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DEVELOPMENT ALLOWANCE AUTHORITY  
AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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



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## **DEVELOPMENT ALLOWANCE AUTHORITY AMENDMENT BILL 1992**

### **OUTLINE**

The Bill amends the *Development Allowance Authority Act 1992* (the Principal Act).

The primary purpose of the Bill is to amend the Principal Act to increase the flexibility of the legislation so that a more consistent approach is available to the various types of prospective applicant for the development allowance.

Where all other criteria in the Principal Act are met, these amendments would allow:

- applicants to elect to aggregate projects consisting of the establishment of new productive facilities with other projects consisting of the expansion, improvement or upgrading of existing productive facilities where the new and existing productive facilities are vertically integrated;
- a project to qualify where the project involves both leased and purchased assets and either or both enable the project to meet the \$50 million qualifying threshold; and
- a lessor to obtain the development allowance in respect of plant which is subject to a long term lease and has been certified for pre-qualification by the DAA on application by the lessee, even if only part of the plant covered by the relevant project is leased.

These amendments provide additional flexibility for claiming the development allowance benefit and, in particular, in passing the \$50 million threshold.

The opportunity is also taken to make minor adjustments to the drafting of certain provisions in the Principal Act to facilitate interpretation by applicants for the allowance, and to make some minor administrative adjustments.

### **FINANCIAL IMPLICATIONS**

The changes in this Bill are considered to be consistent with the original aims of the Principal Act. Therefore there are no financial implications.

## NOTES ON CLAUSES

### PART 1 - 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 and the Principal Act which is the subject of the amendment is also specified.

#### Clause 2 - Commencement

This clause provides that Sections 1 and 2, short title of the Act etc, and Section 122A, which deals with provision of certified copies of documents, commence on the day on which this Act receives the Royal Assent. The remaining provisions of the Act are to commence immediately after the commencement of the Principal Act. This is in order for the Development Allowance Authority (the DAA) to be able to examine all applications for the development allowance, including those lodged before the passage of this Act, in the light of the more flexible provisions incorporated in this Act.

#### Clause 3 - Simplified outline of scheme of Act

This clause amends section 4 of the Principal Act by adding a provision that in the case of leased plant the DAA will issue to the lessee a certificate pre-qualifying the lessor's expenditure for the development allowance if certain conditions are met.

#### Clause 4 - Interpretation

This clause amends Section 6 of the Principal Act. In particular:

the definition of plant expenditure is broadened to include expenditure incurred by a lessee on leased equipment. The purpose of this amendment is to enable applicants who are lessees to register lease payments in order for the lessor(s) to obtain the development allowance on leased equipment;

"Australia" is defined as having the same meaning as in Subdivision B of Division 3 of Part III of the *Income Tax Assessment Act 1936* (the Tax Act). The purpose of this amendment is to align the meaning of Australia contained in the DAA Act with that in the Tax Act;

- a definition of an individual project scheme is inserted. The purpose of this amendment is to enable an applicant to elect that a project establishing a new productive facility and another project consisting of an expansion upgrade or improvement of an existing productive facility, be combined to comprise an individual project *scheme* for the purposes of the Act. This is a mechanism to permit investments involving mixtures of new and existing productive facilities to qualify for the development allowance where they are vertically integrated;

a definition of a joint venture project scheme is inserted. The purpose of this amendment is to enable a joint venture applicant to elect that a project establishing a new productive facility and another project consisting of an expansion, upgrade or improvement of an existing productive facility, be combined to comprise a joint venture project scheme for the purposes of the Act. This is a mechanism to permit investments involving mixtures of new and existing productive facilities to qualify for the development allowance where they are vertically integrated; and

- a definition of a long term lease agreement is inserted.

#### **Clause 5 - When productive facilities pass the discrete project test**

The purpose of this amendment is to correct a typographical error in the Principal Act.

#### **Clause 6 - Heading to Division 2 of Part 2**

This clause amends the heading to Division 2 of Part 2 to include the new defined terms "joint venture project schemes" and "individual project schemes" which are introduced into this Division by the Act.

#### **Clause 7 - Joint venture project schemes**

This clause introduces an additional section which allows the parties to a joint venture to elect that the aggregate of two or more joint venture projects be treated as a joint venture project scheme. The parties to each joint venture project must be the same parties as in each other joint venture project. The election has effect only if all the productive facilities pass the vertical integration test.

The purpose of this section is to ensure that joint venture project schemes can consist of a mixture of new productive facilities and the expansion, improvement or upgrade of existing productive facilities.

#### **Clause 8 - Company group schemes**

This section amends Section 14 of the Principal Act to simplify the wording of the vertical integration test for company group project schemes, and to clarify that company group project schemes may consist of both new productive facilities and the expansion, upgrade or improvement of existing productive facilities.

#### **Clause 9 - Individual project schemes**

This clause introduces a new concept: the individual project scheme. An entity may elect that the aggregate of 2 or more projects be treated as an individual project scheme. The election has no effect unless the productive facilities pass the vertical integration test. The purpose of this election is to permit the aggregation of new productive facilities and the expansion, improvement or upgrade of existing productive facilities.

### **Clause 10 - Competitiveness test for project expenditure**

This clause amends Section 17 of the Principal Act by adding sections to apply the competitiveness test to the two additional classes of scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

### **Clause 11 - \$50 million threshold test for project expenditure**

This Clause amends Section 18 to apply the \$50 million threshold test for project expenditure to the two additional classes of scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

### **Clause 12 - Gross capital expenditure**

This clause amends Section 19 of the Principal Act so that a leasing company's capital expenditure on a project is regarded as capital expenditure attributed to the lessee. The purpose of this section is to allow the aggregation of both leased and purchased assets for the purpose of passing the \$50 million threshold test. Capital expenditure is subject to the basic eligibility test, the recoupment provisions and the non-arm's length transaction provisions as well as the other criteria in the Act, whether leased or acquired by the operator.

### **Clause 13 - Substantial commitment to completion of a project - relevant factors**

This clause amends section 20 to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

### **Clause 14 - Post - 26 February 1992 projects**

This clause amends section 21 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture schemes and individual projects schemes.

### **Clause 15 - Prospective deduction test**

This clause amends section 22 of the Principal Act to include leased plant in the prospective deduction test applied to an entity carrying out a project.

### **Clause 16 - Division 11 and Division 12**

Division 11 is inserted into the Principal Act to provide a mechanism for leased equipment to be subject to Division 10 of the Principal Act. According to this division, leased equipment is assumed to be acquired by the entity for the purposes of the Principal Act.

Division 12 is inserted into the Principal Act to provide for a proposal to incur plant expenditure in carrying out a project to count even if no decision has been made about

whether to acquire, construct or lease the plant. The purpose of this section is to give the applicant maximum flexibility with regard to the financing of projects

**Clause 17 - Form of application etc.**

This clause amends Section 28 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 18 - Criteria for granting application**

This clause amends section 31 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 19 - Form of registration**

This clause amends section 32 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 20 - Form of application**

This clause amends section 37 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 21 - Form of certificate**

This clause amends section 41 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 22 - Applications for variation**

This clause amends section 42 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

**Clause 23 - Form of application**

This clause amends section 43 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

#### **Clause 24 - Criteria for granting application**

This clause amends section 46 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

#### **Clause 25 - Variation of project specification**

This clause amends section 48 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

#### **Clause 26 - Application for transfer**

This clause amends section 49 of the Principal Act to cover individual project schemes.

#### **Clause 27 - Criteria for granting application**

This clause amends section 53 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

#### **Clause 28 - Forms of certificate**

This clause amends section 56 of the Principal Act to cover the two additional types of project scheme introduced by this Act: that is joint venture project schemes and individual project schemes.

#### **Clause 29 - Application for transfer of benefits of registration or certificate to parties to reconstituted joint venture**

This clause amends section 59 of the Principal Act to cover joint venture project schemes.

#### **Clause 30 - Criteria for granting application**

This clause amends section 63 of the Principal Act to cover joint venture project schemes.

#### **Clause 31 - Form of Certificate**

This clause amends section 66 of the Principal Act to cover joint venture project schemes.

#### **Clause 32 - Application for transfer of benefits of registration or certificate to re-constituted partnership.**

This clause amends section 69 of the Principal Act to cover individual project schemes.

**Clause 33 - Criteria for granting application**

This clause amends section 73 of the Principal Act to cover individual project schemes.

**Clause 34 - Form of Certificate**

This clause amends section 76 of the Principal Act to cover individual project schemes.

**Clause 35 - Entities to which this Part applies**

This clause amends sub-section 78(a) of the Principal Act to correct a punctuation error and sub-section 78(b) is amended to cover the two additional types of project scheme introduced by this Act: that is joint venture schemes and individual project schemes.

**Clause 36 - When plant expenditure pre-qualifies under the Act.**

This clause amends section 86 of the Principal Act to provide the mechanism whereby a lessor of plant which is subject to a long term lease can qualify for the development allowance in respect of a project registered with the DAA by a lessee even if only part of the plant involved in the project is leased.

**Clause 37 - Certified copies of documents**

This Clause adds a section which allows the DAA to certify that a copy of a document is in fact a copy of an original document issued by the DAA and which provides that such a certified copy be recognised in courts and tribunals.