Friends of the Gippsland Lakes
5 August 2025

Senator the Hon. Murray Watt
Minister for the Environment and Water
Parliament House
Canberra ACT 2600

Dear Senator Watt,

Re: Request for EPBC Act Section 70 Intervention – Latrobe Valley Mine Rehabilitation Water Diversions

I write on behalf of Friends of the Gippsland Lakes (FOGL) to urgently request your intervention under section 70 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We ask that you exercise your discretionary powers to "call in" the proposed large-scale diversion of surface water from the Latrobe River system to fill decommissioned Latrobe Valley coal mine pits. This request is made on the grounds that the activity may have significant impacts on Matters of National Environmental Significance (MNES) – notably Ramsar-listed wetlands, threatened species (e.g. the endangered Australasian Bittern) and listed migratory species – thereby meeting the threshold for federal assessment under the EPBC Act. Our plea is grounded in compelling scientific evidence and aligns with Australia's obligations to protect internationally significant wetlands and biodiversity. We outline below the reasons for this request, with supporting references.

Proposed Water Diversions and Potential Impacts: The Victorian Department of Energy, Environment and Climate Action (DEECA) is currently considering issuing new bulk water entitlements to coal mine operators for pit lake formation in the Latrobe Valley. If approved, these entitlements could allow the extraction of up to 2,800 gigalitres (GL) of fresh water from the Latrobe River system over coming decades – water that would be diverted into mine voids and ultimately lost to evaporation. Proponents contend that using former power station water allocations for mine rehabilitation will not adversely alter the river system's overall flow regime. However, such claims are demonstrably flawed and inconsistent with hydrological studies. Historically, Latrobe Valley power stations diverted substantial volumes from the river (averaging ~78 GL per year) but returned roughly 23 GL/year back into the system as cooling and process water outflows. These return flows provided vital baseflows and seasonal flushing that benefited downstream ecosystems. By contrast, filling mine voids would permanently remove this water from the river catchment (i.e. zero return flow), eliminating the portion that previously sustained wetlands and buffered salinity in the Lower Latrobe and Gippsland Lakes system. Indeed, the full uptake of the proposed entitlements (up to ~96.5 GL per year of extractions) would fundamentally disrupt catchment-scale

hydrology. In addition, large pit lakes have high evaporative losses – on the order of 15–20 GL per year for each mine void – with no mechanism for ecological return. Extensive modelling by hydrological consultants confirms that this evaporation will further deplete flows to downstream environments (Alluvium & HARC, 2023). In sum, the cumulative reduction in river flow from mine pit filling (through both direct extraction and evaporation) represents a major new stressor on an already flow-stressed system.

Threat to Ramsar Wetlands (Gippsland Lakes): The Gippsland Lakes – fed in part by the Latrobe River – are designated as a wetland of international importance under the Ramsar Convention. They, along with their fringing Lower Latrobe wetlands (Sale Common, Heart Morass, Dowd Morass), depend on periodic freshwater inflows and flood events to maintain their ecological character. However, the Latrobe River system is already over-allocated and suffering significant flow deficits. Even under current conditions (before any mine-pit extractions), the Latrobe River falls short of minimum environmental flow requirements by an estimated 129 GL annually, contributing to *rising salinity*, *more frequent algal blooms*, and *wetland vegetation dieback* in the Gippsland Lakes system. For example, increased salinity and reduced inundation have led to severe decline of freshwater marsh plants in Dowd Morass and parts of Sale Common, with concomitant drops in fish, frog, and waterbird populations.

Climate change is projected to further diminish catchment yields (a ~25% decline in annual runoff over the past two decades has already been observed) and exacerbate salinity intrusion in the Lakes (Hale & Boon, 2020). Overlaying new extractions of up to ~96 GL/year for mine rehabilitation on this scenario is likely to push the system past a tipping point. Independent scientific assessments support this conclusion. A Victorian Government-commissioned *Ecological Effects Assessment* warned that *"harvesting floods to fill pit lakes will be detrimental to the system, particularly for Lake Wellington and the Lower Latrobe Wetlands,"* and could *"potentially lead to a change in the ecological character of the Gippsland Lakes Ramsar Site"*. In other words, taking even high flows (flood pulses that normally replenish the wetlands and flush out salt) for the purpose of mine filling could irreversibly alter the wetland ecosystems downstream. This is a grave concern: under the Ramsar Convention, Australia has a binding obligation to maintain the ecological character of listed wetlands.

In its latest Gippsland Lakes Ramsar Site Management Plan (2024), the combined impacts of water resource use and climate change are identified as among the most serious threat to the Lakes' ecological character. Should the state of Victoria grant large new water allocations that significantly alter flow regimes and degrade the Ramsar site, the Commonwealth would be required under Article 3.2 of the Convention to notify the Ramsar Secretariat of likely changes to the site's character. To date, no such notification has been made – underscoring the urgent need for Commonwealth-level scrutiny *before* irreversible damage occurs. We submit that allowing the mine pit filling to

proceed without federal assessment would pose an unacceptable risk of breaching our duty to protect the Ramsar-listed Gippsland Lakes.

Impacts on Threatened and Migratory Species: The Latrobe River and Gippsland Lakes system supports numerous species of high conservation significance that are protected under the EPBC Act. In particular, the Australasian Bittern (Botaurus poiciloptilus) – listed as endangered – is known to inhabit the wetlands of the lower Latrobe (Sale Common is a key habitat for this species). This secretive waterbird relies on extensive, shallow freshwater marshes with dense reeds; it is extremely sensitive to the drying or salinization of wetland habitat. Any further reduction in freshwater inflows that leads to prolonged drying or increased salinity in wetlands like Sale Common could be devastating for the Australasian Bittern and similar freshwater-dependent fauna. Likewise, migratory shorebirds protected under international agreements (JAMBA/CAMBA) use the Gippsland Lakes wetlands as seasonal feeding grounds. For example, Latham's Snipe (Gallinago hardwickii) forages in periodically flooded meadows and marshes; if those areas remain dry in summer or turn hyper-saline, the snipe and other migratory waders will lose critical habitat.

Native fish are also at risk – the vulnerable Australian Grayling (Prototroctes maraena) occurs in Latrobe River reaches and requires sufficient flow (including spring freshes) to trigger its downstream spawning migrations. Reductions in flow volume and alterations to seasonality can disrupt the life cycles of such flow-cued species. It is important to note that these concerns are not merely hypothetical. In the recent EPBC referral for the Hazelwood mine pit lake proposal (EPBC Referral No. 2022/09239), the Department's assessment already concluded that the action was likely to have significant impacts on (a) a water resource (under the "water trigger" for large coal mining projects), (b) Ramsar wetlands, (c) listed threatened species, and (d) listed migratory species. Consequently, on 5 April 2023, the Department determined this proposal to be a *"controlled action"* requiring a rigorous federal environmental impact assessment.

The *Statement of Reasons* for that decision highlights the very issues raised in this letter. It notes that the Gippsland Lakes Ramsar site is already under stress from reduced water availability and that *"any further reduction in freshwater flows…will exacerbate that threat,"* potentially causing serious or irreversible damage. It also explicitly identified multiple threatened species (including the Australasian Bittern) and migratory birds that could be significantly impacted by altered hydrology. In making the controlled action determination, the Department applied the precautionary principle, recognizing that scientific uncertainty over the precise magnitude of impacts should not delay preventative measures when *significant harm is plausible*. We agree with this prudent approach. The same principle should guide the Ministerial response to the broader Latrobe Valley pit lake proposals: the risks to nationally protected environmental values are evident, and waiting for incontrovertible evidence (which

might come only after damage has occurred) would be inconsistent with Australia's environmental protection commitments.

Request for Ministerial "Call-In" under EPBC Act Section 70: Given the above, we are deeply concerned that the proposed Latrobe Valley mine pit filling program (encompassing Hazelwood, Yallourn, and Loy Yang mines' use of Latrobe River water) has the potential to cause significant impacts on MNES, yet not all elements of this program are currently being assessed under the EPBC Act. While Hazelwood's proposal is now rightly under federal assessment, the other mine rehabilitation water diversions are proceeding through state processes and may not be voluntarily referred for Commonwealth review. There is a real risk that these actions, considered in isolation or through a piecemeal approach, will escape the holistic scrutiny that a cumulative federal assessment would provide. We urge you to utilise the provision in EPBC Act Section 70 to address this gap. Section 70(1) empowers the Minister to request a referral of a proposal if "the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action". In essence, this is the EPBC Act's safety-net mechanism to ensure potentially harmful projects cannot evade assessment.

We submit that the Latrobe mine pit lake water diversion proposals clearly meet the criteria of actions that *"may be controlled actions."* Indeed, your Department's own findings on the Hazelwood referral substantiate that such actions are likely to significantly affect water resources, Ramsar wetlands, and protected species. By exercising a call-in, you would ensure that all relevant components of the Latrobe Valley mine rehabilitation are referred and undergo a proper environmental impact assessment (either individually or jointly), rather than proceeding ad hoc at the state level. This is crucial for capturing the cumulative impacts on the Latrobe catchment and Gippsland Lakes – impacts which might be underestimated if considered mine-by-mine. Federal intervention under s.70 would also send a clear signal that Australia is serious about upholding its international environmental obligations and avoiding unintended breaches (for example, failing to maintain our Ramsar wetland's ecological character). We note that community and expert stakeholders, including Environmental Justice Australia and Gippsland-based environmental groups, have raised serious concerns about the lack of comprehensive assessment for these water diversions. Utilizing the call-in power would be an appropriate and lawful step to address those concerns. It is, in fact, the precise remedy envisioned by Parliament for situations where an action with national environmental significance might otherwise 'fall through the cracks.'

In conclusion, FOGL respectfully requests that you exercise your authority under EPBC Act s70 to require the referral of the Latrobe Valley mine pit lake filling proposals for federal environmental assessment. This intervention is both necessary and justified

given the weight of evidence indicating likely significant impacts on nationally protected wetlands, species, and water resources. It will help prevent irreversible ecological damage and ensure that any decisions about mine rehabilitation water use are subject to the highest standard of environmental scrutiny. We owe this diligence not only to the Gippsland Lakes and its wildlife, but also to the communities who depend on a healthy river and wetland system for their livelihoods and cultural heritage.

Thank you for your attention to this urgent matter. We would welcome the opportunity to discuss our concerns or provide further information to your Department. Please do not hesitate to contact us if we can assist in facilitating a comprehensive solution that protects the Gippsland Lakes for future generations.

Yours sincerely,

Heather Oke
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References (APA 7th ed.):

Alluvium. (2020). *Latrobe Valley Regional Water Study – Ecological Effects Assessment*. Melbourne: Victorian Dept. of Environment, Land, Water and Planning.

Alluvium & Hydrology and Risk Consulting (HARC). (2023). *Latrobe Valley Mine Pit Lakes – Evaporation Loss Modelling*. Unpublished technical report for Victorian Government (as cited in Friends of the Gippsland Lakes, 2025).

Commonwealth of Australia. (1999). *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Canberra: Office of Parliamentary Counsel.

Department of Climate Change, Energy, the Environment and Water (DCCEEW). (2023). *Statement of Reasons – Controlled Action Decision for Hazelwood Mine Rehabilitation (EPBC 2022/09239)*. Canberra: DCCEEW (Decision signed 5 April 2023).

Department of Environment, Land, Water and Planning (DELWP). (2021). *Water sharing in the Latrobe Valley – Power station water usage and return flows*. Melbourne: DELWP (Mine Land Rehabilitation Authority Forum presentation).

Friends of the Gippsland Lakes (FOGL). (2025, July 28). *Letter to Senator David Pocock: Threats to Gippsland Lakes Ramsar site from proposed Latrobe Valley mine rehabilitation water use*. [Unpublished correspondence].

Hale, J., & Boon, P. I. (2020). *Impacts of Reduced Inflows on the Ecological Character of the Gippsland Lakes Ramsar Wetlands*. Report to West Gippsland Catchment Management Authority (as cited in Friends of the Gippsland Lakes, 2025).