
TRANSCRIPT OF PROCEEDINGS

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2014 HAZELWOOD MINE FIRE INQUIRY

MORWELL

WEDNESDAY, 18 JUNE 2014

(16th day of hearing)

BEFORE:

THE HONOURABLE BERNARD TEAGUE AO - Chairman

PROFESSOR EMERITUS JOHN CATFORD - Board Member

MS SONIA PETERING - Board Member

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1 MS DOYLE: If the tribunal pleases, we have available as I
2 speak our written submissions which are being handed to
3 the parties. We have a copy obviously for each of you
4 and they are being handed up now.

5 I don't intend to read these to the tribunal this 09.31AM
6 morning, it's a type of document that you'll obviously
7 want to take away and have a good look at. What I want
8 to do is return to my five themes and, where
9 appropriate, direct attention to parts of this written
10 document and address in more detail some of the themes 09.31AM
11 that I opened up yesterday.

12 These submissions, like the hearings themselves,
13 are divided into three broad areas. I'm going to spend
14 some time on each of the three, but probably a little
15 less time on the first two topics; firstly, because 09.32AM
16 they've been the subject of quite detailed exposition
17 in our written submissions and because there is to
18 a degree less difference between us and the other
19 parties in relation to those two topics.

20 Turning to the first topic which of course is 09.32AM
21 addressed in section 1 of our written submissions, I
22 want to direct your attention to the following parts of
23 our written submissions and to the following topics
24 that might require a little more explanation.

25 Turning to paragraph 13 of our written 09.32AM
26 submissions, we collect there together a list and an
27 explanation of the detailed policies and procedures
28 that Hazelwood had in place before this fire commenced
29 in relation to fire prevention and suppression and in
30 relation to emergencies generally. There's no need for 09.32AM
31 me to read out the list, but of course you will see

1 there and you will know from the evidence you've heard,
2 that all of the policies listed in paragraphs 15, 16
3 and 17 constitute at suite of policy and procedural
4 responses to emergencies and, in particular, fire.
5 They need to be read as a whole and they need to be
6 read together in order to understand the entire system
7 that the mine applies to emergencies and fires.

09.33AM

8 One thing I'd say before I move to the fires
9 themselves is that there's been a lot of talk about the
10 codes. Can I direct attention to paragraph 21 and
11 following where we give a little history lesson in
12 relation to the way these codes have developed from the
13 1980s through to the mid-1990s and through to the
14 version of this code which the mine applies today.

09.33AM

15 What's important about this historical development, and
16 will be emphasised by me again later in my submissions
17 when I talk about lessons learned and the way forward,
18 is that the core documents, the 1984 SECV Policy and
19 the 1994 Generation Victoria Policy which are before
20 the Board of Inquiry were generated at a time when they
21 applied to all three of the open cut brown coal mines
22 in the valley and have continued to be applied with
23 small variations by those mines.

09.33AM

24 It is for this reason that we say in paragraph 26
25 that those codes came to be regarded as the bible for
26 fire services in open cut brown coal mines in the
27 Latrobe Valley, and it is for this reason that later in
28 my submissions I will emphasise the reality that,
29 insofar as there are a number of recommendations that
30 have been made in relation to greater liaison between,
31 say, the mine and the CFA or other entities, including

09.34AM

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1 the council, in relation to Integrated Fire Management
2 Planning, this is a task that will need to also be
3 addressed by the other two mines in the valley; and, if
4 any of the recommendations are picked up in relation to
5 essential infrastructure, many other owners of
6 essential infrastructure of different kinds.

09.34AM

7 Can I take you forward to paragraph 48 of our
8 submissions where some of the matters in terms of the
9 evidence begin to be discussed in more detail in this
10 written document. I'm not going to rehearse all of the
11 evidence; the point of this document is to draw
12 together, in a way that we hope will assist, a great
13 deal of evidence about the course of the fire, the
14 response to it and some of the aspects of the evidence
15 concerning the CFA's response and the mine's response.

09.35AM

09.35AM

16 In addition, we hope within the next couple of
17 days we'll be able to provide the tribunal with a
18 detailed chronology which does some of the same work,
19 but for present purposes this document is also a very
20 good summary of the evidence that you have heard to
21 date.

09.35AM

22 As we note at paragraph 48, there has been this
23 body of evidence concerning the Phoenix modelling. As
24 we note at paragraph 49, in light of the evidence
25 that's been adduced before this Inquiry, it now appears
26 clear that neither of the Phoenix models that
27 Mr Jeremiah had available to him were provided onto
28 Hazelwood. Rather, the only Phoenix modelling map or
29 document that Hazelwood received was the one we refer
30 to in paragraph 49, the one with the timestamp "Monday,
31 10 February, 1.59 a.m."

09.35AM

09.36AM

1 Of course, the Inquiry will remember that the
2 evidence now reveals that this email wasn't passed
3 directly to Hazelwood but passed through a third party
4 intermediary, Mr Demetrios, who is part of the CGEIG.

5 It's important to note that the CGEIG is an
6 organisation which provides a framework or a forum, a
7 committee or a meeting structure, pursuant to which
8 essential industry in the valley can be called on to
9 support emergency services agencies. It doesn't have

09.36AM

10 any statutory status or force, it doesn't have any
11 designated role in emergency management or emergency
12 response. That's not to say it's not a very useful
13 forum, but it is the submission of the mine that it is
14 not an appropriate way to respond to a living,

09.36AM

15 breathing emergency, to pass critical documentation
16 such as Phoenix modelling maps showing predictions with
17 respect to the path and the scope of the fire, to pass
18 that information through a committee structure.

09.37AM

19 Mr Demetrios from whom we have not heard, and so
20 it must be assumed he could not have shed any more
21 light on this topic, does not have any obligation to
22 forward the information and there's no evidence that he
23 has any particular skill or capacity to interpret it
24 and pass on information to explain it, and of course
25 the documentary trail shows he did not. That is why
26 those who received it, Mr Roach and Mr Harkins, said in
27 their evidence that they couldn't make any particular
28 sense of it. They didn't know, of course, that they
29 weren't being provided with the full suite of such
30 documentation, but nor were they provided by the CFA
31 with any particular instructions as to what to do and

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09.37AM

09.38AM

1 how to respond.

2 This is important because, as we say at
3 paragraph 59 of our submissions, Mr Harkins has
4 indicated that, if he had received the additional
5 Phoenix models which we now know existed which depicted 09.38AM
6 fire activity of a particular scope and nature, he
7 would have taken the additional steps that he
8 identified in his evidence; for example, contacting
9 Mr Graham to suggest that the executive team meet to
10 consider their response. It's that sort of evidence 09.38AM
11 which indicates that attention needs to be devoted to
12 developing a more streamlined, useful approach to
13 provision of such critical information.

14 We note in paragraph 60 another question arising
15 in relation to communication. It appears that the 09.39AM
16 incident logs, such as were able to be obtained from
17 the Incident Control Centre, are not a comprehensive
18 record of everything that happened. I've touched on
19 this evidence in relation to the question of the 000
20 call from the mine. 09.39AM

21 But there's another element to this. The logs
22 indicate, as we note in paragraph 60 and 61, that there
23 was an effort to contact Hancock Victoria Plantation on
24 Saturday the 8th and the 9th in relation to the risk
25 posed to it by the Hernes Oak Fire. 09.39AM

26 This is ironic in the extreme in light of the
27 other evidence that the tribunal has heard about the
28 impact of the Hernes Oak Fire on the plantation and
29 then, in turn, on the mine; but what it also throws up
30 is this question of why steps would be taken to contact 09.39AM
31 Hancock when no steps were taken to contact Hazelwood

1 directly.

2 As we note at paragraph 63, whether it was a
3 decision based on a different view taken about their
4 risk profile, we do not know and perhaps will never
5 know, but it cannot have been a decision based on their 09.40AM
6 membership or non-membership of the CGEIG as both
7 entities are members of that group. It's a very
8 curious outcome indeed. That's why at paragraph 64 we
9 draw these threads together and submit that it's unsafe
10 for the CFA to rely on or to expect a third party such 09.40AM
11 as Mr Demetrios to pass on this information and explain
12 its significance.

13 Can I move on to paragraph 73 of this document
14 and, without labouring any recitation of this evidence,
15 point to the synthesis we've provided here of the body 09.40AM
16 of evidence the tribunal now has about the fire
17 activity in the mines.

18 This is important to understand because, while a
19 great deal has been made of the question of whether or
20 not the risk that eventuated in early February was 09.41AM
21 foreseeable, there are some interesting features of
22 what occurred on the 9th and following that put this
23 question of foreseeability in a different context.

24 It's submitted that, while the risk of spotting
25 from plantations approximate to the mine is foreseeable 09.41AM
26 in and of itself, that of course is a risk that GDF
27 Suez cannot control; indeed, its efforts to obviate
28 that risk being put on its doorstep in the mid-1990s
29 failed, and I'll take the tribunal to that evidence
30 later in terms of the correspondence between the mine 09.41AM
31 and those who proposed to put plantations on its

1 doorstep. But of course, once a fire starts, how can
2 GDF Suez stop the trees in the plantation throwing
3 embers into the mine? Of course, it cannot. It can
4 prepare for that risk, it cannot control it at its
5 source, it can only combat it when the source arrives
6 at its mine. 09.41AM

7 What was also not readily foreseeable is the
8 prospect of two fires approaching the mine
9 simultaneously, one or more possibly the work of
10 arsonists, and in combination the power supply failing. 09.42AM
11 It is this perfect storm of events which we submit were
12 not readily foreseeable.

13 That's why in this section of the submissions we
14 deal in some detail with the evidence you've now heard
15 about the likely causes of the outbreak of the fires in 09.42AM
16 the mine. As the evidence settled and as you now come
17 to consider those who gave evidence before you, it now
18 appears - and we note this in paragraph 78 - that
19 there's quite a deal of common ground between all the
20 parties in terms of the origin of these fires, albeit 09.42AM
21 work on the part of Victoria Police yet to be
22 finalised. So we draw some of those threads together
23 in paragraph 78 where we refer to the views of
24 Commissioner Lapsley and the evidence, including that
25 displayed through the Phoenix modelling presented by 09.43AM
26 Mr Norris.

27 At paragraph 80 we note that no evidence has been
28 adduced that the fires commenced from within the mine
29 or were due to any other causes, and it seems that
30 Counsel Assisting agree with that summary of the 09.43AM
31 evidence.

1 At paragraph 81 we deal in chart form in more
2 detail with some aspects of the particular individual
3 fires which took hold within the mine.

4 At paragraph 82 and following we deal with the
5 body of evidence concerning the 000 call. As I
6 outlined the theme in relation to this aspect of the
7 evidence yesterday, I don't need to repeat that
8 material, but only to note the conclusion we reach at
9 paragraph 88, that in the end nothing turned on the
10 failure by anyone at the mine to call 000, even
11 assuming no such call was made.

09.43AM

09.43AM

12 I want to make brief mention of the submissions
13 that we make in paragraphs 93 and following concerning
14 the successes in the firefighting effort. While
15 mention has been made of who was at the mine and why
16 and when, we note in paragraph 96 that by mid-to-late
17 afternoon senior managers, Mr Dietvorst, Mr Graham and
18 the Acting Mine Director James Faithfull, were at the
19 mine.

09.44AM

20 At paragraph 98 we summarise some aspects of the
21 considerable success that was able to be achieved by
22 reason of the extreme efforts applied by staff at the
23 mine who were fighting the fire. By way of example, at
24 paragraph 98(a) we refer to the operating area in the
25 west field of the mine being successfully defended from
26 the Hernes Oak Fire front as it approached and then
27 from the Driffield Fire front which was contained on
28 the west side of the river. Without reading each of
29 those elements the tribunal will see that we've drawn
30 together there the evidence concerning the considerable
31 effort deployed by mine staff.

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09.44AM

1 Then at paragraphs 101 and 102 we touch on the
2 principal reasons for any failure or any extension of
3 the period of time required to contain fires on the
4 9th. As we note in paragraph 101(a) there is of course
5 the question of the multitude of external fire threats 09.45AM
6 that bore down upon the mine all at one time. Of
7 course, there's the weather conditions, not
8 unforeseeable in and of themselves given the nature of
9 the fire season in the valley, but they of course
10 worked with that previously unknown or unexperienced 09.45AM
11 event of two fires bearing down on the mine.

12 Then, the limited firefighting assistance the CFA
13 was able to afford; again, not unknown that the CFA has
14 a finite set of resources, but of course it was a
15 contributing factor. 09.45AM

16 Then finally the loss of power. Power was lost
17 between about 5 and 6 p.m., and as we note later at
18 paragraph 118, not restored fully until 2 a.m. That
19 was a matter which had a critical impact upon the
20 efforts to fight this fire and it's a matter of course 09.46AM
21 to which Mr Graham has devoted considerable mental
22 energies since in terms of assessing what he and the
23 mine might do and positing what SP AusNet might do to
24 change this reality.

25 Can I jump to paragraph 120 in these submissions 09.46AM
26 where there is a recitation of the things that worked
27 well with respect to the firefighting effort. I'm not
28 going to read them but we've detailed in
29 paragraphs (a)-(f) a number of successful aspects of
30 the joint effort made by mine staff, CFA firefighters, 09.46AM
31 MFB firefighters and Interstate firefighters, who we

1 say in paragraph (f) of course worked in very well with
2 the CFA and the mine staff.

3 At paragraphs 121 and 122 we elucidate a number of
4 difficulties encountered. First, the absence of joint
5 protocols or the same protocol in relation to carbon 09.47AM
6 monoxide - I'm going to address that in more detail in
7 the next section - and then a number of other aspects
8 in relation to the early stages of the fire fight we
9 enumerate later in paragraph 121.

10 Then of course, in paragraph 122 we touch on an 09.47AM
11 aspect which is really a continuing theme throughout
12 these proceedings, and that is, this mine is a living,
13 breathing thing. Anything one does to ameliorate one
14 problem may create other problems, and even in fighting
15 a fire the application of large amounts of water to a 09.47AM
16 mine of this kind can create its own risks which must
17 always be monitored in terms of batter stability and
18 the like.

19 As you will see as you work through this document,
20 we then address in detail, and there's no time to read 09.47AM
21 it today, all sorts of other issues which arose in the
22 evidence and we've summarised it by reference to
23 transcript and all the exhibits in order to assist the
24 Inquiry. We deal with helicopters, foam, access,
25 debris. 09.48AM

26 I want to touch on paragraph 142 and following.
27 This is to hark back to one of the themes I opened up
28 yesterday, the good old days. Community witnesses and
29 others gave evidence that during the days of the SECV
30 there was a particular type of dedicated firefighting 09.48AM
31 service or group at the mine, and on many occasions

1 evidence lamented the passing of the good old days.
2 But the evidence is now in and the evidence is clear.

3 In fact, the work now done by the 1x7 Services Day
4 Operations Group who have the primary responsibility at
5 the mine for dealing with fires and managing all 09.48AM
6 aspects of preparedness for fire provides the same
7 level of service and the same level of coverage as the
8 good old days. Things always change, the names of
9 things change, the way people are organised within a
10 workforce change, rostering systems change and 09.49AM
11 sometimes some aspects of the way in which people are
12 deployed changes, but as the evidence now demonstrates,
13 the 1x7 crew who have two shifts and work a 7-day shift
14 during the day are able to provide a very high level of
15 coverage which we say is the same as that which 09.49AM
16 attached in the good old days.

17 We note in paragraphs 143-145 that fundamentally
18 the role and the nature of the service provided has not
19 changed since privatisation. In fact, the number of
20 personnel available for fire services duties is greater 09.49AM
21 than at the time of privatisation. This is the natural
22 result of evolution, of multi -skilling, of
23 modernisation, but it doesn't mean that we've lost
24 anything that was available in the good old days.

25 Before I leave this topic can I respond to a 09.49AM
26 couple of matters arising from specific suggestions
27 made in the submissions of Counsel Assisting. At
28 paragraph 3 on page 8 of Counsel Assisting's
29 submissions - so this appears under a heading, "1.3,
30 Criticisms" and then there is a paragraph (3) towards 09.50AM
31 the bottom of page 8. There it was suggested first

1 that mine personnel did not sufficiently apprehend the
2 grave risk posed by the Hernes Oak Fire or the extreme
3 weather conditions, and that there was an attitude of
4 instead of planning for the worst, hoping for the best.
5 Then it specifically suggested that mine fire
6 preparedness and mitigation plans were not updated.

09.50AM

7 Addressing that suggestion in relation to a
8 failure of planning led to these particular plans not
9 being updated, there are a number of responses we want
10 to make to that. The evidence demonstrates that in the
11 lead-up to 9 February preparedness plans were issued by
12 the mine for the weekend and, as a result of them, the
13 two 30,000 litre tankers which are the biggest and best
14 firefighting resource that the mine has available were
15 manned and available from 7 a.m. onwards each day.

09.51AM

09.51AM

16 Given the evidence of, for example Mr Shanahan and
17 Mr Dugan, that those are the best and the biggest
18 resources that the mine has - see for example Mr Dugan
19 at transcript page 422 - one cannot imagine what else
20 the mine would have had done had those particular plans
21 in their written form been updated. It wasn't put to
22 any witness that, had they seen updated plans they
23 would have taken particular additional steps that would
24 have made an appreciable difference to the outcome. It
25 hasn't been suggested to staff that, had plans been
26 updated in a particular way, staff would have increased
27 their resources or taken particular steps that would
28 have produced a particular result. In those
29 circumstances it would be a triumph of form over
30 substance to suggest that a failure to update the
31 written plan crystallised any particular shortcoming in

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1 terms of the response to the fire.

2 The question of power supply is mentioned in two
3 places in this part of Counsel Assisting's submissions.
4 For example, at page 4, paragraph 19 as it appears
5 there, refers to what happened in relation to loss of 09.52AM
6 power. Then at page 10 at paragraph 8 on that
7 page Counsel Assisting suggest there was no backup
8 power supply available at the mine in the event that
9 main power supply was lost; without power the fire
10 services water system was effective, and then they 09.53AM
11 repeat the results of the same.

12 It's important to remember that the mine did have
13 in place backup and duplication. The duplicate 66 kV
14 lines that are supplied through infrastructure owned by
15 SP AusNet were intended to supply redundancy and were 09.53AM
16 designed by the SECV to do so. There are also two
17 other modes of power within the mine, the MEW 22 kV
18 lines and the MHO 11 kV lines, so there were really
19 three layers of redundancy which had always previously
20 by the SECV, by Generation Victoria and by Hazelwood 09.53AM
21 been understood to provide sufficient redundancy and
22 backup in the event of power failure.

23 What of course had not been specifically intuited
24 was that the use of redundancies through a backup line
25 which runs in parallel with the primary line and the 09.53AM
26 use of wooden poles would then see the very thing that
27 was designed to work during an emergency fail.

28 As I said, Mr Graham's given a great deal of
29 thought to what the mine can do and what SP AusNet
30 might do. A very obvious thing that SP AusNet might do 09.54AM
31 is not have wooden poles holding up critical powerlines

1 side by line which, if one is threatened in the event
2 of a bushfire, you might expect the other to be as
3 well. That's a matter of course on which we haven't
4 heard specifically from SP AusNet, but it's clear from
5 Mr Graham's evidence he intends to pursue it.

09.54AM

6 But in terms of the events on the day, did mine
7 staff as the fires approached apprehend that there was
8 a risk to the power supply? Absolutely. Mr Harkins
9 and Mr Roach, Mr Prezioso and Mr Lalor have all given
10 evidence about the fact that as the fire approached,
11 resources were diverted to the fires most proximately
12 threatening the power supply and then of course to
13 restoring the power supply. Mr Harkins' for example in
14 his first statement at paragraph 74 said, "By the late
15 afternoon the area above the northern batters emerged
16 as a key priority. A grass fire was threatening mine
17 assets and power assets that run down the northern
18 batters." Mine staff were painfully aware of the risk
19 or the threat to their power supply and they responded
20 to it.

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21 Mr Roach gave similar evidence. Exhibit 25 to his
22 statement at page 8 refers to a call made by mine staff
23 to the CFA asking them to focus on the concern that the
24 fire would impact the substation, and of course MWN and
25 the 66 kV lines are in the same location above the
26 northern batters. The Board might also be assisted by
27 looking at his evidence at transcript page 653.

09.55AM

28 Mr Prezioso said the same at transcript page 369.
29 He said, "As these fires approached we were forming a
30 strategy, we started setting our priorities for asset
31 protection, particularly substations and power poles."

09.55AM

1 I want to take the Board now to section 2 which is
2 a topic I'll deal with in relatively brief form; this
3 starts at page 32 of our written submissions. Again,
4 there's now a vast body of evidence before the tribunal
5 which we've synthesised in this part of our written
6 submissions. 09.56AM

7 At paragraph 151-153 we describe or refer to some
8 of the suggestions that have emerged from the hearings
9 which might make things better in the future. As we
10 note there, if there is a Statewide rapid response 09.56AM
11 developed for air quality monitoring and assessment.
12 If that's developed, together with the suppliers of
13 essential services, to provide an indication of smoke
14 levels, then the monitoring on the mine perimeter may
15 not be as essential as was initially thought because 09.57AM
16 there will then of course be data available to inform a
17 public health response.

18 We note in paragraph 152 that the EPA has made
19 certain commitments, and of course we'll watch and
20 learn if those are implemented. We note in 09.57AM
21 paragraph 153 that of course this proposal for
22 permanent monitoring around the mine's perimeter is a
23 function that is already being utilised. If there are
24 further developments and if there are improvements
25 made, of course we will be assisted by them and all who 09.57AM
26 rely on that information will be assisted by them.

27 In this context there is one aspect of Counsel
28 Assisting's submissions we need to make particular
29 response to. At page 20 of those submissions,
30 paragraph 3 on the top of that page, there's reference 09.57AM
31 to the recommendation that's been made, namely, that

1 the EPA should establish an automatic monitoring
2 station in the southern part of Morwell close to the
3 mine.

4 Our written submissions deal with the background
5 to that proposal and the evidence that has generated 09.58AM
6 that sensible proposal. So far, so good. But the
7 first we've heard of a particular suggestion is when we
8 saw these written submissions. The last sentence of
9 paragraph 3 says, "The State should invite GDF Suez to
10 fund the southern Morwell station as an element of its 09.58AM
11 corporate social and responsibility plan."

12 The difficulties we see with that are as follows:
13 That is not the recommendation in the joint report in
14 terms of the evidence put before this tribunal. There
15 is no evidence of the cost of the establishment of such 09.58AM
16 a station. Crucially, it wasn't put to the EPA or
17 anyone from the State that such a station can't or
18 won't be established without the injection of private
19 funds. So, in other words, you did not have a witness
20 from the State say, "This is a great idea, it's just 09.58AM
21 that we can't afford it without the mine paying for
22 it." So there is simply no evidence base that private
23 funding is necessary, desirable or appropriate.

24 It wasn't put to GDF Suez witnesses such as
25 Mr Harkins or Mr Graham that they ought to do this, 09.59AM
26 could afford to do this or should have to do this.
27 And, in circumstances where the reality is that the
28 mine's proximity to the town is the result of an
29 historical decision, and perhaps even an historical
30 failure, to apply appropriate planning and land usage 09.59AM
31 controls, one has to accept that the current operators

1 of the mine are not the architects of that historical
2 failure. So, what is it about this situation that
3 suggests that private funding should be called for here
4 of a public resource when it's not typically done in
5 any other analogous circumstances? Nor has this 09.59AM
6 Inquiry been assisted by an exploration of that new
7 model of public health throughout the evidence. So in
8 that situation we submit there is simply not a basis
9 for acceding to that recommendation at this stage.

10 There was also a great body of evidence during the 10.00AM
11 hearings about the way that carbon monoxide issues were
12 responded to as the fire unfolded. One thing we need
13 to correct is a suggestion that appears on page 29 of
14 Counsel Assisting's submissions, paragraph 33. There's
15 a suggestion in paragraphs 33-37 of Counsel Assisting's 10.00AM
16 submissions on page 29-30 of two matters. First of
17 all, it is suggested in paragraph 37 that GDF Suez was
18 piggybacking on the CFA's CO procedures, and secondly,
19 that as it transpired a number of GDF Suez's employees
20 were hospitalised. I want to unpick both of those 10.01AM
21 suggestions.

22 To the contrary, in fact it was the mine that had
23 a CO policy when the fire started and it was the CFA
24 who were caught flat-footed who were required to draft
25 and re-draft several iterations of their approach as 10.01AM
26 the fire unfolded. You will recall Mr Dugan saying at
27 paragraph 82 of his statement, and at transcript
28 page 424, that from 2006 onwards the mine had developed
29 its CO policy based on a presentation the CFA had given
30 it. So here's an example of the CFA taking perhaps the 10.01AM
31 first step back in 2006, with the mine then running

1 with it and developing a policy and reducing it in
2 writing. Pursuant to that policy, from the first
3 moment mine staff went out with their monitors, their
4 canaries. It was the CFA who arrived without a policy
5 set in stone and without a procedure that they were
6 ready to roll out for their firefighters.

10.02AM

7 Next, insofar as it's suggested that a number of
8 mine staff were hospitalised, that's not really an
9 accurate picture of what occurred. Quite appropriately
10 mine staff who recorded readings above the appropriate
11 levels were taken to hospital, but the evidence is that
12 each of them were able to be sent home following the
13 application of more sophisticated modes of checking
14 their exposure levels. It turned out, and everybody's
15 learnt this now during the fire, that initial high
16 readings are thought to have been because the equipment
17 on site was able to be influenced by matters as minor
18 as variations in light and whether or not people's
19 hands had been washed. Again, that is a matter that by
20 trial and error was worked out through the course of
21 the fire, but there is no suggestion that any mine
22 staff in fact needed medical treatment as a result of
23 those initial exposure readings.

10.02AM

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10.02AM

24 In the end what we've all learnt here is that of
25 course the CFA and the mine should apply the same
26 standards to their workers, and in a broader sense of
27 course those same standards should be afforded to the
28 community in the messages that they receive. Insofar
29 as the mine can do anything about it, Mr Graham has
30 said in his evidence that what needs to be done is to
31 sit down with the CFA now and, with the help of VWA,

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10.03AM

1 develop one protocol that is clear, that is uniform and
2 that can then be applied. Of course, Mr Graham has
3 accepted that that will be done.

4 We refer to this material in places, including
5 paragraphs 193 and 194 of our submissions; 198 in terms 10.03AM
6 of the longer term view; and then Mr Graham's evidence
7 talks to the local protocol that will be developed.

8 Topic 2 also broadly incorporates the question of
9 communication. We've done a great deal of work in
10 terms of pulling this evidence together in the written 10.04AM
11 document, and I'm not going to read it to you, but I
12 should touch on a couple of the themes which emerged.
13 Can I take the tribunal members to paragraph 162 of our
14 written document. One source, one message was a phrase
15 that came to be used in the evidence, but of course it 10.04AM
16 originates from a policy approach to dealing with
17 emergencies.

18 Commissioner Lapsley gave evidence about the
19 integrated warning system which is based on this
20 principle of one source, one message. It's the product 10.04AM
21 of learning about what people in the community and how
22 people in the community respond to messages; they need
23 them to be consistent, clear, uniform and from an
24 authoritative voice.

25 One lesson that's been learnt from this event is 10.05AM
26 that the application of that policy, which is quite
27 appropriate and sound in the context of an emergency,
28 may not be as applicable or appropriate in the context
29 of a longer campaign or event with longer term impact.
30 It's, in light of that, that Mr Harkins and Mr Graham 10.05AM
31 in particular have offered their opinions that they

1 will now, working with others, develop a mode of
2 dealing differently with the longer term campaign,
3 because during those longer term campaigns the needs of
4 the community evolve and change and the need to rigidly
5 adhere to one source, one message, it turns out, may 10.05AM
6 not be the ideal approach.

7 Can I direct your attention in particular to
8 paragraphs 207-208 of these submissions. As we note
9 there, the mine's communications response was shaped by
10 its previous learning that one source, one message is 10.06AM
11 the way to go, and also was shaped by the reality that
12 the CFA arrived and said, "We are the Incident
13 Controller" and it was then acknowledged that they
14 should deliver the message to the community.

15 But as we acknowledge at paragraph 208, the 10.06AM
16 unexpected outcome of this was that it became to be
17 perceived that the mine was absent in terms of public
18 communications and being physically absent from
19 community meetings. This led to an unfortunate
20 perception of a lack of empathy and meant that the 10.06AM
21 efforts of Hazelwood employees and contractors to fight
22 the fire was not as widely recognised as it might have
23 been.

24 So lessons learned we detail at paragraph 209, and
25 in particular that lesson learned was given voice by 10.06AM
26 Mr Graham when he came and gave evidence. We've set
27 out a quote from his evidence at paragraph 209(a). He
28 said, "This has resulted in the wrong outcome because
29 it portrayed that GDF Suez did not care about the
30 community. That's absolutely as far away from the 10.07AM
31 truth as you could actually get because we understand

1 that the community is very close to us." You will also
2 recall other passages in his evidence where Mr Graham
3 referred to the reality that he was concentrated,
4 especially in the early days, on putting out the fire.
5 Why? Because he has a workforce who depend on the 10.07AM
6 mine, as does the town in terms of viability.
7 Secondly, why did he concentrate on deploying assets to
8 the part of the mine closest to the town? Because he
9 knew about the impact of that part of the fire on the
10 town. He noted that, while those concerted efforts 10.07AM
11 were being done, the message did not get out that that
12 is why they were being done.

13 The other suggestion that's been made by Counsel
14 Assisting in terms of improvements to communication
15 appears at page 22 of Counsel Assisting's submissions, 10.07AM
16 paragraph 14 on that page. There it suggested that a
17 private operator of infrastructure like GDF Suez should
18 be included in the co-ordination of public
19 communications, and it suggested that, to this end, the
20 Government should review the role of the Emergency 10.08AM
21 Management Joint Public Information Committee, EMJPIC.
22 Just one personal private recommendation, first point
23 of order in any such meeting might be to change the
24 name of that entity to something a little more
25 user-friendly and evocative in the work it does, but of 10.08AM
26 course GDF Suez embraces that suggestion and would want
27 to participate and would continue to suggest that
28 operators of other mines in the valley and other
29 infrastructure around the State should also be
30 involved. 10.08AM

31 I'm going to turn now to the third topic, the

1 question of mitigation and prevention and there are a
2 number of sub-topics that develop throughout that.
3 This starts at page 48 of our written submission.

4 Can I start where many witnesses ended, including
5 Mr Lapsley and those from the council. The first 10.09AM
6 problem here is an historical one, and, as a result,
7 our capacity to retrofit solutions may have some
8 constraints. The historical failure is one of a
9 failure to adopt an holistic approach to fire planning,
10 along with town planning or land usage. 10.09AM

11 We submit there have been two fundamental
12 failures: Land use planning has failed to take account
13 of the impact of planning decisions upon fire risk
14 management, and in particular, no account has been
15 taken in the planning process, including the obligation 10.09AM
16 to obtain permits or in the way in which zones are
17 designated or in which buffers are established. No
18 account was taken of the significant risk created when
19 plantations were permitted to be established so close
20 to an open cut mine. 10.10AM

21 That is, if you like, one example of another
22 fundamental failure which we elucidate in
23 paragraph 210(b) - Municipal Fire Management Planning
24 and its cousin or successor, Integrated Fire Management
25 Planning, have failed. They have been largely 10.10AM
26 theoretical exercises and they are admittedly
27 absolutely incapable of being implemented. There are
28 failures in the way those plans have been developed,
29 failures of consultation, not being complete or not
30 being reviewed, and there is the significant problem 10.10AM
31 that Mr Lapsley has pointed to, that there's simply to

1 power to implement it.

2 We've set out a quote from Mr Lapsley at
3 paragraph 211, "I think for many years we've left this
4 emergency management, this fire management thing over
5 here; dealt with the broad land use planning", and I 10.10AM
6 think the reference there to "board of control", in
7 fact Mr Lapsley said "broader control", and then added
8 to it. He goes on to say that, "We need to make
9 emergency management front and centre."

10 Just to pluck the eyes out of some of the 10.11AM
11 submissions we then make about the particular failure
12 of land use planning which came to the fore here, the
13 tribunal will of course remember the very evocative
14 map, attachment JP-2 to Mr Pullman's statement, which
15 shows this mine ringed by three plantations within 10.11AM
16 a kilometre of its boundary. As Mr Pullman explained,
17 he drew a 1 kilometre ring around the mine, but nobody
18 else has. The Minister didn't, the plantations didn't,
19 the council couldn't, the CFA has nothing to say about
20 it, so there we are. Mr Pullman has drawn a 10.11AM
21 1 kilometre buffer zone but no such buffer zone exists.
22 As far as Mr Pullman was able to establish, there's no
23 permits for these plantations, and it seems to us the
24 most likely explanation is, they weren't required to
25 obtain them, otherwise they're operating unlawfully. 10.12AM

26 At paragraph 215 we remind you of what Mr Incoll
27 said. He said, "The proximity of these plantations is
28 a significant failure of planning. It's incredible, it
29 beggars belief." The mine can only agree.

30 As we note in paragraphs 216 and 217, while 10.12AM
31 Mr Pullman pointed to some controls that the council

1 might be able to apply and he referred to a code of
2 practice from 2007 about timber production, he agreed
3 that that code says nothing about mitigating fire risk;
4 it's all about how you chop down trees and how you do
5 that without affecting the amenity of the town. He 10.12AM
6 also referred to part of the planning scheme which at
7 least bravely points to the need to acknowledge the
8 risk the plantations pose to mines, but says nothing
9 about how you do that.

10 That's why we submit at paragraph 219, it's only 10.12AM
11 the Planning Minister who possesses the power to change
12 the zones or to implement a buffer around the mine to
13 prevent future plantations being established.

14 Ultimately, as Mr Incoll had to concede and Mr Pullman
15 fervently agreed, even if the Minister took a brave and 10.13AM
16 bold step and made those changes now, the doctrine of
17 existing use in town planning means that those
18 plantation owners would stand and say that they have a
19 right to continue to use their plantations.

20 Mr Incoll, we refer to this at paragraph 224, made 10.13AM
21 a suggestion that at the very least consideration
22 should be given to not permitting these plantations to
23 be replanted. So, in other words, once the current
24 trees are harvested that they be prevented from
25 replanting. We note this is an attractive suggestion 10.13AM
26 but the planning and compensation implications of that
27 are an unknown quantity.

28 Can I take you back to paragraph 220 and just
29 point to two other aspects of the regulatory regime
30 which had also received attention during the Inquiry 10.14AM
31 and in the submissions of Counsel Assisting. This

1 Inquiry has identified many gaps; here's but one of
2 many. There is an obligation in s.43 of the CFA Act on
3 public authorities to take all practicable steps to
4 prevent the occurrence of fires and minimise the danger
5 of their spread. That's confined to public 10.14AM
6 authorities. Section 41 is a power to issue Fire
7 Prevention Notices which rest with the council.

8 To focus on the second of those first, the fire
9 prevention capacity in councils: Mr Pullman explained
10 that the focus of those is traditionally on managing 10.14AM
11 fine fuels and that he's issued a number of them, both
12 to Hazelwood Mine and to others, and that they've all
13 been complied with I might say as well.

14 Mr Incoll made the bold suggestion that those Fire
15 Prevention Notices might be issued by the council to 10.15AM
16 the owners of the Hancock Plantation, or others, and
17 Mr Pullman agreed that he can do that, and he has, but
18 when he does that it is confined to directing those
19 plantation owners to deal with grass and shrubs.

20 Mr Incoll mused aloud about whether or not those 10.15AM
21 Fire Prevention Notices might be far more significant
22 in their reach and might direct plantation owners to do
23 what he regards as fire risk mitigation in timber
24 plantations. It turns out, that involves stripping the
25 bark which might be a very difficult thing to encourage 10.15AM
26 plantation owners to do over and over again. We note
27 this in paragraph 223. It might be feasible, but it
28 would be an endless task. One would have to reissue
29 such notices every summer or during the relevant life
30 cycle of the trees and, no doubt, be requiring 10.15AM
31 uneconomic bark stripping from thousands of such trees.

1 So there we have it, there's the debate about
2 s.41. Can it do what Mr Incoll suggests in a legal
3 sense and can it achieve the result he desires in a
4 practical sense? It's one of those unknowns.

5 With respect to the current scope of s.43: 10.16AM
6 Counsel Assisting have in their recommendations
7 suggested that it be extended to all essential
8 infrastructure. That again is not a matter that's been
9 explored in depth either with witnesses from the State
10 or with witnesses from the mine, but it seems to us at 10.16AM
11 a very preliminary stage that of course, if that were
12 done, one has to then think about what would be the
13 criteria for designating or identifying critical
14 infrastructure in a legislative sense.

15 If we think about the value, it would have to 10.16AM
16 include all the mines, but if we think about it more
17 broadly, of course it would be likely to include all
18 power stations in Victoria that are in private hands,
19 all gas plants, including Longford, the ports, the
20 airports, the powerlines themselves, because they 10.17AM
21 deliver critical infrastructure.

22 That is one of a number of very difficult
23 conversations that the State Government would then have
24 to have with those owners, with its constituents,
25 because it would bring about a fundamental change to 10.17AM
26 the way in which privatisation has proceeded thus far.

27 It seems to us there is not a sufficient
28 evidentiary base emerging from this Inquiry to
29 recommend that bold step, even if it be something on
30 the Government's legislative agenda. It looks to be a 10.17AM
31 matter that would require very significant thought,

1 consultation, and policy analysis.

2 To touch briefly on integrated Fire Management
3 Planning: This is something we deal with on page 52,
4 paragraph 232 and following. I don't need to read much
5 of that. There has been powerful evidence before the 10.18AM
6 Inquiry that the plans do little more than identify a
7 number of risks.

8 Board members, you will recall that at the
9 relevant pages of the plans, whether it be the new
10 Integrated Fire Management plan or the old Municipal 10.18AM
11 Fire Prevention Plan, someone has cleverly identified
12 the fact that a fire might enter the mine. Yes, but
13 what they don't do is say what anyone should do if that
14 is about to happen or how one might avoid it. Further,
15 there's no one responsible for implementing those 10.18AM
16 plans. At paragraph 237 we refer to Mr King's evidence
17 on that.

18 At paragraph 238 we note that Mr Incoll has said,
19 "These plans shouldn't just be gathering dust on a
20 shelf." But as Mr Lapsley noted, and we also pulled 10.18AM
21 together his evidence at paragraph 238, there's just no
22 power on anyone's part to implement those plans thus
23 far.

24 In paragraph 239 we point to what Mr Graham has
25 said. He said, "We'll re-engage with the council and 10.19AM
26 work with others", and of course he's noted that this
27 process will be enhanced if the council, the CFA and
28 all other owners of the critical infrastructure work
29 together.

30 I want to turn to the question of previous fires 10.19AM
31 and responses by the mine to previous fires. We deal

1 with this at page 54 onwards. This is not all of the
2 evidence that exists or all of the facts which exist
3 about the way that the mine responds to fire and learns
4 from fire, but these are the significant fires that the
5 mine has had to fight and respond to. As we set out in 10.19AM
6 paragraph 240, there have been fires in 2005, 2006,
7 2008, 2012 all of which generated a response from the
8 mine; namely, the engagement of external contractors to
9 review the causes of the fire and lessons to be learned
10 from the fire. 10.20AM

11 As we note at paragraph 242, as evidenced by a
12 body of material, including statements and the reports
13 themselves, the vast majority of the various
14 recommendations made by these consultants, often but
15 not always GHD, have been implemented by the mine or 10.20AM
16 led to changes in their practices. This has led to
17 improved procedures in relation to fire preparedness
18 and response. We list a number of those at
19 paragraph 242.

20 A lot of changes have been made, including the way 10.20AM
21 that training has been done with the CFA, the way that
22 escorts are conducted with the CFA and changes to
23 documents have also been made as listed in
24 paragraphs (d) and (e).

25 That collection of evidence, we submit, 10.20AM
26 demonstrates that GDF Suez is an organisation committed
27 to continuous improvement. It has to be remembered,
28 and this will be important in the submissions I'm about
29 to make, that there is no statutory touchstone, there
30 is no regulation or legislative provision which says, 10.21AM
31 "Mine owners must engage external consultants to review

1 every event and, having done so, implement every
2 recommendation that every external consultant makes to
3 you." I'll be explaining further in a minute, there
4 are obligations to review, and there are obligations to
5 continually improve, but there's no obligation to 10.21AM
6 implement everything that an external consultant tells
7 you. The obligation is to continually assess and
8 reassess for risk such as mining hazards, and their
9 reasonably practicable control.

10 Recommendations made by external consultants are 10.21AM
11 not an end in and of themselves; they are part of that
12 process. They are evidence that is relevant in that
13 process but they are not an end in and of themselves.

14 In that context can I address the 2008 GHD Report
15 and Recommendation 6 therein which has received a great 10.22AM
16 deal of focus in these proceedings. One has to start
17 by thinking about the fire which inspired the review.
18 It occurred in September 2008. That's a little
19 unusual, it's outside the predictable scope of the fire
20 season. It occurred, Mr Prezioso said, on a day when 10.22AM
21 there had been rain in the morning. It occurred in a
22 worked out batter, true enough, but as a result of the
23 ignition of a pre-existing hot spot. That's the
24 context. GHD came in and did a body of work.

25 What did they recommend? We've set out the 10.22AM
26 recommendation at paragraph 246. It's of course
27 essential to read the report as a whole, but in these
28 proceedings often even the recommendation wasn't read
29 as a whole. The recommendation was that, "A risk
30 assessment should be undertaken on the non-operational 10.22AM
31 areas to determine if further prevention work is

1 required. The risk assessment should include a
2 cost-benefit analysis." Over the page a range of
3 options have been identified in terms of prevention of
4 hot spots from re-igniting and detection of hot spots.

5 It's important to bear in mind the entire text and 10.23AM
6 then the entire body of evidence significantly from
7 Mr Prezioso about what was done following that
8 recommendation. I'm going to be referring to that as I
9 work through some aspects of the occupational health
10 and safety regime. I'll just note before I move on 10.23AM
11 that at paragraph 249 we summarise the range of actions
12 that Mr Prezioso was taken but I want to put those in a
13 framework by addressing you now on the regulations
14 under the occupation health and safety regime.

15 Tribunal Members, you will recall when I opened 10.24AM
16 yesterday I described this theme as one of shifting
17 goalposts, and this is the situation that has developed
18 at the end of the hearing blocks.

19 At the beginning of last week the principal
20 allegation made against GDF Suez was contained in the 10.24AM
21 report of Professor Cliff. It was at page 8 of his
22 report and it was an allegation that GDF Suez had
23 failed to meet the requirements of the safety
24 assessment regime under Regulation 5.3.23. I'll be
25 explaining in a moment, and I think it's clear from 10.24AM
26 Counsel Assisting's submissions, it's accepted that
27 Professor Cliff retracted that statement.

28 As we sit here today, and in light of the
29 submissions of Counsel Assisting, this has changed to a
30 suggestion that there has been a shortcoming with 10.24AM
31 respect to Regulations 5.3.7 and 5.3.9. We say that

1 the way in which the evidence has been summarised is
2 incomplete and unfair and that there's not a sufficient
3 evidentiary basis to make such a finding for two main
4 reasons, but I'm going to develop them by reference to
5 the evidence.

10.25AM

6 The main reason is that some elements of the risk
7 assessment process required under Regulation 5.3.7 were
8 put to witnesses, we accept that, but you've only been
9 told about one of the answers. You haven't been told
10 about Mr Niest's answers.

10.25AM

11 The elements of the requirements of
12 Regulation 5.3.9, we say, have not been put to anyone
13 but, so far as we have evidence that we want to draw
14 attention to, we say they lead to the opposite
15 conclusion, that 5.3.9 has been complied with. That's
16 to set the scene.

10.25AM

17 Can I go back to the start. It's sections 21 and
18 23 of the Occupational Health and Safety Act which set
19 the standard for operators of all workplaces and then
20 there's a body of regulations which apply to mines.

10.25AM

21 Starting with ss.21 and 23, it became clear in the
22 evidence that Mr Rozen and Mr Niest have different
23 views. In the end, what the tribunal has is a debate
24 between a very senior man from WorkSafe, he's the
25 Executive Director of Health and Safety, and the
26 experienced occupational health and safety lawyer,
27 Mr Rozen. They both have very firm views about s.23
28 and they disagreed with each other. It was fascinating
29 to listen to but it wasn't able to be resolved, because
30 of course it's about legal interpretation of s.23.

10.26AM

10.26AM

31 Counsel Assisting's submissions tell you at

1 page 35, paragraph 21, it is suggested that the legal
2 issue is relatively straightforward and that courts
3 have construed s.23. I don't need to disagree,
4 Mr Niest disagreed. In fact, the case referred to
5 there in footnote 28, *Whittaker v. Delmina*, is really 10.27AM
6 one of the only examples that's ever emanated from
7 Victorian courts. It's a case about a pony ride
8 business. It's a case about a business that offered
9 pony rides and the safety question was whether or not
10 letting customers go outside of the property where the 10.27AM
11 pony rides started and ride off on their own without a
12 supervisor was unsafe. Even then, reasonable minds
13 differed and people had to go to the Supreme Court in
14 order to ascertain whether or not s.23 was engaged.

15 What Mr Niest made clear in his engagement on this 10.27AM
16 question with Mr Rozen was that he regards the question
17 of this fire and whether or not s.23 is engaged is a
18 complex question, perhaps not resolved by applying the
19 pony ride case.

20 The types of things Mr Niest raised were as 10.27AM
21 follows: He said, "But the threat originated
22 externally in the form of a bushfire and travelled into
23 the mine." He also pointed to this other subtlety. He
24 said, "Views might differ about whether or not the fire
25 taking hold in the non-operational parts of the mine 10.28AM
26 gives rise to a different view about whether s.23 is
27 engaged."

28 In our submission, he was appropriately attempting
29 to draw out the subtleties and the difficulties, but in
30 the end it's a question of legal interpretation and not 10.28AM
31 one that the Inquiry is well placed to form a

1 conclusive view on. And in the end, does it matter,
2 because Mr Niest and others have agreed that there may
3 be a regulatory gap? And again, that's a question for
4 the State to consider.

5 Leaving that debate about ss.21 and 23 to one 10.28AM
6 side, the next issue is the treatment in the
7 regulations of mines, where it's clear that there's a
8 difference between mining hazards and major mining
9 hazards. You heard a deal of evidence from witnesses
10 about the difference between the two. Again what 10.28AM
11 became clear is each of Inspector Hayes, Mr Niest and
12 Professor Cliff expressed different views and sometimes
13 very tentative views about how those two work together
14 or the differences between them.

15 Again, it became clear that Mr Rozen and Mr Niest 10.29AM
16 have very different views about their conceptual
17 approach to mining hazards as opposed to major mining
18 hazards, and the significance of that is that it may be
19 a reason to review the way in which those regulations
20 are crafted or applied. In response to that, 10.29AM
21 Mr Graham's evidence is that that would be welcome and,
22 as has always been the case, the mine will continue to
23 work with VWA.

24 In light of that background, can I point to the
25 matters that we take issue with in Counsel Assisting's 10.29AM
26 submissions on this point. At page 37 at paragraph 30
27 Counsel Assisting suggests that the evidence is that
28 VWA has concentrated its regulatory approach on
29 compliance with Regulation 5.3.23 and then they refer
30 to the evidence of Inspector Hayes. 10.30AM

31 To suggest that Inspector Hayes or VWA has focused

1 on that requirement, we say, is erroneous. Inspector
2 Hayes, we don't know what he was asked to respond to in
3 his witness statement, but from its content it appears
4 that he was asked to enumerate the Improvement Notices
5 issued to the mine; as it turned out one of them 10.30AM
6 related to the regulation, and he found it to have been
7 complied with after further work was done. But you
8 have to read his statement with that of Mr Niest and
9 all of the body of material in terms of reports
10 generated at the mine to see that VWA has in fact 10.30AM
11 undertaken annual verification inspections on different
12 topics and, as Inspector Hayes explained in answer to a
13 question from Ms Petering, they appear at the mine on
14 an ad hoc basis, sometimes in response to events,
15 sometimes of their own accord, sometimes planned, 10.31AM
16 sometimes forewarned, sometimes not; they're in and out
17 of there a lot. And in that work they have not
18 confined their approach to 5.3.23. They accept that
19 it's a very important aspect of regulating this mine,
20 but they have certainly not confined their approach to 10.31AM
21 that.

22 It is significant that in 2009, when a big body of
23 work was done by GHD, the workshops that were set up to
24 work through the entire risk assessment process,
25 Inspector Hayes and Mr Sleziak were there. Again, not 10.31AM
26 relevant of an operator that isn't committed to
27 continuous improvement or hides the results of its work
28 from the Regulator; it invites the Regulator in. They
29 were at its workshops, so there's no suggestion that
30 VWA has not kept up to speed with the broad body of 10.31AM
31 work that's done.

1 Can I turn now to the particular issues about the
2 regulations that from time to time it's been suggested
3 the mine has not complied with. A lot of this detail
4 is summarised in our written submissions at paragraphs
5 357-364. Without reading it all to you, can I identify 10.32AM
6 the end point, which is that, while Professor Cliff
7 opened with the suggestion that there'd been a failure
8 to comply with Regulation 5.3.23, in light of two
9 significant developments he retracted that opinion.
10 These are set out at paragraph 363 and 364. All of the 10.32AM
11 detail of that is embedded in the paragraphs which
12 precede it, but can I jump to the punchline because it
13 appears this is now a non-issue.

14 Professor Cliff now accepts that the material
15 provided to him provide a basis for a safety assessment 10.33AM
16 process and that he had previously misapprehended the
17 way in which the Victorian regime works with respect to
18 the distinction between major mining hazards and other
19 mining hazards. So at paragraph 364, as we note, when
20 it was ultimately put to him in cross-examination and 10.33AM
21 when aspects of all of those documents ranging from
22 2003-2012 were put to him, he said the safety
23 assessment process meets the criteria. When pressed he
24 confirmed he now accepts that the criticism in his
25 report at page 8 is not the case. 10.33AM

26 Can I go now then to Regulations 5.3.7 and 5.3.9
27 which are now advanced by Counsel Assisting. Can I
28 remind you of the touchstone of Regulation 5.3.7? It's
29 an obligation to, as far as is reasonably practicable,
30 identify all mining hazards and assess the risks to 10.34AM
31 health and safety associated with mining hazards.

1 Pausing there, can I remind you that Mr Niest's
2 firm view is that a fire in a worked out batter is a
3 mining hazard but not a major mining hazard.

4 Next, Regulation 5.3.7 also requires that, in
5 assessing risks to health and safety associated with a
6 mining hazard, the operator must have regard to the
7 nature of the mining hazard, the likelihood of the
8 mining hazard contributing to any harm to any person,
9 and the severity of the harm that may be caused.

10 Can I pause there. In a sense this regulation is
11 otiose. That is already the obligation imposed by
12 means of ss.21 and 23. Every workplace in Victoria has
13 to identify risk and then devise the reasonably
14 practicable control methods. Perhaps the thinking
15 behind this is to underscore the importance of this
16 with respect to mines and of course to make it crystal
17 clear that a fire in a mine requires this treatment.
18 Whatever may be the policy rationale which underpinned
19 it, it says what it says and it's accepted that that is
20 a regime that applies to mining hazards.

21 You haven't been told much about the next
22 regulation in the suite, which is Regulation 5.3.8.
23 That says that, "Operators must adopt risk control
24 measures that either eliminate or reduce so far as is
25 reasonably practicable the risks." Again, it may be
26 otiose because ss.21 and 23 of the Act say you've got
27 to do that. But I emphasise it because Mr Niest
28 emphasised many times that you are only obliged to
29 apply control measures that are reasonably practicable,
30 and here's another reminder of that.

31 Regulation 5.3.9 says, "In order to ensure

1 compliance with 5.3.8 by adopting appropriate risk
2 controls, operators must review and, if necessary,
3 revise the identification of mining hazards, the
4 assessment of risks to health and safety associated
5 with mining hazards and the risk control methods
6 adopted." And it goes on to say that that review must
7 be conducted after an incident involving a mining
8 hazard.

10.36AM

9 Can I recap: 5.3.7 says you've got to identify
10 mining hazards. Well, we say we can and we do. We
11 understand a fire in a mine is a mining hazard wherever
12 it occurs. 5.3.8 says you have to adopt reasonably
13 practicable control measures, I'll say more about that
14 in a moment, but I will remind you that Mr Niest says
15 in his statement, "People might think that
16 rehabilitation is a good control measure; it's not a
17 reasonably practicable one. People might think that
18 installing pipe networks all over the mine is a good
19 thing to do, but it's not a reasonably practicable
20 control measure in all cases."

10.36AM

10.36AM

10.37AM

21 Then Regulation 5.3.9 adds to that suite of
22 obligations and says, if you have an incident involving
23 a mining hazard - so let's say a fire - you need to
24 review things. Well, we did. That is what the GHD
25 2008 report is. That is the review, that is the
26 compliance with 5.3.9.

10.37AM

27 The regulation doesn't go on to say "and, if any
28 recommendation is made, no matter what, by the
29 consultant who assists you with that review, you must
30 implement it." It does not say that. It's 5.3.8 which
31 governs the outcome. It tells you, implement

10.37AM

1 reasonably practicable control measures.

2 If a consultant has recommended one; good, that
3 will be some evidence of what the reasonably
4 practicable control measure is, but it's not proof of
5 what it is and it doesn't convert it into a legislative 10.38AM
6 requirement to implement everything that a consultant
7 suggests.

8 I want to go back to 5.3.7. It's now asserted at
9 paragraph 32 on page 37 of Counsel Assisting's
10 submissions that there's no evidence that GDF Suez has 10.38AM
11 assisted the risk of fire in a worked out batter as
12 required by Regulation 5.3.7. You are told there's no
13 evidence. This omits important evidence and misstates
14 it.

15 The important evidence comes from the 10.38AM
16 cross-examination of Mr Niest. To save time, I'd ask
17 that transcript page 1837 be available; I'm hoping we
18 can bring that up. At the top of page 1837 Mr Niest
19 was being tackled on this point of risk assessments and
20 he was asked: 10.39AM

21 "From your analysis of the documents you referred
22 to earlier, the safety management system and the safety
23 assessments, has GDF Suez engaged in such a risk
24 assessment in relation to the risk of fire in the
25 non-operational parts of the mine?---Yes." 10.39AM

26 This is what is being suggested we haven't done.
27 Mr Niest, Executive Director of Health and Safety says,
28 "Yes." Mr Rozen went on: "They have?---Yes.

29 Where do we see that?---As I said, the bow-tie
30 diagrams are a representation of a safety assessment or 10.39AM
31 such a risk assessment."

1 I pause there to remind the tribunal, those
2 diagrams were complemented by hundreds of pages of
3 control measures in the control sheets.

4 This is Mr Niest: "As you pointed out earlier,
5 there is that risk identified, that hazard of a 10.40AM
6 bushfire as an initiator of fire in the mine. So
7 clearly they've put their mind to it, but what they
8 consider to be the consequences of that fire is
9 important because, if it's in the non-operational parts
10 of the mine or, as you said, the worked out batters, 10.40AM
11 their consideration of consequences is different to, if
12 it's in an operational part of the mine."

13 Mr Rozen didn't like the answer, so he put it
14 again: "It may be me, I think you might be confusing
15 the two issues: One is the source of the ignition 10.40AM
16 which might be external in the form of a bushfire, it
17 might be internal in the failure of maintenance, by a
18 machine for example. The bow-tie diagram certainly
19 identifies an external source, but my question's a
20 different one. Have they, to your knowledge, engaged 10.40AM
21 in a risk assessment of the risk of fire in relation to
22 the non-operational parts of the mine, regardless of
23 what the source of ignition is?---Yes, I believe they
24 have", says Mr Niest.

25 "Where would we see that? Why do you think that 10.41AM
26 they have?---In looking at their safety management
27 system, in understanding what they consider to be a
28 mining hazard, fire in the mine, no matter where it is
29 in the mine, is a mining hazard and they're required to
30 address all mining hazards in their safety management 10.41AM
31 system."

1 And then he goes on, "That's where the analysis
2 comes out. The best way to think of a safety
3 management system, it's an encyclopedia of risk
4 controls. If a fire is a mining hazard and is then
5 considered in a safety management system, the controls 10.41AM
6 in relation to fire, not as a major mining hazard but
7 just as a mining hazard, is covered in the safety
8 management system, so therefore they've put their mind
9 to that risk assessment."

10 That's Mr Niest's view. Mr Hayes has not said 10.41AM
11 that he's ever noticed such a deficit. In all of his
12 work in the mine, in his consideration, including his
13 participation in the 2009 workshop, he has never formed
14 a view that he should issue an Improvement Notice with
15 respect to a breach of Regulation 5.3.7. 10.42AM

16 While that regulation never mentioned, it might be
17 fairly assumed that it was the touchstone of that
18 regulation that was being put to Mr Niest all the way
19 through those passages there. He says, "Yes, they
20 have." In those circumstances we submit you just 10.42AM
21 couldn't reach a finding, looking at this body of
22 evidence, that there's been a failure to comply with
23 that regulation.

24 Can I turn to Regulation 5.3.9, the one that talks
25 about the obligation to, if you have a fire, review it. 10.42AM
26 As I said a moment ago, that obligation is to review
27 your system in light of the fire that's occurred. The
28 GHD 2008 report looked at the cause of the fire,
29 reviewed the fire and we say constitutes the obligation
30 under 5.3.9. It's a separate question whether a 10.43AM
31 further risk assessment on a discrete topic, if

1 recommended by a consultant, is required to be
2 implemented. Because, we can reasonably apprehend
3 Mr Niest would answer that question this way, he would
4 say, "Only if it's a reasonably practicable control
5 measure."

10.43AM

6 There is no regulation which says, any time you do
7 a review and any time anyone says, here's a list of
8 good ideas that come from a review, you've got to put
9 them into place. That is because, as I said, 5.3.9 is
10 a process, it's not an end in itself, it's a process.

10.43AM

11 Here we're one step back. There was a
12 recommendation by a consultant to do a risk assessment,
13 and Counsel Assisting leaped from that to make a number
14 of assumptions. Can I point you to the problem with
15 the reasoning at page 38, paragraph 36. At
16 paragraph 36 on page 38 it's suggested that, "(1) Given
17 there are similarities between the 2008 and 2014
18 fires" - we dispute that and I'll come back to that in
19 a moment - "(2) It is of considerable concern that GDF
20 Suez did not conduct such a risk assessment. Had it
21 been done and appropriate control measures implemented
22 in accordance with the outcome of the assessment and
23 the requirements of the regulations, the 2014 fires in
24 the worked out areas may not have occurred, or even, if
25 they had occurred, may not have had the catastrophic
26 impact they had."

10.43AM

10.44AM

10.44AM

27 Two points: We don't accept that there are
28 obvious similarities between the two fires. I mean, in
29 one sense a fire is a fire, but one was in the worked
30 out batters due to the reignition of a hot spot
31 in September. The other is due to two huge bushfires,

10.44AM

1 possibly the work of an arsonist or arsonists, bearing
2 down on the mine and shortly thereafter the power going
3 out.

4 But leaving that to one side, it's the faulty
5 logic in terms of causation that troubles us most. 10.45AM

6 That paragraph assumes that had, as a result of
7 recommend 6, a risk assessment been conducted it would
8 have identified appropriate controls. What is it being
9 imagined are the appropriate controls that a
10 hypothetical risk assessment if done in, say, 2008 or 10.45AM
11 2009 would have identified?

12 Remembering of course that Recommendation 6 said,
13 "And it should be the subject of a cost-benefit
14 analysis and it's got a lot to do with hot spots."
15 Mr Prezioso said, "In light of that, here's everything 10.45AM
16 we did. We worked out a way of identifying hot spots,
17 mapping them, tracking them." We say he's done it.

18 But even if one imagined that what Counsel
19 Assisting are driving at here is something else;
20 perhaps they are imagining that a risk assessment, if 10.45AM
21 it was conducted, would have suggested that additional
22 pipework be put in particular places, not where this
23 fire broke out but somewhere else; presumably the
24 somewhere else we're imagining now is the northern
25 batters. How can it be said that, if the pipework was 10.46AM
26 there, the fires might not have occurred? That can't
27 be the case.

28 Secondly, how can it be said that, if that
29 occurred, they may not have had the catastrophic impact
30 they had? That can't be the case. The pipework that 10.46AM
31 was removed is in a rehabilitated part of the land that

1 wasn't a significant part of these fires.

2 Secondly, nothing that is referred to in that list
3 of hypothetical events stops the power going out. So
4 we say it's faulty reasoning to go backwards and say,
5 had you conducted a risk assessment in the context 10.46AM
6 where one was thinking about hot spots in the southern
7 batters, that necessarily would have identified a
8 particular outcome and necessarily, had you implemented
9 it, the fires wouldn't have started. That can't be
10 true or wouldn't have been of this nature. That can't 10.46AM
11 be true. But, much more significantly, nothing can
12 convert any of that into a statutory obligation to
13 implement risk control measures that are not reasonably
14 practicable. Nothing can convert that into an
15 obligation. 10.47AM

16 In this, can I let Mr Niest have the final word.
17 I've asked that paragraphs 29 and 30 of his statement
18 be available. This is exhibit 70 in the proceedings,
19 Mr Niest's evidence, when he talks about what
20 "reasonably practicable" means. We might say that the 10.47AM
21 reference in Recommendation 6 in that 2008 report to a
22 cost-benefit analysis is a shorthand way of evoking
23 these statutory controls.

24 Mr Niest at paragraph 29 said:

25 "The degree of harm that may result from a 10.47AM
26 particular hazard informs the question of whether a
27 particular control measure is reasonably practicable to
28 implement by a duty holder within the terms of the Act.
29 For example, the best way of eliminating or reducing
30 the risk of fire in non-operational parts of the mine 10.48AM
31 might be to rehabilitate the land. However, given the

1 cost or feasibility of rehabilitation, compared with
2 the likelihood of fire and the degree of harm that
3 might result from it, rehabilitation is unlikely to be
4 considered a reasonably practicable control measure for
5 dealing with this particular hazard..."

10.48AM

6 In the next paragraph he gives another example:

7 "Similarly, the cost of installing and maintaining
8 across the entire non-operational part of a large open
9 cut mine such as Hazelwood, a mine fire services system
10 [he's talking about pipe networks] that would be
11 effective in controlling a coal fire is likely to be
12 disproportionate compared to the degree of harm that
13 could result from such a fire. Accordingly, such a
14 risk control measure, while valid and effective, would
15 not be considered reasonably practicable to enforce,
16 even if it might be considered desirable or reasonable
17 in order to prevent or control lesser consequences."

10.48AM

10.48AM

18 To recap: Even if this risk assessment that so
19 much focus has been placed on had been conducted, and
20 even it had recommended a pipe network throughout all
21 of the worked out parts of the mine - although it's not
22 clear why that it would be its focus in order to deal
23 with the risk posed by hot spots - but even if it had
24 done that, one would then need to apply what the
25 consultants called the cost-benefit analysis but what
26 the Act calls the notion of reasonable practicability,
27 and, as Mr Niest says, there's no open and shut cases,
28 you have to assess all the criteria under the Act as a
29 whole. But when he turned his mind to the two most
30 prominent examples in this entire Inquiry, he came up
31 with the answers you see in paragraphs 29 and 30.

10.49AM

10.49AM

10.49AM

1 Then as matter of fact we say in relation to the
2 evidence pertaining to this fire, one can't engage in
3 faulty reasoning with respect to the causal chain to
4 reach the conclusion that it would have had any
5 appreciable effect in this fire if this hypothetical
6 assessment had identified these hypothetical controls
7 and they had hypothetically been implemented.

10.50AM

8 To return to our written document and identify
9 other aspects that I want to address in the oral
10 submissions, can I direct your attention to
11 paragraph 273 and just pick up some of these questions
12 about the evidence pertaining to the fire services pipe
13 network. Prior to these paragraphs we deal in detail
14 with what Mr Polmear had to say, the question of what's
15 required under a work plan or a work plan variation and
16 the like, and it's all set out in detail and we'd ask
17 you to consider all those submissions in evidence.

10.50AM

10.50AM

18 To get to the heart of it, it's worth moving on to
19 the end point which is of course that Mr Graham has
20 said that the mine is going to look at this question of
21 additional pipework. They are going to implement some
22 pipework come what may and they're going to participate
23 in a review of pipework in the non-operational batters.
24 This, I might say, is another example of Mr Graham's
25 can do attitude. There are all sorts of points that
26 can be made and are being made about what he was ever
27 obliged to do, but one thing's for sure, he's told you
28 what he's going to do.

10.51AM

10.51AM

29 At paragraph 273 and onwards we make the point
30 that Mr Incoll's view about whether there was a legal
31 requirement or his purported expression of a legal

10.51AM

1 opinion about whether an amendment to the work plan was
2 required before the pipe network could be altered is
3 not something that the Inquiry will be able to reach a
4 final conclusion on.

5 As we note in paragraph 277, this is not really a 10.51AM
6 question Ms White had ever considered although it was
7 put to her in the running of the matter. It's our
8 submission that one can't elevate the attachment of a
9 map of a network as it stood in 1995 to a statutory
10 obligation to retain pipework in precisely that form. 10.52AM
11 I mean, it's not even logical to assume that given part
12 of this pipework was removed because it wasn't working
13 and part of it was removed to rehabilitate the land.

14 We submit our conclusion at paragraph 278 in that
15 respect. We submit it should be found that we're 10.52AM
16 presently in compliance - of course, that is the
17 evidence of Ms White, she is the Regulator in that
18 regard. We submit at paragraph 278(b) it hasn't been
19 established that a formal variation to the work plan is
20 required. 10.52AM

21 We note, where to from here? At paragraphs
22 279-280 we say really the separate question of whether
23 it's valuable to introduce more pipework and whether
24 wetting down of non-operational areas will assist has
25 become a moot point because Mr Graham has said, "I'll 10.53AM
26 do it, I will look at it, I will review it, and we will
27 in any event instigate wetting down of non-operational
28 areas." It's a matter we refer to at paragraph 281.

29 Can I come to page 66 of our submissions. This is
30 one of the themes I opened up yesterday, the 10.53AM
31 differences, the important differences that must be

1 borne in mind between progressive rehabilitation, final
2 rehabilitation, and interesting ideas that people came
3 up with in the Inquiry. In the interesting ideas
4 category are all variations on the theme of putting
5 earth on the batters in their present vertical state or 10.53AM
6 laid back, mixing the earth with other applications,
7 spraying it, applying it, what have you. As we said
8 yesterday, those are all interesting ideas but they
9 haven't moved off the page or out of people's mind into
10 any practical application thus far, and of course 10.53AM
11 they'll have to be subjected to rigorous risk
12 assessment if they move beyond that stage.

13 In this part of our submissions we deal with, at
14 paragraph 292 onwards, how rehabilitation works and
15 there's been much talk of the evidence of Mr Faithfull 10.54AM
16 and I won't read it out. But what's striking is that
17 Mr Faithfull's evidence is pretty well replicated in
18 Ms White's paragraph 182 where she sets out what you
19 need to bear in mind before you embark on
20 rehabilitation works. And so, it appears that the mine 10.54AM
21 operator in terms of how they do things, and the Mine
22 Regulator in how they conceive of what's safe and
23 feasible, are on the same page.

24 It's not surprising and it's not concerning, as
25 Environment Victoria appeared to suggest, it's because 10.54AM
26 they're the experts; one is the expert Regulator and
27 one is the expert operator. That's how they came to
28 the result; it's not a product of collusion, it's the
29 product of the real world.

30 At paragraph 292 we set out all of the important 10.54AM
31 feasibility aspects of rehabilitation that

1 Mr Faithfull's given evidence of. At paragraph 296 we
2 draw attention to the difference which emerged in the
3 evidence in terms of how people have interpreted the
4 work plan thus far. Again, this falls in the category
5 of interesting evidence, but things have moved on 10.55AM
6 because Mr Graham has said, "Well, look, let's sit down
7 and work it out. In the next version of the plan,
8 let's be clear and make sure that everyone has the same
9 understanding of how the plan works."

10 Can I take you to paragraph 297, and you will 10.55AM
11 recall this evidence of Mr Faithfull about how bringing
12 forward or doing out of sequence rehabilitation work
13 has a dramatic impact on feasibility, on mine operation
14 and on cost. We've set out a good deal of that detail
15 at paragraph 297. Then we echo at paragraph 299 what 10.55AM
16 Ms White said on the very same topic. She pointed to
17 the need to have technical experts available to provide
18 advice about mine stability and the like. I'd ask that
19 in your own time you have close regard to each of those
20 aspects of the evidence that we set out in 10.56AM
21 paragraphs 300-302 without me needing to read it now.

22 At paragraph 306 and following we have set out to
23 assist the Inquiry all the different types of good
24 ideas, temporary rehabilitation, nice thoughts that
25 different witnesses had, but as I've said already, in 10.56AM
26 the final analysis each one of them agreed they hadn't
27 subjected their idea to a risk assessment or to any
28 work with mining experts, and not one of them could
29 come up with an example where it's been successfully
30 applied or even unsuccessfully applied in an open cut 10.56AM
31 mine.

1 By way of example, can I direct your attention to
2 paragraph 318 because it was Professor Cliff who had a
3 particular idea in mind. He had said, "Well, let's put
4 clay or fly ash slurry on steep slopes to provide a
5 coating." In cross-examination, as we note at 10.57AM
6 paragraph 318, he acknowledged he hadn't considered the
7 effect of applying such a surface on drainage and he
8 wasn't aware of this technique having been used in an
9 open cut mine. So, if any of these bright ideas are to
10 be taken to the next stage, obviously those are the 10.57AM
11 sorts of things that will need to be considered.

12 Can I direct your attention to paragraph 322 where
13 we state a conclusion in that regard, and I won't read
14 it.

15 To go to the last couple of topics covered in this 10.57AM
16 part of our written submission, you will see a heading,
17 "Rehabilitation bond." Of course, this aspect of our
18 submissions principally responds to the submissions of
19 Environment Victoria. Looking at paragraph 323, you
20 will see that we acknowledge there what the statutory 10.58AM
21 regime makes provision for, and of course Environment
22 Victoria's call for the Minister to take certain steps
23 under s.79A is a matter for the Minister. If it
24 occurs, it occurs, and of course then the statutory
25 obligations will attach. 10.58AM

26 But as we go on to point out, one always has to be
27 careful to read this statutory regime as a whole.
28 Often s.83, which we refer to in paragraph 327, was
29 overlooked. The Minister can request a licence holder
30 to rehabilitate land and if, following a reasonable 10.58AM
31 period of time, it seems that that request is not going

1 to be met, the Minister can rehabilitate himself and
2 then recover the funds. There is that power, and of
3 course, as Mr Graham said a number of times, and
4 Ms White strongly agreed, there is in any event an
5 obligation to meet requirements of progressive 10.58AM
6 rehabilitation, and as the Regulator, like VWA, is in
7 and out of that mine all the time, it would be brought
8 to the mine's attention if they were deficient.

9 I asked Ms White when she was giving evidence
10 whether Ms Bignell, who was the Inspector on the 10.59AM
11 ground, has ever raised with the Department or raised
12 with the mine a failure to meet targets and comply with
13 the plan in the context of rehabilitation and she
14 confirmed they have not.

15 At paragraph 329 we make the point that it's only 10.59AM
16 if there's multiple failures to meet targets, to comply
17 with the request from the Minister and then an entity
18 walks away from a mine that the need to ever draw on a
19 bond crystallises. Here Ms White has said she has got
20 no reason to believe that GDF Suez won't meet its 10.59AM
21 commitments and Mr Graham has said exactly the same
22 thing. In those circumstances setting a bond has to be
23 appropriately calibrated in light of the risk profile
24 that's presented. The risk profile is not just what
25 rehabilitation is needed and provided for in the plan; 11.00AM
26 it is, is there a risk that the mine operator won't do
27 it? Presently, DSDBI does not hold that view.

28 In terms of methodology for setting a bond, as we
29 say at paragraph 333, there's no one who was available
30 or who attended here to say what was in the minds of 11.00AM
31 those who set the bond in 1995, but we have some

1 material. It seems that what motivated those who were
2 forming a view at that stage, back in Generation
3 Victoria days, was, there was no likelihood that the
4 mine would be closed before its planned end of life
5 because it was providing power that the State needed, 11.00AM
6 and further, provided progressive rehabilitation was
7 kept up, the only potential liability at the point of
8 closure was the residual. This is something we point
9 to at paragraphs 334 and 335.

10 That's why at paragraph 337 we say in these 11.00AM
11 circumstances where the Department is satisfied that
12 Hazelwood is in compliance with the plan, and there
13 exists no other freestanding reason to think that
14 there's any chance that the company won't be able to
15 meet the cost of rehabilitation works, there's no need 11.01AM
16 to assume an occasion to revisit the setting of the
17 bond. In any event, Ms White has said the Department
18 has a bit of a stop/start project on foot to look at
19 this, and as Mr Graham has said, of course we'll
20 participate in that. 11.01AM

21 I've dealt with the matters in section 6 which
22 appear on page 81 and following, so I now want to take
23 you through to section 7 which starts on page 88. This
24 was a late breaking topic in the Inquiry, if I can put
25 it that way. It wasn't really raised starkly with any 11.01AM
26 witness until the Fire Services Commissioner returned
27 on the last day. As we note at paragraph 370, he told
28 us that the total cost of the fire has been estimated
29 at \$32 million. He said this includes what he called
30 an HR component, but it became clear that that means he 11.02AM
31 includes the salaries of all employed firefighters who

1 attend. That is a mode of assessing cost, of course
2 they have to be paid their salaries in any event, but
3 it's to be assumed he's identifying the reality that
4 they were devoted to this emergency rather than another
5 emergency.

11.02AM

6 In any event, in that capacity Mr Lapsley
7 suggested for the first time that Regulation 97 of the
8 CFA Regulations might be used to recover some costs.
9 This is not a suggestion that was raised with other
10 witnesses or principally with the mine, but when one
11 looks at that regulation it's titled, "Emergency
12 attendances", and it really is crafted to refer to the
13 situation where a brigade is called out to a false
14 alarm or a false report. There is a little subsection
15 in it which refers to "special circumstances requiring
16 the protection of life or property." We're not aware
17 of any legal precedents of it being used to call on the
18 owner of private property to contribute to the cost of
19 fighting a large scale bushfire.

11.02AM

11.02AM

20 No doubt, if such a conversation were to be had,
21 there will be a number of other factors that might be
22 relevant to be called in aid in that discussion, and we
23 set those out in paragraph 372. Of course, it was the
24 staff of GDF Suez who were the first responders to this
25 fire for many hours; that's their job but also the CFA
26 said, "We can't get there."

11.03AM

11.03AM

27 Further, the staff of the mine and its contractors
28 were engaged in fighting the fire at great cost over 45
29 days. As Mr Graham has said, the impact on production
30 was luckily limited, but the impact on the business is
31 in the order of tens of millions.

11.03AM

1 Further, the mine of course paid to install the
2 additional fire services network pipes at a cost of
3 \$2.5 million.

4 We note in paragraph (d) the other contribution
5 that is made to defraying the cost of firefighting 11.04AM
6 services in this State. The Fire Services Levy, which
7 has undergone changes since the 2009 bushfires, is now
8 intended to be devised in a manner which recognises
9 that everyone bears the cost of firefighting, and a
10 substantial sum has been contributed via these means. 11.04AM
11 Since the matter came up so late and we hadn't been
12 asked about it, we now seek to advance that information
13 through a one-page chart that's at the end of our
14 submissions which sets out the significant contribution
15 that's been made via these means by GDF Suez. 11.04AM

16 You will see that over the period just from
17 2011-2014 close to \$5 million has been paid by those
18 means to a contribution to the community's cost of
19 fighting fires. So we have no doubt that, if this
20 difficult conversation to which fire Commissioner 11.05AM
21 Lapsley referred is to be had, all of those matters
22 will be relevant to be discussed.

23 Can I conclude by making two responses to two
24 other matters raised by Counsel Assisting, and then
25 noting the last part of our written document. At 11.05AM
26 page 48 of Counsel Assisting's submissions there is a
27 suite of matters that appear under the heading of
28 "Criticisms". those that relate to occupational health
29 and safety I've already dealt with.

30 In terms of the recommendation that is 4.4(2) 11.05AM
31 right down the bottom of page 48, it's said that, "GDF

1 Suez should engage reputable external consultants to
2 conduct a thorough risk assessment." Noting the
3 submissions I've already made about the fact that
4 that's already been done, it then goes on to say, "The
5 assessment must consider the most effective fire 11.05AM
6 protection for exposed coal surfaces, including..." and
7 there's a list. Over the page it says, "GDF Suez
8 should implement the suggestions in the report
9 concerning controls and treatments to minimise the
10 impact of the risk." 11.06AM

11 Can I pause there to take issue with that. This,
12 yet again, converts the work of external consultants to
13 a statutory control. There is no requirement to
14 implement every suggestion made by an external
15 consultant. The scope of the requirement is to be 11.06AM
16 found in Regulation 5.3.9. If you have a fire, you
17 have to review it. Yes, that will be done. Having
18 done that, one needs to look at whether your
19 identification of mining hazards and your
20 identification of the controls with respect to those 11.06AM
21 mining hazards needs work. Even if it does, the
22 recommendations of consultants will assist in that
23 work. But the obligation thereafter is to implement
24 those controls which are reasonably practicable within
25 the meaning of the over-arching scheme. 11.07AM

26 So, insofar as the work of external consultants
27 identifies reasonably practicable control measures,
28 that will be the touchstone from there on. The
29 touchstone is not a blanket requirement to implement
30 what others say is a good idea. 11.07AM

31 The next matter I want to draw attention to is

1 page 49 at paragraph 3 where there's a suggestion that
2 GDF Suez should review its policy and Code of Practice
3 to address a number of matters. As to matter 3(a),
4 Mr Graham has already said that's a lesson learned.
5 The code only requires us to look at external 11.07AM
6 vegetation rather than internal vegetation. We've
7 learnt from this fire that that's not ideal and we're
8 going to implement a program of vegetation reduction.
9 So he's already embraced that proposal.

10 As to the other suggestions, they don't 11.07AM
11 immediately appeal to us as things that will
12 necessarily be recommended or necessarily represent
13 reasonably practicable controls. For example, 3(d),
14 the ready availability of CAFS that are capable of
15 operating in an open cut mine environment. I think 11.08AM
16 everybody agrees that sort of equipment is desirable,
17 and Mr Graham referred to it as a defining moment in
18 this fire fight when it appeared. But to convert one's
19 experience that it was good when the CFA borrowed this
20 equipment from the city and Interstate, to it's 11.08AM
21 reasonably practicable for the mine to buy it itself,
22 is a massive logical leap; not borne out in the
23 evidence, not the product of a risk assessment process,
24 and not the result of a cost-benefit analysis of any
25 kind. Nor was it ever put to the mine's witnesses. It 11.08AM
26 was an idea that Mr Incoll likes, and he's entitled to
27 express that view, but there is not a sufficient
28 evidentiary basis to suggest that these things should
29 then be incorporated in the work plan for the mine.
30 There are a number of leaps there that we suggest are 11.09AM
31 simply not open at this stage. It doesn't mean they're

1 not matters suitable for consideration, but
2 consideration always has to be viewed through the prism
3 of the Act which talks about identifying risks,
4 thinking about their likelihood of occurrence, and then
5 thinking carefully about what is reasonably practicable 11.09AM
6 to control them.

7 Can I close by directing your attention to s.8 of
8 our written submissions, page 89 and following, it's
9 all about lessons learned. This is the final theme
10 that I opened up yesterday. The theme was about the 11.09AM
11 different approach evident in these hearings of private
12 enterprise as opposed to the bureaucratic response of
13 Government.

14 I put it this way yesterday: It was Mr Graham
15 alone who came here and said, "I've seen a problem, 11.10AM
16 I'll use the mine's money and my energies and my
17 commitment to address them." He was forthright about
18 the lessons that he's learned and we've set out some
19 passages of his evidence at paragraphs 375 and 376.

20 In particular, at paragraph 375 he referred to the 11.10AM
21 one regret he's got, "It's about the community
22 engagement. Most certainly we've always acknowledged
23 that the IC is the one consistent voice that will
24 engage with the community and supply information to
25 them." As I've drawn to your attention previously, he 11.10AM
26 went on to say, "It was the wrong outcome because it
27 portrayed that GDF Suez did not care. That's as far
28 away from the truth as you could get." Then he goes on
29 to say, "Part of the reason we want a sustainable
30 business is because we're a big employer." And he 11.10AM

31 points to the well-known positive flow-on effects of

1 being a big employer in a regional town.

2 At page 376 Mr Graham made this interesting
3 observation: That, as with the one source, one message
4 policy that informed the communications approach, his
5 own experience had informed his response to emergencies 11.11AM
6 - namely, fix it, fix it quickly. But he has
7 acknowledged that in these longer campaigns and in
8 these longer community issues a different approach
9 might be required.

10 At paragraph 377 we refer to the personal 11.11AM
11 commitment he gave to implementing the red text in his
12 chart. This, we say, is to be contrasted with public
13 servants who, within their sphere at times exhibited
14 narrow interpretations of their sphere of
15 responsibility and at other times, while evincing a 11.11AM
16 willingness to consider matters, take them away and
17 discuss them, haven't reached the stage of concrete
18 action that Mr Graham has reached.

19 At paragraph 378 and following we reproduce
20 Mr Graham's chart, and the reason we've done that is so 11.11AM
21 it's in one handy place for you, but more significantly
22 we've footnoted it by reference to what Mr Graham said
23 about each suggestion in his evidence. So, to the
24 extent that elucidated his rationale for suggesting
25 these things or re-affirmed his commitment to implement 11.12AM
26 them and how he saw them working, the footnotes do the
27 work for you, we hope Members of the Board, in setting
28 out what he has said about the particular elements that
29 have been recommended.

30 If the tribunal pleases, those are the submissions 11.12AM
31 of GDF Suez, unless there are questions that the Board

1 would wish me to elaborate upon.

2 MEMBER PETERING: Thank you, Ms Doyle, that's a very
3 comprehensive outline. As I said to Mr Graham, it's
4 very commendable, those things that have been
5 mentioned. A number of times Mr Graham has put his
6 personal commitment to seeing those things through. 11.12AM

7 I'd just like clarification that it's actually the
8 company's commitment to seeing that, implementing those
9 things?---Of course. You will recall when Mr Graham
10 gave evidence he said two things, "In terms of
11 feasibility I've consulted with the experts." 11.13AM

12 So one example was electrical engineers, but in
13 terms of authority he had consulted with others, those
14 sitting near or just below him in the chart, but he
15 confirmed he has authority to do it. 11.13AM

16 I think when he was asked by you, Ms Petering,
17 whether or not it was really the case that, regardless
18 of the recommendations that it would be done, he made
19 this point: He said he understands the tribunal may
20 recommend more and differently, but he will implement,
21 and the company has committed to implementing the
22 things in red. He has the Authority to say so. That
23 was a question that I clarified with him during
24 cross-examination.

25 Thank you. 11.13AM

26 MS DOYLE: If there's nothing else I can assist the tribunal
27 with, I understand it's Dr Wilson's turn.

28 DR WILSON: If the Board pleases. Addressing last, we can
29 turn straight away to the substantive issues bypassing
30 preliminaries in addressing what we wish to say on
31 behalf of the State of Victoria. 11.13AM

1 First, can we address the emergency response in
2 general terms. The emergency response to the Hazelwood
3 Mine Fire was conducted under difficult circumstances.
4 The weather conditions were the worst since Black
5 Saturday in 2009.

11.14AM

6 During 9 February approximately 950 fires burned
7 across Victoria and the Board may recall that the
8 Hernes Oak Fire escaped its containment lines and moved
9 quickly towards Morwell, threatening lives and
10 properties.

11.14AM

11 Fires also threatened the Yallourn Open Cut Mine,
12 Jack River, significant tree plantations and the paper
13 mill, a major hazard facility. The Driffield Fire
14 ignited and moved quickly towards the working parts of
15 the Hazelwood Coal Mine, threatening critical
16 infrastructure and the major power supply to the State.

11.14AM

17 MEMBER PETERING: Excuse me, Dr Wilson, would we have the
18 benefit of anything in writing?

19 DR WILSON: We do, but that's going to come in in a few
20 moments, if I may. These are some general
21 preliminaries, if the Board would tolerate, and then
22 we'll get into the pithy substance in a moment.

11.15AM

23 The Board will recall the Jack River Fire
24 destroying property and threatening the town. Spot
25 fires ignited within the mine and the confluence of
26 those fires caused smoky conditions and poor
27 visibility.

11.15AM

28 We ask the Board to consider the State's emergency
29 response to the Hazelwood Mine Fire in that context.

30 That's so particularly in light of the need for our
31 fire services to prioritise the primacy of life because

11.15AM

1 the Jack River Fire, the Board will recall, flared at
2 the same time as the mine fire caught flight.

3 The risk of off-site impacts of the kind
4 experienced by the Morwell community from a large
5 sustained fire in worked out batters was not 11.15AM
6 foreseeable, and accordingly not anticipated nor
7 prepared for. Neither the 1944, the 2006 nor the 2008
8 reports on mine fires had identified additional impacts
9 of the fires on the nearby community as a foreseeable
10 risk. We stress that. 11.16AM

11 The Hazelwood Mine Fire ignited and burned for
12 over a month, that much is common ground. Controlling
13 the fire required significant resources, impacted
14 heavily on the town of Morwell and on other
15 communities. Whatever criticisms may be levelled about 11.16AM
16 the incident, the fire fight was a triumph on a massive
17 scale. A debt of thanks is owed to all those who
18 assisted in the response.

19 The Board will recall that in excess of 7,000
20 firefighters were involved including thousands of 11.16AM
21 volunteers. A Community Health Assessment Centre was
22 subsequently established and assessed over 2,000
23 members of the community. At the same time the world's
24 largest assessment of firefighters' health was
25 conducted. No-one was killed, nor were serious 11.17AM
26 injuries sustained and no houses were lost. The
27 Government viewed this fire and its consequences with
28 the utmost seriousness.

29 The firefighting cost was over \$32 million.
30 Grants to eligible persons amounted to more than 11.17AM
31 \$7 million. All Government agencies worked well

1 together, collaboratively achieving a very favourable
2 outcome in the circumstances.

3 Can we briefly move to the State's written
4 response to specific criticisms. The Board has granted
5 leave to do this and, with a view to saving Board time, 11.17AM
6 we propose to speak to a written submission that we
7 will circulate in a moment and otherwise accept the
8 Board's invitation to write to the Board by 23 June
9 responding to criticisms made by various parties about
10 witnesses and agencies. 11.17AM

11 By way of overview may we say something about
12 activist groups. So far as community witnesses are
13 concerned, the State thanks them and commends them for
14 their involvement in this Inquiry. The State
15 acknowledges their input and contribution to this 11.18AM
16 Inquiry. The State respects their views as it respects
17 them as individuals generally and, may we say, their
18 voices have been heard.

19 That said, not all those who were vocal during the
20 mine fire deserve as much weight as do others. Local 11.18AM
21 views from local groups that were concerned about
22 issues are to be given due regard, but individuals in
23 interest groups taking advantage of the circumstances
24 of the mine fire to push a point of view are not.
25 Community witness Lisa Wilson highlighted that. Those 11.18AM
26 individuals and interest groups distracted attention
27 away from the real issues and hindered attention being
28 given to the real issues among deserving people.

29 This is what we want to say by way of response to
30 the GDF Suez proposal: On the last day of the Board 11.19AM
31 hearings on Friday of last week Suez provided to the

1 Board a document entitled, "Mine Fire Inquiry" about
2 which we've heard something this morning, and it set
3 out various actions and steps it proposed to be taken
4 by the State and it in light of the fire.

5 Of course, the State welcomes the preparedness of 11.19AM
6 Suez to look afresh at how best to address issues of
7 fire prevention, mitigation, and to respond to the fire
8 at and around the Hazelwood Mine, but at the same time
9 it is regrettable that the document adduced by GDF Suez
10 was prepared in haste, without consultation with other 11.19AM
11 interested or affected parties and, most significantly,
12 without proper regard to the fact that Suez was the
13 party with the primary responsibility for addressing
14 issues of risk at the mine.

15 The regulatory framework for the Hazelwood Coal 11.20AM
16 Mine is based on the principle that the primary
17 obligation to identify and to manage risks at the site
18 rests with Suez as the duty holder. It is no different
19 for Suez than it is for any other owner or operator of
20 a business. Risk identification, risk mitigation and 11.20AM
21 risk management is its responsibility. Suez cannot shy
22 away from that responsibility by seeking to condition
23 its willingness to improve on its views about what
24 others should do, whether in the public or private
25 sector. 11.20AM

26 Importantly, and contrary to the position taken by
27 many of those from GDF Suez who gave evidence to this
28 Inquiry, Suez does not operate in a regulatory
29 environment where it is only obliged to do and only
30 does what others ask or tell it to do. The days of 11.20AM
31 regulation by prescription are gone. Duty holders

1 cannot avoid their responsibilities by saying it is
2 someone else's responsibility to tell them when they
3 are doing things wrong or not doing the things they
4 should be doing.

5 As identified by Professor Cliff in his evidence 11.21AM
6 and endorsed in closing by our friends, Counsel
7 Assisting, in light of the fire it's important that
8 Suez undertakes a comprehensive and rigorous risk
9 assessment in relation to the mine in order that
10 preventative and mitigation steps be taken by Suez that 11.21AM
11 may be considered in light of that risk assessment.
12 The proposals tabled for improvement as given just a
13 moment ago by our friend Ms Doyle do not reflect any
14 such comprehensive or rigorous risk assessment.

15 With that preliminary introduction, can we move to 11.21AM
16 the State's second submission. May we hand a copy to
17 each Member of the Board, please, with a copy to each
18 of our friends at the Bar table, two for the Suez camp
19 and two for Counsel Assisting.

20 This State second submission has been prepared on 11.22AM
21 behalf of all departments and relevant agencies of the
22 Government, many of which were closely involved in the
23 regulatory and emergency response associated with the
24 Hazelwood coal fire mine. It doesn't respond to the
25 evidence raised in the coal fire hearings - that's 11.22AM
26 addressed in the document that will be provided to the
27 Board by the 23rd.

28 What I now propose to do is to synthesise as best
29 as can be done the document that's presently before the
30 Board. First of all, the State of Victoria welcomes 11.22AM
31 the opportunity to assist the Board in its Inquiry and

1 report on the fire.

2 The second submission is to be read in conjunction
3 or in logical follow-on from the first submission that
4 was made to the Board in the Government's first
5 submission dated May; that submission outlined the
6 regulatory framework, the Board may recall, and agency
7 response for the coal fire, and it set out the
8 activities of Government in response to the fire.

11.23AM

9 This second submission responds to and makes
10 provision for future emergencies. Some of the actions
11 addressed in the second Government submission are
12 already underway, as they were identified and commenced
13 prior to the fire; others are intended to be
14 implemented in the near future as part of the
15 Government's commitment to continuing improvement.

11.23AM

11.24AM

16 The actions that are proposed address a handful of
17 matters. They include emergency management reform,
18 emergency mitigation and response, communications - a
19 matter of immense importance - environment, health,
20 relief and recovery and the overall regulatory
21 framework.

11.24AM

22 The Government intends to take action necessary to
23 mitigate the risk of future emergencies and to
24 continuously improve the Victorian Government's
25 response to emergencies.

11.24AM

26 Let me now provide an overview of the submission.
27 We've said before that we don't intend to descend into
28 the detail of the evidence as it has unfolded - that's
29 in a separate document that will be provided to the
30 Board. The first matter that we wish to highlight is
31 that of emergency management reform.

11.24AM

1 The Board will recall that on 10 December 2012 the
2 State Government unveiled its vision for the future of
3 emergency management in the State of Victoria,
4 releasing the Emergency Management Reform White Paper.
5 Victoria has previously faced flood, fire, heatwaves 11.25AM
6 and other emergencies over the last five years and it
7 was time to act on the lessons learned. The White
8 Paper flagged the biggest reform the sector has seen in
9 three decades. The White Paper was prepared in light
10 of the 2009 Bushfires Royal Commission and the review 11.25AM
11 of the 2010-2011 Flood Warnings Response. Despite the
12 significant efforts of those involved in responding to
13 these emergencies, the White Paper recognises that
14 Victoria's emergency management framework no longer
15 adequately provides the needs of Victorians during 11.25AM
16 major emergency events. This includes not only those
17 emergencies that are more common, such as bushfires and
18 floods, but also the less common emergencies as we saw
19 here, a coal mine fire where the all hazards, all
20 agencies approach is particularly important. 11.26AM

21 The Board will recall the White Paper outlines
22 reforms to further improve Victoria's emergency
23 management arrangements by embedding an all hazards,
24 all emergencies approach to managing emergencies, by
25 introducing streamlined arrangements for emergency 11.26AM
26 management governance, by encouraging shared
27 responsibility, cooperation and clarity of roles and
28 responsibility with a stronger emphasis on emergency
29 risk mitigation, and by recognising that improved
30 planning processes are essential to minimising the 11.26AM
31 likelihood and consequences from emergencies.

1 The White Paper outlined a broad road map for
2 change over a 10-year period, including 25 specific
3 actions for implementation. Some of the reforms
4 require legislative amendments, while others can be
5 implemented through changes to practice and procedure. 11.27AM
6 Under the White Paper the Government has committed to
7 continuous improvement across emergency management.

8 Of course, the main vehicle for this is the
9 Emergency Management Act 2013 which, if I may, I'll go
10 to now. The Government commenced the process of 11.27AM
11 implementing the reforms. The Emergency Management Act
12 was enacted on 3 December 2013. It commences in a few
13 days time, on 1 July 2014. It establishes a new
14 Government framework for emergency management that is
15 in many forms. First, it establishes a new overarching 11.27AM
16 emergency management body called Emergency Management
17 Victoria, which will make sure that agencies and
18 departments plan and work together, as well as share
19 resources before, during and after an emergency. For
20 the first time one agency will oversee response and 11.28AM
21 management for natural disasters and emergencies from
22 preparation right through to community recovery.

23 Next the legislation creates the role of the
24 Emergency Management Commissioner who assumes the
25 operational responsibility of the present Fire Services 11.28AM
26 Commission and oversees controlling arrangements for
27 fire, flood and emergencies.

28 Next, the legislation creates the role of an
29 Inspector General of Emergency Management to review and
30 monitor performance of State emergency management 11.28AM
31 arrangements.

1 Next, the Act establishes the State Crisis
2 Resilience Council as the Government's peak body
3 responsible for developing and coordinating emergency
4 management policy and strategy, then overseeing its
5 implementation.

11.29AM

6 Next, the Board may have heard some questions and
7 answers about this during the evidence, the Act
8 establishes a volunteer conservative committee, called
9 the Volunteer Consultative Forum to give volunteers
10 direct input into the reform process.

11.29AM

11 These emergency management reforms are a
12 significant aspect of continuous improvement to the
13 Government's preparation for and response to future
14 emergencies.

15 With the Board's indulgence, can we touch upon
16 some of the new arrangements and go straight, if we
17 may, to the State Crisis and Resilience Council or, in
18 the quest for acronyms, the SCRC. Member Petering will
19 be delighted to know that acronyms have a specific
20 definitions section in the early part of this document.

11.29AM

11.30AM

21 The SCRC was established administratively in April
22 of last year pending its establishment under the
23 Emergency Management Act in July of this year. The
24 SCRC is the peak crisis emergency management advisory
25 body in Victoria responsible for providing advice to
26 the Minister and the Security and Emergency Committee
27 of Cabinet in relation to whole-of-Government policy
28 and strategy for emergency management and the
29 implementation of that policy.

11.30AM

30 Its role in a complex or large scale crisis is to
31 ensure that the broad social, economic, built and

11.30AM

1 natural environmental consequences are addressed at a
2 whole-of-Government level, including identifying the
3 need for and providing access to, Government resources
4 as required and for it to oversee media strategies.

5 The SCRC is comprised of all departmental
6 secretaries, together with the Fire Services
7 Commissioner, to be replaced by the Emergency
8 Management Commissioner as Mr Lapsley will soon be
9 called. It's also made up of the Acting Chief
10 Executive of Emergency Management Victoria, it's made
11 up of the Chief Commissioner of Police, the Chief
12 Executive Officer of the Municipal Association of
13 Victoria and Emergency Services Commissioner as an
14 observer, to be replaced by the Inspector General of
15 Emergency Management after 1 July.

11.31AM

11.31AM

11.31AM

16 The Secretary of the Department of Premier and
17 Cabinet chairs the council, with the Secretary of the
18 Department of Justice as Deputy Chair, reflecting the
19 seriousness and significance of this as an organ of
20 Government.

11.31AM

21 The Government's intention in establishing the
22 State Crisis and Resilience Council, before the
23 Emergency Management Act commences operation and puts
24 the SRC on a statutory footing, was to facilitate the
25 implementation of White Paper reforms. Things are
26 already in motion; and at the same time ensuring
27 effective whole-of-Government oversight and
28 coordination for any major emergencies and their
29 consequences.

11.32AM

30 The Board will be interested to know that the
31 State Crisis and Resilience Council convene routinely

11.32AM

1 during the calendar year 2013 and during 2014, as well
2 as during the Hazelwood Coal Mine Fire.

3 Next, can we address the strategic action plan.
4 Under the Emergency Management Act the SCRC must
5 developed a three-year rolling strategic action plan to 11.32AM
6 be endorsed by Government and published on Emergency
7 Management Victoria's website. The purpose of the plan
8 is to improve and strengthen Victoria's emergency
9 management capability focusing on three key themes:
10 Risk and resilience, response and capability, recovery 11.33AM
11 and relief.

12 The strategic action plan will focus on reforming
13 emergency management across the whole-of-Government,
14 not only within the fire services. It broadens the
15 focus of reform beyond response and the traditional 11.33AM
16 first responder agencies. The plan is intended to
17 mitigate against the risk of agencies, focusing
18 exclusively or too narrowly on their own priorities and
19 not giving sufficient priority to collaboration in
20 forward planning. 11.33AM

21 All departments and agencies must implement
22 relevant parts of the strategic action plan. The plan
23 must also contain a works program for the Emergency
24 Services Telecommunications Authority and responder
25 agencies such as the CFA, the MFB, SES and DEPI. The 11.34AM
26 Emergency Management Act provides that these agencies
27 and departments must implement their works programmes.

28 The Inspector General, about which the Board has
29 heard, will be responsible for monitoring and reporting
30 on the implementation of the strategic action plan by 11.34AM
31 these agencies and departments. To assist in the

1 transition between the conclusion of the fire services
2 reform action plan and the implementation of the
3 three-year strategic action plan, the State Crisis and
4 Resilience Council is developing an interim strategic
5 action plan 2014-2015. This will insist in maintaining 11.34AM
6 the momentum of the fire services reform action plan
7 and sustain the benefits of the works carried out under
8 it.

9 Just pausing there, the Board will see that an
10 enormous amount of thought has gone into transitioning 11.35AM
11 arrangements and for catering for the full-scale
12 operation of the Emergency Management Act. But the
13 interim strategic action plan focuses on actions to be
14 delivered in 2014 and 2015; the three-year plan will
15 have a much longer term focus and will be developed 11.35AM
16 over the coming year through consultation across
17 Governments and agencies. That will involve assessing,
18 planning, mitigation, preparedness, response and
19 recovery arrangements for major hazards, related risks
20 to inform priority areas for action. 11.35AM

21 Our next matter that we want to come to is the
22 establishment of Emergency Management Victoria; that
23 will be the new overarching body for emergency
24 management in this State. It will work closely with
25 both emergency response agencies and departments that 11.36AM
26 have an emergency management role. Emergency
27 Management Victoria will be a statutory entity
28 consisting of the Chief Executive and the Emergency
29 Management Commissioner and supported by Department of
30 Justice staff. The Board will probably want to know 11.36AM
31 what the key statutory functions of it are to be -

1 well, they are many.

2 First, it's to act as the agency responsible for
3 the co-ordination and development of the
4 whole-of-Government policy for emergency management in
5 Victoria. Next, it's to provide policy advice to the 11.36AM
6 Minister for Police and emergency services in relation
7 to emergency management.

8 Next, it is to implement emergency management
9 Reform initiatives. Next, it is to liaise with the
10 Commonwealth Government on emergency management, and 11.36AM
11 finally, it's to provide support to the Commissioner so
12 as to assist the Commissioner perform statutory
13 functions.

14 The sorts of things that Emergency Management
15 Victoria will have to have regard to are decisions made 11.37AM
16 by the SCRC. It has to collaborate and consult with
17 the emergency management sector and it has to have
18 regard to the fundamental importance of the role that
19 volunteers play in performance of emergency management
20 functions. Day-to-day operations will be managed by 11.37AM
21 its Chief Executive Officer, and the Chief Executive
22 position will be a statutory appointment with specific
23 statutory functions reporting to the Secretary of the
24 Department of Justice.

25 The Chief Executive of EMV is to take a lead role 11.37AM
26 in coordinating investment planning and large-scale
27 projects on behalf of responder agencies. The
28 strategic action plan 2014-2015 includes a number of
29 such sector projects to increase interoperability such
30 as regional, radio, mobile network, and with a view to 11.38AM
31 informing future investment decisions, a sector-wide

1 strategy is under development.

2 Mr Lapsley told the Board of his new role as
3 Emergency Management Commissioner, may we come straight
4 to that. The Emergency Management Act establishes the
5 role of an Emergency Management Commissioner who is 11.38AM
6 appointed by the Governor and Council. On 1 May the
7 formal appointment of Mr Lapsley, current FSC, was
8 bestowed the role of Emergency Management Commissioner
9 and his term will begin on 1 July.

10 The role of Emergency Management Commissioner has 11.38AM
11 been given in a little detail in the evidence, but may
12 we just try to draw some of the threads together by
13 indicating that it overtakes the present role of Fire
14 Services Commissioner, but he takes on a much broader
15 role in relation to all emergencies. This is 11.39AM
16 consistent with the all hazard, all agencies approach
17 to emergency management. Part of this role includes
18 performing the existing functions of the State
19 Emergency Response Coordinator, but of course that role
20 will cease to exist and the Chief Commissioner of 11.39AM
21 Police, who performs the role of State Emergency
22 Response Coordinator, will be overtaken.

23 Broadly speaking, the Emergency Management
24 Commissioner will be responsible for ensuring that
25 control arrangements are in place for class 1 and 11.39AM
26 class 2 emergencies and also coordinating the response
27 role of relevant agency resources in relation to
28 class 1 and class 2 emergencies.

29 So the Board might be asking, what is a class 1
30 emergency? Well, it's a major fire or a major 11.40AM
31 emergency for which the CFA, the MFB and the SES are

1 responsible, such as a flood.

2 Class 2 emergencies are all other major
3 emergencies, but these include such things as a flu
4 pandemic of a public health nature, with which
5 Professor Catford would be familiar, but it does not 11.40AM
6 include acts of terrorism - a hijack for example, a
7 siege or war-like acts, which remain the province of
8 the Victoria Police.

9 The Emergency Management Act changed the State's
10 emergency response arrangements to the extent necessary 11.40AM
11 to establish the Emergency Management Commissioner.
12 The Government will carry out a broader review of
13 emergency response arrangements to identify any further
14 opportunities for improvement. The recommendations of
15 this Board of Inquiry will inform that review and, as 11.41AM
16 such, the new arrangements established by the Emergency
17 Management Act provide an important context when
18 considering ways to enhance Victoria's response to
19 emergencies in the future, and the State would welcome
20 the Board's contribution in that regard. 11.41AM

21 May we now turn to consequent management. The
22 Board will recall hearing a great deal from Mr Lapsley
23 about the subject of consequence management. As
24 Emergency Management Commissioner, Mr Lapsley will also
25 be responsible for coordinating consequent management 11.41AM
26 for all major emergencies. Effective consequence
27 management aims to minimise the adverse consequences
28 for the community caused by interruption of major
29 services and infrastructure.

30 The Emergency Management Commissioner will seek to 11.42AM
31 ensure that all relevant Government Departments and

1 agencies work together effectively, and the role will
2 be supported through the development of a risk and
3 consequence framework. The framework is currently
4 being developed by the Fire Services Commissioner and
5 that work by that office holder will continue by the
6 Emergency Management Commissioner when he is
7 inaugurated.

11.42AM

8 The inclusion of this function in the Emergency
9 Management Act is the first time that consequent
10 management has been explicitly referred to in
11 legislation. We submit a significant phenomenon and
12 one that we hope the Board would find favour with.
13 This responsibility seeks to ensure that the less
14 direct and immediate consequences of an emergency are
15 given greater attention. Smoke is an obvious one.

11.42AM

11.43AM

16 Can we briefly touch upon the new role of the
17 Inspector General of Emergency Management. Of course,
18 the Act is enhanced by a strong performance monitoring
19 and review body. That's essential for accountability
20 and, to achieve this, the Emergency Management Act
21 establishes the Inspector General of Emergency
22 Management, the IGEM, as the assurance authority for
23 emergency management arrangements.

11.43AM

24 The Inspector General has a collection of
25 statutory functions, may we gallop through them: The
26 first is to develop and maintain a monitoring and
27 assurance framework for emergency management against
28 which the capacity, capability and performance of the
29 emergency management sector is to be assessed. It will
30 also undertake system-wide reviews, including reviewing
31 the emergency management functions of responder

11.44AM

1 agencies and departments in relation to monitoring the
2 assurance framework. It will also, at the request of
3 the Minister, provide advice to or prepare reports for
4 the Minister on any matter relating to the functions of
5 the Inspector General.

11.44AM

6 The Inspector General will evaluate statewide
7 training and exercising arrangements so as to maintain
8 and strengthen emergency management capability. The
9 Inspector General will monitor and report to the
10 Minister on the implementation of the strategic action
11 plan by responder agencies, by departments, by the
12 Emergency Services Telecommunications Authority and by
13 Emergency Management Victoria.

11.44AM

14 The Inspector General will monitor and investigate
15 non-financial performance of the Telecommunications
16 Authority and that office will make recommendations to
17 the Minister about matters arising from any such
18 monitoring of that authority. The Inspector General's
19 initial focus will be on responder agencies with the
20 capacity to extend the scope of other organisations
21 with emergency management responsibilities into the
22 future. Something of a checks and balance is achieved
23 by the implementation of that office holder.

11.44AM

11.45AM

24 Can we move to the subject of a bit of evidence in
25 this case about the volunteer consultative forum. The
26 Government has established the forum as part of its
27 implementation of White Paper reforms. The Board will
28 recall that the first meeting of the forum occurred
29 in November of last year, well prior to the fire. The
30 forum has been established in recognition of the
31 fundamental importance that volunteers play in

11.45AM

1 Victoria's emergency management arrangements, and it
2 provides a mechanism for the Government to consult with
3 volunteers to ensure that their views are heard, all
4 hopefully with a view to bridging whatever might be
5 perceptions in gaps. 11.46AM

6 The volunteer consultative forum consists of
7 representatives from a handful of agencies: Ambulance
8 Victoria, the Australian Volunteer Coastguard,
9 Volunteer Fire Brigades Victoria representing the CFA,
10 Lifesaving Victoria, Red Cross, Salvation Army, 11.46AM
11 St John's Ambulance, Victoria Emergency Services
12 Association representing volunteers from the SES, and
13 the Victorian Council of Churches. It's chaired
14 presently by the Fire Services Commissioner, to be
15 replaced, and a representative from the Office of the 11.46AM
16 Minister of Police and Emergency Services. Again, an
17 important step, we say, in the right direction.

18 Continuing improvements that could be made to
19 emergency preparation and response in general, and in
20 the context of an open cut mine include strengthening 11.47AM
21 industry engagement with the community, improving State
22 planning for emergencies, the improvement of Government
23 engagement with the coal mining sector regarding
24 emergency plans, improving the integration of industry
25 in response to an emergency, improving training 11.47AM
26 for career and volunteer firefighters to include
27 lessons highlighted from this incident, improving OH&S
28 in emergency response to include lessons highlighted by
29 the fire, and developing an integrated emergency
30 response planning framework for the Latrobe Valley. 11.47AM

31 May we now move to something that's taken a lot of

1 time in this Inquiry and that is communications. The
2 White Paper sets out a strategy for improving community
3 awareness and education and making information
4 available during emergencies. Examples of initiatives
5 already commenced include the following: The 11.48AM
6 VicEmergency website that went live in 2013,
7 in December, as a first step towards a central portal
8 of web-based emergency information for the Victorian
9 community; the FireReady app that was rebuilt in 2013
10 to provide a reliable source of warnings and incident 11.48AM
11 information via mobile devices from three fire
12 agencies; the Department of Human Services, the Office
13 of Multi-Cultural Affairs and Citizenship, and the
14 State Library of Victoria are undertaking to improve
15 access for vision impaired, culturally and 11.49AM
16 linguistically diverse community members seeking relief
17 and recovery information.

18 The Government's communication response to the
19 mine fire was conducted in a dynamic event and in the
20 face of significant community anxiety about which we've 11.49AM
21 heard a lot of evidence. But the mine fire provides an
22 opportunity to enhance the Government's specialist
23 crisis communication capability, particularly in the
24 light of a sustained large-scale event with significant
25 community consequences. 11.49AM

26 The SCRC has commissioned a review of emergency
27 management communication arrangements across
28 Government. The review will include examination of
29 governance and coordination across agencies between
30 State, regional and local tiers, and the SCRC review is 11.49AM
31 anticipated to include the following: The roles and

1 functions of Emergency Communications Committee;
2 enhancing specialist crisis communication capabilities
3 within Government; developing a model that uses
4 established local networks as a medium for
5 communicating during emergencies; additional emergency 11.50AM
6 communication training; and developing a coordinated
7 approach to the use of social media by Government
8 agencies during emergencies. All, we hope, find favour
9 with the Board.

10 In the weeks following the fire EMJPIC conducted a 11.50AM
11 review to identify opportunities for improvement in
12 communications, and in that review EMJPIC developed an
13 action plan that included the following: The
14 establishment of a risk and consequence analysis and
15 monitoring function within that entity that would be 11.50AM
16 activated for all major events; the development of a
17 framework for a whole-of-Government communications
18 strategy for major events to guide, control and support
19 agencies; clarifying responsibility for the
20 co-ordination of community engagement, including 11.51AM
21 EMJPIC's role, supporting in those activities; EMJPIC
22 members review their own agency's communication across
23 all platforms to provide greater clarity of messaging
24 by placing greater emphasis on the use of plain English
25 and improving accessibility. 11.51AM

26 The EMJPIC conducted review also developed the
27 action plan that enhances social media capabilities
28 during an emergency through greater cross-agency
29 collaboration, and it identified opportunities for
30 better meeting the need of diverse communities, for 11.51AM
31 example focusing work to meet the needs of people with

1 cultural and linguistic diversity.

2 EMJPIC is also currently reviewing its terms of
3 reference to ensure that they reflect the emergency
4 management reform process; something that it's already
5 doing. 11.52AM

6 May we now move to communications in the
7 Department of Health. The Department of Health is
8 considering how local network influences and
9 stakeholder representatives can be further used in
10 emergency situations to ensure that locally tailored 11.52AM
11 and relevant messages are prepared in a language
12 appropriate to the audience and that they are delivered
13 by an appropriate means. A step we hope the Board
14 finds favour with.

15 The Department of Health is also considering how 11.52AM
16 to further engage with known and trusted local people
17 during a emergency through local offices and councils.
18 The Department of Health also intends to undertake a
19 general review of its communication activities in
20 relation to the mine itself. 11.53AM

21 EPA, of course, is relevant in the communications
22 activity. EPA is reviewing its communications response
23 to the mine fire and, as part of that review, it
24 intends to implement a structured community engagement
25 with the Morwell and surrounding communities to assist 11.53AM
26 in improving a baseline of knowledge and understanding
27 of its information and to build a deeper understanding
28 of the communication needs of the audience.

29 Can we next move to the work of the Department of
30 Human Services. The Department of Human Services has 11.53AM
31 evaluated its own State and regional level

1 communications and community engagement that it put in
2 place to support the relief and recovery plans of this
3 mine fire. The 2013-2014 summer season provided a real
4 test for the Emergency Relief and Recovery Victoria
5 website, and the Victorian Emergency Recovery
6 Information Line services hosted by that Department.

11.54AM

7 The Department of Human Services' monitoring shows
8 that fire affected Victorian communities effectively
9 used both channels from January to March of this year.
10 During that time there were a thumping 19,771 web
11 visits to the recovery website and 861 calls to the
12 Emergency Recovery Information Line service. The
13 Department received 10,332 calls on its hotline.

11.54AM

14 Both channels aim to provide timely, accurate,
15 relevant, appropriate and accessible emergency
16 information to the public using web and phone
17 technology with recovery website viewable on both
18 desktop and laptop platforms.

11.55AM

19 The subject of warnings is of importance
20 obviously, so may we turn to that. The fire in this
21 case demonstrated a potential need to revise
22 terminology to allow for the simplification of
23 information and community education as part of
24 preparedness for emergencies.

11.55AM

25 Mr Lapsley in his current role, and in his soon to
26 be new role, is currently leading a national review of
27 warnings and information. The review is benchmarking
28 what is considered to be best practice by identifying
29 common challenges, emerging trends, innovation and gaps
30 in how the Government provides information to
31 communities during emergencies. It's working across a

11.56AM

1 multi-hazard environment and looking at emergencies
2 such as bushfires, floods, storms, cyclones and others.
3 The review will also include research into the use of
4 emergency relief and the telephone-based warning
5 system. The report will be presented in November 2014. 11.56AM

6 Can we next move to the environment. EPA
7 emergency protocols are outlined in its Emergency
8 Management and Crisis Management Plans. The plans set
9 out the procedures for responding to a range of
10 pollution and emergency situations as both a control 11.56AM
11 and support agency, as well as business continuity for
12 larger scale incidents with significant support
13 applications. The plans and the supporting training in
14 capability were under review at the time of this
15 incident; then already under review. 11.57AM

16 The EPA will continue this review and
17 transformation to an expedited timeline, and it will
18 incorporate lessons learned from the Hazelwood Mine
19 Fire response, including three things: The development
20 of a single scalable model from minor pollution 11.57AM
21 response through to supporting major and long duration
22 emergency response. Next, the clarification and
23 articulation of the roles of environmental monitoring
24 and analysis, communications and engagement activities
25 as support functions during an emergency. And finally, 11.57AM
26 the further refinement of business continuity and
27 fatigue management practices when supporting major and
28 long duration emergency.

29 We wish, if we may, to move to air monitoring in
30 emergencies. EPA is reviewing the future expectations 11.57AM
31 on it and what the optimum set of equipment may be.

1 EPA intends to engage with other emergency response and
2 support agencies to clarify future expectations of
3 incident air monitoring and scenarios and to determine,
4 based on the nature and frequency of those
5 requirements, the appropriate inventory of equipment, 11.58AM
6 which agencies are best placed to maintain and control.
7 This would be best formalised through a multi-agency
8 agreement.

9 On the subject of data and information relevant to
10 the EPA, we wish to say the following: EPA intends to 11.58AM
11 undertake a meta-analysis of data and information from
12 all agencies, including collaboration with relevant
13 academic institutions to produce a study of and draw
14 conclusions from this experience to further the global
15 body of knowledge on long duration smoke incidents and 11.59AM
16 events. This would include smoke plume modelling and
17 the analysis of the potential influence of weather
18 patterns and firefighting techniques.

19 Next can we turn to bushfire, smoke, carbon
20 monoxide and PM 2.5 Protocols. During the fire EPA and 11.59AM
21 the Department of Health relied on the existing
22 Bushfire Smoke Protocol to guide messaging. A
23 significant collaboration between EPA, the Department
24 of Health and CFA was undertaken to develop specific
25 operational protocols in relation to carbon monoxide 11.59AM
26 and PM 2.5 during the incident. But an important
27 opportunity exists to incorporate all three protocols,
28 bushfire smoke, carbon monoxide and PM 2.5 into a
29 single operational document that can be implemented and
30 improved into the future, and we welcome that. 12.00PM

31 The Department of Health and the EPA intends to

1 undertake further development on the incorporation of
2 the carbon monoxide and PM 2.5 Protocol documents into
3 a single operational document. This should be the
4 subject of extensive community education and engagement
5 to assist in the clarification of respective roles and 12.00PM
6 a deeper understanding of the health message in
7 relation to air quality.

8 The Department of Health and the EPA also intends
9 to consider a range of other air quality scenarios that
10 may arise for additional development and incorporation 12.00PM
11 into that document. We hope the Board finds favour
12 with that.

13 The response protocols overall should be reviewed
14 with a focus on both the adopted thresholds as well as
15 appropriate operational responses that are triggered as 12.01PM
16 each threshold is exceeded. Upon completion of the
17 reviews the protocols should be finalised and adopted
18 for future events.

19 May we move into the subject of health generally.
20 The fire demonstrated that, where a potential public 12.01PM
21 health risk arises from exposure to smoke or other air
22 emissions, validated air monitoring information is
23 required in a timely manner to enable assessments of
24 health risks. To that end, the Government intends to
25 develop a State smoke plan covering the management of 12.01PM
26 potential public health impacts from large-scale
27 extended smoke events such as bushfires, planned burns,
28 importantly brown coal fire mines, or industrial fires
29 such as fires of hazardous materials.

30 The purpose of the plan is to provide a framework 12.02PM
31 for ensuring that the most accurate and relevant

1 information available about air quality assessments and
2 forecasts is provided to the Department of Health in
3 the most time-efficient manner and to allow for it to
4 undertake proactive and comprehensive assessments of
5 potential public health risks associated with events in 12.02PM
6 or near communities. The development of the plan
7 should include consideration of issues relating to the
8 capacity - that is to say, equipment - and the
9 capability - that is to say technical expertise - of
10 agencies and personnel involved in an incident 12.02PM
11 response.

12 Can we now come immediately to the long-term
13 health study. It's critical to learn from the
14 Hazelwood Coal Mine fire, in particular for the benefit
15 of the local community which has been exposed to this 12.03PM
16 smoke, by monitoring any potential long-term adverse
17 health effects which will provide reassurance and
18 ensure that any future health service requirements are
19 met. It's also critical to assist health authorities,
20 environment protection agencies and emergency services 12.03PM
21 by monitoring and improving future policy and planning
22 for the response to any future similar event. That
23 much is self-evident.

24 The Department of Health is in the process of
25 commissioning a long-term study into the long-term 12.03PM
26 health effects of the smoke from the Hazelwood Fire.
27 Community consultation sessions about the study were
28 conducted by the Chief Health Officer on 6 and 7 May.
29 The tender will be advertised very shortly. The
30 successful tenderer will design the study in 12.04PM
31 consultation with the Department and, in so doing, will

1 be required to consider the following. This is a
2 rather long list, but we hope the Board will appreciate
3 the degree of detail that has gone into it: How to
4 describe the composition of brown coal in the Morwell
5 area. The coal's likely products of combustion from 12.04PM
6 open air burning of this scale and range of air
7 pollutants of potential health concern. What are the
8 key pollutants relevant to the scope of this long-term
9 study, and they are based on the extensive air
10 monitoring dataset available from Environment 12.04PM
11 Protection Emergency Services sources and in the local
12 community.

13 Next, how the study will address study questions
14 above, including how exposure will be assessed. Next,
15 what comparative populations might be suitable. Next, 12.04PM
16 whether any other questions are important. Which
17 health states are proposed to be measured and how these
18 measurements are to be conducted. How the proposed
19 study will provide information that's relevant to
20 members of the affected community. How the proposed 12.05PM
21 study will provide evidence on which to base health
22 advice when dealing with future similar exposures. How
23 those conducting the study will engage with the
24 affected communities to ensure accurate risk
25 communication. And what benefits might be delivered to 12.05PM
26 the affected community during the course of the study.

27 One can readily see that that is an extensive and,
28 we hope, comprehensive examination of all relevant
29 matters.

30 Can we turn to relief and recovery next. A key 12.05PM
31 emergency relief program is the Personal Hardship

1 Assistance Program administered by the Department of
2 Human Services. The respite and relocation payments
3 provided to eligible Morwell residents during the coal
4 fire were tailored from the usual types of payments
5 made under the assistance program with some additional
6 eligibility criteria to take into account the unique
7 nature of the event.

12.06PM

8 Some of the differentiating elements of this event
9 were the persistent presence of smoke, the at risk
10 conditions identified by the Chief Health Officer and
11 the fact that homes were not destroyed; this changed
12 the purpose of the payments. But DHS developed
13 criteria to ensure Morwell residents most in need were
14 targeted for respite assistance.

12.06PM

15 As part of its annual review of the assistance
16 program, DHS will review the Personal Hardship
17 Assistance Program and implementation guidelines for
18 consistency.

12.06PM

19 We wish, if we may, to address the role of local
20 councils and the support for local councils in this
21 context. In February of this year the Government
22 announced the continuation of funding support to 64
23 Victorian councils for emergency management for a
24 further two years at a cost of over \$9 million. This
25 funding is provided through the Municipal Emergency
26 Resourcing Program. It provides all councils within
27 CFA districts with funds to assist them in implementing
28 their emergency management responsibilities, including
29 responsibilities for relief and recovery and extending
30 to all other responsibilities.

12.07PM

12.07PM

12.07PM

31 When the program began in 2010, and since then,

1 the Municipal Association of Victoria has received up
2 to \$500,000 per year for co-ordination of emergency
3 management offices across councils. The funding
4 concludes at the end of 2013-2014 and Local Government
5 Victoria will take on these functions. This work will 12.08PM
6 also include developing formal and informal networks
7 between emergency management officers and developing a
8 resource base that Local Government Victoria can work
9 closely with during the response and recovery phase of
10 future emergencies. Local Government Victoria is 12.08PM
11 currently undertaking a recruitment process to ensure
12 that it has the appropriate capacity and expertise.

13 Finally, or penultimately anyway, may we come to
14 the subject of regulation. We've heard an enormous
15 body of evidence in this Inquiry about regulation, but 12.08PM
16 we wish to respectfully remind the Board that the
17 regulatory framework currently in operation is based on
18 the principle that the primary obligation to manage
19 risk at a site rests with the duty holder. That is,
20 Suez. 12.09PM

21 For coal mine operations under a number of
22 Victorian Acts, Suez is the duty holder. These
23 obligations provide a framework by which the duty
24 holder can assess and manage its risks. They are more
25 particularly and more expansively set out in the first 12.09PM
26 submission, we don't propose to repeat those here.

27 It's important, though, to consider the core
28 obligations on a duty holder, they include general
29 occupational health and safety duties under the Act,
30 the obligations under the regulations and under the 12.09PM
31 MRSD Act, the obligation to obtain approvals by

1 requirements under a collection of Acts that we set out
2 in the submissions, preparing plans and tools as
3 required by the OH&S Regulations and the MRSD Act, not
4 to pollute the atmosphere or cause or permit
5 environmental hazards; again, an important matter. 12.10PM

6 It must be noted that the suggestions that we make
7 in the body of this second submission are not intended
8 to detract from the core theme, that the primary
9 obligation to manage the risk at the mine rests with
10 the duty holder. 12.10PM

11 The Government does not propose a change of role
12 for Government in defining the relationship between
13 risk and regulation or how acceptable risk is defined.
14 The Government considers that a risk-based approach is
15 best placed to meet these challenges and can 12.10PM
16 accommodate any changes necessary to address the
17 regulatory issues arising from the mine fire.
18 Risk-based regulation of coal mining is complicated and
19 requires a new nuanced approach, as the Board will
20 appreciate. Managing risks, their likelihood and 12.11PM
21 impact is a dynamic process. Risks can't be
22 eliminated, but the regulatory framework can be
23 continuously improved as a greater understanding of the
24 risks is obtained and the application of the regime in
25 its regulatory role is reviewed on a regular basis. 12.11PM

26 The Government is committed to ensuring a better
27 integrated approach in the identification and
28 assessment of risks and associated control measures
29 between the duty holders, Regulators, Local Government
30 and emergency services agencies. 12.11PM

31 Given the complexity of coal mines, a better

1 integrated approach in the identification and
2 assessment of risks and associated control measures
3 will be beneficial. This will provide a broader
4 information and knowledge base to inform the risk
5 assessment and thereby provide an improved ability to 12.12PM
6 collectively identify and assess emerging and
7 cumulative risks. A greater focus should also be
8 placed on potential community impacts, which of course
9 falls under the rubric of consequence management.

10 May we turn briefly to fire risk reduction 12.12PM
11 considerations. In assessing measures to mitigate mine
12 fire risks, consideration should be given to measures
13 that can be adopted outside of, as well as within, the
14 mine licence area. The duty holder has the
15 responsibility for managing mine hazards, including 12.12PM
16 fire within the mine site.

17 Options for the duty holder to consider should
18 include a combination of the following: Adequate
19 control measures to commensurately reduce the risk of
20 fire and associated emissions should be applied to 12.13PM
21 exposed coal areas, including covering or remediated
22 worked out areas. Higher capacity and extent of
23 reticulated water points for re-filling tankers.
24 Higher capacity and extent of reticulated water spray
25 systems, and any other practical and effective measures 12.13PM
26 to adequately reduce the risk. Improving fire response
27 practices with specialised training, combining
28 exercises and crisis response protocol should be
29 considered.

30 We also suggest that better integration with CFA 12.13PM
31 management and communicators should be considered. We

1 suggest that increased firefighting response capability
2 and capacity with CFA compatible equipment, including
3 tankers, extended booms, CAFS and fire crews should be
4 considered. We also suggest that measures to improve
5 the resilience of operational infrastructure in the 12.14PM
6 event of fire within the mine licence area, including
7 resources needed for fire prevention or response,
8 should be addressed. Improved surveillance and
9 detection equipment to provide early detection of
10 points of ignition and prior spread across a large site 12.14PM
11 should be considered. We also suggest measures to
12 reduce fire risk in the buffer zone outside of the mine
13 and beyond the mine licence areas.

14 Where is all this leading? The Government intends
15 to initiate a joint program involving relevant 12.14PM
16 regulators, emergency services and the Emergency
17 Management Commissioner that will enable Regulators and
18 emergency services to assess the prevention and
19 preparedness control on sites across Victoria that fit
20 a low likelihood, high consequence or long duration 12.14PM
21 incident profile.

22 In addition to providing opportunities to
23 intervene directly, this would also produce a clear
24 picture of the state of risk as well as best practice.
25 An important feature of this work would be an 12.15PM
26 assessment of the resilience of potentially affected
27 communities and the development of supportive
28 engagement strategies in preparation for such
29 incidents.

30 What of rehabilitation? Progressive 12.15PM
31 rehabilitation or remediation of the mine is one of the

1 control measures that can be used to mitigate fire
2 risk. Rehabilitation or remediation of areas of
3 coalfaces by covering with clay or soil in worked out
4 areas of the mine, either in accordance with or in
5 addition to rehabilitation plans may involve 12.15PM
6 significant alteration of the profile of the coalfaces;
7 they are likely to be costly and challenging to
8 implement given the need to continue to operate the
9 mine and maintain its stability. Detailed geotechnical
10 engineering design work may be required before 12.16PM
11 determining the practical extent of any such work.

12 In terms of planning, may we finally turn to
13 regional growth plans. The Government has recently
14 released regional growth plans to provide broad
15 direction for land use and development across the State 12.16PM
16 of Victoria. Eight regional growth plans have been
17 prepared to provide direction for accommodating growth
18 and development across regions, protecting key regional
19 economic and environmental assets, as well as providing
20 high level planning frameworks for key regional centres 12.16PM
21 such as Latrobe City, one of Victoria's 10 regional
22 cities. The plans are a mitigation measure against
23 future inappropriate land uses close to population
24 centres and can assist in managing the risks associated
25 with current uses. 12.17PM

26 Finally, although not strictly part of the
27 submissions, Mr Burns and I and representatives of the
28 Victorian Government Solicitors, as no doubt my
29 colleagues at the Bar table and their legal teams, wish
30 to record our gratitude for the fairness, courtesy and 12.17PM
31 friendliness of Members of the Board during this long

1 and searching Inquiry. Thank you.

2 MS DOYLE: If the Board pleases, I've indicated to Counsel
3 Assisting that my intention is to make a five-minute
4 response now to the State's submissions and identify
5 where to from here in terms of any response we might
6 make. 12.17PM

7 Today the tribunal has received from the State
8 some oral submissions and a glossy paper, both of which
9 appear to be directed at proposed high level changes to
10 the emergency management scheme and some aspects of 12.18PM
11 future planning. But neither the oral submissions nor
12 the glossy brochure addressed the last three weeks of
13 evidence and, Dr Wilson has just told you, nor were
14 they intended to do so.

15 One of the difficulties with that is that, in a 12.18PM
16 sense the submissions presented today by the State have
17 passed like a ship in the night with the work done by
18 other parties in terms of synthesising the evidence.
19 Can I give one example by reference to the paper to the
20 difficulties that are caused by a submission being 12.18PM
21 advanced which isn't grounded in the evidence.

22 The example comes from page 44 of the paper you've
23 been given by the State that Mr Wilson just recently
24 read from. Page 44 at paragraph 9.18 refers to a list
25 of so-called options for the duty holder. There are 12.18PM
26 difficulties with a number of them, but by way of
27 example the last dot point suggests that, "The duty
28 holder might consider measures to reduce fire risk in
29 buffer zones outside the mine and beyond the mine
30 licence area." 12.19PM

31 Now, that is not grounded in the evidence because

1 the evidence demonstrates that the operator of the mine
2 has no practical or legal capacity to take measures to
3 reduce fire risk beyond the mine licence area, most
4 graphically demonstrated by the evidence from the
5 council concerning land use planning and the evidence 12.19PM
6 from the council, Mr Incoll, about how one is now
7 unable to deal with the historical reality that
8 plantations ring this mine.

9 We'd suggest then that the State in their written
10 submissions perhaps identify for us what legal capacity 12.19PM
11 or practical capacity the Hazelwood Mine has to reduce
12 fire risk beyond the mine licence area other than by
13 asking, pleading or cajoling, as was attempted to do in
14 the mid-1990s without any success.

15 The difficulty that has been caused by the 12.19PM
16 approach of the State to today's submissions is that,
17 instead of us leaving here today knowing what they
18 intend to say about the evidence or any of the proposed
19 recommendations, instead we have to wait for written
20 submissions on Monday. 12.20PM

21 Instead, you were treated to a speech from WOFG.
22 If you want to know what WOFG is, it appears in the
23 acronym table in the paper that you've just been
24 handed. It's whole-of-Government apparently. But
25 we're not going to know until Monday about what the 12.20PM
26 State says about the evidence or what it says about
27 other peoples' summary of the evidence or responses
28 thereto.

29 GDF Suez submits that today was clearly identified
30 as the primary opportunity to undertake that task with 12.20PM
31 the caveat that parties who needed more time to address

1 additional or new matters would do so by Monday.
2 Counsel Assisting clearly outlined the process and we
3 understood that it was aimed at achieving the following
4 goals:

5 Natural justice: You appeared here today knowing 12.20PM
6 the principle things that other parties talked about.

7 Transparency: The community would appear here
8 today or read the transcript and hear what the parties
9 said about each other.

10 Fairness: The parties would respond to what the 12.21PM
11 others were of a mind to say about them.

12 And, speed and efficiency: No doubt the approach
13 adopted by Counsel Assisting was aimed primarily at
14 assisting the Board to now undertake the process of
15 writing its report. 12.21PM

16 Unfortunately, the State's approach has two very
17 regrettable impacts on this process. It's led to
18 unfairness to my client - we don't know what they're
19 going to say until Monday - and it leads to
20 inefficiency because now I'm obliged to say that we 12.21PM

21 have to reserve our position entirely and need the
22 opportunity, if necessary, to respond to the State's
23 submissions after 23 June, a process which we
24 appreciate subverts the efficient process that the
25 Board and Counsel Assisting had in mind, but in terms 12.21PM

26 of fairness and natural justice, of course I have to
27 reserve my client's position and I will liaise with
28 Counsel Assisting after today to talk to them about
29 what timeframe might be appropriate for us to respond
30 to anything in the State's 23 June submission that 12.22PM

31 raises a question we need to address.

1 Can I also respond to another specific matter
2 addressed by Mr Wilson in his oral submission. He
3 kicked off his oral submission today by criticising
4 Mr Graham's chart on three bases: He said it was
5 prepared in haste, he said that it didn't recognise 12.22PM
6 that GDF Suez was the primary duty holder, and he said
7 it hadn't been the subject of prior consultation with
8 the State.

9 I want to address the three of those. As to
10 haste: Due speed is very different from undue haste. 12.22PM
11 The situation called for speed. This was a three-week
12 Inquiry and Mr Graham needed to respond. In any event,
13 his response and the manner in which he gave his
14 evidence made it clear, the preparation of his chart
15 was not the result of some undue haste. He said he had 12.22PM
16 prepared it in light of his experience of fighting the
17 fire, in light of his experience of all of the events
18 that followed the fire and in light of listening to and
19 reading up on the three weeks of evidence in the
20 hearing and then applying thought to those items and 12.23PM
21 bodies of evidence.

22 As to the suggestion that the chart fails to
23 acknowledge the role of GDF Suez under the occupational
24 health and safety regime as primary duty holder - we
25 reject that. The chart recognises this. Nowhere in 12.23PM
26 the chart or in the evidence has GDF Suez said that it
27 has no duties, and the responses of Mr Graham as set
28 out in the chart make it clear that, in light of that
29 duty, he's recognised the opportunity to implement
30 improvements and will do so. 12.23PM

31 The third criticism by the State of Mr Graham's

1 chart was that it was not the subject of prior
2 consultation with the State. It seemed as though
3 Dr Wilson was saying, before Mr Graham suggests
4 anything he has to consult with the WOFG, the
5 whole-of-Government. You will now appreciate, having 12.23PM
6 heard Mr Wilson's submissions, that would be a
7 Herculean task, so many acronyms to write to,
8 apparently everyone in the table on page 2.

9 Mr Graham's chart nevertheless recognises the
10 reality that, with respect to some of the suggestions 12.24PM
11 he's made, there will need to be consultation and
12 reviews and assessments; the chart says so. But we do
13 reject the suggestion that you have to consult before
14 you suggest change.

15 I mean, it's evocative of a scene in the Life of 12.24PM
16 Brian and the People's Front of Judea: When faced with
17 an emergency say, "This calls for immediate
18 discussion". The discussions will flow, the
19 discussions will happen, but we reject the idea that it
20 wasn't open to Mr Graham to suggest change. 12.24PM

21 In any event, as I've said, they were hardly
22 ill-informed suggestions. They were based on his
23 experience of the fire, his superior knowledge of the
24 mine, his experiences following the fire, and were the
25 product of studying the evidence, which is of course 12.24PM
26 what we assumed was incumbent upon him to do and
27 incumbent upon us to do in the oral submissions today.

28 As to any other matters that have emerged from the
29 State's paper or its oral submissions, or which might
30 emerge from its 23 June submissions, I regret to say we 12.25PM
31 do have to reserve our position in the way I have

1 suggested, and GDF Suez will work with Counsel
2 Assisting to adopt an appropriate timeframe following
3 the 23rd. If the tribunal pleases.

4 CHAIRMAN: Thank you, Ms Doyle.

5 DR WILSON: I don't want to have those swipes left 12.25PM
6 unaddressed. As to the suggestion of inefficiencies,
7 in fact the approach that we've taken has lent itself
8 to efficiencies because we've not consumed the time
9 that other people have taken and we're conscious that
10 we're last and that we have to finish by a certain 12.25PM
11 time, so the best approach is as we have chosen, to put
12 that in writing for the Board and everyone to read in
13 the privacy of their own time.

14 As to the alleged unfairness - we reject that.
15 Ultimately the task of this Board is to get to 12.26PM
16 recommendations, and our submissions that have been
17 adduced on my feet this morning anyway have been
18 tailored pretty much exclusively to the achievement of
19 that end. They address the recommendations that the
20 Board might be interested in hearing about. 12.26PM

21 As to consultation about Mr Graham and his chart;
22 the simple fact is, there was no consultation. That's
23 all we have to say, thank you.

24 MS RICHARDS: May it please the Board. Counsel Assisting
25 have considerable sympathy for the remarks just made by 12.26PM
26 Ms Doyle on behalf of her client and share her and her
27 client's frustration with the approach taken by the
28 State to submissions today. The Board and all of those
29 who are assisting you are very focused on the date of
30 31 August, which is a date set by Dr Wilson's client 12.26PM
31 for the final report.

1 That said, the Board has an overriding
2 responsibility to be fair to parties against whom it
3 might make adverse findings and to whom it might
4 recommend certain actions be taken and that obligation
5 overrides everything, even the final report date, and 12.27PM
6 it's part of our function as Counsel Assisting to
7 ensure that that fairness is accorded where it must be.

8 So, we will consult with counsel for GDF Suez, and
9 of course they will have time, although perhaps not
10 much time, to respond to anything against them that is 12.27PM
11 raised in the submission that we look forward to
12 receiving from the State.

13 Now that I've got that off my chest, that brings
14 us to an end of the public hearings of this Inquiry.
15 Mr Rozen and I as Counsel Assisting thank the Board for 12.27PM
16 the opportunity that you've given us to assist you in
17 your enquiries. It's been a privilege for us to fill
18 the role of Counsel Assisting and to ask the questions
19 that were posed for us during the community
20 consultation process here in Morwell and elsewhere in 12.28PM
21 the Latrobe Valley.

22 It's been a particularly rewarding aspect of our
23 work to lead the evidence of community witnesses during
24 the hearing, and we're grateful to them for the time
25 that they gave to give us their own perspective and to 12.28PM
26 hold up a mirror to some of the evidence that we heard
27 from institutional witnesses.

28 I know that there are some thanks and
29 acknowledgments to come from the Board, but I would
30 like to take an opportunity to make some 12.28PM
31 acknowledgments and give some thanks of our own.

1 The first is to the parties and to their lawyers,
2 and I make particular mention of the Victorian
3 Government Solicitor's Office and King & Wood Mallesons
4 for the impressive response that they gave to our
5 demands for vast amounts of information in a very short 12.28PM
6 time, and particular thanks to the very careful
7 analysis of the evidence that we heard from Ms Doyle
8 this morning.

9 Secondly, I would like to acknowledge and thank
10 Elizabeth Lanyon who's the Head of the Secretariat who, 12.29PM
11 again in a very short time, has put together a very
12 hard-working and focused and happy group of people who
13 are supporting you in the work that you are doing and
14 have supported us in our task over the last few weeks.

15 We need to thank Justine Stansen and her 12.29PM
16 incredible team from K&L Gates who have supported us,
17 made us look competent at times, and have managed the
18 enormous flow of information into the Inquiry between
19 the parties and during the hearings.

20 The next one is a personal thanks to Mr Rozen for 12.29PM
21 the outstanding support that he's given me and for his
22 wisdom and for his calm.

23 Finally, we would both like to thank you for the
24 open and respectful way in which the hearings have been
25 conducted, for your attention throughout the last 12.30PM
26 several weeks and for, in advance, the careful
27 consideration that we know you will give to the
28 evidence and the submissions. May it please the Board.

29 CHAIRMAN: Thank you, Ms Richards, even though in a number
30 of respects you've stolen my thunder. 12.30PM

31 Can I say that today, 18 June, marks the end of

1 the hearings for this, the Hazelwood Mine Fire Inquiry.
2 It was established on 11 March and that was just over a
3 month after the fires started. Within two weeks, and
4 while the fires were still burning, an Inquiry number
5 and a website with information about the Inquiry was
6 set up. 12.31PM

7 On 27 March we held its first press conference
8 nearby and that was the first time that we met as a
9 threesome on that day nearby and we established our
10 offices in this building a few days later so that, when 12.31PM
11 we came to have the first hearing on 26 May - there
12 wasn't a great deal of time - but we had 16 days of
13 hearings.

14 I know I'm going over ground when I say we've
15 organised it into these three weeks, one focusing on 12.31PM
16 the origin and circumstances of the fire, another on
17 health and environment, and the third on mitigation and
18 prevention. During that time we've heard from 48
19 witnesses, including six experts and 13 community
20 witnesses. We've received 100 exhibits and produced 12.31PM
21 over 2,500 pages of transcript.

22 But the hearings are only part of our work. We
23 began our work by listening to those affected in the
24 Latrobe Valley, and in particular the Morwell
25 community, in very open discussions that were held 12.32PM
26 in April. We held 10 community consultations in
27 Morwell, Moe, Churchill and Traralgon. They were
28 invaluable in providing us with early insight into the
29 issues of importance to the people most closely
30 affected by the fires. 12.32PM

31 Specific sessions were held with the Koori

1 community, with people who came from non-English
2 speaking backgrounds, with community service providers
3 who represented a wide range of other people in the
4 community who were otherwise not able to attend.

5 We arranged a public written submissions process 12.32PM
6 and through it we received over 160 individual
7 submissions up to 12 May and we received about 600 more
8 from individuals through the Environment Victoria
9 website. Those submissions and consultations have
10 informed all of our work in ways such as the scope of 12.33PM
11 our Inquiry and witness selection.

12 The hearings have relied upon the skill and hard
13 work of many people inside and outside the Board and we
14 need to thank so many people, some are here today, but
15 most are not. Many we will be able to thank personally 12.33PM
16 but many we will not.

17 We particularly thank the witnesses who appeared
18 before us, especially the community witnesses who had
19 the courage to come here and tell us their stories and
20 share their local knowledge. We thank the people who 12.33PM
21 generously participated in our community consultations
22 and we thank those who provided us with submissions.

23 We thank the lawyers and others at the Bar table
24 and elsewhere in the hearing room. We thank the media
25 who attended for their professional approach and for 12.34PM
26 reporting these important matters to the broader
27 community.

28 We mention those who are part of the Inquiry team
29 and, of course, we'll see more of you all in the hectic
30 weeks from now until the delivery of our report and 12.34PM
31 recommendations.

1 We particularly thank Counsel Assisting,
2 Ms Belinda Richards and Mr Peter Rozen. We do so
3 personally and on behalf of the people of Morwell and
4 the Latrobe Valley for their representation and for
5 asking questions pertinent to this community that were 12.34PM
6 appropriately raised through the consultations and
7 submissions processes.

8 We thank the staff of the Inquiry, led by
9 Elizabeth Lanyon, including our policy staff, our
10 Tipstaff, our in-hearing support and our media and 12.35PM
11 communications personnel.

12 We particularly single out Lana and Tracey who
13 organised the hearings and us.

14 We thank all of the local businesses and
15 contractors who have provided a range of services to 12.35PM
16 us, including audio visual equipment and accommodation.
17 We thank the Latrobe Valley City Council for graciously
18 sharing these, their recovery premises, with us.

19 We thank the ever present transcription team,
20 Rawinia and Daniel, and their web team in Melbourne for 12.35PM
21 providing transcripts to us so promptly despite some
22 very fast-talking people.

23 We will now concentrate on our report and
24 especially its findings and recommendations. The
25 report is due to be delivered to the Victorian Governor 12.36PM
26 by the end of August. The Governor will then present
27 the report to the Premier. The Premier will determine
28 the timing of its release by tabling the report to the
29 Victorian Parliament. Copies of the report will be
30 made available through the Victorian Government. It 12.36PM
31 will also be available on the Inquiry's website.

1 The Board will not be making any comments prior to
2 its delivery about its likely conclusions or
3 recommendations.

4 The final group that we acknowledge are the people
5 of Morwell and the Latrobe Valley and we had some very 12.36PM
6 good representatives who have been routinely here, and
7 they are the cohort to my left, your right, at the
8 back. We are conscious of the wider and your
9 particular suffering throughout our work.

10 We thank the people generally for the hospitality 12.36PM
11 and for the generosity and, most importantly, we hope
12 the work undertaken through and by this Inquiry will
13 assist to prevent a disaster like that of last February
14 and March from ever happening again.

15 Now, we will adjourn forever. 12.37PM

16 THE BOARD OF INQUIRY ADJOURNED