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SENATE

**FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE**

The Proposed Sale of ANL Ltd

NOVEMBER 1995

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ABBREVIATIONS

ANAO	Australian National Audit Office
ANL	ANL Limited
MUA	Maritime Union of Australia
P&O	P&O Australia Limited
PWSB	Price Waterhouse and Salomon Brothers
PWPW	Price Waterhouse and Potter Warburg
TEU	Twenty-foot Equivalent Units
TFAS	Task Force on Asset Sales B, Department of Finance

THE PROPOSED SALE OF ANL LTD

1. INTRODUCTION

Terms of Reference

1.1 On 8 December 1994 the Senate referred the following matter to the Finance and Public Administration References Committee for inquiry and report:

Whether the proposed sale of ANL has been conducted with the prudence, discretion, integrity, skill and propriety necessary:

- (i) to protect the value of ANL and its assets;
- (ii) to realise the maximum price for ANL and its assets;
- (iii) to avoid prejudice to the interests of the Commonwealth, including the potential prejudice to the environment and the Australian shipping industry arising from the impact of increasing dependence on sub-standard and flag-of-convenience shipping.

1.2 The Committee was required to report as soon as practicable, but not before taking into account a report of the Auditor-General, which was required to be prepared by the same resolution. The Auditor-General presented *Audit Report No 2 1995-96: Matters Relating to the Proposed Sale of ANL Ltd*, on 22 August 1995. The full text of the Senate resolution is attached as Appendix 1.

Conduct of the Inquiry

1.3 The Committee advertised the inquiry in the national and metropolitan newspapers on 11 February 1995. In order to allow time for consideration of the Auditor-General's report, interested persons and organisations were invited to lodge submissions by 30 June 1995, although later submissions were accepted. The Committee received 23 written submissions and supplementary submissions from the public and private sectors. A list of submissions is attached as Appendix 2.

1.4 The Committee held two public hearings, on 22 September 1995 and 20 October 1995. A list of witnesses is attached as Appendix 3.

Chronology of Events

1.5 The Auditor-General's report, *Matters Relating to the Proposed Sale of ANL Ltd*, set out a useful chronology of the key decisions and actions in relation to the proposals for the sale of ANL Ltd (ANL).

1.6 As noted by the Auditor-General, the primary responsibility for the sale of ANL was placed with the Task Force on Asset Sales B (TFAS), a unit within the Department of Finance. The unit manages specific major asset sales for the Government, and provides policy advice to the Minister for Finance. The Department of Transport had a lesser role in relation to the sale process. The Department of Transport was responsible for monitoring ANL's financial performance and for providing advice to the Minister for Transport on financial matters relating to ANL and on broad transport policy issues.¹

1.7 The following chronology of events is adapted from the Auditor-General's report, and includes additional information provided in evidence and submissions to the Committee.²

July 1991 Price Waterhouse and Potter Warburg (PWPW) completed an independent market valuation of ANL in a consultancy for the Department of Transport.

August 1991 The Government decided that a sale of up to 49% holding in ANL would be pursued, with the precise scope and arrangements for the sale to be the subject of further consideration.³

August 1991 The Government announced in the Budget that a substantial part of ANL would be sold. The Government indicated that the quantum, method and timing of the sale would be matters for further consideration. The Government asked the ANL Board, chaired by William Bolitho, to prepare a business plan and the TFAS and the Department of Transport commissioned PWPW to undertake a scoping study.

June 1992 The PWPW study found that a 49% share was unlikely to attract buyers and recommended that the Government should seek to divest itself of 100% of ANL.

August 1992 The sale of ANL was again flagged. Budget Paper No 3 1992-93 stated that the proceeds from asset sales previously expected in 1991-92 were now expected to be received in 1992-93.

¹ Australian National Audit Office *Audit Report No 2 1995-96 Performance Audit: Matters Relating to the Proposed Sale of ANL Ltd* AGPS, Canberra, 21 August 1995, p13 (hereafter referred to as ANAO No 2).

² *ibid.*, pp 13 - 16.

³ Submission No 11, Department of Transport, p 9.

- December 1992 The Government decided, and ANL was advised, that expressions of interest in a 100% sale would be sought as soon as practicable, and that ANL's Articles of Association would be changed.⁴ ANL expressed doubts as to whether the sale decision could be implemented in practice. The Government also decided that ANL ships would remain in the Australian register and crews would be employed under Australian awards. The Minister for Finance in consultation with the Minister for Transport would be responsible for all aspects of the sale process. The then Minister for Shipping and Aviation Support was to make the public announcement of the Government's intentions in setting out the timing, quantum and method of sale. This announcement was not made.
- Budget 1993 The proposed sale of ANL was again confirmed. No public announcement was made detailing the Government's intentions for the sale.
- June 1993 The Government decided to remove the sale conditions requiring ANL vessels to remain on the Australian register and employees to be employed under Australian awards and to add a condition that in a 100% sale, foreign equity would be permitted to 49%.
- February 1994 The Government, having observed that ANL's financial performance continued to be poor, and in order to establish ANL's financial position and if necessary consider changes to the sale process and the need for further capital injection, decided that (i) TFAS would continue to pursue an open and flexible sale process; (ii) advisers would be appointed immediately to commence a due diligence process on ANL; (iii) the Minister for Transport would change ANL's Articles of Association immediately in order to require the cooperation of ANL in the due diligence process; (iv) the Government would indicate its preferences for the sale outcome but would not detail the conditions to apply to the sale; (v) the Ministers for Finance and Transport would report on the due diligence process prior to the 1994 ALP Conference.
- March 1994 The commencement of a due diligence process was publicly announced.
- April 1994 Price Waterhouse and Salomon Brothers (PWSB) were appointed as consultants after a competitive tender. The terms of reference for the consultancy were prepared on the assumption that ANL would be sold as a going concern, and encompassed a two-phase process.
- May 1994 The Budget contained a reference to the fact that the due diligence process was under way.

⁴ *ibid.*

August 1994 PWSB reported to TFAS, following a presentation to the Ministers for Transport and Finance, on ANL's financial condition and prospects. PWSB concluded that sale of ANL as a going concern was unlikely and recommended that the Government should undertake a detailed financial analysis to confirm the likely outcomes of two options - a managed trade-down and the reconstruction of ANL as a precursor to a possible rationalisation-driven trade sale. No due diligence process was undertaken and Phase 2 of the consultancy was not commenced. PWSB provided an indicative valuation of ANL on the basis that a managed trade-down (defined as effectively an informal liquidation) would be the only viable option.⁵

The Government decided that (i) it would provide a guarantee for ANL's debts; (ii) the ANL Board would be asked to resign; (iii) a new Board would be appointed with the charter to restructure the company; and (iv) previous Government decisions concerning the sale of ANL would not proceed. The new Board, chaired by the Hon Neville Wran (the Wran Board) was appointed for six months, and the Ministers for Finance and Transport were to report on proposals for reconstruction by February 1995. The Board's term was extended on several subsequent occasions, finally to August 1995.

September 1994 The Wran Board advised the Government of the two viable options for their shareholding in Australian Stevedores Holdings Pty Ltd. The Board, like its predecessor, preferred to purchase the remaining interest in Australian Stevedores. The Government decided that it would sell its 25% interest to Jamison Equity for \$28 million, including \$16.8 million by ANL loan and \$5.6 million by shareholder loan.

December 1994 The Senate referred matters relating to the proposed sale of ANL to the Auditor-General and to the Finance and Public Administration References Committee for inquiry and report (the Senate resolution is attached as Appendix 1).

May 1995 Since its appointment, the Wran Board had investigated potential partners and/or bidders for ANL. Conditional offers were received from ANZDL and from P&O. Unconditional offers were invited by 22 May; P&O submitted an offer and ANZDL withdrew from the process.⁶

August 1995 The Wran Board reported to the Minister for Transport, recommending that 100% of the issued share capital of ANL Limited be sold to P&O Australia Limited (P&O), in preference to retaining ownership and restructuring ANL (the correspondence from Mr Wran to Mr Brereton is attached as Appendix 4).

The Auditor-General presented *Audit Report No 2 1995-96: Matters Relating to the Proposed Sale of ANL Ltd.*

⁵ *ibid*, p 3.

⁶ Committee Hansard 20 October 1995, p 56.

September 1995 The Government agreed to sell ANL to P&O but to defer the sale for two months, pending the successful outcome of talks between P&O and the Maritime Union of Australia (MUA).

The Government appointed an interim ANL Board, chaired by Ted Anson.

The ANL Sale Bill, allowing for an appropriation of up to \$15 million for transfer costs, was introduced in the House of Representatives on 20 September and passed on 28 September. The deadline for the sale was set at 31 December 1995. The provisions of the Bill were referred to the Senate Finance and Public Administration Legislation Committee for inquiry and report on 27 September 1995.

October 1995 The Finance and Public Administration Legislation Committee recommended that the ANL Sale Bill be agreed to in its report tabled on 19 October 1995.

P&O, the only current bidder for ANL, agreed to a one month extension for the finalisation of sale arrangements until 30 November 1995, to allow further negotiations between P&O and the Maritime Union of Australia.

2. VALUATIONS OF ANL

The Price Waterhouse Salomon Brothers (PWSB) Report

2.1 The terms of reference for the PWSB consultancy of April 1994 envisaged a two stage process. Phase 1 was to comprise a detailed pre-sale financial review of ANL and the development of sales options and strategies, and, in the later stages, the planning of a formal vendor due diligence process. Phase 2 was to comprise the provision of assistance to the Commonwealth with the sale process, and the conduct of the formal due diligence process.⁷

2.2 Phase 2 of the consultancy was never undertaken. PWSB reported to the TFAS, and to the Minister for Finance and the Minister for Transport, in August 1994, that the sale of ANL as a going concern was unlikely. PWSB considered that of the various options available to the Commonwealth to dispose of its interest in ANL, the preferred option was most likely to be a 'managed trade-down', described as effectively an 'informal liquidation'. However, PWSB recommended that a detailed financial analysis of the likely outcome of both a managed trade-down and the reconstruction of ANL as a precursor to a possible rationalisation-driven trade sale should be conducted.

⁷ Submission No 16, PWSB, p 2.

2.3 The PWSB report also provided an indicative valuation of ANL. On the basis that the best option was likely to be a managed trade-down, PWSB assessed the value of ANL to be between negative \$74.8 million and negative \$117.8 million, before contingent liabilities. This valuation used figures for both vessels and containers which were discounted, by 30% and between 30 and 45% respectively, from recent valuations undertaken with respect to ANL by Drewry Shipping Consultants Ltd, a major shipping valuer. A second valuation, using amounts for vessels and containers which were not discounted from the Drewry figures, was provided in the report at the request of the Department of Transport, though not in the executive summary. This estimated the value of ANL in the range of negative \$35.3 million to positive \$7.6 million.⁸

2.4 The Committee received submissions from William Bolitho, former Chairman of the ANL Board, representing that the PWSB 'grossly undervalued ANL by somewhere between \$175 million and \$218 million'.⁹ Mr Bolitho pointed out that the new Board had signed ANL's 1993-94 accounts some four months later as a 'going concern' with net assets of \$26 million.¹⁰ As well, in response to questioning by the Committee, Mr Bolitho provided information of several valuations prepared between 1990 and 1994, other than the PWPW and PWSB reports, which assessed values ranging from a high of \$260 million to a low of \$16 million.¹¹ These valuations were prepared by such firms as Ernst and Young, Macquarie Corporate Finance Limited and Drewry's. The latest valuation conducted by ANL, in August 1994, produced a value range of between negative \$0.5 million to \$33.8 million.¹² According to ANAO, the process of discounting vessels and containers accounted for the fundamental difference in valuations of ANL as at August 1994 arrived at by PWSB and by ANL.¹³ Mr Bolitho submitted to the Committee that when other matters were taken into account, including the proceeds of the ANL sale process since August 1994, ANL had a value at June 1994 in excess of \$100 million.¹⁴

2.5 The Committee notes, on the one hand, the point made by PWSB that the report's valuation of ANL was indicative only, to provide a guide as to the deficiency that might be expected to arise under the managed trade-down option. PWSB made it clear that the valuation was not central to the conclusions on the future viability of ANL.¹⁵ On the other hand, the executive summary also makes use of the indicative valuation to illustrate the poor investment that ANL had represented for the Commonwealth over the past ten years.¹⁶

⁸ ANAO No 2, p 26. The full text of the PWSB report was not made available to the Committee. The executive summary, with portions of text removed, was provided.

⁹ Submission No 5, William Bolitho, p 2.

¹⁰ Submission No 5, William Bolitho, p 4.

¹¹ Submission No 12, William Bolitho, p 95.

¹² Australian National Audit Office *Audit Report No 11 1994-95 Project Audit: ANL Valuation Issues* AGPS, Canberra, 2 December 1994, p 15.

¹³ ANAO No 2, p 26; also Submission No 11, Department of Transport, p 7.

¹⁴ Submission No 5, William Bolitho, p 21.

¹⁵ Submission No 16, PWSB, p 7.

¹⁶ PWSB, *Report: ANL Limited, Executive Summary*, p3.

2.6 Criticisms of the valuation of ANL suggested by PWSB have arisen in relation to the central assumption by PWSB that the Commonwealth would be perceived in the market as a forced seller. This assumption played a key role in the level of discounts applied to the assets owned by ANL. ANAO questioned this assumption, commenting that 'the value paid for a Commonwealth asset is less likely to be based on the perception of potential buyers but the willingness of the Commonwealth to accept the price offered'.¹⁷ ANAO noted that the ability of the Commonwealth to pursue non financial policy objectives was in fact demonstrated by the rejection by the Government of the preferred PWSB option of a managed trade-down of ANL.¹⁸

2.7 ANAO commented that a number of valuations of ANL have been prepared over the last five years. ANAO did not propose to examine those valuations in detail nor to rank them, considering the changes in ANL's situation and competitive environment.

2.8 It was put to the Committee by the Hon Neville Wran, Chairman of the ANL Board 1994-95, that the question of valuation of ANL is not one of 'right and wrong', but of comparing 'like with like'. For example, the PWSB valuation based on a liquidation basis is not comparable with the ANL 1994 Annual Report which indicates an appropriate carrying value in the context of the mandate given to the Board by the Government.¹⁹ Similarly, the ANAO, in its 1994-95 Project Audit on ANL Valuation Issues, pointed out that there was no necessary inconsistency between the PWSB report and the ANL Board 1992-93 audited financial statements, the two having been prepared with substantially different assumptions, for different purposes at different times.²⁰

2.9 The Committee appreciates the points made in relation to the comparison of valuations. The matter is complicated, however, by the public release of one of the valuations which was based on a specific set of assumptions, without providing an explanation of these assumptions.

Role of the Minister for Transport

2.10 The Senate agreed, in its reference of matters to the Auditor-General, that the Auditor-General should be aware in the preparation of his report, of issues relating to the Minister's publishing of the PWSB report and comments made at that time. ANAO noted that these events occurred on the 22 August 1994, when the Minister for Transport announced the formal withdrawal of ANL from sale and the appointment of a new Board, and released the edited executive summary of the PWSB report. The Minister also said, in relation to ANL, at a press conference on the same day, that 'It's not a case of privatising ANL, you couldn't give it away'.²¹

¹⁷ ANAO Report No 2, p 33.

¹⁸ ANAO Report No 2, p 33.

¹⁹ Committee Hansard, 20 October 1995, p 57.

²⁰ Australian National Audit Office *Audit Report No 11 1994-95 Project Audit: ANL Valuation Issues* AGPS, Canberra, 2 December 1994, p 14.

²¹ ANAO Report No 2, p 35.

2.11 ANAO had received legal advice that it was beyond its powers to review the actions of a Minister.²² For this reason, ANAO concluded that it could not comment on the actions of the Minister. ANAO also could not comment on any advice given to the Minister which may have influenced his statement, because briefings on this aspect were not documented.²³

2.12 Mr Bolitho submitted to the Committee that there were various other public statements made by the Minister to the effect that ANL had a negative net worth. He advised that it was his belief that the actions and statements of the Minister were a deliberate and substantial devaluation of the worth of ANL and impairment of its sale prospects, and were deliberately and substantially damaging to the commercial reputations of the directors of the Board of ANL at that time.²⁴ The view that the public comments would have detracted from an early sale of ANL and its assets for the maximum price was supported by R C Kidman, a former ANL Board member.²⁵

2.13 In contrast, the Committee also heard evidence on this issue from Mr Wran, who described the suggestion that such comments might have an effect upon the sales price as 'laughable', in the context of a highly competitive industry. Mr Wran advised the Committee that the most accurate valuation of an asset is the price that the market is prepared to pay for it.²⁶ On this assessment, P&O's offer of \$19.5 million (less adjustments) provides the best valuation.

2.14 The Committee points out, however, that this view must be balanced with the primary question of whether the asset was prepared and presented in a manner which would maximise its attractiveness to a buyer, or to several potential buyers.

2.15 Mr Wran provided to the Committee his report to the Minister for Transport of 22 August 1995, in which he recommended to the Government that it dispose of ANL to P&O in accordance with P&O's offer; a sale which he estimated would be likely to result in maximum net proceeds to Government of \$4.9 million. A copy of this report is attached as Appendix 4.

2.16 According to the ANAO, 'comments by management or owners of a business which provide views not already in the market will have a negative effect on value because such persons are usually perceived to be speaking from a well-informed position'. In this instance, ANAO found that it was not possible to conclude whether the comments and actions of the Minister might have limited potential purchaser interest.²⁷

²² ANAO Report No 2, p 3.

²³ ANAO Report No 2, p 38.

²⁴ Submission No 5, William Bolitho, p 3, 5.

²⁵ Submission No 10, R C Kidman, p 1.

²⁶ Committee Hansard, 20 October 1995, p 62.

²⁷ ANAO Report No 2, pp 36-7.

Conclusions

2.17 The Committee agrees that the various valuations of ANL that are available are not necessarily directly comparable, in that they are based on very different assumptions. The Committee does not intend to comment upon the validity of these assumptions, other than to say that there appears to be scope for disagreement among commercial experts. It does appear, however, that the relevance of any one valuation can only be determined within the context of the assumptions upon which it is based. In the view of some members of the Committee, the 'fire sale' assumptions of PWSB may have had a negative influence in determining the value of ANL and its assets.

2.18 It is still not possible for the Committee to determine the impact of the statements of the Minister on the potential market for ANL, and on the price realised for ANL and its assets. In the view of the majority of members, the statements carried the potential to have a negative influence on the interests of the Commonwealth and they question the prudence of the Minister's conduct in making statements which were potentially damaging to the sale process without providing the full documentation relied upon to support those statements. Other members endorse the Wran view that the market would make its own decision regardless of ministerial opinion, and note the release of the PWSB report by the Minister.

3. CONDUCT OF THE SALE PROCESS

3.1 The Auditor-General was also required by the Senate resolution to consider whether public officials associated with the proposed sale of the ANL had acted with prudence, discretion, integrity and propriety. ANAO considered these terms as follows:

... the terms 'prudence, discretion, integrity and propriety' refer to good management practice over and above the strict demands of the law. Such behaviour should reflect the need for:

- actions to be well considered and timely, taking into account all and only relevant considerations;
- the reasons for decisions to be open and well-documented; and
- individuals to be treated fairly and openly.²⁸

3.2 The Committee agrees that the terms under consideration require, at a minimum, behaviour to the standard outlined by ANAO.

3.3 The Committee received detailed submissions from Mr Bolitho, outlining concerns with respect to the conduct of the ANL sale process. For example, Mr Bolitho submitted:

The sale of up to 49% of ANL, announced in the 1991/92 federal budget on 20/8/91, was advised to ANL on 15/8/91. Despite earlier Government advice

²⁸ ANAO Report No 2, pp 7-8.

and assurances to the contrary, the board and management of ANL were excluded from this sale process which was placed under TFAS control ... The sale decision itself was contrary to previous Government assurances to ANL that a level of equity appropriate to ANL's commercial circumstances and its balance sheet would be provided. The placing of all control of the sale in the hands of TFAS actually frustrated the sale process. It led to major problems where the exercise of TFAS control of the sale process clashed with the responsibilities of the ANL Board and management under the law.²⁹

3.4 In Mr Bolitho's submission, the TFAS sale effort was unsuccessful for three years, and was 'extremely damaging to ANL, the morale of its staff, its commercial activities and its sale value'.³⁰ Mr Bolitho added that following the appointment of the new Board in August 1994, this control was removed from TFAS to the new Board. He pointed out that the Board on which he had served had unsuccessfully argued for a long time for this action to be taken.³¹

3.5 One of the difficulties in the conduct of the sale process was that there were different perceptions on behalf of the Board and the Government. The ANL Board clearly viewed ANL as a going concern, with a positive outlook and assets in excess of \$100 million, while the Government held a less optimistic view of the future of ANL. These different perspectives contributed to the problems which existed in the relationship between the Board and the Government.

3.6 Mr Bolitho provided many examples, and extensive documentary evidence, which detailed his submission that the ANL Board under his chairmanship was not kept adequately informed by the Government and the TFAS as to the intentions for the future of ANL. For example, Mr Bolitho requested, but was denied, access to both the PWPW report of 1992, which concluded that a 49% sale of ANL was unlikely, and the PWSB report of 1994, which concluded that the sale of ANL as a going concern was unlikely, and that a managed trade-down was likely to be the most viable option. Mr Bolitho outlined to the Committee many instances where Government decisions in relation to ANL were, in his view, not promptly communicated to the ANL Board, leading to an uncertain climate.

3.7 Similar comments were provided to the Committee by Mr Kidman, who noted:

... I remain mystified as to the logic for precluding ANL Management and Board from perusing and commenting upon the findings of both outside scoping/due diligence studies commissioned by the Government. Such involvement and the frank communication of specific sale criteria to ANL would have added considerable value to the whole exercise.³²

²⁹ Submission No 5, William Bolitho, p 6.

³⁰ *ibid.*

³¹ *ibid.*

³² Submission No 10, R C Kidman, p 1.

3.8 ANAO stated that the process used to gain the resignation of the members of the Board chaired by Mr Bolitho 'did not provide the opportunity for Board members to comment on or defend any implication of lack of performance, ability to restructure the company or commitment to carry out the Government's wishes'.³³ As well, ANAO suggested that it could well have been more prudent to make the PWSB report available to the ANL Board prior to its release, to ensure that its members were seen to be treated fairly. ANAO noted that it would not have added significantly to the time needed for decision-making, particularly if the Board had been kept informed of developments as they occurred.³⁴

3.9 Overall, ANAO concluded that the actions of the Departments generally conformed with the standards of behaviour required, often in a testing environment. However, the situation may have been handled better if the draft PWSB report had been provided to the former ANL Board and the advice to Ministers regarding the report had been more adequately documented.³⁵

3.10 The Departments of Finance and Transport provided views of the sale process to the Committee which were quite different from those of Mr Bolitho. The Department of Finance submitted to the Committee that the Government had ensured that ANL was promptly informed of Cabinet decisions relevant to its intentions in respect of ANL, and that while at times the ANL Board and management provided full cooperation with the Government, at other times, consultation with the Government was inadequate. Certain delays were attributed to the time taken by the ANL Board to provide material.³⁶ The Department of Transport concurred that Government advice to the Board on decisions regarding ANL was prompt, and commented that the ANL Board sought to delay and/or minimise changes to its Articles of Association.³⁷

3.11 ANAO noted that the Department of Finance referred frequently in its briefings to the Minister to the perceived obstruction of the attempts to sell ANL by the ANL Board.³⁸ ANAO was not able to assess the extent to which ANL had made all necessary information available to the Government; it was the view of ANAO that it could not examine the actions of the ANL Board and management as ANL was not within the efficiency audit mandate of ANAO.³⁹

3.12 The references to a lack of cooperation on the part of ANL were strongly rejected in submissions from former Board members.⁴⁰ The Committee was also advised that the process was made more difficult due to a lack of understanding of other parties of the Board's role and responsibilities. According to Mr Bolitho, his Board raised with the Government early in the sale process the difficulties faced by Board members who are subject to clear corporate law obligations which may conflict with the expectations placed upon them by the

³³ ANAO Report No 2, p 8.

³⁴ ANAO Report No 2, p 9.

³⁵ ANAO Report No 2, pp 10-11.

³⁶ Submission No 13, Department of Finance, pp 5-6.

³⁷ Submission No 11, Department of Transport.

³⁸ ANAO Report No 2, p 19.

³⁹ ANAO Report No 2, p 13.

⁴⁰ Submission No 18, William Bolitho; Submission No 10, R C Kidman; Submission No 15, R N H Denton.

Minister and Government officers.⁴¹ While required to provide information, Mr Denton submitted that the Board was not consulted by the Government, but rather was excluded from the sale process and the use to which the information was put.⁴² The Committee was also advised that undertakings were requested of the Board with which members could not comply, according to their legal advice.⁴³ In contrast to this, the Wran Board was given a clear mandate, which did not subject it to conflicting responsibilities.

3.13 According to Mr Bolitho, a satisfactory resolution of these issues was not reached in relation to the Bolitho Board. In March 1994, ANL's Articles of Association were changed 'to require the cooperation of ANL',⁴⁴ in part by requiring the ANL Board to obtain written approval from the Government of any proposed transactions which could significantly affect the potential sale value of the shares of ANL or its assets, or the options for sale of ANL.⁴⁵ Mr Bolitho advised that this effectively removed control over the management of ANL from the Board to the Minister, as the Board could make no decisions of substance.⁴⁶ He also submitted that this caused ANL commercial damage, because responses to outstanding matters were not provided by the Minister in a timely manner.⁴⁷

3.14 In his evidence, Mr Bolitho raised the issue of the difficulties faced when a statutory authority is converted to a corporation. In this situation, the Board of Directors, who are personally responsible for the company under corporations law, are required to act in the best interests of the company as a whole even when this conflicts with ministerial direction.⁴⁸

Conclusions

3.15 It is clear that the spirit in which the sale process was conducted was not one of mutual trust. It is not intended for the purposes of this report to assign 'blame' for specific events; however, it is the view of the Committee that the ANL sale process might fairly be described as characterised by confusion, uncertainty, delay, a lack of adequate documentation and a lack of communication and trust.

3.16 Given that a decision was made to sell ANL, the Committee is concerned that the sale process has lasted for over four years. The Committee appreciates the point made by Stephen Sedgwick, Secretary of the Department of Finance, that, in the initial stages, the Government may have needed to refine its options, and that this was the purpose of the scoping study. Nevertheless, the process was initiated via the scoping study in 1991. For a variety of reasons, the sale clearly has not proceeded in a timely fashion.

⁴¹ Submission No 5, William Bolitho, p 7.

⁴² Submission No 15, R N H Denton.

⁴³ Submission No 12, William Bolitho, pp 252, 265.

⁴⁴ Cabinet Minute No 2563, 21 February 1994 in Submission No 12, William Bolitho, pp 92-3.

⁴⁵ Minute of amendments to the Articles of ANL Limited, Submission No 12, William Bolitho, pp 63-8.

⁴⁶ Submission No 5, William Bolitho, p 22.

⁴⁷ Submission No 12, William Bolitho, p 3; see also correspondence to Minister from William Bolitho 22 August 1994, submission No 12, William Bolitho, p 3.

⁴⁸ Submission No 12, William Bolitho, p 252.

3.17 Some members of the Committee are concerned at the at times almost adversarial, rather than cooperative, nature of the relationship between the TFAS and the former ANL Board. For example, Mr Sedgwick was questioned as to the reason for the decision not to provide the PWPW report of 1992 to the Board. He advised that although he did not have a precise recollection of the reason:

The circumstances which we were in were very similar to those of anybody who receives confidential advice, which they have paid for in the expectation that the advice would be provided to government. It does not seem to me that it necessarily follows that, simply because one party in a transaction has received some confidential advice, it needs to pass it over to any other party in a transaction. Frankly, I do not think that that follows at all.⁴⁹

3.18 As noted above, the Committee received extensive documentary material from Mr Bolitho, which assisted greatly in gaining an understanding of the ANL sale process. In contrast, the Department of Finance, having been invited to give evidence at a public hearing, did not provide a written submission in advance of that hearing, and provided a submission only when specifically requested to do so by the Committee. The Committee was concerned at comments made by the Department of Finance with respect to the difficulty of locating detailed records of advice given to ANL.

3.19 It is apparent from the evidence that there were substantial difficulties in communication between the Minister, Government officers and the Board of Directors, which lasted for several years. The Committee is therefore particularly surprised that greater efforts were not made by the Departments of Finance and Transport to document details in writing, in order to minimise misunderstandings. The Committee was disappointed to find that written briefings to Ministers on key issues were not provided, notes of meetings were not available, and follow-up documentation was not maintained. In short, the documentation kept by the Departments of Finance and Transport was inadequate.

3.20 The Committee agrees with the point made by ANAO, that the Board should have been provided with the PWSB report prior to its release.

3.21 The Committee concludes that the sale process was protracted, decisions were not open and well documented, and certain individuals were not treated as fairly and openly as they should have been.

3.22 The Committee recognises the inherent tension which exists for members of a Board of Directors of a corporation who are subject to the requirements of corporations law, and are also expected to comply not only with ministerial direction but also to be publicly accountable through the Parliament.

⁴⁹ Committee Hansard 22 September 1995, p 33.

4. IMPACT ON THE ENVIRONMENT AND THE AUSTRALIAN SHIPPING INDUSTRY

4.1 The Department of Transport made the following submission in relation to the potential prejudice to the environment and the Australian shipping industry:

... the Department of Transport notes that ANL carries about 2.5% of Australia's maritime trade by value and 6.5% of its container trade by TEU. A proposed sale would have little or no impact on the environment, nor would it significantly increase dependence on sub-standard shipping. The Australian Maritime Safety Authority has a rigorous Port State Control inspection program which has reduced the amount of sub-standard shipping coming to Australia compared with other regions. This will continue irrespective of ANL's ownership.⁵⁰

4.2 The Committee also received a submission from the Navy League of Australia and the Company of Master Mariners of Australia, representing that ANL should remain in Australian hands, or that at least, the sale should not occur until the Government has in place a sustainable policy in respect of an Australian flag merchant fleet. The organisations submitted that a substantial flag fleet has value in providing support for the Australian Defence Forces in the case of emergency, and in providing a training ground from which seafaring workers gain qualifications to support the Australian economy. It was also pointed out that as the only Australian flag operator amongst the international shipping operators who carry nearly all of Australia's value added external trade, ANL provides the only Australian voice within an industry important to the Australian economy, and the only access to 'intelligence' concerning carriage operations.⁵¹

4.3 The Maritime Union of Australia also expressed concern in relation to the increased use of substandard shipping worldwide, and submitted that it was in Australia's interests to maintain a restructured ANL as a Government controlled shipping line.⁵²

4.4 Private individuals also submitted to the Committee their views that ANL should not be sold, on grounds of concern for the environment and safety.⁵³

4.5 The Committee notes the concerns expressed on these issues, and that matters relating to changes within the shipping industry have been the subject of other Parliamentary committee inquiries. The Committee has not focused on these issues during this current inquiry to the depth necessary to reach any formal conclusions. In the view of some members of the Committee, even if ANL is not to be in public hands, there are national interest considerations in relation to the environment and safety which point to the need for continuing Australian involvement in shipping in Australian waters.

⁵⁰ Submission No 11, Department of Transport, p 13.

⁵¹ Submission No 1, Navy League of Australia and Company of Master Mariners of Australia.

⁵² Submission No 14, Maritime Union of Australia.

⁵³ Submission No 2, Larry Noye; Submission No 3, Gloria Neal; Submission No 4, Cheryl Branch; Submission No 9, Gloria Neal.

5. CONCLUSIONS AND RECOMMENDATION

5.1 The Committee believes that there is little to be gained from an assignment of 'blame' for each difficult circumstance throughout the ANL sale process, although most members agree that more could have been done by the Department of Finance TFAS, and that both the actions of the Minister and the protracted decision making process of the Government were not helpful. The Committee believes that the Government can and should learn from this experience.

5.2 It was the view of Mr Sedgwick that:

Perhaps the lesson that we should learn is the one that our colleagues in New Zealand tumbled to some time ago - namely, that the board which builds a business is not necessarily the best one to participate in selling it. In New Zealand, the incumbent is replaced as a matter of course early in privatisation. The board which has built a company may well have a strong attachment to their preferred strategy for the company which may not be consistent with the sole shareholder realising its new ambition to dispose of its asset instead. Each party may well have strong reasons to support their position, but even with goodwill on both sides their goal could be perceived to be inconsistent. Perhaps we should give consideration to adopting this aspect of the New Zealand approach here.⁵⁴

5.3 Mr Bolitho agreed that there is a need to examine the manner in which the Commonwealth sells its assets. Mr Bolitho advised the Committee that he had inquired into the United Kingdom asset sales program, which he described as being undoubtedly the largest and most successful such program in the world. Mr Bolitho noted that sales take, on average, between one and two years, and that:

... once an asset has been corporatised and its availability for sale notified, the board of directors is changed, with the executive directors of the company retained and the non-executive directors replaced with public servants from the relevant departments. This places the public servants in the United Kingdom exercise on the same footing as the other directors in terms of their authority and their liability for actions arising out of the exercise of that authority. ... This is an entirely different and much more efficient structure than we have in Australia where the authority for the sales has been given to a separate entity, the Task Force on Asset Sales. This UK arrangement avoids the situation in Australia where there is a view that there is a natural tendency for the task force to exercise its authority over the company whilst leaving the liabilities arising out of the exercise of that authority with the directors. That is a core structural problem, in my view.⁵⁵

⁵⁴ Committee Hansard 22 September 1995, p 22.

⁵⁵ Committee Hansard 20 October 1995, p 101.

5.4 Mr Bolitho further advised the Committee that the sale process in the UK is conducted by merchant banks, chosen through an open tender by the Board of the company to be sold. As Mr Bolitho noted, this appears to be more similar to the approach to the ANL sale in the context of the appointment of the Wran Board.

5.5 The Committee recommends that:

- **the Government, and in particular the Department of Finance, investigate possible options and models to develop a best practice model for the administration of any possible future Commonwealth asset sales.**

5.6 At a minimum, the best practice model should provide a structure which will improve processes of communication and consultation between all parties, ensure that adequate documentation is maintained throughout, and formalise and specify the duties, responsibilities and obligations of all parties and ensure that the incumbent Board directors are not subject to conflicting responsibilities in the sale process.

Robert Bell
Chair

APPENDIX 1

Extract from JOURNALS OF THE SENATE

No. 133..... dated 8 DECEMBER 1994

**AUSTRALIAN NATIONAL LINE—ORDER FOR PRODUCTION OF DOCUMENTS—
FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—REFERENCE**

Senator Gibson, by leave, moved—That:

- (a) the Senate reaffirms its resolution of 22 September 1994 in relation to paragraph (2)(c) of that resolution, that there be laid on the table, as soon as practicable, a report by the Auditor-General which takes into account as far as necessary the material described in paragraph (1)(b) of that resolution and any other information which the Auditor-General requires and is authorised or empowered to obtain, and addresses the following matters:

any other matters which the Auditor-General believes are relevant to the matters referred to in paragraphs (2)(a) and (2)(b) of that resolution;

- (b) in preparing the report referred to in paragraph (a) the Auditor-General:

(i) be aware of the following issues and questions:

- (A) whether public officials (elected or unelected) associated with the proposed disposal of the Australian National Line (ANL) have acted with prudence, discretion, integrity and propriety,
- (B) whether the actions of the Department of Transport, the Department of Finance (Asset Sales Task Force) and the boards of ANL, as individual organisations and collectively, have been effective in serving the taxpayers' best interests,
- (C) what was the status of the Price Waterhouse-Salomon Brothers report in the sale process, and was there any reason for preferring the Price Waterhouse-Salomon Brothers valuation to other valuations,
- (D) whether the minister behaved with prudence, discretion, integrity and propriety by publishing the Price Waterhouse-Salomon Brothers report and by making the comments he did when publishing the report,
- (E) whether the disposal of Australian Stevedores to Jamison Equity, against the advice of both the old and new ANL boards, was justified, whether the sale price was maximised, and whether the financing arrangements were acceptable on legal and commercial grounds, and
- (F) the circumstances leading up to the agreement with the Maritime Union of Australia, the nature of the agreement including financial arrangements, and whether the agreement was in the best interests of the Commonwealth, and

(ii) be prepared to give evidence to a Senate committee, in so far as the Auditor-General is able, on these issues and questions and other matters arising as a result of the report to be prepared under paragraph (a); and

- (c) the following matters be referred to the Finance and Public Administration References Committee, for inquiry and report on or before 30 March 1995, or as soon as practicable, but not before taking into account the report of the Auditor-General to be prepared under paragraph (a) of this resolution:

Whether the proposed sale of ANL has been conducted with the prudence, discretion, integrity, skill and propriety necessary:

- (i) to protect the value of ANL and its assets,
- (ii) to realise the maximum price for ANL and its assets, and
- (iii) to avoid prejudice to the interests of the Commonwealth, including the potential prejudice to the environment and the Australian shipping industry arising from the impact of increasing dependence on sub-standard and flag-of-convenience shipping.

Debate ensued.

Question put.

The Senate divided—

AYES, 32

Senators—

Abetz	Ellison	Macdonald, Sandy	Patterson
Boswell	Ferguson	MacGibbon	Reid (Teller)
Brownhill	Gibson	McGauran	Short
Calvert	Harradine	Margetts	Tambling
Campbell	Hill	Minchin	Teague
Chamarette	Kemp	Newman	Troeth
Chapman	Knowles	Panizza	Watson
Crichton-Browne	Macdonald, Ian	Parer	Woods

NOES, 30

Senators—

Beahan	Cooney	Jones (Teller)	Schacht
Bell	Crowley	Kernot	Shery
Bolkus	Denman	Lees	Spindler
Bourne	Devereux	McKiernan	West
Carr	Evans, Christopher	Murphy	Woodley
Childs	Evans, Gareth	Neal	Zakharov
Coates	Faulkner	Ray	
Collins	Forshaw	Reynolds	

Question agreed to.

APPENDIX 2

LIST OF SUBMISSIONS

No.	Person/Organisation
1	The Navy League and the Company of Master Mariners of Australia
2	Mr Larry Noye, ACT
3	Ms G Neal, WA
4	Mrs Cheryl Branch, WA
5	Mr William Bolitho, VIC
6	Mr William Bolitho - Supplementary
7	Howard Smith Ltd
8	Howard Smith Ltd - Supplementary
9	Ms G Neal - Supplementary
10	Mr R Kidman, SA
11	Department of Transport
12	Mr William Bolitho - Supplementary
13	Department of Finance
14	Maritime Union of Australia
15	Mr R Denton, NSW
16	Price Waterhouse/Salomon Brothers - No. 1
17	Price Waterhouse/Salomon Brothers - No. 2
18	Mr William Bolitho - Supplementary
19	Hon Neville Wran, NSW
20	Hon Neville Wran - Supplementary
21	Mr William Bolitho - Supplementary
22	Department of Transport - Supplementary
23	Department of Finance - Supplementary

APPENDIX 3

PUBLIC HEARINGS AND WITNESSES

1. FRIDAY, 22 SEPTEMBER 1995, CANBERRA

Mr William Bolitho, Victoria

Department of Finance

Mr Stephen Sedgwick, Secretary

Mr Robert Hogan, Director, ANL Sale Team, Task Force on Asset Sales B

Mr Simon Lewis, Deputy Chairman, Task Force on Asset Sales B

Mr Ross Smith, Acting Chairman, Task Force on Asset Sales B

2. FRIDAY, 20 OCTOBER 1995, CANBERRA

Mr William Bolitho, Victoria

Department of Finance

Mr Stephen Sedgwick, Secretary

Mr Robert Hogan, Director, ANL Sale Team, Task Force on Asset Sales B

Mr Simon Lewis, Deputy Chairman, Task Force on Asset Sales B

Mr Ross Smith, Acting Chairman, Task Force on Asset Sales B

Department of Transport

Mr Peter Core, Secretary

Mr Kym Bills, Acting First Assistant Secretary, Maritime Policy Division

Mr Gregory Outzen, Director, ANL Liaison Section

Price Waterhouse

Mr Gregory Keys, Partner, Corporate Finance

Mr Jonathan Hubbard, Senior Manager, Corporate Finance

Salomon Brothers Australia Limited

Mr Gareth Cope, Vice President

Mr Paul McCullagh, Director and Head of Investment Banking - Australasia

ANL Ltd Board 1994-95

The Hon Neville Wran, Chairman

Mr John Spark, Director

APPENDIX 4



ANL Limited

A.C.N. 008 654 206

Chairman

22 August 1995

The Honourable L J Brereton MP
Minister for Transport
Parliament House
CANBERRA ACT 2600

ANL. It's Australian for Shipping.

Dear Minister,

Since the appointment of the present Board, ANL has held discussions with a wide range of international shippers and other interested parties with a view to identifying potential partners for ANL and/or potential bidders for ANL.

As a result of those discussions, P&O has emerged as the only party interested in acquiring ANL.

The Board and the Government are therefore presented with two options. The first is to dispose of ANL to P&O on terms set out below, the second is to retain ownership of ANL and further significantly to restructure its operations and in the course of so doing dispose of certain non-core businesses.

OPTION 1:

SALE OF 100% OF THE ISSUED SHARE CAPITAL OF ANL LIMITED TO P&O AUSTRALIA LIMITED (P&O)

Outline of Proposal

ANL Limited would be sold to P&O after transferring out of ANL those assets/operations which (i) P&O do not wish to acquire, (ii) are partly owned and subject to pre-emptive rights arrangements which effectively preclude them being sold, and/or (iii) are of such financial complexity that their transfer out of Government ownership is prohibitively expensive. These transferred out assets/operations will remain in Commonwealth ownership via a new 100% Commonwealth owned and guaranteed body ("Retainco"). Retainco would be structured so that it was essentially cost neutral for the Commonwealth in that all of its financial outgoings are matched by charter income.

State of Negotiations

While a considerable amount of work has been done in preparing a contract of sale acceptable to both the Government and to P&O, those negotiations have not been finalised. In practical terms it is not possible to achieve the best result for the Government in the final stage of negotiation unless P&O is advised that the Government is in fact committed to the sale. Accordingly the description of the P&O deal hereunder must be considered as being subject to a final bout of negotiation.

ANL Limited
432 St Kilda Road, Melbourne, Vic. 3004, Australia
P.O. Box 2238T G.P.O. Melbourne 3001
Telephone: (03) 869 5555 Facsimile: (03) 869 5530
Telex: ANLINE AA 130584

Industrial Perspective

While the likely reaction of the Maritime Union of Australia to a sale to P&O is beyond the scope of this letter, I should note that P&O have said to us on a number of occasions that they would wish to review their acquisition of ANL if, as a consequence, there was to be widespread and long-running industrial action. I make this observation only because it is important for the Government to bear in mind that it is not the only party to this proposed transaction which may be sensitive to prolonged industrial disruption on the waterfront. If the Government is minded to proceed with a sale it would be advisable candidly to discuss the likely industrial reaction with P&O so that the Government could be satisfied that both parties to the transaction were fully prepared to deal with the consequences of proceeding with it.

Sale Price

The P&O offer is stated as an initial purchase price of \$19.5m adjusted for the impact of transferred out assets/operations and movements in the ANL balance sheet between 31 March 1995 and the completion date (likely to be 31 October 1995).

This is likely to result in the following maximum net proceeds to Government.

	\$M
Initial Offer	19.5
<i>Less Adjustments</i>	
- Transferred Out Items	9.6
- Other balance sheet movements	5.0
Maximum Net Proceeds	<u><u>4.9</u></u>

Further Reductions to Sale Price

The net proceeds to Government may be further reduced by the following adjustments:

- ♦ Costs involved in the termination of existing ANL financing arrangements - if any financier invokes a valid termination right the costs of termination are to be borne by the Commonwealth. Representatives of P&O, ANL and the Task Force have called on most of the financiers and not all financiers are yet to declare their final positions but, on present indications, this amount is unlikely to be material.
- ♦ River Yarra lease shortfall - P&O are proposing that the Commonwealth should be responsible for the last 3 rental payments under this lease and should also assume the residual value risk. This would enable P&O to keep the River Yarra financing off its balance sheet. If this remains P&O's final position, the Commonwealth may face an estimated liability of approximately \$4.0m in present value terms.

The total amount of the last three lease payments is approximately \$8 million. The estimated scrap value of the Yarra at the end of the lease in 2003 is \$2 million. The net present value of the \$6 million shortfall seven years out is \$4 million. The Commonwealth should require the \$4.0 million to be made up elsewhere. Mr Turnbull has raised this with P&O recently and is confident that can be achieved.

- ♦ Warranty claims - the current draft contract with P&O limits warranty claims to a maximum aggregate of \$13.0m.

In a worst case scenario this may lead to the following result for the Government.

	\$M
Revised Offer Price	19.5
<i>Less Adjustments</i>	
- Transferred Out Items	9.6
- Other balance sheet movements	5.0
Proceeds (as above)	4.9
Less:	
Maximum warranties claim	<u>13.0</u>
Maximum NPV of shortfall on Yarra	<u>4.0</u>
Worst Case Net Exposure to P&O	<u>-12.1</u>

Liabilities Retained and Guaranteed by the Commonwealth

The assets/operations transferred out of ANL prior to a P&O acquisition would be managed by a new Government entity(ies). Associated with these assets/operations would be gross liabilities of \$183.0m which would be guaranteed by the Commonwealth. This sum should be viewed in the context of the present gross liabilities of ANL, both on and off balance sheet, are approximately \$330 million. These liabilities would gradually reduce over time and be fully extinguished by 2005/2006. It is expected that the Commonwealth's gross liabilities will be matched by income from sub chartering out the various assets held by the new entity. At present, two of the three subcharter arrangements remain to be negotiated on terms which keep the Commonwealth risk neutral. These relate to the River Yarra, mentioned above, and the two vessels currently operated by Coastal Express Line being the Searoad Tamar and the Searoad Mersey which are the subject of separate negotiations aimed at extricating the Commonwealth from the current unsatisfactory lease arrangements.

Future Employment Arrangements for Australian Seafarers

P&O have stressed their position as a substantial Australian employer and offered to continue crewing ANL's existing vessels with Australian seafarers as long as it remains commercially viable to do so. P&O have not set out any definitive time scale or criteria for establishing commercial viability but have indicated, in a letter of 19 May to the Maritime Union of Australia, that they would expect "to be still trading Australian flagged and crewed vessels in the overseas trade for the foreseeable future" and that they would expect to remain in the European trade at least until 2002.

The Chairman of P&O in the United Kingdom, Lord Sterling, has recently written to the Prime Minister confirming that the 19 May letter has his full support.

Whatever the future may hold there is no doubt that there will be more jobs for Australian seamen in a P&O owned ANL at the outset. This is simply because P&O will retain ANL's participation in the European trade whereas under the restructuring option set out below that trade will be terminated.

Completion

Final contract negotiations are being conducted by the Department of Finance's Task Force on Asset Sales. The main issues yet to be resolved at the time of drafting this submission are:

- ♦ Lease shortfall on M. V. River Yarra referred to above
- ♦ Taxation indemnities required by P&O
- ♦ Consent of all relevant financiers to a change in the ownership of ANL
- ♦ ANL Board and management "sign offs"

In addition negotiations are still underway with Union Shipping with a view to disposing of ANL's half interest in Coastal Express Line.

OPTION 2

RESTRUCTURE AND CONTINUED OPERATION OF ANL LIMITED UNDER COMMONWEALTH OWNERSHIP

The Board of ANL has developed a proposal for the reconstruction of ANL in the event that the sale of shares in ANL Limited does not proceed.

Outline of Proposal

ANL will focus its activities on becoming a niche Asian shipping operator and continue with its coastal bulk shipping activity. The reconstruction assumes the sale of the Bass Strait and trans-Tasman container shipping businesses, and land based activities. Exit from the Europe trade and a substantial reduction in corporate expenditure is also assumed.

The following schedule indicates the impact of the reconstruction option on the existing ANL Limited business portfolio:

	<i>Business Status</i>	<i>Remarks</i>
NEA (North East Asia)	Retain	Traditional core business - Expanding market
SEA (South East Asia)	Retain	Traditional core business - Expanding market
Europe	Dispose	Sell to P&OCL
Tranztas	Dispose	Sell with retention of Australian crews.
Corporate	Reduced	Business now much smaller.
Bulk	Retain	Sale now will not return best value.
QAL	Retain	Profitable
ASP (60% owned by ANL)	Retain	Profitable.
Coastal Express Line (50% owned by ANL)	Dispose	Sell to Union Shipping subject to appropriate price and leasing arrangements.
Searoad Holdings	Retain	Required as an entity to hold chartered CEL vessels
Land based businesses	Dispose	Non core. Minimal profit effect
Technologies	Dispose	Already closed down
Fast Agencies	Dispose	Tasman focused. ANL would have no Tasman business.

Impact on ANL

The impact on ANL of the reconstruction option must be viewed from a personnel, financial and strategic perspective.

Effect on Personnel

The impact on personnel from the reconstruction is as follows:

Shore-based Personnel

	<i>Current</i>	<i>Proposed</i>	<i>Variance</i>
Shipping and Corporate	298	154	144
Land based Services	121	-	121*
Total	419	154	265

* Staff will move with the business sold as "going concern". This element should not therefore involve redundancies.

At Sea

	<i>Current</i>	<i>Proposed</i>	<i>Variance*</i>
Total (A)	504	455	49
Total (B)	504	367	137

(A) The only reduction in seagoing personnel is from the sale of Australian Venture after the exit from Europe.

(B) Also includes the reduction in 88 personnel from the two Tranztas ships, although it must be noted that the likely purchaser of Tranztas proposes to use Australian crews so while 88 jobs would be lost to ANL, they would not be lost to Australian workers.

Financial Impact

The indicative financial impact prepared by ANL management for the three years immediately following the decision to proceed is as follows:

\$M	Projected 1994/95	1995/96	1996/97	1997/98
EBIT	(18.2)	(16.1)	3.8	3.6
Investments	3.0	0.6	0.6	0.6
Consolidated EBIT	(15.2)	(15.5)	4.4	4.2
Interest	(3.3)	0.5	0.5	0.5
Consolidated Profit Before Tax	(18.5)	(15.0)	4.9	4.7
One off (costs)/benefits				
Proceeds from Asset Sales	28.0	32.5		
Disposal Costs		(16.5)		
Staff Redundancy		(7.5)		
Capital Expenditure	(2.0)	(2.0)	(2.0)	(2.0)
Total One off (costs)/benefits	26.0	6.5	(2.0)	(2.0)
Non Cash Items	21.1	11.3	11.3	11.3
Net Financing Activities	(25.4)	(7.0)	(7.0)	(7.0)
Cash flow	3.2	(4.2)	6.2	7.0

These results have been derived with the following key assumptions:

- ✦ Cost savings of \$21 million implemented by April 1996 from exiting loss making businesses, downsizing corporate overheads and implementation of the recommendations of the MIRA report.
- ✦ Further annual savings of net \$4 million (including a cost contingency of \$2 million) implemented over the next two years arising from efficiency savings in operating costs.
- ✦ The loss of the K-Line container agency business from January 1 1996
- ✦ Replacement of K-Line as ANL's agent in Japan with the subsequent 18% loss in volume for the first half of 1996 and with volume returning to normal levels in the second half of 1996.
- ✦ No allowance has been made for new EBA's under MIRA which are necessary to reduce costs on vessels.
- ✦ While a strategic alliance with a global shipping operator is preferable under the reconstruction option, no financial benefits from such an alliance have been included.

Vessel Replacement Costs

In addition it should be noted that no provision is made in the table of financial results set out above for the cost of the replacement of the ship currently operating in the South East Asian trade (the ANRO Australia) from July 1 1996. This is expected to be at least an incremental \$5 million per annum being the estimated cost of chartering a replacement ship. (Note that the decision to replace ships in this trade has not yet been made by the Consortium).

In the North East Asia trade similarly no provision has been made for the possible incremental cost of a replacement for the Australian Advance when its charter term expires in September 1996.

It is unlikely that the expected additional revenue (anticipated as being from Toyota and Mitsubishi) will be sufficient to justify the purchase of a replacement vessel.

Because of ANL's obligation to maintain Australian crews any replacement vessels must be chartered on a "bare boat" basis. The availability of bare boat charters is variable and it is not possible to predict with any certainty that vessels of the required characteristics will be available when required. If, in the absence of available charters, a decision were made to acquire replacement vessels the capital costs would exceed \$100 million for the two vessels.

Forecast Volatility

It must be noted that ANL has always had difficulty accurately predicting profit due to the volatile nature of shipping freight rates and the subsequent impact on profitability. ANL is a small operator in a highly volatile market where the supply of vessels varies. Larger operators are able to utilise the low entry/exit barriers as the market and their shipping portfolio requirements change.

The projections shown above only include changes to freight rates that have already been agreed amongst operators. Volume increases are also small and in line with recent trade performance.

Strategic Impact

There has recently been a significant realignment of the strategic positions within the industry with key new alliances formed between ANL's Consortium partners and competitors (e.g P&O/NYK/Neptune Orient Line/Hapag Lloyd; e.g Maersk/Sealand). The structure of the shipping industry changes regularly making long term forecasting hazardous.

Funding Requirements

The substantial negative cash flow from operations and the cost of redundancies for the next three years is funded in large measure by the asset sales assumed.

To avoid the company having to undertake further borrowings to enable it to continue trading during this period it is **essential** that the asset sales identified in the restructure plan (Tranztas, Europe and associated vessels) be achieved as a matter of priority. Any delay in the timing of those asset sales will impact most adversely on the viability of the restructure.

Implementation Issues

The ANL Board commissioned the services of a recognised international shipping expert Captain F. Menser from Mercer Consulting to advise on all aspects of the reconstruction option. His advice to the ANL Board dated 14 and 30 July 1995 indicated that:

- Continuing delay in a decision to start the restructure will have the effect of deferring the financial benefits and has placed a significant strain on managements ability to implement key aspects (e.g the appointment of a new agent in Japan). Such delays mean that it is likely that the break-even point could be pushed out to the 1997/98 financial year.
- The formation of a strategic alliance with a global operator would not be easily accomplished in the current environment.
- It is likely that ANL will have to replace at least two vessels in the Asian trades within the next two years. Although it is reasonable to assume that, on the consortia level, replacement would not adversely affect profitability, it must again be noted that ANL's replacement costs are likely to be higher than that of its partners due to the requirements for Australian crews. Without relief in this area ANL's profitability in the Asian trades will be marginal in good times and non-existent in bad.
- The Restructure option critically depends on the sale of Tranztas and Coastal Express. If those sales are not effected or delayed the Government will be exposed to increased operating losses and particularly in the case of Coastal Express substantial uncovered liabilities for the ships.
- Subject to the above, the financial results underpinning the reconstruction proposal should be achievable.

In discussions, Mr. Menser has also indicated that ANL should employ international shipping expertise to assist in the reconstruction.

Conclusion and Recommendation

The Board takes the view that given the present circumstances of ANL the better option from a commercial viewpoint is to sell to P&O. The restructure option has significant risks attached to it some of which have been summarised above.

Fundamentally, however, ANL is simply too small to have a secure future in international shipping as a stand-alone entity. That problem of scale coupled with a high wage structure makes ANL relatively uncompetitive and poorly positioned to cope with the very volatile market in which it operates.

Yours sincerely,



Neville Wran AC QC
Chairman