

Snowy Hydro Corporatisation Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 is formal. It states the purpose of the Act, being to reform the Snowy Mountains Hydro-electric Scheme by corporatising the Snowy Mountains Hydro-electric Authority and making related changes to the Scheme.

The reform has been agreed between the Commonwealth, New South Wales and Victoria and will require further detailed agreements to implement it. A copy of principles agreed to as at 1 May 1997 to guide the corporatisation process is set out in the annexure to this Explanatory Memorandum.

Clause 2 is a commencement provision. Except for section 26(2) which is deemed to have come into force on 9 August 1995, the provisions of the Act will come into operation on a day or days to be proclaimed.

Clause 3 contains a number of definitions for the purposes of the Act. "*Snowy Hydro Company*" and "*Snowy Hydro-group company*" are defined in this section.

Clause 4 provides that the Act is to operate concurrently with the Commonwealth and New South Wales Acts and is to have effect only to the extent that it is within the legislative power of the Parliament.

Clause 5 provides that the Act binds the Crown.

PART 2—SNOWY HYDRO COMPANY

Clause 6 provides that Victoria may acquire, hold and dispose of shares in the Snowy Hydro Company and provides that the shares are taken to be fully paid up and issued for valuable consideration.

Clause 7 provides for referral to the Commonwealth Parliament of the matter of the Commonwealth holding shares in the Snowy Hydro Company.

- Clause 8 provides that a Snowy hydro-group company does not represent and is not an instrumentality, agency or public authority of the State of Victoria nor is entitled to any immunity or privilege of the State.
- Clause 9 provides for tax equivalents payable by New South Wales.
- Clause 10 provides for Government guarantees.

PART 3—TRANSFERS

- Clause 11 provides for transfer to the Snowy Hydro Company of the assets and liabilities of the Snowy Mountain Hydro-electric Authority.
- Clause 12 provides for transfer to the Snowy Hydro Company of the assets and liabilities of the State of Victoria which relate to the Snowy Mountains Hydro-electric Scheme.
- Clause 13 provides that the State of Victoria may enter into an agreement with New South Wales and the Commonwealth with respect to liabilities of the Snowy Mountains Hydro-electric Authority to the Commonwealth that are transferred to Snowy Hydro Company and with respect to discharge of those liabilities.
- Clause 14 provides for transfer to TransGrid of the existing Snowy electricity transmission undertaking.
- Clause 15 provides for transfer to the Snowy Hydro Company of employees of the Snowy Mountains Hydro-electric Authority.
- Clause 16 provides for transfer to the Snowy Hydro Company of any State Electricity Commission of Victoria employees who are seconded to the Snowy Mountains Hydro-electric Authority or working on the Snowy Mountains Hydro-electric Scheme or employed in connection with trading of electricity generated by the Scheme.
- Clause 17 provides for variation of terms and conditions of employment of employees transferred to the Snowy Hydro Company after the corporatisation date which is the date on which the Snowy Mountains Hydro-electric Power Act 1949 (Commonwealth) is repealed.

PART 4—MISCELLANEOUS

- Clause 18 provides for the sharing of land tax with the Commonwealth and New South Wales.
- Clause 19 provides that the Treasurer may execute agreements on behalf of the State of Victoria.
- Clause 20 provides for exemption from State taxation.
- Clause 21 provides for certain exemptions from section 205 and Part 3.2A of the Corporations Law.
- Clause 22 provides for amendments by the Registrar of Titles to the Register and for the Registrar-General to make entries on the records of enrolment and on any memorial relating to land.
- Clause 23 provides for Snowy Hydro Company's financial statements and reports to be laid before both Houses of Parliament.
- Clause 24 provides for the making of regulations.

PART 5—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL

- Clause 25 repeals the **Snowy Mountains Hydro-electric Agreements Act 1958**.
- Clause 26 amends the **Electricity Industry Act 1993**.
- Clause 27 repeals the **Snowy Mountains Engineering Corporation (Victoria) Act 1971**.
- Clause 28 terminates and amends certain existing agreements relating to the Snowy Mountains Scheme.
- Clause 29 abolishes the Snowy Mountains Hydro-electric Authority and the Snowy Mountains Council.
- Clause 30 gives effect to the savings and transitional provisions contained in Schedule 2.

SCHEDULES

Schedule 1 sets out the provisions relating to the transfers of undertakings which are to occur pursuant to sections 11, 12 and 14 of the Act and under corresponding provisions of the Commonwealth and New South Wales Corporatisation Acts.

Schedule 2 contains savings, transitional and other provisions

ANNEXURE

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:
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|---------------------|-----|
| (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 rights 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 gegalitres 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) prescribed 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.