AUSSAT Repeal Act 1991

Act No. 145 of 1991 as amended

This compilation was prepared on 22 September 2006
taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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AUSSAT Repeal Act 1991  iii
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

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

(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.

(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within the period of 6 months beginning on the day on which this Act receives the Royal Assent, Parts 2 and 3 are repealed on the first day after the end of that period.
3 Interpretation

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

4 Commonwealth guarantee of AUSSAT borrowings

(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.

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

(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.
Section 6

(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.

6 AUSSAT not within the shield of the Crown

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.
7 Clarification of AUSSAT’s status for income tax purposes

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

8 Removal of AUSSAT’s tax losses

(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, former sections 79E, 79F, 80, 80AAA and 80AA of that Act.

(2A) AUSSAT cannot deduct from its assessable income for the 1997-98 income year or a later income year, a tax loss (or a part of a tax loss) incurred in an income year ending at or before the transition.

(2B) This section has effect despite anything in the *Income Tax Assessment Act 1997*, in particular, Division 36 of that Act.

(3) An expression has in this section the same meaning as in the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

9 AUSSAT no longer taken to be established for a public purpose

(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 subsection (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.
10 Repeal of the AUSSAT Act 1984

The AUSSAT Act 1984 is repealed.

11 Consequential amendments of other Acts

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

(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.

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

(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

13 Schedule 2 amendments

The Acts specified in Schedule 2 are amended as set out in that Schedule.
Schedule 1—Consequential amendments of other Acts
Section 11

Note:
The amendments made by this Schedule are incorporated in the compilations on ComLaw.

Broadcasting Act 1942
[repealed by Act No. 105, 1992, s. 28 as amended by Act No. 120, 2002, Sch. 3]

Commonwealth Borrowing Levy Act 1987

Crimes Act 1914

Sales Tax (Exemptions and Classifications) Act 1935
[repealed by Act No. 101, 2006, Sch. 5]

Sea Installations Act 1987


For access to the wording of the amendments made by this Schedule, see Act No. 145, 1991.
Schedule 2—Amendments of Telecommunications Legislation

Section 13

Note:
The amendments made by this Schedule are incorporated in the compilations on ComLaw.

*Australian and Overseas Telecommunications Corporation Act 1991* [now cited as *Telstra Corporation Act 1991*]

*Telecommunications Act 1991*

For access to the wording of the amendments made by this Schedule, *see* Act No. 145, 1991.
Notes to the *AUSSAT Repeal Act 1991*

**Note 1**

The *AUSSAT Repeal Act 1991* as shown in this compilation comprises Act No. 145, 1991 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

### Table of Acts

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Date of Assent</th>
<th>Date of commencement</th>
<th>Application, saving or transitional provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</em></td>
<td>101, 2006</td>
<td>14 Sept 2006</td>
<td>Schedule 2 (item 18) and Schedule 6 (items 1, 6–11): Royal Assent</td>
<td>Sch. 6 (items 1, 6–11)</td>
</tr>
</tbody>
</table>

*AUSSAT Repeal Act 1991*
### Table of Amendments

<table>
<thead>
<tr>
<th>Provision affected</th>
<th>How affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 8</td>
<td>am. No. 39, 1997; No. 101, 2006</td>
</tr>
</tbody>
</table>

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
Table A

Application, saving or transitional provisions

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments
Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:
   (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
   (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object
The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:
   (a) any act done or omitted to be done; or
   (b) any state of affairs existing; or
   (c) any period ending;
before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters
Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the Legislative Instruments Act 2003):
   (a) making or amending an assessment (including under a provision that is itself repealed or amended);
Notes to the **AUSSAT Repeal Act 1991**

**Table A**

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd’s liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd’s right, under former section 160ART of that Act, to object against the Commissioner’s amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees’ wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company’s records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.
8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

(a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:

(i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the Income Tax Assessment Act 1936); or

(ii) interest under the Taxation (Interest on Overpayments and Early Payments) Act 1983; and

(b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the Taxation Administration Act 1953) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the subject provision) of any Act or legislative instrument (within the meaning of the Legislative Instruments Act 2003) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901

This Schedule does not limit the operation of section 8 of the Acts Interpretation Act 1901.