



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 25 February 2011

CMI Limited – Panel Makes Final Orders and Receives Review Application and Request for Stay

Final Orders of sitting Panel

The Panel made a declaration of unacceptable circumstances on 22 February 2011 in relation to an application dated 6 January 2011 by Mr Gerry Pauley and Mr Gordon Elkington, in relation to the affairs of CMI Limited (see [TP 11/1](#) and [TP 11/15](#)).

The Panel considered that Ms Leanne Catelan and Mr Raymond Catelan (the **Associated Parties**) are associated in respect of CMI.

The Panel has made final orders (Annexure A). In summary:

- The 3,112,422 shares in CMI (or 9.22%) acquired by Tinkerbelle Enterprises Pty Ltd (**Tinkerbelle**) as trustee for the Leanne Catelan Trust on 23 November 2010 (**Sale Shares**) are to be vested in the Commonwealth on trust for ASIC to sell and return the proceeds net of costs to the owner
- The Sale Shares are not counted for the purposes of the 3% creep exception in item 9 of s611 unless the Associated Parties acquire some Sale Shares on market as part of the sell-down (if they have an existing capacity to 'creep' under item 9(b) of s611)
- The Associated Parties must disclose their voting power in CMI and their association in a substantial holder notice and
- The Associated Parties must not otherwise dispose of, transfer, charge or vote the Sale Shares.

The determination of the proceedings brings to an end the undertaking given by Tinkerbelle dated 19 January 2011.

The sitting Panel was Peter Day, John Keeves (sitting President) and Andrew Sisson.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Review application

The Panel has received an application dated 24 February 2011 from Tinkerbelle and Ms Leanne Catelan seeking a review of the Panel's decision in CMI Limited ([TP11/15](#)).

A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the review application.

Stay of Panel's orders

Since making the orders and receiving the review application, the Panel received a request from Tinkerbelle and Ms Leanne Catelan for a stay of the Panel's Final Orders.

The President of the Panel has stayed the orders (other than order 5) to preserve the position pending consideration by a review Panel of the review application (Annexure B). The effect of the stay is that the Sale Shares will not be vested in ASIC pending determination of the review application.

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Takeovers Panel

Annexure A

**CORPORATIONS ACT
SECTION 657D
ORDERS**

CMI LIMITED

The Panel made a declaration of unacceptable circumstances on 22 February 2011.

THE PANEL ORDERS

Divestment order

1. The Sale Shares are vested in the Commonwealth on trust for Tinkerbell.
2. ASIC must:
 - (a) sell the Sale Shares in accordance with these orders and
 - (b) account to Tinkerbell for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
3. ASIC must:
 - (a) retain an Appointed Seller to conduct the sale and
 - (b) instruct the Appointed Seller -
 - (i) to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale.
 - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares
 - (iii) unless the Appointed Seller sells Sale Shares on market, that it obtain from any prospective purchaser of Sale Shares a statutory declaration that the prospective purchaser is not associated with any of the Associated Parties

- (iv) that none of the Associated Parties may directly or indirectly purchase any of the Sale Shares, except to the extent that they are allowed to acquire additional shares under item 9(b) of s611 and the Appointed Seller sells those shares on market and
 - (v) to dispose all of the Sale Shares within 3 months from the date of its engagement.
4. CMI and the Associated Parties must do all things necessary to give effect to these orders, including:
 - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Sale Shares in the form approved by ASIC and
 - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Sale Shares.
 5. The Associated Parties must not otherwise dispose of, transfer, charge or vote any Sale Shares (except those acquired on market under paragraph 3(b)(iv)).
 6. None of the Associated Parties may take into account any relevant interest or voting power that any of them or their respective associates had, or have had, in the Sale Shares when calculating the voting power referred to in Item 9(b) of s611 of the *Corporations Act 2001* (Cth), of a person six months before an acquisition exempted under Item 9 of s611. Any Sale Shares acquired on market under paragraph 3(b)(iv) must be taken into account in any subsequent calculation for item 9 purposes, taking the date of acquisition as the date they were acquired on market under paragraph 3(b)(iv).

Substantial holding disclosure order

7. The Associated Parties must as soon as practicable give notice of their substantial holding in relation to their voting power in CMI and their association, including disclosing:
 - (a) the name of each associate who has a relevant interest in voting shares in CMI
 - (b) the nature of their association
 - (c) the relevant interest of each associate and
 - (d) details of any relevant agreement through which they have a relevant interest in CMI shares.

Interpretation

Term	Meaning
Appointed Seller	An investment bank or stock broker
ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth

Associated Parties	Ms Leanne Catelan and Mr Raymond Catelan or any of their associates
CMI	CMI Limited
on market	in the ordinary course of trading on Australian Stock Exchange and not by crossing or special crossing
Sale Shares	3,112,422 shares held by Tinkerbell in CMI
Tinkerbell	Tinkerbell Enterprises Pty Ltd as trustee for the Leanne Catelan Trust

Alan Shaw
Counsel
with authority of John Keeves
President of the sitting Panel
Dated 25 February 2011



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS**

CMI LIMITED

- A. On 22 February 2011, the Panel made a declaration of unacceptable circumstances in relation to the affairs of CMI Limited under section 657A of the Corporations Act 2001 (Cth)
- B. On 24 February 2011, the Panel received a review application
- C. On 25 February 2011, the Panel made orders under section 657D of the Corporations Act 2001 (Cth) (**Orders**)
- D. On 25 February 2011, the Panel received a request to stay the Orders pending the review.

The President ORDERS:

- 1. That orders 1, 2, 3, 4, 6 and 7 of the Orders are stayed.
- 2. These interim orders have effect until the earliest of:
 - (i) further order of the Panel
 - (ii) the determination of the review proceedings and
 - (iii) 2 months from the date of these interim orders.

**Alan Shaw
Counsel
with authority of Kathleen Farrell
President of the Panel
Dated 25 February 2011**