

1994

**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

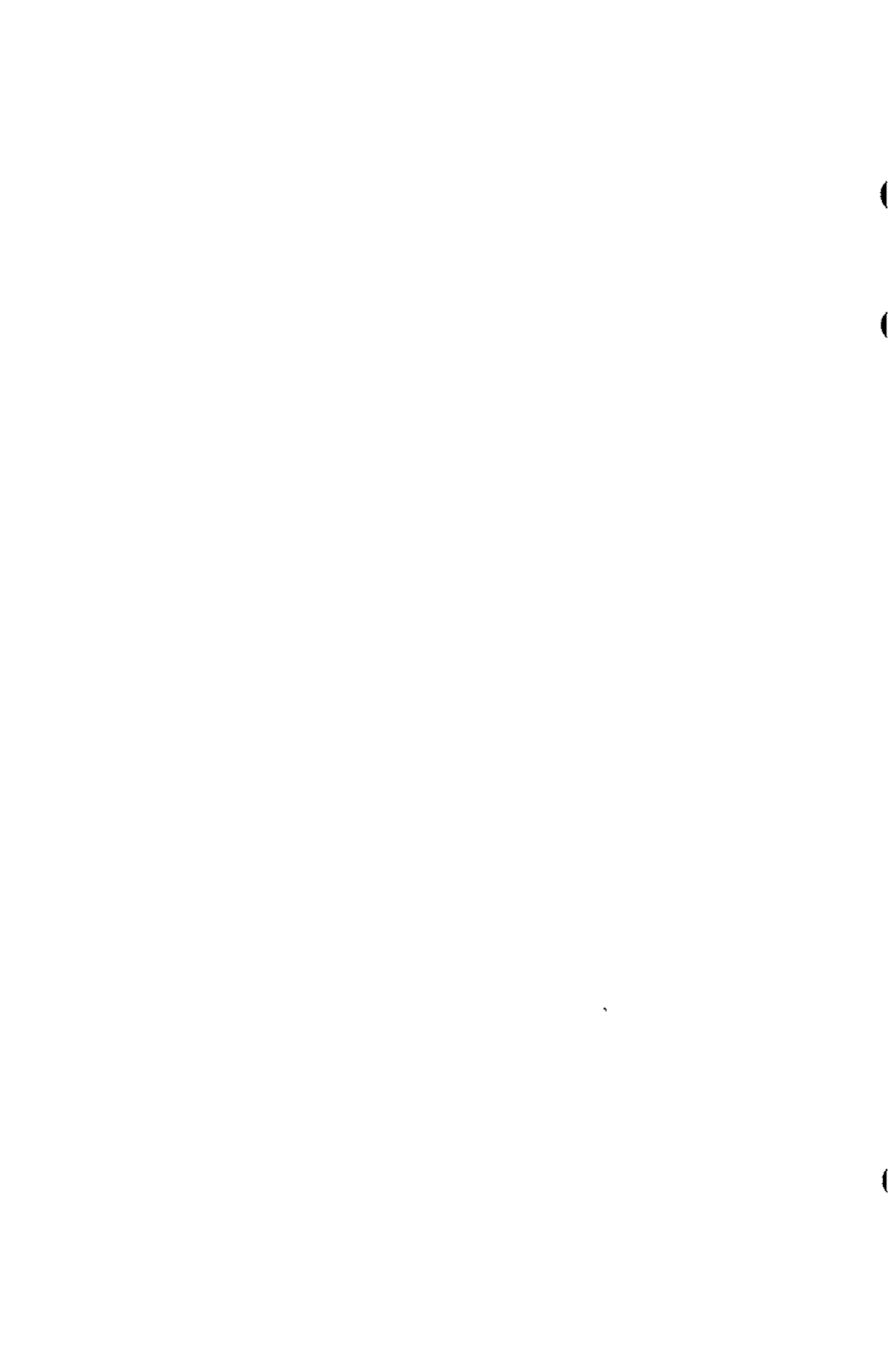
HOUSE OF REPRESENTATIVES

AEROSPACE TECHNOLOGIES OF AUSTRALIA LIMITED SALE BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
the Hon Kim C. Beazley, MP)





AEROSPACE TECHNOLOGIES OF AUSTRALIA LIMITED SALE BILL 1994

OUTLINE

The AeroSpace Technologies of Australia Limited Sale Bill 1994 puts in place the necessary framework for the sale of AeroSpace Technologies of Australia Limited (ASTA) by the Commonwealth.

The main purposes of the Bill are to ensure that:

- existing Commonwealth legislation applying to ASTA because of its status as a Commonwealth owned entity will not apply to ASTA from the sale day and that post-sale ASTA is, as far as practicable, not subject to Commonwealth legislation which does not govern the activities of private sector companies;
- post-sale service of specific categories of employees is recognised as public employment for the purposes of qualifying for certain deferred superannuation benefits; and
- there are saving provisions to allow for certain pre-sale rights or obligations to continue after the sale in respect of matters which occurred before the sale.

The Bill also makes a consequential amendment to the *Commonwealth Borrowing Levy Act 1987*.

The purpose of the Bill is to provide for the sale of ASTA. As part of the sale process it is possible that a subsidiary of ASTA may be sold in advance of the sale of ASTA itself.

Provisions applicable to both ASTA and its subsidiaries ("ASTA bodies") are intended to commence on the day the Bill is introduced into the Parliament, the Introduction Date, but take effect from the relevant sale day for the ASTA body. For a subsidiary, the sale day may occur at any point between the Introduction Date and the sale of ASTA. For ASTA the sale day must occur after the Bill receives the Royal Assent.

While there is the possibility of retrospective application of the provisions applicable to all ASTA bodies (ie ASTA and its subsidiaries) if a subsidiary is sold prior to the Bill receiving the Royal Assent, no employee or other rights will be adversely impacted as a result.

FINANCIAL IMPACT STATEMENT

The primary financial impacts of the sale of ASTA will be the offset to outlays occurring when the sale receipts are credited to the Commonwealth Public Account and the return of any surplus in The Commonwealth Superannuation Scheme Additional Contributions Trust Fund to the Consolidated Revenue Fund.

In relation to employee matters no further employer contributions will be received from ASTA in relation to superannuation. It should be noted that employee superannuation contributions are classified as financing transactions and do not affect the Budget outcome.

No levy will be imposed on ASTA's borrowings after the ASTA sale day under the *Commonwealth Borrowing Levy Act 1987*.

In addition, ongoing costs of monitoring ASTA currently met by the portfolio department (the Department of Defence) and the Department of Finance will no longer be incurred following sale and any risk of a future call on the Commonwealth, such as for capital, will be eliminated.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Commencement: [Introduction Date]

1. Clause 1 provides for the Act to be cited as the *Aerospace Technologies of Australia Limited Sale Act 1994*.

Clause 2 - Commencement

Commencement: [Introduction Date]

2. Subclause 2(1) provides for certain clauses to commence on the Introduction Date. These are:

- formal clauses relating to procedural matters and definitions (Part 1);
- clauses which are applicable both to ASTA and its subsidiaries (clauses 7 to 11, 14, 15 and 16).

These clauses commence on the Introduction Date to provide for the possibility of an ASTA subsidiary being sold between the Introduction Date and the sale of ASTA. While the provisions would commence on the Introduction Date, they would not take effect in relation to ASTA or a subsidiary of ASTA ("ASTA body") until that ASTA body is in fact sold. If an ASTA subsidiary is not sold in advance of the sale of ASTA, the provisions would take effect in relation to that subsidiary on the ASTA sale day (see clause 5 and definition of "sale day" in clause 3).

The provisions cannot take effect in relation to ASTA until after the Bill receives the Royal Assent because the ASTA sale day, which is to be declared by the Minister, cannot occur until after the Royal Assent (see clause 5 and definition of "sale day" in clause 3).

3. Subclause 2(2) provides that all the remaining provisions commence on the ASTA sale day.

4. Subclause 2(3) places a limit on the period of time within which the provisions contained in the Bill can be commenced. Any provisions which have not commenced within 2 years from the date on which the Act receives the Royal Assent are repealed at the end of the period.

Clause 3 - Definitions

Commencement: [Introduction Date]

5. Clause 3 provides definitions of terms used in the Bill. The term "ASTA subsidiary" includes companies that are subsidiaries of ASTA on the Introduction Date or that subsequently become subsidiaries of ASTA.

6. "ASTA body" is defined to mean ASTA or an ASTA subsidiary.

"Sale day" is defined to allow for different sale days to be declared in accordance with clauses 5 and 6 in relation to each ASTA body. If an ASTA subsidiary is sold in advance of the sale of ASTA, the sale day for that body will be a day declared under clause 6. If this does not occur in relation to a particular subsidiary, its sale day will be the ASTA sale day as declared under clause 5.

Clause 4 - Subsidiaries

Commencement: [Introduction Date]

7. Clause 4 provides for the term "subsidiary" to have the same meaning as in the Corporations Law.

Clause 5 - ASTA sale day

Commencement: [Introduction Date]

8. Clause 5 requires the Minister for Finance to declare a specified day to be the ASTA sale day by notice in the *Gazette*. The ASTA sale day is the first day after the Royal Assent but within 2 years of the Royal Assent, on which, in the opinion of the Minister, the majority of the voting shares in ASTA have been acquired by a person or persons, other than the Commonwealth or a nominee of the Commonwealth. The notice must be published within 14 days after the day concerned.

Clause 6 - ASTA subsidiary sale day

Commencement: [Introduction Date]

9. If an ASTA subsidiary is sold prior to ASTA being sold, clause 6 requires the Minister for Finance to declare a specified day to be the sale day for that ASTA subsidiary. The Minister will be required to declare a sale day if in his or her opinion the day is the first day after the Introduction Date on which a majority of the voting shares in the ASTA subsidiary have been acquired by a person other than ASTA, the Commonwealth or a nominee of either. The day must also occur within 2 years of the Royal Assent. The notice must be published within 14 days after the day concerned.

PART 2 - SUPERANNUATION

Division 1 - Superannuation schemes

Clause 7 - Deferred benefits under the *Superannuation Act 1922*

Commencement: [Introduction Date]

10. This clause applies to employees of an ASTA body who up to the relevant sale day for that body were accumulating service with an ASTA body as service in public employment in order to qualify to obtain deferred benefits under the *Superannuation Act 1922* (a total of 20 years is required in most cases).

11. The clause provides that employees who elected to preserve their superannuation rights (and deferred their benefits) under the *Superannuation Act 1922* will be able to continue to count employment with the body, or, if the body is a subsidiary of a particular body corporate and another ASTA body is a subsidiary of this particular body corporate, the other ASTA body, after the relevant sale day as public employment for the purposes of the Act.

Clause 8 - Deferred benefits under the *Superannuation Act 1976*

Commencement: [Introduction Date]

12. Employees of an ASTA body who ceased to be contributing members of the Commonwealth Superannuation Scheme before reaching a total of 5 years contributory membership, may qualify to defer their benefits if they remain in public employment for the balance of the 5 year period.

13. Similarly to clause 7 (*Superannuation Act 1922*) and clause 10 (*Defence Force Retirement and Death Benefits Act 1973*), this clause ensures that employees who have elected to preserve their superannuation benefits are able to continue counting post-sale service with the body, or, if the body is a subsidiary of a particular body corporate and another ASTA body is a subsidiary of this particular body corporate, the other ASTA body, as public employment. A period of employment with one of these bodies will therefore count towards the five year qualifying period for eligibility for deferred benefits even after the sale day.

Clause 9 - Period of eligible employment for the purposes of Division 3 of Part IX of the *Superannuation Act 1976*

Commencement: [Introduction Date]

14. If as a result of the sale of an ASTA body, employment with that body ceases to be eligible employment for the purposes of Division 3 of Part IX of the *Superannuation Act 1976* (which allows for the preservation of rights of persons ceasing to be eligible employees), this clause provides that any period of employment by the relevant ASTA body which was regarded as eligible employment prior to the relevant sale day for that ASTA body will continue to be regarded as eligible employment.

Clause 10 - Deferred benefits under the *Defence Force Retirement and Death Benefits Act 1973*

Commencement: [Introduction Date]

15. This clause relates to the *Defence Force Retirement and Death Benefits Act 1973*. Current employees of an ASTA body who were formerly members of the Defence Force and who have elected to take deferred DFRDB benefits are required to complete an aggregate of 20 years (in most circumstances) in the Defence Force or in subsequent public employment to enable benefits to be paid.

16. In the absence of a specific provision, an employee who has not served the required period prior to the Commonwealth ceasing to have a controlling

interest in an ASTA body would lose his or her entitlement to the benefits available under the *Defence Force Retirement and Death Benefits Act 1973*.

17. Subclause 10(1) is intended to enable former members of the Defence Force who:

- . are employed by an ASTA body on the relevant sale day for that body,
- . had deferred their benefits under the *Defence Force Retirement and Death Benefits Act 1973*, and
- . were accruing service in public employment with that body,

to count employment with the body, or, if the body is a subsidiary of a particular body corporate and another ASTA body is a subsidiary of this particular body corporate, the other ASTA body, as public employment even after the sale day.

Clause 11 - Period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*

Commencement: [Introduction Date]

18. If as a result of the sale of an ASTA body, employment with that body ceases to be eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973* (which allows for the preservation of rights of contributing members who cease to be members of the Defence Force), this clause provides that any period of employment by the relevant ASTA body which was regarded as eligible employment prior to the relevant sale day for that ASTA body will continue to be regarded as eligible employment.

Clause 12 - Application of the *Superannuation Act 1976*

Commencement: This provision will commence on the ASTA sale day.

19. This clause provides that from the ASTA sale day ASTA will no longer be an approved authority for the purposes of the *Superannuation Act 1976*.

20. Current ASTA employees who are members of the CSS will have various options in relation to their superannuation benefits which are provided for in the *Superannuation Act 1976* and regulations made under that Act.

Clause 13 - Application of the *Superannuation Act 1990*

Commencement: This provision will commence on the ASTA sale day.

21. Although ASTA is not an approved authority for the purposes of the *Superannuation Act 1990* as it has been excluded from this Act by a Declaration, this provision is intended to ensure that if the Declaration is ever revoked, there will be no doubt that ASTA is not an approved authority for the purposes of the *Act*.

22. There is no deferred benefit saving provision for the *Superannuation Act 1990* as this Act does not require a qualifying period of public employment to defer or preserve benefits.

Division 2- The Crimes (Superannuation Benefits) Act 1989

Clause 14 - Continuing application of the *Crimes (Superannuation Benefits) Act 1989*

Commencement: [Introduction Date]

23. This clause is designed to stop the *Crimes (Superannuation Benefits) Act 1989* from applying to acts or omissions of employees of an ASTA body that would or might constitute corruption offences, where those acts or omissions occur on or after the relevant sale day for that body.

24. Subclause 14(1) allows the Act to continue to apply in relation to a corruption offence committed before the relevant sale day for an ASTA body.

25. Subclause 14(2) prevents a superannuation order made under the Act from affecting employer superannuation contributions made by an ASTA body on or after the body's sale day.

26. Subclause 14(3) provides that a superannuation scheme to which an ASTA body contributes as an employer on or after the body's sale day is not a superannuation scheme for the purposes of the Act in relation to a corruption offence committed after the body's sale day, and employer contributions to that scheme may not therefore be the subject of a superannuation order.

27. Subclause 14(4) provides that where a superannuation order may be made affecting an employee's entitlements under the Commonwealth Superannuation Scheme and employer contributions in relation to that person's membership of the Scheme have been paid into the Consolidated Revenue Fund but no corresponding benefits have been paid to the person, then the appropriate order is that the proportion of funds representing those contributions and interest belongs to the Commonwealth.

28. Subclause 14(5) provides that where an employee has received superannuation benefits from the Consolidated Revenue Fund, then the relevant superannuation order is that the benefits are to be repaid to the Commonwealth.

Division 3 -The *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

Clause 15 - An ASTA body not to be an eligible or relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

Commencement: [Introduction Date]

29. This clause provides that if an ASTA body was declared by notice in the Gazette to be an eligible or relevant body under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* prior to the relevant sale day for that body, that declaration is to have effect as if the notice did not contain a reference to that body. This clause would not prevent subsequent amendment or revocation of a notice affected by the section.

30. This provision does not apply to an ASTA subsidiary unless the subsidiary ceased to be a "Commonwealth authority" on the subsidiary sale day.

32. Subclause 15(5) provides that "Commonwealth authority" means a company covered by paragraphs (a), (b) or (c) of the definition of "relevant body" in subsection 3(1) of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

32. If an ASTA subsidiary is sold to a Government Business Enterprise covered by the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*, clause 15 will not apply in relation to that subsidiary.

PART 3 - PROSECUTIONS

Clause 16 - Continuing application of the *Director of Public Prosecutions Act 1983*

Commencement: [Introduction Date]

33. This clause ensures that the *Director of Public Prosecutions Act 1983* continues to apply to acts or omissions that occurred prior to the relevant sale day for an ASTA body and that civil remedies in relation to those matters can continue to be pursued even if the ASTA body ceases to fall within the definition of "Commonwealth authority" following the relevant sale day for that body.

PART 4 - ASTA NOT TO BE AN AGENCY OF THE COMMONWEALTH ETC

Clause 17 - ASTA not to be an agency of the Commonwealth, etc

Commencement: This provision will commence on the ASTA sale day.

34. This clause provides that in the absence of a law expressly providing otherwise, ASTA is not taken to be a Commonwealth authority, established for a public purpose or for a purpose of the Commonwealth or to be a public authority or agency or instrumentality of the Crown for the purposes of a law of the Commonwealth, State or a Territory.

PART 5 - REGULATIONS CONNECTED WITH THE SALE OF ASTA

Clause 18 - Regulations connected with the sale of ASTA

Commencement: This provision will commence on the ASTA sale day.

35. This provision enables regulations to be made that include a Declaration that they are connected with the sale of ASTA. If the Governor-General is satisfied that this is the case and the regulations are expressed to take effect on the ASTA sale day, the regulations may commence retrospectively on the ASTA sale day. This is to enable any necessary regulations to commence on the same day as the related provisions of the Bill, in the event that it is not practicable to have the regulations made in advance of the ASTA sale day. Without this provision such regulations may not be able to commence before the date they are notified in the *Gazette*.

PART 6 - CESSATION OF MOBILITY RIGHTS**Clause 19 - Cessation of mobility rights**

Commencement: This provision will commence on the ASTA sale day.

36. This clause extinguishes the residual mobility rights of employees of ASTA under Part IV the *Public Service Act 1922* and the repealed *Officers' Rights Declaration Act 1928*. Public Service staff transferred to ASTA in 1987 and 1988 under Section 81C of the *Public Service Act 1922* retained access to mobility arrangements under Part IV of the *Public Service Act 1922* pursuant to Sections 87K and 87N of the *Public Service Act 1922*. Following the sale of ASTA it would not be appropriate for mobility rights to be retained.

PART 7 - COMMONWEALTH BORROWING LEVY**Clause 20 - Ending ASTA's liability under the *Commonwealth Borrowing Levy Act 1987***

Commencement: This provision will commence on the ASTA sale day.

37. This clause provides that ASTA is not liable to pay any levy imposed by the *Commonwealth Borrowing Levy Act 1987* in respect of any borrowing after the ASTA sale day, though it is still required to pay an amount that became payable prior to the ASTA sale day.

Clause 21 - Consequential amendment of the *Commonwealth Borrowing Levy Act 1987*

Commencement: This provision will commence on the ASTA sale day.

38. This clause provides for amendment of the *Commonwealth Borrowing Levy Act 1987* by omitting the reference to ASTA in the Schedule. This means ASTA will not be required to pay a levy after the ASTA sale day subject to the requirements of clause 20 in respect of an amount that became payable prior to the ASTA sale day.

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