

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

DEVELOPMENT ALLOWANCE AUTHORITY BILL 1992

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 26 May 1992

(Minister Assisting the Treasurer)

A BILL

FOR

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

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Development Allowance Authority Act 1992*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 (2) If the day ("TLAA day") on which the *Taxation Laws Amendment Act (No. 3) 1992* receives the Royal Assent is a later day than the day on which this Act receives the Royal Assent, Parts 2 to 10 (inclusive), 12, 13, 14 and 15 commence on the TLAA day.

Object

3. The object of this Act and the development allowance provisions of the *Income Tax Assessment Act 1936* is to provide tax incentives for investment in large Australian projects which cost \$50 million or more and meet certain other criteria.

5

Simplified outline of scheme of Act

4. The following is a simplified outline of the scheme of this Act:

- (a) an entity may apply before 1 January 1993 for registration of plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia;
- (b) the Development Allowance Authority (“DAA”) will register the expenditure if certain criteria are satisfied;
- (c) the DAA will issue a certificate pre-qualifying the expenditure for the tax incentive known as development allowance if:
 - (i) the expenditure has been registered; and
 - (ii) a substantial commitment to the completion of the project has occurred before 1 July 1996; and
 - (iii) certain other criteria are satisfied.

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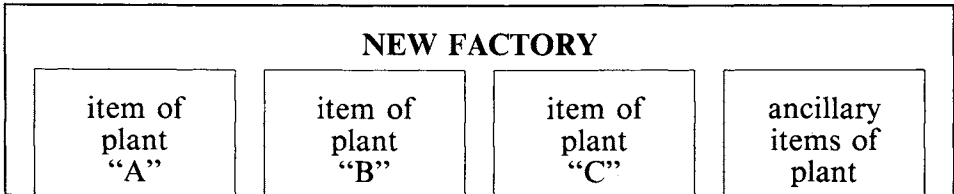
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Example of how this Act will work

[Typical example—new factory]

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5.(1) This section sets out an example of how this Act will work in a typical case involving the establishment of a new factory.



[Step 1—proposal to establish a new factory]

(2) During the 3rd quarter of 1992, a manufacturing company develops a serious, commercially viable proposal to carry out a project consisting of the establishment of a new factory in Australia. The project involves the company incurring expenditure in acquiring new plant for use in the factory. The elements of the plant expenditure are:

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- major items of plant “A”, “B” and “C”, which are the main components of the production line; and
- ancillary items of plant (such as light fittings, ventilation equipment and pollution control devices).

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The factory will be used by the company to produce goods for sale. The company will derive assessable income from the sale of the manufactured goods. Both the effective and nominal rates of industry assistance are less than 10%. The total capital cost of the project

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(including the plant expenditure and the cost of constructing the factory building) is \$65 million. The projected timetable for the project is as follows:

- 5 regulatory approvals obtained—March 1993
- first contracts entered into—April/May 1993
- construction of factory commences—June 1993
- plant installed in factory—May 1994
- factory in operation—June 1994.

[Step 2—application for registration of plant expenditure]

- 10 (3) On 20 November 1992, the company applies to the DAA for registration of the plant expenditure proposed to be incurred by the company in carrying out the project.

[Step 3—grant of registration of plant expenditure]

- 15 (4) The DAA grants registration. The registration is subject to a condition requiring the company to give to the DAA, before 1 July 1995, certified copies of the relevant regulatory approvals.

[Step 4—application for pre-qualifying certificate relating to plant expenditure]

- 20 (5) By October 1993, a substantial commitment to the completion of the project has occurred and the company has complied with the condition of the registration relating to the giving of certified copies of relevant regulatory approvals. It is reasonably likely that the competitiveness test set out in Division 4 of Part 2 will be passed. On 28 October 1993, the company applies to the DAA for a pre-qualifying certificate in relation to the registered plant expenditure.
- 25

[Step 5—grant of pre-qualifying certificate relating to plant expenditure]

- (6) The DAA grants a pre-qualifying certificate relating to the plant expenditure.

[Step 6—tax effects of certificate]

- 30 (7) The pre-qualifying certificate pre-qualifies the plant expenditure for the tax incentive known as development allowance.

Interpretation

6. In this Act, unless the contrary intention appears:

- “AAT” means the Administrative Appeals Tribunal;
- 35 “**acquisition**”, in relation to property, has the same meaning as in section 82AQ of the Tax Act;
- “**approved**” means approved in writing by the DAA;
- “**Australian satellite**” has the same meaning as in the *Radiocommunications Act 1983*;
- 40 “**basic eligibility test**” has the meaning given by section 15;

“business services industry” means an industry of engaging in the provision of any of the following services to business on a contract basis:

- (a) architectural, surveying or similar technical services; 5
- (b) accountancy or legal services;
- (c) data processing or other office services;
- (d) advertising;
- (e) market research;
- (f) management consultancy services;
- (g) credit assessing or reporting services; 10
- (h) pest control of business premises;
- (i) cleaning of business premises;
- (j) caretaking or security services;

“carrying out a project” has the meaning given by section 7;

“certificate” means a pre-qualifying certificate in relation to expenditure granted under Part 4 or 6; 15

“certified copy”, in relation to a document, means a copy of the document which is accompanied by a statutory declaration that:

- (a) is in the approved form; and
- (b) relates to the accuracy of the copy; and 20
- (c) is made by the person designated by the form as the signatory;

“company” has the same meaning as in section 6 of the Tax Act, but does not include a company in a capacity of trustee;

“company group project scheme” has the meaning given by section 14;

“competitiveness test” has the meaning given by section 17; 25

“construction” has the same meaning as in section 82AQ of the Tax Act;

“DAA” means the Development Allowance Authority appointed under this Act;

“discrete project test” has the meaning given by section 9; 30

“document certification provision” means section 15A of the *Taxation Administration Act 1953* insofar as that section applies in relation to this Act;

“entity” means:

- (a) a company; or 35
- (b) a partnership; or
- (c) a person in a particular capacity of trustee; or
- (d) any other person;

“facility” includes:

- (a) a factory; or 40
- (b) a mine or quarry; or
- (c) a wharf or other port facility; or

- (d) an hotel; or
- (e) a passenger terminal; or
- (f) a freight distribution facility; or
- (g) an integrated transport fleet; or
- 5 (h) a pipeline;

“**financial services industry**” includes the insurance industry;

“**goods**” has the same meaning as in section 317 of the Tax Act;

“**gross capital expenditure**” has the meaning given by section 19;

10 “**group company**” has the same meaning as in subsection 160ZZO(3A) of the Tax Act;

“**industry or activity which benefits from a substantial level of industry assistance**” has the meaning given by section 16;

“**joint venture**” means an enterprise carried on by 2 or more entities in common otherwise than in partnership;

15 “**joint venture project**” has the meaning given by section 13;

“**leasing company**” has the same meaning as in section 82AQ of the Tax Act;

“**member of a company group**” has the meaning given by section 14;

“**new**” has the same meaning as in section 82AQ of the Tax Act;

20 “**partnership**” has the same meaning as in section 6 of the Tax Act;

“**plant**” means eligible property within the meaning of section 82AQ of the Tax Act, but does not include property covered by section 82AE or 82AF of the Tax Act;

25 “**plant expenditure**” means expenditure in respect of the acquisition or construction of a new unit of plant;

“**post-26 February 1992 project**” has the meaning given by section 21;

“**production**”, in relation to goods, includes extraction, processing or treatment;

“**productive facility**” has the meaning given by section 8;

30 “**prosecution provisions**” means Part III of the *Taxation Administration Act 1953*, insofar as that Part applies in relation to this Act;

“**prospective deduction test**” has the meaning given by section 22;

“**registration**” means registration of plant expenditure under Part 3;

35 “**reviewable decision**” means a decision of the DAA under Part 2, 3, 4, 5, 6, 8 or 13;

“**\$50 million threshold test**” has the meaning given by section 18;

“**services**” has the same meaning as in section 317 of the Tax Act;

40 “**State taxation officer disclosure provision**” means section 13J of the *Taxation Administration Act 1953* insofar as that section applies in relation to this Act;

“**substantial commitment to the completion of a project**” has the meaning given by section 20;

“**Tax Act**” means the *Income Tax Assessment Act 1936*;

“trustee” has the same meaning as in section 6 of the Tax Act, and includes an entity that is taken to be a trustee because of section 268 of the Tax Act;

“vertical integration test” has the meaning given by section 10.

PART 2—KEY CONCEPTS RELATING TO PROJECTS 5

Division 1—Carrying out a project

Meaning of “carrying out a project”

7. For the purposes of this Act, an entity carries out a project in Australia if, and only if, the entity:

- (a) establishes a new productive facility in Australia; or 10
- (b) establishes 2 or more new productive facilities in Australia where:
 - (i) the facilities pass the discrete project test; or
 - (ii) the facilities pass the vertical integration test; or
- (c) expands, improves or upgrades an existing productive facility in Australia where the expansion, improvement or upgrade is carried out: 15
 - (i) to improve substantially the productivity or capacity of the facility; or
 - (ii) to minimise the effect of the operation of the facility on the environment; or 20
- (d) expands, improves or upgrades 2 or more existing productive facilities in Australia where:
 - (i) the expansions, improvements or upgrades are carried out: 25
 - (A) to improve substantially the productivity or capacity of the facilities; or
 - (B) to minimise the effect of the operation of the facilities on the environment; and
 - (ii) either: 30
 - (A) the facilities pass the discrete project test; or
 - (B) the facilities pass the vertical integration test.

Meaning of “productive facility”

8. For the purposes of the application of this Act to an entity, a facility is a productive facility if, and only if: 35

- (a) it is wholly or principally for use by the operator of the facility in carrying out one or more steps in:
 - (i) the production or distribution, or both, of the same goods or related goods; or
 - (ii) the provision of the same services or related services; 40
- and

(b) either:

(i) the entity operates, or is to operate, the facility; or

(ii) both:

(A) the entity is a leasing company; and

(B) the facility is leased, or for lease, by the entity to another entity who operates, or is to operate, the facility.

When productive facilities pass the discrete project test

9. For the purposes of this Act, 2 or more productive facilities pass the discrete project test if:

(a) either:

(i) the facilities are located on the same premises; or

(ii) the facilities are located on contiguous premises; and

(b) each facility is wholly or principally for use by the operator of the facility in carrying out the same step, or the same series of steps, in:

(i) the production or distribution, or both, of the same goods or related services; or

(ii) the provision of the same services or related services.

When productive facilities pass the vertical integration test

10. For the purposes of this Act, 2 or more productive facilities pass the vertical integration test if each facility is wholly or principally for use by the operator of the facility in carrying out a different step, or a series of different steps, in:

(a) the vertically integrated production or distribution, or both, of the same goods or related goods; or

(b) the vertically integrated provision of the same services or related services.

DAA may direct that activities carried out by an entity are to be treated as the establishment of a new productive facility

11. If:

(a) one or more activities carried out by an entity do not consist of the establishment by the entity of a new productive facility in Australia; and

(b) the activities are related directly or indirectly to a productive facility in Australia; and

(c) the DAA is satisfied that, because of special circumstances, it would be unreasonable not to treat the whole or a part of the activities as the establishment by the entity of a new productive facility in Australia;

the DAA may give the entity a written direction that this Act has, and is taken to have had effect, as if the whole, or the part, as the case may

be, of those activities were the establishment by the entity of a new productive facility in Australia.

Australian satellites deemed to be in Australia

12. For the purposes of this Act, an Australian satellite is taken to be in Australia.

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Division 2—Joint venture projects and company group project schemes

Joint venture projects

13.(1) For the purposes of this Act, if, assuming that the parties to a joint venture were partners in a partnership, the partnership would be taken to carry out a project in Australia, the project is taken to be a joint venture project.

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(2) For the purposes of this Act, the part of a joint venture project carried out by an entity who is a party to the joint venture is taken to be a project carried out by the entity in Australia.

Example:

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JOINT VENTURE PROJECT

entity A's project = entity A's part of the joint venture project	entity B's project = entity B's part of the joint venture project
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(3) Subsection (2) has effect in spite of section 7.

Company group project schemes

[Election to treat aggregate of individual projects as company group project scheme]

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14.(1) For the purposes of this Act, 2 or more companies who are members of a company group may elect that the aggregate of 2 or more specified projects carried out individually by the companies is to be treated as a company group project scheme.

Example:

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[Productive facilities must pass the vertical integration test]

(2) The election has no effect unless either:

(a) both:

(i) each of the individual projects consists of the establishment of one or more new productive facilities in Australia; and

30

- (ii) all of the productive facilities to which the individual projects relate pass the vertical integration test; or
- (b) both:
 - (i) each of the individual projects consists of the expansion, improvement or upgrading of one or more existing productive facilities in Australia; and
 - (ii) all of the productive facilities to which the individual projects relate pass the vertical integration test.

[Membership of company group]

10 (3) For the purposes of this Act, 2 or more companies are members of a company group if, and only if, each of the companies is a group company in relation to each of the other companies.

[Form of election]

- 15 (4) The election:
- (a) is to be given to the DAA; and
 - (b) must be in writing in the approved form.

[Election is irrevocable]

- 20 (5) 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 Division 1 of Part 6 for transfer of the benefits of a registration or certificate relating to a project which forms part of a scheme.

25 ***Division 3—Basic eligibility test***

Basic eligibility test for project expenditure

15. For the purposes of this Act, if:
- (a) expenditure is incurred, or proposed to be incurred, in:
 - (i) establishing a new productive facility; or
 - (ii) expanding, improving or upgrading an existing productive facility; and
 - (b) either:
 - (i) the whole of the productive facility; or
 - (ii) a part of the productive facility;
- 35 as wholly or principally for use by the operator of the facility:
- (iii) as office accommodation; or
 - (iv) as residential accommodation for persons other than tourists or travellers; or
 - (v) in or in connection with the operator's capacity as a
- 40 participant in any of the following industries:

- (A) the financial services industry;
- (B) the business services industry;
- (C) the print media industry;
- (D) the electronic media industry;
- (E) the retail industry;
- (F) the wholesale industry; or

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(vi) in or in connection with the operator's capacity as a participant in an industry, or an activity, which benefits from a substantial level of industry assistance;

then:

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- (c) if subparagraph (b)(i) applies—the whole of the expenditure fails the basic eligibility test; or
- (d) if subparagraph (b)(ii) applies—so much of the expenditure as is attributable to that part of the productive facility fails the basic eligibility test.

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When industries or activities benefit from a substantial level of industry assistance

16.(1) For the purposes of this Act, an industry or activity is taken to benefit from a substantial level of industry assistance if, and only if, the DAA is satisfied that the lower of:

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- (a) the nominal rate of industry assistance from all levels of government; or
- (b) the effective rate of industry assistance from all levels of government;

is more than 10%.

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(2) For the purposes of this section, a rate is to be worked out:

- (a) using the method used by the Industry Commission; and
- (b) on the assumption that levels of industry assistance are equal to the levels that the government concerned proposes to apply on 1 July 1996.

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Division 4—Competitiveness test

Competitiveness test for project expenditure

17. For the purposes of this Act, expenditure incurred, or proposed to be incurred, by an entity in carrying out a project passes the competitiveness test if the DAA is satisfied that:

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- (a) in any case:
 - (i) the labour relations aspects of the carrying out of the project substantially reflect world best practice; and
 - (ii) the labour relations aspects of the operation of the productive facility or facilities concerned substantially reflect world best practice; and

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- (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of the productive facility or facilities concerned are economic and efficient; and
- 5 (b) if the project is part of a joint venture project:
 - (i) the labour relations aspects of the carrying out of the joint venture project substantially reflect world best practice; and
 - 10 (ii) the labour relations aspects of the operation of the productive facility or facilities to which the joint venture project relates substantially reflect world best practice; and
 - 15 (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of the productive facility or facilities to which the joint venture project relates are economic and efficient; and
- (c) if the project is part of a company group project scheme:
 - 20 (i) the labour relations aspects of the carrying out of each other project to which the scheme relates substantially reflect world best practice; and
 - (ii) the labour relations aspects of the operation of each other productive facility or facilities to which the scheme relates substantially reflect world best practice; and
 - 25 (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of each other productive facility or facilities to which the scheme relates are economic and efficient.

Division 5—\$50 million threshold test

\$50 million threshold test for project expenditure

- 30 **18.** For the purposes of this Act, expenditure incurred, or proposed to be incurred, by an entity in carrying out a project passes the \$50 million threshold test if:
- (a) if the project is part of a joint venture project—the sum of:
 - 35 (i) the gross capital expenditure incurred by the entity in respect of carrying out that part of the project; and
 - (ii) the gross capital expenditure incurred by each other party to the joint venture in respect of carrying out each other part of the joint venture project;is \$50 million or more; or
 - 40 (b) if the project is part of a company group project scheme—the sum of:
 - (i) the gross capital expenditure incurred by the entity in respect of carrying out the project; and

- (ii) the gross capital expenditure incurred by each other group company in respect of carrying out the other project or projects to which the scheme relates;
is \$50 million or more; or
- (c) in any other case—the gross capital expenditure incurred by the entity in respect of carrying out the project is \$50 million or more. 5

Gross capital expenditure

[Gross capital expenditure]

19.(1) Subject to this section, for the purposes of this Act, the gross capital expenditure incurred by an entity in respect of carrying out a project is the sum of: 10

- (a) in any case—the total expenditure of a capital nature incurred by the entity in respect of carrying out the project; and
 - (b) if: 15
 - (i) the entity has incurred other expenditure of a capital nature which is related directly or indirectly to the carrying out of the project; and
 - (ii) the DAA is satisfied that, because of special circumstances, it would be unreasonable not to treat the whole or a part of that other expenditure as gross capital expenditure incurred by the entity in respect of carrying out the project; 20
- the whole, or the part, as the case may be, of that other expenditure. 25

[Expenditure does not count if it fails the basic eligibility test]

(2) Subsection (1) does not apply to expenditure to the extent to which the expenditure fails the basic eligibility test.

[Recouped expenditure does not count]

(3) Subsection (1) does not apply to expenditure if the entity is recouped, or becomes entitled to be recouped, in respect of the expenditure. 30

[Dissection of recoupment]

(4) If an entity receives, or becomes entitled to receive, an amount that constitutes to an unspecified extent a recoupment of expenditure, the DAA may, for the purposes of subsection (3), determine the extent to which that amount constitutes a recoupment of that expenditure. 35

[Non-arm's length transactions]

- (5) If the DAA is satisfied that:
 - (a) an entity has incurred expenditure in connection with a transaction where the parties to the transaction are not dealing 40

with each other at arm's length in relation to the transaction;
and

(b) the amount of the expenditure is greater or less than is reasonable;

5 the amount of the expenditure is taken, for the purposes of this section, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

Division 6—Substantial commitment to completion of a project

Substantial commitment to completion of a project—relevant factors

10 **20.** In determining whether a substantial commitment to the completion of a project has occurred, or is reasonably likely to occur, before a particular date, the DAA must have regard to:

(a) in any case:

15 (i) the physical work that has been undertaken in carrying out the project before that date; and

(ii) the nature of the contracts that have been entered into before that date in relation to the project; and

20 (iii) in the case of a project consisting of the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facility or facilities; and

(iv) such other matters as the DAA considers relevant; and

(b) if the project is part of a joint venture project:

25 (i) the physical work that has been undertaken in carrying out the joint venture project before that date; and

(ii) the nature of the contracts that have been entered into before that date in relation to the joint venture project; and

30 (iii) in the case of a joint venture project consisting of the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facility or facilities; and

(iv) such other matters as the DAA considers relevant; and

(c) if the project is part of a company group project scheme:

35 (i) the physical work that has been undertaken in carrying out each other project to which the scheme relates before that date; and

40 (ii) the nature of the contracts that have been entered into before that date in relation to each other project to which the scheme relates; and

- (iii) in the case of a scheme consisting of the expansion, improvement or upgrading of productive facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facilities; and 5
- (iv) such other matters as the DAA considers relevant.

Division 7—Post-26 February 1992 projects

Post-26 February 1992 projects

21. For the purposes of the application of this Act to expenditure incurred, or proposed to be incurred, in carrying out a project, the project is taken to be a post-26 February 1992 project unless: 10

(a) in any case:

- (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of the project—any such construction commenced before 27 February 1992; or 15
- (ii) in all cases—a contract for the acquisition of any new plant which formed, or is to form, part of the project was entered into before 27 February 1992; and 20

(b) if the project is part of a joint venture project:

- (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of the joint venture project—any such construction commenced before 27 February 1992; or 25
- (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of the joint venture project was entered into before 27 February 1992; and 30

(c) if the project is part of a company group project scheme:

- (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of another project to which the scheme relates—any such construction commenced before 27 February 1992; or 35
- (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of another project to which the scheme relates was entered into before 27 February 1992. 40

Division 8—Prospective deduction test

Prospective deduction test

22. For the purposes of the application of this Act to expenditure incurred, or proposed to be incurred, by an entity in carrying out a project, the expenditure passes the prospective deduction test if the DAA is satisfied that, assuming that:

(a) the entity were to incur the expenditure and complete the carrying out of the project; and

(b) the DAA were to issue a certificate in the name of the entity in relation to the expenditure; and

(c) sections 82AC and 82AD of the Tax Act had not been enacted; it is reasonably arguable that a deduction or deductions will be allowable to the entity under section 82AB of the Tax Act in respect of the expenditure.

Application of Tax Act to prospective deduction test

23. In applying the prospective deduction test, the DAA may make such assumptions as appear to the DAA to be reasonable about:

(a) the exercise by the Commissioner of Taxation of any power conferred by:

(i) Part IVA of the Tax Act (which deals with tax avoidance schemes); and

(ii) any other provision of the Tax Act; and

(b) the attainment by the Commissioner of Taxation of any state of mind relevant to the application of any provision of the Tax Act.

Division 9—Specification of project and specification of plant expenditure

Specification of project and specification of plant expenditure

[Documents to which this section applies]

24.(1) This section applies to the following documents:

(a) an application made by an entity under this Act;

(b) a registration;

(c) a certificate.

[Specification of project]

(2) The specification of a project in a document must be sufficiently detailed so as to enable the project, and the constituent elements of the project, to be clearly identified.

[Specification of plant expenditure]

(3) The specification of plant expenditure in a document:

(a) must be made by reference to a description of the nature, use,

proposed use or other attributes of the unit or units of plant concerned (whether that description relates to individual units of plant or to units of plant included in a particular class of units of plant); and

(b) must not be made by reference to a dollar amount.

5

[Example of specification of plant expenditure]

(4) The following is an example of the specification of plant expenditure in a case involving a project consisting of the establishment of a combined office block/hotel where:

(a) some units of plant (such as hotel furniture and fittings) are exclusively for use in the hotel; and

10

(b) other units of plant (such as central air-conditioning plant) are for use in connection with both the office accommodation and the hotel.

Example:

15

Specification of plant expenditure covered by paragraph (a)

“Expenditure proposed to be incurred in respect of the acquisition of the new units of plant described in Part A of the Schedule to this [document], where the expenditure is proposed to be incurred in carrying out the [specified] project”.

20

Plant expenditure covered by paragraph (b)

“So much of the expenditure proposed to be incurred in respect of the acquisition of the new units of plant described in Part B of the Schedule to this [document] as is attributable to the [specified hotel part], where the expenditure is proposed to be incurred in carrying out the [specified] project”.

25

Division 10—Plant expenditure to be incurred wholly or principally in carrying out a project

Plant expenditure to be incurred wholly or principally in carrying out a project

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25. For the purposes of this Act, expenditure incurred in respect of the acquisition or construction of a particular unit of plant is incurred in carrying out a project if, and only if, it is incurred wholly or principally in carrying out the project.

PART 3—REGISTRATION OF PLANT EXPENDITURE

35

Applications for registration of plant expenditure

26. An entity may apply to the DAA for registration of the whole or a specified part of plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia.

Timing of application

27. An application is to be given to the DAA before 1 January 1993.

Form of application etc.

5 28.(1) The application must be in writing in the approved form.

(2) The application must contain such information about the expenditure and the project as is required by the form to be given.

10 (3) If the applicant is not a natural person, the application must be signed on behalf of the applicant by whichever of the following natural persons is applicable:

(a) if the applicant is a body corporate which has a board of directors (however described)—the chairperson (however described) of the board;

15 (b) in any other case—the natural person designated by the form as the signatory.

(4) The application must be accompanied by a report.

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

(6) The report is to be about:

20 (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 company group project scheme—the scheme; and

(d) such other matters as are specified in the form.

25 (7) Information relating to the likelihood of the expenditure passing the competitiveness test is taken to be relevant to the application.

(8) All of the applications relating to a joint venture project must be set out in the same document.

30 (9) All of the applications relating to a company group project scheme must be set out in the same document.

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

35 29. If the DAA gives a request to the applicant 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

30.(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 a refusal must set out reasons for the refusal.

Criteria for granting application

31. The DAA must grant an application for registration of plant expenditure incurred, or proposed to be incurred, by the applicant in carrying out a project in Australia if the DAA is satisfied that: 5

- (a) in the case of plant expenditure which the applicant claims to have incurred in carrying out the project—the plant expenditure has been incurred by the applicant in carrying out the project; and 10
- (b) in the case of plant expenditure which the applicant claims to propose to incur in carrying out the project—the proposal is genuine; and
- (c) the project is a post-26 February 1992 project; and 15
- (d) no part of the plant expenditure fails the basic eligibility test; and
- (e) either:
 - (i) a substantial commitment to the completion of the project has occurred before 1 January 1993; or 20
 - (ii) it is reasonably likely that a substantial commitment to the completion of the project will occur before 1 July 1996; and
- (f) either:
 - (i) the plant expenditure has passed the \$50 million threshold test; or 25
 - (ii) it is reasonably likely that the plant expenditure will pass the \$50 million threshold test; and
- (g) either:
 - (i) the applicant has completed the carrying out of the project; or 30
 - (ii) having regard to:
 - (A) the financial capacity of the applicant; and
 - (B) such other matters as the DAA considers relevant; it is reasonably likely that the applicant will complete the carrying out of the project; and 35
- (h) if the project is part of a joint venture project—either:
 - (i) the parties to the joint venture have completed the carrying out of the joint venture project; or
 - (ii) having regard to: 40
 - (A) the financial capacity of the parties to the joint venture; and
 - (B) such other matters as the DAA considers relevant;

it is reasonably likely that the parties to the joint venture will complete the carrying out of the joint venture project; and

- 5 (i) if the project is part of a company group project scheme—
either:
 - (i) the other member or members of the company group have completed the carrying out of the other project or projects to which the scheme relates; or
 - 10 (ii) having regard to:
 - (A) the financial capacity of the other member or members of the company group; and
 - (B) such other matters as the DAA considers relevant; it is reasonably likely that the other member or members of the company group will complete the carrying out of the other project or projects to which the scheme relates; and
- 15 (j) the plant expenditure has passed the prospective deduction test.

Form of registration

20 32. If an application for registration is granted, the registration must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the registration relates; and
- 25 (d) specify the plant expenditure to which the registration relates; and
- (e) if the project is part of a joint venture project—specify the joint venture project to which the registration relates; and
- (f) if the project is part of a company group project scheme—specify the scheme to which the registration relates.

30 **Duration of registration**

33. A registration of plant expenditure in the name of an entity:

- (a) comes into force on the day on which the application for registration is granted; and
- 35 (b) if the entity's application for a certificate relating to the expenditure is granted—ceases to be in force on the day on which that application is granted.

Conditions of registration

[Notice specifying conditions of registration]

40 34.(1) If the DAA registers plant expenditure in the name of an entity, the DAA may give the entity a written notice specifying conditions to which the registration is subject.

[Kinds of conditions]

(2) Without limiting the kinds of conditions to which a registration may be subject, a registration may be subject to conditions requiring the entity in whose name the registration is held:

- (a) to notify the DAA in writing of: 5
 - (i) the occurrence of such events; and
 - (ii) such changes in the entity’s circumstances; as are specified in the condition; and
- (b) to give to the DAA, before 1 July 1995, certified copies of such relevant authorisations, approvals, licences or permits issued under a law of the Commonwealth, a State or a Territory as are specified in the condition. 10

[Further conditions; revocation or variation of conditions]

(3) The DAA may, by written notice given to an entity in whose name plant expenditure is registered:

- (a) impose one or more further conditions to which the registration is subject; or 15
- (b) revoke or vary a condition:
 - (i) imposed under paragraph (a); or
 - (ii) specified under subsection (1). 20

[Contravention of condition not an offence]

(4) It is not an offence to contravene a condition to which a registration is subject.

PART 4—PRE-QUALIFYING CERTIFICATES RELATING TO PLANT EXPENDITURE

25

Application for pre-qualifying certificate

35.(1) If plant expenditure is registered in the name of an entity, the entity may apply to the DAA for a pre-qualifying certificate in relation to the expenditure.

(2) An entity is not entitled to apply for a pre-qualifying certificate unless the following conditions to which the registration was subject have been satisfied: 30

- (a) a condition of a kind mentioned in paragraph 34(2)(b) (which deals with lodgment of final documentation);
- (b) any other condition, to the extent to which the obligations imposed by the condition arose before the time the application was made. 35

Timing of application

36. An application is to be given to the DAA before 1 August 1996.

Form of application

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

(2) The application must contain such information about the expenditure and the project as is required by the form to be given.

5 (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

10 (b) if the project is part of a joint venture project—the joint venture project; and

(c) if the project is part of a company group project scheme—the scheme; and

(d) such other matters as are specified in the form.

15 (6) All of the applications relating to a joint venture project must be set out in the same document.

(7) All of the applications relating to a company group project scheme must be set out in the same document.

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

20 38. If the DAA gives a request to the applicant 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

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

25 (a) grant the application; or

(b) refuse the application.

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

30 (3) A notice of a refusal of an application must set out reasons for the refusal.

Criteria for granting application

40. The DAA must grant the application if the DAA is satisfied that:

(a) no part of the expenditure fails the basic eligibility test; and

35 (b) a substantial commitment to the completion of the project has occurred before 1 July 1996; and

(c) in a case where no substantial commitment to the completion of the project has occurred before 1 January 1993—it is

reasonably likely that the expenditure will pass the competitiveness test; and

(d) either:

- (i) the expenditure has passed the \$50 million threshold test;
or
- (ii) it is reasonably likely that the expenditure will pass the \$50 million threshold test.

5

Form of certificate

41. If an application for a certificate is granted, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- (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 company group project scheme—specify the scheme to which the certificate relates.

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PART 5—VARIATION OF REGISTRATION OR CERTIFICATE

Applications for variation

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[Variation of registration]

42.(1) An entity in whose name plant expenditure is registered may apply to the DAA for a variation of any or all of the following:

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

25

[Variation of certificate]

30

(2) An entity who holds a certificate in relation to plant expenditure may apply to the DAA for a variation of any or all of the following:

- (a) the expenditure;
- (b) the project to which the certificate relates;
- (c) if the project is part of a joint venture project—the joint venture project to which the certificate relates;
- (d) if the project is part of a company group project scheme—the scheme to which the certificate relates.

35

[Joint ventures]

5 (3) An entity is not entitled to make an application for a variation of a joint venture project to which a registration or certificate relates unless each other party to the joint venture makes a corresponding application.

[Company group project schemes]

10 (4) A company is not entitled to make an application for a variation of a company group project scheme to which a registration or certificate relates unless each of the other members of the company group involved in the scheme make a corresponding application.

Form of application

43.(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.

15 (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:

- 20 (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 company group project scheme—the scheme; and
(d) such other matters as are specified in the form.

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

44. If the DAA gives a request to the applicant 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

30 45.(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.

35 (3) A notice of a refusal of an application must set out reasons for the refusal.

Criteria for granting application**[Variation of expenditure]**

46.(1) The DAA must not grant an application for variation of expenditure unless the DAA is satisfied that:

- (a) in any case—the entity has incurred, or proposes to incur, the varied expenditure in carrying out the same, or substantially the same, project as was specified in the original registration or certificate, as the case may be; and 5
- (b) if the entity's project is part of a joint venture project—the varied expenditure relates to the same, or substantially the same, joint venture project as was specified in the original registration or certificate, as the case may be; and 10
- (c) if the entity's project is part of a company group project scheme—the varied expenditure relates to the same, or substantially the same, company group project scheme as was specified in the original registration or certificate, as the case may be. 15

[Variation of project]

(2) The DAA must not grant an application for variation of a project unless the DAA is satisfied that: 20

- (a) in any case—the varied project is the same, or substantially the same, project as was specified in the original registration or certificate, as the case may be; and
- (b) if the entity's project is part of a joint venture project—the varied project relates to the same, or substantially the same, joint venture project as was specified in the original registration or certificate, as the case may be; and 25
- (c) if the entity's project is part of a company group project scheme—the varied project relates to the same, or substantially the same, company group project scheme as was specified in the original registration or certificate, as the case may be. 30

[Variation of joint venture project]

(3) The DAA must not grant an application for variation of a joint venture project unless the DAA is satisfied that the varied joint venture project is the same, or substantially the same, as the joint venture project specified in the original registration or certificate, as the case may be. 35

[Variation of company group project scheme]

(4) The DAA must not grant an application for variation of a company group project scheme unless the DAA is satisfied that the varied company group project scheme is the same, or substantially the same, as the company group project scheme specified in the original registration or certificate, as the case may be. 40

Date of effect of variation

47. If the DAA grants the application, the variation has effect in relation to expenditure incurred by the applicant on or after:

- (a) the date of the variation; or
- 5 (b) if the applicant requests—such earlier date as the DAA specifies.

Variation of project specification

48.(1) If:

- (a) the DAA grants the application; and
 - 10 (b) the variation involves a change to the nature of the project, joint venture project or company group project scheme specified in the original registration or certificate, as the case may be;
- the DAA must vary the specification of the project, joint venture project or company group project scheme accordingly.

15 (2) The variation has effect in relation to expenditure incurred by the applicant on or after:

- (a) the date of the variation; or
- (b) if the applicant requests—such earlier date as the DAA specifies.

PART 6—TRANSFER OF BENEFITS OF REGISTRATION OR CERTIFICATE

20 *Division 1—Takeovers not involving re-constituted joint ventures or re-constituted partnerships*

Application for transfer

49. If:

- 25 (a) either of the following applies to an entity (the “transferor”):
 - (i) plant expenditure is registered in the name of the entity;
 - (ii) the entity holds a certificate in relation to plant expenditure; and
- (b) the transferor has ceased, or proposes to cease, to carry out the project concerned; and
- 30 (c) another entity (the “transferee”) has taken over, or proposes to take over, the completion of the project (with or without modification); and
- (d) either:
 - 35 (i) the transferee has incurred, or proposes to incur, plant expenditure in carrying out the completion of the project (with or without modification); or
 - (ii) both:
 - (A) the transferee has incurred, or proposes to incur, expenditure in acquiring 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 project (with or without modification); and 5

(e) the takeover, or proposed takeover, is not covered by Division 2 (which deals with re-constituted joint ventures); and

(f) the takeover, or proposed takeover, is not covered by Division 3 (which deals with re-constituted partnerships); and 10

(g) if the project was or is part of a company group project scheme:

(i) both the transferor and the transferee are members of the company group to which the scheme relates; or

(ii) both:

(A) the transferee has taken over, or proposes to take over, the completion of each of the projects to which the scheme relates; and 15

(B) applications under this section are made by the transferee and by each of the group companies to which the scheme relates; 20

the transferor and the transferee may jointly apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

Form of application

50.(1) The application must be in writing in the approved form. 25

(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.

DAA may refuse to consider application unless applicant gives information etc. requested by DAA 30

51. If the DAA gives a request to an applicant 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 35

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 applicants. 40

(3) A notice of a 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:

- 5 (a) the transferor has ceased, or genuinely proposes to cease, to carry out the project; and
- (b) the transferee has taken over, or genuinely proposes to take over, the completion of the project (with or without modification); and
- 10 (c) in the case of plant expenditure which the transferee claims to have incurred in carrying out the completion of the project (with or without modification)—the plant expenditure has been incurred by the transferee in carrying out the project; and
- 15 (d) in the case of plant expenditure which the transferee claims to propose to incur in carrying out completion of the project (with or without modification)—the proposal is genuine; and
- (e) the transferee has taken over, or is proposing to take over, the completion of the project (with or without modification) for genuine commercial reasons; and
- 20 (f) if the completion of the project has been, or is to be, taken over by the transferee with modifications:
 - (i) in any case—the modified project does not amount to a substantially different project from the transferor's original project; and
 - 25 (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
 - 30 (iii) 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
- (g) having regard to:
 - 35 (i) the financial capacity of the transferee; and
 - (ii) such other matters as the DAA considers relevant;
it is reasonably likely that the transferee will complete the carrying out of the project (with or without modification); and
- 40 (h) the expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project (with or without modification) has passed the prospective deduction test.

Form of transfer of benefits of registration

54. If the DAA grants an application for transfer of the benefits of registration:

- (a) the DAA must cancel the transferor's registration; and
- (b) this Act has effect, in relation to an application made by the transferee for registration of, or 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), as if:
 - (i) section 27 (which deals with the timing of applications for registration) had not been enacted; and
 - (ii) the \$50 million threshold test were modified so that so much of:
 - (A) the gross capital expenditure incurred by the transferor in respect of carrying out the project; and
 - (B) if there have been one or more prior successive transferors—the gross capital expenditure incurred by the prior successive transferors in respect of carrying out the project;
 as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the transferee in carrying out the project.

Form of transfer of benefits of certificate

55. If the DAA grants an application for transfer of the benefits of a certificate, the DAA must:

- (a) 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) 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 project concerned (with or without modification).

Form of certificate

56. 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
- 5 (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 company group project scheme—specify the scheme to which the certificate relates.

DAA may direct that plant be treated as new plant

57. If:

- 10 (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 project (with or without modification); and
- 15 (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:

- 20 (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 benefits of 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:
 - 25 (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.

30

Division 2—Re-constituted joint ventures

Registration cancelled, and certificate terminated, if joint venture is re-constituted

58. If:

- (a) either:
 - 35 (i) plant expenditure is registered in the name of an entity; or
 - (ii) an entity holds a certificate in relation to plant expenditure; and
- (b) the project concerned is part of a joint venture project; and
- 40 (c) there is a change in the composition of the parties to the joint venture;

then:

- (d) in the case of a registration—the registration is cancelled; and
- (e) in the case of a certificate—the certificate is terminated with effect in relation to expenditure incurred by the entity after the date of the change.

5

Application for transfer of benefits of registration or certificate to parties to re-constituted joint venture

59. If:

- (a) either of the following applies to an entity (“**old party**”):
 - (i) a registration of plant expenditure in the name of the entity was cancelled under section 58; 10
 - (ii) a certificate held by the entity in relation to plant expenditure was terminated under section 58; and
- (b) the cancellation or termination was the result of a change in the composition of the parties to a joint venture (“**old joint venture**”) who carried on the various parts of a joint venture project (“**old joint venture project**”); and 15
- (c) the following conditions are satisfied in relation to an entity (“**new party**”) (who may be the same entity as the old party):
 - (i) the new party is a party to a joint venture (“**new joint venture**”); 20
 - (ii) at least one of the parties to the old joint venture is a party to the new joint venture; and
 - (iii) the parties to the new joint venture have carried out, or are proposing to carry out, a project (“**new joint venture project**”) which consists of the takeover, or proposed takeover, of the completion of the old joint venture project (with or without modification); and 25
 - (iv) the new party has carried out, or proposes to carry out, a project (“**new party’s project**”) which consists of a part of the new joint venture project; and 30
- (d) either:
 - (i) the new party has incurred, or proposes to incur, plant expenditure in carrying out the new party’s project; or
 - (ii) both: 35
 - (A) the new party has incurred, or proposes to incur, expenditure in acquiring from an old party a unit of property that was new in the hands of the old party; and
 - (B) the acquisition has taken place, or will take place, in the course of carrying out the new party’s project; 40

the new party may apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

Form of application

60.(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.

5 (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 such matters as are specified in the form.

10 (6) All of the applications relating to a new joint venture project must be set out in the same document.

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

15 61. If the DAA gives a request to the applicant 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

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

(a) grant the application; or

(b) refuse the application.

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

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

Criteria for granting application

25 63. The DAA must not grant the application unless the DAA is satisfied that:

(a) in the case of plant expenditure which the new party claims to have incurred in carrying out the new party's project—the plant expenditure has been incurred by the new party in carrying out the project; and

30 (b) in the case of plant expenditure which the new party claims to propose to incur in carrying out the new party's project—the proposal is genuine; and

35 (c) the parties to the new joint venture have taken over, or are proposing to take over, the completion of the old joint venture project (with or without modification) for genuine commercial reasons; and

(d) if the completion of the old joint venture project has been, or is to be, taken over by the parties to the new joint venture with modifications—the modified joint venture project does not

amount to a substantially different project from the old joint venture project; and

(e) having regard to:

(i) the financial capacity of the new party; and

(ii) such other matters as the DAA considers relevant;

it is reasonably likely that the new party will complete the carrying out of the new party's project; and

(f) having regard to:

(i) the financial capacity of each other party to the new joint venture; and

(ii) such other matters as the DAA considers relevant;

it is reasonably likely that the parties to the new joint venture will complete the carrying out of the new joint venture project; and

(g) the expenditure incurred, or proposed to be incurred, by the new party in carrying out the new party's project has passed the prospective deduction test.

Form of transfer of benefits of registration

64. If the DAA grants an application for transfer of the benefits of registration, this Act has effect, in relation to an application made by the new party for registration of, or for a certificate in relation to, the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the new party in carrying out the new party's project as if:

(a) section 27 (which deals with the timing of applications for registration) had not been enacted; and

(b) the \$50 million threshold test were modified so that so much of:

(i) the gross capital expenditure incurred by the parties to the old joint venture in respect of carrying out the old joint venture project; and

(ii) if there have been one or more prior successive old joint ventures—the gross capital expenditure incurred by the parties to the prior successive old joint ventures in respect of carrying out the old joint venture projects;

as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the parties to the new joint venture project in carrying out the new joint venture project.

Form of transfer of benefits of certificate

65. If the DAA grants an application for transfer of the benefits of a certificate, the DAA must grant the new party 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 new party in carrying out the new party's project.

Form of certificate

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

- 5 (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- 10 (e) specify the new joint venture project to which the certificate relates.

DAA may direct that plant be treated as new plant

67. If:

- 15 (a) the new party has acquired from an old party, or proposes to acquire from an old party, a unit of plant that was new in the hands of the old party; and
- (b) the acquisition has taken place, or will take place, in the course of carrying out the new party's project; and
- (c) the DAA considers that it would be reasonable to treat the plant as new in the hands of the new party;

20 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 new party when the plant was or is so acquired by the new party; and
- 25 (e) give the new party and the old party a written direction that, if the DAA grants the application for transfer of the benefits of 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:
 - 30 (i) were new in the hands of the new party when the plant was or is so acquired by the new party; and
 - (ii) were not new in the hands of the old party at any time.

Division 3—Re-constituted partnerships

Registration cancelled, and certificate terminated, if partnership is re-constituted

35 68. If:

- (a) either:
 - (i) plant expenditure is registered in the name of a partnership; or
 - 40 (ii) a partnership holds a certificate in relation to plant expenditure; and
- (b) there is a change in the constitution of the partnership;

then:

- (c) in the case of a registration—the registration is cancelled; and
- (d) in the case of a certificate—the certificate is terminated with effect in relation to expenditure incurred by the partnership after the date of the change.

5

Application for transfer of benefits of registration or certificate to re-constituted partnership

69. If:

- (a) either of the following applies to a partnership (“old partnership”);

10

- (i) a registration of plant expenditure in the name of the old partnership is cancelled under section 68;
- (ii) a certificate held by the old partnership in relation to plant expenditure is terminated under section 68; and

- (b) the following conditions are satisfied in relation to another partnership (“new partnership”):

15

- (i) the new partnership has taken over, or proposes to take over, the completion of the project concerned (with or without modification);
- (ii) at least one partner of the old partnership is a partner of the new partnership; and

20

- (c) either:

- (i) the new partnership has incurred, or proposes to incur, plant expenditure in carrying out the completion of the project (with or without modification); or
- (ii) both:

25

- (A) the new partnership has incurred, or proposes to incur, expenditure in acquiring from the old partnership a unit of plant that was new in the hands of the old partnership; and
- (B) the acquisition has taken place, or will take place, in the course of the new partnership’s takeover, or proposed takeover, of the completion of the project (with or without modification);

30

the new partnership may apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

35

Form of application

70.(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.

40

(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 such matters as are specified in the form.

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

5 71. If the DAA gives a request to the applicant 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

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

- 10 (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 a refusal must set out reasons for the refusal.

15 **Criteria for granting application**

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

- 20 (a) in the case of plant expenditure which the applicant claims to have incurred in carrying out the completion of the project (with or without modification)—the plant expenditure has been incurred by the applicant in carrying out the project; and
(b) in the case of plant expenditure which the applicant claims to propose to incur in carrying out completion of the project (with or without modification)—the proposal is genuine; and
25 (c) the applicant has taken over, or is proposing to take over, the completion of the project (with or without modification) for genuine commercial reasons; and
(d) if the completion of the project has been, or is to be, taken
30 over by the applicant with modifications—the modified project does not amount to a substantially different project from the old partnership's original project; and
(e) having regard to:
(i) the financial capacity of the transferee; and
(ii) such other matters as the DAA considers relevant;
35 it is reasonably likely that the applicant will complete the carrying out of the project (with or without modification); and
(f) the expenditure incurred, or proposed to be incurred, by the applicant in carrying out the completion of the project (with or without modification) has passed the prospective deduction test.

Form of transfer of benefits of registration

74. If the DAA grants an application for transfer of the benefits of registration, this Act has effect, in relation to an application made by the new partnership for registration of, or for a certificate in relation to, the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the new partnership in carrying out the completion of the project concerned (with or without modification), as if: 5

- (a) section 27 (which deals with the timing of applications for registration) had not been enacted; and
- (b) the \$50 million threshold test were modified so that so much 10
 - (i) the gross capital expenditure incurred by the old partnership in respect of carrying out the project; and
 - (ii) if there have been one or more prior successive old 15
 - partnerships—the gross capital expenditure incurred by the prior successive old partnerships in respect of carrying out the project;
 as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the new partnership in carrying out the project. 20

Form of transfer of benefits of certificate

75. If the DAA grants an application for transfer of the benefits of a certificate, the DAA must grant the new partnership 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 new partnership in carrying out the completion of the project concerned (with or without modification). 25

Form of certificate

76. If the DAA grants a certificate under this Part, the certificate must: 30

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

DAA may direct that plant be treated as new plant 35

77. If:

- (a) the new partnership has acquired from the old partnership, or proposes to acquire from the old partnership, a unit of plant that was new in the hands of the old partnership; and
- (b) the acquisition has taken place, or will take place, in the course of the new partnership's takeover, or proposed takeover, of the completion of the project (with or without modification); and 40

(c) the DAA considers that it would be reasonable to treat the unit of plant as new in the hands of the new partnership;
the DAA may:

- 5 (d) make a decision on the application on the assumption that the unit of plant was new in the hands of the new partnership when the plant was or is so acquired by the new partnership; and
- 10 (e) give the old partnership and the new partnership a written direction that, if the DAA grants the application for transfer of the benefits of 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:
- 15 (i) were new in the hands of the new partnership when the plant was or is so acquired by the new partnership; and
- (ii) were not new in the hands of the old partnership at any time.

PART 7—DAA'S INFORMATION-GATHERING POWERS

Entities to which this Part applies

78. This Part applies to an entity if:

- 20 (a) plant expenditure is registered in the name of the entity or the entity has applied for such registration; or
- (b) the entity holds a certificate or the entity has applied for a certificate; or
- 25 (c) the entity has applied for a variation of the expenditure project, joint venture project or company group project scheme to which a registration or certificate held by the entity relates; or
- (d) the entity has applied (whether jointly or otherwise) for a transfer of the benefits of a registration or certificate.

DAA may request entity to give information or produce documents etc.

30 79.(1) For the purposes of this Act, the DAA may, by written notice given to an entity, request the entity:

- (a) to give information to the DAA within the time and in the manner specified in the notice; or
- (b) to produce documents to the DAA within the time and in the manner specified in the notice; or
- 35 (c) to give certified copies of documents to the DAA within the time and in the manner specified in the notice.

(2) It is not an offence to contravene the notice.

How DAA may deal with documents etc. produced by entity

40 80.(1) The DAA or an officer of the Department authorised in writing by the DAA may inspect, take extracts from, and make copies of, any document or copy produced or given to the DAA under section 79.

(2) The DAA may retain a certified copy of a document given in accordance with a request covered by paragraph 79(1)(c).

(3) The DAA may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, a document produced under paragraph 79(1)(b). 5

(4) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the DAA to be a true copy.

(5) The certified copy must be received in all courts and tribunals as evidence as if it were the original. 10

(6) Until a certified copy is supplied, the DAA must, at such times and places as the DAA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document. 15

PART 8—CANCELLATION OR TERMINATION OF REGISTRATION OR CERTIFICATE

Cancellation or termination—failure to comply with request to give information etc.

81. If an entity fails to comply with a request made by the DAA under Part 7, the DAA may, by written notice given to the entity: 20

- (a) cancel any registration of plant expenditure in the name of the entity; or
- (b) terminate a certificate held by the entity, with effect in relation to expenditure incurred by the entity after the date of termination. 25

Cancellation—false or misleading statements etc.

[False or misleading statements—Part 7 request not involved]

82.(1) If an entity, in connection with the operation of this Act (other than Part 7): 30

- (a) makes a statement, either orally or in writing, to the DAA or to an officer of the Department that is false or misleading in a material particular; or
- (b) omits from a statement made, either orally or in writing, to the DAA or to an officer of the Department any matter or thing without which the statement is misleading in a material particular; or 35
- (c) gives or produces a document or copy to the DAA or to an officer of the Department that contains information that is false or misleading in a material particular; 40

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

- (d) any registration of plant expenditure in the name of the entity;
or
- (e) a certificate held by the entity (even if the certificate has been terminated).

5 **[False or misleading information given under Part 7]**

(2) If an entity, in compliance with a notice under Part 7, gives information that is false or misleading in a material particular, the DAA may, by written notice given to the entity, cancel:

- 10 (a) any registration of plant expenditure in the name of the entity;
or
- (b) a certificate held by the entity (even if the certificate has been terminated).

[False or misleading documents given under Part 7]

15 (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 knowledge of the entity, is false or misleading in a material particular, the DAA may, by written notice given to the entity, cancel:

- 20 (a) any registration of plant expenditure in the name of the entity;
or
- (b) a certificate held by the entity (even if the certificate has been terminated).

[Subsection (3) does not apply if document accompanied by explanation]

25 (4) Subsection (3) does not apply to an entity who produces a document, or gives a copy of a document, that, to the knowledge of the entity, is false or misleading in a material particular if the document or copy is accompanied by a written statement:

- 30 (a) stating that the document or copy is, to the knowledge of the entity, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the entity, false or misleading.

[Imputed knowledge of bodies corporate and partnerships etc.]

(5) For the purposes of subsections (3) and (4):

- 35 (a) a body corporate is taken to know anything known by any of its directors or employees; and
- (b) a partnership is taken to know anything known by:
 - (i) if any of the partners are natural persons—any such partner; and
 - 40 (ii) if any of the partners are bodies corporate—any of the directors or employees of any such partner; and
- (c) a natural person is taken to know anything known by an employee of the natural person.

Cancellation of registration—contravention of conditions

83. If:

- (a) plant expenditure is registered in the name of an entity; and
- (b) the entity contravenes any of the conditions to which the registration is subject;

the DAA may, by written notice given to the entity, cancel the registration. 5

Cancellation of registration on request

84.(1) An entity may request the DAA to cancel any registration of plant expenditure in the name of the entity. 10

- (2) The DAA must comply with the request.

Termination of certificate on request

85.(1) An entity may request the DAA to terminate a certificate held by the entity, with effect in relation to expenditure incurred by the entity after the date of termination. 15

- (2) The DAA must comply with the request.

PART 9—TAX EFFECTS OF CERTIFICATION**When plant expenditure pre-qualifies under this Act**

86. For the purposes of the Tax Act, if:

- (a) an entity holds a certificate relating to plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia; and 20
- (b) the plant expenditure is incurred by the entity in carrying out the project; and
- (c) if the project is part of a joint venture project specified in the certificate—the plant expenditure is incurred in carrying out that part of the joint venture project; and 25
- (d) if the project is part of a company group project scheme specified in the certificate—the entity is a member of the company group concerned at the time the plant expenditure is incurred; 30

the plant expenditure is taken to have pre-qualified under this Act.

Effect of cancellation of certificate

87. For the purposes of this Part, if a certificate is cancelled, the certificate is taken never to have been granted.

Effect of termination of certificate 35

88. For the purposes of this Part, if a certificate held by an entity is terminated with effect in relation to expenditure incurred by the entity after a particular date:

- (a) the certificate remains in force; and
- (b) the certificate continues to apply in relation to expenditure incurred by the entity on or before that date.

Effect of variation of certificate

5 **89.** For the purposes of this Part, if a certificate held by an entity is varied with effect in relation to expenditure incurred by the entity after a particular date, the variation does not apply in relation to expenditure incurred by the entity on or before that date.

10 **Effect of decision to revoke or set aside a decision relating to a certificate**

90. For the purposes of this Part, if a decision relating to a certificate is revoked or set aside, the decision is taken never to have been made.

DAA to notify Commissioner of Taxation

15 **91.** The DAA must advise the Commissioner of Taxation in writing of particulars of all things done under this Act which are relevant to the operation of Subdivision B of Division 3 of Part III of the Tax Act.

Amendment of assessments

20 **92.** Section 170 of the Tax Act does not prevent the amendment of an assessment at any time for the purpose of giving effect to this Act.

PART 10—DAA’S POWERS TO FACILITATE COMPLETION OF PROJECTS

DAA’s powers to facilitate completion of projects

25 **93.** If the DAA considers that any action or inaction of a person or body is likely to have the effect of preventing the DAA from:

- (a) registering plant expenditure in the name of an entity; or
- (b) granting a certificate in the name of an entity;

the DAA may, with the consent of the entity, notify the person or body accordingly.

30 **PART 11—DEVELOPMENT ALLOWANCE AUTHORITY**

Creation of single-person statutory office of Development Allowance Authority

94. There is to be a Development Allowance Authority (“DAA”).

Appointment of DAA

35 **95.** The DAA is to be appointed by the Governor-General.

DAA may be full-time or part-time

96. The DAA may be appointed on a full-time basis or a part-time basis.

DAA's term of office

97. The DAA holds office for the period specified in the instrument of appointment. 5

No substantive appointment of DAA on or after 1 January 1997

98. A person is not to be appointed as the DAA for a period that ends on or after 1 January 1997, but this section does not prevent the appointment of a person to act as the DAA during a vacancy in the office of DAA occurring on or after that date. 10

Person may hold both the office of DAA and the office of Commissioner of the Industry Commission

99. Neither this Act nor the *Industry Commission Act 1989* prevents a person from holding both: 15

- (a) an office of Commissioner of the Industry Commission; and
- (b) the office of DAA (whether on a full-time basis or a part-time basis).

Full-time DAA—age limit of 65 years

100.(1) A person who has reached the age of 65 years is not to be appointed as the DAA on a full-time basis. 20

(2) A person is not to be appointed as the DAA on a full-time basis for a period that ends after the person's 65th birthday.

DAA's terms and conditions of appointment

101. The DAA 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. 25

DAA's remuneration and allowances

102.(1) The DAA is to be paid such remuneration as is determined by the Remuneration Tribunal. 30

(2) If no determination is in force, the DAA is to be paid such remuneration as is specified in the regulations.

(3) The DAA is to be paid such allowances as are specified in the regulations.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*. 35

Full-time DAA's leave of absence

103.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time DAA has such recreation leave entitlements as are determined by the Remuneration Tribunal.

- 5 (2) The Minister may grant a full-time DAA leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation of DAA

104. The DAA may resign the office of DAA by signed instrument delivered to the Governor-General.

Termination of appointment of DAA**[Misbehaviour or physical or mental incapacity]**

105.(1) The Governor-General may terminate the appointment of the DAA for misbehaviour or physical or mental incapacity.

15 [Bankruptcy, conflict of interest, absence from duty etc.]

(2) The Governor-General must terminate the appointment of the DAA if the DAA:

- 20 (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; or
- (b) fails, without reasonable excuse, to comply with section 107 (which deals with conflict of interest); or
- 25 (c) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (d) is appointed on a full-time basis and engages in paid employment outside the duties of the office of DAA without the consent of the Minister; or
- 30 (e) is appointed on a part-time basis and engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of his or her duties.

[Insufficient workload to justify full-time appointment]

35 (3) The Governor-General must terminate the appointment of a full-time DAA if the Minister issues a written determination stating that the Minister is of the opinion that the workload of the DAA is insufficient to justify a full-time appointment.

Acting DAA**[Appointment to act as the DAA]**

40 106.(1) The Minister may appoint a person to act as the DAA:

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

- (b) during any period, or during all periods, when the DAA is absent from duty or from Australia or is, for any other reason, unable to perform the duties of that office.

[Initial phasing-out period—senior Department officer to act]

(2) If a vacancy in the office of DAA occurs after 31 December 1996 and before 1 July 2002, a person appointed to act as the DAA during the vacancy must hold or perform the duties of a Senior Executive Service office in the Department. 5

[Final phasing-out period—senior ATO officer to act]

(3) If a vacancy in the office of DAA occurs on or after 1 July 2002, a person appointed to act as the DAA during the vacancy must hold or perform the duties of a Senior Executive Service office in the Australian Taxation Office. 10

[Phasing-out periods—time limits for acting appointments do not apply]

(4) If a vacancy in the office of DAA occurs on or after 1 January 1997, paragraphs 33A(ba) and (c) of the *Acts Interpretation Act 1901* (which deal with time limits for acting appointments) do not apply to a person appointed to act as the DAA during the vacancy. 15

[Acting appointment not to be challenged on technical grounds]

(5) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because: 20

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or 25
- (d) the occasion to act had not arisen or had ceased.

Conflict of interest

[DAA to notify business interests to Minister]

107.(1) The DAA must give written notice to the Minister of all direct or indirect pecuniary interests that the DAA has or acquires in any business, or in any body corporate carrying on a business. 30

[DAA to notify potential conflict of interest to Minister]

(2) If the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA, the DAA must: 35

- (a) give written notice to the Minister of that interest; and
- (b) take no further action on the matter before:
 - (i) the end of 28 days after the date on which the Minister receives the notice; or
 - (ii) the date on which written advice of a decision of the 40

Minister under subsection (4) is given in relation to the matter;
whichever first occurs.

[Minister may direct DAA to delegate]

5 (3) If:

- (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and
- (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;

10 then:

- (c) the Minister must give the DAA a written notice directing the DAA:
 - (i) not to deal with the matter personally; and
 - (ii) to delegate the DAA's functions and powers in relation to that matter to a person holding or performing the duties of a specified Senior Executive Service office in the Department; and
 - (iii) not to delegate the DAA's functions and powers in relation to that matter to any other person; and
- (d) the DAA must comply with the direction.

[Minister may allow DAA to deal with matter personally]

(4) If:

- (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and
- (b) the Minister does not consider that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;

the Minister may give the DAA a written notice stating that the Minister has no objection to the DAA dealing with the matter personally.

[Minister's direction to be given within 28 days of notification of DAA's interest]

(5) If:

- (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and
- (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter; and
- (c) the DAA gives written notice to the Minister of that interest under subsection (2);

a direction under subsection (3) in relation to that matter has no effect unless it is given before the end of 28 days after the date on which the Minister receives the notice.

PART 12—ADMINISTRATION

Delegation by DAA

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108. The DAA may, by writing, delegate to a person holding or performing the duties of a Senior Executive Service office in the Department all or any of the DAA's functions or powers under:

- (a) this Act; or
- (b) the document certification provision; or
- (c) the State taxation officer disclosure provisions; or
- (d) the prosecution provisions.

10

Consultants

109. The DAA may engage as consultants, on such terms and conditions as are determined by the DAA, persons having suitable qualifications and experience.

15

Commonwealth authorities may assist DAA

110.(1) This section applies to an authority established by or under a law of the Commonwealth.

(2) In addition to the functions otherwise conferred on the authority, the authority may, at the request of the DAA, provide assistance to the DAA relating to the administration of this Act.

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(3) The authority may charge fees for the provision of the assistance.

PART 13—PROTECTION OF COMMERCIAL-IN-CONFIDENCE INFORMATION

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Application for protection of commercial-in-confidence information

111.(1) An application under Part 3, 4, 5 or 6 may be accompanied by an application that certain information given in accordance with that Part (other than section 34) be treated as commercial-in-confidence information under this Part.

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(2) The giving of information, or the production or giving of a document or copy, under section 34 or Part 7 may be accompanied by an application that some or all of the information or of the contents of the document or copy be treated as commercial-in-confidence information under this Part.

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(3) An application under subsection (1) or (2) must be in writing in the approved form.

DAA may declare that information is to be treated as commercial-in-confidence information

[Declaration]

5 112.(1) If, on an application under subsection 111(1) or (2), the DAA is satisfied that:

(a) publication of the information specified in the application could reasonably be expected to prejudice substantially the commercial interests of the applicant; and

10 (b) the prejudice outweighs the public interest in the publication of the information;

the DAA may declare that the information is to be treated as commercial-in-confidence information for the purposes of this Part.

[Notification of decision on application]

15 (2) The DAA must give the applicant written notice of the decision about the application.

[Confidential status maintained until reconsideration or review finalised]

20 (3) For the purposes of this Part, if the DAA refuses an application under subsection 111(1) or (2) in relation to information, the information is treated as commercial-in-confidence information at a particular time if:

(a) the time is after the application is made but before the end of the period of 21 days after the giving of the notice of refusal; or

25 (b) if, during that period, the applicant requests the DAA to reconsider the decision refusing the application—the time is during the period when that reconsideration, or any subsequent application to the AAT, has not been finalised.

30 **[Reconsideration taken not to be finalised during period when AAT application can be made]**

(4) For the purposes of this section, a reconsideration of a decision is taken not to have been finalised during the period of 28 days after:

35 (a) if, because of the operation of subsection 119(4), the decision is taken to be confirmed—the day on which the decision is taken to have been confirmed; or

(b) in any other case—the day on which the decision on the reconsideration is notified to the entity concerned.

[Reasons for decision]

40 (5) If the DAA refuses to make a declaration, the notice of refusal must set out the reasons for the refusal.

DAA may revoke declaration**[Revocation of declaration]****113.(1) If:**

- (a) there is in force a declaration under section 112 that information given by an entity is to be treated as commercial-in-confidence information for the purposes of this Part; and 5
- (b) the DAA is satisfied that:
 - (i) publication of the information could not reasonably be expected to prejudice substantially the commercial interests of the entity; or 10
 - (ii) both:
 - (A) publication of the information could reasonably be expected to prejudice substantially the commercial interests of the entity; and
 - (B) the public interest in the publication of the information outweighs the prejudice; 15

the DAA may, by written notice given to the entity, revoke the declaration with effect from the 21st day after the day on which the revocation is notified to the entity.

[When power of revocation may be exercised] 20

- (2) The DAA's powers under subsection (1) may be exercised:
 - (a) on the DAA's own initiative; or
 - (b) upon application being made by the entity concerned.

[Confidential status maintained until reconsideration or review finalised]

- (3) For the purposes of this Part, if: 25
 - (a) the DAA revokes a declaration under section 112 relating to information; and
 - (b) before the revocation takes effect, the entity concerned requests the DAA to reconsider the decision to revoke the declaration;

the information is treated as commercial-in-confidence information at a particular time after the revocation takes effect if that time is during the period when that reconsideration, or any subsequent application to the AAT, has not been finalised. 30

[Reconsideration taken not to be finalised during period when AAT application can be made] 35

- (4) For the purposes of this section, a reconsideration of a decision is taken not to have been finalised during the period of 28 days after:
 - (a) if, because of the operation of subsection 119(4), the decision is taken to be confirmed—the day on which the decision is taken to have been confirmed; or 40
 - (b) in any other case—the day on which the decision on the reconsideration is notified to the entity concerned.

[Reasons for decision]

(5) If the DAA revokes a declaration, the notice of the revocation must set out the reasons for the revocation.

Commercial-in-confidence information must not be disclosed

- 5 **114.(1)** A person who:
- (a) has commercial-in-confidence information; and
 - (b) has it only because of performing duties or functions under this Act; and
 - 10 (c) knows that the information is commercial-in-confidence information;
- must not disclose any of the information except:
- (d) in the course of carrying out functions and duties under this Act; or
 - 15 (e) to the Commissioner of Taxation, for the purposes of the administration of an Act of which the Commissioner of Taxation has the general administration; or
 - (f) by order of a court; or
 - (g) with the consent of the entity who applied to have the information treated as commercial-in-confidence information.

20 Penalty: Imprisonment for 2 years.

(2) For the purposes of this section, information is commercial-in-confidence information at a particular time if, and only if, at that time:

- 25 (a) there is in force a declaration under section 112 that the information is to be treated as commercial-in-confidence information for the purposes of this Part; or
- (b) the information is otherwise treated as commercial-in-confidence information for the purposes of this Part.

PART 14—REPORTS BY DAA

Quarterly reports by DAA

- 30 **115.(1)** The DAA must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operation of this Act during that quarter, including information about:
- (a) the number and type of registrations (if any) granted during that quarter; and
 - 35 (b) the number and type of certificates (if any) granted during that quarter.
- (2) This section applies to a quarter if:
- (a) the quarter commences before 1 January 1997; and
 - 40 (b) there is not in force a direction under section 116 relating to a period which wholly or partly overlaps the quarter.

(3) In this section:

“quarter” means so much of a quarter commencing on 1 July, 1 September, 1 January or 1 April as occurs after the commencement of this section.

Periodic reports by DAA

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116.(1) The Minister may, by written notice given to the DAA, direct the DAA to prepare and give to the Minister a report on the operation of this Act during a specified period.

(2) The DAA must comply with the direction.

Annual report

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117.(1) The DAA must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operation of this Act during that year.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

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(3) This section applies to:

(a) a financial year ending before 1 July 1997; and

(b) a subsequent financial year ending before 1 July 2002 which the Minister, by written notice given to the DAA, declares to be a financial year to which this section applies.

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(4) If this section does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this section and ending on the next 30 June as if:

(a) if the period is less than 6 months—the period were included in the next financial year; or

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(b) in any other case—the period were a financial year.

Reports to deal with ancillary provisions of the *Taxation Administration Act 1953*

118. A reference in this Part to the operation of this Act includes a reference to the operation of:

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(a) the document certification provision; and

(b) the State taxation officer disclosure provisions; and

(c) the prosecution provisions.

PART 15—REVIEW OF DECISIONS

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Reconsideration of reviewable decisions

119.(1) An entity who is affected by a reviewable decision may, if dissatisfied with the decision, by notice given to the DAA within:

(a) the period of 21 days after the day on which the decision first comes to the attention of the entity; or

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(b) such further period as the DAA allows;
request the DAA to reconsider the decision.

(2) The reasons for making the request must be set out in the request.

5 (3) Upon receipt of the request, the DAA must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the DAA thinks fit.

10 (4) If the DAA does not confirm, revoke or vary a decision before the end of the period of 40 days after the day on which the DAA received the request under subsection (1) to reconsider the decision, the DAA is taken, at the end of that period, to have confirmed the decision under subsection (3).

15 (5) If the DAA confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the DAA must, by notice given to the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.

Review of decisions by Administrative Appeals Tribunal

20 120.(1) Applications may be made to the AAT for review of decisions of the DAA that have been confirmed or varied under subsection 119(3).

25 (2) If, because of the operation of subsection 119(4), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period:

(a) commencing on the day on which the decision is taken to have been confirmed; and

(b) ending on the 28th day after that day.

30 (3) If a request is made under subsection 119(1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the AAT for a review of that decision.

Statements to accompany notification of decisions

35 121.(1) If written notice is given to an entity affected by a reviewable decision that the reviewable decision has been made, that notice must include a statement to the effect that:

(a) the entity may, if dissatisfied with the decision, seek a reconsideration of the decision by the DAA in accordance with subsection 119(1); and

40 (b) the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the DAA upon that reconsideration confirming or varying the first-mentioned

decision, make application to the AAT for review of the decision so confirmed or varied.

(2) If:

(a) the DAA confirms or varies a reviewable decision under subsection 119(3); and

(b) gives to the entity written notice of the confirmation or variation of the decision;

that notice must include a statement to the effect that the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the AAT for review of the decision.

(3) A failure to comply with this section does not affect the validity of a decision.

PART 16—MISCELLANEOUS

Giving of documents to partnerships

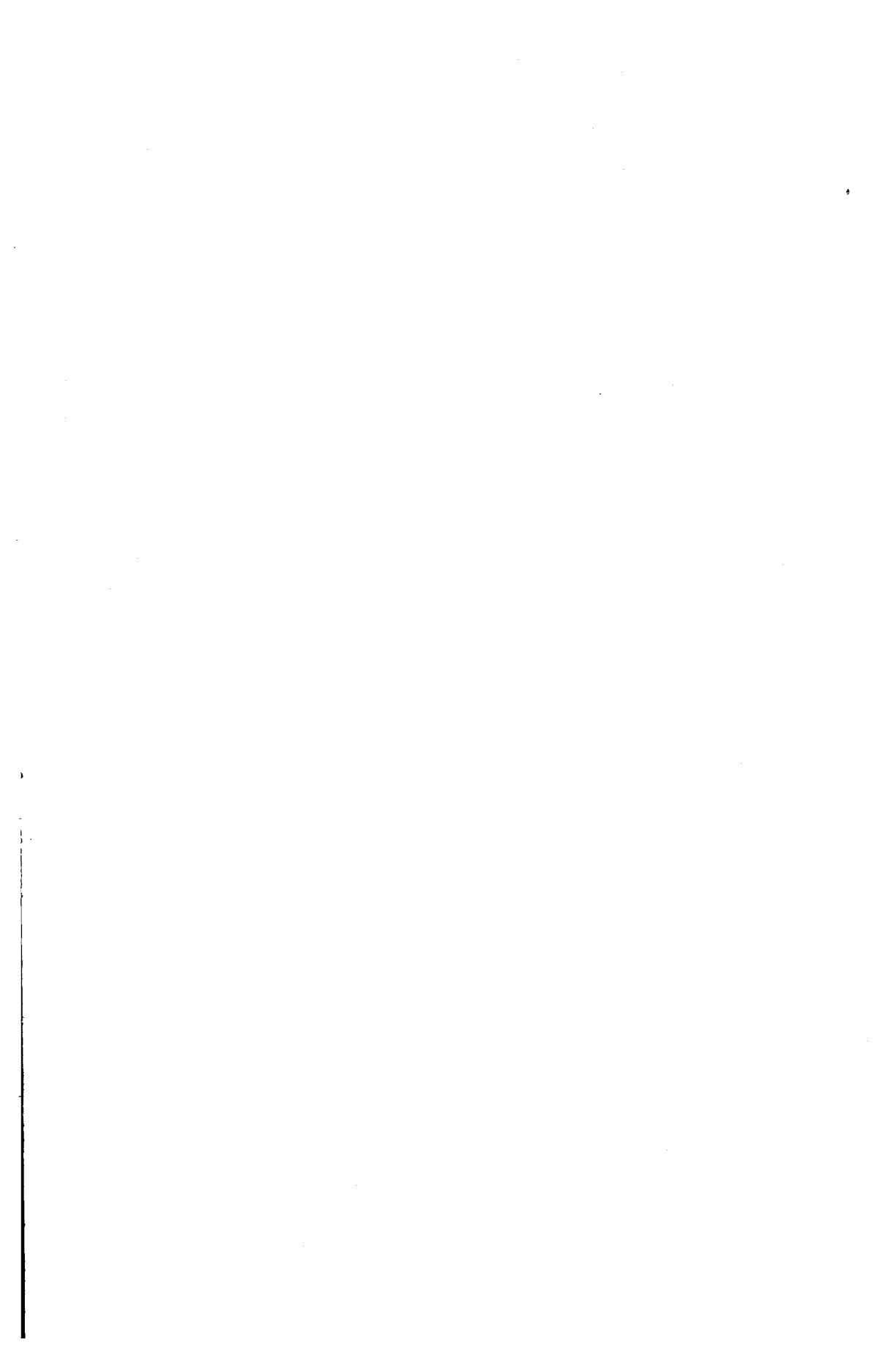
122. For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

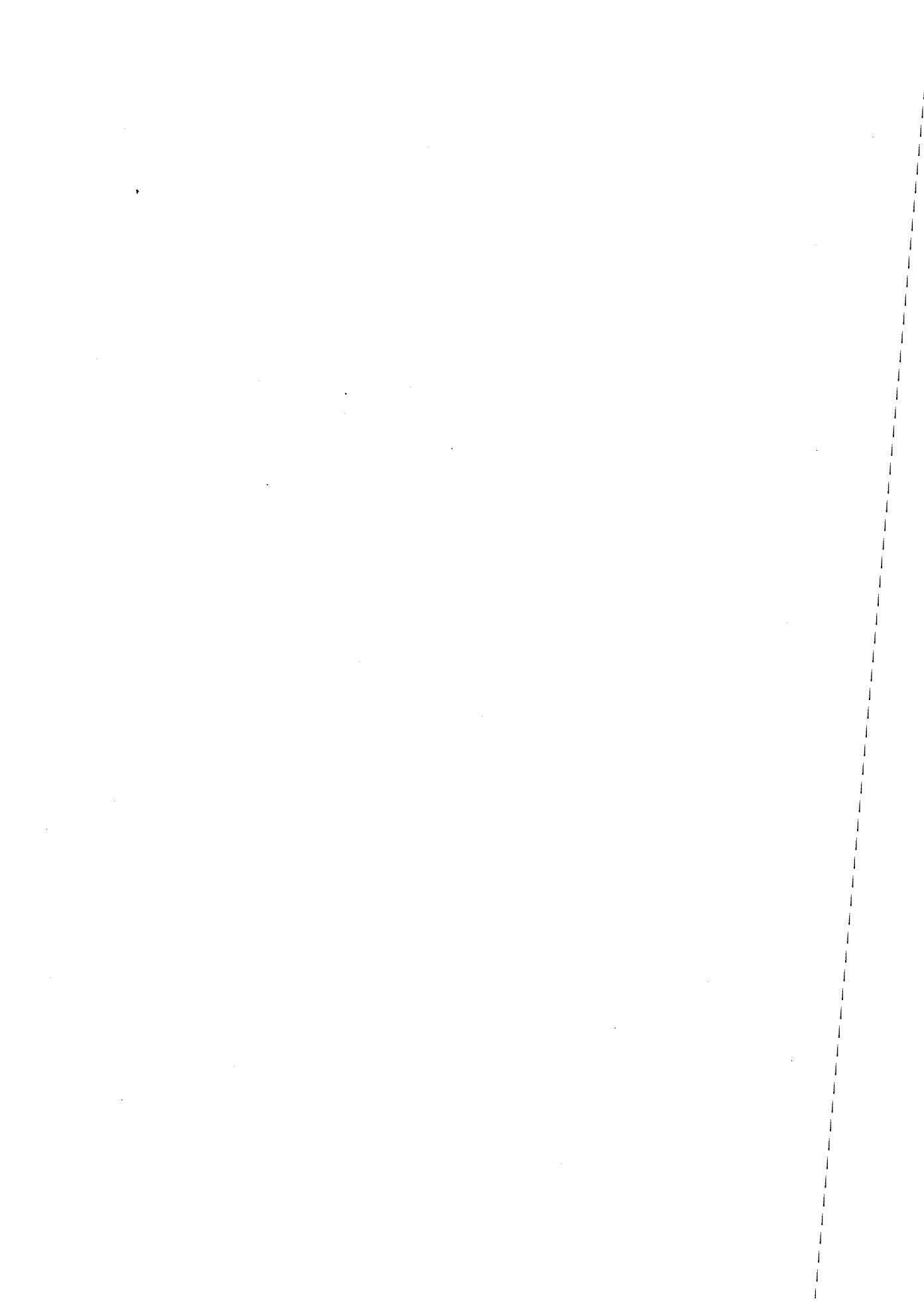
Regulations

123. The Governor-General may make regulations 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.









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