

**IN THE MATTER OF AN INQUIRY INTO THE HAZELWOOD MINE FIRE CONDUCTED
PURSUANT TO PART 3 THE INQUIRIES ACT 2014 (Vic)**

**SUBMISSIONS MADE ON BEHALF OF
ENERGYAUSTRALIA YALLOURN PTY LTD
(ENERGYAUSTRALIA)**

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INTRODUCTION

1. For almost 20 years, EnergyAustralia has worked steadily towards final rehabilitation of the Yallourn mine. The Rehabilitation Master Plan¹ contemplates flooding the Yallourn mine void to create a lake interconnected to the local river network with a water level of RL +37 (**Lake Option**). EnergyAustralia's view, supported by appropriate engineering investigations, is that the Lake Option is the optimal rehabilitation solution for the Yallourn mine.

2. These written submissions are directed at:
 - (a) the proposed findings C and G at paragraph 244 of the Outline of Submissions by Counsel Assisting (**Counsel Assisting's Closing Submissions**, as provided to the parties on 17 December 2015) and aspects of the analysis that supports them. EnergyAustralia does not otherwise take issue with the proposed findings in paragraph 244 of Counsel Assisting's Closing Submissions;

 - (b) the proposed finding in paragraph 247 of Counsel Assisting's Closing Submissions that rehabilitation obligations have been neglected and ignored by EnergyAustralia;

¹ EnergyAustralia's Rehabilitation Master Plans is discussed at paragraphs [142]-[151] of Mr Mether's witness statement (Exhibit 14) and is before the Board as document [EAY.0001.002.0079]. The Rehabilitation Master Plan sets out EnergyAustralia's overarching strategy for the rehabilitation of the Yallourn mine. It was approved by the Regulator and is registered against EnergyAustralia's relevant Mining Licence.

- (c) the suggestion in paragraph 238 of Counsel Assisting's Closing Submissions that a trust fund should be established based on the Loy Yang Complex Agreement extending to all three of the Latrobe Valley mines; and
 - (d) comments on the adequacy of the current legislative framework.
- 3. Further issues that EnergyAustralia has identified with Counsel Assisting's Closing Submissions are listed, together with EnergyAustralia's submissions in relation to them, in the annexure to these submissions.
- 4. Additional matters were also addressed in EnergyAustralia's oral closing submissions to the Hazelwood Mine Fire Inquiry, which EnergyAustralia endorses but has not replicated here.
- 5. EnergyAustralia submits that the proposed findings at paragraph 244 must be considered against the whole of the evidence before the Board. In particular:
 - (a) EnergyAustralia submits proposed finding C should be considered against EnergyAustralia's Condition 7 material (**Condition 7 Material**),² which included a suite of research undertaken by or on behalf of EnergyAustralia as part of the approval of its work plan variation in 2011. The research was either independent or peer-reviewed. That material has been before the Board from the outset and was never challenged. Many key witnesses were unaware of the Condition 7 Material and their evidence and/or opinions were given without consideration of it. The Board should not perpetuate this neglect. The Condition 7 Material is vital and shows that, at Yallourn, work towards the refinement and implementation of the Lake Option is well advanced and on track; and
 - (b) in response to proposed finding G, EnergyAustralia submits there is insufficient evidence before the Board to support the finding. EnergyAustralia concedes the current rehabilitation bond amount does not reflect its best estimate of what it would cost to achieve a safe and stable land form. However, this is not because EnergyAustralia has sought to avoid its obligations. To the contrary, the evidence shows EnergyAustralia has cooperated with the Regulator at all material times and that its estimate of the rehabilitation liability is a genuine reflection of the expected cost. There is no warrant for any direct or indirect attack on EnergyAustralia's bona fides.

² The Condition 7 Material is discussed in Mr Mether's witness statement at [164]-[171], and is before the Board as document [EAY.0001.002.0237]. It was referred to several times in the hearings before the Board.

6. The existence of the Condition 7 Material, as well as the evidence before the Board of significant rehabilitation activities that have occurred in the Yallourn mine,³ also directly contradict the suggested finding in paragraph 247 of Counsel Assisting's Closing Submissions.
7. Though not part of the formal findings and recommendations, Counsel Assisting's Closing Submissions also suggest that a trust mechanism should be instituted as a means of insuring the State against the cost of rehabilitation, EnergyAustralia submits the suggestion is not supported by the evidence and is contradicted by much of Counsel Assisting's analysis, and also the findings of the expert report from the Board's appointed expert, Accent Environmental. The trust arrangements comprised in the Loy Yang Complex Agreement are specific to the nature of the Loy Yang mine (which supplies two different power stations with different owners). Accordingly, the fact that a trust arrangement is in place should not be taken to suggest that such arrangements are necessary or appropriate for the Yallourn mine.
8. As was explained orally on the last day of the public hearings, EnergyAustralia is particularly concerned by the failure of Counsel Assisting's Closing Submissions to address, other than in high level and superficial terms, the differences between the three Latrobe Valley mines. Nowhere is this shortcoming more apparent than in the failure of Counsel Assisting's Closing Submissions to deal with the import of the Condition 7 Material and the other evidence adduced in the course of the public hearings that reinforced or amplified that material. EnergyAustralia consistently, throughout the hearing and in its submissions, advanced and relied upon the Condition 7 Material and that other evidence and pointed to the dangers in not giving due consideration to each mine operator's individual circumstances.
9. A failure by the Board in its final report to deal with this central evidence and argument would constitute a serious denial of procedural fairness.⁴ EnergyAustralia submits that unless the Condition 7 Material and the other evidence that reinforced and amplified the import of that material is properly weighed, the Board will fall into error. These written submissions are accordingly addressed primarily at areas where evidence of that kind has been overlooked or not dealt with adequately in Counsel Assisting's Closing Submissions.

³ See Mr Mether's witness statement at [246] to [256].

⁴ See e.g. *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24 at 39–40 per Mason J and *Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26; (2003) 197 ALR 389; (2003) 77 ALJR 1088, particularly at [88] per Kirby J.

10. In addition to these written submissions, EnergyAustralia also maintains its reliance on:
- (a) the witness statement of Ronald Mether dated 16 November 2015;⁵
 - (b) EnergyAustralia's opening submissions;⁶ and
 - (c) EnergyAustralia's closing argument.⁷

PROPOSED FINDINGS AND RECOMMENDATIONS

Proposed Finding C: The Lake Option is viable at Yallourn

11. EnergyAustralia opened with a detailed account of its Lake Option and over the course of the Inquiry took every opportunity to invite scrutiny of its merit. There is no evidence to contradict EnergyAustralia's position that the Lake Option is the optimal rehabilitated land form for the Yallourn mine site, and this is supported by the proposed finding B in paragraph 244 of the Counsel Assisting's Closing Submissions. The Lake Option is not only viable, it has the potential to deliver the following benefits:
- (a) flood control for the Latrobe and Morwell Rivers;
 - (b) a water source for future industry;
 - (c) the best visual solution for the rehabilitated Yallourn mine;
 - (d) less ongoing maintenance than other alternatives;
 - (e) a significant source of water for fire suppression; and
 - (f) potential conservation and water recreation benefits – reflecting the likely quality of the water.⁸
12. EnergyAustralia submits the benefits outlined above should be reinforced to the Latrobe Valley community. One size does not fit all, and the concern Counsel Assisting express that the State of Victoria will be left "in perpetuity with huge, dangerous, unsightly and expensive voids to look after"⁹ is unfair, has the potential to mislead and unnecessarily

⁵ Exhibit 14 and before the Board as document [EAY.3000.001.0001].

⁶ T25/9 to T29/21.

⁷ T1241/1-1260/5.

⁸ See page 0248 of the Condition 7 Material [EAY.0001.002.0237], Mr Mether's witness statement at [168] and oral evidence at T314/11 to T316/23, also consider Dr von Bismarck's evidence at T551/10-31 and T552/8-26.

⁹ Counsel Assisting's Closing Submissions at [8].

alarm the Latrobe Valley community and should be countered by reference to the evidence of the considerable potential benefits that a lake at Yallourn presents.

13. Page 132 of the Gippsland Region Sustainable Water Strategy¹⁰ (**Water Strategy Document**) formed a significant basis for Counsel Assisting's Closing Submissions on Term of Reference (**TOR**) 8. For the reasons set out below, EnergyAustralia submits the Water Strategy Document does not form a basis for doubting the viability of the Lake Option at Yallourn.
- (a) First, page 132 is moderated by Action Item 6.8 in the same Water Strategy Document. Action Item 6.8 demonstrates no concluded view about the question whether there is sufficient water to fill the Latrobe Valley voids in the years to come is yet to be reached.
 - (b) Second, the Water Strategy Document erroneously assumes that the Hazelwood and Loy Yang mines will be filled entirely with water. The evidence before the Board is that the current approved plans for the Loy Yang and Hazelwood mines will result in them being only partially filled with water.
 - (c) Third, there is no evidence to suggest the observation at page 132 has any particular application to the Yallourn mine as none of the water panel witnesses were aware of:
 - (i) the substantive basis for the opinion expressed at page 132;¹¹ or
 - (ii) the existence or import of the Condition 7 Material.¹²
 - (d) Fourth, there was no evidence to suggest that the Condition 7 Material, including most relevantly the lake filling model report and the peer review of the lake filling model report, was ever considered by the authors of the Water Strategy Document.
14. Furthermore, Counsel Assisting's submissions on TOR 8 proceed on the basis that no or scarce consideration has been given to the question of how water will be obtained to fill the voids. EnergyAustralia submits the Board should not proceed on the same basis. The State Electricity Commission of Victoria (**SECV**) first conceived of a flooded lake at Yallourn. The State of Victoria, acting through relevant Ministers and Departments, approved the Mine Rehabilitation Master Plan in 2001. At all relevant times, the State,

¹⁰ Exhibit 11 [DELWP.1008.001.0001], published by the Department of Primary Industries.

¹¹ T216/1-18.

¹² T216/19-26.

through its administration of the *Mineral Resources (Sustainable Development) Act 1990* (Vic) (**MRSDA**), has been kept informed that, at the appropriate time, water will need to be allocated to fill the Yallourn mine void. The legislative scheme sets the framework for the dialogue and the Condition 7 Material are the most recent substantive communication about water requirements for the rehabilitation of the Yallourn mine.

15. Given:

- (a) there is no other viable option for rehabilitation at Yallourn;
- (b) the evidence in the Condition 7 Material that water in the required volumes is expected to be available; and
- (c) the significant public benefits the Lake Option at Yallourn is likely to provide for the State of Victoria.

the evidence before the Board demonstrates that there are significant and compelling reasons for the State to allocate water to achieve the Lake Option.¹³ Neither the State nor EnergyAustralia have failed to address the question of how water will be obtained to fill the Yallourn void. Additional further work on timing of allocations will be required, but it is inefficient to seek to lock such arrangements in now, when the timing for expected flooding of the mine is still expected to be a significant period into the future, and details in relation to the time of flooding are unknown. The criticisms levelled by Counsel Assisting are accordingly without foundation.

16. EnergyAustralia submits that the proposed finding C at paragraph 244 of the Counsel Assisting's Closing Submissions should be modified to:

- (a) acknowledge that, in the case of the Yallourn mine, the Condition 7 Material exists and was not considered by key expert witnesses, or the water panel;
- (b) acknowledge that the absence of such expert consideration means finding C may not apply, or applies to a lesser extent, to the Yallourn mine; and
- (c) acknowledge that at all material times EnergyAustralia and the State of Victoria have been aware that the Lake Option requires an allocation of water to succeed.

¹³ Further in support of the proposition that water will be made available to EnergyAustralia is the evidence before the Board that it is desirable, in order to reduce stability risks, to fill the mine voids quickly. See the evidence of Dr von Bismarck at T553/29 - 554/5, Mr Mether's witness statement at [187]-[189] and the GHD 2012 Report referred to at [179] of Mr Mether's witness statement (included in the Condition 7 Material) and before the Board as document [EAY.0001.002.0237] (commencing on page 325).

17. The Board should acknowledge these matters in its report.

Proposed Finding G: The extent to which EnergyAustralia’s rehabilitation liability assessment accounts for uncertainty and is accordingly adequate

18. EnergyAustralia submits that it has properly accounted for uncertainties in its rehabilitation cost assessment. Furthermore, research that will assist in progression towards final rehabilitation is undertaken at Yallourn. Accordingly, the Board should revise proposed finding G to address the whole of the evidence.

19. As was properly acknowledged by Counsel Assisting, EnergyAustralia has been candid about the uncertainties that surround calculating the ultimate cost of final rehabilitation at Yallourn.¹⁴ EnergyAustralia has also sought to account for uncertainty by building generous contingencies into its costings.¹⁵

20. There is no evidence to suggest that EnergyAustralia’s assessment of the cost of rehabilitation is inadequate because it does not account for research. To the contrary, the evidence established that research is entrenched in operations at Yallourn, will assist in the progression towards final rehabilitation¹⁶ and is accounted for in EnergyAustralia’s operational budget for the Yallourn mine.¹⁷ There was ample evidence to support the proposition that research (including monitoring and trial batter rehabilitation) relevant to long term rehabilitation is being undertaken in a strategic and appropriate way at the Yallourn mine.¹⁸

21. Further, the extent to which “research” is properly an operational cost or a rehabilitation cost was not ventilated in the evidence. There is therefore no basis upon which the Board can make a recommendation in the form proposed.

22. EnergyAustralia accordingly submits that in relation to proposed finding G, the Board should:

- (a) refer to the steps EnergyAustralia has taken to acknowledge and make plain uncertainties in its rehabilitation cost estimates;

¹⁴ T738/25 to T739/10. See also Counsel Assisting’s Submission at [161].

¹⁵ T740/26 to T741/9.

¹⁶ E.g. T408/1-6, T431/10-15, T443/23-26.

¹⁷ T740/14-20.

¹⁸ As to research efforts, refer to Mr Mether’s witness statement at [61] (annual reporting on groundwater and land levels), [106] (Risk Assessment Management Plan), [108] (progressive rehabilitation reporting), [153]-[172] (Water issues and Condition 7 reports) and [175] (Ground Control Management Plan).

- (b) acknowledge that the extent of EnergyAustralia's research and monitoring activities was not the subject of evidence before the Board in the context of its examination of EnergyAustralia's rehabilitation liability assessments; and
- (c) refer to and acknowledge the fact that the question whether research should be accounted for as a rehabilitation cost, as opposed to an operational cost, is a complex one that requires further consideration. To the extent industry is expected to reflect this expense in its rehabilitation costings, this should be made known to industry.

23. This may be an area where the approach to rehabilitation costing could be improved through standardisation, as set out in proposed finding I. It is, however, unfair to baldly label EnergyAustralia's cost estimates as "inadequate" on this basis.

Proposed Findings at Paragraph 247

24. EnergyAustralia submits the findings proposed at paragraph 247 of Counsel Assisting's Closing Submissions¹⁹ are unable, on the evidence before the Board, to be made with respect to the Yallourn mine. There is no evidence EnergyAustralia has neglected or ignored its rehabilitation obligations. The evidence is categorically to the opposite effect. The Lake Option at Yallourn has been in contemplation since the 1990s. As identified by Dr Collins in opening and closing submissions:

- (a) the SECV commissioned a range of reports from independent experts in the 1990s, including a May 1993 report by Geo-Eng Ltd into the flooding option,²⁰
- (b) a fully flooded lake was the land form identified by the SECV for Yallourn in 1994,²¹
- (c) in June 1995, a report by Geo-Eng assessing mine batter stability during the proposed flooding of the mine was provided,²²
- (d) in 1997, after privatisation, HRL Technologies Pty Ltd likewise reported on the viability of the flooding strategy;²³

¹⁹ Reference is also made to Counsel Assisting's oral closing at T1076/24-26 and T1097/30-31.

²⁰ Referred to in Mr Mether's statement at [159(a)] and before the Board as document [EAY.0002.001.0044]

²¹ An annotated map dated 1994 prepared by the SECV is referred to in Mr Mether's statement at [154]. The map shows the SECV's plans to flood the Yallourn mine void and is before the Board as document [EAY.0005.001.0001].

²² Referred to in Mr Mether's witness statement at [159(b)] and before the Board as document [EAY.0002.001.0010].

- (e) on 18 January 2002, after almost a decade of consideration and expert review, the Lake Option became the final rehabilitation concept approved in EnergyAustralia's Mine Rehabilitation Master Plan;
 - (f) the viability of the Lake Option set out in the Mine Rehabilitation Master Plan was reviewed by independent consultants in 2005;²⁴ and
 - (g) in 2011-12 EnergyAustralia commissioned the Condition 7 Material that looked into the viability of the Lake Option and other potential rehabilitation options for the Yallourn mine.²⁵
25. Further, in addition to the technical assessments in relation to the viability of the Lake Option, EnergyAustralia has performed considerable progressive rehabilitation work. Mr Mether's evidence was that:
- (a) EnergyAustralia has expended over \$9 million over the last nine years on direct, and significantly more on indirect, rehabilitation;²⁶
 - (b) rehabilitation efforts at the Yallourn mine have resulted in the net overall disturbed land within the Yallourn mine being reduced each year since December 2005;²⁷ and
 - (c) the rehabilitation works have significantly reduced the amount of exposed coal at the Yallourn mine (approximately 85% of the area disturbed by mining has now been covered and is no longer exposed coal).²⁸
26. Mr Mether's evidence was not challenged and he was not afforded an opportunity to respond to the criticism now levelled in paragraph 247.
27. EnergyAustralia respectfully submits the finding proposed at paragraph 247 should accordingly be modified to reflect this significant body of work.

²³ Referred to in Mr Mether's witness statement at [157] and before the Board as document [EAY.0001.003.0081].

²⁴ See the Yallourn Mine Rehabilitation – Concept Review Report prepared by GHD for EnergyAustralia referred to in Mr Mether's witness statement at [163] which is before the Board as document [EAY.0001.003.0105].

²⁵ Referred to in Mr Mether's witness statement at paragraphs [165]-[172].

²⁶ See the letter from EnergyAustralia to the Department dated 28 July 2015 referred to in Mr Mether's witness statement at [258]. The letter is before the Board as [EAY.0003.001.0290].

²⁷ A graph showing the rate of rehabilitation against the total amount of exposed is set out in Mr Mether's witness statement at [251].

²⁸ See [249] of Mr Mether's witness statement.

Introduction of a Trust Mechanism

28. EnergyAustralia agrees with Counsel Assisting's primary submission on TOR 10(c)²⁹ that it is premature to consider alternative security mechanisms to the use of bank guarantees. The Board should act consistently with that submission, particularly in the absence of any serious consideration of a trust mechanism in the evidence and the lack of detail in Counsel Assisting's Closing Submissions as to how any trust mechanism would operate. Fundamentally: are rehabilitation costs to be assured by use of a trust? A bond? Or both? The Accent Environmental report merely identifies trusts as a mechanism,³⁰ discusses potential advantages and disadvantages, and notes that:

A trust fund does not provide the same level of guarantee as a rehabilitation bond supported by an unconditional bank guarantee.³¹

29. Indeed, the theme of the Accent Report's discussion of trust funds is that they are potentially of use in securing post closure management, not pre-rehabilitation security.³² This evidence was not expanded before the Board. EnergyAustralia submits that whilst the Board can provide some guidance on the extent to which the State might consider widening the mechanisms by which assurance can be obtained, it should not recommend institution of a trust mechanism given the scant material before it.

30. An issue canvassed in the evidence, but not addressed in Counsel Assisting's Closing Submissions, is the benefit of introducing mechanisms for discounting the bond provided by each mine operator. EnergyAustralia submits discounts provide a means of moderating the potential unfairness of the application of the current scheme – which requires a 100% bond in circumstances where the risk of default is recognised to be low. A discount could also operate as a means of encouraging and rewarding progressive rehabilitation efforts.³³ The Board is well-placed to make observations about the benefits of a discounting scheme, in order that it inform the existing bond review project. This issue is addressed further in the annexure to these submissions.

The Legislative Scheme

31. Like Counsel Assisting, EnergyAustralia submits the existing legislative framework is appropriately adapted to support rehabilitation of the Latrobe Valley brown coal mines to

²⁹ See Counsel Assisting Closing Submissions at [232].

³⁰ Accent Environmental report (Exhibit 44), page 31; page 0040 of [EXP.0010.001.0001].

³¹ Accent Environmental report (Exhibit 44), page 31; page 0040 of [EXP.0010.001.0001].

³² Accent Environmental report (Exhibit 44), page 38; page 0047 of [EXP.0010.001.0001].

³³ Consistent with Counsel Assisting's proposed finding in paragraph 244F that the purpose of the bond system should also be incentivise progressive rehabilitation.

safe and stable land forms once mine operations conclude. The legislative scheme is not fully documented in Counsel Assisting's Closing Submissions at [31] to [37]. Significantly, there is no reference to recent reforms to the legislative scheme, enacted to give effect to recommendation 4 of the Hazelwood Mine Fire Inquiry 2015.³⁴ Nor do the submissions refer to ss. 15, 26, 34(1) and (2)(b), 39A, 40, 41A or 83 of the MRSDA. The Board should have regard to these further provisions which are significant components of the scheme overall.

32. EnergyAustralia would welcome greater coordination within the existing framework in relation to appropriate matters, including access to water and research into issues common to the mines, such as stability.

CONCLUSION

33. The Hazelwood Mine Fire Inquiry 2015 provided an opportunity to call and scrutinise evidence about what the rehabilitation options are for the Latrobe Valley brown coal mines. The experts agreed that full or partial lakes are viable forms of rehabilitation. For each mine, this land form will offer differing degrees of beneficial use and amenity. Each mine is progressing towards this end point at a different rate in light of the different geotechnical features of the mine and differing mine life.
34. In the case of Yallourn, the Lake Option has the capacity to deliver a significant water asset to the people of the Latrobe Valley and the State of Victoria. Properly managed and co-ordinated, the value of that asset has the potential to go well beyond the benefits of safety, visual amenity and recreation and to deliver, among other matters, flood-mitigation, drought-proofing and water harvesting opportunities.³⁵ The Board has every reason to share in the optimism of EnergyAustralia and other key witnesses to the Inquiry – including Dr von Bismarck³⁶ and Ms Unger.³⁷
35. EnergyAustralia is well aware of the challenges the future holds, but it has the capability and resources to implement its approved Mine Rehabilitation Master Plan, and deliver its vision for rehabilitation of the mine void at Yallourn.
36. EnergyAustralia is committed to working with fellow mine operators, regulatory agencies, Government and the local community to deliver a final land form that benefits the community. EnergyAustralia is fully cognisant of its role and obligations as the mine operator of the Yallourn mine. EnergyAustralia joins in the call for clear and coordinated

³⁴ Refer *Resources Legislation Amendment Act 2015* (Vic).

³⁵ For example: T149/14-24 (Mr Wilson), T472/8-17 (Mr Hoxley), and T551/10 to T552/26 (Dr von Bismarck).

³⁶ T539/27 to T542/11.

³⁷ T639/15-21.

decision-making as it progresses towards the implementation of the Lake Option- the endorsed and only viable final rehabilitation option for the Yallourn mine.

Dated 15 January 2016

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Annexure 1: Observations and Clarifications in respect of Counsel Assisting's Closing Submissions

Paragraph Reference to Counsel Assisting's Closing Submissions	Comment
[61]	<p>The suggestion that overburden is a "scarce resource" is inconsistent with the evidence that there are substantial quantities of overburden at the Yallourn mine and that it is <u>not</u> a "scarce resource" in the context of Yallourn's Lake Option: T780/27-28.</p> <p>Further, Counsel Assisting's Closing Submissions fail to acknowledge the geologically unique features of the Yallourn mine and the different ratios between coal and overburden between the Latrobe Valley mines.³⁸</p>
[79]	<p>There is evidence that interconnection is possible and would be beneficial in the case of Yallourn's Lake Option:</p> <ul style="list-style-type: none"> • HRL Report titled "Literature Review on Mine Rehabilitation by Flooding" (June 1997) [EAY.0001.003.0081] referred to at page 0035 of exhibit 14, witness statement of Ron Mether [EAY.3000.001.0001]; • HRL report titled "Prediction of Water Quality in Flooded Open Cut Brown Coal Mines in Victoria" (2001) [EAY.0001.003.0001] referred to at page 0035 of exhibit 14, Mether Witness Statement [EAY.3000.001.0001]; • GHD report titled "Yallourn Mine Rehabilitation – Concept Review Report" (January 2005) [EAY.0001.003.0105] referred to at page 0037 of exhibit 14, witness statement of Ron Mether [EAY.3000.001.0001]; • Dr von Bismarck told the Board of the "large benefits" of interconnection of pit lakes with the local river network, acting in his words "like a sponge" in times of high flood and allowing water from the lake to feed into the river system during times of drought to ensure a healthy river flow: T552/8-26; and • Professor Mackay provided evidence that a pit lake interconnected to the local river systems would be able to be engineered at Yallourn and that the risk of water quality problems is reduced if there is "some sort of flow through": T451/26 - T452/9. <p>Further, Counsel Assisting's Closing Submissions do not distinguish the Yallourn mine from the other Latrobe Valley mines. This is in contrast to Counsel Assisting's oral submissions (at T1104/18-20) that the prospects for Yallourn in successfully resolving questions concerning interconnection is "greater than for the other mines."</p> <p>EnergyAustralia submits that the Board should take this evidence into account.</p>
[81]	<p>EnergyAustralia has demonstrated through the Condition 7 Material that there is sufficient water to fill the Yallourn mine. See also the evidence of Mr Rodda of the water panel, who described the Latrobe River system as a "very reliable system. It has a lot of water consistently running through the system": T196/29-31.</p>

³⁸ The relative shallowness of the Yallourn mine is discussed at [59]-[60] of Mr Mether's witness statement and a schematic drawing demonstrating this is document before the Board as [EAY.0002.001.0001].

Paragraph Reference to Counsel Assisting's Closing Submissions	Comment
[86]	<p>Professor Sullivan's comments in his letter dated 2 February 2011 were made prior to the preparation of the Condition 7 Material [EAY.0001.002.0237]. This material specifically considered issues relevant to water availability.</p> <p>Further, Professor Sullivan expressly acknowledged that the 2011/2012 TRB Annual Report was prepared without any knowledge of the Condition 7 Material: T477/11.</p> <p>EnergyAustralia submits that Professor Sullivan's comments referred to in paragraph [86] of Counsel Assisting's Closing Submissions need to be considered in the context in which they were made.</p>
[97]	<p>Counsel Assisting's Closing Submissions identify questions that purportedly remain unanswered. These have been put without regard to EnergyAustralia's Rehabilitation Master Plan (which specifies that the pit lake will be interconnected to the Morwell and Latrobe Rivers) and the Condition 7 Material.</p> <p>EnergyAustralia submits that the Condition 7 Material [EAY.0001.002.0237] should be specifically acknowledged and addressed.</p>
[101]	<p>Regardless of how progressive rehabilitation is defined, Counsel Assisting's Closing Submissions are dismissive of the evidence before the Board of the significant amount of progressive rehabilitation work that has been undertaken at the Yallourn mine.³⁹ They also ignore the realities (whether practical, technical or otherwise) which prevent an operating mine from being fully rehabilitated whilst it is still an operating mine.</p>
[125] - [127]	<p>There is no foundation in the evidence for inferring that because work items are not identified in the work plan, they have not been done: T251/17-253/7, T474/11-476/11.</p> <p>Mr Mether's witness statement identified the significant work done to progress EnergyAustralia's Mine Rehabilitation Master Plan, including in respect of water.</p> <p>TRB annual reports since 2011 have acknowledged that the issues identified have substantially been addressed by industry: TRB Reports and T477/24-31.</p> <p>EnergyAustralia submits that the TRB's position should be more accurately and fairly recorded. It also submits that specific consideration should be given to the industry's evidence on the purpose and use made of work plans – an issue the expert panel did not disagree with.</p> <p>The submission also fails to address the evidence of the expert panel which unanimously agreed with Professor Galvin's view that a degree of flexibility is important for work plans and for rehabilitation master plans.⁴⁰</p>
[129]	<p>Counsel Assisting's Closing Submissions omit to include the entirety of Professor Galvin's answer, in which he observes that there is now a completely different amongst the mine operators.</p> <p>The remainder of the line of questioning by Dr Collins of Professor Galvin is set out below</p>

³⁹ See [225] - [261] of Mr Mether's witness statement, [EAY.3000.001.0001].

⁴⁰ T474/11 - T476/11.

Paragraph Reference to Counsel Assisting's Closing Submissions	Comment
	<p>(T477/25-29):</p> <p>Professor Galvin: "...It's a completely different culture now, different atmosphere. There's a lot of interchange between the mines, with the TRB. It's a very different atmosphere and environment to work in."</p> <p>Dr Collins: "All of which are positive?"</p> <p>Professor Galvin: "Which is positive, yes".</p> <p>The mine panel's evidence was to the effect that research is shared between mines where the issues are common: T287. Counsel Assisting did not suggest to any member of the mine panel that a competitive and siloed approach is currently taken to research and knowledge.</p> <p>Professor Mackay referred to the batter stability project at Yallourn as being an example of the Yallourn mine cooperating with external researchers.⁴¹</p> <p>EnergyAustralia submits that the changed culture of the mine operators should be acknowledged as a positive development.⁴²</p>
[152]	<p>The reference to "backroom deals" is unfair in circumstances where there is no evidence to suggest "backroom deals" have been done in the past, or that there is a likelihood of them being done in the future.</p> <p>EnergyAustralia submits that the Board should have regard to:</p> <ul style="list-style-type: none"> • the community consultation that EnergyAustralia currently undertakes and its efforts to broaden that consultation;⁴³ and • the extensive community consultation opportunities already embedded in the legislative framework: refer MRSDA ss.39A and 40(3)(d), and consider also the <i>Environment Effects Act 1978</i> (Vic) (EEA) and the opportunities for community consultation afforded where an Environmental Effects Statement (EES) is required by the Minister for Planning, see also the Ministerial Guidelines prepared under s.10 of the EEA. <p>The reference to "backroom deals" should not be adopted in the final report.</p>
[163] -[164]	<p>There is no evidence to suggest EnergyAustralia will be required to purchase water on the open market, or to top up a flooded void at the Yallourn site in perpetuity: T1005/17-1007/12.</p> <p>This matter was further dealt with by Dr Collins in his closing submissions at T1245/10-21, and T1246/6-25.</p>
[176]	<p>In response to Counsel Assisting's comment that "the stark differences between the AECOM figures and those in the reports of the mines further calls into question the mines' assessments", EnergyAustralia submits that that there is no basis for any criticism of EnergyAustralia's bona fides</p>

⁴¹ T/430/29 - T431/15.

⁴² See also the evidence of Professor MacKay at T430/29-T431/24.

⁴³ See paragraph [242] of Mr Mether's witness statement and his evidence at T326/24-328/12.

Paragraph Reference to Counsel Assisting's Closing Submissions	Comment
	<p>in respect of its rehabilitation liability assessment.</p> <p>EnergyAustralia further submits that Counsel Assisting's Closing Submissions in relation to the adequacy or accuracy of EnergyAustralia's rehabilitation liability assessments (Counsel Assisting's Closing Submissions at paragraph [176]) does not follow from the preceding paragraphs of Counsel Assisting's Closing Submissions which properly acknowledge the limitations of the AECOM reports and the different basis upon which the estimates were calculated.</p> <p>The weaknesses in the AECOM (URS) reports subsequently acknowledged by Counsel Assisting should also be taken into consideration by the Board (see [181] and [204] of Counsel Assisting's Closing Submissions as examples).</p> <p>Further, EnergyAustralia submits that consideration should be given to Mr Chadwick's evidence that:</p> <ul style="list-style-type: none"> • further consultation between the mine operators and AECOM was desirable (T1003/24-29); • if further inputs from the mine operators were available to AECOM, the final report would have to be changed (T1003/30 - T1004/2); and • internal inquiries performed by AECOM informing the conclusions reached in the reports were not included in the report and are not available for scrutiny (T1006/19 - T1007/6).
[205]	<p>At [205], Counsel Assisting indicate that the probabilistic model employed by AECOM represents the best evidence available to the Board to make the judgment required by TOR 10(a).</p> <p>EnergyAustralia submits that the assessment required under TOR 10(a) should be undertaken by reference to the whole of the evidence, as distinct from the AECOM work in isolation (which is the approach Counsel Assisting have adopted). In this regard, reference is made in particular to the closing submissions of Dr Collins at T1252/25 -T1255/11.</p> <p>In summary, EnergyAustralia further submits that the Board should consider:</p> <ul style="list-style-type: none"> • the limitations associated with the AECOM assessment, and the potential unfairness of a 100% bond, given the lack of evidence suggesting any risk to the State of an unplanned "close now" scenario being likely to eventuate; and • the extent to which that unfairness may be moderated by providing for discounts to the bond reflecting the low likelihood of the risk to the State manifesting.