
TRANSCRIPT OF PROCEEDINGS

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2015/16 HAZELWOOD MINE FIRE INQUIRY

MELBOURNE

MONDAY, 14 DECEMBER 2015

THE HONOURABLE BERNARD TEAGUE AO - Chairman

PROFESSOR JOHN CATFORD - Board Member

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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: Yes, Mr Rozen.

2 MR ROZEN: Good morning, Chairman and Professor Catford. The
3 Board determined and advised the parties that it would
4 separate the hearing of evidence concerning terms of
5 reference 8 and 9 on the one hand, which we dealt with
6 last week, and term of reference 10 on the other, which we
7 will hear the evidence concerning term of reference today.
8 But I would not want it to be taken by the parties that it
9 is the view of Counsel Assisting that the two are in
10 effect separate matters. It will be our position
11 ultimately, and I will deal with this briefly this
12 morning, that really terms of reference 8, 9 and 10 have
13 to be considered as a whole and that any financial
14 assurance mechanism, which is the subject of term of
15 reference 10, needs to be connected to the resolution of
16 the issues that are set out in terms of reference 8 and 9.
17 As I say, I will expand on that.

18 If I could start by reading out term of reference
19 10. Under term of reference 10, the Board is required to
20 inquire and report on the following matters: Having
21 regard to the rehabilitation liability assessments that
22 have been or will be reported in 2015 by the operators of
23 each of the Hazelwood Mine, the Yallourn Mine and the Loy
24 Yang Mine as required by the Mineral Resources Sustainable
25 Development Act 1990 and to the outcome of the
26 Rehabilitation Bond Review Project: F(a) whether the
27 rehabilitation liability assessments referred to above are
28 adequate; (b) whether the current rehabilitation bond
29 system being one of the measures to provide for
30 progressive rehabilitation by the end of mine life as
31 required under the Act is or is likely to be effective for

1 the Hazelwood Mine, the Yallourn Mine and the Loy Yang
2 Mine; and (c) any practical, sustainable, efficient and
3 effective alternative mechanisms to ensure rehabilitation
4 of the mines as required by the Act.

5 For completeness I note that under term of
6 reference 12 the Board is required to inquire into and
7 report on any other matter that is reasonably incidental
8 to term of reference 10.

9 I note the reference in term of reference 10 to
10 the outcome of the Rehabilitation Bond Review Project.
11 The Board will hear evidence over the next two days about
12 what that project is and it will hear that the outcome
13 will not be known any time soon, certainly not this week
14 and in all likelihood not before the time at which the
15 Board is required to report on term of reference 10.

16 The Board will hear that the project involves a
17 series of steps and that DEDJTR, which is running the
18 project, has reached what appears to be the penultimate
19 step, but the final step of reviewing the bond levels,
20 which is to be the outcome of the project, as I say,
21 hasn't yet arrived.

22 That puts the Board in a somewhat difficult
23 position because it is mandated that the Board must have
24 regard to the outcome and yet the outcome will not be in
25 evidence before the Board. That is a matter we will
26 return to in our closing submissions, but the bottom line
27 appears to be that all the Board will be able to do is
28 take into account those steps of the project that have in
29 fact been completed.

30 Before I address 10(a), (b) and (c) in outline,
31 I think it is worthwhile just remembering the provisions

1 of Part 7 of the Act which deal with rehabilitation so far
2 as they apply to bonds. In summary, section 78 of the Act
3 requires a licensee to rehabilitate land that a licence
4 applies to in accordance with an approved plan for the
5 rehabilitation of that land, and the plan has to satisfy
6 section 79.

7 Section 79A empowers the minister to require a
8 licensee to undertake an assessment of the licensee's
9 rehabilitation liability for the purpose of determining
10 the amount of a rehabilitation bond or reviewing the
11 amount of a rehabilitation bond entered into or to be
12 entered into by the licensee.

13 Importantly, a liability assessment under 79A(2)
14 is quite a different thing from the liability assessments
15 that have to be made under the regulations and are set out
16 in schedule 19. That's because a liability assessment
17 under 79A must be undertaken in a manner and form
18 determined by the minister, whereas the liability
19 assessment that has to be filed under the regulations has
20 no such limitations. It is entirely a matter for the
21 mines as to how they determine their liability assessment
22 under the regulations.

23 Further, under subsection (3) of 79A the minister
24 may require a licensee to engage an auditor to certify
25 that a rehabilitation liability assessment has been
26 prepared in accordance with subsection (2); that is, that
27 it has followed the minister's manner and form
28 requirements, and that it is accurate. Once again, that
29 is a significantly different requirement to the one that
30 applies for the liability assessments under the
31 regulations.

1 We will explore in evidence the use that's been
2 made of section 79A by the regulator, or by the minister
3 strictly speaking, but as presently advised it does not
4 seem to have been activated, despite the fact that it has
5 been there since 2006. It seems to be a very useful tool
6 in advancing the minister's and the department's
7 responsibilities under Part 7.

8 Returning to the remainder of Part 7, section 80
9 mandates the licence holder enter into a bond, and
10 subsection (3) of section 80 makes it clear that there is
11 only one condition of a bond and that is that the licensee
12 rehabilitate the land "to the satisfaction of the
13 minister" and the final expression is obviously important.

14 Under section 82, if the licensee does
15 rehabilitate the bond to the satisfaction of the minister,
16 they get their bond back. On the facts of the inquiry as
17 they will ultimately be disclosed, the operation of
18 section 82 raises some interesting questions. For
19 example, with the Hazelwood Mine, if it is in fact to take
20 500 years to fill the lake, does that mean they don't get
21 the bond back until that's completed?

22 That and a number of other questions are not
23 apparently answered by section 82, but they are very
24 important ones that we probably won't be able to answer in
25 this Inquiry. It is yet another example of the regulatory
26 regime in Part 7 not seeming to fit the circumstances of
27 these three mines perhaps as well as it could.

28 As we have noted in the evidence to date, section
29 81 requires a licensee to progressively rehabilitate the
30 land and I will return to that shortly as to how that
31 works in the context of the bonds.

1 Finally and importantly, section 83 is the sting
2 in the tail, if you like, of the regulatory regime such as
3 it is and that is that the minister is empowered to
4 conduct the rehabilitation of the land himself in the
5 event that he's not satisfied that it's been done and that
6 there has been a request for it to be done and that has
7 not occurred. That is in summary form.

8 Section 83 also raises a number of difficult and
9 interesting questions such as on the facts in relation to
10 these three mines where they are on land that they own, if
11 they don't do the rehabilitation work, how does the
12 minister give effect to the power under section 83 in
13 circumstances where it's on private land and potentially
14 raises practical difficulties? In the event that the
15 minister does the work but the bond is insufficient to
16 cover the cost of the work, then the minister may recover
17 as a debt due to the court in a court of competent
18 jurisdiction any amount by which the cost the minister has
19 incurred exceeds the amount of the bond.

20 It can be seen that on that very brief excursion
21 through the legislation that the purpose of the bond or
22 the purposes of the bond are twofold; one, to be an
23 incentive for rehabilitation to be carried out, both
24 progressive and final, but also to provide a security in
25 the event that it's not done and that the minister has to
26 do it.

27 With that brief understanding of the regulatory
28 scheme in mind, I will turn to each of the terms of
29 reference, starting with 10(a), the adequacy of the
30 rehabilitation liability assessments that have been made
31 by the mines.

1 The evidence will be that each of the mines filed
2 an assessment in 2015 under its schedule 19 report. In
3 relation to Yallourn, the estimate is \$46 to 491 million.
4 In relation to Hazelwood, the estimate is \$73.4 million.
5 In relation to Loy Yang, the estimate is \$53.7 million.
6 It's an interesting observation that only Yallourn has
7 provided an estimate on the basis of a range and the
8 evidence will be, which we will hear this morning from
9 Mr Mether, that the range reflects uncertainty about,
10 among other things, batter stability. There will be
11 evidence before the Board that will assist it in making
12 the judgment it is required to by 10(a); that is, the
13 adequacy of those three assessments.

14 Before turning briefly to look at that evidence,
15 it's worth remembering the observations that were made by
16 Corinne Unger, the last witness we heard from last Friday.
17 Ms Unger has recently been appointed as the rehabilitation
18 specialist to the Technical Review Board. There were two
19 things she said which we will ultimately submit are very
20 significant in terms of an understanding of what
21 rehabilitation and closure means. The first was
22 rehabilitation and closure are more than earthmoving
23 tasks; secondly, a reference she made to a publication
24 which is "It's not over when it's over", which the Board
25 may understand to mean that closure may not be the final
26 step ultimately in rehabilitation of mines.

27 As indicated, the evidence before the Board to
28 assist it in making the judgment it has to make under
29 10(a) will come from three sources: Firstly from AECOM;
30 secondly from Jacobs; and thirdly from various reports
31 that have been commissioned by the mines over the years in

1 relation to their liability assessments.

2 I can deal briefly and quickly with the Jacobs
3 situation. It will be our submission ultimately that
4 there is little assistance to be gleaned for the Board
5 from Jacob's costings. It is not a criticism of Jacobs at
6 all; it is a recognition that the costings in the Jacobs
7 report were done for a particular purpose, that is for a
8 comparative purpose, and they related to term of reference
9 9(f) rather than 10. So, whilst they are part of the
10 evidence, they are perhaps not as significant as the other
11 two sources of which we will submit ultimately the AECOM
12 material is the best basis for the Board to make an
13 assessment under 10(a).

14 AECOM, also sometimes referred to as URS because
15 URS became AECOM or were taken over by them during the
16 course of 2015, carried out a major piece of work, the
17 Board will hear, in 2015 as part of the Bond Review
18 Project. The brief that AECOM were given by DEDJTR was to
19 provide an independent assessment of the cost for closure
20 of each of the mines, based on the approved work plan of
21 each mine and on certain assumptions provided by DEDJTR.

22 Importantly, the work that AECOM did was subject
23 to a number of limitations. The reports that AECOM have
24 provided each contain the following statement of
25 limitation, and I will read it out because we will
26 ultimately submit it is important and it helps the Board
27 evaluate the figures in the AECOM reports.

28 AECOM wrote this: "The cost estimates generated
29 herein" - that's in each of the four reports - "uses the
30 information contained within the various documents
31 provided and assumes the conclusions and assessments made

1 are valid and will be achieved. Furthermore, the
2 URS/AECOM brief for this work was a desktop study of the
3 rehabilitation costs and therefore did not include the
4 following: site inspections, development of detailed
5 closure data such as designs for final slopes, water
6 quality modelling or closure criteria, and collection of
7 contract quotations." We will ultimately be submitting to
8 the Board that those are very significant limitations and
9 need to be considered carefully in evaluating the figures
10 in the AECOM report.

11 As that quote indicates, AECOM received some data
12 from the mines during the course of carrying out their
13 work in 2015, but there certainly seems to be some
14 conjecture on the part of the mines about whether the
15 concerns they have expressed in responding to draft
16 reports that AECOM produced have been dealt with
17 adequately in the final reports produced by AECOM, and
18 perhaps the most strident of the concerns is expressed by
19 GDF Suez, the operator of the Hazelwood Mine.

20 Ultimately, AECOM produced four reports, one
21 relating to Yallourn, one relating to Hazelwood and two
22 relating to Loy Yang, the first of which was based on the
23 then approved 1997 work plan. More recently, as the
24 Inquiry heard last week, a new approved 2015 work plan has
25 come into existence and has been approved by the
26 department. AECOM were asked to do a further piece of
27 work taking into account that plan and costing that plan.
28 As we will see, that has resulted in significant changes
29 to the costings that were in the earlier report.

30 AECOM used a mathematical model with the
31 interesting name, the Monte Carlo simulation. The

1 evidence will be that this model enables uncertainties
2 about costs of particular items to be taken into account
3 in the overall assessment of cost. It produces results
4 which are at different confidence levels which essentially
5 tells you the certainty that surrounds a particular
6 estimate. The confidence levels the Board will hear about
7 are referred to as P50, P80 and P95. Professor Catford in
8 particular will be reminded of confidence levels in the
9 term of reference 6 Inquiry, and it seems for this Board
10 there is no escaping statistics and confidence levels, you
11 will be very pleased to hear.

12 The AECOM methodology takes into account a range
13 of risks inherent in each of the closure plans of the
14 mines. They are set out in each of the reports at 4.6.
15 I won't read them out now, but they are very important
16 considerations and the risks reflect the evidence that we
17 heard last week about matters such as the risk of batter
18 instability, the risk of not being able to get access to
19 water, the risk of water quality needing years of
20 monitoring and so on. They are, we will ultimately
21 submit, very significant uncertainties in this whole area
22 of assessing the rehabilitation liability costs of each of
23 the mines.

24 The evidence will be that, under the model used,
25 changes to rehabilitation plans can have very significant
26 changes to the overall cost estimate. If I just take two
27 examples briefly. If one compares the AECOM report for
28 Loy Yang 2015 to the AECOM report for Loy Yang 1997,
29 remembering that perhaps the most significant change from
30 the early plan to the current plan is that the level of
31 the lake is very much lower than it had been in the early

1 plan, so we have gone from plus 60 metres AHD to negative
2 22.5 metres AHD, according to the AECOM material that
3 change alone adds \$60 million to post closure maintenance
4 and monitoring and it adds \$39 million to the issue of
5 reshaping the batter slopes. So, very close to
6 \$100 million just on those two items just on that one
7 change.

8 Similarly with Hazelwood, it is not a question of
9 a change here, but merely what flows from the particular
10 plan. The plan which envisages on one outcome that it
11 would take 500 years to fill the lake, on that basis AECOM
12 have allocated a sum of \$90 million to rip rap, which is
13 something we all learnt about last week. That's because,
14 on their costings, the rip rap has to be moved every
15 50 years as the lake level rises to deal with erosion at
16 that level over the course of the 500 years.

17 The Board also has before it, as I have
18 indicated, in addition to the AECOM material, various
19 assessments that have been performed by the mines over the
20 last 15 years or so. We will ultimately submit that many
21 of them are now quite old, the liability assessments that
22 have been attached to the various statements, and are not
23 as helpful to the Board in carrying out its task as the
24 other material, particularly the AECOM material, but
25 having regard to those limitations.

26 If I can turn then to 10(b), which requires the
27 Board to determine the effectiveness of the current
28 rehabilitation bond system, a significant task, it must be
29 said. The evidence will be that under the current system
30 the bonds for each of the mines were set on what's
31 referred to as an interim basis in the evidence at

1 \$15 million in 1996 at the time of privatisation or
2 1995/1996. There is, as the Board heard last year when
3 this issue arose, but then only in relation to Hazelwood,
4 surprisingly little documentation setting out the basis
5 for those \$15 million interim bonds.

6 One thing we do have is a briefing note which
7 will be tendered in evidence from 4 December 1995. This
8 is concerning the Hazelwood Mine. It was referred to in
9 the evidence of Kylie White in the Inquiry last year. The
10 context of the briefing note, which was to acting director
11 resources development from manager minerals and petroleum
12 operations, so it was from a senior person to a more
13 senior person within what was then or what is now DEDJTR,
14 the basis of the note was to brief about the assessment of
15 the rehabilitation bond for the Hazelwood Mine. It noted
16 that the bonds had been set at an interim level of \$15
17 million and that Hazelwood had provided detailed estimates
18 of its current and financial liability, and it noted the
19 following, "The company argues that the bond should be
20 based only on the end of life liability on the basis that
21 they keep up the current program of progressive
22 rehabilitation." Twenty years later it seems nothing has
23 changed because that essentially seems to be the position
24 each of the mines is taking on the material that is before
25 the Inquiry.

26 There is then a discussion of the likely cost and
27 at paragraph 7 it is noted, "The total current liability
28 for rehabilitation is thought to be in the vicinity of
29 \$20 million. However, the company has a well managed
30 progressive rehabilitation program with annual expenditure
31 of approximately \$1 million. Their aim is to have all of

1 the progressive rehabilitation work completed by the time
2 the mine closes." It goes on, "Bonds are usually based on
3 an estimate of the worst case liability during the mine
4 life. To set a bond for this site based only on the end
5 of life cost would be a departure from this practice.
6 However, the importance of the mine as part of the State's
7 power supply infrastructure means it is very unlikely to
8 close before the scheduled end of life. It can therefore
9 be argued that, provided progressive rehabilitation is
10 kept up, the potential liability to the State is only the
11 cost at closure."

12 Then ultimately the recommendation was to
13 "maintain the bond level at \$15 million to cover the end
14 of life costs at the site and to require the company to
15 continue progressive rehabilitation at a similar rate to
16 the present program." It is noted that it was agreed by
17 the recipient and ultimately, more importantly for the
18 Board, the bond stayed at \$15 million and it has been at
19 \$15 million for Hazelwood ever since.

20 That is also the case with Loy Yang. They still
21 have a \$15 million bond. Interestingly, the Yallourn bond
22 was decreased about 10 years after it was set at
23 \$15 million. The basis for the decrease of the bond is
24 also highly relevant for this Inquiry.

25 The basis is set out in a letter that was sent by
26 what had by then become the Department of Primary
27 Industries, but for our purposes is DEDJTR, to Yallourn
28 Energy and it is a letter dated 30 July 2004 signed by the
29 minister's delegate. It advises Yallourn that their bond
30 had been reduced following a review by, in round figures,
31 \$3.6 million to \$11.4 million.

1 The letter goes on, "As discussed at our recent
2 meeting, the rehabilitation bond review was carried out in
3 accordance with the department's guidelines." The Board
4 will hear about the current guidelines in the evidence.
5 The letter goes on, "However, the contingency allowance is
6 20 per cent rather than 10 per cent which usually applies.
7 The department's view is that a higher contingency
8 allowance is required to cover uncertainties relating to
9 the final rehabilitation of the site. The minister's EES
10 assessment report of 2001 identified the need for further
11 research, in particular in hydrology, to address this
12 uncertainty. Further research into final landforms and
13 hydrology is also a condition of the licence."

14 Then the fourth paragraph of the letter read as
15 follows: "The department will be happy to initiate
16 another rehabilitation bond review and to reduce the
17 contingency allowance once the research has been
18 undertaken and the uncertainties related to final
19 rehabilitation are resolved."

20 On the evidence that's been provided to the Board
21 to date, that's a rare, perhaps unique example of the
22 department linking the bond level with finding answers to
23 questions such as hydrology, stability and the like. For
24 what it's worth, from Counsel Assisting's perspective that
25 seems a sensible linkage. It's surprising that it hasn't
26 occurred more, and our exploration of the evidence over
27 the following two days will address whether that's a
28 viable approach and in light of that evidence we will
29 ultimately make submissions to the Board on Friday about
30 whether or not that would be a useful addition to the
31 existing regime. What we have in mind in particular is

1 where I started today and that is developing linkages
2 between the bond mechanism and finding answers to the
3 questions that are set out particularly in term of
4 reference 9.

5 Apart from that change, there has been no other
6 change to the bonds. That is despite published guidelines
7 which apply to the work of the department which refer to
8 the need for periodic reviews of bonds and which require
9 or seem to require reviews when there are variations to
10 work plans. We know that in relation to each of the mines
11 there have been variations to work plans. One of the most
12 significant was the variation of the Hazelwood Mine plan
13 in 2009, but we have the Yallourn variation in 2011, we
14 have very recently the Loy Yang variation. Despite what
15 the guidelines seem to require, there has been no review
16 of the bond levels at each stage and that is despite the
17 fact the mines are getting bigger and potentially the
18 liability is greater as the mines get bigger.

19 In the evidence we will explore why that has been
20 the case and, more importantly, how that can inform the
21 Board's answering of the questions that it is asked under
22 term of reference 10.

23 While I'm on the subject of the guidelines,
24 I should briefly point out that the guidelines refer to a
25 concept of third party costing which the Board will hear a
26 bit about and that is that rehabilitation liability
27 assessments and bonds in particular need to take into
28 account the likely cost to the State of doing the work,
29 that is the State as a third party to the mine, and the
30 guidelines and a good deal of the literature acknowledge
31 that generally speaking, all else being equal, it is more

1 expensive for the State to do the rehabilitation than it
2 will be for the mine operator. One only needs to think
3 about the difficulty of engaging contractors and bringing
4 in equipment and so on to understand why that must
5 necessarily be the case.

6 The evidence will disclose that there have
7 been - and this is a bit of a theme in the evidence in
8 this whole area - there have been many reviews by the
9 government into the bond system, reviews going back to
10 2002, 2004, 2009, and the existing review which remarkably
11 started in 2010 and is yet not completed. Despite the
12 reviews, many of which have contained very sensible
13 suggestions to the government about reforming the
14 financial assurance and bond system, there has been very
15 little concrete action in making any changes.

16 The Board's term of reference requires it to have
17 regard to whether the current bond system is effective in
18 achieving progressive rehabilitation, so that link is made
19 in the terms of reference. The Board will recall from
20 some questions I asked of the head of the regulator,
21 Mr McGowan, that there can be differences of opinion about
22 what progressive rehabilitation means, particularly in the
23 context of these three mines. It is not a term that's
24 defined.

25 We will ultimately submit on Friday that the
26 evidence the Board heard last week leads one to think that
27 progressive rehabilitation in the context of the Latrobe
28 Valley mines necessarily means at least two things. One
29 is what can be done on the short-term as an end in itself,
30 so for example covering coal to achieve mitigation of fire
31 risk, so that's one aspect of progressive rehabilitation,

1 but perhaps a more important or at least equally important
2 component of progressive rehabilitation in the context of
3 these mines is the trialling work and the research
4 necessary to answer the questions that arise from the
5 final rehabilitation plans. So I'm referring in
6 particular to the evidence that Professor Sullivan gave
7 last week and is in his report about the trials which have
8 been in place at Loy Yang over the last 10 years
9 concerning issues like batter stability and batter
10 coverage and so on. That is a very significant part, we
11 will ultimately submit, of progressive rehabilitation in
12 the context of these Latrobe Valley mines.

13 Under terms of reference 8 and 9 which we
14 explored last week, we will submit that there's a number
15 of very significant questions that need to be answered,
16 many of which cannot be answered by the Board despite term
17 of reference 9 asking it to on the evidence. Just some of
18 those questions - and these all have very significant
19 implications for the assessment of cost and that's why I'm
20 raising them here. So, what is the right slope angle, for
21 example, and does that need to be determined on a batter
22 by batter basis, as was suggested by a number of experts.
23 There is the question of water quality, whether rivers can
24 or should be diverted. What level of monitoring is
25 required for water quality. Monitoring fire risk. What
26 needs to be done to cover coal. What level of clay needs
27 to be used to achieve the right level of safety.

28 The perennial question of water sourcing, where
29 is it coming from, and the cost implications of that are
30 very significant. The difference between using your
31 existing, pretty cheap access to water and having to buy

1 it on the open market will obviously have very significant
2 questions for cost. The question of community
3 consultation and how it is to occur and at what points in
4 time is important. Stability testing and monitoring. The
5 evidence of Professor Mackay, Professor Galvin and others
6 is that we have only really started on the quest to
7 determine the answers to those questions.

8 The question of whether you need overburden on
9 the pit floor for stability purposes, that has cost
10 implications. Whether there's enough overburden to do
11 that and also to cover the batters is another issue.
12 Evaporation has very significant implications for
13 long-term costs of maintaining water levels and
14 evaporation rates may increase with climate change, a
15 matter that Professor Catford explored with the water
16 witnesses. Wave erosion is another issue. The Board will
17 recall Dr McCullough's evidence about the need for
18 research.

19 So, in relation to each of those areas there's a
20 good deal of work to be done to provide answers about
21 whether a particular control measure is needed or not.
22 Take wave erosion. It's a nice simple example. The
23 outcome of the research might be that it's not a problem.
24 We can just cross the \$90 million off the assessment for
25 Hazelwood. Or it might be we need rip rap, in which case
26 that's necessary. Or it might be we need something else,
27 but here it is and it's a good deal cheaper and it will
28 work just as well. We just don't know and that's the
29 difficulty. That's the difficult task the Board faces in
30 assessing both the rehabilitation liability assessments
31 and also the bond levels.

1 One thing is clear, though, and that is even on
2 the lowest rehabilitation liability assessments that exist
3 at the moment, that is the levels the mines have provided,
4 there's a big gap between the existing bond and those
5 assessments. If, as we will ultimately submit, they need
6 to reflect each other, perhaps not identically, but there
7 needs to be some proper reflection between the assessment
8 and the bond if the bond is to serve its purpose, then the
9 current system is a long way short of adequate.

10 If I can turn then to the final task the Board
11 has under term of reference 10 and that is an
12 identification of alternative mechanisms to ensure
13 rehabilitation, whether there are alternative mechanisms,
14 whether they would work better than the existing
15 mechanisms.

16 The observations I have already made in relation
17 to terms of reference 10(a) and 10(b) necessarily inform
18 the answer to 10(c). We will ultimately submit there is
19 no point changing the mechanism for the sake of it. The
20 evidence will reflect that there are a range of mechanisms
21 and none of this is new. This is reflected in reports
22 going back a number of years commissioned by the
23 government, such as the KPMG report and GHD reports that
24 the Board will hear about, and it's also reflected in the
25 material that's been prepared for this Inquiry, the Accent
26 report and also the very recently received report from
27 Dr Gillespie, who was engaged by AGL.

28 In summary, the alternative mechanisms would
29 appear to be different sorts of bonds. A single-step
30 increase bond, a multi-step increase bond, a discount
31 bond, that is the bond goes down when certain milestones

1 are reached or tasks are performed, or some combination of
2 those. So you could have a situation where the bond
3 either increases or decreases depending on circumstances
4 on a periodic level, which might ultimately be the most
5 effective method.

6 Other alternatives include a trust fund, and we
7 know that under the Loy Yang complex agreement there is a
8 trust fund mechanism, but it doesn't come into effect
9 until 2023. There are also various forms of insurance
10 schemes that have been used interstate and overseas.
11 There is your standard form of insurance. There is a
12 pooled fund insurance where in effect the three mines each
13 have an interest in the other mine carrying out its work,
14 its rehabilitation work, and in the context of an
15 integrated rehabilitation plan, which is one of the
16 matters the evidence discussed last week and that we will
17 address in our final submissions, a type of pooled scheme
18 may have some attractions. There's also other types of
19 insurance, unplanned event insurance, and there is
20 unplanned event funds as well.

21 The evidence will be that the EPA, interestingly,
22 which also operates a financial assurance scheme for
23 various identified premises, including the three mines in
24 the Latrobe Valley, has at its disposal a wide range of
25 financial assurance mechanisms, including one under
26 section 67(b)(1)(f) of the EPA Act, under which the EPA
27 can require a person to put up any financial assurance
28 that the EPA considers appropriate. You don't get much
29 broader power than that.

30 Interestingly, the evidence is that it only uses
31 bonds, despite having that range of assurances available

1 to it. That's a matter that I will explore, and no doubt
2 the parties will, with Mr Webb of the EPA when he gives
3 evidence later today.

4 More importantly, though, the evidence will
5 reveal, at least in relation to the three Latrobe Valley
6 mines, that the EPA has lacked it seems the will or the
7 wherewithal to exercise those powers and require the mines
8 to provide it with financial assurances, despite the fact
9 that it has been a mandatory obligation in the EPA
10 licences of each of the mines for a period of some
11 15 years. Sorry, it's the power stations. I stand
12 corrected.

13 That has been in the face of what I think can be
14 described as a concerted campaign by the operators of the
15 power stations to not put up financial assurances to the
16 EPA and the Board will hear about the correspondence
17 that's passed between them and that that is a matter that
18 is still under review as at 2015.

19 We will ultimately submit that it is not really a
20 question of the type of financial assurance that's
21 available. They have their pros and cons. We will submit
22 ultimately that bonds properly applied are as good a
23 mechanism as any. What is important is how the regulatory
24 scheme and how the regulator uses the mechanisms that are
25 available. They need to be used by the regulator with
26 will. They need to be properly implemented. They need to
27 be reviewed in accordance with the guidelines. We will
28 submit also there needs to be a degree of imagination
29 involved in the design of the mechanism, the re-design of
30 the mechanism, and also the way in which it is implemented
31 so that the bond can play its role in providing answers to

1 the various questions which are thrown up by changing or
2 turning the conceptual plans that exist at the moment into
3 operational closure plans.

4 Ultimately, coming back to the Act, we will
5 submit the questions are, "Is the current system working
6 by providing the answers that everyone agrees need to be
7 provided to the questions set out particularly in term of
8 reference 9?" Because ultimately the bond system serves
9 no purpose other than to achieve rehabilitation of
10 the mines. So that's the standard against which it needs
11 to be judged.

12 We will submit that from a community perspective
13 everyone wants the mines to be rehabilitated and no one
14 wants the State to end up having to do it. Therefore,
15 what is necessary is a financial assurance system that
16 will assist along that path, that will provide the answers
17 to the many important questions about stability, water
18 access, water quality and so on, and in our final
19 submissions we will outline what we consider to be the
20 principal features of such a system.

21 They are the matters that I wish to say by way of
22 opening. I understand some of the parties may also want
23 to make some brief opening statements before I call the
24 first witnesses.

25 CHAIRMAN: Thank you, Mr Rozen. Yes, Ms Forsyth.

26 MS FORSYTH: If the Board please, if I can first start these
27 opening submissions by a note on the terms of reference.
28 In relation to terms of reference 10, they require the
29 Board in summary to make recommendations having regard to
30 two matters: the rehabilitation liability assessments
31 reported by the mines and the outcome of the

1 Rehabilitation Bond Review Project.

2 AGL does welcome the recognition in the terms of
3 reference that the current rehabilitation bond system is
4 one of the measures to provide for progressive
5 rehabilitation. But in fully understanding the terms of
6 reference it is relevant to consider what is meant by the
7 Rehabilitation Bond Review Project. It is defined in the
8 terms of reference to mean the current review into
9 rehabilitation bonds and the methodology by which they are
10 calculated as referred to at page 1612, lines 7 to 8, of
11 the transcript of the Hazelwood Mine Fire Inquiry dated
12 10 June 2014, which is document 35.

13 The scope of the Bond Review Project for the
14 three Latrobe Valley mines is defined in the project plan
15 dated June 2015 which obviously postdates the Inquiry's
16 terms of reference. That is annexure 36 to Mr Wilson's
17 witness statement, document 12, volume 7,
18 DEDJTR.1020.001.0932. The Bond Review Project appears to
19 be quite different to the bond reform project that was,
20 for example, discussed in Ms White's witness statement at
21 paragraph 116, document 36, which apply to sites which
22 exclude the Latrobe Valley coal mines. So there seemed to
23 be two projects: the bond reform project, which applies
24 more broadly, and then the Bond Review Project, which
25 applies to the three mines in the Latrobe Valley. AGL has
26 taken the Hazelwood Mine Fire Inquiry terms of reference
27 to refer to the Bond Review Project as outlined in
28 Mr Wilson's statement as opposed to the bond reform
29 project, which we now understand has largely been rejected
30 by government.

31 So, turning briefly to what I'm going to say in

1 those opening submissions, firstly outline the primary
2 documents and evidence that AGL Loy Yang relies upon;
3 secondly, outline AGL Loy Yang's rehabilitation liability
4 assessment as reported in 2015 and its status in the
5 context of the recently approved work plan variation;
6 thirdly, comment on AGL Loy Yang's position in relation to
7 the AECOM report received last Friday, 11 December; to set
8 out in broad overview AGL Loy Yang's preferred approach to
9 the bond model and mechanism insofar as it can at this
10 stage of the Bond Review Project; and comment briefly on
11 the relevance of the EPA financial assurance to the
12 Board's terms of reference.

13 Turning firstly to the material AGL relies upon,
14 firstly AGL relies upon the submission to the Board dated
15 24 August 2015, which is tender document 53, especially
16 paragraphs 302 to 352; secondly, the witness statement of
17 Mr Stephen Rieniets, which is his third witness statement
18 or second supplementary statement, dated 4 December 2015,
19 which is document 3B, volume 1B; and, thirdly, the expert
20 evidence of Mr Gillespie as contained in his witness
21 statement dated 11 December 2015 which doesn't yet have a
22 tender document number.

23 Can I deal with some definitional issues firstly.
24 There seem to be four key issues that arise from term of
25 reference 10. Firstly, there's the question of the
26 rehabilitation liability assessment which we take to mean
27 in the context, for example, of section 79A of the Act the
28 estimated cost to carry out rehabilitation of the mines at
29 some point in time: for example, on a close now scenario,
30 at an end of mine licence scenario, at an end of mine life
31 scenario or at some point in between.

1 Secondly, there's the issue of the rehabilitation
2 liability assessment model. This is the model used to
3 estimate a rehabilitation liability assessment. Questions
4 arise as to how that model, for example, should deal with
5 uncertainty. Is it appropriate to use a probabilistic
6 model? How should the risk assessment be done? Who
7 should be involved in the inputs into that model?
8 Questions of purpose of the bond are going to be relevant
9 to this question. Is the bond there in place to deal
10 with, for example, uncertainty and, if so, how should it
11 deal with those questions?

12 In this context, the Board is reminded of
13 Mr Gillespie's evidence at paragraph 48 of his witness
14 statement where he says bonds are primarily aimed at
15 addressing risk of rehabilitation default in the event of
16 insolvency or a firm refusing to undertake final
17 rehabilitation works. Then he says at paragraph 47,
18 "Trying to use one instrument to achieve multiple goals is
19 likely to be counterproductive."

20 The third issue relates to the question of
21 whether the bond should be set at 100 per cent of
22 the rehabilitation liability assessment however that has
23 been determined through the rehabilitation liability
24 assessment model. This question is often referred to as
25 the bond model; for example, a two track model, a discount
26 model. Clearly questions of net benefit to the State of
27 Victoria are relevant to this question, and questions of
28 economic efficiency are also highly relevant to this
29 question.

30 Fourthly, there is the question of the mechanism
31 to secure the bond. Should there be just a bank

1 guarantee? Should parent company guarantees also be
2 available? How do trust funds fit into the equation?

3 AGL's submission will be that it is going to be
4 very hard for the Board to fall on a particular number or
5 on a particular model or on a particular bond mechanism
6 for any one mine. Each question could easily occupy a
7 full week of hearing to be dealt with even on a reasonably
8 high level. However, the Board will presumably be in a
9 position to make some broad recommendations about a number
10 of those issues, and we aim through our evidence to assist
11 in your difficult task.

12 If I could deal with the first of those four
13 issues, the rehabilitation liability assessments. As
14 Counsel Assisting has pointed out, there's a difference
15 perhaps between the rehabilitation liability assessments
16 that have been reported by the mines and those that may
17 arise under section 79A of the Act. AGL's rehabilitation
18 liability assessments submitted as part of its 2015 annual
19 activity and expenditure return, as the Board has heard,
20 was \$53.7 million based upon the 1997 work plan. The
21 Board will find reference to that at AGL's submission
22 document 53, paragraph 306.

23 There has been no variation to the rehabilitation
24 plan in the work plan since 1997. There may have been
25 some variations to the work plan, but not in relation to
26 the rehabilitation plan. So this is now the first time
27 that we have seen a variation to the rehabilitation plan
28 as reflected in the recently approved 2015 work plan
29 variation.

30 In anticipation of approval of this 2015 work
31 plan variation AGL Loy Yang commissioned GHD to undertake

1 a preliminary cost estimate of rehabilitation liability
2 based upon that work plan variation. AGL's submission and
3 Mr Rieniets' witness statements include a graph which is
4 an outcome of the GHD review. It shows the estimated
5 remaining rehabilitation liability of the mine at each
6 stage of the remaining life of the mine, taking the stages
7 as shown in the work plan variation. The Board will find
8 that graph at AGL's submission, document 53, page 95,
9 paragraph 245. The graph is also shown in Mr Rieniets'
10 second witness statement, document 3A - sorry, that should
11 be paragraph 245 - as well as the annexure to Mr Rieniets'
12 third witness statement, document 3B, volume 1B,
13 AGL.0001.005.0030.

14 The rehabilitation liability estimate is highest
15 as at 2015. At that point in time, according to the GHD
16 model, it is approximately \$112 million. That is at
17 approximately today's date. Then it gradually falls over
18 the life of the mine, for example, as progressive
19 rehabilitation is undertaken. Rehabilitation liability in
20 2048 is estimated to be approximately \$66 million.

21 Turning to the 11 December 2015 AECOM report,
22 this report in relation to the AGL Loy Yang Mine takes a
23 different approach to the GHD method. It adopts a
24 probabilistic model looking at two scenarios: a close
25 tomorrow scenario and an end of mine or, more accurately
26 in AGL's case, an end of mining licence scenario. The
27 Board has heard evidence that it is AGL's intention to
28 continue mining at least until 2048, and then it may be
29 required to continue to operate the mine to supply the
30 power station that's not owned by AGL, and that the 2037
31 date is only a function of the limits - sorry, the ceiling

1 on the grant of a licence being 40 years at the time it
2 was granted.

3 The figures that the AECOM model produces in
4 relation to the close tomorrow scenario range upwards from
5 \$177 million depending upon confidence levels and risk.
6 So they are higher than the GHD liability assessment as at
7 2015, namely approximately \$112 million. That issue will
8 be explored with AECOM in evidence.

9 The figures that the model produces in relation
10 to the end of mining licence scenario range upwards from
11 \$129 million net present value depending upon confidence
12 levels and risk. The AECOM model does not assess
13 rehabilitation liability over the mine life based upon the
14 stages of the mine in the 2015 work plan variation. AGL
15 Loy Yang makes a few key points about the model in
16 opening.

17 Firstly, the outputs of a model are only as good
18 as the inputs. Secondly, complex risk based models may be
19 effective tools for the mine operators to use, but there
20 is a danger in them being employed by government to
21 undertake rehabilitation liability assessments due to the
22 government's lack of access to appropriate personnel and
23 consultants to provide appropriate model inputs. In
24 particular if a risk based model is used it is imperative
25 that the mine operators and consultants have input into
26 the risk assessment. If a probabilistic model is used it
27 is important that the mine operators have input into the
28 cost variables used in the model.

29 AGL Loy Yang has only had limited input into the
30 AECOM model inputs and its staff and consultants had no
31 input into the risk assessment, assuming one in fact was

1 undertaken. It is critically important that the inputs to
2 the model are transparent so as to enable mine operators
3 to critically review the model outputs. AGL questions the
4 utility of choosing a close tomorrow scenario in light of
5 the extreme implausibility of the AGL Loy Yang Mine in
6 fact closing in the immediate future.

7 AGL Loy Yang proposes to engage with the
8 department in relation to the methodology in inputs and
9 outputs of the AECOM report in order to come up with a
10 realistic and appropriate rehabilitation liability
11 assessment. AGL's submission to the Board will be that it
12 would be entirely premature to put a number on an
13 appropriate rehabilitation liability assessment at this
14 stage.

15 Moving from the rehabilitation liability
16 assessment to the issue of the bond, Counsel Assisting
17 took you to the provisions of the Act and section 80 of
18 the Act which provides that a licensee must enter into a
19 rehabilitation bond for an amount determined by the
20 minister. AGL Loy Yang submits that there is broad
21 discretion given to the minister to determine that bond
22 amount. AGL Loy Yang acknowledges that it will need to
23 engage with the department over the next coming months to
24 determine whether or not a revised bond is required in
25 light of its revised 2015 work plan variation and the Bond
26 Review Project.

27 The critical issue is that a bond should be fair,
28 proportionate, efficient and equitable. AGL Loy Yang's
29 submission outlines one alternative to a bank guarantee to
30 ensure that rehabilitation is undertaken at the AGL Loy
31 Yang Mine, namely the Loy Yang complex agreement. The

1 Board has already heard that that's an agreement entered
2 into between the owners of the two power stations and the
3 State. It sets up a trust fund from 2023 that operates
4 for 10 years and for each of those 10 years 10 per cent of
5 the total rehabilitation liability - estimated
6 rehabilitation liability is put into that trust fund and
7 it can be drawn down in order to carry out rehabilitation
8 works.

9 Another potential mechanism that provides a high
10 degree of certainty to the State is a parent company
11 guarantee. The Board will hear evidence that a parent
12 company guarantee is a type of mechanism that is available
13 to AGL Loy Yang.

14 AGL Loy Yang's primary submission is that the
15 bond review process should take into account a range of
16 factors, including the Loy Yang complex agreement, AGL Loy
17 Yang's track record, risk profile, rehabilitation
18 liability assessment, access to credit and parent company
19 guarantee process. There may be significant benefit in
20 providing certainty to other mine and quarry operators
21 through a formal set of guidelines, however the Latrobe
22 Valley mines are in a different category and ought to be
23 assessed on a site by site basis. They are not in a
24 different category due to being "high risk sites". They
25 are in a different category due to a broad range of
26 factors such as the fact that they provide essential
27 services to the Victorian community.

28 Turning finally to the issue of the EPA financial
29 assurance. The Board's terms of reference do not require
30 it to report on the financial assurance regime under the
31 Environment Protection Act for the Latrobe Valley power

1 stations. Nevertheless a statement is provided by Mr Webb
2 of the EPA outlining EPA's financial assurance system.
3 AGL assumes that the Board is interested or did until this
4 morning assume that the Board was interested in the EPA
5 model for financial assurances and not in the specific
6 details of any potential overlap between the EPA financial
7 assurance system for landfills, which of course relate to
8 the power stations and not the mines, and not the mine
9 rehabilitation bond system. Sorry, I will go back and
10 clarify that sentence.

11 AGL assumes that the Board is interested in the
12 EPA's model for financial assurances and not in the
13 overlap between the EPA financial assurance system and the
14 mine rehabilitation bond system. On that basis, AGL Loy
15 Yang did not intend to cross-examine Mr Webb or make
16 submissions about the financial assurance requirements of
17 the Environment Protection Act except insofar as they
18 serve as a model for the bond system under the current
19 legislation. AGL may need to revisit this issue in light
20 of Counsel Assisting's opening submissions. But insofar
21 as the EPA's bond model is concerned AGL Loy Yang supports
22 some aspects of that model and in particular the
23 flexibility provided in terms of the financial assurance
24 mechanism. AGL refers in particular to annexure 3 to
25 Mr Webb's statement, EPA publication 1586, "Types of
26 financial assurance", document 11, court book volume 7,
27 which states that forms of financial assurance other than
28 bank guarantees may occasionally be appropriate.

29 AGL Loy Yang notes the industry feedback referred
30 to at paragraph 20 of Mr Webb's supplementary statement
31 which indicated strong industry support for flexibility in

1 the form of financial assurance, including support for
2 parent company guarantees. Certainly that's the approach
3 that AGL Loy Yang takes to the bond mechanism. If the
4 Board pleases.

5 MS DOYLE: If the Board pleases, I don't intend to open at
6 length on terms of reference 10 save only to say it is the
7 position of GDF Suez that a policy underpinning any review
8 of the rehabilitation bond mechanism or policy would
9 ideally employ a risk assessment approach. Further, it
10 might also be appropriate for such a model or such a
11 policy to also recognise and reward progressive
12 rehabilitation.

13 We make those two broad comments because it seems
14 to us that the question of estimating costs is occupying a
15 lot of time and energy in circumstances which might really
16 be based on a misconception. It seems that the process of
17 attempting to estimate costs, which is inherently
18 difficult in this arena, is tending to be conflated with
19 the question of risk. We agree with the propositions that
20 will be advanced by the lay witness for Loy Yang and by
21 the expert now called by Loy Yang. We agree with their
22 proposition that in fact the risk that there will be a
23 total default here by any particular operator of a coal
24 mine is low. So the likelihood that the risk will
25 crystallise is low.

26 The time and effort that is being devoted to try
27 to estimate costs is directed to an entirely different
28 question that does not help you analyse the likelihood of
29 the risk occurring. It is only one mode of informing
30 oneself as to what will be the consequences if there is a
31 crystallisation of what ought to be characterised as a low

1 risk.

2 Estimating costs I have described as difficult
3 for this reason. There are really three major levers, if
4 you like, or three reasons why the task of estimating the
5 cost of final rehabilitation is difficult. Firstly, we
6 are all attempting to estimate the cost of something that
7 doesn't need to be done or finally completed for many
8 years.

9 Next, whatever assumptions are used to underpin
10 the costing will of course dramatically affect its
11 outcome. Just by way of one example, what assumptions
12 does one adopt in terms of end of life of mine or time to
13 fill the pit lake void?

14 Third, the inputs, they vary and it is truly an
15 example of an instance where, as Ms Forsyth suggested, the
16 inputs are only going to produce good outputs if there is
17 solid information for determining the rates that are put
18 in or the assumptions that those rates are applied to.

19 As a result, the costings that the Board has been
20 presented with present very large ranges, differences in
21 levels of confidence and there are large discrepancies
22 between each. It is in that context that there will be
23 exploration of the difficulties with those costings
24 through the witnesses who are going to be called.

25 Mention has been made by two counsel this morning
26 of the fact that the government has been reviewing the
27 rehabilitation bond policy and model for some years.
28 Whichever model is ultimately proposed by government, of
29 course GDF Suez hopes to have a substantive and real
30 opportunity to be consulted both in relation to the
31 philosophy underpinning the model and the way in which it

1 will be applied but also in relation to the model of
2 financial assuery that is ultimately to be required.

3 Can I turn from those brief remarks to dealing
4 with some requests that have been made of the parties in
5 the period since we rose last week. I can either deal
6 with this now or at an appropriate time perhaps as the
7 mine panel is being called. Mr Rozen has indicated later
8 would suit him.

9 They fall into two topics. We have been asked to
10 deal with work plan variation and we can do that just
11 before the mine panel starts to give its substantive
12 evidence. All mines were asked to supply some financial
13 information by dint of two requests, one which came
14 through Friday afternoon and one Sunday morning. Those
15 matters weren't requested of us when the mine operators'
16 statements were first called for in October and were very
17 recently requested. In those circumstances, it seems to
18 us that Mr Faithful won't be in a position to speak to the
19 detail of those sorts of financial documents. I gather
20 there is an understanding with Counsel Assisting that
21 I might instead adduce that material from the Bar table,
22 which as I said I will do it at an appropriate time when
23 that indication is given. If the Board pleases.

24 MR ROZEN: If the Board pleases, we have what might elsewhere
25 be described as a packed program for the two days. The
26 first witnesses we will hear from are the mines panel, who
27 will give further evidence in relation to this term of
28 reference. There will then be a DEDJTR panel, slightly
29 different from the one we heard from last week.
30 Mr McGowan will be back. Mr Wilson will be back. In
31 place of Ms Burton we will have Mr Pendrigh. Each of

1 those panels I think will take up significant time and may
2 well see out the day, I suspect, from the estimates of
3 cross-examination I have seen. Then we will hear from
4 Mr Webb from the EPA, who I hope will be pretty quick.
5 Then there will be the AECOM panel and the panel
6 consisting of Accent and Dr Gillespie.

7 Just before I call the mines panel, from
8 something my learned friend Ms Doyle said, there may be a
9 misunderstanding which I probably need to clarify. I had
10 intended to ask Mr Faithful about the very recently
11 provided draft work plan variation, the Hazelwood work
12 draft plan variation. But I understand from Ms Doyle that
13 she thought she might do that.

14 MS DOYLE: No, I understood it to be a shared task.

15 I understood as usual Mr Rozen would lead that evidence
16 and I would have the opportunity to re-examine. I meant
17 rather that we have to physically provide it and
18 I understand it has gone in electronic form to the
19 parties.

20 MR ROZEN: I'm grateful for that clarification and I think that
21 course is probably the best one. With that explanation,
22 I recall Mr Faithful, Mr Rieniets and Mr Mether.

23 <RONALD CLIVE METHER, recalled:

24 <JAMES ANTHONY FAITHFUL, recalled:

25 <STEPHEN GERARD RIENIETS, recalled:

26 MR ROZEN: To show we are all multi-skilling here, I will do
27 one small task for Ms Stansen and just remind you that you
28 remain on your oath or affirmation as you made it last
29 week. I don't think, sir, there is a need to reswear
30 these gentlemen. Thank you.

31 The format today is slightly different to when

1 you were questioned by Ms Shann last week. It will be
2 more that I will ask you questions one at a time and you
3 may be asked, and if you want to please put your hand up,
4 if you want to make observations about what your
5 colleagues are saying. But I would like to start with
6 you, Mr Faithful, if I could, in no particular order.

7 Firstly, can I remind you - and I hope this is
8 not too much of a question without notice - but on
9 reviewing the transcript, and I'm looking at page T256 to
10 257 for the benefit of the parties. Mr Faithful, you may
11 recall that you were asked by Ms Shann if the company that
12 holds the mining licence at the Hazelwood Mine is the same
13 company which owns the land, and your answer at line 5 of
14 257 was, "I would have to clarify. I can't answer that."
15 You were asked by Ms Shann, "Do you undertake to clarify
16 that?" And you said, "That's fine." Are you able to
17 advance that matter? Is that something you have been able
18 to find out in the few days since you were last here?

19 MR FAITHFUL: No, it hasn't been.

20 MR ROZEN: Can you take that that's still a question that we
21 would like answered, please?

22 MR FAITHFUL: No problem.

23 MR ROZEN: And it can be done through your counsel or formally,
24 if you like, after you finish your evidence. Just while
25 we are on the subject of unwanted homework that was given
26 to each of you, Mr Rieniets, at page 261 of the transcript
27 you were asked at line 10 about - I'm sorry, you were
28 asked earlier about what volume of water was needed to
29 fill the Loy Yang Mine to RL minus 22.5. You said,
30 "I don't have the figure, but I will endeavour to get you
31 the exact figure." Any advance on that position?

1 MR RIENIETS: Approximately 700 gigalitres.

2 MR ROZEN: I think, as my learned junior told us all last week,
3 it was a lot of water. You don't have to respond to that.
4 Just while I'm looking at page 261, Mr Faithful, you were
5 asked the same question but in relation to Hazelwood. You
6 were asked, "Do you undertake to make that inquiry and
7 provide that information?" You said "Sure". Are you in a
8 position to help us today?

9 MR FAITHFUL: Yes, it was somewhere in the order of 750
10 gigalitres.

11 MR ROZEN: Thank you. Back to you, Mr Faithful. Your witness
12 statement, which is now exhibit 13 and the Ringtail
13 reference is GDFS.0001.001.0001 and was tendered, as I
14 say, as exhibit 13, you deal with the issues which are of
15 interest to the Board this week starting at paragraph 205.
16 If I can ask you, please, to turn to that. The Ringtail
17 reference for this page ends in 0037. Do you have that
18 page in front of you, Mr Faithful?

19 MR FAITHFUL: I do.

20 MR ROZEN: You will see towards the bottom of the page you were
21 asked the following question by the Board, "Provide
22 details of the current and past rehabilitation liability
23 assessments for the mine together with any variations to
24 those assessments." You commence at paragraph 205 as
25 follows: "Enclosed at annexure 18 is a copy of
26 Hazelwood's annual activity and expenditure return form
27 for 2014/15 submitted in accordance with regulation 35 and
28 schedule 20" - should that be 19 there, schedule 19?
29 I think that's what we all understand is the schedule.

30 MR FAITHFUL: Yes, I believe that's the case.

31 MR ROZEN: So you would make that change? Thank you. You will

1 see, just while we are doing that, there is a
2 corresponding change I think you might want to make in 207
3 over the page, first line; do you see that?

4 MR FAITHFUL: I do.

5 MR ROZEN: Do you agree that should be changed to 19?

6 MR FAITHFUL: Already done.

7 MR ROZEN: Thank you. You refer, putting the schedule number
8 to one side, to annexure 18 to your statement. Perhaps if
9 we can go to that, GDFS.0001.001.1224. We can see on the
10 fourth page of that the Ringtail number ends in 1227. Do
11 you have the fourth page which should have at the top of
12 the page, "What is the current estimated rehabilitation
13 liability for the site?"

14 MR FAITHFUL: Yes, I do.

15 MR ROZEN: That is where we see this figure that's been already
16 referred to today of \$73.4 million?

17 MR FAITHFUL: That's right.

18 MR ROZEN: If you just return to your statement for the moment
19 at 205, it is the case, is it not, that there was some
20 discussion between GDF and the regulator about an earlier
21 schedule 20 document which had been filed that included a
22 different figure at that part of the document? Do you
23 know what I'm referring to?

24 MR FAITHFUL: No.

25 MR ROZEN: It may be that you can't assist us with that, but
26 exhibit 31A, which is at DEDJTR.1007.001.0189, if that
27 could be brought up. You probably don't have that in
28 front of you, but do you see that on the screen there,
29 Mr Faithful? If we can scroll down, please, to the fourth
30 page which ends in 0192. I should tell you that the front
31 of this document says that it's been prepared by

1 Mr Kemsley, the manager of technical compliance at the
2 mine. He is a colleague of yours, is he not, Mr Faithful?
3 MR FAITHFUL: He certainly is.
4 MR ROZEN: It bears the date 4 September 2014, so considerably
5 earlier than the document you have attached to your
6 statement as annexure 18. This appears, and comment on it
7 if you can, to be an earlier submission by GDF of its
8 2013/14 schedule 19 return?
9 MR FAITHFUL: I believe that's the case.
10 MR ROZEN: If you go to the fourth page, we can see there that
11 the two questions that are asked under the heading 5.2
12 are, firstly, "What is the current bond for the site?"
13 And we see \$15 million and that is the same figure that
14 appears in the document attached to your statement. The
15 second question is "What is the current estimated
16 rehabilitation liability for the site?" And rather than
17 the \$73.4 million figure which we see in the document you
18 have attached, we see that figure, \$850,000. Do you see
19 that?
20 MR FAITHFUL: I do.
21 MR ROZEN: I will see if I can do this quickly. It's the
22 situation, is it not, that after submitting this return,
23 the one that's on the screen now, there was some
24 correspondence and discussion between GDF and the
25 regulator about the regulator not being satisfied with
26 that figure?
27 MR FAITHFUL: I'm not sure about that.
28 MR ROZEN: We do have in the material a letter which seemed to
29 shed some light on this, and it's exhibit 31G. It is at
30 DEDJTR.1007.001.0187. This is a letter from
31 Mr Brimblecombe, the acting technical compliance manager

1 of the mine. Do you know Mr Brimblecombe, Mr Faithful?

2 MR FAITHFUL: I do.

3 MR ROZEN: He wrote to Mr McGowan of the regulator on 9 April
4 2015. If we can just scroll down to the bottom half of
5 that page, please. Do you see the heading "Section 5.2.
6 Estimate of rehabilitation liability"?

7 MR FAITHFUL: I do.

8 MR ROZEN: Mr Brimblecombe wrote, "In supplying this figure we
9 again relied upon guidance from your website" and then
10 there is a quote from the website, and it goes on, "Based
11 on discussion held in Melbourne before Easter we
12 understand you require additional information on the
13 entire rehabilitation liability for the site." Then it
14 goes on and explains that that total figure is
15 \$73.8 million. Do you see that?

16 MR FAITHFUL: I do.

17 MR ROZEN: That's the figure we see in the return that's
18 attached to your statement; is that right?

19 MR FAITHFUL: I think it is \$400,000 difference. It's in that
20 order.

21 MR ROZEN: Yes, so the figure that we see in the report of
22 73.4, that's 73.8. We glean from that, Mr Faithful, and
23 tell me if we are getting it wrong, that it seems there
24 was a misunderstanding on the part of GDF about what it
25 was required to write in that part of the form, but that
26 was clarified by correspondence.

27 MR FAITHFUL: I believe that's the case, yes.

28 MR ROZEN: The obligation to put in a schedule 19 form or that
29 same information but in a slightly differently described
30 form goes back a number of years, does it not? It didn't
31 just start in 2013?

1 MR FAITHFUL: No, that's right.

2 MR ROZEN: Are you able to help us? Had this misunderstanding
3 been in place for a long time at GDF about what was
4 required?

5 MR FAITHFUL: I can't help you with that one.

6 MR ROZEN: All right. Can we go back to your statement now,
7 please, at paragraph 208. This is on the page that ends
8 in Ringtail code 0038. You say at page 208, "The detailed
9 calculations underpinning this rehabilitation liability
10 assessment" - that is the 73.4 million - "are enclosed at
11 confidential annexure 5." That document, without going
12 into the detail, is a very detailed spreadsheet, is it
13 not, that itemises in great detail different components of
14 the rehabilitation task right down to cubic metres of soil
15 and how far they have to be moved and at what cost per
16 cubic metre and so on?

17 MR FAITHFUL: That's right.

18 MR ROZEN: That's what you rely on for those costings. You set
19 out that the costings are done having regard to the six
20 matters identified there, (a), (b), (c), (d), (e) and (f).
21 If you read (d), do you see it refers to "future
22 progressive rehabilitation works to be undertaken within
23 the" - should the word "mine" appear there?

24 MR FAITHFUL: "Within the mine". It should, yes.

25 MR ROZEN: Then it goes down to (f), "reasonable estimates of
26 applicable rates for materials and labour". Is this an
27 unfair description, that the costings that have been done
28 are essentially the costings associated with the physical
29 work of moving dirt, for example, and the like? Is that
30 too simplistic a description of the costings that GDF has
31 done?

1 MR FAITHFUL: Yes, it is.

2 MR ROZEN: Do the costings take into account the potential
3 cost, for example, of water monitoring during the up to
4 five centuries that the lake will take to fill, for
5 example?

6 MR FAITHFUL: I'm sure it's not five centuries, but there's an
7 allowance in there. I would have to check the spreadsheet
8 to make sure how that is put in there, but I'm sure it is.

9 MR ROZEN: Are you able to tell us in general terms how that is
10 costed? In other words, is it done on the percentage of
11 the overall cost basis as a contingency or is it
12 identified as an item and an attempt made to cost what it
13 actually might be?

14 MR FAITHFUL: The latter.

15 MR ROZEN: So it is identified as an item.

16 MR FAITHFUL: Yes.

17 MR ROZEN: Are you able to tell us what the cost is for that
18 item?

19 MR FAITHFUL: I'd have to go through the spreadsheet and find
20 out what it is.

21 MR ROZEN: Okay. Can you tell us whether it's done on a labour
22 basis, for example, that a given person or number of
23 people will need to do a certain amount of work per year
24 at a particular rate to monitor the water? Is that the
25 sort of approach that's taken?

26 MR FAITHFUL: It is done on the basis of understanding our own
27 costs and what water costs us to do those activities now,
28 and then projecting them into the future.

29 MR ROZEN: I see. The costing is done - that \$73.4 million,
30 that's an estimate of what it will cost both to do the
31 final rehabilitation at the end of life and the cost of

1 the progressive rehabilitation between now and then; is
2 that right?

3 MR FAITHFUL: That's right.

4 MR ROZEN: There's evidence before the Board about the AECOM
5 costings being done on a probabilistic basis. Are you
6 familiar with that concept?

7 MR FAITHFUL: I'm not overly familiar with it, but I certainly
8 know of it.

9 MR ROZEN: In my simplistic way, and I will no doubt be
10 corrected by people who understand it better, but as
11 I understand it, it attempts to allocate to a particular
12 item a range of potential costs that might be paid. If
13 you take a simple example of needing a cubic metre of
14 soil, it might say that could cost - I'm sure this will be
15 way out - but that will cost \$50, but it could cost as
16 little as \$40 or it could cost as much as \$100, depending
17 on a range of circumstances.

18 MR FAITHFUL: Sure.

19 MR ROZEN: So if you accept from me that's the broad general
20 approach, is that a feature of the costings that GDF has
21 done? Has there been an attempt to take into account the
22 range of prices which might have to be paid?

23 MR FAITHFUL: Yes, there has. There's a contingency that's
24 applied to those estimates.

25 MR ROZEN: So it is done in that way by attaching a
26 contingency?

27 MR FAITHFUL: That's right.

28 MR ROZEN: What's the percentage contingency?

29 MR FAITHFUL: From memory it is between 10 to 20 per cent.

30 MR ROZEN: That's a fairly standard range, isn't it, in the
31 mining industry, for costings?

1 MR FAITHFUL: I believe so, yes.

2 MR ROZEN: You will recall, Mr Faithful, because you were here,
3 that I asked some questions of Dr McCullough, the
4 hydrologist who was engaged by GDF's solicitors to assist
5 the Board by providing a report, and you will know that at
6 the conclusion of that report in answer to the question
7 Dr McCullough was asked, "What needs to be done" - I'm
8 paraphrasing - "to achieve the rehabilitation plan?", he
9 itemises 17 areas of research that need to be carried out,
10 some short-term, some medium term, some long-term. Do you
11 accept that all the questions Dr McCullough has set out in
12 his report need to be answered by GDF Suez to achieve its
13 final rehabilitation plan?

14 MR FAITHFUL: I've spent five minutes looking at that document.
15 I'd expect that the next discussion that I have with Clint
16 we will be able to go through each of those items and from
17 there we will make informed decisions and set out that
18 framework that's going to map the next fair few years.

19 MR ROZEN: I asked him, as you may recall, whether the cost of
20 all that work ought properly be considered as costs of
21 rehabilitation, and I'm hope I'm doing his answer justice.
22 He said some of them may be able to be dealt with as
23 operational costs, but others are properly considered to
24 be costs of rehabilitation. Do you accept that at a sort
25 of conceptual level, that observation?

26 MR FAITHFUL: Yes.

27 MR ROZEN: You accept, do you not, that were you to ask him,
28 Dr McCullough could probably put some costs on that work,
29 especially if he was going to be asked to do it?

30 MR FAITHFUL: I believe he'd be able to put some sort of
31 estimates together with some site input, yes.

1 MR ROZEN: Does the figure that is in your schedule 19 document
2 take into account the costs of the sort of research that
3 Dr McCullough identifies in his report?

4 MR FAITHFUL: As I said before, I've only spent five minutes
5 looking at that document. I would have to read through
6 that document and look at what our forward work plan is in
7 regards to technical services. I'm sure that some of that
8 work is already covered, but being able to pinpoint
9 exactly what that work is, I can't give you an answer
10 right now.

11 MR ROZEN: Do you accept that whatever may be the situation
12 with your costings, and we don't have the time really to
13 go into it in that level of detail, but whatever may be
14 the situation, the costs of that sort of research must be
15 included in any future rehabilitation liability
16 assessment? Do you accept that as a general proposition?

17 MR FAITHFUL: As a general proposition, yes.

18 MR ROZEN: Do you think, as you sit there now, that that has
19 been done adequately in the existing costing assessment
20 that GDF Suez have put into their schedule 19 return?

21 MR FAITHFUL: I still believe there is some work to progress
22 on, and indeed that we are working on at the moment.

23 MR ROZEN: How do your existing costings allow for future water
24 supply for filling the lake? Do the costings assume that
25 the water you currently have access to under your existing
26 licences will be available for filling the lake?

27 MR FAITHFUL: Yes, it does. Yes.

28 MR ROZEN: You would agree with me, wouldn't you, that as you
29 sit there now you don't know if that water will be
30 available to GDF Suez to fill the lake?

31 MR FAITHFUL: All I can go on was the discussion that we had or

1 one of my colleagues had with Southern Rural Water which
2 indicated that you could roll those water licences over
3 for a period of 15 years.

4 MR ROZEN: We heard some evidence about that conversation. So,
5 on that basis can I suggest to you that the costings have
6 been done on a pretty optimistic basis about the access to
7 water supply?

8 MR FAITHFUL: Optimistic? Potentially.

9 MR ROZEN: Has any work been done by GDF Suez on the more
10 pessimistic possibility that you have to buy the water on
11 the open market to fill the lake?

12 MR FAITHFUL: No, but we did look at and as attached to my
13 witness statement there is a range of fill options for
14 Hazelwood and it goes through pretty clearly what those
15 options are and it provides for a range of different
16 filling mechanisms.

17 MR ROZEN: Yes, I know that. But my question is a slightly
18 different one. Each different fill mechanism comes with a
19 different cost outcome, does it not?

20 MR FAITHFUL: It does.

21 MR ROZEN: The question is has the work been done looking at
22 the alternatives and putting the figures into that \$73
23 million to see what effect it has?

24 MR FAITHFUL: No, it hasn't.

25 MR ROZEN: Do you think that's work that needs to be done if
26 that figure of \$73 million is to be an accurate and
27 reliable figure for future liability costs?

28 MR FAITHFUL: Like I said before, there's some work to go, yes.

29 MR ROZEN: At paragraph 226 of your statement, if you can turn
30 to that, it's at the bottom of the page that ends in 0039.
31 You are there discussing a matter that's very important in

1 this context and that is that the figure you get at the
2 end of the day is a product of your methodology and your
3 assumptions?

4 MR FAITHFUL: It certainly is.

5 MR ROZEN: Different methodology, different outcome. Different
6 assumptions, different outcome.

7 MR FAITHFUL: Yes.

8 MR ROZEN: You specify that at 226 where you say,

9 "Significantly different rehabilitation liability figures
10 can be derived, depending upon the assumptions that are
11 made with respect to" - and then you list a number of, if
12 I may say so, very relevant matters to determine these
13 issues. (j) and (k) are the ones I want to ask you about.

14 (j) is something we have already briefly discussed; that
15 is, the confidence level to which costs are estimated.

16 That's very important, is it not, in this area,

17 Mr Faithful?

18 MR FAITHFUL: The confidence level, yes.

19 MR ROZEN: Yes. Because, by definition, the higher the
20 confidence level, the more reliable the figure.

21 MR FAITHFUL: That's right.

22 MR ROZEN: Has the existing costing that's been done by GDF
23 settled on a particular confidence level?

24 MR FAITHFUL: No, but it allows for a contingency.

25 MR ROZEN: So once again that's how - I am probably repeating
26 the question I asked you earlier - but that's how that is
27 addressed in the existing costing?

28 MR FAITHFUL: That's right.

29 MR ROZEN: With that 10 to 20 per cent contingency. (k) is the
30 other thing I want to ask you about. You make the
31 observation that it is important in costing here whether

1 account is taken of the potential for unintended adverse
2 outcomes of the rehabilitation works. You give a pretty
3 dramatic unintended adverse outcome which is a batter
4 failure and costs and any necessary works in response. Is
5 that a matter that is taken into account in the existing
6 \$73 million figure?

7 MR FAITHFUL: Not specifically, but it is covered again by any
8 contingency that's applied to that rehabilitation number.

9 MR ROZEN: You would agree with me, would you not, that one
10 batter failure can result in very significant remedial
11 costs?

12 MR FAITHFUL: Yes, it depends where it is.

13 MR ROZEN: That's my next question. If it is the northern
14 batters at the Hazelwood Mine, then you are potentially
15 talks about tens of millions, are you not, in a realistic
16 world, depending on the size of the failure?

17 MR FAITHFUL: No, well, there is a whole another discussion and
18 there was a panel here last week that spoke about
19 incidents relating to the northern batters. But it can
20 certainly range. It can range from small batter failures
21 to larger batter failures. If we look at what is causing
22 or what would cause a major batter failure, that would be
23 a failure of some water travelling or water carrying body
24 along the top of the northern batters.

25 MR ROZEN: Small batter failures might have costs to remedy
26 them in the hundreds of thousands of dollars?

27 MR FAITHFUL: Could be significantly less.

28 MR ROZEN: Could be significantly less. Large batter failures
29 in the real world we are up in the millions, are we not?

30 MR FAITHFUL: I can't give an answer to that.

31 MR ROZEN: Why is that, Mr Faithful? Because the question is

1 too general?

2 MR FAITHFUL: No, because my job is to make sure the batter
3 stands up.

4 MR ROZEN: Of course it is, and no one is wishing for a batter
5 failure. But you have identified it as one of the risks
6 that all the mines live with.

7 MR FAITHFUL: I have identified batter failure, yes, as a
8 challenge.

9 MR ROZEN: What I'm trying to get from you is some
10 understanding of what you mean when you refer to "costs
11 and any necessary works in response". I'm just putting
12 the observation to you it could be up to millions of
13 dollars, could it not?

14 MR FAITHFUL: And I can't answer that. I'm saying that we
15 allow for an amount of uncertainty within the
16 contingencies on the estimate.

17 MR ROZEN: Mr Faithful, how long have you worked in the mines
18 in the Latrobe Valley?

19 MR FAITHFUL: At GDF Suez Hazelwood, three years.

20 MR ROZEN: You know at least from those three years and
21 discussions with colleagues, for example Mr Mether to your
22 left, that batter failures such as the one they had at
23 Yallourn can be something that costs millions of dollars
24 to remedy?

25 MR FAITHFUL: And we don't have that situation as they do have
26 at Yallourn. They are completely different situations.

27 MR ROZEN: If I can just take you back to paragraph 214,
28 please, Mr Faithful. You talk about some other costing
29 work that has been done and that has been placed in
30 evidence before the Board; that is; some work done by GHD
31 in January 2012. What do you mean by the opening words to

1 paragraph 214, "A high level estimate of the potential
2 costs"? We hear that expression a lot, but what does it
3 mean? What do you mean when you say it?

4 MR FAITHFUL: I believe it actually says it in the document,
5 that it is high level cost.

6 MR ROZEN: But when you use that expression, what do you mean
7 by "high level"? Do you mean not specific, not detailed?

8 MR FAITHFUL: That's right, yes.

9 MR ROZEN: Do you contrast that sort of costing with the
10 details costing that you have done that's led to the \$73
11 million figure?

12 MR FAITHFUL: I do, yes.

13 MR ROZEN: I see. You say at paragraph 224, "In my
14 view" - this is the page that ends in 0039, the next page
15 of your statement, after discussing the work done by GHD
16 and some of the limitations as you see it, you say, "In my
17 view, GDFSAE's costings for the future rehabilitation of
18 the mine contained within confidential annexure 5 more
19 accurately reflect the rehabilitation liability for the
20 mine in that they are prepared in reference to GDFSAE's
21 own mining and rehabilitation methods." If I understand
22 the point you are making there, you are saying that the
23 people who are best placed to make an estimate of costs in
24 this area in relation to a particular mine are the people
25 who work at and operate that mine?

26 MR FAITHFUL: Yes.

27 MR ROZEN: And you say that, as I understand it, because they
28 are familiar with the issues, they know what equipment
29 they've got; the list could probably go on and on?

30 MR FAITHFUL: Yes, that's right.

31 MR ROZEN: You accept, do you not, that you have already in

1 your evidence today identified a number of areas where the
2 costing estimate may need to be revised in light, for
3 example, of the research work that we spoke about earlier?

4 MR FAITHFUL: Certainly.

5 MR ROZEN: So do we take it from the evidence you have given
6 that you stand by what you say at 224, but perhaps the
7 Board ought to understand it as being a bit qualified by
8 some of the concessions that you have made during your
9 evidence?

10 MR FAITHFUL: Yes, as I've pointed out before, there is still a
11 range of work that needs to be done. That's the best
12 estimate we can give at the time.

13 MR ROZEN: It is conceivable - I have been putting to you that
14 the figure is likely to go up if that work is done, if the
15 cost of the work is factored into the assessment. But it
16 is conceivable it could come down as well, I suppose, you
17 might say?

18 MR FAITHFUL: It certainly is.

19 MR ROZEN: Are you able to tell the Board whether GDF has ever
20 been asked to carry out a rehabilitation liability
21 assessment under section 79A of the Mineral Resources
22 Sustainable Development Act?

23 MR FAITHFUL: Not to my knowledge with my three years there.

24 MR ROZEN: You may not have section 79A next to your bed for
25 late night reading, so perhaps I will just tell you what
26 I'm talking about. It seems to envisage a requirement
27 that the assessment be done in a manner and form
28 determined by the minister or more realistically the
29 minister's delegate. Is that something that's ever come
30 across your desk?

31 MR FAITHFUL: No, not across my desk.

1 MR ROZEN: If that request had been made in the last three
2 years, is that something you would know about, do you
3 think?

4 MR FAITHFUL: Yes.

5 MR ROZEN: Similarly, if it had been made some time in the past
6 and the assessment had been done, do you think that's
7 something that GDF would have put in front of the Inquiry?

8 MR FAITHFUL: I believe it would be the case.

9 MR ROZEN: If I can change subject, Mr Faithful, and just ask
10 you some questions briefly about the draft work plan
11 variation document which you have over the weekend or
12 GDF's solicitors have provided to the Inquiry. You deal
13 with this at 228 of your statement, if I could ask you to
14 turn to that. It's on the page that ends in 0040.

15 MR FAITHFUL: I have it.

16 MR ROZEN: You remind the reader that you have earlier referred
17 to GDF's intention to submit a further work plan variation
18 application in early 2016 and you then go on and say it
19 will vary the rehabilitation plan in relation at least to
20 the way in which some of the work is done. Ms Doyle, who
21 opened the hearing for the company for which you work,
22 said this about the draft work plan variation. This is at
23 transcript page 19, line 31. She said, and I quote, "The
24 document will reflect current knowledge and planning in
25 relation to the final closure concept and in relation to
26 progressive rehabilitation to that date." Do you agree
27 with that description of the document?

28 MR FAITHFUL: Yes.

29 MR ROZEN: At 230 of your statement, after reflecting that the
30 work may be done more cost effectively than the way in
31 which it had previously been thought the rehabilitation

1 work would be done, you say this, "Upon any future
2 approval of the further work plan variation application,
3 GDFSAE proposes to revise its rehabilitation liability
4 assessment to take account of the revised rehabilitation
5 methods and schedule." Given that you have just in the
6 previous paragraph said you think the work can be done
7 more cost effectively, do we take it from that that you
8 think the estimate might come down as a result of the
9 approval of the new work plan variation?

10 MR FAITHFUL: Yes, I am. Yes.

11 MR ROZEN: I suppose you would have to accept that it could go
12 up too?

13 MR FAITHFUL: I do accept that.

14 MR ROZEN: The work needs to be done.

15 MR FAITHFUL: Yes.

16 MR ROZEN: Can the Board assume that in doing that future
17 assessment GDF will take into account the sorts of things
18 we've been talking about, that is the need for the future
19 research work identified by Dr McCullough, for example?

20 MR FAITHFUL: Yes.

21 MR ROZEN: What assumption about public accessibility to the
22 lake is to be made in the new work plan variation, or is
23 that something that you are still considering?

24 MR FAITHFUL: It's an item we're still considering.

25 MR ROZEN: What is the position in the existing plan about
26 public access?

27 MR FAITHFUL: Look, I'd have to check. Off the top of my head,
28 I can't remember.

29 MR ROZEN: It has important implications for cost, does it not?

30 MR FAITHFUL: Yes, it does.

31 MR ROZEN: Probably a great deal more needs to be done to

1 ensure for the safety of the public in a lake that they're
2 going to be sailing around in than one that's surrounded
3 by a fence with a big "Do not enter" sign; do you agree
4 with that?

5 MR FAITHFUL: There is a body of work that still needs to be
6 done.

7 MR ROZEN: Mr Faithful, and I'm sure this will be addressed by
8 your counsel if I don't do it adequately, but you would
9 agree with me that it is obvious upon a reading of the
10 draft document which has been provided that it is very
11 much a draft?

12 MR FAITHFUL: It certainly is.

13 MR ROZEN: It's been provided and, if I may say so, it is a
14 credit to you and the company. It's been provided with a
15 range of comments in it asking questions about various
16 things and it is apparent from reading it that there's a
17 deal of consideration going into the detail of that plan?

18 MR FAITHFUL: That's right.

19 MR ROZEN: You would no doubt ask the Board to take into
20 account that it is very much a draft document?

21 MR FAITHFUL: I would.

22 MR ROZEN: It's likely that the document that's ultimately
23 submitted to the regulator for approval will be a
24 considerably more refined document than the draft that
25 we've received?

26 MR FAITHFUL: It will be a more fulsome document, yes.

27 MR ROZEN: You have seen or at least heard about the range of
28 conditions that have been attached to the recent Loy Yang
29 work plan variation approval? Have you had a chance to
30 read through those yourself?

31 MR FAITHFUL: I've heard about them, but I haven't seen them.

1 MR ROZEN: Are they matters or at least to the extent that you
2 know about those, are they matters that you will take into
3 account in the formulation of your application?

4 MR FAITHFUL: I haven't seen them.

5 MR ROZEN: Finally, Mr Faithful, can I ask you about your trip
6 to the northern hemisphere which you describe in your
7 statement at paragraph 238, so that's on the page that
8 ends in 0041. What motivated you to go and have a look at
9 the brown coal mines in Germany?

10 MR FAITHFUL: A lot of our technology is taken from Germans, so
11 German mine technology was instrumental in setting up the
12 Latrobe Valley. They have done a lot of work in a
13 rehabilitation sense over a wide array of mines and have
14 learned a number of lessons along the way, and I went over
15 there to look at how they were doing it, what were some of
16 the challenges that they were facing and also to look at
17 what other measures for fire protection were out there and
18 did they face the same level of issues in Germany as what
19 we do here.

20 MR ROZEN: You very helpfully for the Board summarise your
21 observations and learnings on your final page of your
22 statement at paragraph 242. Can I ask did you meet
23 Dr Von Bismarck in your time in Germany?

24 MR FAITHFUL: No, I didn't. I met his two proteges.

25 MR ROZEN: Not assistants? Proteges? People who are to take
26 over his role; is that what you mean?

27 MR FAITHFUL: No, people working for him.

28 MR ROZEN: Was what they said to you and told you consistent
29 with the presentation that the Board saw from
30 Dr Von Bismarck the other day?

31 MR FAITHFUL: Yes.

1 MR ROZEN: I'm right, aren't I, in understanding that you
2 encourage the Board to take into account the experience in
3 Germany because there are clearly a number of similarities
4 with the position we face here?

5 MR FAITHFUL: I certainly do.

6 MR ROZEN: You accept, don't you, that there are also some
7 pretty significant differences in terms of, for example,
8 depths of the mines, availability of overburden and so on?

9 MR FAITHFUL: Depths of the mines, no, very similar. Indeed in
10 Germany some of the mines are deeper. But certainly in
11 terms of percentage of coal and stripping ratio,
12 absolutely.

13 MR ROZEN: You would invite the Board, I suspect, on the basis
14 of your German experience, to use Dr Haberfield's
15 expression, to take a glass half-full approach to the
16 future rather than a glass half-empty one?

17 MR FAITHFUL: I agree with that.

18 MR ROZEN: Thanks, Mr Faithful. I should just tender the draft
19 work plan variation perhaps just as part of exhibit 13.

20 CHAIRMAN: Yes, that will be added to exhibit 13.

21 #EXHIBIT 13 - (Added) Draft work plan variation.

22 MR ROZEN: I don't think we have a Ringtail coding for that,
23 but I think it's been provided to all the parties and
24 I hope that everyone knows what I'm referring to.
25 Mr Rieniets, you have been sitting patiently. Can I turn
26 to you, please. You have provided to the Board, as you
27 explained last time you gave evidence, three statements.
28 I understand that there are some corrections that you now
29 wish to make to the third of those statements?

30 MR RIENIETS: That's correct.

31 MR ROZEN: That is exhibit 12C. For the benefit of the

1 parties, it is AGL.0001.005.0001. Are you happy for me to
2 lead you to the points where I understand you want to make
3 the changes?

4 MR RIENIETS: That's fine, yes.

5 MR ROZEN: You don't look sure about that.

6 MR RIENIETS: No, 32 is the first one.

7 MR ROZEN: Okay, you take me there. That's probably safer. So
8 this is on the page that ends in 0004, paragraph 32,
9 between bullets 1 and 2, you would seek to correct that by
10 inserting stage C?

11 MR RIENIETS: Yes, stage C, circa 2023, indicative
12 rehabilitation liability 102.8 million.

13 MR ROZEN: So there will now be four dot points, B, C, D and E?

14 MR RIENIETS: Yes.

15 MR ROZEN: Thank you. Is the next change at paragraph 62 on
16 the page that ends in 0009?

17 MR RIENIETS: Correct. The final date there should read "June
18 2015".

19 MR ROZEN: Rather than 22 and 25 November, it should be 22 and
20 25 June 2015?

21 MR RIENIETS: Correct.

22 MR ROZEN: There is a change in 64 as well?

23 MR RIENIETS: 65. At 65 we received an email requesting
24 information and clarifying the information sought as well
25 as the draft document.

26 MR ROZEN: If we just add the words at the end of the sentence
27 "as well as the draft report".

28 MR RIENIETS: Yes.

29 MR ROZEN: Thank you very much. Do you also wish to place
30 before the Board a copy of the email there referred to; is
31 that right?

1 MR RIENIETS: Yes, I have a copy of that email in relation to
2 paragraph 62.

3 MR ROZEN: Just to bring us up to speed there, 62 with the
4 correction now, the second sentence, "AGL Loy Yang sought
5 to clarify the information required in subsequent emails
6 exchanged between Ms Bignell and Mr Barrand on 22 and
7 25 June 2015," and you wish to produce those emails and
8 have them attached to the exhibit, is that right, to your
9 statement?

10 MR RIENIETS: Yes.

11 MR ROZEN: Just for the purposes of the transcript, the
12 email - is it more than one?

13 MR RIENIETS: No, it's just one page.

14 MR ROZEN: I'm sorry, it's an email and then a response. There
15 is an email 22 June, 11.50 am, from Ms Bignell to
16 Mr Barrand and then a reply to that from Mr Barrand to
17 Ms Bignell 25 June 2015 at 8.39 am?

18 MR RIENIETS: Correct.

19 MR ROZEN: So that can just become part of the exhibit, and
20 they are the changes that you wish to make, Mr Rieniets?

21 MR RIENIETS: That's correct.

22 MR ROZEN: Can I take you, please, to the part of your
23 statement that deals with the issues we are concerned
24 with, and it is firstly in your first statement. This is
25 a statement which is exhibit 12A dated 30 October 2015.
26 If you can go to paragraph 201, please, which you will
27 find at page 30 of the statement and the Ringtail code
28 ends in 0030. Do you have that in front of you,
29 Mr Rieniets?

30 MR RIENIETS: Yes.

31 MR ROZEN: Once again you were asked the same questions that

1 I drew to Mr Faithful's attention a moment ago about
2 providing the Board with current and past rehabilitation
3 liability assessments. You note at paragraph 202 that Loy
4 Yang has this year assessed its rehabilitation liability
5 for the mine based on its previous work plan to be circa
6 \$53.7 million.

7 MR RIENIETS: That's correct.

8 MR ROZEN: You refer in paragraph 202 to modelling undertaken
9 in the Loy Yang Power mine rehabilitation whole of life
10 cost report 2011 update. I should know the answer to this
11 question, but is that a document that's been provided to
12 the Board?

13 MR RIENIETS: I believe so.

14 MS FORSYTH: Can I assist?

15 MR ROZEN: Please.

16 MS FORSYTH: I believe that might be annexure Q to Mr Rieniets'
17 first witness statement.

18 MR ROZEN: I'm certainly familiar with annexure Q. Do you have
19 annexure Q in front of you, Mr Rieniets?

20 MR RIENIETS: Yes.

21 MR ROZEN: It is AGL.0001.001.0244. That's the document you
22 are referring to?

23 MR RIENIETS: Yes.

24 MR ROZEN: You are agreeing with your counsel that annexure Q
25 is the same as the document referred to paragraph 202?

26 MR RIENIETS: Yes.

27 MR ROZEN: Annexure Q is a draft, is it not?

28 MR RIENIETS: Yes.

29 MR ROZEN: Was a final version of annexure Q ever provided to
30 Loy Yang?

31 MR RIENIETS: I can't answer that. I wasn't working for Loy

1 Yang at the time.

2 MR ROZEN: Are you able to tell us why the Board has been
3 provided with a draft document as the basis for the
4 \$53.7 million costing?

5 MR RIENIETS: No, I can't.

6 MR ROZEN: At paragraph 203 you say, "AGL Loy Yang has not been
7 able to identify any historical information confirming the
8 relationship between the level of the rehabilitation bond
9 for AGL Loy Yang mine rehabilitation declared in 1997 and
10 contingent liability for AGL Loy Yang mine rehabilitation
11 in 1997, or at any other stage of development of the
12 mine." Is that right?

13 MR RIENIETS: Yes.

14 MR ROZEN: Is what you are saying to the Board that that's the
15 outcome that has followed from a diligent attempt to
16 unearth any such information?

17 MR RIENIETS: Correct.

18 MR ROZEN: Did it surprise you that that search uncovered
19 nothing to explain the basis of the 15 million bond?

20 MR RIENIETS: Not really. It's some time ago the bond was
21 struck in 1997.

22 MR ROZEN: At paragraph 204 you express a conclusion by AGL and
23 you are not limiting that conclusion to yourself, I take
24 it; that's the belief, is it, of the company? Is that
25 what you are saying in 204, that the bond was not set at a
26 level to reflect the contingent liability for mine
27 rehabilitation?

28 MR RIENIETS: That's our conclusion. The fact that the bond
29 was the same for all mines would draw you to that
30 conclusion.

31 MR ROZEN: Yes. What other basis would it be set on other than

1 based on to reflect the contingent liability? You just
2 don't know?

3 MR RIENIETS: I don't know.

4 MR ROZEN: It could just be an arbitrary figure?

5 MR RIENIETS: It could be.

6 MR ROZEN: You may not have seen that briefing note that
7 I referred to which provides some explanation for how the
8 government got to 15 million for Hazelwood. Have you at
9 any time seen that?

10 MR RIENIETS: No.

11 MR ROZEN: Events have of course overtaken to some extent your
12 first statement and the work plan variation which was then
13 awaiting approval has now been approved; that is the case,
14 is it not?

15 MR RIENIETS: That's correct.

16 MR ROZEN: As part of that approval process was AGL at any time
17 asked by the regulator to update its cost estimate based
18 on the new plan?

19 MR RIENIETS: Not to my understanding, but we did do a body of
20 work to come up with a figure in anticipation of having
21 the plan approved.

22 MR ROZEN: And what is that figure?

23 MR RIENIETS: The figure is \$112 million.

24 MR ROZEN: In broad terms are you able to tell us what changes
25 from the earlier plan to the later one have led to a more
26 than doubling of the estimate?

27 MR RIENIETS: It's based on the difference in water levels
28 between the two plans and slight changes to the mine plan.
29 A more staged development in the mine has been factored in
30 to come up with that plan. A key one was AGL's
31 announcement to close its coal fired generation assets by

1 2048.

2 MR ROZEN: The change in water level which is in excess of
3 80 metres, is it not, a whole lot more by way of exposed
4 batters, is that the reason for the increased cost?

5 MR RIENIETS: Yes, obviously there's more earthworks between
6 the two options.

7 MR ROZEN: At paragraph 207 you refer to the Loy Yang complex
8 agreement and that's a matter that you gave evidence about
9 last week; that's the case, is it not?

10 MR RIENIETS: Yes.

11 MR ROZEN: Has there ever been any discussion to your knowledge
12 between Loy Yang and the regulator about whether the
13 existing bond level takes into account the future
14 operation of the trust fund under the Loy Yang complex
15 agreement?

16 MR RIENIETS: Not to my knowledge, no.

17 MR ROZEN: You say, do you not, in your statement and it seems
18 to be the position of the company that you work for that
19 the Board ought to take it into account as additional
20 financial assurance that's available to the State or will
21 be available to the State from 2023 onwards?

22 MR RIENIETS: That's correct.

23 MR ROZEN: It's one of the differences between the Loy Yang
24 Mine and the other two, that in the future there will be
25 that facility?

26 MR RIENIETS: That's correct.

27 MR ROZEN: I want to ask you about the administrative fee that
28 accompanies the bank guarantee which is currently
29 available. You deal with this at paragraph 40 of your
30 third statement which is exhibit 12C, and the Ringtail
31 number is AGL.0001.005.0001.

1 MR RIENIETS: Yes.

2 MR ROZEN: It is at a page that ends in 0005.

3 MR RIENIETS: Yes.

4 MR ROZEN: At paragraph 40 you say, "A substantial increase in
5 the level of rehabilitation liability bond and
6 corresponding bank guarantee has deleterious implications
7 for AGL." If I can pause there, what you are saying in
8 this part of your third witness statement is if there were
9 to be an increase in the bond level the Board ought to be
10 conscious of some of the implications that flow from that
11 which might not be immediately obvious?

12 MR RIENIETS: That's correct. There's two elements. One is
13 the cost of setting up that facility, the ongoing cost of
14 that facility. But also the full amount of that facility
15 affects your credit limit if you were to - building new
16 projects and the like, that would be factored in. So it
17 could compromise the amount of funds you can deploy into
18 new generation facilities.

19 MR ROZEN: With the operative word there being "could". To
20 some extent it is speculative. We don't know. But you
21 are saying, real world outcome, this is a realistic
22 possibility?

23 MR RIENIETS: AGL has a very diverse portfolio. It invests
24 heavily in new energy technologies, and a facility like
25 this would impact its credit capacity in that scenario.

26 MR ROZEN: The first dot point in paragraph 40 you say, "There
27 is a direct cost for the establishment and maintenance of
28 a bank guarantee, which equates to approximately
29 1 per cent of the value." There are two aspects to that,
30 isn't there: there is the one-off cost of establishing the
31 guarantee and then there is, what is it, an annual cost of

1 maintaining it; is that right?

2 MR RIENIETS: That's correct.

3 MR ROZEN: Dr Gillespie in his report refers in general terms
4 to a range of annual fees that might be payable. I think
5 his range is 0.5 of a per cent up to 5 per cent. You say
6 approximately 1 per cent. Are you able to be more
7 specific than that about what the current situation is for
8 AGL?

9 MR RIENIETS: The current situation for the \$15 million bond,
10 we pay 65 BPS for that facility. I haven't got the set-up
11 costs in that. But that's not to say that will be a
12 cost - the same rate for a new facility if that was to be
13 set up.

14 MR ROZEN: For those of us not in the financial world, BPS?

15 MR RIENIETS: Basis points.

16 MR ROZEN: And a basis point is?

17 MR RIENIETS: 100 basis points is 1 per cent.

18 MR ROZEN: Something we hear when interest rates are going up
19 and down, isn't it?

20 MR RIENIETS: Correct.

21 MR ROZEN: So 0.065 basis points?

22 MR RIENIETS: No, 65 basis points.

23 MR ROZEN: It is probably just me getting confused, but that is
24 a fair bet less than 1 per cent, is it not?

25 MR RIENIETS: I think the 1 per cent assumes some management
26 set-up costs on top of that annual fee and that's on our
27 current facility. If a new facility would be set up, that
28 may be different.

29 MR ROZEN: The reality is this, is it not, Mr Rieniets: banks
30 can be flexible with requiring customers to pay fees?

31 MR RIENIETS: Yes, both up and down.

1 MR ROZEN: Every now and again when I remind my bank of the
2 size of my mortgage they waive the \$5 fee or \$10 fee or
3 whatever it is, and I suspect AGL might have just slightly
4 more clout in negotiating with the bank than I do. You
5 don't have to answer that.

6 MR RIENIETS: I can't comment.

7 MR ROZEN: The point being that once again there is a degree of
8 uncertainty about that. You merely draw that to the
9 Board's attention as an actual cost and a potentially
10 greater one in future in the event that the bond was to be
11 increased.

12 MR RIENIETS: Correct, plus the credit implications.

13 MR ROZEN: Yes. At paragraph 41 you raise the question of
14 AGL's record in relation to progressive rehabilitation,
15 and that's a matter you ask the Board to take into account
16 as part of the overall consideration; is that right?

17 MR RIENIETS: Yes.

18 MR ROZEN: You then go on and talk in the last sentence of 41
19 of the increased funding provided by AGL to the
20 development of additional research into mine
21 rehabilitation with partners Federation and Monash
22 University. That's a matter that the Board has evidence
23 from Professor Mackay. You would know Professor Mackay
24 from GHERG?

25 MR RIENIETS: Yes, I do.

26 MR ROZEN: You heard the questions I was asking your colleague
27 Mr Faithful a moment ago. Do you agree with the general
28 observation that for a rehabilitation liability assessment
29 to be reliable and adequate for each of the Latrobe Valley
30 brown coal mines that some allowance must be made for
31 finding answers to those questions that we heard so much

1 about in the evidence last week?

2 MR RIENIETS: Yes, I do.

3 MR ROZEN: Is that allowance currently made in either of the
4 two figures you have referred to, the 53 million or the
5 112 million figures?

6 MR RIENIETS: Those figures would have some contingency in
7 those figures. Specifically I can't answer if it has a
8 line item there for dollars to be put towards those
9 studies and the like.

10 MR ROZEN: Do you just not know either way whether it's done on
11 a contingency basis or a line item basis?

12 MR RIENIETS: I don't know if those studies have a separate
13 line item in our estimates, but I do know the estimates
14 have a contingency in them.

15 MR ROZEN: The project that AGL has funded has obviously been
16 funded to a specific figure; is that right?

17 MR RIENIETS: That's correct. It is coming out of our
18 operating costs each year.

19 MR ROZEN: Similarly for you, Mr Mether, the batter stability
20 project, I know you are not paying for that, but the State
21 is and that's at a specific figure, isn't it?

22 MR METHER: It's a range of figures, yes.

23 MR ROZEN: I am just making the general point that for these
24 areas of work that need to be done one can, with a degree
25 of certainty, attach a cost to the work; do you agree with
26 that, Mr Rieniets?

27 MR RIENIETS: Research, it sometimes can be a bottomless pit,
28 sometimes. But I think within parameters you can have
29 some certainty over what is required and cap it.

30 MR ROZEN: It may be that you can only do it on a staged basis,
31 "Stage A of the research will cost us \$1 million in the

1 next 18 months and then we will reassess and have to think
2 about what flows from the results of that research."
3 MR RIENIETS: I think there needs to be some hold points at
4 certain points along the journey. If it comes to a point
5 where it's not looking favourable, you need to stop
6 putting good money after bad, to coin a phrase.
7 MR ROZEN: Can I go back to your first statement, please,
8 Mr Rieniets. I just want to ask you briefly, if I could,
9 about the two attachments, attachment P and Q that you
10 refer to as providing the basis for the \$53 million
11 figure. That's work that's been done externally from Loy
12 Yang by consultants; is that right?
13 MR RIENIETS: My understanding, yes.
14 MR ROZEN: So we have a GHD report from 2008; is that right?
15 That's annexure P.
16 MR RIENIETS: P is the calculator from 2008.
17 MR ROZEN: I'm sorry, the calculator from 2008. Q is the draft
18 document that I have already asked you about.
19 MR RIENIETS: That's correct.
20 MR ROZEN: If we can just go back to the statement, please, at
21 paragraph 215, and this is on the page that ends in 0032.
22 MR RIENIETS: Yes.
23 MR ROZEN: This is really returning to a point that I have
24 asked you about. I just want to tie this off, if I could.
25 You identify the key differences between the current
26 approved work plan and the previous one at paragraph 216.
27 Then can I draw your attention to 222 on the following
28 page which ends in 0033. That's the detailed technical
29 review of the proposed rehabilitation plan which will
30 ultimately result in a revised cost estimate for
31 rehabilitation. When you wrote this statement you of

1 course were not aware of the conditions that were attached
2 to the approval of the work plan. Has any work been done
3 on the impact of those conditions on this exercise?

4 MR RIENIETS: Not as yet; only to say that we will work with
5 the department to come up with a revised figure.

6 MR ROZEN: Who will do the work that's referred to in 222? Who
7 will undertake the detailed review that will ultimately
8 result in a revised cost estimate? Has that decision been
9 made yet?

10 MR RIENIETS: No, it hasn't.

11 MR ROZEN: How long have you been at Loy Yang, Mr Rieniets?

12 MR RIENIETS: I started there in June 2014.

13 MR ROZEN: To your knowledge has Loy Yang ever been asked to do
14 a section 79A rehabilitation liability assessment?

15 MR RIENIETS: I haven't got the knowledge to answer that.

16 MR ROZEN: Is the position as you sit there that if you had and
17 if you had done it, that is in the manner and form as
18 specified by the minister, that's something that would
19 have been placed in front of the Board by now in amongst
20 all this paper?

21 MR RIENIETS: Yes.

22 MR ROZEN: Can I ask you about the schedule 19 returns, because
23 there's been a similar process with AGL as there has been
24 with Hazelwood in relation to the schedule 19s, hasn't
25 there; that is, putting them in and then the department
26 has come back and said, "No, that's not the right
27 information," and then a revised document has gone in?
28 Are you aware of all that?

29 MR RIENIETS: I'm aware of some of the issues.

30 MR ROZEN: Can we go first, please, to exhibit 31C and this is
31 DEDJTR.1007.001.0212. This is a document, I think I'm

1 right, that was provided to the Inquiry by AGL pursuant to
2 a notice to produce. If we can start with the first page
3 of that. Perhaps we can make that a bit bigger so
4 Mr Rieniets can see it. If we just scroll down there you
5 will see this is the report for 2013/14 that was provided
6 pursuant to schedule 19, signed and prepared it seems by
7 Mr Barrand on 15 August. Do you see that, Mr Rieniets?

8 MR RIENIETS: Yes.

9 MR ROZEN: Mr Barrand's title is described as Infrastructure,
10 Civil and Environmental (ICE) Manager. Is he more senior
11 than you in the pecking order at AGL or how does it work?

12 MR RIENIETS: No, at that point Mr Barrand reported to me.

13 I was the mine manager at that time.

14 MR ROZEN: Did you see this document before it was sent in to
15 the department?

16 MR RIENIETS: I can't recall if I did or didn't.

17 MR ROZEN: If you go to the fourth page of the document which
18 ends in 0215 you will see that there's a section that
19 requires the licensee to advise the department of the
20 estimate of rehabilitation liability. Do you see that?

21 MR RIENIETS: Yes.

22 MR ROZEN: There are two questions there. You heard me ask
23 Mr Faithful. The first is what's the bond. 15 million.
24 The second is what is the current estimated rehabilitation
25 liability for the site, and there is nothing there in
26 response to that question. That's true, is it not,
27 Mr Rieniets?

28 MR RIENIETS: Yes.

29 MR ROZEN: Are you able to tell the Board why nothing was
30 included there when this was first submitted?

31 MR RIENIETS: I haven't got the knowledge to answer that

1 question.

2 MR ROZEN: In any event, as we understand it, as a result of a
3 request from DEDJTR a revised return was put in which
4 included the 53.7 million figure?

5 MR RIENIETS: That's correct.

6 MR ROZEN: Do you know if that figure was available to
7 Mr Barrand in August 2014 when he filled out this form?

8 MR RIENIETS: I can't answer that.

9 MR ROZEN: I need to ask you this, Mr Rieniets. Is it the case
10 that the figure wasn't included there because the contrast
11 with the level of the bond might trigger a bond review and
12 an increase in the bond?

13 MR RIENIETS: I can't answer that.

14 MR ROZEN: But you can't provide the Board with any other
15 explanation for why it's not there?

16 MR RIENIETS: I don't know why it's not there.

17 MR ROZEN: Can I please take you finally back to your third
18 statement, exhibit 12C. At paragraph 7, do you have that,
19 this is on the first page that ends in 0001, you say,
20 "This supplementary statement responds to the Accent
21 report, the Jacobs coordination report, the statement of
22 Mr Webb dated 17 November 2015 and the statement of
23 Mr Wilson dated 20 November 2015." Broadly it deals with
24 the issues thrown up by term of reference 10 for the
25 Board, doesn't it, the rehabilitation liability
26 assessments?

27 MR RIENIETS: Yes.

28 MR ROZEN: And what you wish to say to the Board about how the
29 Board ought to go about answering the questions posed by
30 term of reference 10?

31 MR RIENIETS: Yes.

1 MR ROZEN: If you go to paragraph 18, please, on page 2, you
2 say, "AGL acknowledges that an appropriate financial
3 security should be in place to ensure that rehabilitation
4 can be undertaken by the State should an operator be
5 unable to meet its rehabilitation obligations." You go
6 on, "AGL supports a financial mechanism that is fair and
7 equitable to all parties." Who are the parties that you
8 are referring to there for whom the mechanism has to be
9 fair and equitable?

10 MR RIENIETS: Obviously AGL and the State.

11 MR ROZEN: When we talk about the State, we are really talking
12 about the people of Victoria, are we not?

13 MR RIENIETS: Correct.

14 MR ROZEN: At paragraph 26, by reference to the AECOM bond
15 review process, you note that "if and when AECOM is asked
16 to prepare a report based on" the current work plan
17 variation that you will review it with your consultants.
18 I think we all only got that in the last couple of days.
19 Has that process of review been possible in that
20 timeframe?

21 MR RIENIETS: We have obviously read the report over the
22 weekend and we have some very early comments on that
23 report.

24 MR ROZEN: I don't want to be rude in not asking you what they
25 are, but no doubt we will hear them from your counsel when
26 AECOM come along. At paragraph 29 of the statement you
27 say, "All of the concept models have limitations based on
28 the range of assumptions adopted, particularly those that
29 are broadly applied across the mine." Is that a similar
30 point to the general point that Mr Faithful was making,
31 that you get out of one of these processes what you put in

1 in terms of what methodology you use and what assumptions
2 you make?

3 MR RIENIETS: That's correct. The inputs are very important
4 and a good working knowledge of the mine and the stage
5 development of the mine will assist you to get a better
6 estimate.

7 MR ROZEN: Can you turn your attention, please, to paragraph
8 33, page 0004. You there say, "The likelihood of the
9 total closure of AGL Loy Yang Mine in the next 10 years is
10 extremely unlikely under any plausible scenario, which
11 would therefore be considered a 'rare' event with a very
12 low probability of occurring based on typical risk
13 assessment principles." Is that an assessment that you
14 have made of the likelihood of your employer closing down
15 the mine? Is that how we are to understand that sentence?

16 MR RIENIETS: I think we have made that assessment, but I don't
17 believe it's just our assessment either.

18 MR ROZEN: You say, don't you, that there are a number of
19 incontrovertible objective facts that provide a sound
20 basis for that assessment?

21 MR RIENIETS: Yes.

22 MR ROZEN: The position of Loy Yang in the electricity market
23 and the size of the parent company, they are the matters
24 you draw the Board's attention to, amongst others?

25 MR RIENIETS: The current mine provides 50 per cent of the
26 State's generation, supplies two power stations, Loy Yang
27 A, Loy Yang B. So under any plausible scenario closing
28 that mine down in the next 10 years is very, very low
29 probability.

30 MR ROZEN: But having said that, Mr Rieniets, some words you
31 said a few times last week are ringing in my ears and that

1 is there are no guarantees in life.

2 MR RIENIETS: That's correct, but I think I will be pretty
3 confident on this one, Mr Rozen.

4 MR ROZEN: A sure thing you reckon; all right. In any event,
5 the point you are making - and we can talk about all the
6 lovely labels that risk assessment throws up about "rare"
7 and "unlikely" and so on - is that you ask the Board, and
8 I think in this respect so do the other mines, to take a
9 risk approach or to include an assessment of the risk of
10 default in this debate?

11 MR RIENIETS: That's correct.

12 MR ROZEN: Those assessments we see in the table at paragraph
13 33 where you assess the likelihood of closure in decade
14 periods, starting next year and then through to 2025 and
15 then the following decade and the following decade, we see
16 that the likely of closure increases from rare to almost
17 certain, and you have put some figures, at least in
18 ranges, on the percentage probability. Who has done that?
19 Who has made those assessments and put those figures? Is
20 that your work or is that done by someone with risk
21 assessment qualifications? What's the Board to make of
22 those assessments there, Mr Rieniets?

23 MR RIENIETS: We have done the work and it is our assessment,
24 but it is backed up by market data.

25 MR ROZEN: So somewhere, if we wanted it, there would be a sort
26 of standard risk assessment methodology document that's
27 been completed to produce those outcomes or is it not
28 quite that sophisticated?

29 MR RIENIETS: I don't think it's quite that sophisticated.

30 MR ROZEN: At paragraph 35 you say in the second sentence which
31 starts at the end of the second line, "It is essential

1 that any bond or guarantee should reflect both the quantum
2 of the rehabilitation liability and risk exposure of the
3 event occurring at any given point in time." Whilst you
4 draw the Board's attention to the need for risk exposure
5 you accept, don't you, that the quantum of liability also
6 needs to be considered in ascertaining bonds or
7 guarantees?

8 MR RIENIETS: I think the quantum as well as the risk of it
9 occurring needs to be factored in.

10 MR ROZEN: Do you give those two things a weighting,
11 Mr Rieniets? Do you say they are equally important or do
12 you say one is more important than the other or do you not
13 have a view about that?

14 MR RIENIETS: I don't have a view. I think the cost estimate
15 is one and the probability of that occurring is another.

16 MR ROZEN: At 36 you note that policy changes, even events as
17 far away as Paris over the weekend perhaps, can have an
18 impact on the things we are talking about on the
19 likelihood of change and industries being shut down. We
20 heard from Mr Von Bismarck last week that at the stroke of
21 a pen 80 per cent of Germany's coal mines were shut, the
22 ones located in the former East Germany, because the
23 government decided they didn't measure up. Things can
24 change quickly and they are not always predictable; do you
25 agree with those observations?

26 MR RIENIETS: Yes, that's correct.

27 MR ROZEN: Mr Von Bismarck also told us that the German nuclear
28 energy program which had - I won't say happily bubbling
29 along - certainly been in operation for several decades
30 was shut down overnight as a result of a tidal wave off
31 the coast of Japan. It is an example, isn't it, of your

1 observation that there are no guarantees and assessing
2 risk in this context is difficult; do you agree with that?

3 MR RIENIETS: It can be.

4 MR ROZEN: If I can ask you about your table which appears on
5 page 7. If you go to paragraph 48 of your third statement
6 and see if I can understand the purpose of the indicative
7 stage model that has been prepared by Loy Yang. It's on
8 the page that ends in 0007. Perhaps if we can bring up
9 the table. If we just stop there and we look at the
10 column. The year on the left-hand side, that's pretty
11 easy. Then the second column starts with that figure of
12 112 million that you spoke of earlier which is the current
13 estimate, is that right, for the liability?

14 MR RIENIETS: That's correct. The table is indicative, but we
15 have put in for illustration the 112 million which is our
16 current assessed liability, the work we have done.

17 MR ROZEN: Then the next column we have closure, both
18 likelihood and possibility. Someone has gone out on a
19 limb and said that there's absolutely no possibility,
20 zero per cent probability, of closure in 2015; is that
21 right?

22 MR RIENIETS: Yes, it's probably me.

23 MR ROZEN: That illustrates just how sure you are, doesn't it?
24 We see as we follow that column down that very slowly at
25 first and then a little bit faster around about 2035 -
26 when my children might finally have left home - it
27 increases to about 30 per cent and then up to close to
28 certain we see in 2055; is that right?

29 MR RIENIETS: Yes. So the concept is the closer you get to the
30 end of your life the probability of closure obviously goes
31 up and your rehabilitation liability comes down over the

1 journey because you have been doing progressive
2 rehabilitation.

3 MR ROZEN: Yes. Then the next column is the discount that you
4 suggest should be attached to the rehabilitation liability
5 at any point in time having regard to the probability of
6 closure; is that right?

7 MR RIENIETS: Yes.

8 MR ROZEN: So as the probability of closure increases the
9 discount reduces ultimately to zero?

10 MR RIENIETS: Yes.

11 MR ROZEN: And then when we put it all together the
12 \$112 million by applying the discount of 86.5 presently
13 gets us to \$15 million?

14 MR RIENIETS: Yes.

15 MR ROZEN: That's not a coincidence, is it? You have started
16 with the 15 million and worked backwards, haven't you,
17 Mr Rieniets?

18 MR RIENIETS: I said this table is a concept, not finite
19 figures. But the concept is the liability decreases over
20 the journey. The probability of closure increases as you
21 get closer towards the end of the mine life.

22 MR ROZEN: Under the model, the proposed model, the bond would
23 not go up until 2025; is that right? 10 years time?

24 MR RIENIETS: Yes. If this table is the adopted table that's
25 what we would be saying, at which time the trust from the
26 Loy Yang complex agreement would be in place as well. It
27 commences in 2023.

28 MR ROZEN: The bond under this model gets to its highest in
29 2047 when it increases to its maximum level which is
30 \$66 million; is that right?

31 MR RIENIETS: That's correct.

1 MR ROZEN: And then it goes down a little towards the end of
2 life and sits at 50 million?

3 MR RIENIETS: That's correct. But this assumes there's no
4 impact of the Loy Yang complex agreement, which should at
5 that time have sufficient funds in to reduce that.

6 MR ROZEN: This whole model rejects the notion that the bond
7 ought to reflect a worst case scenario early closure
8 model, doesn't it? This is coming at it from a completely
9 different perspective; do you agree with that?

10 MR RIENIETS: I think it reflects probability aspects of
11 closure.

12 MR ROZEN: Under this model when the State's potential
13 liability is at its greatest, which is now in the event of
14 early closure, the bond is at its smallest; do you agree
15 with that?

16 MR RIENIETS: But the probability of closure now is very low.

17 MR ROZEN: So you add that and you say, "Yes, Mr Rozen, what
18 you say is right, but only if early closure is likely"?

19 MR RIENIETS: If we were to close tomorrow, which I will give
20 you that guarantee that will not happen, the liability is
21 at its highest.

22 MR ROZEN: But, putting aside the question of whether early
23 closure occurs just for the sake of this question, you
24 would agree with me that on these figures the State's
25 potential liability is at its greatest this year at 112
26 million and then goes down gradually to 2055?

27 MR RIENIETS: If I ignore probability, you are correct.

28 MR ROZEN: And you say you shouldn't ignore probability.

29 MR RIENIETS: That's correct.

30 MR ROZEN: And I think we all understand that. But if you do
31 take a worst case scenario early closure approach then

1 now's the very time when the bond needs to be at its
2 biggest because if you were to close tomorrow that's when
3 it's going to cost the most in this timeframe to do the
4 rehabilitation?

5 MR RIENIETS: But it's farcical to ignore probability.

6 MR ROZEN: I understand that's what you say. Similarly or
7 correspondingly, when the liability is at its smallest the
8 bond is at its biggest, is it not, or nearly? So the
9 \$50 million bond that the State will hold under this model
10 from 2049 onwards will be against a potential liability on
11 your figures of as little as 9 million; am I reading it
12 correctly?

13 MR RIENIETS: That's correct.

14 MR ROZEN: Why would AGL want the State to hold a bond of
15 50 million against such a small liability? How is that
16 something AGL would promote?

17 MR RIENIETS: This table doesn't factor in the Loy Yang complex
18 agreement. So once we are at those timeframes the funds
19 available in that trust will cover any rehabilitation
20 costs at that time.

21 MR ROZEN: Wouldn't that just mean that the State has more
22 money tied up when you add the trust fund money and the
23 bond money against a smaller liability?

24 MR RIENIETS: I think we are saying the trust fund money at
25 that timeframe would cover the - it's obviously been used
26 along the journey. It would cover the rehabilitation
27 costs at the end of life.

28 MR ROZEN: Thank you, Mr Rieniets. Can I turn then to you,
29 please, Mr - - -

30 CHAIRMAN: I have a query, seeing that it is now quarter past
31 12 - so we have been going for more than two and a half

1 hours - whether it is desirable to have a comfort break or
2 whether you are assuming we are just going to keep on
3 going until we finish?

4 MR ROZEN: I think it would be. I'm going to be a little time
5 with Mr Mether.

6 CHAIRMAN: We should allow two breaks during the day anyway.
7 We will take a short break now.

8 (Short adjournment.)

9 CHAIRMAN: Yes, Mr Rozen.

10 MR ROZEN: Mr Mether, you have of course provided us with a
11 detailed statement which was received into evidence last
12 week. It is exhibit 14. The code is EAY.3000.001.0001.
13 I think you have it in front of you, I hope.

14 MR METHER: I have.

15 MR ROZEN: Can I ask you to turn to the code that's at the
16 bottom right-hand corner that ends in 0051, part 3 of your
17 statement, "Rehabilitation liability assessment"?

18 MR METHER: I can't see it here yet. Is it on the attachments
19 or on the statement?

20 MR ROZEN: It should be in the statement.

21 MR METHER: Paragraph?

22 MR ROZEN: Paragraph 274.

23 MR METHER: I have it in front of me.

24 MR ROZEN: Excellent. You are also here responding, are you
25 not, to the specific questions from the Inquiry about
26 liability assessments that have been provided to the
27 department?

28 MR METHER: I am.

29 MR ROZEN: You note at 274 that there are actually three bonds
30 that the licensee of the Yallourn Mine has lodged with the
31 regulator.

1 MR METHER: Correct.

2 MR ROZEN: But for our purposes the main game is (a), the
3 licence which is MIN5003. That's a figure of
4 \$11.4 million and some change?

5 MR METHER: That's correct. That's the only licence we mine
6 coal on.

7 MR ROZEN: The other ones are sort of interesting historical
8 artefacts.

9 MR METHER: We still have a bond attached to them.

10 MR ROZEN: Can I just ask you a little bit about the history of
11 the setting of the bonds with Yallourn because it is a
12 little different, is it not, with what's happened with Loy
13 Yang and Hazelwood?

14 MR METHER: A little different.

15 MR ROZEN: It has been reduced along the way. So you got the
16 15 million at the start. Then if I can summarise the
17 process. When I say you, I mean the licensee had to
18 provide a \$15 million bond. Then the explanation for how
19 it came to be reduced to the figure it currently is of
20 \$11.4 million is revealed by the correspondence that you
21 have attached to your statement; is that right?

22 MR METHER: That's correct.

23 MR ROZEN: Could I take you firstly to attachment 9.98, and
24 this is EAY.0008.001.0060.

25 MR METHER: I can't find the attachment here.

26 MR ROZEN: Ms Stansen will navigate the paperwork. Do you now
27 have that, Mr Mether?

28 MR METHER: I have it in front of me.

29 MR ROZEN: It is also on the screen. It is a letter dated
30 2 June 1995 from Yallourn Energy to the regulator, which
31 at this time was the Department of Agriculture, Energy and

1 Minerals; do you see that?

2 MR METHER: I see that.

3 MR ROZEN: The letter is self-explanatory. It refers to some
4 discussions between officers of the department and
5 employees of the mine about structuring the bond and it
6 attaches, we see in the second paragraph, a proposal to
7 base the bond on the cost of works required to complete
8 full restoration of the disturbed mining land upon
9 closure. It notes that this cost is currently assessed at
10 \$7 million. Do you see that?

11 MR METHER: I see that.

12 MR ROZEN: If you turn over the page and look at the page not
13 immediately behind that one but the next page which has 62
14 in the bottom right-hand corner; do you see that,
15 EAY.0008.001.0062?

16 MR METHER: I have that.

17 MR ROZEN: It is headed "Yallourn Energy Limited, Schedule 1,
18 1 June 1995." These are the costing details that were
19 attached. Have I got that right? Maybe not. Sorry,
20 Mr Mether. Perhaps I will just move on. Can you go to
21 9.97? So just slightly back in your folder there should
22 be a page EAY.0008.001.0005.

23 MR METHER: I have that.

24 MR ROZEN: There may well have been other correspondence
25 between the letter I just took you to, that is the letter
26 of 2 June, and this one. But if you can just take a
27 moment to read through that if you need to and just
28 confirm for me that this would appear to be a response
29 from the department to Yallourn about that proposal for
30 reduction in the bond.

31 MR METHER: The reduction in the bond?

1 MR ROZEN: Proposed reduction in the bond. Sorry, I may have
2 inadvertently misled you.

3 MR METHER: This is the original.

4 MR ROZEN: Yes, sorry. This is the correspondence that relates
5 to the bond being set at 15 million, isn't it?

6 MR METHER: Correct.

7 MR ROZEN: I'm very sorry, Mr Mether. Just sticking with that
8 letter if we could, the second last paragraph of the
9 letter of 7 July 1995 from the regulator to the mine, if
10 I can use those general terms, reads as follows, "As these
11 matters are not yet resolved" - and the matters that are
12 being referred to is the detailed basis for Yallourn's
13 cost estimates?

14 MR METHER: That would be my understanding.

15 MR ROZEN: And additional definition surrounding the question
16 of whether it ought to be assessed as a current liability
17 or not, Mr Gardner of the regulator wrote, "As these
18 matters are not yet resolved we propose to set the
19 rehabilitation bond for the Yallourn Mine at \$15 million.
20 This should be regarded as an interim figure until such
21 time as we have assessed whatever additional information
22 you are able to provide on the above matters." That was
23 the state of play as at the time of privatisation at 1995?

24 MR METHER: Correct.

25 MR ROZEN: Then if we go back to your statement, please, at
26 279, we are on the page that ends in 0052 in the bottom
27 right-hand corner.

28 MR METHER: Yes.

29 MR ROZEN: Do you see that, 279, bottom of the page? You say
30 some six years after that correspondence, so 2001, Energy
31 Australia was provided with a report by consultants

1 GEO-Eng with a costing of the Yallourn Mine rehabilitation
2 master plan. I won't take you to that document unless you
3 think it's necessary, but if you go over the page to
4 paragraph 280 you refer to another report provided the
5 following year by GHD which at that time was the
6 same - became the same company as GEO-Eng.

7 MR METHER: Correct.

8 MR ROZEN: So they provided you with that assessment in 2002.

9 Then at 281 you refer to a letter of 30 July, and that's
10 the letter that I meant to take you to a moment ago, in
11 which the department agreed to reduce the bond from the
12 figure of \$15 million to \$11.4 million; is that right?

13 MR METHER: Correct.

14 MR ROZEN: It has been 11.4 ever since. Can I take you to
15 attachment 9.101. Do you see that up on the screen? This
16 is the letter that you are referring to that explained the
17 rationale for reducing the level of the bond.

18 MR METHER: I have it in front of me.

19 MR ROZEN: It is up on the screen. This was from the regulator
20 to the mine. We see at paragraph 2 there's a reference to
21 a recent meeting and that there had been a review of the
22 bond carried out in accordance with the department's
23 guidelines. Can I just stop there. Were you personally
24 involved in any of those meetings, do you recall?

25 MR METHER: I can't remember that exact meeting, but I was
26 around and involved in discussions.

27 MR ROZEN: You have been to a few meetings with the regulator
28 over the journey.

29 MR METHER: Correct.

30 MR ROZEN: In any event, the letter goes on, "However, the
31 contingency allowance is 20 per cent rather than 10 per

1 cent, which usually applies. The department's view is
2 that a higher contingency allowance is required to cover
3 uncertainties relating to the final rehabilitation of the
4 site. The minister's EES assessment report of 2001
5 identified the need for further research, in particular in
6 hydrology, to address this uncertainty. Further research
7 into final landforms and hydrology is also a condition of
8 MIN5003." That is the main licence. Can I just stop
9 there. It's the case, is it not, that in light of the
10 evidence the Board heard last week the Board could
11 conclude, could it not, Mr Mether, that there continues to
12 be further research that needs to be done in relation to
13 hydrology?

14 MR METHER: A significant amount of work has been done in the
15 hydrology area, but I wouldn't argue that more can be
16 done.

17 MR ROZEN: The letter went on to explain the contingency of
18 20 per cent, and if we can skip over to the fourth
19 paragraph, "The department will be happy to initiate
20 another rehabilitation bond review and to reduce the
21 contingency allowance once the research has been
22 undertaken and the uncertainties related to final
23 rehabilitation are resolved." That's never happened, has
24 it, since 2004?

25 MR METHER: No, not to my knowledge.

26 MR ROZEN: That is there hasn't been another bond review. Is
27 that something that Yallourn has spoken to the department
28 about, that is taking into account the work, because I'm
29 sure you would agree with me there has been a deal of work
30 done since 2004, not just in relation to hydrology but
31 other matters? Is that a conversation you have had with

1 the regulator?

2 MR METHER: It is not a conversation I have taken up on.

3 MR ROZEN: I guess it's conceivable, isn't it, Mr Mether, that
4 were you to initiate such a conversation it may be just as
5 likely to result in an increase to the bond as a decrease?

6 MR METHER: It is conceivable.

7 MR ROZEN: But, leaving that to one side, do you agree with me
8 that looking at it more broadly in relation to all three
9 mines that the approach that at least was envisaged in the
10 letter has some attraction; that is, that it's a condition
11 to do some work to find answers to these questions and
12 then a further review be conducted factoring in the
13 outcome of that research?

14 MR METHER: I think it's wise that we as the operator and the
15 department are on a common page on understanding what the
16 liabilities are.

17 MR ROZEN: I suggest to you that Yallourn would like there to
18 be a financial mechanism, whether it be a bond or by some
19 other name, that rewards good practices, rewards getting
20 progressive rehabilitation done, for example.

21 MR METHER: Progressive rehab is something we do, and if it
22 could be recognised that would be a good thing.

23 MR ROZEN: It is an ugly verb, but it is common. It would be
24 nice for the bond system to incentivise that sort of
25 practice?

26 MR METHER: You would have to understand the full bond system
27 to know how it would work in an incentivised arrangement.

28 MR ROZEN: There is not much incentive there now in the bond
29 system; would you agree with that?

30 MR METHER: The bond system itself has never driven
31 rehabilitation during my period at Yallourn.

1 MR ROZEN: Mr Faithful, do you agree that a bond system that
2 provided incentives for progressive rehabilitation, for
3 carrying out research in general terms would be a
4 desirable number?

5 MR FAITHFUL: Yes, I think that's fair, yes.

6 MR ROZEN: Do you think the current system does that, in your
7 experience?

8 MR FAITHFUL: No, as in line with what Ron said, we consider it
9 being part of mining in which you do progressive
10 rehabilitation. If you get some sort of bonus for doing
11 that, then that's certainly desirable.

12 MR ROZEN: Mr Rieniets, any observations about that?

13 MR RIENIETS: I agree a good system would factor in progressive
14 rehabilitation and take that into account when reviewing
15 the bond.

16 MR ROZEN: Do you agree, Mr Rieniets, with the observation
17 I made opening this morning that when you think about
18 progressive rehabilitation in the setting of the Latrobe
19 Valley coal mines that it's necessarily more than
20 short-term covering coal, for example; that conducting
21 trials is a necessary part of progressive rehabilitation?

22 MR RIENIETS: I believe conducting trials is a necessary
23 requirement to enlighten you what the final rehabilitation
24 shape and conditions might look like.

25 MR ROZEN: So your progressive rehabilitation can be an end in
26 itself or it can be getting answers that help you do final
27 rehabilitation or it could be a combination of the two?

28 MR RIENIETS: Correct.

29 MR ROZEN: That's really what's been going on in the last few
30 years at Loy Yang, isn't it? Professor Sullivan describes
31 the trials that have been occurring at Loy Yang and what's

1 been learnt about coverage and stability and other issues?

2 MR RIENIETS: We have had several trials and we are planning to
3 do more as outlined in our current work plan.

4 MR ROZEN: Mr Mether, if we can go back to your statement,
5 please, at 282. You confirm for us that that adjusted
6 bond figure from 2004 as we know remains the current
7 figure at 11.4 million.

8 MR METHER: That's correct.

9 MR ROZEN: Can I ask you please about the schedule 19 reports
10 which you refer to in your statement starting at paragraph
11 283. You set out at 284 what regulation 35 says in
12 summary, that is what the mine is required to report on.
13 Then at 285 you refer to the 2013/14 schedule 19 report
14 that was provided to the regulator; is that right?

15 MR METHER: That's the letter dated 6 April 2015?

16 MR ROZEN: 8 April or 6 April?

17 MR METHER: 8 April.

18 MR ROZEN: Yes. Can I just summarise before going to the
19 correspondence, just as we have heard from your colleagues
20 Mr Faithful and Mr Rieniets, there was a bit of toing and
21 froing between Yallourn and the regulator about getting
22 these schedules in the form that was acceptable to the
23 regulator.

24 MR METHER: Correct, in that recent one.

25 MR ROZEN: So you attach for us the report that you completed
26 on 8 April and you also attached the letter that you have
27 referred to. I will come to those in a moment, but could
28 I first go to exhibit 31E, which we can find at
29 DEDJTR.1007.001.0176. Do you see that up on the screen
30 there, Mr Mether? You actually completed this, didn't
31 you, on 28 August of last year?

1 MR METHER: Correct.

2 MR ROZEN: We see your name and your signature?

3 MR METHER: Correct.

4 MR ROZEN: On the copy on the screen some personal details
5 about you have been blanked out. That's the case, is it
6 not?

7 MR METHER: Correct.

8 MR ROZEN: You don't want to be receiving unwanted mobile phone
9 calls, no doubt.

10 MR METHER: I probably receive enough of those.

11 MR ROZEN: I wouldn't be surprised. If we go to the page that
12 ends at 0180, it is the fifth page of the document in
13 front of you, Mr Mether, do you see that as with your
14 colleagues or the mines that they work for you were asked
15 to complete this estimate of rehabilitation liability and
16 you were asked two questions: what is the current bond,
17 and it is 11.46 million, that's the figure we have been
18 discussing, is it not?

19 MR METHER: Correct.

20 MR ROZEN: Then what is the current estimated rehabilitation
21 liability for the site, and we see a blank there, do we?

22 MR METHER: Correct.

23 MR ROZEN: Why is there no entry at that point or why was there
24 no entry at that point when you sent it in last August?

25 MR METHER: Historically I haven't filled out that line when
26 I have filled them out and I haven't been asked for it.

27 MR ROZEN: So that was a practice you developed over the years
28 and the regulator had never raised it with you?

29 MR METHER: I have filled out previous ones and don't seem to
30 remember filling that in for a range of variables.

31 MR ROZEN: Were you in a position to fill in that figure in

1 August 2014? Did you have that information at your
2 disposal?

3 MR METHER: Probably not an exact figure as a single figure.

4 MR ROZEN: I have to ask you, Mr Mether. Was the failure to
5 fill it in in this form out of a concern that if you put
6 in what you knew to be the estimate that it might trigger
7 a bond review when it was compared to the amount of the
8 bond?

9 MR METHER: No, it's just historically I hadn't been filling
10 that in.

11 MR ROZEN: What happened after; that is, there was some
12 discussion with the regulator when they expressed a
13 concern, did they not, about the failure to fill in that
14 part of the form?

15 MR METHER: I think so. Some time after, yes.

16 MR ROZEN: Without going into the detail of that can we go to
17 your letter of 8 April, which is attachment 9.102 to your
18 statement. It is at EAW.0001.002.0070. Do you see that?

19 MR METHER: I have that one in front of me.

20 MR ROZEN: This letter attached the updated 2013/14 return?

21 MR METHER: Correct.

22 MR ROZEN: And you wrote to Mr McGowan, the head of the
23 regulator, on 8 April 2015 in response to your letter
24 dated 16 March 2015, "Energy Australia has reviewed its
25 annual activity return submitted on 28 August 2014 and
26 provides the amended report attached." It goes on in the
27 second paragraph, "In relation to the current estimated
28 rehabilitation liability we have provided an estimate
29 range as described below."

30 Then if we can skip over the next paragraph and
31 look at the paragraph that commences, "There are still a

1 number of studies and reviews that will be needed as the
2 mine nears completion before final rehabilitation can be
3 undertaken in a number of areas. These reviews mainly
4 focus on stability during the flooding period along the
5 western batters of Township field and the status of the
6 Morwell River diversion. The rehabilitation liability can
7 change significantly depending on the final outcome of the
8 reviews; however the current liability is within the range
9 of \$46 million for minimum stability work required to a
10 conservative position of \$91 million where significant
11 stability treatment is required." Can I just ask you in
12 relation to that range is the cost of doing the studies
13 themselves, the reviews, factored into that cost estimate?

14 MR METHER: The review or stability works we do, we normally do
15 them out of our operating costs. So we have a
16 geotechnical operating budget which would normally deal
17 with those sort of activities. So specifically in these
18 costs, whilst the range of dollars would allow for
19 reviews, we would normally do those as ongoing operational
20 costs.

21 MR ROZEN: So the approach that Yallourn took seems to be
22 somewhat different to the approach taken recently by the
23 other mines. Rather than coming up with a figure and
24 adding a contingency for these sorts of unknowns you have
25 decided to express it as a range?

26 MR METHER: The lower figure actually probably has some
27 contingency built into it. We don't have a line item of
28 contingency, but certainly the rates which I'm across are
29 conservative rates which we have in our model which would
30 have some contingency to what we actually do on site now.
31 Specifically the gap is to address stability issues.

1 MR ROZEN: Just for completeness and without necessarily going
2 to it, we can note that at attachment 9.104 to your
3 statement there is the schedule 19 return dated 8 April
4 2015 that was attached to the letter that we have just
5 been discussing; is that right?

6 MR METHER: Correct.

7 MR ROZEN: That's where we see the range 46 to 91 million, and
8 then in brackets "see cover letter" as an explanation for
9 the range.

10 MR METHER: That's correct.

11 MR ROZEN: Have you had any feedback from the regulator about
12 whether that was a satisfactory response or is it kind of
13 no news is good news?

14 MR METHER: No, I certainly had discussions with the regulator
15 and explained my position in putting this letter in.

16 MR ROZEN: Perhaps I can ask you, Mr Mether, first. Has it
17 ever been raised with you by the regulator that failing to
18 submit a schedule 19 form in the manner required by the
19 regulations is an offence against the regulations? Has
20 that ever been raised?

21 MR METHER: No.

22 MR ROZEN: Mr Faithful, has that ever been raised by the
23 regulator with GDF as far as you are aware?

24 MR FAITHFUL: No.

25 MR ROZEN: Mr Rieniets?

26 MR RIENIETS: It hasn't been raised to me, no.

27 MR ROZEN: One final matter, if I could raise with each of you.
28 I will start with you, please, Mr Faithful. Are you aware
29 if the mine licensee of GDF pays any contribution to GHERG
30 on an annual basis for its research budget?

31 MR FAITHFUL: From memory we contribute near half a million

1 dollars.

2 MR ROZEN: Was that an amount set by the regulator or by
3 negotiation with GHERG or how did that come about?

4 MR FAITHFUL: I'm uncertain of the history of it.

5 MR ROZEN: Mr Rieniets, are you able to tell us what the
6 position is with AGL?

7 MR RIENIETS: AGL contributes to GHERG, and the figure is in
8 the order - I would need to check, but it is in excess of
9 half a million.

10 MR ROZEN: If it is much in excess of half a million could you
11 let us know, please, through your counsel?

12 MR RIENIETS: I will.

13 MR ROZEN: What about you, Mr Mether? Champing at the bit to
14 answer this question?

15 MR METHER: The levy I don't think is specifically to GHERG.
16 It is a batter stability levy which goes to the
17 department. My understanding, it is in the order of the
18 low 400s.

19 MR ROZEN: That's the levy that attaches to being a declared
20 mine under the regulations, is it not?

21 MR METHER: Correct.

22 MR ROZEN: Is that what you are talking about too, Mr Faithful,
23 or are you talking about a separate amount that goes
24 directly to GHERG?

25 MR FAITHFUL: I always thought it was straight through to
26 GHERG, but I can be corrected on that.

27 MR ROZEN: But it is the levy that attaches to being a declared
28 mine; that's what we are talking about, the same thing?

29 MR FAITHFUL: I believe that's the case, yes.

30 MR ROZEN: Mr Rieniets, is that also the case with AGL?

31 MR RIENIETS: The stability levy, yes.

1 MR ROZEN: The stability levy which attaches to being declared
2 as a declared mine.

3 MR RIENIETS: Yes.

4 MR ROZEN: Thank you. They are the questions I have for the
5 mine panel. Professor Catford I thought might have a
6 question that might be appropriate to ask now before the
7 parties do.

8 PROFESSOR CATFORD: Can I thank the panel very much for their
9 answers. I just wonder if we could go back to almost
10 first principles and I would like to ask each of you why
11 we have a financial assurance system. Mr Mether, why do
12 we need this? What's the perspective of the mine?

13 MR METHER: Certainly from my point of view I don't see a
14 strong need personally for a levy for the coal industry
15 which have power stations attached to them. I think they
16 are a different body than the mines which the legislation
17 particularly, I believe, was put around which might have
18 been smaller gold mines et cetera. Mines attached with
19 power stations and significant assets and long-term plans
20 that the State are across I don't believe necessarily need
21 that bond.

22 We have detailed work plans. We have detailed
23 reporting. We have progressive rehabilitation. I don't
24 believe there's any surprises for the regulator in the
25 space of our current mining and our current rehabilitation
26 works. Certainly the bonds have never driven our
27 behaviour before to do those rehabilitation works. It's a
28 mining licence condition and we have an approved rehab
29 plan that we work towards. On a personal level, I don't
30 think it drives the behaviour.

31 PROFESSOR CATFORD: So you don't believe we need a bond or a

1 system. But what is the purpose of the system? You
2 obviously don't agree with it, but what's the purpose of
3 having it?

4 MR METHER: If a mine stopped operation and left a legacy for
5 the State, the State could come in and repair that legacy.

6 PROFESSOR CATFORD: So it is to manage that liability if the
7 mine was to not complete its - - -

8 MR METHER: Complete its obligations to do it.

9 PROFESSOR CATFORD: But you think obviously with all the other
10 processes in hand it's not necessary?

11 MR METHER: The State shouldn't be exposed, but I think there
12 needs to be an assessment of that exposure based on the
13 type of industry that we are.

14 PROFESSOR CATFORD: Can I ask Mr Faithful the same question.
15 Why do we have a financial assurance system and do you
16 agree with it?

17 MR FAITHFUL: I agree with Ron. If you are able to demonstrate
18 that you are a committed mining and power generation
19 business and you are adequately meeting all your
20 rehabilitation milestones and you are progressively
21 achieving those and you are hitting your targets, I don't
22 see why you need one. I think the proof is in the
23 pudding. If you are out there and doing the work, you are
24 acting on what you say you are acting on, I don't think
25 you need one.

26 PROFESSOR CATFORD: I'm actually not going to ask Mr Rieniets
27 that question because you have told us in your submission.
28 Perhaps we can just look at your submission which I think
29 is dated 4 December.

30 MR ROZEN: This is Mr Rieniets' third statement.

31 PROFESSOR CATFORD: Yes. It begins at paragraph 37. I think

1 what you are saying there - we will just have a look at
2 that. I think you define the purpose. In 38 you say it's
3 legitimate, it's reasonable. That's what you said. Is
4 that the situation?

5 MR RIENIETS: That's correct. It's to guard the State from
6 having a legacy or a liability. Bearing in mind AGL, it
7 is a very large company and it also guards against
8 companies going into default or liquidation, that they
9 can't do those works. Where companies are large, the
10 likelihood of them walking away from these operations is
11 very small.

12 PROFESSOR CATFORD: I just note that there is obviously a
13 difference between the mining community about why we have
14 it and if we need it. Could I just say I thought your
15 submission was very helpful in this regard. I thought you
16 flushed out a number of important aspects, and
17 I particularly valued your comments in 39 which are these
18 10 principles of a good security model. Clearly you have
19 said in there that you support those principles. I wonder
20 if I could ask Mr Faithful and Mr Mether whether you also
21 support those principles which I think were part of a
22 consensus process that KPMG managed and Mineral Resources
23 Council was party to it and supported it. Can I just ask
24 you do you support those 10 principles?

25 MR METHER: I was aware the Minerals Council was involved.
26 Without analysing them in detail, I had read the thing and
27 in basic principle I would agree.

28 PROFESSOR CATFORD: You would agree with those principles.
29 Mr Faithful?

30 MR FAITHFUL: This is really the first time that I have looked
31 at this in detail. But some of them seem fine.

1 PROFESSOR CATFORD: It is really coming back to this point that
2 Counsel Assisting raised. I just refer you to items 3 and
3 4, which basically are sort of suggesting that we need to
4 be thinking about actions that are happening in the
5 shorter time, in the shorter term rather than the longer
6 term. So it is about rewarding good behaviour now,
7 encouraging good behaviour in the immediate future, which
8 I think comes back to this point that I think you are all
9 agreeing about that there should be some form of incentive
10 for progressive rehabilitation that the system picks up
11 and acknowledges. That could also include necessary
12 research that equips you with understanding what's needed
13 for ultimately the long-term rehabilitation process. Can
14 I just understand you are on side with this notion of
15 essentially a system that's encouraging performance and
16 rewarding performance early in the process of
17 rehabilitation.

18 MR METHER: You would have to understand how the whole lot
19 comes together to understand the reward; but certainly to
20 get involved in the research, and that's why we are
21 getting involved with GHERG with the batter stability
22 project at Yallourn and putting a significant in kind
23 contribution to that, because it works towards that final
24 end game.

25 PROFESSOR CATFORD: Mr Faithful?

26 MR FAITHFUL: I agree with the principles, yes.

27 MR RIENIETS: And I would support that principle.

28 PROFESSOR CATFORD: It seems to me certainly a departure from
29 the way that bonds have been focused on, which is the back
30 end of the story rather than the front end. Could I just
31 briefly touch on item 10 there which talks about financial

1 assistance should be readily converted into cash. It
2 doesn't actually say it should be cash. I just wondered
3 if you had a view whether cash is the only surety and
4 whether assets could also be used as part of the equation.
5 I'm thinking of assets such as equipment and land. Is
6 this something that you have a view about at all?

7 MR METHER: It's not my area of expertise.

8 MR FAITHFUL: Not at my paid rate.

9 MR RIENIETS: I don't feel able to comment on that.

10 PROFESSOR CATFORD: How much is your equipment worth on your
11 site? What is the second-hand value for elephant crushers
12 or whatever you call them?

13 MR RIENIETS: It depends how much the customer is prepared to
14 pay.

15 MR METHER: Significant value is in the equipment on our site.

16 PROFESSOR CATFORD: I would think so, and I would think your
17 land as well, depending on of course how attractive these
18 lakes will be down the track.

19 MR METHER: Particularly if they have lake views.

20 PROFESSOR CATFORD: It could fetch a tidy sum. But assets
21 could also be considered in the mix of providing a surety;
22 do you think that's reasonable?

23 MR RIENIETS: Perhaps.

24 PROFESSOR CATFORD: Thank you very much.

25 CHAIRMAN: Could I just follow that up. If the bond that you
26 had to pay was significantly higher but could be reduced,
27 if you like, to a lower one if you put up the land as an
28 unregistered mortgage or other assets, which would you go
29 for?

30 MR METHER: I would have to seek advice to understand.

31 I wouldn't be across that.

1 MR ROZEN: I think Ms Nichols has the floor.

2 MS NICHOLS: Mr Faithful, I just have a small number of
3 questions about your progressive rehabilitation and how it
4 works because it may be an input to calculating the bond
5 liability. You say that your progressive rehabilitation
6 schedule is highly tied to the sequence of mining
7 operations and that you schedule or you plan your
8 rehabilitation quite flexibly so that if your mining
9 operations change significantly at all the progressive
10 rehabilitation schedule will vary; that's correct, isn't
11 it?

12 MR FAITHFUL: Yes, that's an input, yes.

13 MS NICHOLS: You say that your progressive rehabilitation has a
14 number of constraints on it and you set those out in
15 detail at paragraph 98 of your statement. You list areas
16 of the mine containing critical mine infrastructure in
17 some detail. In relation to that aspect, when it comes to
18 moving infrastructure such as powerlines, dams and ponds,
19 fire services and so on is it correct that you really need
20 to make an assessment when you are reasonably close to
21 having to do the work because you need to leave the mine
22 infrastructure in place until you come to the time to do
23 the rehabilitation which will affect its positioning in
24 the mine?

25 MR FAITHFUL: That's affair assessment, yes.

26 MS NICHOLS: You also say that a particular feature is the
27 issue with infrastructure positioned above the batters.
28 You say that if you were to consider moving that sort of
29 infrastructure you would need to make an assessment and
30 manage third party interests as well; that's right, isn't
31 it?

1 MR FAITHFUL: That's right.

2 MS NICHOLS: When it comes to doing that you would make that
3 assessment once again reasonably close to the time at
4 which you felt that was necessary to do that in order to
5 progress progressive rehabilitation?

6 MR FAITHFUL: It would depend on the infrastructure, but, yes,
7 that's a fair call.

8 MS NICHOLS: At paragraph 99 of your statement you discuss the
9 need for batter stability assessments. It is subparagraph
10 (a) of your statement if you have that there. You say,
11 "This step is crucial and can take a period of at least
12 six to 12 months for an area of the mine such as the
13 northern batters, which is in close proximity to the
14 Morwell township and third party infrastructure." You
15 discuss in the statement a range of variables, including
16 batter profiles, groundwater levels and so on that need to
17 be assessed. Am I correct in reading that paragraph as a
18 reference to work that you would do in the future at a
19 relevant time when your rehabilitation planning had
20 progressed?

21 MR FAITHFUL: That's work that we have done now and it is work
22 that we will continue to do in the future.

23 MS NICHOLS: Have you done that in relation to block 1C in its
24 entirety?

25 MR FAITHFUL: No, not from memory, no.

26 MS NICHOLS: What aspects of that work have you completed so
27 far?

28 MR FAITHFUL: Mining isn't completed in block C. So the
29 modelling that we are doing is interim modelling on
30 operational batters rather than any type of closure
31 design. That work is still in progress.

1 MS NICHOLS: So it would be fair to say then in relation to
2 progressive rehabilitation when looking forward and making
3 cost adjustments to how your rehabilitation liability will
4 reduce over time there are a number of inputs that need to
5 be input into that calculation and they will vary over
6 time, won't they?

7 MR FAITHFUL: Yes, they will.

8 MS NICHOLS: You discussed in your evidence earlier this
9 morning the costings you have made in support of the
10 \$73.4 million current liability calculation. I understand
11 those numbers are confidential, so I won't ask you about
12 the numbers. But at a level of principle how have you
13 calculated the reduction of that liability over time
14 allowing for progressive rehabilitation to be done?

15 MR FAITHFUL: It doesn't calculate a reduction in the overall
16 liability. What it works through is a cost per activity
17 and builds up over time. So as we work through the period
18 of time there's an expense that we incur each year for
19 progressive rehabilitation.

20 MS NICHOLS: So you would need to look at the actual assessment
21 for each year or each relevant stage of mining and test
22 the assumptions relating to progressive rehabilitation for
23 that particular stage.

24 MR FAITHFUL: No, we would identify what progressive
25 rehabilitation is being done in the year and we would have
26 the supporting work that would enable you to do that.

27 MS NICHOLS: Thank you. Can I ask you just some questions
28 about your corporate structure. You give some evidence
29 about that at paragraphs 15 to 20 of your statement. You
30 have indicated that Hazelwood Power Corporation Pty Ltd
31 holds the mining licence, and that is a wholly owned

1 subsidiary of the Hazelwood Power Partnership. You have
2 set out the members of that partnership since June 2013 at
3 paragraph 16. Can you tell the Board what changes of
4 structure occurred in June 2013?

5 MR FAITHFUL: No.

6 MS NICHOLS: You don't know?

7 MR FAITHFUL: No.

8 MS NICHOLS: Tell me if you can answer this. The ultimate
9 holding companies of IPAH are Engie SA and Mitsui Co Ltd.
10 Engie is a French company, isn't it?

11 MR FAITHFUL: It is.

12 MS NICHOLS: And Mitsui, that is a Japanese company?

13 MR FAITHFUL: It is Japanese, yes.

14 MS NICHOLS: Do you know whether there is any deed of
15 cross-guarantee in place under which any of the parent
16 entities of the entity that holds the licence will
17 guarantee the debts of the licence holder in the event of
18 liquidation or other proceedings?

19 MR FAITHFUL: No, I don't know.

20 MS NICHOLS: You don't know?

21 MR FAITHFUL: No.

22 MS NICHOLS: The financial controller for the mine has not been
23 called to give evidence by GDF. Is he the person who
24 might know the answer to that?

25 MR FAITHFUL: I don't know.

26 MS NICHOLS: Are you able to confirm to the Board that Engie
27 has been attempting to sell a third of its stake in its
28 Australian assets for about the last 18 months?

29 MR FAITHFUL: I can't confirm or deny that.

30 MS NICHOLS: I appreciate you may not have a lot of knowledge
31 about it, but can you tell the Board whether you are aware

1 at all about attempts to sell off the Australian asset?

2 MR FAITHFUL: Look, I don't know.

3 MS NICHOLS: You don't know. Okay. Can I ask you a question

4 you might know something a bit more about. Are you

5 familiar with the calculation of an emissions intensity

6 which, if I have it correct, refers to the amount of

7 greenhouse gas emitted per unit of electricity created?

8 MR FAITHFUL: I'm aware of it at a high level, yes.

9 MS NICHOLS: And it is usually defined as tonnes of carbon

10 dioxide per megawatt hour; is that correct?

11 MR FAITHFUL: I believe so.

12 MS NICHOLS: Can you confirm whether Hazelwood's emissions

13 level is at 1.56 tonnes per carbon dioxide per megawatt

14 hour?

15 MR FAITHFUL: I don't know. I can't answer that.

16 MS NICHOLS: Do you know whether Hazelwood, amongst the Latrobe

17 Valley mines, is the highest emitter of carbon dioxide?

18 MS DOYLE: If the Board pleases, I object to these questions,

19 partly because it appears Mr Faithful doesn't know the

20 answers, but I was waiting to see when they would be

21 linked to terms of reference 10. At this stage I have two

22 difficulties: Mr Faithful doesn't know and the second is

23 I don't see what the link is with term of reference 10.

24 CHAIRMAN: I think there are limits with how far you can go

25 down this track. Certainly there are risk factors

26 involved, but I don't know particularly as we are only

27 getting from this witness an indication that there are

28 other people who really have that information.

29 MS NICHOLS: Given that Mr Faithful doesn't know I won't

30 continue to ask him. I will be submitting later that

31 these considerations are relevant, but I don't need to

1 address that now.

2 CHAIRMAN: Yes.

3 MS NICHOLS: Mr Faithful, you give some evidence in your
4 statement at paragraph 216 about the contracts for closure
5 program and you mention that the GHD costings that you
6 refer to as high level costings were prepared in the
7 course of discussions between Hazelwood and the
8 Commonwealth government in I think it was 2012. Can you
9 confirm that there were discussions as part of that
10 program between Hazelwood and the Commonwealth government
11 concerning the program put forward by the Commonwealth
12 which was to close a number of power stations around
13 Australia?

14 MR FAITHFUL: For starters, it wasn't at Hazelwood. So I don't
15 know. Second of all, I have heard that there
16 were obviously discussions, but that's about as much
17 detail as I can give you.

18 MS NICHOLS: I'm not going to ask you about the discussions
19 themselves, but I'm simply asking you to confirm if you
20 can, given that you do give some evidence about it in your
21 statement, did Hazelwood proceed to negotiations with the
22 Commonwealth with a view, had those negotiations been
23 successful, to closing down the Hazelwood power plant?

24 MR FAITHFUL: I don't know.

25 MS NICHOLS: I'm not sure whether you will be able to assist me
26 with the rest of my questions, Mr Faithful. So I don't
27 have anything further for you. Thank you. Mr Rieniets,
28 I have some questions for you. I would like to ask you
29 about the conceptual model discussed in your third
30 statement. If you have that there, that might be of
31 assistance. You indicate at paragraph 49 of your

1 statement that the numbers in the table you produce are
2 conceptual only. Can you describe what you mean by that
3 expression, "conceptual only"?

4 MR RIENIETS: I think the starting number that we have
5 ourselves come up with a figure of 112. We need to work
6 through that and then we have our work plan approved to
7 work through and come up with a number that we all agree
8 upon.

9 MS NICHOLS: You have already explained this morning that you
10 will necessarily revise that number given the approval of
11 the 2015 work plan. But are you saying that once that
12 figure that's now represented by 112 is adjusted and
13 worked through that that model is something that AGL is
14 putting forward as an appropriate model to assess the
15 level of the State's exposure to risk in the future?

16 MR RIENIETS: The principle is whatever the figure is that
17 reduces over time and the probability of closure increases
18 over time.

19 MS NICHOLS: So if we accept the initial input of 112 will
20 change, are you saying, however, that the assessments of
21 probability that the plant will close and also the extent
22 by which the liability will reduce because of progressive
23 rehabilitation that those elements of the model are
24 accurate?

25 MR RIENIETS: I don't see the probability of closure changing
26 very much at all. The starting liability figure may go up
27 or down once we do more work.

28 MS NICHOLS: But that's really the moveable part in the
29 equation as far as AGL is concerned?

30 MR RIENIETS: Correct.

31 MS NICHOLS: I needn't ask you any further questions about that

1 because that number will vary, won't it?

2 MR RIENIETS: It may go up or down once we do more work.

3 MS NICHOLS: In relation to the reduction of liability by

4 reference to progressive rehabilitation, and I mean by

5 that the numbers in the second column from the far left,

6 you said in your statement that rehabilitation liability

7 will reduce as progressive rehabilitation is performed.

8 That number in the second left-hand column, that is simply

9 meant to reflect a reduction because of progressive

10 rehabilitation, isn't it?

11 MR RIENIETS: That's correct.

12 MS NICHOLS: Is it correct that that reduction each year is

13 meant to reflect what is in your work plan?

14 MR RIENIETS: That's correct.

15 MS NICHOLS: So if we were looking for the basis upon which the

16 number of 112 or whatever it might be is reduced, say, by

17 \$4 million in the first year, \$3 million in the second, \$4

18 million in the third and so on, the place to look for the

19 basis for that is your work plan?

20 MR RIENIETS: That's correct.

21 MS NICHOLS: There are no other calculations that have been

22 done to support the proportionate reduction over the time

23 there?

24 MR RIENIETS: It's really a function of how many hectares of

25 land that become available each year as the mine

26 progresses, and we plan to spend around about \$4 million

27 per year doing progressive rehabilitation, and that's why

28 it decreases over time.

29 MS NICHOLS: Is it a combination really of looking at the

30 figures in your first statement? You might recall they

31 were I think figures 16 to 21 - - -

1 MR RIENIETS: Stage plans, yes.

2 MS NICHOLS: Yes, the stage plans and then the planned spend,
3 which is not quite but more or less evenly divided over
4 the time; is that how you have calculated that?

5 MR RIENIETS: It is calculated on - I think the stage plans are
6 at the various stage B, stage C, stage D, so the detail
7 year by year between those plans is estimated between
8 those two points.

9 MS NICHOLS: So far as there is detail supporting that, that's
10 all to be found in the work plan as well?

11 MR RIENIETS: That's correct.

12 MS NICHOLS: Just test that for a moment. Figure 17 of the
13 work plan, and I will just tell you this and see if you
14 agree with me and we can go to the statement if need be,
15 you would have done rehabilitation of an area of about
16 70 hectares, and mostly rehabilitating the overburden
17 dump, and at the same time you will have significantly
18 expanded the mine area; does that sound right for stage C?

19 MR RIENIETS: That's correct. That's as at 2023, stage C
20 finishes. Sorry, in addition we will be putting
21 overburden back inside the pit from 2017. So we have had
22 six years of putting overburden back inside the floor of
23 the mine.

24 MS NICHOLS: If you look at the difference between the figure
25 in 2015, taking that as indicative for the moment, and
26 then the figure in 2023, you have reduced the
27 rehabilitation liability by about \$27 million on those
28 figures. So how are we to test whether that reduction is
29 a reasonable assessment over that period of time?

30 MR RIENIETS: I think it is working out the number of hectares
31 you plan to rehabilitate each year and having some

1 costings applied to that acreage, if I can use an old
2 term, and that would be indicative of what you plan to do
3 each year.

4 MS NICHOLS: And where are those costings to be found?

5 MR RIENIETS: We have done some very preliminary costings on
6 that. We need to do more work on those.

7 MS NICHOLS: Thank you. It's correct, isn't it, that as this
8 starting figure of 112 is taken over time, there's no
9 allowance made for those costs to increase at all?

10 MR RIENIETS: The costs are indicative. We need to do more
11 work on what the final costs will be and it will go up or
12 down.

13 MS NICHOLS: I think I put that question badly. Whatever the
14 starting point is, your scheme in that column has the
15 costs going down each year because of progressive
16 rehabilitation - - -

17 MR RIENIETS: That's correct.

18 MS NICHOLS: Which is logical because you will be doing the
19 work.

20 MR RIENIETS: That's correct.

21 MS NICHOLS: But it is true, isn't it, that as you proceed it
22 might be that doing your studies and research you find
23 out, for example, that significantly more work is
24 necessary to be done on batter stability or, for example,
25 that it's going to take a lot longer than 15 years to fill
26 the lake to the requisite level to achieve stability and
27 so on. So your assumptions could change quite
28 significantly with more investigation, couldn't they?

29 MR RIENIETS: I agree they could go up or down, or down.

30 MS NICHOLS: So you are not suggesting by this model, are you,
31 that it is meant to be static. It is a dynamic model

1 which is intended to interact with a changing starting
2 point whenever that does change?

3 MR RIENIETS: I think what's important in this model is the
4 principle. Over time your rehabilitation liability should
5 go down with progressive rehabilitation. Over time your
6 probability of closure goes up.

7 MS NICHOLS: Yes, but if you accept the proposition that, as
8 you've said, you will be doing research and investigation,
9 you might find at least in theory that in a few years time
10 your assumptions about what would be required to get to
11 end of life, completed rehabilitation, might be wrong and
12 it's possible that those assumptions might have to change
13 to increase what will be required to finish
14 rehabilitation?

15 MR RIENIETS: I agree they may go up or down, but up or down
16 depending on the outcome of the further work we do.

17 MS NICHOLS: In relation to the probability of closure, you
18 have given your evidence already this morning about the
19 factors that you rely on, and I don't need to ask you
20 about that. But how have the numbers in the fourth column
21 from the left been generated?

22 MR RIENIETS: It is an assessment we have made based on what we
23 know and what the market would indicate.

24 MS NICHOLS: You mentioned market data earlier in your
25 evidence, but what do you actually mean by that? How do
26 you place, for example, a 3 per cent probability on
27 closure in 2024 and a 5 per cent in 2025, just for
28 illustration purposes?

29 MR RIENIETS: Look, I think there's some getting too granular
30 with the numbers. It is our assessment based on Loy Yang
31 being in the lowest cost generating - one of the lowest

1 cost generators in the cycle, lowest carbon intensity in
2 the cycle. So, under any plausible scenario Loy Yang will
3 be the latest to close.

4 MS NICHOLS: You mean the latest out of the Latrobe Valley
5 mines - - -

6 MR RIENIETS: Correct.

7 MS NICHOLS: Based on its emissions intensity.

8 MR RIENIETS: Based on a range of things. How much coal is
9 left, et cetera.

10 MS NICHOLS: Accepting the factors that you mentioned in your
11 statement, being the ones you have set out, how do you
12 translate those factors into the numbers that we see in
13 the probability column?

14 MR RIENIETS: I think we'd all agree that 2015 is zero.

15 MS NICHOLS: 2015, yes. But you have a varying probability
16 assessment and we can all understand why it's not going to
17 close this year. But I'm interested in how you calibrate
18 the risks over the time. If you look, for example, at
19 2025, you have 5 per cent; 2028, 8.6 per cent. How have
20 those numbers been generated?

21 MR RIENIETS: I think there's been some assessments made
22 between two points and just a line that best fits between
23 those two points.

24 MS NICHOLS: What factors have gone into making those
25 assessments in general terms?

26 MR RIENIETS: I think I have covered that before.

27 MS NICHOLS: So you are just saying that the same set of
28 general considerations which are set out in your witness
29 statement have been assumed to exist throughout the period
30 - - -

31 MR RIENIETS: That's correct.

1 MS NICHOLS: And there aren't any other particular factors that
2 would support a certain percentage being assigned to a
3 given year.

4 MR RIENIETS: That's correct.

5 MS NICHOLS: Who has created the probability assessments in
6 that column?

7 MR RIENIETS: We've done that internally.

8 MS NICHOLS: When you say "we", is it you?

9 MR RIENIETS: AGL. I didn't do it. AGL.

10 MS NICHOLS: Is it correct to say you are not quite sure how
11 those numbers have been generated?

12 MR RIENIETS: I'm positive they've been generated based on what
13 the market is likely to do over the next period and
14 there's been some percentages assigned and in between
15 there's been a line of best fit between those two data
16 points.

17 MS NICHOLS: In relation to market, are you referring to demand
18 or something else?

19 MR RIENIETS: A whole range of things. Demand, cost of your
20 product; a whole range of things.

21 MS NICHOLS: Thank you. Can I ask you just briefly about the
22 parent company guarantee. You mention at paragraph 20 of
23 your statement that AGL would consider a parent company
24 guarantee. Have you had the opportunity yet to give any
25 thought to the form that that guarantee might take and the
26 caveats that it might be subject to?

27 MR RIENIETS: Early in the discussions, but we are prepared to
28 explore that.

29 MS NICHOLS: All right. Thank you. Would you agree that to
30 the extent that a parent company guarantee is provided and
31 is considered a useful mechanism that it would be

1 appropriate to provide to the regulator ongoing disclosure
2 about any changes in the parent company structure or its
3 underlying assets?

4 MR RIENIETS: I would have thought that would be a reasonable
5 request.

6 MS NICHOLS: There was brief reference to the emission
7 intensity before. Are you aware about the level of
8 emissions, and if I suggest to you that Loy Yang A
9 generates 1.28 and Loy Yang B generates 1.24 tonnes of
10 carbon dioxide per megawatt hour is that something you can
11 confirm?

12 MR RIENIETS: It depends if you are talking generated or sent
13 out electricity. It's in the order of 1.2, thereabouts,
14 for both stations.

15 MS NICHOLS: As you said before, you rank third behind
16 Hazelwood and then Yallourn; is that your understanding?

17 MR RIENIETS: My understanding.

18 MS NICHOLS: Do you know where the three Latrobe Valley mines
19 sit amongst the other electricity generators in Australia
20 on that scale?

21 MR RIENIETS: I obviously know brown coal is a higher emitter
22 than some of the other types of electricity. But I don't
23 know what the fleet is for the other generators in the
24 electricity market.

25 MS NICHOLS: Just one more question. You refer in your first
26 and second statements to some indicative costings done by
27 GHD. Understanding that they will be redone in light of
28 the 2015 work plan variation, do the existing costings
29 address an end of mine life use that incorporates public
30 access or not?

31 MR RIENIETS: No, it doesn't.

1 MS NICHOLS: Thank you. Mr Mether, I just have a couple of
2 questions for you. There was reference to the contracts
3 for closure program in my discussion with Mr Faithful
4 earlier. Can you say whether Yallourn participated in
5 that program that was instituted by the Commonwealth
6 government?

7 MR METHER: I'm not certain about that.

8 MS NICHOLS: Can you confirm or do you know anything about the
9 emissions intensity at Yallourn?

10 MR METHER: Only on a broad scale of the merit order that was
11 discussed.

12 MS NICHOLS: Would you agree that amongst the three Latrobe
13 Valley mines you come second?

14 MR METHER: Correct, that would be my understanding.

15 MS NICHOLS: Do you know whether or not this is correct, that
16 Yallourn generates 1.49 tonnes of carbon dioxide per
17 megawatt hour?

18 MR METHER: I don't know that number.

19 MS NICHOLS: Thank you. I have no further questions for the
20 mine panel.

21 PROFESSOR CATFORD: Could I just ask a very quick question of
22 clarification, going back to this table 2 of yours. I'm
23 slightly confused. I think you were saying this is
24 entirely indicative and conceptual and we shouldn't be
25 reading anything into the numbers; is that fair?

26 MR RIENIETS: That's correct. It is more the principle.
27 Rehabilitation goes down. Probability goes up.

28 PROFESSOR CATFORD: Just for the record then to clarify that
29 you are intending to rehabilitate between 2031 and 2048,
30 because the liability figure stays constant at
31 \$66 million.

1 MR RIENIETS: Correct.

2 PROFESSOR CATFORD: So you are progressively rehabilitating
3 during that period.

4 MR RIENIETS: Correct. We are just keeping up with the new
5 mine progress during that time because we are retreating
6 back towards the power station.

7 PROFESSOR CATFORD: So therefore your liability would be
8 increasing, although you are rehabilitating.

9 MR RIENIETS: If we did nothing it would go up. We are just
10 keeping an even because we are doing it each and every
11 year. We are retreating back towards the power station.

12 MR ROZEN: I'm informed there is about half an hour of
13 examination, thereabouts, left for this panel. It is
14 quarter to 2. It might be an appropriate time to break
15 for lunch, but obviously we are in the hands of the Board.

16 CHAIRMAN: Perhaps if we make it three-quarters of an hour so
17 we aim to start at 2.30. So we will cut everyone back,
18 and then hopefully still be able to get through what we
19 have or at least a significant part by the end of the day.

20 MR ROZEN: Yes.

21 <(THE WITNESSES WITHDREW)

22 LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 2.30 PM:

2 MS DOYLE: If the Board pleases, I have a couple of questions
3 for Mr Faithful. Just before I start, he has been asked a
4 couple of times, and there is no real reason why it needs
5 to be a memory test, for the information about the holder
6 of the licence and the owner of the land. We will include
7 this in our closing submission as well, of course, but
8 just for the Board's reference it is Hazelwood Power
9 Corporation in a lot of the documentation, referred to as
10 HPC, which is the entity which is the holder of the
11 licence. It is the Hazelwood Power Partnership, sometimes
12 referred to as HPP, which is the owner of the land.
13 However, the HPC entity, the licence holder, is a wholly
14 owned subsidiary of the other entity. We will spell that
15 out in the written document so that it's clear, but that's
16 the answer to the question that's been asked a couple of
17 times.

18 CHAIRMAN: Thank you.

19 MS DOYLE: Mr Faithful, you were asked some questions about a
20 document provided to the Board recently over the weekend,
21 the 2016 - I think it still has 2015 stamped on it - work
22 plan variation application which is in draft form and you
23 answered a couple of questions about that this morning.
24 I just want to ask you to elaborate on a couple of issues
25 arising from that. You explain it is already in draft
26 form. Prior to submitting it to the department for
27 approval, who else internally at Hazelwood is working on
28 the draft document with you?

29 MR FAITHFUL: Romeo Preziosa, the senior mine planner, he is
30 coordinating the work, so he is a direct report to myself.
31 Don Miller from Coffeys and a number of other external

1 consultants are assisting in putting the document
2 together. Once the document is complete, I will obviously
3 review and go through. We incorporate any other work
4 requirements that are there and then it gets passed
5 through GDF in terms of the likes of Gary Wilkinson, my
6 director, George Graham, Stan Kemsley and then it will be
7 finally submitted once it has gone through all those
8 checks.

9 MS DOYLE: You mentioned one external contractor, Coffey. Is
10 GHD also going to do some work on the plan or the
11 revisions to the plan with you?

12 MR FAITHFUL: That's right. GHD are doing all the
13 hydrogeological work as well as the batter stability
14 assessments during flooding of the mine void.

15 MS DOYLE: There are two other documents attached to your
16 statement, one is the RAMP, the risk assessment management
17 plan, and the other is the ground control management plan.
18 Is it expected that before you submit the final version of
19 this variation application that learning and work from
20 those two documents will be reflected in the work plan
21 variation?

22 MR FAITHFUL: Yes, that's right. The second run of the RAMP
23 has been completed and it's been submitted to DEDJTR. The
24 intention was we incorporate any of those requirements
25 that come out of that RAMP into this work plan, and indeed
26 also for the ground control management plan. The first
27 version of the ground control management plan has been
28 published, but there is a second or a newer version that's
29 currently in draw format.

30 MS DOYLE: When the RAMP is finalised or approved, it would be
31 with respect to that final document that you will update

1 the work plan itself; is that right?

2 MR FAITHFUL: That's right, yes.

3 MS DOYLE: I want to ask you some questions about any
4 interaction you've had with a entity previously known as
5 URS, now known as AECOM, in relation to preparing
6 estimates of the cost of rehabilitation. First of all,
7 have you had any opportunity to liaise with that entity -
8 we'll just call it AECOM for present purposes - to liaise
9 with that entity about costings it has been preparing in
10 relation to the Hazelwood Mine?

11 MR FAITHFUL: We had a presentation on site which was pretty
12 high level, and then there were some other conversations
13 backwards and forwards during emails. That's pretty much
14 it.

15 MS DOYLE: I'm going to ask that Mr Faithful be shown an email
16 chain that attaches a table and then a letter. So, first
17 of all the email chain relates to some emails exchanged
18 between he and Mr Chadwick in November this year. We have
19 some copies for the parties. They are in a bundle marked
20 GDFS.0001.004.0103. Mr Faithful, do you have a copy of
21 those?

22 MR FAITHFUL: I do.

23 MS DOYLE: I think that's been presented to you stapled with a
24 letter on the top, but I'm going to take you through to an
25 email dated Monday 16 November from you to Mr Chadwick.
26 Do you see that?

27 MR FAITHFUL: I do.

28 MS DOYLE: If we look at this you have, if you like, an email
29 chain working backwards that starts on 5 November, so an
30 email to you from Mr Chadwick. Did you understand
31 Mr Chadwick to be the person at AECOM who had some

1 responsibility for getting some input from your mind to do
2 these costings?

3 MR FAITHFUL: That's right.

4 MS DOYLE: He says in that email, "Just a quick email to see
5 how you're going with our data request." So, can we take
6 it that some time prior to 5 November AECOM or then URS
7 had asked the mine to supply some data relevant to the
8 costing exercise?

9 MR FAITHFUL: We had a discussion on site with Ross McGowan and
10 Duncan Pendrigh and we committed that we would have the
11 data to them by the date.

12 MS DOYLE: Then above that we can see you answered, saying,
13 "Have got it. Being reviewed. As well as the report you
14 won't have it till next week close of business Tuesday."
15 Then above that we see him thanking you on the 16th for
16 providing it. At the back of this bundle is a chart. Can
17 you just explain the origin of the chart and who populated
18 the columns of the chart?

19 MR FAITHFUL: I generated the chart with page numbers,
20 paragraphs and then comments and then Bryan populated the
21 extreme right-hand side with a response, 16 November.

22 MS DOYLE: Correct me if I have any of this wrong, but just to
23 summarise this, what has happened here is you had a draft
24 of URS or AECOM's work. On the left-hand column you put
25 down the page of the draft you were working from. In the
26 next column you refer to the topic or paragraph at issue.
27 Under the heading "Comment" you gave some information
28 about where you had concerns or disagreement with the
29 content of the report in that draft form. And the far
30 right column was Mr Chadwick or someone else at AECOM
31 responding to that issue.

1 MR FAITHFUL: Yes, that's right.

2 MS DOYLE: I will go to a couple of examples only, but would it
3 be fair to say that you raised some queries about
4 assumptions that had informed the AECOM costings?

5 MR FAITHFUL: Yes, that's right.

6 MS DOYLE: We will come back to the content of it in a moment,
7 but just to return to the email chain, the top email in
8 the chain has you saying, "Hi Bryan, thanks on your
9 comments." You were referring there to the far right-hand
10 column of the table?

11 MR FAITHFUL: Yes.

12 MS DOYLE: You give three answers that go to the substance of
13 matters. Then you say, "So we can debate these items and
14 the other over email or we can speak in person, if Duncan
15 is able to arrange another visit." Then you had another
16 query, "What happened with the variation?" Just pausing
17 there, after you sent this request to Mr Chadwick, what
18 happened in terms of any future consultation?

19 MR FAITHFUL: Nothing.

20 MS DOYLE: You didn't hear back from Mr Chadwick after the 16th
21 about that report?

22 MR FAITHFUL: No.

23 MS DOYLE: Can I take to you the letter on the top of the
24 bundle. This is a letter under GDF Suez's letterhead and
25 it goes to Duncan Pendrigh, Hazelwood Inquiry coordinator.
26 The contents of it, though, relate to the AECOM report.
27 Why was GDF Suez using Mr Pendrigh as a point of contact
28 on the contents of the AECOM report?

29 MR FAITHFUL: It was our understanding that he coordinated it.

30 MS DOYLE: I'm not going to read it out, but the letter runs
31 through three and a half pages of queries and issues

1 arising from the AECOM work. You will see it's signed
2 right at the end by Mr Graham. Did you give Mr Graham
3 some of the input that's gone into this letter in terms of
4 topics and queries?

5 MR FAITHFUL: Yes, I did.

6 MS DOYLE: If the Board pleases, I seek to tender these
7 documents as one bundle.

8 #EXHIBIT 33 - Letter from GDF Suez attaching bundle of emails.

9 MS DOYLE: If the Board pleases. Across the chart and the
10 letter we just looked at and in your statement you raise a
11 number of issues about costings. Rather than trawling
12 through the documents, I'm going to ask you about a couple
13 of them by reference to topics. It will be quicker,
14 I think. One of the issues that you have raised in that
15 document trail is the question of what assumption AECOM
16 used in terms of the end of mine date in order to cost out
17 rehab. Can you tell us in simple terms what's the
18 difference between you and AECOM? What's the dispute or
19 the difference that the two of you are having about that
20 assumption?

21 MR FAITHFUL: AECOM have been instructed to use 2026, the mine
22 licence end, whereas we're working on 2033.

23 MS DOYLE: You work on 2033, I take it, because as your
24 statement explains in the body of it, that is because it
25 is currently planned to work out the mine operations
26 through to 2033?

27 MR FAITHFUL: That's right.

28 MS DOYLE: One of the other issues that you raise with
29 Mr Chadwick is the time taken to fill the void. Can you
30 explain what the area of dispute is between you and AECOM
31 about that assumption?

1 MR FAITHFUL: Well, their time to fill the void is much longer
2 than ours.

3 MS DOYLE: The time that you rest your costings upon is drawn
4 from what information or what study?

5 MR FAITHFUL: Two documents; one the EES done back in 2004
6 which indicated somewhere near the six years to the fill
7 the void, and also the recent work done by GHD regarding
8 the hydrogeological model.

9 MS DOYLE: We don't need to go to the report, but is that the
10 2015 report of GHD attached to your statement that happens
11 to be annexure 14?

12 MR FAITHFUL: Yes, I believe so.

13 MS DOYLE: So you have drawn on those documents in order to
14 plug in an assumption about the length of time it will
15 take for water to fill the void. Do you know where
16 Mr Chadwick got his assumption in terms of length of time?

17 MR FAITHFUL: No.

18 MS DOYLE: Is it correct to say that his assumption is that it
19 will take either 21 or 28 years to fill to stability
20 level?

21 MR FAITHFUL: Yes, that's right.

22 MS DOYLE: Whereas your is six to seven years.

23 MR FAITHFUL: That's right.

24 MS DOYLE: One other issue where it appears there's a debate
25 between you and AECOM is the question of the source of
26 water and related to that the cost of water to fill the
27 void. Can you summarise the area of disagreement between
28 you and AECOM on that topic?

29 MR FAITHFUL: My understanding was that they are purchasing
30 water and not using water from the aquifers. We are
31 assuming use of current entitlements and accessing the

1 aquifers to fill the mine void.

2 MS DOYLE: So, if one went to the AECOM costings which I will
3 take up with Mr Chadwick, is it the case you would see a
4 cost there for buying water on the open market and that
5 won't be reflected in your costings?

6 MR FAITHFUL: That's right.

7 MS DOYLE: One other area of difference between you and
8 Mr Chadwick appears to be some elements of the method of
9 undertaking reshaping and covering of batters. First of
10 all, it appears that there's a dispute between the two of
11 you in terms of preparing costings that relate to the
12 truck and shovel method or the dozer push method. Can you
13 encapsulate briefly the difference between the two
14 approaches to costing in that regard?

15 MR FAITHFUL: One is significantly less expensive than the
16 other. So, it goes without saying that if you're using
17 truck and shovel for the majority of the work to strip
18 back batters and then to relocate the coal somewhere else,
19 then you will wear a higher cost, whereas dozer push you
20 will not.

21 MS DOYLE: Would it be fair to say that the AECOM costings
22 assume there will be 100 metres of exposed batters
23 reshaped using truck and shovel, whereas your costings pin
24 that on 80 metres of exposed batters done principally on
25 the dozer push method?

26 MR FAITHFUL: Ours is a combination of both, so truck and
27 shovel and dozer push, and also retreat mining, but, yes,
28 there is a difference there.

29 MS DOYLE: What about the source of overburden? Is there a
30 difference between you and the AECOM report in terms of
31 that assumption?

1 MR FAITHFUL: I would have to check that one. I will have to
2 check that.

3 MS DOYLE: Rip rap, there is an assumption in the AECOM report
4 that there will be a certain approach taken to rip rap.
5 Your costings, what do they assume or address in relation
6 to rip rap?

7 MR FAITHFUL: The costings don't specifically refer to rip rap
8 over a particular period of time. I know in the URS, the
9 AECOM report, that it refers to rip rap placed every
10 50 years for a 500-year period. As I said before, and
11 indeed Clint McCullough has also said, that's an area of
12 work. I don't believe that having to put worst case in
13 there is justifiable at this stage.

14 MS DOYLE: There is a large component in the AECOM costings
15 referable to management, demobilisation, mobilisation and
16 monitoring. Is there a difference between the mines'
17 costings and the AECOM costings in terms of those sorts of
18 costs?

19 MR FAITHFUL: Absolutely, because we're doing the work at GDF
20 in our costings, whereas that work done by AECOM or URS
21 says that you're getting external contractors in and that
22 bears a cost.

23 MS DOYLE: Ultimately the draft report that your email and
24 letter are referring to was replaced by a final report.
25 Have you or anyone at the mine been invited to participate
26 in any consultation or discussion of the final version of
27 the report that has updated the draft?

28 MR FAITHFUL: No.

29 MS DOYLE: I have no further questions for this panel.

30 MS FORSYTH: If the Board please, I have some questions for
31 Mr Rieniets. Mr Rieniets, last week on 9 December when

1 you gave evidence to the Board, Counsel Assisting put to
2 you that the Loy Yang complex agreement was between two
3 "Loy Yang companies and the State". For the benefit of
4 the Board that was at line 22, page 350 of transcript.

5 Mr Rieniets, can you please explain who the parties to the
6 Loy Yang complex agreement are?

7 MR RIENIETS: Sure. Loy Yang complex agreement dated 29 March
8 1997. It's between three parties: the owner of the Loy
9 Yang A power station, which is currently AGL; the owner of
10 the Loy Yang B power station, which is currently GDF Suez;
11 and the State of Victoria because there is potential coal
12 supply to the Loy Yang B 3 4 bench that was envisaged at
13 the time that may happen into the further. So they are
14 the three parties. Quite clearly that document says
15 whoever is owning and operating the mine at closure or at
16 shut down is responsible for the rehabilitation. So that
17 could be any one of a number of parties who are owning and
18 operating that particular mine at the end of its life.

19 MS FORSYTH: Let me ask you the follow-on question then. You
20 explained at page 350, line 13 of transcript onwards, that
21 the users of the coal will contribute 10 per cent of the
22 rehabilitation liability as calculated as at 2023 every
23 year for 10 years. Can I ask you how are the
24 contributions by the parties to the agreement to be
25 determined?

26 MR RIENIETS: You're correct, 2023 the contract says there'll
27 be a trust fund set up with the parties who use the coal.
28 At the moment there's only two parties using the coal,
29 that's AGL and that's GDF Suez, the owner of Loy Yang B
30 Power station, and that trust fund is set up to 1/10th of
31 the rehabilitation cost at that time is put into that

1 trust fund every year for 10 years. So, by way of
2 example, if the rehabilitation liability is - let's keep
3 it easy - 100 million, at 2023 that means \$10 million each
4 and every year for 10 years is put into that trust fund.
5 The split of that 10 million is based upon the proportion
6 of coal. So, if currently AGL use two-thirds of the coal,
7 they would put in two-thirds of 10 million, which is
8 6.66 million per year; GDF use one-third of the coal, they
9 would put in 3.3 million per year for 10 years, and that
10 makes up the 10 million, if using my example of 100
11 million is the liability.

12 MS FORSYTH: Thank you for that clarification. Turning to
13 another topic, the Board asked the mine panel witnesses to
14 inform the Board of the operating profit of the mines.
15 Have you made enquiries about that matter with respect to
16 the Loy Yang Mine and, if so, what did your enquiries
17 reveal?

18 MR RIENIETS: I have made enquiries to that request. Loy Yang
19 Mine and the Loy Yang complex, for that matter, mine and
20 power station, is set up as a cost centre under the AGL
21 consolidated group operations, so it does not operate as a
22 profit centre. It operates as a cost centre.

23 MS FORSYTH: Thank you for that clarification. I now want to
24 ask you about the email that was tendered this morning
25 which related to paragraph 62 of your third statement.
26 That was the email correspondence between Mr Barrand and
27 Ms Bignell in June 2015. It doesn't yet have a document
28 reference, but do you have a copy of that email in front
29 of you?

30 MR RIENIETS: I do.

31 MS FORSYTH: If you look at the email at the bottom, so we go

1 in chronological order, that's from Ann Bignell to Paul
2 Barrand and the subject matter is the URS information
3 request and it's dated 22 June 2015?

4 MR RIENIETS: That's correct.

5 MS FORSYTH: It says, "Hello Paul. We have spoken with URS who
6 advise that, yes, it can be interpreted differently given
7 the assumptions, but you can provide the data requested
8 and just specify what their assumptions are." Does it
9 appear to you that that email contains a response by
10 Ms Bignell to Mr Barrand's queries about the URS data
11 request?

12 MR RIENIETS: Yes.

13 MS FORSYTH: Is the response from Paul, "We've had a couple of
14 interruptions in gathering this information. Is the
15 request for current liability or for the whole of life
16 plan numbers?" Have you made any enquiries to see whether
17 or not there was a response to that question from Paul to
18 Ms Bignell?

19 MR RIENIETS: I have, and the response I received was that
20 there has been no response.

21 MS FORSYTH: The emails from June have been tendered, but can
22 I please have a copy handed around of the emails from
23 14 October. Just while those emails are being handed
24 around, firstly, Mr Rieniets, is the bottom email an email
25 from Ross McGowan to yourself dated 14 October 2015?

26 MR RIENIETS: That's correct.

27 MS FORSYTH: If you have a look at what that email says over
28 the page at the end of the email, it talks about the next
29 steps in the project being three. First, "Loy Yang Mine
30 provide further information to inform the liability
31 assessments." If you go back over the page there's an

1 email saying - sorry, let me take you back. The first
2 step is "Loy Yang Mine provide further information to
3 inform the liability assessments." Secondly, "URS refines
4 the rehabilitation liability assessments" and some date
5 ranges were given there, 6 to 13 November, and, thirdly,
6 "ERR meets with Loy Yang Mine to discuss the refined
7 liability assessment mid-November 2015." To your
8 knowledge has that third step in the process occurred?

9 MR RIENIETS: Not to my knowledge.

10 MS FORSYTH: I tender that email.

11 #EXHIBIT 34 - Email from Ross McGowan to Stephen Rieniets
12 dated 14/10/2015.

13 MS FORSYTH: I now want to ask you some questions about your
14 third witness statement, which is document 3B, court book
15 volume 1B. I want to ask you about paragraph 33 which is
16 Ringtail reference AGL.0001.005.0004.

17 MR RIENIETS: Yes.

18 MS FORSYTH: You say in that paragraph that, "The likelihood of
19 the total closure of AGL Loy Yang Mine in the next
20 10 years is extremely unlikely under any plausible
21 scenario," and later on in the paragraph you set out the
22 table that you have already been taken to. Paragraph 34
23 that follows then sets out some of the factors that you
24 consider relevant to that likelihood assessment; is that
25 correct?

26 MR RIENIETS: That's correct.

27 MS FORSYTH: Can I ask you to flip to paragraph 54 of your
28 witness statement, and that page reference ends in 0008 in
29 terms of the Ringtail. At paragraph 54 you acknowledge
30 that, "The mix of energy technologies is evolving and AGL
31 considers that there is very low risk of unplanned closure

1 of the AGL Loy Yang Mine or default by AGL Loy Yang prior
2 to 2035 due to the following factors." I want to ask you
3 now about that question of the possibility of default. Do
4 you understand the possibility of fault to be a separate
5 and distinct issue to the risk of closure of the mine?

6 MR RIENIETS: Yes.

7 MS FORSYTH: And in order for the State to be left to bear the
8 burden of rehabilitation it's really the risk of default
9 that we are talking about rather than simply an early
10 closure of the mine; is that correct?

11 MR RIENIETS: Yes.

12 MS FORSYTH: Can I ask you to go to a copy of Mr Gillespie's
13 report. I'm afraid once again I don't have a document
14 number yet for that and I'm wondering if I can have some
15 assistance in having a copy of that report provided or a
16 folder number given to Mr Rieniets. Document 54?

17 MR ROZEN: Tab 54, apparently.

18 MS FORSYTH: Is there a folder number for that document? We
19 have a copy. Maybe I will just get that handed up. Thank
20 you very much. Can I ask to you turn to paragraph 78 on
21 page 8 of that document?

22 MR RIENIETS: Yes.

23 MS FORSYTH: At paragraph 78 Mr Gillespie says, "The likelihood
24 in any particular year requires a chain of risk events.
25 Stephen Rieniets' supplementary statement has identified
26 the likelihood of closure in each year of the mine life.
27 However, in addition to this, consideration would need to
28 be given to the likelihood of insolvency or non-compliance
29 upon closure." Do you agree with that statement?

30 MR RIENIETS: Yes.

31 MS FORSYTH: Do you agree with the list of relevant factors

1 that Mr Gillespie sets out there following in dot point
2 form?

3 MR RIENIETS: Yes.

4 MS FORSYTH: Do you also agree with his next paragraph that
5 says, "The nature of the mine operation also reduces the
6 probability of insolvency" and with the list of factors
7 that he sets out there under paragraph 79?

8 MR RIENIETS: Yes.

9 MS FORSYTH: At paragraph 80 he goes on to say, "In addition to
10 the likelihood of insolvency, consideration would also
11 need to be given to the probability that the Victorian
12 government would be unable to recover the rehabilitation
13 costs from legal measures. The likelihood of default in
14 any particular year equals the probability of closure,
15 times the probability of default, times the probability of
16 failure of legal action." Do you take any issue with
17 what's set out in that paragraph of Mr Gillespie's report?

18 MR RIENIETS: No, I agree with it.

19 MS FORSYTH: Just one final matter. Counsel Assisting this
20 morning said words to the effect that the mines have
21 sought to avoid an EPA financial assurance being imposed
22 on them, and I don't have the exact words, but that seemed
23 to be the tenor of what was said. Assuming that to be the
24 case, can I ask you what you say about that assertion in
25 light of the evidence that you give at paragraph 89 of
26 your witness statement, which for the Ringtail reference
27 is AGL.0001.005.0012. That's document 3B, volume 1,
28 paragraph 89.

29 MR RIENIETS: In 2012 we sought guidance from the EPA and we
30 have no records of EPA responding to our request.

31 MS FORSYTH: What do you say about the proposition that the

1 mines have sought to avoid an EPA financial assurance?
2 MR RIENIETS: I disagree, because we have tried to seek
3 information on that.
4 MS FORSYTH: Thank you. I have no further questions.
5 DR COLLINS: If the Board pleases, I have some questions for
6 Mr Mether. Mr Mether, did Energy Australia provide
7 information to AECOM to assist it in its preparation of
8 its estimation of rehabilitation costs report?
9 MR METHER: After a request from a draft, we provided
10 information to them.
11 DR COLLINS: I take it you have seen and considered the AECOM
12 rehabilitation cost estimate for the Yallourn Mine?
13 MR METHER: I have.
14 DR COLLINS: Have you had an opportunity to participate in any
15 review of that report with anyone from AECOM?
16 MR METHER: No, I haven't.
17 DR COLLINS: Have you been invited to participate in any such
18 review?
19 MR METHER: No, I haven't.
20 DR COLLINS: Have you considered that review from the
21 perspective of the assumptions which are made in it?
22 MR METHER: I have, and they're certainly all skewed from the
23 information we've provided.
24 DR COLLINS: I will just ask you about a couple of them. One
25 of the assumptions in the AECOM report in respect of the
26 Yallourn Mine is that it will be necessary to purchase
27 water to top up the finished lake in perpetuity. The
28 estimate includes an annual figure over a period of
29 100 years. What do you say about that assumption?
30 MR METHER: I certainly disagree with that. Our modelling and
31 modelling of our consultants is there is net positive

1 inflow and that's been tested against climate sensitivity.

2 DR COLLINS: Are you referring there to the lake model filling
3 report that was conducted by Energy Australia in 2011 and
4 2012 in response to condition 7 of the 2011 workplace
5 variation?

6 MR METHER: I am.

7 DR COLLINS: And the GHD peer review of that report?

8 MR METHER: Correct.

9 DR COLLINS: Could I ask you about another assumption made in
10 the AECOM report; that is, that there will need to be
11 cover of between 0.75 metres and 1.5 metres over an area
12 of about 112 hectares of the Yallourn Mine. Do you have
13 any response to those assumptions?

14 MR METHER: At Yallourn, most of the areas above RL 37, which
15 we are calling waterline, are actually overburden batters,
16 so you would need to have specific understanding to put
17 that knowledge there because I don't see any relevance in
18 covering overburden batters, certainly coal, but I have
19 trouble aligning the two numbers.

20 DR COLLINS: The AECOM report assumes that overburden and clay
21 will need to be long-hauled to the Yallourn Mine from
22 outside the mine area, and then quotes a cost for
23 long-haulage of overburden and clay. What do you say
24 about that assumption?

25 MR METHER: It certainly won't be the case at Yallourn. We
26 have been putting overburden back in the mine since 1940.
27 So all around the mine there's substantial quantities of
28 overburden in close proximity to all the batters.

29 DR COLLINS: What difference does that make to the cost, the
30 ready availability of overburden and clay from within the
31 mine as opposed to having to long-haul it in?

1 MR METHER: Significantly reduces it. I can't remember the
2 exact numbers that AECOM put, but if they said it was
3 around \$10 if you were short-hauling it you probably got
4 it down to \$4 and then I would actually debate whether we
5 would be doing that because in a large number of areas we
6 will actually be dozer pushing down the faces which we are
7 currently doing on the faces over at Yallourn.

8 DR COLLINS: The AECOM report assumes many millions of dollars
9 needs to be set aside for lime dosing. First of all, what
10 is lime dosing?

11 MR METHER: It is really just to treat the water to adjust the
12 PH levels, the salinity levels or alkalinity levels before
13 you discharge to the river.

14 DR COLLINS: Do you have a view about the soundness or
15 otherwise of the assumption that many millions of dollars
16 will need be to set aside for lime dosing at the Yallourn
17 Mine?

18 MR METHER: I've certainly got an opinion. If I looked at our
19 discharges as of today when I was in the office this
20 morning, they are currently at 7, which is neutral. The
21 river is running at about 6.7 at the moment. We have a
22 small area of iron sulphate soils which our progressive
23 rehab is dealing with very admirably. Once you start
24 filling with water and not discharging, you won't need to
25 be treating, and once you have a substantial amount of
26 water in, there won't be oxidisation, so you won't have
27 that problem.

28 DR COLLINS: I asked you some questions before about AECOM's
29 assumption that it will be necessary to top up the
30 finished lake in perpetuity. Just on the assumption that
31 water would need to be purchased in perpetuity after the

1 lake is filled, do you have a view about the
2 appropriateness of including an amount in respect of water
3 top-ups as a cost of rehabilitation?

4 MR METHER: I can't see any alternative at Yallourn, a
5 practical alternative, why the lakes won't be linked to a
6 river system. I don't see a top-up from a stagnant lake
7 at the side will be required.

8 DR COLLINS: On the assumption that top-ups were required into
9 perpetuity, do you have a view about whether the cost of
10 in perpetuity top-ups is appropriately counted as a
11 rehabilitation cost?

12 MR METHER: I would say no.

13 DR COLLINS: Why?

14 MR METHER: As I say, the cost of putting that water in, where
15 it come from, as I say I don't believe it will be needed
16 to top up, but it would really come down to whose water
17 body it actually is, I would suggest.

18 DR COLLINS: Nothing further, thank you.

19 MR ROZEN: Just two very brief matters in re-examination. The
20 first matter concerns you, Mr Rieniets, and questions you
21 were asked by your employer's counsel concerning
22 interaction between Loy Yang and EPA about the question of
23 financial assurance for the waste dumps, isn't it? What's
24 the correct expression?

25 MR RIENIETS: Sorry?

26 MR ROZEN: The EPA financial assurance relates to what,
27 exactly?

28 MR RIENIETS: The ash.

29 MR ROZEN: The ash dump; is that right?

30 MR RIENIETS: Yes, correct.

31 MR ROZEN: You were asked whether Loy Yang had been avoiding

1 its responsibilities, as was apparently suggested by
2 Counsel Assisting this morning. You said no, and you
3 pointed to a letter that was sent in 2012 in which you
4 were seeking to engage with the EPA and there's no doubt
5 that occurred, but 10 years earlier GHD had written on
6 behalf of all three mines, had it not, to the EPA
7 questioning whether or not a financial assurance was
8 necessary. Are you aware of that?

9 MR RIENIETS: No, I'm not.

10 MR ROZEN: I will take that up with Mr Webb. The only other
11 matter is I neglected to tender the briefing note that
12 concerned the setting of the Hazelwood bond. It is part
13 of the evidence that was tendered at the first Inquiry and
14 so technically it is in by virtue of the terms of
15 reference incorporating all of that evidence. But I think
16 given it is a single document that stands alone, I think
17 it ought to have a separate exhibit number here. For the
18 parties' assistance, the only coding is the coding that it
19 was given in the first Inquiry, that's
20 DSDBI.0007.002.0015. It can be found in the brief for
21 this Inquiry as an attachment to the supplementary
22 statement of Kylie White which the parties will find
23 behind tab 36 in the hearing book.

24 #EXHIBIT 35 - Briefing note re setting of Hazelwood bond.

25 PROFESSOR CATFORD: I just have one small question. I just
26 wanted to pick up this point in Mr Mether's statement
27 about the long-term maintenance of the rehabilitated
28 mines. I just wonder whether Mr Faithful and Mr Rieniets
29 would like to comment. The question is who is responsible
30 for the long-term maintenance of the rehabilitated mines?
31 There are obviously issues about water treatment, water

1 top-up, batter stability, possible soil erosion over time.
2 So who picks up the tab or who is responsible? Do you
3 have a view?

4 MR RIENIETS: I think obviously as time goes by the requirement
5 should decrease, but there will always be some sort of
6 maintenance required, care and maintenance. Perhaps
7 that's depending on the final use who should pick that up,
8 I think is the question.

9 PROFESSOR CATFORD: So would AGL have a continuing
10 responsibility?

11 MR RIENIETS: Up until a point, I think.

12 PROFESSOR CATFORD: The question is when is that point?

13 MR RIENIETS: That really gets to what is a long-term custodian
14 or keeper of that property.

15 PROFESSOR CATFORD: Mr Faithful?

16 MR FAITHFUL: Very similar sentiments. I believe that for a
17 period it is ours to manage, but there comes a point in
18 time where that gets handed over in some state. After
19 that - - -

20 PROFESSOR CATFORD: And if it was 500 years?

21 MR FAITHFUL: It won't be 500 years.

22 PROFESSOR CATFORD: You can guarantee that?

23 MR FAITHFUL: There are no guarantees in life, but it won't be
24 500 years.

25 PROFESSOR CATFORD: I think, Mr Mether, you responded to the
26 water issue, but what about the other issues? Quality
27 perhaps is picked up, but batter stability, erosion, those
28 sorts of issues?

29 MR METHER: With a full flooded mine at Yallourn it provides
30 the most stable batter situation. Certainly post filling,
31 as part of the filling process I would see the owner of

1 that having a responsibility there and then I would assume
2 once those issues are stabilised and in our particular
3 case the water body becomes a great community asset, that
4 that transfer would go as like all the large water bodies
5 around the state.

6 PROFESSOR CATFORD: Thank you.

7 MR ROZEN: Thank you. Thank you very much, gentlemen. I think
8 you are excused.

9 <(THE WITNESSES WITHDREW)

10 MR ROZEN: I call the witnesses in the DEDJTR panel, recalling
11 Mr Luke Wilson and Mr Ross McGowan, and calling Duncan
12 Pendrigh. If we could just have Mr Pendrigh sworn,
13 please.

14 <DUNCAN JAMES PENDRIGH, sworn and examined:

15 <ROSS GREGOR MCGOWAN, recalled:

16 <LUKE CAMERON WILSON, recalled:

17 MR ROZEN: Mr McGowan and Mr Wilson, if I could just remind you
18 that you are on your former oath or affirmation. I can't
19 remember now what it was. Once again, Mr Chairman,
20 there's no need to reswear the witnesses, I wouldn't have
21 thought.

22 CHAIRMAN: No reason.

23 MR ROZEN: Mr Pendrigh, firstly welcome to this panel and thank
24 you for making yourself available. You have been kind
25 enough to provide the Inquiry with a copy of your CV?

26 MR PENDRIGH: That's right.

27 MR ROZEN: I think it's been distributed to the parties. Can
28 I just confirm, sir, that you presently hold the position
29 of - you are the director of the Hazelwood Mine Inquiry
30 coordination directorate?

31 MR PENDRIGH: Yes.

1 MR ROZEN: You have been doing that since April 2014. As its
2 name suggests, you are there as a liaison point between
3 this Inquiry and the Earth Resources Regulation Branch of
4 DEDJTR?

5 MR PENDRIGH: Yes, with DPC more than directly to the Inquiry.

6 MR ROZEN: I'm sorry, could you repeat that?

7 MR PENDRIGH: With the Department of Premier and Cabinet who is
8 coordinating on behalf of the government.

9 MR ROZEN: They coordinate the coordinators?

10 MR PENDRIGH: A lot of coordination.

11 MR ROZEN: We are very keen on that at this Inquiry. Before
12 taking up that position, you have a fairly lengthy history
13 within what is now DEDJTR, but has gone under a number of
14 different names whilst you have been there, going back to
15 the NRE days which I'm old enough to remember, and in
16 between DSE and perhaps another name or two; is that
17 right?

18 MR PENDRIGH: Yes, mostly land management policy and programs.

19 MR ROZEN: Yes, that was going to be my next question. You are
20 a step ahead of me. Your role there has been primarily in
21 relation to forest management, which is your academic
22 background, is it not?

23 MR PENDRIGH: That's right.

24 MR ROZEN: Not so much in the area of mining regulation, which
25 was probably not even part of DSE or NRE back in the day.

26 MR PENDRIGH: That's right.

27 MR ROZEN: Just for completeness, you list your formal
28 qualifications. Your bachelor degree is a forest science
29 degree from the University of Melbourne, and you have
30 subsequently picked up a graduate certificate in computer
31 science and an MBA; is that right?

1 MR PENDRIGH: That's right.

2 MR ROZEN: Can I tender Mr Pendrigh's CV perhaps as a separate
3 exhibit, I think might be best, because it is not really
4 referred to in the statements of the other witnesses.

5 #EXHIBIT 36 - Curriculum vitae of Duncan Pendrigh.

6 MR ROZEN: Mr Wilson probably, but maybe Mr McGowan if you
7 think you are better placed to answer this. Can I just
8 start by enquiring about a couple of areas that arose
9 during the course of the evidence you both gave last week
10 where certain commitments were given to the Board to
11 follow matters up. I just want to enquire whether you
12 have been able to do that. I know it has only been a few
13 days, but whether you have been able to do it and, if so,
14 what you have found out. The first concerned annexure 8
15 to your statement, Mr Wilson, of 20 November, and in case
16 you don't know your statement that well or the attachments
17 to it, I should say, that's the Monash University report.
18 Do you remember we had a discussion about that?

19 MR WILSON: Yes.

20 MR ROZEN: And the position, as I think you are aware, is that
21 the copy of that report that was provided to the Board is
22 not complete?

23 MR WILSON: That's right.

24 MR ROZEN: And you said, and it is page 104 for the benefit of
25 the parties, as you were giving evidence on 8 December,
26 that was last Tuesday, that efforts were continuing to try
27 to find a complete copy. Any luck?

28 MR WILSON: Not on that one, no.

29 MR ROZEN: The second matter that was left with some further
30 work to do appears at page 120 of the transcript. I don't
31 think I need to take you to it necessarily, but you will

1 recall I asked you some questions about what was referred
2 to as the condition 7 report, that is the Yallourn
3 requirement and the approval of their work plan in 2011 to
4 provide a report to you dealing with some rehabilitation
5 matters, and you will recall that I took you to the report
6 and the report was inviting the department to engage with
7 Yallourn and you had been unable to turn up any
8 correspondence about that and I asked you at line 4
9 whether there were any meetings. You said, "I don't know.
10 I would have to make further enquiries to find that out."
11 Once again, have you turned anything up?

12 MR WILSON: Yes, staff have indicated that there were meetings,
13 but, no, I have not been able to find any documentary
14 evidence that I can wave or present here to demonstrate
15 that.

16 MR ROZEN: Did the staff tell you what was discussed or what
17 the outcome of the meeting was?

18 MR WILSON: No, it just went to the question of whether the
19 matter was followed up.

20 MR ROZEN: Thank you for that. That's I think the sum total of
21 the homework that we set for you. What I want to do, and
22 this is mainly for the time being with you, Mr Wilson, and
23 you, Mr McGowan, is raise with you some issues that have
24 arisen in the evidence that has been led since you gave
25 evidence last week, although in one case it's evidence
26 that had been led before you gave evidence which I should
27 have raised with you last week, and I will do it now.
28 After raising those matters with you, I will ask you some
29 questions about TOR 10 and the bond review project.

30 So, the first matter that arose in the evidence
31 last week that I think the Board would benefit from

1 hearing your views about was evidence that was given by
2 Mr David Langmore, and it appears at transcript page 45.
3 Mr Langmore, who has a background in planning in the
4 Latrobe Valley and he's a published author about matters
5 which impinge on the work the Board is doing, gave some
6 evidence about what he perceived to be a lack of
7 transparency, a lack of public awareness about some
8 matters, particularly in the area of approving work plans.
9 He said this, and I will read it out to you and just ask
10 you to comment on it, if you would.

11 He said, and this is starting at line 21 on page
12 45, "But we now have a situation where - and there's
13 already been mention of it in today's proceedings - the
14 mining companies are talking to the department about
15 changing their plans for rehabilitation, but I don't know
16 of any public process that those plans are going through.
17 Those plans surely should be part of a clear, formal,
18 public process which any interested party can put a view
19 about."

20 He went on, "The original plans that came at
21 privatisation were basically arrangements done between the
22 private companies at the time and the government of the
23 day. They were not put into the public arena for comment,
24 discussion, as you would, for example, with planning
25 scheme changes or variations or with change of an
26 environment effect statement. That's surely the standard
27 of treatment that should be given to rehabilitation plans.
28 It's not a matter of striking a deal between a particular
29 single department of the State government and a particular
30 private company. It should be a public process which the
31 public are adequately involved in and other interested

1 parties are able to participate in as well."

2 So that's the evidence Mr Langmore gave. Then
3 other evidence before the Board, for example in relation
4 to the very recently approved Loy Yang work plan, would
5 appear to suggest that there's been a significant change
6 from the original plan; that is, that the original plan of
7 a publicly accessible lake has become a lake that won't be
8 publicly accessible, but rather potentially fenced off in
9 some way and not accessible. That would seem to be an
10 example of a change that might fall within the type of
11 changes that Mr Langmore is talking about. Do you have
12 any general response to that and particularly any
13 proposals for how those things might be addressed?

14 MR WILSON: Yes. If I interpret the comments correctly, it is
15 a general call for stakeholder involvement or public
16 involvement. I think as a matter of all else equal or in
17 the absence of any particular reason to not do so, it is
18 all good regulatory practice to allow whoever the relevant
19 stakeholders are to at least have a look at what is being
20 proposed and, again depending what it is, possibly some
21 form of involvement or input. Obviously once you get into
22 regulatory regimes the capacity to do that might be
23 limited depending on that regime, but it's undoubtedly
24 good regulatory practice to do that.

25 In the case of the earth resources regulator, as
26 I flagged in my first witness statement, we are doing some
27 changes, putting through changes to the regulator, the
28 reform project as we loosely call it, which is to improve
29 the practices of the regulator in a number of areas, but
30 it includes in relation to stakeholder engagement.

31 I think as I flagged then, the responsiveness and general

1 points of performance have been under some scrutiny and we
2 certainly want to improve that, so we have put together a
3 reform package to change the practices of the regulator.
4 The minister, as she does with all regulators, has sent a
5 statement of expectations and we have put out an action
6 plan which is on our website which responds to that
7 statement. There's a number of components of that action
8 plan. I don't think we have tendered it as evidence, but
9 it can be if that would be useful.

10 MR ROZEN: Yes, that's about to happen, Mr Wilson. Everyone is
11 a step ahead of me today. It is this, isn't it, that we
12 are talking about?

13 MR WILSON: Yes.

14 MR ROZEN: I think it has been provided to the parties. I'm
15 not sure if there are copies for the Board. You have a
16 copy in front of you?

17 MR WILSON: Yes.

18 MR ROZEN: Thank you.

19 MR WILSON: The main point there, if you look at the contents
20 page, it gives you the eight areas for improvement and
21 when you go into each of those areas it makes statements
22 about what is to happen and by when. It is a fairly
23 aggressive timeline, but I don't really want to
24 dilly-dally in getting this done.

25 If you go to section 5, "Stakeholder engagement
26 and consultation", which is page 8, and you look at the
27 first section of the strategy as plan or really put
28 together a new stakeholder engagement approach. So
29 I think it is fair to say that the regulator as evidenced
30 and perhaps suggested by Mr Langmore has not necessarily
31 been in the habit of going to stakeholder consultation as

1 a default. It is not that it has never done that; it has
2 done it and obviously sometimes regulatory matters trigger
3 EESs and the like which by definition go into that domain.
4 But my desire is that this regulator actually shift to the
5 extent it can to make that a default, so if there is a
6 variation on the table, for example, it thinks through,
7 "Well, should this be made available to the public." You
8 could have quite minor variations that perhaps no one will
9 be interested in, but the question I put to the regulator
10 then was, "That might be the case, but is that a reason
11 that it's not at least available, and if no one chooses to
12 comment, then that's fine." Then when there are
13 substantial sets of variations, you might not only make
14 them available, but you might want to go out and trigger
15 some consultation.

16 That process doesn't replace the regulatory
17 decision making because the decisions still have to be
18 made pursuant to the way the laws are framed. But, as a
19 general practice, I think that's something we would like
20 to pursue.

21 MR ROZEN: Thank you for that. Would the end use change that
22 I described fit into that second category of something
23 that might initiate some active engagement rather than
24 just advertising that - I see Mr McGowan is nodding.

25 MR WILSON: Yes, I think that one would fit in well and that's
26 my sense of it. The other thing I should say is it may
27 not always be incumbent on the regulator to do that, so it
28 may be that in this case a mine themselves may have also
29 initiated such a course of action. It could have been
30 through their ERC, it could have been through other
31 measures, so that could be accommodated.

1 MR ROZEN: Two matters arising out of all of that. One is you
2 made the very understandable observation that you would
3 like to see the regulator engage in this sort of process,
4 and I wrote down your words, "to the extent it can".
5 Obviously at the end of the day it is a creature of
6 statute. It has a process to follow. The beauty of a
7 public inquiry is we are not bound by that statute, so do
8 you think that some change to the regulatory structure to
9 encourage and facilitate that process and put it on a
10 proper statutory basis might be a useful addition?

11 MR WILSON: Yes, that could be useful. I guess I'd say if that
12 were to be brought forward you'd always want to keep in
13 mind that for reasonably minor matters you may not want to
14 be forced through what could end up being a very long
15 process if it was not really necessary. But the ultimate
16 question is how do you test that? That's the balancing
17 act.

18 MR ROZEN: Yes, you might need to have some degree of
19 discretion for the regulator about where things sit in the
20 overall scheme of things. The second question relates to
21 page 2 of the new document, the action plan. There is a
22 reference there towards the bottom of the page on page 2,
23 last paragraph above the second table, "A policy priority
24 is to establish a community advocate to support informed
25 community participation in earth resources regulatory
26 decisions." Can you expand on that?

27 MR WILSON: Yes. So that's still under preparation, exactly
28 what that scope will be, but the idea there is because
29 getting that community input has been identified as
30 something that we need to do better, so the idea there is
31 you could have an advocate whose role is to try and

1 generate, or test at least, that input and also maybe to
2 coordinate some of that input so it doesn't just become a
3 lot of noise; you can actually make it to good effect.
4 I probably can't say a lot more because obviously the
5 plan, as it shows there, the plan around exactly what the
6 scope might be is still under design.

7 MR ROZEN: Without wanting to be considered unnecessarily
8 facetious, the plan is to produce a plan under that
9 heading, is it not?

10 MR WILSON: The action is to produce the plan, yes.

11 MR ROZEN: Just before leaving that topic, under the current
12 regulatory scheme the only mechanism for a member of the
13 public to even see an approved work plan is to pay a fee
14 to the person who manages the register and then they get
15 access to see the final document. Am I right that that's
16 the current regulatory scheme?

17 MR WILSON: I think that's correct. That's the default, yes.

18 MR ROZEN: Just out of interest, do people do that? Does the
19 department have much cause to respond to such inquiries?
20 Mr McGowan, you might be able to tell us.

21 MR MCGOWAN: Since the start of my tenure there has been one or
22 two that I'm aware of.

23 MR ROZEN: Yes, but of course seeing the final product and
24 having input into its development are two quite different
25 things. Just in relation to this community advocate role,
26 is it envisaged that that might be a role that could
27 perhaps be compensated to some extent by the department,
28 that the person holding that role might receive payment
29 for expenses, for example, or something like that?

30 MR WILSON: Yes. It doesn't have to be that way, but that
31 would often be the case.

1 MR ROZEN: I'm thinking of the evidence. The very first
2 witness we heard from the Latrobe City Council,
3 Ms Rhodes-Ward, made the point about the demands that are
4 placed on volunteers who are invited to consultative
5 processes and then there seems to be this unwritten
6 expectation that they will go out, disseminate information
7 to their networks and so on, and she questioned whether
8 that was a reasonable expectation to have of often the
9 same community members who are motivated to come to
10 meetings. It seems a reasonable concern, does it not?

11 MR WILSON: Yes, that's an issue that's raised in a number of -
12 not just in earth resources, a number of domains. Some
13 entities are well resourced to do it, others less so.

14 MR ROZEN: The next question I want to ask you about also
15 arises in the context of evidence that we have heard, this
16 time in the form of a report the Board received from
17 Jacobs which is exhibit 27. This is a report that looked
18 at questions of structural reform. The report is
19 EXP.0009.001.0001. I'm particularly interested in the
20 page that ends in 0022.

21 Just while that's being provided to you, I think,
22 Mr Wilson and Mr McGowan, you will be aware and maybe you
23 were in the Inquiry room when Ms Cameron from Jacobs gave
24 evidence last Friday? No. That's right, we let you go
25 last Friday to do other important work. Jacobs were
26 engaged by the Inquiry to look at some coordination
27 structures that might be adapted to promote coordination
28 of activities in this area. As part of the report you
29 will see that, either on the screen or in front of you,
30 there's a quote from a submission that was made to the
31 Inquiry, once again by Mr Langmore as it turned out.

1 I will just read out to you what Jacobs quoted from
2 Mr Langmore's submission.

3 It is as follows: "Rehabilitation is a bit of
4 many organisations' interests, but it seems to be no
5 organisation's particular interest. There is certainly no
6 agency with well qualified staff in the Latrobe Valley
7 which are providing oversight, vision, research and
8 investigation, coordination, planning, monitoring, public
9 information and consultation on rehabilitation." That's
10 the quote. That seems to be reflected a bit in the
11 evidence that we have heard. There are a lot of people
12 that dabble and have an interest, but there is no one with
13 any overarching interest. We have seen how that's played
14 out in relation to the water issue, just to pick one
15 example. We have bodies that are looking at research like
16 GHERG and then we have the regulator and we have the water
17 authorities and so on.

18 Firstly, Mr Wilson, is there a genuine issue
19 there, do you think, from your experience?

20 MR WILSON: I think there's an issue. If I was to take issue
21 with the quote, I think I would say the earth resources
22 regulator does have a particular interest in the
23 rehabilitation, because it is a core role for the
24 regulator. However, even that given, there are clearly
25 elements of that issue that start engaging water bodies,
26 EPA, other departments. So I suspect - I probably
27 shouldn't put words into his mouth - but I suspect that's
28 what he is trying to capture through that statement, that
29 there are other people involved and that from time to time
30 people have a view that that needs further coordination.

31 MR ROZEN: On the evidence before the Board, the closest we

1 have come to something doing at least a number of those
2 jobs was Coal Resources Victoria or Clean Coal Victoria,
3 as I think it was christened. But the evidence we heard
4 about that body last week was not - well, it appears that
5 perhaps the expectations that were set for it weren't
6 matched by the outcome; is that a fair description?

7 MR WILSON: Yes, I guess everyone will have different
8 expectations, but I'd say it probably in some people's
9 minds would have had high expectation. It was framed at
10 obviously a different time, but, based on the record that
11 I can see, it clearly commissioned a lot of work which did
12 feed into work programs, but its remit still seemed to be
13 almost around the mines, but some of the issues that do
14 get raised might well go beyond that.

15 MR ROZEN: I wonder if I can test this proposition with you.
16 There seems to be at least the potential for conflict in a
17 body like Coal Resources Victoria which was performing
18 both an industry promotion role and a coordination of
19 regulatory response role. Is it perhaps the case that the
20 conflict inherent in those roles means maybe that it's not
21 able necessarily to achieve that sort of arm's length
22 coordination role?

23 MR WILSON: If it's set the arm's length role, then that would
24 be challenging. Often for these entities it comes back to
25 what objectives they were set. So if, for example, the
26 objective was more around coal development, then it could
27 successfully undertake that work. But if others then form
28 views that it should also delve into other areas, the
29 entity may end up not ever having had an mandate to do
30 that, and that then becomes a challenge.

31 MR ROZEN: I should, before I forget, tender the action plan

1 that Mr Wilson has drawn to our attention. Perhaps that
2 could be given a separate exhibit.

3 #EXHIBIT 37 - Earth Resources Regulations 2015-16 Action Plan.

4 MR ROZEN: The next matter I want to raise with you, please,
5 arising from the evidence last week was some evidence the
6 Board heard from the water panel, that is Dr Davis and
7 Mr Mauer and Mr Rodda, who were here giving evidence about
8 water access issues, and it particularly concerned what
9 has become exhibit 11 in our Inquiry, which is the
10 Gippsland Regional Sustainable Water Strategy or the SWS,
11 as I think Mr Mauer called it a number of times. Is that
12 a document you are familiar with, gentlemen, or Mr Wilson?

13 MR WILSON: It is a document I have seen recently. I wouldn't
14 claim to be especially familiar with it, but I'm familiar
15 with the SWSs more generally.

16 MR ROZEN: It is the case that this SWS, which was developed in
17 2011, did have input from DEDJTR's predecessor, the
18 Department of Primary Industries. Are you aware of that?

19 MR WILSON: That's right.

20 MR ROZEN: Mr Greg Turner is the person who is identified.

21 Does Mr Turner still work for DEDJTR?

22 MR WILSON: I don't think he does. I would have to confirm
23 that.

24 MR ROZEN: No, that's not more homework. It is not important
25 enough to trouble you to go and find out. I just
26 wondered. We know from a reference to this document in
27 the conditions of approval that were given to Loy Yang
28 that it obviously has a status within DEDJTR. It is seen
29 as a significant document, is it not?

30 MR WILSON: Yes, it is seen as a document that lays out, based
31 on the information up until that date, the situation and

1 questions around water in Gippsland.

2 MR ROZEN: Dr Davis from DELWP described it as a State policy
3 document. That's a correct description, is it not in.

4 MR WILSON: Yes.

5 MR ROZEN: Dr Davis was asked about one particular aspect of
6 the document which concerned an action 6.8 which is
7 identified in it. That's on the page that ends in 0148,
8 if that could be brought up on the screen. This action,
9 just to put it in context for you, follows a discussion on
10 the previous page under the heading "Water use by coal
11 fired power generators in the Latrobe Valley" and a
12 recognition that there are serious questions about the
13 availability of the sort of quantities of water that would
14 be needed certainly to flood each of the three mines.

15 Flowing from that discussion there is this action
16 6.8 which I think is up on the screen now. The "who" is
17 the Department of Primary Industries, so that's DEDJTR, is
18 it not?

19 MR WILSON: Yes.

20 MR ROZEN: It says, "The Department of Primary Industries will
21 review mine rehabilitation strategies in consultation with
22 the Department of Sustainability and Environment, the
23 Environment Protection Authority and companies that mine
24 coal in the Latrobe Valley. The mine closure and
25 restoration strategies will consider impacts on
26 groundwater and surface water resources." The timeframe
27 is said to be "ongoing". Has that happened? Has DEDJTR
28 or its predecessor done that?

29 MR WILSON: I have made enquiries into that and so what
30 I cannot provide or cannot find is any sense of a clear
31 work program, project plan, call it as you like, saying

1 "Here is the action 6.8 work program." So I have not been
2 able to find documentation around that, so that suggests
3 it's not been done in that sense. Clearly some of the
4 evidence shows that that water question is being worked
5 on, as appeared in our recent conditions and other areas.
6 So the issue itself has been carried forward, including
7 with DSE in its various guises and the EPA, but I would
8 have to say I can't present a clear lineage in
9 documentation to that.

10 MR ROZEN: Thank you. When you say the issue has been pursued,
11 the issue is water availability for the task of
12 rehabilitation. It is identified in this State policy
13 document in 2011 as a matter of significance and there is
14 the very sensible action of getting the parties together
15 that have an interest in it to promote resolution of it.
16 It seems most unsatisfactory, I suggest, Mr Wilson, that
17 it hasn't happened, at least not in the sense in which the
18 action would clearly anticipate.

19 MR WILSON: Yes, it doesn't seem to have happened in the form
20 laid out there.

21 MR ROZEN: Perhaps it's because I don't understand how the
22 Public Service works, Mr Wilson, but as I stand here it is
23 very hard to understand how something as significant as
24 that just apparently slips through the cracks between the
25 two departments.

26 MR WILSON: I wouldn't suggest that the issue has slipped
27 through the cracks. I think there is sufficient evidence
28 to say the water question itself has continued to be
29 explored, also with the mines, not just the government
30 entities, but again - and I did enquire - I can't find
31 anything that says "This is the action 6.8 series of

1 actions". So, I can't represent it in that form.

2 MR ROZEN: Yes, I understand. It is the case, as the Board
3 heard, that the strategy document itself notes a
4 requirement on what's now DELWP or was previously DSE, a
5 statutory requirement to report on implementation of these
6 actions. By making it a statutory requirement, that would
7 seem to suggest that the parliament has viewed it as a
8 matter of some significance; would you agree with that?

9 MR WILSON: Yes.

10 MR ROZEN: I know that's not your department and Dr Davis was
11 asked to - this is for the Board and the parties -
12 Dr Davis was asked to follow up whether or not - I think,
13 Professor Catford, you might have asked Dr Davis about
14 whether there had been that reporting. What we have
15 received is a letter from the VGSO dated 14 December from
16 Mr Suddick to Ms Stansen addressing that issue. After
17 noting the statutory requirement in section 22J of the
18 Water Act, it goes on and says, "DELWP and its predecessor
19 departments have reported on the Gippsland Water Strategy
20 in each of the annual reports, as tabled in parliament,
21 since 2012. Given the breadth of issues required to be
22 dealt with by the annual reports, the report for the
23 purposes of section 22J is by necessity at a high level.
24 Action 6.8 of the Gippsland Water Strategy is not
25 referenced specifically in these reports." So I should
26 probably formally tender that letter.

27 #EXHIBIT 38 - Letter from VGSO dated 14/12/2015.

28 MR ROZEN: Mr Wilson, you don't gainsay what is in that letter?
29 You are content to accept that that's a proper
30 description?

31 MR WILSON: Yes.

1 MR ROZEN: Just before leaving this topic, you have mentioned
2 that one of the ways in which the issue of water
3 availability has been progressed is as part of work plan
4 variations. If we could just briefly have a look at the
5 most recent Loy Yang work plan variation document, and I'm
6 particularly interested in the conditions of approval,
7 which is at AGL.0001.004.0003. It is behind tab 31 in
8 volume 11. Please tell me if you need this in front of
9 you, Mr Wilson.

10 MR WILSON: Is that the table that was attached to our letter
11 that you are referring to?

12 MR ROZEN: No, it's the conditions that were attached to the
13 letter of approval.

14 MR WILSON: Yes.

15 MR ROZEN: You have those there. If I could ask you, please,
16 to turn your attention to page 7 of 7. You will see the
17 page numbers in the bottom right-hand corner. For our
18 purposes the Ringtail is 0011. Just whilst that's being
19 found, Mr Wilson, the condition that's imposed there,
20 condition 7.1, requires AGL to perform a water resources
21 risk assessment and as a minimum it says that's to be
22 undertaken in accordance with action 6.8 of the Gippsland
23 Region Sustainable Water Strategy. That's the action 6.8
24 that I have just been asking you about; is that right?

25 MR WILSON: Yes, that's right.

26 MR ROZEN: It looks like DEDJTR is delegating to one of the
27 mines the responsibility to carry out action 6.8. Is that
28 an unfair characterisation of what's happening?

29 MR WILSON: It is not intended to be read that way. The action
30 did nominate amongst others, including DEDJTR, the mines
31 will be part of the action, but the responsibility still

1 remains with us to engage with now DELWP and the EPA.

2 MR ROZEN: There is a very limited capacity for one mine to
3 carry out action 6.8, isn't there, which by definition
4 imposes responsibility on your department?

5 MR WILSON: Yes, and that remains with us, not with the mine.

6 MR ROZEN: At the end of the day, the mines are the mines, the
7 regulator is the regulator and the regulator has to
8 regulate. It can't push that responsibility on to the
9 mines, can it?

10 MR WILSON: That's right.

11 PROFESSOR CATFORD: I wonder if I could just ask, Mr Wilson,
12 just a follow-up on this action 6.8. I realise this may
13 be rather nitpicking. I understand you didn't report it,
14 but was a report made of performance against 6.8? So that
15 was the first question.

16 MR WILSON: No, I don't believe so. When we looked back to see
17 is there something I could present here or see myself, the
18 answer was no.

19 PROFESSOR CATFORD: I'm just wondering whether it would be
20 worth considering a variance report. I realise there are
21 lots of actions in that strategy. But would it be helpful
22 for the department to indicate which ones had not been
23 adequately pursued? The point here is to try to close the
24 loop. If you are highlighting key actions as part of a
25 strategy, but there isn't a mechanism to report or close
26 the loop on that, that seems to be a weakness in the
27 current system. If you would like to comment on that?

28 MR WILSON: To go through the other actions in the Gippsland
29 SWS, do you mean?

30 PROFESSOR CATFORD: Yes, in the Gippsland Water Strategy
31 there's a whole range of actions and the commitment at the

1 end to report annually on progress, but you are not doing
2 that. But is it an opportunity to have at least a
3 variance report so that the broader public and parliament
4 will know what things are tracking well and which things
5 aren't?

6 MR WILSON: That may be an option. I would have to take that
7 up with DELWP, as they are the reporting entity for the
8 whole SWS, but I can certainly discuss that with DELWP.

9 PROFESSOR CATFORD: Could I just ask another question about the
10 community advocate, and I would like to commend you on
11 that, and perhaps you might want to share your experience
12 with another department we have also been asking to
13 consider about aspects of community engagement. In that
14 action plan you actually say that you will by the end of
15 November have developed a plan for community engagement.
16 So has that been done now?

17 MR WILSON: That's the - - -

18 MR ROZEN: Page 2, I think, Mr Wilson.

19 PROFESSOR CATFORD: I'm at the bottom of page 2. It includes
20 "Prepare a forward program including a plan to consult
21 with stakeholders" by the end of last month.

22 MR WILSON: Sorry, that's the plan for the forward program on
23 priorities, legislative priorities? The engagement plan
24 is an end of December action on page 8.

25 PROFESSOR CATFORD: Perhaps you could explain what do you mean
26 then, "to prepare a forward plan including a plan to
27 consult with stakeholders by the end of November"?

28 MR WILSON: That notion was to, which we have done, to put
29 forward to the minister and then to the minister's
30 consideration, "Here are the priorities for possible
31 legislative reforms," any other ideas that we have around

1 the regulatory framework, which is not limited just to
2 coal matters, of course.

3 PROFESSOR CATFORD: Just a final comment, just trying to
4 understand. When a work plan is finalised it is available
5 for public scrutiny, but the applicant has to pay a fee to
6 access it. Is that what the situation is at the moment?

7 MR WILSON: Yes.

8 PROFESSOR CATFORD: Have you thought about just making it
9 available on your website, so opening up access?

10 MR WILSON: Yes. My preference, which I have conveyed to the
11 regulator, is that through this work that's where we
12 should go unless they reveal to us reasons that we can't,
13 which I'm not sure what they would be.

14 PROFESSOR CATFORD: Does that seem reasonable that we want to
15 try and remove barriers for community engagement as much
16 as possible on these things?

17 MR WILSON: That's right.

18 PROFESSOR CATFORD: Thank you.

19 MR ROZEN: In fairness to you, the access fee is relatively
20 modest, I think, is it not, but it is the principle,
21 I suppose, that is of concern.

22 MR WILSON: I think it is an element that's reflective of a
23 past era, pre-internet.

24 MR ROZEN: Yes, indeed. The last matter arising from the
25 evidence, and this does take us into the rehabilitation
26 bonds issue, you probably heard in my opening this morning
27 a reference to section 79A of the Act?

28 MR WILSON: Yes.

29 MR ROZEN: That has since 2006 provided a mechanism under which
30 the minister or the minister's delegate, presumably, can
31 require of any licensee, so not just coal mines, a

1 requirement to provide a rehabilitation liability
2 assessment for the purposes of determining the amount of a
3 bond and the assessment must be undertaken in a manner and
4 form determined by the minister.

5 Firstly, are you able, any of you, to tell us why
6 that section was introduced into the Act? Everyone is
7 looking at you, Mr Pendrigh, because you've been the
8 longest, I think.

9 MR PENDRIGH: I made some enquiries about that earlier this
10 year, internally. I believe it was to make it easier for
11 the regulator by imposing some of the burden of
12 calculating rehabilitation liabilities on the licence
13 holder.

14 MR ROZEN: Yes, and associated with the requirement or the
15 ability to impose a requirement under subsection (2) is a
16 further power the minister has to require the licensee to
17 engage an auditor to certify that the work has been done
18 in the manner and form required by the minister. An
19 auditor is defined as someone who is approved under the
20 EPA Act, I think I'm right. Mr McGowan is nodding. So
21 that's in section 77U. So, as a mechanism or as a source
22 of information for the department, it seems at first blush
23 anyway to be a far more rigorous process than what is
24 presently the case, which is the schedule 19 figure that
25 we have heard a bit about this morning and about which
26 there seems to be a degree of uncertainty, if I can put it
27 that way, on the part of the mines about what they are
28 required to do. So the question is: has the minister or
29 her or his delegate availed themselves of this power since
30 it's been there?

31 MR WILSON: We have, or the minister in fact has utilised it

1 recently for a mine - not a coal mine - another mine in
2 the state. I'm not aware of any other use of that
3 section.

4 MR PENDRIGH: I inquired about that as well. At the time it
5 was introduced, which I believe is around 2006, that part
6 of the Act, the rehabilitation bond calculator was
7 reviewed and made far more useful and user friendly, and
8 the practice of doing the bonds internally using the
9 calculator was continued, notwithstanding that part of the
10 Act being introduced, because while it was being
11 introduced to make it easier for the regulator to
12 calculate the liabilities, the bond calculator served that
13 function. So that was my understanding why it hasn't been
14 used widely. I'm not commenting on whether that's a good
15 thing or not; I'm just saying that's what I understand to
16 be the case.

17 MR ROZEN: Thank you. You see, evidence before the Board is to
18 the effect that at the end of the day the best placed
19 person to make a calculation of the rehabilitation
20 liability is a mine in relation to its own liability. It
21 understands its mine, it knows the areas, it has a
22 detailed knowledge that the AECOMs and the Jacobs are
23 never going to be able to get if they are asked to do that
24 task. Do you agree with that as a general observation?

25 MR WILSON: Yes, I think a mine would be best placed to
26 determine its own liability, yes.

27 MR ROZEN: Having said that, one difficulty which seems to be
28 apparent at present is the mines are each using different
29 methodologies to calculate their liability assessments and
30 as is apparent from even the brief discussion we have had
31 this morning, there are gaps in their assessments which

1 they seem to concede need to be addressed. So that brings
2 us back to the model in 79A which almost seems to be the
3 best of both worlds; the department can set the
4 parameters, the mine then does the work, and there is a
5 process of checking through an accredited auditor. Do you
6 agree? That's perhaps a very long question.

7 MR WILSON: I agree with it. I think, if I understand it
8 right, I guess the question might come to whose liability
9 one is ultimately trying to determine, because at the
10 moment at least the approach to bonds sort of then comes
11 back to what might be the State's liability as opposed to
12 the mine's liability. I think, as was adduced this
13 morning, there might be reasons for those numbers to be
14 different.

15 MR ROZEN: Look, I understand that. 79A is really not about
16 setting a bond; it's about providing the department with
17 some information base for setting a bond, isn't it?

18 MR WILSON: I think that's the intent, yes.

19 MR ROZEN: We will get to this presently, but having sound
20 information for setting a bond is very important, isn't
21 it?

22 MR WILSON: Yes.

23 MR ROZEN: Why hasn't the regulator made use of the section 79A
24 mechanism in relation to the three coal mines?
25 Mr Pendrigh?

26 MR PENDRIGH: I think the question is the manner and form
27 issue. So, the licence holder in this case would do a
28 liability assessment in the manner and form specified by
29 the minister. Because the coal mines are unique sites in
30 Victoria compared with other sites we have, my
31 understanding of the way the project was started was we

1 had to work out what the manner and form would be at the
2 outset to undertake this work.

3 MR ROZEN: This is the work to be undertaken by URS.

4 MR PENDRIGH: So we engaged AECOM to assist us with the manner
5 and form, and then progressed along the same lines as
6 previously, without involving the mines once that had been
7 worked through. So, yes, we didn't use 79A, but we didn't
8 feel at the time we could use 79A because we couldn't
9 specify the manner and form satisfactorily at that point
10 in time.

11 MR ROZEN: But isn't specifying the manner and form something
12 that the department could call on external auditors, for
13 example, for assistance with putting together the
14 parameters for such an assessment? Isn't that an option
15 that would be open to the department?

16 MR PENDRIGH: It certainly is an option, yes.

17 MR ROZEN: Is that something that might become more do-able
18 under the new regime that is being implemented as part of
19 the action plan, the greater use of expert panels, for
20 example, I'm thinking of, Mr Wilson?

21 MR WILSON: Yes, I think so, and there certainly is an expert
22 panel to be put together. But the other element in that
23 work program is to the extent you can provide more
24 certainty or predictability to the regulated businesses
25 and that includes, for example, giving guidance upfront
26 about how certain liabilities might be calculated.
27 Obviously to do that you need to know what guidance to
28 give. But that's the desired place to get yourself to so
29 that no one is in any doubt at least as to what that is.

30 MR ROZEN: Just before leaving that, the other source of advice
31 is Ms Unger who has now been appointed as a rehabilitation

1 expert to the TRB. I know it's early days in her tenure,
2 but have there been any discussions with her by the
3 regulator concerning these sorts of issues, pushing
4 forward these sorts of assessments, for example?

5 MR MCGOWAN: Just very broadly at the Technical Review Board.
6 So Ms Unger has been there for three or four months and
7 I think her contribution is going to be extremely valuable
8 in the coming years.

9 MR ROZEN: You just actually reminded me of the last matter
10 I wanted to raise coming out of the evidence we have heard
11 and that is the future of the Technical Review Board.
12 This Board of Inquiry was told by its chair, Mr Galvin,
13 that its current tenure runs until 30 June 2016 and he was
14 unable to tell us whether it would continue to operate
15 beyond that time and, if so, for how long. Mr Wilson, is
16 that something you can enlighten us about, at least as to
17 the process for answering that question?

18 MR WILSON: Yes. As laid out in the action plan, there is an
19 independent - sorry, an expert panel being put together,
20 I guess they are independent, which provides that
21 specialist advice that the regulator will need on various
22 topics. At the very least that would mean that the TRB
23 can be just used for very strategic questions, because
24 obviously at the moment it is being used for quite a range
25 of issues.

26 MR ROZEN: Yes.

27 MR WILSON: But then the ultimate question that we would be
28 able to get to a little bit later is is there in fact
29 sufficient role left for the TRB or does the panel, if you
30 like, almost replace that function? But we don't have a
31 view on that at this point.

1 MR ROZEN: So that's a matter for consideration. Is one
2 possibility that the existing members of the TRB become
3 part of this broader expert panel?

4 MR WILSON: Indeed.

5 MR ROZEN: That's an option?

6 MR WILSON: Yes.

7 MR ROZEN: The Board heard some concerning evidence from
8 Mr Galvin in particular about the way he has been asked by
9 the department to assist it in recent times, particularly
10 in relation to assessing the application for a work plan
11 variation by Loy Yang, and the concerns were essentially
12 very quick turnaround times and emails in New Zealand at
13 unsociable hours and other things. Is hearing that of
14 concern to you, Mr Wilson? That does seem to be a less
15 than ideal way to use your expert.

16 MR WILSON: Look, if that was the pattern we were wanting to
17 get into, that would be a concern. The Board does know
18 the rebuild we are going through at the moment, so there
19 have been moments where we've had to go to them with
20 questions with not a lot of time, and ultimately moving
21 into the panel will change that and also changing our
22 entire work practice will change that anyway. So, as a
23 current instance it was not a great concern, but it's the
24 practice itself is not something we want to repeat.

25 MR ROZEN: Thank you for that. If we can turn then to the
26 question of bonds and the role of the department, you have
27 provided to the Board a great deal of material, Mr Wilson,
28 in attachments to your statements and you will probably be
29 relieved to know I'm not going to take you to too many of
30 them. But can I summarise the position that is reflected
31 in the various documents that you have attached as being

1 one where for a number of years going back to the very
2 earliest years of the current century, so 2001, 2002, this
3 issue of reviewing bonds and reviewing financial assurance
4 mechanisms has been constantly done, constantly reviewed?

5 MR WILSON: Yes, the records show there have been quite a
6 number of reviews of various kinds around bonds and the
7 question of levels and form and sometimes the question of
8 role of the bond.

9 MR ROZEN: Yes. Some of those reviews have been internal, some
10 have involved external consultants.

11 MR WILSON: Yes.

12 MR ROZEN: But not a lot has changed arising from those
13 reviews, despite them often saying there needs to be work
14 done. Is that a fair general description?

15 MR WILSON: Certainly the bonds themselves, the actual bonds
16 that apply to coal mines haven't changed other than the
17 one instance that was raised this morning.

18 MR ROZEN: I'm not talking about the figures at the moment. We
19 will come to those. It is the mechanism that has been
20 reviewed on a number of occasions and yet, despite getting
21 advice pointing out perhaps the need to have a broader
22 range of financial assurances and so on, not much seems to
23 have been changed at that sort of framework level?

24 MR WILSON: Yes, not to this point.

25 MR ROZEN: Have you contemplated why that might be the case,
26 because the Board is grappling with trying to understand
27 that. Is this just very hard or what's - - -

28 MR WILSON: There are elements that are hard. I have enquired
29 mainly not just for an interest in history, but also to
30 not repeat that exercise under my guidance at the moment.
31 As the action plan shows, I'm rather more interested in

1 things actually happening. So I think the sense, and
2 perhaps similar to your description or the
3 characterisation of Clean Coal Victoria, the avenue or the
4 vehicle for that information, that advice to be carried
5 through to a reform package, perhaps hasn't been well
6 identified in the past. I wasn't there, so I probably
7 can't give any in-depth characterisation as to why, but
8 that's certainly what I observed. That's what I have
9 picked up out of it.

10 MR ROZEN: I should indicate, Mr Wilson, I know the Board is
11 very grateful for the efforts you are making to try to
12 assist us with these matters, knowing you weren't there at
13 the time. Can I start by asking you about the purpose for
14 which we have bonds, a matter that Professor Catford
15 raised with the previous witnesses, and if I can raise it
16 with you. Can I do it by reference to one of the
17 documents you have attached, and this is attachment 30 to
18 your first witness statement, I'm pretty sure. It's
19 DEDJTR.1020.001.0877. It's on the screen before I even
20 finish saying it. That's impressive.

21 This is one of the reviews we've been talking
22 about, this one done by an external consultant, GHD, who
23 I think we've heard have done an enormous amount of the
24 consulting work across a range of areas. This document
25 was published by the Department of Primary Industries, so
26 a DEDJTR predecessor, "Review of rehabilitation bond
27 calculator use for brown coal mines, Loy Yang example".

28 I don't want to take you to too much of the
29 detail, but could you go, please, to page (i), the
30 executive summary, which is at 0880. Do you see down the
31 bottom of the page there's a heading "Bond methodology"

1 and it reads, "One study finding questions whether the
2 current method of estimating the rehabilitation
3 liabilities for bond determination suits the large brown
4 coal mines in Victoria."

5 It is the next sentence I want to ask you about,
6 "The reason for the bond is to provide the State with
7 sufficient money to rehabilitate a mine if the mine owner
8 walked away." Mr Wilson, do you agree with that
9 description of the reason for the bond requirement under
10 Part 7 of the Act?

11 MR WILSON: I do think that's - yes, linking back to the Act,
12 I think that's the current premise.

13 MR ROZEN: Mr McGowan, do you agree with that description of
14 why we have bonds?

15 MR MCGOWAN: Yes.

16 MR ROZEN: Mr Pendrigh?

17 MR PENDRIGH: Yes.

18 MR ROZEN: We take it from that that's a regulator view of the
19 purpose that bonds serve. I will just ask a couple of
20 other general things. I will see if I can do this without
21 necessarily going to the document. You would have heard
22 me this morning ask some questions about a briefing note
23 which was prepared back in December 1995 in relation to
24 the setting of the Hazelwood bond, the Hazelwood Mine
25 bond. It was written by Mr Gardner, the manager of
26 minerals and petroleum operations. That sounds like a
27 similar position to what you now hold, Mr McGowan; would
28 that be right?

29 MR MCGOWAN: It may well be.

30 MR ROZEN: Your predecessor. What he wrote in the briefing
31 note in response to the case that had been put up by the

1 mine was as follows: "Bonds are usually based on an
2 estimate of the worst case liability during the mine
3 life." End quote. Do you agree, Mr Wilson, that that's
4 the general practice, the general principle that applies
5 to the setting of bonds?

6 MR WILSON: I think at the moment that's another way of
7 characterising I think what GHD have written here. One
8 says walk away, worst case. Yes.

9 MR ROZEN: Mr McGowan, you are nodding. Why is that so? As a
10 matter of practice and principle, why is the amount of the
11 bond premised on the worst case scenario?

12 MR WILSON: So I think the premise for that or the reason for
13 that is from the State's perspective it is asking the
14 question, "What is the State's exposure in the case of any
15 particular mine?" And when you look at that exposure,
16 that walk away scenario, which I guess is typically the
17 worst case, that's the exposure that the State then looks
18 at. I should explain I think that's the current setting.
19 Of course, there's been considerable debate as to whether
20 that should be the current setting, but that's the current
21 setting.

22 MR ROZEN: Mr McGowan, is there anything you want to add to
23 that?

24 MR MCGOWAN: No, I agree with that.

25 MR ROZEN: You were both in the room when the mine witnesses
26 were giving evidence earlier about their wish and their
27 employer's wish to see a risk based approach to the
28 setting of bonds, which would seem to be something quite
29 different to a worst case scenario. Do you have any
30 observations for the Board about the desirability of
31 moving to a risk based approach such as that which is

1 being promoted by the mines?

2 MR WILSON: I listened with interest and it's been
3 put - I think it's even later in this report, the GHD one
4 - because it does pose an interesting question of whether
5 that policy setting should shift, which may require at
6 least policy change, possibly legislative change to adopt
7 that. It's still, I guess, from the State's point of
8 view, the question that one would then ask is what about
9 that worst case scenario? What are you going to do with
10 that particular part of the risk, even though it might
11 have a very low probability? How do you manage it or are
12 you just in a sense wearing it?

13 MR ROZEN: Is there a more fundamental problem, Mr Wilson, and
14 that is that assessing risk of such matters is a
15 particularly difficult exercise, isn't it, to do with any
16 certainty?

17 MR WILSON: Yes, it is, to do with any great degree of
18 certainty. But I think any risk framework, it at least
19 brings onto the table what are the possible or likely
20 drivers of certain events. But it is very hard to then
21 enumerate and sort of put a hand on heart saying, "Yes,
22 I'll live by that percentage risk number."

23 MR ROZEN: Take, for example, a situation where a licensee has
24 an overseas parent company who will ultimately make the
25 decisions about whether or not they continue or don't
26 continue. How would the department go about making a
27 realistic assessment of the risk of such a licensee
28 shutting down?

29 MR WILSON: It would be very hard to do, but of course as soon
30 as you are moving away from, let's say, a worst case
31 scenario, they are the very questions that you would then

1 need to ask yourself and certainly even if this department
2 didn't, the treasury department would, because they would
3 be interested in those exposures.

4 MR ROZEN: Indeed. Can I turn to the bond review project,
5 please, and if I could ask you to look at paragraph 125 of
6 your first statement, which is exhibit 5A, and the
7 Ringtail code for that page is VGSO.1023.001.0023.
8 I think I have that right. Do you have that page in front
9 of you, Mr Wilson?

10 MR WILSON: Yes.

11 MR ROZEN: So the context here is you are being asked about the
12 bond calculator, and that was something you referred to
13 earlier, Mr Pendrigh, and at 125 you say, "No review
14 utilising the bond calculator has led to a change in the
15 rehabilitation bond levels for any of the Latrobe Valley
16 mines. This is because in 2010 the government commenced a
17 review of rehabilitation bond policy." That review,
18 albeit under a different name, is ongoing, is it not?

19 MR WILSON: In effect, yes. It has had, from what I can see,
20 several starts and stages, but it is still going.

21 MR ROZEN: Yes. You explain some of the reason for the delay
22 in the most recent completion, that is in the work that
23 URS and AECOM have been doing, at paragraph 146 of your
24 statement. The Board did hear last year, the Board
25 differently constituted, did hear last year from
26 Mr McGowan's predecessor, Ms White, about some of the
27 delays. But that delay on something as important as this
28 is also most unfortunate, isn't it, Mr Wilson? This ought
29 to have been brought to a completion by now?

30 MR WILSON: That certainly would be my preference, yes.

31 MR ROZEN: I take it that seeing it through is a matter that is

1 receiving your earnest attention?

2 MR WILSON: Yes.

3 MR ROZEN: At annexure 37 to your first statement, Mr Wilson,
4 you provide the Board with the original draft project plan
5 for the current reviews. DEDJTR.1020.001.0944 is the
6 first page. Do you have that there?

7 MR WILSON: Yes.

8 MR ROZEN: I want to ask you about the very last page of that
9 document, if I could, please, under the heading "Risk
10 management". It is a page that ends in 0953. Do you have
11 that?

12 MR WILSON: With the colours on it?

13 MR ROZEN: Only colours for the witness, not for Counsel
14 Assisting, Mr Wilson. It is headed "Project plan bond
15 review project" and it should have the number ending in
16 0953 in the top right-hand corner?

17 MR WILSON: Risk management, yes.

18 MR ROZEN: Firstly, can you tell us why this is here? Why does
19 this project contain a risk assessment? Is that standard
20 practice for projects of this type in the department?

21 MR WILSON: Yes, most projects or anything significant will
22 have a risk management around the project itself.

23 MR ROZEN: Down the left-hand side of the column, as is often
24 the case with these things, there is a description of
25 different categories of risk; do you agree with that?

26 MR WILSON: Yes.

27 MR ROZEN: The first category of risk is described as
28 "financial" and the risk is described in the following
29 terms, "Latrobe Valley coal mines refuse to enter into
30 increased rehabilitation bonds causing the State to
31 continue to bear the shortfall of the liability covered by

1 the rehabilitation bonds held." So that's a risk inherent
2 in this project; am I understanding that correctly?

3 MR WILSON: Yes.

4 MR ROZEN: It's given an impact rating of 4 and a likelihood
5 rating of 3. Concentrating on the likelihood rating at
6 the moment, if we go down to the bottom of the page we see
7 a rating of 3 for likelihood is equivalent to a 50:50
8 risk. Do we take it from that that it was considered by
9 the author of this document to be as likely as not that
10 the coal mines would refuse to enter into increased
11 rehabilitation bonds causing the State to continue to bear
12 the shortfall of the liability?

13 MR WILSON: Yes, I think that's a fair reading.

14 MR ROZEN: Who was the author of this risk assessment, do you
15 know? Is it Ms Vin, who is described as the author of the
16 document, Sandra Vin.

17 MR WILSON: I'm not sure.

18 MR PENDRIGH: I think it would be.

19 MR ROZEN: Mr Wilson, do you agree with that assessment, that
20 the likelihood of the coal mines refusing to enter into
21 increased bonds is 50:50; that is, it is just as likely
22 that they will refuse as they will comply?

23 MR WILSON: If I place myself at that time, personally
24 I wouldn't have rated it that highly, but I can see a
25 person at the front end of a project may have been very
26 unsure. But I would probably rate it a little lower or
27 less likely to be clear.

28 MR ROZEN: Mr McGowan, do you have a view about that?

29 MR MCGOWAN: Not a firm view, no.

30 MR ROZEN: Do you agree with the rating, from your experience
31 with the coal mines and the area that you regulate?

1 MR MCGOWAN: With my experience and with the descriptions of
2 how we can set bonds in the Act, it's characterised quite
3 high and I don't believe it should be, yes.

4 MR ROZEN: If I can just follow that through with you, though,
5 Mr McGowan. If you look at attachment 36 to your
6 statement, Mr Wilson, and if you do too, please,
7 Mr McGowan, this is the final approved project plan for
8 the bond review project, isn't it, 24 June 2015?

9 MR WILSON: Yes.

10 MR ROZEN: If we turn to the first page, this bears your
11 signature, Mr McGowan, as the Executive Director, Earth
12 Resources Regulation?

13 MR MCGOWAN: That's correct.

14 MR ROZEN: That is your approval of the contents of the
15 document, I take it?

16 MR MCGOWAN: Approval of the project, yes.

17 MR ROZEN: If you turn to the second last page of the document,
18 DEDJTR.1020.001.0941, that's the risk assessment that
19 accompanied the final project plan; is that right,
20 Mr McGowan?

21 MR MCGOWAN: That's right.

22 MR ROZEN: And the likelihood of that same risk in exactly the
23 same terms is once again rated 3, that is 50:50. Do you
24 see that?

25 MR MCGOWAN: Yes, I do.

26 MR ROZEN: And this is the brief that you endorsed and
27 approved?

28 MR MCGOWAN: That's correct.

29 MR ROZEN: Did you read that risk assessment before you put
30 your signature to the document?

31 MR MCGOWAN: Yes, I did. I also took note of the mitigation

1 measures that are also there.

2 MR ROZEN: Yes. But of course one doesn't get to the
3 mitigation until one assesses the risk; do you agree with
4 that?

5 MR McGOWAN: Certainly.

6 MR ROZEN: And the risk is rated there as 50:50, quite high as
7 you said a moment ago?

8 MR McGOWAN: Correct.

9 MR ROZEN: Had something changed between - you said a moment
10 ago you didn't necessarily agree with the 50:50
11 assessment, so how is it that you endorsed it in the 2015
12 document?

13 MR McGOWAN: Because I have addressed in my mind the risk
14 mitigation measures.

15 MR ROZEN: But they are the same risk mitigation matters that
16 were in the earlier document, aren't they?

17 MR McGOWAN: Yes.

18 MR ROZEN: By reference to the final plan now, that is
19 attachment 36, can I ask you about the second risk that's
20 identified with the description "legal". Do you see that,
21 Mr McGowan and Mr Wilson?

22 MR WILSON: Yes.

23 MR ROZEN: The risk is described in the following terms and
24 I quote, "Licensees become insolvent leaving significant
25 costs to be borne by the State in carrying out approved
26 rehabilitation works and leaving difficult pathways to
27 recover the costs of completing the approved
28 rehabilitation works." Once again, that receives the
29 identical risk rating in terms of likelihood as being
30 50:50; that is, these licensees, these three companies
31 becoming insolvent, leaving the State with those

1 responsibilities. Mr McGowan, you signed this document.
2 That's your agreement that that's a correct rating of that
3 risk?

4 MR MCGOWAN: Yes.

5 MR ROZEN: Mr Wilson, do you agree that there is as much chance
6 of these companies becoming insolvent, leaving the State
7 with those responsibilities, as that not happening?

8 MR WILSON: I haven't turned my mind to that specific question.

9 MR ROZEN: What is the basis of that - - -

10 MR WILSON: Sorry. Look, I'm comfortable to use that risk
11 rating for the purpose of this plan, yes.

12 MR ROZEN: What is the basis, Mr McGowan, of that concern? The
13 reason I ask that is because you were here earlier.
14 Mr Rieniets was putting his house on AGL not going belly
15 up. So there just seems to be a bit of a disconnect
16 between the department's perception of that risk and what
17 the mines are saying to the Board. Could you comment on
18 that?

19 MR MCGOWAN: Only in broad terms. But I would say any company
20 at any time, depending on their exposure on whatever
21 market they're trading, there's always a financial risk to
22 not being able to pay their debts when they fall due. It
23 happens all the time.

24 MR ROZEN: It does, and of course risk is always present, but
25 50:50 seems a pretty high risk rating. Would you put it
26 that way?

27 MR MCGOWAN: You could certainly put it that way. I did, and
28 I'm acting on behalf of the State to make sure that
29 I cover the State's liabilities.

30 MR ROZEN: Yes, I understand. You see, where I'm going with
31 this is the Board is faced with evidence that these bonds

1 were set on an interim basis 20 years ago at 15 each and
2 then the Yallourn one was lowered to 11 some 10 years
3 later and then nothing has happened since, and the
4 liability assessments that the mines have provided,
5 leaving aside any independent advice, are clearly well out
6 of whack, if I can use a colloquial expression, with the
7 bonds and there's been no attempt to increase the bonds at
8 any time, and I'm wondering if that's because the
9 department is concerned that, if it does increase the
10 bonds, it might trigger these risks of either insolvency
11 or refusal to comply with the increased bonds. Has that
12 been part of the department's thinking as to the inaction
13 on the bond levels? Mr McGowan?

14 MR MCGOWAN: Certainly not part of my thinking.

15 MR ROZEN: Okay. One final area I want to explore with you,
16 and that is the wording of term of reference 10. I know
17 neither of you wrote term of reference 10 for the Board,
18 but you would have heard me this morning make reference to
19 the Board being mandated to take into account the outcome
20 of the bond review project. Mr Wilson, what is the
21 outcome of the project? What is it that the Board has
22 been asked to take into account?

23 MR WILSON: I think under the original intent the outcome would
24 be ideally a decision one way or another by the State on
25 what the bonds should become or indeed if there is to be
26 any change.

27 MR ROZEN: Do you agree with that, Mr McGowan?

28 MR MCGOWAN: Yes.

29 MR ROZEN: That's made clear, is it not, in your statement,
30 Mr Wilson, where you set out the various steps in response
31 to a question from the Inquiry, and I'm looking at your

1 statement dated 20 November, on page 27 of the statement,
2 paragraph 156, VGSO.1023.001.0027. Immediately above the
3 table that appears in 156 you were asked a series of
4 questions or at least the department was in a letter from
5 the Inquiry. The questions you were asked were as
6 follows. "Please identify as against each of the
7 milestones set out on pages 6-7 of the project plan the
8 following: Has it been completed? When was it completed?
9 If it has not been completed, why it has not been
10 completed, and when it will be completed?" Do you see
11 that?

12 MR WILSON: Yes.

13 MR ROZEN: Then the various milestones 1 through to 6 are
14 identified. It is the case that each of them has been
15 completed with the exception of 6; is that correct?

16 MR WILSON: That's correct, except in relation to 5, given
17 subsequent information. I'm not sure if I could still
18 claim that one to be completed.

19 MR ROZEN: Is that a reference to the potential for there to be
20 a further round of consultation between AECOM and the
21 mines in light of the concerns the mines have raised?

22 MR WILSON: That's correct.

23 MR ROZEN: The failure to complete 6, put 5 to one side for the
24 moment, you were asked in relation to any steps that had
25 not been completed why they have not been completed.
26 There is no answer there, is there, in the statement, as
27 to why 6 hasn't been completed, why the department hasn't
28 determined bond levels?

29 MR WILSON: There's no answer annexed to 6. The answer,
30 though, I can draw is the explanation under 2, which
31 was why did that stage take longer than anticipated, it

1 went from June out to September, and that's the formation
2 of the report and that's had run-on consequences.

3 MR ROZEN: Well, yes, but as recently as October, so well after
4 those delays had occurred, Mr McGowan wrote to Mr Rieniets
5 of AGL copying in you, Mr Pendrigh, in the following
6 terms. This is exhibit 34 which we received this morning,
7 I think a copy is being placed in front of you.

8 Mr McGowan, you wrote to Mr Rieniets on 14 October, and if
9 you turn over the page you will see a heading "The next
10 steps in the project are" and the third of those is "ERR
11 meets with Loy Yang Mine to discuss the refined liability
12 estimate." Is that the same thing as item 6 or is that
13 something different? Tell me if we're at cross-purposes.
14 Perhaps I will ask the question another way.

15 MR McGOWAN: Ask the question again, if you wouldn't mind,
16 please.

17 MR ROZEN: Yes. Is what you are saying to Mr Rieniets in this
18 email just in October this year that you anticipated
19 completing the bond review project by mid-November 2015 or
20 is that a preliminary step there, number 3, to the final
21 determination of the bond levels?

22 MR McGOWAN: 3 reads we "meet with Loy Yang Mine to discuss the
23 refined liability estimate in mid-November 2015." It
24 doesn't refer to setting of bonds, which 6 says is to
25 determine bond levels. So we had already slipped at that
26 point in time.

27 MR ROZEN: So they are separate things.

28 MR McGOWAN: Yes, they are.

29 MR ROZEN: And in terms of any likely date by which the project
30 is finalised by the setting of new bond levels, I think
31 based on what you just told us about the potential for

1 step 5 to have some further work done, that necessarily
2 pushes out term 6 probably well beyond a date at which it
3 can be taken into account by this Inquiry?

4 MR WILSON: Yes, it will certainly be on the other side of
5 Christmas, I would expect.

6 MR ROZEN: Yes, I think that's a very safe assumption,
7 Mr Wilson. They are the questions that I have for the
8 DEDJTR panel, thank you.

9 PROFESSOR CATFORD: Could I just ask Mr Wilson, and thank you
10 very much for your candid and open remarks which was very
11 refreshing. You were probably here when I asked the mine
12 panel about the KPMG principles, which I'm sure we could
13 show if you would like that, which is in Mr Rieniets'
14 4 December submission. I think it is in paragraph 39.
15 The question is essentially do you also support those
16 principles, because of course that would be very helpful
17 to the Board to understand where the department is coming
18 from? If we just go to 4 December, Mr Rieniets'
19 submission, which is AGL.0001.005.0001. It is paragraph
20 39.

21 MR ROZEN: If I can just jump in, Professor Catford. It might
22 assist you, Mr Wilson, you do actually refer to the KPMG
23 principles in your statement at paragraphs 169 to 172, so
24 you might want to have regard to that as well.

25 MR WILSON: It is on page 5, yes. I think what I would say to
26 that is I don't have a problem with the principles, but
27 there is still the starting question which is the
28 presupposition about what is the bond meant to achieve,
29 because until you have answered that question the
30 principles that you might then choose might then vary.
31 So, the question is what level of security, for example,

1 is the State seeking through the bond. If it is only
2 interested in worst case, then that would lead you down a
3 certain path. If you have a view that there should be a
4 more flexible system, you might take a different set. So,
5 I'm very happy to support the principles, but there is
6 that presupposition there.

7 PROFESSOR CATFORD: I just wanted to lead on to items 3 and 4
8 there, this issue about using the mechanism to encourage
9 good behaviour prior to the closure and final
10 rehabilitation, and this raises the question about
11 progressive rehabilitation and investigations,
12 evaluations, research to best inform the ultimate plan.
13 Do you think that's appropriate for the financial
14 assurance system to follow that line?

15 MR WILSON: I think that's good principle. It opens up the
16 question, "Is that incentive not already being provided by
17 other mechanisms?" Because if you have the view, for
18 example, that the work plans and the audits and
19 inspections against those, if they were already achieving
20 that, then you might say, "What can the bond do that's not
21 already being done? Is there some additionality that it
22 might provide?" On the other hand, you might say, "Well,
23 actually the bond can achieve that and I will reduce that
24 other mechanism." So there are choices there, I think.

25 In general I think that a bond - the calculation
26 of the government's liability, imagine for example you
27 were doing that annually, then that should reflect
28 progressive rehabilitation, or at least should reflect
29 successful progressive rehabilitation because that would
30 flow through to the liability. So you would expect there
31 would be a sort of an element of reward coming through

1 there. There is no guarantee.

2 PROFESSOR CATFORD: Presumably the bond could fluctuate then
3 according to performance, basically.

4 MR WILSON: That's right. It could also fluctuate then on
5 other drivers of cost.

6 PROFESSOR CATFORD: Yes, I understand that. So you are content
7 with considering that as one aspect of the system?

8 MR WILSON: Absolutely. I think there is good reason to think
9 about, if you can, a bond system that I guess in the very
10 least doesn't disincentivise the rehabilitation, but also
11 can it lend support. But I'm sure the question will be
12 asked, "If you were already achieving that, what are you
13 now expecting the bond to do over and above that?"

14 PROFESSOR CATFORD: Can I just pick up 10 again, and both the
15 Chair and I asked about whether assets to be factored in
16 in terms of the security.

17 MR WILSON: I think that's conceivable. I'm trying to think of
18 my Treasury colleagues. Anything that was put on the
19 table as a bond they would probably convert into a cash
20 equivalent. I would have to ask them about the mechanics
21 of that. So, if an asset was placed there as opposed to a
22 cash or cash-like instrument, they'd probably - I assume
23 they'd have some sort of discount they might apply to
24 that. I'm not sure how they would do it. But that's not
25 to say that in that environment you might not be open to
26 other mechanisms. The government has done that, albeit at
27 the far other end of our suite of things for which bonds
28 are collected through the introduction of cash bonds for
29 the very small quarries as opposed to a bank guarantee,
30 because in that case cash was cheaper than the guarantee.

31 PROFESSOR CATFORD: Thank you very much.

1 MS DOYLE: Mr Wilson, your statement and the annexures make it
2 clear that the department and its predecessors have been
3 thinking about the policy that might underpin
4 rehabilitation bonds for about 13 years?

5 MR WILSON: Yes, I think that's about right.

6 MS DOYLE: 2002 to 2015. Indeed, you have a body of work that
7 is out there, if I can put it that way, still yet to be
8 returned. I think the paper from NERA Economics is
9 expected on 23 December; is that right?

10 MR WILSON: Yes, that's correct.

11 MS DOYLE: The task that NERA Economics has been asked to
12 perform, is that to consider the policy that will underpin
13 a rehabilitation bond mechanism or is it another version
14 of the AECOM costings exercise?

15 MR WILSON: No, it is nearer the former. So, it is not to
16 advise on what the policy should be so much as to look at
17 what the policy options might be. The final advice would
18 then fall to the department.

19 MS DOYLE: That very much sounds like the work that GHD has
20 already done in 2008 and KPMG has already done in 2011.

21 MR WILSON: It is probably nearer the KPMG work. GHD I think
22 had a page and a half because that wasn't their core
23 question in their report.

24 MS DOYLE: Does the department have a current view that might
25 later change, but does the department have a current view
26 about the policy that should underpin the setting of a
27 rehabilitation bond?

28 MR WILSON: No, it doesn't have a current view as to where it
29 should go. It is certainly a view I expressed earlier as
30 to what the current policy position is about that worst
31 case scenario. But the work around NERA and going forward

1 is to ask that very question.

2 MS DOYLE: But haven't you already settled upon at least this
3 much, that risk assessment principles will be used to
4 inform any rehabilitation bond policy going forward?

5 MR WILSON: That's for the liability calculation? Do you mean
6 that?

7 MS DOYLE: No, I mean have you not already determined that risk
8 assessment principles will inform any rehabilitation bond
9 policy that is adopted?

10 MR WILSON: I'm not sure I've seen it written in that way.

11 MS DOYLE: I might be misunderstanding the action plan. Could
12 you have a look at exhibit 37, the document you were taken
13 to this afternoon, section 3 on page 5. It is headed
14 "Risk based strategies". It makes the point that, "Risk
15 management is an integral part of good regulatory
16 administration." Then there is the heading "Risk
17 management framework" and the third paragraph down says,
18 "ERR will adopt risk based approaches for all its
19 regulatory activities. It is investigating the
20 introduction of a cash bond system for rehabilitation.
21 Other options to tailor bonds to reflect risk informed by
22 the Hazelwood Mine Fire Inquiry will be considered in
23 2016."

24 MR WILSON: Yes.

25 MS DOYLE: So that's the case?

26 MR WILSON: I'm not sure the way you have characterised it
27 would be how I'd describe that, but it's probably a fair
28 characterisation.

29 MS DOYLE: In fact, underneath the heading "Strategy" in the
30 orange section below, it says that by the end of this
31 month, ERR, the lead agency on this task, "will have

1 completed development of a quantitative risk assessment
2 tool for assessing risks at select earth resources sites."
3 Is that to include the brown coal mines in Victoria or
4 not?

5 MR WILSON: I think it does.

6 MR McGOWAN: Yes.

7 MR WILSON: It certainly includes a range of mining sites and
8 quarry sites.

9 MS DOYLE: Same for the next, "Develop architecture for risk
10 management framework by the end of January"?

11 MR WILSON: That will be the architecture for the regulator,
12 yes.

13 MS DOYLE: I suppose what I'm getting at is does the department
14 have a view or is it waiting for the outcome of this
15 Inquiry?

16 MR WILSON: The department hasn't formed a view on what the
17 future bond policy should be. It has commissioned NERA.
18 Obviously, as you see in the record, it has commissioned
19 previous pieces of work and it will put a view to
20 government at the appropriate time.

21 MS DOYLE: But did the department not develop a bond policy
22 reform package by the end of 2014?

23 MR WILSON: I do believe there was something, yes.

24 MS DOYLE: Because your first statement at paragraph 174 said
25 that, "The 2011 KPMG report and a subsequent 2012
26 parliamentary inquiry had informed a rehabilitation bond
27 policy reform package prepared by the department in 2014.
28 This package expressly excludes high risk sites such as
29 the Latrobe Valley coal mines." Then in your third
30 statement you somewhat retreated from that and said that
31 policy had not been approved.

1 I just want to understand what the situation is.

2 Is it that the department prepared a policy by the end of
3 2014, but it's presently, what, on hold or on ice?

4 MR WILSON: My understanding, that was prepared and placed to
5 the government at the time. I guess the record shows that
6 wasn't adopted. I don't know the reason for that. But it
7 wasn't adopted and therefore we are now into this process
8 looking at future bond policy.

9 MS DOYLE: As at 2014 what had informed the view that there was
10 a need to exclude brown coal mines on the basis that they
11 are high risk? What had informed that view?

12 MR WILSON: I don't know. Sorry, I don't know the answer to
13 that.

14 MS DOYLE: Because in fact if we read the GHD report from 2008
15 and the KPMG report of 2011, they in fact say the
16 opposite, don't they? They say that these are low risk
17 sites in terms of default?

18 MR WILSON: In terms of default they may say that.

19 MS DOYLE: Can I take you to the KPMG report. It was referred
20 to in your statement. Although it is not an annexure
21 thereto. But the number is DEDJTR.1007.001.0228. Do you
22 have the 2011 report there? The particular page I'm first
23 going to ask that you be taken to is DEDJTR.1007.001.0230.
24 That's page 2 of the KPMG report. So you recognise that
25 as the 2011 report?

26 MR WILSON: Yes.

27 MS DOYLE: Just incidentally, that document, although prepared
28 to assist DPI, wasn't given to the mine operators until
29 quite recently under the auspices of this Inquiry, was it?

30 MR WILSON: I believe that's correct.

31 MS DOYLE: If we look at page 2 of the report, which is 0230,

1 under the heading 1.2, "Current system", the third
2 paragraph says, "Up until now few operators have been
3 unable to meet their rehabilitation obligations. However,
4 the current system provides for a 100 per cent failure
5 rate." Do you see that note there?

6 MR WILSON: Yes.

7 MS DOYLE: Can I take you then to page 5 of the report, which
8 is 0233. Do you see paragraph 2.2.5, "Rehabilitation
9 failure rate"?

10 MR WILSON: Yes.

11 MS DOYLE: "When selecting a model, the failure rate of
12 operators in terms of rehabilitation obligations also
13 needs to be considered. It is not likely that 100 per cent
14 of operators will fail to meet their rehabilitation
15 obligations." Do you see that sentence?

16 MR WILSON: Yes.

17 MS DOYLE: Then on page 0234 we see the 10 principles that
18 Professor Catford has already taken you to?

19 MR WILSON: Yes.

20 MS DOYLE: I take it that in the period after 2011 and even
21 through until today, those principles have been regarded
22 as being of some assistance in formulating or reviewing
23 the policy in this area?

24 MR WILSON: I believe that's right, yes.

25 MS DOYLE: Are you aware what information KPMG was given in
26 order for them to make any assessment of the likelihood of
27 the rate of failure?

28 MR WILSON: No, I'm not off-hand.

29 MS DOYLE: The only hint I can see is on the very last page,
30 0253, under B.2. You see there it says, "Past
31 liabilities. KPMG was provided with a history of default

1 data. This data revealed that since November '05 the
2 department has had to call on 24 bonds. Of those, only
3 three exceeded \$20,000." And it gives those which were of
4 that order. Do you have any knowledge about what suite of
5 data was given to KPMG to enable it to undertake that
6 analysis?

7 MR WILSON: No, I'm not personally familiar with that dataset.

8 MS DOYLE: While you have past reports with you, I also want to
9 take you to a couple of pages in the GHD report. I take
10 your point that it was an example prepared about Loy Yang,
11 but the authors went on to express some other broader
12 concepts. It is annexure 30 to your statement,
13 DEDJTR.1020.001.0877. Do you have that handy as annexure
14 30 to your first statement?

15 MR WILSON: Yes, I do.

16 MS DOYLE: Some of the things I want to direct your attention
17 to go to policy and others admittedly go more to the
18 specific example of calculations. But in the executive
19 summary page that you have already been taken to, 0880, do
20 you have that page under the heading "Findings"?

21 MR WILSON: Yes.

22 MS DOYLE: Under 1.1 the authors concluded that the calculator,
23 and you can tell from the context they are talking about
24 the bond calculator, is a sound way of estimating
25 rehabilitation liability; do you see that?

26 MR WILSON: Yes.

27 MS DOYLE: Then it says there are some issues, and one that it
28 points to is that "For large scale brown coal mines the
29 calculator exaggerates the allowance made for project
30 management." You recall that note of caution being
31 sounded by GHD?

1 MR WILSON: I don't recall it because I wasn't involved, but I
2 have read that note of caution.

3 MS DOYLE: Yes. And you would be aware, if we jump ahead to
4 page 0896, that under the heading 3.3 in fact the authors
5 there go on to say that an allowance made of 5 per cent
6 for monitoring and 10 per cent for management and a
7 further 10 per cent for contingency, they refer to that
8 allowance that had been made in costings they had looked
9 at, and said that this was very high - this is the last
10 sentence now on that page - for Latrobe Valley coal mines.
11 "It seems unreasonable that 6 or 7 million would be
12 required to project manage the works necessary to
13 rehabilitate these mines if the operator walks away."

14 Pausing there, that's a suggestion, admittedly
15 back in '08, but a suggestion that 6 or 7 million was an
16 unreasonable estimate. Are you aware that AECOM presently
17 estimates those costs for GDF Suez's mine at in excess of
18 \$41 million?

19 MR WILSON: Yes, I don't recall the exact number, but I'm aware
20 that they were higher.

21 MS DOYLE: I will just take you back into a couple of other
22 pages earlier in the report. One page I would like to
23 direct your attention to ends in 0881. Mr Rozen took you
24 to part of this. He took you to the potential purpose for
25 the bond and you answered some questions about the risk of
26 walk away. But the next sentence is what I want to direct
27 your attention to because it goes to likelihood of risk
28 crystallising.

29 It says, "These mines, critical to the production
30 of electricity for this state for the foreseeable future,
31 are not going to shut down in the near term without very

1 major implications for Victoria. Even if current
2 operators walk away, others will be persuaded to continue
3 running the mine." I just pause there. The authors here
4 are making the common sense point, aren't they, that it is
5 unlikely that the operators of these mines will walk away
6 tomorrow and drop their tools?

7 MR WILSON: Yes.

8 MS DOYLE: If there be any change of any kind to these
9 operations, it is something that will no doubt have a long
10 lead-in time, be discussed with the State that supervises
11 the work plans, and be something about which there's a
12 great deal of lead-in time rather than the drop tools,
13 walk away scenario. Do you agree with that?

14 MR WILSON: Yes, that sounds more likely.

15 MS DOYLE: I note also that the last paragraph on this page
16 speaks to what other uses the bond could be put to, and it
17 says, "Perhaps the bond could be better used to focus
18 attention on the mine rehabilitation requirements of these
19 mines rather than forcing mining companies to carry a
20 large insurance debt for so many years." That perhaps
21 ties in to what Professor Catford was asking you a moment
22 ago, and that is if there need be a mode of encouraging
23 rehabilitation, it may not be, I think you were saying,
24 that the bond need be the sole repository of that
25 mechanism?

26 MR WILSON: Yes, that's correct.

27 MS DOYLE: But there could be a combined approach adopted, such
28 that discount system running along with a primary bond
29 might be an additional way of encouraging progressive
30 rehabilitation?

31 MR WILSON: Yes, certainly if you are looking to incentivise

1 that, that would be an option.

2 MS DOYLE: I wanted to also ask, before we leave that body of
3 work that's been done and it sounds as though there is
4 still some to come, Mr Pendrigh, I note from your CV that
5 one of the major achievements that you identify - this is
6 exhibit 36 - one of the major achievements on the second
7 page of your CV that you identify in your current role as
8 director of the Hazelwood Mine Inquiry Coordination
9 Directorate is it says that you have reviewed the
10 rehabilitation liabilities of the mines to revise the coal
11 mine bond. Can I just ask what body of work that is? Was
12 that you supervising AECOM's most recent body of work or
13 was it something different?

14 MR PENDRIGH: Supervising AECOM's body of work.

15 MS DOYLE: AECOM surely aren't charged with setting what the
16 rate of bonds will be, are they?

17 MR PENDRIGH: No, they're not.

18 MS DOYLE: In fact we have all tended to slide in terms of the
19 use of language, but all that AECOM is doing is conducting
20 an estimate of the end of mine life rehabilitation costs,
21 aren't they?

22 MR PENDRIGH: That's right.

23 MS DOYLE: So it couldn't be thought and it shouldn't be
24 thought that AECOM is charged with discovering or
25 revealing to us all what the dollar rate of the bond
26 should be for any of these three mines going forward?

27 MR PENDRIGH: Perhaps if that's said for the purpose of
28 reviewing the bonds it might be more accurate.

29 MS DOYLE: Because working out the cost of end of life of mine
30 rehabilitation is not the same thing as divining what the
31 policy underpinning the setting of a rehabilitation bond

1 should be, is it?

2 MR PENDRIGH: That's right.

3 MS DOYLE: To the extent that AECOM might, as Mr Wilson has
4 said now, be encouraged or retained to review their work,
5 that will still only be work that is aimed at costing out
6 in some way, with greater or lesser degrees of
7 reliability, the worst case scenario. Would you agree
8 with that, Mr Pendrigh?

9 MR PENDRIGH: It is consistent with what we have said today,
10 yes.

11 MS DOYLE: But if the department determines as a result of any
12 recommendations made by this Inquiry or otherwise,
13 determines rather to adopt a risk based approach, that
14 worst case scenario will only be one part of the matrix
15 necessary to work out what the bond should be for each
16 mine in any given year. Would you agree with that?

17 MR PENDRIGH: If a risk based approach led to that conclusion,
18 yes.

19 MS DOYLE: If one is adopting a risk based approach, the only
20 circumstance in which, let's say, there's world best
21 practice costings that ultimately emerge, the only
22 scenario in which they are relevant is if one estimates or
23 assesses the risk to be 100 per cent likely to fail. Do
24 you agree with that?

25 MR PENDRIGH: Yes.

26 MS DOYLE: In that context, can I ask you, Mr McGowan, a little
27 about the project plan that you agreed. Mr Rozen took you
28 to a chart dealing with risk management. As I read this
29 document, it's really nothing more than an elaborate
30 retainer letter, isn't it, in terms of a description of
31 the task that whoever is going to undertake the review

1 ought to conduct?

2 MR MCGOWAN: That's one way of describing it. It is a way of
3 keeping tabs on a body of work.

4 MS DOYLE: I take it that the risk management or risk
5 assessment table that you were taken to, do you still have
6 it? This document was attachment 36 to Mr Wilson's
7 statement, DEDJTR.1020.001.0941. In attachment 36 to
8 Mr Wilson's statement it's page 10 of 11. Have you got
9 that?

10 MR MCGOWAN: Yes.

11 MS DOYLE: I take it that this table here doesn't represent the
12 department's considered or final view on what is the risk
13 profile of the three mines in the Latrobe Valley? It
14 shouldn't be read as indicating the final view of the
15 department in relation to risk assessment, should it?

16 MR MCGOWAN: No.

17 MS DOYLE: Mr Rozen asked you a number of questions in
18 particular about item 2 in row 2, "Legal", which is
19 looking at the scenario of licensees becoming insolvent
20 and walking away, essentially. This is a variation on the
21 walk away scenario that I have been asking some questions
22 about; do you accept that?

23 MR MCGOWAN: That's correct.

24 MS DOYLE: The state doesn't presently regard that as being
25 50:50 likely to occur, does it?

26 MR MCGOWAN: These are scenarios that we have considered in
27 doing the body of work that we're doing.

28 MS DOYLE: In terms of the papers that have been commissioned
29 to inform the department, GHD and KPMG have, for example,
30 said it's unlikely. No doubt in reaching a final
31 determination on this you would also take those comments

1 into account?

2 MR MCGOWAN: Yes, indeed. These are our internal documents for
3 our project to work through what we think the risks are.
4 As I said earlier, we are taking the view of worst case
5 scenario.

6 MS DOYLE: Internally.

7 MR MCGOWAN: Correct.

8 MS DOYLE: But externally, if I can put it this way, when a
9 policy is ultimately adopted for the rest of the world to
10 consume or to adhere to, one could expect that there will
11 need to be a risk assessment process undertaken that might
12 end up being mine by mine. It may need to be that
13 specific. Would you accept that?

14 MR MCGOWAN: Yes.

15 MS DOYLE: And that body of work hasn't even commenced, that
16 mine by mine risk assessment, in terms of worst case
17 scenario against any other options?

18 MR MCGOWAN: It depends what sort of risk you're talking about.
19 We have been undertaking risk assessments on mines across
20 the state for a couple of years now.

21 MS DOYLE: I'm talking about the likelihood of the walk away,
22 worst case scenario being enlivened.

23 MR MCGOWAN: No, we haven't pursued that.

24 MS DOYLE: No. Indeed, in part that's what NERA Economics are
25 going to do, as I understand it; is that right?

26 MR MCGOWAN: I'm not privy to the NERA work.

27 MS DOYLE: Well, they will at least provide some options or
28 models that might have that as a goal, might have
29 application of risk assessment principles as a goal; would
30 you agree with that?

31 MR MCGOWAN: They may.

1 MS DOYLE: Mr Wilson, do you have anything to say about that?

2 MR WILSON: I should explain, because that is a policy piece,
3 the regulator doesn't get too close to that. The NERA
4 work and then our own subsequent assessment will help form
5 a view on what the bond policy should be. So if, for
6 example, you would go down a risk based path, then some of
7 those other considerations would come into play, compared
8 to the way it's done now.

9 MS DOYLE: It is not clear from your statement, but have you
10 read the report of Accent Environmental, the options paper
11 prepared by that body to assist this Inquiry?

12 MR WILSON: I don't think I have, no.

13 MS DOYLE: I just ask because it doesn't directly emerge from
14 your statement, but the Accent Environmental report
15 suggests that in 2014 within the department there was a
16 proposal to adopt a two-track bond model system. I'm just
17 wondering is that the system you were describing a moment
18 ago, the one that was internally adopted, but ultimately
19 I think I said put on ice, but I think given your
20 explanation, maybe mothballed when the government changed?

21 MR WILSON: I don't know if it's mothballed. I would have to
22 check. I know two-track was one of the things considered.

23 MS DOYLE: Accent Environmental seemed to have a fair bit of
24 information about it. They said it was a model that would
25 involve a 25 per cent bond discount for operations that
26 met the eligibility criteria throughout production and
27 then there are a whole number of variations thereafter.
28 Does that ring any bells in terms of the model that had
29 gained some traction, at least in 2014?

30 MR WILSON: It rings bells as one of the models I recall seeing
31 as having been considered last year.

1 MS DOYLE: So when the work comes back from NERA Economics, you
2 would expect that not to have ruled out or ruled in
3 anything. It may go back to looking at all options based
4 on perhaps even worldwide research in terms of what is out
5 there with respect to rehabilitation bond liability?

6 MR WILSON: It may do. Certainly we'd be keen in that type of
7 engagement, it would be unusual, that NERA would rule
8 something out. They may present options and have a long
9 list of reasons not to pursue them, but we are not really
10 seeking their view on ruling things in or out.

11 MS DOYLE: So no instructions have been given to NERA to focus
12 or concentrate their assessment on particular styles of
13 rehabilitation, bond policy models, or to rule out a
14 discount or to only assess worst case scenario? I assume
15 they've got a clean slate in that regard?

16 MR WILSON: I can't remember the exact terms of reference we
17 gave, but it is a fairly open invitation because it's a
18 starting scoping piece just to refresh us all.

19 MS DOYLE: In a couple of different contexts, firstly in the
20 context of community consultation, but secondly even in
21 the context of how costings are done, there have been
22 questions asked of the mine operators about a period after
23 the end of life of mine during which there might be
24 monitoring and then handover. A number of open-ended
25 questions have been asked about that. But does the
26 department or the government have a policy about the
27 period of time for which it will require mines to monitor
28 their pit lakes when that final landform is achieved?

29 MR WILSON: I know the Act talks about you reach a point at
30 which rehab is likely to be successful. I'm not sure if
31 it quite answers that question.

1 MS DOYLE: So the department doesn't presently have a period of
2 years involved or an event or a milestone that it will
3 regard as terminating the mine operators' responsibility
4 for monitoring post closure of the mine?

5 MR PENDRIGH: I think the answer is when the area is safe and
6 stable would be the point at which that responsibility
7 finishes.

8 MS DOYLE: And then what about ownership of the land? Does the
9 department or government have any policy presently about
10 at what point it will, for example, offer to buy the land
11 to facilitate public access or at what point it will ask
12 that the land be transferred to another entity or a public
13 entity to allow that to occur?

14 MR WILSON: No.

15 MS DOYLE: Are those matters presently under review or they are
16 questions that haven't been asked, let alone answered?

17 MR WILSON: I don't believe they are under review, not in a
18 general sense. I would expect, depending on the concepts
19 that the work plan is working to and the rehab concepts,
20 then they may become relevant questions that will probably
21 be a mine by mine question.

22 MS DOYLE: Because of course insofar as any plan has as an end
23 goal access to the public, that may well raise very real
24 questions about who will ultimately own the piece of land
25 on which the lake sits?

26 MR WILSON: That's correct. That could come up.

27 MS DOYLE: I have no further questions for the panel.

28 MS FORSYTH: I'm aware of the time. Is it appropriate to
29 proceed?

30 CHAIRMAN: I think it is. I will just check with Mr Rozen. We
31 still have in effect three panels, or perhaps not panels,

1 tomorrow.

2 MR ROZEN: Two panels and Mr Webb. We anticipate Mr Webb to be
3 reasonably short, certainly nothing like the length of the
4 panels today, but the two panels tomorrow could take up
5 considerable time. I know there are other considerations,
6 not the least of which are the staff that are doing the
7 typing. But my request, I guess, would be that we try and
8 finish this panel if we are able to.

9 CHAIRMAN: Okay.

10 MS FORSYTH: Thank you. Mr Wilson, you were asked some
11 questions about public participation processes under the
12 Mineral Resources Sustainable Development Act. Do you
13 recognise that there's a complex relationship between that
14 piece of legislation and the Planning and Environment Act
15 1987 enacted in the same year and also a relationship
16 between those pieces of legislation and the Environment
17 Effects Act of 1978?

18 MR WILSON: Yes.

19 MS FORSYTH: In fact, rights of public consultation are
20 available through the planning process except where
21 specific exemptions apply and also the Environment Effects
22 Act provides a process for public consultation where that
23 Act is invoked?

24 MR WILSON: Yes.

25 MS FORSYTH: That Act is usually invoked where there are
26 matters which are considered of significance in relation
27 to environmental, social and/or economic effects of, for
28 example, a major infrastructure project?

29 MR WILSON: Yes.

30 MS FORSYTH: In some cases where the Mineral Resources
31 Sustainable Development Act is triggered, then a planning

1 permit may be required and in other cases it's not?

2 MR WILSON: Yes.

3 MS FORSYTH: The general intention of the public process in the
4 Planning and Environment Act is to identify when it is
5 intended that the public should participate in a process
6 and to identify a process where exemptions are given?

7 MR WILSON: Yes.

8 MS FORSYTH: It would be very difficult for the Board to make
9 recommendations about statutory changes that may bring in
10 further public consultation under the Mineral Resources
11 Sustainable Development Act without being fully informed
12 of the complex relationship between those pieces of
13 legislation, would you agree?

14 MR WILSON: Certainly, yes, the Board would need to take that
15 into account.

16 MS FORSYTH: Mr Pendrigh, you said that prior to engaging AECOM
17 you could not specify the manner and form of the
18 rehabilitation liability assessment as required under
19 section 79A of the Mineral Resources Sustainable
20 Development Act. Can I ask why you didn't consult with
21 the mines on that threshold issue, if you like, as opposed
22 to proceeding with getting AECOM to develop that
23 methodology and do the individual rehabilitation liability
24 assessments all in one go?

25 MR PENDRIGH: No, I can't. I wasn't involved at that point.

26 MS FORSYTH: It would have been an orderly process, wouldn't
27 it, to start with having an understanding of what the
28 methodology should be, firming up on that and then going
29 to the next step of actually conducting the rehabilitation
30 liability assessments?

31 MR PENDRIGH: That was the process. The methodology

1 development didn't involve the mines. I agree with that
2 comment. But that was the process that was run.

3 MS FORSYTH: Okay. I want to ask you about that then. Was it
4 AECOM's view that a probabilistic model should be used
5 such as the Monte Carlo simulation or was that the
6 department's view of the model that should be used?

7 MR PENDRIGH: That was developed in consultation between the
8 earth resources regulator and URS.

9 MS FORSYTH: I'm right then in saying that in developing that
10 approach the mines were not consulted?

11 MR PENDRIGH: That's my understanding.

12 MS FORSYTH: I have some questions, Mr Wilson, on the scope of
13 the bond review project. You say in your witness
14 statement at paragraph 147 that the bond review project
15 commenced on 24 October 2014. We can find the draft
16 project plan in your witness statement at tab 37 and
17 that's DEDJTR.1020.001.0944; is that correct?

18 MR WILSON: Sorry, this doesn't have the numbers on. The other
19 one ended at 943. It stands to reason that it started at
20 944.

21 MS FORSYTH: Can I ask you to go to what is page 6 of that
22 document. For the screen it ends in 0949. That
23 particular plan sets out the key milestones and
24 deliverables as at the date of October 2014?

25 MR WILSON: Yes, I think that's right.

26 MS FORSYTH: And there are some notes or comments to the table.
27 The first comment is by SH1. "The timeframes are not
28 realistic for the political nature of the work and the
29 deliberation that will be required not only with the mines
30 but also with the minister's office." Whose comment was
31 that?

1 MR WILSON: SH. I'm not sure who that is. I don't know,
2 sorry.

3 MS FORSYTH: Can I ask you to skip down to the third last row.
4 There is a line item there that says, "Reassessment of
5 rehabilitation liability for Loy Yang Mine to account for
6 its pending work plan variation." Do you see that line
7 item?

8 MR WILSON: Yes.

9 MS FORSYTH: So it was recognised back in October 2014 that
10 there may need to be that reassessment done when the work
11 plan variation is approved?

12 MR WILSON: Yes, that's what that's suggesting.

13 MS FORSYTH: The final comment on that page, SH4, is a comment
14 in relation to the second last line item there, "Determine
15 bond levels with representatives for each mine and
16 consider approaches to manage future annual liability
17 reviews for coal mines." The comment says, "Deliberation
18 with the mines is expected to take longer than one month."

19 MR WILSON: Yes.

20 MS FORSYTH: I just want to take you to the reissued bond
21 review scope which we can find in the previous tab, tab
22 36.

23 MR WILSON: Yes.

24 MS FORSYTH: Can we turn to the equivalent page, which is page
25 6 of that document, and it is the Ringtail ending 0937?

26 MR WILSON: Yes, I have that.

27 MS FORSYTH: Do you see there that the line item which related
28 to reconsidering the Loy Yang Mine has been removed?

29 MR WILSON: Yes.

30 MS FORSYTH: Then the timeframe from 7 August onwards is
31 effectively slightly different to the previous project's

1 scope?

2 MR WILSON: Yes.

3 MS FORSYTH: This document indicates, doesn't it, that there
4 would be significant liaison and communication between the
5 mines and the department in relation to both the
6 assessment of the rehabilitation liability, but also in
7 relation to revising the bonds and timing of the
8 introduction of those bonds?

9 MR WILSON: Yes, I think that's fair.

10 MS FORSYTH: And that process was envisaged to take a period of
11 some four months, July through to November?

12 MR WILSON: Yes.

13 MS FORSYTH: We can see, for example, the line item that's at
14 30 July 2015, there's a reference to "engagement with the
15 coal mines"; two line items down there's reference to
16 "initiating discussions of rehabilitation liability
17 assessment with each coal mine"; and then the line item
18 further down, "determining bonds with representatives from
19 each mine". The next line down involved seeking comments.
20 I presume that relates to the mines; is that correct?

21 MR WILSON: I'd expect that, given the comment on the right.

22 MS FORSYTH: So I take it that the intention certainly of the
23 department up until that time has been to closely liaise
24 with the mines in relation to determining the
25 rehabilitation liability assessments, but that process
26 simply hasn't been able to be undertaken due to the delays
27 in receiving their AECOM reports. Is that a fair comment?

28 MR WILSON: I wouldn't say it hasn't been undertaken, but it
29 has certainly unfolded quite differently than as planned
30 here because of the delay.

31 MS FORSYTH: Yes, it hasn't been undertaken to the extent that

1 was envisaged by this document.

2 MR WILSON: Yes, and it is also not complete.

3 MS FORSYTH: I also want to ask you about the scope of this
4 project plan and can I take you back to page 3 of the
5 document?

6 MR WILSON: Yes.

7 MS FORSYTH: At the bottom of page 3, that's the part of the
8 document that sets out what the aim of the project is?

9 MR WILSON: The introduction section, you mean?

10 MS FORSYTH: Bottom of page 3, the last paragraph sets out the
11 aim of the project. It says, "This project aims to
12 independently assess the rehabilitation liabilities of the
13 three Latrobe Valley brown coal mines to determine an
14 accurate liability for each site."

15 MR WILSON: Yes.

16 MS FORSYTH: It then says, "It is expected that the learning,
17 strategies and outcomes from this project will inform the
18 development of a methodology to assess the rehabilitation
19 liability for other high risk earth resources sites in
20 Victoria. The project may also consider subsequent
21 options for increasing rehabilitation bonds over time for
22 licences that are assessed as being significantly
23 insufficient. However, this will be explored in further
24 detail should the project scope extend to this work at a
25 later stage."

26 The document then sets out an objective that the
27 current rehabilitation liabilities be understood and
28 estimated, and then an approach is set out there which
29 I take it is effectively the terms of reference, if you
30 like, that were given to AECOM; is that correct?

31 MR WILSON: I think that's the intent, yes.

1 MS FORSYTH: That that approach require a desktop review of the
2 approved work plans, to summarise, and then, secondly, to
3 calculate the current rehabilitation liabilities, and then
4 the third paragraph relates to calculating the costings to
5 achieve mine closure as required by the rehabilitation
6 plan at the end of the approved mine life?

7 MR WILSON: Yes.

8 MS FORSYTH: Do I take it that the AECOM reports which look at
9 two scenarios, one a closed tomorrow scenario and one an
10 end of mine life or end of mining licence life, really
11 pick up and reflect the terms of reference that were
12 provided to AECOM by the department?

13 MR WILSON: Yes, I think that's right.

14 MS FORSYTH: AECOM wasn't asked, for example, to look at a
15 model which looked at the rehabilitation liability of the
16 mines over the life of those mines? It was asked to look
17 at those two specific dates?

18 MR WILSON: That's right.

19 MS FORSYTH: The scope of the bond review project as set out in
20 the project scope was not to examine bond mechanisms, for
21 example, such as bank guarantees, and nor was it to
22 examine bond models such as the two-track discount model
23 that we have heard Ms Doyle refer to. It was solely to
24 examine rehabilitation liability assessment?

25 MR WILSON: Yes.

26 MS FORSYTH: And it is for that reason that the department has
27 not consulted with the mines about things like bond models
28 or bond mechanisms to date.

29 MR WILSON: Certainly not through the AECOM work.

30 MS FORSYTH: But that's where you propose that the NERA
31 Consulting report will come into play?

1 MR WILSON: Yes.

2 MS FORSYTH: Is it possible to get a copy of the project scope
3 or the terms of reference that were given to NERA
4 Consulting?

5 MR WILSON: We must have it.

6 MS FORSYTH: Could I ask for that to be produced?

7 MR WILSON: Yes.

8 MS FORSYTH: Can I ask whether or not the mines will be
9 consulted about the NERA Consulting report before it is
10 produced in final?

11 MR WILSON: I hadn't intended to consult on the NERA work,
12 given it's a scoping work. But I would expect the next
13 step from that, when having done that first piece of work,
14 is then a "where to" for that policy work; I certainly
15 expect to consult on that.

16 MS FORSYTH: Is there a project brief for that NERA Consulting
17 work just like we have seen that there is for the
18 rehabilitation liability assessment work?

19 MR WILSON: Sorry, there's a brief or a terms of reference for
20 NERA's piece of work. The next step, which would be like
21 one of these, would be a project plan for our project
22 about bond policy. I don't think that exists yet.

23 MS FORSYTH: I just want to ask you briefly about the
24 chronology in relation to the bond review project which
25 I'm referring to as the rehabilitation liability
26 assessment project. Mr Rieniets says in his third witness
27 statement that AGL Loy Yang received notification of the
28 bond review project by letter dated 3 June, and that's
29 consistent with your evidence that that was the first time
30 that the mines were notified?

31 MR WILSON: Yes, I think that's right.

1 MS FORSYTH: Would you accept the proposition that that letter
2 contains quite a cursory description of what the bond
3 review project is?

4 MR WILSON: I would accept it would be a summary description.

5 MS FORSYTH: The project plan hadn't been provided to the mines
6 up until it was produced for the purposes of this Inquiry;
7 is that correct?

8 MR WILSON: I believe that's correct.

9 MS FORSYTH: The next time AGL was consulted was the letter
10 dated 18 June, once again referred to in Mr Rieniets'
11 statement, and this time that letter really was from
12 Ms Bignell. Do you accept that's the second time that the
13 mines were consulted?

14 MR WILSON: Yes.

15 MS FORSYTH: The next step in the chain in terms of
16 consultation with AGL after the 11 June letter was the
17 meeting on 13 October and the provision of the draft
18 report on 14 October; is that your understanding of the
19 chronology?

20 MR WILSON: Yes.

21 MS FORSYTH: The report was then provided some one month later
22 on 13 November?

23 MR WILSON: Yes, that's right.

24 MS FORSYTH: And that report dealt with AGL 's 1997 work plan
25 variation?

26 MR WILSON: Yes.

27 MS FORSYTH: At some stage after the work plan variation was
28 approved AECOM was asked to produce a new report for AGL
29 Loy Yang; is that correct?

30 MR WILSON: That's right.

31 MS FORSYTH: When was AECOM asked to undertake that work?

1 MR PENDRIGH: AECOM produced in the preliminary report we
2 discussed with Loy Yang on 13 October advice based on the
3 1997 work plan as well as the draft 2015 work plan at that
4 time. So the 2015 work plan draft was in the numbers that
5 were provided in the preliminary work on 13 October, but
6 were not included in the 13 November final report because
7 the work plan for 2015 hadn't yet been approved.

8 MS FORSYTH: So AECOM had been asked to look at the issue prior
9 to October but then they weren't asked to take that work
10 forward in the November final report?

11 MR PENDRIGH: That was because the work plan had not been
12 approved at that time. When it was approved we then asked
13 AECOM to finalise that work.

14 MS FORSYTH: And what date was that?

15 MR PENDRIGH: They were given the work plan variation on
16 3 December, I believe.

17 MS FORSYTH: And the final report was produced on 11 December?

18 MR PENDRIGH: That's right. They could produce it quickly
19 because they had done the work earlier.

20 MS FORSYTH: I will go to that issue with AECOM. But do you
21 accept that AGL Loy Yang has been requesting since at
22 least the meeting on 13 October that the AECOM report be
23 revised to reflect the 2015 work plan variation rather
24 than the 1997 work plan because it was a more accurate
25 picture of rehabilitation liability? That was
26 specifically raised, wasn't it, at that meeting on
27 13 October?

28 MR PENDRIGH: Yes, AGL would have preferred to have dealt with
29 the 2015 work plan variation only for some time. But
30 legally the 1997 work plan was the approved plan.

31 MS FORSYTH: The report that was produced on Friday obviously

1 hasn't had the benefit of feedback from AGL Loy Yang.

2 MR PENDRIGH: That's right.

3 MS FORSYTH: Would you accept that the extent of consultation
4 with the mines in relation to the methodology used in the
5 AECOM report - I think you have already accepted,
6 Mr Wilson, that there was no consultation in relation to
7 that methodology?

8 MR WILSON: I think that's right, yes.

9 MS FORSYTH: And in terms of the confidence levels that are set
10 out in the AECOM report there's also been no consultation
11 with the mines in relation to that issue?

12 MR PENDRIGH: That's right.

13 MS FORSYTH: So I take it that you would have to accept,
14 Mr Wilson, the statement in Mr Rieniets' witness statement
15 that AGL has not been meaningfully consulted by DEDJTR in
16 relation to determining an appropriate bond level for the
17 AGL Loy Yang Mine?

18 MR WILSON: I probably would take issue with "meaningfully",
19 but certainly it has not been consulted sufficiently to
20 close the project.

21 MS FORSYTH: If I can just take you back to tab 36 to the
22 witness statement which is the bond review scope, or
23 project plan, and going back to that page that sets out
24 the key milestones, which is page 6 of that document and
25 it is DEDJTR.1020.001.0937.

26 MR WILSON: Yes.

27 MS FORSYTH: If we can just have a look at the milestones to
28 ascertain where we are in the process when it comes to AGL
29 Loy Yang. Would you accept the proposition that would
30 probably fall into the line item which has a completion
31 date by 15 July, "Undertake assessment of rehabilitation

1 liability for substitute AGL Loy Yang Mine"?

2 MR WILSON: I think, yes, that step is still live. I wouldn't
3 say that that implies all the other steps haven't
4 commenced. Some have.

5 MS FORSYTH: Term of reference 10, as you have heard, requires
6 the Board to report on a number of matters having regard
7 to the outcome of the rehabilitation bond review project.
8 You would accept the proposition that due to the
9 difficulties in timing the outcome of that project is
10 clearly not yet known?

11 MR WILSON: That's correct.

12 MS FORSYTH: You were asked some questions about the 2014 bond
13 reform package. You mentioned that it has not been
14 approved by government. Can I take it that the bond
15 reform package was not approved following the change in
16 government at the end of last year?

17 MR WILSON: No, I think that's a reference to pre the election.

18 MS FORSYTH: I have got a letter from the VGSO here dated
19 7 December to Mr Jeff Lynn, and it is a response to a
20 letter that Ashurst wrote to the VGSO and it says, "In
21 2014 DEDJTR prepared a rehabilitation bond reform package.
22 The package did not proceed following a change in
23 government. On 2 December 2015 the Minister for Energy
24 and Resources announced implementation of a cash
25 rehabilitation bond scheme as an option for eligible
26 mining and extractive operations." So do I take it that
27 you are saying that that letter is wrong; it was a
28 decision that was made prior to this government coming in?

29 MR WILSON: Sorry, I don't have the letter with me - - -

30 MS FORSYTH: I can have that handed up to you.

31 MR ROZEN: I just really wonder how much assistance the Board

1 gets from knowing which political party terminated this
2 particular project and at what time.

3 CHAIRMAN: I understand that, but I think it is easier to allow
4 the questioning to proceed provided it doesn't go into too
5 much detail for too much longer.

6 MR ROZEN: If the Board pleases.

7 MS FORSYTH: I will wrap this up. You have given evidence that
8 you are not aware of the reasons that that bond reform
9 package was rejected; is that the position?

10 MR WILSON: That's correct.

11 MS FORSYTH: Mr Wilson, at paragraph 143 of your witness
12 statement, that's VGSO.1023.001.0025, you accept that the
13 State should consider both the level of risk to the State
14 and cost implications for the licensee in relation to
15 assets pledged in order to provide an unconditional bank
16 guarantee?

17 MR WILSON: Yes, that's correct.

18 MS FORSYTH: You have not asked the mines to date to provide
19 information on either the level of risk to the State or
20 cost implications of the licensees in relation to assets
21 pledged?

22 MR WILSON: No, that's correct.

23 MS FORSYTH: But you would accept that the mines should be
24 consulted on those issues if they are of relevance?

25 MR WILSON: Yes.

26 MS FORSYTH: I just wanted to ask you one more question. Do
27 you know whether in relation to the 2014 DEDJTR bond
28 reform package Dr Cramer was the consultant who advised
29 the government in relation to that package?

30 MR WILSON: I don't know.

31 MS FORSYTH: I have no further questions. Thank you.

1 MS NICHOLS: A question for Mr McGowan. I would like to draw
2 your attention to a document which is annexure 31 to
3 Mr Wilson's statement. The reference is
4 DEDJTR.1020.001.0923. Do you have that one there?

5 MR MCGOWAN: Yes.

6 MS NICHOLS: That is the first of three letters written to the
7 licensees of the three mines. That one happens to be to
8 AGL Limited but the next two pages are letters to similar
9 effect to the other mine operators. The third paragraph
10 states as follows, "If, as the minister's delegate, I'm of
11 the opinion that the amount of the current bond is
12 insufficient I will in accordance with the Mineral
13 Resources Sustainable Development Act require you to enter
14 into a further bond." Is it a correct reading of that
15 letter that it is indicating your intention to apply the
16 current policy to the three mines in recalculating the
17 rehabilitation bond and requiring them to enter a further
18 bond?

19 MR MCGOWAN: I think you can read it that way, yes.

20 MS NICHOLS: That is the correct way to read the letter?

21 MR MCGOWAN: Yes.

22 MS NICHOLS: Can I ask you briefly about the document which
23 appears at tab 36 to Mr Wilson's statement which is the
24 project plan to which much reference has been made this
25 afternoon. I just want to go to one item in that
26 document, and it is at the page ending 0941. Do you have
27 that one there?

28 MR MCGOWAN: Yes.

29 MS NICHOLS: In relation to the first item, which is the risk
30 that the mines will refuse to enter into increased
31 rehabilitation bonds causing the State to bear the

1 shortfall of liability, the final column in that row
2 discusses risk mitigation strategies consisting of
3 maintaining regular communications, briefing the minister
4 and so on. Can I ask why it is that the real risk
5 mitigation factor for that concern is not the statutory
6 obligation under section 80 that requires a licensee to
7 enter into a further bond as determined by the minister
8 which is itself a penalty provision and can be enforced?

9 MR McGOWAN: That's a good point.

10 MS NICHOLS: Thank you. Why is it that that hasn't been
11 identified or should it be identified as the real risk
12 mitigation strategy?

13 MR McGOWAN: It is always in the back of my mind, but I think
14 it should be, yes.

15 MS NICHOLS: Does that mean then that it is obviously
16 appropriate to talk to the mines and to consult with them
17 and to keep them informed, but ultimately there is no
18 doubt that there is a power to require them to enter into
19 an appropriate bond?

20 MR McGOWAN: That's right.

21 MS NICHOLS: And that's something that will be done, I take it,
22 if there's no willingness just to consent once the
23 appropriate level of the bond has been sorted out?

24 MR McGOWAN: Can you repeat the question, please?

25 MS NICHOLS: There is no doubt, is there, that the appropriate
26 risk mitigation strategy to actually adopt is to simply
27 require the mines to provide the bond once it's been
28 assessed to your satisfaction?

29 MR McGOWAN: That's a matter for the government.

30 MS NICHOLS: Yes, I see. Bearing in mind your answer that that
31 is an appropriate risk mitigation strategy you gave me a

1 moment ago, why is it given the statutory power that the
2 likelihood of that risk materialising is assessed at
3 50:50?

4 MR MCGOWAN: I think it's fair to say that the internal working
5 documents of my area and this risk assessment could do
6 with a little bit more work, and I will leave it at that.

7 MS NICHOLS: But I will just pursue this a little bit further.
8 The identification of the risk in the first cell in that
9 table is that if the mines refuse to enter into the bond
10 the result will be that the State will bear the shortfall.
11 That's not quite correct, is it, because if there is no
12 agreement to enter into the properly assessed bond the
13 minister can require it to be paid?

14 MR MCGOWAN: That's correct.

15 MS NICHOLS: Thank you. Can I now address some questions to
16 Mr Wilson. There's been quite a bit of discussion about
17 the idea of incorporating a risk measure into any new
18 policy that might be developed. There was reference in
19 the KPMG principles to which you were taken about the need
20 to recognise failure rates of the industry, and those
21 would include failures that ultimately result in the State
22 bearing the liability. On that question, in relation to
23 the issue of the financial strength of the mine and
24 whether it is able to pay the costs where there are
25 questions of related entities and the strength of the
26 related entities being relied upon in order to provide
27 financial security it would be imperative, wouldn't it,
28 for any revised policy to ensure very clear mechanisms for
29 transparency around the parent company structures and the
30 assets to which they attach?

31 MR WILSON: Yes, that's correct.

1 MS NICHOLS: Is it fair to say that if a policy was to move in
2 the direction of accepting some form of security from
3 related entities that the department would have to have in
4 its personnel people who were adept at unpacking corporate
5 structures and probably with insolvency experience too?
6 MR WILSON: Either have it within personnel or have access to
7 such people, yes.
8 MS NICHOLS: Would you agree that where a parent company's
9 financial stability is relied on the risk increases where
10 those entities aren't present in Australia?
11 MR WILSON: It doesn't necessarily increase, but it does pose a
12 question that you would certainly want to answer.
13 MS NICHOLS: In answering that question you might find that the
14 transaction costs of ascertaining that the security
15 proffered or identified was actually valid were greater
16 than if you had the parent company present in Australia?
17 MR WILSON: That could be the case, yes.
18 MS NICHOLS: In a risk driven scenario would you accept that it
19 is very likely that the department will incur must greater
20 transaction costs because it is necessary to monitor that
21 risk on a regular and ongoing basis?
22 MR WILSON: I would have to do a quantification to see if that
23 is true. I could conceive that it could be true.
24 MS NICHOLS: It could at least as a matter of theory be -
25 transaction costs would have to be incorporated into any
26 economic modelling that move in a risk management
27 direction?
28 MR WILSON: It would be very much a valid consideration, yes.
29 MS NICHOLS: With a simple bond model under the existing policy
30 you don't have those kinds of transaction costs, do you?
31 MR WILSON: Not really. There are still administrative costs

1 to it, but not in the same way.

2 MS NICHOLS: But the department doesn't have to assume the
3 obligation of continually making sure that the risks
4 identified by the mine operators are objectively assessed?

5 MR WILSON: I think that's correct, yes.

6 MS NICHOLS: Would you accept that if any amendments to the
7 policy do move in that direction that it would be
8 important to independently assess the risks rather than
9 just to leave that in the hands of the mine operators?

10 MR WILSON: I would expect the government would want to do
11 that, yes.

12 MS NICHOLS: Can I just ask you, continuing with this theme of
13 risk management, would you agree that as a regulator when
14 you look forward to what risks might materialise that it
15 is important to take account of external events beyond the
16 specific financial capacity of the mine operator?

17 MR WILSON: Yes.

18 MS NICHOLS: What I'm specifically alluding to is government
19 policies that might change and that might bring to, say, a
20 premature end the life of brown coal plants in Victoria,
21 for example?

22 MR WILSON: Yes.

23 MS NICHOLS: Some of those policy changes might concern
24 emissions targets and renewable energy targets?

25 MR WILSON: Yes.

26 MS NICHOLS: So you would agree then that something like the
27 renewable energy target in Victoria would be an important
28 consideration to bear in mind when assessing the lifespan
29 of the coal plants in Victoria?

30 MR WILSON: You mean the Commonwealth renewable energy target?

31 MS NICHOLS: Yes.

1 MR WILSON: Yes.

2 MS NICHOLS: Victoria has also committed to introducing a
3 renewable energy target too, has it not?

4 MR WILSON: Yes, there has been a statement to that effect.

5 MS NICHOLS: And it has been said that the intention is to have
6 a target of at least 20 per cent of electricity generated
7 in Victoria by 2020 generated from renewable energy
8 sources?

9 MR WILSON: Yes, that's correct.

10 MS NICHOLS: So a policy to that effect, the likely effect of
11 that sort of thing would have to be factored into any risk
12 modelling in a risk based policy, wouldn't it?

13 MR WILSON: Yes, you would take account of it.

14 MS NICHOLS: One of the considerations would also be the change
15 in demand for electricity in Victoria?

16 MR WILSON: Yes, that could be; yes.

17 MS NICHOLS: And commitment at a Commonwealth level to cutting
18 carbon emissions might also be a relevant consideration?

19 MR WILSON: Yes.

20 MS NICHOLS: If I can just mention one example to you. Are you
21 aware that in 2011, although it's now an historical fact,
22 the Commonwealth government entered into a program called
23 contracts for closure?

24 MR WILSON: Yes, I'm familiar with that.

25 MS NICHOLS: The idea of that project was to support the
26 closure of high emissions generating electricity providers
27 in Australia; are you aware of that?

28 MR WILSON: Yes, that's my recollection.

29 MS NICHOLS: And two of the mine operators in Victoria, the
30 Hazelwood plant and the Yallourn plant, engaged in that
31 program until it was no longer pursued by the Commonwealth

1 government?

2 MR WILSON: I had heard that Hazelwood had. I wasn't aware of
3 the list of who had or had not.

4 MS NICHOLS: But the point about that is that one can't assume
5 when looking at risk and the likelihood that these
6 entities will be around at the end of mine closure. It's
7 likely or may well be affected by these sorts of external
8 policy settings that are not determined by your own
9 department?

10 MR WILSON: Yes, that's correct.

11 MS NICHOLS: Thank you. Can I just return to the question of
12 the calculation of the bond liability. There's been quite
13 some discussion about the role for a discount and
14 incentivisation that might be applied in reference to
15 progressive rehabilitation. Would you agree that in
16 allowing for any discount or reduction of risk because of
17 the prospect that progressive rehabilitation will be done
18 needs to proceed cautiously unless there are very specific
19 and measurable goals and criteria in work plans?

20 MR WILSON: So the connection there - it probably makes sense.
21 I haven't considered it in detail, the nature of that
22 connection. But it would make sense that there would be a
23 connection.

24 MS NICHOLS: If, for example, it is put that the risk of
25 unrecovered costs will be minimised because progressive
26 rehabilitation will be done in accordance with a work
27 plan, that's not a meaningful risk reduction unless the
28 work plan itself has very specific and measurable and
29 transparent criteria, is it?

30 MR WILSON: Probably not. Certainly the work plan would need
31 to be purposed and have the appropriate content to that

1 end.

2 MS NICHOLS: If the policy develops in this way, it would be
3 sensible to look at the development and scrutiny of work
4 plans in connection with the bond?

5 MR WILSON: That may be true, yes.

6 MS NICHOLS: Can I just ask you very briefly about the
7 legislation under which you act. You may or may not have
8 a view about this, but does the department consider that
9 there is power to compel licensees to adhere to conditions
10 on mine licences after the expiry of a licence?

11 MR PENDRIGH: Yes.

12 MS NICHOLS: You do?

13 MR PENDRIGH: Yes.

14 MS NICHOLS: Thank you. Just a question in relation to the
15 notice regime that was discussed in evidence earlier. You
16 have given some evidence about the new action plan. It is
17 mentioned that there is some new legislation that came
18 into effect in September this year. Is that the Resources
19 Legislation Amendment Act 2015?

20 MR WILSON: Is that the reference to '14?

21 MS NICHOLS: I may have that wrong. Can I ask you this. Is
22 the substance of the amendment relating to notice to this
23 effect, that following consultation with the licensee the
24 minister may by notice in writing require as a condition
25 to which the licence is subject that the licensee submit
26 to the minister a report on work undertaken under the
27 licence and publish that report?

28 MR WILSON: I think that's right. That's correct.

29 MS NICHOLS: The notice must specify work undertaken on which
30 the licensee must report, and there are provisions for the
31 manner of reporting and so on?

1 MR WILSON: Yes.

2 MS NICHOLS: So that's the amendment to which you are
3 referring. Can I just get some clarification. That
4 notice provision wouldn't apply to proposed variations to
5 work plans, would it, because it relates to work being
6 done under the licence?

7 MR WILSON: I think that's right. If the variations come into
8 force, then they would be picked up, yes.

9 MS NICHOLS: Yes, sure. But it wouldn't apply to proposals
10 before they come into effect?

11 MR WILSON: No, I don't think through that power; that's
12 correct.

13 MS NICHOLS: You said to Mr Rozen, and I don't want to misquote
14 you, that you think it may be a good idea to put at least
15 some elements of the communication and transparency plan
16 into legislation in some form.

17 MR WILSON: Yes. I think there is a question. It is a good
18 regulatory practice in general. Then the question is, "Is
19 it sufficient that you are adopting it as a practice or
20 does it need reinforcement in legislation?" I don't have
21 a firm view that it has to be, but it is a question that
22 we are looking at.

23 MS NICHOLS: Neither the communication plan, as we read it, nor
24 the amendments which have already passed seem to deal with
25 this situation. Proposed variations to work plans that
26 might have or are likely to have an impact on the
27 community or an environmental impact off site, there
28 doesn't seem to be a provision, unless they are picked up
29 by other legislation to which Ms Forsyth referred earlier,
30 such as the EES legislation, there is no specific
31 provision for the community to make submissions or indeed

1 objections to any proposed significant variations to a
2 work plan. My question to you is whether you think that
3 is something that ought to be considered.

4 MR WILSON: I guess in effect, in answer to the previous
5 question, that's what we will do, although I should
6 qualify that. We are looking at best regulatory practice,
7 and then the legislative question is probably secondary
8 but still important.

9 MS NICHOLS: How it is done is probably less important. But is
10 the intention in substance to achieve a result whereby
11 when significant changes to work plans are proposed in the
12 sense I have discussed to allow the community to have a
13 say?

14 MR WILSON: To at least give it an airing. The question will
15 be, "Is it already picked up sufficiently by those other
16 mechanisms or is more needed?"

17 MS NICHOLS: Thank you. I have no further questions,
18 Mr Chairman.

19 MR ATTIWILL: Mr Pendrigh, I just wanted to ask you a few
20 questions. If I could just take you to
21 DEDJTR.1020.001.0932, which is the project plan. Do you
22 have that? Some questions have been asked about the risk
23 management part of that project plan which is at Part 7.
24 If you could go to that, that's at 0941.

25 MR PENDRIGH: Yes.

26 MR ATTIWILL: You will see the first entry says, "Financial.
27 Latrobe Valley coal mines refuse to enter into increased
28 rehabilitation bonds causing the State to continue to bear
29 the shortfall of the liability covered by the
30 rehabilitation bonds held." Could I just then take you
31 back to part 4, which is at page 0937, "Key milestones and

1 deliverables." Do you have that?

2 MR PENDRIGH: Yes.

3 MR ATTIWILL: If you go down under "Milestones", if you go to
4 the penultimate milestone you will see, "Determine bond
5 levels with representatives for each mine and consider
6 approaches to manage future annual liability reviews for
7 coal mines."

8 MR PENDRIGH: Yes.

9 MR ATTIWILL: It is envisaged by this project plan that there
10 would at least be an attempt at an agreement with the
11 mines in relation to the bonds; that's right, isn't it?

12 MR PENDRIGH: That's right. The Act itself specifies the
13 consultation about the bonds, section 84.

14 MR ATTIWILL: That's right. But I'm right, aren't I, that this
15 project itself is at least in the first instance seeking
16 an agreement with the mines in relation to the level of
17 bonds?

18 MR PENDRIGH: That's right.

19 MR ATTIWILL: I'm right, aren't I, in relation to risk
20 management, in Part 7, the part I read out, there's a risk
21 that of course the mines will say, no, they won't
22 cooperate?

23 MR PENDRIGH: That's right.

24 MR ATTIWILL: If I could just take you back to page 0941, the
25 risk management, you will see the last three matters,
26 "Delivery of objectives, critical issues requiring urgent
27 response, divert resources from the project impacting on
28 the project deliverables," that's on this project, isn't
29 it?

30 MR PENDRIGH: That's right.

31 MR ATTIWILL: And the next one, "Delivery of objectives, late

1 decisions approvals result in missed milestones," that's
2 this project again?

3 MR PENDRIGH: That is right.

4 MR ATTIWILL: And same with the last one about insufficient
5 staff and funding?

6 MR PENDRIGH: Yes.

7 MR ATTIWILL: So I'm correct, aren't I, that this risk
8 management which is set out at Part 7 of the project plan
9 concerns risks associated with this project and not
10 matters generally.

11 MR PENDRIGH: That's right?

12 MR ATTIWILL: Mr McGowan, would you agree with that?

13 MR MCGOWAN: Yes, I would.

14 MR ATTIWILL: To the extent you have knowledge of these things,
15 Mr Wilson, would you agree with that?

16 MR WILSON: Yes.

17 MR ATTIWILL: No further questions.

18 MR ROZEN: I will be very brief in re-examination. Firstly,
19 Mr Wilson, in your statement - I don't think I need to
20 take you to it - there is a discussion of how the
21 department is going to settle upon a confidence level. So
22 there's some advice in AECOM about confidence levels, P50,
23 P80, P95. There is material before the Board which
24 suggests, and we will explore it further tomorrow with
25 Mr Webb, that the EPA prefer a 95 confidence level, that's
26 a very high level of assurance. Without asking you
27 whether that's your understanding or not of their
28 position, is that something that you have discussed with
29 them, that is an appropriate confidence level for
30 financial assurance assessments with the EPA?

31 MR WILSON: I haven't personally.

1 MR ROZEN: There is an MOU, is there not, between DEDJTR and
2 the EPA which deals with this overlap question in relation
3 to financial assurances?

4 MR WILSON: Yes.

5 MR ROZEN: It doesn't address the question of confidence
6 levels, does it?

7 MR PENDRIGH: No, it doesn't.

8 MR ROZEN: So the position, as stated, part of the further
9 consideration by the department of this issue is informed
10 by the advice from AECOM, potentially the outcome of this
11 Inquiry and so on?

12 MR WILSON: Yes.

13 MR ROZEN: The other two matters I have both relate to
14 questions that were asked about the Act. One is for you,
15 Mr Pendrigh. You were asked some questions I think by
16 Professor Catford about the length of time in the future
17 beyond closure that the department would require
18 monitoring, for example. I think it was you who referred
19 to the provision in the Act - and I think it is section 82
20 - that talks about a bond being returned when the minister
21 is satisfied (b) "that the rehabilitation is likely to be
22 successful". Is that the provision that was being
23 referred to?

24 MR PENDRIGH: I was talking about safe and stable, along those
25 lines.

26 MR ROZEN: Does the Act refer to "safe and stable" or "likely
27 to be successful"? I'm looking at 82(1)(b). The two
28 triggers for return of the bond seem to be satisfaction on
29 the part of the minister that the land has been
30 rehabilitated as required by the plan and that the
31 rehabilitation is likely to be successful.

1 MR PENDRIGH: Yes, so the objectives of a rehabilitation
2 outcome are a safe and stable landform.

3 MR ROZEN: I see. So it envisages some assessment of - - -

4 MR PENDRIGH: That will be the minister's satisfaction if that
5 has been achieved.

6 MR ROZEN: Yes. But it is also a future looking satisfaction,
7 is it not, about the likelihood of it working?

8 MR PENDRIGH: That's right.

9 MR ROZEN: And that's obviously something that can only be
10 assessed on a case by case basis?

11 MR PENDRIGH: It was part of the discussion we were having with
12 AECOM about what does that mean in relation to the three
13 coal mine work plan rehabilitation plans. So Hazelwood's
14 reference to 500 years to reach water equilibrium and
15 listening to their evidence about thinking about six to
16 10 years would be that time. So there's an opportunity to
17 have a discussion about that, because that 500 years has
18 obviously been taken by us quite seriously with
19 instructions to AECOM. But there's quite significant cost
20 implications for managing a site for 500 years while the
21 water creeps up. So I think GDF Suez may like to examine
22 that with their work plan variation they submit shortly in
23 terms of, if we get clearer on that, we will have a clear
24 line of sight to how we will cost rehabilitation
25 liabilities.

26 MR ROZEN: I'm sure they are listening very attentively to what
27 you are saying, Mr Pendrigh. The other question I wanted
28 to ask about the Act concern some questions my learned
29 friend Ms Nichols was asking about - and this was for you,
30 Mr McGowan - the control measure for maximising the
31 chances of the mines entering into an increased bond; do

1 you recall that, Mr McGowan?

2 MR McGOWAN: Yes, sir.

3 MR ROZEN: In particular section 80 was referred to, that is

4 there is a penalty that attaches to a failure by a

5 licensee to enter into a further bond. That's the penalty

6 under subsection (4A).

7 MR McGOWAN: Yes.

8 MR ROZEN: It does seem to be set at a particularly low level

9 in the context that we are examining, that is a maximum

10 penalty of 200 penalty units, which is about \$30,000.

11 Would you agree that seems to be a low penalty to cover

12 all circumstances?

13 MR McGOWAN: To cover all circumstances it would be, yes.

14 MR ROZEN: Having said that, there is another sting in the tail

15 in section 80, isn't there, and that is in the event that

16 a licensee refuses to enter into an increased bond the

17 minister can up the ante under subsection (5) by

18 prohibiting them from doing any work under their licence?

19 MR McGOWAN: That's correct.

20 MR ROZEN: That would seem to be a most significant sanction

21 that's available to the minister; would you agree with

22 that?

23 MR McGOWAN: Yes, I think so.

24 MR ROZEN: They are the matters that I have in re-examination.

25 CHAIRMAN: Yes.

26 MR ROZEN: Could the witnesses be excused?

27 CHAIRMAN: Yes.

28 MR ROZEN: There's one housekeeping matter that I would like to

29 deal with if I could which I think will be of assistance

30 to the parties.

31 CHAIRMAN: Thank you.

1 MR ROZEN: On behalf of the Board I would like to thank the
2 DEDJTR panel, especially given how long we have gone
3 today.

4 <(THE WITNESSES WITHDREW)

5 MR ROZEN: The matter concerns one of the AECOM reports, the
6 one that was done in relation to Loy Yang based on their
7 1997 work plan. So it is behind tab 29 presently. We
8 have been provided with a replacement for figure 3 and
9 table 2 on page 12 of that report. The Ringtail reference
10 is DEDJTR.1030.001.0046 at 0062. I think it's been
11 distributed to parties. I understand it has. When I call
12 the AECOM witnesses tomorrow I will ask them if they wish
13 to replace the existing table 2 and figure 3 with the new
14 figure and table on the page that's been distributed.

15 The other housekeeping matter which I should
16 refer to briefly concerns the call made by my learned
17 friend Ms Forsyth for documents relating to the NERA
18 review which Mr Wilson responded that he was able to
19 provide. We have deliberately not sought material in
20 relation to the NERA review; that is we at the Board
21 because, given its proposed timing relative to the work of
22 the Board, we took the view that it would potentially
23 cause more problems and particularly problems of the type
24 we faced in the TOR 6 hearings, that is questions of
25 fairness to parties.

26 I really do wonder what point is served by the
27 Board obtaining that material, by that being provided to
28 the Board now, especially when the witnesses who might be
29 asked about it have been excused. Perhaps if I can
30 suggest this. If Mr Wilson is kind enough to provide it
31 to us, I will have a look at it and in consultation with

1 Ms Forsyth hopefully reach an agreed position about what
2 ought to be done with it, whether it should be tendered or
3 not.

4 CHAIRMAN: Yes, that's an appropriate course.

5 MR ROZEN: In terms of a start time tomorrow, this will make me
6 even less popular I suspect, but could I suggest a
7 9 o'clock start. We didn't get to Mr Webb and in those
8 circumstances I think it is probably in everyone's
9 interest to try to get an early start tomorrow.

10 CHAIRMAN: I think the only ones who need consulting are the
11 transcript providers, who have had a very hard day. But
12 if they are content by a nod to start at 9 then we will do
13 so. There we are. We will start at 9.

14 MR ROZEN: We are, as always, very grateful to the
15 transcribers.

16 CHAIRMAN: Indeed. We will resume at 9.

17 ADJOURNED UNTIL TUESDAY, 15 DECEMBER 2015 AT 9.00 AM

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