



AUSSAT Repeal Act 1991

No. 145 of 1991

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

PART 2—PREPARING FOR THE SALE OF AUSSAT

4. Commonwealth guarantee of AUSSAT borrowings
5. Appropriation of up to \$800,000,000 to pay out AUSSAT's existing obligations
6. AUSSAT not within the shield of the Crown
7. Clarification of AUSSAT's status for income tax purposes

PART 3—EFFECT OF THE SALE OF AUSSAT

8. Removal of AUSSAT's tax losses
9. AUSSAT no longer taken to be established for a public purpose
10. Repeal of the *AUSSAT Act 1984*
11. Consequential amendments of other Acts
12. Ending AUSSAT's liability under the *Commonwealth Borrowing Levy Act 1987*

PART 4—AMENDMENTS OF TELECOMMUNICATIONS LEGISLATION

13. Schedule 2 amendments

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

SCHEDULE 2

AMENDMENTS OF TELECOMMUNICATIONS LEGISLATION



AUSSAT Repeal Act 1991

No. 145 of 1991

An Act to provide for some matters connected with the sale of AUSSAT Pty Ltd, to repeal the *AUSSAT Act 1984* and amend other Acts following that sale, and to amend other Acts relating to telecommunications

[Assented to 21 October 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *AUSSAT Repeal Act 1991*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 3 commences, or is taken to have commenced, as the case requires, on a day to be fixed by Proclamation.

AUSSAT Repeal No. 145, 1991

(3) A Proclamation may fix under subsection (2) a day that is earlier than the day on which the Proclamation is published in the *Gazette*, but only if the day so fixed is:

(a) the day after the day on which:

- (i) a person (other than the Commonwealth or a nominee of the Commonwealth) acquires a controlling interest in AUSSAT; or
- (ii) 2 or more such persons together acquire such a controlling interest, or acquire interests in AUSSAT that together constitute such a controlling interest; or

(b) some later day.

(4) If the commencement of Part 3 is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, Parts 2 and 3 are repealed on the first day after the end of that period.

Interpretation

3. In this Act, unless the contrary intention appears:

“AUSSAT” means AUSSAT Pty Ltd, a company incorporated on 6 November 1981 under the law in force in the Australian Capital Territory relating to companies, as that company exists from time to time (even if its name is later changed);

“obligation” includes a debt or liability;

“share”, in relation to a body corporate, means a share in the body’s share capital;

“transition” means the commencement of Part 3.

PART 2—PREPARING FOR THE SALE OF AUSSAT

Commonwealth guarantee of AUSSAT borrowings

4. (1) The Treasurer may, on the Commonwealth’s behalf, enter into a contract guaranteeing the performance by AUSSAT of one or more of the following:

- (a) an obligation to repay an AUSSAT borrowing;
- (b) an obligation to pay interest (including interest on interest) on an AUSSAT borrowing;
- (c) an obligation to pay amounts (other than interest) that are specified in the contract and that AUSSAT is liable to pay with respect to an AUSSAT borrowing.

(2) If the Treasurer determines in writing that the Commonwealth guarantees the performance by AUSSAT of specified obligations each of which is of a kind referred to in subsection (1), the Commonwealth guarantees that performance by force of this subsection.

(3) In this section:

“AUSSAT borrowing” means:

- (a) an amount borrowed or raised, or to be borrowed or raised, by AUSSAT; or
- (b) an amount of credit obtained, or to be obtained, by AUSSAT.

(4) This section ceases to have effect, or is taken to have ceased to have effect, as the case requires, at the transition.

Appropriation of up to \$800,000,000 to pay out AUSSAT’s existing obligations

5. (1) The purpose of this section is to appropriate up to \$800,000,000 to pay out existing obligations of AUSSAT. The money appropriated may be paid to AUSSAT as either of, or as a combination of, the following:

- (a) additional share capital;
- (b) loan capital.

(2) The Minister may 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 a nominee of the Commonwealth.

(3) The Minister may authorise the payment of money to AUSSAT as a loan made on the Commonwealth’s behalf.

(4) The Minister may determine in writing the terms and conditions of loans made under subsection (3).

(5) A payment under subsection (2) or (3) must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) The total of all amounts paid under subsections (2) and (3) must not exceed \$800,000,000.

(7) AUSSAT must not use money paid to it under subsection (2) or (3) except for the purposes of, or in connection with, one or more of the following:

- (a) discharging an obligation of AUSSAT that existed at the commencement of this section;
- (b) discharging an obligation of AUSSAT that arises at or after that commencement because of an agreement or arrangement made before that commencement;
- (c) without limiting paragraph (a) or (b), terminating such an agreement or arrangement.

(8) An authorisation given under subsection (2) or (3) after the transition has no effect, or is taken to have had no effect, as the case requires.

AUSSAT not within the shield of the Crown

6. To avoid doubt, AUSSAT:

- (a) is not, does not form part of, does not represent, and is not an instrumentality or agency of, the Crown; and
- (b) is taken never to have been, formed part of, represented, or been an instrumentality or agency of, the Crown.

Clarification of AUSSAT's status for income tax purposes

7. AUSSAT is not, and is taken never to have been, a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

PART 3—EFFECT OF THE SALE OF AUSSAT

Removal of AUSSAT's tax losses

8. (1) Neither a loss that AUSSAT incurred in a year of income ending at or before the transition, nor a part of such a loss, is allowable as a deduction from AUSSAT's assessable income of a year of income ending at or after the transition.

(2) This section has effect despite anything in the *Income Tax Assessment Act 1936*, in particular, sections 79E, 79F, 80, 80AAA and 80AA of that Act.

(3) An expression has in this section the same meaning as in the *Income Tax Assessment Act 1936*.

AUSSAT no longer taken to be established for a public purpose

9. (1) A law that, if this section had not been enacted, would apply in relation to AUSSAT because AUSSAT was incorporated or established for a public purpose or for a purpose of the Commonwealth does not so apply.

(2) To avoid doubt, subsection (1) does not affect the operation of a law before the transition.

(3) In subsections (1) and (2):

“law” means:

- (a) a law (whether written or unwritten) of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument made under such a law.

Repeal of the *AUSSAT Act 1984*

10. The *AUSSAT Act 1984* is repealed.

Consequential amendments of other Acts

11. (1) The Acts specified in Schedule 1 are amended as set out in that Schedule.

AUSSAT Repeal No. 145, 1991

(2) If Part 5 of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991* commenced before the transition, or commences at the transition, Schedule 1 to this Act is taken to have been amended immediately before the transition by omitting the amendments of the *Crimes Act 1914* and of the first-mentioned Act.

Ending AUSSAT's liability under the *Commonwealth Borrowing Levy Act 1987*

12. (1) AUSSAT is not liable after the transition to pay an amount of levy imposed by the *Commonwealth Borrowing Levy Act 1987* on a borrowing undertaken before the transition.

(2) To avoid doubt, subsection (1) does not apply in relation to an amount of levy that was paid before the transition.

**PART 4—AMENDMENTS OF TELECOMMUNICATIONS
LEGISLATION**

Schedule 2 amendments

13. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1

Section 11

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Broadcasting Act 1942

Subsection 4(1) (definition of "AUSSAT satellite"):

Omit the definition.

Section 6C:

Omit "an AUSSAT", substitute "a".

Subsection 89D(3):

Omit "an AUSSAT" (wherever occurring), substitute "a".

Paragraph 94ZB(3)(a):

Omit "an AUSSAT", substitute "a".

Commonwealth Borrowing Levy Act 1987

Schedule:

Omit item 1.

Crimes Act 1914

Subsection 3(1) (subparagraphs (d)(i), (ii) and (iii) of the definition of "Commonwealth officer"):

Omit ", AUSSAT Pty Ltd".

Sales Tax (Exemptions and Classifications) Act 1935

First Schedule:

- (a) Omit paragraph (a) of item 152.
- (b) Omit from paragraph (b) of item 152 "the purposes", substitute "purposes".
- (c) Omit from paragraph (f) of item 152 "AUSSAT", substitute "space".

Sea Installations Act 1987

Schedule:

Omit "AUSSAT Act 1984".

SCHEDULE 1—continued

Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991

Schedule 2 (amendment of the definition of “Commonwealth officer” in section 3 of the *Crimes Act 1914*):

Omit “, AUSSAT Pty Ltd”.

SCHEDULE 2

Section 13

AMENDMENTS OF TELECOMMUNICATIONS LEGISLATION

Australian and Overseas Telecommunications Corporation Act 1991

Subparagraph 22(3)(c)(ii):

Omit “determination”, substitute “alteration”.

Telecommunications Act 1991

Section 44:

Omit “42”, substitute “43”.

Section 46:

Omit “and 42 (technical regulation)”, substitute “, 42 (technical regulation) and 43 (administering universal service levy)”.

Section 293:

Add at the end:

“(2) Despite subsection (1), a carrier that, because of a declaration under subsection 290(1) or (2), is a universal service carrier in relation to the financial year beginning on 1 July 1991 must give to AUSTEL a notice of the kind referred to in subsection (1) of this section within 60 days after the later of:

- (a) the commencement of this subsection; and
- (b) notification of the declaration in the *Gazette*.”.

Section 355(4):

Omit “or AUSTEL”.

After section 406:

Add:

SCHEDULE 2—continued

Instrument under this Act may provide for matters by reference to any other instrument

“407.(1) In this section:

‘instrument under this Act’ means the regulations or any other instrument made under this Act.

“(2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act, or of any regulations or rules under an Act, as in force at a particular time or as in force from time to time.

“(3) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time;

even if the other instrument or writing does not yet exist when the instrument under this Act is made.

“(4) A reference in subsection (3) to any other instrument or writing includes a reference to an instrument or writing:

- (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory, or an overseas entity); and
- (b) whether of a legislative, administrative or other official nature, or of any other nature; and
- (c) whether or not having any legal force or effect;

for example:

- (d) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
- (e) an international technical standard or performance indicator; or
- (f) a written agreement or arrangement or an instrument or writing made unilaterally.

“(5) Nothing in this section limits the generality of anything else in it.

“(6) Since this section deals differently with the topic dealt with by section 49A of the *Acts Interpretation Act 1901*, that section does not apply in relation to an instrument under this Act.”.

AUSSAT Repeal No. 145, 1991

NOTE ABOUT SECTION HEADING

1. On the commencement of section 9 of this Act, the heading to section 6C of the *Broadcasting Act 1942* is altered by omitting "AUSSAT".
-

*[Minister's second reading speech made in—
House of Representatives on 5 September 1991
Senate on 12 September 1991]*