

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SNOWY MOUNTAINS ENGINEERING CORPORATION BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Housing and
Construction, the Hon. Stewart West, M.P.)

OUTLINE

Explanatory Memorandum

Snowy Mountains Engineering Corporation Bill 1985

The purpose of this Bill is to repeal the existing Act and re-constitute the Corporation with expanded functions and a Board of Directors. Clause 5 of the Bill continues the existing Corporation in existence, but subject to the new provisions. In addition, Sub-Clause 47(2) preserves the existing contracts, and legal commitments of the existing Corporation.

One of the objectives of this Bill in restructuring SMEC is to create a viable organisation resulting in consequential financial returns to the Commonwealth at levels consistent with sound commercial principles and practices.

In addition the Bill broadens the functions and powers of the Corporation to allow it to progressively introduce Australian firms to overseas markets by way of joint ventures etc., in those instances where its financial position is not impaired. In conjunction it broadens the Corporation's charter to make clear that it can compete for a full range of engineering work including work associated with engineering projects like surveying and planning.

The Bill allows for the establishment of a Board of Directors with:

- . a Chairperson;
- . a Managing Director; and
- . three other Directors.

The Directors and the Chairperson would be appointed on a part-time basis. The tenure of all Directors are to be for three years with eligibility for re-appointment. Remuneration is to be determined by the Remuneration Tribunal.

The Bill provides that the Corporation should operate in accordance with "sound commercial principles", in that, the Corporation should in each financial year:

- . meet its expenditure and make provision in respect of any income tax liability for that particular year; and
- . permit payment of a reasonable return on capital of the Corporation to the Commonwealth or pay amounts to the Commonwealth as determined by the responsible Minister.

This Bill also calls for a Director to disclose his or her pecuniary interests in any matter before the Board and sets out the conditions for further participation by any Director with such pecuniary interest in any discussions on this matter.

The Corporation is required to provide regular reports to the Minister of current and future activities.

Explanations of each Clause of the Bill follow.

NOTES ON CLAUSES

Clause 1 - Short title

Provides for the short title of the Act.

Clause 2 - Commencement

Provides for commencement on a day to be fixed by Proclamation.

Clause 3 - Interpretation

Defines certain terms used in subsequent clauses of the Bill.

Clause 4 - Extension to Territories

Provides for the Act to extend to all Territories.

Clause 5 - Reconstitution of Corporation

- (1) Allows for the continuation of the existing Corporation.
- (2) States the Corporation
 - (a) is a body corporate;
 - (b) shall have a seal;
 - (c) may acquire, hold or dispose of real and personal property; and
 - (d) may sue or be sued.
- (3) The seal is to be kept as the Board directs.
- (4) Courts, judges and persons acting judicially to take note of imprint of seal affixed to a document and presume that document was duly sealed.

Clause 6 - Functions of Corporation

Outlines the functions of the Corporation. These are to investigate, advise on, design, supervise and construct engineering works in Australia and overseas. The Corporation

shall, wherever practicable, endeavour to involve and promote the interests of Australian companies and organisations overseas.

Clause 7 - Powers of Corporation

Outlines the Corporation's powers in connection with the performance of its functions. These include the entering into contracts, carrying out research, charging fees for services provided to clients, arranging payments to contractors and sub-contractors on behalf of clients, carrying out scientific tests, joining in the formation of partnerships and companies and recovering costs incurred on behalf of its clients. These powers can be exercised either alone or in association with other persons.

Clause 8 - Directions by Minister

Provides for the Minister to give written directions to the Corporation and in particular directions as to the performance and function of its powers which would prevent the Corporation from carrying out specific classes of work which it would normally be able to undertake, or from carrying out such works in specified places.

Clause 9 - Establishment of Board

Establishes the Snowy Mountains Engineering Corporation Board.

Clause 10 - Functions of Board

Defines the functions of the Board.

Clause 11 - Membership of Board

Outlines the membership of the Board - to be appointed by the Governor-General for a three year term. Board to

consist of:

- . a chairperson;
- . a Managing Director; and
- . three other Directors.

All Directors except the Managing Director to be appointed on a part-time basis.

Clause 12 - Policy to be notified to Minister

Requires the Board to inform the Minister of policy decisions in relation to the performance of the functions of the Corporation.

Clause 13 - Delegation by Board

Gives the Board the power to delegate to a person any of its powers, other than the power of delegation, under this Act.

Clause 14 - Remuneration and Allowances

Provides for remuneration for part-time Directors to be in accordance with the determinations by the Remuneration Tribunal.

Clause 15 - Resignation

Enables part-time Directors to resign by notifying the Minister in writing.

Clause 16 - Disclosure of interests

Outlines the procedure to be followed by a Director if that Director has pecuniary interests in a matter to be considered by the Board.

Clause 17 - Termination of Appointment

Defines the reasons for the Governor-General to terminate the appointment of a part-time Director.

Clause 18 - Acting appointments

Outlines the circumstances under which the Minister may appoint an acting Chairperson.

Clause 19 - Meetings of Board

Gives the Chairperson the power to convene meetings of the Board. It further outlines the voting requirements.

Clause 20 - Managing Director

States that there shall be a Managing Director of the Corporation.

Clause 21 - Duty of Managing Director

Notes that the Managing Director shall, under the Board, manage the Corporation.

Clause 22 - Appointment and Term of Office

Outlines the terms of appointment of the Managing Director.

Clause 23 - Managing Director not to engage in other work

States that a Managing Director shall not engage in paid outside work without the Minister's approval.

Clause 24 - Remuneration and allowances

Provides for remuneration for Managing Director to be in accordance with the determination of the Remuneration Tribunal.

Clause 25 - Leave of Absence

States that the Chairperson may grant leave of absence to the Managing Director upon conditions determined by the Chairperson.

Clause 26 - Resignation

Enables Managing Director to resign by notifying the

Minister in writing.

Clause 27 - Termination of appointment

Outlines the circumstances under which the Governor-General may terminate the appointment of the Managing Director.

Clause 28 - Acting Managing Director

Deals with the normal acting arrangements during the absence from duty of the Managing Director.

Clause 29 - Officers and employees

Gives the corporation the power to engage suitable officers under the terms and conditions of employment determined by the Board of Directors of the Corporation and approved by the Public Service Board.

Clause 30 - Financial policy of Corporation

Directs the Corporation to operate on sound commercial principles and meet all its obligations.

Clause 31 - Capital of Corporation

Gives the Minister for Finance the authority to make available to the Corporation such moneys as the Minister may determine is required by the Corporation. The Minister may also direct the Board to transfer funds from the Corporation's General Reserve to the Capital account.

Clause 32 - Payment to the Commonwealth

Gives the Minister the power to direct the Corporation to pay from its profits, to the Commonwealth, such moneys as the Minister determines.

Clause 33 - Surplus profits of the Corporation

Allows the Minister to determine the application of the profits.

Clause 34 - Borrowing by the Corporation

Sets out the terms under which the Corporation may borrow funds.

Clause 35 - Guarantee by the Commonwealth

Makes the Commonwealth responsible for the Corporation's liabilities.

Clause 36 - Application of money

Sets out the application of the moneys of the Corporation.

Clause 37 - Estimates

Ensures that the Corporation provides advance information on its expected receipts and expenditures for consideration by the Minister.

Clause 38 - Contracts

Notes that the Corporation requires Ministerial approval for the purchase or sale of assets exceeding \$500,000.

Clause 39 - Application to Corporation of Division 2 of Part XI of Audit Act

Declares the Corporation is a public authority, subject to Division 2 of Part XI of the Audit Act 1901.

Clause 40 - Liability to taxation

Outlines the taxation liabilities of the Corporation.

Clause 41 - Reports to Minister

Provides for the Board to present to the Minister, from time to time, information concerning the general conduct of the operations of the Corporation and as the Minister requires, information on future operations.

Clause 42 - Annual Report to include Minister's Directions, etc

Requires that the annual report shall include all directions given by the Minister under certain Sections of the Act.

Clause 43 - Validity of contracts and guarantees

Allows existing contracts and guarantees to be valid under this Act.

Clause 44 - Delegation by Minister

Allows Minister to delegate to any person all or part of his or her powers under this Act.

Clause 45 - Regulations

Gives the Governor-General the power to make regulations to carry out or give effect to this Act.

Clause 46 - Repeals

Repeals the existing Acts.

Clause 47 - Transitional

Maintains the effectiveness of anything carried out under the provisions of the Snowy Mountains Engineering Corporation Act 1970.

