

# New Zealand: Sordid deal to avoid prosecution over Pike River mine disaster

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A letter sent last October from Pike River Coal (PRC) chief executive Peter Whittall's lawyer, Stuart Grieve, to the Ministry for Business, Innovation and Employment (MBIE) is evidence that the ministry's decision to drop 12 health and safety charges against Whittall was the result of a back room deal with the company. Whittall was the only individual charged over the November 2010 mine explosion that killed 29 men.

The letter, which was made public by the opposition Labour Party last Thursday, proposed that the former directors of PRC would pay \$3.41 million to the miners' families if the ministry agreed to "not proceed with the charges laid against Mr Whittall." This is exactly what happened—on December 12, Whittall was acquitted and the so-called "voluntary" payment was announced.

The acquittal means that no one has been held accountable for the disaster, despite a Royal Commission finding in 2012 that PRC ignored "numerous warnings of a potential catastrophe" and its board was "distracted" by "financial and production pressures." The company was found guilty last July of health and safety violations and ordered to pay \$3.41 million in reparations—but at the time PRC's former directors refused to make the payment on the grounds that the company was bankrupt.

In December, the MBIE and Whittall's lawyers denied that the payment had been agreed in return for charges being dropped. The ministry claimed that there was no "public interest" in proceeding with a trial because it would be long and costly and—despite the finding of the Royal Commission—the chance of a conviction was "low." Judge Jane Farish described the payment as a "side issue" in the decision not to prosecute. She told the families: "Some of you will ...

believe that this is Mr Whittall buying his way out of a prosecution. I can tell you that it's not."

Several family members have denounced the payment as "blood money." Anna Osborne, whose husband Milton died at Pike River mine, told the Australian Broadcasting Corporation on Thursday: "New Zealand's justice system is an absolute joke. To find out today that \$3.4 million to pay compensation to families was a condition that everything is dropped and Peter Whittall walks away scot-free is disgusting."

On Friday, Bernie Monk, who lost his son Michael in the disaster, told Radio NZ: "I find this outrageous and disappointing ... [it's] just another reflection of how we've been treated all the way through ... What else has been hidden behind the scenes?"

Prime Minister John Key said there had been no deal made to drop the charges. At the same time, he declared that PRC's payment to families "made more sense" than the government spending "millions and millions" on prosecuting Whittall.

New Zealand's ruling elite never intended to hold anyone responsible for the tragedy, which was the outcome of PRC's drive to extract coal as quickly and as cheaply as possible. The National Party government did everything possible to defend PRC, including setting up a Royal Commission that had no power to assign "blame." For weeks after the explosion, the government, the opposition Labour Party and the Greens all heaped praise on Whittall, while the media portrayed him as a hero. Other leading figures in the company were never charged, including former CEO Gordon Ward, chairman John Dow and the entire board of directors.

Last July, a police investigation into the disaster concluded without laying criminal charges—even though the mine, which should be treated as a crime

scene, has not been entered since the explosion. The men's bodies have still not been recovered.

A significant factor in the decision not to prosecute Whittall was undoubtedly the complicity of the Labour Department—now part of the MBIE—in the disaster. In his October letter, Grieve warned the ministry that the defence's argument would have a "considerable focus" on the role of the department's mines inspectorate. The Royal Commission found that the department was well aware of gross safety violations at Pike River mine, including the lack of an emergency exit and inadequate ventilation, but did not shut it down.

The Labour Party and the trade unions have criticised the MBIE for dropping the case against Whittall in order to divert attention from their own role in the disaster. Labour MP Damien O'Connor told the *New Zealand Herald* that the Department of Labour did not want to be exposed in court as "incompetent and arrogant," adding that it was largely responsible for the "systemic failure at Pike River."

In fact, successive Labour and National led governments dismantled the Department of Labour's specialist mines inspectorate and allowed coal mines to effectively self-regulate. The department was woefully understaffed at the time of the Pike River tragedy, with only two mines inspectors for the entire country. After the release of the Royal Commission's report, O'Connor admitted that the 1999-2008 Labour government had done nothing to improve mine safety, despite being warned by experts that the deregulation of the 1990s would "result in a massive mine disaster."

Asked whether the Engineering Printing and Manufacturing Union (EPMU) had advised Labour to change the law, O'Connor did not answer directly but blamed "coal miners themselves" for not "demanding of their own union that things should change." This comment only reveals that the union bureaucracy collaborated with mining companies to suppress workers' safety concerns. (See "Labour MP blames workers for New Zealand mine disaster")

Labour's justice spokesman Andrew Little, who obtained Grieve's letter under official information laws and released it to the media, was the EPMU's national secretary at the time of the disaster. The union had about 70 members working at Pike River.

Little told the media that "Peter Whittall has bought himself justice." He told TV3 that Pike River Coal and

the Department of Labour were "equally culpable" for allowing the mine to be developed in violation of safety regulations. He declared that Whittall made the "critical decisions" which led to the inadequate ventilation and the lack of a second exit to the mine.

The EPMU, however, knew all along that the mine was unsafe but took no action to shut it down—even after a group of miners spontaneously walked off the job to protest the lack of basic emergency equipment. The EPMU never criticised PRC before the disaster, and immediately after the explosion Little joined the government in defending the company. He told the *Herald* that PRC had an "active health and safety committee" and there was "nothing unusual about Pike River ... that we've been particularly concerned about."



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