

# Snowy Hydro Corporatisation Act 1997 No 99

[1997-99]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Snowy Hydro Corporatisation Act 1997 No 99



New South Wales

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# Snowy Hydro Corporatisation Act 1997 No 99



New South Wales

An Act to reform the Snowy Mountains Hydro-electric Scheme by corporatising the Snowy Mountains Hydro-electric Authority and making related changes to the Scheme; to repeal and amend various Acts consequentially; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Snowy Hydro Corporatisation Act 1997*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Despite subsection (1), sections 11, 12 and 15–18, Parts 5–7, sections 52–55 and Schedules 2 and 3 cannot be commenced unless—
  - (a) the States of New South Wales and Victoria enter into an agreement after the final report of the water inquiry under Part 4 on the outcomes of the inquiry (as referred to in section 21), and
  - (b) the agreement is not disapproved by either House of Parliament within 10 sitting days after the tabling of a copy of the agreement in that House by the Minister or, if so disapproved, a subsequent such agreement (being an agreement that either replaces or varies the disapproved agreement) is not disapproved by either House of Parliament within 10 sitting days after the tabling of a copy of the subsequent agreement in that House by the Minister.
- (3) For the purposes of subsection (2)—
  - (a) an agreement is taken not to have been so disapproved by a House of Parliament if that House passes a resolution, before the end of the relevant period of 10 sitting days, that it does not propose to disapprove the agreement, and
  - (b) further subsequent agreements may be entered into and tabled if an earlier subsequent agreement is disapproved.

### 3 Object of Act

- (1) The object of this Act is to reform the Snowy Mountains Hydro-electric Scheme by corporatising the Snowy Mountains Hydro-electric Authority and making related changes to the Scheme.
- (2) It is the intention of Parliament that this Act—
  - (a) is to operate concurrently with the Commonwealth and Victorian Corporatisation Acts, and
  - (b) is to have effect only to the extent to which it is within the legislative power of Parliament.

### 4 Definitions

- (1) In this Act—

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description, and includes—

- (a) money, securities, choses in action and documents, and
- (b) rights, powers, privileges and immunities (whether present or future and whether vested or contingent), except any immunity or privilege of the Crown in any capacity.

**Commonwealth** includes the Crown in right of the Commonwealth and the Government of the Commonwealth.

**Commonwealth Corporatisation Act** means the *Snowy Hydro Corporatisation Act 1997* of the Commonwealth.

**corporatisation date** means the date on which the *Snowy Mountains Hydro-electric Power Act 1949* of the Commonwealth is repealed by the Commonwealth Corporatisation Act.

**Editorial note—**

Corporatisation date: 28.6.2002. See Commonwealth Gazette No S 216 of 26.6.2002.

**existing Snowy electricity transmission undertaking** means the assets and liabilities of the Snowy Mountains Hydro-electric Authority, the Snowy Mountains Council, the Commonwealth, the State of New South Wales, the State of Victoria, or authorities of the Commonwealth or any such State, that are transferred to TransGrid by orders under this Act, the Commonwealth Corporatisation Act or the Victorian Corporatisation Act.

**existing Snowy hydro undertaking** means—

- (a) the assets and liabilities of the Snowy Mountains Hydro-electric Authority and the Snowy Mountains Council that are transferred to the Snowy Hydro Company by this Act or by the Commonwealth or Victorian Corporatisation Act, and
- (b) the assets and liabilities of the Commonwealth, the State of New South Wales, the State of Victoria, or authorities of the Commonwealth or any such State, that are transferred to the Snowy Hydro Company by orders under this Act, the Commonwealth Corporatisation Act or the Victorian Corporatisation Act.

**liabilities** means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

**share**, in relation to a company, means a share in the capital of the company.

**Snowy 2.0 project** means development described in clause 9 of Schedule 5 to [State Environmental Planning Policy \(State and Regional Development\) 2011](#), as in force on 1 September 2018, (referred to in that clause as the Snowy 2.0 and Transmission Project) that is approved to be carried out under the [Environmental Planning and Assessment Act 1979](#).

**Snowy Hydro Company** or **Company** means Snowy Hydro Limited.

**Snowy hydro-group company** means the Snowy Hydro Company or a subsidiary of that Company.

**Snowy Mountains Council** means the Snowy Mountains Council referred to in Part VIN of the agreement set out in Schedule 1 to the [Snowy Mountains Hydro-electric Power Act 1949](#) of the Commonwealth.

**Snowy Mountains Hydro-electric Authority** or **Authority** means the Snowy Mountains Hydro-electric Authority referred to in the [Snowy Mountains Hydro-electric Power Act 1949](#) of the Commonwealth.

**Snowy park lease** means the Snowy park lease referred to in Part 6.

**Snowy water catchment** means the area comprising the following, being the area shown on the Snowy water catchment map presented to the Speaker of the Legislative Assembly (by or on behalf of the Member of the Assembly who introduced the Bill for this Act) when the Bill was introduced into the Assembly, and also lodged in the Land Titles Office—

- (a) the catchment of the Swampy Plain River upstream of Khancoban Pondage and the course of that river 200 metres downstream of that pondage, and
- (b) the catchment of the Murrumbidgee River upstream of Tantangara Dam and the course of that river 200 metres downstream of that dam, and the Goodradigbee River catchment above the Goodradigbee River Aqueduct, and

- (c) the catchment of the Snowy River upstream of Jindabyne Dam and the course of the Snowy River 200 metres downstream of the Jindabyne Dam and the catchments of the Mowamba River and Cobbon Creek above the Mowamba River Aqueduct and the Cobbon Creek Aqueduct, and
- (d) the catchment of the Tumut River upstream of the Jounama Dam, and
- (e) the catchment of the Tooma River above the junction of the Tooma River and Sparkes Creek.

**Snowy water licence** means the licence issued to the Snowy Hydro Company under Part 5.

**State of New South Wales** includes the Crown in right of New South Wales and the Government of New South Wales.

**State of Victoria** includes the Crown in right of Victoria and the Government of Victoria.

**transferred employee** means a person who, under Division 3 of Part 3, is taken to have been engaged as an employee of the Snowy Hydro Company.

**TransGrid** means the energy transmission operator constituted by the [Energy Services Corporations Act 1995](#) with the corporate name of TransGrid (or, if that name is varied under that Act, the varied name).

**Victorian Corporatisation Act** means the *Snowy Hydro Corporatisation Act 1997* of Victoria.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) For the purposes of this Act, the question of whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined under the [Corporations Act 2001](#) of the Commonwealth.
- (3) Notes included in this Act do not form part of this Act.

## **Part 2 Snowy Hydro Company**

### **5 Shares in Company**

- (1) The State of New South Wales may acquire, hold, dispose of or deal with shares in the Snowy Hydro Company.
- (2) Shares in the Snowy Hydro Company held by the State of New South Wales, the Commonwealth and the State of Victoria, being the initial issue to them of all the



shares in the Company—

(a) are taken to have been fully paid up, and

(b) are taken to have been issued for valuable consideration, being the relevant percentage of the value of the existing Snowy hydro undertaking.

(3) For the purposes of this section—

(a) the value of the existing Snowy hydro undertaking is the value determined by agreement between the State of New South Wales, the Commonwealth and the State of Victoria, and

(b) the relevant percentage of the value of that existing undertaking is the percentage of all issued shares in the Snowy Hydro Company that are shares initially issued to the State of New South Wales, the Commonwealth or the State of Victoria (as the case requires).

#### **5A Disposal of shares in Company requires approval of Parliament**

(1) Shares in the Snowy Hydro Company held by the State of New South Wales must not be sold or otherwise disposed of unless the disposal is approved by resolution of each House of Parliament.

(2) However, no such approval is required for the sale or other disposal of shares to the Commonwealth of Australia at fair market value.

#### **6 Shares of State to be held by eligible Ministers**

(1) The shares in the Snowy Hydro Company acquired by the State of New South Wales are to be held by eligible Ministers.

(2) Those shareholders hold their shares in the Snowy Hydro Company for and on behalf of the State of New South Wales.

(3) A person ceases to be eligible to hold those shares in the Snowy Hydro Company on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).

(4) The Premier is empowered to execute a transfer of any of those shares, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister.

(5) In this section, **eligible Minister** means the Minister administering this Act and any other Minister for the time being nominated by the Premier as being eligible to hold shares in the Snowy Hydro Company.

## **7 Referral of power to the Parliament of Commonwealth**

- (1) The matter of the Commonwealth of Australia holding shares in the Snowy Hydro Company, to the extent to which it is not otherwise included in the legislative powers of the Parliament of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this section commences and ending on the day fixed under subsection (2) as the day on which the reference under this section terminates, but no longer.
- (2) The Governor may, at any time, fix by proclamation published on the NSW legislation website a day as the day on which the reference under this section terminates.
- (3) In this section, a reference to **holding shares** includes a reference to acquiring, disposing of or dealing with those shares.

## **8 Company and subsidiaries not agency of State etc**

- (1) A Snowy hydro-group company is not, and does not represent, the State of New South Wales.
- (2) Without limiting the generality of subsection (1), a Snowy hydro-group company—
  - (a) is not an instrumentality or agency of the State of New South Wales, and
  - (b) is not entitled to any immunity or privilege of the State of New South Wales, and
  - (c) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose or for a purpose of the State of New South Wales.
- (3) This section has effect subject to any express provision to the contrary made by any law of New South Wales.

## **9 Tax-equivalents**

- (1) The Snowy Hydro Company must from time to time pay to the Treasurer for payment into the Consolidated Fund such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the Snowy Hydro Company if it were liable to pay Commonwealth taxes.
- (2) If the State of Victoria holds shares in the Snowy Hydro Company during a period in respect of which payments are required to be made under this section, the Treasurer is required to pay to a Minister of that State such proportion of the payments made as is equal to the proportion of the shares in the Snowy Hydro Company that are held by that State during that period. Payments to the State of Victoria (including adjustments for payments in respect of a part of a financial year) are to be made in accordance with arrangements agreed between the Treasurer and a Minister of that State.

- (3) The Snowy Hydro Company is not required to make payments under this section to the extent that it is or becomes liable to pay any Commonwealth taxes.
- (4) Payments are to be made by the Snowy Hydro Company under this section on such terms as the Tax Assessor determines to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the Snowy Hydro Company were liable to pay corresponding Commonwealth taxes.
- (5) The Snowy Hydro Company and the Treasurer may enter into agreements regarding the amounts to be paid by the Company under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (4).
- (6) The determinations of the Tax Assessor under this section are to be made so as to give effect to any such agreements.
- (7) Any determination of the Tax Assessor under this section is final, and the Treasurer and the Snowy Hydro Company are required to make all the necessary payments and refunds to give effect to the determination.
- (8) The Premier may nominate any person to be the Tax Assessor for the Snowy Hydro Company, and may revoke any such nomination. A nomination under this subsection may only be made with the approval of a Minister of the State of Victoria if it is made at a time when that State holds shares in the Company.
- (9) This section applies to the subsidiaries of the Snowy Hydro Company in the same way as it applies to the Snowy Hydro Company, and (where relevant) applies to the Snowy Hydro Company and its subsidiaries as a group.
- (10) Any liability under this section to make payments to the State of Victoria is to be met out of the Consolidated Fund, which is appropriated accordingly.
- (11) Amounts required to be paid under this section by the Snowy Hydro Company, or its subsidiaries, are called tax-equivalents.
- (12) In this section—

**Commonwealth taxes** means taxes payable under the law of the Commonwealth.

**Tax Assessor** means the person nominated for the time being under subsection (8) as the Tax Assessor.

## 10 Government guarantees

- (1) The liabilities of a Snowy hydro-group company are not guaranteed by the State of New South Wales.
- (2) However, the State of New South Wales may agree to guarantee obligations of a

Snowy hydro-group company with respect to any debt owed by a Snowy hydro-group company to the Commonwealth on the corporatisation date until the debt is repaid.

- (3) Any liability arising from any such agreed guarantee is to be met out of the Consolidated Fund, which is appropriated accordingly.
- (4) Any such agreed guarantee may provide for charges to be paid by a Snowy hydro-group company for the benefit of the guarantee.

## **Part 3 Transfers**

### **Division 1 Transfer of existing Snowy hydro undertaking to Company**

#### **11 Transfer to Company of assets and liabilities of Snowy Mountains Hydro-electric Authority**

- (1) Subject to this section, the assets and liabilities of the Snowy Mountains Hydro-electric Authority, immediately before the corporatisation date, are transferred to the Snowy Hydro Company.
- (2) The assets and liabilities transferred by this section include the assets and liabilities (if any) of the Snowy Mountains Council. For the purposes of this Act, any such assets and liabilities are taken to be the assets and liabilities of the Snowy Mountains Hydro-electric Authority.
- (3) The liabilities transferred by this section include any liability, immediately before the corporatisation date, arising from the works constructed or the activities carried out (or purporting to be constructed or carried out) under the agreements terminated by section 53 (1) (a) (being a liability of the Authority, the Commonwealth, the State of New South Wales, the State of Victoria or any authority of the Commonwealth or any such State). For the purposes of this Act, any such liability is taken to be a liability of the Authority.
- (4) The assets and liabilities transferred by this section do not include the assets and liabilities that are transferred to TransGrid by an order under section 14.
- (5) The assets transferred by this section do not include stored water.
- (6) Schedule 1 applies to the transfer of assets and liabilities under this section.

#### **12 Transfer to Company of assets and liabilities of State of NSW**

- (1) The Minister may, by order in writing and in accordance with an agreement between the Commonwealth and the States of New South Wales and Victoria, direct that such assets or liabilities of the State of New South Wales relating to the Snowy Mountains Hydro-electric Scheme (including those relating to the trading of electricity generated by that Scheme), as are specified or referred to in the order, be transferred to the

Snowy Hydro Company.

- (2) The freehold title to land that comprises the Kosciuszko National Park is not to be transferred to the Snowy Hydro Company under this section. However, this subsection does not prevent the transfer to the Company of the ownership of or other interest in any fixture on that land.
- (3) An order under this section may be combined with an order under the Commonwealth or Victorian Corporatisation Act that transfers assets or liabilities to the Snowy Hydro Company.
- (4) Schedule 1 applies to an order under this section.
- (5) In this section, **State of New South Wales** includes Pacific Power, a subsidiary of Pacific Power, Snowy Hydro Trading Pty Ltd (ACN 076 841 686) or any other authority of the State.

### **13 Agreement relating to Commonwealth debt**

- (1) The State of New South Wales may enter into an agreement with the Commonwealth and the State of Victoria with respect to liabilities of the Authority to the Commonwealth that are to be transferred to the Snowy Hydro Company on the corporatisation date and with respect to the discharge of those liabilities.
- (2) The agreement may contain any related provisions (including guarantees) that are considered appropriate.

## **Division 2 Transfer of electricity transmission undertaking to TransGrid**

### **14 Transfer to TransGrid of existing Snowy electricity transmission undertaking**

- (1) The Minister may, by order in writing and in accordance with an agreement between the Commonwealth and the States of New South Wales and Victoria, direct that such assets or liabilities of the Snowy Mountains Hydro-electric Authority, of the State of New South Wales or of an authority of that State relating to the transmission of electricity generated by the Snowy Mountains Hydro-electric Scheme, as are specified or referred to in the order, be transferred to TransGrid.
- (2) The freehold title to land that comprises the Kosciuszko National Park is not to be transferred to TransGrid under this section. However, this subsection does not prevent the transfer to TransGrid of the ownership of or other interest in any fixture on that land.
- (3) The consideration for the transfer, and the value, of the existing Snowy electricity transmission undertaking (and any other matter concerning the transfer) may be determined by agreement between the State of New South Wales, the Commonwealth

and the State of Victoria.

- (4) An order under this section may be combined with an order under the Commonwealth or Victorian Corporatisation Act that transfers assets or liabilities to TransGrid.
- (5) Schedule 1 applies to an order under this section.
- (6) In this section, **State of New South Wales** includes Pacific Power, a subsidiary of Pacific Power or any other authority of the State.

## **Division 3 Transfer of existing staff**

### **15 Transfer to Company of employees of Authority**

- (1) A person who was an employee of the Snowy Mountains Hydro-electric Authority immediately before the corporatisation date is taken—
  - (a) to have ceased to be employed by the Authority immediately before that date, and
  - (b) to have been engaged by the Snowy Hydro Company as an employee of the Company with effect on and from that date, and
  - (c) to have been so engaged on the terms and conditions on which the Commonwealth Corporatisation Act declares, or purports to declare, the employee to have been so engaged by the Company, and
  - (d) to have accrued an entitlement to benefits, in connection with that engagement by the Company, that is equivalent to the entitlement that the person had accrued, as an employee of the Authority, immediately before that date.
- (2) The service of a transferred employee as an employee of the Company is taken for all purposes to have been continuous with the service of the employee, immediately before the corporatisation date, as an employee of the Authority.
- (3) A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the Authority as a result of this section or of any other provision of this Act or the Commonwealth Corporatisation Act.
- (4) An auditor of the Authority does not, because of the operation of this Act, become an auditor of the Company.
- (5) This section has effect subject to this Division.

### **16 Transfer to Company of certain Pacific Power employees**

- (1) The Minister may, by order, declare that a specified employee of Pacific Power who was, immediately before the corporatisation date, seconded to the Snowy Mountains Hydro-electric Authority or working on the Snowy Mountains Hydro-electric Scheme or

employed in connection with the trading of electricity generated by the Scheme is taken—

- (a) to have ceased to be employed by Pacific Power immediately before that date, and
- (b) to have been engaged by the Snowy Hydro Company as an employee of that Company with effect on and from that date, and
- (c) to have been so engaged on the same terms and conditions as those that applied to the person, immediately before that date, as an employee of Pacific Power, and
- (d) to have accrued an entitlement to benefits, in connection with that engagement by that Company, that is equivalent to the entitlement that the person had accrued, as an employee of Pacific Power, immediately before that date.

- (2) An order under this section has effect according to its tenor.
- (3) The service of a transferred employee as an employee of the Company is taken for all purposes to have been continuous with the service of the employee, immediately before the corporatisation date, as an employee of Pacific Power.
- (4) A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of Pacific Power as a result of an order under this section.
- (5) A reference in subsection (1) (c) to terms and conditions is a reference to terms and conditions that are set out in—
  - (a) a written contract of employment, or
  - (b) a State industrial instrument.
- (6) This section has effect subject to this Division.
- (7) In this section, **Pacific Power** includes a subsidiary of Pacific Power.

## **17 Variations of terms and conditions of employment**

- (1) This Division does not prevent the terms and conditions of a transferred employee's employment on or after the corporatisation date from being varied—
  - (a) in accordance with those terms and conditions, or
  - (b) by or under a law, award, determination or agreement.
- (2) In this section—

**vary**, in relation to terms and conditions, includes—

- (a) omitting any of those terms and conditions, or
- (b) adding to those terms and conditions, or
- (c) substituting new terms and conditions for any of those terms and conditions.

#### **18 Other rights and benefits of transferred employees under Commonwealth Corporatisation Act**

The Snowy Hydro Company—

- (a) may exercise any powers or perform any functions conferred, or purporting to be conferred, on it, and
- (b) must comply with any obligations, and is subject to any liabilities, imposed, or purporting to be imposed, on it,

by the Commonwealth Corporatisation Act in relation to the rights of, or benefits for, transferred employees.

### **Part 4 Water inquiry**

#### **19 Designated area of inquiry**

For the purposes of this Part, the **designated area of inquiry** is the following area—

- (a) the Snowy water catchment,
- (b) the course of the Snowy River flowing from that catchment,
- (c) the course of the rivers and streams flowing from that catchment to Lake Hume, Blowering Reservoir or Burrinjuck Reservoir.

#### **20 Water inquiry to be held**

- (1) As soon as practicable after the commencement of this section, the Minister is to direct that a public inquiry be held in accordance with this Part by one or more persons with respect to environmental issues arising from the current pattern of water flows in rivers and streams in the designated area of inquiry caused by the operation of the Snowy Mountains Hydro-electric Scheme.
- (2) The inquiry is to report on the options for dealing with those issues, and the environmental, economic, agricultural and other impacts of those options as required by the terms of reference of the inquiry. For the purposes of this subsection—
  - (a) agricultural impacts include the impact of changed water flows on agricultural industries that are dependent on irrigation, and
  - (b) environmental impacts include the impact of releases of water from storage that provide environmental flows, being flows in rivers and streams which mimic



natural seasonal flows and which restore and maintain the ecology of those rivers and streams.

- (3) For the purposes of reporting on the impacts of those options, the inquiry may deal with the impacts on areas other than the designated area of inquiry.
- (4) Any decision by the Minister as to the terms of reference of the inquiry must be approved by a Minister of the Commonwealth and a Minister of the State of Victoria.
- (5) Any decision by the Minister as to the person or persons to be appointed to hold the inquiry and the procedures for holding the inquiry must be approved by a Minister of the State of Victoria.
- (6) Before making any decision under this section, the Minister must consult the Minister administering the *Water Management Act 2000*. This subsection does not limit any consultation by the Minister with other Governments or Government agencies.
- (7) Public authorities, State owned corporations and other authorities of the State of New South Wales are to provide any necessary assistance required by the person or persons holding the inquiry for the purposes of the inquiry.
- (8) The person or persons holding the inquiry are to take all reasonable steps to preserve the confidentiality of any documents produced to the inquiry that contain commercially sensitive information.
- (9) The following provisions apply to the inquiry—
  - (a) The Minister is to give notice of the holding of the inquiry and the proposed terms of reference of the inquiry in a newspaper circulating generally throughout the State.
  - (b) The Minister is to allow a period of at least 30 days for public comment on the proposed terms of reference and is to have regard to any comment received on them before they are settled.
  - (c) The person or persons holding the inquiry are to call for public submissions and hold public hearings with respect to the matters being examined by the inquiry.

## **21 Report of water inquiry**

- (1) The person or persons holding the water inquiry under this Part are to make a final report within 6 months or within such other time as is agreed between the State of New South Wales and the State of Victoria.
- (2) The Minister is to make that final report public at the time it is submitted to the Minister.
- (3) It is the duty of the Minister to use his or her best endeavours to determine the

response of the State of New South Wales to that final report, and to reach an agreement with the State of Victoria on the outcomes of the inquiry, within 2 months after that final report is made or within such other period as is agreed between the Minister and a Minister of the State of Victoria.

- (4) The agreement is to provide for—
- (a) the initial release of water to the Snowy River for environmental reasons on the issue of the Snowy water licence, and
  - (b) 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 under section 30.

## **Part 5 Snowy water licence**

### **22 Entitlement to Snowy water licence**

The Snowy Hydro Company is entitled, on the corporatisation date, to a licence issued by the Water Administration Ministerial Corporation under this Part (called the ***Snowy water licence***).

### **23 Rights and obligations under licence**

- (1) The rights that are to be conferred on the Snowy Hydro Company by the Snowy water licence include the following—
- (a) the right to collect all water from the rivers, streams and lakes within the Snowy water catchment,
  - (b) the right to divert that water,
  - (c) the right to store that water,
  - (d) the right to use that water to generate electricity, and for purposes that are incidental or related to the generation of electricity or to the management of that water in the Company's works,
  - (e) the right to release water from storage in accordance with the arrangements made by the licence for the release of that water.
- (2) The obligations that are to be imposed on the Snowy Hydro Company by the Snowy water licence include the following—
- (a) the obligation to release to rivers and streams flowing from the Snowy water catchment all water collected and stored by it, except for normal operating losses, consumption within its works and emergency supplies as authorised by the licence,

- (b) the obligation to release water to rivers or streams flowing from the Snowy water catchment (and to rivers, streams and lakes within that catchment) in accordance with the arrangements made by the licence, including arrangements made for drought and other emergencies and for environmental reasons.

The arrangements made by the licence for the release of water are to include an obligation to give notice of the timing and volume of water releases in the manner required by the licence.

- (3) The Snowy water licence is to give effect to any agreement between the States of New South Wales and Victoria following the report of the water inquiry under Part 4 and, in particular, the licence is to give effect to the provisions of the agreement relating to the initial release of water to the Snowy River for environmental reasons on the issue of the licence.
- (4) The rights of the Snowy Hydro Company to collect, divert, store, use and release water as referred to in this section are subject to section 32 of this Act (Local water extraction) and to Part 1 of Chapter 3 of the *Water Management Act 2000* (Basic landholder rights).
- (5) The rights of the Snowy Hydro Company to collect, divert, store and use water as referred to in this section do not extend to subsurface water.
- (6) The rights or obligations of the Snowy Hydro Company to collect, divert, store, use and release water are subject to the conditions and other provisions of the licence.
- (7) The rights or obligations of the Snowy Hydro Company to release water from its storages as referred to in this section do not authorise the Company to act as a supplier of that water to others or to give rights to others to use that water (except as authorised by the Water Administration Ministerial Corporation).

#### **24 Term of licence**

- (1) The term of the Snowy water licence is to be 75 years.
- (2) Except as provided by an Act—
  - (a) the licence may not be renewed, and
  - (b) a further licence may not be issued (unless it is issued on the revocation of the licence and its term does not exceed the balance of the term of the revoked licence).

#### **25 Review of licence**

- (1) The Water Administration Ministerial Corporation is to review the obligations under the Snowy water licence at such intervals, and in such manner, as the licence provides.

- (2) The licence must provide for such reviews at the following intervals—
  - (a) after the first 5 years (being a review of the provisions of the licence relating to the initial release of water to the Snowy River for environmental reasons), and
  - (b) at intervals of 10 years thereafter.
- (3) It is the duty of the Water Administration Ministerial Corporation to use its best endeavours to complete that first review, and to give effect to the results of the review, within 6 months after the fifth anniversary of the issue of the licence. For that purpose, the Corporation may commence public consultation on the review before that anniversary.

## **26 Variation of licence**

- (1) The Snowy water licence may be varied by the Water Administration Ministerial Corporation—
  - (a) for the purpose of giving effect to anything that is agreed between the States of New South Wales and Victoria and identified in the agreement as an agreed outcome of the water inquiry under Part 4, or
  - (b) for the purpose of giving effect to the results of a review of the obligations under the licence as referred to in section 25, or
  - (c) for the purpose of giving effect to any agreement of the Commonwealth, the States and the Territories relating to reform of water entitlements within Australia, or
  - (d) for any special purpose for which the Water Administration Ministerial Corporation considers that a variation is necessary, or
  - (e) with the agreement of the Snowy Hydro Company.
- (2) The licence may not be varied—
  - (a) before or after the first review of the licence under section 25 (2) (a)—so as to reduce the initial release of water to the Snowy River for environmental reasons as provided in the licence after it is issued, or
  - (b) after that first review—so as to reduce any increased amount of such releases of water to the Snowy River as provided in the licence after the variations made to the licence to give effect to the results of that first review.
- (3) A variation of the licence is to be made in accordance with any relevant provisions of the licence and is effected by service of notice in writing of the variation on the Snowy Hydro Company.

## **27 Public consultation on review or variation of licence**

- (1) The Water Administration Ministerial Corporation is to undertake public consultation in accordance with this section in connection with—
  - (a) any review of the Snowy water licence under section 25, or
  - (b) any variation of the Snowy water licence.
- (2) In order to give the public an opportunity to make submissions, the Water Administration Ministerial Corporation must—
  - (a) exhibit at its Head Office and its regional offices a copy of the provisions under review or the proposed variation, and
  - (b) (Repealed)
  - (c) allow a period of at least 30 days for public comment, and
  - (d) before the matter is exhibited, advertise the dates and places of exhibition and the period allowed for public comment in a manner that the Corporation is satisfied is likely to bring the advertisement to the attention of members of the public.
- (3) (Repealed)

## **28 Revocation of licence**

- (1) The Water Administration Ministerial Corporation may revoke the Snowy water licence because of a contravention of the licence by the Snowy Hydro Company, being a contravention of a kind for which revocation is authorised by the licence.
- (2) The revocation of the licence is to be made in accordance with any relevant provisions of the licence and is effected by service of notice in writing of the revocation on the Snowy Hydro Company.
- (3) This section does not prevent the issue to the Snowy Hydro Company of a further Snowy water licence, or of an authority under any other Act to collect, divert, store and use water, for a period not exceeding the balance of the term of the revoked licence.

## **29 Transfer of licence**

- (1) The Water Administration Ministerial Corporation may, in accordance with the licence, transfer the Snowy water licence from the Snowy Hydro Company to another body if—
  - (a) that Corporation is authorised to revoke the licence, or
  - (b) the Company agrees to that transfer of the licence.

- (2) In that case, a reference in this Act to the Company in connection with the licence is to be construed as a reference to that other body.
- (3) The Water Administration Ministerial Corporation is required to transfer the licence, while the Company is wholly government-owned, in accordance with any direction of the shareholders in the Company. The Company is wholly government-owned if all the shares in the Company are held by the Commonwealth, the State of New South Wales or the State of Victoria.

### **30 Compensation for Company**

- (1) The State of New South Wales may enter into an agreement to compensate the Snowy Hydro Company for any action taken by the Water Administration Ministerial Corporation or the State in relation to the Snowy water licence that has an adverse financial impact on the Company.
- (2) In subsection (1), **action** includes varying or terminating the licence, but does not include—
  - (a) any action that is agreed between the States of New South Wales and Victoria and identified in the agreement as an agreed outcome of the water inquiry under Part 4, or
  - (b) any variation of the licence following the first review of the obligations under the licence to release water to the Snowy River for environmental reasons (to the extent of any increase in the water so released that does not exceed the increased amount referred to in section 21 (4) (b)), or
  - (c) revoking the licence in accordance with section 28.

### **31 Fees and charges for licence**

- (1) The Snowy Hydro Company is required to pay to the Water Administration Ministerial Corporation fees and charges during the term of the Snowy water licence.
- (2) The amount of the fees and charges, and the times for their payment, are (subject to the terms of the licence) to be determined by the Water Administration Ministerial Corporation. The fees and charges may not include an amount by way of tax.
- (3) The obligation of the Company under this section is a requirement of the licence. In addition to any remedies for a contravention of the licence, the amount owing may be recovered in a court of competent jurisdiction from the Snowy Hydro Company as a debt due to the Water Administration Ministerial Corporation.

### **32 Local water extraction**

- (1) Despite anything to the contrary in this Part, a person (other than the Snowy Hydro Company) may be granted by the Minister administering the [Water Management Act](#)

2000 an access licence, water use approval or water supply work approval under that Act in relation to water that is authorised by the Snowy water licence to be collected and stored in the Snowy water catchment.

- (2) The Snowy Hydro Company is entitled (subject to any relevant terms of the Snowy water licence) to charge any such person a fee for taking that water that—
  - (a) is agreed by the Company and the person, or
  - (b) in the absence of agreement, is determined by the Independent Pricing and Regulatory Tribunal to be a reasonable fee not exceeding the loss of revenue from the reduction in electricity generation because of the taking of the water.
- (3) However, the Snowy Hydro Company is entitled to charge persons designated in the licence as existing extractors (and their successors) only for the taking of an amount of water that exceeds, in total for all such extractors from the whole of the Snowy water catchment, a net amount of 3 gigalitres a year.
- (4) Despite anything to the contrary in this Part, the Chief Executive of the Office of Environment and Heritage is entitled to take and use free of charge, for the purposes of the *National Parks and Wildlife Act 1974*, water that is authorised to be collected, stored and used under the Snowy water licence. The entitlement under this subsection is limited to a net amount of 100 megalitres of water a year.
- (5) For the purposes of this section, the **net amount** of water taken over a period is the amount of water extracted over that period less the amount of that water that is returned to the Snowy water catchment over that period.

### 33 Entry and inspection

- (1) The purpose of this section is to enable the Water Administration Ministerial Corporation to investigate compliance with the Snowy water licence.
- (2) A person authorised by the Water Administration Ministerial Corporation may enter any land on which the activities authorised by the Snowy water licence are carried out, and inspect those activities and the works used for those activities.
- (3) A person must not hinder or obstruct any such authorised person in the exercise of the power conferred by this section.  
Maximum penalty—200 penalty units.
- (4) The regulations may make provision for or with respect to the exercise of the power of entry and inspection under this section.

### 34 Offence to contravene Snowy water licence

- (1) The Snowy Hydro Company must not contravene or fail to comply with the terms,

conditions or other provisions of the Snowy water licence.

Maximum penalty (subject to this section): 1,000 penalty units and a further 500 penalty units for each day the offence continues.

- (2) The maximum penalty for an offence against this section is increased to 10,000 penalty units and a further 1,000 penalty units for each day the offence continues if the prosecution establishes that—
- (a) the contravention or failure was intentional or reckless, and
  - (b) the contravention or failure harmed, or is likely to harm, the environment (within the meaning of the *Environmental Offences and Penalties Act 1989*).

The increased penalty applies only if the elements required to be established by the prosecution for the increased penalty are set out in the charge.

- (3) If, by the operation of section 50, a person who is a director of the Snowy Hydro Company or who is concerned in the management of the Company is taken to have contravened this section, the maximum penalty that may be imposed on the person for the contravention is, if the maximum penalty under subsection (2) applies, 2,500 penalty units or 2 years imprisonment or both.
- (4) If an act or omission constitutes an offence—
- (a) under this section, and
  - (b) under the *Environmental Offences and Penalties Act 1989*,
- the offender is not liable to be punished twice in respect of the offence.

### **35 Court orders in connection with offence of contravening Snowy water licence**

- (1) In this section—

**the court** means the Land and Environment Court.

**the Company** includes any body to which the Snowy water licence is transferred.

- (2) This section applies where the court convicts the Company of an offence under section 34.
- (3) The court may order the Company to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow)—
- (a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence, or
  - (b) to make good any resulting environmental damage, or



(c) to prevent the continuance or recurrence of the offence.

(4) The court may, if it appears to the court that—

(a) a public authority has incurred costs and expenses in connection with—

(i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or

(ii) making good any resulting environmental damage, or

(b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the Company to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

(5) An order made by the court under subsection (4) is enforceable as if it were an order made by the court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).

(6) One or more orders may be made under this section against the Company.

(7) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

## Part 6 Snowy park leases

### 36 Definition

In this Part—

**NPW Act** means the [National Parks and Wildlife Act 1974](#).

### 37 Lease, licence etc under NPW Act for Snowy hydro undertaking

(1) The power to grant a lease, licence, easement or right of way under Part 12 of the NPW Act over the Kosciuszko National Park or any other land reserved or dedicated under the NPW Act may be exercised for the purposes of, or in connection with—

(a) the existing Scheme development within the meaning of Part 7, or

(b) any other thing related to the exercise of the rights, or the discharge of obligations, under the Snowy water licence or the plan of management for the Kosciuszko National Park.

(2) The Snowy Hydro Company is entitled, on the corporatisation date, to such a grant by

the Minister administering the NPW Act for the purposes of, and in connection with, the existing Scheme development within the meaning of Part 7 (called the **Snowy park lease**).

- (3) The term of the Snowy park lease is to be 75 years.
- (4) Except as provided by an Act—
  - (a) the Snowy park lease may not be renewed, and
  - (b) a further lease may not be granted (unless it is granted on the revocation of the lease and its term does not exceed the balance of the term of the revoked lease).
- (5) The Snowy park lease may contain provisions for its variation or revocation.
- (6) The Snowy park lease is to make provision for public access to those stored waters of the Snowy Mountains Hydro-electric Scheme that have been previously available for public recreation.
- (7) The Minister administering the NPW Act may transfer the Snowy park lease from the Company to another body if that Minister is authorised to revoke the lease or the Company agrees to that transfer. In that case, a reference in this Act to the Company in connection with the lease is to be construed as a reference to that other body.
- (8) The Minister administering the NPW Act is required to transfer the Snowy park lease, while the Company is wholly government-owned, in accordance with any direction of the shareholders in the Company. The Company is wholly government-owned if all the shares in the Company are held by the Commonwealth, the State of New South Wales or the State of Victoria.
- (9) The Snowy park lease may be granted despite section 153A of the NPW Act.

### **37A Lease, licence etc under NPW Act for Snowy 2.0 project**

- (1) The power to grant one or more leases, licences, easements or rights of way under Part 12 of the NPW Act over the Kosciuszko National Park or any other land reserved or dedicated under the NPW Act may be exercised for the purposes of, or in connection with, the Snowy 2.0 project.
- (2) Despite any of the provisions of the NPW Act, the Snowy Hydro Company is entitled to such a grant by the Minister administering the NPW Act for the purposes of, and in connection with, the Snowy 2.0 project (called a **Snowy 2.0 lease**).
- (3) Without limiting subsections (1) and (2), such a grant may be made despite—
  - (a) the objects of the NPW Act, and
  - (b) the management principles for national parks set out in section 30E of the NPW Act, and

- (c) the purpose of the grant not being a purpose listed in section 151A of the NPW Act, and
  - (d) the Minister administering the NPW Act not being satisfied of the matters set out in section 151B of the NPW Act.
- (4) However, the Minister administering the NPW Act is to have regard to the matters set out in subsection (3) when determining the conditions (if any) that should be attached to any such grant.
- (5) A Snowy 2.0 lease is to expire on 31 May 2077 (being the date of expiry of the Snowy park lease).
- (6) A Snowy 2.0 lease may contain provisions for its variation or revocation.
- (7) A Snowy 2.0 lease is to make provision for public access to those stored waters of the Snowy Mountains Hydro-electric Scheme that have been previously available for public recreation.

### **38 Management plan for Snowy hydro undertaking**

- (1) A plan of management under Part 5 of the NPW Act for Kosciuszko National Park may deal with the activities of the Snowy Hydro Company within that Park and impose obligations on the Company to comply with the plan of management.
- (2) Any steps precedent to the making of such a plan of management, to take effect on the corporatisation date, do not apply if the plan is made in accordance with procedures agreed between the State of New South Wales, the Commonwealth and the State of Victoria.
- (3) The regulations under this Act or the NPW Act may contain provisions for the enforcement of the obligations of the Snowy Hydro Company under such a plan of management, including criminal or civil liability for any contravention of the plan of management.
- (4) The regulations under this Act may modify the application of provisions of the NPW Act that specify steps precedent to the making of a plan of management relating to the Snowy 2.0 project.
- (5) Regulations under subsection (4) must not be made unless the Minister certifies to the Governor that the Minister has—
- (a) consulted with the Minister administering the NPW Act in connection with those regulations, and
  - (b) given that Minister at least 28 days to make submissions regarding those regulations.

**39 Lease, licence etc under NPW Act for existing Snowy electricity transmission undertaking**

- (1) The power to grant a lease, licence, easement or right of way under Part 12 of the NPW Act over the Kosciuszko National Park or any other land reserved or dedicated under the NPW Act may be exercised for the purposes of enabling TransGrid to operate an electricity transmission system from the electricity generating works of the Snowy Hydro Company.
- (2) TransGrid is entitled, on the corporatisation date, to such a grant by the Minister administering the NPW Act for the purposes of, and in connection with, the existing Snowy electricity transmission undertaking.
- (3) The term of such a grant may be the same as those for the Snowy park lease.
- (4) Such a grant may contain provisions for its variation or revocation.

**39A Lease, licence etc under NPW Act for Snowy 2.0 electricity transmission**

- (1) The power to grant a lease, licence, easement or right of way under Part 12 of the NPW Act over the Kosciuszko National Park or any other land reserved or dedicated under the NPW Act may be exercised for the purposes of enabling TransGrid (or the holder of a transmission operator's licence under the *Electricity Supply Act 1995*) to operate an electricity transmission system from the electricity generating works associated with the Snowy 2.0 project.
- (2) TransGrid (or the holder of a transmission operator's licence) is entitled to such a grant by the Minister administering the NPW Act for the purposes of, and in connection with, the Snowy 2.0 electricity transmission system.
- (3) The term of such a grant may be the same as the term of a Snowy 2.0 lease.
- (4) Such a grant may contain provisions for its variation or revocation.
- (5) The regulations may modify the application of provisions of Part 12 of the NPW Act that specify steps precedent to such a grant.
- (6) Regulations under subsection (5) must not be made unless the Minister certifies to the Governor that the Minister has—
  - (a) consulted with the Minister administering the NPW Act in connection with those regulations, and
  - (b) given that Minister at least 28 days to make submissions regarding those regulations.

**39B Contributions and indemnification for compensation for impact on native title**

- (1) The regulations may provide that, if compensation is payable by the State for the

impact of any of the following conduct on native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth (**relevant conduct**), the Snowy Hydro Company, TransGrid or the holder of a transmission operator's licence must contribute to, or indemnify the State against, that compensation—

- (a) the enactment of the *Snowy Hydro Corporatisation Amendment (Snowy 2.0) Act 2018*,
  - (b) the grant of a lease, licence, easement or right of way referred to in section 37A or 39A,
  - (c) the grant of development consent or approval under the *Environmental Planning and Assessment Act 1979* in connection with any part of the Snowy 2.0 project,
  - (d) the preparation, adoption or amendment of a plan of management under the NPW Act in connection with the Snowy 2.0 project.
- (2) Any amount payable to the State under this section is recoverable by the State as a debt in a court of competent jurisdiction.
- (3) The regulations may make provision for or with respect to—
- (a) contributions to, or indemnification against, compensation payable by the State for the impact of any relevant conduct on native title rights and interests, and
  - (b) conferring jurisdiction on the Land and Environment Court to resolve disputes between the State and the Snowy Hydro Company, TransGrid or the holder of a transmission operator's licence concerning the allocation of responsibility for the payment of compensation for the impact of the relevant conduct on native title rights and interests.

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

### **40 Proclamation of existing Scheme development**

- (1) For the purposes of this Part, the **existing Scheme development** is the works, activities and other things declared by proclamation to be the existing Scheme development.
- (2) Any such proclamation may so declare any works, activities or other things connected with the Snowy Mountains Hydro-electric Scheme, including the existing Snowy hydro undertaking and the existing Snowy electricity transmission undertaking.
- (3) More than one such proclamation may be made.
- (4) Any such proclamation may be varied by a further proclamation.
- (5) Any such proclamation may be made or varied only with the concurrence of the

Minister administering the *Environmental Planning and Assessment Act 1979*.

#### 41 Application of *Environmental Planning and Assessment Act 1979*

(1) In this section—

**activity** has the meaning it has in Part 5 of the EPA Act.

**approval** means the Snowy water licence, the Snowy park lease or any other approval within the meaning of Part 5 of the EPA Act.

**determining authority** has the meaning it has in Part 5 of the EPA Act.

**development** has the meaning it has in the EPA Act.

**development consent** has the meaning it has in the EPA Act.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**initial approval** means—

- (a) an approval granted before or on the corporatisation date in relation to the existing Scheme development, or
  - (b) an approval granted within 12 months (or other prescribed period) after the corporatisation date in relation to the existing Scheme development (being an approval for a thing that is agreed between the States of New South Wales and Victoria and identified in the agreement as an agreed outcome of the water inquiry under Part 4).
- (2) A determining authority is not required to comply with Part 5 of the EPA Act for the purposes of granting an initial approval. However, the determining authority is, for the purposes of any Act or law, taken to have complied with Part 5 of the EPA Act in granting the initial approval (but only to the extent that the determining authority would but for this Act have been required to comply with that Part).
- (3) For the purposes of the application of any Act or law to an activity that is part of the existing Scheme development but that is not the subject of an approval granted by a determining authority or of a development consent, the activity is taken to have been commenced and previously carried out in accordance with Part 5 of the EPA Act.
- (4) This subsection applies to any development that is part of the existing Scheme development and that, on the corporatisation date, cannot be carried out without development consent. On that date, the Snowy Hydro Company is taken to have been granted that development consent in accordance with Part 4 of the EPA Act by the relevant consent authority under that Part.
- (5) For the purposes of any Act or law, development that is for a purpose for which a lease is granted, or other grant is made, under Part 6 (Snowy park leases) is taken to

be development authorised by or under the *National Parks and Wildlife Act 1974*.

- (6) The operation of this section is not affected by a change in ownership, on or after the corporatisation date, of any part of the existing Scheme development.

#### **42 Application of *Local Government Act 1993* and *Pollution Control Act 1970***

- (1) The existing Scheme development does not require any approval under the *Local Government Act 1993*.
- (2) Any classification of waters (or any standard for any such classification) under the *Clean Waters Act 1970* does not prevent the issue of a licence under the *Pollution Control Act 1970*, and the attachment of any conditions to such a licence, for the purpose of the continuation of the existing Scheme development.
- (3) The operation of this section is not affected by a change in ownership, after the corporatisation date, of any part of the existing Scheme development.

### **Part 8 Miscellaneous**

#### **43 Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **44 Sharing of land tax with Commonwealth and Victoria**

- (1) The State of New South Wales may enter into an agreement with the Commonwealth or the State of Victoria with respect to the payment to the Commonwealth or the State of Victoria of a requisite proportion of land tax paid to the State of New South Wales by the Snowy Hydro Company.
- (2) The requisite proportion is the proportion of shares in the Company held by the Commonwealth or the State of Victoria, as the case requires, during the relevant period for which the land tax was paid.
- (3) Any liability under this section to make payments to the Commonwealth or the State of Victoria is to be met out of the Consolidated Fund, which is appropriated accordingly.

#### **45 Minister may execute agreements on behalf of State**

The Minister may execute, on behalf of the State of New South Wales, any agreement that the State is authorised to enter into by this Act or any other agreement that is necessary or convenient to give effect to the object of this Act.

#### **46 Exemption from State taxation**

- (1) In this section—

**exempt matter** means—

- (a) the issue or transfer of shares in the Snowy Hydro Company to the Commonwealth or to the State of New South Wales or Victoria (or to any person acting on behalf of the Commonwealth or any such State), or
- (b) the operation of the provisions of this Act, the Commonwealth Corporatisation Act and the Victorian Corporatisation Act relating to the transfer of assets and liabilities to the Snowy Hydro Company or TransGrid, or
- (c) an agreement referred to in section 45 or any agreement under the Commonwealth or Victorian Corporatisation Act to which the Commonwealth or the State of Victoria is a party, or
- (d) a debt of the Snowy Hydro Company to the Commonwealth at the corporatisation date (including the refinancing of such a debt), or
- (e) giving effect to any of the above.

**State tax** means stamp duty and any other tax, duty, fee, levy or charge payable under the law of New South Wales.

(2) State tax is not payable in relation to—

- (a) an exempt matter, or
- (b) anything done (including, for example, a transaction entered into or an instrument or oral agreement made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

(3) The Treasurer, or a person authorised by the Treasurer, may, in writing, certify whether—

- (a) a particular matter or thing is an exempt matter, or
- (b) a particular thing was done (including, for example, a transaction entered into or an instrument or oral agreement made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a particular exempt matter.

(4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matter certified, except to the extent (if any) to which the contrary is proved.

(5) Unless the contrary is proved, a document purporting to be a certificate under subsection (3) is taken to be such a certificate and to have been duly signed.

#### **47 Excluded matters for purposes of Corporations Act 2001 of the Commonwealth**

The following matters are declared to be excluded matters for the purposes of section 5F



of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 2E and Part 2J.3 of that Act—

- (a) any debt to the Commonwealth, or other liability, acquired by the Snowy Hydro Company (or the giving of any related security) in accordance with this Act or the Commonwealth Corporatisation Act or the Victorian Corporatisation Act or any agreement under any such Act,
- (b) the acquisition of initial shares in the Company by the Commonwealth or the State of New South Wales or Victoria.

**Note—**

This section ensures that the provisions of Chapter 2E (Related party transactions) and Part 2J.3 (Financial assistance) of the *Corporations Act 2001* of the Commonwealth will not apply in relation to the matters referred to in this section. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to specified provisions of that Act, then those provisions will not apply in relation to that matter in the State concerned.

**48 Company's financial statements and reports to be laid before Parliament**

- (1) This section applies when, under the *Corporations Act 2001* of the Commonwealth, the Snowy Hydro Company sends to—
  - (a) the State of New South Wales as the holder of shares in the Company, or
  - (b) a person who holds shares in the Company as nominee for the State,copies of the documents required by that Act to be laid before a particular annual general meeting of the Company.
- (2) The Minister must, as soon as practicable, cause to be laid before each House of Parliament copies of the documents referred to in subsection (1) (whether made from the copies first referred to in subsection (1) or otherwise).

**49 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding—
  - (a) 100 penalty units in the case of an individual, or
  - (b) 200 penalty units in the case of a corporation.

**50 Offences by directors and other managers of corporation**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **51 Proceedings for offences**

- (1) Proceedings for offences against this Act or the regulations are to be dealt with—
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in the Local Court, the maximum monetary penalty that the Court may impose for the offence is \$10,000 or the maximum monetary penalty for the offence (whichever is the lesser), despite any other provision of this Act.
- (3) Proceedings for an offence against this Act or the regulations may be commenced within but not later than 3 years after the date on which the offence is alleged to have been committed. This subsection applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

## **52 Repeal of Acts**

Each Act specified in Schedule 2 is repealed on the corporatisation date.

## **53 Termination and amendment of certain existing agreements relating to Snowy Mountains Scheme**

- (1) The following agreements are terminated on the corporatisation date—
  - (a) the agreements set out in the First and Second Schedules to the *Snowy Mountains Hydro-electric Agreements Act 1958*,
  - (b) the agreement set out in the Schedule to the *Blowering Dam (Snowy Mountains Hydro-electric Authority) Act 1963*.
- (2) The agreement set out in the First Schedule to the *Seat of Government Surrender Act 1909* is amended, on the corporatisation date, by omitting clause 10.
- (3) The termination of the agreements referred to in subsection (1) extinguishes the rights and obligations of the parties under the agreements.

- (4) The omission of clause 10 of the agreement referred to in subsection (2) extinguishes the rights and obligations of the parties under the clause.
- (5) An exemption (if any) arising under the agreements referred to in subsection (1) from any written or unwritten laws of New South Wales is terminated on the corporatisation date and is not transferred by or under this Act, the Commonwealth Corporatisation Act or the Victorian Corporatisation Act.
- (6) A right (if any) arising under an agreement referred to in subsection (1) to collect, divert, store, use or release water or to generate or supply electricity, or a right arising under clause 10 of the agreement referred to in subsection (2), is terminated on the corporatisation date and is not transferred by or under this Act, the Commonwealth Corporatisation Act or the Victorian Corporatisation Act.
- (7) Subsections (5) and (6) are enacted to avoid doubt.

#### **54 Authority and Council abolished**

On the corporatisation date—

- (a) the Snowy Mountains Hydro-electric Authority is abolished, and
- (b) the Snowy Mountains Council is abolished,

to the extent that they were, immediately before that date, constituted or recognised as legal entities by any Act.

#### **55 (Repealed)**

#### **56 Savings, transitional and other provisions**

Schedule 4 has effect.

#### **57 Snowy Advisory Committee**

- (1) There is established by this Act the Snowy Advisory Committee (the **Committee**).
- (2) The function of the Committee is to advise the Water Administration Ministerial Corporation each year on the timing and pattern for the release of water for environmental reasons under the Snowy water licence.
- (3) The Committee is to consist of—
  - (a) at least 6 members appointed by the Minister, and
  - (b) a member appointed by the Minister who is by the instrument of appointment to be appointed as Chairperson of the Committee.
- (4) The membership of the Committee is to comprise the following—

- (a) at least 2 members must be community representatives,
  - (b) of the community representatives, 2 are to be nominated by a Minister of the State of Victoria,
  - (c) at least 1 member must be a representative of environmental interest groups,
  - (d) at least 1 member must be a representative of Aboriginal interests,
  - (e) at least 1 member must be a representative of the government of the State of New South Wales,
  - (f) at least 1 member must be a representative of the government of the State of Victoria.
- (5) The regulations may make provision with respect to the membership of the Committee.
- (6) A member of the Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (7) The Committee is subject to the control and direction of the Minister in the exercise of its function, except in relation to the contents of any advice given by it.
- (8) A member may resign from office, or may be removed from office by the Minister with the approval of the person or body that nominated the member for appointment.
- (9) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this section and the regulations, to be as determined by the Committee.
- (10) Unless otherwise provided by the regulations, the quorum for a meeting of the Committee is a majority of the members for the time being.

## **Schedule 1 Provisions relating to transfer of undertakings**

(Sections 11, 12 and 14)

### **1 Definitions**

**corresponding law** means the Commonwealth Corporatisation Act or the Victorian Corporatisation Act.

**transfer instrument**—see clause 2.

**transferee** means the person or body to whom any assets or liabilities are transferred by a transfer instrument to which this Schedule applies.

**transferor** means the person or body from whom any assets or liabilities are transferred by a transfer instrument to which this Schedule applies.

## 2 Application

This Schedule applies to the following transfer instruments—

- (a) section 11 of this Act and a provision of the Commonwealth Corporatisation Act or the Victorian Corporatisation Act transferring assets and liabilities of the Authority to the Snowy Hydro Company,
- (b) an order under section 12 of this Act transferring assets or liabilities of the State of New South Wales to the Snowy Hydro Company,
- (c) an order under a provision of the Commonwealth Corporatisation Act transferring assets or liabilities of the Commonwealth to Snowy Hydro Company,
- (d) an order under a provision of the Victorian Corporatisation Act transferring assets or liabilities of the State of Victoria to Snowy Hydro Company,
- (e) an order under section 14 of this Act transferring assets or liabilities of the Authority or the State of New South Wales or an authority of the State to TransGrid,
- (f) an order under a provision of the Commonwealth Corporatisation Act transferring assets or liabilities of the Authority or the Commonwealth to TransGrid,
- (g) an order under a provision of the Victorian Corporatisation Act transferring assets or liabilities of the Authority or the State of Victoria, or any authority of that State, to TransGrid.

## 3 Vesting of undertaking in transferee

When any assets or liabilities are transferred by a transfer instrument to which this Schedule applies, the following provisions have effect (subject to the transfer instrument)—

- (a) those assets of the transferor vest in the transferee by this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those liabilities of the transferor become by virtue of this Schedule the liabilities of the transferee,
- (c) all proceedings relating to those assets or liabilities begun before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any effect) taken to have been done or omitted by, to or

in respect of the transferee,

- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations or other provisions under Schedule 4), to be read as, or as including, a reference to the transferee.

#### **4 Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded—
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities, or
  - (c) as giving rise to any remedy by a party to a legal instrument, or as causing or permitting the termination of any legal instrument, because of a change in the beneficial or legal ownership of any asset or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other legal instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the enactment or making of a transfer instrument to which this Schedule applies.
- (5) In this clause—

**legal instrument** means an instrument (other than this Act or a corresponding law) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

#### **5 Date of vesting**

A transfer instrument to which this Schedule applies takes effect on the date it is enacted or made, or such other date as is specified in the instrument.

#### **6 Value of particular assets transferred**

The respective values of particular assets transferred by a transfer instrument to which this Schedule applies may be determined by agreement between the Commonwealth and the States of New South Wales and Victoria.

#### **7 Transfer of interests in land**

- (1) A transfer instrument to which this Schedule applies may transfer an interest in

respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.

- (2) If the interest transferred is not a separate interest, the transfer instrument operates to create the interest transferred in such terms as are specified in the instrument.
- (3) This clause does not limit any other provision of this Schedule.

## **8 Confirmation of vesting in Snowy Hydro Company**

- (1) The Minister may, by order in writing, confirm the transfer to the Snowy Hydro Company of particular assets or liabilities by the operation of section 11.
- (2) Such an order is evidence of that transfer.
- (3) An order under this clause may be combined with an order under the Commonwealth or Victorian Corporatisation Act that confirms the transfer of assets or liabilities to the Snowy Hydro Company by that Act.

## **9 Successor of Authority**

The Snowy Hydro Company is taken for all purposes, including the rules of private international law, to be the successor of the Authority (except in respect of assets and liabilities transferred under this Act or a corresponding law to any other body or person).

## **Schedule 2 Repeal of Acts**

(Section 52)

### **2.1 Blowering Dam Act 1951 No 24**

### **2.2 Blowering Dam (Snowy Mountains Hydro-electric Authority) Act 1963 No 54**

### **2.3 Snowy Mountains Hydro-electric Agreements Act 1958 No 20**

### **2.4 Snowy Mountains Engineering Corporation (New South Wales) Act 1972 No 50**

## **Schedule 3 (Repealed)**

## Schedule 4 Savings, transitional and other provisions

(Section 56)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - this Act
  - any Act that amends this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Judicial notice

Despite the repeal of the *Snowy Mountains Hydro-electric Agreements Act 1958*, all courts, judges and people acting judicially must take judicial notice of the imprint of the official seal of the Snowy Mountains Hydro-electric Authority appearing on a document and must presume that the seal was duly affixed.

#### 3 Final report by Authority

- (1) Despite sections 52 and 54, the relevant provisions of the *Snowy Mountains Hydro-electric Agreements Act 1958* continue in force, and the Authority continues in existence, solely for the purpose of enabling the Authority to comply with any of its outstanding obligations under subsection 63H (1) of the *Audit Act 1901* of the Commonwealth in respect of any period before the corporatisation date.



- (2) The Snowy Hydro Company must provide the Authority with any assistance that the Authority reasonably requires for the performance of its duties under subsection (1).

#### **4 Final report by Council**

- (1) Despite sections 52 and 54, the Snowy Mountains Council continues in existence solely for the purpose of performing any necessary duties under clause 21 of the Agreement set out in the First Schedule to the *Snowy Mountains Hydro-electric Agreements Act 1958*.
- (2) The Snowy Hydro Company is to provide any assistance that the Council reasonably requires for the performance of those duties.

### **Part 3 Provisions consequent on enactment of *Local Land Services Act 2013***

#### **5 Member of Snowy Scientific Committee**

- (1) A person who was a member of the Snowy Scientific Committee under section 57 (6) (c) as in force immediately before it was substituted by the *Local Land Services Act 2013* ceases to hold office as such a member on that substitution (but is eligible if otherwise qualified) to be appointed under that paragraph as substituted.
- (2) The person is not entitled to any remuneration or compensation because of the loss of office.

### **Part 4 Provision consequent on enactment of *Snowy Hydro Corporatisation Amendment (Snowy Advisory Committee) Act 2014***

#### **6 Dissolution of Snowy Scientific Committee**

- (1) On the commencement of this clause—
  - (a) the body corporate established by this Act as the Snowy Scientific Committee is dissolved, and
  - (b) any assets, rights and liabilities of the Snowy Scientific Committee become the assets, rights and liabilities of the Crown, and
  - (c) each person appointed as a member of the Snowy Scientific Committee ceases to hold office as such a member.
- (2) A person who ceases to hold office as a member of the Snowy Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.
- (3) A reference in any other Act, or in any instrument of any kind (including any contract or agreement), to the Snowy Scientific Committee is to be construed as a reference to the Snowy Advisory Committee.

## **Part 5 Provisions consequent on enactment of Snowy Hydro Corporatisation Amendment (Snowy 2.0) Act 2018**

### **7 Management plans for Snowy 2.0 project**

- (1) During the period of 4 years beginning on first approval being granted under the *Environmental Planning and Assessment Act 1979* for any part of the Snowy 2.0 project, section 81 (4) of the *National Parks and Wildlife Act 1974* does not operate to prohibit operations being undertaken in relation to the Snowy 2.0 project that are not in accordance with *Kosciuszko National Park Plan of Management 2006*.
- (2) During the period beginning on the commencement of this clause and ending on 1 January 2024, section 81 (4) of the *National Parks and Wildlife Act 1974* does not operate to prohibit operations being undertaken in relation to the Snowy 2.0 project that are not in accordance with the *Snowy Management Plan* set out in Schedule 2 to the *Snowy Management Plan Procedures Agreement* dated 3 June 2002 as incorporated by clause 5 of the *Kosciuszko National Park Plan of Management 2006*.

### **8 Snowy 2.0 leases not subdivisions under other legislation**

- (1) Despite section 23F of the *Conveyancing Act 1919*, the Registrar-General must not refuse to register a Snowy 2.0 lease (as referred to in section 37A) merely because—
  - (a) it is a lease of part of an existing lot that is not shown on a current plan (within the meaning of that Act), and
  - (b) the boundaries of each part into which the land concerned is divided as a result of the lease do not follow the boundaries of an existing lot.
- (2) The grant of a Snowy 2.0 lease (as referred to in section 37A) is taken not to be a subdivision of land for the purposes of the *Environmental Planning and Assessment Act 1979*.