Snowy Mountains Engineering Corporation Limited Sale Act 1993

Act No. 54 of 1993 as amended

This compilation was prepared on 28 September 2006
taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to the sale of the Snowy Mountains Engineering Corporation Limited, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Snowy Mountains Engineering Corporation Limited Sale Act 1993.

2 Commencement [see Note 1]

(1) Sections 1, 2, 3, 4 and 38 commence on the day on which this Act receives the Royal Assent.

(2) Sections 5 to 36 (inclusive) and 39 to 44 (inclusive) commence on the sale day.

(3) Section 37 of this Act commences on a day to be fixed by Proclamation.

(4) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the Gazette but only if the day fixed is the sale day.

(5) If a provision of this Act does not commence within the period of 2 years beginning on the day on which this Act receives the Royal Assent, it is taken to have been repealed on the day after the period ends.

3 Interpretation

(1) In this Act, unless the contrary intention appears:


employee includes apprentice.
Long Service Leave Act means the Long Service Leave (Commonwealth Employees) Act 1976 as in force immediately before the commencement of Part 2 of this Act.


sale day means the day declared under section 4.

share, in relation to a body corporate, means a share in the body’s share capital.

SMEC means the body corporate known before the sale day as the Snowy Mountains Engineering Corporation Limited by whatever name called, and in whatever form that body corporate takes, from time to time.

SMEC body means SMEC or a SMEC subsidiary.

SMEC subsidiary means a body corporate that is a subsidiary of SMEC.


voting share has the same meaning as in the Corporations Act 2001.

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the Corporations Act 2001.

4 The sale day

(1) The Minister for Finance must, by notice in the Gazette, declare the day described in subsection (2) to be the sale day.

(2) The day to be specified in the notice is the day that, in the opinion of the Minister for Finance, is the first day after the commencement of this Part on which a majority of the voting
shares in SMEC are acquired by a person, or persons, other than the Commonwealth or a nominee of the Commonwealth.

(3) The notice must be published within 14 days after the specified day.
Part 2—Amendment of the Long Service Leave (Commonwealth Employees) Regulations

Sections 5, 6

Note:
The amendments made by this Part are incorporated in the compilation on FRLI.

For access to the wording of the amendments made by this Part, see Act No. 54 of 1993.
Part 3—Amendment of the Maternity Leave (Commonwealth Employees) Regulations

Sections 7, 8

Note:
The amendments made by this Part are incorporated in the compilation on FRLI.

For access to the wording of the amendments made by this Part, see Act No. 54 of 1993.
Part 4—Transitional and saving provisions

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

9 Interpretation

(1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same respective meanings as in that Act.

(2) In this Division:

combined service period, in relation to an employee, means the total of:
(a) the period that is, immediately before the sale day, the employee’s period of service for the purposes of the Long Service Leave Act; and
(b) the period starting on the sale day during which the employee continues to be an employee of SMEC.

employee includes a person employed in a full-time or a part-time capacity.

law means:
(a) a law of the Commonwealth or of a State or Territory; or
(b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

post-sale long service leave rights, in relation to an employee, means any long service leave rights an employee acquires under an award, determination, industrial agreement or law (other than this Act) on or after the sale day.

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

(1) This section provides that, in certain circumstances, SMEC may grant long service leave to an employee whose period of service
for the purposes of the Long Service Leave Act was less than 10 years.

(2) This section applies in relation to a person who was an employee of SMEC immediately before the sale day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(3) This section does not apply in relation to an employee who stops being an employee of SMEC by dying. Section 12 covers those employees.

(4) If, from and after the sale day, the employee continues to be employed by SMEC until his or her combined service period is at least 10 years, SMEC may grant the employee long service leave on full salary for a period up to the employee’s long service leave credit under subsection 13(1).

(5) If:
   (a) the employee is to stop being an employee of SMEC on or after reaching the minimum retiring age, or because of retrenchment; and
   (b) the employee’s combined service period at the time when he or she is to stop being an employee of SMEC is at least one year;

SMEC may grant the employee long service leave on full salary for a period up to the employee’s long service leave credit under subsection 13(1).

(6) If a period of long service leave may be granted to an employee under subsection (4) or (5), SMEC may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice that first-mentioned period.

(7) Long service leave granted in the circumstances set out in subsection (5) is to be taken so as to end immediately before the employee stops being an employee.

(8) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:
   (a) that section applied to the employee; and
Part 4 Transitional and saving provisions
Division 1 Transitional and saving provisions in relation to long service leave

Section 11

(b) for the expression “section 16 or 17” in that section there were substituted the expression “section 10 of the Snowy Mountains Engineering Corporation Limited Sale Act 1993”.

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

(1) This section provides that, in certain circumstances, SMEC must pay an amount in respect of long service leave to an employee who has not used all of his or her long service leave credit by taking long service leave under section 10.

(2) This section applies in relation to a person who was an employee of SMEC immediately before the sale day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(3) This section does not apply in relation to an employee who stops being an employee of SMEC by dying. Section 12 covers those employees.

(4) Subject to subsection (7), if the employee stops being an employee of SMEC on or after the day on which his or her combined service period reaches 10 years, SMEC must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 13(2).

(5) Subject to subsection (7), if:
   (a) the employee stops being an employee of SMEC, on or after reaching the minimum retiring age, or because of retrenchment; and
   (b) at that time, the employee’s combined service period is at least one year;

SMEC must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 13(2).

(6) Subject to subsection (7), if:
   (a) the employee stops being an employee of SMEC; and
   (b) SMEC is satisfied that the employee left SMEC because of ill health that justified his or her so leaving; and

8 Snowy Mountains Engineering Corporation Limited Sale Act 1993
Transitional and saving provisions

Part 4

Transitional and saving provisions in relation to long service leave

Division 1

Section 12

(c) when the employee left, his or her combined service period was at least one year;

SMEC must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 13(2).

(7) An employee may, by written notice given to SMEC before the employee stops being an employee of SMEC:

(a) ask SMEC not to make a payment to the employee under this section; or

(b) ask SMEC to make a payment under subsection (4), (5) or (6) of a specified amount that is less than the amount that would otherwise be payable under that subsection.

(8) SMEC must comply with a request made under subsection (7).

(9) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

(a) that section applied to the employee; and

(b) for the expression “sections 16 and 17” in that section there were substituted the expression “section 11 of the Snowy Mountains Engineering Corporation Limited Sale Act 1993”.

12 Payments on the death of an employee

(1) This section applies in relation to a person who was an employee of SMEC immediately before the sale day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) If:

(a) on or after the sale day, the employee dies; and

(b) immediately before his or her death, the employee was an employee of SMEC; and

(c) immediately before his or her death, the employee’s combined service period was at least one year; and

(d) immediately before his or her death, the employee had one or more dependants;

SMEC must make a payment to a dependant or to 2 or more dependants of the employee.
(3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 11 if, on the day of his or her death, the employee had instead stopped being an employee of SMEC on or after reaching the minimum retiring age.

(4) If subsection (2) applies, section 23 of the Long Service Leave Act has effect as if:
   (a) that section applied to an employee of SMEC; and
   (b) a reference in that section to the approving authority were a reference to SMEC; and
   (c) the section were further modified as set out in the following table:

<table>
<thead>
<tr>
<th>Provision</th>
<th>Omit this expression</th>
<th>Insert this expression</th>
</tr>
</thead>
<tbody>
<tr>
<td>section 23</td>
<td>this Act</td>
<td>section 12 of the Snowy Mountains Engineering Corporation Limited Sale Act 1993</td>
</tr>
<tr>
<td>subsections 23(2) and (3)</td>
<td>subsection 16(7) or 17(5)</td>
<td>section 12 of the Snowy Mountains Engineering Corporation Limited Sale Act 1993</td>
</tr>
</tbody>
</table>

13 Employee’s long service leave credit for the purposes of sections 10 and 11

(1) For the purposes of section 10, an employee’s long service leave credit is equal to the long service leave credit that the employee would have had under the Long Service Leave Act for the period:
   (a) starting when the employee started his or her period of service; and
   (b) ending on the sale day;
   if the employee had been retrenched on the sale day.

(2) For the purposes of section 11, an employee’s long service leave credit is the employee’s long service leave credit worked out under subsection (1), reduced by any long service leave credits used under section 10.
14 Division not to affect an employee’s post-sale long service leave rights

To avoid doubt, it is declared that this Division does not affect an employee’s post-sale long service leave rights.

15 Saving—Long Service Leave Act

If, immediately before the sale day, the period of service under the Long Service Leave Act of an employee of SMEC was at least 10 years, then:

(a) despite the amendment of the Long Service Leave (Commonwealth Employees) Regulations by this Act, the employee’s accrued rights under that Act continue; and
(b) that Act has effect after the sale day as if SMEC were the approving authority in relation to the employee for the purposes of that Act.
Part 4  Transitional and saving provisions  
Division 2  Transitional and saving provisions relating to the Safety Rehabilitation and Compensation Act 1988

Section 16

Division 2—Transitional and saving provisions relating to the Safety Rehabilitation and Compensation Act 1988

16 Interpretation

Unless the contrary intention appears, expressions used in this Division that are also used in the SRC Act have the same respective meanings as in that Act.

17 Continued application of SRC Act

If SMEC stops being a Commonwealth authority for the purposes of the SRC Act, the SRC Act continues to apply in relation to SMEC to the extent, and in the manner, set out in this Division.

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

(1) The SRC Act continues to apply on and after the sale day in relation to:
   (a) injuries suffered by employees of SMEC before the sale day; and
   (b) loss of, or damage to, property incurred by employees of SMEC before the sale day;
   including employees who had stopped being employees of SMEC before the sale day.

(2) For the purposes of subsection (1), the SRC Act continues to apply as if:
   (a) SMEC continues to be a Commonwealth authority; and
   (b) the chief executive officer of SMEC (however described) continues to be the principal officer of a Commonwealth authority.
19  Transitional provisions relating to Division 4A of Part VII of the SRC Act

(1) On and after the sale day, Division 4A of Part VII of the SRC Act applies to SMEC as if:
   (a) SMEC continues to be a Commonwealth authority; and
   (b) SMEC is not required to pay a premium under that Division in respect of that part of a financial year which occurs after the sale day; and
   (c) the following word and paragraph were added at the end of subsection 96H(1):
       “; or (f) in the case of an authority—the authority is not required to pay a premium under this Division in respect of part of a financial year.”.

(2) If, 60 days after the sale day, an amount of premium payable by SMEC to Comcare in respect of a period before the sale day remains unpaid, the amount is a debt due to the Commonwealth and payable to Comcare.

20  Transitional provision relating to section 128A of the SRC Act

On and after the sale day, section 128A of the SRC Act continues to apply to SMEC as if SMEC continues to be a prescribed Commonwealth authority for the purposes of that section.

21  Notification of amount of salary etc. paid to employees of SMEC

The chief executive officer (however described) of SMEC must notify the Commission, within 28 days after the sale day, of the amount of salary, wages or pay paid to employees of SMEC in the period starting on 1 July in the financial year in which the sale day occurs and ending on the day before the sale day.

22  Amendment of declarations under the SRC Act

(1) A notice published in the Gazette before the sale day that declares SMEC to be a body corporate to which the SRC Act applies for the purposes of paragraph (c) of the definition of Commonwealth authority in subsection 4(1) of the SRC Act has effect from and including the sale day as if it did not contain a reference to SMEC.
Part 4 Transitional and saving provisions
Division 2 Transitional and saving provisions relating to the Safety Rehabilitation and Compensation Act 1988

Section 22

(2) Subsection (1) does not prevent the declaration, as affected by that subsection, being amended or revoked by the Minister.
Division 3—Transitional and saving provisions in relation to superannuation and other retirement benefits

23 Saving—deferred benefits under the *Superannuation Act 1922*

(1) This section applies if, immediately before the sale day, an employee of a SMEC body was a person to whom deferred benefits were applicable under section 119W of the *Superannuation Act 1922*.

(2) For the purposes of Division 3 of Part XA of the *Superannuation Act 1922*, the employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a SMEC body.

(3) This section is subject to Division 3 of Part XA of the *Superannuation Act 1922*.

24 Saving—deferred benefits under the *Superannuation Act 1976*

(1) This section applies if, immediately before the sale day, an employee of a SMEC body was a person to whom deferred benefits were applicable under section 139 of the *Superannuation Act 1976*.

(2) For the purposes of Division 3 of Part IX of the *Superannuation Act 1976*, an employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a SMEC body.

(3) This section is subject to Division 3 of Part IX of the *Superannuation Act 1976*.

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

(1) This section applies if, immediately before the sale day, a period of employment of a person by a SMEC body was a period of eligible employment for the purposes of Division 3 of Part IX of the *Superannuation Act 1976*. 
Part 4 Transitional and saving provisions
Division 3 Transitional and saving provisions in relation to superannuation and other retirement benefits

Section 26

(2) Despite employment by a SMEC body having stopped being eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976, the period of employment continues to be a period of eligible employment for the purposes of that Division.

26 Saving—deferred benefits under the DFRDB Act

(1) This section applies if, immediately before the sale day, an employee of a SMEC body was a person to whom deferred benefits were applicable under section 78 of the DFRDB Act.

(2) For the purposes of Division 3 of Part IX of the DFRDB Act, the employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a SMEC body.

(3) This section is subject to Division 3 of Part IX of the DFRDB Act.

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

(1) This section applies if, immediately before the sale day, a period of employment of a person by a SMEC body was a period of eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act.

(2) Despite employment by a SMEC body having stopped being eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act, the period of employment continues to be a period of eligible employment for the purposes of that Division.

28 Application—Superannuation Act 1922

On and after the sale day, section 145 of the Superannuation Act 1922 does not apply in relation to SMEC.

29 Application—Superannuation Act 1976

On and after the sale day, SMEC is not an approved authority for the purposes of the Superannuation Act 1976.
Transitional and saving provisions \textbf{Part 4}  
Transitional and saving provisions in relation to superannuation and other retirement benefits \textbf{Division 3}  

\textbf{Section 30}  

\textbf{30 Application—Superannuation Act 1990}  

On and after the sale day, SMEC is not an approved authority for the purposes of the \textit{Superannuation Act 1990}.  

Division 4—Other transitional and saving provisions

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

(1) This section applies if:
   (a) immediately before the sale day, a person was a female employee of SMEC; and
   (b) within 12 months after the sale day, the person would have been entitled to begin leave granted under the Maternity Leave Act if SMEC had continued to be a prescribed authority for the purposes of that Act.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which she would have been entitled to leave as if SMEC continued to be a prescribed authority for the purposes of that Act.

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

(1) This section applies if:
   (a) immediately before the sale day, a person was a female employee of SMEC; and
   (b) on the sale day, the person is on leave granted under the Maternity Leave Act.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which the leave was granted as if SMEC continued to be a prescribed authority for the purposes of that Act.

33 Saving—Crimes (Superannuation Benefits) Act 1989

(1) Subject to subsection (2), if a person who was an employee of SMEC before the sale day committed a corruption offence while such an employee, then, on and after the sale day, the Crimes (Superannuation Benefits) Act 1989 continues to apply in relation
to the person in respect of the offence as if SMEC continued to be a Commonwealth authority.

(2) A superannuation order may not be made under the Crimes (Superannuation Benefits) Act 1989 in relation to employer contributions or benefits paid or payable to a superannuation scheme by SMEC after the sale day.

(3) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by SMEC is not a superannuation scheme for the purposes of the Crimes (Superannuation Benefits) Act 1989 in respect of a corruption offence committed by a person after the sale day.

(4) Despite paragraph 19(3)(d) of the Crimes (Superannuation Benefits) Act 1989, an order under that paragraph may only specify that an amount paid to the Commonwealth before the sale day by or on behalf of SMEC, belongs to the Commonwealth.

(5) If:
(a) a person who was an employee of SMEC before the sale day committed a corruption offence while such an employee; and
(b) the person was paid benefits before, on or after the sale day out of the Consolidated Revenue Fund;
then, despite paragraph 19(4)(b) of the Crimes (Superannuation Benefits) Act 1989, an order under that paragraph may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund be paid to the Commonwealth.

(6) Unless the contrary intention appears, expressions used in this section that are also used in the Crimes (Superannuation Benefits) Act 1989 have the same respective meanings as in that Act.

34 Saving—DPP Act

(1) Despite the DPP Act ceasing to apply to certain acts, omissions or proceedings in connection with SMEC because SMEC stops being an authority of the Commonwealth for the purposes of that Act, that Act continues to apply in relation to:
(a) acts or omissions that occurred before the sale day; and
(b) the taking of civil remedies connected with or arising out of a prosecution that relates to acts or omissions referred to in paragraph (a).
Part 4 Transitional and saving provisions
Division 4 Other transitional and saving provisions

Section 35

(2) In this section:

DPP Act means the Director of Public Prosecutions Act 1983.

35 Saving—Judiciary Act 1903

(1) Despite section 36 of this Act, section 55E of the Judiciary Act 1903 continues to apply in relation to:
   (a) any proceedings to which SMEC is a party that were started before the sale day; and
   (b) any matter that an authorised person, by signed writing, certifies is a matter in relation to which SMEC gave written instructions before the sale day to the Australian Government Solicitor;
       as if SMEC were a body established under an Act.

(2) A document purporting to be a certificate under subsection (1) is, unless the contrary is established, to be taken to be such a certificate.

(3) In this section:

authorised person means:
   (a) the Secretary to the Attorney-General’s Department; or
   (b) an SES employee, or acting SES employee, in that Department.

Snowy Mountains Engineering Corporation Limited Sale Act 1993
Part 5—Other provisions relating to the sale of SMEC

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

(1) On and after the sale day, SMEC is not taken for the purposes of a law to be:
   (a) established by or under an Act; or
   (b) established by the Commonwealth;
       unless a law expressly provides otherwise.

(2) To avoid doubt, it is declared that subsection (1) does not affect the operation of the *Snowy Mountains Engineering Corporation Act 1970* or any other law before the commencement of this section.

(3) In subsections (1) and (2):

   *law* means:
   (a) an Act of the Commonwealth or of a State or Territory; and
   (b) regulations or other instrument made under such an Act.

37 Removal of SMEC’s tax losses

(1) A loss incurred by SMEC in a year of income ending before the year of income in which the sale day occurs is not allowable as a deduction in a year of income ending on or after the sale day.

(2) Subsection (1) has effect despite anything in the *Income Tax Assessment Act 1936* and, in particular, former sections 79E, 79EA, 79EB, 79F, 80, 80AAA and 80AA of that Act.

(3) Unless the contrary intention appears, expressions used in subsection (1) that are also used in the *Income Tax Assessment Act 1936* have the same respective meanings as in that Act.

(4) SMEC cannot deduct in the 1997-98 income year or a later income year a tax loss incurred in an income year ending before the income year in which the sale day occurs.
Part 5 Other provisions relating to the sale of SMEC

Section 38

(5) This section has effect despite anything and, in particular, Division 36 and Subdivision 195-A of the Income Tax Assessment Act 1997.

(6) Unless the contrary intention appears, an expression has the same meaning in subsection (4) as in the Income Tax Assessment Act 1997.

38 Exemption from State and Territory taxes and fees

(1) No tax is payable under a law of a State or a Territory in respect of:
   (a) an exempt matter; or
   (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

(2) An authorised person may, in writing, certify that:
   (a) a specified matter or thing is an exempt matter; or
   (b) a specified thing was done (including a transaction entered into, or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

(3) A certificate under subsection (2) is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(4) In this section:

   authorised person means:
      (a) the Minister for Finance; or
      (b) the Secretary to the Department of Finance; or
      (c) an SES employee, or acting SES employee, in that Department, authorised by the Secretary, in writing, for the purposes of this section.

   exempt matter means:
      (a) the issue or allotment of shares by SMEC to the Commonwealth or another person on or before the sale day; or

(b) an agreement between the Commonwealth and another person relating to the sale, issue or allotment of shares in SMEC; or
(c) the transfer of shares in SMEC by the Commonwealth or a nominee of the Commonwealth to another person; or
(d) the receipt of money (whether before, on or after the sale day) by the Commonwealth, SMEC or another person acting on behalf of the Commonwealth or SMEC from persons who are, on or before the sale day, buying or subscribing for shares in SMEC; or
(e) the operation of this Act.

tax means:
(a) stamp duty or any other tax; and
(b) a fee (other than a fee payable under the Corporations Act 2001);
but does not include a tax or fee (other than a fee payable under the Corporations Act 2001) specified in a notice signed by the Minister for Finance and published in the Gazette.

39 Regulations connected with the sale of SMEC

(1) Subsection 48(2) of the Acts Interpretation Act 1901 does not apply to regulations made under any Act that:
(a) are connected with the sale of SMEC; and
(b) include a declaration that the Governor-General is satisfied that they are connected with the sale of SMEC; and
(c) are expressed to take effect on the sale day.

(2) Regulations covered by subsection (1) take effect on the sale day.

40 Cessation of mobility rights

(1) If Division 2 or 3 of Part IV of the Public Service Act 1922 applied to an employee of SMEC immediately before the sale day, then that Division stops applying to the employee on the sale day.

(2) If Division 4 of Part IV of the Public Service Act 1922 applied to an employee of SMEC immediately before the sale day, then:
(a) the Officers’ Rights Declaration Act 1928; and
Section 41

(b) Division 4 of Part IV of the Public Service Act 1922; stop applying to the employee on the sale day.

41 Refund of contribution paid under the Occupational Health and Safety (Commonwealth Employment) Act 1991

(1) If SMEC has paid a contribution to the cost of the administration of the Occupational Health and Safety (Commonwealth Employment) Act 1991 under section 67H of that Act in respect of the financial year in which the sale day occurs, then SMEC is entitled to be paid the amount worked out using the following formula:

\[
\text{Contribution} \times \frac{\text{No. of refund days}}{365}
\]

where:

Contribution means the contribution paid by SMEC in respect of that financial year.

No. of refund days means the total number of days in the period beginning on the sale day and ending on the last day of the financial year in which the sale day occurs.

(2) An amount to which SMEC is entitled under subsection (1) must be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

42 Ending SMEC’s liability under the Commonwealth Borrowing Levy Act 1987

(1) Subject to subsection (2), SMEC is not liable on or after the sale day to pay an amount of levy imposed by the Commonwealth Borrowing Levy Act 1987 on a borrowing undertaken before the sale day.

(2) Subsection (1) does not apply in relation to an amount of levy that was payable before the sale day.
43 A SMEC body not to be an eligible or relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

(1) A notice published in the *Gazette* before the sale day that declares a SMEC body to be an eligible body for the purposes of the Supervisory Mechanisms Act has effect on and after the sale day as if it did not contain a reference to a SMEC body.

(2) A notice published in the *Gazette* before the sale day that declares a SMEC body to be a relevant body for the purposes of the Supervisory Mechanisms Act has effect on and after the sale day as if it did not contain a reference to a SMEC body.

(3) Neither subsection (1) nor (2) prevents the declaration as affected by that subsection being amended or revoked by the Minister.

(4) In subsection (3):

*Minister* has the same meaning as in the Supervisory Mechanisms Act.

44 Amendments of other Acts

The Acts specified in the Schedule are amended as set out in the Schedule.
Schedule—Amendments of other Acts

Section 44

<table>
<thead>
<tr>
<th>Note:</th>
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<tbody>
<tr>
<td>The amendments made by this Schedule are incorporated in the</td>
</tr>
<tr>
<td>current compilations on ComLaw.</td>
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<tr>
<td>Administrative Decisions (Judicial Review) Act 1977</td>
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<td>Commonwealth Borrowing Levy Act 1987</td>
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<tr>
<td>National Crime Authority Act 1984</td>
</tr>
<tr>
<td>[now cited as Australian Crime Commission Act 2002]</td>
</tr>
<tr>
<td>Snowy Mountains Engineering Corporation Act 1970</td>
</tr>
<tr>
<td>For access to the wording of the amendments made by this</td>
</tr>
<tr>
<td>Schedule see Act No. 54, 1993.</td>
</tr>
</tbody>
</table>
Notes to the *Snowy Mountains Engineering Corporation Limited Sale Act 1993*

**Note 1**

The *Snowy Mountains Engineering Corporation Limited Sale Act 1993* as shown in this compilation comprises Act No. 54, 1993 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

### Table of Acts

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Date of Assent</th>
<th>Date of commencement</th>
<th>Application, saving or transitional provisions</th>
</tr>
</thead>
</table>
Notes to the *Snowy Mountains Engineering Corporation Limited Sale Act 1993*

## Table of Acts

<table>
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<tr>
<th>Act</th>
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<th>Application, saving or transitional provisions</th>
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</thead>
<tbody>
<tr>
<td>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</td>
<td>101, 2006</td>
<td>14 Sept 2006</td>
<td>Schedule 2 (items 900, 901) and Schedule 6 (items 1, 6–11): Royal Assent</td>
<td>Sch. 6 (items 1, 6–11)</td>
</tr>
</tbody>
</table>
(a) The Snowy Mountains Engineering Corporation Limited Sale Act 1993 was amended by Schedule 1 (items 819 and 820) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, **commencing time** means the time when the Public Service Act 1999 commences.

(2) Subject to this section, this Act commences at the commencing time.

(b) The Snowy Mountains Engineering Corporation Limited Sale Act 1993 was amended by Schedule 3 (items 479–481) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.
## Table of Amendments

<table>
<thead>
<tr>
<th>Provision affected</th>
<th>How affected</th>
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<td>S. 3</td>
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<td>S. 33</td>
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<td>S. 37</td>
<td>am. No. 39, 1997; No. 101, 2006</td>
</tr>
<tr>
<td>S. 38</td>
<td>am. No. 146, 1999; No. 55, 2001</td>
</tr>
</tbody>
</table>
Application, saving or transitional provisions

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

(1) If:
   (a) a decision or action is taken or another thing is made, given or done; and
   (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;
then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

   Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the Financial Management and Accountability Act 1997 is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:
(a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
(b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

(a) any act done or omitted to be done; or
(b) any state of affairs existing; or
(c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the Legislative Instruments Act 2003):

(a) making or amending an assessment (including under a provision that is itself repealed or amended);
(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the Income Tax Assessment Act 1936. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the
Notes to the  *Snowy Mountains Engineering Corporation Limited Sale Act 1993*

## Table A

Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd’s liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd’s right, under former section 160ART of that Act, to object against the Commissioner’s amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

**Example 2:** During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees’ wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company’s records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

### 8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.
## Table A

### 9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

(a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:

(i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or

(ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and

(b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

### 10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

### 11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*. 