

1989

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SNOWY MOUNTAINS ENGINEERING CORPORATION  
(CONVERSION INTO PUBLIC COMPANY) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Industry, Technology and Commerce,  
Senator the Honourable John N Button)

SNOWY MOUNTAINS ENGINEERING CORPORATION  
(CONVERSION INTO PUBLIC COMPANY) BILL 1989

OUTLINE

The Bill provides for the establishment of the Snowy Mountains Engineering Corporation ("SMEC") as a company by providing for the corporation ("the existing corporation") to be registered as a company incorporated under the Companies Act 1981 on a day to be proclaimed (proposed section 20). It is expected that the commencing day of SMEC as a company ("the transition") will be 1 July 1989.

The Bill provides for the conversion to occur in four steps. The first step, which will come into effect on the Bill receiving the Royal Assent, involves the creation of the share capital (proposed section 18A), the application by SMEC to be registered as a company (proposed section 18C) and other preparatory steps necessary for the transition.

The second step is the proclamation of subclause 14(1) of the Bill which will repeal sections 41 and 42 of the Snowy Mountains Engineering Corporation Act 1970 ("the Principal Act"). These sections concern the current capital structure of SMEC and when SMEC issues shares under proposed section 18B, sections 41 and 42 will be repealed. SMEC will then be a statutory authority with share capital.

The third step is the transition of SMEC to a company. When suitable memorandum and articles of association are finalised, proposed section 20 will be proclaimed to take effect and SMEC will be taken to be registered under the Companies Act 1981. Concurrently the statutory control over SMEC will be removed by the repeal of most of the provisions of the existing SMEC Act. The operations of SMEC will then be governed by its memorandum and articles of association and guidelines to directors, if any.

The final step is automatic and ensures that SMEC maintains its legal personality at all times. This step involves the repeal of section 6 of the existing SMEC Act which establishes SMEC as a statutory corporation and will take effect immediately after SMEC is registered as a company. Continuity of corporate entity will dispense with the need to transfer assets and liabilities from the existing corporation to the new body corporate and means that all contracts, agreements and arrangements entered in to by or on behalf of the existing corporation which are in force immediately before the transition will apply to the new company.

The Bill provides that, on transition, each staff member of the Corporation will become an employee of the company on the same terms and conditions as applied to his or her employment by the corporation. Entitlements such as long service and recreation leave, and eligibility for sick leave, applying at transition day will be preserved. Those staff who have rights under Part IV of the Public Service Act 1922 will retain those rights.

FINANCIAL IMPACT STATEMENT

The Bill does not involve additional expenditure by the Commonwealth or additional revenue to the Commonwealth.

The Bill provides for exemption from Commonwealth, State and Territory taxes on the transition to a company and transfer of assets, recognising that there has been no change in the Commonwealth's beneficial ownership.

## ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

- Corporation : The Snowy Mountains Engineering Corporation as established under the Snowy Mountains Engineering Corporation Act 1970
- Principal Act : Snowy Mountains Engineering Corporation Act 1970
- Transition : The transition of SMEC from a statutory corporation into a company incorporated under the Companies Act 1981 by virtue of proposed section 20
- SMEC : Snowy Mountains Engineering Corporation

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

1. Provides for the Act to be cited as the "Snowy Mountains Engineering Corporation (Conversion into Public Company) Act 1989".

#### Clause 2 - Commencement

2. Subclause (1) provides for the Act, other than those parts of the Act referred to in subclauses 2(2), 2(4), and 2(6), to come into operation on the day it receives the Royal Assent.

3. The effect of subclause 2(2) is that sections 41 and 42 of the Principal Act, which deal with the capital structure of SMEC and payments to the Commonwealth, are to be repealed on a date to be proclaimed.

4. Subclause 2(3) provides for subclause 2(2) to take effect no later than four months after the Royal Assent.

5. Subclause 2(4) provides for those clauses relating to the removal of statutory control and the transition of SMEC into a public company to take effect on a date to be proclaimed.

6. Subclause 2(5) provides for subclause 2(4) to take effect no later than six months after the Royal Assent.

7. Subclause 2(6) provides that Part II of the Principal Act which establishes SMEC as a statutory corporation is not repealed by subclause 7(2) until SMEC is registered under the Companies Act 1981, thereby ensuring SMEC maintains its legal identity through the transition.

**PART II - AMENDMENTS OF THE SNOWY MOUNTAINS  
ENGINEERING CORPORATION ACT 1970**

**Clause 3 - Principal Act**

8. Defines "Principal Act" as the Snowy Mountains Engineering Corporation Act 1970.

**Clause 4 - Title**

9. Amends the long title of the Principal Act to reflect that the Principal Act as amended by this Bill will constitute SMEC as a public company.

**Clause 5 - Insertion of new sections**

10. Proposed section 3 - Interpretation Defines the various terms used in that Act.

11. Proposed section 3A - Operating under a name For the purpose of protection of company and business names, this specifies circumstances which establish whether a body is operating under a particular name in a State or Territory (see also proposed section 39A).

12. Proposed section 3B - Subsidiaries Provides that the question of whether a body is a subsidiary is to be resolved in the same manner as under the Companies Act 1981.

13. Proposed section 3C - Operation of Act Provides for the Act to operate within and outside Australia.

14. Proposed section 3D - Extension to External Territories Provides for the Act to extend to all Australian external Territories.

Clause 6 - Repeal of sections 4 and 5

15. Subclause 6(1) repeals section 4 of the Principal Act (dealing with interpretation). By virtue of subclause 2(4) it comes into effect on transition.

16. Subclause 6(2) repeals section 5 of the Principal Act relating to the extension of the Principal Act to all the Territories.

Clause 7 - Repeal of Part II

17. Subclause 7(1) repeals subsections 6(2), 6(3) and 6(4) of the Principal Act, which contain details of the establishment of the corporation, on transition. Subclause 7(2) repeals PART II of the Principal Act, which establishes SMEC as a statutory corporation, immediately following transition.

Clause 8 - Heading to Part III

18. Amends the heading of Part III of the Principal Act from "FUNCTIONS AND POWERS OF THE CORPORATION" to "ADDITIONAL FUNCTIONS AND POWERS OF SMEC"

Clause 9 - Additional functions

19. Paragraph 9(a) repeals subsections 17(1) and 17(1A) of the Principal Act dealing with the functions of the corporation and substitutes proposed subsection 17(1) which sets out additional functions of SMEC to include investigating, advising on, designing, supervising and constructing engineering works. SMEC's prime function will be acquired by virtue of it becoming a company.

20. Paragraph 9(d) repeals subsections 17(3) (dealing with the power of the Minister to give directions to the corporation as to the exercise of its powers and functions) and 17(6) (dealing with the application of State laws to the exercise of the corporation's functions) of the Principal Act and substitutes proposed subsection 17(3), which allows for the Minister to approve in writing the exercise by SMEC of a function referred to in subsection 17(1), and proposed subsection 17(4), which provides for proposed section 17 to be subject to the Companies Act 1981 and SMEC's memorandum and articles.

21. The additional functions conferred by proposed subsection 17(1) and the power given in proposed subsection 17(3) to the Minister to approve the exercise of those functions are included so that the power conferred on SMEC by enabling legislation in the various States continues to operate, thus ensuring that SMEC is able to continue to perform those functions in the States.

**Clause 10 - Repeal of section 18 and substitution of section**

22. Repeals section 18 of the Principal Act (dealing with the powers of the Corporation) and inserts proposed section 18 - Additional Powers which provides for SMEC to have the necessary powers to perform the functions set out in proposed section 17 and provides that the exercise of those powers is subject to the Companies Act 1981 and SMEC's memorandum and articles.

**Clause 11 - Insertion of new Part:**

**PART IIIA - CREATION OF CAPITAL STRUCTURE AND OTHER STEPS PRIOR TO CONVERSION OF SMEC INTO A PUBLIC COMPANY**

23. Part IIIA provides for transforming the Corporation into an entity which can be converted into a public company. This ensures there is continuity of the corporate entity whilst SMEC conforms, as far as possible, with the registration requirements of the Companies Act 1981.

24. Proposed section 18A - Share capital of SMEC Provides for SMEC to have \$1 nominal value shares. It also allows for the shares to be issued at a premium, and if so, for the share capital to be adjusted accordingly. Thus if the shares are issued at par, there will be a share capital of \$5,207,807 (being the capital contributed by the Commonwealth as at 30 June 1988 less accumulated losses by the corporation as at 30 June 1988). However, if the shares are issued at, for example, a 30 cent premium the issue price will be \$1.30 and the share capital will be  $5,207,807/1.30 = \$4,006,005$ .

25. Proposed section 18B - Issue of shares Requires SMEC to apply an amount equal to its share capital, as determined under proposed section 18A, in paying up in full shares in SMEC. The shares are to be issued to the Commonwealth or a nominee of the Commonwealth as directed by the Minister. If the shares are issued at a premium then SMEC must transfer the premium to a share premium account, which by virtue of proposed subsection 23(3) is a share premium account for the purposes of the Companies Act 1981. Thus, for example, if a premium of 30 cents per share is determined, the share capital will be \$4,006,005 and \$1,201,802 will be transferred to a share premium account.

26. Proposed subsection 18B(3) provides that the issue of shares by SMEC in accordance with proposed subsection 18B(2) discharges any obligation on SMEC to repay the capital of the Corporation contributed by the Commonwealth. Proposed subsection 18B(4) provides that the issue of shares is an issue for valuable consideration other than cash.

27. Proposed subsection 18B(7) ensures that a person who holds shares as a nominee for the Commonwealth does not thereby become a member of the Company.

28. Proposed section 18C - SMEC to apply to be registered as a company - requires SMEC to apply to the National Companies and Securities Commission for registration as a company limited by shares and to provide supporting documentation, including the proposed memorandum and articles of association.

29. Proposed section 18D - New name of SMEC - provides for SMEC's name to be changed to "Snowy Mountains Engineering Corporation Limited" on the day before transition as if the change of name was effected under the Companies Act 1981. This is to facilitate SMEC's registration as a company.

Clause 12 - Repeal of Parts IV and V and insertion of new Part:

**PART IV - CONVERSION OF SMEC INTO A PUBLIC COMPANY**

30. Repeals Parts IV and V of the Principal Act (dealing respectively, with the Corporation's Board and the Corporation's Managing Director and Staff) and substitutes proposed sections dealing with the mechanics of registering the corporation (now called Snowy Mountains Engineering Corporation Limited) as a company in a manner which preserves the business entity.

31. Proposed section 19 - Effect of Part-summary This sets out SMEC's status under the Companies Act 1981 on transition.

32. Proposed section 20 - SMEC taken to be registered under Companies Act Provides for SMEC to be converted into a public company limited by shares with the name Snowy Mountains Engineering Corporation Limited by deeming the National Companies and Securities Commission to have been required to grant SMEC's application for registration as a company under the Companies Act 1981, and for such registration to have been effected on transition, ie the commencement of the proposed Part IV.

33. Proposed section 21 - Memorandum and articles of SMEC Provides for the prepared memorandum and articles of association of SMEC, lodged with the National Companies and Securities Commission prior to transition (see paragraph 28 above), to be the memorandum and articles of SMEC and to apply from transition as if they had been registered under the Companies Act 1981.

34. Proposed section 22 - Membership of SMEC Provides for persons holding shares in SMEC on transition to be members of SMEC after the transition and to be subject to SMEC's memorandum and articles of association.

35. Proposed section 23 - Application of certain provisions of Companies Act Provides that, where the Commonwealth holds all the shares in SMEC, certain provisions of the Companies Act 1981 shall not apply. The major effect of this section is that, while the Commonwealth is the sole shareholder of SMEC, the requirement that there must be at least 5 shareholders does not apply.

36. Proposed section 24 - Accounting records Provides for accounts and records kept by SMEC under section 63F of Audit Act 1901 to be deemed to be the accounting records of SMEC for the purposes of the Companies Act 1981.

37. Proposed section 25 - Accounts Provides that reports and financial statements prepared by SMEC under section 63H of the Audit Act 1901 and section 52 of the Principal Act are deemed to be profit and loss accounts of SMEC for the purposes of the Companies Act 1981.

38. Proposed section 26 - Operation of section 25B of Acts Interpretation Act Provides that nothing in this Act or in the Companies Act 1981 affects, or is affected by, section 25B of the Acts Interpretation Act 1901 concerning the continued existence of a body the name or constitution of which, is altered by an Act of Parliament.

Clause 13 - Insertion of new Parts

39. Parts VA, VB, and VC determines SMEC's position in respect of business names, staff, taxation and other matters during and post transition.

PART VA - USE OF CERTAIN NAMES

40. Proposed sections 39A and 39B - Protected body may operate under protected company/business name Provide that SMEC's, or a SMEC wholly owned subsidiary's company or business name (see definition of "protected body, group company, protected company name and protected business name" in proposed section 3) may be used in a State and Territory, even if that name is not registered in that State or Territory.

41. Proposed Sections 39C - Other persons not to use protected names and 39D - Exceptions for pre-existing rights Creates an offence for a person to use SMEC's or its subsidiaries' protected names by other persons, except where there are pre-existing rights to such use.

42. Proposed Sections 39E - Use of other names by protected bodies and 39F - Effect on State and Territory laws Allow the use and registration of other names by SMEC and its subsidiaries.

PART VB - STAFF MATTERS

43. Proposed Section 39G - Employment of staff members continues after transition Provides for the Managing Director, officers and employees of SMEC immediately before transition to be employed by the new company on the same terms and conditions on which they were employed immediately before transition.

44. Proposed Section 39H - Act not to affect certain matters relating to staff members Provides that contracts of employment and periods of employment of staff members of SMEC are not broken by the operation of the Bill, and accrued rights are not affected.

45. Proposed Section 39J - Effect of sections 39G and 39H This is a procedural section clarifying that sections 39G and 39H are inserted only for the avoidance of doubt and do not limit the provisions of the Companies Act 1981 relating to change of company name or continuation of rights and liabilities on registration.

46. Proposed Section 39K - Variation of terms and conditions of employment Confirms that terms and conditions of each staff member's employment after transition may be varied in the same way as could be done by SMEC immediately before the transition under sections 34 and 39 of the Principal Act.

47. Proposed Section 39L - Application of Part IV of the Public Service Act Provides for staff members of the Corporation who have mobility rights under Part IV of the Public Service Act 1922 to continue to have those rights.

#### PART VC - TAXATION MATTERS

48. Proposed Section 39M - Interpretation and Proposed Section 39N - Exemptions relating to exempt matters Provide for the definition of certain terms used in Part VC and for exemption from Commonwealth, State and Territory taxes of exempt matters (defined in proposed section 39M to include the issue of shares; SMEC's registration and change of name to Snowy Mountains Engineering Corporation Limited, and the operation of this Bill).

49. Proposed Section 39P - Authorised person may certify in relation to exemptions Provides for certification by an authorised person, (defined in proposed section 3 to be the Minister or an office holder in the Department nominated by the Minister), that a certain matter is an exempt matter or specified transactions were made or instruments executed in relation to an exempt matter (defined in proposed section 39M) and by virtue of proposed section 39N not subject to taxation.

50. Proposed Section 39O - SMEC to be taken to have had share capital Provides for SMEC for the purposes of the Income Tax Assessment Act 1936 to have had, at all times before issuing of shares under proposed subsection 18B(1), a share capital in which all the issued shares were beneficially owned by the Commonwealth.

#### Clause 14 - Repeal of Part VI

51. Subclause 14(1) repeals sections 41 and 42 of the Principal Act (concerning respectively, the current capital structure of SMEC and payments to the Commonwealth) on a date to be proclaimed, but prior to transition. This will occur when SMEC issues shares in accordance with proposed section 18B.

52. Subclause 14(2) repeals the remaining provisions of Part VI of the Principal Act (concerning borrowings and other financial controls on SMEC) on transition.

Clause 15 - Repeal of sections 51 to 54 (inclusive) and substitution of sections

53. Repeals sections 51 to 54 of the Principal Act which cover reports to the Minister, Annual Reports, remuneration of the Managing Director, validity of contracts and guarantees and delegations by the Minister and substitutes other miscellaneous provisions. It will come into effect on transition (subclause 2(4)).

54. Proposed Section 51 - SMEC not public authority etc. Provides that, after transition, SMEC shall not be a Commonwealth authority or otherwise come under the shield of the Crown for the purposes of the law of the Commonwealth, or State or a Territory unless express provision is made to the contrary by the law of the Commonwealth, State or Territory.

55. Proposed Section 52 - Judicial notice of SMEC's Seal Provides that judicial notice will continue to be taken of the seal of the Corporation applied in relation to any document prior to the transition.

56. Proposed Section 53 - Compensation for acquisition of property Provides for compensation to be paid if the operation of the Act results in acquisition of property otherwise than on just terms.

57. Proposed Section 54 - Public Works Committee Act Provides for SMEC to be exempt from the Public Works Committee Act 1969.

58. Proposed Section 54A - Lands Acquisition Act Provides that the Lands Acquisition Act 1989 does not apply to the acquisition of land by SMEC.

59. Proposed Section 54B - Additional powers and functions under State Laws Provides for SMEC to have any additional powers and functions as conferred by State laws, subject to any regulations.

PART III - CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Clause 16 - Consequential amendments of other Acts

60. This clause provides for consequential amendments of other Act, viz:

- . Commonwealth Borrowing Levy Act 1987;
- . Freedom of Information Act 1982; and
- . Sales Tax Assessment Act (No 1) 1930.

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