COMPANIES BILL.

EXPLANATORY MEMORANDUM.

Clause 1.

The usual citation clause.

Clause 2.

This clause enables the various amendments to be brought in on different days. It is of particular importance in relation to the timing of the amendments relating to accounts and audit.

Clause 3.

This is the usual clause dividing the Bill into Parts.

Clause 4.

This makes consequential amendments to the Principal Act's provisions dealing with the division of the Principal Act into Parts.

Clause 5.

This clause introduces two new amendments. The first is a definition of " related corporation " which makes no alteration in the law but is introduced for convenience. The definition of " voting share " is introduced to enable a distinction to be drawn between voting shares and what are commonly referred to as " preference shares ". This is of importance in relation to disclosure of substantial shareholdings and takeovers.

Clause 6.

This clause introduces a new section 6A and provides the basis for determining when a person shall be deemed to have an interest in shares. These sections apply in relation to substantial shareholdings, disclosure of director's shareholdings and takeovers.

The effect of the clause is that a person has an interest in shares if he has an interest in a trust which consists of shares or if he controls or his associates control a body corporate which owns shares. He has an interest in a share if he has an option to acquire a share. If he has a joint interest he has an interest in a share. On the other hand a person does not have an interest in a share merely because he has an interest in a unit trust which has been offered to the public.

The clause also contains particular rules for determining whether there is an interest such as rules that the interest of a bare trustee shall be disregarded and the interest of a banker or other commercial lender in a share pledged as security shall be disregarded. An interest of a person holding a prescribed office shall be disregarded. This could be applied to people such as the receiver in bankruptcy or the Master of the Supreme Court. There is also power to prescribe certain classes of interest that should be disregarded. On the other hand it is not sufficient to show that the interest is remote or that the rights attached to the interest are in some way restricted, in order to disregard an interest.

Clause 7.

This clause introduces the new Division 3A which requires the disclosure of substantial shareholdings. It is based upon the recommendation of the Second Eggleston Report.

Paragraph 4 of that Report contains the justification for the legislation.

[49]—1200/12.10.1971.—1499.

(1) The provisions apply only to shares in companies which are quoted on a stock exchange in Australia but there is power to prescribe shares in other bodies. For example the Bank of New South Wales is not a company under the Companies Act but it is for all practical purposes classed on all fours with a company and it will doubtless be prescribed. The provisions apply to all persons natural or corporate whether resident in Australia or not and applies to acts done outside the State as well as in.

(2) A substantial shareholding is defined as a holding of one-tenth of the voting shares in any class of shares. A person holding a substantial interest must give notice to the company and he must give notice of any change in the nature or quantity of his interest.

(3) Where a person holds shares in which a non-resident has an interest he must give notice to the non-resident of the requirements of the Division.

(4) Times for giving notice may be extended by the Registrar. The company must keep a register which is available for inspection by members without charge and by others on payment of a fee of not more than 50 cents.

(5) Where there has been a failure to comply, the court is given extensive powers to make orders restraining the substantial shareholder from selling the shares, from exercising voting or other rights, to prevent payments of dividends or other amounts due to the shareholder, to prevent registration and to nullify the exercise of any rights. These powers are necessary if the provisions are to be effective against persons outside the jurisdiction.

Clause 8.

This clause gives effect to the recommendations made in the Eggleston Committee's Fourth Interim Report tabled in 1970.

The existing section 124 which deals with the general duties and liabilities of directors is re-enacted. The section is redrafted but there is no change in substance.

The proposed new section 124A makes an officer of a corporation liable for loss suffered by a person if he deals with the officer and the officer has inside information, if that person paid more for the shares than he would have paid if the inside information was publicly known. The section does not extend to the loss that a person might make by selling for less than he might have sold if he had access to the inside information.

Clause 9.

Re-enacts existing legislation relating to the register of director's shareholdings. Directors are obliged to give to the company the information that is necessary to maintain the register. The provisions are redrawn and contain much more detail but do not contain any change in policy.

Part IV.

Contains substantial amendments to the existing provisions relating to accounts and audit. The amendments give effect to the first Eggleston Report.

Clause 10.

Repeals two transitional provisions in the existing Act which are spent.

Clause 11.

Introduces several new interpretations.

" Books " is now defined to cover every form of record whether in writing or maintained on micro-film or by electronic process.

A definition of " calendar year " as being a year commencing on 1st January is included.

A new interpretation of " emoluments " is provided to make it clear that reimbursement of actual out-of-pocket expenses is not included.

The definition of " profit and loss account " is extended to cover operations and development accounts which are commonly used in relation to mining.

Clause 12.

Repeals the provisions of section 9 of the existing Act in so far as they relate to the appointment and qualification of auditors. These provisions are re-enacted with considerable amendments in the new Part dealing with audit.

Clause 13.

Contains consequential amendments to the existing provisions relating to borrowing corporations.

Clause 14.

Amends the provisions which enable 10 per cent of the shareholders to require disclosure of directors' total emoluments so as to require the disclosure to extend to other benefits received by the directors.

Clause 15.

Extends the powers of the Registrar in relation to the extension of time for the holding of the Annual General Meeting.

Clause 16.

Re-enacts various provisions relating to the lodging of an annual return by companies. By paragraph (*c*) a new section 159A is included, the effect of which is to require the annual return of an exempt proprietary company to include in its annual report a statement by the auditor as to whether a company has kept proper books and accounts and whether they have been duly audited and whether there has been any difficulty or irregularity in the accounts referred to in its report.

Clause 17.

Re-enacts with amendments the existing provisions relating to accounts and audit. The new section 161 contains a series of definitions for the purposes of the accounts and audit provisions and the Ninth Schedule.

The definition of " current liability " is provided for the first time. It is defined as the liability which would in the ordinary course of events be payable within 12 months after the relevant financial year.

The new section 161A re-enacts the provisions that require accounts to be kept. There are no significant changes in the provision.

The new section 161B re-enacts the existing requirements with respect to companies within a group having the same financial year unless specially authorized otherwise. Again there are no significant changes.

The new section 162 re-enacts the provisions which require directors to make out and lay before the company's annual general meeting, profit and loss accounts and balance sheets and includes the provisions relating to the making out and laying of group accounts when the company is a holding company.

Sub-section (7) of this section contains a significant provision which requires directors before making out the profit and loss accounts and balance sheet to take reasonable steps to—

(*a*) ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and requires them to cuase " all known bad debts to be written off and adequate provision to be made for doubtful debts " ;

(*b*) to ascertain whether any current assets are unlikely to realize their book values and if so to cause them to be written down to an amount which they might be expected to realize or to cause adequate provision to be made for the difference in value ;

(*c*) to ascertain whether non-current assets are shown at a book value in excess of the amount of their acquisition value at the end of the financial year and unless the asset is written down to ensure that the accounts contain notes that will prevent them from being misleading by reason of the overstatement of the value of that asset.

Sub-section (10) requires directors to make a statement with respect to the accounts before they are audited as to whether they are drawn up so as to give a true and fair view.

Sub-section (12) requires statement of the principal accounting officer of the company as to whether the accounts give a true and fair view of the affairs of the company.

Section 162A deals with the making and contents of the directors' report. The matters to be dealt with in the director's report are considerably extended. The directors must report not only on the company's accounts but on the group accounts.

Paragraphs (*a*) (*b*) (*e*) (*g*) (*h*) (*i*) (*j*) and (*o*) relate to material not previously deal twith. The most important matters would appear to be contained in paragraph (*g*) relating to bad and doubtful debts, paragraph (*i*) relating to the valuation of current assets and paragraph (*o*) which requires the directors to report on matters which have arisen since the end of the financial year, and has the effect of bringing the accounts up-to-date. It should be noted that the directors are under no duty to make inquiries but must disclose matters which have come to their knowledge.

Sub-section (2) deals with the directors' report on the group accounts.

Paragraph (*c*) requires the directors to state the separate contribution of each company in the group to the consolidated profit and loss.

Paragraph (*d*) requires the report to state the name of any subsidiary acquired or disposed of during the year, the consideration for the acquisition of the disposition and the net tangible assets of the subsidiary.

Paragraph (*h*) requires the disclosure of dividends paid by the subsidiary between the end of the financial year and the date of the report.

Sub-section (4) exempts an exempt proprietary company from certain of the provisions relating to directors' reports.

Sub-section (5) requires the directors to disclose the name of the corporation that they believe to be the company's ultimate holding company and if known the place in which that holding company is incorporated.

Sub-sections (6) to (8) require disclosure of options and extend the existing provisions.

Sub-section (9) requires directors to disclosure in their report any benefits received by a director under contract which are not included in the discolsure of emoluments. This is designed to bring to notice contracts made between the company and individual directors.

The new section 162B requires the directors of the holding company, before they make the report on the group accounts, to have presented to them a report by the subsidiary company's directors, and enables directors of the holding company to require the directors of the subsidiary to provide all such information as is required for the preparation of the group accounts and the report of the directors of the holding company.

The section also provides that where the directors of a holding company are unable to obtain the relevant information from a subsidiary company, they may make a statement to that effect and qualify their report accordingly.

The new section 162O gives the Registrar extensive powers to relieve from the particular requirements of the Act relating to the form and content of accounts and to substitute more appropriate requirements in particular cases.

Sub-section (5) requires the Registrar before determining an application as to the form and contents of accounts to take into account the views of the Registrars in the other States and Territories of the Commonwealth. This is designed to achieve uniformity of administrative action.

The new section 163 is the offence section. It is a defence to a charge if a director proves—

(*a*) that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the Act was complied with and was in a position to discharge that duty ; or

(*b*) to prove that the omission of information was not intentional and that the information was immaterial and did not affect the giving of a true and fair view.

By sub-section (4) it is provided that the court must not award imprisonment for an offence unless the offence was committed wilfully.

Section 164 deals with the supply of accounts and directors' reports to members. There is no change in substance in this provision.

The new Division 3, sections 165–167B deals with the provisions relating to the qualifications and appointment and duties of auditors.

Section 165 is substantially the existing provision but any firm of auditors appointed as auditor of a company must have at least one member resident in Australia.

Section 165A authorizes an unlimited exempt proprietary company to dispense with the services of an auditor.

Section 165B enables an exempt proprietary company to dispense with the services of an auditor if all the members agree and the directors certify the accounts and the accounts are lodged with the Registrar.

Section 166 deals with the appointment of auditors and has the effect of making an auditor's appointment continue until he is removed, dies or resigns. There is an exception in relation to the auditor of a company which becomes a subsidiary of another company. Such an auditor will not continue as auditor unless he is re-appointed at the next annual general meeting.

Section 166A deals with the manner of nominating auditors.

Section 166B deals with the removal and resignation of auditors. The auditor can only be removed by special resolution and he is given the right to make representations to the members. An auditor may not resign without giving notice to the Board.

The provisions are designed to see that there is no substantial period during which there is no auditor.

Section 166C gives the auditor a statutory right to receive reasonable fees and reimbursement of expenses.

Section 167 deals with the powers and duties of the auditor in relation to the audit report. In the case of group accounts the audit report is required to specify the names of the subsidiary companies of which the auditor of the holding company has not acted as auditor, whether the auditor's report on the subsidiary company's accounts were qualified and if so particulars of such qualifications, and gives the auditor of the holding company a right of access at all reasonable times to the accounting and other records of any subsidiary company and entitles him to obtain from the officers and auditors of such subsidiary companies such information and explanations as he requires for the purpose of reporting on the group accounts.

Sub-section (9) requires the auditor to report to the Registrar any breach of the Act of which he becomes aware in the course of his duties but only if in his opinion the matter has not been or will not be adequately dealt with by comment in his report or by bringing the matter to the notice of the directors.

Sub-section (9) provides for a penalty to be imposed on an officer or auditor of a corporation who refuses access or information to the holding company auditor.

Section 167B gives express statutory recognition of the qualified privilege enjoyed by auditors in relation to any action for defamation arising out of statements made in his report.

167C makes special provision with respect to banking and life insurance companies, and grants exemptions to banks and life insurance companies in relation to their banking and life insurance business but not in relation to other activities carried on through subsidiaries.

Clause 18 contains consequential amendments to provisions relating to accounts of investment companies.

Clause 19 amends the existing provision which makes it an offence not to keep proper books of account and makes the offence one of not complying with the requirements of the new section 161A.

Clause 20 re-enacts with an amendment an existing provision relating to the making of false and misleading statements. It applies to any person and not only to directors.

Clause 21.

Introduces a new section 375A which makes it an offence for an officer of a corporation wilfully to make false or misleading statements to a director, auditor, member, debenture holder, trustee for debenture holders, an auditor of the holding company or a stock exchange.

Clause 23.

This clause extends the existing provisions relating to the disclosure of information in the annual return lodged at the Companies Office to require :—

(*a*) a list of the business names under which the company carries on business ;

(*b*) a statement as to whether the company has complied with the requirements of the Act as to the laying of accounts before the Annual General Meeting ; and

(*c*) particulars of the total amount of indebtedness of the company with respect to charges, including those not so registered.

Clause 24.

This clause replaces the Ninth Schedule of the Act and it prescribes the details to be shown in the accounts and in the group accounts. The following is *a list of the most important* changes :—

Paragraph 1. This paragraph defines what is meant by " a reserve " and provides that certain items which could previously be shown under this heading must in future, be excluded and shown elsewhere.

Paragraph 2. Pursuant to sub-paragraphs 1 (*a*), (*b*) and (*e*), a separate statement is now required as to the amount of dividends and interest received or paid in respect of each subsidiary company, and in respect of associated and other corporations.

Paragraph 2 (1) (*c*) *and* (*f*). Particulars as to where there has been a sale or revaluation of assets, the amount of any profit and the extent to which it has been brought into account in determining profit or loss of the company or of the group must be shown.

Paragraph 2 (1) (*j*). This paragraph requires a separation of the amounts written off in respect of each class of debtor's accounts.

Paragraph 2 (1) (*l*). Particulars of the emoluments of directors of the companies engaged in the full time employment of the company and related corporations other than full time salaries as employees and of emoluments of other directors of the company are to be stated.

Paragraph 2 (1) (*m*). Particulars of the amounts paid to or receivable by the auditors with separate amounts in respect of auditing and other services must be shown.

Paragraph 2 (2) *and* (3) (*c*). Require disclosure as to the amounts set aside for the payment of income tax attributable to the financial year, the provision for the payment of income tax for periods other than the financial year.

Paragraph (4). Requires a statement where the payment in income tax attributable to the financial year differs by more than 15 per cent. from the amount which would be attributable to its taxable income as set out in the accounts or in the group of accounts an explanation of the difference including a statement of the major items responsible for the difference.

Paragraph 5 (1) (*b*). Requires a fuller disclosure as to those parts of the capital which consists of preference shares.

Paragraph 5 (1) (*f*). Requires reserves of all descriptions to be separated and a separate amount to be shown for each class.

Paragraph 5 (1) (*i*). Requires the amounts of any provisions for doubtful debts to be shown as a deduction from the respective items.

Paragraph 5 (2) (*a*) *and* (*b*). Requires additional disclosure with respect to intercompany debts.

Paragraph 5 (3). Provides for an estimate to be given of the maximum amount for which the company and its subsidiaries could become liable in respect of contingent liabilities.

Paragraph 5 (4) (*e*) *and* (*f*). Requires additional disclosure in relation to the holding of shares in or debenture of subsidiaries and related corporations.

Paragraph 5 (4) (*i*). Requires disclosure of loans made to directors of the company or related corporations or corporations in which a director owns a controlling interest.

Paragraph 6 (2). Requires current liabilities and current assets to be clearly distinguished from other liabilities and assets.

Paragraph 7. Deals with the method of valuation of assets and requires particulars to be given as to the date of valuation, and whether the valuation was made by an officer of the company or a related corporation. A separate provision is contained in this paragraph with respect to assets comprising land or interest in land held for sale or resale and requires disclosure as to the capitalization of development costs.

Paragraph 9. Deals with group accounts and requires the name and place of incorporation of each subsidiary to be stated and particulars of the holding company's investment in each subsidiary. In addition, the previous provision which excluded from the accounts provisions a subsidiary company which was a subsidiary only because the holding company controlled the composition of its Board of Directors or controlled more than half of the voting power of the company has been omitted from the Ninth Schedule.

Paragraph 9 (5). In section 161 group accounts are defined as :—

(*a*) a set of consolidated accounts for the group of companies of that holding company ;

(*b*) two or more sets of consolidated accounts together covering that group ;

(*c*) separate accounts for each corporation in that group ; or

(*d*) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group.

Under paragraph 9 (5) of the Ninth Schedule, where the directors prepare accounts other than in a consolidated form, they must attach a certificate to the accounts to the effect that the preparation of one set of consolidated accounts is impracticable, or that it is preferable in the interest of the shareholders that the accounts be prepared in the form in which they are prepared for the reasons as stated in the certificate, and pursuant to section 167 (3) (*e*), the auditor is required to form an opinion as to whether he agrees with these reasons.

Paragraph 11 (2). In the accounts, comparative figures are required to be shown for items of the previous period and full disclosure must be made of items which occurred in the previous period and do not appear in the current period, and where the two periods are of different length, a clear indication of this difference must be made by way of a note or otherwise.

Paragraph 12 (1). Requires a statement as to the method used to deal with items or information which could be misleading by reason of the failure to explain the method used in dealing with them.

Paragraph 12 (2) *and* (3). Requires sums in the nature of interest, accommodation charges, service charges and maintenance charges or insurance premiums, being unearned income, to be excluded from the amount of debts owing to the company.

Clause 25.

This clause provides that the provisions relating to accounts and audit shall not come into effect until the first financial year after the coming into force of this part of the Act.

Clause 26.

Requires an existing exempt proprietary company, that is a limited company, to appoint an auditor within three months after commencement of this Part of the Act, and exempts from the requirement to appoint an auditor an exempt proprietary company that is an unlimited company that intends to adopt the provisions of section 165A, providing that at the date of its Annual General Meeting no member of the company is a person other than a natural person or an exempt proprietary company that is an unlimited company. In addition, all members of the unlimited exempt proprietary company must have agreed not more than one month before the Annual General Meeting, that it is not necessary for the company to appoint an auditor.

Clause 27.

This clause re-enacts all of the existing provisions relating to special investigations. It gives effect to the Second Eggleston Report.

The new section 168 contains the interpretation provisions. These involve no change in substance in the existing provision.

The new section 169 deals with the appointment of inspectors on the application of various groups. All such applications will be determined by the Governor in Council.

The new section 170 deals with appointments of inspectors by the Governor in Council where there is no application but where he believes it is desirable in the public interest. The section also enables an inspector to be appointed if he has been appointed in another State or territory. All appointments, including investigations into share dealings must now be gazetted.

The new section 171 requires the Governor in Council to specify in the appointment the matters to be investigated, the period in respect of which the investigation is to be made and the terms and conditions of the appointment.

The new section 172 enables an inspector with the consent of the Governor in Council to investigate affairs of related corporations.

The new section 173 contains the powers of the inspector. They are unchanged.

The new section 174 sets out the procedure to be followed when officers of the company are being examined by an inspector.

The new section 175 enables court action to be taken against an officer who fails to comply with the inspector's requirements.

The new section 176 deals with the requiring of evidence by an inspector and authorizes the Minister to supply a transcript of evidence to a lawyer whom he is satisfied is acting for a person contemplating legal proceedings.

The new section 177 enables an inspector to delegate all or any of his powers or functions except the power of delegation, the power to administer oaths and the power to examine on oath.

The new section 178 deals with the reports of inspectors.

The new sub-section (3) varies the existing law in that the inspector is required to include in his report recommendations as to the institution of criminal proceedings but he is required to state his opinion as to whether criminal offences have been committed in a separate opinion given to the Minister. This is to avoid possible prejudice to a person who is subsequently tried for an offence.

The new section 179 deals with the costs of an investigation and authorizes the Governor in Council to require all or any part of the expenses to be paid by the company which was investigated or some other person named in the order. The provisions in the Bill differ from the recommendations of the Eggleston Committee which recommended that in all cases the expenses should be borne by the Crown.

The new section 179A contains an offence provision relating to concealing records of the company being investigated.

The new section 179B enables the Governor in Council to make orders restraining the disposition of shares, the exercise of voting or other rights and generally to control the activities of a company or members of a company which is under investigation. These provisions previously applied only in relation to investigations into share ownership.

The new section extends the use of these powers to other investigations.

The new section 180 re-enacts the provision which makes the report of the investigator a ground for winding up.

Clause 28.

Contains transitional provisions to deal with investigations which may be current at the time that the new provisions come into force.

Clause 29.

Contains consequential amendments to the winding up and general provisions which are necessary as a result of the re-enactment of the provisions relating to special investigations.

Clause 30.

Contains consequential amendments as a result of the revision of the law relating to takeovers. In particular the amendment proposed by paragraph (*a*) will make a conviction for an offence of issuing false statements in relation to takeovers an offence that leads to disqualification as a director.

Clause 31.

This clause re-enacts the law relating to takeovers. The Bill gives effect to the First Eggleston Report in so far as it related to takeovers.

A new section 180A contains the interpretations that are applicable to all provisions governing takeovers. As the provisions now extend to invitations to shareholders to make offers to sell as well as to offers to buy, interpretations of invitation and invitor are included.

Sub-sections (5) and (6) of section 180A are important in that they extend for the purposes of the takeover provisions the concept of shares in a company to which a person is entitled to include shares in which a person has an interest and shares in which an associate of a person has an interest and the concept of associate is defined to include related corporations, persons in accordance with whose directions the person is accustomed to act, and bodies corporate in accordance with whose instructions a person is accustomed to act and persons who have some arrangement whether formal or informal with respect to the shares. These provisions are necessarily complex and are designed to prevent evasion of the requirements of the Part relating to takeovers.

The new section 180B sets out the application of the Part which is declared to apply to all persons and bodies corporate whether in Australia or elsewhere. This is the same situation as is proposed in relation to disclosure of substantial shareholdings. There is also a reciprocal offence provision which will make it an offence in Victoria if a person does an act which would be an offence if done in another State or territory.

The new section 180C sets out the matters that must be set out in a takeover offer. These are similar to the existing provisions but contain much more detail. By sub-section (6) it is expressly provided that offers made at an official meeting of the stock exchange are not within the provisions. The effect of this sub-section is to allow continued acquisition of shares on a stock exchange during the currency of a takeover offer.

The new section 180D contains a formula which determines whether any particular offer is a takeover offer for the purposes of the Part. It provides that if the acquisition of the share or shares in question would together with existing interests constitute a holding of 15 per cent. or more of the voting shares then the offer will be a takeover offer which must comply with the provisions of the Part.

The new section 180E provides that a takeover offer must remain open for a period specified in the offer being not less than one month and that a takeover offer must not be conditional upon special benefits to directors of the company being taken over. If any takeover offer is withdrawn then all offers previously acceptable may be avoided and requires a takeover offer that is conditional to specify a date not less than seven days before which notice will be made as to whether the offer will be made unconditional or not.

The new section 180F deals with invitations along the same lines as section 180E deals with takeover offers. In addition it prevents discrimination between invitors on the basis of first come first served.

The new section 180G requires the offeree company to supply a statement containing information set out in Part B of the new Tenth Schedule. That statement is given to the Registrar as well as to the offeror and the shareholders.

The new section 180H requires notice of the takeover offers to be given to the company which is the subject of the offer.

The new section 180J creates offences in relation to false and misleading matter in statements given by persons making takeover bids along the same lines as the provisions governing false prospectuses.

The new section 180K provides for takeover offers to be accepted by persons who have subsequently acquired shares in the company.

The new section 180L limits the ways in which a takeover offer may be varied during the currency of the offer. Basically the offer can only be varied by varying the consideration whether it be cash shares or debentures.

The new section 180M prohibits benefits being given to some shareholders which are not given to all.

The new section 180N requires the bidder to declare and publish his decision as to whether the bid is to become unconditional and to disclose at the time of the publication the number of shares that he has acquired under the takeover offer.

The new section 180P authorizes the directors of a company in respect of which a bid has been made to reimburse themselves for expenses reasonably incurred in relation to the takeover bid in the interests of the members of the company.

The new section 180Q makes it an offence to falsely announce that it is intended to make a takeover offer and it is also an offence to make an offer if there is no reasonable or probable grounds for believing that the bidder can perform the obligations that would be incurred if the offer were accepted.

The new section 180R gives jurisdiction to the court to make orders to protect the rights of shareholders where the provisions of the Act are not complied with.

The new section 180S gives the court power to excuse non-compliance with the Act if it is due to inadvertence.

The new section 180T sets out the basis for the exercise of the court's jurisdiction under the last preceding sections.

The new section 180U allows the requirements of the Tenth Schedule in relation to matters to be disclosed in the statements made by the bidder in respect of which the bid has been made to be varied by regulation. The regulations may also require copies of documents to be lodged with one or more stock exchanges or with the Registrar.

The new section 180V authorizes the Minister to exempt either absolutely or conditionally a person from all or any of the provisions relating to takeovers.

The new section 180W creates offences for failure to comply with the takeover provisions.

The new section 180X re-enacts with amendments the existing provisions relating to the acquisition of shares of dissenting shareholders when under the takeover bid nine-tenths of the nominal amount of the shares has been acquired.

The new section 180Y contains provisions to protect the rights of minority shareholders by giving them an option to require the majority holder to acquire their shares on the same terms as the other shares were acquired.

Clause 32.

Repeals the existing takeover provisions and provides for the transition from the old scheme to the new.

Clause 33.

Re-enacts with amendments the existing section dealing with the acquisition of shares of dissenting shareholders. This provision will now apply where a holding of 90 per cent. is acquired otherwise than as a result of a takeover bid. The provisions are basically the same as those applicable where there has been a takeover bid.

Clause 34.

Re-enacts the Tenth Schedule and contains the detailed material that must be included in the Part A statement that the offeror must give and the Part B statement that the offeree company must give.

Clause 35.

Validates the action of the directors of offeree companies who have reimbursed themselves for expenses incurred in the interests of members in relation to a takeover scheme.

PART VII.

Contains general amendments to different parts of the Companies Act. Most of the amendments clarify existing provisions but some contain matters of more significance.

Clause 36.

Extends the interpretation of " Foreign company " to include a corporation sole and excludes bodies incorporated outside Victoria but within the Commonwealth that are public authorities or Crown instrumentalities. The clause also contains a definition of " Undischarged bankrupt " which makes no alteration to the law but enables a shortened form of words to be used.

Paragraph (*b*) clarifies the position regarding lodging of documents and amends the law to the effect that the document is not properly lodged until the fee has been paid.

The remaining paragraphs of the clause contain minor amendments for clarification of sections 8 and 9 of the Act but also includes a provision to the effect that the Companies Auditors Board is given a discretion to register persons who satisfy specified conditions and to refuse to register persons who are not resident in Australia.

Clause 37.

Contains amendments to sections 22 and 24 of the Companies Act partly to cover technical difficulties in relation to the names of foreign companies and partly to widen the Minister's power to dispense with the use of the word " Limited ".

Sub-clause (2) of clause 37 contains a re-enactment of section 25 of the Act but although the form is different the law is changed only to the extent that it includes provision to enable a limited company to convert to an unlimited company in certain circumstances. The amendment is related to the provision in the amended Accounts and Audit provisions which include a right for an unlimited exempt proprietary company not to appoint an auditor in certain circumstances.

Sub-clause (2) of clause 37 also contains amendments to the Act that are consequential upon the amendment to section 25.

Clause 38.

Makes minor amendments for clarification of sections 54, 62 and 64 of the Act.

Clause 39.

Amends sub-section (1) of section 76 and excludes from the meaning of " interest " for the purposes of Division 5 of Part IV. (the Division that deals with unit trusts and similar arrangements) interests in partnership agreements other than such interests as are prescribed. The effect of the amendment is to ensure the protection of the public who invest in partnerships in the same way as they are at present protected in investing in unit trusts. The clause also amends sections 80 and 84 to remove doubts that have arisen over the right to grant exemptions from certain requirements of the division, notably the " buy-back " provisions in trust deeds and the keeping of registers of members of the trusts.

Clause 40.

Contains several amendments for clarification of the Act and includes a re-enactment of section 95 that amends the effect of the section only to the extent that it is widened to cover the transfer of interests within the meaning of section 76 and enables personal representatives to make proof by statutory declaration instead of affidavit. Several amendments consequential on the amendment of section 95 are included in the clause.

Clause 41.

Provides in paragraph (*c*) that all companies including proprietary companies must have at least two directors.

Clause 42.

Contains minor amendments and an amendment that will in some circumstances enable persons over the age of 72 to hold office as directors.

Clause 43.

Contains corrections and clarification of sections in the Act relating to the administration of company business. Paragraph (*e*) of sub-clause (1) alters the present provision relating to the convening of general meetings on request of members and provides that at least 200 members must make the request or where there are fewer than 200 members of a company that one-tenth of the holders of the paid-up capital may make the request.

Clause 44.

Amends sections of the Act relating to companies the property of which is under the management of a receiver or manager and clarifies several matters in the relevant sections.

Clauses 45–48.

Contain revisions and clarification of several parts of the Act relating to winding-up of companies but there is no significant change in the law.

Clause 49.

Re-enacts in a more appropriate place in the Act the provisions at present in section 10 relating to disqualification of liquidators and the appointment of official liquidators. There is no significant change in the law.

Clause 50.

Contains an amendment necessary upon the amendment of the U.K. Companies Act and has the effect that the exemption contained in section 348 of the Act correctly refers to the U.K. Companies to which it is intended to refer.

Clause 51.

Contains formal amendments and adds a new section 374H of the Act that relates to defaulting officers and provides that directors who have been responsible for the failure of a company are disqualified from acting as directors.

Clause 52.

Contains a general provision relating to reciprocity between Victoria and other jurisdictions in Australia in relation to offences committed under the Companies Acts.

Clause 53.

Amends the Second Schedule to the Act and provides for increases in certain fees payable by a company in respect of the administration of the Act.

By Authority: C. H. RIXON, Government Printer, Melbourne.