ANL Legislation Repeal Bill 2019

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Date introduced: 11 September 2019
House: Senate
Portfolio: Infrastructure, Transport, Cities and Regional Development
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at October 2019.
Purpose of the Bill

The purpose of the ANL Legislation Repeal Bill 2019 (the Bill) is to repeal the entirety of the ANL Act 1956 (ANL Act) and the ANL Guarantee Act 1994 (Guarantee Act) which have become redundant now that ANL Limited (ANL) no longer exists as a government owned company. The repeal of the ANL Act in particular will remove the current restrictions on ‘protected names’ in relation to ANL, thereby allowing businesses to use these names in a commercial context (such as through the registration of domain names).

Background

Brief history of ANL

ANL was a Commonwealth owned shipping company that had its origins in the need to operate Commonwealth owned vessels in the 20th century. The company was previously known as the Australian Shipping Commission and traded as the Australian National Line prior to being converted into a public company from 1 July 1989 by the ANL (Conversion into Public Company) Act 1988. The conversion of ANL to a public company did not affect its ownership as 100% of the company’s shares were still owned by the Commonwealth; however it allowed for the potential introduction of private share capital in the event that the Government decided to sell part or all of ANL. The intentions of this conversion were to take further steps in the commercialisation of ANL and allow for a change in its corporate culture appropriate for a commercial organisation.

In early 1991, the Government declared an intention to privatise ANL in light of its deteriorating financial performance and the company’s failure to meet targets set out in its 1989/92 corporate plan. ANL was progressively restructured from 1995 and legislation was introduced to facilitate its sale. The Guarantee Act (which will be repealed by the Bill) was also passed and had the effect of underpinning the restructuring process by guaranteeing all existing debts of the company, thereby ensuring ANL’s financiers maintained confidence in the company during the restructure.

In 1998, ANL’s liner shipping business component was sold to ANL Container Line Pty Ltd, a subsidiary of Compagnie General Maritime (now CMA CGM). The Explanatory Memorandum to the Bill notes that this sale included the intellectual property associated with the business.

6. The ANL Sale Act 1995 was intended to facilitate the sale of the Commonwealth’s shares in ANL, however, it was automatically repealed prior to the actual sale taking place—see section 79 of that Act. The ANL Sale Bill 1998 similarly dealt with the consequences of the intended sale of ANL, but did not become law (however, this did not preclude the Government’s ability to sell ANL; see Bennett, ANL Sale Bill 1997, op. cit.).
bulk shipping business was sold to AUSCAN Self-Unloaders Pty Ltd. The Government created the Australian River Co. Limited in 1997 to hold ANL’s residual assets and liabilities following its partial sale in 1998; this company began the process of winding up in 2002 and was subsequently wound up on 15 July 2015.

The Explanatory Memorandum notes that the majority of provisions in the ANL Act and the entirety of the Guarantee Act now have no practical effect given the sale of ANL:

These provisions [of the ANL Act] set out a number of matters relating to the operation of ANL Limited as a Commonwealth-owned business, including staffing and taxation matters. As these arrangements were resolved at the time of the sale, repealing these provisions will not impact the rights or entitlements of former employees, and will remove redundant legislation.

The Guarantee Act can also be repealed without negative impact. The Guarantee Act is a short Act which allows the Treasurer to guarantee loans to ANL Limited. As ANL Limited is no longer a Commonwealth company and has not existed as a legal entity since 2003, the Guarantee Act has no practical effect.

The private shipping company ANL Container Line Pty Ltd (commonly known as ANL) is currently part of the CMA CGM group and has its headquarters in Melbourne.

Committee consideration

**Senate Standing Committee for Selection of Bills**

In its report of 12 September 2019, the Senate Standing Committee for Selection of Bills recommended that the Bill not be referred to committee for inquiry.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.

Policy position of non-government parties

At the time of writing this Digest, there does not appear to be any comments on this Bill from non-government parties or independents.

Position of major interest groups

At the time of writing this Digest, there does not appear to be any publically available comments on this Bill from any interest groups.

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Financial implications
The Government notes in the Explanatory Memorandum to the Bill that the Bill is not expected to have any significant financial impact.\(^{16}\)

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^{17}\)

Parliamentary Joint Committee on Human Rights
The Parliamentary Joint Committee on Human Rights found that the Bill does not raise human rights concerns.\(^{18}\)

Key issues and provisions
ANL as a protected name
As highlighted in the ‘Background’ section above, the ANL Act and the Guarantee Act are now largely redundant given that there is no longer a Commonwealth owned ANL. The ANL Act provides for a range of matters including requirements for the conversion of ANL to a public company, staffing matters and taxation matters. The Explanatory Memorandum to the Bill notes that these arrangements were resolved at the time of sale, and the provisions no longer impact the rights or entitlements of former employees.\(^{19}\) The Guarantee Act allows the Treasurer to guarantee loans to ANL; this Act is also redundant as the Commonwealth company ANL no longer exists as a legal entity.\(^{20}\)

Part IV of the ANL Act, however, still has practical effect. Section 52 of the ANL Act in particular prohibits a person other than the Commonwealth owned ANL (or any wholly-owned subsidiary) from using certain protected names (or names closely resembling those protected names so that they could likely be mistaken for them) for a range of purposes including in relation to business/trade, as part of the name of a body corporate, as a trademark and in relation to goods or services. The relevant protected names are\(^{21}\):

- ANL
- Australian National Line
- Maritime Agencies of Australia\(^{22}\) and
- Searoad.\(^{23}\)

\(^{16}\) Explanatory Memorandum, op. cit., p. 2.
\(^{17}\) The Statement of Compatibility with Human Rights can be found at page 3 of the Explanatory Memorandum to the Bill.
\(^{18}\) Parliamentary Joint Committee on Human Rights, Human rights scrutiny report, 5, 2019, 17 September 2019, p. 16.
\(^{19}\) Explanatory Memorandum, op. cit., p. 2.
\(^{20}\) Ibid.
\(^{21}\) ANL Act 1956, section 3.
\(^{22}\) Maritime Agencies of Australia was ANL’s dedicated port agency and ships husbandry service provider (see ANL, Annual report 1990, op. cit., p. 18; ANL, Annual report 1992, ANL, Melbourne, 1992, p. 10).
The Explanatory Memorandum to the Bill notes that the ‘protected names’ provisions make it an offence to use these names in certain business contexts, including domain names and registrations of intellectual property.\(^{24}\) The status of these names as ‘protected names’ may notionally affect the companies ANL Container Pty Limited and the Bass Strait shipping service provider, SeaRoad.\(^{25}\)

However, there appears to be a particular issue with the car and passenger ferry service company Searoad Ferries and its ability to renew its domain name. The administrator and regulatory body for the ‘.au’ domain space, auDA, lists the above protected names as ‘words and phrases that are restricted under Commonwealth legislation’ on its Reserved List Policy, meaning that these names cannot be used in websites in the ‘.au’ domain.\(^{26}\) Searoad Ferries currently holds the domain name ‘searoad.com.au’.

Minutes from auDA’s Board of Directors meetings highlight that the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development requested that auDA approve the reregistration of Searoad Ferries’ domain name before it expired on 24 February 2019. While advice to the Board reaffirmed that restricted names cannot be registered as domains, the Board resolved to permit the renewal of ‘searoad.com.au’ for one year in light of advice from the Deputy Prime Minister that the Government is working to repeal the ANL Act.\(^{27}\)

The Bill’s key purpose, apart from repealing legislation which is now redundant, is therefore to rectify situations such as these and to allow maritime businesses to use these names in commercial contexts. This is made clear in the Minister’s second reading speech accompanying the introduction of the Bill:

> One key exception [to the fact that most provisions of the ANL Act no longer have practical effect] is the provisions of the ANL Act protecting the use of the business name ‘ANL’ and other associated terms, such as ‘Searoad’. These provisions have recently impeded the business operations of a small number of maritime businesses, including by impeding the re-registering of website names and registration of trademarks.

This is despite the affected businesses having used their names for many years in good faith.

The protected name provisions of the ANL Act should have been removed around the time of the 1998 sale. Having sold the ANL shipping line, the Commonwealth no longer needed to protect these names. However the protections were retained through an historical oversight.

This Bill corrects that oversight to honour the sale of ANL in good faith, and remove unnecessary and unintended barriers for the affected maritime businesses.

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23. ANL/ the Australian National Line also ran a ‘Searoad’ service across the Bass Strait and managed a pure car carrier called Australian Searoad (see, for example, ANL, Annual report 1990, op. cit., p. 14; Australia, Parliament, Eleventh annual report of the Australian Coastal Shipping Commission for year 1966–67, Parl. Paper 166, Canberra, 1967, p. 8).\(^{24}\)


25. Incidentally, ANL previously held a 50% share in a former iteration of SeaRoad prior to this share being sold in 1996, see SeaRoad, ‘History’, SeaRoad website, n.d.\(^{25}\)


27. .auDA, Minutes of a meeting of the Board of Directors, 24 January 2019, pp. 2–3; .auDA, Minutes of a meeting of the Board of Directors, 18 February 2019, pp. 1–2.
This will allow these businesses to get on with their operations and making important contributions to our national economy, without interference from unintended, historical regulatory barriers.\(^{28}\) (emphasis added)

The Bill consists of only two operative items. **Item 1 of Schedule 1** of the Bill repeals the whole of the *ANL Act* and **Item 2 of Schedule 1** of the Bill repeals the whole of the *Guarantee Act*.

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