

# EXPLANATORY STATEMENT

*Public Works Committee Act 1969*

*Public Works Committee Amendment (Snowy Hydro Limited) Regulations  
2018*

## **Authority**

The *Public Works Committee Act 1969* (the Act) provides for the establishment of the Parliamentary Standing Committee on Public Works (PWC) to inquire into and report on public works referred to the PWC by the Parliament. In general, a public work the estimated cost of which exceeds \$15 million must be referred to the PWC before it commences.

Section 40 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted to be prescribed for carrying out or giving effect to the Act.

Subsection 6A(1) of the Act provides that the Act applies to every authority of the Commonwealth. An authority of the Commonwealth includes an incorporated company over which the Commonwealth is in a position to exercise control. Subsection 6A(2)(a) provides that the Act does not apply to authorities declared under subsection 6A(3).

Subsection 6A(3) provides that, where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with another body or other bodies, or with persons, the Governor-General may make regulations declaring that the Act does not apply to that authority.

## **Purpose and operation of the Regulations**

The purpose and effect of the Regulations is to declare Snowy Hydro Limited and its wholly-owned subsidiaries, under subsection 6A(3) of the Act, to be authorities of the Commonwealth to which the Act does not apply. Snowy Hydro Limited is, for the purposes of subsection 6A(3) of the Act, currently engaged in trading activities and providing services in competition with other bodies or persons.

SHL is incorporated under the *Corporations Act 2001* and, from 1 July 2018, is a wholly-owned Commonwealth company prescribed as a Government Business Enterprise.

The Government has made clear its intention for SHL to continue to operate as a commercial entity, independently from the Commonwealth.

Snowy Hydro Limited is a producer, supplier, trader and retailer of energy in the National Electricity Market (NEM) and a leading provider of risk management financial hedge contracts. Snowy Hydro Limited is the fourth largest retailer in the NEM through its retail energy companies, Red Energy and Lumo Energy.

SHL also operates the utilities connection business, Direct Connect, across Australia. SHL is also a water manager and, under its water licence, captures, stores, diverts water and releases it for the use of irrigators, town water supplies and the broader environment.

SHL is trading and providing services in competition with privately owned energy generation and retailing firms. SHL's privately owned competitors are not subject to PWC oversight. Requiring SHL to be subject to the PWC Act would place SHL at a competitive disadvantage, by increasing administrative burden and compliance costs and causing delays not experienced by other existing energy generators and retailers.

Exempting SHL from the PWC approval process will negate these issues and allow SHL to continue to operate on a level playing field with its key competitors. SHL will still be subject to high levels of public and Parliamentary scrutiny, including Senate committee scrutiny and tabling of its annual report in the Parliament.

Attachment A sets out a provision-by-provision overview of the Regulations.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

### **Consultation**

Snowy Hydro Limited, the Department of the Environment and Energy and the Australian Government Solicitor have been consulted.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement was not required for the Regulation (OBPR ID: 22414).

A Statement of Compatibility with Human Rights is set out in Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

**ATTACHMENT A****Details of the *Public Works Committee Amendment (Snowy Hydro Limited) Regulations 2018*****Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Public Works Committee Amendment (Snowy Hydro Limited) Regulations 2018*.

**Section 2 - Commencement**

This section provides for the Regulations to commence on the day after they are registered.

Subsection 2(2) confirms that column 3 in the commencement table under subsection 2(1) does not form part of the Regulations. This allows the commencement date to be published in column 3.

**Section 3 - Authority**

This section provides that the Regulations are made under the *Public Works Committee Act 1969*.

**Section 4 - Schedule(s)**

This section provides that each instrument that is specified in the Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

**Schedule 1 - Amendments****Item [1] – section 7 (after table item 14)**

This item adds new items 14A, 14B and 14C to the table in section 7 of the Public Works Committee Regulations 2016.

Item 14A adds Snowy Hydro Limited to the list of authorities of the Commonwealth to which the PWC Act is declared not to apply.

Item 14B adds a wholly-owned subsidiary of Snowy Hydro Limited to the list of authorities of the Commonwealth to which the PWC Act is declared not to apply.

Item 14C adds a wholly-owned subsidiary of a wholly-owned subsidiary of Snowy Hydro Limited (as in new item 14B) to the list of authorities of the Commonwealth to which the PWC Act is declared not to apply.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Public Works Committee Amendment (Snowy Hydro Limited) Regulations 2018**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Disallowable Legislative Instrument**

The Public Works Committee Amendment (Snowy Hydro Limited) Regulations 2018 amend the Public Works Committee Regulations 2016 to declare Snowy Hydro Limited and its wholly-owned subsidiaries to be authorities of the Commonwealth to which the Act does not apply (for the purposes of subsection 6A(3) of the *Public Works Committee Act 1969*).

**Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The amendments are intended to limit the compliance overheads for Snowy Hydro Limited and its subsidiaries, including administrative burden, and compliance costs and delays, not experienced by other existing energy generators and retailers.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.