



ANL (Conversion into Public Company) Act 1988

No. 127 of 1988

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CONSEQUENTIAL AMENDMENTS OF OTHER ACTS



ANL (Conversion into Public Company) Act 1988

No. 127 of 1988

An Act to amend the *Australian Shipping Commission Act 1956* to convert ANL into a public company, and for related purposes

[Assented to 14 December 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *ANL (Conversion into Public Company) Act 1988*.

(2) In this Act, "Principal Act" means the *Australian Shipping Commission Act 1956*¹.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subsection 7 (1) commences on the day immediately after the day on which subsection 39 (3) of the Principal Act as amended by this Act is complied with.

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(3) Section 6, subsection 7 (2) and sections 9 and 11 commence on a day to be fixed by Proclamation.

(4) Subsection 7 (3) commences immediately after the commencement of section 9.

Title

3. The title of the Principal Act is repealed and the following title is substituted:

“An Act relating to the constitution of ANL as a public company, and for related purposes”.

Short title

4. The short title of the Principal Act is amended by omitting “Australian Shipping Commission” and substituting “ANL”.

5. After section 2 of the Principal Act the following sections are inserted:

Interpretation

“3. In this Act, unless the contrary intention appears:

‘amount’ includes a nil amount;

‘ANL’ means the body corporate that, at the commencement of this section, exists, because of subsection 7 (1), under the name ‘Australian Shipping Commission’;

‘articles’ means articles of association;

‘Australian Capital Territory’ includes the Jervis Bay Territory;

‘authorised person’ means:

(a) the Minister; or

(b) the holder of an authorising office;

‘authorising office’ means an office, in the Department, which is declared by writing signed by the Minister to be an authorising office for the purposes of this definition;

‘employment’, in relation to a staff member, means employment by, or service with, ANL;

‘group company’ means:

(a) ANL; or

(b) a wholly-owned subsidiary of ANL;

‘liability’ includes a debt or obligation;

‘member’, in relation to ANL at any time before the transition, includes a Commissioner;

‘memorandum’ means memorandum of association;

‘operate’, in relation to a name, has the meaning given by section 4;

‘property’ means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

'protected body' means a group company that is a trading corporation, or a financial corporation, within the meaning of paragraph 51 (20) of the Constitution;

'protected business name' means any of the following names:

- (a) **'ANL'**;
- (b) **'Australian National Line'**;
- (c) **'Maritime Agencies of Australia'**;
- (d) **'Searoad'**;
- (e) such other names as are prescribed for the purposes of this definition;

'protected company name' means any of the following names:

- (a) **'ANL Limited'**;
- (b) such other names as are prescribed for the purposes of this definition;

'protected name' means a protected business name or a protected company name;

'protection time', in relation to a protected name, means the time immediately before:

- (a) in the case of a name prescribed for the purposes of the definition of **'protected business name'** or **'protected company name'**—the name first became so prescribed; or
- (b) in any other case—the commencement of this section;

'registered', in relation to a name, includes reserved;

'share', in relation to a body corporate, means a share in the share capital of the body corporate;

'staff member' means a person who, immediately before the transition, is:

- (a) the Managing Director of ANL;
- (b) an officer of ANL; or
- (c) a temporary or casual employee of ANL;

'subsidiary' has the meaning given by section 4A;

'transfer' includes a sale, conveyance or assignment;

'transition' means the commencement of Part IIIA;

'wholly-owned subsidiary', in relation to a body corporate (in this definition called the **'holding body'**), means a body corporate:

- (a) that is a subsidiary of the holding body;
- (b) none of whose members is a person other than:
 - (i) the holding body;
 - (ii) a body corporate that is, under any other application or applications of this definition, a wholly-owned subsidiary of the holding body; or
 - (iii) a nominee of the holding body or of a body of a kind referred to in subparagraph (ii); and

- (c) no share in which is beneficially owned by a person other than:
 - (i) the holding body; or
 - (ii) a body of a kind referred to in subparagraph (b) (ii).

Operating under a name

“4. A reference in this Act to a body operating in a State or Territory under a particular name includes a reference to the body engaging in conduct that, for the purposes of a law in force in the State or Territory, constitutes:

- (a) in any case—using the name in the State or Territory;
- (b) if the name is the body’s name—establishing a place of business, or carrying on business, within the State or Territory; or
- (c) if paragraph (b) does not apply—carrying on business under the name in the State or Territory.

Subsidiaries

“4A. For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.”

Repeal of section 5

- 6. Section 5 of the Principal Act is repealed.

Repeal of Part II

- 7. (1) Section 28 of the Principal Act is repealed.
 - (2) Divisions 2 to 4 (inclusive) of Part II of the Principal Act are repealed.
 - (3) Division 1 of Part II of the Principal Act is repealed and the heading to that Part is omitted.
- 8. After Part II of the Principal Act the following Part is inserted:

**“PART III—CREATION OF CAPITAL STRUCTURE AND OTHER
STEPS PRIOR TO CONVERSION OF ANL INTO PUBLIC
COMPANY**

Share capital of ANL

- “38. (1) As from the commencement of this Part, ANL shall have a share capital.
- “(2) The amount of the share capital shall be equal to the amount that subsection 39 (1) requires to be applied as mentioned in that subsection.
- “(3) The share capital shall be divided into shares of \$1 each.
- “(4) As from the transition, this section has effect subject to the *Companies Act 1981*.

Issue of shares in ANL

“39. (1) As soon as practicable after the commencement of this Part, ANL shall apply the capital that it has at that commencement in paying up, in full, shares in ANL.

“(2) If the amount of the capital is not a multiple of \$1, subsection (1) applies as if the amount were reduced to the nearest multiple of \$1.

“(3) As soon as practicable after complying with subsection (1), ANL shall issue the shares paid up under that subsection:

- (a) to the Commonwealth; or
- (b) to nominees of the Commonwealth;

as the Minister directs in writing.

“(4) The issue of shares under subsection (3) discharges in full ANL’s obligations to repay the capital to the Commonwealth.

“(5) The shares issued under subsection (3) shall be taken to have been issued for valuable consideration other than cash, being the discharge effected by subsection (4).

“(6) A person is not a member of ANL at any time before the transition merely because the person holds shares in ANL.

New name of ANL

“40. (1) On the day immediately before the transition, ANL’s name is, by force of this subsection, changed to ‘ANL Limited’.

“(2) Subsection 65 (5) of the *Companies Act 1981* applies in relation to the change of name made by subsection (1) as if:

- (a) ANL were a company, within the meaning of that Act, when the change was made; and
- (b) the change were made under that Act.

“(3) This section has effect in spite of anything in the *Companies Act 1981*, but nothing in this section prevents:

- (a) ANL from later changing its name under section 65 of that Act; or
- (b) the cancellation, under Division 2 of Part III of that Act, of the registration of a name.

ANL to apply to be registered as company etc.

“41. (1) ANL shall, on the day immediately before the transition:

- (a) apply to the National Companies and Securities Commission under subsection 85 (1) of the *Companies Act 1981* to be registered as a company limited by shares within the meaning of that Act;
- (b) apply to the National Companies and Securities Commission under subsection 55 (1) of the *Companies Act 1981* for the reservation of the name ‘ANL Limited’; and

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(c) lodge with the National Companies and Securities Commission a proposed memorandum, and proposed articles, for ANL.

“(2) The application mentioned in paragraph (1) (a) shall, subject to the regulations, be accompanied by the documents required by subsection 85 (4) of the *Companies Act 1981* to accompany such an application.

“(3) The applications mentioned in paragraphs (1) (a) and (b) shall be made to the National Companies and Securities Commission by delivering them to the office of the Corporate Affairs Commission for the Australian Capital Territory, and the documents mentioned in paragraph (1) (c) and subsection (2) shall be lodged with the National Companies and Securities Commission by lodging them at that office.

“(4) ANL shall be taken to be entitled to make the applications referred to in paragraphs (1) (a) and (b), and to lodge the documents mentioned in paragraph (1) (c) and subsection (2).

“(5) The National Companies and Securities Commission shall be taken:

- (a) to have been required to reserve the name ‘ANL Limited’ under subsection 55 (2) of the *Companies Act 1981*; and
- (b) to have so reserved that name immediately after the making of the application mentioned in paragraph (1) (b).”.

9. Before Part IV of the Principal Act the following Part is inserted:

“PART IIIA—CONVERSION OF ANL INTO PUBLIC COMPANY

ANL taken to be registered under Companies Act

“42. (1) The National Companies and Securities Commission shall be taken:

- (a) to have been required to grant the application mentioned in paragraph 41 (1) (a) and to register ANL as a company under subsection 86 (2) of the *Companies Act 1981*;
- (b) to have granted the application at the commencement of this Part;
- (c) to have so registered ANL, at the commencement of this Part:
 - (i) by the name ‘ANL Limited’; and
 - (ii) in accordance with subsections 86 (3) and (4) of that Act, as a public company, and as a company limited by shares, within the meaning of that Act; and
- (d) to have registered the name ‘ANL Limited’ in relation to ANL at the commencement of this Part, under subsection 55 (4) of the *Companies Act 1981*.

“(2) The date of commencement of ANL’s registration as a company under Division 4 of Part III of the *Companies Act 1981* shall be taken to be the day of commencement of this Part.

“(3) For the purposes of Division 4 of Part III of the *Companies Act 1981*, ANL shall be taken to have been on the day before the commencement of this Part, and to be at that commencement, a corporation within the meaning of that Act.

Memorandum and articles of ANL

“43. (1) As from the commencement of this Part, the proposed memorandum, and the proposed articles, lodged under paragraph 41 (1) (c):

- (a) are respectively the memorandum, and the articles, of ANL; and
- (b) bind ANL and its members accordingly.

“(2) As from the commencement of this Part, the *Companies Act 1981* applies in relation to ANL’s memorandum and articles as if they had been registered as such under that Act.

Membership of ANL

“44. (1) A person who immediately before the commencement of this Part was, or was acting as, a member of ANL ceases at that commencement to be, or to act as, such a member.

“(2) Each person who holds shares in ANL at the commencement of this Part becomes, by force of this subsection, a member of ANL at that commencement.

“(3) A person referred to in subsection (2) is, in relation to membership of ANL, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if the person had become a member of ANL under ANL’s memorandum and articles.

Application of certain provisions of Companies Act

“45. (1) If all the shares in ANL are beneficially owned by the Commonwealth, subsection 82 (1), and paragraph 364 (1) (d), of the *Companies Act 1981* do not apply in relation to ANL, and subsection 244 (6) of that Act applies in relation to ANL as if:

- (a) the Commonwealth were a holding company, within the meaning of that subsection, of ANL;
- (b) the Commonwealth held the whole of the issued shares in ANL; and
- (c) the Minister were a representative of the Commonwealth authorised under subsection 244 (3) of that Act.

“(2) Paragraph 86 (6) (b) and subsections 87 (4) and 90 (5) of the *Companies Act 1981* do not apply in relation to ANL.

“(3) For the purposes of section 360 of the *Companies Act 1981*, a person is not a past member of ANL merely because he or she was a member of ANL, or acted as a member of ANL, before the commencement of this Part.

Accounting records

“46. For the purposes of the *Companies Act 1981*, accounts and records kept under section 63F of the *Audit Act 1901* (as that section applied to ANL because of this Act) shall be taken to be accounting records kept by ANL under a provision of a previous law of the Australian Capital Territory, being a provision corresponding to section 267 of the *Companies Act 1981*.

Accounts

“47. (1) This section has effect for the purposes of:

- (a) the *Companies Act 1981*; and
- (b) the *Companies (Transitional Provisions) Act 1981* as it applies in relation to, and in relation to persons and matters associated with, ANL because of subsection 90 (6) of the *Companies Act 1981*.

“(2) A report and financial statements that were prepared under section 63H of the *Audit Act 1901* (as that section applied to ANL because of this Act) in relation to a period and furnished to the Minister on a particular day shall be taken to be a profit and loss account of ANL that was:

- (a) made out in relation to that period; and
- (b) laid before the body at an annual general meeting of the body held on that day.

Operation of section 25B of Acts Interpretation Act

“48. Nothing in this Act or in the *Companies Act 1981* affects, or is affected by, section 25B of the *Acts Interpretation Act 1901* as that section applies in relation to ANL.

Effect of Part—summary

“49. After the commencement of this Part:

- (a) ANL is a company registered under the *Companies Act 1981*;
- (b) ANL’s name is ‘ANL Limited’;
- (c) ANL is a public company, and a company limited by shares, within the meaning of that Act; and
- (d) that Act applies, subject to this Act, in relation to ANL.”.

10. Part IV of the Principal Act, and the Schedule to the Principal Act, are repealed and the following Parts are substituted:

“PART IV—USE OF CERTAIN NAMES

Protected body may operate under protected company name

“50. A protected body whose name is a protected company name may operate under the name in a State or Territory even if the name is not registered in relation to the body under a particular law, or any law, in force in the State or Territory.

Protected body may operate under protected business name

“51. (1) A protected body may operate under a protected business name in a State or Territory even if the name is not registered in relation to the body under a particular law, or any law, in force in the State or Territory.

“(2) Nothing in this section permits more than one body to operate under the same name at the same time in the same State or Territory.

Other persons not to use protected names

“52. (1) A person other than a protected body shall not:

- (a) use in relation to a business, trade, profession or occupation;
- (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft);
- (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or
- (d) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion, by any means, of the supply or use of goods or services;

a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it.

Penalty: \$1,000.

“(2) Nothing in subsection (1) limits anything else in that subsection.

Exceptions for pre-existing rights

“53. (1) Nothing in section 52, so far as it applies in relation to a particular protected name, affects rights conferred by law on a person in relation to:

- (a) a trade mark that is registered under the *Trade Marks Act 1955*;
or
- (b) a design that is registered under the *Designs Act 1906*;

and was so registered at the protection time in relation to the name.

“(2) Nothing in section 52, so far as it applies in relation to a particular protected name, affects the use, or rights conferred by law relating to the use, of a name (in this subsection called the ‘relevant name’) by a person in a particular manner if, at the protection time in relation to the protected name, the person:

- (a) was using the relevant name in good faith in that manner; or
- (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or a similar name, goods or services as the goods or services of the first-mentioned person.

Use of other names by protected bodies

“54. This Part does not prevent a protected body from operating in a State or Territory under a name other than a protected name.

Effect on State and Territory laws

“55. This Part does not prevent a protected body from registering a name under a law of a State or Territory.

“PART V—STAFF MATTERS

Employment of staff members continues after transition

“56. Subject to this Part, each staff member continues at and after the transition to be employed by ANL on the terms and conditions on which he or she was employed by the body immediately before the transition.

Act not to affect certain matters relating to staff members

“57. (1) This section has effect for the purposes of the application, at any time at or after the transition, of a law, award, determination or agreement in relation to the employment of a staff member.

“(2) Neither his or her contract of employment, nor his or her period of employment, shall be taken to have been broken by the operation of this Act.

“(3) Without limiting section 56 or subsection (2) of this section, this Act does not affect any accrued rights that the staff member had immediately before the transition in relation to any kind of leave.

“(4) Where:

- (a) if the staff member had, immediately before the transition, ceased to be employed by ANL, it would have been necessary to take into account a period during which the staff member was employed by ANL or any other person to determine:
 - (i) an amount payable to the staff member; or
 - (ii) a benefit to which the staff member would have been entitled; because of his or her so ceasing; and
- (b) but for this subsection, some or all of that period would not have to be taken into account as a period during which the staff member was employed by ANL;

ANL shall treat the whole of the first-mentioned period as a period during which the staff member was employed by it.

Effect of sections 56 and 57

“58. Sections 56 and 57 are enacted only for the avoidance of doubt and, in particular, do not limit subsection 65 (5) or 87 (2) of the *Companies Act 1981*.

Variation of terms and conditions

“59. (1) It is a term of each staff member’s employment after the transition that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of his or her employment could, immediately before the transition, be varied under this Act.

“(2) Nothing in this Part prevents the terms and conditions of a staff member’s employment after the transition from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law, award, determination or agreement.

“(3) In this section:

‘terms and conditions’ includes a term or condition existing because of subsection (1);

‘vary’, in relation to terms and conditions, includes vary by way of:

- (a) omitting any of those terms and conditions;
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

Application of Part IV of Public Service Act

“60. For the purposes of the application, after the transition, of Part IV of the *Public Service Act 1922* in relation to a staff member, ANL shall be taken to be declared, by regulations in force under that Act, to be a Commonwealth authority for the purposes of that Part.

“PART VI—TAXATION MATTERS

“Division 1—Exemption from certain taxes

Interpretation

“61. In this Division:

‘exempt matter’ means:

- (a) an issue of shares under subsection 39 (3);
- (b) the change of name made by subsection 40 (1);
- (c) the reservation of name made by paragraph 41 (5) (b);
- (d) ANL’s registration as a company by force of this Act;
- (e) the operation of this Act; or
- (f) giving effect to a matter referred to in another paragraph of this definition or otherwise giving effect to this Act;

‘tax’ includes:

- (a) sales tax;
- (b) tax imposed by the *Debits Tax Act 1982*;
- (c) fees payable under the *Companies (Fees) Act 1981*;

- (d) stamp duty; and
- (e) any other tax, fee, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth.

Exemptions relating to exempt matters

“62. Tax under a law of the Commonwealth or a State or Territory is not payable in relation to:

- (a) an exempt matter; or
- (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

Authorised person may certify in relation to exemptions

“63. (1) 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 (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

“(2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

“Division 2—Application of Income Tax Assessment Act

ANL to be taken to have had share capital

“64. For the purposes of the *Income Tax Assessment Act 1936*, ANL shall be taken to have had, at all times before it complies with subsection 39 (3) of this Act, a share capital all the issued shares in which were, at all such times, beneficially owned by the Commonwealth.

“PART VII—MISCELLANEOUS

ANL not public authority etc.

“65. ANL, as it exists after the transition, shall be taken for the purposes of a law of the Commonwealth or a State or Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown;

except so far as express provision is made by a law of the Commonwealth, State or Territory, as the case may be.

Additional powers and functions under State or Territory laws

“66. (1) It is the intention of the Parliament that ANL should have such additional powers and functions as are conferred on it by or under a law of a State or Territory.

“(2) Subsection (1) has effect subject to the regulations.

Judicial notice of ANL’s seal

“67. (1) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of ANL appearing on a document and shall presume that it was duly affixed.

“(2) Subsection (1) applies in relation to an imprint that was affixed, or appears to have been affixed, before the transition.

Compensation for acquisition of property

“68. (1) Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by ANL such reasonable amount of compensation as is agreed on between the person and ANL or, failing agreement, as is determined by a court of competent jurisdiction.

“(2) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than under this section shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

“(3) In this section, ‘acquisition of property’ and ‘just terms’ have the same respective meanings as in paragraph 51 (31) of the Constitution.

Regulations

“69. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act”.

Consequential amendments of other Acts

11. The Acts specified in the Schedule are amended as set out in the Schedule.

Repeal of certain Acts

12. The following Acts are repealed:

Australian Shipping Commission (Additional Capital) Act 1985
Loans (Australian Shipping Commission) Act 1975.

SCHEDULE

Section 11

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1977

Paragraph (k) of Schedule 2:

Omit “Australian Shipping Commission”.

Commonwealth Borrowing Levy Act 1987

Before item 1 of the Schedule:

Insert the following item:

“1A. ANL Limited.”.

Item 9 of the Schedule:

Omit the item.

Freedom of Information Act 1982

Part I of Schedule 2:

Omit “Australian Shipping Commission”.

Income Tax Assessment Act 1936

Subsection 57AM (1) (definition of “Government ship”):

Omit “, but does not include a ship that is owned by the Australian Shipping Commission”.

Navigation Act 1912

Subsection 6 (1) (definition of “Commonwealth ship”):

Omit from paragraphs (d), (e) and (f) “the Australian Shipping Commission”, substitute “ANL Limited”.

Petroleum (Submerged Lands) Act 1967

Paragraph 140A (5) (a):

Omit the paragraph.

Sales Tax Assessment Act (No. 1) 1930

Schedule 2:

Omit “Australian Shipping Commission”.

Shipping Registration Act 1981

Subsection 3 (1) (definition of “Government authority”):

Omit subparagraph (b) (i).

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SCHEDULE—continued

Stevedoring Industry Finance Committee Act 1977

Paragraph 5 (1) (c):

Omit “the Australian Shipping Commission”, substitute “ANL Limited”.

NOTE

1. No. 41, 1956, as amended. For previous amendments, see No. 87, 1962; No. 88, 1964; No. 4, 1966; No. 145, 1968; No. 55, 1969; No. 216, 1973; No. 83, 1974; No. 37, 1976; No. 153, 1977; No. 36, 1978; No. 39, 1980; No. 26, 1982; Nos 115, 127 and 136, 1983; No. 72, 1984; No. 65, 1985; No. 76, 1986; and No. 99, 1988.
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[*Minister's second reading speech made in—
House of Representatives on 31 August 1988
Senate on 8 November 1988*]