

Takeovers Panel

ANNUAL REPORT

for the year ended 30 June 2011

Laid before the House of Representatives pursuant to sections 150-157 of the Crown Entities Act 2004.

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FUNCTIONS AND POWERS OF THE PANEL

The functions of the Takeovers Panel are set out in section 8 of the Takeovers Act 1993 and section 14 of the Crown Entities Act 2004. In summary, the Panel's functions are:

- To keep under review the law relating to takeovers of Code companies and to recommend to the Minister any changes to that law it considers necessary;
- For the purposes of its review of the law, to keep under review practices relating to takeovers of Code 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 co-operate with any overseas regulator and for that purpose to communicate to that regulator information obtained by the Panel in the performance of its functions and powers which the Panel considers may assist that regulator in the performance of its functions;
- To promote public understanding of the law and practice relating to takeovers;
- Any functions that are incidental and related to, or consequential on, the other functions set out above.

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

The Panel is a body corporate and is a separate legal entity from its members, officers, employees and the Crown (section 15 Crown Entities Act).

The Panel's main powers are set out in Parts 3 and 4 of the Takeovers Act 1993 and section 17 of the Crown Entities Act. In summary, these powers of the Panel 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 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;

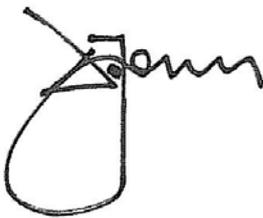
- To do anything that a natural person of full age and capacity may do, for the purpose of performing the Panel's functions (e.g., making applications to Court in respect of matters that are relevant to its functions and powers).

The main statutory powers dealing with the Panel's governance, operation, reporting and financial obligations are set out in the Crown Entities Act.

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

* * * * *

This annual report was approved by the Takeovers Panel on 23 August 2011

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D O Jones
Chairman

A handwritten signature in black ink, appearing to read 'C G Giffney', written over a faint rectangular box.

C G Giffney
Deputy Chairman

CHAIRMAN'S REVIEW

Introduction

This past year has been one of “business as usual” for the Panel, with an increasing level of activity in the market for corporate control in New Zealand. The number of new takeovers started in the past year remain on par with the previous year, signalling ongoing improvement since 2008/2009, and the majority were successful to the point of at least acquiring some shares in the target company. The relatively modest level of transactional activity has again given the Panel the opportunity to direct more resources into policy work. This included the publication of two discussion papers on technical amendments to the Code and a related issue arising out of the judgment from the judicial review proceedings brought against the Panel by Marlborough Lines Limited. The year has also seen significant changes at the Panel member and executive level.

Enforcement of the Code

Enforcement work is the largest of the Panel's outputs. The Panel's practice is to work with market participants to achieve a Code-compliant outcome, if possible, without the need for a major enforcement activity under section 32 of the Act.

Consistent with this approach the Panel was very active on the enforcement front during the year but did not need to take any major enforcement actions. Most enforcement work comprised engaging with the participants to the Code transactions that took place during the year (takeovers and those requiring approval at company meetings), pointing out potential breaches of the Code and having them corrected before documents were finalised and issued to shareholders. The Panel also spent time investigating a number of potential breaches of the Code.

Review of Law

One of the functions of the Panel is to keep the law relating to takeovers under review. An example of this 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 the Government approved the Panel's proposals and agreed to promote the necessary legislation to put them into law. The introduction of legislation is not expected before 2012 because of the Government's busy legislative programme.

On a continuous basis the Panel reviews anomalies or areas of uncertainty which may arise in relation to the Code and the need for exemptions under the Code. In this context the Panel is currently working on the policy process for a range of technical amendments to the Code, the need for which has come to light in the course of Code transactions over the last few years. Two discussion papers on these technical issues have already been through the policy process to the point where the Panel has formulated recommendations to the Minister. A third (and final) consultation paper is anticipated to be published later in calendar year 2011. Recommendations to the Minister for all the proposed technical changes to the Code will be made as one package during 2011/12.

Legislation enacting some minor technical changes to the Takeovers Act was passed into law during the year and further changes (including the change to the definition of “Code company” for unlisted companies, for “50 or more shareholders” to “50 or more shareholders and 50 or more share parcels”) are expected to become law later in 2011.

Guidance

Improving public understanding of takeovers law is an important function of the Panel. The Panel achieves this through engaging with market participants in person, participating in industry seminars, the publication of *Code Word* on a periodic basis, the maintenance of an up-to-date and comprehensive website and the publication of guidance notes.

In the last year the Panel has held two feedback meetings, one in Auckland and one in Wellington, where the Panel's stakeholders, including lawyers, independent advisers, industry representatives, and officials, met with Panel members and staff. The Panel used those meetings to explain recent policy developments and other matters of interest, and to respond to issues raised by the participants at the meetings.

In the past year the Panel has published two guidance notes. These were:

- a guidance note on its upstream takeovers policy (early July 2010);
- a guidance note on the application of rule 30 of the Code, which is concerned with obtaining an updated rule 22 report (on the fairness between classes) when an offeror increases the consideration offered during the course of a takeover which involves multiple classes of securities (February 2011).

The Panel also explained its schemes proposals to ensure the market has a good understanding of these proposals and of the Panel's support for the use of the Companies Act's amalgamation provisions in appropriate circumstances.

Judicial review proceedings

As reported in last year's annual report the Panel held a section 32 meeting in March 2010 called at the request of Marlborough Lines to consider a number of allegations made against Horizon Energy Distribution Limited.

The Panel issued its determination from that meeting on 10 May 2010. The Panel made cost recovery orders under the Takeovers (Fees) Regulations 2001 against both Marlborough Lines and Horizon.

Later in May 2010 Horizon requested that the Panel convene a meeting under section 32 of the Act because of Marlborough Lines' alleged non-compliance with rule 49 of the Code, which relates to recovery from a bidder (Marlborough Lines) of a target company's (Horizon's) properly incurred expenses in responding to a takeover offer.

Before the Panel could meet to determine this allegation, Marlborough Lines issued proceedings under the Judicature Amendment Act challenging the Panel's jurisdiction to convene a meeting in relation to alleged non-compliance with rule 49 of the Code.

Marlborough Lines also made a number of other allegations against the Panel. The case was heard in August 2010 in the High Court in Wellington before Justice MacKenzie. The Court: rejected the allegation of bias which had been made against the Panel; confirmed the Panel's ability to review takeover documents in draft form; found that the Panel had erred in law by not considering the issue of disclosure of valuation material prepared by Cameron Partners Limited in Horizon's target company statement; ruled that the Panel did not have jurisdiction to consider rule 49 complaints even though there were good policy reasons why the Panel should have that jurisdiction; and, while not quashing the Panel's costs orders, directed that they be reconsidered with the benefit of submissions from the parties.

The Panel subsequently set aside its own costs orders and sought submissions from both Horizon and Marlborough Lines as to the proper level and apportionment of the Panel's costs. As a result the Panel lowered the overall costs order against Marlborough Lines and increased the order against Horizon.

The Panel also issued a discussion document on the question of whether the law should be changed to give the Panel jurisdiction to consider rule 49 disputes. As a result of general support for this proposal the Panel will be making recommendations to the Minister for the necessary law change in due course.

Executive Team

The Panel's executive team was led throughout the year by Kerry Morrell as the Chief Executive Officer, until his retirement on 30 June 2011. After an extensive recruitment search, Margaret Bearsley, the Panel's General Counsel, was, appointed to the position of Chief Executive Officer with effect from 1 July 2011.

The year saw several other changes in the Panel executive. Jennifer Fawcett, Senior Associate, Tom Barnes, Lawyer, and Diana Thomas, Lawyer, all resigned from the Panel to pursue other career or life opportunities. The Panel executive was joined in their place by Heather McCaskill, Senior Associate, Julian Sakarai, Lawyer, and Lauren Donnellan, Lawyer.

Panel Members

The Panel is a committee of the market. The Panel has 11 members who are required to be qualified or experienced in business, law or accounting. Members are variously lawyers, company directors, share brokers, investment bankers, accountants or financial 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.)

The term of office of Kevin O'Connor, a member of the Panel since 1994, finished on 31 January 2011. John Waller, a member of the Panel since 2006, resigned his position on the Panel also from 31 January 2011. Simon Horner and Roger Wallis, both lawyers with extensive experience in the corporate and takeovers market, were appointed for five-year terms from 1 February 2011, to replace them. The Panel records its appreciation of the significant contributions made to the work of the Panel by Kevin and John, with Kevin having been involved from the early stages of the development of the Code.

Sue Suckling's term expired in December 2010 after eight years as a member of the Panel. Sue's term of office continues until she is either re-appointed or replaced.

Relationship with Australian Authorities

The reciprocal arrangement with the Australian Panel has proved to be beneficial. The Panel has been able to consult with the Australian Panel about various international issues.

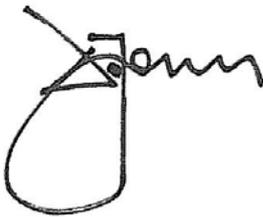
Appreciation

My thanks go to the members of the Panel for their dedication, skills and willingness to take part in Panel work, often at very short notice. On behalf of the members of the Panel I particularly thank Kerry Morrell for his leadership of the Panel executive for the past 10 years, and congratulate Margaret Bearsley on her appointment as Chief Executive. I thank

Kerry and Margaret, and the other staff members, past and present, 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, not only on Code transactional matters but also in relation to the development of Code policy. Finally, I acknowledge and thank the Minister of Commerce and officials from the Ministry of Economic Development for their constructive support of the Panel during the year.

2010/2011 has been a year when the Panel has proved itself responsive to the changing market environment. It has maintained the momentum of policy development work while responding to the encouraging pickup in market activity. We have kept market participants well informed on matters which affect them, including on the Panel's views on takeovers law. We will continue to do so in future.

A handwritten signature in black ink, appearing to read 'D O Jones', written over a faint, large, stylized outline of a person's head and shoulders.

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

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.*

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*

Pip Greenwood *Lawyer. Partner of Russell McVeagh and [current](#) Chair of the [firm](#). Specialising in securities offerings, mergers and acquisitions, takeovers and general corporate advisory work. Former member of the NZX Legal & Regulatory Advisory Board and Chairperson of NZX Unit Trust and Managed Fund Working Group. Appointed to the Panel in 2006.*

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

David Quigg *Lawyer. Partner of Quigg Partners, barristers and solicitors of Wellington, specialising in mergers and acquisitions, takeovers and corporate law. Lecturer in takeovers and mergers and acquisitions law for the Institute of Directors. Member of the Wellington Committee of the Institute of Directors. Appointed to the Panel in 2001.*

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 *Independent company director and business consultant. South Island based. Chair of the New Zealand Qualifications Authority, Baker Fruit Processors Limited, ECL Group, Carter Price Rennie, Annah Stretton, Oxford Clinic, HSR Governance Limited, and a director of Restaurant Brands Limited. Appointed to the Panel in 2002.*

Keith Taylor

Director and consultant. Wellington-based. Former Group Managing Director of Tower Limited. Deputy Chairman of the Earthquake Commission; Director of Reserve Bank of New Zealand, Southern Cross Healthcare, New Zealand Qualifications Authority, Gough Gough & Hamer Limited, Government Superannuation Fund Authority, 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. Appointed to the Panel in 2011.

CHIEF EXECUTIVE OFFICER'S REPORT

The Panel aims to contribute to increased confidence and participation in New Zealand's financial markets. The Panel achieves this outcome by being an effective and efficient regulator of the takeovers market, respected by domestic and international market participants, and by enforcing a Takeovers Code that provides for fair treatment of shareholders and a transparent takeover process. The Panel believes it achieved that outcome contribution in 2010/2011 by its performance in the areas described below.

ACHIEVEMENT OF THE PANEL'S NON-FINANCIAL GOALS

Framework of the Code and Review of Market Practices

The Panel seeks to improve the efficiency and effectiveness of the Code through its policy and review outputs.

A significant and ongoing policy issue for the Panel is the review of the law governing schemes of arrangement and amalgamations under the Companies Act 1993 as it applies to changes of control of Code companies. After several years of promoting changes to the law, the Panel welcomed the Government's announcement in August 2010 that it had accepted the Panel's proposals and would introduce legislation to amend the existing provisions of the Companies Act. It is hoped that the necessary amending legislation will be introduced into Parliament soon.

The Panel is currently undertaking policy development work, over three stages, on a range of technical or low policy content amendments to the Code. The Panel issued a discussion paper in August 2009 on the first set of proposed amendments to the Code, which related to the Code's provisions governing partial offers. After analysing submissions on its paper the Panel finalised a number of recommendations for changes to the law.

A discussion paper on the second tranche of proposals for amendments, concerning a number of miscellaneous provisions in Parts 1 to 5 of the Code, was issued in June 2010. A follow-up consultation paper was issued in December 2010 covering questions around the defensive tactics provisions of the Code as they relate to the conditions to which a Code takeover offer can be subject, and also whether the Panel should have jurisdiction to determine disputes arising under rule 49 of the Code. The Panel has finalised recommendations to the Minister arising out of that consultation process. The third and final tranche of the technical review of the Code was published in early July 2011. Once all three stages of the technical review of the Code have been completed, recommendations will be made to the Minister.

The amount of expenditure allocated to this output category in 2010/2011 was considerably higher than forecast, reflecting the higher than expected input into the Panel's policy work during the year.

Enforcement of the Code

The Panel aims to continue improvement in the level of market compliance with the Code, through its enforcement output. The Panel's main enforcement powers are under section 32 of the Takeovers Act.

The Panel did not hold any section 32 meetings during the year. The Panel had received a request from Horizon Energy Distribution Limited in May 2010 to convene a meeting under section 32 of the Act to determine whether Marlborough Lines Limited was complying with rule 49 of the Code. Horizon argued that rule 49 required Marlborough Lines to reimburse

Horizon for the expenses it had properly incurred in responding to Marlborough Lines' takeover offer for Horizon in September 2009.

The Panel did not convene the meeting as requested by Horizon because Marlborough Lines gave notice that it would file judicial review proceedings against the Panel to, among other things, challenge the Panel's jurisdiction to hold a meeting relating to compliance with rule 49 of the Code.

In the subsequent High Court proceedings Justice MacKenzie ruled that, while there were good policy reasons for the Panel to be able to resolve rule 49 complaints, the law did not give the Panel jurisdiction to do so. That judgment was the catalyst for the Panel's ensuing initiative to seek a change to the law so that the Panel would have the necessary jurisdiction.

The Panel aims to have all formal takeover documents reviewed. The Panel executive often reviews these documents in draft form and provides informal assistance to market practitioners on Code compliance issues as they arise. This level of interaction contributes to a high level of compliance with the law by the time documents are formally sent to shareholders. Notices of meeting and independent adviser reports for Code transactions that are put to a company meeting for approval by shareholders under the Code are also reviewed (again, often in draft).

The year has shown a further recovery in the number of takeover notices received, seven, compared to seven last year and four the year before. 2008/2009 had recorded the lowest number of takeover notices since the Code came into force.

There were 7 Code company meetings over the year, compared to 13 in 2009/2010, that considered proposed transactions requiring shareholder approval under the Code.

The Panel executive reviewed all documents relating to takeovers and company meetings and followed up instances of potential non-compliance with the law arising from those reviews.

The cost recoveries received by the Panel from its enforcement activities show as negative, reflecting both the need (as ordered by the High Court) to review the cost recoveries accrued last year from the Panel's section 32 meeting held in March 2010 and the fact that there were no section 32 meetings during the year. The cost allocated to this function was higher than forecast, reflecting the increased level of market activity and the cost of the Panel's involvement in the Marlborough Lines / Horizon judicial review proceedings during the year.

The Panel is of the view that its enforcement activities improve levels of compliance with takeovers law.

The granting of exemptions

The Panel's exemption function aims to improve the functioning of the takeovers market by alleviating unintended or unreasonable consequences that would arise from a strict application of the Code. The exemption function also enables transactions that could not otherwise comply with the Code, to proceed under modifications to the Code (by way of exemption) in ways that are still consistent with the objectives of the Code.

The Panel has granted important class exemptions for buybacks (amending an existing exemption notice) and from rule 16(b) of the Code (relating to allotments of securities) where some flexibility in outcome, and scope for future control change, is required. These class exemptions should reduce compliance costs for market participants into the future as well as reducing pressure on Panel resources.

The Panel aims to meet the timing needs of the market when exercising its exemption powers. In the past year it achieved this in 82% of cases. Some exemption applications are processed within one week. Other applications may take many weeks to process, often because of their complexity and the need to obtain additional information from applicants.

Thirteen applications for individual exemptions were processed during the year, with two applications for class exemptions (27 and 5 in 2009/2010). This was significantly less than the volume of exemptions forecast for the year, resulting in the Panel's fee revenue from exemptions also being significantly lower than forecast.

Overall the Panel is of the view that the responsible exercise of its exemption powers contributes to a more efficient market.

The approval function

The Panel is required to approve the appointment of independent advisers for takeovers and other transactions effected under the Code. Through its approval function the Panel aims to improve the quality of advice given to shareholders receiving takeover offers and to shareholders entitled to vote at company meetings on Code-related acquisitions and allotments.

The Panel applies criteria relating to prospective independent advisers' competence and independence, in deciding whether to approve advisers to prepare reports under the Code.

During the year the Panel processed 22 applications for approval as independent advisers, of which none were declined. This was a lower number of applications than the previous year, 34, reflecting the slightly lower number of company meetings involving Code matters, and the absence of any applications being declined. Of the 22 applications, 13 were approved by the Chief Executive Officer under delegated authority.

The Panel aims to process 80% of these applications within three working days of receiving a complete application. It achieved this in 100% of cases through the year.

The Panel's practice is to have all adviser reports reviewed in draft form before they are sent to shareholders, to assess their quality and to see if they adequately address relevant Code and merits issues. The Panel measures its impact on the quality of adviser reports by the proxy measure of the number of comments it makes on each draft adviser report. The more Panel comments there are (of a substantive nature) the less complete is the report. The aim is to reduce the number of Panel comments to two per report. The Panel believes this is an acceptable standard.

In the 2010/2011 year, of the 11 reports reviewed by the Panel 5 had 2 or less comments. The remainder had between 3 and 6 comments (2010 69% of 16 reports reviewed had two or less comments).

The Panel did not process any applications from target companies for approval under rule 39 of the Code to undertake defensive tactics during the course of a takeover, the same as in the preceding year.

The cost allocated to this function was around 80% of the forecast amount, reflecting the lower than expected number of adviser applications.

Promoting public understanding of the law and practice relating to takeovers

In the past year the Panel has published two editions of its newsletter *Code Word*. In July 2010 the Panel published a corrected version of the November 2009 *Code Word* which included a Guidance Note from the Panel on the many timing rules in the Code. The second

Code Word published in July 2010 included a Guidance Note on the Panel's approach to granting exemptions for upstream acquisitions. The *Code Word* published in February 2011 provided an update on progress with the Panel's proposals for changes to the law where schemes of arrangement are used to effect changes of control in Code companies and included an outline of the Panel's new class exemptions for buybacks and rule 16(b) allotments.

The Panel aims to publish information about significant changes to takeovers law within a month of those changes occurring. There have been no significant changes to takeovers law in the past year so this objective has not been tested.

The Panel also keeps its website up to date with a complete record of all its exemptions, policies, publications and important enforcement decisions.

The Panel has continued its practice of seeking feedback from the market about its performance. The Panel held two feedback meetings in March 2011; one in Auckland which was attended by some 40 lawyers, independent advisers and merchant bankers, and a second in Wellington attended by around 30 participants with a similar mix. The Panel is implementing a process to obtain feedback, through an on-line survey form, from participants in Code transactions that occur during the year.

The number of enquiries received from the market, at 136 for the year, is slightly higher than the level of enquiries dealt with in 2009/2010 (134).

The Panel is confident that the resources it is putting into promoting public understanding of takeovers law improves the public's knowledge of takeovers law.

International liaison

Through its international activities the Panel aims to improve the level of co-operation and understanding between international takeovers regulators.

The Panel's Chairman is a member of the Australian Takeovers Panel and Peter Scott, a member of the Australian Panel, is a member of the New Zealand Panel.

These arrangements and visits help to promote a greater level of understanding between the trans-Tasman takeovers regulators.

The Panel intends to be represented at the next International Conference of Takeovers Regulators, to be held in Vienna, Austria, in September 2011.

ACHIEVEMENT OF THE PANEL'S FINANCIAL GOALS

The main measure by which the Panel's financial performance can be judged was described in last year's Statement of Intent as the achievement of ongoing financial viability.

For the year ended 30 June 2011 the Panel recorded an operating loss of \$31,765 resulting in operating funds of \$629,195 at year end. The operating funds exclude the monies in the litigation fund, which are not available to meet the Panel's operating needs. It also includes an equity contribution of \$150,000 by the Crown in 2009/2010 to meet the Panel's relocation costs. The Panel is satisfied with its financial viability.

The financial outcome for the year was an operating result that was some \$112,128 worse than that expected. The most significant contributor to this deterioration was the drop in third party fee income (\$178,476 lower than forecast) and the higher than expected level of recruitment costs associated with changes to the executive staff including the process of

appointing a new Chief Executive to the Panel (\$120,090 of which were not budgeted but are incorporated in the Services and Supplies category).

OTHER MATTERS

Panel support services

The Panel has enjoyed its first full year as a standalone entity in its own premises and with its own staff and systems. Since it operates with a minimum of permanent support staff, the Panel outsources 'back office' assistance on an as needed basis. Everything has settled down well over the course of the year.

Relations with Ministry of Economic Development

The Ministry of Economic Development is the Panel's monitoring department. It is also the principal adviser to the Minister of Commerce on policy issues concerning takeovers law.

The Panel executive maintains good working relationships with the officials with whom it deals in both the monitoring and policy development areas of the Ministry. These relationships ensure that the two organisations have a good understanding of each other's point of view and are able to work effectively and co-operatively to achieve good outcomes.

CONCLUSION

This has been a significant year for the Panel and the executive team with changes to the Panel's Members and to the Panel executive.

In general terms the Panel has met its financial and non-financial objectives in the past year.

I am grateful for the dedication and support of the executive team, who have at times worked under considerable pressure during this year. This report mainly covers the responsibilities exercised by the Panel's former Chief Executive. However, as the Panel's new Chief Executive, I accept responsibility, as appropriate, for the matters reported above.



Chief Executive Officer

ADDITIONAL DISCLOSURES

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. Because the Panel is an independent Crown entity for the purposes of the Crown Entities Act the Minister is constrained in his ability to give the Panel any formal directions.

Obligations to be a good employer

The Panel is an equal opportunity employer and strongly endorses the principles underlying equal opportunity and good employer legislation. The Panel values its employees and is determined to provide a caring, supportive and stimulating environment which provides equal opportunities for all.

The Panel has been an employer for three years. The Panel has been in its own premises for less than two years. The Panel's personnel policies are evolving in line with best good employer practice consistent with the limitations of being a small organisation operating in a specialised area of the law. The Panel intends to keep developing its good employer strategies in the coming year in consultation with its staff.

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 a high level of engagement with staff. The whole staff meets weekly to share news and knowledge and to engage and participate in organisational decisions. The Panel has a comprehensive staff handbook which continues to develop as the organisation evolves. The Panel's staff Code of Conduct is based on the State Services Commissioner's guidance issued in 2007. Panel employees are required to act ethically, fairly, impartially, responsibly and trustworthily, and to undertake their work with integrity.

The arrival of a number of new staff over the last six months has brought a new and welcome cultural diversity to the team. Team members are encouraged to share their cultural strengths, particularly in te ao Maori me te reo Maori (the Maori world and Maori language). Developing support for these skills is valuable to the Panel as a Crown entity with statutory obligations to recognise the aims and aspirations of Maori.

Recruitment, selection and induction

The Panel does not discriminate against applicants on the basis of their age, ethnicity or gender. The Panel utilises the services of EEO certified employment agencies and selects candidates on the basis of their qualifications and ability to work well within a team. Women have senior leadership roles in the Panel executive, and the team is ethnically- and age-diverse.

Employee development, promotion and exit

All staff engage in regular mentoring and support from senior management and are encouraged to support each other in a strong team-based culture. All staff have formal yearly performance reviews. 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 personal development opportunities, to help them stay motivated and engaged in their work.

Flexibility and work design

Although it is generally necessary to work from the Panel's offices for ease of access to files and other resources, staff have the availability of remote access to their computers and are able to work from home in order to accommodate family and personal needs.

Remuneration, recognition and conditions

Staff salaries are reviewed by the Chief Executive on an annual basis, taking into account individual performance, movements of salary in the public sector for comparable positions or experience, and any advice or directions from the Minister relevant to remuneration setting. The gender pay gap of the Panel for the 2010/2011 year is -17%, or 17% per cent in favour of women, reflecting the high level of senior women on the Panel's staff.

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 to 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 who 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.

CORPORATE GOVERNANCE

Corporate governance is the system by which entities are directed and controlled.

Although the Panel is a Crown entity, adherence to the principles of good corporate governance is just as important to the effectiveness of the Panel's operations as it would be if the Panel were a listed company.

Leadership and governance go together in a successful Crown entity. They require a strong relationship between the Board and management and a clear understanding right through the organisation of the Panel's objectives and corporate standards. The Panel is committed to providing such leadership.

Putting Governance into Context – the “Board”

The members of the Panel are the governing body of the Panel. A meeting of all the members of the Panel acts effectively as a Board. The Crown Entities Act describes the governing body of a Crown entity as the Board. 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 [3] of this Report.

Responsibilities of the Board

The responsibilities of the Board as set out in the Crown Entities Act are the background against which the Panel's governance is exercised. These Panel responsibilities include:

- 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 with its responsible Minister (the Minister of Commerce);
- The Board must ensure that the Panel carries out its functions efficiently and effectively and consistently with the spirit of service to the public;
- The Board must 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 imposed on members of the Panel under the Crown Entities Act include the requirements that:

- Members of the Panel must not contravene, or cause the contravention of, or agree to the entity contravening, the Crown Entities Act or the Takeovers Act;
- Members of the Panel must, when acting as a member, act with honesty and integrity;
- Members of the Panel must, when acting as a member, act in good faith and not pursue their own interests at the expense of the Panel's interests;
- Members of the Panel must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation) the nature of the Panel, the nature of the action and the position of the member and the nature of the responsibilities undertaken by him or her;
- Members of the Panel who have information in their capacity as a member that would not otherwise be available to them must not disclose that information to any person, or make use of, or act on, that information, except in the performance of the

- Panel's functions, or as required or permitted by law, or in complying with the requirements for members to disclose interests;
- Panel members may disclose, make use of, or act on the information if the member is first authorised to do so by the Board; and the disclosure, use, or act in question will not, or will be unlikely to, prejudice the Panel.

The duties of the Board and of members are duties owed to the responsible Minister and there are penalties set out in the Crown Entities Act for individual or collective non-compliance with these duties. The penalties can include removal from office in some circumstances, although there are specific limitations on this power for members of bodies such as the Panel, which are independent Crown entities.

The activities of the Panel as Board

Board role

The Board's role is to provide leadership to the Panel within a framework of appropriate controls, which enables risk to be assessed and managed. The Board sets the Panel's strategic aims and ensures that appropriate staff resources are in place, consistent with funding constraints arising from being largely funded by Parliament. The Board sets the Panel's values and standards, consistent with the statutory imperatives described above, and reviews management's performance.

How the Board operates

The full Board of the Panel meets six times a year, at roughly two-monthly intervals, to conduct the governance functions of the Board, 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. Generally two meetings are held at the Panel's offices in Wellington, two meetings are held in Auckland, and two meetings are held by video conference. However, in the year under review only one meeting was held by video conference and an additional meeting was held in Auckland.

Panel members are provided with comprehensive briefings by the Panel executive for all items on the agenda of the regular meetings. The Chief Executive provides a detailed report on the operations of the Panel since the last Board meeting. Discussion at Board meetings is free and frank. Senior management attend Board meetings unless it is appropriate that they be excluded because of the topic for discussion.

Separation of the Board from the executive

The Board of the Panel is chaired by David Jones, partner in the firm of Jones Young, based in Auckland. The Deputy Chairman of the Panel is Colin Giffney, Corporate Adviser, also based in Auckland. All Panel members are part-time.

The Panel's Chief Executive was, until 30 June 2011, Kerry Morrell. After undertaking a global search the Panel has appointed Margaret Bearsley (formerly the Panel's General Counsel) as Chief Executive, with effect from 1 July 2011. The Chief Executive heads a staff of eight.

The Board regards it as critically important, particularly in a Crown entity exercising statutory enforcement and exemption powers, that there is a true separation between the decision-makers, the Panel, and the Panel's advisers, the executive. The executive assists the market through informally discussing compliance issues with market participants without prejudice to the discretion of the Panel to act in a particular matter. The executive gives the

Panel free and frank advice, using its skills, experience and training, and the Panel acts on that advice in the manner it thinks fit.

The Board endorses the executive's interaction with market participants, and understands that market participants are given non-binding views about the application of the Code in particular circumstances. The Panel carefully considers the executive's advice when it is alerted to Code compliance issues, but the Panel is clearly not bound to follow the executive's advice.

It is well understood in the takeovers market that the Panel makes its own decisions on all matters before it and is not influenced by any informal views that the Panel executive may have expressed to market participants on those issues before matters were put before the Panel.

Executive appointment and succession planning

The Board is responsible for appointing the Panel's Chief Executive, for negotiating annual Key Performance Indicators with him or her, for monitoring his or her performance during the year and for reviewing it at the end of the year.

The Board sets the remuneration of the Chief Executive, but is required by law to consult with the State Services Commissioner over the Chief Executive's terms and conditions of employment, including changes in remuneration. The Chief Executive's remuneration package includes an "at risk" element linked to specific aspects of the Panel's performance.

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

The Board has delegated to the Chief Executive responsibility for the day to day management of the Panel, including the recruitment, remuneration, training and development of staff, promoting the health and safety of employees, executing the Panel's work programme, and maintaining sound financial management practices within the Panel.

Operating by divisions

For the purpose of exercising most of its statutory powers the Panel meets by division. Divisions are appointed by the Chairman and must have at least three members. Appointments to divisions reflect an appropriate spread of skills and experience across members for the matter at hand. Any member who is "interested" in the matter to be considered is not appointed to the division.

Under the terms of the Takeovers Act appointed divisions are "the Panel" for the purposes of the matter they are established to consider and only that division can exercise the Panel's powers in respect of that matter. The Panel executive provides briefings to division meetings analysing the matter to be considered at the meeting. The executive liaises with market participants and generally executes the Panel's decisions.

Minutes are kept of all Panel Board meetings and division meetings.

Board meetings and subcommittee structure

The Panel has an Audit and Risk Committee with terms of reference approved by the Panel. The Panel has a large number of meetings by division during the year, but it has six Board meetings where all members attend. Meetings of the full Panel are also convened to consider class exemptions, because divisions are precluded by the requirements of the Takeovers Act from considering class exemptions.

Under the provisions of the Crown Entities Act, meetings of the Panel must be chaired by the Chairman if he or she is available and is not “interested” in a matter. If the Chairman is not available or is interested then the Deputy Chairman must chair the meeting. If neither the Chairman nor the Deputy Chairman is available then a Temporary Deputy Chairperson must be appointed.

The following are the records of Panel member participation in Board meetings, division meetings, and Audit and Risk Committee meetings over the past twelve months:

Member	Board meetings (maximum of 6 during year)†	Division meetings (37 during year)*	Audit and Risk Committee (4 during year)
David Jones	6 of 6	32	4
Colin Giffney	5 of 6	27	4
Murdo Beattie	6 of 6	1	
Andy Coupe	6 of 6	15	
Simon Horner ⁺	3 of 3	7	
Pip Greenwood	6 of 6	0	
Kevin O'Connor ⁺⁺	2 of 3	11	
David Quigg	4 of 6	17	
Peter Scott ^{**}	6 of 6	0	
Sue Suckling	5 of 6	16	
Keith Taylor	5 of 6	10	4
John Waller ⁺⁺	1 of 3	0	
Roger Wallis ⁺	3 of 3	4	

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

* Included in the tally of division meetings are a few meetings where the Panel as a whole met to consider applications for class exemptions.

** Peter Scott is a member appointed to the Panel as the representative of the Australian Takeovers Panel under reciprocal arrangements with the Australian Government which also has the Chairman of the New Zealand Panel sitting on the Australian Panel. Mr Scott is based in Melbourne and is not asked to sit on divisions.

⁺ Members since 1 February 2011

⁺⁺ Members until 31 January 2011

Dealing with conflicts of interests

The Panel is meticulous in dealing with matters where members may be “interested”. The ability to act by division when exercising most of its statutory powers and functions 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 involve the full Panel, members are always asked (unless it is already known) to confirm whether or not they have an interest in the matter. Those members who have an interest do not participate in any meetings relating to that matter nor do they receive papers about it. Generally the Panel executive will not report to the Board on any matter until the Panel’s involvement in that matter is concluded.

A number of Panel members are lawyers who are partners in legal firms that are often involved in takeover transactions. As a consequence, their firms from time to time make applications to the Panel on behalf of clients for exemptions from the Code, and their firms also at times represent clients who are involved in enforcement enquiries or actions made or undertaken by the Panel.

In such cases the division of the Panel which is formed to consider the matter excludes the member whose firm is applying on behalf of a client for an exemption or whose client is involved in a takeover transaction or in an enforcement action. If those clients are of the firm of which the Chairman of the Panel, David Jones, is a partner then not only will he not participate in the division as Chairman, he will also not be involved in the establishment of

the division that deals with the matter. This will be a matter for the Deputy Chairman or in the event that he is interested, a Temporary Deputy Chairperson who does not have an interest.

Where an enforcement matter before the Panel involves a member of the Board, either as a legal adviser to a person the subject of a Panel enquiry, or as a possible witness representing a corporate participant in a Panel enforcement proceeding, the Board imposes a strict rule that that member must not appear before the Panel. The client must be represented by another partner of the law firm involved or by another representative of the company concerned.

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. These documents are prepared by management and approved by the Board. The Panel keeps its business plans under review at each regular Board meeting.

Board performance

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

The Board believes it is important to have the right mix of legal, commercial and market skills on the Panel so that divisions with the right balance of skills can be formed when needed. To this end the Board has developed a succession plan, taking account of the current terms of office and types of experience of existing members. This plan has been discussed with the Minister and with Ministry officials. However, the Board can only make suggestions to officials on these issues because appointments to the Panel are outside of the direct control of Panel members.

The remuneration of Board members is fixed by the Remuneration Authority, and includes a combination of daily rates and hourly rates. These rates are reviewed annually. In the spirit of the current economic times the Panel has not sought any increases in members' remuneration in the last two years but has signaled its intention to revisit the issue this year.

New Board members are provided with extensive induction materials describing the powers and functions of the Panel and the policies and procedures applicable to their role in the Panel.

The Board has developed a Board Governance Manual to ensure it always follows best practice in fulfilling its statutory responsibilities and functions. This manual is based on guidance provided by the State Services Commission and was developed with the assistance of a specialist policy development firm.

Accountability and audit

Risk management

The Panel has an Audit and Risk Committee. The membership of the Committee comprises:

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

The membership of the Committee is reviewed every two years.

The Panel's Chief Executive and Accountant are required to be available to attend meetings of the Audit and Risk Committee but are not members of the Committee.

The Audit and Risk Committee reviews all the Panel's external reporting documents, financial forecasts and budgets. The Committee is also responsible for developing a risk management plan for the Panel.

The Panel is a small organisation but its risks have expanded since it became the employer of its own staff in 2008 and also the occupier of its own premises in 2009.

The Panel does not have a separate internal audit function. Strict separation is maintained between the banking, payments and payment authorisation functions. A limited degree of external review of receipts and payments is provided by the Chairman of the Audit and Risk Committee.

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

The Auditor-General has determined that the Panel's financial statements will be audited by Audit New Zealand. As a market regulator the Panel considers it would be inappropriate to use a private accounting firm as external auditor when that firm might either seek the Panel's approval to be appointed as an independent adviser for the purposes of a Code transaction, or could be involved in an enforcement enquiry undertaken by the Panel.

Legal compliance

The Crown Entities Act gives the Board and Board members responsibility for ensuring the Panel complies with its legal responsibilities.

The Panel uses a proprietary legal compliance programme to facilitate this process. The programme provides questions in respect of the Panel's compliance with more than 20 separate pieces of legislation. Board members and management take part in answering the questions. The outcome of each annual compliance survey is reported to the Board.

Protected disclosure 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 other employees of the Panel.

Stakeholder relations

Stakeholder relations are very important to the Panel. The Panel's stakeholders include the Minister of Commerce, the Ministry of Economic Development, other market regulators such as NZX Limited and the Financial Markets Authority, market practitioners active in the market for corporate control, including legal advisers, investment bankers and corporate advisers, shareholders who may become involved in takeover transactions, the media, and overseas takeovers regulators.

The Board has developed a relationship management plan which ensures that the Panel interacts with its stakeholders at an appropriate level and frequency. Apart from direct meetings with stakeholders the Panel seeks feedback from the market through meetings with groups of market practitioners. The Panel also directly seeks market participants' views

on their interaction with the Panel on particular Code transactions. An on-line survey facility has been developed for this purpose and data from that facility will be available for the 2011/2012 reporting year.

The Panel has developed a culture of openness with the market and the media, but balances this with its obligations of confidentiality. The Panel aims to facilitate the market for changes of corporate control by, where possible, helping participants to comply with the provisions of the Code. The Panel operates as a market facilitator as well as an enforcer.

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.

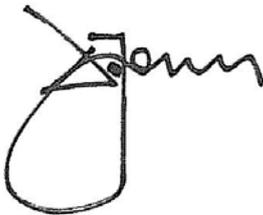
STATEMENT OF RESPONSIBILITY

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.

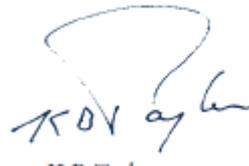
In our opinion these annual financial statements and Statement of Service Performance fairly reflect the financial position as at 30 June 2011 and the operations of the Takeovers Panel for the year ended 30 June 2011.

Signed on behalf of the Panel by:



D O Jones
Chairman

23 August 2011



K B Taylor
Chairman,
Audit and Risk Committee

23 August 2011

STATEMENT OF COMPREHENSIVE INCOME

for the year ended 30 June 2011

Budget 2011		Actual 2011	Actual 2010
\$		\$	\$
	Revenue - operating		
1,494,000	Government grant – baseline funding	1,494,000	1,494,000
16,531	Interest	12 20,759	13,479
350,325	Application fees and costs recoverable	5 171,849	436,712
11,349	Other income	11,758	10,852
<u>1,872,205</u>	Total operating income	<u>1,698,366</u>	<u>1,955,043</u>
	Revenue – litigation fund		
0	Government grant	0	0
0	Recovery of costs	0	0
38,196	Interest	12,4 33,724	31,264
<u>38,196</u>	Total litigation fund income	<u>33,724</u>	<u>31,264</u>
<u>\$1,910,401</u>	Total income	<u>\$1,732,090</u>	<u>\$1,986,307</u>
	Operating expenditure		
12,015	Audit fees	20,500	16,512
57,352	Communication charges	33,975	58,112
20,291	Training and memberships	25,085	17,318
67,913	Depreciation and amortisation	61,435	51,580
245,562	Members' fees	23 220,582	234,483
82,428	Printing and stationery	29,414	46,503
134,774	Consultants and legal	35,215	111,452
116,992	Services and supplies	278,301	135,180
131,616	Rent	131,610	109,675
30,037	Travel and accommodation	37,255	27,817
892,862	Personnel costs	11 856,759	863,339
0	Securities Commission services	3 0	80,527
<u>1,791,842</u>	Total operating expenditure	<u>1,730,131</u>	<u>1,752,498</u>
<u>20,000</u>	Expenditure – litigation fund	<u>4 92,358</u>	<u>9,849</u>
<u>1,811,842</u>	Total expenditure	<u>1,822,489</u>	<u>1,762,347</u>
<u>\$98,559</u>	Net Surplus/Deficit	<u>\$(90,399)</u>	<u>\$223,960</u>
<u>0</u>	Other comprehensive income	<u>0</u>	<u>0</u>
<u>\$98,559</u>	Total comprehensive income	<u>\$(90,399)</u>	<u>\$223,960</u>
	This is comprised of:		
80,363	Comprehensive income -operating /(deficit)	(31,765)	202,545
18,196	Comprehensive income -litigation / (deficit)	4 (58,634)	21,415
<u>\$98,559</u>		<u>\$(90,399)</u>	<u>\$223,960</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

STATEMENT OF FINANCIAL POSITION

as at 30 June 2011

Budget 2011 \$		Actual 2011 \$	Actual 2010 \$
	Current assets		
491,394	Cash and cash equivalents – operations	373,478	227,452
511,997	Cash and cash equivalents – litigation fund	4	29,056
122,807	Term deposits – operations	186,530	180,495
316,543	Term deposits – litigation fund	4	796,603
816	Interest receivable – operating	2,983	867
5,618	Interest receivable – litigation fund	4	8,568
68,616	Trade and other receivables	13	234,986
0	Prepayments	43,351	32,007
0	GST receivable	15,827	0
<u>\$1,517,791</u>	Total current assets	<u>\$1,451,338</u>	<u>\$1,510,034</u>
	Non-current assets		
86,970	Property, plant and equipment	14	134,424
13,699	Software	15	13,015
<u>100,669</u>	Total non-current assets	<u>91,238</u>	<u>147,439</u>
<u>\$1,618,460</u>	Total assets	<u>\$1,542,576</u>	<u>\$1,657,473</u>
	Current liabilities		
51,640	Trade and other payables	17	79,794
60,081	Employee entitlements	16	74,775
2,852	GST payable	0	17,566
<u>\$114,573</u>	Total current liabilities	<u>\$147,637</u>	<u>\$172,135</u>
	Equity		
669,729	Operating funds	629,195	660,960
834,158	Litigation fund	4	824,378
<u>\$1,503,887</u>	Total equity	<u>\$1,394,939</u>	<u>\$1,485,338</u>
<u>\$1,618,460</u>	Total equity and liabilities	<u>\$1,542,576</u>	<u>\$1,657,473</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2011

Budget 2011		Actual 2011	Actual 2010
\$		\$	\$
	Equity at start of year		
589,366	Operating funds	660,960	308,415
815,962	Litigation fund	824,378	802,963
<u>\$1,405,328</u>	Equity at start of year	<u>\$1,485,338</u>	<u>\$1,111,378</u>
80,363	Total comprehensive income- operating/(deficit)	(31,765)	202,545
18,196	Total comprehensive income-litigation/ (deficit)	(58,634)	21,415
<u>98,559</u>	Total comprehensive income	<u>(90,399)</u>	<u>223,960</u>
0	Capital contribution	0	150,000
98,559	Increase (reduction) in equity	(90,399)	373,960
<u>\$1,503,887</u>	Equity at end of year	<u>\$1,394,939</u>	<u>\$1,485,338</u>
	Comprising:		
669,729	Operating funds	629,195	660,960
834,158	Litigation fund	765,744	824,378
<u>\$1,503,887</u>	Equity at end of year	<u>\$1,394,939</u>	<u>\$1,485,338</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

STATEMENT OF CASH FLOWS

for the year ended 30 June 2011

Budget 2011 \$		Actual 2011 \$	Actual 2010 \$
	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
498,562	Application fees and costs recoverable	357,411	335,767
54,727	Interest	51,828	37,686
11,349	Other income	11,758	10,853
0	Goods and Services Tax (net)	0	21,764
	Cash was disbursed to:		
(879,960)	Suppliers	(659,119)	(610,745)
(866,129)	Employees and members	(1,120,211)	(1,080,803)
0	Goods and Services Tax (net)	(33,393)	0
<u>312,549</u>	Net cash inflow (outflow) from operating activities	<u>102,274</u>	<u>208,522</u>
	Cash flows from investing activities		
	Cash was provided from:		
1,420	Receipts from sale of bank deposits	366,634	0
	Cash was applied to:		
(15,000)	Purchase of computer software	0	(9,968)
(4,031)	Purchase of office equipment	(847)	(138,693)
(925)	Purchase of office furniture	(4,387)	(39,073)
	Acquisition of bank deposits	0	(550,618)
<u>(18,536)</u>	Net cash inflow (outflow) from investing activities	<u>361,400</u>	<u>(738,352)</u>
	Cash flows from financing activities		
	Cash was provided from:		
<u>0</u>	Capital contribution	<u>0</u>	<u>150,000</u>
<u>0</u>	Net cash inflow (outflow) from financing activities	<u>0</u>	<u>150,000</u>
294,013	Net increase (decrease) in cash and cash equivalents	463,674	(379,830)
709,378	Add opening cash and cash equivalents	256,508	636,338
<u>\$1,003,391</u>	Closing cash and cash equivalents	<u>\$720,182</u>	<u>\$256,508</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2011

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 2011 were authorised for issue by the Panel on 23 August 2011.

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.

Early adopted amendments to standards

The following amendments to standards have been early adopted:

NZ IAS 24 Related Party Disclosures (Revised 2009) – The effect of early adopting the revised NZ IAS 24 is:

- more information is required to be disclosed about transactions between the Panel and entities controlled, jointly controlled, or significantly influenced by the Crown;
- Commitments with related parties require disclosure
- Information is required to be disclosed about any related party transactions with Ministers of the Crown.

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 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 instruments (its business model) and the contractual cash flow characteristics of the financial assets. The new standard also requires a single impairment method to be used, replacing the many different impairment methods in NZ IAS 39. The new standard is required to be adopted for the year ended 2014. The Panel has not yet assessed the effect of the new standard and expects it will not be early adopted.

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 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 exactly 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.

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 13 April 2010 and published in the Panel's Statement of Intent 2010-2013. 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 SECURITIES COMMISSION SERVICES

Although the Panel is an independent Crown entity, up until August 2009 it had not had its own premises nor equipment. These services were provided by the Securities Commission in terms of an agreement negotiated between the Panel and the Commission on an arm's length basis. From 31 August 2009 the Panel relocated to its own premises and acquired its own IT systems, furniture and fittings.

The Panel had been paying the Commission an overhead contribution in respect of staff the Panel employed and an overhead and salary contribution for the Commission staff utilised by the Panel on a part-time basis. Payments totalled \$80,527 for the two months utilised in 2010. Nil for 2011.

NOTE 4 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 made a further appropriation of \$200,000 (GST inclusive) for the year ended 30 June 2011 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:

	2011	2010
	\$	\$
Government grant received	0	0
Recovery of costs	0	0
Interest received	24,617	22,696
Interest accrued	9,107	8,568
Expenditure on approved litigation	(92,358)	(9,849)
Comprehensive income /(deficit) for the year	(58,634)	21,415
Opening balance	824,378	802,963
Closing balance	<u>\$765,744</u>	<u>\$824,378</u>

This is comprised of:

Cash and cash equivalents		
- Call account	165,474	29,056
- Short term deposits	181,230	0
Term deposits	423,934	796,603
Interest receivable	9,107	8,568
Trade payables	(14,001)	(9,849)
	<u>\$765,744</u>	<u>\$824,378</u>

NOTE 5 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 2011 (on a GST exclusive basis) is as follows:

	2011	2010
	\$	\$
Exemptions	135,898	203,378
Approvals	40,951	32,538
Enforcement – section 32	(5,000)	200,796
Total	<u>\$171,849</u>	<u>\$436,712</u>

NOTE 6 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 7 RECONCILIATION OF STATEMENT OF COMPREHENSIVE INCOME WITH STATEMENT OF CASH FLOWS

	2011	2010
	\$	\$
Net surplus (deficit):	(90,399)	223,960
Movement in non cash items		
Depreciation / amortisation	61,435	51,580
Movement in working capital:		
Increase (decrease) in creditors	(24,498)	27,960
(Increase) decrease in receivables and prepayments	155,736	(94,708)
	<u>192,673</u>	<u>(15,438)</u>
Net cash flows from operating activities	<u>\$102,274</u>	<u>\$208,522</u>

NOTE 8 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:

	2011 \$	2010 \$
Cash and cash equivalents – operations		
- Cash	373,478	227,452
Cash and cash equivalents – litigation fund		
- Cash	165,474	29,056
- Short term deposits	181,230	0
Closing cash balance	<u>\$720,182</u>	<u>\$256,508</u>

NOTE 9 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:

	2011 \$	2010 \$
Loans and receivables		
Cash and cash equivalents	720,182	256,508
Trade and other receivables	61,514	244,421
GST receivable	15,827	0
Term deposits	610,464	977,098
Total loans and receivables	<u>\$1,407,987</u>	<u>\$1,478,027</u>
Financial liabilities measured at amortised cost		
Trade and other payables	115,732	79,794
GST payable	0	17,566
Employee entitlements	31,905	74,775
Total financial liabilities measured at amortised cost	<u>\$ 147,637</u>	<u>\$ 172,135</u>

NOTE 10 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 Aa2, Standard & Poors AA as at 31 December 2010.

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, if not earlier.

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 that the Panel is subject to 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.

Details are as follows:

	Effective Interest Rate	Total \$	Maturities 3 months or less \$	Maturities greater than 3 months \$
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>
2010				
Cash and cash equivalents - operations				
- Current account	0.00%	38,302	38,302	0
- Call account	3.15%	189,150	189,150	0
Term deposits	3.45-3.50%	180,495	0	180,495
		<u>\$407,947</u>	<u>\$227,452</u>	<u>\$180,495</u>
Cash and cash equivalents – litigation fund				
- Call account	3.15%	29,056	29,056	0
Term deposits	3.5-4.9%	796,603	0	796,603
		<u>\$825,659</u>	<u>\$29,056</u>	<u>\$796,603</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 2011, 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 \$4,773 (2010 \$2,182) higher or lower.

NOTE 11 PERSONNEL COSTS

	2011 \$	2010 \$
Salaries	841,558	840,174
Employer contributions to defined contribution plans	11,043	10,648
ACC	3,990	3,244
Contractors	168	1,173
Recruitment*	0	8,100
Total personnel costs	<u>\$856,759</u>	<u>\$863,339</u>

* In 2011 recruitment costs of \$120,090 were classified to the expense item Services and Supplies in the Statement of Comprehensive Income on page 26.

NOTE 12 INCOME FROM FINANCIAL ASSETS

	2011	2010
	\$	\$
Loans and Receivables		
Interest – operations	20,759	13,479
Interest – litigation fund	33,724	31,264
Total interest income from loans and receivables	<u>\$54,483</u>	<u>\$44,743</u>

NOTE 13 TRADE AND OTHER RECEIVABLES

	2011	2010
	\$	\$
Trade receivables	49,424	234,986
Total trade and other receivables	<u>\$49,424</u>	<u>\$234,986</u>

The status of trade and other receivables as at 30 June 2011 is as follows:

	Total	Not past	Up to 30	Over 30
	\$	due	days past	days past
		\$	due	due
			\$	\$
2011				
Gross receivables	49,424	22,830	1,946	24,648
Impairment	0	0	0	0
	<u>\$49,424</u>	<u>\$22,830</u>	<u>\$1,946</u>	<u>\$24,648</u>
2010				
Gross receivables	234,986	29,014	189,284	16,689
Impairment	0	0	0	0
	<u>\$234,986</u>	<u>\$29,014</u>	<u>\$189,284</u>	<u>\$16,689</u>

Included in the gross receivables of 2010 was the amount of \$163,609 (GST inclusive) invoiced to Marlborough Lines Limited which was the subject of High Court proceedings brought against the Panel by that company.

NOTE 14 PROPERTY PLANT AND EQUIPMENT

	Office equipment	Office furniture	Total
	\$	\$	\$
Cost or valuation			
Balance at 1 July 2009	0	0	0
Additions	138,693	39,073	177,766
Disposals	0	0	0
Balance at 30 June 2010	138,693	39,073	177,766
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
Accumulated depreciation			
Balance at 1 July 2009	0	0	0
Depreciation	(40,031)	(3,311)	(43,342)
Balance at 30 June 2010	(40,031)	(3,311)	(43,342)
Balance at 1 July 2010	(40,031)	(3,311)	(43,342)
Depreciation expense	(48,729)	(4,078)	(52,807)
Balance at 30 June 2011	(88,760)	(7,389)	(96,149)
Carrying amounts:			
At 30 June 2009	0	0	0
At 30 June and 1 July 2010	98,662	35,762	134,424
At 30 June 2011	\$50,780	\$36,071	\$86,851

NOTE 15 COMPUTER SOFTWARE

	Computer software
	\$
Cost or valuation	
Balance at 1 July 2009	14,000
Additions	9,968
Disposals	0
Balance at 30 June 2010	<u>23,968</u>
Balance at 1 July 2010	23,968
Additions	0
Disposals	0
Balance at 30 June 2011	<u>23,968</u>
Accumulated amortisation	
Balance at 1 July 2009	(2,715)
Amortisation	(8,238)
Balance at 30 June 2010	<u>(10,953)</u>
Balance at 1 July 2010	(10,953)
Amortisation	(8,628)
Balance at 30 June 2011	<u>(19,581)</u>
Carrying amounts:	
At 30 June 2009	11,285
At 30 June and 1 July 2010	13,015
At 30 June 2011	<u>\$4,387</u>

NOTE 16 EMPLOYEE ENTITLEMENTS

	2011	2010
	\$	\$
Accrued salaries and wages	14,251	36,618
Annual leave	17,654	38,157
Total employee entitlements	<u>\$ 31,905</u>	<u>\$ 74,775</u>

NOTE 17 TRADE AND OTHER PAYABLES

	2011	2010
	\$	\$
Trade payables	73,917	68,282
Accrued expenses	41,815	11,512
Total trade and other payables	<u>\$115,732</u>	<u>\$ 79,794</u>

NOTE 18 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.

	2011	2010
	\$	\$
Not later than one year	131,604	131,604
Later than one year and not later than five years	416,746	526,416
Later than five years	0	21,934
	<u>\$548,350</u>	<u>\$679,954</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. (2010 - no commitments).

NOTE 19 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date. (2010 - no contingent liabilities).

NOTE 20 CONTINGENT ASSETS

There were no contingent assets at balance date. (2010 - no contingent assets).

NOTE 21 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 (2010 \$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 2011 totaled \$25,770 \$23,854. These purchases included the purchase of electricity from Trustpower, air travel from Air New Zealand and postal services from New Zealand Post.

Key management personnel

Mr J.A. Waller, Member of the Panel until December 2010, was appointed as Chairman of the Bank of New Zealand during the 2009 year. The Panel has had banking facilities with the Bank since it received its own funding in 2000. The facilities are provided on normal commercial terms.

The Panel purchased legal services of \$5,536 (2010 \$0) 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.

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.

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

NOTE 22 KEY MANAGEMENT PERSONNEL COMPENSATION

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

	2011	2010
	\$	\$
Short term employee benefits:		
- Members' fees	220,582	234,483
- Senior management team remuneration	441,129	412,789
	<u>\$ 661,711</u>	<u>\$ 647,272</u>

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 2011 \$	Number of Employees 2010 \$
250,001 to 260,000	1	0
240,001 to 250,000	0	0
230,001 to 240,000	0	1
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	1	0
170,001 to 180,000	0	1
160,001 to 170,000	0	0
	<u>2</u>	<u>2</u>

NOTE 23 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 2011 were:

	2011 \$	2010 \$
D.O. Jones (Chairman)	94,083	95,858
C.G. Giffney (Deputy Chairman)	27,823	27,594
M.M. Beattie	7,095	8,242
R.A. Coupe	13,567	20,880
P.M. Greenwood	6,923	7,450
S.M. Horner	7,157	0
K.J. O'Connor	7,148	18,122
D.J. Quigg	14,996	22,167
P.J.M. Scott	0	0
S.H. Suckling	19,775	14,649
K.B. Taylor	14,630	14,920
J.A. Waller	1,505	4,601
R.F. Wallis	5,880	0
Total	<u>\$ 220,582</u>	<u>\$ 234,483</u>

NOTE 24 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. (2010 – no material subsequent events).

NOTE 25 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$173,839 lower than budgeted, primarily because of the lower than expected level of recoveries from exemptions work and enforcement action (no section 32 meetings held during the year).

Expenditure

Total operating expenditure for the year was \$61,711 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 \$161,309 higher than budgeted. This largely relates to recruitment costs in the search for the new Chief Executive and higher than expected costs in subscriptions.

Net operating surplus

The Panel recorded an operating deficit of \$31,765 when a profit of \$80,363 had been expected. This is a result of the lower than expected recoveries from operational activities and some additional expenses relating to staff turnover.

NOTE 26 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 2011

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 2010/2011:

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</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 June 2011 for technical (low policy content) changes to the Code and to have its recommendations approved by the Minister.	No recommendations made. A number have been prepared but are being held back until the full review of technical amendments has been completed.	No recommendations made. A number have been prepared but are being held back until the full review of technical amendments has been completed.

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
Participate as required on projects and reviews.	To be invited to make 3 submissions or contributions on relevant issues.	3 submissions: Legislation Bill, Review of Securities Act, Public Sector Cost Cutting	3 submissions: On Capital Market Task Force Report, on proposals for drafting exemptions, and on summary offence provisions.
Keep under review practices relating to takeover activities by observing market activity through various media each working day.	Continuous.	Continuous.	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 3 inquiries into market practice.	1 initiated (upstream takeovers). As a result policy published on Panel's approach to exemptions for these transactions.	2 (foreign currency consideration and collateral consideration on takeovers).
<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 June 2011.	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.	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>	\$362,000	\$430,107	\$449,774

The complexity of some of the policy issues, resulted in greater time and resource being expended on the consultation process in 2010/11 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;
- 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 2010/2011:¹

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
<u>Quantity</u>			
Applications for approval of independent advisers and independent experts.	40-45	22	34
Applications for consent to withdrawal of offers, and in relation to defensive tactics.	2	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 11 reviewed, 5 had 2 or less comments. The remainder had between 3 and 6 comments.	69% of 16 reports reviewed had 2 or less comments.

¹ Although described as "planned", the number of independent adviser applications reviewed by the Panel is dependent on the level of market activity.

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
<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 90% of cases.	100%	Achieved in 100% of cases.
<u>Revenue (from fees):</u>	\$37,000	\$40,951	\$32,538
<u>Cost:</u>	\$109,000	\$89,302	\$56,634

The greatest contributor to the variance between revenue/cost compared to 2009/2010 relates to the significant staff changes in the executive and therefore loss of corporate knowledge. Not all time spent was charged to applicants in recognition of staff development on the job.

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;
- 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 2010/2011:²

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
<u>Quantity</u>			
Applications for individual exemptions from the Takeovers Code will be processed as received.	28 – 36	12	27
Class exemptions from the Takeovers Code when applied for or at Panel initiative.	2 – 4	2	5

² Although characterised as "planned", the number of exemption applications is dependent on the level of market activity

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
Quality			
The Regulations Review Committee does not recommend disallowance of notices, and notices are not successfully judicially reviewed.	100%	100%	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%	81%	87%
<u>Revenue (from fees):</u>	\$185,000	\$135,898	\$203,378
<u>Cost:</u>	\$544,000	\$379,078	\$451,893

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;
- 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 2010/2011:³

<u>Quantity</u>	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
Review all offer documents.	12	7	7
Review all meeting documents.	24	7	13
Section 32 meetings.	3	0	1
Section 35 actions.	1	0	0
Investigation of possible Code breaches.	25	2	10
Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies.	2	0	1 (Did not seek to appear in Court).
<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.	Only 2 out of 10 formal documents had more than 1. Therefore the measure was met.	Not available.

³ Although described as "planned", the number of offer documents and meeting documents reviewed by the Panel is dependent on the level of market activity

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
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.	100%	One Court challenge to convening of section 32 meeting that Panel has been requested to hold. This issue has not yet been determined by the Court.
<u>Timeliness</u>			
Complete enforcement work within timeframes specified in the Takeovers Act 1993.	100%	N/A	100%
Comply with Court-ordered timetables for legal proceedings under the Companies Act involving Code companies.	100%	N/A	N/A
<u>Revenue (from fees):</u>	\$129,000	\$(5,000)	\$200,796
<u>Cost:</u>	\$661,000	\$694,369	\$657,481

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 2010/2011:

	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</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.	2.	2.
Issue policy statements, guidance notes and commentaries on current issues.	4 times a year.	2 times.	6 times.
Interface with the market through public and private meetings.	12 occasions.	9 occasions.	6 occasions.
Provide news media with relevant information about the Panel and the Takeovers Code.	Continuous.	Continuous.	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 160 enquiries. Respond to enquiries within 3 working days.	136 enquiries received. Responded within 3 days in 100% of cases.	134 enquiries received. Responded within 3 days in 99% of cases.
<u>Revenue:</u>	Nil	Nil	Nil
<u>Cost:</u>	\$127,000	\$205,941	\$134,400

The budget forecast overlooked the costs relating to the two feedback sessions with the market, held in Auckland and Wellington in March 2011. In addition a relatively significant resource went into unbudgeted (for the Panel) work arising from a Securities Commission review of certain exemptions, one of which related to the Code.

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 2010/2011:

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</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.	(0,0)	0 enquiries received. 3 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.	0 time.	1 time

<u>Quantity and Quality</u>	<u>Forecast</u>	<u>Actual 10/11</u>	<u>Actual 09/10</u>
<u>Revenue:</u>	Nil	Nil	Nil
<u>Cost:</u>	\$9,000	\$23,692	\$12,165

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 2011

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 26 to 45, that comprise the statement of financial position as at 30 June 2011, the statement of comprehensive income, statement of movement 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 46 to 55.

Opinion

In our opinion:

- the financial statements of the Panel on pages 26 to 45:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect the Panel's:
 - financial position as at 30 June 2011; and
 - financial performance and cash flows for the year ended on that date.
- the statement of service performance of the Panel on pages 46 to 55:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects, for each class of outputs for the year ended 30 June 2011, 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 23 August 2011. 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.

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

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

Matters relating to the electronic presentation of the audited financial statements and statement of service performance

This audit report relates to the financial statements and statement of service performance of the Takeovers Panel for the year ended 30 June 2011 included on the Takeovers Panel's website. The Members of the Panel are responsible for the maintenance and integrity of the Takeovers Panel's website. We have not been engaged to report on the integrity of the Takeovers Panel's website. We accept no responsibility for any changes that may have occurred to the financial statements and statement of service performance since they were initially presented on the website.

The audit report refers only to the financial statements and statement of performance named above. It does not provide an opinion on any other information which may have been hyperlinked to or from the financial statements and statement of service performance. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and statement of service performance as well as the related audit report dated 23 August 2011 to confirm the information included in the audited financial statements and statement of service performance presented on this website.

Legislation in New Zealand governing the preparation and dissemination of financial information may differ from legislation in other jurisdictions.

Executive of the Takeovers Panel

Margaret Bearsley, Chief Executive Officer
[TBA] General Counsel
Heather McCaskill, Senior Associate
Matthew Tolan, Associate
Julian Sakarai, Solicitor
Lauren Donnellan Solicitor
Hilary Fleming, Accountant/Administrator
Gayle Steere, Personal Assistant to the Chief Executive Officer

How to contact us

Takeovers Panel
Level 3, Solnet House
70 The Terrace
Wellington
Phone (04) 815 8420
Fax (04) 815 8459
Email takeovers.panel@takeovers.govt.nz
Website www.takeovers.govt.nz