

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

A BILL

FOR

**An Act to amend the *Development Allowance Authority Act*
1992, and for related purposes**

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Development Allowance Authority Amendment Act 1995*.

5 **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

Amendments

3. The *Development Allowance Authority Act 1992* is amended in accordance with the applicable items in the Schedule and item 30 in the Schedule has effect according to its terms.

SCHEDULE

Section 3

**AMENDMENT OF THE DEVELOPMENT ALLOWANCE
AUTHORITY ACT 1992**

1. Subsection 13A(4):

Omit, substitute:

Election is irrevocable

“(4) The election is irrevocable, but this subsection does not prevent the DAA from:

- (a) granting an application under Part 5 for a variation of a scheme; or
 - (b) granting an application under Part 6 for transfer of the whole or a part of:
 - (i) the benefits of an application for registration; or
 - (ii) the benefits of a registration; or
 - (iii) the benefits of a certificate;
- relating to a project that forms part of a scheme.”.

2. Paragraph 14(5)(b):

Omit, substitute:

- “(b) granting an application under Part 6 for transfer of the whole or a part of:
- (i) the benefits of an application for registration; or
 - (ii) the benefits of a registration; or
 - (iii) the benefits of a certificate;
- relating to a project that forms part of a scheme.”.

3. Paragraph 14A(4)(b):

Omit, substitute:

- “(b) granting an application under Part 6 for transfer of the whole or a part of:
- (i) the benefits of an application for registration; or
 - (ii) the benefits of a registration; or
 - (iii) the benefits of a certificate;
- relating to a project that forms part of a scheme.”.

4. Subsection 28(6A):

Omit, substitute:

“(6A) The application and accompanying report must be signed:

SCHEDULE—continued

- (a) if the applicant is a natural person—by the applicant; or
- (b) otherwise:
 - (i) if the applicant is an incorporated body that has a board of directors (however described)—by the chairperson (however described) of the board or a person authorised by the chairperson to sign the application and report; or
 - (ii) in any other case—by the natural person designated by the form as the signatory.”.

5. After subsection 30(1):

Insert:

“(1A) In subsection (1):

the application means, if the application has been varied under section 45, the application as so varied.”.

6. Paragraphs 31(g) to (j):

Omit, substitute:

“(g) either:

- (i) the carrying out of the project has been completed; or
- (ii) having regard to the financial capacity of the entity that proposes to carry out the project and such other matters as the DAA considers relevant, it is reasonably likely that the carrying out of the project will be completed; and
- (h) if the project is part of a joint venture project—either:
 - (i) the carrying out of the joint venture project has been completed; or
 - (ii) having regard to the financial capacity of the entities that propose to carry out the project and such other matters as the DAA considers relevant, it is reasonably likely that the carrying out of the joint venture project will be completed; and
- (i) if the project is part of a joint venture project scheme—either:
 - (i) the carrying out of the other joint venture project, or all the other joint venture projects, to which the scheme relates has been completed; or
 - (ii) having regard to the financial capacity of the entities that propose to carry out the other joint venture project or other joint venture projects and such other matters as the DAA considers relevant, it is reasonably likely that the carrying out of the other joint venture project, or all the other joint venture projects, to which the scheme relates will be completed; and

SCHEDULE—continued

- (j) if the project is part of a company group project scheme—either:
 - (i) the carrying out of the other project, or all the other projects, to which the scheme relates has been completed; or
 - (ii) having regard to the financial capacity of the entities that propose to carry out the other project or other projects and such other matters as the DAA considers relevant, it is reasonably likely that the carrying out of the other project, or all the other projects, to which the scheme relates will be completed; and
- (k) if the project is part of an individual project scheme—either:
 - (i) the carrying out of the other project, or all the other projects, to which the scheme relates has been completed; or
 - (ii) having regard to the financial capacity of the entity that proposes to carry out the other project or other projects and such other matters as the DAA considers relevant, it is reasonably likely that the carrying out of the other project, or all the other projects, to which the scheme relates will be completed; and
- (l) the plant expenditure has passed the prospective deduction test.”.

7. Section 31:

Add at the end:

“(2) The reference in subsection (1) to an application for registration of plant expenditure is, if the application has been varied under section 45, taken to be a reference to the application as so varied.”.

8. Subsection 37(5A):

Omit, substitute:

“(5A) The application and accompanying report must be signed:

- (a) if the applicant is a natural person—by the applicant; or
- (b) otherwise:
 - (i) if the applicant is an incorporated body that has a board of directors (however described)—by the chairperson (however described) of the board or a person authorised by the chairperson to sign the application and report; or
 - (ii) in any other case—by the natural person designated by the form as the signatory.”.

9. Heading to Part 5:

After “**VARIATION OF**” insert “**APPLICATION FOR REGISTRATION,**”.

SCHEDULE—continued

10. Before subsection 42(1):

Insert:

Variation of application for registration

“(1A) An entity that has applied for registration of plant expenditure may apply to the DAA for a variation of the application for registration with respect to any or all of the following:

- (a) the expenditure to which the application for registration relates;
- (b) the project to which the application for registration relates;
- (c) if the project is part of a joint venture project—the joint venture project to which the application for registration relates;
- (d) if the project is part of a joint venture project scheme—the scheme to which the application for registration relates;
- (e) if the project is part of a company group project scheme—the scheme to which the application for registration relates;
- (f) if the project is part of an individual project scheme—the scheme to which the application for registration relates.

“(1B) Subsection (1A) does not apply to a variation unless the application for the variation is made because of a change in circumstances that occurred on or after 1 January 1993.”.

11. Subsections 42(3) and (4):

- (a) Omit “a registration or certificate”, substitute “an application for registration, a registration or a certificate”.
- (b) Add at the end “for variation”.

12. Section 42:

Add at the end:

“(5) A reference in this section to an application for registration, to registration or to a certificate is, if the application, registration or certificate has been varied under section 45, taken to be a reference to the application, registration or certificate as so varied.”.

13. Subsection 43(6):

Omit, substitute:

“(6) The application and accompanying report must be signed:

- (a) if the applicant is a natural person—by the applicant; or
- (b) otherwise:
 - (i) if the applicant is an incorporated body that has a board of directors (however described)—by the chairperson (however described) of the board or a person authorised by the chairperson to sign the application and report; or

SCHEDULE—continued

- (ii) in any other case—by the natural person designated by the form as the signatory.”.

14. Section 46:

Omit “original registration or certificate” (wherever occurring), substitute “original application for registration, original registration or original certificate”.

15. Paragraph 48(1)(b):

Omit “original registration or certificate”, substitute “original application for registration, original registration or original certificate”.

16. Part 6:

Repeal, substitute:

**“PART 6—TRANSFER OF THE WHOLE OR A PART OF THE
BENEFITS OF AN APPLICATION, REGISTRATION OR
CERTIFICATE**

Application for transfer

“49.(1) If:

- (a) one of the following subparagraphs applies to an entity (the *transferor*):

- (i) the transferor has applied for registration of plant expenditure or proposed plant expenditure;
- (ii) plant expenditure is registered in the name of the transferor;
- (iii) the transferor holds a certificate in relation to plant expenditure; and

- (b) the transferor is not an *exempt entity* within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936*; and

- (c) another entity (the *transferee*) has, on or after 1 January 1993, taken over, or agreed to take over, the completion of the whole or a part of the project concerned (with or without modification);

the transferee may apply to the DAA for a transfer of the whole or a part of:

- (d) the benefits of the application for registration; or
- (e) the benefits of the registration; or
- (f) the benefits of the certificate;

as the case may be.

“(2) In subsection (1):

another entity means:

SCHEDULE—continued

- (a) if the transferor is an entity that is not a partnership:
 - (i) a partnership, whether or not the transferor is a partner in the partnership; or
 - (ii) another entity that is not a partnership; or
- (b) if the transferor is a partnership:
 - (i) another partnership, whether or not any of the partners in the other partnership is or was a partner in the first-mentioned partnership; or
 - (ii) an entity that is not a partnership.

Form of application

“50.(1) The application must be in writing in the approved form.

“(2) The application must contain such information as is required by the form to be given.

“(3) The application must be accompanied by a report.

“(4) The report must be in writing in the approved form.

“(5) The report is to be about:

- (a) the expenditure and the project; and
- (b) if the project is part of a joint venture project—the joint venture project; and
- (c) if the project is part of a joint venture project scheme—the scheme; and
- (d) if the project is part of a company group project scheme—the scheme; and
- (e) if the project is part of an individual project scheme—the scheme; and
- (f) any other matters that are stated in the form.

“(6) The application and accompanying report must be signed:

- (a) if the applicant is a natural person—by the applicant; or
- (b) otherwise:
 - (i) if the applicant is an incorporated body that has a board of directors (however described)—by the chairperson (however described) of the board or a person authorised by the chairperson to sign the application and report; or
 - (ii) in any other case—by the natural person designated by the form as the signatory.

SCHEDULE—continued

DAA may refuse to consider application unless applicant gives information etc. requested by DAA

“51. If the DAA gives to an applicant a request under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

DAA’s decision on application

“52.(1) After considering the application, the DAA must decide to:

- (a) grant the application; or
- (b) refuse the application.

“(2) The DAA must give written notice of the decision to the applicant.

“(3) A notice of refusal must set out reasons for the refusal.

Criteria for granting application

“53. The DAA must not grant the application unless the DAA is satisfied that:

- (a) the taking over of the completion of the whole or a part of the project by the transferee occurred, or the proposal of the transferee to take over the completion of the whole or a part of the project is made, for genuine commercial reasons and to enable the completion of the project or the part of the project, as the case may be; and
- (b) if the completion of the project or the part of the project has been, or is to be, carried out with modifications:
 - (i) the modified project does not amount to a substantially different project from the transferor’s original project; and
 - (ii) if the transferor’s original project was part of a joint venture project—the modified project is not part of a joint venture project that is substantially different from the original joint venture project; and
 - (iii) if the transferor’s original project was part of a joint venture project scheme—the modified project is not part of a joint venture project scheme that is substantially different from the original joint venture project scheme; and
 - (iv) if the transferor’s original project was part of a company group project scheme—the modified project is not part of a company group project scheme that is substantially different from the original company group project scheme; and
 - (v) if the transferor’s original project was part of an individual project scheme—the modified project is not part of an individual project scheme that is substantially different from the original individual project scheme; and

SCHEDULE—continued

(c) having regard to:

- (i) the financial capacity of the transferee; and
- (ii) such other matters as the DAA considers relevant;

it is reasonably likely that the completion of the project or of the part of the project (with or without modification) will be carried out; and

(d) the expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project or the part of the project (with or without modification) has passed the prospective deduction test.

Form of transfer of benefits of application

“54.(1) If the DAA grants an application for transfer of the whole of the benefits of an application for registration:

- (a) the transferor’s application for registration is taken to be withdrawn; and
- (b) the application for the transfer is taken to be an application by the transferee for registration of plant expenditure as stated in the application for the transfer; and
- (c) the DAA must grant the application for the transfer despite any non-compliance with section 27 or 28; and
- (d) for the purposes of any application made by the transferee for a certificate in relation to the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project concerned (with or without modification), the \$50 million threshold test is, subject to subsection (3), modified as mentioned in subsection (2).

“(2) The modification referred to in paragraph (1)(d) is that so much of the gross capital expenditure incurred by the transferor, and by any prior successive transferors, in carrying out the project as the DAA considers reasonable is to be treated as if it were gross capital expenditure incurred by the transferee in carrying out the project.

“(3) Paragraph (1)(d) does not apply to expenditure incurred by the transferor or a prior transferor unless the DAA is satisfied that the transferee has obtained the benefit of the expenditure (whether by the acquisition of assets resulting from the expenditure or otherwise).

“(4) If the DAA grants an application for transfer of a part of the benefits of an application for registration:

SCHEDULE—continued

- (a) the application for the transfer is taken to be:
 - (i) an application by the transferor for the variation, as stated in the application for transfer, of the transferor's application for registration of plant expenditure; and
 - (ii) an application by the transferee for the registration of plant expenditure as stated in the application for the transfer; and
- (b) this Act has effect in relation to the applications referred to in subparagraphs (a)(i) and (ii) as if sections 27 and 28 had not been enacted, but nothing in this section requires the DAA to grant either or both of those applications; and
- (c) this Act has effect as if the part of the project to be carried out by the transferor and the part of the project to be carried out by the transferee were separate projects.

Form of transfer of benefits of registration

“55.(1) If the DAA grants an application for transfer of the whole of the benefits of registration:

- (a) the DAA must cancel the transferor's registration; and
- (b) the application for the transfer is taken to be an application duly made by the transferee for the registration of plant expenditure as stated in the application for the transfer; and
- (c) the DAA must grant the application for registration referred to in paragraph (b) despite any non-compliance with section 27 or 28; and
- (d) for the purposes of any application made by the transferee for a certificate in relation to the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project concerned (with or without modification), the \$50 million threshold test is, subject to subsection (3), modified as mentioned in subsection (2).

“(2) The modification referred to in paragraph (1)(d) is that so much of the gross capital expenditure incurred by the transferor, and by any prior successive transferors, in carrying out the project as the DAA considers reasonable is to be treated as if it were gross capital expenditure incurred by the transferee in carrying out the project.

“(3) Paragraph (1)(d) does not apply to expenditure incurred by the transferor or a prior transferor unless the DAA is satisfied that the transferee has obtained the benefit of the expenditure (whether by the acquisition of assets resulting from the expenditure or otherwise).

“(4) If the DAA grants an application for transfer of a part of the benefits of registration:

SCHEDULE—continued

- (a) the application for the transfer is taken to be:
 - (i) an application by the transferor for the variation, as stated in the application for transfer, of the transferor's application for registration of plant expenditure; and
 - (ii) an application by the transferee for registration of plant expenditure as stated in the application for the transfer; and
- (b) the DAA must grant the applications referred to in subparagraphs (a)(i) and (ii) as if sections 27, 28 and 43 had not been enacted; and
- (c) this Act has effect as if the part of the project to be carried out by the transferor and the part of the project to be carried out by the transferee were separate projects.

Form of transfer of benefits of certificate

“56.(1) This section has effect if the DAA grants an application for transfer of the whole or a part of the benefits of a certificate.

“(2) The DAA must:

- (a) if the application is for transfer of the whole of the benefits of a certificate—terminate the transferor's certificate, with effect in relation to expenditure incurred by the transferor after:
 - (i) the date on which the DAA grants the application for transfer; or
 - (ii) if the transferor requests—such earlier date as the DAA specifies; and
- (b) in any case—grant the transferee a pre-qualifying certificate in relation to the whole or a specified part of the plant expenditure incurred, or proposed to be incurred, by the transferee in carrying out completion of the whole or a part, as the case may be, of the project concerned (with or without modification).

“(3) If a part of the benefits of the certificate is to be transferred to the transferee, this Act has effect as if the part of the project to be carried out by the transferor and the part of the project to be carried out by the transferee were separate projects.

Form of certificate

“57. If the DAA grants a certificate under this Part, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the transferee; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and

SCHEDULE—continued

- (e) if the project is part of a joint venture project—specify the joint venture project to which the certificate relates; and
- (f) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates; and
- (g) if the project is part of a company group project scheme—specify the scheme to which the certificate relates; and
- (h) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.

DAA must direct that plant be treated as new plant

“58. If:

- (a) the transferee has acquired from the transferor, or proposes to acquire from the transferor, a unit of plant that was new in the hands of the transferor; and
- (b) the acquisition has taken place, or will take place, in the course of the transferee’s takeover, or proposed takeover, of the completion of the whole or a part of the project (with or without modification); and
- (c) the DAA considers that it would be reasonable to treat the unit of plant as new in the hands of the transferee;

the DAA may:

- (d) make a decision on the application on the assumption that the unit of plant was new in the hands of the transferee when the plant was or is so acquired by the transferee; and
- (e) give the transferor and the transferee a written direction that, if the DAA grants the application for transfer of the whole or a part of the benefits of the application for registration, the registration or the certificate, this Act and Subdivision B of Division 3 of Part III of the Tax Act are taken to have, and to have had, effect as if the unit of plant:
 - (i) were new in the hands of the transferee when the plant was or is so acquired by the transferee; and
 - (ii) were not new in the hands of the transferor at any time.”.

17. Paragraph 78(c):

Omit “a registration or certificate held by”, substitute “an application for registration made by, a registration in the name of, or a certificate held by,”.

18. Paragraph 78(d):

Omit “a registration or”, substitute “an application for registration, a registration or a”.

SCHEDULE—continued

19. Heading to Part 8:

Omit, substitute:

**“PART 8—LAPSING OF APPLICATION OR CANCELLATION
OR TERMINATION OF REGISTRATION OR CERTIFICATE”.**

20. Before paragraph 81(a):

Insert:

“(aa) determine that an application by the entity for registration of plant expenditure is taken to have lapsed; or”.

Note: The heading to section 81 is altered and replaced by the heading “**Lapsing, cancellation or termination—failure to comply with request**”.

21. Section 81:

Add at the end:

“(2) If a determination is made under paragraph (1)(aa), the application is taken to have lapsed when the determination is made.”.

22. Subsection 82(1):

Omit all the words and paragraphs after paragraph (c), substitute:

“the DAA may, by written notice given to the entity:

(d) determine that an application by the entity for registration of plant expenditure is taken to have lapsed; or

(e) cancel any registration of plant expenditure in the name of the entity;
or

(f) cancel a certificate held by the entity (even if the certificate has been terminated).”.

Note: The heading to section 82 is altered and replaced by the heading “**Lapsing or cancellation—false or misleading statements etc.**”.

23. Before paragraph 82(2)(a):

Insert:

“(aa) determine that an application by the entity for registration of plant expenditure is taken to have lapsed; or”.

24. Subsection 82(3):

Omit, substitute:

“(3) If an entity, in compliance with a notice under Part 7, produces a document, or gives a copy of a document, that, to the entity’s knowledge, is false or misleading in a material particular, the DAA may, by written notice to the entity:

SCHEDULE—continued

- (a) determine that an application by the entity for registration of plant expenditure is taken to have lapsed; or
- (b) cancel any registration of plant expenditure in the name of the entity; or
- (c) cancel a certificate held by the entity (even if the certificate has been terminated).

“(3A) If a determination is made under paragraph (1)(d), paragraph (2)(aa) or paragraph (3)(a), the application is taken to have lapsed when the determination is made.”.

25. Paragraph 93J(3)(a):

Omit “any of the facilities referred to in paragraph (1)(a), or any of the facilities referred to in paragraph (1)(b) that are being constructed, are under construction”, substitute “any of the facilities referred to in subparagraph (1)(a)(i) or (ii) are under construction”.

26. Subsection 93J(6):

Omit “paragraph (1)(b)”, substitute “subparagraph (1)(a)(ii)”.

27. Subsection 93L(7):

After “following” insert “that are in Australia”.

28. Subsection 93L(8):

After “sewage or wastewater facility” insert “in Australia”.

29. Subsection 115(3) (definition of *quarter*):

Omit “September”, substitute “October”.

30. Transitional

(1) If:

- (a) an application for registration of plant expenditure under the *Development Allowance Authority Act 1992* was refused before the commencement of this Act; and
- (b) the Development Allowance Authority determines that, if the amendments made by this Schedule had been in force when the *Development Allowance Authority Act 1992* received the Royal Assent, the application would not have been refused;

the Authority may treat the refusal as not having occurred and, if it does so, the application is taken not to have been determined.

(2) If:

- (a) an application for registration of plant expenditure under the *Development Allowance Authority Act 1992* was withdrawn before the commencement of this Act; and

SCHEDULE—continued

(b) the Development Allowance Authority determines that, if:

(i) the application had not been withdrawn; and

(ii) the amendments made by this Schedule had been in force when the *Development Allowance Authority Act 1992* received the Royal Assent;

an application could have been made for the transfer of the whole or a part of the benefits of the application for registration;

the Authority may treat the withdrawal as not having occurred and, if it does so, the application is taken not to have been withdrawn.

(3) If:

(a) an application for registration of plant expenditure under the *Development Allowance Authority Act 1992* was granted before the commencement of this Act in respect of an amount of expenditure (the **registered amount**) that was less than the amount of expenditure whose registration was sought in the application; and

(b) the Development Allowance Authority determines that, if the amendments made by this Schedule had been in force when the *Development Allowance Authority Act 1992* received the Royal Assent, the application would have been granted in respect of a greater amount of expenditure;

the Authority may treat that greater amount as being the amount of expenditure registered in respect of the application and, if it does so, it must amend the particulars of the registration accordingly.

