Aerospace Technologies of Australia Limited Sale Bill 1994

Date Introduced: 12 October 1994
House: House of Representatives
Portfolio: Finance

Commencement: Sections 1 to 11 and 14 to 16 are taken to commence on 12 October 1994. All other provisions commence on the date of the sale of AeroSpace Technologies of Australia Limited (ASTA). Any provisions which have not commenced within 2 years of the date of assent are deemed to be repealed at the end of the period.

Purpose

The purpose of the bill is to:

(a) establish a framework for the sale of the Government-owned ASTA;

(b) ensure that specified ASTA employees who continue to work for the company after it is sold will retain accrued public employment entitlements and obligations;

(c) provide that from the date of sale, ASTA is treated as a private sector company and is not subject to Commonwealth legislation which currently applies to ASTA because of its status as a Commonwealth owned entity; and

(d) recognise certain rights and obligations which arose before the sale (particularly in relation to corruption offences) continue for matters which occurred before the sale.

Background

ASTA was established in 1986 with a view to corporatising and making profitable, the old Government Aircraft Factories. From humble beginnings the company has become a profitable enterprise with a 1992/3 profit of $8.7 million.

ASTA Aircraft Services Pty Ltd commenced trading during the 1988/89 financial year. That company specialises in aircraft maintenance and refurbishment.
ASTA's progress can be seen in its steadily increasing consolidated profit figures:

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<tbody>
<tr>
<td>Profit</td>
<td>($497,924)</td>
<td>$543,282</td>
<td>$18,870</td>
<td>$826,367</td>
<td>$1,233,059</td>
<td>$1,074,847</td>
<td>$8,704,111</td>
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(The 1993/94 financial statements were not available at the time of writing this digest)

ASTA is involved in a number of activities:

1. the production of components for commercial aircraft;
2. the provision of consulting and technical services as well as carrying out design, research and development projects;
3. the design, manufacture, assembly, repair and logistical support for military aerospace systems for Australian and overseas defence forces.
4. the management and development of Avalon Airport; and
5. aircraft servicing and maintenance (through its subsidiary ASTA Aircraft Services Pty Ltd).

On 17 December 1993, Senator Ray announced the government's decision to offer ASTA for sale. On 12 October 1994, the Minister for Finance, Mr Beazley declared that expressions of interest would be called for by way of national newspaper advertisements on 14 October 1994 with a closing date of 4 November 1994. The Minister's expectation was that the sale was expected to be completed by the first quarter of 1995.

Main Provisions

Part 1 of the bill contains the commencement provisions (discussed above) and definitions.

The "ASTA sale day" is the first day, after the Act is assented to but within 2 years of assent, on which a majority of the company's voting shares are acquired by a person other than the Commonwealth.

The Act makes provision for the situation where a subsidiary of ASTA is sold before ASTA. "ASTA subsidiary sale day" is the first day, after the introduction of the bill, on which a majority of the subsidiary's voting shares are acquired by a person other than the Commonwealth or a nominee of ASTA. That day must occur within 2 years of assent.

Both of these days must be declared by the Minister in the Gazette within 14 days after the day concerned.

All references to an "ASTA body" include a subsidiary of ASTA.

Division 1 of Part 2 deals with the consequences of the sale on employee superannuation and the availability of deferred benefits.
The *Superannuation Act* 1922 allows a person who has accumulated, in most cases, 20 years in eligible employment to defer superannuation benefits. **Clause 7** provides those employees who have elected to defer their benefits will be able to continue to count employment with an ASTA body after the sale, as public employment.

The *Superannuation Act* 1976 enables Commonwealth employees who ceased to contribute to a Commonwealth Superannuation Scheme before reaching a total of 5 years to defer their benefit if they continue in public employment for the balance of the 5 year period. **Clause 8** allows post-sale service with an ASTA body to be counted towards the 5 year qualifying period.

Where an ASTA body employee was accumulating eligible employment for the purposes of the *Superannuation Act* 1976, **clause 9** deems post-sale employment with an ASTA body to be eligible employment.

**Clause 10** applies to current employees of an ASTA body who were members of the Defence Force and who elected to take deferred retirement and death benefits under the *Defence Force Retirement and Death Benefits Act* 1973. Like **clause 7**, **clause 10** provides that employees who have elected to take deferred benefits and who were accruing service in public employment with an ASTA body can count employment with ASTA even after the sale.

Where an ASTA body employee was accumulating eligible employment for the purposes of the *Defence Force Retirement and Death Benefits Act* 1973, **clause 11** deems post-sale employment with an ASTA body to be eligible employment.

**Clause 12** provides that from the ASTA sale day, ASTA is not an approved authority for the purposes of the *Superannuation Act* 1976. In general terms this means that Commonwealth Government superannuation benefits cannot accru to employees employed for the first time, after the sale date.

**Clause 13** makes the same provision as **clause 12** but in relation the *Superannuation Act* 1990. It should be noted that there is no provision in relation to deferring benefits under the 1990 Act because that Act does not impose a qualifying period of public employment to defer benefits.

Division 2 of Part 2 deals with the application of *The Crimes (Superannuation Benefits) Act* 1989 (the **1989 Act**) to acts by ASTA body employees which may constitute corruption where those acts occur on or after the sale day.

**Subclause 14(1)** allows the continued operation of the 1989 Act for corruption offences committed before the ASTA sale day.

**Subclause 14(2)** provides that a superannuation order cannot be made under the 1989 Act in respect of employer contributions made on or after the ASTA sale day.

**Subclause 14(3)** provides that a superannuation scheme to which an ASTA body makes employer contributions after the sale day is not a superannuation scheme for the purposes of applying the 1989 Act to a corruption offence committed after the sale day. The consequence of this is that employer contributions may not be subject to a superannuation order.
Subclause 14(4) provides that where a superannuation order is to be made in respect of employer contributions paid into Consolidated Revenue, the order should specify that the amount paid into Consolidated Revenue belongs to the Commonwealth.

Subclause 14(5) provides that where an employee has received superannuation benefits from Consolidated Revenue, then any superannuation order made under the 1989 Act should require benefits to be repaid to the Commonwealth.

It is presumed that both subclauses 14(4) and (5) were inserted to avoid the possibility of an order being made requiring an amount of superannuation to be repaid to ASTA rather than the Commonwealth.

Division 3 of Part 2 deals with The Superannuation Benefits (Supervisory Mechanisms) Act 1990 (the 1990 Act). Clause 15 provides that an ASTA body is not to be an eligible or relevant body for the purposes of the 1990 Act.

Part 3 deals with prosecutions and the continuing application of the Director of Public Prosecutions Act 1983 (the 1983 Act). Clause 16 allows for the continuing operation of the 1983 Act in relation to acts or omissions that occurred in relation to an ASTA body before the sale day and to civil remedies connected with a prosecution.

Clause 17 provides that on and after the ASTA sale day, ASTA is not an agency of the Commonwealth.

Clause 18 provides a mechanism for establishing regulations which may operate retrospectively from the sale day.

Clause 19 extinguishes mobility rights of employees of ASTA under Part IV of the Public Service Act 1922.

Clause 20 puts an end to ASTA's liability to pay any levy imposed under the Commonwealth Borrowing Levy Act 1987. Any amount levied before the sale day will still be payable.

Clause 21 amends the Commonwealth Borrowing Levy Act 1987 by omitting the reference to ASTA in the Schedule.

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Bills Digest Service
Parliamentary Research Service

27 October 1994

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.


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