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TRANSCRIPT OF PROCEEDINGS

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*The attached transcript, while an accurate recording of evidence given in the course of the hearing day, is not proofread prior to circulation and thus may contain minor errors.*

2014 HAZELWOOD MINE FIRE INQUIRY

MORWELL

WEDNESDAY, 11 JUNE 2014

(12th day of hearing)

BEFORE:

THE HONOURABLE BERNARD TEAGUE AO - Chairman

PROFESSOR EMERITUS JOHN CATFORD - Board Member

MS SONIA PETERING - Board Member

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1 MR ROZEN: Good morning. As indicated at the conclusion of  
2 yesterday's evidence, this morning we'll be hearing  
3 from the WorkCover witnesses to complete the last part  
4 of the regulatory puzzle.

5 Before I call the first of those witnesses I just 10.04AM  
6 want to do a little bit of housekeeping and tidying up  
7 some of the documentation that will be referred to  
8 today and tomorrow, really for the benefit of the  
9 parties so that it's clear what's in evidence and what  
10 is not. 10.04AM

11 Firstly, just a brief explanation, the position  
12 with the WorkCover witnesses. Initially the Board  
13 sought from WorkCover one or more witness statements  
14 dealing with a range of topics in a letter dated 6 May  
15 2014. Broadly speaking the topics were regulation of 10.04AM  
16 the mine, firefighter safety and advice that was  
17 provided to employers in Morwell during the fire.

18 Initially the Board was notified that a  
19 Mr Len Niest, the senior officer at WorkCover would be  
20 the appropriate witness to deal with those three 10.05AM  
21 topics. The Board had an informal meeting with  
22 Mr Niest and also legal representatives for WorkCover  
23 on 14 May and it became clear that, whilst Mr Niest  
24 could deal with some of the subject matters, it was  
25 thought there would be other witnesses who would be 10.05AM  
26 more appropriate dealing with those, so a further  
27 letter was sent and ultimately four statements from  
28 four different witnesses were provided to the Inquiry.

29 Those statements are from Mr Niest himself,  
30 Mr Kelly, who gave evidence in week one on the topic of 10.05AM  
31 firefighter safety; Mr Hayes who is a local inspector

1 who will be called this morning; and finally, Mr Adam  
2 Watson who dealt with the discrete question of whether  
3 or not WorkCover was conducting an investigation into  
4 the fire and what the scope of that investigation is.

5 What I propose to do is tender the statement of  
6 Mr Watson now.

10.06AM

7  
8 #EXHIBIT 65 - Statement of Adam Watson.

9  
10 MR ROZEN: It's not intended to call Mr Watson unless  
11 Counsel Assisting receive some indication from a party  
12 that a different course ought to be followed.

10.06AM

13 The other thing I'd like to do - as the witnesses  
14 today and particularly the expert witnesses tomorrow  
15 and Friday are likely to be asked to look at a number  
16 of documents in evidence that have been provided to  
17 them. Some of those documents are already in evidence  
18 but a number are not. What we've done is, we've put  
19 together a folder of ten documents which have been  
20 provided to both Professor Cliff and Mr Incoll and are  
21 referred to in their expert reports.

10.06AM

10.07AM

22 I would ask that that folder of those ten  
23 documents, and I have a list here which we can provide  
24 to the parties; they're all documents that were  
25 provided to the Inquiry by GDF Suez and the folders are  
26 being provided to the parties now. I would ask that  
27 that folder be marked as a separate exhibit 66.

10.07AM

28  
29 #EXHIBIT 66 - Folder of documents provided by GDF Suez.

10.07AM

30  
31 MR ROZEN: As I've indicated, the documents were provided to

1 the Inquiry by solicitors acting on behalf of GDF Suez  
2 under cover of a letter dated 2 May 2014. I think, for  
3 completeness, I should tender that letter as part of  
4 that exhibit.

5 10.07AM

6 #EXHIBIT 66 - (Addition) Letter dated 2 May 2014.

7

8 MR ROZEN: With those housekeeping matters dealt with, I  
9 call Mr Kevin Hayes.

10 <KEVIN SHEPHERD HAYES, sworn and examined: 10.08AM

11 MR ROZEN: Good morning, Mr Hayes. For the purposes of the  
12 transcript can you please state your full name and your  
13 professional address?---Kevin Shepherd Hayes, and my  
14 professional address is 6-8 Grey Street, Traralgon.

15 Mr Hayes, for the purposes of this Inquiry have you made a 10.09AM  
16 statement dated 27 May 2014?---I have.

17 You have a copy of that statement in front of you?---I do.  
18 It's a statement of six numbered paragraphs with a number of  
19 preliminary paragraphs that are not numbered; is that  
20 right?---That's correct. 10.09AM

21 There are many attachments attached to your statement. Have  
22 you had an opportunity to read through the statement  
23 before coming along this morning?---I have.

24 Is there anything that you'd like to change in this  
25 statement?---No. 10.09AM

26 I'll tender the statement.

27

28 #EXHIBIT 67 - Statement of Kevin Hayes.

29

30 MR ROZEN: Mr Hayes, in response to an enquiry from the 10.09AM  
31 solicitor to the Inquiry a further document has been

1 produced. Rather than asking you to identify that now,  
2 I'll perhaps deal with that at the appropriate time in  
3 the course of your evidence, if that's acceptable to  
4 you?---Yes.

5 You are employed as a Field Subject Matter Expert Workplace 10.10AM  
6 Inspector at WorkCover. Can you tell us what a Field  
7 Subject Matter Expert is?---A Field Subject Matter  
8 Expert is more a classification within the employment  
9 structure within WorkSafe. I am employed as an  
10 Inspector and I believe the classification's actually a 10.10AM  
11 Technical Inspector within those boundaries.

12 So you're an Inspector appointed under the Occupational  
13 Health and Safety Act 2004?---That is correct.

14 That's a statutory position that you hold?---That is  
15 correct. 10.10AM

16 Internally you hold a classification, I think you've told  
17 us, of Technical Inspector. Is it not Field Subject  
18 Matter Inspector? Is there a difference between those  
19 two?---The FSME, I believe, is the classification, so  
20 I'll clear that up; that is the classification. I 10.11AM  
21 think it obviously is based on pay rates and things  
22 like that.

23 We won't- - -?---No, look, there isn't a delineation I don't  
24 believe.

25 I won't interrogate you about pay rates you'll be happy to 10.11AM  
26 know, but it's the subject matter that I'm interested  
27 in. What is the subject matter that you hold  
28 expertise? Is it mining or is it more narrow than that  
29 or what is it precisely?---Look, I'm an electrician  
30 originally and we are employed in the Earth Resources 10.11AM  
31 Unit to deal with mines, to regulate mines, so that is

1 the area that we work in predominantly, rather than  
2 just the general workplaces that exist throughout  
3 Victoria.

4 You're based in the Traralgon office of WorkCover?---That's  
5 correct.

10.11AM

6 Do you only work as Inspector in the Earth Resources Unit or  
7 do you also carry out general inspection functions in  
8 other workplaces?---Very limited, but from time to  
9 time, yes, I will go out to other workplaces other than  
10 mines.

10.12AM

11 Can we put a percentage of your time estimate on  
12 that?---95 per cent.

13 95 per cent of the time is within the Earth Resources Unit  
14 and you do some general work?---Yes, that is correct.

15 I understand. You have been a member of the Earth Resources  
16 Unit since August 2008 and we know from other evidence  
17 before the Inquiry that the Earth Resources Unit within  
18 WorkCover was established in January 2008; is that  
19 right?---That is correct.

10.12AM

20 That was the time when the function of regulating  
21 occupational health and safety in mines was transferred  
22 from what was then DPI, Department of Primary  
23 Industries, to WorkCover?---That is correct.

10.12AM

24 I understand that was before your time, but nonetheless you  
25 were engaged at a very early stage of the work that was  
26 being done by WorkCover in this area?---That is  
27 correct.

10.13AM

28 In terms of your personal background and qualifications, you  
29 set out your qualifications on page 1 of your statement  
30 towards the bottom of the page; I won't go through each  
31 of them, but you have completed the requisite tertiary

10.13AM



1 Just before leaving your qualifications, the qualifications  
2 that you have listed, if we can just go back to page 1,  
3 the second-last paragraph of the statement, those  
4 qualifications, I think you've already agreed with the  
5 proposition, were the ones that all recently appointed 10.16AM  
6 Inspectors anyway in the last few years that work for  
7 WorkCover are required to obtain; is that right?---I  
8 wouldn't agree with that. I don't know whether all  
9 Inspectors recently have got those qualifications; I  
10 couldn't tell you that, no. 10.16AM

11 I'm more interested in exploring with you what specific  
12 training you received in relation to your work in the  
13 Earth Resources Unit over and above those general  
14 qualifications. Can you summarise that? What other  
15 training was provided to you?---Other training, formal 10.16AM  
16 and informal, underground mining, ground control, but  
17 very basic type of training and instruction. So, it  
18 wasn't a full in-depth qualification that was attained  
19 at the end of it. Two to three day courses depending  
20 on what type of training we're looking at; as I said, 10.17AM  
21 underground training, it was a fairly in-depth course,  
22 ventilation, but all related to underground mining I  
23 might add.

24 In terms of open cut or training relevant to open  
25 cut mining, traffic management and basic hazard risk 10.17AM  
26 assessment type of training.

27 Was any of that training provided to you by people employed  
28 by the Mine Regulator who we now know as DBDSI, I  
29 think; DPI previously?---No, not to my knowledge, other  
30 than the mentoring that I received via Greg Sleziak 10.18AM  
31 who's the other Inspector that you were talking about





1 so that inner region, yes.

2 So you've got Gippsland essentially, is that right, mines  
3 and quarries?---Yes.

4 But I think you've told us that the majority of your focus  
5 is on the three open cut mines?---Yes. 10.20AM

6 Could you tell the Inquiry, would you visit one of those  
7 mines on a weekly basis or a monthly basis, or what, on  
8 average?---On average it would be maybe one to two  
9 times a month.

10 Your statement, as was requested, deals with your 10.21AM  
11 involvement at the Hazelwood Mine, essentially  
12 from January 2009 - I'm looking at paragraph 2 of your  
13 statement - until March 2014.

14 MEMBER PETERING: Excuse me, Mr Rozen, if I could just  
15 interrupt. Mr Hayes, could you just clarify, you 10.21AM  
16 mention you visit the mines one to two times per month.  
17 Do you have a pre-populated program that you discuss  
18 with the mines, or do you just sort of turn up  
19 unannounced and ask questions? Can you just tell me  
20 about the engagement?---It's a combination of all of 10.21AM  
21 those things. We do have pre-planned, what we call  
22 priority visits where we will go out, oversight visits.  
23 Then of course there are the occasional incident  
24 follow-up, notice follow-ups, so all those visits are  
25 included in that one to two times a month. 10.21AM

26 So in terms of engaging with the site, they don't  
27 get a month in advance heads up that in June or July  
28 we're going to be coming out and looking at certain  
29 aspects. We will suggest to them that there are four  
30 or five oversight visits a year and that's pretty much 10.22AM  
31 as it is and we stagger them out through the year.

1 The pre-planned priority visits, are they on a particular  
2 topics?---The oversight visits, yes, they are.  
3 Could you just elaborate perhaps on some of the topics that  
4 you cover?---Maintenance, plant stability, batter  
5 stability, generally things that relate to major mining 10.22AM  
6 hazards; vehicle interaction, yes.

7 Thank you.

8 MR ROZEN: You referred there to major mining hazards and  
9 now might be the appropriate time to ask you some  
10 questions about that. That's a term that's used in 10.22AM  
11 Part 5.3 of the Occupational Health and Safety  
12 Regulations 2007?---That is correct.

13 Those regulations are being brought up on the screen, or at  
14 least that part of those regulations. I just want to  
15 ask you some questions about that. No doubt you're 10.23AM  
16 very familiar with the provisions of these  
17 regulations?---I'm familiar, yes.

18 The first thing I want to ask you about is this concept of a  
19 prescribed mine in Regulation 5.3.3. As I understand  
20 it, Inspector, and correct me if I'm wrong, all mines 10.23AM  
21 as defined fall under Part 5.3 of the  
22 regulations?---That's correct.

23 But a percentage or a proportion of that group of mines are  
24 prescribed as prescribed mines, under the  
25 regulations?---That's correct. 10.24AM

26 And the prescribing is, as we can see from Regulation 5.3,  
27 covers all underground mines, paragraph (a), and also a  
28 mine that is determined to be a prescribed mine by the  
29 Authority under Regulation 5.3.4?---That's correct.

30 Hazelwood, we know, is a prescribed mine and the reason it's 10.24AM  
31 a prescribed mine is because it's been prescribed by

1 the Authority under Regulation 5.3.4; is that  
2 right?---I believe so, but I believe the Authority at  
3 that time would have been the DPI that prescribed or  
4 determined that class of mine, and it's a transition  
5 that's come across into VWA. 10.24AM

6 So as far as you know there's been no separate determination  
7 by the Authority, it's just continued the previous  
8 description?---Yes, not that I'm aware of from VWA,  
9 it's just a continuation from the DSDBI or DPI back  
10 then, yes. 10.25AM

11 It may be that you can't then answer the next question but  
12 I'll try anyway and if not we can take it up with  
13 Mr Niest. The regulations set out a process that is  
14 required to be followed by the Authority of holding an  
15 Inquiry before prescribing a mine as a prescribed mine. 10.25AM  
16 Do you know what criteria are applied by the Authority  
17 in determining whether or not something's a prescribed  
18 mine?---No.

19 In any event, the Hazelwood Mine is prescribed. We will see  
20 in a moment that there are additional obligations 10.25AM  
21 imposed by the regulations, for example to carry out  
22 safety assessments that are imposed on prescribed mines  
23 alone?---That's correct.

24 Other mines merely need to comply with the remainder of Part  
25 5.3; is that right?---That's correct. 10.26AM

26 The regulations also refer to mining hazards. If we could  
27 go to Regulation 5.3.2, it's stated that a mining  
28 hazard is "any activity, procedure, plant, process,  
29 substance, situation or other circumstance that could  
30 pose a risk to health or safety in relation to" - 10.26AM  
31 presumably one or more of the issues that are then set

1 out. Is that right?---That's correct.  
2 We notice there, and we will return to this later,  
3 Inspector, that the risk to health or safety is not  
4 limited to the health or safety of people working in  
5 the mine, is it?---No, that's correct. 10.26AM  
6 The risk, consistently with the overall approach of the Act  
7 under which these regulations are made, the risk could  
8 be to a person employed by the operator of the mine; do  
9 you agree?---I agree.  
10 It could also be a risk to someone who is a contractor 10.27AM  
11 working at the mine?---That's correct.  
12 It could also be a risk to someone like a firefighter who  
13 comes to the mine to deal with a fire?---That's  
14 correct.  
15 Finally, it could be a risk to a member of the public who 10.27AM  
16 lives or works in the vicinity of the mine?---That's  
17 correct.  
18 All of those categories of people are envisaged, if I can  
19 put it that way, by this definition of a mining  
20 hazard?---That's correct. 10.27AM  
21 The particular mining hazard which is of course the focus of  
22 our enquiries is in paragraph (j) there, that is mine  
23 fires or explosions. For our purposes, a fire that  
24 could pose a risk to health or safety of a person falls  
25 within the definition of a mining hazard?---That's 10.28AM  
26 correct.  
27 We can see the significance of something being a mining  
28 hazard if we look at Regulation 5.3.8. We see that the  
29 operator of a mine - and here we're looking at all  
30 mines, not just prescribed mines - "must adopt risk 10.28AM  
31 control measures that eliminate, so far as is

1 reasonably practicable, risk to health or safety  
2 associated with any mining hazards at the mine or, if  
3 it's not reasonably practical to eliminate those risks,  
4 reduce those risks so far as is reasonably  
5 practicable." Once again, that's consistent with the 10.28AM  
6 obligations that employers have under the OH&S  
7 Act?---That's correct.

8 But here, there are specific requirements imposed on the  
9 operator of the mine. You mentioned a moment ago that  
10 the focus of the audit activities is on major mining 10.29AM  
11 hazards; is that right?---That's right.

12 A major mining hazard - I don't think we need to go to the  
13 definition unless you need to, but it's in  
14 Regulation 1.1.5 of these regulations, and it tells us  
15 that a major mining hazard is a mining hazard that has 10.29AM  
16 the potential to cause an incident that would cause or  
17 pose a significant risk of causing more than one death.  
18 That's right, isn't it?---That's correct.

19 Major mining hazards - that is, mining hazards that have  
20 that additional potential, are the subject of 10.29AM  
21 particular requirements in the regulations to do with  
22 safety assessments; is that right?---That's correct.

23 We'll come to that presently. If we leave the regulations  
24 for the moment and go back to the answer you gave to  
25 Ms Petering's question about verification inspections. 10.30AM  
26 As I understand your statement, and it's also referred  
27 to in the statement from Mr Kelly which has been  
28 provided to the Inquiry, the VWA engages in annual  
29 verification inspections?---That's correct.

30 In relation to - now, is it prescribed mines or is it only 10.30AM  
31 that list of 12 mines that are considered to have the

1 most significant risks?---I believe so, yes. I believe  
2 that those 12 sites that are on that list are  
3 prescribed mines.

4 Do we assume that not all of the prescribed mines are on  
5 that list?---That's correct. 10.30AM

6 So we can understand that, perhaps if I can refer to  
7 Mr Kelly's statement, we don't need to have it brought  
8 up on the screen, but Mr Kelly tells us, paragraph 10  
9 of his statement, he says, "The annual verification  
10 process for the 12 highest risk ranked mines was 10.31AM  
11 introduced in the sector by the VWA in late 2010."  
12 Does that accord with your recollection?---Yes, I  
13 believe so.

14 This ranking of the 12 highest ranked mines in Victoria, do  
15 you know if that's a publicly accessible list?---No. 10.31AM  
16 No, I don't believe it is a publicly accessible list.

17 Do you know where the Hazelwood Open Cut Mine sits on that  
18 list in terms of whether it's considered to be the most  
19 hazardous, or where is it?---I can't recall whether  
20 it's No.1 or No.3 or No.5, but I do believe that it 10.32AM  
21 would be in the top five.

22 Presumably along with the other two cut mines?---Yes, that's  
23 correct.

24 As you say and Mr Kelly says, the annual verification  
25 inspections that you're involved in are tailored to 10.32AM  
26 that list of 12, in general terms; is that right?---I'm  
27 sorry?

28 Perhaps I'll re-word that question. Your work focuses on  
29 carrying out annual verification inspections at the  
30 three open cut mines in the valley?---That's correct. 10.32AM  
31 You attach to your statement the reports of three such

1 verification inspections that you've been engaged in as  
2 the lead Inspector in 2011, 2012 and 2013. I'm not  
3 going to take you to each of those, but each deals with  
4 a different major mining hazard; is that  
5 right?---That's correct.

10.33AM

6 How is it determined what the major mining hazard will be  
7 for a given year's inspection? Who makes that  
8 decision?---A team decision based on, I guess an  
9 analysis of incidents that have occurred in relation to  
10 those mining hazards that then in effect - obviously  
11 major mining hazards; industry trends, other incidents  
12 that have occurred elsewhere across the other sites as  
13 well that would come into play; so jacking of plants,  
14 vehicle interaction and of course fires.

10.33AM

15 What I'm going to ask you about, and this won't surprise  
16 you, is that in 2012 the verification inspection  
17 focused on mine fires?---That's correct.

10.34AM

18 Are you able to tell us what the particular reason was for  
19 the focus on mine fires in 2012?---Yes. The primary  
20 reason we focused on fine fires at Hazelwood in 2012,  
21 in essence centered around an incident that they had  
22 in January 2012 where they lost a significant portion  
23 of a machine due to a fire.

10.34AM

24 The Inquiry has some information about the 2012 fire and it  
25 involved a dredger, did it not?---That's correct, yes.

10.34AM

26 The occurrence of that incident led to the verification  
27 inspection focusing on fires; was it just at Hazelwood  
28 that you focused on fires?---No.

29 Or did you look at fires across the other two open cut mines  
30 as well?---Across the other two, that is correct.

10.35AM

31 Can you turn to tab 2 of your statement and I want to ask



1           you some questions about the report that was produced  
2           as a result of that inspection. It's referred to as an  
3           inspection, but it's correct to say, isn't it, that  
4           this is a form of audit that is carried out by  
5           WorkCover?---That's correct. 10.35AM

6           Has conducting audits of this type been part of the  
7           training? Have you been specifically trained in how to  
8           go about conducting this type of audit?---I have been  
9           trained, yes.

10          What was the nature of that training, Inspector?---Are we 10.35AM  
11          talking within WorkSafe or external to WorkSafe or  
12          history?

13          Let's start within WorkSafe, I think we're now required to  
14          say "WorkCover" now, aren't we? Old habits die  
15          hard?---Apologies. 10.36AM

16          No, that's all right. Let's start within WorkCover, what  
17          training in relation to conducting audits have you been  
18          given?---Primarily it is on-the-job training, through  
19          mentoring, and my training or my mentoring was through  
20          Greg Sleziak. 10.36AM

21          If you could have a look at page 7 of the report. Your  
22          focus, as I read this, the focus of your team, was on  
23          an examination of the safety management system that was  
24          in place at the mine; is that right?---That is correct.

25          There's a requirement, isn't there, under Part 5.3 of the 10.37AM  
26          regulations for the operator of a prescribed mine to  
27          have in place a safety management system?---That is  
28          correct, yes.

29          At heading 4.2.2 of the report you list, "Safety  
30          assessment." The report then says, "The mine provided 10.37AM  
31          SAs", is that safety assessments?---That's right.

1 "All of which were incomplete and appeared to be undergoing  
2 development. Of the several major mining hazards,  
3 assessed fire was included." The incomplete safety  
4 assessments that were provided to you became one of the  
5 main focuses of this verification process, did it 10.37AM  
6 not?---It did, but if I can provide some clarity around  
7 that statement there, and it's not totally correct in  
8 saying that the mine provided safety assessments, all  
9 of which were incomplete. My understanding, and I was  
10 part of this verification, is that we only focused on 10.38AM  
11 the mine fire safety assessment, so not all of the  
12 safety assessments that the mine have conducted were  
13 focused on within this verification.

14 I understand. What I want to ask you about is the table  
15 that we see immediately under that part; do you see the 10.38AM  
16 table 4.2.3, "Selected SMS element findings  
17 summary"?---That's correct.

18 On the left-hand side we see a heading, "SMS element", and  
19 then there are three, SMS 1, SMS 2 and SMS 3. Can you  
20 explain to us what that means?---A safety management 10.38AM  
21 system obviously comprises of a number of different  
22 elements, and I'd be referring back to Australian  
23 Standard 4801 at the time. Those elements obviously  
24 include hazard identification incident management, and  
25 there's obviously other elements within a safety 10.39AM  
26 management system.

27 The safety assessment is another element of that  
28 safety management system, and it stands to reason that  
29 those two documents or two processes should be  
30 interlinked. 10.39AM

31 I understand. The next column along, moving towards the

1 right of the page, has a heading,  
2 "Implemented"?---That's correct.

3 We see that next to "Safety assessment mine fires" the word  
4 "no" appears. What does that mean?---In essence we  
5 look at two sides of the fence, so to speak; does the 10.39AM  
6 site have a system in place, is it implemented, and  
7 that will include documentation and processes that they  
8 may already have in place. The functional side is  
9 then, is it working, is it present out in the field?

10 So the theory and the practice essentially?---In essence. 10.40AM  
11 You're looking at both of them?---That's correct.

12 In relation to safety assessment, mine fires, we see "no" in  
13 relation to each of those. The next column is,  
14 "Level". Can you explain to us what "level"  
15 means?---The level's an arbitrary figure, I guess 10.40AM  
16 that's contained in the back of the verification  
17 document, there is a table on page 39. That's the  
18 table.

19 This is the guide essentially, the table?---Yes.

20 We see that there are levels from zero to 6?---That's 10.40AM  
21 correct.

22 And you get a 6 if you answer "yes" and "yes" to the theory  
23 and the practice; is that right?---That's correct.

24 And you get a zero if you answer "no" and "no" to the theory  
25 and the practice, and so if we go back to the table, 10.41AM  
26 that's why there's a zero in the third column; is that  
27 right?---That's correct.

28 The final column is, "Comments. Documentation obtained is  
29 incomplete and cannot be considered a safety  
30 assessment." So that's the description of why they got 10.41AM  
31 a zero essentially?---The very broad type statement,

1           yes.

2       Can I ask you to go back to the regulations, please, so that  
3       we can get some understanding of what a safety  
4       assessment is, what it is that you're looking for.  If  
5       we go to Regulation 5.3.23.  This requirement is in  
6       subdivision (3) of this part of the regulations which  
7       imposed additional duties in relation to prescribed  
8       mines; is that right?---That's correct.

10.41AM

9       We've already talked briefly about safety management  
10       systems, that's another thing that has to be there only  
11       for prescribed mines?---That's correct.

10.42AM

12       Can we try and understand it this way:  Every workplace in  
13       Victoria has to comply with the duties in the Act, the  
14       Occupational Health and Safety Act?---That's correct.

15       Broadly speaking, that is to safeguard, so far as is  
16       reasonably practicable, their employees and others that  
17       may be affected by their undertakings?---That's  
18       correct.

10.42AM

19       If you're operating mine, not only do you have to comply  
20       with those duties, but you also have to comply with the  
21       duties in Part 5.3 of the regulations?---That's  
22       correct.

10.42AM

23       If you're operating a prescribed mine, the requirements are  
24       increased again because there are these additional  
25       obligations?---That's correct.

10.42AM

26       I know you didn't draft the regulations, but no doubt your  
27       training has taught you, Inspector, that those  
28       additional requirements are there to deal with the high  
29       levels of risk associated with operating a prescribed  
30       mine?---That's correct.

10.43AM

31       One of those requirements is in this Regulation 5.3.23 and,

1 as I understand the regulations, and correct me if I'm  
2 wrong, but this obligation to carry out a safety  
3 assessment as required by this regulation is only  
4 imposed on operators of prescribed mines and also  
5 operators of major hazard facilities; is that 10.43AM  
6 correct?---I can't comment on the major hazard  
7 facilities, regulations, that's not an area that I deal  
8 with, but it is correct with these regulations and  
9 prescribed mines, yes, that we're looking at here on  
10 the screen. 10.43AM

11 Can you explain to us, what safety purpose is served by a  
12 safety assessment of a major mining hazard? Why is  
13 that requirement there from your perspective? What  
14 does it achieve?---There are a number of reasons,  
15 obviously mining to be deemed, I guess, a hazardous 10.44AM  
16 industry so to speak, and I think that fits under the  
17 definitions as well, but more importantly the safety  
18 assessment, for want of another word, is an assessment  
19 and a study of those identified major mining hazards  
20 that may pose risk of, for want of another word, 10.44AM  
21 greater than - more than one fatality.

22 This requirement to carry out a safety assessment, the  
23 purpose of it is to lead to the identification of  
24 appropriate controls of the risks identified; is that  
25 right?---So far as reasonably practicable, yes. 10.44AM

26 Mr Niest in his statement explained to the Inquiry that  
27 WorkCover's broad approach to regulation is based on a  
28 recognition that the owner of the risk is in the best  
29 place to address that risk so far as is reasonably  
30 practicable; would you agree generally with that 10.45AM  
31 approach?---Yes.

1 That forms part of your work, does it not, as an Inspector,  
2 that basic underlying principle?---Absolutely.

3 The obligation under 5.3.23 is a specific example of that  
4 broad principle in relation to prescribed  
5 mines?---That's correct.

10.45AM

6 Sub-regulation (2) explains that, "A safety assessment must  
7 involve an investigation and analysis of the major  
8 mining hazards in order to provide the operator with a  
9 detailed understanding of all aspects of risks to  
10 health or safety associated with major mining hazards."

10.45AM

11 If we look at that specifically in the context of  
12 fires in mines, which is obviously the focus of this  
13 Inquiry, then what is required here is that the  
14 operator investigate and analyse fires that can lead to  
15 one or more fatalities; is that right?---Yes, that is  
16 correct, that (a) they would identify scenarios that  
17 lead to those consequences, more than one fatality.  
18 So, in saying that, not every fire or not every  
19 instance of a fire would be considered a major mining  
20 hazard, but it's the operator that would then decide  
21 which one is and which one isn't based on their  
22 knowledge and experience.

10.46AM

10.46AM

23 Once again, we see in Sub-Regulation (2), don't we, that  
24 risks to health and safety are not limited to risks to  
25 employees of the operator; those risks could be to any  
26 one of the categories of people that we spoke about  
27 earlier; is that right?---Through the conduct of the  
28 undertaking, yes, that's correct.

10.46AM

29 So the risk could be to members of the public and so on, the  
30 categories that you talked about?---That's right.

10.47AM

31 If we go to Sub-Regulation (4), it says, "The operator must

1 document all aspects of the safety assessment." Why is  
2 it important from a safety perspective for these things  
3 to be documented. Look, it stands to reason, obviously  
4 that there is clear instructions, a clear definition as  
5 to what they've actually come about - what they've  
6 identified, but more importantly they can pass on that  
7 information to whoever needs that information so it's  
8 readily accessible, and I think it does go down further  
9 and talk about that, so rather than being a  
10 word-of-mouth system.

10.47AM

10.47AM

11 As you've said at paragraph (f), I think is what you're  
12 talking about, (4) (f), it has to be set out and  
13 expressed in a way that is readily comprehensible to  
14 all who use it, so the users of the safety assessment  
15 would include the employees of the operator who have to  
16 put it into effect; is that right?---That's correct.

10.48AM

17 If we go back to (4) (a), "The safety assessment's got to  
18 describe the methods used in the investigation and the  
19 analysis", and then, "State the nature of each mining  
20 hazard and the likelihood of the major mining hazard  
21 causing or contributing to causing any harm to any  
22 person and the severity of the harm that may be  
23 caused." That's a classic risk assessment approach, is  
24 it not?---Yes, that's correct.

10.48AM

25 If we can focus our enquiry here on the major mining hazard  
26 of fire in a mine, I would like to ask you about the  
27 sorts of considerations, the sorts of things you'd want  
28 to see examined in order to determine the likelihood of  
29 a mine fire causing or contributing any harm to any  
30 person.

10.48AM

10.49AM

31 Specifically what I mean by that is, would you

1 expect, for example in relation to the Hazelwood Mine,  
2 would you expect to see a recognition in the safety  
3 assessment of the proximity of the mine to the town of  
4 Morwell?---Again, with regards to risk to health and  
5 safety of employees and other people, if the site had 10.49AM  
6 identified - if the operator had identified that, then  
7 yes, we would absolutely want to see that in the safety  
8 assessment.

9 It's not just a matter of if the operator identified it;  
10 you're not guided by what the operator identifies, I 10.49AM  
11 take it, in determining whether or not they've complied  
12 with the regulation, are you?---No, obviously not, no.

13 So it would be appropriate, wouldn't it, in a safety  
14 assessment of fire in the Hazelwood Mine to recognise  
15 the proximity of the mine to the town of 10.50AM  
16 Morwell?---Well, then I'll clarify that. The operator  
17 or if VWA obviously deem that to be a major mining  
18 hazard, then yes, we would expect to see that in some  
19 documentation.

20 Because a scenario where a mine is as close to a town as the 10.50AM  
21 Hazelwood Mine is different to a scenario where there's  
22 several kilometres between the mine boundary and the  
23 nearest town; you'd agree with that general  
24 proposition?---Yes.

25 Would you expect to see, in a safety assessment for the 10.50AM  
26 major mining hazard of fire at the Hazelwood Mine, some  
27 reference to previous fires that had occurred at the  
28 Hazelwood Mine?---Whether it was a reference or issues  
29 that were taken into consideration with the development  
30 of the safety assessment, yes. 10.51AM

31 Because, if there'd been previous fires that had led to



1 investigations that set out recommendations, and  
2 whether or not those recommendations had been  
3 implemented would impact on the likelihood of a fire  
4 causing harm, would it not?---That's correct.

5 And there are similar considerations, I don't want to go 10.51AM  
6 through each of them with you, but there are similar  
7 considerations you'd expect to see in dealing with  
8 what's at paragraph (iii) there, if we could just go  
9 down to (4)(b)(iii). So these are the three things  
10 that the assessment needs to state, "The nature of the 10.51AM  
11 mining hazard, the likelihood of the major mining  
12 hazard causing or contributing to causing any harm to  
13 any person", and then the third one I want to ask you  
14 about, "The severity of the harm that may be caused."

15 Focusing on what this Inquiry's been dealing with, 10.52AM  
16 a fire that burnt and shrouded the town of Morwell for  
17 over a month in smoke and ash and the like, the  
18 severity of the harm is in part a function of how long  
19 the fire's likely to burn for, do you agree with that,  
20 as far as the public is concerned?---I believe the 10.52AM  
21 severity of harm leads to the definition of a major  
22 mining hazard in terms of fatalities in relation to  
23 that particular statement there. I don't necessarily  
24 agree that you would need to perform a safety  
25 assessment to work out the severity of harm if it was 10.52AM  
26 smoke inhalation that led to some type of chronic  
27 illness. I think it's quite clear that it refers back  
28 to the major mining hazard itself.

29 If I understand you correctly, Inspector, you're saying  
30 because it's a major mining hazard it has the potential 10.53AM  
31 to cause a fatality that's automatically taken you to

1 the highest level in terms of severity?---That's  
2 correct.

3 Paragraph (c) requires there to be reasons for the decisions  
4 reached about those matters that we've been talking  
5 about. Then paragraph (d) requires a description of 10.53AM  
6 all measures considered for the control of risks  
7 associated with major mining hazards. So, if I'm  
8 understanding the process correctly, the risk  
9 assessment takes place under the regulation we've been  
10 talking about, comes to a conclusion about the 10.53AM  
11 likelihood of the hazard causing harm, considers the  
12 severity, and then importantly you go on and control  
13 those risks as they've been identified; is that  
14 right?---That's correct.

15 As I think you've already told us, the requirement to 10.54AM  
16 control is a requirement that is conditional on it  
17 being reasonably practicable to achieve that  
18 control?---That's correct.

19 But the safety assessment, as I read this regulation,  
20 requires a description of the reasons for adopting or 10.54AM  
21 rejecting all of the risk controls measured. Is that  
22 right?---That's correct.

23 Why do you look for that? What's the importance of that  
24 from a safety perspective?---I believe it goes back to  
25 the reasonable practicable scenario; have they 10.54AM  
26 identified ways that they can eliminate the hazard as  
27 opposed to so far as is reasonably practicable, so  
28 you've got an idea then of what the operator is  
29 thinking when they're controlling that risk, but more  
30 so that the operator has that understanding as well. 10.55AM

31 So the requirement is this, isn't it, that in line with

1 their assessment, they then consider the range of  
2 control mechanisms that might be available to deal with  
3 the risk identified? Is that right?---Yes, I think  
4 that's correct, yes.

5 They then have to document why they've chosen some and 10.55AM  
6 rejected others essentially?---That's correct.

7 And the rejection might be because it's not practicable or  
8 it's too expensive or whatever it happens to  
9 be?---That's correct.

10 But the safety assessment has to record the thinking, if I 10.55AM  
11 can put it that way?---That's correct.

12 With that understanding of what's required by the regulation  
13 in mind, can we go back to the verification report  
14 behind tab 2. If I can draw your attention to page 24  
15 of 43 in the report. There's a heading, "Control 10.56AM  
16 Measure 6 - Annual Fire Safety Audits", these numbered  
17 control measures, and you've numbered it as CM 0288,  
18 that's a designation that the operator of the mine gave  
19 to a particular control that it had in place; is that  
20 right?---That's correct. 10.56AM

21 This control was that, according to the document, that they  
22 conducted an annual fire safety audit?---That's  
23 correct.

24 On the next page halfway down, in bold we see, "Review  
25 corrective actions generated from the 2006 mine fire 10.56AM  
26 investigation recommendations - are all actions  
27 completed or closed?" I know this is two years ago,  
28 Inspector, but do you recall why you were particularly  
29 focused on the 2006 mine fire  
30 investigation?---Particular focus, no, I can't. 10.57AM  
31 Probably more importantly just for clarification, the

1 document, as we see it here on the screen here, is set  
2 up by a mining engineer to ask those questions, so  
3 maybe the mining engineer at the time had some  
4 particular focus in that area. The mining engineer  
5 that's employed through VWA. 10.57AM

6 Yes, I understand, as part of your team; is that  
7 right?---That's correct, as part of the team.

8 I'm just looking to see the name of that engineer; do you  
9 recall who it was?---Mr Wally Morrison, if that's the  
10 right name we're looking at, at the front. 10.57AM

11 So he was part of your team?---That's correct, yes.

12 He identified that and we'd need to ask him if we needed to  
13 know why there was a reference to 2006?---That's  
14 correct.

15 The reason I ask that, Inspector, and you may not be able to 10.58AM  
16 assist us here, we heard evidence yesterday from Kylie  
17 White. Were you present in the hearing room  
18 yesterday?---No, I wasn't, no.

19 Ms White is the Executive Director of what's been referred  
20 to as the Mine Regulator at DSDBI. She told us that 10.58AM  
21 during the time in which her agency was regulating  
22 health and safety in mines, so before 1 January 2008,  
23 that an Inspector had issued an Improvement Notice in  
24 relation to these very recommendations in the 2006 mine  
25 fire investigation and had signed it off saying, yes, 10.58AM  
26 they'd all been implemented. Were you aware of that at  
27 the time you were doing this report?---No. I have  
28 become aware of that since, as part of the Inquiry, but  
29 definitely not at that time, no.

30 It raises a broader question, and it may be beyond your area 10.59AM  
31 to answer this, but when you carried out this

1 verification report and the others that you've done, do  
2 you have access to the DPI files in relation to the  
3 Hazelwood Mine relating to their activities before  
4 1 January 2008?---No. No, I don't.

5 If you wanted to find out what had happened, for example in 10.59AM  
6 relation to the 2006 mine, you'd presumably be able to  
7 make that enquiry of DSDBI?---I think there'd be  
8 mechanisms within WorkSafe that would be able to do  
9 that, and, yes, I'd refer that back to my group leader  
10 or to my manager to make those enquiries, yes. 10.59AM

11 The Inquiry has been told by Ms White in her statement that  
12 as part of the transfer of the responsibility taking  
13 effect on 1 January 2008 that electronic copies of  
14 their files - that is, the previous files, did come  
15 over to VWA. Is that not your understanding, that you 11.00AM  
16 have direct access to their electronic reports?---I  
17 can't answer that. Look, I haven't seen any of that,  
18 so I can't answer it, whether we have access or not.

19 Just whilst we're on that part of the verification report,  
20 the Inquiry's particularly interested to understand a 11.00AM  
21 later fire investigation report, one in relation to a  
22 2008 fire that actually occurred after the time that  
23 WorkCover took over, but I think in fairness to you,  
24 Inspector, there's no suggestion that you attended at  
25 Hazelwood in relation to that fire, but my question is, 11.00AM  
26 do you have any familiarity with that report that was  
27 produced?---No, I don't.

28 It's been no part of your role in relation to Hazelwood to  
29 examine whether or not its recommendations had been  
30 implemented at the mine?---No. 11.01AM

31 If we can go over to page 33 of your report; this is where

1 you deal with the SMS element 2. We looked at that  
2 earlier where you found that neither the theory nor the  
3 practice had been satisfactorily addressed in relation  
4 to a safety assessment for mine fire. In the middle of  
5 that page there's a heading, "Performance" and then, 11.01AM  
6 "Implemented". Then there are five statements. I take  
7 it, that's what you were looking for, they're  
8 the - - -?---They're the questions.

9 They're the questions that needed to be answered?---They're  
10 the guiding questions, yes. 11.02AM

11 Of course, what you were principally interested to establish  
12 was whether or not there had been compliance with  
13 Regulation 5.3.23, what we'd just been looking at;  
14 that's right?---Yes, certainly elements, absolutely.

15 If we turn the page, please, the top of page 34, there is a 11.02AM  
16 heading, "A safety assessment exists for the identified  
17 major mining hazard mine fires", and you say,  
18 "Management provided a copy of the bow-tie diagram  
19 titled Mine Fire V7 Dated 3 March 2010 Prior to the  
20 Verification As Evidence That a Safety Assessment Had 11.02AM  
21 Been Carried Out For the Identified Major Mining  
22 Hazard" - that is, fire. You go on, "Management also  
23 provided copies of control description sheets that have  
24 been developed post March 2010."

25 You were provided with some documents that the 11.02AM  
26 operator or of the mine, GDF Suez, said here, this is  
27 what demonstrates that we have conducted a safety  
28 assessment?---That's correct.

29 That we have engaged in the process set out in  
30 Regulation 5.3.23?---In essence, to answer that 11.03AM  
31 question, a safety assessment exists for an identified

1 major mining hazard, yes.

2 You say that, if I could summarise it this way, that it was  
3 a good start but it was incomplete; is that a fair way  
4 of describing it?---A fair assessment.

5 You noted in particular that there was a document 11.03AM  
6 dated December 2009 that identified further work that  
7 needed to be carried out, risk assessments to be  
8 carried out for each of the scenarios in the major  
9 mining hazards to demonstrate the risk has been reduced  
10 to as low as reasonably practicable. You say, 11.03AM  
11 "Management informed me that the assessments as stated  
12 in the above mentioned document have not been  
13 completed." Is that right?---That's correct.

14 It was based on that information that you then reached the  
15 conclusion that they hadn't done what they were 11.04AM  
16 required to do by way of a safety assessment?---That is  
17 correct, and the statement above where I think I  
18 mention here, "The other 27 sheets do not contain any  
19 information", so their control descriptor sheets were  
20 empty as well. 11.04AM

21 I'm trying to understand the process you were engaged in.  
22 Were you looking to see whether the documentation they  
23 had produced matched the requirements of  
24 Regulation 5.3.23?---Looking back at this document and  
25 two years ago, I would suggest that we looked at 11.04AM  
26 certain elements of 5.3.23 in relation to (3) (d),  
27 23(4) (a), 23(2) as set out on the first page, page 33.

28 Do I understand that evidence to be that now, with the  
29 benefit of hindsight looking at this, there are aspects  
30 of Regulation 5.3.23 that you did not consider?---In 11.05AM  
31 this verification?

1 Yes?---That's correct.

2 You ultimately issued an Improvement Notice because you  
3 formed the view that, by failing to comply with  
4 Regulation 5.3.23, that GDF Suez was in breach of their  
5 obligation under s.21 of the Occupational Health and 11.05AM  
6 Safety Act?---That's correct.

7 That is, to safeguard their employees so far as is  
8 reasonably practicable?---That's correct.

9 The Improvement Notice, if we could go to it, is behind  
10 tab 19 of your statement. There are in fact two 11.05AM  
11 Improvement Notices behind Attachment 19. We can  
12 disregard the first Improvement Notice for the moment  
13 and look at the second notice. Do you have that in  
14 front of you?---Yes.

15 Apparently we can't get it so we'll just proceed in the old 11.06AM  
16 fashioned way, I think, Inspector. You issued this  
17 notice, as we see, on 21 June 2012, and without taking  
18 you to it, it's accompanied by an entry report or a  
19 report of what you did on the day?---That's correct.

20 That's behind tab 18. The report and the notice were given 11.07AM  
21 to Mr Luc Dietvorst, we can see that. Did you  
22 understand him to be the CEO of the operator of the  
23 mine?---That's correct.

24 You were dealing with him personally, along with other  
25 management officials; is that right?---Dealing with Luc 11.07AM  
26 through his management team, yes.

27 Just so I understand that, were you actually dealing with  
28 him in person as well?---Not with regards to this, no.

29 The notice, not surprisingly given the evidence you've just  
30 given, identifies that in your opinion there was a 11.07AM  
31 failure to comply with the regulation and s.21, and on



1 the second page of it on the left-hand side there's  
2 directions to be taken to remedy that contravention.  
3 You have said that the mine operator identified there  
4 is Australian Power Partners BV and others, but that's  
5 essentially what we're all referring to as GDF 11.08AM  
6 Suez?---GDF Suez.

7 "... must conduct a comprehensive and systematic safety  
8 assessment in order to assess the risks associated with  
9 the major mining hazard mine fires." And you gave them  
10 until 1 October 2012 to comply with your 11.08AM  
11 notice?---That's correct.

12 You went back there as it turns out on 8 October 2012 to  
13 check on compliance; is that right? If you look behind  
14 tab 20 it seems to be the report that you completed  
15 when you went back there?---That's correct. 11.08AM

16 As you state in that report, you went there to follow-up on  
17 your notice. I want to understand what you did because  
18 ultimately you concluded, didn't you, that the notice  
19 had been complied with?---That's correct.

20 In other words, you were satisfied that there had been 11.09AM  
21 compliance with Regulation 5.3.23, based on what  
22 happened on this day; is that right?---Satisfied that  
23 they had addressed those concerns that we raised with  
24 them, yes, on 21 June.

25 Just so that we understand, those concerns were the matters 11.09AM  
26 that had been identified in the document from 2009 that  
27 said they had to do some more work?---Further work,  
28 that's correct.

29 So that's what you were focused on, ensuring that they had  
30 in fact done the further work that had been identified 11.09AM  
31 earlier?---That's correct.

1 As I understand this report, you were provided with an  
2 updated version of the document that you looked at  
3 previously; is that right?---That's correct.  
4 We have a document which we understand is the one that you  
5 were provided and it's in the folder that was tendered 11.10AM  
6 at the start of today, tab 26. I'll give you some  
7 background, Members of the Board.  
8 The document I'm about to take Inspector Hayes to  
9 was provided to the Inquiry by solicitors for GDF Suez  
10 under cover of the letter dated 2 May that was tendered 11.10AM  
11 earlier. It's a document which, for identification,  
12 was behind tab 26 of the third of the folders that was  
13 given to the Inquiry under cover of that letter.  
14 MEMBER PETERING: Mr Rozen, does this have a name, this  
15 document? 11.11AM  
16 MR ROZEN: It does. It's headed, "IPR-GDF Suez Major Mining  
17 Hazard 7 - Mine Fire Major Fire." Is that a fair  
18 description of it, Inspector?---That's correct.  
19 MEMBER PETERING: How would you refer to it, Mr Hayes? This  
20 document on the screen, what would you call that?---I 11.11AM  
21 would call that the bow-tie diagram.  
22 The bow-tie.  
23 MR ROZEN: That's a term we're going to get used to over the  
24 next couple of days. It's a bow-tie because it's  
25 essentially two sides tied in the middle; is that 11.11AM  
26 right?---That's correct.  
27 If we look at the entire document, the tie bit is the blue  
28 line essentially, is that - - -?---The theory behind it  
29 all is that, you've got your causes of what may  
30 eventuate, to the centrepiece there which talks about a 11.12AM  
31 major mine fire and a mine fire, and then you've got

1 your consequences on the right-hand side, which is -  
2 you scroll across the screen there.

3 This is a relatively conventional style of document for this  
4 purpose?---I believe so.

5 In your entry report you say you were provided with a 11.12AM  
6 document of this description but dated 19 September  
7 2012. Putting the date to one side for the moment, is  
8 that the document that was shown to you when you went  
9 back on 8 October?---It looks similar, but yes.

10 In fairness to you this, as we can see, is two pages. The 11.12AM  
11 one that's been provided to the Inquiry is dated  
12 22 October 2012, which of course is after the date on  
13 which you attended on 8 October. This might be a  
14 difficult question to answer, but are there any  
15 differences from looking at that to the one that you 11.13AM  
16 were provided with, or are you not able to say?---I  
17 couldn't tell. Yes, I couldn't tell whether there was  
18 any difference there.

19 But in any event, you saw a document of this style and with  
20 this general content but dated a month earlier than 11.13AM  
21 this one?---That is correct.

22 Attached to this bow-tie diagram are a large number of other  
23 documents which are the various system controls  
24 numbered; is that right?---That's correct. I believe  
25 they were titled "control descriptor sheets", so system 11.13AM  
26 controls and other critical controls that they may have  
27 had in place, yes.

28 MEMBER PETERING: Sorry, Mr Hayes, this may be a really dumb  
29 question. Could you read the print when it was given  
30 to you?---Yes, I can. It was on an A3 sheet so, I 11.14AM  
31 don't know whether the sheets that counsel have got

1           there are clear, but yes, I could.

2       MR ROZEN:  It might be age, but I'm certainly struggling to  
3           read it.  As I read it, Inspector, on the left-hand  
4           side there's various identified causes of a fire,  
5           including as we see on the second page, bushfire?  So       11.14AM  
6           we see on the left-hand column there, the second yellow  
7           box, bushfire?---That's correct.

8       And then, moving towards the right there's the  
9           identification of several of the control documents that  
10          are then attached that are identified as being relevant       11.15AM  
11          to reducing the risk of a bushfire impacting on the  
12          mine; is that right?---That's correct.

13       Then if we trace further along towards the right there's a  
14          dark blue box and inside that box, believe it or not,  
15          says, "Assessed risk level equals as low as reasonably       11.15AM  
16          practical."  I don't know if you can read that, but I'd  
17          ask you to accept - - -?---Green box.

18       - - - that that's what it says?---That's correct.

19       A similar process, without going to each of them, has dealt  
20          with other causes of fire.                                       11.15AM

21       That was the document that was provided to you on 8 October;  
22          is that right?---Yes, or very similar.

23       Sorry, or very similar with the various attached  
24          controls?---That's correct.

25       What you saw is that the incomplete controls that had been       11.16AM  
26          identified on your previous visit had now in fact been  
27          completed; is that right?---That's correct.

28       You were also given another document for completeness which  
29          you've identified in your report as being some minutes  
30          of a meeting dated 4 and 5 October 2012 which you say       11.16AM  
31          you took away from the site?---That's correct.

1 Those minutes were not attached to your statement - that's  
2 not a criticism of you, but we have paid an enquiry and  
3 we've been provided with those minutes. I'd ask you to  
4 have a look at this document, please, and tell us  
5 whether these were the minutes that were given to you. 11.16AM  
6 Just take a moment to look at those, please, copies are  
7 being provided to the parties. Were they the minutes  
8 that were given to you?---I believe so.

9 I tender those as part of Mr Hayes's statement.  
10 11.17AM

11 #EXHIBIT 67 - (Addition) Minutes of meeting dated 4 &  
12 5 October 2012.

13 MR ROZEN: Am I correct in understanding, they were the  
14 documents that were shown to you on 8 October that led  
15 you to determine that the notice had been complied 11.17AM  
16 with?---That's correct.

17 Was anything else shown to you at that time?---The control  
18 descriptor sheets that sit behind the bow-tie diagram.  
19 Yes, and in fairness to you I haven't taken you to those,  
20 but there are very many?---That's correct. 11.18AM

21 It says 100 of those, so you looked at those?---I will  
22 clarify, I looked at a random sample of those, I didn't  
23 look at every 100 sheets.

24 My question is a pretty simple one: That documentation  
25 doesn't seem to me, maybe I'm missing something, 11.18AM  
26 doesn't seem to me to match what is required of a  
27 safety assessment under Regulation 5.3.23. Could you  
28 comment on that?---I guess at the time I was looking to  
29 see that the site had addressed my concerns that I had  
30 raised through the verification. Now, that spoke about 11.18AM  
31 completing documentation, completing the control

1 descriptor sheets and then obviously the requirement to  
2 consult with their workforce. I don't believe I tested  
3 those 5.3.23, every requirement against the  
4 documentation that was put in front of me, just the  
5 actual identified issues that were raised through the 11.19AM  
6 verification.

7 I'm not going to take you to each of them, but I do want to  
8 ask you about one because you identified it earlier as  
9 being a very important part of the requirement under  
10 the regulation. Nowhere do we see in any of that 11.19AM  
11 documentation any explanation for which control  
12 mechanisms have been considered and whether they've  
13 been implemented or not and reasons for that. Do you  
14 agree that that's not in that documentation?---I agree,  
15 but again that's something that VWA would actually have 11.19AM  
16 to ask the site at some point as to whether all those  
17 controls that they considered were implemented or  
18 whether there were other controls that they rejected  
19 along the way.

20 I'll be a bit more specific if I could. The focus of this 11.20AM  
21 Inquiry has been, as I'm sure you're aware, fires in  
22 the worked out parts of the mine?---That's correct.  
23 We don't see a reference, do we, in that documentation to  
24 that particular matter?---No, we don't.

25 We don't see any consideration of the likelihood of such a 11.20AM  
26 fire occurring; would you agree with that?---Agree.  
27 We don't see any consideration of the severity of such a  
28 fire if it did occur; do you agree with that?---I'd  
29 agree.

30 We don't see any consideration of what might be put in place 11.20AM  
31 to reduce the risk of such a fire occurring. Do you

1           agree with that?---I'd agree.

2       Would you agree, they're important matters that one would  
3       expect to see in a safety assessment carried out under  
4       these regulations dealing with a major mining fire?---I  
5       would agree in terms of going back to the definition of       11.21AM  
6       a major mining hazard, yes.

7       Do you know if any decision has been made about what the  
8       subject of the 2014 verification audit is going to  
9       be?---Not at this point, no.

10      When would you expect to be told what the topic is for       11.21AM  
11      this year?---Shortly.

12      Pretty soon?---Yes.

13      I want to ask you about one other matter and it concerns  
14      some visits that you made to this mine, the Hazelwood  
15      Mine this year more recently. Just for completeness,       11.22AM  
16      you attended at the mine in relation to issues  
17      associated with the safety of firefighters in February  
18      of this year?---That's correct.

19      I'm not going to take you to that in detail because it was  
20      dealt with when your boss, Mr Kelly, was giving       11.22AM  
21      evidence. You went to the site at least on one  
22      occasion with a Mr Grayson, a hygienist employed by  
23      WorkCover?---That's correct.

24      He's a generalist, his role relates to all aspects of  
25      WorkCover's work, does it not?---I understand that he's       11.22AM  
26      a hygienist employed as a specialist, but he is an  
27      Inspector as well.

28      He's not attached to the unit that you work in, though, is  
29      he?---No.

30      You brought him in because you wanted to call on his       11.22AM  
31      additional expertise in relation to carbon monoxide

1 exposure specifically?---The hazards associated with  
2 fire in terms of, yes, atmosphere and health  
3 monitoring, yes.

4 Are they matters which you've been trained in  
5 specifically?---No.

11.23AM

6 In addition to your visits, and you include the entry  
7 reports for those visits and they speak for themselves,  
8 but subsequent to those visits you went back to the  
9 Hazelwood Mine. The report that you prepared is behind  
10 tab 26 to your statement.

11.23AM

11 We see there's a visit on 20 March this year, so  
12 that's very close, is it not, to the date on which the  
13 fire was declared safe? Do you recall when that was?  
14 It was around about 20 March, was it not?---I believe  
15 so, towards the end of the month, yes.

11.24AM

16 Is that why you were there on this date, or is that a  
17 coincidence?---I believe it's a coincidence because VWA  
18 did attend on or around the day that that was  
19 transitioning. If I just go through this here.

20 Sure?---I believe it was a coincidence that we did attend  
21 prior to the fire being declared safe. If I refer to  
22 tab 28, that is when we did go on, on the 25th of the  
23 3rd.

11.24AM

24 So what was the trigger for this attendance, are you able to  
25 tell us, the one on 20 March?---The one on the 20th?

11.25AM

26 Again, just to make some broaden enquiries into the  
27 site, how they're managing certain aspects of the fire,  
28 and to plan, once the area's been made safe, what the  
29 operator is intending to do with regards to

30 assessments, systems of work and, looking at the other  
31 dot points there, there was a discussion obviously on

11.25AM



1 major mining hazards No.7 and mine fire services  
2 equipment.

3 You dealt with a number of managerial employees of the mine  
4 operator; Mr Harkins, Mr Dugan we see referred to on  
5 the first page and others?---That's correct. 11.25AM

6 At the top of the second page you relay what you were told,  
7 as I understand it, by those members of management  
8 about the circumstances in which the fire occurred on  
9 9 February; is that right?---I'm sorry, can you repeat  
10 that again, I'm reading? 11.26AM

11 That first paragraph under the heading, "Mine fire services  
12 equipment", as I understand it you're recording there  
13 what you were told by management about the  
14 circumstances in which fire started to burn in the mine  
15 on 9 February?---That's correct. 11.26AM

16 You were told that, "Burning embers entered the mine around  
17 midday with embers hitting the operating faces and  
18 grass level around this time. Approximately an hour or  
19 so later a number of spot fires appeared along the  
20 non-working batters, ie northern batters, and it is 11.26AM  
21 believed that a change in wind direction and burning  
22 embers also sparked these fires." So that's what you  
23 were told on this day?---That's correct, that's their  
24 belief, yes.

25 Was that at a meeting at which all of the people that you've 11.26AM  
26 listed on the first page were present, that  
27 conversation, or was it with one individual; do you  
28 recall?---I can't recall if everyone was there, no, at  
29 that particular part, no.

30 In any event, your focus on this day, and you were there the 11.27AM  
31 entire day, weren't you, judging from the times on your

1 entry report; you got there at, is it 8.30 a.m. and  
2 left at 6.15 p.m.? Does that sound right?---That is  
3 correct, yes. Look, it is an abnormally long period of  
4 time, but that is correct.

5 A lot of the time was spent travelling around what we know 11.27AM  
6 is a very large mine?---That's correct.

7 Examining one particular issue, which is whether or not  
8 there had been internal compliance by the operator of  
9 the mine with one of its own procedures to do with  
10 maintaining a buffer around the mine area?---That is 11.27AM  
11 correct. We didn't travel around the whole area of the  
12 mine, but there were certain areas of that mine that we  
13 did go into, yes.

14 You were particularly focused on one of the controls, the  
15 documents that we looked at earlier, No.71 which dealt 11.28AM  
16 with fire breaks; is that right?---That's correct.

17 Specifically a requirement in that control that there be a  
18 continuous 50 metre wide and permanently maintained  
19 fire break corridor around the perimeter of the mine to  
20 exist all year round. Why were you particularly 11.28AM  
21 interested in examining that on 20 March?---I guess in  
22 the context of that information that we were provided  
23 about burning embers and the like entering into the  
24 mine on the 9th, and I guess it stands to reason that a  
25 control measure of a fire break may help mitigate some 11.28AM  
26 of that risk of burning embers flying into the mine.

27 Presumably, consistent with the legislation you operate  
28 under, your focus was on future risk; is that  
29 right?---Correct.

30 You ultimately determined, did you not, that there wasn't a 11.29AM  
31 continuous 50 metre wide and permanently maintained

1 fire break corridor?---That is correct.

2 You make specific reference to seeing on some of the worked  
3 out batters grass that exceeded 100 millimetres in  
4 height and also trees and shrubs and the like, and  
5 we've seen photos of that when Mr Shanahan gave his 11.29AM  
6 evidence. You issued a further Improvement Notice  
7 requiring that the mine comply with its own procedure  
8 to ensure that there was such a 50 metre fire break; is  
9 that right?---That's correct.

10 Did you give any thought to whether, in light of the events 11.29AM  
11 of 9 February, whether a 50 metre fire break was  
12 adequate?---In light of the events, no; we were  
13 concerned again about the procedures and processes that  
14 the operator had in place. Whether it was 50 metres or  
15 100 metres, that would all I guess get conducted 11.30AM  
16 through that analysis, going back again through the  
17 safety assessment, that control measuring the safety  
18 measurement.

19 I have consulted with other members, my group  
20 leader for instance, and we still haven't come to a 11.30AM  
21 conclusion at this point whether 50 metres or  
22 100 metres, or for that matter an adequate fire break.

23 What you were seeking to do was to hold them to their own  
24 procedure?---That's correct.

25 Rather than going behind the procedure to see whether or not 11.30AM  
26 it itself was adequate?---That's correct.

27 If I've understood your evidence correctly, that was because  
28 you assumed that, in light of the requirement to do a  
29 safety assessment, that there's been a reasoned process  
30 that led to that 50 metre figure?---That is correct. 11.31AM

31 You gave the mine, if I'm right, some time to comply with

1 the notice that you issued? The notice itself is  
2 behind tab 27, perhaps we should just briefly go to  
3 that. You required compliance by 23 June of this year;  
4 is that right?---That's correct.

5 Have you been back since March to see if work is progressing 11.31AM  
6 in relation to that?---We have, yes.

7 Are you able to tell the Inquiry what you saw?---At this  
8 point, that control measure along with a number of  
9 other control measures is still under review at the  
10 site, through the operator obviously. So, they haven't 11.31AM  
11 given us - VWA haven't written and said that they've  
12 complied with that notice yet.

13 If I understand that correctly, are you saying that as part  
14 of your post-fire work at the mine, if I can call it  
15 that, that you've also examined other aspects of their 11.32AM  
16 fire mitigation and prevention policies?---Enquiries  
17 are continuing into that area, yes.

18 I don't want you to go into an area you're not comfortable  
19 with, but the statement the Inquiry's received from  
20 Mr Adam Watson of WorkCover is to the effect that there 11.32AM  
21 is an ongoing investigation into whether or not the  
22 operator of the mine complied with its legal  
23 obligations. Are you part of that investigation or is  
24 this a separate process that you're engaged in?---My  
25 understanding is, the work that our team are continuing 11.32AM  
26 to do out there may provide input into that  
27 investigation.

28 They're the questions that I have for Inspector Hayes. Do  
29 Members of the Board have any questions?

30 MEMBER PETERING: Thank you, Mr Hayes. In the document that 11.33AM  
31 counsel has provided to the parties, "This document is

1 produced by GDF Suez", as part of that there was a  
2 letter also tabled from GDF Suez solicitors, King  
3 & Wood Mallesons, that tell us about the document under  
4 tab 26 which Mr Rozen took us through as the bow-tie  
5 diagram and all those control mechanisms. Would it be 11.33AM  
6 right to assume that that 2012 bow-tie diagram is the  
7 most recent documentation available? There's no reason  
8 to assume - - -?---I believe so, yes.

9 I'm just curious, and I heard Mr Rozen talk you through, I  
10 guess, the process you went through around whether or 11.34AM  
11 not Regulation 5.2.23 was complied with. I think the  
12 things that Mr Rozen and you discussed was around the  
13 likelihood of the fire, the severity of the fire and  
14 the controls, and also the reasons put in place. It  
15 appears to me as though that documentation, it's still 11.34AM  
16 not complete, it still doesn't have those things in  
17 5.3.23. Could I just talk to you about that and ask  
18 your view?---Absolutely.

19 So, does that documentation meet the criteria set out in the  
20 regulations; is it a safety assessment?---I would have 11.34AM  
21 to actually go back and talk to our senior mining  
22 engineers and our management as to whether that does  
23 meet.

24 I guess, just on a pure reading - and you might like to put  
25 5.3.23 up on the screen. I hear what you're saying, 11.35AM  
26 Mr Hayes, I guess I'm just perplexed about the things  
27 that must be contained in that safety assessment are  
28 the things that Mr Rozen talked you through, and  
29 particularly (4) (c), particularly the reasons for the  
30 decisions, and (e) the reasons for adopting or 11.35AM  
31 rejecting the control measures. They didn't appear to

1 be provided. You can't comment on that?---It looks  
2 like that is the case, yes, at this point in time.  
3 Can you talk to me about, what's the implications of  
4 proposedly not complying with this safety assessment or  
5 breaching those regulations?---Well, if there is a 11.36AM  
6 breach of those regulations, obviously WorkSafe have a  
7 number of tools at their disposal to enforce compliance  
8 and obviously one of those is the issue of an  
9 Improvement Notice with regards to those matters that  
10 you've just raised. 11.36AM  
11 You'll obviously undertake an enquiry of your own to assess  
12 that and I think Mr Rozen asked you about whether 2014  
13 might cover off on topics, and I guess, given the  
14 circumstances of 9 February, might that be a topic that  
15 you would review, have a look at?---That is correct. 11.36AM  
16 I hear what you and Mr Rozen were talking about, that  
17 Mr Watson's statement is that there is an ongoing  
18 investigation. I guess there's a part of me that's  
19 perplexed that a fire took place in the mine, a large  
20 fire, went for a long time, or a number of fires, went 11.36AM  
21 for 45 days, and yet there's no breach of any  
22 legislation?---Again, our enquiries are ongoing into  
23 that area. VWA have identified the fire breaks as one  
24 particular issue that's been identified and other areas  
25 are still under investigation, under enquiry. 11.37AM  
26 All right, I won't push you any further. Thanks, Mr Hayes.  
27 MR ROZEN: If I can just ask one matter, Mr Hayes, following  
28 on from Ms Petering's questions. This may seem a naive  
29 observation, tell me if it is, you have a lot of  
30 experience of other mine operators and their compliance 11.37AM  
31 with these regulations - that's bread and butter of

1           your work, is it not?---To a point, yes.

2           Is it your experience that a document prepared to meet a  
3           requirement under 5.3.23, at a very base level, you'd  
4           expect it to be entitled, "A safety assessment into a  
5           given major mining hazard", wouldn't you?---I'm sorry,           11.38AM  
6           the?

7           If a document was prepared to comply with the requirement to  
8           do a safety assessment under these regulations that  
9           we've been asking you about, the first thing you'd  
10          expect to see is that it actually had that title, that           11.38AM  
11          it was a document which was a safety assessment of  
12          whatever the major mining hazard was? Is that your  
13          experience generally?---Look, that's a fair assessment,  
14          but I guess working within the industry, we may be more  
15          familiar with some documentation than others and           11.38AM  
16          whether the document's titled "safety assessment" or  
17          not, if it looks like a rose and smells like a  
18          rose - - -

19          Someone famous said that, I think, Mr Hayes, yes. So the  
20          name's only part of the equation?---Absolutely.           11.38AM

21          They're the questions that I have for Mr Hayes. I  
22          understand Ms Doyle has some questions and as does the  
23          VGSO.

24          <CROSS-EXAMINED BY MS DOYLE:

25          If I just pick up with the topic you were just being asked           11.39AM  
26          about, Mr Hayes, and it's worthwhile keeping those  
27          regulations on the screen. In light of the answers  
28          you've given this morning, it seems to me, correct me  
29          if I'm wrong, that you have not specifically addressed  
30          in your dealings with Hazelwood whether or not any           11.39AM  
31          documents produced by it contain a statement of the

1 matters set out in (c), (d) and (e) above on the screen  
2 as to 5.3.23?---I haven't reviewed any documentation  
3 relating to those matters at the site, no.  
4 Have you done so with respect to the two other open cut  
5 mines in the valley?---I can't recall. 11.39AM  
6 When Mr Rozen asked you questions this morning about those  
7 aspects of that regulation, paragraphs (c), (d) and  
8 (e), he was effectively asking you to look at those  
9 criteria and asked you whether or not they were  
10 addressed in the documentation that you've spoken about 11.40AM  
11 this morning, but you don't know, do you, whether there  
12 are any other documents that meet that descriptor?---I  
13 don't believe so, no.  
14 I'm going to take you back to this issue in a moment, and we  
15 can leave the regulations aside for now. I want to 11.40AM  
16 take you back to other documents that date back to  
17 2009. Mr Hayes, do you remember attending a workshop  
18 conducted at the mine, facilitated by GHD consultants,  
19 looking at the assessment of major mining  
20 hazards?---That's correct, yes. 11.40AM  
21 I'm going to ask that the witness be shown a document. I've  
22 brought into court as many spare copies as we could  
23 drag out this morning. For the assistance of the  
24 tribunal, this document was produced by GDF Suez in  
25 early May in response to a summons, a document at 11.41AM  
26 12.01.  
27 Do you recognise that document, Mr Hayes?---Yes, I  
28 certainly do.  
29 Just to orient you I'm going to take you to a couple of  
30 aspects of it, but could you start by looking at 11.41AM  
31 page 6, I think it is, where there's a list of



1 attendees. You will see your name under Table 3,  
2 "attendance list"?---That's correct.

3 Along with Mr Sleziak, and I assume that's the gentlemen  
4 you've referred to a couple of times this morning as  
5 someone who has mentored you and given you on-the-job 11.41AM  
6 training?---That's correct.

7 If we go back to the title of this document, it's "Report  
8 for major mining hazards assessment." But I take it  
9 that you understood when you attended this workshop  
10 that what was being undertaken was part of the work 11.42AM  
11 that goes into performing a safety assessment?---That's  
12 correct.

13 You weren't thrown by the title of the document and didn't  
14 understand what you were attending for?---I don't think  
15 this document existed when we attended the workshop, so 11.42AM  
16 yes, no.

17 But you knew what you were there for?---Absolutely.

18 If we look at the executive summary, it says that,  
19 "Hazelwood mine commissioned GHD to facilitate safety  
20 assessments on their major mining hazards." No doubt 11.42AM  
21 in one of the introductory sessions that purpose or  
22 objective of the sessions and the workshops was  
23 explained to you and the other attendees?---That's  
24 correct.

25 It then goes on to describe some of the work done. If you 11.42AM  
26 look at the third paragraph on that page, it says that,  
27 "In total 321 existing controls were listed and the  
28 workshop team raised 11 potential controls for possible  
29 future implementation."

30 Stepping back from that it seems to me, Mr Hayes, 11.42AM  
31 that it's suggesting the workshops looked at work that

1 had already been done and then considered new ideas and  
2 additional controls that it was worth adding to the  
3 process?---That is correct. If I can provide some  
4 clarity around that, though, I believe there were  
5 workshops, VWA attended one of those workshops. If I 11.43AM  
6 go back to the attendance, it was in relation to  
7 confined spaces. So one out of a number of different  
8 safety assessment workshops that were conducted, we  
9 attended one, yes.

10 Is it usual for, I'll break this question down, employers 11.43AM  
11 per se, or is a different answer mine operators, to  
12 invite WorkSafe Inspectors in to attend these sorts of  
13 workshops in-house?---I'm sorry, is it?

14 Is it usual for employers - - -?---It's not unusual. More  
15 so to observe the process that the site's undertaking 11.43AM  
16 rather than to provide input.

17 If we look at page 1, there's a heading, "Overview" and  
18 then, "Scope of work. Under, "Scope of work", it says,  
19 "The scope of work for the safety assessments captured  
20 the following requirements", and then there's reference 11.44AM  
21 to the regulations, then there's reference to  
22 conducting a team-based workshop exercise, then for  
23 each risk scenario identifying the current controls and  
24 selecting critical system and risk controls, then  
25 finally developing performance standards. Mr Hayes, 11.44AM  
26 that's a description there, albeit in shorthand form,  
27 isn't it, of the process of identifying risk, then  
28 identifying controls and then selecting controls, is it  
29 not?---That's correct.

30 Can I take you then to "Assessment methodology" on page 2, 11.44AM  
31 there's a statement of the principles there and it says

1 it will be done according to the Australian Standard  
2 and according to a Risk Management Handbook referable  
3 to the mining industry published from New South Wales.  
4 Are you familiar with the way that the Standard and the  
5 Mining Handbook work in the industry?--No, I'm not. 11.44AM  
6 Do you regard them as appropriate or inappropriate guidance  
7 in this sort of situation?--I would have to review  
8 them and take that back to find - get some clarity  
9 around that, but for the sake of the argument and  
10 exercise, the site have obviously identified that. 11.45AM  
11 Looking at page 3, there's then a diagram that shows the  
12 process according to the Standard that's mentioned on  
13 the previous page. It's a flowchart or a flow diagram  
14 which refers to establishing the context, identifying  
15 risks, analysing risks, evaluating risks, and then 11.45AM  
16 under "Treatment" or "Treat risks", it refers to,  
17 "Identify the treatment options, evaluate them, select,  
18 prepare and implement." Again, albeit in shorthand  
19 form, that's a reference, is it not, to evaluating  
20 treatment options and then selecting one or more of 11.45AM  
21 those which have been evaluated?--That is a  
22 methodology, yes, and it's similarly set out in 4801,  
23 the Australian Standard as well.  
24 Turning to page 4, I want to ask you about something that  
25 might predate your time. It refers here to review of a 11.46AM  
26 2004 study. Inspector Hayes, we have a bundle of  
27 documentation from 2004 prepared by other consultants  
28 called Quest. Before I burden you with those, it may  
29 be, in light of some things you said to Mr Rozen this  
30 morning you're just not aware of it, but have you seen, 11.46AM  
31 either as part of your involvement in this 2009

1 process, or in your role as an Inspector, a bundle of  
2 safety documents and assessments performed by Quest  
3 Consultants in 2003 and 2004?---I can't recall. I have  
4 seen Quest documents but I can't recall whether they  
5 relate to Hazelwood or any other brown coal sites. 11.46AM

6 Just for completeness I might identify the titles for you.  
7 If you haven't seen them, I'll deal with these  
8 documents in another way.

9 I've had provided to me an executive summary  
10 prepared by Quest Consulting for International Power 11.47AM  
11 Hazelwood, but also a bundle of documents titled,  
12 "Stage 1 - Identification of Major Mining  
13 Hazards December 2003; Stage 2 - Semi-Quantitative Risk  
14 Assessment February 2004; and Stage 3 - Critical  
15 Control Adequacy Assessment March 2004." 11.47AM

16 Do you know whether you've seen documents of that  
17 type?---No, I can't recall if I've seen them, no.

18 Can I assume then that you didn't have them in mind when you  
19 undertook and prepared your verification report in 2012  
20 and the Improvement Notice and the Compliance Notice 11.47AM  
21 we've looked at from 2012?---That's correct.

22 But you can see, can't you, on page 4 of this 2009 document  
23 that part of the task engaged in by GHD Consultants in  
24 facilitating this workshop was to review work that had  
25 been done in 2004, and you can see at paragraph 2.2 11.47AM  
26 that this was done to recognise the hazards that are  
27 still applicable and then identify new hazards.

28 Inspector Hayes, is it an appropriate methodology in  
29 conducting a safety assessment of this kind to capture  
30 work that's been done and then look at which of it 11.48AM

31 remains applicable and valid and then identify new

1 hazards or improvements to the document  
2 underlined?---Yes, absolutely.  
3 You can see at paragraph 2.3 there's then a depiction of the  
4 bow-tie diagram in its generic form. I take it from  
5 whatever involvement you had during the sessions that 11.48AM  
6 you attended, that you would have had the opportunity  
7 to confirm that the bow-tie approach provided a  
8 framework to the completion of these  
9 assessments?---That's correct.  
10 Then you can see at page 5 there's a bit more of a 11.48AM  
11 description of how the bow-tie validation was done,  
12 that it started with an update of the 2004 material.  
13 Then there's a description of the workshop process. I  
14 take it from what you've just said, that you didn't  
15 attend all the subject matter workshops, you focused in 11.49AM  
16 on one?---That's correct.  
17 I think you might have been taken to page 19 of this  
18 document or at least asked about it, but it's worth us  
19 looking at it again. There there's an identification  
20 of further work, risk assessment scenarios, an 11.49AM  
21 indication that the scenarios that have been identified  
22 would then be subjected to a risk assessment  
23 process?---That's correct.  
24 You were taken this morning to the verification - I seek to  
25 tender the 2009 report if the tribunal pleases, the one 11.49AM  
26 titled, "Report for Major Mining Hazards Assessment  
27 Interim Submission December 2009."  
28  
29 #EXHIBIT 68 - Report titled "Report for Major Mining Hazards  
30 Assessment Interim Submission December 2009." 11.49AM  
31 MR ROZEN: I don't want to interrupt my learned friend, but

1 we note that it's a draft and what's not clear really,  
2 especially given that the witness hasn't seen it, is  
3 what its status is. Perhaps some clarification might  
4 be provided in that regard in due course.

5 MS DOYLE: I'm happy for the document to be marked for 11.50AM  
6 identification, that can be dealt with later, but the  
7 relevance through this witness is that it conforms with  
8 his recollections of a meeting that he attended.

9 CHAIRMAN: That document is treated as exhibit 68, but I  
10 accept that it is appropriate that there be further 11.50AM  
11 discussions in relation to status.

12 MS DOYLE: We may not need to go to it, but I want to ask  
13 you a couple of questions arising from your  
14 verification inspection document which was at  
15 Attachment 2. In light of what you said this morning, 11.50AM  
16 Inspector Hayes, it appears that the touchstone of your  
17 considerations when you were preparing that report were  
18 some of the aspects of Regulation 5.3.23. Did you make  
19 a considered decision about which aspects of that  
20 regulation to put the document through the filter of, 11.51AM  
21 or are those that you identified as the most important?  
22 What was your decision-making process?---In relation to  
23 the questions, is that what you're asking?

24 Yes, by way of example at Attachment 2, which is this  
25 verification report, at page 33 thereof there are a set 11.51AM  
26 of questions, some of which are based on topics and  
27 others trail off into a reference to a particular  
28 subsection of a particular regulation. I just want to  
29 know, in formulating those questions, is it because  
30 those were the ones that you identified as bearing the 11.51AM  
31 most significance or importance, or is it because you

1 have a predetermined way that you assess the compliance  
2 of safety assessments?---I can't answer that question  
3 wholly because the questions are developed via a senior  
4 mining engineer that gives us the tool to then go out  
5 and ask the questions in the field. However, I guess 11.52AM  
6 an analysis of, as I said before, past incidents,  
7 history, injury trends, everything that goes into a  
8 verification then get filtered down to some level. For  
9 instance, the first line there, SMS contains a  
10 description. I guess what we're looking for there is 11.52AM  
11 that there is a direct link between the safety  
12 assessment and the safety management system, so they're  
13 in relation to each other.

14 It then starts drilling a little bit further down  
15 into the identified major mining hazard, being mine 11.52AM  
16 fires, and then we start going further into some of  
17 those areas there. So we don't necessarily look at the  
18 beginning of each regulation from start to finish and  
19 see whether that complies with every aspect of that,  
20 no, it would be a long process to do something like 11.53AM  
21 that.

22 But question 5, if we can move down a little bit, question 5  
23 in that set or item 5 says, "Evidence that the safety  
24 assessment", I assume that's the acronym you say refers  
25 to that?---Mine fires, yes. 11.53AM

26 "... has provided a detailed understanding of all aspects of  
27 risk from mine fires, Regulation 5.3.23, ie is there  
28 evidence they understand the main causes of the mine  
29 fires and the preventative and mitigative controls?" I  
30 suggest, Inspector Hayes, that, although it's not 11.53AM  
31 presumably intended to wrap up all of the obligations

1 under the regulation, that is an attempt to identify  
2 the heart of the matter, and that is, do they know what  
3 the risks are, and have they got proper preventative or  
4 mitigative controls in place?---That's correct.

5 Is there any guidance material that you or WorkSafe have 11.53AM  
6 prepared for operators of mines covered by  
7 Regulation 5.3.23 or a template to populate dealing  
8 with the matters in subsection (c), (d) and (e) that  
9 you've been asked about a number of times?---Not that  
10 I'm aware of, no. 11.54AM

11 In your work with the mine, and I think you said when you  
12 first started being asked questions today that you  
13 visit once or twice a month over a year and for various  
14 different reasons, in all your visits you haven't  
15 identified a failure to comply with Regulation 5.3.23 11.54AM  
16 (4) (c), (d) and (e) that you have been taken to  
17 today?---That is correct.

18 When you issued an Improvement Notice, you were also asked  
19 about that this morning, the 2012 Improvement Notice  
20 pertaining to safety assessments, and then returned to 11.54AM  
21 check compliance in October 2012, you were asked what  
22 was given to you. If I understood correctly, you said,  
23 "I was given the document with the bow-tie chart  
24 populated with risks", and there may be a question  
25 about its printout date, but you were given one 11.55AM  
26 in October 2012?---That's correct.

27 Were you also given in hard copy form or given access to the  
28 control description sheets that you've been asked  
29 about?---That's correct, yes.

30 Can I ask you, Inspector Hayes, in looking at those 11.55AM  
31 documents did you also look at, at that time, the 2009



1 report that I just took you to this morning?---Not in  
2 conjunction, no.

3 Were you aware of it by that time?---Just for clarity, are  
4 we looking at this report again, the 2009 one?

5 Yes?---Yes, we were aware of it, yes. 11.55AM

6 I think it's actually referred to in either the Compliance  
7 Notice or the Improvement Notice, is it not?---Yes, in  
8 the Improvement Notice.

9 Because if we look at the compliance document, the  
10 Compliance Notice at Attachment 20, if that can be 11.56AM  
11 brought up. At page 2 of that document, although it's  
12 got "120" written at the bottom of it. Do you see the  
13 paragraph that says, "During my visit I observed a  
14 document titled 'International Power Hazelwood, report  
15 for' ..." et cetera, that's the very document that I 11.56AM  
16 was taking you to this morning, is that right?---That's  
17 correct.

18 When you formed a view that there had been compliance, I  
19 take it that you had in mind a number of things; you  
20 had in mind a standard you were measuring compliance 11.56AM  
21 against; yes?---What I was looking at measuring  
22 compliance against was those deficiencies that were  
23 identified in the - - -

24 And your notes?---And the report there that said "further  
25 works", yes. 11.56AM

26 In asking yourself the question, have the deficiencies been  
27 remedied, you looked at the 2009 report that we've just  
28 referred to?---I will clarify that we did not look at  
29 that on 8 October. Those first few paragraphs talk  
30 about what I observed on 21 June, and then you will 11.57AM  
31 look further down, it says, "Today I met with" and then

1           they describe the processes and then what we observed  
2           obviously here.

3       All I'm asking, Mr Hayes, is, in looking at the bow-tie  
4           diagram and the hundreds of pages of control descriptor  
5           sheets, no doubt you also had in mind your own                   11.57AM  
6           knowledge of the process which had preceded it, namely  
7           the 2009 workshops?---That's correct.

8       And the report that you'd seen back in July?---That's  
9           correct.

10       When you attended in October in order to check compliance                   11.57AM  
11           you were given the bow-tie diagram, the hundreds of  
12           control sheets and access to minutes  
13           from October?---That's correct.

14       Those minutes were shown to you this morning and no doubt  
15           that gave you the opportunity to remind yourself about                   11.57AM  
16           what those referred to, but they identified that on  
17           4 and 5 October a working party at the mine had  
18           undertaken the further work identified in the December  
19           2009 report. Is that right?---That's correct.

20       And so it was the combination of all of those things which                   11.58AM  
21           led you to issue the Compliance Notice?---Well, yes, to  
22           lift the notice and state that they have complied with  
23           that, yes.

24       You've said a number of times that when you were checking  
25           compliance you were checking it against your own                   11.58AM  
26           Improvement Notice, which makes sense, but I take it  
27           that if along the way you'd noticed some other  
28           deficiency in compliance with the regulations that  
29           applied to major mines, you would have issued another  
30           Improvement Notice?---Look, yes, absolutely. If those                   11.58AM  
31           deficiencies were obvious and obvious to me through my

1 own knowledge, then absolutely or we would not have  
2 given them compliance with the original notice.

3 The matters that Mr Rozen has taken you to this morning,  
4 compliance with subsections (c), (d) and (e) were not  
5 obvious to you at the time, were they? They have been 11.59AM  
6 matters that have been brought to your attention  
7 today?---That's correct.

8 You've been asked some questions this morning about a much  
9 later Improvement Notice, the one issued in March  
10 this year, it's Attachment 27, if we can go back to 11.59AM  
11 that briefly. When you were asked some questions about  
12 this Improvement Notice, just to orientate you,  
13 Inspector Hayes, it's the 20 March one and you were  
14 asked about the circumstances in which you came to be  
15 in at the mine prior to the formal end of the fire. 11.59AM  
16 You were asked some questions about how you gleaned  
17 knowledge about the fire that had occurred?---That's  
18 correct.

19 I assume that that's only intended to be a high level  
20 summary from those that you met with on the occasions 12.00PM  
21 you entered during the tail-end of the fire and not  
22 intended to be a statement in some sort of  
23 investigatory sense of the causes of the fire?---Are we  
24 referring now to page 2 again? Hang on, are we  
25 looking - - - 12.01PM

26 Mr Rozen took you to some statements about what people at  
27 the site had told you?---That's in the entry report.  
28 That might be in the previous attachment, I apologise. Yes,  
29 on page 2, "Management informed WorkSafe that burning  
30 embers entered into the mine around midday"?---That's 12.01PM  
31 correct.

1 What I'm just suggesting to you, Inspector Hayes, is that  
2 that summary there is by way of a high level summary or  
3 background and not intended in a formal sense to  
4 identify a view on behalf of the regulator as to the  
5 causes of this fire?---At this point in time that 12.01PM  
6 statement there is GDF Suez's view.  
7 Something you were told on the day?---That's right.  
8 In terms of how this report reads, that's the background  
9 information that you gleaned but not a conclusion by  
10 you that this is a correct indication of the 12.01PM  
11 cause?---That's correct.  
12 You then explain that you issued an Improvement Notice  
13 pertaining to a fire break and that, in doing so, your  
14 standard for compliance was GDF Suez's policy with  
15 respect to the width of that fire break?---The width 12.02PM  
16 and the process involved in maintaining that fire  
17 break, yes.  
18 The time for compliance with that notice hasn't passed yet,  
19 it will fall due on 23 June?---That's correct.  
20 Do you understand that GDF Suez has commenced the process of 12.02PM  
21 having excavators and earthworks machinery available in  
22 order to attend to those matters?---I have been  
23 informed that some of those processes are under review  
24 and that they were beginning to take place, yes, but  
25 not to the detail that you've just provided then. 12.02PM  
26 The issue was, wasn't it, that your concern was inspired by  
27 in some places the height of the grass, but in other  
28 places issues to do with more dense vegetation that you  
29 said should now be removed?---That's correct.  
30 And you checked that on or around 23 June?---That's correct. 12.03PM  
31 I wanted to ask you more broadly about the question of

1 dealing with particular grass in terms of vegetation.  
2 During your visits to the mine over time have you  
3 become aware of the annual slashing program that the  
4 mine conducts around the perimeter of the mine?---I  
5 have been made aware of it through these enquiries, 12.03PM  
6 yes.

7 I don't know whether you've been made aware of the evidence  
8 that Mr Dugan gave earlier in this Inquiry where he  
9 referred to the slashing program?---No, I'm not aware  
10 of that, no. 12.03PM

11 Can I ask that the witness be shown one document, it's a  
12 single-page map and I have lots of spare copies  
13 available. It was produced under summons but what I'm  
14 learning is that that doesn't get anywhere.

15 I'm not suggesting, Inspector Hayes, that you've 12.04PM  
16 seen this before but it's just a handy way to tackle  
17 the topic. You said you've been made aware through  
18 these enquiries, I wasn't quite sure whether you meant  
19 learning about the work of this Inquiry or because of  
20 your more frequent attendance recently at the 12.04PM  
21 mine?---The latter, yes.

22 Through those attendances have you been made aware that the  
23 mine sets out an annual program that covers the summer  
24 season, and this is by way of example although this is  
25 the document that pertains to 2013/2014, it maps out an 12.04PM  
26 area that it will slash in a particular way or deal  
27 with to the level of fine mulch et cetera depicted in  
28 this programatic map with colours and distances. Are  
29 you now aware that that's the approach adopted?---That  
30 is the process that they have set out, if that's 12.04PM  
31 correct then that is correct, yes, but I'm aware of

1 that now.

2 If the tribunal pleases, can this document be dealt with in  
3 the same way as previously? This is document 2.02  
4 produced by us under summons in the first week of May.  
5 This witness can't identified it, I just wanted him to 12.05PM  
6 answer questions about it, I'd seek to tender it. If  
7 that is not the disposition of the Board I'd ask that  
8 it be marked for identification and I'll have someone  
9 formally prove it later.

10 CHAIRMAN: I'll accept it as an exhibit. 12.05PM

11

12 #EXHIBIT 69 - Document 2.02 map.

13

14 MS DOYLE: Finally, Inspector Hayes, I asked you a moment  
15 ago about that little passage in the entry report about 12.05PM  
16 what you were told about embers and the fire, and  
17 Mr Rozen also asked you about whether your Improvement  
18 Notice with respect to the fire break was best  
19 characterised as forward-looking, looking at future  
20 risk. 12.05PM

21 Can I just draw the threads of that together and  
22 ask you, you're not suggesting, are you, that the  
23 status in which you found the fire break has been found  
24 by you to have been a contributing cause to the spread  
25 of the fire in February this year?---I'd ask if you can 12.06PM  
26 break that down again, yes. Are you asking that, was  
27 the fire break a cause? Or is that my belief?

28 Is that a conclusion you've reached?---No.

29 I have no further questions for Inspector Hayes.

30 <CROSS-EXAMINED BY MR BURNS: 12.06PM

31 Inspector, you were asked about Regulation 5.3.2 which is a

1 list of mining hazards. It was put to you that it  
2 included not only employees and contractors but people  
3 living nearby. You agreed with that?---That's correct.  
4 Does that arise, when you say it includes people living  
5 nearby, does that arise out of s.23 of the Occupational 12.07PM  
6 Health and Safety Act?---Through the conduct of the  
7 employees' undertaking, yes, that's correct.  
8 That's what I was going to put to you; s.23 employs that  
9 term, doesn't it? It's not in a general sense  
10 providing protection for members of the public, it's 12.07PM  
11 only providing protection for members of the public for  
12 risks arising out of the conduct of the duty holder's  
13 undertaking?---That's correct.  
14 Similarly, s.2 of the Act. The object of the Act again  
15 refers to members of the public re risk, but again, is 12.07PM  
16 that only in relation to the conduct of the  
17 undertaking?---That's correct.  
18 Is that to be contrasted against s.21? Section 21 is the  
19 main section creating obligations on the employer in  
20 relation to its employees; is that right?---That's 12.07PM  
21 correct.  
22 Section 21 doesn't employ that phrase, does it, the conduct  
23 of the undertaking?---No, it doesn't.  
24 In fact the phrase that s.21 uses is the risks - it talks  
25 about creating a working environment which is safe and 12.08PM  
26 without risks?---That's correct.  
27 But doesn't employ that expression from the conduct of the  
28 undertaking?---No.  
29 So it's broader. In the sense of an employer's obligations  
30 to its employees, it's broader, isn't it?---Than just 12.08PM  
31 the conduct of its undertaking? That's correct.

1 It's broader than the offence created by s.23?---That's  
2 correct.

3 Because, where the risks relates to a member of the public,  
4 it must arise from the conduct of the  
5 undertaking?---That's correct. 12.08PM

6 You were asked questions about major mining hazards. That's  
7 a broad definition which requires the risk to be at  
8 such a level that it could lead to more than one  
9 death?---Yes, that's correct.

10 Does that mean that fire isn't always to be considered a 12.09PM  
11 major mining hazard in all parts of the mine; does it  
12 depend on the circumstances?---Correct.

13 You were asked a lot of questions about the Improvement  
14 Notice which you held to be complied with. Were you  
15 conducting an assessment of the duty holder's ability 12.09PM  
16 to conduct a safety assessment generally, or were you  
17 only assessing whether the Improvement Notice had been  
18 complied with?---Yes, the latter; to ensure that the  
19 notice had been complied with.

20 That's a more limited task - - -?---That's correct. 12.09PM  
21 - - - than conducting an assessment of their ability to  
22 conduct a safety assessment generally?---Generally, and  
23 compliance with all those regulations, that's correct.

24 I won't spend much time on this because my learned friend,  
25 Ms Doyle, already has, but is it the case that when you 12.09PM  
26 were making an assessment about whether the Improvement  
27 Notice has been complied with, you are not only relying  
28 on the documents you look at that day; is that  
29 right?---That's correct.

30 You are also relying on your broader experience?---That's 12.10PM  
31 correct.



1 And you're relying on the interactions that you've had with  
2 the duty holder in the past?---Yes.  
3 Indeed, issuing a Safety Improvement Notice is not the first  
4 step adopted at any stage, is it?---No.  
5 It always follows consultation with the duty 12.10PM  
6 holder?---That's correct.  
7 This is effectively in line with s.7 of the Occupational  
8 Health and Safety Act which deals with the functions of  
9 the VWA, because one of your roles under subsection (h)  
10 is to foster a cooperative and consultative 12.10PM  
11 relationship between the employer and its employees; is  
12 that right?---That is correct, yes.  
13 Thank you, they're the questions I have.  
14 MR ROZEN: No re-examination for Mr Hayes. Could he please  
15 be excused? 12.10PM  
16 MEMBER PETERING: Sorry, just before you do, Mr Hayes.  
17 Mr Hayes, just drawing I guess together the enquiries  
18 looking into the future and how can things like this  
19 can be prevented, so just to summarise: Ms White  
20 yesterday gave us clear evidence that the Mine 12.11PM  
21 Regulator regulates parts of the mine and that the  
22 Victorian WorkCover Authority regulate in relation to  
23 safety, but my understanding is that the VWA regulate  
24 in relation to fire in the mine. Is that a correct  
25 summary?---Can you go back a bit? 12.11PM  
26 So there are two regulators in relation to the Hazelwood  
27 Mine Fire and other large open cut mines, the  
28 Department of Sustainability?---Different  
29 jurisdictions, yes.  
30 And so the Victorian WorkCover's jurisdictional authority is 12.11PM  
31 in relation to safety but particularly fires in the

1 mine, we've been talking about that this morning?---I  
2 would go back and say the primary is the safety of  
3 employees, whether it's fire or any other issue there.  
4 So the regulatory boundaries I think is something that  
5 maybe Mr Niest or someone else may be able to answer 12.12PM  
6 with regards to that, yes.

7 Okay, thank you?---I hope that answers the question.

8 So fire protection is under the remit of the Victorian  
9 WorkCover Authority?---Where it concerns the risks to  
10 health and safety of employees. 12.12PM

11 Okay, thank you. Looking forward, and I guess examining the  
12 incident that took place on 9 February and the 45 days  
13 following, have you had an opportunity for reflection  
14 on things that perhaps the Victorian WorkCover  
15 Authority may have done differently or would do 12.12PM  
16 differently in the future?---VWA is still conducting  
17 enquiries with the site there. Are there things that  
18 we'd do differently? We'd still predominantly look at  
19 the risk to health and safety of employees, whether  
20 it's in regards to fires, whether it's plant stability 12.13PM  
21 or batter stability or whatever the case may be, and  
22 VWA obviously would have to allocate resources into  
23 those areas, so yes, I think there would be some type  
24 of review that Earth Resources and VWA would undertake.

25 Are you proposing that a jurisdiction review would also take 12.13PM  
26 place? Is that Mr Niest's jurisdiction?---He would be  
27 probably more safe with that, yes.

28 You're at the coalface, pardon the use of the pun, is there  
29 any things that you see might be subject to examination  
30 for further improvement, so in terms of the 12.13PM  
31 jurisdiction or?---Again, obviously Earth Resources,

1 the processes that we set out would obviously be  
2 reviewed, there is no doubt about that at some point.  
3 Whether there are improvements that can be made, it  
4 would come out through that review there, yes.

5 How does the review take place at VWA?--A review of the 12.14PM  
6 field operations, for example the processes that we're  
7 going through? I guess the team would come together  
8 and discuss those issues that are raised, and obviously  
9 any findings from the Board, that would form part of  
10 that review. It would then flow on to VWA hierarchy 12.14PM  
11 and that would be management through to Mr Niest and so  
12 on I would imagine.

13 Thank you very much for your time, Mr Hayes.

14 MS DOYLE: Sorry to interrupt, Mr Rozen, can I be heard  
15 briefly on a matter relating to documents that have 12.14PM  
16 been mentioned in dispatches this morning; I just  
17 wanted to clarify the situation?

18 The Inquiry served my client with a summons on  
19 29 April requiring production of documents in 18  
20 categories. We provided those documents on 9 May, and 12.14PM  
21 by dint of the number of topics asked for, the  
22 documents produced ran to eight Lever Arch folders.

23 This morning documents falling under  
24 paragraphs 11, 12 and 14 have been dealt with at least  
25 in part by witnesses. With respect to paragraph 11, 12.15PM  
26 this is the document sometimes referred to in witness  
27 statements like that of Professor Cliff as the tab 26  
28 document. That is the document, as I understand it,  
29 that's been made exhibit 66 today, it's tab 10 in  
30 exhibit 66, a bow-tie document with hundreds of 12.15PM  
31 pages of control descriptors.

1           The documents referred to in paragraph 12 are the  
2 GHD interim report of December 2009 that I tendered  
3 through this witness this morning and the minutes of a  
4 working party review from October 2012 that Mr Rozen  
5 tendered through this witness.

12.15PM

6           The documents in paragraph 14 hark back to 2004  
7 and the tribunal might recall that those are the  
8 documents I asked this witness about but of course he  
9 has no direct knowledge of.

10           I just wanted to flag that these documents have  
11 been provided since the first week of May. We didn't  
12 appreciate until today the way in which they were going  
13 to be deployed or used, and we have no difficulty with  
14 that, but I wanted a fair opportunity to complete the  
15 record and, in order to do that, I will want to tender  
16 the 2004 documents.

12.16PM

12.16PM

17           Mr Harkins has already given evidence three times  
18 and he is the one who touched on these matters and it  
19 wasn't put to him that any of the documents in these  
20 three categories were deficient or would be the subject  
21 of later criticism.

12.16PM

22           So I just wanted to set out the sequence of events  
23 in terms of where these documents come from and for how  
24 long they've been available, and our intention to now  
25 get multiple copies of the ones in category 14 -

12.16PM

26           namely, a suite of four reports from 2004 which are the  
27 starting point of a consideration of safety assessments  
28 - and at an appropriate time, it may be later today or  
29 tomorrow, I will seek to tender those because I now  
30 apprehend that they'll be important in terms of, among  
31 other things, questions that will need to be asked of

12.17PM

1 Professor Cliff. And, without that full suite of  
2 documents, it will be inefficient but also unfair for  
3 GDF Suez to proceed without the full suite before the  
4 tribunal. I just wanted to flag, that's our intention  
5 in terms of now getting that set of four documents 12.17PM  
6 together and ready.

7 CHAIRMAN: I think it's appropriate, rather than hear in  
8 relation to this topic, that you have a liaison to work  
9 out what's appropriate, and if you can get agreement,  
10 then it's easy; if not, then we need to perhaps review 12.17PM  
11 the position, but I can understand what you're saying.

12 MS DOYLE: If the tribunal pleases.

13 MR ROZEN: Could I just briefly respond to that, but first,  
14 poor Mr Hayes is sitting there, if he could be excused?

15 CHAIRMAN: Yes. 12.17PM

16 <(THE WITNESS WITHDREW)

17 MR ROZEN: We have no general difficulty with what's been  
18 raised by my learned friend, but I should just place on  
19 record two matters. One is a practical issue that, in  
20 accordance with the practice note, if Counsel Assisting 12.17PM  
21 can be informed in advance of documents that other  
22 counsel want to rely upon, then we'll make sure that  
23 they're available and on the system and so on.

24 A more substantive issue is, without wanting to  
25 trawl over the history, the Inquiry has sought from GDF 12.18PM  
26 Suez a statement - this was the initial request - a  
27 statement from either Mr Graham or Mr Gary Wilkinson  
28 identifying principal plans and policies for mitigating  
29 fire risk. As far as we're aware, in the statements  
30 that have been provided on behalf of GDF Suez to the 12.18PM  
31 Inquiry, only Mr Harkins' second statement deals with

1 that matter, and that's at paragraphs 32-34, and he  
2 doesn't attach any of the documents.

3 So, that's the position, but I will take up the  
4 learned Chair's observation that we discuss the matter  
5 and reach a practical arrangement. 12.18PM

6 CHAIRMAN: I think that's the appropriate way, yes.

7 MR ROZEN: The next witness is Mr Niest and I call Mr Niest.

8 <LEONARD JAMES NIEST, sworn and examined:

9 MR ROZEN: Good afternoon, Mr Niest?---Good afternoon.

10 Can you confirm for us that your full name is Leonard James  
11 Niest?---That's correct. 12.20PM

12 Your professional address is 222 Exhibition Street,  
13 Melbourne?---That's right.

14 Mr Niest, you are the Executive Director, Health and Safety  
15 in the Executive Director Division of the Victorian  
16 WorkCover Authority?---Yes, that's right. 12.20PM

17 For the purposes of the Inquiry you have made a statement  
18 dated 23 May 2014 which is a statement of some 44  
19 paragraphs and has three attachments; is that  
20 right?---That's right. 12.20PM

21 Have you had an opportunity to read through the statement  
22 before coming along to give evidence today?---Yes, I  
23 have.

24 Is there anything in the statement that you would like to  
25 change?---Yes, there's two small minor amendments or  
26 corrections. On page 5 at the bottom of the  
27 page there's a statement that says, "I talk about this  
28 process", that's an error, that needs to be crossed  
29 out. That last sentence, it says, "I talk about this  
30 process below." 12.21PM

31 So you seek to delete that last sentence in paragraph 21,

1 thank you?---Yes. Then on page 6, again at the bottom  
2 of the page, it currently reads, "That is likely to  
3 result from mining hazards." That should be, "Result  
4 from major mining hazards."

5 We're looking at the - - -?---Last sentence on the bottom of 12.21PM  
6 page 6 commences with "however".

7 Yes, the third sentence?---The last line, "That is likely to  
8 result from mining hazards", that should be "major  
9 mining hazards".

10 So we're in the second line at the top of page 7 and you 12.21PM  
11 would insert the word "major" between "from" and  
12 "mining"?---Yes.

13 With those two changes being made are the contents of the  
14 statement true and correct?---Yes, they are.

15 12.21PM

16 #EXHIBIT 70 - Statement of Leonard Niest.

17  
18 MR ROZEN: Mr Niest, you've only recently been appointed to  
19 your role within WorkCover, in January of  
20 this year?---That's correct. 12.22PM

21 Before that, as you explain on page 2 of your statement, top  
22 of page 2 in a series of dot points, you've held a  
23 number of positions, most recently as the Chief  
24 Executive of the New South Wales Independent Transport  
25 Safety Regulator?---Yes. 12.22PM

26 I see that was a job you managed to do whilst also holding a  
27 position in Abu Dhabi?---Yes, I was providing the  
28 Department of Transport in Abu Dhabi with services  
29 around security and risk as they wrote their new  
30 service transport laws. 12.22PM

31 Prior to that you held a number of positions relating to

1 safety and risk management, if I can use that general  
2 descriptor?---(No audible answer).

3 Preceding all of that you spent 20 years in the RAAF,  
4 Department of Defence?---That's correct.

5 What responsibilities come with the position of Executive 12.23PM  
6 Director, Health and Safety at the WorkCover  
7 Authority?---Principally responsible for the workforce  
8 required to deliver and ensure compliance with OHS Act  
9 and the other Acts that VWA concerns itself with, but  
10 predominantly it's the Occupational Health and Safety 12.23PM  
11 Act. I'm accountable for managing the structure,  
12 putting in place leadership and executive direction for  
13 that workforce.

14 You've not previously worked for an Occupational Health and  
15 Safety Regulator; that's a fair observation, isn't 12.23PM  
16 it?---That's correct.

17 You set out on the first page of your statement the  
18 qualifications you have, which include a Bachelor of  
19 Engineering (Mechanical) and a Master of Science  
20 (Logistics Management), as well as a number of other 12.24PM  
21 qualifications that you set out there. The fourth dot  
22 point I want to ask you about, Health and Safety  
23 Investigator, Safety Wise Australia. What is that  
24 qualification, what did that involve?---That is in fact  
25 an OH&S Investigator. So, in the process of improving 12.24PM  
26 my professional knowledge I did the ICAM which is  
27 another OH&S investigation process as a lead  
28 investigator, and then to follow-up on that as part of  
29 that same process I did a - it was a short course on  
30 OHS - particularly to do with OHS investigations and 12.24PM  
31 looking at particularly the employee health and safety



1 aspects of a major incident investigation.

2 You said it was a short course, what was the duration of

3 those two sources, firstly the ICAM process?---The ICAM

4 process was a four-day course. The Health and Safety

5 Investigator Safety Wise was a three-day course. 12.25PM

6 Do I understand you to be saying you did those as part of

7 your preparation for taking on this role or- - -?---No,

8 just part of my own professional development.

9 I searched in vain on the WorkCover website for an

10 organisational chart and I know we didn't ask you 12.25PM

11 specifically for one, Mr Niest, but to whom do you

12 answer?---I report to the Chief Executive of the VWA.

13 That Executive Director division, I take it there are

14 several Executive Directors, are there, how

15 many?---Yes, there's an executive leadership team of 12.25PM

16 which I'm member.

17 How many are in that team?---Currently - as I said it's new

18 to me, so I've got to count them up. Six personnel.

19 You're one of six Executive Directors, the others obviously

20 head up - - -?---A Chief Financial Officer, there's 12.26PM

21 also the Head Executive Director of the Insurance

22 Business Unit within VWA.

23 You effectively head up the prevention enforcement arm of

24 the VWA in relation to the Occupational Health and

25 Safety Act?---That's correct, yes. 12.26PM

26 You say that answering to you - or you're responsible for

27 450 field officers, Investigators, worksite technical

28 experts and support staff. Is that 450 in total of

29 those various people or is it 450 field officers and

30 then - - -?---The 450 is the workforce for the VWA, so 12.26PM

31 the Investigators don't report to me directly, so

1 reporting directly through my organisational is 320  
2 personnel. So that's the field officers, that's a  
3 management structure, administrative staff, all  
4 required for the delivery of those, as you said,  
5 preventative compliance and enforcement services. 12.27PM

6 Just so that the Inquiry has an understanding of where you  
7 sit relative, say, to Mr Hayes. Does Mr Hayes's boss,  
8 Mr Kelly, does he direct report to you?---No, he's not.

9 One of the reasons is, even if you had a vast  
10 organisational chart, it probably would have been 12.27PM  
11 difficult to provide. Since January there's been a  
12 major reorganisation structure of the unit that I'm  
13 responsible for and that was one of the reasons that I  
14 was brought on, to put that organisational change into  
15 effect. Reporting to me I have four direct reports, 12.27PM  
16 two of those direct reports are responsible for the  
17 operational delivery of the preventive services in the  
18 field. Reporting to one of those direct reports is a  
19 Director of Hazardous Industries, and reporting to that  
20 Director is Mr Rob Kelly. 12.27PM

21 So other hazardous industries that would fall under that  
22 area would include the regulation of major hazard  
23 facilities, I take it?---That's correct.

24 That would be headed up by someone at Mr Kelly's level, is  
25 that right?---Yes, the Manager. 12.28PM

26 I understand from your statement that, despite only  
27 commencing at the VWA in January of this year, you have  
28 responded to the various questions that were asked of  
29 you in the letter from Ms Stansen, legal advisor to the  
30 Inquiry, by making enquiries of other relevant people 12.28PM  
31 within the organisation?---That's correct.

1 I don't know if you were present in the Inquiry hearing room  
2 yesterday when Ms White was giving evidence?---No, but  
3 I reviewed the transcript last night.

4 You probably would have noted in your review that Ms White  
5 was asked on I think more than one occasion who the 12.28PM  
6 Regulator was that was responsible for managing the  
7 risk of fire in worked out batters in the Hazelwood  
8 Mine, so asking a very specific question in relation to  
9 the mine that's the subject of this Inquiry. Do you  
10 agree with the answer she gave to the Inquiry that the 12.29PM  
11 VWA is the Regulator responsible for the management of  
12 that risk?---Short answer is, yes. The complexity of  
13 the question though is, in response to which exact risk  
14 of fire? I'm responsible for the Occupational Health  
15 and Safety Act enforcement, so in terms of the risk of 12.29PM  
16 fire constituting or representing a hazard or a chance  
17 of harm to both the employees in the workplace or to  
18 persons as a result of the conduct of the undertaking,  
19 then yes, I'm the Regulator for fire in the mines.

20 But if there's a fire in the mine that exposes people - the 12.29PM  
21 general public outside of the mine and it cannot be  
22 said that the risk arises from the conduct of the  
23 undertaking of the mine, then your position, as I  
24 understand it, is that's not WorkCover's jurisdiction,  
25 if I can put it that way?---That's correct. 12.30PM

26 That necessarily begs the next question, whose jurisdiction  
27 is it?---Again, it comes down to what risk is being  
28 presented to the public. So the risks to the community  
29 of Morwell was a consequence of a fire in a mine. So,  
30 if you're asking who needs to regulate for public 12.30PM  
31 safety and health in terms of the consequences of a

1 fire in a major technological disaster or event such as  
2 this, that's a combination of Regulators because, once  
3 the event has reached the proportion that it is now  
4 imposing a threat or a risk to a community surrounding  
5 that technological undertaking, then Emergency Services 12.31PM  
6 are involved; if it's an environmental impact, then the  
7 EPA are involved. So the Regulators have to work in a  
8 coordinated fashion to ensure that considerations of  
9 that event are understood.

10 I understand that, but the Emergency Services and the EPA 12.31PM  
11 and other such agencies only become involved when the  
12 risk manifests itself into an incident, do they  
13 not?---That's correct.

14 I'm asking you at this point of the regulation of the risk,  
15 if you understand the nature of the 12.31PM  
16 question?---Probably more appropriately, the regulation  
17 of the hazard, because it's the hazard that then  
18 results in the issue. Right now, if we're talking  
19 about the hazard presented by a fire in a mine to the  
20 community that surrounds that mine that is not a direct 12.31PM  
21 result of the conduct of the undertaking by that mine,  
22 then I'm not too sure who should be regulating that.

23 CHAIRMAN: That may be a gap?---The short answer, yes, there  
24 may be. If we're talking about public safety as a  
25 result of something that is not a result of the conduct 12.32PM  
26 of an undertaking, I personally am not sure who should  
27 be regulating that or who's accountable for that public  
28 safety regulation.

29 What if it's partly the operation of the enterprise and only  
30 partly?---In hindsight, because of the event that's 12.32PM  
31 occurred in this mine, when we consider what's gone on

1 in the past about the hazard of fire in the mine, as  
2 we've heard in the discussions with one of my  
3 Inspectors, they draw a critical line between a major  
4 mining hazard versus a mining hazard. The concern in  
5 terms of occupational health and safety is around major 12.33PM  
6 mining hazards, because they present a real and present  
7 danger to loss of life or significant death, more than  
8 one life.

9 In looking with hindsight I don't think it was  
10 ever foreseen that a fire in the disused portions of 12.33PM  
11 this mine would ever present such a hazard to the town  
12 of Morwell, even though everyone would say, well, it's  
13 so close to the mine why wouldn't you have thought of  
14 that? History says in the fires that have persisted in  
15 the past, it's never presented in this way. In 12.33PM  
16 hindsight now, though, as the OH&S Regulator and with  
17 oversight of this mine I now have to consider that  
18 there is the probability of such a consequence, and so  
19 I have to turn my mind to asking the duty holder what  
20 they are doing to control that consequence in the 12.33PM  
21 future.

22 I guess if you're asking, is there a gap in  
23 regulation that would prevent us getting on top of this  
24 issue, I don't believe so. I believe the regulations  
25 and the law that I currently employ under the OH&S Act 12.34PM  
26 provides me with sufficient tools to then go back to  
27 this duty holder and say, we are now aware that a fire  
28 anywhere in the mine if it gets to a certain extent and  
29 scale does present a risk to the community,  
30 particularly given the community is so close to this 12.34PM  
31 mine, so I will be asking the duty holder to assess

1 that risk and present to me the controls that they were  
2 willing to put in place to prevent that risk, so far as  
3 is reasonably practicable.

4 MEMBER PETERING: Have you asked that question?---Not at  
5 this stage, no. Can I answer: It's not a simple quick 12.34PM  
6 question, it's a matter of setting up a process.  
7 Moving forward the Earth Resources group are focused on  
8 mines, they're focused on quarries. I intend in the  
9 future to bolster their resources when enquiring into  
10 situations like this with some good, strong system 12.35PM  
11 safety experts that the VWA has in their team, so that  
12 the enquiry's no longer just, what are you doing about  
13 an issue with a mine, it's about what are you doing  
14 systematically to look at the hazard that's presented  
15 as a result of the conduct of your undertaking and your 12.35PM  
16 close proximity to this community of this mine.

17 CHAIRMAN: My practical reason for asking the question is,  
18 do we include a recommendation that there may or may  
19 not be a gap. The recommendation is that, if there is  
20 a gap, it be filled?---If there can be a distinct gap 12.35PM  
21 between regulatory accountability and responsibility  
22 for the public safety of a community that resides  
23 alongside a technology undertaking and the risks that  
24 that technology or undertaking presents to that  
25 community just by its existence, then that gap should 12.35PM  
26 be filled.

27 MR ROZEN: To understand in a practical way, Mr Niest,  
28 whether there's a gap and what the gap might look like,  
29 as you sit there now is it WorkCover's view that this  
30 fire did arise from the conduct of the undertaking of 12.36PM  
31 the operator of the Hazelwood Mine?---No.

1 It's WorkCover's view that it did not arise?---It did not  
2 arise because of the conduct of the undertaking. The  
3 undertaking is to extract brown coal from the earth and  
4 transport the brown coal to a power station; there is  
5 nothing in that conduct that caused this fire. 12.36PM

6 I don't want to get into a debate with you about the  
7 interpretation of s.23 of the OH&S Act and the case law  
8 on it, and this may be semantics, but s.23 is concerned  
9 with risks arising from the conduct of the undertaking  
10 of the employer, and you say WorkCover's position is 12.37PM  
11 that the risk which manifested on 9 February does not  
12 meet that description?---Which risk are we talking  
13 about? Are we talking about the risk of fire or the  
14 risk of an environmental impact on the community of  
15 Morwell? 12.37PM

16 Both?---Both. The risk of fire didn't present itself as a  
17 result of the conduct of the undertaking.

18 Did the outcome of the fire arise from the conduct of the  
19 undertaking - I'll be specific - - -?---Yes, I  
20 understand what you're saying, so in hindsight - the 12.37PM  
21 simplest way to put it is, if the mine wasn't there  
22 with exposed brown coal, then we wouldn't have had the  
23 event that we had.

24 Yes?---So, is the conduct of the undertaking that there is  
25 exposed brown coal there? 12.37PM

26 What you're now descending to is a level of complexity which  
27 seems to contradict the very simple answer you gave a  
28 moment ago, which was a simple "no". Is the position  
29 this, Mr Niest, that we know there's an investigation  
30 being conducted by WorkCover in relation to this fire? 12.38PM

31 We know that from Mr Watson's statement, I know that's

1 a different section from WorkCover to you, we know  
2 that?---Yes.

3 Isn't that one of the very things that that investigation  
4 will be considering, whether or not this event falls  
5 within s.23 of the Act?---The purpose of the 12.38PM  
6 investigation is to see if there's been a breach of the  
7 Act and has the duty holder been negligent in any way  
8 in account of the OH&S Act.

9 And you can only breach an Act if it applies to  
10 you?---That's correct. 12.38PM

11 So that's the thing that has to be considered in the  
12 investigation?---Correct.

13 You're not suggesting to the Inquiry that that's a decision  
14 that's already been made in advance of the  
15 investigation being completed?---No, no. What I was 12.38PM  
16 suggesting to the Inquiry, that my accountability is  
17 prevention of these things. So I now have the  
18 knowledge that a likely outcome of a fire in a disused  
19 portion of this mine is the impact on the town of  
20 Morwell. So, in terms of my preventive strategies I 12.39PM  
21 have to think about how can I prevent that from  
22 occurring again. It's not my judgment whether the duty  
23 holder did or didn't or was negligent in the OHS Act;  
24 that's why you'll have an investigation, but it's my  
25 duty to prevent these things from happening if I can. 12.39PM

26 Is it the northern batters of the mine that you refer to as  
27 being a disused part of the mine?---Yes.

28 Why do you refer to it as disused?---As I said, the  
29 undertaking is to extract the brown coal and transport  
30 it to the power station. 12.39PM

31 Yes?---That activity no longer goes on in the northern



1           batters.

2       But you understand, and certainly there's been a great deal  
3       of evidence at this Inquiry, that there are a number of  
4       crucial pieces of infrastructure that are located on  
5       the northern batters?---I didn't say that the northern       12.39PM  
6       batters wasn't a workplace; it's not part of the direct  
7       undertaking of the mine. It's a workplace because  
8       there's reticulation of water services, there's pumping  
9       systems, there's drainage systems, they have to work on  
10      that area, there's roads, so people go there from time       12.40PM  
11     to time, so it is a workplace but it is not the  
12     undertaking of the mine.

13      Without dwelling on this issue of the complexity of s.23 of  
14      the OHS Act, if the Inquiry was satisfied, for example,  
15      that a reduction in the availability of reticulated       12.40PM  
16      water in the vicinity of the northern batters  
17      contributed to the extent of the fire, the length of  
18      time it took to put it out, then that could bring it  
19      under s.23 could it not? The part of the conduct of  
20      the undertaking is having available reticulated water       12.40PM  
21      in the event that there's an emergency?---The  
22      requirement for the fire protection as far as OHS law  
23      and my inspectors is, is in protecting the workplace.  
24      Because as you said from time to time there are workers  
25      in those areas, there has to be sufficient protection       12.41PM  
26      for those workers, so a standby water tanker could  
27      provide that protection of a worker working on a pump  
28      or a drainage system. In terms of the actual working  
29      faces of the mine, that's why there's more complex  
30      spraying systems and more present fire protection       12.41PM  
31      systems, because they have to to protect the workplace.

1 If I haven't answered your question I may not have  
2 completely understood the question.

3 No, that's all right, thank you. You said a moment ago that  
4 it had never been foreseen, they were the words that I  
5 had written down, that a fire of this type- - -?---No, 12.41PM  
6 I didn't say that. Let me - - -

7 Please let me finish the question, you can tell me if I've  
8 got it wrong but only when I've finished it. It's  
9 never been foreseen that a fire could impact on the  
10 town of Morwell in this way, a fire in the non-working 12.42PM  
11 part of the mine. Do you mean never foreseen by you  
12 personally, never foreseen by WorkCover? What do you  
13 mean?---By the duty holder.

14 By GDF Suez?---Yes. They're the person responsible for  
15 defining the hazards, assessing the risks and putting 12.42PM  
16 in place the controls for those risks.

17 Are you referring to the absence of any consideration of  
18 this risk from the safety assessment, the evidence that  
19 we've heard this morning? Is that how you say - the  
20 basis for you saying that you haven't seen it?---The 12.42PM  
21 safety assessment is applied to major mining hazards,  
22 so a fire in the disused portion of the mine is not  
23 considered to be a major mining hazard, so therefore it  
24 doesn't come under a safety assessment.

25 Do you say that a fire in, what you're referring to as the 12.42PM  
26 disused part of the mine, so let's be specific the  
27 northern batters, you say such a fire - - -?---Is a  
28 mining hazard.

29 Well, no doubt it's a mining hazard, I think we can all  
30 agree on that, but you say it is not a mining hazard 12.43PM  
31 that has the potential to cause an incident that would

1 cause or pose a significant risk of causing more than  
2 one death?---That's the position the duty holder has  
3 made and we have no information to contradict or  
4 question that position.

5 Take a simple example, Mr Niest: A fire in the worked out 12.43PM  
6 batters could cause a batter collapse, couldn't it,  
7 that could seriously endanger the lives of firefighters  
8 in the vicinity?---Definitely it could, but the duty  
9 holder has explained that the batter collapse happens  
10 in such a fashion that there would be sufficient time 12.43PM  
11 to evacuate the area.

12 I'm just trying to understand this. You're saying that the  
13 duty holder, just so we're all clear that's GDF  
14 Suez?---GDF Suez, yes.

15 Has not assessed that a mine fire in the worked out part of 12.43PM  
16 the mine is a major mining - - -?---That's correct.  
17 - - - major mining hazard?---That's correct.

18 Are you merely making that observation or are you endorsing  
19 it from WorkCover's perspective that that's a correct  
20 categorisation of the risk? I just want to understand 12.44PM  
21 where you stand on that?---GDF Suez, the duty holder,  
22 has presented that as their risk assessment of the  
23 operation of the mine, and the VWA has not challenged  
24 that risk assessment in any way. If we considered that  
25 that was wrong, we would have issued an Improvement 12.44PM  
26 Notice or Prohibition Notice or some other discussion  
27 with the duty holder if we thought it was critically  
28 wrong.

29 When you say GDF Suez have done that, what are you referring  
30 to specifically? Is that the safety assessment that 12.44PM  
31 we've been examining today with Mr Hayes? Is that the

1 source document for your observation?---That's the  
2 safety management system, their assessment presentation  
3 of risks, and it's not just GDF Suez, the regulations  
4 say that fire is a mining hazard; it's only that  
5 additional analysis that says that it has the 12.45PM  
6 probability, the likelihood of a significant risk to  
7 endanger life of more than one person that it then  
8 kicks over into that major mining hazard regime. Right  
9 now in the operation of mines in Victoria, other than  
10 directly involved in the workplace where miners, the 12.45PM  
11 employees, are involved, there hasn't been a suggestion  
12 that kicks that over, that there is that significant  
13 risk of loss of one or more lives to do with fires in  
14 non-working parts of the mine. So it's not just GDF  
15 Suez, the duty holder, that's the experience of the 12.46PM  
16 Earth Resources industry.

17 So you say, because it hasn't happened, therefore there's no  
18 risk? Is that- - -?---No, there's no such thing as  
19 zero risk. I'm not saying that because it hasn't  
20 happened there's no risk, but I'm saying the risk isn't 12.46PM  
21 sufficient that, so far as is reasonably practicable,  
22 you would expect someone to deploy resources, expend  
23 finances on correcting a thing when they have so many  
24 other risks that present a far bigger risk. It's about  
25 getting the right balance of where the resources are 12.46PM  
26 deployed to achieve the best outcome for safety in a  
27 workplace.

28 I think we've exhausted the debate about whether or not it's  
29 a major mining hazard, perhaps we can agree to  
30 disagree, but even if it's just a mining hazard, let's 12.46PM  
31 accept that, the responsibility of the duty holder is

1 the same in substance, isn't it, they still have to do  
2 what's reasonably practicable to address the  
3 risk?---Correct.

4 The additional requirements if it's a major mining hazard  
5 are the requirements we looked at earlier today, that 12.47PM  
6 is the documented safety assessment and the  
7 like?---That's correct.

8 But they're procedural, the substantive obligation is still  
9 to control the risks so far as is reasonably  
10 practicable; is that right?---That's correct. 12.47PM

11 Perhaps we'll come back to that. I should have asked you  
12 about this a moment ago, I should ask you about the  
13 Memorandum of Understanding that you attach to your  
14 statement on the question that you were asked by the  
15 learned Chairman earlier. If you go behind tab 1 of 12.47PM  
16 your statement, please, we heard some evidence from  
17 Ms White about this yesterday. At paragraph 1.2, we  
18 have an MOU and then a schedule attached to the MOU, is  
19 that right?---Yes.

20 Go to page 1 of the schedule which is a document that ends 12.48PM  
21 in 0006 in the top right-hand corner. Do you have the  
22 first page of the schedule in front of you?---Yes, I  
23 do.

24 We understand that the table there identifies areas of  
25 overlapping responsibilities between what's referred to 12.48PM  
26 as WorkSafe but we now know as the VWA, and even though  
27 it says DPI, we know that's DSDBI?---Yes.

28 Just shows how names change in the Public Service. You've  
29 explained that even though the expiry date of this MOU  
30 has been reached, it remains extant until it's replaced 12.48PM  
31 by something else?---It remains in effect.

1 In the box there we see an identification of safety related  
2 elements and then an identification of the lead and  
3 support agency. It's the first two lines I want to ask  
4 you about: There's a distinction there between public  
5 safety and amenity and public safety work related; do 12.49PM  
6 you see that?---Yes, I do.

7 You would have read the evidence that Ms White gave about  
8 that in your review of the transcript from  
9 yesterday?---Yes.

10 It's the second of those I want to ask you about. Are we to 12.49PM  
11 understand the reference "(work related)" to be  
12 synonymous with the extent of the responsibility for  
13 public safety under s.23 of the OHS Act?---That's  
14 correct.

15 We understand "work related" means arising out of the 12.49PM  
16 conduct of the undertaking?---Yes.

17 You could see how one might take a different view, that  
18 something could be work related - work related is a  
19 very general expression?---Yes.

20 "Arising from the conduct of the undertaking" is a bit of 12.49PM  
21 legalese if there ever was an example of one, would you  
22 agree with that?---No, I understand the term "conduct  
23 of the undertaking" and that's its intent, I don't  
24 think it's just legalese.

25 Anyway, you say we and anyone else should read that as being 12.50PM  
26 tied to the s.23 responsibility?---Right. So, I wasn't  
27 present when this schedule was drafted.

28 I understand that?---But I imagine when you're trying to  
29 work out the overlaps between a mine licensing Mine  
30 Regulator and the Occupational Health and Safety 12.50PM  
31 Regulator, that when it refers to "public safety (work

1 related)", it's referring to public safety as a result  
2 of Occupational Health and Safety law; because, as a  
3 lead agency, the VWA only applies the Occupational  
4 Health and Safety law; we don't apply any of the other  
5 regulations that apply to mines.

12.50PM

6 If I can take you back to your statement at paragraph 21.

7 MEMBER PETERING: Mr Rozen, before you go there.

8 Mr Niest, your answer to the very complicated discussion I'm

9 still trying to get my head around, the major mine  
10 fire: Mr Rozen asked you what was the source documents  
11 and you referred to the safety management system and  
12 the safety assessment and the regulations; is that  
13 right?---That's correct. So the safety assessment  
14 kicks in if it's a major mining hazard, but if it's  
15 just a mining hazard it has to be covered by the safety  
16 management system.

12.51PM

12.51PM

17 Ms Doyle was describing some of the documentation and we  
18 have this folder that was produced to us this morning.  
19 Just for clarification, can you tell me what the safety  
20 management system source document is?---It's a defined  
21 document, so it's a document that has to be a safety  
22 management system in concept, but it also has to be  
23 documented. So the duty holder has to be able to  
24 present a safety management system that calls out any  
25 number of elements. It can be from 13-23 in a safety  
26 management system, but the elements of the safety  
27 management system are defined by the duty holder as  
28 representing the specific focuses of risk management  
29 and the risk controls that they'll put in place to  
30 manage those risks.

12.51PM

12.51PM

12.52PM

31 So, Mr Rozen, you might be able to help me, have we been

1 presented with that document, the safety management  
2 system?

3 MR ROZEN: A document has been provided to the Inquiry under  
4 cover of the letter that's been exhibited, 2 May 2009,  
5 and the letter advises, I don't want to mislead anyone, 12.52PM  
6 the request specifically said, "Draw the Inquiry's  
7 attention to the safety management system." I'm just  
8 trying to see - at page 6 of the letter under the  
9 heading, "Occupational Health and Safety" it advises,  
10 "Hazelwood [that's a reference to GDF Suez] has 12.53PM  
11 established and implemented a safety management system  
12 for the mine in accordance with 5.3.21 of the  
13 regulations. A mine fire is one of the mining hazards  
14 managed under the system." And then there's a  
15 reference to tab 26 which is a document we had earlier. 12.53PM

16 I think there's also another document in the  
17 folder which I can't immediately see, Ms Doyle might be  
18 able to assist us, that is entitled, "Safety management  
19 system."

20 MS DOYLE: I'm not sure. I'm have to have a look. It was 12.53PM  
21 eight volumes. I'll have a look.

22 MR ROZEN: We'll clarify that. From memory, and I haven't  
23 got that particular folder here with me in the hearing  
24 room, but I think there is a document entitled, "Safety  
25 management system." 12.53PM

26 MEMBER PETERING: Mr Niest, it's your evidence that there is  
27 a document that you've referred to or sourced called,  
28 "The safety management system?---It's a requirement of  
29 a prescribed mine to have a safety management system.

30 And the safety assessment is the document that we talked 12.54PM  
31 about before, the bow-tie diagram with those



1 control - - -?---A bow-tie is a graphical  
2 representation of a safety assessment.

3 Thank you, Mr Rozen.

4 MR ROZEN: I neglected to ask you a moment ago about this  
5 question of foreseeability of the events of February 12.54PM  
6 and March of this year. As I understand your evidence,  
7 you say it was never foreseen by the operator of the  
8 mine that that event could occur in the way that it  
9 ultimately did, and the basis of that is from your  
10 examination of their documentation of risk. You don't 12.54PM  
11 say that it wasn't foreseeable, do you, if you  
12 understand the distinction?---Correct. I agree.

13 Do you agree that it was foreseeable?---It's a foreseeable  
14 outcome of a fire in an open cut brown coal mine; smoke  
15 and ash. To the extent that was experienced, and based 12.55PM  
16 on the previous fires that had occurred into that mine,  
17 it was probably judged to be an extremely low  
18 likelihood or not even considered as a consequence that  
19 they'd put their thoughts to.

20 You're aware that there have been previous fires in the 12.55PM  
21 worked out batters of this particular mine?---Yes.

22 Two in fact in the last decade?---Yes, I am.

23 You're also aware that a fire in an open coal mine being  
24 caused by an external bushfire is not an unprecedented  
25 event, we know it happened in Yallourn in 1944. Yes. 12.55PM

26 You are also aware, I take it, of the evidence we've heard  
27 about the particular difficulties associated with  
28 putting out brown coal mine fires?---Yes.

29 Those particular difficulties will be exacerbated if the  
30 fire is located in a place where it's difficult to 12.56PM  
31 access where there's a lack of water and the

1 like?---Yes.

2 Putting all that together, that would seem to suggest that  
3 something like what happened in February and March of  
4 this year was foreseeable, if not specifically  
5 foreseen. Do you agree with that?---I agree that the 12.56PM  
6 fire was foreseeable. I don't know if the duty holder  
7 or even the industry had foreseen that it would get to  
8 the extent that it got to and the result and the impact  
9 on Morwell that it had. That's the bit - I'm not  
10 saying that fire was unforeseeable, it was definitely 12.56PM  
11 foreseeable, and I'm not saying that it's not  
12 foreseeable that if it's a brown coal fire, that it's  
13 going to create smoke and ash, but it's the extent of  
14 this particular event that I'm saying - it wasn't  
15 documented anywhere that I could find that it was 12.57PM  
16 foreseen that that was something that someone was  
17 trying to control or correct.

18 I should have added one last piece of the evidence that  
19 we've heard and that is that it took several hours - I  
20 won't be specific - it took several hours for the CFA 12.57PM  
21 to be on the scene actively trying to put out the fire.  
22 Once again you'd agree, wouldn't you, that on a very  
23 high fire danger day it's foreseeable that the CFA  
24 might not have sufficient resources to address a mine  
25 fire?---Definitely. On the circumstances they have to 12.57PM  
26 send their resources to the highest risk as we do in  
27 addressing WorkSafe issues.

28 I'm going to move to a new topic but I see the time, it  
29 might be appropriate to break.

30 <(THE WITNESS WITHDREW). 12.57PM

31 LUNCHEON ADJOURNMENT

1 UPON RESUMING AT 2.00 P.M.:

2 <LEONARD NIEST, recalled:

3 MR ROZEN: Mr Niest, without wanting to go over old ground,  
4 ground we covered before lunch, I just want to see if I  
5 can understand the distinction you make between mining 02.03PM  
6 hazards that are fires, which are major mining hazards  
7 and those which are not major mining hazards. I want  
8 to see if we can, in the context of the subject matter  
9 we're looking at, understand that.

10 Is it your position that all fires in a mine would 02.03PM  
11 fall within the definition of a mining hazard?---That's  
12 right, yes.

13 So any fire could pose a risk to health or safety in a mine,  
14 therefore it's a mining hazard under the definition in  
15 Regulation 5.3.2?---That's correct. 02.03PM

16 For such a fire to be a major mining hazard it has to have  
17 the potential to cause an incident that would cause or  
18 pose a significant risk of causing more than one death;  
19 is that right?---That's correct, yes.

20 As I understand your evidence, you accept that a mine fire 02.04PM  
21 in what you've described as the operational area of,  
22 let's say the Hazelwood Mine, would be a major mining  
23 hazard; is that right?---Sorry, could you repeat that  
24 question?

25 All fires in the operational area of the Hazelwood Mine, 02.04PM  
26 would they fall under the definition of major mining  
27 hazards?---Only if they present that significant risk  
28 of loss of one or more lives. A fire in - you could  
29 imagine elements of each in the operational parts of  
30 the mine where a fire is not going to present that 02.04PM  
31 significant risk of loss of life, but any fire that can

1 present a significant loss of one or more lives is a  
2 major mining hazard.

3 You say that some fires occurring in what you're describing  
4 as the operational areas would meet that test, whereas  
5 others may not?---That's correct.

02.05PM

6 Turning our mind to what you're referring to as the  
7 non-operational areas, and we have been referring to as  
8 the worked out batters, so let's take the northern  
9 batters; is your position that no fire occurring in the  
10 northern batters would meet the definition of a major  
11 mining hazard?---To date the analysis of the risk  
12 presented by fires in that area, there has not been a  
13 conclusion reached that there is a significant risk of  
14 a threat to life.

02.05PM

15 Is the answer to that, yes, no fire in the non-operational  
16 areas will meet the major mining hazard criteria?---The  
17 answer is that the duty holder in performing their risk  
18 analysis have come to that conclusion, that they don't  
19 consider that a fire in the northern batters area  
20 presents a significant risk of loss of one or more  
21 lives, and hence hasn't been classified as a major  
22 mining hazard.

02.05PM

02.06PM

23 I'm not so much asking what the duty holder has decided, I'm  
24 more looking at it from the perspective of WorkCover  
25 and you. I'll ask it a different way: Do you accept  
26 that there could be a mine fire in the northern batters  
27 area of the mine that would meet the major mining  
28 hazard criterion?---Potentially, yes.

02.06PM

29 I think it necessary follows, doesn't it, that if a fire  
30 started in operational area in circumstances where it  
31 did meet the criterion of a major mining hazard and it

02.06PM

1 spread into the northern batters, that such a fire  
2 would also potentially meet the major mining hazard  
3 criterion?---Well, as you said, if it commenced in the  
4 operational, or any area that presents a significant  
5 risk to loss of life, the fact that it spreads 02.06PM  
6 somewhere else doesn't detract that that's a major  
7 mining hazard.

8 It's the case, isn't it, that there are some fires in the  
9 operational areas of the mine that meet the criteria  
10 and others that don't? I think you've already agreed 02.07PM  
11 with that proposition?---I've already agreed with that,  
12 yes.

13 It's also the case, isn't it, necessarily that there are  
14 some fires in what we're referring to as the northern  
15 batters part or other batters, worked out batters, that 02.07PM  
16 meet the criterion and others that don't; it depends on  
17 the circumstances, doesn't it?---Potentially. It  
18 depends on the knowledge, the understanding and the  
19 calculation of what the risk is to life.

20 Is it the case in risk management that you work on worst 02.07PM  
21 case scenarios or best case scenarios, or is that not a  
22 sensible question to ask?---I don't understand the  
23 intent of the question. When doing what?

24 When ascertaining what controls to apply, for example? Do  
25 we wish for the best and prepare for the worse?---No, 02.08PM  
26 you analyse for the most significant risk that is  
27 presented by the hazard and then determine whether it  
28 is reasonably practical or not to put controls in place  
29 for that risk.

30 I'll come to that, but of course the two are related, aren't 02.08PM  
31 they?---Yes.

1 What is reasonably practicable is determined by the outcome  
2 of the risk management?---By the outcome of the risk  
3 management, yes.

4 If I can turn to your statement, I want to ask you about  
5 "reasonably practicable" which is something that you 02.08PM  
6 discuss at paragraph 22 of your statement. In the  
7 fifth line down, after referring to the relevant  
8 sections of the Act, you say that the effect of the  
9 wording in the Act means that a duty holder is only  
10 required to adopt control measures if their 02.09PM  
11 implementation can be considered reasonably practicable  
12 in light of the risk to health and safety." Do you see  
13 you say that?---Yes.

14 Is another way of saying the same thing but in a positive  
15 way, that a duty holder has to do everything that is 02.09PM  
16 reasonably practicable to control a given risk?---To  
17 reduce the risk to health and safety, yes.

18 You refer us to s.20(2) of the Act where there are the five  
19 matters to be taken into account in determining whether  
20 or not something's reasonably practicable. 02.09PM

21 Subsection (1) of s.20 is important as well, isn't it?  
22 Perhaps if that could be brought up. Subsection (1)  
23 draws the dutyholder's attention to the need to  
24 eliminate risks if that's reasonably practicable and  
25 then only to reduce or eliminate those risks if it's 02.10PM  
26 not reasonably practicable to eliminate  
27 them?---Correct.

28 That's consistent, is it not, with s.4 of the Act, perhaps  
29 we don't need that brought up unless you need it,  
30 Mr Niest, but s.4(1) if I can read it out to you, "The 02.10PM  
31 importance of health and safety requires that

1 employees, other persons at work and members of the  
2 public be given the highest level of protection against  
3 risks to their health and safety that is reasonably  
4 practicable in the circumstances." That's one of the  
5 principles of interpretation of the legislation, isn't it?---Yes. 02.10PM

7 So s.20(1) reflects that principle or that goal, that is, to  
8 remove a risk if it's reasonably practicable to do so,  
9 and only if it's not reasonably practicable to remove  
10 it, does one consider mitigation or reduction?---That's 02.10PM  
11 correct, yes.

12 Then the need is to mitigate or reduce to the extent  
13 reasonably practicable. Do you agree with that?---Yes,  
14 I do.

15 You've identified the five matters to be taken into account 02.11PM  
16 in relation to determining whether or not something is  
17 reasonably practicable and I want to ask you about the  
18 last of those, the cost of eliminating or reducing the  
19 hazard or risk. Perhaps if we go back to the statement  
20 at paragraph 22 please. 02.11PM

21 Is part of ascertaining the cost of eliminating or  
22 reducing the hazard or risk, does one also take into  
23 account the cost of not reducing the hazard or risk, if  
24 you understand my question?---Yes, I do understand your  
25 question, and the answer is correct, yes. So you're 02.11PM  
26 balancing the benefits of reducing or eliminating risk  
27 versus the disbenefits or harm.

28 In the context of the fire we're looking at, if one could  
29 take oneself back in time before 9 February this year  
30 and put oneself in the position of GDF Suez, if they're 02.12PM  
31 considering the costs associated for example with

1 extending the reticulated water system in a particular  
2 part of the mine, then they'd have to weigh that cost  
3 against the potential cost of loss of production and  
4 the like from an extended fire. Is that broadly how  
5 that would work?---Not just the loss of production. 02.12PM  
6 It's, as we've said, the potential for harm's always  
7 there so they have to bring that into consideration as  
8 well. But what they have to consider is the whole of  
9 life cost of putting in a firefighting reticulation  
10 system around the entire mine, has to be balanced in 02.12PM  
11 terms of what it is they're trying to prevent from  
12 happening and what that benefit is.

13 I understand that. My question is, and I think you've  
14 already answered it, do you take into account the cost  
15 of not doing it as well as the cost of doing it?---Yes. 02.13PM

16 What about costs incurred by third parties? So in this case  
17 we've heard about the many hundreds of firefighters  
18 that were involved. Now, that's not a cost, as we  
19 understand it anyway, that's been borne by the operator  
20 of the mine, but is that also to be factored into this 02.13PM  
21 exercise, this calculation?---In terms of the OH&S Act,  
22 I am only concerned with the risk presented to the  
23 employees or persons affected by the conduct of the  
24 undertaking. But in terms of reaching agreements with  
25 Emergency Services and other Government Departments, 02.13PM  
26 then that cost would have to be taken into account in  
27 balancing and judging what the risk is and the cost of  
28 preventing that risk. But that's not something I would  
29 assess in looking at compliance with the OH&S Act.

30 At paragraph 29 of your statement you apply these general 02.14PM  
31 principles about reasonable practicability to the



1 particular facts in this case. At the third line of  
2 paragraph 29 you say, "For example, the best way of  
3 eliminating or reducing the risk of fire in a  
4 non-operational part of a mine might be to rehabilitate  
5 the land. However, given the cost or feasibility of 02.14PM  
6 rehabilitation compared with the likelihood of a fire  
7 and degree of harm that might result from it,  
8 rehabilitation is unlikely to be considered a  
9 reasonably practicable control measure for dealing with  
10 this particular hazard in the context of occupational 02.14PM  
11 health and safety." You see you say that?---Yes.

12 The truth is that the structure of the Act and particularly  
13 the regulations we were looking at earlier, means that  
14 it's only once one has done a risk assessment in  
15 respect of the hazard that you've identified there that 02.15PM  
16 you can reach any conclusions about what is or is not  
17 reasonably practicable as a risk control?---Agree.

18 I understand you're expressing a view about - sort of a  
19 tentative view essentially?---As the OHS Regulator, I  
20 cannot enforce or push a particular risk control on to 02.15PM  
21 a duty holder; the duty holder has to be able to come  
22 to the conclusion of what it thinks is a reasonably  
23 practical implement as a risk control and then we have  
24 to evaluate that.

25 That's right, you don't have to accept their 02.15PM  
26 assessment - - -?---I don't have to accept, no.

27 - - - even though they're in breach of the law. The point,  
28 I think you've agreed with this, is that, you don't get  
29 to the point of determining what is a reasonably  
30 practicable risk control measure until you've carried 02.15PM  
31 out that risk assessment exercise?---I agree.

1 From your analysis of the documents you referred to earlier,  
2 the safety management system and the safety  
3 assessments, has GDF Suez engaged in such a risk  
4 assessment in relation to the risk of fire in the  
5 non-operational parts of the mine?---Yes.

02.16PM

6 They have?---Yes.

7 Where do we see that?---As I said, the bow-tie diagrams are  
8 a representation of a safety assessment or such a risk  
9 assessment. As you pointed out earlier, there is that  
10 risk identified, that hazard of a bushfire as an  
11 initiator of fire in the mine. So clearly they've put  
12 their mind to it, but what they consider to be the  
13 consequences of that fire is important because, if it's  
14 in the non-operational parts of the mine or, as you  
15 said, the worked out batters, their consideration of  
16 consequences is different to, if it's in an operational  
17 part of the mine.

02.16PM

02.16PM

18 It may be me, I think you might be confusing two issues:

19 One is the source of the ignition which might be  
20 external in the form of a bushfire, it might be  
21 internal in failure of maintenance, by a machine for  
22 example. The bow-tie diagram certainly identifies an  
23 external source, but my question's a different one.  
24 Have they, to your knowledge, engaged in a risk  
25 assessment of the risk of fire in relation to the  
26 non-operational parts of the mine, regardless of what  
27 the source of ignition is?---Yes, I believe they have.

02.17PM

02.17PM

28 Where would we see that? Why do you say you think they  
29 have?---In looking at their safety management system,  
30 in understanding what they consider to be a mining  
31 hazard, fire in the mine no matter where it is in the

02.17PM

1 mine is a mining hazard and they're required to address  
2 all mining hazards in their safety management system.  
3 I understand that answer, so - - -?---That's where the  
4 analysis comes out. The best way to think of a safety  
5 management system, it's an encyclopedia of risk 02.18PM  
6 controls. If a fire is a mining hazard and is then  
7 considered in the safety management system, the  
8 controls in relation to fire, not as a major mining  
9 hazard but just as a mining hazard, is covered in the  
10 safety management system, so therefore they've put 02.18PM  
11 their mind to that risk assessment.  
12 I've got a specific reason for asking you this and perhaps I  
13 could do it by reference to an investigation report  
14 that was carried out in relation to a fire  
15 in September 2008 at the Hazelwood Mine. This is 02.18PM  
16 Attachment 6 to Mr Dugan's statement and was also  
17 included in the three folders of documents provided to  
18 the Inquiry by the solicitors for GDF Suez. This was a  
19 fire that occurred after the time at which WorkCover  
20 became responsible for occupational health and safety 02.19PM  
21 in mines?---Yes.  
22 We know from Mr Kelly's statement that there was an  
23 attendance at Hazelwood by a gentleman, Inspector  
24 Sleziak, in response to this fire. I take you to  
25 page 15, Recommendation 6. Do you see that there? 02.19PM  
26 This was in the context of a fire in September 2008.  
27 There's a Recommendation 6, "A risk assessment should  
28 be undertaken on the non-operational areas to determine  
29 if further prevention work is required. The risk  
30 assessment should include a cost-benefit analysis." Do 02.19PM  
31 you see that?---Yes, I do.

1 One of the matters that the Inquiry is interested in is  
2 whether that recommendation was implemented, and we've  
3 asked GDF Suez about that but I'm interested to hear  
4 your evidence that, from the perspective of the  
5 Regulator, you say it has been implemented? Is that 02.20PM  
6 right?---You didn't ask me specific to that  
7 recommendation; you asked if I was convinced that there  
8 had been a risk assessment undertaken in respect to  
9 fire in the non-operational part of the mine. I can't  
10 answer directly because I haven't gone to that exact 02.20PM  
11 recommendation to see whether that was addressed or  
12 not.

13 The way it's written is "to determine if further  
14 prevention work is required", so reading that  
15 recommendation it doesn't say a risk assessment's never 02.20PM  
16 been conducted, it's saying another or an additional or  
17 a further risk assessment should be conducted to see if  
18 there's further prevention work required. I can't  
19 ascertain that without looking into it.

20 I understand you're not in a position to say whether or not 02.20PM  
21 this specific recommendation has been given effect to,  
22 I appreciate that. Do I understand your evidence to be  
23 that in substance that's been done as far as the  
24 Regulator's concerned as part of the safety management  
25 system?---Not an additional risk assessment. I'd have 02.21PM  
26 to look in to see if, as a result of this  
27 recommendation, was a further risk assessment conducted  
28 to see if further work is required; I can't confirm  
29 that or disconfirm. My previous comments were around,  
30 yes, I believe a risk assessment has been conducted and 02.21PM  
31 the evidence of that are in the SMS. As to whether an

1 additional risk assessment or an extended risk  
2 assessment, I can't confirm or deny that.

3 It may be semantics, Mr Niest, but there's no reference  
4 there to doing a further risk assessment; it says a  
5 risk assessment is to be done to see if further 02.21PM  
6 prevention work is required?---Correct. I'm not trying  
7 to play semantics, it doesn't have to say - it's saying  
8 a risk assessment. It doesn't say there has been no  
9 risk assessment conducted in respect of this; it says,  
10 a risk assessment should be conducted to see if there's 02.22PM  
11 any further work required, so to me that means go and  
12 conduct a risk assessment.

13 As the Regulator, you would support that recommendation  
14 being implemented, no doubt?---Definitely.

15 Do you see it as part of the role of WorkCover to monitor 02.22PM  
16 whether or not the operators of this mine implement  
17 recommendations such as this one?---It's the role of  
18 the VWA to determine what they've done about that  
19 recommendation; not to enforce its implementation. If  
20 they choose not to implement it, they have to be able 02.22PM  
21 to explain why they've decided not to implement it.

22 So is the answer to my question, yes, that it is an  
23 appropriate role to monitor compliance by, or to  
24 monitor a response by - - -?---A response, yes.

25 That response might be a reason, no, we're not going to do 02.22PM  
26 that or it might be, we've done it?---We've done it.

27 That would require, would it not, WorkCover to have a copy  
28 of a report such as this?---Yes.

29 The evidence before the Inquiry is that WorkCover never  
30 obtained a copy of this report. Do you know otherwise? 02.23PM  
31 That's what we've been told?---I believe we weren't

1 given a copy of that report; that was right at the  
2 position - 2008 was when it transitioned over to  
3 WorkCover.

4 Well, January 2008; this is September?---Yes.

5 Do I take that to be an explanation for why a copy of the  
6 report wasn't sought, because it was early days as far  
7 as WorkCover was concerned?---That's the only answer I  
8 can offer right now, yes.

02.23PM

9 The evidence is of course that Mr Sleziak was someone who  
10 transitioned across from DPI, so he no doubt was an  
11 experienced operator?---Yes.

02.23PM

12 Just before leaving that question of transition, I meant to  
13 ask you earlier, you would have been in court when  
14 Inspector Hayes gave evidence about his ability to  
15 access DPI files that were created prior to the  
16 transition time?---Yes.

02.24PM

17 His evidence seemed to be that he was unable to access  
18 electronic files. Is that in fact the position from  
19 your examination?---I'm unaware; I haven't tried to  
20 access those files or requested access to those files.

02.24PM

21 That seems surprising, if that's the case. Would that  
22 concern you?---It definitely would concern me. I took  
23 a mental note of that, but in saying something's been  
24 transferred electronically doesn't mean that the  
25 software still exists to even open those documents or  
26 how those documents were preserved electronically, so  
27 I've taken a note to go back and find out what the  
28 issue is there.

02.24PM

29 I'd ask you to take that one step further and report back to  
30 us if you could, Mr Niest, because the transition  
31 arrangements that were entered into in late 2007 were

02.24PM

1 very clear about that, that there was a need to, not  
2 surprisingly, transfer that corporate knowledge?---Yes.  
3 On a related issue which arose in Ms White's evidence  
4 yesterday, it's apparently the case that, if there's a  
5 mine fire that meets the statutory criteria for 02.25PM  
6 reporting, then there's an obligation on the part of,  
7 stick with GDF Suez, an obligation on their part to  
8 report that both to WorkCover under s.38, I think, is  
9 it, of the Occupational Health and Safety Act, and  
10 there's a corresponding obligation to tell the Chief 02.25PM  
11 Inspector of Mines?---Yes.

12 Yesterday Ms White was asked about why there is that dual  
13 reporting requirement, and I won't bother you with that  
14 issue, but the question for you is, are there  
15 arrangements in place so that there's some discussion 02.25PM  
16 between the regulators where they're both told about a  
17 mine fire as to what they're going to do in response,  
18 do you know?---Definitely there's an arrangement. If  
19 we have a fire reported to us, we'll also notify DSDBI  
20 of that fire, if it's in a mine. 02.26PM

21 That's a slightly different question than what I asked you.  
22 When you're both notified, do you meet and discuss  
23 who's going to do what in response to that?---Part of  
24 that is the purpose of the MOU, so that we don't have  
25 to meet around every incident, but if it's uncertain as 02.26PM  
26 to what the response should be, then the answer is,  
27 yes, we would meet to discuss that.

28 The reason for asking is, to go back to the 2008 fire, there  
29 doesn't seem to be any separate WorkCover  
30 investigation, or WorkSafe as it then was, into that 02.26PM  
31 fire. I think I'm right in saying that's also the case

1 for the 2012 fire, that there's an internal  
2 investigation carried out by the duty holder but no  
3 separate WorkCover investigation, which seems to be  
4 different to the normal way WorkCover operates in  
5 relation to such matters?---If there was no hypothesis 02.26PM  
6 or belief of a breach of the OHS Act, then there won't  
7 be a WorkCover investigation. So, if you're talking  
8 about trying to learn from the incident, then perhaps  
9 the Inspectors may or may not have been involved with  
10 the incident at the time, but there is no requirement 02.27PM  
11 for an investigation by VWA if there's not that  
12 hypothesis or that concern that there's been a breach  
13 of the Act.

14 And so, in relation to the fire that we're examining, we  
15 assume that there is at least that hypothesis, that's 02.27PM  
16 why there is an investigation?---I'm not aware of - as  
17 you've said, it was reported by VWA that there is an  
18 investigation, so yes, there must be a hypothesis of a  
19 breach of the Act.

20 I took you to paragraph 30 of your statement, if 02.27PM  
21 we could go back to that please. You expand on what  
22 you say in paragraph 29 about what you've referred to  
23 as the disproportionate burden of putting in  
24 a - - -?---A control, yes.

25 Putting in a control and specifically a mine fire services 02.28PM  
26 system through the entire non-operational part of a  
27 large open cut coal mine. Are you familiar with the  
28 history of the removal of part of that system at some  
29 time in the past that the Inquiry's been told  
30 about?---I'm aware that it has partially been removed 02.28PM  
31 but not of the exact conditions around its removal.



1 You're also aware, aren't you, that it was partially  
2 reinstated by the firefighting services during the  
3 course of this year's fire?---Yes.  
4 When you say there, "It's likely to be disproportionate",  
5 that's again a matter that would emerge from a properly 02.28PM  
6 conducted risk assessment, would it not?---A proper  
7 economic analysis and a risk assessment, yes.  
8 You don't mention other risk controls that might potentially  
9 be available at a lower cost, for example putting in  
10 fire breaks, increasing the access to water short of 02.29PM  
11 putting in a complete new reticulated water system,  
12 treating the surface with some form of fire retardant  
13 and so on?---Yes.  
14 In relation to those and no doubt others, that's precisely  
15 what a risk assessment and in fact a safety assessment 02.29PM  
16 under Regulation 5.3.23, they're precisely the things  
17 that should emerge - - -?---Should be considered.  
18 - - - should be considered as part of that process?---Yes.  
19 Do you agree, we don't see that in the documents that I  
20 asked Mr Hayes about earlier?---I haven't seen that 02.29PM  
21 specific extent of looking at risk controls.  
22 It's pretty important, isn't it? At the end of the day,  
23 this is just not a paper exercise, it's meant to lead  
24 to some action by way of risk controls, isn't it, the  
25 safety assessment process?---The safety assessment 02.30PM  
26 process, yes, particularly since that's in response to  
27 a major mining hazard.  
28 At paragraph 34 of your statement, in response to a question  
29 that you were asked by us which is to reflect on what  
30 WorkCover and its Inspectors did in relation to 02.30PM  
31 regulating this mine prior to February this year. You

1 say you haven't identified any shortcomings in  
2 regulation of the mine hazard of mine fire. I take it,  
3 that was based on the discussions you had with other  
4 officers within WorkCover that you told us about  
5 earlier?---Yes.

02.30PM

6 Has the evidence that you've heard today, particularly in  
7 relation to the safety assessment that was examined  
8 earlier today, does that change your view at  
9 all?---That does to a degree. One of the things I have  
10 been thinking about during this time, it's been a steep  
11 learning curve in a number of different dimensions is,  
12 one of the things I certainly will be looking at is to  
13 bolster or improve the Earth Resources Group with some  
14 systems safety specialists. Because when you're  
15 starting to look at bow-tie diagrams, starting to do a  
16 full and comprehensive - almost developing a safety  
17 argument, which is, the safety assessment process is  
18 almost a halfway house between a full safety  
19 case/safety argument model and the lesser just  
20 occupational health and safety for a minor mining  
21 hazard.

02.31PM

02.31PM

02.31PM

22 In thinking about that and looking at that,  
23 certainly, yes, there appears to be a lack of oversight  
24 in terms of, was a full and proper safety argument made  
25 in respect to some of those major mining hazards.

02.31PM

26 Can we put a bit of flesh on the bones of that? What do you  
27 have in mind in terms of systems safety expertise, and  
28 can you just explain a little more what that means for  
29 us please?---You pointed out again in my background  
30 that I don't have a lot of occupational health and  
31 safety learnings. My background comes from a systems

02.32PM

1 safety background. They both focus on hazard  
2 identification, risk assessment, putting risks controls  
3 in place, but my background is more looking at making  
4 sure that you look at a systems of systems approach.  
5 So you don't only look at the hazard that's under your 02.32PM  
6 nose or the impact of something that's immediately in  
7 the aspect of risk; you look at the whole view of the  
8 risk and what it may or may not impact on a broader  
9 scale.

10 So, in looking at the risk of fire, particularly 02.32PM  
11 as a major mining hazard, and then looking at whether  
12 the duty holder, GDF Suez or any duty holder, has  
13 presented a valid safety argument that convinces me as  
14 a Regulator that they do have that risk under control,  
15 I think there needs to be not only good expertise in 02.32PM  
16 the mining expertise, mining engineers and good  
17 Inspector experience in carrying out and conducting  
18 inspections of mines, we also need to bolster that with  
19 some people who understand a proper systems, safety  
20 systems approach in looking at it from end to tail that 02.33PM  
21 risk assessment; taking a bow-tie diagram and, you  
22 know, a quick look at the bow-tie diagram, a full and  
23 comprehensive bow-tie diagram has underneath it who's  
24 accountable for putting in those risks controls, what  
25 the evaluation of those risk controls are. Haven't 02.33PM  
26 seen that in these bow-tie diagrams.

27 A person who specialises in system safety knows  
28 exactly what should be presented in a bow-tie diagram.  
29 If that's the argument that's been presented to  
30 convince me as a regulator that this is safe, I need 02.33PM  
31 someone who really understands bow-tie diagrams to make

1 that assessment. If they chose to present it in a  
2 different form, then I'd need another specialist who  
3 can understand that form to convince me their answer is  
4 correct.

5 So as you ask, in what I've seen today, does that 02.34PM  
6 raise some of the hairs on the back of my neck about,  
7 this isn't a full and comprehensive safety argument  
8 we're seeing to convince me as a Regulator that the  
9 dutyholder's done everything reasonably practical? The  
10 answer is, I'm not quite sure now, I need to have a 02.34PM  
11 look at that, and the way I need to do that is to  
12 bolster the Earth Resources Team with some systems  
13 safety specialists who have expertise in looking at  
14 those arguments.

15 Thank you, we're very grateful for that indication. Is that 02.34PM  
16 expertise that would be located within, for example,  
17 the Major Hazard Facility Division of WorkCover?---It  
18 definitely would, it definitely would. That's why I  
19 said the safety assessment process is almost a halfway  
20 house between what you would expect for a major hazard 02.34PM  
21 facility, which is the full safety case analysis,  
22 versus the lesser argument for mining risks.

23 Because they've identified that a major mining  
24 hazard has a higher risk exposure, the risk of loss of  
25 one or more lives in a mine, they've brought in this 02.35PM  
26 safety assessment process which is moving towards a  
27 major hazard facility-type concept but not a full-blown  
28 safety case.

29 But there are nonetheless - - -?---Same principles.

30 - - - a lot of similarities, aren't there, in the 02.35PM  
31 principles?---Yes.

1 Would there be something to be said for combining those two  
2 areas?---As you would expect, I've put my mind to that,  
3 but in the legislation what creates something as a  
4 major hazard facility is, does it have particular  
5 dangerous goods that are listed in Schedule 9 to that 02.35PM  
6 regulation? Currently in the actual operating part of  
7 the mine brown coal isn't on that list of dangerous  
8 goods, so to ask VWA to consider turning every mine in  
9 Victoria into a major hazard facility, then a large  
10 cost-benefit analysis would have to be made of that 02.36PM  
11 assessment.

12 However, as I've been saying, because there's that  
13 safety assurance process for a major mining hazard,  
14 there's nothing to say that VWA can't come in and  
15 strengthen that safety assessment process so it has the 02.36PM  
16 same impact as making it a major hazard facility  
17 without having to go to that step of making it a major  
18 hazard facility.

19 Two more matters I need to ask you about, Mr Niest. The  
20 first concerns the local Gippsland Regional Strategic 02.36PM  
21 Fire Management Plan. I suspect that's probably  
22 outside your area of expertise and I won't be asking  
23 you to make any expert documents?---Yes.

24 It's a document that was referred to yesterday and it's  
25 behind tab 38 of exhibit 1, Mr Lapsley's first 02.36PM  
26 statement. As its name indicates, Mr Niest, I'll ask  
27 you to accept that this is the current fire management  
28 plan in place in Gippsland. It deals, amongst other  
29 things, with risks of fire associated with the open cut  
30 mines. 02.37PM

31 In particular, at page 27, there's a hard copy in

1 front of you and it should also be on the screen. You  
2 see the second entry there, looking at the left-hand  
3 side, "Power generation facilities - coal  
4 mines"?---Yes.

5 If you trace your way across the very small print you will 02.37PM  
6 see that the risk category is bushfire and there's a  
7 recognition of likely scenario which is potential for  
8 fire in the mine as a result of either an internal or  
9 external fire event; disruption - medium to long-term  
10 loss of power to the National Grid. Then there's 02.37PM  
11 concepts that you'll no doubt be familiar with -  
12 likelihood, consequence and risk rating, and the  
13 likelihood is described as likely, the consequences  
14 catastrophic, and when you add those two together you  
15 end up with an extreme or the highest level of risk 02.38PM  
16 rating. Do you see that?---Yes, I do.

17 The next one I want to ask you about, the heading "Existing  
18 treatment", so as we understand it this is the  
19 identification of what's in place to mitigate the risk  
20 that's rated as extreme. You'll see it says, 02.38PM  
21 "Legislative controls including MHF." MHF is an  
22 acronym for major hazard facilities?---Yes.

23 The Latrobe Valley coal mines are not major hazard  
24 facilities, you just told us that?---They're not.

25 Does it concern you that they're identified here as major 02.38PM  
26 hazard facilities, thus bringing into operation  
27 apparently Part 5.2 of the OHS Regs?---Major controls  
28 including major hazard facility and emergency  
29 management plans. If they're claiming that the coal  
30 mines should have that major hazard facility and 02.38PM  
31 emergency plan, then it is an issue.

1 It goes on, "CFA pre-incident plans. On site firefighting  
2 resources. DPI regulatory planning." There was a  
3 discussion yesterday with Ms White about that which you  
4 may have seen in the transcript. What's missing, given  
5 what we know about the VWA's regulatory role which 02.39PM  
6 you've confirmed for us today, there's no reference at  
7 all to the VWA in any of this?---Correct, yes.

8 That would also concern you, wouldn't it?---The context of  
9 this is protection of critical infrastructure; it's not  
10 the protection of lives or health and safety in the 02.39PM  
11 workplace. So that's probably why we haven't been  
12 consulted on this plan, because this was drawn up in  
13 terms of critical infrastructure protection, and it's a  
14 catastrophic event to lose one of the major power  
15 generation plants in the Latrobe Valley for Victoria. 02.39PM  
16 Is it catastrophic in terms of health and safety? No,  
17 it's high but it's not catastrophic. So, what's your  
18 question again?

19 Well, my question is, the VWA as the Regulator of mine  
20 fires?---Occupational health and safety in mines. 02.40PM

21 You keep telling us that, Mr Niest, but then we look at the  
22 MOU that's in place and it refers to public safety,  
23 work related public safety?---Work related due to  
24 conduct of the undertaking.

25 A fire in the mine can give rise, as we all know, to 02.40PM  
26 significant public safety issues?---Yes.

27 Once the fire starts, it doesn't discriminate, does it,  
28 between who it puts at risk? A fire's a fire?---Right.

29 Some fires cause internal risk and may cause external  
30 risk?---Correct. 02.40PM

31 A document like this, I would suggest, can't be seen as

1 confined only to fires that give rise to work related  
2 risk?---No. My point is, any risk assessment has to,  
3 if you've seen the standard on risk assessment, it  
4 starts with the operating context. The context that  
5 this risk assessment is based around is the protection 02.41PM  
6 of critical infrastructure, it's not the protection of  
7 public safety. So, I'm just saying, this particular  
8 document doesn't mention VWA because it wasn't  
9 considering health and safety, it was considering the  
10 protection of critical infrastructure. 02.41PM

11 If you look at the document as a whole, and perhaps I could  
12 have taken you to more of it, it's concerned with fire  
13 prevention and management?---Yes, but this  
14 particular - - -

15 The table concerned identifies a particular risk associated 02.41PM  
16 with this, but if the VWA has a role of regulating work  
17 related fires that give rise to public safety risks,  
18 and I think you've told us that it does - - -?---Yes.

19 - - - then ought it not be involved in this sort of fire  
20 management planning?---Definitely should be involved in 02.42PM  
21 fire management planning, yes, I agree.

22 The final matter I want to ask you about, Mr Niest, if we  
23 can return to your statement, it concerns the advice  
24 that was provided to people in Morwell and particularly  
25 employers in Morwell as to what their responsibilities 02.42PM  
26 were for their employees during the fire. It's a  
27 matter you deal with towards the end of your statement  
28 starting at paragraph 39. You there identify a number  
29 of things that WorkCover and in particular you did  
30 during the course of the fire to find out about OHS 02.42PM  
31 issues that employers were having and to give advice to



1 people.

2 You've attached at Attachment 2 an information  
3 bulletin, if I understand it correctly - a media  
4 release, sorry, that was put out dealing with these  
5 issues?---Yes.

02.43PM

6 If I can ask you to go to that, please. It starts by  
7 advising workplaces in the Latrobe Valley to take steps  
8 to reduce the impact of bushfire and coal fire smoke on  
9 their staff as fires continue to affect air quality in  
10 the region.

02.43PM

11 In the public consultation process and in the  
12 evidence that's been heard in this Inquiry a number of  
13 people have said to the Inquiry, "I was in a position  
14 as an employer, I didn't know what to do, I didn't know  
15 what specific steps to take, how dangerous it was for  
16 my employees", and so on. This document would appear  
17 to offer very general advice; would you agree with  
18 that?---Definitely, yes.

02.43PM

19 It identifies some of the at risk categories of people; we  
20 see that in paragraph 2, people with pre-existing heart  
21 and lung conditions. So it's drawing employers'  
22 attention to needing to take particular focus on  
23 those?---Particular focus, yes.

02.44PM

24 But not other groups. We've heard evidence about the  
25 particular vulnerability of pregnant women for example,  
26 people over the age of 65. Do you think it would be  
27 more helpful, with the benefit of hindsight, to offer  
28 people more specific advice, or is this the best that  
29 employers can expect?---Employers know it's their duty  
30 to provide a safe workplace for their employees. The  
31 Department of Health and EPA were putting out those

02.44PM

02.44PM

1 other warnings, so this refers employees to seek that  
2 information from the appropriate Department, as to what  
3 the special conditions are in terms of the smoke and  
4 the ash and the bushfire fall out. In terms of trying  
5 to cover off every workplace in a given area at any 02.45PM  
6 time, you can't go into the specifics of every  
7 workplace in a single notice. I think this is  
8 reminding people of their duty to ensure a safe  
9 workplace for their employees, and it's referring to  
10 specific categories that WorkSafe was aware of that 02.45PM  
11 needed specific attention, but it also refers them to  
12 the EPA and the Department of Health to seek further  
13 updates as to what those requirements are; in short, so  
14 that they can enforce their duty.

15 In fairness to you, Mr Niest, it does offer some specific 02.45PM  
16 advice in relation to reducing strenuous activity, for  
17 example, which is consistent with that advice?---Yes.  
18 So you'd say, presumably, that the general level of advice  
19 is consistent with the primary duty being on the  
20 employer to make their own assessments of the risks 02.46PM  
21 faced by their employees?---Correct.

22 I have no further questions for Mr Niest. Do Members of the  
23 Board have any questions?

24 MEMBER CATFORD: Mr Niest, thank you very much for your  
25 testimony. I'm still a little bit unclear about one 02.46PM  
26 item which you touched on this morning, and it's really  
27 referenced to paragraph 35 of your statement.

28 In your statement you're saying you haven't  
29 identified any gaps within the OHS legislative  
30 framework regarding OHS hazards of mine fires at open 02.46PM  
31 cut brown coal mines, but I think what you were saying

1 is that you did identify a gap in the regulation of  
2 mine fires. Can you just expand on that, and  
3 particularly provide us with what you think the  
4 solution is? If there is a gap in the regulatory  
5 framework, how can that be met?--My statement I think 02.47PM  
6 is correct. I didn't identify any gaps in the  
7 regulation, the law. What we've discussed is, I have  
8 identified some gaps in the way VWA enforces or implies  
9 that regulation to get in front of these incidents to  
10 become more - to promote more, to try and get ahead of 02.47PM  
11 such of these incidents.

12 As I said, I didn't identify anything that I can  
13 see in the regulation that, had it been different,  
14 would have prevented this accident or this incident  
15 from happening. But what I have identified is maybe 02.47PM  
16 some gaps in the knowledge based system, the safety  
17 specialists supporting the Earth Resources team,  
18 working together with GDF Suez, the duty holder, and  
19 the Emergency Services and DSDBI. I can see that  
20 there's a better way of perhaps looking at some of 02.47PM  
21 these risks and conducting a more fulsome and more  
22 in-depth risk assessment to ensure that, as I said, the  
23 risk just isn't focusing on the risk at hand, which as  
24 I said this is about critical infrastructure, they  
25 didn't consider the broader risk; that risk assessment 02.48PM  
26 needs to be broadened out so we need to get all the  
27 parties in the room to make sure that that risk  
28 assessment is being conducted more forcefully so that a  
29 proper safety argument can be put together.

30 So, through the process of this Inquiry I've seen, 02.48PM  
31 I don't believe that is occurring within VWA or even

1 within some of the other bodies, so that's one thing  
2 that we can do different, we can cooperate more closely  
3 and conduct a proper and more fulsome risk assessment  
4 of the risk of fires in mines and assess the outcome of  
5 that more accurately and provide a stronger safety  
6 argument as to whether we think the controls are right  
7 or not. But I don't think the regulation needs to  
8 change.

02.48PM

9 So you don't think there is a regulatory vacuum for some  
10 situations arising from the mine? Because you were  
11 making the case about, well, if it wasn't part of the  
12 undertaking then it wasn't part of your role?---So back  
13 to the original question: In terms of public safety  
14 and the risk that public safety may or may not be put  
15 at due to a technological undertaking, something that  
16 man has created within the close proximity of  
17 community, it's because I apply the OHS law and I have  
18 to consider it in terms of, was it a result of the  
19 conduct of the undertaking as opposed to just because  
20 the undertaking exists does that put a community at  
21 risk; that's where that gap potentially is.

02.49PM

02.49PM

02.49PM

22 So there is a gap then. I'm going round in circles here a  
23 bit?---And I'm trying to put the answer to you as  
24 well - - -

25 I'm trying to think from the point of view of the Morwell  
26 community, they're obviously concerned that steps are  
27 taken to fill any regulatory gaps in the control of  
28 mine fires that could potentially repeat the scenario  
29 that they experienced recently. So the question is, if  
30 there is a regulatory gap, which I think you're saying  
31 there is now, how can that be best closed?---If I

02.49PM

02.50PM

1 identify that gap as, who is responsible for regulating  
2 for the protection of public safety, regardless of what  
3 the source of the hazard or the risk is, who's  
4 responsible for public safety, that's where the gap  
5 probably is and I can't - if you were to ask me right 02.50PM  
6 now, I can't tell you who is responsible for regulating  
7 public safety. I'm responsible for regulating  
8 workplace safety and responsible for public safety as a  
9 result of the conduct of that undertaking, but I  
10 couldn't tell you who is directly responsible. 02.50PM

11 So obviously this is a serious issue that needs to be  
12 addressed then? That's your advice. Just to close  
13 this off from my point of view, so you don't think it's  
14 your interpretation of the Act that is the issue,  
15 you're very clear that there are some areas where you 02.51PM  
16 don't have a responsibility in terms of public safety  
17 from a mine?---Correct. If I can't connect the threat  
18 or the harm to the conduct of an undertaking, then I'm  
19 starting to move beyond the OH&S law and I can't, I  
20 apply the OHS law. 02.51PM

21 Thank you.

22 MEMBER PETERING: Just to follow on from Professor Catford's  
23 questioning. If the Victorian WorkCover Authority is  
24 not responsible for public safety if it's not related  
25 to the conduct of an undertaking?---Is that a question? 02.51PM

26 That's what I heard you say?---Yes.

27 Then who would be the appropriate Regulator?---I don't know  
28 if one exists; I can't identify - that's a question  
29 that's around. It's clear what Emergency Services are  
30 responsible for, it's clear in DSDBI's mind what 02.52PM  
31 they're responsible for, VWA are clear they're

1 responsible for workplace health and safety.

2 In my previous roles I've responded to major rail  
3 catastrophes. If it's clear that the undertaking has  
4 caused the threat, then it's always clear who's  
5 responsible for regulating public safety, but if you 02.52PM  
6 talk about the protection of a community to something  
7 that exists alongside it, and it's the cause of a  
8 natural event or some other - if it's a natural event  
9 that causes the flow-on effect to the harm, I don't  
10 know who the Regulator is that's responsible for that 02.52PM  
11 right now.

12 If this had of been as a result of the bushfire  
13 entering the mine and impacting on a stockpile of brown  
14 coal which would be clearly a part of that undertaking  
15 and then that stockpile of brown coal causing this 02.52PM  
16 event, that's a whole different scenario because the  
17 stockpile of coal would have been a direct result of  
18 the undertaking, but coal still in the ground isn't.

19 MEMBER CATFORD: But if it's an unrehabilitated mine batter,  
20 which is a consequence of the mining, isn't that a 02.53PM  
21 consequence of the undertaking and therefore it would  
22 be applicable to the Act? I mean, open batters don't  
23 just exist naturally, do they, they're a consequence of  
24 mining?---They're a consequence of mining and the risk  
25 controls that are expected to be in place to control 02.53PM  
26 that risk have to be considered so far as is reasonably  
27 practicable, and that's based on what you expect the  
28 harm of having exposed the seam of coal there is.

29 Before this event, the harm was stability of the  
30 batter or a threat to workers in the mine and the 02.53PM  
31 actual serious nature of the risk that that presented

1 to workers and that was not seen to be significant.  
2 The seriousness of the risk that the exposed batters of  
3 coal presented to the community of Morwell, whether  
4 rightly or wrongly, wasn't considered to be a  
5 significant risk until this event occurred. As I said, 02.54PM  
6 risk isn't - - -

7 But now it is?---Now it definitely is, yes.

8 So how do we move forward then?---The suggestion I'm saying  
9 as far as open cut brown coal mines in the Latrobe  
10 Valley and VWA goes, I will be putting steps in place, 02.54PM  
11 I will be working with the Mine Regulator, EPA, and the  
12 duty holder, GDF Suez, to better characterise the risk  
13 associated with fire in the mine; I will be making sure  
14 that a systems approach is used in assessing the risk  
15 so that a proper safety argument could be put forward 02.54PM  
16 to convince not only myself but the other Regulators  
17 involved that the risk is under control appropriately  
18 and so far as is reasonably practical.

19 I will be supporting the Earth Resources team with  
20 some of those systems safety specialists so that when 02.55PM  
21 they're presented with documents like a bow-tie diagram  
22 they can have a more accurate and proper assessment of  
23 that as an argument that things are under control and  
24 safe.

25 Just to labour this further. So would you say there was a 02.55PM  
26 gap then because you're actually having to take some  
27 extra steps?---As I said, the gap is probably in the  
28 processes used to apply the regulation; I don't think  
29 there's a gap in the regulation as such. Everything I  
30 just said I can do without changing the regulations; 02.55PM  
31 it's within my powers to do that right now.

1 So it's a gap in the application?---A gap in the  
2 application, yes.

3 MR ROZEN: Can I ask a couple of questions following on from  
4 that? I'm struggling, possibly just me Mr Niest, but  
5 I'm struggling with this idea that, if a bushfire sent 02.55PM  
6 an ember into the mine onto a pile of coal that had  
7 been there just recently from some mining work, then  
8 smoke that comes from that fire is all arising from the  
9 conduct of the undertaking; I think you've said  
10 that?---Yes. 02.56PM

11 You wanted to distinguish that scenario from the facts that  
12 are before the Inquiry, as I understand it, and the  
13 difference being that the same external source of  
14 ignition, but in the facts we're looking at the fire's  
15 in the worked out batters rather than a stockpile of 02.56PM  
16 coal. It's that distinction - - -?---Definitely.  
17 - - - that you say divides s.23 applying from it not  
18 applying?---Not that simple, but yes, that's one  
19 aspect, yes; the answer is, yes, to that because having  
20 an exposed seam of coal can naturally occur as well, 02.56PM  
21 it's not always a direct result of an undertaking.

22 But these ones did not naturally occur?---Please let me  
23 continue.

24 Yes, go on?---The complexity that comes into it is, if it's  
25 a direct result of the undertaking, then the level of 02.57PM  
26 assurance and the - what is considered to be so far as  
27 is reasonably practical has a higher standard applied  
28 because it is part of the undertaking. If it's  
29 existing because the risk controls put in place to  
30 prevent it are either, rehabilitate the face or put in 02.57PM  
31 place a fire protection system, or have some fire



1 protection system that can be deployed within close  
2 proximity on the day, that's where "so far" comes in.  
3 Is it reasonably practical, which of those risk  
4 controls should we be able to force the duty holder to  
5 implement, so far as is reasonably practical, to 02.57PM  
6 prevent the assessed risk prior to this event, the  
7 assessed risk of a fire in a coal mine that's not going  
8 to go anywhere and will make some smoke and ash  
9 probably no more than a bushfire. That was the  
10 thinking before this event. 02.57PM

11 It's completely changed now. We now understand  
12 that, if a fire gets into the mine, it gets out of  
13 control in the way this fire got out of control, it  
14 presents a significant hazard to the town of Morwell.  
15 That's what's changed. Risk assessment is not a static 02.58PM  
16 process; we have to learn, we have to change, we have  
17 to implement better controls.

18 I understand all that, Mr Niest, but I can't let this issue  
19 go. Whether or not the risk arises from the conduct of  
20 the undertaking and whether or not there are reasonably 02.58PM  
21 practicable things to do to reduce or remove that risk  
22 are two separate issues, are they not?--As far as a  
23 Regulator goes I'm about making sure the right controls  
24 are in place.

25 I understand that, but if the risk doesn't arise from the 02.58PM  
26 conduct of the undertaking you don't get to the  
27 question of reasonably practicable, do you, because you  
28 don't have to do anything?--In terms of exposure to  
29 the public, correct.

30 So whether or not the risk arises from the conduct of the 02.58PM  
31 undertaking turns on one's interpretation of the

1           undertaking and its conduct?---Correct.

2           And whether the worked out batters are a part or not, I  
3           think we've already said we can agree to disagree on  
4           that, but we understand your position?---Yes.

5           The final matter goes to this regulatory gap issue.         02.59PM  
6           you agree that prior to 1 January 2008, in the period  
7           when DPI was regulating both public safety amenity and  
8           public safety occupational health and safety, there was  
9           no gap?---No, the same gap would apply. Back then who  
10          was responsible for public safety? That's the gap         02.59PM  
11          we're talking about. Back then when DPI was  
12          responsible for both the mines regulation and the  
13          oversight of the occupational health and safety in  
14          mines, I still couldn't tell you who's responsible for  
15          public safety.   02.59PM

16          And you say that because they were exercising delegated  
17          powers under the same Act, the Occupational Health and  
18          Safety Act?---Correct.

19          I understand. I think we've probably taken that as far as  
20          we can. They are the questions I have for Mr Niest.         02.59PM

21          <CROSS-EXAMINED BY MS NICHOLS:

22          If the Board pleases. Mr Niest, my name is Lisa Nichols, I  
23          appear for Environment Victoria, I have a small number  
24          of questions for you. I want to ask you some questions  
25          about rehabilitation as a reasonably practicable         03.00PM  
26          measure to mitigate the risk of fire in the Hazelwood  
27          Mine. What I would like to do is to explain to you the  
28          context of the questions I want to ask you.

29                 There's been some discussion with Mr Rozen about  
30          things that are now known that weren't previously         03.00PM  
31          known, and I would like you, if you can, to put your

1 hat on as a Regulator looking forward, bearing in mind  
2 what is now known and taking the benefit of hindsight  
3 and perhaps having a look at things which have arisen  
4 from this Inquiry insofar as you know them and insofar  
5 as I am able to point them out to you in this brief  
6 series of questions. 03.00PM

7 You say in your statement that, by reference to  
8 the legislation, one must consider the factors in  
9 s.20(2) when asking whether a particular measure  
10 reasonably practicable to control a certain hazard. 03.01PM  
11 The VWA has developed a policy in a document which  
12 expresses the way that it applies the concept of  
13 reasonably practicable in interpreting the law; that's  
14 right, isn't it?---Yes.

15 I take it, you had regard to that policy when addressing the 03.01PM  
16 factors in your statement?---Yes.

17 I might make brief reference to it to refresh your mind. In  
18 that policy document it says as follows, "The test for  
19 what is reasonably practicable is an objective test;  
20 that is, a person is to be judged by the standard of 03.01PM  
21 behaviour expected of a reasonable person in the  
22 dutyholder's position who is required to comply with  
23 the same duty, and is committed to providing the  
24 highest level of protection for people against risks to  
25 their health and safety and is proactive in taking 03.02PM  
26 measures to protect the health and safety of people."

27 You will agree with that, don't you?---Yes.

28 That reflects the interpretive principle in s.4 of the OH&S  
29 Act?---Yes.

30 It goes on to say that, "In applying the concept of 03.02PM  
31 reasonably practicable, careful consideration must be

1 given to each of the matters set out in s.20(2). No  
2 one matter determines what is or was reasonably  
3 practicable in relation to ensuring health safety."

4 That's right, isn't it?---That's correct.

5 "The test involves a careful weighing up of each of the  
6 matters in the context of the circumstances and facts  
7 of the particular case with a clear presumption in  
8 favour of safety." Agree with that?---Yes.

03.02PM

9 Can I ask you firstly about the criterion in subsection (a),  
10 the likelihood of the risk eventuating. I won't spend  
11 long on this. You agreed with Mr Rozen before that it  
12 was foreseeable that fire could generate in the  
13 Hazelwood Mine and extend beyond the mine?---I agreed,  
14 yes, that the likelihood of fire in the Hazelwood Mine  
15 is well-known.

03.03PM

03.03PM

16 There are a number of factors, are there, in relation to the  
17 likelihood of the risk eventuating and briefly they are  
18 these: That brown coal when it's exposed is extremely  
19 flammable?---Yes, I'm aware of that.

20 The town of Morwell is located in a high bushfire risk area;  
21 agree with that?---Yes.

03.03PM

22 That there's a recognised threat in open cut coal mines to  
23 incursion from external fires including by burning  
24 embers; that's right?---Yes, because it's occurred in  
25 the past so it's likely.

03.03PM

26 It's also recognised that there are very real limitations on  
27 the ability to suppress a fire once it gets started in  
28 a brown coal mine?---Wouldn't agree entirely with that,  
29 because even on this day the fire - one of the first  
30 fires was in the working part of the mine and it was  
31 put out within several hours.

03.04PM

1 Yes, but the fire continued for many, many days after  
2 that?---Several other fires were initiated in other  
3 parts of the mine. You just said that a fire in a  
4 brown coal mine is really, really difficult to put out.  
5 Well, in the actual working part of the mine, it was 03.04PM  
6 put out within two hours.

7 Fires can be extremely difficult to suppress once they have  
8 started?---I won't argue with that, it can be, yes.  
9 It's very important in fire suppression or rather dealing  
10 with the risk of fire to concentrate on mitigation of 03.04PM  
11 the risk as opposed to simply suppression of  
12 it?---Correct.

13 There's been quite a long history of fires in open cut mines  
14 in the Latrobe Valley, including in this  
15 mine?---Correct. 03.04PM

16 Would you agree then, having regard to those factors,  
17 looking forward the factor in subsection (a), namely  
18 the likelihood of the risk eventuating should be given  
19 some real weight in that calculus?---Definitely the  
20 likelihood of a fire in an open cut coal mine is high. 03.05PM

21 Can I ask you briefly about the second factor which is under  
22 subsection (b), "The degree of harm that would result  
23 if the risk eventuated." I'd like you to consider this  
24 in the context of s.23. I won't take you back to the  
25 debate about whether or not it applies in this 03.05PM  
26 circumstance, but let's assume that it does.

27 You may be aware, you are probably likely aware,  
28 that in this context Dr Rosemary Lester, the Chief  
29 Health Officer of Victoria, gave evidence to the  
30 following effect, "On 28 February 2014 following advice 03.05PM  
31 from the Fire Services Commissioner the fire in the

1 Hazelwood Mine was unlikely to be controlled within the  
2 next 10 days, and because of the cumulative exposure of  
3 sensitive groups to the ongoing poor air quality I  
4 issued temporary relocation advice." Relocation advice  
5 from the Chief Health Officer of Victoria is a very 03.06PM  
6 serious step, is it not?---Yes.

7 That advice, the officer gave evidence to this effect, was  
8 preceded by other advice to stay indoors, to avoid  
9 heavy physical activity and to consider relocation, and  
10 the at risk groups in the community comprised people 03.06PM  
11 over 65, preschool-aged children and those with  
12 pre-existing heart or lung conditions and pregnant  
13 women. Having regard to the fire that has occurred and  
14 the fact that that serious advice was given, that would  
15 be a factor that would suggest that the likelihood of 03.06PM  
16 the risk eventuating that is now understood should be  
17 given some considerable weight in the risk calculus  
18 under section 20(2)?---As I said, the likelihood is  
19 already given a lot of weight. You're talking about  
20 the actual combination of likelihood and consequence. 03.07PM

21 Yes, the degree of harm, yes?---The actual consequence or  
22 the degree of harm or the exposure. Definitely in  
23 light of the events that have happened, as I've said  
24 today certainly we're putting a different focus on  
25 that. The problem is, leading up to this single event 03.07PM  
26 there wasn't a lot of weight put on the potential for  
27 that flow-on impact.

28 Indeed. Looking forward, another factor that would be  
29 important would be on the question of the consequences  
30 that might materialise. The Inquiry has heard evidence 03.07PM  
31 from Professor Douglas Campbell in relation to the

1 potential short and long-term health effects of  
2 exposure to this kind of mine fire. Without going to  
3 the detail of it, that evidence was to the effect that,  
4 whilst further study is needed about particular events  
5 of this kind, there are a number of medium to long-term 03.08PM  
6 health effects that may be caused by exposure to smoke  
7 from a brown coal fire. A number of them include  
8 these: In the case of young children the risk may  
9 include reduced lung function and growth rates,  
10 respiratory tract illness including new onset asthma 03.08PM  
11 and bronchitis, exacerbation of existing asthma,  
12 impaired growth in lung function and impaired  
13 neurological development.

14 In the context of people with pre-existing  
15 ailments, the risks to health may include effects on 03.08PM  
16 cardiac conduction, increase of risk of arrhythmias,  
17 morbidity, hospital admissions and death.

18 It's not suggested for a moment that deaths will  
19 necessarily arise from fire, but having regard to that  
20 kind of evidence, you will agree, wouldn't you, that 03.08PM  
21 the consideration about the degree of harm that could  
22 arise if the risk eventuates is one that should be  
23 given quite some weight in the calculus under  
24 s.20(2)?---It's not just the degree but the likelihood  
25 of that degree. So you use "may" a lot in that 03.09PM  
26 explanation. To analyse it we'd need to know what that  
27 is. In regulating what I regulate I have to focus my  
28 resources on the risks that present the greatest harm  
29 to health and safety. So there are far greater risks  
30 to health and safety than operating a mine. So, if we 03.09PM  
31 can put some numbers around what "may" actually means,

1           that then has weight in what I as a Regulator can apply  
2           to force the duty holder to do one thing or another.  
3        I want to make two points about that.  Firstly, it's  
4           necessary, is it not, under s.20 to consider each of  
5           the subsections when weighing up what is a reasonably        03.09PM  
6           practicable step to control risk?---Correct, it's what  
7           is the potential harm and who's exposed to that harm.  
8        So one must ask, what is the potential harm in and of  
9           itself, as well as putting that into a matrix with all  
10          of the other sub-considerations; is that right?---It is        03.10PM  
11          what is the potential harm and what is the likelihood  
12          or probability of that harm occurring.  
13        So if you decide that there is a reasonable likelihood of  
14          harm materialising, it also then becomes relevant to  
15          consider what the seriousness of the harm is?---I            03.10PM  
16          haven't made that analysis and I haven't agreed with  
17          that; I've said there's a reasonable likelihood, a  
18          well-known likelihood of fire.  I haven't said what the  
19          likelihood of the harm that you explain to the  
20          community; that needs to be determined.                        03.10PM  
21        But it's certainly one of the factors that ought to be  
22          considered by the Board, isn't it?---It is certainly  
23          one of the factors that should be considered and will  
24          be considered in terms of future risk assessments.  
25        Subsection (c) concerns what the duty holder knows or ought        03.11PM  
26          to know about both the risk, hazard or risk, and ways  
27          of eliminating or reducing the hazard or risk.  In that  
28          connection, if the evidence were to the effect that the  
29          duty holder was aware of previous fires and the risk  
30          that those fires would escalate, that would have been        03.11PM  
31          an important factor, would it not?---Yes.



1 In this connection, in terms of ways of eliminating or  
2 reducing the hazard, would you agree that it is  
3 relevant that in the work plan rehabilitation plan the  
4 mine operator itself has identified that coverage of  
5 coal batters is one of the major uses to which 03.11PM  
6 overburden can be put in order to provide fire  
7 protection?---That's right, that's stated in the work  
8 plan.

9 And that would be relevant to the consideration about what  
10 the duty holder knows about ways of eliminating or 03.12PM  
11 reducing the hazard or risk?---Correct.

12 The next criterion is in subsection (d) and that concerns  
13 the availability and suitability of ways to eliminate  
14 or reduce the hazard or risk. The identification by  
15 the mine operator of the use of rehabilitation to 03.12PM  
16 mitigate fire risk is relevant also to that criterion,  
17 is it not?---It's a potential control, yes.

18 Similarly, the fact that the duty holder is committed under  
19 its licence to undertake rehabilitation of the mine is  
20 relevant to the availability of rehabilitation as a 03.13PM  
21 risk control measure, isn't it?---Sorry, I didn't  
22 understand that question.

23 The duty holder is already committed to undertaking a  
24 particular activity, namely rehabilitation of the mine  
25 because it must do so under its licence?---Yes. 03.13PM

26 That is relevant to determining the availability of that as  
27 a means of reducing risk?---Definitely. One of the  
28 considerations of reasonably practicable, is it  
29 possible to do it, and clearly it must be thought  
30 possible to do it otherwise it wouldn't be a condition 03.13PM  
31 of the licence.

1 Exactly, so in some scenarios where you're considering s.20  
2 factors, a means of dealing with risk might be  
3 suggested that is hypothetical or has never been done  
4 before or has never been tested. In this case  
5 remediation of the mine is not something new, it is 03.14PM  
6 something which the duty holder in the OH&S context is  
7 required to do for the purposes of its mining  
8 licence?---Correct.

9 And that's very relevant to a consideration under subsection  
10 (d) of s.20, isn't it?---Yes, I mean, there's no 03.14PM  
11 question that covering the coal is a good mitigation  
12 for fire risk.

13 It's unarguable that it's available to the duty holder as a  
14 risk mitigation measure?---The availability depends on  
15 the availability of the materials to cover the mine, 03.14PM  
16 the cost of doing so, when it can do so in terms of its  
17 mining operations, but that's the consideration of the  
18 Mine Regulator as to when that needs to happen.

19 Yes, but in the context of OH&S Regulation and the factors  
20 under s.20(2) which fall into your purview, one of the 03.14PM  
21 things you have to ask about is the availability of  
22 ways to eliminate or reduce hazard?---One of the  
23 factors is, is it technologically or practical or  
24 feasible? The answer is, yes, you can cover the coal  
25 over. But the other aspects of it are the timing of 03.15PM  
26 it, the cost of doing so, are there other risk controls  
27 that could have the same fire control application as  
28 rehabilitation that can be done at half the cost or a  
29 fraction of the cost? So it's up to the duty holder to  
30 consider all the potential - all the technically 03.15PM  
31 feasible risk controls, assess the price or the cost or

1 the economic impact of doing that to the mine operation  
2 and the community, and then choose which one it's going  
3 to work with.

4 But it must necessarily, as you agreed before, consider each  
5 of those questions?---In determining for itself what is 03.15PM  
6 reasonably practicable, it should run through those  
7 questions - can I do it, is it practical to do it is  
8 the first question.

9 Practicality is an outcome; reasonable practicality is  
10 outcome of applying the criterion (a) to (e) in 03.16PM  
11 s.20(2)?---Yes.

12 The next criterion is the one concerning the cost of  
13 eliminating risk or reducing hazard. Mr Rozen's  
14 already asked you some questions about that. Can I  
15 just mention briefly the policy to which I referred 03.16PM  
16 earlier. That document has a number of things to say  
17 about cost and I'll just refer them to you briefly.  
18 Under the heading, "Section 20(2)", the VWA policy  
19 states the following, "There must be a clear  
20 presumption in favour of safety. Once the likelihood 03.16PM  
21 and degree of harm from hazard or risk is understood  
22 and the availability and suitability of a relevant  
23 safety measure to eliminate or reduce the hazard of  
24 risk is established, that safety measure should be  
25 implemented unless the cost of doing so is so 03.17PM  
26 disproportionate to the benefit in terms of reducing  
27 the severity of the hazard that it would clearly be  
28 unreasonable to justify the expenditure."

29 That's the right way to assess the relevance of  
30 cost, isn't it?---Yes, in making the determination of 03.17PM  
31 reasonable practicability, yes.

1 The policy document goes on to state that, "If the degree of  
2 harm is significant, then it is extremely unlikely that  
3 the cost of eliminating or reducing the risk would ever  
4 be so disproportionate to the risk to justify a  
5 decision not to implement an available and suitable 03.17PM  
6 control measure. Moreover, the question of what is  
7 reasonably practicable is to be determined objectively  
8 and not by reference to the dutyholder's capacity to  
9 pay or other particular circumstances." That's  
10 correct, isn't it?---The question of disproportionality 03.17PM  
11 depends on how intolerable the risk is considered by  
12 society, by a judge trying to make a determination of  
13 reasonable practicability. So it depends on how  
14 intolerable the risk is. The more intolerable the  
15 risk, the higher the disproportionality should be on 03.18PM  
16 the basis of assessing cost.

17 The policy document goes on to say that, "If a particular  
18 duty holder cannot afford to implement a control that  
19 is not so disproportionate to the risk as to be clearly  
20 unreasonable, the duty holder should not engage in the 03.18PM  
21 activity that gives rise to the hazard or risk."  
22 Finally, "The calculation of the costs of implementing  
23 the control measure must also take into account savings  
24 from fewer incidents, injuries and illnesses,  
25 potentially improved productivity and reduced turnover 03.18PM  
26 of staff." You'd agree with that, wouldn't  
27 you?---Which bit am I agreeing to?

28 The statement that, "The cost of implementing a control  
29 measure must also take into account savings from fewer  
30 incidents, injuries and illnesses and potentially 03.19PM  
31 improved productivity and reduced turnover of



1 Accept for the purpose of the question this premise: that  
2 the mine operator is obliged to progressively  
3 rehabilitate the mine and it must incur costs, not just  
4 dollar costs, but economic costs of doing that in order  
5 to discharge its obligations under its mining licence; 03.21PM  
6 it must do that. So those costs, whatever they might  
7 be, are incurred necessarily for the purposes of  
8 meeting the obligations under the licence.

9 Given that is the case, that is an important  
10 consideration, is it not, when looking at the s.20 03.21PM  
11 calculus?---When looking at it from an OH&S perspective  
12 the reasonable practicality of a risk control? Yes,  
13 that has to be one of the factors that goes into that  
14 test of what is reasonably practicable.

15 When one is asking the question about the relevance of cost 03.21PM  
16 in that equation, if the cost already has to be  
17 incurred for another purpose, it's very likely that the  
18 costs of doing the undertaking wouldn't - - -?---If the  
19 cost is already included under the mining laws, then I  
20 guess what we're saying is, the cost is something that 03.22PM  
21 the mine is already prepared to pay for.

22 Or has to pay for?---It's agreed to, it's got its licence,  
23 it's put in its licence, so it's agreed to pay for it  
24 at some stage in the life of the mine. But when it's  
25 forced to do that, when it's regulated to do that 03.22PM  
26 rehabilitation has different economic costs that have  
27 to be considered as well.

28 Sure, but if the obligation is to rehabilitate the mine  
29 progressively, then that might also be a relevant  
30 consideration to cost?---Sorry, say that again? 03.22PM

31 If the obligation is to rehabilitate the mine progressively,

1 that might also be a relevant consideration to looking  
2 at cost in the context of the OH&S matrix?---In terms  
3 of determining if a risk control is appropriate or not,  
4 yes.

5 CHAIRMAN: Just on the matter of cost. I think you've 03.23PM  
6 answered this in saying there has to be an overall look  
7 at cost. This refers to the taking into account the  
8 cost of eliminating the hazard or risk. Do you also  
9 take into account the cost of not  
10 eliminating?---Definitely, it's the benefits versus the 03.23PM  
11 potential harm.

12 Even though it's not required here, you take that into  
13 account?---Yes, as I said, it's a full economic  
14 cost-benefit analysis.

15 That's what I understood. 03.23PM

16 MS NICHOLS: As you've agreed with Mr Rozen, that's a fairly  
17 broad consideration of the implications of not  
18 controlling risk?---Correct.

19 So it goes both ways. Having regard to all of those  
20 considerations and looking forward, would you agree 03.24PM  
21 that it certainly can't be concluded at this stage that  
22 rehabilitation is not a reasonably practicable measure  
23 that could be used to control risk of fire in the  
24 Hazelwood Mine?---I haven't made that determination,  
25 no. 03.24PM

26 But you would need to step back from any, perhaps the  
27 absoluteness of the view you expressed in your  
28 statement bearing in mind what is now known having  
29 regard to this fire and those various factors that  
30 we've just discussed?---The view expressed in the 03.24PM  
31 statement is based on current knowledge of what that

1 cost would or wouldn't be in terms of - it was used as  
2 an example to demonstrate "so far as is reasonably  
3 practicable". That is not the analysis that we're  
4 applying under the circumstance. We have to see what  
5 GDF Suez does in terms of re-evaluating this risk. 03.24PM

6 Clearly all the parameters have changed; the smoke and  
7 ash impact I believe wasn't a major foreseeable event;  
8 it is now known it can occur, so the whole risk has to  
9 be re-assessed. In doing that reassessment, we will  
10 expect them to be able to demonstrate, so far as is 03.25PM  
11 reasonably practical, that they are putting the right  
12 controls in place.

13 It is still therefore very much an open question that  
14 rehabilitation of the mine could well be a reasonably  
15 practicable measure to mitigate the risk of fire in the 03.25PM  
16 Hazelwood Mine?---It's on the list of potential  
17 controls. It is up to the duty holder then to  
18 determine which of those risk controls it deems to be  
19 reasonably practicable to implement, and then it's up  
20 to the regulator to assess if that is a valid decision. 03.25PM

21 As part of the process going forward, it's certainly from  
22 the mine owner's perspective - would have to be  
23 something it would need to consider going forward?---As  
24 I said, it's one of the risk controls for fire  
25 prevention that must be considered, yes, there's no 03.26PM  
26 argument there.

27 Thank you. No further questions.

28 <CROSS-EXAMINED BY MS DOYLE:

29 Thank you, Mr Niest. I don't want to take you back to the  
30 detail of the debate about s.20(2), but I want to ask 03.26PM  
31 you about the criteria that you list in your



1 paragraph 22 and just confirm this aspect. The five  
2 criteria you list there, they condition the assessments  
3 that duty holders and WorkSafe undertake in relation to  
4 both s.21 and 23. Is that right?---That's right.

5 Section 23 is not anywhere near as often used by the  
6 Authority as Regulator, is it, it's s.21 that's your  
7 bread and butter and s.23 has been rarely  
8 prosecuted?---Yes.

03.26PM

9 When conducting the type of assessment of risk that is  
10 engaged by sub-paragraph 22(a) there, the likelihood of  
11 a hazard or risk, can I just ask you first in the  
12 broad, Mr Niest, there are types of undertakings run in  
13 Australia and around the world where there's not a  
14 handy ready comparator, whereas in terms of Hazelwood  
15 Mine we have in the first instance two other mines in  
16 the same valley operated in a similar fashion that no  
17 doubt you would accept propose themselves as a good  
18 ready comparator to some degree when looking at the  
19 likelihood of risk?---Correct, it's a source of  
20 potential past or previous incidents that then go to  
21 work out that determination of likelihood .

03.27PM

03.27PM

03.27PM

22 When looking at the assessment of the likelihood of the type  
23 of risk which crystallised in February of this year, it  
24 would be reasonable, wouldn't it, to take into account  
25 the reality that over the history of some 90 years of  
26 open cut mining in this valley there have only been a  
27 handful of bushfires or external fires that have gone  
28 into any of the three open cut mines, compared with  
29 many, many fires that have started within each of those  
30 mines?---Correct.

03.28PM

03.28PM

31 If a risk is identified and assigned the label "rare" in

1 advance of the event, if a rare risk is crystallised  
2 does it invalidate your previous assessment of the  
3 likelihood of that risk occurring?---No.

4 But it might, I take it from your answers this afternoon,  
5 inform future ongoing risk assessments?---And in this 03.28PM  
6 particular case it's more the consequence of the fire  
7 than the risk of fire that we're being informed about.

8 And so there criterion (b)?---The degree of harm.

9 In paragraph 29 and 30 of your statement you give a  
10 particular example of how one performs the balancing 03.28PM  
11 act that generates an identification of the appropriate  
12 controls. When I say "appropriate controls", I'm  
13 injecting into that all of the notions of reasonable  
14 practicability.

15 One of the examples you give there at paragraph 30 03.29PM  
16 is that one might identify a good way of controlling or  
17 almost eliminating a risk, but that bears a  
18 disproportionate cost when compared with the risk  
19 profile. Is that what you're intending to do with that  
20 example there about the particular example of use of 03.29PM  
21 Fire Services systems?---Yes.

22 You've been asked a number of times about the question of  
23 whether there are gaps either in the regulatory matrix  
24 or in its application. Earlier this afternoon, I think  
25 it was in answer to a question from Mr Rozen, you said 03.29PM  
26 that one of the ideas that has occurred to you is that  
27 you might develop greater expertise among your  
28 workforce in terms of injecting some systems  
29 specialists or safety assessment systems specialists in  
30 order to look at that particular criterion under the 03.30PM  
31 regulations we've spent so much time on today.

1           Can I ask you, Mr Niest, is that because as you  
2 sit here this afternoon you yourself are not able to  
3 say whether the various safety assessment documents and  
4 safety management systems documents that have been  
5 produced at Hazelwood meet the criteria or not? You           03.30PM  
6 said you would need to go and check?---Yes, definitely.  
7 Mr Hayes when he gave some evidence today said that he had  
8 not in particular himself studied the application of  
9 5.3.23 in terms of some of the elements of the way that  
10 a safety assessment needs to be recorded. Did you hear           03.30PM  
11 that part of his evidence?---Yes.  
12 In the type of moving forward ideas that you've put up this  
13 afternoon, Mr Niest, could those or would those include  
14 perhaps Mr Hayes and those specialists you've spoken of  
15 sitting down with the operators of mines in the valley           03.30PM  
16 to develop some protocols or some guidance material  
17 about how to implement 5.3.23?---Definitely, yes.  
18 I take it that you don't at this time have available the  
19 sorts of policies you've been taken to by Ms Nichols  
20 with respect to reasonable practicability or any           03.31PM  
21 guidance material on safety assessments. So is that  
22 the kind of thing you could consider  
23 producing?---Definitely. As I said, the safety  
24 assessment process is almost a halfway house, so it  
25 could benefit from more rigor in putting process and           03.31PM  
26 procedure around what is expected out of a safety  
27 assessment in terms of convincing myself as the  
28 Regulator that it's a safe situation.  
29 But also, Mr Niest, in educating duty  
30 holders - - -?---Definitely.           03.31PM  
31 - - - and in this instance mine operators in the valley as

1 to what are the types of things that you would want to  
2 see in a safety assessment?---And that's one of the  
3 obligations of the OH&S Regulator, is to inform and  
4 educate as well where necessary.

5 You saw this afternoon that Mr Hayes himself was not sure 03.32PM  
6 and you yourself have said you could take specialist  
7 guidance. Would you pass that specialist guidance and  
8 that informing onto the operators?---Definitely, yes.

9 Mr Rozen also asked you about Recommendation 6 as it happens  
10 in a 2008 report. I took it from your answers, you 03.32PM  
11 haven't seen that GHD report?---No.

12 It's important that I tell you that you were taken to a  
13 recommendation that referred to a risk assessment on  
14 non-operational areas, but that in the next line it  
15 said that there will be a need to look at the risk of 03.32PM  
16 hot spots re-igniting. Did you understand that that  
17 2008 recommendation was borne of a fire that - at least  
18 in terms of that report's conclusion - was the result  
19 of a flare-up of a hot spot in the southern batters?  
20 Were you aware of that sort of level of detail?---I was 03.32PM  
21 aware that that was one of the causes of the fire, yes.

22 I think you said in answer to Mr Rozen that you as a  
23 Regulator, had you had regard to that document, would  
24 want to look at what happened but that that would be  
25 one aspect of your job as Regulator in terms of 03.33PM  
26 checking compliance with particular aspects of Act. In  
27 other words, it's neither necessary nor sufficient, it  
28 could be relevant or it may not be relevant?---Correct.

29 I take it then that you yourself haven't checked Hazelwood's  
30 response to that recommendation? For example, you 03.33PM  
31 haven't had regard to its paradigm 2 system to check



1 can cooperate more fully with other Regulators. This  
2 is in the context of public safety where the risk  
3 arises not from the conduct of the undertaking but from  
4 some other thing?---Yes.

5 With regard to the potential gap in a regulation for public 03.35PM  
6 safety, do you currently have the tools necessary to  
7 improve - that is, the legislative tools - necessary to  
8 improve the situation in any event?---Sorry, can you  
9 rephrase the question?

10 The way the legislation currently stands, do you have the 03.35PM  
11 ability to require the mine operator to do certain  
12 things which would necessarily protect the public in  
13 any event?---Yes.

14 I think your evidence is that you intend to - - -?---Intend  
15 to do so. 03.35PM

16 Following on from the question from my learned friend,  
17 Ms Doyle, you'll have your Inspectors sit down with the  
18 mine operator and discuss ways of doing  
19 that?---Correct.

20 At one stage you used the acronym is SFARP, which I 03.36PM  
21 understand to mean "so far as is reasonably  
22 practicable"?---Correct.

23 Indeed, that's the principle that really underpins all the  
24 employer's obligations under the Occupational Health  
25 and Safety Act. Is that right?---Yes. 03.36PM

26 They are all the questions I have. Thank you.

27 <RE-EXAMINED BY MR ROZEN:

28 Just one matter in re-examination. You were asked a  
29 question by my learned friend, Ms Doyle, behind me  
30 about s.23 being rarely prosecuted. Do you recall 03.36PM  
31 agreeing with that proposition?---I do.

1 There has, however, been one very high profile s.23 case  
2 commenced in relation to a construction site in the  
3 city?---Yes.

4 Or in Carlton, and there obviously WorkCover at least has  
5 taken the view that the risk there, the risk of a wall 03.36PM  
6 falling onto members of the public, a wall surrounding  
7 a building site, was a risk that arose from the conduct  
8 of the undertaking, being the construction of  
9 apartments on that building site?---It's an ongoing  
10 investigation. 03.37PM

11 No, it's a prosecution that's commenced?---It's a  
12 prosecution now, none of which fall under my control or  
13 management. But the way I can answer it is, there is  
14 sufficient belief that that incident was a direct  
15 result of the conduct of the undertaking. 03.37PM

16 They're all the questions that I have.

17 CHAIRMAN: Any question of the document referred to by  
18 Ms Nichols appropriately to come in or do we not  
19 bother?

20 MR ROZEN: The explanation for the reasonably practicable? 03.37PM

21 CHAIRMAN: The policy elaboration. I don't know whether you  
22 want it in or it may not matter.

23 MS NICHOLS: I can talk to Mr Rozen about it.

24 CHAIRMAN: It's only that the questions may or may not have  
25 been intelligible when they're reviewed without it. 03.38PM

26 MS NICHOLS: We're happy to tender it and I can talk to  
27 Mr Rozen about it.

28 CHAIRMAN: You can talk to Mr Rozen about it later.

29 MR ROZEN: I'm happy to do that. Could Mr Niest be excused?

30 CHAIRMAN: You're excused, Mr Niest, thank you. 03.38PM

31 <(THE WITNESS WITHDREW)

1 MS RICHARDS: On that note I should say that, at the  
2 commencement of the proceedings tomorrow we have a fair  
3 number of documents now that have come to us as a  
4 result of questions of witnesses and follow up that's  
5 been done, and we also have some information that's 03.38PM  
6 been obtained from the Bureau of Meteorology about  
7 weather conditions on 9 February, so I propose to  
8 tender those all in one lot tomorrow and we'll include  
9 that document in that bundle.

10 MEMBER PETERING: Before you do, Ms Richards, may I just 03.38PM  
11 enquire of my friend Dr Wilson about the diagrammatic  
12 structure of all my acronyms so that I've got a clear  
13 understanding of how things fit in the picture?

14 DR WILSON: As you may have apprehended, Ms Petering, the  
15 task is not an easy one. It has been the subject of a 03.39PM  
16 consummate degree of activity over the weekend. The  
17 acronym side is one aspect, the diagrammatic side is  
18 another, and you'll also be pleased to know that it's  
19 gone to the very highest of levels to be certified as  
20 to its accuracy. As to whether we can provide it to 03.39PM  
21 you physically right now, the answer is, no, but we are  
22 hoping that that is a moving feast and it will end up  
23 in a positive reaction shortly.

24 MEMBER PETERING: I am very grateful, and I do appreciate  
25 the enormity of the task. 03.39PM

26 MS RICHARDS: Perhaps we could prevail on Mr Lapsley when he  
27 returns on Friday to explain the diagram since I  
28 anticipate he might be one of those at the very highest  
29 of levels who's been involved in its preparation. The  
30 next witness is Robert Jackman who's a community 03.39PM  
31 witness. Mr Jackman, could you come forward.



1 <ROBERT DAVID JACKMAN, affirmed and examined:

2 MS RICHARDS: Good afternoon, Mr Jackman. Thank you for  
3 waiting patiently this afternoon?---Not a problem.

4 Your name is Robert Jackman?---Correct.

5 And you live in Tambo Crescent here in Morwell?---Correct. 03.40PM

6 You have made a statement to the Inquiry, you have a copy of  
7 it there in front of you. It's a statement of 35  
8 paragraphs. There's one correction that you'd like to  
9 make to it; is that correct?---Yes, that's correct.

10 Paragraph 19 states that during the fire when my family 03.41PM  
11 was away I kept myself busy volunteering for the  
12 Latrobe Valley Hospital. That is incorrect. I was  
13 actually volunteering for the Morwell RSL and Sacred  
14 Heart Primary School, so I apologise to the Board for  
15 the error. 03.41PM

16 That's why we give every witness an opportunity to correct  
17 their statement before they adopt it. So the

18 Morwell RSL and Sacred Heart Primary School?---Correct.

19 With that correction, Mr Jackman, is your statement true and  
20 correct?---It is. 03.41PM

21 I tender that.

22  
23 #EXHIBIT 71 - Statement of Robert Jackman.

24  
25 MS RICHARDS: Mr Jackman, you've been living here in Morwell 03.41PM

26 for about seven and a half years. What brought you to  
27 Morwell?---I lived in Perth for over 30 years and on  
28 retirement my wife and I took the opportunity to come  
29 to Victoria. We had previously visited Morwell, I have  
30 a daughter here who's married and now has three 03.42PM  
31 children. I also have a daughter in Melbourne and, as

1 I say, we took the opportunity of retirement and we  
2 decided to settle in Morwell because we thought it was  
3 a fabulous place. Also to support my daughter whose  
4 husband is an ex-member of the military, medically  
5 discharged and currently diagnosed with post-traumatic 03.42PM  
6 stress disorder, and my daughter needs a lot of support  
7 in getting her through the daily activities of life  
8 with a 7-year-old and now two 18 month old twins.  
9 You and your wife have three daughters, one in Perth, one in  
10 Melbourne, and one here?---Correct. 03.42PM  
11 You've chosen to live closest to the one in Morwell for the  
12 reasons you've just explained?---That is correct.  
13 She and her husband have three children, one is aged 7, was  
14 born around about the time you moved to Morwell?---Yes.  
15 And twins arrived much more recently?---Yes, much to the 03.43PM  
16 surprise of everybody.  
17 Double surprise, and they're 18 months old?---They are now  
18 19 months old now.  
19 19 months old now?---Yes.  
20 Can we move to 9 February this year. When did you first 03.43PM  
21 become aware that there was a fire in the  
22 mine?---Through radio and television media, picked up  
23 bits and pieces that there was a fire. Following the  
24 Hernes Oak Fire we'd been following it relatively  
25 closely just to monitor what was going on. 03.43PM  
26 Obviously it was of interest to you because it was nearby to  
27 Morwell. When did it first start to affect you and  
28 your family day-to-day?---The actual Hernes Oak Fire  
29 affected us because we realised the enormity of the  
30 fire as it approached Morwell, and we were concerned 03.44PM  
31 about that. As far as the mine fire went, it was the

1 smoke and the ash that we started to become very wary  
2 of and concerned with and we followed that pretty  
3 closely.

4 You say in paragraph 6 that you noticed about two to three  
5 days after the fire started that there was visible 03.44PM  
6 smoke and then you make particular mention of the ash  
7 build up in the Sacred Heart Primary School playground.  
8 Your connection with that school is that your grandson  
9 attends there?---My grandson attends there. My wife  
10 and I also volunteer at Sacred Heart on Mondays and 03.44PM  
11 Wednesdays. We take part in a program called Rainbow  
12 Learning and we assist children who have learning and  
13 comprehension difficulties. We've had training and we  
14 have about 28 children on the program and we try and  
15 assist them to overcome these difficulties. 03.44PM

16 When you were attending Sacred Heart Primary School in that  
17 first week of the fire you noticed a visible build up  
18 of ash around the school. Can you describe what you  
19 saw?---Yes. There was quite a bit of a build-up,  
20 especially in the playground area. At some stage we 03.45PM  
21 noticed near the entrances the ash build up was  
22 probably about - excuse me using the old phrase - about  
23 an inch thick. When we were in the classrooms where we  
24 do the Rainbow Learning, the desks and everything were  
25 quite filthy, you could rub your finger across them and 03.45PM  
26 you would come up with a visible black dusty particle  
27 which was most unpleasant.

28 As you tell us in paragraph 8 of your statement, you were  
29 concerned about that. You attended both of the  
30 community meetings at Kernot Hall on the 14th and then 03.45PM  
31 on 18 February. Did you raise that concern at either

1 of those meetings?---I didn't actually raise the  
2 concern of the dust but we did raise what advice the  
3 schools were being given, and it was stated at the  
4 second meeting that the schools were being updated  
5 daily by email. When I turned around to the headmaster 03.46PM  
6 of the primary school who was in attendance, I said to  
7 him, "Is that true?" And he said, "No, I have had no  
8 updates by email from any authority. The only  
9 information I've been getting was from the Catholic  
10 diocese in Sale." 03.46PM

11 And Sacred Heart Primary School, as its name suggests, is  
12 part of the Catholic Education Office rather than a  
13 State school?---Correct, but it is open to anybody who  
14 wishes to attend.

15 You attended that meeting on 18 February. How many people 03.46PM  
16 approximately were there?---That's the second meeting?  
17 Yes, the second meeting?---Roughly around 500 people.

18 How was the meeting run?---For want of a better word, it was  
19 really a bit of a rabble because people were very  
20 concerned, people were very upset. There were a lot of 03.47PM  
21 people who couldn't get their questions answered, in  
22 inverted commas "in plain English", and there were  
23 questions that just remained unanswered.

24 The person who was running the meeting, with all  
25 due respect, didn't control it to start with and I took 03.47PM  
26 it upon myself at one stage to grab the microphone and,  
27 first of all say to the people of Morwell who were at  
28 the meeting that the people on stage were to be  
29 respected; whether we like their answers or not, they  
30 still deserve respect, and that a better way to - 03.47PM  
31 rather than questions being fired from all over the

1 hall, would be to line up, and the person in charge  
2 took that on and people were able to line up and ask  
3 their questions then. But there were a lot of  
4 questions asked that just remained unsolved and you  
5 could see as the meeting wore on that people were  
6 becoming rather upset.

03.48PM

7 Can you, and I'll forgive you if you can't, but can you give  
8 us an example of a question that was asked where there  
9 was not a real answer given?---Yes. One of the  
10 questions that was asked was whether, in the unused  
11 part of the mine the fire sprinkler system had been  
12 disconnected, and there were all sorts of answers given  
13 but there was nothing definitive with regards to that.  
14 That was one question that remained unanswered and  
15 caused a lot of angst.

03.48PM

03.48PM

16 You comment in paragraph 11 of your statement that there was  
17 no-one there from the Hazelwood Mine at that meeting on  
18 18 February?---Correct. There was nobody at the  
19 meeting on the 18th. There was nobody there at the  
20 meeting on the 14th from the Hazelwood Mine, and to my  
21 way of thinking and to a lot of people's way of  
22 thinking, that was totally unacceptable. As I said in  
23 my statement, the mine put an article in the - well, in  
24 the update in the local paper, the Latrobe Valley  
25 Express, they said the reason that they weren't there  
26 was because they thought that the meetings were only to  
27 address health issues. That, to me, was just a load of  
28 rubbish.

03.49PM

03.49PM

29 And if anyone could have answered that question about  
30 whether pipes had been removed, it was the mine  
31 operator, was it not?---I would have thought so, yes.

03.49PM

1 You might like to come back tomorrow morning, Mr Jackman,  
2 because we'll have some evidence about that very  
3 question.

4 MEMBER PETERING: Sorry, Ms Richards.

5 Could I just clarify, do you recall who did try and answer 03.49PM  
6 that question to the community, Mr Jackman?---The one  
7 about the pipes being disconnected? There was no  
8 answer.

9 So no one attempted to answer it either in the panel on  
10 stage?---No, not to my knowledge. Somebody got up off 03.50PM  
11 the floor and said that he had worked at the mine and  
12 categorically stated that they had been disconnected,  
13 but that was only what he said, there was no evidence  
14 to say it was correct.

15 Could you just clarify who did make up the panel? Who were 03.50PM  
16 the people that were providing answers, even if they  
17 couldn't provide them, but who were the  
18 agencies?---There were about eight on the panel from  
19 recollection. From memory, EPA, Latrobe City Council,  
20 CFA, DFA, the health - EPA, Health Organisation. 03.50PM  
21 That's about as much as I can remember.

22 MS RICHARDS: You go on to tell us that a day or so after  
23 that meeting your daughter went to the CFA community  
24 information van that was somewhere here in  
25 Morwell?---In George Street, Morwell, opposite Coles. 03.51PM

26 In George Street, Morwell, and asked for some advice. What  
27 was the advice she was given?---The advice she was  
28 given - the question that she asked the gentleman from  
29 the CFA was that, "If you had three children my age,  
30 would you evacuate from Morwell?" The answer he gave 03.51PM  
31 was, "Yes, I would."

1 As you've said in paragraph 14 of your statement, "If it  
2 were my family, I'd be out of here"?---Correct.  
3 Having received that advice, what did your daughter and her  
4 family decide to do?---We had a discussion between  
5 herself, her husband, my wife and myself and we decided 03.51PM  
6 that we would send my daughter and the three children  
7 to Perth, where one of my other daughters lives, she  
8 has a six-bedroom house so she was able to accommodate  
9 them. Because of the age of the twins, another  
10 accompanying adult had to be on the plane and that was 03.52PM  
11 my wife who accompanied them to Perth.  
12 You and your son-in-law stayed here in Morwell?---Correct.  
13 Three reasons why I stayed in Morwell: One was that there  
14 were reports of homes being broken into where people  
15 had evacuated and I didn't feel comfortable leaving 03.52PM  
16 Morwell. The second reason was that I thought, if  
17 there was a part evacuation from the side of Morwell  
18 that was really badly affected and I could offer my  
19 home to people to stay. The third was that, if there  
20 was a total evacuation of Morwell, then I would like to 03.52PM  
21 be here to try and help whoever I could in the  
22 evacuation of the town.  
23 Your wife and your daughter and your grandchildren left  
24 Morwell and travelled to Perth on  
25 23 February?---Correct. 03.53PM  
26 So that was two weeks after the fire had started?---Yes.  
27 As you've indicated in paragraph 16, that involved some cost  
28 for your family, even though there were only three  
29 actual airfares that you were paying for because the  
30 twins were sitting on laps. Your wife sought and was 03.53PM  
31 granted the \$500 relocation assistance?---I actually

1 did that while they were in Western Australia.  
2 What about your daughter, was she able to obtain any  
3 assistance to cover those costs?---At first her husband  
4 went to seek assistance and was knocked back.  
5 For what reason, do you know?---I don't know. When my 03.53PM  
6 daughter came back, she had phoned them from Western  
7 Australia to make an appointment to see them, she was  
8 again knocked back and she asked for that decision to  
9 be appealed, and it was, and she was granted \$500. The  
10 actual \$500 figure, I'm not too sure, was for 03.54PM  
11 relocation or something else, but she did receive \$500.  
12 I should be clear, the area where you and your wife live is  
13 north of Commercial Road, is it not?---East, Morwell  
14 East.  
15 So, not in the area that's been designated South 03.54PM  
16 Morwell?---No, that's correct.  
17 And your daughter and her family live in that same part of  
18 Morwell?---Yes, they live a kilometre from where we  
19 live.  
20 We might just get the map up and you can point it out if you 03.54PM  
21 don't mind, Mr Jackman, we have a map that we've had  
22 frequent recourse to. There's a ruler just  
23 there?---That is where I live, Tambo Crescent.  
24 Are you able to point to it on the large screen that's just  
25 above the screen that you're looking at?---On here? 03.55PM  
26 Yes, you'll need to stand up, thank you?---I live in Tambo  
27 Crescent there.  
28 CHAIRMAN: It runs between Bridle Road and Waratah?---And  
29 Waratah, that's correct, and my daughter lives in Noy  
30 Court which runs off Gabo Way. 03.55PM  
31 MS RICHARDS: And that's in an area of East Morwell known as



1 the Bridle Estate, is that correct?---That is correct.  
2 Can I ask you about the arrangements that were made for your  
3 grandson's schooling while he was away. His school  
4 relocated just before he left to go to Perth, did it  
5 not?---Yes, they relocated to a disused school in 03.55PM  
6 Newborough. They relocated there a day after  
7 Commercial Road Primary School was closed. To my way  
8 of thinking, it was far too late.  
9 That was at the end or close to the end of the second week  
10 of the fire?---Correct. The children were kept inside 03.56PM  
11 during that time. They weren't allowed out at morning  
12 play or lunchtime, they were kept indoors for the whole  
13 period.  
14 What was your observation of how well or how easy that was  
15 for the teachers to enforce?---It wasn't easy for the 03.56PM  
16 teachers but they managed it absolutely brilliantly.  
17 But your son didn't relocate, he went to Perth, so what  
18 arrangements were made for him with his school work  
19 when he was away?---My daughter approached the school  
20 and they were absolutely fantastic, they arranged for 03.56PM  
21 him to take homework and things like that to do while  
22 he was in Perth.  
23 At around this same time you heard on the radio that there  
24 was a Community Health Assessment Centre that had been  
25 set up?---Yes, this is one of the things that I was 03.57PM  
26 really annoyed at. One morning on Gold 1242, which is  
27 the local radio station, they announced that there was  
28 free health checks in Morwell and that's all the  
29 information they gave. I rang the Latrobe City Council  
30 to find out at around about 20 to 9 that morning, and 03.57PM  
31 the girl said she was unaware of anything like that.

1 She put me on hold. She then came back and said, yes,  
2 she thinks that that is the case and that those tests  
3 were being conducted at the Mid Valley Shopping Centre  
4 at Katies entrance. I took that to be that the tests  
5 were actually at Mid Valley Shopping Centre.

03.57PM

6 I went there where Katies store was and there was  
7 nothing. I had a look around, couldn't see anything.  
8 I went round to Bunnings which is in the Mid Valley  
9 Shopping Centre as well, the complex there, looking for  
10 one of the information vans, couldn't see anything so I  
11 ended up going up to Ambulance Victoria to their  
12 headquarters and there was a sign saying that, yes, the  
13 tests were being conducted in Saskia Way. Saskia Way  
14 is actually opposite the Katies entrance to Mid Valley  
15 Shopping Centre.

03.58PM

03.58PM

16 When I got there, there was no-one there and I was  
17 totally surprised and I said to the girls, I said, "I  
18 thought there'd be a queue of people." They said to  
19 me, "So did we but apparently nobody knows we're here."

20 I had the test, which proved to be okay; the only  
21 thing they said was my blood pressure was up a little  
22 bit, and I said, "Well, I'm not surprised."

03.58PM

23 We've had other evidence that the whereabouts of the Health  
24 Assessment Centre was more precisely advertised later  
25 and it was well attended in the weeks that  
26 followed?---Eventually it was, but the actual place  
27 where it was is pretty well hidden, and you can't see  
28 it from the road. Unless you know exactly where it is  
29 or it's signposted, you've got no hope.

03.58PM

30 Your wife and your daughter and grandchildren returned to  
31 Morwell on 16 March, as it turns out the day before the

03.59PM

1 Chief Health Officer lifted her temporary relocation  
2 advice. Why did they return on the 16th? Had you  
3 given the all clear?---We hadn't given the all clear,  
4 but unfortunately the children, not so much the twins,  
5 but my grandson and my wife were missing dad terribly. 03.59PM  
6 Dad wasn't coping very well at all. As I've previously  
7 stated, he's not well and post-traumatic stress  
8 disorder is something that, with all the stresses of  
9 the fire and family being away, he could have well done  
10 without, so we made the decision for them to return. 04.00PM  
11 And your grandson was able to attend the last week of  
12 school?---Correct.  
13 At the Newborough site?---Correct. The one thing that I  
14 would like to add there and there wasn't really much of  
15 a chance to do anything, but when the relocation was 04.00PM  
16 done the kids still had to go to Sacred Heart Primary  
17 School every morning to be picked up by the bus, taken  
18 to Newborough and returned to the same place again in  
19 the afternoon, but unfortunately there was just no way  
20 around that. It was unfortunate. 04.00PM  
21 Was it possible for them, if their patients were able to  
22 drive them, to go straight to the Newborough  
23 school?---Parents could do that if they wished.  
24 I'd just like to ask you about the clean up, first the clean  
25 up at the school, when was that done?---The date of the 04.00PM  
26 clean up was during the school holidays and to my  
27 knowledge it was done by a private contractor and they  
28 did an absolutely fantastic job. They had to clean  
29 everything from school books to computers, desks,  
30 floors, and when we eventually returned to the school 04.01PM  
31 you could have eaten your breakfast off the floor it

1 was that clean. The playground was great, they did a  
2 marvellous job.

3 What about in your own home, what's involved in the clean up  
4 there?---Even though we lived on that side of the  
5 railway, our house was just filthy and fortunately I'm 04.01PM  
6 fairly domesticated and was able to do a lot of  
7 cleaning, but every time you cleaned it a couple of  
8 days later if the wind was blowing in the wrong  
9 direction the place was filthy.

10 I contacted my insurance company with regards to 04.01PM  
11 cleaning, I'm still waiting to hear back, but if they  
12 don't come to the party then I will just pay and have  
13 the house professionally cleaned. When I say the  
14 house, it's more the roof cavity that I'm concerned  
15 about which might be full of dust. 04.02PM

16 Were you able to avail yourself of the clean up assistance  
17 package that the council has been delivering?---No, I  
18 didn't apply for that; I would have much - I much  
19 rather prefer to do it myself.

20 You make a number of observations under the heading "other 04.02PM  
21 comments" and there's just one that I'd like to ask you  
22 to elaborate on. You say at paragraph 30 that, "The  
23 management of the mine fire in the community has  
24 resulted in a division." Why is that?---Volunteering  
25 for the RSL, I spent 32 hours sitting at Mid Valley 04.02PM  
26 Shopping Centre at a table for the Anzac Day appeal,

27 and during that time I spoke to a lot of people and it  
28 seemed to me that the community was split into two; one  
29 who lived on one side of the railway line and one who  
30 lived on the other side, and the reason for that was, 04.02PM  
31 they felt that some people were getting benefits and

1 help and others weren't depending on where you lived  
2 and also if you had a healthcare card et cetera,  
3 et cetera. To my way of thinking, there shouldn't have  
4 been any of that. If people needed help, then they  
5 should have been given it, and it shouldn't have  
6 mattered where they lived or what circumstances they  
7 were experiencing, and I think that would have gone a  
8 long way to just binding the community together.

04.03PM

9 Thank you, Mr Jackman, those are the questions I had for  
10 you. Do Members of the Board have any questions?

04.03PM

11 DR WILSON: Nothing from us, thank you.

12 MEMBER CATFORD: Mr Jackman, thank you very much for your  
13 testimony. Did anyone explain the division around the  
14 railway line? Did the community understand the reasons  
15 at all? Was any information given about why it  
16 occurred?---Not to my knowledge. Can I just add a  
17 couple of things? First of all, I'd like to thank the  
18 Board for the opportunity to come here and give my  
19 statement.

04.03PM

20 Secondly, I would hope that the recommendations of  
21 the Board are made public to the people of Morwell and  
22 the general population as well. And thirdly, those  
23 recommendations that are given to the Government I hope  
24 are made public and I hope the Government act on them  
25 as quickly as possible. Thank you.

04.04PM

26 MS RICHARDS: Thank you, Mr Jackman. May Mr Jackman be  
27 excused?

28 CHAIRMAN: Thank you, Mr Jackman.

29 <(THE WITNESS WITHDREW)

30 MS RICHARDS: The last witness for today is Lance King who  
31 really has been waiting patiently this afternoon.

04.04PM

1 We'll see if we can finish Mr King's evidence today.  
2 The only person who's indicated a desire to  
3 cross-examine him is Ms Doyle for GDF Suez who says  
4 she'll be only 10 minutes.

5 <LANCE PHILIP KING, affirmed and examined: 04.05PM

6 MS RICHARDS: Good afternoon, Mr King. Can you please state  
7 again your full name and your work address?---Lance  
8 Philip King, 141 Commercial Road in Morwell.

9 You are the Coordinator of Emergency Management at Latrobe  
10 City Council?---That's correct. 04.06PM

11 That's your correct title?---Yes.

12 You've made a statement to the Inquiry which has two  
13 attachments and 56 paragraphs. Have you re-read that  
14 statement recently?---Yes, I have.

15 Any corrections that you would like to make?---Yes, there 04.06PM  
16 is.

17 Please take us to the paragraphs you'd like to  
18 correct?---There's a section in there that identifies  
19 the Municipal Emergency Response Coordinator, and it's  
20 stated that it's Brendan Scully. 04.06PM

21 Which paragraph are you looking at?---I'll have to find it.  
22 I haven't actually marked it.

23 MEMBER PETERING: Page 3, paragraph 6.5, you might like to  
24 check there, Mr King?---Yes, that's incorrect. Brendan  
25 Scully isn't currently the MERC or wasn't the MERC at 04.06PM  
26 the time of the mine fire. I've got a mental blank now  
27 and I've forgotten the actual person's name but I can  
28 correct that later on if you want.

29 MS RICHARDS: All right. When you do remember, and I hope  
30 you do in the course of your evidence, please let me 04.07PM  
31 know. And the MERC of course is not a luxury car, it's

1 the Municipal Emergency Response Coordinator for the  
2 Latrobe municipality?---That's correct.  
3 And that's a position held by - - -?---Cameron Blair it is.  
4 Cameron Blair, you knew it would come to you. I'll claim  
5 credit for the weak joke. And he is an officer with 04.07PM  
6 the Victoria Police?---That's right, he's a senior  
7 sergeant in Moe.  
8 Were there any other corrections that you wish to  
9 make?---No.  
10 With that correction, is your statement true and 04.07PM  
11 correct?---Yes.  
12 I tender that, if I could.  
13  
14 #EXHIBIT 72 - Statement of Lance King.  
15 04.08PM  
16 MS RICHARDS: A little about yourself first, Mr King. This  
17 is your second stint working with the council in a fire  
18 prevention and emergency response role; is that  
19 correct?---That's correct.  
20 You've been in your current role since 2011?---Yes. 04.08PM  
21 If we go back to the beginning of your working life, you  
22 spent about 25 years employed in a whole range of  
23 different capacities in the power industry in the  
24 Latrobe Valley?---That's correct.  
25 Ending in 2000, and then for a period of about seven years 04.08PM  
26 from 2000-2007 you were employed by the council. You  
27 started there in the role of the Municipal Fire  
28 Prevention Officer?---Yes.  
29 After a couple of years you were given another hat to wear,  
30 the Municipal Emergency Response Officer?---Resource 04.08PM  
31 Officer.

1 Resource Officer?---That's correct.

2 Sorry, it says in your statement "Response Officer"?---The  
3 correct terminology is, the MERO is the Resource  
4 Officer.

5 The Municipal Fire Prevention Officer is a role that's 04.09PM  
6 established under the Country Fire Authority Act, is it  
7 not?---Yes.

8 And the Municipal Emergency Resource Officer or Response  
9 Office, or the MERO as it's often referred to, is a  
10 role that's established under the Emergency Management 04.09PM  
11 Act?---That's correct.

12 One has responsibility for fire prevention, the other's got  
13 a much broader emergency response or resource  
14 role?---Yes.

15 In light of those roles you undertook some further 04.09PM  
16 study?---That's correct.

17 What was that?---That was to undertake an Advanced Diploma  
18 in emergency management, Public Safety at EMA.

19 That's the school at Mount Macedon?---That's correct.

20 Soon to be former school at Mount Macedon?---Soon to be 04.09PM  
21 former school, yes.

22 You then had a period working for the Municipal Association  
23 of Victoria, you were initially seconded in July 2008  
24 and you're role there was as Local Government Liaison  
25 Officer, Emergency Management?---Yes. 04.10PM

26 You picked your time well because you were in that role  
27 after Black Saturday, at the time of Black Saturday and  
28 were involved for the next several years in working on  
29 and then implementing recommendations of the Bushfire  
30 Royal Commission?---Yes. 04.10PM

31 In addition to all of that you have a long association with



1 the Country Fire Authority?---That's correct, yes.  
2 Tell us a little about that?---I started with the CFA as a  
3 junior probably back in 1977, and then, as a result of  
4 that, I worked through the system, travelled all over  
5 the State and the country as a result working at fires 04.10PM  
6 at different levels. I became an officer of the  
7 brigade, eventually a Captain, and then from there on I  
8 also became a Group Officer and currently I've been  
9 there for about 37 and a half years and a life member  
10 of CFA as well. 04.11PM

11 And that's all in a volunteer capacity?---That's correct.  
12 You're currently group officer of the Narracan group of  
13 brigades which includes your home brigade, Yallourn  
14 North?---That's correct, yes.

15 Can I move now to your employment at the council and ask you 04.11PM  
16 to explain in a little more detail the two statutory  
17 hats that you wear in your role as Coordinator of  
18 Emergency Management, because you continue to be both  
19 the MERO and the Municipal Fire Prevention Officer for  
20 the council?---That's right. 04.11PM

21 Can you start by explaining what a MERO is and what you  
22 do?---If we go to the other side first, go to the  
23 Municipal Fire Prevention Officer.

24 Okay?---Which is a statutory role as you explained under the  
25 CFA Act 1958. I think it's s.96 of the Act that 04.12PM  
26 appoints that role. In that role I have a number of  
27 powers in relation to inspection of properties all year  
28 round actually, but particularly prior to the fire  
29 season we - myself and a couple of delegated authorised  
30 people that I have the authority to delegate to assist 04.12PM  
31 as assistant Municipal Fire Prevention Officers, we

1 look at fire risk across the municipality.

2 A key part of that fire risk is fire prevention  
3 planning previously, which has now morphed into  
4 municipal fire management planning. We're part of a  
5 committee and work on that committee to look at fire 04.12PM  
6 management issues again across the municipal footprint.  
7 We'll come to those committees and the plans that they have  
8 developed in a little more detail later. But one of  
9 the things that a Municipal Fire Prevention Officer  
10 does is issue Fire Prevention Notices?---Correct. 04.13PM  
11 Which are very much directed at cutting grass - - -?---Fine  
12 fuels, the reduction of fine fuels.  
13 The reduction of fine fuels around the municipality on  
14 private property?---Yes. We've got a dual program that  
15 we started for the first time this year in Latrobe City 04.13PM  
16 where we have, using the Victorian Fire Risk Register  
17 we look at the high and low risk areas. The high risk  
18 areas are a proactive inspection program where we drive  
19 up and down all the rural high risk areas as identified  
20 in that VFRO mapping, and issue notices to those 04.13PM  
21 property owners that live in those areas that are  
22 deemed to be of a fire risk by that inspecting officer.  
23 Can I just stop you there and ask you about the Victorian  
24 Fire Risk Register. What is it?---It's a register of  
25 risks cross the municipality that the CFA have worked 04.14PM  
26 with all agencies and I suppose groups and industry to  
27 identify the level of fire risk from a whole range of  
28 areas; economic impact, social impact, there's  
29 historical, there's cultural impacts as well. It looks  
30 at those layers and maps out the risk profile areas for 04.14PM  
31 those layers across the municipality, and not only

1 Latrobe City but for the whole State, but it's worked  
2 at at a municipal footprint area.

3 So it's a register that's maintained by the CFA?---That's  
4 correct, yes.

5 As the agency responsible, and it takes the form of a map; 04.15PM  
6 is that correct?---That's one of the forms it takes. I  
7 suppose it gives you the view. If you look at the map  
8 you can see where the high risk areas are on that map;  
9 where looking at text wouldn't give you the sort of  
10 holistic overview. 04.15PM

11 The spatial appreciation of where the risk is?---That's  
12 right.

13 And then you can go to a particular area and the register  
14 contains information about the nature of the risk and  
15 the treatments supplied to that risk?---That's right, 04.15PM  
16 yes.

17 As we'll see, that's a tool that's used in municipal fire  
18 management planning?---Correct.

19 I'm not going to let you off the hook, you need to explain  
20 what a MERO is and how that relates to your work as a 04.15PM  
21 Municipal Fire Prevention Officer?---The MERO is the  
22 Municipal Emergency Resource Officer under the  
23 Emergency Management Act 1986. That job is to identify  
24 resources for agencies during emergencies - council  
25 resources, not only council resources but contracted 04.16PM  
26 resources and available resources that we might have  
27 linkages to that can assist agencies in times of need.

28 If, for instance, CFA ran out of fire trucks and  
29 we knew some private fire trucks, we could put that  
30 linkage in place to assist in relation to that. 04.16PM

31 A particular responsibility which you fulfilled on

1 9 February is opening or arranging for the  
2 establishment of and, if necessary, opening an  
3 emergency relief centre?---That's correct.

4 And you did that on 9 February at both Moe and  
5 Traralgon?---Correct.

04.16PM

6 As part of your role as Coordinator of Emergency Management,  
7 you get to go to a number of committee meetings?---For  
8 our current purposes those are the Municipal Emergency  
9 Management Committee?---Yes.

10 And also the Municipal Fire Management Committee?---That's  
11 correct, yes.

04.17PM

12 Which can also be known as the Municipal Fire Prevention  
13 Committee, but it's the same group of people, is that  
14 right?---No.

15 It's not?---So the Municipal Fire Management Planning  
16 Committee replaces the Municipal Fire Prevention  
17 Planning Committee under the Integrated Fire Management  
18 Model. As of late 2013 we dissolved the Municipal Fire  
19 Prevention Planning Committee and passed all our  
20 legislative responsibilities through a formal motion of  
21 that committee to the Municipal Fire Management  
22 Planning Committee which is deemed to be a more  
23 strategic planning committee than the Municipal Fire  
24 Prevention Planning Committee.

04.17PM

25 So, the Municipal Fire Management Planning  
26 Committee has a more senior level focus from CFA, where  
27 the Fire Prevention Committee would have members from  
28 each local brigade across Latrobe City, so there's a  
29 number of different groups, there's Morwell Group,  
30 Narracan Group, Heyfield Group, Traralgon Group that  
31 used to have volunteer reps who would sit on that

04.18PM

04.18PM

1 committee, so there would be up to at least 30  
2 volunteers that sit on that committee.

3 That's a fairly large committee. You've listed the  
4 membership of the Municipal Fire Prevention  
5 Committee?---Fire Management Planning Committee. 04.18PM

6 No, the Municipal Fire Prevention Committee in 2011 at  
7 paragraph 11 of your statement. We'll just have a look  
8 at that because it does identify a large number of  
9 people who might attend the committee. As well as all  
10 of the CFA brigades?---That's right, yes, sorry, yes. 04.19PM

11 And the Regional Community Safety Manager and other CFA  
12 representatives, there are a number of other people who  
13 you list as being on that committee. One of those at  
14 11.7 at the top of the next page is a representative  
15 from International Power Hazelwood. Are you able to 04.19PM  
16 recall who that was?---That was a fair while ago, and  
17 that was the first time that I was working in Latrobe  
18 City, and I've tried to recall the name of the  
19 gentleman, but unfortunately I can't. I know the  
20 current gentleman that sits on CGEIC but he's since 04.19PM  
21 left International Power Hazelwood from my  
22 understanding, the one that used to sit on the  
23 committee.

24 So you can't remember his name?---No.

25 Before I get into the Municipal Fire Prevention Committee 04.20PM  
26 and the former Municipal Fire Prevention Plan I'd just  
27 like to ask you a little about the council's Municipal  
28 Emergency Management Plan which you have attached as  
29 attachment LK-1 to your statement. This was produced  
30 by the Municipal Emergency Management Committee 04.20PM  
31 in November 2011. Is that correct?---Yes.

1 We're getting familiar with the themes of prevention,  
2 response and recovery in emergency management. I'd  
3 like to take you to page 28 which deals with the  
4 prevention arrangements. There's a statement at the  
5 top there about the role of the municipality, "Latrobe 04.20PM  
6 City recognises it has a key role in prevention and  
7 mitigation activities to reduce the risk or minimise  
8 the effects of emergencies that may occur in the area."  
9 Then there's reference to, "Council's enforcement and  
10 continuing reviewing of existing policies and land 04.21PM  
11 use." We heard from Mr Pullman yesterday, "Building  
12 codes and regulations and urban planning, along with  
13 the various agencies responsible for prevention  
14 activities throughout the community, combine to ensure  
15 that all measures possible are addressed to reduce the 04.21PM  
16 likelihood of an emergency."

17 Then there are some quotations about risk  
18 management and then there's an identification at the  
19 bottom of the page about a risk review or risk analysis  
20 that was done in the preparation of the plan. I'd like 04.21PM  
21 to ask you about the outcome of that risk analysis.  
22 There's a list of identified emergencies in Appendix E  
23 which starts at page 56 of the document, but the part  
24 that I'm interested in is on page 59. You have a risk  
25 rating matrix there where you have, on the vertical 04.22PM  
26 axis, a rating of the likelihood of a hazard  
27 eventuating, and along the horizontal axis in the pink  
28 at the top you have a rating of the consequences and if  
29 you combine those two you can identify whether the risk  
30 is low, medium, high or extreme. 04.22PM

31 There are two risk assessments that appear in the

1 table at the bottom of that page; one is fire which  
2 understandably, in view of this municipality's history,  
3 is rated as extreme, and then at the top of the next  
4 page coal fires are rated as a high risk rather than an  
5 extreme risk. Are you able to explain the distinction  
6 between the two?---In relation to the risk?

04.23PM

7 Yes?---We undertake this process from a committee point of  
8 view where we have a risk sub-committee that informs  
9 our Emergency Management Planning Committee, and so,  
10 looking at the likelihood and consequence of previous  
11 fires up to 2011 when this plan was put in place, then  
12 we would have deemed at that committee at that time  
13 that for coal fires, the likelihood and the  
14 consequences, up until that stage coal fires because of  
15 the risk mitigation treatments that have been put in  
16 place as well, that coal fires would probably be at a  
17 high.

04.23PM

04.24PM

18 This is coal fires, including a fire in an open cut  
19 mine?---Yes. It's just coal as in general. It could  
20 be in a power station too, it could be in a bunker,  
21 places like that, where they have sprinkler systems  
22 built in place, conveyor belts where they have coal on  
23 conveyor belts that can catch fire as well, so there's  
24 a whole range of areas in the mining process where coal  
25 sits, as well as PF leaks in power stations that can  
26 catch fire. So, in relation to that specific issue at  
27 that time when we did that risk assessment, that what  
28 was high was what we deemed as the risk profile for  
29 that.

04.24PM

04.24PM

30 As we'll see later, the Municipal Fire Management Plan  
31 that's been produced more recently rates the risk of

04.25PM

1 fire in a coal mine as extreme?---That's correct.  
2 So that's something that's changed over that two year  
3 period?---Yes.  
4 Then tantalisingly underneath that table the risk action  
5 plans for those two risks, fire and coal fire, are for 04.25PM  
6 restricted distribution and were not included in the  
7 attachment. Would it be possible for you to provide  
8 the Inquiry with the risk action plan that was  
9 developed in 2011 for coal fires?---Yes, we should have  
10 that, would be able to send that through. 04.25PM  
11 MEMBER PETERING: Mr King, that's the residual risk matrix,  
12 is that right? I thought I heard you say there that  
13 you took into account certain treatments?---We would  
14 have taken, at that time when we were looking at those  
15 risks, no doubt we would have looked, and that would be 04.26PM  
16 in the risk action plans, the old ones that we have  
17 back then; because currently we're undertaking a new  
18 risk review as part of the whole process of the  
19 re-auditing of the update of this plan, which is called  
20 the CERA Process, Community Emergency Risk Assessment, 04.26PM  
21 in conjunction with SES who audits that process.  
22 MS RICHARDS: Moving now to the Municipal Fire Prevention  
23 Plan that was in place until the middle of last year,  
24 so the previous version, you've attached this as  
25 Attachment 2 to your statement. I don't think I need 04.26PM  
26 to take you to it because you've actually quoted quite  
27 extensively from it in the body of your statement. The  
28 2011 plan lists at 11.3, and I'm looking now at  
29 paragraph 13, a number of authorities and organisations  
30 that had their own Fire Management Plans which had been 04.27PM  
31 provided to the council. If we go to the document and



1 look at it we would not find International Power  
2 Hazelwood as it was then known as one of those  
3 authorities?---That provided a plan?  
4 That had provided a plan to the council?---They may have  
5 provided input; I couldn't say with my hand on my 04.27PM  
6 heart - - -  
7 Let's go and have a look at the document then. It's  
8 attachment LK-2 to your statement, looking at part 11  
9 on page 21 there's a section headed, "Current Fire  
10 Prevention Plans." The first section is the council, 04.28PM  
11 the second section is the Department of Sustainability  
12 and Environment, and then the next section over the  
13 page, 11.3, "Other plans". That lists there a number  
14 of authorities that have developed their own Fire  
15 Management Plans, which includes International Power 04.28PM  
16 Loy Yang but there's no mention in that list of  
17 Hazelwood, is there?---That's right, there's not.  
18 At section 24 on page 35 of the plan there's a section  
19 headed, "Other authorities and organisations", if we  
20 can go to that at the bottom of the page. There's an 04.28PM  
21 acknowledgment there of a significant change in  
22 ownership of land that was previously under public  
23 ownership and is now privately owned and controlled,  
24 and that has made the task of municipal fire prevention  
25 planning more complex, has it not, because there are 04.29PM  
26 now more organisations who need to be involved and  
27 contacted?---That's correct, but also it's turned from  
28 what's deemed as public land to private land where that  
29 now comes under CFA requirements. The council can't,  
30 or the MFBO can't issue a Fire Prevention Notice on 04.29PM  
31 public land.

1 So it's expanded your jurisdiction in that way?---That's  
2 right, yes.

3 There's a recommendation or a series of recommendations that  
4 are made on the following page. There's reference to  
5 an Appendix J which lists the authorities and 04.30PM  
6 organisations that are seen as partners in the efforts  
7 to prevent any fire occurring, and there are  
8 recommendations made arising from Appendix J that, "All  
9 non-Government organisations identified in that  
10 appendix be requested to develop and maintain a Fire 04.30PM  
11 Protection Plan; that those fire protection plans  
12 should be to the satisfaction of the CFA and  
13 acknowledged by the Municipal Fire Prevention  
14 Committee; the CFA should keep the MFPC informed as to  
15 the current situation regarding those plans; and all 04.30PM  
16 Fire Protection Plans should be reviewed in accordance  
17 with s.12 of the Municipal Fire Prevention Plan." What  
18 was the thinking behind that recommendation?---The  
19 thinking behind that recommendation is just to at the  
20 time see that there was plans with these organisations 04.31PM  
21 and large property owners that were in place. Now, we  
22 have no authority in relation to that or to either make  
23 these plans be put in place, but we can ask if there  
24 are any in place for them.

25 If we go to Appendix J we would find International Power or 04.31PM  
26 GDF Suez, as you call it International Power GD Suez,  
27 in relation to Hazelwood that's listed in  
28 Appendix J?---That's right.

29 Can you tell us whether this recommendation was  
30 implemented?---I can probably say that International 04.31PM  
31 Power at that time wasn't approached and asked for any

1 plan, so it wasn't implemented at that stage, and still  
2 hasn't been from my knowledge.

3 So it's one thing to put this recommendation into a  
4 Municipal Fire Prevention Plan, but someone has to go  
5 out there and implement it. Was that person 04.32PM  
6 you?---That person would be me, yes.

7 Did you work through the organisations that are listed in  
8 Appendix J and ask them to provide their Fire  
9 Management Plans or Fire Prevention Plans?---I didn't  
10 have to, they give them to me. I have plans for Loy 04.32PM  
11 Yang, for Yallourn, for the Australian Paper; the only  
12 one I haven't got is the one for International Power at  
13 that time.

14 At that time, but you do acknowledge that you didn't take  
15 the step of alerting them to this 04.32PM  
16 recommendation - - -?---That's right, yes.

17 - - - and asking them to provide their plan. Why was that,  
18 why did you not do that?---I'm not sure why that  
19 wasn't - why that didn't happen.

20 Do you have a contact at Hazelwood?---Well, through CGEIG, 04.33PM  
21 which is the Central Gippsland Essential Industries  
22 Group, I know Alan Roach who sits on that committee, I  
23 probably could have approached him and asked for a  
24 plan, but that hasn't been done as yet.

25 I see the time. I will be 15-20 minutes longer with 04.33PM  
26 Mr King.

27 CHAIRMAN: We'll continue.

28 MS RICHARDS: And Ms Doyle has 10 minutes as well, but we  
29 should be able to finish by 5, but I'll do my best.

30 That plan that we've just been looking at has been replaced 04.34PM  
31 nearly 12 months ago now by the Latrobe City Fire

1 Management Plan?---Correct.

2 This is a different more Strategic Fire Management Plan than  
3 the Municipal Fire Prevention Plan and is the product  
4 of a Municipal Fire Management Planning  
5 Committee?---Which the council is a partner to. 04.34PM

6 You tell us in paragraph 19 of your statement who the  
7 committee members are of the Municipal Fire Management  
8 Planning Committee. So it's chaired by Mick Williams  
9 who is the Sergeant of Police?---Sergeant of Police,  
10 yes. 04.34PM

11 Based in Moe?---Yes.

12 David Johnson, the Integrated Fire Planning Manager. Which  
13 organisation or agency is Mr Johnson attached  
14 to?---That's an interesting - I suppose it come under  
15 the Fire Service's Commissioner's office in the end. 04.35PM

16 It was sort of attached to CFA in a non-formal type of  
17 sense, and he sort of worked in isolation from CFA but  
18 worked out of their offices in Sale from my  
19 understanding.

20 That group or that team?---Integrated fire management 04.35PM  
21 planning was what's informed and led the change from  
22 municipal fire prevention planning to municipal fire  
23 management planning. That transition had helped that  
24 transition period over to that planning process.

25 It was hosted by or auspiced by the CFA, but no longer; is 04.35PM  
26 that correct?---I think the program - like Integrated  
27 Fire Management Planning is closing down currently, my  
28 understanding, and some of those people are being  
29 brought back in under EMV.

30 Emergency Management Victoria?---Yes. 04.36PM

31 So this is the role, the agency, that Mr Lapsley's about to

1 lead starting next month?---That's correct.

2 So a number of representatives from the CFA, although less  
3 than for the Municipal Fire Management Planning  
4 Committee?---That's correct.

5 Representatives from DEPI, Martin Krygsman from Hancock 04.36PM  
6 Victoria Plantations. Is there anyone from the Central  
7 Gippsland Essential Industries Group who sits on this  
8 committee?---Yes, it was one of the concerns that Mark  
9 Nash from Australian Energy raised, that they wanted a  
10 representative on the committee, so there was one of 04.37PM  
11 the members from that committee, from CGEIG, that sits  
12 on here. Of late, not on a regular basis, but they  
13 would continue to get invites to come along to the  
14 meeting.

15 So although not a formal member of the committee, someone 04.37PM  
16 from CGEIG has been invited to attend and has  
17 attended?---Yes.

18 Is that Mr Demetrios?---Yes.

19 Who is from Loy Yang?---Loy Yang, yes.

20 So, no direct representation of Hazelwood on this 04.37PM  
21 committee?---No.

22 Their participation is through CGEIG?---Yes.

23 Can I ask you, before we go to the plan, to explain a little  
24 about Integrated Fire Management Planning?---Integrated  
25 Fire Management Planning has been a process that has 04.37PM  
26 been undertaken over a number of years to make Fire  
27 Prevention Planning transform into Fire Management  
28 Planning at a more strategic level, looking at more  
29 in-depth at risks associated with fire and using the  
30 tools that were developed by CFA in relation to the 04.38PM  
31 Victoria Fire Risk Register to inform the new Fire

1 Management Planning process.

2 That Victorian Fire Risk Register process involved  
3 an all-agencies approach and, as I said before,  
4 critical infrastructure and businesses so that they  
5 could identify their fire risks and their priorities 04.38PM  
6 through that planning process as well.

7 So where the old fire prevention process was specifically  
8 looking at fire prevention issues, this has gone for a  
9 more holistic approach right across fire management.  
10 You will even see in the current Fire Management Plan 04.39PM  
11 the categorisation of transmission lines and other  
12 smaller businesses that may have impact, looking at  
13 strategic access routes such as roads that may have a  
14 national, State or municipal risk profile as part of  
15 that, and there was some risk profiling developed for 04.39PM  
16 the category of those roads as well, so it was a more  
17 in-depth, more strategic planning process that made the  
18 plan more rigorous behind the scenes, I suppose.

19 You mentioned a while ago, and you say again at paragraph 31  
20 of your statement, that council is a partner in 04.40PM  
21 Integrated Fire Management Planning, and we see that in  
22 Part 6A of the Emergency Management Manual Victoria  
23 that sets out guidelines for Municipal Fire Management  
24 Planning.

25 You emphasise the word "partner", that's obviously 04.40PM  
26 significant to you?---Well, councils aren't the experts  
27 in fire. We're not fire managers. From a council  
28 perspective and as a CFA volunteer I have some  
29 knowledge of fire in relation to - because I've worked  
30 in that area, but other officers in similar positions 04.40PM  
31 to mine across the State may not have the benefit of

1 that additional expertise, you might say. So, from a  
2 council perspective, again, we're a partner process, we  
3 do not lead any of the risks associated with emergency  
4 management, we support the agencies that do have lead  
5 roles with those risks. 04.41PM

6 You make the point that there's no agency that has primary  
7 responsibility for progressing Municipal Fire  
8 Management Planning, but in your view it should be the  
9 CFA in Latrobe at least?---That's correct, yes.

10 There's also an issue of the support that has been provided 04.41PM  
11 to the community by the State Fire Management Planning  
12 support team not having been available for  
13 approximately 12 months. How has that come  
14 about?---That's come about because, as per s.6(a) as  
15 you've highlighted before of the EMMV, the Emergency 04.41PM  
16 Management Manual Victoria, and in the Act, that none  
17 of the agencies on the committee are prepared to take  
18 on that role, but that's been resolved.

19 It has been resolved, I'm glad to hear that. How has it  
20 been resolved?---I'm doing the job. 04.42PM

21 You're doing the job?---Yes.

22 Everyone looked longest at you. That resolves it for the  
23 future, but up to this point who, if anyone, has been  
24 responsible for implementing the plan?---There's no one  
25 responsible for implementing the plan currently through 04.42PM  
26 the process.

27 So now that you've put up your hand to be the primary person  
28 in the municipality for progressing Municipal Fire  
29 Management Planning, does that extent to implementing  
30 the plan from time to time?---Council doesn't have the 04.42PM  
31 Authority to implement a Fire Management Plan. As I

1 said before, we're partner to the process; that  
2 discussion will have to be had through the committee  
3 and again, we'd ask guidance from the Regional  
4 Strategic Fire Management Planning Committee about the  
5 implementation of any actions that are required from  
6 that plan.

04.43PM

7 It might be a good time now to look at the plan. This was  
8 tendered yesterday as exhibit 63. We see on the front  
9 cover that it was approved in late June last year, so  
10 it's coming up to its first birthday in a couple of  
11 weeks time. For current purposes, the part of that  
12 that we need to go to is Attachment A(1) which is a  
13 Register of Assets At Risk. This has been prepared  
14 using the Victorian Fire Risk Register that you  
15 referred to earlier in your evidence?---That's correct.

04.43PM

04.44PM

16 There's quite a list of assets. If we turn to page 50 we  
17 find the second-bottom cell, Hazelwood Power Precinct,  
18 Morwell. This table serves a number of purposes,  
19 doesn't it? It identifies the risk, it rates the risk,  
20 and we see about two-thirds of the way across the  
21 page that the risk of fire in the Hazelwood Power  
22 Precinct at Morwell is rated as extreme. There's an  
23 identification of the likely scenario, there's a  
24 listing of existing treatments that are applied and,  
25 then over on the right-hand side there is a separate  
26 section of treatment recommendations.

04.44PM

04.45PM

27 This is what I want to ask you about when it comes  
28 to implementation. The treatment recommendation that's  
29 listed there is, "Land use planning considerations for  
30 surrounding land use." How does that get off the  
31 page in the plan and be implemented as an actual

04.45PM



1 treatment that reduces the fire risk?---That plan's for  
2 future land use planning processes, so one of the  
3 things that we would talk to our planners about is that  
4 they would need to look at future considerations in  
5 relation to that. So, if they liaise with me or spoke 04.46PM  
6 to me about any fire considerations around the mine,  
7 say for instance any future residential developments  
8 for instance, just for an example, they might come and  
9 say, well, this is being planned, have you got any  
10 comment to say, and then we would bring the plan out 04.46PM  
11 and say, well, have you considered this?

12 But for them to do that, they'd have to know - - -?---That's  
13 correct, yes.

14 - - - that this is a recommended treatment, would they  
15 not?---Yes. 04.46PM

16 Mr Pullman, who's the Strategic Planning Coordinator at  
17 Latrobe City, gave evidence yesterday afternoon, and  
18 his evidence was that he didn't know that that was in  
19 the plan until I showed it to him yesterday afternoon.  
20 How can that be?---As I said before, this plan is put 04.47PM  
21 together by a committee of people, and at this stage  
22 that committee have not probably, and I haven't  
23 forwarded it - it's on our web page, so there's a bit  
24 of a disconnect there in relation to future planning,  
25 but it is future planning that they're talking about 04.47PM  
26 here so - - -

27 To date nobody has worked through the recommended treatments  
28 column and said - - -?---Correct.

29 - - - all right, I better tell agency X or person Y who  
30 works in the same building as me, nobody has actually 04.47PM  
31 gone through and implemented the plan in that sense,

1           have they?---That's right.

2           Is that going to occur in future?---I can't answer that.

3           Because we don't know who's responsible for implementing the

4           plan?---That's correct.

5           Are you not the obvious person who implement the plan in the           04.47PM

6           municipality?---As I said, we can't tell other agencies

7           to implement what's in the plan; we have no authority

8           to do that.

9           What needs to change for you to have that authority?---We

10          would need to be given power to allow us to, I suppose,           04.48PM

11          tell other people that this is what they need to

12          implement as part of this planning process, but to this

13          stage we do not have that authority or power to do

14          that.

15          Although there's nothing at all preventing you from           04.48PM

16          writing - - -?---Suggesting.

17          - - - writing and saying, "Please be aware that this

18          treatment has been recommended by the Municipal Fire

19          Management Committee and we suggest that you apply this

20          treatment to your property"?---That's correct, but           04.48PM

21          yourself also identified a gap up until this point that

22          I am now filling as part of that administrative support

23          role for the planning committee.

24          So that step at least is something that you will be able to

25          take in future?---Yes.           04.49PM

26          I have no further questions for Mr King. I understand

27          Ms Doyle has some questions.

28          <CROSS-EXAMINED BY MS DOYLE:

29          Mr King, we've been talking about filling gaps, one you were

30          just taken to then is, you say, "we've written plans",           04.49PM

31          and you've been taken to them, but you have no

1 authority to implement them, so that's a gap you've  
2 identified, one in your capacity or authority to  
3 implement the plans you've prepared?---That's a gap,  
4 yes.

5 The document that was just on the screen a moment ago, I 04.49PM  
6 noticed on its very first page, if we're able to bring  
7 back up the cover, it says, "It's not for public  
8 viewing", why is that the case?---That's been  
9 determined by the committee.

10 Yes, why?---I can't answer that. 04.49PM

11 Any reason why the public can't see it? Other than through  
12 accessing exhibits in this proceeding, any reason why  
13 it wouldn't be available for perusal?---I can't answer  
14 that.

15 I want to take you to the first attachment to your 04.50PM  
16 statement, the Municipal Emergency Management  
17 Plan November 2011, I just wanted to identify something  
18 on page 13 of that document if I might?---Yes.

19 There's a long list there that you were taken to of the  
20 participants or the members of that committee. I see 04.50PM  
21 that it includes about two-thirds of way down,  
22 Gippsland Water. Do you know whether in their role on  
23 that committee they are engaged primarily as a water  
24 authority or also as the owner of a plantation within  
25 the municipality? Do you know whether their engagement 04.50PM  
26 covers both of those hats that the Authority  
27 wears?---I'd say it would be, from Water Authority,  
28 probably both in relation to their plantation, but I  
29 can't be certain in relation to answering that.

30 You see a bit below them there's reference to a 04.51PM  
31 representative from Central Gippsland Essential

1 Industries Group?---Yes.

2 You understand, don't you, that that group has membership  
3 from infrastructure in the valley, including the open  
4 cut mine at Hazelwood?---Yes.

5 A couple of times you've been asked whether you can remember 04.51PM  
6 who from Hazelwood you'd interacted with in relation to  
7 these matters. Do you remember engaging over the years  
8 with a Mr Vesty?---Yes, that's the name.

9 That's the name?---Yes.

10 So you have had engagement with him in relation to this sort 04.51PM  
11 of planning?---Yes.

12 You also mentioned at some stage you know - presently there  
13 is a Mr Roach who's employed at the mine?---That's  
14 correct.

15 Insofar as there's been a discussion about whether you got a 04.51PM  
16 particular plan from the mine or you didn't get it, you  
17 know, don't you, you can call in and get a copy of  
18 it?---I already said that.

19 At page 60 of the document we're still looking at - you were  
20 taken to pages 59 and 60. I wanted to ask you about 04.51PM  
21 page 60. You were asked some questions about coal  
22 fires and you explained that could be coal that catches  
23 fire wherever it's housed, including in an open cut  
24 mine. What I don't understand reading this document  
25 is, where one finds in this plan what to do to avoid a 04.52PM  
26 coal fire and what do you do when a coal fire happens?  
27 Is this plan supposed to answer either of those  
28 questions?---No, it's not supposed to answer those  
29 questions; it's just identifying the risk in relation  
30 to that. That side of the plan would be a plan owned 04.52PM  
31 by you.

1 Right, so this plan just tells us there's a risk of coal  
2 fire?---That's right.

3 We want to know how to avoid it or what to do when it  
4 happens, look elsewhere?---Either go to CFA or go to  
5 the mine operator, yes. 04.52PM

6 Attachment 2 to your statement, the 2011 Municipal Fire  
7 Prevention Plan, I want to ask you about page 20 of  
8 that document. In the committee membership list for  
9 this generation of this plan there's a specific  
10 reference under subtitle 2 to a number of entities, 04.53PM  
11 including Hazelwood; do you see that?---Yes.

12 Then if we move forward to page 22, your attention was  
13 directed to Clause 11.3 and the reference there to the  
14 fact that there are a number of other authorities that  
15 have plans. We've talked about what steps might now be 04.53PM  
16 taken to obtain a copy of the plan. Can I just remind  
17 you what it says at page 100 in that document? Can we  
18 move forward to page 100. Under the bold heading, "8.  
19 International Power." There's a reference there to,  
20 "International Power advises they have a plan." Do you 04.53PM  
21 recall looking at this then, that there must be have  
22 some contact between Latrobe City Council and the mine  
23 in order to get to that stage, and that it seems that  
24 the only gap here that hasn't been closed is that  
25 additional one we've just spoken of, of requesting a 04.54PM  
26 physical copy of it?---I can agree to that, yes.

27 Now can I take you back finally to page 36 in the same  
28 document. This is part of a recommendation or heading  
29 24, "Other authorities and organisations." On page 35  
30 there's a heading, "Action", and it says, "It's 04.54PM  
31 recommended that", and Ms Richards has taken you to the

1 first one, that people be requested to develop plans,  
2 maintain them and provide them. The other elements  
3 engage some obligation on the part of the CFA. They  
4 refer to these plans being to the satisfaction of the  
5 CFA and acknowledged by the committee. You've told us 04.54PM  
6 you don't have the authority to implement it, but I'm  
7 assuming, reading this, that the CFA agreed to  
8 undertake that role?---CFA sit on the committee.

9 So we can take - - - ?---In the development of this plan,  
10 it's another planning committee, that we sit together 04.55PM  
11 and work through this plan.

12 Sorry, could the screen just show page 36, I'm actually a  
13 little bit further down in part 24. So there's four  
14 action items there. We can accept that the CFA would  
15 do the things that fall upon them under this list of 04.55PM  
16 four items, given their engagement with development of  
17 the plan?---Correct.

18 Has the CFA and the council undertaken items (2), (3) and  
19 (4) in 2011, 2012 and 2013?---No, because we started  
20 working on this new document which superseded that one 04.55PM  
21 there, and the new Fire Management Plan under the  
22 Integrated Fire Management Planning system - and I'd  
23 already stated that we hadn't followed through with  
24 some of the stuff, indicated previously that we hadn't  
25 followed through with requesting some of that stuff. 04.56PM

26 Later in that document where there's a list of all other  
27 organisations that are captured by this, the council  
28 and the CFA never got to the stage of running their  
29 plans through that filter of points (1), (2), (3) and  
30 (4)?---That's correct. 04.56PM

31 The other matter I want to ask you about comes from a

1 different part in your witness statement where you talk  
2 about Fire Prevention Notices. At paragraph 42 in your  
3 statement you talk about Fire Prevention Notices served  
4 on GDF Suez and then served on other people. The ones  
5 that you refer to at paragraph 43 you describe by  
6 reference to a map that's not in this document. I made  
7 some enquiries earlier about whether we might be able  
8 to grab it because it's Attachment 4 to the Latrobe  
9 City Council submission to the Inquiry. If we're able  
10 to, that will come up.

04.56PM

04.57PM

11 Just while that's coming up can I clarify the  
12 background? The council is able to serve Fire  
13 Prevention Notices by dint of s.41 of the CFA Act and  
14 Regulation 108? Do you understand that to be the  
15 case?---Yes.

04.57PM

16 The Authority is to serve a notice, there's legalese around  
17 it, but the gist of it is to require a land owner or  
18 occupier to take fire prevention steps, usually  
19 expressed as a requirement dealing with vegetation or  
20 mowing or slashing?---Fine fuels, yes.

04.57PM

21 As I understand the legislative touchstones, you can serve  
22 them on parties other than public authorities?---Yes.

23 What I want to understand then is that at paragraph 43 you  
24 said, "The council served Fire Prevention Notices in  
25 relation to state-owned property around the  
26 northeastern edge of the mine. I refer to  
27 Attachment 4." Two questions: Is it state-owned  
28 property that nevertheless is not a public  
29 authority?---It would have been previously state-owned  
30 property and in relation - - -

04.58PM

04.58PM

31 And it's not now?---No, it's not now.

1 I couldn't understand the map; who did you serve it  
2 on?---International - or GDF Suez.

3 No, you say that you issued Fire Prevention Notices in  
4 relation to state-owned property. Did you mean by that  
5 property which is now passed to the mine or did you 04.58PM  
6 mean something else? You seem to be drawing a  
7 distinction in paragraphs 42 and 43 between notices you  
8 served on the mine and notices you served on  
9 others?---So, "In about December 2013 the council  
10 issued Fire Prevention Notices to the operator of 04.58PM  
11 Hazelwood Mine in relation to parcels of land around  
12 the Hazelwood Pondage. These notices were complied  
13 with and these notices" - - -

14 Are Attachment 6?---That's right.

15 Paragraph 43, "The council also issued Fire Prevention 04.59PM  
16 Notices in relation to state-owned property around the  
17 northern edge. These are depicted in Attachment 4."  
18 This is the map?---Yes, so those properties are what  
19 used to be part of the old SECV. Off-hand, it's pretty  
20 hard to zoom in on that map, you'll need to keep going 04.59PM  
21 in on to the northeastern side of the mine itself. So  
22 these are the ones in and around here, off Morwell.

23 Who did you serve them on? Who was the entity you served  
24 them on?---I haven't got the notices in my hand at the  
25 moment to be able to identify that for you. 05.00PM

26 But it wasn't Hazelwood?---No, it wasn't Hazelwood for those  
27 ones, no.

28 A question flowing from that. Mr Pullman has given evidence  
29 depicted in a map of three plantations, very close to  
30 the mine, within a kilometre. You may not need to go 05.00PM  
31 to the map to answer this, we'll drag it up if we need



1 to, but my question is, whether Fire Prevention Notices  
2 can be served on private owners of plantations?---Yes.  
3 Does the council do that?---Yes.  
4 We'll use the Hancock Plantations as - - -?---We've issued  
5 notices to Hancocks previously. 05.00PM  
6 What type of fire prevention steps do you suggest they take,  
7 given that they are growing a resource that  
8 burns?---It's the same as we would give to any farmer  
9 or large private property owner; to fuel reduce for a  
10 10 metre fire break up to 75 ml on the inside of their 05.01PM  
11 boundary fence line.  
12 Yes, but then within the plantation there's a mass of  
13 trees?---Correct.  
14 Then I want to ask you, Mr King, in either the council's  
15 work of serving Fire Prevention Notices or in its 05.01PM  
16 strategic planning for the valley, do you take account  
17 of the risk that plantations pose to mines in terms of  
18 a fire that could pass from or through a plantation to  
19 a mine?---To this stage, through the Municipal Fire  
20 Management Planning Committee, I can't answer that. 05.01PM  
21 You're not aware of that specific risk having been  
22 identified or addressed?---We've identified risks in  
23 relation to plantations, we've identified risks in  
24 mining areas such as Hazelwood and such as Loy Yang and  
25 such as Yallourn, but actually linking the two 05.01PM  
26 together, I don't think we've actually done that to  
27 this stage.  
28 No, could I suggest then one other gap might be that in this  
29 next phase of integrated fire planning, that the  
30 council engage in the notion of linking the threats 05.02PM  
31 that those two entities pose one to the other, rather

1 than standing in isolation?---You could suggest that,  
2 but this isn't a council led committee, this is a  
3 committee that worked together with all agencies in  
4 relation to that. So I would suggest that that  
5 recommendation be put to the Municipal Fire Management  
6 Planning Committee, not council.

05.02PM

7 I'm trying to understand where that committee is housed.

8 Does it emanate from the State Government Department or  
9 is it a collection of other individuals? What is  
10 it?---As identified in my statement, it's a number of  
11 members led by the Chair of VicPol, it's got CFA, it's  
12 got DEPI, it's got other agencies, and it can bring in  
13 specialists as is required, and it sits currently as a  
14 sub-committee to the Emergency Management Planning  
15 Committee. But again, as I've reiterated before, that  
16 council does not lead - is not an expert in fire and  
17 are not fire managers, so the correct place for this to  
18 be raised is with the Municipal Fire Management  
19 Planning Committee, and "municipal" means the  
20 footprint, not council.

05.02PM

05.03PM

05.03PM

21 If I were lucky enough to have a representative of that  
22 committee here, the Chairperson, and I asked the same  
23 question, would he or she say to me, I can develop a  
24 plan, it's just that I have no authority to implement  
25 it?---May do, may not.

05.03PM

26 I have no further questions, Mr King.

27 <RE-EXAMINED BY MS RICHARDS:

28 Just one question in re-examination, Mr King. The  
29 version of the Latrobe City Fire Management Plan that  
30 was provided to the Board with the council's submission  
31 and was tendered in evidence yesterday is marked,

05.04PM

1 "Internal version not for public viewing." Is there a  
2 version that is for public viewing that's posted on the  
3 council's website?---Yes.

4 What is the difference between the two documents?---It will  
5 have contacts and things like that in there that is 05.04PM  
6 taken out. There might be some more strategic  
7 information that the committee didn't want tabled at  
8 that time that the plan was developed for public  
9 viewing.

10 Thank you. I have no further questions. If Mr King may be 05.04PM  
11 excused?

12 CHAIRMAN: Yes. Thank you, Mr King, you are excused.

13 <(THE WITNESS WITHDREW)

14 MS RICHARDS: Tomorrow we'll commence the day with a  
15 community witness, Lisa Wilson, who will be the last 05.04PM  
16 community witness for the public hearings.

17 We then have not one but two witnesses from GDF  
18 Suez Hazelwood: James Faithfull in relation to  
19 rehabilitation, and in the course of today we've  
20 received a statement from Richard Polmear, who it 05.05PM  
21 appears has worked at the mine for a very long time  
22 indeed and can give evidence about the removal and  
23 restoration of pipes in the Fire Service pipe network.

24 We then move to expert witnesses engaged by the  
25 Inquiry, Professor David Cliff will be available 05.05PM  
26 tomorrow and, if we can complete his evidence, we will  
27 also have evidence from Mr Incoll, Roderick Incoll  
28 who's provided a report in relation to overall bushfire  
29 risk management.

30 CHAIRMAN: Yes. We'll resume at 10 o'clock tomorrow. 05.05PM

31 ADJOURNED UNTIL THURSDAY, 12 JUNE 2014