

**Submission
No 107**

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

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Theme:

Summary

State water

State Water Corporation submission to the Inquiry into the
continued public ownership of Snowy Hydro Limited.

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This submission provides the Select Committee with a relevant background document on State Water Corporation.

STATE WATER CORPORATION – LEGISLATIVE AND REGULATORY FRAMEWORK

This submission is filed in response to the inquiry into the continued public ownership of Snowy Hydro Limited.

As at the date of this submission, neither Blowering nor Burrinjuck Dams (the Dams) are owned by State Water Corporation (SWC) – both are managed under arrangement with the NSW Department of Natural Resources pending any further action by the NSW government with respect to a vesting of those structures in SWC.

However, this submission is written as if SWC had been vested with the ownership of the Dams in anticipation, but without limiting any discretion of the NSW government, of an interest in the Dams being vested.

Legislative Framework

State Water Corporation (SWC) is a State Owned Corporation established under the provisions of:

- the State Water Corporation Act 2004 (the Act); and
- the State Owned Corporations Act, 1989.

It commenced business on 1 July 2004 principally to undertake the functions set out in Section 6 of the Act. The Treasurer of NSW and the Minister for Finance are the two shareholders of SWC.

On 1 July 2004, SWC was granted an Interim Operating Licence pursuant to the provisions of Clause 12 of Schedule 4 of the Act. On 24 June 2005, State Water was issued a three-year Operating Licence.

Objectives and functions of SWC

Section 5 of the Act sets out objectives of SWC:

Section 5 - Objectives of Corporation

- (1) *The principal objectives of the Corporation are to capture, store and release water in an efficient, effective, safe and financially responsible manner.*
- (2) *The other objectives of the Corporation are as follows:*
 - (a) *to be a successful business and, to that end:*
 - (i) *to operate at least as efficiently as any comparable business; and*

- (ii) *to maximise the net worth of the State's investment in the Corporation,*
- (b) *to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,*
- (c) *where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in Section 6 (2) of the Protection of the Environment Administration Act 1991,*
- (d) *to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.*
- (3) *The other objectives of the Corporation are of equal importance, but are not as important as the principal objectives of the Corporation.*
- (4) *Section 20E of the State Owned Corporations Act 1989 does not apply to the Corporation.*

Section 6 of the Act sets out the principal functions of SWC.

Section 6 Functions of Corporation

- "(1) *The principal functions of the Corporation are as follows:*
- (a) *to capture and store water and to release water;*
 - (i) *to persons entitled to take the water, including release to regional towns;*
 - (ii) *for the purposes of flood management; and*
 - (iii) *for any other lawful purpose, including the release of environmental water.*
 - (b) *to construct, maintain and operate water management works; and*
 - (c) *any other functions conferred or imposed on it by the Operating Licence or by or under this or any other Act or law.*
- (2) *The Corporation may:*
- (a) *provide facilities or services that are necessary, ancillary or incident to its principal functions; and*
 - (b) *conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.*
- (3) *The exercise by the Corporation of any of its functions is subject to the Operating Licence and any applicable requirements under the Water Management Act 2000 or the Water Act 1912.*

- (4) *This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of the State Owned Corporations Act 1989, this Act and any other Act or law.*"

SWC may not exercise its functions in that part of the State in respect of which Snowy Hydro Limited conducts its water operations, sections 22, 23 and 32 of the Snowy Hydro Corporatisation Act, 1997.

SWC has limited powers in respect of water flowing in rivers and cannot intermeddle in the exercise of the State's water rights. When the holder of an access licence under the WM Act takes water from a river, the right to do so is a right exercisable against the Minister for Natural Resources. State Water must enable the rights of the access licence holder to extract water, subject to

Regulatory Framework

Section 6 (3) of the Act, makes the exercise of any of SWC's functions subject to the Operating Licence and any applicable requirements made under the WM Act and the Water Act 1912.

The three principal instruments which govern the exercise of powers and functions by SWC are:

- SWC's Operating Licence issued under Clause 12 of Schedule 4 of the Act;
- SWC's Water Management Works Approval granted under the Water Management Act 2000 (WM Act); and
- Various Water Sharing Plans made by the Minister for Natural Resources under section 51 of the WM Act.

The exercise of powers and functions by SWC is also constrained by the provisions of Section 9 (2) of the WM Act, which provides:

"Section 9 - Act to be administered in accordance with water management principles and State Water Management Outcomes Plan

- (1) *It is the duty of all persons exercising functions under this Act:*
- (a) *to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and*
 - (b) *as between the principles for water sharing set out in section 5 (3), to give priority to those principles in order in which they are set out in that subsection.*
- (2) *It is the duty of all persons involved in the administration of this Act to exercise their functions under this Act in a manner that gives effect to the State Water Management Outcomes Plan."*

Operating Licence

The purpose of the Operating Licence is expressed at Clause 2.1.1 to be:

- (a) meet the objectives and other requirements imposed on it in the Act;
- (b) provide, construct, operate, manage and maintain efficient co-ordinated and commercially viable systems and services for capturing, storing and releasing water;
- (c) recognise the rights given to customers by this licence;
- (d) be subject to audits of compliance with its initial licence;
- (e) undertake any functions and powers of the Minister for Natural Resources under the *WMA2000*, or the *Water Act 1912* set out in the licence.

Other provisions of the Operating Licence require State Water to:

- (a) operate systems and services for delivering water in accordance with certain performance standards (Clause 5.1);
- (b) develop and implement a total asset management strategy (Clause 5.2);
- (c) endeavour to manage water, its water release functions and operations to ensure the timely availability of water taking into account physical supply constraints (Clause 6);
- (d) conduct its operations in compliance with the requirements of the Water Management Act, 2000, the State Water Management Outcomes Plan and the Water Sharing Plans established under the Act (Clause 7); and
- (e) develop a Customer Service Charter detailing the levels of service and mutual obligations of State Water and its customers (Clause 4.4).

Related legislation

Independent Pricing and Regulatory Tribunal Act 1992

The IPART involvement in price determinations is a significant requirement on State Water as a "service provider" of rural water supply. IPART sets the maximum price limits and price paths on rural bulk water supply charges.

In addition, IPART is the regulator appointed by the Portfolio Minister to oversee SWC's compliance with its Operating Licence.

Dams Safety Act 1978

The NSW Dams Safety Act sets the standards and conditions for prescribed dams. The owners and operators of such dams are required to comply with these requirements to ensure safety of the structures and the community.

Murray-Darling Basin Agreement

This Agreement is:

- the primary equity mechanism for water sharing between the three States;

- provides for cost apportionment between those States and the commonwealth governments; and
- regulates the exploitation levels of water use in the Murray-Darling Basin through its "Cap" policies.

There are carry-over policies in relation to State shares of Murray waters through a "Continuous Accounting" policy. This provides for accounting of the two upper States' use of Murray waters not just for one year as is the policy applying to individual water users but progressive carry-over for the long term, subject to specified operational criteria. Irrigators in the Murray are well aware of the policy variation.

Water Sharing Plans

State Water is obliged to operate its Water Management Works consistent with any licences or approvals granted by the Minister for Natural Resources and must only release water from these works consistent with any relevant Water Sharing Plan (WSP), section 6(3) of the Act.

The WSP that are relevant to Snowy Hydro are:

- (a) Murrumbidgee Regulated River Water Sources;
- (b) Murray and Lower Darling Regulated River Water Sources;

These Water Sources do not include the water contained in Snowy Hydro's area of operations and water entitlements managed within the mandatory framework of the Plans cannot be dealt with in or transferred, notionally or actually, into an area in which the Plans do not operate.

These WSP do not differentiate between the individual sources of water within the valley for the purpose of annual water determination. Hence, the Murrumbidgee WSP identifies Burrinjuck and Blowering Dams as the one single source of water for the purpose of water sharing.

In respect of all these matters, State Water has no discretion to perform its functions outside of parameters set without breaching the terms of the Operating Licence or the provisions of Section 16 of the *State Water Corporation Act, 2004*. SWC cannot exceed its legislative capacity in respect of the management of any works vested in it and cannot grant rights which diminish the performance of its statutory obligations.

SWC has no discretion in respect to the application for the declaration without the consent of the Governor in respect of the Operation Licence and the Minister for Natural Resources, and as further set out below, without amendments being made to various Acts and Statutory Instruments.