

[Act 1997 No 99]



New South Wales

# Snowy Hydro Corporatisation Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The object of this Bill is to reform the Snowy Mountains Hydro-electric Scheme by corporatising the Snowy Mountains Hydro-electric Authority and making related changes to the Scheme.

At present the Scheme is regulated by agreements between the Commonwealth, New South Wales and Victoria and by complementary legislation of the three jurisdictions which constitutes the Snowy Mountains Hydro-electric Authority to operate the Scheme and which constitutes a Snowy Mountains Council appointed by the Ministers to control the Scheme.

The principal purposes of the reforms are as follows:

- (a) to create a financially viable entity (Snowy Hydro Limited) to operate on a competitively neutral basis and participate effectively in the emerging national electricity market,

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\* Amended in committee—see table at end of volume

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- (b) to replace the existing rights of the Commonwealth, New South Wales and Victoria in the Scheme (including electricity entitlements) with an initial issue of equity in Snowy Hydro Limited, as follows:
- Commonwealth 13%
  - New South Wales 58%
  - Victoria 29%
- (c) to enable the environmental, planning and other laws of New South Wales to be applied to the operations of the Scheme,
- (d) to facilitate the refinancing and repayment of the debt to the Commonwealth under the Scheme,
- (e) to provide, before Corporatisation takes effect, for the establishment of a public water inquiry with respect to environmental issues arising from current water flows in the Scheme and the implementation of the outcomes of that inquiry agreed by New South Wales and Victoria.

The reforms have been agreed to between the Commonwealth, New South Wales and Victoria and will require further detailed agreements to implement them. A copy of principles agreed to as at 1 May 1997 to guide the Corporatisation process is set out in Annexure A to this explanatory note.

The Commonwealth and Victorian Corporatisation Acts will mirror the provisions of the proposed Act (other than the regulatory provisions of Parts 4–7).

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the object of the proposed Act. The clause declares that it is the intention of Parliament that the proposed Act will operate concurrently with the proposed Commonwealth and Victorian Corporatisation Acts and will have effect only to the extent that it is within the legislative power of Parliament.

**Clause 4** defines certain words and expressions used in the proposed Act.

The *Company* is Snowy Hydro Limited, a company to be incorporated in NSW. The *corporatisation date* is a date agreed between the Commonwealth and the States of NSW and Victoria on which the repeal of the existing Commonwealth legislation is proclaimed. The *Snowy water catchment* is defined as the area within designated water catchments in the Snowy Mountains area and as shown on a map tabled with this Bill.

## **Part 2     Snowy Hydro Company**

**Clause 5** authorises NSW to acquire, hold, dispose of and deal with shares in the Company. The initial shares of NSW, the Commonwealth and Victoria will be issued in consideration for the transfer of the existing Snowy hydro undertaking to the Company.

**Clause 6** provides that shares acquired by NSW will be held by Ministers of the State.

**Clause 7** refers to the Commonwealth Parliament the necessary legislative power to hold shares in the Company.

**Clause 8** ensures that the Company and its subsidiaries are not agencies of the State of NSW or public authorities.

**Clause 9** requires the Company to pay to NSW tax-equivalent payments while exempt from Commonwealth income and other tax. Victoria is to be paid a proportion of those payments equivalent to the proportion of shares it holds in the Company, for so long as it continues to hold shares in the Company.

**Clause 10** provides that the liabilities of the Company and its subsidiaries are not guaranteed by NSW, but enables NSW to guarantee obligations of the Company at the corporatisation date with respect to the Commonwealth debt acquired by the Company.

## **Part 3     Transfers**

**Clause 11** transfers to the Company all the existing assets and liabilities of the Snowy Mountains Hydro-electric Authority. The liabilities transferred will include the Commonwealth debt, which is to be determined under the proposed Commonwealth Corporatisation Act with the agreement of NSW and Victoria. The assets and liabilities will not include those relating to the electricity transmission undertaking, which is to be transferred to TransGrid.

**Clause 12** enables the relevant Ministers to transfer to the Company assets and liabilities of the participating Governments relating to the Scheme (including those relating to the trading of electricity generated by the Scheme). Freehold title to land in the Kosciuszko National Park cannot be transferred, but the ownership of works can be transferred even if they are fixtures.

**Clause 13** enables NSW to enter into an agreement with the Commonwealth and Victoria relating to the Commonwealth debt.

**Clause 14** enables the relevant Ministers to transfer to TransGrid any assets and liabilities of the existing Authority or the participating Governments relating to the electricity transmission undertaking of the Scheme.

**Clause 15** provides for the transfer to the Company of the staff of the existing Authority.

**Clause 16** provides for the transfer to the Company of certain Pacific Power staff seconded to the existing Authority or working on the Scheme or in connection with the trading of electricity generated by the Scheme.

**Clause 17** provides for future variations in the terms and conditions of transferred employees.

**Clause 18** provides legislative support for transitional provisions of the Commonwealth Corporatisation Act relating to the existing rights and benefits of employees of the existing Authority who are transferred to the Company.

#### **Part 4 Water inquiry**

**Clause 19** designates the area of inquiry for the purposes of the water inquiry, namely the Snowy water catchment, the Snowy River and other rivers and streams flowing from the catchment to Lake Hume, Blowering Reservoir or Burrinjuck Reservoir.

**Clause 20** requires a public water inquiry to be held by NSW (in conjunction with Victoria) with respect to environmental issues arising from the current pattern of water flows in the designated area caused by the operation of the Scheme. The inquiry is to report on options for dealing with those issues and the environmental, economic, agricultural and other impacts of those options.

**Clause 21** requires the final report of the inquiry to be made within 6 months or other agreed period and places a duty on the Minister to reach agreement with Victoria on the outcomes of the inquiry within 2 months or other agreed period.

## **Part 5     Snowy water licence**

**Clause 22** gives the Company an entitlement to be issued with a Snowy water licence by the Water Administration Ministerial Corporation on the Corporatisation date.

**Clause 23** sets out the rights and obligations to be conferred by the licence. Generally speaking, the Company is to be given the right to collect, divert, store and use (for electricity generation and related purposes) water in the Snowy water catchment. The Company will be obliged to release all the water stored (with certain minor exceptions) in accordance with arrangements made by the licence, including arrangements made for drought and other emergencies and for environmental reasons (such as increasing water flows in the Snowy River and other rivers in the Snowy Mountains area).

**Clause 24** provides that the term of the Snowy water licence is to be 75 years with an option for the Company to renew for another 50 years.

**Clause 25** provides for such a renewal of the licence and provides that any further renewal must be authorised by Act of Parliament.

**Clause 26** requires a review of the Snowy water licence by the Ministerial Corporation in accordance with the terms of the licence.

**Clause 27** authorises the variation of the Snowy water licence by the Ministerial Corporation in certain specified circumstances.

**Clause 28** authorises the revocation of the Snowy water licence by the Ministerial Corporation for certain breaches of the licence.

**Clause 29** enables the Snowy water licence to be transferred by the Ministerial Corporation to another body.

**Clause 30** enables NSW to enter into an agreement to compensate the Company for action taken by the Ministerial Corporation or NSW that causes an adverse financial impact on the Company.

**Clause 31** provides for the payment of fees and charges (but not taxes) by the Company during the term of the Snowy water licence.

**Clause 32** preserves the rights of local water extraction from the Scheme as authorised by the Ministerial Corporation. Existing extractors will not be obliged to pay the Company for water extracted (up to a total net amount for all existing extractors of 3 gegalitres).

**Clause 33** gives the Ministerial Corporation rights of entry to and inspection of the Company's works to investigate compliance with the Snowy water licence.

**Clause 34** makes it an offence for the Company to contravene the Snowy water licence. The clause imposes an increased maximum penalty of \$1 million (together with a daily penalty of \$100,000) if the contravention was intentional or reckless and caused or was likely to cause harm to the environment. The maximum penalty for a director or other person who knowingly authorised or permitted the contravention will be \$250,000 or 2 years imprisonment or both.

**Clause 35** enables the court, on conviction of the Company of such an offence, to make orders to control or make good any resulting harm to the environment or to pay the costs incurred by others in doing so.

## **Part 6 Snowy park leases**

**Clause 36** defines the relevant national park legislation.

**Clause 37** provides for the grant of leases, licences and other rights over the Kosciuszko National Park for the purposes of, or in connection with, the existing Scheme works and future related works of the Company. The Company will be entitled to a grant over any part of the Park for its existing Scheme works (the Snowy park lease). The term of the Snowy park lease is to be 75 years with an option for the Company to renew for another 50 years. The Snowy park lease must make provision for public access to those stored waters previously available for public recreation.

**Clause 38** provides for the plan of management for the Kosciuszko National Park to impose obligations on the activities of the Company in the Park. Regulations may be made under the proposed Act to enforce those obligations, including by imposing criminal or civil liability for a breach.

**Clause 39** provides for the grant of leases, licences and other rights over the Kosciuszko National Park for the purposes of enabling TransGrid to operate an electricity transmission system from the generating works of the Scheme.

## **Part 7 Application of planning and other laws**

**Clause 40** enables the Governor by proclamation to declare the works, activities and other things connected with the Scheme to be the existing Scheme development.

**Clause 41** provides for the application of the *Environmental Planning and Assessment Act 1979 (the EPA Act)* to the existing Scheme development. The development has been exempt from the application of that Act before Corporatisation. Initial approvals for the existing Scheme development may be granted by a determining authority without compliance with Part 5 of the EPA Act. The Company is to be taken to have development consent for any part of the existing Scheme development that requires development consent under Part 4 of that Act.

**Clause 42** exempts the existing Scheme development from any requirement for approval under the *Local Government Act 1993* and from any water classification restriction that would prevent the issue of a licence under the *Pollution Control Act 1970*.

## **Part 8      Miscellaneous**

**Clause 43** provides that the proposed Act binds the Crown.

**Clause 44** enables NSW to enter into an agreement with the Commonwealth and Victoria for sharing land tax payable by the Company while they are shareholders in the Company.

**Clause 45** authorises the Minister to execute agreements on behalf of NSW for the purposes of the proposed Act.

**Clause 46** exempts from NSW taxation matters related to the Corporatisation of the existing Authority.

**Clause 47** gives an exemption from certain provisions of the *Corporations Law* in connection with the Corporatisation of the existing Authority.

**Clause 48** requires the annual financial and other reports of the Company that are required to be provided to the annual general meeting of the Company to be tabled in Parliament.

**Clause 49** authorises the making of regulations under the proposed Act.

**Clause 50** makes directors and other persons concerned in the management of a corporation guilty of an offence if they knowingly permit or authorise the commission of an offence by the corporation against the proposed Act.

**Clause 51** provides for the summary disposal of proceedings for offences against the proposed Act and regulations and for the time within which those offences may be instituted.

**Clause 52** repeals existing NSW Acts relating to the Scheme set out in Schedule 2.

**Clause 53** terminates the existing Government agreements relating to the Scheme.

**Clause 54** abolishes the Snowy Mountains Hydro-electric Authority and the Snowy Mountains Council.

**Clause 55** amends the Acts specified in Schedule 3 in the manner set out in that Schedule.

**Clause 56** gives effect to the Schedule of savings and transitional provisions.

**Schedule 1** contains provisions relating to the transfer of assets and liabilities under the proposed Act.

**Schedule 2** repeals existing NSW legislation relating to the Scheme (including legislation relating to the construction and operation of Blowering Dam).

**Schedule 3** amends the *National Parks and Wildlife Act 1974* and the *Water Administration Act 1986* to make consequential amendments.

**Schedule 4** contains savings, transitional and other provisions.

## **Annexure A Corporatisation principles**

### **1 Introduction**

- 1.1 Corporatisation of the Snowy Mountains Hydro-electric Authority (“SMHEA”) and related aspects of the Snowy Mountains Hydro-electric Scheme (collectively the “Scheme”) by the Commonwealth, New South Wales and Victoria is a significant national micro-economic reform initiative and is being undertaken in accordance with Council of Australian Governments commitments.
- 1.2 Corporatisation is being implemented to create a financially viable corporatised entity (“Snowy Hydro”) to operate on a competitively neutral basis and which is able to effectively participate in the emerging national electricity market (“NEM”).
- 1.3 Corporatisation will bring Snowy Hydro under New South Wales laws generally, including the New South Wales environmental, planning and water regulatory frameworks. Amongst other things, it will also facilitate substantial Commonwealth debt to be refinanced and repaid.



## **2 Purpose**

- 2.1 The Scheme is to be corporatised by the Commonwealth, New South Wales and Victoria in accordance with these principles.
- 2.2 The Governments will take all actions reasonably necessary, including the introduction of legislation and the completion of various contractual arrangements, to corporatise the Scheme in accordance with these principles.

## **3 Corporate**

- 3.1 The Scheme is to be corporatised through the establishment of a company limited by shares under the *Corporations Law*.
- 3.2 The principal purposes of Snowy Hydro are to include:
  - (1) participation on a commercial basis in the emerging NEM as an independent electricity generator,
  - (2) participation on a commercial basis in any future developments and operations approved by its Board, and
  - (3) meeting appropriate water arrangements.
- 3.3 Upon or following Corporatisation:
  - (1) SMHEA and the Snowy Mountains Council will be dissolved,
  - (2) the legislation and associated agreements will be repealed, amended or terminated, and
  - (3) each of the Governments' existing rights in relation to the Scheme (including electricity entitlements) will be extinguished in consideration of the issue of equity in Snowy Hydro.
- 3.4 Equity in Snowy Hydro will be held:

(1) Commonwealth	13%,
(2) Victoria	29%,
(3) New South Wales	58%.
- 3.5 As between Government equity holders:
  - (1) shareholder voting rights are to be equal unless otherwise agreed, and
  - (2) unanimous resolutions will be required on agreed major matters.
- 3.6 The initial board of directors of Snowy Hydro, including its Chairman, will be appointed by the unanimous agreement of the Governments.
- 3.7 The Chief Executive Officer will be appointed by the Board and will be a director.
- 3.8 Board decisions will be based on a simple majority vote with each director having one vote and the Chairman a casting vote.

#### **4 Transfer of business undertaking**

- 4.1 Upon Corporatisation the existing business undertaking (assets, rights and liabilities) of the Scheme will be transferred to Snowy Hydro apart from those assets, rights and liabilities comprising the transmission undertaking.
- 4.2 In addition, at Corporatisation the business undertakings of the States' respective Snowy traders (being separate business divisions of Pacific Power and the State Electricity Commission of Victoria respectively) and Snowy Hydro Trading Pty Ltd ACN 076 841 686 (including all vesting, hedging and other contracts entered into by such parties and which relate to the sale of energy produced by the Scheme) will be transferred on an agreed basis to Snowy Hydro.
- 4.3 The transmission undertaking will be transferred to TransGrid at an agreed fair market value. Thereafter, that undertaking will be operated on an open access basis and in accordance with usual regulatory arrangements for comparable assets in New South Wales.

#### **5 Debt**

- 5.1 At Corporatisation Snowy Hydro will assume debt equivalent to the market value of SMHEA's agreed debt to the Commonwealth at Corporatisation together with the market value of inscribed stock issued by SMHEA which will be novated to the Commonwealth at corporatisation (collectively the "Interim Loan").
- 5.2 The Interim Loan will be for a term of six months or as otherwise agreed and will contain usual commercial terms and conditions.
- 5.3 The Interim Loan will be secured by Snowy Hydro and the States.
- 5.4 The full amount of the Interim Loan will be refinanced and repaid to the Commonwealth as soon as practicable following Corporatisation on usual commercial terms and conditions. If the full amount is unable to be refinanced on reasonable commercial terms and conditions, the shareholder Governments will inject equity into Snowy Hydro to enable the company to refinance and repay the full Interim Loan to the Commonwealth.

## **6 Water rights**

- 6.1 Water will not be an asset of Snowy Hydro. The existing rights of the Scheme with respect to water will be continued under a licence granted by the appropriate NSW water authority (“Water Licence”).
- 6.2 The Water Licence will:
- (1) be in respect of an agreed geographical area (“Area”),
  - (2) specify Snowy Hydro’s right to use, collect, divert, store and release water,
  - (3) provide that Snowy Hydro’s water rights are subject to the rights of certain water users to extract up to a total of 3 gigalitres per annum from within the Area,
  - (4) be for an initial term of 75 years with a 50 year renewal option,
  - (5) only be revoked or terminated following agreed defaults by Snowy Hydro, and
  - (6) be capable of amendment by the appropriate NSW water authority through an agreed process. Financial consideration will be provided to Snowy Hydro by NSW if such amendments have an adverse material financial impact on the company.
- 6.3 Apart from fees under the Water Licence (to be calculated in accordance with principle 9.3 below), no other charges will be imposed on Snowy Hydro in relation to water.

## **7 Water releases**

- 7.1 The Water Licence will set out Snowy Hydro’s water release obligations.
- 7.2 Unless otherwise agreed, those water release obligations will be consistent with the existing arrangements governing the Scheme. In any case they will:
- (1) protect Victoria’s existing right to a share of inflows into the Scheme,
  - (2) protect South Australia’s existing rights,
  - (3) prescribe minimum release volumes in times of drought,
  - (4) provide for variations in releases in emergency situations,
  - (5) include provisions for consultation between Snowy Hydro and the relevant water authorities,
  - (6) include requirements for the development by Snowy Hydro of annual water operating plans in consultation with the appropriate NSW water authority, and
  - (7) provide for the outcomes of the Water Inquiry.

- 7.3 With respect to releases referred to in principles 7.2 (3) and 7.2 (4), no financial consideration will be payable to Snowy Hydro.

## **8 Water inquiry**

- 8.1 Prior to proclamation in full of any corporatisation legislation the States will sponsor a public inquiry into environmental issues arising out of the current pattern of water flows caused by the operation of the Scheme in accordance with agreed terms of reference (“Water Inquiry”).
- 8.2 The inquiry will submit to the States comprehensive, costed options to address the issues considered by the inquiry within six months of its commencement. Thereafter, the States will consider the final report of the inquiry and agree upon a final outcome within 2 months or such other time as may be agreed by them.

## **9 Regulatory framework**

- 9.1 To the maximum extent possible, Snowy Hydro is to operate under a competitively neutral regulatory framework as it applies to other relevant participants in the electricity and water industries.
- 9.2 In particular, Snowy Hydro is to operate under the NSW environmental and planning regulatory framework with due recognition being given to the fact that that regulatory framework has not been applied to the SMHEA from the time of the construction of the Scheme.
- 9.3 All charges incurred in connection with the KNP Lease and the Water Licence will be calculated so as to recoup only the reasonable costs of issuing and administering that lease and licence.

## **10 Employees**

- 10.1 Employees working on the Scheme will be transferred to Snowy Hydro upon corporatisation on substantially the same terms and conditions as their current employment.

## **11 Kosciuszko National Park Occupation**

- 11.1 Snowy Hydro will occupy areas within the Kosciuszko National Park under a lease (and associated licences) granted by NSW (“KNP Lease”).
- 11.2 The KNP Lease will:
- (1) be for an initial term of 75 years with a renewal option of 50 years,
  - (2) provide for occupation on a competitively neutral basis,

- (3) recognise the long term nature of Snowy Hydro assets within the Park, and
- (4) contain limited termination rights and appropriate arrangements on termination.

## **12 Taxation**

- 12.1 Snowy Hydro will not be exempt from Commonwealth, State and local government taxes and charges, which will be applied on a competitively neutral basis.
- 12.2 The Commonwealth will compensate the States in proportion to their shareholding through a rebate or any other agreed mechanism of any Commonwealth income tax and wholesale sales tax paid by Snowy Hydro.
- 12.3 NSW will compensate the Commonwealth and Victoria in proportion to their shareholding through a rebate for any land tax paid by Snowy Hydro.

## **13 Alternative dispute resolution**

Any disputes between a Government and Snowy Hydro will be resolved where possible through alternative dispute resolution mechanisms.