

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

---

*(As read a first time)*

**SNOWY MOUNTAINS ENGINEERING CORPORATION  
AMENDMENT BILL 1985**

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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Presented and read a first time, 8 May 1985

*(Minister for Housing and Construction)*

## A BILL

FOR

### **An Act to reconstitute the Snowy Mountains Engineering Corporation, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **Short title, &c.**

5     **1.** (1) This Act may be cited as the *Snowy Mountains Engineering Corporation Amendment Act 1985*.

**(2)** The *Snowy Mountains Engineering Corporation Act 1970*<sup>1</sup> is in this Act referred to as the Principal Act.

#### **Commencement**

2. This Act shall come into operation on a day to be fixed by Proclamation.

10     **3.** Section 4 of the Principal Act is repealed and the following section is substituted:

#### **Interpretation**

“4. (1) In this Act, unless the contrary intention appears—  
‘appoint’ includes re-appoint;

'Australia' includes the Territories;

'Board' means the Snowy Mountains Engineering Corporation Board established by section 19;

'Chairperson' means Chairperson of the Board;

'Corporation' means the Snowy Mountains Engineering Corporation; 5

'Director' means a member of the Board, and includes the Chairperson and the Managing Director;

'engineering work' includes—

(a) an actual or proposed continuation, completion, repair, alteration, restriction or extension of an engineering work; or 10

(b) a proposed engineering work;

'Managing Director' means the Managing Director of the Corporation;

'part-time Director' means a Director other than the Managing Director.

“(2) For the purposes of this Act, the profits of the Corporation for a financial year are the amounts (if any) remaining after deducting from the revenue received or receivable in respect of that financial year the expenditure and provision for expenditure properly chargeable against that revenue.”. 15

#### **Establishment of Corporation**

4. Section 6 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections: 20

“(2) The Corporation—

(a) is a body corporate;

(b) shall have a seal;

(c) may acquire, hold and dispose of real and personal property; and 25

(d) may sue or be sued.

“(3) The seal of the Corporation shall be kept in such custody as the Board directs and shall not be used except as authorized by the Board.

“(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Corporation affixed to a document and shall presume that the document was duly sealed.”. 30

#### **Repeal of sections 7 to 16**

5. Sections 7 to 16 (inclusive) of the Principal Act are repealed.

#### **Functions of Corporation**

6. Section 17 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections: 35

“(1) Subject to this Act, the functions of the Corporation are to investigate, advise on, design, supervise and construct engineering works in Australia and overseas.

“(1A) Subject to this Act, the Corporation shall endeavour to—

- (a) expand its activities and enhance its professional reputation overseas;
- (b) so far as is practicable, involve Australian organizations in the performance of its functions overseas; and
- (c) promote overseas the interests of the Australian engineering industry.”;

(b) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1) or (1A)”;

(c) by omitting sub-sections (3) and (4) and substituting the following sub-section:

“(3) The Minister may, by notice in writing, give the Corporation directions as to the exercise of its powers and the performance of its functions, including, in particular, directions that the Corporation shall not undertake—

- (a) a specified class of engineering works; or
- (b) engineering works in a specified place,

and the Corporation shall comply with any directions so given.”; and

(d) by omitting from sub-section (6) “sub-sections (3) and (4)” and substituting “sub-section (3)”.

7. Section 18 of the Principal Act is repealed and the following section is substituted:

### **Powers of Corporation**

“18. (1) Subject to this Act, the Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may—

- (a) enter into contracts;
- (b) arrange payments to contractors or sub-contractors on behalf of its clients;
- (c) carry out scientific tests;
- (d) perform research work, or arrange for research work to be undertaken on its behalf by other persons;
- (e) join in the formation of partnerships and companies;
- (f) charge fees for services provided to its clients; and
- (g) recover costs incurred on behalf of its clients.

“(2) The Corporation may exercise any of its powers in co-operation with other persons and organizations, but this sub-section shall not be taken to limit the generality of sub-section (1).”.

8. Parts IV, V and VI of the Principal Act are repealed and the following Parts are substituted:

**“PART IV—SNOWY MOUNTAINS ENGINEERING CORPORATION BOARD**

**Establishment of Board**

“19. There is established by this section a Snowy Mountains Engineering Corporation Board. 5

**Functions of Board**

“20. (1) Subject to sub-section 17 (3), the business and other affairs of the Corporation shall be conducted and controlled by the Board and the policy of the Corporation with respect to any matter shall be determined by the Board.

“(2) All acts and things done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, shall be deemed to have been done by the Corporation. 10

**Membership of Board**

“21. (1) The Board shall consist of—

- (a) the Chairperson; 15
- (b) the Managing Director; and
- (c) 3 other Directors.

“(2) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

“(3) The Chairperson and the Directors referred to in paragraph (1) (c) shall be appointed by the Governor-General, and shall be so appointed as part-time Directors. 20

“(4) A part-time Director shall hold office for such period, not exceeding 3 years, as the Governor-General specifies in the instrument of appointment.

“(5) A part-time Director is eligible for re-appointment. 25

“(6) The performance of the functions, or the exercise of the powers, of the Board is not affected by reason of any vacancy or vacancies in the membership of the Board.

**Policy to be notified to Minister**

“22. The Board shall keep the Minister informed of the decisions of the Board with respect to matters of policy in relation to the performance of the functions of the Corporation. 30

**Delegation by Board**

“23. (1) The Board may, by resolution, either generally or as otherwise provided by the resolution, delegate to a person any of its powers under this Act, other than this power of delegation. 35

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Board.

“(3) A delegation of a power under this section—

(a) may be revoked by resolution of the Board (whether or not constituted by the persons constituting the Board at the time the power was delegated);

5 (b) does not prevent the exercise of the power by the Board; and

(c) continues in force notwithstanding a change in the membership of the Board.

“(4) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Board were a person.

10 “(5) A certificate signed by the Chairperson stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

15 “(6) A document purporting to be a certificate mentioned in sub-section (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

#### **Remuneration and allowances**

“24. (1) A part-time Director shall be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) A part-time Director shall be paid such allowances as are prescribed.

20 “(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

#### **Resignation**

“25. A part-time Director may resign by instrument in writing delivered to the Minister.

#### **Disclosure of interests**

25 “26. (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.

30 “(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the Director shall not, without the approval of the Minister—

(a) be present, during any deliberation of the Board with respect to that matter; or

35 (b) take part in any decision of the Board with respect to that matter.

#### **Termination of appointment**

“27. (1) The Governor-General may terminate the appointment of a part-time Director for misbehaviour or physical or mental incapacity.

“(2) If a part-time Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) is absent, except with the permission of the Minister, from 3 consecutive meetings of the Board; or
- (c) fails, without reasonable excuse, to comply with his or her obligations under section 26,

the Governor-General shall, by notice in writing published in the *Gazette*, declare that the office of that Director is vacant, and thereupon the office shall be deemed to be vacant.

### **Acting appointments**

“28. (1) The Minister may appoint a person to act as Chairperson—

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Chairperson,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) The Minister may appoint a person to act as a part-time Director—

- (a) during a vacancy in the office of the Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any other reason (including the reason that the Director is acting as Chairperson), unable to perform the duties of the office of Director,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(3) While a person is acting in an office under this section, the person has and may exercise all the powers, and shall perform all the functions, of the office.

“(4) An appointment of a person under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting under this section; and
- (b) terminate such an appointment at any time.

“(6) Where a person is acting in an office under paragraph (1) (b) or (2) (b) and the office becomes vacant while the person is so acting, then,



subject to sub-section (4), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

5 “(7) The appointment of a person under this section ceases to have effect if the person resigns the appointment by instrument in writing delivered to the Minister.

“(8) The Managing Director is not eligible for appointment under this section.

10 “(9) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for the person’s appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

### 15 **Meetings of Board**

“29. (1) The Chairperson shall convene such meetings of the Board as are necessary for the performance of its functions.

20 “(2) At a meeting of the Board the Chairperson shall preside but, if he or she is not present, the Directors present shall elect one of their number to preside.

“(3) At a meeting of the Board—

- (a) 3 Directors constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the Directors present and voting; and
- 25 (c) the Director presiding has a deliberative vote and, in the event of the equality of votes, also has a casting vote.

## **“PART V—MANAGING DIRECTOR AND STAFF**

### ***“Division 1—Managing Director***

#### **Managing Director**

30 “30. There shall be a Managing Director of the Corporation.

#### **Duty of Managing Director**

“31. The Managing Director shall, under the Board, manage the Corporation.

#### **Appointment and term of office**

35 “32. (1) The Managing Director shall be appointed by the Governor-General.

“(2) A person shall not be appointed as the Managing Director unless he or she appears to the Governor-General to have experience in matters related to engineering.

“(3) A person appointed as Managing Director shall hold office for such period, not exceeding 3 years, as the Governor-General specifies in the instrument of appointment. 5

“(4) A person appointed as Managing Director is eligible for re-appointment.

“(5) A person who has attained the age of 65 years shall not be appointed or re-appointed as Managing Director and a person shall not be appointed or re-appointed as Managing Director for a period that extends beyond the date on which he or she will attain the age of 65 years. 10

“(6) The Managing Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General. 15

#### **Managing Director not to engage in other work**

“33. The Managing Director shall not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

#### **Remuneration and allowances**

“34. (1) The Managing Director shall be paid such remuneration as is determined by the Remuneration Tribunal. 20

“(2) The Managing Director shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*. 25

#### **Leave of absence**

“35. The Chairperson may grant leave of absence to the Managing Director on such terms and conditions as to remuneration or otherwise as the Chairperson determines.

#### **Resignation** 30

“36. The Managing Director may resign by instrument in writing delivered to the Minister.

#### **Termination of appointment**

“37. (1) The Governor-General may terminate the appointment of the Managing Director for misbehaviour or physical or mental incapacity. 35

“(2) If the Managing Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) except with the approval of the Minister, engages in paid employment outside the duties of his or her office;

(c) is absent from duty, except on leave of absence granted by the Chairperson for 14 consecutive days or for 28 days in any 12 months; or

(d) fails, without reasonable excuse, to comply with section 26, the Governor-General shall, by notice in writing published in the *Gazette*, declare that the office of the Managing Director is vacant, and thereupon the office shall be deemed to be vacant.

10 **Acting Managing Director**

“38. (1) The Board may appoint a person (not being a Director or acting Director) to act as Managing Director—

(a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of Managing Director,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(3) The Board may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Managing Director; and

(b) terminate such an appointment at any time.

“(4) Notwithstanding paragraph (3) (a), an officer of the Corporation who is acting as Managing Director shall continue to be paid the remuneration and allowances payable to such an officer but shall also be paid—

(a) so much of any remuneration payable to the Managing Director as exceeds the remuneration that so continues to be paid to the officer;

(b) so much of any allowance payable to the Managing Director as exceeds the corresponding allowance that so continues to be paid to the officer; and

(c) if an allowance is payable to the Managing Director in respect of which there is no corresponding allowance payable to the officer—that allowance.

“(5) Where a person is acting as Managing Director under paragraph (1) (b) and the office of Managing Director becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Board otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(6) The appointment of a person under this section ceases to have effect if the person resigns the appointment by instrument in writing delivered to the Chairperson.

“(7) While a person is acting under this section, the person has and may exercise all the powers, and shall perform all the functions, of the Managing Director. 5

“(8) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for the person’s appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased. 10

### **“Division 2—Staff**

#### **Officers and employees**

“39. (1) The Corporation may, in Australia or elsewhere, appoint such officers and engage such employees as the Board thinks necessary for the purposes of this Act. 15

“(2) The terms and conditions of employment of persons appointed or engaged under this section are such as are, subject to the approval of the Public Service Board, determined by the Board. 20

### **“PART VI—FINANCE**

#### **Financial policy of Corporation**

“40. In the performance of its functions and in the conduct of its business, the Corporation shall act in accordance with sound commercial principles and shall pursue a policy directed towards securing, in each financial year, revenues sufficient— 25

- (a) to meet the expenditure, and provision for expenditure, of the Corporation properly chargeable to revenue of that year, including provision in respect of income tax payable by the Corporation in relation to that financial year; and 30
- (b) to permit the payment to the Commonwealth of a reasonable return on the capital of the Corporation.

#### **Capital of Corporation**

“41. (1) The Minister for Finance may make available to the Corporation, out of moneys appropriated by the Parliament for the purpose, such amounts as are, in the opinion of the Minister, required by the Corporation. 35

“(2) The capital of the Corporation at any time is the sum of—

- (a) any amounts paid to the Corporation under sub-section (1); and

(b) any amounts transferred from the General Reserve of the Corporation to the capital account of the Corporation in pursuance of directions given under sub-section (3),

5 less the sum of any amounts of capital repaid to the Commonwealth by the Corporation.

“(3) The Minister may direct the Board to transfer a specified amount from the General Reserve of the Corporation to the capital account of the Corporation, and the Board shall comply with such a direction.

10 “(4) In giving a direction under sub-section (3), the Minister shall have regard to any advice that the Board has furnished to the Minister in relation to the financial affairs of the Corporation.

### **Payments to the Commonwealth**

15 “42. (1) Interest is not payable to the Commonwealth on the capital of the Corporation but the Corporation shall pay to the Commonwealth, out of the profits of the Corporation for a financial year, such amount as the Minister determines.

“(2) The capital of the Corporation is repayable to the Commonwealth at such times and in such amounts as the Minister determines.

20 “(3) In making a determination under sub-section (1) or (2), the Minister shall have regard to any advice that the Board has furnished to the Minister in relation to the financial affairs of the Corporation.

### **Profits of the Corporation**

25 “43. (1) The profits of the Corporation for a financial year (other than any amount paid to the Commonwealth in accordance with a determination under sub-section 42 (1)) shall be applied in such manner as the Minister determines.

“(2) In making a determination under sub-section (1), the Minister shall have regard to any advice that the Board has furnished to the Minister in relation to the financial affairs of the Corporation.

### **Borrowing by the Corporation**

“44. (1) The Corporation may, with the approval of the Treasurer, borrow money that is from time to time necessary for the exercise of its powers or the performance of its functions under this Act.

35 “(2) The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend to the Corporation, at such rate of interest and on such other terms and conditions as that Minister determines, money that the Corporation is authorized to borrow under sub-section (1).

40 “(3) The Corporation may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

“(4) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment by the Corporation of amounts borrowed under this section otherwise than from the Commonwealth and the payment of interest on amounts so borrowed.

“(5) The Corporation shall not borrow money except in accordance with this section. 5

**Guarantee by the Commonwealth**

“45. By force of this section, the Commonwealth guarantees the due payment by the Corporation of all money (other than money due in respect of money borrowed under section 44) that is, or may at any time become, payable by the Corporation to a person other than the Commonwealth. 10

**Application of money**

- “46. The money of the Corporation shall be applied only—
- (a) in payment or discharge of the costs, expenses and other obligations of the Corporation; 15
  - (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act;
  - (c) in making payments in connection with any superannuation scheme managed by the Corporation; and
  - (d) in making payments to the Commonwealth as provided by this Act. 20

**Estimates**

“47. The Corporation shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year, and, if so directed by the Minister, for any other period, and shall submit those estimates to the Minister not later than such date as the Minister directs. 25

**Contracts**

“48. (1) Subject to sub-section (2), the Corporation shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Corporation of an amount exceeding \$500,000 or, if a higher amount is prescribed, that higher amount. 30

- “(2) Sub-section (1) does not apply to—
- (a) a contract with a client of the Corporation; or
  - (b) a contract for obtaining assets or services that are intended to be charged to a client of the Corporation.

**Application to Corporation of Division 2 of Part XI of Audit Act** 35

“49. (1) It is hereby declared that the Corporation is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

“(2) For the purposes of the application of that Division by virtue of sub-section (1), references in that Division to the appropriate Minister shall be read as references to the Minister administering this Act. 40

**Liability to taxation**

“50. (1) The Corporation is subject to taxation under the laws of the Commonwealth and to such other taxation as the Minister specifies.

5 “(2) The Corporation is not a public authority for the purposes of paragraph 23 (d) of the *Income Tax Assessment Act 1936*.

**“PART VII—MISCELLANEOUS**

**Reports to Minister**

“51. The Board shall—

- 10 (a) at such times as it thinks fit, and at such other times as the Minister directs, inform the Minister concerning the general conduct of the operations of the Corporation; and
- (b) furnish to the Minister such information relating to those operations, and such information relating to operations to be carried out in the future, as the Minister requires.

15 **Annual report to include Minister’s directions, &c.**

“52. The annual report submitted to the Minister under section 63H of the *Audit Act 1901* as applied by this Act shall include—

- 20 (a) all directions given by the Minister to the Corporation under sub-sections 17 (3) and 41 (3); and
- (b) all determinations made by the Minister under sub-sections 42 (1) and (2) and 43 (1),

during the year to which the report relates.

**Validity of contracts and guarantees**

25 “53. Without prejudice to the duty of the Corporation to comply with the provisions of this Act and to observe the limits of its powers under this Act, a contract entered into, or a guarantee given, by the Corporation is not invalidated by reason of a provision of this Act not having been complied with by the Corporation in relation to the contract or guarantee or by reason of the contract or guarantee not being within those limits.

30 **Delegation by Minister**

“54. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person any of his or her powers under this Act, other than this power of delegation.

35 “(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

“(3) A delegation under this section does not prevent the exercise of a power by the Minister.

**Regulations**

“55. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.” 5

**Transitional**

9. (1) Anything done under a provision of the Principal Act as in force before the commencement of this Act has effect after that commencement as if it had been done under the corresponding provision of the Principal Act as amended by this Act or of the Audit Act as applied by that Act as so amended, as the case requires. 10

(2) The reconstitution of the Corporation by this Act does not affect any property, rights, liabilities or obligations of the Corporation held, accrued or incurred before the commencement of this Act. 15

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**NOTE**

- 1. No. 39, 1970. For previous amendments, see No. 125, 1970; No. 22, 1971; Nos. 74 and 216, 1973; and No. 36, 1978.