

INDUSTRY COMMISSION HEARING - Sydney 18.11.97

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INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY NSW

TUESDAY, 18 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER:

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INQUIRY RESUMED AT 9.10 AM

PRESIDING COMMISSIONER: Good morning everybody, I'd like to welcome you to this second day of the Industry Commission's public hearings into Australia's black coal industry. This, as I mentioned, is the second day of these public hearings in Sydney, which will be followed by another day in Brisbane next week.

These hearings are designed for people to raise issues they feel are impacting on the international competitiveness of Australia's black coal industry, and they give us the opportunity to provide quite a lot of insights for which we're able to then incorporate into our draft report which we expect will be released around February next year.

These hearings are, of course, in addition to the extensive round of visits which we've already undertaken, and the 26 submissions, some are still coming in, to the inquiry which we've received so far at least.

While people who provide information are protected of course, in these public hearings, this is not a court of law, although it might look a bit like that.

I'm going to try and make these hearings as relaxed as possible, so as to give everybody really a chance to tell their own story.

There are a couple of formalities which we do try and follow. First of all, and particularly with a reasonably large group, we do try and get you to introduce yourself initially, so that we can actually get your voice on transcript, then it allows the transcribers to be able to match what you say with your voice. So, the first thing I'll get you to do is to just introduce yourself individually, so that we can do that.

Secondly, we do use these hearings to obtain information which will enable us to liven our report of course, and to give a very practical set of practical elements to the work which we do.

So, if you are providing information to us and you're unsure about the robustness of the information which you're providing, just put up your hand and say, "Look, I'm not exactly sure that that's right," and then we would ask you to come back to us with the accurate information or, alternatively, we'll follow up with you at a later time. So feel free to just indicate where you're not exactly sure of the information that you're providing.

The other thing of course is, that you'll notice that these hearings are being transcribed, and in that sense, all of the participants at today's hearings as at yesterday's, will be provided a copy of the transcript. Anybody else who is here today who wants a copy of the transcript, they can be obtained by contacting my staff and I'll make sure that they give you the opportunity to know where you can obtain them.

My colleague here today is Keith Horton-Stephens, a commissioner with the Industry Commission, and who was involved in the previous inquiry into the mining industry some years ago.

So let me get started. We have as our first participants today, the New South Wales Minerals Council, and if you could just individually introduce yourselves and then feel free of course to highlight the main points of your submission.

I should say of course, we've had a chance to read the submission, so there's no need to go through it word for word, but what we would appreciate is if you could actually highlight those main points, given the size of the submission, we'll never be able to determine those things which you regard as being particularly important unless you do so.

So if you could introduce yourselves individually please:

MR STILLER: My name is Laurie Stiller, I'm the occupational health and safety manger with the Minerals Council.

MR PORTER: I'm Denis Porter, I'm the deputy executive director of the council.

MS ROBERTSON: I'm Jane Robertson, the executive director of the Minerals Council.

MS PENSON: Barbara Penson, assistant director, employment relations.

PRESIDING COMMISSIONER: Thank you very much. If you could now please just highlight the main points or make any statement that you want to please.

MS ROBERTSON: Thank you very much, Mr Scales. I'd just like to make a brief statement which summarises our submission and raises some of the key points as you suggested.

As you would be aware from reading the submission, the New South Wales coal industry has been transformed from a small strife-ridden industry supplying the domestic market in the 1940s to a large, high tech industry exporting about two-thirds of its production by competing on world markets.

We continue to be the world's largest exporter of coal and about 45 per cent of that export coal comes from New South Wales. Coal is Australia's largest export commodity and it contributes about \$8 billion in annual export income to this country.

World demand for coal, particularly for thermal or steaming coal from the Asian region, is expected to expand significantly over the next decade.

The New South Wales industry has the potential to grow and maintain its share of this expanding global market.

However, without significant productivity improvements, competition from countries such as Indonesia and South Africa will not only significantly reduce our share of this market, but could lead to a reduction in current levels of production.

The main barriers to productivity improvements in the New South Wales coal industry, stem from the cultural and regulatory constraints which have characterised it for decades. It is an over-regulated industry, especially in the areas of work practices, mine development, employee benefits and transport.

Our submission illustrates with examples, many of the key areas of over- regulation and the impact they have on company employee relations, cost of production, security of supply, all of which are of course, key factors, which build the industry's reputation both in Australia and overseas.

The New South Wales Minerals Council believes that unless all stakeholders accept the urgent need for change, the industry will not fulfil its potential. Jobs will be lost and the benefits which this nation derives from the industry, will therefore be reduced.

In our view, the reform agenda must embrace firstly, government policies which encourage the development of our coal resources in a timely, responsible, yet competitive manner, a tax framework which is fair and allows the industry to be internationally competitive, a transport

system which is not used as a surrogate tax mechanism and provides reliable delivery at competitive rates.

Labour practices and awards which encourage a safe working environment, innovation and productivity, whilst maintaining international competitiveness, and the ability to recognise the individual nature of each mine, rather than industry based terms and conditions.

Employee benefits, embracing all non-cash payments and including long service leave, workers comp and superannuation, which are aligned to the rest of Australian industry, and employment provisions which preserve the basic rights in a free enterprise society for employers to decide whom they employ from time to time, providing they observe broadly accepted Australian labour market conditions.

The New South Wales Minerals Council in representing the interests of coal producers in New South Wales, is a firm advocate of the stakeholder concept, ie, the community, shareholders, staff and customers, must all benefit, if an enterprise is to survive and prosper.

We encourage the Commission during its deliberations, to balance their views based on this criterion.

The New South Wales coal industry will only prosper in our super competitive world if all industry participants can learn from the past whilst recognising the challenges which are now upon us. Thank you.

PRESIDING COMMISSIONER: Thank you, Jane. Does anybody else want to make any comment at this stage?

UNIDENTIFIED SPEAKER: Not at this stage

PRESIDING COMMISSIONER: As I said, we've had a chance to read through the submission, and thank you very much for providing it to us, it's certainly very rich in information and that's always a great help to us when we're trying to construct a report like we are.

You have made a, I think, not only in the report but in your summary, some interesting comments about, I guess, the challenges. One of the dilemmas that we're facing is that while many people are talking about the challenges facing the industry, we're also noticing huge investment going on within the sector, and even yesterday, we had another rail - FreightCorp, talking to us about substantial levels of investment which they're putting in place in anticipation of even further development within the industry.

That doesn't sound to me like an industry in crisis and I'd certainly be interested in knowing how you think we might balance what seems to be at this stage, certainly at the very least, some mixed messages, that are coming through from the industry.

MR PORTER: I think that's in a sense a perennial problem with the coal industry, but yes, there are signs that the industry is looking to expand. We've got some expansion actually happening, for example, the Bengalla Project. I don't know of any other substantial project in terms of the coal industry that's actually under way. There are a few, of course, that could commence in the next few years with the right market conditions, the right development approvals and so on.

I think the industry fully expects the demand to be there, particularly for the coals that come out of the Hunter Valley, there's no question about that. But you've also seen recently, well for example, a project like Glendell, which was about to go, it had all its approvals, I think it might've even ordered some of the equipment, it's now been shelved because of the market and because of the lack of profitability.

I suspect over the next 12 months with the way the market is heading, that we won't see any more new projects actually commenced by companies, but if we do see some of the changes that we hope will happen in the industry, in terms of regulation, attitudes and so on, then the prospect is for the industry to kick on again.

So, yes, it is difficult to, I think, look through the mixed messages that are out there, but we do see some major problems, and the expansion of the industry is by no means assured.

PRESIDING COMMISSIONER: FreightCorp yesterday were talking to us about the fact that they're expecting, from their own planning, something like an expansion of around a third, I think, of their own rolling stock. Certainly - hopefully, I'm quoting them fairly - that some of it was to replace old rolling stock, but at the same time, it does seem as though there's a significant expansion they think is on the horizon, which presumably they would have obtained from discussions with their various customers.

MS ROBERTSON: I was just going to say, I think also we've seen, for the last couple of years, there has been projections of the increase in the steaming coal market, which obviously is the Hunter Valley market, and as you'd see from our submission, that is said to continue. However, the competition is said to be extremely fierce as I've already highlighted from people like Indonesia and South Africa.

So I concur with what Denis has said and I think what we will see is companies that intended that expansion, will clearly now sit back and look at the supply and demand, and look at the competition, and if they're not able to compete, then clearly, they're not going to go ahead with those sort of expansions and new projects.

PRESIDING COMMISSIONER: The other interesting thing that came through in your survey was - in your submission, was a survey, which I think was done by Coopers & Lybrand on your behalf which showed very, relatively small, and at some times losses, in terms of aggregate, if you like, return on shareholders' funds.

Did you want to make any comment about why that might be the case and why that's continued for such a long period of time, and why is it that an industry that has such relatively poor, with the exception of maybe one or two years, a return on funds, continues to invest the way it does.

MR PORTER: Could I just hark back before I perhaps make a comment on that, just back to FreightCorp. I suspect that some of the expansion in FreightCorp's rolling stock is due to the fact that they are currently - their fleet is currently fully committed and they have problems in coping with the peaks in the Hunter Valley particularly, as does the port, as you know. So, I don't think it's all due to expansion in growth, expansion of production.

On profitability, I guess you could say that there were a lot of perennial optimists in the coal industry, but part of it is also due to the fact that new players will come in from time to time in the belief that they can make a go of the industry.

We saw this in the late '80s with Exxon coming into New South Wales and they also had a project in Queensland which never got under way. Exxon of course, is currently trying to sell its assets in New South Wales. In the early 90s we saw Cypress, another American company, come in to the industry and put a lot of money in, and I'm sure that Cyprus has been disappointed with its results.

Back in the '80s, you saw companies, like CSR who came in at the peak in the early '80s and sold out at the low point in the late '80s.

MR HORTON-STEPHENS: BP.

MR PORTER: There have been a lot of comings and goings in the industry. Some companies of course, do make some money. I don't think there'd be too many at the moment, particularly with the problems in the port at Newcastle, but some companies, despite the poor profitability, have still made good returns over the last 10 years or so. Others, clearly have - it's been a disaster for them.

So I think it's a combination of optimism, of companies coming in and thinking they can make a go of a potential project where others haven't, and sometimes of course, a company - a mine will close, a company goes out of the industry, and the mine is effectively recapitalised at a lower value, and of course, the lower the value, the more chance you have of making a go of it.

We can't go on forever like this, but it has had a history of this sort of thing for some time now.

PRESIDING COMMISSIONER: Even from your own figures, it's at least 10 years it's been going on for.

MR PORTER: Yes, although the returns in recent years have been on average, a bit better than in the 1980s. So we have seen some improvement. But nevertheless, it's way below what an industry should be returning.

PRESIDING COMMISSIONER: With projections now though by many companies, it's going to further decline.

MR PORTER: Yes.

PRESIDING COMMISSIONER: So I mean, it's hard to know where we are in this cycle I guess.

MR PORTER: That's correct.

PRESIDING COMMISSIONER: Which is quite interesting. The other, I guess, the other somewhat dilemma in this whole process is that we're not talking about immature companies making these decisions are we?

MR PORTER: That's right.

PRESIDING COMMISSIONER: We're talking about some of the largest companies in the world who are making decisions to make investments on the assumption that they're going to get a reasonable return, but are finding it difficult to do so. What do you put that down to? I mean, we're not talking about a small company, a small entrepreneur, a company, in the most cases who are thinking that they can - who are being over-optimistic about their own capability and performance.

MR PORTER: Again, this is a hard one, because you're asking us to, I guess, to get into the minds of companies, which we're not necessarily privy to their detailed thinking.

But again I suspect it's, in the case of foreign investment coming into Australia, it's companies coming in who believe they can do better than has been the case with, for example, the previous owner. But what's also happened over this period of say, the last 10 years, or in the last five years or so, is that the competition out there has intensified, you've had - Indonesia has come on as a major force in the industry from virtually nothing in the late '80s to 35 million tonnes or so now of exports.

So companies have come in on the expectation that with good management, good engineering and so on, good employee relations, they can make a go of it. The competition has intensified. They have not been able to get the flexibility in the change locally, and they're caught.

Some companies of course, as I said before, have been able to make a go of the industry and have made some reasonable returns. Perhaps that's a reflection of some good management or a bit of luck or good geology. I'm not sure, it'd be various factors there.

But I think you'd really need to get into the minds of the individual companies to answer the question.

PRESIDING COMMISSIONER: Yes, it's somewhat of a dilemma, because also the point you make for example about labour market practices - don't get the impression I'm trying to grill you on this, but we're trying to get behind what the issues are. But even with labour market practices, it seems on the face of it, there's been two parties involved, and both parties, for whatever reason, have decided to agree to those past labour market practices, and now there's some concern about them, but there's been, seems to at least, have been an agreement by two mature parties, fighting it out in the market place, to agree to these things, and now people are suffering the consequences.

MS PENSON: I think that can be reflected in a lot of industries where concessions are made during times of economic prosperity, and then are able to adapt later on when the pressure's on, when they can achieve flexibilities and so on. The difficulty with this industry is that those benefits are institutionalised, they have become very resistant to change. So it's now the potential to adopt to changed market circumstances which are very real, and the change has to come very quickly for a number of companies to actually survive the next economic squeeze. So they're just not as responsive as we'd like them to be.

I liken a lot of the employment practices, I guess, to a bit of a billabong. The industry has gone off on a curve and been cut off, it's been cut off from the mainstream, and until we can open up those barriers and have the work practices reflect what's gone on in the greater Australian community in terms of change and flexibility, they won't be able to keep up.

PRESIDING COMMISSIONER: If I can just extend this dilemma problem. Normally, where you have an international - a commodity which is sold internationally, and even by your own submission, you indicate that there is a very competitive market right around the world now for black coal, both coking and steaming coal, one would expect that these changes would necessarily come about, sometimes very rapidly.

If the market is so competitive internationally, why are we not seeing significant change in Australia in the same way as we've observed significant change in the United States' market?

MS ROBERTSON: I think we have seen the changes in the coal industry, but we started from a much lower base than everybody else. We've seen, a couple of years ago, the industrial relations coming out from under the Coal Industrial Tribunal into the mainstream, but I think we have entrenched practices which go back to the 1940s, where really, the companies and the government could be held to ransom because it was purely for domestic purposes that coal was used.

We managed to get the position we have now as the world's largest exporter because we're geographically well positioned because we didn't have the sort of competition that we have now.

So I think we have seen some changes, but as the world is changing, very rapidly, as we've seen in the last 12 months to two years with regards to competitors, we need to hasten that change.

PRESIDING COMMISSIONER: Let me just ask one last question and then Keith will intervene I am sure. The reason why it's actually important for this Commission is, if we've

already got the processes in place to bring about change, it may be that any recommendations that we might make might overshoot the mark, or might actually inadvertently interfere with the normal process of change which is already in place, and that's why I'm interested in trying to know whether in fact, international competition is going to drive the change, or whether there are, significant, if you like, government imposed impediments which might stop that into the future.

MR PORTER: I think the market, both the domestic market, which is also getting very tough, and the international market, will drive the change, but whether the outcome is the desirable one or whether the path to the transition is the desirable one, is debatable of course.

A lot of the problems are cultural and attitudinal, but they have been reinforced for many, many years, by the whole regulatory framework that's been there. Also reinforced by, for example, the communities, including the politicians who live in those communities. So the whole thing has been a vicious circle with coal communities, politicians, and that regulatory framework, tending to perpetuate the old attitudes, and look elsewhere for blame of course.

The industry will change in the next few years, I think, dramatically. I think it's how to get that attitudinal change, the preparedness to become flexible and so on, and I think as we've seen with the Hunter Valley mine case, there are institutional impediments there which are standing in the way of change.

Some companies of course, have been able to get some change, others haven't, but the institutional framework has not helped.

MR HORTON-STEPHENS: Yes, I suppose it's an enormous question of culture. We had Camberwell Coal here yesterday. It was striking, the changes it was able to achieve on a greenfield site at the beginning. But it's also striking that there were a lot of very basic problems which are not peculiar to Camberwell at all, on these issues,

You talk about changes in the industry and you mentioned the folding of the CIT into the AIRC and there have been changes for the better. Can you tell me how you think things have improved as a result of the abolition of the CIT and its collapse?

MS ROBERTSON: I'll give a general comment, and Barbara might like to go into more detail. I think it's just a step into mainstreaming. I mean, as you've heard earlier, we've been very isolated as an industry for many, many years. That isolation, I don't believe, has been in the industry's best interest, it's tended to breed an inward looking culture and I think at least by a step into the mainstream, we're starting to behave like the rest of Australia basically. But certainly we're not achieving yet, what we'd like to achieve in terms of employment practices, but it is a step that says the coal industry is no longer different, and that's what we're trying to achieve. We do not want to be treated any differently from other industries in Australia. That's the general comment. Barbara, you might want to expand on the industrial implications of that.

MS PENSON: I guess to get an understanding of employment relations in the coal industry in New South Wales, it requires a reading of 200 years of history which is absolutely fascinating but perhaps doesn't give much of a clue to the future, and New South Wales has had a very tumultuous past with a lot of people deigning that it's their role to intervene in the coal industry and how it's managed, including government parties.

And the Coal Industry Tribunal was actually the first arbitral body ever set up in Australia. It preceded the Industrial Relations Commission, to - and its imprimatur by the Act, was to keep the coal flowing, it wasn't to settle disputes or - as under the Act as required, it was to keep the coal flowing, and their decisions in effect, reflect that thinking, that the most important thing was that the coal was kept flowing for the local industry power requirements primarily in the time that it was set up, and that was its primary reason.

And that is a cultural attribute, I guess, which is perpetuated, and there is also a belief within the employment relations scenario of the industry, that it is different, coal is different; only a little bit of exposure to a whole range of industries indicates that there's nothing intrinsically different about the coal industry, but having it's own tribunal, again entrenched that view.

The move to the AIRC is a big cultural shift, it's about saying that the coal industry is aligned and is a lot more alike to other industry in Australia, and of course, has different principles for reviewing its change.

But there's certainly a lag in terms of reviewing the awards, restructuring, structural efficiency, all those sorts of things that went through other awards probably more effectively and more swiftly than they are doing in the coal industry award.

I think that can even be exemplified by the 150A review that's required under the previous act. We are still going through that process in the coal industry. It's been two years now, where we've been endeavouring to negotiate that review of the award required under the last act, let alone the commencement of the review required under the current act.

So it's been just yet another symbol to endeavour to change the culture as well as the practices.

MR HORTON-STEPHENS: I guess what I miss - was involved in the '91 I think it was, Denis was there too - not much frankly seems to have changed since then. I come back to and look at it again, and there doesn't seem to be a sense of urgency. And yet we hear about an industry in crisis. Bill has been through some of this, and I just don't sense a feeling of urgency. I mean, I know various things are happening. I understand that. I know what's happening in the Hunter Valley. We read in the press the other day that BHP and the so-called friendlies are talking to the CFMEU about restructuring, rearranging the award, revising the award. So I suppose there are various moves afoot to change practices.

But how long does this take? Does Australia have time?

MR PORTER: Could I just comment here. I'm not sure that your impression, Keith, of a lack of urgency is correct. I mean, unfortunately, you haven't had a lot of companies come to you in these public hearings to talk about it. But if you look at what's happening out there at the moment, or just recently, in the western division, you've had two of the big mines have laid off between two and 300 people and scaled back their operations. In the southern coalfields you've got BHP with a program at the moment, I forget the numbers now, but some hundreds of retrenchments, and they're heading towards much more in the next couple of years.

There is a lot happening out there to restructure the industry to try and change. Maybe the industry - well, not maybe - the industry is not good in terms of individual companies and standing up and talking publicly. I think it's a reflection of the history and if they put the head up, someone will take a pot-shot at them. But you can argue about whether the change is fast enough. But there is a lot happening, there is a lot of concern. I think the worry is that it's not happening fast enough, and there's not the flexibility in the system to adapt.

MS PENSON: If I could add there, I feel that the people that I relate to, there is a high level of urgency but it's also combined with a high level of frustration, because it's not easily apparent to them what course they might wish to take.

And Denis has mentioned Hunter Valley and obviously that's one company that has decided that it needs to take a radical change very quickly and we can all see the ramifications that has befallen that company.

Another example, without naming companies, is one particular company made an application to the Commission to vary an aspect of their award which reflects an outdated practice. We requested whether there were other companies in the state that wanted to support that application, a few did, but then they were subjected to a 48-hour stoppage. So there's almost a punishment for being seen to be driving for change.

As I mentioned, the 150A process, in other industries is well and truly completed. The transport industry did it in a couple of days. We're still at it two years later.

A lot of applications have been made the Commission on aspects of the award which on a prima facie reading of the act would indicate should be effected quite easily. Those matters are still unresolved, and we've listed a number of those.

There are a number of institutional impediments to driving change, and so combined with this real need to effect that change, and I feel it quite strongly, is also this feeling of frustration of not knowing how to drive it rapidly in the pace that it requires.

MR HORTON-STEPHENS: Do you have any thoughts for those that are frustrated? Do you have any thoughts on the way through?

MS PENSON: On the way through?

MR HORTON-STEPHENS: Yes - - -

MS PENSON: Yes - - -

MR HORTON-STEPHENS: What's the way through?

MS PENSON: Yes, I think the industry needs to be exposed as rapidly as possible to those practices that apply to the rest of the industrial environment. The Commission could assist by appreciating the capital intensive nature of the industry, and therefore, the certain pressures that are upon it. We have a joint coal board which again acts as a symbol as being different. The services that it delivers in other industries are offered by the market place in terms of insurance or other services that they deliver. We have a long service leave scheme which again entrenches the differences in this industry, it's portable nature between companies, it again entrenches this view that employees work for the industry or for the union which will protect its continuing employment that their fortunes are not linked to the fortunes of the company.

And again, all of these institutions reinforce a view that coal is different and somehow insulated from market forces, and it is not the reality which is being demonstrated at the moment with a number of retrenchments occurring and I'd predict if, depending on how the market goes next year, that won't be the end of it. I can see more of them occurring and more and more companies taking different paths to achieving change fairly quickly, and there are a number of those occurring at the moment.

PRESIDING COMMISSIONER: One last question on this and then we'll move on to some of the other issues I think and some of the practical questions. But another representation of this dilemma is the discussion about coal loaders, in particular, at Newcastle, where we actually see - and we discussed this a little yesterday - the future of that being basically in the hands of the industry.

And yet, the industry, to build on Keith's point, doesn't seem to be able to resolve this issue amongst themselves, and there, by implication, one could come to the conclusion that there is insufficient urgency by the industry to resolve issues which is actually in their own hands.

Now, that might be a very superficial view, and please accept that if it is, accept the superficiality if it is. But can you get to the dilemma, if you like?

MS ROBERTSON: I think the issue of the port is clearly a serious one. It is not just the port it's the whole chain which of course needs to work if we're going to successfully get our coal loaded on time and avoid huge costs and meet the customers' expectations.

The companies are taking this seriously. They, I think, in fact today, Newcastle shippers are meeting yet again to look at the various options, that they can put in place. It is a problem that's arisen over the last few years. It's obviously not just happened the last few weeks. It clearly must be rectified and the companies must take action.

Now they are looking at what sort of system can they put in place, they have to come to a consensus amongst themselves as to what system will work and what will obviously not impact on any specific company worse than any other.

But as I would say, it's not just the port it's the whole chain which involves the rail and everything else. There are of course some impediments. There is an extension which already has development approval which is now being challenged in the Land and Environment Court. It's those sort of legal challenges which in some instances are vexatious, which of course, can hinder developments as well, and which is part of the development process we've urged the government in the past and will continue to try and ensure that development approval processes are more streamlined and give more certainty.

Now, that's just holding up one aspect, and that's 18 months away even if an approval is which we hope will finally occur.

But I understand what you're saying. It clearly sends the wrong message. But I would only say in the companies' defence, they are working very hard with the relevant authorities to try and fix the problem.

MR PORTER: In hindsight, the port capacity should have been lifted some time ago, there's no question about that. But to be fair to the companies, the board of PWCS agonised long and hard several years ago and they do it all the time, about when to add capacity, because they've always been conscious of the problem of too much investment, getting too far ahead of the throughput of a loader, it can only come back and add to costs, and in a fine margin business of course, that's not desirable.

Also, if you look at what happened this year, this calendar year so far, in the first nine months, exports through Newcastle were up about 18 per cent. Historically, the growth has been about seven. So there has been a growth which took everyone by surprise this year.

The industry's got itself in a hole, it's got to get itself out, and as Jane said, the companies are serious about it.

I have a personal view that the system in the Hunter Valley needs some price signals. It's a co-operative at the moment. The loader is a common user facility, it's built into their lease. I just don't think the system is geared to handle the future, and as I say, I have a personal view that the whole system needs to be structured in a way that there are price signals and penalties and incentives for whether you perform or not.

PRESIDING COMMISSIONER: Let's then address some of the specific issues that you raised, and I think one of the major ones that you raised was, if you like, some of the regulatory impediments.

Did you want to give us some view about the priorities in terms of regulatory impediments? And you've raised one of course, which is the issue about the joint coal board and its, if you like, its current role, diminished, certainly though it is, in areas like workers compensation - and feel free to put that in any order that you wish. But are there other important regulatory questions which you think the Commission should be considering?

MS ROBERTSON: I think we probably ought to touch on - certainly talk about occupational health and safety, Laurie, and you might want to just lead off on that first.

MR STILLER: Yes, certainly. The regulatory structure for safety in the coal sector is very dated, as we indicated in our submission, it was designed many years ago, it's very prescriptive and really, I guess you'd characterise it as lowest common denominator regulation. It's designed to cover for the poorest, if you like, the poorest manager out there. It has very little flexibility within it, and it encourages a compliance mentality to manage safety.

The new forms of health and safety regulation that are available in the mainstream are much more performance oriented, meeting those requirements is much more onerous than meeting a prescriptive requirement, but it's also much more flexible, so you, in a prescriptive arrangement, you would require a belt, a conveyor belt to be walked once a shift in order to ensure that it's operating safely under a - that's fairly simple to comply with.

A more difficult requirement under a more enabling regime is that you will ensure that your conveyor system is operating safely and without risk to the environmental or the people who operate it. So much harder to comply with, but much more inherently flexible.

So we certainly need to move into that performance based regulatory regime. We've now got many major multinational companies such as Exxon and Shell who operate under those regimes in Australia and elsewhere in the world, and I think the sooner we can move out from underneath those kind of prescribed arrangements, the sooner we'll get real change in terms of safety performance.

Certainly, the difficulty in making that transition comes back to lack of trust between the parties. The unions have provided board support, albeit cautious support, for a transition to more enabling forms of regulation, but that change as a result is very, very slow.

There are various committees and groups working on that move. We're making progress, but I guess we can't see - I would be surprised to see a full transition in under four years or so from now.

I mean, we've been struggling with changing just the regulations under our existing act, for the past four years, and that has introduced some minor change if you like, in the regulatory structure. But every yard of that has been a battle. It's been four years work of change that may go in next year, although there's rumours that it'll be delayed another 12 months. So it's a very difficult and slow process of change.

MR HORTON-STEPHENS: Is there any means to hasten the process?

MS ROBERTSON: It just tends to get back to industrial relations unfortunately.

MR STILLER: It does.

MS ROBERTSON: That's what's been happening.

PRESIDING COMMISSIONER: Well, let's just peel back the onion a little bit.

MR HORTON-STEPHENS: Yes.

PRESIDING COMMISSIONER: First of all, are there ways by way we can break up the process? I mean, for example, a number of submissions, and even yesterday, there was a suggestion that we should separate, for example, underground from open cut.

Now, I don't know whether that's been done or not. I'm not privy to the discussions, so it's not easy for me to understand that. But that would seem at least on the face of it, to be a manageable process that could be adopted.

Secondly, the way you've described the process, there's almost a veto by one party over another. Now the question is, is the process for making these decisions, the right process, or should there be another process for adopting what we all know is nothing more than existing contemporary knowledge about what makes up good regulation in this area. It's not new, it's not revolutionary, but you are talking about a process as distinct from a set of ideas, which really needs to be understood.

So I think that's what we're trying to understand. How do we peel back the onion to see how one can move from where we are to another paradigm?

MR STILLER: I certainly think the separation of open cut from underground has some good potential and I think that is an area, it's been flagged in current discussions, and I think we'll be floating that as a concept - I'm not sure how far we'll get - but it's certainly I think, a good area for potential.

I think in the other area, and the third party in all this is the government, so they obviously have a clear role. And I think the transition is a delicate one and there's a, I guess, there's a fair - do you bring about a change ahead of cultural change, and ahead of the change in attitudes ahead of the level of trust that you need to make these consultative arrangements that really make health and safety work well. Do you try and force that through, and endanger those processes or do you try and drag the whole thing along at a slower but more acceptable pace?

Now, I think getting that balance is difficult. Certainly between the two, the unions and the employers, there's obviously a tug off war, and I guess it comes back to the government playing more of a leadership role in that process perhaps, and helping to shift us through that phase more quickly.

But I think there is a whole bundle of attitudinal shifts that need to occur at the company levels throughout the industry in tune with this change that we want to bring about. I think it's a dilemma.

PRESIDING COMMISSIONER: Please don't take this wrong, I can't help but reflect on what you were saying about the need for urgency, and yet at the same time you're saying, "Should we be more cautious?"

But again, the message that's coming through here is a mixed message, that presumably, it's also very difficult to pick up - it's very difficult for that message to be discerned in a sophisticated way by those people who are involved with negotiations. Because I mean, your submission makes a very compelling case for getting on with it quickly. And so that's why we're trying to understand how do you peel back the onion in such a way that you can manage the process in a way which gives you the sense of urgency which you're looking for?

MR STILLER: Well, if you take the safety one, in our submissions to - we had the mine safety review that ACIL ran for us, and we put to that review that we needed a step-wise change. We were making gradual progress but it was too slow, we needed a step-wise change. That review didn't support that, it really took us back and said, "We don't think you can move into that process quickly." And they did recommend us looking at particular regulatory structures such as a two-tiered approach and we are examining that but essentially it didn't really provide us, I don't think, with the mechanism to move ahead in a more rapid way.

MS ROBERTSON: Could I just come in on that too. I think as I said, it does inevitably get leaked to industrial relations. I think it's also a difficult concept to sell. If you think about it, we talk about being overly regulated and proscriptive. The perceptions of our industry are that we are dangerous and we would dispute that. There are clearly risks that have to be managed. And I just think it makes it very difficult for us because we are saying if we less proscriptive, that is clearly much harder for each mine site, they therefore, have to manage the whole process. It is not just following guidelines in a book which says if we do this we just tick it off, as Laurie said, walking up and down. I mean, that's just not the way it's done. It's not encouraging people to go on to best practice.

And I think it just makes it very difficult because - I'm losing my train of thought - but it's the whole mentality. We at the moment have a compliance mentality and I think we're over-regulated, that there's a feeling certainly within the union movement that that over-regulation leads to a safer environment. Historically, it hasn't. Let's look at our track record. We therefore have to sell the message, not just the industry but to the broader community, that if we are not as regulated as we are we will be a safer industry, and it will be much - it puts much more onus on to each individual company to manage their own enterprise.

Now, that's a responsibility we have to take on board and we have to sell that but it is also as Laurie said right at the beginning, an issue of trust between the employer and the unions and the employees, and it's a battle we're going to have to win. Now, the change should be quicker than it is but whether we can achieve that without huge industrial strife is another issue. So sorry about that, I got a little bit lost in the middle of it.

PRESIDING COMMISSIONER: That's fine. Well, let's talk about this process issue then just for the moment. I'm sorry to get into a lot of the detail here but you seem to be describing a process where if all parties aren't agreeable then it's not going to happen, and you seem to be describing what is the, if you like, the industrial relations paradigm, rather than, if you like, a sort of a government led paradigm whereby governments can understand what is the best sort of regulatory framework and then move forward. I mean, are there any areas there that you think this Commission should be thinking about in terms of process for resolving what might be quite difficult issues where there is likely to be conflict because of the interaction between the industrial relations system and the occupation and health and safety system, and therefore, presumably it needs a circuit breaker.

MS ROBERTSON: That's exactly right.

MR STILLER: Well, I certainly think the Department has played it very cautiously in that process. It's in a position to be able to move the industry more rapidly but it's tended certainly to operate in pretty much a consensus mode. All of our groups where we have been looking at regulatory reform have been by consensus.

PRESIDING COMMISSIONER: Have you given any thought to an alternative process so that you build in circuit breakers to log jams when decisions, you know, when serious decisions are actually being considered?

MR STILLER: At this stage it hasn't been looked at. I guess the process is moving along. We've been making reform in a gradual way and people have perceived that process to be achieving a degree of change. We haven't, I guess, hit the log jam that has stopped the process dead, that would then turn you towards a circuit breaker. But I do think it would be of value if the government did take a much stronger leadership role in this area in terms of looking at bigger, broader, quicker change.

PRESIDING COMMISSIONER: Other regulatory issues in addition to occupation and health and safety questions?

MS ROBERTSON: A couple of issues we raised which I wouldn't spend too much time on because they're detailed in the submission, is just project developments and also land use constraints and project approvals. You're probably aware, I think, we mentioned in the submission that the State government is currently making amendments to the the EP&A Act here in New South Wales which will not impact to any large extent on the mining industry specifically, but will certainly set a framework going forward for a more integrated approval process. And anything along those lines is of great benefit to the industry because we never try to shirk our responsibilities but it is important that we don't duplicate and there is a lot of duplication currently under New South Wales State legislation.

And those areas, I'm not sure there's much you can do but certainly we've detailed some of it there. With land use constraints, the industry, particularly in New South Wales, has an ongoing issue, I guess with accessing resources, currently about 50 per cent of coal reserves are under existing national parks, that is not to say I'm here to advocate that we mine in national parks, however, we need to seriously look at the land use concepts and reserves that we have in New South Wales, to ensure that we make sensible decisions when we restrict access to land, not just on conservation values but also on economic values. That's something that has been hard over the last few years, there's been 35 new national parks and conservation reserves declared in New South Wales, some of which will impact not directly on the coal industry but on other sectors of the industry, the metalliferous industry.

But something we would urge you to look at is the differing land use reserves that allow perhaps some form of multiple land use where you can clearly preserve areas of high conservation value whilst allowing access to resources because as I say, over 50 per cent of coal resources are already locked away.

Project approvals we've talked about. The joint coal board, Barbara mentioned earlier. Our view is clearly stated there, that in the past it had a function. We believe that most of these functions can be spun off to existing departments or to the private sector. Coal mines insurance we believe could be corporatised, and should be corporatised and open to competition.

MR HORTON-STEPHENS: But do you also - I was going to raise this because we mentioned JCB a moment ago, but the author said it would be timely to review the various functions of the JCB. Is that really necessary? You don't need another Kellman Review. You're not proposing that sort of review.

MS ROBERTSON: No, we're not. No.

MR HORTON-STEPHENS: Your position is fairly clear that the functions of the JCB have been reviewed on a number of occasions.

PRESIDING COMMISSIONER: You're arguing it should be abolished aren't you?

MS ROBERTSON: Yes. That's our preferred position.

MR PORTER: That's our preferred position, but we believe the political realities are that the New South Wales government at least will wish to maintain the JCB and if that's the case we've got to co-operate as best we can.

The reference there to "review" I think that, you know, that was a ploy - that's not probably the best word, but a ploy to - once you get a review of a body, then you're likely to get some change, but it's a process that we want to also follow-up with the government and the board itself, in terms of trying to talk to them about where is the JCB as an organisation going?

MR HORTON-STEPHENS: In a sense, the JCB's up for review in the course of this inquiry.

MR PORTER: Yes, certainly.

MR HORTON-STEPHENS: We've received a submission from the JCB and we'll certainly have something to say about its activities.

MS ROBERTSON: We're aware of that submission and I think it clearly summarises the, or states very clearly, the paternalistic role that we believe that institutions like the JCB have taken towards the industry, and which are just no longer acceptable.

PRESIDING COMMISSIONER: There was one other issue that's been raised with us as we've been visiting a number of mines, and it actually relates to some older mines, and that is part closure of older mines, and what seems to be a very highly prescriptive and regulatory set of environments where old mines that have been in operation for some hundred - some a hundred years now, are finding that they're subject to the same set of regulations almost as though they were working mines, or parts of a mine that is now no longer working.

Is it an issue that you've actually considered about how we can get a more sensible framework for the regulation of parts of mines that are no longer in operation?

MR PORTER: I don't think it's an issue that we've - companies report to us generally.

MS ROBERTSON: We'll certainly take that on board.

PRESIDING COMMISSIONER: My perception, and we're having some people give us some numbers on it, is that particularly for those entrepreneurial miners that are coming behind some very large mining companies and are excavating and obtaining some very good resources out of some old mines, it may actually lead to the development of a whole new set of mining companies it seems to me, and it's not outside of the realm of possibility that we're teaching a whole new group of miners how to go about doing something that could be very valuable in the long term, and they're learning their trade, it seems to me, and making quite a reasonable return, by operating old mines, but they're lumbered with a very substantial cost, simply because of the very extensive holdings that are now no longer currently in use, and there are some, as you would probably be aware, some very prescriptive sets of regulations about how they should be handling those old mines, and some mines, you know, we're talking about anything up to 15 or 20 people that are doing nothing else except inspecting on a continuous basis, very old holdings.

MS ROBERTSON: Can I take that on notice?

PRESIDING COMMISSIONER: Yes. I'd be very interested in your comment about that.

MS ROBERTSON: Yes, be happy to get back to you - - -

PRESIDING COMMISSIONER: And if you felt that there was something that we might be able to do in that regard, I'd be very interested in being able to do so.

MS ROBERTSON: Thank you for raising it.

PRESIDING COMMISSIONER: We should talk about the industrial relations issues. Keith, did you want to cover anything else on this before I move on?

MR HORTON-STEPHENS: No.

PRESIDING COMMISSIONER: Clearly, from what you've put in your submission, we do need to cover those. Did you want to make any additional comments other than the ones that you've made? Maybe I should just lead in by saying when I - on 6, Chapter 6, if you like of your submission, you talk about management and you give the impression that the labour market in this industry is clearly not competitive, I think, to use your words, and you talk about the need to recruit the most appropriate staff, to allocate work in the safest most cost efficient manner, to structure rosters and other work arrangements efficiently et cetera.

Did you want to elaborate on, first of all, why it is that we don't have, if you like, a "competitive" labour market, and what then, once we've finished that discussion, obviously to try and think about whether there's a way through to making it more competitive if you think it isn't currently competitive?

MS PENSON: Well, I think it's clearly accepted in the realms of the industry generally, that strategic human resource management adds to competitive strength, and if one comes with that outside paradigm and applies it to the coal industry, you bump into a whole lot of barriers, and those barriers are very resistant to change.

I've taken the reverse approach I guess, of trying to intimate where the barriers are, rather than highlight them, and say these are difficulties, rather than to say well best practice would say that one would do it in this way, that these are the barriers, and those are institutionalised barriers that have been developed over many, many years, and have become very resistant to change, and the institutional bodies that can lead us out of change, have not been as speedy as perhaps we might have liked in getting those changes.

We're in a very capital intensive industry with a very powerful union, so that any resistance to change is smartly felt and very expensive.

So it's a very, very slow process and one that's very resistant to change, and we'd be keen to look into any approach that might drive that change a little faster.

PRESIDING COMMISSIONER: You seem to be, in a subtle way, however, wanting to change the way, if I'm reading correctly, the way in which the institutional framework should think about arbitrating, and I don't mean that in its narrow sense, from one which is basically revolves around precedent, to one which revolves around best practice.

MS PENSON: Yes.

PRESIDING COMMISSIONER: Now, that would be a very significant change to the institutional framework in this country, and I'm wondering how you saw that that might come about.

MS PENSON: Well, perhaps I should expand on my flippant one-word response there. I believe that the change could come about within the management, and again, the difficulty is reflected

there because many of the managers have been brought up in an environment which is again prescribed. "Thou shalt recruit in this way, thou shalt allocate work in this way." And that is what they've learnt over their many years of working in the coal industry.

In endeavouring to bring about change and to help those managers to manage in the style that reflects best practice, we keep coming up with all these institutional barriers which stop us, ie, custom and practice as entrenched within the award is an award provision. If you've already done it that way for the last x number of years, that's the way you will continue to do it.

The belief systems of the parties suggest that that's the way to go forward. We have been applying to the AIRC to reflect those changes that one would accept are part of the new workplace relations act, and to this date, have not been very successful in bringing about the changes to those practices that one would expect from the act, and we've articulated a number of those instances where, on a first face reading of the act, you suggest that change would have been effected through that body, yet there is a resistance there to bringing those changes through.

And that's where a level of the frustration arises. Many people have fallen back onto old practices because they can't bring about the desired change, the necessary change. And they happen in a number of areas, and if you take the employment chain right through from recruitment right through to the age based compulsory retirement, the whole of one's working life, is prescribed somewhere or other by a regulation or an award or an agreement or custom and practice. And that change is very resistant.

PRESIDING COMMISSIONER: But here, it seems to me, is the rub in a way, because there are so many customs and practices, that it seems to me that it doesn't matter what you do, you're going to be bumping up against another one. Unless you're actually a green field site that has no existing customer practice. So let's put that aside, that particular set of firm decides for the moment. But, at the same time, the question for us, I guess, is how does one cut through this, in a way that is practical and doesn't require people to fall back on addressing every one of the issues, piece by piece, bit by bit. If I can just give you an anecdote which is part of my concern. One firm which we visited in Australia, found that there were at least 150 additional customs and practices that they - the management didn't know were there, until such time as they asked everybody to put a customs and practices on the table, and they found there were that many. They then cleared away many of them, but they still finished up with 40 which they couldn't negotiate out of the system.

So the question then becomes, how does one cut through all of that, so that you can at least get some, if you like, on the assumption that's what you want, some sort of sensible application of best practice on a firm by firm basis.

MS PENSON: That is very challenging, and there are a number of companies within New South Wales, approaching it from a range of perspectives. One, of course, is very high profile and one has decided that they need change radically, but, of course, that's a very expensive route. Others are doing it in endeavouring to take a more consultative participative route, and again, there's not yet much to be delivered either. The green field sites obviously demonstrate what can be achieved, and yes, we are pushing with the rest of them, to try and bring about those changes. I think one of the issues is perhaps the requirement for recognition for managers within the industry. That concerns me, because that replicates, you must have been in the industry for a considerable period of time to be a manager in the industry, and therefore, it is a bit of a resistor to bringing in fresh eyes from people who have been outside the industry and see how other companies manage, because there isn't that cross-fertilisation of ideas, so, yes, it does need some pressure from management to drive the change, and it needs an education process within the workforce. We've had one company endeavouring to achieve an enterprise agreement, and in the process discovered that their workforce weren't all that clear about what was already in the award, so, yes, there needs to be some initiatives on both sides. Yet when we apply some pressure and

suggest, well, this is not what the Act, that regulates how employment occurs in the Australia today, reflects what we are doing, and we try to push against those barriers. We are not having any success. It is very slow, and it doesn't appreciate the particular nature of this industry and how we must effect change rapidly.

MS ROBERTSON: Can I also just come in at the end there, Barbara, and just add that with - the current recruitment practices are such that employing on seniority, employing from less, you are simply entrenching again and again and again, these existing work practices and customs. You are not getting fresh blood into the enterprise, you are therefore being, as you say, when you ask people to write down the list of customs and practices, they're there, they're entrenched, so if we can get some of the major issues corrected, such as the recruitment practices, I believe a lot of these others would fall by the wayside.

PRESIDING COMMISSIONER: So you would say that if, that at least a precondition, if not, a not unnecessary condition would be to think about recruitment practices and the so called lists when they apply.

MS ROBERTSON: Exactly, recruiting on merit. Is there any other industry in Australia that does not recruit on merit?

PRESIDING COMMISSIONER: Are you going as far as to say that it ought to be declared illegal?

MS ROBERTSON: I'm not going as far as that, but I'm certainly saying within the award system.

MS PENSON: Well, the Workplace Relations Act, sir, review of the award under 89A, would reduce awards to allowable matters, and it would be the argument of the industry that the recruitment and the retrenchment provisions are not allowable matters. Therefore, if we can get some principles from the AIRC which direct the reduction of awards to these minimum safety net conditions, and leave other matters to the enterprise to effect in the best manner that they deem appropriate for their commercial enterprises.

PRESIDING COMMISSIONER: But, again, this is part of the dilemma. You seem to be arguing that the AIRC as part of the institutional framework, is working off a legal set of prescriptions, if you like, based around a customer practice and also a precedent which would presumably entrench past practices. So, it's almost a circular argument. You almost - I mean, what I'm trying to do is read between the lines of your submission where you seek - that's why I'm asking you the question so bluntly. Are you actually asking governments to declare those sorts of practices illegal, to cut through that process? You might want to just take that on notice, but that seems to be the implication of what you're saying. And you're saying if you get that one right, then the whole series of other things, including requiring managers to take responsibility for their recruitment and therefore take an appropriate approach to training, and a whole range of other things will fall into place.

But, at the same time, you then go back and seem to say in your submission, and you required the AIRC to take this approach, but then you say, the AIRC in the past hasn't taken this approach. And you get no, I guess, comfort, that you would see the AIRC taking such an approach into the future, so it's the circularity of the argument that I had trouble coming to grips with.

MS PENSON: Well, if I could just draw your attention to the preference position, as you appreciate, under the Workplace Relations Act, the preference in employment based on unionism is considered illegal, however, an agreement went to the AIRC and that clause was put into the

agreement, on the provision that it may be illegal in the Act, but there is no illegality in putting it into an award, so one comes away confused - - -

PRESIDING COMMISSIONER: That's a slightly different question about working off lists. You can still have a list without actually having somebody belong to a union.

MS PENSON: It's a matter of the Commission perhaps not necessarily reflecting in practice what one would read on a prima facie reading of the Act, so we do have that circularity that you refer to. We do need a circuit breaker.

MR PORTER: But the issue is broader than this. I mean, we do go into the various cultural barriers and, you know, including the long service leave scheme mentioned earlier, which perpetuates the employing for the industry. Barbara just mentioned the fact that managers have to go through a system which tends to mean they come up through the ranks, and perpetuates the incestuous nature of the industry, so doing away with seniority or lists and so on, would be a major step forward, however that would be achieved. But, it's only part of the story. We've got to look a bit more broadly than that.

PRESIDING COMMISSIONER: We're moving beyond our time, Keith, would you have any other comments?

MR HORTON-STEPHENS: Not on this, no.

PRESIDING COMMISSIONER: Did you want to add anything else on this important labour market, industrial relations issue?

MS ROBERTSON: I'll take your point on notice and come back - - -

PRESIDING COMMISSIONER: Thanks very much. Keith?

MR HORTON-STEPHENS: Could we move now to which you mentioned right at the beginning, taxation and royalties. You said early in the submission, in fact, it's on p.5 where you were talking about the in the domestic market, and one of the advantages that Victorian have, is that they're not subject to state government royalties. What's your view in terms of an alternative approach because I will - do you advocate an RRT?

MR PORTER: No, we don't.

MR HORTON-STEPHENS: Why not?

MR PORTER: We tried to agree as a - this is in New South Wales as an industry on an RIT back in the early '90's, 1991, I think it was. Quite a number of companies were philosophically supportive of an RIT. We ran into the problem, however, that state government - and we were talking to the state government about the process as well - the state government said it wanted to be assured of its revenue stream, and that seemed to me, at that stage, that existing mines would have to stay on the flat rate royalty. So much for their timing. So any RIT would be applied to new mines and that immediately raised competitiveness issues. It didn't proceed - also a couple of companies that - a couple of their member companies were philosophically opposed to an RIT. They felt it would just leave us too exposed to the rate being adjusted and so on. I think it's - - -

MR HORTON-STEPHENS: That applies to royalties.

MR PORTER: It does. It does, but, that was their thinking and these were companies that had been involved in the oil industry so I guess they had a - were coming from a different perspective.

They've certainly - or there are possibly merits in an RIT, but given our federal system, given the fact that the companies based in New South Wales basically accept the current royalty scale when the - although it's not perfect. It's all a bit hard, frankly. And I don't know how we would break through that.

MR HORTON-STEPHENS: Well, would you at least see that it would be - make more economic sense for any royalties to be profit based, if you didn't have a full RIT?

MR PORTER: Certainly. It's a matter of whether you can set up a new system that would not raise competitiveness issues between producers, and I think that would mean that everyone would have to go onto the RIT. But, how do you deal with existing mines under an RIT system? It is designed really to look at the future - you now, the future cash flows and investments of the company. It's very difficult to see how an RIT can be instituted in an industry like the New South Wales, or even the Queensland Coal Industry where we have so many exciting operations.

MR HORTON-STEPHENS: It's not a subject anywhere which is under active consideration - -
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MR PORTER: It's not.

MR HORTON-STEPHENS: I mean, I guessed it wasn't. Perhaps we can move on from there to rail freight questions, rail questions, p.35. You note - have a number of things to say there - you note, p.35, to its credit of the New South Wales government is phasing out monopoly rents, and are competitive to rail access charge. Do you think it's doing so fast enough? Again we come back to the crisis and the need for change. Was it simply accepted in the industry that that's it, fine, we'll live with that?

MR PORTER: We have accepted it, it's been there for a long, long time, and I think it's a major step forward to have - firstly have both the previous government and now this government, acknowledge that the monopoly rent was there. It was denied for many years. So acknowledgment was there, and now we have real progress and a 25 per cent reduction from July. Sure, it would be great to think that we could have achieved that, a phase out overnight. The realities are political, and the financial realities in New South Wales meant that we have not been able to achieve that. We have, as an industry, accepted the - welcomed and accepted the decision. In an ideal world, sure, we would have liked to have seen it wiped out overnight.

MR HORTON-STEPHENS: You then move on in the next paragraph to talk about some of the concerns of council in terms of the access regime. And one of them is, commercial negotiation isn't possible because of lack of transparency. Could you explain that to me please?

MR PORTER: Well, all that's saying is that at present there is not the detail available about the costs of the infrastructure. Companies or even rail operators, do not have details about costs. If you don't have details about the costs of the service provider, how can you negotiate? It's really not saying a lot more than that. The government has indicated, and RAC has indicated that it is prepared to provide some more information, but until we see the detail of that, it's hard to judge whether that will be adequate.

MR HORTON-STEPHENS: But that will be part of the activities of any regulator. It is suggested it's time we had a regulator here.

MR PORTER: Yes, we had the - there is no regulator at the moment. You have an provider and no regulator.

MR HORTON-STEPHENS: Sure. Do you see that IPART will be a suitable regulator? Have you thought about who might do? We'll come down to the practical questions, thinking about our bottom lines. How can we have value?

MR PORTER: Yes, IPART could well be the regulator. It's the regulator I think for the gas regime.

MR HORTON-STEPHENS: Yes.

MR PORTER: IPART has had another role which is in relation to rates of return, assessing rates of return in the system. You clearly can't have both of those, I don't think, but the government has indicated that it, you know, it's looking at the role of IPART and how to separate out some of those things. We are, I think, making a little bit of progress on some of these issues, but there are still some of those major principles that we'll get to agree on.

MR HORTON-STEPHENS: Perhaps, I may be coming back in with a more general question. That is, opening the system - both operate a system up to competition fairly active in that regard. Where are things on that? I can't find the page at the moment.

MR PORTER: Page 35 also talks about it as well. Page 36.

MS ROBERTSON: We mention that the - there was an appeal to the NCC, and the NCC made a recommendation to the premier to declare it, and the premier had three options to declare and not to declare. Do nothing, he did nothing.

The New South Wales government has continued to speak to the NCC regarding its certification application, and we are continuing to have discussions with the government on the current certification application and what we would like to see in it. ie. The issues we've raised here are being addressed. We have an option, 21 days after the premier was deemed to do nothing. ie. Not to declare. To launch an appeal to the Australian Competition Tribunal. We have to do that by the end of this week and we are currently reviewing our position and we'll make a decision towards the end of the week, whether or not we do. So that's where it's up to.

MR HORTON-STEPHENS: We'll watch this space.

MS ROBERTSON: Watch this space, we'll let you know.

PRESIDING COMMISSIONER: We're going to, I think, need to wrap up now, but is there any last questions?

MR HORTON-STEPHENS: No, that's fine.

PRESIDING COMMISSIONER: Is there anything else that you wanted to raise with us, if it hasn't already been raised?

MS ROBERTSON: I think we've covered everything we'd like to. We'll certainly revert back to you on the two issues that we've taken on notice and thank you for the opportunity to expand upon our submission.

PRESIDING COMMISSIONER: And thank you very much for providing us with such a detailed submission. I enjoyed reading it and it was illuminating in many ways. Thank you very much.

INQUIRY ADJOURNED AT 10.45 AM

INQUIRY RE-CONVENED AT 10.51 AM

PRESIDING COMMISSIONER: I'd now like to re-convene this Industry Commission public hearing into Australia's Black Coal Industry. And we now have with us, Rio Tinto Energy. Would you please introduce yourselves and indicate in what capacity you're here today please?

MR ANGWIN: My name is Michael Angwin, Mr Chairman. I'm appearing on behalf of the Rio Tinto Energy. Appearing with me is Rob Supplitt. I'm the chief adviser into relations for Rio Tinto and Mr Supplitt is a mining superintendent from the Hunter Valley Number 1 Mine.

PRESIDING COMMISSIONER: Rob, we're going to need to get your voice on transcript, so could you just introduce yourself so that we can get that for the transcript.

MR SUPPLITT: My name is Robert Supplitt, I'm a mining superintendent at the Hunter Valley Number 1 Mine. I've assisted Michael in putting the submission together over the last few weeks.

PRESIDING COMMISSIONER: Thanks very much. Please feel free to make any statement or any comment that you want at this stage, then we can have discussions.

MR ANGWIN: I was intending to give you a brief summary of our submission which I notice that you have and I'm sure that you've read. Reform of the Australian Black Coal Industry requires all those who can affect the cost of productivity of coal to align their behaviour with the demands, the customs and markets in our making.

For coal producers, reform means being able to take the decisions necessary to improve the performance of mines as the need for those decisions becomes necessary, and to be able to implement those decisions in a way, and in a time frame which is responsive to competitive pressures.

Among other things, this would require the federal government to make further progress in employer relations laws. For state governments, reform means providing services to coal producers on a competitive basis, allowing the cost and quality of that service to become responsive to the competitive needs for coal producers. Just as any other provider of a service responds to a customer's competitive needs, safety needs will also require reform.

At Rio Tinto we believe the Australian Coal Industry is not performing to its full potential, and is in danger of losing its pre-eminent position amongst world coal producers. Were it to do so, the Australian Black Coal Industry would survive, but it would be a second rate industry. The choice to be made is between on the one hand, a high cost unproductive declining industry, with a decaying capital base, falling employment and unfavourable regional economic effects, including growing pressure on employment conditions. And, on the other hand, an efficient productive growing industry with a capital base capable of supporting further expansion, supporting the regional economies in which it is located, and justifying the generous employment conditions it is used to. Albeit with continuing direct employment declines.

That a wide ranging inquiry into the Australian Black Coal Industry is being undertaken is therefore a timely and valuable opportunity to consider the fundamental performance of the industry and to evaluate what needs to be done to assure its future.

The pressure for reform is coming from the changing characteristics of the work market for black coal, and four characteristics in particular. The emergence of pricing arrangements based increasingly on the spot market. Continual pressure on coal prices. The emergence of new low cost highly competitive producers, and electricity industry deregulation in Australia and overseas.

The consequences of each of these developments is the same. Australian coal producers would have to reduce their costs and become more productive. In Australia few companies are making adequate returns. On average, coal producers receive about a quarter, to less than a half the returns on shareholders funds, compared to Australian mining generally. This is due to Australia being a high cost location in which to produce coal. Productivity increases and cost reductions are not coming at fast enough a pace to overcome this disadvantage.

Steaming coal has high growth prospects. However, there is no shortage of additional capacity. Fierce competition to supply is expected to put pressure on coal prices. The pressure upon coal mines to lower costs will be relentless and ongoing. Only the most efficient will be profitable. High cost mines will continue to struggle.

Segments of the high quality trade in metallurgical coal market will also experience significant growth in demand. However, the demand for moderate quality coke and coals decline. This in turn will force a lower quality semi-soft coal, such as those from the Hunter Valley, back into the steaming coal market. These changes will put pressure on the prices in each market segment.

The coal market is changing. Customers have been increasing the quantities purchased under spot pricing and tender arrangements. The regulations governing electricity utilities in Australia and overseas are being dismantled, and pressure is being applied by governments for utilities to lower costs. Their main variable cost is the cost of coal. This situation will continue to put pressure on the benchmark pricing system.

The only producers likely to succeed in these dynamic markets, are those which are quick to change, and who can continue to change so that they can supply the required coal competitively and continue to do so over time.

In this regard, how is the Australian Black Coal Industry performing, and what is its capacity to change in response to these altered market conditions? Rio Tinto commissioned a benchmark and study, in order to throw some light on those questions, particularly the first.

Looking first to truck and shovel operations, overall the benchmark and study found that New South Wales mines needed to increase productivity by 48 per cent to match the performance of Australian hard rock mines. With Queensland needing 34 per cent increase in productivity. In terms of labour productivity, New South Wales required an increase of 80 per cent, to match the Australian hard rock mining labour productivity, and Queensland, 40 per cent. The main causes of poor labour productivity are idle time and over-staffing.

Compared to Australian hard rock mining, there is at least an additional 2 hours of idle time extra per week, per employee, every week of the year. For every two people employed in Australian hard rock mines, there are three employed in coal mines. The consequences of the poor productivity include higher costs, and costs in the U.S. and Asian coal mines is about 60 per cent of Australia's and over-capitalisation. With New South Wales mines having 53 per cent more installed truck capacity, and Queensland 16 per cent more compared to Australian hard rock mines.

For dragline operations, the picture is a little better, with Queensland coal mines being the benchmark. However, the Queensland performance only serves to highlight the dismal picture in New South Wales, where a 36 per cent overall productivity improvement, and a 17 per cent labour productivity improvement, are required, in comparison with Queensland.

The relatively poor performance of New South Wales, was due to draglines working fewer hours per year and in small measure to geological differences. Overall, the performance of opencut black coal mines in Australia is very poor by comparison with hard rock opencut mining in

Australia, and by international best practice standards. This poor performance is a consequence of poor labour productivity, high costs, and equipment over-capitalisation.

Queensland coal mining performance is generally poor with the exception of dragline operations. New South Wales opencut mining, however, performs significantly worse than each mine sector examined on nearly all measures. Geological factors had a relatively minor impact on productivity.

Given the requirements the market is placing on the industry, and its poor performance. What is the industry's capacity to respond by reducing its cost and improving its productivity? That will be influenced by both the state of employer relations in coal and by the policies of governments, and we can see a need for changes in both.

Turning first to employer relations. The data available, suggests that there are considerable barriers and resistance to change in the coal industry. With the consequence that further managerial and legislative reforms will be necessary to facilitate the alignment of behaviours with the demands the market is making.

The data suggesting that are, first, the special treatment coal receives by way of special labour market institutional arrangements, safety laws, the joint coal board, portable long service leave supported by legislation. Dedicated training infrastructure. This special treatment continues to isolate coal from employer relations and other labour market developments, affecting most other industries.

Second, past management and union behaviour, which has been shaped by favourable market conditions, has led to unproductive and discriminatory work practices becoming entrenched. These are coming under pressure, but not universally.

Third, the coal mining workforce has many qualities, but may display a conservative approach to change.

Fourth, enterprise bargaining has not been an instrument of change. It has raised costs without delivering the necessary productivity improvement.

Fifth, the level of industrial action in coal is 45 times the national average.

Sixth, most of that industrial action appears to have been taken as resistance to workplace change.

As the National Institute of Labour studies reported in one study, "No other industry in Australia has the same combination of high overtime earnings, high levels of paid overtime, but zero levels of unpaid overtime. High rates of absence, low rates in labour turnover. Low levels of job satisfaction, high rates of disputation and high work injury frequency."

The integration of the coal industry tribunal and the Australian Industrial Relations Commission, together with the legislative changes brought about by the Workplace Relations Act, have been steps forward, but the role being played by the Industrial Relations Commission is not yet aligned with the behaviour necessary to enable coal producers to respond effectively to change taking place in the markets.

We expect that market changes will have a continuing and substantial impact on management behaviour. That change in behaviour is starting to emerge and will challenge the norms and conventions of coal mining employer relations for the better. However, further legislative reforms are necessary to enable producers to respond sufficiently and quickly to the changes taking place in their markets, and to help shape the behaviour of unions which, if their past record is any guide, will continue to resist change.

Without such legislative changes, employer relations reforms will be delayed, will be unnecessarily difficult to achieve, and will be potentially a more significant cause of industrial conflict.

Turning to the performance of governments, we looked at this in two main ways. First of all, in relation to government provided services, and secondly, in relation to safety regulation. The cost and efficiency of service provided by government authorities, of which there has an impact on the cost of coal producers. Safety regulation and its outcomes, not only has some serious direct consequences for employees, but also has some potential impact on management behaviour and the state of employer relations.

Turning first to government services, and then the issue to New South Wales Rail, there are four issues. The cross-subsidisation built into the pricing mechanism for New South Wales Rail and its lack of transparency, amongst other things, this may act as a disincentive to address the high costs from other sources.

Second, the rate of return the New South Wales Rail system is seeking, which is higher compared to the rates return required in contrary to the government monopolies.

Third, the need for a co-ordination protocol with the introduction of competition into the rail network.

And, fourth, built into rail access charges is a monopoly rent which will not be phased out until the year 2000.

As far as Queensland Rail is concerned, the most important issue is the need to shift the system to a more competitive basis overall. More specifically there needs to be a separation of truck ownership and access from rail operation. The creation of an effective fair and transparent rail access regime operating on the basis of commercial returns, and third, private access to the rail system.

With Queensland ports, the issue is to put the charges imposed at Queensland coal ports on a competitive basis, providing commercial returns on investment. The current rate of return reflects the revenue raising function port charges currently fulfil.

On safety, we say that of course the safety performance of coal mines which has been poor, is not solely the responsibility of governments. Nevertheless, governments establish the safety framework which is intended to influence the behaviour of producers and employees. Their behaviour shows up in statistics of safety performance. It follows that the approach of governments can also influence behaviours and outcomes for the better.

Safety performance in opencut mines has been subject to several studies commissioned by Rio Tinto. Those studies show the following: First, that there is true distinction between safety performance in opencut mines and underground mines in Australian black coal. With underground mines being three to four times worse than opencuts in terms of injury and fatality rates.

Second, safety performance in Australian black coal mines is poor by comparable local and international standards. This suggests there is significant room for improvement.

Third, some of the reasons for the poor safety performance in coal, may be associated with some of the characteristics of the workforce and some of its work practices.

Fourth, New South Wales mines generally perform worse than Queensland mines, but the reasons why are not clear.

Fifth, safety laws have attempted to identify and deal with mine hazards through detailed, highly prescriptive rules governing the way in which mine operations are carried out.

Sixth, the safety regimes for opencut and underground coal mining, have tended to develop in tandem since opencut mining began to develop in Australia.

Seventh, the trend in safety regulation is away from prescription towards performance standards.

And, finally, there has been no systematic dispassionate analysis of work hazards in opencut coal mining. As a result, the regulation of opencut coal mining safety lacks a thought through rationale.

Safety laws regulating coal mining should be modernised and mainstreamed on the basis of a best practice model of performance standards, a duty of care, and credibility and presence of enforcement regimes. The dispassionate analysis of work hazards is necessary to give content to these laws. Reforms along these lines will have several benefits. They will highlight the accountability of management for safety outcomes, thereby requiring the development of better safety systems. The opportunity to do so is one basis upon which people management skills in coal mining might be developed.

And in turn this will have potentially favourable implications for employer relations generally.

In our view, the quickest way to bring the focus on coal, on reforming the coal industry, is to create political responsibility for it at commonwealth and state government level. The very poor performance of the New South Wales Coal Industry, suggests that there is a particularly strong case for the New South Wales government to play a leadership role. Our submission specifies the particular legislative and policy changes needed, and I don't intend to go to them further here.

In conclusion, let me say that Rio Tinto accepts its responsibility to its shareholders to change in the face of the altered market conditions challenging it. Rio Tinto is not seeking a special deal, or special treatment from governments to meet the challenge. It seeks only an opportunity to improve its coal businesses in an increasingly competitive world. Doing so, requires, among other things, changes in the general framework within which coal is produced in Australia, aligning the framework better with the competitive world coal now faces. Change of that nature is consistent with the broad direction of government policy reforms over the last decade.

We'd be happy to take any questions that you have, Mr Chairman.

PRESIDING COMMISSIONER: Thanks very much, that's very helpful. Does Rob want to make any comment, at this stage?

MR SUPPLITT: Not at this stage.

PRESIDING COMMISSIONER: One of the interesting issues that seems to become part of the industrial relations to date, is the nature of work in both opencut mines and underground mines. Would you be able to, if you like, describe how you would like work to be organised in both of those sets of environments, and if they're different, separately. And the way in which the current industrial relations framework doesn't allow you to achieve what you regard as being the most efficient set of organisational arrangements that you would want?

MR ANGWIN: Well, Rob, you might like to add to what I have to say, but I think - I don't think there's any particular formula which one could follow for organising work in opencut coal mines generally, or underground coal mines generally. But, I think what I would say, Mr Chairman, is that the demands which are being made on coal producers by the market, by the changing market, and by customers in those markets, require coal producers, or at least require us, as a coal

producer, to be able to make every possible cost reduction, and to make every possible improvement in productivity. And to make those changes when and as they are necessary. And to be able to make those changes in response to the demands as they occur.

Our experience in Rio Tinto has been that the most minor of changes requires a considerable effort, often at all levels of the management of the mine, to negotiate, and often to engage in proceedings in industrial tribunals in order to see those changes brought about. This is not withstanding the fact that often the changes sought to be made, are changes which are in accordance with - which are allowable in accordance with the provisions of awards and agreements applying at a particular mine.

In the past, the necessity to undertake those cost reductions, and those productivity improvements, has been less of an imperative as the emphasis for coal producers, and certainly for Rio Tinto coal producers, is to produce the coal, to keep supplying the coal. With the change in market conditions, the emphasis has gone away from simply producing the coal, to producing the coal competitively and productively, and the requirement, the imperative, is to be able to take those decisions which affect the organisation of work, the process of work, who does the work, when the work is done, and what form the work is done, in a way which pays much closer regard, in fact, is driven by the demands that customers are making.

So I think the general answer to your question is that there is a much greater scope for managements to be able to take the decisions that they need to take and to implement those decisions, in a timely and efficient way. The scope which was available in the past to organise work, to allocate work, to decide who does work, to decide when work is done, in a way which was less than efficient, which was less than productive has now passed, and now the way which work is organised, who does the work, when the work is done needs to be done on a first best basis not a second best basis.

MR SUPPLITT: Mr Chairman, we have a practical example, I guess, of how the industrial framework has been an impediment at the Hunter Valley number 1 mine where it's actually a case study - listed as case study number 1 in our submission, the Restrictive work practices at Hunter Valley number 1 mine to do with the taking of meal breaks, it was a case that was taken through the local coal authority and the coal industry tribunal, and found that management didn't have the right to request employees or to insist that employees take a staggered meal break to allow continuous operation of critical priority pieces of equipment, and that's resulted - and it's still resulting today in efficiencies in the mine. Some processes in the mine, particularly at the interface between the mine and the coal preparation plant aren't continuing in a, or aren't able to continue over that meal break because of the fact that unless it's on a voluntary basis the management can't insist that meal breaks are taken in a staggered arrangement, and that's one example and there's many examples.

PRESIDING COMMISSIONER: Can I just elaborate a little bit. One of the things that I've found interesting in this particular inquiry is that some of the discussion about work organisation that I just regard as being normal in almost every other industry I just almost find absent in this industry. For example, there's almost no discussion about the "theory" of teams and team-based production, and the relationship between team-based production and what might be described as an organ of various specialists, that is the linking between the team and maintenance, the linking between the team and those involved in quality control, the linking between the team and those involved in sort of organisation of safety.

Now, in most other industries I see a very vibrant debate about where the borders are in those things, for example, in many of the best practice organisations throughout the community I find that safety now becomes almost the complete responsibility of the work team with certainly some internal consultants advising the work team about occupational health and safety, but the work team are ultimately responsible for it. I even see examples if I pick up the very last point that you

made of work teams deciding for themselves how they will stagger their meal breaks and arrange breaks to achieve an appropriate outcome determined often by themselves in conjunction with senior management. The role of senior management then becomes one of strategist, looking at, you know, adding value to the whole process.

What I find in the coal industry is very little discussion about those sorts of issues, and I'm bemused by it, and that's hence the question about your view about work organisation and what you would regard as being the most appropriate form of work organisation for yourselves within which if you like the institution or industrial relations framework ought to fit, rather than the reverse, that your work organisation fit in within a prescribed industrial relations framework, it's turning the thing on its head

MR ANGWIN: I think that's right. If I can just take one step back from answering your question directly, and I think that one of the effects of having an industry which as ranked production ahead of productivity has been about the skills of managers and particularly the skills of managers in relation to people have been more developed in terms of managing relations with unions and managing the interface between the site and the industrial relations system, and less focussed on the improvement in the quality of managerial leadership, and less focussed on the development of what most of industry would regard as pretty conventional human resource practices. I think if you're concluding that those sorts of practices and the debate about them is not occurring in the coal industry I'd have to say I wasn't surprised.

I think I would also say though that there are some pretty substantial drives of change occurring at the moment, and, you know, I've already given a fair bit of attention to the way in which the market is changing and I think from our own perspective that is driving change in our behaviours, it's driving, and I expect it to continue to drive a healthier debate about the very issues you've raised. I think the debate and the practices and the leadership are not at the highest level in the coal mining industry, and the issues around teams and the way in which work is organised are things still at a very early stage.

The transition which the coal industry is going through as a result of the changes taking place in its markets I think is still at an early stage. The market change is - you know, the pressure on prices has been going on for a decade, and the other changes taking place in the market are now more urgent, and one has the suspicion that in the past managers of coal mining believe they were behaving rationally in putting production ahead of productivity and perhaps they were. In the future one would expect that rational behaviour from managers in the coal mining industry, would be one which would place a far greater emphasis on improving both the quality of the managerial leadership and the human resource management practices - improving human resources management practices in the industry.

There's no reason to believe, for example, that the quality of managers in coal is any different from the quality of management anywhere else, and we had a little bit of work done on that and whilst the data is sketchy what it does tell you is that in terms of qualifications and experience managers of coal mining are about the same as managers anywhere else, perhaps a little bit better qualified but no substantial difference. So the paradox is somewhat hard to explain but my own feeling, Rio Tinto's view, would be that behaviour is being driven to a large extent by the conditions faced in the market, and the changing market conditions would drive different sets of behaviours.

I think it follows from that to go back to the point I made about alignment that the transition from one style of management, one style of work organisation to another style of management and another style of work organisation means a whole lot of things have to be lined up correctly. It won't be enough to let the market drive change. Some of the frameworks within which management and other behaviours occur in the Australian coal industry is also going to have to change to facilitate the shift to higher quality human resources management practice.

PRESIDING COMMISSIONER: Can I just explore this just for one minute, just another minute, the reason that I'm interested in it, it's about trying to understand the way in which in a public policy context one can think about a strategy for change and learning from what we've been able to observe in the past from other sectors. One of the interesting things, and it's my own observation, nobody else's, is that when I look at the substantial change which has gone in within the metals industry it seems as though it came about as a result of a realisation by a number of leading figures on both management and union's side about the way in which work was challenging, the nature of work was changing, and they observed that some of them by looking to the Scandinavian countries, some of them by looking on the management side to Japanese countries, and there became a coincidence of views that while they were slightly different in context they had an underlying similar characteristics that it was all based around, you know, the ability to have significant flexibility so you could actually drive high levels of productivity.

Now, the mechanisms are a little different in each case but there was an understanding of that. That then seemed to me to actually drive significant change in a way in which awards were structured within the metals industry. So it was about what drove what, and again it's trying to understand how we might be able to encourage that's if you like driving of change in a way which brings about a realisation by the various parties about what is required to achieve the high levels of productivity in the future, hence, you know, that's the nature of the question if you like.

And then the role if you like of industry in terms of actually promoting that. The other reason why I'm interested in it is that we were fortunate enough to visit a whole range of companies in the United States recently, and one of the companies that I visited was extremely impressive because it actually brought into the discussions that we had four of the hourly workers who sat down with us and went through their own productivity improvement programs which they were working on with a range of other people within that particular mine, and they were talking about the sort of things that I now, just as a matter of course, hear people in other industries talk about when they're talking about productivity improvements.

So it's happening in the mining industry, in black coal, around the world, but I don't see any real debate about that nature of the change of work.

MR SUPPLITT: Mr Chairman, I think, a lot of that stems from the fact that we don't have a good enterprise focus amongst the employees in the black coal industry, it's more an industry focus and there's a tendency to not allow some sacred cows, as they're called, in the industry norms to be changed, and some of those things are the issues to do with improving productivity. The idea of teams has been implemented at Hunter Valley number 1, and in a way that's a parallel to the whole industry, there's a reluctance for people to act in a team and for systems that should apply within a team such as training a team should be able to decide its own training requirements or the team leader should be able to decide the training requirements, allocation of overtime, and selection of team members should really be on that enterprise level, whereas what tends to happen is that it boils down to the lowest common denominator and everyone has to be treated the same under the current industry thinking amongst the award employees.

PRESIDING COMMISSIONER: Are you therefore saying that what we're observing is a whole series of institutional arrangements that actually stop that normal process of thinking going on, the normal evolution of thinking, so things like, if you like, you know, safety arrangements that prescribe things so clearly stop, if you like, the natural progression of the development of intellectual thought in this area, is that the sort of thing that you're thinking?

MR SUPPLITT: I think that's right. I was contemplating your question which I think was directed towards what's sort of circuit breaker might you have, and I think that I guess it would hardly be surprising if those interests which were concerned to retain the industry focus would want to continue to support it, I mean, I think that's a natural consequence of human ambition and

belief. So, I guess, it's somewhat hard to be critical of those who want to defend systems that they believe serve them well. Nevertheless our view would be that, yes, that sort of system does need to be changed, and as Rob has said the focus needs to be brought down from the industry to the enterprise, and I think there is a range of things which prop up the industry focus above the enterprise focus.

Some of those, for example, are some important symbols of the coal mining industry as an industry rather than as a range of competitive producers. Amongst those I would say are the joint coal board, the special safety arrangements for black coal mining. There is the portable long service leave which is supported by special legislation, and there is dedicated training infrastructure. One of the major struts which has held that up, the Coal Industry Tribunal has now been integrated into the Australian Industrial Relations Commission, but there are those four kinds of institutional arrangements which continue to symbolise the coal mining industry as an industry and not as a range of competitive producers, and we are quite categorically saying that for example the joint Coal Board will be abolished and its functions sent off elsewhere. We believe that safety regulations with coal mines should be mainstreamed, and there's no reason why open cut coal mining safety should be kept separate from the safety regulation of other kinds of open cut mines.

There's no strong case for governments continuing to support dedicated training infrastructure for the coal mining industry, and ultimately there's, if you are to have an enterprise focus the idea of portable long service, and in particular government support for portable long service leave by way of coal mining industry long service leave regulation is no longer sustainable. I think a second kind of those institutions one which I think plays a major part in propping up those outdated work systems we were discussing earlier are the discriminatory employment practices in the coal industry.

Seniority which governs increases in employment, reductions in employment, and a whole range of other employment practices in the industry is a discriminatory system, it's a discriminatory system. It's a system which continues to be protected by legislation, and whilst certainly it's an issue which will be debated in the process of award simplification I can see a lot of people lining up on the other side of the argument to say that it's a system which should be retained, but it's a discriminatory system and I think there is scope for a less tortuous path for the removal of these discriminatory practices.

PRESIDING COMMISSIONER: Can I actually make the past question that I guess I asked are you actually arguing that that's so discriminatory that it's actually against what you might describe as human rights, and therefore to be banned by Australia, and the implications of that?

MR ANGWIN: There's a range of legislation in Australia today which makes a wide range of work practices discriminatory. Now, I'm not sure whether they are called in terms of legislation unlawful or illegal or contrary to human rights, but certainly the intention of the legislation, various kinds of legislation, is that those discriminatory practices should be removed, and I can't see that there's a strong argument at all for legislation continuing to support a practice as discriminatory as seniority.

So, I mean, whether you say that it should be made illegal or unlawful or that it's contrary that human rights, I'm not sure that's the issue, I think the issue is that there's nothing special about discriminatory seniority practices in the coal industry which should mean it can't be overcome.

MR HORTON-STEPHENS: One question that worries me is how do we get there, and there are various ways in place at the moment. Your own company is involved in a very major dispute, there's that, and I don't know if you want to talk about that a bit more. But another route that we read about in the press I haven't had a chance yet to ask questions of the relevant companies really, but we read that the friendlies, the so called friendlies led by BHP is attempting to

negotiate a new industrial award with the CFMEU, that's I guess another approach. Do you see value in that?

MR ANGWIN: I think there's a place in the coal mining industry for a variety of approaches to reform. Within Rio Tinto the approach that's being taken is far from monolithic. Yes, the Hunter Valley mine has attracted some attention lately, but I think that's a product of the particular circumstances in which that mine found itself. Change in other of our mines is not proceeding in the same way that's occurring at Hunter Valley mine, so for example, it would be misleading of me to tell you that the reform process that you've seen taking place in Hunter Valley is Rio Tinto's reform process for and it's not. So just as there are a range of options for Rio Tinto in bringing about change in its mines I guess there's a range of options from producer to producer.

Whether the process which some companies are currently going through with the CFMEU is one which would serve our interests is I think an issue on which we would reserve judgment at this point. But, you know, I think - I guess the general point I'd make is that going back to my answer about the organisation of work, we appreciate that the constraints upon our ability as managers and producers to manage our mines, and to manage the work organisation, work practices and human resource practices in our mines are going to be constrained.

We have no complaints about the fact that our discretion to act is going to be constrained, it's constrained generally by the laws of the country, it's also constrained by the awards under which we operate, and sometimes we can do something about that and sometimes we can't. It's also going to be constrained by the agreements we make and we'll make agreements, you know, with unions for example of which are appropriate to the circumstances in the times of the particular mine, and we would bear the responsibility for the agreements we make. The point we would say, however, is that once we settle what the agreement is (technical fault) what the award is, and we want to be able to get on with making the change within the constraints which are composed upon us by society. You know, we accept that society can impose constraints on us, and there are self-imposed constraints, those which we agree. But within those constraints we want to be able to get on and do what we need to do.

MR HORTON-STEPHENS: That I guess leads me to ask about another aspect that you mentioned, that is the CRT was folded into the ARC effectively. What beneficial changes have you seen from that, and what further changes do you think are necessary? You mentioned some, and you've got some recommendations on the subject generally.

MR ANGWIN: I think the general point is that the special arrangements which have been made for the coal industry have isolated the coal industry from the general run of changes which has affected employee relations in Australia, over the last decade in particular. The kind of example which Mr Scales has given of the co-operative arrangements in the metal industry based upon an appreciation of how work is changing I don't think would have been possible in the coal industry because of its isolation as one example.

So I think a beneficial impact of the integration of the Coal Industry Tribunal with the Australian Industrial Relations Commission has been to remove a major wall isolating the coal industry from the rest of industry, and I think that over time will have a favourable impact on the state of employee relations in the coal industry. The removal of those other walls which I have mentioned will also serve to end the isolation of coal.

PRESIDING COMMISSIONER: You raised a number of recommendations and may be we should move onto those. The question about the Workplace Relations Act which you're suggesting to be amended, and you make a couple of suggestions about how it should be amended. Most of these of course - most of these amendments would also need to relate to all other industries because they wouldn't simply relate presumably to the coal industry. Have you given any thought to the extent to which while they might be of benefit to the coal industry to

take this approach might actually disadvantage other sectors of the Australian economy? Or is it necessary for other sectors of the Australian economy?

MR ANGWIN: If I could answer it this way, I don't think it would disadvantage other sectors of the economy. I appreciate that the sort of recommendation we've made here wouldn't be one which you could confine to the coal industry, indeed it would be entirely counter productive to the case we're trying to make to you to suggest that it shouldn't be confined to the coal industry. What those recommendations are about is making more explicit - making more explicit - the arbitral and conciliation role of the commission and the circumstances in which it may exercise that role.

What has driven those recommendations is our experience that our capacity to make change in accordance with the discretions granted to us by the awards and agreements we operate under has been compromised because of the lack of clarity which exists about the commission's arbitral role, its conciliation role, and about the way in which the commission has used its procedural arbitration if I can put it that way. The effect of the use of the commission's procedural arbitration has been to, we believe, disadvantage us in terms of our capacity to make change which we are otherwise entitled to do.

PRESIDING COMMISSIONER: Michael, can I explain why I asked that question? It sounds like a silly question to ask you, but maybe I can ask another question. Do you know of other industries which are arguing for the same change? And the reason I ask that is, if they're not asking for the same change does it indicate that they don't have the same problems, and if not, why not? And therefore, I guess, what follows from that, are we seeing something in the coal industry that's quite different by its very nature than what we see in other industries and this is this, if you like, approach - a very heavy handed approach to actually address a problem which ought to be resolved within something within the coal industry itself.

MR ANGWIN: I suspect that it's not a problem which is only confined to coal. I suspect it's not. There are potentially two sources to the problem that I have mentioned, one is that it's a transitional issue as the Industrial Relations Commission itself gets used to the new legislation, or it's an example of - it's genuinely a case where further reform is needed. Now, I can't - perhaps I might in different circumstances be able to demonstrate to you this problem which affects other industries, off the top of that, I can't. I suspect it does.

PRESIDING COMMISSIONER: The other way that I could may be put this is for example you're a member of the BCA?

MR ANGWIN: Rio Tinto is, yes.

PRESIDING COMMISSIONER: Has this been raised with the BCA, and have other companies in other industries felt that this is a question, or put another way, is it likely that you might be able to get the support of the Business Council for such an approach?

MR ANGWIN: I would be very surprised if organisations like the Business Council hadn't done some research into the operation of the first year of the Industrial Relations Act. I could take on notice your question and attempt to find out whether the sort of issue we raised here is one which others have raised as well.

PRESIDING COMMISSIONER: That would be helpful. I mean, we could do it from our own perspective, but it might be better if you did it just at least to - - -

MR ANGWIN: I'd be happy to do that.

PRESIDING COMMISSIONER: You understand the reason I raise that, don't you?

MR ANGWIN: I do.

PRESIDING COMMISSIONER: It's about saying where is the real problem, is it with the Act or is it to do with something to do with the way in which the coal industry operates that we've been able to resolve in other industries, but not here. I guess the other question that I raise is it's quite particular to the question of what you're suggesting, and that is you're actually asking that the way the commission be managed be determined by regulation or legislation, and that's by suggesting that, you know, commissioners be allocated on a particular basis. Now, that does seem fairly heavy handed if I might say, and it would seem to take away the responsibility of the commission to manage itself.

MR ANGWIN: The sort of organisation I suggested here of course, as I understand it, is within the discretion of the President of the Commission himself or herself to put in place. It may be the President could be persuaded to do that. I think one of the purposes of raising this sort of issue is in fact to see if a debate can be had about that kind of issue. You know, we're not naive enough to believe that every recommendation we make to you will get through the barbed wire course of a passage of legislation in the Parliament, but the issue here is that the way in which the commission has exercised in particular its procedural powers has been a barrier to the sorts of changes that we wanted to undertake, and that a greater degree of clarity about what roles the commission should exercise and when it should exercise them and how it should exercise them is an issue which in the first instance the commission should be itself given a chance to address.

PRESIDING COMMISSIONER: And feel free to answer this as briefly or take as long as you wish on this one, I want to switch a little now to the question of safety regulations. One of the issues that's come up just over the last couple of days is the possibility within a regulatory framework thinking about open cut and underground mining differently, and do you see that as being a practical possibility?

MR ANGWIN: I'm not sure what "practical means," but - - -

PRESIDING COMMISSIONER: Well, practical in the sense that what you would be doing, of course, is cutting across what might be 100 years of, or maybe less, but certainly of practice that would apply to regulation of this industry, and therefore while on the face of it it might seem relatively simple, to actually achieve it might take - - -

MR ANGWIN: I'm afraid I'll have to give you the long answer. I appreciate what you say about the 100 years of history. The approach that we've taken in Rio Tinto to that kind of change has first of all been to try and make sure the facts of the situation are understood. Over the last 18 months we have commissioned a wide range of research to make explicit what I think is the factual situation in the coal mining industry including in relation to safety. We have commissioned Michael Easton and Grant Creighton to undertake two major pieces of work one of which has been published already, one of which is soon to be published, in which we have sought to understand as best we can what the picture of safety is in the coal mining industry, and to try and understand what sort of reforms might be made to safety regulation in order to improve the safety performance of the industry.

One of the very clear findings of that work is that there's a very strong prima facie case for separating the regulation of open cut mining and underground mining. So our practical approach to that sort of change has been to put the facts on the table and to allow the facts to speak for themselves, and to promulgate the facts.

Now, we are one company acting in an industry which is quite substantial in this country. Without wishing to sound as though we duck the issue, I'm not sure that as one company there's more that we can do. Having said that you might be aware that also from our submission we have said that the next stage in this work of bringing great clarity and understanding to the performance of the coal mining industry with regard to safety is to undertake to fill the gap which Easton and Creighton have identified, namely the absence of a systematic and dispassionate analysis of work hazards in open cut coal mines.

As a result in this submission what we have said we will do would be to seek the participation of the industry associations in undertaking that work and to seek the support of the major coal mining unions for that work, and that's what we're proposing to do, and I think from the point of view of the limited resources of one company, I'm not saying that to down play the significance that Rio Tinto Energy has in the Australian coal mining industry, but that I think is the practical manifestation of what one company can do in order to try and bring greater clarity to the issue of safety. So the industry associations can expect a letter from us, Mr Scales.

MR HORTON-STEPHENS: Can we move onto There are a number of thoughts on that through the submission. You call for greater transparency - in terms of New South Wales, sorry, I'll start with that one - greater transparency in the system and you observed that the 40 per cent rate of return at the moment seems to be pretty high. How do you think again that might be brought about? Do you see a role for, as indeed the Minerals Council suggested, that there should be a regulator in the industry, and if you think that's a sensible approach then would I part fit the bill?

MR ANGWIN: I think we haven't thought about that issue, and I'd have to say that I would have to take some advice about an answer to that question, and if I could take that on notice we will undertake to come back to you on that.

MR HORTON-STEPHENS: Thank you. Also on New South Wales you then move to the question of Newcastle, and you've got some suggestions on page 31 as to what's needed. I guess at least another obvious question is, well, how would that actually be done, how would those solutions be applied, why aren't they being applied and what benefits would you receive from them being applied? I mean, as an outsider coming to it one wonders why some action hasn't been taken, and why doesn't industry or the companies involved agree to resolve it to everybody - a satisfactory situation?

MR SUPPLITT: I think from a user point of view and a part-owner point of view, as Rio Tinto is, the fundamental problem at Port Waratah has been that the demand for loading services has outstripped the capacity of what the terminal can supply, and that the capital expansion that's been planned has really been delayed too long. This wasn't apparently really until the last 6 to 12 months when the growth in the coal industry in New South Wales and in the Hunter Valley, as indicated by the New South Wales Minerals Council's submission, really outstripped or exceeded what the forecasts were. And there's been some other hold ups through the approvals process of getting that capital expansion under way. I think there's a submission from the Port Waratah Coal Services that probably goes into more detail on what the issues are there at Port Waratah.

Another one that I'm aware of is the common user status of the port and the turn of arrival allocation system which basically means the first - or the ships get loaded in the same order that they arrive at the port which drives the users when the capacity reaches, or when the demand gets close to capacity and the queue starts to get bigger it drives the users to behave in a way where they feel a need to get ships in the queue otherwise their coal is going to be delayed even longer, so it's a circle that results in more and more ships coming and the loading rate even if it's at design or better than design capacity as it has been frequently, and can't keep up with the level of the queue.

MR HORTON-STEPHENS: Would you see scope for a pricing mechanism to be introduced to solve that?

MR ANGWIN: A pricing mechanism is something - one of the efficiencies I believe at Port Waratah is that there is a common charge for all loading activities, and some loading activities take a significant amount of extra work by Port Waratah to achieve the cargo and get it loaded onto the ship and a user pays system that charges the people who require more services from Port Waratah would seem a reasonable approach and it would tend to drive the port users to maximise the efficiency of their delivery of coal to the port so as to minimise their cost because at the moment no matter how inefficient their delivery mechanism is they receive the same charge for port services.

MR HORTON-STEPHENS: I want you to move to the last set of recommendations. You've got some comments about the role of governments, some recommendations on the very last page. At the Commonwealth level I was intrigued, there were a couple of points, one is you suggested it would be a good idea if the Minister for Workplace Relations were appointed as minister in charge in that area. What benefits do you see from that?

MR ANGWIN: What we were trying to do was to place a political responsibility or generate a political responsibility for reform of the coal industry, and we had seen how the federal government had done that in relation to waterfront reform, and that impressed us as a useful model to follow. So we were really prompted by things we had seen the federal government itself doing. I guess that it's less important what the particular ministry is than having the ministry do it. It seemed to us that the workplace relations minister was at least a strong candidate because of the strong employee relations flavour that reform has. So I think that, as I say, the answers were impressed by the federal government's own action in allocating a political responsibility of that.

MR HORTON-STEPHENS: I suppose, another point, perhaps you make the suggestion is that it is time to put coal on the COAG agenda.

MR ANGWIN: Yes.

MR HORTON-STEPHENS: Perhaps you just make that suggestion as one point. But at that discussion, I then come to another thought that you have, it's the very last one on page 17, and that is the Commonwealth should offer some carrots to the states if you want to get a more sensible mechanism in place and if you want to ensure the states that they want to lose too much revenue as a result then the Commonwealth should jump in. I guess in return though if you were sitting in the Commonwealth government you'd say, well, that's one side, but what about the states, I mean, what sort of changes would be expect to see brought about to hand out the dollars.

MR ANGWIN: I think that's a fair point. If you look at, for example, the approach the Commonwealth government has taken in waterfront reform, as I understand in its approaches to say the industry has some responsibility to reform itself. If it does some of that then we the Commonwealth might then be in a position to see what assistance we can give to facilitate those reforms. Now, without wishing to, you know, cut off any options which might be available to governments or to circumscribe what we might otherwise say in relation to this particular point, that seems to me to be at least a starting point. I think, you know, you would probably have a difficulty task persuading the federal government to fund reform, but you might have an easier task if the proposition was that if the industry itself and state governments were to display a propensity to reform then what role can the federal government then take to further facilitate and encourage and nurture that reform? Again I say without going into - without really any options under that particular recommendation, that seems to me to be at least a starting point for discussion.

MR HORTON-STEPHENS: Thank you.

PRESIDING COMMISSIONER: I think we probably should finish that off there, Michael. Is there anything else that you wanted to raise with us? No? Again, a terrific submission, thank you very much for providing it to us. If there's anything else that you wanted to provide to us as a result of these discussions today please feel free to do so.

MR ANGWIN: Thank you very much.

MR HORTON-STEPHENS: Thank you.

PRESIDING COMMISSIONER: It's my intention to just keep going through these today. We're not going to stop for lunch or anything because I think we've got three more people to continue with. So I think we just keep going at this stage anyway, and our next participant I think is Bach Consulting. We'll see how we go.

MR FAIRFIELD: Yes, my name is Julian Fairfield, I'm a principal of Bach Consulting, and I am actually representing the Sydney Futures Exchange in this hearing.

PRESIDING COMMISSIONER: Representing Sydney Futures Exchange?

MR FAIRFIELD: Yes.

PRESIDING COMMISSIONER: Please introduce the information you want to put to us and then we can discuss it.

MR FAIRFIELD: I think to summarise the papers that you've already seen and to actually add a little bit as well, what I think is that there is an interplay between benchmark pricing and what I call probably pejoratively the shadow of old industrial relations institutional forms, that have combined together to produce some very unattractive outcomes in the coal industry, on a dimensions, especially in terms of cost and productivity. So that's the lead thought. I'll address that basically in four chapters, very briefly.

The first chapter is really saying that the coal industry is an internationally traded product, and therefore, you've got to look at your - the Australian Coal Industry as it fits within the context of international coal.

The second point that I'll develop is that the current process of marketing coal creates a situation that promotes the unintended consequences from the Japanese perspective of both high prices and insecurity of supply, and I'll develop that argument.

The third chapter, or third point, is that the coal industry for the last 40 to 50 years, has been treated from an institutional point of view from industrial relations as a very special case, and that special case, in terms of industrial relations, is carrying over into behaviour today, is what I call the shadow of the unique industrial institutions, the coal industry, and that the combination of the marketing form of benchmark pricing, and the shadow of the industrial relations institutions that were operated for 40 to 50 years, has resulted in a situation where Australian coal is, the productivity in Australian coal, is - take your numbers, a third to a half of what it ought to be, and the cost of that productivity is probably double of what it ought to be, and furthermore, if you look at any other industrial relations indexes, such as lost time in injury rates, absenteeism rates, strike rates, the coal industry starts in all of those, as an aberration as against all other industries.

So that's what I want to talk about. Is that okay?

PRESIDING COMMISSIONER: Sure.

MR FAIRFIELD: So from a world traded point of view very quickly, probably what you already know, is Australian - 70 per cent of Australian coal is exported, with the largest world exporter accounting for about 30 per cent of the total market, and we're in direct competition basically with the U.S., South Africa, Indonesia and Canada. That that competition has resulted in a very strong price declines, so the compound annual decline in price in U.S. dollar terms from 89 to 99, if your forecast is about .32 per cent. So the first point is that we are in a world traded product with terrific price competition as the basis of the industry.

The second point is that markets, all markets and commodities, basically evolve through four stages. The first stage that markets operate in is what I call vertical integration, where there are very few buyers and very few sellers, and there is a necessity for therefore buyers and sellers to co-operate together and that could integrate with each other in order to protect each other's capital base, and basically stop blackmail of either party, by one party or the other.

Inevitably in resource based industries, the growth of the buyers usually increases - the number of buyers increases faster than the number of suppliers. The reason for this is that the supplier's limited by mother nature, and there are only so many all bodies around, of copper, gold, tin, coal or whatever, but as GNP increases, the number of buyers for commodities increases, and historically what has happened is nearly all commodities have moved into a mode called producer pricing, so copper, lead, zinc, tin, cocoa, almost every product, every commodity that you can name, has actually moved into producer pricing, where the producers have actually set the prices.

The Japanese actually didn't want to get into producer pricing, and they thought that they would actually get into and create a thing called benchmark pricing where instead of allowing the number of buyers to increase, what they artificially did was decrease the number of buyers, by having group buying on the behalf of steel mills and group buying on the behalf of the thermal coal users, in terms of power stations, and they actually increased the X axis, which is the number of producers by funding with small amounts of equity, increased capacity in Canada, the U.S., Indonesia and Australia and South Africa. So they manage the market, and their intentions of managing the market was to create security of supply and low price.

Now what actually happens, it tends to happen in producer pricing, is that the market becomes very profitable and the producers are making a lot of money. That sucks in more producers and the market breaks to free markets. That, again, has happened in nearly all commodity markets. They've actually broken from producer pricing, copper, gold, zinc, have all moved in that root, back into free markets. Benchmark pricing, however, the Japanese at the moment are still sustaining a benchmark pricing system, though in fact, they're severely questioning whether or not to maintain benchmark pricing. As for your information, I've talked to all major trading houses in Japan and most of the thermal buyers of coal and all the steel mills directly have talked to their buying arms.

Now, what's happening in benchmark pricing, as against free market pricing, in free market pricing you get vibrant price signals. So what you get is a true market for a product and you get in very simplistic terms, peaks and troughs in pricing. When the troughs hit, what you get is a - what I call a "clean-out point" where the economics of the high cost producers are exposed and the economics of the inefficient producers are forced to become efficient. You read in the newspaper yesterday, for instance, gold mines actually having to improve their productivity, and/or shut down. That's because the price of gold is dropping close to \$300 an ounce, versus \$400 an ounces.

In benchmark pricing, what occurs is that clean-out point never takes place. What you get is a relatively flat price series, and you don't get a vigorous enough price signal to actually force

change into the industry. What instead we have is three unintended consequences of benchmark pricing, which in fact, the Japanese agree with, that these are unintended consequences, and they agree that it's happened.

The first is, is that you allow the suppliers of labour, who are basically monopoly suppliers of labour in the case of CMFU to piggyback off the benchmark pricing, and they push their price of labour up to the point at which the mines are just marginally profitable, so that the labour does two things. One pushes its cost of labour up to a point where the mines are just unprofitable, and two, it tries to retain the number of employees by maintaining very low levels of productivity.

Now, whether or not that's actually thought through or not, that's actually what occurs, and you can actually prove that that's what occurs. The second point is that in, if you draw a cost curve of the coal mines and plot the 20 or 30 coal mines in Australia, the benchmark pricing system is - and it's very low level of fluctuation in price maintains what they call "lame duck" mines in production for long periods of time, so what you get is the lame duck mines sitting there, holding capacity, and holding sales volume, that should go to increasing the productivity and cost structure of the lower cost mines, but it actually doesn't.

The third thing which is probably actually the most important thing from Australia's relative competitive position, is that under a benchmark long term contractual price system, where save for want of argument, the Japanese are, say buy in 50 million tonnes from us or more, of that 50 million tonnes, probably 45 million tonnes is precontracted, therefore, if I want to open up another Blair Athol at 10 million tonnes, and open up a scale mine, it's actually impossible for me to open it up.

Now, in America, scale curves actually work in mining, so if you plot a scale curve of mining in the U.S. you will see that low cost mines are all large mines and high cost mines are all small mines. In Australia, there is not a scale curve, there's a scattergram, which is again another effect of the things that I'm talking about, the institutional forms I'm talking about. However, without - if you could start up a green field site with efficient work practices, at say 8 or 10 million tonne mine, you would end up with a mine with cash operating costs of around about \$12 to \$15 a tonne. If you open a mine up at 2 to 3 million tonnes, and much lower scale, you end up with mines that are about \$25 a tonne in terms of cash costs. So the whole concept of benchmark pricing was started off by Muricesan(?) in the late 1970's, very, very sensibly, to ensure a sense of backward integration and control over price and control over supply, that that now has actually run its course and in actual fact, it creates much higher prices than a free market would, and furthermore, as you can actually see in the case of Port Waratah, and also with other mines, it discourages investment in the industry, so actually it increases security of supply risk. It doesn't decrease security of supply risk, it increases security of supply risk. The reason why Port Waratah is at capacity now, is because nobody's fronted up with the capital, because the industry is not profitable enough to actually spend the capital to increase the port capacity. Because the marginal producers at the top end of the cross curve, are all in New South Wales, and they haven't been cleared out and they haven't been able to actually make profits to support the investment to get Port Waratah.

So, that's the second point. Market design is actually affecting the dynamics of the industry.

The third area I was going to talk about was in the institutional forms of the industry. If we basically do a quick summary, and go back to 1946, 1947, we start off with the Coal Industry Acts, we then go into the CIT Work Value Review in '88, and the CIT was getting rolled into the ARC in '95, and then in '96, we get the Workplace Relations Act. Basically, up until 1995, the coal industry was in a true legalistic sense, treated as a completely different industry from the rest of Australian industry, and the basic underlying principle of the coal industry tribunals and their charter, was to maintain supply. Nothing about profitability, nothing about costs or anything like that, it was to maintain supply. So their whole orientation was to get the parties back to production. Nothing more, nothing less. That, within the monopoly supplier, linked to

benchmark pricing also, and no clean-out points because of benchmark pricing, gave the monopoly supplier with the CMFU, enormous power, in order to control the price of their labour and their forms of labour relations with management and their demarcations and their approach to productivity.

We're now moving into the year 2000, where the shadow of the past 40 to 50 years is starting to actually get addressed, and that's what's going on with RT Coal, your previous speakers, that's actually what's going on right now, in terms of trying to bring the coal industry into the same state as, for instance, right at this instant, we haven't got loads and loads of arbitrations in the gold industry, sitting before the ARC, and the gold industry is going through much more violent upheavals in terms of pricing, than the coal industry is, because they've actually learned that they're an internationally based product and they have to be competitive, and you have a variety of unions, not a single supplier of labour basically in the gold industry. The result is that in the gold industry we are well competitive on almost any dimension, whether you do it in physical dimensions or cost dimensions or lost time injury frequency rates or strike rates or whatever, we are world competitive in the gold industry. We sure as hell ain't in the coal industry.

As a result of, if you look at what actually has resulted in these institutional forms, that we've had for 40 or 50 years, coal miners on average, average weekly earnings for coal miners of \$1430 a week, all other industries, \$175, and other mining, I'm actually getting the numbers, is around about \$900 a week, so you're seeing about a 50 to 60 per cent difference in the pay rates of mining industry, coal miners as against other miners. Other miners, as against opencut miners, actually work in much harsher and much more dangerous environments than opencut coal miners do.

If you look at percentage growth in average weekly earnings over the period of '88 to '96, coal mining has had an average weekly earnings growth of 90 per cent. Other industries, 44 per cent. An expression of the power base due to this confluence of the marketplace and the old institutional forms. If you look at working days lost for 1000 employees, in coal mining we have 7000 plus. Other minings, 70, and all other industries, 130. You see an aberration in coal mining. If you look at absenteeism in the coal mining, you look at all other industries at around about 5 days a year, and coal mining about 9 days a year, and in fact, New South Wales is close to 12 days a year. If you look at lost time injury frequency in coal mining, you see 58 LTIF ratios. In all other industries 16, and in other mining, 30.

So on every dimension, you see in terms of human dimensions, you see the coal industry in very bad shape, as against its competitors. If you look in terms of productivity at an Australian level, in mines less than a million tonnes a year, the U.S. average is 316,000 tonnes of material moved per employee, per year. In Australia we move 148,000 tonnes of material moved per employee, per year. In mines of greater than 6 million tonnes, in the U.S., and this is, you know, thousands of mines we're talking about in these samples, not in the 6 million, but - not thousands, hundreds of mines - they move - average mines, move 398,000 tonnes of material moved per employee - we move 163,000 tonnes. Our best mines, which were set up in the 1990's, are new mines, basically. Any mine set up after 1990, the CMFU to their credit, actually saw that they were going to have to allow different forms of work practices in the mines after 1990.

Mines after 1990, all of them were above average, Australian average, and two of them were above the minimum to achieve world best practice, Jellinbar and Camberwell, Rix Creek, Cumnock and Stratford, are still below the minimum requirements to world best practice. The mines opened up prior to 1990, on almost every dimension, have tried to implement the same work practices that were actually achieved at these new mines, the new green field sites, and they've consistently been knocked back. So every time those say work through crib is attempted, you go through 3 months of aggravation, 6 months of poor production, and the Commission says, no, they're not going to do it, because it's actually more important that Joe can have crib with his mates, than the productivity of the mine, because at the end of the day, the ARC is faced with a powerplay. It's faced on power relationships. It's not a legal system, it's a quasi legal system, it

actually arbitrates on power. And when the coal miners say, "I'm going to actually use that power," the ARC backs off. So, again, that's why we're in RT Coal at the moment.

So there's about 15 different dimensions where the pre-1990 mines actually are disadvantaged against the Camberwells, Rix Creeks and Jellinbar, some are subcontract mines. All of them have actually tried to make those changes and they've all been knocked back to some degree or other, or they haven't been knocked back, they've just been horse traded on price. So, okay, we'll do that, if you actually increase our wages by \$100 a week, or you increase the bonus.

So, we're in a negative loop there that, at a pre-1990 mine has to improve its productivity, because the price decreases, that are coming through the system. If they try to improve their productivity, they lose whatever goodwill they already have in place. The productivity goes down even more. There is two solutions. You either back off and you say, okay, we'll try and work with you, and we'll try and buy out these issues, or you take the hard line and you say, no, I'm going to fight you, and you go through a bloodbath, and the - it's quite interesting that three of the high productivity mines - no, two of them, Howick and Curragh, have all, have both been through bloodbaths. High productivity is strongly correlated to very small size age or the presence of bloodbaths, all very high strip ratios. Because if you have a high strip ratio, you can't operate the mine with high productivities.

So, in summary, what my argument is, is that we're an internationally traded product, and we have to actually look at other people's products, simply not our own, if we're to compete, that the confluence of the marketing of benchmark pricing, linked to the old institutional forms, that were embedded originally in the 1940's, after the terrible troubles in the 1940's, have actually worked together to produce an environment where we have very high cost labour, very low productivity labour, and we have a, on a social environment, a terribly unattractive working environment on all dimensions, and we have an industry that is actually being beaten by Indonesians and by the South Africans, and we will have our volumes taken away from us if we actually don't do something about it.

That's me ranting on for 30 minutes.

PRESIDING COMMISSIONER: Thank you. The way I sort of summarised - please correct me if I'm wrong, is that you're basically saying, benchmark pricing kept prices to a high?

MR FAIRFIELD: And flat.

PRESIDING COMMISSIONER: Yes. That had the effect, of essentially stopping the normal adjustment that you would see going on, in most other industries. And that your solution to this process is that we have some form of tender process that would enable that to be resolved over time, as we moved towards what is essentially a market based approach to pricing.

MR FAIRFIELD: The solution will be imposed on us by the Japanese, that they are already shifting more product to tender, and it is also being imposed on the domestic market because as we have - as the electricity industry is being privatised, and that there is now a free market in electricity, one is actually forced to have a free market in coal, because the electricity company can't have a variable revenue structure and a fixed costs structure, because it will go out of business. So the power companies, and this is happening to a lesser degree in Japan, because their revenue base is being variablised, so they will actually have to variablise their cost base. So the power companies in New South Wales and Victoria are moving out of fixed long term contracts, and trying to variablise their costs of inputs and that's underway, so I agree with you, yes, Mr Chairman.

MR HORTON-STEPHENS: But that is, in a sense, that's where we're at now, isn't it?

MR FAIRFIELD: Yes.

MR HORTON-STEPHENS: I mean, I read the pages here, and moving from a benchmark buying system to a free market speaks I thought to myself that it's happening.

MR FAIRFIELD: It is underway.

MR HORTON-STEPHENS: And it's happening fairly fast.

MR FAIRFIELD: The Japanese move very slowly - the Japanese are conservative to start with, and the power companies are the most conservative of the Japanese.

MR HORTON-STEPHENS: But it isn't only the Japanese we're talking about. We're talking about - Taipower - - -

MR FAIRFIELD: Taiwan - Taipower is buying benchmark, China buys, or Hong Kong buys benchmark pricing. The new independent power producers are all going to actually buy on spot, so that is actually underway. However, in the immediate term, the Port Waratah capacity problem will actually reverse that trend, probably. It will hold it for a while because you actually can't get the volume through the port, so security of supply will become more important than price, until the Port Waratah capacity is relieved to allow the capacity to flow that's required.

PRESIDING COMMISSIONER: But LAXT is coming on stream.

MR FAIRFIELD: Yes.

PRESIDING COMMISSIONER: Which will probably make up for the lack of capacity at Port Waratah.

MR FAIRFIELD: Absolutely, yes.

PRESIDING COMMISSIONER: You seem to be almost saying that we don't need to worry too much because it's going to resolve itself.

MR FAIRFIELD: I think what will happen - my view, and obviously such a personal view, is that spot pricing and tender will take a larger and larger proportion of the market. At some point, you can't have two prices for the same products floating around in the world. It just doesn't make any sense. At some point, the Japanese will then switch to attend the market, and they'll have what I call a regulated tender market, so they'll actually tender once a month on, you know, the first Tuesday of every month they'll get together and say, okay, we can offer tenders, we'll clear them by the third Tuesday and we'll publish all the data. That will actually create a surrogate free market in coal. It will create an immaturely developed free market in coal. That will force enormous consequential pressures into the industry because, in fact, prices will drop by \$5 to \$10 a tonne in that process. And there will be a series of bloodbaths from the union, an industrial point of view, which will create a learning environment for the ARC that says, hey, this is the third one I've had in a row, and here's a fourth one, and here's a fifth one, and so forth, and at the end of the day, I'm going to have to settle these things based on economics, not based on getting parties to go back to work. So, yes, I believe economics will drive it at the end of the day.

PRESIDING COMMISSIONER: And, is it going too far to say that you would see that our role is as much as anything else, to allow that normal process to happen?

MR FAIRFIELD: Yes, absolutely. And that - - -

PRESIDING COMMISSIONER: And if we were looking for a circuit breaker, it's about trying to get the right set of pricing signals?

MR FAIRFIELD: Pricing signals will have enormous power. The role of the AISC in terms of whether or not they view they have a responsibility to ensure industry profitability, not just continuity of supply, and getting people back to work, this is the other dimension. So those two dimensions working together, if they work together, things will happen very fast. If they work independently, they will operate slower.

PRESIDING COMMISSIONER: I have one last question. And what's in this for the Sydney Futures Exchange?

MR FAIRFIELD: Your futures market.

PRESIDING COMMISSIONER: Yes.

MR FAIRFIELD: You can't have a derivatives market unless you have a cash spot market.

PRESIDING COMMISSIONER: And is the Futures Exchange moving in that direction at this stage to think about establishing a Futures Exchange?

MR FAIRFIELD: We will, in the Futures Exchange, we're obviously seeding ideas in the process, and the day you - the industry goes to cash market, we would actually have a Futures Market running. In fact, we'd probably have it running before the cash market, because then modern derivative markets is actually an interplay, a mutually supporting interplay between the Futures Market and the cash market, and they actually help each other to generate.

MR HORTON-STEPHENS: Does that take much preparation, or have you got a already?

MR FAIRFIELD: No, you could do that, and quite quickly. Quite quickly.

PRESIDING COMMISSIONER: Months?

MR FAIRFIELD: Yes. Not years.

PRESIDING COMMISSIONER: Any other questions?

MR HORTON-STEPHENS: 1998?

MR FAIRFIELD: We could do it within months of a cash market being developed. The Sydney Futures Exchange could develop a Futures Market.

PRESIDING COMMISSIONER: Thanks very much, that was terrific, and again, if there's anything else that you might want to bring before us, please feel free to do so.

MR FAIRFIELD: Okay, thank you.

PRESIDING COMMISSIONER: Thank you very much. We might continue, at this stage, I think, we've got Mr Ernst Easton, I think, who wants to - then we might just break for 10 minutes or so for anybody who wants to grab a cup of coffee or a sandwich, or whatever - whatever time it takes, and then we'll continue on with the Rail Access Corporation after that.

Dr Easton, would you like to introduce yourself please, and indicate in what capacity you're here today.

DR EASTON: I'm in quite an independent capacity. I have been a rail transport consultant to the mining industry since about 1978, particularly the coal industry since 1985. Prior to that, I was consultant for the Victorian Railways on almost a full-time basis for 10 years, so I emphasise that I'm here in an independent capacity, and also that I'm concerned only with mine to port costs. That's my

PRESIDING COMMISSIONER: Would you like to just introduce the main points that you wanted to make and then we can have a discussion about it?

DR EASTON: Yes. Feel free to break in at any time to question me if you think it's appropriate. You won't interrupt my train of thoughts.

The coal industry is heavily influenced by the level of rail freights. A comparatively low cost commodity and rail freight's represented about 14 to 20 per cent, in some cases higher than 20 per cent, of their total FOB price. It's not surprising that in the 1980's, very few, if any - I think there was one mine in New South Wales opened, and none in Queensland - it wasn't until 1989 that the Queensland government decided to modify its policy and encourage some green field mines at Bar East, North Goonyella, Gordanson and Henshall, so they were kept out of production - I don't suggest only by the high level of rail freights, there were other causes. But, that was a factor.

At the same time, a coal mine, once in production, and having invested hundreds of millions, is induced to rail the maximum quantity they can sell. Produce the maximum quantity they can sell, because their 3 or \$400 million dollars in initial investment and infrastructure, which is pretty common in Queensland, has to be and of that has to take place over the estimated mine life. If they can produce additional tonnages, they're better off.

If, as you know, I've just recently completed a thesis on a subject and if you turn to p.36 and 37 of that thesis, you'll find that latter point well illustrated.

Production of incremental tonnes has a quite significant impact on the return on shareholders' funds, naturally. The railway's in the same boat, through investment and infrastructure.

At present, the charges are being reduced. I estimated in 1993 that the average excess in charges in Queensland was of the order of \$5.60 a tonne, to \$5.70 a tonne. In New South Wales, and the Upper Hunter, I estimated that the excess was about \$3.40 a tonne. I didn't attempt to estimate the Blue Mountains and the Southern Mines, because there are too many problems in infrastructure allocation. Particularly on a dedicated coal line or a dedicated coal line, naturally all the other operating - well, the operating costs on infrastructure, are identical identical, if you know the train operations as a base. I've described that method in my thesis, and no doubt, the rail authorities use the same methods. You can identify precisely, or reasonably precisely, all the costs, other than infrastructure costs. Infrastructure costs you can't identify with a particular haul. But you can translate the costs to the haul on a reasonable basis which is usually on nett tonne kilometres. Nett tonne kilometres

So, my worry is, for the future, at - although, as in the case of New South Wales, you have a separate RAC which is responsible for the infrastructure and charges access fees. Those access fees will have to be soundly based. They'll have to be based on efficient costs of infrastructure maintenance. They'll have to be based on reasonable valuation of assets to which I'll come later. I favour historical cost, as you probably know, and I've got a lot of supporters for that.

Notably, the ex-president of the ASCPA, Professor Scott Henderson, Peter Day who is probably the best known chairman ever of the Australian Accounting Standards Board, I've mentioned too, in Australia. The Rail Accounting Principles Board in the U.S.A. The ICC, which in its latest judgments has said, "We reject replacement cost valuation of assets for depreciation and other

purposes, pricing purposes," as has the RAPB. Indeed, they had no option because the decisions of the - the recommendations of the RAPB were mandatory for the ICC.

Another reason for the historical cost approach to infrastructure, in particular, is the fact that it lasts so long. At one time it was thought that the life of rail was only about 15 years on a heavily trafficked coal line, but Mitchell's research, or BHP, and research overseas, has established that a rail lasts much longer. Lasts about 50 years on a most heavily tracked line.

So, you're not looking at replacement - - -

PRESIDING COMMISSIONER: Although I noticed that in your submission, I'm not quite sure whether you do it in your thesis, or not, you do give some thought to the so called deprival value approach.

DR EASTON: I mentioned deprival value. I don't like it. I've rejected it in my thesis, and has had some other economists and accountants, I instanced some particular professors, Johnson and Gapperking(?) of - - -

PRESIDING COMMISSIONER: Although I must say I was intrigued by that. It seems to me that what we had there was almost a - the accountants not being able to agree with the economists.

DR EASTON: I'm an economist with a smattering of accountancy. But, Professor for instance, he was one of my supervisors from my PhD, agrees with my view, provided the capacity of the infrastructure is not exhausted.

PRESIDING COMMISSIONER: But it's the long-term asset issue though, isn't it? It's not about assets per se, it's about long-term assets?

DR EASTON: No, no, a rail's specific assets is a long-term life, such a long-term life, but particularly, as the increase in capacity is such a small cost, I'll mention that I can give you in confidence the exact case. I mentioned in my submission, that in one case, and I know, the branch line of over 100 miles length, specially constructed for coal, at the estimated cost for providing for transport of a million tonnes, I can give you the figures later, in confidence, was only 5 per cent less than the cost of providing for double that capacity.

You see when you get onto routes, often the extra cost is in the extension that exists a number of

PRESIDING COMMISSIONER: I think you make - I mean, I'm very interested in the point you make about evaluation of assets because as you know, when one's thinking about access regimes, this is one of the key questions.

DR EASTON: That's a very key question.

PRESIDING COMMISSIONER: Very key question. But the general principles that's been applied in these areas is some form of opportunity cost to private but, your view about having an historical cost, it seems to me, on the face of what I've read here, to fly in the face of applying what you might describe as a general opportunity cost approach. Now, I know there will be variations to the opportunity cost approach.

DR EASTON: When you get a monopoly supplier, the opportunity cost is what he deems it to be.

PRESIDING COMMISSIONER: Yes, but it's an asset owned by the community, so it's the opportunity cost to the community of the asset.

DR EASTON: Why should - the asset's there, it will not, if it's ever replaced, it will probably be replaced because of its long life, by something different, and the asset's life extends over two mine lives.

PRESIDING COMMISSIONER: Let me take a very simple, but sometimes telling example, if we look at the land under the rail. There is an alternative use of that land, it might be for grazing.

DR EASTON: A strip of land.

PRESIDING COMMISSIONER: Yes. A strip of land.

DR EASTON: A strip of land - I can accept that principle in regard to rail yards in the centre of Sydney or Melbourne. There are alternative uses, but I can't quite accept that, or a strip of land, X yards wide, going through the country. The alternative here is not great, but - - -

PRESIDING COMMISSIONER: But even if it's not great, that's a question - that's separate from the principle.

DR EASTON: No, no, getting back to the principle, the land which doesn't represent a substantial part of the costs in any case. Take the components of the asset. The land doesn't - accepting your argument on land, the land doesn't represent a substantial component of costs. The earthworks will never have to be replaced, their life is it. The same is true in practical terms of concrete bridges, culverts, and concrete sleepers - and the balance is constantly maintained, it has to be, or the line wouldn't be safe. So there's not much - that he left for the rail. Present thinking is - present research indicates that the rail light is 2,500 million tonnes. And these circumstances - and here the fact that re-evaluation is more often than not carried out by indexation, on some index.

Now, to what extent that index allowed for productivity gains, you can lay a new line today much more efficiently and effectively than you could 10, 20, 30 years ago.

PRESIDING COMMISSIONER: You also argue that there should be a two-tiered approach to pricing, I think, don't you?

DR EASTON: Yes.

PRESIDING COMMISSIONER: So you actually separate out that particular part of the costs from the ongoing operation costs?

DR EASTON: Separate out the access to the infrastructure.

PRESIDING COMMISSIONER: And then an operating cost based on marginal costing.

DR EASTON: That's right. I think most economists would accept that as the most efficient form of pricing practicable, given the difficulties with Ramsey pricing which are very acute. How the heck with Ramsey pricing do you make quantitative distinctions, and how do you get the data to make those distinctions?

PRESIDING COMMISSIONER: But the RAC seems to moving towards a more Ramsey pricing approach. What do you make of that?

DR EASTON: Again I disagree, because take Bamald's writings, Bamald says you can't get the data to make a quantitative assessment. The best you can do is get some data to make to give a qualitative guide, and in the circumstances I suggest that it's arbitrary.

PRESIDING COMMISSIONER: You make the other point, I think, too which was about the appropriate rate of return. Would you like to make some comments about that?

DR EASTON: Yes, I would.

PRESIDING COMMISSIONER: Yes, please, please go to that.

DR EASTON: I find several things difficult to understand. The first case a nominal cost of capital rate of return associated with replacement valuation of the asset. I haven't found one economist, and I've spoken to about ten, who does other than throw up his hands in horror, and the industry commission almost did the same thing in 1991. Page 269 of their report. It's double counting, you're counting for inflation once in your replacement costs valuation, and you're counting again for inflation in the nominal cost of capital. And I can't understand the approach to the RAC in doing this, that's first. Second is the actual quantum of the weight. If you use the approach that I have used in the thesis and elsewhere, and it's used in the codes of conduct for the electricity good pricing for calculating WACC separately for interest in debt-funded capital and equity funded capital.

In my calculations you can only arrive at 14 per cent after tax on a 50/50 distribution of equity and debt capital by sending a beta value of 2.5. So again on my figures, the RAC is arguing that investment on the Hunter Valley route is 2.5 times as risky as investment in a bundle of all ordinary shares. I can't swallow that. And I would suggest that even if the assessment of the amount of monopoly rent still embodied in the access fee of 90 cents I think it is, if it is accepted, that is increased to the extent to which, (a), the assets are over-valued, and/or, (b), the rate of return is overstated, and that may be a considerable figure, very considerable figure.

PRESIDING COMMISSIONER: Can I say you've actually given me quite a bit to think about from this piece of work I must say, and I certainly thank you for doing that. Did you have any questions at this stage?

MR HORTON-STEPHENS: No.

DR EASTON: You mentioned to me about - - -

MR HORTON-STEPHENS: The efficiency of the coal chain.

DR EASTON: - - - efficiency of the coal chain for the mine, of course. I think that's a very relevant question. Taking New South Wales as an example, obviously they have improved their efficiency tremendously. For instance, the "One Stop" wagon maintenance centre at Newcastle where they have reduced staff from 200 to 26 I think it is to do maintain 4,000 wagons. But they can go further by one man fees, and - but the companies can assist too because their loading weight and the consistency of their loads, and performance of the mine in the loading area, coal flow and all those kind of things, facilitates - it reduces crude costs in two ways. First by the actual time spent at the mine, and secondly, if they have beta regularity of loadings in the FreightCorp's necessity to retain reserve crews, to provide that quite important factor.

MR HORTON-STEPHENS: We have had a submission from FreightCorp, I mentioned to you earlier it's on the record.

DR EASTON: Yes.

MR HORTON-STEPHENS: We could have a look at that, but we were certainly discussing this issue yesterday, FreightCorp is obviously very aware of the scope to improve the efficiency of the coal chain, and has already introduced perhaps, I can't recall the detail, but at looking at various incentives and penalties. You talk about companies compelled - - -

DR EASTON: Yes.

MR HORTON-STEPHENS: Take that further in terms of - - -

DR EASTON: Personally I think they should be tougher on their penalties.

MR HORTON-STEPHENS: There can be both incentives and penalties - - -

DR EASTON: Yes, that's right. And too, you have to have the you have to have penalties. But New South Wales has been way ahead of Queensland in promoting these incentives for more rapid loading. Queensland has followed suit more recently, but New South Wales have a three leg start. If I may, Mr Scales, I'd like to breach two other aspects. I think I have covered differential pricing, and I don't see - differential even in the coal industry - even as a coal producer - if road transport is an alternative - sure apply the Ramsey principles, but why did the coal producer can be lured into the - lured to the rail at a price which is above the floor level and make some contribution to capital costs and so forth and so on. Okay. But otherwise I can't see it.

But the other one is productivity, the allowance for productivity. No matter if you get your rail freight straight initially, and your productivity adjustments not according to it'll go wrong quickly particularly in a period of high inflation. And the CPI in my approach which is estimation by rail in this case of potential productivity gains, well, what would you do, you'd underestimate. I greatly prefer the ICC approach, which is mentioned in my submission, which mimics the practice in a competitive situation whereby, you know, a single competitor can gain a head start and maintain his superiority for a period, and he benefits to the maximum extent during that period, and the ICC approach is precisely that, to provide that the railroad shall have the benefit of all its productivity gains for a period of 2 years. At the end of 2 years pass the whole of those benefits onto the users, and that really replicates the practice in a competitive environment.

MR HORTON-STEPHENS: Do we need a mechanism to allow that to happen, an independent regulator? The Minerals Council certainly - - -

DR EASTON: You'd need a regulator to work it out.

MR HORTON-STEPHENS: Yes. You have IPASS in New South Wales, for example, couldn't IPASS fulfil that function?

DR EASTON: I think whether or not they supply it to what is in this case a captive client you'd need a regulator in any case. I don't think - I don't think negotiations solves - I'm not a regulator fan, although I was a member of the Prices Justification Tribunal, I'm not wedded to it completely. But in some cases where you have a monopoly supplier and a virtually captive user because once they've invested \$300 million they're in it, they're at the mercy of the supplier if he's

PRESIDING COMMISSIONER: Dr Easton, there were a couple of things I wanted to ask you, you can maybe get back to us on this. There's some sourcing of some of the things which you've got in here that I'm wondering if you could provide to us.

DR EASTON: Sure.

PRESIDING COMMISSIONER: One was page 7 of your submission. You talk about companies funding 6 per cent of capital expenditure on relevant infrastructure, rolling stock and other facilities.

DR EASTON: Page 7, is it?

PRESIDING COMMISSIONER: Page 7. If you could provide us with the source of that?

DR EASTON: No, the source - the source is - the 1,244 million is the Queensland Mining Council, and the source of the 600 and whatever it is, the Queensland Investment, is - no, Queensland Rail - from Queensland Rail, something - say - a couple of years ago. They are not my figures, they're - they're - they're the industry's figures and Queensland Rail's figures.

PRESIDING COMMISSIONER: Page 8 you say it is understood the RAC has estimated that monopoly rent - has estimated that monopoly rent of 90 cents per is currently incorporated in the access fee.

DR EASTON: I am informed that that is the - my source for that is people in the industry. You could check that with the RAC.

PRESIDING COMMISSIONER: They'll be coming later on and we'll talk to them about that. The example which you gave a little earlier about the productivity performance at the "One Stop" wagon maintenance centre in Newcastle, presumably that's well known. But is there a source for that?

DR EASTON: The source of that information is that an address by Terry Kearney, two conferences, the most recent of which was the rail conference on the coal industry organised by IIR, 2 September.

PRESIDING COMMISSIONER: That's right. And then the last one on that same page, page 10, you say, "The Freight Corporation has been successful recently in negotiating reduction in access fees previously payable and is passing on the benefits to users."

DR EASTON: That was first intimated by, the managing director of Freight Corporation at that same conference. I have a copy of the paper.

PRESIDING COMMISSIONER: That's all right, I think we've got those papers, thanks for that.

DR EASTON: And subsequently, yes.

PRESIDING COMMISSIONER: That's good. Is there anything else that you wanted to raise with us?

DR EASTON: No, I think I've made my point - the last point is that, as you know, Freight Corporation's charges have been substantially reduced recently, and I have said in that submission that they average about - the average rates now average about \$5.25 a tonne in the Upper Hunter. If you take that 90 cents off, that's \$4.35 a tonne. I'd suggest that allowing for the fact that RAC's returns I regard as too high. It's getting fairly close to my own figures, and in the Queensland estimates at cost which I put in about \$5.60 a tonne and \$5.70 a tonne in 1993. That was confirmed by the fact that for one year Queensland Rail published some figures of weekly expenses on coal which I was able to deduce that their costs for coal were about \$3.85 a tonne. I had just informed the - I had just worked out that they were \$3.90, so I was fairly close.

PRESIDING COMMISSIONER: Pretty close.

DR EASTON: And knowing as I do Queensland Rail's investment in capital on coal it would be pretty close to capital return and depreciation. So I am satisfied - very satisfied with my Queensland estimates, I'd stand up to them in court.

PRESIDING COMMISSIONER: Very good. Thank you very much for participating. Thanks for that.

DR EASTON: By the way just one other point. Queenslanders always argue that in carriages people are less able to claim, and I imagine some - I imagine some of the information in confidence because I don't want to disclose in public figures that I know that are not available to the public. But in Newlands mine in Queensland which is one of the MIM mines which is not notoriously profitable shall I say, they were 177 K from the port. In 1985 their full rate was fixed at \$12.61 a tonne. These are publicly available, and they later at a concessional rate of \$10.94 a tonne. But if you compare those with a mine an equivalent distance which was open many years earlier the rate that that mine - not much more than half of Newlands.

And in another case at the same time an old mine comparing the rates for an old of a company with rates for a new mine of the same company the difference is about the same. I temper that in confidence.

INQUIRY ADJOURNED AT 1.00 PM

INQUIRY RE-CONVENED AT 1.15 PM

PRESIDING COMMISSIONER: I'll now re-convene this industry commission hearing into Australia's black coal industry. We now have with us the Rail Access Corporation. Could you please introduce yourself and in what capacity you're with us today, please?

MR BONES: Sure.

PRESIDING COMMISSIONER: And then feel free to address your submission. We've obviously had a chance to read it, but feel free to address any elements of it you wish.

MR BONES: Fine. My name is Terry Bones. I am the business development manager with the Rail Access Corporation. I have crossed portfolio business development accountabilities within the corporation including some coal activities. My colleague sitting next to me is Bruce Farrah who is the market manager coal, and as the name suggests he's dedicated to the coal portfolio. First of all, thanks for the opportunity to - - -

PRESIDING COMMISSIONER: Can we just get Bruce's voice on transcript, Terry, if that's okay with you just so that we can - - -

MR FARRAH: Bruce Farrah. Market manager coal, Rail Access Corporation. I commenced there in January 1996.

PRESIDING COMMISSIONER: Thank you.

MR BONES: Thanks first of all for the opportunity come along and address the commission today. I thought if I could open by going through and hitting a few of the key issues out of our submission in overview before handing it over to yourselves for any questions you might have. Briefly I thought I'd outline a little bit about the corporation about the coal haulage network. The regulatory framework for RAC as a monopoly, access charging, and finally to close with some words about maintenance and investment on RAC's network in coal in particular.

Rail Access Corporation like FreightCorp who I understand addressed the commission yesterday is a statutory state-owned corporation. It's created under the Transport Administration Act on 1 July last year which divided the previously vertical integrated state Rail Authority monopoly into the Rail Access Corporation to hold the monopoly - natural monopoly element being the track and associated infrastructure. FreightCorp as a freight train operator are exposed to competition above rail. The State Rail Authority who are now primarily a passenger train operator and Railway Services Authority, that is a provider of maintenance and related activities for track maintenance and rolling stock maintenance, et cetera.

As a state-owned corporation RAC is required to act commercially. One of our statutory objectives is to be a successful business. Now, the restructure that took place on 1 July last year was a direct response to the Hillmar initiatives and a direct flow on from the New South Wales response to the Competition Principles Agreement. As I've said, Rail Access Corporation holds the natural monopoly element in the track. We've got a large portfolio of assets, about 9,000 kilometres of track, but we managed that with a small head office - or a small office of 100 people, and the corporation itself focuses on the commercial management of access, particular access pricing, contracts for access to the network, the high level path allocation activities, allocation of capacity if you like, and also the access asset management function.

Maintenance activities are out-sourced. As of 1 July last year virtually the entire portfolio of infrastructure maintenance was out-sourced to the railway services authority, but there is a contestability program that I'll outline a bit later to progressively put all of our maintenance activities to the market between now and July 2000, and the actual network control activities as

we termed them which is the detailed preparation of the timetable through to the actual real time train control activities are currently out-sourced to the State Rail Authority.

Now, the corporation has forecast access related revenues of about 760 million this financial year.

That excludes some capital grants which are received from the government via the SRA. Roundly that's about 50 per cent from passenger related access charges, 25 per cent from freight access charges, and a further 25 per cent roundly received direct from government in the form of a line community service obligation payment to support lower volume lines which is in fact a large proportion of RAC's network.

Now, coal is the majority of our freight revenues. It represents about 20 per cent overall of RAC's total access revenue base rising to 25 per cent if we exclude the line CSO component. As of today we have got three major customers being the State Rail Authority and FreightCorp who I've previously mentioned. And also the National Rail Corporation who operate interstate freight. We've recently signed a couple of access agreements, one with a new operator called AusTrack who are operating from the Riverina area into Sydney who recently commenced their rail operations, and also Specialised Container Transport who will be operating interstate freight but have yet to commence operations.

BHP down at Port Kembla, Australian Iron and Steel, have operated their own trains for many years including access over previously SOA trackage and now over RAC trackage over several kilometres of track. We've got a number of smaller heritage passenger operators. And I guess of most interest to the inquiry is that we're in very active negotiation with several very serious perspective coal rail operators. They're essentially a mixture of rail operators already operating elsewhere in Australia and transport/logistics firms.

In terms of the coal network, essentially there are two fairly distinct coal operations; the Hunter coal network feeding through the Hunter coal export ports at Port Waratah, or Port Waratah itself and Kooragang Island, and the south and west coal network which exports through Port Kembla. Together in '97/'98 we're expecting about 68 million tonnes, possibly a little bit more. Our official forecast at this stage is 68 million, roundly that will be about 58 million tonnes in the Hunter which that's again our official forecast. We hope to actually exceed that by a couple of million tonnes. Around the 8 million tonnes for the south and west network through to Port Kembla, and we've also got a small amount of domestic coal, about 1.5 million tonnes which is principally in the Hunter region.

As FreightCorp would probably have outlined yesterday and you would have found out doubtless from other submissions, there is strong growth in Hunter Coal, and it is forecast - or our forecasts are for between 80 and 90 million tonnes by the year 2001. Of 31 mines through 21 terminals in the Hunter, and I think it's seven mines south and west, again as other submissions may have outlined the majority of the coal rail operation operates on a just in time cargo assembly basis driven by the shipping schedule there's actually in fact also very little dedicated coal trackage on the network that's very much a multi-user network. Coal shares the tracks with a mixture of passenger services, interstate freight minerals and a variety of rural commodities, principally grain.

There are some very difficult conflicts with other traffic particularly for the south and west coal operation which has to be traverse the metropolitan area. But also on parts of the Hunter network for example the Stratford mine up the north coast line shares track with the interstate services and there are some capacity allocation issues on the Hunter network as well.

I guess if I had to summarise, I'd say overall it's probably one of the most operationally complex, if perhaps not the most operationally complex coal operations in the world given the volume of traffic and the conflicts in the mix with non-coal traffic.

The Rail Access Regime sets our regulatory framework. This document called the Rail Access Regime is given legislative effect over RAC by the Transport Administration Act, and is also subject to the Independent Pricing & Regulatory Tribunal Act (NSW). The Regime itself was gazetted in August 1996, last year. There is now a certification process under way before the National Competition Council, and there are discussions occurring as we speak between the New South Wales government and the NCC over amendments to the Regime to address NCC concerns.

Now, the Regime itself has been drafted as a negotiate and arbitrate regime. I guess it's intended to be fairly pure if you like in a competition principles agreement sense. There's no regulator, if you like. The Regime itself is the regulatory framework for RAC. The Independent Pricing & Regulatory Tribunal acts as arbitrator in the event that there is an intractable dispute over access prices or other terms of access.

The Regime sets a framework of floor and ceiling limits for the negotiation of access prices, and in simple terms the floor is incremental cost, and the ceiling is stand alone cost which includes a rate of return on assets valued on a depreciated replacement cost basis. That rate of return is determined by the Minister for Transport with the approval of the New South Wales premier after consultation with the Independent Pricing & Regulatory Tribunal and is currently set at 14 per cent nominal plus tax. The Regime also incorporates special pricing principles for coal that I'll get to in one moment.

Now, a variety of submissions in this forum and elsewhere have commented on the 14 per cent rate of return. A few points I'd like to emphasise from the corporation's perspective. First of all, the 14 per cent is set by government, it's a regulatory ceiling limit on RAC, and most importantly it's a ceiling rate of return, it's not a prescribed rate of return. RAC has no right to build in a 14 per cent rate of return into all its access prices. Essentially the Regime provides for a market-based approach to pricing, so where we can potentially negotiate a 14 per cent rate of return those are the only circumstances in which we can effectively get our 14 per cent.

I realise that a view has been expressed in a number of circles that the 14 per cent, or the ceiling rate of return should be set according to some sort of weighted average cost of capital calculation. The corporation's view is that for the corporation to have any prospect of achieving its weighted average cost of capital, it's very important that the ceiling rate of return be set at least to some extent higher than the rate of average cost of capital. We've got a portfolio of business, as of here and now in overall times, and in fact even looking at coal generally we're not earning anything like our cost of capital.

So to have any prospect of achieving our cost of capital over even a reasonable sub-segment of our business, the rate of return needs to be set higher than the weighted average cost of capital. If the ceiling rate was set at the weighted average cost of capital, from the corporation's point of view that would be a severe disincentive to investment. To put it in a concrete context, for example, if we had a particular investment for a new railway line to serve a new mine there's some - the corporation in the majority of circumstances bears at least some of the tonnage risk, would bear a risk of tonnage shortage so there'd be a prospect that we wouldn't get our cost of capital, cost of capital that would be the maximum we could ever get. From the corporation's point of view the average outcome if you like is going to be significantly below our cost of capital.

Moving on more specifically to coal access charges, the regime has special pricing principles for coal. There are three categories for coal access charges determined by reference to the implicit or imputed access charge component that existed in the previous freight rates, that is the pre 1 July 1996 freight rates if you like. Category 1, access prices as defined by the regime, relate to those hauls where the imputed access price is above the general ceiling limit in the regime, that is above a 14 per cent rate of return, and the access price is set for those category 1 mines at the ceiling

plus an element known as the adjustment component which if you like is any monopoly rent element imputed out of the previous rail freight rates.

Now, the adjustment component is being phased out at government policy dictate between now and July 2000 at 25 per cent per year, and the first of that 25 per cent reduction occurred this financial year and resulted in a very significant reduction in access prices for the Central Hunter mines.

Now, the category 2 mine is defined in the regime sit - well, they impute a price that sits between the floor and the ceiling, and essentially the access price is determined by reference to the imputed access price directly without any adjustment component. And as per the regime category 3 hauls are where the imputed access would be below the floor in terms of the regime as it currently sits the access price is therefore at the floor.

Now, I've mentioned line CSOs previously, they were something of a late development, if you like, in the policy framework within New South Wales. We reached agreement with government that RAC would get direct line CSO funding towards the end of last financial year. That has essentially allowed us to underwrite all access prices down to a floor of individual incremental cost if you like, the wear and tear cost of the track in most circumstances on a market supportable basis. So for the category 3 mines that has allowed us to give the category 3 mines prices which they can afford without undue price shocks.

The average access price overall is about \$2.40 per tonne. It does vary substantially between individual hauls. That represents about 5 per cent of the FOB cost, and it is of, we point out, a similar order of magnitude to cold handling charges at the ports, and for that matter demurrage costs which are currently being borne by the industry as a result of difficulties at the port principally.

Turning to maintenance and investment. Upon RAC's establishment on 1 July last year it was an immediate priority of the corporation to put in train a strategy to get our costs down. Essentially that strategy has been to put the totality of our infrastructure maintenance to the market. The state has been divided into 14 geographic contract bundles that include all infrastructure, that is track structures, signals and electrical maintenance into a single contract and is also one bundle for statewide infrastructure such as communication.

Now, one of those bundles is going to the market each 3 months between now and July 2000. The first contract which is the Easthills line in the Sydney metropolitan area has already been let to a company called Floor Daniel. We're currently finalising the negotiations for the second contract with preferred proponents who are, well, Infrastructure Alliance who are a joint venture of RSA and TEAS, and the evaluation for the third contract which is for the Waterfall Bombaderry line which is part of the coal network if you like is under way. Of most interest, Hunter Valley coal network will be led into July next year.

At this stage it's hard for us to quantify the savings that will flow from that contestability program, but we're expecting savings of up to 30 per cent. On the investment side one of our key focuses for this year is to establish a firm investment program for coal, and particularly in the Hunter. In fact, it's one of the corporation's key priority corporate projects. We have already identified a variety of early projects to identify capacity pinch points that we'll implementing as we can while we develop our longer term strategies. And as has I guess been widely reported in the press we are currently finalising negotiations for a 15 kilometre line extension in the Hunter, from Mt Thorley to Jerry Plains.

That was really about all I wanted to say, so I'll hand over for questions.

PRESIDING COMMISSIONER: Thank you very much for that. Bruce, did you want to add anything at this stage?

MR FARRAH: No.

PRESIDING COMMISSIONER: There are a number of issues I thought I'd want to raise with you, some of them we may not be able to get through in great detail but we may want to come back to. The pricing regulator, and the appropriateness of the current arrangements regarding pricing regulation. Your facilitation role as you've described it in your submission, to facilitate access to the role facility. The principle of pricing based on the ability to pay, issues to do with valuation of assets, issues to do with of course return on assets, and then some other discussions about maintenance and extension of the capability. So would that cover most of the things that you would want to cover?

MR HORTON-STEPHENS: Yes.

PRESIDING COMMISSIONER: Let's take the first one. One of the issues of course that's been raised and you raised it somewhat briefly was the appropriateness of having slightly - a greater degree of regulation if I can put it that way, the arrangements, particularly the pricing arrangements. I think you've indicated the independent regulator here in New South Wales has some opportunity to be involved essentially after the event by the sound of it once the situation has reached such a stage that you can't reach agreement with companies. What's your general view about the possibility of having slightly more, I guess, interventionist approach if I could put it in those terms, approach to pricing with the RAC?

MR BONES: First of all I'd point that the regime mirrors fairly closely the principles in the competition principles agreement, and I understand that the competition principles agreement was fairly closely the starting point for the government when they framed the regime.

PRESIDING COMMISSIONER: Yes, except that I think in all fairness there was a fair amount of compromise with regard to rail. So it depends what you mean by agreement.

MR BONES: Sorry, I don't quite understand - - -

PRESIDING COMMISSIONER: I think rail was to some extent an exception as, you know - and you can see the evidence of that because of the way by which both Queensland and New South Wales are yet in many cases to declare themselves under the access regime. So I think it was a special case even under the competition policy arrangements. So I wouldn't necessarily regard that as the appropriate base upon which to make a judgment, that's the only point I'm making.

MR BONES: Okay. In terms of the appropriateness of, I guess, more hands on regulation if you like, and I guess what principally tends to be raised by the Minerals Council and others is the possibility of some sort of posted reference price type approach as applies in other industries. From RAC's perspective the rail industry is fundamental different from those other industries in that we have tremendous disparities in capacity, (a), between different markets, and indeed within markets, even within coal as the regime principles themselves reflect. There are tremendous differences in capacity to pay.

Now, almost by definition any process of posted prices or pre-emptor's prices by the regulator if you like, will need to be set somewhat towards the ceiling limit. The question then becomes what meaning those reference prices necessarily have in any true negotiation sense. If the reference prices are set at that sort of a level do they necessarily provide a starting point for negotiation?

From RAC's perspective the answer is pretty firmly "No." We've got our own assessment of capacity to pay in different markets and we set our opening bids in negotiation along those lines.

In setting reference prices, for example, the regulator, if you like would need to go through and have a high degree of market knowledge in order to have any hope of determining appropriate reference prices that reflected the realities of the rail market with its very wide variations in capacity to pay.

PRESIDING COMMISSIONER: But in a sense that's the rub, isn't it, that - and where most of the criticism comes, that it's the principle of using capacity to pay on access to what are essential facilities, and often certainly natural monopolies that actually gives the rub to - if you like, the substance to the debate. And as you know, the alternative approach is to actually establish a set of pricing regimes that's quite neutral between players, and then allows the benefits to be accrued to the community as a result of increased economic activity. How would you answer the argument that says what you're doing actually is intervening in the market in a way which wasn't appropriate for somebody who is responsible for what is in fact a natural monopoly.

MR BONES: I think if we put capacity to pay to one side and adopted some cost based or cost plus rate of returns style approach, the simple reality is that in New South Wales we would only have rail operations in the Hunter coal network, in the core of the Hunter coal network, the rest of the rail operations would seek to exist, they'd be priced off the network, they simply couldn't afford the access prices. The alternative is then, well, we set the access prices at something lower, then - - -

PRESIDING COMMISSIONER: Let's just stop there for a moment. What you're implying there, of course, is that there is a greater need for an increase in the CSO. You've actually implied that the CSO is too low.

MR BONES: No, I've said we're getting CSOs now.

PRESIDING COMMISSIONER: Yes, I know, but you're implying - - -

MR BONES: (Indistinct) market based approach to access pricing.

PRESIDING COMMISSIONER: But you're implying that they're too low, aren't you?

MR BONES: No, I'm saying that if you adopt a cost based approach to access pricing, which almost by definition means that you don't have line CSOs so to speak, which we're currently getting, I mean, line CSOs go hand in glove with our market based approach to pricing. They effectively underwrite our market based prices. If you discard that framework and move to a cost based approach then all of our traffic that is currently effectively supported by line CSO is priced off the network, unless you can come up with some other mechanism to get those CSOs to that rail operation.

PRESIDING COMMISSIONER: Let's just take that back. What you're saying is that the facility is very expensive. For people to use the facility it would cost them a lot more than they currently are. Therefore if the community wants to use it and they can't afford to pay for it then presumably the government would have to pay for it. And that's increasing the CSO.

MR BONES: Yes.

PRESIDING COMMISSIONER: Hence what you're arguing is the CSO currently is too low.

MR BONES: I'm saying the CSO we get now is set appropriately, but the mechanism - as I say CSO - - -

PRESIDING COMMISSIONER: But aren't you saying that the CSO is too low to pay for the full cost of using the regime if it was priced appropriately for each kilometre of track?

MR BONES: The line CSO is currently set so that we essentially break even.

PRESIDING COMMISSIONER: Put the CSO aside the moment, what you're currently getting. I seem to be having trouble making myself clear so I'll try and re phrase it another way. Put that aside just for the moment. You are saying that the cost of the track will be so high that most people won't be able to use it if a standard approach to pricing the track is applied.

MR BONES: Yes. Yes.

PRESIDING COMMISSIONER: And therefore if the community believes that it's appropriate to price it in such a way and have that service then the government would need to intervene to provide a much larger CSO.

MR BONES: Provide the current levels of CSO.

PRESIDING COMMISSIONER: Presumably current's too low though.

MR BONES: The current level of CSO has been determined to support our market-based approach to access pricing.

PRESIDING COMMISSIONER: Yes, that's because you're cross-subsidising.

MR BONES: We're not cross-subsidising.

PRESIDING COMMISSIONER: But you said before if you were to take an approach which simply applies - if the weighted average cost of capital which is alternative was applied then you said you wouldn't be able to pay for the full cost of the system which implies that it's being cross-subsidised.

MR BONES: No, I said we wouldn't achieve our cost of capital.

PRESIDING COMMISSIONER: You wouldn't achieve the set rate?

MR BONES: No. We're still set an absolute floor. We're still subject to the regime floor limits which prevent cross-subsidisation.

PRESIDING COMMISSIONER: Let me put it another way. You're saying if you didn't apply the 14 per cent rate you wouldn't achieve your average rated cost of capital.

MR BONES: I'm saying if the 14 per cent didn't apply as a ceiling.

PRESIDING COMMISSIONER: Yes, as a ceiling which implies that there are cross-subsidies.

MR BONES: No, it implies there are differential returns over parts of the network.

PRESIDING COMMISSIONER: It implies there are different rates that apply to different users of the service.

MR BONES: But again I think - our return is something that is set by the market, if you like. Our ability - we have got no prescribed ability to go in there and set a particular return without reference to the market. It hinges around the market's capacity to pay.

PRESIDING COMMISSIONER: That gets back to the circularity of the argument. I mean I wanted to get away, just for the moment. I'm trying to understand your pricing policy. That's what I am trying to understand. And you seem to be suggesting - and let me ask the question. Is there cross-subsidy within the system in terms of the way in which you apply pricing?

MR BONES: There is no cross-subsidy. That is prohibited by the regime in that we can't charge any operator or group of operators less than their incremental cost. But that's not to say that out of different parts of different markets we aren't getting different rates of return. But we cannot make profits on one part of the network or from particular operators or particular origin and destination movements and use those to essentially make a loss on other parts of the network.

PRESIDING COMMISSIONER: Put aside a loss or a profit, but are you making different returns from different sectors of the system?

MR BONES: Yes.

PRESIDING COMMISSIONER: And those different returns are somewhere between the floor and the ceiling?

MR BONES: That's right.

PRESIDING COMMISSIONER: And you are determining that it's appropriate to make different returns somewhere between the floor and the ceiling, based on capacity to pay.

MR BONES: When you say we are determining, they are essentially the outcome of negotiation rather than - - -

PRESIDING COMMISSIONER: Well, the "outcome of negotiation" is another way of saying "capacity to pay."

MR BONES: Yes.

PRESIDING COMMISSIONER: Therefore if we put aside whether it's a profit or a loss, for what is essentially the same facility you are getting a different rate of return.

MR BONES: Yes, potentially. And certainly - - -

PRESIDING COMMISSIONER: And on the basis - let me just keep this argument going just for the moment. Therefore on the same basis of cost per kilometre we're getting a different rate of return.

MR BONES: Yes.

PRESIDING COMMISSIONER: Isn't that cross-subsidising?

MR BONES: I'm not an economist but my understanding of cross-subsidy is to use rates of return that you've generated on parts of the network to essentially subsidise negative rates of return on other parts of the network. Now that is prohibited by the regime.

MR HORTON-STEPHENS: I'm a bit confused still, I must admit. Let's go to the specific case of coal and the situation where you are required to actively marked access, and you've mentioned that you or other participants have been and are in active discussions and negotiations with operators other than Freightcorp.

What does that mean? You say, "We explained price difference." You obviously both had problems with - this is page 9. You say that if they have the same requirements they should face the same access charges.

MR BONES: Within coal.

MR HORTON-STEPHENS: Within coal. Yes, that's still within coal. We have that principle but we have the other principle which is that operators will have different capacities to pay which should be taken into account.

PRESIDING COMMISSIONER: Let me ask a question. Within coal, over the same kilometre of track, will you be charging one coal firm a price that is different to another coal firm?

MR BONES: For the same origin and destinations our policy is for the same chain operating specification we charge everyone exactly the same price.

PRESIDING COMMISSIONER: Therefore how would that fit in with the capacity to pay?

MR BONES: Because capacity to pay in the coal market is largely a geographical issue. So for example a distant mine might have a lower capacity to pay than a central Hunter mine, for example.

PRESIDING COMMISSIONER: What do you define as capacity to pay?

MR BONES: Well, a starting point for that has been set in the regime, if you like, as the imputed access price within the previous integrated freight rate.

PRESIDING COMMISSIONER: Let me ask a question. Are you defining capacity to pay then on the basis of distance?

MR BONES: No.

PRESIDING COMMISSIONER: What basis do you use for determining capacity to pay?

MR BONES: Well, in coal, as I said, the starting point as set by the regime is the previous imputed freight rates which by definition, mines were paying those rates so therefore they reflect their capacity to pay. Now they may change with negotiation over time.

PRESIDING COMMISSIONER: But the initial freight rate might have been so high that it was actually distorting investment, for example. How did you make the choice that that initial price, that base price was the right price?

MR BONES: That was the government's choice and it was also a mechanism to ensure that any monopoly rents were identified as a component of the access charge.

PRESIDING COMMISSIONER: Let's put that aside for the moment then. Do you determine capacity to pay on the basis of profitability?

MR BONES: On the basis of profitability?

PRESIDING COMMISSIONER: Profitability of the individual mining company?

MR BONES: Well, it's still early days for us yet, so I mean we're still basically fairly close to the starting points laid down in the regime, if you like. Over a period of time, as I say, prices will move with negotiation.

PRESIDING COMMISSIONER: But let's stick with the capacity to pay. You're a monopoly and you're a government owned organisation. What is the rule that you apply for determining capacity to pay?

MR BONES: There is no rule to apply to determining capacity to pay. It is something that becomes evident in the negotiation process.

PRESIDING COMMISSIONER: What becomes evident in the negotiating process?

MR BONES: Willingness to pay.

PRESIDING COMMISSIONER: Willingness to pay. Is that the same as capacity to pay?

MR BONES: Well, essentially as I understand it in an economic sense, if someone's not willing to pay - - -

MR FARRAH: Mr Chairman, can I give you an example that may be able to help us out here? Currently in Hunter Coal we have one access contact with Freightcorp. They are the only accredited operator in Hunter Coal. We have had a number of negotiations convened by Freightcorp on behalf of their customers.

For example a customer will be seeking to re-negotiate a freight rate because of changed circumstances at a mine or they are seeking to invest. We had a recent example where a company was looking to - and it was a mine a fair way away from the port - was looking to invest in a long wall, and they were seeking every assistance from their rail operator to ensure that that investment stacked up.

They came along to us and they said, "Look, we're operating a long way from the port. Our pit to port charges constitute 30 per cent of our F.O.B. costs, and you have two choices. You either don't give us a break on our investment or you lose the potential to get an extra couple of million tons of revenue." And they were saying that they needed this new long wall to maintain the overall profitability of the mine.

My job as column market manager, in part, is to determine the applicability of an access charge to Freightcorp to an individual mine. And I spend a lot of my time talking to mine people and have a reasonable idea of Hunter Valley mine operations in particular. My previous role to Road Access Corporation was as a project manager for ICI Explosives, and prior to that I worked for 8 years for Coal and Allied in Newcastle, and so I have fairly good experience in the mining industry.

Now you say about capacity to pay. Part of my job is to determine the capacity to pay of an end miner. We don't have access contracts with miners at this stage and that's something that the minerals council has requested and that's something that the government through the regime process is looking at.

But if you are asking, "Do we look at a mine's capacity to pay?" Yes, we do. And that's why we apply differential pricing for mines that are further away from the port. If we are not able to charge that mine our costs the government then had the option of applying CSOs.

MR HORTON-STEPHENS: Let's suppose we have the two mines virtually next to each other, the same distance to the port so we haven't got that distance problem. Would you be prepared to discriminate - - -

MR FARRAH: We seek, absolutely where possible, to be consistent, and if you look at our existing price structure, mines in close vicinity to each other are charged quite similar rates.

MR HORTON-STEPHENS: But not necessarily the same.

MR FARRAH: It's usually very close.

MR HORTON-STEPHENS: The reason I ask that is because on the - that says "Pricing Policy." 4.3 says "Subject to 4.2 above," and it's got some sort of technical points. "Rail Access will not charge prices that unduly favour or discriminate against all parties competing for the same quantity of"

Now just apply that in this very situation, and that would imply that the prices should be the same as - - -

MR FARRAH: Yes. Yes.

MR FARRAH: There is no such thing as a mine in the same facility at the prices we charge, and I look at a specific example.

MR HORTON-STEPHENS: Yes, I understand.

MR FARRAH: Say Olga and Mount Thorley.

MR HORTON-STEPHENS: Yes.

MR FARRAH: Are both on the same branch line. Pay a very similar access charge, and the difference between the two relates to the difference in distance. Similarly on the Newdell line the coal loaders on the Newdell Junction which are the Hunter Valley and the Newdell Loader which are owned by Rio Tinto are charged exactly the same price as say the Liddell Loader.

MR HORTON-STEPHENS: So in that situation different capacity to pay would not include considerations as to profitability of the individual mines, for example.

MR FARRAH: We seek where possible to be consistent, but by the same token if there are particular hardship cases where people have come along to us - and it's usually not in the mid Hunter that we're talking about, it's usually the mines further away from the port where our charges are a larger proportion of their FOB costs. They're seeking some assistance.

PRESIDING COMMISSIONER: Let's take the example of the hardship case. Do you take into account what the effects on other mines would be by you providing a lower price to those firms that are in a hardship case?

MR FARRAH: There are - there have been specific instances in Hunter Coal where we have category 2 mines, those mines which are between the floor and the ceiling. And they have come along to us and said, "Our competitive position in relation to Category 1 mines has been eroded

because of the government's decision to phase out monopoly rent." If you are a Category 2 mine the guys up the road have got collectively a \$10 million a year reduction in their freight rate. So if I'm a Category 2 I'm doing it 25 cents a ton harder this year than I was last year, relative to my competitors.

Now at this stage we haven't changed any of our rates because of that principle and we have only reviewed probably three or four cases outside the mainstream Category 1, 2, and 3.

MR HORTON-STEPHENS: If a decision is taken to adjust the charges because there is some particular problem, whatever it happens to be, when you make the decision, is that decision announced publicly?

MR FARRAH: In all instances we - as I said, our access contract is with Freightcorp. Freightcorp convene the meeting and Freightcorp and the mine present the case. There would be a period of negotiation and we may adjust our rates accordingly. The protocols that exist are such that we will advise Freightcorp and then Freightcorp notifies their customer. But no, those rates aren't published outside our relationship with Freightcorp.

MR HORTON-STEPHENS: It comes down to the question of transparency in relation to the Minerals Council. Certain of the Minerals Councils are calling for, as indeed other participants have been calling for greater transparency. It would seem that by making exceptions you are discriminating - - -

MR FARRAH: In all discussions that we've had with Freightcorp and miners to date, Freightcorp has made the access charge available to the mine. Now whether they've made it available to anybody else, it's not something I can comment on.

PRESIDING COMMISSIONER: Presumably in the longer term though you would want to see other players other than Railcorp in the system. Presumably the reason you're in existence is to allow other players other than Freightcorp to be in the system.

MR FARRAH: Not necessarily. There's a number of issues here because by having more than one operator potentially the Hunter Coal chain could be more inefficient because we could have excess capacity.

PRESIDING COMMISSIONER: But that presumably is not a decision of yours, is it?

MR FARRAH: No, of course it's not. But that's a decision of the market that is all about barriers to entry and how much money you can make in the game.

PRESIDING COMMISSIONER: But that's in a sense my point in a way. To what extent are you a neutral player and should you be seen as a neutral player and allow the market to actually resolve its own set of circumstances, or are you in fact a significant player that makes decisions that in fact will affect the market?

MR FARRAH: My role as the coal market manager, and certainly the role of Rail Access Corporation is to facilitate the entry of new competitors.

PRESIDING COMMISSIONER: Let's just stop there for a moment then. If it is to facilitate new competitors is there in your view a danger that by not having complete and open transparent arrangements that you might inadvertently stop the sort of new players that you would otherwise want to encourage to participate?

MR BONES: So you're suggesting that we might actually prevent - - -

PRESIDING COMMISSIONER: I am asking you the question do you think that you do? Or do you think that you might?

MR BONES: I think the short answer there is no.

PRESIDING COMMISSIONER: Why not?

MR BONES: I can't quite see the logic, the line you're following as to how you see - - -

PRESIDING COMMISSIONER: Let me put to you a not hypothetical situation, that if I was wanting to get access to the rail I would not want Freightcorp to know anything about it. I would want to take them completely by surprise. And I would want to make sure that I had as few people as possible know anything about it.

MR BONES: Yes.

PRESIDING COMMISSIONER: And what I would want to have access to is the best available pricing about how I can get access to the system. And unless I can do that sort of work in complete confidence I may decide that the risk is too great.

MR FARRAH: I absolutely agree with you and you make a couple of very important points there. The Minerals Council, from our understanding, has been wanting the RAC to have posted prices. Mt Thorley, PWCS, Singleton Town Hall, \$3.47. Our position has always been, and we intend to maintain it, is that the situation you're talking about does apply and we have had a number of prospective operators come along to us and say, "We don't believe we can compete with Freightcorp at their own game because there are some pretty significant barriers to entry so far as capital investment and things like that are concerned. We want to do something different and we want a different service than what you are providing to Freightcorp and we do not want you to tell Freightcorp."

With each of our operators, mine being Freightcorp, but with our prospective operators we have confidentiality agreements under which we agree not to divulge any arrangements that we have with an operator with any other operator. Even to the stage where we are looking at setting up some automatic identification systems within the Hunter so that everybody can see where particular trains are for day to day scheduling and management, but the performance information of the operators will only be made - or the information relevant to an operator will only be made available to that operator.

So yes, I agree with that you're saying is that we try very hard to keep the arrangements that we might have with one operator confidential from another, because of that very reason, because somebody wants to do something different and doesn't want the details of that proposal published on the Singleton Town Hall noticeboard.

PRESIDING COMMISSIONER: Let's then talk about issues to do with valuation of assets.

MR HORTON-STEPHENS: If I could, before we leave pricing. Monopoly rents. Where are they, on page 16. These have been phased out. Yes, page 10 tells us the government has decided to phase out monopoly rents, as we know. Did you have any say in the rate of phase out? Or do you think it's appropriate?

MR BONES: That was an issue between the government and industry. RAC is merely a collection agency for the adjustment component.

MR HORTON-STEPHENS: Second point on that was as Dr Easton told us it's understood that RAC has estimated monopoly rent of 90 cents per tonne is currently incorporated in the access fee. Is that correct?

MR BONES: What was that - - -

MR HORTON-STEPHENS: 90 cents per tonne.

MR BONES: It would be less than that with - - -

MR HORTON-STEPHENS: After the 25 per cent?

MR BONES: After the 25 per cent reduction. I couldn't comment on the specifics of that figure but the order of magnitude is - - -

MR HORTON-STEPHENS: Why shouldn't the public know what the of the monopoly rent is?

MR BONES: Again I think this is - as I've said, RAC is if you like, merely a collection agency for that monopoly rent. That's an issue that I'd have to defer to government.

MR HORTON-STEPHENS: Okay. You can't or you are not prepared to tell us that. Okay. We'll follow it up. That's fine.

MR BONES: I apologise for passing the buck on that issue but certainly from the corporation's perspective the issues to do with the adjustment component are very much governmental issues rather than corporation issues.

MR HORTON-STEPHENS: So the figure here, whether or not it's correct, is in fact not one which you estimated, it's one that has been decided effectively by the government who decided then to reduce - - -

MR BONES: The adjustment component is - - -

MR HORTON-STEPHENS: Suppose if it were a dollar it's being reduced i 25 cent increments.

MR BONES: Yes.

MR HORTON-STEPHENS: So if it were a dollar it's now sitting at 75. That would - - -

MR BONES: Exactly. Yes, that's right. But that rate of phase out was determined between the government and the industry.

MR BONES: Okay.

PRESIDING COMMISSIONER: Along the same lines, and just one last question on pricing. Would you see there would be any difficulty in publishing your pricing principles so that people would be able to scrutinise and debate them and - - -

MR BONES: I think the difficulty is that at the end of the day prices are negotiated, so it's not as though there is necessarily a formula that results in an access price.

PRESIDING COMMISSIONER: But my point is that maybe there should be.

MR BONES: But then again, you get back to the fundamental basis of the regime, and it's a negotiate and arbitrate regime. To give you a non coal example - - -

PRESIDING COMMISSIONER: But that's not immutable. I mean that's - presumably if the government decided to change it away from a negotiated regime it has the opportunity to do so.

MR BONES: To give you an example in another market, in the interstate market. We went through a long and arduous negotiation with NRC and that eventually resulted in a - it included the commencement of an arbitration process that led to a consent award.

Now the price there has not been set by any formula. That has been a price that has been set at a level agreed between the parties. To set it on some cost based formula basis would exceed their capacity to pay. You know what I mean? I think there's this fundamental difficulty here that we're facing if we're talking about some sort of postal price regime. There's a fundamental inconsistency with the realities of the rail market with a disparate variety of markets with varying capacities to pay.

PRESIDING COMMISSIONER: But you are describing what is a competitive market. Whereas what you are dealing with is a monopoly market, in most cases a natural monopoly. And I don't think there's any doubt. I mean there are books - there's a whole library of literature in pricing in monopoly markets, and particularly in the monopoly markets on a natural monopoly. And what you're describing isn't the sort of pricing regime that normally applies in those sorts of very constrained markets.

And I guess all I'm trying to understand is whether - is this difference between what you're describing which is the sort of price one would tend to apply in a competitive market as distinct from what I understand, and I am happy to go back and read it to be proved that I'm wrong, is a completely different set of approaches that's taken place in the sort of market that you currently find yourselves.

MR BONES: Mr Chairman, can I ask you are you suggesting that we have posted prices for a standard service, for example?

PRESIDING COMMISSIONER: Well, I'm not suggesting any of that. I am really trying to understand whether in fact it is reasonable to have a much more defined approach to pricing than the one which has tended to come through from this sort of discussion, which is the sort of approach to pricing which normally applies in a very strongly competitive market. Competitive, you know, and all that that implies.

MR BONES: Yes.

PRESIDING COMMISSIONER: Now that's what is going through my mind. Now I haven't really thought it through because this is the first time we've had this sort of discussion and therefore I would need to go away and think about that. So I am not sure what I am really thinking about at this stage.

MR FARRAH: Because I think that the earlier point that you made about the confidentiality between operators and them supplying different services. It has been suggested to us that we should post maximum prices, for example. And then if somebody wants to do something different, a negotiated discount back from that. That would be the negotiated settlement. But at this stage the RAC hasn't consented options like that - - -

MR BONES: To get back to your question on publishing of principles. I think what is potentially possible is to publish principles about how we calculate the ceiling revenue test,

whether we're within our outside the ceiling revenue test and similarly to the floor - as opposed to specific principles for individual prices.

PRESIDING COMMISSIONER: Okay. We will need to just think about that. Thank you. The issue about valuation of assets, and clearly which goes to the heart in many ways, of the way in which pricing is developed.

I couldn't find in the submission that you'd provided anywhere where I could get a sense of how you might go about the valuation of assets, particularly long lived assets like the ones that you are involved in. Do you want to just cover that in any fashion?

MR BONES: Okay. I'd probably have to defer the detail to perhaps a follow up meeting or submission, but the regime specifies depreciated replacement cost. RAC or the old SOA has revalued all its assets on a depreciated replacement cost in the last couple of years before the split up on 1 July last year, so the asset values that we're using here and now are essentially those out of the previous SRA depreciation replacement cost asset register.

PRESIDING COMMISSIONER: Right. Do you want to cover any issues on that?

UNIDENTIFIED SPEAKER: No.

PRESIDING COMMISSIONER: I mean we've tended to cover a lot of issues as we were going through so I'll just go through them quickly.

MR BONES: That's fine.

PRESIDING COMMISSIONER: Even the return on assets question, we may have already covered that in sufficient detail. Did you think there's anything else we needed to cover?

MR HORTON-STEPHENS: Just one small question. You said that the 14 per cent decision was made by the minister. The figure was set by the minister after consultation with..... Parks.

MR BONES: It's specified in the regime. I've actually probably got a copy of the - - -

MR HORTON-STEPHENS: I just wanted to know whats role - there's a lot of thinking going on at the moment about whether or not you need a separate regulator and I just want to understand the - if I was consulted were it's views made public?

MR BONES: I would again have to really defer those sorts of questions to government. The question of defining the actual number of the ceiling rate of return is something that's determined externally and then, if you like, imposed on RAC.

MR HORTON-STEPHENS: There's no proposal made by the board as to what might be an appropriate return time?

MR BONES: No.

MR HORTON-STEPHENS: Surprising.

MR BONES: Well, the regime was essentially drawn up before RAC existed, if you like.

MR HORTON-STEPHENS: It would presumably be open to the RAC to suggest a change in the figure?

MR BONES: At this stage RAC is satisfied with a 14 per cent rate of return.

MR HORTON-STEPHENS: Yes, I understand that. Thank you.

PRESIDING COMMISSIONER: The maintenance of existing assets I think you may have covered. The extension of capacity - - -

MR BONES: Yes.

PRESIDING COMMISSIONER: And the means by which you would determine how capacity should be extended in certain circumstances, would you like to just explain how you might go about that, and how you go about it in practice?

MR BONES: Well, we're currently going through an exercise of forecasting coal tonnages and translating that into actual train capacity requirements and drawing up a program of works to meet those capacity requirements. It's a fairly straightforward process.

PRESIDING COMMISSIONER: Well, let me just ask a question. Is it done in consultation with the industry?

MR BONES: It's done in consultation formally with Freightcorp, and certainly with the industry via Freightcorp via operators at this stage.

MR FARRAH: Mr Chairman, I could certainly add to that. Rail Access Corporation over the last couple of months has been participating in a study convened by Port Waratah Coal Services to look at the capacity of the Hunter Coal Train.

As you're probably aware, PWCS have a \$700 million proposal to expand their port facilities. A number of months ago in one of their board meetings the question was asked, "Is this the lowest cost incremental capacity? Are there other projects around that will give us cheaper capacity?" So Frank the coal chain manager of PWCS engaged some people to come up with a model, and we've been feeding them with infrastructure details, pathing details, cycle times. They have been speaking to Freightcorp.

At this stage I understand that a presentation was made to the PWCS Board last week with the results of those models, and we have an undertaking from PWCS that we will be able to use that model to test some of the projects that we have on the books. Our aim is to identify with other stakeholders in the coal chain the lowest cost incremental capacity, irrespective of whether it's in port infrastructure, rolling stock, rail infrastructure or mine facilities.

What the coal chain is trying to do is to find what's the cheapest extra tonne we can get? What's the cheapest extra million tonnes? What's the cheapest extra 10 million tonnes? And if the lowest cost projects are some crossover straits up and down Hicksome, an extension to Thorley Junction, some re-signalling at Branxton Wittingham, which may only be 10 or \$15 million, that may add \$10 million to the capacity of the Hunter coal chain and avoid Freightcorp spending \$25 million on a new train, or PWCS avoiding \$150 million expenditure for their 3A and 3B upgrade options.

Now that model has only just been checked in the last couple of weeks. We've had numerous discussions with PWCS and a number of the new proponents to look at that model. Because when it comes down to it it's not just about tonnages per year which everybody seems to focus on. You hear figures that the coal chain is capable of doing 66 million tonnes.

On a day to day basis I think the record in the Hunter at this stage is about 215,000 tonnes a day. So it's all about peak demand, and we're looking to align our infrastructure with reasonable peak

demand, and we look at numbers of cars required in a day. We try and encourage the rail operators to stuff as many tonnes into each of those paths as you can because obviously doing that you need less paths in any particular day, and we look at the headway between trains, because that's an issue in the Hunter, getting in and out of some of the branch lines. So certainly we have a number of process going on currently.

We have a group of people looking at our long-term strategic requirements in another 5 to 10 years, looking at the 80-100 million tonne capacity range. We've got an asset management plan and line management plan process which is looking at the next 1-5 years which we have a formal consultation process with specifically our operators. But also as a result of representation made by a number of politicians, coalmines and Freightcorp we are reviewing about 8 projects which we internally call "no brainers." Things we need to do tomorrow to fix pinch points that we currently have in the system.

Things like the Mount Thorley junction. Out of that branch line come something of the order of 22 million tonnes and Freightcorp are constrained currently by the configuration of the track in that part of the world. It's a \$2 million project and our Chief Executive, Judy has instructed me to have a business case ready by the end of the week because it's not in our capital program, it's not in our strategic plan, but everybody in the coal chain agrees that we need to do it tomorrow.

So we do have a number of processes going on, from the very short-term as in "What do we do now - tomorrow?" - to "What is the best configuration for our infrastructure isn't 5-10 years time?"

We've taken great pains to consult with the industry, with Freightcorp, with PWCS and with the mines to ensure that we don't have 150 million tonnes of capacity when we only need 100 because the worst thing that could happen in the coal chain is for us to spend too much money in providing something that's not needed.

The second worst thing is if we don't provide enough. And it's that compromise situation where we're trying to provide the lowest cost infrastructure which meets the defined needs of the industry.

PRESIDING COMMISSIONER: The reason I ask is that you would have seen Freightcorp's submission to us. It was basically talked to us about yesterday, and it was certainly implied in that that there was a need to address, certainly maintenance of existing capital stock below the rail - the rail below it, and also need to think about investment. I just thought I wanted to raise that with you. But by the sound of it you think you've got those bases pretty well covered.

MR BONES: Yes. I think it's also fair to say that our particular priority last financial year was in terms of getting the contestability program kicked off. That's now under way. Our focus this year has turned to investment.

PRESIDING COMMISSIONER: I don't have any other questions that I wanted to cover. Keith? There may be some others as we are going through it in a bit more detail, particularly as a result of just reviewing what's been discussed today. We may be able to come back and talk to you about it.

MR BONES: It was very helpful.

PRESIDING COMMISSIONER: But that has been very helpful to me. Helped to clarify some of my thinking. Thank you very much.

MR BONES: If there's any follow up information that you need from us, by all means give us a call.

PRESIDING COMMISSIONER: Thanks, Terry, thank you.

Before I close today is there anybody else who wanted to make a contribution to today's hearings?

MR BAGOT: Thank you, Mr Chairman.

PRESIDING COMMISSIONER: If you could just give us your name and what capacity, simply so we can get it on transcript.

MR BAGOT: Tom Bagot. I'm a management consultant. I look at optimising resources and assets. There's two things that have been covered, in fact the whole proceedings have been very interesting. Thank you very much for allowing me to be here.

The first is the market. Everybody - no one has spoken about the shrinking market. There is a potential that the steaming coal market will shrink. The American production of coal has gone from 116 million tons in the last 10 years to about 80, 90 million at the moment. In America they can supplement power generation capacity with hydro electric power from Canada and the Canadian hydro-electric power consumption - production can be complemented by gas, and there's large gas reserves coming on line and it's a low cost option, so when you bring up hydro-electric power complemented by gas the cheapest source of power is from Canada, and they may have a lot of surplus coal capacity in the United States which will go on the market here. The same applies to gas in this country and in other countries like China.

The other thing which was raised and covered very much is productivity and sort of work preservation which occurs in the coal industry. It applies not only to the miners and it applies less to the tradesmen than in other industries which you're obviously familiar with.

It also applies to the management of mines. It is very structured, contentious, in fact legalistically held together by all the committees and things you've spoken about, and that results in very inefficient management and people protecting their own jobs. They are all very heavily over-staffed.

Now that might be good for the country or good for the economy or good for somebody's purposes but it is a fact, and you won't get sense out of anybody about how to reduce that because everybody is protected by the structure, the people in the corporations, the people in the government bodies, the miners.

There is a third thing. The multi-skilling aspect. It's very hard to multi-skill a fed miner to be an electrician. He just doesn't have the skills. So multi-skilling is quite possible one way, and I think the from Camberwell spoke about it. They can do it very well in - you did cover that and probably do understand that. That's all.

PRESIDING COMMISSIONER: I will close these hearings for today and we'll reconvene next Monday in Brisbane.

INQUIRY ADJOURNED AT 2.21 PM UNTIL
MONDAY 24 NOVEMBER 1997