

21 April 2023

The Hon. Troy Grant  
Inspector-General of Water Compliance  
Department of Climate Change, Energy, the Environment and Water  
GPO Box 3090  
Canberra ACT 2601

**By email:** [igwc@agriculture.gov.au](mailto:igwc@agriculture.gov.au)

Dear Mr Grant,

## **Regulatory Policy Discussion Paper**

Snowy Hydro Limited welcomes the opportunity to comment on the Inspector-General of Water Compliance Regulatory Policy Discussion Paper.

### **1) About the Snowy Hydro Group**

Snowy Hydro Limited (**SHL**) is a producer, supplier, trader and retailer of energy in the National Electricity Market (**NEM**) and a leading provider of risk management financial hedge contracts. We are an integrated energy company with more than 5,500 megawatts of generating capacity. We are one of Australia's largest renewable generators, the third largest generator by capacity and the fourth largest retailer in the NEM through its award-winning retail energy companies - Red Energy and Lumo Energy. Collectively, they retail gas and electricity in South Australia, Victoria, New South Wales, Queensland and the ACT to over 1.2 million customers.

SHL owns and operates the Snowy Mountains Scheme. The Scheme diverts the headwaters of the Snowy, Eucumbene and Murrumbidgee Rivers westward through the Great Dividing Range, releasing water into the Murray and Murrumbidgee Rivers and supporting agriculture in NSW, Victoria and South Australia.

The diversion of water for irrigation is a key purpose of the Scheme, with electricity generation a core by-product. The Snowy Scheme can not release water without generating electricity, nor can it generate electricity without releasing water - the two are intrinsically linked. SHL does not own the water in the scheme or generate any revenue from water regulation services provided to the broader water industry.

SHL's water operations are primarily regulated by the [Snowy Water Licence](#) (the **Licence**), issued by the New South Wales Government. The Licence requires SHL to:

- target water releases in respect of the River Murray and Murrumbidgee River catchments, the annual volumes of which are determined according to highly prescriptive formulae; and
- target water releases in respect of Jindabyne Dam into the Snowy River for environmental purposes (**Snowy River Increased Flows**); and
- facilitate additional natural flows to nominated rivers for environmental purposes (**Snowy Montane Rivers Increased Flows**).

The Licence also gives SHL the right to capture, divert, store, and release water to generate hydro-electricity. SHL operates the Scheme to first meet its water release obligations and then to maximise electricity market opportunities within the constraints imposed by the Licence.

## **2) Submission: Overview**

As a company operating within the energy market, but with such an intrinsic link to water resources in the Murray-Darling Basin, SHL occupies a unique role in the Inspector-General's remit.

SHL only became a Commonwealth agency for the purpose of the *Water Act 2007* (Cth) (the **Act**) in 2018 when the Commonwealth Government became the sole shareholder of the company. Prior to that, SHL was an agency of a State, but with specific exclusions applied. The transaction of company shares was not intended to cause or result in any changes to the arrangement on water issues relating to SHL and the Snowy Scheme. It is therefore important to clarify SHL's role in the Act and the Basin Plan 2012 (the **Plan**).

Table 1 of the discussion paper identifies SHL as a regulated Commonwealth agency under the Act, and lists the company's primary roles as:

- Environmental water management;
- Wholesale water delivery; and
- Water infrastructure operations.

The text that follows Table 1 on page 7 of the discussion paper notes *"in general, the Inspector-General monitors and oversees the following to determine whether they have acted in a way that is lawful and effective...Snowy Hydro Limited's compliance with the Plan and the water trading rules."*

SHL proposes an alternate view on:

- its role within the Act and the Plan; and
- the corresponding monitoring and oversight functions for the Inspector General,


More specifically SHL respectfully submits that:

- **(Section 2A)** its primary role in the context of the Act and the Plan is solely *"water infrastructure operations"*, not environmental water management or wholesale water delivery; and
- **(Section 2B)** any monitoring and oversight should be by reference to the Licence alone, which gives voice to the Act and the Plan, (rather than separately under the Plan as distinct from the Licence), and should not refer to water trading rules.

Details relating to each of these matters are set out below.

### **2A) Submission: SHL's role is solely in respect of water infrastructure operations**

As outlined in Section 1 of this submission, SHL's operations are primarily focussed on meeting the water release requirements of the Licence to support the operation of its



energy business. The Licence was developed under the *Snowy Hydro Corporatisation Act 1997* (NSW) to codify the operation of the Snowy Mountains Scheme, conferring rights and imposing obligations on SHL as the licensee.

Similarly, the Plan imposes obligations on the Murray-Darling Basin Authority (the **Authority**), but importantly, not SHL. In relation to Basin water resource management, the Act defines the obligations of Basin States and the Authority in managing the shared resource.

Accordingly, provided SHL maintains compliance with the Licence, the objectives of the Act will be met.


In relation to environmental water management, environmental releases from the Snowy Scheme are made under the Snowy River, Snowy Montane River and River Murray Increased Flow Programs (**SRIF**, **SMRIF** and **RMIF** respectively). Environmental water management for each of these programs is either the responsibility of the Basin States (**SRIF** and **SMRIF**) or shared between the Basin States and the Authority (**RMIF**), not SHL. SHL's role in relation to SRIF and SMRIF is to deliver water as directed from locations and in volumes determined by NSW. SHL's role in relation to RMIF is to release water when called out by NSW. SHL also has to monitor and keep a record of the volumes of water released. All of these obligations on SHL are required by the Licence, not the Plan or the Act.

In relation to wholesale water delivery, the Licence requires SHL to make Required Annual Releases (**RAR**) that form part of the shared water resource in the Murray and Murrumbidgee Valleys. RAR releases are made throughout the year at times to meet energy demands in the NEM. Hume Dam on the River Murray and Blowering Dam on Tumut River were designed to re-regulate RAR to meet downstream water demands. Under the Act and the Plan, it is incumbent on the Authority and Basin States, not SHL, to manage water delivery within the Basin. SHL's water release requirements are an obligation of the Licence, not the Plan or the Act.

In relation to water infrastructure operations, SHL acknowledges that it meets the definition of an infrastructure operator in Section 7(1) of the Act, but notes that the river flow control works, which cover the entirety of the Snowy Scheme, are specifically excluded in Section 8(2)(a) of the Act. A number of clauses in the act relating to infrastructure operators deal with charges owing to infrastructure operators. SHL does not charge any fees under Schedule 2 Part 3 of the Act for the water storage and delivery services the Scheme provides. The majority of remaining references to infrastructure operators in the Act relate to doing, or failing to do, an act in relation to water resources that is inconsistent with the Plan or the Act. Again, provided SHL maintains compliance with the Licence, the three legal instruments work in harmony and the objects of the Act will be met.

## **2B) Submission: Effective monitoring and oversight of SHL's operations have already been captured in its Licence**

The Act, the Plan and the Licence all work together to ensure SHL operates the Snowy Scheme to integrate with the broader water management frameworks defined in the Act and the Plan, while allowing the company to operate as an energy business with continuing obligations, particularly in relation to the release of water.



As already detailed in this submission, SHL's water operations are primarily regulated by the Licence, which contains rigorous compliance requirements that are regulated by NSW.

The Act, particularly through Part XIV and Schedule F, details the broader effects of the Snowy Scheme on water management. It sets out the obligations on the Authority and other Commonwealth and Basin States to be consistent with the Licence and makes arrangements for the sharing of water released from the Snowy Scheme. When published, the Act did not impose any specific obligations on SHL, because those obligations were already imposed on SHL through the Licence.

Specific references to SHL in the Plan relate to the Plan not being inconsistent with the Licence, and require processes for the Authority to operate consistent with the Licence. The Plan does not impose any specific obligations solely on SHL.

SHL is not involved in water trading, and not aware of any relevant activity that would lead to a need for monitoring or oversight. Given SHL's role as an energy company and not a water authority, SHL is often required to operate at arms length from the other Commonwealth and Basin State agencies.

As a Commonwealth agency, and an infrastructure operator, SHL maintains that it demonstrates compliance with the Act through compliance with the Licence and that additional regulation is unnecessary and administratively burdensome. The role of the Inspector-General through this lens would be a narrow scope of understanding and oversight as opposed to regulation and enforcement. To the extent SHL features in the Inspector-General's regulatory policy, SHL welcomes the opportunity to engage with the Inspector-General to provide further details on the operation of the Snowy Scheme, existing compliance requirements, monitoring and findings.

### **3) Response to specific requests for feedback**

- *Noting the collective responsibility for the management of Basin water resources, is it clear from the above the focus of the Inspector-General's roles and responsibilities?*

**SHL Response:** Yes

- *Are the principles above appropriate to inform the Inspector-General's Regulatory Policy?*

**SHL Response:** Yes

- *Noting the complexity of governance arrangements associated with the management of Basin water resources, what, if anything, would aid in clarifying those governance arrangements? Further, is it clear the unique role performed by the Inspector-General within and to support those arrangements?*

**SHL Response:** As a rather unique Commonwealth Agency, SHL look forward to reviewing the draft regulatory policy to further understand the Inspector-General's intended governance arrangements for the company and would seek to minimise any duplication with existing regulatory and governance requirements.



- *For government agencies, the Inspector-General welcomes insights into how to characterise your various roles to ensure his regulatory policy will be relevant despite differences in individual government arrangements. The Inspector-General is also seeking feedback on whether the above provides sufficient clarity around his regulation of relevant government agencies under the Act*

**SHL Response:** SHL expects this submission will provide the Inspector-General with a good background of the company's interaction with the Basin. SHL welcomes the opportunity to engage with the Inspector-General to provide further details on the operation of the Snowy Scheme, existing compliance requirements and monitoring.

- *Noting the range of objectives of the Act, is it clear how these relate to the Inspector-General's roles and responsibilities?*

**SHL Response:** Yes, noting specific feedback in Section 2 of this submission on the current framing of SHL's interactions with the Act and the Plan

- *Is the Inspector-General's interpretation of this objectives appropriate?*

**SHL Response:** Yes

- *The Inspector-General is requesting feedback on the clarity of the Act and its enabled legislation and, relevantly, how this informs the Inspector-General's roles and responsibilities*

**SHL Response:** The Act and enabled legislation appear fit for purpose. However, SHL notes its concerns in respect of the ambit of this discussion paper and reiterates its concerns in Section 2 of this Submission that the Plan's application to SHL is unnecessary noting the manner in which the Licence operates and applies to SHL.

- *The Inspector-General is requesting feedback on whether his role in the management of Basin water resources is clear from the above. Relevantly, are there any gaps that should be considered in the development of his regulatory policy?*

**SHL Response:** No specific feedback on this request

- *The Inspector-General is requesting feedback on what, if anything, stakeholders consider in addition to the above could usefully be clarified around his functions as part of developing his regulatory policy?*

**SHL Response:** No specific feedback

- *The Inspector-General is requesting feedback on what, if anything, stakeholders consider in addition to the above could usefully be clarified around his regulatory powers as part of developing his regulatory policy?*

**SHL Response:** No specific feedback

- *The Inspector-General is requesting feedback on what, if anything, stakeholders consider in addition to the above could usefully be clarified around the principles guiding his regulatory approach as part of developing his regulatory policy?*

**SHL Response:** No specific feedback



Snowy Hydro appreciates the opportunity to respond to the Inspector-General of Water Compliance Regulatory Policy Discussion Paper. Any questions about this submission should be addressed to [james.pirozzi@snowyhydro.com.au](mailto:james.pirozzi@snowyhydro.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Pirozzi', with a stylized flourish at the end.

James Pirozzi  
Manager Water

