

**IN THE MATTER OF  
The Hazelwood Coal Mine Fire Inquiry**

**STATEMENT OF ROSS GREGOR McGOWAN**

Date of Document: 17 July 2015	Telephone: +61 3 8684 0444
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I, ROSS GREGOR McGOWAN, of Level 9, 121 Exhibition Street, Melbourne, Victoria, Executive Director of Earth Resources Regulation in the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) can say as follows:

**A. Introduction**

1. My full name is Ross Gregor McGowan.
2. I am the Executive Director of the Earth Resources Regulation Branch (**ERR Branch**), in the Regulation and Compliance Division, at DEDJTR based at level 9, 121 Exhibition Street, Melbourne, Victoria.
3. I have been in this role since 2 February 2015. My predecessor was Kylie Anne White. My primary responsibility involves managing the ERR Branch and:
  - 3.1 to regulate the minerals, extractive, geothermal and petroleum industries in accordance with the Acts set out at Annexure A of this statement and the delegations given to me;
  - 3.2 to implement policies that relate to the regulatory framework which I apply; and
  - 3.3 to undertake community consultation and engagement where relevant to my role.
4. My work background is in fisheries management and, before that, in policy development for and the administration of the justice system. I set out a summary of my qualifications and employment history at Annexure B to this statement.

5. This Statement has been prepared pursuant to the request made by the Hazelwood Coal Mine Fire Board of Inquiry by letter of 30 June 2015 (**the Board's letter**) and amended in part by a further letter of 7 July 2015.
6. The letters request that this witness statement cover the following topics:
  - 6.1 explain the role of the ERR Branch in regulating the Anglesea coal mine with particular reference to the *Mines (Aluminium Agreement) Act 1961 (M(AA) Act)* in relation to fire;
  - 6.2 how the ERR Branch applies the provisions of the M(AA) Act to the Anglesea coal mine in relation to fire. For example:
    - (a) whether the licensee, Alcoa of Australia Ltd (**Alcoa**) is obliged to report to the ERR Branch the incidence of fires in the Anglesea coal mine pursuant to s 41AC of the *Mineral Resources (Sustainable Development) Act 1990 (MR(SD) Act)*;
    - (b) whether the Minister has the power to issue a notice pursuant to s 110 of the MR(SD) Act;
  - 6.3 the ERR Branch's experience of fire in the Anglesea coal mine since 1 January 2013;
  - 6.4 the discussions that have occurred between the ERR Branch and Alcoa about the implications on fire mitigation and suppression for the closure of the Anglesea coal mine on 31 August 2015;
  - 6.5 the ERR Branch's understanding of Alcoa's strategies as the mine operator to reduce the risk of fire arising from or impacting the Anglesea mine after 31 August 2015;
  - 6.6 whether Alcoa has provided the ERR Branch with any documented assessments that it has carried out, or has arranged for others to carry out, of those strategies including risk assessments and technical reviews and, if it has, a description of those documents;
  - 6.7 whether the ERR Branch is satisfied that Alcoa will have in place at the time of the mine closure, arrangements that reduce the risk of fire arising from or impacting the Anglesea coal mine that are sustainable, practical and effective; and
  - 6.8 whether those arrangements reduce the risk of fire arising from or impacting the Anglesea coal mine so far as is reasonably practicable.
7. This statement seeks to address each of these matters. In the headings to each section of this witness statement I indicate to which paragraph in the Board's letter the section refers.

8. In addition, the letters also sought a statement that addresses the following geological and regulatory matters:
- 8.1 a description of the features of the coal mined in the Anglesea mine;
  - 8.2 identify the principal differences between that coal and the coal mined in the Latrobe Valley. In particular:
    - (a) whether there is a difference in moisture content;
    - (b) whether there is a difference in sulphur content;
    - (c) whether there is a difference in heat value;
    - (d) whether the coal is more or less flammable;
  - 8.3 describe the implications of these differences, if any, on the:
    - (a) likelihood of fire arising from or impacting on the Anglesea mine compared to the likelihood of a fire arising from or impacting on a mine in the Latrobe Valley; and the
    - (b) consequences to the environment and the health of the population of Anglesea of a fire taking hold in the mine.
9. Jane Elizabeth Burton, Director of Coal Resources, has prepared a statement which addresses the matters set out at paragraphs 8.1 and 8.2(a) to 8.2(c), above. My statement addresses the matters set out at paragraphs 8.2(d) and 8.3.
10. The information contained in paragraphs 39 to 43 of this witness statement is derived from research carried out by officers of DEDJTR at my request in response to the Inquiry and is accurate to the best of my knowledge, information and belief.
- B. The role of the ERR Branch in regulating the Anglesea coal mine (Board's letter at "Regulatory Issues" at [1])**

***ERR Branch***

11. The ERR Branch forms part of the Regulation and Compliance Division in DEDJTR. Regulation and Compliance in turn forms part of the Agriculture, Energy and Resources group of DEDJTR.
12. James Florent is the Deputy Secretary, Regulation and Compliance. Luke Wilson is the Lead Deputy Secretary, Agriculture, Energy and Resources. Richard Bolt is the Secretary of DEDJTR. I report to Mr Florent, Mr Florent reports to Mr Wilson, and Mr Wilson reports to Mr Bolt.

**Attachment RGM-1** is a true copy of the organisation chart of DEDJTR.

13. The ERR Branch is located in five offices: Melbourne, Traralgon, Ballarat, Bendigo, and Benalla.
14. There are approximately 55 full time equivalent positions in the ERR Branch.

**Attachment RGM-2** is a true copy of the organisation chart of the ERR Branch.

15. Among its responsibilities, the ERR Branch is responsible for regulating aspects of the work undertaken at the Anglesea coal mine pursuant to the M(AA) Act, the MR(SD) Act, and the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013 (MR(SD)(MI) Regulations)*. As I discuss later in this statement, day to day regulation of the Anglesea coal mine is carried out by inspectors based at the Ballarat office.

### ***Statutory framework applying to the Anglesea coal mine***

16. The legislative and regulatory framework governing mining work at the Anglesea coal mine is bespoke. Unlike all other mines in Victoria, mining work at the Anglesea coal mine is governed by a combination of the provisions of the M(AA) Act and the MR(SD) Act.
17. The M(AA) Act ratifies, validates and approves an agreement executed in 1961 between the State of Victoria (**State**) and Alcoa. The agreement confers the exclusive right upon Alcoa 'to search work mine for win carry away and dispose of for the use and benefit of [Alcoa] all coal on' the mine area.
18. In 2011 the State and Alcoa amended the agreement. The amended agreement was ratified, validated and approved under the *Mines (Aluminium Agreement) Amendment Act 2011 (M(AA)A Act)*.
19. In contrast to the M(AA) Act, the MR(SD) Act applies to all mines (and quarries) in Victoria, including to the Anglesea coal mine to the extent set out at paragraphs 20 and 26, below.
20. Clause 21 of Schedule 2 of the M(AA) Act establishes a general rule that, in the event of an inconsistency between a provision of the M(AA) Act and the MR(SD) Act, the provision in the M(AA) Act shall prevail:

#### **21. Application of Act**

- (1) The Act so far as it is not inconsistent herewith shall with such adaptations as are necessary apply to this Agreement and the mining operations of the Company on the leased area the freehold land the prior land and the purchased land as if this Agreement were a mining licence granted under the provisions of the Act and the Company were the registered proprietor thereof.

21. The MR(SD) Act is inconsistent with the M(AA) Act in four respects:

- 21.1 the measurement and payment of royalties and rent;

- 21.2 the approval of the mining licence for Anglesea coal mine;
  - 21.3 the approval of a work plan for the Anglesea coal mine; and
  - 21.4 a variation to the work plan for the Anglesea coal mine that would give rise to an extension of the area to be worked.
22. Regulation of the measurement and payment of royalties and rent fall outside the scope of this statement. The other three topics are, however, relevant to the matters identified in the Board's letter requesting this statement. I address each in turn.

*Approval of the mining licence for Anglesea coal mine*

23. The M(AA) Act prescribes the area to which the Agreement applies,<sup>1</sup> the parties to the Agreement,<sup>2</sup> and its duration.<sup>3</sup> It confers exclusive economic rights on Alcoa to the coal at the Anglesea coal mine.<sup>4</sup> This amounts, in effect, to the issue of a mining licence for Alcoa at the Anglesea coal mine.<sup>5</sup>

*Approval of a work plan for the Anglesea coal mine*

24. Before enactment of the M(AA)A Act, the M(AA) Act governed the manner in which mining work (including rehabilitation work) could be carried out at the Anglesea coal mine.<sup>6</sup>
25. The M(AA)A Act removed most of these provisions from the statute.<sup>7</sup> They were replaced with a work plan which was endorsed pursuant to the M(AA) Act and is deemed to be a work plan within the meaning of the MR(SD) Act.<sup>8</sup>

*Variation to the work plan for the Anglesea coal mine that would give rise to an extension of the area to be worked*

26. While a work plan variation must be submitted and determined in accordance with the MR(SD) Act,<sup>9</sup> special rules contained in clause 21D of Schedule 2 of the M(AA) Act govern a work plan variation that would extend the area currently approved for mining work under the existing work plan.<sup>10</sup>

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<sup>1</sup> M(AA) Act, clause 1 (definitions of 'freehold land', 'leased area', 'prior land', 'specified area' and 'stage 1 area') of Schedule 2.

<sup>2</sup> M(AA) Act, clause 1 (definitions of 'Company' and 'Act') of Schedule 2.

<sup>3</sup> M(AA) Act, clauses 6 and 7 of Schedule 2.

<sup>4</sup> M(AA) Act, clause 9 of Schedule 2.

<sup>5</sup> MR(SD) Act, ss 14(1), 39(1)(a), 39(1)(ab) and 40.

<sup>6</sup> M(AA) Act, clauses 12(1)(a)-(f), 12(1)(h), 12(1)(i), 13(a), 13(b), 13(d), 13(e), 14 to 16, 19(1), 19(2), 19(3)(d), 20, 22, and 23 of Schedule 2.

<sup>7</sup> The remaining provisions are M(AA) Act, clauses 11, 12(1)(g), 12(1)(j), 13(c), 17, 18, 19(3)(a) to (c), 19(3)(d), 19(4) and 19(5) of Schedule 2.

<sup>8</sup> M(AA) Act, clause 21A of Schedule 2.

<sup>9</sup> Ibid.

<sup>10</sup> M(AA) Act, clause 21D of Schedule 2.

***Rehabilitation, public safety and the administration and enforcement of rules governing mine work***

27. With the coming into effect of the M(AA)A Act, the M(AA) Act is silent as to rehabilitation.<sup>11</sup>
28. It follows that the rehabilitation of land at the Anglesea coal mine and measures to identify, mitigate and prevent risks to potential safety arising from mining work or rehabilitation work which the ERR Branch regulates are governed by:
- 28.1 the approved work plan for the Anglesea coal mine; and
- 28.2 the MR(SD) Act.
29. Condition 25 of the Schedule of Conditions of the endorsed work plan provides as follows:
- 25. Rehabilitation**
- 25.1 The Company must ensure that progressive rehabilitation of disturbed land is carried out as soon as possible including those areas used for exploration activities not requiring an endorsed work plan.
- 25.2 The Company must ensure that final rehabilitation is in accordance with the endorsed Work Plan.
30. The rehabilitation objective for the mine is:<sup>12</sup>
- The current rehabilitation objective for the Anglesea site is to establish a diverse, self-sustaining heathy woodland ecosystem that maintains or enhances the surrounding land use such as conservation, recreation and other natural values.
31. The work plan proposes the following vision for the use of the mine area after closure:<sup>13</sup>
- Whilst it is emphasised that no firm decisions have been made regarding future land use, there is potential for the land used by Alcoa at Anglesea to be re-used for a variety of commercial, conservation, educational and recreation activities. It is envisaged that Alcoa would not be directly involved in these future land uses beyond facilitating their implementation as an integral part of the decommissioning, rehabilitation and closure process.
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<sup>11</sup> M(AA) Act, clause 14(2) of Schedule 2.

<sup>12</sup> *Alcoa Anglesea Power Station Mine Work Plan*, September 2011 at p 27.

<sup>13</sup> *Ibid.*

The 2061 closure plan generally depicts all high batters being completely filled and redeveloped into rehabilitated slopes that feed down to a flooded void and valley system that disguises the extraction of the coal volumes.

32. As part of the Environmental Improvement Plan set out at Appendix A of the endorsed work plan Alcoa set the following targets and actions in order:

... to establish a diverse heathy woodland ecosystem with mine rehabilitation whilst identifying and protecting archaeological sites; protecting healthy vegetation from *Phytophthora cinnamomi*; continuing existing vegetation protection strategies; improving habitat and restoring native vegetation within the mining area.

...

Targets	Actions
100% species richness in post 2000 mine rehabilitation areas	Continue to experiment and refine rehabilitation techniques (ongoing).
Area of land rehabilitated per annum > area of clearing per annum	Continue to implement the botanical monitoring program to assess post-2000 rehabilitation areas (ongoing; review ongoing requirement Q1 2009). Continue seed dormancy and mine rehabilitation research for recalcitrant plants (Depth and Quantification of Topsoil Reserves in the Anglesea Heath Vegetation [Q3 2008]). Further refine rehabilitation targets in line with Department of Sustainability and Environment's Native Vegetation Framework Guidelines (Q4 2009). Formally document rehabilitation procedures (Q4 2009).

33. The Land Management Plan at Appendix C of the endorsed work plan set out a rehabilitation method. It is:

- 33.1 pre-stripping management;
- 33.2 botanical survey;
- 33.3 disposal of vegetation from land that is cleared for mining;
- 33.4 landscaping;
- 33.5 soil handling;
- 33.6 mulch;
- 33.7 rehabilitation ripping;
- 33.8 planting of recalcitrant plants;

- 33.9 fauna return to rehabilitated areas;
- 33.10 recording and reporting; and
- 33.11 monitoring.
34. The objectives of the Mine Closure Plan set out at Appendix E of the endorsed work plan are:
- We maintain our high focus on environmental and safety standards
  - All rehabilitation achieves the completion of criteria standard
  - Planning for future use of the mine or infrastructure will involve the neighbouring community and other interested parties
  - The site is left in a condition which is safe, self sustaining and suitable for future land uses
  - The amount of waste disposal to landfill is minimised by recycling and reusing waste materials
  - The site is liability free when relinquished to the government or utilised by another body

**C. ERR Branch’s regulation of mining and rehabilitation work at Anglesea coal mine (Board’s letter at “Regulatory Issues” at [2])**

35. Consistent with this regulatory framework the ERR Branch’s regulation of the Anglesea coal mine is integrated into the statewide regulation of all mines and quarries in Victoria.
36. Day to day regulation of the mine is carried out by Elizabeth Abbott, who is an inspector under the MR(SD) Act<sup>14</sup> and is the Operations Manager for the Southwest Region at the ERR Branch. Ms Abbott is based in Ballarat. She reports to John Mitas, the General Manager of Earth Resources Operations at the ERR Branch and the Chief Inspector under the MR(SD) Act. In his role as General Manager of Earth Resources Operations Mr Mitas reports to me.
37. The ERR Branch’s enforcement powers under the MR(SD) Act, whether delegated from the Minister<sup>15</sup> or the Department Head<sup>16</sup>, or exercisable by the Chief Inspector<sup>17</sup> or by inspectors<sup>18</sup>, apply to the Anglesea coal mine.
38. In particular:

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<sup>14</sup> MR(SD) Act, s 90(1)(b).

<sup>15</sup> MR(SD) Act, ss 83(3) (but not s 83(4)), 110.

<sup>16</sup> MR(SD) Act, Part 9, Division 7.

<sup>17</sup> MR(SD) Act, s 41AC.

<sup>18</sup> MR(SD) Act, Part 9, Divisions 3, 5, 8 and 9 and ss 106, 110A.



- 38.1 Alcoa is obliged to notify the Chief Inspector of a reportable event pursuant to s 41AC of the MR(SD) Act; and
- 38.2 the Minister is empowered to issue a notice under s 110 of the MR(SD) Act.
39. I am informed that inspectors have issued three notices to Alcoa under s 110 of the MR(SD) Act, on 15 March 2000, 5 March 2005 and 30 November 2013.

**Attachment RGM-3** is a true copy of the Instruction Notice/Inspection Report dated 15 March 2000.

**Attachment RGM-4** is a true copy of the Instruction Notice/Inspection Report dated 5 March 2005.

**Attachment RGM-5** is a true copy of the s 110 Notice dated 30 November 2013.

40. The first notice required, among other things, the submission of a '[n]ew rehabilitation plan ... by' 15 September 2000. The second required changes to work practices following an 'incident involving the CAT 775 rear dumper'. The third required Alcoa to 'develop and submit to the Department revisions of both the Ground Control Management Plan associated with the Alcoa Anglesea coal mine endorsed work plan'.
41. I am informed that Alcoa complied with all three notices.

**D. Outbreaks of fire at Anglesea coal mine (Board's letter at "Regulatory Issues" at [3])**

42. A search of the ERR Branch's records indicates that Alcoa has reported one outbreak of fire at the Anglesea coal mine since 1 January 2013. On 2 June 2014 Alcoa notified ERR Branch that a fire had combusted spontaneously. It was dug out and extinguished in two hours.

**Attachment RGM-6** is a true copy of the Field Report dated 2 June 2014.

43. I understand that on 13 July 2015 Chris Rolland of Alcoa stated publicly that three fires had broken out at the Anglesea coal mine since 1961. Based upon the records contained in ERR Branch, two of those fires broke out before 1 January 2013.

**E. Rehabilitation and public safety following Alcoa's mine closure announcement (Board's letter at "Regulatory Issues" at [4]-[8])**

***Summary of ERR Branch's anticipated regulatory role***

44. On 11 May 2015 Alcoa announced that it would close the Anglesea coal mine on 31 August 2015. ERR Branch is currently employing two strategies in order to ensure that the mine closure proceeds in accordance with the applicable laws and the endorsed work plan:

- 44.1 direct communications with Alcoa to ensure that it is implementing interim measures to appropriately prevent and/or manage the risk of fire breaking out and taking hold at the Anglesea coal mine before final rehabilitation of the site; and
  - 44.2 participation in the Alcoa Anglesea Co-ordination Committee to co-ordinate the State's response to and to oversee Alcoa's actions in closing Anglesea coal mine.
45. As I discuss later in this statement, ERR Branch:
- 45.1 will have a continuing role in monitoring Alcoa's conduct and enforcing compliance with its statutory and regulatory obligations;
  - 45.2 will be consulted during the preparation of a mine closure plan, including a final rehabilitation plan; and
  - 45.3 will likely be required to consider and determine a work plan variation comprising the mine closure plan.

***Changed conditions at Anglesea coal mine***

46. The mine closure announcement initiated the first of three periods of time in which new challenges in preventing, mitigating and suppressing the outbreak of a fire at Anglesea coal mine may arise.
47. Firstly, immediately following the announcement of the closure of the mine the workforce remained in place and began to carry out interim measures in preparation for mine closure. I understand Alcoa has commenced preparation of a final rehabilitation plan, as one component of a detailed site closure plan for the mine.
48. Secondly, after 31 August 2015 the bulk of the workforce will depart. During this period Alcoa:
- 48.1 will carry out previously approved progressive rehabilitation work;
  - 48.2 will prepare a plan for the final closure of the mine; and then
  - 48.3 will carry out final rehabilitation work in accordance with the final rehabilitation plan.
49. Thirdly, once this work is complete it is anticipated that the whole of the area that is the subject of the M(AA) Act will be managed by the appropriate land manager.
50. ERR Branch's regulation of the Anglesea coal mine during the three closure periods aims to acknowledge these impacts amongst the raft of other matters – geotechnical, hydrological, ecological – that require consideration and attention in the closure of the mine and the rehabilitation of the site.

### *Communications with Alcoa*

51. Our communications with Alcoa since the mine closure announcement have been directed towards ascertaining whether Alcoa has and will put in place measures to mitigate, suppress and, if possible, prevent the outbreak of fire at the Anglesea coal mine during the changed conditions that will be present at the Anglesea coal mine during the first two periods of mine closure, while ensuring that Alcoa will prepare an acceptable mine closure plan that appropriately addresses final rehabilitation.
52. Given that the current endorsed rehabilitation plan requires consideration of ongoing fire risk management, the final rehabilitation plan will similarly be required to address ongoing fire risk management at the rehabilitated mine site.
53. On 18 May 2015, Mr Mitas and Ms Abbott attended a community consultative network meeting to hear Alcoa's interim plan for mine closure.
54. On 19 May 2015, Mr Mitas, Ms Abbott and I inspected the mine with Alcoa representatives Warren Sharp, Power Station Manager, and Chris Rolland, Mine Manager. During the inspection they advised that Alcoa intended to begin a program of covering all exposed coal at the mine with overburden 1 m thick. They anticipated that this work would be completed by closure on 31 August 2015. This would be an interim measure pending preparation of a final rehabilitation plan for the mine.
55. In May 2015 Alcoa began the interim coal capping works. ERR Branch is monitoring its progress. I understood at that time that the works were on schedule to be completed by 31 August 2015. Upon completion all exposed coal at the Anglesea coal mine would have been capped.
56. On 19 June 2015 Ms White and I met with Alcoa representatives John Osborne, Director Asset Management and Planning, Eastern Australia, Mr Sharp and Mr Rolland at the Anglesea coal mine and discussed:
  - 56.1 what action Alcoa proposed to take to reduce risk at the site so as to make it safe and stable; and
  - 56.2 what impacts mine closure could have on its workforce.
57. On 26 June 2015 Mr Mitas, Ms Abbott and I met with Alcoa representatives Mr Osborne, Mr Sharp and Mr Rolland, and representatives from WorkSafe at our office in Melbourne. During the meeting they notified us of Alcoa's intention to obtain a report assessing the risk of fire igniting at the Anglesea coal mine after closure on 31 August 2015. It is anticipated that the report will advise Alcoa on risk mitigation and prevention strategies during the period while final rehabilitation work is planned and carried out – and in particular whether the current project of capping exposed coal with 1 m of overburden would be effective in preventing an outbreak of fire at the mine – while informing the preparation of the final rehabilitation plan. As I discuss at paragraph 61, below, I received a copy of this report on 15 July 2015.

58. On 3 July 2015 Mr Mitas and I met with Alcoa representatives at our office in Melbourne. We discussed the mine closure process from the perspectives of the State and of Alcoa. During the meeting the Alcoa representatives outlined the preparation of a detailed mine site closure program. This would include the preparation of a final rehabilitation plan.
59. On 8 July 2015 I had a brief discussion with Mr Sharp, who informed me that Alcoa would not be able to complete the proposed coal capping work at the Anglesea coal mine. According to them, some of the work cannot be carried out without obtaining a new, or amending the current, cultural heritage management plan for additional areas of the mine.
60. In light of this disclosure, on 10 July 2015 Mr Mitas wrote to Alcoa. Mr Mitas sought the following information from Alcoa no later than 23 July 2015:
- 60.1 a copy of the risk assessment carried out addressing fire mitigation and management for the closure of the mine; and
- 60.2 the measures to be put in place to manage fire risks related to the coal faces that will remain exposed.

**Attachment RGM-7** is a true copy of the letter from Mr Mitas to Alcoa dated 10 July 2015.

61. On 15 July 2015 I received a copy of the risk assessment from Alcoa. At the time of making this witness statement the ERR Branch has not had an opportunity to review it.

#### ***Consultation, consideration and approval of mine closure plan***

62. I anticipate that from July 2015 to December 2016 Alcoa will prepare its final closure plan for the Anglesea coal mine.
63. During this preparation stage Alcoa would also be in regular consultation with Local, State and Commonwealth authorities with relevant expertise in, or whose endorsement would be required, in order to close the Anglesea coal mine.
64. After the mine closure plan is completed it will be submitted to the ERR Branch as a work plan variation for approval. If and when it is approved, final rehabilitation of the Anglesea coal mine will be able to begin in accordance with the approved work plan variation.

#### ***Importance of interim measures***

65. It is in this context that the interim capping of exposed coal at the Anglesea coal mine and the preparation of a fire risk report are important to ERR Branch in the discharge of our regulatory function.

*Alcoa Anglesea Co-ordination Committee*

66. In addition, I am a member of the Alcoa Anglesea Co-ordination Committee (**Committee**). The Committee was established by the State to provide a single contact point in government for Alcoa and to assist in the co-ordination of the State's response to the closure of the Anglesea coal mine.
67. The Committee was established on 12 May 2015. It comprises representatives from DEDJTR (including ERR Branch and Coal Resources), the Environment Protection Authority, the Department of Environment, Land, Water and Planning, the Emergency Management Commissioner, WorkSafe, and the Department of Education and Early Childhood Development.
68. The Committee has conferred on:
- 68.1 12 May 2015 (by teleconference);
  - 68.2 14 May 2015 (by teleconference);
  - 68.3 19 May 2015 (by teleconference);
  - 68.4 2 June 2015;
  - 68.5 23 June 2015 (by teleconference);
  - 68.6 3 July 2015; and
  - 68.7 8 July 2015.

**F. The implications of differences in certain characteristics of coal mined at the Anglesea coal mine and at the three Latrobe Valley coal mines on:**

- **whether the coal mined at the Anglesea coal mine is more or less flammable than that mined at the three Latrobe Valley coal mines;**
  - **the likelihood of fire arising from or impacting on the Anglesea mine compared to the likelihood of a fire arising from or impacting on a mine in the Latrobe Valley; and**
  - **the consequences to the environment and the health of the population of Anglesea of a fire taking hold in the mine.**
  - **(Board's letter at "Geological Issues" at [3])**
69. Neither DEDJTR and its predecessors, nor the SECV, gathered data on the implications of differences in certain characteristics of coal mined at the Anglesea coal mine and at the three Latrobe Valley coal mines on:
- 69.1 whether the coal mined at the Anglesea coal mine is more or less flammable than that mined at the three Latrobe Valley coal mines;

- 69.2 the likelihood of fire arising from or impacting on the Anglesea mine compared to the likelihood of a fire arising from or impacting on a mine in the Latrobe Valley; and the
- 69.3 the consequences to the environment and the health of the population of Anglesea of a fire taking hold in the mine,

because the regulation of the risk of fire at all four coal mines under the MR(SD) Act and the M(AA) Act has not sought to distinguish between the comparative flammability of the coal mined at any of these coal mines.

70. As Ms White noted in her witness statement to the Board last year, DEDJTR and its predecessors' responsibility for regulating fire risk at the Latrobe Valley coal mines has varied since privatisation.<sup>19</sup> Before 2007 DEDJTR's predecessor regulated fire risk as an aspect of occupational health and safety at the coal mines. From 30 August 2006, DEDJTR was required to apply the principles of sustainable development in administering the MR(SD) Act.<sup>20</sup>
71. Further:
- 71.1 since the MR(SD) Act came into effect the Minister has been empowered to issue notices under s 110 of the MR(SD) Act; and
- 71.2 since 30 June 2010 licensees have been required to notify the Chief Inspector of events under s 41AC of the MR(SD) Act when there was a risk to public safety, environment or infrastructure.<sup>21</sup>
72. On 20 January 2015 the Minister varied the licence conditions for each Latrobe Valley coal mine to require the submission of a risk assessment and management plan that addresses, among other things, the risk of fire.

**Attachment RGM-8** is a true copy of the Instrument of Variation and Addition of Licence Conditions for Yallourn coal mine.

**Attachment RGM-9** is a true copy of the Instrument of Variation and Addition of Licence Conditions for Hazelwood coal mine.

**Attachment RGM-10** is a true copy of the Instrument of Variation and Addition of Licence Conditions for Loy Yang coal mine.

73. Due to the unique nature of the regulatory regime applying to the Anglesea coal mine, the ERR Branch considered that the Minister was not empowered to vary the licence conditions for that mine as she had for the three Latrobe Valley coal mines. Instead, the ERR Branch intended to require Alcoa to submit a risk assessment and management plan for the Anglesea coal mine once the *Mineral Resources (Sustainable Development) Amendment Act 2014* came into effect on 1 January

<sup>19</sup> Statement of Kylie Anne White dated 22 May 2014 at [55] to [84].

<sup>20</sup> MR(SD) Act, s 2A.

<sup>21</sup> *Energy and Resources Legislation Amendment Act 2009*, s 27.

2016. Following Alcoa's mine closure announcement ERR Branch no longer intends to impose such a requirement on the work plan for the Anglesea coal mine.

74. Throughout all of these periods of varying responsibility and shifts in statutory and regulatory focus DEDJTR's regulation of fire risk at Victoria's coal mines has proceeded on the following assumptions:

74.1 coal is highly prone to ignition on the basis of:

- (a) spontaneous combustion;
- (b) industrial process; or
- (c) bushfire; and

74.2 adverse health and environmental impacts might be caused by smoke from a fire irrespective of the comparative characteristics of coal mined at any of the four coal mines in Victoria.

75. The underlying premise of the regulation of fire risk under the MR(SD) Act, therefore, is to prevent, to mitigate and if necessary to suppress the outbreak of any fire at a coal mine in Victoria because any fire event has the potential to harm the environment and public safety.

Dated: July 2015

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**ROSS GREGOR MCGOWAN**

## ANNEXURE A

- MR(SD) Act:
  - *Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010;*
  - MR(SD)(MI) Regulations;
- M(AA) Act;
- *Extractive Industries (Lysterfield) Act 1986;*
- *Pipelines Act 2005:*
  - *Pipelines Regulations 2007.*

Responsibility for regulation under the Pipelines Act and the Pipelines Regulations is shared with Energy Safe Victoria;
- *Petroleum Act 1998:*
  - *Petroleum Regulations 2011;*
- *Offshore Petroleum and Greenhouse Gas Storage Act 2010:*
  - *Offshore Petroleum and Greenhouse Gas Storage Regulations 2011;*
- *Geothermal Energy Resources Act 2005:*
  - *Geothermal Energy Resources Regulations 2006;*
- *Greenhouse Gas Geological Sequestration Act 2008:*
  - *Greenhouse Gas Geological Sequestration Regulations 2009;*
  - *Greenhouse Gas Geological Sequestration (Exemption) Regulations 2009.*



## ANNEXURE B

### Qualifications

Bachelor of Business (Business Administration)

### Professional employment

2 February 2015 to present	Executive Director, Earth Resources Regulation, Department of Economic Development, Jobs, Transport and Resources
July 2013 to 1 February 2015	Executive Director, Fisheries Victoria, Department of Environment and Primary Industries
March 2002 to September 2011	Executive Director, Seafood Industry Victoria
August 2000 to March 2002	Senior associate, Globe Communications
November 1999 to July 2000	Communications and strategic advisor
March 1996 to October 1999	Chief of Staff to the Minister for Police, Emergency Services and Corrections
December 1995 to March 1996	Ministerial advisor to the Deputy Premier, Minister for Police and Emergency Services, Minister for Corrections and Minister responsible for the Grand Prix
October 1994 to December 1995	Research assistant to the Secretary of the Department of Justice
August 1993 to October 1994	Policy officer to the Director of Courts and Tribunal Services
December 1989 to August 1993	Administration officer, Courts and Tribunal Services
November 1981 to December 1989	Clerk of Courts

### Previous boards

- Primary Skills Victoria – the Victorian Primary Industries Training Board Inc
- Fisheries research advisory board

### Previous committees

- Fisheries Cost Recovery standing committee
- Fisheries industry safety advisory committee
- Fisheries Research and Development Corporation national priority forum
- Fisheries Research and Development Corporation extension and adoption committee
- National Seafood Industry Alliance

**List of Attachments**

1. Attachment RGM-1 - Organisation chart of DEDJTR [VGSO.1003.001.0019].
2. Attachment RGM-2 - Organisation chart of the ERR Branch [VGSO.1003.001.0021].
3. Attachment RGM-3 - Instruction Notice/Inspection Report dated 15 March 2000 [VGSO.1003.001.0022].
4. Attachment RGM-4 - Instruction Notice/Inspection Report dated 5 March 2005 [VGSO.1003.001.0023].
5. Attachment RGM-5 - s 110 Notice dated 30 November 2013 [VGSO.1003.001.0024].
6. Attachment RGM-6 - Field Report dated 2 June 2014 [VGSO.1003.001.0026].
7. Attachment RGM-7 - Letter from Mr Mitas to Alcoa dated 10 July 2015 [VGSO.1003.001.0027].
8. Attachment RGM-8 - Instrument of Variation and Addition of Licence Conditions for Yallourn coal mine [VGSO.1003.001.0028].
9. Attachment RGM-9 - Instrument of Variation and Addition of Licence Conditions for Hazelwood coal mine [VGSO.1003.001.0050].
10. Attachment RGM-10 - Instrument of Variation and Addition of Licence Conditions for Loy Yang coal mine [VGSO.1003.001.0063].