

Gippsland Environment Group Inc
320 Bellbird Rd
Clifton Creek Vic 3875
31st March 2013

NSW Department of Primary Industries
Office of Water
E: Snowycomments@water.nsw.gov.au

Re: Discussion Paper: Establishment of a Snowy Advisory Committee

Gippsland Environment Group Inc. considers that the proposal to establish a Snowy Advisory Committee to replace the independent Snowy Scientific Committee is completely unacceptable. An independent Snowy Scientific Committee (SSC) is crucial to the restoration of the Snowy River and other rivers affected by the Snowy Scheme. The SSC must be immediately re-established and retain its independence and legislated responsibilities as detailed under s57 of the NSW Snowy Hydro Corporatisation Act (1997) (the Act); and must be fully supported and adequately resourced to enable it carry out that role. The Snowy River Monitoring and Modelling Project must also be re-instated by the NSW Government to provide the necessary data to assist the SSC in fulfilling its legislated role.

The NSW Snowy Hydro Corporatisation Act came into effect in June 2002, and since then the NSW Government has repeatedly failed to meet its legislated responsibility to establish and maintain the Snowy Scientific Committee (SSC). Since June 2002 the Snowy Scientific Committee has been formally operational for only three years out of the past more than ten years. The current proposal by the NSW Government to replace the independent Snowy Scientific Committee with an advisory committee is another unfortunate chapter in the long saga of government attempts to delay, obstruct and interfere in the establishment and operation of an independent SSC, including the failure to provide adequate financial and other support for the SSC to fulfil its legislated role. In proposing to replace the SSC, the NSW Minister for Resources and Energy¹, and Minister for Primary Industries² have reneged on their public commitments to re-establish the SSC after its first three-year term expired in May 2011.

Under the provisions of s57 of the Act the Snowy Scientific Committee has a key role to play in providing wide ranging independent scientific advice to the NSW Government on the ecological health of the rivers, streams and catchments affected by the Snowy Mountains Hydro-electric Scheme and to communicate that information to the community.

Under the legislation the SSC is required to:

- (1) advise the NSW Government each year on the regime for the release of water for environmental reasons under the Snowy Water Licence;
- (2) advise on the adequacy of those releases and the programs for management and restoration of the catchment (and the Snowy River and other rivers and streams) receiving water from those releases, including arrangements for consultation, monitoring and on-going research about those programs; and

¹ Statement by Minister for Resources and Energy Chris Hartcher on ABC Radio Southeast NSW (Bega), 17th May 2011.

² Statement to Snowy River Forum, held at Dalgety NSW, 17th May 2011, by Troy Grant representing Minister for Primary Industries Katrina Hodgkinson.

(3) produce an annual public state of the environment report on the catchments (and the Snowy River and other rivers and streams) affected by the Snowy Mountains Hydro-electric Scheme.

The Office of Water proposal for a Snowy Advisory Committee recommends that a new Snowy advisory committee be established that:

- *has greater focus on providing advice on the timing and pattern of release of environmental water for the Snowy River below Jindabyne dam and the Murrumbidgee below Tantanga Dam.*

Gippsland Environment Group considers that this recommendation should be rejected as it greatly reduces the responsibility of the advisory committee compared to the SSC. The proposed advisory committee will be required to prepare release recommendations for only two river sections whereas the SSC was required to prepare release recommendations for all the rivers receiving environmental flows under the Snowy Water Licence. According to the Snowy Water Licence, Snowy Scheme rivers scheduled to receive environmental flows include not only the Snowy River below Jindabyne Dam and the Upper Murrumbidgee below Tantangara Dam but ALSO the River Murray, two sections of the Snowy River above Jindabyne Dam in Kosciusko National Park, and the Geehi River and Goodradigbee River. All these rivers therefore are required to be included in release regime recommendations prepared by the Snowy Scientific Committee for the NSW Government.

We note however that according to the Snowy Water Licence environmental releases were scheduled to begin to the two sections of the upper Snowy River (above Jindabyne Dam), from below Guthega Dam from 2007/08, and from below Island Bend Dam from 2009/10, but to date no environmental releases to these sections of the Snowy River have been made at all. In addition approximately 230 GL of accumulated water savings acquired by Water for Rivers for the River Murray has been withheld from release by Snowy Hydro Ltd with only one release being made in 2005/06 of 38GL. Under the current legislation these issues would clearly be a matter of concern for the SSC under its responsibility to provide advice on all environmental release regimes whereas it would be outside the role of proposed new advisory committee.

The SSC during its first three-year term drafted recommendations for the environmental flow release regime for the Snowy River below Jindabyne Dam and the Upper Murrumbidgee below Tantangara Dam. It also prepared reports on the adequacy of releases to those rivers. All the SSC's reports were lodged on its website and available to the public (this website has now been shut down). It is difficult to see therefore, how the proposed Snowy Advisory Committee could have a 'greater focus' on the provision of advice on the environmental flows release regime to the Snowy below Jindabyne Dam and the Murrumbidgee below Tantangara Dam other than in the sense of it being its only focus.

The Office of Water's recommendation therefore limits the extent of the advisory committee's role in relation to environmental release regime recommendations to two rivers compared to that of the SSC which is required to provide advice on the environmental flow release regime for all rivers scheduled to receive increased flows under the Snowy Water Licence. There is a serious risk that without the advice of the SSC the environmental release regime to the Geehi, Goodradigbee, upper Snowy and River Murray will be predicated on Snowy Hydro Ltd's financial imperatives rather than the on the ecological needs of the rivers concerned.

In addition this recommendation appears to abolish all other operational roles of the SSC as required under the legislation as per role (2) and (3) above, which is a dramatic reduction of responsibilities and is completely unacceptable.

The level of public accountability and transparency regarding the Snowy Hydro Ltd's delivery of environmental flows under the Snowy Water Licence will be greatly reduced. Independent scientific information on the state of the rivers, streams and catchments affected the Snowy Scheme; independent scientific advice on required programs for management and restoration and on arrangements for research, monitoring and consultation will no longer be provided to the NSW Government, nor will it be available to the Victorian and Commonwealth Governments (co-signatories of intergovernmental Snowy agreements), or the Snowy communities and general public.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *removes the requirement to produce an annual state of the environment report as this duplicates other government processes.*

Gippsland Environment Group considers that this recommendation should be rejected as it effectively eliminates any independent scientific assessment and reporting on the state of ecological health of the rivers and streams and catchments in the Snowy Scheme as a whole. Where is the duplication the Office of Water declares is occurring? There have been no independent whole of catchment state of environment reports produced on the rivers affected by the Snowy Scheme since corporatisation in 2002³.

According to the NSW Snowy Hydro Corporatisation Act, the Snowy Scientific Committee has a responsibility to produce an annual public state of environment report on all the rivers, streams and catchments in the Snowy Scheme. There are 12 rivers and 71 creeks affected by the Snowy Mountains Scheme, many of these rivers are not scheduled to ever receive any environmental flows under the Snowy Water Licence and environmentally catastrophic water diversions continue to be made. This is inconsistent with commitment by the three shareholder governments of Snowy Hydro Ltd under the National Water Initiative to return over-allocated systems to sustainable extraction levels. The Snowy Scientific Committee has a responsibility under the Act to report publicly on all these rivers as well as on the adequacy of environmental flows that are delivered as per the Snowy Water Licence. To remove this requirement to produce public state of environment reports removes any transparency regarding the environmental health of the rivers and streams and catchments so severely affected by the Snowy Scheme. It also effectively removes the opportunity for the SSC to draw attention to the three shareholder governments' responsibility to remedy it.

Since 2002, \$425 million of taxpayers' money has been invested in water savings to off-set the return of limited environmental flows to some rivers in the Snowy Scheme. Removing the requirement for an annual state of environment report will effectively eliminate any public accountability regarding that investment in relation to the adequacy of the environmental flows that are delivered.

³ Prior to this there were the Expert Panel Reports, on the Snowy River below Jindabyne Dam in 1996, and on the Snowy montane rivers in 1998.

As mentioned above, the NSW Government failed to adequately fund the Snowy Scientific Committee to enable it carry out the full extent of its legislated responsibilities. As a result the SSC has not produced even one annual public state of environment report. (Despite the fact that the annual state of environment reports were required under the legislation to inform public submissions to the first Five-Year review of the Snowy water licence regarding the environmental flow provisions.) However the NSW Government's failure to provide adequate resources for the SSC to do its job properly is no justification for the Office of Water's proposal to water down the legislation and remove this requirement for a state of environment report.

In light of the Victorian, NSW, and Commonwealth Governments' commitments⁴, under the Snowy Heads of Agreement (2000) and the Snowy Water Inquiry Outcomes Implementation Deed (SWIOD) (2002), intended to deliver a range of key environmental outcomes for rivers affected by the Snowy Scheme, the annual SSC State of Environment reports are necessary to underpin all future planning to restore the rivers, streams and catchments of the Snowy Scheme.

It is our view that the SSC must be immediately re-established and provided with increased funding and full access to catchment information to enable it produce annual public state of environment reports as required under the current legislation.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *has flexible representation that covers a broad set of skills*
- *comprises government and stakeholder representatives*

It is our opinion that the current structure of the Snowy Scientific Committee already allows for a wide range of scientific expertise and includes government representation and community input. The first Snowy Scientific Committee included nationally and internationally respected scientists with expertise in geomorphology, freshwater ecology, and aquatic science⁵; catchment management representatives; and an environmental interest groups representative (an environmental scientist), who was endorsed by the Snowy Roundtable an informal alliance of national and interstate Snowy River environment and community groups. Through the Southern Rivers Catchment Management Authority the SSC had access to a range of river research including data collected and analysed by the Snowy Monitoring and Modelling Project (which was disbanded in August 2012). The constitution of the committee as required by the legislation clearly provided an excellent range of skills and representation.

The current legislation also explicitly allows for the SSC to advise on 'arrangements for consultation' in which case they can clearly extend the consultation arrangements in any way they see fit.

It has been more a case of the NSW Government failing to provide adequate funding and access to information that has limited the operations of the SSC.

⁴ The governments agreed to return 28% to the Snowy River below Jindabyne Dam (final 7% still un-funded), increased flows to the Snowy montane rivers including the upper Snowy above Jindabyne Dam, and up to 70GL/yr to the River Murray.

⁵ Renowned fish biologist Dr John Harris was also nominated to the inaugural committee by then NSW Minister for Environment Bob Debus but his nomination was apparently overturned by then Minister for Primary Industries Ian McDonald and he was replaced by agriculturalist Mike Curll, a former deputy head of Mr McDonald's department. (*The Australian* March 30, 2009)

There are already two other Snowy River committees representing the three shareholder governments, Snowy Hydro Ltd, and the Murray-Darling Basin Authority i.e. the Snowy Water Consultation and Liaison Committee⁶ which was established to provide advice to Snowy Hydro Ltd in the preparation and implementation of each annual Snowy Water Operating Plan; and the Snowy Technical Advisory Group established in 2011 *by the NSW Office of Water to co-ordinate technical activities between specialists in aquatic sciences and water management particularly in regard to the Snowy, Mowamba and other Montane rivers*⁷. This committee consists of representatives of the Victorian, NSW and Commonwealth Governments and Snowy Hydro Ltd, and whilst the ex-chair of the SSC has a seat at the table as an observer, it is misleading of the Office of Water to state⁸ that the SSC is represented on the Snowy Technical Advisory Group when the SSC's first term concluded in May 2011.

The proposal by the Office of Water to replace the SSC with the proposed Snowy Advisory Committee will replace the only independent scientific committee the community has with yet another advisory committee bound by government policy, which is completely unacceptable.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *retains the requirement for some positions to be nominated by the Victorian Government.*

The discussion paper does not give details as to how many Victorian representatives it recommends will be nominated nor how or by whom the process will be undertaken. Assuming that the recommendation means the Office of Water supports retaining the relevant clause in the current legislation((s57, (6) (d)), in which case two Victorian representatives are to be nominated by a Minister of Victoria (one being a person nominated to represent environmental interest groups) then Gippsland Environment Group suggests that some clarification of the process is required. We recommend that the relevant Victorian Minister be required to consult widely with Snowy River environmental and community groups regarding a potential candidate for the environmental interest groups representative and that the nomination be endorsed by all the relevant Snowy interest groups, rather than the Minister simply appointing a government employee as occurred during the abortive attempt in 2011-12 to re-establish the SSC for a second term.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *be chaired by an independent chair nominated by the Minister for Primary Industries to whom the Committee reports.*

Gippsland Environment Group rejects this recommendation.

Under the current legislation the chair of the independent SSC is an independent aquatic scientist nominated by the Minister for Environment (s57, (6) (e)), this requirement should be

⁶ The Snowy Water Consultation and Liaison Committee established under the intergovernmental Snowy Water Inquiry Outcomes Implementation Deed (2002) Part Three, cl28, included representatives of Snowy Hydro Ltd, the MDBC, the three governments, and the NSW Water Administration Ministerial Corporation. There is no reference however to this committee on the Office of Water website (<http://www.water.nsw.gov.au/Water-management/Law-and-policy/Managing-the-Snowy/managing-the-snowy/default.aspx> accessed 29.3.13) although a Snowy Water Advisory Government Officials Committee is referred to.

⁷ Snowy Hydro NEWS, September 2011.

⁸ <http://www.water.nsw.gov.au/Water-management/Law-and-policy/Managing-the-Snowy/managing-the-snowy/default.aspx> accessed 29.3.13

maintained. The Minister for Environment is responsible for Environmental Water holdings and as such all matters to do with environmental flows in the Snowy Scheme should be the responsibility of the Minister for Environment not the Minister for Primary Industries. This would avoid any potential conflict of interest by the Minister for Primary Industries between the demands of irrigators and environmental priorities. The SSC should therefore report directly to the Minister for the Environment NOT the Minister for Primary Industries. The Office of Water proposal in effect abolishes an entire independent scientific committee (independent of government or Snowy Hydro Ltd) chaired by an independent expert aquatic scientist nominated by the Minister for Environment, and replaces it with an advisory committee subject to the direction of the Minister for Primary Industries (Water) with an 'independent' chair also nominated by the Minister for Primary Industries, which is completely unacceptable.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *be an advisory committee created by statute rather than a statutory corporation as this is more consistent with its role and other advisory committees.*

Gippsland Environment Group rejects this recommendation.

The NSW Snowy Hydro Corporatisation Act establishes the SSC as a statutory corporation (s57 (1)). As a statutory corporation the Snowy Scientific Committee is not subject to the control or direction of the Minister (s57 (7)). This proposal by the Office of Water will abolish the independence and authority of the Snowy Scientific Committee. The Minister for Primary Industries Katrina Hodgkinson states quite clearly in her media release (26 Feb 2013), that the proposed advisory committee will become subject to the control and direction of the Minister.

The Snowy Mountains Hydro-electric Scheme makes a net profit of hundreds of millions of dollars every year for its shareholders at the expense of the environmental health of the rivers and catchments of the Snowy Mountains. Its major shareholder is the NSW Government. It is even more important therefore to retain the independence of the Snowy Scientific Committee separate from the government. The environmental restoration of the rivers, streams and catchments of the Snowy Scheme depends on the independent scientific advice of the Snowy Scientific Committee, and the SSC's independence from political interference depends on and is guaranteed by its statutory corporation status.

The proposed Snowy advisory committee on the other hand will have extremely limited responsibilities, be subject to Ministerial direction and control, be bound by government policy, and its reports potentially influenced by political rather than environmental priorities. Such a committee will not in the best interests of the restoration and management of the rivers, streams and catchments of the Snowy Scheme and therefore is unacceptable.

The Office of Water proposal recommends that a new Snowy advisory committee be established that:

- *be funded by Snowy Hydro Ltd.*

Gippsland Environment Group does not support this recommendation. We consider that it would be a total conflict of interest for Snowy Hydro Ltd to fund the proposed new advisory committee and it would completely undermine the community's faith in the independence of the committee's advice. We consider that the Victorian, NSW and Commonwealth Governments have a joint responsibility as shareholders of Snowy Hydro Ltd and signatories to the Snowy Heads of Agreement and SWIOID to ensure that the SSC is re-established and well resourced and funded to enable it to fulfil its crucial role. Snowy Hydro Ltd's corporate responsibility to deliver the greatest dividend to its shareholders means its electricity

generation and insurance derivatives business which relies on collecting, storing and diverting the greatest amount of water possible from the rivers of the Snowy Mountains is at odds with the three shareholder governments' environmental commitments to restoring the rivers of the Snowy Mountains Scheme. It has also been at odds with the efforts of Snowy community groups advocating for increased environmental flows⁹. Gippsland Environment Group recommends instead that the three shareholder governments of Snowy Hydro Ltd fund the independent Snowy Scientific Committee direct from general revenue earmarked for the environment, with contributions proportional to each government's shareholding in Snowy Hydro Ltd. In this way the burden of resourcing the SSC would be shared and the potential conflict of interest by Snowy Hydro Ltd would be avoided.

It is completely inappropriate that Snowy Hydro Ltd should fund any Snowy advisory committee and if so it should be called the Snowy Hydro Committee to avoid misleading the public.

The Office of Water proposal that a new Snowy advisory committee be established that:

- *be subject to the administration of the NSW Minister responsible for Water, except to the extent of the content of any advice or reports to the Minister.*

Gippsland Environment group considers that this recommendation should be rejected. Whilst the wording is somewhat confusing it appears to relate to the statement in the Minister's media release (26 Feb 2013) that: *With the exception of the advice or reports it produces, the Committee will become subject to the control and direction of the Minister.*

In which case, it appears that the Office of Water is proposing that the new advisory committee will be subject to the control of the Minister for Water but that the content of any advice or reports won't be. This is patently absurd: either the committee is independent or it isn't. It's unbelievable that a committee subject to the control and direction of the Minister, and therefore bound by government policy, would provide independent advice.

According to advice received in May 2011 from the NSW Minister for the Environment Robyn Parker¹⁰, the NSW Minister for Energy had been the Minister responsible for establishing the SSC in his role as the Minister administering the NSW Snowy Hydro Corporatisation Act. Since then the situation appears to have changed, as the Discussion Paper identifies the Minister for Primary Industries and the Minister for Regional Infrastructure and Services as now responsible for the administration of s57 of the Act. Gippsland Environment Group recommends instead that it would be much more appropriate for the Minister for Environment to be the Minister responsible for administering s57 and thus for establishing the Snowy Scientific Committee.

In conclusion:

The Minister for Primary Industries Katrina Hodgkinson stated in her media release (26 Feb 2013) that the discussion paper is an opportunity to "look back and see what has worked and what can be improved."

What has clearly worked was the independent Snowy Scientific Committee's provision of independent scientific advice to the NSW Government and the public. During its three year

⁹ When Snowy River Alliance raised concerns about Snowy Hydro Ltd's failure to deliver environmental flows to the upper Snowy River according to the schedule in their Water Licence the company threatened to take legal action. (Monaro Post 21.9.2011)

¹⁰ NSW Minister for Environment Robyn Parker to Snowy River Alliance letter dated 23 May 2011.

term, under very difficult circumstances¹¹, it produced a series of invaluable reports on the adequacy of environmental flows released to the Snowy River below Jindabyne Dam and to the upper Murrumbidgee River below Tantangara Dam; a discussion paper on the effect of the Mowamba Borrowings Account on the restoration of the Snowy River; and annual recommendations on the release regime for environmental flows to the Snowy below Jindabyne and the Upper Murrumbidgee below Tantangara.

What didn't work was the NSW Government's continued obstruction and lack of financial and other support for the Snowy Scientific Committee. The Minister for Primary Industries Katrina Hodgkinson stated in her media release (26 Feb 2013) that the "old Snowy Scientific Committee will be re-structured". Notwithstanding that the SSC never had a chance to actually get *old*, being established for only three years, this statement pre-empts any community or other feedback in support of retaining the SSC as legislated, that the Office of Water may receive in response to the Discussion Paper proposal, and appears to confirm that the NSW Government's intention is to abolish the SSC once and for all. This is shameful state of affairs.

It is incumbent therefore upon the three shareholder governments of Snowy Hydro Ltd as joint signatories to the Snowy River Heads of Agreement (2000) and Snowy Water Inquiry Outcomes Implementation Deed (2002) that they ensure that an independent SSC is immediately re-established¹² and fully supported and resourced to enable it to fulfil all its responsibilities as required under the current NSW Snowy Hydro Corporatisation Act. The SSC must be re-established and remain an independent statutory corporation as constituted under s57 of the Act. Furthermore we recommend that the SSC should report to the NSW Minister for the Environment rather than the Minister for Primary Industries. The Snowy River Monitoring and Modelling Project should be re-established to continue its vital role in environmental flow data collection and analysis which underpins the adaptive management and planning for environmental flow releases to rivers of the Snowy Scheme. Finally, the Office of Water's Snowy Technical Advisory Group should become a scientific resource for the independent Snowy Scientific Committee rather than sidelining the SSC as appears to have been the case.

The Office of Water proposal to replace the SSC with a new Snowy advisory committee which will have strictly limited responsibilities, be subject to Ministerial (Primary Industries) control, and funded by Snowy Hydro Ltd is completely unacceptable. It will abolish the only independent scientific body advocating on behalf of the environmental health of the beleaguered rivers and catchments of the Snowy Scheme, and therefore must be rejected.

Yours sincerely

Louise Crisp
Secretary,
Gippsland Environment Group Inc.

¹¹ Lack of adequate funding, limited access to Office of Water data and reports, lack of government feedback, lack of government support, to such an extent that even the SSC website relied on an anonymous donor and volunteer management and is now defunct etc, etc.

¹² Nominations to the SSC for its second term were in fact confirmed by NSW in Dec 2011 (Minister for Environment Robyn Parker to Snowy River Alliance letter dated 11 Dec 2011); and by Victoria in early March 2012, Tim Bull MP East Gippsland to Snowy River Alliance pers.com 9 May 2012.