ANL Guarantee Bill 1994

Date Introduced: 22 September 1994
House: House of Representatives
Portfolio: Treasury
Commencement: Royal Assent

Purpose

To allow the Treasurer to guarantee certain debts of ANL Limited (ANL).

Background

On 22 August 1994, the Government announced that:

To ensure that ANL is able to continue to trade in an orderly fashion the Government intends to guarantee all existing debts of the company and any further draw-downs required on its promissory note facility.

The amendments proposed by this Bill will give effect to the above announcement.

While it is not within the scope of this Digest to provide a historical discourse of ANL and the events of the past three months [such information can be readily obtained from the Parliamentary Library Information Service (06 277 2500)] the following briefly examines the issue of whether ANL is in financial difficulties, and if so, why, and the current state-of-play with respect to ANL.

In 1992-93, ANL reported a pre-tax profit of $8.7 million after a $19 million loss in 1991-92. On 19 August 1994, the Government received a due diligence report conducted by consultants, Price Waterhouse and Saloman Brothers, which indicated that as at August 1994 ANL's net debt totalled $180 million, and forecast a downturn this financial year and in future years - with more than $100 million to be lost over the next three years.

Table 1. ANL’s Forecasting Performance

<table>
<thead>
<tr>
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<th>1992 Shipping and terminals</th>
<th>1993 Shipping only</th>
<th>1994 Shipping only</th>
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</thead>
<tbody>
<tr>
<td>July 1989</td>
<td>$58.8m</td>
<td>Sept 1990 - $29.0m</td>
<td>Sept 1990 - $32.0m</td>
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<tr>
<td>Sept 1990</td>
<td>$32.0m</td>
<td>June 1991 - $22.3m</td>
<td>June 1991 - $41.2m</td>
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<tr>
<td>June 1991</td>
<td>($5.2m)</td>
<td>Dec 1991 - $23.5m</td>
<td>Dec 1991 - $40.7m</td>
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<td></td>
<td>Dec 1991 - ($1.1m)</td>
<td>Oct 1992 - $14.8m</td>
<td>Oct 1992 - $25.5m</td>
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<tr>
<td>Actual result</td>
<td>($5.2m)</td>
<td>Dec 1993 - $7.9m</td>
<td></td>
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Earnings before interest and tax (year to June)

Table 2. Gross Cash Flow Forecasts

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<tbody>
<tr>
<td>Steady scenario</td>
<td>($18.8m)</td>
<td>($11.5m)</td>
<td>($18.0m)</td>
<td>($4.5m)</td>
<td>($34.0m)</td>
</tr>
<tr>
<td>Pessimistic scenario</td>
<td>($18.8m)</td>
<td>($33.6m)</td>
<td>($31.1m)</td>
<td>($19.7m)</td>
<td>($84.4m)</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>($3.5m)</td>
<td>($8.8m)</td>
<td>($3.4m)</td>
<td>($1.8m)</td>
<td>($14.0m)</td>
</tr>
</tbody>
</table>

The consensus among analysts is that ANL’s financial difficulties do not stem from any one factor, but rather from a number of factors, including:

- a decline in the terms of shipping trade in ANL’s Asian markets;
- labour costs;
- crewing practices; and
- the taxation regime imposed on local shipping operators.

The Governments rationale for ANL’s financial difficulties center on a decline in the terms of shipping trade on ANL’s international trade routes. For example, the Minister for Transport and Industrial Relations in a News Release of 22 August 1994 said:

With increased competition from major new international container vessel tonnage on order to be built in the next couple of years, an increasing oversupply of tonnage will further worsen ANL’s prospects in the longer term.

The current state-of-play with respect to ANL represents the results of negotiations between the Commonwealth, the Maritime Union of Australia and the ACTU concluded on 13 September 1994. The main points immereging from the negotiations included:
• the Commonwealth will guarantee certain debts of ANL (this measure is given effect to by this Bill);
• exemption of international seafarers from income tax (with the benefit passed to employers) (the income tax measure is estimated to save employers, for a rating paid approximately $40 000 a year gross, 27% on wage costs);\(^5\)
• increasing the depreciation rate on new efficiently operated ships from 20% to 30%;\(^6\)
• an undertaking on the union's part to urgently consider negotiating an industrial package for the industry, including:
  - further reducing crew size and reducing the crewing factor;
  - changing the existing employment arrangements so that overall costs equate to that which would be obtained under company employment;
  - negotiating a long-term wage agreement; and
  - reducing training costs to a level no higher than community standard;\(^7\)
• retention of the existing "cabotage" arrangements which protect local coastal shipping companies from competition from foreign shipping lines;\(^8\)
• rejection of the recommendation of the Taylor inquiry into shipping reform to establish a "second register" of Australian owned vessels operated by foreign crews not covered by local industrial awards;\(^9\) and
• the Government would establish an open-tender process for the sale of a majority stake in ANL to the private sector ("Subject to a viable consortium being successful, the Government would retain a minority shareholding, would support an employee share-ownership plan and would guarantee ANL debt on a transitional basis").\(^10\)

The Australian Shipowners' Association, the peak industry body, has welcomed the above proposals.\(^11\)

The proposals have not been officially costed, however reported costs are estimated by The Age of 14 September 1994 reports that:

*The deal, which also includes undertakings from the union to reduce crew sizes and enter a peace accord, could cost the Government more than $20 million a year.*

The Australia Financial Review of 14 September, 1994 reports that:

*Under the deal negotiated late on Monday night between the Prime Minister, Mr Keating, and the ACTU secretary, Mr Bill Kelly, the Government will consider tax breaks to protect Australian international shipping worth about $18 million a year, including about $5 million a year for ANL.*
The Sydney Morning Herald of 14 September 1994 reports:

The Government has agreed to urgently investigate exempting seamen from PAYE tax, which would cost an estimated $15 million to $20 million.

Main Provisions

The main effect of clause 4 is to allow the Treasurer to enter into agreements under which the Commonwealth guarantees ANL payments under a loan agreement. The term "loan agreement" is defined in clause 3 to mean repayments of principal, payments of interest, or both, under a loan agreement (including agreements made before the commencement of this proposed Act). A legislative rationale for the proposed amendments is provided by subclause 4(1), which is, "to help ANL continue to trade in an orderly fashion or restructure its business interests".

Endnotes

6. Ibid.
8. Ibid.
10. Ibid.

Ian Ireland (06 2772438)
Bills Digest Service
Parliamentary Research Service

2 November 1994

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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