

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

STATEMENT OF ROSS GREGOR McGOWAN

Date of document	4 November 2015	Telephone: +61 3 8684 0444
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Melbourne VIC 3000		Attention: Andrew Suddick

I, ROSS GREGOR McGOWAN of Level 9, 121 Exhibition Street, Melbourne, Victoria, Executive Director of Earth Resources Regulation Branch (**ERR Branch**) in the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) can say as follows:

1. My full name is Ross Gregor McGowan.
2. I am the Executive Director of the ERR Branch in the Regulation and Compliance Division, at DEDJTR.
3. I have been in this role since 2 February 2015. My predecessor was Kylie White. My primary responsibility involves managing the ERR Branch and:
 - a. regulating the minerals, extractive, geothermal and petroleum industries in accordance with the list of Acts set out at **Annexure A** to this statement and the delegations given to me;
 - b. implementing policies that relate to the regulatory framework which I apply; and
 - c. undertaking community consultation and engagement where relevant to my role.
4. My background is in fisheries management and, before that, in policy development for and the administration of the justice system. I set out a summary of my qualifications and employment history at **Annexure B** to this statement.
5. This statement has been prepared pursuant to the request made by the Hazelwood Coal Mine Fire Board of Inquiry by letter of 14 October 2015 (**Board's letter**). The questions

posed by the Board's letter are set out in the remainder of this statement with my responses.

6. The information contained in this statement is substantially derived from enquiries carried out by officers of DEDJTR at my request in response to the Board's letter and is accurate to the best of my knowledge, information and belief.

7. Board's letter question 1:

Provide a background into the history of coal development in the Latrobe Valley mines, including:

- a. the establishment of the SECV;*
- b. the privatisation of the Latrobe Valley Mines;*
- c. the Government's role in coal development since privatisation;*
- d. the establishment and role of the Technical Review Board; and*
- e. the role of the Federation University's Geotechnical and Hydrogeological Engineering Research Group in coal development.*

The establishment of the SECV

8. Information on the establishment of the SECV is set out in a text titled "Coal Mining Heritage Study in Victoria" by Jack Vines, available online at <http://www.dtpli.vic.gov.au/heritage/research-and-publications/thematic-and-typological-studies/mining-thematic-and-typological-studies>.

The privatisation of the Latrobe Valley coal mines

9. The Latrobe Valley coal mines were privatised in 1996 and 1997. The contracts are available at the Victorian Government major contracts website at <http://www.contracts.vic.gov.au/major/contracts.htm>.

The Government's role in coal development since privatisation

10. Since privatisation the Victorian Government has regulated the coal mining industry, reformed the applicable legislation and regulations and implemented coal development programs, initiatives and activities, including:
- Advanced Lignite Demonstration Program (2012);
 - Brown Coal Innovation Australia (2009);
 - CarbonNet (2009); and
 - Brown Coal R&D Funding Program (2007).

11. My knowledge of these coal development initiatives is limited since they have not been undertaken by the ERR Branch. Additional information about these initiatives can be provided to the Inquiry Board upon request.

The establishment and role of the Technical Review Board (TRB)

12. The TRB was established in 2009 as an advisory panel under Part 4A of the *Mineral Resources (Sustainable Development) Act 1990 (the MR(SD) Act)*.
13. The TRB is comprised of mining experts. The primary purpose of the TRB is to provide advice to the Minister for Energy and Resources (**Minister**) on mine and quarry stability issues, specifically in relation to reducing risks to the environment, public safety and infrastructure.
14. In July 2015, the Terms of Reference for the TRB were amended and now read as follows:

'The Board will report to the Minister on an annual basis. The Minister may subsequently release the Board's report to [DEDJTR] and relevant industry stakeholders.

The Board will periodically provide advice on mine and quarry stability, to the Minister and [DEDJTR], in the following areas:

a) Strategy

- *written and/or verbal advice on the [DEDJTR]'s strategies and regulatory approach to mine and quarry stability and geotechnical issues.*
- *written and/or verbal advice on new developments in technology and science relating to the understanding, monitoring or management of mine and quarry stability and related geotechnical and hydrogeological issues.*

b) Stability reports

- *review mine and quarry stability reports including monitoring data that has been submitted to [DEDJTR] and provide written advice to the Minister.*

c) Other Activities

- *advise the Minister in formulating appropriate response to significant events relating to mine and quarry stability, and related geotechnical and hydrogeological issues.*
- *advise the Minister on appropriate guidelines and educational initiatives related to mine and quarry stability.*
- *with the knowledge and agreement of the Minister, interact directly with industry on mine and quarry stability and related geotechnical and hydrogeological issues, including participation in site visits, presentations and dialogue, particularly with respect to communicating findings of reviews with relevant stakeholders.*

- *in conjunction with [DEDJTR], interact with Federation University Australia in relation to the Research and Development program on brown coal geotechnical and hydrogeological issues.*

d) Rehabilitation

- *provide written advice and guidance to [DEDJTR] on any issues related to rehabilitation, including progressive rehabilitation within the mines and quarries.'*

15. Prior to July 2015, the TRB Terms of Reference did not include rehabilitation.

The role of the Federation University's Geotechnical and Hydrogeological Engineering Research Group (GHERG) in coal development

16. In 2009, the Victorian Government established GHERG at the Monash University Gippsland campus. GHERG transferred to Federation University Australia on 1 January 2014. GHERG provides broad range geotechnical and hydrogeological research and development support to the Latrobe Valley coal mines, particularly in the areas of mine stability, mine monitoring systems and interpretation, ground subsidence, effect on rigid structures such as infrastructure, ground and surface water control in mines, and evaluation of models used in practice.

17. Further information about GHERG may be found at:
<http://federation.edu.au/research/research-areas/research-centres-and-networks/gherg/about-us>

18. Board's letter question 2:

Provide an overview of the role and responsibilities of DEDJTR (and its predecessors) in relation to mine regulation, and in particular mine rehabilitation.

19. DEDJTR (and its predecessors) regulates the mining industry:

- a. pursuant to the MR(SD) Act and the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013 (MR(SD) Regulations)*; and
- b. by establishing and then implementing programs and strategies to ensure that licensees and others who receive an authority or approval under the MR(SD) Act and the MR(SD) Regulations comply with their obligations under their authority, approval and under law.

20. Pursuant to s 40(3)(c) of the MR(SD) Act, a rehabilitation plan must be prepared as part of an application for a work plan. The Department Head (the Secretary of DEDJTR) has power under s 40A of the MR(SD) Act to approve or refuse a rehabilitation plan (as part of a work plan) and may require changes to the rehabilitation plan.

21. Pursuant to s 78(1) of the MR(SD) Act, the holder of a mining licence must rehabilitate land in accordance with a rehabilitation plan approved by the Department Head and pursuant to s 81(1) of the MR(SD) Act must, as far as practicable, complete rehabilitation before the expiry of the licence.
22. Pursuant to s 79 of the MR(SD) Act, a rehabilitation plan must take into account any special characteristics of the land, the surrounding environment, the need to stabilise the land, the desirability or otherwise of returning agricultural land to a state that is as close as is reasonably possible to its state before the mining licence or extractive industry work authority was granted and any potential long term degradation of the environment.
23. Schedule 15, Part 1 (item 6) of the MR(SD) Regulations further provides that rehabilitation plans in a work plan must address concepts for the end utilisation of the site, include a proposal for the progressive rehabilitation and stabilisation of extraction areas, road cuttings and waste dumps, including revegetation species, and include proposals for the end rehabilitation of the site, including the final security of the site and the removal of plant and equipment.

24. **Board's letter question 3:**

Provide an overview of the regulatory framework administered by DEDJTR (and its predecessors), in particular in relation to mining licences and work plans, including any work plan variations for the Latrobe Valley mines.

25. Pursuant to the MR(SD) Act and MR(SD) Regulations, mining in Victoria is controlled by mining licences and work plans. Licences allocate Crown rights to a resource, whereas work plans regulate particular aspects of the operation of a mine.

Licences

26. Pursuant to s 8(1)(a) of the MR(SD) Act, a person cannot carry out mining in Victoria without obtaining a mining licence from the Minister.
27. An applicant for a mining licence must satisfy the Minister that the applicant can meet the requirements set out in s 15(6) of the MR(SD) Act, including that: (a) the applicant is a fit and proper person to hold the licence; (b) the applicant intends to comply with the MR(SD) Act; (c) the applicant genuinely intends to do the mining work that is the subject of the licence; (d) the applicant has an appropriate program of work; and (e) the applicant is likely to be able to finance the proposed work and rehabilitation of land.
28. The Minister has the power to impose conditions on a mining licence, including conditions as set out in s 26(2) of the MR(SD) Act. In particular, the Minister has power

to impose licence conditions about rehabilitation of the land (s 26(2)(a)) and about entering into a rehabilitation bond (s 26(2)(g)).

29. The Minister is also empowered to vary licence conditions (s 34(1)). Pursuant to s 34(2)(a), the Minister may act at the request of the licensee, or pursuant to s 34(2)(b), the Minister may do so if he or she decides it is necessary for rehabilitation or for stabilisation of the land to which the licence applies.

Work plans

30. Pursuant to s 39 of the MR(SD) Act work can only be carried out in accordance with the licence and an approved work plan. Pursuant to s 40 of the MR(SD) Act, a licensee who proposes to do work under a licence must lodge a work plan with the Department Head. Pursuant to s 40(3) of the MR(SD) Act, the work plan must include a rehabilitation plan, a community engagement plan and prescribed information.
31. Pursuant to r 32(1)(b) and Schedule 15 of the MR(SD) Regulations, the prescribed information includes specification of the location and how mining work is to be carried out, requirements for an environmental management plan, content of a rehabilitation plan and content of a community engagement plan.
32. Pursuant to s 40(3)(b) of the MR(SD) Act (and Part 2 of Schedule 15 of the MR(SD) Regulations), “declared mines” must also include prescribed mine stability requirements in their work plan. Each of the Latrobe Valley coal mines is a declared mine.

Licences and work plans for each Latrobe Valley coal mine

33. A table that identifies the relevant mining licences for the Latrobe Valley coal mines is set out in **Annexure C** to this statement.
34. A diagram that identifies the licences and work plans for the Latrobe Valley coal mines (including variations) is set out in **Annexure D** to this statement.
35. **Board’s letter question 4:**

Provide details about the final and progressive mine rehabilitation plans for each of the Latrobe Valley mines, including details of any consideration of the following objectives or features of the rehabilitation plans:

- a. *Mine stability (including batter stability and controlling pit floor heave)*
- b. *Waste management (including fly ash);*
- c. *Infrastructure removal;*
- d. *Materials balance;*

- e. *Water management (both surface and groundwater);*
- f. *Public safety, including fire prevention and mitigation;*
- g. *Proposed timeframe for final and progressive rehabilitation;*
- h. *Future beneficial land use; and*
- i. *Long-term management (such as monitoring and maintenance) to prevent environmental degradation and adverse impacts on public safety and public infrastructure.*

36. A table that refers to the relevant parts of the various documents (for example, works plans) that relate to final and progressive mine rehabilitation plans for each of the Latrobe Valley mines is set out at **Annexure E** to this statement.

37. Board's letter question 5:

Provide details of any advice provided by the Technical Review Board to the Government in relation to the final and progressive rehabilitation plans of the Latrobe Valley mines, including advice in relation to the matters referred to in paragraph 4(a)-(i) above.

38. As stated above, the TRB's terms of reference were amended in July 2015 to include rehabilitation. The TRB has not yet provided advice in relation to the approved final and progressive rehabilitation plans of the Latrobe Valley coal mines.

39. The TRB did provide advice by letter of 12 October 2015 in respect of the Loy Yang Work Plan Variation application.

40. Board's letter question 6:

Provide details as to what extent progressive rehabilitation has occurred at each of the Latrobe Valley mines.

41. My answer to this question is substantially based upon inspections of the Latrobe Valley coal mines by officers of DEDJTR.

42. At Hazelwood, approximately one third of the area where mining is completed is rehabilitated (which is about 10% of the total approved mine area for extraction), with an estimated:

- a. 45% of the mine area approved for extraction, mining is continuing.
- b. 25% mining is yet to commence.
- c. 30% of the mine area, mining is completed.

43. At Yallourn, approximately half of the area where mining is completed is rehabilitated (which is about 25% of the total approved mine area for extraction), with an estimated:
- 25% of the mine area approved for extraction, mining is continuing.
 - 25% mining is yet to commence.
 - 50% of the mine area, mining is completed.
44. At Loy Yang, approximately 5% of the area where mining is completed is rehabilitated (which is about 0.5% of the total approved mine area for extraction), with an estimated:
- 15% of the mine area approved for extraction, mining is continuing.
 - 75% mining is yet to commence.
 - 10% of the mine area, mining is completed.

45. **Board's letter question 7:**

Any other matter relevant to term of reference paragraphs 8 and 9.

46. I have nothing further to add in addition to the matters set out in this statement.

47. **Board's letter question 8:**

Provide an overview of the role and responsibilities of DEDJTR (and its predecessors) in relation to establishing and managing rehabilitation bonds for mines.

48. I refer to my answer to question 9 immediately below.

49. **Board's letter question 9:**

Provide an overview of the regulatory framework administered by DEDJTR (and its predecessors), in particular in relation to mine rehabilitation bonds, including any variations to the bonds, calling in bonds and recovering costs in the event of a bond shortfall.

50. Pursuant to s 80(1) of the MR(SD) Act, a licensee must enter into a rehabilitation bond for an amount determined by the Minister.

51. Pursuant to s 80(4) of the MR(SD) Act, the Minister may, at any time after a rehabilitation bond is entered into and after consultation with the authority holder, require the authority holder to enter into a further rehabilitation bond for an amount determined by the Minister if he or she is of the opinion that the amount of the bond already entered into is insufficient.

52. Pursuant to s 82(1), the Minister must return the bond or bonds to the authority holder or former authority holder as soon as possible if the Minister is satisfied (a) that the land has

been rehabilitated as required by s 78 or 78A (as the case may be); and (b) that the rehabilitation is likely to be successful.

53. Pursuant to s 83(1) of the MR(SD) Act, the Minister may take any necessary action to rehabilitate land if he or she: (a) is not satisfied that the land has been rehabilitated as required by s 78 or s 78A (as the case may be); or (b) is satisfied that further rehabilitation of the land is necessary; or (c) is requested to do so by the owner of the land.

54. Pursuant to s 83(4) the Minister may recover as a debt due to the Crown in a court of competent jurisdiction any amount by which the cost incurred under s 83(1) of the MR(SD) Act exceeds the amount of the bond or bonds.

55. Board's letter question 10:

Provide details about the rehabilitation liability assessments for each of the Latrobe Valley mines, including any variations to the assessments.

56. The Latrobe Valley coal mine licensees are required to report annually on the current rehabilitation liability for each mine, incorporating both progressive rehabilitation and final rehabilitation.

57. In April 2015 each of the licensees provided the Minister with the current rehabilitation liability assessment for each mine, as required under r 35(2)(b) of the MR(SD) Regulations, (provided as part of the 2014 Annual Activity and Expenditure Return) as follows:

- a. Yallourn: \$46 to \$91 million;
- b. Hazelwood: \$73.4 million;
- c. Loy Yang: \$53.7 million.

58. In June 2015 each of the licensees provided the Minister with the current rehabilitation liability assessment for each mine, as required under r 35(2)(b) of the MR(SD) Regulations, (provided as part of the 2015 Annual Activity and Expenditure Return) as follows:

- a. Yallourn: \$46 million;
- b. Hazelwood: \$73.4 million;
- c. Loy Yang: \$53.7 million.

59. Board's letter question 11:

Provide details of any modelling or expert assessments undertaken by DEDJTR (or its predecessors) or consultants retained by DEDJTR (or its predecessors) in relation to the early closure vs end of mine life rehabilitation liability assessments for each of the Latrobe Valley mines including the position of the Government in relation to confidence levels.

60. DEDJTR engaged URS to provide an opinion on the rehabilitation liability costs for each of the Latrobe Valley coal mines. URS produced a report in respect of each mine. The Victorian Government does not currently have a position in relation to the confidence levels set out in the URS reports.

61. **Board's letter question 12:**

Provide details in relation to the establishment and role of the Rehabilitation Bond Review Project.

62. The plan for the Rehabilitation Bond Review Project was finalised on 24 June 2015. This plan is annexed as **Annexure F** to this statement.

63. **Board's letter question 13:**

Provide details as to the outcomes of the Rehabilitation Bond Review Project, or, if it is not complete, details as to when it will be complete and the reasons why it is not yet complete.

64. The project is not complete.

65. DEDJTR is seeking information from the mines that DEDJTR will then provide to URS. URS will then provide a further report in respect of each mine. DEDJTR are endeavouring to complete this aspect of the project prior to 30 November 2015. However, I am unable to say when it will in fact be complete. This, in part, depends upon the information provided by the mines.

66. The project was delayed, in substantial part, because URS was required to undertake much more work than was expected in order to examine the costs of rehabilitation and to complete its report. There were also complexities associated with refining the methodology and model for the liability estimates. Significant work was required to resolve these issues.

67. **Board's letter question 14:**

Provide details about the Loy Yang Complex Agreement and how DEDJTR plan to implement the agreement.

68. A redacted version of the Loy Yang Complex Agreement has previously been provided to the Board. Part 5 of that agreement concerns rehabilitation. Given the timing set out in that agreement, DEDJTR has not yet considered how it may implement it.

69. Board's letter question 15:

Any other matter relevant to term of reference paragraph 10.

70. I have nothing further to add in addition to the matters set out in this statement.

Dated: 4 November 2015

List of Annexures

1. **Annexure A** List of Acts
2. **Annexure B** Qualifications and Employment History
3. **Annexure C** Mining Licences for LV Coal Mines
4. **Annexure D** Licences and Work Plans for LV Coal Mines
5. **Annexure E** Details of Final and Progressive Mine Rehabilitation Plans
6. **Annexure F** Rehabilitation Bond Review Project Plan