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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ANL GUARANTEE BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon. Ralph Willis, MP)



ANL GUARANTEE BILL 1994

OUTLINE

1. This Bill enables the Treasurer to guarantee certain debts of ANL Limited ("ANL"). ANL was established as a company under the *ANL Act 1956*.
2. Section 70B of the *Audit Act 1901* provides that the guarantee of the whole or part of:
 - the repayments of principal moneys required to be paid under the terms of an agreement for the loan of moneys; or
 - any interest required to be paid under the terms of such a loan;shall not be given by or on behalf of the Commonwealth unless a provision in an Act expressly authorises the giving of the guarantee.
3. The provisions of this Bill authorise the Treasurer to guarantee payments under a loan agreement in order to help ANL to continue to trade in an orderly fashion or restructure its business interests.

FINANCIAL IMPACT STATEMENT

4. The Minister for Transport announced the Government's intention to guarantee ANL's existing debt, and any further net drawdowns on ANL's \$100 million promissory note facility (which under ANL's Articles of Association require Government approval). The due diligence report conducted by consultants, Price Waterhouse and Salomon Brothers, indicated that as at August 1994 ANL's net debt totalled \$180 million. To the extent that the majority of existing liabilities are secured against assets of the company, the potential financial impact of any calls on guarantees which may be given under the provisions of the Bill in the future is significantly reduced. The successful restructuring of ANL will further reduce exposure.

NOTES ON CLAUSES

Clause 1 - Short Title

1. Clause 1 provides for the short title of the Act to be the *ANL Guarantee Act 1994*.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day it receives Royal Assent.

Clause 3 - Definitions

3. Clause 3 defines certain terms for the purposes of the Act. In particular, "payments under a loan agreement" are defined as meaning repayments of principal and payments of interest under a loan agreement, including loan agreements made before the commencement of the Act.

Clause 4 - Treasurer may guarantee loans

4. Section 70B of the *Audit Act 1901* prohibits the giving of a guarantee (without express statutory authority) by or on behalf of the Commonwealth in respect of the repayment of principal moneys and payment of interest under the terms of an agreement for the loan of moneys. The provisions of the Bill, and clause 4 in particular, give that express authority. Importantly, the provisions of the Bill do not, of themselves, guarantee any specific debts or transactions. Rather, they provide an authority for the Treasurer to execute such guarantees for the purposes declared in subclause 4(1).

5. Subclause 4(1) provides that to help ANL to continue to trade in an orderly fashion or restructure its business interests, the Treasurer may make determinations (subclause 4(2)), and enter into agreements (subclause 4(3)) guaranteeing payments under loan agreements. The "business interests" within the authority to provide guarantees include loan agreements relating to the business of ANL itself as a principal, subsidiaries of the company, and in respect of loan agreements relating to joint ventures and other business structures in which ANL is a participant. The scope and extent of any particular guarantee, whether given by determination or by agreement, will be constituted by the precise terms of the particular instrument of guarantee executed by the Treasurer.

6. Subclause 4(2) provides that if the Treasurer makes a determination that the Commonwealth guarantees payments under a loan agreement, those payments are guaranteed by the Commonwealth by force of this subclause. The guarantee provided under this subclause is subject to any terms and conditions set out in the determination.

7. Subclause 4(3) provides that on behalf of the Commonwealth the Treasurer may enter into a written agreement under which the Commonwealth guarantees payments under a loan agreement as defined.

8. The prohibition in section 70B of the *Audit Act 1901* against entering guarantees by or on behalf of the Commonwealth without express statutory authority is limited to guarantees of payments of principal and interest under the terms of loan agreements. Therefore, the provisions of the Bill do not limit the Commonwealth's executive power, or its powers under any other legislation, to give guarantees in other circumstances or in respect of other liabilities (subclause 4(4)).

Clause 5 - Delegation

9. This clause provides that the Treasurer may delegate his or her powers under this Bill to an officer of the Senior Executive Service of the Treasury. Such delegation must be in writing (subclause 5(1)) and the officer must comply with any directions of the Treasurer when exercising delegated powers (subclause 5(2)).

Clause 6 - Regulations

10. This provides a head of power for the making of regulations required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.