

18 August 2021

The Hon Daniel Andrews  
Premier of Victoria

By email only: [daniel.andrews@parliament.vic.gov.au](mailto:daniel.andrews@parliament.vic.gov.au)

Dear Premier Andrews

### **Request to establish a Board of Inquiry to inquire into Morwell River Diversion integrity**

Environmental Justice Australia and Environment Victoria write to you as part of a collective of community advocates, campaigners, and lawyers who have a long-standing commitment to campaigning and advocacy in the Latrobe Valley.

We refer to the proclamation made by the Governor of Victoria under Part 6 of *the Electricity Industry Act 2000* (Vic) (**EI Act**), and published in the Victoria Government Gazette on Thursday 17 June 2021 (**EI Act proclamation**). We further refer to the direction made under section 159E of the *Water Act 1989* (Vic) (**Water Act**) to Gippsland and Southern Rural Water Corporation by the Governor in Council on the recommendation of Acting Minister for Water the Honourable Richard Wynne, and published in the Victoria Government Gazette on Saturday 19 June 2021 (**Water Act emergency direction**).

We write to request that you recommend to the Governor in Council to establish a Board of Inquiry under section 53 of the *Inquiries Act 2014* (Vic) (**Board of Inquiry**). The Board of Inquiry will be established to inquire into and report on the circumstances requiring the triggering of energy emergency powers to deal with the Morwell River Diversion (MRD) at the EnergyAustralia Yallourn mine, and matters relevant to operator and regulatory oversight of Latrobe Valley mines generally.

#### Why a Board of Inquiry should be established

We believe a Board of Inquiry is warranted and necessary in the public interest for the following reasons:

1. The EI Act proclamation and Water Act emergency direction confers extraordinary and broad powers of direction on the respective Ministers responsible for administering the EI Act and Water Act. These powers reflect the significance of the threat of collapse of the MRD on the Victorian and specifically the Latrobe Valley communities. Given that the threat of failure of the MRD was significant enough to invoke emergency powers and declare an energy emergency, the government ought to consider the threat of failure of the MRD as a significant enough event to require independent and public scrutiny.
2. Our understanding is that the gravity of the damage sustained at the MRD is subject to ongoing assessment and that longer-term plans are being developed to remediate the MRD structural integrity issues. The MRD had previously failed in similar circumstances in 2012. Various government agencies and departments ought to have foreseen that heavy rainfall in the catchment could cause or contribute to risks associated with a potential failure of the structural integrity of the MRD. Those agencies and departments include, but are not limited to: Earth Resources Regulator, the Department of Environment, Land, Water, and Planning, the Environment Protection Authority, WorkSafe Victoria and EnergyAustralia Yallourn Pty Ltd as operator of the mine and MRD.

3. Failure of the MRD could have caused an extended outage at Yallourn power station. During peak energy demand in summer over the coming years (before additional renewable energy and storage capacity is brought online), this could represent a threat to the security of supply in the National Electricity Market. We understand that the act of invoking the emergency powers was to prevent this situation. However, it is possible that a future flooding event may occur quickly enough that emergency powers may fail to enable sufficiently rapid intervention. In our view, an independent investigation into the causes of the current near-failure of the MRD is appropriate to provide confidence to Australian Electricity Market Operator and other agencies that the risk of MRD failure (and thus extended generation outages) is being appropriately managed.
4. The foreseeability of actual or potential failure of the MRD subsequent to the 2012 collapse raises significant public interest questions regarding the knowledge of and proactive steps taken to mitigate actual or potential threat of failure of the MRD since 2012 by EnergyAustralia Yallourn Pty Ltd and the government agencies and departments listed at paragraph 2.
5. The construction and maintenance of the MRD is of considerable public interest. The Morwell River is a public river, and provides important freshwater flows to the Latrobe River, which in turn provides highly significant freshwater flows to the Ramsar-listed Gippsland Lakes. Private construction and maintenance of a public, natural resource that has important consequences for internationally important wetlands deserves rigorous government scrutiny, particularly in circumstances where the MRD has previously failed.
6. All bodies involved in the oversight of the MRD, including public entities and EnergyAustralia Pty Ltd, should be investigated and held accountable for their role in the repeated and foreseeable geotechnical failures at the Yallourn mine.
7. Given the involvement of public entities who administer relevant laws, regulations, guidelines, and otherwise impose obligations on how EnergyAustralia Yallourn Pty Ltd conducts its mining operations, including with respect to the MRD, we believe that the inquiry must be independent of government. The only appropriately independent body to inquire into the recent near-failure of the MRD is a Board of Inquiry.
8. The public interest in the triggering of emergency powers under two Acts of Parliament to ensure electricity generation, and to deal with the foreseeable private issues associated with the Yallourn mine operations, is significant. The Victorian and the Latrobe Valley communities deserve a public, independent inquiry. This will instil community confidence that Yallourn and other coal mines are being and will be managed and regulated to prevent an actual, potential or likely recurrence of incidences associated with mining infrastructure and/or engineering, and that may require the triggering of emergency powers.
9. The circumstances associated with section 30A *Environment Protection Act 1970* emergency discharge licence issued to Hazelwood Power Partners et al should also be investigated. The issues arising as a result of floodwater inundating the Hazelwood Pondage, already experiencing instability and integrity issues, raises further questions about the adequacy and effectiveness of operator and regulatory oversight of Latrobe Valley mines and rehabilitation activities.

10. The Andrews government has a strong history of responding to crises in the Latrobe Valley. The Latrobe Valley community has been reassured that the government will act appropriately when it experiences untoward events, including establishing and fully implementing the recommendations of both Hazelwood Mine Fire Inquiries. The government should continue to build on its legacy of inquiring into, understanding, and developing the solutions to the significant issues experienced by the Latrobe Valley community to protect their industry, environment and well-being.

### Terms of Reference

We propose the following terms of reference for the Board of Inquiry:

The Board of Inquiry is required to inquire into and report on:

1. The adequacy and effectiveness of measures taken by or on behalf of the owner, operator and licensee of Yallourn coal mine to prevent risk to the MRD subsequent to the 2012 collapse; including whether the owner, operator and licensee of the Yallourn mine or any person or entity acting on behalf of any of them:
  - i. Implemented the recommendations arising from reviews of previous events;
  - ii. In the opinion of the Board of Inquiry, properly rebuilt and appropriately maintained the MRD subsequent to the 2012 collapse; and
  - iii. In the opinion of the Board of Inquiry, breached or did not comply with the requirements of (or under) any relevant statute or regulation, including notification or directive given under such statute or regulation and any code of practice, management plan or similar scheme, developed and/or implemented due to such requirements.
2. The adequacy and effectiveness of the application and administration of relevant regulatory regimes in relation to the risk to the MRD subsequent to 2012.
3. The adequacy and effectiveness of measures taken by or on behalf of the owner, operator and licensee of Hazelwood pondage to prevent risk of stability and subsequent discharge of waters from the Hazelwood pondage into the Latrobe River.
4. The adequacy and effectiveness of the application and administration of relevant regulatory regimes in relation to the risk to the Hazelwood pondage.
5. The adequacy and effectiveness of the application and administration of relevant regulatory regimes in relation to the risk at the Hazelwood and Loy Yang mines.
6. Any other matter reasonably or actually relevant to the matters specified in paragraphs 1 – 5.

If you would like to speak further with us about this request please contact Bronya Lipski at Environmental Justice Australia ([bronya.lipski@envirojustice.org.au](mailto:bronya.lipski@envirojustice.org.au)) or Nick Aberle at Environment Victoria ([n.aberle@environmentvictoria.org.au](mailto:n.aberle@environmentvictoria.org.au)).

We otherwise look forward to your prompt response.

Yours faithfully

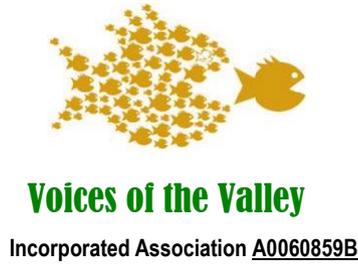


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