



New South Wales

Snowy Hydro Corporatisation Bill 1997

Explanatory note

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

Overview of Bill

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

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

The principal purposes of the reforms are as follows:

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

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

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

Outline of provisions

Part 1 Preliminary

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

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

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

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

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

Part 2 Snowy Hydro Company

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

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

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

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

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

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

Part 3 Transfers

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

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

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

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

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

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

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

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

Part 4 Water inquiry

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

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

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

Part 5 Snowy water licence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 6 Snowy park leases

Clause 36 defines the relevant national park legislation.

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

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

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

Part 7 Application of planning and other laws

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

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

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

Part 8 Miscellaneous

Clause 43 provides that the proposed Act binds the Crown.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule 4 contains savings, transitional and other provisions.

Annexure A Corporatisation principles

1 Introduction

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

2 Purpose

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

3 Corporate

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

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

4 Transfer of business undertaking

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

5 Debt

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

6 Water rights

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

7 Water releases

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

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

8 Water inquiry

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

9 Regulatory framework

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

10 Employees

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

11 Kosciuszko National Park Occupation

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

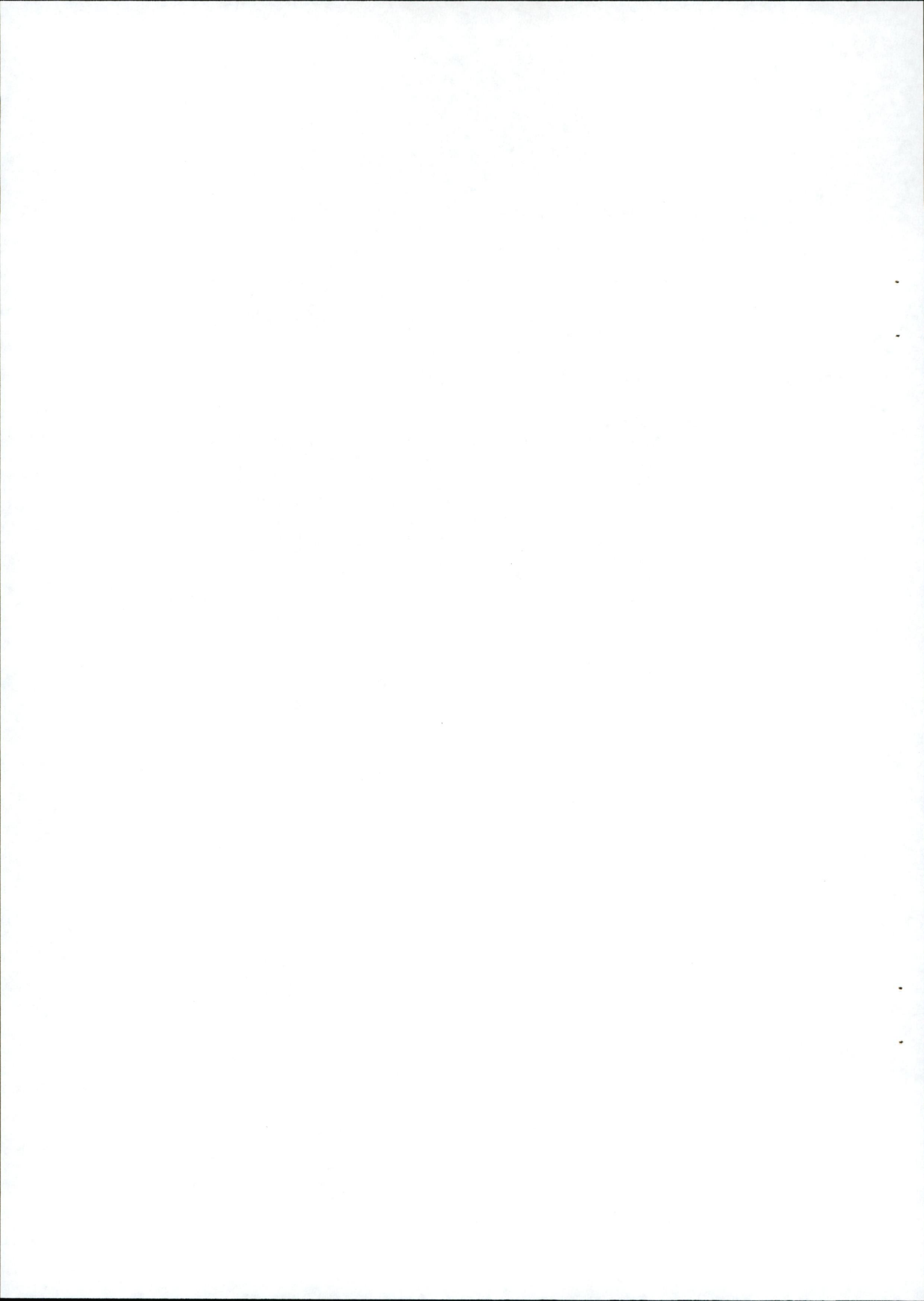
- (3) recognise the long term nature of Snowy Hydro assets within the Park, and
- (4) contain limited termination rights and appropriate arrangements on termination.

12 Taxation

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

13 Alternative dispute resolution

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





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New South Wales

Snowy Hydro Corporatisation Bill 1997

No. , 1997

A Bill for

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.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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. 10

(2) It is the intention of Parliament that this Act:

(a) is to operate concurrently with the Commonwealth and Victorian Corporatisation Acts, and 15

(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: 20

(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. 25

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. 5

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. 10

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 15
- (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. 20

liabilities means any liabilities, debts and obligations (whether present or future and whether vested or contingent). 25

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

Snowy Hydro Company or ***Company*** means the company incorporated or to be incorporated under the *Corporations Law* of New South Wales by the name Snowy Hydro Limited. 30

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 VI of the agreement set out in Schedule 1 to the *Snowy Mountains Hydro-electric Power Act 1949* of the Commonwealth. 35

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. 5

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: 10

- (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 15
- (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 20
25
- (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. 30

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. 35

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 New South Wales Electricity Transmission Authority constituted under the *Electricity Transmission Authority Act 1994*. 5

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

- (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 Law*. 10

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. 10
- (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 15
 - (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). 20

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. 25
- (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). 30
- (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 5

- (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. 10
- (2) The Governor may, at any time, fix by proclamation a day as the day on which the reference under this section terminates. 15
- (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. 20
- (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 25
- (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. 30

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. 5
- (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. 10
15
- (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. 20
25
- (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). 30
- (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. 35

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- (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. 5
- (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. 10
- (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: 15
- 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 20

- (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. 25
- (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. 30

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** 5
- (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. 10
- (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. 15
20
- (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. 25
- (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** 30
- (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. 5
- (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. 10
- (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. 15

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. 20
- (2) The agreement may contain any related provisions (including guarantees) that are considered appropriate.

Division 2 Transfer of electricity transmission undertaking to TransGrid 25

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 30

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. 5
- (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. 10
- (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. 15
- (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. 20

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: 25
- (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 30
- (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. 5
- (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. 10
- (4) An auditor of the Authority does not, because of the operation of this Act, become an auditor of the Company. 15
- (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: 20
- (a) to have ceased to be employed by Pacific Power immediately before that date, and 25
- (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 30
- (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. 35

- (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. 5
- (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: 10
- (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. 15

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: 20
- (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: 25
- (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 30

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, 5
- (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, Blowring Reservoir or Burrinjuck Reservoir. 10

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. 15
- (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. 20
- (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. 25
- (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. 30
- (6) Before making any decision under this section, the Minister must consult the Minister administering the *Water Administration Act 1986*. This subsection does not limit any consultation by the Minister with other Governments or Government agencies. 35

- (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. 5

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. 10
- (2) 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. 15

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*). 5

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, 10
 - (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, 15
 - (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: 20
 - (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, 25
 - (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. 30
- (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. 35

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- (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 section 7 of the *Water Act 1912* (Rights of occupiers of riparian land).
- (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. 5
- (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. 10
- (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). 15

24 Term of licence

The term of the Snowy water licence is to be 75 years, with an option for renewal of the licence for 50 years.

25 Renewal of licence

- (1) The Snowy water licence is to be renewed by the Water Administration Ministerial Corporation on the expiry of the original licence after 75 years, by the issue of a further licence for 50 years, if the Snowy Hydro Company notifies that Corporation in writing before that expiry that it is exercising its option to renew the licence. 20
- (2) The licence may not be further renewed except as authorised by an Act. 25

26 Review of licence

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. 30

27 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 26, or 5
 - (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 10
 - (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) 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. 15

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. 20
- (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. 25
- (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. 30

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: 35
 - (a) that Corporation is authorised to revoke the licence, or
 - (b) the Company agrees to that transfer of the licence.

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- (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) 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 (including any renewed 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 Water Administration Ministerial Corporation under the *Water Act 1912* a right to take and use water, that is authorised to be collected and stored by the Snowy water licence, in the Snowy water catchment. 5
- (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: 10
- (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. 15
- (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 gegalitres a year. 20
- (4) Despite anything to the contrary in this Part, the Director-General of National Parks and Wildlife 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. 25
- (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. 30

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. 35

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- (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. 5
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

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- (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.

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- (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*).

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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.

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- (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.

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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. 10
- (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): 15
- (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. 20
- (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 25
 - (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, 30

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*. 5
- (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. 10

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** 5
- (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: 10
- (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. 15
- (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*). 20
- (3) The term of the Snowy park lease is to be 75 years, with an option for renewal of the lease for 50 years.
- (4) The Snowy park lease is to be renewed by the Minister administering the NPW Act on its expiry after 75 years, by a further grant for 50 years, if the Snowy Hydro Company notifies that Minister in writing before that expiry that it is exercising its option to renew. 25
- (5) The Snowy park lease may not be further renewed except as authorised by an Act.
- (6) The Snowy park lease may contain provisions for its variation or revocation. 30

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- (7) 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.
- (8) 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. 5
- (9) 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. 10 15
- (10) The Snowy park lease may be granted despite section 153A of the NPW Act.

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. 20
- (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. 25
- (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. 30

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. 5
- (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. 10
- (3) The term of such a grant (and the term of any option for its renewal) may be the same as those for the Snowy park lease.
- (4) Such a grant may contain provisions for its variation or revocation. 15

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. 5
- (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. 10
- (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 15

- (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. 20
- 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. 25
- 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 30

- (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). 5
- (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). 10
- (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. 15
- (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. 20
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- (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. 30
- 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*. 35

- (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.

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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.

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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. 10

(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. 15

(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. 20

46 Exemption from State taxation

(1) In this section: 25

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 30

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- (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 5
- (d) a debt of the Snowy Hydro Company to the Commonwealth at the corporatisation date (including the refinancing of such a debt), or 10
- (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: 15
- (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. 20
- (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. 25
- (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. 30
- (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 Exemption from Corporations Law

Section 205 and Part 3.2A of the *Corporations Law* do not apply in relation to:

- (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 or Victorian Corporatisation Act or any agreement under any such Act, or 5
- (b) the acquisition of initial shares in the Company by the Commonwealth or the State of New South Wales or Victoria. 10

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

- (1) This section applies when, under the *Corporations Law*, the Snowy Hydro Company sends to: 15
 - (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 the *Corporations Law* to be laid before a particular annual general meeting of the Company. 20
- (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). 25

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. 30
- (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. 5
- (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. 10
- (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 15

- (1) Proceedings for offences against this Act or the regulations are to be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Land and Environment Court in its summary jurisdiction. 20
- (2) If any such proceedings are brought in a Local Court, the maximum penalty that the Court may impose for the offence is \$10,000 or the maximum penalty for the offence (whichever is the lesser), despite any other provision of this Act. 25
- (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 *Justices Act 1902* or any other Act. 30

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*, 5
 - (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. 10
- (3) The termination of the agreements referred to in subsection (1) extinguishes the rights and obligations of the parties under the agreements. 15
- (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. 20
- (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. 25 30
- (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 35

(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 Amendment of Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule. 5

56 Savings, transitional and other provisions

Schedule 4 has effect.

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. 5

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. 10

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: 15

- (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, 20
- (c) an order under a provision of the Commonwealth Corporatisation Act transferring assets or liabilities of the Commonwealth to Snowy Hydro Company, 25
- (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, 30

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- (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. 5

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): 10

- (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, 15
- (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, 20
- (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, 25
- (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. 30

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 35

- (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. 5
- (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. 10
- (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. 15
- 5 Date of vesting** 20
- 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. 25
- 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. 30

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- (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

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- (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.

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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).

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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

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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 Amendment of Acts

(Section 55)

3.1 National Parks and Wildlife Act 1974 No 80

[1] Sections 40 (1), 53 (1), 58E (1) and 58N

Omit "*Snowy Mountains Hydro-electric Agreements Act 1958*"
wherever occurring.

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Insert instead "*Snowy Hydro Corporatisation Act 1997*".

[2] Schedule 3 Savings, transitional and other provisions

Omit clause 8 (2).

3.2 Water Administration Act 1986 No 195

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Schedule 2 Absolute rights

Omit "*Snowy Mountains Hydro-Electric Agreements Act 1958* or"
from clause 8.

Schedule 4 Savings, transitional and other provisions

(Section 56)

Part 1 Preliminary

1 Regulations

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- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

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. 10
- (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 15
- (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. 20

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.

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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. 5
- (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). 10

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*. 15
- (2) The Snowy Hydro Company is to provide any assistance that the Council reasonably requires for the performance of those duties.

