

QUEENSLAND COAL MINING BOARD OF INQUIRY

Coal Mining Safety and Health Act 1999

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

Before:

Mr Terry Martin SC,
Chairperson and Board Member

Mr Andrew Clough,
Board Member

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

On Wednesday, 19 August 2020 at 10am
(Day 11)

1 THE CHAIRPERSON: Yes, Mr Rice.

2

3 MR RICE: Mr Martin, I call Damien Bernard Wynn.

4

5 <DAMIEN BERNARD WYNN, sworn: [10am]

6

7 <EXAMINATION BY MR RICE:

8

9 MR RICE: Q. Is your name Damien Bernard Wynn?

10 A. Yes, it is.

11

12 Q. Mr Wynn, you are the SSE and general manager at
13 Grasstree mine, am I right?

14 A. That's correct.

15

16 Q. Presumably appointed to that position by the operating
17 company, Capcoal Management?

18 A. That's correct.

19

20 Q. When was that?

21 A. September 2018.

22

23 Q. Tell me, do you have an employment agreement?

24 A. Yes, I do.

25

26 Q. With which entity?

27 A. With Anglo American, but Capcoal, underneath - Capcoal
28 Management, because I'm a director and officer for the
29 holder as well.

30

31 Q. I'm sorry, I didn't hear you.

32 A. I'm a director and an officer for the holder as well.

33

34 Q. Is that your only employment agreement?

35 A. Yes.

36

37 Q. Do you work on site?

38 A. Yes, I do.

39

40 Q. How do you manage your absences, because the
41 obligations under the Act don't seem to cease when you are
42 not on duty. How do you manage that?

43 A. They don't, but if I'm absent from site for more than
44 14 days, then under the legislation I've got to appoint
45 another SSE - or the holder, the operator's representative,
46 appoints another SSE.

47

1 Q. And what about other absences apart from being on
2 leave, for example, for more than 14 days? How do you
3 manage daily absences from the mine? Are you on call all
4 the time, for example?

5 A. Look, these roles as SSEs and directors and officers
6 of the business, you're on call 24/7, but I have
7 a management structure in place on site that obviously is
8 there to manage the operations, and people are there in my
9 absence. But to answer your question, yes, I can be
10 contacted 24/7.

11
12 Q. Those people you described in those management
13 positions might filter out things that they can deal with
14 or alternatively might need to be referred to you?

15 A. They certainly will do what they're capable of in
16 their roles as managers and as a team, and certainly
17 involve me to make sure I'm across anything I need to be,
18 as well, in my absence.

19
20 Q. You, I think, were previously SSE at Oaky North before
21 joining Anglo?

22 A. That's correct.

23
24 Q. For how long were you SSE there?

25 A. For approximately 24 months.

26
27 Q. Do you have certificates of competency?

28 A. Yes, I do.

29
30 Q. Which ones, can you tell us?

31 A. I have a third class certificate of competency, which
32 is a deputy's ticket; a second class certificate of
33 competency, which is an under-manager; and a first class
34 certificate of competency, which is a mine manager.

35
36 Q. All three?

37 A. Yes. And --

38
39 Q. Can you tell us - I beg your pardon?

40 A. And a ventilation officer's ticket of competency.

41
42 Q. Could you give us a bit more detail about your
43 background, going further back than Oaky North?

44 A. Sure. I have a Bachelor of Mining Engineering from
45 the University of New South Wales. I obviously have all
46 the statutory tickets I've just mentioned. I've worked in
47 various SSE roles across Anglo American and Glencore, which

1 predominantly was Xstrata. I've also held mine manager
2 positions and various technical and operational management
3 positions.
4

5 Q. For how long in total would you have been an SSE at
6 any of those mines?

7 A. My tenure was probably a couple of years in both, in
8 each of those operations.
9

10 Q. And your tenure as a mine manager?

11 A. Around the same time, generally, a couple of years.
12

13 Q. I want to ask you a few things about Capcoal
14 Management, because in all that we've heard there's been
15 very little about the operating company. Okay?

16 A. Of course.
17

18 Q. You mentioned already that you are a director of
19 Capcoal Management.

20 A. Of the holder, correct, yes.
21

22 Q. And correct me if I'm wrong, you became a director
23 probably about five months after becoming an SSE?

24 A. That sounds about right.
25

26 Q. In particular, correct me if I'm wrong, it would have
27 been in February 2019?

28 A. Yes, that sounds about correct.
29

30 Q. From what I understand, the SSEs at the other Anglo
31 mines, Moranbah North and Grosvenor, are also directors of
32 their respective operating companies. Are you aware of
33 that?

34 A. That's my understanding.
35

36 Q. Is that a coincidence or is that some strategy that
37 has been implemented?

38 A. No, the way that it works is obviously I'm a director,
39 an officer that's appointed by the holder, which is
40 obviously Capcoal Management. In that, obviously I have
41 responsibilities under the Corporations Act but also under
42 the Coal Mining Safety and Health Act, which is
43 section 74A [sic], and those obligations are that of an
44 officer of the corporation. The purpose of being both the
45 SSE and the director is that the SSE responsibilities and
46 the officer of the corporation, those responsibilities
47 coincide. As an officer for the corporation, I've got to

1 ensure that the corporation abides by the obligations in
2 the Act as well.

3

4 Q. So the dual role serves the overlapping purpose of
5 your satisfying your SSE obligations on the one hand and
6 also --

7 A. That's correct.

8

9 Q. -- at least in part, Capcoal Management's obligations
10 under I think section 41?

11 A. Section 41, that's correct. Well, that's the holder's
12 obligations, and 42 is the SSE's, and then I think it's
13 74Ak [sic] is the officer of the corporation, which I am,
14 as a director.

15

16 Q. Does Capcoal Management have business premises?

17 A. In such as a --

18

19 Q. Does it have office space?

20 A. An office space? We have a presence in the town of
21 Middlemount, which you would call an Anglo - it is an Anglo
22 American owned office space. There's nobody in there. It
23 more serves a purpose of meetings or such nature.

24

25 Q. Would I be right, the directors would be unlikely to
26 gather there for a directors meeting?

27 A. No, the directors generally will meet twice a year.
28 Anything above that will be like on an ad hoc basis for
29 circular resolution purposes. The other two directors and
30 myself will meet twice a year. I'll generally come down to
31 Brisbane for that meeting, but there's no reason why those
32 directors couldn't come up to site to Middlemount for the
33 purpose of those meetings.

34

35 Q. I think the company may have a registered address at
36 Charlotte Street, which I think is also Met Coal's business
37 address; is that correct?

38 A. That's correct. The corporate office is at
39 201 Charlotte Street in Brisbane.

40

41 Q. Does Capcoal Management have any separate office space
42 in that building?

43 A. Not that I'm - well, not that I'm specifically aware
44 of. It's an Anglo American building.

45

46 Q. You would be aware, wouldn't you?

47 A. Well, I certainly attend meetings there as a director,

1 so if I attend there in the purpose of - a meeting room for
2 the purpose of Capcoal Management, then, yes, I do, but
3 I just reference it as the Anglo American building.
4

5 Q. Does Capcoal Management have staff, either at
6 201 Charlotte Street or elsewhere?

7 A. Not specifically that I'm aware of, other than the two
8 financial directors that are part of the directors of
9 Capcoal Management, and then myself.
10

11 Q. Do you have an executive role in that company?

12 A. I have a director's role or an officer's role.
13

14 Q. I understand you are director. I was thinking in
15 terms of a managerial role?

16 A. No, my responsibilities are as of a director and
17 officer, so underneath the Corporations Act and also the
18 Coal Mining Safety and Health Act, as well as the SSE
19 responsibilities.
20

21 Q. There are, I think, perhaps four other directors of
22 the company?

23 A. There's myself, there's two financial directors, and
24 then there's obviously an operator's representative, which
25 is a legal person. But for the purpose of directors,
26 there's myself and two financial directors.
27

28 Q. I was going to ask you what roles they perform in the
29 operation of Capcoal Management?

30 A. Well, as directors, they obviously prepare reports for
31 myself. I prepare for reports for them. During our
32 meetings they get an update on the quarterly safety
33 performance and overall performance of the business, for
34 determining whether the business is solvent, they'll
35 prepare those reports with the assistance of others, and
36 also - yes, for the purpose of, I guess, those meetings,
37 make those kind of reports.
38

39 Q. Occupying, as you do, those two roles, being an
40 officer of the corporation and also SSE, you have
41 a conspicuously long list of statutory obligations; do you
42 agree?

43 A. Yes, I do.
44

45 Q. Probably more so than any other obligation-holder
46 under the Act; would that be your view of it?

47 A. There's certainly a few in there, yes.

1
2 Q. We've heard already that you, at least in your
3 capacity as general manager of Grasstree, report to
4 Mr Britton, who is the director of underground operations?

5 A. Yes, so Mr Britton is the executive head of
6 underground operations.

7
8 Q. He, at least according to what Mr Mitchelson said
9 yesterday, is not an obligation-holder under the Act?

10 A. That's correct.

11
12 Q. Do you agree with that?

13 A. Yes.

14
15 Q. Does he from time to time give you direction?

16 A. In the form of?

17
18 Q. Well, in the form of any aspect of the management of
19 the mine.

20 A. No formal direction, no, but I do report through to
21 him and I do have to give an update on the business and how
22 it's performing. Mr Britton will certainly give advice and
23 insight to the rest of the business or how Grasstree is
24 performing.

25
26 Q. In the course of its business, there are many, many
27 business decisions of all kinds to be made.

28 A. Mmm-hmm.

29
30 Q. I was wondering if you, in the implementation of
31 decisions that may come from group level, having regard to
32 your statutory obligations, have any power of veto over
33 things that might be imposed upon you?

34 A. As the SSE of the operation, I have absolute power of
35 veto. Glen's role is that of a corporate role and
36 a corporate governance role. There's certainly, in any
37 large organisation, a requirement for policies to be in
38 place and assurance processes in place to ensure that those
39 things are being managed, but I guess as an SSE of the
40 business, my obligation is very clear in regards to I am
41 the person that's ultimately accountable for that business.

42
43 Q. Take a hypothetical example - I'm not saying this
44 occurs. Let's say there was development of a panel
45 proposed and a first workings plan is devised at site level
46 and a certain budget is in place for that. If we
47 understand correctly, that would go to corporate level for,

1 shall we say, review; is that correct?
2 A. The budget process is, once the site's done the
3 initial budget, then it goes through the corporate,
4 obviously, for them to review, and obviously there's an
5 approval process in regards to that. But once the budget
6 is in place, if I have to do a change to the business
7 during that period of time - and development is a good
8 example. During the course of the budget period - so the
9 budget period, that's the budget period that's set - there
10 was a requirement, I made a decision to pull out of an area
11 of the mine because we were in the process of mining and
12 gas drainage at the same time, and we were only just
13 getting compliance to be able to mine that area just in
14 time. I made a decision that I wasn't satisfied with that,
15 and the result of that is I put the teams to work to
16 identify an alternative area in the mine to go.

17
18 Now, that is a major change to the current mine plan,
19 which involved site doing the work to be able to
20 demonstrate why we were doing it, me ensuring the
21 financials were put around it to demonstrate what the
22 impact of that decision would be, and then myself
23 presenting that to the likes of Glen Britton and the MCLT
24 to say that this is a decision that I'm proposing making in
25 respect to Grasstree. And they were supportive of that
26 decision. So it wasn't a decision that they could disagree
27 on, in such, or veto. The logic was sound and I could
28 demonstrate the reasons why we did that.

29
30 Q. Well, to take up a hypothetical example --
31 A. Sure.

32
33 Q. -- if the budget that you had prepared for development
34 of a panel was revised downwards to a level that you
35 regarded as unsatisfactory having regard to your
36 obligations, do you have the power of veto of the budget as
37 it has come back to site level, for example?

38 A. I certainly have an opportunity and input into that
39 budget. If there was a - in the case that you use, so this
40 is, say, a production - not restriction, but we're
41 decreasing production, and the reasons behind that came
42 down from a corporate level, that would be fine. I mean,
43 as long as I know what I need to produce that year, then
44 I can make the necessary adjustments around the activities.
45 It just means we produce less with less people, less
46 machinery.

47

1 But if the question is around safety, there's no doubt
2 whatsoever that anything put forward in regards to safety,
3 even if it's an out-of-budget request, and it's clearly
4 easily demonstrated that this is a requirement for safety,
5 it will always be approved. There's no course for that to
6 be vetoed.

7
8 Q. So, to sum up, do you then have the final say, at
9 least so far as safety is concerned, on decisions that may
10 come to you to be implemented from group level?

11 A. At the end of the day, as the SSE of that operation,
12 I'm ultimately responsible for that operation. So if
13 there's an initiative - and I'll use the example of the
14 elimination of fatality six pillars as an Anglo project -
15 I mean, that makes good business sense. Its purpose is to
16 ensure that we - those six pillars have been identified on
17 a global review of mining accidents. In that review, it
18 was identified that at least one or more of those pillars
19 were absent. So when that gets filtered down as
20 a corporate initiative, then of course I just - the
21 decision is simple. I will implement it into a site.

22
23 If I disagreed or had questions in regards to that,
24 then I would obviously have the opportunity to be able to
25 have those discussions.

26
27 Q. You would hope to resolve any issues with Mr Britton
28 and whoever else may be involved at group level, I take it?

29 A. Of course. Of course.

30
31 Q. Is that the way it works in practice, that you are
32 able to resolve, through negotiation, any proposals that
33 may need to be implemented at site level for which you are
34 responsible statutorily?

35 A. Yes, I wouldn't use the word "negotiate", but
36 obviously discussions are had all the time. A business of
37 this size and magnitude, those discussions, especially
38 during the budget preparation period, are had over
39 many months before the budget is signed off, because it's
40 quite a lengthy process.

41
42 Q. In your experience, have you been able to resolve, by
43 that process, a position which is satisfactory to you
44 having regard to your obligations in relation to business
45 decisions that may come from group level?

46 A. Oh, absolutely. I think at the end of that - well,
47 I don't think - I know. At the end of the day, whether

1 it's Tyler Mitchelson, the CEO, or any of the MCLT team,
2 which is the executive leadership team at Anglo, everybody
3 wants the same outcome. We want to be able to produce coal
4 safely and have a profitable business and a safe business.
5

6 Q. I take it you have not, then, been put into
7 a situation of a dilemma where you've been unable to
8 resolve an issue as between you and site level by a process
9 of collaboration?

10 A. No, not in my experience in the industry, no.
11

12 Q. You may have answered this in part in describing your
13 dual role as a director and as SSE, but I want to ask you
14 about the performance by Capcoal of its obligations under
15 section 41. This is not a memory test, but I'll just
16 remind you, the first and perhaps the most onerous of those
17 is to ensure the risk to coal mine workers at the mine is
18 at an acceptable level.

19 A. That's correct.
20

21 Q. How does Capcoal satisfy that obligation?

22 A. We have obviously a safety and health management
23 system in place. I have a management structure in place,
24 and obviously it underpins all - well, underpinning all of
25 that is obviously the things that are part of that system
26 to ensure that the risk to coal mine workers is at an
27 acceptable level.
28

29 Q. That's achieved, I suppose, per medium of your
30 appointment as SSE with all the obligations that surround
31 that?

32 A. That's exactly right. So I guess by having myself
33 appointed as SSE and also an officer of the corporation,
34 those obligations coincide and I have absolute control over
35 that.
36

37 Q. So if you are discharging your obligations under
38 section 42, do you take the view that it should really
39 follow that the corporation's obligations under section 41
40 are likewise being satisfied?

41 A. Yes, because I'm the same person, I'm appointed as the
42 same person in that respect.
43

44 Q. That describes the arrangement, then, doesn't it, for
45 satisfaction of that obligation?

46 A. That's correct.
47

1 Q. One of the other obligations that's perhaps not able
2 to be satisfied in that way is the obligation to audit and
3 review the effectiveness and implementation of the safety
4 and health management system. First of all, the Act
5 doesn't put any degree of frequency with which that needs
6 to be done.

7 A. That's correct.

8

9 Q. Could you explain how frequently that task is
10 undertaken by Capcoal Management?

11 A. Yes. You're correct, it doesn't explain or doesn't
12 dictate the frequency. In my experience - well, at Capcoal
13 management it's three years, and that has been my
14 experience at other organisations as well; every
15 three years that occurs.

16

17 Q. How is it done?

18 A. It's done by an external consultant or provider. The
19 last one - I've got one scheduled for October this year to
20 be completed. Obviously the one previous to that was
21 completed in 2017.

22

23 Q. By "external provider", are you referring to the kind
24 of report that we've seen examples of provided by
25 a consultant called Reed Mining Consultants?

26 A. That's correct, and that's the same person that will
27 be doing the one in October this year again.

28

29 Q. Is that the way in which that particular obligation is
30 satisfied, by engagement of that consultant?

31 A. Yes, it will be in this case, yes.

32

33 Q. Is there anything else beyond the engagement of that
34 consultant and the report that ensues from that engagement?

35 A. Obviously the report, and the recommendations that
36 fall out of that report have obviously then got to be
37 implemented and closed. But in my experience, it has
38 always been an external person that's a representative of
39 the operator, brought in to the business to be able to do
40 that review. And that tends to be --

41

42 Q. To be clear, there's nothing else: you engage that
43 provider, and the report that's prepared with
44 recommendations, or whatever, that is the way, the complete
45 way, in which the company satisfies its obligations under
46 41(1)(f)?

47 A. Yes, so the audit has to be completed to demonstrate

1 that you can demonstrate the effectiveness of the safety
2 and health management system, that it doesn't pose a risk
3 to persons of that operation and demonstrate that the risks
4 are at an acceptable level as well.
5

6 Q. You correctly refer to the requirement of the section
7 that the review is to be into the effectiveness and the
8 implementation of the safety and health management system.
9 I just want to suggest to you that this kind of report from
10 Reeds does no more than determine whether the documentary
11 requirements of the legislation have been met within the
12 SHMS?

13 A. That's part of it, but also part of that process is
14 that that person will do a verification process. They'll
15 take some of the documentation and they'll do an
16 underground visit and do a verification that those
17 documents that form part of the safety and health
18 management system are actually true and correct, and what
19 we say we're going to do is actually occurring, and then he
20 will have to demonstrate that he has evidence to be able to
21 prove that's occurring also. So it's not just a matter
22 of - yes, it has to demonstrate that we're compliant to the
23 legislation, but there's also the whole process underneath
24 that, for that to be an effective audit.
25

26 Q. Would you agree that in its ordinary meaning,
27 "effectiveness" means the degree to which something is
28 successful in achieving what it sets out to do?

29 A. Look, there's certainly always opportunities and
30 recommendations that come out of that audit. I viewed the
31 2017, and there was certainly nothing in there, as an SSE,
32 that gave me concern, if I had received that report at the
33 time. There were opportunities to improve. Generally,
34 those audits will - it's very unlikely that an audit of
35 that magnitude will highlight a complete deficiency, in my
36 experience, because the safety and health management system
37 is a very robust, live thing. We all understand the intent
38 of it and the purpose of it under the legislation, and to
39 that point I've only ever seen recommendations for kind of
40 improvements that have fallen out of an order of that
41 magnitude.
42

43 Q. I understand what you're saying, but having regard to
44 the wording of the legislation, would you not expect to see
45 some measure applied to how effective and whether the SHMS
46 is effective, as opposed to whether it contains the
47 components that it's supposed to contain?

1 A. As a measure of some form of score, are you referring
2 to?

3
4 Q. Look, the metric is to be devised. Let's leave that
5 at large. But at least some qualitative assessment of,
6 again, to repeat that word, the effectiveness of what it
7 does or does not do?

8 A. Look, there's some - that's certainly an opportunity
9 for improvement. But I guess when I read a report of that
10 nature, and my experience in what it's telling me is
11 probably - maybe not seen by others that may not have that
12 kind of experience, so I gauge an understanding relatively
13 easily that, you know, that document or that audit is
14 demonstrating to my satisfaction that the outcome is
15 serving the purpose of that part of the legislation.

16
17 But to answer your question, look, I think yes, sure,
18 any opportunity to improve a process like that can only be
19 beneficial.

20
21 Q. We could all read it and make up our own minds, I
22 suppose.

23 A. Of course.

24
25 Q. But I just want to put to you that it seems
26 self-evident on its face that it does not attempt to
27 measure effectiveness or make any comment about
28 effectiveness. Rather, it is confined to looking to see
29 whether you have a compliant SHMS?

30 A. It serves that purpose, but also it does serve the
31 purpose of the effectiveness. If I wanted to demonstrate
32 the effectiveness of a system, a safety and health
33 management system or part of it, I would get a part of that
34 system, I would first indicate that it meets the
35 requirement of the legislation. I then would go and do
36 a verification, assurance process that that piece or that
37 part of that safety and health management system is
38 actually effective, and I would be doing that by going
39 underground or on the surface, wherever I needed to, to
40 validate that that was occurring. In my mind, that would
41 be my way of assuring that that's a level of effectiveness
42 and assurance.

43
44 It's very similar to what we do around critical
45 controls. The critical control process is around
46 validating, assuring, verifying that those controls that
47 we've deemed as critical are in place and effective. Now,

1 it does that by a person with a capable knowledge,
2 competent person, goes and validates and verifies that that
3 control is in place and also then a person in a management
4 position will then review the evidence that that person has
5 submitted to demonstrate that that critical control is
6 effective.

7
8 Q. Is it your understanding that, whatever the report may
9 say, Reed consultants actually do that?

10 A. That's my understanding, and certainly I have the
11 opportunity now, with Reed organised to do the one in
12 October, I can have that opportunity, as the SSE now of the
13 business and as the officer of the holder, I can have that
14 conversation and ensure that --

15
16 Q. That will be your first one, will it?

17 A. At Grasstree operations, yes.

18
19 Q. Turning to one of the personal obligations that accrue
20 to you and your fellow directors of Capcoal Management,
21 it's actually 47A - I think you might have said 74A.

22 A. Apologies.

23
24 Q. That's okay. 47A of the Act, the corporation is
25 required, or at least you are required, to exercise due
26 diligence to ensure that the corporation has available for
27 use, and uses, appropriate resources and processes to
28 minimise risk.

29 A. Mmm-hmm.

30
31 Q. From what I understand of what you've said of Capcoal
32 Management, as a corporation it doesn't have resources of
33 its own; is that correct?

34 A. Not as its own, but obviously I have access to
35 resources in my role as an SSE and my role as an officer
36 for the holder.

37
38 Q. So, again, do you say that that personal obligation is
39 satisfied by virtue of you, as SSE, applying to the
40 management of the mine such resources as Met Coal might
41 provide?

42 A. That could be one example, yes.

43
44 Q. How else?

45 A. Well, that's correct. I have, obviously, resources
46 available to me, and I guess by having those obligations
47 I can demonstrate that I am meeting those obligations by

1 ensuring that those resources are available.

2

3 Q. Since you are a director, by that means you are using
4 due diligence to ensure that the corporation satisfies that
5 obligation; is that the structure?

6 A. That's correct.

7

8 Q. What about the other directors who are not similarly
9 placed as you - they have personal obligations to satisfy
10 under 47A. Do you know how they go about it?

11 A. Look, I would have to ask those questions we could
12 refer to them, but obviously they are like a non-director
13 executive role. Like I said, they are financial kind of
14 directors and I'm more the operational director, to put it
15 generally.

16

17 Q. I appreciate that you can't necessarily speak for
18 them, but I just thought there might have been some system
19 in place that you could speak to.

20 A. Look, if I was to think of a system, the system is -
21 the system is the operational budget, the capital budget
22 that I have access to to be able to demonstrate my due
23 diligence to ensure that happens. I don't ask for
24 authority off those two directors to be able to access
25 that. I have that ability that's given to myself.

26

27 Q. Can I turn to a different subject. It's one that has
28 already been discussed in some detail by Mr Mitchelson, but
29 you may be able to give us a site perspective. I'm talking
30 about the management of critical controls, a concept you've
31 already mentioned today. To facilitate that, it might be
32 as well to put up a couple of pages of the mine operating
33 system that refer to it, and we might be able to use that
34 as a reference point for some discussion. Okay?

35 A. Of course.

36

37 Q. Mr Operator, could we have ACM.006.001.0055, and, in
38 particular, page 0067. I know this is a big document, but
39 have you had the opportunity to look at this recently?

40 A. I'm familiar with the document. It's a well-known
41 document. It tries to summarise the way we run the
42 business in one kind of document.

43

44 Q. You see on that page that it lists the PHMPs and it
45 appears to identify the owner of the hazard to which the
46 critical control relates; is that correct?

47 A. That's correct.

1
2 Q. To take perhaps the most topical example of fire and
3 explosion, Mr Schiefelbein is the owner of that
4 catastrophic hazard or principal hazard; is that correct?

5 A. That's correct.
6

7 Q. We see reference there to, as we've pointed out, the
8 PHMPs, and also there is something I'm going to ask you
9 about called the critical control auditing program. What
10 I wondered, because it doesn't seem to have surfaced as
11 yet, is whether there is some overarching document that
12 sits above the PHMPs to, for example, describe the process
13 of identifying and managing catastrophic hazards through
14 critical controls and identifying, for the likes of
15 Mr Schiefelbein, what his obligations are as hazard owner.
16 Is there a protocol that sits above these site documents?

17 A. The critical controls are referenced in other
18 documents. This one, for the purpose of what we're
19 discussing now, is suitable. I think it might be easier if
20 I explain the process.
21

22 The way the critical controls originally developed -
23 and this is in the industry as well - is that when we
24 develop principal hazard management plans, there's
25 a process that we go through to develop them, through
26 a bow tie process or a risk management process. Previously
27 in the industry we identified the controls within - that
28 came out of that process as critical, and then we put
29 a process in to demonstrate verification and assurance,
30 which I discussed earlier.
31

32 As the industry has kind of progressed and matured
33 with this process of critical controls, we're now working
34 with people like the University of Queensland, who have
35 come up with a process that, for all intents and purposes,
36 is a flow chart process that says, well, out of these
37 10 controls, as an example, in this one bow tie for
38 a principal hazard management plan, maybe only two of them
39 are really critical; the rest are important, but those two
40 are what we would deem fall into our definition of critical
41 controls.
42

43 That process is being conducted now across Anglo.
44 It's those people that are like Mr Schiefelbein - as an
45 owner of some of those principal hazards, he's been part of
46 that process, and part of that process also is to identify
47 consistency across the undergrounds, because it would be

1 reasonable to state that gas management, as an example,
2 there should be consistent critical controls across, say,
3 the Anglo underground operations.
4

5 Now, there may be different ones required, and that's
6 fine. Grasstree is an example. We have a winder, a man
7 and materials winder, which is unique in Queensland. It's
8 the only one in Queensland. So we have a PHMP for, as you
9 can see there, a winder.

10
11 Q. But how, for example, does Mr Schiefelbein know what
12 is required of him under the management system for critical
13 controls - what is required of him as the owner of
14 a principal hazard?

15 A. So when Mr Schiefelbein is onboarded, the onboarding
16 process would go through those areas of his
17 responsibilities. It would be in his - not his contract,
18 but his personal role description as well. Then
19 Mr Schiefelbein would be taken through the process of
20 critical controls on site, what they are and the process of
21 what he's responsible for ensuring occurs as well, so
22 it's --
23

24 Q. But where is the framework for that?

25 A. There's critical control frameworks. So the critical
26 control frameworks are documents and audit processes and
27 lists of what those things are.
28

29 Q. At a site level - tell me if this is wrong - what
30 I see are PHMPs.

31 A. Mmm-hmm.
32

33 Q. There would be a critical control register; correct?

34 A. Yes, there would be.
35

36 Q. And there seems to be a monthly auditing requirement
37 as well?

38 A. That's correct.
39

40 Q. Is there anything else? Is there a protocol document
41 to describe the management process for critical controls
42 and what stakeholders must do?

43 A. Look, I'll have to take that on notice, but there will
44 be - I've viewed different documents, how we reference
45 critical controls, and I certainly see how it's applied and
46 people's knowledge to be able to demonstrate they
47 understand the process. So there would be.

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Q. It must be more, mustn't it, than simply applying the PHMP, because Mr Schiefelbein would do that, anyway? There must be something to distinguish the critical controls and how he should manage or respond to them?

A. There will be.

Q. As opposed to simply applying the PHMP, which he would do seven days a week?

A. Absolutely. The critical control process is not a small process. It's a very large process from start to finish and it's quite detailed. There's something - nearly 300 different monitoring activities in regards to critical controls, so it's quite a large element of the business.

Q. On this page that we still have on display, at least a little bit above that, Mr Operator, if we could go to the first half of the page, you'll see reference to a critical control auditing program, which it says is to be conducted on a monthly basis. Could you explain that, please?

A. Yes. That's the process of - content experts will get critical controls sent to them via a system, and their requirement is to conduct the audit and verification process to demonstrate that those critical controls are in place and effective and that there's no deficiencies or certainly that they are in place.

Q. I'm sorry, given the example we're taking - Mr Schiefelbein, as the owner of the fire and explosion hazard --

A. Correct.

Q. -- does he do something in response to this auditing program, or is it done in some other area or department of the mine?

A. No, there will be people that will do some verification on the ground, and they will be the competent people to be able to go and have a look at that critical control and ensure that whatever the requirement of that critical control is is in place. Mr Schiefelbein's role in that is to then, once those things are loaded into the system, he will go in and verify the evidence that those people have put in place to show that that critical control is in place, it's effective and here is the evidence to be able to demonstrate that.

Before that critical control process can be signed

1 off, Mr Schiefelbein will go in and identify and review
2 that evidence to satisfy himself that that has been done.

3

4 Q. This, I take it, is a reporting mechanism to group?

5 A. It reports to site and then it will go into a monthly
6 group safety - safety report, correct.

7

8 Q. That would be used at the monthly performance meeting,
9 would it?

10 A. It's a document that goes out to the whole group then.
11 So obviously I'm from a site level, I will get a list of
12 any of the critical - or a list to demonstrate the critical
13 controls have all been signed off for the month. If
14 there's any deficiencies, I get an opportunity to review
15 what the deficiencies were and what the corrective actions
16 were. I will then sign off on that list to demonstrate
17 that it has been completed or that I agree on the actions
18 out of any deficiencies.

19

20 It will then go to Glen Britton, who is the executive
21 head of underground, and then it will go into a monthly
22 report on site and for, obviously, Anglo American.

23

24 Q. There is no document referenced about that process in
25 the management operating system. Is there a document
26 describing the auditing and reporting program?

27 A. Yes, there will be. It'll fall underneath the safety
28 department or the SHE department, we call it, within Anglo
29 American, which is safety, health and environment.

30

31 Q. It will pertain directly, will it, to the critical
32 control auditing program and how it's supposed to function?

33 A. That's correct.

34

35 Q. We heard some discussion at some length about
36 so-called labour hire workers in the course of evidence
37 yesterday and the day before. Whatever the exact figures
38 might be, am I right that at Grasstree the proportion of
39 labour hire workers is rather lower than, say, at
40 Grosvenor?

41 A. Yes, that's correct. I've recently inquired, and
42 there's currently around 76 labour hire, One Key labour
43 hire people at Grasstree.

44

45 Q. Out of how many employees, do you know, even roughly?

46 A. Approximately, there's about 420 employees. There's
47 another 250-odd contractors, mining contractors, and of

1 that 250 that would be - 76 of them would be One Key.

2

3 Q. That's quite a small proportion?

4 A. Yes, it is.

5

6 Q. And much smaller than Grosvenor?

7 A. Certainly. It's a completely different business
8 model, Grasstree. I mean, Grasstree is - we would have -
9 our business model would be around one-third contract
10 labour, which ranges from contractors - I'm including
11 labour hire in that broad-brush definition of
12 "contractors".

13

14 Q. You mentioned the business model. I was going to ask
15 you whether you have a role in determining what the quota
16 of labour hire workers would be for the site?

17 A. Certainly. I mean, when we put together a budget and
18 we have an understanding of what the activities are for
19 that year, that obviously forms part of - manning is part
20 of that requirement to submit for the budget.

21

22 Q. No doubt it is, but the question is how that manning
23 requirement is to be met. Do you determine what proportion
24 of the required manning will be labour hire workers, or
25 does someone else do that?

26 A. No, no. We'll just - I'll determine that on site,
27 obviously, as we put together the budget. If for some
28 reason activities change throughout the year, I've got the
29 flexibility to be able to bring in labour hire to be able
30 to meet that demand. But, no, that sits at a site-based
31 level.

32

33 Q. To sum up, you would determine what the manning
34 requirements are and whether those manning requirements
35 will be met by way of full-time employees or contract
36 services or labour hire workers?

37 A. That's correct.

38

39 Q. Ultimately your decision?

40 A. That's correct. At Grasstree, we're a business that -
41 we've only got 18 months left to go. So we have our
42 permanent employees, which have obviously been in the
43 business for a length of time; we have a contingency of
44 contractors that are required for specialist work; and then
45 we have an element of some labour hire, One Key, that gives
46 us the flexibility to be able to bring them in at times if
47 activities change throughout the year.

- 1
2 Q. It's not a day-by-day flexibility, though, is it?
3 They're not casuals in the sense that someone at Woolworths
4 might work on a shift to fill shelves?
5 A. No, certainly. If there was an activity that required
6 a week or a shift or a month, we would facilitate that with
7 an overtime process. But if it's for something of
8 reasonable duration, then labour hire is available.
9
- 10 Q. You used the word "flexibility". Is that the main
11 purpose of using that style of manning?
12 A. Yes, certainly.
13
- 14 Q. To give you the flexibility to add and subtract fairly
15 readily to your manning complement?
16 A. Yes, certainly. Obviously that gives you the ability
17 to be able to do that, that's correct.
18
- 19 Q. Is that the main reason why you would use a proportion
20 of labour hire workers?
21 A. That's correct.
22
- 23 Q. According to Mr Jones, at Grasstree such workers might
24 be found in outbye, development or longwall crews. Do you
25 agree with that?
26 A. That's correct. They form part of the full-time
27 equivalents, part of our production crews or outbye areas.
28
- 29 Q. Would the labour hire workers be integrated with
30 employees? To explain, I'll give you an example, say
31 a longwall crew. Would such a crew be comprised only of
32 labour hire workers, or would there be a blend of such
33 workers and employees?
34 A. There would be a blend. So they form part of the
35 crews. They wear the same clothes as the employees. For
36 all intents and purposes, you wouldn't be able to identify
37 who was an employee unless you knew the individuals or who
38 was a One Key labour hire person.
39
- 40 Q. Can we elevate that to a strategy, that such workers
41 would be blended amongst the duties performed by employees?
42 A. That's how it currently is. Labour hire are
43 consistent throughout different crews. There's no crew
44 that's completely made up of labour hire.
45
- 46 THE CHAIRPERSON: Q. Why is that, Mr Wynn? Why do you
47 do that?

1 A. Because generally they've been brought in for the
2 purpose of making up additional numbers if activities
3 change. So an example I might use, or that I used
4 previously, when we had to make a decision to completely
5 change the sequence of where we were going in the mine, we
6 brought on an additional development unit, and to make up
7 the manning on that, it was a mixture of some of the
8 employees and some of the labour hire, and that was just -
9 it was a good balance. I've never had the need at
10 Grasstree, at this stage, to make up a full crew of labour
11 hire. We've always had the ability to supplement it with
12 employees and labour hire.

13
14 Q. But it's more the way it works out; you don't actually
15 contrive that it's like that, or do you?

16 A. I've never had the need for that much flexibility.
17 Like, I haven't had the need to bring on complete crews of
18 labour hire. I mean, I could if I needed to, but I would
19 still look at the opportunity to try to mix them up.
20 I think it just gives a good balance.

21

22 MR RICE: Q. I think you were watching yesterday when
23 the contract between One Key and Grosvenor was being
24 displayed and Mr Jones was being asked about parts of it.

25 A. Correct.

26

27 Q. That example is the contract that's held as between
28 Grosvenor and One Key, but I think Mr Jones acknowledged
29 that it was very likely to be in a substantially similar
30 form for the other mines. Do you agree with that?

31 A. Yes, I agree. I heard that.

32

33 Q. There are just a few parts of that that you may
34 quickly be able to comment on from a site level. Okay?

35 A. Mmm-hmm.

36

37 Q. Mr Operator, could we put up AGM.003.004.0001. Could
38 we go to page 15 of that. Item 6.2 was discussed with
39 Mr Jones yesterday. Just take a moment to have a look at
40 that. Do you see there that various obligations are
41 imposed on the contractor, One Key Resources. To take
42 paragraph (b), for example, where the obligation is cast
43 upon the contractor to ensure that workers have all the
44 appropriate qualifications, et cetera, do we take it, or do
45 you agree with what I think Mr Jones was explaining
46 yesterday, that that doesn't obviate your needs to validate
47 competencies and requirements at site level?

1 A. Yes, of course not. So there's an obligation upon
2 myself to ensure that those competencies are validated as
3 well.

4
5 Q. You might confirm, if you wouldn't mind, just what
6 process is undertaken with respect to determining whether
7 people have the competency that is required of them in
8 whatever job they have been sought to do?

9 A. Yes, certainly. An example with One Key, for
10 instance, if I had a requirement for four electricians,
11 One Key would submit a number of resumes for site HR to
12 review with the process owner that required those four
13 electricians. They would determine out of a list of maybe
14 10 potential candidates, they would say, "Well, please,
15 interview those four candidates." They would get
16 interviewed, and when successful, site would review the
17 outcome of that process.

18
19 They would then be put in through the HR training
20 department process and the onboarding process, where they
21 would be engaged and required to send their qualifications
22 and various different skills, training experience.

23
24 Q. Could I interrupt you there. Does this kind of
25 obligation serve effectively as a screening tool, so that
26 the persons who you might, in due course, have at site are
27 assessed by the provider as having the necessary
28 requirements?

29 A. That's the way I read that, and in practice that's
30 what they would do.

31
32 Q. But the next question is, how do you ensure that
33 people do have the requirements that they claim to have?

34 A. Yes. Once they've been interviewed, they've been
35 accepted, they're loaded into the system. The training
36 department then review those competencies and certificates.
37 Recently in the industry, and my training department has
38 identified even fraudulent certificates, because they will
39 do a verification process. If they identify a sample that
40 falls into a category they want to inquire into a little
41 bit further, they will go back to the service providers
42 that have provided that certificate and make inquiries, and
43 during that process they've identified some fraudulent
44 certificates that have come in. That's obviously then
45 reported, as a courtesy, to the department and then to the
46 Queensland Police Service. So that system is in place
47 there.

1
2 Once they come on board and they go through - well,
3 prior to them coming, they'll go through a six or eight
4 hour online induction. They'll then do a day surface and
5 then a day underground induction process. They will then
6 go underground to an area and they will go through an area
7 familiarisation with the supervisor or deputy in charge of
8 that area, and then any of their tickets that they've
9 obtained elsewhere - and I'll use a vehicle as an example -
10 they'll have to go through a recognised prior learning
11 process. So they'll have to demonstrate - even though
12 they've got a piece of paper and we've done all the checks
13 and balances, they'll still have to demonstrate in a
14 practical demonstration that they can operate that piece of
15 equipment before they're allowed to operate it and we sign
16 off and authorise it.

17

18 Q. Is that process that you've just described the same as
19 that which might apply to new employees?

20 A. I went through the same process.

21

22 Q. It's the same for everyone?

23 A. It's no different, whether you're a contractor,
24 a supplementary labour - sorry, a labour hire person or
25 a staff. I went through the same process. I had to give
26 my tickets in and they were verified, went through the same
27 induction process, the same area familiarisations,
28 underground. My process was a little bit lengthier,
29 because if you're appointed as a supervisor, that's another
30 couple of days, and then if you're appointed as a deputy,
31 well, that's an additional week on top of that first week,
32 so it's quite a lengthy process, depending on what you're
33 coming in as.

34

35 Q. If we could go to the next page of that document,
36 please, at 6.6, do you see there (a)(ii) is the power
37 reserved to the SSE to object to a labour hire worker.
38 Have you had occasion to do that, do you know?

39 A. Yes, I have, but I'll just point out - and
40 I appreciate this is the Grosvenor document here. I've
41 since had a look at the Grasstree contract, and it states
42 the company - the contract representative has that ability.
43 The words to the effect are very similar. In this case for
44 One Key at Grasstree, the contract representative is the
45 HR manager. But the HR manager clearly understands that if
46 anybody is going to be removed from site or terminated,
47 then that's a process that I'm the decision-maker on,

1 regardless of what it says in the Grasstree contract.
2 I just wanted to point out that point of difference.

3

4 Q. You're saying that where this contract reads "the SSE
5 may", in Grasstree it's likely to be "the HR manager may"?

6 A. The contract representative, which in this case is the
7 HR manager, who is the contract representative for that
8 contract. And that has, in my time at Grasstree, occurred
9 once, with the removal of a deputy that was working for
10 One Key.

11

12 Q. You've mentioned the removal of a worker. This
13 provision is, perhaps on the face of it, as I read it, more
14 directed to objecting to the commencement of an engagement
15 by a particular worker.

16 A. Yes, my apologies, it is, and it's similar to the
17 Grasstree one as well. There's an opportunity to review
18 and reject it before they come to site, and then obviously
19 if they're already currently on the site, they can be
20 removed.

21

22 Q. Let's go to the next one, paragraph 6.11 on page 18.
23 You saw that Mr Jones was asked about this provision as
24 well.

25 A. Mmm-hmm.

26

27 Q. Do you know if there is a similar provision in the
28 Grasstree contract reserving these powers to the SSE?

29 A. Again, it sits with the contract representative. It's
30 not as detailed as that, but words to the effect, it gives
31 the same power to the contract representative.

32

33 Q. You had mentioned an example - I'll give you the
34 opportunity to elaborate on it - where there had been an
35 occasion of removal of a worker from the site?

36 A. Yes.

37

38 Q. Was that at your instigation, or whose?

39 A. Yes, it was under my direction to the contract
40 representative. It was a deputy that was working for
41 One Key that failed to report a safety incident and fulfil
42 his statutory obligations. We conducted a site
43 investigation process, which is what we would afford to
44 anybody, regardless of whether they're a contractor or
45 a labour hire or an employee. The outcome of that
46 investigation was then handed over to One Key with
47 a request that One Key now, under their company policies -

1 it is up to them what they do in regards to discipline, but
2 from the point of my involvement, I no longer required that
3 person to be on site. As an SSE, that gives me that - it
4 allows me to fulfil the obligations of an SSE.
5

6 Now, I don't know whether One Key terminated that
7 person or gave that person a written warning, but for my
8 purpose that person was removed from site.
9

10 Q. You mentioned that example. Is that the only one?

11 A. That's the only one, yes, that's correct, the only
12 one.
13

14 Q. In the course of your explanation, you referred to the
15 site investigation process.

16 A. Mmm-hmm.
17

18 Q. Is that something that applies to all workers
19 regardless of their status, be it labour hire or permanent
20 employee?

21 A. Yes, absolutely.
22

23 Q. What is it, then?

24 A. So if a person was involved in an incident, the
25 investigation would be conducted. If that person was an
26 employee, and an outcome of that investigation was that
27 that person who was an employee had to be taken through the
28 disciplinary process, then that would occur. Obviously
29 I can't tell a company how to run their business, but what
30 we would do is we would conduct the investigation, we would
31 hand over the investigation and what the outcomes of that
32 investigation were to the contract owner, in this case as
33 an example One Key, and then One Key would need to take
34 appropriate action underneath their company policies with
35 that individual.
36

37 Q. Who would do the investigation - someone from the
38 HR department?

39 A. No, if it was a recommendation that this person,
40 underneath our process, would require to be taken through
41 the disciplinary process, then that is given to the company
42 and it's up to the company to follow through underneath
43 their policies in regards to that. Unless it was of
44 a nature that I just stated previously where I made
45 a decision to remove that person from site for failing to
46 report a safety incident.
47

1 Q. Under the process, would you get a brief of some kind
2 with relevant information that's been gathered by others?

3 A. Yes. That process would be done by others. If it
4 gets to a level that a person is potentially going to be -
5 may end up being terminated or removed from site, and I am
6 the decision-maker in that respect, I would just be
7 involved and kept informed of anything that involved
8 a possible decision to discipline a person in relation to
9 an incident or an event. And, look, that process is
10 applied to all persons on site, to ensure that there's
11 consistency and fairness. There was a labour hire or
12 contracting company on the surface that were about to
13 terminate an employee, and myself and the HR manager have
14 got involved and reviewed that process and deemed that what
15 they were recommending was too harsh, and we gave that
16 recommendation to them in this case.

17

18 Q. Without going to other parts of this contract,
19 perhaps, so far as training is concerned, there is a mine
20 training and competency scheme. I think you would be aware
21 of that?

22 A. Correct.

23

24 Q. Is that scheme applied - we saw the document
25 yesterday. Is that scheme applied to labour hire workers
26 in the same fashion or any different fashion to permanent
27 employees?

28 A. It's applied the same to everybody, whether you're
29 a contractor or whether you're a labour hire or whether
30 you're an employee. There's no distinguishing between the
31 three.

32

33 Q. So, for example, would there be a training needs
34 analysis conducted for labour hire workers?

35 A. There would be, quite possibly, yes. Their skill sets
36 are loaded into Enablon - sorry, into a scenario. If
37 there's a requirement for them or a willingness or a need
38 to get additional tickets, as an example, they would go
39 through the process of getting those opportunities on site.

40

41 Q. I presume also that refresher training would be
42 conducted as needs be for those workers, as for permanent
43 workers?

44 A. That's correct.

45

46 Q. I'm not going to ask you about any particular of the
47 HPIs, because we've spent a lot of time on that already,

1 but I'd just like to clarify what your role in the process
2 of reporting and deliberation of outcomes from those
3 matters is. We have seen in Grasstree's case that
4 Mr Schiefelbein was the one responsible for really all
5 stages of the notification process, from verbal through
6 form 1A and form 5A, but equally, I think, at least the
7 documents, the forms, were emailed to you. How would you
8 explain your role in that process?

9 A. So we're talking about the LFI document?

10

11 Q. No, before that. To begin with, would you be notified
12 as a matter of routine of a methane exceedance of in excess
13 of 2.5 per cent?

14 A. Oh, absolutely. It would start with --

15

16 Q. At the time?

17 A. Oh, absolutely, yes. So it would start with obviously
18 the deputy would ring up the control room or the MSO, which
19 is a role like an under-manager. They would inform them.
20 They would then get in contact with Kelvin and myself, if
21 it was in the evening or on a weekend. If it was during
22 the day, Kelvin would come in and see me. By that time
23 I would have already had a phone call from the control room
24 to notify me as well. So there would be various people
25 that would be attempting to get hold of me to notify me.

26

27 Once that notification has come through, we are
28 obviously at the point of trying to ascertain what's
29 occurred and what we need to do before anything can
30 recommence, but I guess the most important part of that is
31 we want to be able to hear that the power and the systems
32 have worked underground and tripped off, people have been
33 removed to a place of safety and that the risk is being
34 managed.

35

36 Once all that process is occurring and happening, the
37 notification process to the inspectorate and the ISHRs will
38 occur shortly after that. But the initial moment the event
39 occurs, it's all about focusing on the event, having the
40 right people have a look at what's occurred and understand
41 what's occurred and look at what we need to do differently
42 to ensure --

43

44 Q. Are you saying that you are invariably consulted in
45 the way that you've described whenever such an event
46 occurs?

47 A. Oh, absolutely. I mean, one thing about, well, myself

1 and others in the industry, when an event occurs at a coal
2 mine, everybody wants to solve the problem, and I'm no
3 different. I mean, I'd like to put my gear on and head
4 underground and try and solve it, but in my role I've got
5 to take a step back, I've got to remain calm. The best way
6 I can do that is to ensure the right people are talking and
7 that I give them the assurance that this will take as long
8 as it needs to take and that there's no pressure in getting
9 this resolved quickly for the purpose of starting back up
10 again.

11
12 So once I do that and then give those people the space
13 to be able to work through those issues, they can then go
14 ahead and try and complete and understand what happened and
15 put appropriate controls in place.

16
17 Q. There are two parallel forms of inquiry that follow an
18 incident like that. One is that the form 5A needs to be
19 completed with the results of inquiry. That was done
20 routinely by Mr Schiefelbein. And, secondly, there is the
21 LFI process. They're not the same thing, so we've been
22 told. Are you involved in either of those?

23 A. Mr Schiefelbein will report it through to the
24 department and the ISHR, which is quite common in the
25 industry. We actually encourage the mine manager to report
26 those style of HPIs, or if it's an electrical, mechanical,
27 we encourage the electrical engineering manager or the
28 mechanical engineering manager to report them through to
29 the electrical/mechanical inspectorate. That's well
30 accepted in the industry because it keeps the relationship
31 between those individuals open.

32
33 Once that's been reported, Mr Schiefelbein will
34 complete the 1A. It's then sent to me for review before it
35 gets sent off site. That process is completed at that
36 stage. We then obviously go through the process to start
37 preparing to gather information for the LFI process.

38
39 At the one-month period, Mr Schiefelbein will then go
40 into the department's system, to the form 5A, and fill in
41 the information that he has at that point in time in
42 regards to that.

43
44 He will send that to me, and - but, to be honest, I'm
45 not reviewing that. I'm really looking at that email to
46 assure myself that he's completed it within the time frame
47 that's required underneath the legislation. And obviously

1 during this process I've seen some potential opportunities
2 there to improve on that, and we've got some things we're
3 going to do differently on site.
4

5 But the LFI process will then commence over that month
6 as well, start the investigation, and when it's to a stage
7 that it's in a final draft, it goes to the process manager
8 that's in charge of that area. It will then go to the
9 safety manager and then will come to me for a final review,
10 and that gives me the opportunity then to have a final
11 review of that document.
12

13 Sometimes I will send it back to the team or there
14 will be comments on it or I'll walk it around to
15 individuals and have discussions on things that I think are
16 missing or not clear. But once it's finalised, I then sign
17 it and it gets sent off site to Glen Britton, as the
18 executive for underground.
19

20 Q. One of the features of that process, as we've seen, is
21 that typically a set of recommendations would be
22 determined.

23 A. Yes.
24

25 Q. And entered into Enablon for performance as tasks?

26 A. That's correct.
27

28 Q. In the review of the draft report that you've
29 described, what input do you have in that process of
30 identifying what should be done?

31 A. Absolute input and control over it. So what I'm
32 looking for in that LFI report is, can I pick it up and
33 understand the incident that's occurred? Have the team
34 clearly identified what the root causes of that event were?
35 And do the controls or recommendations that they're
36 suggesting clearly address those root causes or failings in
37 the course of that event? If I'm satisfied with that, then
38 it will obviously get reviewed and signed off. If I'm not,
39 then I'll add further comments or I might even add an
40 action or I might even modify an action.
41

42 What I encourage the team to do is - because that can
43 take a month, and sometimes it takes a little bit longer,
44 when that report is in a final draft and those initial
45 recommendations are there, we get them loaded into Enablon.
46 Now, if it gets to me a week or two weeks later and
47 I determine I want additional action put in place, that

1 will get put in place. If I determine one of the actions
2 they've recommended and is already loaded into Enablon
3 needs modifying, then that will get modified at the time.
4 But at least it gets the opportunity to get those actions
5 in early and people starting to think about them and work
6 on them.

7
8 Q. You have the final say, by the sound of it, over what
9 tasks get done arising from that process?

10 A. I'm reviewing it to satisfy myself that the
11 investigation team have identified those root causes and
12 that appropriate action is in place and it gives me an
13 opportunity to have further comment, correct.

14
15 Q. We have seen with all of these that there was
16 a sign-off list, and you're obviously amongst that list.

17 A. Mmm-hmm.

18
19 Q. From what you've said, your signature appearing on
20 that might give a false impression that that's the first
21 you've seen of it. It would not be, from what you've said?

22 A. Oh, it may be the first time I've seen the final draft
23 of the document, but over the course of that month I'm
24 actively involved in discussions with people on how that
25 report's going and how - where the team's up to. You know,
26 the team that's included in on that LFI are the team that
27 pull it all together, but, you know, there's the likes of
28 Mr Schiefelbein, there's the likes of the operations
29 manager, myself, other people that may need to be involved
30 in that, and discussions are had during the course of
31 pulling that report together. It's a very good process,
32 and I must admit that it's something that I haven't - it's
33 unique to Anglo in that respect. It's not something that
34 I've seen outside of Anglo.

35
36 Q. I've just picked one of these up concerning the second
37 incident at Grasstree in October 2019. It turns out, it
38 seems, that the report didn't get finished until December,
39 and your signature appears on it in April the following
40 year.

41 A. Yes.

42
43 Q. Could you explain how that could occur?

44 A. Yes. Look, I can. Unfortunately, sometimes these
45 things naturally take a little bit longer. We aim to get
46 them done in a month, but if there's - with crew rotations,
47 week on, week off, and people can sometimes go away during

1 that period, or it goes through a process of the first
2 manager, then the safety manager, then myself, there's
3 questions that go back - it can extend the period of time.
4

5 Now, although I aim - the aim is to get it done in
6 a month, it really - I'm not so concerned with that.
7 I just want the best and the right outcome. And I said
8 that it is a good process, but if there's a series of LFIs
9 that are coming through the system, that causes a bit of
10 a backlog. It's something that we've been working on for
11 12 months to try to improve and try to tighten those time
12 frames up.
13

14 Q. Just to be clear, the kind of review and input that
15 you've described that you have, could we expect that that
16 will have occurred at an earlier point in time than the day
17 on which you've signed off?

18 A. Oh, yes, absolutely. Like I said, those discussions
19 are being had during the course of the whole part of that
20 investigation. You know, discussions on the initial
21 findings, where we're up to, what the potential outcomes
22 are, some of the long-term controls that the group are
23 thinking about - during that whole process, that's correct.
24

25 Q. So it would be wrong, to take this instance, to think
26 that you'd learned of what's proposed for the first time in
27 April about an incident that occurred back in the previous
28 October?

29 A. No, I assure you I'm actively involved in asking those
30 questions and where that's up to. That's just really
31 a signature to finalise that report so it can be moved off
32 site.
33

34 Q. We notice in almost all cases Mr Britton has signed
35 off on this. What input, if any, would he have in the
36 process?

37 A. Mr Britton - at that stage, he's signing off on it as
38 saying he's read it and obviously he must be satisfied with
39 the outcome of that report. Discussions around a gas HPI
40 or any HPI occur on our weekly meeting. The general
41 managers for the underground and Mr Britton have a weekly
42 dial-up. Part of that is to talk about safety matters or
43 if there's been an HPI event that has occurred at one of
44 the operations, the GMs get the opportunity to talk through
45 what the initial event is and what the initial findings
46 are. So he's kept informed in that respect. He's also
47 informed during a monthly process but --

1
2 Q. That's probably just for reporting purposes, isn't it?
3 Given your seniority, he probably doesn't need to
4 second-guess what you're doing, does he?

5 A. Mr Britton, just like I would, likes to be informed
6 and kept abreast of what's going on in the underground
7 operations. It's not uncommon for me to talk to Mr Britton
8 on a daily basis just to give him an update on how the
9 business went in the last 24 hours. That's an opportunity
10 for both of us to have open dialogue on any other
11 discussions that we have to have as well.

12
13 THE CHAIRPERSON: Q. But when you said that Mr Britton
14 must be satisfied with the outcome of that report, what did
15 you mean by that?

16 A. I guess I'm making an assumption. You'd have to ask
17 Mr Britton, but I'm making the assumption that if there was
18 an issue with the report or a concern with the report, that
19 Mr Britton would raise it to me at that point in time. But
20 because I've kept an open dialogue with Mr Britton during
21 the course of our weekly discussions or our daily
22 discussions, he has an understanding of, say, an event of
23 that nature, of where we're up to and what we're proposing
24 and what the outcomes are.

25
26 Again, if he is signing the document, I'm making the
27 assumption that at that point in time he's had enough
28 information, he's read the document and understands it, and
29 he's content with the document.

30
31 Q. But if he were dissatisfied with the report, what
32 would you expect?

33 A. That he would have a discussion with me and try and
34 clear up a matter in regards to the report. Sometimes -
35 it's easy to write a report on a mine site and you're
36 writing it thinking that if you were to hand it to somebody
37 that's not on a mine site or at that particular mine, would
38 they be able to read and understand it? Sometimes there's
39 some points of clarification that you kind of omit from the
40 report because it's kind of assumed that - the group
41 assumes that people understand what's occurred.

42
43 So Mr Britton may ask me for a bit of clarity over one
44 part of the report because he just needed that part of
45 clarity on a paragraph, and that might be the discussion
46 that might be had.

47

1 Q. But you spoke about the outcome of the report. What
2 did you mean by that?

3 A. The outcome in regards to the controls that the report
4 or the investigation process has recommended.

5
6 Q. But if he was dissatisfied about the outcome as stated
7 in the report, what would he do about that?

8 A. He would - well, I would assume that he would have
9 a discussion with me and say, "I don't agree that the
10 controls have met the outcome of the root cause that's been
11 identified", and I would take that back to the
12 investigation team and have that discussion, and we would
13 reopen a review of that document.

14
15 Q. Who has the final say on the document, though?

16 A. I do. I sign off on the final say. But, I mean, if
17 Glen had further recommendations in addition to that, then
18 obviously I'm more than happy to listen to what they may
19 be, because, you know, it could be that - we're all human,
20 and even though the process is robust, there could be
21 something that Glen has thought about, "Have you considered
22 this? Would you consider this as an additional control?"
23 We might take that back and go, "Yep, that's something that
24 we should consider and we should implement as well."

25
26 Q. If you can't resolve it, do you have the final say
27 over Mr Britton?

28 A. Certainly as the SSE, but I've never been put in that
29 position.

30
31 THE CHAIRPERSON: Thank you.

32
33 MR RICE: Q. Just one other thing I want to ask you
34 about. Mr Mitchelson in his evidence spoke about visible
35 felt leadership, describing it as a key element to the
36 safety program, and he went on to say that there was
37 a target set up for each of the sites against which to
38 report. Are you familiar with that?

39 A. Yes, I am.

40
41 Q. Can I ask you, firstly, how that concept of visible
42 felt leadership applies to you as SSE and what you do to
43 give effect to it?

44 A. Certainly. The intent of the VFL process is to - and
45 I need to do four a week, and that's common for most of the
46 staff, unless you're working on a 7/7 roster and then it's
47 about six.

1

2 Q. Four what?

3

4 A. Four VFLs. So what that would involve is, as an
5 example, during one of my underground visits, inspections,
6 I would walk up to a group of people, I would ask them how
7 they're going, what are they doing for the day, what are
8 the hazards involved in the tasks that they're doing, what
9 are the controls that they've put in place, is there
10 anything else that they're not comfortable with in regards
11 to the tasks they're doing or anything else that they want
12 to raise. It's just that opportunity for me to be visible
13 and down there and talking to an individual or individuals.

13

14 Q. So the target in your case, that he referred to, is
15 four per week?

16

17 A. That's correct, yes. There's a requirement to do
18 that. Sometimes I might go out on the surface, because
19 some of the activities on the surface around gas drilling
20 and moving of infrastructure occur, so there's a number of
21 people that work on the surface. So I'll go for a drive
22 out on the surface with the surface gas manager and do
23 a VFL interaction with individuals or individual on the
24 surface.

24

25 Q. That accounts for you?

26

27 A. Correct.

27

28 Q. What about other managers on site, does it apply in
29 some similar fashion?

30

31 A. It applies to everybody in the same way.

31

32 Q. Could you flesh that out a bit?

33

34 A. All the managers are required to do the same.

34

35 Q. Do they have targets like four, as you do?

36

37 A. They have four. Four is the minimum, when I say
38 a target. Four is a minimum that's got to be done for
39 a week. Obviously if you're on annual leave, that's taken
40 into consideration, but that's a requirement.

40

41 Q. You say "all managers". Just to be specific, are we
42 talking about department heads?

43

44 A. I'm talking about all the senior leadership team, the
45 managers that report directly through to me. Any of the
46 longwall superintendents or any of the other auxiliary
47 staff, the engineers, support staff, technical services
48 staff.

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Q. Mr Schiefelbein?

A. Mr Schiefelbein, certainly, yes.

Q. Would you exclude deputies from management?

A. No. They're required to do some as well. They're required - it depends on - there's a TARP, there's a safety TARP, and if, I think, we're in a green TARP, they're required to do a couple, two VFLs per shift, but they're also required to do several SLAMs, so there's a couple of other things they're required as well.

Q. Is this process that you've been describing the subject of a TARP?

A. Yes, there's a safety TARP that indicates how we're performing, and if we move to, say, yellow as an example, then the number of VFLs or safety interactions increase for the deputies underground. As I said, they do a couple of different processes as part of their role.

Q. Does the TARP include the various levels you've spoken about, up to you?

A. It has the different triggers that indicate, and underneath those triggers there's different, I guess, actions you could call them in regards to certainly coal mine operators, deputies and all the way up to myself.

Q. Mr Mitchelson spoke of reporting against a target every month. Is that a piece of information that goes somewhere?

A. Yes, it is. It's a piece of information. I see a report on a weekly basis of the number that have been completed, but also it has the number year to date that have been completed for individuals. That forms part of a weekly report, forms part of a monthly report, and so on.

Q. Is that another performance aspect that needs to be presented to the monthly performance review meeting?

A. It's in there. It's one of a few different elements that form part of it. It's an important part. When we look at safety on site, if you look at first generation safety being, say, the safety management system and those things that are in place, then that second generation of safety is around that visible felt leadership, so that's about being active, in front of people, having those discussions, being visible. So it's an important part of what we do and gives - it's not just - it's a two-way

1 conversation. It gives the people doing the VFL an
2 opportunity to have a discussion with individuals or an
3 individual, and it gives those individuals or individual to
4 have a conversation with the person doing the VFL. So,
5 yes, it's a good process and part of - one part of many
6 things that we do around safety.

7
8 MR RICE: Thanks, Mr Wynn.

9
10 THE CHAIRPERSON: Mr Roney?

11
12 MR RONEY: I have no questions, thank you.

13
14 THE CHAIRPERSON: Mr Crawshaw?

15
16 **<EXAMINATION BY MR CRAWSHAW:**

17
18 MR CRAWSHAW: Q. You gave evidence about there being
19 76 One Key personnel at Grasstree?

20 A. That's correct.

21
22 Q. That's the current figure, is it?

23 A. That's the current figure, that's correct.

24
25 Q. And 250 other personnel who are contractors.

26 A. That's correct.

27
28 Q. How many of those 250 are labour hire contractors?

29 A. The 76 are included in that 250.

30
31 Q. Are there any other labour hire personnel in the 250?

32 A. No, One Key are the predominant labour hire. There
33 may be a couple of WorkPac that may fall underneath the
34 category of labour hire, and they would be warehouse
35 personnel or some admin people, but there would be very few
36 of them. Predominantly One Key is the labour hire. The
37 others are specialist contract providers.

38
39 Q. Has that been the situation since you arrived at the
40 mine in 2018?

41 A. No. It would fluctuate, obviously, depending on the
42 requirement of the business and the changes of activities.
43 Some of those people over the course of that period of time
44 have been offered fixed-term roles within Anglo, so the
45 numbers are kind of adjusted to reflect that, meaning that
46 we're not bringing more people in, necessarily, but
47 obviously if they're now moved on to fixed-term contracts

1 with Anglo, that number will change in respect of that.

2

3 Q. I was not so much directing that question at numbers
4 but at One Key being almost the total component of the
5 labour hire personnel.

6 A. That would be correct, since I've been there at
7 Grasstree, yes.

8

9 Q. Did WorkPac, to your knowledge, previously have
10 a bigger role?

11 A. Look, I can't answer that question. I'd have to take
12 that on notice. I'm just aware that we have a few WorkPac
13 people still on site.

14

15 Q. When you say "still on site", that seems to imply that
16 they once had a bigger presence. You don't know?

17 A. No, sorry, I said that in the context of saying that
18 One Key are now the service provider or the supplementary
19 labour provider for site. One Key - sorry, WorkPac, who
20 I'm also aware have been a labour provider, are currently
21 on site. So at some stage they must have been on site as
22 well, perhaps in a bigger capacity; I'm not aware.

23

24 Q. During your time on site, has the number of permanent
25 employees changed?

26 A. Look, I think it's had minor fluctuations and changes,
27 yes. Certainly in respect of - you know, we've offered
28 fixed-term Anglo contracts for some of the One Key
29 employees, and that's in the context of Grasstree now only
30 having 18 months left to go.

31

32 Q. So has the number of permanent employees gone up?

33 A. Look, I would say it's probably remained reasonably
34 stable. If it's gone up or down, it's generally -
35 I wouldn't imagine it would be of any great number.

36

37 Q. In terms of the labour hire component, has that
38 fluctuated much at all during your time?

39 A. Only on a needs basis. Like I've stated, if there's
40 activity changes through the course of the year that
41 require that flexibility to be able to bring some in, we
42 will. It generally - it doesn't fluctuate highly, but
43 obviously it gives us that ability to be able to bring
44 people in if needed.

45

46 Q. I'm not talking about what you might do. I'm actually
47 talking about what happened. How long have you been

1 there - 18 months?

2 A. September 2018.

3

4 Q. So nearly two years. What I want to know is whether
5 it has actually fluctuated during that time rather than
6 whether you've got an ability to fluctuate it?

7 A. Certainly. The example I gave when we had to bring on
8 an additional development unit was certainly, I guess, what
9 you would call fluctuation or an increase in One Key labour
10 hire to supplement with the permanent employees.

11

12 Q. So in terms of the current number of 76, when you
13 brought on that extra crew, did that number go above 76?

14 A. No, I don't believe so, no. That number has been
15 built up to 76 with the addition of that fourth unit at the
16 time. Obviously it's reduced back down again now. With
17 Grasstree only having 18 months left to go, obviously
18 activities are starting to reduce and are completed, and
19 we've started to do a reduction in some of those numbers as
20 well.

21

22 THE CHAIRPERSON: Mr Wynn, could you just keep your voice
23 up, please.

24

25 MR CRAWSHAW: Q. I understand you're not a full labour
26 hire model in the Grosvenor sense, but you have a core
27 number of labour hire personnel that doesn't change with
28 peaks and troughs in activity; is that right?

29 A. We have a number of labour hire that certainly can
30 change in peaks and troughs.

31

32 Q. Yes, but there's a core number that doesn't change
33 with peaks and troughs?

34 A. There's certainly a number of One Key employees that
35 form parts of the crews that have been there for a period
36 of time. Some of them, as I stated, have been offered
37 Anglo American fixed-term contracts.

38

39 MR CRAWSHAW: Yes, thank you.

40

41 THE CHAIRPERSON: Ms Holliday?

42

43 MS HOLLIDAY: Mr Martin, I will be about 15 minutes.

44

45 THE CHAIRPERSON: Okay, we might take a 15-minute break.
46 Thank you.

47

1 **SHORT ADJOURNMENT**

2
3 **<EXAMINATION BY MS HOLLIDAY:**

4
5 MS HOLLIDAY: Q. The first series of questions may
6 have a very simple answer to them. You're aware that
7 Mr Taylor is giving evidence in relation to looking at HPIs
8 that occurred at the three mines?

9 A. Yes, I am.

10
11 Q. Have you had an opportunity to read his statement?

12 A. No, not his statement, I haven't, I'm sorry.

13
14 Q. He makes reference to an audit that happened at
15 Grasstree mine in November 2019 into its safety and health
16 management system and, indeed, one of the two footnoted
17 documents are referenced and included in the material. In
18 the questions between yourself and Mr Rice, you were
19 referring to the last audit having been in 2017.

20 A. Mmm-hmm.

21
22 Q. And that there's going to be another one this year.
23 What document were you referencing in comparison to the
24 documentation that Mr Taylor is referring to, or do I need
25 to take you to the document he footnotes?

26 A. If you could take me to the footnote, please.

27
28 Q. Mr Operator, it's AAMC.001.005.0505. For the record,
29 he footnotes - it's footnotes 17 to 18 of Mr Taylor's
30 statement, but this is the only one of those two documents
31 that are referenced, at least that we have access to. It
32 refers to an audit and review of the safety and health
33 management system in November 2019, and you referenced to
34 Mr Rice that the last audit that you were aware of for the
35 safety and health management system was in 2017. Can you
36 just explain to the Board, by reference to this document
37 and your evidence, and try to correlate what has actually
38 occurred?

39 A. Yes, certainly. I can appreciate this seems like it's
40 similar or meeting the requirements of that part of the
41 legislation. My comments this morning in regard to the
42 requirement to audit the effectiveness of the safety and
43 health management system underneath that part of the
44 legislation is something that's conducted every three years
45 and was conducted previously by Mr Phil Reed, who's an
46 auditor on this document, and will be the person conducting
47 the audit in October this year.

1
2 This document here - there's an Anglo American policy
3 document that requires a similar review of the safety and
4 health management compliance system on an annual basis, and
5 that's why that - that audit client, Sarah Makepeace, is an
6 Anglo American employee that works in Brisbane.
7

8 Q. So was the 2017 review more comprehensive than this
9 November 2019 review?

10 A. I haven't read this report in entirety, so I'd have to
11 have a look at it, but the intent for meeting that part of
12 the legislation was it's conducted every three years.
13 However, we do an internal review process annually as part
14 of a policy document.
15

16 Q. So despite the words "statutory compliance" on the
17 front page of that audit, it's not being conducted for that
18 purpose?

19 A. No, it seems very similar and it's very easy to draw
20 conclusions that it could potentially meet the intent of
21 that, but for the purpose of that part of the legislation
22 it is conducted every three years. This is in addition,
23 I guess, to that kind of a requirement.
24

25 Q. Do you know whether Mr Taylor was provided with the
26 2017 review?

27 A. I couldn't answer that, I'm sorry.
28

29 Q. Just one other aspect of Mr Taylor's statement. He
30 speaks about the canopy sensor and a number of the
31 exceedances relating to the canopy sensor, and he states -
32 and this is at the last sentence on page 7, before the
33 heading "Conclusion":
34

35 *One would hope that now the sensor will be*
36 *moved under the regulation amendment that*
37 *ventilation controls in this area will*
38 *continue.*
39

40 The evidence of Mr Smith was that that canopy sensor has
41 remained in its location. Do you know why Mr Taylor is
42 speaking of the fact that it will be moved under the
43 regulation amendment?

44 A. I can't comment on what Mr Taylor was thinking --
45

46 MR HOLT: Could we just pause a moment.
47

1 MS HOLLIDAY: Q. Mr Holt is informing me he's talking
2 about a different sensor. It certainly doesn't read that
3 way. It's talking about the tailgate shield canopy and
4 that it took some time for this to be effectively brought
5 under control. In any event, the question could be asked
6 this way: the canopy sensor as of today, does it remain in
7 the location as it was at the time of the exceedances?
8 A. Yes, it does. It's an additional sensor above the
9 legislation. That's correct.

10
11 Q. Whilst it might not be prescribed by legislation, is
12 it accepted that it's nonetheless required by Grasstree
13 mine?

14 A. Absolutely, and that's why it still remains in place.
15 If that sensor wasn't in place where it is currently now,
16 we would only have been talking about three HPIs, we
17 wouldn't have known about the other eight HPIs. So it's
18 part of our safety and health management system.

19
20 Q. So the readings that that sensor gives you have been
21 considered to be important in terms of gas management at
22 the mine?

23 A. Absolutely. It gave us data that we never had before.
24 You need to understand that when a deputy does an
25 inspection in that area, the processes and the mining
26 processes are stopped. He or she has never identified that
27 to be, I guess, a concern, and the ability - that sensor
28 has given us data and the understanding now that it's
29 something we need to manage.

30
31 Q. Do you accept that a reading at that sensor should be
32 taken seriously by the mine?

33 A. Each time that sensor detected a greater than
34 2.5 per cent, it was reported through to the department,
35 even though the other sensors - none of the other sensors
36 got above 2 per cent.

37
38 Q. And to use a word that again has been used from the
39 Bar table, to segue into the next topic, which is the
40 discussion of Anglo HPIs in comparison to DNRME HPIs. If
41 I can take you to a document - Mr Operator, it's
42 ACM.004.001.0070. This is an internal Anglo American
43 document, where you'll see there that there's a highlighted
44 "DNRME HPI", meaning a departmental HPI; that's correct?
45 That seems to be the way in which Anglo American
46 categorises them.

47 A. That's correct.

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Q. This was one of the exceedances, and it occurred on 6 April 2020. You can see that under "Date occurred". You can see down at the bottom of that screen on the right-hand side that there are some ticks in relation to potential consequences?

A. Yes, I do.

Q. And there has been a change in relation to the potential consequence, or at least crossing out and different markings that have been put in there.

A. Correct.

Q. The 6 April 2020 HPI - and I can take you to the form 1A if necessary - included a reading of 4.37 per cent, which was detected at that canopy sensor. I'll read it fully so that it's not in any way suggested that there can be an error. I quote:

A peak reading of 4.37 per cent was recorded during a period of 26 minutes where the concentration fluctuated as the gas layering cleared. The gas concentration exceeded 2.5 per cent multiple times during that period.

I'm just reading from the form 1A.

A. Mmm-hmm.

Q. That wasn't categorised as an Anglo American HPI; do you accept that?

A. That's correct.

Q. Was that your decision?

A. That decision sits - ultimately it sits with me on site as the SSE, and obviously in consultation with the various people on site when we review the details of that incident.

Q. What about people off site, do they have any bearing on that decision-making process as to whether or not a DNRME HPI is categorised as an Anglo American HPI?

A. If your question refers to do they have the ability to be able to inquire and ask questions in regards to it, certainly. Those HPIs are discussed in a weekly meeting, they're discussed in a monthly meeting, and obviously various other different formatting, reporting mechanisms as

1 well.

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Q. Have you ever made a decision that an HPI should be categorised as an Anglo American HPI, but someone off site has disagreed with you?

A. No. No, I've - no, not since I've been at Grasstree, no.

Q. Mr Wynn, you've been sitting in the back of the court, so I don't need to take you to the relevant document, but there was a form 1A put up on the screen in relation to a rollover that occurred in 2019. Was that your decision that that also did not satisfy categorisation as an Anglo American HPI?

A. That's correct. The rollover that you're referring to was of a loader on a sorting area where we put rubbish to be sorted and then to be removed off site. That was discussed and reviewed on site. That incident involved a loader at a standstill that attempted to roll over a large plastic unit that we use for the bathhouse for storing soap. When the loader rolled over it, it rolled over gently onto its side, and the occupant inside of that was wearing a seatbelt, they were in an enclosed cabin and it was a very slow rollover. We determined on site and I made the decision that there was no way foreseeable that that could have resulted in a fatality or an injury of irreversible nature, so it was reported as a department HPI, which is certainly what it is. But in regards to an Anglo HPI definition, it wasn't.

Q. Mr Mitchelson said that it came across his desk. That was the terminology he used. Was that after you had made the determination that it didn't categorise as an Anglo American HPI?

A. I recall discussing it at one of the MPRs, which is monthly performance review, which Mr Tyler Mitchelson would have been a part of, and discussing the incident that occurred and the outcome. Had the loader been travelling at speed, well, then, the possibility of the outcome would have been very different, but under these circumstances it was, yes, very easy to determine that this was not an Anglo HPI under the definition.

Q. Do you accept that DNRME HPIs are not assessed as safety performance indicators in Anglo American?

A. Yes, I'd probably agree on that. I can't see where they're assessed as a safety performance against some

1 metric. They're certainly reported on and discussed, but
2 in regards to a safety metric, I - your question - yes.

3
4 Q. In terms, then, of the learnings that are made from
5 DNRME HPIs, given they're not included as a safety
6 performance indicator, is that limited to site?

7 A. No, because the process for a department HPI is to
8 obviously go through the LFI process, determine the root
9 causes and the outcomes. Those LFIs are sometimes
10 communicated via monthly significant incident
11 videoconference meetings, which is something that all sites
12 participate in, and they'll present various different,
13 either department HPIs or Anglo HPHs or Anglo HPIs as an
14 example, so there's various mechanisms for that to be kind
15 of communicated to various different people.

16
17 Q. Let's use an example. In relation to the methane
18 exceedances that were occurring at Grasstree over the terms
19 of reference period, did you share those learnings from
20 incident with the SSE for Grosvenor?

21 A. Yes. So during a - we have a weekly dial-up, myself
22 and the other two underground SSEs, with Mr Britton, and
23 those - that's the opportunity for us to discuss those
24 matters, or it would not be uncommon for me to pick the
25 phone up and ring either of those SSEs, or vice versa, for
26 them to ring me and talk about something that's occurred.
27 We wouldn't necessarily just wait for the weekly meeting to
28 be able to do that. So there's avenues.

29
30 There's also - yes, there's other monthly meetings
31 that occur where there's an opportunity to share to a more
32 broader audience rather than just a one-on-one conversation
33 with each of the SSEs.

34
35 Q. The final topic that I want to ask you some questions
36 in relation to is the decision-making around the location
37 of the 243A sensor. Whose decision was it as to where that
38 sensor should be placed?

39 A. Ultimately it sits with me, in consultation with site.

40
41 Q. What input did Glen Britton have in relation to where
42 that sensor should be located?

43 A. Glen had open dialogue with the GMs/SSEs in regard to
44 the up and coming new legislative changes, which is
45 completely reasonable and what you would expect in that
46 position, and we had discussions between the site GMs
47 initially to understand what the intent of the change was,

1 because at Anglo American we already had a roadway sensor
2 in place, which was considered best practice, and what we
3 formed the view of was why the legislation or some of the
4 changes in the legislation were being made, but the intent
5 of that roadway sensor was, if I could explain it -
6 a longwall could be 3 or 4 kilometres long at the start,
7 and underneath the previous legislation there's
8 a requirement to put a methane sensor at the ventilation
9 split, and that could be 3 or 4 kilometres away. So you
10 could have a roadway essentially with a build-up of
11 methane. The intent of that sensor was to be able to
12 detect leakage from a previous longwall mined area as well
13 as what's coming out of the goaf within a 400 metre
14 spacing.

15
16 So when the 243A came about, we had discussions around
17 understanding - during some of the consultation periods it
18 was explained that this was to protect a potential ignition
19 near the sprocket, which is in the location of where the
20 canopy sensor is, so we had discussions around ourselves
21 and then went back to the VOs and the mine managers and --

22
23 Q. Sorry to interrupt. You said yourselves - who are you
24 including in that?

25 A. Well, the general managers would have a discussion
26 with Glen, we'll try to understand the intent of the
27 legislation, the timing of when we've got to have it in
28 place, and then I would have discussions with, say, the
29 tech services team, the ventilation officer and the mine
30 manager, and when the legislation was starting to get
31 formed, it clearly indicated that the requirement at that
32 stage was to trip power to the AFC chain, which goes around
33 that sprocket, and also the shearer cutters.

34
35 Now, we made a decision that, well, if that's the
36 intent of it, then the best place for that sensor to be is
37 as close as possible to that, because if it was 400 metres
38 down the road, and in a longwall of, say, Grasstree, with
39 the ventilation, it would have taken just over 2 minutes
40 for the gas to get down there, for it to be effective. So
41 the best place to put it was the closest we could possibly
42 get it, and all of us agreed, along with the people on the
43 site, that underneath that canopy, because it could be
44 protected in some way as well, was the best place to put
45 it.

46
47 Q. Did you consider that that was in compliance with the

1 legislation?

2 A. Oh, certainly, yes. We all understood that - we were
3 doing that for the purpose of 243A at the time.

4 I appreciate the legislation has changed again, and there's
5 a bit more clarity on where what you might call the zero
6 metres mark is now, and it's within 150, which is good.

7 But at that time, we were all complying with the 243A,
8 because we already had one in the roadway.

9

10 Q. My question, though, was more directed in relation to
11 Mr Britton's involvement. You've just explained the
12 process.

13 A. Yes, so his involvement was purely just to work with
14 the GMs to understand: do we understand the intent of the
15 up and coming changes? Where do we think the best location
16 of these things would be to meet the intent of that and
17 ensure an acceptable level of risk? And then the sites did
18 the analysis to agree that that was the best location, to
19 try and get it as close as possible.

20

21 Q. Did Mr Britton inform you of his view as to where it
22 should be placed pursuant to the regulation?

23 A. No, Mr Britton, you know, informed us, because we were
24 all trying to understand, at the time, the intent of what
25 the sensor was meant to do through the consultation
26 periods, so we all wanted to make sure that we all had an
27 agreement that, yes, we all agree, we understand that the
28 intent of this is to try to prevent an ignition source at
29 that location. And if that was the case, then we would
30 want to put it as close as possible to that location.

31

32 Q. I take it from that that you reject any suggestion
33 that the decision was made by Mr Britton rather than
34 yourself?

35 A. Yes, I do, yes.

36

37 Q. And you reject any suggestion that it was made off
38 site rather than on site; is that correct?

39 A. Yes, I do. The final decision comes to the sites, to
40 the SSEs and the ventilation officers and the UMM.

41

42 Q. If anyone else had a different impression, then you
43 say that they are incorrect?

44

45 MR HOLT: That's not a proper question. That is as
46 imprecise as it is possible for a question to be.

47

1 MS HOLLIDAY: I accept that. They are the only questions
2 I have.

3
4 **<EXAMINATION BY MR HOLT:**

5
6 MR HOLT: Q. Mr Wynn, just a few topics. Starting on
7 that last one, the 243A sensor, just a couple of things.
8 You've indicated that you have kept that sensor, the canopy
9 sensor, as well as, obviously, having a sensor which the
10 inspectorates are satisfied complies with regulation 243A?

11 A. That's correct.

12
13 Q. Have you put another sensor in as well in that
14 sprocket area and, if so, can you explain why?

15 A. Yes. Nearly directly underneath that canopy sensor,
16 we have mounted another sensor, which we call the sprocket
17 sensor. During the course of these HPIs and trying to
18 understand the mechanisms, and I think the Board of Inquiry
19 can appreciate that one LFI that we did with seven events
20 clearly shows there's various different contributing
21 factors that contribute to this.

22
23 So what we wanted to determine around was, you know,
24 were we getting a layering event versus a general body
25 event? So we installed an additional sensor directly on
26 top of what we call the tailgate carport area, and that
27 took a little bit of work because it's reasonably a hostile
28 environment - it gets moist, it gets dusty, there's
29 material that can fall through the canopy. So we had to
30 build something around it to protect it but at the same
31 time ensure we could get a general body reading of methane.

32
33 To answer your question, we have two additional
34 sensors above the legislation, which form part of the gas
35 management of that area.

36
37 Q. You might have picked a theme. There seems to be the
38 suggestion - there are a couple of different topics that it
39 has come up in - that you are somehow cowed by Mr Britton
40 and told on site what to do in breach of your SSE
41 obligations. What's your response to that?

42 A. Yes, it's not true. I mean, I understand my role.
43 I take my role very seriously. I understand my obligations
44 under the Act. I also understand that, like any coal mine
45 worker, if I had a concern in regards to an individual
46 trying to influence my decision-making as an SSE, then
47 I could walk in to Tyler Mitchelson's office, or, for that

1 point, Warwick Jones's office, because they've always said
2 their door's always open.

3
4 Q. In that sense, I guess, there's this question: do you
5 find those roles in Brisbane - and let's take Mr Britton's
6 role as an example, but the others as well - helpful in the
7 performance of your task, in terms of consistency across
8 mine sites, learning from the kinds of experts we've heard
9 about that exist in Brisbane? Do you see that support as
10 being a bad thing or a good thing in the way in which you
11 conduct your role?

12 A. Certainly a good thing, yes. I mean, as a general
13 manager/SSE of an operation, you can get very focused on
14 the operation, which you can appreciate why. Any
15 opportunity that you can get to get across the other
16 businesses or the broader industry and understand what's
17 going on is beneficial. So the benefit of having
18 a Met Coal executive leadership team - that serves
19 a purpose in that example that I've given.

20
21 Q. I guess in that sense, when you're dealing with your
22 relationship with Brisbane - let's use a practical
23 example - you explained that you had to make a decision not
24 to mine a longwall panel which had been part of the plan.
25 I want to be clear, what was the reason why you made that
26 decision? What was going on that meant you had to shift
27 the mine plan so radically?

28 A. We were putting gas drainage in and we were just
29 getting gas drainage compliance back in time to be able to
30 mine a little bit further. It was starting to become
31 complex in what we were doing, and I made the decision and
32 put the challenge to the teams on site to identify
33 a different area of the mine that we could go to.

34
35 Now, I appreciate that seems like - that seems very
36 simple, but I can't express the difficulty of changing
37 a mine from one area of the mine to completely turning it
38 upside-down and going to another. There's a commitment
39 from the technical team to be able to support a schedule;
40 the operational team have to be able to deliver it; the
41 engineering team have to be able to then go and acquire the
42 drivages and the belt infrastructure to be able to put in
43 place, because it's all out of line with the current
44 business plan. But that was the right decision to make and
45 certainly supported by the MCLT when I tabled it.

46
47 Q. Just perching on those two issues, it was the right

1 decision to make, as I understand your evidence, because
2 from your perspective in your role as SSE, that longwall
3 panel was not ready to go in terms of gas drainage?

4 A. Absolutely.

5
6 Q. So the decision was made to do something expensive and
7 difficult, rather than press on through that panel?

8 A. Absolutely.

9
10 Q. And that was supported by - not directed by but
11 supported by - the MCLT and the experts that you have in
12 Brisbane to assist in that regard?

13 A. Absolutely.

14
15 Q. In terms of that relationship issue as well, again,
16 just let's get it out there: there seemed to be a hint of
17 a suggestion that in relation to the rollover HPI - you
18 know the one I'm talking about - that somehow maybe
19 Mr Mitchelson might have had some involvement in telling
20 you what level to put that at. Is that the case? Is that
21 something Mr Mitchelson or anyone in Brisbane had ever
22 done, to try to get you to under-report something or
23 under-classify?

24 A. No, of course not, no. Absolutely not. I mean, if
25 they had any concerns that it would have been - should have
26 been an Anglo HPI, then they would have raised that with
27 me.

28
29 Q. Have you ever had any resistance to classifying things
30 in a way that require - that's in terms of safety incidents
31 or hazards or anything of that kind at Anglo, particularly
32 as you've got experience across a range of operators - any
33 resistance to classifying things appropriately, to naming
34 problems, to dealing with safety issues?

35 A. No, of course not.

36
37 Q. Can we talk about structure for a moment. You were
38 asked some questions by our learned friend Mr Rice about
39 Capcoal. That's the operator, as you know, that you're
40 a director and officer of. He asked you a question about
41 whether or not Capcoal had its own office somewhere.

42 A. Mmm-hmm.

43
44 Q. Can we just inject some reality into that issue for
45 a moment. You're aware, I take it, that Capcoal has
46 service agreements with Anglo American Met Coal as
47 a company?

- 1 A. Yes, I do. I see it on the financial statements.
2
- 3 Q. And Capcoal pays Anglo American Met Coal for a range
4 of services, including legal, technical, planning, human
5 resources - all of those sorts of things?
6 A. Yes, that's correct.
7
- 8 Q. And I suspect, as a result, you're able to use
9 a meeting room in Brisbane if you need one?
10 A. Yes, that's correct.
11
- 12 Q. Let's talk about the other directors of that company.
13 You explained that there were two other directors who have
14 a predominantly financial background?
15 A. Correct.
16
- 17 Q. That presumably allows that Capcoal company to meet
18 its obligations from an insolvency and Corporations Act
19 perspective, and so on.
20 A. Yes, that's correct.
21
- 22 Q. And you are the person who has not just the expertise
23 in terms of your qualifications and experience but the
24 actual knowledge of the way the mine works?
25 A. Yes.
26
- 27 Q. Sitting as a director also. You said there was also
28 a legal person who presumably acts as secretary of that
29 company?
30 A. That's correct, yes.
31
- 32 Q. In terms of the information that goes to those other
33 directors, you mentioned reporting. You're aware that
34 there's in fact a safety quarterly report at a meeting with
35 the manager of Anglo safety for those people to attend
36 every quarter?
37 A. Yes, that's correct. That's a QPR process.
38
- 39 Q. In addition, all the directors get, as you would know,
40 a report in real time when there are changes to the safety
41 and health management system on a mine site that they're
42 a director of?
43 A. Yes, that's correct.
44
- 45 Q. So they're not just sitting around in an office
46 somewhere just waiting to sign off a set of forms or
47 accounts each year; they're actually being constantly

1 provided with information?

2 A. That's correct, yes.

3

4 Q. In terms of audits, which you were asked questions
5 about by both our learned friend Mr Rice and our learned
6 friend Ms Holliday, you were referring to a three-year
7 audit process, which from Capcoal's perspective is intended
8 to comply with its obligation under the Act?

9 A. That's correct, yes.

10

11 Q. That's formally the way in which that obligation is
12 discharged, as you indicated?

13 A. Yes.

14

15 Q. It might be that the answer was obvious from the
16 answers you gave to Ms Holliday's questions, but there is,
17 isn't there, an entire suite of audit and review and
18 monitoring processes for the safety and health management
19 system that sit on day daily, weekly, monthly and annual
20 basis, quite apart from that three-yearly report

21 A. Absolutely yes.

22

23 Q. You described it as a live document or living thing,
24 the SHMS?

25 A. Yes.

26

27 Q. For those of us who don't do this stuff every day,
28 practicalise that for me. How much review and monitoring
29 and auditing and risk assessment is actually happening?

30 A. The safety and health management system isn't just
31 a box. It is a live thing, you know, and in part of that
32 safety and health management system is documents and
33 policies and things like that, but to ensure that that
34 system is live and up to date and effective, there's
35 various amounts of auditing, verification, assurance
36 audits. As you stated, I get a schedule at the start of
37 the year which maps out the corporate governance auditing
38 processes that are going to commence throughout the year,
39 and there may be up to some 20-odd audits that will be
40 conducted in relation to different aspects of the safety
41 and health management system of the business.

42

43 Then there's the site-based audits. We will conduct
44 our own internal audits. It might be on a PHMP document,
45 as an example, or part of the safety and health management
46 system. So although that audit gets done on a three-yearly
47 basis, that system, which is live, is getting audited and

1 checked and verified, and various different aspects of it,
2 continuously.

3
4 Q. There was an implication, I suspect, in a question
5 that was asked of you about whether there might be some
6 future need to design a metric for determining the
7 effectiveness of the safety and health management system.
8 From your perspective, are those metrics simply embedded
9 and constantly developed and reported on within the Anglo
10 structure in which you function?

11 A. Yes, they are, and that was one of my comments: I'm
12 exposed to that, and my experience gives me the knowledge
13 to ensure that these things are effective.

14
15 Q. There seemed to be some concern about ensuring these
16 things were properly documented. You're familiar,
17 obviously, with the primacy of the PHMPs, the principal
18 hazard management plans?

19 A. Yes, I am.

20
21 Q. You understand them to be a very significant feature
22 of the safety and health management system?

23 A. That's correct.

24
25 Q. Can we look, please, at ACM.002.001.0378. It's just
26 an example, helpfully, "Methane Drainage Principal Hazard
27 Management Plan". Do you see that one?

28 A. Yes, I do.

29
30 Q. That's for Capcoal; we can see that?

31 A. That's correct.

32
33 Q. Can I take you to a couple of pages, please. Firstly,
34 could we go to 0398, please. Again, there seemed to be
35 some issue about whether people who had particular roles
36 and responsibilities or owned particular issues might
37 understand what their roles were in respect of component
38 parts of the safety and health management system. Is what
39 we see there in terms of roles and the description in
40 relation to each PHMP kind of emblematic of the way in
41 which these systems and these processes for which you are
42 responsible seek to very definitely and clearly attribute
43 responsibility and accountability for certain roles?

44 A. Yes, absolutely. There's a section of roles and
45 responsibilities in certainly all the PHMPs and all the SOP
46 documents.

47

1 Q. We have performance indicators up the top there, and
2 again that's a pretty standard approach, structurally, for
3 the PHMPs?

4 A. That's correct

5

6 Q. Presumably that then feeds down into the SOPs, the
7 standard operating procedures?

8 A. Correct.

9

10 Q. And also to the monitoring that exists for the
11 critical controls that are associated with a particular
12 hazard or issue that's being managed?

13 A. That's correct.

14

15 Q. We will come to critical controls briefly in a moment.
16 Could we go to 0397, please, Mr Operator. Again, just on
17 the idea of audits and how many different levels audits
18 function at within the Anglo safety and health management
19 system, we can see there the requirement in respect of this
20 PHMP for internal audits to be conducted bi-annually and
21 documented on the internal audit tool. Do you see that?

22 A. Yes.

23

24 Q. If we could go, then, to appendix 1, at 0408, please,
25 Mr Operator, we can see the internal audit sheet, which is
26 referenced in that earlier section?

27 A. That's correct.

28

29 Q. You were talking about the need to plan for these
30 multiple audits that occur during the course of a year. Is
31 that because each one of these processes might require you
32 to do one or two and you have to order them into the way
33 the mine is functioning?

34 A. Yes, absolutely.

35

36 Q. Again, just to be clear that there's enough auditing
37 going on, could we look at 0405, please. We can see there
38 audit processes referred to there, the requirement for when
39 audits would take place from reviews, and also the
40 requirement for the external audit, which is noted there,
41 every three years?

42 A. That's correct.

43

44 Q. And that's an external audit, obviously, of that PHMP
45 as part of the safety and health management system?

46 A. Yes, that's correct.

47

1 Q. On that issue of critical controls that our learned
2 friend Mr Rice took you to, we saw yesterday, I think
3 yesterday, a spreadsheet of critical controls. You would
4 be familiar with the document that contains that?

5 A. Yes.

6
7 Q. As our learned friend Mr Hunter QC had pointed out
8 I think a few days ago, there were many more entries in
9 that spreadsheet than there were critical controls.

10 A. Oh, absolutely.

11
12 Q. You would be aware that's because for each critical
13 control there are multiple monitoring activities?

14 A. That's correct.

15
16 Q. And lest it be thought that there was some absence of
17 process around the assessment and monitoring of critical
18 controls, is it in fact the case that those monitoring
19 requirements are the subject of specific reporting by you
20 on a monthly basis, as SSE, through into Met Coal?

21 A. Yes, absolutely.

22
23 Q. And a key point of discussion in your meetings with
24 the Met Coal leadership team?

25 A. Absolutely.

26
27 Q. And again as a metric dealt with on a quarterly basis
28 as well?

29 A. Correct.

30
31 Q. Is it possible to get away with not monitoring your
32 critical controls, in light of the systems that Anglo has
33 in place, Mr Wynn?

34 A. No, absolutely not.

35
36 Q. How important are they to the way in which hazards and
37 safety issues are managed in the system?

38 A. Extremely important.

39
40 Q. I guess critical, right?

41 A. They're critical.

42
43 Q. For lack of a better word, yes.

44 A. It goes with the name.

45
46 Q. Just a couple of specific topics. In terms of
47 contractor management, I just want to talk about it

1 because, as was noted recently, it is perhaps not an issue
2 that has got quite as much of a guernsey in the course of
3 the inquiry as the terms of reference might suggest it
4 should have. In answer to questions from my learned friend
5 Mr Rice, you talked about the way in which employees and
6 labour hire folk are inducted on to site and trained on
7 site?

8 A. Correct.

9
10 Q. You made a couple of references there to I think
11 contractors or service contractors otherwise. Firstly, the
12 process of managing those service contracts on site, is
13 there someone on site who's responsible for that, or indeed
14 maybe more than one person?

15 A. Yes, in the management structure, there's a role and
16 a person, a contract management superintendent.

17
18 Q. What is that person's role, I guess focusing
19 particularly on ensuring the contractors that come on to
20 site are appropriately identified, validated, competent,
21 those sorts of things?

22 A. That role and that person is like the police person in
23 regards to contract management. So the contract management
24 process is a document that outlines the life cycle of
25 a contract from scoping to procurement to implementing and
26 then to the onboarding and then to finalising at the end of
27 life of the contract. So that role is critical to cover
28 off on all of those things, but importantly there's
29 a process prior to contractors coming on to site, they go
30 through an authority to work process, which is a detailed
31 risk assessment process. It identifies the people, the
32 equipment and the work that they will be doing. Then they
33 go into the onboarding process, which I stated this
34 morning.

35
36 Q. You stated that this morning more in the context of
37 staff and labour hire, but is it the same or different?

38 A. It's exactly the same. There's no difference. The
39 process is absolutely the same, whether it's myself or
40 whether it's a labour hire or a contractor.

41
42 Once that work's completed, prior to them getting
43 loaded into the system to be onboarded and going through
44 the induction process, then when they're on site there's
45 a permit to work process that's got to be completed, which
46 is focusing now down on the risk assessment and the task
47 base of what those contractors are specifically doing.

- 1
2 Q. Can I just perch on that - sorry to interrupt you. Is
3 that something, the permit to work process, which is the
4 contractor's responsibility on site or do you have a person
5 or people who are doing that with them?
6 A. No. The role of the contractor superintendent and the
7 contractor representative are involved in that with the
8 contracting group.
9
- 10 Q. Could we look at AAMC.001.040.0001. What I'm going to
11 show you is a document you're familiar with - the
12 Contractor Management Plan. Are you familiar with that
13 document?
14 A. Yes, I am.
15
- 16 Q. Obviously we can see by the fact that it refers to GTM
17 in the document number and "Grasstree" at the bottom,
18 that's a Grasstree-specific document?
19 A. That's correct.
20
- 21 Q. Again, just to use this as an example of the way in
22 which site is supported centrally, this is obviously
23 a site-specific document, but are you given assistance and
24 support and resources, or do you have to draft every one of
25 these from scratch?
26 A. No, you've certainly got the resources to be able to
27 ensure compliance with that document, absolutely.
28
- 29 Q. Again, we don't need to go through it in detail, but
30 can we scroll down, Mr Operator, to the contents page. We
31 can see there, again, identification of hazards associated
32 with contractors coming on site; in part 3, control
33 procedures, primarily the SHMS and additional SHE
34 obligations?
35 A. That's correct.
36
- 37 Q. Then we can see set out in detail "Managing the
38 contractors lifecycle"?
39 A. That's correct.
40
- 41 Q. Stage 1 - planning. Stage 2 - sourcing strategy.
42 Stage 3 - evaluation and award. Stage 4 - preparing to
43 work on site. Then the authority to work process. Do you
44 see that?
45 A. That's correct.
46
- 47 Q. And then mobilisation and permit to work processes, so

1 exactly those range of key points that happen before
2 someone comes to site and starts doing service contract
3 work?

4 A. That's correct.

5

6 Q. If we can keep going down, roles and responsibilities,
7 we see, so everyone understands what their job is in
8 relation to this process; and review criteria at 9. Could
9 we go, please, to page 29 of the document. Sorry, I don't
10 have a number because I just decided then. I didn't point
11 this out in the previous document. The review criteria
12 about when the document needs to be reviewed - every
13 five years, where there's a change of method, or
14 operational changes occur, or where there has been
15 a significant event to which the document was relevant?

16 A. That's correct.

17

18 Q. We've said this a few times in this inquiry, but
19 sometimes in different contexts we see documents just there
20 for the sake of it. Are these processes and documents that
21 you guys live and breathe, or are they just there so that
22 someone can have a look when they come and audit you?

23 A. Oh, no, this document is very much one of those
24 documents - we live and breathe it, absolutely.

25

26 Q. Just finally, please, Mr Wynn. Can you assist the
27 Board, given your role as SSE, so therefore you have this
28 visibility up to Met Coal and you have visibility through
29 to the site, what is your approach to the question of
30 balancing safety and production? And if you can assist us
31 with how that fits with the kind of support you're given by
32 Met Coal, that would be specific as well.

33 A. Yes, certainly. It's always around safe production.
34 I think it's inherently built into a coal mine worker's
35 DNA: safety is just non-negotiable. We might have
36 different opinions on different things at times, meaning
37 all coal mine workers, but when it comes to safety we're
38 all aligned. That includes the support that I get from the
39 Met Coal executive leadership team or the support that I'll
40 get from a coal mine worker at the face. It's really -
41 it's simple. It's not something that we struggle with.
42 Like I said, it's inherently built into our DNA, we want to
43 be safe.

44

45 Yes, we're in the business to produce coal safely and
46 to make a profit for our shareholders, but at the end of
47 the day, if we don't do that safely, then it doesn't really

1 matter.

2

3 MR HOLT: Thank you, Mr Martin.

4

5 THE CHAIRPERSON: Mr Rice.

6

7 <EXAMINATION BY MR RICE:

8

9 MR RICE: Q. Just a couple of things, Mr Wynn. We were
10 speaking earlier about who was the holder of obligations,
11 and you're obviously conspicuously one. We mentioned
12 Mr Britton, and you were reminded of Mr Mitchelson's
13 evidence that, in his view at least, Mr Britton is not an
14 obligation-holder. Do you agree with me on that?

15 A. Yes, that's correct.

16

17 Q. Just to cover off on that, is there anyone more senior
18 than you in the Anglo hierarchy, and I suppose I'm looking
19 upwards to Met Coal, who is an obligation-holder?

20 A. No, not in respect of that part of the legislation,
21 no.

22

23 Q. Is there some other qualification that you have in
24 mind when you express it that way?

25 A. No. No, the operator is Capcoal Management, of which
26 I'm an officer, and the holder is the Capcoal JV.

27

28 Q. To speak, then, specifically of Met Coal, as you
29 understand it, there's no-one within that operating at
30 a level to which you would report and more senior to you
31 who is an obligation-holder?

32 A. Not underneath that structure or part of the
33 legislation, no.

34

35 Q. Just a couple of things about your directorship. When
36 you were previously at Glencore, were you a director of the
37 operating company there?

38 A. No, I wasn't, no.

39

40 Q. Do you know, so far as Capcoal is concerned, whether
41 the SSE who preceded you was a director of the company?

42 A. I'm sorry, I can't comment.

43

44 Q. At the risk of repetition, but just to try to be clear
45 about it, we've referred more than once to your dual
46 capacity as being director of Capcoal and also SSE. I'd
47 just like to be clear about the rationale or the logic

1 behind the decision to operate in that way?

2 A. It obviously gives me the ability to ensure that it's
3 not two people, it's the SSE's obligations and the
4 obligations of the officer of the corporation which almost
5 coincide, similar, are met and that the corporation
6 complies to the objectives of the Act and the SSE complies
7 to the objectives of the Act.

8

9 Q. In the performance of its obligations, the operator
10 can, in effect, take advantage of your function as SSE; do
11 I understand that correctly? I'm not saying there's
12 anything wrong necessarily with that. I just want to
13 understand.

14 A. Just repeat the question, please?

15

16 Q. Is it so that the operator who, for instance, has the
17 obligation, the broad obligation, to ensure safety within
18 an acceptable limit, having regard to that obligation,
19 whether that is served by, at least in part, your being
20 both SSE and a director of the company?

21 A. Well, there's certainly obviously some very - some
22 benefits to that, me being the one person.

23

24 Q. Do you see that the operator's obligations and the
25 SSE's obligations are overlapping and, if so, to what
26 degree?

27 A. They certainly are. When you look at them in the
28 legislation, there are certainly similarities between the
29 SSE obligations and an officer of the corporation
30 obligations. At the end of the day, my role is to ensure
31 that proper due diligence is applied, there is proper
32 compliance to the obligations in the Act, and that function
33 works well with me holding the SSE and the director
34 position as well.

35

36 MR RICE: Thank you. May Mr Wynn be excused?

37

38 MR CLOUGH: Q. I did have a couple of questions,
39 Mr Wynn. The effectiveness audit carried out by Reed
40 Consulting, are you aware whether or not there is a review
41 of the safety performance and the HPIs when that audit is
42 conducted?

43 A. I'm not aware, because the last one that Mr Reed did
44 was in 2017.

45

46 Q. I would propose that if you want to know whether or
47 not your safety and health management system is effective,

1 wouldn't you want to have a look to actually see how the
2 safety performance was at the site and the HPIs that had
3 occurred?

4 A. Yes, absolutely. I mean, HPIs are probably a good
5 form of a leading indicator. The number of HPIs on site is
6 one thing to look at, but also I think it can also be
7 viewed that it's a good culture of reporting as well. So,
8 yes, I certainly look at - when I step into a new role as
9 an SSE, they're one of a few things that I look at, and
10 certainly I would look at the previous, last 24 months of
11 HPI or directives put upon that operation.

12
13 Q. But in relation to the effectiveness audit, do you
14 believe that it should be part of the audit process to
15 actually review the safety performance and the HPIs?

16 A. Look, I think - yes, I certainly think it could add
17 value. There's an opportunity there. The intent of that
18 is to serve a purpose and to assure you that you have
19 a safety and health management system that is effective to
20 control risks. Then, yes, certainly if there's value in
21 that, I would agree that it's an opportunity.

22
23 Q. The second question is in relation to the decision to
24 go and mine the longwall in another location. That was
25 based on the results of the compliance cores; is that
26 correct?

27 A. Yes, that's right. We needed to continue to do
28 extensive drilling, and while we were drilling, we were
29 also getting compliance cores that were enabling us to go
30 a little bit further, but it was complex and the area
31 needed more drainage time.

32
33 Q. So do you recall what the results were that were
34 coming back from the compliance cores?

35 A. Oh, they were below the outburst conditions for
36 mining, certainly. Otherwise, we wouldn't have been
37 continuing to mine in that area. It was becoming very
38 obvious to me that the decision had to be made to be able
39 to look at other alternatives in other areas.

40
41 Q. Were they below the frictional ignition requirements?

42 A. I believe so, from memory. There's two requirements,
43 as you rightfully just highlighted. There's an outburst
44 threshold limit, and then there's a frictional ignition
45 threshold limit. If you get below that, that's fine. But
46 if you still remain above that, there's just additional
47 controls you need to put in place.

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Q. What I'm hearing is that in fact, according to your principal hazard management plan, all the cores were actually compliant?

A. I'd have to go back and - well, compliant, yes, to be able to mine, yes.

MR CLOUGH: No further questions from me, thanks.

THE CHAIRPERSON: Q. Mr Wynn, you are effectively wearing two hats, one as director of the company and the other as SSE. Do you get separate remuneration for that, or is it a package thing?

A. No, I don't, but I'm happy if that's a recommendation by the Board.

Q. I was just wondering, because you do take on huge obligations in your roles, don't you?

A. Look, yes, I do, and I'm aware of what they are. I'm a member of the Institute of Australian Company Directors, so I appreciate those obligations as a director. Obviously part of a director's role and ensuring due diligence is obviously having the resources available to him or her to be able to do that, and obviously I have that in regards to the Anglo American resources.

Q. I don't want to cause you lost sleep, but you really are exposed under the statutory obligations.

A. And that's why we've got to do so many audits and verification processes and assurance processes, to ensure - to give me that level of confidence that I have got everything covered.

THE CHAIRPERSON: Mr Wynn, thank you for your attendance. You are excused.

<THE WITNESS WITHDREW

THE CHAIRPERSON: Yes, Mr Hunter.

MR HUNTER: May it please, I call Emeritus Professor Michael Quinlan, who is available by videolink.

<MICHAEL QUINLAN, affirmed: [12.42pm]

<EXAMINATION BY MR HUNTER:

- 1 MR HUNTER: Q. Sir, is your name Michael Quinlan?
2 A. Yes, it is.
3
4 Q. Are you an emeritus professor of industrial relations
5 in the School of Management at the University of New South
6 Wales?
7 A. Yes, I am.
8
9 Q. Have you held that position since your retirement in
10 2018?
11 A. Yes, I have.
12
13 Q. Prior to that, between 1994 and 2018 did you hold
14 a professorial position at the same location?
15 A. Yes, I did.
16
17 Q. Do you have a Bachelor of Economics with Honours?
18 A. Yes, I do.
19
20 Q. I'm sorry, we didn't hear that answer, professor.
21 I think you may have muted your microphone.
22 A. Is that better?
23
24 Q. That's better. I can hear you now. Can you hear me?
25 A. Yes, I can.
26
27 Q. My question was about your qualifications. Do you
28 have a bachelor's degree with honours in economics?
29 A. Yes, I do.
30
31 Q. You also hold a PhD?
32 A. Yes, I do.
33
34 Q. In what field was your doctorate?
35 A. Industrial relations.
36
37 Q. You've prepared two documents in connection with your
38 evidence at this inquiry; is that correct?
39 A. Yes.
40
41 Q. The first is a rather substantial document. I won't
42 ask for it to be called up, but the number is
43 BOI.001.004.0001. It was in the nature of a literature and
44 information review; correct?
45 A. Yes, it was. That's correct.
46
47 Q. Can you tell us, please, just in general terms what

1 the nature of that task was?

2 A. I was tasked to review the information and literature
3 in relation to four questions, and in relation to that task
4 I undertook a review of material - I'm sorry, I'm getting
5 feedback here.

6
7 Q. We can hear you just fine.

8 A. Okay. It's just a bit hard. I had materials which
9 I had already collected, but, in addition to that,
10 I undertook a number of web searches of relevant
11 literature. This was Weber Science, Google Scholar,
12 Google, government websites, using generic search terms
13 such as contract labour, mine safety, labour hire, and
14 I collected the material that I had. I also made contact
15 with several people who I knew held material or to check
16 that I hadn't missed anything.

17
18 Q. Just so we're clear, the matters about which you were
19 asked in general terms included the use of labour hire
20 workers?

21 A. That is correct.

22

23 Q. The payment of production and safety bonuses to both
24 workers and corporate executives?

25 A. That's correct.

26

27 Q. The employment arrangements, or the effect of
28 employment arrangements on the performance by safety and
29 health representatives of their functions?

30 A. That's correct.

31

32 Q. And any learnings on the issues, such as the role of
33 corporate governance in health and safety and that sort of
34 thing?

35 A. Yes, that's correct.

36

37 Q. These were all matters about which you had yourself
38 written extensively?

39 A. That is correct.

40

41 Q. Can I ask you this. We can see for ourselves the
42 results of the review as set out in the document to which
43 I've referred. Did you approach the task of the literature
44 review with a critical mindset, that is, without any
45 particular preconception in mind, for example, consistent
46 with the sorts of things that you've expressed yourself
47 when writing on the subjects?

1 A. I undertook it as I would do any normal academic
2 review. I searched out all the material that I thought or
3 could find that was relevant, irrespective of what it
4 found, as long as it pertained to the subject.

5
6 Q. In addition to that document, there's a much shorter
7 document. I'll ask that this be displayed, please,
8 Mr Operator. It's QMI.001.001.0001_U. What we can see and
9 what I hope you have available to you as well, professor,
10 is the shorter document that you prepared.

11 A. Yes.

12
13 Q. It sets out, obviously, your background and your
14 qualifications and the nature of the task on the first
15 page, but if we can go to the second page, please, in
16 particular, to paragraphs 8 and 9.

17 A. Yes.

18
19 Q. You refer in a summary way to concerns over elevated
20 occupational health and safety risks associated with the
21 use of contract labour and you say that such concerns have
22 been around for some considerable time, reinforced by
23 growing bodies of research, but you go on to say in
24 paragraph 9 that, "More research would be valuable". Do
25 I take it, then, that it's implicit in that statement that
26 there is something deficient or that there are shortcomings
27 associated with the research that has been undertaken so
28 far?

29 A. Not really. The results are pretty clear. It would
30 be good if there was more research on Queensland coal
31 mines.

32
33 Q. What sort of research, in your view, ought to be
34 undertaken?

35 A. Well, I think detailed research based on interviews
36 with mine workers holding different positions, management
37 and other stakeholders, union representatives, or ISHRs.

38
39 Q. It's understood that some research in Queensland has
40 already been conducted. Is there an issue with respect to
41 the sample size in the research to date?

42 A. Yes, the sample sizes of fatalities in particular but
43 also accidents are fairly small, and that makes it more
44 difficult to (indistinct).

45
46 Q. More difficult to what, I'm sorry?

47 A. I'm getting a feedback, I'm sorry. It's more

1 difficult to assess the significance of results. For
2 example, if you only get a very small number of fatalities,
3 it's very difficult to judge any differences in relation to
4 what might be the case with the employment style. Compare
5 that to the United States. Their sample sizes are much
6 bigger.

7
8 Q. Did the research that has been undertaken in the
9 United States arrive at a different conclusion from that
10 which you've expressed in the literature review?

11 A. No, it didn't. The research in Sweden, South Africa
12 and the United States all pointed to an elevated risk
13 associated with contract labour.

14
15 Q. At paragraph 12 on the page, which is at the foot of
16 page 2, you refer to the question of reduced worker voice
17 associated with the use of labour hire or contract labour.
18 My question to you is what's the solution to a problem, if
19 there is one, associated with reduced worker voice?

20 A. There are a number of solutions that could be
21 implemented in that regard: greater efforts within the
22 mines to ensure that worker voice was achieved, but more
23 particularly in strengthening the representative structure,
24 the role of SSHRs and ISHRs in mines in terms
25 of strengthening their voice, particularly in lower
26 unionised mines, because generally the research says that
27 representative structures are more effective than other
28 forms of feedback, if you like, because they enable workers
29 to make complaints anonymously, and also because it's
30 through a representative process, there's less opportunity
31 for retribution or fear of retribution.

32
33 I mean, the fear is as important as any actuality that
34 might occur. The representatives also add negotiating
35 skills, so they are able to talk to workers and filter, if
36 you like, the more serious ones out or (indistinct). So
37 there are a variety of ways in which that process works
38 more effectively.

39
40 Q. Just on that point, in Queensland, as you probably
41 understand, the system is that the industry safety and
42 health representatives in this representative structure are
43 funded and provided essentially by the union, so how could
44 the situation be improved in terms of representation at
45 what you've described as lower unionised mines?

46 A. As I understand, the ISHRs can visit non-unionised
47 sites, and I think there may be an argument for more -

1 increased ISHRs, an additional one, who might have more
2 time to visit those sites. I'm getting a lot of feedback.

3
4 Q. That's all right, we'll struggle --

5
6 THE CHAIRPERSON: Well, is it possible to improve the
7 situation?

8
9 MR HUNTER: I don't suppose you have a set of headphones
10 available?

11
12 THE WITNESS: No.

13
14 MR HUNTER: The alternative might be to perhaps abandon
15 the video and try telephone?

16
17 THE CHAIRPERSON: Yes. I'm aware of the time.

18
19 MR HUNTER: Yes.

20
21 THE CHAIRPERSON: Would it be appropriate to try to sort
22 this out rather than having Professor Quinlan under an
23 obvious disadvantage at the moment?

24
25 MR HUNTER: Yes. Professor, we might take the luncheon
26 adjournment now and try to devise a solution over the lunch
27 break, if that's okay with you.

28
29 THE WITNESS: Yes, that's fine with me.

30
31 THE CHAIRPERSON: Thank you for that. We will adjourn
32 until 10 past 2.

33
34 **LUNCHEON ADJOURNMENT**

35
36 THE CHAIRPERSON: Yes, Mr Hunter.

37
38 MR HUNTER: Mr Martin, I trust that we've fixed the
39 situation and that the fixed state of affairs persists.

40
41 Q. Can you hear me okay, professor?

42 A. Yes, I can.

43
44 Q. All right. Before we resumed, you mentioned to me
45 that there was a matter that I'd asked you about before
46 lunch that you wished to expand upon, and that was the
47 question that I raised concerning paragraph 9 of your

1 second report. That is the paragraph that relates to
2 research. What was it that you wanted to tell us about
3 that?

4 A. I wanted to say that, first of all, I mentioned sample
5 size. I was obviously referring to sample sizes with small
6 counts in fatalities. I think there is enough research to
7 indicate that there is a problem. However, I think more
8 research, and particularly a longitudinal study - that is,
9 taking two measurement points in time - would be valuable,
10 in particular in relation to measuring things, not just
11 issues but HPIs, and the regulatory knowledge and
12 compliance of different categories of workers; their
13 willingness to raise safety issues; positive responses and
14 moves on those actions or issues that are raised; and the
15 effectiveness of contractor management regimes more
16 generally. I think that sort of study could also be very
17 good in the sense if there are any recommendations to come
18 out of this Board of Inquiry and if they were to be
19 implemented, then you would get two measurement points in
20 time to evaluate the impact of those changes.

21

22 Q. Just on that point, though - sorry, had you finished?

23 A. Yes, I had.

24

25 Q. On that point, is it fair to say that it's possible,
26 if not likely, that there is a wide variation in the
27 approach to safety - labour hire workers or not - depending
28 upon the site at which the work is being done or the
29 operator? So there might be some operators who have a very
30 good approach to safety and others who have an approach
31 that's less than optimal?

32 A. Absolutely, and I think that's why, when you are doing
33 such a study, you would try to use knowledge from the
34 inspectorate and others to get a sufficiently
35 representative range of operators and contracting in
36 different situations so you can actually evaluate the
37 differences in a systematic way.

38

39 Q. Can we go over the page to some recommendations that
40 you've made with respect to the improvement for safety with
41 labour hire workers in coal mines. You set out a number of
42 matters in paragraph (a). Do you see 13(a)(i) to (vi)?

43 A. Yes.

44

45 Q. I think it will be suggested to you, and we certainly
46 heard some evidence along these lines yesterday, to the
47 effect that Anglo American does do the various matters that

1 are specified there. Let's say you've got an operator of
2 a mine doing those things (i) to (vi). What additional
3 advantage is involved in having the labour hire
4 organisation do the same thing?

5 A. I think there are several advantages in the sense that
6 it will oblige the operator and the labour hire
7 organisation or major contractor to ensure that they have
8 a genuinely integrated system, and it's also important,
9 given that the labour hire firm is actually managing some
10 of the workers on site or how they report back on issues.
11 That list from (i) to (vi) is not exhaustive. It is just
12 indicative.

13
14 I think also in spelling these things out, as you
15 already implied in an earlier question, the level of detail
16 at which some operators deal with this issue is likely to
17 vary, and as it hasn't been essential in other parts of the
18 legislation, I've been spelling out specific areas that you
19 would want covered - hazard and financial.

20
21 It also becomes an auditing point for inspectors and
22 other parties with relevant access to work sites, including
23 the ISHRs. It will be a starting point for them to look at
24 the system. Ideally, these requirements will be put into
25 a central document, as I understand Anglo already has with
26 related contractor management, and so inspectors or others,
27 ISHRs, coming on site can use that as a starting point and
28 then check that there is an alignment between what the
29 labour hire company is doing and what the operator says is
30 happening, and also do workplace inspections to ensure that
31 that is actually the case.

32
33 Q. I suppose that brings me to the next question, that
34 it's all well and good to have a system that is supposed to
35 do these things, but it's important to check, is it not,
36 that it's actually being done on the ground?

37 A. Absolutely. One of the problems over the years - I've
38 lectured a lot on contractor safety management - is that
39 organisations can develop quite elaborate systems across
40 a range of industries, not just mining, but the problem is
41 they often fall down because there's inadequate
42 implementation and monitoring. I have seen some very good
43 systems where they spend a lot of time on implementation
44 and monitoring, so I am not saying this applies to all
45 companies, by any means, but it is a typical failure point.

46
47 I also think sometimes when you do the monitoring and

1 implementation and auditing of systems, you do discover
2 gaps, and even a scheme that has had a lot of time put
3 into, there are often gaps that can be identified at
4 particular points in time. If you look at some of the
5 fatality incidents, such as several I mentioned in my
6 report, the investigation identified a couple of gaps in
7 the contractor management system.

8
9 As I said, that won't apply to all mines or all labour
10 hire operators, but I think it's certainly there and we
11 need to ensure that all operators and contractors are doing
12 that.

13
14 Q. You say in paragraph 13(d), which is at the bottom of
15 that page, that you recommend that the regulator should
16 strengthen inspections. In what way would the inspections
17 be strengthened, to use your language?

18 A. I have no doubt, and when I read the inspection report
19 for the earlier study I did of ISHRs, mine inspectors do
20 already look at contractor management. We know that. The
21 issue is, is that assessment being entirely effective or
22 does it need to be more targeted?

23
24 For instance, New South Wales had a review process in
25 relation to strata, and in the process of that, they
26 discovered significant problems, or one of the problems
27 they identified, as I mentioned in the report, was
28 contractor management in relation to that strata issue. So
29 targeted enforcement activities with publicity, and desktop
30 inspections followed by detailed interviews with key
31 players and direct inspection of workplaces I think will
32 strengthen that regime. So I'm not saying that the
33 inspectorate isn't looking at that issue; I know for a fact
34 they are. I'm just suggesting that it is probably an area
35 that needs more thought or more attention than it probably
36 has received in the past, at least in the very sense that
37 there should be a review of these processes to see if there
38 are any ways that they can be improved.

39
40 Q. The last point I want to raise with you is something
41 that's not addressed in your statement, but it's a matter
42 of which I believe you're aware, and that is the difference
43 between the legislation in Queensland and New South Wales.
44 In New South Wales, a labour hire contractor or labour hire
45 company is subject to an overarching safety obligation to
46 ensure that the place of work where its employees are
47 working is as safe as is reasonably practicable, but the

1 Coal Mining Safety and Health Act in Queensland doesn't
2 contain the same broad obligation when it comes to a labour
3 hire company. Does that strike you as anomalous?

4 A. It does.

5
6 Q. Why?

7 A. Because there is a growing recognition that when you
8 introduce a contracting arrangement - and they're long term
9 in the mining industry, but when we've got a labour hire
10 firm filling significant operational activities it adds
11 a new level of complexity, and generally there has been a
12 variety of reviews in the labour hire industry across other
13 industries that has recognised that there is a need for
14 additional other regulatory measures in relation to labour
15 hire firms, which is why there are licensing requirements.
16 I think particularly in high-hazard workplaces, which mines
17 certainly are, you need to ensure that those overarching
18 responsibilities are being met.

19
20 Q. We know that there's already a health and safety
21 obligation that's in very similar terms imposed upon a mine
22 operator and various people at the mine. What's the
23 advantage, if any, of imposing the same obligation on
24 a labour hire organisation?

25 A. As I said, the advantage is that it requires the
26 operator and the labour hire firm to indicate their
27 processes and for the labour hire firm to be fully aware of
28 all the processes that are in place. I'm sure that there
29 will be suggestions that it's already the case. But also
30 to indicate to what extent they've taken measures to ensure
31 that, for example, workers can report safety issues. As
32 you read from my report, there's considerable evidence, not
33 just in mining but in other industries, that it is
34 a significant problem with contract workers more generally.

35
36 I'm not limiting my observations here to labour hire
37 but also to any company that's undertaking major
38 contracting activities in a mine.

39
40 Q. So why would a labour hire company having that
41 obligation enhance the reporting of safety matters?

42 A. I actually think they should report safety matters as
43 part of their operations, and I think in that oversight and
44 reporting on what actions they've taken, that will increase
45 the level of knowledge and interaction with the operator
46 and I think it will also provide the inspectorate, for
47 instance, with a tool to see how well these activities

1 dovetail between the two organisations.
2

3 Q. I'm sorry, I perhaps didn't put the question clearly.
4 What I meant was how, if at all, would imposing that
5 general obligation on a labour hire company enhance the
6 reporting of safety incidents by workers?

7 A. This is a difficult issue, because of the job
8 insecurity issue. I did a Queensland study - it wasn't in
9 mining - where labour hire companies went to - one labour
10 hire company in Toowoomba went to some lengths to ensure
11 that workers could report safety issues back to it, taking
12 phone calls out of hours, and things like that, and I would
13 like to see what efforts - I think it could be useful for
14 both the operator and the labour hire companies to see what
15 efforts can be taken to improve that sort of level of
16 reporting and action and to document how those issues were
17 raised, because, as we know with reporting, some HPIs are
18 definitely going to be reported, but some may not be. So
19 I think that's one of the focal points that could be useful
20 in terms of showing a constructive relationship is going on
21 and that the labour hire operator and the company are
22 working in conjunction to improve safety on site and to
23 ensure people have some input into that.
24

25 It's not just an issue for labour hire and
26 contractors. Any workers in insecure positions - and
27 I think in my report I document cases where people are not
28 labour hire but are feeling insecure - this has been seen
29 to compromise safety. The difference is that insecurity is
30 more typical in a labour hire situation, so I believe that
31 you need to have additional measures.
32

33 I mean, when I used to lecture in contractor
34 management, one of the points I used to make was that it is
35 critical that the employer's and labour hire company's
36 regimes dovetailed and that in fact the host safety regime
37 is the system that operates on site, and that certainly, as
38 far as I've understood from the evidence given already, in
39 mining is the case. It wasn't always the case in the past.
40

41 But even given that, to achieve equivalence of
42 treatment, I think you have to recognise the greater
43 difficulties. I'm not suggesting that workers are
44 regularly victimised for raising safety issues. There's
45 certainly some evidence of that occurring, but I'm not sure
46 it's saying that that's widespread in mining, but there is
47 a perception, and I think in that situation, while you may

1 have equivalent systems, you may have to go to extra steps
2 to ensure that that (indistinct) workers.

3
4 Q. Just on that point, is that really the problem? Even
5 if people are not being victimised for raising safety
6 issues, there's, it seems, an unjustified perception on the
7 part of workers that they might be?

8 A. There is a very - this is the issue. There is
9 a widespread perception, and I think I document quite a few
10 examples of that in my report.

11
12 I mean, victimisation does occur, but I think the
13 perception or fear of that is much broader than in actual
14 incidents. It's almost as if you have to lean over to make
15 sure that there is - those perceptions are broken down.
16 I mean, a very positive relationship, for instance
17 emphasising the importance of raising safety issues and
18 celebrating actions taken to improve safety is part of the
19 thing, and also telling people repeatedly, as I'm sure mine
20 managers do, that they should raise issues. But there
21 needs to be, I think, some effort to combat any perception
22 that raising an issue - even one that may reflect to some
23 degree poorly on the worker themselves, it still needs to
24 be reported and --

25
26 Q. Can I ask you to stop there, professor. I'm sorry to
27 interrupt. I've been asked to ask you if you would please
28 slow down for the benefit of our transcript writer, who is
29 having some difficulties hearing you.

30 A. I think I was saying that there's a need to probably
31 go an extra step to ensure that that fear is allayed.

32
33 Q. That that fear is allayed?

34 A. Yes, that people feel that not only is reporting
35 safety issues important but that they should do it and
36 there will be no - you know, that the company really wants
37 to - as I said, I'm sure many companies make this point,
38 but I think that message just has to be strengthened.

39
40 Maybe one way for that also to be done would be
41 encouraging more engagement with site health and safety
42 representatives and industry representatives, even in mines
43 where there isn't much union representation, because we
44 know on the mines where there is strong operation and union
45 links between ISHRs and SSHRs, that improves the feedback.
46 I also suspect that it might be very useful for inspectors
47 to meet workers off site and encourage those processes.

1 I think a number of measures should be looked at in that
2 regard to try to deal with that issue.

3

4 Q. Are these cultural matters that need to be addressed
5 at an operator level or is there some role for the
6 regulator to play?

7 A. I think there's a role for the regulator to play,
8 I mean, because the regulator, at the end of the day, sets
9 standards that apply across the industry, and some
10 companies will be better at this than others. I think the
11 representative system works best in terms of worker
12 feedback from the national researches, to my knowledge. So
13 that should be, I think, promoted as part of that. And the
14 inspectors really need to probably go to - I'm sure
15 a number do, but they probably need to go to additional
16 lengths themselves, and they need to ask companies what
17 they're dealing with, labour hire companies, how they're
18 trying to address this issue as part of --

19

20 Q. When you say "trying to" --

21 A. Worker feedback.

22

23 Q. When you say "trying to address this issue", do you
24 mean address the perception?

25 A. Yes, and the reality. If we encourage more reporting
26 generally - and I think the point was made earlier in the
27 hearings that you will get an increase in HPIs if you get
28 better reporting, and that's probably a good thing. In
29 fact, that's definitely a good thing. So generally you
30 want to increase the level of reporting.

31

32 When I did the Beaconsfield investigation, the mine
33 had a fairly good reporting of unsafe movement of ground.
34 But in the course of that investigation and in speaking to
35 workers, the investigation identified a number of incidents
36 where falls of ground weren't reported.

37

38 Q. So that's what you mean when you say that an increase
39 in HPIs is a good thing?

40 A. Yes.

41

42 Q. You mean an increase in reporting of them?

43 A. Absolutely. Absolutely. I'm definitely not implying
44 that an increase in HPIs of itself is a great thing. I'm
45 suggesting we want every HPI that is possible to be
46 reported - and evidence already given to the Board of
47 Inquiry indicates that a lot of parties in the industry are

1 very interested in that and realise it's important that
2 HPIs are reported.

3

4 THE CHAIRPERSON: Q. Just before you go on, professor,
5 you were speaking about the Beaconsfield investigation and
6 you said, "When I did the Beaconsfield investigation, the
7 mine had a fairly good reporting of" - what did you say,
8 reporting of?

9 A. Rockfalls, unplanned falls of ground, strata issues.

10

11 Q. Thank you. And you went on to say, "But in the course
12 of that investigation and in speaking to workers, the
13 investigation identified a number of incidents" - there was
14 a word that we didn't pick up - "that weren't reported".
15 Was there anything we missed there?

16 A. No, not really. I can give you an example. There was
17 one incident where a piece of rock about the size of
18 a typewriter was spat out of the face and shot past a group
19 of workers. If it had collided with one of them, it would
20 have done a serious injury. It wasn't in the report.

21

22 One of the problems was, I think, that the management
23 of the mine didn't spend enough time talking to their
24 workforce about those sorts of issues. I'm not saying that
25 that's the case in coal mining, but it could be the case in
26 some mines.

27

28 THE CHAIRPERSON: Yes, Mr Hunter.

29

30 MR HUNTER: Q. Just finally before I sit down,
31 professor, when you were talking about Beaconsfield before,
32 were you telling us that the investigation revealed that
33 there had been, in addition to the falls of ground that
34 were reported, some other strata-related issues that had
35 not been reported as they should have been?

36 A. Yes, I am saying that. And there was also, relevant
37 to I think something here, a considerable debate between
38 the inspectorate and the company later on about what was
39 reportable, because there were ground fall - or falls of
40 ground incidents that the inspectorate felt they should
41 have known about but they hadn't been told about.

42

43 Q. Falls of ground incidents that the inspectorate should
44 have known about?

45 A. Yes.

46

47 MR HUNTER: Thank you. Those are the questions I have.

1 Thank you.

2

3

<EXAMINATION BY MR HOLT:

4

5 MR HOLT: Q. Professor, my name is Saul Holt. I am one
6 of the barristers for the Anglo group of companies that
7 have been given leave to appear before the Board. I only
8 have a few questions for you. Could we bring up just
9 paragraph 8 of the shorter statement, the one that's
10 currently on the screen, please. I just want to focus on
11 that paragraph just for a small number of questions.

12

13 You have paraphrased, thank you - but I've had the
14 opportunity to read your longer report - concerns that you
15 identified in your review over elevated OHS risks,
16 including fatalities, associated with the use of contract
17 labour, so you've identified that as being a concern.

18

A. Yes, I have.

19

20 Q. The second thing that you very helpfully do in your
21 report, and indeed it flows on from what I know is a lot of
22 the work that you have done over your career, is to look to
23 drill down into that and ask the question of what the
24 features are of different kinds of arrangements or the
25 nature of particular kinds of employment arrangements which
26 might give rise to those kinds of difficulties to increase
27 the OHS risks.

28

A. Yes, I have.

29

30 Q. I just want to drill in on both of those topics, if
31 I can. The first is, you have very helpfully set out in
32 your longer report a body of research on the question of
33 elevated OHS risks associated with contract labour.
34 Firstly you have set out a discussion of a body of overseas
35 research?

36

A. Yes.

37

38 Q. And you very helpfully explained that one of the
39 difficulties in performing the task of trying to figure out
40 what the link is, if any, between the use of contract
41 labour or different kinds of contracting arrangements and
42 elevated OHS risks - there are a number of issues of
43 methodology that you have identified. That's right, isn't
44 it?

45

A. What, in methodology of the studies?

46

47 Q. Yes, real challenges.

1 A. You need to tell me more about what you mean.

2

3 Q. Of course, happy to. There's the obvious sort of
4 apples and oranges, so, as you explain, and many of the
5 studies explain, in different countries and jurisdictions
6 not all contract labour is the same. They have different
7 features and components and different language is used to
8 describe them.

9 A. Yes, that's true.

10

11 Q. And, in addition, there's also the question of how you
12 measure what datasets you can use and have available to you
13 to be able to measure, and there are differences between
14 the datasets available in different places?

15 A. That's true.

16

17 Q. There is also - and this might not be a methodological
18 problem but just something that must be borne in mind, as
19 you explain in your larger review - that some studies deal
20 with all labour hire across all industries and others are
21 more specific to certain industries and certain
22 jurisdictions?

23 A. That's correct.

24

25 Q. There's also, obviously enough, the difference in
26 jurisdictions, different places where these studies are
27 being done, in terms of the regulatory environment and,
28 indeed, just the employment and safety culture that might
29 exist?

30 A. Yes, that's true, but overall the assessments tend to
31 find similar results. I'm not saying regulatory
32 differences don't matter. They do. But in general, the
33 finding - for instance, if you were comparing the US and
34 Australia, you would say that mining in Australia has
35 a much better regulatory context than in the US. But, yes,
36 generally the findings are fairly consistent across
37 countries, including countries with better OHS regimes.

38

39 Q. Let's look at the Australian setting. You identify,
40 and you've explained in your shorter report and explained
41 to Mr Hunter today, that you would like to see more
42 research in Australia on these issues, though you have
43 identified some of the key research and studies that have
44 been done?

45 A. Yes.

46

47 Q. There are a couple that have been done. One is

1 a thesis from an author called Underhill, a University of
2 New South Wales thesis, which used Victorian WorkCover
3 claims as a basis to analyse a link between labour hire or
4 contract labour and OHS outcomes.

5 A. That's correct.

6

7 Q. And then, in addition, you refer to, again very
8 helpfully, some other work that has been done, firstly, by
9 Callinan in 2011?

10 A. Yes, I did.

11

12 Q. Then you refer to the Brady report, which we're all
13 very familiar with, and the work that was done in relation
14 to Brady. I'll come back to these in a bit of detail in
15 a moment, but just to identify the field.

16 A. Yes.

17

18 Q. Then very helpfully you've also yourself, as
19 I understand it, managed to obtain data in respect of
20 fatalities and serious accidents reported in Queensland for
21 an eight-year period from 2012 to 2020?

22 A. Yes. As I explained, I tried to get a 10-year period,
23 but the department said that the 2012 to 2020 period data
24 was more reliable.

25

26 Q. We'll just work through a couple of those, if we can.
27 I don't want to go through the enormous detail in your
28 report, but if we can just focus on a couple. If we can
29 go, please, to BOI.001.004.0001, Mr Operator, and if we
30 could go, then, to 0052 of this lengthier report of the
31 professor's. We can see there starting at the third full
32 paragraph down, there you describe the 2011 work that
33 Graham Callinan did.

34 A. Yes, I did.

35

36 Q. And one of the key things that you identified there
37 was that Mr Callinan did an analysis of some specific
38 recent workplace fatalities, small in number but which had
39 the common feature of involving contractors.

40 A. Yes, I did.

41

42 Q. Then what Mr Callinan identified in the indented
43 paragraph there, which you've quoted, is:

44

45 *Work procedures were identified as*
46 *a significant factor. Four contractors*
47 *utilised procedures that were not part of*

1 *the mine's safety and health management*
2 *system. Three were unfamiliar with and/or*
3 *did not follow the procedure.*

4
5 A. Yes.

6
7 Q. And:

8
9 *A lack of risk assessment prior to the*
10 *incidents was also an issue identified in*
11 *the analysis.*

12
13 A. Yes.

14
15 Q. You go on just over the page, 0053, Mr Operator, at
16 the top, very helpfully to then elaborate on those points,
17 which I won't read out to you, we can all see them there.
18 They fall under the category that I think originally comes
19 from your 2001 work as a factor in relation to this issue,
20 which you label very helpfully "disorganisation".

21 A. Yes. I think that's accurate.

22
23 Q. If I can summarise it perhaps in the way that
24 Underhill did in her thesis, the way in which that
25 disorganisation factor contributes is by looking at these
26 topics: prior experience and knowledge of the job?

27 A. Yes.

28
29 Q. Induction and task training?

30 A. Yes.

31
32 Q. OHS training?

33 A. Yes.

34
35 Q. Fractured or inadequate communication?

36 A. Yes.

37
38 Q. Fractured responsibility?

39 A. Yes.

40
41 Q. And OHS management failure through fragmented
42 responsibility?

43 A. Yes.

44
45 Q. That idea of fragmented responsibility which you
46 explain here and is explained in your earlier work is
47 a feature also of some of those specific fatality incidents

1 that Mr Callinan identified and indeed some of the examples
2 that you have set out in your longer report?

3 A. Yes.

4
5 Q. For example, specifically if we take Pike River as an
6 example, we know that one of the real issues there was
7 quality of contractor induction having been inadequate?

8 A. Yes.

9
10 Q. And a complete absence of a safety and health
11 management system into which contractors were ever inducted
12 in that context?

13 A. Yes, and the failure to integrate contractors into the
14 overarching safety regime at Pike River such as it was.

15
16 Q. You say "such as it was" because the safety and health
17 management system at Pike River was in fact in draft and
18 included the names of other coal mines and things,
19 indicating it had been something of a cut and paste job, as
20 you would know?

21 A. Yes, and a number of the witnesses and evidence
22 presented suggested that even the contractors thought the
23 system was chaotic.

24
25 Q. If I can then move forward, please, to page 0055 of
26 this document. In December 2019 - this is the point where
27 you talk about the Brady-Heywood review, which the Board is
28 already pretty familiar with, not necessarily in the
29 context of this discussion, but this is where you set all
30 of that out?

31 A. Yes.

32
33 Q. As you have explained, one of the things that that
34 review did was to look at - I know you have some helpful
35 comments to make about the conclusions and how they might
36 have been improved - but was to look at this question of
37 whether there was a link between labour hire status, in
38 effect, and poorer OHS outcomes?

39 A. Yes. I think the main focus of the report was looking
40 at the uptick, but they did look at that issue.

41
42 Q. If we go over the page, please, to 0056 and if we can
43 go down to the conclusion from the Brady-Heywood review,
44 the ultimate conclusion in that report was:

45
46 *... this data does not support the view*
47 *that employees work in a considerably safer*

1 *manner than contractors.*

2

3 A. Yes, that's what they stated, yes.

4

5 Q. Absolutely. One of the issues you had with that was
6 the relatively limited time frame of the dataset for
7 serious accidents and fatalities - I think it was only
8 two years' worth of data that was available at that point
9 in time?

10 A. It was a shorter term of data that was available for
11 fatalities, yes.

12

13 Q. You then explained at the bottom of 0057, in the last
14 paragraph - you have noted:

15

16 *To try and clarify matters further,*
17 *a request was made from the Department for*
18 *data covering the period 2010 to 2020 for*
19 *fatalities and serious accidents ...*

20

21 A. Yes.

22

23 Q. But as you have just explained to us, you were able to
24 get eight years' worth of data, not the 10 years' worth
25 that you sought.

26 A. Yes.

27

28 Q. Nonetheless, a bigger dataset than the one that had
29 been previously available?

30 A. Yes, and it was also broken down. I think, if my
31 memory is correct - and the Brady report is a big document,
32 but if my memory is correct - he didn't break down all the
33 different categories of, you know, coal mine open-cut, all
34 the measures, which is probably based on limitations in the
35 dataset.

36

37 Q. Understood completely. If we go over to 58, we can
38 see that you have set out a table there which identifies
39 the fatalities and serious accident numbers and frequency
40 in Queensland mining and quarrying from 2012 to 2020.

41 A. Yes.

42

43 Q. You helpfully break that down to mining and quarrying
44 overall, but then also for underground coal and for
45 open-cut coal in respect of each of the measures that you
46 have chosen to use?

47 A. Yes.

- 1
2 Q. Do you see the heading - of course you do -
3 "Worked Million Hours"?
- 4 A. Yes.
5
- 6 Q. You cite in your report one of the American studies
7 which suggested that hours were a better measure than some
8 of the other metrics that could be used, because it tends
9 to give you a better indication of what the data is telling
10 you?
- 11 A. Well, that you need to qualify - the frequency rates
12 which are controlled for the number of hours worked, so
13 more reliable than incident rates, which don't. Most of
14 the American studies do control for working hours. Some do
15 it better than others.
16
- 17 Q. In any event, fortunately you have the dataset here to
18 be able to do the frequency rates by million hours worked?
- 19 A. Yes.
20
- 21 Q. You make the point, with respect, entirely correctly,
22 that it is very difficult - and this is true across the
23 board, I imagine - to say anything meaningful about the
24 fatality numbers simply because - and it's a good thing,
25 right, but --
- 26 A. It is.
27
- 28 Q. -- the numbers are so low that they become
29 statistically almost meaningless when you're trying to make
30 comparisons, because one event can have such a significant
31 effect on the dataset that you are trying to interpret?
- 32 A. Yes.
33
- 34 Q. So can we just agree on that, because I don't want to
35 try to make anything of the fatality numbers, for that
36 reason.
- 37 A. Yes.
38
- 39 Q. The serious accidents reported are a better measure
40 and used in a lot of the studies in the sense that they are
41 bigger numbers, so you lose a bit of that wicked problem of
42 very, very low numbers?
- 43 A. Yes.
44
- 45 Q. If we then look at the serious accident frequency
46 rate, which is at the bottom, for that eight-year period
47 for underground coal mining, we can see that serious

1 accidents per million hours for underground coal - there
2 are slightly fewer of those for contractors versus
3 employees. I'm not going to make any issue of that and
4 suggest there's something in the difference. They're
5 effectively pretty similar, aren't they? There's not
6 a significant variance between them?

7 A. Look, my eyesight --

8

9 Q. Can we make that any bigger, Mr Operator?

10 A. No, I have another screen. This is why I'm looking
11 away.

12

13 Q. That's fine. I understand.

14 A. Yes, I mean, I'm not a statistician, but the
15 differences look fairly insignificant, yes.

16

17 Q. Absolutely. As far as you can see, from a Queensland
18 underground coal mining perspective you have managed to get
19 a pretty decent dataset, and on the basis of that dataset
20 for serious accidents per million hours for open-cut
21 underground coal, we can see that over an eight-year period
22 it is slightly better for contractors, but for present
23 purposes let's say essentially the same?

24 A. Yes.

25

26 Q. Are you aware of any better empirical dataset
27 available for underground coal mining in Queensland than
28 the one you have been able to obtain in this context?

29 A. No. I was hopeful about one study that I found, from
30 Knights and Scanlan, but it wasn't very useful in the end.

31

32 Q. Again, I don't know how much of the evidence before
33 the Board you've heard, but if we can return back to that
34 list - I mean metaphorically, I'm not asking the operator
35 to go there - of issues under the heading of
36 "Disorganisation" that you were talking about. You would
37 understand, of course, that in the Queensland context, the
38 way in which the regulatory system is set up for coal mines
39 is based around the idea of a unitary and complete
40 obligation of safety and health management owned by
41 particular obligation-holders on coal mine sites?

42 A. Yes.

43

44 Q. And have you also - I'm not sure whether you have, and
45 I'm not criticising you if you haven't - had the
46 opportunity to hear the evidence in this case about, for
47 example, the way in which labour hire workers are inducted

1 on to the various sites that have been the subject of this
2 inquiry to date?

3 A. I heard some of that evidence, yes.

4

5 Q. So if I can paraphrase, hopefully not inaccurately,
6 inducted in the same way as employees?

7 A. Yes.

8

9 Q. And competency tested and challenged in the same way
10 as employees?

11 A. Yes.

12

13 Q. And integrated into crews with employees and treated
14 for risk assessment and other purposes in the same way as
15 employees?

16 A. Yes.

17

18 Q. Again, that would help to deal with - recognising
19 these are issues that have to constantly be managed by coal
20 miners, so no-one is suggesting it's perfect, but this is
21 dealing with, in a way that I imagine you would approve of,
22 subject of course to review and audit and everything else,
23 those sorts of disorganisation issues that you have
24 identified?

25 A. Yes, they don't just come in at that point, but, yes,
26 in that sense, the ones you've mentioned, yes, I would
27 approve of those, yes.

28

29 Q. I know that another one of the factors that you
30 identify in the work that you have done around the features
31 or factors that might impact OHS issues for labour hire
32 workers in this context are also other things apart from
33 disorganisation, like the economic imperatives and
34 incentives, and so on, as well?

35 A. Yes.

36

37 Q. And also, again speaking about labour hire generally,
38 what's said to be the uncertainty or short-term nature of
39 roles in that context?

40 A. Yes, yes.

41

42 Q. Again I'm not sure whether you heard yesterday, for
43 example, the data about the workforce at Grosvenor where
44 the labour hire workforce has the same average tenure as
45 the non-labour hire workforce, 3.7 years on a mine that's
46 six years old.

47 A. I did hear that evidence.

1
2 Q. Again, not a complete solution, but an indication that
3 some of those concerns might, if we analyse this particular
4 area, not be as much of a problem as they are in some of
5 the studies you've identified?

6 A. Yes.

7
8 Q. You've talked a little bit about the way in which you
9 improve a reporting culture and the critical importance of
10 having a reporting culture?

11 A. Yes.

12
13 Q. And some of the things that you have identified,
14 either in your report or in your evidence - we can start
15 from the top down - are an overall authentic approach by
16 whatever business you're dealing with to encouraging
17 reporting?

18 A. Yes.

19
20 Q. And doing so in a way - you describe it as being
21 constant, I think, needing to be constant. We've heard
22 some Anglo employees and staff describe it as a regular
23 drumbeat: on every form of communication there's an
24 encouragement of hazard reporting?

25 A. Yes.

26
27 Q. I'm sure you would be utterly supportive of that
28 coming from the top down?

29 A. Absolutely.

30
31 Q. We've also heard at Grosvenor - and you will be aware
32 Grosvenor is a site that has a particularly high proportion
33 of labour hire workers - that a particular bespoke program
34 was put into place at that mine specifically intended to
35 target those kinds of conversations that allow and create
36 a sort of comfortable space for people to report in that
37 way? Again, I imagine you would approve of that?

38 A. Yes, I would add that you need multiple feedback loop
39 systems, and as I, made, the point in earlier evidence, you
40 need to encourage representative systems, because they
41 allow people who feel insecure to report more readily.

42
43 I'm not - I think every system you've got in place is
44 good, but the general literature and research suggests that
45 representative systems work well, but obviously companies
46 need their own systems to encourage feedback.

47

1 One of the things that my report also raises is that
2 you don't want the reporting systems working in conflict
3 with each other. There was some suggestion that the
4 individualised reporting systems companies might operate
5 might work against the more representative system.
6

7 Q. If I can deal with it in probably a pretty
8 unsophisticated way, you want lots of ways for coal mine
9 workers to be able to report hazards, whether through the
10 company, through representatives, through a whistleblower
11 process, or otherwise. You just want to have as many as
12 you possibly can and as well designed as they possibly can
13 be?

14 A. And working not inconsistently with each other.
15

16 Q. Yes, for example, someone might be happy to go to the
17 SSE's office, who they know has an open-door policy, and
18 sit down and chat with her, but other people may well not
19 be, and so you need different systems to deal with that
20 reality?

21 A. Yes.
22

23 Q. Can I ask you this question: one of the wicked
24 problems that seems to be existing is there seems to be
25 a general acceptance that there remains a perception
26 amongst coal mine workers, some coal mine workers - I'm
27 bound to say the evidence of how many it's pretty
28 impossible to get for reasons Mr Martin previously alluded
29 to - but there's a perception that you might be punished if
30 you raise a hazard, no matter how good a company's
31 messaging is. That perception could still exist or does
32 still exist?

33 A. Yes, I did say in another part of my report that how
34 you run your production or safety bonus systems can also
35 affect reporting.
36

37 Q. Yes, of course.

38 A. And particularly where lost time injuries are seen to
39 have an effect on bonuses, that can have a very adverse
40 effect. I think you would be aware of the American study
41 on that that I cited, where they noted that a company
42 that - only one of the five companies they looked at had
43 a very positive reporting regime/incentive scheme in place
44 based on actions, and with the others, basically it was
45 more injury penalty systems. So you need to get all that
46 in tandem. And there is still, I'm afraid, I think an
47 issue with job insecurity, because, as I said even on mine

1 sites where miners are not contracted, if there's an
2 imminent fear that the mine is going to close, or other
3 things, that will affect reporting on safety.
4

5 Q. Part of the way of dealing with that is - again,
6 subject to perception, which is always a problem - to have
7 a genuine and authentic approach to your human resources
8 strategies and the way in which you deal with incidents and
9 what the consequences for incidents or conduct or
10 performance issues actually are - that's a part of this
11 whole integrated process?

12 A. It is. I think, if I can say, if that was associated
13 with attempts to limit job insecurity on mine sites, that
14 would be probably (indistinct).
15

16 Q. In terms of that perception, the evidence has been
17 consistently, from people from Anglo and from the policy
18 documents and things that we've seen, that the last thing
19 they want to do is discourage people from reporting
20 hazards; that they see reporting hazards as being
21 a positive part of the way in which their business
22 functions, so that they can understand risk and continue to
23 mine safely. Assume that to be true for a moment for me.
24 That would mean, then, that the perception that you might
25 be punished for reporting an incident is wrong, if that
26 assumption holds, or at least almost always wrong. I guess
27 you can't deal for the extreme situation. But it still
28 exists, and we've heard from a number of people, ISHRs in
29 particular, who say, "Yeah, that's still a perception.
30 Yes, it exists. I've heard from someone who's heard
31 something from someone." Do you think there might be
32 a role for those representatives, for the union, for other
33 people who might be representative of people on site, to do
34 more to help to disabuse coal mine workers of that
35 perception, if indeed it is wrong?

36 A. Very difficult. Look, to some extent, I think the
37 safety reps do try and filter problems that are raised.
38 And one of the points that's not recognised is that, on
39 occasion, workers will come to them with concerns and our
40 evidence would suggest that they will tell them that things
41 are actually under control. It's very hard for any party
42 to deal with perceived job insecurity. All the
43 international evidence says that that's a basic problem --
44

45 Q. I am sorry, could I interrupt you, professor.
46 I apologise. I was probably clumsy in my question. It was
47 far too long and clumsy. I'm really focusing on the

1 perception that you will be punished or potentially lose
2 your job for reporting a genuine safety issue. Do you
3 think it's everybody's responsibility to help to disabuse
4 coal mine workers of that perception, if it continues to
5 exist?

6 A. I think that you're right, that every party has a role
7 in that. If I could finish - that would be more meaningful
8 if there's a good relationship between the mine and the
9 SSHRs and the ISHRs and the regulator. I think it's more
10 likely that message will resonate.

11
12 Q. Of course. I'm nearly done. Just a couple of topics,
13 if I may. Toward the end of your shorter report you make
14 some recommendations for change, and I would like to go to
15 page 0003 of that document, if I can. If you look at (c),
16 that's requiring mine owners and operators to prepare an
17 audited annual report on contractor management covering key
18 controls, safety issues, and so on. Do you see that?

19 A. Yes.

20
21 Q. As Mr Hunter alluded to, part of the safety and health
22 management systems, certainly on the mines that we've been
23 dealing with to date in this Board of Inquiry, do in fact
24 already deal with contractor management key controls,
25 safety issues, training and induction issues, and they
26 audit and review those, and all of that material becomes
27 part of the safety and health management system which is
28 available to the inspectors and also to the ISHRs.

29
30 So my question, then, is, is there any value in some
31 additional layer being added here, given that?

32 A. I think if it's put into a single document, it has
33 value, and I also think there are some measures I probably
34 mentioned which have come up in prior evidence in terms of
35 what's happening in relation to HPIs. I looked at the
36 document that was presented in earlier evidence on
37 the number of roles, but I would also want stuff on HPIs
38 and how hazards were identified in relation to contractor
39 management and how efforts were made to ensure there
40 weren't any gaps in the system along the lines of the
41 disorganisation one that I indicated earlier. And even
42 with a fairly comprehensive system, there can always be
43 gaps, and I thought that the audited annual report would
44 provide points reflecting on that, and in the bigger
45 document, that you could say, "This is what we're doing,
46 this is the experience we've had over the last year" and in
47 one form it would enable a pretty ready assessment and

1 a good opportunity, as well, for the mine to reflect on its
2 own processes in that regard.

3

4 Q. That's about contractor management. There are of
5 course many different components to the safety and health
6 management system that exist on a mine other than just
7 contractor management; right?

8 A. There are.

9

10 Q. There are principal hazard management plans, there are
11 TARPs, there are standard operating procedures. We've been
12 getting a sense of just the complexity of the management of
13 that process. Again, there's a risk, isn't there, if we
14 try to regulate in a particular kind of report, that you
15 start doing exactly what you have suggested is a problem,
16 which is to fragment the architecture of the way in which
17 the system works, which is to audit and review within it
18 and then to have those documents available to the
19 inspectors and to the ISHRs and to the SSHRs?

20 A. I still think that, in this area, there's an advantage
21 in having a central document, and as you would have shown
22 with other evidence, documents can be linked so that people
23 know all the tie-ups between them. But as mines have been
24 increasingly, as the trends show, making extensive use of
25 contractors/labour hire, I think there is an advantage in
26 actually ensuring that that particular area has been
27 covered off.

28

29 Q. Could I deal with one final topic, then. You talked
30 in terms of this idea of communication and reporting of
31 hazards and so on, about the important role of
32 representation, that is here, in this context, the ISHRs
33 and the SSHRs.

34 A. Yes.

35

36 Q. One of the issues - I don't know whether you're aware
37 of this evidence, but one of the things we've heard about
38 the ISHRs in this case is that the ISHRs - certainly at
39 least one of them, I shouldn't lump them together - have
40 said that they have difficulties on some sites which don't
41 appear to have as great a level of union representation.

42 A. Yes.

43

44 Q. We also heard, generally speaking, that unionisation
45 of the coal mine worker workforce - I know the numbers are
46 rubbery - seem, on balance, to sit at about 20 per cent,
47 something like that - 20, 25 per cent?

1 A. I'm not in a position to make that judgment, but it
2 has declined.

3
4 Q. I guess my question is this: if the important point
5 is representation and we get to a point where the ISHRs,
6 who are only voted for by one union, paid for by one union,
7 are not representative of the workforce and in fact are
8 indicating that they have problems getting on to some sites
9 and, as we've heard, are going on to sites wearing CFMEU
10 clothing, and so on - are there, in light of those factors,
11 some changes to the structure of that process or the way in
12 which those roles are put into place that you might support
13 in order to ensure that they are genuinely representative?
14

15 MR CRAWSHAW: I object to that question.

16
17 THE CHAIRPERSON: On what basis?

18
19 MR CRAWSHAW: My objection is that there's a number of
20 questions there, a number of assumptions. They should be
21 put individually rather than in some rolled-up manner. It
22 doesn't flow that because an employee or workers are not in
23 unions that ISHRs are not representing them.

24
25 MR HOLT: I didn't think I'd asked Mr Crawshaw the
26 question, but I can break it down.

27
28 THE CHAIRPERSON: Yes, please.

29
30 MR HOLT: Q. We'll just deal with some basic facts. We
31 heard one from one of the ISHRs that they don't feel like
32 they have particularly good access to some sites which
33 appear to have lower levels of union representation on
34 them; okay?

35 A. Yes.

36
37 Q. Now, the second part. We know that, as you've noted,
38 union representation is declining, and the evidence
39 suggests here - I accept that the numbers are not in any
40 sense precise - something significantly less than
41 50 per cent. Given all of your academic work identifies
42 the critical importance of representation in these roles,
43 is it time to rethink who the ISHRs are, in the sense of
44 should they continue to be someone from the union, or is it
45 more important that they're representative of the majority
46 of the workforce, as SSHRs are?

47 A. No, I don't think so. Why I put some of the history

1 in was to identify that the ISHRs were developed - and we
2 don't have to go back to how important the coal miners
3 union has been in improving mine safety legislation.
4 I think we can take that as read. But critical to this was
5 dealing with workplaces where there was less effective
6 representation, or check inspectors, as they used to be
7 known, were subject to some intimidation, and so there was
8 a very long push to get ISHRs onto site and inspect those
9 sites, who would not be subject to those same pressures.

10
11 Rephrasing the question you raised, I think there is
12 an issue in terms of ISHRs at some of these sites. I don't
13 see why their access should be limited in any way. One of
14 the unfortunate things - the union does provide effectively
15 a lot of support for the SSHRs in terms of training, but
16 where they're on sites where they haven't been appointed -
17 or they've been appointed and not with the union, they
18 don't get that training. So I think there are some issues
19 that the Board might want to look at in terms of those
20 ways.

21
22 Probably the world's best practice model, and I think
23 in general what it's managed to achieve - and when we did
24 the survey of the five countries, that's how it came out.
25 The advantage of having union connection is that these
26 people are seen as completely independent, and that's
27 critical. And the union has made a significant
28 contribution to this, both in the fact that it pays their
29 salaries and it also does the SSHR training and mentors
30 a lot of the SSHRs.

31
32 Now, the alternate system that operated in the
33 metalliferous industry where the government paid for the
34 ISHRs, in my view - I've looked at the early history,
35 I haven't looked at it so much recently - it's not as
36 robust a system as what operates in coal mines. So there
37 is a problem, but I think it's a matter of actually
38 reinvigorating the existing system by facilitating the role
39 of the ISHRs.

40
41 The problems here haven't just come through there.
42 I mean, if you read my report, you'll know that one of the
43 points I made about one of the significant advantages of
44 the Queensland system over New South Wales was that the
45 mine inspectorate and the ISHRs swap reports electronically
46 automatically. That system no longer applies --
47

1 Q. I'm sorry, professor, I'm going to interrupt you there
2 because I know you said you were redefining my question,
3 and that's true. You've answered an entirely different
4 question. Can I just come back to the question I was
5 actually asking, which is not in any way to deprecate the
6 ISHR system, not for a moment, not for a moment, nor to
7 suggest there should be fewer or less-resourced or anything
8 of that kind. Not for a second.

9
10 I'm asking a very particular question. You have said
11 that the idea of representation is important. My
12 question - and I think it's a valid one, I'm genuinely
13 asking for your assistance on it - is if the ISHRs are only
14 elected by union members, and those union members are
15 dramatically less or substantially less than 50 per cent of
16 the workforce, is there a problem with representation that
17 you think this Board should think about in terms of reform?

18
19 MR CRAWSHAW: I object to that question.

20
21 THE CHAIRPERSON: Why?

22
23 MR CRAWSHAW: It's just a repeat.

24
25 THE CHAIRPERSON: Mr Crawshaw, you've been muted.

26
27 MR CRAWSHAW: I'll just repeat what I was saying.

28
29 THE CHAIRPERSON: Yes.

30
31 MR CRAWSHAW: That question was asked before, and
32 answered. It is true, after it was answered, that the
33 professor went on to raise another matter, but he answered
34 the question that was asked by my learned friend by saying
35 no to the proposition that there should be a different
36 system, an election, and he went on to say why.

37
38 THE CHAIRPERSON: So that there is no confusion, and since
39 the rules of evidence don't apply here in an inquiry and
40 since we are trying to find solutions, this is a legitimate
41 line of questioning, and I too would benefit from hearing
42 a succinct reply to the question asked.

43
44 MR HOLT: Would it be helpful if I put it again,
45 Mr Martin?

46
47 THE CHAIRPERSON: Yes, might as well do it a third time.

1
2 MR HOLT: Q. Professor, your research demonstrates the
3 importance of representation in these roles, so my question
4 is: given that the ISHRs at the moment are represented
5 only by CFMEU members, and the union representation is
6 substantially less than 50 per cent of the workforce, do
7 you think there's a problem with the representative nature
8 of that role that the Board should think about the
9 potential for recommending changes to?

10 A. As I said, I think the system that operated in
11 Queensland for some time is the best, as far as I can see,
12 the best system operating in the world right now. If there
13 is an issue for improving access, it would be getting ISHRs
14 into the more weakly unionised workplaces.
15

16 Our evidence shows very clearly that it's not just
17 having - our studies, earlier studies in Queensland and in
18 New South Wales show that it's important. The ISHRs'
19 interaction with the role of SSHRs is quite critical.
20 I think, if I remember the evidence, it was that the ISHRs
21 are happy to get information from those who are not union
22 members, but they don't tend to get it. So I don't think
23 there's a simple solution to this, moving away from a model
24 which I think was the most effective system that was in
25 place, and the decline in union membership is a problem,
26 but I don't see that as justifying a change in
27 representation.
28

29 Q. Might I just, my final question, ask this: would
30 a simple solution not simply be, as with SSHRs, that all
31 coal mine workers can vote for who an ISHR is?

32 A. I really don't know that I have enough evidence to
33 answer that question. As I said, the tie-up with the union
34 is quite close and - that's one I have to reflect on, I'm
35 afraid. I don't have a short answer to that. But I think
36 if you diminish the role of the union in safety, that would
37 be a retrograde step.
38

39 MR HOLT: Thank you, Mr Martin.
40

41 THE CHAIRPERSON: Yes, Mr Roney.
42

43 **<EXAMINATION BY MR RONEY:**
44

45 MR RONEY: Q. Good afternoon, professor. My name is
46 Peter Roney. I am counsel for One Key, the labour hire
47 supplier at these particular three mines. I have just

1 a few questions, and they are more or less on the same
2 topic. You have identified in your longer report, which,
3 can we assume from your shorter four-page summary, was
4 a report that was produced around 29 July this year; is
5 that right?

6 A. Yes, that's correct.

7
8 Q. In the preamble in the first page or so of that longer
9 report, you have identified the character of your inquiry
10 and the character of the tasks that you saw yourself as
11 performing, but is it right to say that in the course of
12 the exercise that you have undertaken, you have not
13 actually examined the particular arrangements that were in
14 place between a labour hire supplier, or any labour hire
15 suppliers, and any of the three Anglo mines that we are
16 here concerned with in the period, for example, since the
17 middle of last year or for any period at all?

18 A. That's correct. And I wasn't asked to do that, as far
19 as I understood.

20
21 Q. No, I'm not being critical of you. I'm just trying to
22 understand that that's what has actually happened. You've
23 been told some things already from the two counsel who
24 preceded me with their questioning about some of the
25 evidence that we've heard in this inquiry, and I take it
26 from some of your answers that you have heard some of the
27 evidence that has come before the Board in the last two and
28 a half weeks?

29 A. Yes, I have.

30
31 Q. But you've not sat in for all of it or had a complete
32 understanding of what has been said about various things of
33 interest in your area; is that fair?

34 A. Yes, I've heard a fair bit, but I wouldn't say I've
35 heard all of it, no.

36
37 Q. It's correct to say, isn't it, as others have
38 identified, that you have been able to identify some
39 characteristics of labour hire models that have been used
40 in various places, including in Australia, and which you've
41 identified create some sorts of occupational health and
42 safety risks because of the features of those models - yes?

43 A. Yes, I think that's true.

44
45 Q. One of those that you mention at around page 11 of
46 your larger report has to do with the idea that there might
47 be a lower rate of pay or significantly lower rate of pay

1 to labour hire workers than might exist for the permanent
2 workforce; correct?

3 A. Yes, I didn't look at that in great detail, but that
4 was the impression I got.

5
6 Q. But it's certainly a factor, isn't it, that you have
7 identified as potentially increasing OHS risk associated
8 with the labour hire model?

9 A. Yes, particularly when it makes income irregular.

10
11 Q. So may we assume that if, in fact, at these particular
12 three Anglo mines the rates of pay that are paid to labour
13 hire workers are, if not identical, in some cases better
14 than those which are paid to the permanent workforce, you
15 would regard that as a positive sign?

16 A. Yes, I would.

17
18 Q. And you've also identified in several places in your
19 report concern with the terms for which individuals under
20 the labour hire model are employed. You mentioned such
21 things as --

22 A. Yes, I did.

23
24 Q. And that's to do with, in part, a sense of insecurity
25 that those workers might have, is it?

26 A. That's correct.

27
28 Q. And which is in turn, perhaps, reflective of a risk
29 that they might not report safety issues or workplace
30 conditions that they might otherwise report; correct?

31 A. Yes.

32
33 Q. Can I tell you that at the main mine that we are here
34 concerned with, which is the Grosvenor mine, there is some
35 data, some of which Mr Holt mentioned to you a moment ago,
36 in which he told you that the average worker - that is the
37 labour hire worker - had been there for the same period,
38 about 3.7 years on average. Can I tell you some of the
39 other information that we have in the evidence before the
40 Board.

41
42 This is in document AAMC.001.039.0116, if I could have
43 that up, please. Could the third table on that page be
44 enlarged. You can see this, can't you, professor?

45 A. I might have to look away at a slightly larger
46 version. Yes, I can see it.

47

- 1 Q. Just to assist you to understand this reasonably
2 quickly, in the left-hand table are the Grosvenor Anglo
3 permanent employees, if I can call them that, so that's the
4 normal workforce.
- 5 A. Yes.
- 6
- 7 Q. In the third column, the equivalent entries for the
8 period for which individual workers or groups of workers
9 have worked as supplied by my client, One Key, under the
10 labour hire arrangements. Do you see that?
- 11 A. Yes.
- 12
- 13 Q. You can see, moving down to about the middle of the
14 table, that 150 of the 407 workers supplied by One Key have
15 been there for 6 to 10 years at that mine.
- 16 A. Yes, I can see that.
- 17
- 18 Q. I can suggest to you, doing the maths, that's about
19 37 per cent of all those who work there?
- 20 A. Yes.
- 21
- 22 Q. If one compares that to the table for the permanent
23 employees, it's a significantly lower number, isn't it, as
24 a proportion of the total - 25 out of 173?
- 25 A. Yes, it is.
- 26
- 27 Q. If one goes slightly up the table, we have 152 of the
28 One Key workers having been there for 3 to 5 years, so
29 that's another 37 percentage points, approximately, of the
30 total Grosvenor workforce?
- 31 A. Yes.
- 32
- 33 Q. Again, you would regard that as a very positive sign?
- 34 A. I would.
- 35
- 36 Q. Then we have the period, it says less than 2 years,
37 but it means not new workers, but for the period having
38 worked there for up to 2 years, you've got about
39 25 per cent, so 96 of the 407 workers have been there for
40 up to 2 years?
- 41 A. Yes.
- 42
- 43 Q. You would regard that also as positive?
- 44 A. Yes. I mean, you have to compare it to other mines,
45 but, yes, generally, with that level of experience, it's
46 certainly not - yes, it doesn't flow with some of the
47 issues you've got in mines with very - or workplaces with

1 very high levels of low experience.

2

3 Q. So your concern really is about there being a high
4 turnover of a workforce where workers might be there for
5 only very short periods and have very little security. Is
6 that so?

7 A. That's one of the concerns. There could be others.
8 I mean, people might be there for a longer time, but if
9 they're on a fixed-term contract or casual, they still may
10 feel insecure. But these other factors - generally, yes,
11 I would accept that longer tenure is a better situation.

12

13 Q. At the Grosvenor mine that we've just been focusing
14 on, the evidence is, and there will be some more to come,
15 that about a year or so ago, One Key had its contract
16 extended for a period of three years at that mine for the
17 supply of labour, and that it undertook to keep its
18 workforce - that is, its existing workforce - there for the
19 duration of that contract. You would regard that, if that
20 were true, to be a very positive sign?

21 A. Yes, again depending on what the employment contracts
22 were for those that were working for One Key.

23

24 Q. One of the other matters that you raise at pages 15
25 and 20 of your longer report - and we need not go there -
26 is what you say are problems with the existence of minimum
27 employment conditions, and by that you were referring to
28 leave entitlements and the like?

29 A. Yes, I'd have to see it.

30

31 Q. Sure.

32 A. It's a long document.

33

34 Q. At page 15 - sorry, I don't have the code number - in
35 the third paragraph from the top you mention the issue of
36 labour hire workers having mentioned to a committee that
37 you're there reciting information from that they couldn't
38 afford to take sick leave, they feared losing their work
39 because of --

40 A. Yes.

41

42 Q. With no notice. That's an example --

43 A. (Indistinct - simultaneous speakers).

44

45 Q. That's a matter of concern, isn't it, that if indeed
46 a labour hire model didn't allow workers to take leave
47 where it was necessary, that would put them at risk?

1 A. Yes, it would.

2

3 Q. Can I suggest that in this particular case, under the
4 enterprise agreement and other arrangements in place with
5 the One Key labour, they are in fact paid personal leave,
6 long service leave and superannuation, as well as wage and
7 bonuses. You would regard those matters as a positive
8 outcome in terms of the issues you've dealt with?

9 A. I would - does that apply to those that are designated
10 regular casuals?

11

12 Q. Yes.

13

14 THE CHAIRPERSON: Q. Sorry, is that, "yes", you say, to
15 casuals?

16

17 MR RONEY: Q. Yes, that is the arrangement under the
18 enterprise agreement in place - that's what I'm suggesting
19 you take into account. We'll hear some evidence about it.
20 That would be a positive feature, you would agree?

21 A. Yes.

22

23 THE CHAIRPERSON: I'm sorry, professor, you might
24 understand what the question is.

25

26 What is your question, Mr Roney?

27

28 MR RONEY: Whether it's a positive factor that labour hire
29 workers have those other leave entitlements.

30

31 THE CHAIRPERSON: Including casual workers?

32

33 MR RONEY: Well, all of that workforce. That's what I put
34 to him - the One Key labour hire workforce.

35

36 THE WITNESS: Has sick leave - is that what you're saying?

37

38 MR RONEY: Q. Not sick leave. It's a form of paid
39 leave. So it is long service leave, paid leave it's called
40 in the agreement, and superannuation.

41

42 THE CHAIRPERSON: Mr Roney, I regret I haven't got a copy
43 of the contract with me, but are you on solid ground with
44 this? What's paid leave? What's that?

45

46 MR RONEY: That's the language in the - I haven't got the
47 enterprise agreement in its entirety in front of me, but

1 I have checked that.

2

3 THE CHAIRPERSON: Thank you. You carry on. Perhaps the
4 professor knows what you're talking about.

5

6 THE WITNESS: I don't.

7

8 MR RONEY: In any event, Mr Lewis will be coming along to
9 give some evidence about this.

10

11 MR CRAWSHAW: Could I just intervene here. It is
12 a rolled-up question. As I understand the legal situation,
13 all employees, subject to a certain minimum, receive
14 superannuation. The question as to whether these leave
15 entitlements apply to pure casuals will be no doubt dealt
16 with in the agreement. It's a bit difficult to find, but
17 the relevant agreement is - it's not named in the court
18 book, but I can give you a reference to it. I would have
19 thought it distinguished between casuals, fixed-term and
20 permanent employees in terms of leave entitlements.

21

22 THE CHAIRPERSON: Yes. We do have the agreement.
23 Mr Hunter?

24

25 MR HUNTER: We do.

26

27 MR RONEY: Yes, it was exhibited to Mr Jones's statement
28 yesterday, which I haven't brought down to the Bar table.
29 I don't know what the objection is. It's not a rolled-up
30 question, but I can rephrase the question in simple terms.

31

32 MR HUNTER: Before my friend goes on, I'm looking at an
33 example of a contract with a casual worker who is eligible
34 to be terminated on one hour's notice. The version I have
35 here hasn't been redacted, so I won't ask that it be put
36 up, but I can show it to my learned friend. It provides
37 that "your remuneration", which is the hourly rate,
38 "compensates you for all work performed and is paid first
39 in satisfaction of all entitlements, including but not
40 limited to in respect of ordinary time payments, any
41 overtime payments, allowances, shift penalties, public
42 holidays", and, I should say, "annual leave, personal
43 carer's leave, community service leave and public holidays
44 not worked".

45

46 So I'm respectfully struggling with the idea that
47 a casual worker - a person employed on a casual contract by

- 1 One Key had an entitlement to sick leave.
2
- 3 MR RONEY: If there is a debate about the casual aspect of
4 it, I will leave that out of the question. I am not giving
5 the evidence. I am just asking a question of this witness.
6
- 7 THE CHAIRPERSON: Well, Mr Roney, you are acting for
8 One Key.
9
- 10 MR RONEY: I am.
11
- 12 THE CHAIRPERSON: And it was really being put on the basis
13 that, this being so, that would be a positive thing. If
14 you're putting it on the basis that, in future, that should
15 be part of the contract, no doubt everyone is all ears.
16 Yes. Carry on.
17
- 18 MR HUNTER: Just before my friend does, so that the record
19 reflects what I was referring to, I was referring to
20 OKR.001.001.0001.
21
- 22 THE CHAIRPERSON: Yes, carry on, Mr Roney.
23
- 24 MR RONEY: What my learned friend is referring to is the
25 labour hire contract, which is not what I was referring to,
26 which was specifically a reference to the enterprise
27 agreement.
28
- 29 THE CHAIRPERSON: Yes.
30
- 31 MR RONEY: Can I move on?
32
- 33 THE CHAIRPERSON: You had better have a look at that as
34 well, Mr Roney.
35
- 36 MR RONEY: That's exactly what I was looking at.
37
- 38 Q. Can I put this question, Professor Quinlan, and move
39 on. Just assume this question is directed only to the
40 fixed-term employees who are supplied by One Key, that they
41 are provided with long service leave and other paid leave
42 and superannuation as part of their employment
43 entitlements.
44 A. Does that include redundancy?
45
- 46 Q. It wouldn't. Just those things that I have mentioned.
47 A. Well, two things. Redundancy would be important in

1 terms of people's sense of security, but obviously those
2 conditions better than not having those conditions. The
3 only other issue I would raise that would make workers
4 possibly more insecure is that they might have more trouble
5 getting a housing loan if they've got a fixed-term contract
6 than if they had an ongoing job. That would make them feel
7 more insecure, I would imagine.

8
9 Q. And one of the other issues you've mentioned on
10 page 13 of your longer report is the absence of workers
11 compensation insurance.

12 A. Yes, that doesn't apply to all labour hire workers.
13 It was a point raised in relation to some labour hire
14 workers, particularly those who are self-employed. These
15 were a list that came out of the report, so I decided to
16 list them just so there could be no question about their
17 interpretation, and they were the ones that were raised in
18 the parliamentary inquiry. I'm not suggesting that all of
19 them apply to all labour hire workers.

20
21 Q. Could I suggest that workers compensation insurance is
22 available to One Key employees. That would be a positive
23 thing if that were the case?

24 A. I assume they would be. Because they're all employees
25 they should be entitled to workers compensation. One of
26 the issues with labour hire --

27
28 Q. Can I just --

29 A. No, can I finish?

30
31 Q. Is this an answer to my question or is this something
32 else?

33 A. The one aspect of workers compensation on which there
34 has been some research and more negative findings has been
35 return to work. Now, that again may not be an issue with
36 One Key or the mining industry, but it has been an issue
37 that labour hire workers that go onto workers compensation
38 find it harder to get back into the workforce.

39
40 Q. Can I suggest to you that in the case of One Key, it
41 has a specific employment manager who is trained in the
42 return to work program.

43 A. I accept that.

44
45 Q. One of the other issues that you have expressed
46 concern about is - you may not have used these words, but
47 essentially your concern is - that there might be a risk,

1 or indeed is a risk in some cases, of labour hire employees
2 being the subject of arbitrary dismissal?

3 A. That's a general point, yes.

4
5 Q. Again, if there were an agreed disciplinary process in
6 place between Anglo and a labour hire supplier like
7 One Key, by which any complaint or any concern that needed
8 to be dealt with by One Key in relation to one of its
9 employees, that process would be undertaken and an
10 investigation conducted and an appropriate decision made
11 after a proper investigation had occurred - that would be
12 a positive feature to have in place?

13 A. That would be, assuming it works, yes.

14
15 Q. One of the points that you make at page 13 of your
16 longer report is - the fourth dot point from the bottom of
17 the page:

18
19 *Labour hire workers may have less of*
20 *a "workplace voice" in the host's workplace*
21 *... [and] may find it harder to join*
22 *a union and may be excluded from collective*
23 *bargaining ...*

24
25 A. Again, I'm quoting from the parliamentary - the quote
26 is taken directly from the Queensland parliamentary report.

27
28 Q. But irrespective of the source of it, you say that it
29 would be an undesirable factor if a particular labour hire
30 worker found it harder to join a union because of the
31 labour hire arrangements in place? Do you say that --

32 A. Yes.

33
34 Q. -- or are you literally just quoting from that report?

35 A. Where is that?

36
37 Q. It's the fourth dot point from the bottom.

38 A. It's a quote from the parliamentary report. I am just
39 summarising the arguments for and against labour hire which
40 had been the subject of parliamentary inquiries and
41 government reviews.

42
43 Q. So you're not adopting that as a principle yourself?

44 A. I think that labour hire people should be able to join
45 a union, yes, absolutely.

46
47 Q. Can I suggest to you that in this case, in the case of

1 the One Key employees, there is no impediment whatsoever to
2 them being members of unions and there is no impediment to
3 them being members of unions from the perspective of Anglo,
4 to whom these workers are supplied. That would be
5 a positive outcome if that were true?

6 A. Yes, I don't doubt that's the case. The reality is
7 that workers who are in a more insecure position may worry
8 about joining a body that may bring them to prominence.
9 I'm not saying that the company or One Key would in any way
10 victimise them for that, but there may be a perception, and
11 I think that's what this inquiry was trying to point to.

12
13 Q. At pages 27 and 28 of your report, at the bottom of
14 the second paragraph, which commences, "Acknowledging these
15 complexities", if you could have a look at the last
16 sentence there, you refer to higher rates of injury amongst
17 labour hire workers?

18 A. Yes.

19
20 Q. Is that the point you're making there? And are you
21 making the point that there's some research that suggests
22 that in some jurisdictions there is a higher rate of injury
23 among labour hire workers than in direct-hire or permanent
24 employees?

25 A. That's what the studies have tended to suggest, yes.

26
27 Q. We have some data here, not necessarily comprehensive
28 data, that suggests that the rate of injury to
29 "contractors", they have been identified as, so that
30 includes labour hire workers, is on a par with the rate of
31 injury to permanent employees of the operator. Now, again,
32 if that were true, that would suggest that the issue that
33 you have flagged there at page 27 is not so much an issue
34 at the coal mines in Queensland. Do you agree?

35 A. I said that the available evidence doesn't suggest
36 a difference. I also suggest that we probably need more
37 detailed research on this issue. As you've already
38 indicated, and an earlier counsel did, there are some
39 complexities here that might need to be teased out in
40 a study.

41
42 Q. Certainly. One of the issues that you mention, and
43 I'm leaping around, at page 19 of your report, which is
44 around the middle of the page, there's a reference to
45 something said by the CFMEU:

46
47 *Similarly, CFMEU Mining and Energy ...*

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Do you see that?

A. Yes.

Q. Their concern expressed in the particular inquiry that you're reporting on there, the Victorian labour hire report, was about casual workers being held captive because of them being really just a small proportion of an available panel of workers in excess of the company's requirements. So is that something that you yourself have identified as a factor that exists in the labour hire market, or was that you literally quoting from that submission again?

A. I am just quoting some of the concerns that related to - relating to the mining industry because I was going through these reports trying to find as many references to mining as I could, but only the Victorian inquiry and the Queensland inquiry tended to have much on mining.

Q. At page 28 of your report, in the second paragraph from the top, commencing, "Broadly summarised", this is where you have summarised perhaps all of the points that we have covered, not necessarily in the detail that we've covered them, but you have looked at some of the negative health and safety outcomes that you broadly summarise there?

A. Yes.

Q. We've dealt with the first one. We've not dealt with the second, but can I just look at the third one:

Poor knowledge of and access to regulatory employment rights and less willingness to raise OHS concerns.

You've been asked some questions already by my learned friend Mr Holt about raising concerns, and you've told us, if I can paraphrase your evidence, that we need multiple levels of reporting and multiple reporting systems, ensuring that they don't work inconsistently with each other. Is that a fair summary of your conclusions and your opinions?

A. Yes.

Q. He mentioned to you a particular program. He didn't call it anything in particular, but we've heard some evidence that independently of the reporting systems that

1 exist within the mine for workers to report to their
2 supervisors or to report to deputies or to report in shift
3 reports or to report at pre-start meetings, and so on, that
4 there is an independent program that is in existence which
5 has the sorts of characteristics that an anonymous
6 whistleblowers program might have - that is, you
7 anonymously report a concern, you report it to an entity
8 which is external to the mine; it isn't a mine-controlled
9 entity, and those complaints or reports are dealt with, if
10 you like, outside of the mine process.

11

12 Now, assuming that there was such a program in
13 existence, you would regard that as a very positive sign in
14 terms of your concerns about --

15 A. I'd have to know more about how it operated in
16 practice. There are a number of these schemes, and when
17 I have been involved in, like I was at Beaconsfield - they
18 had reporting systems but they weren't working. Some work,
19 some don't. I couldn't make a generic statement on that
20 without more information. If it worked, if there was
21 evidence it was working, that would be good.

22

23 The question that point also raises is poorer
24 knowledge of the regulatory requirements. I'm not again
25 suggesting that that applies at the Grosvenor incident,
26 because I have no evidence of that. It's just one of those
27 concerns that have been raised in the research.

28

29 Q. So it's a general concern about what has been found in
30 some places, in some industries?

31 A. Well, I cite specific studies that have shown that,
32 even in countries with fairly robust regulatory regimes,
33 like Sweden, like the Aronsson study.

34

35 MR RONEY: Thank you, Mr Chairman. Those are the
36 questions.

37

38 THE CHAIRPERSON: Ms Holliday?

39

40 **<EXAMINATION BY MS HOLLIDAY:**

41

42 MS HOLLIDAY: Q. Professor Quinlan, my name is
43 Deborah Holliday and I'm appearing for what you refer to in
44 your report as the Queensland Mines Inspectorate.

45 A. Yes.

46

47 Q. I just have two topics that I want to cover with you.

1 Mr Operator, if we can bring up page 82 of
2 Professor Quinlan 's longest report, so it's in particular
3 B0I.001.004.0001 at 0082. Between pages 82 and 86 of your
4 report you document, don't you, the research that you
5 discovered in terms of the Queensland Mines Inspectorate's
6 focus on contractor management?

7 A. Yes, I think - yes, a series of directives that
8 I uncovered relating to contractor management, yes.
9

10 Q. They demonstrate, don't they - and you've set them out
11 in detail, helpfully, in your report - that there has been
12 a long-term focus of the inspectorate in terms of
13 contractor management issues?

14 A. Yes.
15

16 Q. What you wouldn't have been provided with to assist
17 you, because it was only provided to the Board recently, is
18 the number of directives and other compliance mechanisms
19 that the inspectorate has used in relation to contract and
20 labour hire management. I'll go through those numbers with
21 you, but those sorts of compliance actions taken by the
22 inspectorate demonstrate, don't they, the focus that the
23 inspectorate has on ensuring compliance by labour hire
24 entities and operators with their obligations?

25 A. Yes, I never claimed it was an exhaustive list, but
26 particularly in the period up to 2017, there were a series
27 of recurring times the issue was raised.
28

29 Q. Indeed, it was by the chief inspector, commissioners
30 and another chief inspector, so over a lengthy period that
31 those concerns were raised?

32 A. Yes.
33

34 Q. The evidence is now before the Board of Inquiry that
35 there were 250 directives that were issued about contract
36 and labour hire management since the commencement of the
37 Act, by the inspectorate. That demonstrates, does it not,
38 not only the concern but also the focus of the inspectorate
39 on those issues?

40 A. It does, though one would also begin to wonder, if you
41 had that many and there was still an issue, you know, were
42 they all having an entirely effective response? I mean,
43 it's good that they've been continuously raised, but if
44 I can give you an analogy: I was on a building site with
45 an inspector and he said, "If we're still issuing the same
46 number of infringement notices on an issue 12 months after
47 we've been working on it, we've got a problem." So, yes,

1 they're certainly acting on it, but it seems that - well,
2 I only raise that as a potential observation that I've come
3 across.

4
5 Q. Are you aware that under the Queensland Act
6 a directive needs to detail what needs to occur to answer
7 that directive? So, in other words, you don't just issue
8 a directive and say, "You're not doing the right thing."
9 You issue a directive and say what the person to whom the
10 directive is issued needs to do?

11 A. Yes, and some of the ones that I've quoted actually
12 specify what needs to happen, yes.

13
14 Q. You mentioned in an answer to a question to Mr Hunter
15 that there would be some benefit in the regulator auditing
16 compliance. You're not suggesting that that doesn't
17 already occur, are you, Professor Quinlan?

18 A. No, I'm not suggesting it doesn't already occur.
19 I just suggested that it might be time to review those
20 audit processes and see whether they needed to be enhanced,
21 that's all.

22
23 Q. Have you had the benefit of being provided with the
24 mine record entries relevant to the terms of reference?

25 A. No, I haven't.

26
27 Q. Can I move on to another topic, Professor Quinlan, in
28 relation to the interaction between the inspectorate and
29 SSHRs. You reference that in your report at page 139 and
30 you reference back to your own study in 2011.

31 A. Well, you're talking about that first study,
32 Queensland safety representatives, yes, I was a joint
33 author of that.

34
35 Q. It's being brought up on the screen now,
36 Professor Quinlan, so you can see there that the start of
37 the first proper sentence on that page says:

38
39 *My review of mine inspections records as*
40 *part of the 2011 study of SSHRs and ISHRs*
41 *indicated that visits by mine inspectors*
42 *where the SSHR wasn't or couldn't be*
43 *contacted were not uncommon.*

44
45 A. Yes.

46
47 Q. Have you had the benefit of listening to the evidence

1 of the inspectors when they gave evidence in the Board of
2 Inquiry?

3 A. I did listen to some of those, yes.

4
5 Q. In particular, did you have an opportunity to listen
6 to Inspector Brown's evidence and that you would be pleased
7 to hear that the arrangements are made by the inspectorate
8 to ensure, as far as possible, that SSHRs are on site when
9 they conduct inspections?

10 A. I don't remember hearing Inspector Brown's evidence.
11 I think I missed that one. But, yes, look, I know that
12 inspectors - and it was a response I think to an earlier
13 review of the Queensland Mines Inspectorate, which I do
14 also cite, that they're making more efforts in that regard.
15 So, yes, I know that, as a matter of course, inspectors do
16 try to do that. How much it's improved since the time that
17 study was done I don't know, because there are obviously
18 difficulties because the SSHR may not be on site during
19 that inspection, but --

20

21 Q. Again, you didn't have the benefit of being provided
22 with the mine record entries over the terms of reference
23 for these particular mines, but I can suggest to you that
24 you would be pleased in that it's now uncommon for the SSHR
25 to not be available on site when the inspections occur?

26 A. Absolutely.

27

28 MS HOLLIDAY: Those are the only two topics that I wished
29 to raise.

30

31 THE CHAIRPERSON: Mr Hunter?

32

33 MR HUNTER: I have no further questions, thank you.

34

35 THE CHAIRPERSON: I am sorry, Mr Crawshaw? I beg your
36 pardon.

37

38 MR CRAWSHAW: I won't be long, I hope.

39

40 <EXAMINATION BY MR CRAWSHAW:

41

42 MR CRAWSHAW: Q. Professor Quinlan, I'm appearing
43 remotely, like you, and I'm appearing for the CFMMEU, as
44 it's now called. I just want to ask you about this line of
45 country about the present system of election of ISHRs. You
46 mentioned the metalliferous mining industry in Queensland.

47 A. Yes.

1
2 Q. I think that was in the context of discussing the
3 funding issue.

4 A. Yes. There's a parallel system in metalliferous
5 mining. Originally it was nationwide, but I think in
6 Queensland and New South Wales are the only two
7 jurisdictions - I stand to be corrected on that - that have
8 systems. In Queensland, my understanding is those
9 inspectors were funded by the government, not by the union.

10
11 Q. Yes, but putting aside the question of funding, you
12 know, don't you, that in the metalliferous mining and
13 quarrying industry in Queensland, the equivalent to the
14 ISHR, the district workers representatives, are nominated
15 by unions?

16 A. That would not surprise me, no. That would - yes.

17
18 Q. In New South Wales, in the black coal industry,
19 a similar system prevails, namely, the ISHRs are nominated
20 by the CFMMEU?

21 A. Yes.

22
23 Q. In non-mining industries, you will know from your
24 examination of industries generally, work health and safety
25 legislation provides for a right of entry to inspect safety
26 matters for any union officials nominated by the relevant
27 union for the industry?

28 A. Yes, that's true.

29
30 Q. By the way, the involvement of such unions is
31 consistent with ILO Convention 155, the occupational safety
32 and health convention, which you mentioned in your report?

33 A. Yes, that's the basic ILO convention that deals with
34 health and safety, and one of its key principles is worker
35 involvement in health and safety.

36
37 Q. Not only worker involvement but workers' involvement
38 through their representative organisation being enabled to
39 inquire into all aspects of occupational safety and health
40 associated with an employer's undertaking and their work?

41 A. Yes.

42
43 Q. And if, as was suggested to you, the ISHRs in the
44 black coal mining industry in Queensland were no longer
45 enfranchised through the union, there would be no union
46 involvement in the black coal industry in Queensland in
47 terms of inspections of a safety nature?

1 A. In answering that question, I'll make two points. One
2 is that when the question was asked of me by earlier
3 counsel, I thought they were only referring to SSHRs, not
4 ISHRs.

5
6 The second point I would make is, yes, the role is
7 pivotal. The union provides the training and logistical
8 support for these officers. They're held in high regard
9 across the industry, in my view, and held in very high
10 regard by the union itself.

11
12 The other point I would make on the more general issue
13 is that my research and that of more eminent scholars in
14 that particular area, like David Walters, is that safety
15 representative systems even outside of the mining industry
16 rely heavily on union support in practice to operate. Does
17 that answer your question?

18
19 Q. Yes. I just have one final question. I suggest to
20 you that it would be undesirable for the black coal mining
21 industry in Queensland to be singled out as the one sector
22 in Australia to institutionalise non-unionism in its safety
23 representative regime.

24 A. Safety reps are elected on non-union sites in other
25 industries, but in general I would agree with your point
26 because as far as I can see, they operate better when
27 a union is present, and in fact in the black coal mining
28 industry it has been an integral part of the industry and
29 the union itself. It has just been fundamental to the
30 industry and improvements in safety in the industry
31 involving the union and the safety reps associated with
32 that.

33
34 MR CRAWSHAW: No more questions, Mr Chair.

35
36 THE CHAIRPERSON: Thank you, Mr Crawshaw. Mr Hunter?

37
38 MR HUNTER: No questions.

39
40 THE CHAIRPERSON: Yes, Mr Clough.

41
42 MR CLOUGH: Q. Professor Quinlan, I have a couple of
43 questions, thank you. Are you aware that within the
44 legislation in Queensland, a worker has the right to
45 actually withdraw himself from a place that he believes is
46 dangerous and/or take whatever corrective action is within
47 his authority to remedy the situation?

1 A. Yes, I am aware of that. It's a pretty standard
2 clause in mine safety legislation. It's been around for at
3 least 100 years.

4
5 Q. My next question is, and I'm only talking about
6 perception and I'm talking in general terms. I'm not
7 talking about the current companies we have been speaking
8 to. Wouldn't it be a greater concern that a worker who has
9 a perception that he can't raise a safety issue feels he is
10 not empowered to actually withdraw himself from a place he
11 thinks is dangerous, and he would actually continue on and
12 work in that environment due to fear of reprisal if he
13 stopped the job?

14 A. Absolutely. There's evidence in a number of coronial
15 inquests and other incidents in mining, as well as
16 Pike River, where that particular scenario had occurred.
17 In the Pike River incident, the underground supervisor led
18 a group of mine workers out in a situation of perceived
19 danger, and they were castigated and the union support for
20 them was castigated. So, a very bad signal.

21
22 Q. The next point I'm going to make: in that particular
23 scenario, it's all about immediacy of action. I take on
24 board your comments about having industry safety and health
25 reps and site safety and health reps, but in that
26 situation, isn't the critical issue that the worker himself
27 can actually stop the job rather than continue on, because
28 there's a time delay in actually going and reporting or
29 raising it as a safety issue? He needs to be able to take
30 actions at that moment and feel empowered to do that. Do
31 you agree with me?

32 A. I do.

33
34 Q. So on that basis, and I'm working on the belief that
35 the management of the mine doesn't want that person to
36 undertake the job if he deems it unsafe, wouldn't the
37 primary mechanism be to actually strengthen the ability of
38 the employee to actually feel confident that he can stop
39 the job and he can raise the issues and that taking the
40 matter to the ISHR or the SSHR is the fall-back position if
41 the first position doesn't work?

42 A. Yes. When I reviewed the Queensland mine inspection
43 reports as part of that project, I think about 500 or 600
44 of the 1,100 I looked at, there were about five or six
45 incidents that identified where I think there was
46 a dangerous situation developing. In one instance, I think
47 the company took action itself, and in the other instances,

1 it was either the SSHRs or the ISHR or the mine inspector.
2 So that was a good response. Ideally you also want people
3 to be able to walk out of the places, and as I think other
4 evidence will come in this inquiry, the warning signals are
5 often there before, so there is some time. But ideally,
6 yes, people need to be able to feel they can walk out.
7 I guess the only practical difficulty is giving people the
8 knowledge and confidence to do that.

9
10 Q. That comes to my last question, or point. I'm after
11 your opinion on this. Would the first step not be, as
12 indicated by Mr Roney, having in place a system where if
13 a casual or a contractor is removed from the site on the
14 basis of performance, that there is actually a documented
15 system that affords natural justice and actually enables
16 that person to at least give their side of the story and
17 for it to be dealt with in a fair manner?

18 A. Absolutely.

19
20 MR CLOUGH: I have no more questions, thank you.

21
22 THE CHAIRPERSON: Yes. Thank you. Mr Hunter, might
23 Professor Quinlan be excused?

24
25 MR HUNTER: Yes.

26
27 THE CHAIRPERSON: Professor Quinlan, thank you for your
28 evidence. You are excused.

29
30 **<THE WITNESS WITHDREW**

31
32 MR HUNTER: Mr Martin, before I hand over to Mr Rice, can
33 I hand up a tender list marked with the letter I relating
34 to yesterday's proceedings. Thank you.

35
36 THE CHAIRPERSON: Yes, the documents listed on the tender
37 list marked I will all be admitted into evidence. Yes,
38 Mr Rice?

39
40 MR RICE: Mr Martin, I call Gavin Taylor.

41
42 **<ROBERT GAVIN TAYLOR, sworn: [4.06pm]**

43
44 **<EXAMINATION BY MR RICE:**

45
46 MR RICE: Q. Is your full name Robert Gavin Taylor?

47 A. Correct.

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Q. Known as Gavin Taylor?

A. Correct.

Q. Mr Taylor, I think you presently occupy a position as president of the Mine Managers Association of Australia?

A. I do.

Q. You retired from active work, I think, in 2013 after spending nearly a full lifetime in various aspects of the coal mining industry?

A. 47 years, yes.

Q. Both here and I think in the UK as well?

A. Primarily the United States. I was in the UK for a little while, yes. Can I just say that whilst I'm the president of the Mine Managers Association, I'm not representing them. There is another representative, and I have nothing at all to do with their submission.

Q. Thank you. You in fact were retained, were you not, by solicitors for the Grasstree and Moranbah North Anglo mines?

A. Correct.

Q. The purpose of that was to review documentation and present a report concerning the methane exceedances amounting to HPis?

A. Correct.

Q. I'll have that brought up on the screen, please, Mr Operator. It is TGA .001.001.0001. I want just to talk to you about some matters of approach to the task that you undertook.

A. Sure.

Q. Could I take you firstly to the second-last paragraph, at the bottom of the page, under the heading "Corporate Oversight". Consistent with the heading, you're speaking in that paragraph about an attitude, I think, that is responsive to the needs of safe and efficient mining, namely, as you express it in the last sentence:

Noncompliance with statutory obligations or corporate standards should be non-negotiable.

- 1 A. Yes.
2
- 3 Q. Is that a proposition which holds true generally, that
4 really everyone in the industry should take that approach?
5 A. I think they should, yes.
6
- 7 Q. I raise it because you put it under the heading of
8 "Corporate Oversight", but in truth it should filter
9 through to everyone working in the industry?
10 A. I agree.
11
- 12 Q. By "non-negotiable", can we assume that you mean that
13 it's not a matter of choice to comply with the standards?
14 A. That's exactly what I mean.
15
- 16 Q. Nor is it a matter of making excuses for not doing so?
17 A. Correct.
18
- 19 Q. The adherence to the standards - legislative
20 standards, to begin with, but also corporate standards as
21 they're set from on high, must be adhered to?
22 A. True.
23
- 24 Q. Since you mention there the statutory obligations, can
25 we turn to that for a bit more context to the review that
26 you undertook, and I just want to get your attitude. The
27 statutory standards in the Act and the regulations, I think
28 you would accept, are set in the interests of safety?
29 A. Sorry, I missed that.
30
- 31 Q. You would accept, I think, that the statutory
32 standards that are set in the Act and the accompanying
33 regulation are promulgated in the interests of safety?
34 A. Yes, they are.
35
- 36 Q. More specifically, with the object of achieving an
37 acceptable level of risk?
38 A. Yes, they are.
39
- 40 Q. That concept of acceptable level of risk is a pivotal
41 concept to the operation of the Act, I think you would
42 probably agree?
43 A. It is in this State, yes.
44
- 45 Q. Likewise, if a regulation sets a standard that has to
46 be adhered to, that standard must be followed as the means
47 of achieving an acceptable level of risk?

1 A. Yes.

2

3 Q. So that in such an instance where there is
4 a regulation setting a standard of what must be done,
5 noncompliance, by definition, means that an acceptable
6 level of risk is not being achieved. Do you accept that?

7 A. Not necessarily. Given that the Queensland
8 legislation isn't particularly self-enabling, it's risk
9 based, what you would have to demonstrate is whatever
10 actions that you've taken are equal to or better than
11 what's written, if you can demonstrate that it's a better
12 standard or a higher standard.

13

14 Q. The example I was putting was where a regulation sets
15 a standard.

16 A. If it sets a standard, yes, then you have to comply.

17

18 Q. It's not a test as to what the Act contains, but I'm
19 just asking you to accept that that is the means by which
20 a mine must comply so as to achieve the acceptable level of
21 risk?

22 A. I agree.

23

24 Q. To drill down further into that to regulations
25 pertinent to methane management, which is what we're
26 concerned with, you would have at least a working
27 familiarity, I take it, with sections 343 and 344 of the
28 regulation dealing with the requirements of the ventilation
29 system?

30 A. Yes, I do.

31

32 Q. Do you accept also that the start point is that the
33 ventilation system must be able to provide, the term is
34 "controlled ventilation" at a place of work, being the
35 coalface, for example?

36 A. Yes.

37

38 Q. Again, controlled ventilation in the context of those
39 two regulations means, so far as methane is concerned,
40 a concentration of methane of no more than 2.5 per cent?

41 A. A couple of things on that. One is that that
42 legislation, or that particular section of legislation,
43 lays out a minimum standard. It lays out the minimum
44 standard where you have gas detectors. That doesn't mean
45 to say that that is the only place that you should have gas
46 detectors. I'd expect that if you had concerns, you would
47 have gas detectors elsewhere.

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Q. I was really just making the point that the effect of sections 343 and 344 taken together is that controlled ventilation involves no more than a concentration of 2.5 per cent of methane?

A. That's the percentage that's prescribed, yes.

Q. Above that, in fact, is deemed to be dangerous?

A. Mmm, can I just come back on that. It concerns me that some of the evidence that's been given has focused on percentage points - 1.25 per cent, 2.5 per cent, 2 per cent. I think we need to really rock back in time to understand where these came from and why these numbers have actually been set there.

It goes back to the good old days when the only gas detection equipment we had underground was called an oil flame safety lamp. So 1.25 per cent was the minimum that you could actually detect on an oil flame safety lamp, if you had good eyesight. I doubt that I could do it these days with my eyes. But 1.25 per cent. Two per cent, which was in the UK and New South Wales, where you withdrew men, was because that was nearly a fully formed triangle, truncated at the top; 2.5 per cent was a fully formed triangle. So that's where these come from.

Now, those were numbers that in those days you could read on an oil flame safety lamp. So at 1.25 per cent, you disconnected electricity, and at 2 per cent or 2.5 per cent, depending on which jurisdiction you were in, you withdrew men because you really had no idea how much more gas was in that area, or could be.

So those were fixed in time because of the systems that you had. We've left them in there, but you'll notice that in Queensland, when we changed the legislation in 1999, the Act, and the regulation in 2001, we actually went up to 2 per cent to disconnect power. The reason why we did that over a period of time, we had greater reliability of methanometers, so we could actually set a higher standard and know that we had it right.

The 2.5 per cent, as I look at it now - is that any worse than, say, 2.48 per cent or 2.51 per cent? Not really. What it's really about is making sure that you have - you're watching the trend. So it's the trend in the gas that's really the key point here, rather than

1 2.5 per cent, because the semantics of the legislation says
2 it's a danger. Well, it probably is. Any gas within
3 a mine is not advisable, so you want to try to eliminate
4 gas if you possibly can.
5

6 But just so we have those figures right, why they're
7 there - 2.5 per cent means that you withdraw your men, and
8 part of that was that if there's no-one there, the
9 likelihood of having a frictional ignition or an ignition
10 of the methane was highly unlikely.
11

12 Q. The history is interesting, but the current regulation
13 has retained the 2.5 per cent.

14 A. I am aware of that, but what I'm saying is your trend.
15

16 Q. Yes.

17 A. If you're looking for recommendations or why the
18 regulations are the way they are, that's what I've been
19 asked to do, and I'm trying to give you the background on
20 where it is, and what I'm saying is I accept 2.5 per cent.
21 At 2.5 per cent, you most definitely must remove your men.
22 But is that trend going up or is the trend going down? So
23 that's the thing that you've really got to be looking at.
24

25 Q. It's going up, is it not, once it gets past 2.5?

26 A. Then obviously it's a concern because it's heading
27 higher, yes.
28

29 Q. If controlled ventilation involves no more than
30 2.5 per cent, it follows logically, does it not, that in
31 excess of 2.5 reflects a loss of control of ventilation?

32 A. I wouldn't necessarily say you've lost control of
33 ventilation. If you have a sudden surge from the waste
34 behind you, you may get a sudden 2.4, 2.5, 2.6 in an
35 instant, and then once that has been forced out of your
36 waste, you're back in control again, so I wouldn't
37 necessarily say you've lost control.
38

39 Q. All right. Well, you point to that example. In fact,
40 that is the only exception that the regulations permit.

41 A. Correct.
42

43 Q. For a concentration of in excess of 2.5 per cent,
44 namely, the sudden and temporary increase.

45 A. I accept that.
46

47 Q. Following which ventilation quickly brings the gas

- 1 back under control?
2 A. Correct.
3
4 Q. Apart from that, as I'm sure you know, the regulations
5 mandate compliance with the 2.5 per cent standard,
6 consistent with your message on page 1 --
7 A. I'm accepting that, yes.
8
9 Q. Ventilation in mines like Moranbah North and Grasstree
10 doesn't work alone to achieve the 2.5 per cent limit, does
11 it?
12 A. No, no.
13
14 Q. In particular, you refer in your statement to other
15 methods of gas management, particularly methane drainage?
16 A. Correct.
17
18 Q. In those two mines, those two controls really must
19 support each other to achieve the no more than 2.5 per cent
20 limit?
21 A. Yes.
22
23 Q. In that sense, both of those working together are
24 critical controls in the management of the hazard of the
25 presence of methane?
26 A. Yes.
27
28 Q. You've been through a lot of documentation that was
29 supplied to you. You may have noticed, so far as the
30 principal hazard management plans were concerned, that
31 consistent with the objective of the regulation, they each
32 set a standard of aiming to ensure that the particular
33 hazard is predicted, assessed and controlled?
34 A. Yes.
35
36 Q. In expressing itself in that way, the various PHMPs
37 don't admit of any exception to achieving that outcome?
38 A. Correct.
39
40 Q. Could I ask your opinion on this: given the mandatory
41 nature of both the regulation and the corporate standards
42 so far as they pertain to ventilation control, is meeting
43 that standard of ventilation compliance in the regulation
44 actually achievable, or do you regard it as aspirational?
45 Leave aside the sudden and temporary increase, would you,
46 from that.
47 A. The 2.5 per cent is aspirational, because the truth of

1 the matter is - and it has been demonstrated - you can have
2 the best gas management system, ventilation system in the
3 world, there could be a time when all the cherries line up,
4 your gas hole's gone offline, there's an overhang in the
5 waste, and there is a sudden fall within the barometer, you
6 may well exceed that 2.5 per cent, with the best will in
7 the world. So to turn around and say that you're always
8 going to achieve that I think is, yes, pie in the sky.

9

10 Q. Should it be accepted, then, in industry as an
11 ordinary incident of mining that there will be occasions
12 when there will be exceedances in a working area? Should
13 we just accept that --

14 A. No, as I said previously, you want to eliminate gas,
15 if you can. You want to keep it to the lowest level
16 possible. So, no, if that's the mandated figure at the
17 present stage, then clearly it requires an investigation as
18 to why you've had that level of methane within your working
19 place.

20

21 Q. Does the legislation set an unachievable standard?

22 A. No, no. What I'm saying is I think - there has to be
23 a measurement somewhere that you set that's an acceptable
24 standard. Because you've exceeded that, you need to then
25 go and investigate why you've had methane in the working
26 place, if that makes sense. So it's definitely a high
27 potential incident, it definitely needs to be investigated,
28 there's no question. But whether you turn around and are
29 taken out and publicly flogged, I'm not too sure that's
30 where you want to be. You investigate it and make sure
31 that it's under control.

32

33 Q. The regulation goes so far as to deem a concentration
34 in excess of 2.5 per cent as dangerous.

35 A. Yes, it does.

36

37 Q. Do you accept that or not?

38 A. That's what the legislation says at the present stage.

39

40 Q. I know that. I'm asking for your view about that,
41 whether that --

42 A. I think the semantics are wrong. I don't like the
43 word "dangerous", because I don't think in some instances
44 that would be danger. If all of your systems and all of
45 your controls in place - we work to a multi-layered system
46 of control. So we have ventilation, okay, we have gas
47 drainage. If those fail for whatever reason, if the

1 cherries line up, you then have other systems. You then
2 have methanometers that will withdraw power at 2 per cent.
3 You have statutory officials that are conducting
4 inspections that are on the lookout for these types of
5 things. So there's a whole list of things that are in
6 place to ensure that you don't get yourself into that
7 position, danger.

8

9 Q. In the structure of the legislation, the primary
10 mechanism for achieving safety in the management of methane
11 is for the combination of gas drainage and ventilation --

12 A. Correct.

13

14 Q. -- to achieve no greater than 2.5 per cent
15 concentration?

16 A. Correct. I'm accepting that.

17

18 Q. And if that can be maintained, then other systems
19 shouldn't be called upon; correct?

20 A. The operative word being "if".

21

22 Q. I think you're telling us - well, your words were that
23 it's pie in the sky to think that you could consistently
24 keep methane at less than 2.5 per cent. Do I understand
25 that correctly?

26 A. Yes, I do. I've worked at a number of mines, and
27 I can't ever think of any gassy mine I've ever worked at
28 that we've been able to do that one hundred per cent of the
29 time, and I'm talking about mines that have excellent gas
30 drainage systems, excellent ventilation systems. So for me
31 to sit here and say that I could guarantee you that never,
32 ever would we go above 2.5 per cent, I'd be telling you
33 a bare-faced lie.

34

35 Q. If a series of mine managers have told this inquiry
36 that they regarded that standard as achievable, I take it
37 you'd disagree with them?

38 A. Well, they haven't achieved that, have they?

39

40 THE CHAIRPERSON: Q. That's not quite the same thing,
41 though, Mr Taylor. They're saying that it is achievable.

42 A. In the majority of cases, if we're looking at -
43 99 per cent of the time, then, yes. What I'm saying,
44 though, is that to turn around and say you're going to
45 achieve that on each and every occasion, I find that - yes,
46 I don't really see that that's going to happen, because
47 there will always be a time when you may exceed that limit,

1 and that's why there are other systems within there to be
2 able to control that level of gas.

3

4 MR RICE: Q. You know the definition of "high potential
5 incident", I take it?

6 A. Yes, I do.

7

8 Q. The critical component of the expression is the
9 potential that the incident has?

10 A. Yes.

11

12 Q. It's not a matter of looking back after the event and
13 saying, look, putting all the circumstances together, that
14 didn't turn out too bad or too dangerous; it's really what
15 potential goes with the methane exceedance?

16 A. Correct.

17

18 Q. Correct me if I'm wrong, but if for some reason
19 control of the ventilation is lost - and by that, I mean
20 that the system can no longer keep methane to the
21 prescribed level - there is no means of predicting how high
22 the level of methane will reach or that it won't, in fact,
23 reach 5 per cent, is there?

24 A. If you have a failure of the ventilation system, if
25 we're talking about a mechanical failure, like your main
26 fans go off, that's correct, you could have well above the
27 5 per cent.

28

29 Q. Is that the only scenario that you can imagine where
30 the methane level might, for other reasons, get to
31 5 per cent? Is that the only scenario?

32 A. No, no, there could be others, but the most likely -
33 the most likely one would be a failure of your main
34 mechanical fans.

35

36 Q. To come back to what I was asking you, can you
37 predict, once you've lost control of ventilation, that the
38 level will not get to 5 per cent?

39 A. No, I don't think you can predict that. If your main
40 fans are off, you've got no idea where it's going to go,
41 and it depends how long the fans would be off. That's
42 another one of the reasons why, if that happens, you lose
43 power underground and you withdraw your men to the surface.

44

45 Q. Do I understand you correctly that in all other
46 circumstances, not involving failure of your main fans, you
47 can be satisfied that although there's an exceedance, it

1 will not get to 5 per cent; is that what you're saying?
2 A. No, you couldn't guarantee that. If your ventilation
3 system fails, then for whatever reason, if there were, say,
4 ventilation doors left open underground, there was
5 a failure of a seal, there was a failure of a stopping
6 where there was a short-circuit of air into your return
7 that didn't reach the longwall face, then you would lose
8 pressure within the system. And ventilation is all about
9 pressure, so if there is a pressure loss across your face,
10 there's a possibility that the methane that's contained
11 within the waste could leave the waste and come into your
12 working place.

13
14 Q. I want to make sure I understand you correctly. Save
15 for the example of the failure of fans so that ventilation
16 effectively totally fails --

17 A. Correct.

18
19 Q. -- are you saying that you can confidently predict
20 that there will not accumulate a flammable level of methane
21 in the workplace?

22 A. So I get you correct, so we're saying the main fans
23 have failed?

24
25 Q. No. I'm asking you if that is the only scenario in
26 which you can imagine that methane would get to
27 a 5 per cent level?

28 A. No, there are others. Your most likely one is the
29 ventilation failure on the surface, power outage or
30 whatever else. If you left ventilation doors open
31 underground, which allowed you to short-circuit ventilation
32 from your main intake to your main return, then you will
33 have a loss of ventilation inbye of a quantity.

34
35 If you had a failure of a seal, you may have gases
36 that are held behind that seal leak out into your intake
37 roadway, which would then pollute your working faces. Or
38 you could have a stopping that failed that allowed air to
39 short-circuit into your return, again reducing the quantity
40 of air that was available in the working places.

41
42 Q. I think you may have enlarged upon your original
43 scenario of failure of the fans to perhaps some other
44 scenarios where gas levels could reach an explosive
45 range --

46 A. Correct.

47

1 Q. -- but nonetheless in a limited category of cases?

2 A. Yes.

3

4 Q. Do we take it that the limited category of cases where
5 you think the methane could get to 5 per cent would exclude
6 the 12 scenarios that you were asked to examine, that being
7 the HPIs at these --

8 A. Can you rephrase that, sorry? I'm not following it.

9

10 Q. I was exploring with you the circumstances in which
11 methane might get to 5 per cent.

12 A. Yes.

13

14 Q. My original suggestion to you was that once you get
15 beyond 2.5 per cent, indicating loss of control, you cannot
16 predict how high it's going to go. That's what I was
17 putting to you.

18 A. Now I've got you. Now I've got you. Yes, look, if
19 you have - along these lines, the most likely scenario that
20 would happen within a longwall is because of the stresses
21 that are set up around the faces at retreats, if you have
22 floor breaks along the face line, and there's a connection
23 to, say, a seam below you, then there is a distinct
24 possibility that you can have gas well over 5 per cent
25 seeping into the longwall face. What you're hoping in that
26 instance is that the ventilation quantity along the face is
27 sufficient to deal with it, but at times it may not be.

28

29 Q. We might progress the discussion if I take you to
30 another part of your statement. Could we go to page 4,
31 please. I want to take you to the bottom of the page, that
32 paragraph where you discuss ignition sources, particularly
33 the final sentence, if you would just have a look at that.

34 A. Yes.

35

36 Q. It may be a choice of words, or it may not be, but are
37 you acknowledging an acceptance there that there can and
38 will be at times a methane concentration in excess of
39 2.5 per cent; is that the premise?

40 A. No, no. No, no. Gas just doesn't - if you are having
41 a look at methane gas, methane will explode between
42 4.7 per cent and 14.7 per cent. That's the explosive
43 range. But methane will ignite, methane will go on fire,
44 if you light it, below that level. So any level of gas, as
45 I said previously, is unacceptable. You really do not want
46 methane in your working place at any given time.

47

1 And we'll come later on - I guess it'll lead us to
2 where that methanometer was, and that's particularly true
3 with regard to layering of methane, where it's layering
4 along the roof, so you may have an extensive methane
5 layering in that area.
6

7 So what I'm saying is that, yes, you may be well below
8 the 2.5 per cent. You may only have 1.5 per cent,
9 1 per cent at the roof. But if there is an ignition
10 source, then you will have a light-up or a fire-up,
11 a flare, of that methane.
12

13 So if we come back to the basics of the fire triangle,
14 as I've mentioned elsewhere, you need three things for
15 a fire or an explosion, which is oxygen, a fuel source and
16 an ignition source. If I remove one of those legs of that
17 triangle, then you cannot have a fire or an ignition.
18

19 Q. You use the words of ensuring that there's no ignition
20 source.

21 A. Correct.
22

23 Q. Can you guarantee the absence of an ignition source at
24 a coalface?

25 A. We can work towards trying to minimise it by a number
26 of things that we do. For example, the most common would
27 be an electrical source or power source, so all of your
28 electrical equipment underground is either flameproof or
29 intrinsically safe. You would look at mechanical sources
30 of potential ignition.
31

32 The other ones that you would be looking at is if you
33 have, say, pyrites within the seam, where a pick working on
34 that - the iron stone within the roof could cause ignition
35 sources. The other one that we don't allow underground in
36 Australia, for example, like the UK, is aluminium, because
37 a rusty piece of metal striking aluminium can cause an
38 incendiary spark, so aluminium is restricted from being
39 taken underground. There's a whole list of things that we
40 look at to try to reduce that ignition source.
41

42 Q. Reduction is the operative word, is it not?

43 A. Correct.
44

45 Q. I'm suggesting to you that you cannot guarantee the
46 absence of an ignition source, and that is one of the
47 inherent dangers of an HPI?

1 A. Exactly, yes.

2

3 Q. If it were possible to ensure - that is to say, to
4 guarantee - there's no ignition source present, then a lot
5 of the other controls would be unnecessary, because you
6 would never have a fire or an explosion; am I right?

7 A. Correct.

8

9 MR RICE: I notice the time, Mr Martin. I will be a bit
10 longer.

11

12 THE CHAIRPERSON: Yes. Mr Holt, you would be some little
13 time, I take it?

14

15 MR HOLT: Yes. I think others probably will be as well.
16 I suspect Ms Holliday might be as well.

17

18 THE CHAIRPERSON: All right. We will adjourn until
19 10 o'clock tomorrow.

20

21 **AT 4.39PM THE BOARD OF INQUIRY WAS ADJOURNED**
22 **TO THURSDAY, 19 AUGUST 2020 AT 10AM**

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