
TRANSCRIPT OF PROCEEDINGS

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

2015/16 HAZELWOOD MINE FIRE INQUIRY

MELBOURNE

TUESDAY, 8 DECEMBER 2015

THE HONOURABLE BERNARD TEAGUE AO - Chairman

PROFESSOR JOHN CATFORD - Board Member

MR PETER ROZEN - Counsel Assisting

MS RUTH SHANN - Counsel Assisting

MR RICHARD ATTIWILL QC - State of Victoria

MS RENEE SION - State of Victoria

MS RACHEL DOYLE SC - GDF Suez Australian Energy

MS MARITA FOLEY - GDF Suez Australian Energy

DR MATTHEW COLLINS QC - Energy Australia Yallourn

MS EMILY LATIF - Energy Australia Yallourn

MS JULIET FORSYTH - AGL Loy Yang

MS LISA NICHOLS - Environment Victoria

MS EMMA PEPPLER - Environment Victoria

1 CHAIRMAN: Good morning and welcome to this part of the
2 Hazelwood Mine Fire Inquiry. I acknowledge the
3 traditional owners of the land on which we gather,
4 Gunaikurnai, and I pay my respects to their elders past
5 and present.

6 The focus of the Inquiry over the coming days are
7 paragraphs 8, 9 and 10 of the terms of reference. They
8 relate to the rehabilitation of the coal mines of the
9 Latrobe Valley. Mine rehabilitation is an important issue
10 within the Valley. Throughout July and August the Inquiry
11 conducted community consultations across the Valley and
12 sought written submissions from members of the community,
13 from industry, from community groups and stakeholders.

14 The Board will develop its final report from all
15 of the information which we have been presented with and
16 with which we are presented here and from what comes from
17 the submissions.

18 Over the next four days we will be addressing
19 terms of references 8 and 9. Term of reference 8 tasks
20 the Board with identifying short, medium and long-term
21 options to rehabilitate land at the Hazelwood, Yallourn
22 and Loy Yang Mines. Term of reference 9 requires the
23 Board to assess each proposed option against specific
24 criteria to ensure that they are appropriate.

25 We will return on December 14 and 15 to address
26 terms of reference 10 which relates to the mines
27 rehabilitation liability assessments adequacy, the current
28 rehabilitation bond system and any practical, sustainable,
29 efficient and effective alternative mechanisms to ensure
30 rehabilitation of the mines. We will return hopefully
31 finally on 18 December when the parties will provide their

1 closing remarks.

2 Board members Professor John Catford and I will
3 be listening to the evidence being presented.

4 Regrettably, Board member Anita Roper will not be in
5 attendance due to a sudden serious illness. We wish her a
6 speedy recovery. Anita has contributed a great deal
7 throughout the Inquiry. She has been heavily involved in
8 the work that has brought us here today and, for that,
9 John and I thank her.

10 We encourage people to visit our website to
11 review written submissions and transcripts of the
12 testimony given over the next few days. I will now ask,
13 before calling on Mr Rozen, for appearances.

14 MR ROZEN: If the Board pleases, I appear with my learned
15 friend Ms Shann to assist the Board.

16 CHAIRMAN: Thank you, Mr Rozen.

17 MR ATTIWILL: I appear with Ms Sion on behalf of the State of
18 Victoria.

19 CHAIRMAN: Thank you, Mr Attiwill.

20 MS NICHOLS: If the Board pleases, I appear with Ms Pepler for
21 Environment Victoria.

22 CHAIRMAN: Thank you, Ms Nichols.

23 MS FORSYTH: If the Board pleases, I appear for AGL Loy
24 Yang Pty Ltd.

25 CHAIRMAN: Thank you, Ms Forsyth.

26 MS DOYLE: If the Board pleases, I appear with Ms Foley for GDF
27 Suez.

28 DR COLLINS: If the Board pleases, I appear with Ms Latif for
29 Energy Australia Yallourn Pty Ltd.

30 CHAIRMAN: Thank you, Dr Collins. Mr Rozen.

31 MR ROZEN: If the Board pleases, I propose to make an opening

1 statement perhaps a little longer than I might otherwise
2 have done so. I thought it would be of assistance to the
3 Board and also to the parties to have at least the current
4 views of Counsel Assisting on the terms of reference set
5 out in some detail by way of an opening statement, given
6 the very tight timeframes under which we are all operating
7 and particularly the tight timeframes in relation to final
8 submissions next week.

9 Brown coal was first discovered in the Latrobe
10 Valley in 1873 and since the early 1900s the region has
11 been at the centre of Victoria's coal mining and power
12 generation activities. Along with eastern Germany, the
13 Latrobe Valley brown coal deposits are the biggest in the
14 world. Coal has played a key role in the social and
15 economic development of the Valley region and the State of
16 Victoria generally, although not without some costs to the
17 community and the environment.

18 In 1920 legislation was passed to establish both
19 a power station at Yallourn and the State Electricity
20 Commission of Victoria, SECV, a public corporation with a
21 mandate to electrify Victoria with a statewide supply.
22 Headed by the decorated World War I general Sir John
23 Monash, the SECV was initially tasked with developing an
24 open cut mine, a power station and a briquette factory.
25 The briquette factory was built by a German company at the
26 suggestion of Monash and over the strenuous opposition of
27 the Hughes federal government.

28 The development of Yallourn was significant for
29 Victoria, not only from the electricity it generated, but
30 also through its technological and industrial advances.
31 Yallourn became a national icon, a focus for national

1 pride and a symbol of modernity in Australia.

2 During the ensuing decades the SEC determined
3 when and how to expand the network of mines and power
4 stations in the Latrobe Valley. Old mines at Yallourn
5 were closed down and the land rehabilitated at least in
6 part. New mines were commenced, first at Morwell in the
7 1950s and then at Loy Yang in the 1980s. The model town
8 of Yallourn came and went and while Morwell was spared the
9 same fate in the 1950s, the victory over those that wished
10 to close Morwell may have been pyrrhic, as its citizens
11 have been left with an inadequate buffer between the
12 town's southern boundary and the northern edge of the
13 Hazelwood mine, as was graphically demonstrated by the
14 fire of February last year.

15 When deemed necessary during this period, rivers
16 were diverted. At each stage of the development of the
17 brown coal industry in the Latrobe Valley between 1920 and
18 1995 decisions were made by a state-owned corporation.
19 The decisions were made for what was perceived to be the
20 greater good of Victorians. The interests of the citizens
21 of the Latrobe Valley were not always accorded the same
22 priority. There was no state regulator to which the SEC
23 was answerable. It self-regulated.

24 In the early 1990s the Victorian government
25 privatised the electricity industry. The SEC was broken
26 up and sold off, realising billions of dollars for
27 Victoria. In due course, the three Latrobe Valley brown
28 coal mines and associated electricity power stations were
29 purchased by private companies which have operated them
30 ever since.

31 These companies purchased licences to win coal

1 and operate power stations. They have been able to do so
2 profitably ever since while paying significant royalties
3 to the state. In the last financial year the combined
4 total of royalties, rent and levies paid by the three
5 operators of the mines to the state were in the vicinity
6 of \$37 million.

7 As part of the grant of licences, each company
8 was required to have a work plan approved by the state
9 regulator, now known as the Earth Resources Regulation
10 Branch of the Department of Economic Development, Jobs,
11 Transport and Resources. It will be referred to by the
12 rather unfortunate acronym of DEDJTR over the next few
13 days. There have been variations to the work plans
14 approved by the regulator in the intervening years.

15 The work plans were and are required to include
16 rehabilitation plans under which each company explained
17 how it would rehabilitate the land associated with its
18 mine licence. In each case the approved plan is for the
19 mine to be turned into a lake. For example, the
20 rehabilitation master plan for the Yallourn Mine envisages
21 that the mine will be rehabilitated at the end of its life
22 into a fully flooded lake up to the level of the Latrobe
23 River and interconnected with the Latrobe River and the
24 Morwell River.

25 The current licences of the three mines will
26 expire as follows: Yallourn in 2026, Hazelwood in 2026
27 and Loy Yang in 2037. Each licensee was required as a
28 condition of the grant of its licence to pay a
29 rehabilitation bond to the state. The evidence the Board
30 will hear is that the purpose of the bond was and remains
31 to provide the state with sufficient money to rehabilitate

1 the mines if the licensees walk away. The bonds were set
2 at the time of privatisation at \$15 million for each mine.
3 In the case of Yallourn, that figure was subsequently
4 reduced to \$11 million.

5 It will be our submission that, on any view of
6 the likely cost of rehabilitating the Latrobe Valley coal
7 mines, and the evidence before the Board will show that
8 estimates vary considerably, the current bonds are
9 inadequate. For example, for the Hazelwood Mine the
10 estimates vary from the mine's estimate of \$73 million to
11 an independent consultant's estimate of between \$218
12 million and \$332 million. As foreshadowed by the Chair,
13 the evidence in relation to this issue will be examined in
14 the hearings next week.

15 In the years since privatisation the mines have
16 expanded in size and depth. They now cover a combined
17 area of approximately 50 square kilometres, an area
18 similar to that of Sydney Harbour. However, at least
19 until very recently little work has been done to answer
20 some of the very significant questions that arise from
21 these final rehabilitation plans.

22 The evidence the Board will hear is that these
23 questions are many and complex and they include the
24 following: Is there sufficient water available in the
25 Latrobe Valley to fill three voids? How long will it take
26 to fill the mines? The plans include estimates of up to
27 several centuries. Is this timeframe acceptable? Will it
28 be possible to divert existing rivers to fill the voids?
29 If so, what impact would this have on the water quality in
30 those rivers? If rivers are not diverted, how will the
31 quality of the water in the lakes be maintained? What

1 about the mitigation of fire risk given the catastrophic
2 2014 fire? Is this part of progressive rehabilitation?
3 What effect will filling the voids have on the stability
4 of the batters? Batter stability has become a matter of
5 very significant concern as a result of several batter
6 collapses in recent years, and the Board will hear
7 evidence about that.

8 Finally, and perhaps most importantly, what is
9 the role of the Latrobe Valley community in relation to
10 decisions about progressive and final rehabilitation
11 options? The first two witnesses the Board will hear from
12 this morning will give evidence about the interests of
13 citizens in the Valley.

14 There are also questions about progressive or
15 short-term rehabilitation. This is mandated under the
16 current laws, but there is a concern in the community as
17 expressed to the Board in its consultations that the mines
18 are not doing enough progressive rehabilitation,
19 especially to mitigate the risk of fire that arises from
20 exposed coal.

21 For example, in 2014 the operator of the Yallourn
22 Mine reported to the regulator that it spent a little over
23 \$200,000 on progressive rehabilitation out of a total
24 expenditure in that year of \$43 million. The Loy Yang
25 Mine operator reported in 2015 that it spent \$1.3 million
26 on progressive rehabilitation out of a total expenditure
27 of in excess of \$115 million. Also in 2014, the Hazelwood
28 Mine operator reported to the regulator that it had spent
29 a little over \$123,000 on rehabilitation out of a total
30 expenditure of in excess of \$76 million.

31 The evidence before the Board will be that the

1 regulator is apparently satisfied that the mines are
2 meeting their statutory duties in relation to progressive
3 rehabilitation. In any event, there appears to be no
4 sanction under the current legislation that could be
5 imposed on a mine operator that was not complying with its
6 progressive rehabilitation duty under the Act. There is a
7 question about whether the regulator can require mine
8 operators to do more, even assuming that the regulator is
9 of the view that they should.

10 We will submit that the current law is lacking in
11 clarity and should be amended to make quite clear what a
12 mine operator is required to do in relation to progressive
13 rehabilitation and the consequences of not doing so.

14 We noted earlier that the rehabilitation plans of
15 the mines are part of their approved work plans. AGL, the
16 operator of the largest of the three mines at Loy Yang,
17 submitted an application for the variation of its work
18 plan in 2014, which was initially rejected by the
19 regulator. Further versions were submitted and ultimately
20 a fortnight ago a fourth version of the application for
21 variation was approved, but subject to a large number of
22 onerous conditions which include requirements for AGL to
23 address stability, water access and quality, to provide a
24 detailed rehabilitation plan which includes timing of
25 works, and to provide a fire risk management plan by
26 31 December 2015.

27 It may be that any future work plan variation
28 applications by the other mines result in similar
29 conditions being imposed on them. One of the issues for
30 the Board during the hearings this week will be to
31 consider the extent to which those types of conditions

1 address the many concerns and questions that bedevil the
2 final rehabilitation plans.

3 We noted earlier that the significant questions
4 thrown up by the approved rehabilitation plans have been
5 largely ignored until recently. The evidence will be that
6 until quite recently the mines and the regulator have been
7 by and large content to leave the answering of these
8 difficult questions until closer to the time when the
9 mines are scheduled to close.

10 While we will spend some time examining the past
11 performance of the mines and the regulator, we note that
12 the Board's terms of reference are essentially forward
13 looking. The examination of the past will be to inform a
14 consideration of future options.

15 The regulator in particular has commissioned a
16 number of reviews by consultants into the questions that
17 we outlined earlier, but it would seem has been unwilling
18 or unable to address the fundamental issues of policy
19 thrown up by the reports produced by those consultants.
20 Nowhere has this been clearer than in the area of the
21 level of the rehabilitation bonds.

22 However, not all connected with the industry have
23 been so sanguine. In 2009 the Victorian government
24 established a body called the Technical Review Board, the
25 TRB, in response to the collapse of the north-east batter
26 at the Yallourn Mine and the subsequent mining warden's
27 inquiry. The TRB has been made up ever since by some of
28 the most eminent and respected geologists and
29 hydro-geologists in Australia. Its role is to provide
30 expert advice to the minister and the regulator to improve
31 geotechnical and hydro-geological performance and

1 knowledge within the mining industry.

2 The Board has before it a number of annual
3 reports that have been prepared by the TRB and provided to
4 the regulator. These will be examined in the evidence.
5 In its 2012 annual report, the TRB warned of "a loss of
6 corporate memory with respect to geotechnical
7 understanding at the brown coal mines".

8 Of great relevance for this Inquiry, it also made
9 the following observations about the rehabilitation plans
10 of the mines, and I quote from page 17 of the 2012 annual
11 report. The Board said as follows, under the heading
12 "Rehabilitation": "It is inevitable that current and new
13 mines will be faced with closure at some point in time.
14 Based on its analysis and the insights from recent
15 instabilities, the TRB is of the opinion that the measures
16 which have been considered to date for the rehabilitation
17 of a mine fall well short of what could reasonably be
18 considered as adequate. There seems to be a general
19 presumption and acceptance that the mines will simply
20 become flooded to form inland lakes and no consideration
21 having been given to a range of issues that include" - if
22 I can summarise - the ongoing stability of the batter
23 slopes, ongoing movement of the areas adjacent to the
24 batters, responsibility of the mine owners in these
25 matters and who would be liable for any consequence, the
26 effect that water retained in the abandoned mine would
27 have on the adjacent batters and their long-term
28 stability, the characteristics of the water that fills or
29 partly fills each mine and safety aspects associated with
30 its potential uses, and the influence that one mine
31 closure might have on adjacent mines.

1 The Board went on to say, "There are many more
2 issues which need careful consideration, some of a general
3 nature and many others specific to each mine." In order
4 to develop appropriate measures and processes for closure,
5 the Board said, "Considerable study, assessment,
6 evaluation, implementation and ongoing monitoring with
7 action plans are required. This will take time to develop
8 and will be a costly process."

9 The Board concluded with the following
10 observation: "It is recommended that steps are taken
11 immediately to begin an assessment of the issues, the
12 processes, the risks and their amelioration, the timelines
13 and priorities and most importantly the cost liabilities
14 required for closure of each existing mine."

15 Subsequent reports provided by the Board in the
16 four years since that report have essentially repeated the
17 observations made in that 2012 report. Without referring
18 to each of them, if I can take the Board briefly to the
19 most recent report delivered by the Board, delivered in
20 the last couple of months, the 2015 report. At page 14
21 the Board had this to say to the regulator under the
22 heading "Rehabilitation": "The TRB has been reporting
23 since 2012 that it considers the original measures
24 proposed for the rehabilitation of the Latrobe Valley
25 brown coal mines fall well short of what could reasonably
26 be considered as adequate. It was noted then that
27 experience was revealing that rehabilitation is a far more
28 complex matter than envisaged when rehabilitation plans
29 were developed as part of the work plans for the mines.
30 This view has been reinforced with the passage of time and
31 subsequent incidents."

1 The Board went on, "Rehabilitation assumed a
2 higher profile in the current reporting period due to the
3 focus of the Hazelwood Mine Fire Inquiry on firefighting
4 activities on the Hazelwood Mine batters and on covering
5 batters to reduce fuel load."

6 The Board concluded that the elevated importance
7 of rehabilitation is reflected in the expanded terms of
8 reference for the Technical Review Board. This will be a
9 consideration when reconstituting the membership of the
10 TRB in its next term which commences in September 2015.
11 As events have transpired, in line with the changed terms
12 of reference for the TRB to include a term of reference
13 relating to rehabilitation, a specific appointment has
14 been made, Ms Corinne Unger, to the Board with a specific
15 brief to look at rehabilitation issues. The Board will
16 hear from Ms Unger later this week.

17 The Chair has noted that the Inquiry is concerned
18 or the particular focus of this week's hearings is on
19 terms of reference 8 and 9. They have been summarised by
20 the Chair and I won't read them out, other than to note
21 that under term of reference 9 there are a range of
22 matters that the Board is required to consider in
23 assessing the sustainability, practicability and
24 effectiveness of rehabilitation options. They include:
25 The impact of a given option on the risk of fire; the
26 extent to which the option would affect the stability of
27 the mine; whether and to what extent the option would
28 ensure that progressive rehabilitation is carried out as
29 required under the legislation; the estimated timeframe
30 and estimated cost of the option and its viability; the
31 impact of the option on the current plans of each mine;

1 and whether the option is otherwise sustainable,
2 practicable and effective.

3 As noted earlier, the terms of reference 8 and 9
4 require the Board to look to the future by reporting on
5 rehabilitation options. Term of reference 10, which
6 involves an examination of existing arrangements, will as
7 noted be the subject of a separate hearing starting on
8 Monday, 14 December.

9 It will be noted that the terms of reference
10 contain no definition of the expressions "short", "medium"
11 and "long term". The Board has reached the preliminary
12 view in consultation with Jacobs, who were engaged by the
13 board to provide it with expert advice, that the terms
14 have the following meaning: "Short term" from now until
15 the end of mining operations; "medium term" from the end
16 of mining operations for a period of 15 years, and
17 "long-term", the period starting 15 years after the end of
18 mining operations.

19 The Board will hear from a range of eminent mine
20 experts. The experts, including the firm engaged by the
21 Board itself, Jacobs, have provided detailed reports to
22 the Inquiry. These will be tendered and examined in
23 evidence. Six of the experts were invited by the Board to
24 meet privately with a view to producing a joint report
25 outlining matters upon which they agreed and, where they
26 disagreed, what the nature and scope of that disagreement
27 is. The meeting took place last week on 3 December 2015
28 and the joint report which all six experts signed as an
29 accurate record of their deliberations will be part of the
30 evidence tendered in the hearings, along with
31 the individual reports of the experts. The joint report

1 records a high degree of agreement amongst the experts
2 about a range of fundamental matters.

3 Significantly, the experts conclude that there is
4 only one realistic final rehabilitation model for the
5 three mines and that is that they should be filled with
6 backfill and water to varying degrees, but that it should
7 not be assumed that the water level in each mine can be
8 identical. They also agree, importantly, that the
9 proximity of the mines to each other means that an
10 integrated rehabilitation plan for all three is desirable.

11 If I can turn then to the hearings. The Board
12 will hear from 22 witnesses over four days of evidence,
13 starting with a community panel consisting of local
14 residents. It will then hear from the Emergency
15 Management Commissioner, Craig Lapsley. That will be
16 followed by a panel from the regulator, DEDJTR. There
17 will then be a panel of senior representatives of the
18 mines, a mine expert panel and a panel of government
19 officers involved in the regulation of water. The Board
20 will hear from the head of the German government agency
21 responsible for the rehabilitation of that country's brown
22 coal mines, and it will hear from other mine experts.

23 As is apparent, five parties with a special
24 interest in the Inquiry have been granted leave to appear
25 by the Board. They are the operators of the three mines,
26 the State of Victoria and the community group Environment
27 Victoria. Their lawyers will be able to question
28 witnesses and make final submissions on behalf of their
29 clients. It is anticipated that their participation will
30 improve the quality of the hearings and contribute to the
31 final report.

1 Through their lawyers the parties have assisted
2 the Board by providing witness statements and other
3 relevant documents in response to our requests. Owing to
4 the tight timeframes under which the Inquiry is operating,
5 this has not always been easy and the Board, if I may say,
6 is grateful for the efforts of the parties in this regard.

7 Perhaps due to those tight timeframes, some of
8 the witness statements submitted, particularly by the
9 mines, appear to be more in the nature of submissions than
10 statements of fact. As the rules of evidence do not apply
11 to the Board, there is no question of this material not
12 being received by the Board. However, questions of the
13 weight to be attributed to parts of the statements will
14 inevitably arise. As has been made clear to the parties,
15 they will have ample opportunity to make formal
16 submissions to the Board orally on 18 December 2015 and in
17 writing thereafter if they choose.

18 Nearly a century after Sir John Monash oversaw
19 the establishment of the SEC, which has been the engine
20 room of Victoria's manufacturing base and modern economy
21 and society, and 20 years after the privatisation of its
22 assets, Victoria has significant decisions to make. They
23 are decisions which will impact on the lives of the
24 residents of the Latrobe Valley for generations.

25 For example, is it in the community's interests
26 for one or more rivers to once again be diverted, this
27 time as part of the closure plans for one or more of the
28 mines? If the voids are filled with water, is it
29 realistic to expect that the ensuing lakes will be assets
30 for the community to use, for example by being able to
31 sail on them?

1 Should the mine significantly increase the money
2 they are allocating to progressive rehabilitation to
3 address the ongoing fire risk that results from exposed
4 coal, even if this has implications for long-term batter
5 stability as some of the evidence will suggest it may?

6 These are not easy questions to answer, but they
7 must be answered in an environment in which brown coal
8 fired power stations are progressively seen as yesterday's
9 technology.

10 In the words of the TRB from 2012, steps must be
11 taken immediately to begin assessment of these issues.
12 Interestingly, as the Board will hear, in the last
13 20 years the German government and its coal mines have
14 grappled with similar issues in relation to their coal
15 industry that we face here. Frederick Von Bismarck, the
16 head of the German Joint Governmental Agency for Coal Mine
17 Rehabilitation, will inform the Board that, in his view,
18 the Latrobe Valley is presently in a similar situation to
19 that which Germany faced 20 years ago. He will tell us of
20 the many successes and the few failures that his agency
21 has experienced in that time, grappling with many similar
22 issues to the ones that are faced in the Valley.

23 We note with interest that at least one of the
24 mines in the Latrobe Valley has been seeking to learn from
25 the German experience. Quite independently of this
26 Inquiry, Mr Faithful of the Hazelwood Mine recently
27 visited Germany. His statement contains observations that
28 he made whilst there, which seem to be somewhat consistent
29 with the views that we anticipate Mr Von Bismarck will
30 provide to the Inquiry. History can occasionally repeat
31 itself in a good way; just as the Germans helped us to

1 initiate our brown coal mining and power industry, so too
2 may they be able to help us to bring it to a satisfactory
3 and safe close in the future.

4 A number of themes will be explored by Counsel
5 Assisting with the various witnesses, both lay and expert,
6 including the requirements for cooperation, collaboration,
7 coordination, innovation, flexibility and integration of
8 effort. It will emerge in the evidence that these
9 qualities are required not only as between the mines
10 themselves, and there are some recent indications that
11 this is a matter that the mines are taking on, but also as
12 between the mines and the government and between the
13 various government agencies which regulate the industry
14 or, for example, in the case of water authorities, have an
15 ability to influence rehabilitation outcomes.

16 From all of that, a question necessarily arises
17 of whether Victoria would benefit from a coordinating body
18 with a long-term vision for rehabilitation of the Latrobe
19 Valley coal mines perhaps based on the German model. The
20 Board will hear evidence later this week of other similar
21 schemes that have been implemented in Australia and
22 overseas which involve bringing together relevant
23 government agencies, private industry and so on.

24 Before we call the first witnesses, who will be
25 the two community representatives, we understand that
26 other counsel wish to make opening statements on behalf of
27 their clients and I'm pleased to report that counsel for
28 the parties have amongst themselves agreed an order in
29 which that is to occur. I'm not 100 per cent sure who is
30 next, but I'm sure I will be told in a moment. If the
31 Board pleases.

1 CHAIRMAN: How long is that expected to last, or you can't give
2 me any estimate either?

3 MR ROZEN: I can. The indications we have been given are that
4 the opening statements for the parties will be in the
5 vicinity of five to 10 minutes each.

6 CHAIRMAN: Yes, Ms Doyle.

7 MS DOYLE: If the Board pleases. I make these brief opening
8 remarks on behalf of GDF Suez, the operator of the
9 Hazelwood Mine. In relation to term of reference 8 and
10 term of reference 9, as has already been indicated this
11 morning, those terms of reference force a focus upon the
12 short, medium and long-term rehabilitation options for the
13 mines and require those options to be assessed against a
14 number of criteria. I will come back to those criteria in
15 a moment. But, as has also been outlined, the approved
16 final rehabilitation plan for the Hazelwood Mine has since
17 the time of privatisation been a pit lake.

18 The Board will find in the statement of
19 Mr Faithful, who is the technical services manager of the
20 Hazelwood Mine, a detailed explanation of that plan and
21 work that has been done in accordance with that plan. In
22 particular, those matters are set out in Mr Faithful's
23 statement at paragraph 100, at paragraph 117 and also at
24 paragraphs 150 through to 155. I won't go to the detail
25 of those at the moment, but in that statement the Board
26 will see diagrams, explanations and obviously Mr Faithful
27 will also give evidence as part of the panel in relation
28 to the way that plan has been evolving over time.

29 The mining licence that applies to the Hazelwood
30 Mine requires the operator to undertake progressive and
31 final rehabilitation in accordance with that approved work

1 plan. You also see attached to Mr Faithful's statement as
2 annexure 8 the first work plan that applied to the mine
3 which dates back to 1996. He explains at paragraph 84 a
4 number of variations that have been made to that plan. He
5 then attaches as annexure 9 the current 2009 work plan.

6 As Mr Faithful explains particularly at
7 paragraphs 88 to 89 of his statement, there is a new
8 variation application in train and it is expected to be
9 submitted in the first part of next year. As he also
10 explains in relation to the current plan, it itself
11 underwent a process in terms of negotiation and discussion
12 with the department, a consideration as part of the
13 environmental effects statement process and related panel
14 inquiry processes leading to its approval in 2009.

15 As Mr Rozen has already indicated, the experts
16 agree - the Board will find this both in the reports of
17 the experts that Hazelwood Mine has retained,
18 Dr Haberfield and Dr McCullough, and in the joint report -
19 that the concept for the closure of this mine, the pit
20 lake option, is the only feasible plan for final
21 rehabilitation of the Hazelwood Mine.

22 But, as the experts will no doubt also explain
23 and as Mr Faithful will explain, work plans are just that.
24 They are plans. They are living documents. They change
25 over time. They don't stand alone. They are supplemented
26 by the work that has been done and is to be done at
27 Hazelwood Mine and supplemented by reports, studies and
28 investigations by consultants along the way.

29 For that reason the 2016 variation application
30 which, as I said, is anticipated to be filed with
31 the department next year will reflect current knowledge

1 and planning in relation to the final closure concept and
2 in relation to progressive rehabilitation to that date.
3 If, as a result of the processes here, there is in the
4 future the development of a coordinated or integrated plan
5 as between mines in the Valley and if this itself
6 generates a need to revisit plans or to vary plans then of
7 course the Hazelwood Mine will work within that construct
8 in order to develop any new variation or plan which is
9 required.

10 In terms of progressive rehabilitation, can
11 I just indicate for the Board's assistance that
12 Mr Faithful's statement at paragraphs 121 to 149 sets out
13 the work that the mine has done in this regard and its
14 interaction with the department in relation to reviews and
15 reports on progressive rehabilitation. It has not been a
16 tick a box exercise. It is an exercise that is regulated
17 by the department through dint of mine visits, review of
18 the reports of the mine's environmental review committee
19 and ongoing liaison between those at the mine and those in
20 the department. Throughout that process and over the
21 years there has not been any suggestion made by the
22 department of any shortfall on the part of the mine in
23 terms of its progressive rehabilitation responsibilities.

24 Another matter mentioned in opening was the
25 question of costings of rehabilitation and the way in
26 which this may relate to term of reference 10. We have
27 seen, as have the other parties, that a number of sets of
28 costings and estimates are likely to be put in evidence in
29 the coming days. With respect to those bodies of work, we
30 suggest that the Board should be wary of comparing apples
31 with apples. It is evident on the face of these documents

1 that each was prepared for a different purpose. The
2 assumptions, exclusions, methods, purposes and inputs or
3 rates used in each of those estimate exercises are
4 different. There appear to be significant variables,
5 sounding in the tens if not hundreds of millions in some
6 of those reports. That appears to arise because of
7 assumptions made that may be reasonable in one context and
8 not in another.

9 Just by way of example, assumptions made in
10 relation to management costs, mobilisation and
11 demobilisation costs, monitoring for a period well after
12 the end of life of the mine, assumptions made about
13 whether particular species of drainage systems will be
14 required or not, all of those appear to have had a great
15 impact on the bottom line.

16 You will hear in evidence that there are concerns
17 about the processes used both by the Jacobs team to
18 develop costings and by the consultants AECOM, concerns
19 relating to those matters I have just identified, the
20 assumptions, methods and purposes used and also the
21 capacity of the mines to have input to that process in
22 which those costings were developed.

23 It's against that background that Hazelwood
24 submits its figures in its schedule 19 return form which
25 can be found in Mr Faithful's statement at annexure 18
26 presently provide the best guide available in relation to
27 the costs which will actually be required to be expended
28 on long-term rehabilitation. This matter will be
29 developed, but it's because those costings are done by
30 those who will be performing the work who have operational
31 knowledge of the mine and who therefore have a good handle

1 on the rates, the inputs and the methods that effect those
2 variables of which I have spoken.

3 But more importantly in relation to the
4 conceptual underpinning of term of reference 10 it will be
5 submitted that these estimates, though they may provide
6 useful guides if considered carefully, ought not be
7 regarded as a proxy for the risk that the State will be
8 left with the contingent liability in relation to
9 long-term rehabilitation.

10 No doubt in the context of these hearings there
11 will be a consideration of the purpose of rehabilitation
12 bonds, what methods might be applied to devise them and
13 what procedures might be appropriate to review them. But
14 as we stand at this stage of the hearings and in light of
15 the evidence that has been coming in in very recent days
16 it seems to us that it may well be premature for the Board
17 to be in a position to recommend a particular model in
18 circumstances where, for example, the State has indicated
19 one significant piece of work it has commissioned won't be
20 available to the State, let alone the parties or the
21 Board, before 23 December this year.

22 It is in those circumstances that we suggest
23 that, while it may be appropriate to consider the process
24 or the risk assessment procedure that might well inform a
25 review of rehabilitation bonds, there is a good deal of
26 work yet to be done in the policy arena with respect to
27 the development of sound principles and a sound model in
28 that area.

29 Can I turn very briefly to one aspect of term of
30 references 8 and 9. I said at the outset those terms of
31 reference require a focus on rehabilitation options

1 through the prism of certain criteria. One of those
2 criteria calls in aid the question of mitigating fire
3 risk. In that context I just wanted to turn to two
4 matters that will arise in the evidence.

5 Our Emergency Management Commissioner,
6 Mr Lapsley, will give evidence today and it is of note in
7 the statement that he has provided, particularly at
8 paragraphs 30 and 31, that he commends the efforts of mine
9 operators since the last Inquiry and last report to
10 respond to those recommendations. In particular in this
11 context as well the Board will no doubt be aware that the
12 first report of the Hazelwood Mine Fire Implementation
13 Monitor, Mr Comrie, is now available. At the appropriate
14 time we will ask that that be uploaded and tendered. It
15 of course reports on the progress made by GDF Suez with
16 respect to each of the recommendations in that report and
17 also a suite of affirmations which align with indications
18 GDF Suez gave on the last occasion as to the steps it
19 would take.

20 The report concludes that GDF Suez has completed
21 or is implementing all of the actions embodied in those
22 recommendations and affirmations, and indeed the
23 implementation monitor in that context acknowledged a high
24 level of cooperation received in undertaking his
25 responsibilities.

26 In that context can I mention then two documents
27 also attached to Mr Faithful's statement. In response to
28 the recommendations of the first Inquiry, one piece of
29 work undertaken by GDF Suez was a comprehensive risk
30 assessment of the risk of fire in all parts of the mine.
31 That report can be found at annexure 16 of Mr Faithful's

1 statement. It's titled, "The April 2015 Hazelwood Mine
2 fire support risk assessment."

3 The other document I would mention is annexure 17
4 to the statement of Mr Faithful. That is a risk
5 assessment which was convened by consultants GHD involving
6 all representatives of the three Latrobe Valley mines, the
7 CFA and others. That risk assessment specifically
8 considered the scenario of a large-scale mine fire of long
9 duration in proximity to a community. The work generated
10 by that scenario assessment, as I said, is to be found at
11 annexure 17.

12 Can I conclude by pointing to one real life
13 example of the way in which this work on fire mitigation
14 and fire preparedness since the last occasion has been put
15 into place. As Mr Faithful said in his statement at
16 paragraph 234 to 237, on 6 October this year an occasion
17 arose where a day of extreme fire danger was expected near
18 the Hazelwood Mine. There was also the presence of a
19 hotspot located within the mine on that day.

20 In the lead-up to that day Hazelwood personnel
21 implemented, if you like, the new regime and the forecast
22 for that day triggered a precautionary management process
23 in and around the mine and particular responses to that
24 hotspot which had been located, including designating the
25 day as an extreme fire danger day within the mine,
26 engaging an ongoing wetting down of the area, mobilising
27 additional fire suppression equipment and personnel, and
28 manning the emergency command centre.

29 As Mr Faithful's statement records, ultimately
30 the day passed without incident. But it was a good
31 practice run, if we can put it that way, and on that

1 occasion the local CFA attended the mine at the request of
2 GDF Suez in order to assess and provide input on fire
3 preparedness, thereby demonstrating the effectiveness of
4 the cooperation between GDF Suez and the local level CFA.
5 We provide that as a living example of the implementation
6 of the new preparedness regime and the new responses to
7 fire mitigation. If it please the Board.

8 CHAIRMAN: Thank you, Ms Doyle.

9 DR COLLINS: If the Board pleases, Energy Australia welcomes
10 the opportunity to participate in these public hearings.
11 We will confine our opening remarks to terms of reference
12 8 and 9.

13 Energy Australia operates the Yallourn Mine,
14 which supplies coal for the Yallourn W power station.
15 Mr Ronald Mether, who is the registered mine manager for
16 the Yallourn Mine, has provided a statement and is here
17 for the duration of the hearings and will be present to
18 give evidence and be questioned.

19 As Counsel Assisting noted, coal mining began at
20 the Yallourn Mine before the other two mines in the
21 Latrobe Valley. Energy Australia has owned and operated
22 the Yallourn Mine for about 20 years, since the time of
23 privatisation.

24 The topography of the Latrobe Valley is not
25 uniform such that a one size fits all approach towards
26 rehabilitation will not be either appropriate or possible.
27 The Yallourn Mine in particular has five key features of
28 relevance to the question of rehabilitation that
29 differentiate it to a greater or lesser extent from the
30 other Latrobe Valley mines. Some of those differentiating
31 factors have not, with respect to the experts, been

1 adequately taken into account in some of the material
2 before the Board.

3 The first relevant feature is this. The Yallourn
4 Mine is the shallowest of the three Latrobe Valley mines.
5 At its lowest point its about 95 metres below ground
6 level. That compares with Hazelwood, which has an average
7 depth of about 120 metres, and Loy Yang, which has an
8 average depth of about 200 metres.

9 Secondly, the topography of the area of the
10 Yallourn Mine varies to a greater extent than the other
11 Latrobe Valley mines. Generally speaking, although not
12 uniformly, the topography declines as one moves from the
13 south-western end of the mine towards the north-eastern
14 end of the mine.

15 Thirdly, unlike the other two mines, Yallourn is
16 located in close proximity to large volumes and sources of
17 water, including most importantly the Latrobe River to
18 the north and the Morwell River, which has been diverted
19 such that it bisects the Yallourn Mine area broadly from
20 north to south.

21 The proximity of those water sources means, as
22 the approved rehabilitation master plan for Yallourn
23 recognises, that there is a unique opportunity for a lake
24 solution at Yallourn to interconnect with existing
25 watercourses in a way that has the potential to generate
26 major benefits for the community. The proximity of those
27 watercourses also has implications for the design and
28 features of the lake.

29 The fourth differentiating feature of Yallourn is
30 that there is a considerable buffer, a greater buffer,
31 between the lowest point of the Yallourn Mine and the

1 closest unconfined aquifer, which is known as the M1A
2 aquifer. This means that the risk and incidence of floor
3 heave is not as significant at the Yallourn Mine as at the
4 other mines and de-watering is not a significant
5 requirement.

6 The final differentiating factor is this.
7 Perhaps because it's the oldest mine, progressive
8 rehabilitation at Yallourn has been taking place over a
9 period of decades. The rate of progressive rehabilitation
10 since 2005 has exceeded the rate at which land has been
11 disturbed for mining operations. As Mr Mether points out
12 in his statement, this means there has been a significant
13 downward trend in net disturbed land since at least 2005,
14 and we estimate that about 85 per cent of the total area
15 that has been disturbed by mining at Yallourn has been
16 covered with overburden.

17 Energy Australia's overarching rehabilitation
18 strategy dates back to SECV days, and as early as June
19 1995 the approved mining licence work plan for the SECV's
20 operations at Yallourn noted that at the conclusion of
21 mining the Yallourn void would be turned into a flooded
22 lake.

23 The tenor of some of the comments made by Counsel
24 Assisting in his opening were that little had been done by
25 way of detailed development of rehabilitation solutions by
26 the mines. Counsel Assisting pointed to the work plans.
27 We agree with Ms Doyle that the work plans are just that.
28 They define an overarching strategy and they ought not to
29 be taken to be the complete repository of the work done by
30 the operators.

31 In fact a great deal of detailed research has

1 been undertaken in respect of the viability and
2 implementation of the Yallourn rehabilitation strategy. A
3 range of reports were commissioned from as early as 1993
4 by the SECV into the then proposed flooding option. In
5 1995 there was an independent report into mine batter
6 stability during the proposed flooding of the mine. In
7 1997 there was a review of the viability of the flooding
8 strategy.

9 The current rehabilitation master plan was
10 approved in its original form in 2002. In 2005
11 independent consultants undertook a concept review of the
12 rehabilitation master plan for Yallourn with particular
13 reference to lake depth, filling time and water quality
14 issues. In 2011, as a result of a condition of approval
15 of a work plan variation, Energy Australia prepared and
16 then submitted in June 2012 a review of its master plan.

17 The 2011/2012 review considered afresh three
18 broad options for rehabilitation, being the status quo,
19 that is the approved fully flooded lake solution; a
20 partial flooded solution; and an unflooded solution. For
21 the purpose of that review Energy Australia prepared a
22 lake filling model report which was focused on questions
23 of water availability, diversion and quality. Three
24 independent reports were commissioned: a peer review of
25 the lake filling model, a geotechnical assessment of
26 flooding options and a review of the stability of the
27 Morwell River diversion under fully flooded, part flooded
28 and unflooded scenarios.

29 So the review considered a range of issues,
30 including long-term water balance, the need for safe and
31 stable batters, floor heave, the availability of

1 overburden, and progressive rehabilitation. The report
2 concluded that the approved solution, the fully flooded
3 solution, was the optimal rehabilitation option for the
4 Yallourn Mine because it provided a more achievable,
5 sustainable, economical and responsible solution than the
6 alternatives.

7 Batter stability testing has been undertaken at
8 the Yallourn Mine over a period of about 15 years at
9 different gradients and different levels of overburden.
10 The Board will hear evidence that further government
11 funded batter development testing is in the works. We
12 cavil, with respect, with the proposition that not much
13 detailed development of the rehabilitation solution has
14 been undertaken. Of course more must occur. Of course
15 integration and coordination is desirable.

16 As we said at the outset, Energy Australia
17 welcomes the opportunity to be here. We will ultimately
18 be putting the submission that the evidence demonstrates
19 that the long-established rehabilitation for Yallourn is
20 not only advanced but it is achievable, responsible and
21 safe. If the Board pleases.

22 CHAIRMAN: Thank you, Dr Collins.

23 MS FORSYTH: If the Board pleases, these submissions are made
24 on behalf of AGL Loy Yang Pty Ltd and address terms of
25 reference 8 and 9. They, firstly, outline the primary
26 documents and evidence that AGL Loy Yang relies upon;
27 secondly, provide a brief overview of the mine and power
28 station; thirdly, say a few words about the work plan
29 variation approved with conditions on 30 November 2015;
30 and, finally, comment briefly on AGL Loy Yang's position
31 in relation to its final land form concept, progressive

1 rehabilitation and fire management.

2 Turning to the primary documents AGL relies upon,
3 the following material has been filed with the
4 Inquiry: the expert witness statement of Mr Sullivan dated
5 27 November 2015. The views expressed by Mr Sullivan in
6 the joint expert report dated 3 December 2015 are also
7 relied upon. Three witness statements of Mr Rieniets,
8 general manager of AGL Loy Yang, have been filed dated
9 30 October, 3 December and 4 December 2015, but noting
10 that the 4 December witness statement is relevant to terms
11 of reference number 10. Finally, AGL Loy Yang's work plan
12 variation approved with conditions on 30 November which is
13 exhibited to Mr Rieniets' 3 December 2015 statement. The
14 conditions to which the work plan are subject are
15 contained in annexure A to Mr Rieniets' witness statement
16 and the approved work plan is contained at annexure B of
17 Mr Rieniets' 3 December witness statement.

18 Turning now to an overview of AGL Loy Yang's mine
19 and power station, the mine currently supplies
20 approximately 50 per cent of Victoria's power needs,
21 making the mine critical infrastructure for Victoria. The
22 mine is also critical infrastructure nationally as it
23 forms part of the interconnected national electricity
24 market. AGL Loy Yang owns and operates the mine and the
25 Loy Yang A power station. AGL Loy Yang became a part
26 owner of the mine in 2004 and a full owner in 2012.

27 The mine supplies coal to both the Loy Yang A
28 power station and the Loy Yang B power station. The mine
29 was established by SECV and commenced operation in 1982.
30 The mine has been operating for 33 years. Mining licence
31 MIN5189 was granted in 1997 and, despite a planned project

1 life through to 2048, the mining licence expires in 2037
2 due to the 40-year maximum life of a mining licence issued
3 under the Mineral Resources Sustainable Development Act.

4 AGL Loy Yang may seek an extension to enable it
5 to operate through to its planned closure in 2048, which
6 would mean that it had a further operating life of 30-plus
7 years. Without an extension the mine would have a further
8 operating life of 20 or so years. AGL Loy Yang's
9 greenhouse policy commits it to the closure of all
10 existing coal fired power stations in its portfolio by
11 2050.

12 Assuming a closure date of around 2048, the AGL
13 Loy Yang Mine is at about the mid-point of its lifecycle.
14 It is at a different stage in its lifecycle to the other
15 two mines. AGL Loy Yang Pty Ltd concurs with
16 the submissions of Energy Australia that there is not a
17 one size fits all approach to rehabilitation of the three
18 mines.

19 The 2015 work plan variation replaces the
20 previously approved work plan in its entirety, namely the
21 October 1996 work plan which was approved in 1997. So it
22 probably should be called the 1997 work plan. As outlined
23 by Counsel Assisting in his opening submissions, the
24 conditions upon which that work plan was approved require
25 AGL Loy Yang to submit, review and resubmit documents to
26 the department for approval at various stages of mine
27 development which relate to ground control, mine
28 stability, rehabilitation, water and fire risk.

29 AGL Loy Yang is currently working through the
30 detailed and onerous conditions. AGL Loy Yang agrees with
31 Ms Doyle and Mr Collins that the work plans are

1 overarching documents. They should and do recognise the
2 progressive nature of planning for mine closure.

3 The setting of the mine and its operational
4 requirements and constraints are important factors for the
5 Board to consider in its deliberations. Figure 16 of the
6 work plan variation shows the layout of the site as at
7 2014. It shows the layout of the mine pit, the power
8 stations, the ash ponds, the overburden dump and the fire
9 services pond. It shows the extent of the mining licence
10 boundary which excludes the power stations and the ash
11 ponds but includes the overburden dump.

12 The final land form concept or rehabilitation
13 model which is described in the 2015 work plan variation
14 is for a partially filled lake, with the remainder of the
15 land to be contoured and vegetated to reflect pre-mining
16 agricultural land use. Appendix 4 of the work plan
17 variation is a mine lake water balance modelling report by
18 GHD dated March 2015 which examines various options for
19 lake filling consistent with this final land form.

20 Mr Sullivan's evidence is that there is only one
21 land form option, namely the one adopted by AGL Loy Yang
22 in its 2015 work plan variation due to the geotechnical
23 characteristics, hydrogeology and quantity of available
24 waste materials. The land form proposed in the 2015 work
25 plan variation is generally consistent with the land form
26 assessed by Jacobs as being the most suitable option for
27 the AGL Loy Yang Mine described by Jacobs as partial
28 backfill below the watertable.

29 Accordingly, while AGL Loy Yang may not agree
30 with all of the assumptions and methods in the Jacobs'
31 report, AGL Loy Yang does not take specific issue with its

1 overall conclusions relating to terms of reference 8 or 9.
2 Of course that is subject to the two important caveats
3 that are in the evidence, namely the agreed qualifications
4 expressed in the joint report in relation to the question
5 about the Jacobs' report, question 4, and, secondly, the
6 qualification in the Jacobs' report itself that the
7 costings are relative only, were done for comparative
8 purposes and do not present an estimate of closure
9 liability.

10 Turning finally to fire risk management in the
11 context of progressive rehabilitation, AGL has an advanced
12 system of fire risk management which has been further
13 improved following the Hazelwood experience and the
14 Inquiry's recommendations. AGL's submission to the
15 Inquiry outlines the new initiatives following the
16 Hazelwood fire and outlines AGL's significant network of
17 fixed fire suppression infrastructure, mobile equipment,
18 systems and personnel.

19 AGL Loy Yang's risk assessment and management
20 plan, which is currently under consideration by the
21 department, at annexure C of Mr Rieniets' statement
22 outlines further proposed fire mitigation strategies.
23 AGL's fire risk management system does include covering
24 the roads within the mine pit, but does not rely heavily
25 upon progressively covering the batters until the batters
26 are laid back and shaped for final rehabilitation.
27 Covering the batters immediately after they are mined is
28 one of the options for reducing fire risk during the
29 operating life of the mine. However, it's not a cost
30 efficient or practical option for a large portion of the
31 AGL Loy Yang Mine pit.

1 AGL Loy Yang reiterate the key message from
2 Mr Sullivan's evidence, namely that rehabilitation is a
3 complex process in which all relevant factors must be
4 taken into account and a risk based approach adopted.
5 There is a danger in giving too much emphasis to one
6 factor at the expense of another. For example, in
7 considering progressive rehabilitation, matters such as
8 fire risk, water management, the placement of
9 infrastructure, ongoing access and operational
10 requirements, slope stability issues and the final land
11 form all need to be considered together.

12 AGL Loy Yang's 2015 work plan variation sets out
13 an orderly approach to the rehabilitation of the mine,
14 having regard to the location of infrastructure, the
15 planned new overburden dump within the mine pit and the
16 past and forthcoming rehabilitation trials.

17 AGL Loy Yang continues to be committed to
18 mitigating risks, including ongoing fire risks, and to
19 ensuring that the final land form is one that is safe,
20 sustainable and stable within the context of the final
21 land form and end use, to use the words of Mr Sullivan.
22 AGL Loy Yang is progressing steadily along the path of
23 gathering knowledge and information in order to ensure
24 that it achieves that objective in the long term. Thank
25 you.

26 MS NICHOLS: If the Board pleases, I will be very brief.

27 Environment Victoria is not calling its own witnesses. So
28 I wish to simply emphasise the matters that Environment
29 Victoria respectfully submits are critical to be observed
30 in the course of these hearings.

31 First, the community must be engaged in the

1 process and the outcome of rehabilitation. It is a
2 statement that's easy to make. It is probably harder to
3 actually achieve. Short, medium and long-term engagement
4 is required. What is required is buy-in by the community,
5 not only in the end solution for the mines but in the
6 process and in relation to how the process is monitored
7 between now and the end of life.

8 Second, the costs of rehabilitation should be
9 internalised to the mine operators and not borne by the
10 Victorian community. There seems to be in principle
11 acknowledgment of that proposition in some of the material
12 put forward by the mines, but the actual solution needs to
13 ensure that there is 100 per cent financial assurance to
14 the Victorian people.

15 Thirdly, strong regulatory action is required in
16 order to ensure that the steps that must be taken between
17 now and the end of mine life are in fact undertaken. The
18 history of regulation of mines shows, even the recent
19 history shows as examined in the previous Inquiry, that
20 regulatory action has not always been as strong as it
21 ought to have been.

22 The end of mine life is approaching really quite
23 quickly for each of the mines, even for the mines with the
24 longest life. When one thinks in periods of seven and
25 eight years, they very quickly add up. Strong regulatory
26 action is required because time is short and because goals
27 and plans for rehabilitation still remain at a very high
28 level of generality.

29 Fourth and finally, this Inquiry represents a
30 rare opportunity to ensure that the legacy of mining in
31 the Latrobe Valley is one which is extremely positive for

1 the community and not negative. The circumstances in
2 which this Inquiry is sitting are that there is still much
3 to be known, as the Technical Review Board tells us, there
4 is still much work to be done and as the Board has heard
5 this morning there's a lot of complexity.

6 Acknowledging all of that, as Environment
7 Victoria does, there is a lot that is known. There has
8 been a lot of work done. We will be urging the Board at
9 the end of the day to make very clear statements of
10 principle as concretely as possible so that the outcome of
11 this Inquiry will simply not be a set of recommendations
12 to do further work and to put off the shape of final
13 rehabilitation and the strong principles that need to
14 guide the regulation of the mines over the next several
15 decades. Thank you.

16 MR ROZEN: If the Board pleases, Ms Shann will call the first
17 witnesses.

18 MS SHANN: I call Sara Rhodes-Ward and David Langmore for the
19 community panel.

20 <DAVID LEONARD LANGMORE, sworn and examined:

21 <SARA RHODES-WARD, sworn and examined :

22 MS SHANN: Thank you both. Just firstly, I will just deal with
23 some documents that each of you have provided to the
24 Board. Mr Langmore, you provided a submission to the
25 Board which is at Ringtail HMFI.1007.001.0001.

26 Mr Langmore, you don't need to worry yourself with these
27 numbers. This is a problem we have to deal with. That's
28 at volume 2 and tab 7 for the Board's convenience. I will
29 tender that document.

30 #EXHIBIT 1 - Submission of David Langmore HMFI.1007.001.0001.

31 MS SHANN: Ms Rhodes-Ward, you have provided a witness

1 statement at WIT.0008.001.0001, volume 10, tab 22.

2 I tender that.

3 #EXHIBIT 2 - Witness statement of Sara Rhodes-Ward

4 WIT.0008.001.0001.

5 MS SHANN: If perhaps firstly I could just ask each of you to
6 briefly introduce yourselves to the Board. You are both
7 here as community members, but also to share some concerns
8 and ideas from a community perspective. But perhaps if
9 you could start by telling the Board your link to the
10 Latrobe Valley.

11 MS RHODES-WARD: My role is with Latrobe City Council and I am
12 the general manager of community services. Through that
13 role I have the opportunity to work with the community
14 quite broadly through a range of activities. Currently
15 some of those activities are council's work in mine fire
16 recovery and resilience, and a range of communication and
17 engagement platforms, so also the community recovery
18 committee, which is a committee made up of community
19 representatives who volunteer their time to support the
20 community in its recovery work, and then also a team of
21 individuals who support that work on the ground through
22 broad neighbourhood based engagement with our community.
23 So it's the work that is undertaken in that space that
24 largely has informed council's contribution to this space.

25 MS SHANN: Thank you. Mr Langmore.

26 MR LANGMORE: I'm a retired professional town and regional
27 planner. I initially came to live and work in the Latrobe
28 Valley in the early 1970s, when I was working with
29 Australian Paper Manufacturers in their personnel
30 department for three years. I subsequently decided to
31 enter the town planning field, returned to Melbourne and

1 then came back to the Latrobe Valley in 1977 as regional
2 manager of the Town and Country Planning Board's Central
3 Gippsland office. That was a position I held for seven
4 years, during which time there was a lot of developmental
5 activity going on in the Latrobe Valley. I then
6 subsequently became an employee of the Latrobe Regional
7 Commission where I worked for 10 years in several
8 different positions, but primarily as director of planning
9 there. When the Latrobe Regional Commission was closed
10 by the State Government in approximately 1995, I then went
11 back to the job of regional manager of the Department of
12 Planning, the State Government's Department of Planning
13 for Gippsland, and I worked there for a further four
14 years. I then retired from the public service and
15 I worked as a part-time planning consultant around
16 Gippsland for approximately seven years.

17 MS SHANN: Part of what you have done, amongst many things, is
18 write a book, "Planning power: The uses and abuses of
19 power in the planning of the Latrobe Valley." Can you
20 just explain very briefly what that's about?

21 MR LANGMORE: It's about the history of planning and
22 development in the Latrobe Valley through from the period
23 really in 1920, when brown coal winning first commenced
24 here, through to the mid-1980s, and so it covers a period
25 of 65 years of planning and development in this region.
26 There are many interesting stories that occurred in that
27 time.

28 MS SHANN: All right. I have outlined the purpose of the
29 particular panel in relation to rehabilitation. If I can
30 first start with you, Mr Langmore, can you provide a brief
31 overview of what you detail primarily in your book about

1 rehabilitation under the SEC?

2 MR LANGMORE: Yes. It's basically that very little
3 consideration was given to rehabilitation. I comment in
4 my submission it's very hard to find reference to the word
5 "rehabilitation" in SEC documents until the mid-1970s.
6 Various factors obviously contributed to that, but I guess
7 it was partly the prevailing viewpoint within that
8 organisation, probably generally in the community, that
9 brown coal mines would open up and that they would
10 continue on virtually indefinitely and that at some point
11 in time, well, you worry about what might be done with
12 them in the future. There was no consideration given with
13 the opening of the Yallourn open cut or with what was then
14 termed the Morwell open cut, now referred to as the
15 Hazelwood open cut, there was no consideration given in
16 the reports that went to State Government at the time of
17 any rehabilitation plans, programs, requirements. That
18 did change obviously as planning controls became
19 introduced into Victoria and environmental controls became
20 introduced. So with the Loy Yang proposal - - -

21 MS SHANN: What sort of era are you talking about here?

22 MR LANGMORE: We are talking mid-1970s. There was
23 consideration given before to the Loy Yang Mine opened up
24 to the issue of rehabilitation. For example, it was
25 stated in the documents that the SEC provided to the
26 environmental inquiry at the time that overburden from the
27 Loy Yang Mine would be going back into the void of the Loy
28 Yang open cut from the year 2000.

29 MS SHANN: All right. Thank you for that. I would like to ask
30 each of you in turn from your perspective what the
31 community concerns are in relation to rehabilitation of

1 the mines issues today and looking forward into the future
2 towards closure. Ms Rhodes-Ward?

3 MS RHODES-WARD: Certainly. I'm more than happy to share some
4 of the comments that we have received. The work that we
5 have been undertaking at a neighbourhood level has
6 involved us going door-to-door through two trial
7 neighbourhoods talking to residents about their ongoing
8 health and wellbeing and opportunities to improve their
9 health and wellbeing in place. Certainly if we look at
10 the feedback from those neighbourhoods there are a number
11 of comments that community members make about the mine and
12 in particular mine rehabilitation. So, if we look at the
13 community closest to the north batters which has called
14 itself the Rose Garden community - - -

15 MS SHANN: This is the northern batters of the Hazelwood Mine?

16 MS RHODES-WARD: Yes, that's right. That community actually
17 rated issues relating to mine operations and
18 rehabilitation as the second most important issue to them
19 in terms of the way they perceive their neighbourhood and
20 their community. There are a number of comments that they
21 make around needing to be a transition away, requiring to
22 clay cap the unused northern batters - these are comments
23 that are received through the survey - advocate for mine
24 rehabilitation, and certainly a strong sense that
25 rehabilitation needs to be undertaken in a way that
26 supports the ongoing health and wellbeing of the
27 community.

28 We also through some work that we are undertaking
29 with RMIT in the Future Morwell space, is the project
30 name, have spoken to a range of community members through
31 an open gathering that was held in Morwell over a period

1 of time. It was around 800 community members moved
2 through that space, and we saw in that moment that the
3 issue of stability became the overwhelming theme, both
4 stability of the batters but also stability of the
5 economic foundations for the community, the stability of
6 the return of confidence in the future of the town itself.

7 So there were three key issues that related to
8 rehabilitation and the first one was to transform the mine
9 into a community asset that celebrates the history of
10 industry and also provides an asset for the future
11 wellbeing. Again, to remove the coal overlay so there is
12 an emotional sense of stability that returns to the
13 community, and again to stabilise the northern batters and
14 very much we see that, whether it is a perception or a
15 reality, that there exists within that particular
16 community closest to the northern batters a perception
17 that there is inherent instability in those batters that
18 still exists.

19 MS SHANN: You mentioned fire in your statement as being a
20 concern that you have heard through these forums. Can you
21 explain how that's been articulated?

22 MS RHODES-WARD: Absolutely. Certainly we can see that the
23 community, while they are very focused on the future and
24 on what they would like to see happen in the future, they
25 are very concerned that issues relating to fire prevention
26 are managed well. There were a range of comments in
27 relation to community views of what has occurred in the
28 mine and the potential for there to have been an increased
29 fire risk and the community seeking I guess assurances
30 that some of that risk has now been mitigated. I think
31 there is a sense that, should the remediation work not

1 actually consider looking at the remediation through the
2 lens of fire management, that the community feel there's a
3 potential for it to be left and for it to become a
4 management issue that doesn't have a strong set of
5 principles and governance frameworks around it in terms of
6 providing some security for them into the future.

7 We do still continue to see within the feedback
8 we receive from the community some anxiety around fire
9 issues and that remains an ongoing point of concern and
10 certainly, through the work that we have been doing, work
11 very hard to convey some of the messages around the work
12 that has been undertaken back to the community. But
13 I think when there has been an event such as that it is
14 reasonable to expect that that remains an ongoing issue
15 for individuals that live in those neighbourhoods.

16 MS SHANN: Thank you. Mr Langmore.

17 MR LANGMORE: Could I comment a bit further on some of those
18 things?

19 MS SHANN: Certainly. I was wondering in particular issues of
20 beneficial use. It's a theme in your submission that
21 Ms Rhodes-Ward has mentioned. But perhaps if you could
22 outline your concerns and touch on that particular issue.

23 MR LANGMORE: Sure. I would agree very strongly with what Sara
24 has said. I think there is an overwhelming sense of
25 concern in the community. There is a feeling that there's
26 a risk that these mines are out of sight, out of mind.
27 They can even be within the Latrobe Valley, let alone in
28 Victoria. So therefore there's a concern that could the
29 Latrobe Valley just be left with inadequately
30 rehabilitated mines as a liability for the long-term
31 future. Unfortunately, as demonstrated in my book, there

1 have been numerous examples of situations where Latrobe
2 Valley community's interests have been either disregarded
3 or underrated in some of the planning processes that have
4 occurred in this area. So there's this feeling of fear,
5 concern, apprehension.

6 Also a feeling of risk, that it would be very
7 easy to just say, "Oh, well, rehabilitation will occur at
8 some later point in time and we will worry about it then."
9 I think that's one of the great concerns with regard to
10 the flooding options. It seems like it's such a great,
11 easy solution; you just flood the mines. But will it
12 work, will it be suitable, will it be appropriate, and if
13 it doesn't, have we blown the chances of getting
14 rehabilitation done properly. That's a fairly major
15 concern.

16 Of course, it's not just a matter, as you say, of
17 making sure that the mines are not a nuisance or a
18 liability, but surely they should be capable of being
19 converted into something positive, beneficial and
20 valuable, if not an outright attraction and great asset in
21 one form or another to both the Latrobe Valley and
22 possibly even the broader state community.

23 So there clearly are not just questions of safely
24 and securely closing up the mines. No, let's make sure
25 that they are something really to be proud of, to be used
26 for a range of possible beneficial uses.

27 MS SHANN: There is an idea that you have put forward or a
28 concept you discuss in your submission about transparency
29 and the need for a greater level of communication about
30 what is happening now and what is going to happen between
31 the mines and the community. Perhaps if each of you could

1 touch on that idea.

2 MS RHODES-WARD: Certainly. We see in some of the comments
3 from the community that obviously there is a strong sense
4 of still some mistrust and suspicion and there's a quote
5 from one of the surveys that kind of gives us an idea of
6 some of the emotional places where people still are, and
7 it says, "Please don't forget us again. It was the worst
8 feeling in the world. Still don't trust government. Feel
9 this is being done for political gain." This is a survey
10 where we asked people about their health and wellbeing.
11 We provide an opportunity for them to offer any comments
12 at the end. We certainly don't solicit those comments.
13 I think it is an insightful view into the community where
14 people offer that information without a degree of
15 prompting.

16 I'm very mindful of some of the words that
17 Professor Wise said at the community engagement session
18 that was held, where she did say that health and wellbeing
19 outcomes are very closely tied to the process of being
20 involved in decisions and being part of the
21 decision-making process, and that where communities are
22 actually enveloped in that process and they are taken on
23 that journey they generally have stronger health and
24 wellbeing outcomes.

25 I think that resonates very much with what we
26 hear from the community and certainly what we have heard
27 already is that there may be changes to plans that occur
28 or rehabilitation plans that occur, but they occur in the
29 absence of a conversation with the community. I think
30 that's what we have heard continuously from the community,
31 is that there is an earnest desire to be part of a

1 conversation. It doesn't mean that they want to be in
2 control of the conversation, they just want to be part of
3 the conversation.

4 Certainly if I think about some of the things
5 that Tracey Lund has said also during some of the
6 sessions, and I think she put it very succinctly where she
7 said, "If it's about us, you need to involve us." That is
8 something that we hear time and time again from the
9 community. They understand there are technical experts
10 and they understand that there will be realms of what's
11 possible and what's not possible. It is purely about
12 having them be part of that conversation and to explore
13 that knowledge and to become part of that information
14 circle to build the confidence that, whatever it is that
15 is delivered at the end of the day, there's a strong
16 community understanding as to how it is that we ended up
17 at that place.

18 MR LANGMORE: Yes, we have gone from a situation, as
19 I mentioned before, where there were no plans about
20 rehabilitation at all back through the 1960s to a
21 situation where, yes, plans were developed. But we now
22 have a situation where - and there's already been mention
23 of it in today's proceedings - the mining companies are
24 talking to the department about changing their plans for
25 rehabilitation, but I don't know of any public process
26 that those plans are going through. Those plans surely
27 should be part of clear, formal, public processes which
28 any interested party can put a view about.

29 The original plans that came at privatisation
30 were basically arrangements done between the private
31 companies at the time and the government of the day. They

1 were not put out into the public arena for comment,
2 discussion, as you would, for example, with planning
3 scheme changes or variations or with change of an
4 environment effects statement. That's surely the standard
5 of treatment that should be given to rehabilitation plans.
6 It's not a matter of striking a deal between a particular
7 single department of the State Government and a particular
8 private company. It should be a public process which the
9 public are adequately involved in and other interested
10 parties are able to participate in as well.

11 MS SHANN: Can I ask you briefly about a concern that you raise
12 in your submission about bonds. Would you just detail
13 that for the Board?

14 MR LANGMORE: I made what might seem like a rather flippant
15 statement. I said I thought the level of the bonds was so
16 low that it almost invited the holders of those bonds to
17 walk away from their responsibilities. \$15 million is a
18 flea bite, quite frankly, in terms of what's likely to be
19 required for proper rehabilitation in any of the mines.
20 I would think a substantial multiple of that figure is
21 required to be a serious bond that's going to be taken
22 notice of by private companies. At the end of the day,
23 the private companies are there to do their job within
24 what regulations they have to operate in, but they don't
25 surely wish to spend undue amounts of money over and above
26 what they are being required to do. \$15 million is not
27 going to tie them to very much.

28 MS SHANN: There is an idea that you have put forward in your
29 submission, Mr Langmore, about a special purpose agency.
30 Could you explain a bit to the Board about that idea and
31 then, Ms Rhodes-Ward, I might get you to comment on that

1 from your perspective.

2 MR LANGMORE: I have put the view that the rehabilitation of
3 the open cut mines in the Latrobe Valley is arguably the
4 most challenging environmental issue in Victoria in the
5 next few decades. You can argue about that, but certainly
6 it is a very, very major issue by any standards. It is
7 going to require hundreds of millions of dollars. It's
8 going to require a lot of good research, a lot of good
9 planning, a lot of good coordination to do it well. We
10 don't just want to end up with something that's vaguely
11 acceptable. We want to end up with something which is a
12 positive asset for the regional and state community.

13 That requires expertise, it requires financial
14 resources and it requires good public processes of the
15 type that I have just mentioned that need to be gone
16 through. I think you need a purpose built body to do that
17 and I think you need one that's on the ground dealing and
18 mixing with the issues within the region where the bulk of
19 that work is actually happening.

20 MS SHANN: Regionally based.

21 MR LANGMORE: Yes. We have had too many situations where
22 issues that have been of major concern in the Latrobe
23 Valley have been dealt with in Melbourne, which isn't to
24 say that many people who have been involved in those
25 haven't worked conscientiously at them, but they are not
26 rubbing shoulders with the issues very closely. I think
27 that's a real problem.

28 CHAIRMAN: Could I follow that up or do you want me to come
29 back to it later?

30 MS SHANN: Mr Chairman, you can do as you please.

31 CHAIRMAN: It seems to me one of the dilemmas we face is should

1 there be a new body or should it be one of the existing
2 bodies that has its powers ramped up. At the moment it
3 seems that the department, having gone through a phase
4 where it did relatively little, has decided to start
5 moving in that area, but it will have the disadvantage of
6 being a Melbourne based operation. So, the department
7 doesn't seem to be right. With the Technical Review
8 Board, they have really been looking at matters like
9 stability in a significant way, but they are I suppose
10 experts who are again away from the matter. You represent
11 the council in a sense and the planners of yore, and they
12 of course know the local scene, but have they got enough
13 of an expertise or is the council - it just doesn't seem
14 to be an appropriate base to work from, but it provides
15 the local input.

16 How does one expand some existing body's powers
17 or does one need something new and is it really just going
18 to be a too hard exercise to work out how you get the
19 local input, as well as the expertise, as well as the
20 power that would really mean that you are going to be
21 imposing something on other people and, as you know from
22 your experience referred to in the book, if you have a
23 power like the SEC it overrides other people, but with the
24 benefit of hindsight you can see it ignored an awful lot
25 of other considerations.

26 MR LANGMORE: If I could respond to that. You can probably
27 argue the toss on this. My personal view would be I think
28 one would do better by having a completely purpose built
29 new organisation. It is such a major issue of huge
30 significance, regionally and statewide, but you could
31 argue the toss. I think the relevant thing is that in any

1 revamped arrangement you do need regional - you need a
2 good board, you need expert staff, and you need to draw
3 some of those from within the region and you need to draw
4 some of them from outside the region. But I think there's
5 benefit in having the actual base within the region, very
6 definitely, whether that be a reorganised existing
7 structure or a completely new one. But you would
8 certainly need a board with representation that includes
9 representation from regional community. But I would agree
10 with you that you also need some external expertise coming
11 in as well. It is a matter of getting the balances right.

12 MS RHODES-WARD: Yes, I would tend to agree. I think you could
13 potentially recreate something that already exists or
14 craft something fresh. But I agree that the important
15 component to that is that it is locally based. I think
16 what we see when experts come in to the region and then
17 they leave the region is there is a disconnection from the
18 community and from the informal leadership in communities
19 and a lack of appreciation of the inherent strengths
20 within those communities.

21 I think an important component of actually being
22 based in community as an entity such as what may be
23 considered, there is the obvious and compelling: they are
24 there, they are present, they are in that space. Theirs
25 is an ongoing process of monitoring and review and
26 engagement. In some ways they can't escape the community.
27 They are there to be in conversation with, engaged and
28 part of the community. Be it in a formal sense or an
29 informal sense, the community will keep them to account
30 and will then have ready access to those technical experts
31 or those individuals who specialise in engagement.

1 So, in many ways, certainly for this community
2 where we see sentiments around comments that we have
3 repeatedly seen where people come from Melbourne and those
4 comments are made as if Melbourne is the moon, it is only
5 down the road, but there's a strong sense of, "We would
6 like there to be local individuals that we can embrace and
7 call our own and that we can build relationships and trust
8 with," and I think that is the foundation pillar of any
9 success, is that it is an agency that is committed to
10 building relationships and trust with the community, and
11 I think that only occurs when you are here and you become
12 an integral part of that community.

13 MS SHANN: Thank you. If you just wait there, there might be
14 some questions from the other parties.

15 MS DOYLE: Thank you. Ms Rhodes-Ward, you spoke about
16 doorknocks. I just wanted to see whether we are talking
17 about the same material. You mentioned first of all a
18 doorknock conducted in the Rose Garden neighbourhood. Was
19 that the doorknock that reported in about August, but it
20 related to a doorknock undertaken in June 2015?

21 MS RHODES-WARD: The Rose Garden neighbourhood doorknock was
22 undertaken between June and July and then the community
23 consultation sessions with that neighbourhood were in
24 September, and then a working group was formed from
25 participants and they have been meeting since September
26 and continue to meet. Then the Morwell East
27 neighbourhood, that doorknock occurred in
28 October/November, the community workshop consultations
29 occurred in mid-November and the working group first
30 formed at the end of November and we again continue to
31 meet with that community.

1 MS DOYLE: The results of the first doorknock, if we can focus
2 on that, the one conducted in June 2015, is the report of
3 that or the results of that doorknock captured in a report
4 dated 13 August 2015 available through the council?

5 MS RHODES-WARD: Without having that here in front of
6 me - sorry, could you give me that detail again?

7 MS DOYLE: 13 August 2015 a report prepared by Ms Bulmer, your
8 community resilience officer.

9 MS RHODES-WARD: Without having seen the copy you have in front
10 of you, I would find it difficult to determine whether you
11 and I are looking at the same document at this point in
12 time.

13 MS DOYLE: All right. Let's see how we go in terms of a couple
14 of features emerging from that. The focus of the
15 doorknock conducted in June 2015 was essentially on health
16 and wellbeing in that community, wasn't it?

17 MS RHODES-WARD: Yes, that's right.

18 MS DOYLE: And although there were a number of questions asked,
19 the key topics, I'm just summarising them now, were
20 neighbourhood, safety and wellbeing, physical activity,
21 healthy eating, community participation, and then moved on
22 to health impacts, evacuation and trust. Does that fit
23 with your memory of the types of topics that the questions
24 explored?

25 MS RHODES-WARD: So, the questions were based on council's
26 municipal public health and wellbeing plan. Certainly
27 there are components around healthy eating, exercise,
28 protecting our health, staying connected, feeling safe and
29 skills for healthy communities.

30 MS DOYLE: I see those dot points do appear on the first page
31 of the report, so obviously that's information that has

1 guided the development of both the June doorknock and the
2 subsequent doorknock in Morwell East; is that right?

3 MS RHODES-WARD: Yes. So the surveys were very similar, but
4 not identical.

5 MS DOYLE: In the first doorknock, as I understand it, 71
6 responses were received from the community, either
7 face-to-face or a few answers came in by post afterwards.
8 Does that fit with your memory of the size of the group?

9 MS RHODES-WARD: Yes, that's correct. Of the 373 households,
10 71 provide responses.

11 MS DOYLE: Then the analysis of the answers you got is
12 therefore based on either people who were there and able
13 to be spoken to on the spot or who decided later to fill
14 it in and send in a questionnaire by post.

15 MS RHODES-WARD: And there were certainly individuals who
16 attended workshop sessions who didn't necessarily fill in
17 a survey. So they may have come home and had an update
18 from their neighbours that there was a piece of work being
19 undertaken and those individuals were more than welcome to
20 come to the workshop sessions even if they hadn't actually
21 completed the survey.

22 MS DOYLE: Neighbours or community members were asked to
23 respond to positives and negatives. The negative issue
24 which recorded the highest number of concerns was the
25 issue of traffic noise which 37 per cent of respondents
26 suggested was particularly concerning affecting those
27 along Driffield Road and, related to that, parking
28 congestion and hoons. Do you recall that was the negative
29 issue that received the largest voice, if you like?

30 MS RHODES-WARD: Yes, absolutely, and certainly we can see that
31 post the mine fire where some of the vegetation has been

1 burnt that would have buffeted the noise from the highway,
2 that has become very much a concern for the community
3 living in that neighbourhood.

4 MS DOYLE: Do you recall that 13 per cent of respondents cited
5 that a concern front of mind for them was a perceived lack
6 of duty of care from local real estate agents and managers
7 who were letting rentals in a poor state which was
8 affecting the amenity of their street?

9 MS RHODES-WARD: Yes, the 13 per cent was following the 19 per
10 cent related to mine subjects, yes.

11 MS DOYLE: On mine subjects, the 19 per cent who commented
12 negatively in that regard, they mentioned the matters of
13 coal dust, proximity to the mine, air quality and the fire
14 itself and all of those matters having an effect on
15 property values. That was the nature of the 19 per cent
16 who focused on fire related issues?

17 MS RHODES-WARD: No, what I will say is that's a summary of a
18 range of comments. So it would not be accurate to say
19 that all of those issues were then connected to property
20 value. Those comments could have been things such as,
21 "Get rid of the mine. Never knew it was there until it
22 caught fire. Get rid of the mine. It's too close. They
23 have dug way too close to the town. Disused sections of
24 the mine need to be rehabilitated urgently. Power
25 stations to be closed due to health and wellbeing issues.
26 Coal mine gone. Make the mine into a lake and camping
27 area." So they have been summarised for the purpose - -
28 -

29 MS DOYLE: In the 19 per cent.

30 MS RHODES-WARD: Yes.

31 MS DOYLE: In terms of any other top answers I suppose we have

1 talked about the 37, the 19 and the 13 per cent, there
2 were 10 per cent who referred to having perceptions of not
3 feeling safe at night and related concerns in relation to
4 police, drugs et cetera.

5 MS RHODES-WARD: Yes.

6 MS DOYLE: There were a further 10 per cent of issues or
7 comments that were spread over a range of topics:
8 consultation, partying too loud, flooding due to no access
9 to stormwater, lack of shopping and young people moving
10 away from the area. Trying not do an injustice to the
11 topics, but they are gathered together as the remaining
12 10 per cent in terms of hot topics that were reported;
13 does that fit with your recollection?

14 MS RHODES-WARD: Yes.

15 MS DOYLE: Then there were 10 per cent who said they had no
16 negative issues to report.

17 MS RHODES-WARD: That's right.

18 MS DOYLE: In terms of the work done more recently in the
19 Morwell East neighbourhood are the results of that work
20 available yet or are they still being compiled?

21 MS RHODES-WARD: The results of that work are not publicly
22 available at this point in time. We have compiled that
23 report. We will then report that back to the
24 neighbourhood, who will then give us some consent around,
25 "Yes, that's an appropriate reflection of our views and
26 sentiments." Once we have received that, it will then go
27 to our community recovery committee to be noted. Then we
28 will submit it to be noted by the council. Then once it
29 has moved through that process it will be publicly
30 available. But it is always our first port of call to
31 seek the consent of the neighbourhood first.

1 MS DOYLE: Okay. So that report, if you like, or any work from
2 that is still in train. But I suggest, in light of the
3 groups of topics that we have looked at and accepting your
4 explanation that these are only summaries, it appears as
5 though there are a couple of comments that focused on
6 rehabilitation but, given that the first survey was some
7 45 days after the fire, there is naturally more of a focus
8 on the proximate effects of the fire; would you agree
9 that's a fair summary of the first set of responses?

10 MS RHODES-WARD: What I would suggest is that the survey work
11 was undertaken and then we have held a number of workshops
12 and meetings with those communities and there would be a
13 consistent narrative around their views in relation to the
14 mine. That has occurred right throughout that work.

15 MS DOYLE: Can I ask you about other fora in which people might
16 express their views. Are you aware that the Hazelwood
17 Mine has conducted three community sessions or briefings
18 I think they are technically called since October last
19 year to which members of the community have been invited?

20 MS RHODES-WARD: Sorry, were they invitations or are they
21 broadly available to the community via advertising?

22 MS DOYLE: The three sessions that I'm talking about, one was
23 conducted on 24 October last year, one on 17 February this
24 year and one on 21 October this year, included invitations
25 to community representatives including yourself. Are you
26 aware of those?

27 MS RHODES-WARD: Yes, but I guess my question is are they
28 invitation only - - -

29 MS DOYLE: They are invitation only including to members of the
30 community including yourself.

31 MS RHODES-WARD: Yes.

1 MS DOYLE: You are broadly aware of them, I take it, but you
2 didn't attend any of those three sessions?

3 MS RHODES-WARD: No. So members of my staff have attended
4 those sessions for me and then brought back reports from
5 those sessions.

6 MS DOYLE: In particular the session held on October this year
7 did you receive a report back in relation to the slides or
8 the presentation given at that session pertaining to
9 rehabilitation works at the mine?

10 MS RHODES-WARD: From memory, I don't have them here in front
11 of me.

12 MS DOYLE: I might just ask that you be shown. We have brought
13 some hard copies in. I won't take you to all three
14 sessions. It is just handiest to go to the most recent.
15 Hazelwood community briefing, October 2015. The code of
16 that document is GDFS.0001.004.0047. We will hand around
17 some hard copies and perhaps later in the proceedings we
18 will have them formally tendered, but just so that
19 Ms Rhodes-Ward can look at this one.

20 MS RHODES-WARD: Thank you.

21 MS DOYLE: I don't know whether or not those who reported back
22 to you physically brought back the presentation or whether
23 it was verbal, but have you seen this briefing pack before
24 or anything like it from the - - -

25 MS RHODES-WARD: I have seen a briefing pack like this.
26 I would feel uncomfortable confirming it was this exact
27 one.

28 MS DOYLE: I will just direct your attention to page 26, using
29 the numbers now on the bottom left-hand corner, but in
30 terms of the coded copy the number on that page ends in
31 0072. You see there's a heading there "Rehabilitation

1 works"?

2 MS RHODES-WARD: Yes, there is an indeed a heading that says
3 "Rehabilitation works".

4 MS DOYLE: And there are some subtopics set out there in terms
5 of a four part process, sections of rehabilitation work
6 that had been undertaken in the northern batter as and
7 what is planned. Without requiring you to go through a
8 memory test, do you know whether or not that material or
9 the topics were reported back to you by those of your
10 staff who attended?

11 MS RHODES-WARD: Yes, there was some conversation around the
12 nature of the commentary that was provided to the briefing
13 update.

14 MS DOYLE: A great deal of that session and the previous two
15 sessions also focused on fire preparedness and fire
16 management planning. Again, was it made known to you that
17 a substantial topic in terms of those briefing sessions
18 pertained to changes that had been made at the mine in
19 terms of looking forward to the next fire season?

20 MS RHODES-WARD: I am aware that that progress has occurred,
21 but it may be that that was through other channels.

22 MS DOYLE: I just have a couple of further questions. This is
23 open to both members of the community panel because one or
24 other of you may have more knowledge of this. There has
25 been a statement in recent days supplied to the tribunal
26 from Mr Wilson of the department who has explained some of
27 the workings of an entity once shown as Clean Coal
28 Victoria and is now Coal Resources Victoria, once known as
29 CCV now as CRV apparently. In his second statement he has
30 referred to an advisory committee of that entity having
31 some community sessions and stakeholder engagement days

1 throughout the period 2011 to date. Have either of you
2 been involved in any either community engagement sessions
3 or stakeholder consultation sessions convened by that
4 entity?

5 MS RHODES-WARD: Sorry, could I have those dates?

6 MS DOYLE: Since 2011.

7 MR LANGMORE: I can respond. I haven't been involved and
8 I wasn't aware of those arrangements being in existence.

9 MS DOYLE: Ms Rhodes-Ward, I take it you are not specifically
10 aware of those sessions or the council's involvement in
11 those sessions?

12 MS RHODES-WARD: I think it's important to note that I have
13 only been with council for just over a year. So that's a
14 timeframe well beyond my role here at council. So
15 I couldn't possibly confirm that council hadn't been
16 involved. But what I can say is I don't believe I have
17 been involved.

18 MS DOYLE: I understand. In terms of the places in which the
19 community may express its views, I have asked you about a
20 couple of examples and you of course have explained the
21 doorknock. One other mode, I suppose, that community
22 members might adopt to express their views is by the more
23 old-fashioned mechanism of writing a letter to the editor.
24 You sometimes see that community views or a community view
25 is expressed there.

26 I'm not again going to engage in a memory test,
27 but can I just ask that you be shown just by way of
28 example a recent letter to the editor of the local
29 newspaper. I'm not sure if it has made its way to you and
30 it is tricky to read. It is page 14 of the Latrobe Valley
31 Express, 26 November 2015. One of the authors of letters

1 to the editor on this occasion is the first letter, the
2 one that's featured under the heading "Valley, it's time
3 to move on," the author there is obviously expressing his
4 own view, a resident of Morwell, but I don't know if you
5 saw it at the time. Have either of you seen this letter
6 to the editor at the time it was published in the local
7 press?

8 MS RHODES-WARD: Yes, I have.

9 MS DOYLE: Just one view, as I say. But the author of this
10 letter makes a plea three or four paragraphs from the
11 bottom of his letter, "No more inquiries, government
12 investigations, complaints of long-lasting doubtful health
13 issues and poor government compensations." He goes on to
14 say, "These issues were brought to our notice mainly by
15 Voices of the Valley," and his personal view is that group
16 doesn't speak for him. Again a question to both of you.
17 Just one example, but no doubt there are examples of those
18 who say different things from other community groups or
19 who express different views, strong views in community
20 sessions that are different from those that you have
21 showcased today?

22 MS RHODES-WARD: Absolutely, and I would confirm that every
23 voice is important in the community and, just as we would
24 give the same consideration to Mr Archibald, we would also
25 give that same consideration to every member of the
26 community that we interact with, including Voices of the
27 Valley. There is no benchmark that would suggest that
28 Mr Archibald's voice is more valid than Voices of the
29 Valley or the community recovery committee or committee
30 members that attend workshops. We consider them all to be
31 equally important and valid.

1 MS DOYLE: Thank you. Unless you had anything further to add
2 to that, Mr Langmore, those were the questions I had.

3 MR LANGMORE: There are a range of views within all communities
4 and one would expect that and it is to be, as Sara said,
5 respected. Having said that, there have been a lot of
6 inquiries and issues that have gone on in the Latrobe
7 Valley. Because of all the activities that have occurred
8 here, there have been a lot of these things that have gone
9 on. Of course sometimes, quite frankly, the community can
10 get a little bit punchdrunk on them. How do you keep up
11 with it? Do you keep going to consultative meetings
12 et cetera?

13 In a sense concerned citizens of the area do need
14 to because otherwise their interests may not be adequately
15 considered. But it can get very tiresome too, having said
16 all that. So these things do need to be phased and they
17 need to be well considered, they need to be well
18 structured and people shouldn't be overworked in the
19 process.

20 MS DOYLE: If I can draw the threads of that together,
21 Mr Langmore, you used the term "punchdrunk" or perhaps
22 consultation fatigue. It may be that some feel at the
23 moment they are reaching that stage of perhaps fatigue
24 with the Inquiry or the consultation process. It doesn't
25 mean that they won't want to be involved later on.

26 MR LANGMORE: Correct.

27 MS RHODES-WARD: And certainly, if I may, I would suggest that
28 the community are keen to be involved. Certainly at a
29 council level we see our community are very interested in
30 their future and discussing their future. I think some
31 suggestions that we have exhausted them through

1 consultation or the Inquiry has may be, likewise, true for
2 some but it isn't true for everyone. I think we need to
3 be very careful that we provide a range of options, that
4 there is a strong sense of choice for the community and
5 that they can engage in a time of their choosing and in a
6 range of formats that they feel is appropriate.

7 MS DOYLE: Thank you. I have no further questions for the
8 panel.

9 DR COLLINS: Just a couple of questions for the panel, if
10 I could, on this topic of community engagement. Could
11 I start with you, Ms Rhodes-Ward. I take it you are aware
12 that the operator of the Yallourn Mine has had in place an
13 environmental review committee since 1996?

14 MS RHODES-WARD: Yes.

15 DR COLLINS: You are aware, aren't you, that there are two
16 community representatives who sit on that committee at all
17 times?

18 MS RHODES-WARD: No, but now you have told me.

19 DR COLLINS: Were you aware that that committee has met
20 quarterly, that's four times a year, each year since 1996?

21 MS RHODES-WARD: I'm happy to suggest that you are telling the
22 truth, so yes.

23 DR COLLINS: I'm asking whether you are aware. If you are not
24 aware or it, just say so.

25 MS RHODES-WARD: No, I'm not aware of how regularly they meet.

26 DR COLLINS: Are you aware that there are two representatives
27 from the Latrobe City Council in attendance at each
28 meeting, being a member of the council and an
29 environmental professional?

30 MS RHODES-WARD: Yes.

31 DR COLLINS: They report back to you, I take it, from time to

1 time about what happens at these ERC or environmental
2 review committee meetings?

3 MS RHODES-WARD: I would suggest to you that councillors never
4 report to me. I'm a dutiful and earnest member of the
5 council and should they want me to report to them that's
6 the way that goes.

7 DR COLLINS: Councils are the same everywhere.

8 MS RHODES-WARD: Absolutely.

9 DR COLLINS: Were you aware that, for example, the latest
10 meeting of the environmental review committee in November
11 this year advertised the meeting in the Express, the local
12 newspaper?

13 MS RHODES-WARD: I don't recall, no.

14 DR COLLINS: I presume the answer to this question will be you
15 don't know either, but I'm instructed that no members of
16 the community attended the meeting, despite the fact that
17 it was advertised in the Express. You are not aware of
18 that?

19 MS RHODES-WARD: Not aware.

20 DR COLLINS: Are you aware that Energy Australia, the operator
21 of the Yallourn Mine, produces a report for each of these
22 quarterly meetings which is provided to attendees?

23 MS RHODES-WARD: No.

24 DR COLLINS: Are you aware that the operator of the Yallourn
25 Mine each year via its environmental review committee
26 produces a publicly available report called its social and
27 environment performance summary report?

28 MS RHODES-WARD: No, I don't believe I have seen the report.

29 DR COLLINS: You would accept, though, wouldn't you, that
30 quarterly meetings of the environmental review committee
31 do afford an opportunity for community engagement around

1 aspects of environment and rehabilitation at least at the
2 Yallourn Mine?

3 MS RHODES-WARD: I don't know that I would agree with you.

4 I guess one of the comments that I have heard from
5 community members and certainly at the community
6 engagement and consultation session that was held recently
7 is I think Lisa Sinha from the multicultural service here
8 in Gippsland said that as a community representative she's
9 often asked to sit on various committees and panels as a
10 member of her community work, and then there is an
11 expectation that she in her community volunteer capacity
12 then undertake some kind of information dissemination
13 responsibility. She noted how difficult that is for
14 volunteer members to do.

15 Certainly again if I think about other community
16 volunteer members we do hear that time and time again,
17 that they are invited to participate in meetings and
18 sessions with some expectation that they then dutifully
19 disseminate that information through their networks. I do
20 think we need to potentially rethink the expectations that
21 we place on those individuals, that we can't somehow
22 assume that their attendance at those meetings removes
23 from us the obligation to more broadly engage and interact
24 with the community.

25 DR COLLINS: Is it therefore potentially another example of
26 what Ms Doyle referred to and that is the community can be
27 engaged out, in a sense, by the number of opportunities to
28 engage?

29 MS RHODES-WARD: No, I don't agree. I would suggest to you
30 that there are times when our engagement approach is
31 ill-fitting for our community and we don't actually ask

1 the community what engagement approach would work for them
2 or what engagement methodology is going to perhaps garner
3 a great attendance. We have a tendency to say, "We will
4 be available for engagement on Tuesday between the hours
5 of 3 and 4," and that's when we choose to be available and
6 for some reason if the community don't want to be there
7 between 3 and 4 we then proclaim that it hasn't worked.
8 I think sometimes we just need to ask the community what
9 would work and then potentially look to model our
10 behaviours from that information.

11 DR COLLINS: By "they" you mean the council?

12 MS RHODES-WARD: No, I mean the community.

13 DR COLLINS: You said before, "We need to engage in greater
14 engagement with the community about the means by which
15 they would seek to engage." You mean by that that's a
16 matter for council to consider?

17 MS RHODES-WARD: When I say "we" I collectively mean all of us
18 that have something to communicate to the community. We
19 often talk about community capacity building as in this
20 opportunity to inform and raise up a community. But
21 I actually think the learning and the capacity building is
22 ours. Those of us who are in positions that hold
23 technical information and who make decisions, the
24 challenge is ours to engage better with the community to
25 have them be part of our processes and to convey
26 information to them in a way that can be easily
27 understood. I'm not suggesting that anybody is perfect or
28 that anybody has the magic key to unlock that mystery.
29 What I'm suggesting is that I think we all collectively,
30 myself included, can do better and we can be more generous
31 listeners in that space, and it is simply the desire to do

1 it better that I think will help us to achieve that.

2 DR COLLINS: Thank you.

3 MR LANGMORE: Could I make an additional comment to that.

4 There are various levels and types of community
5 involvement. Some of them can be very superficial, to be
6 honest, and tokenistic. I think sometimes some people in
7 the Latrobe Valley are very aware of that and very wary of
8 them for that reason. There is a difference of course
9 between involvement and community empowerment. People are
10 much more inclined to be willing to be involved if they
11 genuinely feel that they have some power in the process,
12 as distinct from a tokenistic exercise which they might be
13 able to say some words but really they are not going to go
14 very far. It's partly a question of quality and style and
15 approach.

16 DR COLLINS: I take it you were listening when I asked
17 questions about the Yallourn Mine operator's environment
18 review committee. Do you have any familiarity with the
19 operations of that committee?

20 MR LANGMORE: No, not particularly. I was aware that AGL have
21 something a bit similar at Loy Yang. That's good. But
22 I don't know that it's necessarily sufficient in itself to
23 represent a full engagement of the community, let alone
24 some degree of community empowerment in the process.

25 DR COLLINS: You don't mean to suggest by your answer that the
26 operations of a committee with which you have little
27 familiarity is tokenistic?

28 MR LANGMORE: I couldn't comment one way or another because I'm
29 not familiar with it.

30 DR COLLINS: Thank you. No further questions.

31 MS NICHOLS: A question to Mr Langmore. It's been said that

1 the community wants more information about the progressive
2 and final rehabilitation. Would the public, regular
3 reporting of progressive rehabilitation targets and
4 outcomes go any way to assisting that concern?

5 MR LANGMORE: It undoubtedly would go some way. I think a lot
6 of us feel that there is a lot of flux in this situation
7 with regard to rehabilitation planning at the moment; that
8 we don't feel a high degree of confidence that firm
9 rehabilitation directions have been well set for at least
10 some of the mines. Sure, regular updates are desirable.
11 But I think a lot of people are more concerned about
12 really what are the suitability and adequacy and
13 appropriateness and desirability of the final outcomes.

14 MS NICHOLS: In relation to the final outcomes is it your
15 impression that the working assumption that people in the
16 community have is that final land uses will involve public
17 access and public use?

18 MR LANGMORE: I think that's an absolutely critical element.
19 I do make comment in my submission that after nearly
20 100 years of open-cut mining in the Latrobe Valley not one
21 section of any of the major mines has been rehabilitated
22 to a stage whereby that land can be returned to some form
23 of public use. I would have to say that I think the
24 community has been unbelievably patient waiting for some
25 areas of rehabilitated land to emerge which can be used
26 for public purposes.

27 MS NICHOLS: To Ms Rhodes-Ward, you were asked some questions
28 by Ms Doyle that seemed to suggest that the views
29 expressed about rehabilitation were somewhat of a minority
30 view amongst the people you had surveyed or engaged with.
31 What do you say about that?

1 MS RHODES-WARD: My reflection of those comments are that
2 I think the point should be made that in a survey which
3 asked people about their health and wellbeing there were
4 individuals who felt that that was such a powerful theme
5 for them they still felt the need to actually put that
6 into that space. So had we asked a question about
7 the mine and the mine fire we may have received a very
8 different response. However, the purpose of our work is
9 to future orientate the community into actually empowering
10 them to take responsibility for their own health and
11 wellbeing. Our view at the time of crafting that survey
12 was that constantly asking people about their experience
13 during the mine fire was not helpful in having people
14 think about how they can be dynamic in their own health
15 and wellbeing space. So the fact that it came in at the
16 percentage that it did in the absence of any questions on
17 that topic was very surprising to us.

18 MS SHANN: Just briefly, you were asked quite a number of
19 questions, Ms Rhodes-Ward, about the information you had
20 obtained from surveys . Is that the sole source of the
21 concerns that you have told the Board about today?

22 MS RHODES-WARD: No, our work with the neighbourhoods and the
23 surveys are a small part of the work that we do. We also
24 do quite a lot of work with the community recovery
25 committee and have been working with the recovery
26 committee for over a year now. It again is a committee of
27 volunteers who look at elements of the community's
28 recovery and actions that can occur in that space.
29 Certainly the issue of the mine fire remains an
30 outstanding topic for the community recovery committee as
31 well.

1 MS SHANN: You have been taken to a newspaper article which
2 referred to in part Voices of the Valley not speaking for
3 that particular gentleman. Both of you talked about in
4 response the divergent views. Have either of you had
5 views expressed to you of the nature that the community or
6 particular members don't want more transparency in this
7 area?

8 MR LANGMORE: I certainly haven't, no.

9 MS RHODES-WARD: On the topic of transparency, no.

10 MS SHANN: Just finally, Mr Langmore, were you ever invited to
11 any of the Hazelwood consultations that Ms Doyle referred
12 to?

13 MR LANGMORE: Not personally, no.

14 MS SHANN: Thank you.

15 PROFESSOR CATFORD: Could I just ask a couple of questions of
16 the panel. Thank you very much, Mr Langmore and
17 Ms Rhodes-Ward, for your consideration. I just wonder if
18 you could take a helicopter view and just explain to us
19 what you think the purpose of rehabilitation is,
20 particularly with regard to these mines in the Latrobe
21 Valley? What's the ultimate aim?

22 MR LANGMORE: I think the mines obviously need to be safe and
23 secure and not a hazard in terms of fire, earth movements.
24 So there's a kind of security level which is very, very
25 critical. So they shouldn't be a hazard or a liability.
26 That's sort of the minimum base level, if you like.

27 But, beyond that, I think most people would like
28 to see some beneficial use so the areas are productive,
29 valuable, perceived to be beneficial to the community and
30 that could be for a range of economic purposes. I'm
31 inclined to think that use for a wide range of

1 recreational purposes are likely to figure pretty strongly
2 in that sort of area, both passive and active recreational
3 areas.

4 The idea of having a great new set of Gippsland
5 lakes, which was I think the great white hope for what
6 would be the beneficial use for the open-cuts, sounds
7 terrific and if it were possible that might be wonderful.
8 But, from the indications I have seen, it seems very
9 unlikely that full flooding of most of those open-cuts is
10 not a seriously viable option. It may be a partial option
11 for some of the open-cuts. I would love to see the
12 Hazelwood Mine look something a little bit like a sunken
13 Central Park in New York, thank you.

14 MS RHODES-WARD: If I may, the community consultation
15 undertaken as part of the Future Morwell work where some
16 780 community members were indeed asked questions relating
17 to mine rehabilitation, their view was that it should be
18 transformed into a community asset, that it be celebrated,
19 that the history of the area be acknowledged. I certainly
20 hope we don't take away today from the community's strong
21 sense of pride in the history of power generation. It is
22 an issue very near and dear to the heart of the community
23 and they would hate to lose that in a transformation
24 process where those assets were turned into a community
25 asset. But certainly we do see the phrasing "community
26 asset" which would suggest to me that the community are
27 seeking to be engaged in that area for the long-term
28 future.

29 PROFESSOR CATFORD: Thank you. Do you think the process of
30 rehabilitation is also worth considering as an economic
31 activity, a source of employment, for example, for the

1 Valley?

2 MS RHODES-WARD: My view would be that rehabilitation should be
3 considered from a range of aspects, certainly from a
4 community resilience and social cohesion perspective.
5 I think the opportunity to have the conversation around
6 what should occur in that space has an enormous potential
7 to bring the community together and to focus the community
8 on actually whether they are getting their hands dirty in
9 an intellectual sense thinking about the issue, whether
10 they physically are getting their hands dirty
11 participating in a rehabilitation effort. I think it was
12 Wendy who noted at one of our comments that there needs to
13 be an opportunity to drive the community together to
14 actually have them come and create a greater sense of
15 cohesion through action, and potentially the
16 rehabilitation of the mines is a beautiful opportunity to
17 do that piece of work.

18 MR LANGMORE: I would agree with that. It would be a major
19 economic activity necessarily and one would suspect that
20 there will be employment generated in the maintenance and
21 use of whatever activities eventually go into the open-cut
22 areas as well which would also be a provider of some
23 employment. I'm not going to say it's holding out the
24 prospect of providing substitute numbers of jobs for the
25 numbers of jobs that might be lost in the power industry
26 if that were to actually close down in the Latrobe Valley.
27 I think that would be foolish to look at it in those
28 terms. But it could be a major contributor and that could
29 be of relevance.

30 I would just make reference to a comment I make
31 in my submission, and that is the question of re-using

1 some of the overburden from the overburden dumps and
2 putting that back into the mines. I think that is a
3 matter that needs to be looked at very carefully, very
4 appropriately. The overburden is a very valuable
5 resource. At the moment it's just been stuck in dumps on
6 the edges of the mines in the case of Hazelwood and Loy
7 Yang. There is scope, I believe, to re-use some of that
8 overburden back in the voids of the open-cuts. That in
9 itself would generate some work.

10 PROFESSOR CATFORD: Thank you.

11 MS SHANN: Thank you. Could I just check with Ms Doyle that
12 the two documents that were referred to, whether she would
13 like those tendered?

14 MS DOYLE: I was going to tender through Mr Faithful the three
15 community sessions, the packs relating to that. But it
16 may be useful if the newspaper article is tendered at this
17 time.

18 MS SHANN: Thank you. If that could be done. That is exhibit
19 3.

20 CHAIRMAN: Yes.

21 #EXHIBIT 3 - Newspaper article.

22 MS SHANN: I think from Counsel Assisting's perspective now
23 would be a useful time to thank the panel but also to ask
24 for a short break while we organise ourselves.

25 CHAIRMAN: Yes. We will resume on the hour, 12 o'clock.

26 <(THE WITNESSES WITHDREW)

27 (Short adjournment.)

28 CHAIRMAN: Yes, Mr Rozen.

29 MR ROZEN: If the Board pleases, I call Craig Lapsley.

30 <CRAIG WILLIAM LAPSLEY, sworn and examined:

31 MR ROZEN: Good afternoon, Mr Lapsley.

1 MR LAPSLEY: Good afternoon.

2 MR ROZEN: I think I have this right and you will know if I'm
3 wrong. Is this your fourth time in the witness box in the
4 Hazelwood Mine Inquiry, parts 1 and 2?

5 MR LAPSLEY: Yes, this is the fourth.

6 MR ROZEN: We thank you for once again making yourself
7 available to us. We know it's a particularly busy time of
8 year. Mr Lapsley, you are the Victorian Emergency
9 Management Commissioner, a role you have held since 1 July
10 2014?

11 MR LAPSLEY: Correct.

12 MR ROZEN: As you have explained, if not in your current
13 statement, then certainly in the one you tendered for the
14 Anglesea term of reference, that's a statutory role under
15 the Emergency Management Act 2014?

16 MR LAPSLEY: Correct.

17 MR ROZEN: Can I summarise your many responsibilities as
18 including coordinating the response to major emergencies,
19 including ensuring appropriate controls are in place
20 before emergencies?

21 MR LAPSLEY: Correct, and it extends to a number of other
22 issues.

23 MR ROZEN: Indeed, which are set out in your statements.

24 MR LAPSLEY: Yes.

25 MR ROZEN: Mr Lapsley, for the purposes of these terms of
26 reference, that is the terms of reference that deal with
27 the rehabilitation of the mines, you have made a witness
28 statement dated 1 December 2015.

29 MR LAPSLEY: Correct.

30 MR ROZEN: For the Board and the parties' assistance, that's
31 behind tab 20 in folder 10. It bears the Ringtail code

1 VGSO.1005.001.0001. Please ignore all those numbers,
2 Mr Lapsley. They are for our purposes. Do you have a
3 copy of the statement in front of you?

4 MR LAPSLEY: I do.

5 MR ROZEN: Have you had an opportunity to read through the
6 statement before coming along to give evidence today?

7 MR LAPSLEY: Yes, I have.

8 MR ROZEN: Is there anything in the statement you wish to
9 change?

10 MR LAPSLEY: No, there's not.

11 MR ROZEN: Are the contents of the statement true and correct?

12 MR LAPSLEY: They are.

13 MR ROZEN: I tender the statement.

14 #EXHIBIT 4 - Witness statement of Craig Lapsley

15 VGSO.1005.001.0001.

16 MR ROZEN: Can you confirm for us, Mr Lapsley, there are 16
17 annexures to your statement?

18 MR LAPSLEY: That's correct.

19 MR ROZEN: There's a list of them, if it helps, on page 10 of
20 the statement.

21 MR LAPSLEY: Yes, they're all here. That's fine.

22 MR ROZEN: Mr Lapsley, you were asked in a letter provided to
23 you by the solicitor to the Board of Inquiry to answer
24 three specific questions. The questions are set out in
25 the statement and your answers follow each question. Is
26 that the format of the statement?

27 MR LAPSLEY: There is just a point of clarity for a moment. As
28 I look at this one, Mr Rozen, it actually refers to
29 Anglesea, the one that's in front of me here. It is dated
30 20 July 2015.

31 MR ROZEN: That is certainly the wrong statement. It should be

1 one dated 1 December 2015, which we will see if we can
2 get.

3 MR LAPSLEY: The one I walked in with is dated 1 December. The
4 one in the folder in front of me here is 20 July 2015 and
5 refers to Anglesea and the Surf Coast issues.

6 MR ROZEN: Perhaps if you can put that to one side. In
7 answering my questions, if you can just concentrate on the
8 one you walked in with, please, and we will make sure we
9 have the right statement on the system. Thanks very much
10 for pointing that out, Mr Lapsley. The first question
11 that you were asked concerns the role of the Coal Mines
12 Emergency Management Taskforce; is that right?

13 MR LAPSLEY: Correct, yes.

14 MR ROZEN: You are the chair of that taskforce?

15 MR LAPSLEY: I am.

16 MR ROZEN: If you turn to the second page of your statement,
17 paragraph 9, you there set out in summary form the
18 question and you provide a response by setting out the
19 number of meetings, that it has met on 17 occasions, and
20 I will ask you briefly about some of the activities. Just
21 a little bit of background about the taskforce. It was
22 established in September 2014?

23 MR LAPSLEY: That's correct.

24 MR ROZEN: As part of a response of the government to the
25 Hazelwood Mine fire of February 2014?

26 MR LAPSLEY: Correct.

27 MR ROZEN: And also the first Hazelwood Mine Fire Inquiry which
28 reported, as it turned out, at about the time the
29 taskforce first was convened in September.

30 MR LAPSLEY: Correct.

31 MR ROZEN: In summary, the role of the taskforce is to

1 determine and coordinate emergency management priorities
2 for the Latrobe Valley for the fire season 2014/15 and
3 also 2015/16?

4 MR LAPSLEY: Correct.

5 MR ROZEN: And it also had a separate role in relation to
6 Anglesea and you gave evidence about that at the hearings
7 earlier this year.

8 MR LAPSLEY: Correct.

9 MR ROZEN: You have chaired the taskforce since its
10 establishment and you set out and I should take you
11 briefly to paragraph 14 of your statement. You set out
12 the terms of reference of the taskforce. Perhaps if we
13 could just note what you say at paragraph 14, that its
14 terms of reference have been to review the fire and
15 emergency preparedness of the four Victorian brown coal
16 mines. That is the three in the Latrobe Valley, plus
17 Anglesea; is that right?

18 MR LAPSLEY: Correct.

19 MR ROZEN: To oversee the implementation of relevant Hazelwood
20 Coal Mine Inquiry affirmations and improvement plans?

21 MR LAPSLEY: Correct.

22 MR ROZEN: And, thirdly, support improved capability and
23 inter-operability between the coal mine industry,
24 government agencies and community?

25 MR LAPSLEY: That's correct.

26 MR ROZEN: The priority area of work of the taskforce is set
27 out by you in paragraph 15 of your statement, which has
28 been the preparedness of the mines in addressing improved
29 prevention and response capabilities to reduce the risk of
30 major fires occurring in or entering the mines, and that
31 is in fact the major priority of the taskforce?

1 MR LAPSLEY: It is, yes.

2 MR ROZEN: Without going into detail, you set out the
3 membership of the taskforce at paragraph 18 and in summary
4 it consists of representatives of the mines, firstly?

5 MR LAPSLEY: Correct.

6 MR ROZEN: And also representatives of the Latrobe Council and
7 also various State Government agencies which have a
8 responsibility in relation to either mines or fire or
9 both?

10 MR LAPSLEY: Correct.

11 MR ROZEN: As you explain in your statement, the taskforce has
12 met on 17 occasions since it commenced work in September
13 2014. Can I summarise your overall assessment of the work
14 of the taskforce as being a largely positive experience?

15 MR LAPSLEY: It has been exceptionally good, in the sense that
16 the goodwill, but not only the goodwill, the level of
17 discussion, willingness to openly discuss issues that have
18 otherwise been complex, and see that there are agreed
19 plans and able to move forward on issues that have been
20 otherwise not resolved has been exceptional.

21 MR ROZEN: That's a reference, I take it, to all members of the
22 taskforce.

23 MR LAPSLEY: Yes, all members have been - their attendance has
24 been exceptional, but also their level of participation in
25 the discussion has been also exceptional.

26 MR ROZEN: Can I take you, please, to page 4 of your statement
27 at paragraph 23.

28 MR LAPSLEY: Yes.

29 MR ROZEN: At paragraph 23 of your statement you make reference
30 to subjects or themes that have constantly arisen during
31 the course of this Inquiry, and that is community

1 engagement and communications between agencies and mines
2 on the one hand and the community on the other.

3 MR LAPSLEY: Yes. That's one of the key things about how we do
4 communicate and engage and get a broader understanding of
5 what the taskforce is about. Not only that; to get a
6 common understanding of some of the challenges that they
7 face.

8 MR ROZEN: You set out, in summary form anyway, a number of
9 activities - I don't want to downplay their significance
10 at all - that you have been involved in personally but
11 also, for example, briefings that have been conducted by
12 the mines. You make reference to GDF Suez conducting
13 community briefings and activities which seem to have
14 taken place throughout the period since the taskforce
15 being set up, right up until the beginning of this fire
16 season.

17 MR LAPSLEY: True. I think it's a little bit broader than
18 that. It's been letter drops, it's been community
19 meetings, it's been use of media, but it's also been the
20 fact that we have allowed others to lead it. So, it
21 hasn't necessarily been led by the taskforce. The
22 taskforce is somewhere to facilitate those. Whether it's
23 through the city, whether it's through Suez themselves,
24 whether it's using the community recovery committee when
25 it was operating, to connect into the community is very
26 important. So it's not just the taskforce. The taskforce
27 sometimes is a facilitator of the process, but supports
28 across the taskforce.

29 MR ROZEN: If I could ask you to go over to paragraph 36. I'm
30 sorry to jump you around the document. This is on page 9
31 and you say, "Improved performance in relation to fire

1 management within the mines is crucial in building
2 community understanding, confidence and trust in the mine
3 operators and agencies having an enhanced and sustainable
4 capacity and capability to reduce their exposure to major
5 incidents in future." Is it fair to say that there are
6 sort of two dimensions to that: there's the doing of the
7 work on the one hand by the mines, improving capability?

8 MR LAPSLEY: Yes.

9 MR ROZEN: And then there's the communication that that work
10 has been done to the community?

11 MR LAPSLEY: Yes. It's probably a little bit broader than that
12 in the sense of - and it goes a little bit to the previous
13 speakers about how do you get engaged communities, how do
14 you get a community that's connected into the issue and
15 ensure that it's not just done when there is smoke in the
16 sky. So, how do you do get them in the readiness phase,
17 how you get them in the preparedness, understand what it
18 is, understand what they can do. It is important about
19 shared responsibility. It is about understanding the
20 community in the broad and ensuring that then you have
21 what you talk about, trusted networks operating, and that
22 leads to what is trust, respect and confidence of what we
23 are doing, and we may not always agree, but at least we
24 have the discussion to do that.

25 Some of that is a little bit aspirational because
26 I don't think the networks have been set up to be
27 successful, but we have certainly attempted to connect
28 into the Morwell, Latrobe Valley networks and communities.

29 MR ROZEN: You will be aware that the Inquiry has consulted
30 quite broadly in community sessions. It has also received
31 a number of submissions from community members.

1 MR LAPSLEY: Yes.

2 MR ROZEN: There's been a theme through those consultations,

3 I will ask you to accept this from me, that there has been
4 a theme, not a universal one, but a theme which seems to
5 some extent at odds with the level of work and preparation
6 that you describe in your statement; that is, a degree of
7 scepticism about whether things have really improved in
8 terms of fire safety at the mines. Can I ask you to
9 comment on that? If there is such a disconnect, why do
10 you think there might be?

11 MR LAPSLEY: I think if you use some very practical examples,
12 particularly with Hazelwood Mine, I mean the pumps, the
13 reticulation system, the use of sprinklers, that wasn't
14 there before, that is there now and very visible to the
15 community and it gives confidence to the community that
16 they are there and operate. The amount of work that's
17 been done in an earth moving sense on the mine is very
18 visible. Without entering the mine, you can see it is
19 quite significant how the earth moving works has covered
20 the mine, but also segregated the mine into sectors. For
21 those that aren't informed from the community, they might
22 not understand how strategic that is to actually start to
23 segregate the area that's exposed that could be alight at
24 some stage.

25 I think you take me to the point of when is a
26 community connected and when is a community fully engaged.
27 That I think is the piece of work that's still to be
28 learnt and to be actually achieved in the Valley. Is that
29 any different from other communities in Victoria? No,
30 it's not. We in fire, in particular emergency management,
31 find we have some communities that are very, very engaged

1 and others that aren't, in the sense that they wait for
2 the event to occur and wait for a warning to turn up on a
3 telephone. That's not where we want to be. Obviously we
4 would like all our communities to be engaged in the before
5 and obviously engaged during the event and certainly
6 engaged after the event.

7 We haven't got, I believe, that mature model yet
8 in the Valley about total engagement of all the
9 communities, all the trusted networks of communities, and
10 that is a piece of work that is identified in the
11 recommendations at recommendation 12 that's still works in
12 progress and to some degree recommendation 11 and you
13 could even take it back to recommendation 3 that talks
14 about planning and also in the regulatory area.

15 So there's still works in progress that's very
16 active and seeking even in next budgets additional funding
17 to progress those issues forward.

18 MR ROZEN: The recommendation numbers you have just referred to
19 are the recommendations from the first Hazelwood Fire
20 Inquiry?

21 MR LAPSLEY: Hazelwood, yes. So recommendations 3, 11 and 12
22 are three that are still works in progress and address,
23 not in totality, but address the planning issues, the
24 communications and therefore what is the future community
25 connection model, and it's interesting I use the word
26 community "connection" model, not the community
27 "engagement" model, because I think we are moving to a new
28 model, certainly in an emergency management sense, about
29 connection into community and not just engagement, and
30 I believe "engagement" has a definition that doesn't take
31 us all the way. When I say "connection", it's about how

1 do you connect into the trusted networks, and not all of
2 it is face-to-face meetings; we have to use social media
3 and other aspects of how we do that.

4 MR ROZEN: It's the case, is it not, Mr Lapsley, that whilst
5 the implementation monitor who has examined the
6 implementation of the recommendations is generally
7 positive, one area where more work to do has been
8 identified is in this area, those recommendations that you
9 referred to.

10 MR LAPSLEY: Yes, absolutely, and they link. It is a bit of a
11 - I suppose I could call it a bit of a wicked problem. We
12 haven't seen it fixed for probably three decades. We have
13 to be careful we don't try and fix it for what we think
14 works for the Valley and it doesn't work across Victoria
15 for other local government areas. There is not one
16 solution because communities are different, different in
17 size, different in demographic, different in their
18 networks of how they actually connect. So, it is
19 identified and I know the monitor has spoken personally to
20 me about how critical those recommendations are and the
21 success, they are ongoing and they will be watched very
22 closely by the monitor.

23 MR ROZEN: I think you were in the hearing room, were you not,
24 when the previous witnesses were giving evidence about
25 community perceptions and concerns?

26 MR LAPSLEY: Yes.

27 MR ROZEN: You will recall that Ms Rhodes-Ward from the council
28 gave evidence about the need for agencies to learn about
29 what works rather than just imposing something and then
30 saying, "Look, no one turned up to the meeting. We've
31 done our bit." I take it you would agree broadly with

1 those observations?

2 MR LAPSLEY: Yes, I agree. Absolutely. That is not just about
3 the timing; it is about the type of conversation, the
4 content, how you allow communities to have an opinion and
5 express it and validate it against what would be people of
6 subject matter expertise or those that have varied
7 opinions within communities.

8 MR ROZEN: Can I take you back now to the substance of what's
9 been done, if I can put it that way, the work that's been
10 done on the ground. Even though the principal focus of
11 terms of reference 8 and 9 are concerned with
12 rehabilitation, the Board is required, as I'm sure you are
13 aware, by term of reference 9(a) to consider in relation
14 to a given rehabilitation option, whether it is short,
15 medium or long-term, whether and to what extent the option
16 would decrease the risk of a fire that could impact the
17 mine and, if so, the cost of the option relative to the
18 cost of other fire prevention measures.

19 It is that that I want to direct your attention
20 to, specifically in relation to the work the taskforce has
21 done. So if we can go to paragraph 16 of your statement,
22 please, at the top of page 3. You say there, "The
23 additional consideration," that is of the taskforce, "is
24 to foster a consistent approach by all mines in adopting
25 standards that will achieve the goals of improved fire
26 safety while taking into consideration a broad scope of
27 probabilities."

28 Can you just expand on that for me, please, what
29 it is that you are saying there?

30 MR LAPSLEY: There's a number of different standards,
31 obviously, and I think in the presentation later today you

1 might hear from deputy secretary or lead deputy secretary
2 Luke Wilson, who will talk, I would think, about some of
3 the standards which are in their area. We also have
4 standards within the fire services, so I have a
5 responsibility to promulgate standards, and there's just
6 been a new set of standards that have been promulgated
7 under my signature which will be dated November 2015, and
8 that's about ensuring that we have got not only standards
9 in the way we operate, but standards in the way we train
10 and prepare ourselves and build capability. That in my
11 legislation doesn't reach into the industry. However, in
12 the true sense of where we are, we need to be able to
13 reach out to that broader than what are the fire services
14 or the emergency services.

15 That's been recognised, and if you think about
16 recommendation 2 where it talks about integrated incident
17 management, we have the principles of that, but we need
18 the standards to apply to ensure that we can measure that
19 over a period of time, and we are also dealing with, in
20 that example, an incident management system that's a
21 national system. So it can operate not only in Victoria,
22 it can operate in other parts of Australia.

23 So, when we talk about adopting standards, the
24 word "standards" is a reasonably broad attempt to make
25 sure it's not just about the standards that I have
26 responsibility for, but reaching to other standards and
27 standards that are sometimes within the control of
28 government, the Victorian government, or outside that.

29 MR ROZEN: Why is consistency or why has consistency of
30 approach by the mines been a focus of the taskforce?
31 What's the significance of that from your perspective?

1 MR LAPSLEY: It is about getting standardisation and seeing
2 that the three mines operate in a similar way - and I have
3 to be careful; they may not, because of the type of mine
4 it is, work in exactly the same way, but a similar way,
5 and that's obviously the hence about where we are with
6 standards.

7 One of the positive things is in incident
8 management, for example, the amount of training that all
9 three mines in the Valley have actually undertaken to
10 achieve what they call level 2 controllers. So they are
11 looking at how they achieve that within their workforce
12 and obviously mandating that in their workforce to have a
13 standard approach that can be applied between mines.
14 That's just one example.

15 MR ROZEN: Table 1 in your statement sets out in summary form
16 some of the steps that have been taken - this is on page
17 6, just underneath paragraph 29 - sets out in summary form
18 some of the steps that have been taken by the mines and
19 reported to the taskforce as it has met. So, for example,
20 we see that the mines have implemented better fire
21 detection and firefighting equipment. That's been a focus
22 of the work that's been done?

23 MR LAPSLEY: Correct.

24 MR ROZEN: There has been improved management of vegetation,
25 both within mines and also around perimeters?

26 MR LAPSLEY: Correct.

27 MR ROZEN: And a significant focus on improvement of training
28 in relation to emergency response, emergency management,
29 integration with the fire agencies and so on?

30 MR LAPSLEY: Yes, that's the building capability and capacity
31 which is quite critical.

1 MR ROZEN: They are the tangible things you point to as
2 examples of why you are so impressed with the work the
3 that the taskforce has done.

4 MR LAPSLEY: They are, and more detail is under annex 2, which
5 is the report that was delivered on 31 December 2014 which
6 overviewed what the status report was and I think you will
7 find that those in the table you just represented are a
8 summary of what's contained in that report.

9 MR ROZEN: Is there anything in particular in annex 2 you would
10 like to take us to, or you make that link?

11 MR LAPSLEY: No, I just make that link. But obviously the next
12 number of annexes give you the detail of what it is as far
13 as exercising and some of the work that's been carried
14 out.

15 MR ROZEN: I want to take you to a couple of those, if I may.
16 One of the issues, and this really picks up on the terms
17 of reference, and that is the role of fire mitigation,
18 fire risk mitigation in progressive rehabilitation.
19 That's a central concern to the Board. It is the case, is
20 it not, that on occasions when the mines have been
21 reporting to the taskforce about what they have done in
22 terms of improvement of management of fire risk, that they
23 have pointed to their work of progressive rehabilitation?

24 MR LAPSLEY: They have, yes.

25 MR ROZEN: Perhaps we can take one example, if we could. If
26 you could go to annexure 10 to your statement which is at
27 EMV.1004.001.0059. What you have produced for us here are
28 minutes, or rather meeting outcomes rather than minutes,
29 from a meeting that took place on 25 November 2014?

30 MR LAPSLEY: Correct.

31 MR ROZEN: So this time last year or so. Perhaps we can start

1 with page 1 just to underline the point you made about how
2 well attended these taskforce meetings have been. That's
3 an example. It's always better when the box with the
4 names that were there is bigger than the box of apologies,
5 I guess, isn't it, Mr Lapsley?

6 MR LAPSLEY: Correct.

7 MR ROZEN: We see this is a good example of the first box being
8 much bigger than the second. We see, for example, that
9 Mr Rieniets was there from AGL in the second column of
10 attendees?

11 MR LAPSLEY: Correct.

12 MR ROZEN: And in the third column we see Mr Mether from Energy
13 Australia was there?

14 MR LAPSLEY: Yes.

15 MR ROZEN: And, for completeness, a representative of GDF Suez
16 in the fourth column, Mr Innocenzi.

17 MR LAPSLEY: Correct.

18 MR ROZEN: If I can take you, please, to page 4 of the document
19 which in our code ends in 0062. What we see here is a
20 summary of the report that was made to the meeting by the
21 representatives of the various mines about their fire
22 mitigation activities.

23 MR LAPSLEY: Correct.

24 MR ROZEN: If you go down about two-thirds of the way down page
25 4, we see on the left-hand side a box "Energy Australia
26 Yallourn" and then some dot points and they are the
27 matters that Mr Mether from Energy Australia reported to
28 that meeting; is that how we understand it?

29 MR LAPSLEY: Yes, correct.

30 MR ROZEN: The first of those is "rehabilitation continuing",
31 you will see?

1 MR LAPSLEY: Yes.

2 MR ROZEN: Then, similarly, if you go to the next page, page 5,
3 Mr Innocenzi from GDF Suez Hazelwood in his report, his
4 fifth dot point is that rehabilitation work was proceeding
5 as part of fire mitigation.

6 MR LAPSLEY: Correct.

7 MR ROZEN: I don't want to take you to each of the documents,
8 but we see that in other documents, that there's a theme
9 there as part of the mines, the link between
10 rehabilitation work, that is progressive rehabilitation,
11 and fire mitigation.

12 MR LAPSLEY: What it doesn't do, I suppose, is tell you the
13 extent of it, but that would be obviously in the detail of
14 the verbal report at the taskforce.

15 MR ROZEN: The reason I'm raising this, Mr Lapsley, is when we
16 had our first Inquiry in the first half of 2014, there was
17 - I think I'm fairly summarising it - there was a degree
18 of resistance to the idea of those two things being
19 linked. They were said essentially to be quite separate
20 things. Do you think there has been a bit of a sea change
21 in the light of the Hazelwood fire?

22 MR LAPSLEY: I think there has been, and rightly so, in the
23 sense that they can't be separate.

24 MR ROZEN: It is fair to say, is it not, that there is probably
25 still a great deal of work that needs to be done in
26 teasing out precisely how progressive rehabilitation can
27 promote a reduction in fire risk? Is that a fair
28 observation?

29 MR LAPSLEY: Yes. But I think the thought process and
30 discussion has extended and obviously this week and next
31 week will probably bring a number of things to the table

1 of how close it is to being integrated or not.

2 MR ROZEN: Can I take you to a letter. It is not annexed to
3 your statement, but it is an annexure to a statement from
4 Mr Luke Wilson, who you mentioned earlier, and it is
5 annexure 15 to Mr Wilson's first statement. The document
6 ID is DEDJTR.1020.001.0560. Are you familiar with the
7 work of the Technical Review Board, Mr Lapsley?

8 MR LAPSLEY: I'm aware of the Technical Review Board, but not
9 in detail of what it championed over the period.

10 MR ROZEN: You are aware that it is an expert body that
11 provides advice to DEDJTR about mine stability,
12 geotechnical issues and hydro-geological issues?

13 MR LAPSLEY: Yes.

14 MR ROZEN: This letter, as Mr Wilson explains it in his
15 statement to the Board, is a letter of response from the
16 chair of the Technical Review Board, Professor Galvin,
17 dated 12 October 2015. It is a letter of response from
18 the board to the department when the board was asked to
19 comment on a proposed work plan variation that had been
20 submitted by AGL, the Loy Yang Mine operator. I just ask
21 you to accept that that's the context.

22 MR LAPSLEY: Yes.

23 MR ROZEN: I would ask you to look, please, at the first
24 paragraph on the second page, page 0561. You will see
25 that Professor Galvin says, "It seems that the proponent,"
26 which seems to be reference to AGL, "has no intention of
27 reducing the fire fuel load on the northern batters until
28 the final rehabilitation is carried out at the completion
29 of stage C mining in about a decade's time. The presence
30 of a range of mining and other infrastructure on this
31 batter has been put forward as the reason for this delay.

1 Notwithstanding this, the proponent still claims to be
2 undertaking progressive rehabilitation. The matter does
3 not appear to have been independently tested to date from
4 both technical and risk management perspectives."

5 If you just put that letter to one side and
6 I will ask you a couple of things about it. Is that a
7 notion that you are familiar with, that the ability of the
8 mines to carry out progressive rehabilitation,
9 particularly covering exposed hole, is inhibited from the
10 mine's perspective by the presence of infrastructure?

11 MR LAPSLEY: Not to that detail. I haven't been in the mine
12 for some months and, when I say that, probably on purpose
13 in the sense I have to chair the taskforce and rely on the
14 facilitation of the goodwill. The detail of the northern
15 batters versus some of the other batters in Hazelwood
16 I have not taken a need to be there and there's a reason
17 for that in the sense that I don't have the authorisation
18 to endorse, approve or ensure that there's any direction
19 issued. So we are relying on the reference board and the
20 powers of DEDJTR or the regulator to ensure that those
21 things are enforced in a timing sense.

22 What we have done in the taskforce is to ensure
23 that we have got a review, a connection and an oversight
24 of implementation, but we don't set the priority of
25 implementation. I think that's an issue in itself about
26 how do you set the priority of implementation and how do
27 you get good fire prevention, fire management, fire
28 mitigation works in a program.

29 MR ROZEN: I understand that. It is probably my fault. The
30 reference in the letter to the northern batters is not the
31 northern batters of the Hazelwood Mine. It is actually to

1 the Loy Yang Mine that Mr Galvin is referring to.

2 MR LAPSLEY: Sorry.

3 MR ROZEN: I understand your personal limited role in relation
4 to this issue. But I'm more interested in knowing how
5 this matter has been dealt with at the taskforce meetings.
6 I will put it this way. Maybe I'm missing it, but if one
7 reads through the minutes of the taskforce this sort of
8 fundamental question of covering the coal as a short- to
9 medium-term option of reducing fire risk doesn't seem to
10 get a guernsey in the discussions.

11 MR LAPSLEY: It doesn't. The reason it doesn't is I don't
12 believe we have landed on what is the fire management
13 issues of rehabilitation.

14 MR ROZEN: For this Board the context is the evidence it heard
15 last year, particularly from Mr Rod Incoll, who was
16 engaged as the fire expert who did a review of fire risk
17 mitigation particularly at Hazelwood, and his evidence was
18 very clear if I can summarise it. He told the Inquiry
19 that as long as the coal is uncovered the risk is there.
20 It's a lot of fuel waiting to burn.

21 Of course more recently this Inquiry has had the
22 experience of Anglesea where the coal has been covered
23 I think by a metre of clay material. I need to ask you
24 this. For the work of the taskforce is this an issue
25 that's been sort of in the too hard basket, do you think?

26 MR LAPSLEY: I don't think it is in the too hard basket.

27 I think the priority works of what we have done have been
28 more, I suppose, tactical in the sense of how to achieve
29 certain things. My opinion of rehabilitation is it is
30 complex and it varies on not only each mine but each part
31 of the mine. You know this and I don't need to tell you

1 and there are other experts who will present this, but
2 there is mine stability, water management, water quality.
3 Then you move into what is then coverage and growth of
4 coverage, that is what is going to be the vegetation
5 coverage or non-vegetation, and therefore what is it that
6 we are protecting.

7 So in that sense I think that discussion is yet
8 to be had in its fullest about how do we get the mines
9 rehabilitated in a way that's successful, knowing that
10 they are all different in an engineering sense. We would
11 be a willing to be a very strong participant in that
12 discussion to make sure that we get a long-term outcome
13 and use of land that is in a conducive way for land
14 management principles but also fire protection and fire
15 prevention principles.

16 CHAIRMAN: You say you would be interested in being a party to
17 it. Who should lead that?

18 MR LAPSLEY: We would look at DEDJTR, so we would look at the
19 regulator to lead it under the current arrangements,
20 whether that's the arrangements in the future, but
21 certainly those that have the - - -

22 CHAIRMAN: That would be the closest equivalent in a broader
23 rehabilitation to your being the start of the supervisor
24 of what's done in relation to fire matters, and presumably
25 you as chair are not able to do much of the groundwork,
26 but you exert the pressure from above to ensure that other
27 people who are your delegates do liaise with the various
28 people who matter.

29 MR LAPSLEY: The bit that's there and I know it will come up in
30 other evidence about the effectiveness of what we are
31 trying to cover, and we all know - and I can take you back

1 to the mine fire itself. We had to bring our own expert
2 panel in that had the understanding of the hydrology of
3 the place, the stability of the place, the engineering of
4 the place, which I think are similar consultants and
5 engineers that probably the TRB has got on board. It is a
6 complex thing and, as I say, and I'm not playing down
7 Anglesea, but I think Anglesea was almost easy in the
8 sense of how to cover it - it was covered in a matter of
9 months and there is only a small part that is not covered
10 today - in what you described earlier on what are the
11 short, medium and long-term arrangements of what it looks
12 like over time in regards to use by the public or not
13 being a risk to the public, so being a safe place or as
14 safe as it can be.

15 The mines in the Valley are different. We know
16 that. Each mine is different. I think each part of a
17 mine could be different. So we need to have expert input
18 and an expert process to ensure that we get this right.
19 It hasn't been part of the taskforce; you are dead right.
20 The terms of reference we haven't extended to audit what
21 is rehabilitation, and if we did we would need expert
22 advice, if the taskforce was to take that on, which it is
23 not in its terms of reference as we know it, however the
24 terms of reference are a little bit broad about overseeing
25 works activities and reviewing what is the fire
26 prevention.

27 CHAIRMAN: Given the limitations of other bodies, the taskforce
28 is at least an existing body that potentially could have
29 its powers extended to deal with matters of this kind.

30 MR LAPSLEY: It could, or something similar to the taskforce.

31 The taskforce, as we currently know it, was planned to

1 finish on December 2015. We have just had ministerial
2 approval by the Minister of Emergency Services to extend
3 it to September 2016 based on some of the works it has not
4 been completed from the 12 recommendations put forward,
5 and also knowing we need to keep an eye on what comes out
6 of this Inquiry in regards particularly to rehabilitation
7 of the mines and whether the taskforce gets a view and
8 understanding of that. So we have extended it or we have
9 been approved to have it extended to September 2016.

10 CHAIRMAN: But it is not unreasonable to say that at least
11 because of the fire issues that are involved the taskforce
12 appears to be as good a starting point than any other.

13 MR LAPSLEY: It does, without a doubt.

14 CHAIRMAN: The Technical Review Board has its problems and so
15 on, GHERG and other options.

16 MR LAPSLEY: What we would need to do, though, is understand
17 that we need additional technical support - - -

18 CHAIRMAN: Yes.

19 MR ROZEN: That would be a convenient segue to the next topic
20 I want to raise with you and that is the new mine fire
21 safety unit which is being set up in DEDJTR. We have only
22 very recently been provided with evidence about this. It
23 is in the third statement of Mr Wilson which I don't think
24 has been coded but the parties will find behind tab 26 and
25 it is in folder 11, I think. We are just getting a copy
26 in front of you, Mr Lapsley. Just while that's coming
27 your way, are you familiar with this very recent
28 development within DEDJTR, the establishment of this mine
29 fire safety unit?

30 MR LAPSLEY: Yes, I am aware of the principles of what's trying
31 to be achieved.

1 MR ROZEN: Mr Wilson summarises the role of the unit at
2 paragraph 6 of his third statement in the following terms.
3 I will just see if this accords with your understanding,
4 "The role of the unit is to lead regulatory, compliance
5 and education activities related to fire safety and to
6 provide advice to earth resources regulation staff,
7 industry and the public. The MFS unit will undertake four
8 ongoing programs to perform its role as set out in
9 question 1(b) below." Then those matters are set out in
10 some detail.

11 MR LAPSLEY: Which paragraph was that, sorry?

12 MR ROZEN: I was reading from paragraph 6 of Mr Wilson's
13 statement which is the top of page 2 of his statement.

14 MR LAPSLEY: Yes, thank you.

15 MR ROZEN: Does that broadly accord with your understanding of
16 the role it is to perform?

17 MR LAPSLEY: Yes, it does.

18 MR ROZEN: Mr Wilson goes on to tell us that the unit will have
19 six staff and a budget of approximately \$1.3 million per
20 annum. So it would appear that that's potentially an area
21 in which a number of the things that we have been
22 discussing can be addressed by people who are regulating
23 on a day to day the mines?

24 MR LAPSLEY: Yes, and not only give it the practical
25 understanding, and my understanding is that the majority
26 of those people will be based in the Valley, so it will be
27 a practical understanding and access to the three mine
28 operators to be able to progress standards and assess
29 against those standards and ensure that the actions that
30 are set out are achieved.

31 MR ROZEN: Without putting another folder in front of you and

1 taking you to another document, Mr Lapsley, but I will if
2 I need to, the Inquiry has the implementation monitor's
3 most recent report, and I'm sure you are familiar with
4 this. This is the October 2015 report. This extract for
5 the benefit of the parties is behind tab 49 in the hearing
6 book. I noted that Ms Doyle said earlier it was her
7 intention at some point to tender the entire document. If
8 she was to do that, then that could replace this extract.

9 But for the present purposes, Mr Lapsley, I just
10 want to read out to you what the implementation monitor
11 says on page 39 of the report. He says, "DEDJTR is also
12 establishing an expert panel to provide technical advice
13 about geotechnical, hydrological and fire risk
14 assessments. The purpose of the panel is to provide
15 high-level advice in relation to these technical areas.
16 This includes identifying the necessary principles and
17 approaches to be applied by licensees in risk assessment
18 and management of industry, the environment and public
19 safety." It goes on to talk about where the experts are
20 to come from and the process by which the panel is to be
21 put together. Is that an initiative that you would
22 support, Mr Lapsley?

23 MR LAPSLEY: Yes, I would.

24 MR ROZEN: How do you think that might assist in taking forward
25 these issues about the interrelationship between
26 progressive rehabilitation and fire risk that we were just
27 discussing?

28 MR LAPSLEY: I think it brings the discussion about
29 the complexity of the mines and those issues I raised
30 before about understanding water management, water access,
31 water quality, stability, the engineering, the

1 understanding of what's the consequence of those issues.
2 Again we go back to Anglesea. Anglesea is so different.
3 It hasn't got road infrastructure that sits right on top.
4 It hasn't got major electrical assets sitting right on top
5 of it. It's a different mine and was achieved so much
6 easier.

7 The Valley is complex. We need to make sure we
8 get the right expert support and ongoing discussion.
9 I think the other thing that is worth noting, my
10 understanding of the six person team is that it is ongoing
11 funding. It is not in a project sense. It is going to be
12 embedded in the organisation, embedded in the Valley to
13 ensure it, and that would be similar with what you are
14 putting forward here, Mr Rozen.

15 MR ROZEN: There are at least two examples in the evidence
16 that's been provided to the Board which underline your
17 observation about the complexity of these issues; that is
18 that fire risk can't be looked at in isolation from other
19 issues. We know, for example, that the quantity of water
20 that was put on to the northern batters of the Hazelwood
21 Mine have had an impact on the stability of the northern
22 batters.

23 MR LAPSLEY: Yes.

24 MR ROZEN: One example. Another example, I think from
25 Mr Sullivan's report - I will be corrected if I'm wrong -
26 is that whilst to cover batters with coal one needs to lay
27 them back as far as one can so that the coverage won't be
28 washed off and so on and will actually remain where you
29 put it.

30 MR LAPSLEY: Yes.

31 MR ROZEN: There is some suggestion that steeper batters might

1 be more stable in the long term. So there is that
2 potential conflict between fire risk, suppression and
3 stability there as well.

4 MR LAPSLEY: Yes. The other observation I have is it's not
5 only complex; you also have a working mine. So at one end
6 it is working, it is operating. At the other end it is
7 not. Again, Anglesea isn't a working mine. It is easier
8 to be able to walk in or take the gear in to do what is an
9 engineering solution to cover the batters.

10 The three mines are working. It is far from my
11 knowledge of how you segregate or separate that
12 non-working from working. But I would suggest it's very
13 difficult to fill them with water when the other end of
14 the mine is still dredging away, providing productive
15 coal. So that balance of working mine/non-working area
16 and that will continue, in my understanding, for some time
17 is one of those issues we are dealing with all the time.

18 MR ROZEN: The complexities don't mean that we just put our
19 heads in the sand. These are issues we have to grapple
20 with.

21 MR LAPSLEY: Yes.

22 MR ROZEN: What you would say, I take it, Mr Lapsley, is that
23 the grappling is something that should be done
24 collaboratively, should involve all relevant stakeholders
25 working together.

26 MR LAPSLEY: Absolutely.

27 MR ROZEN: And would you also agree with me that you would want
28 the regulators, the mines and other interested parties to
29 draw on the very best Australian and also international
30 knowledge and research?

31 MR LAPSLEY: Absolutely, yes.

1 MR ROZEN: Thanks, Mr Lapsley. They are the questions that
2 I have for you. We haven't been notified that anyone else
3 wanted to ask Mr Lapsley a question. That doesn't appear
4 to have been changed. So could Mr Lapsley be excused?

5 CHAIRMAN: Yes, thank you, Mr Lapsley.

6 <(THE WITNESS WITHDREW)

7 MR ROZEN: I note the time, sir, at 10 to 1. I'm about to
8 obviously call a panel of witnesses.

9 CHAIRMAN: It may be best to in effect take an hour from now
10 until 10 to 2 and start again as close as we can to 10 to
11 2.

12 MR ROZEN: Yes, I think that would be acceptable.

13 LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 1.50 PM:

2 CHAIRMAN: Yes.

3 MR ROZEN: If the Board pleases, the next witnesses, there are
4 three, and I see they have diligently come up to the
5 witness box, three senior officers from the Department of
6 Economic Development, Jobs, Transport and Resources,
7 DEDJTR.

8 <JANE ELIZABETH BURTON, affirmed and examined:

9 <LUKE CAMERON WILSON, sworn and examined:

10 <ROSS GREGOR MCGOWAN, sworn and examined:

11 MR ROZEN: In no particular order, could I start with you,
12 please, Mr Wilson. You are the Lead Deputy Secretary,
13 Agriculture, Energy and Resources in the department that
14 we are referring to as DEDJTR?

15 MR WILSON: That's correct.

16 MR ROZEN: You have held your current position since January
17 this year when the department itself was established?

18 MR WILSON: Yes.

19 MR ROZEN: In your statement at annexure 1, and I won't take
20 you to this at the moment, you have set out your formal
21 qualifications?

22 MR WILSON: Yes.

23 MR ROZEN: We don't need to go through those. But you also set
24 out in annexure 1, if I can do it in reverse chronological
25 order, that you have since 2008 held a range of senior
26 positions in the Victorian Public Service?

27 MR WILSON: That's correct, yes.

28 MR ROZEN: Before that, you did a stint holding a senior
29 position in the South Australian Public Service.

30 MR WILSON: Yes, that's correct.

31 MR ROZEN: Earlier again you spent a few years with

1 PricewaterhouseCoopers and earlier again spent some
2 further time in the Victorian Public Service?

3 MR WILSON: In the Commonwealth Public Service.

4 MR ROZEN: In the Commonwealth Public Service, I'm sorry.

5 I won't ask you which is the best public service to work
6 in. It's probably not appropriate. For the purposes of
7 this Inquiry, Mr Wilson, you have made three statements.
8 If we can deal with them one at a time and then we can
9 deal with some corrections that you would seek to make.
10 The first statement you made was a statement dated
11 20 November 2015. Do you have a copy of that in front of
12 you?

13 MR WILSON: Yes, I do.

14 MR ROZEN: For our purposes that is behind tab 12 in the
15 hearing book, Ringtail reference VGSO.1023.001.0001.
16 Before I come back to that, perhaps I can deal with the
17 other statements and then we will do all the corrections,
18 if I may. You have also made a statement dated
19 30 November 2015 which is behind tab 19 of the hearing
20 book and has the Ringtail reference VGSO.1025.001.0001.
21 If you could confirm that you made that statement?

22 MR WILSON: Yes, 30 November.

23 MR ROZEN: 30 November. Then very recently, yesterday, you
24 made a third statement dated 7 December 2015 which is in
25 the hearing book behind tab 26. Can you confirm you made
26 that third statement?

27 MR WILSON: Yes, that's correct.

28 MR ROZEN: I think I'm right in saying that has not been coded.
29 It has now. It is up there. For the record, it is
30 VGSO.1030.001.0001. In your third statement, the one that
31 I have just referred to dated 7 December, you have

1 identified a number of amendments that you seek to make to
2 those first two statements?

3 MR WILSON: That's right.

4 MR ROZEN: Perhaps if I can take you through those and, rather
5 than taking it from the third statement, could I just go
6 to the corrections that you wish to make and you will tell
7 me if I miss any. In your first statement dated
8 20 November, is the first change you wish to make at
9 paragraph 160?

10 MR WILSON: That's correct.

11 MR ROZEN: Is the change that you wish to make to delete what
12 is presently there and to insert the following sentence,
13 "Information was then provided by GDF Suez by email on
14 26 June 2015" - sorry, the following two sentences, and
15 then it goes on, "Energy Australia and AGL Loy Yang
16 discussed the information request with ERR but did not
17 provide the information." Is that the change you wish to
18 make at 160?

19 MR WILSON: Yes.

20 MR ROZEN: Thank you. Is the next change that you wish to make
21 at 174?

22 MR WILSON: Yes.

23 MR ROZEN: The change that you want to make there is to add a
24 number of new sentences as follows. So, immediately after
25 the word "mines" and the full stop in 174 at the end of
26 the paragraph, you wish to add the following, "The bond
27 reform package has not been approved by government. On
28 2 December 2015 the Minister for Energy and Resources
29 announced a new cash rehabilitation bond scheme as an
30 option for eligible mining and extractive operations (see
31 media release at annexure 18 to my statement of 7 December

1 2015). The cash bond options provide an alternative to
2 bank guarantees which will continue to be accepted for
3 operations with an assessed rehabilitation liability of up
4 to \$20,000." Is that the change that you wish to make to
5 that paragraph?

6 MR WILSON: That's correct.

7 MR ROZEN: The next change is in 177?

8 MR WILSON: Yes.

9 MR ROZEN: A nice simple one. You would delete the number "16"
10 and insert "23".

11 MR WILSON: Yes.

12 MR ROZEN: So that the paragraph now reads, "A report is
13 expected to be provided to DEDJTR on 23 December 2015 and
14 can be provided to the Board at that time."

15 MR WILSON: Yes.

16 MR ROZEN: They are the changes that you wish to make to the
17 statement dated 20 November?

18 MR WILSON: That's correct. There was also a minor typo
19 correction in annexure 1 which I think was - - -

20 MR ROZEN: Which is the list of annexures. Sorry, annexure 1
21 being your bio. The change is in the middle of the page,
22 the stint you had between July 2014 and December 2014,
23 Chief Executive Office of Living Victoria.

24 MR WILSON: That's right.

25 MR ROZEN: With those changes, are the contents of your
26 statement of 20 November 2015 true and correct?

27 MR WILSON: Yes.

28 MR ROZEN: I tender that statement.

29 CHAIRMAN: Do you only want that particular statement as
30 exhibit 5 or do you want all three?

31 MR ROZEN: I'm in your hands. We could have 5A, B and C,

1 perhaps.

2 CHAIRMAN: All right. All three together.

3 MR ROZEN: So perhaps if that could be 5A.

4 CHAIRMAN: A, B and C in chronological order. Yes.

5 #EXHIBIT 5A - Statement of Luke Wilson dated 20/11/2015.

6 #EXHIBIT 5B - Statement of Luke Wilson dated 30/11/2015.

7 #EXHIBIT 5C - Statement of Luke Wilson dated 7/12/2015.

8 MR ROZEN: Just to complete the formalities, Mr Wilson, there

9 are also some changes that you wish to make to the second

10 statement, the one dated 30 November 2015?

11 MR WILSON: Yes.

12 MR ROZEN: And the first change is paragraph 6?

13 MR WILSON: Yes.

14 MR ROZEN: And you would delete the date "2008" and replace it

15 with "2009".

16 MR WILSON: Correct.

17 MR ROZEN: The second change is at paragraph 31.2 on page 6 of

18 the statement?

19 MR WILSON: Yes.

20 MR ROZEN: What you would like to do there is delete all of

21 31.2 and replace it with the following, "Commissioning GHD

22 to provide a water balance study titled 'Groundwater

23 impact and management of lignite mining in the Latrobe

24 Valley'."

25 MR WILSON: Yes.

26 MR ROZEN: Just as a point of clarification, annexure 8, which

27 is a study that emerged from Monash University, will

28 remain as part of your statement of 30 November; am

29 I correct in understanding that?

30 MR WILSON: Yes, we can do that. That annexure, the changes

31 I had proposed would have had a consequence of deleting

1 the annexure. That annexure still stands as valid. It
2 was a study not commissioned. It was a work experience
3 student from the university, so it wasn't a peer review
4 piece. It was still a piece of work that did in fact
5 happen. So it can still be entered if that's of interest.

6 MR ROZEN: Yes. I can indicate to you that the board is
7 interested in that remaining part of the materials, but it
8 will now be considered in light of the evidence you have
9 just given about it. Just whilst we are on it, the copy
10 that has been provided to the board, this is annexure 8 to
11 your statement of 30 November, would appear to be an
12 incomplete copy. Have efforts been made to try to locate
13 a complete copy?

14 MR WILSON: Yes, they have, and they are continuing as we
15 haven't yet found one.

16 MR ROZEN: I will ask you to persevere, if you can, and perhaps
17 inform us formally one way or the other if a complete copy
18 does in fact get turned up. The next change is also on
19 that page at paragraph 33.2. You would seek to delete the
20 existing 33.2 and replace it with the following, "Section
21 7 of the GHD water report provided a preliminary review of
22 the long-term stability of the final mine voids relevant
23 to pre-mining aquifer pressures with the proposed
24 overburden placement and considered rehabilitation options
25 including developing pit lakes and additional overburden
26 requirements to stabilise the mine floor." That's the
27 change you wish to make there?

28 MR WILSON: Yes.

29 MR ROZEN: And I think we are nearly there, I'm glad to say.
30 There is one final and simple change on page 9 to
31 paragraph 43. You would seek to change the date

1 "16 December" so that it reads "23 December"?

2 MR WILSON: Yes.

3 MR ROZEN: With those changes to your statement of 30 November,
4 is the statement true and correct?

5 MR WILSON: Yes.

6 MR ROZEN: I think that's already been tendered as 5B.

7 Finally, Mr Wilson, there is the third statement itself,
8 the one dated 7 December 2015. Are there any changes that
9 you wish to make to that statement?

10 MR WILSON: No.

11 MR ROZEN: I will tender that. It is 5C already. Thanks,
12 Mr Wilson.

13 If I can go now to you, please, Mr McGowan. You
14 hold the position of Executive Director Earth Resources,
15 Regulation Branch of DEDJTR?

16 MR MCGOWAN: That's correct.

17 MR ROZEN: You have held that position since 2 February this
18 year?

19 MR MCGOWAN: Correct.

20 MR ROZEN: And your predecessor in that role was Ms Kylie
21 White?

22 MR MCGOWAN: That's right.

23 MR ROZEN: The board of course heard from Ms White in the first
24 Inquiry in Morwell last year. Just out of interest, were
25 you present when Ms White gave her evidence to the first
26 Inquiry?

27 MR MCGOWAN: No, I wasn't.

28 MR ROZEN: You were in a completely different job I think at
29 that time?

30 MR MCGOWAN: I was indeed.

31 MR ROZEN: Your formal qualifications, you have a bachelor of

1 business, is that right?

2 MR MCGOWAN: That's correct.

3 MR ROZEN: Your background is principally in the management of
4 fisheries?

5 MR MCGOWAN: Yes.

6 MR ROZEN: And you held the role of Executive Director of
7 Fisheries Victoria immediately before you took up your
8 current role. How long were you in that position?

9 MR MCGOWAN: About two and a half years, I think.

10 MR ROZEN: Before that, you held the position of Executive
11 Director of the Seafood Industry Association for a decade
12 or so?

13 MR MCGOWAN: Yes.

14 MR ROZEN: Immediately before that you had a number of policy
15 positions in the Justice area?

16 MR MCGOWAN: Correct.

17 MR ROZEN: And having started your career, I see, as a clerk of
18 courts back in the 80s?

19 MR MCGOWAN: That's right.

20 MR ROZEN: For completeness, you have attached your CV as
21 annexure B to your statement.

22 MR MCGOWAN: Correct.

23 MR ROZEN: And your statement that you made to the Inquiry is
24 dated 4 November 2015 and it can be found behind tab 5 in
25 the hearing book, VGSO.1019.001.0001. Have you had a
26 chance to read through the statement before coming to
27 court today?

28 MR MCGOWAN: Yes, I have.

29 MR ROZEN: Is there anything that you would like to change in
30 that statement?

31 MR MCGOWAN: No.

1 MR ROZEN: I'm very relieved to hear that, Mr McGowan. The
2 contents of the statement are true and correct?
3 MR MCGOWAN: That's right.
4 MR ROZEN: I tender Mr McGowan's statement, please.
5 #EXHIBIT 6 - Statement of Ross McGowan dated 4/11/2015.
6 MR ROZEN: Ms Burton, welcome back. I think you gave evidence
7 to us in the Anglesea term of reference, from memory?
8 MS BURTON: Yes, I did.
9 MR ROZEN: You are the Director of Coal Resources at DEDJTR?
10 MS BURTON: That's correct.
11 MR ROZEN: That's a position you have held since December 2014?
12 MS BURTON: August, I think.
13 MR ROZEN: You are more likely to know than me. Yes, August.
14 Thank you. Your formal qualifications are actually listed
15 in an attachment to Mr Wilson's statement of 30 November,
16 annexure 6. Have you had a chance to look at that
17 document?
18 MS BURTON: Yes, I have.
19 MR ROZEN: I don't think I need to take you to it at the
20 moment. You have held a variety of senior positions in
21 the Victorian Public Service relating to coal, if I can
22 use that general descriptor, since 2010?
23 MS BURTON: Yes, that's correct.
24 MR ROZEN: And before that you held some senior positions
25 within the Latrobe City Council as well as other councils?
26 MS BURTON: Yes, Latrobe City Council.
27 MR ROZEN: You also before that were working at Monash
28 University in a research role?
29 MS BURTON: Much before, yes.
30 MR ROZEN: You are a local, I think, as well; is that right?
31 You live in the Valley?

1 MS BURTON: Yes, I live close to the Valley.

2 MR ROZEN: Not on the moon, as Melbourne was described earlier.

3 MS BURTON: No, that's right.

4 MR ROZEN: You haven't actually provided the Inquiry with a
5 statement, but you have been kind enough to come along and
6 give evidence, principally because of the role that you
7 have already told us about as described in Mr Wilson's
8 statement of 30 November, specifically paragraphs 6 to 44.
9 Without necessarily taking you to those, have you had a
10 chance to read through what Mr Wilson says about you?

11 MS BURTON: Yes, I have.

12 MR ROZEN: Do you agree in general terms about his description
13 of your role and the work you have done whilst with the
14 department?

15 MS BURTON: Yes, I do.

16 MR ROZEN: Thank you. With that rather lengthy introduction,
17 if I can perhaps start by asking a general question of
18 you, Mr Wilson. Perhaps if I can do it by reference to
19 one of the annexures to your statement, and this is in
20 annexure 9. This is the most recent report from the
21 Technical Review Board. It's at DEDJTR.1020.001.1179. Do
22 you have that in front of you?

23 MR WILSON: Yes, I do.

24 MR ROZEN: Can you just confirm for us, and I'm pretty sure you
25 say this in your statement, that the Technical Review
26 Board is the principal source of geotechnical and
27 hydro-geological advice provided both to the minister and
28 to the department?

29 MR WILSON: Yes, that's correct.

30 MR ROZEN: And the board itself I think has existed since 2009;
31 am I correct?

1 MR WILSON: The commencement date I can't recall. It's in my
2 witness statement. But certainly for some years.

3 MR ROZEN: It came into existence following the mining warden's
4 report into the Yallourn batter collapse?

5 MR WILSON: Yes.

6 MR ROZEN: And it provides an annual report and you have very
7 helpfully provided to us copies of the annual reports
8 going back to 2011. I want to ask you about what appears
9 on page 14 of the most recent annual report of the TRB.
10 You will see in the middle of the page, and this is
11 DEDJTR.1020.001.1196 - do you have page 14 in front of
12 you?

13 MR WILSON: Page 14 is a blue page. It only goes to 13.

14 MR ROZEN: I think I have an earlier version. Can you find the
15 heading "Rehabilitation"?

16 MR WILSON: Yes.

17 MR ROZEN: Just to confirm, does it start, "The TRB has been
18 reporting since 2012"?

19 MR WILSON: Yes, that's correct.

20 MR ROZEN: It goes on, "But it considers the original measures
21 proposed for the rehabilitation of the Latrobe Valley
22 brown coal mines fall well short of what could reasonably
23 be considered as adequate."

24 MR WILSON: Yes, that's correct.

25 MR ROZEN: It's a correct statement, isn't it, that that's what
26 the board has been telling the department since 2012?

27 MR WILSON: Yes.

28 MR ROZEN: Do you agree with the content there, that the
29 original measures proposed for rehabilitation of the mines
30 fall well short of what could reasonably be considered as
31 adequate?

1 MR WILSON: Yes, I would say in the current context that's a
2 fair conclusion.

3 MR ROZEN: The board goes on, as it has done in previous
4 reports it has provided to the minister and to the
5 department, to call for immediate action. "Immediate" is
6 the word we see going back to 2012. In general terms, how
7 has the department responded to that call from its
8 principal technical adviser on this topic?

9 MR WILSON: I can answer that in relation to the period I have
10 been involved, which is this year. It is hard for me to
11 give a characterisation prior to that. But the usual
12 response is this information or the TRB's advice or indeed
13 other is then framed into advice to government. That's
14 obviously a fairly standard role for us to play. I would
15 expect that that would have been the case in the past, but
16 I can't necessarily vouch for that.

17 MR ROZEN: These are my words and you don't have to agree with
18 them, but one reads the reports going back to 2012 and
19 there would appear to be a degree of frustration in the
20 way this topic is referred to and they come back to it and
21 they tell government that they have been raising this now
22 for a number of years. Is that a fair characterisation,
23 that one senses a degree of frustration coming from the
24 board?

25 MR WILSON: I would have to check with the board whether
26 frustration was fair to their characterisation, but
27 certainly they have been repeating the statement and the
28 way it is written here is quite pointed, presumably to
29 make the point you are raising, and that's certainly the
30 way I'd read it.

31 MR ROZEN: Has government and the department responded

1 adequately, do you think, to those - they are clarion
2 calls, really, aren't they, for action?

3 MR WILSON: Certainly this most recent report is, and that's
4 the one that's come to me and whilst I've been here, and
5 certainly, as I think some of the other content in the
6 witness statement shows, we are currently acting on this
7 issue.

8 MR ROZEN: I will take you to the detail. But can you just
9 indicate to the board in general terms how you are acting
10 on that issue?

11 MR WILSON: The various work programs that are described in the
12 witness statement basically revolve around the bond
13 project, but also some broader work going on, not just
14 about what's the right amount of a bond, but also work
15 that will frame advice to government about what's the
16 right role for bonds. So this is getting into policy
17 advice as opposed to the more mechanical parts. How do
18 you frame them, what are the expectations of bonds, what
19 is the objective of rehabilitation? Then that ends up
20 when that's completed, that becomes advice to government.

21 MR ROZEN: I'm not concerned at the moment with the topic of
22 bonds, although I accept there is some overlap between
23 bonds and rehabilitation generally. The board has taken
24 the view that it would like to separate the two topics, as
25 I think you are aware, and I think you have been kind
26 enough to say you'll come back and deal with bonds next
27 week, next Monday.

28 MR WILSON: Yes.

29 MR ROZEN: But I want to just try and drill down a little bit
30 into the responses to these calls for action from the TRB.
31 You said that you really are only in a position to

1 describe responses that have occurred since you have been
2 in the role. Have you not made enquiries of departmental
3 officers about what has happened earlier?

4 MR WILSON: Yes, I have done that, and obviously the records
5 provide information, as we can see here, as to what's
6 happened. What I guess I have to say is I wasn't privy to
7 all the conversations, so I can't quite describe exactly
8 how decisions were landed or not. But certainly at the
9 moment we are - I mentioned then the bonds, but on the
10 rehabilitation, our work around work plans, work plan
11 variations and the move into risk based work plans is
12 certainly part of that move around rehabilitation, because
13 it is obviously a live and ongoing issue.

14 MR ROZEN: Is a recent example of that work or the response
15 from the department the conditions on which the Loy Yang
16 approval for the variation was granted?

17 MR WILSON: That's one example, yes.

18 MR ROZEN: I will come back to it, but I just want to get a
19 sense of the general position. Mr McGowan, can I just
20 clarify, do you answer to Mr Wilson? Are you a direct
21 report to Mr Wilson? Is that the structure?

22 MR MCGOWAN: Not a direct report. I have a deputy secretary
23 who I report to, who then reports to Mr Wilson.

24 MR ROZEN: So there is a reporting layer between you.

25 MR MCGOWAN: Correct.

26 MR ROZEN: But you effectively head up the regulator; is that a
27 fair description of your position?

28 MR MCGOWAN: I think so, yes.

29 MR ROZEN: From that perspective, can you add anything to what
30 Mr Wilson has said at the sort of general level of how the
31 regulator has been responding to these annual concerns

1 that have been raised by the TRB?

2 MR MCGOWAN: I think more broadly since the establishment of
3 the Economic Development, Jobs, Transport and Resources
4 Department we have gone down the pathway of reforming the
5 regulator and I think Mr Wilson's covered that in his
6 statement with respect to some of the matters that may
7 have been raised previously and not necessarily addressed.

8 MR ROZEN: Mr Wilson, can I ask you, please, to go to your
9 first statement, exhibit 5A? This is the statement of
10 20 November. Could you go, please, to paragraph 63?

11 MR WILSON: Yes.

12 MR ROZEN: Just so the context is clear, and you will correct
13 me if I'm wrong about this, but an initial statement was
14 provided to the board by Mr McGowan dealing with a range
15 of issues that had been raised by the board with DEDJTR
16 about the role of the regulator.

17 MR WILSON: That's right.

18 MR ROZEN: The Secretariat to the Inquiry wrote back to the
19 department raising concerns about the depth in which
20 matters had been dealt with in Mr McGowan's statement and
21 setting out a number of specific questions that the board
22 wanted answered. Question 6 is one of the questions we
23 see there in the middle of the page, page 12. That's one
24 of the questions that you were asked to address in that
25 letter?

26 MR WILSON: Yes.

27 MR ROZEN: The response from the department was to provide to
28 the board this statement, your statement dated
29 20 November?

30 MR WILSON: Yes.

31 MR ROZEN: You were asked a range of questions about the way in

1 which the department had carried out its function of
2 approving work plans generally and rehabilitation plans
3 specifically?

4 MR WILSON: Yes.

5 MR ROZEN: We can see that question 6 was, "Have any changes
6 ever been sought by DEDJTR for rehabilitation plans of the
7 mines and, if so, please detail." If I can just skip over
8 paragraphs 63 and 64 and just go to the heading
9 "Yallourn"; do you see that towards the bottom of the
10 page, paragraph 65?

11 MR WILSON: Yes.

12 MR ROZEN: What you are here describing is a relatively recent
13 example of interaction between the department and one of
14 the mines concerning an application for a variation to its
15 work plan and specifically in relation to its
16 rehabilitation plan; is that right?

17 MR WILSON: That's correct.

18 MR ROZEN: Obviously it predates a more recent example of Loy
19 Yang, but I just want to deal with this as an example, if
20 I could. What you say at 65 is the former department
21 approved the work plan variation in May 2011 to undertake
22 work in the Maryvale Field, subject to a number of
23 conditions. If we can skip over the first three
24 conditions that you have referred to there and if we can
25 go to paragraph 65.4 at the top of the page, the next
26 page, "Condition 7 required the licensee to undertake a
27 review of the Yallourn rehabilitation master plan
28 regarding the feasibility of the flooded mine scenario
29 versus other alternatives within 12 months of the
30 approval." If I can just stop there in the reading,
31 that's an example, is it not, of the department wanting to

1 convey to one of the mines, in this case Yallourn, that
2 it's time to put a bit of flesh on the bones of these
3 rehabilitation plans, to get a bit of serious research and
4 technical work done examining their feasibility?

5 MR WILSON: Yes, that's correct.

6 MR ROZEN: Going back to the paragraph, it then sets out
7 specifically what condition 7 required the review to
8 address. It dealt with a number of issues which have been
9 raised by consultants and others over the years involving
10 long-term water balance studies, stability of batters, the
11 minimisation of floor heave, strategic use of overburden
12 and then the final dot point, "Advantages and
13 disadvantages of the flooded versus non-flooded mine
14 scenarios regarding progressive rehabilitation
15 opportunities." That was the request or the condition
16 that was imposed on Yallourn to do that work within a
17 year?

18 MR WILSON: Yes.

19 MR ROZEN: The department's expectation was that that would be
20 a serious bit of technical work that was done addressing
21 those matters and hence a pretty generous timeframe was
22 given to do it; would you agree?

23 MR WILSON: I'm probably not qualified to describe whether
24 12 months is generous or not, but it is certainly an
25 appreciable amount of time.

26 MR ROZEN: If you go over to paragraph 90 of the same
27 statement, please, Mr Wilson, you note there in the second
28 sentence that the review that was sought in condition 7
29 was provided to DEDJTR in 2012, so in the following year.

30 MR WILSON: Yes.

31 MR ROZEN: In your third statement, if I could ask you to go to

1 that now, please, exhibit 5C, in paragraph 34 you are
2 there referring - correct me if I'm wrong - to the same
3 review, that is the review that was provided in response
4 to condition 7?

5 MR WILSON: Paragraph 34 is around payments. This is in the
6 third statement?

7 MR ROZEN: The statement dated 7 December 2015?

8 MR WILSON: Sorry, yes. I have it here.

9 MR ROZEN: Do you have that? It has question 2, "If so,
10 provide a copy" and so on.

11 MR WILSON: Yes, the document obtained from EA?

12 MR ROZEN: Yes. It's the same document, isn't it, that was
13 provided in response to condition 7?

14 MR WILSON: I would need to check that. It looks as if it is,
15 but I would need to be able to verify it.

16 MR ROZEN: It says, doesn't it, "The review is set out in TRU
17 Energy Yallourn Pty Ltd document review of Yallourn Mine
18 rehabilitation master plan MIN 5003 work plan variation
19 condition 7 (the Yallourn review)."

20 MR WILSON: Yes, it does look to be the correct reference.

21 MR ROZEN: As you note, the board had been provided with that
22 by Energy Australia and that's what I would like to take
23 you to now. I think the simplest way to do it is to note
24 that it is an attachment to the statement of Mr Mether.
25 It is paragraph 179 of Mr Mether's statement. The coding
26 is EAY.0001.002.0237. It is in volume 6 of the hearing
27 book which I think will be handed to you in a moment. You
28 should I hope have in front of you, Mr Wilson, a TRU
29 Energy Yallourn Pty Ltd document "Review of Yallourn Mine
30 rehabilitation master plan", and then at the bottom "Work
31 plan variation condition 7, 5 June 2012".

1 MR WILSON: Yes.

2 MR ROZEN: Is that the document that we have just been
3 discussing, or a copy of it?

4 MR WILSON: Yes, it looks like that. Yes.

5 MR ROZEN: Could you turn to the first page with writing on it
6 that's headed "Introduction"?

7 MR WILSON: Yes.

8 MR ROZEN: Do you see there's a heading "Background"?

9 MR WILSON: Yes.

10 MR ROZEN: And the second paragraph reads, "Non-flooding,
11 partial flooding and full flooding options have been
12 considered by TRU Energy Yallourn. However, the full
13 flooding scheme remains the preferred option available to
14 the organisation. Under this scenario, a final lake level
15 of RL 37 metres is planned." Do you see that there?

16 MR WILSON: Yes, I do.

17 MR ROZEN: Then it goes on, "Concerns relating to the
18 rehabilitation flooding of the Latrobe Valley coal mines
19 have been raised over the past decade. In a major
20 assessment of the potential development of the Latrobe
21 Valley coal fields in this century" - and there is a
22 reference to a GHD report from 2004 - "a range of issues
23 were identified, including the management of adverse
24 aquifer pressures, groundwater contamination, lake water
25 quality, potential for acid mine drainage, impact of wave
26 action and the availability of water to fill the mines."
27 If I can just stop there, they are issues that have been
28 referred to and discussed in various reports prepared by
29 the mines and commissioned by the department over a number
30 of years now?

31 MR WILSON: That's correct.

1 MR ROZEN: The purpose of this report was to get a bit of
2 science around trying to answer some of those or address
3 some of those issues; is that the intention of the
4 condition?

5 MR WILSON: For the purpose of this mine, yes.

6 MR ROZEN: Yes, I understand that. Then the next paragraph.

7 "DPI" - that is DEDJTR's predecessor - "facilitated the
8 establishment of various projects to research some of the
9 technical issues raised. However, TRU Energy Yallourn is
10 not aware that any of these efforts have led to any major
11 conclusions or recommendations as yet."

12 Then if you could please turn over to the
13 conclusion of this report, which is on page 11. You will
14 see the page numbers in the bottom right-hand corner.

15 MR WILSON: Yes.

16 MR ROZEN: About a third of the way down, you see a paragraph,

17 "It is recognised that other criterion or frameworks may
18 be identified by DPI to assess the remedial options. TRU
19 Energy Yallourn is keen to work with DPI if any such
20 refinements are required. However, at this stage the
21 analysis clearly confirms the advantages of the flooding
22 option when compared to the non-flooding option with
23 respect to progressive rehabilitation and other criteria."

24 The last thing I want to ask you about is under
25 the heading "Conclusion" towards the bottom of the page.
26 "TRU Energy Yallourn has recently commenced further work
27 to better quantify the geotechnical design requirements of
28 our preferred fully flooded mine rehabilitation option.
29 What remains critical for TRU Energy Yallourn is ensuring
30 that the currently approved RMP" - rehabilitation
31 master plan, is that what that stands for?

1 MR WILSON: Yes.

2 MR ROZEN: "Is re-affirmed by the DPI and that more certainty
3 regarding our access to water resources can be gained,
4 thus leading to the confidence to pursue additional
5 studies aimed at resolving the remaining challenges."
6 Then it concludes, "We look forward to your response to
7 this submission and remain prepared to work closely with
8 DPI to achieve a good result for all stakeholders."

9 Would you agree with me that Yallourn Energy was
10 looking to the department for some certainty, for example
11 about access to water, in order for them to continue to do
12 the work answering these technical issues?

13 MR WILSON: That's certainly I think what that sentence is
14 suggesting, yes.

15 MR ROZEN: The page as a whole makes several references which
16 are really in the form of invitations to the department to
17 identify things, to communicate back to the mine about its
18 attitude about things so that this very important work of
19 sorting out whether or not this rehabilitation plan at
20 Yallourn is actually truly workable can continue to be
21 done; would you agree with that?

22 MR WILSON: Yes, I think that's a fair characterisation.

23 MR ROZEN: In your statement, the one I just took you to, your
24 third statement at paragraph 35, after referring to that
25 report, you say this, "There is no correspondence between
26 DEDJTR and Energy Australia or TRU Energy dealing with
27 the content of the Yallourn review."

28 MR WILSON: Yes.

29 MR ROZEN: Is that really the position, that the department
30 received that report in the middle of 2012 containing
31 requests and invitations for engagement, looking for

1 certainty about, for example, access to water, and there
2 was nothing that went back to Yallourn Energy?

3 MR WILSON: Certainly no correspondence that we could find.

4 MR ROZEN: Are you able to tell the board that there were
5 meetings with Yallourn Energy that addressed the issues
6 they raised?

7 MR WILSON: I don't know that. I would have to make further
8 enquiries to find that out.

9 MR ROZEN: Is that acceptable, Mr Wilson, that there was no
10 response to that report?

11 MR WILSON: If indeed there was no response at all, I wouldn't
12 accept that. I just don't know whether that's the case.

13 MR ROZEN: Let's assume for the sake of the question that it is
14 the case, and I'm sure that the board will be told if it
15 is not, but let's assume it is the case. I suggest to you
16 that's quite derelict on the part of the department not to
17 have responded at all to a report of that nature.

18 MR WILSON: I would agree that if there was no response at all,
19 and it would surprise me if there was nothing of any
20 nature, but if that were the case, then, yes, I wouldn't
21 accept that in my position.

22 MR ROZEN: Have you made enquiries about whether or not there
23 was any response?

24 MR WILSON: Only to the extent of looking for any formal
25 correspondence back and forth. I would have to go back
26 and verify were there any other records of other meetings.

27 MR ROZEN: I would ask you to do that and formally, please,
28 advise the board through your lawyers whether or not those
29 searches turn anything up. Would you agree with me,
30 Mr Wilson, that the non-response, if in fact there was
31 none, puts Yallourn in a difficult position, doesn't it,

1 in knowing whether it should advance and continue to do
2 the work that's envisaged in the report?

3 MR WILSON: Yes, well, certainly if there were no response at
4 all, which would imply not even a conversation, which
5 would be a surprising position, but if that were the case
6 I would expect Yallourn to have been on the phone directly
7 to one of my predecessors. But I can't imagine that they
8 would have been happy with that proposition if that were
9 in fact the case.

10 MR ROZEN: You see, maybe it's just me, Mr Wilson, but what
11 seems perplexing is that it was the department that
12 initiated the need for the report to be done by imposing
13 condition 7. The department set the process rolling and
14 then when it gets the report it seems, on the evidence
15 before the board, it does nothing with it.

16 MR WILSON: I'm not sure there's a question there, but I would
17 comment that in the other parts of the witness statements
18 there are other studies around water and rehabilitation
19 and other communications around rehabilitation with all
20 the mines. So they may not have been as a causal link to
21 condition 7, but clearly those conversations have gone on.
22 But, as I've said before, I can't verify right on the spot
23 now was there a specific meeting to follow up that
24 specific point. I'm not sure.

25 MR ROZEN: Just before leaving this report, I think you have
26 already agreed with me that the issues raised about water
27 access, about water quality, about batter stability in the
28 event of flooding the mine, they are not new issues, they
29 have been around for a number of years, and they are
30 issues that have to be resolved, don't they, for the
31 existing rehabilitation plans to be operationalised? Do

1 you agree with that?

2 MR WILSON: Yes, I do. They would be, yes.

3 MR ROZEN: And this question of access to water is one of the
4 central questions that arises in this area.

5 MR WILSON: Yes, it does arise in quite a number of the
6 studies.

7 MR ROZEN: I want to take you to one final document on this
8 topic, and it's a letter that has been provided to the
9 board by Southern Rural Water. It is a letter dated
10 24 August 2015. It is in volume 10 at tab 24. It is an
11 attachment to the statement of Mr Rodda. It's referred to
12 at paragraph 47. Just whilst that's being provided to
13 you, Mr Wilson, we discussed earlier the recent work plan
14 variation that has been approved for Loy Yang?

15 MR WILSON: Yes.

16 MR ROZEN: As part of assessing the application for the
17 variation of the work plan, the department corresponded
18 with Southern Rural Water to get its input into the
19 department's assessment of the application?

20 MR WILSON: Is that correct?

21 MR McGOWAN: Yes.

22 MR WILSON: Yes.

23 MR ROZEN: Sorry, I should perhaps more appropriately direct it
24 to Mr McGowan. That is the case, is it not?

25 MR McGOWAN: I believe so, yes.

26 MR ROZEN: It may be, Mr McGowan, this is a question better
27 directed at you, Mr Wilson. Perhaps I will ask it and you
28 can decide amongst yourselves who is best placed to answer
29 it. Do you have in front of you the letter addressed to
30 Ms Bignell in your branch, Mr McGowan?

31 MR McGOWAN: Yes, I do.

1 MR ROZEN: It is a letter dated 24 August. It is clear from
2 reading it that your department has asked for input from
3 Southern Rural Water concerning the proposed work plan
4 variation for mining licence 5189, which is the AGL
5 licence for Loy Yang; is that right?

6 MR McGOWAN: That's correct.

7 MR ROZEN: Why did you seek the input of Southern Rural Water?

8 MR McGOWAN: Because that would be our normal practice when
9 doing work plan variations.

10 MR ROZEN: But why specifically here? What is Southern Rural
11 Water's role in relation to Loy Yang?

12 MR McGOWAN: They would have a role with respect to groundwater
13 and matters associated with water in the area.

14 MR ROZEN: But they licence Loy Yang to get access to
15 groundwater, do they not?

16 MR McGOWAN: Yes, that's correct.

17 MR ROZEN: When you say it is normal practice for water
18 authorities to be asked to comment on work plan
19 variations, how far back does that practice date, to your
20 knowledge?

21 MR McGOWAN: I can't put a timeframe on it, but I would have
22 thought with respect to mines of this size and
23 understanding, as you have already alluded to, the
24 technical nature of the mines, that we would consult quite
25 broadly with other agencies with expertise in this area.

26 MR ROZEN: Your branch knew and you knew, didn't you, that when
27 you wrote this letter to Southern Rural Water it was the
28 proposal in the AGL variation document to use its existing
29 water entitlements as a source of water to flood the Loy
30 Yang Mine?

31 MR McGOWAN: That's one of the proposals, yes.

1 MR ROZEN: And that was one of the issues that Southern Rural
2 Water was asked to comment on, is it not?
3 MR MCGOWAN: As I understand it.
4 MR ROZEN: If you look at the bottom of page 2 of the letter,
5 the last dot point there, second dot point under the
6 heading "Other matters", they address that issue, don't
7 they?
8 MR MCGOWAN: Yes, it does.
9 MR ROZEN: Can you read that second sentence?
10 MR MCGOWAN: It says, "In addition, current bulk entitlement
11 from the Latrobe system does not allow water use for mine
12 flooding."
13 MR ROZEN: The proposal from Loy Yang, and I'm reading it, "The
14 current concept is based on all existing water licences
15 entitlements being available to flood the pit." Is that
16 your understanding of the proposal that Loy Yang were
17 putting up to the department?
18 MR MCGOWAN: I believe so.
19 MR ROZEN: The variation was granted, albeit subject to a
20 number of conditions which I will take you to in a moment.
21 But how does the board marry those two? How does the
22 board marry approval for Loy Yang for a rehabilitation
23 plan that assumes it can use its existing water
24 entitlements as part of rehabilitation and advice to the
25 department from the licensor that that water is not
26 allowed to be used for mine flooding?
27 MR MCGOWAN: On the face of it, it would appear that they
28 contradict each other, but over time application of water
29 from particular water authorities and particular companies
30 changes. So, at the end of mine life I would have thought
31 there would have been conversations with respect to the

1 use of water and the use of entitlements and perhaps the
2 use of those entitlements for other matters, including
3 mine flooding.

4 MR ROZEN: We can't wait until the end of mine life for that
5 conversation to occur, can we, Mr McGowan?

6 MR MCGOWAN: We can start those discussions now, of course, and
7 the company can start those discussions.

8 MR ROZEN: Can I just take that a step further, if I may. How
9 are those conversations going to occur? What's envisaged
10 by the department in getting past this impasse? Perhaps
11 if I can help you. Is that what's envisaged by the
12 conditions that were attached to this variation
13 application about the need for AGL to put in water plans?

14 MR MCGOWAN: I would have to refer to the conditions. In terms
15 of the conditions that were signed off by the secretary of
16 the department, 6.11 deals with, "The licensee must by no
17 later than completion of stage C of the work plan
18 variation obtain and provide evidence to the department
19 that it has obtained the necessary licences or contracts
20 for the quantity of water that will be applied to achieve
21 the key objectives set out in section 6.2 of the work plan
22 variation, not represent, submit or state that approval by
23 the department of the work plan variation represents the
24 granting of a right to the licensee to use water from
25 aquifer or surface sources for the purposes of mine
26 rehabilitation."

27 MR ROZEN: Wouldn't the more prudent course have been to reject
28 the variation application pending those conversations
29 occurring and an outcome consistent with the proposal
30 emerging from those conversations?

31 MR MCGOWAN: That may have been one way of dealing with it.

1 MR ROZEN: Why isn't that the way it was dealt with?

2 MR McGOWAN: The department decided we would put conditions on
3 the licence and ensure that those conditions are complied
4 with by the licensee.

5 MR ROZEN: The other issues that are raised in the Southern
6 Rural Water letter are also very significant ones too, are
7 they not? I'm referring specifically to the three dot
8 points under the heading "Mine closure" on that second
9 page. Do you see that what they said to the department
10 was, "The work plan variation" - I'm reading from
11 the first dot point - "indicates that mine closure
12 incorporates flooding of the final mine void. This
13 process may take in excess of 85 years and includes the
14 use of all existing water licences, surface water and
15 groundwater for an extended period as the initial water
16 sources avoid filling. Subsequent filling appears to rely
17 on water obtained from surrounding catchments that would
18 otherwise flow to the Latrobe River. There are a
19 significant number of risks related to the long-term
20 availability of water for mine void filling and potential
21 consequent impacts on regional water resources to achieve
22 the proposed mine rehabilitation plan which are not
23 addressed in the plan." Do you see that?

24 MR McGOWAN: Yes, I do.

25 MR ROZEN: What steps did the department take to see that those
26 matters raised there were addressed in the plan before it
27 was approved?

28 MR McGOWAN: Again I would say the licensee - the condition
29 6.11(a) would deal with that matter.

30 MR ROZEN: So the work that Loy Yang has to do as set out in
31 the conditions is the department's response to addressing

1 those matters.

2 MR MCGOWAN: At this point, yes.

3 MR ROZEN: The second dot point, "The rehabilitation plan does
4 not address potential water quality management issues
5 during and post mine filling. The water quality
6 objectives for the void lake, the maintenance of water
7 quality given exposed coal batters and a closed system
8 water environment for many years of filling and potential
9 risks to groundwater quality through interconnection
10 between the pit lake and aquifers exposed within the mine
11 void are not addressed in the work plan variation."

12 Firstly, that's correct, isn't it? Those matters are not
13 addressed in the work plan variation?

14 MR MCGOWAN: Yes, that's correct.

15 MR ROZEN: And once again do you point the board to that same
16 condition as the way the department has responded to the
17 concerns in this letter?

18 MR MCGOWAN: I would also take you further to 7.1 which refers
19 to water resources schedule 15 that states, "The water
20 resources risk assessment must be to the satisfaction of
21 the department head. The water resources risk assessment
22 must as a minimum include local catchment and regional
23 assessment of risks to surface water and groundwater
24 resources and natural ecosystem services, and be
25 undertaken in accordance with section 6.8 of the Gippsland
26 regional sustainable water strategy."

27 MR ROZEN: Thank you. The conditions that you are referring to
28 are replete with requirements that assessments be carried
29 out to the satisfaction of the department head; would you
30 agree with that?

31 MR MCGOWAN: That's correct.

1 MR ROZEN: And in a number of cases they are things that have
2 to happen several years in the future to the satisfaction
3 of the department head.

4 MR McGOWAN: That's correct.

5 MR ROZEN: How is AGL to know what criteria will be applied in
6 determining whether the various plans and assessments are
7 acceptable to the department head?

8 MR McGOWAN: We would as a regulator actively engage with AGL
9 to work through the issues and assist where we could to
10 resolve those matters.

11 MR ROZEN: Thank you. If we can change topics and I can ask
12 you some questions about the issue of fire risk at the
13 mines. I think the three of you were in the hearing room
14 when Mr Lapsley gave his evidence earlier today. This is
15 probably a question for you, Mr McGowan. The new mine
16 fire safety unit which is explained in Mr Wilson's third
17 statement, exhibit 5C, can you bring the board up to date
18 as of today on where things are at in terms of appointing
19 people to positions?

20 MR McGOWAN: Yes. Thank you. We have conducted a range of
21 interviews. I think five or six interviews were conducted
22 not last week, the week before. Until I was advised by
23 you that I'm required here next Monday, I was conducting
24 more interviews on Monday of next week to complete the
25 process.

26 MR ROZEN: So it's my fault, Mr McGowan? Sorry, I couldn't
27 resist that. Go on.

28 MR McGOWAN: So we are actively recruiting and going through an
29 interview process as we speak, literally.

30 MR ROZEN: The role of the unit or the proposed role of the
31 unit is set out in some detail in Mr Wilson's third

1 statement. I just want to ask you about one aspect of it.
2 Do you, Mr Wilson, have your third statement handy? If
3 you could go to paragraph 7.2(b).

4 MR WILSON: Yes.

5 MR ROZEN: There on page 3. You are here setting out very
6 helpfully for us the proposed work program for the unit.
7 At 7.2 you refer to the continuous improvement program
8 that the unit will undertake. I'm interested in (b), that
9 "Part of the role of the unit will be to undertake a
10 desktop assessment of international and national best
11 practice approaches for the prevention, mitigation and
12 suppression of fire in earth resources industry sites."

13 My question is why is it limited to a desktop
14 assessment? It seems like a very important bit of work,
15 but why desktop?

16 MR WILSON: It is normal for us to specify desktop particularly
17 as the starting point, because the question will be, "Why
18 don't you go overseas and see for yourself?" This is a
19 sorting system where we say, "Start with the desktop
20 because you get a lot of resources without having to
21 travel around." But I would expect that after that piece
22 of work the team would come back and say, "Here's some
23 best practice or some things that we think we need to
24 learn from or develop." They may well then put a
25 recommendation to us to say, "There are some things that
26 we should now go and see." It is an ordering system just
27 to control the way the effort is directed.

28 MR ROZEN: The trawling to see what's out there in terms of
29 coal mine fires and their suppression started in the midst
30 of the fire last year, didn't it? We went and tried to
31 find out how to put fires like these out and in the

1 process is it fair to say that we found there's not
2 necessarily much out there, that it was a rather unique
3 circumstance that Victoria faced last year?

4 MR WILSON: I believe that's correct, yes.

5 MR ROZEN: I'm not seeking to downplay the importance of the
6 work that we are talking about here, but it's a reality,
7 isn't it, that the unit will have to do a lot of this
8 starting from first principles?

9 MR WILSON: Yes, I would expect it would need to do that.
10 Clearly there's not a lot of brown coal experience around
11 the world.

12 MR ROZEN: You may recall I asked Mr Lapsley, gave him two
13 examples of the complexities of this topic; that is, the
14 interaction between fire suppression and batter stability,
15 for example, is a live issue which means that one can't
16 look at fire or the mitigation of fire in isolation from
17 other matters?

18 MR WILSON: Yes, I think that's correct, both the mitigation
19 and the planning for it. Yes.

20 MR ROZEN: It is probably a question for you, Mr McGowan. The
21 interaction between this unit and other agencies, so, for
22 example, WorkSafe have a role in relation to the
23 management of fire risk as part of their OHS
24 responsibilities; we have the taskforce that Mr Lapsley
25 will head up at least until next September. Has much
26 thought be given to how those interactions are going to
27 work or is that an ongoing task within the department?

28 MR MCGOWAN: There has certainly been - I'm a member of
29 Mr Lapsley's taskforce. We have significant interaction
30 both with Emergency Management Victoria but also CFA,
31 WorkSafe, EPA. The recommendations coming out of the

1 first Inquiry certainly led us to a conclusion that we had
2 to improve our approach and the way in which we
3 collectively did our work together. That is a matter that
4 will continue on, as you indicated. We also have a range
5 of instruments between WorkSafe, EPA, Energy Safe Victoria
6 about how we do business and that is I guess an area for
7 improvement. As came out of the previous Inquiry, that's
8 something that we have been working on and have been
9 I guess not complimented, but got a tick from the
10 implementation monitor.

11 MR ROZEN: This is not referred to, Mr Wilson, in your
12 statement, but in the implementation monitor's report,
13 most recent one, October of this year, there's a reference
14 to DEDJTR establishing an expert panel to provide
15 technical advice about geotechnical, hydrological and fire
16 risk assessments. If I can just stop there, that's a
17 separate thing from the mine fire safety unit, is it? Is
18 that how we are to understand that?

19 MR MCGOWAN: Yes, it is.

20 MR ROZEN: Mr Wilson?

21 MR WILSON: Yes, that's correct.

22 MR ROZEN: At what stage is the establishment of that panel at
23 and how will it work, say, in relation to the TRB? What's
24 the overlap there?

25 MR WILSON: The idea of a panel was to have available some
26 experts that we could tap. So it's a contractual panel,
27 not - sometimes a panel is read as being like a board, but
28 it's the idea of having those sort of capabilities on tap
29 rather than having to individually go to market each time.
30 Mr McGowan might be able to give more detail, but one
31 example I think is that we do use Professor Rob Joy for

1 fire expertise, so we certainly access him in that way.

2 MR ROZEN: Can I change topics a little bit. I want to talk
3 about progressive rehabilitation. Before I do that, you
4 will have heard that I asked Mr Lapsley this morning
5 whether in his experience since the Hazelwood fire there's
6 - perhaps convergence is overstating it - but there's a
7 recognition of the role that progressive rehabilitation
8 can play in relation to the mitigation of fire risk. He
9 certainly thought that there was, there was a developing
10 view about that. Is that also the view of the regulator,
11 Mr McGowan?

12 MR MCGOWAN: I think rehabilitation is one of those mechanisms
13 that can help prevent fire, yes.

14 MR ROZEN: My recollection, and I will be corrected if I'm
15 wrong, but when that proposition was raised with your
16 predecessor, Ms White, she took what might be described as
17 the conventional view, which is really they are two
18 separate matters, that progressive rehabilitation is about
19 returning the mining area to something approaching its
20 natural state which might involve planting lots of trees,
21 for example, not necessarily going to reduce the fire
22 risk.

23 MR MCGOWAN: I think that's a matter of definition. As you did
24 with Mr Lapsley, he talked about Anglesea. Anglesea we
25 have capped the coal at around about one metre. That's
26 not envisaged as a final end use rehabilitation. You
27 could call that rehabilitation, but it was a fire
28 prevention mechanism. But it will incorporate probably
29 not the end use, but could be used as part of the end use
30 as part of the rehabilitation process.

31 MR ROZEN: That figure of one metre, the evidence at the

1 Anglesea Inquiry was that there wasn't necessarily a lot
2 of science around that. I think we heard from
3 Mr Farrington whose recommendation it was that it be one
4 metre, that in the circumstances he thought that was about
5 right; it could have been more, could have been less and
6 there were pros and cons. Is there some work to be done
7 there, some technical work to set some sort of standard
8 that might be of general application at our brown coal
9 mines?

10 MR MCGOWAN: I think that would be a true statement, yes.

11 MR ROZEN: Is that something that perhaps the mine fire safety
12 unit might be well placed to be involved in or to develop?

13 MR MCGOWAN: I would think so, yes.

14 MR ROZEN: Going back to progressive rehabilitation, as I read
15 section 81 of the Mineral Resources Sustainable
16 Development Act 1990, and for the benefit of the board
17 it's in Part 7 of the Act which is behind tab 39 in the
18 hearing book, it says, "The authority holder" - and in the
19 context of the three Latrobe Valley coal mines that's the
20 licensee, is it not, the authority holder?

21 MR MCGOWAN: Yes.

22 MR ROZEN: "Must rehabilitate land in the course of doing work
23 under the authority and must as far as practicable
24 complete the rehabilitation of the land before the
25 authority or any renewed authority ceases to apply to that
26 land." Do you see that? That would seem to suggest or
27 assume that ordinarily most of the rehabilitation work
28 will be done prior to the licence coming to its end date.
29 Would you agree with that as a general proposition?

30 MR MCGOWAN: What section are you referring to, sorry?

31 MR ROZEN: Section 81(1). There is a mandatory obligation to

1 rehabilitate land in the course of doing work and as far
2 as practicable, and I accept it's qualified, that's to be
3 completed before the authority ceases to apply to the
4 land.

5 MR MCGOWAN: That's certainly what it states. The MRSDA covers
6 a whole range of mines, the largest being the three coal
7 mines here, also smaller mines and quarries.

8 MR ROZEN: So that concept of most of the work being done by
9 the time the licence ends might apply in other
10 circumstances; smaller mines, quarries, for example.

11 MR MCGOWAN: Yes. As I think has been stated this morning, we
12 are dealing with a unique situation with large mines.

13 MR ROZEN: Nonetheless, you would agree with me, wouldn't you,
14 that 81(1) imposes a mandatory duty to do progressive
15 rehabilitation as far as practicable?

16 MR MCGOWAN: That's correct.

17 MR ROZEN: There doesn't seem to be any sanction that attaches
18 to a failure to comply with that duty. Do you agree?

19 MR MCGOWAN: Just to go back, I'm sorry, it says "must
20 rehabilitate", not "progressively rehabilitate" land.

21 MR ROZEN: That is true, but if it is done in the course of
22 doing the work, isn't that progressive rehabilitation? Is
23 there a difference?

24 MR MCGOWAN: It is not referring to progressive rehabilitation.
25 It is talking about rehabilitation. I'm not going to
26 argue about interpretation. You're the lawyer.

27 MR ROZEN: That's true, but it is an important matter for the
28 board because the board's terms of reference make
29 reference specifically to progressive rehabilitation, but
30 it is not a term we see used in section 81. As I'm
31 reading section 81, that seems to be what it is talking

1 about. Progressive rehabilitation is the rehabilitation
2 you do whilst the work under the licence is being carried
3 out, isn't it?

4 MR MCGOWAN: I think you could read that section in that way,
5 yes.

6 MR ROZEN: So for all practical purposes that is the
7 requirement to do progressive rehabilitation. That's
8 where we find it in the Act, isn't it?

9 MR MCGOWAN: Yes.

10 MR ROZEN: It says they "must" do it, so that's mandatory
11 language. It would seem to suggest that there might be
12 some sanction if it is not done, but we don't see a
13 sanction. There is no penalty, for example, if someone
14 doesn't do that. Am I reading the Act correctly?

15 MR MCGOWAN: I do note that there is a section at the end for
16 20 penalty units, but I'm not sure that applies to - - -

17 MR ROZEN: I see that. I suggest to you that applies to the
18 responsibility under subsection (3) to continue the
19 appointment of the manager.

20 MR MCGOWAN: So that would be correct.

21 MR ROZEN: Yes. So, as far as the obligation in (1) is
22 concerned, if the department was of the view that one of
23 these mines, for example, wasn't complying with its duty
24 to do progressive rehabilitation, what options are open to
25 the department to do something about that?

26 MR MCGOWAN: We could certainly ask one of the mines to look at
27 doing a risk assessment. If that risk assessment came up
28 with an issue with respect to stability or safety that
29 needed addressing with respect to rehabilitation, we could
30 compel them to rehabilitate, as I understand.

31 MR ROZEN: The information that's been provided to the board in

1 the schedule 19 reports, that is the reports that the
2 mines are required to file annually with the regulator
3 about various aspects of their operations, include
4 figures, do they not, for the amount that mines have spent
5 in the previous year on progressive rehabilitation?

6 MR McGOWAN: That's correct.

7 MR ROZEN: Why is that information that the department requires
8 the mines to provide it with? What purpose is served by
9 them telling you what they've done, what they've spent,
10 what area they've rehabilitated and so on?

11 MR McGOWAN: I think that's useful information for the
12 department to have to be able to check when they do
13 inspections. It is also potentially part of their work
14 plans to do progressive rehabilitation and their need to
15 report on that.

16 MR ROZEN: In its 2014 report, if I could just pick one, the
17 Hazelwood Mine operator reported to the department that it
18 had spent a little over \$123,000 on rehabilitation out of
19 a total expenditure for the year on wages, salaries and
20 everything else of \$76 million. On my maths that's about
21 0.2 per cent of the overall expenditure. Is that adequate
22 from the department's perspective?

23 MR McGOWAN: I'm not in a position to say whether it is
24 adequate or inadequate. It doesn't seem to be a
25 substantial amount of money.

26 MR ROZEN: You say you are not in a position to say whether it
27 is adequate or inadequate. How does the department
28 measure whether the mines are complying with their duty to
29 progressively rehabilitate?

30 MR McGOWAN: They are inspected on an annual basis and the
31 district manager here in Traralgon would be actively

1 inspecting and doing audits of the activities within the
2 mine. I would expect that they would also use that
3 schedule to make sure that in fact the work or the dollar
4 value that they have said has been expended can be
5 justified against rehabilitation.

6 MR ROZEN: Mr Wilson, can I ask you to go back, please, to your
7 first statement at paragraph 97?

8 MR WILSON: Yes.

9 MR ROZEN: You will see immediately above paragraph 97 that one
10 of the questions that you were asked or the department was
11 asked is, "How does DEDJTR's understanding of the
12 progressive rehabilitation which has occurred at the three
13 mines compare with the rehabilitation plans? Are the
14 mines complying with their rehabilitation plans in this
15 regard?" Then you respond to that by referring to the
16 areas of the various mining licence areas that have been
17 rehabilitated.

18 Then at paragraph 101 you say, "Under the
19 applicable Hazelwood work plan the first progressive
20 rehabilitation milestone will be triggered in 2019." Do
21 you see that?

22 MR WILSON: Yes.

23 MR ROZEN: The board heard some evidence about what that meant
24 in practice when Ms White was giving evidence last year
25 and I understand from the evidence of Mr Faithful that
26 there's been some correspondence between the department
27 and GDF about what the department's expectations are in
28 that regard.

29 MR WILSON: Yes, I do understand that too.

30 MR ROZEN: Is it right an agreement has been reached about what
31 the expectations are?

1 MR WILSON: I would have to check if there is agreement, but
2 I certainly know we have an expectation that the milestone
3 referred to there should be met in 2019, if that's the
4 correct characterisation.

5 MR ROZEN: Yes, I shouldn't have used the word "agreement".
6 The department has made it clear what its expectations are
7 to GDF Suez.

8 MR WILSON: Yes, I believe so.

9 MR ROZEN: It is the next paragraph I want to ask you about.
10 "The Loy Yang and Yallourn rehabilitation plans do not
11 contain specific progressive rehabilitation milestones."
12 Where is that difference between Hazelwood on the one hand
13 which has milestones and the other two that don't? Can
14 you explain that?

15 MR WILSON: I can't really explain why historically those
16 things differ, but I would note that from my perspective,
17 certainly where you can, it is more desirable to have
18 milestones because it gives you something to measure and
19 hold people to.

20 MR ROZEN: Indeed. If you go back to paragraph 73 in your
21 statement you refer to the rehabilitation guidelines that
22 the department has published and which are annexed to your
23 statement. Do you see that on page 15?

24 MR WILSON: Yes.

25 MR ROZEN: You note that there are various general principles,
26 in fact 14 of them, set out in the guidelines. The second
27 of them concerns progressive rehabilitation. "Detail on
28 the proposed rehabilitation works, how they will be
29 undertaken and their sequence and timing." It is that
30 last word I want to emphasise, that notion that things
31 have to happen by particular dates. How is it that the

1 guidelines say that's what should be in an approved
2 rehabilitation plan and yet the Loy Yang plan and the
3 Yallourn one don't have apparently those milestones?

4 MR WILSON: The general principles, so you're right, that's our
5 statement as it says at the opening of 73, these are the
6 general principles from the department's view of how we
7 would like to see the rehab plans come out, and I do make
8 the point they are general principles rather than rules
9 because ultimately it is the test of what's required under
10 the Act and the regs that is the test that must be passed,
11 and of course the way those things are worded don't get to
12 the level of specification here.

13 MR ROZEN: I understand that. But I think you have already
14 agreed with me that it's a principle that has a good deal
15 of sense about it because it gives you something to
16 measure.

17 MR WILSON: Absolutely.

18 MR ROZEN: Is that something that is now going to be part of
19 the future assessment of rehabilitation plans, the
20 requirement for milestones to be spelt out so that there
21 can be some assessment of compliance?

22 MR WILSON: Certainly to the extent that we can require that,
23 and that's the point of the general principles. That's
24 one thing we do want in there.

25 MR ROZEN: Do we see such milestones in the most recently
26 approved Loy Yang rehabilitation plan?

27 MR WILSON: Yes, we do.

28 MR ROZEN: Perhaps, Mr McGowan, you want to answer that?

29 MR MCGOWAN: Yes. Schedule 15.6(a), rehabilitation plan.

30 "Within three months of the date of approval the work plan
31 variation licensee shall provide the department with a

1 detailed plan that is to the satisfaction of the
2 department head for rehabilitations of areas extracted
3 beyond the potential Loy Yang Mine development." And it
4 goes on from there.

5 MR ROZEN: Once again, the approval is subject to conditions,
6 the Loy Yang work plan variation. One of the conditions
7 is that within - did you say within three months?

8 MR McGOWAN: Yes.

9 MR ROZEN: There is a requirement for that level of detail
10 with - - -

11 MR McGOWAN: Detailed plan.

12 MR ROZEN: Yes, to be provided.

13 MR McGOWAN: Then it goes on to a range of other conditions,
14 but they are all time bound. So we are moving to far more
15 prescriptive conditions which are time bound and
16 measurable.

17 MR ROZEN: Just in relation to that, I don't want to hold you
18 to this, but as a general approach can the board
19 anticipate that in relation to future work variation
20 applications by, for example, Yallourn and Hazelwood, that
21 similar types of conditions will be imposed?

22 MR McGOWAN: Yes.

23 MR ROZEN: They are all the matters that I have for you.
24 Ms Burton, I'm sorry that I didn't ask you a specific
25 question.

26 MS BURTON: Perfectly fine.

27 MR ROZEN: That may change. Before I sit down, can I confirm,
28 Mr Wilson, that you are able to come back and field
29 further questions about the term of reference 10, the
30 rehabilitation bond, next Monday?

31 MR WILSON: Yes, that's correct.

1 MR ROZEN: Thank you. We have received indications of others
2 wishing to examine these witnesses.

3 MS DOYLE: Thank you. Mr Wilson, I want to ask you a couple of
4 questions arising from each of your statements. If we can
5 first go to statement 1, the one dated 20 November.
6 I will ask you to go to paragraph 66. In paragraph 66 you
7 refer to the historical matters in terms of a work plan
8 and a work plan variation having been approved for the
9 Hazelwood Mine. Then in paragraph 67 you refer to an
10 application made in 2013. At the end of paragraph 67 you
11 say, "The work plan variation was withdrawn on 25 May
12 2015."

13 I wanted to ask you about events since then. You
14 are aware, aren't you, that in terms of Hazelwood's work
15 plan and any variation to it, that there's work under way
16 in terms of the next variation application, that it's
17 expected to be lodged with the department or filed with
18 the department in 2016?

19 MR WILSON: I can't remember the date, but yes, soon.

20 MS DOYLE: And that Ms Bignell of your department is working
21 with Hazelwood and is aware of the fact that revisions are
22 being undertaken and that the application hasn't stopped;
23 the variation application will go in next year. Are you
24 broadly aware of that?

25 MR WILSON: Broadly, yes.

26 MS DOYLE: Have you been made aware by Ms Bignell of the
27 reasons that the variation application is now under review
28 or have you not been brought up to speed with the detail
29 of that?

30 MR WILSON: Probably not on the detail, no.

31 MS DOYLE: Are you aware in general terms that by reason of the

1 passage of time in between the variation application first
2 going in and coming to May 2015, the planned schedule of
3 works and the shape of the mine had changed such that it
4 made sense that those matters be addressed before any
5 variation be approved?

6 MR WILSON: Yes, that's my understanding.

7 MS DOYLE: Further, during that passage of time a position had
8 been reached where the mine realised it would be able to,
9 at least in some parts of the mine, undertake
10 rehabilitation via a dozer push method rather than truck
11 and shovel and that it would be prudent for the variation
12 application to now reflect that new but also cheaper
13 method of work in some parts of the mine?

14 MR WILSON: Yes, I do understand that to be the case.

15 MS DOYLE: And, further, this probably relates back to the
16 first point, that because there's been a minor extension
17 to the area which is proposed to be mined in the north
18 field and some minor revisions to the planned sequence of
19 works, again that those works and that progressive
20 rehabilitation should be reflected in the new variation
21 application?

22 MR WILSON: Yes, I expect that to be the case.

23 MS DOYLE: Would you also expect that after that variation
24 application officially goes in and is lodged with the
25 department, that Ms Bignell principally will continue to
26 liaise with the mine about any further work the department
27 wants done or any further information the department needs
28 pertaining to that variation application?

29 MR WILSON: Yes, I would certainly expect there to be
30 exchanges. Whether it is only with Ms Bignell, I'm not
31 sure.

1 MS DOYLE: Can I take you to your second statement. That's the
2 statement dated 30 November.

3 MR WILSON: Yes.

4 MS DOYLE: I want to ask you questions about a couple of
5 annexures, but perhaps to put them in context, at
6 paragraph 18 of your second statement you start to talk
7 about a report provided by consultants GHD in June 2009?

8 MR WILSON: Yes.

9 MS DOYLE: And you mention there in June 2009 a report provided
10 to the then department, DPI, titled "Mine rehabilitation
11 options and scenarios for the Latrobe Valley: Developing a
12 rehabilitation framework". Before we look at the annexure
13 the title seems to suggest that what might have been part
14 of that scope of work was a consideration of broader
15 questions, namely rehabilitation of the three mines across
16 the Valley rather than, as some other reports we have
17 seen, focusing in on one mine or the other.

18 MR WILSON: Yes.

19 MS DOYLE: Is that your understanding of the scope of the work
20 of that report?

21 MR WILSON: That's what that would suggest. I would have to
22 double-check the annexure to confirm.

23 MS DOYLE: It is annexure 4 to that second statement. I will
24 just get a reference for the transcript in terms of the
25 more detailed precise number. The number on that fourth
26 annexure is DEDJTR.1025.001.0085. But for your purposes,
27 Mr Wilson, it will be annexure 4 to your second statement.

28 MR WILSON: Yes, I have that here.

29 MS DOYLE: The report has the title that you explained in your
30 statement. It is dated June 2009. Obviously it seems to
31 have been commissioned by the then department. "Mine

1 rehabilitation options and scenarios for the Latrobe
2 Valley: Developing a rehabilitation framework". I have
3 had a look at the report and it doesn't immediately leap
4 out who was consulted in order to develop the work and the
5 report that we find here. I don't know whether you,
6 Mr Wilson, or Ms Burton or Mr McGowan know who provided
7 the material or who was consulted with?

8 MS BURTON: I understand there was a technical reference group
9 that had representation from the three mines within that
10 group.

11 MS DOYLE: If we go to page 58, I'm using the numbers on the
12 bottom right hand if that's easier for you, but in terms
13 of the hearing book reference number it is a number that
14 ends with 0145 in the top right-hand corner. Do you see a
15 section there called "6. Findings"?

16 MR WILSON: Yes.

17 MS DOYLE: Without me reading it out and perhaps the board can
18 have a look at its leisure after the hearings, but through
19 section 6, and there are really 11 points set out there,
20 there's an indication there in the findings of the report
21 that rehabilitation is a critical part of the plan and the
22 mine operation in the Latrobe Valley, which is item 1.

23 Item 2 says, "The rehabilitation requirements for
24 Latrobe Valley mines are quite different from other mines
25 in Australia." There are some reasons set out there and
26 then there is a reference to the extremely long life of
27 the mines, et cetera, and so on through 11 points.

28 Perhaps if I can take you to the 11th of those on
29 page 59. It says, "There is a need to establish
30 acceptable solutions for the mine rehabilitation issues
31 specific to the Latrobe Valley and Gippsland coal mines."

1 This is really a question to any of the three of
2 you. There is certainly a statement of 11 findings,
3 principles or guides, but has that work moved on at all?
4 Is there as at today a strategic plan or an overarching
5 plan for the Valley in terms of the operations of the
6 three mines that we are concerned with today?

7 MR WILSON: If I might give a broader characterisation there.

8 I think the final answer is no, in that is there a single
9 thing that is the answer for the Valley. I don't think we
10 are there yet, and I agree with the characterisation that
11 this and other reports are kind of pointing to that
12 direction. Jane may be able to speak more, but there has
13 certainly been a lot more work done in that direction
14 between that time of this report and now.

15 MS DOYLE: Then I will ask Ms Burton. Perhaps we will work
16 backward. I'm happy to hear from you what work has been
17 done, but I take it you agree with Mr Wilson there is no
18 plan?

19 MS BURTON: Yes, that's correct, there is no plan. So there
20 has been a number of things that were done post this work,
21 including there was Clean Coal Victoria did do some
22 preliminary scoping as a follow-on from this work about
23 rehabilitation strategies. That really only got - has
24 never been completed. RMIT University were also engaged
25 to do some visioning works to look at what long-term
26 landforms might look like and that's where that work is at
27 at the moment.

28 MS DOYLE: Just to pick up on that, then, if you can perhaps
29 borrow Mr Wilson's folder and move through to annexure 7
30 of his second statement and the page reference for those
31 using the board's hearing book, it ends in 0178,

1 1025.001.0178. This is a report commissioned from
2 consultants Sinclair Knight Merz December 2012. So the
3 one we just looked at was June '09, this is December 2012.
4 This one it seems, though, was commissioned by Clean Coal
5 Victoria. Again, looking at it, it seems a little
6 different in the way it has been constructed. I don't see
7 any indication in this report that it involved drawing on
8 consultation with the three mine operators. Is that right
9 or wrong?

10 MS BURTON: From my recollection, that's correct. It was an
11 internal document.

12 MS DOYLE: So this was something commissioned by Clean Coal
13 Victoria for Clean Coal Victoria itself?

14 MS BURTON: That's correct.

15 MS DOYLE: It hasn't had any public dissemination, this report?

16 MS BURTON: No.

17 MS DOYLE: If you look at page 16 of the report, which is
18 hearing book page 0196, we have six mine closure strategy
19 principles. Without forcing you to read through them, in
20 many ways they are very similar to the 11 principles we
21 looked at in the last document. Ms Burton, it looks like
22 between June 2009 and then this report in 2012, all that's
23 happened is there's been a restatement of the fact that
24 there is a need for an overarching plan.

25 MS BURTON: I think that's correct.

26 MS DOYLE: And then you mentioned that since then other work
27 has been done, but it wasn't brought to completion. I see
28 from Mr Wilson's third statement, and we probably don't
29 need to go to all the documents, Mr Wilson's third
30 statement attaches a number of business plans of Clean
31 Coal Victoria and I think it has just changed its name

1 again, hasn't it? It is now called - - -

2 MS BURTON: Coal Resources.

3 MS DOYLE: Coal Resources Victoria. Is there any magic in the
4 name change?

5 MS BURTON: No, it was just a decision of the previous
6 government.

7 MS DOYLE: Under whichever badge or whichever name, in
8 successive business plans Clean Coal Victoria has
9 indicated, using slightly different terminology, but has
10 indicated over a number of years that it would be a good
11 idea to draft a coal plan or it is sometimes called a
12 strategic coal plan for the Valley, and yet that still
13 hasn't been done.

14 MS BURTON: That's correct.

15 MS DOYLE: In the last business plan I looked at, which was
16 annexure 17 to the third Wilson statement, the suggestion
17 was it would be done by the first quarter of 2013/2014.
18 Is there a current date in terms of when it will be
19 available or circulated for comment?

20 MS BURTON: Not at this time.

21 MS DOYLE: And when that work does recommence and if it does,
22 I take it that consultation will be undertaken with all
23 those with the relevant technical expertise but also with
24 the mine operators?

25 MS BURTON: I would assume that would be the case, yes.

26 MS DOYLE: I should add, for completeness, if all of those
27 entities are involved in the development of such a
28 strategic plan, I take it then that it would also be
29 sought to involve any water authorities who are relevant
30 for either administering or reviewing the administration
31 of licence entitlements in terms of water allocations to

1 the mines? Would they be involved in that process?

2 MS BURTON: Yes, they would.

3 MS DOYLE: I have no further questions for the panel.

4 DR COLLINS: Mr Wilson, you were asked some questions by
5 learned Counsel Assisting about paragraph 65.4 of your
6 first statement. If I can ask you to pull that up.

7 MR WILSON: Yes.

8 DR COLLINS: You will recollect the questions concerned the
9 review conducted by the operator of the Yallourn Mine in
10 response to condition 7 to a work plan approval granted
11 subject to those conditions in 2011.

12 MR WILSON: Yes.

13 DR COLLINS: You were then shown, I think, at least the front
14 page of the review that was subsequently submitted by the
15 operator of the mine. This is hearing book tab 9.92,
16 EAY.0001.002.0237. Do you have a hard copy of that,
17 Mr Wilson?

18 MR WILSON: Repeat the reference, sorry? Yes.

19 DR COLLINS: Do you see the front page matches what you see on
20 the big screens displayed across the hearing room.

21 MR WILSON: Yes.

22 DR COLLINS: Have you read and considered that review of the
23 Yallourn Mine rehabilitation master plan before coming to
24 give your evidence today.

25 MR WILSON: No, I haven't read the entire document.

26 DR COLLINS: You have never read the entire document?

27 MR WILSON: Not the entire document.

28 DR COLLINS: Are you able to say what consideration was given
29 to this document by the department or your predecessor.

30 MR WILSON: No, I can't characterise what might have happened
31 at the time other than by looking at the record.

1 DR COLLINS: Can I ask you to turn to page 0248. If you look
2 at the bottom right of each page, you should see a series
3 of numbers. I'm directing your attention to page 0248.

4 MR WILSON: Yes.

5 DR COLLINS: And do you see in about the middle of the page a
6 series of bullet points preceded by the words, "The
7 proposed fully flooded rehabilitation option would result
8 in a lake some three times the size of Blue Rock. The
9 potential benefits to the state include" - and then there
10 is a reference to flood control, water source, visual
11 solution, ongoing maintenance, water for fire suppression
12 and conservation and recreational benefits.

13 MR WILSON: Yes.

14 DR COLLINS: Have you given consideration to those potential
15 benefits of the solution that is presently approved for
16 the Yallourn Mine?

17 MR WILSON: In terms of the current work we are doing, so
18 obviously not at the time of this, but that flooding
19 option and the various flooding options that have been
20 discussed are being considered at the moment.

21 DR COLLINS: And your understanding is that each of those
22 benefits remains benefits of the proposed fully flooded
23 option for the Yallourn Mine void.

24 MR WILSON: They would remain at least potential benefits.

25 DR COLLINS: So far as you are aware, no response by way of
26 seeking clarification, amendment or revision of the
27 Yallourn rehabilitation master plan was made consequent
28 upon this 2012 review being submitted to the department.

29 MR WILSON: As I said in my witness statement, I couldn't find
30 any correspondence reacting to this document.

31 DR COLLINS: Yes. And the approved rehabilitation master plan

1 for Yallourn that dates back to 2001 or early 2002, as
2 supplemented by this report, remains the approved plan for
3 the Yallourn Mine post cessation of mining?

4 MR WILSON: Is that the right characterisation?

5 MR McGOWAN: You will have to repeat that, sorry?

6 DR COLLINS: The approved master plan for rehabilitation of the
7 Yallourn Mine first approved in January 2002, as now
8 reviewed in the documents to which I have just taken
9 Mr Wilson, remains the department's approved plan for the
10 Yallourn Mine pit?

11 MR McGOWAN: If it is still part of the work plan, yes, it is.

12 DR COLLINS: And you would expect the operator of the Yallourn
13 Mine to be continuing to operate diligently to that work
14 plan?

15 MR McGOWAN: Correct.

16 DR COLLINS: Mr Wilson, you were asked some questions about
17 progressive rehabilitation of each of the mines. If you
18 have your first statement, I think you deal with this at
19 paragraph 99.

20 MR WILSON: Yes.

21 DR COLLINS: In paragraph 98 you deal with progressive
22 rehabilitation at Hazelwood and in paragraph 99 at
23 Yallourn and at paragraph 100 at Loy Yang. We see,
24 perhaps because of the relative ages of the mines, the
25 progressive rehabilitation at Yallourn is more extensive
26 than at the other mines. That's your understanding?

27 MR WILSON: I believe that's right, yes, because of the age and
28 nature of it.

29 DR COLLINS: If you go over to paragraph 103 on the next page
30 of your statement, you identify some constraints on
31 progressive rehabilitation. Could you just develop that

1 for the benefit of the board?

2 MR WILSON: I think the reference there - and I think part of
3 this came up in the discussions with Mr Lapsley today -
4 that the operation of a still operating mine can sometimes
5 limit the ability to undertake progressive rehabilitation
6 or it causes a modification, compared to if you were
7 simply dealing with an empty pit that you could then do to
8 as you wish.

9 DR COLLINS: Is one of the constraints also the potential need
10 to relocate infrastructure upon the cessation of mining in
11 parts of an approved mine area.

12 MR WILSON: Yes.

13 DR COLLINS: And fire suppression infrastructure such as the
14 pipes and hoses and so on and the extinguishers that are
15 in place would be one of those constraints upon
16 progressive rehabilitation.

17 MR WILSON: Could conceivably be a constraint, yes.

18 DR COLLINS: You are aware, aren't you, that that is a
19 constraint upon rehabilitation at the Yallourn Mine, for
20 example.

21 MR McGOWAN: It may well be the case.

22 MR WILSON: It may be true. I haven't heard a statement
23 that - - -

24 DR COLLINS: Learned Counsel Assisting referred to the tension
25 or whether there is an overlap between progressive
26 rehabilitation on the one hand and fire suppression on the
27 other. I'm seeking to put a slightly different slant on
28 it, and that is the presence of fire suppression
29 infrastructure can act itself as a constraint on
30 progressive rehabilitation.

31 MR WILSON: Yes, that is certainly conceivable.

1 DR COLLINS: Mr McGowan, you were asked some questions by
2 learned Counsel Assisting about what sanctions might be
3 able to be imposed were a mine operator to fail in its
4 obligation of progressive rehabilitation. Do you have a
5 copy of the legislation, the Mineral Resources Sustainable
6 Development Act, with you?

7 MR McGOWAN: No, I don't.

8 DR COLLINS: Is one of the potential sanctions the power under
9 section 34 of that Act to vary, suspend or revoke a
10 condition of a licence for which a mining licence has
11 effect?

12 MR McGOWAN: Yes, I believe so.

13 DR COLLINS: I'm being told it is at hearing book tab 39.
14 Perhaps I will ask you to be shown that.

15 MR McGOWAN: What section were you referring to, I'm sorry?

16 DR COLLINS: If you go to section 34, do you see that section
17 headed "Variation of licence"?

18 MR McGOWAN: Yes.

19 DR COLLINS: And then, "The minister may after consultation
20 with the licensee by instrument served on the licensee
21 vary a licence or vary, suspend or revoke a condition of a
22 licence or add a new condition" - and then if you flick
23 over to subsection (2)(b) you see the minister may act
24 under subsection (1)(b) "if the minister decides it is
25 necessary for the protection of the environment or the
26 rehabilitation or stabilisation of the land to which the
27 licence applies."

28 MR McGOWAN: Yes.

29 DR COLLINS: You would accept, wouldn't you, that it is
30 therefore within the power of the minister, no doubt on
31 advice from the department, to sanction a mine operator by

1 varying, suspending or revoking a licence or a condition
2 on a licence if the mine operator fails in its obligation
3 of progressive rehabilitation?

4 MR MCGOWAN: Yes.

5 DR COLLINS: Could I ask you to go to section 83 of the same
6 Act. Do you see in section 83 the minister is empowered
7 to take "any necessary action to rehabilitate land if he
8 or she (a) is not satisfied that the land has been
9 rehabilitated as required by section 78 or is satisfied
10 that further rehabilitation is necessary or is requested
11 to do so by the owner of the land."

12 MR MCGOWAN: Yes.

13 DR COLLINS: That's another power that the minister, through no
14 doubt acting on advice from the department, would have in
15 the event that a mine operator failed in its obligation of
16 progressive rehabilitation?

17 MR MCGOWAN: Yes.

18 DR COLLINS: In that event, there is in section 4 a power in
19 the minister to recover as a debt due to the Crown any
20 amount by which the cost incurred by reason of carrying
21 out those works exceeds the amount of the bond or bonds.

22 MR MCGOWAN: Yes.

23 DR COLLINS: No doubt rehabilitation works carried out by the
24 government would be done at competitive rates comparable
25 to those that would be done by the mine operators
26 themselves. That doesn't require an answer. Thank you,
27 no further questions.

28 MS FORSYTH: Mr Wilson, you have referred at paragraph 60 of
29 your first witness statement dated 20 November to the
30 assessment by the department of AGL Loy Yang's 2015 work
31 plan variation. You didn't take the opportunity in your

1 supplementary statements dated 30 November or 7 December
2 respectively or in the amendments made to your statements
3 today to state that that variation had been approved
4 subject to conditions ?

5 MR WILSON: Yes, you are correct. I didn't.

6 MS FORSYTH: Do you have a copy of Mr Rieniets statement dated
7 3 December 2015 which is in court book reference 1B? Can
8 I ask you to turn to annexure A and identify that
9 document, please.

10 MR WILSON: Annexure A, conditions of approval of work plan
11 variation 2015; is that the correct one?

12 MS FORSYTH: Yes. Is that the work plan, the conditions to
13 which the approved work plan 2015 are subject?

14 MR WILSON: Yes, that looks like the right one.

15 MS FORSYTH: Is that document dated 27 November 2015?

16 MR WILSON: Yes.

17 MS FORSYTH: Can I ask you to refer to annexure B1.

18 MR WILSON: Yes.

19 MS FORSYTH: And turn to page 1 which is after the cover sheet
20 and identify that document ?

21 MR WILSON: The cover page?

22 MS FORSYTH: Yes, after the cover page. So it is titled "Loy
23 Yang work plan variation volume 1, main text and figures".

24 MR WILSON: Mine licence - - -

25 MS FORSYTH: Yes. Is that the approved work plan variation?

26 MR WILSON: Yes.

27 MS FORSYTH: Is that stamped 30 November 2015?

28 MR WILSON: It is stamped 1/12/15. Sorry, it has three stamps
29 on it. There is a Richard Bolt has stamped it 30/11/15?

30 MS FORSYTH: Yes. Just as a matter of clarification, can you
31 confirm whether or not the work plan variation and

1 conditions were approved on 30 November or, as the
2 conditions say, on 27 November?

3 MR WILSON: I understood it to be the 27th, but I was going by
4 the date of the letter. As you say, it's stamped the
5 30th.

6 MS FORSYTH: The department took into account the comments
7 provided by the Technical Review Board and other agencies
8 such as Southern Rural Water on the work plan variation
9 2015 in making its decision to approve that document
10 subject to conditions?

11 MR WILSON: Yes.

12 MS FORSYTH: The approach taken in the case of the AGL work
13 plan variation by the department has been to recognise
14 that there are areas of uncertainty, for example, in
15 relation to mine stability issues and water availability
16 issues and to require the provision of information and
17 updated information at each stage of the mine's life in
18 order to address those uncertainties?

19 MR WILSON: I don't know that we use the term "uncertainties",
20 but certainly on the point of the conditions it identifies
21 matters that do need to be resolved.

22 MS FORSYTH: Would it be fair to say that the detailed
23 conditions that the approval is subject to represent a new
24 and more onerous approach by the department to
25 conditioning approvals of this type?

26 MR WILSON: That's a reference to past practice?

27 MS FORSYTH: Yes.

28 MR WILSON: I think that would be correct, is my understanding,
29 yes.

30 MS FORSYTH: I wanted to ask you some questions about
31 Ms Bignell's letter from Southern Rural Water that you

1 were taken to in questioning by Counsel Assisting. Can
2 I ask you if you have a copy of that letter?

3 MR WILSON: Do you have a tab for that?

4 MS FORSYTH: I'm afraid I don't have it in my index, and I'm
5 not sure if it's been given a number yet. But it was
6 referred to in the statement of Mr Rodda.

7 MR WILSON: Sorry, I did have it, but I don't think I have it
8 now.

9 MR ROZEN: It is tab 24, just so everyone knows.

10 MS FORSYTH: Thank you. Can I ask you to turn to page 2 of
11 that letter and go to the first dot point under the
12 heading "Mine closure".

13 MR WILSON: The folder was taken, I think. I do have it now.

14 MS FORSYTH: Thank you. Under the heading "Mine closure" on
15 the second page there's a dot point that reads, "The work
16 plan variation indicates that mine closure incorporates
17 flooding of the final mine void. This process may take in
18 excess of 85 years and includes the use of all existing
19 water licences (surface water and groundwater) for an
20 extended period as the initial water sources for void
21 filling."

22 Can I ask you to go to the 2015 approved work
23 plan variation at section 6.3 on page 71.

24 MR WILSON: Yes.

25 MS FORSYTH: There is an end use concept section, and can I ask
26 you to read out the fifth line starting "One concept"?

27 MR WILSON: "One concept is based on all existing water
28 licences and entitlements being available to flood the
29 pit."

30 MS FORSYTH: Can you keep reading the next sentence, please.

31 MR WILSON: "On this basis the study scenario 2, GHD report

1 31-11418/15 Loy Yang Mine rehabilitation mine lake water
2 balance modelling, January 2015, shows the lake level will
3 be at minus 18 metres RL to minus 20 metres RL 15 years
4 after flooding commences and depending on a range of
5 expected climatic conditions." The next one too?

6 MS FORSYTH: Yes, please.

7 MR WILSON: "The study also shows that the final lake level
8 could be achieved within a further 70 years will be up to
9 RL 0 (assuming historical climate conditions)."

10 MS FORSYTH: Would you accept then that the work plan variation
11 recognises that only one of a number of scenarios is to
12 make use of all available water licences including surface
13 water and groundwater?

14 MR WILSON: Yes, it does indicate it's one concept.

15 MS FORSYTH: If that scenario that is outlined in the end use
16 concept is adopted according to the GHD report, then the
17 time taken to fill to a stable water level is in the order
18 of 15 years?

19 MR WILSON: Sorry, to fill to a stable level?

20 MS FORSYTH: To a stable level, the minus 18 RL to minus
21 20 metres RL?

22 MR WILSON: Yes.

23 MS FORSYTH: And in terms of reaching its long-term level in
24 70 years - sorry, the reference there is to 70 years as
25 opposed to the 85 years mentioned in the Southern Rural
26 Water letter?

27 MR WILSON: It says "a further 70 years".

28 MS FORSYTH: Yes. Are you aware of whether Ms Bignell was
29 provided with the March 2015 GHD water report?

30 MR WILSON: I would expect so, but I would need to confirm
31 that. I can, if you like.

1 MS FORSYTH: Can I ask you to go to that report. It is
2 annexure 4 to the work plan variation 2015. I will give
3 you a page reference.

4 MR WILSON: Can you give me the reference again?

5 MS FORSYTH: It is appendix 4 to the work plan variation 2015.

6 MR WILSON: I'm just trying to find the starting point of that
7 appendix.

8 MS FORSYTH: I'm afraid I don't have the Ringtail reference.
9 I will have to come back to that. Bear with me. Can
10 I take you back to the Southern Rural Water letter and
11 take you to the third dot point. I'm going back to the
12 Bignell letter. I will have to get that other reference
13 for you in time. But just so as to make use of time, do
14 you have a copy of the Bignell letter?

15 MR WILSON: I put it back in this other folder. It is the
16 24 August letter again?

17 MS FORSYTH: Yes.

18 MR WILSON: Yes.

19 MS FORSYTH: The third dot point of that letter has a sentence
20 at the end of the dot point, "The completion criteria
21 provided in 6.4.4.1 do not mention lake water quality."
22 Are you aware of the fact that the work plan variation was
23 amended to address that concern?

24 MR WILSON: I would have to check the reference, but I'm aware
25 that the conditions required matters such as that to be
26 addressed.

27 MS FORSYTH: Can I take you to page 81 of the work plan
28 variation which follows on from table 6.4.4.1 on the
29 previous page. Does the top line in the approach under
30 poor lake water quality refer to the development of water
31 quality objectives and water level criteria prior to lake

1 filling?

2 MR WILSON: Yes, it does.

3 MS FORSYTH: On the last page of the letter, the first dot
4 point says, "Ongoing ownership of the mine itself and
5 water entitlements have not been addressed." Can I ask
6 you to go to section 6.3 of the work plan variation again,
7 which is under the end use concept?

8 MR WILSON: Yes.

9 MS FORSYTH: Does the second sentence identify AGL's intention
10 that the land will remain in private ownership at the
11 completion of mining?

12 MR WILSON: Yes.

13 MS FORSYTH: I want to ask you now about the preceding
14 sentence, so on the bottom of page 2 the letter says,
15 "Current bulk entitlement from the Latrobe system does not
16 allow water use for mine flooding." Have you been
17 provided with a copy of the statement of Mr Rodda from
18 Southern Rural Water?

19 MR WILSON: Do you have the reference for that? I think it's
20 in this folder.

21 MS FORSYTH: I have the Ringtail reference. I'm sorry I'm a
22 bit on the run. This all arose out of questioning and not
23 from your witness statement, so bear with me. Tab 24, the
24 statement of Mr Rodda dated 4 December 2015?

25 MR WILSON: Yes, I have that.

26 MS FORSYTH: Can I ask you to go to paragraph 37 which deals
27 with bulk entitlements.

28 MR WILSON: Yes.

29 MS FORSYTH: It says, "The Latrobe Valley power stations bulk
30 entitlements are not explicit about the purpose they
31 should be used for, other than to supply electricity

1 generation works. The bulk entitlements do not define
2 what constitutes elected generation works."

3 Do you see that's in response to a question from
4 the board, question E, to provide information about the
5 purpose for which access has been granted or provided and
6 whether this extends to rehabilitation of the mines after
7 closure of the power stations and/or mines?

8 MR WILSON: Yes.

9 MS FORSYTH: Would you agree that the statement that's now been
10 provided by Mr Rodda to the board provides a further
11 clarification upon the blanket statement that's set out in
12 the letter by Ms Bignell that seems to indicate that the
13 bulk entitlements do not allow water use for mine
14 flooding?

15 MR WILSON: I think Mr Rodda's letter - I will get this
16 correct - is suggesting it cannot. That's correct, isn't
17 it?

18 MS FORSYTH: Mr Rodda's letter says that the bulk entitlements
19 do not define what constitutes electricity generation
20 works and it seems to leap over the question as to whether
21 or not mine flooding could be encompassed within that
22 definition, does it not?

23 MR WILSON: Yes, sorry, Mr Rodda's statement rather than his
24 letter does make that statement. So it leaves the
25 question open, is my reading of it.

26 MS FORSYTH: I do have a reference to the GHD mine lake water
27 balance modelling report. The Ringtail reference, which
28 I think is the only reference I can give you to assist in
29 finding that particular appendix 4, is AGL.0001.004.0588.

30 MR WILSON: This folder appears to jump over that.

31 MS FORSYTH: I might have a copy handed up, if I may, just so

1 we can get through questioning and then we can deal with
2 the court book.

3 MR WILSON: Mine goes from 2s to 7s. There are no 5s.

4 MS FORSYTH: I will have a copy handed to you. Mr Wilson, are
5 you familiar with this report by GHD dated March 2015
6 which was approved as part of the work plan variation?

7 MR WILSON: Yes.

8 MS FORSYTH: Can I ask you to go to section 2.2 of that report.

9 MR WILSON: The model scenarios section?

10 MS FORSYTH: Yes, the model scenarios.

11 MR WILSON: Yes.

12 MS FORSYTH: Does that report set out six potential scenarios
13 for the filling of the mine lake to a level below minus
14 22.5 metres AHD and for a mine lake level above minus
15 22.5 metres AHD?

16 MR WILSON: Yes, it does.

17 MR ROZEN: Can we get a page reference, please? We are having
18 trouble finding this document.

19 MS FORSYTH: We have just given our Ringtail reference to the
20 witness, I'm afraid, but it seems that it may not have
21 been copied correctly. It is up on the board, but I'm
22 afraid I don't have the Ringtail reference. I have given
23 the Ringtail reference to the start of the report,
24 0001.004.0595. Do those six scenarios that are set out
25 there range from using all of the bulk entitlement flows
26 and entitlements down to not using the entitlements and
27 relying on runoff and groundwater seepage?

28 MR WILSON: Yes, they run from seepage up to the - well, the
29 maximum being the 40 gig per year.

30 MS FORSYTH: If you can flip over two pages under the "Model
31 results", does table 2 set out the years to reach the

1 stable water lake level of RL minus 22.5 metres AHD under
2 each of those six scenarios?

3 MR WILSON: Yes, it does.

4 MS FORSYTH: In relation to scenario 2, is the anticipated
5 years in the order of 10 years?

6 MR WILSON: Yes.

7 MS FORSYTH: And in relation to scenario 6, which you
8 identified as not relying upon the bulk entitlements, does
9 that take up anywhere between 65 years and 85 years?

10 MR WILSON: Yes, that's correct.

11 MS FORSYTH: In relation to achieving a lake water level after
12 200 years, do the scenarios in table 3 set out what the
13 anticipated effectively final level of the lake is likely
14 to be based upon different scenarios and different
15 climatic conditions?

16 MR WILSON: Yes, that's correct.

17 MS FORSYTH: So it would be incorrect to rely, for example, on
18 the Southern Rural Water statements about what any
19 previous version of the work plan variation contained in
20 relation to water quantity availabilities and scenarios?

21 MR WILSON: I would have to review the suite again to work out
22 if "incorrect" is the right term.

23 MS FORSYTH: Two final questions. Firstly, in relation to the
24 suite of conditions that have been placed on the AGL work
25 plan variation, is the department satisfied that it has
26 the technical capacity and the resources to be able to
27 assess and approve in a timely fashion all of the various
28 plans and assessments that are required to be submitted to
29 and approved by the department or the department head?

30 MR WILSON: Yes, I am.

31 MS FORSYTH: Finally, in relation to the desirability to have

1 milestones for rehabilitation, is it important that those
2 milestones are mine specific?

3 MR WILSON: Yes, I would expect that to be the case.

4 MS FORSYTH: And the 2015 work plan variation for Loy Yang does
5 have rehabilitation milestones as reflected in figures
6 attached to the work plan variation which show the
7 proposed extent of progressive rehabilitation. Are you
8 familiar with those figures?

9 MR WILSON: Yes. Do you want to direct me to the page?

10 MS FORSYTH: Yes, I will. I will take you to figures 16 to 19.
11 Figure 16 is at AGL.0001.004.0187. Does figure 16 show
12 the development stage that's just completed, namely 2014
13 as identified in the bottom right-hand corner of that
14 page?

15 MR WILSON: Sorry, I have figure 16. Can you ask that again,
16 please?

17 MS FORSYTH: If you look at the bottom right-hand corner of the
18 page, it refers to "Development stage B 2014".

19 MR WILSON: Yes.

20 MS FORSYTH: Would you agree that that plan reflects the extent
21 of rehabilitation that has occurred as at last year?

22 MR WILSON: I believe that's what it's presenting. I would
23 have to check with my staff as to whether we were
24 satisfied with that, but I understand that to be the case.

25 MS FORSYTH: If you turn over to figure 17, does that show
26 what's proposed in terms of development at stage C, the
27 next stage or the current stage of mining?

28 MR WILSON: It shows the stage plan for stage C, yes.

29 MS FORSYTH: Does it show areas reserved for rehabilitation
30 trials as marked in the red hatching?

31 MR WILSON: Yes.

1 MS FORSYTH: And, in the light green, previously rehabilitated
2 areas and, dark green, new rehabilitated areas?

3 MR WILSON: Yes.

4 MS FORSYTH: Then if you turn to figure 18, does that theme
5 continue to show the milestones that are expected for AGL
6 Loy Yang in relation to progressive rehabilitation?

7 MR WILSON: It shows the previously rehab areas and the new.
8 Is that the area you are suggesting?

9 MS FORSYTH: Yes. Does the identification of further
10 rehabilitation for each stage of the mine, is that
11 equivalent to setting milestones for rehabilitation?

12 MR WILSON: That would be part of setting a milestone, yes.

13 MS FORSYTH: You referred to condition 6.1 of the approval.
14 Can I take you back to annexure A.

15 MR WILSON: Annexure A of?

16 MS FORSYTH: Mr Rieniets' witness statement which contains
17 those conditions of approval. So that's in court book 1B.

18 MR WILSON: Yes, I have that here.

19 MS FORSYTH: Condition 6.1 was referred to earlier as a
20 condition that set milestones for rehabilitation. Do you
21 accept that that condition relates to the rehabilitation
22 of works in the areas extracted beyond the extraction
23 limit, and that in fact the relevant conditions are
24 conditions 6.4 and 6.5 in relation to progressive
25 rehabilitation?

26 MR WILSON: That's what 6.1 does. Sorry, what was the
27 suggestion? How are you characterising 6.4 and 6.5?

28 MS FORSYTH: 6.4 and 6.5 are the relevant conditions which deal
29 with the requirements for further information and if any
30 milestone is to be set in relation to progressive
31 rehabilitation?

1 MR WILSON: That characterisation looks right. Obviously those
2 specific words aren't used.

3 MS FORSYTH: Yes. I have no further questions, thank you.

4 MS NICHOLS: Mr Wilson, I have some questions for you first in
5 relation to the Loy Yang rehabilitation plan 2015 that you
6 have just been asked about. Just to clarify, that plan
7 was approved in the form most recently submitted, but with
8 a set of conditions?

9 MR WILSON: Yes.

10 MS NICHOLS: And the department took the view that the plan had
11 a number of shortcomings as set out in the letter from the
12 secretary approving the plan. The way that those
13 shortcomings are addressed is by reference to the
14 conditions?

15 MR WILSON: Yes.

16 MS NICHOLS: So the plan, if taken by itself, is unacceptable
17 and defective?

18 MR WILSON: Well, put it this way. If the conditions were not
19 to be met or if they were untreated, then, yes, you would
20 go to that sort of characterisation.

21 MS NICHOLS: Yes. If one took the plan without the conditions,
22 it would be unacceptable?

23 MR WILSON: Yes.

24 MS NICHOLS: Prior to the department approving the plan or
25 rather the minister approving the work plan variation, the
26 Technical Review Board wrote in these terms, and I will
27 refer you briefly to a letter which is at annexure 15 of
28 your statement. It is a letter from the Technical Review
29 Board dated 12 October 2015 and the reference is
30 DEDJTR.1020.001.0560. Do you have that one there,
31 Mr Wilson?

1 MR WILSON: Yes, I do.

2 MS NICHOLS: You will see in the middle of the first page it is
3 said, "The application is highly conceptual and based
4 heavily on descriptions of proposed activities and
5 statement of intent. The underpinning technical
6 information is scant and furthermore the reader is
7 required to distil for themselves the little technical
8 information that is there from the appendices. In the
9 main performance criteria appear to have been set by the
10 proponent rather than by an independent assessing body."

11 Over the page it is said, "It seems the proponent
12 has no intention of reducing the fire fuel load on the
13 northern batters until the final rehabilitation is carried
14 out at completion stage C mining in about a decade's time.
15 This matter does not appear to have been independently
16 tested to date from both technical and risk management
17 perspectives."

18 Those matters pointed out in that letter are
19 limitations in the existing plan, aren't they, when read
20 without the conditions?

21 MR WILSON: They do go to the plan as lodged at the time, yes.

22 Sorry, I should say variations as lodged at the time.

23 MS NICHOLS: Indeed, the work plan that has now been approved,
24 WPV 2015. The question for you is what was the regulatory
25 thinking behind approving a plan which was itself
26 defective, but imposing conditions?

27 MR WILSON: That's one of the avenues provided for under the
28 legislative framework and if you like you could
29 characterise it as a choice between approving with
30 conditions or refusing with reasons. I guess it's in the
31 eyes of the beholder as to what the difference there is,

1 but certainly the scheme provides for approval with
2 conditions and that's the course that we took.

3 MS NICHOLS: Given that course, it would be critical, wouldn't
4 it, for the regulator, for your department, to strictly
5 enforce the conditions?

6 MR WILSON: Yes.

7 MS NICHOLS: It is said at the third paragraph of the letter to
8 which I just referred that, "A fundamental problem appears
9 to be that a detailed set of performance criteria are yet
10 to be set by government. For example, the current
11 performance criteria for rehabilitation batters is simply
12 that they are required to be safe and stable in the long
13 term."

14 Is that a criticism by the Technical Review Board
15 in relation to the setting of criteria by government that
16 your department accepts?

17 MR WILSON: Sorry, which paragraph is it?

18 MS NICHOLS: It is the third paragraph on the second page.

19 MR WILSON: What was the question again?

20 MS NICHOLS: There is a criticism implicitly of the department
21 or the government, to use the language of the letter, that
22 there is a failure to set detailed performance criteria.
23 Read in the context of the letter, it is that the
24 proponent has been left to set various criteria. Do you
25 accept that's a valid criticism?

26 MR WILSON: Yes, and when the TRB provided this, that was
27 noted, because they do often provide that sort of advice.

28 MS NICHOLS: Would you therefore accept that it is absolutely
29 critical, when approving new variations to work plans and
30 when deciding whether the conditions that you have imposed
31 on this plan have been met, to set detailed performance

1 criteria?

2 MR WILSON: Yes, good regulatory practice.

3 MS NICHOLS: In relation to that, can I ask you about how it is
4 intended to work. I will refer you to the conditions in
5 relation to the Loy Yang licence. Do you have a copy of
6 that? You were recently referred - - -

7 MR WILSON: The letter?

8 MS NICHOLS: No, the conditions. They are annexure A to the
9 Loy Yang work plan. The reference is AGL.0001.004.0003.
10 Do you have that, Mr Wilson?

11 MR WILSON: Yes, I don't have the reference. I have another
12 copy.

13 MS NICHOLS: That's fine. As I understand it, if you can have
14 a look at condition 6 in relation to the rehabilitation
15 plan, specifically if you can look at 6.3, which requires
16 the licensee to do various things including completing a
17 mine rehabilitation risk review, reviewing the plan in
18 light of the findings of this Inquiry and then undertaking
19 further risk studies throughout the life of the mine at
20 each stage or rather six months before the completion of
21 each stage, that is really a process solution, isn't it?
22 It requires the mine operator to identify risks and to
23 report to the department on those risks?

24 MR WILSON: That's part of the work, yes.

25 MS NICHOLS: If you look at the words at the top of the page
26 ending in 001 or subsection (a) of 6.3, it is said there
27 that, "The operator is to complete a mine rehabilitation
28 risk review that identifies and analyses the significant
29 or higher risks, including but not limited to fire and
30 mine stability risks for the achievement of the
31 rehabilitation plan at section 6 of the WPV." Should we

1 read the reference to "risks for achieving the
2 rehabilitation plan" as a reference to any factors that
3 might cause the operator to not achieve rehabilitation in
4 accordance with the plan?

5 MR WILSON: I think those words, they sound reasonable to me.
6 The logic, yes.

7 MS NICHOLS: Yes. You have referred there to fire risk and
8 mine stability and you accept that those are factors which
9 might have an impact outside of the mine, conceivably?

10 MR WILSON: Yes.

11 MS NICHOLS: But the underlying risk that these conditions are
12 addressing is the risk that rehabilitation won't be
13 completed in accordance with the plan.

14 MR WILSON: For that part of the conditions, that's the focus,
15 is rehabilitation, yes.

16 MS NICHOLS: Yes, and so what the department is asking the
17 operator to do is to say, "Tell us how you are going to
18 achieve your rehabilitation plan and we will assess what
19 you say."

20 MR WILSON: That's probably a broader specification.

21 I understand the way you frame it, but when we write the
22 conditions we do specify them only to mean what they are
23 specified as.

24 MS NICHOLS: Yes, I understand. I'm paraphrasing that, but you
25 are asking the operator to tell you how it will achieve
26 its rehabilitation plan?

27 MR WILSON: To provide further detail, yes.

28 MS NICHOLS: Do you accept that given that this is a process
29 solution and that the mine operator itself must tell you
30 how it's going to achieve its plan, then unless quite
31 particular criteria are identified, they won't be picked

1 up as risks of failing?

2 MR WILSON: Do you mean unless we specify criteria or the mine
3 or both?

4 MS NICHOLS: I will start with the proposition that unless a
5 specific criteria is identified as having to be achieved,
6 a risk based study will not identify that it's at risk of
7 not being achieved.

8 MR WILSON: No, the risk based study will identify the risks in
9 the first instance and the work plan identifies the
10 treatments.

11 MS NICHOLS: But you have to start with the criteria for the
12 achievements, don't you?

13 MR WILSON: Yes, you do have to understand what you are trying
14 to achieve.

15 MS NICHOLS: Yes. I will make it more concrete. If you take
16 the example of progressive rehabilitation, and I will talk
17 in generalities first. If the plan simply said "The mine
18 will be rehabilitated by 2035", rather than saying a
19 certain amount or proportion or stages of rehabilitation
20 will be done by particular dates, it would be easy not to
21 identify the risks that might occur along the way,
22 wouldn't it?

23 MR WILSON: Look, that could be the case, but I think the
24 identification of risks itself may not depend on the
25 pattern of rehabilitation. They may be separate items,
26 but I can see they will be related as it unfolds over
27 time.

28 MS NICHOLS: In relation to that point concerning progressive
29 rehabilitation in particular, you had a discussion earlier
30 with Mr Rozen about milestones in the plan. This is the
31 Loy Yang plan in particular. Your statement says that

1 there are no progressive milestones in the Loy Yang plan
2 or the Yallourn plan. These conditions don't themselves
3 solve that problem, do they?

4 MR WILSON: The conditions will or should in fact bring forward
5 milestones.

6 MS NICHOLS: But when are you asking the operator to identify
7 specific milestones for progressive rehabilitation?

8 MR WILSON: When they bring forward the responses to these
9 conditions.

10 MS NICHOLS: Yes, but there will be a general review within
11 12 months. Then there will be a review prior to the
12 completion of each of stages C, D and E, which is in 2023,
13 in eight years time, 2030 and 2057. There are great gulfs
14 of time, relatively speaking, between those stages, aren't
15 there?

16 MR WILSON: There are some years between them, yes.

17 MS NICHOLS: So when is it that you are expecting specifically
18 the operator in this case to identify its time based
19 milestones for progressive rehabilitation?

20 MR WILSON: Do you mean when will the milestones be or when
21 will we see what they are?

22 MS NICHOLS: When will you see what they are.

23 MR WILSON: As they respond to these conditions to the extent
24 that they are not already in the plan.

25 MS NICHOLS: You were asked some questions about the figures in
26 the work plan and I will just take you to those briefly.
27 Have you got the approved work plan there?

28 MR WILSON: The figures I think were ones that weren't in this
29 document, the pictures.

30 MS NICHOLS: Yes.

31 MR WILSON: I recall the pictures, but it was the page that we

1 didn't have.

2 MS NICHOLS: I will just put this to you and see if you can
3 answer without looking at the documents. You were taken
4 to figures 16 to 18, I think, and you may recall that
5 figure 16 is representing what's happened to date, figure
6 18 represents what's supposed to happen by 2023, and
7 figure 18 by 2030, that's stage D.

8 MR WILSON: I remember the stage names, not the years.

9 MS NICHOLS: If you can accept from me those are the years, so
10 we have 2014 or '15, 2023, 2030, 2037. Will you accept
11 that there is nothing in the work plan to date that says
12 what is to happen or by when in relation to achieving the
13 rehabilitation shown on those diagrams represented in
14 those figures?

15 MR WILSON: I wouldn't accept that there was nothing, because
16 those plans do lay out a plan on those time markers as you
17 identified.

18 MS NICHOLS: They are very broad time markings, aren't they?

19 MR WILSON: They are, but they are there.

20 MS NICHOLS: Yes, they are there. But wouldn't you accept that
21 it is not sufficient for a work plan to lay out a
22 progressive rehabilitation milestone simply by saying, "At
23 point 1 we will do this and in eight years later we will
24 have achieved something different"?

25 MR WILSON: I don't think I can give a general response to that
26 because the right answer will depend on each mine and each
27 situation. But as I did say in a general response
28 earlier, my preference would be, and as reflected in the
29 department's guiding principles, four milestones, because
30 they do help you to map progress. There is the question
31 of what are the right number of milestones and what gap

1 between them. From my point of view there is no sort of
2 broad answer to the right answer.

3 MS NICHOLS: But would it be correct to say that the department
4 will be looking for something more particular than a
5 statement by the mine operator that it will achieve a
6 certain level of rehabilitation, phase 1, and then eight
7 years later it will achieve another level of
8 rehabilitation?

9 MR WILSON: Certainly as we have said in the principles, we
10 would prefer more milestones than fewer, at least from the
11 starting point that we have at the moment.

12 MS NICHOLS: And there is no limitation on the power of the
13 minister to impose conditions to that effect, is there?

14 MR WILSON: As long as it is consistent with the powers given.

15 MS NICHOLS: What is the process that the department has
16 designed or planned to ascertain whether the various
17 reviews required by these conditions will meet the
18 satisfaction of the department?

19 MR WILSON: I don't think the final process has been designed,
20 but as I think Mr McGowan explained before, there would be
21 conversations with the proponent to talk through each
22 condition and lay out what the expectations are. If there
23 are existing guidelines that gives clarity, then they
24 would be put on the table. If there are points where it
25 is unclear, then we would work through those.

26 MS NICHOLS: Can I just make one more point about this
27 milestone issue. Can I refer you to Mr Faithful's
28 statement. I will just read it to you. I'm not sure you
29 need to look at it. Mr Rozen made reference to this
30 before. Mr Faithful says this in his statement, and
31 I will give you the reference. It is GDFS.0001.001.0027.

1 He is referring to something that came out of the first
2 Inquiry in relation to the progressive rehabilitation
3 required by GDF Suez.

4 MR WILSON: I have the statement.

5 MS NICHOLS: It is at paragraph 138 of the statement.

6 MR WILSON: Yes.

7 MS NICHOLS: You will see there that Mr Faithful explains that,
8 "During the hearings of the 2014 Inquiry a difference of
9 opinion emerged between myself and Ms White as to the
10 interpretation of rehabilitation dates within the work
11 plan variation. The issue was whether rehabilitation
12 shaded in red on the plan was due to commence by 2019, my
13 interpretation, or whether it had to be completed by 2019,
14 Ms White's interpretation."

15 Just pausing there, it would be a really sensible
16 practice, wouldn't it, for the department to adopt to try
17 to avoid that kind of misunderstanding about when things
18 are to be done?

19 MR WILSON: Yes.

20 MS NICHOLS: Is that the approach that the department will take
21 when reviewing these plans that are to be submitted under
22 the Loy Yang conditions?

23 MR WILSON: Yes. If you mean by that maximum clarity so people
24 understand what the expectation is, then, yes.

25 MS NICHOLS: And the underlying point is that, in relation to
26 rehabilitation, what is to be done by when is a really
27 important question that everyone needs to be clear about?

28 MR WILSON: Yes.

29 MS NICHOLS: Of course, that applies not only to the Loy Yang
30 conditions but to the conditions that are imposed in
31 relation to every other mine?

1 MR WILSON: Yes.

2 MS NICHOLS: Just to finish off on that point, at paragraph 140
3 it is explained that there was further consultation and
4 that "Ms Bignell clarified that the department would
5 expect rehabilitation shaded in red to commence once
6 mining commences", and so on. "In her email, Ms Bignell
7 further noted that DSDBI would be concerned if after the
8 commencement of mining block 2A overburden is not used
9 towards meeting the rehabilitation outcomes associated
10 with the mining sequence. Dates are indicative."

11 I appreciate, Mr Wilson, that you are not the
12 author of that correspondence, but I will suggest to you
13 that that as an indication of the department's intention
14 and expectation is quite vague and ambiguous. Do you
15 agree with that?

16 MR WILSON: If that was a final departmental position, then
17 that would be problematic in the way you describe it.

18 MS NICHOLS: Yes. All right. Thank you. You were referred to
19 condition 6.1 of the conditions imposed on the Loy Yang
20 work plan and Ms Forsyth pointed out to you that 6.1 in
21 fact relates to the area of extraction that went outside
22 the licence, and you agreed with that, did you not?

23 MR WILSON: I agreed that that's what that section was about,
24 yes.

25 MS NICHOLS: Yes. We needn't go to figure 9, but you will
26 agree, won't you, that the particular conditions imposed
27 at subsections (a) and (b) and the time limit imposed at
28 6.2, being quite particular, are not imposed in relation
29 to the rest of the mine, are they?

30 MR WILSON: There are conditions that were imposed because of
31 that particular matter raised in 6.1.

1 MS NICHOLS: Yes, but it would be open to the department to
2 impose similar conditions in relation to other aspects of
3 rehabilitation, wouldn't it?

4 MR WILSON: If the grounds were there, it would have been open
5 to the department to do that, yes.

6 MS NICHOLS: There was a discussion about the letter from
7 Southern Rural Water to the department about water quality
8 issues, and you were asked some questions about this by
9 Ms Forsyth. If I can just refer to that letter again. Do
10 you have a copy of that there?

11 MR WILSON: This is the letter from Southern Rural?

12 MS NICHOLS: Yes. Just to remind you, the reference there is,
13 under the heading "Mine closure", that "The rehabilitation
14 plan does not contain any criteria in relation to
15 monitoring, assessment, and so on. These criteria need to
16 be in place well before closure as they may influence
17 closure strategy."

18 It was said in the letter that the completion
19 criteria don't mention lake water quality or confirmation
20 of the proposed lake water balance. Ms Forsyth then took
21 you to 6.4.4.1 in the work plan, as you may recall, a few
22 moments ago.

23 MR WILSON: Yes.

24 MS NICHOLS: That's at page 81 of the work plan. Can I ask you
25 to have a look at that. Do you have that there?

26 MR WILSON: Yes.

27 MS NICHOLS: If you go to page 81, which is the second page of
28 the risk mitigation approach table, under the heading "4"
29 which is at the top left-hand corner, it says, "Poor lake
30 water quality approach. Develop water quality objectives
31 and water level criteria prior to lake filling." And

1 under the heading "7", "Completion criteria. Lake water
2 quality meets water quality objectives."

3 MR WILSON: Yes.

4 MS NICHOLS: You were asked a question whether that work plan
5 refers to water quality objectives and you correctly
6 answered yes. But isn't the point that the plan presently
7 does not itself contain any quality water objectives; it
8 simply says they have to exist?

9 MR WILSON: Yes, that's correct.

10 MS NICHOLS: It would be important, wouldn't it, in keeping
11 with the advice received by Southern Rural Water, that
12 those criterion need to be in place well before closure as
13 they may influence closure strategy?

14 MR WILSON: Yes, that's correct.

15 MS NICHOLS: And will the department be taking steps to ensure
16 that criteria in relation to water quality are identified
17 and enforced promptly?

18 MR WILSON: I think that's the intent of the conditions under
19 section 7 in the conditions. A water resources risk
20 assessment, to complete that, has to involve setting those
21 objectives.

22 MS NICHOLS: Yes, but what is the timeframe for setting those
23 objectives?

24 MR WILSON: I don't think we have one specified against that
25 particular item.

26 MS NICHOLS: No timeframe specified?

27 MR WILSON: Not against that particular matter. There is the
28 general timeframe for coming back on all the conditions.
29 But there is no independent one set for that that I can
30 see.

31 MS NICHOLS: You would agree that it would be important that a

1 timeframe be set and the submissions be carefully
2 scrutinised to make sure that that is being addressed in a
3 timely way?

4 MR WILSON: Yes, which means it will need to therefore be
5 addressed within the general timeframe, which I can't
6 recall, I think it was 12 months, but I stand corrected on
7 that.

8 MS NICHOLS: I have not many more questions to go, Mr Chairman.
9 Shall I continue for a few minutes?

10 CHAIRMAN: Are you going to re-examine or are we going over
11 until tomorrow, because I know Professor Catford has
12 another commitment that he has to go to.

13 MR ROZEN: I'm conscious of that. I probably have five minutes
14 of re-examination. I think it would be desirable if we
15 could finish the witnesses. I'm not sure how much longer
16 Ms Nichols has. We have about 10 minutes.

17 CHAIRMAN: As long as you keep to that, Professor Catford will
18 stay. But he is at liberty to go at any time.

19 MR ROZEN: I think that might be the best basis upon which to
20 do it in case we go longer than the barristers' estimates,
21 because that can happen as we know. We will proceed.

22 CHAIRMAN: Yes, continue, Ms Nichols.

23 MS NICHOLS: Thank you. I won't be long. I have finished on
24 the Loy Yang conditions. Is it fair to say that, having
25 regard to those conditions despite my criticisms of some
26 lack of milestones, what the department has endeavoured to
27 do is to require the operator to identify specific steps,
28 regular reviews and specific reporting about important
29 matters that must be done prior to mine closure?

30 MR WILSON: Yes, I think that's a reasonable characterisation.
31 We are certainly looking, as per our guiding principles,

1 to have far more specification, and not just on
2 rehabilitation but certainly on that.

3 MS NICHOLS: Would the department regard those as absolutely
4 necessary rather than simply onerous additions, as was
5 suggested by Loy Yang?

6 MR WILSON: I would certainly consider them necessary. That's
7 why we have put them there. I did reflect earlier the
8 question of - I think it was put, "Are they more onerous
9 than in prior examples?" That's probably the case. But
10 our objective is not a degree of onerousness.

11 MS NICHOLS: Of course not, and it is not suggested. But to
12 the extent that they are more onerous, and I'm suggesting
13 they are, that is entirely appropriate and necessary,
14 isn't it?

15 MR WILSON: The conditions here are entirely appropriate and
16 necessary.

17 MS NICHOLS: Will the department follow this same process when
18 reviewing the work plan for the Hazelwood Mine which will
19 be submitted in 2016?

20 MR WILSON: Yes. Each process can be slightly different, but
21 it would be very similar.

22 MS NICHOLS: But will the department look for a similar level
23 of close assessment of the risks that might attend
24 completion of rehabilitation including fire risks and
25 stability?

26 MR WILSON: Yes.

27 MS NICHOLS: And will the department impose a similar reporting
28 regime that has regular reports being made back to the
29 department?

30 MR WILSON: That will depend on what's put forward in the
31 proposal. If the proposal already meets that standard,

1 then we wouldn't impose something additional.

2 MS NICHOLS: You were taken to a report before by GHD that is
3 annexure 4 to your second statement. I will just refer to
4 it briefly. The reference to that document, the page
5 number I want to go to is DEDJTR.1025.001.0089. Do you
6 have that there, Mr Wilson?

7 MR WILSON: Yes.

8 MS NICHOLS: So that's page (ii) of the document. I will start
9 on the previous page, sorry. GHD is summarising the
10 report in relation to final land form and it says that the
11 final land form should optimise the recovery of coal and
12 so on, and the third dot point, "Provide the community
13 with a rehabilitated land area that provides opportunities
14 for land uses that are safe for use and sustainable into
15 the future, i.e. a lasting legacy to the community." Does
16 the department accept that that is an important and
17 legitimate goal in determining final land use?

18 MR WILSON: I guess there are two parts to that. When the
19 regulatory processes are happening we do of course have to
20 stick with the expectations set out in the legislation and
21 regulations around what is required for rehabilitation.
22 I do accept that not only GHD but many others would make
23 statements of this kind, and that goes to what is a more
24 general expectation. But there is sometimes a difference
25 between that and what's specifically required in
26 legislation.

27 MS NICHOLS: Accepting that one must conform with legislative
28 requirements, do you accept that there is a legitimate
29 expectation in the community that access to the community
30 to the final land forms be given as much scope as is
31 reasonably possible?

1 MR WILSON: I accept that that will be a relevant
2 consideration, but the question of exactly what weight can
3 be given to it in an actual decision, again I come back to
4 the decision maker is still then bound by what the Act
5 allows. So some might have the view that they sit in
6 accordance with each other and others might say they
7 differ.

8 MS NICHOLS: Let's take for the purposes of the question an
9 assumption that the Act in a particular case would permit
10 public access to land. Would you accept that the
11 community of the Latrobe Valley would regard it as
12 important that final land use concepts be prepared to
13 enable as far as was technically possible and reasonably
14 possible public access and use of the land?

15 MR WILSON: I can't remember the exact initial words, but
16 I think the expectation would certainly be there, yes.

17 MS NICHOLS: In relation to the Loy Yang work plan, you may
18 recall - and this is mentioned at Mr Rieniets statement,
19 I won't go to it, at paragraph 94 - the 1997 work plan had
20 as its final end use concept the intention that it form a
21 lake for community recreational purposes and that the
22 overburden dump be reverted to grazing and recreational
23 areas. Do you recall that?

24 MR WILSON: Yes.

25 MS NICHOLS: You will also recall that the land use concept as
26 discussed at point 6.3 of the current work plan variation
27 indicates that the land will remain in private ownership
28 on completion of mining. Was that a conscious decision by
29 the department to revert to private use?

30 MR WILSON: No, it is in private ownership at the moment.

31 MS NICHOLS: Understood. I probably put that question badly.

1 Was it intended by accepting that work plan to close off
2 the possibility in the future for public access to the
3 land, understanding that ownership structure may change in
4 the future?

5 MR WILSON: No, I think it goes to the question of whether that
6 type of end use, particularly that ownership, is it an
7 allowable end use concept or not.

8 MS NICHOLS: Accepting that you are saying that hasn't been
9 determined yet, but if that is an allowable end use
10 concept will the department require the kind of
11 rehabilitation that would facilitate as far as possible
12 public use and public access provided that it's a legally
13 allowable use?

14 MR WILSON: If it was legally allowable and indeed a valid or
15 foreseeable end use concept, it may well be - the
16 department will certainly allow for it. I think the
17 question is would we require that to be the case, and
18 I don't have an answer to that.

19 MS NICHOLS: My question is really more directed at the steps
20 that might be necessary now and in the time between mine
21 closure to not foreclose that. So, for example, if you
22 needed to remediate water to a different standard or
23 ensure batter slope stability to a different standard,
24 would that be a consideration that the department would
25 have regard to?

26 MR WILSON: It could be a consideration again depending on what
27 end use concepts are relevant to that mine.

28 MS NICHOLS: The department has not done any consultation with
29 the community which would convey to the community that
30 public access to the land in this case may not be
31 something that the department would contemplate, has it?

1 MS BURTON: No.

2 MR WILSON: No.

3 MS NICHOLS: Would it be important in the department's view to
4 consult with the community and engage the community on
5 this very topic?

6 MR WILSON: Yes.

7 MS NICHOLS: Thank you. Nothing further, Mr Chairman.

8 MR ROZEN: Three quick matters. I'm under pressure. The
9 document that has been brought up on the screen was the
10 document that I was asking you about. This is the work
11 plan variation application version 5 of 2015. If you
12 could scroll down to the bottom of the page, do you see,
13 Mr Wilson, it is very hard to read, but this is version 5,
14 May 2015 of the Loy Yang Mine work plan variation?

15 MR WILSON: Yes, I have that here.

16 MR ROZEN: This is the version I was asking you about. If you
17 scroll up to actually the next page, 6.3, if you could
18 look under the heading 6.3, "End use concept", Mr Wilson?

19 MR WILSON: Yes.

20 MR ROZEN: Do you see five lines down the sentence, "The
21 current concept is based on all existing water licences
22 and entitlements being available to flood the pit"? Do
23 you see that?

24 MR WILSON: 6.3?

25 MR ROZEN: 6.3, "The current concept is based on all existing
26 water licences and entitlements being available to flood
27 the pit"?

28 MR WILSON: I can see "one concept".

29 MR ROZEN: It is apparent that we are at cross-purposes. If
30 you look up at the screen - - -

31 MR WILSON: Sorry, it is the wrong one.

1 MR ROZEN: This is AGL.0001.003.0139. This was the document
2 provided to the board by AGL, and I must say until earlier
3 today I was of the assumption this was the approved work
4 plan variation 15. So do you have this now that refers
5 to, "The current concept is based on all existing water
6 licences"?

7 MR WILSON: Yes.

8 MR ROZEN: My learned friend Ms Forsyth for AGL was asking you
9 questions about a later version, and I think I'm right,
10 version 6 of this same proposal in which the words "one
11 concept" appear where "the current concept" previously
12 appeared; are you following that, Mr Wilson?

13 MR WILSON: Yes, that was the other one that I had.

14 MR ROZEN: My question is this. It would appear the wording
15 changed between version 5 and the final version which was
16 approved. Was that at the department's request? Are you
17 able to assist us with that change of wording?

18 MR WILSON: I don't know the answer as to who initiated that
19 change, sorry. I can look that up and see what I can find
20 out.

21 MR ROZEN: If you are able to inform the board of that that
22 would be appreciated. My second question concerns
23 evidence that you gave, Mr McGowan, or it might have been
24 Mr Wilson, actually, about the options that were available
25 to the department in relation to the Loy Yang variation,
26 that is to approve the variation with conditions or to
27 reject the application with reasons. I think you said to
28 us that you could argue the toss about which one was the
29 most appropriate course. I just want to follow that up,
30 if I can, in terms of the requirements of section 78 of
31 the Mineral Resources Sustainable Development Act 1990.

1 Do you have a copy of the Act in front of you? Perhaps if
2 we just - - -

3 MR WILSON: I can see it on the screen.

4 MR ROZEN: It is behind tab 39 of the hearing book, part 7. Do
5 you see section 78 requires the holder of a mining licence
6 or prospective licence to rehabilitate land in accordance
7 with the rehabilitation plan approved by the department
8 head? The trigger for the bond to be called in and for
9 the potential for the minister to either have to
10 rehabilitate the land or, alternatively, be in a position
11 to recover as a debt money are all contingent on the
12 licensee not rehabilitating the land in accordance with
13 the approved plan; do you agree with that?

14 MR WILSON: Yes.

15 MR ROZEN: If we think about the situation with Loy Yang, any
16 commitments that are made by them in a document submitted
17 as required by the conditions will only be enforceable
18 within this regime if they are then brought into the plan;
19 is that right?

20 MR WILSON: If they are accepted by the department head, yes.

21 MR ROZEN: It is more than just being accepted. They have to
22 be accepted and then become part of the plan, do they not?

23 MR WILSON: My understanding is that upon acceptance when the
24 treatment is done or the condition is met, and obviously
25 it depends on the condition, then that comes into the
26 plan.

27 MR ROZEN: Okay. That's the intention of the department?

28 MR WILSON: Yes.

29 MR ROZEN: The mechanism by which that occurs is perhaps
30 something that will need to be considered; do you agree?

31 MR WILSON: That's possible, yes.

1 MR ROZEN: The final question I have is a broad one which was
2 explored very early today in questions by Professor
3 Catford with Mr Langmore. I'm not sure if you were here
4 when the first witnesses gave evidence earlier today.

5 MR WILSON: Some of it.

6 MR ROZEN: It is probably a bit out of left field for you,
7 Mr Wilson, and I apologies in advance. It goes to the
8 broader question of whether there is a need for some
9 overarching coordinating regional authority overseeing the
10 future essentially, overseeing the rehabilitation of the
11 coal mines, bringing in appropriate expertise and so on.
12 It is probably a difficult question for you to answer
13 because that would be a structure that would be
14 necessarily different from the one that presently exists.
15 But do you have any thoughts about the desirability of
16 such an approach working together perhaps with
17 the department?

18 MR WILSON: I have heard that proposition. I have not formed a
19 view on its desirability. But obviously the question and
20 I guess the question for the board in the end is that to
21 come to that question I would tend to start with what are
22 we trying to achieve, what functions are relevant to that,
23 what stakeholders are relevant and sort of the question,
24 "Is it an entity; is it something else," almost comes at
25 the end of that exercise so that you at least know what
26 you are trying to achieve. Whether it is a single entity
27 or an existing body or what-not, that can be a decision
28 later. I don't have a view on that.

29 MR ROZEN: Thank you very much. I think I might have come in
30 on budget there, the questions in re-examination, and
31 could these three witnesses please be excused.

1 CHAIRMAN: Yes, indeed.

2 MR ROZEN: Subject to Mr Wilson's commitment to come back on
3 Monday for terms of reference 10 of course.

4 CHAIRMAN: We will adjourn now until 9.30 tomorrow morning.

5 <(THE WITNESSES WITHDREW)

6 ADJOURNED UNTIL WEDNESDAY, 9 DECEMBER 2015 AT 9.30 AM

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