

Select Committee on the continued public ownership of  
Snowy Hydro Limited

# **Continued public ownership of Snowy Hydro Limited**

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## How to contact the committee

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## Terms of reference

1. That a select committee be appointed to inquire into and report on the continued public ownership of Snowy Hydro Limited, and in particular:
  - (a) impacts on the short and long term financial position of the Government including revenue and recurrent costs,
  - (b) future capital expenditure requirements of Snowy Hydro Limited in order to remain competitive in the national energy market,
  - (c) control of water regulation,
  - (d) access to lands controlled by Snowy Hydro Limited,
  - (e) removal of disused Hydro infrastructure in National Parks,
  - (f) heritage issues,
  - (g) any other related matters.
2. That the committee consist of seven members comprising:
  - (a) Government members: Mr Catanzariti, Mr Donnelly and Ms Fazio,
  - (b) Opposition members: Mrs Forsythe\* and Mrs Pavey, and
  - (c) Cross bench members: Ms Hale and Revd Dr Moyes.
3. That, notwithstanding anything contained in the standing orders:
  - (a) the Chair of the committee be Revd Dr Moyes, and
  - (b) the Deputy Chair be Mrs Pavey.
4. That the committee report by Friday 27 October 2006.
5. That the minutes of proceedings, evidence, all papers, documents, reports and records of the Select Committee on the proposed sale of Snowy Hydro Limited, appointed on 3 May 2006, be referred to the committee.

*Minutes of Proceedings No 6, 7 June 2006, Items 26 and 35*

\*The Hon Charlie Lynn MLC was appointed to replace Mrs Forsythe, *Minutes of Proceedings No 15, 20 September 2006, Items 3*

## Committee membership

<b>Rev the Hon Dr Gordon Moyes MLC</b>	Christian Democratic Party	<i>Chair</i>
<b>Hon Melinda Pavey MLC</b>	The Nationals	<i>Deputy Chair</i>
<b>Hon Tony Catanzariti MLC</b>	Australian Labor Party	
<b>Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Hon Amanda Fazio MLC</b>	Australian Labor Party	
<b>Hon Patricia Forsythe MLC</b>	Liberal Party	<i>Until 19 September 2006</i>
<b>Hon Charlie Lynn MLC</b>	Liberal Party	<i>From 20 September 2006</i>
<b>Ms Sylvia Hale</b>	The Greens	

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## Chair's foreword

I am pleased to present the report of the Select Committee on the continued public ownership of Snowy Hydro Limited. This report examines the future of the company following the withdrawal of the three shareholding Governments from the proposed sale in June 2006.

This inquiry, and an earlier inquiry established at the time of the proposed sale, have revealed a deeply held affection among New South Wales citizens for the Snowy Scheme. A feat of engineering skill and human endurance, the scheme is largely based in one of Australia's most beautiful national parks and holds special significance for many people. The Committee became acutely aware of community support for retaining public ownership of the iconic Snowy Scheme during its visit to Cooma in July of this year.

Snowy Hydro has effectively made the transition from Commonwealth-owned authority to a successful publicly owned company.

The Committee recognises, however, that due to recent changes in the National Electricity Market, including vertical integration, Snowy Hydro must pursue a high growth strategy if it is to remain viable in the long term. We have been mindful of the strength of community support for keeping the Snowy Scheme in public hands, and for ensuring it meets its environmental and irrigation obligations.

The Committee recommends that the NSW Government pursue the position jointly taken with the Victorian Government: that the Commonwealth acquire Snowy Hydro Limited and that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation.

In addition, the NSW Government must ensure the community is adequately informed about any future proposals regarding the ownership or funding of Snowy Hydro.

On behalf of the Committee, I thank each of the inquiry participants for their time and expertise. I am grateful to my Committee colleagues for the work they have undertaken on this inquiry and their contribution to this report. On their behalf, I would like to acknowledge the Secretariat. In particular, Rebecca Main, Glenda Baker, Beverly Duffy, Stephen Frappell and Marie Burton. I commend this report to the Government.



**Revd the Hon Gordon Moyes MLC**  
**Chair**

## Executive summary

### Chapter 1

Snowy Hydro Limited (Snowy Hydro) is an unlisted public company owned by the New South Wales, Victorian and Commonwealth Governments. The company operates the Snowy Mountains Hydro-Electric Scheme (Snowy Scheme) which is a dual purpose hydro-electric and irrigation scheme located predominantly in the Kosciuszko National Park, New South Wales.

Two select committee inquiries concerning Snowy Hydro were conducted during 2006. The first inquiry was to examine the proposal to sell Snowy Hydro, and the second inquiry was established following the decision not to proceed with the sale. The terms of reference of the second inquiry, which are included in this report, primarily focus on the impact of the continued public ownership of Snowy Hydro on the company's future capital expenditure requirements and the control of water regulation.

### Chapter 2

Over the past 50 years Snowy Hydro has developed from a Commonwealth-owned authority to a public corporation. Chapter 2 provides detail on the extensive regulatory framework that the company has to operate within including corporation law, electricity, environmental and water regulations.

This chapter suggests that the regulation of water generated by the Snowy Scheme has been enhanced under corporatisation. Snowy Hydro has no regulatory role but must release water in accordance with the Snowy Water Licence, which is administered by the NSW Government, or face significant penalties, including imprisonment for company directors. The water resources of the Snowy Scheme are and will continue to be owned by the NSW Crown.

A key concern among inquiry participants was monitoring the impact of environmental releases on the fragile Snowy River. The Committee recommends that the NSW Government fulfil its statutory responsibility under the *Snowy Corporatisation Act 1997* to establish the Snowy Scientific Committee immediately to monitor the environmental flows.

### Chapter 3

Snowy Hydro is unique as most of its operations are located within the Kosciuszko National Park. Its location emphasises the importance of balancing environmental and commercial concerns and was an important issue during this inquiry. Snowy Hydro activities within the park are regulated by the Kosciuszko National Park Plan of Management 2006 and the Snowy Management Plan. This chapter discusses access to lands controlled by Snowy Hydro, the management of unused infrastructure within the park and the cloud seeding trial. The Committee believes that there is robust regulation in place to manage Snowy Hydro's operations within the precious environment of a national park.

### Chapter 4

The latest phase in the development of Snowy Hydro was the attempt to sell the three Governments' shareholdings in the company. Chapter 4 discusses the concerns of inquiry participants about the potential impact of the sale on water rights and the iconic status of the Snowy Scheme; the way the project to sell the company was managed; and, following the withdrawal from sale, the potential impact on the community of the continued public ownership of Snowy Hydro.

Given community concerns about the loss of a national icon, the Committee recommends that the NSW Government further investigate the possible listing of the Snowy Scheme on the State Heritage Register and liaise with the Commonwealth Government on appropriate recognition of the assets of the Snowy Scheme that have heritage value.

One of the key concerns expressed by inquiry participants was the level of communication by the shareholding Governments during the proposed sale of Snowy Hydro. The Committee accepts that there were restrictions on the ability of Snowy Hydro to discuss aspects of the sale. While some people may never have supported the sale of Snowy Hydro, no matter how much information they were provided, the Committee considers that, if more information had been provided to the community prior to and during the proposed sale, the debate would have been better informed.

## **Chapter 5**

The Committee acknowledges that Snowy Hydro needs to expand in the National Electricity Market (NEM) due to the company's critical role in this market and the recent market trend of vertical integration. If Snowy Hydro does not look towards other areas for growth in the NEM the company risks losing its relevance in the market. This would likely lead to a reduction in revenue and a reduction in the value of the company, ultimately jeopardising the company's future. The Committee acknowledges that Snowy Hydro needs to pursue a high growth strategy and that additional capital of approximately \$800 million is required.

The options to fund high growth under continued public ownership are canvassed in Chapter 5. It is clear to the Committee that the shareholding Governments are not keen to invest additional funds in Snowy Hydro as they prefer to fund core government services and reduced dividends to shareholders will not fund the long term growth required. Issuing bonds is also not a viable means of raising capital for Snowy Hydro as the company will acquire more debt and there is a limit to how much debt is prudent for Snowy Hydro to carry in order to operate in the NEM.

The Committee is mindful of the strength of community support for keeping the iconic Snowy Scheme in public hands, and for ensuring it meets its environmental and irrigation obligations.

The Committee recommends that the NSW Government pursue the position jointly taken with the Victorian Government: that the Commonwealth acquire Snowy Hydro Limited and that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation.

In addition, the NSW Government must ensure the community is adequately informed about any future proposals regarding the ownership or funding of Snowy Hydro.

## Summary of recommendations

- Recommendation 1** 20  
That the NSW Government establish the Snowy Scientific Committee immediately.
- Recommendation 2** 40  
That the NSW Government:
- investigate the possibility of including the Snowy Scheme on the State Heritage Register
  - liaise with the Commonwealth on appropriate recognition of the assets of the Snowy Scheme that have heritage value.
- Recommendation 3** 66  
That the NSW Government pursue the position jointly taken with the Victorian Government: that the Commonwealth acquire Snowy Hydro Limited and that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation.
- Recommendation 4** 66  
That the NSW Government ensures the community is adequately informed about any future proposals regarding the ownership or funding of Snowy Hydro.

## Glossary

AWOP	Annual Water Operating Plan
DEC	NSW Department of Environment and Conservation
DNR	NSW Department of Natural Resources
gigalitre	1 billion litres (GL)
IPO	Initial public offer
KNP	Kosciusko National Park
megalitre	1 million litres (ML)
megawatt	1 million watts (MW)
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPWS	NSW National Parks and Wildlife Service
SHTPL	Snowy Hydro Trading Pty Ltd
SMHEA	Snowy Mountain Hydro Electric Authority
SMP	Snowy Management Plan
SPERP	Snowy Precipitation Enhancement Research Project
SWIOID	Snowy Water Inquiry Outcomes Implementation Deed

**Above Target Water:** Water in Snowy Scheme storages that is in excess of the water required for minimum annual water releases for irrigation.

**Below Target Water:** Water in Snowy Scheme storages required for minimum annual water releases for irrigation.

## Chapter 1 Conduct of the inquiry

This chapter provides an overview of the inquiry process and the structure of this report. It also includes a brief background to the establishment of the inquiry.

### Establishment of the inquiry

- 1.1 Snowy Hydro Limited (Snowy Hydro) is an unlisted public company owned by the New South Wales, Victorian and Commonwealth Governments.<sup>1</sup> The company operates the Snowy Mountains Hydro-Electric Scheme (Snowy Scheme) which is a dual purpose hydro-electric and irrigation scheme located predominantly in the Kosciuszko National Park (KNP) New South Wales.<sup>2</sup>
- 1.2 Two select committee inquiries concerning Snowy Hydro were conducted during 2006. The first inquiry was to examine the proposal to sell Snowy Hydro, and the second inquiry was established following the decision not to proceed with the sale.

### Select Committee inquiry into the proposed sale of Snowy Hydro Limited

- 1.3 On 3 May 2006, the Legislative Council referred terms of reference for the establishment of a Select Committee into the proposed sale of Snowy Hydro Limited.<sup>3</sup> The inquiry was adopted in response to the proposal by the New South Wales, Commonwealth and Victorian Governments to sell their combined assets in Snowy Hydro.
- 1.4 On 2 June 2006, the Prime Minister, the Hon John Howard MP, announced that the Commonwealth was withdrawing the sale of its stake in Snowy Hydro.<sup>4</sup> Later that day, the NSW Premier, the Hon Morris Iemma MP, announced that given the Commonwealth's decision, the sale of the NSW Government stake in Snowy Hydro was impractical, and also withdrew from the proposed sale.<sup>5</sup>
- 1.5 Following these announcements, the Committee met to consider the future conduct of the inquiry. The Committee resolved to recommend to the Legislative Council that the House adopt new terms of reference in relation to the continued public ownership of Snowy Hydro.
- 1.6 A brief report arising from the first inquiry was tabled in the Legislative Council on 7 June 2006 and is available on the web at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

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<sup>1</sup> Submission 103, NSW Government, p5

<sup>2</sup> Submission 103, p5

<sup>3</sup> *Minutes of Proceedings No 148*, 3 May 2006, Item 29 (the terms of reference for the Inquiry into the proposed sale of Snowy Hydro Limited can be found at Appendix 1)

<sup>4</sup> The Hon John Howard MP, 'Australian Government withdraws from sale of Snowy Hydro Limited', Media Release, 2 June 2006

<sup>5</sup> The Hon Morris Iemma MP, 'Snowy Hydro Limited', Media Release, 2 June 2006

## **Select Committee inquiry into the continued public ownership of Snowy Hydro Limited**

- 1.7 On the 7 June 2006, the Legislative Council referred new terms of reference for the establishment of a Select Committee into the continued public ownership of Snowy Hydro Limited.<sup>6</sup> The terms of reference for the inquiry are reproduced on page iv of this report. The terms of reference primarily focus on the impact of the continued public ownership of Snowy Hydro on the financial position of the NSW Government, including the future capital expenditure requirements for the company and the control of water regulation. The membership of both Committees was the same.

## **Conduct of the inquiry into the continued public ownership of Snowy Hydro**

### **Submissions**

- 1.8 The Committee called for submissions through advertisements in the *Sydney Morning Herald*, *The Australian*, *The Land* and relevant regional newspapers including the *Cooma Monaro Express*, *Tumut and Adelong Times* and the *Deniliquin Times*. The Committee also sought submissions from key stakeholders, including Snowy Hydro, various New South Wales', Commonwealth and Victorian government agencies, irrigators, local councils, and community groups.
- 1.9 The Committee received 109 submissions to the inquiry from a range of stakeholders including the NSW Government, Snowy Hydro and community members. The Victorian and Commonwealth Governments did not provide a submission. The terms of reference stipulate that evidence including submissions received as part of the inquiry on the proposed sale of Snowy Hydro Limited be referred to this inquiry. This means that during the preparation of this report the Committee considered submissions made to the inquiry on the proposed sale of Snowy Hydro Limited. A full list of submissions is contained in Appendix 2.

### **Hearings and public forum**

- 1.10 The Committee held three public hearings, two at Parliament House in Sydney and one in Cooma. The Committee heard from representatives from Snowy Hydro Limited, local councils, the Department of Environment and Conservation, the Department of Natural Resources, NSW Treasury, irrigators and community groups.
- 1.11 The hearing in Cooma was followed by a public forum, which gave community members an opportunity to speak directly to the Committee about their views on the ownership of Snowy Hydro. More than 15 people presented their views to the Committee at the forum.
- 1.12 A list of witnesses and forum speakers can be found at Appendix 3. Transcripts of the hearings and forum are on the Committee's website at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

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<sup>6</sup> *Minutes of Proceedings No 6*, 7 June 2006, Items 26 and 35



### Site visit

- 1.13** The Committee visited the Snowy Hydro Education Centre and Control Centre in Cooma on 5 July 2006. An informal briefing on the operations of the company was provided to the Committee from senior officers of Snowy Hydro, including Mr Terry Charlton, Managing Director, Mr David Harris, General Counsel, Mr Ken Lister, Executive Officer, Production and Mr Stephen Mikkelsen, Chief Financial Officer. The Committee also received information on Snowy Hydro's cloud seeding trial during this visit.
- 1.14** The Committee would like to thank all inquiry participants who made submissions and gave evidence at hearings and the public forum.

### Report structure

- 1.15** This report has five chapters. Chapters 1 to 3 examine the operations of Snowy Hydro in the context of current and on-going public ownership. Chapters 4 and 5 examine the corporation's future.
- 1.16** Chapter 2 provides an overview of Snowy Hydro, including its development from a Commonwealth owned authority to a public corporation, its current corporate and governance structure and regulatory framework. It also briefly discusses the decision not to proceed with the sale of Snowy Hydro in early 2006, setting the scene for the later chapters, which examine issues concerning the continued public ownership of the company.
- 1.17** Chapter 3 looks at the unique operation of Snowy Hydro in the Kosciuszko National Park. It briefly outlines the regulation of Snowy Hydro activities within the park, including access to lands controlled by Snowy Hydro, and the management of unused infrastructure within the park. The chapter also discusses cloud seeding trials within Kosciuszko National Park.
- 1.18** Chapter 4 considers the latest phase in the development of Snowy Hydro: the attempt to sell the three Governments' shareholdings in the company. Inquiry participants were concerned about the potential impact of the sale on water rights and the environment; the way the project to sell the company was managed and, following the withdrawal of sale, the potential impact on the community of the continued public ownership of Snowy Hydro.
- 1.19** Chapter 5 explores the future of Snowy Hydro under continued public ownership. It highlights the need for Snowy Hydro to pursue a significant growth strategy in order to remain relevant in the National Electricity Market. It recognises that the company requires access to capital in order to pursue this growth and outlines various options to access capital under continued public ownership.



## Chapter 2 Snowy Hydro Limited

This chapter provides an overview of Snowy Hydro Limited (Snowy Hydro), including its development from a Commonwealth-owned authority to a public corporation, as well as its current corporate and governance structure and regulatory framework. It also briefly discusses the abandoned privatisation project in early 2006, setting the scene for the later chapters, which examine issues concerning the continued public ownership of the company.

### Brief history

**2.1** Considered to be an icon in Australian history, the Snowy Mountains Hydro Electric Scheme (Snowy Scheme) is the most complex hydro scheme in the world. The Snowy Scheme diverts water from the Snowy and other rivers through its turbines to produce hydro-electricity. The water is then directed westwards providing irrigation for agriculture in the Murrumbidgee and Murray catchments.<sup>7</sup>

**2.2** It was unanimously agreed by inquiry participants that the Snowy Scheme is an icon of human endeavor in Australian engineering and immigration history. The National Trust of Australia (NSW) highlighted the symbolism of the Snowy Scheme:

The Snowy Scheme is strongly symbolic for large parts of the Australian community and is held in special regard, especially by the large community of former Snowy workers and their families who lived and worked there. For many, these associations of the Snowy Scheme are intertwined with their experience of immigration from post-war Europe, and the start of a new life in Australia. For some local communities, who were moved and felt or still feel dispossessed by the Scheme, the cultural memories are different though equally powerful.<sup>8</sup>

**2.3** The cultural and heritage value of the scheme identified by the community is also acknowledged by the NSW Department of Environment and Conservation (DEC) in the Kosciuszko National Park Plan of Management 2006:

At a national level, the legend of the Man from Snowy River has contributed to a particular Australian sense of identity, as had the construction of the Snowy Mountains Hydro Electric Scheme. For specific groups or communities, experiences associated with the park can explain deeply held collective positions and feelings, some of which may be passed on from one generation to the next. The experiences of displaced people, be they Aboriginal or non-Aboriginal, may be reflected in feelings of loss and lament, nostalgia and pride, resentment and anger, or a need for recognition or legitimacy. The experiences of other groups, be they Snowy Scheme construction worker, pioneering ski enthusiasts or ardent conservationists, can explain heartfelt connections with particular time and places.<sup>9</sup>

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<sup>7</sup> Smith S, *The Future of the Snowy River*, NSW Parliamentary Library Research Service, Briefing Paper 2/2000, p2

<sup>8</sup> Submission 95, National Trust of Australia (NSW), Classification Report, June 2006, p2

<sup>9</sup> Department of Environment and Conservation, *Kosciuszko National Park Plan of Management 2006* at 11.2.3, pp83-84

- 2.4** Some inquiry participants suggested that, given its iconic status, the Snowy Scheme, should be heritage listed (also see Chapter 3).<sup>10</sup> DEC stated that there is currently no intention to have the Snowy Scheme listed for State heritage significance under the *Heritage Act 1977 (NSW)*.<sup>11</sup>
- 2.5** On 7 July 1949, the Commonwealth Parliament passed *The Snowy Mountains Hydro Electric Power Act 1949*, which established the Snowy Mountains Hydro-electric Authority as the operating body of the Snowy Scheme. Construction started on the scheme in October 1949 and was completed in 1974, for a total cost of \$820 million.<sup>12</sup> The Snowy Scheme was designed to capture and divert 99% of water flows in the Snowy Mountains area into the Snowy Scheme storages.<sup>13</sup>
- 2.6** In 1997 the NSW Government and the State Electricity Commission of Victoria established a joint venture, Snowy Hydro Trading Pty Ltd (SHTPL), to trade electricity generated by the Snowy Scheme in the National Electricity Market (NEM)<sup>14</sup>. In February 2000 the Commonwealth joined SHTPL as a shareholder.<sup>15</sup>
- 2.7** Even though the Snowy Scheme delivers considerable benefits in terms of irrigation and as a clean and renewable energy resource, there is no doubt that diverting water from the Snowy River has had a negative impact on the health of this river. The Snowy Water Inquiry was established in 1998 to work out costed options to restore the environment of the Snowy and its associated rivers through environmental flows.<sup>16</sup> The outcomes of the Snowy Water Inquiry which are contained in the Snowy Water Inquiry Outcomes Implementation Deed, set out measures to improve the health of the river.
- 2.8** On June 28 2002, the Snowy Mountains Hydro-electric Authority was corporatised under the *Snowy Hydro Corporatisation Act 1997 (NSW)*.<sup>17</sup> This resulted in the merger of the Authority and

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<sup>10</sup> See for example Submission 73, Mr Angel John Gallard, p4 and Submission 97, Snowy River Shire Council, p3

<sup>11</sup> Submission 103, NSW Government, p34. The Minister administering the *NSW Heritage Act 1977* can direct a listing on the State Heritage Register of a building or work where the Minister considers it is of State heritage significance, but only if the Heritage Council recommends that listing.

<sup>12</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=67&parentID=66&grandParentID=242](http://www.snowyhydro.com.au/LevelThree.asp?pageID=67&parentID=66&grandParentID=242)> (accessed 10 August 2006)

<sup>13</sup> Submission 103, p9

<sup>14</sup> The National Electricity Market (NEM) is the wholesale market for the supply of electricity to retailers and consumers in most states in Australia (excluding Western Australia and the Northern Territory). The NEM was created in 1998 to improve competitiveness and choice in the electricity sector. The NEM is managed by the National Electricity Market Management Company (NEMMCO) (Submission 102, Snowy Hydro Limited, p59).

<sup>15</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=67&parentID=66&grandParentID=242](http://www.snowyhydro.com.au/LevelThree.asp?pageID=67&parentID=66&grandParentID=242)> (accessed 10 August 2006)

<sup>16</sup> Smith S, *The Future of the Snowy River*, NSW Parliamentary Library Research Service, Briefing Paper 2/2000, p2

<sup>17</sup> Corporatisation was affected under complementary legislation of the three shareholding governments.

SHTPL to become Snowy Hydro Limited. The legislation also covers the Snowy Water Licence, the Snowy Park Lease, and offences against the Act.<sup>18</sup>

- 2.9** In its submission to this inquiry, the NSW Government noted that corporatisation took Snowy Hydro from being a statutory authority directly operated by Government, to effectively an independent business owned at arms length by government shareholders. For the NSW Government the role shifted to one of regulation.<sup>19</sup>
- 2.10** The corporatisation process took eight years and produced a set of comprehensive regulatory arrangements that apply to the operation of the Snowy Scheme and the corporate governance of Snowy Hydro.<sup>20</sup> The NSW Government's submission indicated that 'the Government's intention at corporatisation was to establish Snowy Hydro with corporate governance arrangements to allow the company to compete effectively with private companies in the NEM.'<sup>21</sup>

## The Snowy Scheme

- 2.11** The dual purpose Snowy Scheme provides hydro-electricity to the NEM and water for irrigation purposes. As indicated on the map in Figure 2.1, the scheme is situated predominantly in the Kosciuszko National Park (KNP), New South Wales.<sup>22</sup> The scheme captures the snow melts and rainfall in the Snowy Mountains, including the south flowing waters of the Snowy River and its tributaries. It also involves the regulation and utilisation of the headwaters of the Tumut, Tooma, Geehi, Crackenback, Bogong and Eucumbene Rivers.<sup>23</sup>
- 2.12** The scheme is a fast starting and flexible generating facility. It has a high generation capacity of 3,756 megawatts and an annual average energy production of 5,100 gigawatt hours. As depicted in Figure 2.2, the Snowy Scheme today generates hydro electricity through a network of seven power stations, 31 generating units, 16 dams and 225 kilometres of tunnels and aqueducts. This electricity is then sold into the NEM. The Snowy Scheme is mainland Australia's largest producer of clean, renewable energy.<sup>24</sup>

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<sup>18</sup> *Snowy Hydro Corporatisation Act 1997*

<sup>19</sup> Submission 103, p8

<sup>20</sup> Submission 103, p8

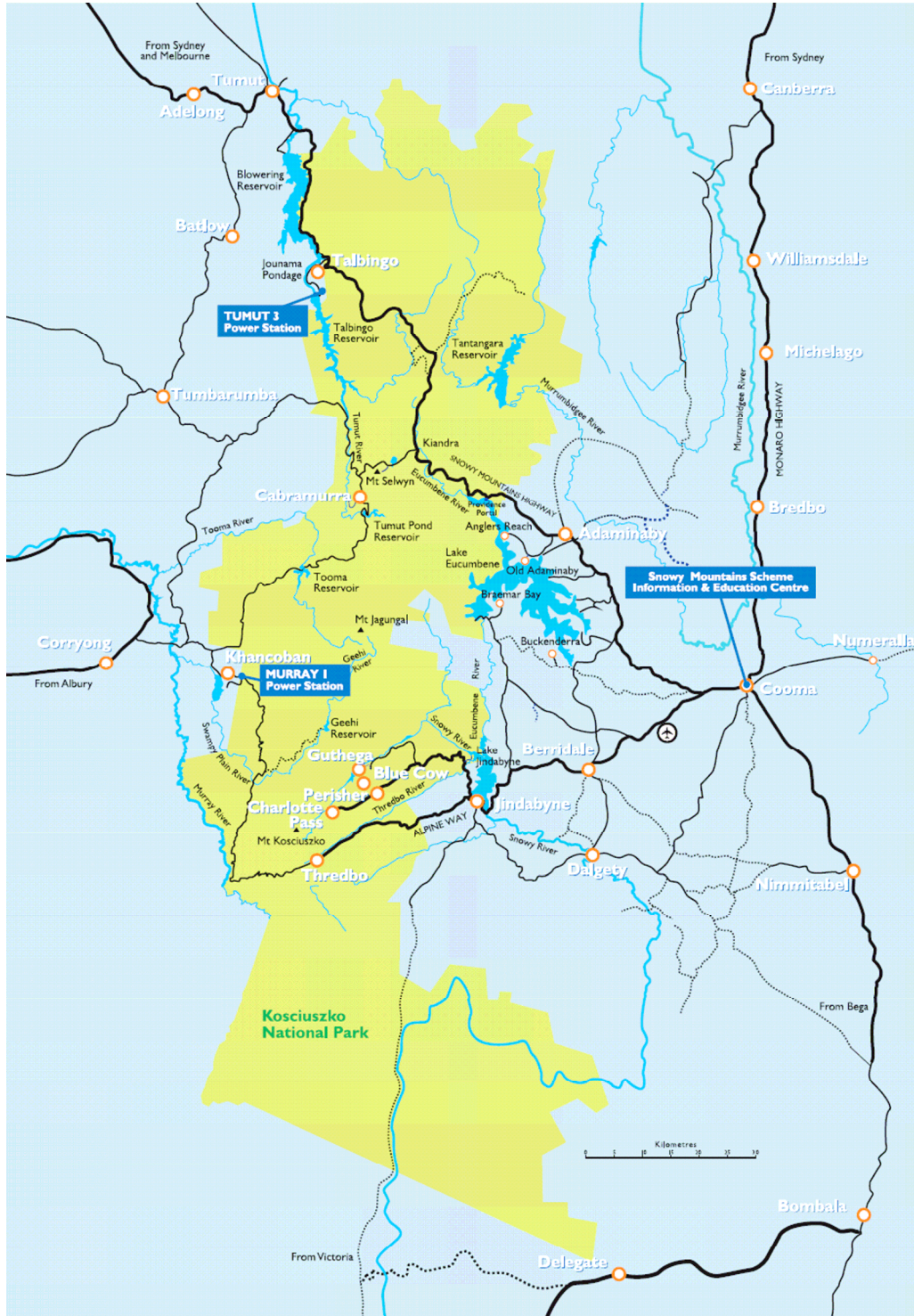
<sup>21</sup> Submission 103, pp4-5

<sup>22</sup> Submission 103, pp4-5

<sup>23</sup> Submission 103, pp4-5

<sup>24</sup> Submission 103, pp4-5

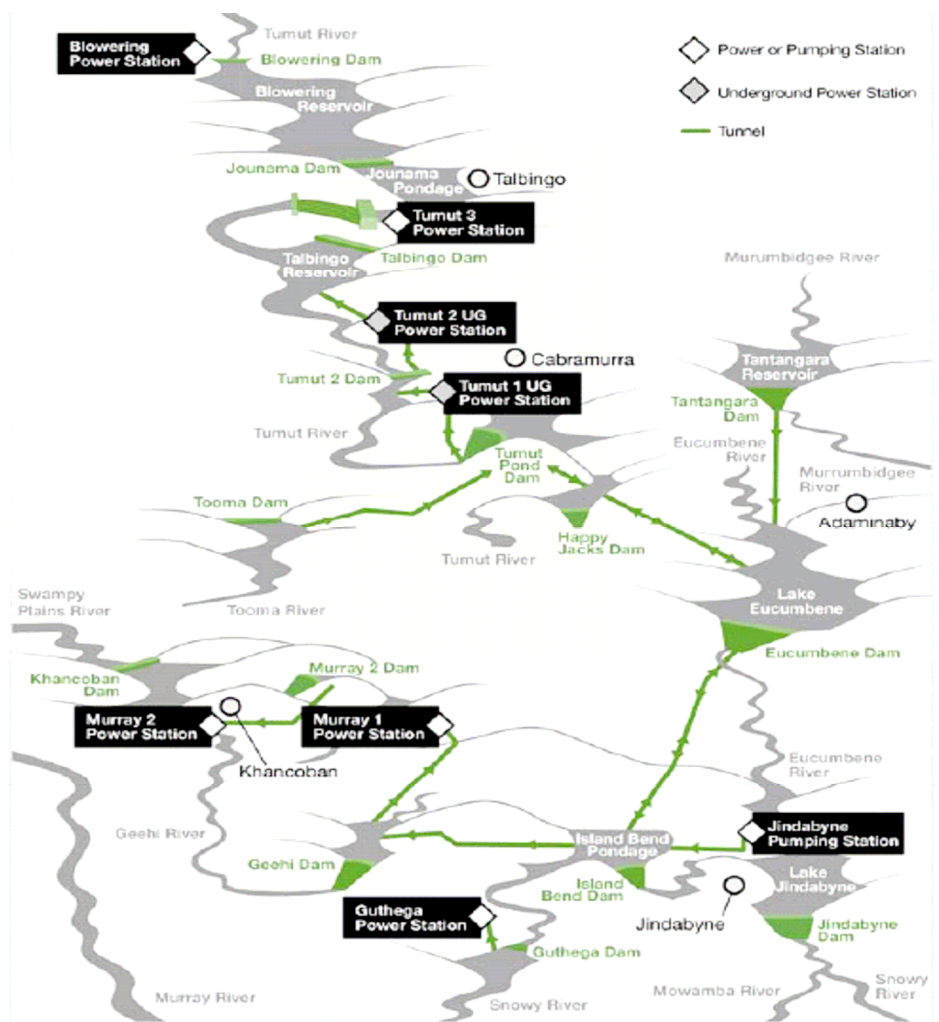
Figure 2.1 Snowy Scheme and Kosciuszko National Park Map<sup>25</sup>



25 <[www.snowyhydro.com.au/files/map.pdf](http://www.snowyhydro.com.au/files/map.pdf)> (accessed 10 August 2006)

**2.13** The total active water storage capacity for the Snowy Scheme is approximately 5,300 gigalitres.<sup>26</sup> The Snowy Scheme is designed to make minimum annual releases of water to the Murray and Murrumbidgee Rivers in order mitigate the effects of drought for irrigated agriculture in those regions.<sup>27</sup> It should be noted that the Snowy Scheme has a finite capacity for holding water, that is, water that is collected must eventually be released as it cannot be stored indefinitely. Snowy Hydro advised that since completion of the scheme average inflows (2,800 gigalitres) have equalled averaged outflows (2,700 gigalitres with 100 gigalitres lost to evaporation).<sup>28</sup> The Committee notes, however, that Lake Eucumbene, the principal storage, has considerable opportunity to store Above Target Water to be released at Snowy Hydro's discretion at a time most beneficial to Snowy Hydro.

**Figure 2.2** The Snowy Scheme<sup>29</sup>



<sup>26</sup> Submission 102, Snowy Hydro Limited, p18

<sup>27</sup> Submission 103, pp4-5

<sup>28</sup> Submission 102, p48

<sup>29</sup> Submission 102, p2

## Snowy Hydro Limited

- 2.14** Snowy Hydro is a public company owned by the New South Wales, Victorian and Commonwealth Governments but is not listed in the Australian Stock Exchange.<sup>30</sup> Snowy Hydro's issued share capital is held 58% by the NSW Government, 29% by the State Electricity Commission of Victoria and 13% by the Commonwealth Government.<sup>31</sup> However, voting rights are distributed evenly between the Governments at one third each.<sup>32</sup>
- 2.15** Snowy Hydro is estimated to have a current equity value (asset value minus debt) of between \$2.5 and \$3.0 billion and has 584 full time equivalent employees. Employees are located in Cooma (head office), Sydney, Melbourne and regional New South Wales and Victoria.<sup>33</sup>

### Corporate governance

- 2.16** The company has a board of directors with responsibility for optimising the company's performance and building shareholder wealth, at the same time having regard to its community and water stakeholder obligations.<sup>34</sup>
- 2.17** The dealings between the shareholders, the company, the company's directors and third parties, including creditors, is prescribed generally by the *Corporations Act 2001 (Cth)* and the Snowy Hydro Constitution. Snowy Hydro's Constitution is standard for an unlisted company, however, there are some notable exceptions including the involvement of shareholders in decisions relating to investment, acquiring debt and changes to activities of the company.<sup>35</sup>

### Revenue

- 2.18** Snowy Hydro predominantly earns revenue from generating electricity into the NEM and providing electricity price risk hedging contracts to other energy market participants (contracts for suppliers to insure against price rises in the NEM). Snowy Hydro operates predominantly as a peak generator supplying approximately 14% of electricity in the NEM.<sup>36</sup> The Snowy Scheme is considered a fast start generator as it can provide up to 1,000 megawatts of generation capacity in 5 minutes, up to 3,000 megawatts in 10 minutes and be at near full available capacity in 30 minutes. Snowy Hydro's fast start generation combined with the low cost of production ensures the company has a strong competitive position in the NEM.<sup>37</sup>

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<sup>30</sup> Submission 103, p5

<sup>31</sup> Submission 102, p2

<sup>32</sup> Mr Terry Charlton, Managing Director, Snowy Hydro Limited, Evidence, 17 August 2006, p10

<sup>33</sup> Submission 102, p32 and p37

<sup>34</sup> <[www.snowyhydro.com.au/files/Corp\\_Governance.pdf](http://www.snowyhydro.com.au/files/Corp_Governance.pdf)> (accessed 10 August 2006)

<sup>35</sup> Submission 102, p5

<sup>36</sup> Mr Charlton, Evidence, 17 August 2006, p11. Peak electricity generators tend to operate only when there is high demand for electricity within the market.

<sup>37</sup> Submission 103, pp4-5



**2.19** Other sources of revenue for the company include:

- additional service provision to the National Electricity Market Management Company (NEMMCO), such as voltage control, ensuring a constant level of voltage in the NEM
- electricity retailing through Red Energy, an electricity retailer owned by Snowy Hydro and predominantly operating in Victoria
- water assurance fees for the provision of pre-releases of future years' minimum annual water releases.<sup>38</sup>

**2.20** Snowy Hydro argue that recent changes to the electricity market, such as vertical integration,<sup>39</sup> means that a funded growth strategy is required if it is to remain competitive and relevant.<sup>40</sup> Snowy Hydro's growth strategy and funding options are discussed in detail in Chapter 4.**Assets****2.21** As Snowy Hydro's core business is underpinned by the Snowy Scheme, the company has programs in place to maintain and enhance the reliability of the plant and to increase its capacity. The maintenance of the scheme has been a priority before and since corporatisation. Snowy Hydro commented:

Commencing July 2006, Snowy Hydro is undertaking a ten year capital expenditure program designed to ensure the continuing high reliability and availability of the Snowy Scheme. The program is estimated to cost between \$220 million and \$250 million, of which \$145 million has been approved for expenditure over the next five years... The ten year expenditure plan forms part of Snowy Hydro's rolling 20 year asset management plan.<sup>41</sup>

**2.22** The company has also sought to expand its asset base beyond the Snowy Mountains. Over the last few years Snowy Hydro has:

- acquired a 300 megawatt Valley Power gas-fired peaking power station located in Victoria
- purchased Red Energy, an electricity retailer operating primarily in Victoria
- commenced constructing a 320 megawatt gas-fired power station in Laverton, Victoria.<sup>42</sup>

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<sup>38</sup> Submission 102, p26

<sup>39</sup> Vertical integration in the NEM means that one company may be involved in the various stages of electricity production and delivery, including, generation, transmission, distribution and retail. For example, a single company may own an electricity generating plant as well as a retail company that sells the electricity direct to the public.

<sup>40</sup> Submission 102, p33

<sup>41</sup> Submission 102, p35

<sup>42</sup> Submission 103, pp4-5

- 2.23** According to Mr Terry Charlton, Managing Director, Snowy Hydro Limited, Snowy Hydro is also waiting on approval from the NSW Government to build a gas peaking plant in the western suburbs of Sydney.<sup>43</sup>

## **Regulatory framework**

- 2.24** The regulatory framework within which Snowy Hydro operates is complex and multilayered. It includes various forms of corporate, electricity, environmental and water regulation, as outlined below.

### **Corporate regulation**

- 2.25** As a company, Snowy Hydro is subject to the corporations law and the *Trade Practices Act 1974 (Cth)*. The Snowy Hydro constitution seeks to achieve the following objectives of corporatisation:
- to avoid giving preference to any one jurisdiction's legislation
  - to establish Snowy Hydro with a regulatory and corporate governance framework similar to other companies that compete in the NEM
  - to subject Snowy Hydro to regulation by the Australian Securities and Investments Commission (ASIC).<sup>44</sup>

### **Electricity regulation**

- 2.26** As Snowy Hydro is also involved in electricity generation, the company holds all registrations and licences required under the National Electricity Rules to operate as a generator and retailer in the NEM.<sup>45</sup>

### **Environmental regulation in the Kosciuszko National Park**

- 2.27** Snowy Hydro is subject to numerous environmental controls and regulations. Some of the key instruments are highlighted in this section.
- 2.28** The Snowy Park Lease, a commercial lease between the NSW Government and Snowy Hydro, governs the occupation by Snowy Hydro of land in the Kosciuszko National Park. The NSW Minister for the Environment, under the *National Parks and Wildlife Act 1974*, issued this lease in 2002 for a period of 75 years.<sup>46</sup>
- 2.29** Snowy Hydro is also subject to the Snowy Management Plan, which is part of the Kosciuszko National Park Plan of Management, a statutory instrument under the *National Parks and*

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<sup>43</sup> Mr Charlton, Evidence, 17 August 2006, p12

<sup>44</sup> Submission 103, p6

<sup>45</sup> Submission 102, p8

<sup>46</sup> Submission 103, p8

*Wildlife Act 1974*. Any further development of the scheme would also be subject to the standard approval processes under the *National Parks and Wildlife Act 1974* and the *Environmental Planning and Assessment Act 1979 (NSW)*.<sup>47</sup> Snowy Hydro's operations in the Kosciuszko National Park are examined in the next chapter.

## Water regulation

- 2.30** One of the most contentious issues during the inquiry was who controls the water captured by the Snowy Scheme and how to balance three competing priorities: the release of water for irrigation; for the environment flows; and for the generation of hydro-electricity. The regulations applying to these releases of water provide explicit rules on how to balance the priorities and protect New South Wales and Victoria's right to water.<sup>48</sup>

### *Snowy Scheme water releases*

- 2.31** The Snowy Scheme captures the water from snow melts and rainfall in the Snowy Mountains, including the waters of the Snowy River and its tributaries.<sup>49</sup> Under the Snowy Water Licence, Snowy Hydro is required to release a total of 2,088 gigalitres of water for irrigation annually (these are later referred to as water releases). This water is released through their turbines to generate electricity and is directed into both the Blowering Dam for the Murrumbidgee catchment and the Hume Dam for the Murray River.<sup>50</sup>
- 2.32** Blowering Dam and Hume Dam are owned and managed by State Water Corporation (State Water) and River Murray Water, respectively. These organisations are government owned corporations, who, in the case of State Water, control the release of water from Blowering Dam<sup>51</sup> (and Burrinjuck Dam) to irrigators, who in turn release the water to farmers. In New South Wales, irrigators purchase the water from State Water at a price that is set by the Independent Pricing and Regulatory Tribunal. However, the amount of water and timing of releases to irrigators in New South Wales is regulated by the NSW Department of Natural Resources (DNR) through water sharing plans.<sup>52</sup>
- 2.33** The water that is held in the Snowy Scheme storages required to deliver minimum annual water releases for irrigation is referred to as "Below Target Water" and equates to 84% of the long term inflows of both the Murray and Murrumbidgee River catchments. Any water in excess of this is referred to as "Above Target Water". The amount of water and timing of releases of Above Target Water is at the discretion of Snowy Hydro.<sup>53</sup>

<sup>47</sup> Submission 103, p8

<sup>48</sup> Submission 103, p21

<sup>49</sup> Submission 103, pp4-5

<sup>50</sup> Submission 102, p49

<sup>51</sup> Snowy Hydro owns the power station on Blowering Dam, however, water that is to be released from Blowering Dam to irrigators can either be released through the turbines of the power station or via valves controlled by State Water at its discretion.

<sup>52</sup> Mr Dan Berry, Manager, Information and Operations, State Water Corporation, Evidence, 7 July 2006, p42

<sup>53</sup> Submission 102, p46

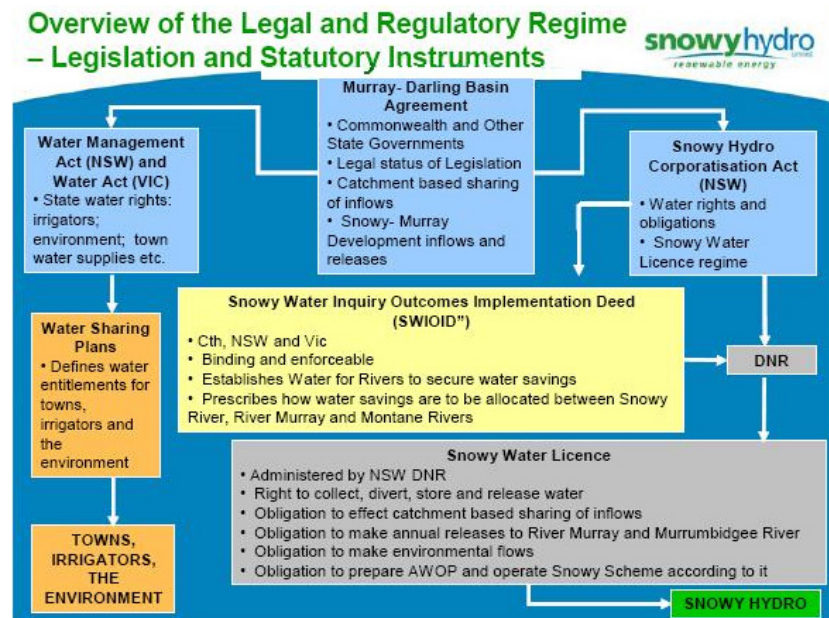
- 2.34** The other type of release of water from the Snowy Scheme is referred to as environmental flows. As mentioned earlier, the diversion of water from the Snowy River has had a negative impact on the health of the river and therefore Snowy Hydro are required, under the Snowy Water Licence to release a certain amount of water every year for environmental flows. These flows are designed to improve the health of the Snowy River.<sup>54</sup> Environmental flows will be discussed in more detail later in this chapter.
- 2.35** There are a number of legal documents that set out the water regulations. These regulations, that were set up at the time of corporatisation, include:
- Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry
  - Snowy Water Inquiry Outcomes Implementation Deed (SWIOID)
  - Snowy Water Licence
  - Snowy Compensation Deed
  - Snowy Scheme Deed of Indemnity
  - Murray Darling Basin Amending Agreement
  - Snowy Scheme Long Term Water Arrangements Deed
  - Snowy Bilateral Deed.<sup>55</sup>
- 2.36** Some of the key instruments used to regulate the water operations of Snowy Hydro such as the Snowy Water Licence and the Annual Water Operating Plan are discussed below. In addition to these, the documents set out above play supportive roles to control the Snowy water resource. The interaction of these water arrangements are depicted in the figure below and their content is briefly set out in Appendix 4. The Snowy Compensation Deed is not publicly available because it is a ‘commercial in confidence deed between the shareholders and the company.’<sup>56</sup> The question of when and how much compensation would be payable were Above Target Water releases required was a concern raised during the inquiry.

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<sup>54</sup> Submission 103, p23

<sup>55</sup> Submission 103, p22. The majority of these documents can be found on the Committee’s website at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

<sup>56</sup> Mr Ben Lathwell, Technical Officer, NSW Treasury, Evidence, 7 July 2006, p60

Figure 2.3 Overview of water regulatory arrangements for Snowy Hydro<sup>57</sup>

### *Snowy Water Licence*

**2.37** The Snowy Water Licence is the principal instrument governing the use of water by Snowy Hydro. The licence was issued in 2002 to Snowy Hydro under section 22 of the *Snowy Hydro Corporatisation Act 1997 (NSW)* for a period of 75 years. The licence is issued and administered by the NSW Minister for Natural Resources and grants Snowy Hydro certain rights:

- rights to collect, divert and store all water from the rivers, streams and lakes within the Snowy Water Catchment
- the right to use that water to generate electricity
- the right to release water from storage.<sup>58</sup>

**2.38** In addition to these rights the licence imposes conditions on the water operations of Snowy Hydro, including the amount of water released for irrigation and environmental flows.<sup>59</sup>

**2.39** While Snowy Hydro is licensed to capture, divert, store and release the water to generate hydro-electricity, the company does not own the water of the Snowy Scheme.<sup>60</sup> Mr Charlton, in his appearance before the Committee, stated ‘we do not own water’.<sup>61</sup> However, Snowy Hydro does control the Above Target Water.

<sup>57</sup> Submission 102, p42

<sup>58</sup> Submission 103, pp25-26

<sup>59</sup> Submission 103, p9. Refer to Appendix 4 for more information on the SWIOID.

<sup>60</sup> Submission 103, p9

<sup>61</sup> Mr Charlton, Evidence, 17 August 2006, p11

- 2.40** The Snowy Water Licence is regulated by the NSW Water Administration Ministerial Corporation (MinCorp), which is administered by the NSW Minister for Natural Resources. There are contractual obligations, agreed to at corporatisation, that set the parameters within which MinCorp operates in relation to regulating the Snowy Water Licence. In particular, these contracts require a transparent process for variations to the licence and the need to clarify the environmental and economic implications of regulatory changes.<sup>62</sup>
- 2.41** As set out in section 34 of the *Snowy Hydro Corporatisation Act 1997*, if Snowy Hydro does not comply with the Snowy Water Licence, the company may be liable for a fine of between 500 and 10,000 penalty units (\$55,000 - \$1,100,000) and directors of the company may face a term of two years imprisonment.<sup>63</sup>
- 2.42** The licence prescribes in Schedule 4 that Snowy Hydro must make the following minimum annual water releases:
- 1,062 gigalitres for the Snowy Murray Development (Murray River)
  - 1,026 gigalitres for the Snowy-Tumut Development (Murrumbidgee River).<sup>64</sup>
- 2.43** The timing of these minimum releases is not prescribed by the licence. However, the licence specifies conditional minimum release requirements for the months from December to April.<sup>65</sup>

#### ***Annual Water Operating Plan***

- 2.44** The Annual Water Operating Plan (AWOP) provides water authorities with details of how Snowy Hydro proposes to meet the requirements of the Snowy Water Licence, including Schedule 3 (environmental flow requirements) and Schedule 4 (western river releases for irrigation) and any other parameters notified to Snowy Hydro by the NSW Government.<sup>66</sup>
- 2.45** The AWOP is prepared each year by Snowy Hydro and is then reviewed by the Water Consultation and Liaison Committee (WCLC) established under the SWIOID.<sup>67</sup> Snowy Hydro must consider WCLC comments and provide a revised plan to the Department of Natural Resources (DNR). This department then considers the AWOP and if appropriate approves it. Each year Snowy Hydro must operate the Snowy Scheme in accordance the AWOP approved by DNR.<sup>68</sup>

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<sup>62</sup> Submission 103, p10

<sup>63</sup> Section 34 of the *Snowy Hydro Corporatisation Act 1997* and section 17 of the *Crimes (Sentencing Procedure) Act 1999* that states that one penalty unit is equivalent to \$110.

<sup>64</sup> Submission 103, p23

<sup>65</sup> Submission 102, p46

<sup>66</sup> Submission 102, p43

<sup>67</sup> WCLC comprises of representatives from NSW Treasury, NSW Department of Natural Resources, Victorian Department of Sustainability and the Environment, Murray Darling Basin Commission, and the Commonwealth Department of Industry. Refer to Appendix 4 for more details on the SWIOID.

<sup>68</sup> Submission 102, p43

2.46 Snowy Hydro stated that, since 2004, the AWOP has included guaranteed quarterly minimum water release volumes to Blowering Dam and Hume Dam for irrigation.<sup>69</sup> Snowy Hydro has an obligation to comply with the AWOP under section 8 of the Snowy Water Licence. There was some dispute regarding the meaning of the relevant licence provisions (refer to Appendix 4).

*Water and electricity*

2.47 Some inquiry participants expressed concern that Snowy Hydro is more focused on generating electricity and raising revenue than supplying water for irrigators and environmental flows.<sup>70</sup> In his opening statement to the Committee, Mr Charlton responded to this suggestion by stating that ‘we do not put electricity before water’.<sup>71</sup>

2.48 Snowy Hydro commented that it is important to note that electricity is inseparably linked to releases of water from the Snowy Scheme because the only practical way to release water from the Snowy Scheme is by generating electricity through the Snowy Scheme’s turbines.<sup>72</sup>

2.49 According to Snowy Hydro, it does not see its role as an electricity supplier as an alternative to the provision of water for irrigation and the environment as it manages its operations to achieve both. The Snowy Water Licence stipulates that the company must balance water releases for irrigation and environmental flows, while providing Snowy Hydro with the timing flexibility it needs as an electricity generator.<sup>73</sup>

*Regulation of environmental flows*

2.50 A Snowy Water Inquiry was established by NSW and Victorian Governments in the lead up to corporatisation to address the environmental issues arising from the pattern of water flows generated by the operation of the Snowy Scheme.<sup>74</sup>

2.51 In December 2000, the NSW, Victorian and Commonwealth Governments agreed that the following water flows should be progressively achieved over ten years:

- total flows equivalent to 21% of original average flows in the Snowy River at Dalgety (about 212 gigalitres per year)
- increased flows equivalent to 150 gigawatt-hours per year of foregone electricity generation in the alpine rivers in the Kosciuszko National Park and the upper Murrumbidgee River (about 120 gigalitres per year)

<sup>69</sup> Submission 102, p46

<sup>70</sup> See for example, Submission 92, Ms Acacia Rose, Submission 77, Snowy River Alliance, and Mr Richard Wallace, Mayor, Snowy River Shire Council, Evidence, 5 July 2006, p8

<sup>71</sup> Mr Charlton, Evidence, 17 August 2006, p11

<sup>72</sup> Submission 102, p45

<sup>73</sup> Submission 102b, Snowy Hydro Limited, pp8-9

<sup>74</sup> Submission 103, p23. A copy of the Executive Summary of the Snowy Water Inquiry Report can be viewed at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

- dedicated environmental flows allocated to the Murray River of 70 gigalitres per year.<sup>75</sup>

**2.52** An additional 7% of flows in the Snowy River may be achieved after 2012, following the implementation of additional major capital works to achieve water savings in the southern Murray-Darling Basin.<sup>76</sup>

**2.53** These releases of water for environmental flows are set out in a legally binding agreement between the Governments called the SWIOID and reflected in the Snowy Water Licence, Schedule 3.<sup>77</sup>

**2.54** Snowy Hydro explained that they are required to make two types of environmental flows, Snowy River Increased Flows, which are releases to be made from Jindabyne Dam into the Snowy River (21% of annual average flow of Snowy River). The second is Snowy Montane Rivers Increased Flows, which are additional flows that Snowy Hydro must allow to pass through certain regulating structures.<sup>78</sup>

**2.55** The water releases for environmental flows comes from the water earmarked for irrigation. Under the Snowy Water Licence, Governments are required to find water savings in the west so that some of the water allocated for irrigators can be used for environmental flows in the east.<sup>79</sup>

**2.56** The NSW Government explained in their submission how water savings work:

The water savings recovered in the irrigation districts reduce the volume of water required to supply the needs of irrigation farmers, without affecting production.<sup>80</sup> These water savings offset increased flows in the Snowy River by reducing the required annual releases from the Snowy Scheme to the west for irrigation farming. These reductions enable increased releases from Jindabyne Dam to the east to provide increased flows in the Snowy River.<sup>81</sup>

**2.57** Once the water savings have been found the Governments advise Snowy Hydro and the company will in its annual water operating plan reduce the planned flows to the west by the amounts advised by the Governments. They will then increase the flows to the east for environmental flows in accordance with the Snowy Water Licence.<sup>82</sup>

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<sup>75</sup> Submission 103, p24

<sup>76</sup> Submission 103, p24

<sup>77</sup> Submission 103, p24. Refer to Appendix 4 for more detail on the SWIOID.

<sup>78</sup> Submission 102, pp50-51

<sup>79</sup> Mr Kim Alvarez, Director, Water Planning and Policy, Department of Natural Resources, Evidence, 7 July 2006, p23

<sup>80</sup> Water for Rivers, a joint government enterprise, makes water savings through water efficiency infrastructure projects, innovation and technology and by acquisition of water entitlements.

<sup>81</sup> Submission 103, p24

<sup>82</sup> Mr Alvarez, Evidence, 7 July 2006, p23



- 2.58** An important point to make regarding environmental flows is that Snowy Hydro is only responsible for releasing the water for the flows. The volume and pattern of the releases are set by the Governments, primarily by the NSW Department of Natural Resources. This department is responsible for directing environmental flow regimes that deliver optimal environmental outcomes.<sup>83</sup>
- 2.59** In accordance with the Snowy Water Licence, for the 2006-07 water year the volume of Snowy River increased flows is 38 gigalitres. Under the SWIOLD the governments have committed to targeting 212 gigalitres for these flows (21% of annual average flow of Snowy River at Jindabyne Dam) from June 2009.<sup>84</sup>
- 2.60** Also, in accordance with the licence, the water for the environmental flows for the first three years has been a result of water being diverted and “borrowed” from the Mowamba River to be repaid later. This has been in place whilst construction has been undergoing on Jindabyne Dam to meet the requirements of increasing environment flows into the Snowy River.<sup>85</sup> There was a perception that this arrangement was a permanent one. The consequent re-diversion of water resulted in considerable public disquiet.
- 2.61** According to Snowy Hydro, the construction at Jindabyne Dam is completed and the dam will be commissioned in the near future.<sup>86</sup>

### ***Snowy Scientific Committee***

- 2.62** Under section 57 of the *Snowy Hydro Corporatisation Act 1997* there is a requirement to establish a Snowy Scientific Committee to advise the Water Administration Ministerial Corporation each year on the regime of environmental flows under the Snowy Water Licence. This committee is also required to produce a public report every year on the state of the environment for the Snowy River and related catchments effected by the Snowy Scheme. This committee is to be appointed by the Minister overseeing the *Snowy Hydro Corporatisation Act 1997*.<sup>87</sup>
- 2.63** The committee has not been established and has resulted in a cause of concern among several inquiry participants including Mr Angel John Gallard:

This Act was implemented on 28 June 2002. That is the date when this scientific committee should have come into being. It should have already been put together by the New South Wales Government and it should have been ready to run and to follow up the benchmarking works done by the Department of Infrastructure, Planning and Natural Resources of New South Wales...[it was] expected that the Snowy Scientific Committee would be in place and ready to take over and to carry on that essential research and monitoring of the first environmental flows introduced on 28 August...<sup>88</sup>

<sup>83</sup> Submission 102b, p15

<sup>84</sup> Submission 102, p51

<sup>85</sup> Mr Alvarez, Evidence, 7 July 2006, p23

<sup>86</sup> Mr David Harris, General Counsel, Snowy Hydro Limited, Evidence, 17 August 2006, p26

<sup>87</sup> Section 57, *Snowy Hydro Corporatisation Act 1997*

<sup>88</sup> Mr Angel John Gallard, Public Forum, 5 July 2006, p9

- 2.64** According to Snowy Hydro the company is not responsible for the outcomes of the environmental flows. The company releases the water for environmental flows as directed by the Department of Natural Resources.<sup>89</sup> As the *Snowy Hydro Corporatisation Act 1997* is administered by the Minister for Finance, this Minister is responsible for the establishment of Snowy Scientific Committee, not Snowy Hydro.<sup>90</sup>
- 2.65** The NSW Government advised the Committee that while the Minister has commenced the process of establishing the Snowy Scientific Committee, there is limited benefit from establishing the Snowy Scientific Committee until the environmental releases are at a level that would generate environmental benefits. In the meanwhile:
- Information on the environmental flows is currently being recorded by the relevant catchment management authorities for use by the Snowy Scientific Committee once it is established.<sup>91</sup>
- 2.66** Monitoring the impact of environmental releases on the fragile Snowy River was a key concern among inquiry participants. The Committee urges the NSW Government to fulfil its statutory responsibility to establish the Snowy Scientific Committee immediately.

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### **Recommendation 1**

That the NSW Government establish the Snowy Scientific Committee immediately.

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### **Who regulates the water?**

- 2.67** The timing of the release of water from the Snowy Scheme is determined by Snowy Hydro. Once released into the Blowering or Hume Dam, it is regulated by the Department of Natural Resources.<sup>92</sup> Snowy Hydro has no role in regulating the water. Water releases must occur in accordance with the Snowy Water Licence and the Annual Water Operating Plan for that corresponding year.<sup>93</sup> Therefore, Snowy Hydro must make the minimum annual water releases for irrigation and environmental flows in accordance with the licence or they face significant penalties, including imprisonment for company directors.<sup>94</sup> The Snowy Water Licence is applicable and enforceable regardless of the ownership of the company.<sup>95</sup>

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<sup>89</sup> Submission 102b, p15

<sup>90</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, p5

<sup>91</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, p5

<sup>92</sup> In the case of the Hume Dam it is regulated by River Murray Water.

<sup>93</sup> Submission 103, NSW Government, p25

<sup>94</sup> Section 34 of the *Snowy Hydro Corporatisation Act 1997*

<sup>95</sup> Submission 103, p25

- 2.68** The NSW Government explained that the ‘water resources of the Snowy Scheme are, and will continue to be, owned by the New South Wales Crown. This is clearly set out in the Snowy Water Licence.’<sup>96</sup>

### **Conclusion**

- 2.69** Following corporatisation Snowy Hydro was required to operate within an enhanced regulatory framework.

## **Proposed sale of Snowy Hydro Limited**

- 2.70** The proposal in early 2006 to sell the government shareholdings in Snowy Hydro was a significant event in the company’s history.
- 2.71** In December 2005, the NSW Government announced its intention to sell its shareholding in Snowy Hydro. Soon afterwards the Commonwealth and Victorian Governments also agreed to do the same, resulting in a proposal for full privatisation<sup>97</sup>. This occurred after an unsuccessful recapitalisation proposal put forward in October 2005 by the Snowy Hydro Board to list shares on the stock exchange and reduce government shareholding.<sup>98</sup>

### **NSW Government’s reasons for the proposed sale**

- 2.72** The NSW Government identified two key reasons for seeking to sell its share in Snowy Hydro. First, the company requires input of capital from the shareholding governments, who are not in a position to provide this additional capital. Second, due to Snowy Hydro’s corporate governance arrangements it is not possible for the NSW Government to control the company’s investment strategies. The NSW Government commented that ‘as the majority shareholder, this means that the NSW Government has significant investment in Snowy Hydro without the ability to manage that investment directly.’<sup>99</sup>
- 2.73** On 2 June 2006 the NSW Government announced that the sale of Snowy Hydro would not continue, after the Commonwealth Government withdrew from the transaction. Subsequently, legislation has been passed in both the Victorian and NSW Parliaments, to ensure that the shareholding in the company will not be sold without approval of both Houses of Parliament, unless that sale is to the Commonwealth Government.<sup>100</sup> A private members

<sup>96</sup> Submission 103, p26

<sup>97</sup> The privatisation process was also referred to as the initial public offer (IPO) process.

<sup>98</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 4, p1. Recapitalisation would have entailed listing shares on the stock exchange and thus reducing government shareholding.

<sup>99</sup> Submission 103, p4

<sup>100</sup> Submission 103, p4; Correspondence from Mr Philip Reed, Acting Secretary, Victorian Minister for Environment, to Chair, 13 July 2006 and <<http://www.dms.dpc.vic.gov.au/>> (accessed 12 September 2006)

bill has been introduced to the Commonwealth Parliament relating to provisions of shareholding ownership if Snowy Hydro is listed on the Australian Stock Exchange.<sup>101</sup>

### **Conclusion**

- 2.74** During the inquiry process the Committee heard that the proposal to sell Snowy Hydro generated considerable concern in the community. In particular, the impact of privatisation on the availability of water for irrigation and the environment. These community concerns are canvassed in greater detail in Chapter 4.

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<sup>101</sup> <<http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/19060601.pdf>> (accessed 18 August 2006)

## Chapter 3      **Snowy Hydro Limited activities within Kosciuszko National Park**

Snowy Hydro Limited (Snowy Hydro) is unique as most of its operations are located within a national park, Kosciuszko National Park (KNP). Its location emphasises the importance of balancing environmental and commercial concerns and was a key issue during this inquiry.

This chapter briefly outlines the regulation of Snowy Hydro activities within the KNP, including access to lands controlled by Snowy Hydro, the management of unused infrastructure within the park and heritage issues. It also discusses cloud seeding trials within KNP.

### **The regulation of Snowy Hydro in the KNP**

- 3.1** Most of Snowy Hydro's activities take place on land within the borders of the KNP. While land within the park is owned by the NSW Government, Snowy Hydro has the right to occupy specific parts of the park under the terms of the Snowy Park Lease.
- 3.2** KNP covers an area of approximately 650,000 hectares within the Snowy Mountains region (refer to Figure 2.1). It is the largest national park in New South Wales and is part of a 1.6 million hectare chain of national parks and reserves across the Australian Alps. The New South Wales, Victorian and Commonwealth Governments work together to preserve this area of unique cultural and environmental value with its glacial landscapes, unusual plants and animals and water catchment areas.<sup>102</sup>
- 3.3** The management of KNP, and the activities that take place within it, are regulated by an array of international agreements, domestic laws and inter and intrastate strategies. In particular, the *National Parks and Wildlife Act 1974* (NPW Act), the Snowy Park Lease and two management plans:
- Kosciuszko National Park Plan of Management 2006
  - Snowy Management Plan.
- 3.4** Snowy Hydro's activities within KNP are regulated by these plans of management, which are administered by the NSW National Parks and Wildlife Service (NPWS), as part of the Department of Environment and Conservation (DEC).

#### **Kosciuszko National Park Plan of Management 2006**

- 3.5** The Kosciuszko National Park Plan of Management 2006 (hereafter referred to as the KNP Plan of Management) is a statutory instrument under the NPW Act, which outlines how the park will be managed in the years ahead. The current KNP Plan of Management, which

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<sup>102</sup> NSW Department of Environment and Conservation, *Kosciuszko National Park Plan of Management*, June 2006, pix (hereafter referred to as KNP Plan of Management)

supersedes all other plans, came into force on 14 June 2006. All of the international, state and regional obligations relevant to the park are reflected in the plan.

- 3.6 The KNP Plan of Management was prepared by NPWS after consultation with community and government stakeholders.<sup>103</sup> All operations that take place in the park must comply with this plan.<sup>104</sup>

### **Snowy Management Plan**

- 3.7 The Snowy Management Plan (SMP) is concerned exclusively with the existence and operations of the Snowy Mountains Hydro-Electric Scheme (Snowy Scheme) within KNP.<sup>105</sup> The SMP sits within the KNP Plan of Management.<sup>106</sup>
- 3.8 The objective of the SMP is to provide for ‘the continuation of works, activities ...’ as they were at the time of the corporatisation of Snowy Hydro.<sup>107</sup>
- 3.9 Snowy Hydro must comply with the SMP or incur penalties. For breaches of the regulations, up to 50 penalty units are incurred, which is equivalent to a fine of \$5,500.<sup>108</sup> Under the SMP there is an obligation for Snowy Hydro to have an environmental management plan for all existing operations.

### **Environmental Management Plan**

- 3.10 The SMP requires that an Environmental Management Plan (EMP) be prepared by Snowy Hydro. The EMP establishes environmental management strategies for activities associated with the existence and operation of the Snowy Scheme within the KNP and is approved by DEC.<sup>109</sup>
- 3.11 Snowy Hydro’s obligations under the EMP include:
- the minimisation of impacts from the scheme on Aboriginal heritage places within the park as well as on areas of historical heritage significance
  - reduction of impacts of low altitude aircraft on fauna and visitors to KNP
  - the proper management of emergencies within the area, including fire

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<sup>103</sup> KNP Plan of Management, pii

<sup>104</sup> KNP Plan of Management, p18

<sup>105</sup> KNP Plan of Management, p215

<sup>106</sup> Mr Alistair Henchman, Director Southern, Department of Environment and Conservation, Evidence, 5 July 2006, p25

<sup>107</sup> KNP Plan of Management, June 2006, piii

<sup>108</sup> National Parks and Wildlife Regulation 2002 and the *Crimes (Sentencing Procedure) Act 1999*

<sup>109</sup> Submission102, Snowy Hydro Limited, p9

- care of flora and fauna.<sup>110</sup>

**3.12** The draft EMP has 15 chapters that cover environment management issues such as tourism, historical and aboriginal heritage, emergency management, roads, threatened species and waste pollution.<sup>111</sup> Currently, Snowy Hydro and DEC are working together to finalise the EMP.<sup>112</sup>

### **Snowy Park Lease**

**3.13** The Snowy Park Lease is a commercial arrangement between the NSW Government and Snowy Hydro. Under this lease Snowy Hydro has the right to occupy specific land inside KNP but the NSW Government retains freehold title to the land.

**3.14** The lease, which was issued for 75 years and will run until 2077, sets out both the purposes and the conditions of use of the land, including the acceptable level of public access to lands occupied by Snowy Hydro within the KNP.<sup>113</sup>

**3.15** Snowy Hydro is permitted to use the land for the collection, diversion and release of water for generating hydro-electricity, the exercise of Snowy Hydro's rights and obligations under the Snowy Water Licence and for any other purpose that may be approved by the Minister.<sup>114</sup>

**3.16** In return for the use of KNP, the Snowy Park Lease also places obligations on Snowy Hydro. These obligations include:

- To maintain and keep Snowy Hydro's works located in the Leased and Licensed Areas in good and substantial repair, order and condition to preserve their structural integrity;
- Keep the Leased Areas clean and tidy;
- Not put waste in the Licensed Areas; and
- Ensure that Snowy Hydro's occupation of Leased and Licensed Areas does not cause deterioration (defined as degradation of the basic condition they were in as at the commencement date).<sup>115</sup>

<sup>110</sup> *Snowy Management Plan Procedures Agreement Document*, Annexure 1: Table 4 – Specific objectives and content of Environmental Plan

<sup>111</sup> Answers to questions on notice taken during evidence 17 August 2006, Mr David Harris, Snowy Hydro Limited, Draft Environmental Management Plan

<sup>112</sup> Mr Henschman, Evidence, 5 July 2006, p26

<sup>113</sup> Submission 103, NSW Government, p30

<sup>114</sup> Submission 102, p53

<sup>115</sup> Submission 102, pp53-4

**Access to land**

- 3.17** Under the Snowy Park Lease, land within KNP occupied by Snowy Hydro is classified into two categories, either “leased areas” or “licensed areas”.<sup>116</sup> This classification determines the level of public access.
- 3.18** Leased areas contain major infrastructure and include land occupied by Snowy Hydro power stations and dam structures. For safety reasons public access may not be available to such areas.
- 3.19** Licensed areas contain infrastructure such as powerlines, aqueducts, pipelines and communication equipment, as well as reservoirs and lakes. Snowy Hydro’s occupation of licensed areas is not exclusive and public access is permitted across these licensed areas. Mr Terry Charlton, Managing Director of Snowy Hydro, informed the Committee that:
- Except for the areas of the KNP that are leased to Snowy Hydro ... the public have a statutory right of access under the NPW Act to the lands within the KNP that are licensed to Snowy Hydro ...<sup>117</sup>
- 3.20** Mr Ken Lister, a long term employee and member of the Snowy Hydro Executive, stated in his personal submission that ‘[a]ccess is only restricted to certain limited areas where there is a safety, security to environment risk. There is no need to change access arrangements.’<sup>118</sup>
- 3.21** Access to the licensed areas of the park is subject to the KNP Plan of Management 2006, which sets out acceptable recreational activities within all areas of the park.<sup>119</sup>
- 3.22** The land outside KNP that is owned by Snowy Hydro is primarily located around Lake Eucumbene and Lake Jindabyne. These lakes have ‘extensive foreshores, significant portions of which adjoin the KNP and are therefore accessible to the public.’<sup>120</sup> Access to these lands is subject to the same regulations that govern all land in the area.
- 3.23** The foreshore land surrounding Lake Eucumbene and Lake Jindabyne that is not part of KNP adjoins either:
- New South Wales Crown land and is licensed for grazing
  - private landholders and is licensed for grazing and recreational use with agreements that provide for continued public access
  - land leased to Snowy River Shire Council for the express purpose of public access.<sup>121</sup>

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<sup>116</sup> Submission 103, p31

<sup>117</sup> Submission 102, p53

<sup>118</sup> Submission 79, Mr Ken Lister, p2

<sup>119</sup> Submission 102, p54

<sup>120</sup> Submission 102, p54

<sup>121</sup> Submission 102, p54



**3.24** Snowy Hydro recognises the need for public access to foreshore land and commented that:

Snowy Hydro has developed ten key recreational areas around these lakes to ensure safe access for recreational users. These are well sign posted and accessed from public roads ... are well maintained and offer environmentally friendly facilities.<sup>122</sup>

**3.25** There are cooperative arrangements in place with local government and community groups to ensure boating access to the lakes. Public access is available at numerous boat ramps, caravan parks and camping areas.<sup>123</sup>**3.26** During evidence, Mr Vivian Straw, General Manager, Snowy River Shire Council, recognised the good working relationship that exists between the Council and Snowy Hydro:

...we have a good working relationship with Snowy Hydro in regard to access to land for recreational purposes. [Snowy Hydro] ... provides a number of facilities. We believe that the situation should remain as it is outside the park.<sup>124</sup>

**3.27** Cooma-Monaro Shire Council believe there is adequate access to land owned by Snowy Hydro:

Snowy Hydro Limited currently allows access to dam foreshores to people who wish to use the dams for recreational use such as fishing and boating. ... it allows many locals and visitors to the region to enjoy the recreational use of the water.<sup>125</sup>

**3.28** Members of the local community view the maintenance of this public access as essential. Ms Jan Leckström, owner of the Alpine Tourist Park and Chair of the Lake Eucumbene Chamber of Commerce told the Committee that the area relies on many forms of tourism and that public access is an essential part of this:

In the region's economy the focus has changed from agriculture to tourism ... the region does not rely predominately on any form of tourism or on any one aspect. ... Lake Eucumbene operates for 12 months a year for fishing, whilst in the rivers and creeks there is a closed season. Also in our area are many wonderful and historic places of interest, natural wonders such as caves, thermal pools with a constant 27 degrees, waterholes and activity-based tourism such as horse trekking, bush walking and snow sports in winter. The Snowy Scheme and the Kosciusko National Park in their own right also attract a huge number of tourists to our area....The region's economy depends to a great extent on fishing. ... With regard to boat access at times of low water, that in itself creates a public safety issue. The New South Wales government should ensure through the provision of an adequate boat ramp that [access] is possible at all times.<sup>126</sup>

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<sup>122</sup> Submission 102, p54

<sup>123</sup> Submission 102, p54

<sup>124</sup> Mr Vivian Straw, General Manager, Snowy River Shire Council, Evidence, 5 July 2006, p10

<sup>125</sup> Submission 78, Cooma-Monaro Shire Council, pp2-3

<sup>126</sup> Ms Jan Leckström, Chair, Lake Eucumbene Chamber of Commerce, Public Forum, 5 July 2006, p19

**Committee comment**

- 3.29** Given that most of Snowy Hydro's operations take place within the KNP, there is a clear need for robust regulation to manage its operations within this precious environment.
- 3.30** Public access to KNP is dependent on the NPW Act and the KNP Plan of Management. Snowy Hydro cannot change the public access arrangements to the land it occupies in the KNP as they do not make or control the regulations.

**Cabramurra and tourism**

- 3.31** Cabramurra is a small township situated within KNP and close to the Mount Selwyn snowfields. Staff and contractors of Snowy Hydro currently occupy the town under the Snowy Park Lease and this is the only accommodation allowable under the terms of the lease.<sup>127</sup>
- 3.32** Snowy Hydro informed the Committee that the town is used to accommodate maintenance staff overnight when they are undertaking major maintenance works. To minimise the risks involved in travelling on mountain roads either at night or early in the morning staff are accommodated overnight.<sup>128</sup>
- 3.33** Due to its proximity to the snowfields, interest has been expressed by some people in developing the town's tourist potential by providing low cost holiday accommodation during the winter ski season.
- 3.34** Mr Alistair Henschman, Director Southern, DEC, indicated that under the recently updated KNP Plan of Management 2006, Snowy Hydro may approach DEC to 'have the lease amended to allow for [tourist] accommodation.'<sup>129</sup>
- 3.35** Snowy Hydro informed the Committee that they have had ongoing discussions with Mount Selwyn and 'understand their isolat[ion] difficulties and the fact that they do not have on snow accommodation.'<sup>130</sup> Snowy Hydro, however, has a policy to retain flexibility with their limited accommodation and this is incompatible with tourist rentals for Mount Selwyn.<sup>131</sup>
- 3.36** In addition, Mr Charlton explained that a further obstacle to the development of tourist accommodation in Cabramurra is that Snowy Hydro promotes this township as a safe family town where their staff, although isolated, can provide a secure environment for their families.<sup>132</sup>

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<sup>127</sup> Mr Henschman, Evidence, 5 July 2006, p26

<sup>128</sup> Mr Terry Charlton, Managing Director, Snowy Hydro Limited, Evidence, 17 August 2006, p35

<sup>129</sup> Mr Henschman, Evidence, 5 July 2006, pp26-27

<sup>130</sup> Mr Charlton, Evidence, 17 August 2006, p35

<sup>131</sup> Mr Charlton, Evidence, 17 August 2006, p35

<sup>132</sup> Mr Charlton, Evidence, 17 August 2006, p35

## Management of unused Snowy Hydro infrastructure and sites

**3.37** From time to time it is necessary for Snowy Hydro to remove infrastructure that is no longer used or requires replacing. According to a retired Snowy Hydro employee of 36 years, Mr Keith Montague, a responsible attitude to the conservation of the environment and the National Park has always been demonstrated during all phases of the Snowy Scheme:

During and after construction was completed in 1974, the SMHEA [Snowy Mountains Hydro Electric Authority] made a practice of ‘clean up’ of buildings etc which were no longer required for the operation and maintenance phase. I believe the Authority has always adopted a responsible attitude towards such work and I would anticipate any further work of this nature which is still required would be similarly carried out.<sup>133</sup>

**3.38** There are currently a number of sites throughout KNP that are no longer required for Snowy Hydro operations. These sites are called “Former Scheme Sites.” There are safety, environmental and heritage issues to be considered when this infrastructure is removed.<sup>134</sup>

**3.39** During the corporatisation process an environmental assessment of all former sites was carried out by DEC. These sites were divided into two groups: major sites, such as large spoil dumps and quarries; and minor sites, such as townships sites, spoil dumps, landfills and small quarries.<sup>135</sup> Of the 700 sites identified, approximately 30 were classified as ‘Major Former Scheme Sites’, the rest as ‘Minor Former Scheme Sites’.<sup>136</sup>

**3.40** DEC is responsible for carrying out the necessary remediation works to restore the land. Following the assessment, Snowy Hydro paid DEC \$32 million to rehabilitate these sites. This included \$25 million for major sites and \$7 million for the minor sites. If these sites are found to be contaminated Snowy Hydro is liable to meet the cost of remediating the contamination.<sup>137</sup>

**3.41** NPWS, as part of DEC, is responsible for the timing, scope, location, priority and management of remediation works.<sup>138</sup> To date approximately \$3.3 million has been spent on ‘addressing a couple of the major sites and a number of the issues with minor sites.’<sup>139</sup>

**3.42** DEC informed the Committee that the management of these sites is a long-term project and it is estimated that it will take the next 20 years to complete:

We are planning a long-term project. There is significant work to do on these sites, particularly with weed control and physical works on reshaping these sites and revegetating them.<sup>140</sup>

<sup>133</sup> Submission 51, Mr Keith Montague, p4

<sup>134</sup> As is required to comply with the KNP Plan of Management.

<sup>135</sup> KNP Plan of Management, p180

<sup>136</sup> Submission 102, p55

<sup>137</sup> Submission 103, p32

<sup>138</sup> Submission 103, p32

<sup>139</sup> Mr Henchman, Evidence, 5 July 2006, p24

### Community concerns in relation to the removal of infrastructure

- 3.43** Mr Christopher Adams, the General Manager of Tumut Shire Council, expressed community concern in relation to the focus of rehabilitation work in KNP and the possible loss of cultural and heritage value if some of the work sites were removed.<sup>141</sup>
- 3.44** Many items of historical and or cultural significance remain in the park. These are often relics of ‘days gone by’ and include gold mining and early settler items. Inquiry participant, Mr Clive Dunn, expressed his pleasure at coming across relics while exploring KNP:
- ... on my walks in the Snowy area it was a joy to come across relics of gold mining an human endeavour, pause for a moment and ponder, what it was like then, how did it get here, what it might have been.<sup>142</sup>
- 3.45** These items often pre-date the Snowy Scheme and do not make up part of Snowy Hydro infrastructure. Responsibility for these items lies with DEC and is expressed in one of the objectives of the KNP Plan of Management that: cultural values of human-disturbed sites are identified and managed so as to retain their cultural significance.<sup>143</sup>
- 3.46** Mr Lister of Snowy Hydro Limited, emphasised that Snowy Hydro is mindful of this heritage value and has actively participated in the retention of heritage by their support of projects such as the Welcome Wall at the Australian Maritime Museum and Engineers Australia oral history recording project. He also stated that original equipment, when being replaced is offered for donation and that ‘heritage consideration is part of any environmental assessment if change is planned.’<sup>144</sup>
- 3.47** DEC considers the heritage values of each site before rehabilitation work is commenced. This includes the cultural and heritage value of some of the work sites.<sup>145</sup> Chapter 4 also discusses the iconic status and heritage value of the Snowy Scheme.

### Cloud seeding

- 3.48** According to Snowy Hydro and others, there has been a small increase in the minimum and maximum temperatures in the Snowy Mountains due to the effects of human activity and global warming. Combined with the current prolonged drought conditions, these changes have resulted in reduction in the depth of the snowfalls in the area.<sup>146</sup>

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<sup>140</sup> Mr Henschman, Evidence 5 July 2006, p24

<sup>141</sup> Submission 69, Tumut Shire Council

<sup>142</sup> Submission 62, Mr Clive Dunn, p1

<sup>143</sup> KNP Plan of Management at 11.2.3, p182

<sup>144</sup> Submission 79, p3

<sup>145</sup> Mr Henschman, Evidence, 5 July 2006, p25

<sup>146</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3](http://www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3)> (accessed 24 July 2006).

- 3.49** In an attempt to ameliorate these effects, Snowy Hydro embarked on a six-year research project known as the Snowy Precipitation Enhancement Research Project (SPERP).<sup>147</sup> The project is taking place in KNP, but does not encompass the sensitive Jugungal Wilderness Area, due to environmental concerns raised by NPWS.
- 3.50** The project is aimed at increasing the snowfall from clouds passing over the Snowy Mountains and assessing the effectiveness and reliability of precipitation enhancement technology in the Snowy Mountains. Snowy Hydro has fully funded this project, with no detriment to dividend policy.<sup>148</sup>
- 3.51** During his second reading speech on the proposed Snowy Mountains Cloud Seeding Trial Bill, Mr Bryce Gaudry MP suggested that multiple benefits could stem from the trial, for both the water users and the environment:
- [B]y replenishing water storages in the Snowy Scheme, the additional water from the research project will increase the certainty of water releases for irrigators from the Snowy Scheme and enable the continuation of water borrowing arrangements.
- Environmental benefits may be expected as a result of the research project through mitigating the declining snow cover in Kosciusko National Park and therefore the adverse effects of long-term climate change on the alpine region of New South Wales.<sup>149</sup>
- 3.52** It is anticipated that the annual average increase in snowpack over the target area as a result of the cloud seeding project will be approximately 10%, resulting in average increase in water yield of 70 gigalitres.<sup>150</sup> This increase is equivalent to 70,000 Olympic-sized swimming pools flowing down the Murray River once the snow melts in the spring.<sup>151</sup>

### How cloud seeding works

- 3.53** Cloud seeding is a technique for increasing rainfall or precipitation using naturally occurring clouds. Cloud seeding is only effective if suitable clouds are present.<sup>152</sup> Minute amounts of silver iodide are sprayed across a land-based propane flame. The silver iodide particles rise into the clouds and cause cloud moisture to freeze and create ice crystals. When these crystals are

<sup>147</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3](http://www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3)> (accessed 24 July 2006).

<sup>148</sup> Mr Charlton, Evidence 17 August 2006, p31

<sup>149</sup> Mr Bryce Gaudry MP, Legislative Assembly, New South Wales, *Hansard*, 2 April 204, p8047

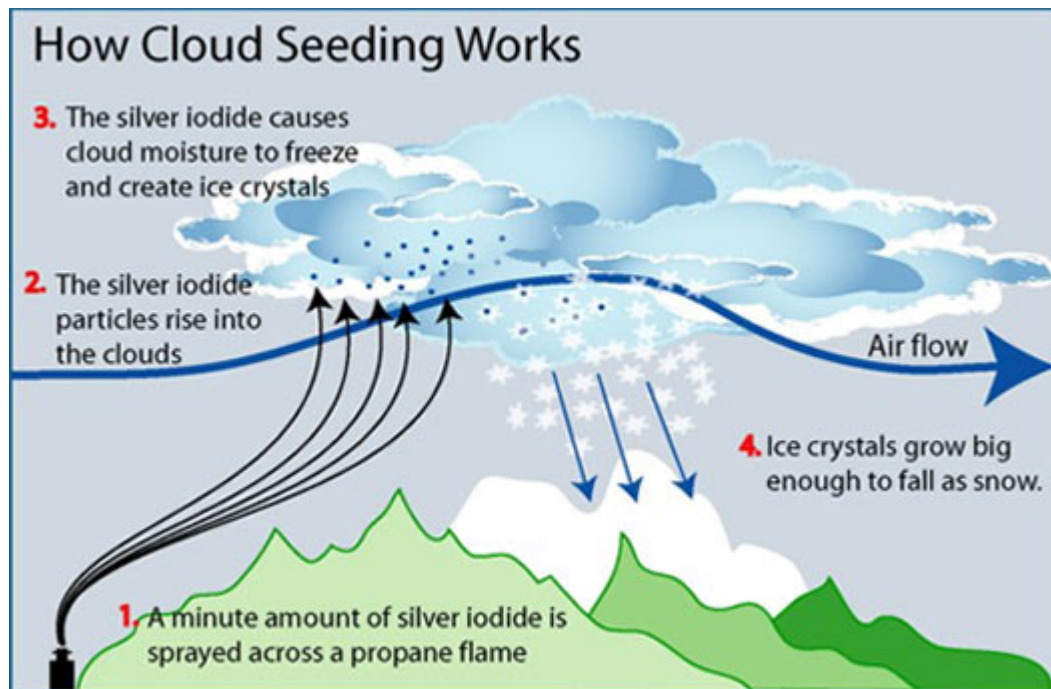
<sup>150</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3](http://www.snowyhydro.com.au/LevelThree.asp?pageID=85&parentID=254&grandParentID=3)> (accessed 24 July 2006).

<sup>151</sup> Hon Ian Macdonald MLC, Minister for Agriculture and Fisheries, Legislative Council, New South Wales, *Hansard*, 17 March 2004, p7392

<sup>152</sup> <[www.hydro.com.au/home/Energy/Cloud+Seeding/FAQs+Cloud+Seeding.htm](http://www.hydro.com.au/home/Energy/Cloud+Seeding/FAQs+Cloud+Seeding.htm)> (accessed 24 July 2006)

large enough and heavy enough they fall back to earth in the form of snow. This snow is then measured to test if there is a change in depth over the test time (also see Figure 3.1).<sup>153</sup>

**Figure 3.1 How cloud seeding works<sup>154</sup>**



**3.54** When this snow melts the run off is returned to the river system making additional water available for the generation of renewable electricity, as well as providing additional water for release into the river system. This water will boost environmental flows and ensure some level of certainty of access to water for the irrigators of the area.<sup>155</sup>

### **Snowy Hydro cloud seeding trial**

**3.55** The cloud seeding trial involves winter cloud seeding to assess the feasibility of increasing snow precipitation in the Snowy Mountains and the provision of information on the environmental impact of these cloud seeding activities.<sup>156</sup> The research trial targets only winter clouds that would otherwise dissipate. Therefore, Snowy Hydro is not reducing snowfalls in other areas that are further downwind. Mr Charlton stated that Snowy Hydro have been

<sup>153</sup> <[www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3](http://www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3)> , (accessed 24 July 2006)

<sup>154</sup> <[www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3](http://www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3)> , (accessed 24 July 2006)

<sup>155</sup> <[www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3](http://www.snowyhydro.com.au/LevelFour.asp?pageID=257&parentId=85&grandparentId=254&greatgrandParentId=3)> , (accessed 24 July 2006)

<sup>156</sup> <[www.snowyhydro.com.au/LevelThree.asp?pageID=85&grandParentID=3&parentID=254](http://www.snowyhydro.com.au/LevelThree.asp?pageID=85&grandParentID=3&parentID=254)>; (accessed 24 July 2006)

encouraged by the results: '[w]e are getting seeding signatures. We are getting indications that where we do seed, we are getting increases.'

**3.56** The legislation approving this trial limits this project to a six year period. Any further trials or permanent process of cloud seeding would require additional environmental assessment and new legislation to be passed. There have been no significant environmental problems to date. Should there be any environmental problems or Snowy Hydro fails to meet the conditions set in the legislation, the cloud seeding trial is to be halted.<sup>157</sup>

**3.57** Although the project is due to be completed in another three years, due to the lack of cloud seeding events this year, Snowy Hydro informed the Committee that they will be requesting an extension of another year. According to Mr Charlton this year:

'has been an absolute disaster ... We are having difficulty finding events to do cloud seeding. It is just too dry, and the beautiful, big highs that are sitting over the snowfields are not terribly productive.'<sup>158</sup>

**3.58** Mr Charlton stated that the results for the year were on a 'very limited basis of conducting infrequent seeding operations' and an extension to the project would help 'ensure the statistical validity of their results.'<sup>159</sup>

### Stakeholder views regarding cloud seeding

**3.59** As stated in Chapter 2, water captured by Snowy Hydro is classified as 'above target' or 'below target' water. The classification of this water, and its subsequent 'ownership', was raised as an area that will need to be examined should the project be successful. The NSW Irrigators Council (NSWIC) commented:

NSWIC has an open mind on the potential for cloud seeding to play a positive, affordable role in water resource management in Australia and supports Snowy Hydro's commitment to exploring the value of this process.

There are also competing views relating to the ownership status of any additional run-off yield generated. ...NSWIC is unaware of the development of conclusive scientific proof that moisture generation after a cloud seeding event is a result of cloud seeding and that normal weather conditions are not a contributing factor. ... these issues may be clarified by the current trials being undertaken ... and further enhance industry understanding of and commitment to cloud seeding as a long term resource management strategy.<sup>160</sup>

**3.60** Snowy Hydro are following 'tight statistical methodology' in order to assist in determining whether moisture generation is a result of cloud seeding or a natural event. This information will assist in determining the status of additional water generated by cloud seeding. If the trial

<sup>157</sup> Mr Bryce Gaudry MP, Legislative Assembly, New South Wales, *Hansard*, 2 April 2004, p 8047

<sup>158</sup> Mr Charlton, Evidence 17 August 2006, p31

<sup>159</sup> Mr Charlton, Evidence 17 August 2006, p31

<sup>160</sup> Submission 91, NSW Irrigators Council, p5

is successful and the process continues negotiations may be required between relevant stakeholders to establish the use of any additional water yielded.

## **Conclusion**

**3.61** The Committee believes that there is robust regulation in place to manage Snowy Hydro's operations within the precious environment of the KNP. It would appear that a successful balance between environmental and commercial concerns has been achieved.



## Chapter 4 Issues concerning the proposed sale of Snowy Hydro Limited

This chapter considers the latest phase in the development of Snowy Hydro Limited (Snowy Hydro): the attempt to sell the three Governments' shareholdings in the company. Inquiry participants were concerned about the potential impact of the sale on water rights and the environment; the way the project to sell the company was managed and, following the withdrawal of sale, the impact on the community of the company operating under continued public ownership.

### The proposal to sell Snowy Hydro

- 4.1** In December 2005 the New South Wales, Commonwealth and Victorian Governments announced their intention to sell their shareholdings in Snowy Hydro.<sup>161</sup> This decision was reversed on 2 June 2006 when the NSW Government advised that the sale of Snowy Hydro would not continue, following the withdrawal of the Commonwealth Government from the transaction.<sup>162</sup>
- 4.2** Inquiry participants were concerned about the potential impacts of the sale including:
- the perceived risks to the control of water
  - the loss of the Snowy Scheme as an Australian 'icon'
  - the potential loss of ongoing revenue to governments and citizens
  - the trend towards privatisation of public utilities.
- 4.3** Inquiry participants' anxieties about the way the proposed sale process was handled, included:
- poor communication with the community about the sale
  - alleged unfair share offers to employees and executives of Snowy Hydro
  - costs to governments of the abandoned sale.
- 4.4** Following the withdrawal of the sale, the local community raised concerns that this may have a negative impact on them, for example:
- withdrawal of community funding provided by Snowy Hydro, since the sale did not go ahead
  - threat to employment opportunities for future generations in the region if Snowy Hydro does not continue to grow under public ownership.

<sup>161</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 4, p1

<sup>162</sup> The Hon Morris Iemma MP, 'Snowy Hydro Limited', Media Release, 2 June 2006

## Potential impacts of the sale

- 4.5 Community concerns regarding the potential impact of the proposed sale of Snowy Hydro are discussed below.

### Control of water regulation

- 4.6 One of the most pressing concerns expressed by inquiry participants regarding the proposed sale of Snowy Hydro was its potential impact on access to water for irrigation and environmental flows. In essence, participants believed that a privately-owned Snowy Hydro would severely compromise access to water.

- 4.7 Mr Henk van de Ven, a private citizen, stated that:

When it comes to water, which this is basically about, I firmly believe the control should remain in the hands of the people through their elected representatives. Water is life, and as such control of water should not be sold off.<sup>163</sup>

- 4.8 Mr Bryan Harper, a private citizen, commented that access to water under a private Snowy Hydro would be compromised:

In terms of water management there are no advantages for irrigators or the community in general, in fact there are significant disadvantages from having a private owner control the seasonal pattern of release [as] the only requirement under the [Snowy] Water Licence is an annual release volume.<sup>164</sup>

- 4.9 Mrs Glenice White of the Snowy River Alliance, a community group concerned with the environmental state of the Snowy River, argued that the privatised company would control the water of the Snowy Scheme:

If you give away the right to collect, store, divert and use for private profit the rights to water that then becomes the property of the person buying the company. It is moved out of the hands of the people. It has nothing to do with the people. To say that we are not selling the water is splitting hairs and trying to put a spin on something that should be more honestly stated.<sup>165</sup>

- 4.10 Mrs White further explained that the privatised company would be more concerned with profit than with water agreements:

The privatised company says it can make better use of the water. It may even decide after a few years that it is not getting enough profit and it would say to the Government that it gives this water to the west for nothing and that it wants to put a charge on it. The Government would not be able to do anything about it.<sup>166</sup>

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<sup>163</sup> Submission 99, Mr Henk van de Ven, p2

<sup>164</sup> Submission 93, Mr Bryan Harper, p5

<sup>165</sup> Mrs Glenice White, Snowy River Alliance, Evidence, 5 July 2006, p32

<sup>166</sup> Mrs White, Evidence, 5 July 2006, p32

**4.11** Mr Ian Morse, civil engineer and local resident, suggested that if Snowy Hydro was privatised then the water of the Snowy Scheme could be controlled by the private entity and the need would arise for governments to buy back this control prior to the water licence expiring. He contended:

[T]he protection afforded to Snowy Hydro by the so-called 46 agreements [water regulations] meant that the corporation could not be privatised without drastic consequence for Australian taxpayers. An example of this would occur when at some stage before the year 2078 governments need to buy back control of their, or in fact, our water.<sup>167</sup>

**4.12** Mr Max White of the Snowy River Alliance suggested that in addition to irrigators not being able to access water, there would also be less access to water for environmental flows in the Snowy River under a privatised Snowy Hydro as ‘the bottom line is profit and there is no profit in sending water down the Snowy River to try to improve it, or partially improve it’.<sup>168</sup>

**4.13** Not everyone believes that access to water for irrigation and environmental flows would be compromised under a privatised Snowy Hydro. The NSW Government made it quite clear to the Committee that Snowy Hydro does not own the water in the Snowy Scheme. The NSW Government explained that the ‘water resources of the Snowy Scheme are, and will continue to be, owned by the New South Wales Crown. This is clearly set out in the Snowy Water Licence.’<sup>169</sup>

**4.14** It is explicit in both the Snowy Water Licence at clause 7.4 and in section 23 (7) of the *Snowy Hydro Corporatisation Act 1997* that Snowy Hydro ‘is not authorised to act as a supplier of water released from the Snowy Scheme to others or to give rights to others to use that water’.<sup>170</sup> It is important to note that the water released by Snowy Hydro for irrigation purposes goes to State Water (government) controlled dams that then release water to irrigators at prices set by the Independent Pricing and Regulatory Tribunal. Snowy Hydro does not release water directly to irrigators.<sup>171</sup>

**4.15** The NSW Irrigators Council do not feel that privatisation will compromise their water supply:

Whether it was a privatised entity or government, we did not believe that that would make a difference. The same regulations would have applied to every entity, the same minimum release requirements of 1,062 and 1,026 ggalitres would have been applied and we still would have had issues surrounding the timing of water release. We were advised, and it is our advice, that the various agreements and legislative controls would have been applicable irrespective of the shareholding.<sup>172</sup>

<sup>167</sup> Mr Ian Morse, Evidence, 5 July 2006, p20

<sup>168</sup> Mr Max White, Snowy River Alliance, Evidence, 5 July 2006, p32

<sup>169</sup> Submission 103, NSW Government, p26

<sup>170</sup> Submission 103, p26

<sup>171</sup> Mr Dan Berry, Manager, Information and Operations, State Water Corporation, Evidence, 7 July 2006, p42

<sup>172</sup> Mr Doug Miell, Chief Executive, NSW Irrigators’ Council, Evidence, 7 July 2006, p3

- 4.16 In summary, Snowy Hydro must make the minimum annual water releases for irrigation and the releases for environmental flows in accordance with the licence or they face significant penalties, including imprisonment for company directors.<sup>173</sup> The Snowy Water Licence is applicable and enforceable regardless of the ownership of the company.<sup>174</sup>

***Committee comment***

- 4.17 The Committee notes that water regulations relating to the Snowy Scheme, including releases for environmental flows, are controlled by the NSW Government and would remain in place regardless of who owned Snowy Hydro. Two of the most important instruments to regulate the water, the Snowy Water Licence and the Annual Water Operating Plan are administered and regulated by the NSW Department of Natural Resources and breaches of the licence are enforceable under the *Snowy Corporatisation Act 1997*.

**An Australian “icon”**

- 4.18 Inquiry participants generally accept that the Snowy Scheme has an iconic place in Australian history but many were concerned this would be lost under privatisation.
- 4.19 Mr van de Ven commented that one of the reasons Snowy Hydro should not be privatised is its iconic status in Australian history:

[One] of the reasons for keeping the scheme in public hands is the iconic nature of the scheme and its construction in the history of Australia... This in my mind tipped the balance of public opinion. The scheme is the largest piece of infrastructure ever built in Australia, it was a scheme which cost a lot of workers lives, it was a scheme built with a labour force drawn from 70 odd countries around the world, and as such our first experience in dealing with a multi-cultural society, many people spent the whole of their working lives on the scheme. The descendents of the workers on this scheme would form a very large part of the population of this country. This scheme is different for these reasons to the other infrastructure sectors that have been sold by the public sector to private enterprise.<sup>175</sup>

- 4.20 Dr Geoff Mosley, a private citizen, also commented that under public ownership governments could ensure the ‘world heritage values’ of the scheme are protected.<sup>176</sup>
- 4.21 According to Mr Richard Clarke, a local resident, there is a ‘misconception ... that a private company would not maintain the iconic scheme properly’ but that there is no logical reason as to why a company would not maintain the assets of their business if it wanted to remain profitable.<sup>177</sup>
- 4.22 In order to protect the iconic status and continue to value the human effort put into its construction, Ms Patricia Stewart, a concerned citizen, suggested that the scheme should be

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<sup>173</sup> Section 34 of the *Snowy Hydro Corporatisation Act 1997*

<sup>174</sup> Submission 103, p25

<sup>175</sup> Submission 99, p2

<sup>176</sup> Submission 56, Dr Geoff Mosley

<sup>177</sup> Mr Richard Clarke, Evidence Public Forum, Cooma, Wednesday 5 July 2006, p17

heritage listed.<sup>178</sup> Other community members and concerned citizens supportive of heritage listing the Snowy Scheme included, Mr Angel John Gallard, Ms Sue Johnston and Mr Peter Williams as well as the Snowy River Shire Council.<sup>179</sup> However, it is not clear whether these participants are referring to the State Heritage Register.<sup>180</sup>

- 4.23** The Committee notes that, since 2002, the Snowy Scheme has been listed on the Register of National Estate, which is Australia's national inventory of natural and cultural heritage places worth keeping for the future. The listing of the Snowy Scheme on this register means that it has heritage value and has met various criteria of national estate significance.<sup>181</sup>
- 4.24** In addition, the Committee was advised that Snowy Hydro, as part of their Environmental Management Plan, has prepared an Historic Heritage Strategy and code of practice to manage the historic heritage of certain parts of the scheme.<sup>182</sup>
- 4.25** However, the NSW Government stated that there is currently no intention to have the Snowy Scheme listed under the *Heritage Act 1977 (NSW)*. The Minister for Planning can direct a listing on the State Heritage Register of a building or work where the Minister considers it is of State heritage significance, as long as the NSW Heritage Council recommends that listing.<sup>183</sup>

#### *Committee comment*

- 4.26** Clearly the iconic status of the Snowy Scheme was a factor in the legislation passed in both the New South Wales and Victorian Parliaments, which ensures that the shareholding in the company will not be sold without approval of both Houses of the Parliaments. The Committee acknowledges the iconic status of the Snowy Scheme and supports the spirit of the legislation.
- 4.27** In acknowledging the iconic status of the Snowy Scheme, the Committee supports further investigation of the possible heritage listing of the Snowy Scheme to address the community's concern of protecting the national icon.

<sup>178</sup> Submission 54, Ms Patricia Stewart

<sup>179</sup> See Submissions 97 Snowy River Shire Council; Submission 73 Mr Angel John Gallard; Submission 40b Ms Sue Johnston; Submission 58 Mr Peter Williams.

<sup>180</sup> The NSW register of heritage listed items. This list includes those items which have been identified as having particular importance to the people of NSW.

<sup>181</sup> For details on the criteria relevant to the Snowy Scheme visit the Australian Heritage Council website <<http://www.ahc.gov.au/register/index.html>> (accessed 15 September 2006)

<sup>182</sup> Answers to questions taken on notice during evidence 17 August 2006, Mr David Harris, General Counsel, Snowy Hydro Limited, Draft Environmental Management Plan, Chapter 5.

<sup>183</sup> Submission 103, p34

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**Recommendation 2**

That the NSW Government:

- investigate the possibility of including the Snowy Scheme on the State Heritage Register
  - liaise with the Commonwealth on appropriate recognition of the assets of the Snowy Scheme that have heritage value.
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**Revenue to governments**

**4.28** Some inquiry participants contended that if Snowy Hydro were privatised, the shareholding Governments would miss out on the ongoing dividends that they had been receiving from the company,<sup>184</sup> which is between \$100 and \$110 million (approximately \$64 million for New South Wales based on their 58% shareholding).

**4.29** Mr Vin Good, a former Commissioner of the Snowy Mountains Hydro Electric Authority, also supported this view. Mr Good stated:

By deciding not to sell Snowy governments have forgone a significant one off payment that may mean increased borrowings or curtailed spending for one or more of them but those same governments will receive ongoing annual dividends and company tax rebates into the future.<sup>185</sup>

**4.30** Mr Gallard argued that there is no need to sell Snowy Hydro to make money as it already provides substantial returns, by way of dividends, to the shareholding Governments.<sup>186</sup> Ms Acacia Rose, a concerned community member, stated that 'the Snowy Scheme generates more than sufficient funds to maintain itself, as well as provide for government coffers'.<sup>187</sup>

**4.31** The NSW Government commented that one of the reasons for the proposed sale was because under continued public ownership, future dividends are likely to decrease as capital is needed to reinvest in the company to ensure that it remains competitive and relevant in the National Electricity Market, and governments are not in a position to fund this growth.<sup>188</sup>

***Committee comment***

**4.32** The Committee recognises that dividends received from Snowy Hydro are likely to decrease without injection of significant capital. This issue of the future of Snowy Hydro as a public owned company will be examined in Chapter 5.

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<sup>184</sup> Submission 66, Mr Ian Morse, p7

<sup>185</sup> Submission 90, Mr Vin Good, p3

<sup>186</sup> Submission 73, Mr Angel John Gallard, p2

<sup>187</sup> Submission 92, Ms Acacia Rose, p5

<sup>188</sup> Submission 103, p4

### **Trend towards privatisation of public utilities**

- 4.33** Some inquiry participants highlighted a general concern regarding the privatisation of public utilities, such as water and energy.
- 4.34** Ms Rose commented that the worldwide trend towards privatisation in both the water and energy sectors has been a failure, with most nations now attempting to return water utilities, in particular, to public ownership and control:
- There are many cases cited in both the developed and developing world, where post-privatisation regimes consistently show failure to maintain infrastructure and deliver quality water to poor communities.<sup>189</sup>
- 4.35** Mr Artur Baumhammer, a community member, stated that several states in the United States of America that ‘sold their water to private companies are now endeavouring to obtain it back, the result is inflated prices make it almost impossible for the states to buy it back, depriving the community of a fair deal’.<sup>190</sup>
- 4.36** Mr Jim Manwaring, of the National Civic Council of NSW, who opposes the privatisation of Snowy Hydro, pointed to the experience in the deregulated Californian electricity market: ‘California is spending billions building government-owned power generators to stop future manipulation of deregulated power markets’.<sup>191</sup>
- 4.37** Mr B J Sloan, a private citizen, suggested there are ‘significant constitutional implications in the selling off of public utilities in that, as the public has paid for them and they belong to the people, it would seem appropriate that there should be referendums [to decide their future]’.<sup>192</sup>

### **Concerns about the management of the proposed sale**

- 4.38** The management of the proposed sale of Snowy Hydro by the shareholding Governments was the subject of considerable criticism by some inquiry participants. These are outlined below.

#### **Communication during the process**

- 4.39** A significant issue that was raised with the Committee, and became apparent during its visit to Cooma, was that inquiry participants indicated that they felt the community was not kept informed about the development of the proposed sale process and how it would impact on the operations of the Snowy Scheme.
- 4.40** Some people felt that if more information had been provided, especially about the benefits of the sale, there might have been less opposition. Mr Richard Clarke, employee of Snowy Hydro, highlighted in his submission that the positive impact of the proposed sale of Snowy

<sup>189</sup> Submission 92a, Ms Acacia Rose, p2

<sup>190</sup> Submission 59, Mr Artur Baumhammer, p2

<sup>191</sup> Submission 88, Mr Jim Manwaring, National Civic Council NSW, p5

<sup>192</sup> Submission 52, Mr B J Sloan

Hydro, such as increased employment opportunities and money for local services, was not clearly explained to the community. He commented:

Unfortunately, this side of the argument was not properly explained before the decision to scrap the float. Opposition to the float was led by people unable to accept the present realities of a competitive electricity market, or by those who misunderstood the issue of control of water.<sup>193</sup>

- 4.41** Mr Doug Nicholas, a private citizen, highlighted in his submission a lack of information in the public domain ‘...the quiet way in with which preparations for the sale were pursued, where no considered case was offered and no Parliamentary debate ensued...’.<sup>194</sup>
- 4.42** Mr Morse commented at the public hearing in Cooma that ‘to date, the lack of informed debate on technical and other issues involved in the proposal to sell Snowy Hydro has been alarming, to say the least’.<sup>195</sup>
- 4.43** Ms Maggy Massari, local resident and employee of Snowy Hydro, stated that during the proposed sale process ‘someone needed to be giving them [the local community] up to date information on where Snowy Hydro is in the business world and its future plans including the impact [of the sale]’.<sup>196</sup>
- 4.44** According to NSW Treasury one of the reasons for Snowy Hydro’s apparent lack of communication in relation to the sale was that there was an agreement between the three shareholding Governments and Snowy Hydro that the majority of the public statements about the sale would be made by the Governments.<sup>197</sup>
- 4.45** Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, indicated that there was a communication committee that managed the relationship with the financial media regarding the proposed sale transaction.<sup>198</sup> This communication committee also established a communication protocol that Snowy Hydro was required to follow. Mr Terry Charlton, Managing Director of Snowy Hydro, described the communications protocol:

From the time the IPO [initial public offer]<sup>199</sup> was declared we were under a protocol established by the steering committee of the three governments. That steering committee—the long and the short of the—said, "You don't say anything that we don't approve, and if you want to say anything you put it up basically in writing and we will have a process"—a protocol as it was referred to—"to control who says what". The message was loud and clear: We don't want you out there making

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<sup>193</sup> Submission 68, Mr Richard Clarke, p2

<sup>194</sup> Submission 94, Mr Doug Nicholas, p3

<sup>195</sup> Mr Morse, Evidence, 5 July 2006, p20

<sup>196</sup> Submission 61, Ms Maggy Massari, p1

<sup>197</sup> Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Evidence, 7 July 2006, p51

<sup>198</sup> Mr Cosgriff, Evidence, 7 July 2006, p52

<sup>199</sup> The proposed sale is also referred to as the Initial Public Offer (IPO)



statements on where the company is going and what the business is and what the issues are surrounding the IPO.<sup>200</sup>

- 4.46** Mr Charlton explained that, while he understood the legal reasons for the protocol, he acknowledged that the lack of information did lead to confusion in the local community. He commented:

I tried to get the message out in a positive and productive way, given all the things I have just said. I took some risks because I believed there was a need to communicate better to the local community than was happening... our attempts to communicate behind the scenes were frustrated for one reason or another. That was disappointing. It has certainly turned out to be a point of anger in the local community that there was information there and in fact it was not provided to them... there was an impenetrable wall for us to communicate to the local people.<sup>201</sup>

- 4.47** In addition, Mr Cosgriff explained the general Australian Securities and Investment Commission (ASIC) restrictions on commenting on a proposed sale of a company:

[T]here are restrictions on both the company and the shareholders as to what they can say during the transaction. This is to ensure the integrity of the process, and to ensure that investment decisions are made only on the basis of the prospectus.

However, there is a general exemption for Ministers to talk on matters of public importance, for example, responding to questions in Parliament or in the media. This exemption is not available to Snowy Hydro. So comments from the company risk breaching ASIC rules, for which there are penalties. Very properly, there were times when Snowy Hydro's executives stated that they were unable to comment on a particular matter. Snowy Hydro was able to make general statements explaining how the business operates and its past performance. Once the prospectus was released, the company would have taken the lead role in talking about the information in the prospectus, but as the transaction was cancelled that prospectus was not released.<sup>202</sup>

- 4.48** Councillor Roger Norton, Mayor, Cooma-Monaro Shire Council, commented that in relation to a local public meeting organised by the Council to discuss the proposed sale, Snowy Hydro were invited but did not attend as they would be unable to respond to issues in the prospectus.<sup>203</sup> However, the Hon John Della Bosca MLC, the Minister for Finance, overseeing the proposed sale for New South Wales, did attend the public meeting. Councillor Norton described the Minister's presentation:

When our council resolved to have the forum we did not have a declared position because we were seeking a balanced view from Mr Della Bosca. In my mind, Mr Della Bosca provided an indication of why the State Government was keen to sell and it was green \$100 notes. He did not have another reason. That is why when a couple of motions were moved from the floor the 305 people here all voted against the proposed sale. It was not a winning position that he explained. I again refute any

<sup>200</sup> Mr Terry Charlton, Managing Director, Snowy Hydro Limited, Evidence, 17 August 2006, pp14-15

<sup>201</sup> Mr Charlton, Evidence, 17 August 2006, pp14-15

<sup>202</sup> Mr Cosgriff, Evidence, 7 July 2006, p51

<sup>203</sup> Councillor Roger Norton, Mayor, Cooma-Monaro Shire Council, Evidence, 5 July 2006, p15

suggestions that we had a preconceived idea and that we actively stopped Snowy Hydro participation on the night. In fact, we actively encouraged it.<sup>204</sup>

### ***Committee comment***

- 4.49** The Committee acknowledges that there were restrictions put on Snowy Hydro for discussing aspects of the sale. The Committee believes that if the community had been more receptive to the information from the Governments about the rationale for selling Snowy Hydro and the negligible impact of the sale on the control of water for irrigation and environmental flows, debate would have been better informed.
- 4.50** The Committee notes that compensation could be payable to Snowy Hydro under the compensation deed if the water licence were to be amended within the next 70+ years. The failure by the Government or Snowy Hydro to address this issue did not contribute to public understanding of the implications of the proposed privatisation of Snowy Hydro.

### **Share offers to employees and executives of Snowy Hydro**

- 4.51** A few inquiry participants alleged that generous share offers to Snowy Hydro employees and management explained their support for the sale. For example, Ms Rose stated that ‘the community wishes for clarification that the Snowy Hydro executive stood to gain from share options [or] other monetary gain.’<sup>205</sup>
- 4.52** Mr Charlton commented to the Committee:

Let me come right to that point. I think you are asking whether it was ever offered to myself and the executive team. The answer is no. Was it offered to other employees? Yes, there was an intention to offer shares to give ownership in the outcome and the future success of the company...<sup>206</sup>

- 4.53** The Committee asked Snowy Hydro to indicate what share offers were to be made to employees as part of the proposed sale. Snowy Hydro reported that any preferential allocations of shares proposed as part of the sale were determined by the three shareholding Governments. In terms of employee share offers the governments approved two allocations:
- a General Employee Share Plan under which Snowy Hydro was to have made an initial offer of \$1,000 worth of shares to eligible employees under the prospectus
  - a General Employee Loan Based Share Plan under which Snowy Hydro was to have made an offer to eligible employees of shares funded by a one-off interest free loan facility of up to \$10,000 with a repayment obligation which is limited to the value of the shares acquired.<sup>207</sup>

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<sup>204</sup> Councillor Norton, Evidence, 5 July 2006, p15

<sup>205</sup> Submission 92c, Ms Acacia Rose

<sup>206</sup> Mr Charlton, Evidence, 17 August 2006, p36

<sup>207</sup> Submission 102, Snowy Hydro Limited, p58

- 4.54 According to Snowy Hydro, to be eligible, employees were required to be full-time or permanent part-time employees of the Snowy Hydro Group. However, executives of Snowy Hydro were not eligible to participate in either of these plans. Accordingly, ‘other than shares for which they may have applied for in the general public offer, executives of Snowy Hydro would not have been able to participate in the share offer.’<sup>208</sup>

*Committee comment*

- 4.55 The Committee notes that there was some concern that employees or the executive may have benefited from the proposed sale. The Committee believes that these concerns may have been allayed if the details of the share packages had been communicated more effectively by the Governments during the proposed sale process.

**Costs to governments of the abandoned sale**

- 4.56 Inquiry participants raised concerns with the cost to the Governments of the abandoned sale. Mr Good requested that the Committee look at how much the abandoned proposed sale of Snowy Hydro has cost governments:

This privatisation exercise fiasco has cost Australian taxpayers any dollar number up to \$100 million. The Australian public deserves to know who paid for what and to whom before the next election. That applies to all three governments—Victoria, New South Wales and the Commonwealth. This includes costs covered by the three governments and the company throughout this initiative.<sup>209</sup>

- 4.57 According to the NSW Treasury the total cost of the transaction is estimated to be \$21 million.<sup>210</sup> These costs are to be shared between the Government shareholders, proportionally based on shareholdings in the company. This means that the NSW Government share of the transaction costs is approximately \$12.1 million (58% of \$21 million).<sup>211</sup>
- 4.58 NSW Treasury also provided the Committee with a breakdown of the transaction costs, including costs relating to financial advisers, advertising, travel and legal costs.<sup>212</sup> This can be found on the Committee’s website at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

*Committee comment*

- 4.59 The Committee acknowledges that the loss of approximately \$12.1 million to the NSW Government and therefore citizens is certainly undesirable. The Committee believes that had

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<sup>208</sup> Submission 102, p58

<sup>209</sup> Mr Vincent Good, a retired Snowy Scheme Executive Manager, Public Forum, 5 July 2006, p5

<sup>210</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, p1

<sup>211</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, p1

<sup>212</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, p1

the communication side of the proposed sale been handled more appropriately the outcome may have been different.

## **Potential impact of continued public ownership**

- 4.60** While there is considerable support among community members for the decision to maintain public ownership of Snowy Hydro, concerns remain among some inquiry participants about the potential negative impact of a publicly owned Snowy Hydro.

### **Community funding**

- 4.61** The Committee heard evidence of the role that Snowy Hydro has played in the community and the desire of the community for this to continue. Councillor Roger Norton, Mayor of Cooma-Monaro Shire Council, praised Snowy Hydro's contribution to the community:

I would like to emphasise the great contribution that Snowy Hydro has made to the community of Cooma-Monaro, the Snowy River and the whole of the region, Tumut and Tumbarumba. We have worked very effectively over the years to our mutual benefit and Snowy Hydro has supported functions, particularly some of the infrastructure that has gone in... [the] community has also supported Snowy Hydro by providing amenities for lots of Snowy workers.<sup>213</sup>

- 4.62** SouthCare Helicopter Service was one of the community groups to stress the importance of the continuation of Snowy Hydro funding. In their submission they stated:

A financially successful Snowy Hydro is vital to the community and particularly the Snowy Hydro SouthCare Helicopter Service's coverage of our widely diverse and geographically challenging areas of coverage.<sup>214</sup>

- 4.63** There was some concern that since Snowy Hydro is not to be privatised it will require all its money to fund future growth strategies and not continue to contribute to the community. Tumut Shire Council told the Committee that while Snowy Hydro has been a good corporate citizen there have been suggestions in the community that if Snowy Hydro is to continue to be publicly owned there would be a scaling back of input to community services in the area:

...Snowy Hydro has advised local community groups that they will not necessarily be supported by them in the future. This will have a serious negative impact on such activities as festivals, and the local community radio. Snowy Hydro in the past has been a good and active corporate citizen, and it would be a shame if the withdrawal of community support from Snowy Hydro is a price that the local communities have to pay for the failure of the privatisation proposal.<sup>215</sup>

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<sup>213</sup> Councillor Norton, Evidence, Cooma, 5 July 2006, p11

<sup>214</sup> Submission 98, Snowy Hydro SouthCare Helicopter Fund, p1

<sup>215</sup> Submission 69, Tumut Shire Council, p2

- 4.64 Mr Charlton commented that commitments of community funding made by Snowy Hydro prior to the proposed sale process will be met and new requests will continue to be considered.<sup>216</sup>

*Committee comment*

- 4.65 The Committee is of the opinion that Snowy Hydro has shown itself to be a good ‘corporate citizen’ and that the rural and remote communities of the area have benefited from the presence of the company.

**Employment for future generations**

- 4.66 Like many rural communities Cooma and the surrounding townships are concerned with employment opportunities for both their adult residents and for their children as they mature and seek to enter the workforce. Snowy Hydro has been responsible for generating many of the employment opportunities within the region.<sup>217</sup> However, there is concern that if Snowy Hydro is to remain under public ownership the company may not be able to grow and therefore the employment opportunities with the company may be threatened for future generations.

- 4.67 Since corporatisation the growth and development of Snowy Hydro has seen a shift in the work culture of the company. The current employees have told the Committee that they see Snowy Hydro as a company with a future, which can provide for both their own and their children’s futures. For example, Ms Maggy Massari, a current employee, commented that:

Working for Snowy Hydro for the past six years has been extremely fulfilling. ... Corporatisation has opened up doors for opportunity in the workplace along with cultural change and monetary rewards. ... I have a fear that Snowy Hydro will become irrelevant in the market, should [no growth] occur, I am sure that jobs will be at stake and the effect on the local communities could be devastating. ... The youth in country areas need to have a future as they are our tomorrow. The majority of teenagers in Cooma, when finishing school, leave the local area due to lack of opportunity. The family unit is broken at a critical time when children need family support to ease them into their adult life. ... in a small country town we should be looking for every opportunity of growth and embrace it.<sup>218</sup>

- 4.68 Another inquiry participant and local resident, Mr Maarten van den Stap told of his concern in the uncertainty for the future of the region. He stated:

...there is now a level of uncertainty about the future. This is, whilst there is still a good understanding, acceptance and alignment to the business plan, and direction, the lack of direction where equity will be derived from leads to uncertainty. ... We need to focus on the future rather than be totally enveloped in dwelling on the achievements of our forefathers and the iconic symbolism of the scheme.<sup>219</sup>

<sup>216</sup> Mr Charlton, Evidence, 17 August 2006, p21-22

<sup>217</sup> Submission 78, Cooma-Monaro Shire Council, p3

<sup>218</sup> Ms Maggy Massari, Public Forum, Evidence, 5 July 2006, p16

<sup>219</sup> Submission 85, Mr Maarten van der Stap, p2

- 4.69** This was reiterated by Ms Sharon Howes, local resident and employee of Snowy Hydro, in her address to the Committee at the public forum:

As a resident, I am concerned that the 35 professional staff and families who have made [Cooma] their home in recent years, not to mention all the other highly professional people, including the 184 Cooma-based employees who are also members of this community, no longer believe they are part of a dynamic business. They do not want to work in a museum in the mountains, no matter how iconic it is. Most importantly, they are suggesting they do not want to work in a backward-looking community.<sup>220</sup>

## **Conclusion**

- 4.70** One of the key concerns highlighted by inquiry participants was the level of communication by the shareholding Governments during the proposed sale of Snowy Hydro. While the Committee accepts that there were some restrictions on the ability of Snowy Hydro to discuss aspects of the sale, this was not the case for the NSW Government. Some people may never have supported the sale of Snowy Hydro, no matter how much information they were provided. However, the Committee considers that, if more information had been provided to the community prior to and during the proposed sale, community concerns regarding access to water from the Snowy Scheme could have been reduced. More importantly the need for Snowy Hydro to access significant capital to ensure its future viability would have been better appreciated.

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<sup>220</sup> Ms Sharon Howes, Public Forum, Evidence, 5 July 2006, p14

## Chapter 5 Future growth of Snowy Hydro Limited

This chapter discusses the future of Snowy Hydro Limited (Snowy Hydro) under continued public ownership. It highlights the need for Snowy Hydro to pursue a high growth strategy in order to remain relevant in the National Electricity Market (NEM). It recognises that the company requires access to capital in order to pursue this growth and outlines various options to access the needed capital.

### Does Snowy Hydro need to grow?

- 5.1 There is considerable support among inquiry participants for the view that if Snowy Hydro is to survive it must find a way to expand its capital base. This view is based on an understanding of the nature of the NEM and the role of Snowy Hydro in this market.

#### The National Electricity Market

- 5.2 Electricity markets such as the NEM are among the most financially volatile markets in the world because electricity must be generated to match immediate demand and cannot be stored. Electricity prices in the NEM are calculated at five minute dispatch intervals and can vary from -\$1,000/MWh to \$10,000/MWh over a five minute period.<sup>221</sup> A significant proportion of this variability in prices occurs during times of peak electricity demand.<sup>222</sup>

#### The role of Snowy Hydro in the National Electricity Market

- 5.3 The main sources of revenue for Snowy Hydro is through its participation in the NEM as a peak electricity generator<sup>223</sup> and supplier of electricity price risk hedging contracts. These contracts involve selling insurance contracts to other NEM participants, such as retailers and generators, to limit price risk from highly variable electricity prices. Snowy Hydro manages the risk it takes on under these contracts by being able to generate at short notice with low production costs.<sup>224</sup>

#### Recent changes in the National Electricity Market

- 5.4 Since the corporatisation of Snowy Hydro in 2002, there have been significant changes in the NEM including increased demand for electricity, regulatory change and change in the behaviour of market participants.

<sup>221</sup> These prices refer to the price of electricity purchased by retailers from generators in the NEM.

<sup>222</sup> Submission 103, NSW Government, p16

<sup>223</sup> Peak electricity generators tend to operate only when there is high demand for electricity within the market

<sup>224</sup> Submission 103, pp15-16 and Submission 102, Snowy Hydro Limited, p22

- 5.5** The National Electricity Market Management Company (NEMMCO) has forecast expected maximum demand for electricity to grow at a rate approximately 55% higher than average electricity demand from 2005 through to the end of 2015.<sup>225</sup>
- 5.6** Recent regulatory changes have created a more open and competitive retail market, as now consumers can now choose their electricity supplier. This has led to the integration or consolidation of NEM participants (vertical integration) in order to compete effectively in the open retail market.<sup>226</sup> Vertical integration in the NEM means that generators of electricity are also becoming retail suppliers of electricity to consumers.<sup>227</sup>
- 5.7** Vertical integration in the industry reduces the demand for electricity price risk hedging products (insurance contracts against price changes). This is because the integrated businesses manage their risks internally (because they can generate themselves), instead of purchasing contracts from Snowy Hydro.<sup>228</sup>
- 5.8** According to Dr Peter Dodd, a corporate financial expert, vertical integration and the volatility of the electricity market pose significant challenges for Snowy Hydro. He advised:

The notion that we used to have some years ago that electricity generation was a great big machine somewhere pumping out the power from a coalmine into households is very different today. It is a very vibrant market. The competitive structure of the industry is changing. We are seeing not only in Australia but also a trend worldwide vertical integration where companies are competing all the way from retail through to generation. There is tremendous risk in the industry, from the pricing risk to the volatility that comes with the industry, the natural risk that is there. Companies are always trying to find ways to optimise their risk positions and maximise their returns. So it is a complex industry and it is changing quickly. The competition is fierce. You have got a mixture of publicly owned companies, privately owned companies, very large companies and some fast-moving companies. So it is a challenge going forward.<sup>229</sup>

### **Snowy Hydro response to changes in the NEM**

- 5.9** The NSW Government advised that Snowy Hydro has adopted a ‘robust growth strategy’ since corporatisation to take advantage of increasing electricity demand. Snowy Hydro’s growth strategy includes:
- expanding gas-fired generation capacity
  - expanding electricity price risk hedging contracts
  - expanding retail customer base

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<sup>225</sup> Submission 103, p16

<sup>226</sup> Submission 103, p17

<sup>227</sup> Vertical integration in the NEM means that one company may be involved in the various stages of electricity production and delivery, including, generation, transmission, distribution and retail.

<sup>228</sup> Submission 103, pp16-17

<sup>229</sup> Dr Peter Dodd, Corporate financial expert, Evidence, 17 August 2006, p2



- considering acquisitions in the energy sector
- maintaining and enhancing the snowy scheme.<sup>230</sup>

**5.10** The NSW Government believes that, to date, this growth strategy has been commercially viable: it has been viewed favourably by credit rating agencies Standard & Poor's and Moody's Investment Services and has increased the company's profitability.<sup>231</sup> Mr Terry Charlton, Managing Director, Snowy Hydro, also commented positively on the pursuit of this growth strategy noting that 'the business is now threefold the value of the Snowy Scheme at corporatisation'.<sup>232</sup>

### **Does Snowy Hydro need a high growth strategy?**

**5.11** Some inquiry participants questioned the need for Snowy Hydro to pursue any form of growth. Ms Acacia Rose, a community member, commented that since Snowy Hydro has a strong position in the market 'I do not think it needs to feel insecure or that it has to grow. The income accruals are certainly adequate to maintain infrastructure and for additional funding'.<sup>233</sup> In her submission Ms Rose also stated that 'the perception that Snowy needs to raise capital in order to grow needs close examination'.<sup>234</sup>

**5.12** According to Mr Max Talbot, a retired Executive Director of Snowy Hydro, Snowy Hydro is a profitable organisation and it has the capacity to grow organically within its own means:

It [Snowy Hydro's submission] has in there three options that provide it with the ability to defend its position, among other things, and to achieve some growth. Two of those three options do not require equity, that is, they do not need any more money, so Snowy Hydro does not need to borrow. In my view, those are the only options that should be pursued.<sup>235</sup>

**5.13** Mr Vincent Good, a former Commissioner of the Snowy Mountains Hydro Electric Authority, questioned whether Snowy Hydro needs to pursue high growth. He contended:

Snowy Hydro has more than adequately demonstrated that it has the cash flow to maintain and modernise the Snowy Scheme, including its recently acquired assets, and with ongoing retained earnings has an ability to maintain a moderate growth strategy without deferring or reducing capital expenditure on traditional assets... In 2004-2005, with profits of \$148 million, the total dividend paid by Snowy Hydro was \$110 million. So it is hard to see how the... prediction that without a high growth strategy Snowy Hydro is likely to wither and die can be accepted as fact.<sup>236</sup>

<sup>230</sup> Submission 103, p13

<sup>231</sup> Submission 103, p13

<sup>232</sup> Mr Terry Charlton, Managing Director, Snowy Hydro, Evidence, 17 August 2006, p10

<sup>233</sup> Ms Acacia Rose, Public Forum, 5 July 2006, p11

<sup>234</sup> Submission 92, Ms Acacia Rose, p4

<sup>235</sup> Mr Max Talbot, Evidence, 5 July 2006, p19

<sup>236</sup> Submission 90, Mr Vincent Good, p4

**5.14** Snowy Hydro's current level of profitability is dependent on its ability to offer tailored electricity price risk hedging products to its customers. The main factor in providing these products is Snowy Hydro's scale, that is, the amount of power that Snowy Hydro can produce. If the amount or capacity that Snowy Hydro has at its disposal does not keep pace with the overall level of growth in market demand then the company's ability to offer the price risk hedging products and the profitability of the company would be reduced.<sup>237</sup> Mr Charlton stated that to retain the company's position in the NEM it would have to increase its capabilities by about 300 megawatts every two to three years.<sup>238</sup> Snowy Hydro's ability to offer price risk hedging is a function of the nature of its hydro assets and its level of control of the Snowy Scheme's water resource. As the market grows these products may be more sought after and profitability may increase rather than decline. One of the purposes of building gas turbine plants is for mitigating its transmission risk rather than purely being aimed at enhancing its trading activities.

**5.15** Mr Charlton indicated that Snowy Hydro is a critical supplier in the NEM and must expand its operations so it can continue to perform this critical role. In addition, the company must remain successful in order to continue to be flexible in its delivery of water for irrigation.<sup>239</sup> Mr Charlton explained:

The way the NEM is evolving, our role is important—arguably, critical—and as the market does expand, if we are going to remain in the same role as a critical supplier to the market, we are going to have to increase our capability...But also, not only does the NEM need us to continue to be successful but so do the irrigators. While we do not supply directly to the irrigators... we are able to do deals with the irrigators, and the more successful we are as a business the more we have flexibility to do those arrangements to supply them with some sort of certainty, particularly in times of drought.<sup>240</sup>

**5.16** Snowy Hydro's corporate plan indicates that a "do nothing" strategy would mean that Snowy Hydro would not be one of the five or six major players in the NEM (as a result of vertical integration), which could lead to a serious loss in shareholder value over the next ten years. The plan states:

Snowy Hydro's products will either not be required or the pricing will be significantly reduced. This will move Snowy Hydro back its original business model as a peak generator with somewhat stranded assets.<sup>241</sup>

### **Committee comment**

**5.17** While the Committee notes the concerns of some inquiry participants about growth, it acknowledges that the need for Snowy Hydro to continue to expand in the NEM is based on the volatility of the NEM, the critical role of Snowy Hydro in this market and the recent trend

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<sup>237</sup> Submission 102b, Snowy Hydro Limited, p4

<sup>238</sup> Mr Charlton, Evidence, 17 August 2006, p11

<sup>239</sup> Mr Charlton, Evidence, 17 August 2006, p11

<sup>240</sup> Mr Charlton, Evidence, 17 August 2006, p11

<sup>241</sup> Submission 102, p33

of vertical integration. If Snowy Hydro does not look towards other areas for growth in the NEM the company risks losing its relevance in the electricity market. This would likely lead to a reduction in revenue, a reduction in the value of the company (shareholder value) and ultimately jeopardise the company's future.

- 5.18** In addition, it may also be in the interests of electricity consumers that Snowy Hydro remain a viable player in the NEM so that the market continues to be competitive and also in terms of the environment as the Snowy Scheme produces clean renewable energy. The value of the assets and its iconic status is more likely to be preserved if Snowy Hydro remains a viable company that can maintain its infrastructure to meet the needs of the NEM.

## Snowy Hydro strategies for the future

- 5.19** Snowy Hydro put forward three alternatives for the future of the company that require access to different amounts of capital, in other words funds to invest in the company. These alternatives are:

- “cash cow”
- risk manager
- major player.

### Cash cow

- 5.20** The “cash cow” strategy involves maintaining the scheme to current standards and undertaking upgrade opportunities as the need arises. The company estimates that between \$220 and \$250 million is required to upgrade the scheme over the next ten years. An additional \$10 to 15 million per annum is required for normal capital works (maintenance). This means that total expenditure would be between \$35 and 40 million per annum.<sup>242</sup>
- 5.21** Under this strategy Snowy Hydro estimates that the company would increase its dividends in the short term to up to \$160 million per annum while maintaining its BBB+ credit rating.<sup>243</sup> However over ten years the dividends would decline to around \$90 million (divided between the Governments in line with their shareholding). There would be no need for additional capital from shareholders.<sup>244</sup>
- 5.22** The key concern with this strategy, shared by Snowy Hydro and the NSW Government, is that it would not mitigate the impact of vertical integration. It is, therefore, likely that over five to ten years Snowy Hydro's customer base would substantially decrease, either because Snowy Hydro's existing customers would be acquired by a competitor or because they would build their own peaking plant and manage their electricity price risks. Snowy Hydro estimates that their earnings would decrease by between \$80 million to \$100 million per annum.<sup>245</sup>

<sup>242</sup> Submission 102, p37

<sup>243</sup> Companies operating in the NEM must have at least a “BBB” credit rating.

<sup>244</sup> Submission 102, p37

<sup>245</sup> Submission 102, p37

- 5.23** The company's current equity value (asset value minus debt) of between \$2.5 and \$3 billion, as estimated through the initial public offer process, would drop to between \$1.6 and \$1.8 billion under the "cash cow" alternative after approximately ten years<sup>246</sup>
- 5.24** Snowy Hydro does not support the cash cow option because it would mean that the Governments collectively take maximum (but declining) dividends out of the company and there are no further investments, ultimately losing shareholder value. Mr Charlton stated 'the Governments will have taken out large lumps of dividends and the business will be perceptually moribund, exactly where it is today, in a market that is going to grow past it'.<sup>247</sup> This indicates that the critical role the company plays in the NEM would be threatened and the Governments would own a company with a depreciating value.

### **Risk manager**

- 5.25** The risk manager strategy builds on the "cash cow" strategy by recognising that Snowy Hydro is the primary provider of risk management (insurance) contracts to the electricity industry. In order to maintain this position the company needs to continue its expansion into gas fired peaking plants, with an increase of 300 megawatts of capacity every three or four years. It is estimated that this would cost between \$250 to \$300 million for each 300 megawatts development.<sup>248</sup>
- 5.26** The risk manager strategy best describes Snowy Hydro's current position. Under this strategy the company could pay average dividends in the order of \$110 million per annum while maintaining its BBB+ credit rating. There would be no need for additional capital because it is likely that under some future market outcomes the levels of dividends would need to be reduced in order to retain appropriate credit rating ratios. After approximately ten years it is likely that the equity value of the business would remain between \$2.5 and \$3.0 billion.<sup>249</sup>
- 5.27** However, Mr Charlton suggested that under the risk manager strategy vertical integration still threatens the company's customer base, which increases the risk of relying on this strategy. He explained:

For example, our customer base now includes AGL, Origin, Energy Australia, Country Energy, et cetera. I am not going to speculate on who might own those businesses into the future, but if a retailer that is a customer of ours today is acquired some time in the future by a business such as an Origin or an AGL, which has aspirations to grow its own internal hedge capability, that is, in the form of gas peaking plant or, in the case of AGL, it already has a hydro facility in the form of Southern Hydro, then we will lose our customer base, and that means a decline in the value again.<sup>250</sup>

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<sup>246</sup> Submission 102, p37

<sup>247</sup> Mr Charlton, Evidence, 17 August 2006, pp29-30

<sup>248</sup> Submission 102, p38

<sup>249</sup> Submission 102, p38

<sup>250</sup> Mr Charlton, Evidence, 17 August 2006, pp29-30

**5.28** NSW Treasury commented that neither the “cash cow” or risk manager options are acceptable for the NSW Government because:

- the NSW Government would continue to have significant equity tied up in a company over which it has limited control, particularly in relation to investment strategies
- New South Wales taxpayers’ funds, that could alternatively be returned to Government for expenditure on Government services including education and transport, would continue to be used to build energy infrastructure outside of the State
- annual dividends paid to the Government shareholders would continue to decline.<sup>251</sup>

### **Major player**

**5.29** The major player strategy best describes Snowy Hydro’s vision for the future. According to Snowy Hydro, this strategy produces the greatest value because it capitalises on the scheme’s unique ability to manage electricity market risk.<sup>252</sup>

**5.30** The company has already successfully positioned itself as an electricity market risk manager (through the provision of insurance contracts against price volatility) and taken a small step towards vertical integration through acquiring and growing Red Energy (an electricity retail provider in Victoria). Snowy Hydro advised that the next step in the strategy was to have been the acquisition of retail and or further generation opportunities as the industry consolidated.<sup>253</sup>

**5.31** Under the major player strategy the company could pay average dividends in the order of \$110 million per annum while maintaining its BBB+ credit rating. However, an injection of up to \$800 million of additional capital would be required to finance acquisition opportunities estimated to be between \$1.5 and \$2 billion over the next five years. The balance of funding, between \$700 and \$1.2 billion would be provided through a mixture of debt, debt hybrid structures and other financing techniques. Under this model the equity value of the business would grow to between \$3.0 and \$3.5 billion plus the additional capital contributed of \$800 million within approximately ten years.<sup>254</sup>

**5.32** The main issue with this strategy is how it would be funded. Additional capital of \$800 million is required and, as discussed later, it is highly unlikely to be provided by the shareholding Governments. Nor is it likely to be gained through increased debt, as the Governments are unlikely to risk guaranteeing loans for Snowy Hydro.

<sup>251</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 29, p7

<sup>252</sup> Submission 102, p38

<sup>253</sup> Submission 102, p38

<sup>254</sup> Submission 102, p38

- 5.33** Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, told the Committee that the sale of Snowy Hydro would have allowed them to access capital through equity on the share market to ensure its status as a major player in the NEM. He stated:

Snowy, post the IPO [initial public offer], would have been able to access private equity markets for further capital. For instance, as part of the float potentially they could have raised extra capital. The private equity market opens up for Snowy's capital needs through a transaction like an IPO in a way that is not available under government ownership.<sup>255</sup>

### **Committee comment**

- 5.34** The Committee believes it would be undesirable to see Snowy Hydro pursue the “cash cow” strategy. In the long term this would mean the Governments would own a company with depreciating value and declining dividends. The success of the company that has been built up since corporatisation would be lost.
- 5.35** Similarly, the Committee does not support the risk manager strategy. This strategy would not address the issue of vertical integration which is a threat to Snowy Hydro’s customer base, revenue and shareholder value. Under this strategy it would be necessary for the company to divert the funds that would have been used for dividends into infrastructure investment. This is not considered acceptable to the shareholding Governments, as they prefer to invest dividends in core government services.
- 5.36** The Committee’s preferred option is that Snowy Hydro should be in a position to pursue the major player strategy. The main issue with the major player strategy is how it would be funded as additional capital of \$800 million is required. Options to fund growth of the company under the major player strategy while remaining in public ownership are discussed in the following section.

## **Financing Snowy Hydro’s growth strategy**

- 5.37** Significant capital is required to allow Snowy Hydro to pursue an appropriate growth strategy in order to continue its critical role in the NEM. However, Snowy Hydro is not a publicly listed company and therefore cannot access the equity market.<sup>256</sup> Listed companies have access to both debt and equity finance, comprising of borrowing funds from banks and financial institutions (debt) and accessing new capital from increasing shareholdings or retaining company earnings (equity).<sup>257</sup>

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<sup>255</sup> Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Evidence, 7 July 2006, p56

<sup>256</sup> A market where investors buy and sell securities providing ownership of a company’s shares, for example the Australian Stock Exchange.

<sup>257</sup> Submission 103, p13

- 5.38** Snowy Hydro is effectively confined to the use of debt and retained earnings to finance its growth strategy. Although as the company's capacity to increase debt is decreasing,<sup>258</sup> it means it would then rely on retained earnings. This in turn reduces the dividends for Government shareholders. Government shareholders would essentially be receiving lower dividends today in expectation of potentially higher future capital gains. However, these capital gains can only be accessed by the Governments selling their shareholdings.<sup>259</sup>
- 5.39** This section canvasses various options that were presented to the Committee on how the company could access capital for the necessary growth to ensure its position as a major player under continued public ownership. These options include:
- Governments inject capital into the company
  - reduce dividends to government shareholders
  - Commonwealth Government buy out other government shareholders
  - issue Snowy Hydro bonds
  - sell off the company's trading business and lease the Snowy Scheme assets
  - recapitalisation of Snowy Hydro.

#### **Governments inject capital into the company**

- 5.40** The first obvious option to support a growth strategy for Snowy Hydro is for the shareholding Governments to inject capital into the company. However, the NSW Government suggested that the three Government shareholders do not want to inject further capital into the business as it is considered more appropriate for government funds to be allocated to delivering core government services.<sup>260</sup>
- 5.41** It is unlikely, therefore, that the shareholding Governments will invest funds in the order of \$800 million for the company to pursue the major player strategy, or even a lesser amount to pursue a moderate growth strategy.
- 5.42** Another reason the Governments will not invest funds in the company is that the greater the amount of public funds invested, the greater the Governments' exposure to the risk faced by the company. This risk also relates to debt. Without access to equity, Snowy Hydro cannot continue funding business growth through debt without seeking guarantees on the debt by Government shareholders. This increases the risk to Government shareholders as guarantors on the loans and reduces the shareholder value through the higher cost of servicing debt.<sup>261</sup>

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<sup>258</sup> Mr Cosgriff, Evidence, 7 July 2006, p62

<sup>259</sup> Submission 103, p14

<sup>260</sup> Submission 103, p13

<sup>261</sup> Submission 103, p14

- 5.43** It was clearly indicated to the Committee by the NSW Government that the option of governments injecting capital funding into Snowy Hydro is not a priority for the shareholding Governments and therefore, not likely to happen.<sup>262</sup>

#### **Reduced dividends to shareholders**

- 5.44** Currently, Snowy Hydro pays approximately \$110 million per annum in dividends to the three shareholding Governments.<sup>263</sup> Dividend return policy is at the discretion of the Snowy Hydro Board and as per the corporations law a company and the directors have a duty to act in the best interest of the company, which may mean recommending less dividends.<sup>264</sup>

- 5.45** A number of inquiry participants suggested that one way to protect Snowy Hydro's future as a publicly owned company would be for the shareholding Governments to take reduced dividends. So that Snowy Hydro could retain their profits to invest in growth.

- 5.46** Dr Dodd explained how this could work:

The capital can come from the funds that are generated by the company through its operations, which are not paid out to the shareholders as dividends and that is retained. In deciding how much to pay as dividends and how much to retain, it is very important that the board and management are aware of and understand the requirements for maintenance and the capital expenditure program going forward.<sup>265</sup>

- 5.47** Mr Cosgriff indicated that there are few other options available for a company in Snowy Hydro's situation: 'for a business that has a prudent level of debt, that cannot access further debt markets, either the owner puts in more equity or you effectively have to reduce dividends to keep cash in the business to fund capital expenditure'.<sup>266</sup>

- 5.48** Councillor Vanzella also argued that the shareholding Governments should reduce their dividends, as 'the council [Tumut Shire Council] would support any efforts from Snowy Hydro to ensure that dividends are not paid at the expense of maintenance and expansion'.<sup>267</sup>

- 5.49** Mr John Richardson, Chair of the Snowy River Alliance, suggested that the Governments refrain from extracting the profits of Snowy Hydro as dividends and reinvest up to \$150 million a year annually back into the company until it is satisfactorily maintained and commercially competitive.<sup>268</sup>

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<sup>262</sup> Submission 103, p13

<sup>263</sup> Submission 102, p39

<sup>264</sup> Mr Charlton, Evidence, 17 August 2006, p34

<sup>265</sup> Dr Dodd, Evidence, 17 August 2006, p3

<sup>266</sup> Mr Cosgriff, Evidence, 7 July 2006, p56

<sup>267</sup> Councillor Gene Vanzella, Mayor, Tumut Shire Council, Evidence, 5 July 2006, p12

<sup>268</sup> Mr John Richardson, Chair, Snowy River Alliance, Evidence, 5 July 2006, p29



- 5.50** However, Mr Charlton commented that under the Snowy Hydro constitution shareholder permission is required if the company decided to make no dividends available to shareholders and reinvest that money into expansion.<sup>269</sup>
- 5.51** Mr Ben Lathwell, Technical Officer, NSW Treasury also suggested that it is unlikely that shareholders would agree to lower dividends. He commented:
- That [the level of dividends] was one of the issues that was a catalyst to our analysis [for the IPO<sup>270</sup>], the fact that if it wanted to access equity it cannot do it, so it virtually has to retain dividends and use those dividends to invest in infrastructure outside the State of New South Wales where, alternatively, those dividends could have been coming back to the New South Wales Government.<sup>271</sup>
- 5.52** Further to this, even though the value of the company might expand with the capital from reduced dividends being invested into the company, the shareholding government is unable to access that increased value, as it is capital growth that can only be realised and accessed by the sale of its shares.<sup>272</sup>
- 5.53** The argument put by Dr Dodd is that the funds raised from paying lower dividends are constrained by the amount of profits and cash the company can generate and accumulate in a year. Even with lower dividends, the company might not be able to generate enough capital internally in order to fund large expansions.<sup>273</sup>
- 5.54** As Dr Dodd noted, even if Snowy Hydro paid out less dividends to shareholders this would not fund a long term expansion strategy, such as the major player strategy, that would require \$800 million in additional capital. Reduced dividends may mean that the company can fund a strategy, such as the risk manager strategy, for \$250 to \$300 million every four years. However, this strategy does not address the issue of vertical integration and the NSW Government indicated that even with the current level of dividends it was interested in pursuing other options for the company. This suggests that a reduction in these dividends would not be appealing for the shareholders.

### **Commonwealth Government buy out Victorian and NSW Governments**

- 5.55** A way forward for Snowy Hydro supported by the Victorian and NSW Governments is to sell their shareholdings in Snowy Hydro to the Commonwealth Government.<sup>274</sup> In his submission, Mr Whan MP, Member for Monaro, stated that the community expressed a strong view during the debate on selling Snowy Hydro that they would like to see the Commonwealth

<sup>269</sup> Mr Charlton, Evidence, 17 August 2006, p34

<sup>270</sup> IPO – initial public offer is used to describe the proposed sale of Snowy Hydro.

<sup>271</sup> Mr Ben Lathwell, A/Technical Officer, NSW Treasury, Evidence, 7 July 2006, p62

<sup>272</sup> Mr Lathwell, Evidence, 7 July 2006, p63

<sup>273</sup> Dr Dodd, Evidence, 17 August 2006, p3

<sup>274</sup> As set out in recent bills passed in both the Victorian and NSW Parliament that amended the respective Snowy Hydro Corporatisation Acts in each state.

Government buy the company and ensure it stayed in public ownership. He further commented:

This step would be logical on a number of grounds, firstly from Snowy Hydro's point of view the current three way split of responsibility would be removed and Snowy Hydro could access some of the Federal Government's massive budget surplus to fund expansion.

From the Commonwealth's point of view the acquisition of Snowy Hydro would fit well with the logic for the establishment of the futures fund. This fund has been set up to invest equity and other assets with a view to offsetting future liabilities resulting from superannuation and an aging workforce. Investment in an income producing asset like Snowy Hydro would fit well with this philosophy.<sup>275</sup>

**5.56** Mr Keith Montague, a community member, commented that there may be considerable merit in the Commonwealth either resuming or repurchasing 100% ownership in Snowy Hydro Ltd. He advocated that:

This way the NSW and Victorian Governments could be reimbursed with the funds they sought from the sale of Snowy Hydro Ltd. They were presumably agreeable to forego the annual income for the injection of capital funds receivable. A Snowy Hydro Ltd totally owned by the Commonwealth would preserve control of this important water resource in alpine NSW...<sup>276</sup>

**5.57** Dr Dodd was asked to comment on how Snowy Hydro would be better managed under one government instead of three. He responded:

The more [shareholders] you have the more difficult it becomes, I would suspect. With one shareholder it may be easier because only one shareholder has to understand and hear the demand from management for what they want to achieve going forward and agree to that. Otherwise you have got three, three governments as shareholders, as with three individuals, would have different perspectives on that. I do not know whether ultimately that is going to be better or worse but I would have thought the more there are the more difficult it would be to get a consensus view you need to have.<sup>277</sup>

**5.58** Mr Charlton also commented that the three government shareholders add complexity to the business. He stated:

I think the reality is that three governments probably complicate the challenges facing the business by about ninefold. It is a reality that it is probably an unstable partnership in a sense between three governments because they have different objectives, and those objectives change over time. It is very difficult operating a company in a highly competitive and fast-moving environment and trying to respect one's shareholder views, in this case shareholders plural views, sometimes mutually exclusive.<sup>278</sup>

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<sup>275</sup> Submission 49, Mr Steve Whan MP, Member for Monaro, p2

<sup>276</sup> Submission 51, Mr Keith Montague, p6

<sup>277</sup> Dr Dodd, Evidence, 17 August 2006, p6

<sup>278</sup> Mr Charlton, Evidence, 17 August 2006, p13

**5.59** However, Mr Charlton also suggested that it is unrealistic to expect one of the Government shareholders to buy out the others:

So one is probably better than three—arguably, it is better than three—but I think one is unrealistic, certainly given the discussions that took place during corporatisation. The evidence then was that there was no likelihood of one as opposed to three, as evidenced by the fact that, irrespective of the equity positions of 13%, 29% and 58%, corporatisation was only achieved because there was an agreement to one third, one third, one third. I think it highly unlikely that we could find a situation where there is only one shareholder.<sup>279</sup>

### Bonds

**5.60** Another option raised by some inquiry participants as a way for Snowy Hydro to raise capital to fund its growth is through the issue of Snowy Hydro bonds. Dr Dodd explained the concept of bonds:

Bonds are just another form of raising capital. One of the parts of the debt markets is bonds. It is no different from borrowing from an institution such as a bank. You can go to a capital market and issue bonds or debentures<sup>280</sup> or some other form of paper, which is just people lending money to the company, and you provide a security for that loan and the interest payments and no more.<sup>281</sup>

**5.61** Mr Doug Nicholas, a private citizen, provided details in his submission on how bonds could work for Snowy Hydro:

If the Commonwealth issues Snowy Bonds with interest set a little above the Reserve Bank cash rate target a national capital fund could be created which would allow Snowy Hydro... to be offered development loans on the best possible terms... Bonds could be offered for fixed terms of 5, 10 or 20 years and their maturity would see either a return of capital to investors or Bond renewal to fund new projects of national importance...

The likely success of a bond issue can be gauged from the almost universal support for retention of Snowy Hydro in public ownership and by the reported response of 200,000 to the call for registration of interest in the prospectus for the proposed float of the company... [for example]:

- If 100,000 investors took up Commonwealth Snowy Bonds at the \$5,000 minimum level, a capital reserve of \$500 million would accrue...
- If 200,000 investors took up an average of \$16,000 each, \$3.2 billion would be raised, enough for the Commonwealth to buy out the NSW and Victorian Governments.<sup>282</sup>

<sup>279</sup> Mr Charlton, Evidence, 17 August 2006, p13

<sup>280</sup> A type of debt instrument that is not secured by physical asset or collateral. Debentures are backed only by the general creditworthiness and reputation of the issuer. Both corporations and governments issue this type of bond in order to secure capital.

<sup>281</sup> Dr Dodd, Evidence, 17 August 2006, p3

<sup>282</sup> Submission 94, Mr Douglas Nicholas, pp6-7

**5.62** Support for issuing bonds as a means of raising capital was also expressed by the Mayor of Cooma Monaro Shire Council, Councillor Richard Norton, who stated that ‘I am sure that our community and the communities Australia-wide...would welcome the opportunity to put up their money and those bonds could be raised for a substantial amount of money’.<sup>283</sup>

**5.63** The Snowy River Shire Council commented in their submission that if additional external funding is required for Snowy Hydro a system of bonds or debenture notes should be created in two forms:

The first of these forms would be a government guaranteed fixed interest investment in the organisation and the second form would be a floating value debenture note with the capacity to elect one or two members to the Snowy Hydro Limited board... Judging by the interest in the float for shares for this organisation it is considered that the three governments would have no difficulty raising funds through this process.<sup>284</sup>

**5.64** Mr Whan MP suggested that many Monaro residents have expressed interest in investing money in the Snowy Scheme but in the form of bonds not as shares. He further commented:

While bonds may at times seem to be a fairly old fashioned way of raising money they do still have strong relevance as a secure investment and I understand there are precedents around the world for government owned energy companies utilising bonds for capital raising. My suggestions would be that the Snowy Bonds be marketed primarily toward individuals looking to long term investments and to superannuation funds. They would be a stable long term investment returning healthy although not spectacular returns over a long period of time.<sup>285</sup>

**5.65** Other inquiry participants such as Mr Max Talbot, retired Executive Director of Snowy Hydro, was concerned that bonds represented a form of ‘privatisation by stealth’.<sup>286</sup>

**5.66** However, Mr Cosgriff indicated that the issuing of bonds is simply another form of debt and Snowy Hydro has only a limited capacity to support more debt. He explained:

The issues that would strike you with pure bonds are exactly the same as those that would strike you with Snowy getting more debt, namely there is a limit to how much debt it is prudent for a company like Snowy to carry. If it starts to push itself too hard against that limit it will find that it is subject to downgrading its credit rating...

For an electricity company, that has serious implications because they have to maintain an appropriate credit rating to continue to transact in the market. So there would be severe constraints on the extent to which you could push a bond that looked like a debt instrument, as most bonds do.<sup>287</sup>

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<sup>283</sup> Councillor Richard Norton, Mayor, Cooma-Monaro Shire Council, Evidence, 5 July 2006, pp10-11

<sup>284</sup> Submission 97, Snowy River Shire Council, pp2-3

<sup>285</sup> Submission 49, Mr Steven Whan MP, Member for Monaro, pp1-2

<sup>286</sup> Mr Max Talbot, Evidence, 5 July 2006, p23

<sup>287</sup> Mr Cosgriff, Evidence, 7 July 2006, p56

### Sell off the trading business and lease the Snowy Scheme assets

- 5.67** At the hearing in Cooma, the Mayor of Tumut Shire Council, Councillor Gene Vanzella proposed a possible solution to Snowy Hydro's need to access greater capital: the sale of the trading business of the company and lease the Snowy Scheme assets:

A new corporate entity [could] be formed in public ownership, to own and maintain the infrastructure of the Snowy Scheme. Snowy Hydro could also be an operating company that could be privatised and be able to make investments beyond the bounds of the Snowy.

The infrastructure corporation will also be responsible for monitoring water releases to ensure that they are in accordance with the appropriate statutes and regulations. This corporation could be funded by lease or licence fees from the operating company and also from the downstream water users. This option would ensure the future of the Snowy Scheme in a manner that the public expect. It will also encourage the growth of a vigorous Snowy Hydro, and guarantee the water entitlements of the downstream water users.<sup>288</sup>

- 5.68** Mr Charlton acknowledged that this option may be viable for Snowy Hydro:

[T]he assets remain in government hands and are leased to the company, whatever that happens to be, the people come across to the new company and it operates exactly as it is today. I think with some finessing that can work. That is a real possibility, and I would put that as an alternative up there...<sup>289</sup>

- 5.69** Mr Lathwell from NSW Treasury commented that while this may be possible to do, it would seem similar to stepping back to pre-corporation days and there would need to be serious consideration of the impact of such an option on the water regulations.<sup>290</sup> Mr Cosgriff further explained:

Did they envisage that the trading function would be separated from the asset function and the trading function would be effectively privatised, which, in a sense, was the old structure of Snowy before corporatisation, where the trading function was separated. It is certainly, in theory, possible to do. You can think of arrangements for the electricity market where the trading function is separated from the assets that are associated with that...Whether you can do it in the context of Snowy is a more difficult issue because of the nature of the water issues and the flows, and that would be an issue you would want to give really careful consideration to.<sup>291</sup>

- 5.70** Mr Lathwell also commented that:

Given the eight years it took to corporatise the company and set up a set of the regulatory arrangements for the water and park operations of the scheme, then with a lease of the assets, you might even see a need to replicate those again to reflect that you have an owner of the trading functions and an owner of the assets and the

<sup>288</sup> Councillor Vanzella, Evidence, 5 July 2006, p13

<sup>289</sup> Mr Charlton, Evidence, 17 August 2006, p30

<sup>290</sup> Mr Lathwell, Evidence, 7 July 2006, pp61-62

<sup>291</sup> Mr Cosgriff, Evidence, 7 July 2006, pp61-62

arrangements between the two owners would need to reflect the current regulatory arrangements. You would have the Snowy scheme owned by the government saying that is fine, you can tell us to release water now, but we still have to meet our obligations under the licence to the irrigators and we still have to meet our environmental flows.<sup>292</sup>

### **Recapitalisation**

- 5.71** Prior to the proposal to privatise Snowy Hydro the Snowy Hydro Board suggested recapitalisation as a means of remaining relevant in the volatile NEM. The recapitalisation proposal was referred to as Project Hudson. Recapitalisation refers to a revision of a company's capital structure by an exchange of securities (shares).<sup>293</sup>
- 5.72** Under Project Hudson Snowy Hydro would raise a certain amount of funds on the stock exchange, through issuing additional shares, and those funds would be returned to the Government shareholders in accordance with their shareholder proportions and therefore reduce their level of ownership. For example, it might have resulted in 60% of Snowy Hydro being owned by the Governments with 40% privately owned.<sup>294</sup>
- 5.73** The NSW Government considered that a recapitalisation proposal, like Project Hudson, would be beneficial as it would:
- allow Snowy Hydro to access private sector equity, therefore reducing the NSW Government's exposure to the risks of the business
  - expose Snowy Hydro to the market disciplines of a publicly listed company through increased scrutiny of the operations, performance and investment strategy
  - dilute the NSW Government's ownership in Snowy Hydro, therefore reducing the policy issues associated with majority shareholding in the company
  - reduce the conflicting roles of the NSW Government as a regulator and part owner of Snowy Hydro
  - improve the alignment of the NSW Government's remaining shareholder interests and voting rights as currently, the NSW Government is the majority shareholder, yet only has one third voting rights
  - allow the NSW Government to realise 'fair value' for the State's equity investment in the company.<sup>295</sup>
- 5.74** Regardless of the benefits highlighted by the NSW Government, it indicated it would have preferred a full sale compared to a recapitalisation, as a full sale would have yielded a number

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<sup>292</sup> Mr Lathwell, Evidence, 7 July 2006, p61

<sup>293</sup> The Macquarie Dictionary, Macquarie Library Pty Ltd, Online edition 2005

<sup>294</sup> Mr Lathwell, Evidence, 7 July 2006, p55

<sup>295</sup> Correspondence from the Hon John Della Bosca MLC, Minister for Finance, to Chair, 27 September 2006, p3

of other benefits to the Government shareholders including avoiding the Governments becoming shareholders in a mixed public/private entity.<sup>296</sup>

- 5.75** NSW Treasury advised the Committee that the original recapitalisation proposal required unanimous shareholder approval but did not receive this support.<sup>297</sup> This may be an issue if a new recapitalisation proposal is put forward, however, as the shareholders were keen to sell all their shareholdings at that time, recapitalisation may be more appealing, given recent events.
- 5.76** Mr Charlton indicated that recapitalisation would maintain government ownership but at the same time allow additional capital (through access to the equity/share market) to be raised for the company.<sup>298</sup> Mr Charlton stated that ‘from Snowy Hydro’s point of view, as it was then, it still remains an option today’.<sup>299</sup>
- 5.77** While a recapitalisation proposal would need to be agreed to by the shareholders as well as both Houses of Parliament in New South Wales, Victoria and the Commonwealth, this does not rule out recapitalisation as an option for Snowy Hydro to fund their growth under continued public ownership.

### Committee comment

- 5.78** The Committee recognises that insufficient growth is likely to threaten the future viability of Snowy Hydro. The question remains as to how to fund high growth under continued public ownership.
- 5.79** It is clear to the Committee that the NSW Government is not keen to invest additional funds in Snowy Hydro as it prefers to fund core government services, such as health, education and transport. Therefore, further government investment is an unlikely option, unless the other shareholding Governments were to invest the necessary funds.
- 5.80** For the same reasons, the shareholding Governments would prefer to receive dividends than accept reduced or no dividends from Snowy Hydro. In any case, reduced dividends to shareholders will not fund the long term growth required under the major player strategy.
- 5.81** The option of the Commonwealth Government buying out the Victorian and NSW Governments may be attractive to these states as the Commonwealth has access to more funds than the Victorian and NSW Governments. Both the Victorian and New South Wales Parliaments have passed legislation that indicates a sale or transfer of Snowy Hydro shares to the Commonwealth Government would be acceptable. However, this option was floated at the time of the abandoned proposed sale and there was no indication of support from the Commonwealth.

<sup>296</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 58, p13

<sup>297</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 58, p13

<sup>298</sup> Mr Charlton, Evidence, 17 August 2006, pp23-24

<sup>299</sup> Mr Charlton, Evidence, 17 August 2006, pp23-24

- 5.82** The issuing of bonds is not an acceptable solution for Snowy Hydro to raise capital, as it is another form of debt. The company has a limited capacity to take on further debt as it needs to retain its BBB+ credit rating to continue to transact in the NEM. If the company became unable to transact in the NEM the future viability of the company would be seriously threatened. Increases in the level of debt would most likely reduce shareholder dividends.
- 5.83** One possibility would be to create a new government-owned corporation, which would lease the Snowy Scheme infrastructure to a separate, privately-owned, electricity trading company. The private trading company could access capital from the private market and continue growth outside of the Snowy Scheme. The Committee can see merit in this idea as it would ensure the Snowy Scheme infrastructure would remain in public hands and considers that the NSW Government should approach the other shareholding governments to facilitate discussion on this option.
- 5.84** Recapitalisation may also be a viable option. It would enable Snowy Hydro to pursue a robust growth strategy and thus continue its relevance in the NEM, while maintaining some degree of Government ownership of the company. The most important role that the NSW Government can play in relation to Snowy Hydro is that of regulator and quality assurance authority. Under recapitalisation there is no fear of losing the national icon, public ownership or diluting government responsibility for the regulatory operations of the scheme, such as environmental flows and irrigation. Indeed recapitalisation may strengthen the Government's role as regulator by reducing the conflict between owner and regulator. A recapitalisation project like Project Hudson should be reconsidered by shareholders and the NSW Government should approach the other shareholding governments to facilitate discussion on this option.

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### **Recommendation 3**

That the NSW Government pursue the position jointly taken with the Victorian Government: that the Commonwealth acquire Snowy Hydro Limited and that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation.

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### **Recommendation 4**

That the NSW Government ensures the community is adequately informed about any future proposals regarding the ownership or funding of Snowy Hydro.

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## Appendix 1 Terms of reference for the inquiry into the proposed sale of Snowy Hydro Limited

Below are the terms of reference for the inquiry into the proposed sale of Snowy Hydro Limited. This inquiry was adopted in response to the proposal by the New South Wales, Commonwealth and Victorian Governments to sell their combined assets in Snowy Hydro.<sup>300</sup> However following the withdrawal of the sale, new terms of reference in relation to the continued public ownership of Snowy Hydro were referred to the Committee, which have been reported on in main body of this report.

### 1. Terms of reference:

1. That a select committee be appointed to inquire into and report on the proposed sale of Snowy Hydro Limited by the Government, and in particular:
  - (a) whether the proposed sale of the Snowy Hydro Limited is in the public interest,
  - (b) the need for the sale of the Snowy Hydro Limited,
  - (c) impacts on the short and long term financial position of the Government including impacts on revenue and recurrent costs,
  - (d) potential compensation payments to affected parties,
  - (e) intended use of funds raised from privatisation,
  - (f) control of water regulation,
  - (g) future location of Snowy Hydro Limited headquarters,
  - (h) job security for the current workforce,
  - (i) access to lands controlled by Snowy Hydro Limited,
  - (j) removal of disused Hydro infrastructure in National Parks,
  - (k) limits to foreign and majority share ownership,
  - (l) impacts on tourism and local communities in the region,
  - (m) continuation of support of community events and activities by Snowy Hydro Limited,
  - (n) impacts on local councils,
  - (o) heritage issues,
  - (p) land release issues, and
  - (q) any other related matters.
2. That, notwithstanding anything contained in the standing orders, the committee consist of seven members comprising:
  - (a) three government members,
  - (b) Mrs Pavey and Mrs Forsythe, and
  - (c) Revd Dr Moyes and Ms Hale.

<sup>300</sup> A brief report arising from the first inquiry was tabled in the Legislative Council on 7 June 2006. Copies of this report are available on the web at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

3. (1) That the Chair of the committee be Revd Dr Moyes.  
(2) That the Deputy Chair be elected at the first meeting of the committee.
4. That the committee report by Friday 27 October 2006.<sup>301</sup>

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<sup>301</sup> *Minutes of Proceedings No 148*, 3 May 2006, Item 29

## Appendix 2 Submissions

The terms of reference stipulate that evidence including submissions received as part of the inquiry on the proposed sale of Snowy Hydro Limited be referred to this inquiry. This means that during the preparation of this report for the inquiry into the continued public ownership of Snowy Hydro Limited, the Committee considered submissions made to the inquiry on the proposed sale of Snowy Hydro Limited. Below is a list of submissions made to both inquiries.

### Submissions made to the inquiry into the proposed sale of Snowy Hydro Limited

No	Author
1	Ms Judith Campbell
2	Mr Darren Spoor
3	Mr Bob Allen
4	Mr Rex Beard
5	Mr Lindsay Marks
6	Ms Claudette Rones
7	Mr Lindsay Oates
8	Mrs Rhonda Avasalu
9	Ms Marina Cook
10	Miss Tracy Lee
11	Mr Geoff Parker
12	Mrs Margaret Parker
13	Mr Andrew Snowdon
14	Mrs Jeanine Treharne
15	Mr Ross McMillian
16	Mrs Julie Jordan
17	Mr Ian Somerville
18	Ms Beverley Pavey – National Council of Women
19	Mr Pierre Pesenti
20	Mr/s P Lind
21	Mr John Stimson
22	Ms Helen Wilson
23	Em Professor Lance Endersbee
24	Mrs Dorothy Hammond
25	Mr Keith McFadden
26	Mr Jim Manwaring – National Civic Council NSW
27	Mrs Judy Treloar

<b>No</b>	<b>Author</b>
28	Mr Antony Hall
29	Mr Des Goonan
30	Mr Pat Francis
31	Mrs Sharon Cox
32	Mr John Lamplough
33	Mr Edward Bent
34	Mr Mike Smith
35	Ms Denise Cooper
36	Mr John Cox-Taylor
37	Mr Paul Gage
38	Mrs Thea Pors
39	Mr/s FC Crook
40	Ms Sue Johnston
41	Mrs Coral Talbot
42	Mr Alan Skelton
43	Mrs DM Foster
44	Mr David Poland
45	Dr Susan Britton
46	Mrs Carolyn Green

**Submissions made to the inquiry into the continued public ownership of Snowy Hydro Limited**

<b>No</b>	<b>Author</b>
47	Mr David Williamson
48	Ms Louise Halsey
49	Mr Steve Whan MP – Member for Monaro
50	Mr Bob Brown
51	Mr Keith Montague
52	Mr BJ Sloan
53	Mr David Christie
54	Ms Patricia Stewart
55	Mr Laurie Arthur – President, Ricegrowers' Association of Australia Inc
56	Dr Geoff Mosley
57	Mr FW Heuke
58	Mr Peter Williams
59	Mr Artur Baumhammer

<b>No</b>	<b>Author</b>
60	Mr Peter Tommerup
61	Ms Maggy Massari
62	Mr Clive Dunn
63	Mr HM Talbot
64	Mr Lee Furness – Murrumbidgee Private Irrigators
65	Mr David Star
66	Mr Ian Morse
67	Mr DB Milthorpe
68	Mr Richard Clarke
69	Mr Christopher Adams – General Manager, Tumut Shire Council
70	Ms Anna Aebersold
71	Mr Daryl McDonald – Chair, Murray Valley Water Diverters Advisory Association
72	MS Lee Talyor-Friend
73	Mr Angel John Gallard
74	Mrs PA Sarah Vorchheimer
75	Ms Louise Crisp – Secretary, Gippsland Environment Group
76	Mr Bede Mecham – Secretary, Murrumbidgee Region, Murray Darling Association Inc
77	Mr Gilbert Richardson – Vice Chairperson, Snowy River Alliance
78	Mr Neil Watt – General Manager, Cooma-Monaro Shire Council
79	Mr Ken Lister
80	Mr Ewen MacDonald
81	Ms Leanne Barnes – A/General Manager, Bega Valley Shire Council
82	Mr Craig Ingram MP – Member for Gippsland East, Victorian Parliament
83	Mr Richard Hyett – CEO, Southern Riverina Irrigators
84	Mr Paul Goodsall – General Manager, Murrumbidgee Shire Council
85	Mr Maarten Van Der Stap
86	Mr Matt Linnegar – Corporate Affairs Manager, Murrumbidgee Irrigation Limited
87	Mr Stewart Ellis – Chair, Murray Irrigation Limited
88	Mr Jim Manwaring – National Civic Council of NSW
89	Ms Noni Seagrim
90	Mr Vin Good
91	Mr Doug Miell – Chief Executive, NSW Irrigators' Council
92	Ms Acacia Rose

<b>No</b>	<b>Author</b>
93	Mr Bryan Harper
94	Mr Doug Nicholas
95	Mr Graham Quint – Deputy Conservation Director, The National Trust of Australia (NSW)
96	Ms June Weston – Constitutional Property Rights Association
97	Mr Vivian Straw – General Manager, Snowy River Shire Council
98	Mr Wayne Evans – Snowy Hydro SouthCare Helicopter Fund
99	Mr Henk Van de Ven
100	Mr Don McNaught
101	Mrs Joan Pickeringill
102	Mr Terry Charlton – Managing Director, Snowy Hydro Limited
103	Hon John Della Bosca MLC – Minister for Finance, NSW Government
104	Ms Cate Faehrmann – Director, Nature Conservation Council
105	Ms Coral Talbot
106	Ms Jan Leckström – Chair, Lake Eucumbene Chamber of Commerce
107	Mr Dan Berry - Manager Information and Operations, State Water Corporation
108	Mr Bruce Hovey
109	Mr David Mead

## Appendix 3 Witnesses and the public forum

A total of three public hearings were conducted. Two public hearings were held at Parliament House, Sydney and one hearing was held in Cooma, at the Cooma Ex-Services Club. A list of witnesses is provided below. Transcripts of the hearings are on the Committee's website at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

### Witnesses

Date	Name	Position and Organisation
Wednesday 5 July 2006 Public Hearing, Cooma	Mr Steve Whan MP	Member for Monaro, NSW Legislative Assembly
	Clr Richard Wallace	Mayor, Snowy River Shire Council
	Mr Vivian Straw	General Manager, Snowy River Shire Council
	Clr Roger Norton	Mayor, Cooma-Monaro Shire Council
	Mr Neil Watt	General Manager, Cooma-Monaro Shire Council
	Clr Gene Vanzella	Mayor, Tumut Shire Council
	Mr Max Talbot	Retired Executive Director of Snowy Hydro
	Mr Ian Morse	Civil Engineer
	Mr Alistair Henchman	Director Southern, Department of Environment and Conservation
	Mr Dave Darlington	Regional Manager, Snowy Mountains Region, Department of Environment and Conservation
	Ms Nicole Shotter	Principal Snowy Hydro Liaison Officer, Department of Environment and Conservation
	Mr Gilbert Richardson	Vice Chairperson, Snowy River Alliance
	Mr Max White	Treasurer, Snowy River Alliance
	Mrs Glenice White	Secretary, Snowy River Alliance
Mr Mark Gooden	Chair, Murrumbidgee Region, Murray-Darling Association	
Friday 7 July 2006 Public Hearing	Mr Doug Miell	Chief Executive, NSW Irrigators Council
	Mr Colin Thomson	Director, Western Murray Irrigation Ltd and Chair NSW Irrigators Council

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Richard Thompson	Chair Murrumbidgee Irrigation Ltd
	Mr Malcolm Holm	Director, Murray Irrigation Ltd
	Mr Kim Alvarez	Director, Water Policy and Planning, Department of Natural Resources
	Mr Derek Rutherford	Director of Environmental Water and Riverbank, Department of Environment and Conservation
	Mr Dan Berry	Manager, Information and Operations, State Water Corporation
	Mr Kevin Cosgriff	Deputy Secretary, Resources and Policy, NSW Treasury
	Mr Ben Lathwell	Acting Treasury Technical Officer, NSW Treasury
Thursday 17 August 2006	Dr Peter Dodd	Corporate financial expert
Public Hearing	Mr Terry Charlton	Managing Director, Snowy Hydro Limited
	Mr David Harris	General Counsel, Snowy Hydro Limited
	Mr Stephen Mikkelsen	Chief Financial Officer

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## Public forum participants

The hearing in Cooma was followed by a public forum, which gave community members an opportunity to speak directly to the Committee about their views on the ownership of Snowy Hydro. Below is a list of people who spoke at the public forum. The transcript of the public forum can be found on the Committee's website at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
Wednesday 5 July 2006 Public Forum, Cooma	Mr Vincent Good	Local resident and former Commissioner of Snowy Hydro Scheme
	Mr Norman Kopievski	Local resident and former employee
	Mr Peter Cocker	Local resident and rock climbing guide
	Mr Angel John Gallard (Gara-djarralang)	President Dalgety and District Community Association
	Ms Acacia Rose	Local resident
	Ms Lee Taylor-Friend	Local resident
	Ms Sharon Howes	Local resident and current employee
	Ms Coral Talbot	Local resident
	Ms Margaret Massari	Local resident and current employee
	Mr Richard Clarke	Local resident and current employee
	Ms Vicki Wallace	Local resident
	Ms Jan Leckström	Local resident and Tourist Park owner
	Mr Bruce Hovey	Local resident
	Mr Keith Montague	Local resident and former employee
	Mr Richard Hopkins	Local resident and current employee
	Mr Ian Cooke	Local resident and current employee
	Mr Max Talbot	Retired Executive Director of Snowy Hydro
	Ms Elizabeth Laught	Local resident

## Appendix 4 Water regulations and agreements

There are a number of intergovernmental agreements that relate to water regulation of the Snowy Scheme. The primary instruments for water regulation of the Snowy Scheme, the Snowy Water Licence and the Annual Water Operating Plan (AWOP), were discussed in Chapter 2. Provisions 8.4 to 8.12 of the Snowy Water Licence are included in this appendix. Some of the complementary documents or agreements are outlined briefly below and include:

- Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry
- Snowy Water Inquiry Outcomes Implementation Deed (SWIOID)
- Snowy Compensation Deed
- Snowy Scheme Deed of Indemnity
- Murray Darling Basin Amending Agreement
- Snowy Scheme Long Term Water Arrangements Deed
- Snowy Bilateral Deed
- *Water Management Act 2000*

### ***Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry***

In the lead up to corporatisation, a Snowy Water Inquiry was conducted in 1998 by the NSW and Victorian Governments to develop costed options to address the environmental issues arising from the pattern of water flows caused by the operation of the Snowy Scheme.<sup>302</sup> The Heads of Agreement is the agreement on the outcomes (and the implementation of those outcomes) from this inquiry and includes the NSW, Victorian and Commonwealth Governments.

The agreement commits the Governments to implement specified levels of increased flows in the Snowy River and the Snowy montane rivers and dedicated environmental flows in the River Murray. It also commits NSW and Victoria to provide \$150 million and the Commonwealth to provide \$75 million over ten years to obtain water savings to offset the increased flows.<sup>303</sup>

### ***Snowy Water Inquiry Outcomes Implementation Deed (SWIOID)***

The SWIOID is a legally binding agreement between the shareholding Governments that sets out the environmental flows that were agreed to under the Heads of Agreement.<sup>304</sup> This document sets out the target levels of the flows, timeframes for the levels of flows and works to be carried out to ensure the flows take place. Also covered in this document is the establishment and function of the joint government enterprise to source water savings and the establishment of the Water Consultation and Liaison Committee, which reviews the AWOP prepared by Snowy Hydro. The details of the SWIOID are also reflected in the Snowy Water Licence.<sup>305</sup>

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<sup>302</sup> Submission 103, p23. A copy of the Executive Summary of the Snowy Water Inquiry Report can be viewed at [www.parliament.nsw.gov.au/snowyhydro](http://www.parliament.nsw.gov.au/snowyhydro).

<sup>303</sup> *Heads of Agreement*, pp 2-3

<sup>304</sup> Submission 103, NSW Government, p27

<sup>305</sup> *Snowy Water Inquiry Outcomes Implementation Deed*

***Snowy Compensation Deed***

The compensation deed says that the NSW Government must compensate Snowy Hydro Limited for any changes to the Snowy Water Licence that occur without agreement.<sup>306</sup> This document is not publicly available as it is a commercial document and contains information concerning the business affairs of Snowy Hydro Limited and the shareholder Governments.<sup>307</sup>

***Snowy Scheme Deed of Indemnity***

Under the SWIOID the Governments agreed to indemnify the Licensee (Snowy Hydro Limited) with respect to certain liabilities in relation to the Snowy River Increased Flows (environmental flows). Specifically this deed says that each of the Governments indemnifies the Licensee to the full extent permitted by law and on a full indemnity basis against all liability (including any claim, cost or damage) to any person (other than a subsidiary of the licensee) arising in relation to or in connection with the release by the Licensee of Snowy River Increased Flows.<sup>308</sup> This basically means that Snowy Hydro is not liable or responsible for any damage that the environmental flows may cause.

***Murray Darling Basin Amending Agreement***

The Murray Darling Basin Amending Agreement (MDBAA) binds the Governments of NSW, Victoria, the Commonwealth and South Australia. It safeguards Victoria's share of the water released from the Snowy Scheme by allowing the Murray Darling Basin Commission to reallocate water released into the Murray River from the Snowy Scheme to ensure Victoria's allocation is consistent with the provisions of the SWIOID. The MDBAA also protects South Australia's water entitlement by protecting Victoria's entitlement as South Australia receives water down stream from Victoria. The agreement also enables management of the additional environmental flows for the Murray River arising from the SWIOID.<sup>309</sup>

***Snowy Scheme Long Term Arrangements Deed***

The purpose of the Snowy Scheme Long Term Arrangements Deed is to safeguard the water interests of Victoria and the Commonwealth when the Snowy Water Licence expires 75 years after corporatisation (2077) or if it is revoked earlier. The Long Term Deed recognises the ability of New South Wales to revoke the licence where Snowy Hydro breaches the terms of the licence. NSW Government is bound to a process of negotiation if the licence is revoked as set out under the Long Term Deed.<sup>310</sup>

***Snowy Bilateral Deed***

The Snowy Bilateral Deed provides contractual rights to Victoria against Snowy Hydro in relation to compliance with the licence. The Snowy Bilateral Deed provides a safeguard for Victoria's water rights where New South Wales does not take action to enforce compliance with the licence. This deed also creates an obligation on Snowy Hydro to consult with Victoria in relation to the preparation of the Annual Water Operating Plan.<sup>311</sup>

<sup>306</sup> Mr Kim Alvarez, Director, Water Policy and Planning, Department of Natural Resources, Evidence, 7 July 2006, p27

<sup>307</sup> Answers to questions on notice taken during evidence 7 July 2006, Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, Question 34, p8

<sup>308</sup> *Snowy Scheme Deed of Indemnity*, p1

<sup>309</sup> Submission 103, NSW Government, p27

<sup>310</sup> Submission 103, NSW Government, p27

<sup>311</sup> Submission 103, NSW Government, p28

***Water Management Act 2000***

The object of the *Water Management Act 2000* is to provide for the sustainable and integrated management of the water sources of NSW for the benefit of both present and future generations.<sup>312</sup> Simultaneously, the SWIOID sets out that the NSW Government must ensure that the *Water Management Act 2000* does not permit the Government to act in contravention of the provisions of the SWIOID.<sup>313</sup>

***Provisions 8.4 – 8.12 of the Snowy Water Licence*****8.4 Licensee to Submit Draft Annual Water Operating Plan to Water Consultation and Liaison Committee**

Not later than 27 February each year, the Licensee must submit to the Water Consultation and Liaison Committee its proposed draft Annual Water Operating Plan for the next Water Year.

**8.5 No Dispute with respect to Advice from Water Consultation and Liaison Committee**

Despite any other provision in this Licence, neither the Ministerial Corporation nor the Licensee may refer a dispute with respect to advice given by the Water Consultation and Liaison Committee to an independent expert for determination under clause 13.

**8.6 Licensee to Consider Advice of Water Consultation and Liaison Committee**

The Licensee must in good faith consider the advice (if any) given by the Water Consultation and Liaison Committee with respect to each proposed draft Annual Water Operating Plan.

**8.7 Licensee to Submit Proposed Annual Water Operating Plan to Ministerial Corporation**

The Licensee must, not later than 3 April each year but after:

- (1) considering in good faith the advice (if any) given by the Water Consultation and Liaison Committee; and
- (2) making whatever amendments to the proposed draft Annual Water Operating Plan that it considers appropriate, submit to the Ministerial Corporation its proposed Annual Water Operating Plan for that Water Year.

**8.8 Approval of Annual Water Operating Plan**

Subject to clauses 8.9 and 8.10, within 14 days of receipt from the Licensee of its proposed Annual Water Operating Plan, the Ministerial Corporation must:

- (1) approve the Annual Water Operating Plan; or
- (2) require the Licensee to amend the proposed Annual Water Operating Plan.

**8.9 Basis on Which Ministerial Corporation May Require Amendments to Proposed Annual Water Operating Plan**

The Ministerial Corporation may only require the Licensee to make an amendment to a proposed Annual Water Operating Plan under subclause 8.8(2) if that particular amendment is required to achieve consistency between the provisions of the proposed Annual Water Operating Plan and:

- (1) the Increased Flow Requirements; and
- (2) the Water Release Requirements for that Water Year.

**8.10 No Dispute with Respect to Maximum Probable Annual Water Releases**

Despite any other provision in this Licence, the Ministerial Corporation may not:

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<sup>312</sup> *Water Management Act 2000*, section 3

<sup>313</sup> Submission 103, NSW Government, p28

- (1) require the Licensee to amend the volume of the maximum probable annual water release from each of the Developments for the Water Year set out in a proposed Annual Water Operating Plan submitted by the Licensee under clause 8.4; or
- (2) refer a dispute with respect to either or both of those volumes to an independent expert for determination under clause 13.

#### **8.11 Licensee to Consider Amendments Required by Ministerial Corporation**

If the Ministerial Corporation requires the Licensee to amend its proposed Annual Water Operating Plan under subclause 8.8(2), the Licensee must in good faith and within 14 days of receipt of notice from the Ministerial Corporation requiring the Licensee to amend the proposed Annual Water Operating Plan, consider the Ministerial Corporation's requirements and indicate to the Ministerial Corporation in writing either:

- (1) its agreement to the Ministerial Corporation's proposed amendments (as may be further amended by the Ministerial Corporation) in which case the Annual Water Operating Plan as amended is taken to be approved by the Ministerial Corporation; or
- (2) that it requires some or all of the required amendments to be referred to an independent expert for determination in accordance with clause 13, in which case the Licensee must within that 14 day period give to the Ministerial Corporation a written notice that identifies the amendments to be referred to an independent expert for determination.

#### **8.12 Ministerial Corporation to Approve Annual Water Operating Plan**

If subclause 8.11(2) applies, as soon as practicable after the completion of the expert determination process in accordance with clause 13, the Ministerial Corporation must approve the Annual Water Operating Plan in accordance with the outcome of that expert determination process.<sup>314</sup>

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<sup>314</sup> *Snowy Water Licence*, pp14-16

## Appendix 5 Minutes

### Minutes No 1

Thursday, 8 June 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Room 1043, Parliament House at 10.30am

#### 1. The Clerk of the Parliaments opened the meeting

In accordance with standing order 213 (1), the Clerk of the Parliaments declared the meeting open at 10.30am. The Clerk:

- reported the resolution of the Legislative Council of Wednesday, 7 June 2006 establishing the Committee
- confirmed the membership of the Committee in accordance with the resolution of the Legislative Council of Wednesday, 7 June 2006
- advised the Committee that Stephen Frappell would be Acting Director of the Committee secretariat
- advised that the Committee that the Legislative Council Standing Orders would apply for the duration of the Committee's existence
- invited Revd Moyes to take the Chair.

Revd Moyes took the Chair.

#### 2. Members Present

Revd Gordon Moyes (Chair)

Ms Melinda Pavay (Deputy Chair)

Mr Greg Donnelly

Ms Amanda Fazio

Ms Patricia Forsythe

Ms Sylvia Hale

#### 3. Apologies

Mr Tony Catanzariti

#### 4. Procedural resolutions

Resolved, on the motion of Ms Fazio: That the following procedural resolutions be adopted for the life of the Committee:

##### 1. Sound and television broadcasting

That in accordance with the resolution of the Legislative Council of 11 October 1994, the Committee authorises the sound and television broadcasting, as appropriate, of its public proceedings, unless the Committee decides otherwise.

##### 2. Calling witnesses

That the arrangements for the calling of witnesses and for visits of inspection be left in the hands of the Chair and the Secretariat after consultation with the Committee.

##### 3. Media statements

That media statements on behalf of the Committee be made only by the Chair, if possible after consultation with the Committee.

#### 4. Transcripts of evidence

That, in accordance with section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 223, the Committee authorise the Director to publish the transcript of evidence taken at public hearings, unless the Committee decides otherwise.

#### 5. Committee correspondence

That the Secretariat be empowered to respond to correspondence on behalf of the Committee, where the correspondence concerns routine or administrative matters. In all other cases the Chair must approve replies to correspondence.

#### 6. Statements of dissent

That any member who wishes to append a statement of dissent to a report in accordance with Standing Order 228 must advise the Committee of their intention to do so at the last deliberative meeting considering the report.

### 5. Conduct of the inquiry

#### *Advertising*

The Committee considered the proposed advertising schedule for the inquiry distributed by the Chair.

Resolved, on the motion of Ms Fazio: That:

- the Committee advertise its terms of reference in *The Australian*, *The Sydney Morning Herald*, *The Land* and regional papers in NSW and Victoria as nominated by the secretariat
- the Committee send a written invitation to make a submission to the inquiry to the parties nominated by the secretariat
- the Committee publish a press release advertising the inquiry via Media Monitors
- the inquiry be advertised on the Committee's website
- the closing date for submissions be Monday, 26 June 2006.

#### *Parties making submissions to the inquiry into the proposed sale of Snowy Hydro*

Resolved, on the motion of Ms Forsythe: That the Committee secretariat send a copy of the report into the proposed sale of Snowy Hydro Limited to the parties that made a submission to the inquiry, informing them that their submissions and views will be registered as part of the new inquiry into the continued public ownership of Snowy Hydro Limited, but inviting them to nevertheless lodge a new submission to the inquiry into the continued public ownership of Snowy Hydro Limited if they wish.

#### *Public hearings and site visits*

Resolved, on the motion of Ms Fazio: That the Committee adopt the following schedule of public hearings and site visits:

- 5 July 2006 – Cooma (including a site visit at 8:30 am, followed by a public hearing and public forum)
- 7 July 2006 – Sydney (public hearing).

Resolved, on the motion of Ms Fazio: That the Committee secretariat distribute a proposed hearing program for the hearings in Cooma and Sydney in advance of the hearings, and that Committee members be given 48 hours to comment.

#### *Additional material on the Committee's web site*

Resolved, on the motion of Ms Fazio: That the Committee secretariat write to Snowy Hydro Ltd requesting copies of the following documents:

- The 1998 Snowy Water Inquiry Final Report
- The 2000 NSW and Victorian Government Heads of Agreement on the Snowy Water Inquiry

- The 2002 Snowy Water Inquiry Outcomes Implementation Deed
- The 2002 Snowy Water Licence to the corporatised Snowy Hydro
- The 2002 Murray-Darling Amending Agreement
- The 2002 The Snowy Scheme Long Term Arrangements Deed
- The 2002 The Snowy Bilateral Deed

**6. Adjournment**

The Committee adjourned at 10.45am until a date to be determined.

Stephen Frappell  
Acting Director

**Minutes No 2**

Thursday, 22 June 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Snowy Hydro Limited Sydney Office

Level 25, 6-10 O'Connell St, Sydney at 9.35 am

**1. Members Present**

Revd Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Greg Donnelly  
Ms Patricia Forsythe  
Ms Sylvia Hale

**2. Apologies**

Mr Tony Catanzariti  
Ms Amanda Fazio

**3. Briefing from Snowy Hydro Limited Offices**

The Committee received a briefing on the operation of Snowy Hydro Limited from the following Snowy Hydro officers:

- Mr Terry Charlton, Managing Director and CEO
- Mr David Harris, General Counsel
- Mr Ken Lister, Executive Officer, Production
- Mr Stephen Mikkelsen, Chief Financial Officer

Resolved, on the motion of Ms Hale: That the Committee accept the following documents:

- (confidential)
- Snowy Hydro Limited PowerPoint presentation (confidential)

**4. Adjournment**

The Committee adjourned at 12.45pm until a date to be determined.

Stephen Frappell  
Acting Director



**Minutes No 3**

Wednesday, 5 July 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Snowy Hydro Limited Cooma Offices and Cooma Ex-services Club, Cooma at 8.05 am

**1. Members Present**

Revd Gordon Moyes (Chair)  
 Ms Melinda Pavey (Deputy Chair)  
 Mr Tony Catanzariti  
 Mr Greg Donnelly  
 Ms Amanda Fazio  
 Ms Patricia Forsythe  
 Ms Sylvia Hale

**2. Site visit – Snowy Hydro Limited Cooma Offices**

The Committee visited the Snowy Hydro Education and Information Centre, the Snowy Hydro Control Centre and the Snowy Hydro Cloud Seeding Centre and received briefings from the following officers of Snowy Hydro:

- Mr Terry Charlton, Managing Director and CEO
- Mr David Harris, General Counsel
- Mr Ken Lister, Executive Officer, Production
- Mr Stephen Mickelson, Chief Financial Officer
- Ms Sharon Howes, Executive Officer, Organisational Development, Safety, Environment and Water
- Ms Lori Warren, Meteorologist
- Mr Andrew Nolan, Manager, Water.

The Committee departed the Snowy Hydro Limited Cooma Offices at 10.10 am and arrived at the Cooma Ex-services Club at 10.15 am.

**3. Deliberative meeting – Inquiry into the continued public ownership of Snowy Hydro Ltd**  
***Confirmation of minutes no 1 and 2***

Resolved on the motion of Ms Fazio: That minutes no 1 and 2 be confirmed.

***Correspondence***

The Committee noted the following items of correspondence:

- Letter from Murray Darling Association re submission (received 26 June)
- Email from Acacia Rose re supplementary submission (received 29 June)
- Email from Terry Charlton, CEO Snowy Hydro Limited, re weather conditions and cloud seeding (received 30 June)
- Emails from Acacia Rose re additional background articles (received 30 June)

***Publication of submissions***

Resolved, on the motion of Mr Donnelly: That the Committee publish submissions 1 – 103 and supplementary submissions 18a, 23a, 40a, 40b, 43a, 66a and 96a.

Resolved, on the motion of Mr Donnelly: That the Committee publish submissions 92 and 92a with certain material suppressed following consultation with the submission author.

**4. Public hearing – Inquiry into the continued public ownership of Snowy Hydro Ltd**

The Chair made an opening statement.

The following witness appeared on former oath:

- Mr Steve Whan, Member for Monaro

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Clr Richard Wallace, Mayor, Snowy River Shire Council
- Mr Vivian Straw, General Manager, Snowy River Shire Council
- Clr Roger Norton, Mayor, Cooma-Monaro Shire Council
- Mr Neil Watt, General Manager, Cooma-Monaro Shire Council
- Clr Gene Vanzella, Mayor, Tumut Shire Council

Mr Vanzella provided a supplementary submission (submission 69a).

The evidence was concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Max Talbot, retired Snowy Hydro Executive Director
- Mr Ian Morse, Engineer

Mr Talbot provided a supplementary submission (submission 63a).

The evidence was concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Alistair Henschman, Director, Southern, DEC
- Mr Dave Darlington, Regional Manager, Snowy Mountain Region, DEC
- Ms Nicole Shoter, Principal Snowy Hydro Liaison Officer, DEC

The evidence was concluded and the witnesses withdrew.

The Committee adjourned at 1.00 pm. Witnesses, the media and the public withdrew.

The Committee resumed at 2.00 pm.

The following witnesses were sworn and examined:

- Mr Gilbert Richardson, Vice Chairperson, Snowy River Alliance
- Mr Max White, Treasurer, Snowy River Alliance
- Ms Glenice White, Assistant Secretary, Snowy River Alliance

Mr White tabled the following document:

- Environment Australia, 'Environmental Assessment: Report on the Proposed Corporatisation of the Snowy Mountains Hydro-electric Authority', October 2000

The evidence was concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Mark Gooden, Chairman, Murrumbidgee Region, Murray Darling Association

The evidence was concluded and the witness withdrew.

## **5. Public forum – Inquiry into the continued public ownership of Snowy Hydro Limited**

The following witness was sworn and examined:

- Mr Vincent Good, former Commissioner, Snowy Mountains Hydro-electric Authority

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Norm Kopievski, ex Snowy Hydro Limited employee

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Peter Cocker, rock-climbing guide in the Snowy Mountains

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Angel John Gallard, President, Dalgety District Community Association

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Acacia Rose

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Lee Taylor Friend

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Sharon Howes, current employee, Snowy Hydro Limited

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mrs Carol Talbot

Mrs Talbot provided a submission (submission 105)

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Maggy Massari, current employee, Snowy Hydro Limited

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Richard Clarke, civil engineer

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Vicki Wallace, Vice President, Dalgety District Community Association

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Jan Leckstrom, Owner, Alpine Tourist Park

Ms Leckstrom provided a submission (submission 106).

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Bruce Hovey, retired

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Keith Montague, former employee, Snowy Mountains Hydro Electric Authority

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Richard Hopkins, engineer

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Ian Cooke, current employee, Snowy Hydro Limited

The evidence was concluded and the witness withdrew.

The following witness appeared on former oath:

- Mr Max Talbot, retired Snowy Hydro Executive Director

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Elizabeth Laught

The evidence was concluded and the witness withdrew.

Witnesses, the media and the public withdrew.

## **6. Deliberative meeting – Inquiry into the continued public ownership of Snowy Hydro Ltd**

### ***Publication of submissions***

Resolved, on the motion of Ms Fazio: That the Committee publish submissions 63a, 69a, 105 and 106.

### ***Tabled document***

Resolved on motion of Ms Fazio: That the Committee accept and publish the document tabled by Mr White during the public hearing.

## **7. Adjournment**

The Committee adjourned at 5:35 pm until the public hearing in Sydney at 9.30 am on Friday, 7 July 2006.

Stephen Frappell  
Acting Director

## **Minutes No 4**

Friday, 7 July 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Room 814/815, Parliament House at 9.25 am

### **1. Members Present**

Revd Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Tony Catanzariti  
Mr Greg Donnelly  
Ms Amanda Fazio  
Ms Patricia Forsythe  
Ms Sylvia Hale

### **2. Deliberative meeting – Inquiry into the continued public ownership of Snowy Hydro Ltd**

Ms Pavey took the Chair.

***Confirmation of minutes no 3***

Resolved on the motion of Mr Donnelly: That minutes no 3 be confirmed.

***Publication of submissions***

Resolved, on the motion of Mr Donnelly: That the Committee publish submissions 92, 92a, 104 and 107.

***Correspondence***

The Committee noted the following items of correspondence:

- Email from Acacia Rose re questions from the forum (received 6 July 2006)
- Email from Acacia Rose re Snowy Hydro Share Offer (received 6 July 2006)
- Email from Acacia Rose re Edison International (received 6 July 2006)
- Letter from Maggy Massari forwarding the letter from 71 Snowy Hydro employees to Cooma Council of 4 July 2006 (received 6 July 2006)
- Email from Acacia Rose re edited submission (received 7 July 2006)

**3. Public hearing – Inquiry into the continued public ownership of Snowy Hydro Ltd**

Revd Moyes took the Chair.

The Chair made an opening statement.

The following witnesses were sworn and examined:

- Mr Doug Miell, Chief Executive, NSW Irrigators Council
- Mr Colin Thomson, Director, Western Murray Irrigation Ltd and Chair, NSW Irrigators Council
- Mr Dick Thompson, Chairman, Murrumbidgee Irrigation Ltd
- Mr Malcolm Holm, Director, Murray Irrigation Ltd

The evidence was concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Kim Alvarez, Director, Regional Water Reform and Innovation, Department of Natural Resources
- Mr Derek Rutherford, Director, River Bank, Department of Environment and Conservation

The evidence was concluded and the witnesses withdrew.

The Committee adjourned at 1.20 pm. Witnesses, the media and the public withdrew.

The Committee resumed at 2.20 pm.

The following witness was sworn and examined:

- Mr Dan Berry, Manager, Information and Operations, State Water

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury
- Mr Ben Lathwell, Acting Treasury Technical Officer, NSW Treasury

The evidence was concluded and the witnesses withdrew.

Witnesses, the media and the public withdrew.

**4. Deliberative meeting – Inquiry into the continued public ownership of Snowy Hydro Ltd*****Next meeting of the Committee***

Resolved on the motion of Ms Forsythe: That the Committee hold a further public hearing in Sydney on the morning of Thursday, 17 August 2006 at which representatives of Snowy Hydro Limited and a financial expert on the financial options facing Snowy Hydro (if available) be invited to attend.

Resolved on the motion of Ms Fazio: That Members may lodge any supplementary questions on notice arising out of the hearing of 7 July 2006 with the secretariat by 5.00 pm on Friday, 14 July 2006.

**5. Adjournment**

The Committee adjourned at 4.10 pm until Thursday, 17 August 2006.

Stephen Frappell  
Acting Director

**Minutes No 5**

Thursday, 17 August 2006

Select Committee on the continued public ownership of Snowy Hydro Limited  
Room 814/815, Parliament House at 9.00 am

**1. Members Present**

Revd Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Tony Catanzariti  
Mr Greg Donnelly  
Ms Amanda Fazio  
Ms Patricia Forsythe  
Ms Sylvia Hale

**2. Public hearing – Inquiry into the continued public ownership of Snowy Hydro Ltd**

The Chair made an opening statement.

The following witness was sworn and examined:

- Dr Peter Dodd, Financial expert

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Terry Charlton, Managing Director and CEO, Snowy Hydro Limited
- Mr David Harris, General Counsel, Snowy Hydro Limited
- Mr Stephen Mikkelsen, Chief Financial Officer, Snowy Hydro Limited

The evidence was concluded and the witnesses withdrew.

Witnesses, the media and the public withdrew.

**3. Deliberative meeting – Inquiry into the continued public ownership of Snowy Hydro Ltd**  
***Confirmation of minutes no 4***

Resolved on the motion of Ms Fazio: That minutes no 4 be confirmed.

***Publication of submissions***

Resolved, on the motion of Mr Donnelly: That the Committee publish submissions 29a, 63b, 72a, 73a, 73b, 77a, 92b, 92c, 102a, 105a, 108 and 109.

***Correspondence***

The Committee noted the following items of correspondence:

**Received:**

- Letter from Peter Tommerup regarding the public forum (received 18 July)
- Letter from Philip Reed, A/Secretary for Minister for Environment (Victoria) advising they are not making a submission to the inquiry (received 24 July)
- Email from Acacia Rose regarding media comments made by Committee members (received 31 July)
- Email from Max Talbot regarding media comments made by Committee members (received 1 August)
- Email from Ben Lathwell, NSW Treasury, advising that the response to questions on notice will be submitted by 10 August (received 1 August)
- Response to questions taken on notice at hearing on 7 July 2006 from Derek Rutherford, Department of Environment and Conservation (received 2 August)
- Letter from Ellie Lucas, Manager, Parliament and Correspondence Cabinet Secretariat, Victorian Government, regarding the Snowy Hydro Corporatisation (Parliamentary Approval) Bill (received 9 August)
- Response to additional questions on notice from Kevin Cosgriff, NSW Treasury on behalf of NSW Government (received 11 August).
- Response to questions taken notice at the hearing on 7 July 2006 form Kevin Cosgriff, NSW Treasury (received 15 August).

**Sent:**

- Letter to Hon Ian MacDonald MLC, Minister for Natural Resources, from Chair, advising of departmental representatives to appear at public hearing on 7 July 2006 (dated 3 July).
- Letter to Hon Bob Debus MP, Minister for the Environment, from Chair, advising of departmental representatives to appear at public hearing on 7 July 2006 (dated 3 July).
- Letter to Hon Michael Costa MLC, Treasurer, from Chair, advising of departmental representatives to appear at public hearing on 7 July 2006 (dated 3 July).
- Letter to Kevin Cosgriff, Deputy Secretary, Resources and Policy, from Director, requesting a whole of government response to additional questions on notice (dated 20 July).

***Questions on notice***

Resolved on the motion of Ms Forsythe: That the Committee publish responses to questions taken on notice received from:

- NSW Treasury (on behalf of NSW Government)
- Department of Environment and Conservation

Resolved on the motion of Ms Forsythe: That, once received and after circulation to the Committee, the Committee publish the response to outstanding questions on notice from NSW Treasury.

***Future conduct of the inquiry***

Resolved on the motion of Ms Forsythe: That the Committee write to the Premier, Treasurer and Minister for Finance seeking information regarding issues concerning the recapitalisation of Snowy Hydro Limited, and that members submit questions for inclusion in this correspondence to the secretariat by Thursday 24 August 2006, 5 pm.

**4. Adjournment**

The Committee adjourned at 12.20 pm until 10.00am Monday 16 October 2006, Room 1108, Parliament House (report deliberative meeting).

Rebecca Main  
A/Principal Council Officer

### **Minutes No 6**

Monday, 16 October 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Room 1108, Parliament House at 2.30 pm

#### **1. Members Present**

Rev Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Tony Catanzariti  
Mr Greg Donnelly  
Ms Amanda Fazio  
Ms Sylvia Hale

#### **2. New Committee Member**

The Committee noted that the Hon Charlie Lynn MLC was appointed by the House to replace Mrs Forsythe (Minutes of Proceedings No 15, 20 September 2006, Items 3)

#### **3. Confirmation of Minutes**

Resolved on the motion of Ms Fazio: That minutes no 5 be confirmed.

#### **4. Publication of submissions**

Resolved, on the motion of Ms Fazio: That the Committee publish submission 102b.

#### **5. Correspondence**

The Committee noted the following items of correspondence:

##### ***Received:***

- Letter from Mr Kevin Cosgriff, Deputy Secretary, Resources and Policy, NSW Treasury, providing responses to questions taken on notice at the 7 July 2006 hearing (received 25 August 2006 – previously circulated).
- Letter from Mr David Harris, General Counsel, Snowy Hydro Limited, providing responses to questions taken on notice at the 17 August 2006 hearing (received 15 September 2006 – previously circulated).
- Letter from the Hon John Della Bosca MLC, Minister for Finance, regarding the option of recapitalisation for Snowy Hydro Limited (received 27 September 2006 – previously circulated)

##### ***Sent:***

- Letters to Premier, Treasurer and Minister for Finance, from Chair, regarding the option of recapitalisation for Snowy Hydro Limited (sent 29 August 2006 – attached)

Resolved, on the motion of Mr Donnelly: That the Committee publish the following correspondence:

- Letter from Mr David Harris, General Counsel, Snowy Hydro Limited, providing responses to questions taken on notice at the 17 August 2006 hearing.
- Letter from the Hon John Della Bosca MLC, Minister for Finance, regarding the option of recapitalisation for Snowy Hydro Limited.

#### **6. Consideration of Chair's draft report**

The Chair submitted his draft report which, having been previously circulated to Committee Members, was accepted as having been read a first time.

The Committee proceeded to consider the Chair's draft report in detail.



Chapter 1 read.

Resolved, on the motion of Ms Fazio: That paragraph 1.2 be amended by omitting 'examined' and inserting instead 'was to examine'.

Resolved, on the motion of Ms Hale: That the following sentences be added to paragraph 1.15 'Chapters 1 to 3 examine the operations of Snowy Hydro in the context of current and on-going public ownership. Chapters 4 and 5 examine the corporation's future.'

Resolved, on the motion of Ms Fazio: That Chapter 1, as amended, be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Donnelly: That paragraph 2.13 be amended by omitting 'River Murray and Murrumbidgee River' and inserting instead 'Murray and Murrumbidgee Rivers', and any other instance where the words appear.

Resolved, on the motion of Ms Hale: That paragraph 2.13 be amended by adding 'The Committee notes, however, that Lake Eucumbene, the principal storage, has considerable opportunity to store Above Target Water to be released at Snowy Hydro's discretion at a time most beneficial to Snowy Hydro.'

Ms Hale moved: That paragraph 2.21 be amended by adding the words 'The Committee notes a former Commissioner of the Snowy Hydro Scheme, Mr Vin Good and a retired Executive Director of Snowy Hydro, Mr Max Talbot, have indicated that in their opinion there was an over-estimation of maintenance costs.'

Question put.

Committee divided.

Ayes: Ms Hale, Ms Pavey

Noes: Ms Fazio, Mr Catanzariti, Mr Donnelly, Rev Moyes

Question resolved in the negative.

Resolved, on the motion of Ms Hale: That paragraph 2.36 be amended by adding 'The Snowy Compensation Deed is not publicly available because it is a "commercial in confidence deed between the shareholders and the company" with the footnote reference 'Mr Ben Lathwell, NSW Treasury, Evidence, 7 July 2006'.

Ms Hale moved: That paragraph 2.36 be amended by adding 'The question of when and how much compensation would be payable were Above Target Water releases required was a concern raised during the Inquiry.'

Question put.

Committee divided.

Ayes: Ms Hale, Ms Pavey, Rev Moyes

Noes: Ms Fazio, Mr Catanzariti, Mr Donnelly

Question resolved in the affirmative on the casting vote of the Chair.

Ms Hale moved: That paragraph 2.37 be amended by adding ‘the length of the licence, in the context of ongoing uncertainty about the impacts of drought and climate change was an issue raised throughout the inquiry.’

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 2.39 be amended by:

- omitting ‘neither’ and inserting instead ‘does not’
- omitting ‘nor controls’
- omitting ‘This fact was reiterated by’
- adding ‘However, Snowy Hydro does control the Above Target Water.’

Ms Hale moved: That paragraph 2.41 be amended by omitting ‘directors of the company may face a term of two years imprisonment.’

Question put and negatived.

Ms Hale moved: That paragraph 2.41 be amended by adding ‘the likelihood of incurring the maximum penalties imposed by the Act could be considered slight, and would be subject to Snowy Hydro failing to make the required annual release twice in any ten-year period.’

Question put and negatived.

Ms Hale moved: That paragraph 2.45 be amended by omitting all words after ‘SWIROID’ and inserting instead ‘While preparing the AWOP Snowy Hydro must consider WCLC comments in good faith but is not obliged to incorporate those comments. Likewise, the DNR must approve the plan unless it contravenes a licence condition.’ with the footnote reference ‘Sections 8.4-8.9, Snowy Water Licence; Submission 63 and 63b, Mr Max Talbot’.

Ms Hale moved: That paragraph 2.46 be amended by adding ‘There was some dispute regarding the meaning of the relevant licence provisions (refer to appendix)’ and that the provisions of 8.4 - 8.12 of the Snowy Water Licence be incorporated into the report as an appendix.

The Committee agreed to defer consideration of paragraphs 2.45 and 2.46.

Ms Hale moved: That paragraph 2.52 be amended by adding the words ‘In the absence of water savings, compensation would be made to Snowy Hydro.’

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 2.60 be amended by adding ‘There was a perception that this arrangement was a permanent one.’

Ms Hale moved: That paragraph 2.60 be amended by adding ‘The consequent re-diversion of water resulted in considerable public disquiet.’

Question put.

The Committee divided.

Ayes: Rev Moyes, Ms Pavey, Ms Hale

Noes: Ms Fazio, Mr Cantanzariti, Mr Donnelly

Question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Ms Hale: That paragraph 2.67 be amended by omitting the first sentence and inserting instead 'The timing of release of water from the Snowy Scheme is determined by Snowy Hydro. Once released into the Blowering or Hume Dam, it is regulated by the Department of Natural Resources.'

Resolved, on the motion of Ms Hale: That paragraph 2.68 be amended by:

- omitting the first sentence
- omitting the first three words of the second sentence.

Resolved, on the motion of Mr Donnelly: That paragraph 2.69 be amended by omitting 'far more extensive' and inserting instead 'an enhanced'.

Resolved on the motion of Ms Hale: That paragraph 2.69 be amended by omitting 'There is no evidence to suggest that this framework would be weakened if the ownership status changed.'

Ms Hale moved: That paragraphs 2.70 to 2.73 be moved to Chapter 4.

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 2.70 be amended by omitting 'milestone' and inserting instead 'event'.

Chapter 3 read.

Resolved, on the motion of Ms Fazio: That Chapter 3 be adopted.

Chapter 4 read.

Ms Fazio moved: That the introducing paragraph be amended by inserting 'local' before community on the last line.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 4.4 be amended by inserting 'local' before 'community' in the first line and by omitting 'the local community' and inserting 'them'.

Ms Hale moved: That paragraph 4.11 be amended by:

- omitting 'retired engineer' and inserting instead 'civil engineer'
- omitting 'would' on the second line and inserting instead 'could'
- omitting 'to buy back this control once the water licence had expired' and inserting instead 'to buy back this control prior to the water licence expiring'.

The Committee agreed to defer consideration of paragraph 4.11.

Resolved, on the motion of Ms Hale: That paragraph 4.13 be amended by deleting 'or control' from the second sentence.

Ms Hale moved: That the paragraph 4.17 be amended by inserting the following sentence 'A view was expressed, however, that neither the Licence nor the Act were adequate to protect the water resource and public interest were the corporation privatised'.

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 4.26 be amended by omitting 'key'.

Ms Fazio moved: That Recommendation 2 be omitted and inserting instead 'That the NSW Government liaise with the Commonwealth on appropriate recognition of the assets of the Snowy Scheme that have heritage values'.

Ms Hale moved: That the question be amended by inserting Ms Fazio's new Recommendation 2 as an addendum to the original Recommendation 2.

Question: That the amendment of Ms Hale be agreed to.

Committee divided.

Ayes: Ms Hale, Ms Pavey, Rev Moyes

Noes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Question resolved in the affirmative on the casting vote of the Chair.

The amendment of Ms Fazio was therefore not in order.

Resolved, on the motion of Ms Hale: That paragraph 4.28 be amended by omitting 'is' and inserting instead 'were' in the first sentence.

Resolved, on the motion of Ms Hale: That paragraph 4.29 be amended by omitting 'a retired Snowy Scheme Executive Manager' and inserting instead 'a former Commissioner of the Snowy Mountains Hydro Electric Authority'.

Ms Hale moved: That paragraph 4.32 be amended by inserting 'a majority of' at the beginning of the first sentence.

Question put and negatived.

Ms Hale moved: That paragraph 4.32 be amended by omitting 'without injection of significant capital' and inserting instead 'should they be redirected towards reinvestment in the Snowy Hydro'.

Question put and negatived.

Ms Hale moved: That paragraph 4.35 be amended by adding 'had' before 'sold'.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 4.38 be amended by omitting 'in particular the NSW Government'.

Ms Fazio moved: That paragraph 4.38 be amended by adding the following 'It was evident from what was said that a concerted campaign of misinformation had occurred during the proposed sale process. Some of these comments are outlined below.'

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Noes: Ms Hale, Ms Pavey, Rev Moyes

Question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Ms Fazio: That paragraph 4.38 be amended by omitting 'poor' from the subheading.

Ms Fazio moved: That paragraph 4.39 be omitted and inserting instead 'A significant issue that was raised with the Committee, and became apparent during its visit to Cooma, was that inquiry participants indicated that they felt the community was not kept informed about the development of the proposed sale process and how it would impact on the operations of the Snowy Scheme.'

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Donnelly, Mr Catanzariti, Rev Moyes

Noes: Ms Hale, Ms Pavey

Question resolved in the affirmative.

Resolved, on the motion of Ms Hale: That paragraph 4.43 be amended by inserting 'employee of Snowy Hydro' after 'Mr Richard Clarke'.

Resolved, on the motion of Ms Fazio: That paragraph 4.43 be moved to above existing paragraph 4.40.

Ms Fazio moved: That paragraph 4.48 be amended by deleting the last sentence and the quote from Councillor Norton.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Noes: Ms Hale, Ms Pavey, Rev Moyes

Question resolved in the negative on the casting vote of the Chair.

Ms Hale moved: That paragraph 4.49 be amended by omitting 'opposition to the sale would have been reduced' and inserting instead 'debate would have been better informed'.

Question put.

Committee divided.

Ayes: Ms Hale, Ms Pavey, Rev Moyes

Noes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Ms Fazio: That the second sentence of paragraph 4.49 be omitted and inserting instead 'The Committee believes that if the community had been more receptive to the information from the Governments about the rationale for selling Snowy Hydro and the negligible impact

of the sale on the control of water for irrigation and environmental flows, debate would have been better informed.’

Ms Hale moved: That a new paragraph be inserted after paragraph 4.49 to read ‘The Committee notes that compensation could be payable to Snowy Hydro under the compensation deed if the water licence were to be amended within the next 70+ years. The failure by the Government or Snowy Hydro to address this issue did not contribute to public understanding of the implications of the proposed privatisation of Snowy Hydro.’

Question put.

Committee divided.

Ayes: Ms Hale, Ms Pavey, Rev Moyes

Noes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Question resolved in the affirmative on the casting vote of the Chair.

Ms Hale moved: That paragraph 4.58 be amended by deleting the last sentence.

Question put and negated.

Resolved, on the motion of Ms Hale: That paragraph 4.60 be amended by omitting ‘repeated’ and ‘exemplary’.

Ms Fazio moved: That paragraph 4.69 be omitted and inserting instead ‘One of the key concerns highlighted by inquiry participants was the level of communication by the shareholding Governments during the proposed sale of Snowy Hydro. The Committee accepts that there were some restrictions on the ability of Snowy Hydro to discuss aspects of the sale during the IPO. The Committee also notes that some people may never have supported the sale of Snowy Hydro no matter how much information they were provided with especially in relation to the safeguarding of water access and the need for Snowy Hydro to access significant capital to ensure its future viability.’

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Noes: Ms Hale, Ms Pavey, Rev Moyes

Question resolved in the negative on the casting vote of the Chair.

Ms Hale moved: That paragraph 4.69 be amended by deleting the last three sentences.

Question put and negated.

The Committee resumed discussion of previously deferred motion regarding paragraph 4.11.

Resolved on the motion of Ms Hale: That paragraph 4.11 be amended by:

- omitting ‘retired engineer’ and inserting instead ‘civil engineer’
- omitting ‘would’ on the second line and inserting instead ‘could’
- omitting ‘to buy back this control once the water licence had expired’ and inserting instead ‘to buy back this control prior to the water licence expiring’.

Resolved, on the motion of Ms Pavey: That Chapter 4, as amended, be adopted.

On the question being put, Ms Hale, being the only member voting for the Noes, asked for her vote to be recorded in the minutes.

The Committee resumed discussion of previously deferred motions regarding paragraphs 2.45 and 2.46.

Ms Hale moved: That paragraph 2.45 be amended by omitting all words after ‘SWIOLD’ and inserting instead ‘While preparing the AWOP Snowy Hydro must consider WCLC comments in good faith but is not obliged to incorporate those comment. Likewise, the DNR must approve the plan unless it contravenes a licence condition.’ with the footnote reference ‘Sections 8.4-8.9, Snowy Water Licence; Submission 63 and 63b, Mr Max Talbot’.

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 2.46 be amended by adding ‘There was some dispute regarding the meaning of the relevant licence provisions (refer to appendix)’ and that the provisions of 8.4 - 8.12 of the Snowy Water Licence be incorporated into the report as an appendix.

Resolved, on the motion of Ms Fazio: That Chapter 2, as amended, be adopted.

Chapter 5 read.

Ms Hale moved: That introduction paragraph be amended by deleting the second sentence.

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 5.13 be amended by omitting ‘a retired Snowy Scheme Executive Manager’ and inserting instead ‘a former Commissioner of the Snowy Mountains Hydro Electric Authority’.

Ms Hale moved: That paragraph 5.14 be amended by adding ‘Snowy Hydro’s ability to offer price risk hedging is a function of the nature of its hydro assets and its level of control of the Snowy Scheme’s water resource. As the market grows these products may be more sought after and profitability may increase rather than decline. One of the purposes of building gas turbine plants is for mitigating its transmission risk rather than purely being aimed at enhancing its trading activities.’

Question put.

Committee divided.

Ayes: Ms Hale, Ms Pavey, Rev Moyes

Noes: Ms Fazio, Mr Donnelly, Mr Catanzariti

Question resolved in the affirmative on the casting vote of the Chair.

Ms Hale moved: That paragraph 5.17 be amended by omitting ‘relevance’ and adding the sentence ‘Snowy Hydro’s fast acting hydro plant, its peak generation capacity, and its peak risk hedging products may be sufficient to ensure that its profitability will not decline although its market share might’.

Question put and negatived.

Ms Hale moved: That paragraphs 5.23 to 5.26 be amended by removing reference to the equity value of the business.

Question put and negatived.

**7. Adjournment**

The Committee adjourned at 5.30 pm until 1.15pm Tuesday 17 October 2006, Parkes Room, Parliament House (continue report deliberative meeting).

Rebecca Main  
A/Principal Council Officer

**Minutes No 7**

Tuesday, 17 October 2006

Select Committee on the continued public ownership of Snowy Hydro Limited  
Parkes Room, Parliament House at 1.15pm

**1. Members Present**

Rev Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Tony Catanzariti  
Mr Greg Donnelly  
Ms Amanda Fazio  
Ms Sylvia Hale  
Mr Charlie Lynn

**2. Consideration of Chair's draft report (continued)**

The Committee continued to consider the draft report in detail.

Ms Hale moved: That paragraph 5.18 be amended by inserting a final sentence 'The relevance or viability of each of these strategies has been substantially altered by the decision of the three Governments not to proceed with the sale and declining to provide additional capital to Snowy Hydro.'

Question put.

Committee divided.

Ayes: Ms Hale, Mr Lynn, Ms Pavey  
Noes: Mr Catanzariti, Mr Donnelly, Ms Fazio, Rev Moyes

Question resolved in the negative.

Ms Hale moved: That paragraph 5.25 be amended by inserting, at the beginning of the second sentence 'Snowy Hydro argues that in order'

Question put.

Committee divided.

Ayes: Ms Hale, Mr Lynn, Ms Pavey  
Noes: Mr Catanzariti, Mr Donnelly, Ms Fazio, Rev Moyes

Question resolved in the negative.



Ms Hale moved: That paragraph 5.28 be amended by omitting 'are viable for' and inserting instead 'acceptable'.

Question put.

Committee divided.

Ayes: Ms Hale, Mr Lynn, Ms Pavey, Rev Moyes

Noes: Mr Catanzariti, Mr Donnelly, Ms Fazio

Question resolved in the affirmative.

Ms Hale moved: That paragraph 5.28 be amended by omitting 'outside of the State.'

Question put and negated.

Ms Hale moved: That paragraph 5.35 be omitted and inserting instead 'The Committee recognises that the risk manager strategy is currently the only option available to Snowy Hydro, given that its sale is not proceeding and the shareholders are reluctant to provide additional capital. The Committee notes that the diversion of dividends from shareholders to energy infrastructure investment will provide the company with an additional \$110 million per year. To this figure must be added \$40 million p.a. for depreciation and \$40 million from retained profits. Thus a minimum of \$190 million could be available each year for reinvestment. In this context it is worth noting that the cost of an additional gas peaking plant is in the vicinity of \$200 million.'

As is common in the business community, vendor finance is another option that is open to Snowy Hydro to explore.

The Committee notes that dividend policy is determined by the Board of Snowy Hydro, and not by its shareholders, and that the Board is bound by corporations law to act in the best interests of the company.'

Question put and negated.

Ms Hale moved: That paragraph 5.36 be omitted and insert instead 'The Committee notes that it is inappropriate for government to actively promote proposals that encourage further concentration of ownership of energy resources, and is contrary to ACCC guidelines.'

If Snowy Hydro is suffering from the vertical integration of its competitors and the formation of alliances between electricity generators and retailers, the Committee believes the appropriate course for the company is not to emulate the vertical integration of its competitors but to seek the assistance of the ACCC to bring about a more competitive market.'

Question put and negated.

Ms Hale moved: That paragraph 5.38 be amended by omitting the last two sentences and inserting 'Although government shareholders would initially receive reduced dividends, these can be expected to increase as a result of substantial reinvestment in additional infrastructure.'

Question put and negated.

Ms Hale moved: That paragraph 5.50 be amended by inserting 'The Committee notes, however, that there is no obstacle to the payment of reduced dividends should the Board so decide.' at the end of the paragraph.

Question put and negatived.

Resolved, on the motion of Ms Hale: That paragraph 5.53 be amended by omitting 'A key point suggested by' and inserting instead the words 'The argument put by'.

Ms Hale moved: That new paragraphs be inserted before the existing 5.69 'The Committee notes that the suggestion the trading business be sold and the Scheme's assets be leased to the purchaser was not discussed, other than in passing, by the Committee. It notes, however, that there would be major difficulties with such a proposal, namely:

- The electricity generating capacity of Snowy Hydro is inextricably linked with water releases, and that generating capacity must be available to meet annual water release requirements
- Such releases must occur within the context of plant maintenance and unforeseen plant breakdowns
- The electricity company would have no value if it did not have the right to collect and store all water falling in the catchment, to generate electricity when the market requires, as well as protection against any governmental amendment to the Water Licence
- To separate the electricity trading business from the infrastructure and its operation would involve shareholder governments:
- Establishing yet another bureaucracy to own and manage the assets of the Snowy Scheme and to monitor the leasing arrangements
- The passing to the electricity trading company of the Water Licence, the Snowy Compensation Deed and other relevant agreements.
- The Committee also notes that:
- The net result of this exercise would leave the private company in the same position as SHL currently is in relation to its rights to control water prior to electricity generation, including above target water, and its right to compensation should Governments amend the Water Licence
- Any business that requires a government guarantee is ultimately based upon the premise that the government will bear the risk
- If the electricity-generator were to indulge in hedge contracts that it was unable to meet (whether through unwise risk assessments or lack of control over operating equipment) then the ultimate costs would be borne by the Government (which would bear the risk but reap none of the benefits of privatisation)
- The Government would be responsible for the assets, and enjoy only a lease income of the same order of magnitude as the current dividend
- The Government would incur a liability to pay substantial compensation to a private company rather than to itself, when/if the necessity arises to release above-target water or to amend the Water Licence at some time over the next 72 years.'

Question put and negatived.

Ms Hale moved: That paragraph 5.69 be amended by adding the following quote of Mr Ben Lathwell from page 61 of the transcript for the hearing on 7 July 2006: 'But given the eight years it took to corporatise the company and seven years to set up a set of the regulatory arrangements for water and park and the operation of the scheme, then a lease of the assets, you might even see a need to replicate those again to reflect that you have an owner of the trading functions so they would be saying when to release water and all those sort of timings. You would have the Snowy Scheme owned by the Government saying that is fine, you can tell us to release water now, but we still have to meet our obligations under the licence to the irrigators and we still have to meet our environmental flows.'

Question put.

The Committee divided.

Ayes: Ms Hale, Mr Lynn, Ms Pavey, Rev Moyes  
Noes: Mr Catanzariti, Mr Donnelly, Ms Fazio

Question resolved in the affirmative.

Resolved on the motion of Mr Donnelly: That the second sentence in paragraph 5.70 include a definition of recapitalisation, with a footnote.

Ms Fazio moved: That paragraph 5.80 be amended by omitting the last sentence.

Question put.

Committee divided.

Ayes: Mr Catanzariti, Mr Donnelly, Ms Fazio  
Noes: Ms Hale, Mr Lynn, Ms Pavey, Rev Moyes

Question resolved in the negative.

Ms Fazio moved: That paragraphs 5.84 - 5.87 and Recommendation 3 be omitted inserting instead the following recommendation 'The Committee recommends that the NSW Government pursue the position jointly taken with the Victorian Government that the Commonwealth buy out Snowy Hydro Limited and guarantee existing water entitlements.'

Ms Hale moved: That the question be amended by omitting 'buy out' and inserting instead 'acquire' and inserting 'and the corporations retention in public ownership.' at the end of the recommendation.

Question: That the amendment of Ms Hale be agreed to.

Committee divided.

Ayes: Mr Catanzariti, Mr Donnelly, Ms Fazio, Ms Hale, Rev Moyes  
Noes: Mr Lynn, Ms Pavey

Amendment resolved in the affirmative.

Original question, as amended, put.

Committee divided.

Ayes: Mr Catanzariti, Mr Donnelly, Ms Fazio, Ms Hale, Rev Moyes  
Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

### **3. Adjournment**

The Committee adjourned at 2.20 pm until 6.30pm Wednesday 18 October 2006, Members Lounge, Parliament House (continue report deliberative meeting).

Glenda Baker  
A/Senior Council Officer

**Draft Minutes No 8**

Wednesday, 18 October 2006

Select Committee on the continued public ownership of Snowy Hydro Limited

Members Lounge, Parliament House at 6.30pm

**1. Members Present**

Rev Gordon Moyes (Chair)  
Ms Melinda Pavey (Deputy Chair)  
Mr Tony Catanzariti  
Mr Greg Donnelly  
Ms Amanda Fazio  
Ms Sylvia Hale  
Mr Charlie Lynn

**2. Confirmation of Minutes No 6 and 7**

Resolved, on the motion of Ms Fazio: That Minutes No 6, as amended, be confirmed.

Resolved, on the motion of Mr Donnelly: That Minutes No 7, as amended, be confirmed.

**3. Consideration of Chair's draft report (continued)**

The Committee continued to consider the draft report in detail.

Resolved, on the motion of Ms Donnelly: That Chapter 5, as amended, be adopted.

Executive Summary read.

Ms Hale moved: That the second paragraph under the Chapter 2 heading be amended by omitting 'including imprisonment for company directors'.

Question put and negatived.

Ms Hale moved: That the last paragraph under the Chapter 4 heading be amended by omitting 'no matter how much information they were provided'.

Question put.

Committee divided.

Ayes: Ms Hale, Mr Lynn, Ms Pavey

Noes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes

Question resolved in the negative.

Mr Cantazariti moved: That the fourth paragraph under the Chapter 5 heading be amended by omitting 'guarantee existing water entitlements and the corporation's retention in public ownership' and inserting instead 'that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation'.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes, Ms Hale  
Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

Ms Fazio moved: That Chapter 5 be recommitted.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes, Ms Hale  
Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

Mr Cantazariti moved: That the Recommendation 3 be amended to reflect the amendment to the Executive Summary by omitting 'guarantee existing water entitlements and the corporation's retention in public ownership' and inserting instead 'that any acquisition must guarantee the retention of existing water entitlements and the public ownership of the corporation'.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes, Ms Hale  
Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

Ms Fazio moved: That Chapter 5, as amended, be adopted.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes, Ms Hale  
Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

The Committee continued to consider the Executive Summary.

Ms Hale moved: That the first paragraph under the Chapter 5 heading be omitted.

Question put and negatived.

Mr Donnelly moved: That the Executive Summary, as amended, be adopted.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr Cantazariti, Mr Donnelly, Rev Moyes, Ms Hale

Noes: Mr Lynn, Ms Pavey

Question resolved in the affirmative.

Resolved, on the motion of Ms Fazio: That the report, as amended, be adopted by the Committee, signed by the Chair and presented to the House.

Resolved, on the motion of Ms Fazio: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223, the Committee publish all non-confidential tabled documents, correspondence, minutes, answers to questions on notice, submissions and transcripts.

Ms Pavey, Ms Fazio and Ms Hale indicated that they would submit statements of dissent.

Resolved, on the motion of Ms Fazio: That any statements of dissent be provided to the Committee Secretariat no later than 9am, Friday 20 October 2006.

The Chair advised the Committee that the report will be tabled on Thursday 26 October 2006 and a press conference will be held at 1.00pm in the press room on Level 6, Parliament House.

#### **4. Adjournment**

The Committee adjourned at 7.00pm.

Rebecca Main  
A/Principal Council Officer

## Appendix 6 Dissenting statements

### SELECT COMMITTEE ON THE CONTINUED PUBLIC OWNERSHIP OF SNOWY HYDRO

#### DISSENTING REPORT FROM GOVERNMENT MEMBERS

The recommendations of the report are supported however issue is taken with some of the comment included in the body of the report. These issues are detailed below.

##### ***Paragraph 2.60***

The amendment of this paragraph is not supported. The following accurately reflects the situation regarding the Mowamba aqueduct.

The subsequent recommissioning of the Mowamba aqueduct resulted in some disquiet from the local community. However, it was broadly acknowledged that consistent with the findings of the Snowy Water Inquiry there are greater potential environmental benefits from the release of the increased environmental flows from Jindabyne Dam compared to Mowamba weir.

##### ***Paragraph 4.50***

The addition of this paragraph is not supported.

It is inappropriate and unsubstantiated to identify any one particular issue in relation to the water arrangements as being less considered and communicated by the Governments, and therefore playing a larger part in contributing to public apprehension of the sale.

From the outset the Governments clearly and consistently communicated the position that the existing water arrangements would remain unchanged. The tax compensation deed forms an integral part of the water arrangements, and therefore as per the rest of the arrangements no change was to be considered.

It is important to recognise that the water arrangements were designed to balance the competing needs for the water resource of the Snowy Mountains Scheme, including the long-term viability of the hydro-electric scheme.

##### ***Paragraph 5.14***

The amendment of this paragraph is not supported.

The assertion that as the market grows the demand for Snowy Hydro's products may also grow and therefore be more, rather than less, profitable is incorrect.

The fundamental argument behind the sale was that Snowy Hydro required equity to grow. The need to grow was driven by the increasing trend in the national energy market of the consolidation and vertical integration of energy market participants. It is this impact that is threatening the profitability of Snowy Hydro as the greater the vertical integration the less the demand for Snowy Hydro risk management products. This impact will continue regardless to the growth of the national energy market.

**Paragraph 5.70**

The inclusion of this paragraph is not supported.

The paragraph adds very little to the existing quote from Mr Cosgriff at 5.69 currently. Reading the quote from Mr Lathwell it essentially sets out that yes, a lease/trader option could be viable for the Snowy Mountains Scheme. Although, given the complexity of the water arrangements care would have to be given structuring the lease/trader arrangements to ensure they reflect the current water arrangements. That is protecting the current flexibility of Snowy Hydro to release water while meeting the conditions of the Snowy water licence. This is the very message more clearly articulated in the current quote from Mr Cosgriff.

**The debate on the proposed sale of Snowy Hydro**

One of the issues raised during the Inquiry was communications by the shareholding Governments during the proposed sale of Snowy Hydro. It should be noted that some people may never have supported the sale of Snowy Hydro no matter how much information they were provided with especially in relation to the safeguarding of water access and the need for Snowy Hydro to access significant capital to ensure its future viability.

It was evident from what was said by many inquiry participants that a concerted campaign of misinformation had occurred during the proposed sale process. The motivation of those who put about this misleading information is not certain but seems to stem from both an opposition to recognise the need for Snowy Hydro to move with the times in order to remain competitive and a philosophical objection to any form of privatisation regardless of the merits of each individual case.

The facts are that Snowy Hydro was constrained by corporation laws in what they could discuss about matters contained in the prospectus for the initial public offer. This constraint was misconstrued for political motives by some of those who agitated in the local area to drum up opposition to the sale as Snowy Hydro and the NSW Government being secretive.

The inclusion of derogatory comments about the NSW Minister for Finance by Councillor Roger Norton, Mayor of Cooma-Monaro Shire Council is not warranted. These comments were not reflected in any of the submissions received during the course of the Inquiry nor in any of the evidence received at either the public hearing and the public forum which were held by the Committee in Cooma other than by Councillor Norton. The inclusion of such unsubstantiated and inaccurate assertions demeans the report and further illustrates that a misinformation campaign has been conducted on this whole issue.

**Gratuitous references to the possibility of compensation.**

The addition of a reference in paragraph 2.36 to 'how much compensation would be payable were Above Target Water releases required was a concern raised during the Inquiry' is not reflected by the evidence received during the Inquiry and seems to be an attempt to perpetuate the misinformation campaign that was conducted during the proposed sale of Snowy Hydro.

Additionally the inclusion of references in paragraph in 4.50 that compensation could be payable to Snowy Hydro under the compensation deed if the water licence were to be amended within the next 70+ years further illustrates this campaign.



## **OPPOSITION DISSENTING REPORT TO SNOWY HYDRO UPPER HOUSE INQUIRY**

The Opposition Members of the Committee have a fundamental belief that NSW shouldn't lose one of the State's most important pieces of infrastructure.

The Opposition Members of the Committee believe the Government's motivation to sell the Snowy Hydro is to cover the budget deficit, which is a result of their own economic mismanagement. The Government should seek to fix the budget crisis by improving its management of NSW's finances, not by selling iconic and important infrastructure.

The Opposition Members of the Committee don't accept that the NSW Government, the majority shareholder of Snowy Hydro, should be able to offload their responsibilities onto the Commonwealth Government, and at the same time lose control of this iconic scheme.

The Commonwealth Parliament established the Snowy Mountains Scheme and expended \$840 million until 1974 constructing the Snowy Scheme. Over the past 50 years Snowy Hydro has moved from a Commonwealth owned authority to a public corporation under the control of the NSW Government (58% ownership), Victorian Government (29% ownership) and the Commonwealth Government (13% ownership).

Snowy Hydro will be safest in the hands of the people of NSW. Majority ownership by the NSW Government is the best way to protect this asset from other jurisdictions that may not assign the same historical and cultural importance to the asset as the people of NSW.

The Opposition Members believe that the NSW Labor Government, as majority shareholder, is only motivated by a desire to cash in on this asset to assist its budget bottom line, which is behind their call for the Commonwealth to acquire the asset. Further, the Commonwealth has not expressed a clear desire to purchase Snowy Hydro, and this will invariably affect the price they would be willing to pay.

The Board is required by the Corporations Act to fulfil its fiduciary duty in the best interests of the Company rather than for the financial benefit of the three shareholders, the NSW, Victorian and Commonwealth Governments.

The Opposition Members recognise that Snowy Hydro must pursue a high growth strategy if it is to remain viable in the long term. The Opposition is also mindful of the strength of community support for keeping the iconic Snowy Scheme in public hands, and for ensuring it meets environmental and irrigation obligations.

The Opposition Members believe the NSW Government, as majority shareholder of Snowy Hydro should ask the Board to reconsider their dividend policy to allow Snowy Hydro to fund their expansion to meet the growing demands of the National Electricity Market and allow it to compete aggressively to grow its customer base.

The Opposition Members believe Snowy Hydro could pursue a high growth strategy whilst maintaining its BBB+ credit rating, by Government resetting its dividend policies.

Snowy Hydro believes \$800 million is required to pursue its vertical integration strategy to allow it to become a major player in the NEM over the next five years.

The cash injection, through reduced dividends to the shareholders, must be considered by Snowy Hydro as the basis to raise between \$1.5 billion and \$2 billion over the next five years without affecting the Corporations credit rating.

Future dividends from Snowy Hydro based on their projections would allow the company to grow and ultimately give taxpayers a greater dividend return into the future.

The NSW Labor Government argues that one of the reasons for the proposed sale is because under continued public ownership, future dividends are likely to decrease, as capital is needed to reinvest in the company to ensure that it remains competitive and relevant in the NEM.

The Opposition Members disagree and believe that future dividends can in fact increase if Government, through the Snowy Hydro Board, pursues a strategy of reinvesting dividends in the short term for a greater dividend return in the long term.

Further it is not appropriate for Government to forfeit access to above water allocations from its control, given the growing demand on the State's water resources.

The NSW Labor Government should be protecting this iconic asset and not be pushing to sell it off to the Commonwealth to fix their budget crisis.

***Opposition Member recommendation:***

***That the NSW Government as majority shareholder of Snowy Hydro ask the Board to reconsider their dividend policy to allow Snowy Hydro to fund their expansion to meet the growing demands of the National Electricity Market and allow it to compete aggressively to grow its customer base.***

Hon Melinda Pavey MLC

Hon Charlie Lynn MLC

## DISSENTING REPORT - SYLVIA HALE MLC, THE GREENS

This Inquiry represented an opportunity to consider in depth the public interest issues raised by the operations of Snowy Hydro Ltd. Instead, we have a Report that is preoccupied with the past, with urging the virtues of ‘Major Player’ strategies for Snowy Hydro that are clearly no longer relevant given the changed political landscape. In the wake of massive public opposition, privatisation has been effectively ruled out, and the NSW, Victorian and Commonwealth governments have justifiably indicated their unwillingness to invest more capital or to underwrite the Corporation’s raising additional capital on the private market.

Snowy Hydro exercises substantial control over the most significant body of water (an active storage of up to 5300 Gigalitres) in south eastern Australia. If Snowy Hydro were to remain in private hands in a time of global warming, regaining control of this water, could require governments, under the Snowy Compensation Deed, to pay billions of dollars in compensation to the private owners. No legal agreement or licence can adequately protect Governments and hence the community against the implications of this control being in private ownership until the year 2078 and beyond.

The consideration of the public interest raises numerous questions that the Report ignores or skates over:

1. Does the current regulatory framework curtail, rather than enhance, government control of Snowy Hydro’s activities by giving undue discretion to Snowy Hydro in the timing and quantity of water releases and limiting the power of government to intervene?
2. Should statutory guarantees be enacted to guarantee adequate environmental flows to the Snowy, Murrumbidgee, and Murray rivers?<sup>1</sup>
3. Is it in the public interest that the terms of the Snowy Compensation Deed remain secret?
4. In times of flood or drought, should the Corporation’s interests and protection of insurance contracts take precedence over the needs of irrigators, the environment, or other users?<sup>2</sup>
5. Is it desirable that Snowy Hydro should be seeking greater vertical integration in the electricity market? Would a further consolidation of the NEM significantly reduce competition and work to the detriment of consumers?
6. Would ownership by one government - the Commonwealth - be preferable to ownership by three? (The report contains a recommendation to that effect but no supporting commentary.)

A disconcerting aspect of the evidence from Snowy Hydro Ltd was its failure to address these issues and to respond appropriately to the public rejection of privatisation. Its evidence was characterised by a rigid refusal to confront reality and by repeated assertions that the ‘Major Player’ strategy was the only one open to it.

The Committee’s uncritical acceptance of Snowy Hydro’s need for a substantial injection of capital was despite contrary evidence from well-informed witnesses such as the former Executive Engineer, Mr Max Talbot, and former Commissioner of SMHEA, Mr Vin Good, “one of the major negotiators on behalf of the Snowy Mountains Hydro Electric Authority throughout the eight years of corporatisation”.<sup>6</sup> Both were skeptical of Snowy Hydro’s need for a significant injection of capital.

Mr Talbot noted that he had been involved in assessing “capital requirements for Scheme life extension and modernisation for the period 2001 to 2021,” which were estimated to require “an average capital expenditure of \$25 million pa”. He states, “This equates to \$125 million over the next 5 years which is a long way from the \$1.5 billion claimed to be necessary by Snowy Hydro”. He then asks, “what do they need the additional \$1.375 billion for” and suggests that one possible purpose is to build further gas peaking plant in NSW “to make it more difficult for other players to enter their segment of the market”.<sup>7</sup> The Report fails to question the desirability of this purpose.

Mr Good commented that, “Snowy Hydro should justify why its rapid growth strategy must be adopted over a lesser growth strategy that would be funded off its own balance sheet and borrowings in accordance with its current credit rating”.<sup>8</sup> This alternative “Risk Manager” strategy, in light of the abandonment of privatisation and the reluctance of the shareholders to provide more capital, would appear to be the only course open to the Corporation, but is given scant attention in the Report. Snowy Hydro’s Board, however, determines dividend policy and its directors are obliged to act in the company’s best interests.<sup>9</sup> The Board can divert to Snowy Hydro the bulk of the \$110 million in dividend payments made to shareholders last year. This, when coupled with \$40 million retained profits and \$40 million depreciation, would provide Snowy Hydro each year with approximately \$190 million for reinvestment. The cost of a gas peaking plant is about \$200 million.

The outcry over the proposed sale of Snowy Hydro represented an attachment to a significant national social and engineering achievement. Indignation was heightened by the lack of publicly available information and the denial to the community and the parliaments of the opportunity to scrutinise and debate the proposal in an open, inclusive manner. A crash through policy resulted in crash. No evidence has been produced to substantiate any claim that, had the public been more aware of the “facts”, opposition would have lessened.

The abandonment of the Snowy sale is in some respects as important as Snowy’s construction. It demonstrates the significant and growing public opposition to the privatisation of major public enterprises. The balance of the evidence before the committee shows that the public rejection of the privatisation was correct and that it is overwhelmingly in the public interest that Snowy Hydro remains in public hands.

## **Sylvia Hale MLC**

<sup>1</sup> Nature Conservation Council of NSW, submission 104, p3

<sup>2</sup> Submission 66, p10

<sup>3</sup> Ms Acacia Rose, submission 92a, p3

<sup>4</sup> Mr Vin Good, Public forum, Evidence, 5 July 2006, p43

<sup>5</sup> Lake Eucumbene Chamber of Commerce, Submission 106, p3

<sup>6</sup> Mr Vin Good, Public forum, Evidence, 5 July 2006, p40

<sup>7</sup> Submission 63, pp8-9

<sup>8</sup> Public forum, Evidence, 5 July 2006, p43

<sup>9</sup> Mr Charlton, Evidence, 17 August 2006, p34