

**REPORT OF PROCEEDINGS BEFORE**

**SELECT COMMITTEE ON THE CONTINUED PUBLIC  
OWNERSHIP OF SNOWY HYDRO LIMITED**

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

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**At Sydney on Friday 7 July 2006**

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**The Committee met at 9.30 a.m.**

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**PRESENT**

Reverend the Hon. Dr G. K. M. Moyes (Chair)

The Hon. A. Catanzariti  
The Hon. G. J. Donnelly  
The Hon. A. R. Fazio  
The Hon. P. Forsythe  
Ms S. P. Hale  
The Hon. M. Pavey

**DOUG MIELL**, Chief Executive, New South Wales Irrigators Council, Level 6, 139 Macquarie Street, Sydney;

**COLIN THOMSON**, Director, Western Murray Irrigation Limited, and Chairman, New South Wales Irrigators Council, 5 Tapio Street, Dareton;

**RICHARD WARREN THOMPSON**, Chairman, Murrumbidgee Irrigation Ltd, "Hampton", Hanwood; and

**MALCOLM HOLM**, Director, Murray Irrigation Ltd, Pyngama, RMB 3090 Finley, sworn and examined:

**CHAIR:** Welcome to the second public hearing of the Legislative Council Select Committee on the Continued Public Ownership of Snowy Hydro Ltd. The Committee held an initial public hearing in Cooma on Wednesday, at which it received evidence from the community of Cooma and the surrounding alpine region. Today the Committee will hear from representatives of the irrigation industry and the New South Wales Government.

There are several procedural issues I need to place before you now and on the public record. Witnesses participating in parliamentary proceedings at a select committee such as this are afforded the same protection that members of Parliament enjoy. In other words, this place becomes an extension of the House as far as privilege is concerned. However, just as members of Parliament are expected to use this freedom responsibly, the freedom of speech granted to witnesses is not intended to provide a protected forum for the making of adverse statements about other people. Adverse reflections can also divert the focus of the inquiry from the terms of reference and are not usually constructive. In general, I will warn you if I believe you are reaching the stage where your comments are becoming in danger of being perhaps libellous or opening you to defamatory action. I also remind you that giving false testimony or misleading evidence to such a committee as this may constitute contempt of Parliament. The penalties for that are extremely severe.

The Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasting guidelines are available from the table by the door. In reporting the proceedings the media must take responsibility for what they publish, including any interpretation placed on the evidence before the Committee. In accordance with these guidelines, while members of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs.

Under the standing orders of the Legislative Council evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a member of the Committee or any other person. A transcript of the evidence presented here today will be available early next week on the Committee's web site, which is [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au). Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. Please turn off any mobile phones.

We found the previous meeting in Cooma an extremely good one, and are looking forward to a good day. Mr Miell, as you are representing all of the others, do you wish to start by making an opening statement?

**Mr MIELL:** Thank you, chairman. If I could just read the membership I represent in the Murray and Murrumbidgee valleys. It is Coleambally Irrigation Corporation Ltd, Murray Irrigation Ltd, Murray Valley Water Diverters Advisory Association, Murrumbidgee Private Irrigators Incorporated, Murrumbidgee Irrigation Ltd, New South Wales Farmers Association, Dairy Section, New South Wales Farmers Association, the Southern Riverina Irrigators, South-Western Water Users, the Wine Grapes Marketing Board and the Murrumbidgee Horticultural Council Ltd. Those people have made their own representations on these issues, and will be following those up with your Committee.

I would like to reiterate some of the points we made in our submission to your Committee and then expand on some of those. Putting things into context, we would like to go back to resolutions my council took in support of the privatisation of Snowy Hydro on 2 March. Those resolutions were that the New South Wales Irrigators Council support the privatisation of Snowy Hydro on the basis that the Federal and State governments provided council with written guarantees that all existing legislative NDBC agreements and annual water release arrangements will remain in force and a 10 per cent cap be imposed on individual shareholdings and that this provision remain in force for 10 years; that there be no change to existing annual distribution as to the Murray and Murrumbidgee valleys at 1,062 gegalitres and 1,026 gegalitres respectively without agreement of New South Wales Irrigators Council members in those valleys; that licence entitlement holders be indemnified against cost increases attributable to the privatisation; that all future water savings required to meet current and future environmental flow requirements be sourced from water savings; and that the privatised entity is required to establish and maintain regular consultation processes with the industry. They were the conditions that we came to that debate at that time with. Up to the conclusion of that process, when the decision to abort that sale process was made, none of those conditions had been met. That said, none of our support was activated.

In responding to your terms of reference for your committee, on the various points of view, terms of reference (a), the impact on the short and long-term potential position of the Government including revenue and recurrent costs, as council we did not have information to support or make any informed view on that. But we did seek a guarantee and we do seek a guarantee from all government shareholdings that investment in infrastructure renewal and refurbishment will always be maintained at levels that allow for the efficient and timely release of guaranteed annual distributions to both Murray and Murrumbidgee valleys. We would hate to see the infrastructure decline to a point where that impinged on the ability of the water release that is critical to our membership.

**CHAIR:** That is already guaranteed under law, is it not?

**Mr MIELL:** Sure. I suppose this is just reiterating that that is our concern without having the expertise to go into the various aspects of how they get their funding. Regarding your term of reference (b), the capital requirements for the national energy market, we have no knowledge of that aspect of Snowy's business. Term of reference (c), the control of water regulation, obviously gets to the critical elements of concern to our membership. During privatisation we sought from governments guarantees that all existing legislative controls operating in licence conditions, NDBC agreements and annual water release arrangements would remain in force following the completion of the privatisation process, and that they would survive the transition to any new shareholding. That was the critical point.

We requested three key points: The opportunity to review on a confidential basis all agreements pertaining to the operations of Snowy Hydro in order to ascertain the robustness of each of these agreements and the overall level of security provided to entitlement holders; the release of the New South Wales Government's legal advice on Snowy Hydro's operating licence, again to give us confidence that all the issues that we thought important were addressed, and both of those requests were under active consideration at the conclusion of the privatisation process by Minister Della Bosca and we had confidence to believe that we were going to be afforded the opportunity, and we will still seek that opportunity through the establishment of the consultative committee, but I will follow that up shortly.

The third point was that there be no changes to existing annual distribution to the Murray and Murrumbidgee valleys of 1,062 gegalitres and 1,026 gegalitres respectively without agreement of the New South Wales Irrigators Council. That is just reiterating those key points. It is my council's view that by reviewing the various documents referred to above it will be able to identify any shortcomings in the various agreement's ability to offer surety to entitlement holders and, if necessary, to obtain the Government's concurrence to any amendments required to build security and confidence.

Going on to access to lands controlled by Snowy Hydro, obviously we are supportive of community access to lands under Snowy Hydro's control being continued for recreational, cultural, and environmental and other purposes so long as safety and operational considerations are properly identified and satisfied. On the removal of disused Hydro infrastructure, we believe that Snowy Hydro should have the ability to make those operational decisions for disused or decommissioned assets.

Likewise with heritage issues. We support the identification and appropriate protection of all those sorts of issues so long as they do not impinge, or if they do impinge on Snowy Hydro's operations they are properly identified and not used in a manner that would impinge on their ability to operate their assets.

Under other issues, we have three. One is the Snowy Hydro consultative committee that Minister Della Bosca announced on the Monday after the sale was withdrawn would be established. At our council meeting yesterday we reaffirmed our support, welcomed that decision and reaffirmed council's membership to that committee, and we will be looking to work with Snowy Hydro to establish that committee and have the first meeting probably either in the last week of July or the first week of August. So, we have a draft terms of reference that will be circulated to Snowy Hydro.

Regarding cloud seeding, the council has an open mind on the potential of cloud seeding to play a positive and affordable role in water resource management in Australia. We support Snowy Hydro's commitment to exploring the value of that process. There are environmental issues and issues of knowing where the water fits—is it above target or below target—the affordability of water and Snowy Hydro's continued commitment to that. We will explore those issues from the industry perspective and it would be best explored through the consultative committee to identify what range of options may be suitable for better managing that and perhaps getting more industry involvement in various aspects of that trial.

Finally, regarding Snowy River water savings, we are firmly of the view that all future water savings required to meet current and future environmental flow requirement applications be sourced from water savings. To expand a little on those points, the Irrigators Council is neutral to ownership of Snowy Hydro. We feel it is important to ensure the protection of the volumes and the timing of releases for the Murray and Murrumbidgee valleys. Obviously council has been involved when Snowy Hydro was 100 per cent government owned, then through corporatisation and then privatisation. We felt that, irrespective of where the ownership of the shareholding sits, our issues are equally as important under any particular model.

**CHAIR:** Could you elaborate on that? Publicly and in the press there has been a lot of argument against privatisation, and that private shareholders would be anxious to perhaps limit the amount of water available to you because they wanted excess for electricity generation and so on. You reflected on my comment that the availability of water is already very carefully regulated under law. As irrigators, are you happy, regardless of the shareholding?

**Mr MIELL:** 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 gigalitres 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. That was the position we took.

However, we are seeking to get access to all of those agreements: to the Government's advice, to reaffirm that that is indeed what the contracts would have delivered. We still want to go down that path, to reassure ourselves. That is where we are coming from. It was our advice that all those agreements would have had the same applicability, irrespective of the shareholding structure.

**The Hon. MELINDA PAVEY:** You are suggesting that the Government is in control of the water, under regulation and law, not Snowy Hydro?

**Mr MIELL:** The Government owns the water. Snowy Hydro obviously has the operational control of that water. Some of my colleagues may have more operational experience on those issues and may want to add to that.

**Mr THOMSON:** I agree entirely with what the Hon. Melinda Pavey has said. That is the issue: the issue is not who owns it but the rules and regulations which that entity operates under, whether the government, the corporatisation as it currently is, or privatisation.

**The Hon. MELINDA PAVEY:** The public debate during the privatisation process, before it was cancelled, had water as a major issue for many people. There was a fear that overseas interests would control the water. Why did the debate become so hysterical?

**Mr MIELL:** Probably a lack of understanding of the issue. From our council's point of view, we were looking at the industry issues, not buying into the iconic nature of the debate. We felt that was for the community. We were simply keen to understand and ensure that the decision makers understood the legislative controls of the water. That was our primary concern. We acknowledge that community issues were there and many of our members were looking at both industry and the community issues. I think generally it was a lack of understanding of who owns the water and that Snowy Hydro did not own the water and did not have the power to sell that water.

**The Hon. MELINDA PAVEY:** What is your relationship with Snowy Hydro as a corporatised entity? Has it been more productive than under government ownership?

**Mr MIELL:** I will pass that to my colleague to answer further. The industry has a very productive working relationship and we have indeed had a number of commercial relationships that Dick Thompson, Malcolm Holm and Colin Thomson, as the corporate entities, have developed and negotiated.

**Mr THOMPSON:** I have worked very closely with them in negotiating the deals to get outcomes during this drought, which has been a good outcome for irrigators. All the industries would agree that we have kept a lot of people employed by working with Snowy Hydro and balancing out some of the water availability.

**The Hon. MELINDA PAVEY:** On 2 March your council moved a motion of support for the process of privatisation, with a couple of key provisos. One was that 10 per cent be imposed on individual shareholdings and that that provision remain in force for 10 years. What happened to that demand?

**Mr MIELL:** Basically the Government has never met it. The closest the Government got to it was the 15 per cent cap for four years that the Federal Government came out with foreign ownership. The last discussions we had with Minister Della Bosca on the Thursday, the day immediately preceding the cancellation of the sale, was in Deniliquin, where we put an alternative to the Minister that he go and talk about and think about. That was a 10 per cent cap for 10 years enshrined in legislation, then with a public review of whether it deserved to be renewed or changed. None of our conditions, those five resolutions, were satisfied or activated before the sale was cancelled.

**The Hon. PATRICIA FORSYTHE:** As you were a key player in the whole process, to what extent was the Government in consultation with you during the process of privatisation? How did the process work?

**Mr MIELL:** The industry had a number of positive working engagements with Minister Della Bosca. Through myself, my members and our office, Minister Della Bosca was invited to and attended a public meeting in Griffith. Two or three weeks later he attended another one in Deniliquin.

**The Hon. PATRICIA FORSYTHE:** What about the steering committee? What about the group that was making the decisions?

**Mr MIELL:** No, and no Federal Government response either. We had written to the Premier, to Minister Minchin and the Prime Minister articulating our resolutions and had no contact from any of those people at all. Minister Della Bosca was our industry's only point of contact.

**Ms SYLVIA HALE:** Mr Miell, you say you were neutral as to ownership. In that case why did you want the 10 per cent cap on ownership in place? If you were satisfied with the security offered by the regulations, why the 10 per cent cap?

**Mr MIELL:** Simply to reflect concern that we did not want to see any particular group in the first instance have major control. It is a bit of a contradiction you could say. It was just reflecting

some of the inner concerns of people; there was a bit of doubt that we had not seen all of the agreements. We were led to believe that we had all of the controls in place but because we had not been able to go through and have a look at the various agreements, it was just filling in that doubt.

**Ms SYLVIA HALE:** You did not want that cap legislated and you did want a public review at the end. That seems to me to have been a significant consideration, because you said publicly that if that condition were not met you would not support the sale.

**Mr MIELL:** Going to the legislation, or having that cap legislated, was in response to the moving debate. That was put to Minister Della Bosca on the Thursday, the very day before the sale was cancelled. That was basically a response to the shifting of the political sands. Our initial 10 per cent was because industry has never been able to see any of the agreements, and there are numerous agreements that cover the operation of Snowy Hydro. Because we had not seen those, to satisfy ourselves that the controls were as we had been told, part of our membership said that in the absence of that there be a 10 per cent cap. It was just a trade off, that was all.

**Ms SYLVIA HALE:** The lack of transparency on the part of Snowy Hydro is a complaint voiced presumably by yourself and also by members of the community. If you wanted confidential access to documents because you have a specific interest would you have agreed to other interest groups having access to those documents or agreements?

**Mr MIELL:** We offered to Minister Della Bosca that a select group of industry experts and a legal adviser would have been quite willing to enter a confidential agreement to have access to those documents. It would not worry us if other members of the community made the same offer and were afforded the same opportunity.

**Ms SYLVIA HALE:** Do you think it would be in the public interest for a number of those documents that did not go directly to the commercial interests of Snowy Hydro to be available?

**Mr MIELL:** That would be our view generally; the more debate is informed—but it is a matter of where to draw the line. If they do not impinge on the confidentiality of the commercial aspects of the business, we take the view that public debate would be informed if they were in circulation, yes.

**Ms SYLVIA HALE:** Is it true that the details of the water licence have been made publicly available only recently?

**Mr MIELL:** I do not think it is publicly available yet.

**Ms SYLVIA HALE:** I think there is a reference.

**Mr MIELL:** We had an offer from Minister Della Bosca that the Government's legal advice on the various aspects of that would be given to industry. It never got to that stage, we never got that. My understanding is that the operating licence is not a public document.

**Mr HOLM:** Murray Irrigation Ltd does have a copy of a document, but there are a number of other documents behind that document that are not publicly available. Whilst we have one part of that document, which was corporatisation, numerous documents sit behind that document and they were the documents that it was proposed we should have a look at.

**Ms SYLVIA HALE:** Without public access to those documents you are taking it more or less on trust and on previous performance that things would continue to operate in the interests of irrigators as they have in the past. That was a leap of faith that you might have been prepared to take with a privatised owner?

**Mr MIELL:** I do not know if it was a leap of faith. We wanted to be able to convince ourselves that the controls that we were told by various members of Parliament and Ministers and government departments that existed actually did exist. Indeed we wanted to be able to look at those documents. From our experience as being actively involved in the use of water we may well have

been able to point out to the Government areas where those documents could be strengthened. Without seeing those, obviously we could not.

**Ms SYLVIA HALE:** Would it perturb you to know that the Government amended the water licence in May 2006 and did not advertise that for public comment or input? The Government still went ahead and amended it despite the legislation that required a 30-day notification.

**Mr MIELL:** Anything like that, yes, you would be disturbed if those sorts of agreements were changed without due process and notification.

**Ms SYLVIA HALE:** For it to be done immediately before the proposed privatisation, that is at the death knell in May 2006, could be another cause for concern?

**Mr MIELL:** Sure. However, I am not aware of that, but that is what you are saying happened.

**Ms SYLVIA HALE:** It is. It is in the documents that have been released.

**Mr MIELL:** That is why we want to look at the documents; to satisfy ourselves that they will not impinge on the ability of water to be delivered.

**CHAIR:** The Committee has gone away from what you had presented for general discussion on the issue. In order to be fair, are there any questions on what Mr Miell has said? We will then return to the presentation.

**The Hon. TONY CATANZARITI:** I will wait until the presentation.

**The Hon. MELINDA PAVEY:** We are very eager.

**Mr MIELL:** I continue by placing on record that we were very supportive and appreciative of Minister Della Bosca's endeavours to engage. That did come a little late in the process, but when it happened it started to give us confidence, and had the process continued I think we would have got some answers that would have satisfied our concerns. There are still a couple of outstanding issues. We have seen the establishment of the consultative committee, and we are very supportive of that. We will be having further discussions to try to get access to all those documents under confidentiality agreements, so that we can be positive contributors to the ongoing development of Snowy Hydro.

Yesterday, at our council meeting, we resolved that membership of the Snowy Hydro Consultative Committee will be one representative from each of the four major irrigation corporations—Western Murray Irrigation, Murray Irrigation, Coleambally Irrigation and Murrumbidgee Irrigation. Then two of my council directors—who will be Mr Holm and Mr Laurie Arthur—will represent the interests of all other New South Wales Irrigators Council members in the Murray and Murrumbidgee valleys. We have developed draft terms of reference, which we will now take to Snowy Hydro and engage in that consultative committee.

We wish to ensure the Committee that we have a very good understanding of how Snowy Hydro fits into the whole of the operation of water in the Murray and Murrumbidgee valleys. So it brings in the relationship with State Water and its relationship with River Murray Waters. The water just does not go from the Snowy Hydro catchments to irrigators. Obviously, out of Dartmouth in the south it goes into the Hume, and then is picked up with River Murray water operations and NDBC issues; and out of the Tumut River and the Murrumbidgee River it brings in Blowering Dam and Burrinjuck Dam. So we are very much aware, and we obviously have a very good working relationship with State Water through its customer consultative committees. One of my directors, Michael Bennett, is a director of State Water. So we understand the linkages from the top of the river all the way through to the bottom.

**CHAIR:** In other words, you are saying that Snowy is responsible for the provision of water from the headquarters of the water, down into the major dams, which have come under the oversight of State Water, and that they then are responsible for the distribution to the irrigators?

**Mr MIELL:** Absolutely. And River Murray Water as well, in the Hume. State Water does not manage the Hume. If our members are going to order water, that is done through State Water, not through the Snowy.

**CHAIR:** So there is no financial relationship between you and Snowy Hydro?

**Mr MIELL:** No—only when some of my commercial members start developing their own commercial business arrangements. That is the only relationship that the industry has with Snowy directly. Otherwise, our relationship is with State Water. It is quite important to understand the flow of water and the River Murray water.

**Ms SYLVIA HALE:** Who determines to which dam the water is released—whether it goes to Blowering, Hume or Dartmouth?

**Mr MIELL:** It is a complex operational matter, and one of my other members might know about that. I do not know whether they have too many opportunities.

**Mr THOMPSON:** There are only the two: it is either Hume or Blowering, and it depends on generation patterns. They have to put out the guarantee each year during the season, and it depends on where they want to generate.

**CHAIR:** My understanding is that it has to do with the air capacities of those dams.

**Ms SYLVIA HALE:** Blowering has quite small capacity, I think. But provided your target water is satisfied, they could choose to release any above target water through either of those dams. That would be up to Snowy Hydro, and they might then release it to the one that is most advantageous.

**Mr THOMPSON:** They do not. There is a sharing rule, depending on where the water is captured. That share has to be diverted to its respective valley. So they do not have a choice to move it to one valley or the other.

**CHAIR:** Would you like to continue, Mr Miell?

**Mr MIELL:** Yes, thank you. Industry has a very constructive relationship with Snowy Hydro, and has had for a number of years, and a number of my members have been able in times of dry season, or drought or low water allocations to negotiate commercial arrangements for what are called Snowy borrows. Dick and Malcolm will probably go into that further. We have been able to get close to and impress on Snowy Hydro the circumstances in regional New South Wales where water allocations are low and strike commercial deals for the early release of some of their reserves.

In the context of getting to better understand what opportunities there are for industry and Snowy Hydro to work together better in both managing resources and better understanding the pressures on their business, and for them to better understand ours, we will be looking to use the consultative committee to first of all get closer to their agreement, so that we understand the constraints on them, and identify issues where there may be mutual benefit in future agreements, perhaps future relationships in a business sense if they may arise. Cloud seeding might be one where in time there might be a reason why some of our industry may choose to invest in that technology and share the rewards of it if they can be quantified.

In closing, we would look to be developing and continuing our relationship with Snowy Hydro in a very constructive manner, so that any commercial issues can be fully explored, and so that if any operational issues arise that might involve road blocks or something we have a process of being able to very quickly put them before a committee, work our way through them, and ensure that we understand exactly what their business requirements are and they understand what ours are, and ensure that regional New South Wales is in no way disadvantaged by any of Snowy Hydro's operations. And perhaps we can get some greater benefit out of the resources that are at our joint disposal. That is where I would like to conclude my comments, Mr Chairman.



**CHAIR:** Are there any questions from Government members on what Mr Miell has had to say?

**The Hon. GREG DONNELLY:** Not at this stage.

**The Hon. TONY CATANZARITI:** No, not at this stage.

**The Hon. PATRICIA FORSYTHE:** In relation to the commercial arrangements which you said some of your members have been able to reach at certain times, that seems to me to imply a moving away from the fixed allocations of water, which we understand is the normal way in which Snowy Hydro operates—that over a period of years a fixed amount of water will be released—to a more flexible process. Is that a direction that you would want to see?

**Mr MIELL:** I might ask Dick to respond to that question. Dick was heavily involved in the negotiation of those agreements.

**Mr THOMPSON:** This is one I was going to comment on later. It is the case that there are options to get better outcomes for Snowy Hydro, and for irrigators I believe, by having more flexibility.

**The Hon. PATRICIA FORSYTHE:** So you would like more flexibility?

**Mr THOMPSON:** We would like to be able to work with Snowy Hydro to determine what better outcomes we can have. You would not want to write it into some agreement at the moment, but I think as we continue to better understand each other's business we can clearly come up with agreements with win-win outcomes.

**The Hon. MELINDA PAVEY:** And who wins?

**Mr THOMPSON:** I believe both can be better off.

**The Hon. MELINDA PAVEY:** And the environment as well?

**Mr THOMPSON:** Yes. In fact, that is one of the areas I am going to comment on.

**The Hon. MELINDA PAVEY:** We might let Mr Thompson do his introduction.

**Ms SYLVIA HALE:** Then let us have everyone do their introductions.

**The Hon. MELINDA PAVEY:** Yes.

**Mr THOMPSON:** Mr Chairman, firstly I would like to thank the select committee for this opportunity to present. Murrumbidgee Irrigation represents about half of the entitlements in the Murrumbidgee River. As such, we are vitally interested in any outcomes from any changes to Snowy Hydro.

Throughout this whole, ultimately failed, process, and today, our major interest is in the environmental and irrigation outcomes. We have not bought into whether icons should be bought or sold. It is, though, our belief that a number of individuals and organisations have used this process to put forward misinformation, and they have misled the debate. Much of our understanding of Snowy Hydro is outlined in our submission. However, I would like to dwell on a few of the points here at the moment.

First I will comment on the commercial deals between Snowy Hydro and ourselves and other irrigators. Over recent years Murrumbidgee Irrigation and Snowy Hydro have entered into commercial arrangements. These arrangements had been based on payments to Snowy Hydro for bringing forward of water from future years and changing the pattern of generation during the year. This has managed to provide additional resource for irrigators during what is the worst drought on record in our area. A lot of that was done on the basis of keeping some industries going and maintaining local employment. I encouraged irrigators to take it up, even though they thought, "It

would cost us as much for the water as we would make", on the basis that it was good for the community. A lot of people did just that. Far from being bad for irrigators, the maturing of the relationship with Snowy Hydro will see better outcomes for both Murrumbidgee Irrigation and Snowy Hydro. I have no doubt about that.

What we are doing in working with Snowy Hydro to try to increase security in dry years is in line with the program that we have just put up for funding, which is called River Reach. Our company is looking to provide, in the short term, 40,000 megalitres a year to the environment on average. This water will be from our savings and will go to the environment in higher allocations years, which is actually when the environment gets the best benefit if we can top up flows that are already there. All these savings will stay with our company, to ensure irrigators get that basic amount to keep industries going in dry years. We want to work with Snowy Hydro to further the outcome of security in dry years and allow them more flexibility in wet years. I would be happy to talk more about River Reach at some other time if people are interested. It really does provide an opportunity to find water for the environment, at least cost to the community.

The other area I would like to talk on is pricing. We have heard that the price of water will go up if the Snowy were privatised. Snowy does not own it, and cannot charge for it. It comes out of their generators and actually runs downhill into Blowering. I will not talk about the Murray side because that is not my area. The water flows into Blowering and Snowy has no control over it from there, and has no ability to charge for it. The only time it has the ability to charge us is if we want to do a commercial deal with them to get them to change their generation pattern.

The other one we heard was that Snowy Hydro will release water when the dams are full. There is an air space rule in Blowering whereby if they want to release and the water is going to be spilt and not available for irrigation, they then have to guarantee that amount from their above target water back in Eucumbene. They are not going to be flooding water out of the system when the dams are full. By the same token, they are not going to hold water back to the extent that they might have a spill in Eucumbene. They would really be in strife if they were into false generation. So those were just a couple of furphies that were around and were clearly not true.

There is talk about the water for the Living Murray, which is a share of the Snowy savings. Over the years people have said, "It can't be used properly for Murray." I think even the MDBC people admit now that when it comes out as the first above target water, they have the choice whether they even take that, whether they need it in that year, or whether they store it in Hume. They have total control of it for environmental outcomes. So it is wrong to say it is of no use to the environment.

Murrumbidgee Irrigation has worked co-operatively with Snowy Hydro over recent years to deliver water risk products. The irrigators have had to pay for this, but it has given them the assurance they need early in the season to go ahead and plant a crop. The million tonnes that the rice industry ended up with last year, and the number of jobs that were created, were possible because irrigators knew early in the season, and that is what we have got to work towards. We do not want more water. In fact, we have carried forward under some of these other arrangements. I think you will find a slight decrease in the amount of water used. But we want to build in security, and that is what we can do by working with Snowy Hydro.

**CHAIR:** Mr Thompson, can I clarify something? I think you were making the point that even in times of drought there was plenty of water available.

**Mr THOMPSON:** No, there was not plenty of water available, but we were able to make more water available by bringing forward future years water. Last year the deal we did—

**CHAIR:** So that gave you the flexibility?

**Mr THOMPSON:** That gave flexibility. That will be deducted from people's allocations. The next time we get above 50 per cent allocation, it will not go above that until they have repaid what they borrowed. It is allowing industries to maintain their core markets in the process.

**Ms SYLVIA HALE:** Did you have to pay for that bringing forward of future years allocations?

**Mr THOMPSON:** We certainly have paid, and we are more than—

**Ms SYLVIA HALE:** You paid that to Snowy Hydro?

**Mr THOMPSON:** We paid that to Snowy Hydro. They would certainly have incurred costs in changing their generation pattern. You cannot expect them just to make changes whenever we like.

**The Hon. MELINDA PAVEY:** What was the Government's involvement in that process? Did it have to tick it off?

**Mr THOMPSON:** They had to tick off on it.

**The Hon. MELINDA PAVEY:** That was the Department of Natural Resources?

**Mr THOMPSON:** Yes, but they were supportive right through the process. We kept them fully involved. It was a good outcome for the communities and I believe for Snowy Hydro as well.

**CHAIR:** Please continue.

**Mr THOMPSON:** That is basically it. We want to continue to work through this Committee and directly with Snowy Hydro to continue to get the better outcomes.

**CHAIR:** I was interested in your remark that you had made substantial water savings. For the sake of the record, how are those water savings made?

**Mr THOMPSON:** There is one major one, which we are about to officially launch shortly—the Barren Box program—where we are not only restoring probably 2,000 hectares of wetland to something probably better than its original state but that project is saving 20,000 megalitres in evaporation savings and better management savings.

**CHAIR:** You will have to help me; I am only a local church pastor. Through this program in the Barren Box area, how do you save water by putting water into the environment?

**Mr THOMPSON:** Barren Box was a 3,000 hectares black box wetland. Once irrigation was formed above it, when you get rainfall on irrigated land you get a lot more run-off. So for 50 years that was full of water. It killed every black box tree in that area.

**CHAIR:** With too much water?

**Mr THOMPSON:** It was too much water that killed them, not not enough. It was then used as a storage for irrigators downstream and by gravity all recycled within our system. We have decided to put a bank through it and reduce the service area which will mean in the dry years we will have major savings in evaporation and the area that does not have water all the time will get more, like it did naturally. About two-thirds of it will now be restored. Since we have done this and put water back into one of the sections the sea eagles have already come back and rebuilt their nests and the swans have moved back in.

**CHAIR:** You will tell me soon that you are replanting black box?

**Mr THOMPSON:** We will be replanting not only black box—it will have a bit different water regime now to what it had—but maybe some other natives that are more suitable. That is the plan we are just commencing.

**CHAIR:** I had an idea we would get around to that. That is good information.

**The Hon. GREG DONNELLY:** On the issue of the release of water to irrigators, when we were in Cooma earlier this week there was a suggestion that there was room to improve communication of information to irrigators so that they have a quicker and clearer understanding about the releases. Would you comment on that?

**Mr THOMPSON:** I think there is probably a need not only with Snowy Hydro but through the department to have better updates of where the dams are up to and the actual allocation. Over the last few years they have improved and as soon as there is an inflow of any magnitude they do advise what the allocations are. Most irrigators now look at what the inflows are and they get a pretty good idea before it is announced. As far as the guaranteed amount and the time of the year—that is probably where you were coming from—in most years it is not really important. We know that most of the generation will be at its peak for heating in the winter and cooling in the summer. That is when irrigators want it. To say that they are going to generate and we do not want the water is rubbish. The bit that comes out after February will be carried forward. It is not wasted; it just becomes some of next year's water. There is no loss of water for irrigation. We want to continue to work with Snowy Hydro so that in those dry critical years they will give us some better outcomes than we might get by just getting those minimum guarantees over the full year.

**The Hon. GREG DONNELLY:** Do you have any view as to how the enhancement and improvement of the communication of information from Snowy Hydro and the department could be achieved?

**Mr THOMPSON:** Clearly, the committee that is being set up, which all the irrigators are supporting, will be a good outcome and will allow us to communicate more closely with Snowy Hydro.

**The Hon. PATRICIA FORSYTHE:** Do you believe there should be any changes to Snowy Hydro's water licence?

**Mr THOMPSON:** No, I believe we can work with what there is there now. We clearly have got some better outcomes in the last few years and we can continue to do that. I do not think you could ask Snowy Hydro to be totally tied up. They do have to run as a business and maximise their profits. We need to work with them so that they can do that and we can get better outcomes as well.

**The Hon. MELINDA PAVEY:** Mr Thompson, does the ability to have more flexibility with water releases during the dry years and wet years also allow better investment by farmers. Knowing that water is going to be available even during dry times, they can invest in the infrastructure to save water.

**Mr THOMPSON:** Actually it is critical in those very dry years. The markets have been built up for years and that is when you need to maintain at least a quarter of those markets. The cost of missing out and losing markets for, say, the rice industry for one or two years is enormous.

**The Hon. MELINDA PAVEY:** I mean more in terms of on farm investment in water saving measures.

**Mr THOMPSON:** In water saving measures it certainly allows them to be more viable if they know they are going to have the water. It is no good making the savings if you do not have the savings to make with no water in dry years. You certainly need the security of early season announcements and as high as possible announcements early in the season.

**Mr MIELL:** If I could add to that, if individuals know that there is an ability to do deals when things get tough, it underpins the confidence they have in the investment and employment decisions they make. If we can establish that, yes, these deals can be done, that we can negotiate, that Snowy Hydro is willing to negotiate—obviously every year is going to be different—it does underpins the confidence that the industry will have if we know if we run into a tough spot that is an option we can explore. It might not work every year because we do not know what gifts mother nature will give us, but basically it underpins the confidence that we can get ourselves out of a tight spot if necessary.

**The Hon. TONY CATANZARITI:** What, if anything, should be put in place if Snowy Hydro were to be privatised to guarantee Murrumbidgee irrigators their future viability and security?

**Mr THOMPSON:** What we need, regardless of who the owner is, is a guarantee of water into the future and that the licence remains how it is and they cannot suddenly decide to reduce it. We need a guarantee.

**The Hon. TONY CATANZARITI:** You have touched on the River Reach Program and there have been questions about it. How will that program work? Would you expand on your submission as to how that will work with Snowy Hydro?

**Mr THOMPSON:** In this project we put forward there are probably three main outcomes from it. One is looking at where we can find the water. The second one is the basis on which you might actually trade it at what price and for what length of term. The third part of it is how we can better manage that environmental water when it does become available. Unfortunately, up till now the water that is available to the environment has not been managed as well as it should have been. This project is about improving that management as well.

**CHAIR:** We will move on to Mr Holm.

**Mr HOLM:** From a personal point of view I am an irrigator-dairy farmer milking 500 cows. We employ five people. Murray Irrigation is an unlisted public company and is the largest private irrigation company in Australia. Its shareholders are largely family-run farms. We divert about two-thirds of the water, about 1.5 million megalitres of entitlements on our licence, in the New South Wales Murray. Our family farm businesses have an estimated income of about \$310 million a year. In the Murray region we produce 50 per cent of Australia's rice crop, 20 per cent of the New South Wales milk production, 75 per cent of the processing tomatoes in New South Wales and 40 per cent of potatoes in New South Wales. Murray Irrigation produces the vast amount of this produce. CSIRO figures estimate that every \$1,000 of irrigated farm income generates about \$3,500 of economic activity.

The sale of water to irrigators is the company's mainstream of income. The company has a low energy gravity driven supply system and stormwater escapes. We have just under 3,000 kilometres of earthen supply channels and 20,000 structures in supply and stormwater escapes. We have asset replacement value of about \$500 million. Our company has a lead role in natural resource management as the implementation authority for the Murray land and water management plans. The plans have four components each tailed to different geographic areas to provide a 30-year strategy to improve the natural resource management of the New South Wales Murray Valley. Our research shows that large water users are more viable and farm enterprises are better able to invest in improved farming practices and management. Over the past decade irrigators in our region have invested \$350 million in land and water management plan activities. We also participate in a range of other environmental initiatives, such as, wetland watering on private property, a 10-year water monitoring program and research and development.

In relation to the Snowy Hydro issue, water is our key business. The 1.2 million megalitres that Snowy releases into the Murray system each year underpins our allocation. This can provide about 8 per cent of the flow into the Murray under average conditions and up to 35 per cent in dry conditions. Our position is that water, not electricity, is the scarce resource. Electricity can be generated through a number of different activities. Water is water; you cannot replace it. Governments should not jeopardise the future availability and timing of water by pandering to releases for electricity interests, and I would also note environmental interests. As I said before, electricity can be generated in a number of different ways. Water is a finite and relatively geographically restricted resource.

We welcome this Committee and the opportunity to present before it. We also welcome the consultation committee, which was being negotiated during the cancelled privatisation process. We believe that Murray Irrigation, along with our other irrigators, can have a much better and closer relationship with Snowy Hydro so that we have a better understanding of the way they do business and they also have a better understanding of the way that irrigators do business. Murray Irrigation has been involved in a number of Snowy deals. These were done prior to me coming on the board, so I have limited knowledge. As irrigators these deals were initiated by SunRice, Murrumbidgee and Murray Irrigation and in the Murray were made available not only to Murray Irrigation shareholders but to all New South Wales irrigators on the Murray River. Whilst the corporation had a large play

and stake in negotiating these deals, once the deals were finalised they were made available to all irrigators in the valley. In general, I endorse the comments of the two previous speakers.

**The Hon. PATRICIA FORSYTHE:** I know that you represent a diverse group of irrigators, users of the water. We have received a submission from an organisation called River Murray Water. Would you enlighten me where they fit because their submission presents a completely opposite position to that we have heard today?

**Mr MIELL:** River Murray Water are the operators of the river in the Murray and part of the Murray-Darling Basin Commission.

**Mr HOLM:** They are their commercial arm, who operate the Murray River. Once River Murray Water has allocated the water to the States, then State Water runs the water from that point.

**Mr MIELL:** I might add that with all the structures on Murray, they subcontract that out to State Water, to the river operators in Victoria and South Australia, who operate those structures. As you go down the river, the various States operate those structures under contractual arrangements.

**CHAIR:** Would you like to continue, Mr Thomson?

**Mr THOMSON:** Thank you very much. I think a fair bit of what I was going to say has been well covered. Western Murray Irrigation is probably a little bit different from Murray Irrigation Ltd, in that it is all high-security water and it is all permanent plantings. Western Murray comprises three old government irrigation areas, which were privatised in 1995.

**CHAIR:** For the sake of clarification, what do you mean by high-security water?

**Mr THOMSON:** In New South Wales we have two classifications of water. One is high-security water, which traditionally was used for permanent planting crops, so they could be guaranteed to have water in times of scarce availability. Now, with deregulation, people have the ability to take the risk and grow high-security crops, what we call permanent planting crops on low-security water; that is the individual risk they take. On Murray, that high-security component is only about 10 per cent of the water, so it is a very low element of the water. But the minimum releases from Snowy are extremely important to high-security irrigators on Murray, and Murrumbidgee for that matter, because those minimum releases guarantee 100 per cent allocation for high-security crops on Murray. So it is extremely important to us.

With regard to our company's attitude to the privatisation, we did not oppose the privatisation at all. Although, it did not have the same consequences as those faced by my colleagues from Murrumbidgee Irrigation Ltd. Because of our water being guaranteed, we are not out there in the market bringing water forward, as they explained to you. Although, I absolutely and totally support what they are doing. We in Western Murray do not have to do that as a company, but it is still extremely important to us.

I might add that I think a lot of the hype out there in the community was driven by emotion and fear; it was not driven by fact. Our company discussed it, and our concerns really rotated around the robustness of the rules and regulations which control the operation of Snowy at the moment. In other words, how strong those rules were for the future, not currently—we are very happy with the current rules—but whether they would still be there, say, in 50 years time. I think the directors of Western Murray Irrigation conceded that it did not matter what entity, or what was put in place, those rules could probably still be changed in the long term. So we did not have any fear of it being privatised. I do not think I have a lot to add. I had quite a number of things to say, but I think they have been fairly well covered so there is no point in repeating what others have said.

**Ms SYLVIA HALE:** I gather from the comments all of you have made that none of you has found any difficulty working in conjunction with Snowy Hydro while it has been in public ownership. In fact, when it came to the question of bringing forward water uses, you were able to work quite happily with the Department of Natural Resources. So was there going to be any tangible benefit to you from the scheme's privatisation?

**Mr HOLM:** I think it has been highlighted before that the key issue was the security around those licences. Murray Irrigation, to a large degree, and the other irrigator groups through the Irrigators Council, took the pragmatic view that water is the issue and we will let the community have the debate about the privatisation, so long as those licence conditions—and we were in the process of being about to review that and have to continue that review. It is perhaps no different to the licence that Murray Irrigation operates under, where we have a number of terms and conditions and so forth, and if we break them the law comes pounding upon us. So, as irrigators we let the community have the debate about the privatisation, and we looked after our own interests because, as I said before, you cannot replace water.

**Ms SYLVIA HALE:** So you cannot see any major positive benefit from privatisation as opposed to continued ownership by the Government?

**Mr THOMPSON:** It is operating virtually as a private entity would now, with three shareholders. The department only comes into it after we have arranged a deal; they virtually approve it, to see that it is not having impacts on others. If anything, we would have been able to work more closely, I would think, with a private entity. There definitely would not have been any downside. We ourselves have seen the benefits of privatisation.

**Ms SYLVIA HALE:** I was interested in what the upsides were.

**Mr THOMPSON:** But I am suggesting that as a private irrigation company we have seen major improvements in the way we have been able to operate. And I would not have seen any real reason to stop somebody else having that opportunity to get the benefits of privatisation.

**The Hon. MELINDA PAVEY:** But you were not expecting any special favours?

**Mr THOMPSON:** No. All we expected to be able to do was to continue to negotiate on a commercial basis with a private company.

**Mr MIELL:** What we may have seen, depending on where the shareholding sat, you may have had some additional expertise from individuals or investors who have some pretty good knowledge and understanding of resource management, or perhaps business management, that could have enhanced what Snowy Hydro was doing. That may have led to the development of more innovative products and services. That is the sort of thing we would have expected, depending on what the shareholding was. If those people felt it was an attractive investment, that might have been what we would have seen as a positive outcome.

**Ms SYLVIA HALE:** You seem to be placing a lot of hope in the consultative committee. Has the Government given you any indication that that committee will continue to be established now that the privatisation is not proceeding?

**Mr MIELL:** Minister Della Bosca actually announced it on the Monday after the sale was cancelled.

**Ms SYLVIA HALE:** In your submission you talk about cloud seeding and whether the water that is generated as a result is below-target or above-target water. Given that Snowy Hydro, in effect, has a monopoly and is under no obligation other than to release those guaranteed quantities of water, how did you expect to be in an equal bargaining position with Snowy Hydro?

**Mr THOMPSON:** That will be the challenge for the committee: to discuss with Snowy Hydro and work out some compromise conditions which are going to advantage us both.

**Ms SYLVIA HALE:** I am not saying that Snowy Hydro is comparable to Enron. But Enron was an example of a company that had a monopoly position and was prepared to use it ruthlessly. One of the problems with monopolies is the greater power that resides in some of the parties.

**The Hon. AMANDA FAZIO:** That was the problem in Eastern Europe as well.

**Ms SYLVIA HALE:** That is right, I agree. I am not for one moment disputing that. But how did you expect to bargain, on an equal basis, with Snowy Hydro, particularly when it has this monopoly control over water—when we have seen, for example, the activities of Macquarie at Sydney airport?

**The Hon. PATRICIA FORSYTHE:** You cannot disperse the name of a corporation in the middle of an inquiry—

**Ms SYLVIA HALE:** I am simply saying that at the airport we are seeing a company that is prepared to use its position to the detriment of a lot of other people with an interest in the operations of the airport.

**The Hon. GREG DONNELLY:** But that is a value judgment on your part.

**CHAIR:** I will let Ms Sylvia Hale's comments stand, because I think she was meaning it only as an example. However, I think she then made some value judgments on the example. We will let it stand as an example; we will not discuss it.

**Ms SYLVIA HALE:** But I would like some indication of how you expected—from what seems to be a position not as powerful as that of Snowy Hydro, particularly when it was privatised—to achieve outcomes that were suitable to yourselves, in relation to issues such as above-target water, which is not regulated, or cloud seeding, which is not regulated by the Government.

**Mr THOMPSON:** Above-target water does have a high value to irrigators as well; it does come out for irrigation. It is the water that builds up ploughing dam storages, which we then carry forward to some extent for dry years, and it will be the water that causes spills, which the environment gets the benefit from. I see cloud seeding as benefiting not only irrigators but also the environment.

As far as the negotiation we can have with them is concerned, we do have things to offer Snowy Hydro in additional flexibility. I would think that we can sit down with them and work out how that water might be used in dry years to give some further security, where they would clearly get it as above-target water in other years. I think it is a case of getting a better outcome for both of us—not saying that they would have been a monopoly who would not listen. They will certainly listen if you put a case forward which gives them a return.

**Ms SYLVIA HALE:** If you concede that Lake Eucumbene is, at best, 65 or 70 per cent full, there is surely the capacity for Snowy Hydro to store that above-target water for many, many years and to release it only when it is in the interests of Snowy Hydro, rather than in the interests of the irrigators. I am talking purely about the above-target water.

**Mr THOMPSON:** No, they do not have the ability to store it for many, many years. It will spill if you try to store it for too many years. And then they are in trouble if Eucumbene starts to spill.

**Ms SYLVIA HALE:** But Lake Eucumbene is only 65 per cent full at the moment.

**Mr THOMPSON:** I would have thought it is probably less than that at the moment.

**CHAIR:** I think the evidence we received the other day was that it is substantially below 65 per cent.

**Mr THOMPSON:** I would hope that by the end of November it is up to 65 per cent or better. But at this time of the year, normally it is low.

**Ms SYLVIA HALE:** But what I am saying is that that gives Snowy Hydro the capacity to store considerable quantities of water for many years, and not release it when it is necessarily—

**Mr THOMPSON:** Not for many years.



**The Hon. MELINDA PAVEY:** Perhaps this is a question for Snowy Hydro to answer, about the inflows into Lake Eucumbene, which, if we get good snowfall over the next couple of months, will probably be full when the snow melts.

**Mr MIELL:** Ms Sylvia Hale was saying that the Government does not regulate cloud seeding. Cloud seeding is only operating because of the special Act of Parliament to allow it to operate in the national park.

**The Hon. MELINDA PAVEY:** And only part of the national park.

**Mr MIELL:** Yes.

**Ms SYLVIA HALE:** The Government does not dictate what happens to the results of that cloud seeding, does it? I was referring to how it regulates the results. There is no regulation of that.

**Mr MIELL:** That is what we see as the benefit of the consultative committee. Obviously, there are a lot of technical aspects around the science of cloud seeding: measuring the yield, and whether it was the result of cloud seeding. By having the consultative committee, which gets back to the start of your question—

**Ms SYLVIA HALE:** But since Snowy Hydro argues that it pays for the cloud seeding, and it is not a result of natural phenomena, I assume its position, and the position that seems to be flagged in your submission, is that it is entitled to all the proceeds of that cloud seeding.

**Mr MIELL:** That is the view that Snowy Hydro is expressing. I think it might have gone further, to say, "If we cannot get a certain outcome, perhaps we will reconsider whether we make that investment." The consultative committee will give us an opportunity to get a better understanding of certainly the current performance of the cloud seeding trials, Snowy Hydro's specific direction, where it wants to take it and what it is seeking to achieve, and there may well be opportunities for individuals or corporations in the irrigation community to perhaps share some of the risk in the rewards. That is the sort of benefit we will expect to try to get out of Snowy Hydro. We will have a process by which we can explore those—

**Ms SYLVIA HALE:** How will you resolve in the committee those differences in interest? If the committee cannot resolve them, how will they eventually be resolved?

**Mr MIELL:** I suppose the first thing we would do is get the issues up, and then there will be the ebb and flow. Some things perhaps you cannot resolve.

**Mr THOMSON:** Mr Chairman, may I make a comment. The three of us directors here all sit on monopoly companies. I do not think we are all Enrons; in fact, I think we would be a little offended if we were compared with Enrons. We work out there with the broader community, who have aspirations that involve us. We sit down and talk to that broader community, and we are able to come to agreements that benefit us all. I just do not see it as a negative; I think it is an opportunity for us to talk to these people. Surely they do not have three heads or something. I am sure we can come to some conclusion that will benefit us all.

**CHAIR:** Are there any questions from Government members?

**The Hon. AMANDA FAZIO:** No.

**The Hon. MELINDA PAVEY:** I want to elaborate further on the issue of the guarantees that you were wanting from government during the privatisation process, especially in relation to the 10 per cent share cap. Do you think the idea of appeasing irrigators and your members with a 10 per cent share cap got lost in the system? Did it get lost in government during the privatisation process? Did they not act quickly enough on that?

**Mr MIELL:** In hindsight, we could probably say that lots of things got lost to all three governments because there was a misunderstanding or misreading of community sentiment; otherwise it probably would have been concluded by now. That was probably one of the ones that may well have

been a turning point and, if it had, it could have been resolved earlier. Perhaps recognition of that is that the Commonwealth came out with their limits on foreign ownership et cetera. From our point of view, we recognise that as a way of bringing our industry and our industry community to the table. That was one of the issues that we put up early but we did not get any reaction to it until very late in the piece.

**Mr THOMSON:** We did not have the opportunity to debate that further. If it was going to be privatised the general community did not want one particular company owning the whole lot. That is the understanding of the 10 per cent. I know there was a feeling within government that that 10 per cent rule would reduce the sale price of the whole entity. But we never had the opportunity of having that debate; the rug was pulled from under us before any of us could comment.

**Mr HOLM:** On the day prior, when Minister Della Bosca was in Deniliquin, we had quite a good meeting with him. As Doug said before, as irrigators, we put a proposal to him of a 10 per cent cap with a 10-year review. If that was not working or we were comfortable with something else, that could happen. One of the main reasons we had those conditions attached to it was because we did not have access to the full licence conditions. The 1,062 gigalitres in the Murray and the 1,026 gigalitres in the Murrumbidgee are sacrosanct as far as we are concerned.

**Mr MIELL:** All of our conditions and our participation in the debate were predicated on some fairly robust commentary from all three governments that the sale was proceeding full steam ahead irrespective. Obviously we were taking that as a pretty firm declaration of the interests of the three shareholding governments. So we were responding accordingly and trying to move with the way that the debate and the various decisions out of government were coming.

**Mr HOLM:** I might add that our shareholders were quite relieved when the sale did not proceed. But, as I said before, our main issue was the delivery of the water.

**Ms SYLVIA HALE:** Why were your shareholders relieved?

**Mr HOLM:** There was the general community debate about the icon. It is as simple as that. As I said before, as an irrigation industry, we are focused on water and we let the community have a debate about the icon. But our irrigators are part of the community like anybody else.

**Ms SYLVIA HALE:** Can I ask about the water savings and the 21 per cent that is mandated to be returned to the rivers?

**The Hon. MELINDA PAVEY:** To the Snowy.

**Ms SYLVIA HALE:** Yes, to the Snowy. Then there is the 7 per cent you hope to get on top of that.

**The Hon. PATRICIA FORSYTHE:** They hope to get on top of that. There is not much irrigation over there on the Snowy.

**Ms SYLVIA HALE:** I am asking: Do you anticipate that it will be possible to reach that 21 per cent target?

**The Hon. PATRICIA FORSYTHE:** That is a question for State Water.

**Ms SYLVIA HALE:** But you are the ones who are making the savings, presumably, and which State Water hopes to utilise in some way.

**Mr HOLM:** I think it needs to be seen in context. The Snowy River has a figure and the Living Murray has a figure. There are a lot of environmental water projects out there—whether we see them all as being achievable or not. As irrigators, knowing how we manage water and run water and the environmental outcomes that we can achieve with the limited amount of water that we put into some of those systems, we would sometimes question some of those volumes and ask whether, if we were much smarter about the way we use the water, we could achieve much better environmental outcomes with a lot less water and have much more productive systems.

**CHAIR:** If there are no further questions to our panel, I thank you for being present today and for answering our questions. Would you like to make a final statement?

**Mr MIELL:** I omitted to include the Ricegrowers Association of Australia as one of my members. I had better make sure that that is corrected.

**CHAIR:** Are there other any other comments?

**Mr THOMSON:** Thank you for this opportunity, Mr Chairman.

**(Short adjournment)**

**KIM JONATHON ALVAREZ**, Director, Water Policy and Planning, Department of Natural Resources, P. O. Box 3720, Parramatta, and

**DEREK PAUL RUTHERFORD**, Director of Environmental Water and Riverbank, Department of Environment and Conservation, P. O. Box 733, Queanbeyan, affirmed and examined:

**CHAIR:** Mr Alvarez, we have your paper before us. Would you like to make an opening statement?

**Mr ALVAREZ:** I am here today to try and give confidence to the panel that the water management arrangements are robust, clear and irrefutable. Firstly, it would be good for me to explain the bona fides of why I sit before this panel. Not only is my position with the Department of Natural Resources but I joined the department in 1975 as a civil engineer involved with water management, the then WCMIC. I, in fact, was the New South Wales councillor on the Snowy Mountains Council for the last three years prior to corporatisation and I have been heavily involved in all matters leading to the establishment of the Snowy Water Licence.

It is also important to point out that as an engineer and a manager what I say today is opinion. I am not a lawyer and since the water licence and the many supporting documents are legal documents my statements today need to be taken in that context. I understand that there has been a degree of discontent about the degree of debate hovering around the water licence in the lead-up to the privatisation or intended float of the shares of Snowy Hydro. There seems to be discontent that not enough debate hovered around the water components, that it was all focused on power. It is my belief that there is a good reason for that and that is that at the time of corporatisation a large amount of effort was put into making sure before corporatisation even began that the water licence was secure and provided flexibility to Snowy to go about its business of providing electricity, yet provided security for the downstream users of the water all the way from the mountains through to South Australia.

As I said before, what I am here to do today is to try and convince you and the panel that the elements in this water licence are indeed that way: they are robust and they will maintain the rights of licence holders. I would like to put my presentation in three forms. One will go briefly over the scheme operation, but I understand that you have had discussions with Snowy Hydro so I will not dwell on that. But there are some elements of the scheme operation that are very significant for the structure of the water licence. I will go into the licence itself and briefly describe what each of the elements of the licence does and the way in which it provides obligations to Snowy Hydro to release water and it provides obligations on the ministerial corporation, which is the Department of Natural Resources acting on behalf of the Minister for Natural Resources.

There are other documents that give weight to the strength of the water licence as well, so I will briefly describe what those supporting documents are and how they provide strength to the Snowy Water Licence. This is a map showing the distribution of water within the area of the Snowy. The pink-purple stuff is the Murrumbidgee catchment, the Green is the Murray catchment, the yellow and blue together are the catchments of the Snowy. It is a peculiar part here where the catchment does this s-bend coming south to below Cooma, then travelling north all the way up to the head waters of the Snowy River, which used to be, in fact, way up above the Eucumbene Dam. The blue part, of course, is that below Jindabyne and therefore continues naturally to flow to the sea. The yellow part is the catchment that is interrupted by Jindabyne Dam and the associated aqueducts.

The next slide is a schematic showing the average amounts of water that move in various directions. Again, briefly to describe the way it works, Jindabyne Dam has a catchment from Eucumbene Dam down to the dam capturing 310 gegalitres a year; 50 gegalitres comes in from the local catchment. All of that water at the moment is pumped upwards through Island Bend and can go two directions: an average of 335 goes back to Eucumbene, of which 310 comes back into the Murray system; the remaining 25 becomes part of the Murrumbidgee supplies, its share of the, let us say, the productivity of the interbasin divide, that is the Snowy water going west. It is joined by Island Bend flows of 540 to become 887 through the main pipeline as it is heading west. It picks up another 350 from Geehi. There is another 30 of local flows enters as it goes through Murray 1 and Murray 2 stations to an average of around 1,260 gegalitres.

It is worthy to know at this point that the licence, which I will get into shortly, mandates a minimum of 1,062 to be released to the Murray system. Taking the Murrumbidgee side, local catchment to Tantangara 300; all of it goes through the pipeline through Providence Portal into Eucumbene. It is joined by another 295 of local inflow and there it mixes with the 25 net coming across from the Murray side; 630 heads off towards the west, but it too is a two-directional pipeline picking up, on occasion, Upper Tumut water, which can flow back to the Eucumbene for storage. It picks up 375 local water and 295 of Murray water that is on the Tooma side, coming through the Tooma pipe into the Murrumbidgee. These arrows indicate the way the amount of water, as it goes down through the Murrumbidgee, increased due to local inflows being added to them along the way.

**CHAIR:** I had not realised before, but water from the upper catchment of the Murray can be diverted into the Murrumbidgee?

**Mr ALVAREZ:** It is diverted. It is always diverted into the Murrumbidgee, correct. When you look at the yield of the Snowy, which is, if you add the 295 here to the 540 and the 50, you would say why does the Murrumbidgee only get this net of 25 coming across here? That is because the Snowy scheme adds to that the 300 of Murrumbidgee water and it also adds to that 300 of Murray water. So, you would expect to see something like 600 difference, because it is getting 300 of upper Murray water here. That is the calculation as to why we end up with guaranteed flows around equal. The guaranteed flow on the Tumut is 1,026 and the guaranteed flow on the Murray is 1,062.

On the next slide I will explain the way the scheme was designed. We use what we call a safe yield analysis in designing a scheme. In Australia we have variable inflows. We have highly above-average inflows and we have below-average inflows. The dams at the storage level that out. Adding those two numbers together gives us 2,088, so we can release 2,088 in many years where the inflows to the scheme are far less than that. That is because of the storage. So, the scheme is designed in a way that allows 2,088 to be released every year without fail, however the average inflows are significantly more than that. So, at times there is more than that but there is no less than that. It can survive letting go 2,088 every year, provided we have a repeat or similar climatic sequence as we had in the past 100 years.

In the context of where the Snowy corporatisation took us, which is including releases to the east to satisfy the environmental flows arising from the Snowy water inquiry, if there is less water coming into the scheme, or in this case being released to the east and not being captured by the dam, you will have lesser inflows. If you have lesser inflows, there are two outcomes. You can either reduce the amount of assured flows to the west and maintain the same reliability so you get it every year or maintain the 2,088, but in that case the scheme would fail in some years. It would not supply the 2,088 every year. If you have less inflows you cannot survive through the worst drought.

The scheme is designed to have a storage level, and whenever you reach that storage level, which is called target level, you know from that point on you have enough water to survive a repeat of the worst drought. I say that because the next slide comes from the original design of the scheme. I draw your attention to the top line. The other two lines are the Murrumbidgee and the Murray separated but we do run two separate schemes. The upper line is the combined storage of the whole scheme. You can see from that that this is a simulated flow. If the scheme had been built in 1910, this is how the storage would have operated with the inflows that were recorded and every year letting go 2,088. You can see we have come from a full supply up here, and that happens to be about 1916. It would have been full and it would have hunted around for many years in its mid level and then the 1939 to 1946 drought hit and it would have just emptied in 1946. It still supplied 2,088 in that year but it just emptied.

So, you can see that if we had taken more than 2,088 out of that scheme it would have failed. It would have gone empty and failed to supply 2,088. On the other hand, if we take less than 2,088 out every year, it would have travelled along a higher line. There would have been less taken out and it would have spilt in these two years. So, based on the historical sequence, it is a very fine line between taking too much and taking too little. What we have is a design that gives exactly 2,088 every year without fail, providing of course our climate does not change on us. That is significant for the way the licence is structured, and I will get to that later.

That was theoretical at the time of the design. This is the actual behaviour. I have split it into the two arms here, of the Murrumbidgee and the Murray, and again I will talk briefly when I get into the licence about the need and the obligation for Snowy Hydro to keep them both separate. It must run the two schemes as two separate entities and must account for water as two separate entities. From this I will point your attention to the two lines. The upper line is the actual storage of water. This one is the Snowy-Murray development. I will describe what has happened here. Back in 1979 the storage for that scheme was on target. It had enough water to survive through a repeat of the worst drought. It started into a sequence, starting in 1979, and it travelled down here and you will see it reached a low point about here in 1983. It is about 20 per cent of storage on the Murray side. It then started to recover and ultimately went up, and there was a small spill at this point in 1996.

The purple line is the contract line. That is a calculated line that says where would the storage have been if it had released 2,088 in every year. Along here it did not release 2,088 in every year; it was not required to. The WC&IC at that time, back in the late 1970s and early 1980s, requested Snowy not to release water because our dams were full. We requested it not to release water to exacerbate flooding. We said, "We do not need any more water. Please let it go." When we do not need any more water, in other words it supplied more than was necessary under the contract, that water goes into above-target water because it is no longer needed to fulfil the requirements of doing 2,088 every year.

The lines on the graph diverge for a while as water has gone into above-target water and they run parallel until the theoretic line meets target. Once it meets target it follows target. Why? Because the contract amount never has to be more than that necessary to meet the 2,088 gigalitres supply forever. Any extra water goes into above-target water. It is water surplus to its needs to supply 2,088 in every year. That is the definition of "above-target" water; it is water that is held in storage that is not necessary in meeting its contract. Despite it being above-target water it still must be released to the west and it must be released to the west in proportion to where that water fell; whether it is in the Murrumbidgee system or the Murray system. The separate developments must be maintained and separately accounted.

However, because it is not part of the contract, it can be released at will without affecting the contract. If it is let go, and if all of the above-target waters were let go today, there would still be enough water in the scheme to fulfil the contract of 2,088 in every year. It is interesting to note that if we have a repeat of the worst drought, when we get to the bottom—when the storage is apparently empty—and there is still above-target water in there, the fact that it still has to be released to the west means that above-target water is, in effect, additional reserve. It is additional reserve, which will become available to irrigators. However it will not be like the below-target water, the contract water, because you know when contract water is going to come out. With above-target water you do not know when it is going to come out.

You do know it will come out, and the circumstances that would have it coming out when it is down at almost empty would mean our dams would be empty. It would come into our dams and we would regulate it to the benefit of irrigators. There is in fact a greater reliability than the licence gives via contract. I can now move onto the water licence.

**Ms SYLVIA HALE:** Mr Chairman, is it possible to ask a question?

**Mr ALVAREZ:** It may be better to wait till I get to the end, because there is a lot of complexity in the licence that may explain. There are six main schedules in the licence, the way it is structured. The main part of the licence is quite small. Clause 7.1 grants Snowy Hydro the right to collect, divert, store, release and generate water. That is all it allows it to do. It does not allow it to consume it in anything other than normal operations such as drinking water, water for concrete, and stuff like that. There is no notion that they own the water. They have the right to collect all that water. However, we know that there are riparian rights from those within the scheme area, such as national parks, which consume water and have licences. The resorts have the right to domestic water.

**CHAIR:** What is the background to "riparian"?

**Mr ALVAREZ:** "Riparian" means that you front a river and have a longstanding right to take water from that river for domestic and stock use. Section 7.2 says that the department has the

right to issue riparian rights and Snowy does not have the right to block riparian rights. Section 7.3 of the main licence declares that the water must be released to the west, excluding environmental flows. I will talk about that shortly. It says that Snowy does not have the right to manage water in any way it sees fit, it does not have the right to release water from the scheme other than through the power stations to the west or through the environmental flow positions of the licence. It has no right to do otherwise. For example, if it is decided that it wanted to be an environmental manager and wanted to release more water down the Goodradigbee to prevent it from doing that from the licence, it must release water to the west and it must release environmental water to the east.

Section 7.4 makes it very clear that when instructed to issue environmental water to the east, that is the increased flows that arose after the environmental water inquiry, it must do so. Under section 7.4 it must release those waters to the east, if directed. Section 7.5 is quite significant, because it tells the business it cannot act as a water supplier, because it has no rights to water, it cannot trade water, it cannot act as a water supplier. It is very overt. I have expressed three times that it must keep its water separate and because the scheme has a limited capacity it must operate its scheme in order to minimise the internal spills, which I will describe.

It cannot bias its water generation down to the Murray, leaving the Murrumbidgee at a higher storage than the Murray and therefore causing the internal spills from the Murrumbidgee system to the Murray. It must balance its operation so that there is an equal probability of spill from the Murray to the Murrumbidgee or the reverse. It cannot bias one scheme at the expense of the other. It declares that the way the scheme is operated is through the provisions of an annual operating plan, which must be approved by the ministerial corporation. Section 9 deals with fees and charges, which are largely unimportant here.

Section 10 is important, because it actually starts dealing in broad terms with the nature of the relationship of the environmental flows that exist in the licence and the Snowy Water Inquiry Outcomes Implementation Deed [SWIOID]. Section 10.5 is important. The licence provides for review of environmental flows in year five or under that review if any change to the licence is contemplated it must be consistent with the SWIOID, which is an agreement between the Premiers of the States and the Commonwealth. If there is a review in year five, or in fact at any time, and any change to the licence compensation is payable to Snowy for lost energy, if such a change were contemplated, the Snowy Corporatisation Act 1997 requires that consultation take place before any change to the licence.

Section 11 talks about the revocation of the licence and the nature of what sort of actions undertaken by Snowy would result in a revocation. Clearly this is a major utility. The idea of taking away a licence from a utility that provides all sorts of mandatory facilities into the national energy market would not be contemplated lightly. The licence is structured in a way that it would be revoked only in the circumstances of a major misdemeanour. Worse than that, the misdemeanour requires that the directors be prosecuted to the extent of the law under section 34 of the Act, to the full extent.

We expect that there would be disputes between a company, and that could be related to a number of items, but usually about the annual operating plan. That is when they get their annual operations approval. Section 12 and section 13 deal with disputes. In simplicity, it requires a dispute to be resolved by an independent arbitrator. Section 14 deals with charge and assignment, and that is one of the circumstances of how the water licence operates in the circumstances of changed ownership of Snowy Hydro. This is very significant. It was always contemplated at the start, at corporatisation, that governments might not always be the owners of Snowy Hydro. So there are specific circumstances. That gives us confidence. It was thought about beforehand, it is there in the licence and it means that the licence does not change, irrespective of ownership. It is a robust licence. The change of ownership makes no difference to the operation of the scheme.

The area of minor misdemeanours under section 13 is the dispute process. A lot of people have said that if you can throw the book at them big time, how are you going to get them to cooperate. Under section 13.6 the parties agree to abide by the annual operating plan or, if in dispute, the determination by the independent arbitrator. If Snowy Hydro fails to do that it is in breach of contract and the court will issue damages through the court process. We do not ever expect it to reach that far and the licence is actually structured in such away that resolution would be agreed. That is the main licence.

Schedule 1 "The Catchment", is very simple, it describes what the catchment is and it is significant in regard to section 7.6, which is keeping the developments apart and section 7.2 about riparian rights, knowing where the riparian rights are. Schedule 2 "The Works", operates in a similar fashion to the works approval issued under the Water Management Act. The licence contains the description of works that by virtue of the fact that they have a licence they are able to operate those works in accordance with the licence. Any work not in here that affects the flow of water within the scheme or out of the scheme if operated without being put into the schedule would be illegal.

The increased flow paths are the environmental flows to the east and the montane. Schedule 3 deals with that. Schedule 4 covers the regulations in flows to the west. There are six parts and the first part is general. This is largely flowing from the SWIOID, the Snowy water inquiry. It says that in order to find water to the east, water flows for the environmental flows, governments will find water savings in the west. Having found those water savings they will notify Snowy Hydro of what the savings are. As a consequence of that notice, which has to be given before February each year, Snowy Hydro will in its annual operating plan reduce the planned flows to the west by the amounts so advised. They will increase the flows to the east in a manner described later in the section. It introduces also the concept that at the time of the drafting of the licence there was no capability at Lake Jindabyne to release that water.

There are two general provisions that say that for the first three years, while that water cannot be released, it will be released by way of stopping the flows that come in from the Mowamba River and instead releasing them to the Snowy. After three years it introduces the concept of all the environmental flows being released via Jindabyne. There are more details on that to come. Part 2 is the details relating to the Snowy River flows, not the montane flows. Montane flows refer to the high level streams that are high up in the montane areas, as opposed to the main rivers that are released to the west, and the Snowy River to the east.

Section 6 of this part refers to the construction of works. Knowing that it did not have the capacity of Jindabyne, the licence binds Snowy to constructing certain works. Section 7 deals with the commencement date of the environmental flows, and it also goes into the details of saying that for the first three years following the commencement—which was at corporatisation—the releases will be in accordance with part 3, which is yet to come, and that from there on to use part 4, as a direct entrée into part 3. Part 3 of the schedule deals specifically with the Mowamba and Cobham creeks. For those who do not know the geography, these are creeks in and around the back of Lake Jindabyne that flow directly into the Snowy. At an elevation suitable, there is a small weir with an off-take on the northern side that diverts the water into Lake Jindabyne.

This part directs Snowy to allow up to 38 gigalitres per year during the first three years. It has provision that if in those three years it was very wet—and I will state now it was not; it never got there—and if it did exceed 38 gigalitres, a very wet circumstance, then there is provision for Snowy to turn the pipe back on again and take any extra water above 38 back into Lake Jindabyne. It demands that Snowy keeps a borrowing account. That is, we know that water which technically falls under the environment flow banner was being released before the savings had been made in the west, and knew we had not established the joint government enterprise to find those yet, so by definition it is a borrow. So they must maintain a borrow account.

Part 4 deals with Jindabyne. This is the part after the first three years. It simply says that it must release the water as instructed by the Ministerial Corporation to release, that is, release waters down the Snowy. There is a concept of monthly quantities. Snowy needs to be advised at the beginning of the year what the total amount for the year would be, and the pattern on a monthly distribution through the year. In a failure of the Ministerial Corporation to issue any instructions otherwise, there is a default pattern, and that is established in the licence. There is a default monthly pattern, and that pattern is the same pattern as the average natural flows that flowed in the Snowy at Jindabyne before the scheme was built. That default pattern is provided at section 13.3.

Section 14.1 recognises that you can get a heck of a lot better environmental outcomes if in fact you manipulate your flows on a daily basis. If you have a monthly allowance of say 2,000 megalitres, it may be better to let that go at a higher rate for half of the month and at a lower rate for the other half of the month. So section 14.1 allows the Ministerial Corporation to advise Snowy Hydro



a month in advance what that daily pattern should be. It also says in section 23 that when 100 gegalitres or more of water is found by the joint government enterprise and they have been notified of that amount, there is provision to let go what we call flushing flows. The flushing flows cannot be greater than 5,000 megalitres. We cannot direct Snowy to let go more than 5,000 megalitres a day because under the works provision we have only instructed them to build a works capable of releasing up to 5,000 megalitres a day.

**CHAIR:** These are not part of the environmental flow, is it?

**Mr ALVAREZ:** These flushing flows?

**CHAIR:** Yes.

**Mr ALVAREZ:** Yes, they are. So, in concept, what would happen is that when we have got more than 100 gegalitres, we could instruct Snowy to store 50 gegalitres of it for release in the spring as a single flushing flow, peaking at maybe 5,000 megalitres a day for a couple of days, so that is 10,000 megalitres, and the remaining 40,000 megalitres of that to be distributed into the recession of that, to make a natural-type flood event. The rest of that water would then be distributed as maintenance flows throughout the rest of the year, according to instructions given by the Ministerial Corporation.

Part 5 of the schedule deals with the Montane rivers. It has a couple of sections in it. It looks very similar to the structure of the Snowy River provisions in that it has in section 19 the requirement to modify works as required to release water for the Montane streams, and that may mean decommissioning aqueducts, increasing our capacity from dams, et cetera. Specifically, it must build a 2 gegalitres work at Tantangara. That is provided in section 20. It specifies that the releases to the Montane streams are to be proportional to the savings. So, given we have a commitment of 212 gegalitres for the Snowy, when we have reached say 160 gegalitres, that is we are 50 per cent through, then 50 per cent of the Montane flows should be facilitated by Snowy.

The extent of the Montane releases is not directly related to water, so I cannot tell you what specific volume is required, because the limit that is placed on the Montane stream relates to the loss of energy. So what we have in effect is a kitbag of up to 150 gigawatt hours. To explain what that means: if you do something to a power station, for example, something around Tumut 3 power station, where you have only got a third, the last amount of the power left in the works, you are only bypassing one power station. If, however, you release water from right at the top of the scheme, you are losing the potential energy that might have been going through Tumut 1, Tumut 2, Tumut 3 and Jounama.

So you are losing a lot more energy for an environmental flow pass that leaves the scheme high, as opposed to one that is really diverting around. For example, there are provisions to some of the aqueducts that are high in the scheme that might bypass Geehi but still end up through the Murray power stations. That would be a small cost environmental Montane release, as opposed to one that is coming from say Tantangara, which bypasses all of the power stations.

There is a table at section 23 that prescribes the distribution between the Montane schemes, but the table may be varied. Part 6 deals directly with Tantangara. Without going through it, it is the same structure as that for Jindabyne, including such things as the orders to release, the daily flows and the monthly flow. It has all those provisions in there, so I will not repeat my talk about what is in part 6. Schedule 4 deals with the flows to the west. This is most important to the irrigators. There is a definition of what the developments are in sections 2 and 3. I repeat, this is where it becomes quite clear that Snowy has no flexibility with releasing water, other than in accordance with where that water has fallen, between the two schemes. It must maintain that separation, and that is in section 4.

There is a concept called relaxation. As I described on that previous chart, when we were going through the physical operations, when we have enough water in our irrigation dams to announce 100 per cent, we do not need any more water; we have got enough to allocate our water for our irrigators at that time, for that amount, therefore any water beyond that that would be coming from Snowy is what is called relaxation. This says that the Ministerial Corporation will notify Snowy that

we no longer need any more water for that year, and they have the prerogative of not releasing should they so desire. They can relax their releases under clauses 6 and 7.

People might question that one. I guess I might say I am a long-time civil engineer and I know it is always smart to keep your water as high in the scheme as you possibly can, because then you can always release it later to a lower point. If you release water unnecessarily to a lower point, you remove that flexibility of releasing it later. Clauses 6 and 7 are basic construct that if you do not need water downstream for your downstream commitments, don't release it; or, in this case, don't mandate it for release. It is still up to Snowy whether they do or do not, because obviously they might have power contracts that mandate its release. But they do not have to release it.

Section 9 obviously is there to cater for irrigators' needs for inter-valley transfers. If someone in the Murrumbidgee buys water from the Murray, and we need to get the water over the top, as we call it, then there is provision here to lower the releases on the Murray side and increase them on the Murrumbidgee side, and vice versa, but only in concert with the inter-valley transfers that have been applied for.

Section 10 requires continuous accounts to be kept by Snowy Hydro, and those are auditable accounts. There is a special clause in there. Our irrigators were concerned that at corporatisation the corporate entity would start releasing more water than it ever had during winter. There may have been higher prices during winter, or higher demands. In order to maintain a semblance of history, and to make sure that it does not leave irrigators short during the summer, when they want water, clause 11 mandates that a certain minimum amount of the annual requirement is in fact released during the summer. So, although I have written down here "can't generate at all in winter", they can. I have written that incorrect. Snowy Hydro can generate in winter. But, if it does so, it still must meet a minimum amount in summer. And, if it has run out of its 2008 by December, then it must release its above target water during the summer. That preserves the pattern of flows into our dams and avoids it all coming down before the irrigation season.

The concept of 1026 and 1062 mandates enters at section 12, and there is flexibility, and that is recognised in that even Snowy cannot turn its power stations completely off if it reaches 2088 a week before the end of the year. So there is a flexibility clause that says: They can't get it spot-on every time, so if they are a little bit above or a little bit below, in fact 100 gegalitres above or below, we will continuously account that across years.

Section 14 deals with the sharing of data. Quite clearly, our department needs to have knowledge of what is going on in the scheme in order to be satisfied that they are following their rules, and Snowy Hydro needs access to downstream data to make sure we are following the rules. Section 15 declares that models will be kept that will actually be able to have a look to detect whether differences in operations have occurred or not. Schedule 5 deals with internal licences, the riparian licences, and simply says that there is a list at schedule 5 of the licences that are riparian and therefore allowed. If we chose to license water beyond a 3 gegalitres net, there is compensation payable to Snowy for lost energy. This becomes quite significant if, for example, water were to be released from Tantangara for say Canberra's water supply or indeed for the Queanbeyan or some other water supply. There would be compensation for lost energy payable under those arrangements. Schedule 6 details how those water accounts are kept. It is a very technical part, and members of the Committee may view that at their leisure.

That is the end of the actual licence. I will briefly talk about the supporting documents that give the robustness to this licence. I have referred to the SWI/OID. Fundamentally the SWI/OID agrees that the other States recognise that New South Wales has the sovereignty over the New South Wales land and indeed it has sovereignty and management rights over Snowy Hydro. There is an agreement in there that agrees to fund the joint government enterprise to fund the Snowy savings, thereby allowing the environmental flows to proceed. It agrees with the way the savings are converted to the Snowy Hydro. Interesting enough, this is a direct repeat of what I have just been through that is in the licence, and that is deliberate. That is, although New South Wales has the unilateral right to change the licence, that is the recognition of the sovereignty up here, if it proceeds independently without telling anybody else about it, Snowy would still be complying with the new licence. The other States would have nowhere to go. This is an intergovernment agreement. So it is written the same way as the

licence is. Despite what New South Wales might do to change the licence, this does not change. If this does not change, then the nature of any arrangements made with other States remains constant.

I am seeing some cocked heads, so I should carry on with that one, I think. There was always concern by the other States that despite the provision and comfort that Snowy would always comply with the New South Wales licence, the fact that it is a New South Wales sovereign licence that is being issued under the New South Wales Act, there is nothing to stop New South Wales changing that licence. It has to be that way. That is what governance is about. However, this is an intergovernment agreement and because it repeats the licence, just because there is a change in the licence does not mean there is a change in disagreement. In other words, it locked in place the benchmark against which change can be measured.

**The Hon. MELINDA PAVEY:** If New South Wales went alone and changed something, it may have to pay compensation on the basis of the intergovernmental agreement it signed?

**Mr ALVAREZ:** Correct, it does not change just because New South Wales changes the licence. By repeating the licence and separating it from the licence, it does not matter what New South Wales does, the intergovernment relationship is based on what was there at the corporatisation date. So it locked in place at the time of corporatisation the Snowy-Montane flows by duplicating the environmental provision that is currently in the licence. So it is locked in by high-level intergovernment agreement by the Premiers, whereas the licence can be changed by Minister Macdonald. If he does so, of course, by changing it there are other provisions that would trigger compensation.

It was a really tricky exercise, this whole thing, because in one way we wanted and had to have it come under one government's control. You have to have that sovereignty. You have to have the independence. You cannot have a Minister of one Crown having to go to another Crown to seek approval. So you had to preserve the right of a Minister and a Government to govern. At the same time the other States wanted to say, "How do we preserve our rights? We are entitled to the water that flows down the Murray River. How do we maintain that?" It was a very tricky exercise, and this is the way it was put in place.

This also brings into the notion that they would like to have consultation. If it is our licence we could cut the other States right out of consultation. This establishes the consultation by intergovernment agreement on Snowy matters. That is what is called the WCLC, Water Consultation Liaison Committee. It is through that committee that the annual operating plan goes before it goes to my Minister for approval. That is the way we lock the interests of the other States into the process. That committee is not an approving committee; it is a vetting committee of the annual operating plan.

There is a Murray Darling Basin Agreement. Victoria and South Australia recognise that at any time New South Wales could change the licence. If it did so they are going to suffer the consequences. So there was an agreement to amend the Murray Darling Basin Agreement in such a way that if New South Wales unilaterally acts, then the Murray Darling Basin Commission will adjust the books in the commission to make the effect binding on the other States. So all of the impact of any change will be borne by New South Wales. If New South Wales wants to maintain the sovereignty to take unilateral action it can, but this agreement says if we do we pay. Again, that preserves both sides. It preserves both States' interests and our State's sovereignty over the licence. There are three other documents here. The long-term water arrangements: it is a 75-year licence. This permits New South Wales to consult with the other States before renewing or changing the licence at the end of the 75 years. There is a deed of indemnity. This is where Mr Rutherford comes into play. We knew at the time of making the corporatisation there was an issue to do with cold water pollution. I think everybody understands what cold water pollution is.

**CHAIR:** I have it when I dive into the swimming pool this time of year.

**Mr ALVAREZ:** Exactly. If you go to the bottom of a pool it is bloody cold and if you go to the top it is warm. Fish feel the same. We know that all of our large dams suffer from releases which come at the bottom of the dam and are often cold and deoxygenated. Water at the top is oxygen full. It is better water from the top of the dam. We knew that was the case. So how were we going to deal with this? Again, other States were most concerned that as shareholders in Snowy Hydro if New

South Wales unilaterally put a huge load onto Snowy Hydro they were going to suffer financially as shareholders. So they said if New South Wales acted unilaterally to require Snowy to invest in a whole lot of expenditure on cold water pollution devices it wants some indemnity. So there is an indemnity for a period of seven years from corporatisation. So in 2009 that goes away. Snowy is on its own from there. Snowy has to make provision against the future possibility in their financial management to be able to put in cold water pollution devices past the seven years.

**The Hon. MELINDA PAVEY:** If government requests.

**Mr ALVAREZ:** If government requests. I will not go too much further into that.

**Mr RUTHERFORD:** I can explain that a bit more in a few minutes in relation to the Protection Environment Operations Act. They have a potential liability under legislation whether Government requests they do work or not.

**Mr ALVAREZ:** Very simply what this deed of indemnity does is indemnifies SHL for environmental releases that it makes. Let me explain what that means. The environmental releases are directed by the Mincorp. We direct them on the quantity and the timing. Snowy Hydro says, "We will do as we are told, but if we do as we are told and cause damage do not come to us. We are doing your bidding." That is what this says: yes, it is the Government's choice to put environmental water down. This indemnifies Snowy from any damage that may be caused from that. It does not indemnify them against all matters though. For example, if we told them that they have to release 100 megalitres a day or 1,000 megalitres a day or work up towards a large release under a flushing flow we would still expect Snowy to consult properly to make sure that people are not camped in the river valley, that we know when it is going to happen and they make sure that people are not damaged by it. But it certainly does indemnify them for the damage of the release of that water. This financial support says if the Government acts within the first seven years to direct environmental cold water pollution devices to be done, then there is financial support granted by Government.

**The Hon. MELINDA PAVEY:** Has there been a great deal of work done other than at Jindabyne?

**Mr ALVAREZ:** I think Derek will go into that. The compensation deed, very simply put, says that New South Wales must compensate SHL for any changes of the licence other than by agreement. Just before I finish, the linking of all of those together makes it extremely difficult for New South Wales to change the licence—as it should be. It is not impossible; it is extremely difficult. It is deliberately made difficult because a lot of people benefit from the robustness of that licence. We had to maintain sovereignty over the licence and for it to be changed without having to go to another government for approval. We are prepared to lock in, as we have, consultation. Again, the other thing that stops my Minister from doing things unilaterally is he knows if he does without Snowy's agreement he is up for compensation, a lot of money. He knows if he does it is on his own without going to the Murray Darling Basin Commission first he will be up for a lot of water in the west. He knows if he changes it unilaterally there will be a whole a lot of people upset by it. I doubt whether it is going to happen.

That sounds like a threat to our Minister. It is not. He can act that way—preserve that all the way—but it is deliberately robust. I believe we can afford to be robust because we had seven years of work following the inquiry to make sure that we got it right the first time. That is why I am here today: to try to convey to you my confidence, having been a significant part in the drafting of this, that it is robust, that unilateral actions cannot be taken or if they are they are corrected, and that it provides security to all interests involved.

**The Hon. AMANDA FAZIO:** All these water licences and regulatory documents that you have referred to are not secret documents, are they?

**Mr ALVAREZ:** No, they are not.

**The Hon. AMANDA FAZIO:** Are they all publicly available?

**Mr ALVAREZ:** I can speak on behalf of my Minister and our department in regard to the water licence. Like all of our water licences they are publicly available. I have heard that there had been criticisms of them not being made publicly available. Since 2002, the completion of the corporatisation, everyone who has come to me asking for a copy has been either sent a disc or I have emailed them a copy. At certain times I have given them a copy of the water licence. At the time of the IPO, the potential float, that licence was put on our web site and it remains on our web site. That is the water licence. I can speak in regard to the water licence only. My Minister is responsible for that. As regards to the other documents, which are signed by the Premier of the Treasurer—

**The Hon. MELINDA PAVEY:** Such as the Snowy water licence?

**Mr ALVAREZ:** That is the Snowy water licence.

**Ms SYLVIA HALE:** Why was it not put on the web site earlier? What did it take until early this year to be put on the web site?

**Mr ALVAREZ:** We do not put anybody's licence on the web site normally. It is not a normal practice. We have a register and anyone can inquire of that registrar about anybody's licence. It is no different to any other water licence. It is available for scrutiny by individuals at any time.

**Ms SYLVIA HALE:** Surely if anyone can obtain a copy, in the interests of transparency and the feeling that people are being kept in the loop, all of those licences should be available on your web site?

**Mr ALVAREZ:** Again, we are trying desperately to keep in line with a whole lot of public expectations. One is consistency that we treat all our licencees the same. We are governed also by privacy. There are a lot of elements related to private licences that are governed under the Privacy Act. We have to be mindful of that. Up until the float we have been consistent about the presentation. Anyone who wants to inquire, it has been available. As regards the public interest at the time of the float, it was seen to be in the public interest to put that licence up because that was the only one that was being floated. If there were a public float of Murray Irrigation's licence, we would do the same thing. But until such time as there is a public necessity, we treat all licences—

**Ms SYLVIA HALE:** So you do not see there being any public interest in being able to compare the conditions of one licence with the conditions of another, for example?

**Mr ALVAREZ:** On the contrary, I think it is quite appropriate. That is why any inquiry, for any licence, can be made of our department at any time.

**CHAIR:** You may be able to help us, Mr Alvarez. Apparently we cannot get hold of the 2002 Snowy Water inquiry outcomes implementation deed, the 2002 Snowy Scheme long-term arrangement deed, and the 2002 Snowy bilateral deed. Are you responsible for the production of any of those documents?

**Mr ALVAREZ:** My department is not responsible for those documents. My department is only responsible for the water licence, because that is where my Minister—

**CHAIR:** To whom should we go for those documents?

**Mr ALVAREZ:** I understand the SWIOID long-term agreement is signed by the Premier, so I would say it is the Premier's Department. The bilateral deed is between Snowy Hydro and the State of Victoria. It has nothing to do with us; we are not at liberty to produce the document.

**CHAIR:** What about the long-term arrangement deed?

**Mr ALVAREZ:** The long-term arrangement deed is the same as the SWIOID document: it is the Premier's Department. I could be corrected on that, but I am pretty sure it is the Premier's Department.

**CHAIR:** Do members have further questions of Mr Alvarez before we hear from Mr Rutherford?

**The Hon. PATRICIA FORSYTHE:** I would prefer to hear from Mr Rutherford before I ask questions of Mr Alvarez.

**Mr RUTHERFORD:** Kim has outlined in good detail the regulation of water supply and water volume through the scheme. The involvement of the Department of Environment and Conservation relates to the impact of the scheme's activities on water quality, as regulated under the Protection of the Environment (Operations) Act, which the Department of Environment and Conservation administers. The Act has two relevant aspects, one being a schedule of activities which require a licence under the Act. One of those activities nominated in the schedule is power generation activities. For that reason, Snowy Hydro has an environment protection licence with us under the Protection of the Environment (Operations) Act, which covers its power generation activities and impacts on particularly water quality.

Section 120 of the Act basically states that it is an offence to pollute waters—essentially, an offence to pollute waters unless doing so in accordance with a licence under the legislation. Companies and individuals have an ability to come to us and apply for a licence effectively to regulate water discharges if they are not on the schedule of activities that require licences. For that reason, Snowy Hydro holds a licence under the Act for discharges associated with Cabramurra sewage treatment plant. So there are two licences issued under the Act that they hold with us.

In addition, the Department of Environment and Conservation is also what is termed the appropriate regulatory authority under the legislation for basically any activities of Snowy Hydro, being a government-owned entity, that may be undertaken outside a licence framework. In many instances councils, for example, could be nominated as appropriate regulatory authorities. Where it is a government entity that is involved, then it is generally the Department of Environment and Conservation that takes that role.

**CHAIR:** Once you give a licence for pollution, what checking do you make on that to see that the pollution is not above appropriate levels and so on?

**Mr RUTHERFORD:** For example, Cabramurra has pollutant discharge limits on its sewage treatment plant discharges.

**CHAIR:** You did have complaints, for example, that that pollution and outflow was much higher than it should be?

**Mr RUTHERFORD:** Yes. Having limits specified on the licence, they are also required to monitor compliance with those limits. So they have records that they are required to report to us from time to time.

**CHAIR:** Who checks that?

**Mr RUTHERFORD:** We have officers at the regional level, inspectors, who respond to complaints from time to time and who look at data coming from the company from time to time, to monitor compliance.

**CHAIR:** In light of the fact that we heard some complaints about that, will you look into the issue to see that your officers have, in fact, been checking those discharge levels?

**Mr RUTHERFORD:** Yes. Certainly we have had complaints over time as well, and we always have complaints in relation to various licences. Cabramurra is a situation that had a less than adequate treatment process in place there for some time. Since we have issued a licence to it, upon corporatisation, we have gone through a negotiation process with Snowy Hydro to upgrade that plant. That upgrade was completed six months or so ago. Since that time, essentially that upgrade has brought it up to a best practice standard and we are quite satisfied with the way it is operating. There were issues prior to that time, which is why we negotiated the upgrade with Snowy Hydro.

So there are two licences, one over essentially the power generation activities and one over Cabramurra as a specific water discharge. Beyond that, Kim touched on the issue of cold water pollution from dams. That issue has emerged as a potential water quality issue in recent years only. As part of a strategy at State level to address that issue, we have amended the Protection of the Environment General Regulation not so long ago, to basically exempt large dam operators from the offence of water pollution with respect to temperature only, where the release works associated with those dams are operated in accordance with a Water Management Act works approval issued by the Department of Natural Resources and where that works approval addresses those potential cold water pollutant impacts.

Essentially, that provides a limited exemption under our legislation and establishes a single regulator for releases from dams and dam operation infrastructure under the Minister for Natural Resources, but the exemption only applies where there is a Water Management Act works approval in place that addresses that issue. So it provides an incentive to dam operators, in effect, to undertake works and to have those works addressing that issue to be regulated by a single entity under the Department of Natural Resources and to have that limited exemption under the Protection of the Environment (Operations) Act.

We have had some discussion with Snowy Hydro because that exemption refers to the Water Management Act. Snowy Hydro is regulated under the Snowy Hydro Corporatisation Act, not the Water Management Act, or its licence is issued under that legislation. We have had some discussion with Snowy Hydro and have agreed that we could extend that amendment to our Protection of the Environment General Regulation to include Snowy Hydro, provided that there is a linkage, essentially being that the water licence, issued under the Corporatisation Act, has conditions that not only require them to have structures in place to be able to release warm surface water from the dam but also operational conditions that basically require them to manage those structures in order to release those surface waters. Subject to amendment to their licence to have such provisions in place, we have said we would amend our regulation to allow essentially a limited exemption from our legislation in relation to that issue.

**The Hon. MELINDA PAVEY:** Mr Alvarez, I refer to an email from Treasury sent to you on 9 May 2006, which came out through the call for papers from the upper House. That email, from Ben Lathwell of Treasury, talks about the need to waive the Snowy water licence in relation to public consultation. The email says:

... it is important that the Licence be amended prior to the public listing of Snowy Hydro. The public consultation process will have two detrimental impacts:

- it may cause the Licence to be unable to be amended prior to public listing; and
- it would be undesirable to have the Licence open for public consultation during the sale process.

Should you wish to discuss further, please do not hesitate to contact me.

I wonder about the public policy implications and the obvious pressure from Treasury to amend the Snowy water licence. Can you give us your department's perspective on the negotiations regarding the sale on this issue?

**Mr ALVAREZ:** Certainly. Obviously, at the time of the potential sale there was a lot of discussion at office level saying, "What does the licence require us to do? What does the Act require us to do prior to the sale?" These emails have been going to and fro, obviously trying to understand what it is that we need to do, lawfully, to put things into effect. I listened to Derek's evidence about the link between his Act and our licence. Section 6.1 of part 2 of the environmental flows, dealing with the construction at Jindabyne, is where it was required to put the works in to take the water above the thermocline. Again, this is one of those environmental things.

For example, one of the issues being discussed there was that, although the licence requires them to build that, there was a glitch that the licence does not require them to operate to that. But, fairly obviously, anyone who takes the trouble to build something like this is going to operate to it. However, there was some foreclosure before the sale. There was a suggestion that maybe some of those things should be tidied up beforehand.

Ben is asking me some questions about what is the process for doing those sorts of things. What I was disclosing in some of those emails is that there is a public consultation process required to do that, and simply exposing that if we were to take on that tack, if we were to amend the licence to make it absolutely complete, even though we believed it was unnecessary, if it were to be done, I was simply exposing to Ben that it requires a public consultation process. And if that gets in the way of the timing that had been committed for the IPO, then it is an issue for the Government to deal with.

**The Hon. MELINDA PAVEY:** Do you know what ended up happening?

**Mr ALVAREZ:** Nothing.

**The Hon. MELINDA PAVEY:** So the licence was not amended?

**Mr ALVAREZ:** No.

**The Hon. MELINDA PAVEY:** Because it would have had to require public consultation?

**Mr ALVAREZ:** And that is not to say that we will not. In fact, on the contrary—

**The Hon. MELINDA PAVEY:** But you just did not want it to take place in that market atmosphere of the IPO?

**Mr ALVAREZ:** It was always a decision: Do you go through that process and change the licence before, or do you basically trust government that we are going to change it afterwards? We could have taken either step, but the first step would have meant that we would have been having to consultation is going at the same time. It was not my role to—maybe I should not have made comments at the time as to whether that should be happening or not. That is probably a personal opinion, rather than a professional opinion. Professional opinion was: this is what is required; take that into consideration in regard whether you amend the licence before or after.

**Ms SYLVIA HALE:** But would you not agree that at a time when there is an initial public offering being made, absolute disclosure of relevant information is critical to that process, and to even suggest that a certain process that is required by law be not proceeded with is an undermining of the assumptions upon which most people operate?

**Mr ALVAREZ:** No, I was not suggesting that we do otherwise. There are consequences of going each way. We were simply discussing what were the options open to us at the time. There was no committal. I do not carry the power. I was not responsible for the IPO. I am responsible for articulating what the licence requires us to do. As all good public servants do, we communicate between each other to try to find out what is the best way to do these things in light of what our obligations are.

**Mr RUTHERFORD:** It highlights the linkage, if you like, between the various respective roles in that there is no amendment to the licence required. If the Snowy are required under their water licence to construct release outlets that allow them to take above the thermocline and if they construct those works they are in compliance with that licence. If they choose not to operate them in accordance with good practice and deliver downstream outcomes, they are currently subject to the provisions of our legislation on water quality. If the licence was amended, then they would become subject to one regulation under the water Act and the water licence to their benefit.

**The Hon. TONY CATANZARITI:** How do the current water regulatory arrangements compare with what was in place before the corporatisation?

**Mr ALVAREZ:** That is an interesting question. Before corporatisation, as a member of Snowy Mountains council, the way the Snowy Mountains council was structured was basically that gentlemen discussed issues on an ad hoc basis. The Snowy Mountains council had a member of the power companies and the water companies—in effect, the department—from two of the States and the Commonwealth and, when an issue came up, they would try to decide what the best outcome was. There were very few, if any, absolute guidelines. They were only guidelines.



I guess the best example of that is this very robust thing that we have now, which is this mandate to release 2,088 gegalitres. Many people think that is what it was before corporatisation but it was not. The 2,088 figure was simply the water that was associated with the production of a certain amount that the power companies in the respective States required. That was called "minimum notification". It has nothing to do with water. It said, "We agree to produce a certain amount of electricity every year." That was what the minimum notified power generation was. It happened to be associated with something like 2,088 gegalitres but it was extremely ad hoc. What we have now in the corporatisation is far, far more robust than the operations for the 75 years preceding corporatisation.

**The Hon. PATRICIA FORSYTHE:** To follow on, you described a "robust process" that is far less ad hoc than what existed prior to corporatisation. You gave a fairly comprehensive account of the various licence processes. Am I right in saying that, since the SWIOD process and agreement, a scientific committee is to be in place as one element of this but we do not yet have it? Can you explain the process for the scientific committee, why is it not in place and the repercussions of the failed existence of the scientific committee in terms of things such as the release of water, daily targets and Mowamba and Jindabyne?

**Ms SYLVIA HALE:** And the five-year review.

**Mr ALVAREZ:** The Snowy scientific committee is a function of the Snowy corporatisation Act. I do not administer the Act for a very good reason. There is very good sense in the water regulator being a different person from the Act regulator. It is not happenstance that that occurred. In fact, it is very healthy. The Treasurer is the administrator of the licence and a shareholder and it is right and proper that the regulations for the protection of the environmental flows and the irrigation flows are not from the same Minister. With that background, I guess my answer is that I and my Minister do not administer the Act so I would prefer that someone else answer that question. In fact, under the Act our department is not a member of that committee at all. So I will have to defer to Treasury.

**CHAIR:** We can put that question on notice and ask it later this afternoon.

**The Hon. TONY CATANZARITI:** What options are open to the Government, as the regulator, to take action if Snowy Hydro does not comply with its licence?

**Mr ALVAREZ:** Primarily, a lack of compliance will manifest itself through not complying with the approved annual operating plan. The licence requires an annual operating plan to be put forward that is consistent with the licence. It requires them to go through the water consultation liaison committee. It requires it to go to the Minister for approval. If it goes to the Minister for approval and the Minister rejects that approval, quite clearly you cannot have a situation where they do not have approval to operate and you have a major utility that cannot operate. So there is provision that, in the absence of approval of an annual operating plan, they will still operate according to that plan. However, it immediately triggers the process of dispute resolution in sections 12 and 13. That is when an independent arbitrator is brought to bear. He looks at the licence, looks at the annual operating plan and makes a determination about the proposal by the Minister, who will at that stage have sent back an amended draft to Snowy. Snowy either accepts that amended draft and operates to it or rejects it. If they reject it, we are in dispute and an independent arbitrator comes in. We have agreed that we will comply with the findings of the independent arbitrator.

If Snowy continues to be in default of the findings of the independent arbitrator it is in default of the agreement. What would happen is that the ministerial corporation would sue Snowy Hydro for damages in the courts. It is deliberately done that way so that it brings into account the courts in the process under agreements that are entered into by way of the licence. It makes it an open, transparent process and at the same time allows the utility to keep operating while that is being determined.

**Ms SYLVIA HALE:** Mr Alvarez, you say that you are responsible for oversight of the licence and its implementation.

**Mr ALVAREZ:** Correct.

**Ms SYLVIA HALE:** Can you explain why there has been a breach of the licence? The licensee was to construct an outlet at Jindabyne Dam. It was to be constructed by the third anniversary of the corporatisation date yet it is still not completed and looks like it may not be completed for another 12 months. Is Snowy Hydro not in contravention of its licence by failing to complete that Jindabyne outlet? I also have some questions about the implications that flow from that.

**Mr ALVAREZ:** I have before me the licence and I guess the answer to that question is in part 2 of schedule 3, which deals with Snowy in particular. Section 6 deals with the construction. I think the terms that you are talking about say, "By no later than the third anniversary of the corporatisation the licensee must construct an outlet at Jindabyne that is capable of releasing water from above the thermocline." You have to read the licence in its entirety. If that was a blank "must do" and no other way, we would not have section 6.3. Section 6.3 is headed, "Where the licensee does not construct an outlet by the due date." So quite clearly at the beginning we always knew and recognised that for various reasons—indeed, it appears that the delay occurred because of the EIS provisions—things could be brought to bear that would delay the construction date.

So there are provisions to make sure that the environmental flow releases are released by recognising that in section 6.3. All of this falls under the Snowy increased flows generally part. The ministerial corporation will notify the company of the water that is required to be released to the environment. The company has to be capable of releasing that, which is why 6.3 is there. What actually happened? There were delays in the construction so the company responsibly came to the department and said, "We're invoking 6.3; we're not going to be able to get it there." Our response was, "You still have to be able to release the flows." What were they instructed to do? They were instructed in those years to release 57 gegalitres. According to the pattern of release, that meant they would have to be able to release up to 100 megalitres a day. Responsibly, the company constructed siphons from above the thermocline capable of releasing 100 megalitres a day, and they operated to it. They released the environmental flows as directed. The fact that they did not release it from a turbine at the bottom of the dam is completely ancillary.

If, however, we had a wonderful couple of years, for example, and the JGE had found the savings sufficient to get more than 100 gegalitres and, therefore, had invoked a later clause dealing with flushing flows and we had instructed them to deliver 5,000 megalitres a day for a number of days and they had not constructed, yes, they would have been in breach. But they were not. They were instructed to release the flows, they have constructed the works capable of releasing the flows and they will continue to do so. My understanding is that those final works up to the 5,000 will be opened and commissioned in July this year, which, in fact, will probably be many years ahead of the 100 gegalitres environmental savings.

**The Hon. PATRICIA FORSYTHE:** So they have met their requirements.

**Mr ALVAREZ:** They have met their requirements.

**CHAIR:** They certainly have not communicated that to the community.

**Ms SYLVIA HALE:** But the understanding was that until the Jindabyne outlet was completed, at the very least, water would continue to be released across the Mowamba weir and into the Mowamba River and would not be diverted to Jindabyne. The re-diversion and the recommissioning of the weir has had considerable environmental impacts. I understand that:

... the environmental objectives for the Snowy River and the Snowy upper montane rivers are to improve the habitat for a diverse range of plant and animal species by a combination of:

- improving the temperature regime of the river flow;
- achieving channel maintenance and flushing flows within rivers;
- restoring connectivity within rivers for migratory species and for dispersion;
- improving triggers for fish spawning;
- and improving the aesthetics of currently degraded riverine environments.

Now the community up there is arguing that the recommissioning of the Mowamba weir and the failure to allow water to continue down the Mowamba River as was hyped by Premiers Carr and Bracks and whoever—

**The Hon. MELINDA PAVEY:** During the spin.

**Ms SYLVIA HALE:** The recommissioning of that weir is directly contrary to the achievement of those environmental objectives. What is your comment about that?

**Mr ALVAREZ:** First, you used the word "understanding". We do not work on understandings; we work on the law and the licence. The licence says that after three years it will be turned back.

**Ms SYLVIA HALE:** Where does it say that? Could you direct the Committee to the precise point? The other day when asked to point specifically to where that occurred a witness said that he could not do so but that was his interpretation when he was involved in the formulation of those conditions.

**Mr ALVAREZ:** Yes, I can.

**Ms SYLVIA HALE:** Because this is what the community is keen to hear. Certainly there is a very intensely unhappy community up there because of this.

**Mr ALVAREZ:** Schedule 3, part 1 of the licence talks about the general requirements. I would just pick up the actual clause that you are looking for. Section 7—if you are looking at the licence it is on page 46—deals with the date of commencements of Snowy River increased flows. Section 7.2 specifically deals with date of commencements. It says, "The licensee must operate the works as follows: (1) From the date that is seven days after the date of giving notice by the ministerial corporation of this Schedule 3 until the third anniversary of the corporation date so as to make the increased river flows under part 3 of this Schedule 3." So it says for the first three years from seven days after corporatisation you must operate under part 3.

The next clause says, "After the third anniversary of the commissioning of the outlet referred so as to make the Snowy River's increased flows under part 4 of this schedule". So part 3 for the first three years then part 4. I will take you to part 3, which is on page 47. Section 9.1, volume of increased flows, "Each year until the third anniversary of the corporatisation date the licensee must make Snowy River increased flows under this part 3 of Schedule 3 up to a maximum volume of 38 gegalitres". Section 8.1 says, " Subject to the other provisions of this Schedule 3, the licensee must operate the works so as to allow a volume of water to pass the Mowamba River and Cobham Creek aqueducts into the Snowy River".

**Ms SYLVIA HALE:** It just says, "a volume", and that could be the trickle that is there today?

**Mr ALVAREZ:** The very next clause says "volume".

**Ms SYLVIA HALE:** What does it say?

**Mr ALVAREZ:** "And the volume each year until the third anniversary of the corporatisation date the licensee must make increased flows under this part 3 of Schedule 3 up to a maximum of 38."

**Ms SYLVIA HALE:** So you are saying once that third anniversary was gone there was no obligation therefore to continue to feed water into the Mowamba River and not divert it?

**Mr ALVAREZ:** There was more than no obligation to do it, there was an absolute and written obligation not to.

**Mr RUTHERFORD:** Under part 4.

**Mr ALVAREZ:** Because extremely after that it goes straight to part 4 and part 4 is constructive in a similar way. It says, "The licensee must operate the works so as to target releases from Jindabyne Dam in accordance with this part 4". So it is quite clearly structured that for three years it goes from Mowamba and from three years on it must go from Jindabyne.

**Ms SYLVIA HALE:** But you would concede the public was not aware of that?

**Mr ALVAREZ:** No, I will not concede that.

**The Hon. MELINDA PAVEY:** At this point I refer to another email that came through in the call for papers, and from our inquiry in Cooma this week it seems there has been an incredible amount of misinformation circulating around the local community.

**Mr ALVAREZ:** I agree.

**The Hon. MELINDA PAVEY:** And this email that I am about to read from a Brett Miners from the Catchment Management Authority on 2 March, addressed to you, says, "On the first look the current dam release only pattern looks pretty dodgy to me and I think exposes New South Wales and other governments to some criticisms regarding mimicking of natural variability. We have always recognised that there are some trade-offs which need to be made when there is limited annual flow volumes, especially minimum flows versus variability. Currently we seem to have lost out on both counts and if flows drop down to lower base fall for March then we would struggle to convince people that it was sustaining the current level of ecological recovery. If DNR is prepared to do the negotiations with SHL then I am confident that SRCMA would have some input into getting a more beneficial flow release pattern than the one currently outlined in the licence. Do you have any contact in Treasury who is likely to know anything about Snowy Scientific Committee?" We have a senior public servant from that region obviously unaware of the licence agreements and promoting an idea to change the licence agreements.

**Mr ALVAREZ:** No, I would challenge that again. What was rightfully and properly happening was a person local to the area has observed that the application of the pattern, which is part of the licence, to a small volume of water, which we currently have because we have only saved 57-odd gigalitres, results in a very small amount of flow during the low release years. I explained to you before that the licence has provision for the ministerial corporation to amend that pattern. Directly following representations from both Dalgety and from Brett Miners I took action on that to advise the Minister that we would change the pattern for the current year, and that is to remove water from the high months pattern and move it into the low months, thereby maintaining the minimum flow that was required at Dalgety. So again, directly in accordance with the provisions of the licence, we took action immediately following that receipt to amend the pattern for that year so that the low flows did not go below what Brett describes as a bad time.

**The Hon. MELINDA PAVEY:** But do you think there has been a lot of community misunderstanding? Can you comment on the amount of community misunderstanding because of the decision by Premiers Bracks and Carr to make the announcement of reclaiming and saving the Snowy River at Mowamba aqueduct giving people the feeling—which was very evident in their submissions and their passionate testimony to us in Cooma in Wednesday—that they had been deceived by this public stunt which they thought was then going to continue into the future, and then they read the fine print, which is not easy fine print for the average person to read. There has been a lot of misinformation and a lot of broken faith in the community over that and I just wonder whether you have any comments on that.

**Mr ALVAREZ:** Yes, I do have some comments. I agree with you that there is and has been a lack of information. I reiterate my comments: it has not been through lack of provision of information from us. I guess the issue is that during the time of the water inquiry there were lots of debates by scientists between the benefits of water coming from the Mowamba River from Jindabyne and the debate over flushing flows. That debate was had and the decision was made. I think what you are hearing now is an attempt to reopen the water inquiry over decisions that have been made by those who did not get their way.

That is public opinion. That is what they are entitled to do—to continue to express their opinion. But, again, having been part of that process, it was likely to me at the time that there was always going to be a trade-off. I can go into great detail; I can put that map up again that showed those flow volumes—and you might take the trouble to look at it some other time. If you have a look at the quantity of water that comes into Jindabyne, including the Mowamba River, it is only just over the environmental flows provision. If we continue to put water down the Mowamba River it is going to

take an ever-increasingly long time to build up a store in Jindabyne sufficient to provide flushing flows.

That was recognised at the time of the inquiry and there were trade-offs made between the benefits of continuing to put unmanaged flows down the Mowamba, and, yes, those benefits were recognised, but so too were the benefits of putting that water back into Jindabyne in order to be able to store it up and to have flushing flows, because everybody knew, including the scientists, that if you have habitat maintenance flows without flushing flows to create that habitat you are getting nowhere. And that is why the decision was made to as soon as possible after the commissioning of the works put the Mowamba River back into the Jindabyne so that those flows can be built up to flushing flows.

As I have expressed as I went through specific clauses, that allows for flushing flows to be done once 100 gigalitres is on the savings. So that debate was done at the time of the inquiry; it was clearly put into the licence and the licence has been a public document, even though we have only recently put it onto the web. I think the expression that we are hearing from local members was the same as the feeling that they had at the time of the inquiry, and I do not deny them the right to continue to agitate for that outcome. I resisted the temptation to enter into the scientific panel but I will make a comment on it that the whole idea of the scientific panel when it was constructed was to have a look at the success of the balance between the flushing flows and the maintenance flows and provide advice to the ministerial corporation as to whether that was the right balance. Until we have had the time to actually try out what that balance is it is difficult to conceive of why you would change that balance now.

**The Hon. MELINDA PAVEY:** And that is why the committee has not been established as yet?

**Mr ALVAREZ:** I am not going to comment on why it has not been established yet.

**The Hon. PATRICIA FORSYTHE:** I do not wish to put words in the mouths of witnesses we have heard but it was fairly obvious to me, listening to the presentation from the Snowy River shire, that they felt they were somehow out of the loop on exactly what was happening on the flow at Mowamba, that it seemed to have come as a surprise to them this change at three years, and they seemed to be blaming Snowy Hydro. They were suspicious of Snowy Hydro because of this and therefore they were not going to trust the concept of it being privatised, and that was the conclusion they had drawn.

Did somebody have a responsibility to liaise with the local council and, if so, who should it have been? Should it have been Snowy Hydro or should it have been the Department of Natural Resources? Has there been any ongoing consultation? Have they been kept informed about the impact of the three-year change? Whose responsibility should it have been, Snowy Hydro or the Department of Natural Resources?

**Mr ALVAREZ:** I will see if I can answer some of those things. When the licence was first constructed, before it was actually gazetted, there was no Mowamba provision at all. When it was constructed, 6.3 came in and Snowy has reluctantly said, "Yes, we will have to build it, but it is going to take us three years to do it". The Premiers at the time said, "What? We have just been through an inquiry and you are going to tell us even if we save our water now it is going to be three years before we can make environmental flows?" "Yep, those are the physical limitations" "How can we do that better?" "I've got an idea. How about we let go the Mowamba River? It can be done right now". "Great."

So the fact of the matter is that the Mowamba River was a late entry of a way to achieve environmental flows immediately. If that had not entered into it they would still not have environmental flows. People get this understanding or expectation that the Mowamba was the first step and Jindabyne was later. No. It was a late entry to get results to the people of Dalgety immediately. People develop expectations, and you cannot stop that.

**The Hon. MELINDA PAVEY:** Why did you not do some radio interviews on this?

**Ms SYLVIA HALE:** Why was some counter-information not provided to tell people this was only for three years? Why were the Premiers allowed to go down there and make such a public show of restoring and saving montane rivers?

**Mr ALVAREZ:** I am sorry; I am a public servant. I do not tell the Premier what to do; he tells me what to do. With regard to that, though, everybody wanted this to be a very robust document. Snowy is scrupulous in complying with it, as it should be. I think it is totally unfair that Snowy Hydro is blamed for sticking to a licence that government has put on to it. I think it is totally unreasonable.

**Mr RUTHERFORD:** I think it is also unreasonable to say there has not been any information. Over the past three years there has been communication between local communities and government, and that issue has been clearly explained. They may not be satisfied with the outcome and may be still trying to cause change but there have been explanations going back.

**CHAIR:** Maybe the people who got the explanations are not the same people who are now very puzzled about it?

**Mr RUTHERFORD:** I think there is a fairly wide understanding.

**Ms SYLVIA HALE:** Whose responsibility is it to ensure that Dalgety gets enough water to guarantee that the water purification plant can operate?

**Mr ALVAREZ:** It is ours.

**Ms SYLVIA HALE:** We had evidence that there were quite a few calls. If I recall, Mrs Wallace—

**The Hon. MELINDA PAVEY:** The mayor's wife.

**Ms SYLVIA HALE:** Yes—was sent from one department to another and back again. The water level was below the intake pipe and alarm and warning bells were rung by the system at the water purification plant. How could that be allowed to happen?

**Mr ALVAREZ:** I can explain that. I have almost daily conversations with Mrs Wallace.

**The Hon. MELINDA PAVEY:** What about the mayor?

**Mr ALVAREZ:** I respond to telephone calls that come in and I have almost daily conversations with Mrs Wallace. In two instances within one day of the issue being raised with us it was rectified. The only reason the problem came up—

**CHAIR:** If it was rectified, are they not still trucking in water?

**Mr ALVAREZ:** I do not know that they are trucking in water.

**The Hon. MELINDA PAVEY:** There was trucking in water to Dalgety but that was about 12 months ago.

**Mr ALVAREZ:** You might find that was the time when releases were not being made from Jindabyne. They are not made from Jindabyne, they are made under the first three years, Mowamba had dried up. Of course they are out of water. They had to truck water.

**The Hon. MELINDA PAVEY:** So, it was the environmental flow mechanism through Mowamba that has resulted in Dalgety running out of water?

**Mr ALVAREZ:** Remember that Mowamba is an unregulated stream. You do not put water into Mowamba; you let it go. It flows naturally. In the middle of the drought the Mowamba flows were down to nothing, not controlled, nothing. No rain, no water.

**The Hon. PATRICIA FORSYTHE:** As they would have been before the Snowy scheme ever existed?

**Mr ALVAREZ:** Correct. And there was no provision for release from Jindabyne, it was within the three-year period. They had to truck in water, a physical problem. After the Jindabyne works were put into effect, the syphons, there did become another small incident. Interestingly enough, it was caused by council moving its off-take point from inside the weir, where water was available, to a closer point that was away from there. Did they seek approval from the department to move that off-take point? No. If they had they may have been given advice that that was not a wise thing to do, at least until such time as Jindabyne was under control and they could be made available. A number of incidents have occurred; largely they would never have occurred if we had managed to get the water savings program higher than it currently is. Will it happen in the future? Well, there is a significant water savings exercise that joint government enterprises are entering into with Murrumbidgee Irrigation for barren box savings. Once those are put onto the list, those flows will not happen again. Yes, it is a teething problem. Should it have happened? There are many reasons why it should not have happened. Did we respond quickly? Yes, we did. Will it happen again? No, it will not.

As regards to consultation, that final question on consultation, yes, there is an obligation on Snowy—it is not a legal obligation, I would have thought it is a business obligation—to consult with people affected by its operations, and there is certainly an obligation on our department to liaise with people as a result of that, as we have been doing.

**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.

**The Hon. MELINDA PAVEY:** In relation to community consultation, in particular with Snowy River shire, I think it is important to put on the record the amount of consultation and discussion you also had with the mayor, Richard Wallace, about many of these issues in relation to Mowamba and the Jindabyne dam construction. Did he seem to understand the points you were making in relation to the Mowamba release resulting in the Dalgety trucking in of water?

**Mr ALVAREZ:** I cannot speak on his behalf. I do not know.

**The Hon. MELINDA PAVEY:** Have you had a lot of consultation with the mayor?

**Mr ALVAREZ:** No, the mayor has been pretty quiet.

**The Hon. MELINDA PAVEY:** With you?

**Mr ALVAREZ:** Yes.

**The Hon. MELINDA PAVEY:** That was some of the testimony he gave at Cooma on Wednesday, which is why I raise this. He talked with passion about it being a failure in the sense that water was being trucked into Dalgety, but I think it is relevant to make the point that it was the environmental flows through Mowamba that had created that issue. Following up on that, in relation to Jindabyne dam, there is some concern within the community, and businesspeople have raised this with me, about the falling levels of the dam at Jindabyne with the increased environmental flows once the dam level has increased and we get the 21 per cent flow down the Snowy at the top of the season, whether it be summer and you have water going down the Murray and the Murrumbidgee and you

have water going down the Snowy. What sort of impact variation could there be at Jindabyne, given the huge tourism and recreational pursuits that take place there and the impact of the dust, as I hear from the locals, when that dam level falls?

**Mr ALVAREZ:** Many and varied. Dam levels depend upon what comes in and what goes out. We cannot dictate what comes in, that is due to rainfall and snowfall. What goes out is according to what the water savings projections are. My only answer to this is it is going to be quite variable.

**The Hon. MELINDA PAVEY:** And a more dramatic than it is now?

**Mr ALVAREZ:** Yes. In the build-up to a flushing flow they will have to build the water level right up to the spillway level in order to effect those. Quite clearly, you cannot say at any time give us a flushing flow. There has to be advance warning. They have to manage the amount of pumpings at the Jindabyne pump station, which goes over to the Murray. Once they have been given the instruction that we now have enough water, we want to build to a flushing flow, those pumpings will be turned off and the water levels will be rising. Of course, once you reach those levels and you do a flushing flow, it is going to drop very rapidly. You drop 212 gegalitres where you may only get 50 gegalitres coming in—I showed you those figures. On average, they would be more than that. On average, it is 300 gegalitres. If you are letting 100 in, you still have 200 to build up. So, it is going to be many and varied. It is going to come up in times of flushing flows and then after flushing flows it may stay up if it is fortuitous that you have rain after that. But it may drop if you are in a drought. If you make a flushing flow it will drop. I am sorry I cannot predict what it is going to be other than it varies.

**Mr RUTHERFORD:** The releases to the east down the Snowy are balanced by reduced releases to the west and, from Jindabyne's perspective, that means reduced pumping of inflows from Jindabyne back up to Island Bend. There is no real reason why the variability in the lake levels will be greatly different at all, in that sense. It means that flows to the east will mean less pumping out of Jindabyne, balanced by flows that are released.

**The Hon. MELINDA PAVEY:** So you do not think there will be much variability than currently?

**Mr RUTHERFORD:** I do not see any logic as to why the variability will greatly increase, even in the release of the flushing flows. It will not be 212 gegalitres flushing flows, it might be more like a 50-gegalitre flushing flow. I do not know but I would like to know how many inches that would be across the surface area of Jindabyne but I suggest probably not very many.

**The Hon. MELINDA PAVEY:** There seems to be a difference of opinion here?

**Mr RUTHERFORD:** Snowy will vary the way it operates Jindabyne over time and could cause variations in lake levels relative to previous activity, but the release of environmental flows as an issue in itself will not necessarily greatly increase the variability of Jindabyne's flow level. It will depend on how Snowy balances that with its pumping activities back up to Island Bend.

**The Hon. PATRICIA FORSYTHE:** That question arises from the sort of information that locals are telling my colleagues and which goes to the real issue about how much the local community understands the process and the obligation on somebody to have a better dialogue with the community about this whole process. I do not know which of your departments is going to take responsibility but half of the reason we got into this an enormous community upset and concern was a real lack of understanding of what was involved. That question goes to exactly the sort of issues they are bringing forward. Some may well be red herrings, but that is what the community understands. Not enough information is coming from the Government about what people should understand, about what people need to know, to put these sorts of fears at rest.

**CHAIR:** Do you want to comment on that?

**Mr ALVAREZ:** No, I would agree. If and when we know what the impact might be from the various flow regimes, from the various flushing flows strategies, yes, the people of Jindabyne will need to be part of that knowledge transfer.



**Ms SYLVIA HALE:** We will not know that until the scientific committee is established, is that correct?

**The Hon. GREG DONNELLY:** On the issue of how much water irrigators get, can you explain to the Committee how that is calculated, how that is worked through, by the department, just in broad terms? We have not heard too much evidence based on this whole issue of how that is determined?

**Mr ALVAREZ:** I presume you mean how the Snowy flows relate to the water available to irrigators?

**The Hon. GREG DONNELLY:** Yes.

**Mr ALVAREZ:** It is reasonably simple. We know that every year 2,088, 1,062 and 1,026 gigalitres will be let down. Our department takes that water into account, along with the water that is in storage at Burrinjuck and Blowering on the Murrumbidgee, and on the Hume at Dartmouth, and other Murray storages. It then adds to that the expected in-flows that will come from rainfall within a season. Those are conservatively set at a minimum at the start of the year. Obviously if you get more than that the allocation goes up. It then divides the amount of water that is available to it and we know that we can put 2,088 into it because Snowy is mandated to release 2,088.

We put that into the bucket, we divide it by our commitments. First of all we take out high security, they are entitled to 100 per cent. What is left over we divide by the general security, and that is the allocation. Snowy is very important, probably a more important aspect in the Murrumbidgee because, especially in drought, it is a significant component. If you have no other water at all it would probably be of the order of a 25 per cent allocation assured every year, if you have nothing else. On the Murray it is less so because there are more players in the game and more tributaries.

**The Hon. MELINDA PAVEY:** I refer to the front page of today's edition of the Australian. Is there any research by your department on the basis that if we do not have the Snowy Hydro scheme whether the bottom reaches of the Murray would be flowing today, given the dry spell over the past nine years?

**Mr ALVAREZ:** Yes. We back-calculate using our models to natural flows. I cannot tell you what it is right now. Yes, there are significant periods when there would have been no flow in the lower part of the Murray. Also there would have been a lot more water at times down there. And yes there would still have been significant periods of very low flows on the Murray itself. You have probably seen the pictures of a previous Premier with his feet astride the Murray River at Swan Hill, just a trickle through Swan Hill. In the past five years our estimates are that that would have occurred probably three or four times if there had been no storages.

**Mr RUTHERFORD:** The current flow in that part of the Murray relates to regulation by Hume Dam, which is not releasing at the moment for irrigation, being a non-irrigation season. They are minimising releases; that is probably more affected by Hume Dam's operation than by Snowy's operation at the moment.

**The Hon. MELINDA PAVEY:** An email from Graham Enders of the catchment management authority to Mr Alvarez relating to Murrumbidgee River flows at Mittagang, expressed concern that they were unaware of the changing conditions of the river flow as people were working down river during a sudden increase flow in the river, but not on the day when there was an irregular flow. What is your knowledge of that event on about 24 February 2006?

**Mr ALVAREZ:** I understand that gaps coincided with the initial releases of the montane flows from Tantangara. Prior to that commencement the river was in a pretty frightful state, very low. Knowing the time it takes for water to get through a system is directly related to the flow rate, in order to get an immediate response as far down as possible, the flow rate was increased to above the average for the first two days and then pulled back to the average flows that they were required to do, specifically in order to get that through to the environment pretty quickly. I am pretty sure that is what it related to. It is necessary to try to get that through as quickly as possible.

**Ms SYLVIA HALE:** Does the licence provide specific detail as to what is to be canvassed in the five-yearly review? Does it stipulate what is required?

**Mr ALVAREZ:** No. The five-yearly review is a provision in the Act and it is duplicated basically verbatim.

**Ms SYLVIA HALE:** Is the annual operating plan open for public scrutiny or input? Where does the bulk of the information come from?

**Mr ALVAREZ:** The annual operating plan is a commercial in-confidence document at the moment. The reason for that is that it contains forecast information for the coming season that, in the hands of the competitors to Snowy, could be damaging to their production. As we speak, the annual operating plan, in agreement with the Water Consultation Liaison Committee, is being carved into two components. One component will contain all the information you seek, and that will be made public. The other component will remain commercial in-confidence, and that is a confidential document that will contain the forecast information. I believe that later this year the annual operating plan will be—

**Ms SYLVIA HALE:** When was that decided upon?

**CHAIR:** Time has expired.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**DANIEL FRANCIS BERRY**, Manager, Information and Operations, State Water Corporation, P.O. Box 1018 Dubbo, New South Wales, sworn and examined:

**CHAIR:** What is your occupation and in what capacity are you appearing before the Committee?

**Mr BERRY:** I am an engineer with the State Water Corporation, and I am here today in the capacity of Manager of Information and Operations in State Water at Dubbo.

**CHAIR:** So you are speaking on behalf of State Water?

**Mr BERRY:** The State Water Corporation.

**CHAIR:** Would you like to make a statement?

**Mr BERRY:** Certainly. I thank you for the opportunity to appear before the Committee. In my opening statement I would like to give a description of what State Water is and, just as importantly, who we are not in terms of relationships with Snowy Hydro and various other regulators. So I am seeking to clarify roles in my opening remarks.

State Water is a State-owned corporation under the New South Wales State Owned Corporations Act. We have our own Act, the State Water Corporation Act 2004, so we are relatively young. But we have a genesis that goes back to the 1994 COAG agreements on water as ratified through the National Water Initiative. Back then there was a decision, in terms of managing water, that the resource manager and regulator should be separated from the operator. That is referred to as one of the five things referred to in COAG as institutional separation. The quick description we give for that one is that the COAG principle is that the agency responsible for handing out water for consumptive use should not be the same agency that makes its money from operating in that business. That is so the resource manager does not get confused about how much water should go to the environment and consumptive users because it is trying to protect its own bottom line.

In New South Wales, over a number of years, we eventually got to the situation where the previous organisation, the Department of Land and Water Conservation, had both State Water Corporation and State Water as a business unit, but had the Department of Natural Resources as the same predecessor. In New South Wales the Department of Natural Resources is the natural resource manager and regulator, whereas State Water is the operator.

In referring to the submission, I have cut and pasted some of the relevant sections from the State Water Corporation Act. Primarily, it talks about our primary objective as being capture, store and release of water. That means that the State Water Corporation is the rural bulk water authority in New South Wales. So that all of the other major dams—for example, Burrinjuck in the Murrumbidgee, Wyangala, Burrendong and Copeton are all of our dams, and we capture and store water in those dams and release that water to our rural customers, who are basically in irrigation, but we also supply towns and the mining and other industry. New South Wales is starting to create environmental licences as well, so that we will have discrete customers with environmental requirements as well.

As a bulk water authority, most of our business is tied up in managing those dams, so that we have an asset management strategy and concrete and steel engineers that go with that side of the business. And we have a water delivery business, so that we need to work out how much to release from each of those dams each day. Our area of operation is all of New South Wales, but it does not cover State Water or Hunter Water, and we have no activities within the area of Snowy Hydro.

Under our Act we have an operating licence, which basically restates our objectives in terms of capture, store and release. The operating licence gives us some powers to make sure that our customers, which the Department of Natural Resources refer to as its licensees, are not stealing any water, so we have some powers to take enforcement action against people who are taking water beyond their entitlements under those licences.

So we are basically that agency that owns those dams and delivers water down the rivers. But we are not a regulatory authority. We do not regulate anyone else, and we certainly do not have any regulatory powers over Snowy Hydro Limited. In terms of our customers, some of whom you heard from this morning, we deliver water to those customers, and we treat them as customers. But in terms of how much water they have and when it is available to them, that is regulated by the resource regulator, so that the Department of Natural Resources makes the available water determinations and those calculations that were referred to before lunch about what the announcement should be and how much water should be available to customers. Those announcements and those rights that go with those are passed on from the natural resource manager to our customers, and then we as the operator merely deliver that water from the dams on the days that the customers order that water.

However, in terms of our operations, we do have a lot of interactions with Snowy Hydro, the Department of Natural Resources and those customers. I will quickly touch on those. In terms of our operations planning, we need to know what releases we plan to make from Blowering Dam particularly and from Burrinjuck. Both dams are supplying our customers in the Murrumbidgee. So we need from Snowy Hydro information relevant information from their operations plan so that we can plan; so that we know what storage levels we are going to have in Blowering if we make our releases, and whether we should be releasing from Burrinjuck or Blowering. So we are interested in their operations plan, and that flows from minimum notifications.

There are a range of other complications that go with that accounting. There is transferability of water rights within the Murray-Darling Basin, so the Murrumbidgee, Murray in New South Wales, Victoria and South Australian licences can all transfer water round. Sometimes those transfers can be administered over the top end, through Snowy. Otherwise, we have to deliver those transfers via releases from Burrinjuck and Blowering, through the Murrumbidgee at the bottom end, into the Murray. So we need to be kept up-to-date on where those transfers are up to, and which ones we have to deliver. Similarly with the borrow arrangements, where our customers have been negotiating directly with Snowy to take advances on the minimum notification. We are not a party to those negotiations, and have no financial interest, but we often provide information to those parties in terms of their negotiations and we certainly need to be advised of what the outcomes are so that we can develop our operations plans to deliver that water to our customers at the end of the day. So we are involved in that exchange of information in the sense that in providing information we want to receive information at the end as well.

In terms of flood operations—and we hope that there will be some floods again one day—for our flood operations in the Murrumbidgee with Burrinjuck and Blowering we do rely on information from Snowy as to what their discharges are likely to be, so that we can set our releases from Blowering. There is an air space policy that we operate there in Blowering as well, so we need an information exchange during floods, and that can get down to an hourly exchange of information so that we know exactly what is going on.

In terms of dam safety, we as an asset owner are compelled to comply with the Dams Safety Committee in New South Wales, and so we have a dams safety upgrade program. Most of our dams were built a long time ago, and to different standards, and so they do not now comply with modern standards. We are going through a program and trying to work out what to do with Blowering to bring it up to modern standards. Obviously, we need to know, in terms of our risk upstream, with Talbingo and Jounama, what is happening with Snowy in terms of their management of flood risks upstream. So we exchange information there.

In terms of hydro, Snowy own the hydro power station on Blowering Dam, but on a day-to-day basis we make the decision on how much is released from Blowering. The basic principle is that we set the release, and we make an offer to Snowy, "Do you want that water to go through your hydro station at Blowering?" And, of course, every day they do say, "Yes." So, effectively, almost everything that we release from Blowering goes through the power station that Snowy owns and operates from its operations centre. But it is under our direction as to what we want in the river downstream.

Then there is a Tumut River works program downstream of Blowering Dam in which we are involved with the Department of Natural Resources and Snowy. The latest deliberations are, I think,

that it is more likely to move to the catchment management authority, but we are certainly a party to that arrangement with the works in the Tumut River.

So those are some examples where our business touches with Snowy and with the Department of Natural Resources and the customers. Once again, our role is as the operator, and we have got these objectives of capture, store and release. But we do not operate in a vacuum. We have a range of relationships with regulators, like the Department of Natural Resources, with suppliers like Snowy Hydro, and with our customers.

**The Hon. TONY CATANZARITI:** Why is the irrigation part of the operating licence with State Water and not with the Department of Natural Resources?

**Mr BERRY:** State Water is issued an operating licence.

**The Hon. TONY CATANZARITI:** Why is the irrigation water part of it not with the Department of Natural Resources [DNR]?

**Mr BERRY:** In terms of the irrigation component, in our operating licence there is scant reference to that. The irrigation components that end up being the allocations to our customers are basically described in the water sharing plans that DNR does administer. They create the water sharing plans to allocate the shares between consumptive users and the environment. That is outside of our operation. The operating licence says that we need to operate in compliance with those water sharing plans.

**The Hon. TONY CATANZARITI:** Do you set the rates for the delivery of water?

**Mr BERRY:** Water charges?

**The Hon. TONY CATANZARITI:** Yes.

**Mr BERRY:** No, IPART sets the water charges. They are another one of our regulators.

**The Hon. TONY CATANZARITI:** That is under State Water?

**Mr BERRY:** No, IPART is our regulator. We are a State-owned corporation and we need to operate according to our operating licence. Our operating licence is actually administered by IPART as well, but they also set and regulate our prices.

**The Hon. TONY CATANZARITI:** State Water has nothing to do with charges at all?

**Mr BERRY:** We put a submission to IPART on what the charges should be. We put a submission to them on our total costs across the State and we put in our submission that in line with COAG and the National Water Initiative that each of the States should get full cost recovery. We put that submission to IPART. IPART then goes through submissions and a determination process and then sets the price at the end of the day. Within six weeks or so they will be setting the price. When we deliver water to our customers we will bill our customers according to the prices that are set by IPART.

**The Hon. TONY CATANZARITI:** Do you make a recommendation to IPART about the prices that should be set?

**Mr BERRY:** We put in a submission. The Department of Natural Resources also puts in a submission. Then IPART calls for submissions from everybody.

**The Hon. TONY CATANZARITI:** How do you arrive at the recommendation and the setting of a price?

**Mr BERRY:** Under the National Water Initiative principles we put up our total costs for our operation and we then leave it to IPART to say whether users, our customers, should be paying all of those costs or whether government should be bearing some of those costs as well. At the end of the

day IPART does a split so that a portion of our costs are borne by our customers and recovered through water charges and a portion is termed as the government share and basically comes via our portfolio Minister from Treasury.

**The Hon. TONY CATANZARITI:** If there were a 30 per cent increase in the Murrumbidgee area, how do you get to that price? You say that IPART plays a part and you play a part. I am confused as to how you would arrive at that percentage.

**Mr BERRY:** IPART sets a price generally for a longer term, a three- or four-year term. We have just been through a series where we have had one-year determinations. At the moment they are seeking a longer determination. Each time IPART sets a price, it is only for the year ahead. At the moment we have a price for last year. We have not currently got a price for the year that we are going into. Over the last two years—

**The Hon. MELINDA PAVEY:** In six weeks we will have a price when IPART makes its final recommendation based on partly the information that you provided.

**Mr BERRY:** Yes. We provide information on our costs and it is up to them to say whether they agree with those costs because under the COAG principles they only pass on efficient costs. They might decide that we are being inefficient. The other alternative is that some of those costs should be borne by government because they are general community beneficiaries rather than customers only. At the end of the day we are regulated by the price that IPART sets.

**The Hon. TONY CATANZARITI:** Is the operating licence available to everyone at will?

**Mr BERRY:** Yes, it is on our Internet site.

**The Hon. MELINDA PAVEY:** IPART will make its final recommendation in six weeks' time. It looks like there will be a big increase to irrigators. What percentage will State Water get and what percentage will the Government receive?

**Mr BERRY:** Ultimately that is up to IPART and what they put in their final determination. The changes from previous determinations to this one fall a little unevenly across the State in terms of the valley implications. IPART comments from the draft determination are that overall our customers will see a price of about 5 per cent. That is on a statewide average. Some customers will see more than that, particularly in the Murrumbidgee where there have been some uneven prices between different customers within the Murrumbidgee.

**CHAIR:** I have heard that some are up to 30 per cent.

**Mr BERRY:** Yes. IPART has heard that at its hearing last week and they will be considering that over the next few weeks and they will make their final determination in a few weeks' time.

**The Hon. MELINDA PAVEY:** Where the money goes will also be announced in six weeks' time?

**Mr BERRY:** Yes.

**The Hon. MELINDA PAVEY:** I presume the money State Water gets goes into running your corporation as well as dam asset management?

**Mr BERRY:** Yes. We have two main components to our budget: our operations costs, delivering water; and the other main component for State Water is our dam safety upgrade program. All of our dams were built in previous eras under previous standards. So there is a major component of our capital works program that goes to upgrading those dams for dam safety and also for environmental issues in terms of temperature and fish passage. IPART previously has determined that most of those costs should be borne by government. Once again they are considering that for this determination.

**The Hon. MELINDA PAVEY:** From your perspective, are you happy with the way that the Snowy Hydro notification system works?

**Mr BERRY:** Yes. Certainly, the operations plan primarily goes to the Department of Natural Resources first, so that they can make the available water determination, the allocation announcements. We need to get enough information out of that to give us a forecast of the storage levels and releases we will be able to make from Blowering. We are a party to ample information for us to do our operations plan.

**The Hon. MELINDA PAVEY:** You have ample information for you to do your work?

**Mr BERRY:** Yes.

**The Hon. MELINDA PAVEY:** There have been some calls that Snowy Hydro, for example, should be on a daily basis putting information out into the public about water releases. From your perspective, is that not required?

**Mr BERRY:** Certainly there is a compromise here for the operation of Snowy in terms of competition with their other electricity competitors. There is information that is sensitive to that market, so we are mindful of that need. In terms of Snowy's behaviour over previous years and what it has been doing in recent years, there is basically very little difference. We know the total volume that we are going to get over the year and we have an indication of the most likely patterns under various climate scenarios. But there are no guarantees in that. In some respects, that is not different to the climate as well. We have got some uncertainty in terms of what is going to come in natural inflows and we also have some uncertainty in terms of our demands from our customers downstream, depending on what crop mix they end up planting each year. The weather pattern that falls on those crops varies the demand pattern as well.

**The Hon. PATRICIA FORSYTHE:** You referred to your customers downstream and their crops. What guarantees do you give your customers?

**Mr BERRY:** We have a customer service charter. We do not have a customer service guarantee. That customer service charter is broken into each of our key performance indicators. There is a range of customer service ones where we consult with our customers. We are a monopoly business. In terms of consulting with our customers on levels of service, we are regulated by IPART to consult with our customers. So we have customer service committees in each valley. In terms of our water delivery performance in the charter, we give indications on delivery of water, how much of the water is ordered will be delivered on time. In terms of transfers, which is the other main thing we administer for our customers, we have information on the turnaround time for transfers. Then we give an indication in terms of our asset management that we will do an appropriate level of asset management planning and again consult with our customers as to the benefits that they will accrue from any upgrades to any of those structures.

**The Hon. PATRICIA FORSYTHE:** When you said earlier you make your decisions on the release of water from Blowering, for example, who do you inform when you are about to release from the dam?

**Mr BERRY:** We are releasing from each of our dams every day, but we have a daily decision to vary the release or not. During flood operations we might get down to hourly changes. In reasonably consistent weather we basically make a change each day. We make a media release generally in hindsight. We publish on the web what we have done each day. Most of our customers are aware of the various avenues of getting that information either from their local radio, the ABC radio and the *Country Hour* news at lunchtime. I think they still do that. They are thinking about cutting that one out because of access to the Internet. Basically a lot of information is published on the Internet—24 hours in hindsight generally, but it is on the Internet.

**Ms SYLVIA HALE:** Mr Berry, you said at the moment you have a lot of interaction with Snowy Hydro about borrowing arrangements, flood operations, dam safety and such matters. Would you anticipate there would be more or less information if the company were privatised or would you

expect it to be business as usual? Would there be any benefit from privatisation of the company from your perspective?

**Mr BERRY:** There is nothing apparent for State Water in terms of ownership and those relationships.

**Ms SYLVIA HALE:** Does it make a difference to you if water is released from Blowering via Snowy's turbines over the spillway?

**Mr BERRY:** We have the hydro station as well as valves. If the hydro were to break down we could use our valves. To get water to go over the spillway the dam has to be over full. So there is a different implication to get it over the spillway. In terms of us getting water down the river, it does not matter whether we release from the valves or from the hydro.

**Ms SYLVIA HALE:** Are you obliged to comply with Snowy Hydro's request or is it a matter of your discretion?

**Mr BERRY:** It is the other way around. We make the decision on the release and then we advise them. We say we can release up to that amount. If they want to release less, then we would put the extra on our valves to get the release that we wanted.

**Ms SYLVIA HALE:** You are basically in control of that operation. It is a courtesy to Snowy Hydro that you ask them?

**Mr BERRY:** Yes. It is basically an agreement with that power station, a longstanding arrangement, and there is no change to that precedent.

**Ms SYLVIA HALE:** You talked about how you got information from the annual operations plan. Do you have any input into that plan at all?

**Mr BERRY:** No, not to Snowy's plan.

**Ms SYLVIA HALE:** Do you know who does?

**Mr BERRY:** No, but we do not have an input.

**The Hon. PATRICIA FORSYTHE:** The announcement by Minister Della Bosca of the consultative committee was after the decision not to proceed to privatisation?

**The Hon. MELINDA PAVEY:** Yes, on the Monday.

**The Hon. PATRICIA FORSYTHE:** Is State Water a party to that committee?

**Mr BERRY:** Not as far as I know.

**The Hon. TONY CATANZARITI:** You said you consult with customers regularly. How often is regularly and who are the customers you consult with? Are they peak bodies, growers' meetings, irrigators' meetings Murrumbidgee Irrigation, annual general meetings?

**Mr BERRY:** Our primary method of communication with our customers is through our customer service committees. We have a customer service committee in each valley. In this case we have one for the Murrumbidgee and one for the Murray. The customer service committee is primarily made up of representatives of the peak groups and the different irrigator groups within the valley. We also have local government representatives and stock and domestic representatives on those committees. They are a committee of eight or nine people in most valleys. We meet on a quarterly basis with each of the customer service committees. We have a range of other opportunities to present to the grower groups or to individual water user associations as well. That is in a less formal sense and by invitation basically. Our primary method of communication with customers is through the customer service committees.

**(The witness withdrew)**



**KEVIN COSGRIFF**, Deputy Secretary, New South Wales Treasury, Level 27 Governor Macquarie Tower, 1 Farrer Place, Sydney, and

**BEN LATHWELL**, Acting Treasury Technical Officer, New South Wales Treasury, 1 Farrer Place, Sydney, sworn and examined:

**CHAIR:** Mr Cosgriff, would you like to commence your evidence with an opening statement?

**Mr COSGRIFF:** Yes. I would like to outline New South Wales Treasury's role. We have responsibility for the shareholding functions for the New South Wales equity holding in Snowy Hydro. That role is carried out inside the energy section of Treasury, alongside the commercial and financial monitoring of the other state-owned enterprises that operate in the electricity industry.

Similar to the shareholder role with state-owned corporations, New South Wales Treasury provides advice to the Government on the performance of businesses, including their current and forecast capital structure and financial distributions. The advice is presented in the context of the Government's commercial and financial policy frameworks. In relation to financial distributions, the Government has a preference for dividends over capital gain and for a reasonably stable stream of dividends.

Reflecting its functions, the New South Wales Government also has brought a preference for investment of New South Wales taxpayer funds in core services such as health, education and public transport. It is against these criteria that our ownership interest in Snowy Hydro has been evaluated. The rationale for those things is set out more fully in the Government's submission. I propose, if you are agreeable, to take questions.

**The Hon. PATRICIA FORSYTHE:** Mr Lathwell, you mentioned that you had had a role with the Snowy Task Force. Can you set out for me who were the members of the task force and where they are from?

**Mr LATHWELL:** The members of the task force were James Grainger, a contractor to New South Wales Treasury and director of the taskforce. There was myself—

**The Hon. MELINDA PAVEY:** What was his background to be a contractor?

**Mr COSGRIFF:** James has been involved in other asset sales undertaken by the New South Wales Government, such as FreightCorp.

**The Hon. MELINDA PAVEY:** So he is a private consultant?

**Mr COSGRIFF:** He is a private consultant with some speciality in the project management of asset sale processes.

**Mr LATHWELL:** Formerly of the Premier's Department.

**The Hon. MELINDA PAVEY:** What was the task force called?

**Mr LATHWELL:** The Snowy Hydro Task Force.

**The Hon. PATRICIA FORSYTHE:** Is that the sum total of the membership?

**Mr LATHWELL:** No. There was Steven Brady, an officer of New South Wales Treasury, Angelo Kriketos, another officer of New South Wales Treasury, there were two administrative assistants, one being Tanya Roggenkamp, and Aideen Hordern. I think we might have had another assistant who came in for a while to help with filing.

**Mr COSGRIFF:** The task force was assisted by two people from the Victorian Treasury and two people from the Commonwealth Department of Finance Administration, who reported through me to the steering committee, which comprised representatives of the three governments' central agencies, and that steering committee reported to Minister Della Bosca.

**The Hon. PATRICIA FORSYTHE:** The steering committee made the decisions—?

**Mr COSGRIFF:** No, the Minister made the decisions, in consultation with his two shareholding colleagues in Victoria and the Commonwealth. The steering committee's role was to present recommendations to the—

**The Hon. PATRICIA FORSYTHE:** Did the steering committee have consultants advising it as well, in addition to the task force?

**Mr COSGRIFF:** Yes, there were a range of consultants who were giving advice on the administration of the IPO.

**The Hon. PATRICIA FORSYTHE:** Can you tell me who those consultants were?

**Mr COSGRIFF:** I will attempt to give you a list; it may not be comprehensive. There was a financial adviser, Credit Suisse, who advised the steering committee and the task force on the financial aspects of the IPO. There was an accounting adviser, Deloitte, who were preparing the management accounts for the prospectus and the forecasts for the prospectus. There was a probity adviser who was advising on probity aspects of the transaction, there were legal advisers, Baker and McKenzie, who were advising on the legal aspects of the transaction.

Three joint lead managers were appointed, who were the main managers of the sale transaction and had retail distribution capabilities. They were UBS, Macquarie Bank, and Goldman Sachs. In addition, two co-lead managers were appointed, Deutsche and—my mind fails me momentarily—who had more direct involvement in the retail side of the transaction. Then there were a rather large group of service providers, of the nature of call centre operators, a banker to the issue, mail house, communications advisers, and those sorts of things, that provided support to the transaction, particularly as you go into the retail side of the transaction.

**The Hon. PATRICIA FORSYTHE:** When was the steering committee established?

**Mr COSGRIFF:** The steering committee would have been established in January.

**The Hon. PATRICIA FORSYTHE:** What was the budget for the committee? How much did you set aside to manage the process?

**Mr COSGRIFF:** I will have to take that on notice. I cannot recall exactly what the budget allocation was at that stage.

**The Hon. PATRICIA FORSYTHE:** Do you know whether you spent all the money you were allocated, or whether you exceeded the budget?

**Mr COSGRIFF:** No, we have not spent the money that was allocated to the transaction. The transaction was not completed, so a lot of the costs are still—

**The Hon. PATRICIA FORSYTHE:** But you must have spent some of the money. You must have paid some of those consultants.

**Mr COSGRIFF:** Yes, certainly, some of the consultants were paid, or are invoicing us and we are in the process of negotiating fees that are due to them for work they have undertaken in the lead-up to the lodging of the prospectus.

**Mr LATHWELL:** Had the transaction been executed, the costs would have been offset by the proceeds.

**The Hon. PATRICIA FORSYTHE:** Sure. But it was not, so the cost there has been a cost borne by government.

**Mr LATHWELL:** That is right, yes.

**The Hon. PATRICIA FORSYTHE:** Are we talking in terms of millions?

**Mr COSGRIFF:** Yes, we are talking in terms of millions of dollars.

**The Hon. MELINDA PAVEY:** Tens, twenties?

**Mr COSGRIFF:** I do not have the finalised figure. The Minister said at the time the transaction was aborted that he anticipated it would be the order of \$20 million, and I think that is the order.

**The Hon. PATRICIA FORSYTHE:** Do you have a policy about who is being paid and who is not being paid?

**Mr COSGRIFF:** The payments are set out in the contracts that the advisers entered into when they started the transaction.

**Ms SYLVIA HALE:** Did those contracts envisage the process being aborted at any stage, or not going to completion?

**Mr COSGRIFF:** Yes. All the contracts had a termination provision in them, so that the Crown could terminate the contracts and the fees payable were those that were due at the time—

**Mr LATHWELL:** A lot of them were based on successful completion of the transaction as well. The way the contracts—

**The Hon. PATRICIA FORSYTHE:** But has an agreement been reached with each of the external consultants about the amount of money they are each to receive?

**Mr LATHWELL:** That is the process we are undertaking now, given the number of contracts there are. But the way the contracts were structured, the only payments they will be receiving is for services rendered; they will not get any compensation payments because the sale fell through or anything like that. It was all based on successful completion of the sale.

**Ms SYLVIA HALE:** So you do not expect any litigation over any of the contracts?

**Mr LATHWELL:** No. We are now going through a commercial process of settling them. That is why it is taking a little while, because it is payment for services rendered, so we are having to clarify—

**The Hon. PATRICIA FORSYTHE:** Will you be in a position to provide to the Committee an indication of how much is being spent in this process?

**Mr COSGRIFF:** We will be in that position, yes, when we finish the negotiations with the various service providers.

**Ms SYLVIA HALE:** When do you anticipate finishing those negotiations?

**Mr COSGRIFF:** Roughly, we are a couple of weeks away from that. We are still to finalise negotiations with a couple of the service providers.

**The Hon. AMANDA FAZIO:** Mr Cosgriff, when we were in Cooma for our public hearings on Wednesday this week comments were made to the effect that there was a perception that Snowy Hydro had been muzzled during the IPO process, so the community down there felt that they were not getting the full extent of the information they should have got about the privatisation process. Can you

explain what were the arrangements and the legal provision or rules about who could speak publicly during the sale transaction, so we can clear that issue up?

**Mr COSGRIFF:** 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.

**The Hon. MELINDA PAVEY:** You said "majority"?

**Mr COSGRIFF:** Majority. This was for two reasons. First, the decision to sell was a decision made by the government shareholders, as were decisions about the various details of the process. Obviously, it is appropriate for Ministers to talk about the policy issues associated with those matters. Secondly, there 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.

**Ms SYLVIA HALE:** Whose decision was it for Mr Charlton to appear on *Business Sunday* when he had previously declined a request that he attend a public meeting in Cooma and said that he could not do so and could not speak because he could not provide information, yet he was subsequently unable to appear on *Business Sunday*?

**Mr COSGRIFF:** I cannot recall the occasion.

**Ms SYLVIA HALE:** I do not have the date with me—

**CHAIR:** The fact was, he did?

**Ms SYLVIA HALE:** Yes.

**The Hon. MELINDA PAVEY:** I think Mr Cosgriff just said that he could talk generally about the company—

**Mr LATHWELL:** He could talk generally about the company in terms of public consultation for the *Business Sunday* program.

**Mr COSGRIFF:** The rules are particularly clear about the fact that before the prospectus is lodged you cannot market the transaction. Even to say things about "This is a good company and investors should look at it seriously". The issues around the marketing of the transaction according to the ASIC rules have to be clearly set out in the prospectus, and essentially the company and the shareholders cannot depart from the general investment messages that are set out in the prospectus. So there are quite clear restrictions on what any party can say, and that particularly applies to the company. With issues of policy, there is a more general exemption for Ministers to speak on matters of public interest.

**The Hon. AMANDA FAZIO:** Would it be reasonable to assume that the questions that the business analysts on *Business Sunday* would ask would be framed with those restrictions in mind whereas people asking questions from the floor of a public meeting would not understand the difference between what the CEO could say and what would put him in breach of ASIC rules?

**Mr COSGRIFF:** Certainly the business journalists would understand the rules by which the company had to abide.

**Ms SYLVIA HALE:** Presumably Mr Charlton would have understood those rules when responding to questions from the meeting and could have declined to answer.

**The Hon. AMANDA FAZIO:** I am asking questions of the witnesses. I am not asking for silly asides from you.

**Ms SYLVIA HALE:** I was just giving you the benefit of my observation.

**The Hon. AMANDA FAZIO:** The last thing on the face of this earth that I would need is the benefit of your so-called wisdom.

**Ms SYLVIA HALE:** I did not call it wisdom; I said it was an observation.

**The Hon. MELINDA PAVEY:** I need to get an understanding of the communications part of the process. Where did the communications group, and in particular the Premier's former workmate David Tierney, sit in that process?

**Mr COSGRIFF:** Under the steering committee there were a number of subcommittees, one of which was the communications committee. We needed a communications adviser to perform a particular function in managing the relationship with the financial press around the transaction—providing information and ensuring that journalists, particularly financial journalists, had access to the information necessary to provide background information on the company et cetera and to write the articles that needed to be written. Essentially, that was the function of the communications consultant and he was part of the team that was providing communications advice to the transaction.

**The Hon. MELINDA PAVEY:** Did Treasury give any special consideration to Mr Tierney joining the team?

**Mr COSGRIFF:** To the extent that the communications advisers were—

**The Hon. MELINDA PAVEY:** As he was not a full-time employee of the company that won the contract to provide communications advice did Treasury give any special consideration to his joining the team?

**Mr COSGRIFF:** He was part of the group that was successful in terms of the consultancy contract. I do not think there was anything special or unusual in the relationship between—

**The Hon. MELINDA PAVEY:** Not that you are aware of.

**Mr COSGRIFF:** Not that I am aware of, no.

**The Hon. MELINDA PAVEY:** Is it the same for you, Mr Lathwell?

**Mr LATHWELL:** Every tender that was submitted by a consultant went through the same evaluation process, which was oversights by the probity adviser. It is all documented and all there for disclosure if needs be in terms of the process that was gone through.

**The Hon. MELINDA PAVEY:** It is all under privilege at the moment.

**Mr LATHWELL:** It is all there: the evaluation of each and the interview process that was gone through for the appointment of each advisor.

**The Hon. PATRICIA FORSYTHE:** Where did the buck stop? Who was the decision maker at the end of the day in this process?

**Mr COSGRIFF:** The shareholding Ministers. It was the sale of New South Wales, Victorian and Commonwealth shares in a company so it was the shareholding Ministers who had the power and the authority to make those decisions.

**The Hon. PATRICIA FORSYTHE:** We got the impression from listening to people at the public hearing in Cooma the other day that suggestions were coming in to the steering committee but they were not getting a response. For example, one of the councils put forward a proposal about the ownership of shares and they said that it seemed to fall into a black hole. They were not getting decisions.

**The Hon. MELINDA PAVEY:** Tumut Council put up a proposition in relation to capping share ownership. The Irrigators Council did the same. They did not get any response from the Minister on that issue. Did the Minister bring that sort of information to you for advice?

**Mr COSGRIFF:** If we are thinking about the same issue—which is what the individual share cap should be as part of the transaction—there was a lot of discussion around that issue, a lot of advice was asked for and advice was provided.

**The Hon. PATRICIA FORSYTHE:** Was any decision taken?

**Mr LATHWELL:** Numerous press releases were issued jointly by the Ministers in regard to a shareholder cap and foreign ownership clauses in terms of maintaining the Australian identity of the scheme.

**The Hon. MELINDA PAVEY:** That was announced by the Federal Government in the last week.

**Mr LATHWELL:** No, it was announced jointly. The restrictions on the shareholder cap were announced jointly by the shareholders, as were the Australian identity clauses for the company. What was announced separately by the Commonwealth near the end of the transaction was that they might look to introduce legislation into the Commonwealth Parliament to mandate the foreign ownership restrictions through legislation, which we previously had not considered.

**The Hon. MELINDA PAVEY:** You had not considered it?

**Mr LATHWELL:** We had considered it but we received legal advice that there was no need for it because there were existing laws in regard to foreign ownership that would have applied to Snowy Hydro.

**Ms SYLVIA HALE:** What was the role of the probity adviser?

**Mr COSGRIFF:** It was the same role as in other transactions: to ensure appropriate standards of probity are kept, particularly in the appointment of advisers, the policies around the transaction, such as the allocation of shares and issues around retail. It was essentially to give the governments advice on high standards of probity in the appointment of advisors and the carriage of the transaction.

**Ms SYLVIA HALE:** So there would be oversight, for example, of whether people working for these consultant companies could purchase shares in the privatised company. Is that correct? Would there be restrictions on that?

**Mr COSGRIFF:** There was certainly a policy developed by the probity adviser covering in particular who could not participate in the transaction.

**Ms SYLVIA HALE:** Were there any restrictions on the ability of Snowy Hydro or any of its employees to participate in that transaction?

**CHAIR:** I think that was indicated to us.

**Ms SYLVIA HALE:** I want to hear it from Treasury.

**Mr LATHWELL:** There is no restriction on the ability of employees to purchase shares; they would have been considered like anyone else—any other member of the public—who applied for shares.

**Ms SYLVIA HALE:** Are you aware of any bonuses that might have been made available to any employee of Snowy Hydro if the sale had been successful?

**Mr LATHWELL:** I think Snowy Hydro was intending to offer an interest-free loan to employees to encourage them to take up shares. This would be beneficial to the company in providing an incentive to employees that aligned with the company's performance.

**Ms SYLVIA HALE:** Was that to be available at the same rate to all employees regardless of whether they were at the top or the bottom of the pyramid?

**Mr LATHWELL:** I think it was \$10,000 interest free for a certain period for all employees. But you would have to—

**Ms SYLVIA HALE:** Were any other bonuses available to the chief executive or any other executives of Snowy Hydro?

**Mr COSGRIFF:** Can we be clear about this? The allocation policy of shares is a policy decision for shareholding Ministers. The shareholding Ministers took a decision on advice from the company and the steering committee that an offer to staff as Ben has just described was appropriate. There was nothing else approved by the shareholding Ministers.

**The Hon. PATRICIA FORSYTHE:** I want to return to a question that I asked earlier so that I understand the issue clearly. What was the budget that was set aside for the process of privatising Snowy Hydro? How much did Treasury have to sell Snowy Hydro?

**Mr COSGRIFF:** I cannot tell you off the top of my head.

**The Hon. PATRICIA FORSYTHE:** Is it cannot or will not?

**Mr COSGRIFF:** I genuinely cannot remember what the number was off the top of my head. I am happy to take that question on notice and come back to you with the answer to that question.

**The Hon. PATRICIA FORSYTHE:** I think this Committee will really need a breakdown of how much you have spent and how it was allocated.

**Mr LATHWELL:** In terms of allocation between—

**The Hon. MELINDA PAVEY:** How much third person got and how many charter flights and hotel rooms there were—all the details.

**The Hon. PATRICIA FORSYTHE:** The media monitoring and advertising.

**Mr LATHWELL:** That can be done when they are all finalised.

**The Hon. MELINDA PAVEY:** On that point, you will be able to provide within two weeks—is that what you said—a cost breakdown of where all the money went.

**Mr COSGRIFF:** The money that we have spent to date?

**The Hon. MELINDA PAVEY:** Yes.

**Mr COSGRIFF:** Yes.

**The Hon. MELINDA PAVEY:** And that will cover all the consultants, all the investment banks, all the mail houses and communications.

**Mr LATHWELL:** All money expended from the Government in relation to the sale of Snowy Hydro.

**The Hon. MELINDA PAVEY:** And tabulated—identified.

**Mr LATHWELL:** I suppose we could do that.

**The Hon. AMANDA FAZIO:** They can always ask for it during budget estimates.

**The Hon. MELINDA PAVEY:** We will not have to do that if it is provided in two weeks. We can then concentrate on other management issues of your Government, Amanda. Some of the emails that are not privileged mention Project Hudson. Can you explain to the Committee what that is, Mr Lathwell?

**Mr LATHWELL:** Project Hudson was effectively the predecessor to the sale of Snowy Hydro. It was based on a proposal that was received by the board of Snowy Hydro. Basically, the analysis underpinning that suggestion was the same as Treasury had come to: Snowy Hydro needed access to private sector equity to grow. They recognised that the governments did not want to provide that equity so Project Hudson was effectively a partial sale of Snowy Hydro or recapitalisation whereby Snowy Hydro would raise a proportion of the funds or a certain amount of funds on the stock exchange and those funds would be returned to the shareholders in accordance with their shareholder proportions. For example, it might have resulted in Snowy Hydro owned 60 per cent by the governments with 40 per cent private equity.

**Ms SYLVIA HALE:** Who came up with that proposal?

**Mr LATHWELL:** It was suggested by Snowy Hydro.

**Ms SYLVIA HALE:** When was that proposal advanced?

**Mr LATHWELL:** It was received in late 2005 and because it was consistent with the analysis that New South Wales Treasury had done we discussed it with the other shareholding governments at the time to see where they sat.

**Ms SYLVIA HALE:** How long do you think Snowy Hydro had been working on Project Hudson?

**Mr LATHWELL:** I cannot speak for Snowy Hydro; you will have to ask the company.

**Ms SYLVIA HALE:** It has been suggested to the Committee that the notion that Snowy could be privatised was fundamental to the corporatisation of the authority. Would you agree?

**Mr LATHWELL:** I was not around for the corporatisation so I cannot comment.

**Ms SYLVIA HALE:** Mr Cosgriff, was that always in mind?

**Mr COSGRIFF:** I do not know whether it was in the minds of those who were part of the corporatisation. Certainly the structure of the corporatisation allows for privatisation in the sense that the regulatory and other arrangements are clearly codified. The company is set up in a way that it could be privatised.

**Ms SYLVIA HALE:** I seem to recollect that Mr Charlton was of that view.

**The Hon. MELINDA PAVEY:** That question is probably more relevant for Minister Della Bosca.

**Ms SYLVIA HALE:** I agree.

**The Hon. AMANDA FAZIO:** Can I ask you some questions in relation to our terms of reference? That might be novel. We are looking at the continued public ownership of Snowy Hydro and what can be done to try to ensure that we can identify its capital needs, how they can be met and how it can stay competitive in the national energy market. A number of people have raised, both in submissions and in evidence in Cooma, the concept of bond issues. They suggested that there could be



some form of Snowy bonds. I know that system of raising capital was used a lot in the past; it does not seem to be terribly in vogue at the moment. Can you tell us what the pros and cons would be of having a bond issue to raise capital for Snowy Hydro?

**Mr COSGRIFF:** First, we have to be very clear what we are talking about. The traditional way of thinking about bonds and instruments like that is that rather than getting money from a bank on which you pay interest you go out to private individuals or institutional markets and get what is essentially a loan so that your capital is guaranteed within limits and you get an interest payment on that money that is generally a little higher than the bank interest on debt. 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 by Standard and Poor's, Moody's or whoever its credit rating agency is.

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. In today's market it is possible to issue hybrid-type bonds which have characteristics of equity, but then that would be not unlike the recapitalisation proposal in the sense you would be asking people to supply money which they could get capital loss on, and in that sense it carries the characteristics of equity.

**The Hon. AMANDA FAZIO:** Given that the Government has indicated that it is not keen to put in capital for infrastructure that would be developed outside of New South Wales, because I think the proposal was for peaking gas-fired power stations in either Victoria or South Australia and that the bond issue does not seem to be that viable, what other options could there be to the Snowy Hydro to actually raise that capital, or are there any?

**Mr COSGRIFF:** Options are somewhat limited. 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.

**CHAIR:** Generally you either get it from the government or you borrow it by decreasing your dividend payments to the government in order to take normal commercial loans?

**Mr COSGRIFF:** No, you either borrow it from the bank, to the extent you can do that. If you cannot do that you then have to effectively generate cash either through keeping retained earnings or through getting an equity injection from your owner.

**The Hon. PATRICIA FORSYTHE:** So where did the Government anticipate that the funds from the initial public offer were going? Were they going to the Snowy to expand its business?

**Mr LATHWELL:** Proceeds from the sale?

**The Hon. PATRICIA FORSYTHE:** Yes.

**Mr COSGRIFF:** Most of the proceeds of sale would have come back to the shareholders and would have entered the New South Wales, Victorian and Commonwealth balance sheets.

**The Hon. PATRICIA FORSYTHE:** But the shareholders are the Government. That is not going back to Snowy Hydro.

**Mr LATHWELL:** No, because we are selling our shares, so we are receiving the proceeds for that sale.

**Mr COSGRIFF:** I go back to the three ways you can raise capital. You can either have lower dividends, you can have equity injections or you can increase debt. Snowy, post the IPO, 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.

**Ms SYLVIA HALE:** To participate in the national electricity market you require minimal credit rating, is that correct?

**Mr COSGRIFF:** Yes.

**Ms SYLVIA HALE:** What is it?

**Mr COSGRIFF:** Triple B.

**Ms SYLVIA HALE:** What is Snowy's current credit rating?

**Mr COSGRIFF:** Triple B plus.

**Ms SYLVIA HALE:** So there is still a small ability there for it to enter into a debt that it would service through its own turnover?

**Mr LATHWELL:** Snowy Hydro would be best to answer that one. But there may be a margin.

**Mr COSGRIFF:** Yes, in a finely balanced sense there might be a margin for increased debt, but I think you would find the board of the Snowy would come back and say prudently they would want to retain a triple B plus rating in order to give themselves a flexibility and manage the business through time.

**Ms SYLVIA HALE:** This is a whole-of-government response, presumably. Can I ask you gentlemen were you the authors of it or was it Treasury who produced the document?

**Mr LATHWELL:** I authored the New South Wales Government response with input from relevant agencies.

**Ms SYLVIA HALE:** Given, as Ms Fazio has pointed out, it is an inquiry into the continued public ownership, and given that it is highly unlikely that it will do anything other than remain in continued public ownership, why did you present the Committee with a document which really deals with the benefits I presume you and Snowy Hydro see of privatisation when that is, presumably, a question that has been resolved to the satisfaction of the public, if not of the Minister?

**Mr LATHWELL:** It is an inquiry into the continued public ownership. We have to examine that against private ownership.

**Ms SYLVIA HALE:** You put up no alternatives, you put up no scenario as to how things should proceed, you merely construct something that if it had been privatised then these options would have been open to it. You do not put up any vision for the future of the organisation as it continues in public ownership.

**Mr LATHWELL:** That is the Government's next step.

**The Hon. PATRICIA FORSYTHE:** Can I come back to the earlier issues? You said earlier that the Project Hudson concept was a partial sale. Why did the Government proceed towards a full sale?

**Mr LATHWELL:** Because based on an analysis undertaken by all the governments of a partial sale there was no difference between that and a full sale, so the decision was made.

**The Hon. MELINDA PAVEY:** There would have been a difference in terms of financial outcomes for New South Wales?

**Ms SYLVIA HALE:** It is a difference that confronts Telstra at the moment.

**Mr LATHWELL:** The preference of all the shareholders is that if there was to be a partial sale then a full sale would be more beneficial.

**The Hon. MELINDA PAVEY:** Especially to New South Wales, being the majority shareholder. The revenue to New South Wales would have been far superior if it had gone through?

**Mr LATHWELL:** We would have got greater proceeds from a full sale as opposed to a partial sale.

**Mr COSGRIFF:** All the shareholders would have got more proceeds, but it would have been in proportion to their original shareholding in the company.

**The Hon. MELINDA PAVEY:** But the financial situation in New South Wales being what it is, was there a desire from Government to push for a full sale instead of a partial sale to help the budget bottom line?

**Mr LATHWELL:** The sale proceeds do not hit the budget bottom line.

**The Hon. MELINDA PAVEY:** Where do they go?

**Mr LATHWELL:** To the balance sheet.

**The Hon. MELINDA PAVEY:** To improve the balance sheet?

**Mr LATHWELL:** Yes.

**The Hon. PATRICIA FORSYTHE:** So how was Snowy going to be able to raise funds to expand its business?

**Mr LATHWELL:** Because it would then be able to go and access further private sector equity because if Snowy Hydro could come up with a project that had a commercial rate of return then they could go out and put that to the market and raise additional funds.

**The Hon. PATRICIA FORSYTHE:** So it is about enhancing its access to funds?

**Mr COSGRIFF:** Its access to funds. Essentially, under the Hudson proposal, the Governments' funds, if you like, the equity the three governments had invested in Snowy Hydro, would have remained constant and Snowy would access private equity markets to get further funds for development. The effect of that would be that you would slowly dilute the original shareholders' interest unless they subscribed for the capital that Snowy issued.

**The Hon. GREG DONNELLY:** We heard some evidence in the inquiry so far from Snowy about the competitive nature—in fact it has been characterised as the highly competitive nature—of the electricity industry, which appears to be a key imperative for them of looking to see how they need to expand into other opportunities to remain competitive. I am wondering in the work that Treasury did if you were able to yourselves establish that that is in fact the reality of the electricity industry, that it is innately very competitive, and to remain a viable player within the industry you need to be able to have some flexibility to be able to exist over time?

**Mr COSGRIFF:** The electricity industry is competitive. What distinguishes Snowy from other market participants is a couple of unique characteristics. Snowy is a company that is long in capacity in the sense that if it could run its dams 24 hours, seven days a week, it could generate a lot more electricity. It is fundamentally constrained from doing that by the volume of water it has got. So that means that by its very nature even though it has a lot of capacity it can only generate a relatively few number of hours in any given year and that pushes it, by its nature, into the peaking market. Its natural strategy is to provide power intermittently, particularly at periods of high demand or constrained supply, which means the market price is high.

One of the risks that faces particularly, say, a retail business operating in the electricity market is that it tends to have a series of fixed-price contracts with customers, households and firms for the supply of electricity, but it purchases its electricity, which it essentially on-sells to its customers, from a volatile wholesale market. That retailer has essentially three strategies: one, it can try and merge with a generator and manage its risks that way so that in the combined business on days when there are some losses in the retail side there will be offsetting profits on the generation side. The retailer could, as a second strategy, invest in peaking plants so it builds and operates its own peaking plant—generally they will be gas-fired. So that during periods of high prices when it is effectively on the retail side having to pay more for its electricity than it will get in revenue from its customers, it can run its peaking plant and generate revenue from the pool.

The third strategy is to enter into a contract with someone who will essentially take on the risk of high prices. These contracts look like insurance contracts. Essentially; the retailer will pay a fee and that will be paid on a 24/7 basis and in return for that fee when the price gets above a strike price, effectively the company offering the insurance product will pick up the difference and that secures, essentially, the profitability of the retailer.

There are only two types of plant that can provide backing to that insurance product. The company that is offering the insurance, like Snowy, has to have the capacity to generate because on the days or hours that it is paying money to the retailer it wants to be able to generate so it can get some revenue from the market. There are only really two types of plant that can do that: they are gas-fired peaking plants and hydro plants, which have a very fast start capability and can generate quickly. So Snowy has a natural market niche as a provider of, essentially, hedging products to the electricity market. That is a market niche that can be competed away by other companies that have gas-fired generation plants; they can offer the same sort of contractual coverage to retailers as Snowy currently offers. That is one form of competition for Snowy.

The other form of competition for Snowy is, effectively, the vertical integration that is going on in the electricity market where retailers and generators are starting to combine. The more retailers and generators combine the more they effectively manage their risks inside the one business and the less demand they have for the insurance type products that a company like Snowy can offer.

**The Hon. GREG DONNELLY:** In regard to this issue of the vertical integration, which we are just about to explain, it has been put to us in evidence that this now is a feature of the electricity industry and it is something which, since the national grid system, certainly on the East Coast, has established itself and played out. Would it be your assessment that the vertical integration momentum is something that cannot be wound back? That it is something which has developed in the market place and is taking place in the market place and really it cannot be stopped or slowed down or prevented from continuing to occur?

**Mr COSGRIFF:** I think there are trends in that direction of increased vertical integration. We have clearly seen that in the Victorian market. It is a natural response of companies. AGL made losses in New Zealand because it got into a position where its retailers had not adequately managed the risk and the relationship with generators, and that has caused that company to look more to vertical integration as a way of giving itself some assurance that its contractual arrangements with the spot market were well managed. So, I think that underlying risk management is pushing towards more and more vertical integration.

**Ms SYLVIA HALE:** It would be a general view that it is not desirable to encourage monopolies, and one role of government would be to protect the public interest against monopoly interests?

**Mr COSGRIFF:** Yes, but this is a world where the major monopoly parts of the electricity system, namely the distribution and transmission networks, would be separated. They would be in separate companies and they all are subject to regulation by independent regulators like the Australian Industry Regulator and the Independent Pricing and Regulatory Tribunal. So that bit of it I think is clear. The other bit that might be of concern is generator concentration, and the issue there seems to be more about having an adequate number of vertically integrated firms rather than problems with vertical integration per se. Most discussion around the concerns of monopoly issues in electricity

industry go to generator concentration and to too few participants rather than to issues around vertical integration—its that more horizontal integration rather than vertical integration is the issue.

**Ms SYLVIA HALE:** You say project Hudson originally came forward from Snowy Hydro, but the whole privatisation process was, what, driven more by New South Wales's interest in the project that either the Commonwealth's or Victoria's?

**Mr COSGRIFF:** I think the three governments are all interested in the privatisation process. Once project Hudson did not proceed I think the New South Wales Government took the lead.

**Ms SYLVIA HALE:** So there was no reluctance, for example, on the part of Victoria to enter into it, or the Commonwealth?

**Mr COSGRIFF:** They needed to convince themselves that was the right thing to do, but then they went forward.

**Ms SYLVIA HALE:** But New South Wales, essentially, was the lead, the driver of the process?

**Mr COSGRIFF:** Yes.

**Mr LATHWELL:** New South Wales announced the sale of its shareholding before any other government.

**Ms SYLVIA HALE:** Does that indicate that New South Wales was prepared to go ahead and sell its share even if Victoria and the Commonwealth had not been interested in doing that?

**Mr LATHWELL:** Yes.

**Mr COSGRIFF:** Yes. The original announcement by the Premier foreshadowed that was a possibility.

**Ms SYLVIA HALE:** In November 2005 the Premier denied when he was asked, I believe, in the lower House that there was any contemplation of privatising Snowy. Was there no contemplation in November? Did it strike like a bolt from the blue in December that they would be privatising?

**Mr COSGRIFF:** At the time, yes. I would not say a bolt from the blue. At the time the recapitalisation process did not proceed, then the option of privatisation came on the table.

**Ms SYLVIA HALE:** You list a number of documents on page 22 of your submission. Are all of those documents publicly available?

**Mr LATHWELL:** The vast majority of those documents are public documents. The agreement between New South Wales and Victoria on the outcomes of the Snowy water inquiry was incorporated into the *Hansard* of the New South Wales Parliament on 5 December 2000. So, it is definitely available to Parliament and public. The heads of agreement from the Snowy water inquiry outcome, along with the KNP Lease, which is not on here, are the statutory instruments because they are referred to under the Snowy Hydro Corporatisation Act, are all available to both Parliament and the public. The Snowy water licence is on DNR's web site. The Snowy compensation deed is not available because it is a commercial in confidence deed between the shareholders and the company. The Snowy scheme deed of indemnity, I assume, would be public. I would have to check. The Murray-Darling Basin agreement is public. The joint public statement communiqué would be available. The long-term water arrangements deed would be publicly available, but you would have to talk to DNR about the Blowering deeds. The Snowy bilateral deed is a deed between Victoria and the company which NSW is not a party to.

**Ms SYLVIA HALE:** We attempted earlier this morning to ask Natural Resources why the scientific committee had not been formed or established, and I think it was suggested that you might

be the appropriate people to ask. So, could you explain, despite the Corporations Act requiring the committee to be established, why it was not set up?

**Mr LATHWELL:** It requires a committee to be established but does not put a time frame on the establishment of that committee. I think at the time of corporatisation that was the intention. If you refer to the corporatisation legislation as set out in the Act, the purpose of the committee is to report on the regime for water releases from the Snowy scheme for environmental reasons and 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. We are still new in this process in terms of achieving water savings and therefore the water we can release now is 58 gigalitres which sees 38 gigalitres go down the Snowy River, effectively the natural flow from Mowamba. Because they are such low quantum, in 10 years they are scheduled to increase from 38 gigalitres to 212 gigalitres, at this point in time there is no overwhelming benefit to establish a scientific committee.

**Ms SYLVIA HALE:** Except that the Act requires you to have a five-year review of the efficacy of the water releases or whatever and environmental flows. How can you do that review next year in the absence of any data from the preceding four or five years?

**Mr LATHWELL:** The data is being collected.

**Ms SYLVIA HALE:** Who has it been collected by?

**Mr LATHWELL:** The relevant catchment management authorities.

**Ms SYLVIA HALE:** If you say the data is there, why not establish the scientific committee to assess the implications of that data?

**Mr LATHWELL:** Because the data is on minimum basic flow, very low level sort of flows. The idea of the Snowy scientific committee was once you start achieving savings of 100 gigalitres to 150 gigalitres, it can look at varying the release patterns, changing from various months and from year to year, and it can look at storing up water across the years to achieve flushing flows. Based on that data and that sort of analysis it could continue to look at what is best. Because those flows are not yet achieved and that data is being recorded now by the catchment management authorities—and I assume that would be used as part of the five-year review—it will effectively be the ground work for when we establish the Snowy scientific committee, to go away and say this is what we have to date. It is not much because these are the quantum of flow, but will be useful going forward.

**Ms SYLVIA HALE:** So, you are saying where the Act says you must set up a scientific committee, you are not obliged to set it up immediately, it is whenever you see fit, but when the Act says you must finish the alterations to the Jindabyne dam within three years, it is also argued then that we do not have to do that because, for varying reasons, it is not possible? It seems to me there is an attitude that we will do what we want to do and ignore the rest.

**The Hon. MELINDA PAVEY:** I would just like to ask a question in relation to the submission that was put to us in Cooma from Tumut Shire Council, getting back to the future needs of Snowy Hydro, the biggest employer in the Monaro region, and the future of the company. Its submission basically suggested the idea of letting out the Snowy Hydro infrastructure to a privatised company so the community would continue to own the Snowy scheme, the iconic Snowy scheme, and government could possibly get a return on its asset, knowing that it would remain in public hands. Is that something that was considered or has been considered?

**Mr LATHWELL:** It has been given preliminary consideration. But 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 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.

**Mr COSGRIFF:** What did they envisage? 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.

**CHAIR:** You are saying it could be leased out?

**Mr COSGRIFF:** 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.

**The Hon. PATRICIA FORSYTHE:** Has Treasury done any modelling for the future in the light of what has happened?

**Mr COSGRIFF:** In terms of this—

**The Hon. PATRICIA FORSYTHE:** On this or any other proposal that may take Snowy Hydro forward?

**Mr COSGRIFF:** We have done no modelling or work on proposals that involve the sale of Snowy, no. We are looking at issues around the governance, particularly of investment and capital decisions, which I think will be an ongoing need as the company goes forward.

**CHAIR:** In the preparation for privatisation did Treasury have conversations with Edison Energy in the United States?

**Mr COSGRIFF:** Not that I am aware of.

**CHAIR:** I just mention this because that was raised by someone previously.

**Mr COSGRIFF:** I do not recall any specific conversation.

**The Hon. MELINDA PAVEY:** You have probably gone over this but I need to get a clear understanding of why the option left with Snowy Hydro was to privatise so it could then go and borrow to build the business. Why could it not borrow under government ownership?

**Mr COSGRIFF:** It has borrowed under government ownership and it has built the business using those borrowings. It has reached, effectively, the limits of borrowing. The IPO process was about accessing equity, not debt. It was about getting equity investment into Snowy and from those equity funds it could manage further investments. There is a limit to how much any company can borrow, and Snowy was approaching those limits.

**Ms SYLVIA HALE:** But if it cut back on its dividends to the governments, it could reinvest using that, and it makes, what, \$450 million a year, is it, of which \$200 million goes as dividends? So, if those dividends did not go to the governments they could be reinvested in infrastructure?

**Mr COSGRIFF:** The numbers are less than that.

**Mr LATHWELL:** It is \$100 million to \$110 million. That was one of the issues that was a catalyst to our analysis, 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.

**Ms SYLVIA HALE:** But was not one of its plans, for example, to establish a gas-fired plant in Western Sydney? That is not outside New South Wales.

**Mr COSGRIFF:** It has a range of ideas, including retail and generation.

**The Hon. MELINDA PAVEY:** The message and spin from the Government and from Minister Della Bosca was all about investing in Victoria.

**Mr COSGRIFF:** That is where the most recent and significant investments have taken place, in Laverton Valley power and—

**The Hon. PATRICIA FORSYTHE:** But they have increased their profits at the same time.

**Mr COSGRIFF:** Yes.

**The Hon. PATRICIA FORSYTHE:** They had a return on their investment.

**Mr COSGRIFF:** Absolutely, they are a profitable company. Let us be clear about this. The issue is capital for growth. Now with the debt that company has taken on, that can come from two places, either from equity provided by the Government or the private sector, or it can come from returned dividends.

**The Hon. PATRICIA FORSYTHE:** Their investment is making a return.

**Mr LATHWELL:** But it is a return we cannot access because it is locked up in the company.

**The Hon. PATRICIA FORSYTHE:** What is that?

**Mr LATHWELL:** We cannot access the investment, because it is capital gain. The value of the company might grow more and more, and obviously there will be a greater risk associated with that because of growth strategy, but what good is that to the Government. The only way we can access it is by sale.

**Ms SYLVIA HALE:** Presumably the whole point of these additional investments is to generate more dividends. Governments can access those dividends. Is that correct?

**Mr LATHWELL:** We cannot access those dividends while it is owned by governments, because they will need to use those dividends to fund acquisition.

**Ms SYLVIA HALE:** It is up to Snowy Hydro as to whether it returns those dividends to shareholders or reinvests in infrastructure or other capital acquisition?

**Mr LATHWELL:** Dividends are at the discretion of the board.

**Ms SYLVIA HALE:** At the discretion of the Snowy Hydro board?

**Mr LATHWELL:** They would have to consider the comments of shareholders.

**Ms SYLVIA HALE:** But they are not bound by those comments?

**Mr COSGRIFF:** No.

**Ms SYLVIA HALE:** They have to act in the interests of the company, that is predominant?

**Mr LATHWELL:** It is a corporations law company, and the directors under the corporations law have a duty to act in the best interest of the company.

**The Hon. AMANDA FAZIO:** How did Snowy Hydro pay for its more recent Victorian infrastructure? Was it by diverting dividends or by borrowing?

**Mr LATHWELL:** A combination. There is a trend in forecast dividends declining.

**The Hon. AMANDA FAZIO:** Have they repaid the cost of that new infrastructure in Victoria?



**Mr LATHWELL:** You would have to ask Snowy Hydro.

**The Hon. MELINDA PAVEY:** The trend of dividends declining is because of the investment they need to make?

**Mr LATHWELL:** That is right.

**The Hon. MELINDA PAVEY:** The dividend to government will not be as much?

**Mr LATHWELL:** That is right, because they need equity to fund the new acquisitions.

**Mr COSGRIFF:** We should distinguish the two sources of investment. The company appropriately reinvests and in its current assets and carries out maintenance and refurbishments set out in a large capital program over 10 years. The investment we are talking about is in new plant, outside the core assets.

**The Hon. MELINDA PAVEY:** In the call for papers there was reference to Project Clancy. Are you aware of that Mr Lathwell?

**Mr LATHWELL:** Project Clancy was the name given to the sale.

**The Hon. MELINDA PAVEY:** By the steering committee, the task force, by everybody?

**Mr LATHWELL:** I do not know.

**Mr COSGRIFF:** By the task force.

**Mr LATHWELL:** Sir William Hudson, the chief engineer of the scheme, was the reason behind the naming of that. And Project Clancy, was for Clancy of the Overflow.

**The Hon. MELINDA PAVEY:** It is pretty fair to say that the sale process was a public relations disaster. In the aftermath of the sale, the crikey web site had a good go at your boss, John Pearce, saying that he was at fault because he stopped people talking about the sale. Today you have given evidence that Minister Della Bosca was in a unique position to speak publicly about the proposed float because he was a Minister of the Crown and had special ministerial leave, if you like, outside the normal ASIC regulations. Do you have a comment on that?

**Mr COSGRIFF:** On crikey.com the main criticism of John was that he was looking after the interests of New South Wales taxpayers. I think the Treasury Secretary pleaded guilty as charged.

**The Hon. MELINDA PAVEY:** But the issue was one of public relations debate, it certainly got away from government. Minister Della Bosca could have played a stronger role in putting the interests of Snowy Hydro, given that he was probably the only person in New South Wales able to do that, as a Minister.

**Mr COSGRIFF:** That is a question you should perhaps put to Minister Della Bosca.

**The Hon. MELINDA PAVEY:** We might need to call him as a witness.

**Ms SYLVIA HALE:** Evidence was presented to the Committee in Cooma, and from one of the affected councils, that originally snowy started off as an irrigation scheme whereby electricity was to be used to pay for it. During the period of corporatisation it became an embodiment of the clean-green energy generator. Now it has transmogrified into a company which is into the derivatives market, insurance market, energy, futures and whatever. The suggestion is that that very narrow focus ignores the interests of the broader stakeholders—farmers, environmentalists, tourism industry, energy industry, scientists, technologists and construction engineers.

There is a very diverse group of stakeholders in the scheme, but they are not reflected in either the composition of the board or in the background or expertise of the chief executive officer of

Snowy Hydro, or in the company's thinking and focus. As a publicly owned organisation, do you think it appropriate that its management committee or board be broadened to encompass that greater range of interests?

**The Hon. GREG DONNELLY:** Sure that is a question to Snowy?

**Ms SYLVIA HALE:** No, the Government is one of the shareholders. What does the Government see as its role?

**Mr LATHWELL:** In terms of environmental and water stakeholders, I do not know how they can claim they are now being ignored. We have gone through an eight-year process of corporatising the company and setting out an extensive and broad range of regulatory arrangements, which protects their interests.

**The Hon. GREG DONNELLY:** That is the Greens' position, no-one else's.

**Ms SYLVIA HALE:** No, I am putting the position of the chamber of commerce which was very concerned.

**The Hon. AMANDA FAZIO:** Which chamber of commerce?

**Ms SYLVIA HALE:** Eucumbene. It was concerned that the interests of small businesses, tourist operators and others, were effectively ignored by Snowy Hydro. They gave evidence that they were not kept informed, that Snowy Hydro—

**CHAIR:** The board lacked the breadth of confidence.

**Mr LATHWELL:** I do not want to speak for the company, but if you spoke to the company you would get a very different story in terms of the money injected into the community by the company—boat ramp facilities, Care Flight helicopter.

**Ms SYLVIA HALE:** Are you aware of community fears at the moment that there will be reprisals because of the failure to proceed with privatisation to the extent—

**The Hon. GREG DONNELLY:** That is hearsay.

**Ms SYLVIA HALE:** Funds will be withdrawn from such activities. Are you aware of that?

**CHAIR:** It could be asked in the context of: are you aware that this was published in the *Snowy Mountains Echo*?

**Mr COSGRIFF:** No, I am not aware.

**Ms SYLVIA HALE:** I was asking that question as a follow-up to Mr Lathwell's response that Snowy Hydro was putting a lot into the community. You spoke about target levels for water flows. There is supposedly a guaranteed 21 per cent of original average flows to be returned to the Snowy River. What happens if that is not achieved? How much is being achieved in water savings today?

**Mr LATHWELL:** The 21 per is a 10-year target. It was based on the recommendations of the scientific committee and the Snowy Water inquiry based on the capabilities and probabilities of achieving that level of savings. The three governments committed to funding \$375 million over 10 years.

**Ms SYLVIA HALE:** That recommendation was in 2000 for 10 years. That takes it to 2010 and it is now 2006. How far along the road are we to achieving that target?

**Mr LATHWELL:** it would be more appropriate to talk to the joint government enterprise. Based on their business plans that they have submitted, the forecast is that they will achieve that target by 2012.

**Ms SYLVIA HALE:** Who should the Committee talk to?

**Mr LATHWELL:** The joint government enterprise that is trading as Water for Rivers. They are the entity responsible for achieving those savings.

**The Hon. PATRICIA FORSYTHE:** Finding the savings.

**Mr LATHWELL:** Yes. The governments have committed that funding to the entity and established it with appropriate staff to go out and undertake that process.

**Ms SYLVIA HALE:** To get it up to the desired 28 per cent, that additional 7 per cent will come at a cost of whatever compensation needs to be payable to Snowy Hydro?

**Mr LATHWELL:** I do not think 28 per cent was ever set as the desired rate.

**CHAIR:** It is desired only by some groups who are interested in the Snowy.

**Mr LATHWELL:** There is reference in the SWIOID that if they achieve the 21 per cent, and there are environmental benefits to gain from flows above 28 per cent, there is an option to do that. There is a range of prerequisites to doing that.

**Ms SYLVIA HALE:** It came out of the Webster committee, I think, that 28 per cent was the optimum target that you needed to get to to have full environmental flows.

**Mr LATHWELL:** I think the Snowy Water inquiry found 21 per cent.

**Ms SYLVIA HALE:** To get from 21 to 28 per cent would require compensating Snowy Hydro for any power generating capacity that had been foregone?

**Mr LATHWELL:** Yes. You have to recognise that the governments, in corporatising Snowy Hydro, have foregone extensive funds because we have taken 21 per cent away from the company that they could have otherwise used for generation. Prior to corporatisation they had no obligation to make environmental releases. Corporatisation came along and everyone said we should get some more water going, environmental flows, we should try to recover the Snowy River and the eastern rivers. A committee was set up. The Snowy Water Inquiry said that 21 per cent would be good to go down the eastern side of the scheme. Snowy Hydro cannot generate on revenue of flows over the eastern side of the scheme. With corporatisation the governments took a financial hit of the equivalent of what could have been generated in revenue from 21 per cent.

**Ms SYLVIA HALE:** If one were to go to 28 per cent, which many scientists and others believe is the desirable flow, Snowy Hydro would have to be compensation for that 7 per cent of foregone capacity.

**Mr LATHWELL:** Yes.

**Ms SYLVIA HALE:** Has there ever been a figure put on that 7 per cent?

**Mr LATHWELL:** No. It would be inappropriate to do that at this time.

**Ms SYLVIA HALE:** I understand that Terry Charlton at one stage was talking about it being in the vicinity of hundreds of millions of dollars. Under the current regime, the public ownership, if Snowy Hydro were compensated, that compensation would indirectly come back to the governments that compensated Snowy Hydro, would it not? Because it would money going in a circular flow: from the governments to Snowy Hydro and back from Snowy Hydro to the shareholders. In a privatised scenario that money would just stay within the private shareholders. Is that correct?

**Mr LATHWELL:** Go to the public owners, which potentially are the mums and dads.

**Ms SYLVIA HALE:** Potentially it could be the Macquarie Bank?

**CHAIR:** Ladies and gentlemen, I am anxious that this be wrapped up. I have been asked to allow one further question from the Hon. Melinda Pavey.

**The Hon. MELINDA PAVEY:** Do you know the status of the Lakes R Us program, which is a program for the upper lake areas of the Snowy?

**Mr LATHWELL:** I understand Lakes R Us is currently going through a process with one of the tribunals, I think maybe the Australian Competition Tribunal, in terms of that application.

**The Hon. MELINDA PAVEY:** IPART?

**Mr LATHWELL:** No, not IPART. I would have to check and get back to you on that. But it is not part of Treasury's function.

**The Hon. MELINDA PAVEY:** Are you able to take that on notice for us?

**Mr COSGRIFF:** Yes, we can take that on notice.

**Mr LATHWELL:** We can take that on notice. But it might be better to ask Snowy Hydro.

**Ms SYLVIA HALE:** They make a reference here to contaminated land. Has there ever been a value put on the cost of remediation of that contaminated land?

**The Hon. MELINDA PAVEY:** National Parks had \$32 million from Snowy Hydro to fix that up. That was given in evidence.

**Mr LATHWELL:** As part of the corporatisation process, extensive environmental studies and surveys have been undertaken, those studies nor anything to date has identified contaminated land. The liability for remediating any contaminated land rests with Snowy Hydro.

**Ms SYLVIA HALE:** Except it says here, "The New South Wales Government has committed to Snowy Hydro that in return for the payment of \$25 million the New South Wales Government will assume responsibility for the environmental remediation of the major former Snowy scheme."

**Mr LATHWELL:** If you read on, it has an exclusion provision, and that liability for contaminated land rests solely with Snowy Hydro.

**CHAIR:** Thank you, gentlemen, for appearing here today. We appreciate that.

**(The witnesses withdrew.)**

**(The Committee adjourned at 4.05 p.m.)**