



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 97 2002–03

Snowy Hydro Corporatisation Amendment Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 97 2002–03

Snowy Hydro Corporatisation Amendment Bill 2002

Mary Anne Neilsen
Law and Bills Digest Group
3 February 2003

Contents

Purpose	1
Background	1
Corporatisation of the Snowy Mountains Scheme.....	1
Taxation and corporatisation.....	2
Main Provisions	2
Endnotes.....	3

Snowy Hydro Corporatisation Amendment Bill 2002

Date Introduced: 11 December 2002

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The Bill is taken to have commenced on 26 July 2001 (ie the date on which Snowy Hydro Limited was incorporated).

Purpose

To amend the *Snowy Hydro Corporatisation Act 1997* in order to exempt certain transactions dealing with the process of corporatisation from the Goods and Services Tax (GST).

Background

Corporatisation of the Snowy Mountains Scheme

The process of corporatisation of the Snowy Mountains Scheme has been a long and complex process. Its history dates back to 1993, when reform efforts gained impetus following the agreement of the Council of Australian Governments (COAG) to corporatise the Snowy Mountains Hydro-electric Authority (SMHEA) as an integral part of the energy market reform agenda.¹

In 1997 the Commonwealth, New South Wales and Victorian governments agreed to a set of Corporatisation Principles. These Principles covered:

- the formation, corporate governance and equity holdings for the new company, Snowy Hydro Limited (SHL)
- water arrangements for SHL
- the establishment of the Snowy Water Inquiry

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- the New South Wales regulatory arrangements which were to be imposed on SHL and
- tax matters arising from corporatisation.

The Corporatisation Principles provided the framework for Snowy corporatisation as a precursor to corporatisation legislation. That legislation consisted of the *Snowy Hydro Corporatisation Act 1997* passed by the Federal Parliament on October 1997 and complementary legislation passed by both the NSW and Victorian Parliaments at the same time.²

On 27 June 2001 SHL, the corporate entity which has replaced the SMHEA, was incorporated in preparation for corporatisation. SMHEA was finally corporatised on 28 June 2002. Upon that date, the *Snowy Mountains Hydro-electric Power Act 1949* was repealed and the assets of the SMHEA were transferred to SHL. The Commonwealth, New South Wales and Victorian Governments are shareholders in the new company with shareholdings reflecting the electricity entitlements of the three Governments - Commonwealth 13%, New South Wales 58% and Victoria 29%.³

Taxation and corporatisation

The original intention, conveyed in section 49 of the *Snowy Hydro Corporatisation Act 1997*, was that transactions relating to corporatisation should be exempt from tax. However this intention was overruled in relation to the GST by the operation of section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.⁴

In the Minister's Second Reading Speech to this Bill, he states that in order to allow corporatisation of the SMHEA to proceed, the Commonwealth undertook to introduce a Bill to exempt certain transactions relating to corporatisation from the GST.

The Minister also states that approval of all State and Territory Treasurers to the amendment has been obtained in accordance with the requirements of the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* and the intergovernmental agreement on the reform of Commonwealth-State financial relations.⁵

The Snowy Hydro Corporatisation Amendment Bill 2002 proposes to implement this exemption.

Main Provisions

Subsection 49(1) of the *Snowy Hydro Corporatisation Act 1997* provides that the initial steps involved in corporatisation are not to be subject to taxation. For example, the issue or transfer of shares (to the Commonwealth, Victoria or New South Wales) in the Snowy Hydro Company were to be exempt from tax. **Item 1** inserts an explanatory note at the end

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

of subsection 49(1) which confirms that this exemption is overruled in relation to GST matters by virtue of section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*. However the note also refers the reader to **new section 49A** which deals with supplies that are GST free under the Act.

Item 2 inserts **proposed section 49A** into the Act. **Proposed subsection 49A(1)** exempts certain aspects of corporatisation from GST. Exemptions from GST apply to:

- the initial issue of shares to the three Governments⁶
- the transfer of assets and liabilities of the Authority⁷ and the Governments that comprise the Snowy Scheme⁸
- the assumption and restructure of the Authority's debt⁹
- the transfer of employees¹⁰
- the transfer of Authority records¹¹, and
- the termination of the Snowy Agreements¹².

Proposed subsection 49A(2) confirms that the GST exemption only applies to the corporatisation transaction itself and does not impact on the ongoing operation and application of the GST Act to Snowy Hydro Ltd.

Endnotes

- 1 Department of Industry, Tourism and Resources, *Snowy Corporatisation*. At: http://www.isr.gov.au/content/controlfiles/display_details.cfm?objectid=23FBAC4E-F967-401D-AD47A268A24DE5CE
- 2 *Snowy Hydro Corporatisation Act 1997* (NSW) and the *Snowy Hydro Corporatisation Act 1997* (Vic).
- 3 Snowy Mountains Hydro-electric Authority, *Annual Report 2001-2002*, p. 17.
- 4 Section 177-5 cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay GST. The cancellation does not apply if the provision of the other Act commences after section 177-5 commenced; and it refers specifically to GST payable under the GST Act.
- 5 House of Representatives, *Hansard*, 11 December 2002, p. 10082.
- 6 **Proposed paragraph 49A(1)(a)** of the Bill.
- 7 Division 1 of Part 3 of the Commonwealth Snowy Hydro Act.
- 8 Sections 11 and 12 of the New South Wales and Victorian Snowy Hydro Acts.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 9 Division 3 of Part 3 of the Commonwealth Act and sections 13 of the New South Wales and Victorian Acts.
- 10 Part 4 of the Act and section 16 of the New South Wales and Victorian Acts.
- 11 Section 56 of the Commonwealth Act.
- 12 Section 60 of the Commonwealth Act and sections 53 and 28 of the New South Wales and Victorian Acts respectively.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.