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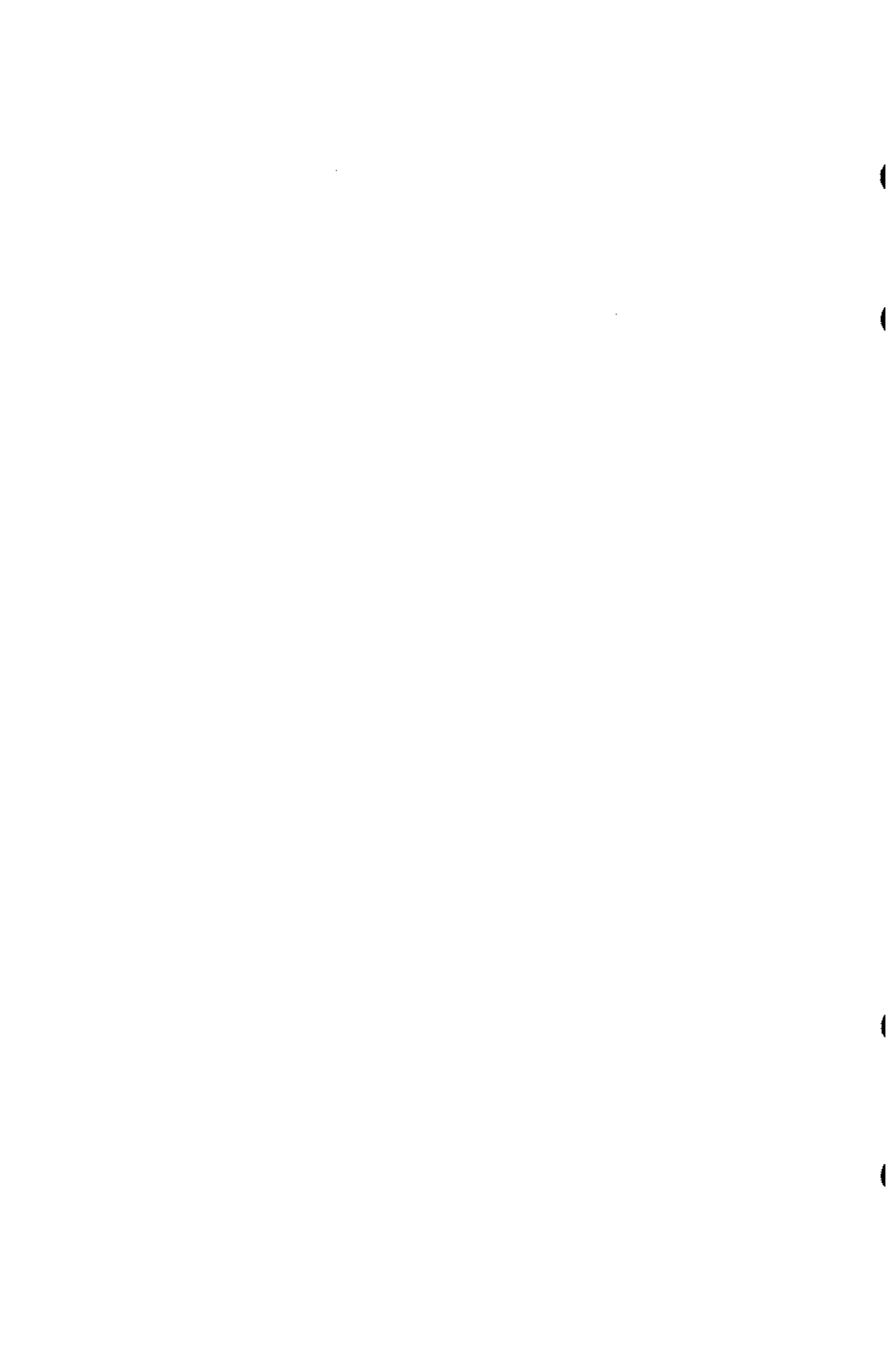
THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

DEVELOPMENT ALLOWANCE AUTHORITY BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon John Dawkins, MP)



DEVELOPMENT ALLOWANCE AUTHORITY BILL 1992

OUTLINE

The Bill establishes a one member statutory authority to be known as the Development Allowance Authority (the DAA).

The primary purpose of the DAA is to assess the eligibility of large projects in Australia, with a total capital cost of \$50 million or more, for the development allowance. This will be achieved through the DAA's assessing each application for registration and pre-qualifying certification against basic eligibility criteria and, in some instances, competitiveness criteria.

The development allowance is a deduction against income, equal to 10 per cent of eligible plant expenditure, provided for in the Income Tax Assessment Act 1936 (the Tax Act). The deduction will be allowable in the year the eligible plant expenditure is first used or installed ready for use. Its purpose is to provide encouragement to certain large scale investment projects in Australia, where these projects meet specified criteria.

Important trigger dates are set against each step of the DAA's assessing an application. An applicant must have applied for registration with the DAA by end 1992. If the DAA is satisfied that a registered project has substantially commenced by the end of 1992 then in order that the project not be further delayed, the competitiveness tests need not be met. By 1 July 1995 the applicant must provide the DAA with documentation that reflects that the project has the necessary authorisations, approvals etc in order to substantially commence. In order to obtain pre-qualifying certification for the development allowance, the key cut off date is 1 July 1996 by which time the DAA must be satisfied that there is a substantial commitment to the project's completion. To be considered for certification, the applicant must be registered with the DAA and have provided the DAA with the documentation, noted above, by 1 July 1995.

The pre-qualifying certificate is one of the requirements for eligibility for the development allowance tax deduction. A pre-qualifying certificate will enable the entity to claim the development allowance with respect to specified items of plant expenditure once incurred. Final eligibility for the development allowance is ultimately a matter for the Commissioner of Taxation having regard to the relevant provisions of the Tax Act.

This Act, in conjunction with the development allowance provisions of the Tax Act, will provide tax incentives for eligible large projects in Australia.

A member is to be appointed as the DAA under this Act until 31 December 1996.

FINANCIAL IMPLICATIONS

The cost of the development allowance is estimated to be approximately \$40 million in 1994-95 and \$70 million in 1995-96. A further estimated \$1.2 million in supplementary funding for 1991-92 and 1992-93 will meet the cost of the DAA and its Secretariat support, within the Department.

NOTES ON CLAUSES**PART I - PRELIMINARY**

This part sets out the preliminary framework for the operation of the Bill.

Clause 1 - Short title

The short title of this Act is specified.

Clause 2 - Commencement

This clause provides that the Act is to commence on the date that the Act receives the Royal Assent. This is in order to provide for the DAA's appointment and any necessary regulations to commence. The DAA's functions, however, would not begin until such time as the complementary tax legislation receives the Royal Assent.

Clause 3 - Object

This clause sets out the object of the Act - namely, to operate in conjunction with the Tax Act to provide the development allowance as a tax incentive to eligible large Australian projects.

Clause 4 - Simplified outline of scheme of Act

This clause sets out the structure of the DAA's basic operations under the Act.

Clause 5 - Example of how this Act will work

An example is provided as to how the Act will work from an application going through the various steps towards obtaining a pre-qualifying certificate. Importantly, the project example meets all the required cut-off dates:

- . application for registration with the DAA by 1 January 1993;
- . contracts are post-26 February 1992;
- . regulatory approvals by 1 July 1995;
- . project substantially commenced by 1 July 1996;
- . plant installed and producing assessable income by 1 July 2002.

Clause 6 - Interpretation

This clause defines concepts, words and expressions for the purposes of the Act. In particular, the clause defines:

- . an entity as the unit which, under the Tax Act, is potentially entitled to claim for the development allowance;
- . plant expenditure as the expenditure for the acquisition or construction of a new unit of plant.

PART 2 - KEY CONCEPTS RELATING TO PROJECTS

This part sets out and defines concepts and criteria, as provided for by this Act, against which the DAA is to assess eligibility for pre-qualification for the development allowance.

Division 1 - Carrying out a project

Clause 7 - Meaning of "carrying out a project"

This clause defines a project for the purposes of the Act. A project entails:

- . establishing a new productive facility in Australia;
- . establishing two or more (related) productive facilities encompassing a discrete or vertically integrated project in Australia; or
- . expansions, improvements or upgrades of a substantial nature or to better meet environmental standards at a new or existing productive facility in Australia. This does not include ongoing maintenance related investment.

Clause 8 - Meaning of "productive facility"

This clause defines a productive facility as a facility used primarily by the operator for the production or distribution of the same or related goods or services. This clause also provides for a lessor to carry out a project, subject to the relevant provisions of the Tax Act which set out certain conditions relating to the use and retention of the leased facility.

Clause 9 - When productive facilities pass the discrete project test

This clause defines a discrete project when two or more facilities are involved. A discrete project is where two or more productive facilities are located on the same or contiguous sites and are primarily used by the operator to carry out the same production process for the production or distribution of the same or related goods or services.

Clause 10 - When productive facilities pass the vertical integration test

This clause sets out the vertical integration test whereby two or more productive facilities can be treated as a single project where they are involved primarily in a different step in the vertically integrated production or distribution process for the same or related goods or services.

Clause 11 - DAA may direct that activities carried out by an entity are to be treated as the establishment of a new productive facility

This clause provides the DAA with the discretion to treat specified activities as the establishment of a new productive facility, where there are special circumstances and the DAA considers it as unreasonable not to do so.

Clause 12 - Australian satellites deemed to be in Australia

This clause, for the purposes of the project test, deems an Australian satellite to be in Australia conditional on its being a productive facility.

Division 2 - Joint venture projects and company group project schemes

Clause 13 - Joint venture projects

This clause provides for a joint venture project and that, despite clause 7, the part of a joint venture project undertaken by a party to the joint venture is to be treated as a project in its own right.

Clause 14 - Company group projects

This clause provides for members of a company group to make an election that the aggregation of individual projects to establish, expand, improve or upgrade productive facilities (where the facilities pass the vertical integration test) is to be treated as a company group project scheme.

The mechanism by which a company group establishes project scheme status is by way of electing (in writing to the DAA) that two or more projects being undertaken individually by the individual companies be treated as a company group project scheme. This election, while irrevocable, is not precluded from a variation to the Scheme (under Part 5) or a transfer of the benefits of registration or certification (under Division 1 of Part 6) but only within that company group or in the case of a full takeover.

Division 3 - Basic eligibility test for project expenditure

Clause 15 - Basic eligibility test

This clause sets out those projects excluded from basic eligibility for the allowance. Exclusion applies to specific, and largely non-traded sectors, as specified, and those projects which benefit from substantial assistance.

Where the entire productive facility falls into one of these categories then all the expenditure fails the basic eligibility test. If only a part of the productive facility falls within this category then only that expenditure related to that category is not eligible. For example, capital expenditure on a tourist hotel would not include those expenditures or parts of expenditures for a ground floor of retailing outlets.

Clause 16 - When industries or activities benefit from a substantial level of industry assistance

This clause provides that a project is considered to benefit from substantial assistance when the lower of the nominal and effective rate of assistance exceeds 10 per cent. Nominal and effective rates of assistance are to be calculated in a manner consistent with the methodology used by the Industry Commission, and using tariff or other known levels of assistance that apply on 1 July 1996.

Division 4 - Competitiveness test

Clause 17 - Competitiveness test for project expenditure

This clause sets out the competitiveness test. To pass the two tests the DAA must be satisfied that: the project's labour arrangements substantially reflect world best practice; and that key inputs for the operation of the facility are economic and efficient. Key inputs excluded from the latter test are labour and capital (including land). For a joint venture or company group project scheme, all parties are required to satisfy the competitiveness test. This test is not required to be met where the project has registered and substantially commenced by end 1992.

Division 5 - \$50 million threshold test

Clause 18 - \$50 million threshold test for project expenditure

This clause specifies that in applying the \$50 million threshold test for eligibility for the allowance, an entity, except where a joint venture or company group scheme is involved, must incur gross capital expenditure of \$50 million or more for carrying out the project. For joint ventures and a company group project scheme the gross capital expenditure of each of the parties can be aggregated to meet the \$50 million threshold.

Clause 19 - Gross capital expenditure

Subclause 19(1) basically defines gross capital expenditure to be total expenditure of a capital nature incurred by the entity in carrying out a project. It is intended that the interpretation of expenditure of a capital nature is consistent with that made under the Tax Act. For example, in the case of a project to establish a new productive facility, included as gross capital expenditure would be expenditure for: acquiring land on which to construct the facility; construction of the productive facility; and associated plant expenditure. Only that part of the gross capital expenditure that relates to the purchase of eligible plant would qualify for the development allowance.

Subclauses 19(2) and (3) provide that expenditure failing the basic eligibility test (to the extent that it fails that test) or made by an entity that is the subject of recoupment is not taken into account in aggregating expenditure for meeting the \$50 million threshold test.

Subclause 19(4) provides that in assessing the amount of expenditure subject to recoupment, the DAA may determine the amount that reasonably makes up that recoupment of expenditure.

Subclause 19(5) provides for the DAA to deem what is reasonable expenditure if the parties are not at arms' length and the expenditure is considered not reasonable for the purposes of the \$50 million threshold test. Reasonable expenditure is taken to be expenditure that would have arisen if the parties were operating at arms' length.

Division 6 - Substantial commitment to completion of a project

Clause 20 - Substantial commitment to completion of a project - relevant factors

This clause sets out the factors which the DAA may take into account in assessing whether there is a substantial commitment to the completion of a project. For example, substantial commitment to complete a project would not be taken to have occurred where contracts for only a small proportion of the project's total cost have been entered into and where there is no substantial physical evidence that the project has commenced.

Division 7 - Post-26 February 1992 projects

Clause 21 - Post-26 February 1992 projects

This clause defines a post-26 February 1992 project to be a project that has not commenced, by way of project related construction or a contract for project related plant and equipment, before 27 February 1992. This test applies fully to all components of projects undertaken by joint ventures or a company group project scheme.

It is intended that the DAA under this provision will be satisfied that the project had in no way or form been commenced by the entity or a related entity before 27 February 1992.

Division 8 - Prospective deduction test

Clause 22 - Prospective deduction test

This clause sets out the test which the DAA may apply to determine whether the entity's expenditure is reasonably likely to be deductible under section 82AB of the Tax Act.

This is intended to allow the DAA to avoid processing applications which would not in any event be eligible for the development allowance under the relevant tax tests. The DAA would consider issues such as:

- . where the lessor is carrying out a project - the lease is for not less than four years;
- . where plant is not to be used wholly or principally for the project;
- . whether plant is to be used in the production of exempt income.

Clause 23 - Application of Tax Act to prospective deduction test

This clause is intended to complement the application of clause 22 - to enable the DAA to make reasonable assumptions in applying the prospective deduction test on the likelihood of deductibility. For example, Part IVA of the Tax Act which deals with tax avoidance schemes enables the Commissioner of Taxation to cancel tax benefits in the case where artificial schemes have been entered into to meet the post-26 February 1992 test. It is envisaged that in complying with the provisions of this clause, the DAA may need to consult with the Commissioner of Taxation.

Division 9 - Specification of project and specification of plant expenditure

Clause 24 - Specification of project and specification of plant expenditure

This clause sets out the form of specification for the project and plant expenditure that the DAA or applicant is required to follow in an application, registration or certificate. This is needed in order for the Commissioner of Taxation to ascertain whether plant for which a deduction is claimed, is within the specified elements of the project.

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

Clause 25 - Plant expenditure to be incurred wholly or principally in carrying out a project

This clause requires that plant expenditure must be incurred wholly or principally for the eligible project being carried out. Plant not so used will not qualify for certification - with that expenditure treated as "not incurred in carrying out the project".

PART 3 - REGISTRATION OF PLANT EXPENDITURE

This part sets out procedures necessary for an applicant to register a project and requirements on the DAA in processing that application.

Clause 26 - Applications for registration of plant expenditure

This clause provides for an entity to apply to the DAA for registration of plant expenditure.

Clause 27 - Timing of application

This clause requires that an application for registration is to be given to the DAA by 1 January 1993.

Clause 28 - Form of application etc

This clause requires a written application and report for registration to be provided to the DAA in the form and including such information as required by the DAA. In particular the report must set out the expenditure and project, and how the project will meet the competitiveness test (where relevant).

An application is to be signed by the Chairperson of the Board for a company or, for non-company entities, as specified in the form. It is expected that a person of equivalent authority to a Chairperson of a company board will be specified for a non-company entity.

For a joint venture or company group project scheme, all applications must be provided to the DAA in a single document.

Clause 29 - DAA may refuse to consider an application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for registration where the applicant has not met an information request (under Part 7).

Clause 30 - DAA's decision on application

This clause requires the DAA, having considered an application for registration, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 31 - Criteria for granting application

This clause sets out the criteria against which the DAA is required to assess applications for registration. The criteria are:

- . expenditure has been incurred or future expenditure is genuinely proposed;
- . the project is a post-26 February project;
- . no part of the expenditure for which the applicant is seeking registration fails the basic eligibility test;

- . substantial commitment to the project's completion by 1 January 1993 has occurred or is reasonably likely to occur by 1 July 1996;
- . the project has passed, or is reasonably likely to pass, the \$50 million threshold test;
- . the project is either completed or is reasonably likely to be completed. In making this assessment the DAA will take into account relevant matters such as the financial capacity of the applicant;
- . for joint venture projects and company group project schemes all parties to the project have completed, or are reasonably likely to complete, the carrying out of the project; and
- . the DAA can reasonably assume that the expenditure will broadly be eligible for the allowance under the relevant tax tests - by passing the prospective deduction test.

The criteria are intended to ensure that the applicant has an intention to proceed with an eligible project, within the specified time frame.

Clause 32 - Form of registration

This clause sets out the information that must be specified in the granting of registration.

Clause 33 - Duration of registration

This clause provides for the duration of the registration - from the date registration is granted, and ceasing when a pre-qualifying certificate is granted.

Clause 34 - Conditions of registration

This clause provides for the DAA to specify, and vary, add to or revoke, the conditions to which a registration is subject. These include but are not limited to:

- . a requirement on the applicant to notify the DAA in writing of relevant changes in circumstances (for example where the project no longer meets the registration criteria); and
- . provision of certified copies of documents by 1 July 1995 proving that final approvals to enable the project to commence have been provided; eg environmental agency approvals, where required.

It is intended that conditions of registration only apply for the duration of registration.

Contravention of a condition of registration is not an offence.

**PART 4 - PRE-QUALIFYING CERTIFICATES RELATING
TO PLANT EXPENDITURE**

This part sets out the procedures necessary for an applicant to obtain a pre-qualifying certificate and the DAA's obligations with respect to that application. A pre-qualifying certificate will enable the entity to claim the development allowance with respect to specified items of plant expenditure once incurred. Final eligibility will, however, be determined by the Commissioner of Taxation in accordance with the relevant provisions of the Tax Act.

Clause 35 - Application for pre-qualifying certificate

This clause requires that, before an applicant can apply for a pre-qualifying certificate, the entity must be registered and have met the conditions attached to its registration approval, including that final documentation relating to approvals for the project's commencement has been provided.

Clause 36 - Timing of application

An application must be lodged with the DAA by 1 August 1996. This date is based on the two trigger dates related to pre-qualification. First, that final documentation relating to approvals for the project's commencement are required by 1 July 1995. Second, that the project has substantially commenced by 1 July 1996.

Clause 37 - Form of application

This clause requires a written application and report for a pre-qualifying certificate to be provided to the DAA in the form, and including information, required by the DAA. For a joint venture or company group project, all applications must be provided to the DAA in a single document.

Clause 38 - DAA may refuse to consider application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for a pre-qualifying certificate where the applicant has not met an information request (under Part 7).

Clause 39 - DAA's decision on application

This clause requires the DAA, having considered an application for pre-qualifying certification, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 40 - Criteria for granting application

This clause sets out the criteria that the DAA must be satisfied are met before granting an application. The criteria are:

- . expenditure does not fail the basic eligibility test;
- . there is a substantial commitment by 1 July 1996 to the project's completion;
- . projects not having substantially commenced before 1 January 1993 are reasonably likely to pass the competitiveness test; and
- . the \$50 million threshold test has been met, or is reasonably likely to be met.

Clause 41 - Form of certificate

This clause sets out the form and information specified in a certificate. In particular the certificate will specify the plant expenditure that has pre-qualified (once incurred) and the project to which the certificate relates. The format for such specification is as required by clause 24. Final eligibility for the allowance will be determined by the Commissioner of Taxation in applying the relevant tax tests, including for the definition of plant expenditure.

PART 5 - VARIATION OF REGISTRATION OR CERTIFICATE

Part 5 enables applicants to vary certain elements of their project, provided that after the variation the project remains substantially the same. The clauses under this part set out the necessary procedures to give effect to a variation.

Clause 42 - Applications for variation

Subclause 42(1) provides for a registration holder to apply to the DAA for variation of the expenditure or project specification as set out in the registration.

Subclause 42(2) provides for a certificate holder to apply to the DAA for variation of the expenditure or project specification set out in the certificate.

Subclauses 42(3) and 42(4) require that a joint venture or company group scheme application for variation must be made by all the joint venture parties or all the members of the company group scheme.

Clause 43 - Form of application

This clause requires a written application and project report for variation to a registration or pre-qualifying certificate to be provided to the DAA in the form, and including information, as required by the DAA.

Clause 44 - DAA may refuse to consider application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for a variation certificate where the applicant has not met an information request (under Part 7).

Clause 45 - DAA's decision on application

This clause requires the DAA, having considered an application for variation of registration or the pre-qualifying certificate, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 46 - Criteria for granting an application

Subclause 46(1) sets out that the DAA in granting an application for variation of expenditure must be satisfied that the proposed varied expenditure relates to the same or substantially the same project (as specified in the original registration or certificate).

Subclause 46(2) sets out that the DAA in granting an application for project variation must be satisfied that the variation relates to the same or substantially the same project (as specified in the original registration or certificate).

Subclauses 46(3) and 46(4) require that the DAA in granting an application for variation of a joint venture project or company group project scheme must be satisfied that the varied project is the same or substantially the same project as that specified in the original registration or certificate.

Clause 47 - Date of effect of variation

This clause provides that the variation has effect in relation to expenditure incurred from either the date the variation is made or at an earlier date (if specified by the DAA at the applicant's request).

Clause 48 - Variation of project specification

Subclause 48(1) requires the DAA in varying a registration or certificate to accordingly vary the project's specification. In accord with clause 46 a variation in the project specification must relate to substantially the same project as specified in the original registration/certificate.

Subclause 48(2) provides that the variation applies to expenditure incurred from the date of effect of variation.

PART 6 - TRANSFER OF BENEFITS OF REGISTRATION OR CERTIFICATE

This part enables the benefits of registration or a pre-qualifying certificate to be transferred when the ownership of the project is transferred, provided that the transfer is for genuine commercial reasons and the project is substantially the same as originally registered/certified. The clauses under this part set out the necessary procedures to effect a transfer.

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

Clause 49 - Application for transfer

This clause provides for a joint application to be made to the DAA by the transferor and transferee for the transfer of the benefit of registration or a pre-qualifying certificate where:

- . the transferor is registered or holds a pre-qualifying certificate; and
- . full responsibility for the project's completion and expenditure to complete the project has or will be fully taken over by the transferee; and
- . the transferee has either:
 - incurred or will incur expenditures towards the project's completion; or
 - will purchase plant that was new in the hands of the transferor as part of the takeover; and
- . the takeover, or proposed takeover, does not deal with a reconstituted partnership or joint venture (covered by Division 2 of this part); and
- . for a company group project scheme, the transferee and transferor are both within the same company group and jointly apply for transfer.

Clause 50 - Form of application

This clause requires a written application and project report for transfer of the benefit of registration or pre-qualifying certificate to be provided to the DAA in the form, and including information, as required by the DAA.

Clause 51 - DAA may refuse to consider application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for a transfer of registration or pre-qualifying certificate where the applicant has not met an information request (under Part 7).

Clause 52 - DAA's decision on application

This clause requires the DAA, having considered an application for transfer of the benefit of registration or a pre-qualifying certificate, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 53 - Criteria for granting application

This clause specifies the criteria against which the DAA must assess an application for transferring the benefit of registration or a pre-qualifying certificate. The criteria are directed towards preventing the transfer of a tax benefit to a different project or for non-commercial reasons. The criteria are:

- . a genuine transfer has occurred or will occur, ie the transferor has ceased or will no longer carry out the project;
- . plant expenditure the transferee has claimed to have made has in fact been made;
- . the transferee's proposal to undertake the remaining plant expenditure in order to complete the project is both genuine and for genuine commercial reasons;
- . the project is substantially the same project (including joint venture project or company group project scheme) as registered or certified in the name of the transferor;
- . the transferee is reasonably likely to complete the project; and
- . the DAA can reasonably assume that the project will be broadly eligible for the allowance under the relevant tax tests - by passing the prospective deduction test.

Clause 54 - Form of transfer of benefits of registration

This clause provides the mechanism by which the transfer is given effect. This involves the cancellation of the transferor's registration. In granting the transferee registration, the DAA:

- . does not apply the 1 January 1993 deadline for registration; and
- . will, in requiring that the \$50 million test is met by the transferee, treat where reasonable, gross capital expenditure made by the transferor as if it were made by the transferee.

Clause 55 - Form of transfer of benefits of certificate

This clause provides the mechanism by which the DAA transfers the benefit of certification. This involves the cancellation of the transferor's certificate. Cancellation has effect from the date the DAA grants the application for transfer or an earlier date if reasonably requested by the transferor. The transferee is then granted a pre-qualifying certificate for plant expenditure that the DAA specifies as being required for the project's completion.

Clause 56 - Form of certificate

This clause sets out the form for, and information that must be specified in, a certificate for the transferee. In particular the plant expenditure that has pre-qualified (once incurred) and the project for which the certificate has been granted are specified .

Clause 57 - DAA may direct that plant be treated as new plant

This clause provides for a redefinition of "new" plant and equipment in the circumstances where the DAA believes it reasonable that the plant be treated as new in the hands of the transferee. This may arise, for example, where the transferor has just prior to transfer purchased eligible plant which has not been installed or claimed against the allowance, and is transferred to the transferee as part of the takeover. In this instance the DAA may deem that plant to be new for the purposes of this Act and the relevant part(s) of the Tax Act.

Division 2 - Re-constituted joint ventures**Clause 58 - Registration cancelled, and certificate terminated, if joint venture is re-constituted**

This clause provides for the cancellation of registration and termination of a certificate when the composition of the parties to the joint venture changes.

Clause 59 - Application for transfer of benefits of registration or certificate to parties to re-constituted joint venture

This clause sets out the circumstances whereby a new joint venture party may apply to the DAA for a transfer of the benefits of registration/pre-qualifying certificate. The circumstances are:

- . a change in the joint venture composition has triggered (clause 58) the cancellation of registration or termination of the certificate;
- . the new joint venture includes one of the parties from the original joint venture;

- . the new joint venture has assumed responsibility for carrying out the completion of the same or substantially the same project; and
- . the new joint venture has either:
 - incurred or will incur expenditures towards the project's completion; or
 - will purchase plant that was new in the hands of the original joint venture as part of the takeover.

Clause 60 - Form of application

This clause requires a written application and project report for the transfer of registration or pre-qualifying certificate to be provided to the DAA in the form and including information, as required by the DAA.

All the applications for the new joint venture project must be provided to the DAA in a single document.

Clause 61 - DAA may refuse to consider application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for a transfer of the benefits of a pre-qualifying certificate where the applicant has not met an information request (under Part 7).

Clause 62 - DAA's decision on application

This clause requires the DAA, having considered an application for transfer of the benefit of registration or a pre-qualifying certificate, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 63 - Criteria for granting application

This clause specifies the criteria against which the DAA must assess an application for transferring the benefit of registration or pre-qualifying certificate. The criteria are directed towards preventing the transfer of a tax benefit to a different project or for non-commercial reasons. The criteria are:

- . a genuine transfer has occurred or will occur, ie the old party has or will no longer carry out the project;
- . plant expenditure the new party has claimed to have made has in fact been made;
- . the new party's proposal to undertake the remaining plant expenditure in order to complete the old project is both genuine and for genuine commercial reasons;

- . the joint venture project is substantially the same project as registered or certified in the name of the old party;
- . the new party is reasonably likely to complete the new party's project;
- . in the case of a new joint venture all of the parties will complete their part of the project; and
- . the DAA can reasonably assume that the project will be broadly eligible for the allowance under the relevant tax tests - by passing the prospective deduction test.

Clause 64 - Form of transfer of benefits registration

This clause provides the mechanism by which the transfer is given effect. This involves the cancellation of the old party's registration. In granting the new party registration, the DAA:

- . does not apply the 1 January 1993 deadline for registration; and
- . will, in requiring that the \$50 million test is met by the new party, treat where reasonable, gross capital expenditure made by the old party as if it were made by the new party.

Clause 65 - Form of transfer of benefits of certificate

This clause provides that the DAA in granting an application for transfer of the benefits of a certificate, must issue a new pre-qualifying certificate for expenditure that the DAA specifies as being required for carrying out the new party's project.

Clause 66 - Form of certificate

This clause sets out the form for, and information that must be specified in, a certificate for the transferee. In particular the plant expenditure that has pre-qualified (once incurred) and the project for which the certificate has been granted are specified.

Clause 67 - DAA may direct that plant be treated as new plant

This clause provides for a redefinition of "new" plant and equipment in the circumstances where the DAA believes it reasonable that the plant be treated as new in the hands of the transferee. This may arise, for example, where the old party has just prior to transfer purchased eligible plant which has not been installed or claimed against the allowance, and is transferred to the new party as part of the takeover. In this instance the DAA may deem that plant to be new for the purposes of this Act and the relevant part(s) of the Tax Act.

Division 3 - Re-constituted partnerships

Clause 68 - Registration cancelled, and certificate terminated, if partnership is re-constituted

This clause provides for the cancellation of registration and termination of a certificate when the constitution of the partnership changes.

Clause 69 - Application for transfer of benefits of registration or certificate to re-constituted partnership

This clause sets out the circumstances whereby a new partnership may apply to the DAA for a transfer of the benefits of registration/pre-qualifying certificate.

- . A change in the partnership composition has triggered (clause 50) the cancellation of registration or termination of the certificate;
- . the new partnership includes one of the parties from the original partnership;
- . the new partnership has assumed responsibility for carrying out the completion of the same or substantially the same project; and
- . the new partnership has either:
 - incurred or will incur expenditures towards the project's completion; or
 - will purchase plant that was new in the hands of the original partnership as part of the takeover.

Clause 70 - Form of application

This clause requires a written application and project report for transfer of the benefit of registration or a pre-qualifying certificate to be provided to the DAA in the form, and including information, as required by the DAA.

Clause 71 - DAA may refuse to consider application unless applicant gives information etc requested by DAA

This clause allows the DAA to refuse to consider an application for a transfer of the benefits of a certificate where the applicant has not met an information request (under Part 7).

Clause 72 - DAA's decision on application

This clause requires the DAA, having considered an application for transfer of the benefit of registration or a pre-qualifying certificate, to either grant or refuse the application. The DAA is required to advise the applicant in writing of the outcome. If an application is refused the DAA is required to set out the reasons for refusal in the written notice.

Clause 73 - Criteria for granting application

This clause specifies the criteria against which the DAA must assess an application for transferring the benefit of registration or certification. The criteria are directed towards preventing the transfer of a tax benefit to a different project or for non-commercial reasons. The criteria are:

- . a genuine transfer has occurred or will occur, ie the old partnership has or will no longer carry out the project;
- . plant expenditure the new partnership has claimed to have made has in fact been made;
- . the new partnership's proposal to undertake the remaining plant expenditure in order to complete the project is both genuine and for genuine commercial reasons;
- . the project is substantially the same project as registered or certified in the name of the old partnership;
- . the new partnership is reasonably likely to complete the project; and
- . the DAA can reasonably assume that the expenditure will be broadly eligible for the allowance under the relevant tax tests - by passing the prospective deduction test.

Clause 74 - Form of transfer of benefits of registration

This clause provides the mechanism by which the transfer is given effect. This involves the cancellation of the old partnership's registration. In granting the new partnership registration, the DAA:

- . does not apply the 1 January 1993 deadline for registration; and
- . will, in requiring that the \$50 million test is met by the new partnership, treat where reasonable, gross capital expenditure made by the transferor as if it were made by the new partnership.

Clause 75 - Form of transfer of benefits of certificate

This clause provides that the DAA, in granting an application for transfer of the benefits of a certificate, must issue a new pre-qualifying certificate for plant expenditure that the DAA specifies as being required for carrying out the new partnership's project.

Clause 76 - Form of certificate

This clause sets out the form for, and information that must be specified in, a certificate for the new partnership. In particular the plant expenditure that has pre-qualified (once incurred) and the project for which the certificate has been granted are specified .

Clause 77 - DAA may direct that plant be treated as new plant

This clause provides for a redefinition of "new" plant and equipment in the circumstances where the DAA believes it reasonable that the plant be treated as new in the hands of the new partnership. This may arise, for example, where the old partnership had just prior to transfer purchased eligible plant which has not been installed or claimed against the allowance, and is transferred to the new partnership as part of the takeover. In this instance the DAA may deem that plant to be new for the purposes of this Act and the relevant part(s) of the Tax Act.

PART 7 - DAA'S INFORMATION GATHERING POWERS

This part sets out the extent of the DAA's information gathering powers.

Clause 78 - Entities to which this Part applies

This clause provides for the information gathering powers of the DAA to apply to those parties dealing with the DAA for the purposes of obtaining eligibility for the development allowance.

Clause 79 - DAA may request entity to give information or produce documents etc

This clause requires an entity to provide the DAA with information and/or documentation at the DAA's written request. While it is not an offence to deny such a request there are adverse implications for the entity (set out in separate clauses) by way of the DAA refusing to consider an application, or cancelling a registration or terminating a certificate.

Clause 80 - How DAA may deal with documents etc produced by entity

This clause sets out the procedures required of the DAA, or an authorised officer of the Department, in handling documents provided by the entity to the DAA under clause 79.

**PART 8 - CANCELLATION OR TERMINATION OF REGISTRATION
OR CERTIFICATE**

This part sets out the conditions under which a registration or certificate may be terminated or cancelled.

Clause 81 - Cancellation or termination - failure to comply with an information request etc

This clause provides for the DAA to cancel a registration or terminate a certificate if the applicant concerned does not comply with a request for information or documentation under Part 7.

Clause 82 - Cancellation - false or misleading statements etc

Subclauses 82(1)-(4) (inclusive) provide for the DAA to cancel in writing a registration or certificate if an entity provides the DAA or a Department officer with false or misleading information or knowingly provides a false or misleading document.

Subclause 82(5) sets out the imputed lines of knowledge under this clause for an entity, be it a body corporate, partnership or natural person in, providing the DAA with a document.

The provision of false or misleading information may also render the entity liable for prosecution under the Tax Act.

Clause 83 - Cancellation of registration - contravention of conditions

This clause requires the DAA to cancel by written notice a registration if the entity no longer meets the conditions of registration. The onus largely rests with the entity to notify the DAA of non-compliance. That is, a condition of registration (as required in subclause 34(2)) is that the entity holding registration must notify the DAA of a change in circumstances as specified in the registration. This is intended to require the entity to notify the DAA at the time that the entity no longer meets the registration conditions.

Clause 84 - Cancellation of registration on request

This clause requires the DAA to cancel a registration at the entity's request.

Clause 85 - Termination of certificate on request

This clause requires the DAA to terminate a certificate at the entity's request.

PART 9 - TAX EFFECTS OF CERTIFICATION

This part sets out the tax effects of certification, and including cancellation, variation and termination of a pre-qualifying certificate. The part contains the key linkages between this Act and the Tax Act.

Clause 86 - When plant expenditure pre-qualifies under this Act

This clause provides that pre-qualified expenditure is plant expenditure incurred by a holder of a certificate relating to that expenditure. This clause forms the key link to establishing the eligibility of an applicant to claim the allowance under the Tax Act. Expenditure does not "pre-qualify" if it is not used wholly or principally for carrying out the project (through the application of clause 25). Pre-qualifying under this Act does not automatically entitle the entity to the development allowance. That determination is one ultimately made by the Commissioner of Taxation.

Clause 87 - Effect of cancellation of certificate

This clause provides for cancellation of a certificate to have the same effect as if the certification had never occurred. For example, if a certificate is cancelled because false or misleading information has been given to the DAA (clause B2), then the certificate holder is treated as if it had never been entitled to the allowance under the Tax Act. It is intended that any allowances claimed would need to be reassessed by the Commissioner of Taxation.

Clause 88 - Effect of termination of certificate

Termination of a certificate takes effect in relation to expenditure incurred after the date of termination. In such cases (provided for by clause 85), the entity would be entitled to retain allowances claimed for expenditures incurred up until the date of termination, but not thereafter.

Clause 89 - Effect of variation of certificate

This clause provides that expenditure incurred by the entity before the date of variation is not effected by the variation under this part.

Clause 90 - Effect of decision to revoke or set aside a decision relating to a certificate

This clause provides for revocation or the setting aside of a decision to certify, to have the same effect as if the decision had never been made.

Clause 91 - DAA to notify Commissioner of Taxation

This clause requires the DAA to notify the Commissioner of Taxation of any action taken under this Act which impacts on the operation of the Subdivision B of Division 3 of Part III of the Tax Act, which set out the relevant tax provisions for the operation of the development allowance. For example, the DAA would advise the Commissioner of Taxation of the issuing, cancellation, termination or variation of a certificate for pre-qualifying expenditure.

Clause 92 - Amendment of assessments

This clause provides that if for, say, reasons of cancellation the Commissioner of Taxation needs to amend an assessment that the time limits in section 170 of the Tax Act do not apply.

PART 10 - DAA'S POWERS TO FACILITATE THE COMPLETION OF PROJECTS

This part provides the DAA, with the consent of the applicant, powers to assist the applicant in achieving pre-qualification.

Clause 93 - DAA's powers to facilitate completion of projects

This clause enables the DAA, with the entity's consent, to notify a third party that its action or inaction is preventing the DAA from registering or certifying the applicant's project. For example, if a government authority providing a key input to the project does so in an inefficient or uneconomic way, preventing the project from pre-qualifying for the allowance, then the DAA may notify the third party accordingly. This clause enables the DAA to undertake a project facilitation role.

PART 11 - DEVELOPMENT ALLOWANCE AUTHORITY

This part sets out the administrative framework for the operation of the DAA.

Clause 94 - Creation of a single-person statutory office of Development Allowance Authority

This clause establishes the DAA as a single person statutory office.

Clauses 95 and 96 - Appointment of DAA - full-time or part-time

These clauses provide for the Governor-General to appoint the DAA on a full-time or part-time basis.

Clause 97 - DAA's term of office

This clause provides that the term of office for the DAA's appointment will be that specified in the instrument of appointment.

Clause 98 - No substantive appointment of DAA on or after 1 January 1997

This clause provides that there will be no appointment of a substantive DAA on or beyond 1 January 1997. This provision effectively provides the outer limit for the term of the DAA's appointment (as specified in clause 97). The clause does not preclude the appointment of an acting DAA for the period on or beyond 1 January 1997.

Clause 99 - Person may hold both the office of DAA and the Office of Commissioner of the Industry Commission

This clause provides for the person to hold simultaneously office of the DAA and Commissioner of the Industry Commission. Relevant provisions of the Remuneration Tribunal Act 1973 apply, in order that only one (the higher) full time salary is received in the case of both offices being simultaneously held on a full-time basis. The Remuneration Tribunal Act 1973 also provides for a person holding both full and part time offices, to be only paid remuneration for the full-time position.

Clause 100 - Full-time DAA - age limit of 65 years

This clause sets an age limit of 65 years for a full-time DAA.

Clause 101 - DAA's terms and conditions of appointment

This clause provides that any other terms and conditions of office not provided for by the Act may be determined by the Governor-General.

Clause 102 - DAA's remuneration and allowances

This clause provides for the remuneration and allowances of the DAA to be determined by the Remuneration Tribunal, or if no determination has been made by the Remuneration Tribunal, as prescribed.

Clause 103 - Full-time DAA's leave of absence

Subclause 103(1) provides that a full time DAA will have recreation leave entitlements determined by the Remuneration Tribunal. If the DAA is appointed from the APS, any leave entitlements will be preserved by the operation of section 87E of the Public Service Act 1922.

Under subclause 103(2) the Minister may grant the DAA leave of absence on such terms and conditions as to remuneration determined by the Minister. For the purposes of this subclause leave of absence does not include recreation leave.

Clause 104 - Resignation of DAA

The DAA may resign by giving a written notice to that effect to the Governor-General.

Clause 105 - Termination of appointment of DAA

This clause provides for termination by the Governor-General of the appointment of the DAA in certain circumstances. These circumstances include upon the written determination of the Minister, if the Minister considers the DAA's workload is insufficient to justify a full-time appointment.

Clause 106 - Acting DAA

Subclause 106(1) provides for the appointment by the Minister of an acting DAA in certain circumstances. These circumstances are vacancy or absence from duty or Australia.

Subclauses 106(2)-(5) (inclusive) require that if a vacancy in office occurs on or after 1 January 1997 the acting DAA:

- . must be a SES officer in the Department for the period to 1 July 2002;
- . must be a SES officer in the Australian Taxation Office for the period on or after 1 July 2002;
- . provisions 33A(ba) and (c) of the Acts Interpretations Act 1901 relating to time limits for acting appointments do not apply; and
- . the decisions made by an acting DAA cannot be challenged on technical grounds.

Clause 107 - Conflict of interest

Subclause 107(1) requires the DAA to notify the Minister of any business interests.

Subclause 107(2) requires the DAA to notify the Minister of any potential conflict of interest relating to a matter being considered or about to be considered by the DAA. The DAA is required to take no action on that matter until the Minister's written advice of a decision on the DAA's role in considering the matter or 28 days after written notice of the conflict of interest, whichever is first.

Subclause 107(3) provides for the Minister to direct the DAA to delegate the DAA's functions and powers to a specified SES officer in the Department in the instance of an interest which the Minister considers could conflict with the DAA performing its functions. It is intended that should the DAA contravene this subclause any decision made by the DAA in considering an application is invalid.

Subclause 107(4) provides for the Minister to allow the DAA to continue to deal with a matter personally if the Minister considers that the DAA's interest will not conflict with the DAA performing its functions.

Subclause 107(5) requires the Minister to direct the DAA under subclause (3) within 28 days of having received the written notice of a conflict of interest. A Ministerial direction given after that time has no effect.

PART 12 - ADMINISTRATION

This part authorises the DAA to delegate its powers and functions and to commission consultants or other Government agencies to assist in the carrying out of its functions.

Clause 108 - Delegation by DAA

This clause provides for the DAA to delegate all or any of its powers and functions to a SES officer in the Department. It is intended that the delegation powers in this clause will be exercised at the direction of the Minister if the operation of clause 107 is activated in the case of a conflict of interest.

Clause 109 - Consultants

This clause enables the DAA to engage persons with suitable qualifications and experience as consultants to the DAA.

Clause 110 - Commonwealth authorities may assist DAA

This clause provides for Commonwealth authorities to upon request provide the DAA with assistance. For example, the DAA may request the assistance of the Industry Commission in assessing an applicant's claim as to whether a substantial level of assistance is afforded the project. The Commonwealth authority may charge a fee for providing such assistance.

PART 13 - PROTECTION OF COMMERCIAL IN CONFIDENCE INFORMATION

This part enables information provided to the DAA to be treated as Commercial-in-Confidence under certain conditions. It also sets out the procedures to ensure adequate protection of information during review action.

Clause 111 - Application for protection of Commercial-in-Confidence information

This clause provides for an application under Parts 3-6 (inclusive) to include an application for information or documents provided to the DAA or the Department to be treated as commercial-in-confidence. Such an application must be made in writing and in the approved form. An application for commercial-in-confidence status can also accompany the provision of information or documents under Part 7 or clause 34.

Clause 112 - DAA may declare that information is to be treated as commercial-in-confidence information

Subclause 112(1) sets out the circumstances under which the DAA can declare information to be commercial-in-confidence. These circumstances are where the DAA is satisfied that the disclosure of the information would be likely to substantially prejudice the commercial interests of the applicant and that the prejudice outweighs any public interest from the information's disclosure.

Subclause 112(2) requires the DAA to notify the applicant of the decision in writing.

Subclause 112(3) sets out the circumstances whereby if the DAA refuses a commercial-in-confidence application, the information is protected as commercial-in-confidence for 21 days or during the period which the applicant has requested the DAA to reconsider its decision or any subsequent unfinalised AAT action.

Subclause 112(4) provides for the preservation of commercial-in-confidence status of information for 28 days following a DAA decision being confirmed because the DAA has not acted within 40 days of the request, or the applicant being notified that a decision on reconsideration has been made.

Subclause 112(5) requires the DAA to set out the reasons for refusing to give a declaration in the written notice of the decision.

Clause 113 - DAA may revoke declaration

Subclauses 113(1) and (2) provide the circumstances by which the DAA, of its own initiative or at the request of an applicant, can revoke the commercial-in-confidence status previously granted information and/or documentation provided to the DAA. The circumstances are where the DAA is satisfied that the information's publication would no longer reasonably prejudice the commercial interests of the applicant; or where that prejudice is now outweighed by the public interest. Revocation applies 21 days after the entity is notified in writing.

Subclause 113(3) provides for the information with revoked status to be continued to be treated as commercial-in-confidence for the period during which the applicant has requested the DAA to reconsider its decision or any subsequent unfinalised AAT action.

Subclause 113(4) provides for the preservation of commercial-in-confidence status of information for 28 days following a DAA decision being confirmed because the DAA has not acted within 40 days of the request, or where the applicant being notified that a decision on reconsideration has been made.

Subclause 113(5) requires the DAA to set out the reasons for revocation in the written notice.

Clause 114 - Commercial-in-confidence information must not be disclosed

This clause requires that a person performing duties under this Act cannot disclose commercial-in-confidence information, with the exceptions of providing the information to the Commissioner of Taxation, by a court order or with the consent of the applicant. The maximum penalty for contravening this provision is 2 years imprisonment. The Crimes Act also provides for, at the Court's discretion, a monetary penalty for contravening this provision.

PART 14 - REPORTS BY DAA

This part provides for the Parliament, by way of an Annual Report, and the Minister, by way of periodic/quarterly reports, to be properly informed as to the operations of the DAA.

Clause 115 - Quarterly reports by DAA

This clause provides for the DAA to provide the Minister with quarterly reports, or for some other period prescribed by the Minister (under clause 116), on the operation of the DAA up to 1 January 1997. After 1 January 1997 the DAA is only required to provide the Minister with reports at the request of, and for a period prescribed by, the Minister.

Clause 116 - Periodic reports by DAA

This clause provides for the Minister to direct the DAA to provide a report for a specified period. The intention of this provision is to afford the Minister discretion in requesting such reports when the Minister deems they are warranted.

Clause 117 - Annual report

This clause requires the DAA to provide an Annual Report to the Minister for the period up to 1 July 1997 or for a year as prescribed by the Minister beyond 1 July 1997 but before 1 July 2002.

Subclause 117(2) requires the Minister to table the Annual Report in each House of Parliament within 15 sitting days of its receipt.

Clause 118 - Reports to deal with ancillary provisions of the Taxation Administration Act 1953

This clause provides that a reference to this Act, in giving the DAA certain reporting requirements, includes the operation of three relevant provisions of the Taxation Administration Act 1953 under which the DAA also operates.

PART 15 - REVIEW OF DECISIONS

This part sets out the procedures for reviewing decisions made by the DAA.

Clause 119 - Reconsideration of a reviewable decision

Subclauses 119(1) and (2) provide for an applicant to request the DAA to reconsider a reviewable decision. It is intended that an applicant must request a DAA review before a matter can be brought before the AAT. The request must be made in writing within 21 days of the applicant being advised of a DAA decision, and set out the reasons for the request.

Subclause 119(3) provides for the DAA upon receipt of such a request to revoke, confirm or vary a decision.

Subclause 119(4) provides for a confirmation of the decision if the DAA has not confirmed, revoked or varied the decision within 40 days of receiving the request. This is intended to ensure that a request is not held up by the DAA and may be subsequently reviewed by the AAT without delay.

Subclause 119(5) requires the DAA to advise the applicant of its decision in writing and provide the reasons for that decision.

Clause 120 - Review of DAA decision by Administrative Appeals Tribunal

Subclause 120(1) provides for applications for review of DAA decisions by the AAT where the DAA has already reconsidered the decision.

Subclause 120(2) provides for AAT review under Section 29 of the AAT Act 1975 to apply as if the prescribed time for the decision's review commences from the date of confirmation and ends 28 days from that commencement.

Subclause 120(3) provides that in the case of a decision deemed to be confirmed under subclause 119(4), for section 41 of the AAT Act 1975 (relating to stay of action implementing decision) to apply when an application to the DAA to reconsider a decision under subclause 119(1) is made.

Clause 121 - Statements to accompany notification of decision

Subclause 121(1) provides that written notice of a reviewable decision having been made must also include a statement setting out the necessary steps should the applicant wish to seek a review of that decision. Those steps involve an applicant, if dissatisfied with a DAA decision, seeking the DAA's reconsideration in the first instance. If the DAA confirms or varies that decision, the entity may then make an application to the AAT for a review of the decision.

Subclause 121(2) requires the DAA, in confirming or varying a decision upon an applicant's request for the decision's reconsideration (under subclause 119(3)), to notify the applicant in writing that the decision is reviewable by the AAT if the applicant remains dissatisfied.

Subclause 121(3) - provides that the validity of a DAA decision is not affected if the DAA does not comply with this clause.

PART 16 - MISCELLANEOUS

Clause 122 - Giving of documents to partnerships

This clause provides for the assumption that if a document is given to a partner, it is taken to have been given to the partnership.

Clause 123 - Regulations

This clause enables the Governor-General to make regulations not inconsistent with the Act, for carrying out or giving affect to the Act; and for prescribing matters that are required or permitted by the Act.

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