

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment and Energy portfolio

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Hearing: Budget Estimates
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Topic: Legal Structure of Snowy Hydro Limited
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Senator Carr asked:

Mr Broad: We are a corporation. We are very different. When I ran GBEs I could have Crown protection. I have no Crown protection. We used to borrow under the triple-A rating of the governments you dealt with. We do not as we borrow under our own rating and we raise our own money. The company rises and falls on its own performance.

Senator KIM CARR: What makes you different from Australia Post?

Mr Broad: I am not sure about Australia Post. I cannot comment. I would just say that for us we are a corporation under corporations law. Most others are statutory corporations.

Senator KIM CARR: Mr Broad, do you resent being here today?

Mr Broad: Not at all.

CHAIR: Senator Carr, that is really not an appropriate question.

Senator Birmingham: Senator Carr, I am happy to take the questions on notice and ensure that the department provides you with the legal differentiation in terms of, at least, the structure.

Senator KIM CARR: Thank you, Minister, I appreciate that.

Senator Birmingham: A notable point of what differentiates Snowy Hydro from Australia Post is that they have multiple shareholders across multiple entities. They have a commitment to those shareholders which are established in the corporate structure versus Australia Post is a GBE which, of course, has only one shareholder being the Australian government.

Answer:

Snowy Hydro Corporatisation

1. On 28 June 2002, Snowy Hydro was fully corporatised in accordance with the *Corporations Act 2001* (Cth). The Snowy Hydro's *Shareholders' Agreement* and *Constitution* deals with the establishment of the company and its corporate governance arrangements.
2. Snowy Hydro resulted from the merger of the Snowy Mountains Hydro-electric Authority (a Commonwealth statutory body) and Snowy Hydro Trading Pty Ltd (which was established by New South Wales and Victoria as a joint venture to trade electricity generated by the Snowy Mountains Hydro-electric Scheme). Shareholder ownership was determined as being equivalent to each jurisdiction's original economic interests in the Scheme. These shareholdings comprise: New South Wales 58 per cent, Victoria 29 per cent, and the Commonwealth 13 per cent.

3. Snowy Hydro:
 - a. Is not a Commonwealth company or government business enterprise for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)
 - b. does not have any Crown protection from the operation of Commonwealth and state laws and regulations that apply to similar businesses.
4. Under section 181(1)(a) of the *Corporations Act 2001*, the directors of a company must act 'in good faith in the best interests of the corporation', which in practice means to act in the interests of shareholders or members of the company as a whole.
5. Under rule 111 of the Snowy Hydro *Constitution*, the directors must prepare a Corporate Plan which includes but is not limited to corporate objectives, financial risk and targets, dividend policy and review of financial and non-financial performance.

Australia Post

6. On 1 January 1989, the Australian Postal Commission was corporatised in accordance with the *Australian Postal Corporation Act 1989*, changing its name to the Australian Postal Corporation and retaining its trading name of 'Australia Post'. This legislation establishes the Australian Postal Corporation's main functions, powers, governance structure, community service obligations and factors to consider regarding dividends.
7. Australia Post is:
 - a. a Commonwealth entity and a government business enterprise for the purposes of the PGPA Act and *Public Performance and Accountability Rule 2014* (PGPA Rule)
 - b. wholly owned by the Commonwealth.
8. The Commonwealth's relationship to its government business enterprises is similar to the relationship between a holding company and its subsidiaries, features of which include:
 - a. a strong interest in the performance and financial returns of the government business enterprise
 - b. reporting and accountability arrangements that facilitate active oversight by the shareholder
 - c. action by the shareholder in relation to the strategic direction of its government business enterprises where it prefers a different direction from the one proposed
 - d. management autonomy balanced with regular reporting of performance to shareholders
 - e. boards that are accountable to shareholders for government business enterprise performance, and shareholders that are accountable to Parliament and the public.
9. Under subsection 16E(4) of the PGPA Rule, government business enterprises may prepare and publish a statement of corporate intent in place of a full corporate plan, in the interest of not disclosing commercially sensitive information. A statement of corporate intent focuses on the purpose and corporate outlook of a government business enterprise, and expresses the expectations of its management in relation to future financial and non-financial performance.