

CB : PART XIII : VARIOUS TYPES OF COMPANIES

1054. Part XIII (cls 475 to 527) contains the following provisions dealing with various types of companies:

DIVISION 1 - No liability Companies

DIVISION 2 - Investment Companies

DIVISION 3 - Companies Carrying on Business Outside
the Territory

DIVISION 4 - Recognized Companies and Recognized
Foreign Companies

DIVISION 5 - Foreign Companies other than Recognized
Foreign Companies.

DIVISION 1 : NO LIABILITY COMPANIES

1055. Division 1 of Part XIII of the CB (cls 475 to 489) contains special provisions dealing with no liability companies.

Cl. 475 : Application of Act to no liability companies

1056. The provisions of the CB relating to public companies, other than those relating to the liability of members, will apply to no liability companies (CB cl 475 - based on ICAC CAs s. 319)

1057. A no liability company will not be able to be formed as a proprietary company (see CB s-cl. 34(1)). Only mining companies will be able to be formed as no liability companies (see CB para 33(2)(e)).

Cl. 476 : Shareholder not liable to calls or contributions

1058. Shareholders will not be required to pay calls in respect of shares they hold in a no liability company or to contribute to its liabilities. If, however, calls are unpaid, then the shareholder will not be entitled to any dividend due on the shares, in respect of which the calls are due. These are the essential features of no liability companies. (CB cl. 476 - based on ICAC CAs s. 320).

Cl. 477 : Dividends payable on shares held irrespective of amount paid up on shares

1059 Subject to the articles, a dividend will be payable to a no liability company shareholder in proportion to the number of shares held, irrespective of the amount paid up or credited as paid up (CB cl 477 - based on ICAC CAs s. 321).

Cl. 478 : Calls, when due

1060. There will be procedures to enable no liability company share holders to become aware of a call having been made and to have sufficient time to meet the call (CB cl 478). The obligations on the company are less inflexible and expensive than those imposed by the corresponding ICAC provision (ICAC CAs s. 322) which requires companies to:

- (a) make calls payable on the second Wednesday in a month and
- (b) publish details of the call in a daily newspaper circulating generally throughout the State. The advertising requirement has been deleted in line with the policy throughout the CB of reducing unnecessary costs for companies where notice is required to be sent to each affected person individually.

Cl. 479 : Forfeiture of shares

1061. Any share in a no liability company upon which a call remains unpaid 14 days after the day payment is due, will be forfeited and will be offered for sale by public auction (CB cl 479 - based on ICAC CAs s. 323).

Cl. 480 : Provisions as to sale of forfeited shares

1062. If forfeited shares which are advertised for sale at public auction are not sold, they will have to be offered to share holders for a limited period (unless the shareholders resolve otherwise) and, if still unsold, must be held by the directors in trust for the company. They must then be disposed of in such manner as the company determines (CB cl 480 - based on ICAC CAs s. 324).

Cl. 481 : As to shares held by or in trust for company

1063. A call will not have any effect on a forfeited share that is held by or in trust for the company but if it is re-issued or sold by the company it may be credited as paid up to an amount which the company determines (CB cl 481 - based on ICAC CAs s. 325).

Cl. 482 : Sale of shares on non-payment of calls valid although specific numbers not advertised

1064. A sale of forfeited shares will be valid although the specific numbers of the shares are not advertised (CB cl 482 - based on ICAC CAs s. 326).

Cl. 483 : Postponement of sale

1065. An intended sale of forfeited shares will be able to be postponed for a limited period (CB cl 483 - based on ICAC CAs s. 327).

Cl. 484 : Redemption of forfeited shares

1066. Subject to certain conditions, a person will be able to redeem a forfeited share prior to the intended sale of such share (CB cl 484 - based on ICAC CAs s. 328).

Cl. 485 : Office to be open the day before sale

1067. The company's office will have to be open on the day immediately preceding the day of the intended sale of a forfeit share (CB cl 485 - based on ICAC CAs s. 329).

Cl. 486 : Distribution of surplus where cessation of business upon winding up

1068. Any surplus in a winding up will be distributed among the parties entitled to it in proportion to the shares held by them irrespective of the paid up value of the shares although the holder of shares on which a call is due will not be so entitled (CB cl 486 - based on ICAC CAs s. 330).

Cl. 487 : Distribution of surplus where cessation of business
within 12 months

1069. If a no liability company ceases to carry on business within 12 months of its incorporation, shares issued for cash will rank on a winding up in priority to shares issued to vendors or promoters for consideration other than cash (CB cl 487 - based on ICAC CAs s. 331).

Cl. 488 : As to rights attaching to preference shares issued
to promoters

1070. The holders of any shares issued to vendors or promoters will not be entitled to any preference on the winding up of the company (CB cl 488 - based on ICAC CAs s. 332).

Cl. 489 : Restrictions on tribute arrangements

1071. A no liability company will be required to do its own working of any mines rather than contract the work out, unless authorised by a special resolution of the company to contract out or, if the contract or lease arrangement is for a period of less than 3 months, a similar arrangement has been made in the preceding 2 years (CB cl. 489 - based on ICAC CAs s. 333).

DIVISION 2 : INVESTMENT COMPANIES

1072. Division 2 of Part XIII of the CB (cls 490 to 499) contains special provisions dealing with investment companies.

Cl. 490 : Interpretation

1073. There are special definition and interpretation provisions for the purposes of this Division 2. (CB cl. 490).

1074. CB cl. 490 is based on ICAC CAs s. 334, with the following changes:

(a) Foreign companies which do not carry on business in the Territory or have any connection with it will be excluded from the ambit of the Division. Only a company incorporated in the jurisdiction and a foreign company registered in the jurisdiction will be able to be declared by the NCSC to be an investment company (CB s-cl. 490(3)).

(b) The NCSC will be able to specify, when declaring a corporation to be an investment company, that only some provisions of the Division apply to that corporation (CB s-cl. 490(4) - (6)).

1075. Note s-cl. 13(16) of the C(TP)B which deals with a declaration made by the Minister under s-sec 334(2) of the ACT CO and in force immediately before the commencement of the CB.

Cl. 491 : Restriction on borrowing by investment companies

1076. An investment company will be prohibited from borrowing amounts equivalent to more than 50% of its net tangible assets. Borrowing otherwise than by the issue of debenture stock will be limited to 25% of the net tangible assets. (CB cl 491 - based on ICAC CAs s. 335).

Cl. 492 : Restriction on investments of investment companies

1077. An investment company will be prohibited from:-

- (a) investing amounts equivalent to more than 10% of its net tangible assets in another corporation; and
- (b) holding more than 5% of the ordinary share capital of another corporation

(CB cl. 492 - based on ICAC CAs s. 336).

Cl. 493 : Restriction on underwriting by investment companies

1078. An investment company will be prohibited from underwriting issues of authorised securities (authorised trustee investments) to an amount exceeding the equivalent of 40% of its net tangible assets. The amount will be restricted to the equivalent of 20% of its net tangible assets in the case of underwriting other securities (CB cl 493 - based on ICAC CAs s. 337).

Cl. 494 : Special requirements as to articles and prospectus

1079. An investment company will be prohibited from issuing a prospectus without specifying:-

(a) the type of security in which its objects enable it to invest; and

(b) whether the objects enable it to invest within or outside Australia or both

(CB cl 494 - based on ICAC CAs s. 338).

1080. In addition, within 3 months of the company being declared an investment company, its articles will have to specify the matters mentioned in paras (a) and (b) above if the company wishes to invest, borrow, underwrite or sub-underwrite (CB s-cl. 494(1) - based on ICAC CAs s-sec 338(1)).

Cl. 495 : Investment company not to hold shares in other investment companies

1081. Investment companies will be prohibited from holding any shares or debentures in any other investment company or a corporation engaged primarily in the business of investment that has been declared by an order of the NCSC for the purpose of these provisions (CB cl. 495 - based on ICAC CAs s. 339)

1082. Note s-cl. 13(17) of the C(TP)B which deals with a declaration made by the Minister under para. 339(b) of the ACT CO and in force immediately before the commencement of the CB.

Cl. 496 : Investment company not to speculate in commodities

1083. An investment company will be prohibited from buying, selling or dealing directly in any raw materials or manufactured goods for the purposes of profit (CB cl 496 - based on ICAC CAs s. 340).

Cl. 497 : Balance - sheets and accounts

1084. Investment companies will be required to state in their accounts in greater detail than other companies their purchases and sales of securities, investments, underwriting income and brokerage and to indicate the manner in which their investments have been valued (CB cl 497 - based on ICAC CAs s. 341). It is understood that the practice of most such companies is to use either cost with selective upward revaluations or current market values.

Cl. 498 : Investment fluctuation reserve

1085. Investment companies will be required to credit profits from the sale of securities to a reserve account which is available for the payment of income tax but not for the payment of dividends (CB cl 498 - based on ICAC CAs s. 342).

CL. 499 : Penalties

1086 There will be a specific general penalty for all breaches of the provisions of the Division (CB cl 499 - based on ICAC CAs s. 343). Comparative tables of penalties in the CB are contained in Appendix 'A' to this ex memo.

DIVISION 3 : COMPANIES CARRYING ON BUSINESS OUTSIDE THE
TERRITORY

Introductory

1087. Division 3 of Part XIII of the CB (cls 500 to 504) is a new Division which, in conjunction with Divisions 4 and 5 of Part XIII, is designed to give effect to the concept of one place of registration.

1088. This concept involves the following features:

- (a) A company incorporated in a participating State or Territory will only need to lodge documents in its jurisdiction of incorporation in order to carry on business throughout all participating jurisdictions.
- (b) An overseas corporation that wishes to carry on business in Australia will only need to lodge document in one jurisdiction in order to carry on business throughout all participating jurisdictions.
- (c) An Australian body that is not a company in its jurisdiction of formation and a company formed in a non-participating Australian jurisdiction will still be required to register as "foreign companies" in each other Australian jurisdiction in which they wish to carry on business.

1089. Division 3 gives effect to the first 2 principles listed above by providing that those corporations which receive the benefits of the co-operative scheme need only provide the delegate of the NCSC in their "home" jurisdiction with details of their principal places of business in other participating jurisdictions in order to be entitled to carry on business in those other jurisdictions.

1090. Note cl. 29 of the C(TP)B which deals with a company that immediately before the commencement of the CB had established a place of business or carried on business in a participating State or another participating Territory.

Cl. 500 : Interpretation

1091. This Division will apply to companies incorporated in the jurisdiction and to foreign companies incorporated or formed outside Australia that are registered in the jurisdiction as a foreign company (CB s-cl 500(1)).

1092. A number of factors are set out in the interpretation provision which, by themselves, are not to be regarded as indicating that a company is "carrying on business" within a participating jurisdiction (CB s-cl 500(3)). These indicia are similar to those used in ICAC CAs s-sec 344(3) in context of when a foreign company will not be regarded as 'carrying on business' within the ICAC jurisdiction concerned.

CL. 501 : Notification of principal office in participating State or Territory

1093. A local company or a overseas foreign company registered locally which has established a place of business or commenced to carry on business in another participating State or Territory must notify the corporate affairs office in its "home" jurisdiction of the situation of its principal office(s) in any other participating jurisdiction(s) (CB s-cl 501(1)). Notification of the hours during which such offices are open to the public is optional CB s-cl 501(2)). (While cl. 501 and other provisions throughout the CB refer only to lodgement of notice with the NCSC this is to be interpreted as a reference to the corporate affairs office of the "home" jurisdiction - see C & S (I & MP) A s. 14).

1094. Where such a company has lodged a notice with the NCSC in relation to its principal office in a participating jurisdiction the NCSC will be required (on request) to issue a certificate stating that the company has a principal office in that jurisdiction and specifying the address of that office (CB s-cl 501(3)). Such a certificate will be prima facie evidence in all courts of the particulars stated in it (CB s-cl 501(4)). This certificate will correspond to that which was previously issued under ICAC CAs s-sec 346(9) in respect of foreign companies in the jurisdiction in which they were registered as foreign companies (A certificate issued in a participating jurisdiction will also be prima facie evidence in all courts of the particulars stated in it (see CB s-cl. 507(2)).

Cl. 502 : Notice to be given of change or alteration in principal office in participating State or Territory

1095. Notice in the prescribed form of any change in the situation of the principal office of a company to which this Division applies in a participating jurisdiction will be required to be lodged with the NCSC not later than 7 days after the day on which the change occurs. A similar requirement will apply in respect of notification of altered office hours if the original hours of operation had been notified to the NCSC. (CB cl 502 - these provisions are similar to the requirements in relation to registered office in CB cl 217).

Cl. 503 : Notice to be lodged of cessation of business in participating State or Territory

1096. If a company to which this Division applies ceases to have a place of business or to carry on business in a participating jurisdiction it will be required to notify the NCSC within 7 days after so ceasing (CB cl 503).

Cl. 504 : Offences

1097. Officers as well as the company itself will be liable for breaches of a provision of this Division (CB cl 504)

DIVISION 4 : RECOGNIZED COMPANIES AND RECOGNIZED FOREIGN
COMPANIES

Introductory Note

1098. Division 4 of Part XIII of the CB(cls 505 to 509) is based on Division 2A Part XI of the ICAC CAs (which related only to recognized companies) but is considerably shorter, reflecting the advantages which recognized companies and recognized foreign companies receive under the one place of registration concept. For example, there are no longer any provisions in this Division requiring corporations to lodge documents with the NCSC in jurisdictions in which they are recognized companies.

1099. The provisions relating to branch registers that were in the corresponding Division of the ICAC CAs have been removed. The ICAC CAs required recognized companies to maintain branch share registers in the jurisdictions in which they were recognized companies if requested to do so by residents of those jurisdictions. The same result is now achieved in relation to recognized companies by imposing (through the law of the home jurisdiction) an obligation on each local company to maintain branch share registers in participating jurisdictions where requested to do so by residents of those jurisdictions (see CB cl. 262 - see also CB cl. 521 dealing with the branch registers of registered foreign companies).

1100. Note cl. 28 of the C(TP)B which deals with a recognized company that immediately before the commencement of the CB was registered under the ACT CO as a foreign company.

Cl. 505 : Interpretation

1101. A number of factors are set out in the interpretation provision which, by themselves, are not to be regarded as indicating that a recognized company or a recognized foreign company is "carrying on business" within the ACT (CB cl 505). Similar indicia are relevant to the question whether a local company is 'carrying on business' in another participating jurisdiction (see CB cl 500).

Cl. 506 : Power to hold land

1102. A recognized company or a recognized foreign company will have power to hold land in the ACT (CB cl 505 - based on ICAC CAs s.343B). A similar power is conferred on foreign companies registered under Division 5 (see CB cl 511).

Cl. 507 : Recognized company or recognized foreign company to have a principal office

1103. A recognized company or a recognized foreign company that has established a place of business or commenced to carry on business within the jurisdiction will be required to have a principal office in the ACT which is open for certain specified hours on business days and attended to by an authorized company representative (CB cl. 507 - based on ICAC CAs s-sec. 343C(1)).

1104. This provision complements the provision corresponding to cl. 501 in the laws of other participating jurisdictions requiring notification in the home jurisdiction of the principal office in a participating jurisdiction.

Cl. 508 : Name of recognized company or recognized foreign company to be reserved or registered

1105. A recognized company or a recognized foreign company will not be able to establish a place of business or carry on business within the ACT unless its name has been reserved or registered (CB cl. 508 - based on ICAC CAs s. 343E).
(Application for reservation will need to have been made in the home jurisdiction under the equivalent of Division 2 of Part II of the CB).

Cl. 509 : Obligation of recognized company or recognized foreign company to exhibit name

1106. A recognized company or recognized foreign company, other than a banking corporation, will be required:-

- (a) to place on all relevant documents its name and place of incorporation and, in the case of a recognized foreign company, a statement to the effect that its liability is limited if that is the case (CB s-cl. 509(1)); and

- (b) to exhibit conspicuously outside every place of business established by it in the ACT its name and place of incorporation; the fact that its liability is limited (if it is); and, in the case of a principal office, the words "Principal Office" (CB s-cl. 509(4)).

1107. These requirements are based on ICAC CAs s. 343F except that it has been widened to ensure that all recognized companies and recognized foreign companies carrying on business in the ACT are subject to the same disclosure requirements in the ACT as are imposed on local companies (see CB cl 218) and on locally registered foreign companies (see CB cl 517).

DIVISION 5 : FOREIGN COMPANIES OTHER THAN RECOGNIZED FOREIGN COMPANIES

1108. Division 5 of Part XIII of the CB (cls 510 to 527) deals with foreign companies other than recognized foreign companies and is based on ICAC CAs Division 3, Part XI. However it is structured slightly differently in view of the fact that not all registered foreign companies are accorded equal entitlement to the benefits of the co-operative scheme. The Division will not apply to recognized foreign companies (see ex memo para 1110, below).

Cl. 510 : Interpretation

1109. For the purposes of the Division there are definitions of "agent" and "foreign company" (which excludes recognized foreign companies) and an interpretation provision as to the factors which, in themselves, will not amount to "carrying on business" in the jurisdiction (CB cl 510). Similar indicia will be used in the provisions which apply where a local company, a recognized company or a recognized foreign company is 'carrying on business' outside its home jurisdiction (see CB s-cl 500(2) and (3) and CB 505).

1110. This clause is based on ICAC CAs s. 344 except for the inclusion in the CB of a definition of a foreign company as meaning a foreign company other than a recognized foreign company. The effect of this definition is that the Division will apply to:

- (a) companies formed outside Australia that are not registered as a foreign company in another participating jurisdiction (under Division 5, Part XIII of a corresponding law);
- (b) companies incorporated in non-participating Australian jurisdictions; and
- (c) bodies formed anywhere in Australia that are not companies in their place of formation.

1111. Although all 3 categories of foreign company are required to register as a foreign company under this Division (see CB cl. 512) only the first category is accorded the benefits of the co-operative scheme. A company formed outside Australia which registers as a foreign company under this Division will by virtue of Division 3 of Part XIII, be entitled to carry on business in other participating jurisdictions simply by notifying the NCSC in its jurisdiction of registration, of a principal place of business in other participating jurisdictions (see CB cl 507 which requires a recognized foreign company to maintain a principal office in the ACT if it is carrying on business there).

1112. Note that ICAC CAS s-sec 344(1) has been deleted and that cl. 30 of the C(TP)B deals with a corporation (other than a recognized company) that immediately before the commencement of the CB was registered as a foreign company under the ACT CO. The provision also deals with a corporation, formed outside

Australia, that is registered as a foreign company in the A and in one or more other participating jurisdictions - such a corporation will only be required to be registered as a f company in one participating jurisdiction after the commenc of the CB.

Cl. 511 : Power of foreign companies to hold land

1113. A foreign company registered under this Division have power to hold land in the ACT (CB cl 511 - based on IC CAs s. 345). A similar power is conferred on recognized companies and recognized foreign companies (see CB cl 506).

Cl. 512 : Unregistered foreign company not to establish pla of business or carry on business in the Territory

1114. A foreign company (other than a recognized foreign company) will not be able to establish a place of business commence to carry on business within the jurisdiction unless it is registered under this Division. The NCSC will be req to register a foreign company under the Division if the for company lodges certain documents with the NCSC (CB cl. 512)

1115. This clause is based on ICAC CAs s. 346 except th companies are required to register prior to commencing to c on business in the jurisdiction rather than within one mont thereafter.

Cl. 513 : Registered office of registered foreign company

1116. A registered foreign company will be required to have a registered office within the ACT to which all communications may be addressed, which is open to the public for certain hours on business days and at which a representative of the company is present at all times when the office is open to the public (CB cl 513 - based on ICAC CAs s-sec 346(4) and similar to cl. 507 in respect of recognized companies and recognized foreign companies).

Cl. 514 : Agents

1117. There are provisions relating to the appointment of agents in the Territory authorised to accept service of process on behalf of the company (CB cl 514 - based on ICAC CAs s-secs 346(2), (5) - (9)).

Cl. 515 : Notice to be filed where documents etc altered

1118. Registered foreign companies will be required to notify the NCSC within one month, of changes to such things as the company's constituent documents, the directors, its agents the company's name, the company's address in its place of incorporation and increases in authorized share capital (CB cl. 515).

1119. Notification of a change in the hours during which the registered office of a registered foreign company is open in the jurisdiction will be required to be lodged not later than 7 days after the change has occurred. This is in line with the same provisions relating to the registered office of a local company : (see CB cl. 217).

1120. The clause is based on ICAC CAs s. 347 except that the time for compliance in relation to notice of a change in the hours that the registered office must be open have been altered.

Cl. 516 : Balance-sheets and other documents

1121. A registered foreign company will be required at least once in every calendar year and at intervals of not more than 15 months, to lodge with the NCSC a copy of its balance-sheet and of its profit and loss account made up to the end of its last financial year in such form as the company is required to prepare by the law for the time being applicable to that company in the place of its incorporation or formation (CB cl. 516).

1122. This clause is based on ICAC CAs s.348 except that:

- (a) It relies on the new definition of financial year (see CB s-cl. 5(1)) associated with changes made to Part VI.

- (b) It requires registered foreign companies to lodge profit and loss accounts as well as balance sheets. (CB s-cl. 516(1) - see s. 402 N.Z. Companies Act). The periods of time are subject to the power of the NCSC to grant extensions of time for the lodgement of balance sheets and profit and loss accounts.
- (c) The provision has been amended to make it clear that the NCSC Commission will be able to require the balance sheet or the profit and loss account to be audited before it is lodged (CB s-cl 516(3)).
- (d) The NCSC, rather than the Governor or Minister, will be able to make a declaration having the effect of excluding certain companies from the requirements of the clause (CB para 516(7)(b) and (c)).

1123. Note s-cl. 13(18) of the C(TP)B which deals with a declaration made by the Minister under para. 348(5)(b) or (c) of the ACT CO and in force immediately before the commencement of the CB.

Cl. 517 : Obligation to exhibit name of foreign company etc.

1124. A foreign company, other than a banking corporation, will be required:

(a) to place on all relevant documents its name and place of incorporation and a statement to the effect that its liability is limited if that is the case (CB s-517(1)); and

(b) to exhibit conspicuously outside every place of business established by it in the ACT its name place of its incorporation; the fact that its liability is limited (if it is); and, in the case of a principal office, the words "Principal Office" (CB s-cl. 517

1125. These requirements are based on ICAC s. 350. They are similar to those imposed on local companies, recognized companies and recognized foreign companies see CB cls. 218 and 509.

Cl. 518 : Cessation of business etc

1126. If a registered foreign company (ie one registered in the A.C.T.) ceases to have a place of business or to carry on business in the ACT or any other participating jurisdiction it will be required to notify the NCSC within 7 days of so ceasing (s-cl. 518(1) - based on ICAC CAs s-sec 352(1) but amended in the light of the one place of registration arrangements).

1127. If the NCSC receives notice from an agent of a registered foreign company that the company has been dissolved, the NCSC must remove the name of the company from the register (CB s-cl. 518(2) - based on part of ICAC CAs s-sec 352(5)).

1128. Where the NCSC has reasonable cause to believe that a registered foreign company no longer has a place of business or carries on business in the jurisdiction (and in the case of a registered foreign company formed outside Australia, no longer has a place of business in any other participating jurisdiction) the NCSC will be able to initiate a procedure which can lead to a company's name being struck off the register (CB s-cls 518(3), (4), (5) and (6)). This procedure is to the same effect as that set out in ICAC CAs s-sec 352(6) but the CB expresses in greater detail the steps required to be taken by the NCSC being steps analagous to those to be taken to strike a locally incorporated company off the register (see CB cl. 459).

1129. Provision is also made for restoring the company's name to the register if struck off by administrative error or if a person is aggrieved by the striking off (CB-cls 518(7), (8) and (9) respectively, in line with CB s-cls 459(5), (6) and (7)).

1130. If a registered foreign company formed or incorporated within Australia is placed under official management, or the period of official management is terminated, it will be required to notify the NCSC within 1 month thereof (CB s-cl. 518(12) - based on ICAC CAs sub-s. 352(2A)).

1131. If a registered foreign company goes into liquidation or is dissolved in its place of incorporation or formation:-

- (a) the company's agent will be required to notify the NCSC of the commencement of the liquidation and of the dissolution and the appointment of a liquidator if applicable; and
- (b) the liquidator in the place of incorporation or formation will be able to apply to the ACT Supreme Court for the appointment of a liquidator to realize the property of the company in the jurisdiction

(CB s-cls 518(11), (12) and (13)).

1132. These three sub-clauses are based on ICAC CAs s-secs 352(2), (3) and (4) except that two changes have been made to give effect to the concept that a liquidator once appointed, has control over all the company's affairs, irrespective of where the company carries on business. These two changes are as follows:-

- (a) There is no longer provision that until a liquidator for this jurisdiction has been appointed by the Supreme Court, the liquidator appointed in the jurisdiction of incorporation or formation has the powers and functions of a locally appointed liquidator.

- (b) In the case of a registered foreign company formed or incorporated outside Australia, the liquidator appointed by the Court may realize the assets in other participating jurisdictions as well as in the jurisdiction in which the company is registered as a foreign company.

Cl. 519 : Name of foreign company to be struck off register

1133. Where a registered foreign company that is formed outside Australia or the external Territories is registered as a foreign company in a participating State or Territory, the NCSC will be required to strike the name of the company off their register (CB s-cl. 519(1)).

1134. Where a registered foreign company formed outside Australia or the external Territories is registered as a company under the provisions of a law that correspond to Division 4 of Part III of the CB, the NCSC will be required to strike the name of the company off the register (CB s-cl. 519(2)).

Cl. 520 : Restriction on use of certain names

1135. Foreign companies will have to comply with the provisions relating to names set out in Division 2 of Part III of the CB (CB cl 520 - based on ICAC CAs cl. 353).

1136. Note s-cls 13(19) and (20) of the C(TP)B which deal with consents given by the Minister under s-secs 353(1) and (2) of the ACT Co before the commencement of the CB).

Cl. 521 : Branch register of shares in foreign company

1137. A branch register of the shares of members resident in the jurisdiction must be kept in the jurisdiction by any registered foreign company carrying on business in the ACT that has a share capital if a share holder resident in the jurisdiction requests the keeping of such a register (CB s-cls 521(1) and (3) - based on ICAC CAs s-secs 354(1) and (2)). In addition a registered foreign company will be required, if requested by a member who is resident in a participating jurisdiction, to keep a share register in that jurisdiction if it is carrying on business there and if less than 2 months has elapsed since a similar request was made (CB s-cls 521(2) and (4) - new provisions).

1138. There will also be provisions (based on ICAC CAs ss 354 and 358) relating to:

- (a) exclusions from the provisions of CB cl. 521 of companies that cannot seek funds from the public (C s-cl. 521(6));
- (b) the manner of keeping the branch register (CB s-cl 521(7) - (9));

(c) the opening of a branch register (CB s-cl. 521(10))
and;

(d) changes in its location (CB s-cl. 521 (11)).

Cl. 522 : Registration of shares in branch register

1139. Registered foreign companies, upon application by local shareholders, will be required to register in a branch register shares held by members that are registered in another register kept by the company (CB s-cl. 522(1) - this is a complementary provision to CB cl. 523).

1140. This clause is based on ICAC CAs s. 355, but it is supplemented by a new requirement that registered foreign companies formed outside Australia must, on application by shareholders resident in other participating jurisdictions, register in branch registers maintained in those participating jurisdictions, the shares that are held by members that are registered in any other register kept by the company (CB s-cl. 522(2)).

Cl. 523 : Removal of shares from branch register

1141. Registered foreign companies will be required, on application being made, to remove shares from a branch register and to register them in such other register as is specified in the application (CB cl. 523).

1142. This clause is based on ICAC CAs s.356 but has a wider operation since it now also extends to removal from, and registration on, registers maintained in participating jurisdictions (in respect of registered foreign companies incorporated outside Australia).

Cl. 524 : Index of members holding shares in branch register, and inspection and closing of branch registers

1143. The requirements imposed on locally incorporated companies as to the keeping of indexes of names of members and the requirements as to inspection and closing of registers of members will apply (with such adaptations as are necessary) to branch registers maintained by registered foreign companies. (CB cl. 524 - based on ICAC CAs s. 357).

Cl. 525 : Branch register to be prima facie evidence

1144. A branch register will be prima facie evidence of any matters required or authorized by the Act to be inserted therein (CB cl 525). This provision is based on ICAC CAs s. 359 except that the wording has been brought into line with the similar evidentiary provision in relation to the register of members of a local company (see CB s-cl. 256 (4)).

Cl. 526 : Certificate as to shareholding

1145. A certificate under the seal of a foreign company specifying any shares held by any share holder and registered in the branch register will be prima facie evidence of the title of the shareholder to the shares and of the fact that the shares are registered in the branch register (CB cl. 526 - based on ICAC CAs s. 360).

Cl. 527 : Penalties

1146. The foreign company and any officer or agent who is in default under this Division will be subject to the basic penalty of \$500 (CB cl. 527 - based on ICAC CAs s. 361; see also CB s-cl. 570 (6) which sets out the amount of the basic penalty).

CB : PART XIV : MISCELLANEOUS

1147. Part XIV of the CB (cls 528 to 581) contains three Divisions entitled:

Division 1 - General

Division 2 - Offences

Division 3 - Rules and Regulations.

DIVISION 1 : GENERAL

1148. Division 1 of Part XIV of the CB (cls 528 to 551) deals with various general matters.

Cl. 528 : Service of documents on company

1149. A document will be able to be served on :

- (a) a company by leaving it at, or posting it to, the registered office (CB s-cls 528(1) and (2)) or serving it personally on 2 Australian resident directors (CB s-cl 528(4));
- (b) a liquidator of a company by leaving it at, or posting it to, the last address of the liquidator lodged with the NCSC (CB s-cl. 528(5));
- (c) an official manager of a company by leaving it at, or posting it to, the last address of the official manager lodged with the NCSC (CB s-cl. 528(6)).

1150. These provisions as to service are based on ICAC CAs s. 362 except that:

- (a) The provisions relating to the situation of the registered office of a company have been expanded (CB s-cls. 528(2) and (3) - cf. ICAC CAs s-sec 362(2)).

- (b) There is a new provision enabling a document to be served on a company by delivering a copy of the document personally to each of two directors of the company (CB s-cl. 528(4)).
- (c) There is a new provision for service on an official manager where one has been appointed (CB s-cl. 528(6)). There is no equivalent provision in relation to recognized companies, recognized foreign companies or registered foreign companies (see CB cls. 529 and 530).
- (d) There is a new provision that nothing in this clause affects the power of the Supreme Court or the operation of a provision of another law to authorize a document to be served in a manner not authorized by this clause. (CB s-cl. 528(7)). There is also an equivalent provision in relation to recognized companies, recognized foreign companies or registered foreign companies (see CB cls. 529 and 530).

1151. There is no specific provision in the CB in relation to service by telex (discussed by JG Starke 54 A.L.J. 423-4 : see also definition of 'document' in C & S (1 & MP) A para 13(c) and C & S (1 & MP) A s. 15 dealing with service by post).

Cl. 529 : Service of documents on recognized company or
recognized foreign company

1152. A document will be able to be served on a recognized company or a recognized foreign company or the liquidator of such a company in the same general manner as it will be able to be served on a local company or its liquidator (CB cl. 529).

1153. This provisions is based on ICAC CAs s. 343H except that:-

(a) It has been extended to apply to recognized foreign companies.

(b) It has been amended along the lines of CB cl. 528.

Cl. 530 : Service of documents on registered foreign company

1154. A document will be able to be served on a registered foreign company or its liquidator in the same general manner as it can be served on a local company or its liquidator (CB cl. 530).

1155. These provisions as to service are based on ICAC CAs s. 351 but have been amended along the lines of the provisions dealing with service on local companies (see CB cl. 528).

Cl. 531 : Vesting of property

1156. Where a court order under the CB vests property in a person, the property forthwith vests in the person except where the transfer or transmission of the property may be registered under a Commonwealth, State or Territory law, the property will not vest in that person at law (though it does in equity) until the requirements of the law relating to registration have been complied with (CB s-cl. 531(1) & (2)). This is the case also for any property vesting under the CB transfer or transmission of which may be registered (CB s-cl. (1) & (2)).

1157. These provisions as to vesting are based on ICAC CA s-secs 183(4) and 233(4) but have been expressed in more general terms.

Cl. 532 : Parts of dollar to be disregarded in determining majority in value of creditors, &c.

1158. Parts of a dollar will be disregarded in determining a majority in value of creditors (CB cl 532 - new provision based on s. 304 Bankruptcy Act - same provision in NCB cl 583).

Cl. 533 : Security for costs

1159. Where a corporation is plaintiff in legal proceedings the Supreme Court will be able, if it appears that the corporation may be unable to pay costs if the defendant is

successful, to require security to be given for those costs (CB cl 533 - based on ICAC CAs s. 363).

Cl. 534 : Disposal of securities if whereabouts of holder
unknown

1160. Where the whereabouts of a holder of securities have been unknown for a period of not less than 6 years, the company will be able, subject to compliance with certain procedures, to arrange for the transfer of those securities to the Minister responsible for administering the A.C.T. Unclaimed Moneys Ordinance 1950 (CB cl. 534)).

1161. This provision is based on ICAC CAs s. 364, except that:

- (a) The provision has been extended to cover securities, rather than only shares (see definition in s-cl. 5(1))
- (b) The time period has been reduced from 10 years to 6 years.

1162. In each jurisdiction covered by the co-operative scheme other than the A.C.T.:

- (a) the relevant Minister will be the Minister in that jurisdiction responsible for administering that jurisdiction's unclaimed moneys legislation:-

- NSW : Unclaimed Moneys Act 1917
- QLD : Public Curator Act 1915
- SA : Unclaimed Moneys Act 1891
- TAS : Unclaimed Moneys Act 1918
- VIC : Unclaimed Moneys Act 1962
- WA : Unclaimed Moneys Act 1912.

(b) the exemption from liability in CB s-cl. 534(6) will be conferred on the jurisdiction in question and its relevant Minister (instead of the Commonwealth and its Minister).

Cl. 535 : Power to grant relief

1163. Where there are proceedings actual or anticipated, for negligence, default, breach of duty or breach of trust against officers and certain other persons who have functions to perform in relation to a corporation, the court will be able to relieve that person of liability where it appears to the court that he acted honestly and ought fairly to be excused (CB cl 535).

1164. These powers to grant relief are based on those in ICAC CAs s. 365 except that the requirement that the person appear to have acted "reasonably" as well as honestly has been omitted - the NCB cl 561 also required reasonableness.

Cl. 536 : Power of Court to give directions with respect to meetings ordered by the Court

1165. The Supreme Court will be able to give directions with respect to the convening, holding or conduct of meetings which it orders and also any ancillary directions which it thinks are appropriate (CB cl. 536 - based on ICAC CAs s-sec 142(1)).

Cl. 537 : Appeals from decisions of NCSC

1166. There will be a general right of appeal to the Supreme Court from acts, omissions or decisions of the NCSC where there is no appeal or review procedure otherwise provided in the CB, except in relation to matters declared by the CB to be conclusive or final (see eg CB s-cl. 210(4)) or in respect of which an appeal procedure has already been provided for by the CB (see eg CB s-cl. 27(9)) (CB cl 537 - cf. ICAC CAs s-sec 12(6)).

Cl. 538 : Appeals from decisions of receivers, liquidators, &c.

1167. There will be a general right of appeal to the Supreme Court in respect of an act, omission or decision of persons administering a compromise or scheme of arrangement; a receiver; a receiver and manager; a liquidator; a provisional liquidator; an official manager, or a deputy of an official manager (CB cl 538).

1168. This provision is based on ICAC CAs s. 279 except that it has been extended to apply to persons administering a compromise or schemes of arrangement, receivers or receivers and managers and provisional liquidators as well as liquidators.

Cl. 539 : Irregularities

1169. There are provisions dealing with irregularities in proceedings (based on ss 215 and 366 of the ICAC CAs.) The main provisions of are as follows:

- (a) A proceeding under the CB is defined to include a liquidation proceeding (CB para 539(1)(a) - new provision).
- (b) A reference to a procedural irregularity will include a reference to a defect, irregularity or deficiency in notice or time (CB para 539(1)(b) - new provision).
- (c) A proceeding under the CB will not be invalidated by reason of any procedural irregularity, unless the court is of the opinion that some substantial injustice has been caused which cannot be remedied by the Supreme Court and by order declares the proceeding invalid (CB s 539(2) - based on ICAC CAs s-sec 366(1)).

(d) The accidental omission to give notice of a meeting will not invalidate the meeting or proceedings unless the Supreme Court declares the proceedings at the meeting to be void (CB s-cl. 539(3) - based on ICAC CAs s.215 except that the CB provision:-

(i) applies to the whole CB and not just to the official management provisions; and

(ii) applies also to meetings notice of which has to be given under the CB as well as to meetings held for the purposes of the CB.

(e) The Supreme Court, on application by any interested person, will be able to make any of the following orders:

(i) an order declaring any act to be valid notwithstanding a failure to comply with the CB or with the constituent documents of a corporation (CB para 539(4)(a) - based on ICAC CAs s-sec 366(2) and (3));

(ii) an order directing the rectification of any Register kept by the NCSC (CB para. 539(4)(b) - new provision);

(iii) an order relieving a person from any liability in respect of such a failure (CB para 539(4)(c) - new provision);

(iv) an order extending or abridging the period for doing any act (CB para 539(4)(d) - based on ICAC CAs s-sec 366(4)).

(f) In the case of an order declaring an act to be valid under CB para 539(4)(a), the Supreme Court will be required to be satisfied that:

(i) the act is essentially procedural in nature;

(ii) those concerned in the failure or contravention acted honestly;

(iii) it is in the public interest that the order be made, before it can make an order.

(CB para 539(6)(a) - new provision).

(g) In the case of an order relieving a person from any civil liability, the Supreme Court will be required to be satisfied that the person acted honestly (CB para 539(6)(b) - new provision)

- (h) In all cases, before an order can be made, the Supreme Court will be required to be satisfied that no substantial injustice has been or is likely to be caused to any person (CB para 539(6)(c) - based on ICAC CAs para. 366(3)(b)).

Cl. 540 : Power of NCSC to intervene in proceedings

1170. The NCSC will be able to intervene in any legal proceeding (see Baxt 1980 A.B.L.R. 412-413) relating to a matter under the CB. When it does so, it will be deemed to be a party to the proceeding with all the attendant rights, duties and liabilities. The NCSC will be able to appear and be represented by a employee of the NCSC or by a person to whom it has delegated its functions and powers (CB cl. 540 - same provision in CASA s. 61 and in SIA s. 148).

1171. This power is a more general version of the power of a corporate affairs office to be represented in certain proceedings which previously arose under the ICAC CAs - see sub-ss 117(2) and 122(3).

Cl. 541 : Examination of persons concerned with corporations

1172. CB cl. 541 deals with the procedure for the examination of persons concerned in the affairs of corporations.

1173. The procedures involved in such examinations are:

(a) Where it appears to the NCSC or a prescribed person (i.e. an official manager or liquidator or other person authorised by the NCSC) that a person concerned in the affairs of a corporation is guilty of fraud, default, negligence, breach of duty or trust in relation to the corporation, or has information in relation to the affairs of a corporation, the NCSC will be able to apply to the Supreme Court for an order (CB s-cl. 541(2)); the Supreme Court will be able to order, if it thinks fit, to order that the person attend before the Court to be examined on oath as to the affairs of the company (CB s-cl. 541(3)); such an examination will be held in public except in special circumstances (CB s-cl. 541(4)); and the Supreme Court will be able to give directions as to the matter to be inquired into and the procedure to be followed (CB s-cl. 541(5)).

(b) A person who is ordered to attend must not:-

- (i) fail to attend without reasonable excuse (CB s-cl. 541(6));
- (ii) fail to take an oath or make an affirmation (CB s-cl. 541(7));
- (iii) refuse to answer a question (CB s-cl. 541(8)).

- (iv) fail to produce relevant books under his control if directed to produce them by the Court (CB s-cl. 541(9));
 - (v) make a statement that is false or misleading in a material particular (CB s-cl. 541(11)).
- (c) A person will not be excused from answering a question on the ground that the answer might tend to incriminate him, but where the person claims that this will be the case, the answer will not be admissible in evidence against him in criminal proceedings other than proceedings under CB cl. 541 or proceedings in respect of the falsity of the answer (CB s-cl. 541(12)).
- (d) The Court will be able to order the questions put and answers given at the examination to be put in writing and signed by the person (CB s-cl. 541(13)); such a signed transcript will be able to be used in evidence in any legal proceedings against the person (CB s-cl. 541(14)); an examination under this clause will be able to, if the Court so directs, be held in another court (CB s-cl. 541(15)); such a person will be able to employ a solicitor and counsel who may ask questions that the Court considers just (CB s-cl. 541(16)); the Court will be able to adjourn the examination from time to time (CB s-cl. 541(17)); and the Court has the right, if it thinks that the order for the examination

was unreasonably obtained to order that the costs be paid by the applicant or by any person who took part in the examination (CB s-cl. 541(18)).

1174. CB cl. 541 is based on the provisions of ICAC CAs ss. 249, 250 and 367A subject to the following modifications:

(a) There is no equivalent to ICAC CAs s. 249 in the extent to which it allows the Court to summons on its own initiative (i.e. without any application being made to it) persons connected with a company for the purposes of examination.

(b) The ICAC CAs provisions do not allow an official manager to seek a Court order that a person be examined (see CB s-cl. 541(1)).

(c) The ICAC CAs do not, in the case of examinations initiated by the Court (s. 249) or requested by a liquidator (s. 250) give the Court any discretion to:

- order that the examination be held in private (CB s-cl. 541(11));
- make procedural orders for the conduct of the examination (CB s-cl. 541(5));
- make any special orders as to costs (CB s-cl 541(18)).

1175. The following is a comparative table of the provisions in CB cl. 541 and ICAC CAs ss 292, 250 and 367A. It should be noted that the correspondence is sometimes only approximate:

<u>ICAC CAs</u>	<u>Companies Bill</u>
s-sec 249(1)	s-cl. 541(2) except that there is no provision in the CB allowing a Court to initiate an examination
s-sec 249(2)	s-cl. 541(3), (13), (14)
s-sec 249(3)	s-cl. 541(9), (10)
s-sec 249(4)	s-cl. 541(15)
s-sec 249(5)	s-cl. 541(16)
s-sec 249(6)	no exact equivalent in the CB but see penalties provided for in CB s-cl. 541(6)
s-sec 250(1)	s-cl. 541(1), (2), (3) but note that CB s-cl. 541(1) allows an official manager to apply for an order for an examination
s-sec 250(2)	
s-sec 250(3)	s-cl. 541(5)
s-sec 250(4)	s-cl. 541(3)
para. 250(5)(a)	
para. 250(5)(b)	s-cl. 541(16)
s-sec 250(6)	
para. 250(7)(a)	s-cl. 541(13)
para. 250(7)(b)	s-cl. 541(13)
para. 250(7)(c)	s-cl. 541(14)

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para. 250(7)(d)	
s-sec 250(8)	s-cl. 541(17)
s-sec 367A(1)	s-cl. 541(2)
para. 367A(2)(a)	s-cl. 541(4)
para. 367A(2)(b)	s-cl. 541(15)
s-sec 367A(3)	s-cl. 541(5)
para. 367A(5)(a)	s-cl. 541(3)
para. 367A(5)(b)	s-cl. 541(8)
para. 367A(5)(c)	s-cl. 541(12)
s-sec 367A(6)	s-cl. 541(16)
para. 367A(7)(a)	s-cl. 541(13)
para. 367A(7)(b)	s-cl. 541(13)
para. 367A(7)(c)	s-cl. 541(14)
para. 367A(7)(d)	
s-sec 367A(8)	s-cl. 541(17)
s-sec 367A(9)	s-cl. 541(18)

Cl. 542 : Orders against persons concerned with corporations

1176. On the application of a prescribed person and where the Supreme Court is satisfied that a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation and the corporation has suffered loss or damage as a result, the Court will be able to make such orders as it thinks appropriate. Such an order may direct the person to pay money or transfer property or pay the amount of any loss

or damage to the corporation but will not be made unless the person has an opportunity to be heard and to give evidence (CB cl. 542).

1178. A prescribed person is defined in CB s-cl. 542(1) to mean an official manager, a liquidator or a person authorized by the NCSC.

1179. CB cl. 542 is based on ICAC CAs s. 367B subject to the following modifications:

(a) CB cl. 542 is framed in more general terms than the equivalent ICAC CAs provision.

(b) The CB provision ensures that the person the subject of the order has the opportunity to give evidence and call witnesses and to employ a solicitor (CB s-cl. 542(3)).

(c) There is a proviso in CB s-cl. 542(5) to the effect that nothing in CB cl. 542 prevents any person instituting any other proceeding in respect of the subject matter of the CB cl. 542 order.

Cl. 543 : Civil proceedings not to be stayed

1180. Civil proceedings arising under the CB will not be stayed by reason only that the proceedings disclose, or arise out of, the commission of an offence (CB cl 543).

Cl. 544 : Form and evidentiary value of books

1181. A book that is required by the CB to be kept or prepared, will be able to be kept:

- (a) by making entries in a bound or looseleaf book;
- (b) by recording or storing the matters concerned by of a mechanical, electronic or other device; or
- (c) in any other manner approved by the NCSC.

(CB s-cl. 544(1))

1182. However, a book will not be able to be prepared by a mechanical, electronic or other device unless:

- (a) the matters recorded or stored will be capable of reproduced in written form; or
- (b) a reproduction of those matters in a written form approved by the NCSC is kept.

(CB s-cl. 544(2)).

1183. A corporation will be required to take all reasonable precautions, including any precautions set out in regulation to safeguard against falsification records required to be kept

for the purpose of the CB. This will enable the making of regulations about standards of security etc in relation to computerized records and imposes a general duty to safeguard against falsification. Under the existing law (ICAC CAS s-sec. 369(2)) this duty only exists if the records are not kept in a bound book. (CB s-cl. 544(3)).

1184. Where a corporation records or stores any matter by means of a mechanical, electronic or other device, any duty imposed by the CB to make a book containing those matters available for inspection will be construed as a duty to make the matters available for inspection in written form, or to provide a reproduced copy of them (CB s-cl. 544(4)).

1185. The provisions (CB cl. 544) about the form and evidentiary value of records kept for CB purposes are based on NCB cl. 567, the 1973 U.K. Companies Bill cl. 81, and the Ontario Business Corporations Act s. 156. See also ICAC CAS s. 367.

Cl. 545 : Inspection of books

1186. A book that must be available for inspection according to the provisions of the CB, will be required to be available for inspection at the place where it is kept at a time when the registered office in the ACT of the corporation is open and accessible to the public. If it is kept at a place other than the registered office, that place will be required to be open

and accessible for inspection during the same hours that the registered office is required to be open (CB cl. 545. As to the place where books of a company must be kept see ex memo paras 609 to 611).

1187. CB cl. 545 is based on ICAC CAs s. 370 except that:

- (a) It provides for the situation where a register is kept by a company in a place which is not its registered office - see CB s-cl. 545(2).
- (b) It will now be an offence for any person, whether or not an officer of a corporation, to refuse to allow an authorized person access to a company's books (CB s-cl. 545(3)).

Cl. 546 : Location of books kept on computers etc.

1188. Where a corporation keeps required books in other than a written form (e.g. on a computer) it will be deemed to have complied with the requirements of the CB relating to the location of books if:-

- (a) the information is available in written form at the place where the books are required to be kept;
- (b) the NCSC is notified; and

(c) changes in location are notified within 14 days.

(CB cl. 546. As to the place where books of a company are required to be kept see ex memo paras 609 to 611).

1189. CB cl. 546 is based on NCB cl. 569 (see also 1973 United Kingdom Companies Bill cl. 82) subject to the following modifications:

(a) NCB cl. 569 distinguishes between the requirements for a register of members or debenture holders of a corporation and those for a management register or index of the corporation.

(b) The time limit for notification of a change in the location of register etc in the NCB is 28 days whereas it is 14 in the CB (CB para 546(3)(b)).

(c) The NCB provision applies only to registers.

Cl. 547 : Location of registers

1190. A local company or a registered foreign company (see CB s-cl 547(7)) will be required to keep the following registers at its registered office or principal place of business in the ACT.

- register of options granted to persons to take up unissued shares in the company (see CB cl 131);
- register of substantial shareholders (see CB cl 141);
- register of debenture holders (see CB cl 147);
- register of charges (see CB cl 209);
- register of directors shareholdings (see CB cl. 238(1));
- register of directors, principal executive officer and secretaries (see CB cl. 238(1));
- register of members (see CB cl. 256); and
- branch register of shares in a registered foreign company (see CB cl. 521).

1191. These registers will be able to be kept in another place if:

- (a) the register is made up at another office of the company within the ACT;
- (b) the company arranges for the register to be made by some other person at an office within the ACT;
- (c) the NCSC approves that other place CB s-cl. 547

1192. Similar requirements apply in respect of branch share registers that are required by the CB to be maintained in another jurisdiction (CB s-cl. 547(2)).

1193. Where a register is kept at a place other than the registered office, or, in the case of branch share registers, at a place other than the company's principal place of business in the jurisdiction in which it is maintained, or if there is any change, in its location the NCSC must be notified (CB s-cl. 547(4) - see ex memo paras 609 to 611 for details of the place where certain minute books and registers are required to be kept).

1194. CB cl. 547 is based on ICAC CAs s. 152 except that the latter provision is restricted to the place where registers of members must be kept. The extension of the equivalent provision in the 1948 United Kingdom Companies Act along the lines of CB cl. 547 was recommended in the Jenkins Committee Report at para 470.

Cl. 548 : Translations of instruments

1195. Where a corporation is required to lodge any document with the NCSC and the document is not written in English, a certified translation of the document will be required to be lodged at the same time (CB s-cl. 548(1)). Where a corporation must make an instrument available to the public and the instrument is not in English, the corporation will be required to keep a certified translation at its registered office or principal office in the ACT (CB s-cl. 548(2)).

1196. This provision is based on ICAC CAs s. 371, except that:

- (a) The reference to principal office in CB s-cl. 548(2) is new.
- (b) CB s-cl. 548(3) is new and gives a definition of "instrument" for the purposes of the section (a definition of certified translation appears in s-cl. 5(1)).

Cl. 549 : Certificate of incorporation conclusive evidence

1197. A certificate of incorporation (given under cl. 31, cl. 35 or cl. 72 of the CB or under a previous law of the ACT) will be conclusive evidence that all the requirements of the CB or previous law in respect of registration have been complied with, and that the company is duly incorporated (CB cl 549).

1198. This provision is based on ICAC CAs s. 372) which did not, however, specify the provisions under which the certificate was given. Consequently there may have been some doubts as to the extent of its coverage, especially in relation to certificates under a previous law.

Cl. 550 : Admissibility of books in evidence

1199. Any book kept by a corporation under the CB, a previous law of the ACT, a corresponding law of another State or Territory or a previous corresponding law will be admissible in evidence

in any proceeding and will be prima faice evidence of the matter stated or recorded in the book. A document purporting to be a book kept by a corporation will be deemed to be such a book unless the contrary is proved. (CB cl 550).

1200. This is a new provision based on s-sec 156(3) of the Ontario Business Corporations Act. It is an evidentiary provision that is intended to expedite legal proceedings where books are to be introduced in evidence. This provision obviates the need to call witnesses to prove that books are books of the corporation when this fact is not in question or to prove transactions recorded in books when these matters are not in dispute.

Cl. 551 : Court may compel compliance

1201. The CB requires certain books (including registers) to be open for inspection and for copies to be supplied on request (see e.g. CB cls 238, 257). If a person refuses to comply with these provisions, the Supreme Court will be able to order an immediate inspection of the book or to order a copy to be supplied (CB cl 551).

1202. CB cl. 551 is based on ICAC CAs s. 373 except that the latter provision only applies to registers, minute books or documents.

DIVISION 2 : OFFENCES

1205. Division 2 of Part XIV of the CB (cls 552 to 574 contains a series of provisions imposing offences and also dealing with some related matters.

Cl. 552 : Restriction on offering shares, debentures, &c., subscription or purchase

1206. A person will be prohibited from going from place to place offering for subscription or purchase to the public shares, debentures, units or documents conferring on the holder a claim against a corporation which is in existence or which is to be formed, unless the NCSC has exempted the corporation from the operation of this provision (CB cl. 552).

1207. Except in the circumstances set out in CB s-cl. 552(1), a person will also be prohibited from making an offer in writing to any member of the public of any shares etc. for purchase or subscription unless the offer is accompanied by:

- (a) a statement in writing containing the particulars required by CB s-cl. 552(6) or
- (b) in the case of shares of a corporation formed outside the A.C.T., a statement or a prospectus that complies with the CB.

1208. CB cl. 552 is based on ICAC CAs s. 374 except that CB s-cl. 552(3) will now not apply to an offer of shares where the provisions of Division 1 (prospectuses) or Division 5 (debentures) of Part IV of the CB have been complied with. This change was recommended by the Eggleston Committee (para 11 of his Sixth Interim Report).

1209. Note s-cl. 13(21) of the C(TP)B which deals with an exemption given by the Minister under para. 374(2)(b) of the ACT CO that is in force immediately before the commencement of the CB.

Cls 553 to 557 : offences by officers of certain companies

1210. Cl 554 to 558 of the CB are provisions dealing with offences committed by officers of certain companies. These provisions are based on part of the 'defaulting officer provisions' of the ICAC CAs. See also D.R. Magarey (SULS sem).

Cl. 553 : Interpretation

1211. There are special application and definition provisions for the purposes of these clauses (CB cl. 553).

1212. In particular, the provisions of CB cls 554 to 557 will apply to a company:-

- (a) that has been or is being wound up, including one where the winding up has been stayed or terminated (by a CB cl. 383 order);
- (b) that is or has been under official management;
- (c) whose affairs are or have been under investigation pursuant to Part VII of the CB or a corresponding previous law of the Territory;
- (d) in respect of the property of which a receiver, or a receiver and manager, has at any time been appointed;
- (e) that has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or arrangement with its creditors.

(CB s-cl. 553(1) and (2)).

1213. These application provisions are the same as in ICAC CAs s. 374E except that CB cls. 554 to 557 will now also apply to:

- (a) a company in respect of which a winding up order has been stayed or terminated (CB para 553(1)(a);

(b) a company in respect of whose property a receiver who is not a manager has been appointed (CB para 553(1)(e));

(c) a company that has entered into a compromise or arrangement with its creditors (CB para 553(1)(g));

(d) a company that has been under a "disability" in the past as well as a company that is undergoing a present "disability".

1214. The definitions of "appropriate officer" and "relevant day" in CB cl. 553 are directly related to the companies to which CB cls. 554 to 557 will apply (see CB s-cl. 553(3)).

Cl. 554 : Offences by officers of certain companies

1215. It will be an offence for a past or present officer of a company to which this provision applies:

(a) not to disclose, as far as he is capable, to the appropriate officer (i.e. a liquidator, official manager, receiver the NCSC or a person administering a compromise or arrangement - see CB s-cl. 553(3)) all the property of the company or not to provide information concerning the disposal of the property of the company during the past 5 years (except property disposed of in the ordinary course of business);

- (b) not to hand over all the property or books in his custody or control to an appropriate officer;
- (c) to conceal or remove property of the company or to conceal a debt due to or by the company;
- (d) to fraudulently part with or alter any of the company's books;
- (e) to obtain on credit by fraud property that the company has not subsequently paid for;
- (f) to dispose of property, otherwise than in the ordinary course of business, that the company has obtained on credit and not paid for;
- (g) to make a material omission in a statement relating to the affairs of the company;
- (h) to fail to inform the appropriate officer of any knowledge or belief that a false debt has been proved by a person;
- (i) to prevent the production of any of the company's books;
- (j) to make entries in the books of the company showing fictitious transactions, losses or expenses; or

- (k) to make any false representation or to commit any other fraud to obtain the consent of the creditors of the company to an agreement in relation to the company's affairs or to the winding up.

(CB cl. 554 - based on ICAC CAs s. 374A).

Cl. 555 : liability where proper accounts not kept

1216. Where a company to which this provision applies (see CB cl. 553) and ex memo para 1212 or a company which within 2 years becomes such a company, fails to keep proper records (in contravention of CB cl. 267) directors and officers who are in default are guilty of an offence (CB cl. 555).

1217. This provision is based on ICAC CAs s. 374B except that:

- (a) There is now a specific reference in cl. 555 to a director of a company who fails to take all reasonable steps to secure compliance by the company with cl. 267 (which sets out the accounting records to be kept).
- (b) It will be a defence with regard to such non-compliance if reasonable grounds existed for the belief that a competent and reliable person was handling the discharge of this duty to comply with cl. 267.

Cl. 556 : offences relating to incurring of debts or fraudulent conduct

1218. If a company to which this provision applies (see CB cl. 553 and ex memo para 1212) incurs a debt and at the time the debt was incurred or immediately before that time, there were reasonable grounds to expect that the company would be unable to pay its debts, any person who was a director, or who part in the management, of the company at the time when the debt was incurred, will be guilty of an offence and those persons and the company will be jointly and severally liable for the payment of the debt (CB s-cl. 556(1)).

1219. This provision is based on ICAC CAS s-sec 347C(1), except that it has been restructured to place greater responsibility on persons who are directors or managers of a company at the time that unreasonable debts are incurred by the company and to provide that such persons, and the company, are liable to creditors for the repayment of any debts incurred in contravention of cl. 556. The question of what constitutes reasonable grounds has been discussed in Dunn v. Shapowloff (1978) 3A.C.L.R. 755 and in Hamilton v. Caratti .

1219A. A new provision has been inserted to make it clear that a criminal conviction need not be obtained before civil proceedings can be instituted pursuant to CB s-cl. 556(1). (CB s-cl. 556(3A)).

1220. It will be a defence to a charge under CB cl. 556 if the defendant proves that the debt was incurred without his express or implied authority or consent or that he did not have reasonable grounds to expect that the company would not be able to pay its debts (CB s-cl. 556(2)). This is a new provision and is designed to protect a person who either does not authorize the incurring of the relevant debt or who does not realize that the company will not be able to pay its debts.

1221. Where a person repays, in accordance with an obligation imposed by CB s-cl. 556(1) a debt incurred by a company, that repayment will not make the company liable to the person concerned in respect of the amount paid (CB s-cl. 556(4)). This is a new provision which will have the affect of ensuring that an officer who repays a debt will not be able subsequently to claim the amount paid from the company and to that extent will restrict the operation of CB cl. 558.

1222. If a company does any act with intent to defraud creditors or any other person, or for any other fraudulent purpose, and the company is or becomes a company as defined in CB cl. 553, any person who is knowingly concerned in the doing of the act with that intent will be guilty of an offence (CB s-cl. 556(5)). This offence is based on ICAC CAs s-sec 374C(2) except that it has been made clear that the provision applies to an act of the company both before and during the period it is a company to which these provisions apply.

Cl. 557 : Powers of Supreme Court

1223. Where a person has been convicted of an offence under s-cl. 556(1) or (5), the Supreme Court will be able to declare that person to be personally liable for certain debts, and may give directions and make orders to enforce such declarations (CB cl. 557).

1224. This provision is based on ICAC CAs s. 374D except that:

- (a) In the case of a conviction under CB s-cl. 556(1) an order by the Court must be made in favour of the person to whom the debt is payable (CB s-cl. 557(1)).
- (b) Where a company is or has been under official management and CB cl. 556 applies, a member of the company may make an application under CB cl. 557 (para. 557(3)(c)).
- (c) In CB s-cl. 557(8), an applicant other than an appropriate officer is also able to give evidence and call witnesses on the hearing of an application under CB s-cl. 557(1).

Cl. 558 : Certain rights not affected

1225. Nothing in CB s-cl. 556(1) or 557(1) will affect a person's rights to indemnity, subrogation or contribution.

(CB cl. 558). This is a new provision which was included to ensure that where, for example, an officer was held to be liable for the repayment of a company's debts pursuant to CB s-cla 556(1) or 557(1), the common law rights referred to in (CB cl. 558) were preserved for his use against other officers of the company.

Cl. 559 : Inducement to be appointed liquidator or official manager

1226. It will be an offence for a person to offer or give a member or creditor of a company valuable consideration to secure his own appointment, or to secure or prevent the appointment of another person, as the company's liquidator, provisional liquidator, or official manager, or as receiver, or receiver and manager of the company's property or as manager of a compromise or scheme of arrangement (CB cl 599 - based on ICAC CAs s-sec 374F(1) - except that the latter provision is restricted to appointments as the company's liquidator or official manager).

Cl. 560 : Falsification of books

1227. Any officer, former officer, member or former member who conceals, destroys, mutilates, alters or falsifies any of the company's securities or books will be guilty of an offence (CB cl 560).

1228. This provision is based on ICAC CAs s-sec 374F(2) except that:

(a) CB cl. 560 will also apply to former officers and members.

(b) It will now be an offence where a company's books are kept on a computer etc, for a person:

(i) to record or store information he knows to be false;

(ii) to destroy, remove or falsify information; or

(iii) to fail to record or store information with intent to falsify an entry made or intended to be compiled.

(CB s-cl. 560(2) - new provision). These new offences endeavour to deal with some of the problems that can arise with computer-kept records: see, for example, J.W.K. Burnside: "The legal implications of computers" (1981) 55 A.L.J. 79 @ 87.

(c) It will be a defence to the offences created by CB s-cl. 560(1) and (2) if the defendant proves he acted honestly and that, in all the circumstances, the offence should be excused (CB s-cl. 560(3)).

(d) Officers will (for the purposes of CB cl. 560) include receivers who are not also managers (CB s-cl. 560(4)).

Cl. 561 : Frauds by officers

1229. A person will be guilty of an offence if while an officer of a company,

- (a) he fraudulently induces a person to give credit to the company or a related corporation;
- (b) with intent to defraud the company, he makes a gift or transfer of, or charge on the property of a company or related corporation, or is involved in a levy of execution against such property; or
- (c) with intent to defraud the company he conceals or removes any such property after or within 2 months before the due date of any unsatisfied judgement for payment of money against the company or related corporation.

(CB cl 561).

1230. This clause is based on ICAC CA s s. 374G except that:

- (a) CB paras 561(b) and (c) are now also expressed to apply to members as well as creditors.
- (b) The clause has been widened and refers to "company or related corporation" rather than merely a "company".

Cl. 562 : Court may disqualify person from acting as director, &c., in certain circumstances

1231. On an application by the NCSC, the Supreme Court will be able to make an order prohibiting a person from acting as director of, or being concerned in the management of, a company for a period of up to 5 years, provided that:

- (a) the person was given notice of the application;
- (b) the person was, up to 7 years before the application, a director of, or concerned in the management of, 2 or more companies that had been wound up etc (see Cls-cl. 562(1) for companies to which CB cl. 562 applies); and
- (c) in the case of such a company, the manner in which the affairs of the company had been managed was wholly or partly responsible for that company being wound up etc.

(CB cl 562).

1232. This provision is based on ICAC CAs s. 374H except in that CB cl. 562 will also apply to certain companies in respect of which a winding up order has been stayed or terminated (see CB para 562(1)(b)).

Cl. 563 : False and misleading statements

1233. It will be an offence for a corporation to advertise, circulate or publish a misleading statement of the amount of its capital, and for any officer of the corporation knowingly to authorize, direct, or consent to the advertising (CB s-cl. 563(1)).

1234. A person who in a document required by or for the purposes of the CB or lodged with or submitted to the NCSC, makes or authorizes the making of a statement that to his knowledge is false or misleading, without having taken all reasonable steps to ensure that the statement was not false or misleading, will be guilty of an offence (CB s-cl. 563(2) and (3)).

1235. This provision is based on ICAC CAs s. 375 except that:

- (a) CB s-cl. 563(2) and (3) - based on ICAC CAs s-sec 375(2) - deal with documents lodged or submitted for lodgement with the NCSC whereas ICAC CAs s-sec 375(2) applies to any document required for the purposes of the Act.
- (b) "Wilfully" in the ICAC CAs s-sec 375(2) has been omitted.
- (c) The negligent making of a false or misleading statement is now covered (CB s-cl. 563(3)).

- (d) CB s-cl. 563(4) (based on ICAC CAs s-sec 375(3)) has been redrafted to ensure that it will apply to the omission of something from a document as well as to the making of a statement.

Cl. 564 : False reports

1236. It will be an offence for an officer of a corporation to make or authorize the making of any false or misleading statement or report relating to the affairs of the corporation to:

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
- (b) an auditor of the holding company in the case of a corporation that is a subsidiary;
- (c) a stock exchange or officer of a stock exchange,

(CB cl 564).

1237. This provision is based on ICAC CAs s. 375A except that:

- (a) CB s-cl 564(3) is new and defines the making of such a statement to include a reference to a false and misleading statement or report as to the state of the knowledge of the person making such a statement or report.

- (b) CB s-cl 564(4) is also new and provides that where a statement is made to a person referred to in para. (1)(a), (b) or (c) in response to a question asked by that person, the question, and the statement or report, must be considered together in determining whether the statement or report was false or misleading.

Cl. 565 : Dividends to be paid out of profits

1238. Dividends must be paid out of profits or from the share premium account (see CB cl. 119) (CB cl 565).

1239. This provision is based on s. 376 of the ICAC CAs and replaces cls. 376, 376A and 376B of the exposure drafts. See also Macfarlan (SULS sem pp 124-135) and UK Companies Act 1980 ss. 39 to 45.

Cl. 566 : Restriction on use of words "Limited" and "No Liability"

1240. It will be an offence for a person to carry on business under a name using "Limited" or "No Liability" or any abbreviation of these words as part of the name, unless duly incorporated with limited liability or no liability, as the case may be (CB cl 566 - based on ICAC CAs s. 377).

Cl. 567 : Restriction on use of word "Proprietary"

1241. It will be an offence for a company to use the word "Proprietary" or any abbreviation of that word unless the company fulfils the requirements of the CB with regard to proprietary companies. The company and each officer of the company who is in default will each be guilty of an offence (CB cl 567).

1242. This provision is based on ICAC CAs s. 378. It is envisaged that the Victorian Companies (Application of Laws) Bill will provide that this provision in its application in Victoria will not apply to a company incorporated before 24 December 1896.

Cl. 568 : Reciprocity in relation to offences

1243. A person who does an act within the A.C.T. which would have been an offence outside the A.C.T. under a provision that corresponds with a provision of the CB, will be guilty of an offence against the relevant provision of the CB (CB cl 568 based on ICAC CAs s-sec 378A(1) - identical to SIA s. 148).

Cl. 569 : Offences committed partly in and partly out of the Territory

1244. Where any act, omission or thing done partly inside and partly outside the ACT would have constituted an offence against the CB if it had been done wholly within the ACT, it

the doing or omission of that act or thing will be deemed to be an offence against the CB (CB cl 569).

1245. This is a new provision based on SIA s. 149.

Cl. 570 : General penalty provisions

1246. A person who contravenes or fails to comply with a provision of the CB will be guilty of an offence by virtue of the general penalty provision unless that provision otherwise provides that he is guilty of an offence (CB cl 570 - based on ICAC CAs s. 379 cf CASA s. 53 and SIAS. 141).

Cl. 571 : Continuing offences

1247. There will be a new provision imposing, in effect, a penalty of \$50 a day for failure to comply with a continuing obligation (CB cl. 571 - cf CASA s. 54 and SIA s. 142).

1248. This provision for continuing offences is designed to overcome a defect in s. 380 of the ICAC CAs which was exposed in the decision of Welsh v. Cornfoot (1973) VR 21. In Welsh v. Cornfoot the informant obtained orders nisi to review the decision of a magistrate that the two defendants, both directors of a company, had no case to answer in relation to alleged breaches ss 54, 112 and 134 of the VIC CA. Each of these provisions requires certain things to be done within one month

of a specified occurrence. These provisions also provide that "if default is made....every officer of the company who is in default shall be guilty of an offence against this Act." S-sec 380(3) of the ICAC CA defines an "officer in default". The information charged that the offence had been committed after the relevant one month periods. The court discharged the order nisi on the basis that the offences were complete when the one month periods expired and the offences were not continuous.

1249. The new provision will apply where:

- (a) under the CB an act must be done within a particular period;
- (b) failure to do that act is an offence; and
- (c) that act is not done within the period.

In those circumstances: -

- (d) the obligation to do that act will continue, even if the time period has elapsed;
- (e) where a person is convicted of an offence that, by virtue of (d), consists in the failure to do that act after that period has elapsed, that person will be guilty of a further and separate offence in respect of each day he continues to fail to do that act after the day of conviction; and

(f) the penalty applicable to each separate and further offence will be \$50.

(CB s-cl. 571(1)).

1250. The situation where the CB requires something to be done, but no time period is specified, is also covered (CB s-cl. 571(2)).

Cl. 572 : Officers and other persons in default

1251. An officer or other person will be deemed to be in default of the requirements of a provision of the CB if, by act or omission, they are directly or indirectly knowingly concerned in the contravention of those requirements (CB s-cl. 572(1) - cf CASA s.55).

1252. CB s-cl. 572(1) is based on s-sec 380(3) of the ICAC CAs but it has been extended to also cover past officers of a corporation, or any other person, as the case may be, and to apply to omissions as well as acts and to indirect contraventions as well as direct contraventions.

1253. For the purpose of CB s-cl. 572(1) a secretary of a company will, unless the contrary is proved, be deemed to be knowingly concerned in and party to any breach in regard to:

- (a) a provision of CB cl. 216 requiring the registered office of a company to be open for certain hours on business days;
- (b) any provision of CB cls. 238 (register of directors, principal executive officers and secretary) or 263 (annual return) requiring the lodgement of a document with the NCSC.

(CB s-cl 572(2))

1254. This deeming provision is new. Its effect is to place the obligation to comply with certain routine technical matters upon the secretary of a company (cf. s-sec 252(1) of the Income Tax Assessment Act 1936 in relation to the "public officer" of a company).

ICAC CAs s. 381

1255. There is no provision in the CB that corresponds with s. 381 of the ICAC CAs (proceedings how and when taken). This matter is dealt with in s. 36 of the C & S (I & MP)A.

1256. Note also cl. 27 of the C(TP)B which deals with the institution of a proceeding under the ACT CO that was subject to the consent of the Minister.

Cl. 573 : Power of Supreme Court to prohibit payment or transfer of moneys, securities or other property

1257. If an investigation, prosecution or proceeding is in progress, the Supreme Court will be able, on application by the NCSC to make orders:

- (a) prohibiting a person who is indebted to the relevant person from making a payment in total or partial discharge of the debt at the direction of the person to whom the debt is owed (for the purposes of this provision, a relevant person will be a person subject to an investigation under the CB or the subject of criminal or civil proceedings under the CB.);
- (b) prohibiting a person holding money, securities or property on behalf of the relevant person from paying any of the money, or parting with the securities or property to a person on whose behalf the money or the securities or other property, is or are held;

- (c) prohibiting the taking or sending out of the ACT or Australia of moneys of the relevant person or any person associated with the relevant person;
- (d) prohibiting the taking, sending or transfer of securities or other property of the relevant person out of the ACT or Australia;
- (e) an order appointing a receiver or trustee to the property or part of the property of the person where the relevant person is a natural person or where the relevant person is a body corporate a receiver or receiver and manager of the property or part of the property of the person;
- (f) prohibiting a natural person leaving Australia without the Court's consent and requiring delivery of his passport and other such documents.

(CB cl. 573).

1258. This is a new provision based on cl. 273 of the CSIB; see also s. 151 of the SIA.

Cl. 574 : Injunctions

1259. The Supreme Court will be able on the application of the NCSC or of any person interested in or affected by the conduct, to grant an injunction restraining a person from committing an offence or requiring a person to do something which is either considered desirable by the Court or which would prevent the occurrence of an offence. Alternatively or in addition the Court award damages to the affected person. The Court will also be able to grant an interim injunction and rescind or vary any injunction granted.

1260. This is a new provision and is based on SIA s. 149. See also R. Baxt (1980) A.B.L.R. 413 and R.P. Austin (SULS sem).

Cl. 575 : Power of Court to punish for contempt of Court.

1261. The power of the Supreme Court in relation to the punishment of contempt will not be affected by any provision of the CB (CB cl. 575).

1262. This is a new provision which replaces specific provisions to the same effect in the August CB (see, eg, s-cl. 562(6) and 571(5) of the August CB).

DIVISION 3 : RULES AND REGULATIONS

Cl. 576 : Rules

1263. The power to make rules of court conferred by s. 28 of the ACT Supreme Court Act will be extended in respect to certain matters (CB cl 576).

1264. This clause is based on VIC CA s. 383, except that the words "not inconsistent with this Act" are new and ensure that any Companies Rule that is inconsistent with a provision the CB or the regulations will be inoperative to the extent of the inconsistency. By virtue of CB s-cl. 5(1) "this Act" includes the regulations.

Cl. 577 : Regulations

1265. The Governor-General will be able to make regulation not inconsistent with the CB prescribing all matters required or permitted by the CB to be prescribed by the regulations (C cl 577).

1267. This clause is based on VIC CA s 384, except that:

(a) VIC CA paras 384(1)(c) and (e) have been omitted.

These paragraphs deal respectively with:

- the prescribing of fees not provided for in the Fees Schedule (para 384(1)(c)); and
 - the making of regulations which are necessary for giving effect to the VIC CA or which are permitted to be prescribed under the Act otherwise than by rules.
- (b) The Governor-General will now be able to make regulations concerning the manner in which a liquidator may exercise his powers (CB para 577(1)(g)).
- (c) The maximum amount for any penalty for breach of regulations has been raised to \$500 (CB para 577(1)(j)).
- (d) The Governor-General's power to make regulations will only be able to be exercised in accordance with advice that is consistent with resolutions of the Ministerial Council (CB s-cl. 577(2)). This provision appears in s-sec 53(4) of the NCSC Act and in the other Commonwealth legislation that is part of the co-operative scheme and that contains a regulation making power.

DIVISION 4 : MISCELLANEOUS

Cl. 578 : Non-application of rule against perpetuities to certain schemes

1267A. The rule against perpetuities will not apply to the trust of any funds established for the benefit of any employee of a company (CB s-cl. 578(1)). The companies, funds and employees to which CB cl. 578 apply are specified in CB s-cl. 578(2).

1267B. This provision is based on s. 382 ACT CO which is similar in terms to s. 386 of the SA CA and s. 82 of the NSW CA.

Cl. 57a : Act not to apply to trade unions

1267C. The CB will not apply to trade unions and the registration of any trade union pursuant to its provisions will be void (CB cl. 579).

Cl. 580 : Operation of Life Insurance Act

1267D. Nothing in the CB will affect any of the provisions of the Commonwealth Life Insurance Act 1945.

Cl. 581 : Operation of Workmen's Compensation Supplementation Fund Ordinance

1267E. CB cls. 437 to 450 will apply subject to the provisions of s. 40 of the Workers Compensation Supplementation Fund Ordinance 1980.

COMPANIES BILL SCHEDULES

1268. The Companies Bill contains the following Schedules:

- Schedule 1 : Repealed Ordinances
- Schedule 2 : Powers
- Schedule 3 : Table A : Regulations for management
of a company limited by shares
Table B : Regulations for management
of a no liability company
- Schedule 4 : Forms of transfer of marketable
securities
- Schedule 5 : Order of priority of registrable
charges

1269. Schedules 4 and 5 are new. The other Schedules set out above are based on the corresponding Schedules to the ICAC CAs.

1270. The ICAC CAs Schedules that have been omitted, and the reasons for their omission, are as follows:

- Second Schedule : This Schedule, which deals with fees payable under the CAs, has been replaced by the Companies (Fees) Bill and the Companies (Fees) Regulations.

- Fifth Schedule : The contents of this Schedule, which deals with prospectuses, are to be prescribed by regulations (see CB para. 98(1)(e)), except in the case of certain matters which have now been incorporated in the CB - see the section of this ex memo dealing with cl. 98.
- Sixth Schedule : This Schedule, which deals with statements in lieu of prospectuses, has been omitted along with ss 50 to 52 of the ICAC CAs - see the introduction to the section of this ex memo dealing with Division 2 of Part IV.
- Seventh Schedule : The contents of this Schedule, which deals with statements to be issued in relation to the issue of prescribed interests, are to be prescribed by regulation - see CB s-cl. 170(4).
- Eighth Schedule : The contents of this Schedule, which deals with the contents and form of company annual returns, are to be prescribed by regulation - see (s-cl. 263(1).
- Ninth Schedule : The contents of this Schedule, which deals with the content of company accounts and group accounts, are to be prescribed by regulation - see CB s-cl. 269(8).
- Tenth Schedule : This Schedule, which deals with takeovers, has been replaced by Schedules to the C

SCHEDULE 1

Repealed Ordinances

1271. Schedule 1 sets out the ACT Ordinances that will be repealed when the CB comes into operation (see CB cl. 4).

SCHEDULE 2

Powers

1272. Schedule 3 sets out the general powers of a company. Unless expressly excluded by the memorandum or articles of the company, a company will have these powers in addition to the powers set out in CB cl. 67.

1273. This Schedule is virtually identical to the Third Schedule to the ICAC CAs.

SCHEDULE 3

Table A : Regulations for Management of a Company Limited by Shares

Table B : Regulations for Management of a No Liability Company

1274. A company will be able to adopt all or any of the regulations in Table A of Schedule 3; a no liability company will be able to adopt all or any of the regulations in Table B of Schedule 3. These articles will apply automatically to such companies except insofar as the articles of the company exclude or modify the regulations (see CB cl. 75).

1275. Schedule 3 to the CB is based on the Fourth Schedule to ICAC CAs except that:

(a) There are new interpretation provisions:-

Table A : s-regs 1(2), (3);

Table B : s-regs 1(2), (3);

(b) Changes have been made to the provisions dealing with general meetings:-

Table A regs 40, 41;

Table B : regs 24, 25.

(c) Changes have been made to the provisions dealing with powers and duties of directors:-

Table A : reg. 66;

Table B : reg. 50.

- (d) Changes have been made to the provisions dealing with the signing of resolutions by directors:-

Table A: reg 77;

Table B: reg 61.

- (e) Changes have been made to the provision dealing with the inspection of records (previously titled 'Accounts').

Table A: reg 85;

Table B: reg 69.

SCHEDULE 4

Forms of Transfer of Marketable Securities

1276. Schedule 4 sets out forms for the transfer of marketable securities. All forms in this Schedule are based on the corresponding forms in the existing marketable securities legislation of the 6 States and the 2 mainland Territories.

1277. However, the wording of Forms 8 to 11 inclusive (which deal with transfers involving authorized trustee corporations) have been altered slightly to take account of amendments made to the provisions relating to transfers by authorized trustee corporations (see CB cl 192).

SCHEDULE 5 : ORDER OF PRIORITY OF REGISTRABLE CHARGES

Introductory Note

1278. The priorities as between registrable charges are out in Schedule 5.

1279. The policy issues involved as to which charges should take priority over other charges have been generally resolved along the lines of the Eggleston Committee's draft schedule priorities. However, unlike the Eggleston Committee's draft schedule, the CB does not purport to determine priorities as between registrable charges and other unregistrable interests in the property of a company.

Cl. 1 : priority given to a registered charge

1280. Registered charges will take precedence inter se according to the times of registration unless the later registered charge was created earlier and the holder of the prior registered charge is proved to have had notice of it when he took his charge (CB Schedule 5 paras 1(1)(a), 1(2)(a) and 1(1) - based on Eggleston Committee's draft schedule paras 2(a) and 3(c)). In certain circumstances, registered charges will also not take precedence inter se according to the times of registration where the earlier charge is a floating charge and the later registered charge is a fixed charge - see CB s-cl. 204(3).

1281. A registered charge takes precedence over an earlier created unregistered charge unless the holder of the registered charge is proved to have had notice of the earlier unregistered charge when he took his charge (CB Schedule 5 paras 1(1)(b) and 1(2)(b) - based on Eggleston Committee's draft schedule paras 2(a) and 3(c)).

1282. Priorities as between registered charges and other unregistrable interests in the property (such as interests acquired by a retail buyer and stockbrokers' liens over shares) will be left to be determined under general law (cf. Eggleston Committee's draft schedule paras 2(b) and 3(b)). In line with this policy, CB Schedule 5 does not contain any reference to competition between holders of registered charges and execution creditors although this omission would not have any effect on the general law: a registered charge will not take precedence over the claim of an execution creditor under a prior levied execution.

1283. CB Schedule 5 does not contain any reference to competition between registered charges and claims in liquidation. This issue is covered in CB cl. 205. If liquidation or official management occurs then a registrable charge will be void as a security on the property of the company as against the liquidator or official manager unless notice is lodged with the NCSC within the specified time (see CB s-cl. 205(1) and (2)) or at least six months before the commencement of the winding-up or official management. However, the charge

will not be void as a security if the 45 day or other period has not elapsed when the winding up or official management commences CB s-cl. 205(1) of ICAC CAs s. 100(1)) (see also ex memo paras 497 to 499; cf. Eggleston Committee's draft schedule paras 2(d) and 3(d)).

Cl. 2 : priority given to an unregistered charge

1284. An unregistered charge will take precedence over a subsequently created registered charge if the holder of the registered charge is proved to have had notice of the earlier unregistered charge when he took his charge (CB Schedule 5 para 2(a) - based on Eggleston Committee's draft schedule paras 4(b) and 5(b)).

1285. Unregistered (but registrable) charges will take precedence inter se according to the times of their creation, regardless of notice (CB Schedule 5 para 2(b) - based on Eggleston Committee's draft schedule para 4(a)).

1286. Priorities as between unregistered (but registrable) charges and other unregistrable interests will be left to be determined under general law (cf. Eggleston Committee's draft schedule paras 4(c), 5(a) and 5(c)). As to competition between unregistered charges and claims in a liquidation see CB cl. 2 and ex memo paras 496 to 499 and 1151.

C1 3 : Tacking

1287. If a registrable charge over company property secures any liability that is not fixed or capable of being ascertained at the time that the charge is registered, then whether or not any priority accorded by Schedule 5 to the charge over another charge will extend to that liability (another charge will extend to that liability) may depend on 1 or more of the following factors:

- (a) whether or not the liability is of an unspecified amount;
- (b) whether or not the chargee has actual knowledge of the other charge;
- (c) if the liability is only a liability up to a specified maximum amount, whether or not the NCSC has been notified of the nature of the liability and the amount so specified;
- (d) whether or not the liability becomes fixed or capable of being ascertained before the chargee first learns of the other charge; and
- (e) whether or not the charge can be required, in certain circumstances, to make further advances.

1288. If, for example, a company gives security for an overdraft which provides for the possibility of the lender making further advances of an unspecified amount and, whether before or after the charge is registered, the lender makes further advances, even though under no obligation to do so then the

lender will be entitled to repayment of those further advances in priority to the claims of, say, the holder of a subsequently registered charge only if the advances had been made prior to the first lender learning of the existence of the other charge. (CB Schedule 5 -s-cl. 3(2) and para 3(4)(c)).

1289. If, however, the terms of the charge providing for further advances actually require the chargee to make those subsequent advances, then the lender will be entitled to repayment of those further advances in priority to the claims of the holder of the subsequently registered charge even if the advances are made after the person making them knew of the existence of the subsequently registered charge. (CB Schedule 5 para 3(4)(d)).

1290. Similar principles will apply if the charge secures a liability which is not capable of being ascertained at the time that the charge is registered, although the maximum possible amount of the liability is fixed, but that that maximum amount is not notified to the NCSC (CB Schedule 5 para 3(4)(d)).

1291. If the nature of that liability and the maximum amount are notified to the Commission then the priority accorded by the Schedule to the charge over another charge, extends to the liability even if it becomes a fixed liability only after registration and even if, when it becomes a fixed liability, the chargee knows of the existence of the other charge (CB Schedule 5 s-cl. 3(3)).

1292. Whereas priorities as between registered charges will generally be affected by constructive notice on the part of chargees of the existence of prior created charges (see CB Schedule 5 cls. 1 and 4), actual knowledge is the factor which will determine whether or not the priority accorded to a charge by cl. 1 extends to a liability that is not fixed or capable of being ascertained at the time that the charge is registered. This is to avoid the need for example, for lenders making further advances under the terms of a registered charge to be constantly searching the register of charges (given that they would be fixed with constructive notice of details on the register).

Cl. 4 : notice and knowledge

1293. A reference in CB Schedule 5 to a person having "notice" of a charge will include a person having constructive notice. The meaning of "constructive notice" will be left to be determined under the general law. (cf. Eggleston Committee's draft schedule para 7 which was concerned not simply with the notice of other charges deemed to be obtained by holders of registrable charges but also notice on the part of person having other unregistrable interests in property of the company.)

Charges existing when property acquired

1294. A charge existing when property is acquired will be treated as if it were not registrable until the charge is registered but when the charge is registered it has priority

accorded as from the time of registration. This registration will not prejudice any rights of the charge prior to registration. Provisions to this effect, based on cl. 8 of the Priorities Schedule to the Eggleston Committee's redraft, are contained in CB s-cl. 199(3) and (4) rather than in Schedule 5. See ex memo para 477.

Waiver of priority

1295. Chargees will be able to consent to a waiver or variation of the priority to which their charges would otherwise be entitled. A provision to this effect, based generally on cl. 1 of the Priorities Schedule to the Eggleston committee's redraft is contained in CB s-cl. 204(2) rather than in Schedule 5.

1296. A chargee of a floating charge will be deemed to have consented to a subsequent registered fixed charge created before the floating charge crystallises taking priority unless the chargee of the floating charge takes certain action. A provision to this effect is contained in CB s-cl. 204(3). There was no counterpart in the Eggleston Committee recommendations.

Cls 5 and 6

1297. These are interpretation provisions relating to the categories of charges.

ACCOUNTS AND GROUP ACCOUNTS

Introductory Note

1298. The provisions in Schedule 6 to the August Bill, which related to accounts and group accounts, were based on the Ninth Schedule to the ICAC CAs. That Schedule is basically uniform in all jurisdictions except Tasmania, which has not introduced the accounts and audit amendments that other jurisdictions introduced around 1970 following the First Interim Report of the Eggleston Committee.

1299. It has now been decided that these provisions should be set out in Regulations to facilitate amendments to take account of changes in accounting standards etc.

1300. It is envisaged that the initial Regulations will be based on the ICAC CAs Ninth Schedule with the following amendments:-

- (a) particulars of income received, or due and receivable, as interest on debentures, deposits, loans or advances from "other persons" will also be required (based on ICAC CAS Ninth Schedule para 2(1)(b) as amended by this requirement.)
- (b) it will not be necessary to state whether any profit or loss on sale of assets (other than current assets, has been brought into account in determining the net

amount of the profit or loss of the company or of the company and its subsidiaries (cf. ICAC CAS Ninth Schedule paras 2(1)(c) and (f)).

- (c) particulars of the amount of debts on which interest or credit charges that is or are due has or have not been brought fully to account in the profit and loss account will be required (based on ICAC CAS Ninth Schedule 2(1)(j) as amended by this requirement).
- (d) it will not be necessary to disclose emoluments received by a non-resident director of the company from a holding company that is formed or incorporated outside Australia (cf. ICAC CAS Ninth Schedule para 2(1)(1)).
- (e) particulars of the nominal value of shares in the capital of the company in respect of which options are outstanding, the amount of premium (if any) payable in respect of those shares and particulars of the options will be required.
- (f) particulars of the amount of the discount at which preference shares are to be redeemed or are liable to be redeemed will now be required (based on ICAC CAS Ninth Schedule para 5(1)(b) as amended by this requirement).

- (g) the requirements on disclosure of stock on hand and work in progress in ICAC CAs Ninth Schedule paras. 5(4)(b) and (c) have been combined and expanded and will now require the disclosure, where appropriate, of raw materials, finished goods, work in progress and other stock.
- (h) particulars of options held over shares in the holding company, subsidiaries, other related corporations and other corporations will now be required.
- (i) the amounts of interest due from the holding company, subsidiaries, other related corporations and other person will be required to be disclosed if that interest has not been brought to account in the profit and loss account.
- j) particulars will be required in respect of:-
 - (i) loans made by the company of its subsidiaries or both to the trustee of a trust under which a director of the company of a related company or the spouse or other relative of such a director has a beneficial interest; and
 - (ii) such loans guaranteed or secured by the company or its subsidiaries or both.

Based on ICAC CAs Ninth Schedule para 5(4)(i) as amended by this requirement).

- (k) particulars of the extent to which each corporation in the group contributed to the consolidated profit or loss will be required (cf. ICAC CAs para 162A(2)(c)).
- (l) estimates will now also be required in the balance sheets of borrowing and guarantor corporations of amounts payable by, and debts payable to, the company within 1 year after the end of the financial year (based on ICAC CAs Ninth Schedule cl. 8 as amended by this requirement).
- (m) the name of a company's ultimate holding company and its country of incorporation will be required (cf. ICAC CAs s-sec 16ZA(5)).
- (n) the requirement to provide comparative figures in balance sheets and profit and loss statements has been modified to make clear that comparative figures also have to be provided in respect of notes to those documents (based on ICAC CAs Ninth Schedule cl 11 as amended by this requirement).

- (o) the requirement that unearned income be deducted from the gross amount of debts owing to the company or the company and its subsidiaries has been modified to also require the deduction of unearned income from each class of debt referred to in para 1300(1) of this ex memo (based on ICAC CAs Ninth Schedule s.cl 12(2) as amended by this requirement).

APPENDIX A

OFFENCES UNDER THE CB

1303. The offences under the CB can be analysed into the following groups:-

- A - serious offences relating to management of the company;
- B - offences relating to the raising of funds;
- C - offences relating to maintenance of capital;
- D - offences related to inspection procedures and special investigations;
- E - offences relating to breach of requirements arising from corporate status of company and less serious offences relating to management of company;
- F - offences relating to auditors and liquidators;
- G - offences relating to failure to comply with directions of the Supreme Court or of the NCSC;
- H - offences relating to the keeping of registers; and
- I - offences relating to the lodgment of documents or the provision of information to the public.

PART A : Serious offences relating to management of company

1304. Group A - Offences which carry penalty of \$20,000 or 5 years imprisonment or both.

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
229	229	124	DUTY AND LIABILITY OF OFFICERS
			(1) failing to act honestly in exercise of powers and discharge of duties where there is an intent to deceive or defraud the company, members or creditors or creditors of any other person
			(3) improper use of information acquired by virtue of position
			(4) improper use of position
230	230	125	LOANS TO DIRECTORS
			(5)(e) making a loan, giving a guarantee or providing security to a director or relative thereof with intent to deceive or defraud company members or creditors or creditors of any other person
276	276	164B	FAILURE TO COMPLY WITH THIS DIVISION
			(1)(b) acting in contravention of Part VI Div. 2 with intent to deceive or defraud members or creditors of the company or creditors of any other person

1305. Group B - Offences which carry penalty of \$10,000 or 2 years imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981 Bill	August CB ED	
554	554 374A	OFFENCES BY OFFICERS OF CERTAIN COMPANIES (1) failure to disclose information or to deliver property and books and concealing property, books or information
556	556 374C	OFFENCES RELATING TO INCURRING OF DEBTS OR FRAUDULENT CONDUCT (5) company acting with intent to defraud creditors of the company or creditors of another person
560	560 374FA	FALSIFICATION OF BOOKS (1) destruction or concealment of documents (2) offences in relation to computer records
561	561 374G	FRAUDS BY OFFICERS (a) by false pretences, inducing a person to give credit to the company (b) with intent to defraud the company, making a gift or transfer of or charge on property of the company

(c) with intent to defraud the company,
concealing or removing any part of the
property of the company

563 563 375 FALSE AND MISLEADING STATEMENTS

(1) advertising, issuing or publishing any
statement of the amount of capital that is
misleading or in which the amount of nominal
or authorized capital is stated without the
words "nominal or authorized", or in which
the amount of capital or authorized or
subscribed capital is stated, but the amount
of any charge on uncalled capital is not
stated

(2) making of false or misleading statement
or omission of matter without which document
is misleading

564 564 375A FALSE REPORTS

(1) furnishing reports relating to the
affairs of the corporation

1306. Group C - Offences which carry penalty of \$5000 or 1 years imprisonment or both.

	<u>Clause</u>			<u>Subject of offence</u>
1981	August			
Bill	CB	ED		
227	227	122		CERTAIN PERSONS NOT TO MANAGE CORPORATIONS (1) without court leave acting as director or promoter while an insolvent under administraton (2) without court leave acting a director or promoter within 5 years of conviction (4) failing to comply with limitations or conditions imposed by the Court when granti leave to manage a corporation.
230	230	125		LOANS TO DIRECTORS (8), (9) furnishing false certificate
499	449	343		PENALTIES failure by investment company to comply wi Part XIII Div. 2
554	554	374A		OFFENCES BY OFFICERS OF CERTAIN COMPANIES (5) receiving property knowing it to be pawned or pledged

- 555 555 374B LIABILITY WHERE PROPER ACCOUNTS NOT KEPT
(1) failing to comply with (CB cl. 267 during
the whole or any part of the relevant period
of 2 years
- 556 556 374C OFFENCES RELATING TO INCURRING OF DEBTS OR
FRAUDULENT CONDUCT
(1) offences relating to incurring of debts
when company unable to pay
- 562 562 374H COURT MAY DISQUALIFY PERSON FROM ACTING AS
DIRECTOR, &c., IN CERTAIN CIRCUMSTANCES
(3) (4) failing to comply with court order
disqualifying person from acting as director
- 563 563 375 FALSE AND MISLEADING STATEMENTS
(3) making a statement without having taken
reasonable steps to ensure statement true and
complete
- 564 564 375A FALSE REPORTS
(2) making or furnishing a statement or
report without having taken reasonable steps
to ensure statement true and complete

1307. Group D - Offences which carry penalty of \$5000

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
229	229	124	DUTY AND LIABILITY OF OFFICERS
			(1) failing to act honestly in exercise of powers and discharge of duties where there is no intent to deceive or defraud the company members or creditors of the company or creditors of any other person
			(2) failing to exercise the skill of a reasonably prudent person
276	276	164B	FAILURE TO COMPLY WITH THIS DIVISION
			1(a) failure by director to comply with Division 2 of Part VI where there is no intent to deceive or defraud the company or creditors of any other person.

PART B : Offences relating to the raising of funds

1308. Group A - Offences which carry penalty of \$20,000 or 5 years' imprisonment or both.

	<u>Clause</u>			<u>Subject of offence</u>
1981	August			
Bill	CB	ED		
96	96	37	FORMS OF APPLICATION FOR SHARES OR DEBENTURES TO BE ATTACHED TO PROSPECTUS (3) failing to issue prospectus with form of application for shares or debentures	
97	97	38	INVITATIONS OR OFFERS IN RELATION TO BORROWINGS BY A CORPORATION (10)(a) failing to comply with requirements that a prospectus be registered with the NCSC before any invitation or offer is made	
103	103	42	REGISTRATION OF PROSEPECTUSES (3) issuing unregistered prospectus	
108	108	47	CRIMINAL LIABILITY FOR UNTRUE STATEMENT OR NON-DISCLOSURE IN PROSPECTUS (1) issuing prospectus containing any untrue statement or non-disclosure	

174 174 86 PENALTY FOR BREACH OF CERTAIN PROVISIONS OR
CONVENANTS

(1) failing to comply with certain section
or with a covenant in an approved deed

1309. Group B - Offences which carry penalty of \$5000 or 1
year's imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	

105 105 44 ALLOTMENT OR ISSUE OF SHARES OR DEBENTURES
WHERE PROSPECTUS INDICATES APPLICATION FOR
QUOTATION ON STOCK MARKET
(8) issuing a prospectus containing untrue
statement re permission for quotation on
stock market

1310. Group C - Offences which carry penalty of \$2500 or 6
months' imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	

97 97 38 INVITATIONS OR OFFERS IN RELATION TO
BORROWINGS BY A CORPORATION
(10)(b) issuing invitation without having

registered prospectus or failing to issue
document acknowledging indebtedness

98 98 39

CONTENTS OF PROSPECTUSES

(7) issue of prospectus which does not
comply with requirements of the Act

99 99 40

CERTAIN NOTICES, &c., NOT TO BE PUBLISHED

(7) publishing notices offering for
subscription or purchase shares in or
debentures of a corporation or proposed
corporation

100 100 40A

CERTAIN REPORTS REFERRING TO PROSPECTUSES NOT
TO BE PUBLISHED

(6) publishing reports which are reasonably
likely to induce persons to apply for shares
or debentures referred to in issued or
pending prospectuses

102 102 41

RETENTION OF OVER-SUBSCRIPTIONS IN DEBENTURES
ISSUES

over-subscription cannot be accepted or
retained unless the right to accept or retain
has been expressly reserved (fine only)

105 105 44

ALLOTMENT OR ISSUE OF SHARES OR DEBENTURES
WHERE PROSPECTUS INDICATES APPLICATION FOR
QUOTATION ON STOCK MARKET

(6) failing to keep money received pursuant

to prospectus in separate bank account
(7) failing to comply with undertaking
to stock exchange

106 106 45 EXPERT'S CONSENT TO ISSUE OF PROSPECTUS
CONTAINING STATEMENT BY HIM
(2) issuing prospectus with statement by
expert where his consent not given

110 109 48 PROHIBITION OF ALLOTMENT UNLESS MINIMUM
SUBSCRIPTION RECEIVED
(6) failing to repay money received from
applicants for shares (without interest)
within 7 days of becoming liable to do so
(12) allotting shares or debentures on the
basis of a prospectus after the expiration
6 months from the issue of the prospectus

111 110 49 APPLICATION MONEYS TO BE HELD IN TRUST UPON
ALLOTMENT
(2) failing to keep application moneys in
separate bank account upon trust for the
applicant

152 152 74 QUALIFICATIONS OF TRUSTEE FOR DEBENTURE
HOLDERS
(9) failure to appoint trustee for debenture
holders

154 154 74B CONTENTS OF TRUST DEED
(5)&(6) (5) failure to express in debenture or trust deed limitation on amount that borrowing corporation may borrow

552 552 374 RESTRICTION ON OFFERING SHARES, DEBENTURES, &c., FOR SUBSCRIPTION OR PURCHASE
(10) making an offer (in writing) of shares for purchase without prescribed statement or prospectus, or going from place to place offering shares for subscription or purchase

1311. Group D - Offences which carry penalty of \$1000 or 3 months imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
B111	CB ED	
101	101 40B	EVIDENTIARY PROVISIONS, &c. (4) failing to deliver to the NCSC the certificate specifying directors' names or exempting a notice from application of s-cl. 99(4) or 100(4).

1312. Group E - Offences which carry penalty of \$500.

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
110	109	48	PROHIBITION OF ALLOTMENT UNLESS MINIMUM SUBSCRIPTION RECEIVED (1) making allotment where minimum subscription not subscribed or where sum payable not received

PART C : Offences relating to maintenance of capital

1313. Group A - Offences which carry penalty of \$10,000 or 2 years imprisonment or both.

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
123	123	64	SPECIAL RESOLUTION FOR REDUCTION OF SHARE CAPITAL (11) concealment of name of creditor entitled to object to a reduction in the share capital of the company or misrepresentation of nature or amount of the debt or claim of any creditor of the company
129	129	67	COMPANY FINANCING DEALINGS IN ITS SHARES, &c. (5) giving financial assistance in connection with acquisition of shares
565	565	376	DIVIDENDS PAYABLE FROM PROFITS ONLY (2) paying dividend out of an amount which is known not to be profits.

1314. Group B - Offences which carry penalty of \$1000 or months imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB	ED
116	116	57A
		RESTRICTION ON APPLICATION OF CAPITAL OF COMPANY
		(3) applying shares or capital money either directly or indirectly in making a payment to a person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company

PART D : Offences related to inspection procedures and special investigations

1315. Group A - Offences which carry penalty of \$20,000 or 5 years imprisonment or both.

<u>Clause</u>			<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
310	310	179A	CONCEALING, &c., OF BOOKS OF CORPORATION (1) concealing, destroying, mutilating or altering books of a corporation under investigation

1316. Group B - Offences which carry penalty of \$10,000 or 2 years imprisonment or both.

<u>Clause</u>			<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
14	14	74A	OFFENCES (1) refusing or failing to furnish information (2) furnishing information or making a statement that is false or misleading in a material particular

- (3) (4) obstructing or hindering the NCSC or person executing a warrant

296 296 174 EXAMINATION OF OFFICERS

- (2) failing to produce books or give assistance
(3) furnishing information that is false misleading in material particular
(4) making a statement that is false or misleading in a material particular

541 541 367A EXAMINATION OF PERSONS CONCERNED WITH CORPORATIONS

- (6) failing to attend before the Court
(7) refusing to take an oath or make an affirmation
(8) refusing or failing to answer a question
(9) refusing or failing to produce books
(11) making a false or misleading statement

1317. Group C - Offences which carry penalty of \$2,500 or months imprisonment or both.

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	
14	14 7AA	OFFENCES

- (5) occupier or person in charge of premises

failing to provide all reasonable facilities
and assistance to person executing a warrant

311 311 179B POWER OF COMMISSION TO MAKE CERTAIN ORDERS
(4) failing to comply with order of the
NCSC in relation to an investigation

1318. Group D - Offences which carry penalty of \$1000 or 3
months imprisonment of both.

	<u>Clause</u>	<u>Subject of offence</u>
1981 Bill	August CB ED	
16	16 7B	PRIVILEGE (1) failing to furnish Commission with name of person to whom or by whom communication made
296	296 174	EXAMINATION OF OFFICERS (5) refusing to take an oath or make an affirmation
298	298 176	RECORD OF EXAMINATION (4) non-compliance by interviewee with conditions attached to receiving copy of record of examination

(7) improper use of record of examination
legal practitioner

(9) non-compliance by any other person with
conditions attached to receiving copy of
record of examination

308 308 178B PRIVILEGED COMMUNICATIONS
failing to furnish name and address of person
to whom or by whom communication made

PART E : Offences relating to breach of requirements arising from corporate status of company and less serious offences relating to management of company

1319. Group A - Offences which carry penalty of \$2500 or 6 months imprisonment or both.

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
175	175	87	WINDING UP OF SCHEMES, &c. (1) failing to call meeting where management company is in liquidation or has ceased to carry on business (fine only) (4) failing to apply to the Court for an order confirming a resolution of the holders of prescribed interest (fine only)
198	199	99L	OFFENCES fixing stamp to instrument that does not relate to sale, executing and lodging instruments that are not sufficient instruments of transfer
233	233	129	PAYMENTS FOR LOSS OF OR RETIREMENT FROM OFFICE failure to disclose to members

particulars of compensation to
directors for loss of, or retirement
from, office

267	267	161A	ACCOUNTS TO BE KEPT
	(11)		(11) failure to keep accounts and to have them available for inspection
375	375	234	STATEMENT OF COMPANY'S AFFAIRS TO BE SUBMITTED TO LIQUIDATOR
	(9)		(10) failing to submit statement of company's affairs to liquidator

1320. Group B - Offences which carry penalty of \$1000 or 3
months imprisonment or both

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	
71	71	27
		DEFAULT IN COMPLYING WITH REQUIREMENTS AS PROPRIETARY COMPANIES
		(7) arranging any subscription for shares or debentures of or any deposit of money w a proprietary company through a solicitor, broker, agent or any other person who invi the public to make use of his services in arranging investments or holds himself out the public as being in a position to arran investments

(8) failing to comply with any restriction, limitation or prohibition of a kind specified in s-cl. 34(1) that is included or deemed to be included in the memorandum or articles

144 144 69L OFFENCES AGAINST CERTAIN SECTIONS

failure by substantial share holder to give notice of his interests (cl. 137) of changes in his interests (cl. 138) and of ceasing to be substantial shareholder (cl. 139).

146 146 69N POWERS OF COURT WITH RESPECT TO DEFAULTING
SUBSTANTIAL SHAREHOLDER

(10) contravention of or failure to comply with court order

(11) where offence under (11) committed by corporation, officer in default guilty of an offence

218 218 113 PUBLICATION OF NAME

(1) failure by company to have its name on seal, stationery, &c. (fine only)

(2) use or issue of stationery &c. on which company's name does not appear (fine only)

(4) failure by company to have its name and "Registered Office" (if applicable) on outside of every office (fine only)

- 222 222 117 VACATION OF OFFICE
(5) a person whose office is vacated
purporting to act as a director
- 230 230 125 LOANS TO DIRECTORS
(5)(d) making a loan, giving a guarantee c
providing security to a director or relati
thereof (no intent to deceive or defraud t
company)
- 232 232 127 GENERAL DUTY TO MAKE DISCLOSURE
failure to disclose particulars relating t
shares &c, and changes thereto, and to giv
notice of birth date
- 240 240 136 ANNUAL GENERAL MEETING
(9) failing to hold annual general meetin
or to comply with conditions imposed by
Commission
- 253 253 148 MINUTES OF PROCEEDINGS
(4) failing to keep minutes of all
proceedings of general meetings and of
meetings of directors and of executive
officers

- 261 261 156A POWER OF COMPANY TO OBTAIN INFORMATION AS TO
BENEFICIAL OWNERSHIP OF ITS SHARES
(6) failing to comply with a notice from
company requiring particulars of persons with
relevant interests
- 274 274 164 MEMBERS OF COMPANY ENTITLED TO BALANCE-SHEET,
&c.
(1) failing to send accounts and statements
to persons entitled to receive notice of
general meetings (fine only)
(2) failing to comply with request to supply
past accounts and statements (fine only)
- 327 327 192 STATEMENT THAT RECEIVER APPOINTED
(2) failing to have statement on business
documents that a receiver, or a receiver
and manager, as the case may be, has been
appointed (fine only)
- 335 335 199 POWER OF COMPANY TO CALL MEETING OF CREDITORS
TO APPOINT OFFICIAL MANAGER
from (16), (17) & (18)
(1) failing to call meeting of
creditors to appoint official manager
(4) failing to prepare statement of
affairs
(5) failing to furnish certificate

(6) failing to give grounds for belief that statement does not give a true fair view of the company's affairs

(7) furnishing certificate without making reasonable inquiries

(10) failing to attach summary and certificates to notice, to notify that statement available for inspection or that request can be made for a copy, failing to comply with such a request

(15) failing to lodge copy of notice of meeting with certified copy of statement of affairs attached

336 336 200 STATEMENT OF AFFAIRS OF COMPANY TO BE
SUBMITTED TO MEETING OF CREDITORS OF COMPANY
(3) failing to appoint director to attend
meeting of creditors or to submit statement
of company's affairs

356 356 213 NOTIFICATION THAT CORPORATION IS UNDER
OFFICIAL MANAGEMENT
(1) failing to have "under official
management" on all business documents

398 398 260 MEETING OF CREDITORS
from (4)
(1) failing to convene meeting of
creditors

- (2) failing to give 7 days' notice of meeting, to send statement of affairs
- (4) failing to present full statement and lodge copy of statement with Commission and to appoint director to attend meeting
- (5) failure by director and secretary to attend and disclose affairs of the company

424 424 283 NOTIFICATION THAT A CORPORATION IS IN LIQUIDATION

- (2) failing to have "in liquidation" on business documents

508 508 343E NAME OF RECOGNIZED COMPANY OR RECOGNIZED FOREIGN COMPANY TO BE APPROVED

- (3) carrying on business with unapproved name or with name other than approved name

509 509 343F OBLIGATION OF RECOGNIZED COMPANY OR RECOGNIZED FOREIGN COMPANY TO EXHIBIT NAME

- (1) failing to have name on business documents and failing to disclose whether liability is limited (fine only)
- (2) improper use of stationary etc on which company's name does not appear (fine only)
- (4) failure to disclose place of incorporation and "Principal office" (fine only)

- 517 517 350 OBLIGATION TO EXHIBIT NAME OF FOREIGN
COMPANY, &c.
- (1) failing to exhibit name and to have name
on business documents
- (2) improper use of stationary etc on which
company's name does not appear (fine only)
- (4) failure to disclose place of
incorporation and "Principal office" (fine
only)
- 566 566 377 RESTRICTION ON USE OF WORDS "LIMITED" AND
"NO LIABILITY"
- using "Limited" or "No Liability" in name
where not incorporated with limited or no
liability

1321. Group C - Offences which carry penalty of \$500

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	
33	33 14	FORMATION OF COMPANIES
		(3) forming an association or partnership consisting of more than 20 persons that has for its object the acquisition of gain which is not incorporated or formed pursuant to another Act or letters patent

- | | | | |
|-----|-----|-----|---|
| 72 | 72 | 27A | (4) failing to lodge, within 14 days, copy of any document altering the memorandum of a company |
| 82 | 82 | 36 | PROHIBITION OF CARRYING ON BUSINESS WITH FEWER THAN STATUTORY MINIMUM NUMBER OF MEMBERS

(1) proprietary company carrying on business for more than 6 months with less than 2 members and any other company carrying on business for more than 6 months with less than 5 members |
| 88 | 88 | 36F | ALTERATIONS TO CONSTITUENT DOCUMENTS OF FOREIGN CORPORATIONS

(1), (2) and (3) (8) failing to make necessary alterations to constituent documents, to use the same rate to convert amounts of money to Australian currency, and to apply to the Court for approval of the altered constituent documents when directed to do so by the Commission. |
| 128 | 128 | 66 | RIGHTS OF HOLDERS OF PREFERENCE SHARES TO BE SET OUT IN MEMORANDUM OR ARTICLES

(2) allotting preference shares or converting shares to preference share where the rights of holder of those shares are not set out in the articles or memorandum |

180	180	92	CERTIFICATE TO BE EVIDENCE OF TITLE (4) issuing a certificate not under the common seal of the company and not containing required particulars
188	188	99	DUTIES OF COMPANY WITH RESPECT TO ISSUE OF CERTIFICATES (3) failing to have documents relating to allotment of shares or issue of debentures read within a specified time and failing to send them to the relevant person (4) failing to comply with court order directing company to make good any default
219	219	114	DIRECTORS (5) public company failing to have at least 3 directors, at least 2 being natural persons ordinarily residing in Australia, and proprietary company failing to have at least 1 director, at least one being a natural person ordinarily residing in Australia
228	228	123	DISCLOSURE OF INTERESTS IN CONTRACTS, PROPERTY, OFFICE &c. failure by director to disclose interests in contracts, property, offices, &c.

235 235 131 POWERS TO REQUIRE DISCLOSURE OF DIRECTORS'
EMOLUMENTS .

(2) failing to prepare audited statement showing total amount of directors' emoluments, to convene a general meeting, to send a copy of the statement to every person entitled to receive notice of general meetings and to lay the statement before the general meeting

236 236 132 SECRETARY

(8) failing to have at least one secretary being a natural person ordinarily resident in the Territory appointed by the directors; secretary failing to be present at registered office; secretary acting as director and secretary where Act requires thing to be done by director and secretary

239 239 135 STATUTORY MEETING AND STATUTORY REPORT

(10) failure to hold statutory meeting and to present statutory report

245 245 141 PROXIES

(5) in the case of a public company having a share capital, failing to include in notice convening a meeting a statement that a member entitled to attend and vote is entitled to appoint not more than 2 proxies, that where

more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights and that a proxy need not be a member, and, in the case of a public company not having a share capital, failing to include a statement that a member entitled to attend and vote is entitled to appoint a proxy and that the proxy must or need not be a member (as the case requires)

(6) sending notice re proxies to some members only

247	247	143	CIRCULATION OF MEMBERS' RESOLUTIONS, &c. (7) failing to circulate copy of resolution and statement relating thereto
315	315	181	POWER TO COMPROMISE WITH CREDITORS AND MEMBERS (13) (16) failing to annex copy of court order approving compromise or arrangement to every copy of memorandum or constituent documents (15) (17) failing to instruct accountants or solicitors or both to report on the proposal and to make the report available for inspection

316 316 182 INFORMATION AS TO COMPROMISE WITH CREDITORS
OR MEMBERS

failing to provide explanatory statement of
compromise

318 318 185 ACQUISITION OF SHARES OF SHAREHOLDERS
DISSENTING FORM SCHEME OR CONTRACT APPROVED
BY MAJORITY

(10) failing to keep sums received in
separate bank account in trust for the
persons entitled to shares

328 328 193 PROVISION AS TO INFORMATION WHERE RECEIVER
APPOINTED

(1) failing to serve on the company notice
of appointment as receiver; failing to make
out and submit to receiver a statement as to
affairs of the company; failing to lodge copy
of statement and any necessary comments on
statement, to send company copy of comments
(if any) or notice that there are not comments
and in particular circumstances to send
trustees copy of statement and comments

(3) failing to lodge copy of notice given by
receiver or copy of court order

- 329 329 194 SPECIAL PROVISIONS AS TO STATEMENT SUBMITTED
TO RECEIVER
- (1) failing to include specified information
in statement required by cl. 328
- (2) failing to have statement verified by
statutory declaration
-
- 342 342 203A SIX MONTHLY MEETINGS OF CREDITORS AND MEMBERS
- (1) failing to prepare statement of assets
and liabilities of the company and a report
to convene a meeting of creditors and members
to consider the statement and report and to
cause the statement and report to be laid
before the meeting
- (4) failing to comply with meeting notice
requirements
- (5) failing to send notice to creditors and
members that statement of assets and
liabilities has been prepared
- (5) failing to keep copies of statement and
report and to have them available for
inspection
- (6) failing to lodge notice of holding of
meeting together with a copy of each
statement and report

347 347 206

DUTIES OF OFFICIAL MANAGER

- (1) failing to take into custody or under control property of company, to conduct business and management of company in manner most beneficial to interests of members and creditors, to comply with certain directions of creditors, to comply with requirements of Act relating to keeping of accounts and lodging of annual returns, to perform all other duties imposed on company or directors, under specified circumstances to convene a meeting of creditors or a meeting of members
- (3) failing to convene meeting of members to consider voluntary winding up where continuance of official management will not enable company to pay its debts
- (4) failing to convene meeting of creditors where meeting convened under sub-s. (3), to send notices to creditors and members on the same day
- (5) failing to lay before creditors full statement of company's affairs and list of creditors
- (11) failing to lodge notice of the holding of meetings and to lodge sub-s. (5) statement

410 410 271 ANNUAL MEETING OF CREDITORS

- (1) where winding up continues for more than one year, failing to convene general meeting of the company in case of members' voluntary winding up) or general meeting of company & meeting of creditors (in case of creditors' voluntary winding up) within 3 months of the end of the first year from commencement of winding up and the end of each succeeding year and failing to lay before meeting or meeting an account of acts and dealings
- (2) failing to send notices to creditors & members simultaneously

411 411 272 FINAL MEETING AND DISSOLUTION

- (1) failing to prepare account and convene meeting(s)
- (2) failing to comply with meeting notice requirements
- (3) failing to lodge return of the holding of the meeting(s) with copy of account attached
- (4) where applicable failing to lodge return with account attached stating that meeting duly convened and no quorum present
- (7) failing to lodge office copy of court order

- 479 479 323 FORFEITURE OF SHARES
- (1) failing to offer shares for sale by public auction
 - (2) failing to advertise sale in prescribed manner
 - (6) failing to apply proceeds of sale in specified manner
- 512 512 346 UNREGISTERED FOREIGN COMPANY NOT TO ESTABLISH PLACE OF BUSINESS OR CARRY ON BUSINESS IN THE TERRITORY
- (1) foreign company carrying on business where not registered
- 520 520 353 RESTRICTION ON USE OF CERTAIN NAMES
- (5) using a name other than that under which it is registered
- 527 527 361 PENALTIES
- the penalty for contravention of the Division is \$500 except where a penalty or punishment is expressly mentioned
- 567 567 378 RESTRICTION ON USE OF "PROPRIETARY"
- using word "Proprietary" where requirements of proprietary companies not fulfilled.

PART F : Offences relating to auditors and liquidators

1322. Group A - Offences which carry penalty of \$10,000 or 2 years imprisonment or both

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
286	286	167AA	OBSTRUCTION OF AUDITOR
			refusing or failing to allow auditor of corporation or of holding company to have access to records

1323. Group B - Offences which carry penalty of \$1000 or 3 months imprisonment or both

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
417	417	277A	DISQUALIFICATION OF LIQUIDATORS
			person not registered as liquidator accepting appointment as liquidator or person accepting appointment as liquidator when not entitled to do so

559 559 374F INDUCEMENT TO BE APPOINTED LIQUIDATOR OR
OFFICIAL MANAGER
giving or agreeing to give valuable
consideration to secure own appointment or
prevent appointment of another

1324. Group C - Offences which carry penalty of \$500

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB ED	
267	267 161A	ACCOUNTS TO BE KEPT (10) disclosing to a person other than a director information acquired in the course of an inspection
277	277 165	QUALIFICATIONS OF AUDITORS (1) a person consenting to be auditor when not a registered auditor or when otherwise disqualified (2) a firm consenting to be auditor when not qualified (11) where a firm consents to be appointed or acts as auditor of a company or prepares a report required by the Act to be prepared by a registered company auditor or by an auditor of a company each member for the firm is guilty of an offence

(16) wilfully disqualifying self or firm

280 280 166 APPOINTMENT OF AUDITORS

- (1) failing to appoint auditor within one month of incorporation
- (3) failing to appoint auditor at annual general meeting or to fill vacancies
- (5) failing to fill vacancy
- (7) appointing person or firm that has not consented to appointment

281 281 166A NOMINATION OF AUDITORS

- (1) appointing auditor where no notice or insufficient notice given
- (3) failing to send copy of notice to each person nominated, to each auditor of the company and to each person entitled to receive notice of general meetings

282 282 166B REMOVAL AND RESIGNATION OF AUDITORS

- (2) failing to advise auditor and Commission that resolution to remove auditor has been passed
- (4) failing to send copy of auditor's representations to persons requested
- (5) failing to lodge notice of removal of auditor with the Commission

285 285 167 POWERS AND DUTIES OF AUDITORS AS TO REPORTS
ON ACCOUNTS

- (1) failing to report on accounts
- (2) failing to furnish report in prescribed time
- (3) failing to set out particulars in report
- (4) failing to state particulars of any deficiency, failure or shortcoming
- (5) failing to give auditor books or information
- (6) failing to give auditor books or information relating to subsidiaries
- (7) failing to attach auditors' report to accounts and to have it open for inspection
- (8) failing to give auditor notice of meeting
- (9) failing to inform Commission of default
- (10) failing to report to Commission

287 287 167A SPECIAL PROVISIONS RELATING TO BORROWING AND
GUARANTOR CORPORATIONS

- (1) failing to send copy of report or document to every trustee for the holders of debentures of the borrowing corporation
- (2) failing to send report to corporation and to trustee

- 330 330 195 LODGING OF ACCOUNTS OF RECEIVERS
(1) failing to lodge account in prescribed form
(2) failing to lodge accounts at least a year
- 342 342 203A SIX-MONTHLY MEETING OF CREDITORS AND MEMBERS
(10) auditor failing to supply official manager with statement
- 375 375 234 STATEMENT OF COMPANY'S AFFAIRS TO BE SUBMITTED TO LIQUIDATOR
(7) liquidator failing to file copy of statement with Court and to lodge copy of statement with Commission and failing to file copy of notice to Commission
- 380 380 238 PAYMENT BY LIQUIDATOR INTO BANK
(3) paying money into an account or bank other than an account or bank prescribed or specified under sub-s. (1)
- 416 416 277 BOOKS TO BE KEPT BY LIQUIDATOR
failing to keep proper books or to allow creditor or contributory to inspect them

425 425 284 BOOKS OF COMPANY

(2) destroying books within 5 years of the date of dissolution of the company

455 455 298 EXECUTIONS, ATTACHMENTS, &c., BEFORE WINDNG UP

(1) failing to pay to liquidator an amount equal to the amount (if any) received as a result of the execution less the taxed costs thereof

PART G: Offences relating to failure to comply with direction
order

1325. Group A - Offences which carry penalty of \$5000 or 1
years imprisonment or both

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
31	31	12	REGISTERS
			(13) failing to comply with court order t make good a default

1326. Group B - Offences which carry penalty of \$500

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
65	65	23	CHANGE OF NAME
			(3) failing to comply with direction from NCSC to change name
265	265	160	EXEMPTION OF CERTAIN COMPANIES
			(3) failing to comply with order of the 1

PART H : Offences relating to the keeping of registers

1327. Group A - Offences which carry penalty of \$500

	<u>Clause</u>		<u>Subject of offence</u>
1981	August		
Bill	CB	ED	
131	131	67B	REGISTER OF OPTIONS (7) failing to keep a register of options granted to persons to take up unissued shares in the company
143	143	143	COMPANY TO KEEP REGISTER OF SUBSTANTIAL SHAREHOLDERS (4) failing to keep a register of substantial shareholders
147	147	70	REGISTER OF DEBENTURE HOLDERS AND COPIES OF TRUST DEED (10) failing to keep a register of holders of debentures
172	172	84	REGISTER OF HOLDERS OF PRESCRIBED INTERESTS (1) failing to keep a register of the holders of prescribed interests

210	210	110A	COMPANY TO KEEP DOCUMENTS RELATING TO CHA AND REGISTER OF CHARGES (5) failing to keep register of charges
231	231	126	REGISTER OF DIRECTORS' SHAREHOLDINGS, &c. (12) failing to keep a register of directors' shareholdings &c.
238	238	134	REGISTER OF DIRECTORS, EXECUTIVE OFFICERS SECRETARIES (8) failing to keep a register of direct executive officers and secretarties
256	256	151	REGISTER AND INDEX OF MEMBERS (7) failing to keep a register of members
261	261	156A	POWER OF COMPANY TO OBTAIN INFORMATION AS BENEFICIAL OWNERSHIP OF ITS SHARES (7) failing to enter in separate part of register the name of each person who has a relevant interest in shares
262	262	157	BRANCH REGISTERS (9) failing to keep branch register
521	521	354	BRANCH REGISTER OF SHARES IN FOREIGN COMPA (5) failing to keep a branch register for the purpose of registering shares of membe resident in the ACT

544 544 369 FORM AND EVIDENTIARY VALUE OF BOOKS
(3) failing to take all reasonable precautions for guarding against damage to or falsification of any book required to be kept

546 546 370A LOCATION OF BOOKS KEPT ON COMPUTERS, &c
(2) failing to keep available for inspection at a place where books of a company are required to be kept, record of those matters which are not kept in written form.

547 547 370B LOCATION OF REGISTERS
(3) failing to keep books in specified places
(4) failing to notify NCSC of place where register kept or of change of place

PART I : Offences relating to the lodgment of documents or the provision of information to the public

1328. Group A - Offences which carry penalty of \$500

	<u>Clause</u>	<u>Subject of offence</u>
1981	August	
Bill	CB	ED
71	71	27
		DEFAULT IN COMPLYING WITH REQUIREMENTS AS TO PROPRIETARY COMPANIES
		(6) failing to lodge an office copy of an order determining that a company has ceased to be a proprietary company
72	72	27A
		GENERAL PROVISIONS AS TO ALTERATION OF MEMORANDUM
		(2) failing to lodge a copy of a resolution an office copy of an order or a copy of a document which affects the memorandum and a printed copy of the memorandum as altered
74	74	29
		ARTICLES OF ASSOCIATION
		failing to register articles complying with requirements of CB

- 79 79 34 COPIES OF MEMORANDUM AND ARTICLES
(5) failing to supply member with copy of memorandum and articles; to issue memorandum or articles as altered; to lodge copy of articles as altered; and to issue or lodge memorandum or articles with agreement attached
- 112 112 54 RETURN AS TO ALLOTMENTS
(7) failing to lodge a return of any allotment specifying certain matters and to lodge a copy of certain contracts
- 120 120 61 REDEEMABLE PREFERENCE SHARES
(8) failing to lodge notice specifying that shares redeemed
- 124 124 64A COMMISSION TO BE INFORMED OF SPECIAL RIGHTS CARRIED BY, OR DIVISION OR CONVERSION OF, SHARES
(3) failing to lodge statement containing particulars of rights attached to shares or to lodge a return in the prescribed form showing particulars of division or conversion
- 125 125 65 RIGHTS OF HOLDERS OF CLASSES OF SHARES
(7) failing to lodge office copy of court order

- 153 153 74A RETIREMENT OF TRUSTEES
(6) failing to lodge notice in the
prescribed form of the appointment of a
successor to a trustee
- 158 158 74F OBLIGATIONS OF BORROWING CORPORATION
(1) failing to lodge report with trustee a
copy with Commission
(2), (3) failing to include certain
particulars in report
(4) failing to furnish particulars of any
charge
(5) failing to lodge profit and loss account
and balance-sheet
- 159 159 74G OBLIGATION OF GUARANTOR CORPORATION TO
FURNISH INFORMATION
(2) failure by guarantor corporation to
furnish borrowing corporation with
information
- 166 166 78 APPROVAL OF DEEDS
(3) failure to lodge deed or copy of deed
verified by statutory declaration
- 172 172 84 REGISTER OF HOLDERS OF PRESCRIBED INTEREST
(3) failing to make copy of register
available for inspection

- 185 185 97 NOTICE OF REFUSAL TO REGISTER TRANSFER
(3) failing to send transferee notice of refusal to register transfer
- 206 207 108 ASSIGNMENT AND VARIATION OF CHARGES
(1) new chargee failing to lodge a notice that he has become chargee and failing to give copy of notice to company
(2) failing to lodge a notice setting out particulars of any variation increasing the amount of the debt or extending the obligations secured by a charge and failing to lodge instrument effecting the variation or a copy thereof
- 207 208 109 SATISFACTION OF, AND RELEASE OF PROPERTY FROM, CHARGES
(1) failing to give company a memorandum acknowledging that the debt or other obligation has been satisfied in whole or in part or that the property or a part of it is no longer subject to the charge
- 208 209 110 PERSONS WHO MAY LODGE NOTICES
(2) where document lodged by person other than company concerned, failure by that person to give copy of documents to company
(3) failing to advise Commission of assignment of a charge

- 216 216 111 REGISTERED OFFICE OF COMPANY
- (2) failing to have registered office and/or to have office open and accessible to the public during prescribed times
- 217 217 112 NOTICE OF ADDRESS OF REGISTERED OFFICE AND OFFICE HOURS
- (1) failing to lodge notice in the prescribed form of the full address of the proposed registered office of the company including room number and building floor
- (3) failing to lodge notice of change of address 7 days before change occurs
- (4) where notice of hours lodged, failing to lodge notice of change of hours 7 days before change occurs
- 220 220 115 RESTRICTIONS ON APPOINTMENT OR ADVERTISEMENT OF DIRECTOR
- (1) naming person as director where consent not lodged
- (4) failing to lodge with the memorandum a list of the persons who have consented to be directors or lodging an incorrect list
- 244 244 140 QUORUM, CHAIRMAN, VOTING, &c., AT MEETINGS
- (7) failing to lodge copy of minute relating to a notice, resolution or other documents as required by the CB.

251 251 146 REGISTRATION AND COPIES OF CERTAIN
RESOLUTIONS AND AGREEMENTS
(3) failing to lodge copy of resolution or
agreement or to supply copy to member

254 254 149 INSPECTION OF MINUTE BOOKS
failing to keep minute books at an approved
place, to have them available for inspection
or to provide copies

257 257 153 INSPECTION AND CLOSING OF REGISTER
(4) failing to have register and index of
members available for inspection or to
provide copies

263 263 158 ANNUAL RETURN
(3) failing to lodge annual return containing
list of members and accompanied by prescribed
documents

264	264	159A	AUDITOR'S STATEMENT (3) failure by company that is not required to lodge accounts to include in or attach its annual return a statement relating to accounts of the company signed by the auditor
317	317	183	PROVISIONS FOR FACILITATING RECONSTRUCTION AND AMALGAMATION OF COMPANIES (3) failing to lodge office copy of Court order
320	320	186	REMEDY IN CASES OF OPPRESSION OR INJUSTICE (6) failing to lodge office copy of Court order
326	326	191	NOTIFICATION OF APPOINTMENT OF RECEIVER (3) failing to lodge notice of appointment of receiver or notice of receiver's ceasing to act as such
338	338	202	POWER OF CREDITORS TO PLACE COMPANY UNDER OFFICIAL MANAGEMENT (3) failing to lodge notice of passing of resolution to place company under official management, to send notice thereof to creditors and members and to cause notice that the company has been placed under official management to be published in the <u>Gazette</u>

(6) failing to lodge copy of court order terminating appointment of official manager and appointing a registered company auditor as official manager

340 340 202B NOTICE OF APPOINTMENT AND ADDRESS OF OFFICIAL MANAGER

(3) failing to lodge notice of appointment as official manager, of address or change of address and of resignation or removal from office

344 344 203C POWER TO EXTEND PERIOD OF OFFICIAL MANAGEMENT

(4) failing to lodge copy of resolution

354 354 211A LODGMENT OF OFFICE COPY OF COURT ORDER

(2) failing to lodge notice of the making of court order and office copy of court order

355 355 212 TERMINATION OF APPOINTMENT AND RELEASE OF OFFICIAL MANAGER

(7) failing to give notice or sufficient notice to official manager

(8)(a) and (9)(a) failing to prepare report showing how official management conducted

(8)(b) and (11) failing to give explanations

(8)(c) and (12) failing to lodge notice of the holding of meeting together with a copy of the report

(9)(b) failing to convene meeting of creditors

(10) failing to give notice or sufficient notice to creditors

(13) and (14) (where applicable) failing to lodge notice that meeting not held on the day for which it was convened

(13) failing to lodge office copy of court order

357	357	214	FUNCTIONS OF COMMITTEE OF MANAGEMENT AND APPOINTMENT OF DEPUTY OFFICIAL MANAGER
			(4) failing to lodge notice of appointment as deputy official manager, of address or change of address
			(5) failing to lodge notice of ceasing to be deputy official manager
			(6) failing to comply with direction from committee of management

370	370	230	CERTAIN NOTICES TO BE LODGED WITH COMMISSION
			(3) failing to lodge notice of application for winding up, of making of order or of withdrawal or dismissal of application and failing to lodge office copy of order, serve office copy on executive officer and deliver office copy to liquidator together with statement that order has been served.

- 374 374 233 CUSTODY AND VESTING OF COMPANY'S PROPERTY
(3) failing to lodge office copy of court order
- 382 382 240 AS TO ORDERS FOR RELEASE OR DISSOLUTION
(5) failing to lodge office copy of court order
- 383 383 243 POWER TO STAY OR TERMINATE WINDING UP
(5) failing to lodge office copy of court order
- 392 392 254 CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP VOLUNTARILY
(3) failing to lodge copy of resolution for voluntary winding up and to cause notice of the resolution to be published in the Gazette
- 397 397 259 DUTY OF LIQUIDATOR TO CALL CREDITORS' MEETING IN CASE OF INSOLVENCY
(1) failing to convene meeting of creditors
(2) failing to send notice of meeting accompanied by statement showing names of all creditors and the amounts of their claims
(4) failing to submit statement of assets and liabilities
(7) failing to lodge notice in prescribed form



411 411 272 FINAL MEETING AND DISSOLUTION

- (1) failing to prepare account and to hold meeting
- (2) failing to advertise meeting in Gazette
- (3) failing to lodge a return of the holding of the meeting with a copy of the account attached
- (4) (where applicable) failing to lodge a return with account attached stating that meeting duly convened but no quorum present
- (7) failing to lodge office copy of order deferring date of dissolution

421 421 280 NOTICE OF APPOINTMENT AND ADDRESS OF LIQUIDATOR

- (1) failing to lodge notice of appointment as liquidator, of address or change of address
- (2) failing to lodge notice of resignation or removal from office

422 422 281 LIQUIDATOR'S ACCOUNTS

- (1) failing to lodge in the prescribed form and verified by statutory declaration an account of receipts and payments and a statement of the position in the winding up

- (2) failing to furnish auditor with required books and information
- (3) failing to keep account and have it available for inspection
- (4) failing to give notice that account made up and available for inspection

458 458 307 POWER OF COURT TO DECLARE DISSOLUTION OF
COMPANY VOID

- (2) failing to lodge office copy of order declaring dissolution to be void

503 503 343AD NOTICE TO BE LODGED OF CESSATION OF BUSINESS
IN PARTICIPATING STATE OR TERRITORY
failing to lodge notice of cessation of
business

513 513 346A REGISTERED OFFICE OF REGISTERED FOREIGN
COMPANY
(1) failing to have registered office and/or
to have office open and accessible to the
public during prescribed times

515 515 347 NOTICE TO BE FILED WHERE DOCUMENTS, &c.,
ALTERED
(1) failing to lodge notice of change or
alteration in situation of registered office

(2) failing to lodge notice of change or alteration in constituent documents, directors, agents etc.

(3) failing to lodge notice of change in hours

516 516 348 BALANCE-SHEETS AND OTHER DOCUMENTS

(4) failing to comply with requirements of NCSC notice

(5) (where applicable) failing to lodge with NCSC a profit and loss account

(7) failing to lodge return in prescribed form

518 518 352 CESSATION OF BUSINESS &c

(1) failing to lodge notice of ceasing to carry on business

(8) failing to lodge office copy of order that name of company be restored to register

(11) failing to lodge notices that company is being wound up or has been dissolved and of appointment of liquidator

(12) failing to lodge notice of commencement and/or termination of official management

(13) failing to advertise invitation to creditors to make claims, paying out any creditor of the exclusion of any other creditor and failing to recover and realise property

545 545 370 INSPECTION OF BOOKS

(1) failing to have books available for inspection

(2) where register kept at place other than registered office, failing to have that place open during the hours that the registered office is open

(3) failing to permit person entitled to inspect books to make copies or take extracts

APPENDIX B

ADVERTISING REQUIREMENTS IN THE COMPANIES BILL

1329. The following advertising requirements remain in the
CB.

	<u>Clause</u>		<u>Requirement</u>
1981 Bill	CB	ED	
66(1)	66(1)	24(1)	...the Commission may (after requiring, if it thinks fit, the proposal to be advertised in such manner as it directs either generally or in a particular case), by licence...
69(3)	69(3)	25(3)	...notice of the change of status shall be published by the company in such manner (if any) as the Commission directs.
72(8)	72(8)	27A(6)	Notice of the registration shall be published in such manner (if any) as the Court or the Commission directs.

129	129	67	...a notice - is published, in each
(10)(h)	(7)(h)	(5)(e)	State and Territory in which the
			company is carrying on business, in
			a daily newspaper circulating
			generally in that State or
			Territory;

182	182	94	The directors of a company
(3)(a)	(3)(a)	(3)(a)	may,...., require the applicant -
			(a) to cause an advertisement to be
			inserted in a daily newspaper
			circulating in a place specified by
			the directors...

184(5)	184(5)	96(5)	Lists of share certificates... shall be advertised in the <u>Gazette</u> and in such newspapers and at such times as the company thinks fit.
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335	335	199	...notice of a meeting of
9(b)	9(b)	(9)(b)	creditors...shall be given by - (b, publishing a copy of that notice in the Territory, and in each State or other Territory in which the company carries on business or has carried on business..., in a daily newspaper circulating generally in the Territory, or in that State or other Territory, as the case may be.

337(3)	337(3)	201(3)	...the company shall cause notice...of the resumption of the meeting to be published in a daily newspaper circulating generally in the Territory...
338 (2)(b)	338 (2)(b)	202 (2)(b)	The company shall - (b)...cause notice that the company has been placed under official management... to be published in the <u>Gazette</u> .
392 (2)(b)	392 (2)(b)	254 2(b)	A company shall - (b)...cause notice of the resolution to be published in the <u>Gazette</u> .
399(3)	399(3)	260A (3)	...the company shall cause notice...of the resumption of the meeting...to be published in a daily newspaper circulating generally in the Territory...
411(2)	411(2)	272(2)	The meeting shall be convened by an advertisement published in the <u>Gazette</u> ...
479(2)	479(2)	323(2)	The sale shall be advertised... in a daily newspaper circulating generally throughout the Territory.

483(2) 483(2) 327(2)

The date to which the sale is postponed shall, ..., be advertised in a daily newspaper circulating generally in the Territory.

518 518 352
(13)(a) (13)(a) (12)(a)

A liquidator of a registered foreign company who is appointed by the Court - (a) shall, before any distribution of the foreign company's property is made, by advertisement in a newspaper circulating generally in the Territory and, in the case of a foreign company formed outside Australia and the external Territories, in each participating State or participating Territory where the foreign company had been carrying on business..., invite all creditors to make their claims...

534(1) 534(1) 364(1)

...the company may cause an advertisement to be published in a daily newspaper circulating in the State, Territory or country shown in that register in relation to the address of the person concerned...



1330. Provisions requiring the NCSC to publish copies of notices etc in the Gazette are not included in the above list.

Appendix C

1331. The major changes between the exposure draft and the August CB were as follows:-

<u>Exposure Draft</u>	<u>Nature of Change</u>
Cl. 5(1)	<p>The definition of "affairs" was deleted and replaced by cl. 6 of the August CB which contained a definition of "affairs" and applied it to specific provisions of the August CB. The definition of "affairs" in the exposure draft on the other hand applied generally throughout the draft. References to a trustee of a trading trust were also deleted from the new definition consequential upon the deletion of Part VIAA of the exposure draft.</p>
Cl. 5(1)	<p>The definition of "banker's books" no longer referred to "books of a banker", but was changed to "books of a banking corporation, including any documents used in the ordinary business of a banking corporation".</p>

Provision of Exposure
Draft

Nature of Change

- Cl. 5(1) A banking corporation was excluded from the definition of a "borrowing corporation."
- Cl. 5(1) A cheque, order for the payment of money, bill of exchange and a promissor note were specifically excluded from the definition of "debenture."
- Cl. 5(1) The reference to the words "affairs of" was deleted from the definition of "executive officer".
- Cl. 5(1) The definition of "financial year" was amended to make it clear that the directors might resolve a period "whether longer or shorter than 12 months".
- Cl. 5(1) A new definition of "home exchange" was included - see cl. 141 of August CB.
- Cl. 5(1) A new definition of "listed corporation" was included - see e.g. sub-para. 129(6)(b)(ii).
- Cl. 5(1) A new definition of "minerals" was included - see para (a) of definition of "mining purposes".

<u>Provision of Exposure Draft</u>	<u>Nature of Change</u>
Cl. 5(1)	The definition of "nominee corporation" was amended to bring it into line with the corresponding definition in the CASA.
Cl. 5(1)	The definition of "prescribed business" was deleted consequential upon the deletion of Part VIAA of the exposure draft.
Cl. 5(1)	A new definition of "principal executive officer" was included. That definition was similar to the definition of "manager" in the ICAC CAS but narrower than the definition of "executive officer" in the CB.
Cl. 5(1)	The definition of "trading trust" was deleted consequential upon the deletion of Part VIAA of the exposure draft.
Cl. 5(1)	The definition of a "voting share" was changed so that it only extended to an issued share in a body corporate.
Para. 6A(4)(e)	The 20 per cent interest in this provision was amended to "the prescribed percentage".

Provision of Exposure
Draft

Nature of Change

S-cl. 6AA(1)

(cl. 9 in the August CB)

The reference to an "executive officer" was omitted from s-cl. 9(1) of the CB

Cl. 6AB

Omitted

This provision, dealing with the binding of the Crown, was omitted from the August CB but see cls 314, 322, 334 and 358 of the August CB.

Cl. 7

(cl. 12 in the August CB)

New sub-cl. 12(1) was added to require the NCSC to satisfy a purpose test before it could order the production of books.

S-cl. 7(5)

(s-cl. 12(6) in the August CB)

Sub-para. (a)(ii) was amended to make it clear that the explanation sought was one within the ability of the person to provide.

Sub-para. (a)(iii) was amended to allow the NCSC to retain books only for the purposes of inspection or the making of copies.

Provision of Exposure
Draft

Nature of Change

S-cl. 7(6)

(s-cl. 12(7) in the August CB)

This was amended to make it clear that the relevant identification was one which was within the ability of the person to make.

S-cl. 7A(4)

(s-cl. 13(4) in the August CB)

Paras (a) and (b) were amended - similar to amendments to sub-paras 7(5)(a)(ii) and (iii) (now sub-paras 12(6)(a)(ii) and (iii)).

Cl. 7AA

(cl. 14 in the August CB)

New sub-cl. 14(3) was added to provide a defence of reasonable belief to a prosecution for giving false and misleading statements.

new provision

(cl. 15 in the August CB)

This evidentiary provision was included so that a copy of a book would be admissible as original evidence in any proceeding (under the August CB or general law). This inclusion was made to avoid the necessity of having to rely on secondary evidence rules in such proceedings.

Provision of Exposure
Draft

Nature of Change

Cl. 7B

(cl. 16 in the August CB)

S-cl. 7B(1) (s-cl. 16(1)) was amended to make it clear that the name and address to be furnished was one within the knowledge of the legal practitioner.

S-cl. 7B(2)

This was deleted from the August CB as unnecessary.

Cl. 8

(cl. 17 in the August CB) :

This clause was amended to provide that:-

- (i) only natural persons could be registered as liquidators (this change was not, however, intended to affect trustee companies which were already acting as corporate liquidators under present legislation).
- (ii) an applicant for registration as a liquidator need not be registered company auditors.

Provision of Exposure
Draft

Nature of Change

Cl. 9

(cl. 18 in the August CB)
Sub-cl. 9(9) (s-cl. 18(9) of August CB) was amended so that the NCSC could not be required at first instance to give the unsuccessful applicant the reasons for its decision - it could only be required to give notice of the decision within a specified period, and reasons on request.

Cl. 11

(cl. 20 in the August CB)
Qualifications for an applicant not already registered as a liquidator under present legislation (sub-para. 11(2)(a)(i) (sub-para 20(2)(a)(i)) in the August CB)) were amended as a result of the decision not to require liquidators to also be registered company auditors (see cl. 8 (now cl. 17)). The qualifications required in the August CB were similar to those for an auditor under para. 9(2)(a) (now para 18(2)(a) in the August CB).

S-cl. 11(11)

(s-cl. 20(11) in the August CB)
This was amended similar to s-cl. 9(9) (s-cl. 18(9) in the August CB).

Provision of Exposure
Draft

Nature of Change

Cl. 11B

(cl. 22 in the August CB)

Amended so that the liquidator's security had to be lodged with the local Corporate Affairs Office and to allow the NCSC to specify the form and amount of the security. (Consistent with provisions as to stock brokers' securities in SIA).

Also amended to make it clear that the NCSC could determine a security for a particular liquidator.

Cl. 11H

The main provisions of this clause were incorporated into cl. 27 of the August CB cl. (formerly 11G) as follows:

- . s-cl. 11H(2) became s-cl. 27(9)
- . s-cl. 11H(4) became s-cl. 27(15)
- . s-cl. 11H(5) became s-cl. 27(8).

Cl. 11J

(cl. 28 in the August CB)

A new s-cl. 28(6) was added to provide that the reference to "document" in s-cl. 28(5) included a reproduction of that document.

Provision of Exposure
Draft

Nature of Change

new provision

(cl. 30 in the August CB)

This clause was included to make provision for auditors and other persons to enjoy qualified privilege in certain circumstances in similar terms to cl. 167B of the exposure draft which was omitted.

Cls. 22 to 22D

(cls. 38 to 66 in the August CB)

The names provisions were substantially redrafted to encompass the concepts of reservation and registration in a codified form for application to the various categories of company status e.g. recognized company, registered foreign company etc.

Cl. 31

(cl. 76 in the August CB)

Sub-cls (4) to (6) regarding alteration of the articles to effect a restriction of voting rights, were omitted.

Cls 35A and 35B

(cl. 81 in the August CB)

Cls 35A and 35B on preincorporation contracts were redrafted to overcome technical ambiguities and omissions and were combined into one clause.

Provision of Exposure
Draft

Nature of Change

Cl. 37A

(cl. 94 in the August CB)

A new s-cl. 94(2) was inserted. It provided that for the purposes of cl. 95 or 96, forms were deemed to be issued to the public irrespective of the method used to select the recipient and irrespective of the fact that the form could only be used by the person to whom it was issued. Forms issued to-

- (a) persons whose ordinary business is buying and selling shares, debentures or prescribed interests;
 - (b) existing members or debenture holders of the corporation; and
 - (c) existing members in connection with a proposal under cl.409
- were excepted.

A new s-cl. 94(3) was inserted.

This provision previously appeared as the definition of "statement" in s-cl. 40(1) of the exposure draft.

Provision of Exposure
Draft

Nature of Change

Cl. 37AA

(cl. 95 in the August CB)

Para. 37AA(2)(b) was redrafted to refer to the invitation or offer to which the form relates, rather than the invitation or offer with which the form was issued.

S-cl. 37AA(3) was omitted because of the inclusion of the new s-cl. 94(2).

Cl. 37

(cl. 96 in the August CB)

S-cl. 37(1) was redrafted so that a form of application for shares or debentures had to be attached to a prospectus, and both the prospectus and the application had to be registered by the NCSC.

Para. 37(2)(b) was redrafted along the same lines as para. 37AA(2)(b).

S-cl. 37(3) was omitted because of the inclusion of the new s-cl. 94(2).

Provision of Exposure
Draft

Nature of Change

Cl. 38

(cl. 97 in the August CB)
Sub-sub-para. 38(4)(b)(ii)(H) was amended to exclude advances to related corporations which are guarantor corporations.

A new sub-sub-para. 97(5)(b)(ii)(I) was inserted requiring disclosure of advances made by guarantor corporation to related corporations of the borrow corporation.

Cl. 39

(cl. 98 in the August CB)
Para. 39(1)(e) was omitted. A new para. 98(1)(e) was included which provided that in specified cases, prospectuses would contain matters and reports to be prescribed by regulation. In all other cases, the matters and reports to be included in a prospectus would be specified by the NCSC. Para. 39(1)(1) was redrafted to require a prospectus to state whether or not an application for listing was proposed to be made.

Provision of Exposure
Draft

Nature of Change

Cl. 40

(cl. 99 in the August CB)

The definition of "statement" which appeared previously in s-cl. 40(1) of the exposure draft was covered by the new s-cl. 94(3).

Cl. 42

(cl. 103 in the August CB)

S-cl. 42(3) of the exposure draft was omitted. The effect of the omission was that a prospectus of a foreign company formed in an other State or Territory would have to comply with all of the requirements of the CB before it could be registered.

Cl. 44 (cl. 105 in the August CB)

The words "and wilfully" were deleted from sub-para. 44(6)(b)(iii). S-cl. 44(10) was omitted as para. 39(1)(1) made the provision unnecessary.

Cl. 46

(cl. 107 in the August CB)

The word "wilful" was deleted from s-cl. 46(1).

Provision of Exposure
Draft

Nature of Change

Cl. 47

(cl. 108 in the August CB)

The word "wilful" was deleted from s-cl. 47(1). A new para. 108(1)(c) was inserted providing a defence where it would be shown any non-disclosure was inadvertent.

Cl. 48

(cl. 109 in the August CB)

Para 48(6)(b) was omitted. The new para. 109(6)(b) made directors jointly and severally liable to repay money and interest if the company did not repay the money within 7 days of becoming liable. It also made every director guilty of an offence in those circumstances. S-cl. 48(7) was amended to extend the defence provided by that sub-clause to the offence provision.

Cl. 57A

(now cl.116 in the CB)

This was amended by omitting s-cl. 57A(3) which was redrafted to become s-cl. 59(1) (s-cl. 118(1) in the August CB).

Cl. 59

(cl. 118 in the August CB)

See above.

<u>Provision of Exposure Draft</u>	<u>Nature of Change</u>
Cl. 60	(cl. 119 in the August CB) S-cl. 60(1) was amended so that application of provisions of August CB relating to reduction of share capital did not include s-cl. 123(6).
Cl. 61	(cl. 120 in the August CB) S-cl. 61(5) was amended so that the amount to be debited would not include a premium payable on redemption of shares. This was in accordance with the present legislation.
Cl. 62	(cl. 121 in the August CB) S-cl. 62(4) and (5) were omitted.
Cl. 64	(cl. 123 in the August CB) A drafting change was made to s-cl. 64(15) (s-cl. 123(15) in the August CB).
Cl. 64A	(cl. 124 in the August CB) The word "shareholders" was used instead of "members" in s-cl. 64A(5) (now s-cl. 124(5)).
Cl. 65A	(cl. 126 in the August CB) A similar provision to cl. 65 (cl. 125 in the August CB) was added to apply to companies having a share capital not divided into classes.

Provision of Exposure
Draft

Nature of Change

Cl. 65B

(cl. 127 in the August CB)

A similar provision to cls 65 and 65A (cls 125 and 126 in the August CB) was added to apply to companies not having a share capital but where members have special rights.

Cl. 67

(cl. 129 in the August CB)

Cl. 67 was extensively redrafted as a result of submissions from the public.

S-cl. 67(1)

(s-cl. 129(1) in the August CB)

Drafting changes.

S-cl. 67(3)

(s-cl. 129(3) in the August CB)

This was amended to include an offence deemed to have been committed by sub-s. 38(1) of the C & S (I & MP) A.

new provision

(s-cl. 129(4) in the August CB)

Added to extend the power of the Court to grant relief from liability under cl. 535 to relief from an order for compensation under s-cl. 129(3) (former s-cl. 67(3)).

Revision of Exposure
Draft

Nature of Change

new provision

(s-cl. 129(5) in the August CB)

Added to make it clear that certain transactions were not prohibited forms of "financial assistance".

-cl. 67(4)

(s-cl. 129(6) in the August CB)

Para. 67(4)(a) (para. 129(6)(a) in the August CB) was amended to include the giving of guarantees or securities.

Also, two new sub-paras were included to provide additional restrictions on the circumstances in which the loan, guarantee or security could be given in the course of business. Paras 67(4)(b) and (c) were amalgamated and simplified (para. 129(6)(b) in the August CB) and amended to take account of the situation where a listed company in a group is not the ultimate holding company, or where the local holding company is a subsidiary of an overseas parent.

-cl. 67(5)

(s-cl. 129(7) in the August CB)

This was amended -

Provision of Exposure
Draft

Nature of Change

- (a) to provide that steps similar to those taken by a company in relation to the special resolution for financial assistance were also to be taken by the listed corporation of which the company is a subsidiary or by the ultimate Australian holding company (see also change to s-cl. 67(4) (s-cl 129(6) in the the August CB.
- (b) so that the requirement for a statement of the directors' opinion as to the financial assistance applied only to a proprietary company and it was expanded to require the inclusion of the name of the directors who voted against the resolution and the reasons why they voted against it. In the case of a public company this requirement is to be replaced by report of a registered company auditor.

Provision of Exposure
Draft

Nature of Change

The requirement that it be stated whether the financial assistance would be in the interests of the company was deleted in relation to both the statement and the report - Instead the relevant consideration became the likelihood of the financial assistance causing material prejudice to the interests of creditors or members.

new provision

(S-cl. 129(8) in the August CB)
Added to allow a company that has substantially complied with s-cl. 129(7) to give the financial assistance proposed.

S-cl. 67(6)

(now s-cl. 129(9) in the August CB)
This was consequentially amended by addition of new para. to cover the situation of the listed corporation and ultimate holding company.

S-cl. 67(7)

(s-cl. 129(10) in the August CB)
Consequential amendments and drafting changes were made.

S-cl. 67(9)

(s-cl. 129(12) in the August CB)
Drafting changes were made.

Provision of Exposure
Draft

Nature of Change

new provision

(s-cl. 129(14) in the August CB)
Added to protect acts done after the enactment of the CB pursuant to contracts entered into prior to enactment if the acts would have been valid under the previous legislation

Cl. 67A

(cl. 130 in the August CB)
Cl. 67A was substantially redrafted in the light of public submissions.

S-cl. 67A(1)

(s-cl. 130(1) in the August CB)
This was amended to make it clear that a company's acquisition of shares in itself was void but that the giving of financial assistance by the special resolution procedure by the company would be valid.

S-cl. 67A(2)

(s-cl. 130(2) in the August CB)
This was amended to cover a contract or transaction that was related to a contract or transaction which contravened cl. 129.

Provision of Exposure
Draft

Nature of Change

S-cl. 67A(3)

This was replaced by new s-cl. 130(3) in the August CB which gave the Court power to authorize certain persons to give notice of avoidance in the name of the company.

S-cl. 67A(4)

(s-cl. 130(4) in the August CB)
Drafting changes were made, and the provision was consequentially amended to cover related contracts or transactions (see changes to s-cl. 67A(2) - now s-cl. 130(2)).
The reference to orders being made against "any person who has been convicted of an offence under sub-sect. 67(2)" was replaced by a reference to orders being made against "the company or against any person who aided and abetted, counselled or procured, or was, by an act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention".

<u>Provision of Exposure Draft</u>	<u>Nature of Change</u>
new provisions	(s-cl. 130(6) to (12) in the August CB) New provisions were added to provide for a certificate of compliance to be given by directors which would protect a person relying on it from a court order and which would also provide for the validity of the contract or transaction and protect it from avoidance.
Cl. 69A	(cl. 134 in the August CB) S-cl. 69A(6) was omitted, and the definition of "business day" inserted in s-cl. 5(1).
Cl. 69C	(cl. 136 in the August CB) "executive officer" was deleted from sub-paras 69C(3)(a)(i) and (ii). A similar deletion was made from sub-paras 6AA(1)(a)(i) and (ii) (sub-paras 9(1)(a)(i) and (ii) in the August CB).
Cl. 69E	(cl. 138 in the August CB) The words "and of every associate of the person" were deleted from s-cl. 69E(3).

<u>Provision in Exposure Draft</u>	<u>Nature of Change</u>
new provision	(cl. 141 in the August CB) A new clause (cl. 141) was inserted requiring the person giving notice under cl. 137, 138 or 139 to a listed company to copy the notice to the home exchange of the company.
Cl. 70	(cl. 147 in the August CB) S-cl. (2) was made to refer to Division 5 of Part XIII. S-cl. (8) was made to refer to a company or foreign company. S-cl. 70(9) and (10) were deleted. S-cl. 147(9), (10) and (11) were added as new provisions.
new provision	(cl. 148 in the August CB) This clause was added to deal with branch registers.
Cl. 74	(cl. 152 in the August CB) In the new s-cl. 152(1) the words "or Public Curator" were deleted.

Provision in Exposure
Draft

Nature of Change

Cl. 74B

(cl. 154 in the August CB)

Cl. 154 was reworded and linked to the Companies (Acquisition of Shares) Act 1980. S-cls (2) and (3) were added as new provisions.

Cl. 74B

A new s-cl. (6) was added.

Cl. 74F

(cl. 158 in the August CB)

S-cl. 158(4) amended to refer to a "relevant guarantor corporation". S-cl. (6), (7) and (8) were added as new provisions. S-cl. (10) was omitted and s-cl. 158(13), (14), (15), (16), (17), (21) and (23) were added as new provisions.

Cl. 93

(cl. 181 in the August CB)

This was amended to add "Certificate Seal", so as to extend the concept of a "Share Seal" to certificates for debentures, unsecured notes and interests.

Provision in Exposure
Draft

Nature of Change

new provision

(cl. 186 in the August CB)

A new cl. 186 was added to remedy possible injustices in small and "two family" companies where the company refuses to register a transfer by death, lunacy or bankruptcy. A right of appeal to the Court against such a refusal was included.

Cl. 99D

(cl. 192 in the August CB)

This was amended to cover transfers by authorized trustee corporations and other persons in addition to transfers by authorized trustee corporations only.

Cl. 102

(cl. 202 in the August CB)

Changes were made to clarify that:

- (a) charges over negotiable interests other than those created by way of deposit, etc. were required to be registered (paras 202(1)(k) and (2)(c)); and
- (b) the provisions relating to registration of trade marks extended to service marks and other registered designs.

<u>Provision in Exposure Draft</u>	<u>Nature of Change</u>
Cl. 110E	<p>(cl. 214 in the August CB)</p> <p>Changes were made to the provision which was designed to give effect to the priorities system of each participating jurisdiction throughout all participating jurisdictions. It had been suggested that the provision in the exposure draft would not have achieved the desired effect.</p>
Cl. 112	<p>(cl. 217 in the August CB)</p> <p>Amended to provide that notice of a change of address or a change in the hours of public access had to be lodged seven days after the day on which the change occurred (s-cl. 217(3) and (4) - had the effect of reverting to the position in ICAC CAs).</p>
Cl. 119	<p>(cl. 224 in the August CB)</p> <p>The reference to an executive officer in sub-cl. 224(1) of the CB was deleted.</p>
S-cl. 120(9)	<p>(cl. 225 in the August CB)</p> <p>S-cl. 120(9) was omitted from cl. 225 of the CB.</p>

<u>Provision in Exposure Draft</u>	<u>Nature of Change</u>
Cl. 121	A new provision was inserted which provided that a person would be incapable of being appointed as a director unless he had attained the age of 18 years (s-cl. 226(12)).
S-cl. 124(2)	(now cl. 229 in the August CB) This was redrafted to bring it closer to the existing ICAC CAs provision (s-cl. 229(2) of the August CB). The penalty of imprisonment was also omitted.
Cl. 125	(cl. 230 in the August CB) Cl. 230 of CB was extensively redrafted to accommodate points raised in public submissions.
Cl. 128	This was omitted from the August CB because the purpose of the provision was thought to be unclear.
Cl. 129	(cl. 233 in the August CB) The main changes were: (i) exemptions in s-sec. 129(5) ICAC CAs were included (s-cl. 233(7) of CB).

Provision in Exposure
Draft

Nature of Change

- (ii) s-cl. 129(4) to (7) were omitted because they were already covered in CASA;
- (iii) to provide that where payment (to which para. 233(1)(a) applied) had to be approved by the company in general meeting, exempt benefits had to be disclosed but not approved (which was in line with Jenkins Committee recommendation).

Cl. 134

(cl. 238 in the August CB)
Drafting changes were made to this clause, inserting in place of "executive officers", "principal executive officers".

S-cl. 148(1)

(cl. 253 in the August CB)
This clause was changed so that it no longer contained a reference to "executive officers".

S-cl. 148(4)

Deleted

Provision in Exposure
Draft

Nature of Change

Cl. 161

(cl. 266 in the August CB)

The definition of "accounts" was altered to clarify the inclusion of the directors' statement on the accounts under s-cls 269(9) and (10).

Cl. 161A

(cl. 267 in the August CB)

There were 3 changes to this provision:

- (a) All of the requirements relating to companies acting as trustees for trading trusts were omitted.
- (b) The requirement that a company retain the accounting records kept under this provision for a period of 7 years after the completion of the transactions to which they relate was reinserted in this provision.
- (c) A company keeping its accounting records outside Australia, was required to:

Provision in Exposure
Draft

Nature of C

- (i) keep in Australia such statements and records as would enable true and fair accounts and any documents required by this Act to be attached to the accounts to be prepared: and
- (ii) notify the Commission where those statements and records are kept if they are not kept at the registered office.

Cl. 162

(cl. 269 in the August CB)
A provision was added requiring directors to state in a statement prepared pursuant to s-cl. 269(9) whether they considered that the company is able to pay its debts as and when they fall due.

Cl. 162A

(cl. 270 in the August CB)
The fixed salary received by a director as a full-time employee of a related corporation was added to the items which do not have to be disclosed as

Provision in Exposure
Draft

Nature of Change

being a benefit a director of the company has received or become entitled to receive by reason of a contract made by the company or a related corporation with the director (s-cl. 270(8) in the August CB).

Cl. 162B

(cl. 272 in the August CB)

Amended to require directors of a holding company to take all reasonable steps to ensure that, before preparing their directors' report, they had available the directors' reports and accounts of each subsidiary.

Cl. 165

(cl. 277 in the August CB)

The following changes were made to this clause:

- (a) The amount of permitted indebtedness for auditors was increased from \$2000 to \$5000 (paras 277(1)(e) and (2)(f)).
- (b) The permitted level of indebtedness of an auditor was stated not to include indebtedness to a banking or life insurance corporation where

Provision in Exposure
Draft

Nature of Change

the indebtedness arose as a result of a loan made by the corporation in the ordinary course of its ordinary business for the purchase of a principal place of residence (s-cl. 277(3)).

- (c) To allow a firm to be appointed auditor of a company provided that at least one member of the firm was a registered company auditor ordinarily resident in a State or Territory (para. 277(2)(d)).
- (d) The appointment of a firm as auditor of a company was deemed to be an appointment of all persons who are members of the firm and who are registered company auditors (s-cl. 277(7)).
- (e) Consequential changes were made to s-cl. 277(8) to take account of the fact that not all members of the firm have to be registered company auditors.

Provision in Exposure
Draft

Nature of Change

Cl. 165A

(cl. 278 in the August CB)

The reference to an exempt proprietary company that is a trustee of a trading trust was omitted.

Cl. 165B

(cl. 279 in the August CB)

This clause was modified in three ways:

- (a) The procedure for the appointment of an auditor when members have previously agreed not to appoint an auditor was included.
- (b) A further inclusion provided that where a company becomes an exempt proprietary company the members may agree to terminate the appointment of the auditor.
- (c) The reference to an exempt proprietary company that is a trustee of a trading trust was omitted.

Cl. 167B

This clause was omitted from the CB, as a similar clause, cl. 30, which made provision for auditors and other persons to enjoy qualified privilege in certain circumstances, had already been included.

Provision in Exposure
Draft

Nature of Change

Part VIAA

This part, containing special provision relating to trustees of trading trusts, was omitted from the August CB.

Cl. 168

(cl. 289 in the August CB)

S-paras (1)(b)(iii) to (x) of the definition of "company" were removed.

Cl. 173

(cl. 295 in the August CB)

The words "in the prescribed form" in s-cl. 173(1) were replaced by the words "containing the prescribed matters".

A new sub-clause was inserted (s-cl. 295(2)) to provide that a notice given pursuant to para. (1)(c) set out the provisions of s-cl. 296(6) and (7).

Cl. 174

(cl. 296 in the August CB)

A new sub-clause was inserted (s-cl. 296(8)), providing that a claim in s-cl. (7) could be made in any form of words agreed between the officer and the inspector.

Cl. 176

(cl. 298 in the August CB)

S-cl. 176(1) and (2) were replaced by three new sub-clauses.

<u>Provision in Exposure Draft</u>	<u>Nature of Change</u>
Cl. 176A	(cl. 299 in the August CB) The word "or" was removed after para. 176A(2)(a). Sub-paras (b)(i) and (ii) were changed to paras (b) and (c).
Cl. 176B	(cl. 300 in the August CB) The word "or" was placed after sub-paras 176B(a)(ii) and (iii). Sub-paras (a)(iv) and (v) were deleted.
Cl. 177	(cl. 304 in the August CB) The words "a prescribed person" in s-cl. 177(4) were replaced by the words "an officer of a corporation".
Cl. 176E	(cl. 303 in the August CB) In s-cl. 176E(6) the words ", without the leave of the court or tribunal hearing the proceedings" were inserted after the words "a party is not entitled".
Cl. 178AA	(cl. 306 in the August CB) The word "legal" in s-cl. 178AA(12) and (13) was replaced by the word "civil".

Provision in Exposure
Draft

Nature of Change

Cl. 178B

(cl. 308 in the August CB)

At the end of the clause the words "requirement, he shall forthwith furnish it in writing the name and address of the person to whom or by or on behalf of whom the communication was made." were replaced by the words "requirement he shall, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the inspector."

Cl. 181

(cl. 315 in the August CB)

References in this clause and other clauses in Part VIII referring to schemes of arrangement requiring approval by a majority in number representing 75% in value of the creditors or members (as the case may be) were changed to 75% of those persons present and voting in person or by proxy at the relevant meeting.

Provision in Exposure
Draft

Nature of Change

S-cl. 181(2)

(s-cl. 315(2) in the August CB)
Persons intending to make an application to the court were no longer required to give 21 days notice to the Commission. Instead 14 days notice, or such lesser period as the Commission permits, was required to be given of the hearing of the application (s-cl. 315(2)).

S-cl. 181(7)

(s-cl. 315(5) in the August CB)
The implication that members or creditors belonging to more than one class of members or creditors respectively are not entitled to vote at meetings of each such class was removed.

S-cl. 181(9)

(s-cl. 315(7) in the August CB)
A change was made to clarify that an auditor of a company which is a mortgagee of the scheme company would not be precluded from being appointed to administer the scheme.

Provision in Exposure
Draft

Nature of Change

S-cl. 181(12)

(s-cl. 315(10) in the August CB)

The provision which imposed on scheme administrators some of the obligations and responsibilities of receivers was changed so that the scheme administrator would not incur personal liability in the same manner as a receiver. The provision relating to control of liquidators (cl. 420) was made to apply to scheme administrators. Changes were also made so as to prevent this provision operating retrospectively.

S-cl. 181(21)

(s-cl. 315(19) in the August CB)

The residency test in s-cl. 181(21) was replaced with a test as to where debts are recoverable. This change was made to achieve the stated intention of overcoming differences in court orders between jurisdictions as they affect parties to a particular scheme of arrangement.

Provision in Exposure
Draft

Nature of Change

S-cl. 181(22)

(s-cl. 315(20) in the August CB)

A new provision was inserted providing that the Court should not approve what amounts to a take-over in the guise of a scheme of arrangement.

A similar provision was inserted in s-cl. 317(4).

S-cl. 182(5)

(s-cl. 316(6) and (7) in the August CB)

General changes were made to this clause,

(1) an explanatory statement was now no longer required to be sent to creditors whose debts were less than \$200 as long as they were given an opportunity to obtain a copy on request (s-cl. 316(2)).

(2) In a scheme of arrangement which merely involved a corporate reconstruction and did not involve creditors, the explanatory statement had to

Provision in Exposure
Draft

Nature of Change

be registered by the Commission before it was sent out (rather than approved by the Court as in the exposure draft).

- (3) The CB was also changed so that in schemes of arrangement or compromises in which insolvent was an element, the explanatory statement would not have to be registered by the Commission before it was sent out. The Commission however, would have to be given opportunity to examine the statement before the Court approved the arrangement, however (s.c. 316(7)).

Cl. 185A

(cl. 319 in the August CB)

This clause was changed to require a person appointed as administrator of a scheme to notify the Commission of his appointment.

Cl. 186

(cl. 320 in the August CB)

An additional ground for applying to the Court was inserted in the provision relating to conduct of affairs of a company in an oppressive manner.

Provision in Exposure
Draft

Nature of Change

The new ground applied where directors of a company were acting in their own interests rather than in the interests of the members as a whole, or in any other manner that was unfair or unjust to members other than the directors.

Cl. 187

(cl. 323 in the August CB)

The prohibition on corporations acting as receivers (ICAC CAs s. 187) was restored and the prohibition on auditors of mortgagee corporations acting as receivers (exposure draft) was removed.

Cl. 192

(cl. 327 in the August CB)

The list of documents in which reference must be made to the fact that a receiver has been appointed was extended.

Cl. 192A

(cl. 538 in the August CB)

The provision enabling appeal against decisions of a receiver was relocated to cl. 538.

Provision in Exposure
Draft

Nature of Change

Cl. 195

(cl. 330 in the August CB)

Provision was made for the Commission to make an order declaring that a receiver was liable for the costs of an audit of his accounts.

Cl. 196

(cl. 331 in the August CB)

The overriding priority in respect of tax instalment deductions and withholding tax on dividends remitted overseas, conferred by ss 221P and 221YU of the Income Tax Assessment Act 1936, was recognized on the face of the CB.

Cl. 198

(cl. 333 in the August CB)

The definition of "special resolution" in the ICAC CAs was restored so as to require passage by a majority of creditors present and voting whose debts against the company amount in the aggregate to not less than 75% of the total amount of the debts of creditors present and voting, either in person or by proxy, at the meeting.

Provision in Exposure
Draft

Nature of Change

Cl. 202

(cl. 338 in the August CB)

The capacity to object to the appointment of an official manager was extended to secured creditors and a consequential adjustment was made to the value of debts owed to a creditor, entitling him to object (see also s-cl. 347(1) and 353(1)).

Cl. 203A

(cl. 342 in the August CB)

The requirement to advertise six monthly meetings of members and creditors was deleted.

Cl. 203B

(cl. 343 in the August CB)

The provision designed to ensure that, unless otherwise ordered by the court, an official management takes priority, for the purposes of trading, over the right of a secured creditor to appoint a receiver was deleted.

Cl. 203C

(cl. 344 in the August CB)

The permitted timing of a meeting to consider whether or not to extend the period of official management was altered to enable this matter to be

Provision in Exposure
Draft

Nature of Change

considered at a regular 6 monthly meetings and thus prevent an extra meeting being necessary.

Cl. 208

(cl. 349 in the August CB)

The amount of property that an official manager may sell otherwise than in the ordinary course of business was raised again to \$5000 (or \$20,000 if the committee of management consents).

The capacity to sell an unlimited amount with the approval of the Court was changed so as only to require consent of the creditors given by special resolution.

Cl. 212

(cl. 355 in the August CB)

The creditors, of which the official manager must convene a meeting after his release, were defined as meaning all persons who were creditors at the commencement of the official management and all persons who were creditors on the day on which the person ceased to be the official manager.

Provision in Exposure
Draft

Nature of Change

Cl. 213

(cl. 356 in the August CB)

The list of documents etc. in which notification must be given that a corporation is under official management was extended.

Cl. 218A

This clause relating to transfers to avoid liabilities was deleted.

Cl. 226

(cl. 367 in the August CB)

The provision conferring power on the Court to stay or restrain proceedings against the company was amalgamated in cl. 367 along with the other powers of the Court on hearing a winding up application.

Provision in Exposure
Draft

Nature of Change

Cl. 228

(cl. 368 in the August CB)

The provision avoiding the enforcement of certain remedies by proceeding against property of a company after the commencement of winding up was amalgamated with cl. 368 relating to avoidance of certain dispositions etc.

Cl. 230

(cl. 370 in the August CB)

The provision requiring lodgment with the Commission of certain documents in relation to the winding up of a company was altered so as to require notice of the application for winding up to be lodged not later than 10.30 am on the next business day after the filing of the application.

Cl. 232

(cl. 373 in the August CB)

Provision was made for the review of the liquidator's remuneration by the Court on the application of the Commission and certain creditors (as well as certain members).

Provision in Exposure
Draft

Nature of Change

Cl. 235

(cl. 376 in the August CB)

The preliminary report by a liquidator as to the causes, if applicable, of the company's inability to pay its debts in full within 12 months from the commencement of winding up was replaced by a report as to the reasons for the company's failure.

Cl. 236

(cl. 377 in the August CB)

Amended so that, in addition to powers being conferred on a liquidator by the Court or by a committee of inspection, these powers could also be conferred by a special resolution of creditors. The amount of debts which a liquidator can compromise was increased to \$20,000.

Cl. 238

(cl. 380 in the August CB)

The amount of money received by a liquidator which can be retained for more than 10 days without being paid into a bank was increased to \$500.

Provision in Exposure
Draft

Nature of Change

Cls. 241, 242 and 262

(cls 432 to 436 in the August CB)

The provisions relating to appointment of a committee of inspection previously differed as between a voluntary winding up (cl. 262) and a winding up by the court (cls 241 and 242). These provisions were amalgamated and relocated in Division 4, and made applicable to every mode of winding up. The amalgamated provisions were based on NCB cls 352 to 358.

Cl. 244

(cl. 378 in the August CB)

The power of the Court to settle lists of contributories was conferred directly on the liquidator (rather than indirectly under the rules of court, as previously). A right of appeal against the liquidator's decisions was provided for in cl. 538.

Cl. 260

(cl. 398 in the August CB)

Amended so that notice of a meeting of creditors at which a proposal for voluntary winding up was to be put, had to be lodged with the Commission not less than 14 days before the meeting

Provision in Exposure
Draft

Nature of Change

and advertised in each State or Territory in which the company carried on business or had carried on business during the preceding 2 years. The statement of affairs which was required to be posted to creditors did not have to be sent to creditors who were owed less than \$200, but such creditors were to be afforded an opportunity to obtain a copy on request.

new provision

(cl. 402 in the August CB)
Similar prohibitions to those in ICAC CAs s.263 (and exposure draft cl. 263) concerning execution and civil proceedings against companies after the commencement of a creditors voluntary winding up were applied so as to stay proceedings against the company in other participating jurisdictions.

Cl. 276A

(cl. 415 in the August CB)
The provision relating to disqualification of liquidators was made applicable to provisional liquidators.

Provision in Exposure
Draft

Nature of Change

Cl. 277A

(cl. 417 in the August CB)

A number of changes were made to the provision relating to disqualification of liquidators.

Cl. 279

(cl. 538 in the August CB)

The right of a person aggrieved by any act or decision of a liquidator to appeal to the Court was re-located in a general provision.

Cl. 281

(cl. 422 in the August CB)

The provision enabling auditing of a liquidator's accounts was amended to enable the accompanying statement of the position in the winding up to be audited and a report prepared by the auditor. Also amended to require the Commission to provide the liquidator with a copy of the report and to make copies available for public search.

Cl. 283

(cl. 424 in the August CB)

As with other similar provisions, the list of documents in which notification must be made that a corporation is in liquidation was expanded.

Provision in Exposure
Draft

Nature of Change

new provision

(cl. 440 in the August CB)

Provision was made to implement the Eggleston Committee recommendation that, in a winding up, a charge that is capable of being registered under the Act but hasn't been registered would be void against the liquidator.

Cl. 292

(cl. 441 in the August CB)

Priority was accorded to the costs incurred by a provisional liquidator and priority was no longer accorded, under para. (h), to any debts owing to the Commonwealth.

Cl. 295

(cl. 453 in the August CB)

The liquidator's right to recover preferences was extended to enable recovery of moneys from an officer of a company in circumstances where a preferential payment to a creditor of the company discharged an officer from a guarantee or other liability.

Provision in Exposure
Draft

Nature of Change

Cl. 296

(cl. 454 in the August CB)

Time limits were imposed on the liquidator's power to disclaim onerous property (thus restoring the limitation in ICAC CAs s-sec. 296(1)).

Cl. 306

(cl. 457 in the August CB)

This provision was amended by the deletion of that part of s-cl. 457(1) which was covered in cl. 541, and by exempting from the requirement to give assistance to the Commission in its prosecution a duly qualified legal practitioner acting for a defendant or likely defendant (s-cl. 457(2)).

Cl. 318

(cl. 473 in the August CB)

This provision was restricted to bodies (other than companies incorporated in the jurisdiction) formed within Australia. A new cl. 474 was inserted to provide that outstanding property of similar bodies incorporated or formed overseas would vest in the Commission in a similar manner to ICAC CAs s. 310.

Provision in Exposure
Draft

Nature of Change

C. 347

(cl. 515 in the August CB)

Time limits for notification of changes in particulars were changed back to the 1 month period as in ICAC CAs except in relation to notification of change in address of registered office and hours of opening, where notification was required not later than 7 days after the change.

Cl. 362

(cl. 528 in the August CB)

Provision was made in a new s-cl. 528(5) for service of documents on an official manager.

Cl. 362B

Omitted

Cl. 362B on retention of books was omitted in reliance on the new s-cl. 267(2) dealing with the keeping of accounting records for seven years.

Cl. 362D

Omitted

Cl. 362D dealing with certain provisions in contracts etc. that are to be regarded as void was omitted because it was felt it would have caused unnecessary difficulties in relation to settled commercial practice.

<u>Provision in Exposure Draft</u>	<u>Nature of Change</u>
new provision	(cl. 536 in the August CB) This clause was concomitant to cl. 535, and enabled the Court to give directions with respect to meetings which it might order.
new provisions	(cls 537 and 538 in the August CB) These two new clauses gave a general right of appeal from acts, omissions or decisions of the NCSC, receivers, liquidators etc. and they applied where no other appeal or review procedure was provided or the matter was not specified to be conclusive or final.
Cl. 366	(cl. 539 in the August CB) A new para. 539(4)(b) was added to allow an order by the Court directing the rectification of any NCSC Register.
new provision	(cl. 543 in the August CB) This new provision specified that civil proceedings under the CB were not to be stayed by reason only that the proceedings disclosed, or arose out of, the commission of an offence.

Provision in Exposure
Draft

Nature of Change

Cl. 374A

(cl. 554 in the August CB)

Amended so that the offence of non-disclosure in para. 554(1)(a) would only go to what the person was capable of disclosing.

Cl. 374B

(cl. 555 in the August CB)

It was provided that a defence to non-compliance with cl. 267 was available if reasonable grounds existed for the belief that a competent and reliable person was handling the discharge of the duty to comply with the accounts provisions in that clause.

Cl. 374C

(cl. 556 in the August CB)

It was provided that a defence to a charge under this clause was available if the debt was incurred without the defendant's express or implied authority or consent, rather than where he did not know and could not have found out by the exercise of reasonable diligence. This recognized situations where a defendant knew that a debt was being incurred but where it was not within his power to stop or influence its being incurred.

Provision in Exposure
Draft

Nature of Change

new provision

(cl. 558 in the August CB)

Included to expressly provide that the matters under s-cl. 556(1) or 557(1) did not affect any rights of a person to indemnity, subrogation or contribution.

Cl. 376

(cl. 565 in the August CB)

Cl. 376 was substantially redrafted as cl. 565, and the dividends to be paid out of profits provisions were substantially based on s. 376 of the ICAC CAs.

Cls. 376A and 376B

Omitted

Cls. 367A and 367B were omitted as they were no longer necessary.

Cl. 380A

(cl. 572 in the August CB)

Para. 380A(2)(b) was omitted in the redraft of cl. 572 thus not deeming the secretary of a corporation to be a party to the offence therein.

Sch. 7A

(Sch. 4 in the August CB)

Forms 8 to 11 were amended consequent upon changes to cl. 99D (cl. 192 in the August CB).

Provision in Exposure
Draft

Nature of Change

Sch. 7B

(Sch. 5 in the August CB)

Changes were made to this schedule
including changes to:

- (a) take account of claims of an
official manager in relation to
property of the company (paras
1(1)(e) and 1(2)(e));
- (b) ensure that the references to liens
were in line with those in Division
9 of Part IV;
- (c) include in the priorities schedule
(cl. 3) the provision formerly
in s-cl. 108(4) of the exposure
draft relating to the priority
accorded to the amount of an
increase in the debt secured by
a charge;
- (d) ensure that the references to
unlimited securities (cl. 3)
covered present and future
advances, contingent liabilities,
liabilities in respect of bills
of exchange, letters of credit,
third party indebtedness etc.;
- (e) recognize, in cl. 6, that
priorities were divided differently
between a number of charges by

Provision in Exposure
Draft

Nature of Change

reference to different monetary layers of the total amount secured by all charges.

(f) clarify the definition of a prior registered charge; and

(g) define a "holder in due course" for the purposes of cl. 1.

Sch. 9

(Sch. 6 in the August CB)

Paras 2(1)(c) and (f) were modified to remove the need to state whether any profit or loss on sale of assets (other than current assets) was brought into account in determining the net amount of the profit or loss of the company or of the company and its subsidiaries.

A new provision (para. 2(1)(m)) requiring disclosure of the total amount of wages and salaries paid by the company to its employees was inserted. Sub-para. 5(1)(j)(iii) was omitted as it only had application in respect of companies which were trustees of trading trusts.

Provision in Exposure
Draft

Nature of Change

Para. 5(4)(1), which concerns certain loans made, guaranteed or secured by the company, or by the company and its subsidiaries, was revised as a consequence of s-cl. 230(1) being redrafted.