INDUSTRY COMMISSION HEARING - Sydney 17.11.97

LIST OF SPEAKERS PAGE NO.

INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY NSW

MONDAY, 17 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER: MR B SCALES

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INQUIRY COMMENCED AT 12.45 PM

PRESIDING COMMISSIONER: Good afternoon and welcome to this Industry Commission public inquiry for Australia's black coal industry. This public hearing in Sydney is the first in two sets of hearings, the other is scheduled for Brisbane next week. The hearings are designed for people to raise issues they feel are impacting on this particular industry and are designed to allow people to make sure that they can make whatever contribution that they regard as important, particularly on those issues affecting international competitiveness of Australia's black coal inquiry and industry, and it gives everybody the opportunity to provide input into the draft report which is due to be released in late February of next year.

These hearings are in addition, of course, to the extensive round of visits already undertaken by the Commission and the 26 submissions to the inquiry are already received. While people who provide information of course are protected in this inquiry and at these hearings as they were giving evidence into a court, this is not a court of law. I am going to try and make these hearings as relaxed as possible so as to give everybody the chance to tell their own story. However, there are some formalities which we try and follow each time we conduct a public hearing.

First, we ask people to participate, and for the benefit of the transcript to introduce themselves indicating what capacity they appear here today. I'll get you to do that in a few minutes if that's okay. Second, information provided by you at these hearings is often used in our reports. We therefore ask participants to be as accurate as possible with their comments and answers. If there's any doubt about the accuracy of anything you might say just tell us that you are not absolutely certain, and what we'll then try and do is to come back to you to get that verified in one way or another. We use these to liven up our reports in a significant way, so therefore these hearings are quite important in that regard.

Finally, transcripts from today's proceedings will be provided to all participants at these hearings. Anyone else wanting to obtain a copy should contact my staff, and you'll see them here today, who will be only too pleased to assist you. Let me now introduce my colleague on my right, Keith Horton-Stephens, who is a commissioner with the Industry Commission and was the presiding commissioner on our much earlier inquiry into the mining industry. Also Keith has a significant amount of understanding and knowledge of this particular sector of the Australian economy.

So I think we could probably get started.

MR HORTON-STEPHENS: If I could be informal for a moment, I wasn't the presiding commissioner.

PRESIDING COMMISSIONER: Weren't you?

MR HORTON-STEPHENS: No.

PRESIDING COMMISSIONER: If we can now get started. Our first participant today is Mr Terry Kearney, representing FreightCorp. Terry, could you please introduce yourself and then briefly of course outline the main points that you might want to make.

MR KEARNEY: Mr Chairman, Terry Kearney is my name. I am General Manager Coal Services for FreightCorp, and FreightCorp welcomed the opportunity to provide a submission to the inquiry by way of the consolidated submissions that went forward from the New South Wales government, and this afternoon I'd like to just take the opportunity to bring up some of the salient points in the submission and provide the inquiry with an opportunity to then discuss with me any particular areas they'd like to explore further.

PRESIDING COMMISSIONER: Thank you. Please go ahead.

MR KEARNEY: And perhaps if I can just refer back to our submission, our submission predated the first FreightCorp annual report. FreightCorp was corporatised on 1 July last year, and we just concluded our first year of operation. I do have copies of our annual report for the inquiry. If I might just review briefly our performance in the last 12 months, through until 30 June this year FreightCorp carried a record tonnage of 72.6 million tonnes, an increase of 8.8 million tonnes over the previous year, and the previous year was freight rail as part of the State Rail Authority.

Our revenue exceeded $800 million, and in terms of our turnaround process we started the year with nearly 4,000 employees and concluded the year with a little over 3,500 employees. Given the increase in tonnage, largely driven by the export coal which is our core business, and the largest grain harvest we've seen in the last 15 years, our locomotive productivity was up 26 per cent, wagon productivity 21 per cent, and employee productivity up 31 per cent. So from our standpoint it was a particularly good start to life as a corporation, and we recorded a profit of $42.8 million after abnormals were taken into account. So I think it's an important way to start off life as a new corporation.

If I might turn to the operating environment, our submission covered the major changes which took place in rail last year with our corporatisation and formation of Rail Access Corporation, and I draw your attention to the figure on p.3 of our submission, figure 1, that indicates the commercial and contractual arrangements that exist between ourselves, our coal clients and the other rail entities in New South Wales today. I think importantly FreightCorp in the new competitive environment is a state-owned corporation. There is the ability for the private sector to enter the market now and compete directly with FreightCorp and carry export coal to the ports, and FreightCorp itself is offering to its coal clients a full transport service. In other words, train scheduling, train operations and cargo assembly, and we deal on behalf of our coal clients with the other rail entities in terms of access charges and contracts that are in play with Rail Access Corporation.

During the course of '96/'97 FreightCorp hauled a total of 58.7 million tonnes of coal which is 80 per cent of our total tonnage, and the revenue generated represented 50 per cent of our total revenue. So by any standard export coal in particular is very, very important to FreightCorp and its success in the future.

I think given the major changes that have taken place in the rail industry and ourselves being very conscious of the competitive environment we have strived in the last 12 months to build on our former relationship with the coal industry by looking at means by which we can together with the industry provide a better service in the delivery of coal. This has led to new performance-based contracts. The contracts now reflect areas of performance such as train scheduling, on time placement of trains, size of trains delivered, and on the other side of the ledger we in conjunction with our clients are recognising to a large extent than previously the actual performance of a loading terminal, so that in the event that a loading terminal is not able to load trains 24 hours a day, 7 days a week, or takes longer than we'd contracted to load those trains, penalty provisions apply.

So the contracts today can cut both ways. But we can be in fact providing a more competitive freight rate if indeed our client is performing. Similarly if we fail to perform the client sees that reflected in the freight rate in terms of a penalty against ourselves.

I draw your attention to page 5 of our submission where we do outline some of those performance components; consistency in loading; accuracy of loading; train scheduling; notification of train arrival; and level of train demand. These are the major elements in the contracts. Each new contract though is negotiated to reflect the particular areas that our clients want to recognise in the contract.

If I might now draw the Inquiry's attention to some of the areas where we're striving for higher operational efficiency. Today we're currently implementing an Automatic Equipment Identification system. In other words we're tagging our wagons so that we have a better means of managing the entire fleet, and provides to the Hunter Valley coal producers and PWCS, greater opportunity to use our wagons as effectively the messenger in delivering information between the coal company and Port Waratah Coal Services on train arrival sequencing, and the coal carried on those trains that's a system that is proven in the United States and effectively we're using a standard system that has software standing behind it that will provide the necessary functionality for the Hunter Valley coal industry.

Supporting the roll out of Automatic Equipment Identification is the new operation system that we're bringing on line towards the end of this year which does provide us with improved scheduling systems so that we can plan and schedule the coal trains more beneficially I think to both the coal industry and ourselves. From our standpoint we're looking for higher productivity from our fleet. From the coal industry standpoint they're looking for greater assurances that their coal always made the port in time for vessel loading. This is another tool that we'll be applying.

I think if I might draw your attention then to page 7, the thrust over the last 12 months that improved interface between PWCS and ourselves, we indicate there the number of planning horizons at which we do interface with PWCS. I think most importantly if we look at the short-term horizon this is one area we and PWCS worked on actively in the last 3 to 6 months in developing what will become a full commercial arrangement between our respective organisations. We've existed as co-service providers to the coal industry for some 22 years, but at no time have we had a commercial agreement between the respective parties. Putting in a place a commercial contract will provide the financial drivers for both ourselves and Port Waratah Coal Services to provide an ever improving service to the coal industry.

If I might then draw your attention to page 8, Satisfying Demand and the Capacity for Market Growth. I think everyone who is close to the coal industry would recognise at the moment we're seeing historically high levels of demand from the overseas clients of the Hunter Valley coal producers at least, and this I think is most evident with the number of ships sitting off Newcastle. We have indicated on page 9 our capacity to move coal from January through to August, and if I extended the graph out to November we're now consistently hitting manualised delivery rate into the port at 66 million tonnes despite the fact that we did have a minor hiccup back on 23 October at Beresfield when we had that terrible collision between two coal trains. Fortunately no fatalities and the crew is recovering.

In terms of our capacity and commitment to the coal industry, we're currently taking delivery of wagons on an existing contract which will inject into the Hunter Valley an additional 240 wagons by September next year. On top of that current contact, 2 weeks ago we went to selective tender for a further 120 wagons, again we're looking for the delivery in the same time frame. The end result of those two contracts will see our fleet capacity using relatively conservative utilisation factors standing at 72 million tonnes per year, by March next year. This time next year our fleet capacity in the Hunter Valley will be 92 million tonnes.

Why would we extend ourselves well beyond Port Waratah Coal Services current name plate capacity? The reason is we believe that we're talking about a glass ceiling with PWCS' name plate capacity at 66 million tonnes. On a daily basis the company has shown its ability to receive coal at a rate well in excess of 70 million tonnes, and we believe looking at the new commercial arrangements we're putting in place with PWCS in conjunction with fleet that will stand ahead of their current capacity but in step with their future expansion plans, we'll be in a position to supply the coal industry with the necessary capacity in the Hunter Valley itself conscious of the emerging competitive environment, that means too that we're effectively renewing our fleet and modernising our fleet so that if we do see a competitor emerge we will have a level playing field when it comes down to competition.

I have touched on there other elements of our overall strategy for meeting the demands of the industry, our fleet maintenance strategy, the fact that we have in our previous guise as Freight Rail undertaken in fleet maintenance major reforms that collapse in essence 26 different classifications of workers involved in wagon maintenance, down one classification. We're now in a position where we have 26 staff in what we term "One Stop" Maintenance Centre in Newcastle that are able to maintain 4,000 wagons on a preventative maintenance regime.

Our locomotive maintenance, we've gone with locomotive maintenance to the private sector that have in place a 15 year contract to supply the locomotives that operate within the Hunter Valley.

So I guess in summary in that we're going in meeting the demands of the market place we do want to be in a position where FreightCorp is not the weak link in the chain. We do want to continue our drive for efficiencies, and over the next 2 years our managing director announced only 3 weeks ago we will be looking to trim our operating costs by 25 per cent. So we're going to be driving very hard to continue to drive down our costs which will be reflected in freight rates, aligned with an active program of fleet acquisition that will continue to provide the coal industry with confidence in our ability to move coal.

If I might now turn to the other side of the equation, freight charges. We have indicated on page 11 of our submission the way in which freight rates on average have moved over the last 12 years or so, and freight rates continue to come down. If we then turn to international comparisons we have done work in the past with a number of international consultants and looked at the way in which rates are set particularly in North America.

And at the top of page 12 we've indicated that two rules generally apply, rates are market based and they allow a shippers delivery of product at cost commensurate with or below that of the shipper's competition. The rates at least cover variable costs. This is not inconsistent with the approach that FreightCorp is taking in putting its rates out on the table. We are seeking a rate of return globally across our business that will be set by the board. Looking at our last year's performance against our asset base we had a rate return after tax of 4.2 per cent, and you'll find details of it in the annual report. At this point in time we don't believe it's an adequate rate of return, but we'll be striving to improve a rate of return by driving down our costs and also selectively trimming our asset base albeit with the injection of new assets in the Hunter Valley.

We have provided on page 12 an indication of our freight rates in terms of dollars per metric tonne against distance versus those that can be ascertained from other sources on US rates, and we believe at this point in time, given the very short haul nature of the operation in New South Wales our rates are not inconsistent with those that prevail in the US.

Page 13, we have attempted to indicate there the significant change in the freight rate regime that has come about since the establishment of Rail Access Corporation, and the decision by the government, the New South Wales government, to phase out over a 4 year period what has been termed monopoly rent that applies in the freight rates in the Hunter Valley or some freight rates in Hunter Valley.

If I might dwell on the diagram for a moment. The New South Wales government in establishing Rail Access and ourselves took the view that any monopoly rent element that was in the pre-existing freight rates should be transferred down into Rail Access Corporation, and then gave a commitment to the New South Wales coal industry that the monopoly rate element would be phased out by the Year 2000. What we've attempted to illustrate in that particular figure is the way in which the monopoly rent will phase out to zero, and we'd anticipate Rail Access and its drive for efficiency in maintaining the network would also see its base charge reduce. Our charge obviously will continue to come down as drive for efficiencies, and the major driver there is either the threat of competition of the emergence of competition.

In terms of page 14, Access Pricing, in fact FreightCorp has taken a lead on behalf of the coal industry in concluding an arrangement for '97/'98 with Rail Access Corporation that will in fact save the Hunter Valley coal producers some $22 million this year against the access charges that Rail Access put on the table early in the year. We had concerns that there was little reflection of the growth in tonnage that was coming through in the Hunter Valley, and we wanted to clearly recognise within the access charging regime that as tonnages grow then there should be a commensurate reduction in access charge. So we're satisfied that we're able to conclude that on behalf of the coal industry and certainly in my discussions with our clients the coal industry itself is satisfied with the outcome.

If I might then turn to FreightCorp's future efficiency directions. Further reductions and costs, reductions in prices, and improved efficiency in reliability. The major thrusts of our direction over the next couple of years, as I indicated earlier, we're looking toward a 25 per cent reduction in operation costs over the next 2 years, and we'll be sharing those gains with our coal clients.

I think if I could then take you to the bottom of page 15 looking at the integration of coal chain. By any standard the Hunter Valley coal chain is a very complex arrangement given the very small stockpiles held at Newcastle, and the multiplicity of coal types being exported through the port. We, PWCS and the Newcastle Port Corporation do co-operate to ensure coal is transported to port in time for vessel loading, and there's a number of variables there that I won't go through but I think they're going to come up in other discussions in terms of cargo composition and vessel size and so on.

We last year instituted with Port Waratah Coal Services an efficiency study, a joint efficiency study, and a framework study that was jointly funded that looked at how we can drive greater efficiencies into the system. And I believe one of the important outcomes there is in fact the new commercial arrangement that we're bringing into play with PWCS, so we have the right financial drivers to gain further efficiency in the coal chain.

If perhaps I could just conclude there by saying that the growth in the Hunter Valley coal exports does present a common challenge for the coal industry and FreightCorp and requires a co-operative approach between all participants within the Hunter Valley coal chain. We believe that through a range of reform initiatives, operational efficiencies, cost and price reductions and targeted capital expenditure, FreightCorp is in a position to remain the preferred haulage operator in the emerging competitive environment.

Mr Chairman, I went through it fairly quickly and I think perhaps if I could then explore with you any matters you'd like to take further.

PRESIDING COMMISSIONER: Terry, thank you very much for that. A couple of questions, first of all where do you see the main competition from in the future?

MR KEARNEY: Possibly an existing rail operator, and if we look at the change in an emerging environment, rail environment, in Australia we've seen recently the privatisation of Australian National with an American railroad vying for the South Australian part of Australian National, and TransRail from New Zealand taking over TasRail. TransRail is a competent operator, possibly they could be a competitor. National Rail Corporation is due to be privatised next year, and the future owners of National Rail may also be looking out beyond the interstate operations and looking at other opportunities. Brambles, I think, is an obvious starter, Brambles have been quite forthcoming in discussions indicating their interest in possibly operating Hunter Valley, and John Fletcher, their managing director, in reporting back to the board only 2 weeks ago was quoted in the press as saying that Brambles are looking at the Hunter Valley as a possible operation in the future.

PRESIDING COMMISSIONER: So things are going to change pretty drastically?

MR KEARNEY: Things are going to change, yes.

PRESIDING COMMISSIONER: Can you explain one of the points you made earlier when you were talking about your significant level of investment, and I think you made the point, and I won't get this exactly right, but you felt that that significant level of investment might actually help you to compete more with some of these operations in the future. Can you just expand on that little bit about you saw that operating?

MR KEARNEY: We have wagons today that in age extending from a few months of age out to about 22 years. The ones at the far end of the spectrum, ones that were built in the mid '70s are approaching the end of their economic life. We've taken a conscious decision to invest in new rolling stock, a little ahead of what would have otherwise been the case to provide in short term the capacity to meet PWCS' peak receival capacities, and then it provides us with an opportunity with the emergence of any future competition that could perhaps take part of our market share to retire out the older rolling stock, so that when we're then competing with the new operator who would presumably have new equipment we too will have new equipment and all the advantages that will bring in terms of reliability and carrying capacity of the wagons.

PRESIDING COMMISSIONER: So it's, as well as being a very forward looking investment program it's also got an element of, if you like, defensive strategy associated with it?

MR KEARNEY: Yes. I guess when a company is currently in a monopoly position that means that anyone who is looking at the market has the opportunity to consider how that particular company is operating you're very visible - you've been invisible, and a new company then is going to be looking at how we'll be able to carve out part of the market for itself. And we ourselves have considered how we'd go about it, we're a new starter, and we believe any company that was serious would be looking at having the most efficient rolling stock in play, and we believe for us to survive and continue to prosper our rolling stock has to be at least equal to that of competitors.

PRESIDING COMMISSIONER: Presumably what this is going to mean for you however is that you will spend a period of time where your return on investment is going to be less than you would want it to be because of the investment which you have made in advance of need of the coal loader to actually accommodate that. How many years would you expect that that investment might if you like undermine your ability to achieve I think you mentioned earlier that was another return on investment a bit beyond the 4.2 or 4.5 per cent.

MR KEARNEY: It's really a judgment call. Given that many of our wagons are a depreciated asset, and the life of about 25 years is what one would anticipate out of those wagons, they are reaching the end of their economic life. So that we've drawn forward some of that investment by a year or two. So from our standpoint we believe that in hitting an adequate return on assets it may have moved our position by a year or two.

PRESIDING COMMISSIONER: Have you got any sense of what that actually would mean to your bottom corporatised, you know, profit roughly?

MR KEARNEY: We each year put to the New South Wales government on a confidential basis a statement of corporate intent that rolls out our 5 year projections, but I'm not in a position to share those with you. I can share with you our annual report results for last year.

PRESIDING COMMISSIONER: Maybe you could tackle it a slightly different way. We'd be quite happy to, and are capable of being able to receive confidential information, and it would be helpful to us if you could think about maybe providing that to us on a confidential basis. Maybe if I could tackle it slightly another way, what is the total cost of the increasing rolling stock that would give you the ability to compete effectively? And I don't think it's actually covered in the submission, the total cost of the investment?

MR KEARNEY: Our current contract that still has another 240 wagons to be delivered will represent capital expenditure of around another $30 million, and this is a decision we took some time ago. Our recent tendering for a further 120 wagons represents a further CAPEX of $15 million. So in all we're spending around the $45 million between now and this time next year with new rolling stock.

PRESIDING COMMISSIONER: Can I just explore one other element about this? The point you made about being slightly in advance of PWCS is quite interesting. My understanding of it, and I might be quite wrong here and we can talk to them about it when we meet with them, but is that I don't think they've got any plans at this stage to go roughly 90 million tonnes, while they do have some capacity to - some opportunity to increase their capacity marginally, and I think you indicated, you know, similarly that it might be 70, 75, maybe something like that. 90 million would seem to actually require a fair amount of increased investment at the port. Have you actually been able to work with them, or have you been working with them to get an indication that they might be moving to that sort of capacity in the longer run?

MR KEARNEY: We've been working closely with PWCS for many years in the expansion plans, and at this point in time PWCS are looking at the first phase of their Stage 3 Expansion. This will involve a further berth at Kooragang together with some changes to the stock yard, not extending the stock yard but some of the overall systems within the stock yard, and the broad indication is that this work once they commit to it will take them out to the high side of 18 million tonnes capacity. So just in terms of overall efficiency gains without new capital expenditure we're confident working with PWCS that receivals can go out to a high side of 17 million tonnes.

So in terms of their commitment to their first phase expansion which will take them out to beyond 18 million tonnes, we don't believe we're all that far in advance of their plans. I think the Inquiry would be aware that PWCS is still waiting the outcome of a Court of Appeal decision that came out of their overall ELS and development consent process. So I think in terms of some of the directed comments on their capacity it'd be best put to PWCS.

PRESIDING COMMISSIONER: Yes, that's fine. Thank you. Keith, do you have any questions on this particular issue?

MR HORTON-STEPHENS: No.

PRESIDING COMMISSIONER: You made I think quite a number of quite important points in your submission about the roll of the access regime, and a number of the submissions have been suggested that the way in which the access regime is currently being constructed could lead one to the interpretation that some of if you like the monopoly rents or the monopoly profits have actually been transferred through to actually the cost of access. Do you want to make any comment about that from your own perspective, or any thoughts that we might need to think about, if you like, balance, some of the comments that have been made by other participants?

MR KEARNEY: I believe those questions should be placed directly to Rail Access Corporation. So I wouldn't wish to speculate on what's happened within their implementation, what we've been very conscious of is looking to drive down the overall cost of access with the coal industry, and we believe have been moderately success to date in doing so.

The overall structure within the access charge I think is a matter for the New South Wales Minerals Council who has discussed a length in their submission to the NCC. So I prefer not to speculate.

PRESIDING COMMISSIONER: No, that sounds fine. The only reason I raised it is I think you mentioned Terry that you've seen part of your role, and correct me if I'm wrong here, but you seem to be suggesting that part of your role was to almost act as an intermediary between the coal industry and the access regime authority on some of these sorts of issues, and I think what you were suggesting was to give you the ability to play whatever role that your customers wanted in that regard, whether it was a full provider of a service or to be a provider of a service based on using their rolling stock and a whole graft of other options, and I guess that was the reason I thought you might want to make a comment about that.

MR KEARNEY: If we look at the access charge itself broken into its two components of base charge and monopoly rent. The monopoly rent component is identified by the New South Wales government via the Department of Transport at the time the regime was put in place. We as FreightCorp have been more looking at how the base charge can be driven down as Rail Access becomes more efficient in infrastructure management, and we've taken as a given the quantum of the monopoly rent element so that when we were advised earlier this year by Rail Access of the access charge on origin/destination basis within the Hunter Valley, which also included an adjustment factor, the monopoly rent element.

We, FreightCorp, and our board, took the view that it needed to be fully transparent between ourselves and our client. So for a given company in the Hunter Valley we now invoice that company showing the headline freight rate, broken into a haulage component, our charge, and the rail access component which is inclusive of monopoly rent. So as time rolls on and the monopoly rent adjustment factor component comes down each time we're advised there's been a reduction we'll be adjusting our freight rate downward accordingly, and reflecting in our invoice that that's - it doesn't end there though as I mentioned earlier, we'll continue to drive for a lower base charge because we believe for the New South Wales Coal Industry to remain internationally competitive the entire cost of rail haulage, the haulage component and the access component needs then to be as good as anywhere else in the world.

PRESIDING COMMISSIONER: Thank you. Keith?

MR HORTON-STEPHENS: You told us a moment ago, and it's written in the submission, that you're able to - you will complete negotiations with the RAC, which you say in '97/8 as a result of which will save Hunter Valley producers some over 20 million a year for this year. To what extent does that reflect a cut in monopoly rate, that element?

MR KEARNEY: That doesn't reflect monopoly rate.

MR HORTON-STEPHENS: At all?

MR KEARNEY: No. The monopoly rate element adjustment had already occurred. We were dissatisfied with the fact that the access charge, as put to us earlier this year, did not reflect any volume growth. Last year FreightCorp delivered 50.3 million tonnes of coal into the port of Newcastle. At our current delivery levels which are currently standing at close to 65, 66 million tonnes, we'd anticipate that for '97/98 for the full year, we will deliver anything up to 60 million tonnes. So in other words, a 20 per cent increase in volume in 12 months. None of that was reflected in the Access charge. Despite comparison most of our contracts with Hunter Valley producers do reflect volume, so on individual company basis, as volume increases the haulage component comes down. So we went back to Rail Access and said we're dissatisfied and after some fairly robust discussions extending out over 8 to 10 weeks, we then reached a conclusion that will see in fact, a reduction in the overall base Access charge after a certain quantum of tonnage has been moved across for the central Hunter Valley.

MR HORTON-STEPHENS: So that's the sole explanation for the 20 million reduction?

MR KEARNEY: Yes.

MR HORTON-STEPHENS: Is there any discussion in those negotiations, I guess either with the RAC and indeed separately with your clients, of making charges to some extent subject to the capacity of the individual mines to pay?

MR KEARNEY: It hasn't been a major issue for discussion, albeit we have had some tri-partite discussions with Rail Access, where particular clients have indicated their desire to become party to those discussions and put on the table with Rail Access, particular concerns, and in some cases it does come down to capacity to pay issues. But I think appropriately, I think if a particular company believes they have a concern in that area, we take a leadership role in arranging that discussion so that we don't simply become a conduit to go back to Rail Access to say a particular client has a concern, let's sit around the table and hear those concerns and see how we can play it out.

MR HORTON-STEPHENS: Is that consideration accepted as a valid basis for adjusting charges?

MR KEARNEY: By Rail Access?

MR HORTON-STEPHENS: By you.

MR KEARNEY: Capacity to pay?

MR HORTON-STEPHENS: Yes.

MR KEARNEY: Capacity to pay has - in the past was always something that the old State Rail Authority was conscious of. So in terms of haulage component we're now sitting in a competitive environment and I don't really think it's capacity to pay anymore. I understand the question though in relation to Rail Access charges. I think perhaps if Rail Access are appearing before the inquiry, again, appropriately, it should be put to Rail Access.

MR HORTON-STEPHENS: I certainly propose to discuss it with the Corporation, they are in fact appearing tomorrow, and do indeed cover the point in the submission, I think. On (indistinct) monopoly rent, but I guess I still have one question in my mind and that is, are you happy with the rate of phasing out of monopoly rent? Do you accept that as a given?

MR KEARNEY: The phase out is a matter that is being determined by the New South Wales government in discussion with the coal industry.

MR HORTON-STEPHENS: Yes, but obviously it affects you, it affects your business.

MR KEARNEY: I don't know if it does affect our business, it's a matter that a decision has been taken on by the New South Wales government. It's if anything, one of the few givens in the new environment.

MR HORTON-STEPHENS: On current pricing, I didn't quite understand what you were saying, if I read it again after this discussion it might be easier, but, yes, you did in fact, mention it briefly earlier on but it's right in the middle of p.8 there, and it talks about the length of KPIs. It says, "The freight rate applied for a particular period can then vary depending on achievement of set standards by other parties measured by the KPIs." I just wonder what that meant in practice.

MR KEARNEY: The way we manage our contracts today is to have in place a contract that has key performance indicators incorporated within it, and then on an agreed with our client basis, we then sit down and review performance. Our performance, their performance. And in the event there's a need for an adjustment of any sort in freight rate, it can be concluded on the basis of those face to face discussions. So we've been very forthcoming in setting up and facilitating meetings with the clients to allow that exchange to take place.

MR HORTON-STEPHENS: So that it's very much a part of pricing policy now?

MR KEARNEY: Yes.

MR HORTON-STEPHENS: It's not a theoretical point anymore.

MR KEARNEY: Not theoretical at all, no. In some cases we're sitting down on a monthly basis with clients.

MR HORTON-STEPHENS: What sort of variation can it entail?

MR KEARNEY: We're talking tens of cents. I wouldn't like to take it any further than that.

MR HORTON-STEPHENS: No, I understand.

MR KEARNEY: And different components have different weightings.

MR HORTON-STEPHENS: Yes. Thank you. That's all.

PRESIDING COMMISSIONER: While we're talking about that, you mentioned the KPIs a number of times. Did you want to give us a bit of an idea of what those KPIs actually are in practice?

MR KEARNEY: On what basis?

PRESIDING COMMISSIONER: Just what they **-** not the basis, just what they actually are.

MR KEARNEY: Service reliability.

PRESIDING COMMISSIONER: They're the ones here, are they?

MR KEARNEY: So on time placement of wagons. In some cases we have contracts in place now where we, FreightCorp, need to be advising a client of the estimated arrival time of a train so that if the client then is making provision for labour to load that train, they're not then having people unnecessarily rostered. Wagon mix. Some contracts now require FreightCorp to provide to a client certain size trains going from our maximum size train which carries 7,800 tonnes down to trains that carry only 2,000 tonnes. The loading rate, traditionally the terminals within the Hunter Valley have loaded at a rate of 3,200 tonnes an hour, and that's what was called a "Category 5" terminal. There's one new terminal in place now that has US technology. It can load in excess of 4,000 tonnes per hour. We monitor the loading rate and that can affect the overall freight rate. Acceptance of trains. If, for our own purposes, and to improve our utilisation of assets, we call upon a company to take a train that wouldn't otherwise be required by their program, then that can come into play as one of the indicators. And volume and distance. Volume being the reflection I mentioned earlier, of increasing volumes of coal in the Hunter Valley, so that our contracts today do have in place volume incentives.

PRESIDING COMMISSIONER: Thanks very much for that. I notice that on a number of pages you talk about some of the things which are being done by FreightCorp to improve performance over time, and I accept the fact that sometimes it takes a little time for these things to come into play and therefore, the benefits to come into being. But when we - for example, when you spoke about the Automatic Equipment Identification, the new coal operating system and the global positioning system and so on, have you got any idea about - I don't want details, but sort of the rough indicator as to what these are going to do to your operating performance? If we take them one by one. Have you got any idea about sort of the percentage gain in terms of operating performance that you'll get out of full application of the Automatic Equipment Identification system?

MR KEARNEY: I'd prefer to say that they need to be considered as a package. That what we've listed out there are discrete elements in how we can manage our fleet and manage the service delivery of the clients better than we have previously. But if I might just take Automatic Equipment Identification as one particular item, I mentioned earlier that it can be used in conjunction with other communications to identify coal being delivered to the port. Up until recently, the system used to identify coal coming into a port is something that has been there since railways originated, and that was placing a ticket on a wagon that identifies the coal. PWCS and ourselves recognised the system was archaic, we looked at other ways of doing it but it's been the system in play for those many years. PWCS believe that by having new systems which incorporate the application of Automatic Equipment Identification will save 35 minutes at the port. At the moment it takes some 35 minutes to verify the coal that's on a train. So there's an immediate gain in terms of system capacity, and it means the potential for higher through-put at the port.

If I turn to the others, the global positioning system is largely about providing greater certainty to our clients about train arrival. The planning and scheduling system is about ourselves, FreightCorp, being able to provide to the client a greater level of confidence that the cargos will be at the port as and when required. And from our standpoint it means that as we bed down the new system, we believe we can extract high utilisation out of the equipment. So referring back earlier to my comments on our fleet expansion plans and our ability later to retire old vehicles, if we can in fact, ratchet up from what we believe is relatively conservative utilisation of equipment at the moment, it means more speedily we can retire out those older assets and it places ourselves in a far better position to compete when we do see another company out there wishing to runs trains at Hunter Valley.

PRESIDING COMMISSIONER: Could I just follow this through just a little bit more. The reason that I'm asking that to be somehow quantified, and I'm not asking anything incredibly precise, but you know, if you've read some of the submissions you would have noticed that many of the participants in the industry have been critical of that part of the coal chain which is made up by rail, and they've given some broad indicators of the lack of performance compared to some international bench marks, and some have used Queensland and some have used the United States, and some have used both. And what I'm trying to understand is, whether what we see in place here will, for all intent and purposes, remove most of that, if you like, disability between what's happening in New South Wales compared to what's happening overseas. There's not much point in the Commission focusing on something and making recommendations on things which you already have in hand. So that was the main reason for wanting to try and get a sense of how far you think it's going to take you towards achieving something like your best practice.

MR KEARNEY: If I could perhaps broaden the landscape slightly. If we take that in conjunction with our commercial agreement with Port Waratah Coal Services, in terms of our ability to deliver coal with given size fleet of trains, we believe there's easily, easily 10 per cent more coal that could be delivered in a year with a given fleet, by putting in place this whole suite of changes of Automatic Equipment Identification, a better planning scheduling system, a commercial agreement with Port Waratah Coal Services. On a daily basis today, we can be losing anything up to 12 per cent off our planned program of trains, and it's largely due to matters that arise at interfaces be it out at the loading terminal or at Port Waratah Coal Services. And when I say we lose up to 12 per cent, in essence, to bring a train program back into order we'll cancel out trains. So if we look at trains cancelled on a day because the whole system has started to run late for whatever reason, we believe putting these systems in place so that we, in conjunction with PWCS can better manage what's happening with the coal chain, there's 10 per cent efficiency gains in that.

PRESIDING COMMISSIONER: That's helpful actually. That gives us a bit of a ball park number that we can think about.

MR HORTON-STEPHENS: Can I just change tack slightly but still on the question of productivity. You mentioned your first enterprise agreement on p.15, and you mentioned work place performance included the testing of driver only operations. Just one question on those, sir. How common are driver only operations in other parts of the world to the north to Queensland and say, United States, Canada?

MR KEARNEY: Not common at all, certainly not in the North American environment. Many trains in north America still have four people on them. In Queensland, Queensland Rail are using driver only now in operating trains into the ports. So in other words a train will deliver the coal down to one of the marshalling yards and from that point into the port there will be driver only. TransRail in New Zealand now have in place an arrangement for running driver only trains and they seem to be moving very rapidly to driver only across they're entire operation. So we've been spending time with our unions discussion implementation of driver only operation, and as part of our first enterprise agreement, there's an agreement within that document for the trialing of driver only operation, and those discussions, working party discussions are continuing with our employees and unions.

MR HORTON-STEPHENS: Are there any other elements of the enterprise agreement that you might like to mention now, in terms of doing something now in New South Wales or catching up with Queensland for example?

MR KEARNEY: I guess there's a stand out, that's the biggest one. The others, I think, like most industries, the incremental reform issues of how we're going to do it better, how we're going to use technology to assist us in providing a better operation. That's probably the stand out, the driver only operation trials.

MR HORTON-STEPHENS: Does your workforce accept the need for these sorts of changes? How difficult are you finding it to make some of these changes?

MR KEARNEY: I think it's fair to say our workforce does accept the need for change, and after all, we have in the first 12 months of life as a corporation, reduced our workforce from 4,000 to 3,500 and I might say that occurred through voluntary redundancy, natural attrition and without any industrial disruptions. We've laid out for our workforce, a plan that shows that 2 years out from now we'll be down to 2,500 or less, and the workforce accepted that if we're going to be competitive, it's necessary. We're in the process right now of a major rationalisation of our locomotive fleet arrangements. We rely heavily the out-sourced "ready power" locomotives, but we still have locomotive fleet depots around the State. We're scaling down, for example, here in

Sydney, our Enfield operation and the people working at Enfield who have already been through a number of sessions looking at their opportunities to remain within FreightCorp, and the alternatives, voluntary redundancy.

So it's accepted. It's been a process we've been driving and striving for in the last 12 months and prior to corporatisation. It was the accepted direction from 1989 onwards.

MR HORTON-STEPHENS: You mentioned out-sourcing locomotive maintenance on p.10.

MR KEARNEY: Page 10.

MR HORTON-STEPHENS: Fleet maintenance, is that all done in-house?

MR KEARNEY: Our fleet maintenance comes in several strata. We carry out preventative maintenance on unit coal trains on a 14, 28 or 56 day basis. We then have a preventative maintenance regime on a wagon by wagon basis, where the wagons go through the One Spot Wagon Repair Centre as I mentioned earlier, and that's going through on a 2 year or 3 year basis, so that the wagon receives intensive maintenance, what can be done and can only be done in 8 hours or less. If we are then looking at the major repairs, we'll look at out-sourcing for those major repairs, anything that's going to take longer than 8 hours on a wagon. We have in place today, contracts with the Railway Service Authority that have wagon maintenance workshops at Bathurst and at Goulburn. We also have in place contracts for the private sector. So companies in the Newcastle region are carrying out heavy maintenance repairs for us, strengthening older wagons where we've seen stress fatigue fractures occurring. And coming here today I left a meeting where we were discussing the current tender we have out in the market with the private sector responding Tuesday of next week. So that we're reliant less and less for heavy maintenance on government owned organisations and more and more on the private sector.

I might also just mention too, that in terms of the bogeys and wheel sets that go under the coal wagons, we have in place a 10 year contract with a subsidiary of Goninan, MainTrain, and all of the heavy maintenance and overhaul work on those bogeys goes to MainTrain. So when a wagon comes into our One Spot Centre in Newcastle and it requires a new bogey, a new or refurbished bogey goes under it. The old bogey will be shipped off to MainTrain out at Clyde and it's the private sector we're relying on. When we took that decision we were benchmarking against what the government owned rail industry could do versus the private sector, and found it was a better alternative to go to the private sector.

MR HORTON-STEPHENS: Thank you.

PRESIDING COMMISSIONER: Terry, I know that you're anxious to go but on p.14 you actually raise a couple of issues that you seem to be suggesting that we need to take significant account of. And you say "Within this environment, the total environment and so on, of infrastructure, ownership and investment" and you say "The efficient operation of the network in the coal chain is dependent on having appropriate contracts and planning arrangements in place." And then you suggest that that needs to be significantly looked at. In the next paragraph you actually talk about "additionally FreightCorp believes that infrastructure investment is an area which requires attention within the scope of the land transport policy." Do you want to make any comment about either or both of those that might help us?

MR KEARNEY: Obliquely, we've referred to matters we believe that Rail Access should be addressing with the inquiry. If we look at the old environment where we had a vertical integrated railway operating in New South Wales, and if we compare our environment with that of say, North America, by and large we still see vertical integrated railways operating, so that the decisions that have been taken on the operation of a system, take into account the nature of the infrastructure, the required investment infrastructure, and how the infrastructure itself can contribute to the operation of the trains across that infrastructure. It's early days for Rail Access Corporation and the infrastructure basically is sound but there could be some pinch points emerging in the infrastructure to particularly support the Hunter Valley coal producers. We believe there's a need for co-ordinated planning between the operators and infrastructure provider, looking at how best to address some of those pinch points, and it's largely, I think, up to Rail Access to provide FreightCorp and our coal clients with the confidence that if we look 5 and 10 years out, the infrastructure will remain adequate for the task at hand. Because in many cases infrastructure development we are talking about relatively long leave time, capital expenditure and development.

PRESIDING COMMISSIONER: And if we just take one last question in this area here, did you have any idea about the nature of that "planning" process that ought to be put in place? Were you suggesting that it needs to be sort of coordinated with industry or did you have any thoughts in mind of how that might happen?

MR KEARNEY: We believe there's a need for close coordination with rail operators, so that the significant rail operators have an opportunity to work with Rail Access in identifying appropriate infrastructure. The last thing that we, FreightCorp, are looking for, is what you might term "gold plating" in infrastructure. We're looking for infrastructure that's fit for purpose, and when we sit down with our coal clients we can confidently say looking on a 5 year horizon, yes, infrastructure will be adequate. We can then nominate the likely capacity of that infrastructure in annualised tonnage, and understand clearly what our investment strategy should be in terms of the application of new rolling stock and size of trains still operating.

PRESIDING COMMISSIONER: Thank you. That's very helpful. I don't have anything else that I wanted to cover. Keith?

MR HORTON-STEPHENS: No, I'm fine.

PRESIDING COMMISSIONER: Just one last thing. We noticed, I think you cover in your submission and you make the point that you'd actually been working with Port Waratah Coal Services on the study into the Hunter Valley coal chain. Is that a publicly available document?

MR KEARNEY: No, it was a document that was prepared with the assistance of PWCS, representatives of the coal industry, and ourselves, and the assistance of a consultant, and that's a document that's shared by the three parties.

PRESIDING COMMISSIONER: Is it? And I mean, is there - - -

MR KEARNEY: It's being used though by the three parties as a reference for many of the initiatives that we're collectively carrying forward today.

PRESIDING COMMISSIONER: Would you be able to at least take on notice, the possibility that we might at least be able to cite that, even if it was on a confidential basis?

MR KEARNEY: I'd just like to have the opportunity to discuss that with PWCS and the Minerals Council.

PRESIDING COMMISSIONER: I accept that. I completely accept that, that's why I thought I'd raise it with you now to see the possibility of that. Again, if necessary, we can keep the content confidential, if necessary. And again, just if I could ask you to note, as I think you already have, that possibility of talking to us on a confidential basis about the extent to which the appropriate level of the return on investment or return on assets is likely to be delayed as a result of bringing forward some of that investment. Terry, is there anything else that you wanted to cover with us?

MR KEARNEY: I don't believe so, Chairman. I'd just like to thank the Inquiry for the opportunity to present our submission to you.

PRESIDING COMMISSIONER: That was very helpful and can I say thank you very much for what I thought was a very readable and thoughtful submission. I appreciated the opportunity to go through it in detail and thanks for participating.

MR KEARNEY: I'd just like to leave with you a copy of our annual report and I've also included a paper I presented at the Newcastle Export Forum that was chaired by the Ministry of Resources the Friday before last.

MR KEARNEY: Thanks Terry. Thanks very much. If there is anything else after this hearing that you want to bring to our attention just feel free to do so, we'd be only too pleased to receive it. Thanks very much. Why don't we just take a 5 minute break and then our next participant will be Phillip McCarthy from Powercoal, I think, who I see sitting in the audience. So we'll just take a break for a couple of minutes.

INQUIRY ADJOURNED AT 2.07 PM

INQUIRY RE-CONVENED AT 2.11 PM

PRESIDING COMMISSIONER: We now have our second participant for this afternoon. We have Powercoal who is represented by Mr Phillip McCarthy. Phillip, would you mind just introducing yourself in what capacity you are here today so that we can get your voice on to the transcript, please?

MR McCARTHY: Thanks, Chairman. Yes, I'm Phillip McCarthy of Powercoal. My role in Powercoal is managing director, therefore, as chief executive officer of the company, I bring this evidence to the Commission.

PRESIDING COMMISSIONER: Would you now like to just introduce the point that you want to make with us and then we can have a discussion of that as we're going through them?

MR McCARTHY: Well, establishing the ownership of Powercoal, I believe is important to set the scene. Powercoal is a wholly owned subsidiary company of Pacific Power. Pacific Power, of course, was the generator in New South Wales but was dis-aggregated and now Pacific Power has basically three business. It has (indistinct), it has a major engineering and consulting business that operates in Australia and internationally, and it is also the shareholder in Powercoal. So all shares of Powercoal are held by Pacific Power. Powercoal Pty Ltd, is a stand alone subsidiary company of Pacific Power, and has its own board of directors with an independent chairman, Mr Gene Herbert, who is our independent chairman, it has independent directors as well as the chief executive of Pacific Power, on our board.

We operate at arms length commercial relationship from Pacific Power with our own accounts and for all intents and purposes, are the same as any other coal company, it just so happens our shareholder is Pacific Power, all shares owned by the one sharehohlder.

Powercoal as a business is very similar to all other coal companies. We believe our business imperatives can be simply explained in the five "whats" that we do, and that's safety, reliability of supply to our customers, we have to grow the business and grow the profit. Our mines require continued investment and around mines are like octopus, they have tentacles reaching out, you have to service those tentacles, that's conveyors and electrical reticulation systems et cetera, so you have to have sufficient cash to continue the investment. And obviously we have to serve our shareholders and reward our employees.

That is the "what" of our business imperatives. The "how" of our business imperatives is basically under three headings. We have to have a positive change process to have continuous improvement. We have to work towards achieving world class productivity, however one measures world class productivity, and we have to create a culture within our workforce that links their rewards and their benefits to productivity. One cannot be achieved without the other. People have to recognise that linkage.

The issue, of course, for many coal companies in the domestic and international market is just what that market is doing. And what I'd propose, chairman, is to give the Commission an overview of what's happening in the domestic market, and then spend a few moments on the international market. And no matter which sector of industry a company is operating, I think it's fair to say that the coal industry is in crisis or on the edge of crisis. I'm sure if we're not in it yet, we're almost in it.

We see an industry where supply is ahead of demand. We see demand is growing strongly but supply is outstripping that demand. We see the Port of Newcastle, seven of the eight Powercoal mines are located in the Newcastle region. We see the Port of Newcastle with a name plate capacity of

66 million tonne, achieving through-puts less than that, somewhere between 60 and 62 million tonne per annum. However, our marketing people are certainly up to the task because they've got the ships arriving at somewhere between 78 and 82 million tonne a year. And therefore, we obviously have huge demurrage charges in the port, and I'll turn to that shortly.

But all these events, of course, lead to an over-supply in the domestic market because most coal mining companies have the ability either to sell internationally or in the domestic market. And traditionally, the domestic market has been somewhat of lower price than the international market, and therefore people in general have chased Japanese benchmark pricing to gain sufficient margins to operate their business. But with the emergence this year of both the Japanese power utilities and KEPCO of Korea, into the spot market business, means now that many producers are looking to hedge their bets, as you might say, to have coal in the domestic market as well as the international market because the price variance between spot market and domestic markets is very little.

Now, the domestic market, of course, is one very large consumer, being the electricity industry, and a smaller producer being the steel industry. And in general the steel industry have their own minds vertically (?) integrated back to their steel mill, particularly in Port Kembla. So my comments will really focus on the electricity market in New South Wales, but obviously, that looks to the national electricity market that has been in operation this year. So currently that national electricity market is a two horse race, Victoria and New South Wales. Victoria, as we all know, has been privatised. They have low cost coal, they have low incremental cost of coal, and they have either low or non-existing royalties on that coal to their government, whereas New South Wales pays $1.66 per tonne. So therefore, no matter how you go up to that starting line in New South Wales, you've paid a levy to the government in the form of a royalty of $1.66 a tonne before you even get to the starter's gate. It's almost an input tax to electricity cost.

So therefore, Victoria, in theory, has a very good starting base. Obviously, there's some disadvantages in brown coal in Victoria but I won't dwell on that for the moment. It is, suffice to say, that the economics of the position would be that the Victorians in general, have a lower fuel cost input to their power stations.

So to be in the market and in fact, to push back the flowing tide of electricity from Victoria to New South Wales, the New South Wales generators are chasing low prices. Last week, Macquarie Generation, that is the company owned by the New South Wales Government that operates Bayswater and Lidell Power Stations, and produces 40 per cent of the electricity of New South Wales, released their annual report. That's publicly available. And it's very interesting to note that Macquarie Generation's comment in that annual report, and I'll just read from the chief-executives comments in that report. "The review of our current and future coal supplies provides us with a window of opportunity for a creative arrangement with coal suppliers. Macquarie Generation's cost of fuel will have to fall year on year to maintain it's competitive position but we believe such reductions are sustainable with increasing mining efficiency."

Those words, I believe, are worthwhile focusing on for a few moments. Clearly, that is one generator saying that they have an expectation that they can drive down fuel price, and I'm sure the other two generators, namely, Delta Electricity and Pacific Power, would echo exactly the same words. And indeed, are echoing the same words.

What does this mean for a coal supplier? It means the price of his product will continue to fall. We have seen in the last 7 years huge reductions in coal prices and that has been very well documented and published through the previous New South Wales Government and used to be published well in the annual reports of Pacific Power. One problem at the current time with the annual reports issued by the generators is they are very scant on details. Obviously, for commercial reasons, they are not publishing anything like companies normally publish in annual reports, apart from their statutory accounts.

So we will see a market which is under stress, a market that is really being driven downwards by the generators because the New South Wales generators are continuing to require lower cost of fuel. They have to do that, of course, because of the low cost of fuel with the Victorian generators. And it's most interesting when one looks at the profile of the Victorian generators, in the Financial Review on Friday 22 August 1997, the Financial Review had published some of the operational and statistical data on New South Wales, Victoria and Queensland generators. And I will furnish to the Commission, the comparative analysis of productivity measures of the generators of New South Wales, Victoria and Queensland. And it is quite clear when one looks at Victoria, the yellow bar there, Victoria on every count, is ahead of the other two. The other two, of course, are still State owned. Victoria has been privatised. And obviously, out of that, of course, has meant major job reductions in the Victorian generation industry, and obviously, those numbers of people are still sitting in the New South Wales industry. So I will hand that to the Commissioner.

That alone, when one considers fuel cost and those comparative performance analysis, certainly indicate that Victoria can be more competitive. However, courtesy of Internet, these days, the market indicators under the national electricity market are published each week, and I also hand to the Commission some data that's up to early November, showing the amount of times where the connection between New South Wales and Victoria has constrained the market. And then also, the impact Victoria has been having on New South Wales. Above the line, the blue bars there show Victoria pushing power into New South Wales on a per week basis, averaging about 60 gigawatt hours, and for a couple of weeks in October, New South Wales pushing power into Victoria. So, a very quick view of that surely indicates that the Victorians are taking market share from New South Wales. And it's no secret that the cost of coal and the better operational performance of the Victorian generators support that view.

So where does that leave coal suppliers? And Powercoal, I might add for the record, supplies 36 per cent of the New South Wales coal for electricity generation. All that coal has been won in open competitive tendering, it is not through vertical integration, so therefore, as a company we have to stand in the market the same as everybody else.

But obviously, as coal producers supplying that domestic market we're finding it difficult for productivity to keep pace with market requirements. Productivity improvements and cost controls are the only ways that we will be able to gain and retain those markets. And from what our experience has been, whether it be our productivity or our costs, we can't vary them at the rate to the same extent as the rate of market change. I would suggest that there are many institutional impediments in New South Wales which tend to hold back that rate of change. So the three issues that I will now focus on is productivity, costs and lack of flexibility. And I think all three have a pervading influence by the institutional impediments that are quite clear in New South Wales.

So turning to productivity, it is fair to say with Powercoal, like most other coal companies, productivity is improving, the rate seems to be on average, around the 5 per cent per annum. We do have peaks of 7 per cent, then tend to fall back a little, but on average, the long-term average is being about
5 per cent per annum.

PRESIDING COMMISSIONER: Before you go on. When you talk about productivity, are you talking that as in the labour productivity?

MR McCARTHY: This is labour productivity measured by total tonnes produced divided by total workforce per mine. So tonnes per employee per year is the standard on which a lot of us have been using in recent years because with variation in shift lengths and days in the year, the output per man shift that the Joint Coal Board and others used to publish, are almost meaningful statistics. So the Americans tend to use tonnes per employee per hour, and we've tended to go up scale into tonnes per employee per year.

So productivity obviously, is the key to getting labour costs down and to compete. But in underground coal where you are adjacent to a power plant, labour costs are approximately 50 to 52 per cent of total cost. So obviously that is the big ticket item in terms of improving your cost profile.

Other costs vary from royalty, as I said, $1.66 a tonne through a whole range of government charges, local government charges, electricity costs, rates, taxes, insurances, and then right through to the corporate charges which bank charges et cetera, can influence. And I know in our company, along with other companies, all of us have a real focus on cost control and cost avoidance. The industry certainly has no fat. The banks do not like dealing with coal companies because we keep on saying we can't afford the bank fees. Suppliers find it difficult because margins on their products to us are always under challenge, so cost control and cost avoidance are very much part of it.

But the third issue is, I think, the real emerging issue, and that is, flexibility. And before I go on to flexibility, I'll just reiterate those two other points of productivity is our way of reducing our labour cost. Our labour cost is approximately 50 per cent of our total cost. Cost control and cost avoidance are other ways of ratcheting down those costs. But when we reiterate the words out of the Macquarie Generation 1997 annual report, I think it can be summed up in one word, flexibility. What generators are wanting is the coal companies to manage part of their risk. And in fact, what they're wanting coal companies to do is manage both volume risk and price risk, in that very volatile electricity market.

That is new territory for many coal mines because most mines are set up to produce X number of million tonne per year, and the marketing people sell at whatever price they can get for that type of tonnage. But with generators, they're saying they want much more flexibility than what they've look at in the past. And in this case you could see flexibility of say, plus or minus 30 or 40 per cent of the volume they require. Now, that becomes a very difficult market and it requires different approaches other than just marketing, to overcome that problem.

I can see in our company along with others in the New South Wales industry, we are to the stage where mines will have to be driven up and down depending upon the market forces of the electricity generation industry. And that is very similar to what happens in the US, where quite often you'll see mines having layoffs for 6 weeks or 6 months or 3 months when generators have got major outages with plant re-builds or market prices are not sufficient to justify running that plant. So instead of mines being fixed operations, I believe we will see the need to flex those operations to suit markets. And that's very particular the point in Powercoal because of the 10 million tonne per year we produce, 6 million of that is not suitable for any other market other than domestic power generation. So it is not simply saying, "Well, if you can't sell it to the local generator, flog it off at the spot market price." We do not have any other market for much of that coal. So therefore if that market flexes, the mine automatically must flex.

And that's really, gentlemen, where the institutional impediments start to play an important part. Flexibility, as I said, doesn't just look at the downside, it also looks at upside. So I can see mines of the future having to be much more flexible in the way they operate.

So let's talk very briefly about those institutional impediments. Here in New South Wales the Department of Resources are the body that manages the New South Wales legislation for mining approvals, equipment approvals,
et cetera. The underground coal industry has to use machines which are approved by the inspector of the Department. Sadly, I have witnessed in the last 3 months, something like $3 million worth of new machines, five in number, sitting idle either at the manufacturing plant or at

our mine sites because the Department have changed their standards, changed their rules or changed their opinion from the time the machine was ordered to the time the machine was manufactured. And we have been struggling ever since to get those machines approved.

It may seem only a small issue however, if we consider the way to raise productivity is about workforce motivation and technology, as we are trying hard to improve our underground technology, we find the Department's attitude towards innovation, towards technology, towards safe systems of work, to be draconian, would be one word for it, totally unrealistic is another word.

The Department seems to look to the past for its point of reference and their approval system is very much individualistic. The person involved is the judge and jury, instead of them clearly articulating, as they do in the U.S. certain standards that have to be achieved. This is having quite an impact on our company, and I'm sure, many others in the coal industry, and I'm sure it's an issue that the Commission will be hearing more about.

Likewise, we have a Department for you to mine coal, even though you've been through your environmental impact statement and development consent. In underground mines, still have to give approval for secondary extraction. That is long wall extraction, or pillar(?) extraction. And we have on a number of occasions, seen those approvals been given, 1 or 2 years ahead of time, which is appropriate, and then see them being unilaterally withdrawn by the Department through some problems the Department has with approval processes. It takes a certainty in our business, and certainly causes compromise in mine planning, and that then causes mines to sometimes sit idle for days when you're waiting for the chief inspector to actually sign the approvals.

So that's an institutional impediment in terms of flexibility, because if the market requires flexibility, and if we've got the situation where we need to have an upswing in production short-term and we can't predict that of course, and then find the Department cannot handle such variations, well, then we sit with our arms folded.

If we do have those upswings, one way to supply labour to that is, of course, through the use of contractors, and yes, we of Powercoal use many contractors, both underground and for major maintenance. But, I must say that the use of contractors are an ongoing saga with both the unions and the AARC. The AARC seems to be the vanguard of the past practices and if the matter is taken there by the unions they are very slow to act in one way or another.

But, in terms of the unions themselves, there's no real problem at national level by the CFMEU in allowing contractors, but when you get into district level and mine site level, we then find that there are many constrains and controls on us. I recently had to write to some local union officials and remind them that if they continue down a certain path, I would have to look at it on a restraint of trade basis. They were trained to keep a certain contractor out of mines because of their union position, whatever that may be.

So, use of contractors, national level, okay. District and local level, it gets harder and harder, and particularly when you get more and more close to the mine site, because if Fred doesn't like Bill, obviously then there's problems and sometimes unions forget that there are laws in this land that everybody should live by.

So to get that flexibility, I believe we will see much more use of contractors and somehow the CFMEU has to be able to influence its district and local people to accept that.

On that point, I think it's worthwhile to refresh our memories, the articles in the Australian newspaper, 13th and 14 September 1997. An article by Nicholas Way, basically interviewing Mr Maitland, and it's interesting, Mr Maitland's words, Maitland developed a keen understanding of the power of the lodgers, that's the local mine site union lodge, and the districts, that's the areas.

"They have enormous power, in essence, we are still a Federation, it's how we operate. They, the districts, have their own autonomy, their own history, their own traditions. You could say the union is still a bit tribal. I - " speaking himself, Maitland, "Often refer to our union as a group of Scottish clans that fight each other all the time and only unite when they are told the English are coming." And I think that says a lot, and for my 32 years in the industry, I think Mr Maitland has certainly said it as it really is.

The national unions can do deals with companies to facilitate things, but it's how it's delivered on the ground, is the real problem, and no matter how we communicate with our workforce, no matter how we try and get them on side, they are very traditional and they take a lot of moving.

So when it comes to flexibility, we see district local unions having trouble with the use of contractors and the flexibility necessary for that, and we have people such as the Department of Resources.

Turning now to other institutional impediments, I often ponder why here in New South Wales, we have it prescribed that there shall be only one insurer for Workers Compensation. That is, Coal Mines Insurance with the Coal Board. The national competition policy was agreed by all governments. All governments are pursuing competition at various ways and means, and yet we still have a monopoly insurer, and whilst documented evidence suggests that they are doing a good job as an insurance company, I think that there's more to it than just the dollars of insurance. I think there's also the pervading influence of, "you are part of an industry", and I think that's an issue that needs to be really looked at closely.

This culture that we are an industry and therefore as an employee, we do not hold any - we don't believe the employer is relevant. We believe the industry is relevant, because by the nature of the process of union membership seniority, long service leave, and joint Coal Board Workers Compensation insurance, the employees see themselves employed by the industry. If one mine fails, so what? There'll be another one opened, and therefore, there's no allegiance to the business enterprise.

They see they are effective when they're damaging the business enterprise, when they're damaging the mouth that feeds them. The action, of course is, we are not happy about something that's happened on a mine site, so we'll have a strike. Most strikes, as you would know from all the documented evidence, are not national strikes. They're not major issues that stop the nation. They're the nitpicking issues of the day, and even though under the awards and enterprise agreements, we all have these very nice cooling off periods and processes to go through so that people do not lose time. We're still seeing walk-outs, or in American terminology, wild cat strikes, quite regularly.

And, indeed, under the ARC, there's no real way of getting them back to work in a hurry if they want to go that way. So, in fact, I believe to some extent we've gone backwards because previously, we could at least get them ordered back to work.

So, wild cat strikes are still a feature of the industry, and people still see they belong to the industry, not to the coal - they don't work for the coal company. And the strike action is their weapon, and yet it's damaging the enterprise that feeds them. So that's a major cultural issue and doesn't auger well for the flexible nature that we need as an industry, if we're going to stay in these domestic power station markets.

Let's look forward and see the impact if we can't achieve what our customers in the domestic electricity market want from us. In time, the line capacity from Victoria to New South Wales, will be increased and it will not be limited to 800 megawatt, so therefore, if New South Wales isn't competitive, Victoria will flow more power in. And if we stretch our imagination to the Year 2000 plus, obviously if coal suppliers can't match what the generator's requirements are, it will be almost like Britain, the dash for gas will be on, and for many reasons, gas can be attractive, and I think it's just the gas infrastructure in New South Wales that has prevented it thus far, that if we of the coal industry can't get our house in order, and be flexible to suit the generator's requirements, gas, I think, will be there in a big way and take an ever increasing piece of the market. So that will leave the New South Wales market, which is currently about 23 million tonne per year, under threat by both Victoria and by gas, and I would predict that market would shrink dramatically from its 23 million tonne.

So really it's incumbent upon the management and labour and the institutional supports around New South Wales, to look after the market they have. If we continue down the path that we're on, we will certainly lose that market. Management, of course, has a major part to play in it, because one of the problems in the coal industry, it's such an ingrained industry, that we lack fresh ideas. The management itself tends to use the past as a point of reference. Has not been used to the flexible approach, and therefore that also is a major challenge and that challenge is right through the whole of the workforce, not just at workforce level.

So for companies such as Powercoal that has 75 per cent of the domestic market, and 25 per cent of the export market, one might say, well, is it your intention to move more into the export market and less in the domestic market. And that may be a good business strategy, if you could actually export the tonnage. The markets are there, but unfortunately, our port of Newcastle, of which we're a shareholder, the PWCS arrangement, certainly is not matching market demand.

The port has 66 million tonne nameplate capacity, and currently is operating somewhere between 60 to 62 million tonne, and the arrival of ships is somewhere between 75 and 80 million tonne a year on an annualised basis. So, therefore, we find ourselves at the current time, in an unprofitable industry, however, it's interesting to note it's an industry that is spending somewhere near 120 million tonne a year in demurrage, in the port of Newcastle.

And to put that 120 million in context, that's about the cost of the next stage of development of Newcastle. We have a port that prides itself on a very low port charge of $2.80 a tonne, but after paying demurrage, you're up around some very high levels of $5 a tonne. So, on one hand we seem to have a price that looks right, but it doesn't happen in fact, because we're paying so much demurrage. The position unsustainable, and I think power coal and many other coal producers have come to the conclusion that we have to introduce a port allocation system, to suit the current capacity of 66 million tonne a year.

That will not suit all companies, and it will certainly have some major implications for the Hunter Coal Industry, but we cannot go on the way we're going. There are 37 ships off Newcastle now, and that will continue to grow.
Regardless of what we do, all stake holders are going to lose out. Customers will lose confidence in the port of Newcastle. Employment will drop, and employment opportunities will not be available. Generally in the past when the squeeze has been on, inefficient mines have closed and then new ones have opened up at the first turn of the upcycle. But, obviously, with a port that's constrained, people will not be investing.

Under the current situation of pouring 120 million down the drain on demurrage, companies will see further financial losses, and some businesses will fail. Obviously governments will lose royalties, payroll taxes, and opportunities to promote the Hunter. In fact, Queensland will be the benefactor out of the whole thing.

So, the port of Newcastle is an impediment on the growth. Much is said about the coal chain, and PWCS. But, sometimes if you sit back and look from outside in, you could be drawn to the conclusion that the whole coal chain, PWCS scenario, is somewhat like an old co-operative. Plenty of shareholders, but no real leadership, and I think we're currently seeing the need for the coal chain to be brought under the control of one management system. There is plenty of consultative bodies around and everybody's doing their best endeavours. But nobody has authority to make a decision. You can only go forward once you can make a decision, and we Australians are not known for consensus, so therefore, I fail to see how we're really going to get the port up to where it should be, while ever we have this current structure. And recently, the Minister of Mineral Resources, called a coal forum day in Newcastle. There is much talk about where we have come from. There's much been said about what committee's going to form the next committee, but there's not much being said about what positive measures are we going to take, so hence the concept of the co-operative.

So that's the port of Newcastle, and also the rail capacity and the rail system, whilst in certain areas there's been signs of improvement, just speaking of power coal, we've tried for something like 2 years to negotiate a fair contract with the freight corp, to no avail. Our price has not altered at all, and it's very hard to negotiate with somebody who will not negotiate. Somehow monopolies are not good at negotiating. They seem to think that the status quo is the best way to fix things. So that's another cost in terms of power coal export side of the business.

So, in summary, Powercoal 75 per cent domestic, 25 per cent export. Domestic markets under challenge, and the future of domestic markets will see lower prices and much more flexibility required. We have to realign our stake holders into the atmosphere of being flexible. Because if we use today, last week, last month, last year, or the last 5 years, flexibility is not a word in the dictionary. And that is not just the unions, it is all stake holders. And if we look at our exports, we have good markets in high priced markets, semi soft coke and coal and benchmark steaming coal, of low sulphur, low nitrogen. They are profitable business, but we are losing a lot of the margin through what's happening with the port of Newcastle, and rail freights that are just over the top for the short transport distance.

So, gentlemen, I believe I have given you some overview of our position.

PRESIDING COMMISSIONER: Thanks very much, you've covered quite a range of stuff there, so we might just try and maybe move through them a bit, one by one. You make quite a point about the importance of Victoria as a competitor in generation, and a couple of points where they just seem by implication to be suggesting that you're not really in the coal industry, but you're actually in the power generation industry. Would that be a fair representation the way you see your long-term future?

MR McCARTHY: that is the market we're in, yes. It certainly is the power generation industry.

PRESIDING COMMISSIONER: But one of the submissions that's come to us has actually said yes to that issue between Victoria might be a relatively short-term question. Relatively short-term in the context of the life of the coal industry anyway, that it's unlikely that there will be new generators built in Victoria, so if New South Wales can withstand the pressure for a few years, it might find itself in a very strong position in the long run.

MR McCARTHY: When one looks at investors paying up to 35 times ebit(?) for those power stations and considering the type of money they paid in the billions of dollars mark, obviously they have to get a significant return on taht investment.

The Victorian power stations can produce a lot more power than what they are producing. Some of the merchant banks and financial advisers to the consortiums who bid for the Victorian power generation assets, in conversation with me, have told me that a lot of the bid price, was on the future likelihood of them gaining further market share in New South Wales.

Places like Loyang A and Loyang B, are very modern power stations. The Americans talk about power plants having lives of 50 years. So I would see the situation being around for at least 20 or 30 years, which I think is a reasonably long time. I'm not one who believes that that competition will go away in 2, 3, 4, 5 years. Some are suggesting it will. I don't think so. There has been too much money put in front by the investors, to see them walk away from that investment.

PRESIDING COMMISSIONER: You also made, I think, quite a compelling case for the need for flexibility in terms of your relationship with your customers. Did you want to talk a bit more about how that might be translated in terms of flexibility to ..... the coal face?

MR McCARTHY: Flexibility can mean all things to all people, but we'll take a typical example. Take a customer, a power generator, who you have a contract of say 2 million tonne a year. That's the power generator's wish, that if he achieves in the market, what he wishes to achieve, he would buy 2 million tonne from you. But if he contracts himself to that 2 million tonne, he has to burn that coal, regardless of what happens in the market, and he may find himself as current spot prices are, where some generators have been bidding zero or 5, or some ridiculous number, which is far below their operating costs, or cost of fuel.

So, therefore, that generator will be looking for some risk management technique. He will want to be able to say, well, I will buy 1 million tonne from you as a base, and then leave the other 1 million tonne or whatever the arrangement might be, flexible. But, if I win in the market, I'll buy it from you.

Now, if you have a coal that can either go to the generator or into the export market, you can manage that quite simply by the variety of markets. But if you have a coal that is not suitable for other markets, you have to have virtually this idle capacity sitting there to service it. So, therefore, I could envisage times where you might have a mine working say at a million tonne a year capacity, as a base case, and then bringing in contractors to mine the other million tonne a year, if he is successful in the market, and bearing in mind, no step is 100 per cent, so it might be in steps of so much per month, 1 month he might need it, next month he mightn't. You can adjust that by stockpiles to some extent, but you don't normally carry a million tonne of stock, so therefore, you would probably see working the mine at a 2 million tonne annualised rate for 3 months, and at a 1 million tonne a year rate for another 3 months. And in the classical case in New South Wales, of course, is the difference in burn between summer and winter. Winter is the high burn. Summer is the low burn. Victoria, of course, is the opposite. Summer air-conditioning is the high burn and winter is the low burn, because they use alternate heating.

So, flexibility in that case would mean bringing in contractors to operate for so many months of the year. Now, that doesn't happen at the current time. Generally coal production is by full-time labour, and that really is the only way to do it. Otherwise, you would have full-time labour that's sitting idle for so many months of the year, and obviously one cannot afford to do that in those type of markets.

PRESIDING COMMISSIONER: But are you also suggesting that you should have access to part-time labour? That you don't currently have access to.

MR McCARTHY: We recently, as Powercoal, have got agreement from the CFMEU to use short-term labour, yes. We have people working under 2 and 3 month contracts. Now these are a breakthrough that's only happened in recent weeks. But it's the start of recognition of the need for flexibility. It's met a lot of resistance from local union members, local union officals, but that's the first step.

MR HORTON-STEPHENS: Is that for particular activities, maintenance, for example?

MR McCARTHY: That is, production, maintenance, and development.

MR HORTON-STEPHENS: It's the whole - yes.

MR McCARTHY: So we are advancing, but the quantum steps that will be required in the next 12 months, 2 years, are far in excess of what people can see at the current time.

PRESIDING COMMISSIONER: Were you also implying when you were talking about the length between the joint Coal Board, and Workers Compensation, that some of these flexibility arrangements might have a set of perverse incentives within them? That, if you actually were moving towards haviing more flexible work arrangements, that people with the relatively generous sets of arrangements that currently apply, might see it being ..... to actually be at work, but actually be off on Workers Compensation? Is that what you were implying?

MR McCARTHY: That's one of the issues. As I said, it's the real pervading influence on the industry and I will just speak for a couple of minutes on safety, because it's accidents that causes, in theory anyhow, lost time injuries which causes Workers Compensation. The coal industry, particularly the underground coal industry, and in particular, Powercoal, places safety as its first priority.

Now, safety is not just a word that you pay homage to. It's something you've got to live, breathe and do. Many people can have safety programs and safety posters and safety awards and safety committees and safety this and that, but what do you actually do in the workplace that makes the difference? And it really gets back to three issues. It gets back to having the right technology for the application. Quite often in our Australian underground mines, and in particular in Powercoal, that is not available to the international marketplace. We've had to put seed money forward, RMB programs to develop those pieces of technology, and I know in roof bolting in underground coal mines, we've improved the safety to no end by the amount of work and effort we, as a company, have put into that. Back in the '80's we had three fatalities in the 10 years with roof bolting accidents. Now, every person putting in roof bolts are under steel canopies and therefore they are not exposed to loose roof.

In coal and all the metalliferous mines, people still use 1930 technologies in roof bolting here you're standing under the material you're trying to support. So, there's a real doing element to safety in terms of the technology, and that's where commitment by boards of directors and senior people, about putting the money in and the resources in to make that happen is important.

The second level is the safe working procedure, and there's a lot of work and energy goes into that. And then the third thing is the behavioural side of the equation, getting people to have the right attitude towards the safe work and safe procedures. Because we Australians in general are not known for sticking to the system or the rules. We're bits of Mavericks. I contrast with the Americans who when they are given a procedure, they follow it. The first thing the average person does in Australia, I presume I'm one of them too, is you rip up the rule book, and you say, well, I'll do it my way. We're great at "my way" operating.

So we find that a lot of work is done, and is continuing to be done on safety. However, some bodies, such as the joint Coal Board, see it that they are the vanguards of safety, and sometimes put out messages that causes confusion amongst people where we're really going. And there's nothing worse for companies when you're dedicated to an end result of a safe mine, and a safe workplace and the right technology, for mixed messages to keep flowing in front of your employees. On one hand for them to say that they're the honest broker, that's the joint Coal Board, and to be talking about safety in generic terms is fine, but if they then by some of their actions, give people a fairly soft option, mankind is such that it will always take a soft option. And I think we have instances in that industry. It's not what I would call widespread, but I think it's the mixed messages that cause the problems.

PRESIDING COMMISSIONER: One of the participants I think is coming tomorrow, is suggesting that the joint Coal Board and the Coal Industry Tribunal have been very beneficial in the past, but it's now time for a significant change, and I think there usually in the mainstream, so that the industry becomes one with all industries in terms of the sets of arrangements that should apply. Do you want to offer a comment about that?

MR McCARTHY: Well, I think it's incumbant upon companies like Powercoal to take that position because as you said earlier, Mr Chairman, Powercoal with 75 per cent of its product in the electricity market, is very, very close to the electricity ministry, and if we want to wrap ourselves up in cottonwool and pretend we're in a cocoon, locked away from other industries, well, then obviously we won't stay there long. Market forces will override us. So mainstreaming of all of these bodies around us, is not just something we'd like to do, it's an imperative on us because of the - the markets will drive us that way.

PRESIDING COMMISSIONER: But isn't there an argument that says that - certainly underground mining, is quite different to most other industries, and therefore, should be looked at a little differently, say from surface mining, opencut mining?

MR McCARTHY: There's a case in that, but let's differentiate between underground mining and any other form of mining, or any other form of industry. Let's just say between underground coal and opencut coal. The only real difference is the core risks inherent in underground coal mining, which are basically the roof falling in, the walls falling in, or gas and fire, or water flooding it. Opencuts can have water flooding. So there's some core risks that are inherent in underground coal, that have to be managed.

Sadly the number of instances and fatalities we have in New South Wales and Australia, prove that prescriptive legislation alone does not work. If we look at other industries - just take the electricity industry. Look at the amount of energy in any one of those power stations. They can have huge blow-ups in power stations if they didn't have safe symptoms of work. If they didn't plan and control the environment they're in.

They don't have the level of prescriptive legislation, or the institutions overviewing them, that the coal industry does have. Look at the oil industry? Look at the gas industry? Look out over here to Clyde Refinery or down to Kernall Refinery. They're plants that have many risks, but likewise, they don't have all this proliferation of support around them. So, all those enterprises, electricity, gas, oil, and many others, understand their risks and manage them.

Because of our origins in coal over 200 years, we've been an industry that's - were given a pair of crutches in the very early days, and we were told really that you can't walk by yourself, you need these crutches under you, to support you. This is, you know, the 1912 Coal Mines Regulation Act, which after a bit of panel beating is still basically the same, and inspectors and et ceteras, et et ceteras, et ceteras, all there to assist you on your way.

And if you look back as recently as 1963, there was a famous newspaper article by the then Senator Spooner, who was the Minister for National Development. He was opening a new mine in the Lake Macquarie area called Chain Valley, and he was commenting with Sir Edward Warren, the then chairman of Coal and Allied, about how the 110 mines of the Newcastle Cessnock coal fields were down to 90, and yet they still produce the same amount of coal. We've now got something like 16 producing four times the amount of coal. So, when it was Ma and Pa and Dad and Dave having their own mine, yes, I can understand why the need for the crutches. But when you look at some of Australia's largest companies and some of the largest international, multi-national companies in the world, being in coal mining today, it begs the question, why should major companies who manage huge risks in other industries, come into coal and finding they have all these institutional arrangements placed upon them. Because really, we tend to manage by the legislation rather than manage by what needs to be managed.

MR HORTON-STEPHENS: Just take that a little further in terms of trying to find the most practical solutions. You present a very powerful picture, and a pretty persuasive case for the need for some change. If you don't change, then you're going to lose the market. There will be no mines or, you know, jobs. Other perhaps through the export market, that opens up another series of problems.

But in terms of the Departmental regulation, you talk not only about standards, and you've just said it again effectively, that the standards are no longer appropriate, but you also talked about the Gold Coast - I hate using ..... but with the Gold Coast changing, you just don't know in fact what the standard is, you don't know what the rules are, you don't know what the opinions are, they change from person to person. What's the solution? Where lots of attempts have been made over the years to change the Coal Mines Regulation Act, and it has been changed. There are lots of committees, the changes have been made. What's the solution to they?

MR McCARTHY: Well, having been a player in that area for - right back to 1976, in the first major round of them, we've all made the fatal mistake of trying to take something that's current and panel beat it into what we want for the future. If we look at the U.S. legislation, and I'm not suggesting the U.S. legislation is the be all and end all, but if you look at the U.S. legislation that sets up the desired outcomes from the mine, in terms of safety, it calls for things such as a roof support plan, a ventilation plan, a spontaneous combustion plan, et cetera, et cetera, and then defines the outcomes required of the coal operators.

And then each operator has to consider the risks and manage those risks within that plan that that operator has to pull together, so therefore, the operator has ownership of that plan. Whereas, when you have the Parliament tabling legislation that's been built by some committee that resembles a camel, I think we end up with something that (a) it's not in plain English; (b) nobody has any ownership of; and (c) it is out of date before it ever gets through Parliament.

In the world that we live in today, the technology is changing so fast that really a centralist approach does not work, and that's one thing I think the Americans have got right in the fact that their legislation is an enabling legislation. It puts up the requirements and then requires each company to come forward with its own operational plan and risk management process for the particular mine, and tht enabling legislation, highlights the areas that have got to be covered.

If they then want to change the legislation, they go through quite an exhaustive process of submissions and hearings and a proper debate, so that people can understand the impacts. Here we tend to, when we get into those committees, tend to run along by faction or who's got the loudest voice of the day. We tend to lose the bigger picture, so I think there's a giant contrast between what is best practice, and I think it's only the U.S. that I've seen enabling legislation that allows innovation, or allows new technology, but leaves the burden of safety where it truly belongs, and that's with management. Management has to manage safely.

MR HORTON-STEPHENS: Can I switch slightly to one of the other institutional impediments? You describe the AILC as the vanguard of past practices. The same sort of thought, I suppose. What changes do you think are necessary in that respect?

PRESIDING COMMISSIONER: Maybe just before you go onto that, maybe you could explain the extent to which you are able to take advantage of enterprise bargaining arrangements and the extent to which the existing Act, which has recently been put in place, gives you the ability to achieve a sort of flexibility, which I think you were asking for.

MR McCARTHY: Let's just take a generic view of enterprise bargaining. Enterprise bargaining in coal is probably as mature, if not more mature, than most other industries in Australia. Lots of enterprise agreements have been struck and are working in coal. That might be fine. The question really about that is, has the productivity resulted from enterprise bargaining, or has it come through technology or natural progression of work systems?

And the second question, how much have people paid for the right? And, in fact, as recently as August of this year, the general president of the CFMEU, agreed with the proposition that labour costs have risen greater than the productivity increases. And not just by a few per cent, by a conseriable per cent.

The comparison can be drawn from the Canadian Coal Industry, which is mainly metallurgical coal into the Japanese steel mills. They have published recently in an APEC forum, with fairly stable workforce, therefore, this graph would show productivity increasing with very stable wages, and I will hand that to the Commission, that is as recently as November of this year in a APEC Coal Flow Seminar.

So the first issue, I think, for many of us has been, for the flexibility, how much do you have to pay? And if you're in steaming coal and you're underground with the majority in domestic market, there's not too many bikkies in the tin. So, we as a company, have mine site agreements that were hooked to the original work model arrangement which has seen substantial change in the way work is being done. We've had three attempts at enterprise agreements and fail on each. The reason being, we weren't matching the market in terms of the dollars we were prepared to pay for the change.

The interesting thing is, in the industry you can virtually take all the change over time, or pay up and try and get it in one step. If then you have paid up and you don't get the productivity improvements, you're left with the legacy of high rates that you can't negotiate down. And there are some classic examples west of Sydney, of that at the current time.

So the other down side, of course is, under the legislation one can be locked into a bargaining period. People take their bat and ball home and I think there's a reasonable sized dispute in the Hunter Valley that's been going on for many weeks, which is a classical case of both sides having different views as to what amount of change people are prepared to take. So, really when you look at all the aids across the coal industry, they have been within the boundaries of what the aware used to prescribe. They haven't really been able to get outside of the prescribed boundaries of seniority, first off, last on, those type of processes.

PRESIDING COMMISSIONER: But if we argue that enterprise agreement brings together two mature parties, who have the capability of agreeing to certain circumstances, why should we be worried about it if it turns out that those two mature groups can't come to agreement or come to an agreement which actually puts either one of them at a significant disadvantage. What's wrong with that as a system?

MR McCARTHY: There is only one word there that one has to focus on. That's "maturity" and I think quite often amongst our workforce, I'm not actually using the word "union" deliberately, it's the people that work for us. The people who drink at the pub or the club with their mate who works at the other mine, who's got a base rate of, you know, 760 bucks, as against my $580. I work in a mine, I also am going to get $760. He doesn't see the connection between the guy who's getting $760 has a productivity of 20,000 tonne per employee per year, and I'm doing 5,000 tonne per employee per year.

So until we get that connection between linking reward to productivity, we will never get the maturity required to do the EA. I, myself, have been involved for weeks and months, directly with workforces of two mines, and I thought I could solve any damn thing, and I fell over.

Those two mines are in a very volatile domestic electricity market with no other outlet for their product. They have one year remaining on their coal supply contract and if I can't turn them around within this 12 months I am sure they won't win a contract next time and there will be another 356 jobs lost.

So even though that is all well known, well explained, and I must say that even the CFMEU have facilitated, pushed and helped us to try and bring reality into these people, but if people have been working in the same mine for 30 years odd they are very ingrained to what they did yesterday, and unfortunately people don't see the down side until they've got that terrible piece of paper in their hand which says, "Don't come Monday."

PRESIDING COMMISSIONER: If I could just follow this a little bit though, because clearly what the commissioner is trying to understand is whether the institutional framework stops that reality from eventually taking place. And we don't want to interfere one way or the other, but if the thing will play itself out to such that you will eventually need to close that mine, eventually that reality will be there and you will move on and presumably look for other mines that are more productive.

So what we are trying to understand is to what extent is the institutional framework appropriate for what will eventually be a playing out of that particular scenario.

MR McCARTHY: If both parties are mature there is no need for intervention of the referee. If the institution called the ARC in this case, is going to be there and continues to look to the past for its point of reference, say if the two parties get into disputation and it is called into arbitration, and the ARC take the view, the past is good enough or a small increment on top of the past is fair enough, then the system clearly fails.

At the current time, when one considers the way the scales are set, the company has an asset and generally has contracts and customers and goodwill and things that are worth money, the employees have their jobs and one would think, in a mature position, both sides would be able to find common ground.

However, as I said, my personal experience has been that the employers themselves take a view, "We can always get much more, that guy on the opposite side of the table is only bluffing," then if they continue down the track of taking protective action and then get to the point where there is a long strike, there is only two things that happen. The company loses its assets and the employees lose their jobs. That is a great shame for Australia, particularly in underground mines, because very rarely does an underground mine reopen, once it is closed. Very rare indeed.

So Australian loses resources that are in the ground that won't be mined again. It is big stakes.

PRESIDING COMMISSIONER: I guess the thing I am trying to understand is, do you think the system will allow that to play itself out? And are you comfortable with the way in which that will play itself out?

I guess that what we are trying to understand is, even if one party decides that it actually doesn't want to accept what you might describe as the reality, whether that be the side of management or the work force, is there an natural consequence to that which means that reality will eventually come about. Either they will realise that you are bluffing because you will continue to operate that mine, or alternatively, they will realise that you are not bluffing because you will close the mine and there will be a natural result of that process that will help people to understand what the consequences are. Are you comfortable that that, if you like, that natural order if I can use the terrible term, might play itself out in that context?

MR McCARTHY: The history would have it of course, that the ARC has intervened, and I think there is recent evidence of the ARC intervening. But I am sceptical about the current system delivering any outcome. I think the concept behind it, that natural order will take place, both parties will bargain and eventually give us an outcome, is fine, but if you have got the situation where you operate eight mines, as we do, and one mine is locked up in a battle, then you all of a sudden see that starting to flow over to the others, and there is no safeguard. You can't build a fence around that enterprise. Then you are playing an all or nothing game.

The current system seems to be a playing field that knows no boundaries and there doesn't appear at law at the current time to be any realistic processes that can deliver within a reasonable time frame some fences to keep things within their boundaries.

So the ARC, I don't see by the actions in the last 12 months, or current actions, either enables the parties to move forward, nor does it do anything other than sometimes hinder the process by going on and on and on in ever decreasing circles.

PRESIDING COMMISSIONER: Maybe if I should - I intervened with Keith's question.

MR HORTON-STEPHENS: Sorry, ...

PRESIDING COMMISSIONER: But was the - what Keith was also trying to arrive at was something not dissimilar to the point you were raising - since the joint coal board, are there any practical issues which you think the Commission should be thinking about that might help to address some of these questions?

MR McCARTHY: The one thing the Commission has to start to get it's head around, is the commercial realities of the players and the commercial realities of the marketplace.

Rarely does the Commission consider those type of issues. I think if there is one thing the Commission should be forced to do is take into consideration the commercial position because markets are changing and if employees and companies are left to thump it out in the ring for 15 rounds, and both damaging one another to the extent that the Australian economy, even though it is only a small step of it, is hurting, then the Commission should at least remind the parties of the commercial consequences.

Because what is not recognised by the Commission, or the public in general or governments in general is the multiplier effect of mining. Quite often we hear about mining and the multiplying effect when we go through environmental impact statements, but I draw the Commission's attention to what happens in the manufacturing sector of mining equipment, products and services, a body called Austmine, that is linked to Austrade, report that they export about a billion dollars a year of products and services. That is all built on the back of our coal industry and mining industry and if we don't have a viable industry that is world class, these manufacturing facilities will also die off. So it is not just the coal product.

I think that is one area where the Commission can really pick up, and I think that the bodies, such as Austmine, can really identify for the Commission the part it plays in the whole economy.

PRESIDING COMMISSIONER: We have taken a lot of your time, but I had a couple of other questions. Just one that I can talk about is the port of Newcastle for one minute. What is to stop the parties from resolving this issue? I mean, you've got some of the biggest parties in the world coal industry, if they wished to, they presumably could simply have a shareholding and they could contract out a management arrangement and they could do the sort of things that you are suggesting. Why don't they do that?

MR McCARTHY: I am not sure. Certainly the concept of contracting out the management and having a contractor coal chain has been discussed, but we seem to - as I mentioned, we seem to have like - even though we are shareholders, it is almost like a co-operative. They are the world's large companies, they are the big multi-nationals who are the managerial .... and some of the leading players. But we don't seem to be able to get enough fire power together of the same mind, even though $120 million a year is being given to the ship owners to leave their vessels anchored off the port.

PRESIDING COMMISSIONER: Again, if I could talk about this particular inquiry, in a sense I guess - this is somewhat of a provocative question, but if mature people who have been involved in the industry for years want to actually transfer money to their customers why should the government bother?

MR McCARTHY: Exactly.

PRESIDING COMMISSIONER: Why not let them do it?

MR McCARTHY: Exactly. The industry for years said, "We will manage it, leave it to us", well, we are not doing it too well. So I agree with you, that it is an industry issue and if the government owned the port one can imagine the hue and cry by the industry about government inefficiency. Maybe it is the other way around, maybe the Industry Commission and government can say, "Hey guys, what's wrong with your efficiency? Why can't you get together and make things happen? Leave your parochialism in the various parts of the world where you may have your head office and get together in the port of Newcastle and do something positive."

PRESIDING COMMISSIONER: Okay. Keith?

MR HORTON-STEPHENS: Yes, just one last question, it relates to competition, or rather the lack of it. You talked about the problem of getting your freight charges down. That's because there is a monopoly freight operator at the moment, but that may change.

The other area I guess where monopolies is at work is with the joint coal board to come back to that one. What would you advocate there? Opening it up to competition?

MR McCARTHY: Well, Workers Compensation is covered in various way in various companies, depending upon their size, there is large companies have self insurance of course and therefore manage it very closely, there is plenty of insurance providers for other industries and then there is the concept of all the workcovers that always seem to be in strife. So really it looks as though, for the variety of players in the industry there seems to be a need for larger companies who self-insure all the other parts of the business, should be able to do the same for their coal, why should they be segregated in coal, and other players go to the market and make sure there is adequate and proper coverage.

MR HORTON-STEPHENS: So you would leave it for a decision of the individual mines?

MR McCARTHY: Of the individual mines. If we bring in a contractor to build a wigwam plant, one of the things in our specification is he has to come forward with his workers compensation insurance policy. I see it very much the same in that situation.

PRESIDING COMMISSIONER: What would be the practical effect on your company. Would you be inclined to self insure,or take some other alternative arrangements and how would that change your strategic behaviour?

MR McCARTHY: I will deal with the second part first, the strategic behaviour. That is really what it is about.

If you are accountable for something you tend to manage it very closely. If it is something that is almost like a levy, total cost of insurance divided by the total number of companies in some methodology, it is a levy, it's a cost plus type situation. If they run behind, then the levy goes up and if they are doing well, sometimes it might come down.

I think the behaviour and the attitude of companies change when people are accountable in the company to do it. Whether that be by self insurance or whether it be by contracting out to a variety of companies of insurance it still will end up with the same result, change in behaviour of the insured.

MR HORTON-STEPHENS: One more question, you mentioned fairly early in the piece, I think, a question of the New South Wales royalty system. Do you think it reasonable that the community get a return from the exploitation of an asset which it owns, and if so, I guess, how and the obvious question there is, "Well, if you don't like the present system because it is not profit related, perhaps we should think about moving to a resource rent tax."

MR McCARTHY: I think it is right and proper that communities do get something from the resource in the area, and in fact it even goes one step further that the regional community where it comes from should get something off it, not just here in Sydney. Say in the New South Wales case. But all that aside, I think if there is going to be a national electricity market all players should line up to the starters gun on the same line. I don't see why somebody should be $1.66 behind the other. So if it's good enough for one, it should be good enough for all. It sets the ....

MR HORTON-STEPHENS: In terms of the local community getting a return, I suppose some people would argue that local government rates look after that particular element?

MR McCARTHY: In a very minor way. But I think when major mining expansions go into the community, I reflect on the early 1970s when I lived in Singleton, there were two mines and all of a sudden there were 20 and you ended up with a town under stress and I think it is incumbent upon governments who collect the royalty to put some money back in the infrastructure in such communities. Local **-** rates through local councils take a long time to aggregate up sufficient to put such infrastructure in place.

PRESIDING COMMISSIONER: Thank you very much you have been very generous with your time and I am sorry we have kept you a bit longer than we expected, but what you had to say was very interesting. Thank you very much for that.

I think we will break for five minutes and we will come back again in about five minutes time.

INQUIRY ADJOURNED AT 3.32 PM

INQUIRY RESUMED AT 3.46 PM

PRESIDING COMMISSIONER: I would now like to reconvene this Industry Commission hearing into black coal. We now have with us Camberwell Coal, could you please introduce yourself and what capacity you are here with us today, please?

MR GAZZARD: Yes, I am Rick Gazzard, I am the general manager of Camberwell Coal and I have been involved in the project since 1989, construction phase.

MR MUIR: My name is Lance Muir, I am the manager of Human Resources, Coal Preparation and Shipping and I have been with Camberwell since 1990.

PRESIDING COMMISSIONER: You might want to just go through the main points in your submission, but before you do that, could I say how much I enjoyed reading it. I mean, all of the submissions have been very good but I must say I enjoyed reading it, it had a great clarity about it and it was very, very valuable and I enjoyed it.

If you wanted to make any main comments that you have you might also want to indicate to us how much of this particular submission that you have given us, is actually confidential, so that we could then know what we ought to be discussing with you and what we should be keeping to ourselves.

MR GAZZARD: Thank you, Lance is just checking the submission and he will give you an answer on that confidentiality side when I throw the ball to him.

I want to make a few opening comments and then I will throw it over to Lance to go through the submission and field any questions that you might have about the submission. I think the point that we would like to make, the key challenge that we see for the industry, particularly the thermal coal industry and the semi-soft coke and coal industry, based in the Hunter Valley, we have to work out how the hell we are going to regain our competitive position. That is the challenge that is really facing all of the players in the industry.

We have totally lost our competitive edge, I don't think you will find one Australian mine that is in the bottom third of the export cost of production, and that is a pretty severe indictment on the coal industry in Australia, particularly in the Hunter Valley, as I said, mainly steaming coal or semi-soft coking coal whose price is related to steaming coal. We are up against very low cost players. Indonesia, the growth in the Indonesian coal industry has been startling over the last 10 years and I believe it will continue to be startling and they are a very low cost producer.

China is emerging, in my opinion, more and more on the export market. I was in Korea last week and the Koreans are jumping over themselves to buy more and more coal out of China. I was also in Taiwan, and a customer that we had, called Formosa Plastic Group, currently buys about 80 per cent of its 3 million tonnes of coal from China.

South Africa is also an enormous competitor and the South American mines are also enormous competitors for us in the European sphere. That is the big challenge for us, how to get our competitive position back to where it used to be 10 years ago. That's all I'd like to make in my opening comments.

PRESIDING COMMISSIONER: Thank you very much.

MR MUIR: Just in regard to the confidentiality of the document, gentlemen, I don't believe there is anything in the document that can't be used.

PRESIDING COMMISSIONER: That is very helpful, thank you very much. So we can just talk about this today. That is very helpful. Rick, can I make - Lance did you want to make any other comment at this stage?

MR MUIR: Not really, other than the submissions here and it has been divided up as you said into a number of areas. It probably is easier if you ask some questions, I think, rather than me just reading the submission back to you.

PRESIDING COMMISSIONER: That sounds good. Rick, one of the interesting issues that we keep getting confronted with is that there are many people making the same point that you have made, that is the importance of regaining, if you like, the competitive edge. But what we see of course, is that there is significant new investment going on in Australia and we also see a situation where, even today, we have had people tell us that they expect to that the amount of exports out of Australia is likely to increase considerably. Even to the extent that FreightCorp is actually investing significantly in new rolling stock to cope at the cost of some tens of millions of dollars, with the new demand.

So how are we able to, as a Commission, match the point that you are making with what is being described in practice by players into investment, and also what we actually see in the marketplace, which is what seems to be a very healthy demand for Australian coal?

MR GAZZARD: I wish I had the answer. I think in the Hunter Valley, New South Wales coal industry anyway, people really are going to get sick and tired of making 2, 3, and 4 per cent return on their investment. The industry continues to go through peaks and troughs, lots of money is spent when things look rosy, then we all fall in a heap, just like we are about to do now. I think the investment will dry up. It is certainly, in our own company, having just spent last week with our shareholders in Japan, their patience is at an end and we are not making an adequate return and it has been clearly spelled out to me that we have got to turn that around. I don't have the answer for you, I wish I did. Hard coking coal in Queensland I think is a different issue. Because we have got the quality and the price is just so much higher. US$50 a tonne for hard coking coal, versus $36 to $37 a tonne for thermal coal out of Newcastle, $40 a tonne for semi-soft and a spot price for thermal coal of $US26 or $US27.

Customers in Japan last week said to me they just saw that as a crazy price, stupid were the words that were used, stupid and crazy.

PRESIDING COMMISSIONER: Yes, it is a real dilemma, isn't it. You see - and you do see the investment going on, and it's hard to actually make out why it is these people who are mature players in the industry are actually continuing to make the investment while at the same time there are discussions of significant gloom and doom, as you quite rightly say. I think even tomorrow, I think the New South Wales Minerals Council has given us a list of return on investments. That seems to be quite low, and seems to have been low for a long period of time, it's not something that has just happened. So there is a real dilemma there as to how we should interpret that.

MR GAZZARD: That's correct. In our case, we are a relatively high strip ratio mine, as an open cut mine, our stripping ratio this year is about 10 bank cubic metres per saleable ton and we are certainly not even covering our cash costs at the moment, this year. I include cash costs on including finance costs. So our shareholders will have to inject cash into us to keep us going this year and we have got to try and address that situation next year by changing the structure. Looking at different stripping ratio areas, trying to reduce our overall cash position.

PRESIDING COMMISSIONER: While we are focussing on this, one of the other interesting things that I noticed in your submission was some very significant productivity improvements. You seem to be painting quite a rosy picture of the way in which you are able to work with your staff, to be able to increase productivity on the basis of I guess technology and just working with teams and so on. What would stop you from actually achieving the sorts of long-term return on assets or investments that you would want. Given what seems to be a very positive relationship between yourselves and your workforce?

MR GAZZARD: We do have a very positive relationship with the workforce. We have worked in a co-operative manner with the CFMEU since we first started. In fact, Lance and I negotiated a memorandum of understanding that was signed with John Maitland and Mick Kelly from CFMEU in 1990 and we have continued to work co-operatively ever since. The main problem that we face is that people that have been employed at another coal mine finish their employment on a Friday and they might start with us on a Monday. They go through a quantum leap over the weekend. The change between how they worked on Friday and how they worked with us on the Monday is just enormous.

But having entered our culture and our working environment we still find it very difficult to get on-going progress and on-going change and we are a long way ahead of most of the industry. There is many different ways of looking at productivity in the open cut industry, we have an inherently high-cost mine because of our stripping ratio. We have to move a lot of rock to get a saleable ton of coal. Our stripping ratio is about 50 per cent higher than the Hunter Valley average. So we look at productivity measured in total movement, which is the volume of overburden, plus the volume of raw coal and we are moving about 120,000 bank cubic metres per person per year.

The Hunter Valley average is somewhere around 60,000 to 70,000, so we are nearly double what other mines are moving in total movement per person per year. That is honestly the only thing that has allowed us to keep going. If we were just a typical Hunter Valley mine with our strip ratio we would have been out of business a long while ago.

The problem is that we need to get from 120,000 bank cubic metres per person per year, we probably need to get something like 160,000. There are things that we need to change and that we believe could be changed to help us achieve that. But the difficulty is getting people to accept the on-going need for change and certainly in a way that allows us to reduce our cost structure. For too long the industry has kept paying, and paying and paying for change, and I think in our submission wages costs are about - for a person working 7 days a week on what is called a 5-panel roster, we are talking about gross earnings at our mine of about $104,000 a year.

Now that person would be working 48 to 50 hours a week on average. That is spread over the 7 days of the week. Somebody on a Monday to Friday roster, just working 5 days a week, three shifts a day, plus a weekend overtime shift, they would be grossing about $84,000 per year. Now that is a lot of money in anybody's experience. There is an expectation that if we want change our employees as well paid as they are, would still want more money to change, rather than just accepting the need for change to get the business back on a viable footing.

MR HORTON-STEPHENS: Are you telling them what the world is like out there? It is pretty normal, saying "Well, I'm going to change, but I want to be paid for that. If we're going to have a productivity gain I want my share of it," is a perfectly reasonable request I guess. Do you then put it in the practical perspective?

MR GAZZARD: We have, since day one, have always told our team members exactly the state of the business, every month we have communication meetings that discuss the market place, our cost structure, who our customers are, what price they pay and what our cost structure is, whether we are in profit, or whether we are in loss. We have taken employees to Japan on three occasions to visit our customers and get our people to understand what the world market is.

But in the coal industry, whether it is governments or whether it is employees, they all have an unrealistic expectation of the earning power of the coal industry and governments and employees have far to big a share of the overall pie.

PRESIDING COMMISSIONER: So in your view there needs to be some sort of redistribution of that in some way, back towards - - -

MR GAZZARD: People need - it is very hard to get people to wind the wages back, but people need to understand that there has got to be a period of no growth, and we have got to have change, just to get the industry back into survival mode.

PRESIDING COMMISSIONER: So you are suggesting that that redistribution will come back through high levels of productivity?

MR GAZZARD: High levels of productivity, without having to pay for it.

MR HORTON-STEPHENS: Have you been getting some of that changed recently?

MR MUIR: I think as Rick mentioned, when we started the mine off we made a significant change from other mines that are in our area.

MR HORTON-STEPHENS: People talk about you around the country. Rick Gazzard and Camberwell are famous around the country.

MR MUIR: The problem that we have had is basically as Rick has mentioned, that we have made very little change since day one. Productivity has improved, it has improved, but it has been through a number of negotiations of agreements. The last agreement was negotiated back in 1995 and there were wage increases put into the agreement.

In terms of that agreement that really hasn't delivered what we expected. We are now reducing similarly to what we were doing back in 1995. Even though we paid for some changes.

MR HORTON-STEPHENS: What does that mean in a practical sense, in terms of for instance demarcation, getting people who are qualified to work in one area and to work in another area, doing just that - - -

MR MUIR: One of the problems we have had from day one, and it was a situation we tried to address in the early days, is that we still have the demarcation in respect of our production people and our engineering people. When we started Camberwell off one of the philosophies that we had was that we really wanted a multi-skilled flexible team that we could use people when and where required, if that meant we had a tradesman in the workshop who really wasn't busy and we needed someone to operate truck, that we could utilise that skill if the person was so skilled and trained.

I suppose that we have been working since day one, to try and change that demarcation, but it is a district or national CFMEU policy that there is no cross-ever between the production and engineering streams, other than for minor issues such as changing hoses, changing mirrors or - I suppose where we sit today, that would be one area for us that we could gain some substantial benefits by being able to utilise people more flexibly.

PRESIDING COMMISSIONER: Could we just focus on that for a little bit more though, one of the interesting things for us is, as we have been going around the country we have actually come across some companies and some mines that have actually obtained that benefit and some of them actually have what those they describe as no demarcations and they even have a situation where on truck and shovel operations while the normal truck or shovel operator is actually having a break, somebody in the maintenance area will actually take up and run the operation for that period of time on a basically hot seat changeover.

Why is it that we are seeing on one hand that situation in some parts of the nation, but not in others, and people are tending to generalise about the fact as though it's actually the same everywhere?

MR MUIR: I think that's a difficult question to answer. One of the problems that we did have - - -

PRESIDING COMMISSIONER: Before you answer it, is it right to say that what I have just said is right?

MR GAZZARD: The only mine that I'm aware in coal that has that situation is Encham in Queensland.

PRESIDING COMMISSIONER: Even it's only one it means that it's there.

MR GAZZARD: We certainly have tried to get that from day one. In fact in 1990 when we negotiated he first agreement before we actually employed anybody, the deal that was negotiated between Lance and John Maitland included a cross-over between production and engineering streams. That was actually knocked back by the northern district, and since then we've been trying to get it re-instituted.

We have the crazy situation in the washing plant, for example, where we have a very very multi skilled crew. They are terrific. We have five crews of three people. In that three man crew there are two mechanical tradesmen and one electrical tradesman, so they operate the plant, they do the minor running maintenance in the plant, they operate a bulldozer on the clean coal stockpile, they load trains. They can operate a truck on the weekends to haul reject, they can operate a front-end loader on the stockpile to tip the coal into the bin, but we've had cases in the last few months where because we haven't moved enough overburden the plant was down. We didn't have any coal to feed into the plant.

Would have been nice to take those 15 people who all have a bulldozer skill or a truck skill or a front-end loader skill and say, "Look, we don't want you in the washing plant for the next month but we want to take you down and put you on a truck," but we just can't do it, even though they do have a skill. We can't do it purely and simply because there is a line that just says, "Those people are prep plant people." They can be fully multi skilled within the prep plant but we can't use that skill down in the mine.

Similarly with our tradesmen in the workshop. They can operate a truck but if we had the idea situation where there was no gear in the workshop and yet we wanted to operate the trucks or the front-end loaders during crib time while the normal miners are having their crib we can't do it.

PRESIDING COMMISSIONER: Can I just follow this up just a bit further? Did I hear you correctly when you were saying that you've actually negotiated a no demarc agreement nationally but that was overridden by the local district officials?

MR GAZZARD: Back in 1990, December 1990.

PRESIDING COMMISSIONER: A couple of questions. Why do you negotiate nationally if that's the case?

MR GAZZARD: We actually thought we had everything covered. We had John Maitland as the national president and we had a very senior district official as well from the northern district so we thought we had both bases covered, but when we signed off on the deal nationally it then has - it's just the union structure, it has to go back to the various districts, and I can still remember John Maitland's comment. He said, "Now you know what the Federal Goverment's like, having to work in a federation with the States. You have to get every State - every district in this case - to approve each agreement."

And already in 1990 when our agreements were fixed in 1990 we had things like single - one man shovel operation, one man drill operation, things like that were in our agreement but they were seen to be too radical for the northern district.

For example, when we actually started the mine we notionally supposedly had a two man shovel operation but we never started it that way. The northern district but the northern district just wouldn't accept in 1990 a one man shovel and a one man drill.

PRESIDING COMMISSIONER: Can I get a practical understanding of the point that you made about the overburden problem? What did you then do with those 15 people?

MR GAZZARD: They continued to do minor maintenance work in the prep plant. We do have the flexibility because they are tradesmen that they can be transferred back to the workshop. They could have - sometimes they went back to the workshop and did maintenance work in the workshop. Other times they did minor maintenance work around the prep plant. Loaded trains if we had a train to load. But we would have liked to have been able to operate to allocate them to the highest priority job to suit the needs of the business and not just suit the needs of an industrial agreement.

PRESIDING COMMISSIONER: Do you have any idea of what it cost you?

MR GAZZARD: No, we haven't worked that out.

PRESIDING COMMISSIONER: Would you be interested in trying to give us an understanding of what it cost you? Not now, but at some other time, so that we could get a sense of what that might be?

MR GAZZARD: Sure.

PRESIDING COMMISSIONER: You also made the point, and you have it in your submission, the very substantial labour costs. Would you be able to, not necessarily now but at another time maybe, break down that particular labour cost into sort of a base rate, overtime, allowances, bonuses and so on?

MR GAZZARD: Certainly.

PRESIDING COMMISSIONER: That might be quite helpful if we understood that. But just for today's discussion would you be able to, I think building on the point that you were making before, saying that you've paid for some of this but you're not getting the productivity gains, presumably you've paid for it also in terms of bonuses. Would that be the main means of payment?

MR GAZZARD: We have a flat bonus scheme. We pay $300 a week flat. It's not tied to production, not tied to performance in any way. It's just a flat payment.

PRESIDING COMMISSIONER: Why do you describe that as a bonus scheme?

MR GAZZARD: I think it's just the history of the - - -

MR MUIR: Just - I think when we started the operation, in regards to the bonus, the comments made to us from the union at that point of time was that the district average, or the northern district average for open cuts at that point of time was $247 a week and that we could have whatever bonus system that we wanted as long as it delivered $247 a week. So regardless of being - whether it was productivity-based, safety-related, whatever, as long as it delivered our workforce $250 a week there wasn't a problem.

PRESIDING COMMISSIONER: So it wasn't in any way related to performance at the mine?

MR MUIR: Initially when we started the mine off, because we were new and we were building up production we decided that it wasn't worthwhile to have a production-related bonus so we had an attendance-related bonus which was made up of a - there was a $200 flat component and then there was $50. The $50 was dependant upon absenteeism at the mine, and how that worked was if there was a person away in any one week everyone was deducted $5 per day from that $50.

And I suppose in terms of success of that operation, for the first 18 months it was successful until we had a couple of long-term illnesses. One chap had a heart attack and the moral issue came into play then so we set up a bonus committee to look at a number of key indicators.

Rick and I were on that bonus committee along with a number of other of our team members and the comment was made at one of the meetings, "Why don't you just pay us the $250 flat? We'll keep delivering you the goods, regardless of what targets you put there?" So we took the people on face value at that point in time and we've had a flat bonus since them.

MR GAZZARD: I think the point that we'd want to make here very strongly is that we're not criticising our workforce in any way because we have an excellent workforce. They deliver very high productivity, but it could be better, is the point we're making. Relative to the rest of the industry our guys do an outstanding job. We have an excellent safety performance. We have a lot time injury frequency rate less than 10 since we started. That's cumulative since we started. We have an outstandingly low unplanned absence figure. It's averaging about 1.1 per cent since we started, and our guys tell us time after time, "You break the dirt up for us and we'll deliver the goods."

But we just think we could do it a little bit better and a little bit easier if there was a preparedness to accept ongoing change and that there is a better way of doing things. Moving to a different shift roster, for example.

We would like our mining guys who are working Monday to Friday - 5 days a week Monday to Friday, and then about 70 per cent of them work an overtime shift on the weekend.

PRESIDING COMMISSIONER: Yes.

MR GAZZARD: So they are working effectively 6 days a week, 8 and a half hour shifts. 51 hours per week, and we think we could do that in a better way that would give them more time off. We'd still get the coverage we want if we could negotiate a system that had, for example, four 12 and a half hour shifts.

But the trouble is there's an expectation in the industry that if you move to 12 and a half hour shifts, even though the total hours worked in the week would be no more than they're working now in a 6 day week they'd want more money.

MR HORTON-STEPHENS: Can I come back to the - I suppose the question that is really in my mind is how did we get there? It must be in your mind every day of the week.

MR GAZZARD: How did we get there?

MR HORTON-STEPHENS: No, how did you get there? Whether it was a green fill site and you were able to achieve some changes, but you haven't been able to take it much further. There have been some changes but you've got to a point where you need some further, much bigger changes.

There was an article by Nicholas Way in the Australian on the 12th of November which started out, "The Nation's friendly coal producers led by BHP are negotiating a new industrial award with the peak industry union, the CFMEU."

I don't know whether Camberwell is one of the friendlies but you mentioned you have an MEU with the CFMEU. Is that perhaps the way to go, to have some of these bigger problems as soon as you see them resolved on a broader basis?

MR MUIR: Certainly we've participated in some of those meetings that you've alluded to in Nicholas Way's article, and are known as one of the friendly companies.

I suppose the problem in regard to that situation is that we were contacted by John Maitland back in September and asked whether we wanted to go through a process of talking about the new award in the industry. We attended three or four meetings. We put forward from the employers that were involved, a list of things that we saw that needed to be changed.
That was early October I think was the last meeting we had, and we put into place a process that we were going to go through and there was going to be a deadline of 1 December to have a new award finalised. We haven't heard from the CFMEU or we hadn't heard from the CFMEU for approximately one month after that meeting, and I think part of that was because of their involvement in the Rio Tinto dispute and not having the manpower available to go forward with this process.

I actually wrote to John Maitland a week and a half ago and he did reply to say that the process was still going to be ongoing and that we would be contacted in the near future. Certainly from our point of view if it's going to offer us some benefits by doing it that way we're quite prepared to go ahead and do that. I suppose the thing that we've got to see is that by going ahead in a conciliatory manner with the union as to whether they can deliver some changes for us.

MR HORTON-STEPHENS: Which of let's say the top five - you've mentioned four or five chief topics. What are they? Which are the areas where you feel you must - - -

MR MUIR: Well, in terms of the process that is going ahead at the moment the larger companies have more to benefit than a smaller company like ourselves because they're really looking at global issues such as seniority, preference clauses, demarcations. I'm just trying to think of some of the important issues that were on the table. They were really looking at award issues whereas we've addressed a number of those issues already in our agreements.

MR HORTON-STEPHENS: Yes.

MR MUIR: I suppose from our point of view, being a smaller company, what we really need to do or what we really want to do is have the ability and the flexibility to negotiate directly with our employees without having the constraints of national or district union policies put upon us.

I think it goes back from Day 1. We did get a lot of change when we did our enterprise agreement but we were also the focus of a lot of scrutiny from the union and our local lodge officials have been I suppose fairly diligent in making sure that we follow a lot of the district and national policies that are in place and I think that is because we were so different to start off with.

PRESIDING COMMISSIONER: Are the district commissioners also monitoring whether in fact the employees of the mine are also delivering what they said they would - in terms of productivity performances? I think you indicated before that you'd actually had some - - -

MR MUIR: Certainly in terms of the last agreement that we did in 1995 the productivity performances haven't been up to the standards that were set in the agreement.

PRESIDING COMMISSIONER: What does the local lodge say about that?

MR MUIR: I might let you answer that, Rick.

MR GAZZARD: After the agreement was signed in April/May 1995 we wasted about 9 months disputing whether the targets that were set in the agreement were too high and there was a lot of debate as to whether those targets were achievable. In fact they were referred to as my targets, but they were targets that we set through careful analysis of the business. They were targets that we needed to achieve to get the right amount of overburden moved to in turn uncover enough coal per person per year to be a viable business. We haven't achieved those targets and we are struggling because of it.

As to why we are not achieving them now, I wish I knew. I wish I knew. But as an example, earlier this year for annual leave we've previously had a system where we allowed larger numbers of people to go on annual leave during the peak school holiday period and we used temporary labour, casual labour to supplement the numbers during the school holiday period.

Now when our current enterprise agreement started 2 and a half years ago we thought that we would be able to have a pool of trained casual people available in the industry so that once they got trained we could call on them for holiday relief. What we found was that we just became a training school for everybody. We'd train them to be a truck driver and then, bang, they'd get a job in the industry. And we decided at Christmas time last year that we were going to call a halt to this. We were training people for four weeks, using them for a couple of weeks and then found that the next set of school holidays they weren't available because they had a permanent job and that's fine.

So we said to our people, "Look, that's no good. It's costing us too much money to train people then find they are not available. We're now going to employ some additional permanent people but in return we're going to have to smooth the holidays out. No more peaks. We're just going to have four people off each mining crew, for example, continuously right through the year."

That was totally unacceptable to the workforce. Didn't matter how much time we spent discussing it and justifying the need for change on a cost basis. In the end we went to the commission. We got a ruling in our favour. We also were trying to get some changes made to drilling and blasting practices. We got a ruling in our favour and in April for the first time this year we lost five shifts of operations due to a local strike, basically in protest because the guys got a ruling from the commission that they didn't like.

So to us it seems to be that no matter how much time and effort that we go to to convince people of the needs of the business, in the end it gets a bit frustrating because in the end we find that we still can't get through and get people to understand that a business has got to be profitable. The best business they could work for would be one that is very profitable, to give them the job security they need and want.

And it's probably one of the biggest frustrations that we have, given all the time and effort we've put into good communications, that really when it's come down to things our guys don't stand up to the district or the national executive and say, "Look, we don't want to be involved in that," and we've still lost probably close to 30, 40 days of production since we started, due to district and national issues about which we have no control.

I mean the marketing - the one week marketing strike of a few years ago, I think our blokes on site knew more about what was really happening in the coal market than the national and district officials because at that stage we'd had about 15 people from the mine actually go to Japan and sit down with our customers for a week. I am trying to think - the strikes last year about the framework agreement - what was that about? Middle of last year. When certain companies got exempted because of a framework agreement.

And we wrote to the national and the district officials and said, "Look, you tell us how our memorandum of understanding and our current enterprise agreement, how is it different to the so-called framework agreement? So why are our employees being involved in these stoppages?" Never got any joy from anybody.

PRESIDING COMMISSIONER: Can I go back a little to the point that Keith was raising with you, and that is what you regard as being most important in terms of reform? And from page 7, 8, 9 10, 11, 12 - maybe it stops at 12 I think at this stage. Lets say from pages 7 to 12. You've listed a whole series of impediments - I think that's the way you would describe them - about you actually achieving productivity, with only a few of them relating to wages and conditions. Most of them really are about how you go about doing your business. It covers things like increased penalties and use of weekends and public holidays, production bonuses, rosters, shift allowances, shower times, overtimes, district and national stoppages and so on. Recruitment policies, casual/part-time employment, seniority, demarcations and so on.

Given the point, Rick, that you were making before, that these are difficult times, it seems as though you are not likely to get where you want to go through some sort of incremental change. I mean what you're describing here is a very significant level of impediment to you getting on with the business.

If you take a couple of Keith's points, how do you clear away some of this in a reasonable period of time, maybe less than 10 years, so that you can some time in the foreseeable future give your owners and shareholders a reasonable return on assets?

MR GAZZARD: I quite honestly - I mean the things that we've listed there under section 4 "Industrial Relations Issues" that's what you're quoting from, isn't it?

PRESIDING COMMISSIONER: Yes, that's right. Yes.

MR GAZZARD: They are all issues that are adding to the cost structure for employing a person and I think it's going to be very difficult for us to wind back some of those conditions, perhaps impossible. We've got to make sure that they don't continue to increase further, and the only way we can combat them is to try and get increases in productivity. I think the increases in productivity to try and get our unit costs down are probably easier to achieve than trying to wind back wages and conditions in absolute terms.

PRESIDING COMMISSIONER: Sure.

MR GAZZARD: It'd be lovely to think that we could wind back wages and conditions in absolute terms but I don't think that's a realistic target to achieve in the coal industry.

PRESIDING COMMISSIONER: Let's just focus on the productivity issues because I think that's almost generally accepted that's the most practical way by which total labour costs can be reduced. But you are still describing a very significant set of impediments here to actually - for you to get there. Have you given thought about what might be the practical steps that this commission should be thinking about to actually help you to get to where you need to go?

MR GAZZARD: I haven't thought of that question and I haven't thought of the answer. Have you?

PRESIDING COMMISSIONER: You might want to just give some thought to that and if you wanted to get back to us on that that might be quite helpful.

MR GAZZARD: I guess really we listed those points there to try and get people to understand the high cost structure that we've been burdened with and I think - now there's a classic example just on the absorption of pressing domestic leave into the personal carer's leave. You might like to comment on that one. There's an example of people continuing to want to better the general industry standards. Just talk about personal carer's leave and PDL.

MR MUIR: I'll just do that. I think in terms of the things that have been raised in the submission here I think it will be difficult to cut wage rates and cut bonuses and whatever. I suppose what we were trying to do in respect to those issues was just to highlight the significant difference between general industry standard and coal industry standard and some of the reasons why particularly now when times are tough that our cost structure remains high.

The comment that Rick made then about pressing domestic need, I've been involved in a process over the last 12 months which was a section 150A a review of the Coal Industry Award of which basically there was a committee set up between industry and the union under the auspices of the Industrial Relations Commission to plain English the award, introduce test cases and generally make the award easier to read.

The matter was before Justice Bolton about a week ago for the consent variation and one of the issues that was raised or that had been discussed was the introduction of the Personal Carers Leave into the award because there is no such provision. The Coal Industry Award has a provision which is called Pressing Domestic Leave where people are entitled to single day absences on the basis of their being a pressing domestic need.

The matter went before the commission and the union's position is that they want Personal Carers Leave but they also want to retain the Pressing Domestic Leave that's in the award, whereby our submission was that we wanted it absorbed because basically it provides the same arrangement.

MR GAZZARD: And already the industry has very generous sick leave provisions, 15 days sick leave a year, so it was a case of, in our view, double dipping, and they just won't accept that compared to the general industry conditions that exist in other industries the coal industry is very very well paid and has outstandingly good conditions and it can't continue to be viable on a world basis and continue to pay ourselves so well in wages and conditions and at the same time grow the industry the way it really has the potential to grow.

PRESIDING COMMISSIONER: I'm going to change topics, if that's okay with you.

MR GAZZARD: Sure.

PRESIDING COMMISSIONER: In your submission you talk about other issues that are quite important to you and you talk about regulatory questions. You make the pretty general point that you think that many of the statutory provisions that currently apply in the industry come from an era of the past. You seem to be suggesting that most of them come from what was underground mining operations, and that in fact things have changed significantly now and you seem to be suggesting that there is a place for thinking about open cut surface mining quite differently than underground mining. Would you like to comment further on that and help us to understand what you're trying to drive at there?

MR GAZZARD: The open cut coal industry basically uses the same surface mining equipment as the iron ore industry and the gold industry. Most of it is manufactured in the US. For example we have a caterpillar fleet of equipment, mobile equipment. To put that same equipment to work in the coal industry in New South Wales requires extensive modifications, adds additional cost, just to get it approved for use in the New South Wales coal industry. It's a ridiculous requirement. Yet the same bit of equipment could be used in the gold industry or the iron ore industry in Western Australia without that modification.

The regulatory environment that we are exposed to through the Mines Inspectorate is also out of date. We can't use a mining supervisor that doesn't have an open cut examiner's certificate so that means that very experienced mining supervisors that might have grown up in the gold industry or the iron ore industry, they might be outstanding supervisors, may have come from an operating background, we can't put them to work as a supervisor in the coal industry because most of them with 20 years experience when they've finally got to go back to Tech and get an open cut examiner's certificate are just not interested.

So the coal industry in its culture has drawn a circle around itself and said, "We're something different," the open cut industry I'm talking about here. "We're something different," and it just helps to continue to preserve the status quo because you can't introduce mining supervisors from outside, introduce a bit of new blood. You can't even use modern management techniques based on a team based approach without a supervisor in the mining environment.

We use it in the prep plant. We don't have any supervisors in back shifts in the prep plant, and similarly in the maintenance workshop, we don't have any supervisors in the back shift. We use teams. But in the mining environment you can't, you must have our statutory person called an open cut examiner who has a ticket called an open cut examiner's ticket. And it goes all the way through. It just continues to preserve this culture that the coal industry, the open cut coal industry is something different to the rest of the open cut mining industry in Australia.

MR HORTON-STEPHENS: We keep hearing this criticism of the Coalmines Regulation Act and that leads me to wonder if the view is pretty general then why hasn't something been done about it already? Why do we have to have another inquiry to highlight the issue? Where is the resistance coming from?

MR GAZZARD: Well, there's a thing called the Joint Safety Review Committee which is a tripartite body consisting of the Mines Inspectorate who obviously want to preserve the status quo, the union who want to preserve the status quo and the companies. So we're one voice in three. And nobody really wants to grab the nettle. It's a tripartite committee that's going nowhere.

PRESIDING COMMISSIONER: What was the difference between that then and what happened in metalliferous mining where many of these changes seem to have been made, and it seems like it's a much more liberal but not lax set of regulations? Did you have any views about that or any ideas about how that has come about?

MR GAZZARD: I don't, but I think the root cause comes back to the coalmining industry history of 100 years or 200 years in Australia almost and that it comes from the underground mentality of the coalmining industry being a particularly hazardous industry which I am sure it is in the underground environment, but the open cut environment, it's no more hazardous in an open cut coalmine than it is in an open cut iron ore mine or an open cut goldmine.

PRESIDING COMMISSIONER: You also in the same context talked about things like workers compensation insurance. Do you want to make any comments about that, in a general sense about the special nature of the industry? I think you were particularly talking about - this is on page 15, it's sort of the monopoly nature of coalmine insurance.

MR GAZZARD: I think in terms of workers compensation I make note that some of these issues don't really apply to our company because we're a small company, and in terms of our workers compensation insurance I doubt if - even if the market was deregulated that we would change from where we are. But as has been managed in the submission, like bigger players like Hexon and whatever, it is a restriction because they may want to do something else like self insure or utilise - - -

PRESIDING COMMISSIONER: Would it change in any way your strategic behaviour with regard to safety?

MR MUIR: No.

PRESIDING COMMISSIONER: I mean I am aware you've got a very good safety record. People talk about it in glowing terms. You would not change your strategic behaviour at all?

MR GAZZARD: We're aiming to get the lowest workers compensation premiums we can just like anybody else and I think from our perspective Coalmines Insurance or the Joint Coal Board from our perspective as a small producer, suits us fine.

MR MUIR: We have a particularly good relationship with the Singleton Office and I think that's the benefit of being small, in that regard.

MR HORTON-STEPHENS: Can I say something again? Come back to the front of the submission where you list a number of government charges? Just cover a few of those. The major item in terms of .... on page 5 are the royalties and you make the point - again you are not the only one to have made it, obviously, but some of those royalties are not related to profit. Would you be in favour of changing to another system. I suppose from an economist's point of view we have it in the petroleum industry of moving to a resource rent tax?

MR GAZZARD: Yes, personally we would, and particularly in the open cut industry. It's a legacy of the late 70s and early 80s where the open cut industry is burdened with a thing called a super royalty.

MR HORTON-STEPHENS: It could have operated at that that time of course.

MR GAZZARD: It might have been fine then but in my view now it's just - well, the way royalties are levied now it's just not relevant. We would be much better off in our view having something akin to a resources rent tax.

MR HORTON-STEPHENS: Is it here or somewhere else? It's under Point A back a couple of pages where you talk about the monopoly rent element and rail freight. That is of course being phased out. You say on page 3 "The industry can't wait that long, can't wait till the year 2000 for it to be phased out." Would you care to expand on that a bit?

MR GAZZARD: There is actually - I think to give credit to the New South Wales government they've moved quickly with the rail reform program, and the operating above track component has been freed up and I think Freightcorp is doing an excellent job on the operational side.

We've had competitive pricing offered to us and there is no great incentive for us to switch from Freightcorp at the moment. What that might be in a year's time I don't know. However, the rail freight charge that we are - no, it's not the operating component, it's the rack charge.

MR HORTON-STEPHENS: Yes.

MR GAZZARD: We're very concerned about the methodology behind the calculation of the rack charge. We think there's potential to include another form of monopoly profit because the rail access regime that has been introduced to New South Wales has very high rates of return and it's also on replacement value of the capital so you have got the double whammy there.

The monopoly profit component that is to be phased out is over 5 years and I think in our case it's estimated that that monopoly profit component might have been - it's about $1.50 to $.200 and that's going to be phased out over 5 years, but there will still, in my view, be an element of monopoly profit in the rail access charge that we've been quoted.

The operating component, the above track component from Freightcorp we're quite happy with that and we're getting competitive pricing in and there is not a lot of difference between then two. It's still the rack element, and I believe there will be an ongoing monopoly profit component still contained in that charge even after the phase out of the identified monopoly profit over the next 5 years.

MR HORTON-STEPHENS: At the moment of course there is only one provider, there is only one freight operator.

MR GAZZARD: Yes.

MR HORTON-STEPHENS: Would you like to see at least the possibility of more than one?

MR GAZZARD: Certainly, yes, yes.

MR HORTON-STEPHENS: What scope do you think there might be to reduce freight charges in that sense?

MR GAZZARD: In the operating component of the charge?

MR HORTON-STEPHENS: Yes.

MR GAZZARD: Well, as I said, so far the figures that have been put to us by alternate service providers suggest there is not a lot to be saved but that may well change once they get up and running. It may be that they haven't sharpened their pencil as yet. And that is only just in our case. We don't have a lot of volume as well. Only 2 million, 2 and a quarter million tons. So the alternate service providers are not really chasing us at the moment. They would look at trying to pick us up perhaps later on as a bit of marginal business. They are obviously chasing a few larger companies with larger volume I think.

PRESIDING COMMISSIONER: While we're talking about access and infrastructure issues you haven't raised the question of port facilities in any substantial way. Do you want to make any comment about that?

MR GAZZARD: Other than I think having just come back from overseas again, we're facing a disaster because of poor performance in the port, and I've been highly critical of PWCS over a number of years.

MR HORTON-STEPHENS: To be critical is one thing. What's the solution? It's almost like asking - Bill was doing it a moment ago. If you were sitting here and you had the opportunity to write the bottom lines what sort of thing would you be recommending in terms of the ports?

PRESIDING COMMISSIONER: Before you get onto that and answer that I'll give you a chance to think about it. I'll give you some thinking time. One of the interesting things again which we were putting earlier, you may have heard the commissioner saying,"This is essentially a group of people who are some of the best, supposedly business brains in Australia sitting around talking about this issue. It's not something the government has imposed upon them, they've imposed it upon themselves." I guess the first question, why should this commission even be suggesting the government do anything? Why isn't it these sensible people, men and women are not able to resolve this matter?

MR GAZZARD: I wish I knew. I think - I think the port management should have been restructured quite a long time ago. One particular company has had a management contract there, is a fairly major player, and I think we should have changed the management structure a long while ago in the port, and that's hindsight. I think probably the common user nature of the port works against it that any company supposedly does not have to worry about the port capacity being there, it's going to be provided by somebody else. From an operational point of view I just see a lot of deficiencies in the way PWCS was managed by its previous management. There has been some change in staff and change in focus there and hopefully things will improve, but there is a so-called - a name plate capacity of 66 million tons installed in the port of Newcastle and I was on the NCS board of directors at the time the expansion plans were approved back in 1994 and I think it was fair to say that the industry was in a trough at that time. It was before the big price increase, and I can still remember one of the major shareholders in the port saying, "Look, we've got to send a message to Japan that we won't expand the port whilst prices are so low."

Now we dithered for 6 months or 9 months, maybe it was 12 months, arguing amongst companies whether there was a need to expand the port or not, and that was totally wrong. If we wanted to send a message to Japan why did we keep building mines? We should have made sure that at least the infrastructure was there to load the coal and we should have made sure that we had appropriate management to run it.

PRESIDING COMMISSIONER: Yes. It's a very - this is a - we will talk a bit more about it with the Minerals Council tomorrow, but it is of quite important, in a sense, philosophical and conceptual point because it may be that we're saying that these sorts of co-operatives, as it was described a little earlier, actually don't operate very well when they are in the hands of commercial operators because there might be too much second guessing of each other.

And while I'm not arguing this by the way - I mean some might argue that in fact this might be better in government hands so that there can in fact at least be one manager scrutinised by the community rather than it being commercial agents.

MR GAZZARD: Now the shareholders' agreement for a start guarantees profit so if there's any extra costs go into the port then that just gets mark up. If there's inefficiency in PWCS it doesn't go to reducing their profit margin. I think that's an element that PWCS might correct. That's my understanding.

PRESIDING COMMISSIONER: The thing that confuses us I think in that situation, if you were actually to reverse the position, if it was a government sitting as managers of that port, using a flat rate and simply charging everybody on the basis of some sort of .... there would be an outcry by the commercial operators.

MR GAZZARD: Yes, absolutely. I think - you know, a case in point, 2 years, 3 years ago when the last enterprise agreement was done in the port it didn't move then to a 7 day a week operation. They still continued to run a port that's a 365 day a year operation based on Monday to Friday labour with weekend overtime and then denied it was a problem. It's just crazy. From the loading terminals' perspective, prior to Freightcorp being split off and becoming just the operator there used to be a Level 5 rail freight, and to get Level 5 rail freight you had to operate your loading terminal 7 days a week. Now Freightcorp probably still to this day is putting up with coalmining companies enduring Level 5 rail freights which are a lower rail freight yet their loading terminals aren't working 7 days a week. So the industry in New South Wales, in the Hunter Valley has got a lot of players all with lots of opinions, different opinions, and that's why it is very hard to get consensus.

PRESIDING COMMISSIONER: Has there been any talk of "privatising" listing it on the stock exchange and allowing there to be a more independent relationship between customers and the owners?

MR GAZZARD: I haven't heard that raised but I think that's something that - well, I wouldn't favour putting it back in the hands of government, for sure, but I think there needs to be a bit of competition there.

PRESIDING COMMISSIONER: Can I raise another issue, and it is the last one that I will raise this afternoon, and I thank you for your time today too. The ACSA as an organisation, as a person coming in with a relatively new set of eyes to this industry, it looks as though it's an unusual organisation with an unusual set of objectives that doesn't normally seem to be consistent with tying in the role of management with the objectives of the particular commercial institution. Do you want to make any comment about that or any insights do you have about the way in which that operates in practice here?

MR MUIR: I suppose in terms of our operation we've had very limited involvement from the ACSA in the last 3 or 4 years. I think in the early days we had quite a lot of involvement, seeing we were new and whatever. All our staff are on - we have an agreement with the union but we also have basically individual contracts with all of our staff on site, and very limited involvement with the ACSA. I am not sure how it is at the other mines now.

PRESIDING COMMISSIONER: But presumably most of your staff are still members of the ACSA.

MR MUIR: I'm not sure.

PRESIDING COMMISSIONER: Okay.

MR MUIR: I would think the majority of them probably are.

MR GAZZARD: It's not an issue for us.

PRESIDING COMMISSIONER: Not an issue for you.

MR GAZZARD: Not an issue for us. If they want to continue with their membership they are free to do so. We have 100 per cent of our staff, what we call our support and foundation team, which is 24 people - right at the moment 100 per cent of us are on individual contracts, some of which are performance based.

PRESIDING COMMISSIONER: You make a point here, not so much a point, but you raise the issue that the ACSA allows the members who take voluntary redundancy packages to move back onto a retrenchment list. Has there been any effect on you by that approach by the ACSA? Have you found that that has restricted your ability to, as you've suggested, introduce new blood?

MR MUIR: Certainly in the early days it did. More recently because of the change in the Industrial relations Act a lot of those things haven't been as large an issue. We'd hired a number of people in the early days, I think, who had taken voluntary retrenchment packages and they were on the retrenchment list. They were hired on merit, but through a retrenchment list so we were restricted in terms of people that we could hire. We couldn't hire outside the industry at that point in time.

PRESIDING COMMISSIONER: Along the same lines, on the next page you actually seem to be making the case which is different to what some other people have made, that you don't seem to have experienced any difficulty by having to recruit off white or blue collar lists. Is that right? Is that the right interpretation of what you've written here?

MR MUIR: It's certainly been the case. In terms of recruitment this year we've hired 25 blue collar workers and a couple in the white collar area and we certainly haven't had any trouble in terms of hiring those people. We weren't restricted to hiring people off the retrenched list. Out of the 25 blue collar workers there were a number of cleanskins that we did hire, and we have actually hired a couple of white collar people from outside of the industry as well.

UNIDENTIFIED SPEAKER: I think Lance is making the point there from 1 January.

MR MUIR: '97. Things were very different. Prior to that there was the retrenched list and we used to - I think very early on when you go right back to 1991 - when we initially recruited we had to hire off the - out of the membership anyway, whether it was off the list or members from other mines. We weren't able to have any flexibility at all in those days.

MR GAZZARD: And then as the retrenched list numbers got lower and lower in the '94/95/96 period then we were able to - one for one arrangement, we could get one cleanskin in for one existing - - -

MR MUIR: Member, or it had to be off the retrenched list, was it?

MR GAZZARD: Depended upon the period. But certainly since 1 January hasn't been an issue. Retrenched lists have not been an issue for us.

PRESIDING COMMISSIONER: I don't have any other questions. Is there anything else that you wanted to raise with us that you haven't covered adequately or at all?

MR GAZZARD: No, not from our point of view.

PRESIDING COMMISSIONER: That's been very helpful. Thank you very much for your contribution, and I'll say again, I really did appreciate reading your submission, it was very well put together, whoever did that can be congratulated, you did a good job. I will now close these hearings for today and we'll reconvene tomorrow morning at 9.30 with the New South Wales Minerals Council.

INQUIRY ADJOURNED AT 4.55 PM UNTIL 9.30 AM
18 NOVEMBER 1997