

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**DEVELOPMENT ALLOWANCE AUTHORITY AMENDMENT  
BILL 1992**

**TABLE OF PROVISIONS**

Section

1. Short title etc.
2. Commencement
3. Simplified outline of scheme of Act
4. Interpretation
5. When productive facilities pass the discrete project test
6. Heading to Division 2 of Part 2
7. Insertion of new section:
  - 13A. Joint venture project schemes
8. Company group project schemes
9. Insertion of new section:
  - 14A. Individual project schemes
10. Competitiveness test for project expenditure
11. \$50 million threshold test for project expenditure
12. Gross capital expenditure
13. Substantial commitment to completion of a project—relevant factors
14. Post-26 February 1992 projects
15. Prospective deduction test
16. Insertion of new Divisions:

*Division 11—Plant expenditure incurred in respect of the lease of  
new units of plant*

- 25A. Plant expenditure incurred in respect of the lease of new units of  
plant

TABLE OF PROVISIONS—*continued*

## Section

*Division 12—Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant*

- 25B. Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant
17. Form of application etc.
18. Criteria for granting application
19. Form of registration
20. Form of application
21. Form of certificate
22. Applications for variation
23. Form of application
24. Criteria for granting application
25. Variation of project specification
26. Application for transfer
27. Criteria for granting application
28. Form of certificate
29. Application for transfer of benefits of registration or certificate to parties to re-constituted joint venture
30. Criteria for granting application
31. Form of certificate
32. Application for transfer of benefits of registration or certificate to re-constituted partnership
33. Criteria for granting application
34. Form of certificate
35. Entities to which this Part applies
36. When plant expenditure pre-qualifies under this Act
37. Insertion of new section:
- 122A. Certified copies of documents

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 20 August 1992

*(Minister Assisting the Treasurer)*

**A BILL**

FOR

**An Act to amend the *Development Allowance Authority Act 1992***

The Parliament of Australia enacts:

**Short title etc.**

1.(1) This Act may be cited as the *Development Allowance Authority Amendment Act 1992*.

5 (2) In this Act, “**Principal Act**” means the *Development Allowance Authority Act 1992*<sup>1</sup>.

**Commencement**

2.(1) Sections 1, 2 and 37 commence on the day on which this Act receives the Royal Assent.

10 (2) The remaining provisions of this Act are taken to have commenced immediately after the commencement of the *Development Allowance Authority Act 1992*.

### **Simplified outline of scheme of Act**

3. Section 4 of the Principal Act is amended:

(a) by inserting in paragraph (c) “if the expenditure is in respect of the acquisition or construction of plant—” before “the DAA”;

(b) by adding at the end the following paragraph: 5

“(d) if the expenditure is in respect of the lease of plant—the DAA will issue a certificate pre-qualifying the lessor’s expenditure for the tax incentive known as development allowance if:

(i) the lessee’s expenditure has been registered; and 10

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

(iii) certain other criteria are satisfied.”.

### **Interpretation**

4. Section 6 of the Principal Act is amended: 15

(a) by omitting the definition of “plant expenditure” and substituting the following definition:

“‘**plant expenditure**’ means either or both of the following types of expenditure:

(a) expenditure in respect of the acquisition or construction of a new unit of plant; 20

(b) expenditure incurred by a lessee in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company;”;

(b) by inserting the following definitions: 25

“‘**Australia**’ has the same meaning as in Subdivision B of Division 3 of Part III of the Tax Act;

‘**individual project scheme**’ has the meaning given by section 14A;

‘**joint venture project scheme**’ has the meaning given by section 13A; 30

‘**long-term lease agreement**’ has the same meaning as in section 82AQ of the Tax Act;”.

### **When productive facilities pass the discrete project test**

5. Section 9 of the Principal Act is amended by omitting from subparagraph (b)(i) “services” and substituting “goods”. 35

### **Heading to Division 2 of Part 2**

6. The heading to Division 2 of Part 2 of the Principal Act is amended by omitting “*and company group project schemes*”, and substituting “*, joint venture project schemes, company group project schemes and individual project schemes*”. 40

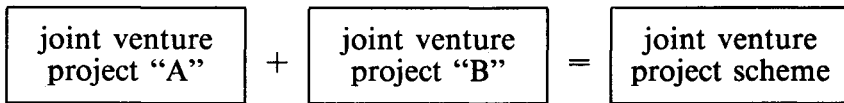
7. After section 13 of the Principal Act the following section is inserted:

**Joint venture project schemes**

5 **[Election to treat aggregate of joint venture projects as joint venture project scheme]**

“13A.(1) For the purposes of this Act, the parties to a joint venture may elect that the aggregate of 2 or more specified joint venture projects carried out by the parties to the joint venture is to be treated as a joint venture project scheme.

10 Example:



**[Productive facilities must pass the vertical integration test]**

15 “(2) The election has no effect unless, assuming that the productive facilities included in the scheme were operated by the same entity, the productive facilities would be taken to pass the vertical integration test.

**[Form of election]**

“(3) The election:

- (a) is to be given to the DAA; and
- (b) must be in writing in the approved form.

20 **[Election is irrevocable]**

“(4) The election is irrevocable, but this subsection does not prevent the DAA from granting an application under Part 5 for a variation of a scheme.”.

**Company group project schemes**

25 8. Section 14 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

**[Productive facilities must pass the vertical integration test]**

30 “(2) The election has no effect unless, assuming that the productive facilities included in the scheme were operated by the same company, the productive facilities would be taken to pass the vertical integration test.”.

9. After section 14 of the Principal Act the following section is inserted:

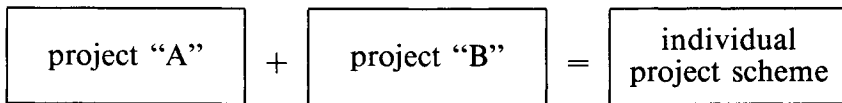
**Individual project schemes**

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

“14A.(1) For the purposes of this Act, an entity may elect that the aggregate of 2 or more specified projects carried out by the entity is to be treated as an individual project scheme.

5

Example:



**[Productive facilities must pass the vertical integration test]**

“(2) The election has no effect unless the productive facilities included in the scheme pass the vertical integration test.

10

**[Form of election]**

“(3) The election:

- (a) is to be given to the DAA; and
- (b) must be in writing in the approved form.

**[Election is irrevocable]**

15

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

- (a) granting an application under Part 5 for a variation of a scheme; or
- (b) granting an application under 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.”

20

**Competitiveness test for project expenditure**

10. Section 17 of the Principal Act is amended:

(a) by inserting after paragraph (b) the following paragraph:

25

“(ba) if the project is part of a joint venture project scheme:

- (i) the labour relations aspects of the carrying out of each other joint venture 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
- (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

30

35

which the scheme relates are economic and efficient; and”;

(b) by adding at the end the following word and paragraph:

“; and (d) if the project is part of an individual project scheme:

- 5 (i) the labour relations aspects of the carrying out of each other project to which the scheme relates substantially reflect world best practice; and
- 10 (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
- 15 (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.”.

**\$50 million threshold test for project expenditure**

11. Section 18 of the Principal Act is amended:

20 (a) by inserting in paragraph (a) “but not part of a joint venture project scheme” after “joint venture project” (first occurring);

(b) by inserting after paragraph (a) the following paragraph:

25 “(aa) if the project is both part of a joint venture project and part of a joint venture project scheme—the sum of:

- (i) the gross capital expenditure incurred by the entity in respect of carrying out that part of the project; and
- 30 (ii) the gross capital expenditure incurred by the entity and by each other party to the joint venture in respect of carrying out each other part or parts of the joint venture project scheme;
- is \$50 million or more; or”;

(c) by inserting after paragraph (b) the following paragraph:

35 “(ba) if the project is part of an individual project scheme—the sum of:

- (i) the gross capital expenditure incurred by the entity in respect of carrying out the project; and
- 40 (ii) the gross capital expenditure incurred by the entity in respect of carrying out the other project or projects to which the scheme relates;
- is \$50 million or more; or”.

**Gross capital expenditure**

12. Section 19 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsections:

**[Leased plant—lessor’s capital expenditure attributed to lessee]**

5

“(1A) If:

(a) an entity incurs plant expenditure in carrying out a project; and

(b) the expenditure is incurred in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company;

10

the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the unit of plant is taken, for the purposes of subsection (1), to be expenditure of a capital nature incurred by the entity in respect of carrying out the project.

15

**[Other leased property—lessor’s capital expenditure attributed to lessee]**

“(1B) If:

(a) an entity incurs expenditure as a lessee in respect of the lease of property (other than plant) under a long-term lease agreement where the lessor is a leasing company; and

20

(b) assuming that the expenditure had been incurred by the entity in respect of the acquisition of the property instead of in respect of the lease of the property, the expenditure would have been expenditure of a capital nature incurred by the entity in respect of carrying out a project;

25

the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the property is taken, for the purposes of subsection (1), to be expenditure of a capital nature incurred by the entity in respect of carrying out the project.”;

30

(b) by adding at the end of subsection (2) “Subsections (1A) and (1B) do not apply to expenditure incurred by the lessor to the extent to which the expenditure would have failed the basic eligibility test if it had been incurred by the entity in carrying out the project.”;

35

(c) by adding at the end of subsection (3) “Subsections (1A) and (1B) do not apply to expenditure if the lessor is recouped, or becomes entitled to be recouped, in respect of the expenditure.”.

40



**Substantial commitment to completion of a project—relevant factors**

13. Section 20 of the Principal Act is amended:

(a) by inserting after paragraph (b) the following paragraph:

“(ba) if the project is part of a joint venture project scheme:

- 5 (i) the physical work that has been undertaken in carrying out each other joint venture project to which the scheme relates before that date; and
- 10 (ii) the nature of the contracts that have been entered into before that date in relation to each other joint venture project to which the scheme relates; and
- 15 (iii) in the case of a scheme which involves 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 facilities; and
- 20 (iv) such other matters as the DAA considers relevant; and”;

(b) by omitting from subparagraph (c)(iii) “consisting of the expansion, improvement or upgrading of productive” and substituting “which involves the expansion, improvement or upgrading of a productive facility or”;

(c) by adding at the end the following word and paragraph:

25 “; and (d) if the project is part of an individual project scheme:

- 30 (i) the physical work that has been undertaken in carrying out each other project to which the scheme relates before that date; and
- 35 (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
- 40 (iii) in the case of a scheme which involves 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 facilities; and
- (iv) such other matters as the DAA considers relevant.”.

**Post-26 February 1992 projects**

14. Section 21 of the Principal Act is amended:

(a) by inserting after paragraph (b) the following paragraph:

“(ba) if the project is part of a joint venture 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 joint venture project to which the scheme relates—any such construction commenced before 27 February 1992; or 5
  - (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of another joint venture project to which the scheme relates was entered into before 27 February 1992; and” 10
- (b) by adding at the end the following word and paragraph:
- “; and (d) if the project is part of an individual 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 15
    - (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.” 20 25

**Prospective deduction test**

15. Section 22 of the Principal Act is amended by omitting all the words after “arguable” and substituting the following word and paragraphs: 30

“that:

- (d) to the extent that the expenditure is incurred in respect of the acquisition or construction of a new unit of plant—a deduction will be allowable to the entity under section 82AB of the Tax Act in respect of the expenditure; and 35
- (e) to the extent that the expenditure is incurred in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company—a deduction will be allowable to the leasing company under section 82AB of the Tax Act in respect of the expenditure of a capital nature incurred by the leasing company in respect of the acquisition or construction by the leasing company of the unit of plant.” 40

16. After section 25 of the Principal Act the following Divisions are inserted:

***“Division 11—Plant expenditure incurred in respect of the lease of new units of plant***

**Plant expenditure incurred in respect of the lease of new units of plant  
[Section applies to lease expenditure]**

5 “25A.(1) This section applies if an entity incurs, or proposes to incur, plant expenditure in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company.

**[When expenditure incurred in carrying out a project]**

10 “(2) For the purposes of this Act, in testing whether the expenditure is incurred, or proposed to be incurred, in carrying out a project, it is to be assumed that the entity had incurred, or proposed to incur, the expenditure in respect of the acquisition of the unit of plant instead of in respect of the lease of the unit of plant.

15 **[Periodic lease payments deemed to be incurred when earliest payment incurred]**

“(3) For the purposes of this Act, if, apart from this subsection, the expenditure is incurred on a periodic basis, all of the expenditure is taken to have been incurred at the earliest time at which any of the expenditure was incurred.

20 ***“Division 12—Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant***

25 **Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant**

“25B.(1) For the purposes of this Act, a proposal to incur plant expenditure in carrying out a project counts even if the entity concerned has not decided whether to acquire, construct or lease the unit or units of plant.

30 “(2) The expression ‘as the case may be’ may be used in a document under this Act to denote such a state of indecision. For example, ‘expenditure proposed to be incurred in respect of the acquisition, construction or lease, as the case may be, of the new units of plant described in Part A of the Schedule to this [document]’.”.

35 **Form of application etc.**

17. Section 28 of the Principal Act is amended:

(a) by inserting after paragraph (6)(b) the following paragraph:

“(ba) if the project is part of a joint venture project scheme—the scheme; and”;

40 (b) by inserting after paragraph (c) the following paragraph:

“(ca) if the project is part of an individual project scheme—the scheme; and”;

(c) by inserting after subsection (8) the following subsection:

“(8A) All of the applications relating to a joint venture project scheme must be set out in the same document.”; 5

(d) by adding at the end the following subsection:

“(10) All of the applications relating to an individual project scheme must be set out in the same document.”.

**Criteria for granting application**

18. Section 31 of the Principal Act is amended: 10

(a) by inserting after paragraph (h) the following paragraph:

“(ha) if the project is part of a joint venture project scheme—either:

(i) the parties to the joint venture have completed the carrying out of each other joint venture project or joint venture projects to which the scheme relates; or 15

(ii) having regard to:

(A) the financial capacity of the parties to the joint venture; and 20

(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 other joint venture project or joint venture projects to which the scheme relates; and”;

(b) by inserting after paragraph (i) the following paragraph:

“(ia) if the project is part of an individual project scheme—either:

(i) the applicant has completed the carrying out of the other project or projects to which the scheme relates; or 30

(ii) having regard to:

(A) the financial capacity of the applicant; and 35  
(B) such other matters as the DAA considers relevant;

it is reasonably likely that the applicant will complete the carrying out of the other project or projects to which the scheme relates; and”.

**Form of registration** 40

19. Section 32 of the Principal Act is amended:

(a) by inserting after paragraph (e) the following paragraph:

“(ea) if the project is part of a joint venture project scheme—specify the scheme to which the registration relates; and”;

(b) by adding at the end the following word and paragraph:

5 “; and (g) if the project is part of an individual project scheme—specify the scheme to which the registration relates.”.

### **Form of application**

20. Section 37 of the Principal Act is amended:

10 (a) by inserting after paragraph (5)(b) the following paragraph:

“(ba) if the project is part of a joint venture project scheme—the scheme; and”;

(b) by inserting after paragraph (c) the following paragraph:

15 “(ca) if the project is part of an individual project scheme—the scheme; and”;

(c) by inserting after subsection (6) the following subsection:

“(6A) All of the applications relating to a joint venture project scheme must be set out in the same document.”;

(d) by adding at the end the following subsection:

20 “(8) All of the applications relating to an individual project scheme must be set out in the same document.”.

### **Form of certificate**

21. Section 41 of the Principal Act is amended:

25 (a) by inserting after paragraph (e) the following paragraph:

“(ea) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates; and”;

(b) by adding at the end the following word and paragraph:

30 “; and (g) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.”.

### **Applications for variation**

22. Section 42 of the Principal Act is amended:

35 (a) by inserting after paragraph (1)(c) the following paragraph:

“(ca) if the project is part of a joint venture project scheme—the scheme to which the registration relates;”;

(b) by adding at the end of subsection (1) the following paragraph:

“(e) if the project is part of an individual project scheme—the scheme to which the registration relates.”;

40 (c) by inserting after paragraph (2)(c) the following paragraph:

- “(ca) if the project is part of a joint venture project scheme—  
the scheme to which the certificate relates;”;
- (d) by adding at the end of subsection (2) the following paragraph:
  - “(e) if the project is part of an individual project scheme—  
the scheme to which the certificate relates.”; 5
- (e) by inserting in subsection (3) “, or a joint venture project  
scheme,” after “project”.

**Form of application**

23. Section 43 of the Principal Act is amended:
- (a) by inserting after paragraph (5)(b) the following paragraph: 10
    - “(ba) if the project is part of a joint venture project scheme—  
the scheme; and”;
  - (b) by inserting after paragraph (c) the following paragraph:
    - “(ca) if the project is part of an individual project scheme—  
the scheme; and”;. 15

**Criteria for granting application**

24. Section 46 of the Principal Act is amended:
- (a) by inserting after paragraph (1)(b) the following paragraph:
    - “(ba) if the entity’s project is part of a joint venture project  
scheme—the varied expenditure relates to the same, or 20  
substantially the same, joint venture project scheme as  
was specified in the original registration or certificate,  
as the case may be; and”;
  - (b) by adding at the end of subsection (1) the following word and  
paragraph: 25
    - “; and (d) if the entity’s project is part of an individual project  
scheme—the varied expenditure relates to the same,  
or substantially the same, individual project scheme  
as was specified in the original registration or  
certificate, as the case may be.”; 30
  - (c) by inserting after paragraph (2)(b) the following paragraph:
    - “(ba) if the entity’s project is part of a joint venture project  
scheme—the varied project relates to the same, or 35  
substantially the same, joint venture project scheme as  
was specified in the original registration or certificate,  
as the case may be; and”;
  - (d) by adding at the end of subsection (2) the following word and  
paragraph: 40
    - “; and (d) if the entity’s project is part of an individual project  
scheme—the varied project relates to the same, or  
substantially the same, individual project scheme as  
was specified in the original registration or certificate,  
as the case may be.”;

(e) by inserting after subsection (3) the following subsection:

**[Variation of joint venture project scheme]**

5 “(3A) The DAA must not grant an application for variation of a joint venture project scheme unless the DAA is satisfied that the varied joint venture project scheme is the same, or substantially the same, as the joint venture project scheme specified in the original registration or certificate, as the case may be.”;

(f) by adding at the end the following subsection:

10 **[Variation of an individual project scheme]**

15 “(5) The DAA must not grant an application for variation of an individual project scheme unless the DAA is satisfied that the varied individual project scheme is the same, or substantially the same, as the individual project scheme specified in the original registration or certificate, as the case may be.”.

**Variation of project specification**

20 **25.** Section 48 of the Principal Act is amended by omitting from subsection (1) “or company group project scheme” (wherever occurring) and substituting “, joint venture project scheme, company group project scheme or individual project scheme”.

**Application for transfer**

**26.** Section 49 of the Principal Act is amended:

(a) by adding “and” at the end of paragraph (g);

(b) by inserting after paragraph (g) the following paragraph:

25 “(h) if the project was or is part of an individual project scheme—both:

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

30 (ii) applications under this section are made by the transferee and the transferor in relation to each of the projects to which the scheme relates;”.

**Criteria for granting application**

**27.** Section 53 of the Principal Act is amended:

35 (a) by inserting after subparagraph (f)(ii) the following subparagraph:

40 “(iia) if the transferor’s original project was part of a joint venture project scheme—the modified project is not part of a joint venture project scheme that is substantially different from the original joint venture project scheme; and”;

(b) by adding at the end of paragraph (f) the following subparagraph:

“(iv) if the transferor’s original project was part of an individual project scheme—the modified project is not part of an individual project scheme that is substantially different from the original individual project scheme; and”.

5

**Form of certificate**

28. Section 56 of the Principal Act is amended:

(a) by inserting after paragraph (e) the following paragraph:

“(ea) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates; and”;

10

(b) by adding at the end the following word and paragraph:

“; and (g) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.”.

15

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

29. Section 59 of the Principal Act is amended:

(a) by adding “and” at the end of paragraph (d);

(b) by inserting after paragraph (d) the following paragraph:

20

“(e) if the old joint venture project was part of a joint venture project scheme—the new joint venture project is part of a joint venture project scheme;”.

**Criteria for granting application**

30. Section 63 of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

25

“(da) if the old joint venture project was part of a joint venture project scheme—the new joint venture project is not part of a joint venture project scheme that is substantially different from the original joint venture project scheme; and”.

30

**Form of certificate**

31. Section 66 of the Principal Act is amended by adding at the end the following word and paragraph:

“; and (f) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates.

35

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

32. Section 69 of the Principal Act is amended:

(a) by adding “and” at the end of paragraph (c);

(b) by inserting after paragraph (c) the following paragraph:

40



“(d) if the old partnership’s project was part of an individual project scheme—the new partnership’s project is part of an individual project scheme;”.

**Criteria for granting application**

5 33. Section 73 of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

10 “(da) if the old partnership’s project was part of an individual project scheme—the new partnership’s project is not part of an individual project scheme that is substantially different from the old partnership’s original individual project scheme; and”.

**Form of certificate**

34. Section 76 of the Principal Act is amended by adding at the end the following word and paragraph:

15 “; and (e) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.”.

**Entities to which this Part applies**

35. Section 78 of the Principal Act is amended:

20 (a) by omitting from paragraph (c) “expenditure” and substituting “expenditure,”;

(b) by omitting from paragraph (c) “or company group project scheme” and substituting “, joint venture project scheme, company group project scheme or individual project scheme”.

**When plant expenditure pre-qualifies under this Act**

25 36. Section 86 of the Principal Act is amended by omitting “the plant expenditure is taken to have pre-qualified under this Act” and substituting the following word and paragraphs:

“then:

30 (e) to the extent that the plant expenditure is incurred in respect of the acquisition or construction of a unit of plant—the plant expenditure is taken to have pre-qualified under this Act; and

35 (f) to the extent that the plant expenditure is incurred in respect of the lease of a unit of plant under a long-term lease agreement where the lessor is a leasing company—the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the unit of plant is taken to have pre-qualified under this Act.”.

37. After section 122 of the Principal Act the following section is inserted:

**Certified copies of documents**

“122A.(1) The DAA may certify that a document is a copy of a document (**‘original document’**) issued by the DAA under this Act.

“(2) Subject to subsection (3), a document purporting to be a copy certified under subsection (1) must be received in all courts and tribunals in proceedings arising out of a law of the Commonwealth as evidence as if it were the original document. 5

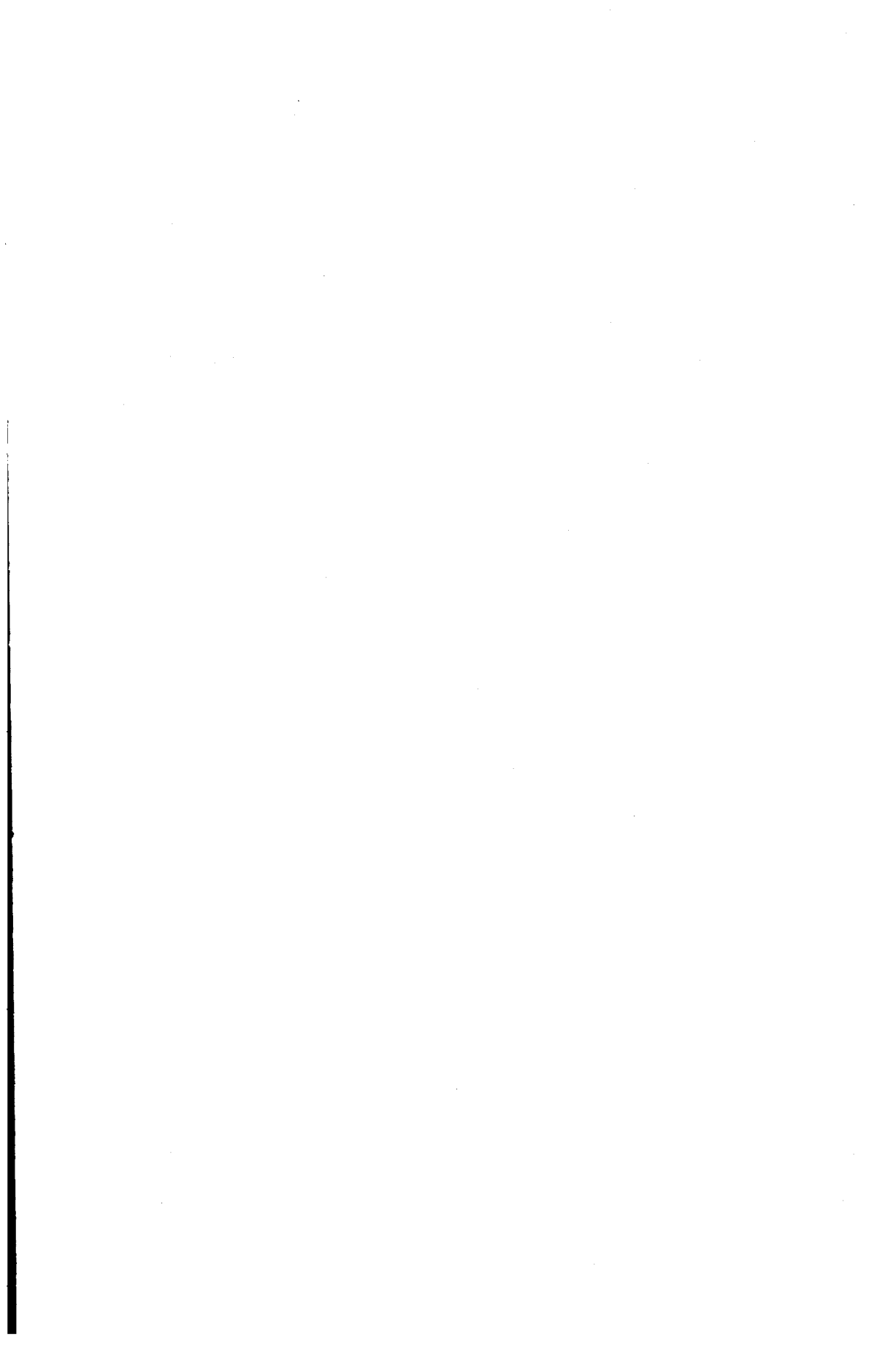
“(3) Subsection (2) does not apply in relation to a document if:

- (a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy; or 10
- (b) in any other case—it is proved that the document is not a true copy.”.

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**NOTE**

1. No. 99, 1992.













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