

Takeovers Panel

ANNUAL REPORT

for the year ended 30 June 2012

G.62

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CONTENTS

FUNCTIONS AND POWERS OF THE PANEL	2
THE CODE APPLIES TO “CODE COMPANIES”	2
CHAIRMAN’S REPORT	3
MEMBERS OF THE TAKEOVERS PANEL.....	6
CHIEF EXECUTIVE’S REVIEW	9
FINANCIAL REPORT	22
STATEMENT OF COMPREHENSIVE INCOME	23
STATEMENT OF FINANCIAL POSITION.....	24
Executive of the Takeovers Panel	52
How to contact us	52
APPENDIX	53

FUNCTIONS AND POWERS OF THE PANEL

The main functions of the Takeovers Panel are set out in section 8 of the Takeovers Act 1993. In summary, the Panel's functions are:

- To keep takeovers law and practice under review and to recommend to the Minister of Commerce any changes to the law that the Panel considers necessary;
- To investigate any act or omission or practice for the purpose of exercising its enforcement powers under the Act;
- To make determinations and orders and make applications to the Court under the enforcement provisions of the Act;
- To co-operate with and to provide information to any overseas regulator to assist that regulator in the performance of its functions;
- To promote public understanding of the law and practice relating to takeovers.

The Panel's powers are set out in Parts 3 and 4 of the Takeovers Act. In summary, these powers are:

- To issue summonses and to take evidence on oath;
- To carry out inspections and obtain evidence at the request of overseas regulators;
- To make confidentiality orders;
- To accept undertakings that are enforceable by the Courts;
- To inspect documents, and to authorise the Registrar of Companies or any other person to undertake inspections;
- To grant exemptions from the Takeovers Code;
- To enforce the Takeovers Code by:
 - making determinations on whether a person is complying with the Code;
 - issuing restraining orders and compliance orders; and
 - applying for Court orders.

Under the Takeovers Code the Panel has powers to approve independent advisers and appoint independent experts.

THE CODE APPLIES TO "CODE COMPANIES"

The Takeovers Code applies to large, relatively widely owned, companies. A Code company is a New Zealand registered company that –

- (a) is a party to a listing agreement with a registered exchange and that has securities that confer voting rights quoted on the registered exchange's securities market; or
- (b) was within paragraph (a) at any time during the 12-month period before any date or the occurrence of any event referred to in the Code; or
- (c) has 50 or more shareholders (holding voting rights) and 50 or more share parcels.¹



C G Giffney
Deputy Chairman



K B Taylor
Chairman,
Audit and Risk Committee

¹ Prior to commencement of the Takeovers Amendment Act 2012, unlisted companies needed to have only 50 or more shareholders in order to be subject to the Code.

CHAIRMAN'S REPORT

Introduction

New Zealand's slow and somewhat fragile economic recovery from the global financial crisis that began in 2008 has shown itself in an only moderate level of activity in the market for corporate control in this country.

The Panel's Chief Executive provides details about the Panel's activities over the last financial year in her accompanying Review. The Annual Report also includes an overview of the history and role of the Panel, on page 14 "About the Panel". My report focuses on the direction of the Panel over the next three years.

The Panel continues to work towards increased efficiency and transparency in the takeovers market.

The Panel's outcomes and impacts

The Panel is focused on achieving the following outcomes over the medium term:

- maintaining an efficient takeovers market for voting securities;
- reducing transaction costs for investors; and
- increasing confidence in the integrity of the takeovers market.

The Panel contributes to important national goals: the Government's goal of growing the economy to deliver prosperity, security and opportunities to all New Zealanders, and the New Zealand financial sector's goal of increasing confidence and participation in the financial markets. The Panel does this through its own intended outcomes that are set out in the box above.

The Panel's outcomes are predicated on the Panel's role of ensuring that takeover processes are transparent and equitable.

To achieve these outcomes, the Panel plans to centre its services (outputs) on making the following three impacts:

- takeovers law being efficient for acquirers in a takeover and improving the information that must be provided for shareholders, and the Panel being an efficient regulator;
- 100% compliance with the Code; and
- shareholders, acquirers, and their advisers being better informed about the role of the Code and of the Panel.

Focus for resources over the medium term

Practically speaking, this means that, in addition to its enforcement activities, the Panel will continue, as it has since 2009, to focus a greater proportion of its resources on its statutory policy function of reviewing takeovers law and practice, and recommending any necessary law changes. The Panel will also give greater attention to its public understanding function. I discuss each of these in turn, below.

Review of Law

The Panel's policy function is aimed at improving the efficiency of takeovers law. It balances efficiency for acquirers with protection for shareholders. Accordingly, recommendations for law change often include proposals for improving the disclosure of information to, and processes for, shareholders.

An example of this regulatory policy work is the Panel's recommendations in relation to changes of control of Code companies effected through schemes of arrangement and amalgamations under the Companies Act 1993. During the year, legislation adopting the Panel's recommendations has been introduced into the House and the Panel looks forward to the Companies and Limited Partnerships Amendment Bill progressing through the legislative process.

During the Bill's time in the House, the Panel is progressing its development of, and public consultation on, the internal policies and practices that will underpin the legal process for 'takeovers by way of schemes of arrangement'. The new regime is similar to the process that has been operating

Ensuring transparent and equitable takeover processes

in Australia for many years. The Panel anticipates that its own internal policies and practices will also reflect the approach that is well settled in Australia.

The Panel also reviews anomalies or areas of uncertainty which may arise in relation to the Code. Some of these are dealt with through recommending law changes, others, particularly if they are fact or circumstance specific, are resolved by granting exemptions from compliance with the Code.²

In this context of the review of the law, the Panel has completed a thorough technical review of the Code. The review began the public phase of its journey with the launch of the first of four discussion papers, in August 2009. Many of the issues in the Code that were identified in this review programme came to light in the course of Code transactions over the last several years.

The changes to the Code that are the result of this lengthy review programme may be not too far from being implemented, by the time this Annual Report is published.

In parallel with this, the Takeovers Amendment Act 2012 makes changes to the definition of an unlisted Code company in the Takeovers Act and Code, from one with *50 or more shareholders* to one with *50 or more shareholders (who hold voting rights) and 50 or more share parcels*. This change clarifies what qualifies a company as being subject to the Code, and it focuses the Code on companies that are widely-held.

Over the medium term, the Panel intends to undertake a policy review of the entities to which the Code applies, addressing the question as to whether the current reach of the Code is appropriate for the size of New Zealand's financial markets. The Panel anticipates work to commence on this significant policy question over the next year.

Public Understanding

The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market.

The Panel's periodic publication *Code Word* is the vehicle for transmitting the Panel's views on topical takeovers matters. The Panel's website also provides a platform for access to the Panel's decisions and its views on Code matters and other useful information for all sectors of the takeovers market. The Panel has invested in upgrading its website to improve its functionality. Although the main website users have tended to be practitioners, it is hoped that shareholders, company directors and other market participants will find the new website both intuitive to navigate and informative.

Meetings with market participants and public speeches and presentations are other methods used by the Panel for disseminating information about the Code and about the Panel's role as a regulator.

With the ongoing fragility of the economy, signified by soft levels of takeover activity, the Panel intends to focus more resources on its public understanding output so that both the Code and the Panel's role are better understood. This should contribute to better informed shareholders, thus reducing their transaction costs.

Over the last year the Panel has undertaken one-to-one engagements with market participants. The subject for that round of engagements was independent advisers and independent adviser reports produced for Code-regulated transactions. As a result of these interactions, it is clear that market participants find the advice of independent advisers useful for Code-regulated transactions. The Panel learned through these engagements that there was a low level of understanding about the robustness of the Panel's process for approving independent advisers to act for Code transactions.

In response to its interactions with that group of market participants, the Panel published an article in *Code Word* on the Panel's requirements for independent advisers to be approved to act on a Code transaction. The article also covered the process required of prospective advisers to demonstrate to the Panel their independence for acting on a transaction. In addition, a new policy has been adopted, requiring an adviser's independence, in respect of the transaction being advised on, to be prominently displayed on the front page of the independent adviser's report.

The Panel plans to undertake further such engagements with market participants over the medium term.

² Exemptions can contribute to an efficient market by, when appropriate, modifying the Code to meet the circumstances of the transactions. The Panel only grants exemptions from compliance with the Code that are appropriate and consistent with the objectives of the Code.

Panel Members

The Panel is an expert body of professionals in the corporate arena. It comprises 11 members who are required to be qualified or experienced in business, law or accounting.

Members are variously lawyers, company directors, investment bankers and specialist advisers. One of the members is also a member of the Australian Takeovers Panel, appointed under a reciprocal arrangement made between the governments of Australia and New Zealand some years ago. The Chairman of the New Zealand Panel sits as a member of the Australian Takeovers Panel under the same arrangement.

Two Panel members resigned their positions on 23 August 2011: David Quigg had been a member of the Panel since 2001 and Pip Greenwood had been a member since 2006. This slightly brought forward their respective retirement dates, and was kindly undertaken to enable their replacements to be appointed before the Government entered the pre-election period during which appointments cannot be made. The Panel records its appreciation for the significant contributions made by David and Pip. David had been a long-standing member of the Panel and involved in many of its noteworthy enforcement and policy decisions in the early years of the Code.

Two new members were appointed to the Panel on 24 August 2011: Carl Blanchard, investment banker, and David Flacks, lawyer. Both have extensive experience in the corporate and takeovers markets. They have both been appointed for five-year terms.

The terms of office of three members have expired. Peter Scott, who is also a member of the Australian Takeovers Panel, was appointed on 10 July 2008 for a term of two and two-thirds years. Sue Suckling was appointed on 16 December 2002 for a term of three years and re-appointed for a five-year term on 21 December 2005. Keith Taylor was appointed on 20 December 2006 for a five-year term. All these members' terms of office continue until they are re-appointed or replaced.

The terms of office of the Chairman and Deputy Chairman are due to expire in September 2012. The Panel has a succession plan in place and is working with officials to maintain the integrity of the Panel's composition.

Executive Team

The Panel's executive team was led throughout the year by Margaret Bearsley, who, as reported last year, was appointed as the new Chief Executive from 1 July 2011. Margaret has worked closely with me to provide the key link between the Panel and its executive staff. Margaret was the Panel's General Counsel before her appointment as Chief Executive, and she has proved to be an able and professional leader of the Panel executive.

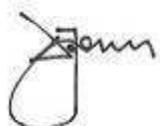
The year saw several changes in the Panel executive. Andrew Hudson, was appointed as General Counsel in September 2011. Andrew comes with ten years' experience as a commercial lawyer in private practice. Lucy Mehrtens has joined the Panel executive as a new lawyer, replacing Julian Sakarai, who resigned for other opportunities.

Appreciation

My thanks go to the members of the Panel for their dedication and willingness to take part in Panel work, often at very short notice. On behalf of the members of the Panel I thank Margaret and the other staff members for their commitment and highly professional work during the past year.

I also wish to acknowledge the willing assistance of market participants in their dealings with the Panel in relation to the development of Code policy. Finally, I acknowledge and thank the Minister of Commerce and officials from the Ministry of Business, Innovation and Employment for their constructive support of the Panel during the year.

The 2011/2012 year has shown the Panel to be responsive to the global impacts on the local market environment. The Panel anticipates moderate market activity in the next 12 months and is working hard to ensure that the takeovers market is always moving towards increased efficiency and transparency.



D O Jones
Chairman

MEMBERS OF THE TAKEOVERS PANEL

Chairman



David Jones

Lawyer. Partner of Jones Young, Barristers and Solicitors, Auckland, specialising in mergers and acquisitions and corporate law. Member of the Panel from its inception as an advisory group. Member of the Australian Takeovers Panel.

Deputy Chairman



Colin Giffney

Specialist corporate adviser. Principal of Giffney & Jones. On the boards of several public & private companies. Member Financial Markets Authority. Appointed to the Panel in 2001.

Members



Murdo Beattie

Investment Banker. Partner of the investment banking firm of Cameron Partners Limited. Specialises in advising corporates on merger and acquisition transactions. Appointed to the Panel in 2008.



Carl Blanchard

Investment Banker. Director of investment banking at First NZ Capital. Specialises in advising on utilities, government and property. Carl has been a member of the Takeovers Panel since 2011.



Andy Coupe

Investment Banker. Senior Advisor at UBS New Zealand Limited, with very extensive experience in public market takeovers and capital markets. Appointed to the Panel in 2008.



David Flacks

Lawyer. Bell Gully partner experienced in takeovers, mergers, securities law, and corporate governance. Appointed to the Panel in 2011.



Simon Horner

Lawyer. Partner at Mayne Wetherell with extensive experience in mergers and acquisitions and securities offerings. Appointed to the Panel in 2011



Peter Scott

Investment banker, based in Melbourne. Vice Chairman, Investment Banking, of UBS AG in Australia and a member of the Australian Takeovers Panel since 2002. Appointed to the Panel as the Australian Panel's representative in 2008.



Sue Suckling

A governance specialist. Previously Board Chair of both the National Institute of Water and Atmospheric Research Ltd and AgriQuality Ltd. Other governance roles, currently Chair of The Oxford Clinic in Christchurch and in the past Carson Group. She is currently a member of the Takeovers Panel, Chair of Barkers Fruit Processors Ltd, Board member of Restaurant Brands, Board member of SKYCITY Entertainment Group, Chair of ECL Group Ltd.



Keith Taylor

Director and consultant. Wellington-based. Former Group Managing Director of Tower Limited. Chairman Speirs Group Limited and Government Superannuation Fund Authority, Deputy Chairman of the Earthquake Commission; Director of Reserve Bank of New Zealand, Southern Cross Healthcare, Gough Gough & Hamer Limited, Port Marlborough and a range of private companies, trusts and charitable organisations. Appointed to the Panel in 2006.



Roger Wallis

Lawyer. Partner of Chapman Tripp. Specialising in corporate and securities law. Member of the Listed Companies Association executive, the Institute of Directors, and former Chairman of the NZX Legal and Regulatory Advisory Board. He is also a member of the Chapman Tripp board. Appointed to the Panel in 2011.

CHIEF EXECUTIVE'S REVIEW

Introduction

As the Chairman notes in his Report, this past year has seen the continuation of a slow recovery from the 2008 global financial crisis. This, together with the European sovereign debt crises, has resulted in only moderate levels of activity in New Zealand's takeovers market. While the Chairman's Report is mainly forward-looking, focusing on the Panel's intentions for the medium term, my Review analyses the Panel's services over the last financial year and discusses the achievement of its impacts and outcomes over that time.

The Panel is an independent Crown entity, established under the Takeovers Act. Its responsible Minister is the Minister of Commerce. Each year, the Panel is advised of the Minister's expectations of the Panel for the coming year.

Minister's expectations of the Panel for 2011/2012

The Minister of Commerce advised the Panel that the priority for the government for the 2011/2012 year was to grow the New Zealand economy to deliver greater prosperity, security and opportunities to all New Zealanders.³

The outcome the Minister sought from the Panel was that its services would result in reduced transaction costs for domestic and international investors and increasing confidence in the integrity of New Zealand's takeovers market.⁴ The Minister asked the Panel to achieve this through ensuring transparent and equitable takeover processes.

The Minister also expected the Panel's enforcement activities to promote confidence and certainty in the markets. The Minister expected this to contribute to an efficient market for takeovers, ensuring broad participation by investors and thus contributing to the government's objective of driving productive, non-inflationary growth.

In addition, recognising that the takeovers market was still experiencing only modest levels of transactional activity following the global financial crisis, the Minister expected the Panel to allocate its resources effectively to undertaking policy work for reviewing takeovers law and the Code.

The Panel believes it has appropriately allocated its resources in the circumstances of the economic environment over the 2011/2012 year, to achieve the Minister's expectations. The Statement of Service Performance, on pages 41 to 49 of this Annual Report, sets out in full the services that the Panel provided over the year.

Operating environment

New Zealand is very much a member of the global community, including with respect to its financial markets. This international connectedness was reflected over the 2011/2012 reporting period in the ongoing effects of the 2008 global financial crisis on the takeovers market in New Zealand. The February 2011 Canterbury earthquakes and the March 2011 tsunami in Japan also impacted on our financial markets. At the time when, following these disasters, the local financial markets seemed to be regaining their confidence, the European sovereign debt crises, particularly in Greece and Spain, and the slow recoveries of the USA and the UK, appeared to dampen the New Zealand capital markets again.

Within this context, the New Zealand takeovers market had appeared to be strongly improving for the first six months of the reporting year. Three new takeovers were all announced shortly before Christmas 2011,⁵ and these gave the sense of a market returning to normal. However, the debt crises in Greece and Spain coincided with a 'first' for the takeovers market in the Code's 11 year history: not one takeover was announced over the seven month period from December 2011 to June 2012. There was, of course, other Code-regulated activity occurring, with 15 shareholder meetings held during the year to approve increases in voting control for various Code company shareholders.

In view of this, the Panel has been balancing its resources between its (usually) highest resource activity of enforcement, and its policy and public understanding functions.

The Panel has completed its technical review of the Code, which was begun in 2009. The Panel executive liaised closely with officials from the Ministry of Business, Innovation and Employment

³ Letter of Expectations 2011/2012, dated 10 November 2010, from the Hon Simon Power, (then) Minister of Commerce.

⁴ Ibid.

⁵ In October 2011, Cerebos New Zealand Limited announced a takeover of Comvita Limited, and Australasian Equity Partners Fund No. 1 LP announced a takeover of Pyne Gould Corporation Limited. Then in November 2011 BayWa Aktiengesellschaft announced a takeover of Turners & Growers Limited.

Ensuring transparent and equitable takeover processes

(“MBIE”) before the Panel made its recommendations in mid-August 2012 to the Minister, on a range of technical or low policy content amendments to the Code. The co-operation between the Panel and MBIE enabled officials to provide timely and well-informed advice to the Minister regarding the recommendations. A targeted consultation on an exposure draft of the regulations will help to ensure that the amendments are well drafted and achieve their purpose.

In addition, the Panel is taking the opportunity to upgrade its website. While this involves a cost of \$50,000 for the development phase, the changeover is anticipated to result in better performance and cost savings over time. The current website is unwieldy and unable to be internally administered, resulting in high running costs for the Panel, averaging approximately \$13,000 per annum. Administration costs are expected to reduce with the new site which will also be more intuitive for users.

The Panel's IT system is also long overdue for an upgrade, with the current system so outdated that it is not capable of supporting software any newer than Windows XP and Office 2003. The Panel is liaising with Ministry officials regarding any potential funding needs. The Panel hopes to have the new IT system operating by the end of calendar year 2012.

In the 2010/2011 year, the Panel assisted officials from the then Ministry of Economic Development (now MBIE) with a review of the fees that the Panel is able to charge to third parties for various actions undertaken by the Panel. The fees are chargeable under the *Takeovers (Fees) Regulations 2001* and have not been updated since they were enacted in 2001. It had been hoped that the fees review would be concluded in calendar year 2011, since the prescribed rates contained in the regulations under-recover on each chargeable activity by approximately 40%.

Unfortunately, the review has been in abeyance while officials in MBIE have been dealing with more pressing matters. The Panel is now hoping that the conclusion of the fees review will coincide with the passage of the Companies and Limited Partnerships Amendment Bill (which contains the Panel's proposals for dealing with schemes of arrangement and amalgamations under the Companies Act, that involve Code companies).

Under the current fees regulations the Panel can only charge for its activities in relation to matters under the Takeovers Act and Code. However, under the law changes in the Bill the Panel will have a role in relation to schemes of arrangement under the Companies Act that involve Code companies.

The fees regulations need to be amended in conjunction with the passage of the Bill. Without an amendment, the Panel will face a further shortfall in its third-party funding. This is because the Panel anticipates that, once the new regime comes into effect and beds in, a significant proportion of takeovers will be undertaken under that regime. The reason for this expectation is that the proposals under the Bill are closely aligned with the regime that has operated in Australia for several decades, and around half of all takeovers are undertaken as schemes of arrangement in that jurisdiction.

Achievements for the reporting year: the Panel is a cost effective regulator

Economy and efficiency

The Panel's operating income

The Panel's funding for the financial year was mostly provided by Parliament, being \$1,494,000 (through Vote Commerce: Non Departmental Output – Administration of the Takeovers Code). In addition, the Panel received income of c. \$100,000 from third party funding for its chargeable activities.

Third party funding was also very low for the 2010/2011 year, at c. \$170,000. In all prior years third party funding has generated income for the Panel of between \$300,000 and \$600,000 per annum.

The Panel is managing with its reduced income, although this becomes increasingly difficult within a small and relatively stable staff, six of whom are specialist lawyers. Robust controls on spending and a strong focus on internal efficiency enable the Panel to generally maintain a more or less break even position on its operating expenditure.⁶

⁶ The biggest impact on the Panel's annual financial position is whether it holds section 32 meetings and, if so, whether the outcome of a meeting enables the Panel to make cost recovery orders against any parties. This is because of the expenses involved in holding each hearing. The Panel's costs for a section 32 hearing can be c. \$90,000 to \$250,000 (depending on where the hearing is held, how long it takes and whether the Panel requires the assistance of industry experts). If the Panel finds that there has been a breach of the Code it can then make cost recovery orders against parties to the hearing. Costs orders might generate income of c. \$100,000 to \$200,000. If the Panel does not make costs orders, then the Panel's costs for holding the hearing must be borne by the Panel.

Ensuring transparent and equitable takeover processes

Resources

Members and the executive committed 11,745 hours of time to Panel work over the year, as compared with 12,885 in the previous year. The reduction in hours is due mainly to the three months without a General Counsel (due to the Panel's previous General Counsel becoming Chief Executive on 1 July 2011), and one other lawyer who left in November 2011 and was not replaced until March 2012.

The Panel's assets consist of its capital resources, being c. \$46,500 of office equipment and furniture, and its intellectual resources, being its executive team of eight staff and the Panel members. As noted above, the Panel's website and IT infrastructure are outdated and need upgrading to support the Panel's future capability. The Panel hopes to have these completed over the next year and will report on them in the 2012/2013 Annual Report.

Outputs

Utilising its income and resources, over the 2011/2012 financial year the Panel provided the outputs described in the Statement of Service Performance on pages 41 to 49 below.

Cost effectiveness of Panel

Impacts

For the Panel's 2011/2012-2014 Statement of Intent, the three impacts that are shown in the left column of Table 1, below, were identified. The right column sets out the measures that were proposed in the Statement of Intent, and the middle column sets out the actual performance against each impact.

Table 1: Panel's impacts as identified in the 2011/2012-2014 Statement of Intent

IMPACT ⁷	ACTUAL FOR 2011/2012	MAIN NON-FINANCIAL MEASURES BY WHICH THE FUTURE PERFORMANCE OF THE PANEL MAY BE JUDGED (AS ESTIMATED FOR 2011/2012 SOI)
<p><i>Efficiency</i></p> <p>The improvement in the efficiency of takeovers law.</p>	<p>The Panel did not make any recommendations to the Minister for changes to the law (but it completed the policy work and the recommendations were drafted in the reporting period). The Panel has liaised closely with officials from MBIE regarding the timing of releasing its recommendations.</p> <p>The Panel is unable to report on whether the Minister accepts the recommendations, although it anticipates that the liaison with officials increases the likelihood of that outcome.</p>	<p>The Panel keeps market practices under review and makes recommendations to the Minister for changes to takeovers law where necessary. As a measure of the Panel's impact on the efficiency of the Code the Panel aims to have its recommendations for changes to takeovers law accepted by the Minister of Commerce</p>
<p><i>Information</i></p> <p>The improved quality of advice given to recipients of takeover offers and to shareholders entitled to vote to approve Code related allotments and acquisitions.</p>	<p>In the 2010/2011 year, 11 independent adviser's reports were reviewed and five (45%) of those had two or less substantive comments made on them by the executive (with the remainder having up to six such comments).</p> <p>In the 2011/2012 year, 21 independent adviser's reports were reviewed and 14 (66%) of those had two or less substantive comments made on them by the executive (with the remainder having up to five such comments).</p> <p>Accordingly, as a proxy measure, the figures suggest a possible positive impact by the Panel on the quality of advice given to shareholders involved in Code-related matters.</p>	<p>The Panel does this by setting high standards of independence and competence for advisers approved by the Panel while also promoting a larger pool of available advisers, and by reviewing and commenting on their draft reports. As a proxy of a measure that reflects the impact the Panel makes on the quality of advice given to shareholders involved in Code-related matters, the Panel aims to reduce the level of substantive comments the Panel executive makes on draft independent adviser reports to two comments per report.</p>

⁷ Note that the Panel has proposed different impacts and outcomes for future years for measuring its performance. The new impacts will be in the same three broad areas of efficiency, information, and enforcement, and the new outcomes will be at the level set by the Minister's Letter of Expectations for the Panel (rather than at the broader financial sector level as in the 2011/2012-2014 Statement of Intent).

Ensuring transparent and equitable takeover processes

IMPACT ⁷	ACTUAL FOR 2011/2012	MAIN NON-FINANCIAL MEASURES BY WHICH THE FUTURE PERFORMANCE OF THE PANEL MAY BE JUDGED (AS ESTIMATED FOR 2011/2012 SOI)
<p><i>Enforcement</i></p> <p>The improvement in the level of compliance with the Code as measured by receiving net positive market feedback on the Panel's performance in promoting compliance with the Code.</p>	<p>The results of the on-line survey that the Panel has been operating since 1 July 2011,⁸ provide positive feedback by the market participants who deal directly with the Panel executive. Of the 52 market participants surveyed over the year, 41 responded to the survey (a 78% response rate). Of those, 100% answered the questions relating to the practice of reviewing drafts, and of those for whom the practice was applicable to their transaction, all commented favorably on the practice.</p>	<p>The Panel aims to be an effective and responsive market regulator carrying out both enforcement and facilitative roles in relation to compliance with the Code. The Panel aims to review all takeover documents received, to provide compliance advice where possible, and to have appropriate enforcement action initiated where the need is identified. The Panel's effectiveness is to be measured by the level of positive feedback obtained from market participants.</p>

Outcomes

The Panel's 2011/2012-2014 Statement of Intent proposed that the overall *outcome* that the Panel aimed to contribute to was *increased confidence and participation in New Zealand's financial markets*. The Panel recognises that this proposed outcome reflects the outcome of the broader financial sector. In other words, the suggested outcome is at too high a level to be able to measure the contribution to it of a regulator as narrowly focused as the Panel. Although the Panel is unable to provide evidence that its services have contributed to this outcome, it is probably not unreasonable to suggest that they did.

From next year, the Panel proposes, as a more achievable overall outcome against which to measure its performance, the outcome identified by the Minister of Commerce in his 2011/2012 Letter of Expectations to the Panel. The Minister expected that the Panel's services for ensuring transparent and equitable takeover processes would result in *reduced transaction costs for domestic and international investors and increasing confidence in the integrity of New Zealand's takeovers market*.

The Panel has set up performance measures for the next financial year for the impacts and outcomes that sit under this high-level outcome. The 2012/2013 Statement of Service Performance establishes data for measuring the achievement of the newly identified impacts and outcomes.

Results of Panel's on-line survey

The Panel decided that it is one thing to say that it is a well-respected and efficient regulator, and it is another to ask its 'clientele' for their views on that proposition. The on-line survey for the 2011/2012 year was accordingly established to collect data on its performance.

Over the year the Panel sent 52 survey requests. Each request was sent shortly after the practitioner's involvement with the Panel executive reached its conclusion. The Panel received 41 responses, or a 78% response rate, with mostly positive feedback. The Appendix at the end of the Annual Report provides a summary of the survey results for the 2011/2012 year.

The survey has had the added benefit of providing a forum for respondents to raise any concerns that might not otherwise be brought to the Panel's attention, such as suggestions for improving the website or delivery of other services. The Panel has been able to act on this feedback virtually immediately after it is received.

In preparation for the 2012/2013 Annual Report, the survey questionnaire has been slightly re-styled and made more streamlined for respondents.

Stakeholder relations

The Panel's stakeholders include practitioners who are active in the mergers and acquisitions market, including legal advisers, investment bankers and corporate advisers, industry bodies including INFENZ, the Institute of Directors and the Shareholders Association, directors and shareholders themselves, and the media.

Other key stakeholders are the Minister of Commerce, senior officials and policy advisers from MBIE and other government departments, including the State Services Commission and the Treasury, and

⁸ See the Appendix to this Annual Report for a full summary of the 2011/2012 survey results.

Ensuring transparent and equitable takeover processes

other market regulators such as the Financial Markets Authority, Overseas Investments Office, NZX Limited, and overseas takeovers regulators.

For the practitioner and corporate stakeholders, the Panel holds formal, large-group seminar-style meetings, every 18 months to two years. The Panel also has frequent, informal one-to-one, ad hoc meetings conducted usually by the Chairman or Chief Executive. Whatever the format, these engagements provide opportunities for the Panel to share its news and views (i.e., to promote public understanding of the Code and the Panel) and opportunities for feedback to the Panel from the participants.

The Panel also directly seeks market participants' views on the professionalism and efficiency of the Panel executive, through its on-line survey.

As the results of the 2011/2012 survey show (see pages 52 to 54) 95% of respondents found the Panel executive to be responsive and helpful, and to give timely and useful advice. Of the respondents who commented on the Panel's publications, 95% found them useful in relation to the specific transaction they had just worked on. Only two respondents to the survey indicated that they were not happy with all aspects of the performance of the executive.

The information set out in the next section of this Annual Report, coupled with the positive feedback that the Panel has received through its on-line survey, provides data that shows the Panel to be a cost effective service provider that has achieved its expected impacts and outcomes. The Panel's executive staff is committed to supporting the Panel's achievements of its goals.



Margaret Bearsley
Chief Executive

ABOUT THE PANEL

A brief history

The Takeovers Code came into force on 1 July 2001 after many years of debate in New Zealand about whether there needed to be such legislation. Prior to the Code's introduction, New Zealand had been one of the few market economies without a modern takeovers regime.⁹

The Code replaced the light-handed regime that was in place under the Companies Amendment Act 1963. The effectiveness of the regime under the Amendment Act was minimal, due to its exceptions. Offers could be made to six or less shareholders, or could be made through the Stock Exchange, without having to comply with the Amendment Act's provisions. Accordingly, taking control of a company could occur to the benefit of a few major shareholders, while the minorities were left to ponder the effect of such transactions on their own investment in the company.

As part of the government's major corporate law review in the early 1990s the Companies Act 1993 and the Takeovers Act 1993 were implemented. The Takeovers Panel was established under the Takeovers Act and was given the task of recommending a takeovers code to the government.

The Panel recommended a code in June 1995. Several more years were to pass before the Takeovers Code was enacted, under the Takeovers Code Approval Order of 2000.

As with other modern takeovers regimes, New Zealand's Code regulates the *process* of share transactions in companies. Under the Code, these transactions occur in an orderly fashion and all shareholders are subject to the same rules.

The Panel and the Code ensure fair and equitable takeover processes

The role of the Panel and of the Code is to ensure that all shareholders have a fair opportunity to participate in control-change transactions in Code companies (such as takeovers and allotments or acquisitions of parcels of shares). The Code also ensures that shareholders have adequate information to assist their decision-making for these transactions.

The Code achieves this through its two main purposes of *transparency* and *equitable processes*.

Transparency is achieved through the disclosures that potential acquirers have to make to shareholders in advance of the shareholders' decision on the transaction. The advice that shareholders are given by the Code company's directors and by an independent adviser also contribute to the transparency of Code-regulated transactions.

The equitable processes that are supported by the Code relate to the mandated timeframes under which the steps of a takeover must occur, and the rules about the equality of offer terms and conditions for shareholders. For shareholder meetings required for allotments and acquisitions, the Code ensures that only 'disinterested' shareholders vote on the resolution; the allottee or acquirer and their associates are not allowed to vote to approve the transaction.

The Panel supports these purposes of the Code through its statutory functions of enforcing the Code and of promoting public understanding of takeovers law and practice. The Panel's public understanding work contributes to the goal of many financial sector regulators, to improve the public's financial literacy.

The Panel focuses a significant proportion of its resources on ensuring that the Code is complied with. This impacts on the acquirer side of the takeovers market and on Code companies themselves. But compliance is not limited to these parties. Rule 64 of the Code, the 'truth in takeovers' rule that prohibits misleading or deceptive conduct in relation to Code-regulated transactions, applies to every person.

The Panel has strong enforcement powers under the Takeovers Act, including the power (under section 32 of the Takeovers Act) to hold hearings, and the power to take evidence under oath and to issue confidentiality orders. The Panel also has the power to issue temporary restraining orders that prevent share transactions from being undertaken. It can also issue permanent orders requiring persons to publish statements or preventing persons from publishing statements. When exercising its enforcement powers, the Panel acts judicially, as a tribunal.

If the Panel's own enforcement actions are not sufficient to remedy a breach of the Code, the Panel takes action through the High Court to obtain permanent orders.

⁹ Bob Dugan, *Law, Economics and the Draft Takeovers Code*, (1996) 26 VUWLR 39.

Ensuring transparent and equitable takeover processes

In cases where persons have committed serious breaches of the Code that materially prejudice shareholders or other parties, or that are likely to materially damage the integrity or reputation of New Zealand's securities markets, the Panel may apply to the High Court for a pecuniary penalty against the person in breach. A pecuniary penalty can be up to \$500,000 against an individual or \$5,000,000 against a body corporate, for each breach of the Code. To date, this remedy has not been sought.

The Panel's approach facilitates an efficient takeovers market

In the first few years of the Code's operation, the Panel held a significant number of section 32 hearings. As a result of these enforcement actions, the Panel published its determinations. These have established the Panel's interpretation of the Code on a number of specific fact situations. The Panel has also published articles, policies and guidance notes on how it interprets and enforces the Code.

These published 'rulings', together with the informal advice that is regularly offered to practitioners by the Panel's staff, along with the Panel's reputation as a decisive regulator, have all combined to create an environment under which it is now rare that the Panel needs to hold a formal enforcement hearing. This environment is supported by the generally co-operative nature of New Zealand's takeovers professionals.

As a result, most potential breaches of the Code are found and resolved while documents are still in draft. In the now rare case where an actual breach has occurred, it is almost always voluntarily disclosed to the Panel and voluntarily remedied in accordance with Panel policy (usually requiring an immediate sale of the shares acquired in breach).

Hearings under section 32 of the Takeovers Act are relatively expensive. The Panel's full costs for holding them have generally been between c. \$90,000 and \$250,000, depending on the complexity of the matter and the number of witnesses. The parties' costs would also be at least as much as the Panel's.

From August 2002 it became the Panel's policy to have all independent adviser reports reviewed in draft by the executive. This was for the purpose of ensuring that the reports contained, as a minimum, a full discussion of the merits of the transaction and accurate and comprehensive information for shareholders about the application of the Code to the transaction.

From 2005 the Panel executive began, at the request of a few legal practitioners, to review takeover documents in draft. This practice has now become common-place. By 2010 the executive was reviewing in draft almost all Code-related documents, as well as their related market announcements.

It is not possible to assert a direct correlation between the resources put into the 'soft enforcement' activity of vetting Code-regulated documents in draft and a reduction in the number of section 32 meetings being held. Other factors would include those mentioned in the first two paragraphs of this section on facilitating an efficient takeovers market.

Nevertheless, the Panel believes that there is some correlation between these factors and the reduction in the number of formal hearings.

Table 2: Hearings held under section 32 of the Takeovers Act:¹⁰

Year (12 months to 30 June)	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
No. of s32 hearings	10	6	4	1	3	0	3	1	1	0	0
No. of takeover notices (*approximate)	18*	12*	14*	20*	20*	23	12	4	7	7	7
No. of shareholder meetings (figures are available from 1 July 2006)	-	-	-	-	-	13	13	13	13	7	15

¹⁰ These figures are approximate, due to reliance on manual data manipulation and collection.

The Panel is more than just an enforcer

While enforcement activities (including the 'soft enforcement' activity of the review of draft documents) are a key focus of the Panel's role, the Panel has several other functions. The Panel approves the independent advisers who advise shareholders on each Code-regulated transaction; it considers exemption applications and, if appropriate and consistent with the objectives of the Code to do so, grants exemptions from compliance with the Code; the Panel keeps under review market practice and recommends any changes to takeovers law that the Panel believes are necessary; it promotes public understanding of takeovers law and practice; it participates in international co-operation amongst takeovers regulators.

As an expert body of takeovers practitioners in their own fields, and supported by a small staff of specialist takeovers lawyers, the Panel is well equipped to undertake its policy function of reviewing takeovers practice and recommending law changes. Since the 2008 downturn in transactional activities, the Panel has used the opportunity of having fewer takeover transactions to monitor, to undertake a raft of policy work to improve the efficiency and effectiveness of the Code.

When the mergers and acquisitions market does pick up again, it will be in a regulatory environment of improved efficiency of the Code for acquirers, and improved disclosures for shareholders.

From next year, the Panel will start reporting on an expected decline in the number of exemptions being granted, as an indicator that its policy function, including the granting of key class exemptions, has made the rules of the Code more efficient for acquirers, and maintains that efficiency as the securities markets innovate over time.

The Panel's role within the broader financial markets

The Panel has a sharply focused regulatory role (takeovers law and practice) within a broad matrix of prudential and financial markets regulation, including that exercised by the Reserve Bank, the Financial Markets Authority and the Registrar of Companies. In addition, NZX Limited undertakes a supervisory role of its listed market participants. Other regulators whose roles also impact on the financial markets include the Overseas Investments Office and the Commerce Commission.

The Panel's role is significant within its own sphere of takeovers activity, but it is a comparatively small regulator.¹¹ The Panel provides just one of the building blocks in the whole financial sector's regulatory framework for increasing confidence in New Zealand's financial markets.

CORPORATE GOVERNANCE AND ADDITIONAL DISCLOSURES

Introduction

The Panel applies the principles of good corporate governance to its operations.

The Panel has a strong relationship with management and there is a clear understanding throughout the organisation of the Panel's objectives and corporate standards.

The Board of the Panel

Responsibilities of the Board

The members of the Panel are the governing body of the Panel. A meeting of all the members is a meeting of the Board for the purposes of the Crown Entities Act. The responsibilities of the Board derive from the Takeovers Act and the Crown Entities Act. The functions and powers of the Panel are set out at page 2 of this Report.

The responsibilities of the Panel – "Board" – as set out in the Crown Entities Act, include that the Board must –

- act in a manner that is consistent with the Panel's powers and functions under the Crown Entities Act, the Takeovers Act, its Statement of Intent and Output Agreement (if it has one) with its responsible Minister (the Minister of Commerce);
- ensure that the Panel carries out its functions efficiently and effectively and consistently with the spirit of service to the public;

¹¹ As an indicator of the Panel's size, its total operating income for the 2010/2011 year was c. \$1,700,000. According to their annual reports for the same period, the Reserve Bank's operating income was c. \$200,000,000 and the Commerce Commission's was \$44,000,000.

Ensuring transparent and equitable takeover processes

- ensure that the Panel operates in a financially responsible manner. For this purpose, the Board must prudently manage its assets and liabilities, and endeavour to ensure the Panel's long-term financial viability.

Responsibilities of Panel members

The responsibilities of individual members of the Panel under the Crown Entities Act include that, when acting as a Panel member, they –

- do not contravene the Crown Entities Act or the Takeovers Act;
- act with honesty and integrity;
- act in good faith and do not pursue their own interests at the expense of the Panel's interests;
- exercise care, diligence, and skill;
- do not wrongfully disclose, use or act on information gained as member.

The duties of the Panel and of members are duties owed to the Minister of Commerce. There are penalties under the Crown Entities Act for individual or collective non-compliance with these duties.

The activities of the Panel as Board

Board role

Members of the Panel provide leadership to the executive within a framework of appropriate controls, which enables risk to be assessed and managed. Members set the Panel's strategic aims and reviews management's performance.

How the Panel operates

The full Panel meets six times a year to conduct the governance functions of the Panel, including the review of the performance of the Panel executive, review of the work of the various Divisions of the Panel, relationships with stakeholders, and consideration of policy papers.

Separation of the Board from the executive

Lawyer, David Jones MNZM, a partner of Jones Young, Lawyers, based in Auckland chairs the Panel. The Deputy Chairman is Colin Giffney, Corporate Adviser, also based in Auckland. All Panel members work part-time for the Panel.

The Panel's Chief Executive, Margaret Bearsley, heads a staff of eight: six lawyers (including herself), an accountant and an Office Manager.

The backbone of the Panel's governance arrangements is the clear separation between the decision-makers, the Panel, and the Panel's advisers, the executive.

The executive assists the market by giving informal comments on compliance issues, on a without prejudice basis. It does this both by fielding general enquiries and by reviewing draft Code-regulated documentation.

Market participants who use this service are aware that the Panel retains the discretion to act as it sees fit, should the matter subsequently come before it. If this should happen, market participants understand that the Panel may reach a different conclusion than the position taken in the executive's informal comments.

The executive provides free and frank advice to the Panel on the matters that require the Panel to make a decision. The Panel considers that advice, and it acts in the manner it thinks fit. The executive liaises with market participants and executes the Panel's decisions.

Executive appointment and succession planning

The Panel operates a standard corporate management structure under which the Board is responsible for appointing the Chief Executive, negotiating his or her annual Key Performance Indicators, monitoring his or her performance during the year and reviewing it at the end of the year.

The Panel also sets the Chief Executive's remuneration, after consultation with the State Services Commissioner. The Chief Executive's remuneration package includes an "at risk" component linked to achieving specified goals for the Panel.

The Panel is also responsible for developing a succession plan for its Chief Executive.

The Panel delegates responsibility for the day-to-day management of the Panel to the Chief Executive, including the recruitment, remuneration, training and development of staff, promoting the health and

Ensuring transparent and equitable takeover processes

safety of employees, executing the Panel's work programme, and maintaining sound financial management practices within the Panel.

Operating by Divisions

For exercising most of its statutory powers the Panel meets by a Division of members. The Chairman appoints Divisions for each matter that requires a Panel decision. This includes the consideration of exemption applications, and of applications from advisers for approval to be an independent adviser, the considering of enforcement issues, etc. A Division must be constituted with at least three Panel members. No member who is "interested" in the matter is appointed to the Division.

Under the Takeovers Act, an appointed Division is "the Panel" for the purposes of the matter it is appointed to consider, and only that Division can exercise the Panel's powers in respect of that matter.

Panel meetings and subcommittee structure

The Panel has an Audit and Risk Committee with terms of reference approved by the Panel. The Audit and Risk Committee has authority to make some decisions on behalf of the Panel, particularly in relation to risk management, finalisation of the Panel's statutory reporting documents, and defined levels of expenditure.

Meetings of the full Panel are convened to consider class exemptions, because the Takeovers Act precludes Divisions of the Panel from considering class exemptions. Likewise, only the full Panel may review market practice and recommend changes to the law.

Panel member participation in Panel meetings, Division meetings, and Audit and Risk Committee meetings over the past twelve months was as follows:

Member	Panel meetings (maximum of 6 during year)†	Division meetings (30 during year)	Audit and Risk Committee (8 during year)
David Jones	6 of 6	22	7
Colin Giffney	6 of 6	27	8
Murdo Beattie	6 of 6	5	
Carl Blanchard ⁺	5 of 5	4	
Andy Coupe	6 of 6	16	
David Flacks ⁺	5 of 5	7	
Pip Greenwood ⁺⁺	0 of 1	0	
Simon Horner	6 of 6	19	
David Quigg ⁺⁺	1 of 1	0	
Peter Scott ^{**}	6 of 6	0	
Sue Suckling	4 of 6	7	
Keith Taylor	5 of 6	3	8
Roger Wallis ⁺⁺⁺	5 of 6	6	

† Maximum number of Panel meetings that Members could attend is shown.

** Peter Scott is based in Melbourne and is not asked to sit on Divisions.

⁺ Member since 24 August 2011

⁺⁺ Member until 23 August 2011

⁺⁺⁺ Absent on leave for one meeting with the approval of Panel Chairman

Dealing with conflicts of interest

The ability to act by Division ensures that interested members do not form part of the Panel for dealing with matters in respect of which they have an interest. When matters are being dealt with that must involve the full Panel, members who have an interest do not participate in the part of the meeting that relates to that matter, and nor do they receive the Board papers about that matter. The Panel maintains an Interests Register for recording members' interests in accordance with the Crown Entities Act.

Where an enforcement matter before the Panel involves a Panel member, either as a legal adviser to a person the subject of a Panel enquiry, or as their corporate representative (for example, as the director of a company that is the subject of a Panel enquiry), the Panel's governance rules require that the member does not appear before the Panel. Another partner of the member's firm must represent the client or another of the company's corporate representatives must represent the company.

Ensuring transparent and equitable takeover processes

Planning

The Panel's main planning documents are the annual Statement of Intent, required to be prepared under the Crown Entities Act, and the annual Output Agreement agreed between the Panel and the Minister of Commerce. The Panel develops a strategic plan each year in preparation for its Statement of Intent, and it keeps its business plans under review at each Board meeting.

Panel performance

The Governor-General appoints all members to the Panel on the recommendation of the Minister of Commerce. Panel members must have experience in business, accounting or law. Members are appointed for terms of up to five years.

The Panel has developed a succession plan, taking account of the current terms of office and types of experience of existing members. This plan is kept under review and discussed with the Minister and with Ministry officials.

The remuneration of Panel members is fixed by the Remuneration Authority, and includes a combination of daily rates and hourly rates. These rates are reviewed annually.

New Panel members are provided with extensive induction materials describing the powers and functions of the Panel and the policies, procedures and past Panel decisions that are applicable to their role on the Panel.

Accountability and audit

Risk management

The membership of the Panel's Audit and Risk Committee is reviewed every two years. The current Committee comprises:

Chairman: Keith Taylor
Members: David Jones (ex officio)
Colin Giffney

The Panel's Chief Executive and the Accountant/Administrator attend the Committee's meetings but are not members of the Committee.

The Audit and Risk Committee reviews the Panel's external reporting documents, financial forecasts and budgets, and the Panel's risk management plan.

The Panel does not have a large enough staff to operate a separate internal audit process. However, strict separation of personnel is maintained between the banking, payments, and payment authorisation processes. A limited degree of external review of receipts and payments is provided by the Chairman of the Audit and Risk Committee undertaking periodic spot checks.

The Audit and Risk Committee meets with the Panel's auditors, Audit New Zealand, following each annual audit. For part of that meeting, management is excluded from the discussions.

The Auditor-General has determined that the Panel's financial statements be audited annually by Audit New Zealand. It would be inappropriate for a private accounting firm to be the Panel's external auditor when that firm might seek the Panel's approval to be appointed as an independent adviser for a Code transaction.

Legal compliance

The Panel is responsible for ensuring that the Panel complies with its legal obligations. The Panel uses a proprietary legal compliance survey for this.

The survey is run each year. It is completed by management, and by Panel members in respect of their compliance with their Crown Entities Act duties as members. The annual survey contains questions on the Panel's compliance with the provisions of key legislation to which the Panel is subject. The outcome of each annual compliance survey is reported to the Panel.

Protected disclosures policy

The Panel has a written policy under the Protected Disclosures Act 2000 to protect staff members who wish to make protected disclosures about serious wrongdoing by members of the Panel or by employees of the Panel.

Directions issued by the Minister

The Panel has not been given any directions under any enactment by the Minister of Commerce during the course of the past year. As an independent Crown entity under the Crown Entities Act, the Panel cannot be directed to give effect to government policy, but it is subject to whole of government directions that do not affect the Panel's statutory independence.

Obligations to be a good employer

The Panel operates a good employer policy. The Panel values its employees and provides a supportive and stimulating work environment.

With respect to the seven key employment elements of a good employer and equal employment opportunities programme, the Panel reports as follows:

Leadership, accountability and culture

Panel management is committed to leading by example in all spheres of the work environment, and senior staff also regularly engage on a one-to-one basis with team members. All staff participate in organisational decisions. The Panel has a comprehensive Staff Handbook which sets out the organisation's expectations for professional and collegial behaviour, and also contains the Panel's employee related policies. The Panel's Staff Code of Conduct is closely based on the State Services Commissioner's guidance issued in 2007.

Recruitment, selection and induction

The Panel makes employment decisions based on merit. It uses the services of EEO certified employment agencies to assist with advertising and the selection of candidates for interviewing. The Panel aims to be inclusive and it values diversity. The small team and specialised field for legal staff means needing to make a careful selection of candidates on the basis of their qualifications and ability to work well within the team. In this context, diversity is a further positive element that candidates bring to the selection criteria.

To meet its aim for greater diversity, a database was set up for the Panel by its recruitment agency, for the most recent recruitment, to capture information on the gender, age and ethnicity of applicants. Of the approximately 60 applicants for the advertised new graduate/junior lawyer position, 56% were female and 44% male. Around 80% were aged 20-29 years, 10% were 30-39 years, 5% were 40-49 years and 5% younger than 20. In terms of ethnicity, approximately 55% identified themselves as 'New Zealand' or 'Other' European, 6% as New Zealand Maori, 25% as Asian, 2% as Pacific Island the rest as 'Other'.

As it turned out, the candidate selected was a female in the 20-29 age bracket who identified herself as New Zealand European. The Panel will continue to look for ways to encourage a diverse range of applicants from whom to choose its employees.

As at 30 June 2012, the Panel's staff comprised six women and two men. Amongst the Managers, the Chief Executive is female and the General Counsel male. Staff were asked to identify their ethnicity, and the results of that, together with the break-down of their work categories, are shown in the table below.

Table 3: Employee characteristics as 30 June 2012

	Pakeha/European	
	Full time	Part time
Professionals	3	2
Administration Officers	1	
Managers	2	
TOTAL	6	2

Ensuring transparent and equitable takeover processes

Employee development, promotion and exit

All staff engage in regular mentoring and support from management and are encouraged to support each other in a strong team-based culture. All staff have formal annual performance appraisals. The Panel makes internal promotions based on merit, and recruits externally where positions cannot be filled internally. The Panel encourages all employees to attend relevant professional training and development opportunities that meet the criteria of the Panel's Training and Development Policy.

Flexibility and work design

The Panel accommodates flexible working arrangements to the extent possible. All staff have remote access to their computers and are able to work from home. This accommodates family and personal needs and is a part of the Panel's Disaster Management Plan.

Remuneration, recognition and conditions

Staff salaries are reviewed by the Chief Executive annually, taking into account individual performance, movements of salary in the public sector for comparable positions or experience, and any advice or directions from central government relevant to remuneration setting.

The gender pay gap of the Panel for the 2011/2012 year was 28% (i.e., in favour of men). This compares with -17% (i.e., in favour of women) in the previous year. The use of the median figure, for establishing the gender pay gap, in such a small organisation as the Panel, can produce volatile swings such as that between the 2010/2011 and 2011/2012 years.

Harassment and bullying prevention

The Panel has a Workplace Bullying and Harassment Policy. This policy encourages Panel employees to take action against any form of workplace bullying or harassment. The Panel has zero tolerance for bullying and harassment. The procedures for making complaints are detailed in the Policy.

Safe and healthy environment

The Panel promotes a positive work environment that celebrates important events in its people's lives. In order to ensure that staff have access to help when it is needed, the Panel subscribes to an Employee Assistance Programme that makes available confidential professional advice and counselling on request by staff. The Staff Handbook includes advice on emergency procedures, and the usual office health and safety equipment is on site, as well as emergency provisions for disaster management. Free flu vaccinations and courses of antibacterials are provided as a prophylaxis, for staff that want them. Workplace assessments are also provided to ensure employees' health and comfort at their desks.

Permission to act when interested

There were no occasions during the year when the Chairman of the Panel gave permission to a member, in terms of section 68(6) of the Crown Entities Act, to act in a matter despite being interested in that matter.

FINANCIAL REPORT

Sources of Funding

The Panel is funded by the appropriation of money by Parliament and the payment of fees by the users of its services, and parties to its enforcement actions. It is responsible for the allocation of the money. It sets priorities with care and reviews them continually to ensure that the money is used to best advantage.

Statement of Responsibility

We acknowledge responsibility for the preparation of these financial statements and Statement of Service Performance and for the judgements used in them.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Panel's financial reporting.

In our opinion these annual financial statements and Statement of Service Performance fairly reflect the financial position as at 30 June 2012 and the operations of the Takeovers Panel for the year ended 30 June 2012.

Signed on behalf of the Panel by:



C G Giffney
Deputy Chairman

31 August 2012



K B Taylor
Chairman,
Audit and Risk Committee

31 August 2012

STATEMENT OF COMPREHENSIVE INCOME

for the year ended 30 June 2012

Budget 2012			Actual 2012	Actual 2011
\$		Note	\$	\$
	Revenue - operating			
1,494,000	Government grant – baseline funding		1,494,000	1,494,000
22,000	Interest	11	28,071	20,759
259,000	Application fees and costs recoverable	4	104,225	171,849
17,000	Other income		13,849	11,758
<u>1,792,000</u>	Total operating income		<u>1,640,145</u>	<u>1,698,366</u>
	Revenue – litigation fund			
0	Government grant		0	0
0	Recovery of costs		0	0
39,000	Interest	11,3	32,181	33,724
<u>39,000</u>	Total litigation fund income		<u>32,181</u>	<u>33,724</u>
<u>\$1,831,000</u>	Total income		<u>\$1,672,326</u>	<u>\$1,732,090</u>
	Operating expenditure			
19,000	Audit fees		19,000	20,500
36,000	Communication charges		71,547	33,975
16,000	Training and memberships		18,723	25,085
50,000	Depreciation and amortisation		46,229	61,435
220,000	Members’ fees	22	168,512	220,582
101,000	Printing and stationery		80,041	29,414
106,000	Consultants and legal		63,236	35,215
131,000	Services and supplies		154,980	278,301
132,000	Rent		131,610	131,610
40,000	Travel and accommodation		43,398	37,255
896,000	Personnel costs	10	830,264	856,759
<u>1,747,000</u>	Total operating expenditure		<u>1,627,541</u>	<u>1,730,131</u>
20,000	Expenditure – litigation fund	3	0	92,358
<u>1,767,000</u>	Total expenditure		<u>1,627,541</u>	<u>1,822,489</u>
<u>\$64,000</u>	Net Surplus/Deficit		<u>\$44,786</u>	<u>\$(90,399)</u>
0	Other comprehensive income		0	0
<u>\$64,000</u>	Total comprehensive income		<u>\$44,786</u>	<u>\$(90,399)</u>
	This is comprised of:			
45,000	Comprehensive income -operating /(deficit)		12,605	(31,765)
19,000	Comprehensive income -litigation / (deficit)	3	32,181	(58,634)
<u>\$64,000</u>			<u>\$44,786</u>	<u>\$(90,399)</u>

STATEMENT OF FINANCIAL POSITION

as at 30 June 2012

Budget 2012			Actual 2012	Actual 2011
\$			\$	\$
	Current assets	Note		
520,000	Cash and cash equivalents – operations		162,802	373,478
91,000	Cash and cash equivalents – litigation fund	3	156,090	346,704
195,000	Term deposits – operations		498,790	186,530
700,000	Term deposits – litigation fund	3	637,884	423,934
0	Interest receivable – operating		4,595	2,983
1,000	Interest receivable – litigation fund	3	3,951	9,107
59,000	Trade and other receivables	12	21,420	49,424
0	Prepayments		37,118	43,351
0	GST receivable		17,921	15,827
<u>\$1,566,000</u>	Total current assets		<u>\$1,540,571</u>	<u>\$1,451,338</u>
	Non-current assets			
46,000	Property, plant and equipment	13	46,574	86,851
15,000	Software	14	0	4,387
<u>61,000</u>	Total non-current assets		<u>46,574</u>	<u>91,238</u>
<u>\$1,627,000</u>	Total assets		<u>\$1,587,145</u>	<u>\$1,542,576</u>
	Current liabilities			
60,000	Trade and other payables	16	79,564	115,732
53,000	Employee entitlements	15	67,856	31,905
6,000	GST payable		0	0
<u>\$119,000</u>	Total current liabilities		<u>\$147,420</u>	<u>\$147,637</u>
	Equity			
716,000	Operating funds		641,800	629,195
792,000	Litigation fund	3	797,925	765,744
<u>\$1,508,000</u>	Total equity		<u>\$1,439,725</u>	<u>\$1,394,939</u>
<u>\$1,627,000</u>	Total equity and liabilities		<u>\$1,587,145</u>	<u>\$1,542,576</u>

STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2012

Budget 2012		Actual 2012	Actual 2011
\$		\$	\$
	Equity at start of year		
671,000	Operating funds	629,195	660,960
773,000	Litigation fund	765,744	824,378
<u>\$1,444,000</u>	Equity at start of year	<u>\$1,394,939</u>	<u>\$1,485,338</u>
45,000	Total comprehensive income- operating/(deficit)	12,605	(31,765)
19,000	Total comprehensive income-litigation/ (deficit)	32,181	(58,634)
<u>64,000</u>	Total comprehensive income	<u>44,786</u>	<u>(90,399)</u>
0	Capital contribution	0	0
<u>64,000</u>	Increase (reduction) in equity	<u>44,786</u>	<u>(90,399)</u>
<u>\$1,508,000</u>	Equity at end of year	<u>\$1,439,725</u>	<u>\$1,394,939</u>
	Comprising:		
716,000	Operating funds	641,800	629,195
792,000	Litigation fund	797,925	765,744
<u>\$1,508,000</u>	Equity at end of year	<u>\$1,439,725</u>	<u>\$1,394,939</u>

STATEMENT OF CASH FLOWS

for the year ended 30 June 2012

Budget 2012 \$		Actual 2012 \$	Actual 2011 \$
	Cash flows from operating activities		
	Note		
	Cash was provided from:		
1,494,000	Government grant – operations	1,494,000	1,494,000
0	Government grant – litigation fund	0	0
259,000	Application fees and costs recoverable	132,229	357,411
61,000	Interest	63,796	51,828
17,000	Other income	13,849	11,758
0	Goods and Services Tax (net)	0	0
	Cash was disbursed to:		
(637,000)	Suppliers	(612,470)	(659,119)
(1,078,000)	Employees and members	(962,825)	(1,120,211)
0	Goods and Services Tax (net)	(2,094)	(33,393)
<u>116,000</u>	Net cash inflow (outflow) from operating activities	<u>126,485</u>	<u>102,274</u>
	Cash flows from investing activities		
	Cash was provided from:		
0	Receipts from sale of bank deposits	0	366,634
	Cash was applied to:		
(20,000)	Purchase of computer software	0	0
0	Purchase of office equipment	(1,566)	(847)
(1,000)	Purchase of office furniture	0	(4,387)
(18,000)	Acquisition of bank deposits	(526,210)	0
<u>(39,000)</u>	Net cash inflow (outflow) from investing activities	<u>(527,776)</u>	<u>361,400</u>
	Cash flows from financing activities		
	Cash was provided from:		
0	Capital contribution	0	0
<u>0</u>	Net cash inflow (outflow) from financing activities	<u>0</u>	<u>0</u>
77,000	Net increase (decrease) in cash and cash equivalents	(401,291)	463,674
534,000	Add opening cash and cash equivalents	720,182	256,508
<u>\$611,000</u>	Closing cash and cash equivalents	<u>\$318,892</u>	<u>\$720,182</u>

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2012

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

Reporting entity

The Takeovers Panel is a body corporate established by the Takeovers Act 1993.

The Panel is an independent Crown entity for legislative purposes and a public benefit entity for the purposes of New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS).

The financial statements of the reporting entity, the Panel, for the year ended 30 June 2012 were authorised for issue by the Panel on 31 August 2012.

The Panel's primary function is the regulation of corporate takeovers in New Zealand.

Basis of preparation

Statement of compliance

These financial statements have been prepared in accordance with the Crown Entities Act 2004, which includes the requirement to comply with generally accepted accounting practice in New Zealand (NZ GAAP)

They comply with NZ IFRS and other applicable Financial Reporting Standards, as appropriate for public benefit entities.

Basis of measurement

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on an historical cost basis have been applied.

Functional and presentational currency

These financial statements are presented in New Zealand dollars (\$) which is the entity's functional currency.

Use of estimates and judgements

The process of applying accounting policies requires the Panel to make judgements, estimates and assumptions that affect the reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on past experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimates are revised and in any future periods affected.

Changes in accounting policy

There have been no changes in accounting policies during the financial year.

Standards, amendments and interpretations issued that are not yet effective and have not been early adopted

Standards, amendments and interpretations issued but not yet effective that have not been early adopted, and which are relevant to the Panel, include:

NZ IFRS 9 Financial Instruments will eventually replace NZ IAS 39 Financial Instruments: Recognition and Measurement. NZ IAS 39 is being replaced through the following three main phases: Phase 1 on the classification measurement of financial assets has been completed and has been published in the new financial instrument standard NZ IFRS 9. NZ IFRS 9 uses a single approach to determine whether a financial asset is measured at amortised cost or fair

Ensuring transparent and equitable takeover processes

value, replacing the many different rules in NZ IAS 39. The approach in NZ IFRS 9 is based on how an entity manages its financial assets (its business model) and the contractual cash flow characteristics of the financial assets. The financial liability requirements are the same as those of NZ IAS 39, except for when an entity elects to designate a financial liability at fair value through the surplus or deficit. The new standard is required to be adopted for the year ended 30 June 2016. However, as a new Accounting Standards Framework will apply before this date, there is no certainty when an equivalent standard to NZ IFRS 9 will be applied by public benefit entities.

The Minister of Commerce has approved a new Accounting Standards Framework (incorporating a Tier Strategy) developed by the External Reporting Board (XRB). Under this Accounting Standards Framework, the Panel is classified as a Tier 1 reporting entity and it will be required to apply full Public Benefit Entity Accounting Standards (PAS). These standards are being developed by the XRB based on current international Public Sector Accounting Standards. The effective date for the new standards for public sector entities is expected to be for reporting periods beginning on or after 1 July 2014. This means the Panel expects to transition to the new standards in preparing its 30 June 2015 financial statements. As the PAS are still under development, the Panel is unable to assess the implications of the new Accounting Standards Framework at this time.

Due to the change in the Accounting Standards Framework for public benefit entities, it is expected that all new NZ IFRS and amendments to existing NZ IFRS will not be applicable to public benefit entities. Therefore, the XRB has effectively frozen the financial reporting requirements for public benefit entities up until the new Accounting Standard Framework is effective. Accordingly, no disclosure has been made about new or amended NZ IFRS that exclude public benefit entities from their scope.

Significant accounting policies

Significant accounting policies set out below have been applied consistently to all periods presented in these financial statements.

- a Cash and cash equivalents
Cash and cash equivalents comprise cash balances on hand, held in bank accounts and short-term deposits that form part of the Panel's day-to-day cash management. They are short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in values. They are held for the purpose of meeting short-term cash commitments and have short maturities of three months or less.
- b Term deposits
This category only includes term deposits with maturities greater than three months. These deposits are loans and receivables under NZ IFRS. Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are recognised initially at fair value plus transaction costs and subsequently measured at amortised cost using the effective interest method.
- c Trade and other receivables
Debtors and other receivables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method, less any provision for impairment.
- d GST
All items in financial statements are exclusive of GST with the exception of trade and other receivables and trade and other payables which are stated with GST included.

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of comprehensive income and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST

Ensuring transparent and equitable takeover processes

component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.

- e Trade and other payables
Creditors and other payables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method.

- f Financial instruments
A financial instrument is recognised when the Panel becomes party to a financial contract. All financial instruments are recognised in the statement of financial position and all revenues and expenses in relation to financial instruments are recognised in the statement of comprehensive income.

Financial instruments comprise trade and other receivables, cash and cash equivalents, term deposits and trade and other payables.

- g Income tax
The Panel is exempt from income tax under the Income Tax Act 2004.

- h Revenue recognition
Government grant is recognised as revenue when earned and is reported in the financial period to which it relates. Revenue from application fees and costs recoverable is recognised when the relevant services are provided or when the Panel has made the relevant determination under section 32 of the Takeovers Act 1993.

Interest income is recognised as it accrues, based on the effective interest rate inherent in the respective financial instrument. The effective interest rate discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount. The method applies this rate to the principal outstanding to determine interest income each period.

- i Cost allocation policy
For the purposes of the statement of service performance direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

- j Litigation fund
Interest income and expenditure on approved litigation fund matters are reported as income and expenditure of the Panel in the financial period in which they were derived or incurred. Reimbursements from the Crown to top up the fund are reported as income in the period to which the Panel's claim for reimbursement relates. The balance of the fund is disclosed as a component of equity in the statement of financial position.

- k Impairment
The Panel considers at each reporting date whether there is any indication that a non-financial asset may be impaired. If any such indication exists, the asset's recoverable amount is estimated.

Given that the future economic benefits of the Panel's assets are not directly related to the ability to generate net cash flows, the value in use of these assets is measured on the basis of depreciated replacement cost.

At each balance date financial assets such as receivables are assessed for impairment. Trade and other receivables are individually assessed for impairment. This assessment is also made with reference to previous experience with debtors. The recoverable amount is the present value of the estimated future cash flows.

An impairment loss is recognised in the statement of comprehensive income whenever the carrying amount of an asset exceeds its recoverable amount. Any reversal of impairment losses is also recognised in the statement of comprehensive income.

Ensuring transparent and equitable takeover processes

- l Short term employee benefits
Employee entitlements represent the Panel's liability for employee annual leave entitlements and salaries accrued up to balance date. This has been calculated on an accrued entitlement basis which involves recognising the undiscounted amount of short term employee benefits expected to be paid in exchange for service that an employee has already rendered. This is calculated at current remuneration rates.
- m Property, plant and equipment
Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses (see note 1(k)). The following classes of property, plant and equipment have been depreciated over their economic lives on the following basis:
- | | | | |
|------------------|------|---|-----------------------------|
| office furniture | 8.5 | - | 10.5 percent straight line, |
| office equipment | 17.5 | - | 40 percent straight line. |
- n Intangible assets
Computer software that is not integral to the operation of the hardware is recorded as an intangible asset and amortised on a straight line basis over a period of three years.
- o Contingent assets and contingent liabilities
Contingent liabilities are disclosed if the possibility that they will crystallise is not remote. Contingent assets are disclosed if it is probable that the benefits will be realised.
- p Superannuation schemes
Obligations for contributions to Kiwisaver are accounted for as defined contribution superannuation schemes and are recognised as an expense in the statement of comprehensive income as incurred.
- q Leases
Operating leases – an operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset. Lease payments under an operating lease are recognised as an expense on a straight line basis over the lease term.

NOTE 2 BUDGET FIGURES

The budget figures are those approved by the Panel on 12 May 2011 and published in the Panel's Statement of Intent 2011/2012-2014. The budget figures are prepared in accordance with generally accepted accounting practice and are consistent with the accounting policies adopted by the Panel for the preparation of the financial statements.

NOTE 3 LITIGATION FUND

The litigation fund is to be used for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or responds to litigation brought against it.

Parliament agreed to an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2012 to top-up the fund to the set level of \$675,000. The Panel has not had to draw from this appropriation during the year.

A summary of the movements in the fund during the year is as follows:

	2012	2011
	\$	\$
Government grant received	0	0
Recovery of costs	0	0
Interest received	28,230	24,617
Interest accrued	3,951	9,107
Expenditure on approved litigation	0	(92,358)
Comprehensive income /(deficit) for the year	32,181	(58,634)
Opening balance	765,744	824,378
Closing balance	<u>\$797,925</u>	<u>\$765,744</u>

Ensuring transparent and equitable takeover processes

	2012 \$	2011 \$
This is comprised of:		
Cash and cash equivalents		
- Call account	156,090	165,474
- Short term deposits	0	181,230
Term deposits	637,884	423,934
Interest receivable	3,951	9,107
Trade payables	0	(14,001)
	<u>\$797,925</u>	<u>\$765,744</u>

NOTE 4 APPLICATION FEES AND COSTS RECOVERABLE

The Takeovers (Fees) Regulations 2001 enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement action pursuant to the Takeovers Act. An analysis of the amounts invoiced for the year ended 30 June 2012 (on a GST exclusive basis) is as follows:

	2012 \$	2011 \$
Exemptions	72,772	135,898
Approvals	31,453	40,951
Enforcement – section 32	0	(5,000)
Total	<u>\$104,225</u>	<u>\$171,849</u>

NOTE 5 MANAGEMENT OF EQUITY

The Panel seeks to maintain sufficient equity to enable it to manage its ongoing operations and obligations. Surplus funds are invested having regard to the cash flow profile of future commitments. There have been no material changes in the Panel's management of equity during the period compared with the previous period.

The Panel is not subject to any externally imposed equity requirements.

NOTE 6 RECONCILIATION OF STATEMENT OF COMPREHENSIVE INCOME WITH STATEMENT OF CASH FLOWS

	2012 \$	2011 \$
Net surplus (deficit):	44,786	(90,399)
Movement in non cash items		
Depreciation / amortisation	46,229	61,435
Movement in working capital:		
Increase (decrease) in creditors	(217)	(24,498)
(Increase) decrease in receivables and prepayments	35,687	155,736
	<u>81,699</u>	<u>192,673</u>
Net cash flows from operating activities	<u>\$126,485</u>	<u>\$102,274</u>

NOTE 7 CASH FLOWS

Investing activities

Investing activities are those activities relating to the movements in short term deposits and the purchase of property, plant and equipment. The cash flows relating to the Panel's investing activities are reported on a gross basis in the statement of cash flows. The amounts held in term deposits are rolled over frequently through the year.

Financing activities

Financing activities are those activities relating to changes in the equity structure of the Panel.

Operating activities

Operating activities for the purposes of the statement of cash flows include all activities other than investing and financing activities. Activities funded from the litigation fund are included in this category.

Cash

This means cash balances on hand, held in bank accounts, and short term deposits in which the Panel invests as part of its day-to-day cash management.

The closing balance of cash reported in the statement of cash flows is comprised of:

	2012	2011
	\$	\$
Cash and cash equivalents – operations		
- Cash	162,802	373,478
- Short term deposits	0	
Cash and cash equivalents – litigation fund		
- Cash	156,090	165,474
- Short term deposits	0	181,230
Closing cash balance	<u>\$318,892</u>	<u>\$720,182</u>

NOTE 8 CATEGORIES OF FINANCIAL ASSETS AND LIABILITIES

The carrying amounts of financial assets and liabilities in each of the NZ IAS 39 categories are as follows:

	2012	2011
	\$	\$
Loans and receivables		
Cash and cash equivalents	873,111	720,182
Trade and other receivables	29,966	61,514
GST receivable	17,921	15,827
Term deposits	582,455	610,464
Total loans and receivables	<u>\$1,503,453</u>	<u>\$1,407,987</u>
Financial liabilities measured at amortised cost		
Trade and other payables	79,564	115,732
GST payable	0	0
Employee entitlements	67,856	31,905
Total financial liabilities measured at amortised cost	<u>\$ 147,420</u>	<u>\$ 147,637</u>

NOTE 9 FINANCIAL INSTRUMENTS

Credit risk

Credit risk represents the risk that a counterparty will default on its contractual obligations to the Panel. Financial instruments which potentially subject the Panel to credit risk consist of bank balances, bank term deposits, interest receivable, and trade and other receivables. The maximum exposure to credit risk at the reporting date is the carrying amount of those instruments as detailed below.

There is limited credit risk for the Panel because most of the financial assets are the Panel's cash or investments. These are deposits with Bank of New Zealand which is a registered bank in New Zealand and is rated by Moody's Aa3, Standard & Poors AA- as at December 2011.

The Panel does not require collateral or security to support financial instruments.

Other than balances with the BNZ, there are no concentrations of credit risk.

Fair values

All financial instruments are recognised in the statement of financial position and are stated at carrying amounts. Given their short term nature, the carrying amounts are considered a reasonable approximation of their fair values. There has been no change from the previous period in the Panel's exposure to risks, how they arise or the Panel's objectives, policies and processes for managing the risk and the methods used to measure the risks.

Liquidity risk

Liquidity risk represents the Panel's ability to meet its contractual obligations associated with financial liabilities. The Panel evaluates its liquidity requirements on an ongoing basis. The Panel's creditors are mainly those reported as trade and other payables. The Panel aims to pay these within normal commercial terms: that is, by the 20th of the month following invoice.

Currency risk

The Panel does not hold any overseas securities or deposits and is therefore not exposed to any currency risk.

Market risk

The only market risk to which the Panel is subject is interest rate risk. Interest rate risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Fair value interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Panel's exposure to fair value interest rate risk is limited to its bank deposits which are held at fixed rates of interest.

Cash flow interest rate risk is the risk that the cash flows from a financial instrument will fluctuate because of changes in market interest rates. The Panel's exposure to cash flow interest rate risk is limited to its bank deposits which are held at fixed rates of interest.

Ensuring transparent and equitable takeover processes

Details are as follows:

	Effective Interest Rate	Total \$	Maturities 3 months or less \$	Maturities greater than 3 months \$
2012				
Cash and cash equivalents – operations				
- Current account	0.00%	24,196	24,196	0
- Call account	3.00%	138,606	138,606	0
Term Deposits	4.5 - 4.53%	498,790	0	498,790
		<u>\$661,592</u>	<u>\$530,306</u>	<u>\$498,790</u>
Cash and cash equivalents – litigation fund				
- Call account	3.0%	156,090	156,090	0
Term deposits	4.48 - 4.58%	637,884	0	637,884
		<u>\$793,974</u>	<u>\$156,090</u>	<u>\$637,884</u>
2011				
Cash and cash equivalents – operations				
- Current account	0.00%	61,720	61,720	0
- Call account	3.0%	311,758	311,758	0
Term Deposits	4.5 - 5.2%	186,530	0	186,530
		<u>\$560,008</u>	<u>\$373,478</u>	<u>\$186,530</u>
Cash and cash equivalents – litigation fund				
- Call account	3.0%	165,474	165,474	0
- Short term deposit		181,230	181,230	0
Term deposits	3.5 - 5.2%	423,934		423,934
		<u>\$770,638</u>	<u>\$346,704</u>	<u>\$423,934</u>

The Panel's interest rate risk is limited to interest on call accounts and term investments, the maturities of which are shown above.

Sensitivity analysis

As at 30 June 2012, if the floating interest rate on call deposits had been 100 basis points higher or lower throughout the year, with all other variables held constant, the surplus/deficit for the year would have been \$3,253 (2011 \$4,773) higher or lower.

NOTE 10 PERSONNEL COSTS

	2012 \$	2011 \$
Salaries	813,344	841,558
Employer contributions to defined contribution plans	13,669	11,043
ACC	3,251	3,990
Contractors	0	168
Total personnel costs	<u>\$830,264</u>	<u>\$856,759</u>

NOTE 11 INCOME FROM FINANCIAL ASSETS

	2012	2011
	\$	\$
Loans and Receivables		
Interest – operations	28,071	20,759
Interest – litigation fund	32,181	33,724
Total interest income from loans and receivables	\$60,252	\$54,483

NOTE 12 TRADE AND OTHER RECEIVABLES

	2012	2011
	\$	\$
Trade receivables	21,420	49,424
Total trade and other receivables	\$21,420	\$49,424

The status of trade and other receivables as at 30 June 2012 is as follows:

	Total	Not past due	Up to 30 days past due	Over 30 days past due
	\$	\$	\$	\$
2012				
Gross receivables	21,420	6,722	9,648	5,050
Impairment	0	0	0	0
	\$21,420	\$6,722	\$9,648	\$5,050
2011				
Gross receivables	49,424	22,830	1,946	24,648
Impairment	0	0	0	0
	\$49,424	\$22,830	\$1,946	\$24,648

NOTE 13 PROPERTY PLANT AND EQUIPMENT

	Office equipment	Office furniture	Total
	\$	\$	\$
Cost or valuation			
Balance at 1 July 2010	138,693	39,073	177,766
Additions	847	4,387	5,234
Disposals	0	0	0
Balance at 30 June 2011	139,540	43,460	183,000
Balance at 1 July 2011	139,540	43,460	183,000
Additions	1,565	0	1,565
Disposals	0	0	0
Balance at 30 June 2012	141,105	43,460	184,565

Ensuring transparent and equitable takeover processes

	Office equipment	Office furniture	Total
Accumulated depreciation			
Balance at 1 July 2010	(40,031)	(3,311)	(43,342)
Depreciation	(48,729)	(4,078)	(52,807)
Balance at 30 June 2011	(88,760)	(7,389)	(96,149)
Balance at 1 July 2011	(88,760)	(7,389)	(96,149)
Depreciation expense	(37,612)	(4,230)	(41,842)
Balance at 30 June 2012	<u>(126,372)</u>	<u>(11,619)</u>	<u>(137,991)</u>
Carrying amounts:			
At 30 June 2010	98,662	35,762	134,424
At 30 June and 1 July 2011	50,780	36,071	86,851
At 30 June 2012	<u>\$14,733</u>	<u>\$31,841</u>	<u>\$46,574</u>

NOTE 14 COMPUTER SOFTWARE

	Computer software \$
Cost or valuation	
Balance at 1 July 2010	23,968
Additions	0
Disposals	0
Balance at 30 June 2011	<u>23,968</u>
Balance at 1 July 2011	23,968
Additions	0
Disposals	0
Balance at 30 June 2012	<u>23,968</u>
Accumulated amortisation	
Balance at 1 July 2010	(10,953)
Amortisation	(8,628)
Balance at 30 June 2011	<u>(19,581)</u>
Balance at 1 July 2011	(19,581)
Amortisation	(4,387)
Balance at 30 June 2012	<u>(23,968)</u>
Carrying amounts:	
At 30 June 2010	13,015
At 30 June and 1 July 2011	4,387
At 30 June 2012	<u>\$0</u>

NOTE 15 EMPLOYEE ENTITLEMENTS

	2012	2011
	\$	\$
Accrued salaries and wages	43,877	14,251
Annual leave	23,979	17,654
Total employee entitlements	<u>\$ 67,856</u>	<u>\$ 31,905</u>

NOTE 16 TRADE AND OTHER PAYABLES

	2012	2011
	\$	\$
Trade payables	70,564	73,917
Accrued expenses	9,000	41,815
Total trade and other payables	<u>\$79,564</u>	<u>\$115,732</u>

NOTE 17 COMMITMENTS

The Panel has the following operating lease commitments. These amounts are the total of minimum future lease payments under the Panel's non-cancellable operating leases.

	2012	2011
	\$	\$
Not later than one year	131,610	131,604
Later than one year and not later than five years	285,155	416,746
Later than five years	0	0
	<u>\$416,765</u>	<u>\$548,350</u>

The Panel entered into a six year operating lease agreement for its new premises that commenced 1 September 2009. This lease gives the Panel the right to renew the lease for six years subject to a mutually agreed redetermination of the lease rental.

The Panel had no capital commitments at balance date. (2011 - no commitments).

NOTE 18 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date. (2011 - no contingent liabilities).

NOTE 19 CONTINGENT ASSETS

There were no contingent assets at balance date. (2011- no contingent assets).

NOTE 20 TRANSACTIONS WITH RELATED PARTIES

All related party transactions have been entered into on an arms length basis

The Panel is an independent Crown entity for the purposes of the Crown Entities Act 2004. The Crown is its major source of revenue.

Significant transactions with government related entities

The Panel has been provided with funding from the Crown of \$1,494,000 (2011 \$1,494,000) for specific purposes as set out in the Takeovers Act 1993 and the scope of the relevant government appropriations.

Collectively, but not individually, significant, transactions with government related entities

In conducting its activities, the Panel is required to pay various taxes and levies (such as GST, PAYE and ACC levies) to the Crown and entities related to the Crown. The payment of these taxes and levies, other than income tax, is based on the standard terms and conditions that apply to all tax and levy payers. The Panel is exempt from paying income tax.

The Panel also purchases goods and services from entities controlled, significantly influenced or jointly controlled by the Crown. Purchases from these government-related entities for the year ended 30 June 2012 totalled \$40,147 (2011 \$25,770). These purchases included air travel from Air New Zealand and postal services from New Zealand Post.

Transactions with firms of Panel members

The Panel has processed a number of exemption applications from firms where a member of the Panel was a partner in the firm making the application. The affected members are legally not part of the Panel for the purposes of considering any exemption applications from their firm. Those applications were processed and invoiced using the Panel's standard procedures.

The Panel purchased legal services of \$680 (2011 \$5,536) from Chapman Tripp, a legal firm of which Mr R.F. Wallis, Member of the Panel, is a partner. The services were in relation to advice provided on a draft class exemption notice.

No related party debts have been written off or forgiven during the year.

NOTE 21 KEY MANAGEMENT PERSONNEL COMPENSATION

Key personnel comprise the members of the Panel and the senior management staff.

	2012	2011
	\$	\$
Short term employee benefits:		
- Members' fees	168,512	220,582
- Senior management team remuneration	377,079	441,129
	<u>\$ 545,591</u>	<u>\$ 661,711</u>

Ensuring transparent and equitable takeover processes

Employee remuneration

During the year, the number of employees of the Panel, not being members, who received remuneration and other benefits in excess of \$100,000 were:

	Number of Employees 2012 \$	Number of Employees 2011 \$
250,001 to 260,000	0	1
240,001 to 250,000	0	0
230,001 to 240,000	1	0
220,001 to 230,000	0	0
210,001 to 220,000	0	0
200,001 to 210,000	0	0
190,001 to 200,000	0	0
180,001 to 190,000	0	1
170,001 to 180,000	0	0
160,001 to 170,000	0	0
120,001 to 160,000	0	0
110,001 to 120,000	1	0
	<u>2</u>	<u>2</u>

NOTE 22 BOARD MEMBER REMUNERATION

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2012 were:¹²

	2012 \$	2011 \$
D.O. Jones (Chairman)	62,327	94,083
C.G. Giffney (Deputy Chairman)	25,563	27,823
M.M. Beattie	8,428	7,095
C.G. Blanchard	7,083	0
R.A. Coupe	12,684	13,567
D.M. Flacks	8,654	0
P.M. Greenwood	0	6,923
S.M. Horner	16,494	7,157
K.J. O'Connor	0	7,148
D.J. Quigg	1,155	14,996
P.J.M. Scott	0	0
S.H. Suckling	6,498	19,775
K.B. Taylor	9,109	14,630
J.A. Waller	0	1,505
R.F. Wallis	10,517	5,880
Total	<u>\$ 168,512</u>	<u>\$ 220,582</u>

¹² See page 18 for information regarding the appointment and resignation dates of Messrs Blanchard, Flacks and Quigg, and Ms Greenwood. Messrs O'Connor and Waller were Members until 31 January 2011 and Messrs Horner and Wallis were appointed from 1 February 2011.

NOTE 23 SUBSEQUENT EVENTS

There were no material events subsequent to balance date that would affect the interpretation of the financial statements or the performance of the Panel. (2011 – no material subsequent events).

NOTE 24 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$32,395 lower than budgeted, primarily because of the lower than expected level of recoveries from exemption work and enforcement action (no section 32 meetings held during the year).

Expenditure

Total operating expenditure for the year was \$119,460 lower than budgeted primarily because of lower than expected expenditure on consultants and legal experts and members' fees. This was attributed to the lower level of exemption, approval and enforcement work.

Services and supplies was \$23,980 higher than budgeted. This largely relates to recruitment expense being \$21,000 higher than budgeted as a new General Counsel was recruited.

Net operating surplus

The Panel recorded an operating surplus of \$12,605 when a profit of \$45,000 had been expected. This is a result of the lower than expected recoveries from operational activities and some additional unbudgeted expenses relating to recruitments following the appointment of the former General Counsel to the position of CEO and the need to then replace the General Counsel.

NOTE 25 PROFESSIONAL INDEMNITY INSURANCE

The Panel has effected a professional indemnity insurance policy to provide cover for members of the Panel, employees of the Panel, as the Panel performs its duties and statutory functions.

STATEMENT OF SERVICE PERFORMANCE

For the year ended 30 June 2012

PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

The delivery of the Takeovers Panel services is funded under Vote Commerce Non-Departmental Output Class – *Administration of the Takeovers Code*.

OUTPUT 1: Recommendations for changes to takeovers law:

- To keep under review the law relating to takeovers and to recommend to the Minister of Commerce changes as appropriate;
- To keep under review practices relating to takeovers of Code companies for the purpose of recommending changes to the law.

Impact:

Improvements in the efficiency of the Code through the making of recommendations to the Minister of Commerce to achieve changes to the Code and takeovers law more generally.

Activities and actions to include:

- reviewing the provisions of takeovers law;
- identifying areas of the Code which require correction or would benefit from improvement;
- reviewing the practices relating to the takeover of Code companies;
- developing policy papers, guidance notes and practice notes on issues arising under the Code and its administration;
- supporting implementation of the recommendations to the Minister of Commerce, on the interaction between the provisions of company law and takeovers law as they apply to schemes of arrangement and amalgamations effected under Parts 13 and 15 of the Companies Act 1993;
- developing proposals for public comment on proposed recommendations to the Minister, as necessary;
- making recommendations to the Minister for changes to that law, where appropriate.

Actual performance against planned performance standards and performance measures for 2011/2012:

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
Keep the Takeovers Code and the Takeovers Act 1993 under review and recommending amendments to the Code and Act as necessary.	The Panel intends to make 20 recommendations to the Minister by September 2011 for technical (low policy content) changes to the Code and to have its recommendations approved by the Minister.	As agreed with the Ministry, no recommendations made. 24 have been prepared and will be made in conjunction with officials' advice to the Minister shortly after balance date.	No recommendations made. A number have been prepared but are being held back until the full review of technical amendments has been completed.
Participate as required on projects and reviews.	To be invited to make 3 submissions or contributions on relevant issues.	3 submissions: NZX Independent Appraisal Report Regime, SSC and Treasury proposed changes to the Crown Entities Act, FMA class exemption relating to takeovers.	3 submissions: Legislation Bill, Review of Securities Act, Public Sector Cost Cutting.

Ensuring transparent and equitable takeover processes

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
Keep under review practices relating to takeover activities by observing market activity through various media each working day.	Continuous.	Continuous ¹³ .	Continuous.
Inquiries into market practice with a view to recommending amendments to the Takeovers Code and to the Panel's policies and publishing proposed changes to the Code and Panel policies for public comment.	Complete 2 inquiries into market practice.	2 initiated. 1.Changes to trustees of family trusts. As a result a class exemption has been approved. 2. Enquiry into equity derivatives (work commenced).	1 initiated (upstream takeovers). As a result policy published on Panel's approach to exemptions for these transactions
<u>Timeliness</u> Recommendations for amendments to the Code will be made in accordance with Work Programme.	20 recommendations for changes to the law to be made by 30 September 2011.	No recommendations were made during the year. Timeliness is affected by the decision to work closely with officials to coordinate making recommendations with officials giving advice to the Minister.	No recommendations were made during the year. Timeliness is affected by the decision to delay making recommendations to the Minister until the full technical review is completed.
<u>Revenue:</u>	Nil	Nil	Nil
<u>Cost:</u>	\$389,000	\$504,538	\$430,107

The Complexity of some of the policy issues resulted in greater time and resource being expended on the consultation process in 2010/2011 and 2011/2012 than budgeted for. Making recommendations at the end of the process is the least resource-intensive aspect.

OUTPUT 2: Approvals:

The approval of the appointment of independent advisers, where required under Rules 18, 21 or 22 of the Code or by the terms of an exemption granted, and the appointment of independent experts where required by Rule 57 of the Code.

Impact:

The improvement in the quality of advice and independent adviser reports to recipients of takeover offers and to shareholders entitled to vote to approve Code-related allotments and acquisitions.

Activities and actions to include:

- processing applications from advisers for approval under the Code;
- ensuring that appointed advisers are both independent and competent to do the job required;
- assessing, where necessary, previous work of advisers to determine their experience and competence;
- reviewing draft independent advisers' reports and making suggestions for improvement;

¹³ The Panel subscribes to a media monitoring service which sends daily press and other media articles covering all matters relating to the Takeovers Code and Panel. In addition the Panel's legal staff are all required to monitor the financial press daily.

Ensuring transparent and equitable takeover processes

- meeting with advisers on an ongoing basis to discuss and obtain feedback on any issues and concerns;
- appointing independent experts where required under the compulsory acquisition provisions of the Code;
- processing applications for consent to withdraw offers, and in relation to approval of defensive tactics.

Actual performance against planned performance standards and performance measures for 2011/2012:¹⁴

<u>Quantity</u>	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual10/11</u>
Applications for approval of independent advisers and independent experts.	22-28 (Straightforward 15-20, Complex 7-8)	25 (Straightforward 17, Complex 8)	22
Applications for consent to withdrawal of offers, and in relation to defensive tactics.	1	0	0
<u>Quality</u>			
The Panel aims to improve the quality of independent advice given to shareholders involved in Code transactions by setting high standards of independence and competence for advisers approved by the Panel and by reviewing and commenting on their draft reports.	As quality proxy, to reduce Panel executive comments on draft independent adviser reports to 2 substantive comments per report.	Of the 22 reviewed, 15 had 2 or less comments. The remainder had between 3 and 5 comments.	Of the 11 reviewed, 5 had 2 or less comments. The remainder had between 3 and 6 comments.
<u>Timeliness</u>			
For approvals of independent advisers within 3 working days of receipt of complete application. For other applications within 5 working days of receipt of complete application.	To be achieved in 95% of cases.	96%	100%
<u>Revenue (from fees):</u>	\$34,000	\$31,453	\$40,951
<u>Cost:</u>	\$88,000	\$65,102	\$89,302

OUTPUT 3: Exemptions:

The granting of individual and class exemptions for Code events where relief from the Code's requirements is appropriate and consistent with the objectives of the Code.

Impact:

The improvement in the functioning of the market by alleviating unintended or unreasonable consequences arising from the application of the Code.

Activities and actions to include:

- considering applications for individual exemptions from the Code;
- considering applications for class exemptions from the Code;
- issuing exemption notices for individual exemptions;
- issuing exemption notices for class exemptions;

¹⁴ Although described as "planned", the number of independent adviser applications reviewed by the Panel is dependent on the level of market activity.

Ensuring transparent and equitable takeover processes

- gazetting the exemption notices;
- publishing guidance notes to explain the policies being applied by the Panel in relation to various types of exemption.

Actual performance against planned performance standards and performance measures for 2011/2012:¹⁵

<u>Quantity</u>	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
Applications for individual exemptions from the Takeovers Code will be processed as received.	16-20 (complex 4-5, less complex 14-19)	10 (complex 4, less complex 6)	12
Class exemptions from the Takeovers Code when applied for or at Panel initiative.	2 – 4	1	2
<u>Quality</u>			
The Regulations Review Committee does not recommend disallowance of notices, and notices are not successfully judicially reviewed.	None disallowed	None disallowed	100%
<u>Timeliness</u>			
Within timeframe agreed with applicants. This may vary from 2 days to 3 months depending on the needs of the applicant and the complexity of the exemption sought.	90%	100%	81%
<u>Revenue (from fees):</u>	\$125,000	\$72,771	\$135,898
<u>Cost:</u>	\$354,000	\$227,856	\$379,078

OUTPUT 4: Enforcement:

Maintaining oversight of takeover activity in the market by reviewing documentation, intervening where necessary in accordance with the Panel's statutory powers, investigating any possible breaches of the Code in accordance with the law and the rules of natural justice.

Impact:

The continuing improvement in the level of compliance with the Takeovers Code by market participants.

Activities and actions to include:

- reviewing all main takeover offer documents;
- reviewing Code-related meeting documents;
- convening formal meetings to exercise the Panel's enforcement powers under sections 32 and 35 of the Code;
- making applications to the Court to seek orders from the Courts, as necessary;
- investigating possible Code breaches;
- investigating complaints by shareholders and other principal parties to a transaction;
- monitoring NZX company announcements, media and other public information for transactions with Code implications;
- accepting enforceable undertakings from the party or parties in breach of the Code;
- issuing determinations and Panel decisions;

¹⁵ Although characterised as "planned", the number of exemption applications is dependent on the level of market activity

Ensuring transparent and equitable takeover processes

- seeking to be heard in Court proceedings involving the change of control of Code companies being effected through the scheme of arrangement provisions of the Companies Act.

*Actual performance against planned performance standards and performance measures for 2011/2012:*¹⁶

	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
<u>Quantity</u>			
Review all offer documents.	14	7	7
Review all meeting documents.	12	15	7
Section 32 meetings.	3	0	0
Section 35 actions.	1	0	0
Investigation of possible Code breaches.	8	5	2
Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies.	1	0	0
<u>Quality</u>			
Documents reviewed for compliance with the law. The effectiveness of the review function is indicated by the reduction in the number of material instances of non-compliance in formal takeover documents.	The Panel aims to review all takeover documentation and all documentation relating to shareholder meetings conducted for the purpose of approving Code transactions. The average number of material instances of non-compliance with the Code to be no more, per formal takeover document, than 1.	20 out of 21 formal documents had no instances of material non compliance. Therefore the measure was met.	Only 2 out of 10 formal documents had more than 1. Therefore the measure was met.
Enforcement meetings conducted in accordance with the Panel's procedures with no Court challenges or, where challenged, Court endorsement.	100% as demonstrated by lack of legal challenge to conduct of meetings.	No enforcement meetings conducted.	100%

¹⁶ Although described as "planned", the number of offer documents and meeting documents reviewed by the Panel is dependent on the level of market activity

Ensuring transparent and equitable takeover processes

	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
<u>Timeliness</u>			
Complete enforcement work within timeframes specified in the Takeovers Act 1993.	100%	No enforcement under section 32 of Takeovers Act.	N/A
Comply with Court-ordered timetables for legal proceedings under the Companies Act involving Code companies.	100%	No proceedings involving Code companies.	N/A
<u>Revenue (from fees):</u>	\$100,000	\$0	\$(5,000)
<u>Cost:</u>	\$689,000	\$488,262	\$694,369

OUTPUT 5: Public Understanding:

To enhance and improve co-operation and liaison with overseas takeovers regulators on matters of mutual interest.

Impact:

The improvement in the level of co-operation and understanding between the Panel and other international takeovers regulators.

Activities and actions to include:

- publishing the Panel's occasional newsletter, *Code Word*, to explain changes to the Code and the Act and key Panel enforcement and exemption decisions;
- publishing practice notes and guidance notes to inform the market about the Panel's decisions and policies, to assist market participants to relate to the Panel and to explain how the Panel interprets various rules of the Code;
- improving the market's understanding of takeover matters and Panel activities through public speeches about the Code at relevant conferences and other meetings;
- receiving feedback from market participants about the Panel's performance through meetings with market participants to both gauge the effectiveness of the Panel in dealing with its stakeholders and to explain issues which have arisen;
- visiting the most active legal and advisory firms to obtain direct feedback;
- holding group meetings with other interested market participants;
- maintaining a website that is kept up-to-date with all Panel decisions, news releases, speeches, discussion papers, practice notes;
- communicating with affected shareholders through telephone and correspondence explaining the application of the Code in particular circumstances;
- assisting the media with background information to ensure that the public receives accurate reports on issues of public interest.

Actual performance against planned performance standards and performance measures for 2011/2012:

	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
<u>Quantity, Quality and Timeliness</u>			
Publish a publication designed to provide information about the Takeovers Code and relevant law.	3 times a year, with publication within 1 month of significant changes to the law affecting takeovers.	3	2
Issue policy statements, guidance	3 times a year	2 times	2 times

Ensuring transparent and equitable takeover processes

	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
notes and commentaries on current issues.			
Interface with the market through public and private meetings.	10 occasions	16 occasions	9 occasions
Provide news media with relevant information about the Panel and the Takeovers Code.	Continuous	Continuous ¹⁷	Continuous
Maintain a website with relevant information about the Takeovers Code and Takeovers Act 1993 and activities of the Panel.	All relevant material posted promptly to the website, within 5 working days of the event or decision.	100% of events or decisions.	100% of events or decisions.
Receive miscellaneous enquiries from members of the public and professional firms.	Receive 140 enquiries. Respond to enquiries within 3 working days.	129 enquiries received. Responded within 3 days in 99% of cases.	136 enquiries received. Responded within 3 days in 100% of cases.
<u>Revenue:</u>	Nil	Nil	Nil
<u>Cost:</u>	\$194,000	\$292,957	\$205,941

OUTPUT 6: International Liaison:

To enhance and improve cooperation and liaison with overseas takeovers regulators on matters of mutual interest.

Impact:

The improvement in the level of cooperation, liaison and understanding between the Panel and other international takeovers regulators. Such improvements enhance international investors' and overseas takeovers regulators' confidence in the New Zealand market and enhance the Panel's administration of the Code's provisions.

Activities and actions to include:

- continuing the high level of contact with the Australian Takeovers Panel through the Panel Chairman's membership on the Australian Panel and membership of the New Zealand Panel by a member of the Australian Panel;
- continuing to maintain the good working relationships with the relevant staff of the Australian Panel and of the Australian Securities and Investments Commission by members of the Panel and executive;
- continuing to support the Australian Panel's promotion of the informal group of international takeovers regulators by attending the group's conferences;
- cooperating, on request, with overseas takeovers regulators on various regulatory matters within the Panel's powers.

Actual performance against planned performance standards and performance measures for 2011/2012:

¹⁷ Media representatives receive emailed links to every article that is published on the Panel's website.

Ensuring transparent and equitable takeover processes

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 11/12</u>	<u>Actual 10/11</u>
Liaise with comparable overseas bodies, particularly in Australia, to improve the administration and enforcement of takeovers law, and to promote international understanding of New Zealand's laws.	Respond to all enquiries within 5 working days. Initiate enquiries of other bodies as required. 2 enquiries.	0 enquiries received. 0 enquiries made.	0 enquiries received. 0 enquiries made.
Maintain reciprocal membership between Australian and New Zealand Takeovers Panels.	Maintain 1 Australian Panel member on New Zealand Panel and 1 New Zealand Panel member on Australian Panel.	1,1	1,1
<u>Timeliness</u> Panel representatives to meet regularly with overseas bodies.	1 time per year.	1 time	0 times
<u>Revenue:</u>	Nil	Nil	Nil
<u>Cost:</u>	\$53,000	\$48,826	\$23,692

Independent Auditor's Report

To the readers of the Takeovers Panel's financial statements and statement of service performance for the year ended 30 June 2012

The Auditor-General is the auditor of the Takeovers Panel (the Panel). The Auditor-General has appointed me, Clare Helm, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements and statement of service performance of the Panel on her behalf.

We have audited:

- the financial statements of the Panel on pages 23 to 40, that comprise the statement of financial position as at 30 June 2012, the statement of comprehensive income, statement of movements in equity and statement of cash flows for the year ended on that date and notes to the financial statements that include accounting policies and other explanatory information; and
- the statement of service performance of the Panel on pages 41 to 48.

Opinion

In our opinion:

- the financial statements of the Panel on pages 23 to 40:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect the Panel's:
 - financial position as at 30 June 2012; and
 - financial performance and cash flows for the year ended on that date.
- the statement of service performance of the Panel on 41 to 48:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects, for each class of outputs for the year ended 30 June 2012, the Panel's:
 - service performance compared with the forecasts in the statement of forecast service performance for the financial year; and
 - actual revenue and output expenses compared with the forecasts in the statement of forecast service performance at the start of the financial year.

Our audit was completed on 31 August 2012. This is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Members of the Panel and our responsibilities, and we explain our independence.

Basis of opinion

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and carry out our audit to obtain reasonable assurance about whether the financial statements and statement of service performance are free from material misstatement.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the financial statements and statement of service performance. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the financial statements and statement of service performance, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Panel's preparation of the financial statements and statement of service performance that fairly reflect the matters to which they relate. We consider internal control in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Panel's internal control.

An audit also involves evaluating:

- the appropriateness of accounting policies used and whether they have been consistently applied;
- the reasonableness of the significant accounting estimates and judgements made by the Members of the Panel;
- the adequacy of all disclosures in the financial statements and statement of service performance; and
- the overall presentation of the financial statements and statement of service performance.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and statement of service performance. We have obtained all the information and explanations we have required and we believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion.

Responsibilities of the Members of the Panel

The Members of the Panel are responsible for preparing financial statements and a statement of service performance that:

- comply with generally accepted accounting practice in New Zealand;
- fairly reflect the Panel's financial position, financial performance and cash flows; and
- fairly reflect its service performance.

Ensuring transparent and equitable takeover processes

The Members of the Panel are also responsible for such internal control as is determined necessary to enable the preparation of financial statements and a statement of service performance that are free from material misstatement, whether due to fraud or error.

The Members of the Panel's responsibilities arise from the Crown Entities Act 2004.

Responsibilities of the Auditor

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you based on our audit. Our responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

Independence

When carrying out the audit, we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the New Zealand Institute of Chartered Accountants.

Other than the audit, we have no relationship with or interests in the Panel.



Clare Helm
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

Executive of the Takeovers Panel

Margaret Bearsley, Chief Executive
Andrew Hudson, General Counsel (from 26 September 2011)
Heather McCaskill, Senior Associate
Matthew Tolan, Associate
Julian Sakarai, Solicitor (resigned on 11 November 2011)
Lauren Donnellan, Solicitor
Lucy Mehrtens, Solicitor (from 26 March 2012)
Hilary Fleming, Accountant/Administrator
Gayle Steere, Office Manager

How to contact us

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APPENDIX

SUMMARY OF RESULTS OF PANEL'S ON-LINE SURVEY¹⁸

Survey questions	% of respondents that ticked 'yes'	% of respondents that ticked 'no'	Comments
Q.1. Was the Panel executive courteous and respectful?	100%		16 comments, including, e.g.: <ul style="list-style-type: none"> • <i>very prompt & helpful;</i> • <i>excellent/very fast service;</i> • <i>responsive/timely/helpful;</i> • <i>highly professional;</i> • <i>could not be faulted;</i> • <i>consistently helpful & accessible; etc</i>
Q.2. Were the Panel executive's comments on your draft takeover documents, shareholder meeting documents, or independent adviser report: clear/timely/precise/useful?	97.5% ticked 'yes' or 'not applicable'	2.5% (1 respondent) ticked 'no'	23 comments, including, e.g.: <ul style="list-style-type: none"> • <i>extremely helpful/ accessible/prompt;</i> • <i>valuable guidance provided;</i> • <i>clear, succinct & prompt;</i> • <i>limited comments were needed;</i> • <i>excellent & helpful and we actioned many of their comments; etc;</i> • <i>responded quickly and had given significant consideration to the offer document. One issue was where the Panel executive had a view but the Panel itself had not issued formal guidance. It would be good if [there was] formal guidance...; *</i> <p>The respondent who ticked 'no' commented that, despite submitting a fully explained exemption application, they were asked for further, unnecessary, explanations re the application of the Code to the transaction. This incurred further costs for the client... However, the executive's comments were timely and their approach was helpful "so this comment applies at a technical level only"</p>
Q.3. Did the Panel executive process your exemption/adviser application in the timeframe communicated to you?	97.5% ticked 'yes' or 'not applicable'	2.5% (1 respondent) ticked 'no'	11 comments, including, e.g.: <ul style="list-style-type: none"> • <i>Above and beyond;</i> • <i>Staff really good to deal with - responsible and pro-active;</i> • <i>Noticeably quicker in the last 12 or so months;</i> • <i>Timing of service is exceptional; etc</i> <p>2 comments were negative (although only 1 'no' was ticked):</p> <ul style="list-style-type: none"> • <i>There was a delay ...because [the Panel] was tied up with other urgent matters;</i> • <i>Overall "yes", but there was a delay in finalising the exemption notice ...this was due to delays within [another agency]. ... the application could have been processed faster, given it was a "roll over" of an existing exemption on substantially similar terms and the Panel exec had indicated that the new exemption notice should be able to be completed in time. Ultimately, not a big deal and [staff member] did a good job in communicating the delay.</i>
Q.4. Were you kept adequately informed about the progress of you exemption/adviser application?	95% ticked 'yes' or 'not applicable'	5% (2 respondents) ticked 'no'	3 comments, as follows: <ul style="list-style-type: none"> • <i>Yes;</i> • <i>As mentioned above, there was a delay in receiving a response;</i> • <i>Generally no timeframe provided for Adviser</i>

¹⁸ The questions have been summarised by grouping together into Question 2 in the table, above, four questions in the on-line survey regarding the executive's review of draft documents. For the questions that have seven or more comments, a 'flavour' of the positive comments is included in the table. All the negative comments are set out fairly fully in the table. Of the 41 respondents, one experienced technical difficulties and had to 'skip' the 'yes/no/not applicable' questions, and instead posted comments indicating 'yes' answers.

Ensuring transparent and equitable takeover processes

Survey questions	% of respondents that ticked 'yes'	% of respondents that ticked 'no'	Comments
			<i>approval.</i>
Q.5. Was the executive's advice useful, about the Panel's likely attitude to an exemption application?	100% ticked 'yes' or 'not applicable'		5 comments, as follows: <ul style="list-style-type: none"> • <i>As usual the Panel's executives guidance was very helpful and constructive;</i> • <i>Yes but see above [i.e., the negative comment shown for Q.2 above];</i> • <i>Feedback and guidance was valuable;</i> • <i>N/A;</i> • <i>Had helpful discussions with the Panel exec, prior to submitting the application, ... This helped focus the exemption application, and should be encouraged generally (and even though the Panel did not ultimately agree to the exemption duration we proposed, their reasons for not doing so were understandable).</i>
Q.6. Were any Panel publications useful to you for this transaction?	95% ticked 'yes' or 'not applicable'	5% (2 respondents) ticked 'no'	14 comments, listing various Panel publications, including multiple responses for the following Guidance Notes: <ul style="list-style-type: none"> • <i>Independent Advisers (3rd ed) – 5 respondents;</i> • <i>Timing Rules of the Code – 5 respondents;</i> • <i>Recovery of Takeover Expenses – 2 respondents.</i>
Q.7. Does Code Word provide good information about the Panel and its policies?	95% ticked 'yes' or 'not applicable'	5% (2 respondents) ticked 'no'	6 comments, as follows: <ul style="list-style-type: none"> • <i>Yes. However ... the search engine on the panel website is not powerful...; **</i> • <i>Very useful - required reading. A subject index to all the Code Words would be good... ***</i> • <i>The Code Word is always very helpful and informative;</i> • <i>Extremely helpful ...informative and well written. It would be useful if an index of ...Code Words was available ...; ***</i> • <i>Yes - it is circulated widely here;</i> • <i>We were referred to No. 07... which was very helpful.</i>

* The executive took this comment to the Panel. The Panel decided that the liaison between the executive and market participants on their draft documents remains a satisfactory way to deal with these issues as they arise (however, guidance on broad principles is published from time to time in *Code Word*, and the respondent's particular concerns may be directly resolved through such guidance over time).

** This should be resolved when the new website is installed.

*** This was actioned shortly after receiving these comments.