AUSSAT Repeal Bill 1991

Date Introduced: 5 September 1991
House: House of Representatives
Portfolio: Transport and Communications

Purpose
To appropriate up to $800 million from the Consolidated Revenue Fund to pay out AUSSAT's existing debt's and liabilities; allow the Treasurer to guarantee AUSSAT borrowings; and prevent AUSSAT's current income tax losses being used as a tax deduction by its purchaser.

Background
AUSSAT Pty Ltd was established in November 1981 to establish, own and operate a national satellite system. Commercial operations commenced in 1985 with the launch of AUSSAT 1 (Note: AUSSAT 2 was also launched in 1985 and AUSSAT 3 in 1987). The Memorandum and Articles of Association of AUSSAT initially required that 49% of the shares in the company be sold to the public whilst the Commonwealth retain 51%. The Satellite Communications Act 1984 precluded shares being sold to the public and since 1984 the Commonwealth has held 75% and Telecom 25% of the shares. AUSSAT Pty Ltd has two subsidiary companies: AUSSAT Finance Ltd which raises finance offshore on behalf of AUSSAT Pty Ltd; and AUSSAT New Zealand Ltd whose principal activity is contracting work on behalf of AUSSAT Pty Ltd.

AUSSAT recorded an operating loss before tax of $21.925 million in 1989-90 (compared with an operating profit before tax of $3.242 million in 1988-89). The Directors of AUSSAT have attributed AUSSAT's operating loss to a contraction in bulk transponder sales due to rationalisation in the commercial television industry, the effects of a limited market in which the AUSSAT group of companies can operate, and a continued highly geared financial structure with related debt servicing costs which represent over 60% of AUSSAT's cash operating costs. Total operating revenue of AUSSAT in 1989-90 was $148.046 million (compared to $142.649 million in 1988-89). The major contribution to AUSSAT revenue in 1989-90 came from sales of transponder services (Note: each AUSSAT satellite has 15 transponders, each capable of carrying one or two television pictures or up to 1000 two-way telephone conversations). Revenue from transponder services in 1989-90 totalled $87.8 million (compared to $95 million in 1988-89). Statistics relating to the operating profit/(loss) and operating revenue of AUSSAT for 1984-90 are contained in Table 1 below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating Profit/(Loss) Before Tax</th>
<th>Operating Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984-85</td>
<td>$(9.182 million)</td>
<td>$532 000</td>
</tr>
<tr>
<td>1985-86</td>
<td>$(42.604 million)</td>
<td>$28.649 million</td>
</tr>
<tr>
<td>1986-87</td>
<td>$(34.954 million)</td>
<td>$73.682 million</td>
</tr>
<tr>
<td>1987-88</td>
<td>$(10.233 million)</td>
<td>$104.075 million</td>
</tr>
<tr>
<td>1988-89</td>
<td>$3.242 million</td>
<td>$142.649 million</td>
</tr>
<tr>
<td>1989-90</td>
<td>$(21.925 million)</td>
<td>$148.046 million</td>
</tr>
</tbody>
</table>

In June 1988, contracts were awarded to the Hughes Aircraft Company in the United States for the construction of two satellites to replace the two first generation satellites launched in 1985 and are scheduled to end their service life in 1992-93. AUSSAT's two second generation satellites are scheduled for launch in 1991-92. The launch vehicle for the second generation of AUSSAT satellites will be provided by the Peoples Republic of China.

In May 1990, the Government announced that AUSSAT would be provided with a once-off injection of $100 million in equity, doubling the capital of AUSSAT from $100 million to $200 million.
In making the announcement, the Minister stated that the Government's decision followed consideration by Federal Cabinet of AUSSAT's financial needs and that the existing regulatory regime has restricted AUSSAT's market and limited its options for diversification. In its 1989-90 Annual Report, the Directors of AUSSAT indicate that the additional equity is being used to fund AUSSAT operations and has had the effect of lowering borrowings by $100 million. Despite this injection of equity, AUSSAT's debt in 1989-90 totalled $561 million.

On 8 November 1990, the Prime Minister and the Minister for Transport and Communications announced a telecommunications reform package. The stated aim of the proposed reforms is to promote competition and dynamism in the industry, guarantee community service obligations in telecommunications, maintain quality of telecommunications services, maintain Telecom and OTC in full public ownership, maintain maximum possible Australian ownership in the industry, further development and promote the industry, ensure effective regulation, and remove from Telecom and OTC all Government imposed constraints which limit their ability to respond effectively to competition and which do not serve the broader national interest.

The major decisions to come out of the November Statement that will affect AUSSAT include:
* that AUSSAT be sold and be given the right to compete with Telecom/OTC and provide a full range of telecommunications services;
* that majority Australian ownership will be required in the consortium buying AUSSAT;
* that the sale of AUSSAT and the tender for the licence for the second telecommunications carrier will be completed by 31 December 1991;
* that Telecom will be extracted from its present 25% ownership of AUSSAT and will lose its positions on the AUSSAT board;
* that the geographic constraint that restricts AUSSAT to provide services only within its present satellite 'footprint' will be lifted; and
* that the party acquiring AUSSAT will be required to provide capacity for services including pay television, remote commercial television services and the ABC's homestead and community broadcasting satellite service.

On 21 January 1991 the AUSSAT Amendment Act 1990 was assented to. The principal effect of this Act is to allow AUSSAT to compete with Telecom and OTC in the provision of: any domestic or international public telecommunications infrastructure or network; access to international public telecommunications networks for Australia; and certain telecommunications services (e.g. public switched data services, public switched text and video services, leased circuits services and mobile telephone services). The Act also repealed those sections of the AUSSAT Act 1984 which prevented AUSSAT being converted into a public company and restricted who may hold shares in AUSSAT.

Main Provisions
Part 3 (clauses 6-10) of the Bill will have effect on a date set by Proclamation (subclause 2(2)). A Proclamation may set a commencement date earlier than that on which the Proclamation is Gazetted if the date set is the day after that on which a controlling interest is acquired in AUSSAT, or some later day (subclause 2(3)). Parts 2 and 3 (clauses 4-10) of the Bill will be repealed where a Proclamation for the commencement of Part 3 is not made within six months of this Bill receiving Royal Assent (subclause 2(4)).

The principal effect of clause 4 will be to allow the Treasurer to guarantee AUSSAT borrowings. 'AUSSAT borrowing' is defined to be: an amount borrowed/raised, or to be borrowed/raised by AUSSAT; or an amount of credit obtained, or to be obtained by AUSSAT. Clause 4 will cease to have effect at the commencement of Part 3 (clauses 6-10) of this Bill.

The principal effect of clause 5 will be to appropriate from the Consolidated Revenue Fund an amount up to $800 million to pay out AUSSAT's existing debts or liabilities. The money may, on the Minister's authorisation, be paid to AUSSAT either as additional share capital, loan capital, or a combination of both. Where money is paid to AUSSAT by way of loan, the Minister may attach terms and conditions to the loan. AUSSAT is not to use money paid to it except for discharging an existing debt or liability; discharging a pre-existing debt or liability that arises because of an agreement or arrangement; or terminating such an agreement or arrangement. Authorisations made after the commencement of Part 3 (clauses 6-10) of this Bill will have no effect.

The effect of clause 6 will prevent AUSSAT's current income tax losses being used as a tax deduction by its purchaser.
AUSSAT is not to be taken to have been established for a public purpose (clause 7). This will make it exempt from a number of requirements, such as freedom of information.

The AUSSAT Act 1984 will be repealed by clause 8.

Clause 11 will amend two Acts as set out in Schedule 2 of this Bill. A new section 407 will be inserted into the Telecommunications Act 1991 that basically allows regulations or any other instrument made under that Act to provide for the application, adoption or incorporation of existing or future provisions of any other Act, regulations, rules, or instruments. (Note: This proposed amendment for the adoption of future instruments is a deviation from the general rule under section 49A of the Acts Interpretation Act 1901. See 'Remarks' section of this Digest below.)

**Remarks**

A provision similar to proposed section 407 has recently been examined by the Senate Standing Committee for the Scrutiny of Bills. In the Committee's Alert Digest No. 10 of 1991 the Committee noted the proposal to insert a new subsection 98(3A) into the Civil Aviation Act 1988 to provide:

"The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a written instrument or other document, as in force at a particular time or from time to time."

The Committee, while accepting the justification for the proposed amendment put forward in the Explanatory Memorandum to the Bill, indicated that "...while it accepted the argument that it was essential that Australia meet its international obligations in relation to the safety of air navigation, it was equally essential that material which operated with the force of law was subject to scrutiny of Parliament. If the regulations are able to apply, adopt or incorporate matters contained in non-legislative instruments or documents 'as in force ... from time to time', the result would be to allow such extra-Parliamentary documents to be amended and to allow such amendments to have the force of law, without the Parliament having the opportunity to scrutinise them. Clearly, the competing considerations here must be balanced by the Parliament. The Committee draws Senators attention to the clause, as it may be considered an inappropriate delegation of legislative power, in breach of principle 1(a)(iv) of the Committee's terms of reference."

The Minister's response to the Committee's concerns and the Committee's comments are contained in the Committee's Eleventh Report of 1991 at pp. 309 and 310.

**References**

2. AUSSAT Annual Reports 1985-86 to 1989-90.
7. Ibid., p. 77.