

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VOTES AND PROCEEDINGS**

No. 40

WEDNESDAY, 16 OCTOBER 1996

1 The House met, at 9.30 a.m., pursuant to adjournment. The Speaker (the Honourable Bob Halverson) took the Chair, and read Prayers.

2 **STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) BILL 1996**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—*And on the amendment moved thereto by Mr P. J. Baldwin, viz.*—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House:

- (1) is of the opinion that the maintenance of a universally accessible system of government schools able to provide appropriate curriculum offerings comprehensive enough to meet the needs of the students enrolled is a national priority;
- (2) expresses grave concern at the damage likely to be done to government schools by the Government’s mooted abolition of Commonwealth requirements for funding non-government schools, with the significant cost being offset by a reduction in Commonwealth direct grants to the government sector;
- (3) condemns the Government for refusing to meet its responsibilities in ensuring that a quality education is accessible to every Australian child”—

Debate resumed.

Amendment negatived.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

*Message from the Governor-General:* Message No. 50, dated 23 September 1996, from His Excellency the Governor-General was announced recommending an appropriation for the purposes of the Bill.

*Consideration in detail*

Bill, by leave, taken as a whole.

Mr P. J. Baldwin, by leave, moved the following amendments together:

*Amendments—*

Clause 19, page 16, (lines 14 to 16), omit subclause (2), substitute:

- (2) The Minister may make a determination reducing an amount that is payable to the State under any provision of this Act in a program year by an amount not greater than the repayable amount: provided that the Minister may not make a determination reducing an amount calculated under section 44 unless, in respect of the relevant State, any of the requirements of Division 2 of this Part have not been complied with.

Part 4, page 29, omit the heading to Division 3, substitute the following heading:

**Division 3—Changes and proposals requiring assessment**

Clause 36, page 29, (lines 11 to 14), omit paragraphs (b) and (c) of the definition of *location proposal*, substitute:

- (b) provide education at a new location in substitution for a previous location where the new location is more than 5 kilometres from the previous location; or
- (c) provide a level of education at an additional location (where the additional location is more than 5 kilometres from the existing location) otherwise than as mentioned in paragraph (b).

Clause 37—

Page 30, (lines 3 to 14), omit subclause (2), substitute:

- (2) The application must:
- (a) be lodged not later than:
- (i) 2 years before the 1st day of March in the year in which the proposal is to take effect; or
- (ii) where the Minister has concluded that a shorter period is appropriate because of exceptional circumstances — another date determined by the Minister; and
- (b) be in writing; and
- (c) set out the particulars of the proposal; and
- (d) request the Minister to vary the list to take account of the proposal.

Page 30 (lines 15 to 23), omit sub-clause (3).

*Proposed new clauses—*

Page 30, after clause 37, insert:

**37A Notice of proposals; access to copies of proposals etc.**

- (1) The Minister must:
  - (a) cause details of proposals received under section 37 to be published in the *Gazette*; and
  - (b) ensure that copies of proposals received under section 37 are made available for inspection by interested persons.
- (2) Where a proposal is lodged:
  - (a) under subparagraph 37(2)(a)(i)—the details must be published in the *Gazette* not later than the 1st day of the July next following receipt by the Minister of the proposal; or
  - (b) under subparagraph 37(2)(a)(ii)—the details must be published in the *Gazette* as soon as practicable after their receipt by the Minister.
- (3) The details of a proposal to be published under this section must include the name of the school or proposed school, its location, the proposed number of students and the proposed levels of education involved.

**37B Opportunity for comment on proposals**

Following publication of the details of proposals in the *Gazette* in accordance with section 37A, any person may, within 8 weeks of the date of the publication of the relevant *Gazette*, make a submission on the proposal to the relevant planning committee.

*Amendments—*

Clause 38, pages 30 and 31, omit the clause, substitute the following clause:

**38 Consideration of applications**

The Minister must not make a determination varying the list to take account of a new school proposal or a location proposal unless the appropriate Non-Government Schools Planning Committee has considered, and provided advice to the Minister on, the proposal.

Clause 39, pages 31 and 32, omit the clause, substitute the following clause:

**39 State based Non-Government Schools Planning Committees**

- (1) For the purposes of this Division, there is to be, in respect of each State, a Non-Government Schools Planning Committee, which may be a joint committee where the Minister and the relevant State Minister agree on membership.
- (2) Where agreement on the membership of a committee is reached between the Minister and the relevant State Minister, a committee appointed under subsection (1) shall consist of:
  - (a) a Chair nominated by the relevant State Minister; and

- (b) 5 other Members nominated jointly by the Minister and the relevant State Minister:
    - (i) 1 of whom shall be chosen from names proposed by the Association of Independent Schools and other non-government school authorities; and
    - (ii) 2 of whom shall be chosen from names proposed by Catholic education authorities; and
    - (iii) 2 of whom shall be chosen from names proposed by other interested parties, including parent and teacher bodies; and
  - (c) 3 members nominated by the relevant State Minister because of their involvement in planning, demography or school/educational planning, at least 2 of whom should be officers of the relevant State Department responsible for school education; and
  - (d) 1 officer of the Department of Employment, Education, Training and Youth Affairs.
- (3) Where agreement is not reached on the membership of a committee between the Minister and the relevant State Minister, the committee shall consist of:
- (a) a Chair nominated by the Minister; and
  - (b) 5 other Members nominated by the Minister:
    - (i) 1 of whom shall be chosen from names proposed by the Association of Independent Schools and other non-government school authorities; and
    - (ii) 2 of whom shall be chosen from names proposed by Catholic education authorities; and
    - (iii) 2 of whom shall be chosen from names proposed by other interested parties, including parent and teacher bodies; and
  - (c) 3 members nominated by the relevant State Minister because of their involvement in planning, demography or school/educational planning, at least 2 of whom should be officers of the relevant State Department responsible for school education.

Clause 40, page 32, omit the clause, substitute the following clause:

**40 Functions of Non-Government Schools Planning Committees**

The functions of a Non-Government Schools Planning Committee are:

- (a) to consider new school proposals and location proposals made to the Minister under this Division, together with any

submission or submissions made under section 37B on a proposal; and

- (i) if it thinks a proposal is appropriate in terms of the criteria set out in this Division and on the basis that funding assistance under this Act should be provided on a planned, consistent and fair basis—to recommend variation of the list to take account of the proposal; or
  - (ii) otherwise—to recommend rejection of the proposal; and
- (b) to report its recommendations to the Minister.

*Proposed new clauses—*

Page 32, after clause 40, insert:

**40A Listing criteria—new school proposal**

The listing criteria for a new school proposal are:

- (a) the requirements that:
  - (i) either:
    - (A) the proposed school's catchment area is within an area where the expected student population is growing at the rate of 2% per annum or more, or
    - (B) the proposed school provides a significant additional educational choice for which there is an established clientele, as may be evidenced by the payment of non-refundable deposits or a guarantee of enrolments by an approved school system; and
  - (ii) approval of the application will not have a significant negative impact on the educational services provided by existing government schools or non-government schools in the catchment area of the proposed school, as assessed by:
    - (A) the prospect of a verifiable and unavoidable contraction of curriculum offerings, resulting from the application of published staffing formulae or other documentation, or
    - (B) the prospective closure of a school, or a reorganisation of educational services, likely to result in significant changes in accessibility for students; and
  - (iii) a 5 year enrolment plan has been prepared and judged by the relevant planning committee as appropriate in terms of the minimum enrolment requirements set out in schedule 8A; and
  - (iv) a 5 year financial plan has been prepared and approved as feasible and appropriate by a member of a panel of

experienced persons approved by the Department for the purposes of this Division;

- (b) the suitability of the proposed catchment area according to section 40D;
- (c) the prospect of the proposed school meeting the registration requirements of the relevant State;
- (d) the question of the existence, in established schools in the catchment area, of an excess of permanent accommodation of 10% or more;
- (e) the degree to which the proposal promotes the rational and economic use of educational resources in the area.

#### **40B Listing criteria—location proposal**

The listing criteria for a location proposal are such of the criteria set out in section 40A with any necessary and appropriate modifications the relevant Non-Government Schools Planning Committee considers appropriate.

#### **40C Assessment of proposals by Non-Government Schools Planning Committees**

- (1) In considering a new school proposal, the relevant planning committee must apply the requirements set out in paragraph 40A(a) and must have regard to the criteria set out in paragraphs 40(A)(b) to (e).
- (2) In considering a location proposal, the relevant planning committee must apply the requirements set out in paragraph 40A(a) to the extent to which they are applicable, and must have regard to the criteria set out in paragraphs 40A(b) to (e) to the extent to which they are applicable.
- (3) After considering a new school proposal or a location proposal a planning committee must advise the Minister of its finding as to whether the proposal should be approved.

#### **40D Catchment areas**

- (1) An application for a new school proposal or a location proposal must:
  - (a) define precisely the proposed catchment area for the school or location; and
  - (b) if the catchment area is or includes an area other than an area immediately adjacent to the school or location—justify the practicability of, and need for, that catchment area.
- (2) If the relevant Non-Government Schools Planning Committee considers that the proposed catchment area is not appropriate, it must not recommend rejection of the application unless it has given the applicant a reasonable opportunity to amend the proposal.

**40E Decision by Minister**

- (1) If:
- (a) the approved authority of an approved school system or of a non-systemic school has notified the Minister of a new school proposal or a location proposal; and
  - (b) a relevant planning committee has recommended that the proposal should be approved; and
  - (c) the Minister is satisfied that, having regard to the matters set out in section 40A, the proposal should be approved;
- the Minister may give provisional approval to the proposal.
- (2) If the Minister makes a decision in relation to a proposal that is not consistent with the advice provided by the relevant planning committee the Minister must, within 14 days of making the decision, publish in the *Gazette* a statement of the reasons for the decision.

**40F Changes to list**

- (1) Subject to subsection (2), if:
- (a) the Minister has given provisional approval under section 40E to a proposal; and
  - (b) the change involved in the proposal has been recognised by the relevant State Minister; and
  - (c) the school has or schools have, not later than the schools census day for the State in the year following the year in which the proposal is to take effect, a number of students enrolled at the relevant level or levels that is not less than the minimum number of students set under schedule 8A for that level or those levels; and
  - (d) the school or schools the subject of the proposal is or are not conducted for profit; and
  - (e) in the case of a non-systemic school—the approved authority of the school is a body corporate;
- the Minister must vary the list to take account of the change.
- (2) The Minister must not vary the list under subsection (1) if a matter referred to in that subsection occurs after the end of 2 years from the beginning of the year in which financial assistance was sought, unless the Minister is satisfied that there are exceptional circumstances justifying the variation.

**40G Non-government schools—change if failure to meet minimum enrolments**

If the number of students enrolled at a particular level, or at a particular combination of levels, at a systemic or non-systemic school in a State, being a school that is included in the list for the

provision of education at that level or those levels on the schools census day for that State in a program year is less than the minimum number of students for that level or that combination of levels, as the case may be, as set out in schedule 8A, for two consecutive years, the Minister must vary the list by:

- (a) removing the name of the school from the list; or
- (b) including the school in the list only in so far as it provides education at a particular level, consistent with the minimum enrolment requirements as set out in schedule 8A.

Page 34, after clause 43, insert:

**43A Limits on funding assistance**

If the Minister makes a determination under section 40F to vary the list to take account of a new school proposal or a location proposal in relation to primary students or secondary students, or both primary and secondary students, at the school or location, as the case may be, the total amount of the grant for recurrent expenditure of the school under section 47 for the year in respect of which the variation takes effect or any of the next following 4 years must not exceed the amount that would be the amount of that grant if the number or numbers of those students in the year concerned were equal to the maximum number or numbers of such students as stated in the application for the variation of the list.

*Amendments—*

Clause 44, page 35 (line 9) omit “not greater than”, substitute “equal to”.

Clause 47, page 39 (after line 3), at the end of the clause add:

- (4) This section has effect subject to section 43A.

*Proposed new schedule—*

Page 87, after schedule 8, insert the following schedule:

**Schedule 8A—Minimum enrolment requirements  
for schools or locations in respect of new  
school proposals or location proposals.**

**Part 1—New school proposals (other than proposals  
for start-up schools) and location proposals.**



Column 1 Class of school	Column 2 Planned minimum number of students at school or location
Primary school other than declared rural primary school.	50
Declared rural primary school.	20
Junior secondary school	
Years 7-10	100
Years 8-10	75
Senior secondary school	40
Years 11 and 12	

Column 1 Class of school	Column 2 Planned minimum number of students at school or location
Full secondary school	
Years 7-12	140
Years 8-12	115

### **Part 2—New school proposals for start-up primary schools.**

Column 1 Class of school	Column 2 Planned minimum number of students at school
Start-up primary school	20 when it begins to operate 50 within 3 years

### **Part 3—New school proposals for start-up schools (other than start-up primary schools).**

Column 1 Class of school	Column 2 Planned number of students at school for year			
	Year 1	Year 2	Year 3	Later years
Junior secondary start-up school				
Years 7-10	25	50	75	100
Years 8-10	25	50	75	75

Column 1	Column 2			
Class of school	Planned number of students at school for year			
Senior secondary start up school Years 11-12	20	40	40	40
Full secondary start up school Years 7-12	45	90	115	140
Years 8-12	45	90	115	115

*Amendments—*

## Schedule 9—

Page 88, after the definition of *capital project*, insert:

*catchment area*, in relation to a new school or a school at a particular location, means the area from which the new school, or the school at the location, is expected to obtain students.

*Catholic education authorities* means organisations or persons associated with the Catholic church and engaged in the delivery of school education.

Page 89, after the definition of *community language*, insert:

*declared rural primary school* means a school declared by the Minister, having regard to the population of the area in which it is located, as a declared rural primary school for the purposes of this Act;

Page 93, after the definition of *overseas student*, insert:

*permanent accommodation* means accommodation at a school other than temporary or demountable accommodation.

Page 93, after the definition of *permanent resident*, insert:

*planning committee* means a Non-Government Schools Planning Committee established under section 39.

Page 95, after the definition of *special school*, insert:

*start up school* means a school included in a new school proposal the acceptance of which was recommended by the relevant Non-Government Schools Planning Committee on the basis that it would be a school starting to provide educational services that was expected to develop into a school serving a larger student population.

Debate continued.

Question—That the amendments be agreed to—put.

The House divided (the Deputy Speaker, Mr J. N. Andrew, in the Chair)—

## AYES, 41

Mr Albanese	Mr Fitzgibbon	Mr Lee	Mr Price
Mr P. J. Baldwin	Mr E. L. Grace*	Mr McClelland	Mr Quick
Mr Beddall	Mr Griffin	Ms Macklin	Mr Sawford*
Mr Brown	Mr Hatton	Mr McLeay	Mr Sercombe
Mr Crean	Mr Holding	Mr McMullan	Mr S. F. Smith
Mrs Crosio	Mr Hollis	Mr Melham	Dr Theophanous
Ms Ellis	Mr Jenkins	Mr A. A. Morris	Mr K. J. Thomson
Mr G. J. Evans	Mr Jones	Mr P. F. Morris	Mr Wilton
Mr M. J. Evans	Mr Langmore	Mr Mossfield	
Mr L. D. T. Ferguson	Mr Latham	Mr O'Connor	
Mr M. J. Ferguson	Dr Lawrence	Mr O'Keefe	

## NOES, 80

Mr Abbott	Mrs Draper	Mr Lindsay	Mr Scott
Mr K. J. Andrews	Mrs Elson	Mr Lloyd	Mr Sharp
Mr Anthony	Mr R. D. C. Evans	Mr McArthur*	Mr Sinclair
Mrs Bailey	Mr Fahey	Mr McDougall	Mr Slipper
Mr R. C. Baldwin	Mr Fischer	Mr McGauran	Mr A. C. Smith
Mr Barresi	Mr Forrest	Mr McLachlan	Mr W. L. Smith
Mr Bartlett	Ms Gambaro	Mr Miles	Mr Somlyay
Mr Billson	Mrs Gash	Mr Moore	Dr Southcott
Mrs Bishop	Mr Georgiou	Mrs Moylan	Mrs Stone
Mr Bradford	Mrs E. J. Grace	Mr Mutch	Mrs Sullivan
Mr Broadbent	Mr Hardgrave	Mr Nairn	Mr Taylor
Mr Brough	Mr Hawker	Mr Nehl	Mr Truss
Mr Cadman	Mr Hicks*	Dr Nelson	Mr Tuckey
Mr E. H. Cameron	Mr Hockey	Mr Neville	Mr M. A. J. Vaile
Mr R. A. Cameron	Ms Jeanes	Mr Nugent	Ms D. S. Vale
Mr Causley	Mrs Johnston	Mr Pyne	Mr Wakelin
Mr Cobb	Mr Jull	Mr Randall	Mrs West
Mr Costello	Mrs D. M. Kelly	Mr Reith	Mr Williams
Mr Dondas	Dr Kemp	Mr Ronaldson	Ms Worth
Mr Downer	Mr Lieberman	Mr Ruddock	Mr Zammit

\* Tellers

And so it was negatived.

Bill agreed to.

Consideration in detail concluded.

On the motion of Dr Kemp (Minister for Schools, Vocational Education and Training), by leave, the Bill was read a third time.

### 3 VOCATIONAL EDUCATION AND TRAINING FUNDING AMENDMENT BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed by Mr P. J. Baldwin who moved, as an amendment—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House:

- (1) is of the opinion that the vocational education and training system has an increasingly vital role in providing Australia's young people with skills appropriate to the changing workplace; and
- (2) condemns the Government:
  - (a) for proposing substantial cuts in expenditure which will hamper the vocational education and training sector in fulfilling this role; and
  - (b) for clearly failing to meet its election commitments to 'continue to support a strong and effective TAFE sector' and 'to ensure that the network of TAFE institutions, especially in rural areas and regional centres, will not be undermined'".

Debate continued.

It being 2 p.m., the debate was interrupted in accordance with standing order 101A, and the resumption of the debate made an order of the day for a later hour this day.

#### 4 MINISTERIAL ARRANGEMENTS

Mr Howard (Prime Minister) informed the House that, during the absence of Dr Wooldridge (Minister for Health and Family Services), Mrs Moylan (Minister for Family Services) would answer questions on his behalf.

#### 5 MR JOHN PORTER—RETIREMENT—STATEMENT BY SPEAKER

The Speaker referred to the retirement of Mr John Porter as Deputy Secretary of the Joint House Department and thanked him for his contribution to the House of Representatives and the Parliament.

Mr McLeay associated himself and former Speaker Child with the remarks of the Speaker.

#### 6 PROVISIONAL PARLIAMENT HOUSE—SPEAKER'S CHAIR—STATEMENT BY SPEAKER

The Speaker made a statement in response to a question asked of him on 9 October 1996 concerning the Speaker's Chair in the provisional Parliament House.

#### 7 QUESTIONS

Questions without notice being asked—

*Paper:* Mr Fischer (Minister for Trade) presented the following paper:

Visit to Venezuela by Mr Fischer—Joint Communique, Caracas, 14 June 1996.

Questions without notice continued.

*Paper:* Mr Crean, by leave, presented the following paper:

Industry, Research and Development Board—AusIndustry—Scoreboard '95: Business expenditure on research and development—Report compiled by Coopers and Lybrand, October 1995.

Questions without notice continued.

*Paper:* Mr Crean, in accordance with standing order 321, having called for a document quoted from by Mr Howard (Prime Minister)—

Mr Howard presented the following paper:

Bligh Ventures Limited—Copy of letter from Leni Stanley, Financial Controller, Bligh Ventures Limited to Mr Moore, Minister for Industry, Science and Tourism, 16 October 1996.

Questions without notice continued.

#### 8 SUSPENSION OF STANDING AND SESSIONAL ORDERS—MOTION OF CENSURE OF THE PRIME MINISTER

Mr Beazley (Leader of the Opposition) moved—That so much of the standing and sessional orders be suspended as would prevent the Leader of the Opposition moving forthwith—That this House censures the Prime Minister:

- (1) for his Industry Minister's failure to meet the requirements of the Prime Minister's guidelines on ministerial conduct;
- (2) notes that there is a clear and interlocking relationship between Bligh Ventures, Bligh Oil and Gas, Techniche, RSM and JTEC;
- (3) notes that it is absurd to assert that those firms have an arms length relationship when they share the same office, they share the same secretarial staff, share the same phone number and share the same directors;
- (4) notes that the Prime Minister is wrong when he asserts, so as to defend the Minister, that Bligh Ventures' situation is like that of superannuation funds and their investments;
- (5) notes that Bligh Ventures is a significant supporter of R&D despite the Prime Minister's claims to the contrary; and
- (6) notes that the Minister has responsibility for venture capital via pooled development funds and the AIDC Acts and that Bligh Ventures is a venture capital company operating within the area of responsibility of the Minister's portfolio; and

The House calls on the Prime Minister to sack the Minister for Industry for his clear breach of the guidelines on the conduct of ministers.

Question—put and passed, with the concurrence of an absolute majority.

#### 9 PRIME MINISTER—MOTION OF CENSURE

Mr Beazley (Leader of the Opposition) moved—That this House censures the Prime Minister:

- (1) for his Industry Minister's failure to meet the requirements of the Prime Minister's guidelines on ministerial conduct;
- (2) notes that there is a clear and interlocking relationship between Bligh Ventures, Bligh Oil and Gas, Techniche, RSM and JTEC;
- (3) notes that it is absurd to assert that those firms have an arms length relationship when they share the same office, they share the same

secretarial staff, share the same phone number and share the same directors;

- (4) notes that the Prime Minister is wrong when he asserts, so as to defend the Minister, that Bligh Ventures' situation is like that of superannuation funds and their investments;
- (5) notes that Bligh Ventures is a significant supporter of R&D despite the Prime Minister's claims to the contrary; and
- (6) notes that the Minister has responsibility for venture capital via pooled development funds and the AIDC Acts and that Bligh Ventures is a venture capital company operating within the area of responsibility of the Minister's portfolio; and

The House calls on the Prime Minister to sack the Minister for Industry for his clear breach of the guidelines on the conduct of ministers.

Debate ensued.

Question—put.

The House divided (the Speaker, Mr Halverson, in the Chair)—

AYES, 46

Mr Adams	Mr M. J. Evans	Mr Latham	Mr O'Connor
Mr Albanese	Mr M. J. Ferguson	Dr Lawrence	Mr O'Keefe
Mr Andren	Mr Fitzgibbon	Mr Lee	Mr Price
Mr P. J. Baldwin	Mr E. L. Grace*	Mr McClelland	Mr Quick
Mr Beazley	Mr Griffin	Ms Macklin	Mr Sawford*
Mr Beddall	Mr Hatton	Mr McLeay	Mr Sercombe
Mr Bevis	Mr Holding	Mr McMullan	Mr S. F. Smith
Mr Brereton	Mr Hollis	Mr Martin	Dr Theophanous
Mr Brown	Mr Jenkins	Mr Melham	Mr K. J. Thomson
Mr Crean	Mr Jones	Mr A. A. Morris	Mr Wilton
Mrs Crosio	Mr Kerr	Mr P. F. Morris	
Mr G. J. Evans	Mr Langmore	Mr Mossfield	

## NOES, 86

Mr Abbott	Mrs Draper	Mr Lindsay	Mr Scott
Mr Anderson	Mrs Elson	Mr Lloyd	Mr Sharp
Mr J. N. Andrew	Mr R. D. C. Evans	Mr McArthur*	Mr Sinclair
Mr K. J. Andrews	Mr Fahey	Mr McDougall	Mr Slipper
Mr Anthony	Mr Filing	Mr McGauran	Mr A. C. Smith
Mrs Bailey	Mr Fischer	Mr McLachlan	Mr W. L. Smith
Mr R. C. Baldwin	Mr Forrest	Mr Miles	Mr Somlyay
Mr Barresi	Ms Gambaro	Mr Moore	Dr Southcott
Mr Bartlett	Mrs Gash	Mrs Moylan	Mrs Stone
Mr Billson	Mr Georgiou	Mr Mutch	Mrs Sullivan
Mrs Bishop	Mrs E. J. Grace	Mr Nairn	Mr Taylor
Mr Bradford	Ms Hanson	Mr Nehl	Mr Truss
Mr Broadbent	Mr Hardgrave	Dr Nelson	Mr Tuckey
Mr Brough	Mr Hawker	Mr Neville	Mr M. A. J. Vaile
Mr Cadman	Mr Hicks*	Mr Nugent	Ms D. S. Vale
Mr E. H. Cameron	Mr Hockey	Mr Prosser	Mr Wakelin
Mr R. A. Cameron	Mr Howard	Mr Pyne	Mrs West
Mr Causley	Ms Jeanes	Mr Randall	Mr Williams
Mr Charles	Mrs Johnston	Mr Reith	Ms Worth
Mr Cobb	Mr Jull	Mr Rocher	Mr Zammit
Mr Costello	Mrs D. M. Kelly	Mr Ronaldson	
Mr Dondas	Dr Kemp	Mr Ruddock	

\*Tellers

And so it was negatived.

**10 PAPER**

The Speaker presented the following paper:

Public Service Act—Department of the Parliamentary Reporting Staff—Report for 1995-96.

**11 AUDITOR-GENERAL'S REPORT—PUBLICATION OF PAPER**

The Speaker presented the following paper:

Audit Act—Auditor-General—Audit report No. 10 of 1996-97—Performance audit—Follow-up audit—Energy management of Commonwealth buildings: Department of Primary Industries and Energy; Department of Administrative Services.

Mr Reith (Leader of the House), by leave, moved—That:

- (1) this House authorises the publication of the Auditor-General's audit report No. 10 of 1996-97; and
- (2) the report be printed.

Question—put and passed.

**12 PAPERS**

The following papers were presented:

Australian Institute of Marine Science Act—Australian Institute of Marine Science—Report for 1995-96.

Australian National Maritime Museum Act—Australian National Maritime Museum—Report for 1995-96.

Australian National Training Authority Act—Australian National Training Authority—Report for 1995—

Volume 1.

Volume 2.

Volume 3.

Australian Nuclear Science and Technology Organisation Act—Australian Nuclear Science and Technology Organisation—Report for 1995-96.

Australian Tourist Commission Act—Australian Tourist Commission—Report for 1995-96.

Commissioner of Taxation—Report for 1995-96.

Defence policy—Ministerial statement, 15 October 1996.

Export Finance and Insurance Corporation Act—Export Finance and Insurance Corporation—Report for 1995-96.

Industrial Chemicals (Notification and Assessment) Act—National Industrial Chemicals Notification and Assessment Scheme—Report for 1995-96.

National Health and Medical Research Council Act—National Health and Medical Research Council—

Grants 1996.

Report for 1995.

Primary Industries and Energy Research and Development Act—Forest and Wood Products Research and Development Corporation—Report for 1995-96.

Public Service Act—

National Science and Technology Centre—Report for 1995-96.

Royal Australian Mint—Report for 1995-96.

Social Security Act and Public Service Act—Department of Social Security—Report for 1995-96.

Tobacco Marketing Act—Australian Tobacco Marketing Advisory Committee—Final report, for period 1 January to 3 July 1995.

Trade Practices Act and Public Service Act—Australian Competition and Consumer Commission—Report for 1995-96.

### **13 PAPERS—MOTION TO TAKE NOTE OF PAPERS**

Mr Reith (Leader of the House) moved—That the House take note of the following papers:

Australian Institute of Marine Science Act—Australian Institute of Marine Science—Report for 1995-96.

Australian Nuclear Science and Technology Organisation Act—Australian Nuclear Science and Technology Organisation—Report for 1995-96.

Australian Tourist Commission Act—Australian Tourist Commission—Report for 1995-96.



Commissioner of Taxation—Report for 1995-96.

Defence policy—Ministerial statement, 15 October 1996.

National Science and Technology Centre—Report for 1995-96.

Primary Industries and Energy Research and Development Act—Forest and Wood Products Research and Development Corporation—Report for 1995-96.

Trade Practices Act and Public Service Act—Australian Competition and Consumer Commission—Report for 1995-96.

Debate adjourned (Mr Crean), and the resumption of each debate made an order of the day for the next sitting.

**14 HEALTH POLICY FOR VETERAN COMMUNITY IN RURAL AND REMOTE AREAS—MINISTERIAL STATEMENT AND PAPER**

Mr Scott (Minister for Veterans' Affairs), by leave, made a ministerial statement on health policy for the veteran community in rural and remote areas, and presented the following paper:

Department of Veterans' Affairs—Health policy for the veteran community in rural and remote areas.

Mr Martin, by leave, also made a statement with reference to the matter.

**15 PROPOSED DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—OVERSEAS TRADE INTERESTS**

The House was informed that Mr S. F. Smith had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The need for Australia's overseas trade interests to be ministerially represented in a clear and unequivocal manner".

The proposed discussion having received the necessary support—

Mr S. F. Smith rising to address the House—

Mr McLachlan (Minister for Defence) moved—That the business of the day be called on.

Question—put.

The House divided (the Deputy Speaker, Mr J. N. Andrew, in the Chair)—

## AYES, 80

Mr Abbott	Mr Dondas	Mr Lieberman	Mr Scott
Mr Anderson	Mrs Draper	Mr Lindsay	Mr Sharp
Mr K. J. Andrews	Mrs Elson	Mr Lloyd	Mr Sinclair
Mr Anthony	Mr R. D. C. Evans	Mr McArthur*	Mr Slipper
Mrs Bailey	Mr Fahey	Mr McDougall	Mr A. C. Smith
Mr R. C. Baldwin	Mr Forrest	Mr McLachlan	Mr W. L. Smith
Mr Barresi	Mrs Gallus	Mr Miles	Mr Somlyay
Mr Bartlett	Ms Gambaro	Mrs Moylan	Dr Southcott
Mr Billson	Mrs Gash	Mr Mutch	Mrs Stone
Mrs Bishop	Mr Georgiou	Mr Nairn	Mrs Sullivan
Mr Bradford	Mrs E. J. Grace	Mr Nehl	Mr Taylor
Mr Broadbent	Ms Hanson	Dr Nelson	Mr Truss
Mr Brough	Mr Hardgrave	Mr Neville	Mr Tuckey
Mr Cadman	Mr Hawker	Mr Nugent	Mr M. A. J. Vaile
Mr E. H. Cameron	Mr Hicks*	Mr Prosser	Ms D. S. Vale
Mr R. A. Cameron	Mr Hockey	Mr Pyne	Mr Wakelin
Mr Causley	Ms Jeanes	Mr Randall	Mrs West
Mr Charles	Mrs Johnston	Mr Reith	Mr Williams
Mr Cobb	Mr Jull	Mr Ronaldson	Ms Worth
Mr Costello	Dr Kemp	Mr Ruddock	Mr Zammit

## NOES, 43

Mr Adams	Mr Fitzgibbon	Dr Lawrence	Mr O'Connor
Mr P. J. Baldwin	Mr E. L. Grace*	Mr Lee	Mr O'Keefe
Mr Beddall	Mr Griffin	Mr McClelland	Mr Price
Mr Bevis	Mr Hatton	Ms Macklin	Mr Quick
Mr Breton	Mr Holding	Mr McLeay	Mr Sawford*
Mr Brown	Mr Hollis	Mr McMullan	Mr Sercombe
Mr Crean	Mr Jenkins	Mr Martin	Mr S. F. Smith
Mrs Crosio	Mr Jones	Mr Melham	Dr Theophanous
Mr G. J. Evans	Mr Kerr	Mr A. A. Morris	Mr K. J. Thomson
Mr M. J. Evans	Mr Langmore	Mr P. F. Morris	Mr Wilton
Mr M. J. Ferguson	Mr Latham	Mr Mossfield	

\* Tellers

And so it was resolved in the affirmative.

## 16 MIGRATION LEGISLATION AMENDMENT BILL (NO. 3) 1996

Mr Ruddock (Minister for Immigration and Multicultural Affairs) presented a Bill for an Act to amend the *Australian Citizenship Act 1948*, the *Immigration (Education) Act 1971*, the *Migration Act 1958* and the *Migration (Health Services) Charge Act 1991*, and for related purposes.

Bill read a first time.

Mr Ruddock moved—That the Bill be now read a second time.

*Paper:* Mr Ruddock presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Kerr), and the resumption of the debate made an order of the day for the next sitting.

**17 MIGRATION (VISA APPLICATION) CHARGE BILL 1996**

Mr Ruddock (Minister for Immigration and Multicultural Affairs) presented a Bill for an Act to impose a charge in respect of applications for visas.

Bill read a first time.

Mr Ruddock moved—That the Bill be now read a second time.

*Paper:* Mr Ruddock presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Kerr), and the resumption of the debate made an order of the day for the next sitting.

**18 IMMIGRATION (EDUCATION) CHARGE AMENDMENT BILL 1996**

Mr Ruddock (Minister for Immigration and Multicultural Affairs) presented a Bill for an Act to amend the *Immigration (Education) Charge Act 1992*, and for related purposes.

Bill read a first time.

Mr Ruddock moved—That the Bill be now read a second time.

*Paper:* Mr Ruddock presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Kerr), and the resumption of the debate made an order of the day for the next sitting.

**19 VOCATIONAL EDUCATION AND TRAINING FUNDING AMENDMENT BILL 1996**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—*And on the amendment moved thereto by Mr P. J. Baldwin, viz.*—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House:

- (1) is of the opinion that the vocational education and training system has an increasingly vital role in providing Australia’s young people with skills appropriate to the changing workplace; and
- (2) condemns the Government:
  - (a) for proposing substantial cuts in expenditure which will hamper the vocational education and training sector in fulfilling this role; and
  - (b) for clearly failing to meet its election commitments to ‘continue to support a strong and effective TAFE sector’ and ‘to ensure that the network of TAFE institutions, especially in rural areas and regional centres, will not be undermined’”—

Debate resumed.

Amendment negatived.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

*Message from the Governor-General:* Message No. 51, dated 23 September 1996, from His Excellency the Governor-General was announced recommending an appropriation for the purposes of the Bill.

Leave granted for third reading to be moved forthwith.

On the motion of Dr Kemp (Minister for Schools, Vocational Education and Training), the Bill was read a third time.

## 20 NATURAL HERITAGE TRUST OF AUSTRALIA BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—*And on the amendment moved thereto by Dr Lawrence, viz.*—That all words after “That” be omitted with a view to substituting the following words: “the House is of the opinion that the Bill should be withdrawn and redrafted to provide, in the interest of certainty, for \$1 billion from the Consolidated Revenue Fund to be credited upon enactment to the Natural Heritage Trust of Australia Reserve”—

Debate resumed.

Debate adjourned (Mr Anthony), and the resumption of the debate made an order of the day for the next sitting.

## 21 ADJOURNMENT

Mr Jull (Minister for Administrative Services) moved—That the House do now adjourn.

Debate ensued.

The House continuing to sit until 8 p.m.—The Speaker adjourned the House until tomorrow at 9.30 a.m.

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## PAPERS

The following papers were deemed to have been presented on 16 October 1996:

Currency Act—Determination 1996 No. 5.

Taxation Administration Act—Determinations 1996 Nos. TD 96/42, TD 96/43.

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## ATTENDANCE

All Members attended (at some time during the sitting) except Mrs Gallus, Mr Katter, Mr Marek, Mr Reid, Mr Tanner, Mr A. P. Thomson and Mr Willis.

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**L. M. BARLIN**

Clerk of the House of Representatives

1996

**HOUSE OF REPRESENTATIVES**  
**SUPPLEMENT TO VOTES AND PROCEEDINGS**

No. 40

**MAIN COMMITTEE**

**MINUTES OF PROCEEDINGS**

**WEDNESDAY, 16 OCTOBER 1996**

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1 The Main Committee met at 10 a.m.

2 **INCOME TAX ASSESSMENT BILL 1996**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

*Paper:* Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister) presented a supplementary explanatory memorandum to the following Bills:

Income Tax Assessment 1996;

Income Tax (Consequential Amendments) 1996; and

Income Tax (Transitional Provisions) 1996.

Question—put and passed—Bill read a second time.

*Consideration in detail*

Bill, by leave, taken as a whole.

On the motion of Mr Miles, by leave, the following amendments were made together:

Clause 1-2, page 2 (line 11), omit “1996”, substitute “1997”.

Page 17 (after line 2), insert:

**Guide to Division 6**

Page 17 (after line 5), insert:

**Operative provisions**

Page 18 (after line 7), after clause 6-1, insert:

**Operative provisions**

Clause 6-5—

Page 18 (line 15), after “Australia” insert “, during the income year”.

Page 18 (line 19), after “Australian sources” insert “during the income year”.

Page 18 (line 21), after “assessable income” insert “for the income year”.

Clause 10-5—

Page 29 (lines 10 and 11), omit:

**co-operative company**

receipts of ..... **119**

Page 29 (after line 28), insert:

**co-operative company**

receipts of ..... **119**

Page 36 (line 18), omit “*electricity*”, substitute “*electricity connections*”.

Page 38 (line 31), omit “*leave*”, substitute “*leave payments*”.

Page 42 (line 12), omit:

CRAFT scheme, employer’s income from ..... **23(jc)**

Page 43 (after table item dealing with sports, culture or recreation), insert:

**superannuation and related business**

constitutionally protected funds ..... **271A**

Page 46 (after line 18), after:

non-resident, foreign sourced income ..... **23(r)**

insert:

OBU off-shore investment trusts, income to which  
subsection **121D(6)** applies ..... **121EL**

Page 46 (line 20), after “Papua New Guinea pension”, insert “, Papua New Guinea resident”.

Page 47 (line 17), omit:

policy premium, income from ..... **111**

Page 47 (lines 21 and 22), omit:

reinsurance recovery and refund of premium, income  
from ..... **111AB**

Clause 12-5—

Page 52 (lines 10 to 12), omit:

“12% of original value” method ..... Subdivision  
28-D

substantiation of car expenses ..... Division 900

substitute:

substantiation of car expenses ..... Division 900

“12% of original value” method ..... Subdivision  
28-D

Page 54 (lines 29 and 30), omit:

**electricity**

connections, capital cost of ..... **70A**

substitute:

**electricity connections**

capital cost of ..... 70A

Page 60 (lines 28 and 29), omit:

modified application of trading stock provisions ..... 102AAZ

modified application of depreciation provisions ..... 102AAZ

substitute:

modified application of depreciation provisions ..... 102AAZ

modified application of trading stock provisions ..... 102AAZ

Page 61 (lines 27 to 30), omit:

income equalisation deposits ..... 159GA to  
159GDA

horticultural plants, establishment costs of ..... 124ZZD to  
124ZZR

substitute:

horticultural plants, establishment costs of ..... 124ZZD to  
124ZZR

income equalisation deposits ..... 159GA to  
159GDA

Page 62 (line 4), after “*electricity*”, insert “*connections*”.

Clause 26-55, page 74 (after line 21), after paragraph (d), insert:

- (e) Division 3 of Part XII (Drought investment allowance), so far as it provides for deductions by a \*leasing company.

Clause 28-115, page 89 (lines 17 and 18), omit the example, substitute:

Example: If you keep a log book in 1997-98, you would need to keep the next one in 2002-2003, unless subsection (3) or (4) requires one sooner.

Clause 36-25, page 107 (after line 12), insert:

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4. A company can transfer a surplus Subdivision 170-A  
amount of its tax loss to another  
company so that the other company can  
deduct the amount in the income year  
of the transfer. (Both companies must  
be members of the same wholly-owned  
group.)

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Clause 40-10, page 114 (line 15), omit “You”, substitute “Depending on the kind of expenditure, you”.

Clause 40-30—

Page 118 (after table item dealing with development allowance), insert:

<b>Drought investment allowance</b>	Capital expenditure on certain kinds of structural improvements and equipment for use in a primary production business for the purpose of producing assessable income	Primary producers, and finance companies that lease the improvements or equipment to primary producers	Immediate 10% write off when a unit of property is first used in a primary production business for producing assessable income or is installed ready for such use	Deduction disallowed if property disposed of within 12 months of first use, and if property disposed of later in accordance with intention formed before first use	<b>Part XII</b>
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Page 119 (table item dealing with electricity connections, column headed “What expenditure qualifies?”), omit “on land used or intended for use in producing assessable income”, substitute “used or intended for use in a business for producing assessable income on land in Australia”.

Page 119 (table item dealing with electricity connections, column headed “Who may deduct?”), omit “carrying on an assessable business on land in Australia”, substitute “with an interest in the land”.

Page 120 (table item dealing with grapevines, column headed “For more detail, see ...”), omit “75D”, substitute “75AA”.

Page 120 (after table item dealing with grapevines), insert:

<b>Horticultural plants</b>	Expenditure on establishing a horticultural plant	Entity carrying on horticultural business	1 to 15 years, depending on effective life of horticultural plant	Further deduction allowed if horticultural plant destroyed	<b>Division 10F of Part III</b>
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Page 122 (table item dealing with telephone lines, column headed “Who may deduct?”), omit “carrying on a primary production business”, substitute “with an interest in the land”.

Page 123 (table item dealing with timber mill buildings, column headed “Who may deduct?”), omit “operations”, substitute “milling business”.

Clause 41-15, page 126 (line 23), omit “1996-97”, substitute “1997-98”.

Clause 43-2—

Page 134 (graphic, Step 1), omit “30/6/96”, substitute “30/6/97”.

Page 134 (graphic, Step 1), omit “1/7/96”, substitute “1/7/97”.



Clause 43-55—

Page 141, (lines 13 to 17), omit paragraph (1)(a), substitute:

- (a) you entered into an \*arrangement with:
    - (i) an entity to which paragraph 23(d), (e), (ea), (eb), (ec), (f), (g), (h), (j) or (k) of the *Income Tax Assessment Act 1936* (dealing with \*exempt income) applies; or
    - (ii) an STB (within the meaning of Division 1AB of Part III of that Act) whose \*ordinary income and \*statutory income is exempt from income tax;
- under which you were to pay an amount, or transfer property, directly or indirectly, to the entity; and

Page 141, (lines 25 to 27), omit subclause (2), substitute:

- (2) Subsection (1) applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(i) after 1 May 1980 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.
- (3) Subsection (1) also applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(ii) after 30 June 1994 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.

Clause 43-65, page 143 (line 3), omit “1 July 1996”, substitute “1 July 1997”.

Clause 43-75—

Page 144 (line 16), omit “30 June 1996”, substitute “30 June 1997”.

Page 144 (line 24), omit “1 July 1996”, substitute “1 July 1997”.

Clause 43-85, page 147, (line 6), omit “spec builders”, substitute “speculative builders”.

Clause 43-90, page 151 (table item “Time period 6”, Column 1), omit “30/6/96”, substitute “30/6/97”.

Clause 43-95—

Page 151 (line 15), omit “1 July 1996”, substitute “1 July 1997”.

Page 152 (line 1), omit “30 June 1996”, substitute “30 June 1997”.

Page 152 (line 7), omit “1 July 1996”, substitute “1 July 1997”.

Page 152 (line 11), omit “30 June 1996”, substitute “30 June 1997”.

Clause 43-140—

Page 157 (table item “Time period 1”, Column 1), omit “30/6/96”, substitute “30/6/97”.

Page 157 (table item “Time period 2”, Column 1), omit “30/6/96”, substitute “30/6/97”.

Clause 43-145—

Page 160 (table item “Time period 1”, Column 1), omit “30/6/96”, substitute “30/6/97”.

Page 162 (table item “Time period 2”, Column 1), omit “30/6/96”, substitute “30/6/97”.

Clause 43-185, page 171 (line 16), omit “1 July 1996”, substitute “1 July 1997”.

Clause 165-10, page 186 (after line 10), at the end of the clause, add:

Note: In the case of a listed public company or its 100% subsidiary, Subdivision 166-A modifies how this Subdivision applies, unless the company chooses otherwise.

Clause 165-35, page 193 (after line 17), after the existing note, add:

Note: In the case of a listed public company or its 100% subsidiary, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

Clause 165-170, page 209 (lines 1 to 6), omit the clause.

Clause 165-205—

Page 211 (lines 19 and 20), omit “someone as \*legal personal representative of the person”, substitute “the trustee of the person’s estate”.

Page 211 (line 21), after “owned”, insert “beneficially”.

Page 213 (after line 11), after Division 165, insert:

## **Division 166—Income tax consequences of changing ownership or control of a listed public company**

### **Guide to Division 166**

#### **166-1 What this Division is about**

This Division modifies the way the rules in Division 165 apply to a listed public company (and also its 100% subsidiaries). It makes it easier for the company to comply with those rules:

- if the company has maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between;
- all shareholdings of less than 1% in the company are treated as if they were held by a single notional entity so that it is unnecessary to trace through to the persons who beneficially own those shareholdings;
- the company does not have to trace through any complying superannuation funds, complying approved deposit funds or special companies that are interposed between the company and persons who control any of the voting power, or who have rights to dividends or capital, in the company.

## Table of Subdivisions

- 166-A Deducting tax losses of earlier income years
- 166-B Working out the taxable income and tax loss for the income year of the change
- 166-D Tests for finding out whether the listed public company has maintained the same owners
- 166-F How to treat shareholdings of less than 1%
- 166-G How to treat interposed superannuation funds, approved deposit funds and special companies

### Subdivision 166-A—Deducting tax losses of earlier income years

## Table of sections

- 166-5 How Subdivision 165-A applies to a listed public company
- 166-10 How Subdivision 165-A applies to a 100% subsidiary of a listed public company
- 166-15 Companies can choose that this Subdivision is not to apply to them

### 166-5 How Subdivision 165-A applies to a listed public company

- (1) This Subdivision modifies the way Subdivision 165-A applies to a company that is a \*listed public company at all times during a period (the *test period*) consisting of the \*loss year, the income year and any intervening period.

Note 1: Subdivision 165-A is about the conditions a company must satisfy before it can deduct a tax loss for an earlier income year.

Note 2: This Subdivision also modifies how Subdivision 165-A applies to a 100% subsidiary of a listed public company: see section 166-10.

Note 3: A company can choose that this Subdivision is not to apply to it: see section 166-15.

#### *Substantial continuity of ownership*

- (2) The \*listed public company is taken to have met the conditions in section 165-12 (which is about the company maintaining the same owners) if there is \*substantial continuity of ownership of the company as between the start of the \*test period and each of these other times in the period:
  - (a) the time of each \*abnormal trading in \*shares in the company; and
  - (b) the end of each income year.

See section 166-145 to work out whether there is substantial continuity of ownership.

*No substantial continuity of ownership*

- (3) The \*listed public company is taken to have *failed* to meet the conditions in section 165-12 if there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and one or more of the other times referred to in subsection (2).

*Satisfies the same business test*

- (4) However, if the \*listed public company satisfies the \*same business test for the income year (the *same business test period*), it is taken to have satisfied the condition in section 165-13 (which is about the company carrying on the same business).

For the same business test: see Subdivision 165-E.

- (5) Apply the \*same business test to the \*business that the \*listed public company carried on immediately before the first time (the *test time*) covered by paragraph (2)(a) or (b) for which there was no \*substantial continuity of ownership of the company as between the start of the test period and that time.

**166-10 How Subdivision 165-A applies to a 100% subsidiary of a listed public company**

- (1) This Subdivision also modifies the way Subdivision 165-A applies to a company that is *not* a \*listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Subdivision 165-A is about the conditions a company must satisfy before it can deduct a tax loss for an earlier income year.

- (2) The company (the *subsidiary*) must be a \*100% subsidiary of another company (the *holding company*) at all times during a period consisting of:
- (a) the \*loss year of the subsidiary; and
  - (b) the income year of the subsidiary; and
  - (c) any intervening period.
- (3) Also, the \*holding company must be a \*listed public company at all times during that period.
- (4) If the conditions are met then, for the purposes of applying Subdivision 165-A to the subsidiary, this Subdivision applies to the subsidiary as if:
- (a) the subsidiary were itself a \*listed public company at all times during that period; and
  - (b) an \*abnormal trading in \*shares in the \*holding company during that period were an abnormal trading in shares in the subsidiary.

(Subdivisions 166-D, 166-F and 166-G apply to the subsidiary in the same way and for the same purpose.)

**166-15 Companies can choose that this Subdivision is not to apply to them**

- (1) The \*listed public company or subsidiary can choose that Subdivision 165-A is to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

**Subdivision 166-B—Working out the taxable income and tax loss for the income year of the change**

**Table of sections**

166-20	How Subdivision 165-B applies to a listed public company
166-25	How to work out the taxable income and tax loss
166-30	How Subdivision 165-B applies to a 100% subsidiary of a listed public company
166-35	Companies can choose that this Subdivision is not to apply to them

**166-20 How Subdivision 165-B applies to a listed public company**

- (1) This Subdivision modifies the way Subdivision 165-B applies to a company that is a \*listed public company at all times during the income year (the *test period*).

Note 1: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way.

Note 2: This Subdivision also modifies how Subdivision 165-B applies to a 100% subsidiary of a listed public company: see section 166-30.

Note 3: A company can choose that this Subdivision is not to apply to it: see section 166-20.

*No abnormal trading*

- (2) If there is *no* \*abnormal trading in \*shares in the \*listed public company during the \*test period, it is taken to have met the condition in paragraph 165-35(a) (which is about there being persons having \*more than a 50% stake in it during the whole of the income year).

*Abnormal trading, but substantial continuity of ownership*

- (3) If there *is* \*abnormal trading, but there is \*substantial continuity of ownership of the company as between the start of the \*test period and the time of each abnormal trading, the company is also taken to have met the condition in paragraph 165-35(a).

See section 166-145 to work out whether there is substantial continuity of ownership.

*Abnormal trading without substantial continuity of ownership*

- (4) If there *is* \*abnormal trading, and there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and the time of the abnormal trading, the company is taken to have *failed* to meet the condition in paragraph 165-35(a).

*Satisfies the same business test*

- (5) However, if the company satisfies the \*same business test for the rest of the income year (the *same business test period*) after the first \*abnormal trading covered by subsection (4), it is taken to have satisfied the condition in paragraph 165-35(b) (which is about the company carrying on the same business).

For the same business test: see Subdivision 165-E.

- (6) Apply the \*same business test to the \*business that the company carried on immediately before the time of the first \*abnormal trading (the *test time*) covered by subsection (4).

**166-25 How to work out the taxable income and tax loss**

- (1) If the \*listed public company must calculate its taxable income and \*tax loss for the income year under Subdivision 165-B, then, in dividing the income year into periods, apply subsection (2) instead of subsection 165-45(3).
- (2) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:
- (a) the *earliest* time when there is an \*abnormal trading in \*shares in the \*listed public company (except one covered by subsection (3)); or
  - (b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the \*listed public company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
    - (i) getting some benefit or advantage to do with how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else.
- (3) In working out when a period ends, disregard an \*abnormal trading if there is \*substantial continuity of ownership of the company as between the start of the period and the time of the abnormal trading.

See section 166-145 to work out whether there is substantial continuity of ownership.

### **166-30 How Subdivision 165-B applies to 100% subsidiary of a listed public company**

- (1) This Subdivision also modifies the way Subdivision 165-B applies to a company that is *not* a \*listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way.

- (2) The company (the *subsidiary*) must be a \*100% subsidiary of another company (the *holding company*) at all times during the income year of the subsidiary.
- (3) Also, the \*holding company must be a \*listed public company at all times during that income year.
- (4) If the conditions are met then, for the purposes of applying Subdivision 165-B to the subsidiary, this Subdivision applies to the subsidiary as if:
- (a) the subsidiary were itself a \*listed public company at all times during the income year; and
  - (b) an \*abnormal trading in \*shares in the \*holding company during the income year were an abnormal trading in shares in the subsidiary.

(Subdivisions 166-D, 166-F and 166-G apply to the subsidiary in the same way and for the same purpose.)

### **166-35 Companies can choose that this Subdivision is not to apply to them**

- (1) The \*listed public company or subsidiary can choose that Subdivision 165-B is to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

[The next Subdivision is Subdivision 166-D.]

### **Subdivision 166-D—Tests for finding out whether the listed public company has maintained the same owners**

#### **Guide to Subdivision 166-D**

### **166-140 What this Subdivision is about**

This Subdivision has the tests to work out whether a listed public company has maintained the same owners as between different times.

Subdivisions 166-F and 166-G have rules which make it easier for the company to satisfy these ownership tests.

Note: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.

## Table of sections

### Substantial continuity of ownership

166-145 Substantial continuity of ownership

### The ownership tests

166-150 Who has more than 50% of the voting power in the listed public company at a particular time

166-155 Who has rights to more than 50% of the listed public company's dividends at a particular time

166-160 Who has rights to more than 50% of the listed public company's capital distributions at a particular time

### Rules affecting the operation of the ownership tests

166-165 Rules in Division 165 apply

### Substantial continuity of ownership

#### 166-145 Substantial continuity of ownership

- (1) There is *substantial continuity of ownership* of the \*listed public company as between the start of the \*test period and another time in the test period if (and only if) the conditions in this section are met.

#### *Voting power*

- (2) There must be persons (none of them companies) who had \*more than 50% of the voting power in the \*listed public company at the start of the \*test period. Also, those persons must have had \*more than 50% of the voting power in the \*listed public company immediately after the other time in the test period.

To work out who had more than 50% of the voting power: see section 166-150.

#### *Rights to dividends*

- (3) There must be persons (none of them companies) who had rights to \*more than 50% of the \*listed public company's \*dividends at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the \*listed public company's dividends immediately after the other time in the test period.

To work out who had rights to more than 50% of the listed public company's dividends: see section 166-155.



*Rights to capital distributions*

- (4) There must be persons (none of them companies) who had rights to \*more than 50% of the \*listed public company's capital distributions at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the \*listed public company's capital distributions immediately after the other time in the test period.

To work out who had rights to more than 50% of the listed public company's capital distributions: see section 166-160.

*When to apply the test*

- (5) To work out whether a condition in this section was satisfied at a time (the *ownership test time*), apply the ownership test for that condition.

**The ownership tests****166-150 Who has more than 50% of the voting power in the listed public company at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, between them control, or are able to control, the voting power in the \*listed public company (whether directly, or indirectly through one or more interposed entities), those persons have *more than 50% of the voting power in the listed public company* at that time.

**166-155 Who has rights to more than 50% of the listed public company's dividends at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) more than 50% of any \*dividends that the \*listed public company may pay, those persons have rights to *more than 50% of the listed public company's dividends* at that time.

**166-160 Who has rights to more than 50% of the listed public company's capital distributions at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) more than 50% of any distribution of capital of the \*listed public company, those persons have rights to *more than 50% of the listed public company's capital distributions* at that time.

## Rules affecting the operation of the ownership tests

### 166-165 Rules in Division 165 apply

- (1) The rules in these sections also apply for the purposes of an ownership test in this Subdivision:
- 165-175 (which is about how an ownership test can be satisfied by a single person);
  - 165-185 (which treats some \*shares as never having carried rights);
  - 165-190 (which treats some \*shares as always having carried rights);
  - 165-195 (which disregards redeemable \*shares);
  - 165-200 (which is about how other rules do not affect how \*shares or rights are counted);
  - 165-205 (which deals with deaths of beneficial owners).
- (2) The rule in section 165-180 (which is about arrangements affecting beneficial ownership of \*shares) also applies for the purposes of an ownership test in this Subdivision as if the reference to a particular time during the ownership test period were a reference to the ownership test time.

*[The next Subdivision is Subdivision 166-F.]*

### Subdivision 166-F—How to treat shareholdings of less than 1%

#### Guide to Subdivision 166-F

#### 166-215 What this Subdivision is about

This Subdivision has rules which make it easier for the listed public company to satisfy the ownership tests in Subdivision 166-D.

All shareholdings of less than 1% in the company are treated as if they were held by a single notional entity. This means that the company does not have to trace through to the persons who beneficially own those shares.

A similar rule applies if another listed public company is interposed between the company and those persons. All shareholdings of less than 1% in the *interposed* company are treated as if they were held by a different single notional entity. This means that the company does not have to trace through to the persons who beneficially own those shares in the interposed company.

- Note 1: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.
- Note 2: The rules in this Subdivision do not apply if they would hide a failure by the company to maintain the same owners: see sections 166-250 and 166-255.

## Table of sections

### Special tracing rules for listed public companies

- 166-220 Shareholdings of less than 1% in the listed public company
- 166-225 Shareholdings of less than 1% in an interposed listed public company
- 166-230 Notional shareholder
- 166-235 Notional shareholder taken to have minimum voting control, dividend rights and capital rights
- 166-240 Voting, dividend and capital shareholding of less than 1%
- 166-245 Shares that are part of a substantial shareholding

### When the rules in this Subdivision do not apply

- 166-250 Limit on listed public company splitting its shares into different classes
- 166-255 If listed public company would not have otherwise passed the ownership tests

### Special tracing rules for listed public companies

#### 166-220 Shareholdings of less than 1% in the listed public company

This Subdivision modifies how the ownership tests are applied to the \*listed public company (the *head company*) if the company has:

- (a) \*voting shareholdings of less than 1%; or
- (b) \*dividend shareholdings of less than 1%; or
- (c) \*capital shareholdings of less than 1%.

For the ownership tests: see sections 166-150, 166-155  
and 166-160.

#### 166-225 Shareholdings of less than 1% in an interposed listed public company

- (1) This Subdivision also modifies how the ownership tests are applied to the \*head company if another \*listed public company (the *interposed company*) meets the conditions in subsections (2) and (3).

For the ownership tests: see sections 166-150, 166-155  
and 166-160.

- (2) The \*interposed company must be interposed between the \*head company and persons (none of them companies) who:
  - (a) control (or are able to control) voting power in the head company indirectly through the interposed company; or

- (b) have the right to receive, for their own benefit and \*indirectly through the interposed company, any \*dividends the head company may pay; or
  - (c) have the right to receive, for their own benefit and \*indirectly through the interposed company, any distributions of capital of the head company.
- (3) The \*interposed company must have:
- (a) \*voting shareholdings of less than 1%; or
  - (b) \*dividend shareholdings of less than 1%; or
  - (c) \*capital shareholdings of less than 1%.

### 166-230 Notional shareholder

#### *Notional shareholder of the head company*

- (1) The ownership tests in sections 166-150, 166-155 and 166-160 are applied to the \*head company as if, at the \*ownership test time, a single notional entity (the ***notional shareholder***):
- (a) directly controlled the voting power in the head company that is carried by each \*voting shareholding of less than 1% in the company at that time; and
  - (b) had the right to receive, for its own benefit and directly:
    - (i) any \*dividends the head company may pay in respect of each \*dividend shareholding of less than 1% in the company at that time; and
    - (ii) any distributions of capital of the head company in respect of each \*capital shareholding of less than 1% in the company at that time; and
  - (c) were a person (other than a company).

#### *Notional shareholder of the interposed company*

- (2) The tests are also applied to the \*head company as if, at the \*ownership test time, for each \*interposed company, a different single notional entity (the ***notional shareholder***):
- (a) directly controlled the voting power in the interposed company that is carried by each \*voting shareholding of less than 1% in the interposed company at that time; and
  - (b) had the right to receive, for its own benefit and directly:
    - (i) any \*dividends the interposed company may pay in respect of each \*dividend shareholding of less than 1% in the interposed company at that time; and

- (ii) any distributions of capital of the interposed company in respect of each \*capital shareholding of less than 1% in the interposed company at that time; and
- (c) were a person (other than a company).

*Persons who actually control or have rights are taken not to*

- (3) The tests are also applied to the \*head company as if, at the \*ownership test time:
  - (a) the persons (other than companies) who control (or are able to control) the voting power in the head company or interposed company (whether directly, or indirectly through one or more interposed entities) that is carried by each \*voting shareholding of less than 1% in the company had *not* had that control; and
  - (b) the persons (other than companies) who have the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities):
    - (i) any \*dividends that the head company or interposed company may pay in respect of each \*dividend shareholding of less than 1% in the company; and
    - (ii) any distributions of capital of the head company or interposed company in respect of each \*capital shareholding of less than 1% in the company; had *not* had that right.

**166-235 Notional shareholder taken to have minimum voting control, dividend rights and capital rights**

*Minimum control of voting power*

- (1) If the \*ownership test time is *after* the start of the \*test period and:
  - the voting power in the \*head company or \*interposed company that the \*notional shareholder controls at that time; is greater than:
  - the voting power in the company that the notional shareholder controlled at the start of that period;
 the notional shareholder is taken to control voting power in the company at that time only to the extent that it controlled it at the start of that period.

*Minimum percentage of rights to dividends and capital*

(2) If the \*ownership test time is *after* the start of the \*test period and:

- the percentage of the \*dividends or distributions of capital of the \*head company or \*interposed company that the \*notional shareholder has the right to receive at that time;

is greater than:

- the percentage (the *lower percentage*) of the dividends or distributions of capital of the company that the notional shareholder had the right to receive at the start of that period;

the notional shareholder is taken to have the right to receive the lower percentage of the dividends or distributions of capital at that time.

**166-240 Voting, dividend and capital shareholding of less than 1%***Meaning of voting shareholding of less than 1%*

- (1) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) less than 1% of the voting power in the company, those shares (except shares that are \*part of a substantial shareholding) constitute a ***voting shareholding of less than 1%*** in the company at that time.

*Meaning of dividend shareholding of less than 1%*

- (2) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) the right to receive less than 1% of any \*dividends that the company may pay, those shares (except shares that are \*part of a substantial shareholding) constitute a ***dividend shareholding of less than 1%*** in the company at that time.

*Meaning of capital shareholding of less than 1%*

- (3) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) the right to receive less than 1% of any distribution of capital of the company, those shares (except shares that are \*part of a substantial shareholding) constitute a ***capital shareholding of less than 1%*** in the company at that time.

**166-245 Shares that are part of a substantial shareholding**

- (1) \*Shares in a company *begin* to be *part of a substantial shareholding* of a person when the person gives the company:
- (a) a notice under section 709 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a \*relevant interest in the shares as at the day when the person became a substantial shareholder in the company; or
  - (b) a notice under section 710 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a \*relevant interest in the shares after the change in relevant interests because of which the notice had to be given;

whichever happens first.

- (2) The \*shares *stop* being part of the substantial shareholding when the person gives the company:

- (a) a notice under section 710 of the Corporations Law from which it appears that neither the person nor an associate (within the meaning of that section) had a \*relevant interest in the shares after the change in relevant interests because of which the notice had to be given; or
- (b) a notice under section 711 of the Corporations Law from which it appears that the person has stopped being a substantial shareholder in the company;

whichever happens first.

**When the rules in this Subdivision do not apply****166-250 Limit on listed public company splitting its shares into different classes**

This Subdivision does not apply unless, at the \*ownership test time, all the \*voting shares in the \*head company carry (between them):

- (a) the right to receive more than 75% of any \*dividends the head company may pay; and
- (b) the right to receive more than 75% of any distributions of capital of the head company.

**166-255 If listed public company would not have otherwise passed the ownership tests**

This Subdivision does not apply for the purposes of section 166-5 or 166-20 if the Commissioner considers it reasonable to assume that the \*head company would not meet the conditions in that section if it were not for the rules in this Subdivision.

Note: The conditions in sections 166-5 and 166-20 require the listed public company to maintain the same owners at each ownership test time during the test period.

## **Subdivision 166-G—How to treat interposed superannuation funds, approved deposit funds and special companies**

### **Guide to this Subdivision**

#### **166-260 What this Subdivision is about**

This Subdivision has rules which make it easier for the listed public company to satisfy the ownership tests in Subdivision 166-D.

The company does not have to trace through any complying superannuation funds, complying approved deposit funds or special companies that are interposed between the company and persons who control any of the voting power in the company, or who have rights to its dividends or capital.

Note: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.

### **Table of sections**

#### **Special tracing rules for listed public companies**

166-265 When fund or special company is taken to control voting power

166-270 When fund or special company is taken to have rights to dividends and capital

#### **Special tracing rules for listed public companies**

##### **166-265 When fund or special company is taken to control voting power**

- (1) This section modifies how the ownership test in section 166-150 (about control of voting) is applied to the \*listed public company if:
  - (a) a \*superannuation fund, \*approved deposit fund or \*special company is interposed, at the \*ownership test time, between persons (none of them companies) and the listed public company; and
  - (b) at the ownership test time, those persons control (or are able to control) any of the voting power in the listed public company indirectly through the fund or special company (or through entities including it); and
  - (c) the fund or special company is a \*complying superannuation fund, \*complying approved deposit fund or special company



at all times during the income year of the listed public company in which the \*ownership test time occurs.

*If fund or special company has more than 50 members*

- (2) If the fund or \*special company has more than 50 \*members, the test is applied as if, at the \*ownership test time, the fund or special company were a person (other than a company) who controlled the voting power in the \*listed public company that those persons control (or are able to control).

*If fund or special company has 50 members or less*

- (3) However, if the fund or \*special company has 50 \*members or less, the test is applied as if, at the \*ownership test time, each member were a person (other than a company) who controlled an equal proportion of the voting power in the \*listed public company that those persons control (or are able to control).

*Persons who actually control are taken not to control*

- (4) The test is applied as if, at the \*ownership test time, the voting power in the \*listed public company that those persons control (or are able to control) were *not* controlled by them (except as provided by subsection (3)).

**166-270 When fund or special company is taken to have rights to dividends and capital**

- (1) This section modifies how the ownership test in section 166-155 (about \*dividend rights) or 166-160 (about capital rights) is applied to the \*listed public company if:
- (a) a \*superannuation fund, \*approved deposit fund or \*special company is interposed, at the \*ownership test time, between persons (none of them companies) and the listed public company; and
  - (b) at the ownership test time, those persons have the right to receive for their own benefit, and \*indirectly through the fund or special company (or through entities including it):
    - (i) a percentage of any \*dividends that the listed public company may pay; or
    - (ii) a percentage of any distributions of capital of the listed public company; and
  - (c) the fund or special company is a \*complying superannuation fund, \*complying approved deposit fund or special company at all times during the income year of the listed public company in which the \*ownership test time occurs.

*If fund or special company has more than 50 members*

- (2) If the fund or \*special company has more than 50 \*members, the test is applied as if, at the \*ownership test time, the fund or special company were a person (other than a company) who had the right to receive, for the person's own benefit, that percentage of those \*dividends or distributions of capital of the \*listed public company.

*If fund or special company has 50 members or less*

- (3) However, if the fund or \*special company has 50 \*members or less, the test is applied as if, at the \*ownership test time, each member were a person (other than a company) who had a right to receive, for the person's own benefit, an equal proportion of those \*dividends or distributions of capital.

*Persons who actually have the right are taken not to have it*

- (4) The test is applied as if, at the \*ownership test time, the persons (other than companies) who have the right to receive that percentage of those \*dividends or distributions of capital did *not* have that right (except as provided by subsection (3)).

Clause 330-15, page 238 (line 11), omit "1996-97", substitute "1997-98".

Clause 330-60, page 243 (line 9), omit "1996-97", substitute "1997-98".

Clause 330-80—

Page 246 (line 18), omit "1996-97", substitute "1997-98".

Page 246 (line 26), omit "1995-96", substitute "1996-97".

Page 246 (line 27), omit "1996-97", substitute "1997-98".

Clause 330-95, page 248 (lines 29 and 30), omit paragraph (1)(a), substitute:

- (a) \*plant;

Clause 330-110, page 253 (line 11), omit "1996-97", substitute "1997-98".

Clause 330-310—

Page 270 (line 5), omit "1996-97", substitute "1997-98".

Page 270 (line 7), omit "1997-98", substitute "1998-99".

Page 270 (line 10), omit "1998-99", substitute "1999-2000".

Page 270 (line 18), omit "1995-96", substitute "1996-97".

Page 270 (line 20), omit "1996-97", substitute "1997-98".

Page 270 (line 23), omit "1995-96", substitute "1996-97".

Page 270 (line 26), omit "1996-97", substitute "1997-98".

Clause 330-350, page 274 (line 13), omit "1996-97", substitute "1997-98".

Clause 330-370—

Page 276 (line 2), omit "1996-97", substitute "1997-98".

Page 276 (line 10), omit "1995-96", substitute "1996-97".

Page 276 (line 11), omit “1996-97”, substitute “1997-98”.

Clause 330-435, page 281 (line 20), omit “1996-97”, substitute “1997-98”.

Clause 330-495—

Page 288 (lines 22 to 24), omit “(of a kind that qualifies for a deduction under this Division, or qualified for a deduction under a corresponding previous law)”.

Page 288 (lines 29 and 30), omit note 1.

Clause 330-545, page 292 (line 7), omit “1996-97”, substitute “1997-98”.

Clause 900-95, page 326 (lines 11 and 12), omit “\*salary and wages”, substitute “salary or wages”.

Page 346 (after line 2), in Division 960, insert:

**Subdivision 960-E—Entities**

Page 347 (after line 8), after clause 960-100, insert:

*[The next Subdivision is Subdivision 960-H.]*

**Subdivision 960-H—Abnormal trading in shares or units**

**Table of sections**

960-220	Meaning of <i>trading</i>
960-225	Abnormal trading
960-230	Abnormal trading—5% of shares or units in one transaction
960-235	Abnormal trading—suspected 5% of shares or units in a series of transactions
960-240	Abnormal trading—suspected acquisition or merger
960-245	Abnormal trading—20% of shares or units traded over 60 day period

**960-220 Meaning of *trading***

There is a *trading* in \*shares in a \*listed public company, or in units in a unit trust, if there is an issue, redemption or transfer of, or any other dealing in, those shares or units.

**960-225 Abnormal trading**

- (1) There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if a \*trading in the shares or units is abnormal having regard to all relevant factors, including these:
  - (a) the timing of the trading, when compared with the normal timing for trading in the company’s shares or in the trust’s units;
  - (b) the number of shares or units traded, when compared with the normal number of the company’s shares, or the trust’s units, traded;

- (c) any connection between the trading and any other trading in the company's shares or in the trust's units;
  - (d) any connection between the trading and a \*tax loss or other deduction of the company or trust.
- (2) There may also be an abnormal trading under any of the following provisions.

**960-230 Abnormal trading—5% of shares or units in one transaction**

There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if 5% or more of the shares or units are \*traded in one transaction.

**960-235 Abnormal trading—suspected 5% of shares or units in a series of transactions**

- (1) There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if the company or trustee knows or reasonably suspects that an entity (or an entity and one or more of the entity's \*associates) has acquired (or redeemed) 5% or more of the shares or units in 2 or more transactions and would not have done so if the company or trust did not have a \*tax loss or other deduction.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the time of the particular transaction that causes the 5% figure to be exceeded.

**960-240 Abnormal trading—suspected acquisition or merger**

There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if a \*trading in those shares or units happens which the company or trustee knows or reasonably suspects is part of an acquisition or merger of the company with another company, or of the trust with another trust.

**960-245 Abnormal trading—20% of shares or units traded over 60 day period**

- (1) There is an *abnormal trading* in \*shares in a \*listed public company or units in a unit trust if more than 20% of the shares or units are \*traded during a 60 day period.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the end of the 60 day period concerned.

Clause 995-1—

Page 351 (after line 7), after the definition of *100% subsidiary*, insert:

*abnormal trading* has the meaning given by Subdivision 960-H.

Page 351 (after line 18), after the definition of *apartment building*, insert:

**approved deposit fund** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

**approved stock exchange** has the meaning given by section 470 of the *Income Tax Assessment Act 1936*.

Page 352 (line 3), omit “1996-97”, substitute “1997-98”.

Page 353 (after line 2), after the definition of **capital allowance**, insert:

**capital shareholding of less than 1%** has the meaning given by section 166-240.

Page 353 (after line 9), after the definition of **cash bidding exploration or prospecting authority**, insert:

**club** means a company that was established or is carried on mainly to provide facilities, for the use or benefit of its \*members, for drinking, dining, \*recreation or entertainment.

Page 353 (after line 17), after the definition of **company**, insert:

**complying approved deposit fund** means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

**complying superannuation fund** means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

Page 354 (line 5), omit “1996-97”, substitute “1997-98”.

Page 354 (after line 10), after the definition of **dividend**, insert:

**dividend shareholding of less than 1%** has the meaning given by section 166-240.

Page 355 (line 20), omit “1996-97”, substitute “1997-98”.

Page 356 (line 6), omit “1995-96”, substitute “1996-97”.

Page 356 (after line 21), after the definition of **Guide**, insert:

**head company** has the meaning given by section 166-220.

Page 358 (line 4), omit “1997, or the 1996-97”, substitute “1998, or the 1997-98”.

Page 358 (after line 10), after the definition of **income year**, insert:

**indirectly**: persons have the right to receive \*dividends or capital of a company **indirectly** for their own benefit if they would receive the dividends or capital for their own benefit if:

- (a) the company were to pay or distribute the dividends or capital; and
- (b) the dividends or capital were then successively paid or distributed by each entity interposed between the company and those persons.

Page 358 (after line 20), after the definition of **instalment of petroleum resource rent tax**, insert:

**interposed company** has the meaning given by section 166-225.

Page 358 (line 22), after “82AQ” insert “or 680, as appropriate,”.

Page 359 (after line 2), after the definition of **legal personal representative**, insert:

**listed public company** means a company that satisfies all of these conditions:

- (a) any of the \*shares (except shares that carry a right to a fixed rate of \*dividend) in the company are listed for quotation in the official list of an \*approved stock exchange;
- (b) more than 20 persons (none of them companies) between them control, or are able to control, 75% or more of voting power in the company (whether directly, or indirectly through one or more interposed entities);
- (c) more than 20 persons (none of them companies) have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any \*dividends that the company may pay;
- (d) more than 20 persons (none of them companies) have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any distribution of capital of the company.

Page 359 (after line 23), after the definition of **more than 50% of the company's dividends**, insert:

**more than 50% of the listed public company's capital distributions** has the meaning given by section 166-160.

**more than 50% of the listed public company's dividends** has the meaning given by section 166-155.

Page 360 (after line 2), after the definition of **more than 50% of the voting power**, insert:

**more than 50% of the voting power in the listed public company** has the meaning given by section 166-150.

Page 360 (after line 4), after the definition of **motor vehicle**, insert:

**mutual affiliate company** has the meaning given by section 121AC of the *Income Tax Assessment Act 1936*.

**mutual insurance company** has the meaning given by section 121AB of the *Income Tax Assessment Act 1936*.

Page 360 (after line 12), after the definition of **notional loss**, insert:

**notional shareholder** has the meaning given by section 166-230.

Page 360 (after line 17), after the definition of **ownership test period**, insert:

*ownership test time* has the meaning given by section 166-145.

Page 360 (after line 20), after the definition of *partnership*, insert:

*part of a substantial shareholding* has the meaning given by section 166-245.

Page 362 (after line 12), after the definition of *quasi-ownership right*, insert:

*recreation* includes amusement, sport or similar leisure-time pursuits.

Page 362 (after line 25), after the definition of *relative*, insert:

*relevant interest* has the meaning given by Division 5 of Part 1.2 of the Corporations Law.

Page 363 (lines 5 and 6), omit the definition of *same business test period*, substitute:

*same business test period* has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 166-5 and 166-20.

Page 363 (after line 13), after the definition of *shareholding interest*, insert:

*special company* means:

- (a) a \*mutual affiliate company; or
- (b) a \*mutual insurance company; or
- (c) a trade union registered under an \*Australian law; or
- (d) a \*sporting club; or
- (e) a company that is prescribed by the regulations.

Page 363 (after line 14), after the definition of *specific deduction*, insert:

*sporting club* means a society, association or \*club that:

- (a) is established for the encouragement of sport or a game; and
- (b) is *not* carried on for profit to its members.

Page 363 (after line 19), after the definition of *statutory income*, insert:

*substantial continuity of ownership* has the meaning given by section 166-145.

*substantial shareholding*: see *part of a substantial shareholding*.

*superannuation fund* has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

Page 364 (line 8), omit “1995-96”, substitute “1996-97”.

Page 364 (after line 19), after the definition of *Territory law*, insert:

*test period* has the meaning given by sections 166-5 and 166-20.

Page 365 (lines 1 and 2), omit the definition of *test time*, substitute:

*test time* has the meaning given by sections 165-13, 165-40, 165-45, 166-5, 166-20 and 330-175.

Page 365 (after line 11), after the definition of *this Act*, insert:

*trading* in \*shares in a \*listed public company, or in units in a unit trust, has the meaning given by section 960-220.

Page 366 (after line 2), after the definition of *unrecouped expenditure*, insert:

*voting shareholding of less than 1%* has the meaning given by section 166-240.

*voting share* in a company means:

- (a) if the company is a body corporate—a voting share as defined by section 9 of the Corporations Law; and
- (b) otherwise—a share that would be a voting share as defined by that section if the company were a body corporate.

Bill, as amended, agreed to.

Consideration in detail concluded.

Ordered—That the Bill be reported to the House with amendments.

### 3 INCOME TAX (CONSEQUENTIAL AMENDMENTS) BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Question—put and passed—Bill read a second time.

*Consideration in detail*

Bill, by leave, taken as a whole.

On the motion of Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), by leave, the following amendments were made together:

Clause 2, page 1 (line 21), omit “1996”, substitute “1997”.

Schedule 1—

Page 2 (after line 3), before item 1, insert:

#### 1A Before subsection 6(1)

Insert:

- (1AA) So far as a provision of the *Income Tax Assessment Act 1936* gives an expression a particular meaning, the provision does *not* also have effect for the purposes of the *Income Tax Assessment Act 1996* (*the 1996 Act*), except as provided in the 1996 Act.

Page 2 (after line 19), at the end of the definition of *this Act*, add:

Note: Subsection (1AA) of this section prevents definitions in the *Income Tax Assessment Act 1936* from affecting the interpretation of the *Income Tax Assessment Act 1996*.

Item 5, page 3 (line 3), omit “1996-97”, substitute “1997-98”.

Item 5, page 3 (line 7), omit “1996-97”, substitute “1997-98”.

Page 3 (after line 7), after item 5, insert:

#### 5A Subsection 18(1)

Omit “His”, substitute “For the purposes of this Act, the person’s”.



- Item 6, page 3 (line 10), omit “1996-97”, substitute “1997-98”.
- Item 6, page 3 (line 14), omit “1996-97”, substitute “1997-98”.
- Item 9, page 3 (line 24), omit “1996-97”, substitute “1997-98”.
- Item 10, page 4 (line 6), omit “1996-97”, substitute “1997-98”.
- Item 17, page 5 (line 20), omit “1996-97”, substitute “1997-98”.
- Item 17, page 5 (line 24), omit “1996-97”, substitute “1997-98”.
- Item 29, page 7 (line 3), omit “1996-97”, substitute “1997-98”.
- Item 29, page 7 (line 6), omit “1996-97”, substitute “1997-98”.
- Item 30, page 7 (line 9), omit “1995-96”, substitute “1996-97”.
- Item 31, page 7 (line 15), omit “1996-97”, substitute “1997-98”.
- Item 32, page 7 (line 20), omit “1996-97”, substitute “1997-98”.
- Item 32, page 7 (line 24), omit “1996-97”, substitute “1997-98”.
- Item 46, page 9 (line 22), omit “1995-96”, substitute “1996-97”.
- Item 56, page 11 (line 26), omit “1996-97”, substitute “1997-98”.
- Item 56, page 11 (line 30), omit “1996-97”, substitute “1997-98”.
- Item 57, page 12 (line 3), omit “1996-97”, substitute “1997-98”.
- Item 57, page 12 (lines 7 and 8), omit “1996-97”, substitute “1997-98”.
- Item 66, page 13 (line 25), omit “1996-97”, substitute “1997-98”.
- Item 66, page 14 (after line 5), at the end of the note, add:

- Division 3 of Part XII (Drought investment allowance).

Items 68 to 76, page 14 (line 16) to page 16 (line 26), omit the items, substitute:

**68 Before subsection 79E(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note 1: To work out the amount of a tax loss for the 1997-98 year of income or a later year of income: see Division 36 of the *Income Tax Assessment Act 1996*.

Note 2: To find out how much of a loss incurred in a post-1989 year of income you can deduct for the 1997-98 year of income or a later year of income: see section 36-105 of the *Income Tax (Transitional Provisions) Act 1996*.

Note 3: For the rules about deducting tax losses from assessable foreign income for the 1997-98 year of income or a later year of income: see section 79DA.

Note: The heading to section 79E is replaced by the heading “**General domestic losses of 1989-90 to 1996-97 years of income**”.

**69 Subsection 79EA(1)**

Omit “a year of income”, substitute “the 1996-97 year of income or an earlier year of income”.

**70 Subsection 79EA(1)**

Add at the end:

Note: To work out whether a PDF can deduct a tax loss in the 1997-98 year of income or a later year of income: see Subdivision 195-A of the *Income Tax Assessment Act 1996*.

**71 Before subsection 79EB(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: To work out whether a PDF can deduct a tax loss in the 1997-98 year of income or a later year of income: see Subdivision 195-A of the *Income Tax Assessment Act 1996*.

**72 Before subsection 79F(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note 1: To work out the amount of a film loss for the 1997-98 or a later income year: see Subdivision 375-G of the *Income Tax Assessment Act 1996*.

Note 2: To find out how much of a film loss incurred in a post-1989 year of income you can deduct for the 1997-98 or a later year of income: see section 36-105 of the *Income Tax (Transitional Provisions) Act 1996*.

Note: The heading to section 79F is replaced by the heading “**Film losses of 1989-90 to 1996-97 years of income**”.

**73 Before subsection 80AA(1)**

Insert:

(1AA) This section does not apply to the 1997-98 year of income or a later year of income.

Note: To find out how much of a primary production loss incurred before the 1989-90 year of income you can deduct for the 1997-98 or a later year of income: see section 36-110 of the *Income Tax (Transitional Provisions) Act 1996*.

**74 Before subsection 80F(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: To work out the deductibility of a tax loss that results from a debt being written off as bad in the 1997-98 year of income or a later year of income: see section 63CA.

**75 Before subsection 80G(1)**

Insert:

- (1A) The right to a deduction for an amount of a loss cannot be transferred under this section in the 1997-98 year of income or a later year of income.

Note: To work out whether a company can transfer its tax loss to another company in the 1997-98 year of income or a later year of income: see Subdivision 170-A of the *Income Tax Assessment Act 1996*.

## **76 Before subsection 82(1)**

Insert:

- (1A) Subsection (1) does not apply to the 1997-98 year of income or a later year of income.

Note 1: Section 8-10 of the *Income Tax Assessment Act 1996* prevents you from getting double deductions for any of the years of income after 1996-97.

Note 2: Section 8-10 of the *Income Tax (Transitional Provisions) Act 1996* prevents you from getting double deductions for a year of income before 1997-98 and a year of income after 1996-97.

Item 78, page 17 (line 4), omit "1996-97", substitute "1997-98".

Page 17 (after line 5), after item 78, insert:

## **78A Subsection 82AD(4)**

Omit "section 82AC", substitute "section 26-55 of the *Income Tax Assessment Act 1996*".

Item 91, page 18 (lines 21 and 22), omit the item, substitute:

## **91 Subsection 82KS(2)**

Omit "year of income and later", substitute ", 1995-96 and 1996-97".

Item 92, page 18 (lines 26 and 27), omit "and 1995-96", substitute ", 1995-96 and 1996-97".

Item 93, page 18 (lines 28 and 29), omit the item, substitute:

## **93 Subsection 82KZBE(1)**

Omit "income year and later", substitute ", 1995-96 and 1996-97".

Item 94, page 19 (line 3), omit "1996-97", substitute "1997-98".

Item 107, page 20 (line 13), omit "1995-96", substitute "1996-97".

Items 137 to 192, page 23 (line 17) to page 33 (line 15), omit the items, substitute:

## **137 After subsection 122D(1)**

Insert:

- (1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual previous capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**138 After subsection 122DB(1)**

Insert:

- (1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**139 After subsection 122DD(1)**

Insert:

- (1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual (1 May 1981 to 18 August 1981) capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**140 After subsection 122DF(1)**

Insert:

- (1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual (19 August 1981 to 19 July 1982) capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**141 Subsection 122DG(1)**

After “after 19 July 1982”, insert “and before the 1997-98 year of income”.

**142 Subsection 122DG(1)**

Add at the end:

Note: Subdivision 330-C of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for allowable capital expenditure incurred in the 1997-98 year of income or a later year of income.

**143 After subsection 122DG(2)**

Insert:

- (2A) A deduction is not allowable under subsection (2) for the 1997-98 year of income or any later year of income.

Note: Section 330-5 of the *Income Tax (Transitional Provisions) Act 1996* converts the amount of unrecouped expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**144 Subsection 122DG(7)**

Add at the end:

Note: Subsection (2A) limits deductions allowable under subsection (2) to years of income before the 1997-98 year of income. Section 330-45 of the *Income Tax (Transitional Provisions) Act 1996* converts the whole or a part of a deduction disallowed in the 1996-97 year of income into an amount a taxpayer can deduct in the 1997-98 year of income.

#### **145 After subsection 122J(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Subdivision 330-A of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for expenditure incurred on exploration or prospecting for minerals obtainable by eligible mining operations in the 1997-98 year of income or a later year of income.

#### **146 Subsection 122J(3)**

Add at the end:

Note: Section 330-10 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

#### **147 Subsection 122J(4)**

Add at the end:

Note: Section 330-30 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

#### **148 Subsection 122J(4C)**

Add at the end:

Note: Section 330-40 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

#### **149 Subsection 122JAA(1)**

After "property" (first occurring), insert "before the 1997-98 year of income".

#### **150 Subsection 122JAA(1)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when roll-over relief is available in relation to the disposal of property in the 1997-98 year of income or a later year of income.

#### **151 Subsection 122JAA(2)**

After "property", insert "before the 1997-98 year of income".

**152 Subsection 122JAA(2)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when a joint election for roll-over relief may be made in relation to the disposal of property in the 1997-98 year of income or a later year of income.

**153 Subsection 122JE(1)**

Repeal the subsection, substitute:

(1) If, after 15 August 1989 and before the 1997-98 year of income, a taxpayer incurs allowable capital expenditure, an amount worked out in accordance with this section is an allowable deduction in respect of that expenditure in the year of income the expenditure was incurred and in all later years of income.

Note: Subdivision 330-C of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for allowable capital expenditure incurred in the 1997-98 year of income or a later year of income.

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-5 of the *Income Tax (Transitional Provisions) Act 1996* converts the amount of unrecouped expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**154 Subsection 122JE(9)**

Add at the end:

Note: Subsection (1A) limits deductions allowable under subsection (1) to years of income before the 1997-98 year of income. Section 330-45 of the *Income Tax (Transitional Provisions) Act 1996* converts the whole or a part of a deduction disallowed in the 1996-97 year of income into an amount a taxpayer can deduct in the 1997-98 year of income.

**155 Subsection 122JF(1)**

Repeal the subsection, substitute:

(1) Subject to this section, expenditure incurred by the taxpayer after 15 August 1989 and before the 1997-98 year of income on exploration or prospecting for materials obtainable by eligible quarrying operations is an allowable deduction in the year of income the expenditure was incurred.

Note: Subdivision 330-A of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for expenditure incurred on exploration or prospecting for quarry materials obtainable by eligible quarrying operations in the 1997-98 year of income or a later year of income.

**156 Subsection 122JF(6)**

Add at the end:

Note: Section 330-40 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income

into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

**157 Subsection 122JG(1)**

After “property” (first occurring), insert “before the 1997-98 year of income”.

**158 Subsection 122JG(1)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when roll-over relief is available in relation to the disposal of property in the 1997-98 year of income or a later year of income by a taxpayer to another taxpayer.

**159 Subsection 122JG(2)**

After “property”, insert “before the 1997-98 year of income”.

**160 Subsection 122JG(2)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when a joint election for roll-over relief may be made in relation to the disposal of property in the 1997-98 year of income or a later year of income.

**161 After subsection 122K(1)**

Insert:

(1A) The disposal, loss or destruction of the property, or the termination of use of the property by the taxpayer for prescribed purposes or eligible purposes, must have occurred in the 1996-97 year of income or an earlier year of income.

Note: Subdivision 330-J of the *Income Tax Assessment Act 1996* deals with balancing adjustments for the 1997-98 year of income and later years of income.

**162 Subsection 123A(1)**

After “1 July 1961”, insert “and before the 1997-98 year of income”.

**163 Subsection 123A(1)**

Add at the end:

Note: Subdivision 330-H of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for transport capital expenditure incurred in the 1997-98 year of income or a later year of income.

**164 Subsection 123A(1A)**

After “by a taxpayer”, insert “before the 1997-98 year of income”.

**165 Subsection 123A(1A)**

Add at the end:

Note: Subdivision 330-H of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for transport capital expenditure incurred in the 1997-98 year of income or a later year of income.

**166 Paragraph 123A(1C)(a)**

After “17 August 1976”, insert “and before the 1997-98 year of income”.

**167 Subsection 123A(1C)**

Add at the end:

Note: Subdivision 330-H of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for transport capital expenditure incurred in the 1997-98 year of income or a later year of income.

**168 Subsection 123A(1E)**

After “9 March 1984”, insert “and before the 1997-98 year of income”.

**169 Subsection 123A(1E)**

Add at the end:

Note: Subdivision 330-H of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for transport capital expenditure incurred in the 1997-98 year of income or a later year of income.

**170 After subsection 123B(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-60 of the *Income Tax (Transitional Provisions) Act 1996* converts any capital expenditure to which this Subdivision applies that is undeducted at the end of the 1996-97 year of income into transport capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**171 Subsection 123BBA(1)**

After “property” (first occurring), insert “before the 1997-98 year of income”.

**172 Subsection 123BBA(1)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when roll-over relief is available in relation to the disposal of property in the 1997-98 year of income or a later year of income by a taxpayer to another taxpayer.

**173 Subsection 123BBA(2)**

After “property”, insert “before the 1997-98 year of income”.

**174 Subsection 123BBA(2)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when a joint election for roll-over relief may be made in relation to the disposal of property in the 1997-98 year of income or a later year of income.



**175 Paragraphs 123BD(1)(a) and (b)**

After “15 August 1989”, insert “and before the 1997-98 year of income”.

**176 Subsection 123BD(1)**

Add at the end:

Note: Subdivision 330-H of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for transport capital expenditure incurred in the 1997-98 year of income or a later year of income.

**177 After subsection 123BE(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-60 of the *Income Tax (Transitional Provisions) Act 1996* converts any capital expenditure to which this Subdivision applies that is undeducted at the end of the 1996-97 year of income into transport capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**178 Subsection 123BF(1)**

After “property” (first occurring), insert “before the 1997-98 year of income”.

**179 Subsection 123BF(1)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when roll-over relief is available in relation to the disposal of property in the 1997-98 year of income or a later year of income by a taxpayer to another taxpayer.

**180 Subsection 123BF(2)**

After “property”, insert “before the 1997-98 year of income”.

**181 Subsection 123BF(2)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when a joint election for roll-over relief may be made in relation to the disposal of property in the 1997-98 year of income or a later year of income.

**182 After subsection 123C(1)**

Insert:

(1A) The disposal, loss or destruction of the property, or the termination of use of the property by the taxpayer primarily and principally for a purpose referred to in section 123A or 123BD, must have occurred in the 1996-97 year of income or an earlier year of income.

Note: Subdivision 330-J of the *Income Tax Assessment Act 1996* deals with balancing adjustments for the 1997-98 year of income and later years of income.

**183 Paragraph 124AA(1)(b)**

After “1 July 1976”, insert “and before the 1997-98 year of income”.

**184 Subsection 124AA(1)**

Add at the end:

Note: Subdivision 330-C of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for allowable capital expenditure incurred in the 1997-98 year of income or a later year of income.

**185 After subsection 124AD(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual previous capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**186 After subsection 124ADB(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**187 After subsection 124ADD(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual (1 May 1981 to 18 August 1981) capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**188 After subsection 124ADF(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Section 330-1 of the *Income Tax (Transitional Provisions) Act 1996* converts any undeducted residual (19 August 1981 to 19 July 1982) capital expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**189 Subsection 124ADG(1)**

After “after 19 July 1982”, insert “and before the 1997-98 year of income”.

**190 Subsection 124ADG(1)**

Add at the end:

Note: Subdivision 330-C of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for allowable capital expenditure incurred in the 1997-98 year of income or a later year of income.

**191 After subsection 124ADG(2)**

Insert:

(2A) A deduction is not allowable under subsection (2) for the 1997-98 year of income or any later year of income.

Note: Section 330-5 of the *Income Tax (Transitional Provisions) Act 1996* converts the amount of unrecouped expenditure at the end of the 1996-97 year of income into allowable capital expenditure incurred by a taxpayer in the 1997-98 year of income.

**192 Subsection 124ADG(7)**

Add at the end:

Note: Subsection (2A) limits deductions allowable under subsection (2) to years of income before the 1997-98 year of income. Section 330-45 of the *Income Tax (Transitional Provisions) Act 1996* converts the whole or a part of a deduction disallowed in the 1996-97 year of income into an amount a taxpayer can deduct in the 1997-98 year of income.

Items 194 to 205, page 33 (line 19) to page 35 (line 19), omit the items, substitute:

**194 After subsection 124AH(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

Note: Subdivision 330-A of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for expenditure incurred on exploration or prospecting for petroleum obtainable by eligible mining operations in the 1997-98 year of income or a later year of income.

**195 Subsection 124AH(4)**

Add at the end:

Note: Section 330-35 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

**196 Subsection 124AH(4B)**

Add at the end:

Note: Section 330-40 of the *Income Tax (Transitional Provisions) Act 1996* converts any excess amount at the end of the 1996-97 year of income into exploration or prospecting expenditure incurred by the taxpayer in the 1997-98 year of income.

**197 After subsection 124AM(1)**

Insert:

- (1A) The disposal, loss or destruction of the property, or the termination of use of the property by the taxpayer for purposes of carrying on prescribed petroleum operations or of exploration or prospecting for petroleum, must have occurred in the 1996-97 year of income or an earlier year of income.

Note: Subdivision 330-J of the *Income Tax Assessment Act 1996* deals with balancing adjustments for the 1997-98 year of income and later years of income.

**198 Subsection 124AMAA(1)**

After “property” (first occurring), insert “before the 1997-98 year of income”.

**199 Subsection 124AMAA(1)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when roll-over relief is available in relation to the disposal of property in the 1997-98 year of income or a later year of income by a taxpayer to another taxpayer.

**200 Subsection 124AMAA(2)**

After “property”, insert “before the 1997-98 year of income”.

**201 Subsection 124AMAA(2)**

Add at the end:

Note: Common rule 1 in Subdivision 41-A of the *Income Tax Assessment Act 1996* sets out when a joint election for roll-over relief may be made in relation to the disposal of property in the 1997-98 year of income or a later year of income.

**202 Subsection 124BA(1)**

After “1 July 1991”, insert “and before the 1997-98 year of income”.

**203 Subsection 124BA(1)**

Add at the end:

Note: Subdivision 330-I of the *Income Tax Assessment Act 1996* gives a taxpayer a deduction for expenditure incurred on rehabilitation in the 1997-98 year of income or a later year of income.

**204 Before section 124ZA**

Insert in Division 10C of Part III:

**124ZAPA Division to cease to have effect**

This Division does not have effect for the 1997-98 year of income or a later year of income.

Note: See instead Division 43 of the *Income Tax Assessment Act 1996*.

**205 Before section 124ZF**

Insert in Division 10D of Part III:

**124ZEB Division to cease to have effect**

This Division does not have effect for the 1997-98 year of income or a later year of income.

Note: See instead Division 43 of the *Income Tax Assessment Act 1996*.

Item 207, page 36 (line 11), omit “1996-97”, substitute “1997-98”.

Item 253, page 44 (line 30), omit “twice”, substitute “wherever”.

Item 267, page 46 (lines 9 to 11), omit the item, substitute:

**264 Section 638**

Omit “sections 639 and 640”, substitute “section 639 of this Act and section 26-55 of the *Income Tax Assessment Act 1996*”.

**265 Before subsection 640(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

**266 Paragraph 641(a)**

Omit “or 640”, substitute “of this Act or section 26-55 of the *Income Tax Assessment Act 1996*”.

Page 46 (after line 19), after item 269, insert:

**269A Paragraphs 647(3)(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) section 26-55 (which reduces the deduction) of the *Income Tax Assessment Act 1996*;
- (b) Subdivision B (which takes away the deduction) of this Division;
- (c) sections 663 to 666 (which take away the deduction) of this Act.

Item 270, page 46 (line 22), omit “1996-97”, substitute “1997-98”.

Schedule 3—

Item 2, page 50 (line 11), omit “1996-97”, substitute “1997-98”.

Page 56 (after line 12), after item 57, insert:

***Development Allowance Authority Act 1992***

**57A Paragraph 22(c)**

Omit “Tax Act”, substitute “*Income Tax Assessment Act 1936* and section 26-55 of the *Income Tax Assessment Act 1996*”.

**57B Paragraph 22(d)**

Omit “Tax Act”, substitute “*Income Tax Assessment Act 1936*”.

**57C Paragraph 22(e)**

Omit “Tax Act”, substitute “*Income Tax Assessment Act 1936*”.

Item 95, page 61 (lines 14 to 24), omit the definition of *basic car rate*, substitute:

*basic car rate*, in relation to a year of tax ending on 31 March in a year, means the rate prescribed for the purposes of:

- (a) if the year of tax ended on or after 31 March 1998—section 28-25 of the *Income Tax Assessment Act 1996*; or
- (b) if the year of tax ended on 31 March 1995, 31 March 1996 or 31 March 1997—section 3-2 of Schedule 2A to the *Income Tax Assessment Act 1936*; or
- (c) if the year of tax ended before or on 31 March 1994—paragraph 82KX(1)(a) of the *Income Tax Assessment Act 1936*;

in relation to the year of income ending on 30 June in that year.

Item 95, page 61 (line 27), omit “1 July 1996”, substitute “1 July 1997”.

Item 95, page 61 (line 34), omit “1 July 1996”, substitute “1 July 1997”.

Item 97, page 62 (lines 21 to 35), omit the item, substitute:

**97 Subsection 106H(1) (paragraph (b) of the definition of *HEC repayment income of a person*)**

Omit “or any subsequent year of income”.

**97A Subsection 106H(1) (at the end of the definition of *HEC repayment income of a person*)**

Add:

- (c) in relation to the 1997-98 income year or any later income year—the sum of:
  - (i) the person’s taxable income for that income year; and
  - (ii) if the person has deducted under section 8-1 of the *Income Tax Assessment Act 1996* for that income year an amount for interest on money the person borrowed to finance rental property investments, and the total of that amount any other amounts the person has deducted under that Act or the *Income Tax Assessment Act 1936* (otherwise than for interest on money borrowed) in respect of the rental property exceeds the rental income of the person—the amount of the excess.

Item 111, page 65 (line 3), omit “1996-97”, substitute “1997-98”.

Schedule 4—

Item 22, page 71 (line 14), omit “1996-97”, substitute “1997-98”.

Item 23, page 71 (line 18), omit “1996-97”, substitute “1997-98”.

Item 24, page 71 (line 25), omit “1996-97”, substitute “1997-98”.

Bill, as amended, agreed to.

Consideration in detail concluded.

Ordered—That the Bill be reported to the House with amendments.

#### 4 INCOME TAX (TRANSITIONAL PROVISIONS) BILL 1996

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Question—put and passed—Bill read a second time.

*Consideration in detail*

Bill, by leave, taken as a whole.

On the motion of Mr Miles (Parliamentary Secretary (Cabinet) to the Prime Minister), by leave, the following amendments were made together:

Clause 1-5, page 2 (line 11), omit “1996”, substitute “1997”.

Clause 4-1, page 3 (line 8), omit “1996-97”, substitute “1997-98”.

Clause 6-3, page 4 (line 11), omit “1995-96”, substitute “1996-97”.

Note: The heading to clause 6-3 is altered by omitting “1996-97” and substituting “1997-98”.

Clause 6-20, page 4 (line 15), omit “1995-96”, substitute “1996-97”.

Note: The heading to clause 6-20 is altered by omitting “1996-97” and substituting “1997-98”.

Clause 8-3, page 5 (line 12), omit “1995-96”, substitute “1996-97”.

Note: The heading to clause 8-3 is altered by omitting “1996-97” and substituting “1997-98”.

Clause 8-10—

Page 5 (line 19), omit “1995-96”, substitute “1996-97”.

Note: The heading to clause 8-10 is altered by omitting “1996-97” and substituting “1997-98”, and by omitting “1995-96” and substituting “1996-97”.

Page 5 (line 23), omit “1996-97”, substitute “1997-98”.

Clause 28-100—

Page 6 (line 20), omit “or 1995-96”, substitute “, 1995-96 or 1996-97”.

Page 7 (lines 3 and 4), omit “or 1995-96”, substitute “, 1995-96 or 1996-97”.

Clause 36-100, page 8 (line 8), omit “1996-97”, substitute “1997-98”.

Note: The heading to clause 36-100 is altered by omitting “1996-97” and substituting “1997-98”.

Clause 36-105, page 8 (lines 12 to 19), omit the clause, substitute:

**36-105 Tax losses for 1989-90 to 1996-97 income years**

- (1) If you incurred a loss for the purposes of section 79E (General domestic losses of 1989-90 to 1996-97 years of income) of the *Income Tax Assessment Act 1936* in any of the 1989-90 to 1996-97 income years, the loss is your *tax loss* for that income year, which is called a *loss year*.

- (2) You can deduct the tax loss in the 1997-98 or a later income year only to the extent that it has not already been deducted.

Clause 36-110—

Page 8 (line 26), omit “1996-97”, substitute “1997-98”.

Page 9 (line 9), omit “1996-97”, substitute “1997-98”.

Clause 43-100, page 10 (line 15), omit “30 June 1996”, substitute “30 June 1997”.

Clause 43-105, page 10 (line 21), omit “1 July 1996”, substitute “1 July 1997”.

Clause 330-1—

Page 12 (line 12), omit “1996-97”, substitute “1997-98”.

Page 12 (line 17), omit “1996-97”, substitute “1997-98”.

Page 12 (line 18), omit “1996-97”, substitute “1997-98”.

Clause 330-5—

Page 13 (line 6), omit “1995-96”, substitute “1996-97”.

Page 13 (line 11), omit “1995-96”, substitute “1996-97”.

Page 13 (line 16), omit “1996-97”, substitute “1997-98”.

Page 13 (line 18), omit “1996-97”, substitute “1997-98”.

Page 13 (line 22), omit “1996-97”, substitute “1997-98”.

Clause 330-10—

Page 14 (line 6), omit “1995-96”, substitute “1996-97”.

Page 14 (line 10), omit “1996-97”, substitute “1997-98”.

Page 14 (line 12), omit “1996-97”, substitute “1997-98”.

Page 14 (line 14), omit “1995-96”, substitute “1996-97”.

Clause 330-15, page 14 (line 23), omit “1996-97”, substitute “1997-98”.

Clause 330-20, page 15 (line 14), omit “1996-97”, substitute “1997-98”.

Clause 330-25, page 16 (line 10), omit “1995-96”, substitute “1996-97”.

Clause 330-30—

Page 17 (line 4), omit “1995-96”, substitute “1996-97”.

Page 17 (line 8), omit “1996-97”, substitute “1997-98”.

Page 17 (line 13), omit “1995-96”, substitute “1996-97”.

Clause 330-35—

Page 18 (line 4), omit “1995-96”, substitute “1996-97”.

Page 18 (line 8), omit “1996-97”, substitute “1997-98”.

Page 18 (line 13), omit “1995-96”, substitute “1996-97”.

Clause 330-40—

Page 19 (line 5), omit “1995-96”, substitute “1996-97”.

Page 19 (line 9), omit “1996-97”, substitute “1997-98”.

Page 19 (line 14), omit “1995-96”, substitute “1996-97”.



Page 19 (line 22), omit “1996-97”, substitute “1997-98”.

Clause 330-45—

Page 19 (line 28), omit “1995-96”, substitute “1996-97”.

Page 20 (line 1), omit “1996-97”, substitute “1997-98”.

Page 20 (line 5), omit “1996-97”, substitute “1997-98”.

Clause 330-50—

Page 20 (line 12), omit “1996-97”, substitute “1997-98”.

Page 20 (line 16), omit “1996-97”, substitute “1997-98”.

Page 20 (line 20), omit “1996-97”, substitute “1997-98”.

Page 20 (line 21), omit “1996-97”, substitute “1997-98”.

Clause 330-55—

Page 21 (line 10), omit “1996-97”, substitute “1997-98”.

Page 21 (line 13), omit “1996-97”, substitute “1997-98”.

Page 21 (line 23), omit “1996-97”, substitute “1997-98”.

Page 21 (line 28), omit “1995-96”, substitute “1996-97”.

Page 21 (line 32), omit “1996-97”, substitute “1997-98”.

Clause 330-60—

Page 22 (line 14), omit “1995-96”, substitute “1996-97”.

Page 22 (line 19), omit “1995-96”, substitute “1996-97”.

Page 22 (line 22), omit “1996-97”, substitute “1997-98”.

Page 22 (line 27), omit “1996-97”, substitute “1997-98”.

Page 23 (line 1), omit “1996-97”, substitute “1997-98”.

Page 23 (line 4), omit “1996-97”, substitute “1997-98”.

Page 23 (line 7), omit “1996-97”, substitute “1997-98”.

Page 23 (line 9), omit “1996-97”, substitute “1997-98”.

Page 23 (line 12), omit “1996-97”, substitute “1997-98”.

Clause 330-65—

Page 23 (line 24), omit “1995-96”, substitute “1996-97”.

Page 23 (line 29), omit “1996-97”, substitute “1997-98”.

Page 24 (lines 23 to 34), omit subsection (3), substitute:

(3) Second:

- (a) the total capital expenditure of the transferor in relation to the property; or
- (b) if there have been 2 or more prior applications of the old roll-over provisions—the total capital expenditure of the prior transferors in relation to the property;

is taken to have been capital expenditure of the transferee in relation to the property.

Clause 330-75—

Page 26 (line 11), omit “1995-96”, substitute “1996-97”.

Page 26 (line 15), omit “1996-97”, substitute “1997-98”.

Page 26 (line 24), omit “1995-96”, substitute “1996-97”.

Clause 375-100, page 28 (line 11), omit “1996-97”, substitute “1997-98”.

Note: The heading to clause 375-100 is altered by omitting “1996-97” and substituting “1997-98”.

Clause 375-105—

Page 28 (line 16), omit “1995-96”, substitute “1996-97”.

Note: The heading to clause 375-105 is altered by omitting “1995-96” and substituting “1996-97”.

Page 28 (line 17), omit “1995-96”, substitute “1996-97”.

Clause 375-110—

Page 28 (line 24), omit “1996-97”, substitute “1997-98”.

Page 28 (line 25), omit “1995-96”, substitute “1996-97”.

Bill, as amended, agreed to.

Consideration in detail concluded.

Ordered—That the Bill be reported to the House with amendments.

**5 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT ON THE AUSTRALIAN AID PROGRAM—PROCEEDINGS OF A SEMINAR—MOTION TO TAKE NOTE OF PAPER**

The order of the day having been read for the resumption of the debate on the motion of Mr Brereton—That the House take note of the paper (*presented on 16 September 1996*), viz.:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Australian Aid Program—Proceedings of a seminar, 31 July 1996, Canberra—

Debate resumed.

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*Suspension of sitting:* At 11.36 a.m., a division having been called in the House, the proceedings were suspended.

*Resumption of sitting:* At 11.50 a.m., the proceedings were resumed.

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Debate continued.

Debate adjourned (Mr Sawford), and the resumption of the debate made an order of the day for the next sitting.

**6 ADJOURNMENT**

On the motion of Mr M. A. J. Vaile, the Main Committee adjourned at 1 p.m.

The Deputy Speaker fixed tomorrow at 10 a.m. for the next meeting of the Main Committee.



**I. C. HARRIS**

Clerk of the Main Committee