

Cl.489 : Powers of Court Cumulative

1616. This clause is based on CA s.390.

1617. Any powers conferred on the Court by the CB will be in addition to any existing powers of instituting proceedings against any contributory or debtor of the company.

Part 5.5 - VOLUNTARY WINDING UP

1618. This Part is based on CA Part XII Division 3.

Division 1 - Resolution for winding up.

Cl.490 : Limitation on right to Wind Up Voluntarily

1619. This clause is based on CA s.391.

1620. Where a winding up application on the ground that the company is unable to pay its debts has been filed with the Court the company will not, without the leave of the Court, be entitled to resolve that it be wound up voluntarily.

Cl.491 : Circumstances in which Company may be Wound Up Voluntarily

1621. This clause is based on CA s.392.

1622. Subject to the above limitation, a company will be able to be wound up voluntarily if it so resolves by special resolution. A printed copy of such resolution must be lodged with the ASC within 7 days after the passing of the resolution.

Cl.492 : Commencement of Winding Up

1623. This clause is based on CA s.393.

1624. A voluntary winding up will commence at the time of passing of the resolution for the voluntary winding up .

Cl.493 : Effect of Voluntary Winding Up

1625. This clause is based on CA s.394.

1626. From the commencement of the winding up, a company will be required to cease to carry on its business except so far as, in the opinion of the liquidator, is required for the beneficial disposal or winding up of the business.

1627. The corporate state and powers of the company remain until it is dissolved.

Cl.494 : Declaration of Solvency

1628. This clause is based on CA s.395.

1629. Where it is proposed to wind up a company voluntarily, the directors of the company will be able to make a written declaration that they are of the opinion that the company will be able to pay its debts in full within 12 months after the commencement of the winding up. A statement of affairs should be attached to such a declaration.

1630. Such a declaration will have no effect unless certain requirements, expressed in sub-cl.494(3), are fulfilled.

1631. If a declaration of solvency is made, the winding up will be a members' voluntary winding up if the members so resolve. Where no such declaration is made, the winding up will be a creditors' voluntary winding up.

Division 2 - Members' Voluntary Winding Up

Cl.495 : Liquidators

1632. This clause is based on CA s.396.

1633. The company in general meeting will have to appoint a liquidator to wind up the company's affairs and distribute the company's property. Once a liquidator is appointed, all powers of the directors cease unless the liquidator approves the continuance of any of those powers.

Cl.496 : Duty to Liquidator to Call Creditors' Meeting in Case of Insolvency

1634. This clause is based on CA s.397.

1635. Where a declaration of solvency has been made and the liquidator is of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration he will be required to call a meeting of creditors.

1636. At such a meeting, the liquidator will be required to submit a statement of the assets and liabilities of the company. The creditors at such a meeting will be able to appoint another liquidator. The liquidator, or new appointee, will be required to lodge a notice of the holding of the meeting within 7 days thereafter.

Division 3 - Creditors' Voluntary Winding Up

Cl.497 : Meeting of creditors

1637. This clause is based on CA s.398.

1638. A company will be required to call a meeting of creditors at a time and place convenient to the majority of

creditors on the day on which (or the day after) there is to be a meeting proposing a resolution for voluntary winding up.

1639. The company will be required to give the creditors at least 7 days notice of the meeting and to provide certain information to them.

Cl.498 : Power to Adjourn Meeting

1640. This clause is based on CA s.399.

1641. A meeting of creditors should be able to be adjourned for up to 21 days. If a meeting is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of creditors will have effect as if it had been passed immediately after the passing of the resolution.

1642. References to the circulation of newspapers in CA s.399(3) have been altered to newspapers circulating in the State where the meeting is to be held.

Cl.499 : Liquidators

1643. This clause is based on CA s.400.

1644. The Company will be required and the creditors will be permitted, at their respective meetings, to nominate a person to be a liquidator. In the event of any conflict the Court should have power to settle the nominations. On the appointment of a liquidator the powers of the directors cease except as far as the committee of inspection or, if there is no such committee, the creditors approve.

Cl.500 : Execution and Civil Proceedings

1645. This clause is based on CA s.401.

1646. After the commencement of the creditors' voluntary winding up, any attempt by a creditor to enforce a remedy by proceeding against the property of the company will be void and civil proceedings will only be able to be commenced against the company with the leave of the Court.

Division 4 - Voluntary winding up generally.

Cl.501 : Distribution of Property of Company

1647. This clause is based on CA s.403.

1648. The property of a company will, on its winding up, be applied equally in satisfaction of its liabilities and subject to that application, be distributed among the members according to their rights and interests in the company.

Cl.502 : Appointment of Liquidator

1649. This clause is based on CA s.404.

1650. If for any reason there is no liquidator acting, the Court will be able to appoint a liquidator.

Cl.503 : Removal of Liquidator

1651. This clause is based on CA s.405.

1652. The Court will be able to remove a liquidator, on cause shown, and appoint another liquidator.

Cl.504 : Review of Liquidators' Remuneration

1653. This clause is based on CA s.406.

1654. Any member or creditor or the liquidator will be able to apply to the Court to review the remuneration of the liquidator. The decision of the Court will be final.

Cl.505 : Acts of Liquidator Valid etc.

1655. This clause is based on CA s.407.

1656. The acts of a liquidator will be valid notwithstanding any defects that may afterwards be found in his appointment or qualification.

Cl.506 : Powers and Duties of Liquidator

1657. This clause is based on CA s.408.

1658. The liquidator will be able to exercise certain powers given to him or her by the Court, certain other powers of the Court and other powers given by the Bill.

Cl.507 : Powers of Liquidator to Accept Shares etc. as consideration for Sale of Property of Company

1659. This clause is based on CA s.409.

1660. The liquidator, with the sanction of a special resolution of the company, will be able to accept shares, debentures, policies or other like interests as consideration for the sale of property of the company.

1661. In relation to the law relating to commercial arbitration (sub-cl.507(7)) the law will be that of the Australian Capital Territory.

Cl.508 : Annual Meeting of Creditors

1662. This clause is based on CA s.410.

1663. If the winding up continues for more than one year, the liquidator must convene a general meeting of the company, or in the case of a creditors' voluntary winding up, a general meeting of the company and a meeting of the creditors, within 3 months after the end of the first year from the commencement of the winding up and thereafter yearly. He must lay before the meeting an account of his acts and dealing and of the conduct of the winding up in the preceding year.

Cl.509 : Final Meeting and Dissolution

1664. This clause is based on CA s.411.

1665. Once the affairs of a company are fully wound up, the liquidator will be required to make an account showing how the winding up has been conducted and how the company's property has been disposed of. He will be required to convene a general meeting of the company, or in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, and lay the account before that meeting.

Cl.510 : Arrangement, when Binding on Creditors

1666. This clause is based on CA s.412.

1667. An arrangement entered into between a company about to be or in the course of being wound up and its creditors is binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by a majority in number present and voting, where such majority represents 75% of the total amount of the debts of the creditors present and voting either in person or by proxy.

Cl.511 : Application to Court to Have Questions Determined or Powers Exercised.

1668. This clause is based on CA s.413.

1669. The liquidator, any contributory or creditor will be able to apply to the Court to determine any question arising out of the winding up of a company or to exercise any of the Court's powers under the Bill.

Cl.512 : Costs

1670. This clause is based on CA s.414.

1671. All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) will be payable out of the property of the company in priority to all other claims.

PART 5.6 - WINDING UP GENERALLY

1672. This Part is based on CA Part XII Divisions 1 and 4.

Division 1 - Preliminary

Cl.513 : Application

1673. This clause is based on CA s.359.

1674. Unless the contrary intention appears, the provisions of this Bill apply to windings up by the Court and voluntary windings up.

Division 2 - Contributions

1675. This Division is based on CA ss.360-362.

Cl.514 : Where Division Applies

1676. This Division applies where a company is being wound up.

Cl.515 : General liability of contributory

1677. This clause is based on part of CA s.360(1).

1678. Subject to this Division, every present and past member will be liable to contribute to the assets of the company on its being wound up.

Cl.516 : Company limited by shares

1679. This clause is based on CA para.360(1)(e).

1680. The liability of a member of a company limited by shares is the amount unpaid on the shares.

Cl.517 : Company limited by guarantee

1681. This clause is based on CA para.360(1)(f).

1682. The liability of a member of a company limited by guarantee is the amount he has undertaken to contribute.

Cl.518 : Company limited both by shares and by guarantee.

1683. A member of a company limited by shares and guarantee is the aggregate of the amount unpaid on the shares and the amount he has undertaken to contribute.

Cl.519 : Exceptions for former unlimited company.

1684. This clause is based on CA para.360(1)(g).

1685. The liability of a person who was a member at the time of the change from unlimited to limited company in respect of debts contracted before that time is unlimited.

Cl.520 : Past member: later debts

1686. This clause is based on CA para.360(1)(c).

1687. A past member need not contribute towards the payment of debts contracted after he ceased to be a member.

Cl.521 : Person ceasing to be a member a year or more before winding up.

1688. A past member who was not a member during the year preceding the commencement of the winding up need not contribute. This is subject to cl.523.

Cl.522 : Present members to contribute first.

1689. This clause is based on CA para.360(1)(d).

1690. A past member need not contribute unless it appears that existing members are unable to satisfy the contributions they are liable to make.

Cl.523 : Past member of former unlimited company.

1691. This clause is based on CA para.360(1)(b).

1692. A past member who was a member at the time the company changed from unlimited to limited status (if that occurred within the 3 years preceding the commencement of winding up) will be liable to contribute towards the payment of debts incurred before that time.

Cl.524 : Past member of former limited company.

1693. This clause is based on CA para.360(1)(h).

1694. A person who was a past member at the time a company changed from limited to unlimited status is only liable to

contribute the amount he would have been liable if the company had remained limited.

Cl.525 : Debts to a member.

1695. A sum due as a dividend, profit or otherwise to a member is only to be taken into account in the final adjustment of rights between contributories and is not treated as a debt in the case of competition between a member and a creditor.

Cl.526 : Liability on certain contracts.

1696. This clause is based on CA para.360(1)(j).

1697. A provision in a policy of insurance or other contract limiting the liability of individual members is not invalidated.

Cl.527 : Nature of Liability of Contributory

1698. This clause is based on CA s.361.

1699. The liability of a contributory will be of the nature of a specialty debt according to the law of the Australian Capital Territory. The debt will be payable at the time when calls are made for enforcing the liability.

Cl.528 : Death of contributory

1700. This clause is based on CA s.362(1).

1701. If a contributory dies, his personal representatives will be liable in the course of administration to contribute to the property of the company in discharge of his liability.

Cl.529 : Bankruptcy of contributory

1702. This clause is based on CA s.362(2).

1703. If a contributory becomes insolvent under administration or assigns his estate for the benefit of his creditors, his trustee will represent him and be a contributory. The estimated value of his liability to future calls as well as calls already made may be proved against his estate.

Cl.530 : Division 2 Company

1704. This provision picks up changes in status under corresponding laws.

Division 3 - Liquidators

Cl.531 : Books to be Kept by Liquidator

1705. This clause is based on CA s.416.

1706. The liquidator will be required to keep proper books in which he or she must record certain matters. Any contributory or creditor may inspect them, unless the Court orders otherwise.

Cl.532 : Disqualification of Liquidators

1707. This clause is based on CA s.417.

1708. A person will not be able to be a liquidator of a company unless he or she is either a registered liquidator or registered as a liquidator of that company. Other grounds for disqualification are set out in the provision.

Cl.533 : Reports by Liquidator

1709. This clause is based on CA ss.324C and 418.

1710. If it appears to the liquidator that an officer or member may be guilty of an offence, that a person connected with the company has misappropriated money or property or may be guilty of negligence or a breach of duty the liquidator is bound to report this to the ASC.

1711. The liquidator must also report if the company may be unable to pay its unsecured creditors more than 50 cents in the dollar. The Court may also order certain reports to be made.

Cl.534 : Prosecution by liquidator of delinquent officers and members.

1712. This clause is based on CA s.324D.

1713. Where a report has been lodged by the liquidator but the ASC has decided not to prosecute, it must so inform the liquidator and the liquidator may begin a prosecution. The ASC may pay the part or whole of the cost of the proceedings. Otherwise it is payable out of the company's property as part of the costs of the winding up.

Cl.535 : Liquidator has Qualified Privilege in Certain Circumstances

1714. This clause is based on CA s.419.

1715. In the absence of malice on his part, a liquidator will not be liable to any action for defamation in regard to any statement he makes in the course of his duties as liquidator. Qualified privilege is defined in Cl.89.

Cl.536 : Supervision of Liquidators

1716. This clause is based on CA s.420.

1717. If it appears to the Court or to the ASC that a liquidator has not faithfully performed or is not faithfully performing his duties, or has not observed or is not observing any of the requirements of the Court, the CB or regulations or rules, the Court or ASC may inquire into the matter and the Court may take such action as it thinks fit.

1718. While the Commission may conduct an inquiry the Court is the final arbitrator of the matter.

Cl.537 : Notice of Appointment and Address of Liquidator

1719. This clause is based on CA s.421.

1720. A liquidator will be required to lodge notice of his or her appointment, address and resignation, removal from office or change of address with the ASC.

Cl.538 : Regulations Relating to Money, etc Received by Liquidator

1721. This clause is based on CA s.421A.

1722. This provision enables regulations to be made dealing with payments into and out of banks.

1723. The regulations may apply generally or to specified windings up.

Cl.539 : Liquidator's Accounts

1724. This clause is based on CA s.422.

1725. The liquidator will be required to lodge with the ASC half-yearly accounts of his receipts and payments and a statement of the position in the winding up. The ASC will be able to cause these accounts to be audited.

Cl.540 : Liquidator to Make Good Defaults

1726. This clause is based on CA s.423.

1727. If a liquidator has not lodged any document that he is required to lodge, and fails to make good the default within 14 days after service on him or a notice requiring him to do so, the Court will be able to make an order directing the liquidator to make good the default.

Division 4 - General

Cl.541 : Notification that a Company is in Liquidation

1728. This clause is based on CA s.424.

1729. When a company is being wound up, the words 'in liquidation' should be set out by the company, after its name, on every public document and in every negotiable instrument issued or signed by or on behalf of the company.

Cl.542 : Books of Company

1730. This clause is based on CA s.425.

1731. Where a company is being wound up, all books of the company and of the liquidator that are relevant to the company will be, as between the contributories of the company, prima facie evidence of the truth of all matters recorded within them.

1732. When a company has been wound up the liquidator will be required to retain the books for at least 5 years.

Cl.543 : Investment of Surplus Funds on General Account

1733. This clause is based on CA s.426.

1734. Whenever the cash balance standing to the credit of a company is in excess of the amount that is required for the time being to answer demands in respect of the property of the company, the liquidator will be able to invest any part of the sum in authorised trustee investments or with authorised dealers in the short term money market in addition to being able to deposit it at interest with any bank. Any interest received will be part of the property of the company.

Cl.544 : Unclaimed Property to be Paid to Minister

1735. This clause is based on CA s.427.

1736. Where a dividend remains unclaimed for more than 6 months from the date it became payable or an amount remains unclaimed or undistributed after the final distribution, the liquidator should pay these moneys to the Minister who will deal with them in accordance with Part 9.7.

Cl.545 : Expenses of Winding Up Where Property Insufficient

1737. This clause is based on CA s.429.

1738. Unless expressly directed to do so by the ASC or the Court, a liquidator will not be liable to incur any expense unless there is sufficient available property.

Cl.546 : Resolutions Passed at Adjourned Meetings of Creditors and Contributories

1739. This clause is based on CA s.430.

1740. Subject to clause 498(4) (power to adjourn meeting), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution will be treated as if it were passed on the date on which it was in fact passed and not on any earlier date.

Cl.547 : Meetings to Ascertain Wishes of Creditors or Contributories

1741. This clause is based on CA s.431.

1742. The Court will have power to have regard to the wishes of the creditors and contributories as to all matters relating to the winding up. If it thinks it necessary, the Court may order meetings of creditors and contributories to ascertain those wishes.

Division 5 - Committees of Inspection

1743. The provisions relating to committees of inspection are based on CA ss.432-436 (Part XII, Division 4, Subdivision B).

Cl.548 : Convening of Meetings by Liquidator for Appointment of Committee of Inspection

1744. This clause is based on CA s.432.

1745. If requested by a creditor or contributory, the liquidator will have to convene separate meetings of creditors and contributories to see if they require a committee of inspection to be appointed to act with the liquidator. Criteria for eligibility to be appointed a member of a committee are set out.

Cl.549 : Proceedings of Committee of Inspection

1746. This clause is based on CA s.433.

1747. Provision is made for the convening of meetings of a committee of inspection and then taking decisions.

Cl.550 : Vacancies on Committee of Inspection

1748. This clause is based on CA s.434.

1749. There are provisions for filling vacancies on committees of inspection.

Cl.551 : Member of Committee Not to Accept Extra Benefit

1750. This clause is based on CA s.435.

1751. A member of the committee of inspection shall not, except as provided in the Bill or with leave of the Court, make an arrangement to derive a pecuniary benefit from the winding up or become the purchaser of any property of the company.

Cl.552 : Powers of Court Where No Committee of Inspection

1752. This clause is based on CA s.436.

1753. Where there is no committee of inspection, the liquidator will be able to seek comparable directions or permission from the Court.

Division 6 - Proof and Ranking of Claims

1754. This Division is based on CA ss.437-450 (Part XII, Division 4, Subdivision C).

Cl.553 : Proofs of Debts

1755. This clause is based on CA s.438.

1756. In every winding up, all debts payable on a contingency and all claims against the company will be admissible to proof against the company. In the winding up of insolvent companies the relevant provisions of the Bankruptcy Act 1966 apply in relation to the rights of secured and unsecured creditors, debts provable, and the valuation of annuities and future and contingent liabilities.

Cl.554 : Computation of Debts

1757. This clause is based on CA s.439.

1758. With the exception of certain amounts required to be paid under cl.557 the amount of a debt of a company will, for the purposes of a winding up, be computed as at the relevant date.

1759. 'Relevant date' is defined in the Chapter 1.

Cl.555 : Debts proved to Rank Equally except as Otherwise Provided

1760. This clause is based on CA s.440.

1761. Except as otherwise provided in the CB, all debts proved in a winding up will rank equally. If the property of the company is insufficient to meet them in full, debts must be paid proportionately.

Cl.556 : Priority Payments

1762. This is based on CA s.441.

1763. The order of priority of payment of debts are set out in this provision. Both sections 441(1)(h) and 449 CA have been deleted. It is Commonwealth policy not to support Crown priorities in general. Exceptions to this policy are made in special provisions in this and other legislation.

Cl.557 : Orders under section 91 of the Commission Act

1764. This clause is based on CA s.442.

1765. Where an Order is made under clause 91 of the Commission Act against a company being wound up, the amount the company is liable to pay under the order should be admissible to proof against the company and is to be given the priority stated sub-cl.556.

Cl.558 : Debts Due to Employees

1766. This clause is based on CA s.443.

1767. Where a contract of employment with a company being wound up is in existence immediately before the relevant date, the employee under the contract will be entitled to payment under cl.556 as if his services with the company were terminated by the company on the relevant date.

Cl.559 : Debts of a Class to Rank Equally

1768. This clause is based on CA s.444.

1769. After provision is made for the costs, charges and expenses referred to in para.556(1)(a), debts of a class referred to in the remaining paragraphs of sub-cl.556(1) will rank equally between themselves and will be paid in full, unless the property of the company is insufficient to meet them, in which case they will be paid proportionately.

Cl.560 : Advances in Respect of Wages, Retrenchment Payments and Leave of Absence

1770. This clause is based on CA s.445.

1771. A person who advances money in respect of wages or leave of absence payments etc will have a specified right of priority in relation to the money so advanced and paid.

Cl.561 : Priority of Employees' Claims Over Floating Charges

1772. This clause is based on CA s.446.

1773. Employees' claims for wages, leave of absence, retrenchment or long service leave will have a specified priority in relation to floating charges.

Cl.562 : Insurance Against Liabilities to Third Parties

1774. This clause is based on CA s.447.

1775. The amounts received by the company or liquidator under a pre-liquidation contract of insurance against liability to third parties will be paid to the third party in respect of whom the liability was incurred in priority to other priority debts.

Cl.563 : Provisions relating to Injury Compensation

1776. This clause is based on CA s.448.

1777. Notwithstanding anything in cl.556, para.556(1)(f) will not apply:

- (a) where the company is being wound up for the purpose of reconstruction or amalgamation and the right to injury compensation has been preserved; or
- (b) the company has entered into a contract with an insurer in respect of any liability for injury compensation.

1778. This clause also clarifies the method of calculating certain worker's compensation payments.

Cl.564 : Power of Court to Make Orders in Favour of Certain Creditors

1779. This clause is based on CA s.450.

1780. Where in a winding up:

- (a) property has been recovered under an indemnity for costs of litigation given by creditors; or
- (b) expenses in relation to which a creditor has indemnified a liquidator have been recovered,

the Court will be able to make such order as it deems just with respect to the distribution of that property and those expenses.

Division 7 - Effect of Other Transactions

1781. This Division is based on CA ss.451-456 (Part XII, Division 4, Subdivision D).

Cl.565 : Undue Preference

1782. This clause is based on CA s.451.

1783. A settlement, conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company which would be void against the trustee in bankruptcy if it had been made by a natural person who had become bankrupt, will be void against the liquidator. This provision also deals with the date in relation to winding up that corresponds with the date of the presentation of the petition in bankruptcy proceedings.

Cl.566 : Effect of Floating Charge

1784. This clause is based on CA s.452.

1785. Certain floating charges created within 6 months of the commencement of the winding up will be invalid.

Cl.567 : Liquidator's Right to Recover In Respect of Certain Transactions

1786. This clause is based on CA s.453.

1787. Where, within a 4 year period preceding the commencement of the winding up, the company has, for cash consideration, either acquired from or sold to certain persons closely associated with the formation or management of the company, any property, business or undertaking, the liquidator will be able to recover from those persons the difference between the cash consideration and the value of the property at the time of its acquisition or sale.

Cl.568 : Disclaimer of Onerous Property

1788. This clause is based on CA s.454.

1789. A liquidator will be able to disclaim onerous property.

Cl.569 : Executions, Attachments etc Before Winding Up

1790. This clause is based on as CA s.455.

1791. Where a creditor has issued execution or instituted proceedings against the property of a company within 6 months before the commencement of the winding up of a company the creditor will be obliged to pay the liquidator the amount he received as a result of such proceedings. Where the creditor

has paid the liquidator under such circumstances he will be able to prove his debt in the winding up as an unsecured creditor.

Cl.570 : Duties of Sheriff after Receiving Notice of Application

1792. This clause is based on CA s.456 CA.

1793. Where a sheriff (defined in Chapter 1) receives notice in writing of:

- (a) an application to the Court for the winding up of a company; or
- (b) the covering of a meeting of a company to consider a resolution that the company be wound up voluntarily,

the sheriff must not sell property of the company pursuant to any process of execution by a creditor, or pay to such creditor the proceeds of a sale of property which has taken place under such a process.

Division 8 - Dissolution

1794. This Division is based on CA ss.458-464 (Part X, Division 4, Subdivision F). Clause 573 is new.

Cl.571 : Power of Court to Declare Dissolution of Company Void

1795. This clause is based on CA s.458.

1796. Where a company has been dissolved following a winding-up, the Court will be able at any time, on an application by the liquidator or other interested person, to make an order declaring the dissolution to be void. The Court

will be able to give directions and make such provisions as seem just for placing the company and all other persons in the same position, as far as possible, as if the company had not been dissolved.

Cl.572 : Notice by Commission of intention to deregister defunct Company

1797. This clause is based on CA sub-ss.459(1), (2), (3) and (8).

1798. Where the ASC has reasonable cause to believe that a company is not carrying on business it will be able to publish a notice in the Gazette, after sending certain notices to the company, with a view to cancelling the registration of the company.

1799. The ASC will also be able to cancel the registration of a company in a similar manner if the company is being wound up and no liquidator is acting; the affairs of the company are fully wound up and the liquidator is 6 months in default in lodging a return; or the affairs of the company have been fully wound up under Division 1 and there is no property or the property available is not sufficient to pay the costs of obtaining an order of the Court dissolving the company. Sub-cl.572(4) indicates the means of addressing notices or letters to be sent under this clause.

Cl.573 : Application to Commissioner for deregistration of defunct company

1800. This is a new provision.

1801. In addition to the above clause, this clause provides for 'eligible applicants', namely, the company, its members, or any other interested person to make an application to the ASC to publish a particular notice in relation to the company

that may ultimately result in the registration of the company being cancelled and the company being dissolved.

1802. An eligible applicant will be required to seek the approval of the ASC by applying and lodging a declaration in the prescribed form attesting that certain circumstances exist in relation to the status of the company, namely that the company is not carrying on business or is not in operation; and that all of the members desire that the company be deregistered and dissolved (sub-cl.573(3)). An eligible applicant will be required within 7 days of having obtained the above approval, to publish a notice in the prescribed form in a daily newspaper circulating generally in each State or Territory in which the company has carried on business, of its application for deregistration (sub-cl.573(5)). The notice should set out the terms of the declaration and state that, unless cause to the contrary is shown to the ASC within 3 months of the date of the notice, the ASC may cancel the registration and the company will be dissolved (sub-cl.573(6)). Copies of these notices should be sent by the eligible applicant to the ASC and the company (sub-cl.573(7)).

1803. Unless it has reason to suspect to the contrary, the ASC will not be under any obligation to ensure the veracity of the statutory declaration. It can assume the truth of the declaration (sub-cl.573(4)).

Cl.574 : Power of Commission to deregister defunct company

1804. This clause is based on CA sub-ss.459(4), (5), (6) and (7).

1805. At the expiration of the time specified in notices under sub-cl.572(2) or (3) or 573(5) above the ASC may, unless cause to the contrary is shown, by notice in writing published in the Gazette cancel the registration and dissolve the company.

1806. Sub-clauses 574(2) and (3) deal with the situations when a company should be reinstated. Sub-clauses 574(4) and (5) enable reinstatement and empower the Court to give any directions necessary to place the company and all persons in the same position, so far as possible, as if the company's registration had not been cancelled.

Cl.575 : Commission to Act as Representative of Defunct Company

1807. This clause is based on CA s.460.

1808. This clause enables the ASC in the listed circumstances to act as a representative of the defunct company or its liquidator.

Cl.576 : Outstanding Property of Defunct Company to Vest in Commission

1809. This clause is based on CA s.461.

1810. After a company has been dissolved, any outstanding property within or outside Australia which was vested in the company, to which the company was entitled or over which the company had a disposing power, will vest in the ASC.

Cl.577 : Outstanding Interests in Property : How Disposed of

1811. This clause is based on CA s.462.

1812. Once the ASC has an estate or interest in property vested in it under the preceding clause, it will be able to get in, sell or otherwise dispose of, or deal with any part or all of that estate or interest.

1813. Any commission payable and the remainder (after deduction of expenses) will be paid to the Minister to be dealt with under Part 9.7.

Cl.578 : Liability of Commission and Commonwealth as to
Property vested in Commission

1814. This clause is based on CA s.463.

1815. Property vested in the ASC under this Division will continue to be liable to all charges etc imposed on that property by reason of any law as to rates, taxes, etc to which the property would have been liable had it continued in the ownership of the company.

Cl.579 : Accounts

1816. This clause is based on CA s.464.

1817. The ASC will be required to keep accounts relating to property vested in it under this subdivision.

Division 9 - Co-operation between Australian and foreign
courts in external administration matters

1818. The provisions of the previous Division 5 of Part XII - Reciprocity with Participating States and Territories - which confers recognition under the CA of decisions of the Supreme Courts concerning the winding up of a company under the law of a participating jurisdiction are not necessary under the Bill. However, it has been decided to provide various clauses which enable mutual assistance between foreign and Australian courts in insolvency matters. Similar provisions are found in the Bankruptcy Act 1966 and are desirable in the light of the greater mobility of persons and assets today.

Cl.580 : Interpretation

1819. This Division provides for mutual assistance in external administration matters. The latter term is defined in the interpretation clause to relate to:

- (a) the winding up of a company or a Part 5.7 body under this Chapter;
- (b) the winding up of a body corporate or a Part 5.7 body outside Australia;
- (c) the insolvency of a body corporate or of a Part 5.7 body.

1820. A prescribed country for the purposes of the new section is:

- (a) a country prescribed by the regulations;
- (b) a colony, overseas territory or protectorate of a country so prescribed.

Cl.581 : Courts to Act in Aid of each other

1821. This clause is based on s.29 of the Bankruptcy Act 1966.

1822. It requires all courts having jurisdiction under the Corporations Bill and officers of or under the control of those courts, to act in aid of one another in all external administration matters.

1823. By virtue of the Foreign Tribunals Evidence Act 1856, an Imperial Act still in force in Australia, assistance to foreign courts in corporate insolvency matters is limited to the taking of evidence. By contrast, in relation to the bankruptcy of a natural person, s.29 of the Bankruptcy Act 1966 also enables an overseas bankruptcy official to obtain control, or the proceeds from the sale, of an overseas bankrupt's property situated in Australia : Re Ayres ex parte Evans (1981) 51 FLR 395; Ayres v. Evans (1982) 56 FLR 235. These provisions aim to complement the assistance provisions in the Bankruptcy Act by providing for mutual assistance in 'winding up and other insolvency matters'.

1824. In all external administration matters the Court will be bound to act in aid of, and be auxiliary to, the courts of excluded Territories, and of prescribed countries that have jurisdiction in external administration matters; and may act in aid of, and be auxiliary to, the courts of other countries that have jurisdiction in external administration matters (sub-cl.581(2)). This provision parallels s.29(2) of the Bankruptcy Act 1966.

PART 5.7 - WINDING UP OF BODIES OTHER THAN COMPANIES

1825. Division 6 of Part XII has been modified to reflect the position that the provisions of CA s.470 which provide for grounds of winding up which extend beyond insolvency, are not applicable in their present form to bodies which are not trading and financial corporations, foreign corporations, nor bodies formed within an internal Territory.

1826. Accordingly, two different approaches have been taken to the winding up of such bodies, called Type A bodies and Type B bodies in this Bill. Type A bodies and Type B bodies are defined in Chapter 1.

1827. Relying on the corporations and territories powers in the Constitution for Type A bodies and relying on the insolvency power for Type B bodies, those bodies will be subject to winding up provisions based on CA s.470.

1828. A Type A body is defined in the Chapter 1 to be:

- (a) a foreign company;
- (b) a corporation (other than a company) that consists or more than 5 members; or

(c) a partnership or unincorporated body that:

(i) was formed in a Territory or in an excluded Territory

(ii) consists of more than 5 members;

but does not include an exempt public authority.

1829. A Type B body is defined to be:

(a) a body corporate that is incorporated in a State; or

(b) a partnership or unincorporated body that was formed in a State or outside Australia and the external Territories; and consisted of more than 5 members.

but does not include an exempt public authority.

Cl.582 : Application of Part

1830. This Part operates in addition to and not in derogation of other provisions in the Bill or any other Australian law which concerns the winding up of Part 5.7 bodies (sub-cl.582(1)).

1831. Nothing in this Part affects the operation of the Bankruptcy Act 1966 (sub-cl.582(2)).

1832. A Part 5.7 body incorporated outside Australia may be wound up under this Part even though it is being wound up or has been dissolved or has otherwise ceased to exist as a body corporate under or by virtue of the law of the place under which it was incorporated (sub-cl.582(3)).

Cl.583 : Winding up of Type A Bodies

1833. This provision is based on CA s.470 but is limited to Type A bodies.

1834. Subject to Part 5.7, Type A bodies may be wound up under this Chapter where such adaptations to the Chapter as are necessary, including : deeming the principal place of business of the Type A body in Australia to be its registered office; providing that a Type A body cannot be wound up voluntarily and listing the circumstances when winding up may take place are made. The circumstances when winding up may take place are:

- . where the Type A body is unable to pay its debts, has been dissolved, has ceased to carry on business in Australia, or has a place of business in Australia only for the purpose of winding up its affairs.
- . if the Court is of the opinion that it is just and equitable that the Type A body should be wound up; or
- . that the Commission has stated in a report prepared under Part 3, Division 1 of the ASC Bill that in its opinion:
 - (a) the Type A body cannot pay its debts and should be wound up;
 - (b) it is in the interest of the public, of the members or of the creditors, that the Type A body should be wound up.
- . CA sub-para.470(1)(c)(iv) has been replaced by a provision, making it a ground of winding up if an investigation is being or has been carried out under the Act as to whether an offence may have been committed by a

person, and the ASC has formed either of the opinions referred to in para 583(1)(c)(iii) (based on CA s.470(1)(c)(iv) (A) and (B)).

Cl.584 : Winding up Type B bodies

1835. Subject to Part 5.7, Type B bodies may be wound up under this Chapter where such adaptations to the Chapter as are necessary are made.

1836. Adaptations include:

- (a) deeming the principal place of business in Australia of the Type B body to be its registered office;
- (b) a Type B body cannot be wound up voluntarily; and
- (c) listing the circumstances when a Type B body may be wound up to be:
 - (i) if the Type B body is unable to pay its debts.
 - (ii) if the Type B body has been dissolved because it was unable to pay its debts.

Cl.585 : Insolvency of Part 5.7 Body

1837. This clause is based on CA sub-s.470(2).

1838. The cases when a Part 5.7 body is deemed to be unable to pay its debts are listed.

Cl.586 : Contributories in winding up of Part 5.7 body

1839. This clause is based on CA s.471.

1840. In the winding up of a Part 5.7 body every person who is liable to pay (i) any debt or liability of the Part 5.7 body (ii) a sum for the adjustment of members rights or (iii) the costs and expenses of the winding up, will be a contributory. Every contributory will be liable to pay all sums due from him in respect of such a liability.

Cl.587 : Power of Court to stay or restrain proceedings

1841. This clause is based on CA s.472.

1842. The provisions of the Bill relating to staying and restraining actions and other civil proceedings against a company being wound up will extend in the case of a Part 5.7 body to actions and other civil proceedings against the contributory of a company where the application to stay or restrain is by a creditor.

Cl.588 : Outstanding Property of a defunct Part 5.7 body

1843. This clause is based on CA ss.473 and 474.

1844. This clause applies where:

- (a) a Type A body has been dissolved; or
- (b) a Type B body has been dissolved because it was unable to pay its debts;

and there remains certain outstanding property in Australia vested in that body, to which that body was entitled or over which the body had a disposing power (sub-cl.588(1)).

1845. Sub-cl.588(2) lists the persons in whom the estate or interest in that property vests by virtue of this clause. If the body was incorporated in Australia or an excluded Territory, the property vests in the person entitled to the

property under the law of the body's place of origin; if it was not so incorporated the property vests in the ASC.

PART 5.8 - OFFENCES

Cl.589 : Interpretation and application

1846. This part (other than Bill cl.595) will apply to a Division 2, 3 or 4 company, and as it so applies:

- (i) a reference to the company will include a reference to the company as it existed at a time before its registration day (including a time before the commencement of this application clause);
- (ii) a reference to a provision of this Bill will include a reference to a law corresponding to that provision, and
- (iii) a reference to the Commission (the ASC) in relation to a provision of this Bill, will include a reference to the NCSC (Bill sub-cl.589(6)).

1847. This Part will also apply to a Division 2 or 3 or 4 company with such other modifications as the circumstances require (Bill sub-cl.589(6)).

1848. Cls.589 to 593 of the Bill are based on CA.ss.553 to 557 and will deal with offences committed by officers of certain companies. These provisions 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 an order under Bill cl.482);
- (b) that is or has been under official management;

- (c) whose affairs are being or have been under investigation by the ASC under Division 1 of Part 4 of the ASC Bill or have been at any time under investigation under Part VII of the CA or under a law or a previous law of a State or an Territory that corresponds to that Part of CA (Bill sub-cl.589(2));
- (d) in respect to 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.

1849. The definitions of "appropriate officer" and "relevant day" are directly related to the companies to which these clauses will apply (Bill cl.589).

Cl.590 : Offences by officers of certain companies

1850. This provision is based on CA s.554.

1851. 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 (ie a liquidator, official manager, receiver, receiver and manager, the ASC or a person administering a compromise or arrangement of all the property of the company or, not to provide information concerning the disposal of 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 the person's 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) fraudulently to 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 pawn, pledge or 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 or report 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.

(Bill sub-cl.590(1))

1852. It will also be an offence for a person to receive property of a company knowing it to have been pawned, pledged or disposed of by a person in the circumstances referred to in paragraph (f) above (Bill sub-cl.590(5)).

1853. Moreover, the person who receives or takes the property, regardless of the circumstances in which it was obtained and pledged, pawned or disposed of, will be deemed to hold the property as trustee for the company and will be liable to account to the company for the property (Bill sub-cl.590(6)).

1854. In proceedings pursuant to the above provision, it will only be necessary to establish on the balance of probabilities that the person had the required knowledge (Bill sub-cl.590(7)).

Cl.591 : Liability where proper accounts not kept

1855. This provision is based on CA.s.555.

1856. It will provide that where a company to which Bill cl.589 applies, or which becomes such a company, has failed to keep proper accounting records in contravention of Bill cl.289 during the whole or part of a specified period, a director or officer who fails to take all reasonable steps to secure compliance by the company with that provision will be guilty of an offence.

1857. 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 the duty to comply with Bill cl.289.

Cl.592 : Offences relating to incurring of debts or fraudulent conduct

1858. This provision is based on CA.s.556.

1859. It will provide that if a company to which Bill cl.589 applies incurs a debt, and at the time the debt was incurred or immediately before that time, there were reasonable grounds of expectation that the company would be unable to pay its debts, any person who was a director, or who took 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 to creditors for the payment of the debt.

1860. The question of what constitutes reasonable grounds has been discussed by the High Court in Shapowloff v Dunn (1981) 148 CLR 72 at p.86; (1981)CLC 40-707 at p.33,134.

1861. Bill sub-cl.592(2) will provide that it will be a defence to a charge under Bill sub-cl.592(1) if the defendant proves that the debt was incurred without the person's express or implied authority or consent, or that the defendant did not have reasonable grounds to expect that the company would not be able to pay its debts as and when they became due.

1862. Bill sub-cl.592(3) will provide that a criminal conviction need not be obtained before civil proceedings can be instituted pursuant to Bill sub-cl.592(1). The liability of a person under Bill sub-cl.592(1) will need only to be established on the balance of probabilities (Bill sub-cl.592(4)).

1863. Where a person repays, in accordance with an obligation imposed by Bill sub-cl.592(5) a debt incurred by a company, that repayment will not make the company liable to the person concerned in respect of the amount paid. This provision will have the effect 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 Bill cl.594 (Bill sub-cl.592(5)).

1864. 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 Bill cl.589, any person who is knowingly concerned in the doing of the act with that intent will be guilty of an offence (Bill sub-cl.592(6)).

Cl.593 : Powers of Supreme Court

1865. This clause is based on CA s.557. It will provide that where a person has been convicted of an offence under Bill sub-cl.592(1) or 592(6), the Court will be able to declare that person to be personally liable for certain debts, and will be able to give directions and make orders to enforce such declarations (Bill sub-cl.593(1) and (2)).

1866. Where a company is or has been under official management and Bill cl.592 applies, a member of the company will be able to make an application under Bill para.593(3)(b).

1867. On the hearing of an application under Bill sub-cl.593 the appropriate officer or other applicant will be able to give evidence or call witnesses (Bill sub-cl.593(8)).

Cl.594 : Certain rights not affected

1868. This provision is based on CA s.558.

1869. It will provide that nothing in Bill sub-cl.592(1) or 593(1) or (2) will affect any rights of a person to indemnity, subrogation or contribution, except that Bill sub-cl.592(4) will prevent a director, who becomes personally liable under Bill sub-cl.592(1) to pay a debt incurred by a company, from seeking re-imbursement from the company.

Cl.595 : Inducement to be appointed liquidator or official manager

1870. This provision is based on CA s.559.

1871. It will be an offence for a person to offer or give to a member or creditor of a company valuable consideration in order to secure the person's own appointment, or to secure or to 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 to administer a compromise or arrangement in relation to the company.

Cl.596 : Frauds by officers

1872. This provision is based on CA s.561.

1873. It will provide that a person will be guilty of an offence if the person while an officer of a company:

- (a) fraudulently induces a person to give credit to the company or a related body corporate;
- (b) with intent to defraud the company or a related body corporate or members or creditors of the company or related body corporate, makes a gift or transfer of or charge on, the property of the company or of a related body corporate, or is involved in a levy of execution against such property; or
- (c) with intent to defraud the company or a related body corporate, 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 body corporate.

PART 5.9 - MISCELLANEOUS

Cl.597 : Examinations of persons concerned with corporations

1874. This provision is based on CA s.541.

1875. It will deal with the procedure for the examination of persons concerned in the affairs of companies.

1876. The procedures involved in such examinations will be as follows:

- (a) Where it appears to the ASC or a prescribed person (i.e. an official manager or liquidator or other person authorised by the ASC) that a person concerned in the affairs of a company 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 ASC will be able to apply to the Court for an order; the Court will be able 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; such an examination will be held in public except in special circumstances; the Court will be able to give directions as to the matters to be inquired into and the procedure to be followed.
- (b) A person who is ordered to attend must not:-
 - (i) fail to attend without reasonable excuse;
 - (ii) fail to take an oath or make an affirmation;
 - (iii) refuse to answer a question;
 - (iv) fail to produce relevant books under his or her control if directed to produce them by the Court;
 - (v) make a statement that is false or misleading in a material particular.
- (c) A person will not be excused from answering a question on the ground that the answer might tend to incriminate him or her, but where the person claims

that this will be the case, the answer will not be admissible in evidence against that person in criminal proceedings other than proceedings under this provision or other proceedings in respect of the falsity of the answer.

- (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; such a signed transcript will be able to be used in evidence in any legal proceedings against the person; an examination under this clause will be able, if the Court so directs, to be held in another court; a person under examination will be able to employ a solicitor and counsel who may ask the person such questions as the Court considers just to allow the person to explain or qualify answers or evidence given by the person; the Court will be able to adjourn the examination from time to time; and the Court will have 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 other person who took part in the examination with the Court's consent.

Cl.598 : Orders against persons concerned with corporations

1877. This provision is based on CA s.542.

1878. It will provide that on the application of the ASC or a prescribed person, where the 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 an order will not be able to be made unless

the person has been given an opportunity to be heard and to give evidence. A prescribed person will be defined as meaning an official manager, a liquidator or a person authorised by the ASC.

Cl.599 : Court may disqualify person from being a director, &c.

1879. On an application by the ASC, the Court will be able to make an order prohibiting a person from being a director or promoter of, or from being concerned in or taking part 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, two or more companies to which this provision applies, whether that period commenced before or after the commencement of this Bill; and
- (c) in the case of each such company, the manner in which the affairs of the company had been managed was wholly or partly responsible for that company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver or of a receiver and manager, or entering into a compromise or arrangement with its creditors.

1880. For the purposes of this provision, a "company" will be defined to mean a corporation or a Part 5.7 body (Bill sub-cl.599(5)).

1881. Bill sub-cl.599(4) will prohibit a person, who is the subject of a Bill clause 599 order (whether made before or after the commencement of this Bill), from being a director or promoter, or being in any way concerned in, or taking part in, the management of a corporation.

Cl.600 : Commission may order persons not to manage corporations

1882. This provision is based on CA s.562A and will enable the ASC to make orders prohibiting certain persons from managing a corporation.

1883. Where the ASC receives a notice from a liquidator, in respect of two or more companies as to their inability to pay their unsecured creditors more than 50 cents in the dollar, and each company has a common director, being a person who was a director of each company at any time during the period of 12 months ending on the date of the commencement of each winding up, the ASC will be able to give notice in writing to such a person requiring that person to show cause why he or she should not be prohibited from managing a corporation.

1884. Unless the ASC is satisfied that such a person should not be prohibited from taking part in the management of a corporation, the ASC will be able to serve on that person a notice in writing to the effect that that person will be prohibited from managing of a corporation for a period of up to 5 years. The person will have a right of appeal to the Court against the ASC's decision.

1885. Where the ASC serves notice under Bill sub-cl.600(2) on a person who was a common director to two or more "relevant companies" (as defined in Bill sub-cl.600(1)) and those companies have at any time been related to each other, the ASC will be required to have regard to that fact in deciding whether or not to serve a notice under Bill sub-cl.600(3) prohibiting that person from managing of a corporation. This provision will be relevant in the case of a failure of a group of companies which is in substance a single entity.

1886. A person who is the subject of a Bill clause 600 notice will be prohibited from being a director or promoter of, or in any way being concerned in or taking part in the management of a corporation, whether the notice was served before or after the commencement of this provision (Bill sub-cl.600(5)).

Cl.601 : Operation of Certain Ordinances

1887. Bill Cl.601 will provide that various provisions of the Bill will have effect subject to, or as modified by certain ACT Ordinances.

CHAPTER 6 - ACQUISITION OF SHARES

Introduction

1888. This Chapter covers the same subject matter as CASA and also incorporates the substantial shareholding provisions from CA Part IV Division 4 and the disclosure of beneficial ownership provisions from CA Part V Division 4.

1889. The basic framework of CASA and its pivotal concepts are retained. Apart from the reform measures specifically adverted to in the clause descriptions, the law, insofar as the Commonwealth's constitutional powers permit, has not been changed. This is so even though, where possible, the provisions have been restructured in a more logical way and again, where possible, the drafting of a number of provisions has been simplified.

1890. Two of the most significant changes made to the CASA provisions are:

- (a) discontinuation of pre-registration vetting by the Commission of Part A statements and offers (see cl.644); and
- (b) discontinuation of the requirement that the Commission consent to profit forecasts and asset revaluations during takeovers.

1891. These reforms will not change the liability of persons issuing Part A statements and offers, profit forecasts and asset revaluations if those statements contain false or misleading material. Nor will the reforms change the role of the Commission in investigating and taking action against such statements. This will be supplemented by a new provision (see cl.995) in the Securities Chapter which will provide civil

remedies for misleading or deceptive conduct in relation to, among other things, takeovers.

1892. The major change to the substantial shareholder provisions is the reduction of the threshold for disclosure from 10% to 5%. In addition, notification will no longer be required to be in the prescribed form.

1893. The major change to the disclosure of beneficial ownership provisions as they appeared in CA is the restriction of the right to serve a "s.261" notice to the ASC.

1894. As a result of the omnibus nature of the Bill, a number of definitions and interpretative provisions previously contained in CASA but which are common to other Chapters of the Bill have been put in the interpretation Chapter. Some of the more important examples include provisions dealing with:

"acquisition" and "disposal" of shares (CASA sub-ss.7(1) and (2) - now in cl.51)

"associated persons" (CASA sub-ss.7(4), (5), (6) and (7) - now dealt with in Division 2 of Part 1.2)

"relevant interest" in shares (CASA s.9 - now dealt with in Division 5 of Part 1.2).

PART 6.1 - INTERPRETATION

Cl.602 : Effect of this Part

1895. The provisions of Part 6.2 are expressed to have effect, unless the contrary intention appears, for the purposes of Chapter 6.

Cl.603 : Definitions

1896. Clause 603 contains definitions for the purposes of this Chapter of the Bill.

1897. Some of the more important definitions are as follows:

appropriate dealer is an expression used in relation to takeover announcements for a listed company (see Part 6.4) and means a member of the Australian Stock Exchange Ltd (ASX) in the case of ASX main board or second board companies, or a member of the company's home stock exchange (see definition below) for other companies.

closing phase is defined to mean the period of five trading days immediately before the end of the period of an offer under a takeover announcement. As with many of the definitions in this clause, this definition does not appear in CASA s.6. It is however included because the period is relevant to a number of provisions and avoids the need to repeat the description each time.

defeating condition is defined to mean certain conditions which prevent or defeat acceptance of a takeover offer under certain conditions. The description of such conditions as defeating conditions replaces their description as "prescribed conditions" under CASA.

full takeover scheme is defined to mean a scheme of offers for all the shares in a particular class of shares. Such schemes are first described at Bill para.635(a) and are then subsequently referred to by use of the definition. This replaces the references in CASA to "takeover schemes under which offers have been made in accordance with para.16(2)(a)(i)" and is intended to remove the need for such lengthy cross referencing.

home stock exchange is given a wider meaning than in CASA to identify home stock exchanges for companies listed on the second board of an Australian Stock Exchange (ASX) subsidiary or on a non-ASX stock exchange. In the case of ASX main board or second board companies, the home exchange is that designated in the ASX or the ASX subsidiary's listing rules. In the case of companies listed on non-ASX exchanges, the home exchange is the exchange itself or, if the company is listed on more than one exchange, the exchange designated by the ASC. This definition is relevant for the purposes of the clauses dealing with takeover announcements for listed companies (see Part 6.4). These provisions now allow for takeover announcements to be made for companies listed on the second boards of ASX subsidiaries and, conceivably, on non-ASX exchanges. (CASA S.17 is currently confined to ASX main board listed companies).

invitation is defined to mean a statement falling short of an offer in respect of shares or rights. The definition is essentially the same as in CASA s.6.

listed company is defined as a company included in the official list of a stock exchange. The substance of the definition is unchanged from CASA.

notifiable securities exchange means a listed company's home stock exchange and all other exchanges (other than

the ASX or its subsidiaries) on which the company is listed. This definition is relevant for the purposes of notifications of acquisitions in companies the subject of a takeover offer or announcement (see Division 2 of Part 6.5)

offer period means the period during which offers under a takeover scheme or takeover announcement remain or would have remained open if not accepted. This definition was not included in CASA and serves to reduce the length of many substantive sections later in the Bill.

prescribed occurrence is a definition consisting of a number of events in relation to a target company or its subsidiary which would make the continuation of the takeover scheme, or continuation of it on the terms offered, unacceptable to the offeror. The definition corresponds with that in CASA s.6.

proportional takeover scheme is a scheme under which each offer relates to the same proportion of shares held by the shareholder. Again this definition will remove the need for lengthy cross-referencing.

relevant official meeting in relation to a takeover announcement for a listed company (see Part 6.4) means an official meeting of the ASX (in relation to a main board or second board company) or of the company's home stock exchange in respect of companies listed on non-ASX exchanges. The meeting must be held on a stock market of the company's home exchange (see above definition) and must be of a type on which the company's shares are usually traded. This definition represents an extension of the corresponding CASA definition which only referred to official meetings of ASX.

stock market is defined to include, in the case of the Australian Stock Exchange Ltd, a stock market of an ASX subsidiary.

takeover announcement and takeover scheme are defined by reference to Part 6.4 and cl.634 respectively.

takeover period is a new definition designed to avoid repetition of description of the period in many substantive provisions. In relation to takeover offers under a takeover scheme (see Part 6.3) the period begins when the Part A statement is served and ends 28 days after that service, or, if offers are despatched before then, at the end of the offer period.

Cl.604 : Acquisition of shares by "special" transaction

1898. This provision is based on CASA sub-s.8(9).

1899. It provides that "special" transactions within the meaning of the listing rules of a stock exchange are not included within the meaning of an acquisition in the ordinary course of trading on a stock market of the exchange.

Cl.605 : Acquisition and disposal of, entitlement to, and relevant interests in, marketable securities other than shares

1900. This clause applies the concepts of acquisition, disposal, entitlement and relevant interest contained in Part 1.2 of Chapter 1 of the Bill to references to marketable securities in this Chapter (for example in the clauses setting out disclosure requirements in Part A, B, C, and D statements - see cl.750).

Cl.606 : Announcement by representative of dealer

1901. This provision is based on CASA sub-s.8(9B).

1902. It provides that an announcement by a stock exchange member's representative under this Chapter is deemed to be that of the member.

Cl.607 : Approved manner of sending documents

1903. Various provisions in this Chapter require documents to be sent in an approved manner (eg cls.636, 679). The approved manner can be as directed or approved by the Commission, or in the manner prescribed in the regulations.

Cl.608 : Doing acts

1904. This interpretative provision was not included in CASA. It is designed to save repetition of the full concept in each relevant provision.

1905. A reference to a person doing any act or thing will include a reference to doing the act or thing together with others.

Cl.609 : Entitlement to shares

1906. This provision is based on CASA sub-ss.7(3) and 7(8). Sub-cl. 609(2) is a new provision.

1907. The shares to which a person is entitled include those in which the person or any associate (provisions dealing with associates are contained in Division 2 of Part 1.2), has a relevant interest. (Provisions dealing with relevant interests are contained in Division 5 of Part 1.2).

1908. An approved nominee body corporate under sub-cl.609(3) will not have a relevant interest held by an associate attributed to it under cl.609 (para.609(1)(b)). In addition, any shares held by an associate of a person (the association arising by virtue of an agreement by the person to acquire

particular shares from the other person) which are not subject to the agreement will not be included in the person's entitlement (sub-cl.609(2)).

1909. Apart from these exceptions, the effect is that the interests of a person and that person's associates must be aggregated when applying provisions of this Chapter which are based on share entitlements, eg:

- (a) in determining whether a contravention of cl.615 has occurred ; and
- (b) for the purposes of the notification requirements (see Div 2 of Part 6.5 and Part 6.7).

Cl.610 : Inadvertance or mistake, etc.

1910. This clause is the same in substance as CASA sub-s.8(11).

1911. Ignorance of the law or mistake of law cannot be used as a defence to prosecutions or actions brought under this Chapter.

Cl.611 : Knowledge of employee or agent imputed to employer or principal

1912. This clause is the same in substance as CASA sub-s.8(10).

1913. In any proceedings arising out of this Chapter, knowledge of a servant or agent is to be imputed to the master or principal.

Cl.612 : Odd lots

1914. This clause is the same in substance as CASA sub-s.8(5).

1915. An "odd lot" is defined as less than a marketable parcel (defined in cl.603)

Cl.613 : Remedial Orders

1916. This clause categorises as "remedial orders" a number of the orders a Court can make under cls.733, 737, 738, 739, 741 and 742. Accordingly, the length of the above clauses is considerably reduced. The orders coming within the definition do not differ in substance from those available under the equivalent sections of CASA.

Cl.614 : Persons to whom Chapter applies

1917. This clause is substantially the same as CASA s.10.

1918. The Chapter applies to all natural persons, whether Australian residents and citizens or not, and to all bodies corporate or unincorporate and extends to all acts done outside Australia.

PART 6.2 - CONTROL OF ACQUISITION OF SHARES

Introduction

1919. Part 6.2 contains the central controls on the acquisition of voting shares.

1920. As in CASA, there is a basic prohibition on any acquisition of voting shares which would increase a holding to more than 20% of the total number of issued shares of a company or which would increase a holding already between 20% and 90%.

1921. There are various exceptions to which the prohibition does not apply:

- (a) acquisitions as a result of a takeover scheme (cl.616);
- (b) acquisitions as a result of a takeover announcement (cl.617);
- (c) "creeping" acquisitions of not more than 3% every 6 months (cl.618);
- (d) acquisitions of shares in small companies or in proprietary companies with the consent of members (sub-cl.619);
- (e) "on market" acquisitions during a takeover (cl.620);
- (f) acquisitions as a result of "pari passu" allotments (cl.621);
- (g) various acquisitions listed in cls.622 to 633.

Each of these clauses is dealt with in turn.

Cl.615 : Restrictions on acquisitions

1922. This clause is based on CASA s.11 and retains the same fundamental concepts and thresholds as in CASA. It differs from CASA, however, in that the prohibition is linked to the acquisition of shares in a "constitutional" corporation, the acquisition of shares by such a corporation or an acquisition of shares which increases such a corporation's "entitlement" (see cl.609) to voting shares.

1923. Clause 615 provides the central control on acquisitions of voting shares which may result in a change of control of a company. This is established by prohibiting certain acquisitions unless made in accordance with this Chapter. The prohibited acquisitions are those which would:

- (a) result in an entitlement to voting shares being increased to more than 20% (or such lesser amount as is prescribed) (paras.615(1)(a), (2)(a) and (3)(a)); or
- (b) increase an existing entitlement to voting shares which is not less than 20% (or such lesser amount as is prescribed) but less than 90% (paras.615(1)(b), (2)(b) and (3)(b)).

1924. 20% has been chosen as the appropriate threshold beyond which the acquisition controls imposed by the Chapter will apply. This figure was considered appropriate for CASA as in most cases it would fall short of the figure that could be regarded as indicating that control resides with that holding. This figure remains appropriate.

1925. The prohibition applies in three ways.

- (a) A person is prohibited from acquiring shares in a "constitutional" corporation if the entitlement of any person (including the first mentioned person) would, after the acquisition, exceed the 20% threshold or increase an existing 20-90% entitlement (sub-cl.615(1)).
- (b) A corporation is prohibited from acquiring shares in a company that is not a corporation if the entitlement of any person would exceed the threshold or increase an existing entitlement of 20-90% (sub-cl.615(2)).
- (c) A person other than a corporation is prohibited from acquiring shares in a company that is not a corporation if the entitlement of a corporation would exceed the threshold or increase an existing 20-90% entitlement (sub-cl.615(3)).

1926. In all cases the prohibition relates in some way to a corporation. The prohibition, although expressed in cl.615 to refer only to an acquisition by a single person or company, does contemplate, by virtue of the interpretative provision in sub-cl.608(2) relating to "doing acts", acquisitions by a person or company together with any other person or persons. Accordingly, the width of the prohibition in this regard does not differ from CASA s.11 which expressly contains the words "alone or together with another person" in the section. If a person is precluded from acquiring shares, an offer or invitation for the shares is also precluded (sub-cl.615(4) - based on CASA sub-s.11(3)).

1927. There will be a defence for inadvertent breaches of the provision (sub-cl.615(5) based on CASA sub-s.11(4)). This

defence is necessary given the extensive controls affecting remote interests.

1928. Acquisitions will remain valid despite a breach of the prohibition (sub-cl.615(6) - based on CASA sub-s.11(5)). A Court order may, however, provide otherwise (see cl.737)

Cl.616 : Acquisitions permitted under takeover scheme

1929. This clause is to the same effect as CASA sub-s.16(1).

1930. One major exception to the prohibition in cl.615 is the acquisition of voting shares as a result of the acceptance of an offer made under a formal takeover scheme. Provisions relating to the nature of a takeover scheme are found in Part 6.3 of this Chapter (cls.634 to 672) and in Part 6.5 (cls.686 to 703).

Cl.617 : Certain acquisitions permitted under takeover announcements

1931. This clause is to the same effect as CASA sub-s.17(1).

1932. Another major exception to the prohibition in cl.615 is the acquisition of shares in a listed company as a result of an offer made under a formal takeover announcement. Provisions relating to the nature of a takeover announcement are found in Part 6.4 of this Chapter (cls.673 to 685) and in Part 6.5 (cls.686-703).

Cl.618 : Acquisition of not more than 3% of voting shares permitted in each 6 months

1933. This provision is to the same effect as CASA s.15.

1934. The prohibition in cl.615 does not apply to "creeping" acquisitions. In any six month period there may be a net increase of 3% of a holding of voting shares (cl.618).

1935. The provision will apply from the time when the entitlement is at least 19%, not 20%, of the total number of voting shares. The use of the figure "19%" avoids a requirement to have exactly 20% of the total number of voting shares.

1936. In calculating the number of voting shares acquired in any six month period, those shares acquired by way of a pari passu allotment under cl.621 are not included.

Cl.619 : Acquisition of shares in small companies or with consent of shareholders

1937. This clause is to the same effect as CASA sub-s.13(1).

1938. Certain acquisitions are permitted in small companies or proprietary companies. This clause applies to acquisitions in a company with not more than fifteen members (joint members are treated as one - sub-cl.619(2)), or a proprietary company with more than fifteen members all of whom consent in writing to the acquisition (sub-cl.619(1)).

Cl.620 : Acquisition on market during takeovers

1939. This clause is to the same effect as CASA sub-ss.13(3), (4) and (5).

1940. The prohibition in cl.615 will not apply to acquisitions by an offeror (but not those of associates unless they participate in the bid) outside a relevant takeover scheme or on-market announcement if those acquisitions are made on a stock exchange:

- (a) by an offeror after service of the Part A statement on the target company and within 28 days after service or, if offers are sent, for as long as the offer remains open (para.620(1)(a) and definition of "takeover period" in cl.603). This offer must be for all of the remaining shares (see definition of "full takeover scheme" in cl.603) and must not contain any "defeating condition" other than those relating to "prescribed occurrences" (see definitions in cl.603) or one approved by the ASC (para.620(1)(b)); or
- (b) by an offeror under a takeover announcement after the announcement, and for as long as the offer remains open (sub-cl.620(2)).

1941. By insisting on an absence of all but protective conditions, token offers made to gain access to stock exchange trading are avoided.

1942. In the case of a takeover scheme, if offers are not sent within 28 days of service of the Part A statement on the target company, then the offeror is not entitled, without the consent of the ASC, to exercise any voting rights attached to shares acquired under sub-cl.620(1) (sub-cl.620(3)). This provision avoids what could be an unfair use of control gained by acquisitions which would otherwise have been in contravention of the prohibition in cl.615. The Court may make various orders, including "remedial orders" in such a case (see cl.739).

1943. The basis for this exception to the prohibition in cl.615 is that failure to provide access to stock exchange trading during the takeover period would place the proposing offeror at an unfair disadvantage to any competitors (who have access to the market during that period) and might enable successful counter-measures, thereby defeating the bid and depriving shareholders of the benefits of the bid.

Cl.621 : Acquisition as a result of pari passu allotments

1944. This clause is to the same effect as CASA s.14.

1945. The prohibition in cl.615 will not apply to an acquisition by a shareholder under a pari passu allotment of shares or by an underwriter or sub-underwriter of the allotment (sub-cl.621(1)), provided that the allotment is to all registered shareholders in proportion to their shareholding (sub-cl.621(2)). The formula in para.621(2)(c) restates the requirement in CASA para.14(2)(c) to assist understanding (the same comment applies in relation to para.621(3)(c)).

1946. Where there are foreign shareholdings, a company is deemed to comply with the provisions of sub-cl.621(2) if, instead of making offers to those foreign shareholders, it allots their respective entitlements to an approved nominee for sale on approved terms, and then pays the proceeds of the sales to the foreign shareholders (sub-cl.621(3)).

Cl.622: Acquisitions pursuant to prospectus

1947. This clause is to the same effect as CASA paras.12(b), (c) and (d).

1948. The prohibition in cl.615 will not apply to acquisitions:

- (a) under a prospectus (lodged in accordance with the requirements in Div.2 of Part 7.12) seeking subscriptions (sub-cl.622(1));
- (b) by a provision in respect of a first (lodged) prospectus issued by a company where the acquirer is a promoter of the prospectus (sub-cl.622(2)); and

- (c) by underwriters or sub-underwriters under agreements disclosed in a (lodged) prospectus seeking subscriptions (sub-cl.622(3)).

Cl.623 : Acquisitions approved by resolution of target company

1949. This clause is based on CASA para.12(g). It does, however, differ from that paragraph by virtue of its express coverage of allotments pursuant to the grant of an option.

1950. The prohibition in cl.615 will not apply to acquisitions under an allotment approved by a majority vote of shareholders other than the acquirer and associates of the acquirer. If the allotment did not involve an option, then the approval must have been obtained prior to the allotment (para.623(1)(a)).

1951. If the allotment involved an option, then either before the option was granted, approval must have been given to the grant or, if the option required, after the option was granted, the company must have agreed to the allotment under the option where the grantee or acquirer of the option or their associates do not vote (para.623(1)(b)).

1952. The prohibition in cl.615 will not apply to acquisitions under a purchase approved by a majority vote of shareholders other than the acquirer and associates of the acquirer (sub-cl.623(2)). If the purchase did not involve an option, then the approval must have been obtained before the agreement to purchase was made or under a conditional agreement prior to the purchase (para.623(2)(a)).

1953. If the purchase was under the exercise of an option, then, either before the option was granted approval must have been given to the grant of the option, or, if the option required, after the option was granted the company must have agreed to the purchase under the option (para.623(2)(b)).

Cl.624 : Allotment by newly formed company

1954. This clause is to the same effect as CASA para.12(e).

1955. The prohibition in cl.615 will not apply to acquisitions by allotments made before it would be necessary to issue a prospectus.

Cl.625 : Acquisition under compromise or arrangement approved by Court

1956. This clause is based on CASA para.12(ea).

1957. The prohibition in cl.615 will not apply to acquisitions under Court approved compromises or arrangements under Part 5.1 of this Bill or a corresponding law, whether or not that compromise or arrangement relates to the shares acquired.

Cl.626 : Acquisition by liquidator

1958. This clause is to the same effect as CASA para.12(f).

1959. The prohibition in cl.615 will not apply to acquisitions under a transfer to a liquidator under cl.507 or under a corresponding law.

Cl.627 : Acquisition by exercise of option or right

1960. This clause is to the same effect as CASA para.(12)(h).

1961. The prohibition in cl.615 will not apply to acquisitions resulting from the exercise of an option or right where the shares could lawfully have been acquired at the time when the option or right was acquired.

Cl.628 : Acquisition of shares as consideration for takeover offer

1962. This clause is to the same effect as CASA para 12(j).

1963. The prohibition in 615 will not apply to acquisitions resulting from the acceptance of shares as consideration for a takeover offer.

Cl.629 : Acquisition by acquiring shares in listed company

1964. This clause derives from CASA para.12(k) but limits it in two important respects indicated below.

1965. The clause covers the situation where the acquisition of shares of one company indirectly gives the offeror an entitlement (see cl.609) to shares of another company by virtue of the first company's holding in that other company, and the indirect entitlement would otherwise be prohibited by cl.615.

1966. The clause precludes the use of investments above the level prescribed in cl.615 as an undesirable defence tactic to a takeover of a listed company.

1967. However, whereas CASA para.12(k) applied to the initial acquisition in listed corporations (defined for the purposes of CASA to include foreign corporations listed in Australia), cl.629 will only apply to acquisition of shares in listed Australian incorporated companies. In addition, CASA para.12(k) allowed the indirect acquisition in the "downstream" company even where the listed corporation may not have held more than 20% of the downstream company (but aggregation of that holding with the acquirer's existing holding in the downstream company brought the holding above the 20% threshold in CASA s.11). Clause 629 will only exempt such downstream acquisitions where the actual holding by the listed company in the downstream company is not less than 20%.

Cl.630 : Acquisition by exercise of power vested in lender

1968. This clause is to the same effect as CASA para.12(1).

1969. The prohibition in cl.615 will not apply to acquisitions pursuant to powers granted in relation to shares in connection with the ordinary course of the business of lending money.

Cl.631 : Acquisition by will or operation of law

1970. This clause is to the same effect as CASA para.12(a).

1971. The prohibition in cl.615 will not apply to acquisitions by will or operation of law.

Cl.632 : Acquisition of forfeited shares

1972. This clause is to the same effect as CASA para.12(m).

1973. The prohibition in cl.615 will not apply to acquisitions of forfeited shares at an auction conducted by a stock exchange.

Cl.633 : Other permitted acquisitions

1974. This clause consolidates CASA paras.12(n) and (o).

1975. The prohibition in cl.615 will not apply to acquisitions made in a prescribed manner or in prescribed circumstances or with the written approval of the ASC.

PART 6.3 - TAKEOVER SCHEMES

Introduction

1976. Part 6.3 of the Bill deals with takeover schemes which, in accordance with cl.616, constitute one of the permissible forms of acquisition of shares which would otherwise be prohibited by cl.615.

Division 1 - Nature of Takeover Offers

1977. Division 1 of Part 6.3 sets out the requirements to bring takeover offers under the description "takeover scheme" for the purposes of cl.616.

Cl.634 : Offers must comply with this Division

1978. This clause is to the same effect as the introductory words to CASA sub-s.16(2).

1979. Under cl.634 offers to acquire shares will only be made under a takeover scheme where they relate to a class of shares and they comply with the following requirements of Division 1.

Cl.635 : Full takeover schemes and proportional takeover schemes

1980. This clause is to the same effect as CASA para.16(2)(a).

1981. Each offer must either relate to all the shares in a class or to a proportion, the same for each offer, of the shares in a class.

Cl.636 : Identical offers

1982. This clause is based on CASA para.16(2)(b).

1983. Offers must be the same. Differences in offers that merely reflect the different number of shares held by offerees or differentials in accrued dividends or in amounts paid up are disregarded. The clause differs from CASA para.16(2)(b) by allowing amounts of unpaid premium as well as unpaid capital in relation to shares to be disregarded. Separate takeover schemes will accordingly not be necessary in such cases. The offeror is required to send an offer in an approved manner (see cl.607) to each holder of shares of the class in respect of which the offer was made (the same requirement as CASA para.16(2)(c)).

Cl.637 : Service of Part A statement and copy of offer on target company

1984. This clause is to the same effect as CASA paras.16(2)(d) and (e).

1985. The offeror must, between 14 and 28 days before the offers are sent, serve on the target company a Part A statement (the requirements of which are set out in cl.750) signed and endorsed in accordance with the requirements of para.637(1)(a) and a copy of one of the proposed offers (certain details may be omitted e.g. name and address of the offeree - see para.637(1)(b)).

1986. The offeror must on the same day lodge with the ASC a notice stating that the Part A statement has been served and, if the target company is a listed company, serve on each notifiable securities exchange (see definition in cl.603) a copy of each of the documents served on the company. The ASC will already have copies of these documents (see cl.644).

Cl.638 : Contents of offers

1987. This clause is based on CASA para.16(2)(f).

1988. The required contents of the offer have not been altered and remain the same as those in the above paragraph. Each offer must:

- be in writing (sub-cl.638(1));
- have the same date being no earlier than 3 days before the offer is sent and no later than that date (sub-cl.638(2));
- stay open for a period of between 1 and 6 months unless withdrawn (sub-cl.638(3));
- specify the total number of shares in the class and the number held by the offeror prior to the offer (sub-cl.638(4));
- if subject to a "defeating condition" (see definition in cl.603), specify a date during the second last week of the offer as the date for publication of the notice required by sub-cl.663(4) - sub-cl.638(5));
- set out how the obligations of the offeror are to be satisfied (sub-cl.638(6)); and
- set out that the consideration is to be paid by the offeror within 30 days of the offer being accepted or becoming unconditional but in any event no later than 21 days after the end of the offer period (sub-cl.638(7)).

Cl.639 : Part A statement, and Part B statement if available, to accompany offers

1989. This clause is to the same effect as CASA sub-para.16(2)(f)(viii).

1990. Each offer is to be accompanied by a Part A statement and, if the target company has, within 14 days of receiving the Part A statement, given to the offeror a Part B statement, a copy of the Part B statement and a copy of its accompanying reports.

Cl.640 : Service on Commission of copies of documents accompanying offers

1991. This is a new provision that requires the offeror to lodge with the ASC, no later than the day the offers are sent, a copy of every document that accompanied the offer other than a document previously lodged with the ASC. There is no requirement for such material to be registered by the ASC (only the Part A statement and the offer itself are required to be registered - see cl.644). An example of such a document is a "Chairman's letter".

Cl.641 : Offer Price

1992. This clause consolidates the requirements of CASA para.16(2)(g) and sub-ss.16(2AA) and (2AB).

1993. The offer price must not, when made in cash terms, be less than the highest price paid by the offeror during the 4 months leading up to the dispatch of offers. However, if during that period the target company had taken or announced that it proposed to take action involving an allotment of shares, a granting of share options, an issuing of convertible notes or a declaration of a dividend, the ASC may (under sub-cl.641(3)), upon application by the offeror, approve a specified amount as the offer price. Variations to specified prices in accordance with the terms of agreements to purchase shares shall be disregarded for the purpose of determining the agreed purchase price of shares under sub-cl.641(1) (sub-cl.641(2)).