

Corporations Bill : Explanatory Memorandum : Corrigendum to  
Paragraphs 2248-2262 - Declarations of Unacceptable  
Acquisition or Conduct in Takeovers and Related Matters

Paragraphs 2248-2262 of this explanatory memorandum indicate that the ASC would, as did the NCSC under CASA, have power to declare certain acquisitions or related conduct unacceptable and to make certain temporary freezing orders where such declarations were made. However, it was envisaged, as indicated in paragraph 357 of the explanatory memorandum to the ASC Bill, that the Minister would direct that the above ASC powers be conferred exclusively on the Corporations and Securities Panel established under that Bill.

As indicated in the corrigendum to the ASC Bill, the Panel jurisdiction will be conferred directly by specific provision in the Corporations Bill itself. The main elements of this approach are as follows:

- . the Panel will have the same power to make declarations as the NCSC had under CASA (see cl.733);
- . before making a declaration, the Panel must be satisfied that unacceptable circumstances have occurred (see cl.732 - based on CASA sub-ss.60(1) and (3)) and that a declaration is in the public interest having regard to any relevant matters including those set out in cl.731, e.g. the desirability of an efficient, competitive and informed market for the acquisition of shares (see para.733(3)(b));
- . where the Panel makes such a declaration, it will be able, on the application of the ASC, to make any orders it considers necessary to, among other things, protect the rights of persons affected by the acquisition or conduct, including remedial orders of the type which were available to the Court under CASA sub-s.60(4) (sub-cl.734(2)). The Panel will also be able to make interim orders pending determination of an application for an order under sub-cl.734(2) (sub-cl.735(2));
- . it will be an offence for a person to contravene an order made by the Panel (sub-cl.734(5));
- . Panel decisions will be reviewable by the Court under the Administrative Decisions (Judicial Review) Act, but not otherwise;
- . the declaration powers of the Panel will be exercisable on the application of the ASC which must apply within 60 days of the acquisition or conduct or within (up to) an extra 30 days if the Panel allows. The Panel, unless the Court extends the period, must decide within 90 days of the acquisition or conduct or within 30 days of the application, whichever is the later period (sub-cl.733(2)); and
- . hearings in relation to acquisitions and conduct must be held in private (see sub-cl.185(3) of the ASC Bill).