

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSSAT AMENDMENT BILL 1990

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 amends the AUSSAT Act 1984 to enable AUSSAT Pty Ltd to compete with Telecom and OTC and to remove from the Act impediments to the sale of AUSSAT.

The Bill will give AUSSAT Pty Ltd the new primary object of supplying telecommunications services, whether within Australia, outside Australia or between Australia and overseas and the carrying on of any business or activity relating to telecommunications, whether within or outside Australia.

AUSSAT, in performing its new role, will not be restricted by the provisions in the Telecommunications Act 1989 (the Telecommunications Act) which give exclusive rights to the other carriers, but will be generally subject to that Act and to regulation by AUSTEL in the same way as the other carriers are.

The Bill removes the current limitations on AUSSAT which restrict it to providing satellite systems and operating in Australia and neighbouring regions.

The Bill will also enable AUSSAT to request AUSTEL to direct another carrier to make available a telecommunications network or facility for its use. It further provides for the network or facility to be made available on such terms and conditions including price as are agreed by the carriers or, failing agreement, as are determined by AUSTEL.

The Bill facilitates the sale of AUSSAT by removing restrictions on AUSSAT which prevent it being converted to a public company and which limit who may hold shares in AUSSAT.

The measures in this Bill which enable AUSSAT to compete with Telecom and OTC are interim arrangements pending substantial amendments to the Telecommunications Act which are intended to be introduced in the Autumn sittings 1991.

FINANCIAL IMPACT STATEMENT

It is expected that substantial Commonwealth revenue will be generated by AUSSAT's ability to provide new services and the sale of AUSSAT. It is impossible at this stage to estimate the likely amounts of revenue to be raised. The revenue to be gained from new services is not readily assessable because the AUSSAT Board has yet to take final decisions on how it will react to the new business opportunities offered. The price obtained for the sale of AUSSAT will depend heavily on responses by tenderers in negotiation later this year.

NOTES ON CLAUSES

Clause 1 - Short Title, etc.

This clause provides for the Amending Act to be cited as the AUSSAT Amendment Act 1990 and provides that in the Amending Act, "Principal Act" means the AUSSAT Act 1984.

Clause 2 - Commencement

This clause provides for the Amending Act, other than clause 6, to commence upon Royal Assent. Clause 6 will commence upon Proclamation. If clause 6 has not commenced by a Proclamation within 6 months after Royal Assent, it will commence automatically at the end of that period.

Clause 3 - Title

This clause amends the title of the Principal Act to remove any implication that the role of AUSSAT is restricted to the supply of the national telecommunications satellite system.

Clause 4 - Interpretation

This clause omits the definition of "neighbouring regions" in section 3 of the Principal Act as a consequence of the repeal of section 9 in which the term appeared (see clause 5).

Clause 5 - Substitution of new section

Section 9 of the Principal Act sets out the primary object of AUSSAT. The primary object currently set out in subsection 9(1) is the carrying on of the business of providing -

- . a telecommunications system for Australia by the use of space satellites; and
- . space satellite facilities for use in telecommunications systems for neighbouring regions.

Subsection 9(2) of the Principal Act deems the Memorandum of Association of AUSSAT to provide that the principal object of AUSSAT is the object specified in subsection 9(1) and requires the Directors and other persons to act accordingly.

This clause repeals section 9 of the Principal Act to remove the limitations in the primary object of AUSSAT

which restrict it to using satellite systems, and to operating in Australia and neighbouring regions, and substitutes a new section which provides a new primary object for AUSSAT.

New subsection 9(1) provides that AUSSAT has as its primary object the conduct of a business consisting of -

- . the supply of telecommunications services whether within Australia, outside Australia or between Australia and overseas; and
- . the carrying on of any business or activity relating to telecommunications whether within or outside Australia.

New subsection 9(2) re-enacts the current requirement in subsection 9(2) by deeming AUSSAT's Memorandum of Association to provide that AUSSAT has the object specified in new subsection 9(1) and requiring the Directors of AUSSAT and other persons to act accordingly.

Clause 6 - Insertion of new sections

This clause inserts new sections 10A, 10B, and 10C in the Principal Act.

New section 10A allows AUSTEL to direct another carrier to make available a telecommunications network or facility to AUSSAT for its use.

New subsection 10A(1) enables AUSSAT to request AUSTEL to make such a direction.

New subsection 10A(2) gives AUSTEL a discretion to make such a direction where it is satisfied that the network or facility is necessary or desirable to enable AUSSAT to supply telecommunications services or other services that it has a right to supply under the Principal Act.

New subsection 10A(3) makes the terms and conditions on which the network or facility is to be made available to AUSSAT (including the price) such as are agreed between AUSSAT and the other carrier or, failing agreement, as are determined by AUSTEL.

Section 49 of the Telecommunications Act currently provides a mechanism for a carrier to request AUSTEL to direct another carrier to make available a telecommunications network or facility.

New subsection 10A(4) clarifies that new subsection 10A is not to be taken to limit the operation of section 49 of the Telecommunications Act.

New section 10B enables AUSSAT to compete with Telecom and OTC. Divisions 1, 2 and 3 of Part 3 of the Telecommunications Act 1989 set out rules regulating Australia's telecommunications networks and set out which carriers have exclusive rights to provide reserved services. New section 10B enables AUSSAT to undertake certain activities in the conduct of its business in spite of the provisions of those Divisions.

Under new subsection 10B(1), AUSSAT has the right to do any of the following in the conduct of its business:

- (a) to provide any domestic or international public telecommunications infrastructure or network;
- (b) to provide access to international public telecommunications networks for Australia;
- (c) to supply reserved telecommunications services of the kinds referred to in section 36 of the Telecommunications Act 1989 (ie, public switched telephone services, public switched data services, public switched text and video services, public switched ISDN, leased circuit services and public mobile telephone services).

New subsection 10B(2) applies the Telecommunications Act 1989 to AUSSAT, subject to the provisions of new subsection 10B(1), in relation to the provision of a service that AUSSAT has the right to supply under the Principal Act as amended by this Bill in the same way that the Telecommunications Act applies to another carrier with the right to provide the same service. For example, Division 4 of Part 3 of the Telecommunications Act creates rules for reserved service charges. Under new subsection 10B(2), those rules would also apply in the same way to reserved services that AUSSAT provides under the Principal Act as amended by this Bill. Another example is section 100 of the Telecommunications Act which imposes obligations on a carrier supplying certain services not to bundle charges. The same rule would apply to AUSSAT supplying one of those services that it has the right to provide under the Principal Act as amended by this Bill.

New subsection 10B(3) exempts from the operation of new section 10B sections 35, 47 and 48 of the Telecommunications Act. Those provisions concern Telecom's exclusive right to supply the first telephone for a basic telephone service and public payphones within Australia. The reference in paragraph 35(c) to the exclusive right of a carrier to supply, install, maintain and operate all equipment, lines and facilities connected to and within the boundary of a telecommunications network operated by it is not intended to restrict interconnection between the carrier networks.

New section 10C deems AUSSAT's Memorandum and Articles of Association to confer on AUSSAT power to do those things which are necessary or convenient to be done for, or in connection with, the provision of a service that AUSSAT has a right to provide under the Principal Act as amended by this Bill.

Clause 7 - Repeals

This clause repeals sections 14 and 15 of the Principal Act to facilitate the sale of AUSSAT. Section 14 currently prevents AUSSAT from being converted to a public company and section 15 restricts who may hold shares in AUSSAT and places other restrictions on the issuing of shares.

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