

1991

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSSAT REPEAL BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, the Hon Kim C Beazley MP)

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OUTLINE

This Bill puts in place arrangements to enable the sale of AUSSAT to proceed smoothly. It appropriates the Consolidated Revenue Fund to pay out existing obligations of AUSSAT. The Bill enables those obligations to be paid out either in the form of additional share capital or loan capital for AUSSAT, or as a combination of both. The maximum amount of the additional share and loan capital is limited to \$800 million.

The Bill also enables the Treasurer to guarantee AUSSAT's borrowings. This will enable AUSSAT to restructure its borrowings in preparation for the Commonwealth paying them out prior to the completion of the sale.

The Bill prevents AUSSAT's tax losses in income years prior to the sale being used as a deduction for income tax purposes from the time of the sale.

The AUSSAT Act 1984 is repealed by the Bill and consequential amendments are made to other Commonwealth Acts. Minor amendments are also made to the Australian and Overseas Telecommunications Corporation Act 1991 and the Telecommunications Act 1991 to correct drafting anomalies and clarify the technical operation of certain provisions of those Acts.

FINANCIAL IMPACT

This Bill provides for a maximum of \$800 million which can be paid to AUSSAT as additional share capital or loan capital or both. It is not possible at this stage to predict the precise amount that will be paid out as a result of the Bill. It is expected to be less than \$800 million, but the precise amount will depend on -

- . the timing of the debt payout;
- . variable interest rates up to the time of the debt payout; and
- . whether or not the satellite leases are paid out by the Commonwealth (which is a matter which will be determined in the negotiations with the bidders).

It is not possible to predict what amount the sale of AUSSAT itself will bring in revenue to the Commonwealth as this will depend on the tenders put forward by the bidders in the sale process. The removal of AUSSAT's tax losses will save potential future claims against taxation revenue of approximately \$50 million.

ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum -

AUSSAT	AUSSAT Pty Ltd
AUSSAT Act	AUSSAT Act 1984
new Act	AUSSAT Repeal Act 1991
Telecommunications Act	Telecommunications Act 1991

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the citation of the *AUSSAT Repeal Act 1991*.

Clause 2 - Commencement

This clause provides for the commencement of the new Act.

Clause 2(1) provides for most of the Act to commence upon Royal Assent.

Clause 2(2) provides for Part 3, which sets out the effect of the sale of AUSSAT, to commence or to be taken to have commenced on a day to be fixed by proclamation.

It is intended that Part 3 should commence on the day after the sale of AUSSAT occurs. A proclamation of a commencement date usually takes effect on its publication in the Gazette. Clauses 2(2) and (3) enable the proclamation to fix a date earlier than the date of publication. Provision for this is included because of the nature of the sale process. The sale will depend on commercial negotiation, and if a party is not able to complete at the time fixed by the contract, further time may be agreed between the parties for completion. Accordingly, it will be undesirable to proclaim the commencement in advance of the completion of the sale, as the completion date may change if there are last minute difficulties.

Clause 2(3) places a limitation on the commencement date that can be proclaimed under clause 2(2) if a day earlier than the day of publication in the Gazette is chosen. The commencement date must be either the day after the buyer

acquires a controlling interest in AUSSAT or a later day. The reason for choosing the day after the sale for commencement is that the payout of AUSSAT's debt may occur on the day of the sale itself, and it is considered undesirable to repeal the AUSSAT Act until after the sale is completed.

Clause 2(4) provides for the automatic repeal of Parts 2 and 3 if a proclamation of the commencement of Part 3 is not made within 6 months of Royal Assent. This ensures that in the unlikely circumstances that the sale falls through, Parts 2 and 3 do not have a long-standing continuing effect.

Clause 3 - Interpretation

This clause provides definitions of terms used in the new Act.

PART 2 - PREPARING FOR THE SALE OF AUSSAT

Clause 4 - Commonwealth guarantee of AUSSAT borrowings

This clause enables the Treasurer, on the Commonwealth's behalf, to enter into a contract guaranteeing AUSSAT's performance of certain obligations. AUSSAT will be able to use the guarantee in restructuring its borrowings prior to the Commonwealth paying them out under the following clause.

Clause 4(1) enables the Treasurer to guarantee AUSSAT's performance of its obligations to repay a borrowing, pay interest and to pay other amounts specified in the contract (such as bank service charges).

Clause 4(2) makes a determination by the Treasurer that the Commonwealth guarantees the performance of specified AUSSAT obligations of a kind referred to in clause 4(1) a Commonwealth guarantee of that performance.

Clause 4(3) contains a definition of the term 'AUSSAT borrowing' for the purpose of clause 4.

Clause 4(4) makes this clause cease to have effect at the transition. The 'transition' is defined in clause 3 to mean the commencement of Part 3 (ie intended to be the day after the completion of the sale).

Clause 5 - Appropriation of up to \$800,000,000 to pay out AUSSAT's existing obligations

Clause 5(1) sets out the purpose of this clause, which is to appropriate up to \$800 million to pay out existing obligations of AUSSAT.

The money may be paid to AUSSAT either as additional share capital or loan capital, or as a combination of these. The form of the payout is a matter which will be negotiated with the successful bidder for AUSSAT so that the capital structure of AUSSAT meets the commercial needs of the bidder.

Clause 5(2) enables the Minister to authorise the payment to AUSSAT of all or part of the amount subscribed for shares in AUSSAT that have been or are to be issued or allotted to the Commonwealth or to a nominee of the Commonwealth.

Clause 5(3) enables the Minister to authorise the payment of money to AUSSAT as a loan made on the Commonwealth's behalf.

Clause 5(4) enables the Minister to determine the terms and conditions of a loan made under clause 5(3).

Clause 5(5) requires a payment of share or loan capital under clause 5(2) or (3) to be made out of the Consolidated Revenue Fund and appropriates it accordingly.

Clause 5(6) restricts the total of the share capital paid under clause 5(2) and loan capital paid under clause 5(3) to \$800 million.

Clause 5(7) restricts the purposes for which AUSSAT can use the money paid to it under clause 5(2) or (3). The money must be used for discharging an existing obligation, discharging obligations that arise because of a pre-existing agreement or arrangement, or terminating such an agreement or arrangement.

Clause 5(8) prevents an authorisation being given under clause 5(2) or (3) after the transition by making it have no effect.

PART 3 - EFFECT OF THE SALE OF AUSSAT

Clause 6 - Removal of AUSSAT's tax losses

Sections 79E, 79F, 80, 80AAA and 80AA of the Income Tax Assessment Act 1936 enable losses during a previous income year to be carried forward and claimed as deductions from

assessable income for a later income year in certain circumstances.

Clause 6(1) prevents any loss or part of a loss incurred by AUSSAT in a year of income ending at or before the transition being allowable as a deduction from AUSSAT's assessable income of a year of income ending at or after the transition.

Clause 6(2) makes it clear that clause 6 overrides the relevant provisions of the Income Tax Assessment Act.

Clause 6(3) is an interpretive rule which ensures that expressions used in clause 6 have the same meaning as in the Income Tax Assessment Act.

Clause 7 - AUSSAT no longer taken to be established for a public purpose

Much Commonwealth legislation is expressed to apply to an 'authority of the Commonwealth' which is often defined as being, inter alia, a body incorporated or established for a public purpose (see for example the definition in subsection 3(1) of the Archives Act 1983).

There is a possible argument that these laws would continue to apply to AUSSAT after the sale, despite AUSSAT no longer being a Commonwealth body, because it was originally established for a public purpose.

Clause 7(1) prevents laws that would apply to AUSSAT because it was incorporated or established for a public purpose or for a purpose of the Commonwealth from applying to AUSSAT.

Clause 7(2) makes it clear that clause 7(1) does not affect the operation of the law before the transition.

Clause 7(3) provides a definition of the term 'law' for the purposes of clause 7.

Clause 8 - Repeal of the AUSSAT Act 1984

The AUSSAT Act sets out the objects of AUSSAT and various rules relating to its operation. This Act will no longer be relevant following the sale of AUSSAT. AUSSAT's objects will be set out in its constituent documents. AUSSAT is to be licensed as a general carrier and public mobile carrier under the Telecommunications Act and that Act sets out the new regulatory regime governing its telecommunications operations. Accordingly, this clause provides for the repeal of the AUSSAT Act.

Clause 9 - Consequential amendments of other Acts

Clause 9(1) provides for the making of the amendments to other Commonwealth legislation set out in Schedule 1 which are consequential to the repeal of the AUSSAT Act by the preceding clause.

Clause 9(2) is included because 2 consequential amendments in Schedule 1 to the Bill will be unnecessary in a situation where the merger of Telecom and OTC occurs before the completion of the sale of AUSSAT. In such a situation, those amendments are taken to be omitted.

Clause 10 - Application of amendment of the Commonwealth Borrowing Levy Act 1987

The *Commonwealth Borrowing Levy Act 1987* (CBL Act) imposes a levy on borrowings by certain bodies from persons other than the Commonwealth.

One of the amendments in Schedule 1 would remove AUSSAT Pty Ltd from the list of bodies which are subject to the levy. AUSSAT is to be removed from the list as it will no longer be a Commonwealth owned body.

Clause 10(1) is an application provision which ensures that AUSSAT is not liable after the transition to pay an amount of levy under the CBL Act on a borrowing undertaken before the sale of AUSSAT.

Clause 10(2) is included to prevent any argument being raised that clause 10(1) means that an amount of levy paid before the transition should be repaid.

PART 4 - AMENDMENTS OF TELECOMMUNICATIONS LEGISLATION

Clause 11 - Schedule 2 amendments

This clause provides for the making of the amendments to the *Australian and Overseas Telecommunications Corporation Act 1991* and the *Telecommunications Act 1991* set out in Schedule 2. The amendments clarify the technical operation of certain provisions of the latter Act and correct minor drafting defects in both Acts.

SCHEDULE 1

This Schedule makes amendments to other Commonwealth legislation which are consequential to the repeal of the AUSSAT Act by clause 9.

SCHEDULE 2

This Schedule makes minor amendments to the *Australian and Overseas Telecommunications Corporation Act 1991* and the *Telecommunications Act 1991* to clarify the technical operation of certain provisions of the latter Act and correct minor drafting defects in both Acts.

The amendments which clarify the technical operation of provisions of the *Telecommunications Act* are explained below.

Section 293 of the *Telecommunications Act* requires a universal service carrier to give AUSTEL a written notice within the first 60 days of the financial year specifying proposed service areas that should be declared to be net cost areas. Under the universal service levy arrangements, other participating carriers may have to share the losses that result from supplying services in relation to those net cost areas. Subsection 290(8) of the Act deems a declaration that a carrier is a universal service carrier during the 1991/92 financial year to take effect on 1 July 1991. Section 293 does not deal with a situation where a declaration is made after the first 60 days of the 1991/92 financial year.

The proposed amendment to section 293 will include a new subsection providing that a universal service carrier in relation to the financial year beginning on 1 July 1991 must give the written notice of proposed net cost areas within 60 days of commencement of the amendment or the notification of the declaration that the carrier is a universal service carrier, whichever is later.

Schedule 2 also inserts a new section 407 in the *Telecommunications Act* which will enable the regulations and other instruments made under the Act to make provision in relation to a matter by applying, adopting or incorporating the provisions of Acts, regulations or other instruments as in force at a particular time or as in force from time to time.

The usual rule under section 49A of the *Acts Interpretation Act 1901* is that in relation to matters contained in instruments other than Commonwealth regulations or Acts, those matters can only be adopted or incorporated as existing at a particular time. The reason for this rule is that if it does not apply, documents adopted and thereby having the force of law can be amended without the Parliament being given the opportunity to scrutinise them. However, the Parliament has passed laws allowing exceptions to this rule in particular cases.

It is proposed that an exception be allowed in the case of the *Telecommunications Act* because of the rapid pace of technological change in the field of telecommunications and

its global nature. For example, it is envisaged that conditions of carrier licences declared under section 64 or 65 will require carriers to comply with relevant technical standards set by international bodies such as the CCITT (the International Telegraph and Telephone Consultative Committee of the International Telecommunications Union), the requirements of which are updated from time to time. Licence conditions would need to be updated continuously if they could not apply existing international standards as they are updated and new international standards as they are developed to apply to new types of services. The rapid pace of technological change in relation to telecommunications means that new standards relating to technical engineering matters such as the configuration for interfaces between different networks are constantly being developed and updated.

Another example of the need for the provision relates to AUSTEL technical standards - it is envisaged that carrier licence conditions will require the carriers to comply with AUSTEL technical standards. Without the benefit of the amendment, licence conditions will need to be changed each time AUSTEL prepares a new standard or updates an existing standard.

Also, the National Code under section 117 which will provide for environmental and planning standards may need to incorporate other instruments by reference (such as Australian standards, including standards of the Australian Standards Association, or particular State standards or international standards) and it may be desirable, in the case of particular standards, for changes to such standards to automatically have effect for the purpose of the Code. There are currently no appropriate existing technical standards for masts and towers under any State or Territory law, as they are used for telecommunications facilities which historically have not been subject to such laws. Accordingly, it may be necessary for the National Code to require carriers to comply with standards for masts and towers upon their being developed by the Commonwealth in conjunction with the States.



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