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LIST OF SPEAKERS PAGE NO.

INQUIRY COMMENCED AT 9.30 AM

PRESIDING COMMISSIONER: Good morning. Welcome to the Industry Commission, the public inquiry into Australia's black coal industry. Today's public hearing in Brisbane is the final of two separate hearings, the other was held in Sydney last week. These hearings are designed for people to raise issues which they feel are impacting upon the international competitiveness of Australia's black coal industry, and provides significant input by those individuals into the draft report which is due to be released last February next year.

These hearings are in addition to the extensive round of visits already undertaken by the Commission and the 26 or so submissions the inquiry has received so far. While people who provide information to this particular inquiry are protected as if they are giving evidence in a court, this is clearly not a court of law and we don't try to run it as such. I'm going to therefore try and make these hearings and relaxed as I possibly can and so give everybody a chance to tell their own story.

There are however, a couple of formalities which I will ask you to follow today, particularly Richard. When you do participate, for our benefit we do want you to introduce yourself so that the transcript can pick up who you actually are. The second, if there are issues that you're not exactly sure about the veracity of the information then we do ask you to raise that with us so that we don't use that inadvertently in such a way that misleads people when they're reading our draft report. We're quite comfortable about coming back to you at some stage in the future to just verify one way or the other what you put in in your submission or what you tell us. We do try and use these hearings as a way of enlivening our report and so anecdotes and information which is provided here is actually extremely valuable to us but it does need to be accurate and we need to be sure about that. So if you've got any doubts about that please let us know.

You'll get today a transcript of these hearings. If there are other transcripts that you require then if you talk to one of our staff they'll make sure to make them available to you. Keith Horton-Stephens is with me. Keith is a colleague on the Commission, a commissioner with the Commission, has been with the commission for quite some time and has done quite a bit of work in the mining area. If you could just please introduce yourself and also indicate in what capacity you're here today, please?

MR KOERNER: My name is Richard James Koerner. I'm a principal associate with Asia Pacific Strategy and I also lecture in strategic management at the graduate School of Management at Griffith University. I've had an extended professional career in the energy industry over 20 years, mainly in the United States but was for 4 years vice president of planning and control for Anaconda Australia, which of course is now ARCO Coal.
I would like to address an area which was raised in the issue discussion paper that the Commission sent out regarding the behaviour particularly, of international coal markets because this is an area of particular research interest of mine. And what I'd like to do to facilitate the discussion is to put some slide materials up on the screen. These materials have been sent to the Commission electronically so copies are with Andrea Calder, I sent them to her the middle of last week, but if we could just sort of talk to these slides and please, I'd invite both commissioners to stop me and ask questions and raise issues if they so desire.

The area I'd like to address are factors that explain differences in price in major coal markets and particularly the price formation process in international coal markets. I published a number of articles in journals, particularly resources policy and the Pacific economic paper series that's published by ANU by the Australia Japan Research Centre, on this topic, and I'd like to emphasise portions of the work that's been done, particularly the research that might be of interest to the Commission in this inquiry.

In attempting to understand price formation process in international coal markets I've utilised the hedonic modelling technique which I guess was developed from work of Rose back in '73, of attempting to first look at the characteristics which should be important technically, and to then do regression modelling to see if indeed modelling affirms such characteristics are important, and what I've done is a series of cross-sectional analyses of particularly the Japanese coking coal market, and these analyses go right back to 1973, and I'll talk to those.

I've also looked at the Brazilian coking market for a couple of years, '94 and '95, and also '96, and I'll show you some results from a hedonic modelling analysis of the 1996 settlement in Brazil. And I've done a little work, I've looked at a couple of years of the major thermal coal settlement with Chubu Electric. And of course, Chubu act as the purchasing coordinator for all the Japanese utilities in negotiating with Australian thermal coal suppliers to the utility industry in Japan.

So could we have the next slide, please? Now, this is probably a somewhat familiar picture. If one looks at prices over an extended period of time, coal has had a decline in both cost and presumably - well, certainly price and presumably cost, going back over 100 years. If you look in constant dollar terms, coal prices have really been coming down since the 1880's, 1890's. However, there was a period where there was a substantial fluctuation in coal prices and that's been an area of research interest to me. Not totally coincidentally, it occurred with the extreme large fluctuation in oil prices which occurred of course, in 1973. And one of the papers that I have submitted as evidence discusses the reasons for the response of coal price to be at first oil shock and the commissioners might find that useful, it's actually in the paper I submitted, "Price Movements and Labour Cost Response: The Coking Coal Industries of Queensland and Appalachia." That was in fact, a monogram published with the University of New South Wales in November 1992.

There's a section in there that looks at the response of the American coal market, particularly the American thermal coal market, to the first oil shock. And I believe the commissioners may find that useful in giving them some background understanding of recent history of international coal prices both for coking and thermal coals.

But getting back to that particular diagram, you'll see that we're showing here landed costs, CIF costs of the three major suppliers of coking coals to the Japanese market. And we're showing trends going back 30 years, in effect. And a couple of things come out of that, first of all, Australian CIF values are always lower than the other two major suppliers, there's of course, the substantial fluctuation that occurred in '73/'74. The American prices for their coal sold into Japanese market responded almost straight away, our prices went up but they lagged a little and they went up I guess mainly due to the influence that Rex Connors had on negotiations and the market at that point in time. Because if you actually go back and look at the contractual arrangements with Utah in particular, they were long-term supply arrangements which had inflation clauses written into the pricing formulae, but of course, Australian inflation didn't rise although it went through a pretty savage increase in and around that period, it didn't go up anywhere near as fast as those prices went up. And I guess it was a case of government influence in pressing on the JSM that they should respond to what was happening elsewhere in the market.

But the important point or one of the important points to look at is that prices into Japan peaked in real terms in about 1976 for our coals and have been declining almost steadily since. And even with the settlements of the last years, I guesswe had a bit of an increase in 1995 but we appear now to be on the decline again. And again, if one looks in real terms, the prices today are probably about where they were before the first oil shock, in real terms. In other words, CIF value of about $40 a tonne in constant 1987 dollars. And in my view, one of the real questions is, have we now reached a sort of a stable situation or will coke and coal prices in fact, continue to decline in real terms.

Can we have the next slide, please? Now, reasons have been offered in the past for why our coals have always commanded lower CIF value than our major competitors premium coking coals. Utah made a submission, I think, to a senate hearing in 1982. The ACA made a submission to the Taylor Inquiry, and the reasoning was basically quality. In other words, it was considered that our coking coals were of inferior quality, therefore, couldn't command the same price as either Canadian or American coals.

Now, of course, hedonic modelling is the way to test this assertion. If you've got the detail quality information for the coals that are sold into the Japanese market. Can we have the next slide, please? In doing this sort of work one has to look at, on a priority basis, the sorts of characteristics that may be important as far as the buyer is concerned, when one looks at coking coal. And some of the parameters, the physical parameters that are considered relevant, are fixed carbon, mean max reflectance of vitrolite, which is getting a little bit technical but it's related to the maceral content of an individual brand of coal, CSR, which is a measure of the strength of coke that a particular coal will make and the performance of that coke in the blast furnace, its coke strength after reaction, and these are really carbon related physical measurements, if you like. And finally, volatile matter. And volatile matter is if you like, an indirect measure of carbon content in that higher volatile coals which are younger coals of lower rank tend to have lower carbon contents. And if a purchaser is buying a coking coal to create a carbon in coke or the blast furnace operation, obviously the buyer - one would expect the buyer to value coals having a higher carbon content.

Another rank related characteristic which is important in the actual manufacture of coke is the plasticity or caking characteristic of the coal, and there are a number of measurements that are commonly used to define this CSN or crucible swelling number is one, it's a very crude measurement, an unconstrained button test. However, it's widely available and widely quoted. Another measure is Geissler fluidity, which is a much more direct measurement of the melting or caking characteristics of a particular coal. And the third one is the Ruhr dilation measurement which is favoured particularly by European coke makers and blast furnace operators.

Now, the carbon and plasticity characteristics are obviously important, particularly when blending different coals from different sources to try and make high quality coke. And those characteristics should be favoured by buyers. Now, one of the difficulties is that they tend to be inversely related. Coal, having very high carbon content may lack plasticity. Coke having the high plasticity properties tend to have lower carbon contents. So it's really a blending selection process but those characteristics should be favoured by buyers and should have a positive sign in a modelling regression analysis, in other words, a co-efficient of those particular parameters.

Attributes of coal that are not highly favoured of course, are ash and sulphur because they reduce the favoured characteristics so they physically take up room. And they also contaminate the coke and then have to be dealt with in the blast furnace itself. So if one looks at the sorts of characteristics that should be important in this modelling work, a rank or carbon related characteristic, plasticity characteristic and ash sulphur, and then of course, moisture is pretty useless as far as the coke oven operator is concerned and one would not expect people to value moisture. The way I deal with moisture is simply calculate landed value on a dry basis to just get moisture out of the modelling.

Can we have the next slide, please? If one looks at a cross-section analysis of the 1994 settlement, and this is a settlement where I was able to obtain a large amount of data in terms of the number of particular brands of coal that were purchased by the JSM in that year. In fact, there were 58 brands which accounted for over 80 per cent of the total purchases of the JSM in that particular year. And if one then does some structural testing to ensure that the specifications that one is justified to pool coals from different sources et cetera, et cetera and then looks at quality characteristics we've discussed previously, this is the hedonic regression model that one gets, where CIF value is a constant term plus or actually minus a volatile matter per cent, plus a log for the (indistinct) term, there are ash and sulphur terms which have co-efficients which are not significantly different from zero, and what I call intercept shift terms. And the intercept shift terms reflect the fact that if one looks at this particular sample, there is evidence, very, very strong evidence from Chow tests, that is market is segmented. And one can go back to the previous chart we looked at where you can see the segmentation of CIF value with source between American and Canadian and Australian coals, and the modelling does support that there is indeed segmentation by these shift dummy terms.

If one then looks at the T values for the co-efficients, you can see that ash and sulphur are not significantly different from zero at any credible level of significance. The explanatory power is very, very strong considering the sample size, you're looking at a co-efficient of determination of point 95, which means that this model will in fact, develop the CIF value, explain 95 per cent of the actual CIF values that occur in that particular settlement. And so it's a robust model, the F value you can see is particularly strong.

Can we go on to the next - if one then goes from the mathematical formula to a picture and I always find it a bit easier looking at a picture, it appears that the 1994 market settlement was really a four tier equation, if you like. There were three very, very high priced Canadian coals, and of course, this is well known, the north-east British Columbian projects which received prices well above that which their quality would normally reward. There's also a segment, if you like, of the US coking coals, plus one Canadian brand that happened that Line Creek (?) which is one of the more recent projects of Canada, and those coals were $15 below the very, very high priced ones. Then there's a tier where in volume terms, most of the coals that the Japanese purchased lay. There are 29 Australian brands, and of course, most of our Queensland coal, in fact, all of our Queensland coals and some south coast, New South Wales coals, and a number of Canadian brands but they're the Canadian projects that came on about the same time, the same timeframe as the Queensland projects came on, that is, the early 70's. And the Canadian, and I'm talking about are Fording and Luscar (indistinct), those particular brands have characteristics very close to our Queensland coals. And they obtained the prices pretty much the same as our Queensland coals, which one would expect. And there has been modelling work done in Canada, this was done looking at settlements, from memory, it was 1977, which took comfort in the fact that the Canadian coals were receiving the same price as the Australian coals, however, even if you go back in those early years, both the Canadian and the Australian coals were getting substantially lower prices on a quality adjusted basis, than American coals. So there appears to have been this sort of price discrimination going way back into the early '70s.

Then the last tier you see on this diagram is in fact, the so-called semi-soft or semi-coking brands, and they're a fairly recent event. They sort of started becoming prominent about '86/'87, maybe a year or two earlier. And it appears that in some respects they're a bit of an artificial market segment because a lot of those coals are in fact high ash premium coals. If one looks at the physical characteristics of those coals they're premium coals but they do have higher ash content which means that the producer has an incentive to produce them by lowering or rising the ash cut through their preparation plants. And in my view, a lot of producers have gone to these coals to simply try and pick up volume in the market and the JSM has of course, welcomed this sort of behaviour.

All right, can we move on to the next one. I've spoken in some detail about the 1994 settlement. I've also done similar analyses in '73, '77, '83 and '92, and these are all published. I've submitted the '92/94 publication to the hearings, that's in Pacific economic paper, 252 I didn't actually submit the previous article but I'm happy to do so. It was an article that was published in Resources Policy in 1993 which looked at earlier cross-sectional analysis. I'm happy to make that available for the commissioners if they're interested but they've got a lot of stuff to read.

However, in a nutshell, modelling results do not support the contention that Australian prices into Japan should be lower on the basis of quality. There's no evidence that would justify that. If one looks at the actual modelling results using the quality characteristics that a buyer should value.

Can we have the next one.

PRESIDING COMMISSIONER: Before you go on, have you submitted those findings to the ACA for comment? Has there been any public discussion of the findings?

MR KOERNER: Well, yes, I've had discussions with both BHP and other companies. I've worked with the (indistinct) people here. There's no serious challenge of these results and they've been scrutinised very closely by people that are totally conversant with the industry. I've even put up some research proposal to ACARP to do this sort of work. But I guess my feeling is that this sort of work isn't really welcome because it throws a lot of transparency into the individual bargaining process which as an individual bargainer you may not welcome because perhaps you feel you can get a better deal with the JSM without this stuff out in the open than you might with this stuff in the pubic domain. I mean, that's the impression I have and I can understand because I've been in their chair. But no, I've attempted to - I put proposals actually to the last ACARP research, invitations to look at the 1996 settlement because as you're well aware, the Japanese have announced that they're abandoning benchmarking, and they announced this in fact, in 1995. Well, I'd be very curious to model a settlement say in 1996 and see if the results were different, and if indeed, quality factors were starting to show up. Because if one believes the public relations effort that's gone with the abandonment of benchmarking, the JSM will start to reward quality and one should see it in this sort of work. But there hasn't been a lot of interest in doing that work.

PRESIDING COMMISSIONER: Before you go on, one of the things that I read in this paper, and also just thinking about it and listening again today, the first thing that comes to mind for myself is that when one thinks about the pricing principles, it's rare that any one variable will bring the determinative price and we know that there are a whole series of other reasons why price will fluctuate, not the least, even with a homogeneous product, price will fluctuate depending on reliability of supply for example.

MR KOERNER: Yes.

PRESIDING COMMISSIONER: And I was interested in fact in whether you'd actually thought about other variables other than simply testing the, if you like, the quality variable as suggested by the ACA?

MR KOERNER: Well, yes, and indeed, what I'm getting on to here, I think addresses the issue you're raising Commissioner, because short term supply demand where you've got high barriers to exit like the coal industry, this probably influences price more than quality because if you've got a producer with very, very low marginal costs but very high fixed costs, that producer is going to be tempted to attempt to gain market share depending on whether it's a buyer's market or a seller's market. And unfortunately in the history of this industry it seems to be a buyer's market in those years. So it's a very important factor.

PRESIDING COMMISSIONER: But we also see that in many markets these days not only in coal we can see it almost in every market in the most modern economy.

MR KOERNER: Yes. And it's a difficult problem and it's one that in my view is exacerbated when you have a lot of discipline on the buying side and I would argue that culturally, the Japanese almost naturally form cartels on the buying side. In other words, if you're trying to sell to the JSM, it's impossible to sort of go and deal with Kawasaki or Nippon and get a better deal from one guy than you can get from another, because they talk to each other and they use a trading company as a sort of uniform communication device, in my view, and you'll never split their ranks. And I'm very sceptical that the abandonment of benchmarking is going to cause any real change to this behavioural characteristic, it's almost a national characteristic, I think, in as far as the Japanese negotiators are concerned. They compete in their home markets but when they're dealing with say, a foreign supplier, they seem to naturally create a monopsony or an oligopsony.

PRESIDING COMMISSIONER: The other way that I was thinking about it was can we identify what one might describe as a world price, competitive world price for coal?

MR KOERNER: The difficulty is - - -

PRESIDING COMMISSIONER: Excuse me for (indistinct). That seems to be the question that you're raising, isn't it? Is there any such thing as a world price for coal or is there a differentiated price based on some other characteristic other than the market? That's the question that you're trying to raise, isn't it?

MR KOERNER: Well, I'm really challenging the assertion that has been made in the past that our coals do not deserve a better price or value in the Japanese market because they're of inferior quality, and this has been sort of the formal position taken in 1982 and again in 1994, by various stakeholders in the industry. And in doing this work I'm looking as a researcher and I'm saying, "All right, let's test it."

PRESIDING COMMISSIONER: Sure. But if that's almost a straw man then the questions becomes, if we just put that aside for the moment and think about the proposition slightly differently and ask ourselves a different question, and the other question we might ask ourselves is can we identify in this commodity, that which we can identify in almost all other commodities, that is, the international competitive price. And if we can identify an internationally competitive price, what does that then tell us about, if you like, the other proposition of if you like, the negotiating characteristics of all parties? You can determine if you like, via the normal, you know - these are very unsophisticated words, but the normal playing out of the moments of flight in a particular time, or are we seeing something different?

MR KOERNER: The difficulty in trying to establish an internationally competitive price is the transportation component in coal.

PRESIDING COMMISSIONER: That's what led me to come to that proposition because if I look at the graphs that you've produced, and if you use your benchmark as CIF, what I observe is that that coal which is further distant from the market, having a price greater than that coal which is closer to the market.

MR KOERNER: Yes, which is counter-intuitive.

PRESIDING COMMISSIONER: Well, it may be consistent - - -

MR KOERNER: Unless it's got higher qualities.

PRESIDING COMMISSIONER: No, it may be quite consistent with an international price where if you like, the C, the cost is the international price and the variable is the I and the F?

MR KOERNER: Well, I'd sort of go back, and unfortunately I didn't bring the illustration but Ben Smith published an interesting paper in 1977, which looked at bilateral monopoly bargaining in the resource commodity trade, and of course, he addressed this issue exactly, that if you've got sort of two world markets and you could say simplistically, there's a Pacific market and the

Atlantic market, and transportation is a substantial portion of delivered cost. Appalachian producers have got an intrinsic sort of God given advantage in the Atlantic market in Europe, and we in Canada, have an intrinsic advantage into the Pacific, simply because if you look at the total transportation costs from say, port or mine to Yokohama, and I don't have the numbers in front of me but from memory, our costs are about 14 or $15 a tonne, and I think the American costs are 25 or $28 a tonne. There's a rent that's out there that if our coal was of identical quality to American coal and if you had equilibrium, reasonable supply demand equilibrium, we should be able to actually command a higher FOB price than the Americans because of this locational rent.

And one would expect the CIF price to be the same if the quality is the same unless there's a premium for supply security and you know, that's a separate issue. And certainly, all of the work I've done suggests that the Japanese do pay a substantial premium for whatever, whether it's supply security, but pay an incredible premium to their own thermal coal suppliers. Japanese thermal coals command about $150 a tonne, CIF and what are ours, about $40. So three's a long historic pattern of, if you like, price discrimination in Japan. It almost comes naturally to them. And you can say, "Well, they do that because they want supply security, they want to have 6 million tonnes of Japanese thermal coal into their utility market irrespective of price." And you could also argue, and I'd certainly support the argument, that it's clear they'll pay a premium for the very high priced Canadian coal but you can say, all contractual arrangements they really had to do - well, to some extent, but those projects were initiated by the JSM for the most part and they're paying a great premium.

Now, with competitive pressures it's been a lot harder to do because Japanese steel is now getting priced out of the market versus Korean steel and Taiwanese steel, and of course, the Koreans and Taiwanese are freeloading to some extent, on the Japanese keeping excess supply in the Pacific markets by keeping Bullmoose and Quintette on line. And it's going to be very interesting to see what happens next year when those contracts expire, how much capacity remains in the system from those very high cost mines. My own view is that Bullmoose will certainly stay on stream but Quintette is a very interesting issue. If Quintette operates at 5 million tonnes, well, Quintette is a good operator and Quintette may be able to continue to operate Quintette at a million or a million and a half tonnes but I doubt very much if they can keep it operating at 5 million tonnes.

So you're absolutely right, there's a long pattern of price discrimination for want of a better word, associated with security supply. And I agree wholeheartedly with that position. But it sort of comes up from starting to look at this market share trend, that's looking at the red portion of the graph looking at Australia's total coking coal mines share. Now, this isn't just premium coals this is premium and semi-softs and soft, and the whole bit. You can do longitudinal analysis because if you have done work suggesting that quality is not the factor as far as the JSM is concerned, if the JSM was in fact, a cost minimising industry, one would expect that if we are laying in a comparable quality coking coal to Japan, six bucks under the two other major suppliers, our market shares should be going up and up and up until you reach a point where the Japanese will not take Australian coal because of this quality - sorry, this diverse use supply premium.

And that's supports completely what you're suggesting because we can never get, I would suggest, more than half of that market. The Japanese will not buy more than half the coal from Australia, it doesn't matter what we do in lowering costs. In my view, our coals are already probably 5 to $6 a tonne on a quality adjusted basis, below the principal suppliers. If we increase that to $15 a tonne below, the Japanese are not going to take any more coal from us because of the premium to attribute to supply diversity. And that creates an interesting economic problem.

PRESIDING COMMISSIONER: That's certainly true but they might take less.

MR KOERNER: If they do, that places them in an increasingly difficult situation with respect to say, Korea and Taiwan, who do not incur the same costs. It's true they may take less but it's sort of slicing off their nose to spite their face because - - -

PRESIDING COMMISSIONER: But not if you take the point that you're making that even if price was to go up - you seem to be suggesting and please correct me if I'm wrong, but the price to go up they would still maintain roughly the same market share.

MR KOERNER: If they were operating as a value maximising industry, see, my work suggests that on a quality adjusted basis our coals could command $5 higher CIF landed value in Japan and still look comparable to coals from America or Canada. Now, that's what this sort of work is suggesting and it's been suggesting that to me since 1973. Now, if we raised the price, you know, there is the possibility that we'd be punished. I mean, the Japanese, particularly if one company raises the price, and this is the difficulty with divided sellers dealing with an effective buyer cartel, you know, who is going to put their head out first and take the risk. Because they'll be punished and there's no question that - there's an excellent example, if you go back a few years, in the first oil shock going back right to 1974, Smoky River, and they produce a very good coking coal, it's a low vol but very, very high carbon
content coking coal, they had the audacity to try and price with the American coking coals, and they were punished. They were cudgelled, they were beaten, and you know, sort of practically put out of business by the JSM because they took the argument that look, the American coking coal has suddenly gone from 40 bucks a tonne to 100 bucks a tonne. Our coals in quality terms are equivalent so why shouldn't we. Well, JSM didn't like that at all, punished them like hell.

So, yes, there's certainly a track record of if you get out of line and you're dealing with an effective cartel, you get punished. And that gets to the real crux of the problem, is that we've got this market power resting on the buyer's side. We have for years in this market, in my view, and it also rests with the Koreans and all the people that are using the Japanese settlement as benchmark for deals they do with Australia. So it's a problem that contaminates other markets.

But let's move on from there. You can see just from this one that it looks as though we're never going to get more than half of this market because you've had the - the green is the rise in Canadian production, the next one, the blue one, is the Japanese domestic production which has declined quite dramatically, and they effectively went out of the coke and coal business in 1991, they ceased selling, in other words, the JSM said, "We're not going to pay this $150 premium to own soft coke and coal producers." Then the yellow is sort of others, and "others" is Russia and China, and some of the PCI coals like Indonesian coals are coming in as pulverised coal injection coals into the market And they're causing a lot of problems too because they're coming in at very, very low prices. Then of course, the upper one, the pink one, is in fact, the decline of American share of the Japanese market.

But if you do a longitudinal analysis and you try and then relate market share to landed value, nothing happens. In other words, the regression analysis is useless. There's no relationship between volume and price in this market. And I've look at - from 1978 to 1994, I've done a longitudinal regression analysis for the Australian and Canadian markets, trying to relate market share against landed value. No relationship. It all gets back to the point you're making, it's this premium that the Japanese apparently will pay for supply diversity.

PRESIDING COMMISSIONER: One of the interesting things of course, from our perspective is not so much correlations but cause and effect. As you would expect, you can find lots of correlations in lots of markets but then the question becomes, what is causing that? And for all of the points that you've raised there, I could probably expound a slightly different theory for why, some of them to do with diversity of market and the point that you've just raised, you know, the alternative sources of supply, are almost infinite now, not only in terms of different - within the coal market itself, you know, we Canadian have all sorts of variations of coking coal now to achieve a certain objective depending on the way in which those people who are buying that coal might see the long-term supply chain, if you like, so they can vary, given enough time, how you even might presumably adjust the blast furnace to cope with different sorts of qualities of supply.

MR KOERNER: I guess I wouldn't agree totally. I think that if you're looking at blast furnace coke and you're looking at the sources of coal that you can make high quality coke, it's not like thermal coals in the sense that most coal that's under the ground won't do the job. There are unique characteristics that you have to have that are physical characteristics in the resource and you can't just take coal from some other reserve and use it for coke. And we are still fortunate, now maybe we're not that fortunate with technology changes, and let's face it, the blast furnace will probably cease to be around in another 15 or 20 years, it's been around for the last 200, so it's about time we got a new technology anyway, but nevertheless, there is still this window of opportunity where we should be able to command a premium for the high quality reserves that we do have in the Bowan Basin.

I mean, my work suggests that we really never got the premium that the market should reward us with, and with the sort of decline of this business, there's going to be increasing struggles going on because of the high barriers to exit because as long as you've got this market power on the buying side, the opportunity to play off sellers is going to become even greater, which is a big problem for us.

PRESIDING COMMISSIONER: The other - you might want to go on with this - but one question that I guess I'd like you to think about as we're going through this is, and I certainly don't know the answer to it, but would you be likely to get a different set of dynamics even if you didn't have, as you described it, if you like, a buyer cartel, than if you had one or two very large buyers of coal?

MR KOERNER: I believe you would and it's work I'd be fascinated to do. I think the European market behaves closer to the ideal market even though you'll have a national company. Certainly, there is evidence and even Abare has done work, is that there is a price elasticity of demand in European market that doesn't show up in the Japanese market, and there was work that a couple of ABARE researchers did a few years ago. Coal quality, and again, I'd love to do the work to the same level or details that I've looked at asian markets, but coal quality from contacts I have in the industry, and Charles Coin from ACIRL, is a guy that I talk to a lot, he believes that the European steelmakers really buy on the basis of quality. So, I think the European market perhaps have a look at Spain, Germany is going to be interesting because they are phasing out their domestic metallurgical coals I think the Germans are likely to behave a lot closer to an ideal sort of market situation than, say, we see in the asian market.

MR HORTON-STEPHENS: Richard. (Indistinct) today, could I just quote you from the submissions that we received from Camberwell Coal. It's just for your reference, it's no.13 and it's on the first page. It says, "Two years ago the JSM scrapped the benchmark system and each steel mill now conducts an individual price negotiation with each of its suppliers. Camberwell supplies all six major steel mills and has a different price for each mill, whereas 2 years ago our price was the same for each mill. Tonnage supplied to some mills has increased and dropped to others."

MR KOERNER: That's interesting but you have to ask the question, why are there quality differences, because maybe they vary in ash. I'd be fascinated because Camberwell is selling semi-coking coals, I guess, and as far as I'm concerned, semi-coking coal is a distressed market in the sense that I don't believe producers obtain their full costs of capital in the pricing that has been created in that market segment. So I can't really comment.

MR HORTON-STEPHENS: I guess what I'm trying to do is trying to sort of move this (indistinct) - - -

MR KOERNER: Sure. Yes.

MR HORTON-STEPHENS: - - - changing and - - -

MR KOERNER: And I would love to do hedonic modelling of the 1996 settlement but again, DPIE ceased to record the pricing and quality data as I understand it, so we disbanded, if you like, the data base that you really need to do this sort of work effectively, and I think that's a real shame.

MR HORTON-STEPHENS: Bring back export controls?

MR KOERNER: I am not saying that but at least understand what the hell is going on. I mean, I'm not saying bring back export controls but if you don't know what's going on, you're not really in a position to come up with useful policies in my view, and we've certainly - we're backing away from at least monitoring what is going on. And certainly if you look at the interests of individual firms, again, it's this difficulty with divided sellers trying to struggle for market share. You're going to have an awful lot of supply competition but if for culture reasons or whatever, there isn't much demand competition, you're going to get some pretty unsatisfactory pricing outcomes. I believe that's almost implicit. But I would love to look at what Camberwell are doing in terms of price quality, what other companies are doing, but my sources are text reports, and I'm a bit sceptical about them because who is publishing them? And that's about the only public source of material on this industry and this is why in one of the papers that I submitted, the Japanese know much more about this industry than we know. And that immediately creates a problem with knowledge asymmetry and bargaining. If they know an awful lot about our cost structure, particularly our marginal cost structure and in my view they do because very often they sit on the operating committees because they have a minority interest in most of our producers, and ARCO included, because they used to run the fax machines all day after we had our operating meeting, that information goes directly to the negotiators of the JSM, the Nippon negotiator, and to all the JSM companies because in my view the Sogo Sosha act, if you like, as purchasing agents, so that information goes into the Japanese bargaining side of the table and here we are, we're sitting around and competing like crazy for marginal volume, so what sort of outcome would one expect? And I think that's been going on for a few years, in fact, as long as I've been looking at the industry.

But it's very interesting, a very good point, and I'd love to do the analysis.
But I think what you've really got to do is not just look at the Australian scene, you've got to look at Canada and America. And that's hard. I mean, it's hard enough to find out what's going on with our coals. It gets extremely difficult in looking at particularly, the nuances of quality that the American producers use and they are very skilled at this. And really, you've got to have a consistent sort of quality of data across all major suppliers.

Just quickly going on to the Brazilian settlement, I mentioned to you that I have looked at some Brazilian settlements. That's a result of the 1996 settlement and the general form of the model is quite similar in that again, ash and sulphur, which one would expect to be sort of - they should have negative co-efficients and they should be significantly different to zero, again, disappeared. You had an intercept shift term that sort of came in, and that's related to this sort of semi-coking market segment, and pretty good explanatory power point 91, not as good as the JSM, but a robust model.

Let's move on to the next one because I'm taking up too much time here. And finally, this is a quick look at the Japanese utility market. And that's a bit interesting because again, and here I'm looking as net as received calorific value, which, I mean, people buying coal for heat value, that should be important and sure enough it is, the other quality related term I'm looking at is fuel ratio, which is really a volatile matter related characteristic, and very low vol coals have high fuel ratios and they can create combustion problems, you know, you can get flame out in the boilers and explosions and what have you, so that was probably worth including. But again, the main interesting thing to me about the results of that analysis was the importance of these intercept shift terms and the thermal coal market is equally segmented. The good news is that we are at the top. Ourselves and American, in fact, get a premium price into that market and the people on the bottom, and well and truly on the bottom of course, are the Indonesians, and according to this model the Indonesians are laying their coal into Japan at about nine bucks under the competitive suppliers. And of course, the two main producers are subsidiaries of Rio Tinto and BHP. And so that's an interesting situation where the international energy company is in fact, underpricing its coal in one place, in another place, which is not - you know, I'm familiar enough with those things happening in the oil industry but it's interesting to see it also seems to happen in the coal industry. But again, pretty fair co-efficient of determination, and a robust model.

So, to summarise it, the work that I've done suggests that quality is only a minor explanatory factor and as the commissioner pointed out, other factors seem to influence price in these markets and maybe security supply is the major factor and bargaining power, whether it's a buyer or sellers' market. Ash appears to be irrelevant. And of course, this raises a problem because if ash is one of the few things that you can do as a producer to improve your quality and of course, your buyer doesn't reward ash, what's the point? Market segment certainly appears to exist both by source and category of coal. In other words, they're segments for Americans and Canadians and Australians, and a semi-coking category, which is a new segment. US and some Canadian prices are premiums, US and Australian thermal brands are at premium prices. The Indonesian brands seem priced well below other thermal coals, at least looking at the '95 settlement. Yes, the next one.

So, just summarising, the business strategy implications I find quite interesting because again, if you've got an effective buyer cartel that is practising price discrimination, and then you've got a ceiling on your market share, the normal sorts of business strategy of lowering costs or enhancing quality really don't work. And that's sort of almost counter-intuitive. And where it raises, I think, a very interesting question is the efforts that are being made to lower freight costs, and I notice the Queensland Rail submission, they were talking about lowering their freight costs by 40 per cent, I think, over the next few years. In my view, the lowering of those costs is very likely to be bargained away in dealing with the asian buyer cartels, for the simple reason that lowering costs is not going to increase their market share because they're already at the ceiling, and if you look at the history of the relief of the export levy, back in '92, remember we took the 350 a tonne off, well, what happened is I think the JSM took about 80 per cent of it in the next settlement, in that our price came down $2 US.

So, I guess my prognosis is what is very likely to happen with the reduction of freight costs, particularly in Queensland, is that there will be further producer surplus diversion from Australian to Japan, with this structural arrangement that we are looking at.

The other, I guess, finding, is that the distortion isn't unique to the JSM market, of course, it flows into Korea, Taiwan, because they leverage off the Japanese settlement. India, India is using the Japanese settlement. So the whole Pacific market is, if you like, influence by this cartel, buyer power issue, and unfortunately it's feeding into Brazil. And that was interesting to me because I thought that as a swing market between the Atlantic and Pacific, Brazil might reflect more the European or what I hope is the case in Europe, where quality would be rewarded in that market. Thank you, gentlemen.

PRESIDING COMMISSIONER: What we wanted to do of course, was talk to you about this today and then try and fit this into the broadest context we possibly could. One of the points that you make about who gains is a very interesting one and we find similar questions are raised almost in every market. And in a sense, the question becomes to what extent does competition change the dynamics between the winners and the losers right throughout the economy? And while, it seems to us you actually get winners at one stage, those winners aren't necessarily always the winners as competition plays itself out. So to take your point about coking coal, for example, it might be possible that some of the steel producers in Japan do gain but they're also in competition against plastics and a whole range of other composites.

So the question is, how does that all wash it out within an economy, and also within the global economy? And they're the issues which we're trying to understand. My guess at this stage is that there's so much competition for product around the world particularly products that are competing against steel, that we'll see significant pressure on prices throughout the system whether it's for coking coal or for everything else.

MR KOERNER: Our, if you'll pardon the word, "subsidising" of energy into the Japanese steel industry is an encouragement for them to keep in this blast furnace technology. Once the blast furnace technology goes, this coking coal has got very little premium, so maybe that's a trade-off by us actually laying our coking coal in for 5 or 6 bucks under what, in my view, the market would normally suggest. At least we'll keep the blast furnaces and the coke ovens operating for a few more years.

PRESIDING COMMISSIONER: Just another point - we should finish up now I guess, but that was another point I was thinking about, that was another dummy variable in a way. You know, to the extent to which in a dynamic competitive market you're getting buyers who are making some sort of assumptions about future technologies. And also, in a strategic sense, asking themselves to what extent does it pay then to actually keep that coking coal into the market even if it means for a longer period of time than you would otherwise expect at a different price simply because of the marginal cost of operating a mine and the desire to actually retrieve what they might regard as certain costs that need to be retrieved over time. That sort of dynamic, I'm not sure you pick up in modelling, to be honest.

MR KOERNER: That's gets a bit complicated.

PRESIDING COMMISSIONER: Yes, I know. I mean, as you know, we do a lot of this modelling stuff and I think the thing that comes through in the work which we do, is you can actually - can't replicate real life. And depending on how you - what variable, or what you allocate to that variable, you will get a completely different set of likely outcomes. So I think you've raised a lot of important issues and a lot of complicated ones.

MR KOERNER: My dummy variables cover a multitude of sins. These intercept shift terms have got all those factors in them in my view. They've got, technology change, they've got security of supply. They're a sort of an all embracing variable. That's the way I look at it, because the things that you can really put in are the detailed coal technology variable, which are the rank and plasticity variables and ash and sulphur, which the technical guys will tell you, any buyer is looking at this whether they tell you they are or not, they have got to be. Thank you gentlemen.

PRESIDING COMMISSIONER: Thank you. Thank you very much for that. Our next participant for this morning is BHP. Please come forward. We'll take a break for 5 minutes while you get yourself settled in.

INQUIRY ADJOURNED AT 10.30 AM

INDUSTRY COMMISSION HEARING - Brisbane 24.11.97

INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE QLD

MONDAY, 24 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER: MR B SCALES

INQUIRY RE-CONVENED AT 10.37 AM.

PRESIDING COMMISSIONER: We now have with us BHP Coal. Would you please introduce yourselves individually so as we can get your voice on transcript and then feel free to raise any of the main points that you wish, from your submission.

MR WILLIMS: Thank you, Chairman. Ross Willims, general manager, external affairs, BHP Coal.

MR ISLES: Thank you, Chairman. Peter Isles, general manager, central region, BHP Coal.

MR LEACH: Noel Leach, commercial manager, transportation. BHP Coal.

MR CUPITT: Chairman, Mike Cupitt, manager, human resources, central region.

MR WILLIMS: Chairman, we've provided a submission to the inquiry. By way of opening our comments I would draw the Commissioner's attention to the executive summary where we feel the main points that we wanted to make in the submission are captured. At this point I wouldn't propose elaborating on those points, I'd simply ask the chairman if he has particular questions, to put those to us and we'll do our best to answer those questions.

PRESIDING COMMISSIONER: Thanks very much, Ross. Can I say I did appreciate the provision of this submission and I enjoyed reading it. There's lots of good information in here which is certainly helpful to us. What does come through, I think, right throughout your submission, is that the industry is an industry that's got significant challenges in front of it. And from simply changing market at one end through to significant challenges in terms of keeping costs under control and even in a more fundamental way, significantly reducing costs right throughout your own company. Would you like to just elaborate on maybe some elements of the market for a start, in terms of what you see is the greatest challenges that might face BHP in the future?

MR ISLES: Yes, thank you, Chairman. Peter Isles, again. The export coal produced by the BHP operations in Queensland and in the Illawarra in New South Wales are predominantly destined for the steel industry overseas. I mean, practically exclusively for the blast furnace route to steelmaking. The third arm of our business, the thermal coal operations in Indonesia supply a little coal into the steel industry in Japan but principally supply coal to the East Asian thermal coal market. As far as the coking coal, the metallurgical coal market goes, we see a very tight balance between demand and supply in the next handful of years, particularly in the internationally traded coal that our business is in.

As we say in the submission, the total use of metallurgical coal world wide is 400 million tonnes, give or take the occasional kilogram per year, the international trade which is our business is about 170 million tonnes. The principal issue we see is the very close nexus between demand and supply in that business in the next couple of years.

PRESIDING COMMISSIONER: I think you're talking about, from your submission, a very modest change in demand, maybe sort of real growth of around about 1 per cent per annum or something like that, and you see there being roughly a balance between demand and supply in that regard, do you?

MR ISLES: Yes. Yes, Chairman.

PRESIDING COMMISSIONER: And in terms of thermal coal, did you want to add anything more than what you've currently covered here in the submission as regard the thermal coal? You seem to be suggesting a much, if you like, more significant increase in demand, and I'm wondering whether the recent events in south-east Asia in particular, might cause you to moderate some of those forecasts since writing this submission?

MR ISLES: Yes, Chairman. Firstly, I must point out that as a business, we're not large in the international trade in thermal coal, we probably contribute something in the region of 12 million tonnes into an international trade that is, if my memory serves me, over 200 million tonnes. We certainly see that market in the mere term, the next couple of years, much the same as the metallurgical coal market, that being very much in balance or in balance to the point that it is unbalanced, that the supply site is in fact, much stronger than the demand site.

The long-term forecast for electricity requirements, particularly in east Asia, have been very bullish for years. Even if those forecasts are discounted somewhat, the suggestions from practically all commentators is that there will be significant growth opportunities for traded thermal coal in the next 5, 10, 15, 20 years.

MR HORTON-STEPHENS: Could I just pick up two or three points in this section? The first is the piece at the bottom of.6 p headed "Market Perception and Liability", it looks like a warning. It says, "In the late '80s due to industrial activity, there were concerns about Australian reliability" and in the last sentence you talked about a "lingering unease with the perceived over-reliance on Australian supply." What are you trying to say there? Is this a comment on what's happening today? Are you concerned about the amount of industrial activity trouble that there is in Australia at the moment? Who are you hinting at? What are you hinting at and why?

MR ISLES: I think there's a couple of points there, the first one is simply to note what happened in the 1980's and one must draw lessons from that history, and what we're simply saying is that we can't afford for that history to be repeated or to be continued and the last sentence of that section quite simply notes that the Japanese do have limits in which they are prepared to over-rely or rely on one particular market. So it is getting back to the question, there is a note of warning in that little history, and my point about what is happening right now in terms of current Japanese practice.

MR HORTON-STEPHENS: Are you suggesting that the changes that you go on to talk about in the rest of the submissions as being essential and needing to be brought about quickly, there's a need for urgency, there's some
brake sitting there that those changes shouldn't be effected - shouldn't be sought if it means increasing industrial activity?

MR ISLES: Yes, I'm just lingering on which way to answer it. The changes have to be sought and the changes have to be achieved or the business as we know it will not be the business as we currently know it and so it's change for necessity. Our task as managers will be to achieve that change without horrendous industrial disruption or more importantly, without bad disruption to the supply chain to our customers. But the underlying requirement is tt hathese changes must occur.

MR HORTON-STEPHENS: Mike, were you going to say something?

MR CUPITT: I was going to be helpful but I think Peter has covered it pretty well.

MR HORTON-STEPHENS: Feel free to - - -

MR CUPITT: I think it's fair to say that our experience to date has been that change comes probably at a reasonably slow pace, that's been our experience to date. It's clear to us now that the pace has got to be picked up as is highlighted in this particular document, but our experience in very recent times has been that people, and I'm generalising and I'm not sure that that is the right thing to do, but people at some of our locations at least, are prepared to pick up the pace on change, and we've seen some clear evidence of that happening in reality on the job within the last month or two at a couple of our operations, clear evidence of a willingness on the part of the people who work for us, to actually change the way they are working.

MR HORTON-STEPHENS: We'll come to that a little later, I guess. Just above that in terms of potential competitors or anyway, other suppliers, you say, "The major (indistinct) supplied to the United States but China also has this potential." Could you tell us a little bit more about the situation in China. To what extent are infrastructure limits, and that would be port capacity both acting as a constraint and likely to continue to act as a constraint on Japan as a major player, as a major exporter?

MR ISLES: My major experience with China suggests that although there are some extremely good ports in China, port capacity per se is a restraint. The railing system is also a restraint, and the third part of the equation is the potential for the Chinese economy in its own right to materially increase its steel make. And at the end of the day that could be the most important of the three, that Chins a'demand for domestically produced steel soaks up coal that otherwise could be put through a strained infrastructure into the export market.

PRESIDING COMMISSIONER: Can I go back to the reliability of supply issues just for a moment. Do you know of any examples where Japanese steel mills or Japanese energy producers have actually suffered as a result of the problem of reliability of supply in Australia?

MR ISLES: Anecdotally, in the latter part of the 70's there were a couple of strikes in Queensland that were extremely long, like months, and my guess is, I don't know, but my guess is that with stoppages to the industry of that duration, it would have given the Japanese steel mills, who at that stage were categorically the largest customer, still are, would have given the Japanese steel mills some problems because I doubt that the alternative supply would have been there in quite the force that would have been needed to maintain the status quo. That alternative supply predominantly would have come from the east coast of the United States, so it would have been expensive coal as well.

PRESIDING COMMISSIONER: So that's some time ago but you're suggesting they've got long memories, is that the implication?

MR ISLES: Well, they do have long memories. Most nations do, but I really can't think of a current example that would suggest that reliability of supply has been a major issue.

PRESIDING COMMISSIONER: Ross, the other point that you made before, you seemed to be suggesting that there is a limit to the extent to which Japanese steel mills in particular will actually buy from Australia. If that is the case that actually obviously potentially limits the ability of the industry to actually take part of any growth in the industry, based on the performance of the Australian industry, for example, if we were to actually increase our productivity performance 10 or 15 per cent, are you suggesting that that wouldn't necessarily induce Japanese steel mills to buy more from us?

MR WILLIMS: I'm not suggesting that they wouldn't buy more. I think if were to (indistinct) our performance and make it more attractive for the Japanese to buy from here, I think we would share in that growth. I'm simply saying that there would be limits to that growth because of a desire by the Japanese to continue to have diverse sources of supply.

PRESIDING COMMISSIONER: But you're not sure at this stage what that limit might be?

MR WILLIMS: No.

MR ISLES: Chairman, if I could, our assessment would be that the Japanese steel industry, the steel make quantity in Japan, is not likely to increase. So improved productivity in the Australian industry leading to greater supply potential to the international trade would automatically mean practically that that extra production would go to other markets, expanding markets of which India is sometimes an example, Korea and Taiwan still have, we believe, some expansion opportunities, the east Asian (indistinct), once they recover, could well in time, become markets. And surprisingly, the eastern Europe market is starting to open up, and it's not an easy market to get to and it's not a particularly lucrative market but it is starting to open up.

MR HORTON-STEPHENS: Can we be competitive in eastern Europe?

MR ISLES: With great difficulty but it's an opening, potentially an opening market that sources of supply into would be domestic European coal, predominantly Polish and Ukranian coal, the east coast of the United States and then the people far, far away.

PRESIDING COMMISSIONER: You actually go on and talk about barriers to international trade, that's what I was going to cover now. Did you want to make any specific comments about this before we move into just general discussion? You raised a number of issues here. One of the ones I want to actually come to is not only in terms of barriers to international trading in coal, and particularly coking coal, also the question about international trade, international restrictions in trade to steel, if you felt that was an issue that we ought to at least consider as well, as a by-product of some of the points that you're making here. But we might, if you like, come back to that.

Where we talk about trading blocks here, I wasn't exactly sure, it's just as a point of clarification more than anything else, you talk about NAFTA and the role of NAFTA with regard to - as a possible source of a trading block to Australian coal, but I actually wasn't sure that Chile was part of NAFTA. I'm wondering if you could just explain what you had in mind there?

MR WILLIMS: Just by way of clarification on that, and I don't have the full details with me but there's a recent agreement between Chile and Canada which appeared to be in part, related to an arrangement through NAFTA, where Canada had its tariffs on its coal into Chile, substantially reduced, at a disadvantage to us where we continue to have full tarrifs supplied on our coal. The simple point there was that Canada seemed to be getting some advantage under NAFTA or some equivalent to NAFTA, that put us at a price disadvantage and was making it very difficult to maintain that market.

I think we've got a similar circumstance potentially arising in Brazil, as I understand it. The precise time dimensions for that are not yet clear but potentially we face very considerable pressure in that market as well.

PRESIDING COMMISSIONER: It may be necessary for us to get a bit more detail about that and we may need to come back to you on that.

MR WILLIMS: Yes, we can get that for you.

PRESIDING COMMISSIONER: It's the first time this issue has actually been raised with us. And in fact, the impression we've tended to get was that it is actually a fairly free market and becoming even more free in some markets, ie, some parts of Europe, and so it's the first time I think this has been raised by anybody, so we may need to get back - - -

MR WILLIMS: The Department of Foreign Affairs and Trade and the Department of Primary Industry and Energy in Canberra will have considerable detail on that issue as well if you wish to pursue it with them.

PRESIDING COMMISSIONER: Thank you. That's helpful.

MR HORTON-STEPHENS: Yes, I was curious, having spent a number of years overseas at our embassies, you say - the message in the trading block section seems to be the government - you're quite happy with the government focus on multilateral trade diplomacy which would tend to suggest that there needs to be a greater purpose or certainly more attention be given to bilateral trade problems. Governments in my experience of (indistinct) and it's predecessors have always been there to help put pressure on countries where there are bilateral trade problems and obviously in fact, you've used that medium to - I don't quite know why you're raising it with us or what you expect us to do about it. What can we do about it other than what you're already doing (indistinct)?

MR WILLIMS: I'm simply - well, I don't know what the Commission can do about it either in its report. The purpose of raising it was simply to indicate that there has been a problem there, that the government's approach had been to indicate that they wanted to use APEC as a forum in which seek to resolve freeing up of trade in commodities such as coal. APEC has an agenda which to date hasn't been able to resolve the sorts of issues that have arisen in the Chilean coal market, and our point simply is that if APEC isn't able to resolve such issues in a reasonable timeframe, then the government has no alternative but to focus more on resolution through bilateral means.

PRESIDING COMMISSIONER: While we're still talking about that under this section you raise also some concerns about what I think you describe as "possible political pressure", eg, US trade balance considerations exerted on the Japanese steel mills to buy, say from the USA. Were you able to provide any further information about that that might help us?

MR LEACH: We might get back to you on that point, if we can.

PRESIDING COMMISSIONER: That will be helpful. Do you want to follow that up?

MR HORTON-STEPHENS: Not on that point, I just want to look at the next paragraph. In the next paragraph you raise the old issue of Australia having a single desk operation. It's been suggested that Australia should respond with a single industry face. I'm curious as to why you should raise that with us, I don't think it's been raised so far in the inquiry. You raise it to knock it down. Why raise it with us?

MR WILLIMS: Simply because it's an issue that has been kicking around for a good while. We thought it may arise in the inquiry and yes, you're right, we did want to knock it down.

MR HORTON-STEPHENS: If it comes up I guess, in the, seriously in the course of the inquiry we might want to get back to you with perhaps a fuller presentation on the topic.

MR WILLIMS: Sure.

MR HORTON-STEPHENS: Thank you.

PRESIDING COMMISSIONER: You also talk about some greenhouse issues, there were global warming questions. I guess the Commission hasn't seen that it can necessarily go into this in any great detail because if we started to move into this area we will probably divert it from some of the other issues which I think the industry has tended to see as being particularly important, although having a quite industry specific focus. Do you want to highlight anything out of this that you would want us to at least take into account?

MR WILLIMS: Nothing other than to note that it is a challenge for the industry. None of us can know at this stage what the outcome from the Kyoto consequence subsequently will be. We simply in this section, try to cover the two possibilities, one of which is tight restrictions and the other more modest restrictions and potential outcomes from both of those. It's simply a factor that is providing, or is an issue for the industry, but beyond that I have no other particular points to note.

PRESIDING COMMISSIONER: Maybe we then should move on to the question of the performance of the Australian industry and I think in this section, both this section and also the one under "Work Arrangements", that in your - seem to me to be arguing that performance has actually been at best modest and at worst, leaving a lot to be desired. And one of the things that you talk about, I think, is that you say that "Even though our performance over a long period of time has been quite modest", I think you suggest there's been continuing, as you say "excessively optimistic forecast for future demand" and presumably therefore, quite optimistic forecasts of the benefit of exploiting the resource. Could you give us a bit of an idea about why you've felt that there has been such a continuing excessively optimistic forecast? What's been behind that?

MR WILLIMS: Perhaps that's one that we could take on notice and get back to you as to the reasons for that. I suppose more than anything else we are simply noting that there have - that those forecasts have existed for some time, they continue to exist, they continued to exist in government circles, at least until very, very recently, and with encouragement for new producers to come into the market, and certainly has not helped the over-supply problem facing the industry. Beyond that, no other comments at this stage. If you wanted to pursue it further perhaps we could get back to you with some further comments on it. We are simply noting it as a fact, I suppose.

PRESIDING COMMISSIONER: Yes. One of the reasons why it is of interest, certainly to myself, is that it seems to have been the basis upon which other parts of the community, not the least State governments and certainly not the least unions, have felt that it's quite reasonable to ask for what seems to have been quite excessive benefits that have flowed from the industry, and even within this inquiry we're getting a mixed message about the state of the industry. Some people are saying it's a crisis and others saying, "Well, there's quite a lot of investment still going on and a lot still planned" and so it's about trying to understand whether these optimistic forecasts of the past are likely to continue into the future and therefore have an effect on the way in which players respond to that, I guess, in the future. So that's the reason. So if you wanted to take that on notice, that would be fine.

MR WILLIMS: Yes.

MR HORTON-STEPHENS: You say later on in that page that you "benchmark individual operations against other operations within the group and against other relevant BHP minerals operations" and so on. We're doing or having done some work of our own on benchmarking in the industry, because we're asked to do so in the terms of reference, would it be possible for you to share any of this work with us, at least on a confidential basis?

MR WILLIMS: We've had some discussions with the Commission about that already. I will look at what other material we can provide to the Commission on that on a confidential basis.

PRESIDING COMMISSIONER: Good. Now, why don't we move on to work arrangements and you raise a whole series of issues here, and again, do you want to make any special comment before we move on to any discussion about work arrangements?

MR HORTON-STEPHENS: Mike, do you want to pick any points up there?

MR CUPITT: I'm just thinking if it's not better, if you'd like me to make some observations in respect of this report or if you'd prefer to ask questions?

PRESIDING COMMISSIONER: Why don't you make some observations first so we can get a sense of the way you're thinking about it and then we can have a discussion about it.

MR CUPITT: Okay. First up, what we really want to make clear is that we don't see it as productive to get on to some sort of blame trip, blame government, blame unions or our performance or lack of performance. At the end of the day it's our view that the people who are paid to manage our operations ought to be doing just that. Our view is that our performance to date, I think in your words, Commissioner, has been modest. There has been some change occurring over a number of years, some significant, some smallish by way of comparison with probably what we need to do today, but bottom line our view is that our managers are accountable to manage the operations not government, not the unions as such.

If I could just touch on the question of government for a moment. As we see it, government will probably always find a role of sorts for itself. If we look at reality, it's probably fair to say, given the system as we've known it over a number of years, that government will probably in the foreseeable future, want to in some way, ensure that there's some sort of a safety net in place for the people who work for us and other organisations. And I guess government has a couple of choices as to how they do that. They can do that through some sort of legislative framework, the sort of thing that we've seen in some of the State jurisdictions over the years where they've legislated for minimum long service leave, annual leave type entitlements, or alternatively, the sort of device that I guess government today is looking at, setting up a safety net through individual award mechanisms.

Our award at the moment is in fact, not a bad working document as such, but has been in place now for 7 years. It would be my view at least, that that document has not been taken full advantage of, if that's the way to put it. The award itself is not perfect but it was in my view, a significant first step on a road towards an outcome which would have had it that you have an award instrument in place that did little more than set out the basic terms and conditions of employment of people as opposed to an instrument which not only does that but tends to intrude upon operational matters. And you might recall that in the late 80's there was even a provision in our awards that mandated that we had to shut down every Christmas and every Easter.

There is still some provisions in the coal award which in our view, intrude if you like, on our ability to operate as we ought to be operating. A couple of examples, there is a provision in there which would get in the way, if you like, of management in making decisions to change working schedules. There's the old favourite, the reduction of hands provision, is another example. We see that the award instrument really ought to be the sort of instrument if there is to be one, that is contemplated through the current government's legislation, and the bottom line, if there is to be that sort of instrument in place, it really ought to take the shape that we think is contemplated by the current government.

There is clearly a case there for other protective mechanisms to be put in place by government, depending on how government looks at those sort of things, providing they again, don't interfere with, or intrude upon the management in its attempts to manage it's own operations as such.

I think we provided something of a list of issues on p.15. That's an indicative list, if you like, some tend to hit the headlines from time to time but it may well be worthwhile if I could just identify for you those that really arise out of an award or some legislative mechanism, and those that don't. And it's quite interesting if you run through from the top to the bottom; "The right to recruit on merit", there's nothing in the award on that subject. What we've got we've created for ourselves, probably with a little bit of help from the unions, but bottom line again, we've created it for ourselves, the current situation.

PRESIDING COMMISSIONER: Can I just clarify that. So, what you're saying there is, if I'm reading you correctly, is that really is up to you to remove?

MR CUPITT: Absolutely.

PRESIDING COMMISSIONER: In BHP's court?

MR CUPITT: Yes.

PRESIDING COMMISSIONER: And there's no legislative or regulatory barrier for you achieving that?

MR CUPITT: Not to my knowledge, Commissioner. And I must say some of our operations have already addressed that issue. Not all but some. The second one, "Right to select and promote on merit", that's something that is in part picked up by the award, but in my opinion the reality is that again, we haven't taken full advantage, if I can again use that terminology, of the award provisions as they currently stand. Our view is that the award shouldn't address that issue at all, of course, but we've got to accept some level of responsibility for again, the situation we find ourselves in at some of our operations, on that subject.

"Effectiveness of disputes procedure." I'm not sure what you can say. There an award disputes procedure but the reality is, again, it's up to us to make those mechanisms work. There is a provision in the award which allows for our operations to substitute for the award disputes procedure, if they have a better idea. In some cases they have done that.

"Right to use contractors when business needs dictate." There's not an award provision on that subject. There is, as you probably realise, a custom and practice provision in our award which is always something of a problem but I really don't recall that being used in recent times when we've sat down and had this debate. The right to use contractors is not in itself, an award issue, it's a matter which again, I think at the end of the day, we need to have a good look at ourselves and the way we've managed it over the years.

"Acceptance of continuous improvement without undue delays." That's with us. It's not an award matter. It's not a legislative matter. That's with us. I think there's been an improvement, certainly in recent times, but nowhere near where we want to be.

"Ship roster and work out flexibility." There are some limitations in the award, I think I've already mentioned that. Where those limitations or restrictions apply they ought to be addressed through that award review process. Some of our operations have managed in fact, to make significant changes to work schedules without hindrance from people who want to misuse the award provision or use it.

"Flexibility between work streams and wages employees and staff." That's a 50/50 one. It's there in the award that limitation. At the time it was dropped into the award it would seem to be something of an advance what's in that award. Right now you've got that restriction which doesn't allow managers to make the sort of decisions some of them want to make in the interests of their operations. Again, that can be and ought to be picked up through the award review process, if not through enterprise negotiations which can substitute for award provisions anyway. And again, some of our operations have been working on that particular issue.

"Right to out-source when clearly cost effective." That's again, the contractor issue. The award doesn't say anything about that. That's something that has been with us and is with us, and again, we're working on. It is an issue.

"Restrictions on overtime." The award talks about reasonable overtime. Again it's an issue insofar as there is some level of restriction when you get down to a definition of what is reasonable overtime. But again at the end of the day that's one that we need to work on ourselves as well.

"Specific equipment manning issues." Nothing to do with the award at all. You can get a bit caught up in this notion of custom and practice, and that has been used in various forums on occasions, but again it is something that our people are picking up and doing something about in real terms.

"Use of casuals." There is not a provision as such, as I recall, in the award. Certainly the production and engineering award which permits the use of casuals, but again I am not sure that we've actively gone about addressing that issue ourselves as we might have.

"Crib flexibility." The award provides for crib flexibility. We haven't used the award again to advantage as managers.

"Attendance management including procedures, notification of absence." That's a sort of 75/25 thing. Really attendance management broadly speaking is not something that is picked up by the award. It's picked up through various procedures and processes by the culture, if you like, at our various mines. The award does have a provision which I think gives people the opportunity to wait 72 hours before they tell you that they were sick on a particular day.

That's been addressed through various enterprise negotiations at some of our mines and can be addressed through that means, and again it's one of those process matters that ought not, in our opinion, be in an award anyway. The debate ought not be over the 72 versus 24, it's a question of whether it ought be in the award. In our view, no, it shouldn't be in the award. It's a matter we ought to pick up ourselves and manage as an issue, broadly speaking, and if we can't there is a simple answer.

"Removing seniority where it is a barrier to improved business performance."
The fact is that seniority was an issue addressed when the production and engineering award was put in place in 1989/90 and if one really runs through that award there is not much of a place for seniority according to the award
any more in this industry. I think there is a provision in there which talks about training opportunities being made available on some basis of seniority but beyond that it's not there.

There's the reduction of hands provision which is reverse seniority. The award today is a lot different from the old award. The unfortunate thing is that our company and other companies have managers who are still operating within the culture pre 1989, they've still got that mindset, and we probably didn't do enough, in retrospect, to address that issue with our managers as such.

I guess the message is that they are real issues, they are live issues more or less, at our operations, but at the end of the day we've got to stand up and be accountable for our failure in some of those areas, if not most of those areas.

I think that's probably as much as I ought to say as an overview, anyway.

PRESIDING COMMISSIONER: Does anybody else want to make any comment at this stage on what Mike has said?

Mike, I am a little bemused, I must say, because if as you've described it, most of these things are in BHPs court why haven't they been removed, because I guess the thing that worries us even though we're still trying to work through lots of the information which is provided to us, it does seem at least on the face of it that the general productivity performance of the industry is in some cases abysmal, and by its very nature what this implies is that not only are shareholders of major companies not getting a real return on their assets, but it's also sacrificing from a national perspective the opportunity to actually become a very substantial player in an important world market. So what is it that's actually - where's the blockage in doing what we would see in most other industries is applying almost every day, and that is the application of best practice.

MR CUPITT: I guess the best I can do is offer an opinion. My opinion is that while the 70s were a little rough in terms of industrial activity the 70s - that was the era in which I guess our operations, the coalmining industry in Queensland was born. I think it is fair to say that in those days you really had to kick a bit of dirt off and you'd pick up some coal and you could sell every bit you could pick up at your price.

Now that's the culture, if you like, within which our operations and those of other organisations were established and again, in my opinion I think that the culture of the 70s, if you like, was allowed to continue, despite even the downturn in the early 80s, continue within our operations and particularly within the ranks of our management, our supervision et cetera.

There seemed to be this mindset here that, "Hey, all we've got to do is pull it out of the ground and they'll sell as much as we can produce pretty much at any number." That seemed to be a view at our operations and I believe at the operations of other companies.

It seems, in my experience, to take an event, a significant event to, if you like, bring people into reality. To some extent we saw that in the late 80s, and I think even the unions would agree that in the late 80s the significant event was in fact the so-called hours case, and the union movement at that time saw that if they weren't prepared to change it would occur anyway.

PRESIDING COMMISSIONER: You're describing something quite different from what many other people have been describing throughout this inquiry, in that you are describing a situation where most of the concerns are basically management concerns and most of the control for outcomes is really in the hands of management.

We have tended to have other people say to us while that's certainly the case, and nobody's trying to deny that, they're saying if you actually aggregate all of the impediments say at each one of these you get a position whereby it is very difficult to bring about change. Because not only do you have - it's quite right that you know that you have the opportunity for managers to actually bring some of these things about, but at each step of the way they are stopped from bringing about change. Whether it is in terms of the relationship between the union, either on site or at the local lodge level, or alternatively we've been given quite a number of examples of where when it gets into the ARC, some what they regard as quite sensible suggestions about bringing about productivity changes have simply been ruled as being invalid by the AIRC. You're painting a quite different picture to that.

MR CUPITT: I am really. I guess the picture I paint really suggests once again at the end of the day our managers, people like myself are paid good money to deliver results for people who work for us, for our shareholders, and those people are entitled to question our performance to date. There has been change, there's been improvement, but it's not at the level it ought to be.

Sure it's difficult on the job. It is difficult. And that varies from job to job too, but we're paid to manage. The unions aren't paid to manage our operations.

As far as the AIRC is concerned, I guess if you go back to the early 80s we found ourselves through various dispute resolution procedures spending a fair bit of time in the commission. We spend very little time in the commission now, very very little time in the commission. We don't avoid it but we don't find ourselves in the commission. We have tended to not rely upon the legal fraternity, if you like, to resolve issues for us on the job. We haven't found that necessary in general terms.

I think most of our experience in the commission now would be in fact an experience that sees us taking agreements along for certification.

MR STEPHENS: Can I just say - Bill said he was bemused. I was certainly that, and if not, confused. I read it sitting there, looking at the points as you were talking to them. I also read on the page that there's a need for an increasingly co operative approach to address these issues. Things need to be quickened up and so on. Can I expect to read an announcement in the next month or so, "BHP announces new work methods and arrangements for its coalmines." Is that the sort of message you're giving us? And perhaps that almost leads into previous things that we have been reading in the press was that you were leading a group of so called "friendly" companies to work towards a new award with CFMEU.

MR CUPITT: If I could go back to your first point, I don't expect that you will read such an announcement in the papers in a month's time or even two months' time. Our style is generally one where we'd prefer to have the results on the ground before we go waving fancy bits of paper around which promise a lot of change, and they're generally called enterprise agreements.

We have in fact at some of our mines already in place measures which are delivering what I'd regard as significant change compared with where we've been. It's not even across our mines. I can think of one mine that - and I don't particularly want to name it at this stage unless you'd like me to - I can think of one mine which less than a month ago was, in our view, in more trouble than Flash Gordon. Probably still is potentially, but the people at that mine have got together with the management and they've put in place a plan which is directed at addressing costs, work practices, the full squid of issues, and they have already commenced to implement that program. The program is one that sees them through to the end of our current fiscal year, 31 May next year, and also envisages the next financial year in terms of the sort of change that's necessary but very very basic stuff, the sort of stuff that's highlighted through these sort of issues. But they're already doing it, but we don't see it as productive to make public announcements at this stage.

MR STEPHENS: That's fine. On the other hand I think it would be helpful if we could know what changes are happening, even if you feel the need to put "confidential" on that piece of information. We need to understand what's going on because we can only understand what we're told, and you've been hearing from us that we're really getting suddenly a rather different picture from you this morning.

MR CUPITT: We can take that on notice. We can certainly provide you with some detail in that regard.

PRESIDING COMMISSIONER: The other thing which would be very helpful, and again we would be happy to keep it confidential, is to get some idea about what you believe that those changes will do in terms of improving your own productivity, because ultimately the rub is, the ultimate rub is to what extent are those changes going to actually allow you and others, if they apply what you're intending to do, to achieve what you might describe as world's best practice productivity performances.

MR CUPITT: Yes.

PRESIDING COMMISSIONER: So to the extent that you could help us with that that would be a significant thing.

MR CUPITT: We would be happy to do that.

PRESIDING COMMISSIONER: What we don't want to do is to intervene or to disrupt a situation by getting the cycle wrong. And if everybody in industry is now basically understanding what needs to be done and is getting on with it, then that's terrific. And we don't want to intervene if that's the case. We'll get out of your hair. So it's important for us to understand where we are on the site. You might be able to help me though just the same. Some of the dilemmas, and you might say that these will be overcome with new sets of arrangements but I don't see diversity in terms of employment in the industry. For example, I see few women, I see few aborigines, I see few young people, I see an ageing workforce, so would the arrangements that you were talking about, now be likely to address what I would normally see in most other, if you like, competitive labour markets?

MR CUPITT: I think if you want a straight answer to that, unlikely in the short order medium term, despite our efforts. Unlikely.

PRESIDING COMMISSIONER: I also observe in this industry, levels of industrial disputation significantly above almost every other industry. Will the arrangement that you're putting in place be likely to address that?

MR CUPITT: Yes.

PRESIDING COMMISSIONER: When I look at wage rates in this particular industry and compare them to wage rates in other industries with similar sorts of characteristics, I see this industry being significantly above what I see in other sectors of the economy. Would it be likely to address overtime and those sorts of issues?

MR CUPITT: I think it depends what sort of comparison you're making there. The award rates - I'm not sure if the award rates in themselves are that far out of kilter. Again, it depends on the comparison you make. If you line them up with oil for instance, they're not really out of kilter. If again, you come back to the total package, you start to consider the so-called "over awards", yes, there's a big question mark behind those moneys. Our objective is to build into the total package a higher component which is related to real performance.

PRESIDING COMMISSIONER: So we're likely to see a change in the way in which the package is constructed to reward effort, for example?

MR CUPITT: Yes. Absolutely.

PRESIDING COMMISSIONER: I mean, I could go through a whole range of these and as you can see we're on heading here. When one identifies - when one looks at the industry from the outside you can see a whole series of, if you like, characteristics of the labour market in this sector that are not the same as you see in a competitive market.

MR CUPITT: I think, if picking up the packages, an example of what we've already done, and admittedly it's not so much with members of the Miner's Federation and the Metal Workers, people in the warehouses, clerical administrative roles, laboratory, surveying, et cetera, all of those people are now on the normal salary package, not some fluffed-up aggregate wage but a normal salary package which is treated in the same way as my package for those people. And that's been the case now for about 2 years.

I guess our preferred situation is to see all of our employees on a similar arrangement. Now, that doesn't mean to say the administration that goes around the salary package I'm on or those other people are on, can't be improved, it can be.

PRESIDING COMMISSIONER: If I may, I'll just ask one last question here and then hand it over to Keith and see if he's got any others. But that list that you've provided on p.15, I mean, in most other industries, they're just regarded as being the norm.

MR CUPITT: That's right.

PRESIDING COMMISSIONER: And have been the norm for at least a decade and for some industries, two decades. How long would you see before you before you would be able to bring what you have described here, in line with what I would describe as normal practice, not even best practice, normal practice in most other industries?

MR CUPITT: See, I - again, it's a matter of this event we're going with, we haven't got a choice anymore. I think the point we made in here is we've been working on change progressively over a pretty lengthy period and some of it's been happening, it's been spotty. We've no longer got a choice, it's got to happen quickly and in my view, the sort of target that we'd be looking at, I think that would be demanded of us, will be to have those issues and others addressed by the end of this current financial year, and that's tight. 31 May, next year.

PRESIDING COMMISSIONER: There's a real sense of urgency then, isn't it?

MR CUPITT: It is.

PRESIDING COMMISSIONER: Keith?

MR HORTON-STEPHENS: No.

PRESIDING COMMISSIONER: Why don't we move on to some safety issues. The question that comes to mind when I look at this is why is New South Wales so different to Queensland? The performance in - certainly the performance in New South Wales seems to be very significantly different to the performance of what we see in Queensland, and is there some structural issue there that we should be made aware of?

MR ISLES: I can make up an answer to that. At the end of the day, Chairman, safety performance as it's measured here with infrequency rate and severity rate, comes back to a matter of attitude. Superimposed on that, the operations recorded in this chart for our business in New South Wales, are all underground mines, and underground mines have a tradition, be it attitudinal or factual, of having higher, ie, worse measures of safety performance. So I think, if there's a legitimate reason it's because the operations in New South Wales are all underground.

PRESIDING COMMISSIONER: Does that - Peter, I'm not trying to put words into your mouth but does that imply that it would be reasonable for us to think about safety regulatory issues differently between surface mining and underground?

MR ISLES: As a general rule the State legislation that governs that safety issues in both Queensland and New South Wales is differentiated already.

PRESIDING COMMISSIONER: Significant enough from your perspective?

MR ISLES: The Queensland Act and regulations are in the process of being reviewed, re-written and modernised. The surface operations will be quite minimal. There has been a lot of work done, an awful lot of work done on the underground sector basically to define risk and to define how Risk 14 should be managed. The intention is to structure the regulations such that those risks that need very proscriptive solutions will be so proscribed, those that can be handled more generally will be handled more generally. Bill, if I could - - -

PRESIDING COMMISSIONER: Yes.

MR ISLES: The collieries operations in New South Wales covers today five underground mines. The best in the measures of frequency rate and severity rate, the best of those five mines is as good as any of the open-cuts in Queensland, so there's great variation within the business in New South Wales.

PRESIDING COMMISSIONER: The other thing that strikes me from this table, of course, is the difference between surface mining even between Queensland and surface mining in other parts of the world. You were good enough to arrange for us to visit Navajo Mine, and when you visit that mine you could be forgiven for thinking that you were at Peak Downs, to some extent. And yet I see very significant differences in performance even between Queensland mines and say the Navajo Mine. Do you have any explanation for why that might be the case?

MR ISLES: Again, I think it at the end of the day, comes back to a question of attitude, that a good safety performance is going to be driven by the way people think about working safely. Incidentally, Peak Downs performance right now is nearly identical with Navajo.

PRESIDING COMMISSIONER: Is it? That's good.

MR ISLES: Frequency rates - severity rates are a little higher.

PRESIDING COMMISSIONER: But Peter, correct me if I'm wrong but there's an also of incentives, isn't there, that also play themselves out with regard to safety. I mean, I think most of us know, having a look at it, if you get the wrong incentives, for example with regard to Workers Compensation arrangements, you can sometimes get that played out either in accidents or where there may not be necessarily accidents but people may decide that they may stay away a bit longer or a day here or a day there, and they can build up to be quite significant over time. Do we see any of those issues of incentive being played out in these sorts of numbers?

MR ISLES: Historically we certainly do. The Workers Compensation arrangements in Queensland have, in times gone by, been extremely user friendly. The regulatory environment in Queensland has changed and is changing and the next major step change will be the facility for organisations that need a certain set of defined criteria to self-insure. So to the extent that today there is rorting of the Workers Compensation system, progressively over the last handful of years and in periods to come, those opportunities will decline.

The other - probably today, more important thing, is that in the Australian based business, BHP Coal business, in the last, probably starting seriously 5 or 6 years ago and getting extra specially serious about 3 years ago, as an issue that management has applied it's attention to, we've put an awful lot of time and energy into enhancing our safety performance, their frequency rates, severity rate or any other measure.

The first and major approach was to take on a structured system that comes out of the South African industry that basically looks at the physical surrounds and the control mechanisms for a safety management plan. That's starting to bear fruit such that the next phase that we will take on will be to start looking practically exclusively at attitudinal issues. So my expectation is that we will see what has already been an improvement in measures in the last say, 5 years, that improvement will continue.

MR HORTON-STEPHENS: Just one small point, on p.17 you talk about self-insurance and you just explained how you've chosen to self-insure in Queensland, what you say there applies to Queensland, it doesn't apply to New South Wales. I was little surprised not to hear some comment about the JCB monopoly.

MR ISLES: I'm not familiar with the New South Wales arrangements, Keith.

PRESIDING COMMISSIONER: Is it an issue for us though? Would you want us to look at the issues of the Joint Coal Board and it's relationship to insurance in - - -

MR ISLES: We'd probably want to ask our friends.

MR WILLIMS: We'd need to check that and get back to you, I think, on that.

PRESIDING COMMISSIONER: All right. Thank you. Maybe we should move on to a few economic infrastructure issues. You've raised a whole range of issues here but again the impression I get is that there's a lot needs to be done in regard to economic structure. Do you want to make any comment about that?

MR WILLIMS: Two sets of issues in Queensland, or three sets of issues, two I particularly want to focus on, one in relation to rail and the second in relation to electricity. I think in both areas we have seen reforms and we've seen improvements. In both areas, however, there is considerably more that needs to be done. If I can just talk about rail very briefly. The reforms that we have seen still leave us short of world's best practice and well short of world's best practice, still leave us well short in terms of freight costs compared to what we've been able to achieve in our Western Australian iron ore operations.

We believe that the benefits that we're looking for, while some can be delivered by Queensland Rail in it's own right, what we are particularly looking for is third party access, the right of third party operators to operate on the system to deliver the benefits of competition that we're looking for.

In relation to electricity, we've seen a very large reform program that's been announced by the Queensland Government. The fruits of that, and they are to be commended for the initiative that they've taken in that area, the fruits of that for major consumers such as ourselves will hopefully start to be realised from early next year. There are remaining issues there that we picked up in our submission, that we believe need to be addressed for those benefits to be fully realised. Again, we are looking at reducing our costs in that sector and what is a high cost item for us.

They're the general comments I would make. If there are other particular questions we will try to answer them.

PRESIDING COMMISSIONER: Maybe just on the access regime, how would you take advantage of that if you had the opportunity to do so?

MR LEACH: I think the important issue to note is that we don't want access for access sake, that we're looking for a system that does truly promote the opportunity for competition and thereby creating, if you like, a threat to Queensland Rail to sharpen their prices as well as they should. I think in the absence of access we fall back on issues like world best practice, and a study was done in that respect. Whilst that was very useful it gets to the stage where I think a lot of these exercise do, you fall back on the structural differences between Queensland Rail and the benchmark partner that you're looking at, and if you're not very careful you can explain that whole difference away due to structural changes or structural differences, sorry.

In addition, I think to date, were due to the lack of (indistinct) we have
with rail freight in Queensland that will best practice exercise benchmark operating costs only and not the full rail freight amount. And not surprisingly to us, Queensland Rail performed reasonably well performance-wise. We've never had a major complaint with their performance, our complaints have been what they have charged for it.

But getting back to the access issue, I don't think we have any real desire to run trains if that's perhaps what you're referring to, ourselves. Obviously the opportunity would be there if and when third party access becomes reality. But at this stage we would be looking for, as I said, a fair basis for a third party to offer a real competitive opposition to the current system, be that us, another smaller party, another third party operator big or small, or whether merely the threat to Queensland Rail is sufficient to sharpen their outlook.

PRESIDING COMMISSIONER: The only thought that comes to mind is if (indistinct) isn't able to provide that credible, if you like, threat, it's hard to see who else would. The point I'm making, it might be necessary to support the access regime with some sort of action to show there is a credible threat. Now, I don't want you to answer that but I mean, there's a real balance between a threat and a credible threat in this area.

MR LEACH: Yes. Chairman, I could briefly answer that to say that there are numerous companies out there that we have had some preliminary talks to and some rather large companies as well that are interested in providing those services. What we need to do is to get the rules established as quickly as we can so we can establish just how many of those companies could operate in that, and they can assess themselves whether it's feasible to continue looking at the possibility. And then, I guess, we need to, depending on how that pans out, to re-assess where we go from there ourselves.

PRESIDING COMMISSIONER: My guess is that if we were to make some case for establishing the rules quickly, the Queensland Government will simply say, "It's already being done." How would you respond to that if that's what their response was?

MR LEACH: Establishing the rules, firstly, establishing their access regime will require certification from the National Competition Council.   Queensland, we believe, is currently preparing a submission to go to that. We are concerned that that submission may be very, very brief and bare bones, if you like, which would throw it back as you suggest, into Queensland's hands to put all the meat on it and really make the operating rules.

I guess we would like to make sure that the review by the NCC is comprehensive and does meet the requirements of the National Competition principles and that if the submission that Queensland does put in is not sufficient then it not be credited until they give us some more indication of how the system will operate. Ross, do you have any - - -

MR WILLIMS: (Indistinct response.)

MR HORTON-STEPHENS: Just a couple of questions, you said at the beginning of the submission that if we are quiet on a subject it's because we agree with what the QMC had to say. The QMC had to say on access pricing, that's what I want to raise, "Cause for trans (indistinct) cost reflective access pricing with posted access prices and no discriminatory pricing or cross-subsidisation between mines or between coal and other traffic groups."
Let's leave aside coal and other traffic groups but I'd like to understand what's behind the thought of no discriminatory pricing between mines.

We had a discussion in Sydney with the New South Wales FreightCorp (indistinct) Corporation on this point. There has been suggestion that pricing should be, or at least, should be allowed to be based on the capacity of individual mines to pay. As I understand the principle of the Mining Council, do you agree with that and if so, why?

MR LEACH: I guess, firstly, let me say it's not always easy to get total unanimous agreement with people on a body such as the Queensland Mining Council. I think what essentially though they were meaning there, and probably referring to some past practices of significant subsidies being given to encourage new development into the industry. We're not necessarily talking about minor differences in rates but significant rail freight concessions to assist the mine to develop. And I think that has the two issues, there's discriminatory against the existing mines and quite often can encourage supply into the arena which can further exacerbate an over supply situation in encouraging supply by a body that doesn't necessarily understand the mechanics of what's happening within the industry. Now, I suggest that was what the QMC was referring to there. Ross, have you got any - - -

MR WILLIMS: Yes. I think that that covers it. One additional point though is that if one looks at the Queensland system at the moment, where you have, well, you've had until very recently de facto royalties built into rail freight rates, you've had massive discrimination that's worked very heavily against us. We would benefit more than any other company in having discrimination ended and a non discriminatory regime.

MR HORTON-STEPHENS: How would you suggest - again, a move is underway in New South Wales so action has been taken although the thing that strikes you looking at it from a distance is that New South Wales is moving much faster that Queensland, whether it's moving in entirely ways which you'd like is another matter but in the question of monopoly rents there, there's certainly - there's been a reduction in New South Wales. There hasn't been in Queensland and it's not intended that there be for some time yet. Does that make sense?

MR LEACH: Well, there has. Not strictly correct. There has been a reduction in Queensland, unfortunately BHP Coal hasn't been party to them. Under the phased out arrangements for the de facto royalty all new operations since 1993 do not attract the de facto royalty. All operations whose rail haulage agreements naturally expired from 1993 onwards were allowed to re-negotiate those contracts without de facto royalty. And it's only mines who had contracts extending beyond 2000 which, as I said, were all our northern Bowan Basin mines, just haven't had the opportunity for either reduction - either elimination or even reduction of the de facto royalty to date. So there's has been some removal, yes, but certainly from our point of view, no.

PRESIDING COMMISSIONER: We might need to move on. There's something else on economic infrastructure. We need to talk about ports maybe. Are there any issues that you wanted to raise with us on ports?

MR HORTON-STEPHENS: Before I - before we go, just in terms of what I (indistinct) infrastructure, I suppose, you have no comments here on the Hunter Valley. You do have a mine in the Hunter Valley that uses the rail facility. In New South Wales it's a pretty big topic and certainly sitting in the Sydney hearings we spent a fair bit of time talking about the Hunter Valley (indistinct) rail and the Port of Newcastle.

MR WILLIMS: We have one mine in the Hunter Valley, it's tonnage is relatively small compared to our Queensland operations and for that reason we focused far, far more, well, we focused exclusively in the submission on - - -

MR HORTON-STEPHENS: No, and I'm saying, that's the point it was exclusively - do you have nothing to say to us about the situation in the Hunter? Perhaps you could take it on notice if you do.

MR LEACH: From an access point of view, do you mean? Third party access?

MR HORTON-STEPHENS: Yes. Rail and port.

MR LEACH: Perhaps we can take it on those and come back but I guess the general comment we would make is they have made a lot of ground but most of it's been in circles from what we can see. Certainly the access regime that has been proposed does not appear to be very workable and it seems to be transferring the existing problem from rail face, higher rail freighting to a higher access charge, and not solving things. And I think that's apparent by the Hunter Valley users, I think, have objected to the access regime that was proposed and that get all back in the melting pot as far as I know. So our impressions of what has happened in New South Wales are not very favourable at this stage. We'll get some views on that and get back to you.

PRESIDING COMMISSIONER: Anything else, Keith, on infrastructure?

MR HORTON-STEPHENS: I'd like to ask one question on - I think we're in the same - on p.21 you talk about other effects of government and you talk about royalty. BHP, or at least another part of BHP, the petroleum part, has a PRRT, has a resource rent tax operating. Do you have any views on - perhaps any suggestion that might be made or has been made indeed, to replace existing royalty arrangements of coal with a resource rent tax?

MR WILLIMS: Again, could we take that question on notice? It's not one that we've - - -

PRESIDING COMMISSIONER: I don't have any other questions that I think that aren't covered at least in reasonable detail in the submissions. So thank you again for that. Is there anything else you think we should have covered? There are number of things that we are going to take on notice and we might come back to you about those once we've had a chance to look at the transcript but is there anything else, Ross?

MR WILLIMS: No, I think that covers it, Chairman, we've got, as you say, a number of points to come back to you on. If you've got any further questions perhaps you could consider that after you've seen what we provide and had a look at the transcript.

PRESIDING COMMISSIONER: Thanks very much. Thanks for your time this morning, I'm sorry we've kept you a bit later than we expected. We should break now maybe just for 10 minutes, I notice there's a cup of tea or coffee down the back, and then we'll come back in maybe 5 or so minutes time with the Australian Mines and Metals Association.

INQUIRY ADJOURNED AT 12.00 PM

LIST OF SPEAKERS PAGE NO.

INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE QLD

MONDAY, 24 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER: MR B SCALES

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INQUIRY RE-CONVENED AT 12.05 PM

PRESIDING COMMISSIONER: I would now like to re-convene this Industry Commission hearing into Australia's black coal industry, and we now have with us the Australian Mines and Metals Association. Could you please introduce yourself and indicate in what capacity you are here this morning, please?

MR HARDY: Yes. I'm Jim Hardy. I've been the manager for Mines and Metals Association in Queensland for just over 11 years now, and I'm here representing the views of the Association generally, and in particular, the points raised in this submission.

PRESIDING COMMISSIONER: Jim, why don't you just cover the main points that you want to make and then we can have a discussion about them? We've obviously read them so you don't need to go through it in detail so just hold on to the main points.

MR HARDY: Certainly. The Association is a group of companies formed to protect the interests of its members in the metalliferous mining and hydrocarbons, and related industries. We are primarily human resource orientated and to that end of course, we're very conscious of what happens around us because inevitably there is some cross-fertilisation of people and practices, and to that end we have taken an interest in what's happening in coal, and of course, some of our members are in fact, moving into the coal industry picking up work in that area.

MR HORTON-STEPHENS: Can I ask which companies? Your members are - - -

MR HARDY: Some of the contractors. Eltan Limited, for example. Downers are one of the companies that came to us for advice and assistance in breaking into the coal industry in New South Wales. Roche (indistinct) are all having a look at the coal industry as contractors, mining contractors.
And of course, BHP Minerals itself is a member of ours in respect to their metalliferous operations. But our primary reason of course, is that we see a viable mining industry makes great sense for Australia and our vision that we took to our members and proclaimed some 10 years ago, emphasises that, that the generation of national wealth and employment is essential for the enhancement of living standards in Australia. We firmly believe that and we've seen results that speak for themselves in that area.

PRESIDING COMMISSIONER: That's all you need to say at this stage?

MR HARDY: That's all I need to say, yes.

PRESIDING COMMISSIONER: Jim, you make the general point about the importance of the industry but then you go on and talk about barriers, which will need to be addressed, particularly with regard to what you might describe as human resource management practices. And I think you make the case if I can quote from you, you say, "Under those scenarios the necessary work place changes and improved productivity will occur. The major issue will be how this transition process is managed." Do you want to outline in your own views how it ought to be managed?

MR HARDY: It's interesting. I listened to part of the BHP submissions and of course, that started from a fairly comfortable position in their industry and now they're trying to reform an industry that they allowed to basically corrupt itself because the labour was such a low component of their cost structure back in the '70s or middle '70s and early '80s, but when I arrived here we were just starting the reformation of the gold industry and of course, we had to start from scratch and create an industry and an industry structure that let us become immediately world competitive. And to that end we set to and removed as many of the barriers to productivity and efficiency as possible at that stage. And of course, the primary order that I got when I turned up here was that we were going to have one production union. It didn't matter if we had one union in the operation as long as we didn't have more than one union attempting to produce the ore, and if we needed to do a deal with the two maintenance unions to achieve productivity, then that was quite fine.

So based on that we set to remove the demarcation that existed between the operators of the mining equipment, the excavators and shovels, and the truck drivers and of course, the people ancillary to the rest of the operation. So what we've achieved is a complete work force that completely interchanges between one section and the other in that a guy could be driving the excavator for 4 hours of his shift and from then on in he could be driving a truck, or similarly, driving a road grader or whatever happens to be the next important job. And of course, with the introduction of the longer working shifts and the compressed work weeks, of course, that was essential to keep people's productivity at a high level, that they didn't sit and do one job all day and become totally bored, so we shift around during the working day. Of course, this has benefits in that everyone becomes relatively highly skilled in each of the areas.

There's no doubt that a very efficient excavator operator is the key to your production system because he can make or break an operation. And of course, when we've got half a dozen people equally skilled, of course, that resolves that. But the reduction in demarcation is certainly a major issue. One of the other things that we set about doing was introducing the operator maintainer concept into the industry. We had a study tour back in the middle 80's that examined that concept in the mining and hydrocarbons industry. We also looked at all staff employment or a single status workforce back then, and where possible, those concepts have been introduced.

Strangely enough, the Metal Workers Union has not rejected what we've said in the past but quite often their members will be on our sites but they will be primarily operators with a secondary role as a maintainer or a trade skill person. That happens and it works quite well. And of course, what we find is that a fellow that has to fix the machine or keep an eye on its capacity, doesn't break it. Very casually he worries about the quality of his gear and it's ongoing maintenance. So we see that that reduction at the demarcation side of it, the freer interchange between the maintenance and production people have had a significant boost to our productivity. There was some resistance to the use, or the staff people using equipment but now we quite often see that the foreman will hop into a truck when somebody is off for a toilet break or a lunch break and keep the thing operating.

In the (indistinct) of all operations, of course, we are achieving something like 22 hours a day trucking operations and equipment operations. The contractors tell us that they need that sort of equipment hour utilisation to make money out of the gear, and to that end of course, the only time the thing stops is for re-fuelling and a check.

We have what they call a "hot seat change", a one shift change operation where the new driver is brought along and hops into the truck after a very cursory walk around to make sure it's still in one bit and takes off with the gear. There is a maintenance period where the truck is actually down or the fleet is down, normally between about 5 am and 7 am in the morning. So our maintenance people are on a different work pattern to the rest of the folks to handle that, and of course, there are modern techniques in equipment monitoring to make sure that the gear runs properly.

So we've done that part of the awards system that allows you to do that, and of course, the contractors themselves help because they're efficient movers of earth coming from the civil side of life, they are very effective at moving tonnes of ore or over-burden, and once again, they're on a price per bank cubic metre, they're not paid by the hour. So their interest and the interests of their employees is to shift the stuff.

As far as the other items we've mentioned here, the engagement of casuals and part-timers, yes, when the 1989 National Wage Case came out, we took advantage of that as part of the structural efficiency of the awards and introduced those provisions under proper arrangements in most of the awards. Now, I say "the awards" and that's one of the differences here in Queensland, is that we have enterprise specific agreements or awards rather than an industry award, well, as of February of this year, we do now have an efficient industry award and I would see that from here on in we'll be using that award as the framework and certified agreements for each of the new mines as they come along, or in some cases, we'll set aside the enterprise awards and use that with a certified agreement for existing operations.

So there is a transition period in place. The other states, New South Wales has quite an efficient framework award. It runs with enterprise agreements above that or workplace agreements. Western Australia has a basic framework award and various set-ups of agreements over and above that, either they're workplace agreements or staff type contract arrangements.

For our resurgence in the gold show, the engagement of contractors was accepted by the unions we deal with that it's essential to get the industry back on the ground. And we do use quite a lot of contractors, predominantly the mine haul is contracted out. There are only three operations at the moment that have their own employees doing the actual mining and haul part of the process. Normally, the company's employees run the treatment plants, the mill and provide maintenance services to that area and the contractor provides the excavator or the shovel and the truck fleet, and maintains those. It's on his head to produce the tonnes, the agreed rate of tonnes at the agreed price.

In respect to seniority, we've stressed that employment is based on the needs of the business and retrenchment once again, is on the needs of the business. We don't have any seniority list problems or whatever, in place.

PRESIDING COMMISSIONER: Who would you see that we ought to be able to bring what's happened in metalliferous mining into black coal, and what are the mechanisms for doing that, do you think?

MR HARDY: I think if we look at what happened where best practice has been introduced in most industries around the world, it needs to be a fundamental discovery that the place has gone broke. That is really the spur that brings an industry to heel or attention to its needs.

There is a problem in coal at the moment that they are certainly losing, or prospects of losing market share, their profits are dwindling, they are facing that issue fairly quickly. As far as what to do, legislatively, or by recommendation to government, my own view would be to dismantle the hierarchal decision-making structure (indistinct) to that.

I've got friends in the coal industry, and family. The Hunter Valley number one, everybody's talked about it. They've been 2 years trying to get an agreement there. The problem, the way it's been explained to me, is that the employees, the company, the employee's employer, and even local representatives in that group reach agreement on something, that agreement goes to the lodge, the lodge doesn't like it, and then it comes back and they re-hash the situation. If they get to the stage where the lodge likes it, it goes to the next level of the union and somebody else puts their spoke in and says, "We don't like it" and it comes backs to the troops, and ultimately gets to the Federal Executive, and then they are governed quite often by decisions passed at the National Conference, and they send it back saying, "We can't do this because the National Conference decision says you can't do it."

So the problem is the people on the ground have no real control over their own destiny, and that's - whether we can put a provision in that the decisions of the employees and their direct representatives are final and binding on the union is a moot point. But certainly when you look at the issues carried and the decisions taken at the National Conferences of that particular union, they have some strange issues put up by delegates and for better or for worse they're carried, and then they subsequently affect the rest of the industry.

PRESIDING COMMISSIONER: So you think a legislative change is probably the only way that you might be able to get some of that through?

MR HARDY: It would be the quick change.

PRESIDING COMMISSIONER: Are there other ways by which you might bring about that change that you can think of?

MR HARDY: The way that the companies are attempting to do it now by the crash or crash through system where the confrontation is between the company employees and the union, when you look at what happened in Western Australia in the iron ore industry, while the companies crashed through, I think if you sit back and analyse what really happened, is that people themselves were sick of the union movement running their lives, and rebelled against it and it took a lot of time and a lot of effort but it eventually happened. In the coal industry they haven't quite got to that stage. There were isolated instances here over the 12 hour shifts on a couple of mines where the boys wanted it and the union management said no, and in fact tried to expel them from the union, et cetera.

So, yes, there are pockets of people who want to see change and want to see their jobs protected, and in fact, I think, would like to see a much more interesting job. And when you look at the Institute of Labour Studies' reports on the industry, I think that comes through, they're well paid, they're underworked and they're bored and they look for excitement. It's a monotonous job so the excitement is to stir up a bit of trouble and let's have a strike or some other form of excitement.

When you look at the utilisation per day, I mean, our people have a problem with the same amount of down time per shift as they do, they get the same breaks, they lose the same amount in start up and wind down times, yet the productivity is much higher. I notice - - -

PRESIDING COMMISSIONER: Who is predominant union in the - - -

MR HARDY: Predominantly the Australian Workers Union. And once again, you've got a different culture in the union management there that they're primary industry people. A lot of the executives are shearers or ex-shearers, they know how hard it is to make $40,000 a year and when they see our guys on that or thereabouts, for the sort of shifts we work, they think they're not doing too bad, you know, they're not out there to say that, "We need 50 per cent more because we need 50 per cent more." It's a different approach, I mean, they're used to the agricultural industry and basic primary industries, and of course, they relate that - the metalliferous mining is once again, another primary industry, they take it in that context. I'm not saying they're not hard to deal with but you can deal with them fairly. That you've beat the market costs for labour and you don't get complaint. If you structure the roster and the work and rest time properly, you won't get obstructed. But it depends on both sides being fair.

PRESIDING COMMISSIONER: Keith, have you got any questions that you wanted to ask?

MR HORTON-STEPHENS: Not really, I had the same question as you have already put.

PRESIDING COMMISSIONER: I thought what you've done here at the end is actually quite helpful and we may want to come back to you and extend that a little bit, Jim, if that's a possibility?

MR HARDY: Certainly.

PRESIDING COMMISSIONER: That is the attachment one, I'm talking about where we think about, if you like, doing some sort of general comparisons between one industry and another. I feel that could be quite helpful and even the possibility of extending it beyond these five or so areas here.

MR HARDY: Yes. We've had a little bit of a problem working out which would be a good benchmarking award because we've got so many and they all are fairly restricted in their application. But I notice that the Western Australians, the notification of sick leave is within 24 hours, our ones here are preferably before start of shift so that we can put a relief man into place rather than not know what's happening. But certainly, if we can assist in preparing a - - -

PRESIDING COMMISSIONER: That might be very helpful. Well, we might need to come back to you on that one.

MR HARDY: Certainly.

PRESIDING COMMISSIONER: Jim, is there anything else that you wanted to cover with us?

MR HARDY: No, no.

PRESIDING COMMISSIONER: That's been very helpful actually. Thank you very much. Why don't we adjourn and have some lunch and come back at half past one, where we'll have Shell and Callide Collieries.

INQUIRY ADJOURNED AT 12.25 PM

INDUSTRY COMMISSION HEARING - Brisbane 24.11.97

LIST OF SPEAKERS PAGE NO.

INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE QLD

MONDAY, 24 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER: MR B SCALES

INQUIRY RE-CONVENED AT 1.35 PM

PRESIDING COMMISSIONER: I'd now like to re-convene these Industry Commission Hearings into Australia's Black Coal Industry, and we now have with us Shell and Callide. Would you please introduce yourself. We'll need to get both of you for the record, your voices for the record, and then if you could introduce the main points that you wanted to make, and then we can have a discussion about it.

MR SKINNER: Dennis Skinner, appearing on behalf of Shell Coal. My responsibilities are HR Co-Ordinator for the coal sector.

MR LAWRENCE: Owen Lawrence from Callide Coalfields. I'm the Manager Human Resources, Callide Coalfields.

PRESIDING COMMISSIONER: We've obviously had a chance to read your submissions, but feel free to highlight any of the main points that you wanted to make and then we can discuss them.

MR SKINNER: Well, from a sector perspective, the three areas that we thought may benefit the inquiry was number 1, what we refer to as the industry award; (2) Demarcation issues, which are inherent within the industry, and the recruitment and retention issues which are fairly popular at the moment.

PRESIDING COMMISSIONER: Would you like to outline any specific elements of any one or each of those that you want to highlight there.

MR SKINNER: Well, it may be helpful, I daresay if the P&E award which it is colloquially called is an award of long standing, and our submission identifies actually the history behind the award. It's our view that this award still retains a place in day to day discussions and negotiations which is arguably a distraction, and what we mean by that is simply, in other industries, the impact of the industry award has diminished over time. Coal, because of its unique place in the Australian industrial system, hasn't necessarily had the same amount of time to evolve, and brace the concepts of enterprise bargaining, as we see in mainstream.

And we believe an obstacle to this is the requirement or preference to retain the award as a cornerstone of all negotiations, and we have cited examples in there where if you go to what is called an enterprise agreement in coal, on many occasions, you will find that what you are looking is almost a mirror image of the industry award, and all the historical practices and the customer practices that that entails.

So what we are suggesting or recommending, is that a matter of some urgency, if the award could be relegated back to a minimum rates award and I'm aware that clearly under the new legislation there is a capacity to have that done under the allowable, or allowable matters. But, the sooner that is achieved, then we believe the parties, particularly at enterprise level, will then be best in a position, to best focus on what is the best for that enterprise, as opposed to having to pay a great deal of attention, time and energy, to procuring all sorts of superfluous clauses - lifting superfluous clauses out of the industry award to place them into Ebbs, so that in an overview, is our concern, with the impact of the industry award.

PRESIDING COMMISSIONER: Tell me why it is that you can't do that now?

MR SKINNER: There's no fundamental reason logically why an employer should not be able to come to an arrangement with a workforce around an EBA which represents the requirement for that business. And indeed there are some examples of that having occurred. But to the best of my knowledge, they are principally green fields, or agreements with contractors entering the industry.

When you look at established operation, you'll invariably find what I've already mentioned. The reason for that is that the industry is still, in my view, centralist in nature, insofar as there's a whole infrastructure designed around industry negotiation, and what you find are there are a number of areas which are called within the industry, occasionally "no go" areas, so you shall not negotiate out certain terms and conditions, and those terms and conditions are quite often determined of what we call, a district level, or a national level, as being terms and conditions which are highly desirable or being represented as highly desirable in localised enterprise agreements.

So an employer is faced with the situation where he can perceive marginal change if he is prepared to accommodate some of the less desirable clauses, or he can embark on on a trial which will inevitably lead to high level conflict, or he can do nothing, and there are examples of all three of those.

PRESIDING COMMISSIONER: So you're arguing that this restriction can't essentially divert to the structure of the union movement?

MR SKINNER: Yes, and I'm not leaning - I'm not suggesting that that structure hasn't served a number of parties well in the past. What I'm saying is that today, it is an inappropriate structure. It's not a criticism so much, it is a simple fact that the industry along both employer and employee lines, was historically centralised.

Now, I think there's sufficient evidence to argue that the employer association are very much aware of the enterprise focus which is required today, and those structures have been removed. Whereas the union structures, I think are having some difficulty coming up with a workable alternative, or an alternative which can assist in the transition process.

PRESIDING COMMISSIONER: Why don't we see the same thing operating in other industries, that have also to some extent got similar forms of union structures?

MR SKINNER: Again, this is a personal view. I spent most of my career in the metalliferous industry. Metalliferous industry, for example, has never been bound by any central award or industry award as such. That industry has been regulated by numerous state awards and associated agreements, and so what you have there is an industry which is quite comfortable with focusing on what is required for that particular enterprise, as opposed to what should sit over the industry. And, again, that is just, I daresay a quirk of history. So in metalliferous you don't tend to see it.

In the metal trades industry, for example, that has been the vanguard award for Australian industrial relations systems for many, many years, and I'm not confident to speak of that industry, but there is again, sufficient evidence to suggest that in the 80s and into the early 90s, they also went through a rather traumatic time as the influence and impact of their industry award began to diminish.

And today, the metal industry again is covered by numerous enterprise based agreements. That could very well be third and fourth generation, so therefore, it's an evolutionary thing where the influence of a central award has diminished, particularly with the demise of centralised wage fixation, et cetera.

The transport industry has gone through a similar exercise, where the influence of their big central award, or industry awards, is diminishing, and I daresay they have at times had various degrees of difficulty adjusting to that. And that was my earlier point. While all of that has been going on in general industry throughout the, say from the mid 80s on, the coal industry up until '95 was insulated from all that.

It hasn't had the luxury of a decade to adjust and assimilate, and my concern is where other industries have had that luxury of time, is taken anywhere between 5 to 10 years, and the coal industry simply doesn't have that.

PRESIDING COMMISSIONER: Do you think that it will eventually come about, just a matter of time?

MR SKINNER: I think that the evolutionary forces will ensure that it will eventually come about. What we're proposing is to accelerate it.

PRESIDING COMMISSIONER: Can we just follow this line of thinking down just a little bit more. Why is it you believe that to actually bring about change at the moment will require, or does require, significant disputation? Why is that the case?

MR SKINNER: Again, I don't necessarily adhere to the school of thought that the coal industry is inherently more difficult when it comes to managing these issues. I think you can go back over the history of other industries and find similar parallels. I believe it is unfortunately a fact of industrial life in certain industries, that when you embark on major change, you are running a much higher risk of significant disruption.

Now that may not occur, but you are certainly running the risk of it occurring, and you could put it down to an inherent conservatism when it comes to changing what people are comfortable with or any number of theories abound. I think the reality is, however, that we only have to look around the industry at the moment and at the heart of a number of the most recent disputes, is the requirement to significantly change the workplace.

Now why some people have been successful and others haven't in achieving that in a more manageable way, I don't know. I think, just again, I just - I suppose it's almost - almost being a student of history, I think you have to be prepared to acknowledge that once you do embark on some of these change programs, you are courting a higher level of risk.

PRESIDING COMMISSIONER: I guess the reason I asked these questions it to try to understand whether in fact the point you make, that is, that it will inevitably happen, will in fact be so. Or whether there are some impediments that actually stop that normal evolutionary process from taking place.

MR SKINNER: Well, again, if I go back to my experience in metalliferous iron/ore, even pulp and paper, the changes that have occurred in those industries, not in every case, but the changes that occurred in those industries have at different times been accompanied by fairly high profile disputation.

I think maybe a sociologist is more, is better equipped to analyse the whys and the wherefores. I agree with your observation that it's not necessarily inevitable, but my concern is that I believe that it is probable, more probable than possible.

PRESIDING COMMISSIONER: Let me follow it a bit further down. Let's assume that we actually do what you're suggesting, and make some recommendation that government picks up and simply, and the AIRC picks it up and simply converts that particular award, into a minimum rates award, with just safety net provisions. Why would you see that, that that Act would actually change the characteristics of the behaviour within the industry?

MR SKINNER: Because you take away, if you like, you take the bone out of the dog fight. You take away areas which are steeped in tradition, and remove them from any contentious forum. If it's not there, there's nothing to argue about. Now, the parties may wish to go away and negotiate something similar. By the end of the day it may very well be that even in the absence of a highly prescriptive award, some parties will still be comfortable with those types of outcomes.

I suggest that is only a matter of time before those agreements fall over through sheer economic necessity, as the rest of the industry moves on. Our proposition is that at the moment there is a great deal of time and energy wasted on arguing around these peripheral issues. If those issues weren't there - because they don't really contribute to anything - if those issues were removed, as a focused or discontent or argument, then people would have nothing else to focus on, other than the enterprise which they are presently employed in.

PRESIDING COMMISSIONER: But wouldn't they have a lot of incentive to argue that those provisions simply be put into an enterprise agreement?

MR SKINNER: And I believe that in some cases, that argument will be put and employers will, for reasons best known to themselves, conceive and accept, and then they'll simply be enshrined in the form of a certified agreement, or a consent agreement, which has no weight, has no bearing on proceedings elsewhere.

PRESIDING COMMISSIONER: On any other company?

MR SKINNER: Correct.

PRESIDING COMMISSIONER: Other than themselves?

MR SKINNER: That's right. And it's not for me to, I suppose comment on companies that are quite happy to see that outcome. I personally don't believe that it would be desirable in our own organisation, because I think we need to move on as we discussed before. Each agreement should be an improvement on the last.

PRESIDING COMMISSIONER: Let me give you a practical example of the sort of things that we've been told. We've been told that the interaction between the award and if you like, safety arrangements, actually make it almost impossible to get flexible work practices, particularly in underground mines. That the responsibilities which are apportioned to, if you like, union delegates, means that at any one time, you can get the significant interaction between the safety system and the industrial relations system. Would you see that, taking the P&E award and making it a minimum rates, minimum standards award, would resolve that sort of issue?

MR SKINNER: It would have to assist. I'm not quite that I accept clearly what has been put by the parties. I'm not quite sure of the context in which they put it, but certainly there is, and it's a matter of record. There is a high incidence of safety type disputes. Now, whether they are more safety as opposed to industrial is always a bit blurred. But the potential is clearly there due to the interaction of the award, the Mining Act, and obviously the requirement to produce.

I'm not that sure that the P&E award, and I'm trying to quickly flick through in my own mind all the causes - I'm not that sure that it is necessarily overly prescriptive when it comes to safety issues. The safety issues that the Mines Act regulates, like health and safety at the workplace in conjunction with other legislation. There is statutory obligations which certain classes of employees have to discharge. Underground that is a deputy, the undermanager, and ultimately the mine manager who has a first class ticket.

Yes, there is occasions when there is conflict at that interface, as to how certain things should be achieved. By reducing the award to a minimum rates award, I don't know that you dramatically reduce concurrently the potential for the sorts of disputes that obviously have been discussed previously. But it certainly wouldn't impede or hinder.

PRESIDING COMMISSIONER: I'll give you another example. One of the impediments that people are arguing has been very important in restricting productivity enhancing arrangements at the - within the mine, both surface and underground. Is the, often the inability of employers to actually recruit the people that they would want to recruit on a basis of merit.

MR SKINNER: Yes.

PRESIDING COMMISSIONER: Now, for example, if we were to take the P&E award and make it a minimum rates award, would you see more women in the workplace? Would you see more young people? Would you see more aborigines?

MR SKINNER: I believe you would, because you will remove - I'll go back a step, if I may. The recruitment practices in the industry have been traditionally regulated by what we call retrenchment lists, and I'm sure you're familiar with those terms. There are also other lists, sons and daughters, there have been a number of preferential practices, but the retrenchment list is probably the best known. So that has ensured that to a certain extent, labour has been recycled, both within the immediate area and within the state and in some cases outside the state. So as one mine closes, another will open up and it will simply take all of the workforce, or part thereof that has been displaced and probably from the clothesline and life goes on.
So that's what I mean by the term "recycled" it just goes up and down the coalfields.

Because of that practice, and without entering the merits of it, but because of that practice, it means that it has been almost impossible for minority groups, women, aboriginals, to enter the workforce. It just hasn't happened.

PRESIDING COMMISSIONER: But even at a time of declining employment, presumably young people are kept out of it as well.

MR SKINNER: Well, that's where the sons and daughters lists came in. Sons of miners. So there was - I mean, there was an entry point for younger people, but again, it was based on this concept of being the - - -

PRESIDING COMMISSIONER: But they're still in a sense, an insider, aren't they, to the system?

MR SKINNER: Yes, yes. So it's very much a closed system.

Now, the point I'm making is that the legislation has effectively, in my view anyway, made that practice highly questionable.

PRESIDING COMMISSIONER: Is it still required by Shell?

MR SKINNER: I think it's fair to say that we have been bound by our award, clearly we have been bound by our award, and we have been forced to use the retrenchment list, but equally it's fair to say that there are a number of examples where we have actually gone outside of that for a number of reasons, but not - and we have been opposed accordingly. So, no, to answer your question, we do not use it, and we have challenged it in the past.

Indeed, my colleague here, the company that he represents, was responsible for challenging it in the first instance back in '92 with the Callide - where the decision unfortunately went against Callide, and the retrenchment list was institutionalised in the form of an award, but specifically for Callide. Later the entire industry. So, yes, we have a history of challenging it and not being particularly happy with it, but equally we've been bound by our award.

I believe that, again if the award was stripped or modernised, then certainly where there are pockets of resistance still, to more enlightened recruitment practices, that resistance would be overcome totally.

PRESIDING COMMISSIONER: Why would the union agree to that?

MR SKINNER: Agree to new recruitment practices?

PRESIDING COMMISSIONER: To that particular practice being taken away from whatever the award looked like, or whatever the - - -

MR SKINNER: I doubt if they will agree. I don't - - -
PRESIDING COMMISSIONER: The reason I'm asking that is that therefore what would the difference be between a dispute, a long dispute about that issue, and a long dispute about trying to remove it under an award?

MR SKINNER: Once it's gone out of the award completely, there is no lawful grounds to impose on am employer that recruitment practice.

PRESIDING COMMISSIONER: So your approach would be, that the federal government would simply, if you like, ban that activity?

MR SKINNER: Yes. Now I believe - that's correct. I personally believe, with a number of other people, mind you, that the present Act effectively bans the practice in its strict sense now.

PRESIDING COMMISSIONER: Because it's discriminatory.

MR SKINNER: Because it's discriminatory. Now, of course, that is an interpretation. I believe it's a sound one, but there are people that obviously don't agree with it, that interpretation, and they're quite entitled to, and until it's basically removed, the argument will go on - - -

PRESIDING COMMISSIONER: Or tested.

MR SKINNER: Or tested, the argument will go on.

PRESIDING COMMISSIONER: Well, Bill mentioned that the likely reaction of the union. But the question going round in my mind is, you present these ideas to us. Have you discussed them with your employees and/or their representatives? And if so, how do they react?

MR SKINNER: These discussions, to a greater or lesser extent, have taken place at all of our operations at some point in time, as a natural part of the negotiating process. This year alone, we have registered, I think, maybe three, four agreements. And I think it's fair to say that by the very nature of negotiations obviously needed is a compromise.

We have met on all occasions, total resistance to the proposition that we have put to you and I don't believe on overstating it, and I'm not even necessarily sure that some of the parties involved at the various mines when negotiating these agreements, were necessarily overly concerned as to whether or not some of these things stayed or went. But in the interests of conforming with national negotiating parameters it really wasn't open to that party to necessarily agree with us in some of the positions that we were putting.

And so hence you find yourself in a situation where we took a strategic position on some on the basis that we thought in time they would be clearly deemed to be unlawful activities so therefore they would be void, and on others we took the view, well, next time round the standard would have changed to the extent that we'll modify the agreements accordingly, more to an enterprise focus.

PRESIDING COMMISSIONER: What happens if - and I am not arguing this - but what happens if the union perceive this as being the origins of their power? Why would you think that they would allow this to be even negotiated away in any form without a very significant dispute.

MR SKINNER: And I suppose that takes us back to one of my original contentions that there's three ways. You can be totally committed and say, "Well, I'm not going to accept anything under - I'm not going to accept anything other than an agreement which doesn't embrace those concepts," which under our Act I suggest would mean that you're obviously going to end up in a fairly lengthy dispute. You can do nothing, which some companies are happily fit to do in the short term, or you can attempt a compromise which others have done.

So I don't believe that you can negotiate those things out of an agreement. I believe at this point in time the prevailing view is that they are set in concrete, and they'll remain there until they're removed. They won't be negotiated out.

MR STEPHENS: So if you then effectively do nothing what are the consequences of that action? We hear about levels of profitability in the industry.

MR SKINNER: That's right.

MR STEPHENS: There are numbers around.

MR SKINNER: Twelve months ago I think there was a school of thought to say, "Look, we'll do nothing and see which way the wind blows. Let events take their course." I think the cost of doing nothing now is far greater than the challenges faced with actually changing some of these things at the workplace. To do nothing now in a majority of the mines means basically that you are going to go out of business.

MR STEPHENS: Do the employees appreciate this? If they're going out of business they'll lose their jobs. Is that how you talk to them?

MR SKINNER: Yes. The vast majority of employees are very rational people, but I suppose, as it was put to me one time, there are always mines closing and there have always been new jobs created, and under the old systems those who wanted a job within the industry got a job within the industry. It is only now I think dawning - not on everybody but only on some people - that that is no longer the case. For the first time in living memory, in some people's cases, they're out of work with no prospects of going to another coalmine. I think it'll take a year or two for that to really filter through the industry. I'm being a bit presumptuous there because I am speaking for - - -

PRESIDING COMMISSIONER: Let's just test that for the moment. Will that in fact happen? Let's just for the sake of the discussion ask you to do the somewhat intellectual test that says you're about to open up a new mine. Where would you get your people from?

MR SKINNER: The first thing we would do, we'd obviously decide how we were going to engineer and configure the mine. That would then demand a certain skills basket, if you like. We would then profile the requirements, and the reason this is so fresh is because this is basically what we did as recently as 12 months ago. We would then go out and advertise and look for people that in our view, after going through a series of selection tests, best fitted the scope of those positions.

Now if they came from coal, well and good, if they came from heavy industry, well and good. If they came from metalliferous, well and good. And indeed that's where a number of people have come from in the last exercise. It is the opportunity for the first time in this industry to say, "These are the types of skills that we require" and we will go to the general labour market and see what comes from that."

PRESIDING COMMISSIONER: And just to continue with that line of thinking for the moment. Of the total number that you employed at that new mine how many actually came from the black coal industry?

MR SKINNER: Certainly half of them.

PRESIDING COMMISSIONER: Half?

MR SKINNER: Yes, clearly half. I am not sure of the actual figures because it was done in a couple of ways, but I am safe in saying there were at least half. They're highly skilled people.

PRESIDING COMMISSIONER: Yes.

MR SKINNER: The difficulty has been in the past that if you take out some - well, one of our central Queensland mines which is only about 10years old, when we were recruiting for that it wasn't a matter for selection criteria or skills assessment, basket of skills token jobs. It was a matter that we needed 120 people or thereabouts, and we were told that "That's where you can get them from under your obligations." So they came from places like Blackwater Cook, Ipswich, and that was it.

MR STEPHENS: And if you hadn't taken them, if you'd decided you were going to pick your own people, what would have happened?

MR SKINNER: You wouldn't have got the mine open.

MR STEPHENS: Why not?

MR SKINNER: Because the CIT in those days had a very firm view on employers' obligations in relation to recruitment.

MR STEPHENS: Today. Let's take today.

MR SKINNER: Today?

MR STEPHENS: Yes.

MR SKINNER: Today we would open the mine and we would open the mine on the terms and conditions that best suited the ongoing viability, and if that meant we went outside the industry we would - which we indeed we have with our Mirrimbah operation.

PRESIDING COMMISSIONER: And if it meant that you wanted to recruit 100 per cent outside the industry you feel as though you are in a position to be able to do so today?

MR SKINNER: I'd say yes, if that suited our requirements we would.

PRESIDING COMMISSIONER: Okay.

MR SKINNER: Now people may challenge that, and I don't believe they could successfully challenge it because the arguments that the challenge would be based on would in my view be discriminatory. But again that's an argument there.

PRESIDING COMMISSIONER: Anything else on the award, Keith?

MR SKINNER: No.

PRESIDING COMMISSIONER: Did you want to cover some of the other issues that you raised? Demarcations for example?

MR SKINNER: Yes. Again I think the industry is suffering to a certain extent because traditionally we've had these dedicated employment streams, and I daresay they may have served the industry well in the past but I don't know.

What I find difficult to accept is that we still preserve these dedicated streams even today, on the basis that a production employee will belong to a certain union. An engineering employee will belong to a certain union and that will dictate the range of skills that they can deploy.

Now again, if we go to other industries, metalliferous mining or general industry - I'm not saying that demarcation doesn't exist, I'm sure it does. You can always find examples, but in general those artificial demarcations have evaporated and the focus is on working within a responsible range of skills in a safe manner.

PRESIDING COMMISSIONER: Let me put it to you this way then. If we were to say - let's take a metals tradesperson whom you have trained to operate a truck or a shovel. Would you be able to use them on that truck or shovel in your shell operations at this stage?

MR SKINNER: Not at the moment. It would be - yes, there would be restrictions I would imagine. You won't find any official recognition that I am aware of of tradesmen being allowed to operate plant, production plant, outside testing for maintenance purposes.

PRESIDING COMMISSIONER: Would you like that to be the case?

MR SKINNER: Yes. We have for some time considered, for want of a better term, that the concept of an integrated work team - it's not a labour reduction exercise. I'll use the underground example. If you have 10 people on a wall, it could be seven mines, a deputy, mechanical electrical tradesmen, in some cases there are two, two of each. Those people are dedicated to that wall.

Now in some cases the tradesmen, for example, are simply there waiting for something to break down and that may or may not occur because ideally it doesn't break down within a production shift. It would be a far more practical and rational allocation of labour to have them included in the production process so while they are at the face they are involved in that process, and then if breaks down then okay they can band aid it till we can get to a dedicated maintenance crew. They are the sorts of things that the industry needs to pursue with some vigour.

Now there are examples again of that, but they are in Greenfield operations and I am quite sure some of these people will be appearing before you. They have the advantage of a far more flexible workforce and the associated efficiencies that flow from that. And what always I find somewhat perplexing is that 80 per cent of people are employed in brown field or mature order operations. These people will leave. Sometimes these people will leave these operations because they have to close for a host of things, for a host of reasons, and then go to a green field operation where they will pick up a new contract of employment and be quite content to work in a far more flexible environment. It's almost self destruct.

It's the brown field operations are the ones that are going to maximise employment and are the ones that need the efficiency gains now because the green fields can structure any way they wish.

PRESIDING COMMISSIONER: Dennis, tell me now again, how do you think that we ought to go about ensuring that that is available to miners?

MR SKINNER: I think this one is probably the most difficult one. The reason that we picked this is because there is an example of what's going on in the industry which is not necessarily taking place in other sectors.

I don't know that legislation can fix this one. I really do believe it is an issue for both the workforce and management. You could use the Act at the moment and attempt to run a case along the lines that this was an impediment to a productive workplace, so on and so forth, it is demarcation at its worst example, but again I don't know that you would necessarily have a great deal of success at the workplace.

PRESIDING COMMISSIONER: But if you take the experience of other industries the structural efficiency principles that have been applied in other awards seem to have actually had the effect of (a) encouraging both parties to the agreement talking about these issues in that framework.

MR SKINNER: Yes.

PRESIDING COMMISSIONER: And secondly giving the AIRC some guidance about how it can balance conflicting, if you like, views about what is important.

Now would some similar approach that actually whereby the AIRC was instructed, instructed by law to take into account structural efficiency principles have some effect on demarcations?

MR SKINNER: I think that would certainly bring the issue into focus. At the moment I don't believe in many quarters it is even viewed as an impediment because it's one of those things that has been around forever. So what are people complaining about?

I'm also not so sure that there's an acceptance in some management circles that it's necessarily an impediment, because again it's been around forever.

PRESIDING COMMISSIONER: Tell me just as background for myself, have you ever - or do you have any experience of others in the coal industry actually taking some of these structural efficiency principles and applying them to the black coal industry?

MR SKINNER: I believe that to a certain extent the work models, are you familiar with that?

PRESIDING COMMISSIONER: Yes, sure.

MR SKINNER: I believe the work models to a certain extent attempted to address that concept.

PRESIDING COMMISSIONER: It's a very centralised approach to structural efficiency principles though, isn't it?

MR SKINNER: That's right. But again that is a product of the coal industry. And indeed I think in our paper we comment on the fact that the work models were - the time and energy that went into them - they were a commendable exercise, but I think they were fundamentally flawed in that people were attempting to apply a panacea again over an entire industry. And as part of the work model process - again I didn't participate in that. I wasn't in coal at the time.

The people that were there, they - I have been informed that the structural efficiency and the demarcation issues were tabled, but again the level of resistance was very high and so as part of that process there was a subsequent agreement reached which was the peripheral and incidental which was also a follow on from one the mainstream national wage case decisions, and the parties attempted to address some of these issues around peripheral and incidental.

Apparently there was at a peak body level an agreement as to how that would take place, would take effect at the workplace. What happened was it collapsed, because as you pointed out, it was a central approach, parties remote from the workplace agreed, handed down the guidelines to the industry where for all intents and purposes the work models were in theory picked up, but in practice never really implemented, but the incidental and peripheral agreement was totally rejected, and the legacy of that agreement was in fact a number of disputes when employers attempted to actually apply it in the workplace.

And so again it was an example of a central solution to complex enterprise issues which at the end of the day the parties within the various workplaces rejected anyway. I think that was probably about the last major exercise at what I am calling these demarcation issues. Newer operations, newer entrants to the industry have dealt with it.

PRESIDING COMMISSIONER: And as you say, a number of green field sites seem to have been able to address them fairly well.

MR STEPHENS: They haven't eliminated them. I recall we had Camberwell Coal at the Sydney hearings and there was some - having been on site there were certain demarcation issues that were live. They haven't been got rid of.

PRESIDING COMMISSIONER: It depends where you go. ANSHAM will argue that they're all got rid of.

MR SKINNER: I am mindful of not speaking for other organisations. But the example that you cite is probably the good one in Queensland where they've been successful. The one in New South Wales, again I think that is almost a subculture in the northern districts.

PRESIDING COMMISSIONER: Thank you very much for that. And the last issue that you raise as a major point on this submission is the recruitment and retention. Do you want to cover issues to do with that?

MR SKINNER: I think we've probably canvassed the recruitment. The retention issue - again I think what we have here is a legacy of the past in relation to Clause 24. It's the reduction of hands clause.

By the end of the day it is a clause which is simply LOFO driven which is last on first off. It has been in the industry, as our submission says, from pretty well day one. I don't believe it is an acceptable practice by general community standards today that an individual in the time of downsizing will lose their job for no other reason than they are the most junior. I think a far more acceptable practice is to use any number of criteria - not excluding seniority. I think seniority can be one of any number, but with the emphasis on obviously skills, competency. I am also suggesting that if this practice existed in any other industry and was applied in this manner it would have been dealt with reasonably quickly to ensure that the practice conformed to the more acceptable approach. But again because of the isolation of coal it's been permitted to exist.

The tragedy as I see it at the moment is clearly the industry is on the brink of major decisions. As recently as this morning there were a number of articles in the newspaper on the impact of lower prices on the black coal industry, and people speculating as to how many mines would possibly close, what this would mean to new investment.

In our view, if this is a likelihood, then as regrettable as it clearly would be, any significant downsizing, I would suggest that it's an absolute imperative that if the industry is going to remain robust then the most appropriate employees are retained, and in the absence of more responsible selection criteria I don't believe anyone can say with any authority or confidence that that would necessarily be the case.

Furthermore, if you - and I don't wish to comment on the merit of a number of the disputes that have taken place this year - but if you analyse those disputes you will find that this clause has made a significant contribution to those disputes occurring, and while it remains in the award in its present form I don't think there is any chance of the disputes that have occurred in the past not occurring into the future.

PRESIDING COMMISSIONER: And in a sense you are also asking that this clause be removed from the award?

MR SKINNER: Yes.

PRESIDING COMMISSIONER: You seemed also therefore to be saying by implication that no employer on their own is actually strong enough to actually break this particular characteristic of the industry down.

MR SKINNER: That is correct. And certainly that is the implication. Again I don't wish to comment on the disputes themselves, but clearly no single employer has to date been successful in challenging the legitimacy of this clause in isolation.

PRESIDING COMMISSIONER: That's been very helpful. I am conscious that we've only looked at half, in a sense, of both of your submissions. Would you like to make some comments with regard to the other - the Callide submission? Are there any things in that that we should be made aware of that we haven't already covered.

MR LAWRENCE: I think my colleague here has covered most of the areas. I'd just like to add that we at Callied Coalfields Operations are an operation that - we have just entered into our fourth generation of enterprise agreements and we've been successful in doing things that have made our operations far more efficient. But we're still faced with the award base. Everything seems to tend to operate from that award base which is very restrictive, and I'm not saying I guess, if you had enough money, that you couldn't negotiate a way around most of the restrictions that we are still faced with, but you would push what are already very high wages and conditions through the roof.

The issue of demarcation of work still is the single biggest restriction that we're faced with. It prevents us from having people work to the limits of their competence and their ability and their skills. It's very very closely guarded by the unions, and in the evolutionary sense I think, given enough time we would get there but I just don't think that the industry has time for the evolutionary pace that is currently being set.

We've made large leaps forward in the areas of safety, and again if you look at the base that we're coming from we've come from not a good record to one that's steadily but surely heading in the right direction. However, there are no conditions as such hang off the safety side of it, and the award is very scant on safety references. So those sorts of things haven't been as big an impediment to going forward. Neither should they be. I mean one of the things we have to do right is to get our safety right.

A lot of the restrictions that we are still faced with are very very artificial, and again I am talking about the demarcation of work. It's evidenced to me fairly starkly by the fact that a lot of our employees own small farms or operate other businesses and they leave work and they go and do a whole range of things that make them operate those businesses very efficiently, and yet when they step back onto a coalmine they are restricted from doing probably two thirds of what they might do in their own business and I don't think that the industry has the luxury of being able to see that sort of thing go on at the current evolutionary pace.

We have a phrase that we use here that we say, "We're running at the moment to stand still." It's a moving ballpark, and whilst we are making headway, whilst we are getting ahead and gradually wearing down and removing the demarcations and the other restrictions that we have, the nature of the industry itself is changing at a rapid pace, and I am particularly talking about the prices that we're able to obtain for our products.

The nature of contracts is changing. You used to be able to get longer term fairly secure contracts. Now contracts tend to be much much shorter, and I guess it's a buyer's market for our product. So we are really needing to be, more than ever, very very flexible at the moment and I think that will continue to be the case for our industry for a fair number of years to come.

Other than that, I don't wish to add anything more than what we have in our submission. We've mentioned in the Callied submission that there is another side that we need to look at, and that's the effectiveness of management. Idaresay that a lot of the restrictions that we're now faced with were probably the results of decisions that were taken more in the interests of expediency rather than the long term view, and we certainly have to address that as well if we are going to take the industry into the future and succeed.

PRESIDING COMMISSIONER: One issue that you did raise that I don't think we've covered at all is, if you like, the make up of the total wage, or that part of it which is really the so-called coal bonus. Did you want to make any comment about that? And I guess in doing so you might just give some thought to again why it is that you think you are not in the position to be able to do something about this yourselves.

MR LAWRENCE: We certainly are in a position to be able to attempt to do something about it. The coal bonus is as much entrenched in the industry as the work practices themselves in the areas of demarcation that I have just spoken about.

Some time ago the coal bonus which was in the award was removed from the award by the Coal Industry Tribunal but the upshot of that was that the individual agreements then had to be taken back and negotiated on the sites, and still had the validity of an award provision.

The money that the coal bonuses provide is very high, in some cases almost adding a third onto the wages, and I guess it gets back to the comments that were made just previously as to whether any one company is big enough to take it on and erode it successfully.

You're talking about lots of money and there's lots at stake, so it's not outside the ability of anyone to want to have a go at it. It's the cost in succeeding.

MR STEPHENS: Just let me say that I found that a very thoughtful contribution from both of you, the submissions. Having been helpful in that area I was wondering whether the companies have got some helpful thoughts in some other areas that affect your operations. We've been talking about the workplace, essentially. What about transport? I don't expect you to answer them now, in terms of your backgrounds. But if you've got any thought, particularly on transport, questions of taxation royalties, we'd be very glad to hear from you.

MR LAWRENCE: I'd be prepared to make a short statement on transport now, and that is rail freights. The issue of rail freights, while it's being addressed on other fronts, is very very integral to the viability of the industry. It has very severe restrictions. In my experience with rail freights in Queensland and the structure that surrounds that, there's more or less an absolute monopoly, which there is very little room to do anything about at the moment.

MR STEPHENS: That's a pretty sad comment. Now we have a submission from the Queensland Mining Council with quite a lot of thoughts in this area. I presume you were involved in that or have seen - - -

MR LAWRENCE: I'm aware of it, but no - - -

MR STEPHENS: You support it, I know, but - I mean it - there is a general view both in Queensland and New South Wales that a lot has to be done. There is certainly plenty of scope to do a lot right the way down the coal chain from leaving the mine through to the port.

MR LAWRENCE: Yes.

MR STEPHENS: So I am just a little surprised to hear you sound rather pessimistic on the subject.

MR LAWRENCE: Sorry, I didn't wish to sound all that pessimistic. I guess the point I was trying to make is that - - -

MR STEPHENS: My word, not yours.

MR LAWRENCE: But the current situation is one that the rail freights are very very onerous on the coal companies and it has been, and there are moves afoot and things happening to try and even that out a bit. But you know, it's taken a long time and I am not quite sure what the outcomes will be.

But my main purpose was just to say yes, that the issue of rail freight is one that is of great concern to our company.

MR STEPHENS: I guess what I am looking for is some ideas on how to change things for the better. Not right now but you might take it away and thing about it.

MR LAWRENCE: Yes.

MR STEPHENS: Thanks.

PRESIDING COMMISSIONER: Just to go back. One last question on management. One of the issues that has been raised with us a number of times is the fact that management within the industry not only has loyalty to the company but it seems to have a quite strong loyalty to its own union, and I am wondering whether you wanted to make any comment about the way in which that plays itself out in practice.

MR SKINNER: The coal industry again is rather unique in the way union membership is structured. What you have is a production union, and there is nothing remarkable in that, and a trades union, but you also have a staff union. This staff union has the capacity to cover people at a mine site right up to a very senior level. By senior level I mean it certainly covers under-managers, for example.

Now whether that's a good or a bad thing is difficult to comment on. My concerns have always been particularly with the staff coverage. There is a potential for a conflict of interest, an unnecessary aggravation as to the role of a supervisor having to discharge his duties in what he believes to be the most appropriate manner, but which may cause him some duress or concern when he tries to reconcile that with other issues.

PRESIDING COMMISSIONER: Can you give us a practical example of where you would find that to play itself out?

MR SKINNER: I am just trying to couch this very carefully so I don't, in the first instance break a confidence, and in the second instance, embarrass anybody.

We have senior supervisors at one organisation - any number of supervisors, and while we were in the process of going to alternative forms of remuneration that caused some disquiet within a large number of our staff numbers. That disquiet manifested itself in different ways. It unfortunately set into place almost two camps, for want of a better term, whereby there were some people who wished to go to this alternative arrangement because it suited their circumstances. Other people, it didn't suit their circumstances, and then there was probably a third group who didn't like it and basically demanded some sort of conformity with the status quo.

That caused manageable conflict but indeed it caused conflict at the workplace between some of the staff and with some of the supervisors at the same level. And again it is understandable because we were asking people to exercise discretion in an environment where basically it's always been one in all in, and in exercising that discretion what some people thought we were doing was threatening the fundamental rights or reasons for this particular union or association to exist. And I suppose the down side was this conflict of interest.

It wasn't - I'm not going to place it as high as that it was unmanageable or it was dysfunctional, but it certainly - there was about 6 months I would say, where if not for the fact that this particular association had the capacity, the quite lawful capacity within this industry to cover these people right up to a high level none of this would have existed.

PRESIDING COMMISSIONER: Are your staff obliged to belong to the staff association.

MR SKINNER: No. And particularly with the new Act. I mean unionism is no longer a compulsory matter so people can exercise their discretion. But again, it's one of those evolutionary things.

PRESIDING COMMISSIONER: Yes.

MR SKINNER: For all intents and purposes union member - union membership is not something that we have a major interest in.

PRESIDING COMMISSIONER: Sure.

MR SKINNER: But I am quite sure that the density is still probably high in a number of our operations. And I am confining it to the staff area. And unfortunately as a consequence it does lead to both internal problems within the association on site, and at times it leads to external conflict for people trying to manage these issue at the workplace.

And I will personally, and I've been quite public about it, I've always held the view that people are quite entitled to belong to any association that they so desire, but I don't believe it necessarily appropriate that in this case the association discharge what I call industrial responsibilities. Because of the nature of the task I think they are relationships best left to the employer and the employee concerned.

PRESIDING COMMISSIONER: We've had very little, by the way, on this issue as we've been moving around the country, although we have had some private comments made to us about the same thing, about the potential for conflict of interest. If you wanted to raise it and provide us with more information I would be only too happy to look at it.

I presume that Shell would be aware of what the situation is in the United States where it is simply not legal for people in managerial positions to belong to industrial organisations of that type. You seem to be suggesting that that's almost something that you might be suggesting or countenancing.

MR SKINNER: Again, it's a highly personal view. As I said, I've made it quite public at various operations that I do not believe it is desirable that people run the unnecessary risk of a conflict of interest. Having said that, I must admit the present legislation says that freedom of association is such that people are quite entitled to belong to any institution of their choice, and I think I probably err on that side more than saying, "You shall not belong."

My concern is that ideally these organisations should really confine their interests more to a professional club. There are plenty of examples of professional unions. In the public sector for example, the APEA I think is an engineering union. The Professional Officers Association, so it's just that in mining, again I think the staff association is a phenomenon peculiar to coal.

PRESIDING COMMISSIONER: That's helpful. Thank you. Is there anything else that you wanted to raise?

MR LAWRENCE: Nothing. Just on that - on the ACSA. Presumably when you said manning its own union you were talking about the ACSA?

MR SKINNER: I was, yes, that's right.

MR LAWRENCE: And we're faced on the site with, again it comes back to a demarcation of work issue, and the lines are becoming incredibly grey there as well at the moment, particularly with the introduction of technology on machinery, so on and so forth, where the wages workforce are now getting into the area of what used to be a skilled technician's almost - semi technical domain. So again we're faced with the issues of demarcation, of work being restrictive. However, not to the same extent as it is between the wages unions.

PRESIDING COMMISSIONER: Thank you very much. There's nothing else? Thanks very much. We'll make sure that you get a copy of the transcript of this so that you can see what you have said.

INQUIRY ADJOURNED AT 2.43 PM

INDUSTRY COMMISSION HEARING - Brisbane 24.11.97

LIST OF SPEAKERS PAGE NO.

INDUSTRY COMMISSION

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE QLD

MONDAY, 24 NOVEMBER 1997

Black Coal Industry Inquiry

PRESIDING COMMISSIONER: MR B SCALES

INQUIRY RESUMED AT 2.50 PM

PRESIDING COMMISSIONER: For our last participant today we have Arco Coal. Would you please introduce yourself and indicate in what capacity you are here today, please?

MR GOLDING: Barry Golding, Bill. I'm manager for infrastructure for Arco Coal. By infrastructure I mean rail, port, power and water. I've got degrees in mining and economics, 30 years experience in the mining industry, including overseas, and in the last 5 years I have been working almost exclusively on infrastructure, and the reason was that Arco saw about 5 years ago that with the high cost of infrastructure it was worthwhile putting an effort into getting that cost down.

For those of you who don't know, rail costs are the largest single cost after mining costs, operating costs on the mine site, and quite simply we believe there is a fair room to move in getting those costs down. Even in the BIE reports we see that they said there that Queensland costs were between 4 and 5 cents a nett tonne kilometre, whereas in the US costs are down as low as 1 cent per nett tonne kilometre. If we could get our costs down from the present 4 to 5 cents down to 2 cents that would mean a reduction of $5 a tonne on our costs of getting coal to the port. So there are significant opportunities to get costs down and we believe it's possible.

The industry has put a paper forward, as well as Arco. We've restricted the Arco paper purely to rail, and purely almost to the issue of access and what we need from access. But from an industry perspective I think it's fair to say we all want the lowest possible rates we can get. We want non discriminatory pricing, in other words equitable pricing. But above all we want a transparent system. Whilst it's a monopoly it is essential that we have transparency in the pricing.

Under the old regime the Queensland government probably had more interest in railing coal than we did because they made more money out of the surrogate royalty than the mining companies made out of mining coal. With the removal of the surrogate royalty it does mean that the coal companies and the government are aligned in their objective, and that is one of trade maximisation. It's in both of our interests to get coal rail freights down as low as possible and therefore get the volume of coal railed up.

If you look at Queensland railways, coal and minerals contribute 1.1 billion of the 1.4 billion it receives in revenue, or approximately 80 per cent of the revenue received.

I was lucky enough to participate in the joint advisory group looking at world's best practice rail, and we found that Queensland rail was in fact just 18 per cent behind Burlington Northern in terms of efficiency, so we know that as a railway it is a fairly efficient railway. It's a modern railway.
The haul distance is a good one, on average 250 kilometres from the coast, but unfortunately the way the coal companies see it the operating efficiency doesn't translate into low rail freights.

And that really is the dilemma that the coal industry has had, and we sought to expose the costs of the coal and minerals group, especially, so that we could at least understand why the rail freight rates were higher than we expected. But fair to say, we have been fairly frustrated in that effort although the degree of co-operation between the railways on an operational level is very good.

The coal industry therefore has sought to look at access as a means of getting the transparency we need, and also getting rail freight rates down. The unfortunate dilemma is that railways do not fit easily into a competitive model it doesn't suit really the economic purists as well as say the electricity industry.

Trains can collide whereas electrons don't so it's very difficult to bring competition into a railway system as railways throughout the world have found. In fact it rarely exists, if at all.

The dilemma for the coal industry is we want the lowest possible rates, we want transparency. We believe that the access regime will deliver that for us where we have competition above the track and transparency below the track, but if we don't get that transparency for below track costs and competition is not seen to be possible above track, then we'll be no better.

It's therefore very important that before we look at the structure of Queensland railways we ensure that the operating conditions under which access is going to occur are good for the coal industry.

I reiterate that the coal industry is almost 80 per cent of Queensland Rail's business and it is the profitable part of the operation, so it is important that we establish an access regime that suits the coal industry.

We need to establish the operating rules, and that is the undertaking by which access will be provided, and we need to do it quickly. That's really the key point raised in our submission. We need to get on and work out these operating rules as quickly as possible, either with the Queensland railways or whomever else is appointed to look after access.

Certainly we don't need a new structure that creates barriers to the cooperation which we presently have. Because railways require a high degree of logistics there needs to be cooperation from the mine site to the port and in between, and the last thing we need is a bureaucracy created whose pure function is just to exist. It must have the purpose of ensuring efficiency and the efficient use of infrastructure.

So I will just go over the key points again. Coal and minerals is 80 per cent of the income of Queensland railways. It's actually 90 per cent of the tonnage, and if you look at a map of Queensland rail, and you look at which part's coal and minerals - I've just highlighted those in yellow, green and blue. It actually is a very small part of the rail network in Queensland, yet that's the section that contributes all the income.

The industry has its own suggestions on how we might best achieve the right structure but we haven't really had time to develop these full yet, and I guess speaking for myself, I would hate to see a structural change that didn't take account of the needs of the coal industry and didn't take account of the operating rules which we would jointly develop with Queensland Railways.

I think the electricity industry model that ended up with QERU was an excellent model of how to move in the area of electricity, and that has worked very well. We suggest that that would be a good outcome for Queensland whereby a body similar to QERU was established to look at the access regime, establish the operating rules and then look at the structure.

I will comment on one other thing. I think I am allowed to comment. Outside rail. Is that okay?

PRESIDING COMMISSIONER: Yes.

MR GOLDING: And that's electricity, since I'm on electricity. The industry - following on from the fact that QERU has worked well, and that on the 18th of January the first 40 contestable customers will be buying electricity, it was very disturbing to hear in the Labor party launch that they would contemplate re-amalgamating the three generators with the engineering group back into AUSTA. I think that would be disastrous, especially for the 40 contestable customers who would then be operating in a competitive market. Even though it is only Queensland it will certainly send the wrong message to everyone, and I doubt it adheres to the principles that were laid down at COAG for the competition within Australia.

PRESIDING COMMISSIONER: Thank you, Barry. You've made quite a point about the access rules and getting them in place quickly. Have you given any thought to the nature of those rules, how one might think about pricing access to the rail? How one might consider issues to do with valuing assets, and so on?

MR GOLDING: Yes, we have as an industry, and I have personally, and Ithink that's presented in the QMC submission which is an excellent submission.

PRESIDING COMMISSIONER: Fine. Okay.

MR GOLDING: We have done more work on how we might price for access and we're certainly at this stage looking towards a more regional basis, and as you can see, if you look at the Queensland coal routes we're not a very big area and it might well be that it is better to isolate your coal areas as entities rather than look at the whole of Queensland. I think everyone that gets into rail access is stepping into new ground. It's not as if this is old territory. It's new throughout the world, and I think it's very dangerous to jump in with the philosophical model before you look at other models.

PRESIDING COMMISSIONER: Okay. That's helpful. So we could simply follow that other submission and you'd think that was pretty close to what you'd regard as being appropriate?

MR GOLDING: We've done more work since then so I don't know whether we're willing to submit any more at this stage.

MR STEPHENS: Whilst we're on it I already told Ben Klassen who was with us today that we certainly appreciated the QMC submission, and not least in the rail area. Indeed I read it. But you did mention some things from the principles and I'd just like to take a couple of them up with you.

From the QMC submission it calls for transparent cost reflective access pricing. It calls for posted access prices and then said - and this is the bit that really intrigues me. "No discriminatory pricing or cross-subsidisation between mines or between coal and other traffic groups." Let's leave "between different traffic groups to one side, let's talk about coal.

I don't understand - I understand the call for transparent pricing and you mentioned that yourself. You also talk about "equitable pricing." I don't know whether that is code for "no discriminatory pricing" but - - -

MR GOLDING: That's code, yes.

MR STEPHENS: But could you explain to us why you feel that way, and you might bear in mind we actually had a discussion of this topic in New South Wales. There were suggestions we had some problems understanding because there was quite a lot of discussion about whether pricing should be on a non-discriminatory basis or whether there should be some capacity for the authority to allow for pricing to be based on capacity to pay.

MR GOLDING: Those statements really relate to a monopoly provider because once you have open access and you have competition then supposedly above the track anyway one wouldn't have to worry about those ideals. That's the way we'd certainly see it that once we have competition then we'll accept the competitive outcome. But until there is competition you effectively have a monopoly supplier and the monopoly supplier here is a government owned enterprise or corporation.

We've seen too often in the past a willingness for pricing to become politicised, you might say, where the politicians can intervene and dictate who gets what, based on their perception of profitability or other perceptions, or non profitability. And the process then of picking winners generally results in an illogical development of mining reserves because once you try to say one is more justifiable than another then that determines which mine might or might not be developed, and I doubt rail operators are in a position to make that decision, and it's not often that politicians are either. Has that answered it for you?

MR STEPHENS: Yes. Is there any disagreement on that subject within, as you say, the industry?

MR GOLDING: Within the industry?

MR STEPHENS: I don't quite know what "the industry" is.

MR GOLDING: I think it's fair to say that as an industry body we put out what's in there and we agree with that. As individuals we'd argue strongly we want a lower price. But that's the right of individuals to argue. But I think as individuals we realise that we are far better off with equitable treatment than inequitable treatment in the long run.

MR STEPHENS: It is not unusual in business though for business to price down to marginal cost, and indeed to charge different customers different prices.

MR GOLDING: Yes. It's a difficult argument because that's exactly what they do on the US railroads. Burlington Northern made that quite clear to us when we visited with them. But they also have the lowest rail freights in the world and that's because there is a form of competition there which we don't have, and that's competition internally for fuel sources, between gas and coal. So competition effectively drives the price down in the US where there is no effective competition here in Australia on coal haulage.

This is a conflict between how a monopoly operator charges and a competitive operator charges and I certainly err on the side of equity and transpareng.

PRESIDING COMMISSIONER: That's the distinction, isn't it?

MR STEPHENS: That's the point.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: I mean what we've described, what with marginal costing is what you would expect in a competitive market.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: Whereas we're not talking about a competitive market. We're talking about something different.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: That's the point that kept being forgotten by our friends at ROC.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: The other interesting thing about Burlington North of course, there is some competition, even amongst other railways in the United States.

MR GOLDING: Yes, they have road and rail competition as well.

PRESIDING COMMISSIONER: And there is a degree of benchmark competition going on there even if it's not direct.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: And because you've got - also you have got the same company operating with sometimes three railroads, Canadian railroads, and the two operators in the US they've got this ability to have a degree of transparency that isn't otherwise available.

MR GOLDING: Yes.

PRESIDING COMMISSIONER: So it's a much more subtle form of competition even if it's not direct.

MR GOLDING: That's correct, yes. And it certainly has been effective. I guess that's the end of the story.

PRESIDING COMMISSIONER: It has.

MR GOLDING: The rates are very good.

PRESIDING COMMISSIONER: That's right. Although there is still, as you know, a debate there about access.

MR GOLDING: Yes, and that's why I guess we are cautious here about access because we know it just has not proved successful yet. They have very competitive rates there (in the US), yet they are not contemplating the type of access regime that for instance has been instigated in New South Wales, and it is a difficult issue as to what will deliver the lowest rates.

PRESIDING COMMISSIONER: And the right infrastructure.

MR GOLDING: And the right infrastructure, yes.

PRESIDING COMMISSIONER: Okay. Barry, is there anything else that you wanted to cover with us?

MR STEPHENS: One more question. You also said something like, "We want an access regime which suits the coal industry."

MR GOLDING: Yes.

MR STEPHENS: I guess that is a reasonable enough request. I think I might attempt to add, "that serves the community as well." There are slightly broader interests when you talk about - - -

MR GOLDING: Yes. I guess when I am answering these questions I'm a Queenslander at heart and always will be. I would hope to think that I am answering them in the best interests of the State as well.

MR STEPHENS: I mean - yes, I meant the community more broadly .... Queensland.

MR GOLDING: Yes. I think what's in the best interest of the State is maximising the export of coal, and that is where I am coming from. And I think as far as delivering other services, then they shouldn't be clouded behind coal and minerals which is what the case is now, because I think that confuses the issue.

MR STEPHENS: You've already explained to us how the coal industry is the major user of rail in Queensland. It leads me to ask whether in the process of developing the new regime the industry adequately consulted? Are you represented in the discussions that take place?

MR GOLDING: Well, we tried to be represented through the Queensland Mining Council and we have an infrastructure group within the Queensland Mining Council and a rail group within that.

MR STEPHENS: Right.

MR GOLDING: But it's fair to say that we've had to fight tooth and nail to get our views across over the last 4 years, and although we're listened to more now, I don't believe it's anywhere near the degree of our rights as a predominant user of the railways.

It is fair to say that there is a good operating agreement between Queensland Railways and the coal companies but there is still a high degree of, I'd say Government intervention in moving forward.

We all know we have to move forward. We all know that access is a reality in the year 2000 yet we are moving very slowly towards it.

MR STEPHENS: Do you look with some jealousy at the way things are moving in New South Wales?

MR GOLDING: No, to be honest.

MR STEPHENS: Why not?

MR GOLDING: Well, I think it's nothing short of a disaster down there. From what I see of it no one seems to be able to put rolling stock on the existing track and I guess that is what we're trying to avoid in Queensland - we want a situation in Queensland where when access comes a third party operator can go along and very quickly understand what they're going to be charged and give us a price for putting their locomotives on Queensland rail or on the existing railways. And I don't see that happening in New South Wales. And I think to a certain extent they have got the cart before the horse in that they've re structured without contemplating how they are going to operate the system.

PRESIDING COMMISSIONER: One last question from me. You alluded to the fact that if you couldn't get competition above track and transparency in pricing, far below track than we would be no better off.

MR GOLDING: Yes, that's right. I did more than that though.

PRESIDING COMMISSIONER: That is what I was going to ask you, whether in fact you wanted to go quite a bit further than that. Now presumably you can pick up the second part of your request.

MR GOLDING: Okay. We're heading down the access route and with access we'll have competition above the track, and therefore we've accepted that we'll have to take the price that exists, basically. That's where it's going to be, basically. But below the track there's got to be transparency, and posted prices as we've said before - which we don't have now. So I think access without transparency may be no better than what we've got.

PRESIDING COMMISSIONER: Does that also imply that you think there would be some value in having a regulator or at least some body supervising prices?

MR GOLDING: I think that's going to be essential in some form, and it's essential first - I think the more transparency you can have the less regulation you'll need. I think it's fair to say that the way Power Link has operated here in Queensland, where it's published its prices, everyone knows what the rules are. You don't need a great deal of regulation. I think the regulation will be high if you don't get the transparency. But all the same you certainly will need one initially.

MR STEPHENS: Won't the QCA, the Queensland Coal Authority - - -

MR GOLDING: Competition Authority.

MR STEPHENS: Competition Authority, yes, QC - be the regulator?

MR GOLDING: Act as regulator?

MR STEPHENS: Yes.

MR GOLDING: I believe so. That's not totally clear but we believe so.

PRESIDING COMMISSIONER: Is there any suggestion that it will follow the New South Wales model and therefore leave the access regime to the rail outside of the regulatory environment?

MR GOLDING: I don't think we're that far advanced yet. That's the dilemma we've got. But we want to be part of that and know that before we launch into this new world.

PRESIDING COMMISSIONER: Barry, that's been very helpful. Is there anything else that you wanted to raise with us?

MR GOLDING: No.

PRESIDING COMMISSIONER: That's terrific. Thank you very much. Ialways leave this opportunity open for anybody else who is here to make any comment if they wish and I will do the same today, if anybody wants to.

In that case I will close these hearings and people can expect to see a draft report some time towards mid to late February.

INQUIRY ADJOURNED AT 3.15 PM