.
47

1   Q.   Can we turn, then, please, Mr Lewis, to paragraph 74
2   of your statement, which is still on the screen, but
3   perhaps we might be able to make it a little larger for
4   you. There, you indicate that for the purpose of
5   completing your statement, you have been asked to consider
6   the culture around the sorts of arrangements that One Key
7   enters into to supply labour.
8   A.   Yes.

10   Q.   I'm interested in particular in your next sentence
11   there. We can see that you say that in your experience:

13   *... One Key employees at the 3 ... mines*
14   *are not treated less favourably in the*
15   *mine, or treated differently, or as some*
16   *kind of second class citizen or inferior*
17   *workers in the workplace.*

19   A.   Yes.

21   Q.   I'm just interested to understand the source of your
22   belief about that? How do you know?
23   A.   Yes. I attend sites on a regular basis, for all sorts
24   of reasons, and I obviously engage with the workforce
25   whenever I go to site and get that feedback both from our
26   workforce as well as just through anecdotal evidence that
27   I see through our onsite workforce managers, other people
28   within my business, other staff within my business, and
29   obviously feedback from the client as well. It's very
30   much, if I can use the phrase, one team. That's what
31   everyone's sort of - that's the culture, one team on site.

33   Q.   So, as I understand it, it's your observation from
34   when you personally attend at the mine as well as your
35   client's, that is Anglo's, feedback of information to
36   you --
37   A.   Yes.

39   Q.   -- that you're basing that observation on?
40   A.   Yes, as well as feedback from my workers in place at
41   those sites, One Key workers.

43   Q.   In terms of feedback from your workers, do you ever
44   get told by any of your employees that they're concerned
45   that they're not treated as well as direct employees?
46   A.   It has happened. It's not to my recollection on Anglo
47   sites. It has happened on other sites from time to time,

1   yes.
2
3   Q.   What happens in a case like that? If one of your
4   workforce comes to you and makes a complaint along those
5   lines, what does One Key do in response?
6   A.   Depending who it comes to, obviously. If it was to
7   come to me, I would raise that with our account managers,
8   first of all, and check if they'd heard that through other
9   channels or could confirm that or not, and I would also
10   raise it with our clients when we go through our periodic
11   reviews, ie, monthly reviews. I would raise that that
12   statement had come up and look to strategise around how we
13   could either look deeper into that or take action to
14   counter that.
15
16   Q.   If someone did make a lot of complaints to you about
17   the site that they had been deployed to, make themselves
18   a squeaky wheel, as it were, is there a risk that having
19   made themselves the squeaky wheel, when it comes time to
20   downsize the number of workers needed at the site they
21   might be one of the first to be considered to be let go?
22   A.   That's not my experience, and I'll just qualify.
23   Certainly if there is any feedback or concern raised about
24   any safety issue whatsoever, or hazard, it's the direct
25   opposite of that. That's actually actively encouraged and
26   promoted, to ensure that we've got a good feel for what's
27   happening on site and obviously everyone's meeting their
28   obligations.
29
30   Q.   I haven't turned yet to complaints about safety
31   matters.
32   A.   Right.
33
34   Q.   I'm talking about more general complaints that might
35   be made, and my question was whether you think that there
36   is a risk that a worker who makes complaints puts
37   themselves in a position where they might be considered one
38   of the first to be let go in those unfortunate
39   circumstances where a site requires less numbers than
40   previously?
41   A.   That's not my experience, and I would hope that
42   doesn't occur throughout the business, because, well, it's
43   not - I don't think it's right. Yes.
44
45   Q.   Can we turn, then, to workers raising safety concerns
46   in particular.
47   A.   Sure.

1
2   Q.   Mr Operator, if we could go over to page 0010, could
3   I ask you please to zoom in to paragraph 81. There,
4   Mr Lewis, you can see that you have been asked to comment
5   on the issue of the bonus arrangements in place at the
6   various mines - and here in this paragraph, we're talking
7   about Grosvenor in particular, just so that you know -
8   whether or not bonus arrangements involve some kind of
9   penalisation of workers who raise safety concerns, and you
10   indicate that you're not aware of anything like that
11   occurring?
12   A.   Yes.
13
14   Q.   What I'm interested in is your next sentence, where
15   you say that there has been no experience that you have
16   encountered of One Key workers not raising concerns because
17   of any perceived risk of the payment of bonuses.
18   A.   Yes.
19
20   Q.   Can I preface the next series of questions by telling
21   you that we've heard evidence in these hearings from Anglo
22   personnel who have acknowledged that there is a perception,
23   unquantifiable, perhaps, but a perception in the industry
24   generally, that there might be a risk of a worker raising
25   safety concerns jeopardising their job if they're not
26   a permanent employee. Do you understand what I'm
27   indicating to you?
28   A.   Yes. Yes.
29
30   Q.   What you've said there in that sentence is that it has
31   not been your experience that One Key workers have not
32   raised safety concerns because of any such perceived risk.
33   My question is: how would you know? Can you give us an
34   indication of how you would know if that was occurring?
35   A.   So I wouldn't know if they're not raising them.
36
37   Q.   Yes.
38   A.   But what I do know is that, you know, the vast
39   majority of our workforce - and I'll quantify that by
40   saying certainly the workforce at Grosvenor - is, in my
41   experience, very vocal about raising any concerns at all,
42   be they safety or otherwise. We have regular opportunity
43   to engage with them, both my onsite workforce manager but
44   myself included when I visit site, and there is no shying
45   away of asking any questions or raising any concerns that
46   they may have about anything.
47

1   Q.   But can I ask you this - and it might be that you
2   can't advance it any further than the answer you've already
3   given: on the one hand, you might know the concerns that
4   are being vocalised, they might be brought to your
5   attention; it's the case, though, isn't it, that you have
6   no way of assessing the concerns that aren't being
7   vocalised, purely by virtue of the fact that they're not
8   being vocalised?
9   A.   That's right, yes.
10
11   Q.   So when you say that, in your experience, you haven't
12   encountered One Key workers not raising safety concerns, is
13   it perhaps more accurate to say that you have personal
14   experience of One Key workers raising safety concerns on
15   occasion, but you have no idea how many One Key workers
16   hold safety concerns that are not raised?
17   A.   That would be fair.
18
19   Q.   All right, thank you. Just on the issue of safety
20   concerns, if we could go, please, to paragraph 82, at the
21   bottom of that page, and over to the top of the next, I'm
22   really interested in the last sentence, but just for
23   context, Mr Lewis, have a read of the whole paragraph,
24   please.
25   A.   Mmm-hmm.
26
27   Q.   You talk about monthly client reviews which occur
28   between One Key and Anglo?
29   A.   Yes.
30
31   Q.   To identify, amongst other things, whether there have
32   been any safety non-compliances and the circumstances of
33   those.
34   A.   Yes.
35
36   Q.   And your last sentence there says:
37
38   *My review of those monthly records suggests*
39   *that there is no evidence of a failure by*
40   *One Key or its workers to report safety*
41   *concerns.*
42
43   A.   Yes.
44
45   Q.   My question around this sentence is probably the same
46   as in paragraph 81: you wouldn't know from reviewing the
47   records, would you, if there had been a failure to raise

1   concerns, because by the very nature of the fact that there
2   had been a failure to raise concerns, they won't be in the
3   records; is that correct?
4   A.   Yes, that's correct to an extent. Probably the
5   qualifier around this, and why I said that, is it's within
6   the client reviews. Part of those reviews is we put
7   forward our known safety events and concerns, and we
8   cross-reference that with the Anglo system that they've
9   captured. So if there were events or concerns raised by
10   somebody else, that would be captured and there would be
11   a disparity between the two sets of data. I haven't seen
12   that in my review of those records. They're very closely
13   aligned all the time.

15   Q.   Finally on this topic, if we could go to paragraph 83,
16   you indicate there that you don't believe that there's any
17   reason to think that there would be any reluctance of
18   One Key workers to report safety concerns.
19   A.   That's right.

21   Q.   That seems on the face of it a fairly confident and
22   bald statement to make. Do you want to give any
23   qualification to that at all?
24   A.   Yes. Yes, sure. The thinking behind that is that the
25   two sites we're talking about there, One Key is well known
26   on site, obviously, we're well aligned with the client,
27   we've got relatively long tenure of contracts, we've got
28   good presence, certainly on Grosvenor on a daily basis, and
29   there's many, many indicators around positively reinforcing
30   reporting as well as reminding people to report and raise
31   safety concerns and all those sorts of things.

33   So there has been no demonstrated event that the
34   workforce, if you will, could point to and say, "Oh, that's
35   why I'm not doing it." So in the absence of no event to
36   say why they wouldn't report and the positive and
37   reinforced culture of positively reporting and, you know,
38   making positive example of that, that's why I make that
39   statement.

41   Q.   I can think of two hypothetical reasons why it might
42   be that there would be a reluctance on the part of
43   a One Key worker to report safety concerns. I'm interested
44   in your view about the validity of either of these.
45   A.   Yes.

47   Q.   What if, for example, a One Key worker sees another

1   One Key worker engaged in an unsafe practice. Can you
2   conceive that that One Key worker might have a reluctance
3   to raise that as a safety concern, knowing that it may well
4   be that if they've dobbed on their mate for engaging in an
5   unsafe practice who's a casual employee, that person might
6   just be terminated?
7   A.   That's a possibility. I would suggest that the flip
8   side of that is if somebody witnessed someone doing an
9   unsafe event or an unsafe activity or performing work in an
10   unsafe manner, they themselves are at risk and, if that was
11   me, I would report that for my own safety, not to mention
12   the legislative obligation to report all safety matters
13   like that. So it is a possibility, but I think it's
14   outweighed by the counter position of it.
15
16   Q.   Certainly you would hope it would be outweighed by
17   that counter position?
18   A.   Yes.
19
20   Q.   What about the example we spoke of earlier of two
21   significant events occurring where One Key workers deployed
22   at the particular mine - I take it you were talking about
23   Grosvenor on those two occasions?
24   A.   Yes.
25
26   Q.   Are then demobilised to an extent, the workforce is
27   demobilised to an extent. What if an event like that has
28   just occurred and workers don't know whether there's going
29   to be further downsizing. Can you perceive of a risk that,
30   in those circumstances, a One Key worker might have
31   a reluctance to raise safety concerns, knowing that next
32   time round it might mean, whether they're right or wrong,
33   that they're closer in line to the chopping board?
34   A.   Rightly or wrongly, it could be a perception. But,
35   again, the way in which safety is treated at all our sites
36   and by us, and frankly everybody, is that it is of such an
37   importance and significance that it is separate to
38   operational matters, and in fact some of those instances
39   that you spoke about before, where our One Key workers may
40   end up being ultimately engaged in a permanent job at the
41   mine, some of the background checks and some of the
42   information that is requested of us is how much safety
43   reporting have they done? What's their safety culture
44   like? On a positive slant. And that will end up bringing
45   them into that role, for positive reinforcement, I suppose,
46   of reporting culture.
47

1 Q.   On that note, at paragraph 93, over on page 0012, you
2 indicate that, in your experience, One Key workers are
3 proactive in raising safety concerns, and of course you've
4 already made mention of that a little while ago.
5 A.   Yes.
6
7 Q.   Does One Key keep records of the numbers of safety
8 concerns raised by its workers at any given mine?
9 A.   We do. There's I suppose two differentiating
10 subgroups there. We ask of our employees to notify us of
11 all incidents and injuries, so that is absolutely recorded
12 and I would say very well correlated to what they're
13 reporting to the client sites.
14
15   Hazards or concerns is a little bit more vague, and
16 often they may only be reported through to the mine
17 operator and not necessarily to us, unless there's no
18 action taken by the mine operator.
19
20 Q.   I'm interested to move --
21 A.   Sorry, I'll just clarify further. When they are
22 raised, yes, they're absolutely recorded, yes.
23
24 Q.   I'm interested to move to the topic of demobilisation
25 of One Key workers at the Anglo sites, and if we move
26 a little further down --
27
28 THE CHAIRPERSON: If you are changing to another topic, we
29 may as well adjourn.
30
31 MS O'GORMAN: Yes, of course.
32
33 THE CHAIRPERSON: Just before we do.
34
35 Q.   Do bonuses have an impact on the reporting of safety,
36 or might it have an impact on the reporting of safety?
37 A.   It's not my experience. I don't believe so.
38
39 Q.   But you wouldn't know, would you?
40 A.   I'm not intimately involved with it, no.
41
42 Q.   And could I just understand your data that you have on
43 injuries. Do you get separate data to that which the mine
44 gets about injuries?
45 A.   We do collect our own data, but we --
46
47 Q.   And how do you do that?

1   A.   Via incident reporting, and we track it on our
2   database system as an incident or an injury or something
3   like that.
4
5   Q.   Who reports the incident?
6   A.   The worker.
7
8   Q.   To whom?
9   A.   To One Key, and that could be via their account
10   manager, via our safety team or via a number of other
11   channels. Sometimes they just ring the office, ring the
12   Brisbane office.
13
14   Q.   So is there an obligation on the One Key employee to
15   notify the employer, you, if injured?
16   A.   Yes.
17
18   Q.   And that's the check of data about which you speak?
19   A.   That's correct, yes.
20
21   THE CHAIRPERSON: Thank you. We will adjourn until 2.15.
22
23   **LUNCHEON ADJOURNMENT**
24
25   MS O'GORMAN: During the session with Mr Dalliston earlier
26   today, the department indicated that it would obtain some
27   further information for the Board, and Mr Dollar can
28   provide that update now.
29
30   THE CHAIRPERSON: Thank you.
31
32   MR DOLLAR: Yes, Mr Martin. We can indicate that the
33   1,955 directives issued in the last 10 years relate only to
34   coal mines.
35
36   THE CHAIRPERSON: Underground coal mines?
37
38   MR DOLLAR: In excess of 600 of those directives relate to
39   underground coal mines.
40
41   THE CHAIRPERSON: Thank you.
42
43   MS O'GORMAN: Q.   Mr Operator, could we bring back up the
44   statement of Mr Lewis, please. Mr Lewis, on page 12 of
45   your statement you turn to the topic of removal of One Key
46   workers from Anglo sites.
47   A.   Yes.

1
2   Q.   In particular, at paragraph 103 you set out the number
3   of One Key workers who have been removed from Anglo sites
4   during the terms of reference under consideration.
5   A.   Yes.
6
7   Q.   We can see there that nine workers were removed from
8   Grosvenor and six from Grasstree, making a total of
9   15 workers during that period of time?
10   A.   Yes.
11
12   Q.   You say in paragraph 103 that that number is exclusive
13   of workers whose contracts had come to an end during the
14   period.
15   A.   Yes.
16
17   Q.   Are you able to tell us how many people whose
18   contracts came to an end did not have their contracts
19   renewed?
20   A.   No, I'm not, unfortunately, off the top of my head,
21   no. I would have to go and get that information.
22
23   Q.   Are you able to tell us, of those people whose
24   contracts were not renewed, whatever the number, why they
25   were not renewed during the period?
26   A.   Yes - well, not exclusively on a case-by-case basis,
27   but from my knowledge of the operations, that there were
28   a number of them that had transferred to permanent
29   employment with one of - with the host mine that they were
30   placed at, and several others were on short-term contracts
31   for various things, and they just came to a natural end and
32   weren't required any longer and finished up. Also, there
33   would have been - there is another group there that
34   resigned voluntarily for other positions or other reasons,
35   family reasons, whatever.
36
37   Q.   Could we go over the page, Mr Operator, please, to
38   page 13 and zoom in on paragraph 105. Mr Lewis, there you
39   set out the examples of the breaches which had occasioned
40   the removal of those 15 workers from Anglo sites. You can
41   see that?
42   A.   That's for some of them, yes. There's some other
43   reasons further down, but yes.
44
45   Q.   You've indicated that one of those reasons is that the
46   worker was found to be in breach of the safety and health
47   management system.

```
 1          A.    Yes.
 2
 3          Q.    Are you able to say on how many of the 15 occasions
 4     the removal of the worker was due to breach of the SHMS?
 5          A.    Again, not off the top of my head, I'm afraid, no.
 6
 7          Q.    On one occasion, at least, it seems that someone was
 8     demobilised or terminated from attending an Anglo site
 9     because they had attended work when ill during the COVID
10     period when instructed not to.
11          A.    Yes.
12
13          Q.    Presumably that worker or workers were people who were
14     on casual contracts?
15          A.    I'm not sure.  Not necessarily.
16
17          Q.    If they weren't on a casual contract, they would have
18     paid leave available to them for being sick; right?
19          A.    Yes, that's correct.
20
21          Q.    But if they were on a casual contract, they wouldn't
22     be able to take paid sick leave?
23          A.    That's correct.  However, during the COVID time
24     frames, we actually had an agreement in place with Anglo
25     that anybody that was required to self-isolate, be it that
26     they had tested or just felt unwell, there would be, for
27     casuals, a period of two weeks paid for them to do that
28     without any other recourse.
29
30          Q.    And that was something that was communicated to your
31     workforce?
32          A.    Yes.
33
34          Q.    How many of those 15 people have been able to be
35     placed elsewhere by One Key, do you know?
36          A.    I'm not sure.
37
38          Q.    In paragraph 107 you talk about various reasons for
39     which One Key workers have been disciplined.
40          A.    Yes.
41
42          Q.    When you use the word "disciplined" in that context,
43     are you talking about removed from the site or are you
44     talking about a disciplinary process that took place but
45     enabled them to keep their job?
46          A.    So what I'm referring to there is a disciplinary
47     process in line with our employee relations management
```

1   plan. That may, depending on the severity and what comes
2   out of that disciplinary process, result in termination but
3   could result in everything from nothing to a verbal
4   warning, written warning, show cause - those types of
5   various escalating outcomes.
6
7   Q.   You say in paragraph 107 that one of the reasons for
8   such disciplinary action, whatever it was, was a refusal by
9   the worker to act under directions or refusal to comply
10   with directions.
11   A.   Yes.
12
13   Q.   Do you know if any of those refusals to act or comply
14   related to matters which might impact on the worker's
15   safety?
16   A.   No, I don't know for sure. However, one of the
17   reasons in our system when we record these things would be
18   a safety breach, and if it was safety related, it would be
19   recorded as that. These other things would be not safety
20   related but perhaps other policy or culturally related.
21
22   Q.   We understand that when there is a problem with
23   a One Key worker on an Anglo site, the matter is referred
24   to your organisation to pursue the investigation and
25   disciplinary side of things.
26   A.   Yes.
27
28   Q.   Can I ask whether, to your knowledge, there is ever
29   any intimation given by Anglo personnel at the time they
30   make the referral to you as to what they would like the
31   outcome to be, and specifically whether you're given an
32   intimation that, "We don't want this worker back"?
33   A.   Generally speaking, no, there isn't. They allow us to
34   follow the due process and arrive at whatever the outcome
35   is that we arrive at.
36
37   Q.   I want to ask you about your understanding of whether
38   or not - and when I say "your", I'm specifically asking you
39   about One Key's understanding, as to whether any of the
40   obligations in the Coal Mining Safety and Health Act apply
41   to One Key. As I understand it from your statement,
42   One Key does not consider itself to have any obligations
43   pursuant to section 43 of the Act?
44   A.   That's correct.
45
46   Q.   You know that section 43 of the Act applies, don't
47   you, to a contractor at a mine?

```
 1        A.    Yes.
 2
 3        Q.    One Key does have a contract with Anglo, does it not?
 4        A.    Yes, it does.
 5
 6        Q.    And One Key does have a permanent presence on each of
 7        the mines, being Grosvenor, Grasstree and Moranbah North,
 8        does it not?
 9        A.    No.  We have a permanent presence on Grosvenor only.
10
11        Q.    All right.  So that being the case in respect of
12        Grosvenor, is it still One Key's position that it does not
13        have any obligations as a contractor at a mine?
14        A.    Yes.
15
16        Q.    Are you able to indicate why it is that One Key has
17        formed that view?
18        A.    Yes.  The reason for that is that whilst we have
19        a contract and we have some workforce managers on site,
20        they do not conduct any direction, supervision or control
21        of our workforce whilst they're actually performing mining
22        tasks or operational tasks.  We provide labour only, under
23        the direction and control of our client, and our onsite
24        workforce managers are there to undertake those HR and
25        performance and, as I said, manning and rostering-type
26        requirements and in no way have any bearing or influence
27        over how work is performed or where or when it is
28        performed.
29
30        Q.    You're aware, are you, that there are obligations
31        under section 47 of the Act on service providers at a mine?
32        A.    Yes.
33
34        Q.    And in fact the obligation under section 47 applies to
35        a person who provides a service at a mine?
36        A.    Yes.
37
38        Q.    Do I understand from your answer a little earlier that
39        One Key doesn't consider it has any obligations under that
40        section, either?
41        A.    That's correct.
42
43        Q.    Can I just take you to one of the final documents that
44        you attach to your statement.  Mr Operator, if this could
45        perhaps be brought up at the same time as the statement.
46        It's the document with identifier OKR.003.003.0001.
47        Mr Lewis, do you recognise that document on the right-hand
```

1   side of the screen there?
2   A.   Yes. Yes, I do, yes.

4   Q.   That's a One Key document, isn't it?
5   A.   Yes, it is, yes.

7   Q.   Could I ask you to have a look at the first
8   substantial paragraph that commences with the words, "As
9   a provider of services to Anglo American Exploration
10   areas".
11   A.   Yes.

13   Q.   Keeping that in mind, go a little further down to the
14   paragraph commencing, "The service provided by One Key
15   Resources", that full paragraph reads, does it not:

17   *The service provided by One Key Resources*
18   *is the provision of labour hire personnel*
19   *to work under the direct supervision of*
20   *Anglo American authorised representatives.*

22   A.   Yes, it does.

24   Q.   It seems from that document, doesn't it, that One Key
25   does consider itself to be a service provider at Anglo
26   mines?
27   A.   That could be said. I've addressed this specifically
28   in paragraph 112 of my statement, where I outline that
29   I was not involved in the development or distribution of
30   that document, so I'm not sure exactly where it came from,
31   and my understanding is it is not based on any legal advice
32   that we've sought on that matter.

34   Q.   So notwithstanding that document, your evidence is, on
35   the part of One Key Resources, that it does not consider
36   itself to have any obligations either under section 43 or
37   section 47 of the Act?
38   A.   That's right.

40   Q.   Just a couple of final topics, Mr Lewis. Firstly,
41   briefly in respect of health assessments for your
42   employees, you're aware, obviously, of the regulation that
43   applies?
44   A.   Yes.

46   Q.   Section 46 of the regulation - I'm not presuming you
47   will have it at the front of your mind?

```
1      A.   No.
2
3      Q.   But it provides that an employer of coal mine workers
4      must ensure that a health assessment is carried out for
5      each person to be employed, or employed, by the employer as
6      a coal mine worker.
7      A.   Yes.
8
9      Q.   You're aware of that provision?
10     A.   Yes.
11
12     Q.   Section 47(2) provides that the employer must pay for
13     the health assessment?
14     A.   Yes.
15
16     Q.   Is it the case that One Key ensures that health
17     assessments are undertaken by One Key employees before they
18     go to Anglo sites and pays for them?
19     A.   Yes.
20
21     Q.   I understand that you're aware that under the Work
22     Health and Safety Act 2011 in New South Wales, there is an
23     obligation on those conducting businesses or undertakings
24     to ensure, so far as reasonably practicable, the health and
25     safety of workers engaged?
26     A.   Yes.
27
28     Q.   And that's section 19 of the Act that I've just spoken
29     of.
30     A.   Yes, I'm not aware of the section exactly, but I'm
31     aware of that, yes.
32
33     Q.   One Key does operate in New South Wales, does it not?
34     A.   Yes, we do.
35
36     Q.   Can I ask if you could briefly explain to us how it is
37     that you go about ensuring your compliance with that duty?
38     A.   Yes, certainly.  I have outlined it elsewhere in my
39     statement as well, but we have developed our own HSE
40     management plan that puts in quite a large number of steps
41     and processes to ensure that we meet that obligation as far
42     as reasonably we can be expected to and have the ability
43     to.  Yes, that's - and we use that in other jurisdictions
44     outside of Queensland coal.
45
46     Q.   Just to be clear, notwithstanding the fact that you
47     have that plan in place, you don't implement it and require
```

1   your workers in Queensland coal mines to follow it because
2   of the obligation on the operator to have such a plan in
3   place at the mine?
4   A.   That's right. We don't require that of them, but we
5   do have it, you know, running in the background, so to
6   speak, so that it is a standard process that we follow to
7   ensure that everything is caught, in addition to the
8   obligations on a coal mine operator.
9
10 Q.   Finally just in relation to licensing, it's the case,
11 isn't it, that you have obligations under the Labour Hire
12 Licensing Act 2017 here in Queensland?
13 A.   Yes.
14
15 Q.   And that Act requires of you certain reporting
16 requirements?
17 A.   Yes, that's correct.
18
19 Q.   As I understand it, on a 12-monthly basis your
20 organisation must report certain matters, which include
21 notifiable incidents under our Work Health and Safety Act?
22 A.   Yes, that's correct.
23
24 Q.   And you would be aware, I take it, that notifiable
25 incidents under our Work Health and Safety Act include
26 things like death, serious injury, serious illness?
27 A.   Yes.
28
29 Q.   It would seem that that does not apply to death,
30 serious injury or illness at a coal mine. Nonetheless,
31 does One Key make notifications of those kinds of
32 incidents?
33 A.   Yes, we do, yes. So I believe the reporting period is
34 every six months, and we report on a bunch of data, but one
35 of those requests is, have there been any notifiable
36 incidents? And, yes, we do report on those to the labour
37 hire licensing board.
38
39 Q.   So, for example, in respect of the incident that
40 occurred on 6 May, is that a matter which One Key has
41 notified pursuant to the Labour Hire Licensing Act?
42 A.   Yes, it is, yes. We did that in our mid-year report.
43
44 MS O'GORMAN: Thank you, Mr Lewis. Mr Martin, those are
45 the questions I had.
46
47 THE CHAIRPERSON: Ms Dann.

1
2   **<EXAMINATION BY MS DANN:**
3
4   MS DANN: Q.   Mr Lewis, my name is Geraldine Dann and I'm
5   one of the barristers for Anglo Coal. I want firstly to
6   take you, please, to the Site Safety Audit which is
7   attached to your statement. Mr Operator, could we have
8   OKR.003.017.0001. Could we go to page 2 of that document,
9   please. Counsel assisting took you to some parts of this
10   document. I just want to take you to the boxes at the top
11   of page 2, if we could zoom in on those.
12   A.   Yes.
13
14   Q.   Firstly, we can see that the box fourth down on the
15   left-hand side refers to the maintaining of up-to-date
16   training records on the site; that's correct?
17   A.   Yes.
18
19   Q.   And that it's being continuously reviewed?
20   A.   Correct, yes.
21
22   Q.   And your understanding is that that's what occurs in
23   practice?
24   A.   Yes.
25
26   Q.   And that these records are available on site for
27   One Key to access as required, on request?
28   A.   Yes.
29
30   Q.   Then if we come up to the top line of that document,
31   we can see there a reference to something called the LFI,
32   the learning from incident process?
33   A.   Yes.
34
35   Q.   Which we've heard is a process which Anglo uses to
36   investigate incidents at site. Are you aware of that
37   process?
38   A.   Yes, I am, yes.
39
40   Q.   Below that immediately is a reference to Enablon.
41   A.   Yes.
42
43   Q.   Do you understand that to be the database where this
44   information is stored so that you can have access to
45   documents such as LFI reports that are stored in Enablon?
46   A.   Yes, that's right, yes.
47

1   Q.   If we could have Mr Lewis's statement up, please, and
2   page 12, which I presume ends in 0012. I want to zoom in
3   on paragraph 99, please.
4   A.   Yes.
5
6   Q.   You refer there to Anglo on rare occasions having
7   required One Key to remove a worker from their sites.
8   A.   Yes.
9
10   Q.   In your experience, this is primarily due to a safety
11   concern, including an SSE exercising their statutory
12   obligations.
13   A.   That's right.
14
15   Q.   Now, the Board has heard evidence from Mr Damien Wynn,
16   who is the site senior executive at Grasstree mine, that he
17   has required the removal of a deputy who failed to report
18   a safety incident and fulfil his statutory obligations.
19   A.   Yes.
20
21   Q.   Are you aware of that incident?
22   A.   Yes. That's the incident I'm referring to there.
23
24   Q.   That's the only time you're aware where an SSE of an
25   Anglo mine has required the removal of a One Key worker
26   from a site?
27   A.   Yes, as far as I'm aware, yes.
28
29   Q.   Any of its three sites?
30   A.   Yes.
31
32   Q.   If we could go down, please, Mr Operator, to
33   paragraph 100 on that page, you're aware, Mr Lewis, as
34   I understand it, of a document called the Anglo American
35   Consequence Model?
36   A.   Yes, I am, yes.
37
38   Q.   Which is a document which sets out a process, a fair
39   treatment process, for decision making in relation to how
40   incidents should be treated on site involving individuals?
41   A.   Yes.
42
43   Q.   You refer in this paragraph of your statement to the
44   One Key Resources employee relations management plan.
45   A.   Yes.
46
47   Q.   It's right, isn't it, that that management plan is

```
1     based on the same principles as the Anglo consequence
2     model?
3     A.    That's correct, we have a very similar model.
4
5     Q.    It's right, isn't it, that if there is an incident on
6     site, the process is that Anglo conducts an investigation
7     into the factual circumstances of the incident?
8     A.    That's correct.
9
10    Q.    And then, if necessary, that's then referred to
11    One Key?
12    A.    Yes.
13
14    Q.    If there's a process that One Key needs to address
15    from the point of view of its employment arrangements on
16    the site?
17    A.    That's correct, yes.
18
19    Q.    And One Key does that through the use of its --
20    A.    Sorry, I'll just note, not just employment relations.
21    If there was a behavioural or disciplinary matter that
22    arose out of an investigation, that would be notified to us
23    to take action on.
24
25    Q.    Thank you.  My mistake.  I meant under the umbrella
26    term "employment matters".
27    A.    Yes.
28
29    Q.    Things that you had to deal with as the employer of
30    the person who may be involved.
31    A.    Right, yes.
32
33    Q.    You then go through your employee relations management
34    plan process to determine what the relevant circumstances
35    are in terms of the conduct which has occurred --
36    A.    Yes.
37
38    Q.    -- the nature of the incident and what the possible
39    consequences are within that model?
40    A.    Yes.
41
42    Q.    Moving from a low or negligible significance, I think
43    you said to Ms O'Gorman, no consequence, right the way
44    through to termination?
45    A.    Yes.
46
47    Q.    You make a decision then, having applied that process,
```

1   as to what you will do?
2   A.   That's correct, yes.
3
4   Q.   It's right, then, isn't it, that you then will advise
5   Anglo of what you propose?
6   A.   Yes. We, for want of a better word, out of courtesy
7   let them know what our recommendation or proposal is.
8
9   Q.   You understand that Anglo therefore understands what
10   you propose to do and is satisfied with the course of
11   action you propose to take?
12   A.   That's correct, yes.
13
14   MS DANN: Thank you, Mr Martin. I have no further
15   questions.
16
17   THE CHAIRPERSON: Thank you. Mr Trost.
18
19   **<EXAMINATION BY MR TROST:**
20
21   MR TROST: Q.   Good afternoon, Mr Lewis. My name is
22   Jeremy Trost. I'm counsel for Mr Mulholland, who is one of
23   the workers injured on 6 May.
24   A.   Right.
25
26   Q.   I just have a few questions that I would like to put
27   to you this afternoon. Would you accept on behalf of
28   One Key that every underground mine is inherently dangerous
29   or poses risks to your workers?
30   A.   Yes, underground mines have a lot of risks, yes.
31
32   Q.   And those can come from various aspects of operating
33   an underground mine, including methane presence in a mine,
34   of course?
35   A.   Yes.
36
37   Q.   You obviously provide workers to several underground
38   mines?
39   A.   Yes, that's correct.
40
41   Q.   Are the risks the same at every one of those
42   underground mines?
43   A.   As I understand it, no, there's varying different
44   underground conditions or mining conditions at different
45   pits.
46
47   Q.   That might be because of different structures at the

1   mines, different strata, some are gassy mines and some
2   aren't; is that correct?
3   A.   Yes, that's as I understand it, yes.
4
5   Q.   Given that they're all a bit different, would you also
6   accept that a worker's hours of work at a mine might be
7   impacted by those safety concerns?
8   A.   I'm probably not in a position to say about that. In
9   what way, can you rephrase it?
10
11   Q.   Yes, I'll give you an example. If gas control
12   happened to be an issue at a mine, are you aware that that
13   might cause shutdowns?
14   A.   Yes.
15
16   Q.   That might cause more shutdowns than expected or fewer
17   shutdowns than expected?
18   A.   That's my understanding, yes.
19
20   Q.   That might either increase the need for labour or
21   reduce the need for labour as well?
22   A.   Potentially, yes.
23
24   Q.   Does One Key rely solely on Anglo to identify those
25   risks, particularly of methane exceedance?
26   A.   Yes, we do. We don't propose to be a mining operator
27   of any nature, and all the operational or, say, mining
28   operational risks, yes, we believe that is Anglo's
29   responsibility.
30
31   Q.   So do you ask Anglo to explain to - I'm not sure
32   whether it would be yourself or another person in One Key
33   what those specific risks are?
34   A.   Not by a standard rule. If we were to get a series of
35   concerns raised or notice a series of events or something
36   like that, we could potentially ask that question and seek
37   information.
38
39   Q.   So if you did discover that there were those issues at
40   that mine site, would you then also rely on Anglo to
41   respond to those risks at that mine site?
42   A.   Yes, absolutely.
43
44   Q.   Would you want to seek comfort - do you actually seek
45   comfort that those risks have been responded to?
46   A.   Yes. In that situation, yes.
47

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1   Q.   Do you also rely on Anglo to decide whether
2   a particular work site poses any more significant risk than
3   other work sites that you send workers to?
4   A.   Yes. Every site is unique in its own nature, and not
5   just Anglo and their group of sites, but each site
6   individually - for instance, Grosvenor, Grasstree and
7   Moranbah North have their own sets of circumstances which
8   Anglo would be obviously very well aware of.
9
10   Q.   So if Anglo identified to One Key that any particular
11   site posed a greater risk, would One Key then undertake to
12   reassess whether it was willing to send its workers to that
13   site?
14   A.   Possibly, if that was the case, if that was raised to
15   us. However, equally I would expect that Anglo,
16   identifying that one site is riskier than others, if you
17   put it that way, would have appropriate controls in place
18   to manage that risk not just for One Key workers but for
19   everybody.
20
21   Q.   Mr Operator, could I bring up the audit, please. The
22   reference is OKR.003.017.0001. This is the Site Safety
23   Audit that you referred to in your statement?
24   A.   Yes.
25
26   Q.   Can we enlarge the answer to question 2, please. Now,
27   the question posed here is:
28
29   *Have there been any high potential or*
30   *serious injuries or incidents in the*
31   *previous Calendar year?*
32
33   This site safety audit was undertaken in January of this
34   year?
35   A.   That's right, yes.
36
37   Q.   So it's looking back to January of the previous year?
38   A.   Yes.
39
40   Q.   I put it to you, and I'd ask you to accept this, that
41   there had actually been 13 high potential incidents, as
42   defined under the Act, at Grosvenor between July 2019 and
43   November 2019. Do you accept that those should have been
44   picked up by that question?
45   A.   Yes.
46
47   Q.   So just generally talking about an audit, would you

1   expect an audit to verify that Anglo's safety management
2   system was controlling the risks that are present at
3   Grosvenor?
4   A.   Yes, I would.

6   Q.   And would you expect that would include controlling
7   the risk of methane exceedances?
8   A.   Yes, of course.

10   Q.   Would you expect an audit to compare the available
11   evidence regarding gas management?
12   A.   Yes.

14   Q.   And you would expect that the audit would then confirm
15   whether the system was controlling the risks from gas based
16   on that evidence?
17   A.   Yes.

19   Q.   So do you know why the audit did not include those
20   details of the gas exceedances?
21   A.   No, I don't. Like I say, I didn't perform that audit.
22   As you say, it's clearly missing some of those incidents.

24   Q.   Do you know what One Key would have done, had you been
25   aware that there had been those 13 HPIs within not just
26   a year but a few months prior to this audit?
27   A.   Yes, it's difficult to speculate what we would have
28   done, but I myself would have gone a little bit further and
29   said, "Well, if there was those, what controls are in
30   place", you know, "What's the forecast", if you will, "of
31   future events", "How are they being managed", that sort of
32   thing.

34   Q.   To whom would you have asked those questions?
35   A.   Whoever was performing the audit, the safety team
36   representative in the first instance.

38   Q.   Would you then expect them to be discussing that
39   directly with Anglo or would you --
40   A.   Sorry, I mean with the Anglo safety person on site.

42   Q.   Mr Operator, can I take Mr Lewis to the other document
43   referred to in his statement, OKR.003.003.0001. This is
44   a document that I think you're not aware of how it came
45   into being, or you weren't involved in the creation of the
46   document?
47   A.   That's correct.

1
2 Q. It is a document that was dated 20 August 2019?
3 A. Yes.
4
5 Q. I'll put to you again, without taking you to the
6 details of it, that up until the date of that document,
7 there had actually been 11 methane exceedances at Grosvenor
8 in the preceding 50 days or thereabouts. Would One Key
9 have been aware of those exceedances at that stage, bearing
10 in mind this is before the audit?
11 A. I can't comment on everybody, but I certainly was
12 unaware of those incidents, yes.
13
14 Q. How would you have become aware of those incidents
15 prior to creating a document like this?
16 A. It would only be through asking questions of our
17 clients in, for instance, the safety audit or being
18 notified through any of our monthly reporting, KPI
19 reporting meetings.
20
21 Q. I'm not entirely sure that I covered this with you
22 entirely before, but would you accept that methane
23 exceedances do affect One Key's ability to perform work at
24 a mine site?
25 A. Yes, methane is obviously an important issue. I'll
26 just reiterate that we don't actually perform work at those
27 sites. Our workers work for Anglo. But I understand the
28 question, and, yes, methane is an important factor.
29
30 Q. So they might lead to, as I mentioned before,
31 a reduction in production, those sorts of things?
32 A. Yes.
33
34 Q. Could we go to page 2 of this document, please,
35 Mr Operator, and the second-last bold line and the answer
36 to that. This was the response in this document, that
37 One Key is not aware of any risks "that will affect the way
38 that we will do the work". Presumably, then, had you been
39 aware of numerous HPIs that had effected shutdowns at
40 Grosvenor mine, you would have answered that question
41 differently at 20 August?
42 A. Presumably, yes. The other presumption is, in the
43 technicality of the wording, in the fact, "the way we will
44 do work". The way we will do work is we don't do work. We
45 operate under Anglo systems, processes, direction and
46 control.
47

1 Q.   I just have probably one or two last questions. If
2 One Key is aware of the particular risks at a site, does it
3 communicate those risks to the workers directly, to your
4 workers directly?
5 A.   We would do if we were aware of them. But, again,
6 that would be as a supplementary-type measure to what would
7 already be communicated on site through the owner - or
8 through the operator discharging their obligations under
9 normal toolbox talks and LFIs and things like that.
10
11 Q.   In the instance of the risks being identified as
12 perhaps being greater than they had been on other sites,
13 you mentioned before that you would raise it with Anglo,
14 for instance, in that audit, had you been aware of the
15 13 HPIs. Then would you be solely relying on Anglo's
16 response, saying, "No, they're fine, they're not really
17 anything to be worried about", or would you be conveying
18 this perhaps different circumstance at this particular site
19 to your workers and allowing them to make up their own
20 minds as to whether they wanted to accept that potential
21 increased risk?
22 A.   It's difficult to speculate on what would have or
23 could have been done. In the first instance, as I said
24 before, we would consult with Anglo and look to understand
25 what measures they'd put in place and controls, and things
26 like that, and of course look to satisfy themselves under
27 their statutory obligation, but everybody else as well, of
28 the safety of the mine.
29
30   That said, as I said before, we're not a mine
31 operator, so what controls are in place, we are, to an
32 extent, at the mercy of the operator, given we're not
33 a miner ourselves.
34
35 Q.   Might you raise those concerns to anyone else or
36 conduct any further investigation --
37 A.   Potentially, yes.
38
39 Q.   Have you ever had to do that in the past?
40 A.   No, we haven't. We haven't been in that position, no.
41
42 MR TROST: No further questions.
43
44 THE CHAIRPERSON: Q.   Mr Lewis, referring to the Site
45 Safety Audit document, and you were taken by Mr Trost to
46 the section dealing with - although the wording was
47 somewhat disjointed, I thought, but high potential or

1   serious accident or incidents, I think it said.
2   A.   Yes.
3
4   Q.   Is "high potential" defined anywhere for the purposes
5   of One Key's interpretation of that?
6   A.   I'm not sure if it's defined anywhere.
7
8   Q.   In your books, I mean.
9   A.   I don't know. I can't comment on that off the top of
10 my head.
11
12 Q.   What do you understand by "high potential"?
13 A.   A high potential, from my understanding, is an
14 incident that has the potential, or the possible
15 consequence, of serious injury, harm or fatality.
16
17 Q.   Would you expect, or do you know, that that's the
18 common understanding with your staff, the staff on site?
19 A.   I can't speak for everybody, but I would expect that
20 is the common understanding, yes. It's not an uncommon
21 term that we've been exposed to.
22
23 THE CHAIRPERSON: Thank you. Anything arising out of
24 that, Mr Trost?
25
26 MR TROST: Q.   Have you ever had cause to ask Anglo
27 regarding what are HPIs, or do you know - I appreciate
28 you're not involved with the Site Safety Audit, but
29 presumably you have someone on site conducting the audit.
30 A.   Yes.
31
32 Q.   Have they ever sought clarification about what they're
33 going to put in that section about HPIs or high potential
34 incidents?
35 A.   No, I don't know. I can't comment on that, sorry.
36
37 MR TROST: No other questions.
38
39 THE CHAIRPERSON: Thank you. Mr Crawshaw?
40
41 **<EXAMINATION BY MR CRAWSHAW:**
42
43 MR CRAWSHAW: Q.   Can you see me here, Mr Lewis, on the
44 screen?
45 A.   Not yet. Oh, yes, got you now.
46
47 Q.   You probably realise I'm appearing for the CFMMEU.

1   A.   Yes.
2
3   Q.   You would agree, would you not, that the strategy
4   behind the One Key business has always been continual
5   expansion in servicing new mining, gas and infrastructure
6   sectors?
7   A.   That's been part of the strategy, yes. Obviously
8   business growth is a key focus.
9
10   Q.   That strategy is central to One Key's business, isn't
11   it?
12   A.   I think it's central to anyone's business, but, yes,
13   it is, growth.
14
15   Q.   Initially, One Key was focused on the coal industry in
16   Queensland; is that correct?
17   A.   Yes, that's correct.
18
19   Q.   But from 2011 onwards, One Key has expanded into iron
20   ore, gold and other resource markets?
21   A.   Yes.
22
23   Q.   As well as civil infrastructure and major projects?
24   A.   Yes.
25
26   Q.   Indeed, I think you mentioned this in your statement.
27   It has now expanded Australia wide, into Western
28   Australia - as far as Western Australia?
29   A.   That's correct.
30
31   Q.   And you have an office in Perth?
32   A.   Yes.
33
34   Q.   Do you agree with the proposition that employees
35   Australia wide are not subject to any different treatment
36   or categorisation within the One Key business simply
37   because they work in coal mining or any other industry?
38   A.   Yes, that's right.
39
40   Q.   How many employees do you have Australia wide?
41   A.   It's in the vicinity of about 1,200 at the moment.
42
43   Q.   How many sites?
44   A.   At last check, over 100, like, early 100s, maybe 105.
45
46   Q.   How many employees working at sites, as distinct from
47   working in offices, are actually permanent employees?

1   A.   That number goes up and down. I couldn't tell
2   definitively, because it goes up and down, but I would say
3   at the moment we would be around about 100 permanent
4   employees, as in on hire with our clients. It has been as
5   high as 400 probably within the last 12 months.
6
7   Q.   Where did that spike come from?
8   A.   That built over a long period of time in New South
9   Wales, and it came down from that after one of our clients
10   decided to move that workforce in-house, if you will, and
11   took them onto their own books.
12
13   Q.   Where was that?
14   A.   That's in New South Wales.
15
16   Q.   Yes, but what site?
17   A.   It's Boggabri.
18
19   Q.   An open-cut coal mine?
20   A.   That's correct, yes.
21
22   Q.   You told counsel assisting, I think it was counsel
23   assisting, but someone earlier on, anyway, that you had
24   a permanent presence only at Grosvenor, of the three Anglo
25   coal mines that are mentioned in the terms of reference.
26   A.   At this point in time, yes, that's correct. We have
27   had previous - similar arrangements in other sites.
28
29   Q.   I'm just trying to understand how you distinguish
30   between Grosvenor on the one hand and the Grasstree and
31   Moranbah North on the other hand in talking about having
32   a permanent presence there.
33   A.   Sorry, what I'm referring to is a permanent presence
34   of our own in-house staff. We've got two dedicated staff
35   on site at Grosvenor, and the other mines, Grasstree, for
36   example, we have an account manager that visits there on
37   a frequent basis but is not permanently based there.
38
39   Q.   I understand. How many times have you been to each of
40   those Anglo mines this year?
41   A.   This year has been restricted. I think I've been to
42   Grosvenor once this year, with all the coronavirus things,
43   but prior to that it would be in the vicinity of five to
44   six times a year at Grosvenor, and probably two times
45   a year at Grasstree.
46
47   Q.   I apologise for asking you about a rather

1 unrepresentative time period. You're saying that in 2019 -
2 you said "would have". Did you actually visit Grosvenor
3 five or six times in 2019?
4 A. Yes. Yes, and some of those would be for extended
5 periods of time, some days, you know, two or three days in
6 a period across, say, five or six instances of that.
7
8 Q. Why would you go for an extended period of time?
9 A. I suppose it's a little bit of logistics in terms of
10 getting the travel organised and whatnot, but once I'm up
11 there I like to engage with as many people as I can. That
12 includes our onsite team, obviously our client contacts,
13 but in most cases I try to get across a roster change, so
14 I need to be there for probably 48 hours to get
15 a cross-section across all the roster changeovers, to get
16 in front of our employees.
17
18 Q. Would it surprise you if I suggested that there are
19 Grosvenor employees, or employees of your company working
20 at Grosvenor, watching this proceeding today who suggest
21 that they have never seen you?
22 A. It would surprise me. It's not to say it's
23 impossible. You know, with 400 people, it's difficult to
24 get across all of them, of course. But, again, I've been
25 at One Key for five years and have been to the Grosvenor
26 site in particular - I can't tell you, but many, many times
27 over that period.
28
29 Q. Can I move on to the question of the industrial
30 instruments that --
31 A. Can I just add to that previous statement that when
32 I go and visit site, not every time but on occasion, I have
33 actually gone underground as well as surface to try to get
34 in front of as many people as possible.
35
36 Q. Thanks for that, Mr Lewis. Can I move on now to the
37 industrial instruments that apply.
38 A. Yes.
39
40 Q. The basic safety net that applies to your operations
41 in black coal mines is the Black Coal Mining Award?
42 A. Yes.
43
44 Q. It's a safety net award that applies, if nothing else
45 is made that's better off overall, in terms of the
46 agreement?
47 A. Sorry, can you rephrase that question a little bit?

Q.   The Black Coal Mining Award is a safety net, a floor
of conditions --
A.   Yes.

Q.   -- that applies if an agreement is not made that's
better off overall than the award?
A.   Possibly. However, my understanding is to get an
agreement, it needs to be tested for "better off overall",
so if you have an approved agreement, it would be better
off overall, but I get the gist of what you're saying.

Q.   I'm saying if you don't have an agreement that passes
that "better off overall" test, the Black Coal Mining Award
will apply?
A.   Probably, yes.

Q.   Well, isn't that fairly basic?
A.   Yes, I understand that the Black Coal Award
underpins - or as you say is a safety net and underpins any
enterprise agreement, but to have an enterprise agreement
that isn't better off overall - I can't understand how that
could be, basically.

Q.   Do you understand that there's no provision in the
Black Coal Mining Award for casual employment for
production and engineering employees?
A.   Yes, I do, yes.

Q.   It's the production and engineering employees that we
call labour hire employees at coal mining sites?
A.   Yes.

Q.   And your model of employment includes a large
proportion of casuals?
A.   Yes.

Q.   So in order for you to legally employ those casuals,
it's necessary for one of your companies to have an
enterprise agreement --
A.   Yes.

Q.   -- that covers production and engineering employees?
A.   That's correct.

Q.   You tendered for the work at Grosvenor in 2016, didn't
you?

```
 1        A.   Yes.
 2
 3        Q.   When you tendered, were you required to have an
 4        enterprise agreement?
 5        A.   I don't recall specifically.  It's highly likely that
 6        was a question on the tender.
 7
 8        Q.   You know, don't you, that it's not only highly likely
 9        but necessary, when you're tendering for coal mine sites,
10        to have enterprise agreements?
11        A.   Yes, it's highly desirable, yes, of course.
12
13        Q.   That's because if you don't have an enterprise
14        agreement, there's a potential of your employees getting
15        together to bargain for one; is that right?
16        A.   Yes.
17
18        Q.   And in the course of that bargaining to legally take
19        protected industrial action?
20        A.   That's correct.
21
22        Q.   That's why you need to have an enterprise agreement?
23        A.   That's one of the reasons, yes.
24
25        Q.   I accept it's only one of the reasons.  Another
26        reason, which we've already discussed, is that you can't
27        employ casuals if you don't have an enterprise agreement
28        that provides for them?
29        A.   That's right, yes.
30
31        Q.   After you successfully tendered for the Anglo work at
32        Grosvenor, you entered into a new enterprise agreement,
33        which you've mentioned in your statement.  Could we just
34        call it the FES agreement?
35        A.   Sure, yes.
36
37        Q.   Did you notify Anglo that you were negotiating that
38        agreement?
39        A.   Yes.
40
41        Q.   Who did you notify at Anglo of that?
42        A.   I don't recall specifically, but I can assure you that
43        we notified our contract representative on site and more
44        than likely Warwick Jones, the HR manager.  I had several
45        conversations with both of those people.
46
47        Q.   Indeed, you know you were required to so notify Anglo
```

```
 1    because of the provisions in the labour supply contract
 2    that you have with Anglo?
 3    A.    Sorry, you cut out a bit then.  What was that
 4    question?
 5
 6    Q.    I'm sorry.  Your notification to Anglo, I'm
 7    suggesting, was required by your contract with Anglo?
 8    A.    It may have been.  I'm not sure.  I suppose my intent
 9    in terms of the purpose of those conversations was an
10    awareness thing more so than contract compliance.  If it is
11    in fact part of that contract I'm not sure.
12
13    Q.    You don't know?
14    A.    I'm not sure, no, without checking.
15
16    Q.    Well, can I just take you to it, if the operator could
17    bring up AGM.003.004.0001 at 0023.  Would you take it from
18    me that this is your labour hire agreement?
19    A.    Yes.
20
21    Q.    We can scroll back to page 1 if you're unsure about
22    that.
23    A.    No, no, that's fine.
24
25    Q.    Do you see clause 7.6?
26    A.    I do, yes.
27
28    Q.    In particular, what's set out in 7.6(a) and (b), which
29    is on the screen?
30    A.    Yes, I can see that.
31
32    Q.    Were you aware of those provisions?
33    A.    Not offhand, no, I wasn't.  We obviously agreed to the
34    contract way back then, but they're obviously there,
35    I accept that.
36
37    Q.    So it was purely fortuitous that you notified Anglo,
38    and I think you said Mr Jones, in accordance with those
39    provisions that you were negotiating a new enterprise
40    agreement with the CFMMEU?
41
42    MR RONEY:   I object to that question.  It contains
43    multiple parts.
44
45    THE CHAIRPERSON:   Could you speak up, please.
46
47    MR RONEY:   I object to the question.  It contains multiple
```

1   parts, one of which the witness has disagreed with, which
2   is the proposition that he communicated with Mr Jones in
3   accordance with those terms. If my learned friend could
4   rephrase the question, perhaps he means something
5   differently to that which came out, but that's the way it
6   was put.

7

8   THE CHAIRPERSON: All right.

9

10   MR CRAWSHAW: I was actually asking to the contrary, with
11   respect, Mr Chair.

12

13   THE CHAIRPERSON: Yes, well, please just ask it again,
14   then.

15

16   MR CRAWSHAW: Q.   You said you weren't aware of this
17   provision in clause 7.6.
18   A.   Yes.

19

20   Q.   Is that right?
21   A.   Not offhand, that's correct, yes.

22

23   Q.   So your notification to Mr Jones, who I think you said
24   you spoke to on more than one occasion --
25   A.   Yes.

26

27   Q.   -- had nothing to do with these provisions?
28   A.   It wasn't as a result or as an action out of these
29   provisions. You mentioned before that it was fortuitous.
30   I wouldn't suggest it was just fortuitous. We have close
31   working relationships with all our clients, and something
32   of that nature is obviously something that we would
33   discuss, be it contractually obliged or not.

34

35   Q.   But what I was suggesting was fortuitous is that by
36   notifying Mr Jones, it turned out you were complying with
37   clause 7.6?
38   A.   Yes.

39

40   Q.   And do you agree that that was fortuitous?
41   A.   Yes.

42

43   Q.   The FES agreement is a greenfields agreement
44   negotiated with the CFMMEU; correct?
45   A.   That's correct, yes.

46

47   Q.   Without going into legal definitions, a greenfields

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1   agreement applies when there's no existing employees of the
2   company or employer that's party to that agreement?
3   A.   That's my understanding, yes.
4
5   Q.   That's the only situation in which direct negotiation
6   can take place with a union as to the terms of an
7   agreement, an enterprise agreement?
8   A.   That's my understanding, yes.
9
10 Q.   Otherwise, negotiations have to take place with the
11 employees, who may be represented, if they so desire or by
12 the force of the Fair Work Act, by a union?
13 A.   Yes.
14
15 Q.   When you were negotiating the greenfields agreement
16 with the CFMMEU, the FES agreement, I mean --
17 A.   Yes.
18
19 Q.   -- you didn't agree with everything that the CFMMEU
20 wanted in the agreement, did you?
21
22 MR RONEY: I object. With respect, these questions are in
23 no way relevant to the terms of reference of this Board.
24 What was negotiated, why it was negotiated, whether the it
25 was the subject of claims that were not agreed to by my
26 client are entirely irrelevant.
27
28 THE CHAIRPERSON: What is the relevance of this,
29 Mr Crawshaw?
30
31 MR CRAWSHAW: It's relevant to how agreements are made
32 with labour hire companies. I'm not going to go into
33 detail into the negotiations. I just want to establish
34 that proposition.
35
36 THE CHAIRPERSON: And what's the proposition?
37
38 MR CRAWSHAW: That the One Key group didn't agree with
39 everything that the CFMMEU wanted in the agreement.
40
41 THE CHAIRPERSON: Right.
42
43 Q.   Do you agree with that proposition?
44 A.   Yes.
45
46 MR CRAWSHAW: Q.   And, likewise, they didn't agree with
47 everything that One Key wanted in the agreement?

```
 1      A.   Yes.
 2
 3      Q.   But you came to a compromise, which is the agreement
 4      that is mentioned in your statement?
 5      A.   Yes.
 6
 7      Q.   Do I understand you to be saying that at this point in
 8      time, all your employees working at black coal mines -
 9      well, all your production and engineering employees that
10      are working at black coal mines are working under that
11      agreement, without exception?
12      A.   Yes, that's my understanding.
13
14      Q.   None of those employees are currently employed by any
15      other company associated with the One Key group?
16      A.   That's correct, that's my understanding.
17
18      Q.   But when you made the agreement, the greenfields
19      agreement, the notion behind making that agreement was to
20      transfer employees from other companies within the One Key
21      group to this FES Coal Pty Ltd?
22
23      MR RONEY:   I renew my objection on the same basis as the
24      last objection, but also additionally that the question is
25      nonsensical because it asks the witness what the notion
26      behind an agreement is, which is a meaningless concept.
27
28      MR CRAWSHAW:   I withdraw "notional".
29
30      Q.   You wouldn't have made the FES Coal Pty Ltd agreement
31      unless you were going to transfer employees presently
32      working for other companies in the One Key group to FES
33      Coal Pty Ltd?
34
35      MR RONEY:   My objection remains.  This issue about what
36      the circumstances were that stood behind the entering into
37      the greenfields agreement, which is in evidence, it's been
38      in place now for a couple of years, is not within the terms
39      of reference.
40
41      THE CHAIRPERSON:   How do you make this relevant,
42      Mr Crawshaw?
43
44      MR CRAWSHAW:   How do I make it relevant?  There's a term
45      of reference, which the Board is no doubt familiar with,
46      2.1(iv), that enables the Board to make recommendations,
47      and that includes recommendations directed to the nature of
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1   any particular employment arrangements which may be better
2   apt to ensure acceptable risk levels to workers.
3
4   That part of the terms of reference is not confined to
5   the four mines mentioned in the terms of reference. That's
6   the first point. Indeed, Professor Quinlan gave evidence
7   this week about the position generally across all coal
8   mines.
9
10   THE CHAIRPERSON: Yes.
11
12   MR CRAWSHAW: So in terms of evidence about specific
13   labour hire companies, it turns out that the One Key group
14   is the predominant provider of labour to at least the Anglo
15   mines, and, in any event, so far Mr Lewis, representing
16   One Key, is the only witness to be called from the labour
17   hire sector, although no doubt the Board will hear from
18   some of the One Key employees at Grosvenor in further
19   hearings.
20
21   On the face of the statement of Mr Lewis, One Key
22   might no longer be typical of all labour hire employers, at
23   least in relation to its operations at Anglo. But as
24   counsel assisting said, we are dealing with the contractual
25   relationship between One Key and Anglo and the implications
26   arising from that relationship.
27
28   That relationship began in 2016, and the history of
29   One Key since 2016 shows the potential for labour hire
30   employees to act in a different manner and for One Key
31   itself to act in a different manner than it is now acting.
32   So the history since 2016 also, as we've already heard,
33   demonstrates the necessity to have enterprise agreements.
34
35   And further, the history since 2016 also shows how the
36   current enterprise agreement, which is a greenfields
37   agreement, an unusual situation, came to apply to the
38   company. It came to apply to a company with no employees
39   in existence, and operates when the One Key group clearly
40   already had employees. We submit that's relevant, not only
41   to the labour hire agreement with Anglo but also the
42   position generally in terms of what sort of other
43   agreements might arise in the labour hire industry.
44
45   What my learned friend is obviously worried about is
46   my raising the agreements with the previous One Key
47   entities that applied prior to this one. We say they give

1   you an insight into what can happen in the labour hire
2   sector.
3
4   THE CHAIRPERSON: Mr Roney?
5
6   MR RONEY: Can I start with this proposition, Mr Chair.
7   The relevant part of the terms of reference, 2.1(iv), to
8   which our learned friend makes reference, is not an open
9   book in terms of examining any particular employment
10   arrangements that have ever been entered into either by
11   One Key or any other labour hire entity.
12
13   Indeed, even if it were that that could be read into
14   that paragraph, which is concerned with recommendations,
15   it's qualified by the proposition that they be arrangements
16   which may be better apt to ensure acceptable risk levels to
17   workers. So you might, in those circumstances, be looking
18   at an issue which is concerned with what kinds of
19   arrangements could be the subject of recommendation which
20   might manage risk.
21
22   What we've just been told by Mr Crawshaw is that he's
23   going to invite you, through a range of questions he now
24   wants to put forward, to examine the history of my client's
25   or some other company's ways of managing labour hire and
26   the potential, as he puts it, for them to act in
27   a different manner to that which is now the manner being
28   used.
29
30   So it seems to be - and I might add this objection has
31   nothing to do with anything that I or anyone else is
32   worried about. What I am concerned about is to ensure that
33   this Board's inquiry does not drift into some sort of
34   peripheral challenge to the circumstances that led to the
35   existing greenfields agreement which applies on this site
36   or some kind of slur being placed on the way in which
37   labour hire companies, my client potentially included, have
38   acted in the past in the way they've negotiated or in terms
39   of what's in their agreements.
40
41   If there is a question directed to what could be in
42   a labour hire agreement which might be apt to ensure
43   acceptable levels of risk to workers, that would be
44   a reasonable question within the scope of the inquiry, but
45   this is not. That's my response.
46
47   THE CHAIRPERSON: Mr Crawshaw, how does this go to

1   improving safety in the industry?

2

3   MR CRAWSHAW: Well, insecurity and conditions of
4   employment are related to safety.

5

6   THE CHAIRPERSON: Yes.

7

8   MR CRAWSHAW: We know of evidence on those very questions
9   in relation to the current agreement. Those conditions in
10   the current agreement are relevant to the terms of
11   reference. We say conditions in other labour hire
12   agreements are likewise relevant. It's not as though I'm
13   going to spend a long time on this, but it provides at
14   least some more perspective than what you currently have,
15   which is a greenfields agreement, unique in itself,
16   although we haven't heard the full circumstances as to how
17   it came into existence, compared to what normally happens
18   in terms of agreements negotiated with employees.

19

20   THE CHAIRPERSON: Ms O'Gorman?

21

22   MS O'GORMAN: Mr Martin, I note the present agreement has
23   been in effect since 20 August 2018, quite some time before
24   the commencement of the terms of reference period. I'm
25   finding it a little bit difficult to understand how the
26   history of the entering into of that agreement or any other
27   agreements which preceded it might assist the Board to any
28   great degree.

29

30   THE CHAIRPERSON: Mr Crawshaw, are you trying to attack
31   the fact of labour hire agreements in the future, or what
32   is the purpose?

33

34   MR CRAWSHAW: In terms of the position of my client on
35   labour hire, it would prefer not to have labour hire at
36   all. But as part of that argument, we certainly want to
37   draw attention to the sorts of agreements that can be made
38   by labour hire companies.

39

40   THE CHAIRPERSON: Yes, and then you propose to make
41   a recommendation on how you could avoid agreements which
42   inherently cause a lack of safety to workers?

43

44   MR CRAWSHAW: No, we're saying that the quality of the
45   agreements is relevant to matters such as morale, and
46   they're in turn related to safety. The quality of the
47   agreements in terms of security of employment are related

1 to safety, without elaborating on the connection that's
2 obviously already been made so far.
3
4   I can deal very easily with this, what I wanted to go
5 to, by relying on a decision of the Fair Work Commission,
6 which actually goes into this history - I don't want to
7 unduly, given the time we're at today - I would have
8 actually finished my questions about this matter during the
9 time over this debate, but it may be simpler for me to just
10 put before the Board a Fair Work Commission decision that
11 shows this history, and then there's no necessity for me to
12 ask these questions.
13
14 THE CHAIRPERSON: All right. Mr Roney, do you have any
15 objection to that, and you can --
16
17 MR RONEY: I have no objection to that.
18
19 THE CHAIRPERSON: All right. Very well, Mr Crawshaw.
20
21 MR CRAWSHAW: Q.   Can we move on, then, to your
22 statement, Mr Lewis. I want to ask you some questions
23 about parts of it. First of all, paragraph 13. You refer
24 in paragraph 13 to the enterprise agreement setting out
25 employment conditions for basically the minimum in terms of
26 rates of pay. Do I take it from that that on any
27 particular coal mine site, employees are on different rates
28 of pay?
29 A.   Yes, there's different rates of pay for different
30 skill sets and different rates of pay across different
31 sites, marginally different.
32
33 Q.   On any particular mine site, if labour hire employees
34 are doing the same work, do they receive the same pay or
35 can it differ?
36 A.   Sorry, can you rephrase that question a little bit?
37
38 Q.   On any particular coal mine site where your employees
39 are doing the same work, can their rates of pay differ?
40 A.   No, not on the same site where they're doing the same
41 role, no, their pay rates will be the same. They may
42 differ site to site, but they don't differ on the one site
43 for the same role.
44
45 Q.   So it can vary between coal mines?
46 A.   Yes.
47

1   Q.   Indeed, it varies between the Anglo Coal mines that
2   we're discussing in these terms of reference, doesn't it?
3   A.   Possibly. I would have to check that. Possibly.
4
5   Q.   I don't know whether you've been watching proceedings
6   or whether you're otherwise aware, but are you aware that
7   at the Moranbah North mine site, there's an enterprise
8   agreement that provides as one of its conditions that
9   labour hire employees receive the same rates and conditions
10   of employment as permanent employees?
11   A.   Yes, I am aware of that, yes.
12
13   Q.   It didn't take these proceedings to make you aware of
14   that?
15   A.   No.
16
17   Q.   Such a provision directly affects you if you're
18   working at the Moranbah North mine?
19   A.   Yes.
20
21   Q.   And it affects the rates of pay that you must afford
22   your employees at the Moranbah North mine?
23   A.   Yes, that's right.
24
25   Q.   But you know that there's no such provision in the
26   Grasstree enterprise agreement?
27   A.   As I understand it, that's right.
28
29   Q.   And it's not really relevant, such provisions - well,
30   there's no enterprise agreement for the production and
31   engineering employees at Grosvenor?
32   A.   That's my understanding, yes.
33
34   Q.   Therefore, there couldn't be such a clause?
35   A.   Correct.
36
37   Q.   Indeed, there's no direct employment of production and
38   engineering employees by Anglo at Grosvenor?
39   A.   That's my understanding, yes.
40
41   Q.   The position is, is it not - and tell me if you don't
42   know - that your labour hire employees at Grosvenor earn
43   less than your labour hire employees at Moranbah North?
44
45   MR RONEY: I object. Could the question be clear about
46   whether we're talking about workers performing exactly the
47   same tasks or just some broad general conceptual idea that

1   they earn less?
2
3   MR CRAWSHAW: Q.   On average, talking about production
4   operators, the rates of pay at Grosvenor are less than
5   Moranbah North, aren't they, for your labour hire
6   employees?
7
8   THE CHAIRPERSON: But you're talking about the same job,
9   are you, like for like?
10
11   MR CRAWSHAW: Production operator. I'm asking about
12   a production operator.
13
14   MR RONEY: Can I be clear, when we talk about the rates,
15   are we talking about what the individual workers are
16   actually paid or something in the EA? The reference to
17   rates seems to suggest it's referable to some document.
18
19   MR CRAWSHAW: No. I am talking about the rates of pay
20   paid by One Key. Can I ask the question again?
21
22   THE CHAIRPERSON: Yes, please.
23
24   MR CRAWSHAW: Q.   You're aware, are you not, that the
25   rates of pay actually paid by your company to production
26   and engineering employees at Grosvenor, for production
27   operators, are less than the rates paid to equivalent
28   employees at Moranbah North?
29   A.   I'm unaware of that. I don't know. The reason for
30   that is we only have a very small number of employees at
31   Moranbah North, so I'm not familiar with what the rates of
32   pay are.
33
34   Q.   Can I ask you the same question in relation to
35   Grasstree, that the rates of pay received by your employees
36   at Grosvenor for production operators are less than the
37   rates received at Grasstree for your labour hire employees?
38   A.   I'm unsure of that. My opinion on it would be that
39   they would be, you know, very close, if there is some
40   difference. I wasn't aware of any material difference.
41
42   Q.   You don't know?
43   A.   That's right.
44
45   Q.   In any event, you say they're confidential?
46   A.   Correct.
47

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 1      Q.    And so on the grounds of confidentiality, you're not
 2      going to tell the Board?
 3
 4      MR RONEY:   I object.  A claim of confidentiality has been
 5      made by my client because the documents are confidential,
 6      commercially sensitive, and that request for
 7      confidentiality has been granted by the Board.  This
 8      witness isn't claiming the confidentiality.  It's quite
 9      unfair to put that proposition to him as if he has made the
10      claim.
11
12      THE CHAIRPERSON:   Yes.  A claim has been made and granted
13      on that basis, Mr Crawshaw.
14
15      MR CRAWSHAW:   Can I inquire, Mr Chair, does that mean
16      these rates of pay that I am asking about are before the
17      Board?
18
19      THE CHAIRPERSON:   Ms O'Gorman?
20
21      MS O'GORMAN:   Yes, that's the case.
22
23      THE CHAIRPERSON:   Yes, Mr Crawshaw, they are.
24
25      MR CRAWSHAW:   That suggests that it may be able for at
26      least counsel assisting to ascertain the answers to my
27      questions without them losing their confidentiality.
28
29      THE CHAIRPERSON:   Yes.  Mr Roney, you have no objection to
30      the Board taking into account the different rates of pays?
31
32      MR RONEY:   We're only concerned with the publication of
33      that material.
34
35      THE CHAIRPERSON:   Thank you.  Yes, thank you.
36
37      MR CRAWSHAW:   Q.   If I could then move on to
38      paragraph 14, where you set out the different categories of
39      employment.  At paragraph 14.3 - or perhaps if I just take
40      you back to the beginning of the paragraph, it starts with
41      the words:
42
43          The Enterprise Agreement provides for the
44          categories of workers being ...
45
46      And in relation to fixed term, you say:
47
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 1              ... for a fixed period ordinarily aligned
 2              with One Key's contract to supply labour to
 3              that site ...
 4
 5      A.    Yes.
 6
 7      Q.    The enterprise agreement doesn't actually mention
 8      anything about aligning with One Key's contracts to supply
 9      labour to the site, does it?
10      A.    That's correct, it does not.
11
12      Q.    What you're saying is that the enterprise agreement
13      provides for a fixed term, but separately your group, or
14      this FES company, at least, tries to align that period with
15      One Key's contract?
16      A.    That's correct, yes, we do.
17
18      Q.    Would you accept that there is no requirement in the
19      enterprise agreement for you to do that?
20      A.    That's right, yes.
21
22      Q.    And you could stop doing that at any time?
23      A.    Yes, technically we could, yes.
24
25      Q.    Legally, you could?
26      A.    Yes.
27
28      Q.    Indeed, while we're talking about that, legally, your
29      group could set up another company and decide to employ
30      workers in that company, and the FES agreement would no
31      longer apply; is that right?
32
33      MR RONEY:    I object to these questions.  They ask this
34      witness for his opinion about a matter of law which is
35      concerned with the proper construction of what the EA
36      provides, and in this respect, in a critical respect, about
37      whether one could legally stop doing something that one had
38      represented to one's workforce that you would do and then
39      whether you could legally set up with another company to
40      get around the current enterprise agreement - those are not
41      questions properly for this witness.
42
43      THE CHAIRPERSON:    Mr Crawshaw?
44
45      MR CRAWSHAW:    I accept the point.  It's a matter that
46      submissions can be made about.
47
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1   Q.   I'm just a bit puzzled that although the term "fixed
2   term" is used in the enterprise agreement, the words
3   "maximum term" are used in the contracts. Is that the
4   situation?
5   A.   I understand that that is the situation, yes.
6
7   Q.   In relation to your labour hire employees employed
8   under this agreement, you send to all of them a letter of
9   offer with the words "maximum term" in the heading; right?
10   A.   Yes.
11
12   Q.   Why don't you use the words "fixed term"?
13   A.   I'm not sure exactly. The construct of the contract
14   or the employment contract templates have been sought legal
15   advice on, and that's what it was. I'm not sure any more
16   than that.
17
18   Q.   Are you saying you got legal advice not to use the
19   words "fixed term"?
20   A.   No, I'm saying we got legal advice on the construct of
21   the employment contracts template.
22
23   Q.   And the template also says that, in offering a fixed
24   term - refers to the possibility of providing for
25   a 12-month extension?
26   A.   Yes.
27
28   Q.   But a 12-month extension would not necessarily align
29   with the contracts that you have with your client?
30   A.   No, not necessarily.
31
32   Q.   The contracts that you offer make express reference to
33   the right to terminate, which counsel assisting asked you
34   about?
35   A.   Yes, that's right.
36
37   Q.   Really, the words "maximum term" or the phrase
38   "maximum term" is designed to emphasise that right to
39   terminate, isn't it?
40
41   MR RONEY: I object. The witness has not said that he was
42   in any way involved in the decision to use the expression
43   "maximum term".
44
45   THE CHAIRPERSON: Yes, that's true, Mr Crawshaw.
46
47   MR CRAWSHAW: That doesn't stop me asking him, as the

1   principal officer of the group involved in these
2   arrangements, as to his opinion about that.
3
4   THE CHAIRPERSON: All right, well, ask his opinion.
5
6   MR CRAWSHAW: Q.   The phrase "maximum term" emphasises
7   the right to terminate, doesn't it?
8   A.   I'm not sure it does. Again, I'm not privy to how
9   that was arrived at, but I'm not sure it does. It
10   provides - I think the contracts are very clear in what
11   they provide. It says the term, it outlines the term. It
12   outlines the option for extension. As you've said, it
13   outlines the notice periods. I think they're very
14   self-explanatory.
15
16   Q.   I want to suggest to you that the words "maximum term"
17   convey a level of insecurity to the employee not found in
18   the words "fixed term"?
19   A.   That's, I suppose, a matter of perspective.
20   Potentially. I don't - I don't see it that way. Again, as
21   I said, all the parameters are outlined in the contracts
22   when they go out to employees.
23
24   Q.   You can't offer any reason for changing the words
25   "fixed term" in the enterprise agreement to "maximum term"
26   in the contracts that you send out?
27   A.   Sorry, can you repeat that question?
28
29   Q.   You can't offer any reason, other than this is the way
30   your lawyers drafted it, for the words "maximum term" being
31   used in the contract to describe what is called in the
32   agreement, the enterprise agreement, a "fixed term"?
33   A.   That's correct, I can't.
34
35   Q.   By the way, those contracts that you offer aren't
36   offered specifically at a particular mine, are they?
37   A.   Sorry, what do you mean by that? They are specific to
38   mines, yes, to a place --
39
40   Q.   I'm suggesting to you they're not offered specifically
41   for a particular mine.
42   A.   My understanding is that they are.
43
44   THE CHAIRPERSON: Q.   Are they offered across mines
45   generally or --
46   A.   Yes.
47

1   Q.   -- a specific mine, I think you're being asked?
2   A.   Oh, right. Yes, they are offered in the same general
3   construct to all different client sites and mines.
4
5   MR CRAWSHAW: Q.   Are you sure about that?
6   A.   That's my understanding, yes.
7
8   Q.   I won't take up time trying to find them all for the
9   moment. The documents will speak for themselves,
10   I suppose. If we can move on, then, to paragraph 18.
11   I think counsel assisting has already asked the question.
12   Could I just ask this about the security that you
13   mentioned. If a fixed term employee is terminated at the
14   end of the fixed term, you understand, don't you, that
15   there's no access to unfair dismissal remedies?
16   A.   I understand that, yes.
17
18   Q.   You've given evidence that there's also subcontractors
19   engaged by your company at the Anglo sites?
20   A.   That's correct.
21
22   Q.   Do you accept that they don't have access to the
23   unfair dismissal remedies?
24   A.   Yes.
25
26   Q.   Although one way they might have access to the unfair
27   dismissal remedies is to argue that they are really
28   employees of your company?
29   A.   That's a possibility.
30
31   Q.   Because are you saying those subcontractors do the
32   exact same work as the employees?
33   A.   Some of them do.
34
35   Q.   But they're not paid under the conditions in the
36   enterprise agreement, because they're not employees?
37   A.   Correct. They're under their own subcontractor
38   arrangement for their own company.
39
40   Q.   If they're engaged by your company at the Anglo sites,
41   do they work exclusively at the mine?
42   A.   I'm not sure they do. They have their own obligations
43   as, you know, running their own business to fulfil their
44   own obligations.
45
46   Q.   I'm just trying to work out how they can - I can't
47   remember where you said it, but I thought you said

1   somewhere that they did exactly the same work, or some of
2   them at least do exactly the same work as employees?
3   A.   Some of them do. Some of them have what I'll call
4   highly specialised or highly experienced backgrounds, and
5   they perform obviously highly experienced and specialist
6   tasks.
7
8   Q.   Are they working in crews together with Anglo
9   employees?
10 A.   Yes, that's my understanding.
11
12 Q.   Some of them?
13 A.   Yes.
14
15 Q.   I would suggest in that situation they're working
16 exclusively at the Anglo mine?
17 A.   I'm not sure of their own - I'm not sure of what their
18 own arrangements are.
19
20 Q.   Are they full-time employees, and I say "full-time" as
21 distinct from permanent? Are they working full time at the
22 Anglo mines?
23 A.   Yes, they work the full roster, yes.
24
25 Q.   You mention in paragraph 17, just going back for
26 a minute, the casual conversion clause. You say that the
27 award doesn't have it.
28 A.   Yes.
29
30 Q.   That's because there are no casuals, other than
31 management employees, provided for in the award, as we
32 discussed earlier?
33 A.   That's right.
34
35 Q.   In paragraph 19 you mention some other specific
36 employee benefits. They're not guaranteed by any
37 enterprise agreement, are they?
38 A.   No, they're not.
39
40 Q.   In paragraph 22 you refer to some conditions under the
41 enterprise agreement in relation to casual workers.
42 A.   Yes.
43
44 Q.   I think counsel assisting asked you about unpaid
45 compassionate leave.
46 A.   Yes.
47

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1    Q.   That's required under the Fair Work Act, isn't it?
2    A.   Yes, that's right.
3
4    Q.   The casual loading of 25 per cent is standard
5    throughout Australia for casual employees?
6    A.   Yes.
7
8    Q.   And superannuation, that's provided for for all
9    employees that work beyond a minimal amount of hours?
10   A.   Yes, that's right.
11
12   Q.   Long service leave, in paragraph 22 - that's subject
13   to legislation, isn't it?
14   A.   Yes, that's right.
15
16   Q.   A casual employee would have to be there eight years
17   to receive long service leave?
18   A.   My understanding is the coal LSL is - they would need
19   to be working in the industry in any capacity for the
20   eight-year period.  It's like a transportable industry
21   scheme.
22
23   Q.   Now, if we can move on to paragraph 23 - I'm sorry,
24   before we move off paragraph 22, can I just suggest this to
25   you:  the fact that sick leave is unpaid for casuals is an
26   incentive to turn up to work ill, isn't it?
27   A.   No.  First of all, personal leave is the provision,
28   and, no, it's not an incentive because there's other
29   mechanisms there, such as the 25 per cent, that offsets
30   that.  Some people do turn up to work sick, yes, but that
31   is strongly discouraged, obviously, for the workplace
32   health and safety ramifications that that could have,
33   particularly during these times, COVID and whatnot.
34
35   Q.   I understand your point about that, but personal leave
36   includes sick leave, doesn't it?
37   A.   Yes.
38
39   Q.   It is logical, isn't it, that even though they're
40   getting the 25 per cent loading, if a casual doesn't turn
41   up to work, the casual doesn't get paid?
42   A.   That's correct, yes.
43
44   Q.   So there is an incentive for a casual to turn up at
45   work ill?
46   A.   It could be perceived that way.
47
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 1     Q.   Well, it's just logical, isn't it?
 2     A.   I suppose so.
 3
 4     Q.   Could we go back to paragraph 21.  There you say what
 5     the leave entitlements are for fixed term employees.
 6     A.   Yes.
 7
 8     Q.   Could I just suggest this to you, rather than go
 9     through each condition that you refer to, that other than
10     accident pay, all those provisions are required by
11     Commonwealth law?
12     A.   Yes.
13
14     Q.   Accident pay is required by clause 18 of the Black
15     Coal Mining Award?
16     A.   Correct.
17
18     Q.   You will be pleased to know I'm moving on to
19     paragraph 45.  You talk about a shortlist being provided to
20     Anglo.  Does Anglo give reasons when declining candidates?
21     A.   I'm not sure.  I can't comment on that definitively,
22     because it only ever happens very rarely, so I can't think
23     of a particular instance where they have or haven't.  In
24     the vast majority of cases, what we put forward as
25     a recommendation is the list that ends up getting employed.
26
27     Q.   Are these recorded anywhere?
28     A.   What's that?
29
30     Q.   The reasons.
31     A.   I'm not sure.  I don't think we have a definitive
32     process around that.
33
34     Q.   Paragraph 51.  You refer to organising personal
35     protection equipment.
36     A.   Yes.
37
38     Q.   Are you saying you provide the personal protective
39     equipment at the Anglo mines, for example?
40     A.   We provide the - as outlined in our contract - list of
41     PPE that we're required to.  There's different forms of
42     that at different mines.  Grosvenor and Grasstree are
43     different.  But, yes, we provide that.
44
45     Q.   But are you aware that section 64 of the Coal Mine
46     Safety and Health Regulation, or clause 64, provides the
47     coal mine operator provides the personal protective
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1    equipment?
2    A.    I'm not specifically familiar with that clause.
3    I believe our clients provide ordinarily, like, consumables
4    for - the things that get used all the time.  We provide
5    uniforms, boots, things like that.
6
7    Q.    In paragraph 54, there's a reference to the attitude
8    of employees being reviewed.  What details does One Key
9    keep about the attitudes of its employees?
10   A.    That would be - that is recorded in the performance
11   appraisals that I spoke to earlier today that are conducted
12   via our onsite manager just in terms of general performance
13   in the workplace.  I did mention on that things like safety
14   attitude and workplace culture and things like that.
15
16   Q.    I can move on to paragraph 69.  You come back to the
17   categories of employment here.
18   A.    Yes.
19
20   Q.    Can I just clarify, at least in the Anglo mines
21   there's no offer of permanent work?
22   A.    That's correct.
23
24   Q.    At paragraph 74, you give evidence about culture and
25   matters like that.
26   A.    Yes.
27
28   Q.    Could I suggest to you that you wouldn't know what the
29   culture was like on these sites?
30   A.    I think as I referenced before, I don't know what
31   I don't know, but each time I've been there, my experience
32   on sites and visiting is as I've said in my statement
33   there, that there's no segregation or, you know,
34   unfavourable treatment or anything like that that I've seen
35   or am aware of.
36
37   Q.    I want to suggest to you, in terms of paragraph 75,
38   that you wouldn't know these things?
39   A.    As I've said before, I don't know what I don't know,
40   but our employees, One Key employees generally, I would
41   consider as experienced, qualified, you know, high-quality
42   mine workers.
43
44   Q.    We can move on to the bonuses.  At paragraph 78, you
45   refer to the situation of there being no incentive for
46   One Key to have bonuses paid in those circumstances.
47   A.    Yes.
```

1
2 Q. You would agree with me, would you not, that the bonus
3 helps One Key to ensure the ongoing supply of labour?
4 A. Yes, to an extent. Obviously if the workforce is
5 getting bonuses paid, they're going to be more content than
6 if they weren't.
7
8 Q. Some of them would leave, wouldn't they, if they
9 didn't get the bonuses?
10 A. Possibly, yes.
11
12 Q. And they're determined by Anglo?
13 A. That's right.
14
15 Q. So Anglo effectively determines the overall
16 remuneration?
17 A. I think that's a bit of a stretch, but, you know,
18 Anglo does determine the bonus calculation and the amount
19 of bonus, yes.
20
21 Q. You say you're not aware - in paragraph 80 - of any
22 situation where there has been a problem in relation to the
23 payment of bonus. The CFMMEU has raised issues on behalf
24 of members who are One Key employees in relation to the
25 bonus with you directly, haven't they?
26 A. Not to my recollection.
27
28 Q. Didn't you actually agree with the CFMMEU that there
29 had been inconsistencies with timings and interpretations
30 in relation to the bonus payments?
31 A. Yes.
32
33 Q. And that was following representations that the CFMMEU
34 made to you?
35 A. Possibly, yes.
36
37 Q. You told the CFMMEU that you'd expressed to Anglo that
38 renewed clarity around the structure and standardisation of
39 how the bonus applied would be ideal?
40 A. Yes, there was some confusion and concerns raised
41 around the calculation of the bonus, and yes, I raised that
42 in one of our site meetings that, you know, clarification
43 of that would be good.
44
45 Q. In relation to paragraph 81, can I suggest to you that
46 bonuses have been withheld for alleged disciplinary
47 matters?

1   A.   Yes. I'm aware of that.
2
3   Q.   And indeed because of injury?
4   A.   I'm not aware of the injury matter, but, yes, in terms
5   of disciplinary things, yes, there is in some cases.
6
7   Q.   Can I suggest to you that one of your employees had
8   a month's bonus withheld for parking in the car park at the
9   mine when attending to undertake an unrostered overtime
10   shift?
11   A.   I'm not aware of that, the specifics of that case.
12   I can't comment on that. I wasn't aware of that.
13
14   Q.   If we could move on to paragraph 91, you talk about
15   your whistleblower hotline.
16   A.   Yes.
17
18   Q.   How often is that used?
19   A.   Not very often. It is only a relatively new
20   initiative, towards the mid to end of last year, so, yes,
21   there isn't a great uptake of that at all. I will say in
22   relation to these sites, I know Anglo has a similar type
23   facility, and that is very widely distributed on all sites.
24   So there's two channels there, two potential channels
25   there, for employees - or our employees to raise any
26   concerns.
27
28   Q.   If I could move on finally to the removal of One Key
29   workers. You set some figures out at paragraph 103.
30   A.   Yes.
31
32   Q.   Why did you choose such a short time period?
33   A.   Because that's the reference period for this inquiry.
34
35   Q.   I see. Are you suggesting that's typical of your
36   previous experience?
37   A.   Yes, I would say so, yes.
38
39   Q.   Does that table include casuals?
40   A.   Yes, it does.
41
42   Q.   How many of them are casuals?
43   A.   I'm not sure of that detail. I'd have to go and find
44   that.
45
46   Q.   In relation to paragraph 105, you made special mention
47   and I think gave some evidence to counsel assisting about

```
1     the COVID case.
2     A.   Yes.
3
4     Q.   I'll just take that as the one example on which I have
5     been able to get instructions.  I suggest to you that the
6     particular employee was advised, when he was sent away from
7     the site, to do so by an Anglo management person.
8     A.   I'm not aware of that.  I don't have that level of
9     detail on that particular instance.
10
11    Q.   And then his next contact was again from an Anglo
12    person to advise that he'd been terminated for reporting to
13    work ill?
14
15    THE CHAIRPERSON:   Mr Crawshaw, it's no use your giving
16    evidence.  If the witness doesn't know about it, he can't
17    provide evidence.
18
19    MR CRAWSHAW:   Well, this is the problem.  We have this
20    generalised evidence from a person who really doesn't know
21    the facts.
22
23    THE CHAIRPERSON:   Well, who do you suggest should be
24    called to give the facts?  You seem to have --
25
26    MR CRAWSHAW:   I'm not suggesting anyone.  I accept your
27    point, Mr Chair.  I'm not suggesting anyone should be
28    called, but this does reflect on the quality of the
29    evidence.
30
31    THE CHAIRPERSON:   Of course it does, but you seem to have
32    instructions, Mr Crawshaw.  Perhaps you could have asked us
33    to call certain evidence.
34
35    MR CRAWSHAW:   I certainly got some instructions on one of
36    the matters in the short time we've had the statement,
37    which I didn't receive until last night, dealing with that
38    one matter.  I don't want to take up time debating that
39    point with you now, Mr Chair.
40
41    THE CHAIRPERSON:   All right, move on, please.
42
43    MR CRAWSHAW:   I don't have any further questions.
44
45    THE CHAIRPERSON:   Thank you.  Mr Dollar?
46
47    MR DOLLAR:   No questions, Mr Martin.
```

1
2   THE CHAIRPERSON: Bless you. Mr Roney?
3
4   MR RONEY: I have no questions. Could Mr Lewis be
5   excused, subject to questions from the Board.
6
7   THE CHAIRPERSON: Ms O'Gorman?
8
9   MS O'GORMAN: I have no further questions.
10
11   THE CHAIRPERSON: Mr Clough?
12
13   MR CLOUGH: I have no questions.
14
15   THE CHAIRPERSON: Mr Lewis, thank you for your evidence.
16   You are excused.
17
18   **<THE WITNESS WITHDREW**
19
20   MS O'GORMAN: Mr Martin, I have the tender list item L
21   from today, and I ask that those items be entered as
22   exhibits.
23
24   THE CHAIRPERSON: Thank you. Does this include the
25   decision to which Mr Crawshaw referred?
26
27   MS O'GORMAN: No, it doesn't.
28
29   MR CRAWSHAW: I haven't supplied that yet. I was, as it
30   were, suggesting that as a solution for the objection that
31   was made by the learned friend. That can be supplied
32   tonight, if necessary.
33
34   THE CHAIRPERSON: Yes, thank you. That wasn't
35   a criticism. I was just ensuring that we do get it. So if
36   you would forward it, that will then form part of this
37   list. Is that correct?
38
39   MS O'GORMAN: Yes.
40
41   THE CHAIRPERSON: All right. The items on this list
42   marked L, to be also including the case referred to by
43   Mr Crawshaw, will be admitted into evidence. It's on the
44   list marked L. Thank you.
45
46   MS O'GORMAN: Mr Martin, that was the last of the
47   witnesses set down for this tranche of the hearings.

1
2   THE CHAIRPERSON: Thank you. Ladies and gentlemen, this
3   first tranche of the public hearings is now concluded. As
4   you know, the second tranche of public hearings will
5   concern the Grosvenor mine, both the 27 methane exceedances
6   at longwalls 103 and 104 between 1 July 2019 and 5 May 2020
7   and the serious accident on 6 May.
8
9   Expert reports into the serious accident are still
10   being completed. In any event, the Board is of the view
11   that the logical progression of the inquiry means that the
12   methane exceedances at Grosvenor should be dealt with
13   firstly leading into the evidence concerning the serious
14   accident.
15
16   To that end, the second tranche of public hearings
17   will commence on Tuesday, 15 September 2020 in this court
18   and will continue until all relevant evidence has been
19   called. Depending upon the availability of relevant
20   reports, there may be some days when the inquiry does not
21   sit, to ensure all parties have the opportunity to properly
22   consider the material.
23
24   The Board expresses its thanks to all parties with
25   leave and witnesses who have participated in this first
26   tranche of hearings. The Board also expresses its thanks
27   to those who otherwise significantly assisted the progress
28   of the inquiry through the provision of submissions and
29   information. The Board looks forward to this cooperation
30   and assistance continuing.
31
32   Written submissions in relation to this first tranche
33   of evidence are now sought from the parties with leave to
34   appear. A letter will be forwarded to all parties with
35   leave setting out, in general terms, the structure of the
36   submissions sought. All such submissions are to be
37   provided no later than 5pm on Wednesday, 1 September 2020.
38   Earlier provision of the submissions would be greatly
39   appreciated by the Board and would assist the Board in the
40   progress of the inquiry.
41
42   Is there anything before we adjourn? Thank you.
43   Would you adjourn the hearings, please.
44
45   **AT 4.19PM THE BOARD OF INQUIRY WAS ADJOURNED**
46   **TO TUESDAY, 15 SEPTEMBER 2020 AT 10AM**
47

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