



New South Wales
TREASURY

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Dear Mr Frappell

Inquiry into the continued public ownership of Snowy Hydro Limited

I refer to your letter of 20 July 2006 in which you sought a response from NSW Treasury, on behalf of NSW Government, in relation to a number of questions on notice relating to the inquiry into the continued public ownership of Snowy Hydro.

Please find attached the answers to these questions.

In relation to the questions on the costs of the sale to the Governments, since 7 July when I attended before the Committee of Inquiry, significant progress has been made in relation to ascertaining the final costs of the Snowy Hydro transaction. This process has taken some time because of the number of advisers and service providers involved, there being some 18 different contracting parties. In addition, it is also necessary to consult with the Victorian and Commonwealth governments as the three shareholding governments are sharing the costs. As the final commercial outcome on costs is still being negotiated I am not yet in a position to provide the details the committee has requested. I anticipate that it will take another fortnight or so to conclude these negotiations. I will then be in a position to provide the Committee with the details requested.

I trust this information is of assistance to the Inquiry and I shall provide further details regarding the costs as soon as the commercial negotiations are completed.

Yours sincerely,

Kevin Cosgriff
Deputy Secretary

Questions on notice to the NSW Government submitted by Sylvia Hale MLC

1. Had the Government contemplated corporatising the Snowy Mountains Authority at any time prior to the announcement by the Federal Government in 1997 of its intention to corporatise the Scheme? If so, when?

The decision to corporatise the Snowy Mountains Hydro-electric Authority (SMHEA) was a joint agreement of the Australian, NSW and Victorian Governments. The agreement to corporatise was reached in 1994 after a number of years of assessment and analysis by the three Governments.

2. When was privatisation of Snowy Hydro first envisaged by the Government? Was it before or during the corporatisation process?

Privatisation was not envisaged by the NSW Government before or during the corporatisation process. By corporatising SMHEA, the three Governments intended to establish the business on a competitively neutral basis. Consistent with this the water and environmental regulatory arrangements applying to the Snowy Mountains Scheme are designed to be effective and enforceable independent of the ownership structure of Snowy Hydro Limited (Snowy Hydro Ltd).

3. Was privatisation, as has been suggested by Terry Charlton, always envisaged as a 'natural outcome' of corporatisation?

No. The corporatisation of SMHEA was a response by the three Governments to:

- *improve the management and operation of the Snowy Mountains Scheme; and*
- *enable the business to effectively compete in the national electricity market.*

4. Who first initiated proposals to privatise Snowy Hydro Limited?

It is important to make the distinction between a recapitalisation and a privatisation. In the case of Snowy Hydro Ltd, a recapitalisation would have seen a dilution of Government ownership in the company with new shares issued on the Australian Stock Exchange. A privatisation would have resulted in an exit of Snowy Hydro Ltd Government ownership.

In October 2005 the Board submitted a recapitalisation proposal. To implement the proposal required unanimous shareholder approval. The proposal was considered by the Governments and was supported by the New South Wales and Australian Government. Victoria however did not support the proposal.

The New South Wales Government still considered the proposal had benefits and in December 2005 New South Wales announced its intention to sell its shareholding. Shortly afterwards the Australian Government announced it would join New South Wales and sell its shareholding. The sale of shares became a full privatisation only when the Victorian Government subsequently announced it would also sell its shareholding.

5. When were specific proposals developed? By whom?

Specific proposals to privatise were developed after Victoria announced it would join the New South Wales and Australian Government in divesting their equity holding in Snowy Hydro Ltd.

The New South Wales Government lead the development of the privatisation proposal at the request of the Australian and Victorian Governments.

6. Were any of the proponents of the privatisation of Snowy Hydro to be given privileged access to Snowy Hydro shares? If so, who?

No.

7. Was any conflict of interest declared to the government by any Snowy Hydro employee or Director in relation to the proposal to privatise Snowy Hydro?

No.

8. Was a cost/benefit analysis of privatising Snowy Hydro Ltd undertaken by any government ministry, agency, or consultancy? If so, will that analysis be made public?

NSW Treasury undertook detailed financial cost/benefit analysis for Cabinet consideration both on the sale of New South Wales shareholding alone and for a privatisation.

The final stage of this analysis, a retention value report, was to be prepared for the NSW Government once the full details of the sale structure were finalised. The sale was abandoned before the retention value report was prepared.

9. What disadvantages of privatisation were identified in any such analysis?

The analysis undertaken by NSW Treasury concluded that privatisation would be beneficial to the State and to Snowy Hydro Ltd.

10. On Business Sunday, on 16 April 2006, the following exchange occurred between Terry Charlton and interviewer Ali Moore:

MOORE: There already is going to be change with an agreement to increase flows by some seven per cent in the next six-seven years and that's going to be compensation but no-one seems to know exactly how much.

CHARLTON: That's still a long way off, that's 2012 and that's only after certain water savings have been found, there's a lot of provisos on that, and yes that is defined as foregone revenue and that will be easily measured. I would - I know I've gone on the record as saying that could be in excess of 100-million dollars but we don't know that at this stage.

MOORE: As you say, it's seven years out, who knows what the situation will be, it could be 400-million?

CHARLTON: I think the important thing to note is that that exists now irrespective of who the shareholding ownership is

Were detailed costings made of the amount of compensation that would be payable to Snowy Hydro if Snowy Hydro were to be required to release flows 'above minimum' for any purpose? If so, when were those calculations made? Over what time frame? What were they?

The Government has not formally assessed the potential liability in relation to compensation for environmental flows in the Snowy River greater than 21 percent of the River's historic natural flow. Any liability could only be accurately estimated at the time when flows above 21 percent are anticipated, given the inherent variability of the key elements of compensation:

- a. the evolving Australian water market and market for trading water rights; and*
- b. the evolving National Electricity Market, greenhouse and renewable energy markets.*

Any liability for compensation would be allocated jointly to the Governments of NSW and Victoria.

11. Was any person ever offered employment with Snowy Hydro on the basis that Snowy Hydro would be privatised? If so, who?

Not that the Government is aware of.

12. Was access to shares in a future privatised Snowy Hydro ever offered as a part of a remuneration package for any Snowy Hydro employee? If so, when and on what basis?

Not that the Government is aware of.

13. Were any share options to be offered to employees as a bonus? If so, were such bonuses to be a charge against Snowy Hydro's profits?

Not that the Government is aware of. No shares were offered to employees as a bonus as part of the sale. Snowy Hydro Ltd submitted to the Governments a proposal for an employee share offer as part of the sale. The proposed offer included a priority allocation of shares for employees, a 12 month interest free loan (to be made available by Snowy Hydro Ltd) to employees to purchase shares, and an allocation of \$1,000 worth of shares per Snowy Hydro Ltd employee.

Prior to the sale being called of the Governments supported the priority allocation of shares and an interest free loan for Snowy Hydro Ltd employees, however, the value of both of these offers was not finalised. No decision was made in regard to allocation of \$1,000 worth of shares per employee.

14. The appointments on 15 May 2006 of Rick Holliday-Smith, Bruce Hogan, Bruce Brook, and Peter Lowe to the Board of Snowy Hydro were all made at a time when Snowy Hydro was to be privatised. Will there be any changes to the composition of the Board given that the privatisation has been cancelled?

There is no intention by the Government shareholders to remove any of the current Board.

15. What remuneration and other benefits are each of the Directors entitled to receive?

As part of the sale, Government shareholders reviewed the remuneration for the Board to reflect public listing. The Governments approved a remuneration cap of \$1.050 million for the Board.

16. Were any of the Directors to be excluded from purchasing or being given shares in the privatised company?

Directors were not to be given shares nor were they to be precluded from purchasing shares.

17. Will the NSW Government be seeking to ensure that other interest groups (eg water, environmental, tourism, scientific) are represented at Board level?

Appointments to the Board of Snowy Hydro Ltd require the unanimous agreement of the three Government shareholders. Appointments are made in accordance with proper corporate governance structures reflecting:

- *Snowy Hydro Ltd is a Corporations Law company and the directors have a fiduciary duty to act in the best interest of the company, not specific interest groups; and*
- *the importance of accountability and independence (ie no conflict of interest) of directors.*

On this basis, the Government shareholders do not consider a change to the composition of the Board necessary.

18. What mechanisms are in place to ensure that Snowy Hydro Ltd's activities in the electricity market are adequately regulated to protect the public interest and the interest of electricity consumers?

Yes. The operations of Snowy Hydro Ltd in the electricity market are subject to the same regulation and scrutiny as all other participants in the national electricity market. In terms of competitive behaviour and public interest this is regulated by the Australian Competition and Consumer Commission (ACCC) under the Trade Practices Act 1974 (Cth).

19. Why was the Mowamba aqueduct re-commissioned on 31 January this year when the outlet at Jindabyne Dam is still not completed. Does the Snowy Water Licence explicitly state, Schedule Three, Part 2, clause 6.3 that if that outlet is not constructed by the third anniversary of corporatisation (ie June 2006) then water must be released from Mowamba River and Cobbon Creek?

The works at Jindabyne Dam, as at 31 January 2006, were sufficient to allow the release of the environmental flows:

- *as prescribed by the water licence and;*
- *notified by the Water Administration Ministerial Corporation (WAMC) for the 2005-06 water year.*

Under the water licence Snowy Hydro Ltd is obligated to re-commission the Mowamba aqueduct as soon as the works required to make the environmental releases under the water licence are completed.

20. Was the due date for completion of the outlet for increased environmental flows at Tantangara Dam within three years of corporatisation? Was this completion date met? If not, why not?

The works at Tantangara Dam were completed in September 2004. The due date was the third anniversary of corporatisation, 28 June 2005.

21. Has Snowy Hydro complied with its Water Licence in the instances outlined in questions 19 and 20 (above)? If not, why has the NSW Water Ministerial Corporation not ensured Snowy Hydro's compliance with its licence?

Snowy Hydro Ltd has complied with its water licence. Once it was realised that the date for Jindabyne Dam could not be met, alternate structures were designed so that the environmental flows could be released as soon as possible. The WAMC was notified that the June 2005 date would not be met, and arrangements were agreed whereby these structures would be available by February 2006.

Releases continued via the Mowamba River until the end of January and then releases were made from Jindabyne. Snowy Hydro Ltd has fulfilled its obligations to release the environmental water to the Snowy River in accordance with its water licence.

Similarly, in regard to Tantangara Dam, Snowy Hydro Ltd has fulfilled its obligations to construct the works required under the water licence.

22. Given that section 57 of the Snowy Hydro Corporatisation Act 1997 requires the establishment from the time of corporatisation of a Snowy Scientific Committee to research and advise the NSW Water Ministerial Corporation and Snowy Hydro Ltd on environmental flows for best ecological outcomes, why was this committee not established immediately after corporatisation?

*As set out in the Snowy Hydro Corporatisation Act 1997 (NSW) (**SHC Act**), the purpose of the Committee is to report on the regime for the water releases from the Snowy Mountains Scheme for environmental reasons (under the Licence) and to advise from time to time on the adequacy of those releases and the programs for management and restoration of the catchments receiving water from those releases.*

*The environmental releases are set out in the Snowy Water Inquiry Outcomes Implementation Deed (**SWIOID**) and progressively increase over a ten year period from corporatisation. Until such time as the environmental releases are of a magnitude that would result in environmental benefits from varying the release pattern from that prescribed in the water licence, there is limited benefit from establishing the Snowy Scientific Committee (**SSC**).*

*Information on the environmental flows is currently being recorded by the relevant catchment management authorities for use by the SSC once it is established. In line with the provisions in the SWIOID regarding the progressive increase in environmental flows and the forecast water savings by the Joint Government Enterprise (**JGE**), Minister Della Bosca as the Minister responsible for the SHC Act has commenced the process of establishing the SSC.*

23. Why was the Mowamba aqueduct re-commissioned without the scientific advice of the Snowy Scientific Committee? Was this action in breach of the Snowy Hydro Corporatisation Act 1997? If not, why not?

Snowy Hydro Ltd recommissioned the Mowamba aqueduct so as to comply with the water licence. The water licence was based on recommendations of the Snowy Water Inquiry and aims to balance the competing needs for the water captured and released by the Snowy Mountains Scheme.

*Importantly, it is the function of the Snowy Scientific Committee (**SSC**) to 'advise the Water Administration Ministerial Corporation each year on the regime for the release of water for environmental reasons under the Snowy water licence'. To decommission the Mowamba aqueduct is inconsistent with the Snowy water licence and therefore outside the scope of the SSC.*

24. Has an assessment been made of the effect on environmental objectives of the recommissioning of the Mowamba aqueduct and the consequent reduction in and reduced variation of current flows from Jindabyne Dam, including improving the temperature regime of the river, achieving channel maintenance and flushing flows within rivers, restoring connectivity within rivers for migratory species and for dispersion, improving fish spawning triggers and improving the aesthetics of currently degraded riverine environments? What are the outcomes or conclusions of any such assessment?

The obligations of the water licence in relation to the construction of works at Jindabyne Dam (the flow rate requirements of the outlet, and that the outlet must take water from above the thermocline) are targeted at ensuring the releases from Jindabyne maximise environmental benefits through the water temperature of releases, achieving channel maintenance and flushing flows within the rivers and improving the aesthetics of the riverine environments. These benefits could not be achieved by environmental flows releases coming from the Mowamba River.

Environmental evaluation for the environmental water releases was undertaken as part of the Snowy Water Inquiry. Releases from Mowamba for the first three years were included in the water licence to allow for immediate commencement of environmental flows from corporatisation. The initial releases from Mowamba allowed time for the required modifications to Jindabyne Dam and a borrow forward of water while the JGE was established to find the required future water savings to offset the environmental flows.

25. Has Snowy Hydro Ltd met the requirements of the Heads Of Agreement or the Snowy Water Licence Schedule Three, Part 2, clause 5.1 with regard to environmental outcomes? If so, how?

The above referenced clause states the objectives of Governments not Snowy Hydro Ltd. This clause places no obligation upon Snowy Hydro Ltd. It merely states the objectives of the Government as a prelude to the following Clauses 6 and 7.

26. Is Snowy Hydro Ltd operating flow releases into the Snowy River consistent with the Snowy Water Licence under Schedule Three, part three, clause 13.3 Default Monthly Releases? If not, why not?

Clause 13.3 provides a default pattern for circumstances where the WAMC has not advised of an alternative monthly pattern. Through the Annual Water Operating Plan (AWOP) process, Snowy Hydro Ltd and WAMC have identified that, while the environmental water is of small volume, the default pattern yields flows that are too low during the late summer. An alternative pattern, which lowers the spring quantity to allow an increase in the summer quantities, has been approved by the WAMC.

27. What action is the government intending to take to ensure the licence requirements are met in the future?

To date, all licence requirements have been met. Each year through the AWOP process the operations of the previous year are reviewed to ensure that compliance has been achieved. The Water Consultation and Liaison Committee (WCLC) which comprises of members from the Murray-Darling Basin Committee and the NSW, Victorian and Australian Governments, monitors Snowy Hydro Ltd's activities to ensure compliance with the water licence and the SWTIOID. Within each year WAMC will monitor the releases from a number of sites, of which Jindabyne and Tantangara are just two, to ensure that the releases are made as set out in the AWOP.

28. Have any amendments been made to the Snowy Water Licence at any time in the last four years? If so, what were those amendments and when were they made?

The water licence has not been amended.

29. Was the Government aware when it took the decision to privatise that Snowy Hydro had identified two strategic pathways for the future that do not require additional equity capital, the so-called “Cash Cow” and “Risk Manager” paths (see Snowy Hydro's Preliminary Submission to the Inquiry p37)? If not, why not?

The Government was aware of a range of options available for Snowy Hydro Ltd. A sale of New South Wales' shareholding in Snowy Hydro Ltd allowed Snowy Hydro Ltd to address the issue of an equity constraint under continued public ownership, and it allowed the New South Wales Government to best address the issues arising from ownership in Snowy Hydro Ltd.

Neither the “Cash Cow” or “Risk Manager” options would have addressed these issues as:

- *the NSW Government would continue to have significant equity tied up in a company over which has limited control, particularly in relation to investment strategies. While this is appropriate for Snowy Hydro Ltd as a business operating in the national electricity market, it is not ideal for the New South Wales Government as a shareholder.*
 - *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; and*
 - *annual dividends paid to the Government shareholders would continue to decline.*
30. If so, why did it insist, during the sale process that the only way forward was for Snowy Hydro to have access to equity capital to remain competitive in the National Electricity Market, ie the so-called “Major Player” path?

See above answer.

31. How does the Government justify the statement 'Snowy Hydro neither owns or controls the water of the Snowy Scheme' (NSW govt. submission p10) when Snowy Hydro controls the collection, storage and timing of release of the water?

Snowy Hydro Ltd is licensed to capture, divert, store and release the water to generate hydro-electricity. These functions are controlled through the Snowy Water Licence which is administered by the NSW Government.

32. By what means has the Government established that 'the water regulations constitute a set of clearly defined and legally enforceable arrangements which are sufficiently robust to continue to be enforceable in the absence of Government ownership of Snowy Hydro' (NSW govt. submission p21)?

The water regulatory arrangements were signed off on this basis by each of the Governments at corporatisation.

33. The legal opinion from Macphillamy's Lawyers on the Annual Water Operating Plan (attached as appendix 1 to submission 66 to the Inquiry) concludes that “there is very

limited scope for requiring, and enforcing, water releases of any particular amount at any particular time". Which section/s of the Snowy Hydro Corporatisation Act 1997 (NSW) or terms of the Snowy Water Licence or other instrument render this conclusion invalid?

Snowy Water Licence Part 4:

Clause

- 12.1(1) - obliges Snowy Hydro Ltd to release water from Jindabyne within 10% of the notified annual quantity;
- 12.1(2) - obliges Snowy Hydro Ltd to release water within 20% of each monthly target;
- 12.1(3) - obliges SHL to release daily quantities within 20% or 50 Ml of the daily notified quantities;
- 12.2 and 12.3 - determine when a breach of the release requirements has been caused;
- 13.1 - allows the WAMC to issue monthly instructions;
- 13.3 - allows for a default pattern to apply in the event of WAMC failing to give monthly instructions;
- 14.1 - allows the WAMC to issue daily release instructions.

Each of these clauses was drafted with the realisation that despite its best endeavours there are physical reasons why Snowy Hydro Ltd may not be able to release exactly that which is instructed. For that reason there is a flexibility associated with each instruction in terms of assessing compliance.

34. The NSW government submission refers to a package of 14 legal documents (p22). Which of these documents is publicly available and where are they available for public scrutiny?

Since corporatisation, the key documents relating to the water operations and releases of the Snowy Mountains Scheme have been publicly available in various forums and upon request.

Included with this supplementary NSW Government submission to the Select Committee is a CD containing nine of the fourteen water documents that are publicly available, being:

- *Agreement between New South Wales and Victoria on the Outcome from the Snowy Water Inquiry;*
- *Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry;*
- *Snowy Water Inquiry Outcomes Implementation Deed (SWIOID);*
- *Snowy Scheme Deed of Indemnity;*
- *Murray Darling Basin Amending Agreement;*
- *Intergovernmental Agreement;*
- *Joint Public Statement (Communiqué);*
- *Snowy Scheme Long Term Water Arrangements Deed;*
- *Blowering Airspace Deed.*

The five documents not included in the CD are set out below, along with an explanation as to why they are not included:

- *Snowy Water Licence - this document is already publicly available on the NSW Department of Natural Resources website.*
- *Snowy Compensation Deed – this document is a commercial document and contains information concerning the business affairs of Snowy Hydro Ltd and the shareholder Governments.*
- *Snowy Bilateral Deed – NSW is not a party to this document and cannot provide consent to making the document publicly available. The Victorian Government and Snowy Hydro Ltd are parties to this document.*
- *Blowering Works Operating Deed and Lease - this document is a commercial document and contains information concerning the business affairs of Snowy Hydro Ltd and the NSW Government. The NSW*

Department of Natural Resources does not publicly disclose other leases it issues to competitors of Snowy Hydro Ltd for the location of their power stations on other government dams.

- *Tumut River Works Agreement - this agreement is a commercial arrangement for the funding of works on the Tumut River outside the Snowy operations area. The NSW Department of Natural Resources does not make available other commercial arrangements with other bodies about funding various works.*

35. When were the key documents relating to water made public (NSW Govt. submission p2). By what means was the public made aware of this?

From the date of corporatisation any request for a copy of either the Snowy Water Licence or the Snowy Water Inquiry Outcomes Implementation Deed resulted in either hard or soft copy being sent to the applicant by WAMC. This is standard practice with water licences.

36. The Government submission states that prior to Corporatisation in 2002 there was no formal obligation regarding releases from the Scheme (p23). Have release obligations not been in place since 1957 and administered by Snowy Mountains Council?

*Prior to corporatisation the Snowy Mountains Council (**Council**) advised the Snowy Mountains Authority on the operation of the Scheme and the distribution of the resultant power. Although there was a concept of "minimum notification" of the amount of power to be produced by the Scheme each year, which closely aligned to 2088 Gl of water there was no formal obligation to release that amount of water and on numerous occasions the Council agreed to release either more or less than that amount. The annual operations plans of Council reflect this procedure. The lack of formality is what led to the requirement under the SHC Act to formalise arrangements so that the annual required release was unambiguous, could be enforced and formally audited for compliance.*

37. What amendment to the water licence was proposed during the sale process? What was the purpose of this amendment?

One proposal to amend the Licence was considered during the sale process. The amendment was of an administrative nature to clarify and reaffirm the current licence conditions.

38. Has the water licence been amended since January 2005. If so, what was the nature of this amendment? Was the amendment made without the mandatory public consultation period? If so, why?

The licence has not been amended.

39. Snowy Hydro has charged irrigators to 'borrow' water from the Scheme - how does the Government reconcile this with its stated view that Snowy Hydro has no ability to charge downstream users? (NSW govt submission p26).

Snowy Hydro has no ability to charge for water. There is nothing preventing Snowy Hydro Ltd and licensed irrigators entering into bilateral contracts involving performance by one and moneys paid by the other, providing that in doing so the water licence is not breached.

Snowy Hydro Ltd has the flexibility over the pattern of releases within a water year to the west, subject to the terms of its licence and the quarterly release targets. The 'borrow' deeds are financial arrangements between some irrigators and Snowy Hydro Ltd. Both parties enter into the arrangements on voluntary basis and do so for commercial gain. Snowy Hydro Ltd receives funds to release water early in the season (conducive to

irrigation needs) when the electricity market would have caused late seasons releases instead. That the water account has to be reconciled in the future, gives evidence to the fact that water was not being sold. If it were water being sold one would not have to reconcile the advance at a future date. The arrangements are oversighted by the WAMC.

40. Why is the Government prepared to approve the construction of open cycle gas turbine plant in areas of high population density when these plants are inefficient, use a non-renewable natural resource and emit nitrous oxide gas, a component in smog, at low levels?

No application for an open cycle gas turbine plant has been lodged by Snowy Hydro Ltd with the Department of Planning.

41. What projections has the government made about the cost of water in the next 20 to 50 years? Do these projections take into account current scientific weather predictions and the predicted future reduction in rainfall and snowfall over the Snowy Mountains?

The value of water is set by market forces and its ability to produce a return on investment. Government has not made predictions about the cost of water.

42. On what dates were the Annual Water Operating Plans (AWOPs) approved by the Ministerial Council for the water in the years 2004/2005 and 2005/2006 ?

- 2004-05 - Ministerial Approval (July 2005)
- 2005-06 – Ministerial Approval (September 2006 - this delay was a result of consideration of the Dry Inflow Sequence formula by the WCLC).

43. How often were the AWOPs updated during the year, and when and to whom were these updates given? How did the quarterly releases differ from the approved AWOP releases?

In order to assist downstream water authorities the AWOP contains minimum quarterly releases projected for the coming year. During the 2004-5 year, the advance ('borrow') entered into included an agreement by Snowy Hydro Ltd to advance the water and to make sure it was delivered before February. Accordingly, the AWOP was altered to raise the February notified minimum by the required amount.

44. In evidence to the Inquiry, Mr Kim Alvarez was asked the following question and provided the following response:

Ms SYLVIA HALE: Mr Alvarez, in your initial presentation you refer to an incident where the dams were full and there was a request to Snowy Hydro or to the authority at that stage not to reduce the level of water. That was complied with. Would there be any obligation on Snowy Hydro Ltd in a similar scenario in the future to abide by that request if it were in its financial interests to generate as much electricity as it could at that time?

Mr ALVAREZ: No, nor was there at the time. When it was under government control for the production, the degree of relaxation that happened there, they relaxed a small amount for a small amount of time but at the end of the day they had to produce electricity and they generated. There was no obligation before; nor is there an obligation for them to back off. It is, as it was then, an opportunity, should they choose, and should it be suitable for them to reduce their generation at the time, we would be compliant with it.

In view of the apparent reliance on Snowy Hydro's goodwill and the absence of any legal obligation on the part of Snowy Hydro to comply with requests from the government,

irrigators, environmentalists, or other interested parties, not to release water at certain times when it would be in the interests of Snowy Hydro to do so, what mechanisms are in place to protect the public interest? What penalties would Snowy Hydro incur if it ignored a request from the government not to release water?

The water licence is clear about Snowy Hydro Ltd's obligations to release. At no time in history has there been an obligation for Snowy Hydro Ltd or SMHEA not to release water.

At corporatisation it was recognized that Snowy Hydro Ltd could not be solely a water company releasing water when irrigators want it, or solely a power company providing energy at times when the eastern seaboard of Australia demands it.

The issue was addressed by balancing the water obligations of Snowy Hydro Ltd. On an annual basis Snowy Hydro Ltd has to provide a minimum required annual release. Within the water year the water license provides Snowy Hydro Ltd sufficient flexibility for water releases to allow Snowy Hydro Ltd to meet the energy demands of the national electricity market and maintain commercial operation.

45. When was the Water Administration Ministerial Corporation (WAMC) established?

The WAMC was established under Clauses 371-377 of Part 2 of Chapter 8 of the Water Management Act 2000. Sub-clauses (5) and (6) of 372 make specific reference to Snowy Hydro Ltd.

46. Who heads the WAMC?

The WAMC is essentially a statutory body representing the Crown and affairs of the Minister for Natural Resources.

47. What staff does the WAMC employ?

The WAMC is the administrative arm of the Minister for Natural Resources.

48. How often does the WAMC meet?

N/A

49. When did the WAMC last meet?

N/A

50. Does the WAMC produce an annual report?

No.

51. What are the WAMC 's principal activities?

The functions of the WAMC are set out at Clause 372 of the Water Management Act 2000. Principle activities include the construction and operation of water management works and monitoring equipment, the development of water management technology and the acquisition of water rights.

In relation to the Snowy Water Licence, it is the duty of the WAMC to exercise its function of issuing the licence under Part 5 of the Snowy Hydro Corporatisation Act 1997 consistently with the terms of the Snowy Water Inquiry Outcomes Implementation Deed.

52. If, after Snowy Hydro had been privatised and the Scheme's infrastructure had become the property of the privatised company, Snowy Hydro had breached its licence with the result that the government determined to revoke that licence, how was it intended that the water in the Scheme would be released if Snowy Hydro refused to co-operate in that release?

This issue is unaffected by privatisation. Regardless of ownership, the assets must be operated in accordance with the water licence.

Revocation is essentially an action of last resort of the licence regulator. The process for revocation is considered in the Snowy Scheme Long Term Water Arrangements Deed. The New South Wales Government is bound to a process of negotiation with the Australian and Victorian Governments if the water licence is revoked.

If the New South Wales Government determines to revoke the water licence and issue a further licence, the Government must as soon as practicable negotiate in good faith with the Commonwealth and Victoria upon the terms of the further licence to protect their rights and interests after revocation.

If the New South Wales Government determines to revoke the water licence and not issue a further licence, the Government must as soon as practicable negotiate in good faith with the Commonwealth and Victoria upon either or both of a set of legislative and other legally binding arrangements to protect their rights and interests after revocation.

53. Given that the government must have contemplated such a scenario in its assessment of the pros and cons of privatisation of Snowy Hydro Ltd, what changes did it envisage making to the Snowy Hydro Act or to the Snowy Water Licence to ensure that the punitive provisions of the Licence were practically enforceable?

No changes were contemplated by the Governments as the existing arrangements already sufficiently deal with such a scenario.

54. Is it intended to amend the Snowy Water Licence or the Act to make the punitive provisions practically enforceable?

No need has been identified to do so.

Questions on notice for NSW Treasury submitted by Melinda Pavey MLC

55. How was the sale going to affect the budget of NSW?

The sale proceeds were to be used to strengthen the State's balance sheet. That is, the market value of Snowy Hydro is greater than the book value NSW currently has on its balance sheet. A sale would have allowed NSW to realise this difference and increase the State's assets without increasing its liabilities.

56. Was there any planning of how the NSW Government would spend its proceeds of the sale?

Other than the \$30 million allocated to Snowy River environmental flows and works, the NSW Government had no plans for the expenditure of the sale proceeds. The sale proceeds were to be used to strengthen the State's balance sheet and financial position.

57. Had NSW Treasury factored the proceeds of the sale into forward estimates of revenue and spending?

No. It is NSW Government practice not to include proceeds from sales in forward estimates until the transaction is complete.

58. Given the board of Snowy Hydro had proposed a partial sale, why did the NSW Government push ahead with a full sale?

The recapitalisation proposed by Snowy Hydro Ltd would have allowed the company to address its increasing need to access equity. However, this proposal required unanimous shareholder approval to allow Snowy Hydro Ltd to issue new shares. At the time, the proposal was not approved unanimously by shareholders.

The New South Wales Government still considered the proposal had benefits and in December 2005 New South Wales announced its intention to sell its shareholding. Shortly afterwards the Australian Government announced it would join New South Wales and sell its shareholding. The sale of shares became a full privatisation only when the Victorian Government subsequently announced it would also sell its shareholding.

Compared to a recapitalisation, a full sale would have yielded a number of other benefits to the Government shareholders including ensuring that the full value of Snowy Hydro Ltd was realised and avoiding the Governments becoming minority shareholders in a mixed public/private entity.

Questions on notice taken by the NSW Government at the inquiry hearing on Friday 7 July

1. When was the Steering Committee established? (page 49)

The Snowy Hydro Steering Committee first established, and met on, the 17 January 2006.

2. Does NSW Treasury know the status of the Lakes R Us program? (page 55)

*NSW Treasury is aware that in October 2004 Lakes R Us lodged an application with the National Competition Council (**Council**) for the declaration of water storage and transport services provided by Snowy Hydro Ltd.*

The Council considered the application and made a recommendation to the decision-maker (in this case the Premier of New South Wales, the Hon. Morris Iemma MP) in November 2005 not supporting the Lakes R Us application. In January 2006, the acting Premier of New South Wales determined that the Lakes R Us that application for access to the water storage and release service of Snowy Hydro and State Water should not be declared.

The final recommendation and statements of decision are available on the Councils website.

*Following this Lakes R Us applied to the Australian Competition Tribunal (**Tribunal**) for a rehearing of the Premier's decision. In May 2006 Lakes R Us sought to withdraw its application for review, the withdrawal was granted by the Tribunal.*

