

**Takeovers Panel**

**ANNUAL REPORT**

*For the Year Ended 30 June 2000*

# **Report of the Audit Office**

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**To the readers of the Financial Statements of Takeover Panel for the year ended 30 June 2000.**

We have audited the financial statements on pages 4 to 6. The financial statements provide information about the past financial and service performance of the Takeovers Panel and its financial position as at 30 June 2000. This information is stated in accordance with the accounting policies set out on page 4.

## **Responsibilities of the Board**

The Public Finance Act 1989 requires the Panel to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Takeovers Panel as at 30 June 2000, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 2000.

## **Auditor's responsibilities**

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Takeovers Panel. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed A J Shaw, of Audit New Zealand, to undertake the audit.

## **Basis of opinion**

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Takeovers Panel in the preparation of the financial statements *and*
- whether the accounting policies are appropriate to the Takeovers Panel's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards, including the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Panel.

**Unqualified opinion**

We have obtained all the information and explanations we have required.

In our opinion, the financial statements of the Takeovers Panel on pages 4 to 6:

- comply with generally accepted accounting practice *and*
- fairly reflect:
  - the financial position as at 30 June 2000 *and*
  - the results of its operations and cash flows for the year ended on that date.

Our audit was completed on 27 October 2000 and our unqualified opinion is expressed as at that date.



A J Shaw  
Audit New Zealand  
On behalf of the Controller and Auditor-General  
Wellington, New Zealand

## The Functions of the Takeovers Panel

The Takeovers Panel (the Panel) is established by the Takeovers Act 1993.

That Act states that the functions of the Panel are:

- a) to recommend a Takeovers Code applying to takeovers of specified companies (the "Code");
- b) if the Code is adopted:
  - i) to formulate and recommend, from time to time, such amendments to the Code as the Panel thinks fit;
  - ii) for the purposes of paragraph i), to keep under review practices relating to takeovers of specified companies;
  - iii) to investigate any act or omission or practice for the purpose of exercising its powers and functions under Part III of the Act;
  - iv) to make determinations and orders and make applications to the Court in accordance with Part III of the Act; and
  - v) to promote public understanding of the law and practice relating to takeovers; and
- c) to perform such other functions as are conferred on it by the Act.

## The Membership of the Panel in 1999/2000

The Panel consists of not less than five and not more than eight members appointed by the Minister of Commerce. At least one member of the Panel must be a barrister or solicitor of the High Court of not less than seven years practice. All other members must be qualified or experienced in business, accounting or law.

There are at present eight members of the Panel. They are:

**Chairperson**

Mr John King, Solicitor

**Deputy Chairperson**

Mr David Jones, Solicitor

**Members**

Mr Gordon Gilmour, Company Director

Mr Alistair Lawrence, Banker

Mr Paul Randall, Investment Consultant

Mr Malcolm Ott, Accountant

Mr Kevin O'Connor, Company Director

Mrs Daphne Rawstone, Business Consultant

Mrs Rawstone was appointed to the Takeovers Panel on 10 February 1999 and her appointment will expire on 10 February 2001. The appointments of all other members of the Panel expire on 18 October 2000. The appointment process for the Takeovers Panel is currently underway. Under the Takeovers Act 1993 the Panel members will continue to be appointed to the Panel beyond 18 October 2000 until they are either re-appointed or replaced.

## **The Activities of the Panel in 1999/2000**

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In June 1995, the Panel recommended to the Minister of Justice that the Government adopt a Takeovers Code. However, in August 1995, Cabinet agreed that a decision on whether the Code should be adopted should be deferred until an assessment could be made of the effectiveness of the provisions in the new companies legislation and New Zealand Stock Exchange Listing Rules which seek to protect minority shareholders.

The new Government indicated a clear intention to implement a takeovers code. To facilitate this the Minister of Commerce returned the 1995 Takeovers Code to the Panel in April 2000, with the recommendation that the Panel re-consider the Code in light of changes in the market over the last five years. As the Takeovers Panel had no resources, the Ministry of Economic Development provided to the Chairman of the Takeovers Panel the resources necessary to carry out the review of the Code. This resource commitment was a temporary arrangement between the Ministry of Economic Development and the Chairman until the Code has been adopted. The Takeovers Panel and its advisers made all the decisions and carried out the work in revising the Takeovers Code and its independence was not compromised in any way.

## **Statement of Accounting Policies**

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*for the year ended 30 June 2000*

These are the financial statements of the Takeovers Panel, a Crown entity in terms of the Public Finance Act 1989. These financial statements have been prepared in accordance with section 41 of the Public Finance Act 1989.

The financial statements have been prepared on a going-concern assumption.

## **Changes in Accounting Policies**

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Given that the Panel has not yet undertaken any activities under the Takeovers Code there have been no changes in accounting policies during the period. The comparative figures have not been provided as no transactions were conducted in the previous period.

## **Statement of Financial Performance of the Panel**

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*for the year ended 30 June 2000*

As the activities of the Panel have been held in abeyance pending approval by Cabinet to adopt a Takeovers Code and until the appointment process has been completed the Panel did not undertake any financial transactions during the 1999/2000 financial year.

However, during this period John King, David Jones and Bob Dugan acting as the Panel's adviser, have received some payment from the Ministry of Economic Development for consultative work carried out on updating the Takeovers Code.

## **Statement of Financial Position**

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*as at 30 June 2000*

The Panel does not manage any assets or liabilities.

## **Statement of Cashflows**

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*for the year ended 30 June 2000*

No activities were undertaken during the period.

## **Statement of Commitments**

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*as at 30 June 2000*

No commitments exist as at 30 June 2000.

## **Statement of Contingent Liabilities**

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*as at 30 June 2000*

No contingent liabilities exist as at 30 June 2000.

## Proposed Activities of the Panel in 2000/2001

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The Takeovers Panel, with the aid of advisers, considered changes in the market, international developments and other technical aspects and made several necessary technical amendments to the Code. The amended Code was then sent out for public consultation. Many detailed and useful submissions were received on the Code and, as a consequence, other amendments were made. All of the amendments made before and after the consultation period were technical in nature or had very low policy content. The fundamental principles of the 1995 Takeovers Code remain unchanged.

The Panel recommended the revised Takeovers Code to the Minister on 5 September 2000. Following approval by Cabinet and promulgation by the Governor-General, the Code has now been gazetted and has become law but will not come into effect until 1 July 2001.

Cabinet is currently considering further legislation and funding to enable the Takeovers Panel to carry out its obligations under the Takeovers Code and Takeovers Act 1993.



John King  
Chairman  
27 October 2000



David Jones  
Deputy Chairperson  
27 October 2000