

**INQUIRY INTO THE CONTINUED PUBLIC OWNERSHIP  
OF SNOWY HYDRO LIMITED**

**Organisation:**

**Name:** Ms Acacia Rose

**Telephone:**

**Date Received:** 12/07/2006

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**Theme:**

**Summary**

## Marie Burton - Fwd: Letter / Submission in Response to NSW Government

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**From:** Rebecca Main  
**To:** Marie Burton  
**Date:** 13/07/2006 9:04 AM  
**Subject:** Fwd: Letter / Submission in Response to NSW Government

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>>> Acacia Rose > 12/07/2006 2:07 pm >>>

Begin forwarded message:

**From:** Acacia Rose  
**Date:** 12 July 2006 12:30:03 PM  
**To:** Gordon Moyes <[gordon.moyes@parliament.nsw.gov.au](mailto:gordon.moyes@parliament.nsw.gov.au)>  
**Cc:** Stephen Frappell <[Stephen.Frappell@parliament.nsw.gov.au](mailto:Stephen.Frappell@parliament.nsw.gov.au)>  
**Subject:** Letter / Submission in Response to NSW Government

12 July 2006

Good afternoon Gordon.

Please find attached my letter and response to the NSW Government submission.

Primarily I examine the assumption that the Snowy Scheme is primarily about energy and subsequently, the adoption of a 'model constitution' (or close) for a company operating in the NEM. This preemptive position has created major problems and understandings no doubt, by the Snowy Board that they were always heading down the path of privatisation.

Not so. This was patently private information and not public information. The cost to the NSW Taxpayers in considerable because of the failures of the three shareholder governments to indicate their intent in the first place.

I think that we need to draft a new Constitution for Snowy Hydro and this will reflect in a better governance model as well as strategic direction.

Thank you Gordon once again, f

12 July 2006

Reverend the Hon. Dr. Gordon Moyes  
Chairman  
Snowy Hydro Inquiry  
Parliament House,  
SYDNEY NSW 2000

Dear Rev. Moyes

***Re: Snowy Hydro Inquiry***

Thank you for the ongoing opportunity to consider the evidence before the NSW Parliamentary Inquiry into the Continued Public Ownership of Snowy Hydro.

May I firstly, thank you and the Committee for your goodwill, patience and attention as well as capacity to come to terms with the many – and sometimes conflicting – important agendas, none the least being the management and safety of Australia's water catchments into the future.

No doubt the imperative to deliver fair and balanced judgements, weighing up all the evidence, will take time and considerable effort.

Rev. Moyes in this submission, I wish to closely examine the original makeup of Snowy Hydro constituted under apparently, standard rules for companies entering the NEM. In this I feel, lies the core problem that has subsequently, determined a difficult course for the Snowy Scheme in that, the assumption at the time (whether 1997 or at any time later) that electricity generation was the primary role of the Snowy Scheme and within that, the niche derivatives / hedge fund market. Herein lies the essential problem no doubt exacerbated by a lack of openness of the three shareholder governments in communicating to the public that their preference was to corporatise and later, privatise the asset as a part of the NEM. At the time of corporatisation, the community was strongly concerned about water issues and opposed to corporatisation. However, the governments failed to cognise that the future course and direction of the Scheme must be, simply stated, about water and energy and not primarily, about energy. Later in 2002 with the formation, as I understand, of the NEM and the coinciding corporatisation of the Snowy Scheme, still, in the minds of government and most probably, the board and executive of Snowy, was the belief or volition to 'grow' the Scheme into the energy market with an almost certain imperative to privatise. That the community does not wish that for the Snowy Scheme, appears to some to be nothing more than a 'hiccough' on the road to privatisation. However, this course must not be considered to be 'a given'; not so in part through privatisation of management for example, or in entirety for the Snowy Scheme.

From the outset, the Constitution, principles of corporatisation, governance and strategic direction including strategic investment and 'capital raising' ventures apply *not* to a dual capacity utility with clear importance in the publicly owned, National Infrastructure Sector, but to a private company aiming to grow and prosper within the NEM. The grafting or adopting of the Constitution and subsequent makeup of the Board is thus *not* appropriate and my submission is that, *we return to the drawing board.*

It will take much more considered effort to write a more appropriate Constitution for the Snowy Scheme as well as other documents however, we must do so, in the national interest. The 'profit' model and 'growth paradigm' have their place and interestingly, in terms of major energy and water utilities, Australia is at least a decade behind many other countries in its strategic thinking and direction, yet proponents of privatisation argue that they are forward thinking. Indeed, this is a narrow and retrograde philosophy more reflective of a backwards-looking market model that has not yet understood its limitations. The way forwards is the 'sustainable yield' model, a win-win that accrues some wealth – particularly necessary for the region as well as asset maintenance / upgrades – and that secures water supply and energy generation into the future. This is far wiser course albeit not as sensational as 'raising capital, float, bonds issue, share options, market growth, vertical integration' and other terms that apply in the utilities sector, not so much to solid performance, but risk-taking behaviour that ostensibly, will benefit the few and not the majority. International experience backs up this view and my suggestion is once again, that the Committee commission and independent report on international trends in re-nationalisation of energy and water utilities in particular.

Further, my question is why are we allowing ourselves to be forced into the 'growth' model which includes 'capital raising' ventures whereas indeed, the more sensible course is to carefully and judiciously look after this asset whilst trading comfortably within an assured niche within the NEM? My question is why do we still believe that privatisation as a paradigm is the only way forwards and that any resistance amounts to not wanting Snowy to move forwards or thrive or benefit from corporate expertise. Nothing could be further from the truth. It takes much greater strength, wisdom and foresight as well as the benefit of experience, to understand and continue with a 'holding pattern' that brings in a reasonable yield, primarily for the nation without undermining sovereignty particularly in the utilities sector. Without fully protected key assets, then we in effect, do not have sovereign rights in this nation especially if governments are at the behest of large organizations rather than practically capable to reflect the rights, wishes and well being of citizens. In reality, 'no ownership' means that this continent is and will be owned by a subset of large corporations and their shareholders. Government then has no role or place apart from reflecting the wishes of the most powerful of the corporations.

This is neither democratic or the way forwards. To abrogate the sovereignty of the nation in any manner, particularly control over water and energy and other key assets and utilities, is arguably, a grossly flawed and potentially, dangerous course of action. Our commitment is firstly and primarily to the land and the people and then to ideologies that support their health and well-being, not simply to profit. Profit has its place only in that it will increase the value and worth of the nation and people but must arise from democratic processes and fair play that guarantees rights of citizens as well as corporations.

I trust that this committee understands that national assets of this kilt and importance are simply not for sale, even though some individuals will benefit considerably through bond issue, share options and expansion of the function of Snowy Hydro beyond what is necessary or desirable. This is not so much an anti-privatisation position, but a cautious and sober approach forged partly on the experience and wisdom of many overseas players.

Please find attached challenges to the assertions made by the NSW Government in the adoption of the Constitution for Snowy Hydro and later issues.

*My questions to the Committee are specifically:*

**FOR NSW PREMIER'S DEPARTMENT AND TREASURY AND COMMONWEALTH PRIME MINISTER'S DEPARTMENT, TREASURY AND FINANCE DEPARTMENTS**

1. By whom and when was corporatisation and privatisation mooted? Was this by the NSW Treasury or Commonwealth Treasury or a combination of all three governments?
2. Did the 'three government shareholders' recruit the last Commissioner, with the explicit or implicit intent to corporatise and / or privatise the Snowy Scheme.
3. Was the Board of Snowy appointed with a view to privatisation of the Scheme?
4. Were any of the Snowy Hydro executives appointed with the understanding that Snowy Hydro would be privatised?
5. Did any or all of the three shareholder governments have any knowledge of any 'share options' to any of the Snowy Hydro Executive or Board and if so, how much and to whom?
6. Why did the shareholder governments change the Board prior to the withdrawal of sale of Snowy Hydro.
7. Will any of the three shareholder governments recommission the allocation of ownership (at which time no money was exchanged) of the Snowy Scheme to better reflect public ownership by all Australians. If not, why not? Why did this allocation not consider water as a primary resource?
8. Will the NSW Treasury charge a reasonable rental / lease fee for the water and infrastructure assets to Snowy Hydro. If not, why not.
9. Will the NSW Treasury consider that if Snowy Hydro properly paid for the primary resource water, and to lease rather than 'own' the infrastructure, that it would not be competitive in the NEM?
10. Why has the NSW Treasury not increased the rates payable by Snowy Hydro to local councils, for example, to Tumut Shire?
11. Will NSW Treasury state how much money and what projects may be affected allocated to Council and other regional projects due to the withdrawal of sale of Snowy Hydro.
12. Will the NSW Treasury list the amounts of money / compensation paid to each Board Member (including any options, benefits etc) and Snowy Hydro Executives and how they arrived at this amount.
13. Were any Government employees in a position to gain in any way from the proposed sale of Snowy Hydro.

**FOR DEPARTMENT OF NATURAL RESOURCES / PREMIER'S DEPARTMENT**

1. What measures has the Premier's Department taken to work towards water savings to return environmental flows to the major and montane rivers? What projects have reached fruition and how much audited water has been saved?
2. Who are the members of the Water Ministerial Council or Corporation? Where and how often do they meet? Does the WMC have minutes and has it received any reports from the Snowy Scientific Committee under the terms of the Snowy Corporatisation Act and its Licence. Would the Premier's Department produce evidence of the Adaptive Flow Response Model and over what time period?
3. Will the Premier's Department and Treasury be able to provide a minimum of \$500,000 per annum and adequate staffing to enable the continued monitoring and restoration of the Snowy River over at least, a 10 year period. If not why not?
4. Will the Premier's Department, Treasury and Department of Natural Resources, immediately allocate significant funding, a preferable minimum of \$500,000 per annum for independent 'whole of catchment' monitoring studies to observe the biological health of the alpine aquatic systems over at least, a 10 year period, and engage local schools, universities, TAFE's and recreation groups and providers in the study. If not why not?
5. Will the Premier's Department, Treasury and Department of Natural Resources indicate and guarantee, that they *will not* attempt any further privatisation of Australia's natural resources, either directly or indirectly under any model of management.

Thank you and regards  
Acacia Rose

**INQUIRY INTO THE CONTINUED PUBLIC OWNERSHIP  
OF SNOWY HYDRO LIMITED**

***Response to NSW Government Submission***

*Acacia Rose*



## **Background**

Assertion: ‘The New South Wales Government announced its decision to sell its decision to sell its shareholding in Snowy Hydro Limited (*Snowy Hydro*).

Question: The intention to sell Snowy Hydro arose long before the official ‘decision’ to sell. Snowy Hydro / shareholder governments recruited executives with specific goal to privatise. **Would the Inquiry request information about recruitment / explicit or implicit understanding to privatise and any contracts indicating same. Will the Inquiry ask recruited Snowy Hydro Executives under oath, whether it was their understanding that the asset was to be privatised. Will the Inquiry ask the other two shareholder governments when privatisation was first mooted.**

Assertion: ‘Snowy Hydro’s business environment means that the company needs to continue to grow and diversify in order to remain successful.’

Question: Is it not true that Snowy Hydro is capable of trading off its balance sheet. **Will the Inquiry seek an independent financial analysis and opinion, in the light of the re-nationalisation of energy and water sector in other nations as to whether or not Snowy Hydro can ‘hold its own’ in the market, especially considering its niche position.**

Secondly, the AFR reported that the energy regulator will tighten conditions and enforce fines for failures in energy generation. This will actually strengthen the niche, ‘peaking load’ position of Snowy Hydro without needing diversification in order to ‘compete’.

Assertion: ‘This requires access to significant capital.’

Question: Snowy Hydro does not need to diversify or grow and does not need capital apart from the over \$400 million annual accruals, which are more than sufficient for upgrades and maintenance. Further, the three ‘shareholder governments’ may wish to reconsider taxation regimes thereby liberate Snowy Hydro from financial pressures. **Will the Inquiry seek to enquire whether the non-core interests of Snowy Hydro are in the best interests of the nation, particularly with respect to water management.**

Assertion: ‘The company’s corporate governance arrangements mean that it is not possible for the New South Wales Government to control the company’s investment strategies.’

Question: The three shareholder governments give direction to the Board and thus Executive of Snowy Hydro and thus have direct involvement with investment strategies for Snowy Hydro. **Will the Inquiry seek to clarify with the Premier and NSW Treasury, who makes decisions including for ‘investment strategies’ for Snowy Hydro. Further, was**

**freedom to make investment decisions implicit in the corporatisation process and if so, is it not wise to change the legislation and de-corporatise the asset? Will the Inquiry recommend further restrictions so that Snowy Hydro does not exercise liberties through interpreting the Corporations Act in order to abrogate accountability to and consultation with the public through their representative governments.**

Assertion: ‘The decision to sell Snowy Hydro was based on the desire to resolve these issues.’

Question: Is not resolution better achieved through wide consultation, including with the community? **Will the Inquiry immediately, establish a community consultative committee with broad stakeholder interest groups and individuals able to better represent public opinion and guide both the shareholder governments and Snowy Hydro Board and executive on public interest issues? Is it not clear that the NSW Government is ‘cutting and running’ from its responsibility and at the same time, putting its hand into the public purse?**

Assertion: ‘It would also have allowed the New South Wales Government to reinvest our funds in priority projects here in New South Wales.’

Question: Has not the New South Wales Government demonstrated that it is not capable of operating effectively within its budget limits. **Will the Inquiry recommend that, a purpose Snowy Water Trust Fund be established to hold in trust, all income accruals from Snowy Hydro Trading P/L until the Australian community can collectively consider ‘priority’ projects.**

### **1.3 Corporate governance arrangements and Government shareholders.**

Assertion: ‘The Shareholders’ Agreement and Snowy Hydro Constitution deal with the establishment of the company and its corporate governance arrangement.

Question: Is it not appropriate for revision of the makeup of ‘Shareholder Governments’ to include all States and Territories as well as the Commonwealth and that, no decisions may be made in terms of corporate governance and strategic direction / investment without full consultation with the community, whether via Community Consultative Committee, at election of all governments or debate in all governments / houses of parliament or at referendum. The ‘Heads of Agreement’ must therefore be amended to include all states. **Will the Inquiry kindly consider broadening of the Shareholder group / governments and**



**accordingly, the Heads of Agreement to better reflect full and wider ownership by all Australian people.'**

Assertion: 'The SOC Act was designed specifically for Government ownership of corporations and provides the New South Wales Government with enhanced shareholder powers compared to the Commonwealth *Corporations Act*.'

Question: **Will the Inquiry examine the appropriate weighting of power to the NSW Government in relation to Snowy Hydro, particularly in view of their assertion that they have no control over strategic investment by Snowy Hydro. Whilst the NSW Government asserts that it 'was not possible to incorporate the company under any specialist legislation from one of the three shareholder jurisdictions' it would appear more appropriate and reflective of importance of this asset to water sharing implicating South Australia and the ACT for example, that Snowy Hydro came under the Commonwealth Corporations Act. May I ask if the NSW Attorney General's Department can work with the Commonwealth to enable this transition and accordingly, greater control / input by the Commonwealth in the strategic management and governance of Snowy Hydro, in the interest of all Australians.**

### **1.3.2. Constitution**

Assertion: 'Snowy Hydro was established ... in order to avoid giving preference to any one jurisdiction's legislation.'

Question: Does not the previous assertion made by the NSW Government indicate that special powers apply to the NSW SOC? **Will the Inquiry examine the patent disparity between the Snowy Hydro Constitution and NSW SOC and recommend that Snowy Hydro come under Commonwealth Corporations Law?**

Assertion: 'to establish Snowy Hydro with regulatory and corporate governance framework similar to other companies that compete in the NEM;'

Question: Does not this aspect of the Constitution reflect a limited understanding of the history and ongoing as well as future role of Snowy Hydro to capture, impound and reticulate water with energy generation as the means to provide funds for infrastructure maintenance and upgrades? Without consulting with the broader community, the constitution *assumes* that entry into the NEM is the primary purpose of the Scheme. **Will the Inquiry recommend that this assertion be fully tested in the public domain through widespread consultation with stakeholder groups as well as the Australian public and accordingly, amend the Snowy Hydro constitution to more accurately reflect the importance of water?**

Assertion: 'subject Snowy Hydro to regulation by the Australian Securities and Investments Commission (**ASIC**).

Question: The broad community has a number of problems with the lack of scrutiny of the proposed sale and any ongoing suggestions for bond issue, privatisation of management and other measures to change the nature of this public asset and would like ASIC to fully investigate any relationship between any member of the three shareholder Governments, their departments or Snowy Hydro Board / Executive in terms of pecuniary interest / gain. Of particular note, is the Macquarie Bank / Energy and associated corporate partners. **Will the Inquiry order an immediate ASIC investigation into the above matters and postpone further investment or strategic spending / capital raising ventures by Snowy Hydro until the investigation is complete.**

Assertion: 'Under the Corporations Act, board directors have a fiduciary duty to act in the best interest of the company, including its creditors and shareholders, not only its majority shareholder.'

Question: There are serious problems with the limited definition and interpretation of 'best interest' of the company, particularly creditors and shareholders. Putting aside the attempt to maintain a BBB or higher credit rating by Snowy Hydro and AAA credit rating by the NSW Government, clearly, the fiduciary duty needs to be examined and tested by all Australian people, not just any of the shareholders. For example, since withdrawal of the sale, the patent pressure upon the region and also, local Mayors and Councils to promote bond issue, is contrary to natural fiduciary duty. Moreover, the increasing importance of water management by the Commonwealth for all Australians, means that both the constitution and interpretation of fiduciary duty must be consider by broader stakeholder groups and a more diverse board and management. **Will the Inquiry recommend a thorough study of fiduciary duty with special emphasis on the value and importance of water, not only through regulated releases for agriculture and environmental flows, but through participation in water savings and a national water auditing program. Will the Inquiry request broader representation including via Community Consultative Committee to better determine the definition and interpretation of fiduciary duty.'**

Assertion: 'the New South Wales Government cannot require the company to seek Budget Committee approval for projects ....., the company's Constitution also limits the ability of shareholders' powers in relation to approving dividends.'

Question: Herein lies a core problem where Snowy Hydro slips between control by Government and accountability to the public under 'commercial in confidence.' May I strongly submit that neither the Constitution of Snowy Hydro or the application of the SOC is appropriate to a highly valued and valuable asset with major implications for water conservation, catchment management and reticulation / water sharing. **Will the Inquiry recommend that a broader Inquiry into the nature and structure of the Constitution of Snowy Hydro be immediately undertaken to better reflect the dual role of the Scheme including, importantly, water. Whilst the Constitution appears to be**

readily imported from other NEM related companies, it is clearly *not* appropriate to Snowy Hydro and must be changed. The ready adoption of the Constitution and application of the NSW SOC reveals a gaping hole not only in understanding, but in governance and practical strategic direction and subsequent management. This requires urgent and independent assessment and attention.’

Assertion: ‘a statutory State-owned Corporation will have a “share dividend scheme” which is formulated by the board and the voting shareholders and approved by the New South Wales Treasurer.’

Question: The ‘share dividend scheme’ must be subject to public scrutiny. Whilst the NSW Government does not appear to have control over the strategic direction, it demands dividends. Arguably, the contradiction and weakness in the SOC exposes both Snowy Hydro and the NSW Treasurer to failures to understand and effect fiduciary duty. **Will the Inquiry examine whether the share dividend scheme complies with fiduciary duty in that the NSW Treasurer has no control over the strategic direction and spending of Snowy Hydro and amend the problem through change in Snowy Hydro Constitution and application of the Commonwealth Corporations Act rather than primarily, the SOC.** The NSW Government supports this view yet fails to closely examine and challenge the strategic direction of the company. Further the previously submitted attachment by the PSIRI examining the NSW Green Energy Paper strongly criticises its approach on the NEM. The NSW Government appears to be charging forwards on the wrong path, and despite ‘as majority shareholder of Snowy Hydro, is limited in exercising its preferences over dividends declared by the company and capital investment by the company in new projects’ and that ‘this creates a major tension between the roles of Government in allocating taxpayer’s funds to carry out the core functions of Government and as a shareholder in Snowy Hydro’ appears to fail not only in its fiduciary duty but also, lacks the ability and capacity to change the Snowy Hydro Constitution and Governance. **Will the Inquiry seek to redress the imbalance in governance founded in the inappropriate constitution adopted and applied to Snowy Hydro.**