

Takeovers Panel

ANNUAL REPORT

for the year ended 30 June 2001

Laid before the House of Representatives pursuant to section 16 Takeovers Act 1993 and section 44A Public Finance Act 1989.

(inside front cover)

FUNCTIONS AND POWERS OF THE PANEL

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

To formulate and recommend a takeovers code applying to takeovers of specified companies;

To formulate and recommend amendments to the takeovers code;

To keep under review practices relating to takeovers of specified companies;

To investigate any act or omission or practice for the purpose of exercising its powers under the enforcement provisions of the Act;

To make determinations and orders and make applications to the Court under the enforcement provisions of the Act;

To promote public understanding of the law and practice relating to takeovers.

In exercising its functions and powers the Panel shall comply with the principles of natural justice.

The powers of the Panel are set out in sections 9 and 13 and Part III of the Takeovers Act 1993. In summary the powers of the Panel are:

To issue summonses and to take evidence on oath;

To make confidentiality orders;

To authorise the Registrar of Companies to undertake inspections;

To grant exemptions from the Code;

To enforce the Takeovers Code by:

- making determinations on whether a person is complying with the Code;
- issuing restraining orders; and
- applying for Court orders.

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

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CHAIRMAN'S REVIEW

[Photo]

This report covers a very significant year for the Takeovers Panel. Although the Panel was established in 1995 it operated on an informal basis before then, having been formed originally as an advisory committee in 1991. The gazetting of the Takeovers Code in October 2000 was the culmination of an extensive period of consultation and debate not only on the provisions of the Code but also on the desirability of having a Takeovers Code in any form.

It is appropriate now to recognise the contribution of past members of the Panel and the advisory committee for their contribution to the formulation of the Code. I refer to Andrew Meehan, Paul Baines, Kerrin Vautier, David Gascoigne and Annabelle Young, as well as Gordon Gilmour and Malcolm Ott who retired in June this year, and Paul Randall, a present member of the Panel, who will be retiring shortly. They contributed many hours of hard work reviewing overseas codes, considering the particular requirements of the New Zealand market, considering submissions from the public, both written and oral, formulating the Code and preparing detailed reports for the Government. I mention particularly Gordon Gilmour and Paul Randall who were two of the original appointments made in 1991. I thank all members, past and present, for their contribution to the introduction of the Code which represents a significant step forward in the approach to regulating takeovers in New Zealand.

I welcome two new Panel members, Colin Giffney and David Quigg. We look forward shortly to the appointment of an Australian member as part of the Government's initiative to develop closer relations between the New Zealand and Australian Takeovers Panels. A member of the New Zealand Panel will also be joining the Australian Panel.

The Code did not become operative until 1 July 2001. After the Code was gazetted in October 2000 the Panel's main task was to prepare itself for the 1 July start date. There were a range of significant events.

The Securities Amendment Act 2001 was passed to enable the Securities Commission to provide administrative and support services to the Panel. This is a more cost effective method of resourcing the Panel than creating a stand alone organisation.

The Takeovers Amendment Act 2001 was passed which made changes to facilitate the operation of the Panel including authority for the Panel to operate in divisions and expanded investigatory powers through the Registrar of Companies.

Class exemptions have been gazetted under the Takeovers Code (Class Exemptions Notice (No.2)) 2001. These exemptions provide a standard form of exemption to apply to common classes of transactions thereby reducing significantly the need for applications for specific exemptions for particular transactions. The terms and conditions of the class exemptions ensure however that the underlying purpose and intent of the Code is fulfilled.

The Takeovers (Fees) Regulations 2001 came into effect on 1 July 2001. These regulations enable the Panel to charge for some of its activities including the granting of exemptions and in certain circumstances the exercise of the Panel's enforcement powers.

As part of the Panel's role in promoting public understanding of the Code the Panel has established a website containing an extensive range of information and initiated a publication *Code Word* which provides new and relevant information on the Code and the work of the Panel. *Code Word* is circulated to a wide body of interested parties.

In the period up to 1 July the Panel established systems, procedures and manuals to help it perform its various functions in relation to the Code. The preparatory work is now complete, the Code is operative and the Panel has commenced its new role.

Looking forward, the Panel will continue to evaluate the need for further class exemptions, particularly in the light of applications for specific exemptions that are received. It will monitor activity in the takeovers market and the operation of the Code. So far as enforcement is concerned, the Panel believes that the underlying

purpose and intent of the Code is very clear and is hopeful that the market will quickly adjust to requirements of the Code. However the Panel is resourced with a litigation fund so that it has the ability to take the necessary enforcement action where necessary.

Through its website and *Code Word* the Panel will continue to keep the market informed of its activities and of issues that arise under the Code. Guidelines and information on procedures will be issued and updated from time to time.

The Panel looks forward to making a significant contribution to the development of an efficient and fair takeovers market in New Zealand.

JC King

Chairman

TAKEOVERS PANEL

FINANCIAL REPORT

SOURCES OF FUNDING

The Panel is funded by Parliamentary appropriation. It is responsible for the allocation of the money. It sets priorities with care and reviews them constantly to ensure that the money is used to best advantage.

STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements 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 fairly reflect the financial position as at 30 June 2001 and the operations of the Takeovers Panel for the year ended 30 June 2001.

.....
J.C. King
Chairman

27 July 2001

.....
27 July 2001

TAKEOVERS PANEL

FINANCIAL STATEMENTS**STATEMENT OF FINANCIAL PERFORMANCE***for the year ended 30 June 2001*

<i>2001 Budget \$</i>		<i>Note</i>	<i>2001 Actual \$</i>
Income			
570,000	Government grant		569,778
4,000	Interest		10,187
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574,000	Total income		579,965
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Expenditure			
5,000	Audit fees		3,500
2,000	Auditors – other services		-
2,000	Communication charges		1,779
113,000	Members' fees	2	65,657
40,000	Printing and stationery		8,506
86,000	Consultants and legal		81,371
90,000	Services and supplies		56,937
47,000	Travel and accommodation		18,880
7,000	Use of assets	3	3,001
189,000	Securities Commission services		226,871
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581,000	Total expenditure		466,502
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\$(7,000)	Surplus/(deficit)	4	\$113,463
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The accompanying notes form part of these financial statements.

TAKEOVERS PANEL

STATEMENT OF FINANCIAL POSITION

as at 30 June 2001

<i>2001 Budget</i>		<i>Note</i>	<i>2001 Actual</i>
\$			\$
Current assets			
70,000	Bank		3,006
-	Short term deposits		216,163
10,000	G.S.T. receivable		14,060
-	Sundry debtors and prepayments		20,515
11,000	Prepayment for use of assets	3	8,349
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91,000	Total current assets		262,093
Non-current assets			
31,000	Prepayment for use of assets	3	21,959
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\$122,000	Total assets		\$284,052
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Current liabilities			
80,000	Creditors and accruals		121,589
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80,000	Total current liabilities		121,589
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Equity			
49,000	Equity capital		49,000
(7,000)	Accumulated funds		113,463
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42,000	Total equity		162,463
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\$122,000	Total equity and liabilities		\$284,052
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On behalf of the Takeovers Panel:

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 J.C. King
 Chairman

27 July 2001

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27 July 2001

The accompanying notes form part of these financial statements.

TAKEOVERS PANEL

STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2001

<i>2001 Budget \$</i>		<i>2001 Actual \$</i>
-	Equity at start of year	-
(7,000)	Surplus/(deficit) for year	113,463
49,000	Equity capital	49,000
42,000	Total recognised revenues and expenses for the year	162,463
<u>\$42,000</u>	Equity at end of year	<u>\$162,463</u>

The accompanying notes form part of these financial statements.

TAKEOVERS PANEL

STATEMENT OF CASH FLOWS

for the year ended 30 June 2001

<i>2001 Budget \$</i>		<i>Note</i>	<i>2001 Actual \$</i>
Cash flows from operating activities			
Cash was provided from:			
570,000	- Government grant		569,778
49,000	- Government equity capital		49,000
-	- Application fees & costs recoverable		-
4,000	- Interest		9,525
Cash was disbursed to:			
(553,000)	- Suppliers		(409,134)
70,000	Net cash flows from operating activities	4	219,169
Cash flows from investing activities			
Cash was provided from:			
-	- Net decrease in bank deposits	5	-
Cash was applied to:			
-	- Net increase in bank deposits	5	(216,163)
-	Net cash flows from investing activities		(216,163)
70,000	Net increase (decrease) in cash balance		3,006
-	Add opening cash balance		-
\$70,000	Closing cash balance carried forward		\$3,006

The accompanying notes form part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS*for the year ended 30 June 2001***NOTE 1 STATEMENT OF ACCOUNTING POLICIES****(a) Reporting entity**

The Takeovers Panel is a body corporate established by the Takeovers Act 1993. The financial statements presented here are prepared pursuant to section 16 of the Takeovers Act 1993 and section 41 of the Public Finance Act 1989. They are the first full annual financial statements prepared by the Panel. There are no comparatives as there was no appropriation in the previous year.

(b) Measurement system

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

(c) Accounting policies**(i) Budget figures**

The budget figures are those approved by Panel members on 30 November 2000.

The budget figures are prepared in accordance with generally accepted accounting practice.

(ii) Short term deposits

Short term deposits are shown at cost.

(iii) GST

GST is accounted for by the net method.

(iv) Financial instruments

All financial instruments are recognised in the Statement of Financial Position.

(v) Income tax

The Panel is exempt from income tax under the Income Tax Act 1994.

NOTE 2 REMUNERATION OF MEMBERS OF THE PANEL

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2001 were:

J.C. King	31,057
G.G.H. Gilmour	5,300
D.O. Jones	5,950
A. Lawrence	4,000
J.M. Ott	3,800
K.J. O'Connor	4,700
P.A. Randall	5,550
D.M.D. Rawstorne	5,300
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	\$65,657
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NOTE 3 PREPAYMENT FOR USE OF ASSETS

This represents amounts paid to the Securities Commission to finance the purchase of assets required by the Commission to service the requirements of the Panel. The amounts are being written off, having regard to the expected life of the assets and the interim estimated period of the arrangements with the Commission, over the following periods:

Furniture, fittings and library	5 years
Office equipment	3 years

For the year ended 30 June 2001:

	\$
Amount paid to finance the purchase of assets	33,309
Amount amortised for use of assets	(3,001)
	<hr/>
Balance at 30 June 2001	\$30,308
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NOTE 4 RECONCILIATION OF STATEMENT OF FINANCIAL PERFORMANCE WITH STATEMENT OF CASH FLOWS

	<i>2001</i> <i>Actual</i> \$
Reported surplus (deficit)	113,463
Add increase in equity capital	49,000
Movement in working capital:	
- Increase (decrease) in creditors	121,589
- (Increase) decrease in receivables	(64,883)
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	56,706
Net cash flows from operating activities	<hr/> \$219,169 <hr/>

NOTE 5 CASH FLOWS

The cash flows relating to the Panel's investing activities are reported on a net basis in the Statement of Cash Flows. The amounts involved are held in short term deposits which are rolled over frequently through the year.

NOTE 6 FINANCIAL INSTRUMENTS

(a) Credit risk

Financial instruments which may subject the Panel to credit risk consist of bank balances and bank short term deposits.

The Panel's investments are deposited with a registered bank in New Zealand.

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

(b) Fair values

All financial instruments are recognised in the Statement of Financial Position and are stated at fair values.

NOTE 7 COMMITMENTS

There were no lease or capital commitments at balance date.

NOTE 8 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date.

NOTE 9 TRANSACTIONS WITH RELATED PARTIES

There were no transactions with related parties during the year.

NOTE 10 BUDGET VARIANCES***Expenditure***

Significant variances from budget were:

- (i) Fees paid to Members were lower than budgeted arising from less meetings being held than anticipated.
- (ii) Various other expenses were lower than budgeted arising from the Panel's set-up costs being less than budgeted.
- (iii) Securities Commission services to the Panel were higher than budgeted arising from additional professional staff hours provided by the Commission to meet the Panel's administrative requirements.

REPORT OF THE AUDIT OFFICE

Text to come

(Audit NZ report continues)

DIRECTORY

The members of the Takeovers Panel are:

Chairman

John King, lawyer

Deputy Chairman

David Jones, lawyer

Members

Colin Giffney, stockbroker & corporate advisor

Alistair Lawrence, investment banker

Kevin O'Connor, company director

David Quigg, lawyer

Paul Randall, investment consultant

Daphne Rawstorne, company director and business consultant

How to contact us

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