

THE SNOWY FLOWS AGAIN INTERGOVERNMENTAL CO-OPERATION ON WATER REFORM

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ABSTRACT

The Snowy Mountains Hydro-electric Authority was established as a statutory authority of the Commonwealth Government under the *Snowy Mountains Hydro-electric Power Act 1949* to own and manage the permanent works of the Snowy Mountains Hydro-electric Scheme. Until 28 June 2002, the Scheme operated under the *Snowy Mountains Hydro-electric Agreement 1957*. Under this agreement, Victoria has received an equal share of the water diverted by the Scheme from the Snowy River Catchment to the River Murray Catchment, in exchange for not requiring any releases from the Scheme to the Snowy River.

In 1997, the Victorian, NSW and Commonwealth Governments passed complementary legislation to corporatise Snowy Mountains Hydro-electric Authority. The key objective of corporatisation was to create a financially viable commercial entity able to participate effectively in the National Electricity Market on a competitively neutral basis.

In December 2000, the New South Wales, Victorian and Commonwealth Governments reached agreement on the the outcomes of the Snowy Water Inquiry and made a commitment to invest \$375 million over 10 years to restore 21% of average natural flows, equivalent to 212 gigalitres in the Snowy River and allocated 70 gigalitres per annum of additional dedicated environmental flows to the River Murray. Increased flows were also to be provided to the Snowy montane rivers, including the upper Murrumbidgee River.

The Governments also agreed that the additional 7% of further flows in the Snowy River up to a total of 28% of average natural flows may be achieved following the implementation of an additional major capital works program to achieve water savings in the southern Murray-Darling Basin. This program would be undertaken through public private partnerships with water savings allocated to the governments used to offset increased flows in the Snowy River and to provide further dedicated environmental flows in the River Murray.

The Governments agreed that increased environmental flows would be offset by water savings primarily achieved through water efficiency projects in the irrigation areas in the River Murray, Murrumbidgee River and Goulburn River systems on the basis that the projects would have no impact on irrigator entitlements, existing environmental flows or on South Australian entitlements and water quality.

While the corporatisation legislation set out the general framework for reform of the Snowy Mountains Hydro-electric Authority, more than 40 commercial and intergovernmental agreements were required to implement the reforms, including several agreements necessary to implement the post-corporatisation water release arrangements. Snowy Hydro Ltd was created as a *Corporations Act* company and formally took over the assets and operation of the Snowy Scheme on 28 June 2002.

This paper describes the new Snowy water agreements framework and outlines the key features of the water agreements concluded between the Commonwealth, New South Wales, Victorian and South Australian Governments and Snowy Hydro Limited on 28 June 2002 to implement the Heads of Agreement on the outcomes of the Snowy Water Inquiry and to establish the post corporatisation water arrangements.

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Introduction

On 28 August 2002, the Victorian and New South Wales Premiers closed the Mowamba Aqueduct and released the first waters back into the Snowy River, doubling the previous flow into the river from three to six per cent and ameliorating the further deterioration of the ecological health of the Snowy River.

This initial release marked the conclusion of more than eight years of protracted and complex intergovernmental negotiations between the shareholder governments of New South Wales, Victoria and the Commonwealth. The South Australian Government as a major stakeholder, was also involved in discussions relevant to its interests.

The Snowy Scheme is not only a complex engineering achievement, it also has a complex legal and administrative framework because it services the interests of four governments and sits astride national electricity industry and water reforms.

This paper describes the new Snowy water agreements framework and outlines the key features of the water agreements concluded between the Commonwealth, New South Wales, Victorian and South Australian Governments, and Snowy Hydro Limited on 28 June 2002 to implement the Heads of Agreement on the outcomes of the Snowy Water Inquiry and establish the post corporatisation water arrangements.

The paper summarises the factors that led to the successful conclusion of the Snowy water agreements and outlines some of the broader outcomes and benefits of the Snowy corporatisation process.

Historical Context

Seen in an historical context, these negotiations have been a continuation of the ongoing intergovernmental debates and negotiations about access to water, and particularly about the rights to use and divert water from the Lower Murray and its tributaries. The debates began in response to the droughts of the 1800s, and eventually provided a significant driving force for Federation.

By 1885, both NSW and Victoria had established Royal Commissions to inquire into the future of water supplies in general and irrigation in particular. The two Commissions met and resolved:

“That...:

- *the waters of the tributaries of the Lower Murray may be diverted and used by the respective Colonies through which they flowed; and*
- *that the whole of the waters of the Lower Murray shall be deemed to be the common property of the Colonies of New South Wales and Victoria and each of them was entitled to divert one half of the available water”¹.*

South Australia later held its own Royal Commission in response to its concerns not having been addressed by the upstream colonies. Little further came of this Royal Commission, as NSW refused to deal with it, however in an addendum to its report in 1890, one of the Commissioners suggested that:

“ a tripartite agreement should be sought to establish and define the mutual rights of the riparian colonies to the River Murray and its tributaries. Such an agreement should establish the minimum amounts of compensation water South Australia must receive, and establish the proportional shares of New South Wales and Victoria for irrigation”²

Following further inquiries and debates and a series of dry years, agreement was finally reached between the Commonwealth, New South Wales, South Australian and Victorian Governments on the River Murray Water Agreement in 1914. The agreement was incorporated into legislation by all jurisdictions in 1915, providing the basis and a model for many future intergovernmental water agreements between the four governments.

As early as 1884, the harnessing of the snow waters from the Alps was proposed to the NSW Royal Commission as a way of providing water for permanent irrigation to inland areas and alleviating the effects of drought. The NSW Surveyor General at the time, proposed that the Snowy River be diverted and a canal constructed across the Great Dividing Range with water to be diverted inland via the Murrumbidgee River³.

Under the *Seat of Government Act 1912 (NSW)* the New South Wales Government ceded use of the waters of the Snowy River to the Commonwealth Government for the purposes of generating hydro-electricity to supply the Commonwealth “seat of Government”, that is the Australian Capital Territory.

Both before, and after the long period of contemplation surrounding the configuration and then design of the Snowy Scheme, vigorous debates occurred between Governments as to whether the Snowy Scheme was a vehicle to harness water for the purposes of generating hydro-electricity or, on the other hand, a vehicle for the purpose of underwriting downstream irrigation extractions.

The debate continued until the Commonwealth Government’s concern about the vulnerability of coastal thermal power stations during World War II led to a proposal for a dual-purpose scheme. Under the proposal, the Snowy Scheme would provide water regulation services to downstream users and would be paid for by the electricity it produced. The debate ended with the Commonwealth using the defence powers under the Constitution to pass the *Snowy Mountains Hydro-electric Power Act 1949* to obtain control over the alpine headwaters and enable the development of the Scheme and the establishment of the Snowy Mountains Hydro-electric Authority.

Following a number of threats of a High Court challenge to the use of the defence powers and concern about the potential consequences of the Scheme being declared unconstitutional, the Commonwealth Government proposed an interim arrangement to the New South Wales and Victorian Governments in 1950 for the distribution of water and electricity from the scheme. The States accepted the interim arrangement, but it took a further eight years and apparently numerous drafts and redrafts before Victoria and NSW concluded the *Snowy Mountains Hydro-electric Agreements* with the Commonwealth in 1957 and the arrangements for the Snowy Scheme were ratified by the respective State Parliaments in 1958.

Under this Agreement, the Commonwealth financed the construction of the Scheme, with the Commonwealth, Victorian and New South Wales Governments paying for the ongoing operation, maintenance and finance costs in proportion to their electricity entitlements. The entitlements to electricity generated by the Scheme were held by the Commonwealth (13%), New South Wales (58%) and Victoria (29%). The Snowy Mountains Hydro-electric Authority was to be responsible for the construction of the Scheme but the Authority's operation and maintenance of the power stations, and the allocation of load and therefore the release of water from the Scheme was to be subject to the direction of the Snowy Mountains Council. The Snowy Mountains Council was to be made up of representatives from the Commonwealth, New South Wales and Victorian Governments and the Commissioner and Deputy Commissioner of the Authority.

The Victorian Government of the time agreed that in exchange for equal share of the water diverted from the Snowy River Catchment to the River Murray Catchment, it would not require any release of water from the Snowy Scheme to the Snowy River. It also agreed to accept sole responsibility for any consequences in Victoria resulting from the diversion of the headwaters of the Snowy River to the River Murray⁴.

The Snowy Mountains Hydro-electric Scheme is now internationally recognised as a major feat of engineering and one of the eight engineering wonders of the world along with the Eifel Tower and the Suez Canal. The Scheme's operations cover an area of 778,400 hectares, almost entirely within the Kosciuszko National Park in NSW and regulate the waters of the upper catchments of the River Murray, Murrumbidgee and Snowy Rivers. The Scheme took 25 years to complete at an historical cost of \$1 billion, with a replacement cost today of more than \$7 billion.

The Scheme is the largest renewable energy generator in mainland Australia and plays a pivotal role in the operation of the national electricity market, generating approximately 3.5% of the power in mainland Australia.

The Scheme also has a significant role in providing secure and clean water to the Murray-Darling Basin. The Scheme provides a minimum of 2088 gegalitres of water a year to the Murray Darling Basin, providing additional water for an irrigated agriculture industry worth about \$4.5 billion per annum, representing more than 40% of the gross value of the nation's agricultural production⁵.

While the 1957 Agreement allowed the construction, completion and ongoing operation of the Scheme, there continued to be considerable ongoing uncertainty about the constitutional validity of the legislation that enabled construction of the Scheme. Under the Commonwealth Constitution, the provision of water and power is a State not a Commonwealth responsibility.

There was also some legal uncertainty about the ownership of the major assets of the Snowy Scheme but this only became a major concern until later during the corporatisation negotiations. This uncertainty arose because the major Snowy Scheme assets, such as dams and power stations, were fixtures on land owned by NSW located in the Kosciuszko National Park⁶.

Forty years later, the issues raised prior to and during the establishment of the Scheme were to be raised once more as Governments sought to reform the national electricity market. The proposal by Governments to corporatise the Snowy Mountains Hydro-electric Authority re-opened the debate about the use of water from the Scheme for hydro-electricity and irrigation, and opened a new debate about the need for the Scheme to release water to provide environmental flows.

By June 1993, the Council of Australian Governments (COAG) agreed to establish a competitive national electricity market by 1 July 1995⁷. Given its strategic location and role in supplying electricity to South-eastern Australia, the corporatisation of the Snowy Scheme had the potential to increase competition and provide greater flexibility in the national electricity market.

In February 1994, COAG reached agreement on a Strategic Framework for Water Reform⁸ in response to considerable concern about the state of the nations water resources and recognition of the need for significant policy and institutional reform. The corporatisation of the Snowy Scheme, with its key role in providing a secure water supply for irrigated agriculture in the Murray-Darling Basin, again had the potential to have a key role in future water reform in South-eastern Australia.

Corporatisation of the Snowy Mountains Hydro-electric Authority

Consideration of the corporatisation of the Snowy Mountains Hydro-electric Authority commenced in the late 1980s when the Commonwealth government began to explore options for the reform of the generation, transmission and distribution of electricity. The Snowy Scheme was seen at the time to be integral to the Commonwealth's ability to drive national electricity reform.

In 1993, the Commonwealth, New South Wales and Victorian Governments agreed in-principle to proceed with the corporatisation of the Snowy Mountains Hydro-electric Authority as an integral part of the energy market reform and national competition policy initiatives. As initial negotiations commenced, it was thought that the process would be a straightforward matter of establishing a new corporate entity to replace the existing Commonwealth statutory authority, so that it could operate successfully in a competitive electricity market.

Corporatisation was seen as offering a number of potential benefits to the three Governments, including:

- reform of the national electricity market;
- refinancing of the existing Commonwealth debt for the construction of the Scheme;
- establishment of a new competitively neutral, commercially focussed electricity business;
- securing greater certainty of water supply for irrigation from the Scheme; and
- an opportunity to address outstanding ownership, tenure and environmental issues.

Following extensive negotiations, the Victorian, New South Wales and Commonwealth Governments agreed to replace SMHEA with a Corporations Law company jointly owned by the three Governments with the shareholdings in proportion to their existing electricity entitlements (NSW 58%, Victoria 29% and the Commonwealth 13%).

In late 1994, Governments agreed on a set of key principles to guide the corporatisation process. The key principles from a water perspective were:

- water would not be an asset of the Snowy corporation;
- the parties would set out the existing rights and obligations of the Snowy Corporation in the use and release of water from the Scheme;
- until otherwise agreed, there would be no charges for the use of water or water services provided by the Scheme; and
- the parties would endeavour to establish new commercial water arrangements, consistent with water reform principles agreed by COAG within the agreed COAG water reform timelines.

Codification of the “status quo” water arrangements proved to be a more difficult concept to achieve than was previously contemplated. The difficulty arose because a key component of the existing water arrangements was the decisions made from time to time by the Snowy Mountains Council. It was simply not possible to “codify” these decisions in advance. On the other hand, the corporatisation was not “bankable” on the status quo arrangements.

Governments therefore adopted a two staged approach to the reform of the Snowy Scheme, beginning with electricity reform, as energy industry reforms were further advanced particularly in Victoria. This was to be followed by the water reform measures, on the assumption that the water sharing arrangements established by the Snowy Mountains Council and in place prior to corporatisation could continue with the agreement of the relevant State water agencies.

In 1997, the Governments passed complementary legislation to corporatise the Snowy Mountains Hydro-electric Authority, and revised and expanded the original set of Corporatisation Principles. The revised Principles covered the formation, corporate governance and equity holdings for the new company, Snowy Hydro Limited (SHL), water and occupation arrangements for SHL, the NSW regulatory arrangements to be imposed on SHL and tax matters arising from corporatisation

The purpose of the legislation was to establish Snowy Hydro Limited as a Corporations Law company, owned jointly by the three Governments and for the Scheme to operate subject to New South Wales environmental, natural resources and planning laws.

During the debate on the *Snowy Corporatisation Bill 1997* both in the Legislative Council in New South Wales and later in Federal Parliament in the Senate, there was concern raised about the implications of corporatisation for the timing and certainty of releases for irrigation in the Murray-Darling Basin. Increasingly passage of the legislation was also seen as an opportunity by the minority parties and community groups to ensure adequate environmental flows, given the Scheme’s ability to regulate flows into the River Murray, the Murrumbidgee and the Snowy Rivers.

One of the major issues that needed to be addressed as part of the corporatisation process was the re-financing of the remaining Commonwealth debt for the construction of the Scheme. In order for the corporatisation to proceed successfully and to refinance the debt on commercial terms, it became apparent

that a high level of certainty was required in terms of future commercial water arrangements. Existing “informal arrangements” for water sharing and irrigation water supply which had been negotiated progressively since 1957 in meetings of the Snowy Mountains Council needed to be codified and any outstanding environmental flow issues addressed, to ensure that the future water sharing and environmental flows arrangements were both sustainable in the long term and provided the necessary commercial certainty.

The Scheme was diverting 99% of the Snowy River’s natural flow below Lake Jindabyne, reducing the mean annual flow at Jindabyne from 1180 GL to a minimum of 10GL as well as diverting the Mowamba River flows via an aqueduct to Lake Jindabyne. Following its construction, releases from the Scheme below Lake Jindabyne were only based on the needs of riparian users and took no account of ecosystem needs. Studies at the time of the initial corporatisation negotiations identified a number of possible environmental flow options^{9 10}.

In November 1997, the New South Wales, Victorian and Commonwealth Parliaments all passed legislation to corporatise the Snowy Mountains Hydro-electric Authority. All three Snowy Hydro Corporatisation Acts contained a core set of provisions and to that extent were complementary. The NSW Act contained additional provisions concerned with establishing the Snowy Water Inquiry¹¹, regulating the water operations of the Snowy Scheme, regulating the occupation of the Kosciuszko National Park by Snowy Hydro Ltd, and deeming planning approvals for Snowy Scheme operations. The Victorian Act also included the additional provisions relating to the establishment of the Snowy Water Inquiry. The Commonwealth Act contained additional provisions relating to the debt and borrowings of SMHEA and the employee entitlements of staff of SMHEA who were transferred to Snowy Hydro Ltd.

The final proclamation and commencement of the remaining provisions of the Commonwealth corporatisation legislation were subject to the completion of the Snowy Water Inquiry and the Commonwealth Minister being

“ satisfied with the adequacy, of the conduct, outcome and planned implementation of the inquiry, having regard to the continued viability of the Scheme”¹².

The Snowy Water Inquiry was to be established as soon as practicable after the commencement of the New South Wales Act, with terms of reference to be agreed with the Victorian and Commonwealth Governments. The Inquiry was required to investigate:

“the environmental issues arising from the pattern of water flows in rivers and streams caused by the operation of the Snowy Mountains Hydro-electric Scheme, and report on options for dealing with the issues and the environmental, economic, agricultural and other impacts of those options”.

The Snowy Water Inquiry and Commonwealth Environmental Impact Statement

The Snowy Water Inquiry

The Snowy Water Inquiry (later known as the Webster Inquiry) chaired by the Hon. Robert Webster was established jointly by the NSW and Victorian Governments in January 1998. The Inquiry’s terms of

reference required it to examine and address the issues arising from these current patterns of water flow in the Snowy Scheme catchment area and produce a range of costed options with analysis of the environmental, economic and social impact of each of the options.

The Inquiry sought public submissions, held public hearings, sought public comment on the Options Discussion Paper and appointed a Scientific Reference Panel to provide expert scientific advice on the relative benefits and costs of various options developed by the Inquiry. After extensive public consultation and integrated environmental, economic, social and financial analysis, the Inquiry developed seven composite options.

The Inquiry provided its final report to the NSW and Victorian Governments in October 1998¹³. It identified a range of key factors to be taken into account by Governments. While not required to do so under its terms of reference, the Inquiry proposed the adoption of Composite Option D incorporating a range of measures to address the environmental issues in the Snowy and Murrumbidgee Rivers, including the values of the upper Murrumbidgee and the Snowy montane rivers and the return of 15% of average flow to the Snowy River¹⁴. The options were considered by both the NSW and Victorian Governments and provided the basis for defining the future environmental operating conditions for the corporatised Snowy Scheme.

Principles for negotiation of agreement on the outcomes of the Inquiry

Following the completion of the Snowy Water Inquiry an election was held in Victoria in mid 1999. With the election of the Bracks Labor Government in 1999, the new Victorian Minister for Energy and Resources, the Hon. Candy Broad and the NSW Special Minister of State, the Hon John Della Bosca made a Joint Statement on 15 December 1999¹⁵ and announced agreement on the principles for improving water flows and the environment of the Snowy River, the Snowy montane rivers and the Murray and Murrumbidgee systems. Both Ministers recognised the need to balance the competing needs for economic development and environment improvement.

In making the statement, Victoria restated its commitment to the goal of 28% flows to the Snowy River, and NSW stated its desire to preserve economic activity which depends on the Snowy Scheme while maximising environmental outcomes.

A number of other principles were also agreed:

- Water for increased environmental flows was not to be obtained at the expense of efficient irrigation farming.
- The interests of the irrigators and the environment of the Murray and Murrumbidgee Rivers was to be maintained;
- The Murray-Darling Basin Cap and the COAG water reform principles would remain the fundamental principles for future water management in the Murray-Darling Basin;
- Environmental improvements in the Snowy River, Upper Murrumbidgee and Snowy montane rivers would involve increased water flows and capital works;

- The identification and examination of the technical feasibility and costs of water savings that could be achieved through reducing system losses would be accelerated;
- Environmental flows were also to be made to the Upper Murrumbidgee and Snowy montane rivers;
- Water savings from increased water use efficiency could be made available for agreed environmental outcomes; and
- Governments could access water freed up in investments to reduce water losses in irrigation systems.

The Ministers also emphasised that they would work with the Commonwealth and South Australia directly and through the Murray-Darling Basin Commission to develop sustainable solutions.

The Commonwealth Environmental Impact Statement

Following the receipt of the Final Report of the Snowy Water Inquiry, the Commonwealth Minister responsible for the corporatisation of the SMHEA, the Minister for Industry, Science and Resources referred the Snowy Corporatisation Project to the Commonwealth Minister for the Environment and Heritage on 8 December 1999 for determination as to whether an Environmental Impact Statement was required under the Commonwealth *Environment (Impact of Proposals) Act 1974*.

The Minister for the Environment and Heritage directed that an Environmental Impact Statement be prepared in relation to the decisions to be made by the Commonwealth. In issuing the guidelines for the EIS, the Minister indicated that its purpose was not to review the construction and operation of the Snowy Scheme or the decision by Governments to corporatise the Scheme. The EIS guidelines required the proponent to ensure that all relevant information be identified and consolidated for decision makers, so that decisions taken about the use of the water from the Snowy Scheme were made in the national interest.

The Draft Environmental Impact Statement¹⁶ was released in June 2000 for public comment. It concluded that in recognising that all environmental flows returned to the Snowy River would reduce the volume of water available from the Snowy Scheme for release to the west, the most effective way to address the potential impacts on the viability of the Scheme and water flows in the River Murray and the Murrumbidgee River was to identify water savings projects which would offset or mitigate the effects on water security, other stakeholder interests and the environmental needs of these river systems¹⁷.

In September 2000, a Supplementary Environmental Impact Statement¹⁸ was prepared in response to the issues raised in the more than 900 submissions on the Draft Environmental Impact Statement. The Supplementary Environmental Impact Statement outlined the original conclusions and suggested refinements to water release and management processes proposed by the Snowy Water Inquiry¹⁹.

The Commonwealth EIS re-affirmed the outcomes of the Snowy Water Inquiry and the negotiating principles previously agreed and announced by the New South Wales and Victorian Ministers in December 1999.

Agreements on the Outcomes of the Snowy Water Inquiry

Agreement between Victoria and NSW - October 2000

The NSW Snowy corporatisation legislation required the New South Wales and Victorian Governments to reach agreement on the

“the initial release of water to the Snowy River on the issue of the Snowy water licence”²⁰ and “the increased amount of such releases of water following the first review of the Snowy water licence under this Act that will not give the Company an entitlement to compensation”²¹

Following extensive negotiations between the Victorian Minister for Energy and Resources, Candy Broad, and NSW Special Minister of State, John Della Bosca and respective Victorian and New South Wales Government agencies, agreement was reached. On Friday 6 October 2000, the Victoria and New South Wales Premiers announced an historic 10 year, \$300 million agreement to restore the Snowy River flows and agreed to a long term target of 28% of average natural flows²². In reaching agreement, the Governments undertook to use the opportunity provided by the corporatisation of SMHEA to reverse some of the environmental damage caused by the diversion of Snowy River flows to the Murray and Murrumbidgee Rivers

The agreement included a package of measures designed to:

- deliver environmental benefits to the Snowy River and its communities;
- protect the environment of the Murray-Darling Basin;
- safeguard the interests of irrigators;
- maintain the quantity and quality of South Australia's water supply; and,
- secure the financial position and operating flexibility of the Snowy Scheme.

It also provided for an immediate release of water from the Snowy Scheme once corporatisation was finalised. The Governments also agreed to significant increases in environmental flows for the upper Murrumbidgee River and key alpine rivers in the Kosciuszko National Park.

The *Agreement on the Outcomes of the Snowy Water Inquiry* between NSW and Victoria was tabled in the NSW Parliament on 5 December 2000²³.

Agreement between Victoria NSW and Commonwealth – December 2000

After further negotiations with the Commonwealth Government, the historic tri-governmental Heads of Agreement on the Outcomes of the Snowy Water Inquiry²⁴ between Victoria, NSW and the Commonwealth was announced on 6 December 2000. This Heads of Agreement was based on the agreement initially reached between NSW and Victoria, with additions consequent on the Commonwealth becoming a party to the agreement.

The Commonwealth Government also formally announced its participation in and support for the return of flows to the Snowy River and made a commitment to contribute an additional \$75 million on top of the \$300

million already committed by the governments of Victoria and New South Wales to secure the allocation of an additional 70 gigalitres per annum in increased dedicated environmental flows for the River Murray.

Under the agreement, for the first three years following corporatisation, up to an additional 38 gigalitres per annum would be provided to the Snowy River from borrowings from the Snowy Scheme to prevent the further deterioration of the river. A target flow of up to 21% of average natural flows is to be returned to the Snowy River over the next 10 years, in conjunction with the additional 70 gigalitres per annum to be allocated for dedicated environmental flows to the River Murray.

Increased flows beyond the agreed initial releases necessary to prevent further deterioration of the Snowy River will not be implemented unless first offset by water savings achieved primarily through undertaking water efficiency capital works projects, environmental improvement and regional development projects in the River Murray, Murrumbidgee River and Goulburn River systems and, only if necessary, through purchases of water from these areas²⁵. The purchase of water entitlements and water rights will only occur in a manner that promoted the water trading market²⁶. Water savings projects were only to be undertaken on the basis that they would have no impact on irrigator entitlements or on South Australian entitlements and water quality²⁷.

The Governments also agreed that the additional 7% of further flows in the Snowy River up to a total of 28% of average natural flows equivalent to 282 gigalitres, may be achieved following the implementation of an additional major capital works program to achieve water savings in the southern Murray-Darling Basin beyond those required to offset the 21% average natural flows in the Snowy River. This program would be undertaken through public private partnerships in which the water saved is shared between the governments and private sector partners. Water savings allocated to the governments would be used to offset increased flows in the Snowy River and to provide further dedicated environmental flows in the River Murray²⁸.

Under the agreement, a Joint Government Enterprise will be established by the NSW, Victorian and Commonwealth Governments within six months of the corporatisation date, to obtain water primarily through the investment in water savings projects, such as major engineering works, better water accounting and the improved maintenance of irrigation distribution systems.

Through the Heads of Agreement, all governments have reinforced that the focus of the enterprise will primarily be on acquiring water savings through water-efficiency capital works projects and only if necessary, through the purchase of water entitlements and water rights in a manner that promoted the water trading market²⁹.

The \$375 million package represents a large-scale investment in irrigation infrastructure and has the potential to provide long-lasting benefits to regional areas of Victoria and NSW.

The Snowy Corporatisation Agreements

The Snowy Scheme is not only a complex engineering achievement, it also has a complex legal and administrative framework because it services the interests of four governments and sits astride national electricity industry and water reforms.

The key objective of corporatisation and the agreements to implement the outcomes of the Snowy Water Inquiry was to secure the financial position and operating flexibility of the Snowy Hydro Scheme while delivering environmental benefits to the Snowy River, River Murray and the rivers in the Kosciuszko National Park.

The Snowy Hydro Corporatisation Acts in the three jurisdictions established the general framework for the corporatisation of SMHEA and enabled the Governments to develop and enter into further agreements and other instruments as required to implement the reforms and provide Snowy Hydro Limited with commercial certainty. The corporatisation arrangements agreed between the three Governments were formalised through more than 40 commercial and intergovernmental agreements.

These agreements set out the new regulatory regime for the Scheme and cover:

- Corporate governance arrangements;
- Debt refinancing;
- Occupation of Kosciuszko National Park;
- Tax compensation;
- Transfer of assets and liabilities; and
- Water operations.

Prior to corporatisation, the *Snowy Mountains Agreement* ensured the catchment based sharing of water between the Murray and Murrumbidgee systems. Under the *Murray-Darling Basin Agreement*, Victoria received half of the releases from the Snowy-Murray Development. While the operation of the *Snowy Mountains Agreement* provided some statutorily guaranteed diversions in times of severe drought, it did not provide any certainty to Victoria in terms of annual volume or timing of releases.

The *Snowy Mountains Hydro-electric Power Act 1949 (Cth)* was fairly prescriptive in what the Scheme could do and yet excluded the operation of otherwise applicable State legislation. The Act established SMHEA and a Ministerial Council to oversight its operations and make decisions as social and industry circumstances evolved. Roles associated with ownership, management, finance, industry regulation, water and electricity policy were internalised and blurred around the edges.

By contrast, the current legal foundation is based on all governments' general powers to legislate. By agreement, the Corporatisation Acts are complementary but, with different content in each of the three jurisdictions. The respective Snowy Hydro Corporatisation Acts all include enabling provisions to allow Governments to enter into any agreements necessary to implement corporatisation.

The current legislative basis is enabling, allowing the use of existing and new legislative and other legal instruments and institutions to facilitate today's reform agenda, including:

- establishment of SHL as company under existing Corporations Law;
- SHL is now subject to all the applicable laws in the NSW and Commonwealth jurisdictions;
- SHL pays State and Commonwealth taxes;
- the Snowy Water Licence is issued to SHL under the NSW Corporatisation Act;
- Environmental Entitlements for increased environmental flows to the Snowy River are provided for and protected under NSW and Victorian water legislation; and
- legally enforceable commercial agreements define detailed rights and obligations and dispute resolution processes between the parties and between the Scheme and the parties with a beneficial interest in the Scheme.

In addition to this legal/ legislative framework, the three Governments have also entered into a number of high level intergovernmental political compacts to provide policy guidance for the future development of further legally binding agreements.

By using a range of instruments specifically targeted to each situation, the whole corporatisation legal and policy framework is believed to retain flexibility while also being more precise and certain in defining rights and obligations.

In applying the framework, the roles of ownership, regulator, industry policy development, operational accountability and financier are more clearly separated and focused. Water security is defined more precisely and will be monitored by an independent organisation on behalf of the jurisdictions. Environmental obligations are both precisely defined in relation to the release of water from the Scheme for environmental purposes and more broadly defined under a range of applicable legislation that apply to any other business in NSW.

The Snowy Water Agreements

The intention of the Governments was to establish Snowy Hydro Limited as a Corporations Law company operating subject to New South Wales environmental, natural resource and planning law.

The Snowy Water Agreements were developed to formalise the provisions of *the Heads of Agreement on the outcomes of the Snowy Water Inquiry* and include specific provisions from the New South Wales Corporatisation Act relating to water arrangements, the *Snowy Water Licence*, the rights and obligations of the Licensee, the application of the *Water Management Act 2000 (NSW)*, and the establishment of a Snowy Scientific Committee to advise on environmental releases from the Snowy Scheme. The Snowy Water Agreements also needed to amend the provisions of the *Murray-Darling Basin Agreement* that referred to SMHEA and the Snowy Scheme.

The Snowy Water Agreements were concluded on 28 June 2002 and include the following six key agreements and instruments in addition to the Heads of Agreement:

- The Snowy Water Inquiry Outcomes Implementation Deed
- The Snowy Water Licence
- The Murray-Darling Basin Amending Agreement
- The Snowy Scheme Long Term Arrangements Deed
- The Snowy Bilateral Deed.
- Intergovernmental Agreement

There are also a number of associated water related commercial arrangements between the New South Wales Government and Snowy Hydro Limited. These will not be considered here.

The *Snowy Water Inquiry Outcomes Implementation Deed* between Victoria, NSW and Commonwealth provides for all agreed Snowy Water Inquiry outcomes in a legally binding form, including increased flow targets, the process for the establishment of the Joint Government Enterprise and obligations on NSW to implement a range of matters through the *Snowy Water Licence*.

The *Snowy Water Licence*, issued and administered by the Ministerial Corporation of NSW under the *Snowy Hydro Corporatisation Act 1997 (NSW)* is the principle instrument through which the water rights of the Scheme are conferred and its water operations are governed. Under the Licence, SHL is given the right to collect, divert, store, use and release water within the Snowy Scheme. In addition, the Licence imposes obligations on SHL in respect to Water Release Requirements (for irrigation purposes) and Environmental Flow Requirements (for the Snowy, Montane and Murray Rivers).

The *Murray-Darling Basin Amending Agreement* between the Victorian, New South Wales, Commonwealth and South Australian Governments sets out amendments required to the *Murray-Darling Basin Agreement* as a result of corporatisation. Most importantly, the amendments to the *Murray-Darling Basin Agreement* protect Victorian and South Australian water rights and interests from unilateral action by NSW under the Snowy Water Licence.

The *Bilateral Deed* between Victoria and SHL will assist in the protection of existing Victorian water rights that are currently protected in the arrangements governing the operations of the Scheme.

The *Intergovernmental Agreement* between the Governments of Victorian, New South Wales, Commonwealth and South Australian recognises South Australia's interests in improving River Murray flows and outlines the basis upon which South Australia could participate in the proposed Joint Government Enterprise.

The *Snowy Long Term Water Arrangement Deed* is a further agreement between the Governments of Victoria, New South Wales, Commonwealth and the South Australian to protect the water rights and interests of Victoria, the Commonwealth and South Australia upon expiry or revocation of the *Snowy Water Licence*.

The overall framework and interrelationship between the Snowy Water Agreements is provided below in Figure 1 and details of the purpose and key features of each of the agreements are provided in Table 1.

The Snowy Water Agreements involves the use of a combination of agreements and instruments, including: some which are legislative requirements, such as the *Agreement on the Outcomes of the Snowy Water Inquiry* between NSW and Victoria required under the NSW corporatisation legislation; political compacts such as the *Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry* between NSW, Victoria and the Commonwealth; statutory instruments such as *Snowy Water Licence* and a range of legally binding and enforceable agreements.

Only the *Murray-Darling Basin Amending Agreement* requires incorporation in complementary legislation under the provisions of the *Murray-Darling Basin Agreement*³⁰. Amending legislation has been introduced into the Victorian³¹, New South Wales³² and Commonwealth³³ Parliaments and it is expected that South Australia will introduce the necessary legislation shortly.

The Heads of Agreement between the three Governments on the outcome from the Snowy Water Inquiry provided a clear framework within which the Snowy Water Agreements and other instruments were developed and negotiated by each of the jurisdictions, in conjunction with representatives the former Snowy Mountains Hydro-electric Authority, the Murray-Darling Basin Commission and their respective legal advisers.

Figure 1. SNOWY WATER AGREEMENT FRAMEWORK

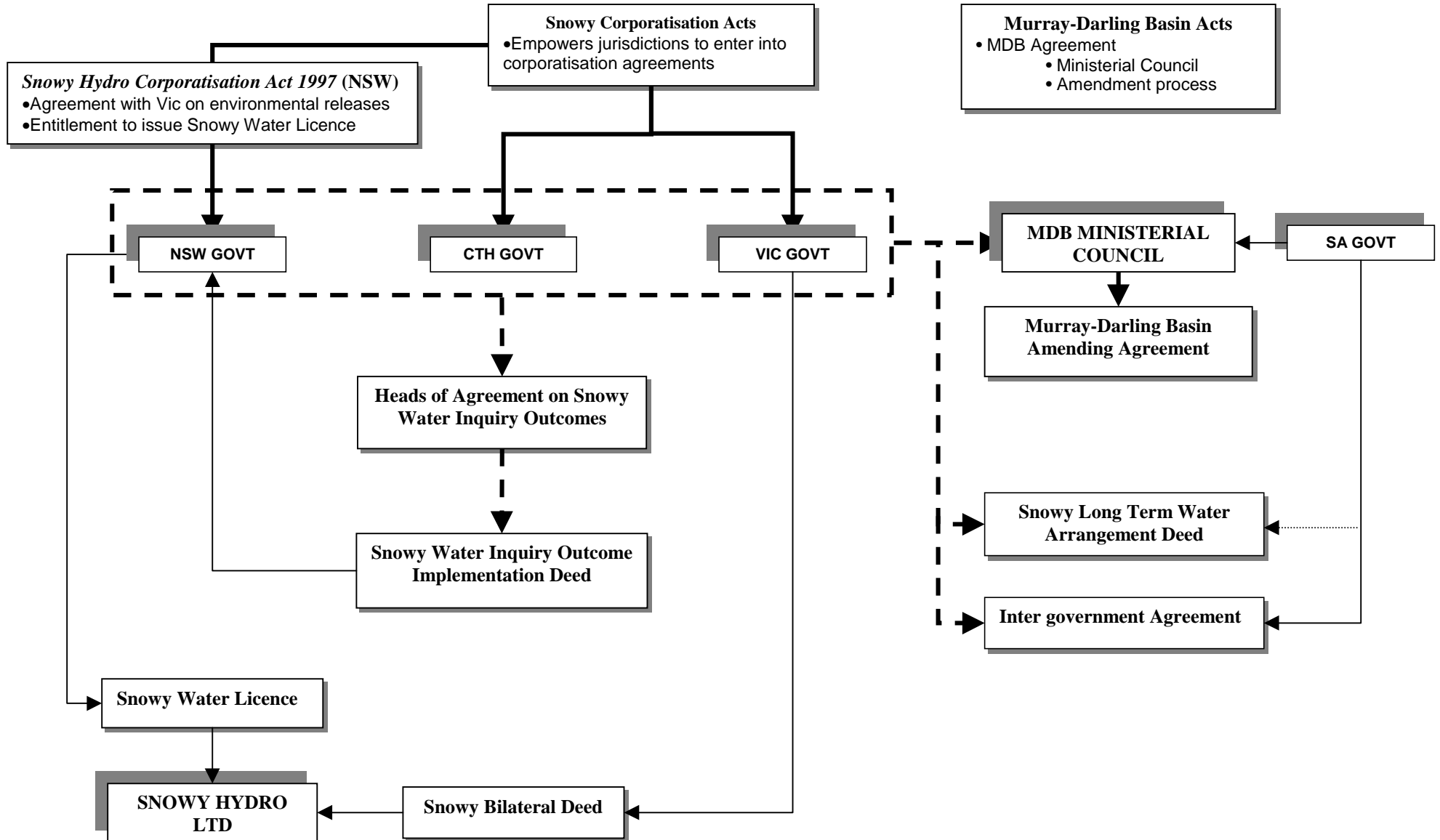


Table 1. Snowy Water Agreements - Key Features

Agreement between NSW and Victoria on the Outcome from the Snowy Water Inquiry

Parties NSW Victoria	<p>Purpose Agreement required between NSW and Victoria on releases of water to the Snowy River under the <i>Snowy Corporatisation Act 1997 (NSW)</i></p> <p>Key Features Prescribes:</p> <ol style="list-style-type: none"> (1) the initial release of water to the Snowy River for environmental purposes; (2) the increased amount of such releases of water following the first review of the <i>Snowy Water Licence</i>. <p>This Agreement was tabled in both Houses of the NSW Parliament in December 2000.</p>
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Heads of Agreement: The Agreed Outcome from the Snowy Water Inquiry

Parties NSW Victoria Commonwealth	<p>Purpose Agreement between the three Governments on the outcomes of the Snowy Water Inquiry and the implementation of the outcomes</p> <p>Key Features</p> <ul style="list-style-type: none"> • Outlines the total agreement between the three Governments on the outcomes of the Snowy Water Inquiry and the implementation of the outcomes. • Commits the Governments to implement specified levels of increased flows in the Snowy River and the Snowy montane rivers and dedicated environmental flows in the River Murray. • Commits NSW and Victoria to providing \$150 million and the Commonwealth to providing \$75 million over ten years to obtain water savings to offset the increased flows. • Outlines the agreed role and purpose of the Joint Government Enterprise which will be established to obtain water savings.
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Snowy Water Inquiry Outcomes Implementation Deed

Parties Commonwealth NSW Victoria	<p>Purpose To establish a legally binding agreement between the three Governments on the outcomes of the Snowy Water Inquiry and their implementation.</p> <p>Key Features</p> <ul style="list-style-type: none"> • Sets out in legally certain terms the total agreement between the Governments in relation to the outcomes from the Snowy Water Inquiry and the implementation of those outcomes. • Specifies releases from the Snowy Scheme to implement increased flows in the Snowy River and the Snowy montane rivers and dedicated environmental flows in the River Murray. • Commits NSW and Victoria to providing \$150 million and the Commonwealth to providing \$75 million over ten years to obtain water savings to offset the increased flows. • Outlines the role and purpose of the Joint Government Enterprise which will be established to obtain water savings through water savings projects and if necessary water purchases. • Requires amendments to respective State legislation to give full effect to this Deed. • This Deed was developed to implement the <i>Heads of Agreement</i>.
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Snowy Water Licence

Parties Issued by the NSW Water Administration Ministerial Corporation	<p>Purpose To confer rights on Snowy Hydro Ltd to collect, divert, store, use and release water by and from the works of the Snowy Scheme for a period of 75 years issued under the <i>Snowy Hydro Corporatisation Act 1997 (NSW)</i></p> <p>Key Features</p> <ul style="list-style-type: none"> • Confers rights on Snowy Hydro Ltd to collect, divert, store, use and release water by and from the works of the Snowy Scheme for a period of 75 years. • Imposes conditions on the operation of the Snowy Scheme from a water resource management perspective. • Prescribes the "water release rules" which establish Snowy Hydro Ltd's rights and obligations vis-à-vis downstream water authorities in relation to the release of water for irrigation purposes. • Imposes environmental flow obligations on Snowy Hydro Ltd arising out of the Snowy Water Inquiry. • Other key provisions relate to: granting and exercise of water rights by Snowy Hydro Ltd; preparation of annual water operating plans; the Water Consultation and Liaison Committee; metering, provision of data and general reporting requirements; fees and charges; breaches of the Licence and corresponding penalties. • The Snowy Water Licence is issued under the <i>Snowy Hydro Corporatisation Act 1997 (NSW)</i>
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(Table 1. - continued)

Murray-Darling Basin Amending Agreement

<p>Parties Commonwealth NSW Victoria South Australia</p>	<p>Purpose Sets out the necessary amendments to the <i>Murray-Darling Basin Agreement</i> agreed between the Governments and approved by the Murray-Darling Basin Ministerial Council as a result of the corporatisation of the Snowy Mountains Hydro-electric Authority</p> <p>Key Features</p> <ul style="list-style-type: none"> • Sets out amendments to the <i>Murray-Darling Basin Agreement</i> agreed between the Governments and necessitated by the corporatisation of the Snowy Mountains Hydro-electric Authority. • Codifies arrangements for sharing water made available from the Snowy Scheme to the River Murray catchment above Hume Dam. • Secures Victoria's water rights (and consequently those of South Australia) which were contained in the original Snowy legislation by requiring specific performance by NSW. • To be effective, the amendments to the <i>MDB Agreement</i> must be approved by the Parliaments of the parties to the <i>MDB Agreement</i> (except Queensland).
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Snowy Scheme Long Term Arrangements Deed

<p>Parties Commonwealth NSW Victoria (South Australia)</p>	<p>Purpose To protect the water rights and interests of Victoria, the Commonwealth and South Australia upon expiry or revocation of the <i>Snowy Water Licence</i></p> <p>Key Features</p> <ul style="list-style-type: none"> • Protects the interests of Victoria and South Australia on the expiration or sooner revocation of the <i>Snowy Water Licence</i>. • Requires NSW to continue to act in accordance with the Snowy Water Inquiry Outcomes Deed of Agreement in respect to the operation of the Snowy Scheme until otherwise agreed with the other parties, and to negotiate and consult with the other Governments in relation to any new water arrangements • South Australia has also been invited to sign the Deed.
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Snowy Bilateral Deed

<p>Parties Victoria Snowy Hydro Ltd</p>	<p>Purpose To protect Victoria's water rights that were part of the arrangements governing operations of the Snowy Scheme prior to the corporatisation</p> <p>Key Features</p> <ul style="list-style-type: none"> • Victoria has rights against Snowy Hydro Ltd with respect to compliance with the provisions of the Snowy Water Licence and must assign this deed in event of assigning its interest in the Licence.
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Inter-Governmental Agreement

<p>Parties Commonwealth NSW Victoria South Australia</p>	<p>Purpose Provides an agreement on the basis which South Australia may join the Joint Government Enterprise</p> <p>Key Features</p> <ul style="list-style-type: none"> • Outlines the basis on which South Australia may join the Joint Government Enterprise. • Provides for regular reviews of the increased flows to the River Murray for environmental purposes
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Returning the flows

Initial release of Snowy River environmental flows

The proclamation of the *Snowy Hydro Corporatisation Act 1997 (Cth)* on 28 June 2002 repealed the *Snowy Mountains Hydro-electric Power Act 1949* and the *State Snowy Mountains Hydro-electric Agreements Acts*, enabling the initial release of increased flows to the Snowy River from Mowamba Weir on 28 August 2002.

Under the agreements reached between the three Governments, up to 38 gigalitres per year will be borrowed from the Scheme for Snowy River releases from the Mowamba River and Cobbon Creeks for three years following corporatisation, to ensure that there is no further deterioration of the river while the necessary modification works are undertaken to Jindabyne Dam and water savings are accumulated. The 38 gigalitres represents an increase of 3% in the average natural flow of the Snowy River and will result in flows of up to 6% average natural flow at the confluence of the Mowamba and Snowy Rivers.

Future Increased Flow Targets

Under the *Snowy Water Inquiry Outcomes Implementation Deed*, the three Governments have agreed to the increased environmental flow targets detailed in Table 2 and the New South Wales Government has further agreed to procure the increased flows through *the Snowy Water Licence*.

Water sharing and accounting arrangements necessary to protect the interests of the affected jurisdictions have also been agreed through the *Snowy Water Inquiry Outcomes Implementation Deed* and incorporated into the *Snowy Water Licence* and the *Murray-Darling Basin Agreement* through the *Murray-Darling Basin Amending Agreement*.

Table 2. Future Increased Flow Targets ³⁴

Years from corporatisation	Snowy River	River Murray	Snowy Montane Rivers
Year 1	Up to 38 GL released from Mowamba weir and provided by borrowing from the Snowy Scheme	Nil	Nil
Year 2 to 7	Target increased flow of 142 GL per year (15% flow)	Allocation of 70 GL per Water Year.	Target average annual flow up to maximum volume equivalent to 100 GWh per annum of forgone electricity generation.
Year 8 to 10	Target increased flow of 212 GL per year (21 % flow)	Target allocation of 70 GL per Water Year.	Target average annual flow up to maximum volume equivalent to 150 GWh per annum of forgone electricity generation.
Year 10 onwards	Target increased flow from 212 GL up to 294 GL (28% flow)	Same as year 8-10 or more if agreed by Governments	Same as year 8-10

The Joint Government Enterprise

The Joint Government Enterprise will have the responsibility for undertaking savings projects in both Victoria and New South Wales on behalf of the three Governments. The *Snowy Water Inquiry Outcomes Implementation Deed* provides for the broad structure and operations of the Enterprise.

Under this agreement Victorian and New South Wales Governments have each agreed to provide \$150 million and the Commonwealth Government has agreed to provide \$75 million over ten years to the Joint Government Enterprise to fund water savings projects and if necessary purchases to offset the targeted increased flows. The purchase of any water entitlements and water rights would only occur in a manner that promoted the water trading market.

The Joint Government Enterprise will:

- have a charter to find and fund water savings to offset up to 212 GL per annum in increased flows to the Snowy River and to provide 70 ggalitres per annum to the River Murray;
- commission necessary environmental and riverine works;
- be accountable - its annual business plan has to be approved by the three Governments; and
- ensure that in finding water for increased flows that there will be no adverse impact on existing entitlements and environmental flows or on South Australian water security or water quality.

Following the completion of corporatisation, the three Governments are currently negotiating the establishment and future operations of the Joint Government Enterprise.

Water Savings Investigations and Projects

New South Wales

In 1999, New South Wales Treasury commissioned Brewsher Consulting to undertake , *A Review of Water Efficiency Projects Available in New South Wales*³⁵. The report was a preliminary desktop study conducted in consultation with major stakeholder groups and identified more than 10 projects with the potential to generate approximately 154GL in water savings in NSW.

Victoria

The Victorian Government has also undertaken and completed strategic studies to identify potential water savings in the irrigation distribution and bulk storage systems in Northern Victoria^{36 37}. The reports identified more than 25 projects with potential of water savings in the order of 150 GL for further detailed investigation. A trial of new irrigation technology systems is also underway in the Goulburn-Murray Irrigation District and has the potential to generate significant economic and water savings efficiencies. These studies and investigations will assist the Joint Government Enterprise to identify and commission water savings projects once it is established.

In February 2001, the Victorian Government announced a \$25 million package of water savings projects in Northern Victoria to be implemented over three years as part of the Governments commitment to ensuring increased flows to the Snowy River³⁸. The projects are being undertaken by Goulburn-Murray Water under an agreement with the Victorian Department of Natural Resources and Environment.

When completed in late 2003 and through 2004, these projects will generate an estimated 25 gigalitres per annum of water savings, with up to an additional 2 gigalitres also becoming available on completion of another pipeline project in 2003. The resulting water savings will be offered to the Joint Government Enterprise upon completion and will offset future increased flows from the Snowy Scheme.

The restoration of the Snowy River also requires considerable environmental and engineering works to restore and rehabilitate the currently degraded stretches of the river and to recreate and improve instream and riparian habitat and processes to maximise the benefits of the increased flows. Considerable work is currently underway in both New South Wales and Victoria, including substantial willow removal and revegetation programs in New South Wales and a trial of a range of rehabilitation techniques to recreate more diverse habitat in the lower reaches in Victoria³⁹.

Summary and Conclusions

The latest chapter in the more than 100 years of intergovernmental water reform began with the agreement by the Council of Australian Governments in 1991 to proceed with national electricity market reform. By 1994, COAG's agreement on the Strategic Framework for Water Reform was to provide a broader national basis for water reform.

By the time the Snowy Hydro Corporatisation legislation was introduced into the respective Parliaments in 1997, the focus of the Snowy corporatisation process had broadened from electricity market reform to having to concurrently address concerns about the future security of water supplies to the west for irrigation and the need to restore environmental flows to the Snowy River, River Murray and the Snowy montane rivers.

The 1999 Victorian election succeeded in further raising the profile of increased environmental flows as a major national political issue. The Bracks Labor Government in Victoria, in its election platform for the 1999 election had made a commitment that if it were elected, it would seek to negotiate an agreement with the New South Wales and Commonwealth Governments for the return of 28% of the Snowy River's flows⁴⁰.

The Heads of Agreement on the Snowy Water Inquiry outcomes, firstly between New South Wales and Victoria, and then with the Commonwealth provided a workable solution for all three Governments. In jointly committing to implement the Inquiry outcomes and to provide \$375 million for water savings to offset increased flows to the Snowy River and the River Murray, the Governments recognised the importance of ensuring adequate environmental flows as the basis for a sustainable future for the Snowy Scheme.

The high level political and policy direction provided by the Corporatisation Principles, the Victorian and NSW negotiating principles of 15 December 1999 and the *Heads of Agreement on the outcomes of the Snowy Water Inquiry* of 6 December 2000 allowed Government agencies to work together to progress corporatisation, with each jurisdiction needing to adopt a whole-of-government approach to the negotiations to be able to deal concurrently with the complex legal, financial, water, environmental and operational aspects and simultaneously resolve numerous overlapping issues to conclude the more than 40 agreements.

By using a range of instruments targeted to each situation, the whole corporatisation legal and policy framework is considered to be more precise and certain in defining rights and obligations, while providing sufficient flexibility to accommodate future changes that may be required over the 75 year period of the *Snowy Water Licence*.

Under the Snowy corporatisation agreements framework, the roles of ownership, regulator, industry policy development, operational accountability and financier are more clearly separated and focused. Water security is defined more precisely and will be monitored by an independent organisation on behalf of the jurisdictions. Environmental obligations are both precisely defined in relation to the release of water from the Scheme for environmental purposes and more broadly defined under a range of applicable legislation that apply to any other business in NSW.

While this paper has focussed largely on the legal and water reform policy implications, particularly of restoring environmental flows, it is also important in concluding that the broader benefits and outcomes of the Snowy corporatisation process are recognised.

These include:

- a significant contribution to improving the efficiency of national electricity market by creating a more commercially focused owner/ operator of the Scheme;
- the establishment of a focussed and viable renewable energy business at a time of increasing concern about the potential impacts of global climate change;
- protection of jurisdictional water rights and interests and increased certainty and security of water supply for irrigation from the Snowy Scheme through the *Snowy Water Licence*, *Murray-Darling Basin Agreement* and other enforceable agreements;
- providing significant Government funding towards major water supply infrastructure and efficiency improvements in the Murray-Darling Basin;
- providing a framework and new tools for future water reform to restore environmental flows such as the establishment of the Joint Government Enterprise and the development and agreement to new mechanisms to achieve water savings in one river system and translate them into environmental flows in another river system;
- development of environmental objectives and a strategy for the River Murray dedicated environmental flows to maximise the environmental benefits of releases from the Scheme;
- agreement to improved operational arrangements and practices within the Kosciuszko National Park; as well as
- restoration of environmental flows to the Snowy River, River Murray and the Snowy montane rivers.

The approach adopted by Governments to the corporatisation of the Snowy Mountains Hydro-electric Authority has also demonstrated that Governments can work together to address complex energy, water and environmental policy issues and that considerable progress can be made in addressing Australia's economic, social and environmental needs through intergovernmental co-operation.

Acknowledgments

The development and negotiation of the Snowy water agreements involved a large number of officials over a long period from a number of Victorian, New South Wales and Commonwealth Government agencies, Snowy Hydro Ltd, the former Snowy Mountains Hydro-electric Authority, the Murray-Darling Basin Commission, the respective legal advisers and DGJ Projects as legal counsel to the three Governments on the corporatisation process.

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Notes

The views expressed in this paper are those of the authors and do not purport to represent the views or policies of the Victorian, New South Wales or Commonwealth Governments.

- ¹ Sandford D. Clark, 'The River Murray Question – Colonial Days', *Melbourne University Law Review*, Vol 8, no.1, June 1971, p27.
- ² Clark, p30.
- ³ Brad Collis, *Snowy – The Making of Modern Australia*, Tabletop Press, Canberra, 4th edition, 2002, p35.
- ⁴ *Snowy Mountains Hydro-electric Agreements Act 1958 (Vic)*, Schedule, Part A, The Principal Agreement, clause 12 of the *Snowy Mountains Hydro-electric Agreement 18 September 1957*, provides that the waters diverted from the Snowy River Catchment to River Murray Catchment be shared equally between Victoria and NSW in exchange for which it would not require any release of water from the Snowy Scheme to the Snowy River and that it would accept sole responsibility for any consequences in Victoria resulting from the diversion of the headwaters of the Snowy River to the River Murray.
- ⁵ Murray-Darling Basin Ministerial Council, *The Living Murray Discussion Paper*, Murray-Darling Basin Commission, Canberra 2002, The values of the Murray - Economic values p8.
- ⁶ At the corporatisation date, the ownership issue was resolved since the Snowy Scheme assets were unequivocally transferred to Snowy Hydro Ltd by the operation of both:
 the corporatisation legislation which transferred to SHL the relevant assets of SMHEA; and
 a transfer order signed by relevant NSW, Victorian and Commonwealth Ministers which transferred any interests of the Governments in the relevant assets to SHL.
 In addition, the NSW corporatisation legislation made provision for the assets in the Kosciuszko National Park to be severed from the land on which they were located. This enabled clear title to the assets to be transferred to SHL separate from the ownership of the land, which remained with NSW.
- ⁷ Council of Australian Governments, *Communique of the Meeting of 8 – 9 June 1993 regarding COAG agreement to implement competitive electricity market by 1 July 1995*, Melbourne, 1993.
- ⁸ Council of Australian Governments, *Communique of the Meeting of 25 February 1994 regarding COAG agreement to implement the Strategic Framework for Water Reform*, Hobart, 1994.
- ⁹ New South Wales Department of Land and Water Conservation, Victorian Department of Conservation and Natural Resources and the Snowy Mountains Hydro-electric Authority, *Snowy River Downstream of Lake Jindabyne – Environmental Flow Scoping Study*, DLWC, Sydney 1995.
- ¹⁰ P. Pendelbury, W.D. Erskine, S. Lake, P. Brown, I. Pulsford, J. Banks, J. Nixon and C. Robertson, *Expert Panel Environmental Flow Assessment of the Snowy River below Jindabyne Dam*, prepared for the Snowy Genoa Catchment Management Committee, Cooma, 1996.
- ¹¹ *Snowy Hydro Corporatisation Act 1997 (NSW)*, s19-20 set out the requirements to establish and conduct a Water Inquiry, section 21 requires the NSW Minister to reach an agreement with the State of Victoria on the outcomes of the Inquiry and specifies that matters that such an agreement must provide for.
- ¹² *Snowy Hydro Corporatisation Act 1997 (Cth)*, s2(3)(a) sets out the requirements for the proclamation of s59 of the Act repealing the *Snowy Mountains Hydro-electric Power Act 1949*.
- ¹³ Snowy Water Inquiry, *Snowy Water Inquiry Final Report*, Snowy Water Inquiry, Sydney 1998.
- ¹⁴ Snowy Water Inquiry, p7.
- ¹⁵ The Hon. Candy Broad, the Victorian Minister for Energy and Resources and the Hon John Della Bosca, the NSW Special Minister of State, *Joint Statement - Principles for improving waterflows and the environment of the Snowy River, other river s in the Kosciuszko National Park and adjacent alpine areas and the Murray and Murrumbidgee systems*, Melbourne / Sydney, 15 December 1999.
- ¹⁶ Department of Industry, Science and Resources, *Corporatisation of the Snowy Mountains Hydro-electric Authority – Environmental Impact Statement*, Commonwealth of Australia, Canberra, June 2000.
- ¹⁷ Department of Industry, Science and Resources, June 2000, p338.
- ¹⁸ Department of Industry, Science and Resources, *Corporatisation of the Snowy Mountains Hydro-electric Authority – Supplementary Environmental Impact Statement*, Commonwealth of Australia, Canberra, September 2000.
- ¹⁹ Department of Industry, Science and Resources, September 2000, p89-91.

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- 20 *Snowy Hydro Corporatisation Act 1997* (NSW), s21.4a.
- 21 *Snowy Hydro Corporatisation Act 1997* (NSW), s21.4b.
- 22 Premier of Victoria, Media Release – Victorian and NSW announce Historic Agreement to restore Snowy River Flows, Department of Premier and Cabinet, Victoria, 6 October 2000.
- 23 The State of New South Wales and The State of Victoria, *Agreement on the Outcomes of the Snowy Water Inquiry*, 5 December 2000.
- 24 The State of New South Wales, The State of Victoria and the Commonwealth of Australia, *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, 6 December 2002.
- 25 *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, clauses 1.4 and 2.2.
- 26 *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, clause 2.2.
- 27 *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, clause 2.1
- 28 *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, clause 1.3.
- 29 *Heads of Agreement: The Agreed Outcome of the Snowy Water Inquiry*, clause 2.2.
- 30 *Murray-Darling Basin Agreement 1992* (as amended), Clause 6 requires the contracting Governments to submit any amendments to the Agreement agreed by Ministerial Council for the approval of the respective Parliaments as soon as practicable after such an Agreement is reached.
- 31 *Murray-Darling Basin Amendment Bill 2002 (Vic)*, introduced on 12 September 2002.
- 32 *Murray-Darling Basin Amendment Bill 2002 (NSW)*, introduced on 17 September 2002.
- 33 *Murray-Darling Basin Amendment Bill 2002 (Cth)*, introduced on 18 September 2002.
- 34 *Snowy Water Inquiry Outcomes Implementation Deed*, 28 June 2002, clause 7.1 specifies the agreed target levels of increased flows for the Snowy River, River Murray and Snowy montane rivers.
- 35 Brewsher Consulting Pty Ltd, *A Review of Water Efficiency Projects Available in New South Wales*, prepared for New South Wales Treasury, Epping, 1999.
- 36 Sinclair Knight Merz, *Water Savings in Irrigation Distribution Systems*, a report to Goulburn-Murray Water and the Victorian Department of Natural Resources and Environment, Melbourne, June 2000.
- 37 Sinclair Knight Merz, *Water Savings in Bulk Water Systems in Northern Victoria*, a report to Goulburn-Murray Water and the Victorian Department of Natural Resources and Environment, Melbourne, March 2002.
- 38 The Hon Steve Bracks, Premier of Victoria, Press Release - *Premier Announces First \$40m To Revive Snowy River*, Melbourne, 5 February 2001.
- 39 The Hon Candy Broad, Minister For Energy And Resources, Press Release Minister Broad Announces Plan For Snowy River, Melbourne, 17 March 2000
- 40 Australian Labor Party, Victorian Branch, *Our Natural Assets*, Melbourne, 1999.