

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

ANL SALE BILL 1995

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

A BILL

FOR

**An Act relating to the sale of ANL Limited,
and for related purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1 This Act may be cited as the *ANL Sale Act 1995*.

Commencement

2.(1) Part 1, section 37 and Part 8 commence on the day on which this Act receives the Royal Assent.

(2) Parts 5, 6 and 7 commence on the agreement day.

(3) The remaining provisions commence on the sale day. 5

Definitions

3.(1) In this Act, unless the contrary intention appears:

agreement day means the day declared under subsection 5(1).

ANL means the body corporate known before the sale day as ANL Limited, by whatever name called, and in whatever form that body corporate takes, from time to time. 10

ANL body means:

(a) in Divisions 1, 2 and 3 of Part 3 and in section 49—ANL or a body corporate that is a subsidiary of ANL immediately after a majority of the voting shares in ANL are acquired by one or more persons other than the Commonwealth or a nominee of the Commonwealth; and 15

(b) in the remaining provisions of this Act—ANL or a body corporate that is a subsidiary of ANL.

ANL subsidiary means a body corporate that is a subsidiary of ANL. 20

authorised person means:

(a) in sections 52 and 53:

(i) in relation to a designated transferee that is a body corporate—a director of that body corporate; and

(ii) in relation to a designated transferee that is the Commonwealth—the Minister administering those sections, the Secretary to the Department or a person holding, or performing the duties of, a Senior Executive Service office, in the Department; and 25

(b) in section 62—the Minister administering that section, the Secretary to the Department, or a person holding, or performing the duties of, a Senior Executive Service office, in the Department. 30

designated transferee, in relation to an asset, liability, right or obligation to which a determination under subsection 46(1) relates, means the Commonwealth, RetainCo, a RetainCo subsidiary or, if there is a RetainCo holding company, that holding company, whichever is specified in that determination as the body to which that asset, liability, right or obligation is to be transferred. 35

employee includes apprentice.

Federal Court means the Federal Court of Australia. 40

Long Service Leave Act means the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before the sale day.

Maternity Leave Act means the *Maternity Leave (Commonwealth Employees) Act 1973* as in force immediately before the sale day.

5 **RetainCo** means the body corporate nominated by the Minister under section 44.

RetainCo holding company means a body corporate all of the shares in which are beneficially owned by the Commonwealth that is itself the beneficial owner of all of the shares in RetainCo.

10 **RetainCo subsidiary** means a body corporate all of the shares of which are beneficially owned by RetainCo.

sale agreement means the agreement between the Commonwealth and P&O Australia Limited (A.C.N. 000 282 977) (**P&O**) for the sale by the Commonwealth to P&O of all the shares owned by the Commonwealth in ANL (other than the special share).

sale day means the day declared under subsection 5(2).

Senior Executive Service office has the same meaning as in the *Public Service Act 1922*.

20 **share**, in relation to a body corporate, means a share in the body's share capital.

special share means the share in ANL referred to in paragraph 69(a).

specified article means an article in ANL's articles of association that is described in section 69.

SRC Act means the *Safety, Rehabilitation and Compensation Act 1988*.

25 **statutory transfer time**, in relation to an asset, liability, right or obligation that is the subject of a Ministerial determination under subsection 46(1), is the particular time, on the particular day, determined by the Minister to be the time at which, and the day on which, that asset, liability, right or obligation is to be transferred to a designated transferee.

30 **voting share** has the same meaning as in the Corporations Law.

(2) References in this Act to assets, liabilities, rights and obligations described in Schedule B to the sale agreement:

- (a) include references to the assets, liabilities, rights and obligations described in that Schedule from time to time; and
- 35 (b) to the extent that fuller particulars of those assets, liabilities, rights and obligations have been set out in a Ministerial determination under subsection 46(6)—include references to those assets, liabilities, rights and obligations as more particularly described in that determination.

Subsidiaries

4. For the purposes of this Act, the question whether a body corporate is or was at any time a subsidiary of another body corporate is to be determined in the same way as that question is determined under the Corporations Law.

5

The agreement day and the sale day

5.(1) If the sale agreement is entered into on a day occurring before 1 January 1996, the Minister must make a written declaration declaring that first-mentioned day to be the agreement day.

(2) If the Minister declares a day to be the agreement day, the Minister must make a written declaration declaring the day described in subsection (3) to be the sale day.

10

(3) The day to be declared is the day that the Minister believes is the first day on which a majority of the voting shares in ANL is acquired by one or more persons other than the Commonwealth or a nominee of the Commonwealth.

15

(4) Each declaration must be published in the *Gazette* within 21 days after the day to which the declaration relates.

PART 2—AMENDMENTS OF ACTS AND REGULATIONS

Amendments of Acts

6.(1) The *ANL Act 1956* is amended as set out in Schedule 1.

5 (2) The Acts referred to in Part 1 of Schedule 2 are amended as set out in that Part.

Amendments of regulations

7.(1) The regulations specified in Part 2 of Schedule 2 are amended as set out in that Part.

10 (2) The amendment of any regulations by subsection (1) does not prevent the regulations, as so amended, from being amended or repealed by the Governor-General.

PART 3—TRANSITIONAL AND SAVING PROVISIONS***Division 1—Transitional and saving provisions in relation to long service leave*****Interpretation**

5 **8.(1)** Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same meanings in this Division as in that Act.

(2) In this Division:

combined service period, in relation to an employee, means the total of:

- 10 (a) the period that was, immediately before the sale day, the employee's period of service for the purposes of the Long Service Leave Act; and
- (b) the period starting on the sale day during which the employee continues to be an employee of an ANL body.

employee includes a person employed in a full-time or a part-time capacity.

15 ***law*** means:

- (a) a law of the Commonwealth, a State or a Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

20 ***post-sale long service leave rights***, in relation to an employee, means any long service leave rights an employee acquires under an award, determination, industrial agreement or law (other than this Act) on or after the sale day in relation to service on or after that day.

Long service leave for employees with less than 10 years service

25 **9.(1)** This section provides that, in certain circumstances, an ANL body may grant long service leave to an employee whose period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) This section applies in relation to a person who was an employee of ANL immediately before the sale day if, at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years.

30

(3) This section does not apply in relation to an employee who dies while in the employment of an ANL body. Section 11 applies to such employees.

(4) If the employee continues to be employed by an ANL body on and after the sale day until his or her combined service period is at least 10 years, the ANL body may grant the employee long service leave on full salary for a period of up to the employee's long service leave credit under subsection 12(1).

35

(5) If:

(a) the employee ceases to be an employee of an ANL body, on or after reaching the minimum retirement age, or because of retrenchment; and

(b) the employee's combined service period at the time when he or she ceases to be an employee of the ANL body is at least one year; 5

the ANL body may grant the employee long service leave on full salary for a period of up to the employee's long service leave credit under subsection 12(1).

(6) If a period of long service leave may be granted to an employee under subsection (4) or (5), the ANL body may, if the employee asks in writing, grant the employee long service leave on half salary for a period that is not more than twice the first-mentioned period. 10

(7) Long service leave granted in the circumstances set out in subsection (5) is to be taken so as to end immediately before the employee ceases to be an employee. 15

(8) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:

(a) that section applied to the employee; and 20

(b) for the expression "section 16 or 17" in that section there were substituted the expression "section 9 of the *ANL Sale Act 1995*".

Payments in lieu of long service leave for employees with less than 10 years service

10.(1) This section provides that, in certain circumstances, an ANL body must pay an amount in respect of long service leave to an employee who has not used all of his or her long service leave credit by taking long service leave under section 9. 25

(2) This section applies in relation to a person who was an employee of ANL immediately before the sale day if, at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years. 30

(3) This section does not apply in relation to an employee who dies while in the employment of an ANL body. Section 11 applies to such employees.

(4) Subject to subsection (7), if the employee ceases to be an employee of an ANL body on or after the day on which his or her combined service period reaches 10 years, the ANL body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 12(2). 35

(5) Subject to subsection (7), if:

(a) the employee ceases to be an employee of an ANL body, on or after reaching the minimum retiring age, or because of retrenchment; and

(b) the employee's combined service period at the time when he or she ceases to be an employee of the ANL body is at least one year;

the ANL body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 12(2).

(6) Subject to subsection (7), if:

(a) the employee ceases to be an employee of an ANL body; and

(b) the ANL body is satisfied that the employee left the ANL body because of ill-health that justified his or her so leaving; and

(c) when the employee left, his or her combined service period was at least one year;

the ANL body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 12(2).

(7) An employee may, by written notice given to an ANL body before the employee ceases to be an employee of the ANL body:

(a) request the ANL body not to make a payment to the employee under this section; or

(b) request the ANL body to make a payment under subsection (4), (5) or (6) of a stated amount that is less than the amount that would otherwise be payable under that subsection.

(8) The ANL body must comply with a request made under subsection (7).

(9) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

(a) that section applied to the employee; and

(b) for the expression "sections 16 and 17" in that section there were substituted the expression "section 10 of the *ANL Sale Act 1995*".

Payments on the death of an employee

11.(1) This section applies in relation to a person who was an employee of ANL immediately before the sale day if, at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) If, on or after the sale day, the employee dies and, immediately before his or her death:

(a) the employee was an employee of an ANL body; and

(b) the employee's combined service period was at least one year; and

(c) the employee had one or more dependants;

the ANL body must make a payment to a dependant, or to 2 or more dependants, of the employee.

(3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 10 if, on the day of his or her death, the employee had ceased to be an employee of the ANL body on or after reaching the minimum retiring age. 5

(4) If subsection (2) applies, section 23 of the Long Service Leave Act has effect as if:

(a) that section applied to an employee of an ANL body; and

(b) a reference in that section to the approving authority were a reference to the ANL body; and 10

(c) for the expression "this Act" in that section there were substituted the expression "section 11 of the *ANL Sale Act 1995*"; and

(d) for the expression "subsection 16(7) or 17(5)" in that section there were substituted the expression "section 11 of the *ANL Sale Act 1995*". 15

Employee's long service leave credit for the purposes of sections 9 and 10

12.(1) For the purposes of section 9, an employee's long service leave credit is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period: 20

(a) starting when the employee started his or her period of service; and

(b) ending on the sale day;

if the employee had been retrenched on the sale day.

(2) For the purposes of section 10, an employee's long service leave credit is the employee's long service leave credit worked out under subsection (1) of this section reduced by any long service leave credit used under section 9. 25

Division not to affect an employee's post-sale long service leave rights

13. To avoid doubt it is declared that this Division does not affect an employee's post-sale long service leave rights. 30

Saving—Long Service Leave Act

14. If, immediately before the sale day, the period of service under the Long Service Leave Act of an employee of ANL was at least 10 years, then:

(a) the employee's accrued rights under the Long Service Leave Act continue; and 35

(b) the Long Service Leave Act has effect on and after the sale day in relation to the employee as if ANL were an approving authority for the purposes of that Act.

Division 2—Transitional and saving provisions relating to the Safety, Rehabilitation and Compensation Act 1988

Interpretation

5 15. Unless the contrary intention appears, expressions used in this Division that are also used in the SRC Act have the same meanings in this Division as in that Act.

Continued application of SRC Act

10 16. If an ANL body ceases to be a Commonwealth authority for the purposes of the SRC Act, the SRC Act continues to apply in relation to the ANL body to the extent, and in the manner, set out in this Division.

Transitional provisions relating to the SRC Act that relate to employees and former employees of an ANL body

15 17.(1) The SRC Act continues to apply, on and after the sale day, in relation to:

- 15 (a) injuries suffered by employees of an ANL body before the sale day; and
- (b) loss of, or damage to, property incurred by employees of an ANL body before the sale day;

20 including employees who ceased to be employees of an ANL body before the sale day.

(2) For the purposes of subsection (1), the SRC Act continues to apply as if:

- 25 (a) the ANL body continued to be a Commonwealth authority; and
- (b) the chief executive officer of the ANL body (however described) continued to be the principal officer of a Commonwealth authority.

Transitional provisions relating to Division 4A of Part VII of the SRC Act

30 18.(1) On and after the sale day, Division 4A of Part VII of the SRC Act applies to an ANL body as if:

- 30 (a) the ANL body continues to be a Commonwealth authority; and
- (b) the ANL body is not required to pay a premium under that Division in respect of the part of a financial year that occurs after the sale day; and
- 35 (c) the following word and paragraph were added at the end of subsection 96H(1):

“; or (f) in the case of an authority—the authority is not required to pay a premium under this Division in respect of part of a financial year.”.

(2) If, 60 days after the sale day, an amount of premium payable by an ANL body to Comcare in respect of the period before the sale day remains unpaid, the amount is a debt due to the Commonwealth by the ANL body and payable to Comcare.

Transitional provision relating to Part VIIIA of the SRC Act 5

19. On and after the sale day, Part VIIIA of the SRC Act continues to apply to an ANL body as if any licence granted to the ANL body under that Part were revoked on the sale day.

Transitional provision relating to section 128A of the SRC Act 10

20. On and after the sale day, section 128A of the SRC Act continues to apply to ANL as if ANL were still a prescribed Commonwealth authority for the purposes of that section.

Notification of amount of salary etc. paid to employees of an ANL body

21.(1) This section applies to an ANL body that was a Commonwealth authority immediately before the sale day. 15

(2) The chief executive officer (however described) of the ANL body must notify the Commission, within 28 days after the sale day, of the amount of salary, wages or pay paid to employees of the ANL body in the period starting on 1 July in the financial year in which the sale day occurred and ending on the day before the sale day. 20

Refund of licence fee paid under the SRC Act

22.(1) If an ANL body has paid a licence fee in respect of the licence fee year in which the sale day occurs under section 107R of the SRC Act, the ANL body is entitled to be paid an amount equal to the amount worked out using the following formula: 25

$$\text{Licence fee} \times \frac{\text{Number of refund days}}{365}$$

where:

Licence fee means the fee paid under section 107R of the SRC Act in respect of the licence fee year in which the sale day occurs.

Number of refund days means the total number of days in the period beginning on the sale day and ending on the last day of the licence fee year in which the sale day occurs. 30

(2) An amount to which an ANL body is entitled under subsection (1) is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly. 35

(3) In this section:

licence fee year means the year beginning on the starting date of a licence granted under section 107J of the SRC Act and ending on the day before the anniversary of that date.

5 **Amendment of declarations under the SRC Act**

10 **23.(1)** A notice published in the *Gazette* before the sale day that declares an ANL body to be a body corporate to which the SRC Act applies for the purposes of the definition of **Commonwealth authority** in subsection 4(1) of the SRC Act has effect on and after the sale day as if it did not contain a reference to the ANL body.

(2) Subsection (1) does not prevent the declaration, as affected by that subsection, being amended or revoked by the Minister for Industrial Relations.

Division 3—Transitional and saving provisions in relation to retirement benefits

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

24.(1) This section applies if, immediately before the sale day, an employee of an ANL body was a person to whom deferred benefits were applicable under section 78 of the *Defence Force Retirement and Death Benefits Act 1973*. 5

(2) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, the employee is taken to continue in public employment, on and after the sale day, while the employee continues to be employed by an ANL body. 10

(3) This section is subject to Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

Period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973* 15

25.(1) This section applies if, immediately before the sale day, a particular period of employment of a person by an ANL body was a period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*. 20

(2) If employment by the ANL 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* on the sale day, then, despite that cessation, the period of employment continues to be a period of eligible employment for the purposes of that Division. 25

Application of the *Superannuation Act 1922*

26. On and after the sale day, section 145 of the *Superannuation Act 1922* does not apply in relation to an ANL body.

Application of the *Superannuation Act 1976*

27. On and after the sale day, an ANL body is not an approved authority for the purposes of the *Superannuation Act 1976*. 30

Application of the *Superannuation Act 1990*

28. On and after the sale day, an ANL body is not an approved authority for the purposes of the *Superannuation Act 1990*.

Division 4—Other transitional and saving provisions**Transitional maternity leave provisions relating to employees of ANL who were not on maternity leave immediately before the sale day**

29.(1) This section applies if:

- 5 (a) immediately before the sale day, a woman was an employee of ANL;
and
(b) within 12 months after the sale day, the woman would have been
entitled to begin leave granted under the Maternity Leave Act if ANL
had continued to be a prescribed authority for the purposes of that
10 Act.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the woman in relation to the confinement in respect of which she would have been entitled to leave as if ANL continued to be a prescribed authority for the purposes of that Act.

- 15 (3) This section does not confer rights on a person who, immediately before the sale day, had no entitlement to benefits under the Maternity Leave Act because of the operation of subregulation 6(2) of the Maternity Leave (Commonwealth Employees) Regulations.

Transitional maternity leave provisions relating to employees of ANL who are on maternity leave on the sale day

30. (1) This section applies if:

- 20 (a) immediately before the sale day, a woman was an employee of ANL;
and
(b) on the sale day, the woman is on leave granted under the Maternity
25 Leave Act.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the woman in relation to the confinement in respect of which the leave was granted as if ANL continued to be a prescribed authority for the purposes of that Act.

30 Saving—Crimes (Superannuation Benefits) Act 1989

31.(1) Subject to this section, if a person who was an employee of an ANL body before the sale day committed a corruption offence while such an employee, then, on and after the sale day, the *Crimes (Superannuation Benefits) Act 1989* continues to apply in relation to the person in respect of
35 the offence as if the ANL body continued to be a Commonwealth authority.

(2) A superannuation order may not be made under the *Crimes (Superannuation Benefits) Act 1989* in relation to employer contributions or benefits paid or payable to a superannuation scheme by an ANL body on or after the sale day.

(3) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by an ANL body is not a superannuation scheme for the purposes of the *Crimes (Superannuation Benefits) Act 1989* in respect of a corruption offence committed by a person on or after the sale day.

5

(4) Despite paragraph 19(3)(d) of the *Crimes (Superannuation Benefits) Act 1989*, an order under that paragraph may only order that an amount be paid to the Commonwealth.

(5) If:

- (a) a person who was an employee of ANL before the sale day committed a corruption offence while such an employee; and
- (b) the person was paid benefits before, on or after that day out of the Consolidated Revenue Fund;

then, despite paragraph 19(4)(b) of the *Crimes (Superannuation Benefits) Act 1989*, an order under that paragraph may only order that an amount be paid to the Commonwealth.

15

(6) Unless the contrary intention appears, expressions used in this section that are also used in the *Crimes (Superannuation Benefits) Act 1989* have the same meanings in this section as in that Act.

Saving—Director of Public Prosecutions Act 1983

20

32. Even though the *Director of Public Prosecutions Act 1983* ceases to apply to certain acts, omissions or proceedings in connection with an ANL body because the ANL body ceases to be an authority of the Commonwealth for the purposes of that Act, that Act continues on and after the sale day to apply in relation to:

25

- (a) acts or omissions in connection with an ANL body that occurred before the sale day; and
- (b) the taking of civil remedies connected with or arising out of a prosecution that relates to acts or omissions referred to in paragraph (a).

30

Saving—Judiciary Act 1903

33.(1) Despite section 35 of this Act, section 55E of the *Judiciary Act 1903* continues to apply in relation to:

- (a) any proceedings to which ANL is a party that were started before the commencement of this section; and
- (b) any matter that an authorised person, by signed writing, certifies to be a matter in relation to which ANL gave written instructions before the commencement of this section to the Australian Government Solicitor;

35

as if ANL were a body established by an Act.

40

(2) A document purporting to be a certificate under subsection (1) is, unless the contrary is established, taken to be such a certificate.

(3) In this section:

authorised person means:

- 5 (a) the Secretary to the Attorney-General's Department; or
(b) a person holding or performing the duties of a Senior Executive Service office in that Department.

Saving—*Proceeds of Crime Act 1987*

10 **34.(1)** Despite the amendment of the Proceeds of Crime Regulations by subsection 7(1) of this Act, section 34C of the *Proceeds of Crime Act 1987* continues to apply in relation to relevant offences that caused financial loss to ANL and were committed before the sale day as if ANL continued to be a GBE.

15 (2) Unless the contrary intention appears, expressions used in this section that are also used in the *Proceeds of Crime Act 1987* have the same meanings in this section as in that Act.

**PART 4—OTHER PROVISIONS RELATING TO THE
SALE OF ANL**

**ANL taken not to be established by or under an Act or established
by the Commonwealth**

5 **35.(1)** On and after the sale day, ANL is taken for the purposes of a law not to be:

- (a) established by or under an Act; or
- (b) established by the Commonwealth;

unless a law expressly provides otherwise.

10 **(2)** To avoid doubt, it is declared that subsection (1) does not affect:

- (a) the operation of the *ANL Act 1956* or any other law before the commencement of this section; or
- (b) the fact that ANL is a body corporate.

(3) In subsections (1) and (2):

15 *law* means:

- (a) a law of the Commonwealth, a State or a Territory; and
- (b) regulations or any other instrument made under such a law.

Removal of ANL's past tax losses

20 **36.(1)** A loss incurred by an ANL body in a year of income ending before the year of income in which the sale day occurs is not allowable as a deduction in a year of income starting on or after the sale day.

(2) This section has effect despite anything in the *Income Tax Assessment Act 1936* and, in particular, sections 79E, 79EA, 79EB, 79F, 80, 80AAA and 80AA of that Act.

25 **(3)** An expression used in this section and in the *Income Tax Assessment Act 1936* has the same meaning in this section as it has in that Act, unless the contrary intention appears.

Regulations connected with the sale of ANL

30 **37.(1)** Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to regulations or other subordinate instruments made under any Act other than this Act that:

- (a) are connected with the sale of ANL; and
- (b) in the case of regulations, include a declaration that the Governor-General is satisfied that they are connected with the sale of ANL; and
- (c) are expressed to take effect on the sale day.

35

(2) A determination made under subsection 45(3) or 46(1) or (6) or a notice made under paragraph (e) of the definition of *tax* in subsection 62(5) may be expressed to take effect at a time specified in the determination or

notice that occurs before it is made, so long as the determination or notice is expressed to take effect on or after the day on which this Act receives the Royal Assent.

(3) Regulations or other subordinate instruments covered by subsection (1) or (2) take effect in accordance with their terms. 5

Avoidance of doubt—cessation of mobility rights

38.(1) The purpose of this section is to avoid doubt about the application of Part IV of the *Public Service Act 1922* and the *Officers' Rights Declaration Act 1928*.

(2) If Division 2 or 3 of Part IV of the *Public Service Act 1922* applies to an employee of an ANL body immediately before the sale day, then that Division ceases to apply to the employee on that day. 10

(3) If Division 4 of Part IV of the *Public Service Act 1922* applies to an employee of an ANL body immediately before the sale day, then:

(a) the *Officers' Rights Declaration Act 1928*; and 15

(b) Division 4 of Part IV of the *Public Service Act 1922*;

cease to apply to the employee on the sale day.

Refund of contribution paid under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

39.(1) If an ANL body has paid a contribution to the cost of the administration of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* under section 67H of that Act in respect of the financial year in which the sale day occurs, the ANL body is entitled to be paid the amount worked out using the following formula: 20

$$\text{Contribution} \times \frac{\text{Number of refund days}}{365}$$

where: 25

Contribution means the contribution paid by the ANL body in respect of that financial year.

Number of refund days means the total number of days in the period beginning on the sale day and ending on the last day of the financial year in which the sale day occurs. 30

(2) An amount to which an ANL body is entitled under subsection (1) is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

ANL body not to be eligible or relevant body for the purposes of the Superannuation Benefits (Supervisory Mechanisms) Act 1990

5 **40.(1)** A notice published in the *Gazette* before the sale day that declares an ANL body to be an eligible body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* has effect on and after the sale day as if the notice did not contain a reference to the ANL body.

10 **(2)** A notice published in the *Gazette* before the sale day that declares an ANL body to be a relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* has effect on and after the sale day as if the notice did not contain a reference to the ANL body.

(3) Subsections (1) and (2) do not prevent a declaration affected by either of those subsections from being amended or revoked by the Minister.

15 **(4)** In subsection (3):
Minister has the same meaning as in the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

Ending ANL's liability under the Commonwealth Borrowing Levy Act 1987

20 **41.(1)** Subject to subsection (2), ANL is not liable on or after the sale day to pay an amount of levy imposed by the *Commonwealth Borrowing Levy Act 1987* on a borrowing undertaken before the sale day.

(2) Subsection (1) does not apply in relation to an amount of levy that was paid or payable before the sale day.

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50. *Journal of the American Chemical Society*, Vol. 117, No. 50, 1995, pp. 4901-5000.

**PART 5—RETAINCO AND OTHER DESIGNATED
TRANSFEREES**

Division 1—Preliminary

Objects of this Part

- 5 **42.** The objects of this Part are to provide for:
- (a) the transfer of certain assets, liabilities, rights and obligations from ANL bodies to:
 - (i) the Commonwealth; or
 - (ii) a company nominated to be RetainCo; or
 - 10 (iii) a RetainCo subsidiary; or
 - (iv) if there is a RetainCo holding company—that company; and
 - (b) the guarantee of certain obligations of RetainCo and RetainCo subsidiaries.

Extraterritorial operation of Part

- 15 **43.** This Part extends to:
- (a) things situated outside Australia; and
 - (b) things happening outside Australia; and
 - (c) things that are governed or otherwise affected by the law of a foreign country.

Division 2—Nature of RetainCo

Nomination of RetainCo

44.(1) Before the sale day, the Minister must nominate in writing a body corporate to be RetainCo for the purposes of this Act.

(2) The Minister may nominate a body corporate only if: 5

(a) it is a body corporate all the shares in which are beneficially owned by the Commonwealth; or

(b) it is a body corporate all the shares in which are beneficially owned by a body corporate to which paragraph (a) applies.

(3) Not later than 21 days after nominating a body corporate to be RetainCo, the Minister must publish the nomination in the *Gazette*. 10

RetainCo etc. not a public authority

45.(1) After it has been nominated, RetainCo is taken for the purposes of a law:

(a) not to be established by or under an Act or by the Commonwealth; and 15

(b) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and

(c) not to be a public authority or an instrumentality or agency of the Crown; 20

unless a law expressly provides otherwise.

(2) To avoid doubt, subsection (1) does not affect the fact that RetainCo is a body corporate.

(3) If:

(a) an asset described in Schedule B to the sale agreement is transferred to the Commonwealth; and 25

(b) the asset comprises the whole of the beneficial shareholding in a company;

the Minister may determine, in writing, that this section applies in relation to that company in the same manner as it applies to RetainCo and, where the Minister so determines, this section applies accordingly. 30

(4) If the Minister makes a determination under subsection (3), the Minister must, as soon as practicable, but in any case not later than 21 days, after so doing, publish the determination in the *Gazette*.

(5) In subsection (1): 35

law means:

(a) a law of the Commonwealth, a State or a Territory (other than such a law providing generally for the establishment of companies); and

(b) regulations or any other instrument made under such a law.

Division 3—Transfers from ANL bodies to designated transferees**Statutory transfers to designated transferees***Minister may determine particulars of statutory transfers*

5 **46.(1)** The Minister may, on or before the sale day, determine in relation to an ANL body's asset, liability, right or obligation described in Schedule B to the sale agreement (other than an asset, liability, right or obligation referred to in section 48):

- 10 (a) whether that asset, liability, right or obligation is to be transferred, in accordance with subsection (3), to the Commonwealth, RetainCo, a specified RetainCo subsidiary or, if there is a RetainCo holding company, that holding company; and
- (b) the day and time on or before the sale day, on which that asset, liability, right or obligation is to be so transferred.

Minister may make more than one determination

15 **(2)** The Minister may make determinations in relation to different assets, liabilities, rights and obligations at different times.

Transfer of assets, liabilities, rights and obligations in accordance with Ministerial determination

20 **(3)** By force of this section, an ANL body's asset, liability, right or obligation to which a determination under subsection (1) relates, at the statutory transfer time in relation to that asset, liability, right or obligation:

- (a) ceases to be an asset, liability, right or obligation of that ANL body; and
- 25 (b) becomes an asset, liability, right or obligation of the designated transferee.

Assets etc. described by reference to classes

30 **(4)** For the purposes of this Act, an ANL body's asset, liability, right or obligation is taken to be described in Schedule B to the sale agreement whether that description is specific or is done by reference to its inclusion in a class of assets, liabilities, rights or obligations.

Amendment of Schedule B between agreement day and sale day

35 **(5)** For the avoidance of doubt, nothing in this Act is taken to imply that the parties to the sale agreement may not agree, under the terms of the sale agreement, from time to time on or after the agreement day and before the sale day, to vary the particulars of the assets, liabilities, rights and obligations that are described in Schedule B to the sale agreement.

Minister may determine fuller particulars of Schedule B content

(6) The Minister may, from time to time before the sale day, make a determination in writing setting out fuller particulars of assets, liabilities, rights and obligations that are described in Schedule B to the sale agreement at that time by reference to their inclusion in a class of assets, liabilities, rights and obligations. 5

Ministerial determinations to be gazetted

(7) The Minister must, as soon as practicable, but in any case not later than 21 days, after making a determination under subsection (1) or (6), publish the determination in the *Gazette*. 10

References to ANL body in instruments relating to transferred interests**47. An instrument:**

- (a) that existed before the statutory transfer time determined for the transfer to a designated transferee of a particular asset, liability, right or obligation described in Schedule B to the sale agreement; and 15
- (b) that relates in whole or in part, to that asset, liability, right or obligation; and
- (c) that is required to have effect for a period extending beyond that time; 20

continues, or continues to the extent that it so relates, to have effect on and after that time as if each reference in the instrument to the ANL body to which the asset, liability, right or obligation belonged were a reference to the designated transferee.

Transfer of assets, liabilities, rights and obligations other than by force of section 46 25

48. Section 46 does not apply at a particular time to an ANL body's asset, liability, right or obligation described in Schedule B to the sale agreement if, at that time, that asset, liability, right or obligation has already ceased to be an asset, liability, right or obligation of an ANL body. 30

Documents, or copies of documents, for designated transferees**49.(1)** An ANL body or its successor must, in relation to any document:

- (a) that is held by the body or its successor; and
- (b) that relates to an asset, liability, right or obligation described in Schedule B to the sale agreement that becomes an asset, liability, right or obligation of a designated transferee; 35

give to that designated transferee:

- (c) if the document relates solely to that asset, liability, right or obligation—that document; or

(d) if the document relates in part only to that asset, liability, right or obligation—a copy of that document.

5 (2) If a copy of a document is given to a designated transferee under subsection (1) by an ANL body or its successor, that body must, in any circumstance where it is necessary for the original document to be used or produced by that designated transferee, on reasonable request, make the original document available to that designated transferee.

Designated transferees are successors in law of ANL bodies

10 **50.** If an asset, liability, right or obligation of an ANL body becomes an asset, liability, right or obligation of a designated transferee, that designated transferee is, in relation to that asset, liability, right or obligation, the successor in law to that ANL body.

Occurrences that are not changes of ownership for the purposes of certain agreements

15 **51.(1)** An occurrence listed in subsection (2), and an action taken in anticipation of, or in consequence of, such an occurrence, is taken not to be a change of ownership, or of control, or of shareholding, or to result in any rights of pre-emption (however described) being exercisable, for the purposes of any agreement that is described in Schedule B to the sale
20 agreement.

(2) For the purposes of subsection (1), the occurrences are:

- (a) the entry into the sale agreement; and
- 25 (b) the fact that ownership of shares in ANL (other than the special share), or the control of voting power in respect of decisions of the board of ANL, passes under the sale agreement to a person other than the Commonwealth; and
- (c) the fact that ownership of shares in an ANL body, or the control of voting power in respect of decisions of the board of the
30 ANL body, passes, whether under section 46 or otherwise, to the Commonwealth, RetainCo, a RetainCo subsidiary, or if there is a RetainCo holding company, that company.

Certificates in relation to interests in land

52.(1) This section applies if:

- (a) land becomes land of a designated transferee under this Part; and
- 35 (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become land of a designated transferee
40 under this Part.

(2) The land registration official may:

- (a) register the matter in the same way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established. 5

(4) In this section:

land means:

- (a) a legal or equitable interest in land; or 10
- (b) a right, power or privilege in relation to land.

land registration official means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

Certificates in relation to other assets

53.(1) This section applies if: 15

- (a) an asset becomes an asset of a designated transferee under this Part; and
- (b) there is lodged with an assets official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and 20
 - (iii) states that the asset has become an asset of a designated transferee under this Part.

(2) The assets official may:

- (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and 25
- (b) make such entries in the register as are necessary having regard to the effect of section 46.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established. 30

(4) In this section:

assets official means a person or authority who, under the law of the Commonwealth, a State or a Territory, has responsibility for keeping a register in relation to assets of the kind concerned. 35

Designated transferees and parties to sale agreement to take steps necessary to carry out transfers

5 **54.** Each designated transferee, the parties to the sale agreement and any other persons who are parties to agreements described in Schedule B to the sale agreement, must take the steps that are reasonably necessary to ensure that this Part is fully effective, and, in particular, fully effective in relation to its operation outside Australia.

Part to have effect in spite of laws and agreements prohibiting transfer etc.

10 **55.(1)** This Part has effect, and must be given effect to, in spite of anything in:

- (a) the Corporations Law; or
- (b) any other law of the Commonwealth (apart from this Act) or any law of a State or a Territory; or
- 15 (c) any instrument.

(2) No provision of this Part, and nothing done by a person because of, or for a purpose connected with or arising out of, this Part:

- (a) is to be regarded as:
 - 20 (i) placing an ANL body or another person in breach of contract or confidence; or
 - (ii) otherwise making an ANL body or another person guilty of a civil wrong; or
- (b) is to be regarded as placing an ANL body or another person in breach of:
 - 25 (i) any law of the Commonwealth, a State or a Territory; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset, liability, right or obligation or the disclosure of any information; or
- 30 (c) is to be taken to release any surety that is not, after the sale day, an ANL body from any of the surety's obligations in relation to a liability or obligation that passes to a designated transferee.

(3) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Part in a particular respect, the consent is taken to have been given.

35 **Compensation for acquisition of property**

56.(1) If:

- (a) this Part would result in an acquisition of property; and
- (b) this Part would not be valid, apart from this section, because a particular person has not been compensated;

the Commonwealth must pay that person:

- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
- (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction. 5

(2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section: 10

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Australian Government Solicitor may act for certain companies

57.(1) This section applies in relation to:

- (a) RetainCo, while all of the shares in RetainCo are beneficially owned by the Commonwealth or by any RetainCo holding company; and 15
- (b) a RetainCo subsidiary, while RetainCo is a body corporate described in paragraph (a); and
- (c) any RetainCo holding company; and
- (d) any other body corporate referred to in Schedule B to the sale agreement, while all of the shares in the body corporate are beneficially owned by the Commonwealth or by any RetainCo holding company. 20

(2) Despite subsection 55E(3) of the *Judiciary Act 1903*, the Australian Government Solicitor may act for a body corporate while it is a body corporate in relation to which this section applies. 25

Application of certain provisions of the Corporations Law

58.(1) This section applies if all of the shares:

- (a) in RetainCo; or
- (b) in another body corporate having the beneficial ownership of all of the shares in RetainCo; or 30
- (c) in another body corporate all of the shares in which were previously beneficially owned by ANL;

become, by virtue of the operation of section 46 or otherwise, beneficially owned by the Commonwealth. 35

(2) If this section applies in relation to RetainCo or another body corporate:

- (a) subsection 186(1) and paragraph 461(d) of the Corporations Law do not apply in relation to RetainCo or that other body corporate; and

(b) subsection 249(7) of the Corporations Law applies in relation to RetainCo or that other body corporate as if:

(i) the Commonwealth were a holding company, within the meaning of that subsection, of RetainCo or that other body corporate; and

(ii) the Commonwealth held the whole of the issued shares in RetainCo or that other body corporate; and

(iii) the Minister were a representative of the Commonwealth authorised under subsection 249(3) of the Corporations Law.

5

Division 4—Guarantee of obligations of RetainCo and RetainCo subsidiaries

Guarantee of obligations transferred from ANL bodies

59.(1) The Commonwealth guarantees (by force of this subsection) due payment of any money payable by RetainCo or a RetainCo subsidiary under an agreement if: 5

- (a) the agreement was made by an ANL body before the sale time; and
- (b) the obligations imposed on the ANL body by the agreement have been transferred to RetainCo or to a RetainCo subsidiary (under this Act or otherwise) on or before the sale day. 10

(2) The guarantee extends to payment of money under an agreement that has been amended after the transfer of the obligations if the Treasurer has approved the continuance of the guarantee in respect of the agreement as so amended. For this purpose, the Treasurer's approval must be in writing and is subject to any terms and conditions that the Treasurer sets out in the approval. 15

Treasurer may guarantee obligations of RetainCo and RetainCo subsidiaries

Scope of Treasurer's power to give guarantees

60.(1) The Treasurer may make a determination, or enter into a written agreement, to guarantee due payment by RetainCo or a RetainCo subsidiary of money payable by RetainCo or the subsidiary (whether the money is payable under an agreement or for some other reason). 20

Determination to give guarantee

(2) If the Treasurer makes a written determination that the Commonwealth guarantees a payment by RetainCo or a RetainCo subsidiary, the payment is guaranteed by the Commonwealth by force of this subsection. The guarantee is subject to any terms and conditions set out in the determination. 25

Other powers to give guarantees unaffected 30

(3) This section does not limit the Commonwealth's executive power, or its power under any other Act, to give guarantees.

Delegation

61.(1) The Treasurer may delegate, by written instrument:

- (a) the Treasurer's power under subsection 59(2) to approve the continuance of a guarantee; or 35
- (b) any of the Treasurer's powers under section 60;

to a person holding, or performing the duties of, a Senior Executive Service office in the Department of the Treasury.

(2) In exercising any of the powers under the delegation, the officer must comply with any directions of the Treasurer.

**PART 6—TAX EXEMPTION, INCOME TAX TREATMENT,
AND PAYMENTS RELATING TO ANL SALE**

Division 1—Tax exemptions

Exemption from certain taxes and fees

62.(1) No tax is payable under a law of the Commonwealth, a State or a Territory in respect of an exempt matter or anything connected with an exempt matter. 5

(2) An authorised person may, by signed writing, certify that:

(a) a specified matter or thing is an exempt matter; or

(b) a specified thing was done in connection with a specified exempt matter. 10

(3) In all courts and for all purposes, a certificate under subsection (2) is evidence of the matter stated in the certificate.

(4) A document that appears to be a certificate under subsection (2) is taken to be such a certificate and to have been properly given unless the contrary is established. 15

(5) In this section:

exempt matter means:

(a) an asset or a liability of an ANL body being taken to cease to be an asset or a liability of an ANL body under section 46 and to become an asset or liability of a designated transferee under that section; or 20

(b) a right or obligation of an ANL body being taken to cease to be a right or obligation of the ANL body under section 46 and to become a right or obligation of a designated transferee under that section; or

(c) the operation of Part 5 in any other respect; or 25

(d) a transfer of an asset, liability, right or obligation from an ANL body to the Commonwealth, RetainCo, a RetainCo subsidiary or (if there is a RetainCo holding company) that holding company under an agreement made before the sale day; or

(e) any agreement substantially in the form set out in Schedule F to the sale agreement. 30

tax means:

(a) stamp duty or any other tax or charge; or

(b) a fee, other than a fee in the nature of a tax;

but does not include: 35

(c) tax payable under the *Income Tax Assessment Act 1936*; or

(d) charges payable under the Corporations Law; or

(e) any other tax, charge or fee specified in a notice signed by the Minister and published in the *Gazette*.

Division 2—Income tax treatment of certain transfers

Application of the *Income Tax Assessment Act 1936* in relation to certain transfers

5 **63.(1)** This section applies if an asset, liability, right or obligation is transferred from an ANL body to RetainCo, a RetainCo subsidiary, any RetainCo holding company or the Commonwealth (the *recipient*) after the agreement day but on or before the sale day under Part 5 or by another means.

10 **(2)** The *Income Tax Assessment Act 1936* (except Part IIIA of that Act) applies to the ANL body, and to RetainCo, the RetainCo subsidiary or the RetainCo holding company if it is the recipient, as if:

- 15 (a) the recipient had acquired the asset, liability, right or obligation at the time when, and in the circumstances in which, the ANL body acquired the asset, liability, right or obligation; and
- 15 (b) the recipient had treated and dealt with the asset, liability, right or obligation in the way that the ANL body treated and dealt with the asset, liability, right or obligation; and
- 15 (c) the ANL body had never acquired or disposed of the asset, liability, right or obligation.

20 **(3)** Subsection (2) does not affect the application of the *Income Tax Assessment Act 1936* in relation to anything that happened in relation to the asset, liability, right or obligation before it was transferred from the ANL body to the recipient.

(4) Part IIIA of the *Income Tax Assessment Act 1936* does not apply in relation to the transfer of the asset from an ANL body to a recipient.

25 **(5)** So far as concerns the application of Part IIIA of the *Income Tax Assessment Act 1936* to the disposal of an asset acquired from an ANL body by RetainCo, a RetainCo subsidiary or any RetainCo holding company (the *transferor*):

- 30 (a) if the ANL body acquired the asset before 20 September 1985—the transferor is taken to have acquired the asset before that date; or
- 30 (b) if the ANL body acquired the asset on or after 20 September 1985—the transferor is taken to have paid as consideration in respect of the acquisition of the asset from the ANL body an amount equal to:
- 35 (i) for the purpose of ascertaining whether a capital gain accrued to the transferor on the disposal—the amount that would have been the indexed cost base to the ANL body of the asset for the purposes of that Part if that Part had applied in respect of the disposal of the asset by the ANL body to the transferor; and

- (ii) for the purpose of ascertaining whether the transferor incurred a capital loss on the disposal—the amount that would have been the reduced cost base to the ANL body of the asset for the purposes of that Part if that Part had applied in respect of the disposal of the asset by the ANL body to the transferor. 5

(6) Subsections (2), (4) and (5) do not affect the nature or effect of the transfer for a purpose other than a purpose of the *Income Tax Assessment Act 1936*.

(7) An expression that is used in subsection (4) or (5) and in Part IIIA of the *Income Tax Assessment Act 1936* has the same meaning in that subsection as it has in that Part. 10

Shareholding in ANL taken for income tax purposes to have been acquired from beginning of sale day

64. For the purposes only of the *Income Tax Assessment Act 1936*, the purchaser of the Commonwealth's shareholding in ANL (other than the special share) is taken, with effect from the first moment of the sale day, to be the beneficial owner of that shareholding. 15

Accounting periods for certain ANL bodies

65.(1) This section applies to a body corporate that was an ANL body immediately before the sale day and does not cease, on that day, to be such a body. 20

(2) For the purposes of the application of the *Income Tax Assessment Act 1936*, that Act applies to a body corporate to which this section applies as if:

(a) the period from 1 July 1994 to the day immediately preceding the sale day (inclusive); and 25

(b) the period from the sale day to 31 December 1996 (inclusive);

were each an accounting period adopted, with the leave of the Commissioner of Taxation, under subsection 18(1) of that Act.

(3) Nothing in subsection (2) prevents a body corporate to which this section applies from making application, at any time on or after the sale day, for the leave of the Commissioner of Taxation to adopt a different accounting period to the accounting period set out in paragraph (2)(b). 30

Division 3—Income tax significance of the special share

Special share to be disregarded for the purposes of the *Income Tax Assessment Act 1936*

5 **66.** For all purposes of any provision of the *Income Tax Assessment Act 1936* in respect of ANL and of any related company, as defined for the purposes of that provision, during a particular period, the holding by the Commonwealth of the special share during that period is to be disregarded.

Division 4—Payments**Finance Minister's power to make payments under sale agreement etc.**

- 67.(1)** The Minister may make payments totalling no more than \$15,000,000 that: 5
- (a) are required to be made by the sale agreement; or
 - (b) the Minister believes are necessary or desirable to facilitate the transfer from an ANL body of an asset, liability, right or obligation described in Schedule B to the sale agreement.
- (2)** The Minister may, from time to time, enter into arrangements of any kind for the purpose of providing working capital, or additional working capital, for the financial year 1995-96, to: 10
- (a) RetainCo; or
 - (b) a RetainCo subsidiary; or
 - (c) another body corporate referred to in Schedule B to the sale agreement, the whole of the shareholding in which is beneficially owned by the Commonwealth. 15
- (3)** The Consolidated Revenue Fund is appropriated for the purposes of subsections (1) and (2).
- (4)** Section 37A of the *Audit Act 1901* has effect as if the appropriation made for the purposes of subsection (1) had not been made. 20

**PART 7—SPECIAL ARRANGEMENTS TO SAFEGUARD
NATIONAL INTEREST**

Division 1—Purpose of Part

Purpose of this Part

- 5 **68.** The purpose of this Part is to provide means for giving effect to the
national interest in relation to ANL through:
- (a) the issue of a special share in ANL to the Commonwealth, giving
special rights to the Commonwealth; and
 - 10 (b) the inclusion of specified articles in ANL's articles of association;
and
 - (c) the ability of the Minister to take legal action to ensure compliance
with the specified articles.

Division 2—Specified articles and special share

ANL's articles of association to include certain provisions

69. On and after the sale day, ANL's articles of association must include the following provisions (the *specified articles*):

- (a) a provision requiring ANL to issue to the Commonwealth on the sale day a share in ANL with the characteristics described in the articles mentioned in paragraphs (b) and (c); 5
- (b) a provision specifying that the special share is not transferable;
- (c) a provision specifying that the holder of the special share is not entitled: 10
 - (i) to vote at a general meeting of ANL; or
 - (ii) to receive any distribution (by way of dividend or otherwise) of ANL's profits;
- (d) provisions that:
 - (i) deal with any other matters (whether they relate to the special share or not); and 15
 - (ii) are described in the articles of association as specified articles.

Alteration of specified articles or their effect

70.(1) A special resolution of ANL to alter, or alter the effect of, a specified article has effect only if the Commonwealth consents to the alteration in accordance with this section. 20

(2) On behalf of the Commonwealth, the Minister may, by written notice, consent to the alteration.

(3) A notice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. 25

(4) A notice takes effect immediately after the end of the last day on which the notice could have been disallowed.

(5) A special resolution or resolution of ANL has no effect if it would, apart from this subsection:

- (a) result in a contravention of a specified article if acted on; or 30
- (b) ratify an act or omission that contravenes a specified article.

(6) In this section:

resolution has the same meaning as in the Corporations Law.

special resolution has the same meaning as in the Corporations Law.

This Division has effect despite the Corporations Law 35

71. This Division has effect despite the Corporations Law.

Division 3—Ensuring compliance with specified articles**Injunctions in relation to contraventions or alterations of specified articles**

5 **72.(1)** Subsection (2) applies if ANL or any other person (including P&O Australia Limited (A.C.N. 000 282 977) or a person other than the Commonwealth who holds shares in ANL) has engaged, is engaging or is proposing to engage in conduct:

(a) constituting or that would constitute:

- 10 (i) a contravention of a specified article; or
- (ii) attempting to contravene a specified article; or
- (iii) aiding, abetting, counselling or procuring a person to contravene a specified article; or
- (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a specified article; or
- 15 (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a specified article; or
- (vi) conspiring with others to contravene a specified article; or
- (b) to try to alter, or alter the effect of, a specified article without the consent of the Commonwealth under section 70.
- 20

(2) On the application of the Minister, the Federal Court may grant an injunction, on the terms that the Court thinks appropriate:

- (a) restraining ANL or the other person from engaging in the conduct; and
- 25 (b) if the Court thinks it appropriate to do so—requiring ANL or the other person to do anything.

(3) Subsection (4) applies if ANL or any other person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing and that refusal or failure constitutes or would constitute:

- 30 (a) a contravention of a specified article; or
- (b) attempting to contravene a specified article; or
- (c) aiding, abetting, counselling or procuring a person to contravene a specified article; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a specified article; or
- 35 (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a specified article; or
- (f) conspiring with others to contravene a specified article.

(4) On the application of the Minister, the Federal Court may grant an injunction on the terms that the Court thinks appropriate, requiring ANL or the other person to do anything.

(5) The Court may discharge or vary an injunction under this section.

Consent injunctions

5

73. On an application for an injunction under subsection 72(2) or (4), the Federal Court may, if the Court thinks it appropriate, grant an injunction by consent of all parties to the proceeding, whether or not the Court is satisfied that that subsection applies.

Interim injunctions

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74. If the Federal Court thinks it appropriate to do so, the Court may grant an interim injunction pending determination of an application under subsection 72(2) or (4).

Undertaking as to damages not required for interim injunctions

75. The Court must not make it a condition of granting an interim injunction that the Minister give an undertaking as to damages.

15

Factors relevant to the grant of a restraining injunction

76. The power of the Federal Court to grant an injunction under paragraph 72(2)(a) restraining ANL or any other person from engaging in conduct may be exercised:

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- (a) whether or not it appears to the Court that ANL or the other person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not ANL or the other person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any person if ANL or the other person engages, or continues to engage, in conduct of that kind.

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Factors relevant to the grant of a mandatory injunction

77.(1) The power of the Federal Court to grant an injunction under paragraph 72(2)(b) requiring ANL or another person to do anything may be exercised:

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- (a) whether or not it appears to the Court that ANL or the other person intends to refuse or fail, or to continue to refuse or fail, to do the thing; and
- (b) whether or not ANL or the other person has previously refused or failed to do the thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if ANL or the other person refuses or fails to do the thing.

35

(2) The power of the Federal Court to grant an injunction under subsection 72(4) requiring ANL or another person to do anything may be exercised:

- 5 (a) whether or not it appears to the Court that ANL or the other person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not ANL or the other person has previously refused or failed to do that act or thing; and
- 10 (c) whether or not there is an imminent danger of substantial damage to any person if ANL or the other person refuses or fails to do that act or thing.

Remedies under this Division are additional to those under Corporations Law etc.

15 78. The remedies provided by this Division are in addition to any remedies provided by the Corporations Law or otherwise.

PART 8—MISCELLANEOUS

**This Act to be repealed if agreement day does not occur before
1 January 1996**

5 **79.** If the agreement day has not occurred before 1 January 1996 then, with effect from that day, this Act is repealed and, for the purposes of the *Acts Interpretation Act 1901*, the repeal has effect as if it were a repeal done by another Act.

SCHEDULE 1

Subsection 6(1)

AMENDMENTS OF THE ANL ACT 1956

1. Section 3 (definitions of *group company*, *operate*, *protected body*, *protected business name*, *protected company name*, *protected name*, *protection time* and *registered*):

Omit.

2. Section 4:

Repeal.

3. Section 4A:

Repeal.

4. Subsection 45(1):

Omit.

5. Part IV:

Repeal.

6. Section 60:

Repeal.

7. Section 66:

Repeal.

SCHEDULE 2

Subsections 6(2) and 7(1)

PART 1—AMENDMENTS OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1977

1. Schedule 1:

Add at the end:

“; (w) decisions of ANL Limited or a company that is a subsidiary of that company.”.

Commonwealth Borrowing Levy Act 1987

2. Schedule (item 1A):

Omit.

National Crime Authority Act 1984

3. Schedule 2:

Omit “Australian Shipping Commission”.

Navigation Act 1912

4. Subsection 6(1) (definition of *Commonwealth ship*):

Omit all the words after paragraph (c).

*Occupational Health and Safety (Commonwealth Employment)
Act 1991*

5. Schedule:

Omit “ANL Limited”.

SCHEDULE 2—continued**PART 2—AMENDMENTS OF REGULATIONS****Long Service Leave (Commonwealth Employees) Regulations****6. Schedule 1A (item 2):**

Omit.

Maternity Leave (Commonwealth Employees) Regulations**7. Paragraph 6(1)(c):**

Omit “subject to subregulation (2),”.

8. Subregulation 6(2):

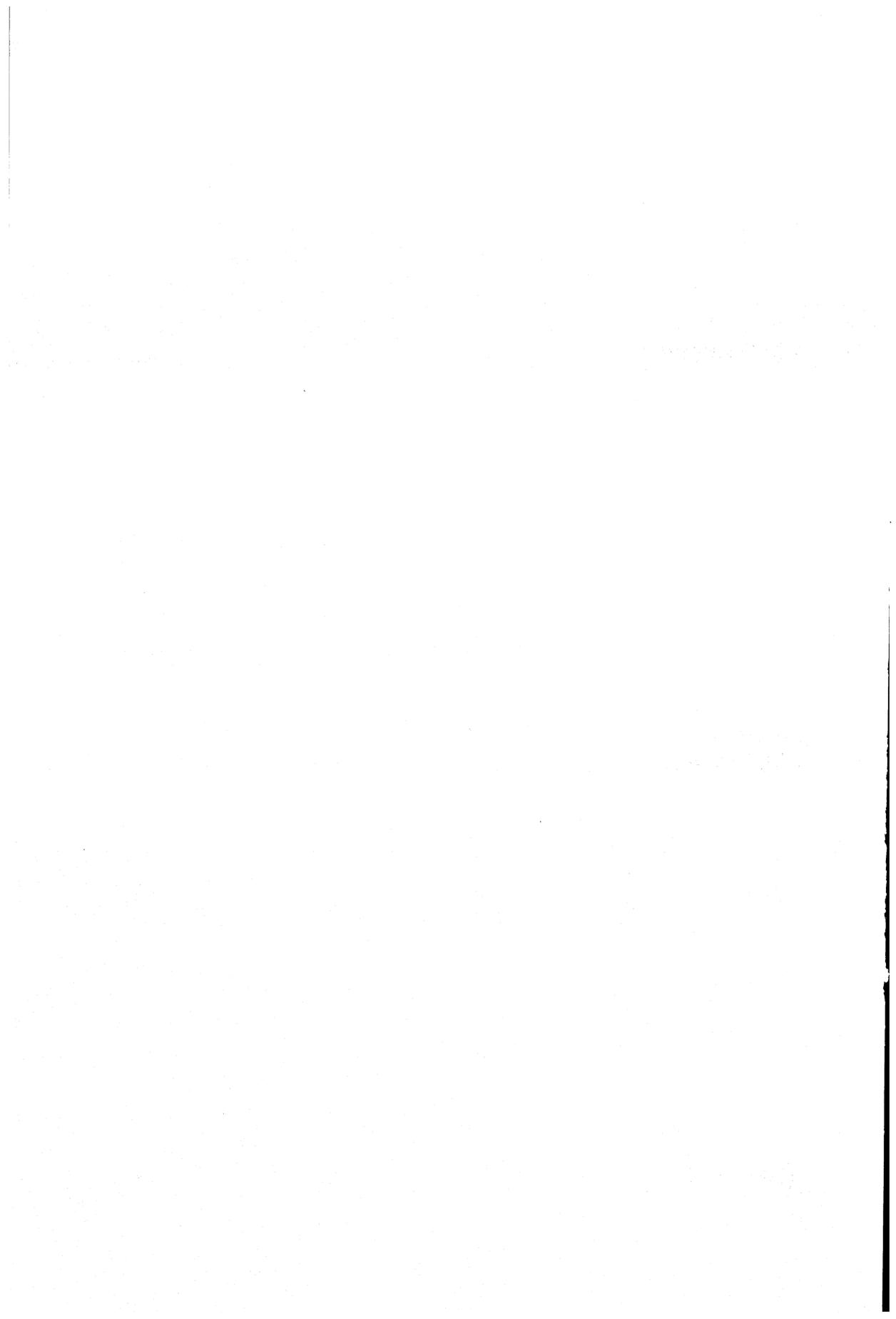
Omit.

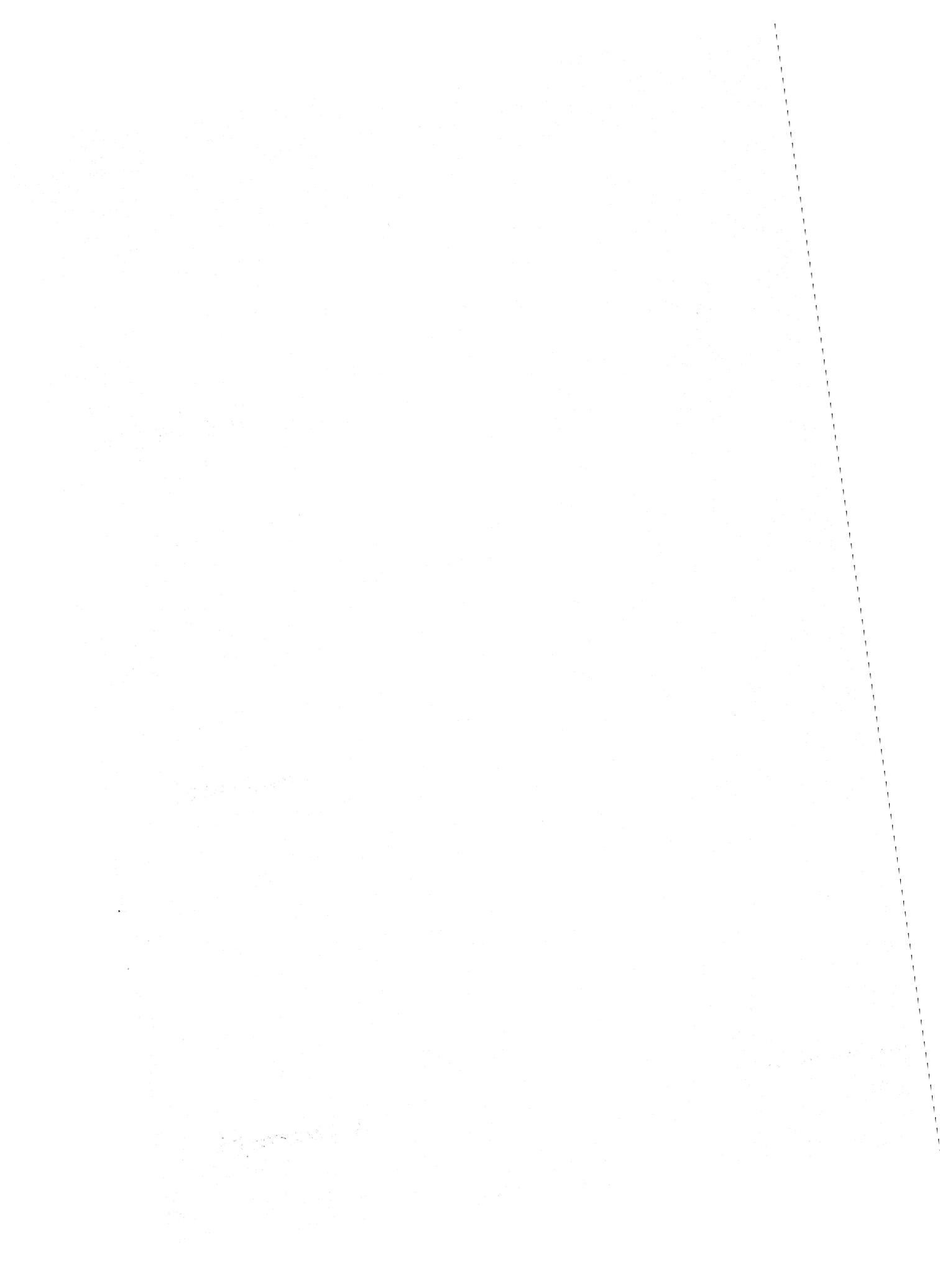
9. Schedule 2A (item 1):

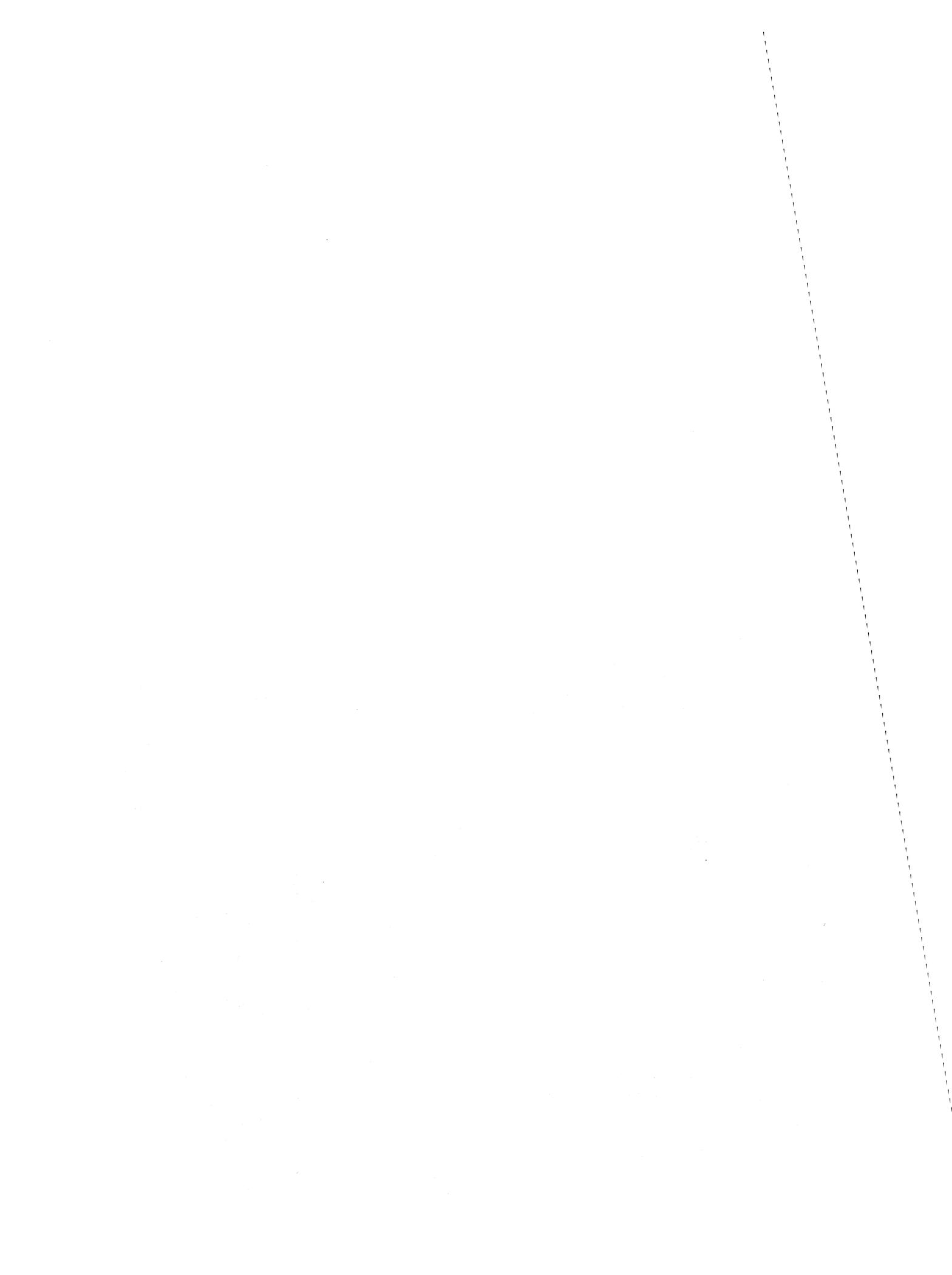
Omit.

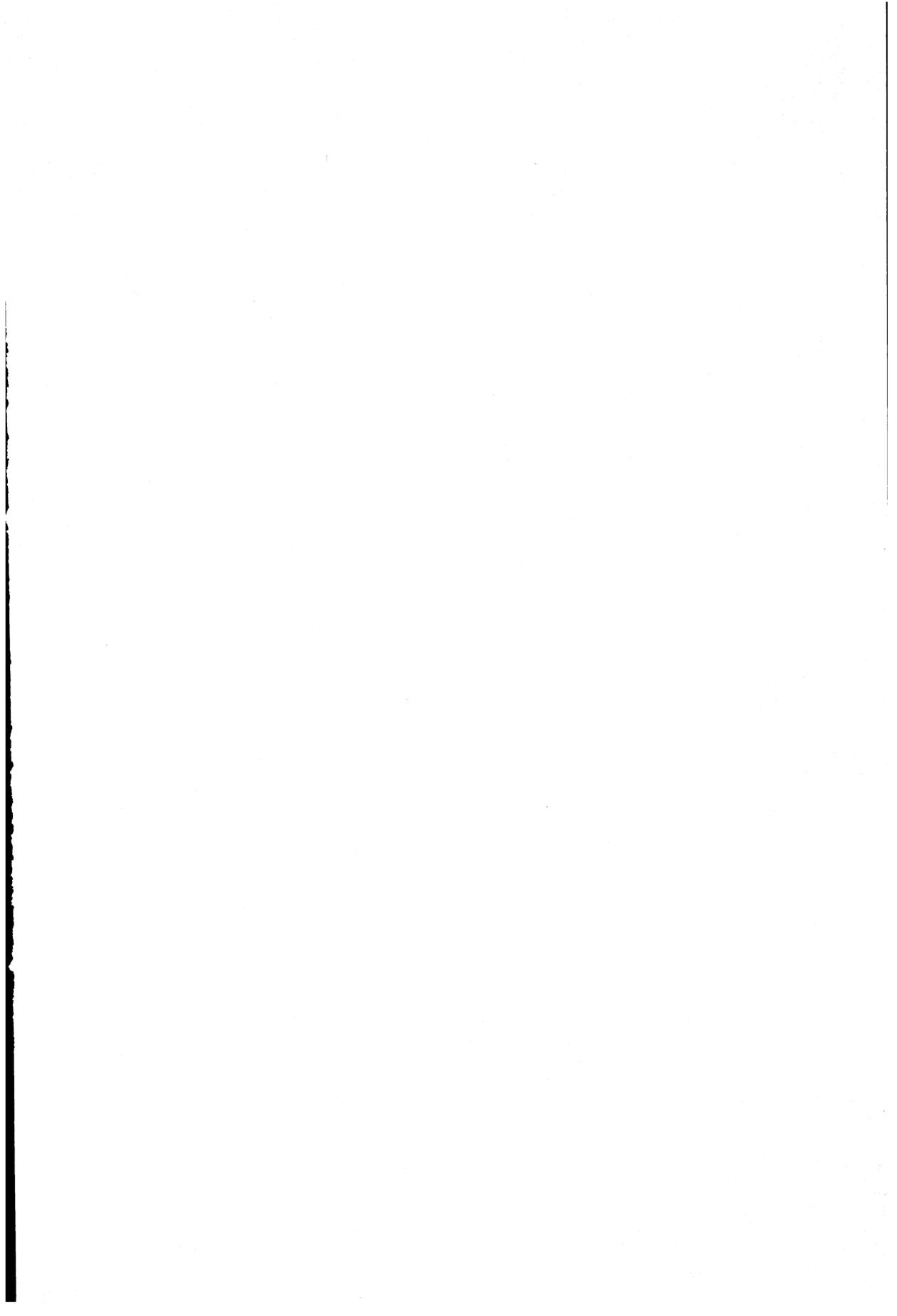
Proceeds of Crime Regulations**10. Paragraph 3B(e):**

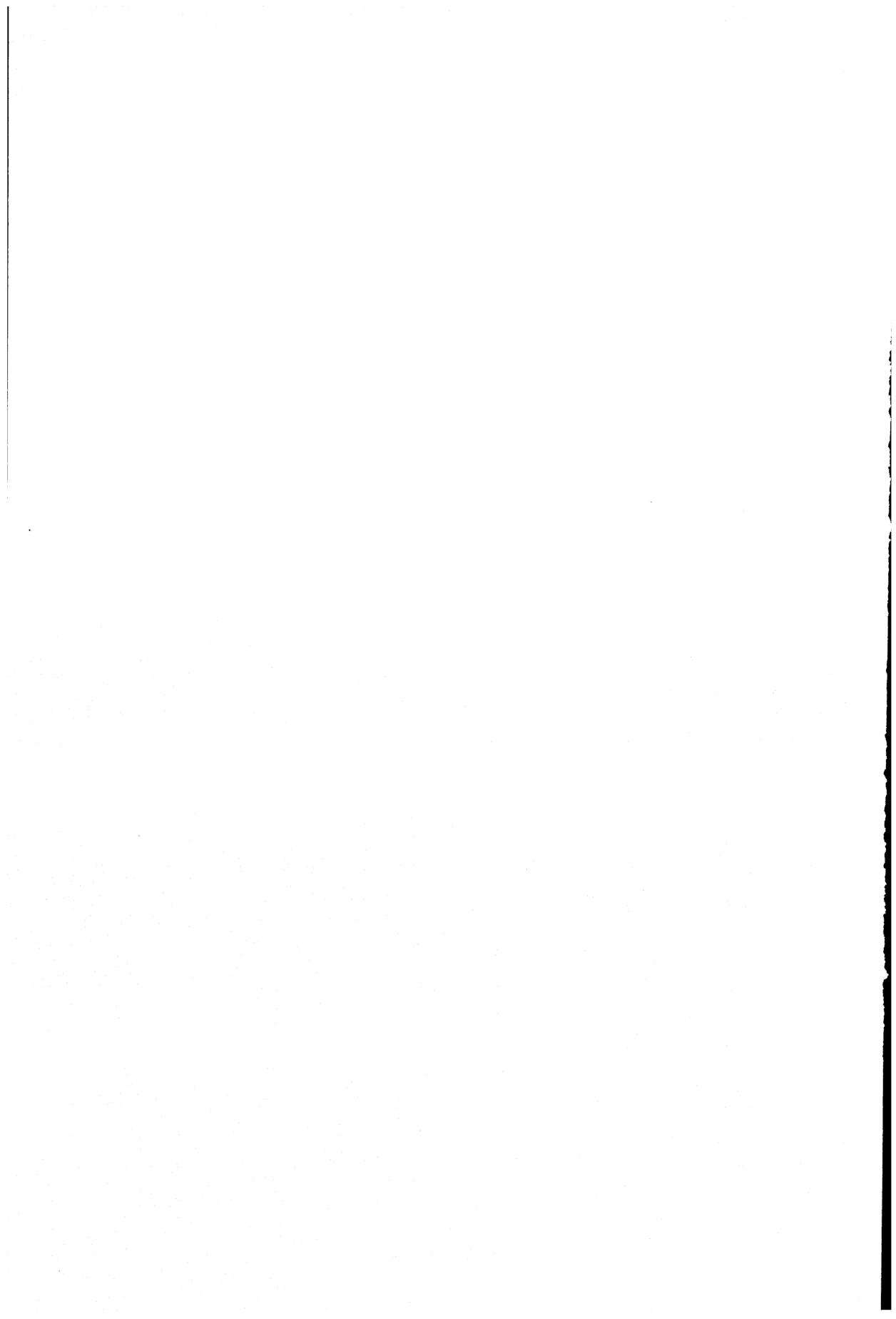
Omit.













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