

HAZELWOOD MINE FIRE INQUIRY

SUBMISSIONS ON BEHALF OF GDF SUEZ AUSTRALIAN ENERGY (GDFSAE) IN RELATION TO TERM OF REFERENCE 7

1. Term of Reference 7 (**TOR7**) requires the Board to inquire into, and report on, the following matters:

“Short, medium and long term measures to improve the health of the Latrobe Valley communities having regard to any health impacts identified by the Board as being associated with the Hazelwood Coal Mine Fire.”

2. GDFSAE wishes to make a small number of submissions in relation to TOR7 and the process adopted by the Board in relation to it.

Forum Sessions

3. For the purposes of TOR7, the Board brought together invited representatives from the health, business, social services and education sectors within, and servicing, the Latrobe Valley to participate in a series of Health Improvement Forum sessions on 28 - 30 September, and 13 and 19 October 2015.
4. The invited representatives were encouraged to contribute ideas about short, medium and long term measures to improve health within the Latrobe Valley in the future, with the Forum sessions being tasked with considering the following subjects:
 - **Day One (Monday 28 September):**
 - Chronic Disease Management;
 - Health Behaviours; and
 - Mental Health.
 - **Day Two (Tuesday 29 September 2015):**
 - Early Detection and High Risk Screening;
 - Healthy Workforce; and
 - Children and Youth.
 - **Day Three (Wednesday 30 September 2015):**
 - Healthy Workplaces;
 - Healthy Environments; and
 - Social Disadvantage.
 - **Day Four (Tuesday 13 October 2015):**
 - Community Engagement and Communication;
 - Health Conservation Zone and Health Advocate; and
 - Indigenous Health.
 - **Day Five (Monday 19 October 2015):**
 - Governance, Leadership and Sustainability.
5. GDFSAE commends the Board for undertaking such an innovative and expansive approach to the identification of ways in which the health of Latrobe Valley communities may be improved in the future.

6. GDFSAE directly employs about 495 persons, and uses the services of on average about 300 contractors. The vast majority of these employees and contractors live within the Latrobe Valley. As a large employer, and an active member of the local business community, GDFSAE fully supports initiatives which aim to achieve better health outcomes for the Latrobe Valley.

Health impacts of the Mine Fire

7. In addition to requiring the Board to inquire into short, medium and long term measures for improving the health of the Latrobe Valley communities, TOR7 also requires the Board to:

“hav[e] regard to any health impacts identified by the Board as being associated with the Hazelwood Coal Mine Fire.”

8. Without intending to limit the Board’s consideration of the future health of Latrobe Valley communities, and ways in which the health of these communities may be improved, GDFSAE reminds the Board that it would be wrong to simply proceed on the basis that health issues generally in the Latrobe Valley are related to the Mine Fire, or to treat any particular health impacts as a given or established fact.
9. There do not appear to have been any specific health impacts found by the Board to have been associated with the Mine Fire. Further, many of the health issues discussed at the Forum sessions on any view of it can have no association with the Mine Fire. These health issues include, but are not limited to dementia, drug and alcohol abuse, chronic disadvantage, high rates of cigarette smoking, poor nutrition, social isolation, low health literacy and child development issues.
10. On 24 September 2015, legal representatives for GDFSAE wrote to the Board’s Principal Legal Advisor seeking the details referred to in the following comment in the Board’s Information Sheet for the *Community Engagement and Communication* session of the Forum:

“[t]he health of the Latrobe Valley communities was adversely affected in many ways, as detailed in the 2014 Hazelwood Mine Fire Inquiry Report”.

11. In a letter dated 25 September 2015 in response, the following pages of the *2014 Hazelwood Mine Fire Inquiry Report* were referred to: pages 250-254, 308-312, and 318-319.
12. GDFSAE has reviewed these pages of the *2014 Hazelwood Mine Fire Inquiry Report*. The pages refer to a wide range of health issues about which the Board noted that it had received submissions or heard evidence. These issues included:
 - headaches, tiredness, gastric upset, nausea and vomiting, raspy voice, fatigue/lethargy, sore and stinging eyes, sore throat, confusion, epistaxis (blood nose), mouth ulcers, decrease in concentration, shortness of breath, rash, unusual/metallic taste in mouth, raised blood pressure, diarrhoea, tight chest, chest pain, loss of appetite, sneezing, sinusitis, coughing, ear infection;¹
 - difficulty in breathing, whistling in breath;²
 - sore lungs, throat, ulcers on tongue and roof of mouth, skin rashes, nausea, periods of semi-consciousness and major chest pain;³
 - flu like symptoms (running nose, sore throat, sinus problems, headaches, itchy eyes), shortness of breath, wheezing, asthma;⁴
 - respiratory and cardiovascular problems, nose bleeds, nausea, headaches, sore/itchy eyes, cough, hypertension and mental health issues;⁵

¹ 2014 Hazelwood Mine Fire Inquiry Report p. 309.

² Ibid.

³ Ibid.

⁴ Ibid.

- increased coughing, breathlessness and lack of energy;⁶
- intensification of symptoms in pre-existing conditions, including increased coughing, breathlessness and lack of energy;⁷
- a reported bacterial lung infection in one individual with a pre-existing lung condition, a severe fever and coughing fits, fear going outside; continual cough, exacerbated breathlessness;⁸
- anxiety, light headedness;⁹ and
- stress, depression, panic attacks, fear leaving the house.¹⁰

13. Importantly, whilst the Board may have heard evidence or received submissions from individuals in which these health issues were referred to, this evidence and material was not tested, and there were no findings by the Board that any specific health issues referred to in any such evidence or submissions were due to or contributed to by the Mine Fire.

14. GDFSAE submits that the Board must be mindful of this in reporting on, and making any recommendations in relation to, TOR7.

Video / audio clips played at the Forum

15. In a similar vein, GDFSAE refers to the pre-recorded video and/or audio clips which were played at the commencement of several of the days on which the Forum sessions were conducted.

16. These pre-recorded video and/or audio clips typically featured an un-named individual who spoke of health issues which they said related to them or others, and expressed views and opinions as to the health conditions being in some way related to or exacerbated by the Mine Fire.

17. As these were only video and/or audio clips, there was necessarily no opportunity to test in any way this material. This was consistent with the general prohibition by the Board of any questioning by lawyers of participants at the Forum sessions. As a consequence the views expressed by the persons featured in the video and/or audio clips were untested.

18. While GDFSAE understands the approach of the Board to the Forum sessions that there was to be no questioning by lawyers, the fact remains that potentially prejudicial material of the kind contained in the video and/or audio clips was not made available for scrutiny and therefore cannot be treated by the Board as evidencing or establishing any facts in relation to any health impacts associated with the Mine Fire.

Misapprehensions of certain Forum participants

19. It was clear that a number of participants in the Forum made statements or expressed views which were based on misapprehensions about the Mine Fire and misunderstandings as to the Mine more generally.

20. For example, one participant in the *Mental Health* session on 28 September 2015 expressed a view during the “report back” session to the Board that there was a need for an event which “*recognises the trauma which people have been through as part of the healing process, the recognition or symbolic part of it... they may come to grieve or hear apologies or whatever.*”

⁵ 2014 Hazelwood Mine Fire Inquiry Report p. 309.

⁶ 2014 Hazelwood Mine Fire Inquiry Report p. 310.

⁷ Ibid.

⁸ Ibid.

⁹ 2014 Hazelwood Mine Fire Inquiry Report p. 311.

¹⁰ 2014 Hazelwood Mine Fire Inquiry Report p. 318.

21. Apart from the fact that such a suggestion runs counter to the extensive evidence that members of the community are looking to move on from the Mine Fire and focus on “good news” rather than continually being confronted with the past (and in particular an event that occurred 18 months ago), the suggestion that it may be necessary to convene a public event at which the impacts of the Mine Fire upon the local community are recognised, and apologies are offered, overlooks the fact that:
- (a) two major Inquiries have now been conducted into the Hazelwood Mine Fire, which were open to the public, and at which senior representatives of GDFSAE and a range of State agencies have acknowledged issues that could have been better managed, and reflected their regret and concern for the impact of the Mine Fire on the local community;
 - (b) since the Mine Fire commenced, GDFSAE has engaged in a large range of community programs and initiatives including its *Revive Morwell* program; and
 - (c) GDFSAE has actively engaged with the local community in relation to its implementation of affirmations and recommendations arising from the 2014 Hazelwood Mine Fire Inquiry Report.
22. Another example was in the *Healthy Environments* session of the Forum on 30 September 2015, during which a participant on the panel made a number of assertions in relation to the operation of the Hazelwood Power Station, in particular that:
- (a) there had been a lack of action/ community engagement on the part of both GDFSAE and EPA Victoria in response to concerns about an alleged significant increase in visible ‘start up’ emissions at the Hazelwood Power Station;
 - (b) the increase in start-up emissions constituted a breach of the EPA Licence;
 - (c) the increased start-up emissions were attributable to inadequate maintenance being performed on the Hazelwood Power Station; and
 - (d) GDFSAE’s typical business practice is to “pay the fine” for its environmental licence breaches and continue operating in the same manner.
23. In fact, none of these assertions is correct. GDFSAE and the EPA consulted in relation to the issue of community concern regarding the number of “start ups”, and the EPA subsequently issued a media release in relation to the issue of the start ups, reflecting its consultation with GDFSAE. The start ups are not attributable to inadequate maintenance, and not only is it *not* GDFSAE’s practice to “pay the fine” and continue operating in the same manner, the EPA has not issued any fines for non-compliances with licence conditions concerning emissions from the Power Station.
24. A third example was a suggestion in the *Healthy Environments* session of the Forum that the Board should recommend that all Power Stations in the Latrobe Valley be required to report upon pollution reduction measures that have been implemented “*in recent years*”. GDFSAE submits that this suggestion overlooks the fact that the environmental performance of the Latrobe Valley Power Stations (including Hazelwood) is already the subject of numerous reports to environmental regulators and oversight committees, including:
- (a) EPA Victoria, under EPA Licence 46436 for the Power Station;
 - (b) the Environmental Review Committee (**ERC**) for the Hazelwood Mine and Power Station, which was established and meets regularly in accordance with conditions within Mining Licence 5004; and
 - (c) the Commonwealth of Australia, for the purposes of the National Pollutant Inventory, a publically accessible database. These reports already require the identification of Cleaner

Production Activities and Pollution Control Devices, as set out in the following extract from the 2013-2014 report for the Hazelwood Power Station:¹¹

Cleaner Production Activities

Activity	Comments
Improved maintenance scheduling, record keeping, or procedures	Refocused planning department to plan and track maintenance and improve focus on maintaining plant. Some additional air in-leakage sealing
Installation of high-pressure/low-volume cleaning equipment	Program of upgrading on-line furnace sootblowers, thereby increasing thermal transfer of energy to boiler tubes.
Dust suppression - water sprays/chemical suppression	Used to minimise fugitive dust emissions and reduce potential fire risk in the mine.
Community consultative committee	Community and Stakeholder representatives meet quarterly through out the year to review environmental performance
Other modifications / practices	Monthly employee and contractor Toolbox environmental topics used to support reductions in point and fugitive emissions and resource efficiency.

Pollution Control Devices

Device	Installed (year)	Comments
Electrostatic precipitator	1998	1998-2004 completion of \$85 million program to build and install new precipitators thereby replacing the old ESP's and reducing particulate emissions from 400mg/m ³ to average 60-70 mg/m ³
Wastewater treatment	2010	Settlement ponds used on site to reduce suspended solids. Acid dosing used for pH control of waste water transfer for offsite reuse by like business. In 2010 a Carbon Capture plant-demonstration plant was built. Some of the captured CO ₂ was used for pH control of waste water to reduce use of sulphuric acid.
Opacity monitor	1990	1990 replaced existing opacity monitors with newer equipment and ensured continuous monitoring of each stack, alarmed to control room and reported to community and regulators, including Environment Review Committee quarterly

25. GDFSAE endorses the comments of Mr Ron Mether, the Mine Manager for the Energy Australia Yallourn Mine that all emissions are taken “exceptionally seriously”.¹² GDFSAE actively monitors the environmental impacts of its operations, and contributes towards regional environmental health, including by way of:
- (a) contributing to the operation and maintenance of the Latrobe Valley Air monitoring network;
 - (b) conducting weekly testing of water quality within the Hazelwood Cooling Pond, and the discharge from the Cooling Pond into Eel Hole Creek; and
 - (c) creating sizeable wetlands areas off the Morwell River, and near Brodribb Road.

26. As noted, the matters set out above are examples only of assertions which are incorrect or misplaced. GDFSAE submits that it would be entirely unsafe and inappropriate for the Board to rely on assertions by Forum participants in respect of facts or matters of this kind in formulating its views and in reporting or making recommendations in relation to TOR7.

Reports of Campbell and Clarke, and de Leeuw and Wise

27. In about September 2015, the following reports were uploaded onto the Board’s website, which it has subsequently emerged were obtained by the Board for the purposes of TOR7:
- a. undated report of Professor Donald Campbell and Professor David Clarke entitled “*Improving the health of the people of the Latrobe Valley*”; and

¹¹ See: <http://www.npi.gov.au/npidata/action/load/individual-facility-detail/criteria/state/VIC/year/2014/jurisdiction-facility/00004337>

¹² TX 194.23 – 31.

- b. undated report of Evelyne de Leeuw and Marilyn Wise entitled "*Population health development in the Latrobe Valley*".
28. By letters dated 24 September 2015 and 1 October 2015 to Board's Principal Legal Advisor, GDFSAE by its solicitors (King & Wood Mallesons) sought copies of the instructions provided to these experts, together with any materials that they were briefed or otherwise provided with, details of any assumptions which they were invited to make, and any facts, matters and circumstances to which they were instructed to have regard:
29. The reason for the request was that the reports contain various assertions, presumptions, observations and conclusions for which there is no apparent or disclosed evidentiary basis, and which are disputed. For example:
- Recommendation 1 of the report of Professor Donald Campbell and Professor David Clarke states that "*the Government and Mine Operators should formally acknowledge the perception of harm to health caused by the mine fire and the operation of the mines and power stations generally, which is genuinely held by the residents of the Latrobe Valley.*"; and
 - Page 5 of the report of Evelyne de Leeuw and Marilyn Wise contains a comment that "*the determinants of the poor health of the population of the Latrobe Valley are primarily within the control of the institutions and people who decide to expose other people and communities to unsafe, unhealthy living and working conditions.*"
30. Regrettably, King & Wood Mallesons was not provided with any of the requested materials in relation to the reports, which are entirely untested. The authors of the reports also have not been made available for any form of cross examination or questioning, and the reports have not been tendered in any relevant sense.
31. In the circumstances no reliance should be placed on the reports by the Board, in particular to the extent that reports rely on or contain unsubstantiated assertions, presumptions, observations and conclusions of the types referred to above.
32. GDFSAE is also concerned that various of the unsubstantiated assertions, presumptions, observations and conclusions may reflect views of particular persons which are not representative of the broader community.

Dated: 26 October 2015

KING & WOOD MALLESONS