



**SENATE
FINANCE AND PUBLIC ADMINISTRATION
LEGISLATION COMMITTEE**

CONSIDERATION OF LEGISLATION REFERRED TO THE COMMITTEE

**PROVISIONS OF THE
SNOWY HYDRO CORPORATISATION BILL 1997
AND THE
*SNOWY HYDRO CORPORATISATION
(CONSEQUENTIAL AMENDMENTS) BILL 1997***

OCTOBER 1997

The Parliament of the Commonwealth of Australia

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* Not included on the internet version. Available from the Committee secretariat.

REPORT ON THE PROVISIONS OF THE SNOWY HYDRO CORPORATISATION BILL 1997 AND THE SNOWY HYDRO CORPORATISATION (CONSEQUENTIAL AMENDMENTS) BILL 1997

Reference and conduct of the inquiry

1. On 26 June 1997 the Senate referred to the Finance and Public Administration Legislation Committee the provisions of the Snowy Hydro Corporatisation Bill 1997 and the Snowy Hydro Corporatisation (Consequential Amendments) Bill 1997 for inquiry and report by 28 August 1997. The reporting date was subsequently deferred by the Senate until 2 October 1997.

2. The committee received communications from a number of groups and individuals, seeking to put their views on the legislation. Formal submissions were received from the Snowy River Alliance, Mr Ian Moon, the Orbost Women's Awareness Group and Native Fish Australia and are included as appendices to this report, as is correspondence from Murray Irrigation Ltd. At its public hearing on 26 September 1997, the committee took evidence from the following groups and individuals:

Senator Warwick Parer, Minister for Resources and Energy, accompanied by the following officers and persons:

Mr Don Banfield, First Assistant Secretary, Project Facilitation Division, Department of Primary Industries and Energy

Dr Ian Dalziell, Principal Adviser, Electricity Taskforce, Department of Primary Industries and Energy

Ms Margaret Sewell, Senior Adviser, Snowy Reform Section, Department of Primary Industries and Energy

Mr Guy Aitken, Attorney-General's Department

Mr Kenneth Eagle, Australian Government Solicitor's Office

Mr Andrew Martin, Managing Director, DGJ Projects Ltd;

Murray-Darling Basin Commission, represented by Mr Don Blackmore, CEO;

Murray Irrigation Ltd, represented by Mr Ian Morton, Company Director, Mrs Jenny McLeod, Policy Adviser and Mr Michael Parker, Public Relations Adviser;

Native Fish Australia, represented by Mr Craig Ingram, Mr George Collis and Mr Nick Thorne; and

Snowy River Alliance, represented by Mr Paul Leete, Chairman, and Mr Max White.

Background to the legislation

3. The Snowy Mountains Hydro-electric Authority owns and manages the Snowy Mountains Scheme, devised in the immediate post-war years to produce renewable energy for south-eastern Australia and to provide a reliable supply of water west of the Great Dividing Range for irrigation purposes. The Snowy River and its tributaries the Guthega and the Eucumbene were dammed and half of the flow diverted to the Murray River and half to the Murrumbidgee River.

4. In legislative terms, the Authority was established under the *Snowy Mountains Hydro-electric Power Act 1949* to own and manage the Scheme. Its assets are vested in the Commissioner, as a corporation sole with perpetual succession. The Commissioner is currently responsible to the Commonwealth Minister for Resources and Energy, Senator Parer; the Authority is part of the Commonwealth Government's Primary Industries and Energy portfolio. The Authority owns the assets of the Scheme and employs the majority of staff; the Snowy Mountains Council, established by an Agreement between the Commonwealth, New South Wales and Victorian Governments in 1957, directs the operation and maintenance of the Scheme.

5. It has long been recognised that the dual management system which currently governs the Scheme is less efficient than it might be. Also, under its current legislation, the Snowy Scheme is precluded from operating commercially in the national electricity market. The proposed corporatisation is intended to remedy this.

What the legislation is intended to do

6. Senator Parer outlined the reasons for the decision reached by the Commonwealth, New South Wales and Victoria in 1995 to corporatise the Snowy: to simplify the corporate government arrangements; to enable the Scheme to operate as an independent generator in the national electricity market; and to enable the Scheme to repay the \$916 million debt it owes the Commonwealth.¹ The legislation, therefore, is intended to:

- replace the Snowy Mountains Hydro-electric Authority with a company, Snowy Hydro, to operate and maintain the Snowy Mountains Scheme;
- replace the existing rights of the Commonwealth, New South Wales and Victoria in the Scheme with an initial issue of equity in Snowy Hydro;
- apply New South Wales environmental, planning, water and other laws to the operations of Snowy Hydro;
- facilitate the refinancing and repayment of the debt to the Commonwealth under the Scheme; and
- provide for the establishment of a public water inquiry under the auspices of the new South Wales and Victorian Governments into the environmental issues arising out of the current pattern of water flows.

7. In Attachment 1 to the Explanatory Memorandum, the principles underlying the legislation and enunciated by Senator Parer are expanded upon. Corporatisation is being undertaken in accordance with Council of Australian Governments' commitments to national micro-economic reform, to enable the corporatised entity to operate on a competitively neutral basis and to participate effectively as an independent electricity generator in the national electricity market. Complementary legislation was introduced into the New South Wales Parliament on 30 May 1997; the second reading debate was moved in the Victorian Parliament on 18 September 1997. Before the legislation can be proclaimed, the complementary bills must be passed in the three jurisdictions and an independent public inquiry into water flows completed.

Issues considered by the committee

¹ Senate *Hansard*, 26 September 1997, p. F&PA 29.

The water inquiry

8. The chief concern of witnesses was not so much what the bill contained, but what it omitted. In the Snowy Corporatisation Principles appended to the Explanatory Memorandum, principle no. 8 constitutes the only reference to the water inquiry:

8.1 Prior to proclamation in full of any corporatisation legislation the States will sponsor a public inquiry into environmental issues arising out of the current pattern of water flows caused by the operation of the Scheme in accordance with agreed terms of reference ("Water Inquiry").

8.2 The inquiry will submit to the States comprehensive, costed options to address the issues considered by the inquiry within six months of its commencement. Thereafter, the States will consider the final report of the inquiry and agree upon a final outcome within two months or such other time as may be agreed by them.

9. Concern was expressed that the Commonwealth had little input into the water inquiry. The Commonwealth Resources and Energy Minister or his department have liaised over the terms of reference which must be approved by the Commonwealth Minister, but the Minister has no input to the selection of a commissioner to head the inquiry or any say in the findings. Senator Parer explained that the water inquiry was appropriately the responsibility of the two States with the principal responsibility for Snowy Scheme water management. Mr Blackmore, Chief Executive of the Murray-Darling Basin Commission, added that the Commonwealth natural resources ministers will have input via the Murray-Darling Basin agreement and act as, no matter what the outcome of the water inquiry is, it will affect the River Murray.

10. Two further concerns were expressed: that the water inquiry should have preceded the parallel Commonwealth/States legislation rather than following it; and that there was no legislated commitment to take into consideration any findings of the water inquiry. In response to these concerns, Senator Parer indicated that there had been

a lot of debate about when the water inquiry would take place, whether it would take place before corporatisation or during corporatisation. I think we have come out with probably the best result in that even with the passage of the bills through the three jurisdictions, they will not come into effect until a determination has been made based on the water inquiry, which decision will have to be made by the Victorian and New South Wales governments.²

He later added that the issue had been dragging on for so many years that the conclusion was to go ahead with legislation in the hopes that the other jurisdictions would follow.³

11. The committee acknowledges the concerns of the groups who gave evidence to it on the proposed legislation. Mr White of the Snowy River Alliance expressed his disappointment that the Commonwealth was not taking a leading role, given the fact that the Snowy was a national river.⁴ His colleague Mr Leete was critical of the fact that there was

² Senate *Hansard*, 26 September 1997, p. F&PA 34.

³ Senate *Hansard*, 26 September 1997, p. F&PA 38.

⁴ Senate *Hansard*, 26 September 1997, p. F&PA 44.

not a more integrated approach to the matter. And as Mr Collis of Native Fish Australia pointed out,

the state of the Snowy River has come about directly as a result of Commonwealth government activities. We see that the Commonwealth government has a responsibility to do something about the situation.⁵

12. There are at the moment no guarantees for irrigators that water flows will be maintained following corporatisation, or that if they are reduced, that compensation will be paid; and there are no guarantees for the groups wishing to see flows restored to the Snowy River that this will occur. As Mr Whelan, MLA, recognised in his second reading speech in the New South Wales Parliament:

There are many competing interests for water from the Snowy scheme; water for environmental flows for the Snowy River; water for irrigation west of the Dividing Range; water to address salination and loss of agricultural land along the Murray River; and water for electricity generation by Snowy Hydro ... The water inquiry will develop costed options for environmental flows ...

13. Following the agreement reached on 11 April 1995 at a meeting of the Council of Australian Governments, that the environment is a legitimate user of water, there has been an expectation that calls for increased environmental flows for the Snowy would be heeded. The Commonwealth Government's stated rationale for insisting on a water inquiry as a precursor to the proclamation of corporatisation of the Snowy was to allow the views of all interested parties - irrigators, environmental interests and other downstream users of water - to be expressed and the financial consequences of changed allocations to be clarified in order to provide a valid basis on which the two governments chiefly concerned could take action on water allocation. Senator Parer did not agree that this was an abrogation of the Commonwealth's interest in environmental matters, merely an acknowledgment of the Commonwealth's limited powers in this case.

Constitutional implications

14. Some discussion ensued as to whether the legislation breached section 100 of the Constitution, which states:

the Commonwealth shall not, by any law or regulation of trade or commerce, abridge the rights of a State or the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

15. Mr Eagle of the Australian Government Solicitor's Office explained the background to the Commonwealth's legislating in this area in the past:

Water traditionally is a State area and the Commonwealth only had the power to make that legislation under the 1909 Seat of Government Acceptance Act in which the state of New South Wales ... granted the Commonwealth the right to use Snowy water to generate electricity for use in the ACT.⁶

⁵ Senate *Hansard*, 26 September 1997, p. F&PA 43.

⁶ Senate *Hansard*, 26 September 1997, p. F&PA 36.

He went on to explain that that would no longer be the case with a corporatised entity, Snowy Hydro, competing in the national electricity market and that even if the Commonwealth wanted to grant water rights, it had no power to do so. He further added that the mechanism in the 1949 Commonwealth act referring to the use of the Snowy water derived from agreements under the Seat of Government Act.⁷

Term of water rights

16. It is intended that the existing rights of the Scheme with respect to water will be continued under a water licence granted by the appropriate New South Wales water authority and will be for an initial term of 75 years with a 50-year renewal option. Concern was expressed at the length of this term. However, Dr Dalziell of the Department of Primary Industries and Energy explained that there is a provision in the New South Wales legislation for more frequent analysis and review of those arrangements and stated, 'governments have agreed that the licence will require that those arrangements be renewed every five years and every 10 years for environmental flows'.⁸

Terms of transfer of employees

17. The corporatisation principles provide that employees working on the Scheme will be transferred to Snowy Hydro upon corporatisation on substantially the same terms and conditions as their current employment. Members of the committee questioned the areas in which current terms and conditions would not be upheld and whether in particular there would be any negative changes in the occupational health and safety area, or workers' compensation. The Minister promised to clarify the matter in writing.

Conduct of Bills inquiries

18. The Committee's examination of this legislation highlighted a problem with the consideration of bills referred through the Selection of Bills Committee process. The areas of dispute with regard to the corporatisation of the Snowy Scheme are principally matters with regard to water management and environmental flows in the Snowy and Murray River catchments. These Commonwealth bills are not directly relevant to water management issues which come under the jurisdiction of the States. The Committee's hearing on 26 September devoted almost no time to considering the actual bills but was almost totally taken up with a general discussion of the likely impact of the whole Commonwealth/State legislative scheme on water flows.

19. The Committee believes that it would be timely to re-examine the procedure of referring bills to committees, which was originally intended to expedite the consideration of legislation in the Senate by subjecting the actual bill to detailed scrutiny in the less formal environment of a standing committee hearing. If it is the intention of the Senate to refer the general policy of a bill and other related matters to a committee for inquiry, then it should be sent to a references committee.

⁷ Senate *Hansard*, 26 September 1997, p. F&PA 37.

⁸ Senate *Hansard*, 26 September 1997, p. F&PA 32.

Recommendation

That the bills be agreed to, without amendment.

Senator Brian Gibson
Chairman

DISSENTING REPORT - SENATORS LUNDY AND RAY

The question of environmental flows in the various river systems affected by the Snowy Mountains scheme after corporatisation has aroused considerable public debate.

Advocates of increased flow in the Snowy River and holders of irrigation licenses in the Murray Valley appeared before the committee to express concern that the actual corporatisation would be completed prior to consideration of the issue of environmental flows by the independent water inquiry required to be established under Part 4 of the New South Wales legislation. This inquiry is required to be completed in six months. The Commonwealth's role in the water inquiry is restricted to approving its terms of reference. There is a concern that this effectively removes any Commonwealth influence over the findings of the water inquiry and their implementation.

The effect of clause 2 (3) of this bill is to defer proclamation of that part of the Commonwealth legislation which repeals the *Snowy Mountains Hydro-electric Power Act 1949* (and effectively ends Commonwealth responsibility) until after the completion of the water inquiry.

It would reassure those with an interest in the environmental flow issue if the Commonwealth, at the very least, was required to state explicitly that it was satisfied with the conduct and outcome of the inquiry prior to the final proclamation of the Commonwealth legislation. We therefore recommend that the bill be amended to add the words 'with the conduct and findings of the water inquiry and' after the word 'satisfied' in clause 2 (3) of the bill.

Senator Kate Lundy

Senator Robert Ray

MINORITY REPORT AUSTRALIAN DEMOCRATS

The Democrats are extremely concerned with the major environmental consequences to what was originally a pioneering engineering scheme. The Democrats argue the Commonwealth should be taking a leading role in these matters and that failure to do so is an abrogation of the Government's responsibilities for the environment.

While we welcome the Commonwealth Government's insistence on a water inquiry as a precursor to the proclamation of corporatisation of the Snowy, we do not believe this is adequate. We are concerned that environmental interests and concerns will not be given a fair hearing in the report. We are also concerned that even if they are, there is no guarantee that they will be acted upon. In particular, the lack of any legislated commitment to take into consideration any of the findings of the water inquiry is clearly a concern.

The Democrats want to be assured that the environmental requirements are determined by scientific experts, and that no decision is made without the involvement and support of the local community.

At the very least, we argue that corporatisation should not proceed until the water inquiry is completed, publicly released, and decisions made regarding water allocation.

Recommendation

The Bill should be withdrawn until satisfactory agreements have been established between the State Governments involved and the communities on environmental flows and other relevant matters.

If the bill is proceeded with, the Democrats will consider moving or supporting appropriate amendments during the Committee stage of this bill in the Senate.

Andrew Murray
Democrat Senator for Western Australia