

1993

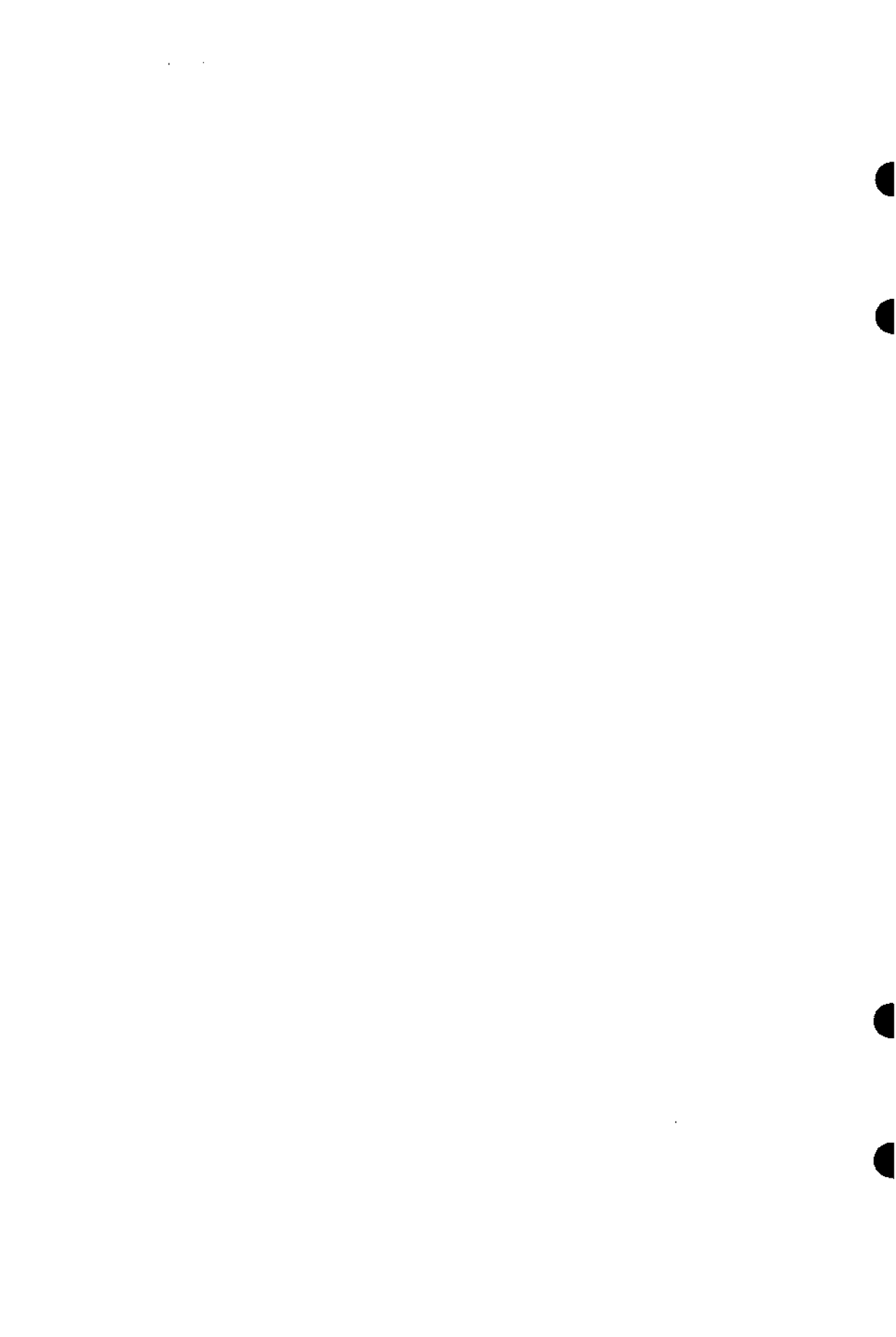
THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SNOWY MOUNTAINS ENGINEERING CORPORATION LIMITED SALE BILL
1993

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance,
the Hon Ralph Willis, MP)



SNOWY MOUNTAINS ENGINEERING CORPORATION LIMITED SALE BILL 1993

OUTLINE

The Snowy Mountains Engineering Corporation Limited Sale Bill 1993 puts in place the necessary framework for the sale of the Snowy Mountains Engineering Corporation Limited (SMEC) by the Commonwealth.

The main purposes of the Bill are to ensure that:

- existing Commonwealth legislation applying to SMEC because of its status as a Commonwealth owned entity will not apply to SMEC from the sale day and that post-sale SMEC is, as far as practicable, not subject to Commonwealth legislation which does not also govern the activities of other private sector companies;
- despite the change of ownership, employee entitlements already accrued under Commonwealth legislation in respect of pre-sale employment are retained post-sale;
- the post-sale service of specific categories of employees is recognised as public employment for the purposes of qualifying for certain rights and benefits;
- there are saving provisions which allow for certain pre-sale rights or obligations to continue post-sale in respect of matters which occurred during the pre-sale period. The principal areas involve obligations to employees and some administrative and legal issues; and
- certain parts of the Snowy Mountains Engineering Corporation Limited Act 1970 are retained including those which preserve the basis of incorporation of SMEC.

The Bill also makes consequential amendments to various Commonwealth Acts and Regulations.

FINANCIAL IMPACT STATEMENT

The prime financial impact arising from the sale of SMEC will be the offset to outlays occurring when the sale receipts are credited to the Commonwealth Public Account.

Apart from sale receipts the SMEC Sale Bill contains provisions which have financial impacts in four areas:

- Dividend - there will be no further dividends from SMEC to the Commonwealth as shareholder;
- Employee matters - primarily in relation to superannuation where no further employer contributions will be received from SMEC. It should be noted that employer superannuation contributions are classified as financing transactions and do not affect the Budget outcome;

- exemption from certain Commonwealth, State and Territory taxes and fees during the sale process; and
- the extinguishing of tax losses accrued up to 30 June 1993 may form part of the sale consideration in lieu of cash sale receipts.

In addition, ongoing costs of monitoring SMEC faced by the portfolio department (the Department of Industry, Technology and Regional Development) and the Department of Finance will be no longer incurred following sale and any risk of a future call on the Commonwealth such as for extra capital will be eliminated.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Commencement: Royal Assent

1. Provides for the Act to be cited as the Snowy Mountains Engineering Corporation Limited Sale Act 1993

Clause 2 - Commencement

Commencement: Royal Assent

2. Subclause 2(1) provides for certain clauses to commence on Royal Assent. These are:

formal clauses relating to procedural matters and interpretation (clauses 1, 2, 3, and 4) ; also

exemptions from certain State and Territory taxes and fees (clause 38).

3. Subclause 2(2) allows for the majority of the provisions to commence on the sale day with the exception of clause 37 which is to commence on a day to be fixed on by Proclamation (subclause 2(3)). Clause 37 provides for the removal of SMEC's tax losses.

4. Subclause 2(4) provides that a Proclamation in relation to clause 37 may fix a day earlier than the day on which the Proclamation is published in the Gazette but only if the day is the sale day.

5. Subclause 2(5) places a limit on the period of time within which the provisions contained in the Bill can be commenced. Any provisions which have not commenced within 2 years from the date on which the Act receives the Royal Assent are repealed on the day after the period ends.

Clause 3 - Interpretation

Commencement: Royal Assent

6. Subclause 3(1) provides definitions of terms used in the Bill. The term SMEC subsidiary includes bodies that are subsidiaries of SMEC before or on the date of sale, as well as bodies which, post-sale, become subsidiaries of SMEC.

7. Subclause 3(2) provides for the term "subsidiary" to have the same meaning as in the Corporations Law.

Clause 4 - The sale day

Commencement: Royal Assent

8. Clause 4 requires the Minister for Finance to declare a specified day to be the sale day by notice in the Gazette. It is the day which, in the opinion of the Minister, the majority of the voting shares in SMEC have been acquired by a person or persons, other than the Commonwealth or a nominee of the Commonwealth.

PART 2 - AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) REGULATIONS

9. This Part amends the Regulations made under the Long Service Leave (Commonwealth Employees) Act 1976 ("Long Service Leave Act") which prescribe the companies to which that Act applies.

Clause 5 - Principal Regulations

Commencement: This provision and clause 6 will commence on the sale day. Transitional and saving provisions will also commence on the same day to preserve employee benefits under the Long Service Leave Act (Division 1 of Part 4, clauses 9 to 15).

10. This Clause defines the term "Principal Regulations" to mean the Long Service Leave (Commonwealth Employees) Regulations.

Clause 6 - Schedule 1A

Commencement: See clause 5.

11. Clause 6(1) omits reference to the Snowy Mountains Engineering Corporation Limited from the relevant schedule to the Principal Regulations. Hence, employees of SMEC will no longer be covered by the Long Service Leave Act from the sale day. See Division 1 of Part 4 (clauses 9 to 15) for transitional and saving provisions.

12. Clause 6(2) ensures that the amendment of the Principal Regulations does not prevent the Governor-General from further amending or repealing those Regulations.

PART 3 - AMENDMENT OF THE MATERNITY LEAVE (COMMONWEALTH EMPLOYEES) REGULATIONS

13. This Part amends the Regulations made under the Maternity Leave (Commonwealth Employees) Act 1973 ("Maternity Leave Act") which prescribe the companies to which that Act applies.

Clause 7 - Principal Regulations

Commencement: This provision and Clause 8 are to commence on the sale day. Transitional provisions will also commence on the same day to preserve employee benefits under the Maternity Leave Act (clauses 31 and 32).

14. This clause defines the term "Principal Regulations" to mean the Maternity Leave (Commonwealth Employees) Regulations.

Clause 8 - Schedule 2A

Commencement: See clause 7.

15. Clause 8(1) omits reference to the Snowy Mountains Engineering Corporation Limited from the relevant schedule to the Principal Regulations. Hence, employees of SMEC will no longer be covered by the Maternity Leave Act from the sale day. See clauses 31 and 32 for transitional provisions.

16. Clause 8(2) ensures that the amendment of the Principal Regulations does not prevent the Governor-General from further amending or repealing those Regulations.

PART 4 - TRANSITIONAL AND SAVING PROVISIONS

17. Transitional and saving provisions continue or modify certain obligations of SMEC. They also allow for the completion of matters commenced pre-sale and preserve certain employee benefits associated with pre-sale service that would otherwise be foregone because of the sale.

18. The saving provisions also recognise the post-sale service of specific categories of employees as public employment for the purposes of qualifying for certain deferred pension benefits.

Division 1 - Transitional and saving provisions in relation to long service leave

Commencement: Provisions under this Division are to commence on the sale day and will coincide with the commencement of clause 6 which removes SMEC from the ambit of the Long Service Leave Act. It covers the preservation of long service leave benefits accrued to point of sale and preserves existing long service leave entitlements.

19. SMEC employees pre-sale accrue long service leave entitlements (3 months for every 10 years service) under the Long Service Leave Act.

20. For most employees, pre-sale service of less than 10 years will not normally qualify for any long service leave entitlement under the Long Service Leave Act.

21. To ensure equity, transitional provisions in this Division provide that when those employees either complete 10 years service with SMEC or cease to be employees in circumstances under which Long Service Leave Act entitlements would have applied had SMEC not been sold, this Bill will ensure long service leave benefits at the Long Service Leave Act standard are provided in relation to service before the sale day.

22. Thus, under the transitional provisions, a SMEC employee with 9 years service as at sale day could be granted long service leave of 9/10 of 3 months once the employee has served 10 years with SMEC. The employee's long service leave entitlements relating to service after the sale day will accrue and be credited according to the long service leave regime in operation after the sale day.

Clause 9 - Interpretation

Commencement: This provision will commence on the sale day.

23. This clause provides for the definition of terms used in this Division and for expressions used in this Division to have the same meaning as in the Long Service Leave Act. It includes a definition of the "combined service period" of an employee to be the total of the employee's service in the public sector before the sale day and the employee's service with SMEC after sale.

Clause 10 - Long service leave for employees with less than 10 years service

Commencement: This provision will commence on the sale day.

24. This clause provides for the granting of long service leave for the leave accrued under the Long Service Leave Act prior to sale for employees who at point of sale have less than 10 years service. Long service leave credit for the purpose of this clause is defined in subclause 13(1).

25. The provision applies to a person who was an employee of SMEC immediately before the sale day and whose period of service at sale day was less than 10 years. If the employee continues to be employed by SMEC until his or her combined service period with SMEC is at least 10 years SMEC may grant the employee long service leave.

26. Subclause 10(5) provides for granting of the long service leave in the circumstances of retirement or retrenchment as long as the employee has a combined service period with SMEC of at least one year. Leave granted under subclause 5 is to be taken so as to expire immediately before the employee is to retire or be retrenched.

27. Subclause 10(8) provides for the application of section 20 of the Long Service Leave Act to calculate the rate of salary to be used in working out the full salary of an employee for the purposes of this provision.

Clause 11 - Payments in lieu of long service leave for employees with less than 10 years service

Commencement: This provision will commence on the sale day.

28. Clause 11 sets out the circumstances in which an employee can be paid an amount in lieu of long service leave accrued under the Long Service Leave Act for employment with SMEC before the sale day. The provision allows for an employee to elect not to be paid under this clause or to accept a lesser amount. Such request to be made to the employer in writing. The rate of salary to be used for this provision to be the rate applicable to an employee under section 21 of the Long Service Leave Act, and the amount of leave is determined by subclause 13(2).

29. This provision may apply to employees on reaching minimum retirement age, or retrenchment, or cessation due to ill health. It also covers cessation of employment when an employee has a combined service period of at least 10 years.

Clause 12 - Payments on the death of an employee

Commencement: This provision will commence on the sale day

30. This clause provides for the payment to a deceased employee's dependant (or dependants) of the amount that would have been payable to the employee under clause 11 if on the day of the employee's death, the employee had stopped being an employee on or after reaching minimum retirement age. This provision applies as long as immediately before the sale day the employee had less than 10 years service; or at the time of death had a combined service period of at least one year.

Clause 13 - Employee's long service leave credit for the purposes of sections 10 and 11

Commencement: This provision will commence on the sale day

31. This clause defines the long service leave credit of SMEC employees as being equal to the employee's long service leave under the Long Service Leave Act as at the sale day.

Clause 14 - Division not to effect an employee's post-sale long service leave rights

Commencement: This provision will commence on the sale day

32. This clause provides certainty that the application of the provisions in this Division do not effect an employee's post-sale long service leave rights. Long service leave associated with service with SMEC after the sale day will be a matter for SMEC and its employees to agree in the context of relevant State and Territory legislation.

Clause 15 - Saving - Long Service Leave Act

Commencement: This provision will commence on the sale day and will coincide with the commencement of clause 6 (removing SMEC from the ambit of the Long Service Leave Act) and clauses 9-14 (transitional long service leave provisions).

33. This clause ensures that accrued long service leave credits, arising from pre-sale service with SMEC under the Long Service Leave (Commonwealth Employees) Act 1976 (Long Service Leave Act) are retained post-sale.

Division 2 - Transitional and saving provisions relating to the Safety Rehabilitation and Compensation Act

Clause 16 - Interpretation

Commencement: This provision will commence on the sale day.

34. This clause provides for the expressions used in this Division to have the same meaning as in the Safety Rehabilitation and Compensation Act 1988 ("SRC Act").

Clause 17 - Continued application of SRC Act

Commencement: This provision will commence on the sale day.

35. Clause 17 provides that the SRC Act (ie. the rights and obligations of the employees, SMEC and Comcare) continues to apply to SMEC only as set out in this Division.

Clause 18 - Transitional provisions relating to the SRC Act that relate to SMEC employees and former SMEC employees

Commencement: This provision will commence on the sale day.

36. This clause provides that the SRC Act continues to apply in respect of claims arising from injuries suffered by employees of SMEC while such employees prior to the sale day. This includes employees of SMEC who were injured while employees of SMEC but who ceased to be employees of SMEC before the sale day.

Clause 19 - Transitional provision relating to Division 4A of Part VII of the SRC Act

Commencement: This provision will commence on the sale day.

37. Clause 19 provides for Division 4A of Part VII of the SRC Act (which relates to premiums) to continue to apply to SMEC. This is to allow for any excess premium paid by SMEC or shortfall payable to be adjusted as a result of the sale. It is likely that a refund of premium would be required where SMEC has paid a premium for a full financial year but the sale occurs before the end of the financial year.

38. Subclause 19(2) makes any amount of premium payable by SMEC which remains unpaid 60 days after the sale day a debt due to the Commonwealth and payable to Comcare.

Clause 20 - Transitional provisions relating to section 128A of the SRC Act

Commencement: This provision will commence on the sale day.

39. This clause provides certainty that SMEC continues to be liable to pay for any injuries suffered by employees prior to 1 July 1989.

Clause 21 - Notification of amount of salary etc paid to employees of SMEC

Commencement: This provision will commence on the sale day.

40. This clause requires that the Commission for the Safety Rehabilitation and Compensation of Commonwealth Employees (Comcare) be notified of the amount of pay, or salary or wages paid to employees of SMEC for that part of the financial year ending on the day before the sale day. The actual wage and salary bill is relevant to the calculation of any refund of premium to SMEC or amount payable to Comcare (as provided for in clause 19).

Clause 22 - Amendment of declarations under the SRC Act

Commencement: This provision will commence on the sale day.

41. This clause removes reference to SMEC from the declaration under the SRC Act identifying SMEC as a body corporate to which the SRC Act applies. From the sale day it is intended that SMEC will be required to comply with generally applicable workers' compensation legislation.

Division 3 - Transitional and saving provisions in relation to superannuation and other retirement benefits

Clause 23 - Saving - deferred benefits under the Superannuation Act 1922

Commencement: This provision will commence on the sale day.

42. This clause applies to employees of SMEC or a SMEC subsidiary who up to sale day were accumulating service with SMEC or a SMEC subsidiary as service in public employment in order to qualify to obtain deferred benefits under the Superannuation Act 1922 (a total of 20 years is required in most cases).

43. The clause provides that employees who elected to preserve their superannuation rights (and deferred their benefits) under the Superannuation Act 1922 will be able to continue to count employment with SMEC or a SMEC subsidiary after sale day as public employment for the purposes of the Act.

Clause 24 - Saving - deferred benefits under the Superannuation Act 1976

Commencement: This provision will commence on the sale day.

44. Employees of SMEC who ceased to be members of the Commonwealth Superannuation Scheme before reaching a total of 5 years contributory membership, may qualify to defer their benefits if they remain in public employment for the balance of the 5 year period.

45. Similarly to clause 23 (Superannuation Act 1922) and clause 26 (DFRDB Act), this clause ensures that employees who have elected to preserve their superannuation benefits are able to continue counting post-sale service with SMEC or a SMEC subsidiary as public employment. A period of employment with one of these bodies will therefore count towards the five year qualifying period for eligibility for deferred benefits even after the sale day.

Clause 25 - Saving - period of eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976

Commencement: This provision will commence on the sale day.

46. This clause provides that any period of employment with SMEC or a SMEC subsidiary which would have been regarded as eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976 (which allows for the preservation of rights of persons ceasing to be eligible employees) prior to the sale day continues to be regarded as such for the purposes of the person qualifying for deferred benefits.

Clause 26 - Saving - deferred benefits under the DFRDB Act

Commencement: This provision will commence on the sale day.

47. This clause relates to the Defence Force Retirement and Death Benefits Act 1973 (the DFRDB Act). Current employees of SMEC who were formerly members of the Defence Force and who have elected to take deferred DFRDB benefits are required to complete an aggregate of 20 years (in most circumstances) in the Defence Force or in subsequent public employment to enable benefits to be paid.

48. In the absence of a specific provision, an employee who has not served the required period prior to the Commonwealth ceasing to have a controlling interest in SMEC would lose his or her entitlement to the benefits available under the DFRDB Act.

49. Subclause 26(1) is intended to enable former members of the Defence Force who:

- are employed by SMEC, or a SMEC subsidiary,
- had deferred their benefits under the DFRDB Act, and
- were accruing service in public employment with SMEC or a SMEC subsidiary,

to count employment with SMEC or a SMEC subsidiary as public employment even after the sale day.

50. These employees would be entitled to their deferred benefits if they remain with SMEC or a SMEC subsidiary (or in other public employment) until the qualifying period (usually 20 years) is completed.

Clause 27 - Saving - period of eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act

Commencement: This provision will commence on the sale day.

51. Clause 27 ensures that any period of employment with SMEC or a SMEC subsidiary which would have been eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act (which allows for the preservation of rights of contributing members who cease to be members of the Defence Force) prior to the sale day, continues to be regarded as such for the purposes of a person qualifying for deferred benefits.

Clause 28 - Application - Superannuation Act 1922

Commencement: This provision will commence on the sale day.

52. This provision provides that from the sale day SMEC is not to be taken to be an approved authority for the purposes of section 145 of the Superannuation Act 1922. This provision does not affect the operation of clause 23 which allows for eligible SMEC employees to continue to qualify to defer their pension benefits post-sale.

Clause 29 - Application - Superannuation Act 1976

Commencement: This provision will commence on the sale day.

53. This clause provides that from the sale day SMEC will no longer be an approved authority for the purposes of the Superannuation Act 1976.

Clause 30 - Application - Superannuation Act 1990

Commencement: This provision will commence on the sale day.

54. Although SMEC is not an approved authority for the purposes of the Superannuation Act 1990 as it has been excluded by a Declaration by the Minister, this provision is intended to ensure that if the Declaration is ever revoked, there will be no doubt that SMEC is not an approved authority for the purposes of the Superannuation Act 1990.

55. There is no saving provision for the Superannuation Act 1990 as this Act does not require a qualifying period of public employment to defer or preserve benefits.

Division 4 - Other transitional and saving provisions

Clause 31 - Transitional maternity leave provisions relating to employees of SMEC who are not on maternity leave immediately before the sale day

Commencement: The provision will commence on the sale day and will coincide with the commencement of clause 8 which removes SMEC from the ambit of the Maternity Leave (Commonwealth Employees) Act 1973 (Maternity Leave Act).

56. SMEC employees are currently able to avail themselves of provisions under the Maternity Leave Act which provide for leave of up to 12 months, 12 weeks of which is on full pay, the remainder without pay.

57. This clause will preserve the entitlements of officers and employees of SMEC who were employees of SMEC pre-sale to apply for and be granted leave under the Maternity Leave Act provided that such leave is begun within 12 months of the sale day.

Clause 32 - Transitional maternity leave provisions relating to employees of SMEC who are on maternity leave on or before the sale day.

Commencement: This provision will commence on the sale day and will coincide with the commencement of clause 8 which removes SMEC from the ambit of the Maternity Leave (Commonwealth Employees) Act 1973 (Maternity Leave Act).

58. This clause preserves the existing rights of those employees who are currently on maternity leave.

Clause 33 - Saving-Crimes (Superannuation Benefits) Act 1989

Commencement: This provision will commence on the sale day.

59. This clause ensures that the Crimes (Superannuation Benefits) Act 1989 continues to apply in relation to corruption offences committed by employees of SMEC, while an employee of SMEC, prior to sale day.

60. Where a person who was an employee of SMEC commits a corruption offence while employed by SMEC before the sale day an order will be able to be made against that person even after the sale day as if SMEC continued to be a Commonwealth authority. This is necessary because the Act can only apply if the employer is the Commonwealth or a Commonwealth authority.

61. Subclause 33(2) ensures that if an employer has paid contributions into the employee's superannuation scheme after the sale day a superannuation order may not be made against those contributions but only against contributions which are paid or payable before the sale day.

62. Subclause 33(3) ensures that an order cannot be made against the superannuation scheme of the employee if his or her corruption offence is committed after the sale day.

63. Subclause 33(4) provides that where an order pursuant to paragraph 19(3)(d) of the Crimes (Superannuation Benefits) Act 1989 is made by the court in respect of funds paid into the Consolidated Revenue Fund, or Superannuation Fund before the sale day by or on behalf of SMEC, the order must specify that the amount is to be retained by the Commonwealth. This provision relates to funds not yet paid to the employee from the superannuation scheme.

64. Subclause 33(5) provides that where an order pursuant to paragraph 19(4)(b) of the Crimes (Superannuation Benefits) Act 1989 is made by the court in respect of funds paid to the employee from the Consolidated Revenue Fund, or Superannuation Fund the order must specify that an amount equivalent to that amount is to be paid to the Commonwealth. This provision relates to funds which have already been paid to the employee from the superannuation scheme.

65. Subclauses 33(4) and (5) ensure that any amount which was paid prior to the sale day by SMEC to the Commonwealth in respect of employees under the Commonwealth Superannuation Scheme (CSS) who are convicted of a corruption offence is either retained by, or paid back to the Commonwealth. Without these subclauses it would be up to the court to determine whether the Commonwealth or SMEC was the relevant body to which to return the employer contribution to the employee's superannuation.

Clause 34 - Saving - DPP Act

Commencement: This provision will commence on the sale day.

66. This clause ensures that the Director of Public Prosecutions Act 1983 ("DPP Act") continues to apply to acts or omissions that occurred prior to the sale day and that civil remedies in relation to those matters can continue to be pursued. This provision is required because the DPP Act will no longer apply to SMEC from the sale day because it will not fit within the definition of an authority of the Commonwealth under that Act.

Clause 35 - Saving - Judiciary Act 1903

Commencement: This provision will commence on the sale day.

67. This clause is intended to ensure that the Australian Government Solicitor (the "AGS") will, post sale, continue to be able to act on behalf of SMEC in relation to proceedings which were commenced prior to the sale. The AGS may also continue to act where a certificate has been given by the Secretary to the Attorney-General's Department or a person holding a Senior Executive Service office in that Department to the extent that instructions were given by SMEC prior to the commencement of the section. Such a certificate is conclusive evidence unless the contrary is established.

PART 5 - OTHER PROVISIONS RELATING TO THE SALE OF SMEC

Clause 36 - SMEC not to be established by or under an Act or established by the Commonwealth

Commencement: This provision will commence on the sale day.

68. This clause is intended to ensure that the Snowy Mountains Engineering Corporation Limited is not to be taken to be established by or under an Act, or to be established by the Commonwealth. This is to ensure that after the sale day laws which are applicable to companies established by or under an Act or established by the Commonwealth will no longer apply to SMEC unless such laws expressly provide otherwise.

69. The provision does not affect the operation of any law including the operation of the Snowy Mountains Engineering Corporation Act 1970 prior to the commencement of this clause.

Clause 37 - Removal of SMEC's tax losses

Commencement: By Proclamation. It is not intended to proclaim this provision unless the removal of tax losses forms part of the sales agreement as approved by Government. Should this clause not be proclaimed it will lapse.

70. This clause provides that losses incurred by SMEC in a year of income before the year in which the sale day occurs are not allowable as a tax deduction for any year of income ending on or after the sale day.

Clause 38 - Exemption from State and Territory taxes and fees

Commencement: Royal Assent.

71. This provision exempts from State and Territory taxes and fees (other than fees under the Corporations Law), a variety of transactions relating to the sale of the Commonwealth's shareholding in SMEC, including:

- the transfer of the Commonwealth's shares in SMEC to another person and agreements relating thereto;
- the receipt of money by the Commonwealth, SMEC or another person acting on behalf of the Commonwealth, or SMEC from persons who are buying or subscribing for shares in SMEC on or before the sale day.

72. The Minister for Finance, or the Secretary to the Department of Finance, or an authorised delegate (who must be a member of the Senior Executive Service of the Department of Finance) may certify that a matter is exempt or has been done because of, or for a purpose connected with or arising out of, a specified exempt matter. Such a certificate is conclusive evidence of that matter unless the contrary is established.

Clause 39 - Regulations connected with the sale of SMEC

Commencement: This provision will commence on the sale day.

73. This provision enables regulations to be made that include a Declaration that they are connected with the sale of SMEC. If the Governor-General is satisfied that this is the case and the regulations are expressed to take effect on the sale day, the regulations commence retrospectively on the sale day. This is to enable necessary regulations to commence on the same day as the related provisions of the Bill, in the event that it is not practicable to have the regulations to commence on the sale day. Without this provision such regulations would not be able to commence before the date they are notified in the Gazette.

Clause 40 - Cessation of mobility rights

Commencement: This provision will commence on the sale day.

74. This clause extinguishes the mobility rights of employees of SMEC under Part IV the Public Service Act 1922 and the repealed Officers' Rights Declaration Act 1928. Access to mobility arrangements under Part IV of the Public Service Act 1922 has not been available to new staff at SMEC since SMEC was converted into a public company under the Corporations Law. However a small number of SMEC staff had acquired mobility rights before SMEC was converted to a public company and their rights had been preserved. The most significant element of these mobility rights was the opportunity to have special consideration given to reappointment to the Australian Public Service in the event of redundancy.

Clause 41 - Refund of contribution paid under the Occupational Health and Safety (Commonwealth Employment) Act 1991 (OH&S Act)

Commencement: This provision will commence on the sale day.

75. The Schedule to this Bill provides that SMEC and its subsidiaries will cease to be Commonwealth authorities for the purposes of the OH&S Act from the sale day. Clause 41 provides for a refund of a contribution if the sale day falls part way through a financial year where the relevant company has paid a contribution under section 67H of the OH&S Act in respect of the administration of that Act.

Clause 42 - Ending SMEC's liability under the Commonwealth Borrowing Levy Act 1987

Commencement: This provision will commence on the sale day.

76. This clause provides that SMEC is not liable to pay any levy imposed by the Commonwealth Borrowing Levy Act 1987 in respect of any borrowing after the sale day.

Clause 43 - A SMEC body not to be an eligible or relevant body for the purposes of the Superannuation Benefits (Supervisory Mechanisms) Act 1990

Commencement: This provision will commence on the sale day.

77. This clause removes the reference to SMEC from certain Declarations made under the Superannuation Benefits (Supervisory Mechanisms) Act 1990. Following the sale it is intended that this Act cease to apply to SMEC and its subsidiaries.

Clause 44 - Amendments of other Acts

Commencement: This provision will commence on the sale day.

78. This clause provides for the Acts as specified in the Schedule to be amended as set out in the Schedule.

SCHEDULE

AMENDMENTS OF OTHER ACTS

79. The Snowy Mountains Engineering Corporation Limited is presently subject to a range of statutes by virtue of its Commonwealth ownership. It is intended that it be removed from the ambit of most of the applicable legislation from the sale day. This will ensure that legislation which applies specifically to Commonwealth Government Business Enterprises does not apply to SMEC. This accords with the Government's intention that SMEC be treated by Commonwealth legislation consistently with private sector enterprises from that point on.

80. Acts to be amended are

Administrative Decisions (Judicial Review) Act 1977

Commonwealth Borrowing Levy Act 1987

National Crime Authority Act 1984

Occupational Health and Safety (Commonwealth Employment) Act 1991

Snowy Mountains Engineering Corporation Act 1970

AMENDMENTS TO THE SNOWY MOUNTAINS ENGINEERING CORPORATION ACT 1970

81. The Snowy Mountains Engineering Corporation Act 1970 (the SMEC Act) established the corporation. This Act was substantially amended by the Snowy Mountains Engineering Corporation (Conversion into Public Company) Act 1989. It is necessary to retain some of the provisions of the SMEC Act including those which preserve the basis of the company's incorporation. Other provisions in this Act are repealed.

82. Commencement. The schedule will commence on the sale day.