

1988

**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

**ANL
(CONVERSION INTO PUBLIC COMPANY) BILL 1988**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Gareth Evans QC.)

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OUTLINE

The aim of the Bill is to:

- . establish the Australian Shipping Commission, which trades as the Australian National Line (ANL) as a public company; and
- . remove statutory controls on ANL's operations.

Establishment as a Public Company

The legislation will establish ANL as a company by providing for the Commission to be registered as a company incorporated in the ACT under the Companies Act 1981 on a day to be proclaimed. It is expected that the commencing day of the Company (ie. the transition day) will be 1 July 1989.

The Bill provides for there to be no change in ANL's corporate entity. The Commission will change its name (to ANL Limited) and its form immediately before registration to facilitate its registration as an ongoing business enterprise while conforming, as far as possible, to the registration requirements of the Companies Act.

Under this approach ANL's intra-state trading rights are preserved.

Continuity of the corporate entity also dispenses with the need to transfer assets and liabilities from the Commission to a new body corporate. It means that all contracts, agreements and arrangements entered into by or on behalf of the Commission and which are in force immediately before transition will apply to the new Company.

This registration process avoids the administrative costs and time which would be involved in resolving these matters under alternative legislative approaches.

All the shares in the new Company will be held directly by the Commonwealth.

The Bill provides that on transition, each staff member of the Commission will become an employee of the Company on the same terms and conditions as applied to his or her employment by the Commission. Entitlements such as long service and recreation leave, and eligibility for sick leave, applying at transition date will be preserved. Those staff who have rights under Part IV of the Public Service Act 1922 will retain those rights.

Controls

The legislation provides for removal of existing statutory controls on the Commission (ANL) which are embodied in the Australian Shipping Commission Act 1956, through amendment of most sections of that Act. The removal of these statutory controls will occur at the time of registering the Commission as a company. Any controls which the government decides should remain over ANL will be specified in either the Memorandum and Articles of Association of the new Company or in the Guidelines to Directors.

FINANCIAL IMPACT STATEMENT

The Bill does not involve additional expenditure by the Commonwealth or additional revenue to the Commonwealth.

The Bill provides for exemption from Commonwealth, State and Territory taxes on the incorporation and transfer of assets of the Commission, recognising there has been no change in the Commonwealth's beneficial ownership.

NOTES ON CLAUSES

Clause 1: Short title, etc.
Provides for the Act to be cited as the ANL (Conversion into Public Companies) Act 1988 and defines the term "Principal Act" for the purposes of the Act.

Clause 2: Commencement
Subclause (1) provides for the Act to come into operation on the day on which it receives Royal Assent.

Subclause (2) provides for the section of the Principal Act relating to capital to be repealed (subclause 7(1)) on the day after ANL (Commission) issues shares in accordance with proposed subsection 39(3).

Subclause (3) provides for the registration of ANL (Commission) in the name of ANL Limited (proposed Section 42); repeal of those Sections of the Principal Act relating to the functions, powers and duties of the Commission, its staff and its finances (subclause 7(2)) and related definitions (Clause 6); and amendments of other Acts (Clause 11) to come into effect on a day to be fixed by Proclamation.

Subclause (4) provides for Division 1 of Part II of the Principal Act (Establishment and Constitution of the Commission) to be repealed (subclause 7(3)) immediately after the registration of ANL (Commission) under the Companies Act (proposed Section 42).

Clause 3: Title
Amends the title of the Principal Act to define more clearly the aims of the Principal Act.

Clause 4: Short title
Amends the short title of the Principal Act from the Australian Shipping Commission Act 1956 to ANL Act 1956.

Clause 5: Insertion of new sections
Proposed Section 3 of the Principal Act defines the various terms used in that Act including ANL and transition. Transition is the term which refers to the Commission becoming a company.

For the purpose of protection of company and business names, proposed Section 4 specifies circumstances which establish whether a body is operating under a particular name in a State or Territory (see also proposed Section 50).

Proposed Section 4A provides for the question of whether a body is a subsidiary is to be resolved in the same manner as in the Companies Act 1981.

Clause 6: Repeal of Section 5

Repeals the interpretations relating to the Commission which become superfluous (see proposed Section 3).

Clause 7: Repeal of Part II

Sets out the sections of the Principal Act which are to be repealed.

Subclause 7(1) repeals section 28 of the Principal Act (which details the capital of the Commission) and comes into operation on the day after the issue of shares by ANL (Commission) to the Commonwealth (see proposed Section 39(3)).

Subclause 7(2) which repeals Divisions 2 to 4 (inclusive) of Part II of the Principal Act (relating to the functions, powers and duties of the Commission, its staff and its finances) comes into operation on a day to be proclaimed (which will be the day of transition from the Commission to a public company).

Subclause 7(3) which repeals Division 1 of Part II (the establishment and constitution of the Commission) of the Principal Act comes into operation immediately after ANL's registration under the Companies Act (see proposed Section 42).

Clause 8: Insertion of new Part

Provides for transforming the Commission into an entity which can be converted into a public company. This ensures there is continuity of the corporate entity whilst ANL conforms, as far as possible, with the registration requirements of the Companies Act 1981.

To facilitate the registration of the new company proposed Section 38 provides for ANL (Commission), before its transition to a company, to have share capital equal to the level of capital subscribed by the Commonwealth to the Commission (currently \$196,391,000) and divided into \$1 shares.

Proposed Subsections 39(1)(2) and (3) provide for ANL (Commission) to issue fully paid up shares equal to its share capital, in accordance with the Minister's direction, to the Commonwealth.

Proposed Subsections 39(4) and 39(5) provide for this issue of shares to discharge the Commission's obligation under subsection 28(2) of the ASC Act to repay the capital subscribed by the Commonwealth.

Proposed Subsection 39(6) ensures that all shares are retained by the Commonwealth as the Commission is converted to a company.

Proposed Section 40 provides for ANL's (Commission's) name to be changed to ANL Limited as if the change of name was effected under the Companies Act 1981 to facilitate its registration as a Company.

Proposed Section 41 requires ANL to apply for registration as a company limited by shares and to provide supporting documentation.

Clause 9: Insertion of new Part
Inserts into the Principal Act proposed sections dealing with the mechanics of registering the Commission (now called ANL Limited) as a company so as to preserve the business entity.

Proposed Section 42 provides for ANL to be converted to a public company by requiring the National Companies and Securities Commission to grant ANL's (Commission) application thereby enabling it to become a company registered in the ACT under the Companies Act 1981 with the name ANL Limited.

Proposed Section 43 provides for the Memorandum and Articles of Association of the Company, which are to be lodged with the Corporate Affairs Commission prior to transition, to be the Memorandum and Articles of the Company and to apply from the transition as if they had been registered under the Companies Act 1981.

Proposed Section 44 facilitates the transfer of the Commission's capital to the Company by providing for members holding shares in ANL (Commission) to also be members holding shares in the Company on transition.

Proposed Section 45 provides for the Commonwealth to be the sole member (shareholder) of the new company. The effect of this section in combination with section 82 of the Companies Act 1981 is to dispense with the requirement that there must be at least 5 shareholders.

Proposed Section 46 provides for accounts and records kept by the Commission in accordance with subsection 35(1) of the Principal Act to be deemed to be accounting records of the Company (ANL Limited) for the purposes of the Companies Act.

Proposed Section 47 provides that reports and financial statements prepared by the Commission in accordance with subsection 35(1) of the Principal Act are deemed to be profit and loss accounts of ANL Limited for the purposes of the Companies Act.

Proposed Section 48 provides that nothing in this Act affects, or is affected by, section 25B of the Acts Interpretation Act 1901 concerning the continued existence of a body whose name or constitution is altered by an Act of Parliament, as it applies in relation to ANL.

Proposed Section 49 is a procedural section summarising the effect of the preceeding amendments on ANL's status with regard to the Companies Act.

Clause 10: Repeal of Part IV and the Schedule and substitution of new Parts

Repeals Part IV of the Principal Act, which relates to a range of matters facilitating the operations of the Commission (eg. reports to Minister, application of Acts to ANL, by-laws and regulations), and will insert sections which clarify the new company's position in respect of business names, staff, taxation and other matters during and post transition.

Proposed Sections 50 and 51 provide that a company or business name protected under the Bill (see proposed Sections 52 and 53 below) may be used in a State and Territory, even if that name is not registered in a State or Territory.

Proposed Sections 52 and 53 provide for protection of company and business names from use by other persons, except where there are pre-existing rights to that use.

Proposed Sections 54 and 55 allow use and registration of other names by the Company.

Proposed Section 56 provides for the managing director, officers and temporary and casual employees of the Commission immediately before the transition to be employed by the new company on the same terms and conditions on which they were employed immediately before the transition.

Proposed Section 57 provides that contracts of employment and periods of employment of staff members of the ANL (Commission) are not broken by the operation of the Act, and accrued rights are not affected.

Proposed Section 58 is a procedural section clarifying that Sections 56 and 57 are inserted only for the avoidance of doubt.

Proposed Section 59 confirms that terms and conditions of each staff member's employment after transition may be varied in the same way as could be done by the Commission immediately before the transition under Sections 22 or 24 of the Principal Act.

Proposed Section 60 provides for staff members of the Commission who have mobility rights under Part IV of the Public Service Act 1922 to continue to have those rights.

Proposed Sections 61 and 62 provide for exemption from Commonwealth, State and Territory taxes for the issue of shares; transfers of property and liabilities; ANL's (Commission) change of name to ANL Limited at transition and its subsequent registration as a company.

Proposed Section 63 provides for certification by the Minister or an office holder in the Department nominated by the Minister, that specified transactions were made or instruments executed in relation to an exempt matter (see proposed Section 61).

Proposed Section 64 provides for ANL (Commission) for the purposes of the Income Tax Assessment Act 1936 to have had, at all times before issuing of shares under proposed subsection 39(3) a share capital, all the issued shares in which were beneficially owned by the Commonwealth.

Proposed Section 65 clarifies ANL's company status, after incorporation, in respect of the laws of the Commonwealth or a State or Territory.

Proposed Section 66 provides for ANL (whose shares will be held by the Commonwealth) to operate intra-state shipping services in those States to which the Section applies (currently Queensland and Western Australia).

Proposed Section 67 provides that judicial notice will continue to be taken of the seal of the Commission applied in relation to any document prior to the transition.

Proposed Section 68 provides for compensation to be paid if the operation of the Act results in acquisition of property otherwise than on just terms.

Proposed Section 69 provides for the Governor-General to make regulations not inconsistent with the Act.

Clause 11: Consequential amendments of other Acts
Provides for consequential amendments of other Acts, viz:

Administrative Decisions (Judicial Review)
Act 1977

Commonwealth Borrowing Levy Act 1987

Freedom of Information Act 1982

Income Tax Assessment Act 1936

Navigation Act 1912

Petroleum (Submerged Lands) Act 1967

Sales Tax Assessment Act (No. 1) 1930

Shipping Registration Act 1981

Stevedoring Industry Finance Committee Act
1977

Clause 12: Repeal of certain Acts
Repeals outdated legislation.

