

## SUBMISSION GUIDE

# How to have your say on **how river water is used to rehabilitate Victorian coal mines**

Until **midnight on 15 December 2024**, the Victorian Department of Energy, Environment, and Climate Action (DEECA) is seeking feedback on how river water is used for coal mine operations and rehabilitation.

This round of consultation relates **only to water entitlements for the operation and rehabilitation of Loy Yang A power station and mine, and the operation of Loy Yang B power station** in the Latrobe Valley.

Your submission will be compiled into a report for the Victorian Minister for Water, Harriet Shing. Using the report and considering other relevant matters,<sup>1</sup> she will decide whether to approve or deny the water entitlement applications for the operation and rehabilitation of Loy Yang A power station and the operation of Loy Yang B power station.

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<sup>1</sup> s 40 of the *Water Act 1989* (Vic)

# What is this consultation about?

In October 2023, the Latrobe Valley Regional Rehabilitation Strategy outlined plans for the closure of **Loy Yang A power station and mine; and Loy Yang B power station**. Old mines can harm local communities and the environment, so it's essential for the companies that have profited multi-billions of dollars from them, to clean up and rehabilitate the sites to reduce lasting impacts.

The current operator of **Loy Yang A power station and mine** is **AGL**. They plan to rehabilitate the mine by flooding the pits with vast amounts of river water from the Latrobe River. To access this river water, they need to apply for permission to the state Minister for Water, Harriet Shing, for a "bulk water entitlement".

This application has been submitted, and it represents the first in a series of approvals for the rehabilitation of AGL's mines. But before the Minister considers it, the community has an opportunity to provide feedback. That's what this consultation is all about!

Because coal power generation takes a lot of water for operation, both AGL and the operators of Loy Yang B, Southern Rural Water, already have bulk water entitlements in place to cover their operations. So, **in addition** to applying for a new bulk water entitlement to rehabilitate Loy Yang A mine – both operators are also applying **to amend their existing entitlements** to reflect the planned closure of the power stations.

To put it simply, this consultation is your opportunity to have your say on **three different but related** bulk water entitlements:

1. **Application A - A new bulk water entitlement** for AGL to access river water for the purpose of Loy Yang A mine rehabilitation.
2. **Application B - An amendment** to AGL's existing water entitlement related to the operations of Loy Yang A power station.
3. **Application C - An amendment to Southern Rural Water's** existing water entitlement related to the operations of Loy Yang B power station.

# Why should I make a submission?

These bulk water entitlements give corporations access to massive amounts of river water – AGL is seeking **over 2 Sydney Harbours worth of water** for the rehabilitation of Loy Yang A mine alone!

Pushing the Minister to scrutinise the applications for the best environmental and social outcomes will lead to a healthier future for the Latrobe Valley and everyone who depends on the Latrobe River system.

These applications are the first in a series of mine rehabilitations, so it's crucial to **get this right** by setting a strong precedent as more mines are rehabilitated in the coming years.

## Tips for writing a good submission

The best submissions are unique. Good submissions generally:

- **Are concise** and well-structured
- Emphasise the key points so that they are clear
- **Outline concerns** as well as suggesting **recommendations** to address them
- Only include information and documents that are **directly relevant** to your key points.

You can find more advice from EJA on how to write a good submission, [here](#).

## How to lodge your submission

### OPTION 1: Upload a written submission to the survey portal

Note: We encourage you to **make a written submission with this method** so that you can tailor it to suit your concerns.

- **Prepare your submission:** Write your document and save it on your computer.
- **Open the [online survey](#):** Use your preferred internet browser.
- **Upload your document:** In question 2, select “I will attach my own submission.” Click the arrow below to upload your saved document.
- **Complete the survey:** Answer only the required questions. Your document should cover all other information.
- **Finish the survey:** Scroll through all 5 pages by clicking "Next" to move forward.
- **Submit:** On the final page (page 5), click "Submit." You will receive a submission ID number when your submission is complete.

## OPTION 2: Use the online survey

If you submit via the online survey, follow the *steps* below to navigate the form. Note that only questions marked as “required” need to be answered to proceed.

**Access the survey** by [clicking this link](#).

### **Answer questions on page 1:**

- Answer questions about yourself and why you're interested in the consultation.
- In question 2, select that you'll be submitting via the survey, not with a written submission.
- Click "Next" to continue to page 2.

### **Answer the questions on page 2:**

- This page is where you can provide feedback on the application for a new bulk water entitlement for AGL to access river water for the purpose of Loy Yang A mine rehabilitation. You may wish to discuss:
  - Overall impacts of mine rehabilitation on the river system
  - Lack of transparency and public information
  - Downstream environmental and social impacts
  - Costs
- Follow the prompts to provide feedback or if you do not wish to provide feedback on this matter then you can click “no”.
- Click "Next" to go to page 3.

### **Answer the questions on page 3:**

- This page is where you can provide feedback on the application to amend AGL's existing bulk water entitlement for the purpose of operating Loy Yang A until it's closure.
- Follow the prompts to provide feedback or if you do not wish to provide feedback on this matter then you can click “no”.
- Click "Next" to go to page 4.

### **Answer the questions on page 4:**

- This page is where you can provide feedback on the application to amend Southern Rural Water's existing bulk water entitlement for the purpose of operating Loy Yang B. You may wish to discuss:
  - Unclear closure date of Loy Yang B power station.
- Follow the prompts to provide feedback or if you do not wish to provide feedback on this matter then you can click “no”.
- Click "Next" to go to page 5.

**Click submit:**

- On the final page (page 5), click "Submit." You will receive a submission ID number when your submission is complete.

## What does the law say?

The Minister **must consider** the submissions you make when deciding whether to accept or reject the applications. She also **must consider** the matters under s 40 of the *Water Act 1989* (Vic), including:

- The existing and projected availability of water in the area (s 40(1)(b));
- The existing and projected quality of water in the area (s 40(1)(c));
- The permissible consumptive volume of the area (s 40(ba));
- Adverse effects that the BWE would have on existing authorised uses of water, waterways or aquifers, the maintenance of the environmental water reserve objective (s 40(1)(d));
- Water to which the applicant is already entitled (s 40(1)(e));
- The need to protect the environment including the riparian and riverine environment (s 40(1)(g));
- Relevant government policies (s 40(1)(g)-(j));
- Whether the source of water is within a heritage area (s 40(1)(ja));
- The proper management of the waterway and its surrounds or of the aquifer (s 40(k));
- The purposes for which the water is to be used (s 40(1)(l));
- The needs of the applicant (s 40(1)(m));
- Any relevant reports of findings made under any Act which are available to the Minister (s 40(1)(n)); and
- Other matters the Minister thinks fit (s 40(1)(o)).

The Minister may either approve or refuse the application(s).<sup>2</sup> The Minister must not approve an application unless she considers that the entitlement is not likely to have any significant impact on the matters required to be considered under s 40 (listed above).<sup>3</sup>

This is why it is so important for you to have your say. If you are opposed to the application(s) you should state this clearly and why in your submission.

## Contact us

If you have any questions, need additional support or want to share your submission with us, get in touch at [hello@envirojustice.org.au](mailto:hello@envirojustice.org.au).

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<sup>2</sup> s 42(1)

<sup>3</sup> s 42

# According to EJA lawyers – what are the key issues?

Environmental Justice Australia’s lawyers have thoroughly reviewed the bulk water entitlement applications and identified the key issues outlined below.

Note that topics 1-4 are related to **application A** (AGL’s application for a new bulk water entitlement to access river water for the purpose of Loy Yang A mine rehabilitation).

Topic 5 is related to **application C** (Southern Rural Water’s application to amend their existing water entitlement related to the operations of Loy Yang B power station).

Click on each link to read more EJA lawyer views:

1. [Overall impacts of mine rehabilitation on the river system](#)
2. [Climate change and downstream impacts](#)
3. [Lack of transparency and public information](#)
4. [Costs](#)
5. [Unclear closure date of Loy Yang B](#)

# 1 Overall impacts of mine rehabilitation on the river system

These applications are the first in a series of bulk water entitlements for mine rehabilitation in the Latrobe Valley, with an additional application for the Yallourn mine expected in the coming months. Each application involves a huge amount of water, and together, the cumulative impact on the Latrobe River system will undoubtedly be enormous. However, since these applications are being submitted separately, it's hard for the community to accurately provide feedback on the overall impact.

Based on existing estimates, Yallourn will need at least 630GL of water for rehabilitation,<sup>4</sup> while Hazelwood will require 637GL.<sup>5</sup> Combined with the 1074GL requested in AGL's Loy Yang mine application,<sup>6</sup> the total water demand for mine rehabilitation in the Valley would be a staggering 2,341GL—**more than four and a half times the size of Sydney Harbour**. This represents a massive draw on a river system already under strain, made worse by a drying climate.

If you feel strongly about this issue, you can ask the Minister to:

- **Refuse the application until all bulk water entitlement applications can be reviewed** together and the overall impacts of drawing water for three pit lakes can be considered together.
- **Consider the cumulative impacts** of diverting water for all three pit lakes, climate change impacts, as well as other industries which contribute to pollution in the area.

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<sup>4</sup> LVRRS Amendment, [Latrobe-Valley-Regional-Rehabilitation-Strategy-Amendment.pdf](#) p 4

<sup>5</sup> Hazelwood EES Referral Form, [Microsoft Word - Hazelwood EES Referral - submission 2DEC21.docx](#) p 47

<sup>6</sup> See p 2 of Application A (35.8GL x 30 years = 1074GL)

# 2 Climate change and downstream impacts

The large-scale extraction of water for mine rehabilitation presents a serious risk to the Latrobe River system and surrounding ecosystems, especially in the face of a drying and more unpredictable climate. Removing such a large volume of water could have catastrophic effects on the river and the downstream Gippsland Lakes, which are internationally significant, Ramsar-protected wetlands

These concerns are heightened because the Latrobe River system plays a key role in diluting pollution from coal mining, power generation, and other industries. With less water available due to climate change, and the bulk water entitlements, the river's flow could be disrupted, leading to stagnant, polluted water that threatens the health of the entire ecosystem downstream.

When making your submission, you might like to consider the downstream impacts of the application such as:

- What environmental and cultural impacts downstream are you concerned about?
- How will a drying climate and climate change impact the availability of water and affect the environment and cultural values downstream?
- What species are likely to be impacted?
- How will this impact your enjoyment of the river and water resources?
- Should there be flexibility to use manufactured water built into the bulk water entitlement in the event of a drying climate and limited water availability?
- How will downstream impacts be appropriately mitigated and monitored? Who will pay for this?



# 3 Lack of transparency and public information

The application for the rehabilitation of Loy Yang A mine proposes only one solution: creating a pit lake by flooding the mine with water from the Latrobe River. This approach is based on the Victorian Government’s Latrobe Valley Regional Rehabilitation Strategy (LVRRS). However, the strategy lacks clarity in explaining how it determined that this was the best rehabilitation option.

The LVRRS also provides little explanation for why the Latrobe River was chosen as the water source for rehabilitation, rather than alternatives like manufactured water. While the LVRRS acknowledges that manufactured water is technically feasible, it claims it is too complex and expensive. But cost alone shouldn’t rule out a solution—especially when coal mine operators have profited for years and should be held accountable for cleaning up the mines in the least harmful way for the environment and public. After public pressure, the government has released a report into why they consider manufactured water is not feasible for pit lakes, available on their website [here](#).

On behalf of a local community group, EJA lawyers also sought access to material which led to the LVRRS amendment concluding that a pit lake was the only option. We submitted a Freedom of Information (FOI) request in April 2024 on behalf of a community group. We are still yet to be provided with this information.

EJA lawyers believe the Minister should make all analysis available to the public for consultation, including why pit lake rehabilitation was selected for the region.

The Minister should allow the public to access this information to inform their submissions. The Minister should not make a decision until this has occurred.

# 4 Costs

Bulk water entitlements are not just permission to extract river water—they should involve a cost that corporations must pay to the State Government. However, it is unclear how much AGL and other coal mine operators are paying for access to this water.

Although Applications B & C reference storage costs, it does not provide a clear breakdown or the total cost of water extraction. Concerningly, Application A makes no reference to any costs. Given the value and scarcity of water, the public should have full transparency on the costs associated with using it for mine rehabilitation.

EJA lawyers believe the Minister should make all information regarding these costs publicly available for consultation to inform their submissions. The Minister should not make a decision until this has occurred.

# 5 Unclear closure date of Loy Yang B

Application C aims to clarify the future use of river water required for the operation of Loy Yang B power station, but it fails to specify a closure date for the station. Despite claims in the application that it provides a "clear and unambiguous trigger point" and the website stating it offers a "clearly identifiable closure date," no actual date is provided.

At present, Loy Yang B power station is set to close in 2047, but Loy Yang A mine, which supplies the station with coal, is set to close 12 years earlier in 2035. The application does not explain how these conflicting timelines will be addressed.

Considering the high degree of public interest, and the significant amount of resources being dedicated to assessing the bulk water entitlements EJA lawyers believe the Minister should require Loy Yang B to confirm its closure date publicly prior to considering the applications.