

# **TAKEOVERS PANEL**

## **STATEMENT OF INTENT**

**2006/2007 - 2009**

*Presented to the House of Representatives  
Pursuant to section 149 of the Crown Entities Act 2004*

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## **1. KEY BACKGROUND INFORMATION ABOUT THE PANEL**

- 1.1 This Statement of Intent for the Takeovers Panel (“the Panel”) relates to the 2006/2007 financial year and each of the following two financial years.
- 1.2 The Panel is the regulator of the market for the control of “public” companies in New Zealand. It achieves this through the administration of the provisions of the Takeovers Code (“the Code”) and the Takeovers Act 1993 (“the Act”). It carries out a quasi-judicial function when exercising some of its powers.
- 1.3 By the start of 2006/2007, or shortly thereafter, the companies coming within the scope of the Code (“Code companies”) will comprise New Zealand registered companies whose voting securities are listed on the NZX, or were at any time in the previous 12 months, and those companies with 50 or more shareholders.
- 1.4 The Panel administers the rules for takeovers, including making restraining orders when infringements occur. From time to time the Panel grants exemptions from the Code where the rules do not fit the circumstances or would have unintended consequences. The Panel approves the independent advisers who must report on most Code transactions. It informs the market and educates the public about takeovers law and it also advises the Minister on changes it considers are needed to takeovers law.
- 1.5 Given the tight timeframes for takeover procedures in the Code and the size of the transactions involved the Panel has to operate under considerable time pressure in many of the activities it undertakes.
- 1.6 The Panel is a committee of the market. All its members are currently active participants in the corporate world. Members are variously lawyers, company directors, share brokers, merchant bankers, accountants or financial advisers. One member is an Australian lawyer who is also a member of the Australian Takeovers Panel.
- 1.7 The Panel is supported by an executive based in Wellington. The executive is supplied by the Securities Commission under the terms of a memorandum of understanding entered into between the Panel and the Commission. The Panel pays the Commission on the basis of the hours worked for the Panel by professional staff. The rate paid covers the overheads provided by the Commission such as library and secretarial support, premises, computer and phone systems as well as the salary and superannuation costs of staff. The Panel has no employees of its own.
- 1.8 The Panel has regular contact with all market participants, including their advisers.
- 1.9 The Panel’s powers to intervene in takeover transactions mean that legal advisers have to take a very close interest in how the Panel interprets the Code. The executive assists the market in this regard.
- 1.10 In summary, the Panel operates actively in a very high-end market, generally being involved in many of the major corporate transactions being undertaken in New Zealand. It must be professional and responsive to be effective.

## **2. THE NATURE AND SCOPE OF THE PANEL'S FUNCTIONS AND INTENDED OPERATIONS**

2.1 Section 8 of the Act sets out the present functions of the Panel. The functions of the Panel are:

- a to keep under review the law relating to takeovers of specified companies and to recommend to the Minister any changes to that law that it considers necessary;
- b for the purposes of paragraph (a), to keep under review practices relating to takeovers of specified companies;
- c to investigate any act or omission or practice for the purpose of exercising its powers and functions under Part III of the Takeovers Act 1993;
- d to make determinations and orders and make applications to the Court in accordance with Part III of the Act;
- e to co-operate with any overseas regulator and, for that purpose (but without limiting this function), to communicate, or make arrangements for communicating, to that overseas regulator information obtained by the Panel in the performance of its functions and powers (whether or not confidential) that the Panel considers may assist that overseas regulator in the performance of its functions;
- f to promote public understanding of the law and practice relating to takeovers; and
- g to perform such other functions as are conferred on it by the Act.

2.2 The Panel intends to continue to undertake a number of operational activities in the coming years including:

- a Enforcement activities, ranging from reviewing takeover documents, investigating complaints, convening formal meetings to exercise its enforcement powers and seeking orders from the Courts where necessary. Because of the widening of the Panel's powers arising from the passage of the Securities Legislation Bill the Panel expects to undertake an expanded level of enforcement activity in the coming year as market participants test the scope of the Panel's new powers and how it will use them;
- b Approval activities, including the approval of independent advisers and the appointment of independent experts when required under the Code. The level of these activities undertaken is determined by market demand. The Panel sets high standards of competence and independence for approving independent advisers and does not intend to lower its standards. However, the Panel always welcomes new advisers to the market;

- c Exemption activities, including the consideration and granting of individual and class exemptions for a range of events and transactions that are covered by the Code but where some relief from its requirements is appropriate. The level of these activities is also dependent on market demand. When granting exemptions the Panel must ensure they are appropriate and consistent with the objectives of the Code;
- d Educational activities, including publication of *Code Word* and the issue of practice notes and guidance notes to inform the market about the Panel's decisions and policies and to assist practitioners in the market to understand how the Panel views various issues. This is particularly important in 2006/2007 because of the technical changes made to the Code and the broadening of the scope of the Act and Code through the Securities Legislation Bill.

2.3 The Panel also intends to undertake a number of policy and market review activities in 2006/2007 and beyond. The Panel is responsible for keeping under review the provisions of takeovers law and making recommendations to the Minister for changes to that law where appropriate. This is likely to involve:

- a Working with a group of key market participants to investigate and develop responses to issues including the inter-relationship between the Securities Act and the Takeovers Act when takeover offers involving scrip as consideration are involved;
- b Analysis of comments received on a discussion paper issued by the Panel concerning the interaction between the provisions of company law and takeovers law as they apply to schemes of arrangement effected under part XV of the Companies Act 1993;
- c Preparation and publication of a discussion paper considering possible changes that could be made to the law relating to schemes of arrangement and amalgamations to provide greater consistency with the principles of the Code where code companies are involved; and
- d Reviewing the terms of the Panel's class exemptions from time to time to ensure they remain relevant and appropriate.

2.4 The Panel intends to continue with the publication of its occasional newsletter, *Code Word*, as a means of explaining changes to the Code and the Act. *Code Word* is also used to explain key Panel decisions and to publish guidance notes and practice notes. The Panel expects to publish 3 editions of *Code Word* during each year. The Panel Chairman also plans to give public speeches about the Code to relevant conferences and other meetings as a means of improving the market's understanding of takeover matters.

2.5 There will be special attention given in *Code Word* and in public speeches to explain the changes to takeovers law being made through the Securities Legislation Bill and the technical amendments to the Code. The Panel's website [www.takeovers.govt.nz](http://www.takeovers.govt.nz) is kept up-to-date with all publications, policy statements, texts of speeches, and other guidance issued or published by the Panel.

- 2.6 The Panel intends to continue liaising with overseas regulatory bodies involved in regulating takeovers markets in other countries. This involves the Chairman being a member of the Australian Takeovers Panel and a member of the Australian Panel being a member of the New Zealand Panel. It involves ongoing telephone and email communication where needed. It also involves attendance at overseas conferences of takeovers regulators when opportunities arise.
- 2.7 The relationships developed through these contacts have proved invaluable where transactions occurring in both jurisdictions have been involved. They provide a very good understanding of how the laws in each jurisdiction function “from the inside”. They allow for quick access to authoritative views about regulatory policy in each country.
- 2.8 The Panel considers it is very important to get feedback from market participants about its performance. For this purpose a group of Panel members and the executive plans to visit the most active legal and advisory firms on a one-on-one basis to obtain direct feedback. The Panel will also conduct group meetings with other interested market participants. There are expected to be around 16 meetings during the year. The Panel will take account of feedback about the operation of the Code and the performance of the Panel. The format of these meetings may be varied from year to year.
- 2.9 Informal feedback is obtained through the members’ networks of contacts in the business and professional fields. The Panel also monitors media comment on takeovers issues and the performance of the Panel.

### 3. THE PANEL'S SPECIFIC IMPACTS, OUTCOMES OR OBJECTIVES

- 3.1 The "Vote Commerce" section of the Government's annual appropriation statement states that the Panel contributes to economic growth because "*enforcement of the Code ensures equal treatment of shareholders and a transparent takeover process, resulting in confidence of domestic and international investors in the integrity of our market.*" This is a Government **outcome**. "Outcome" is defined in the Public Finance Act as:

*A state or condition of society, the economy or the environment and includes a change in that state or condition (s2(1) of the Public Finance Act).*

- 3.2 The Panel is a small body administering a specialised area of the law. The Panel aims to achieve a number of **impacts** on the Government's target outcome through its work. "Impact" is defined in the Public Finance Act as:

*The contribution made to an outcome by a specified set of outputs, or actions, or both (s2(1) of the Public Finance Act)*

- 3.3 The Panel's overall objective is that of being **an effective and efficient regulator of the takeovers market respected by market participants**.
- 3.4 In managing its resources the Panel puts the highest priority on enforcement, exemption and approval matters. This is because these activities are generally transaction orientated and the Panel must be ready and able to act quickly and effectively in the market as circumstances demand. The Panel also gives a high priority to its function of keeping under review market practices for the purpose of recommending changes to takeovers law to the Minister. However, at times pressure on resources from exemption and enforcement activity has meant that policy work with a longer-term focus has had to be given less attention. The Panel also ensures that its website is kept current and that changes to the law and the Panel's policies are quickly communicated to the market and published.

#### *The Panel's contribution to the relevance and effectiveness of the Code*

- 3.5 The effectiveness of the Code in promoting economic growth depends both on the relevance of the framework of the Code itself and the effectiveness of the Panel in administering its provisions, covering in particular enforcement, exemptions and approvals.
- 3.6 The Panel drafted the initial Code with a view to providing as much flexibility as possible while protecting the interests of shareholders. As an example, unlike other Codes, partial bids<sup>1</sup> are allowed (sometimes with shareholder approval). Thus a bidder can secure control of a target company without having to make an offer for the whole company.

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<sup>1</sup> Partial bids are bids for less than 100% of the voting rights in the target company.

- 3.7 In 2003 the Panel recommended a number of technical changes to the Code which were endorsed by the Government in June 2005 following review by the Ministry. These changes are expected to come into force later in 2006 and should aid the functioning of the takeovers market.
- 3.8 The Panel does not see any need for a fundamental review of the Code's main provisions. However, the Panel has as a function to keep under review the terms of takeovers law, including the Code.
- 3.9 The Panel is able to recommend changes to the Code but is not able to implement them. The Panel is concerned at the time it has taken to implement what it considers are desirable and necessary changes to the Code and would like to see this process streamlined for urgent cases.
- 3.10 As part of the Panel's function of keeping the provisions of the takeovers law under review, the Panel also keeps under review practices relating to the takeover of code companies. Most recently the Panel has focused attention on market transactions involving schemes of arrangement and amalgamations effected under the Companies Act 1993.
- 3.11 The outcome sought by the Crown for its takeovers law is a subset of its overall goal of creating a growing, inclusive and innovative society for the benefit of all. Takeovers law aims to provide for equal treatment of shareholders and a transparent takeover process, giving confidence to domestic and international investors in the integrity of the market.
- 3.12 The **impact** arising from the Panel's function of keeping the Code under review is improvements in the efficiency of the Code by identifying areas of the Code which require correction or would benefit from improvement, developing proposals to achieve those corrections or improvements, seeking public comments on those proposals, and making recommendations to the Minister of Commerce to achieve those changes.

#### *Enforcement of the Code*

- 3.13 The Panel has significant enforcement powers in relation to the Code. Enforcement of the Code's provisions is the largest of the Panel's outputs and is expected to remain so.
- 3.14 The theoretical aim of enforcement is to achieve 100% compliance with the Code. While that obviously will never happen, the Panel's interventions can result in a high level of compliance with the Code by market participants.
- 3.15 Therefore the intended **impact** of the Panel's enforcement function is the continuing improvement in the level of compliance with the Code by market participants.
- 3.16 The Panel achieves this impact in a number of ways, detailed later.

*The granting of exemptions*

- 3.17 The Panel's second most significant output in resource terms relates to the granting of exemptions.
- 3.18 The Code is a relatively brief document, with far-reaching provisions. As a result there are occasions where the Code's provisions do not cover particular transactions or circumstances, or where strict application of the Code would produce unintended or unreasonable consequences.
- 3.19 This was recognised by giving the Panel the ability to grant both individual and class exemptions. Individual exemptions may be retrospective.
- 3.20 The Panel's power to grant exemptions is constrained by the requirement that any exemption be both appropriate and consistent with the objectives of the Code. A Practice Note issued by the Panel in January 2005 outlining the approach followed by the Panel in considering applications for exemption states:

*The Panel will, therefore, in deciding whether an exemption is appropriate, consider whether compliance with the Code is possible and whether compliance would create an inappropriate, unreasonable or unintended result.*

*Furthermore, the exemption itself must be consistent with the objectives of the Code as embodied in the provisions of the Code. Consequently the conditions upon which exemptions are granted are designed to preserve the underlying purpose and intent of the relevant provisions of the Code*

- 3.21 One such example is where a person makes a scrip bid, that is offers securities such as shares, for shares in the target company. Rule 20 of the Code requires that the same consideration be sent to all shareholders in a takeover offer. However where some shareholders are living overseas the New Zealand security offer documents (prospectus and investment statement) may not comply with the securities laws of the countries in which those shareholders reside. The Panel's Practice Note states:

*A number of offerors making scrip offers have sought exemptions from rule 20 to allow them to offer overseas shareholders cash only rather than scrip. In the absence of such exemptions offerors would be required to ensure that their offer complies with securities laws in every country where target company shareholders reside. Compliance with such overseas requirements as well as New Zealand securities law requirements increases the cost and complexity of making a scrip offer for a New Zealand code company.*

*... exemptions in respect of scrip offers and overseas shareholders are an example of addressing a situation where the provisions of the Code have an unintended and undesirable outcome. Scrip offers are an important part of the takeovers market and yet without an appropriate exemption the existence of overseas shareholders would have an undesirable effect on the ability to make scrip offers.*

*Consequently the Panel has a policy that will enable it to grant exemptions from rule 20 in respect of offers to overseas shareholders but only if it is satisfied that the number of overseas shareholders in any jurisdiction is extremely small and the alternative consideration to be offered to overseas*

*shareholders is equivalent to that being offered to remaining shareholders. The Panel's exemptions will not extend to jurisdictions where there are a significant number of overseas shareholders or where it is known that the offer can be properly made using the New Zealand offer documents. This ensures that the purpose of rule 20 is preserved.*

- 3.22 The Panel has granted exemptions to a number of offerors. It has approved a number of mechanisms to ensure that overseas shareholders receive equivalent consideration for their shares to that received by those living in New Zealand.
- 3.23 The intended **impact** of the Panel's exemption function is the improvement in the functioning of the market by allowing otherwise legitimate market practices to occur while still observing the principles of the Code.

*The approval function*

- 3.24 The Panel is required to approve the appointments of independent advisers where these are needed under rules 18, 21 or 22 of the Code or by the terms of an exemption. The Panel is also responsible for appointing independent experts where these are required by rule 57 of the Code.
- 3.25 The role of the independent adviser is very important under the Code. The Panel seeks to ensure that appointed advisers are both independent and competent to do the job required. The Panel issued a Guidance Note about the role of independent advisers under the Code in July 2003 to assist advisers in preparing their reports. The Panel routinely reviews draft reports and makes suggestions to advisers on how to improve them. The Panel also has continuing discussions with advisors through general "feedback" meetings which provide the opportunity for dialogue about any issues of concern.
- 3.26 In one or two instances the Panel has told advisers that they will not be approved for further Code assignments.
- 3.27 The intended **impact** of the Panel's role in relation to the approval of independent advisers is the improvement in the quality of advice given to recipients of takeover offers and to shareholders entitled to vote to approve Code-related allotments and acquisitions.

*Promoting public understanding of the law and practice relating to takeovers*

- 3.28 The Panel has as a function to promote public understanding of the law and practice relating to takeovers.
- 3.29 Takeovers law impacts on people in many ways. Some are involved as bidders or shareholders of bidders. Other interested parties include shareholders in a target company.
- 3.30 Takeovers give rise to many issues. Sometimes they are simply procedural. Sometimes wider economic issues of resource use or regional employment can arise where a takeover involves infrastructure assets or assets in sectors undergoing significant restructuring.

- 3.31 Recently concerns have been expressed at the number of listed companies taken over by private entities or offshore companies, with a consequent loss of companies from the NZX.
- 3.32 The provisions of the Code are aimed at providing a transparent process with adequate time to ensure that the various issues are properly considered.
- 3.33 The intended **impact** of the Panel's function of promoting public understanding of takeovers law is the improvement in public understanding of takeovers law over time.

*International liaison*

- 3.34 The Panel has as a function to co-operate with overseas takeovers regulators on matters where it can use its powers to assist such regulators.
- 3.35 The Panel has a high level of contact with the Australian Takeovers Panel because the Panel's Chairman is a member of the Australian Panel, and a member of the Australian Panel is also a member of the New Zealand Panel.
- 3.36 Members of the Panel executive also have good working relationships with the relevant staff of the Australian Panel and of the Australian Securities and Investments Commission.
- 3.37 The Australian Panel has promoted the formation of an informal group of international takeovers regulators. The group has met twice, in Melbourne in 2002 and in Johannesburg in 2005. The New Zealand Panel has been represented at both meetings and is supportive of the Australian Panel's efforts to bring more formality to the ongoing arrangements.
- 3.38 The intended **impact** of the Panel's international activities is the improvement in the level of co-operation and understanding between international takeovers regulators.

#### **4. HOW THE PANEL INTENDS TO PERFORM ITS FUNCTIONS AND CONDUCT ITS OPERATIONS TO MEET ITS OBJECTIVE AND ACHIEVE ITS IMPACTS**

- 4.1 The Panel comprises ten members experienced in accounting, business or law. This is the governing body of the Panel, and exercises all the Panel's powers. The chairman is an experienced commercial lawyer and company director.
- 4.2 One of the features of the Panel's operations is its ability to form "divisions", comprising a minimum of three members, to attend to most matters before the Panel. Under the Act the appointed division is "the Panel" for the particular matter.
- 4.3 The only times where the Panel is not able to operate by divisions is where it is considering class exemptions or is making recommendations to the Minister for changes to takeovers law. In practice the great bulk of the Panel's work is done by divisions.
- 4.4 The Panel has a small professional executive team, primarily lawyers, with the Senior Executive Officer who is an accountant, to support the Panel's operations. The Panel is also able to use the Commission's Communications Manager and an accountant on a part-time basis.
- 4.5 The Panel has no staff of its own, all staff being employed by the Securities Commission. There are special provisions in the Securities Act to provide that the Commission can provide services to the Panel as one of its functions.
- 4.6 The Panel has a memorandum of understanding with the Commission which sets out the basis of the relationship between the two bodies. This covers the level of professional staff time and other services (premises, IT systems, phone systems) to be provided by the Commission and the cost to be paid by the Panel. The cost is based on an overall single charge-out rate per professional hour worked for the Panel which covers all the relevant salary and overhead costs.
- 4.7 The following sections set out in broad terms how the Panel intends to perform its functions and conduct its operations to achieve its impacts.

##### *Framework of the Code (including review of market practices)*

- 4.8 The 2005/2006 year has seen considerable resources used on supporting the Ministry in the making of a range of technical amendments to the Code. These were first recommended by the Panel in December 2003. The Panel has an ongoing liaison role with the Ministry and Parliamentary Counsel Office in the development of these regulations.
- 4.9 The 2005/2006 year has also seen considerable resources used in commenting on law reform proposals promoted by the Ministry, for example in relation to the changes affecting takeovers law being implemented through the Securities Legislation Bill.

- 4.10 The Panel will continue to draw on its experience with administration of the Code, including its enforcement functions and exemption activities, to identify aspects of the Code where amendment is considered urgent and/or essential. It will work with the Ministry in promoting desirable changes.
- 4.11 The Panel is concerned at the processes which seem to be required to bring about a change in the Code and intends to explore this issue with the Ministry.
- 4.12 If the Panel becomes aware of matters in the Code that need urgent amendment it would develop proposals to solve the identified difficulty and circulate those proposals for public comment. Following a period of consultation the Panel would then make appropriate recommendations for change to the Minister.
- 4.13 The Panel has no current intention of promoting any further technical amendment to the provisions of the Code in the coming years, but could do so. The Panel sees no need to undertake a review of the fundamental provisions of the Code. They are now well understood by the market and firmly entrenched. However, there are problems which need to be addressed in the interrelationship between the Companies Act, the Securities Act and the Takeovers Act as they impact on changes in the control of companies.
- 4.14 The Panel will use its own staff to develop policy papers, guidance notes and practice notes relating to issues affecting the Code.
- 4.15 The Panel publishes guidance notes and practice notes to indicate to the market how practitioners should be dealing with particular issues arising under the Code or how the Panel will administer particular sections of the Code.
- 4.16 As discussed earlier (see paragraph 3.21) the Panel has identified a potential difficulty with the application of New Zealand securities law to takeovers where scrip is offered as consideration. To complement the skills already available to the Panel through its own members and the executive the Panel approached a group of experienced takeovers practitioners who agreed to look into the issue and develop policy proposals for consideration by the Panel. The Panel appreciates the assistance of this group of lawyers.
- 4.17 All these activities are aimed to ensure the Code fulfills its purpose of providing an efficient basis on which to conduct takeover activity in New Zealand. The level of impact the Panel is able to achieve towards this purpose is affected by the level of resources the Panel is able to put into the activity.

#### *Enforcement of the Code*

- 4.18 The Panel makes extensive use of its executive resources for enforcing the provisions of the Code.
- 4.19 All the main takeover documents are required by the Code to be provided to the Panel at the same time they are served on the target company or sent to the shareholders. On receipt these documents are reviewed by Panel staff for compliance with the Code. Once the prospective technical amendments to the Code are promulgated takeover

participants will be obliged to send the Panel any other documents sent to shareholders relating to the offer or transaction.

- 4.20 It is common for compliance issues to be identified in takeover documents reviewed by Panel staff. The Panel is also made aware of compliance issues through complaints by shareholders and other principal parties to a transaction.
- 4.21 The Panel executive routinely monitors NZX company announcements and (including through a clipping service) New Zealand newspapers for transactions which appear to have Code implications.
- 4.22 Where issues are relatively minor these are usually dealt with in discussion with the legal advisers to the party involved. Appropriate correcting action is taken by agreement and without recourse to the Panel's formal powers.
- 4.23 Where more serious issues arise the matter may be referred to a division of the Panel. If the Panel considers there may be non-compliance then the non-compliant party will be advised of this and told the correcting action the Panel considers is necessary.
- 4.24 If non-compliance appears to be reasonably serious and the issues cannot be resolved then the Panel is likely to exercise its formal powers and convene a meeting under section 32 of the Act.
- 4.25 The Panel normally retains senior external counsel to assist with such meetings. A section 32 meeting must be held within 7 days of being called and the Panel must reach a decision within two days of calling the meeting if restraining orders are to be made or continued. Each meeting usually involves four Panel members and two members of the executive. They are often for a full day but on occasion have taken two full days. The Panel's full decision will be advised to the parties and published as quickly as possible, usually within two days of the meeting.
- 4.26 If the Panel has determined that non-compliance has occurred then it is likely to issue restraining orders freezing the situation for up to 21 days. This period allows the parties to resolve the matter with the Panel or for the Panel to take the matter to Court to have the Court make final orders.
- 4.27 If matters proceed to Court the Panel may use the services of a law firm to provide litigation support.
- 4.28 The Panel has a litigation fund of \$675,000 provided by the Crown to meet the costs of litigation it initiates or to which it has to respond. The Crown is committed to topping up this fund (within limits) as it is used.
- 4.29 The section 32 process is very intensive and the Panel aims to have adequate staff to enable more than one section 32 action to be undertaken at any one time.
- 4.30 The Panel believes that the resources it puts into enforcement of the Code provide a reasonable prospect that breaches of the Code, particularly where they involve listed companies, will be detected and investigated. Unfortunately there is no reliable way to measure precisely how compliance standards are improving. The evidence is anecdotal.

- 4.31 In 2006/07 and future years the Panel's enforcement role will be significantly expanded by changes being made to the Code through the Securities Legislation Bill particularly concerning the prohibition on misleading and deceptive conduct in takeover transactions.
- 4.32 The Panel has been preparing for these changes by developing policies for dealing with complaints that may arise under the expanded provisions of the Code and by researching the law underlying the new provisions. When the new provisions come into force the Panel will be ready.
- 4.33 The aim of enforcement activity is to raise the standard of compliance with the Code and thus facilitate the operation of the takeovers market. Sometimes this may mean having to have share acquisitions that were made in breach of the Code unwound by a sale of shares. Often it means having to have documents corrected. In the more extreme cases it may be necessary to have recourse to the Courts in order to achieve an appropriate and effective solution.
- 4.34 From the feedback the Panel receives it is clear that the Panel is having a significant impact on the level of compliance with the Code.

*The power to grant exemptions*

- 4.35 Next to enforcement the Panel's highest priority activity relates to the exercise of the power to grant exemptions from the Code.
- 4.36 The Code is a reasonably brief document expressed in quite broad terms. This means that there are many occasions where its provisions do not "fit" a particular transaction or where its strict application would have unintended or unexpected consequences.
- 4.37 The Panel receives many requests for exemptions. A significant number are declined because they are either inappropriate or their granting would be inconsistent with the objectives of the Code. The Panel will not grant exemptions that attempt to alter any of the fundamental parameters of the Code.
- 4.38 As discussed earlier (see paragraph 4.16) an issue for the Panel is the interaction between the scheme of arrangement provisions in Part XV of the Companies Act, the amalgamation provisions in Part XIII of the Companies Act, and the mechanisms provided in the Code as they relate to changes in control of code companies.
- 4.39 There are no statutory exemptions from the Code for transactions undertaken under Parts XIII and XV of the Companies Act, and nor are there any statutory provisions that preclude code companies from using the provisions for schemes of arrangements and amalgamations in the Companies Act.
- 4.40 Some amalgamations and schemes, depending on how they are structured or (in the case of schemes) presented to the Courts, do not come within the jurisdiction of the Code. Other schemes and amalgamations are covered by the Code and may require an exemption from the Panel before they can proceed. Sometimes schemes can proceed using the existing provisions of the Code.

- 4.41 These exemptions, where requested, have proved very challenging for the Panel. The Panel has recently released a discussion paper seeking public submissions on the policy it proposes to follow in considering these exemptions. The paper also asks specifically about the interrelationship between the Code and the amalgamation and scheme provisions of the Companies Act.
- 4.42 When an exemption application is received the Panel executive analyses the issues arising from it. After clarifying any outstanding issues with the applicant the executive prepare a report for the responsible division appointed to deal with the matter. This report is then considered by the Panel (being the responsible division) and a decision made. If it is decided to grant an exemption instructions are given to Parliamentary Counsel Office to draft the particular exemption. After checking this is signed by a member of the Panel (usually the Chairman) and published in the *Gazette*.
- 4.43 The Panel aims to meet the timing requirements of the market for exemptions. This can sometimes impose considerable strain on the Panel's resources. Exemptions are a significant area of work for the Panel's members and executive. The aim in granting exemptions is to retain all the disciplines and policies of the Code but also to avoid unintended or unexpected outcomes arising from the application of the strict rules of the Code.
- 4.44 Every exemption granted improves the functioning of the market by removing an impediment contained in the existing law or by providing a framework within which an otherwise legitimate transaction can be undertaken where none is contained in the Code or any existing class exemptions.

#### *Approvals under the Code*

- 4.45 A further important part of the Panel's activities involves the granting of approvals for independent advisers to carry out various roles under the Code and for the appointment of independent experts where required by rule 57 of the Code.
- 4.46 The Panel has published its policy for the approval of advisers on its website. Any time that an adviser is required under rule 18, rule 21 or rule 22 of the Code the company required to appoint the adviser will go through a process to find a suitable adviser and then that adviser will apply to the Panel for approval.
- 4.47 The application is processed by the executive. If there are any queries about the independence or competence of the adviser these are taken up by the executive. New advisers are asked to produce copies of their past work so that the Panel can assess their experience and competence. The executive then reports to the responsible division of the Panel, which will make a decision on the application.
- 4.48 The Panel aims to approve applications within 3 working days of receiving a completed application with all information required by the Panel. It usually achieves this aim.
- 4.49 To try and maintain a good standard of adviser reports the Panel published a guidance note about the role of independent advisers in July 2003. This is available on the Panel's website and outlines the Panel's expectations in relation to each type of report required under the code.

- 4.50 In furtherance of this aim the Panel also has a policy of having the executive review draft reports before they are sent to shareholders. Given the tight deadlines in the Code most often these reviews have to be undertaken in less than 48 hours. Many reports are of a high standard and may require no comment or need correction only on a few points relating to Code matters. Unfortunately other reports have required considerable executive input, sometimes resulting in the Panel seeing several successive drafts.
- 4.51 Two or three advisers have been told by the Panel that they will not be approved again. Those advisers have been given the right to be heard by the Panel.
- 4.52 The Panel has no doubt that the standard of independent adviser reports prepared under the Code has been improved as a result of the standards it has adopted for the approval of independent advisers, the publication of its guidance note, and the effort it has put into reviewing and commenting on draft reports. While the Panel has no plans to change these policies it actively seeks feedback from market participants to ensure its comments are useful and well directed.
- 4.53 Although the Panel reviews draft adviser reports it never seeks to influence the adviser's assessment of the value of the target company by commenting on valuation outcomes or the merits of the transaction. That would be wholly inappropriate. The Panel's approach is to ensure that these issues are well addressed, including, in particular, both short- and long-term effects on control.
- 4.54 The Panel itself has the responsibility of appointing independent experts where these are required for the purposes of the Code's compulsory acquisition provisions. When the Panel is required to appoint an independent expert it goes through a process of seeking expressions of interest from firms with valuation expertise that are not already conflicted by previous involvement with the transaction or any of the main parties. The Panel then chooses the most appropriate firm for the assignment.
- 4.55 The Panel does not review the independent expert's report before it is given to the bidder and the target company. This is to avoid any suggestion that the Panel has influenced the outcome of the valuation.

*Public education activities*

- 4.56 The Panel uses a number of means to promote public understanding of takeovers law. These include:
- a Publication of the Panel's newsletter *Code Word* as required, usually two to four times a year depending on what is occurring in relation to takeovers (changes in the law, Panel enforcement and exemption decisions), including distribution to a list of several hundred recipients;
  - b Maintenance of a website that is kept up-to-date with all Panel decisions, news releases, speeches, discussion papers, practice notes etc;
  - c Publication of practice notes and guidance notes explaining how market participants should relate to the Panel and how the Panel interprets various sections of the Code;

- d Giving public speeches to relevant seminars explaining issues around the Panel's activities and takeovers law;
- e Meeting with market participants in "feedback" sessions to both gauge the effectiveness of the Panel in dealing with its stakeholders and to explain issues which have arisen over the previous year;
- f Communication with affected shareholders through telephone calls, email messages and correspondence explaining the application of the Code in particular circumstances.

- 4.57 The Panel's promotion role involves most members and the executive.
- 4.58 The Panel shares its Communication Manager with the Commission. She and her staff are responsible for producing *Code Word* and maintaining the Panel's website.
- 4.59 Most public speeches are given by the Chairman of the Panel. The feedback meetings, of which there were some 14 in 2005/2006, involve three to four Panel members and a representative of the executive. The format of these meetings will be varied over time. All of the executive are involved with telephone and written enquiries from the public.
- 4.60 Takeovers tend to attract their own publicity, for a variety of reasons. It is on such occasions that questions about the application of the Code are often raised. The Panel is willing, through its senior personnel, to assist journalists with background information so that the public will get an accurate understanding of issues of public interest.
- 4.61 The Panel believes that its current approach to promoting public understanding of takeovers law is effective in raising the level of public understanding of takeover law and is appropriate given the level of the Panel's resources that it has available to put into this activity.

#### *International liaison*

- 4.62 The Panel co-operates with overseas takeovers regulators when asked to do so and within the limits of its powers. The Panel calls on assistance from overseas regulators when there is a need to do so. This has proved invaluable recently in relation to proposed merger transactions involving Australian and New Zealand companies.
- 4.63 The membership of the Australian Panel by the Panel's Chairman, and of New Zealand's Panel by a member of the Australian Panel, ensure ongoing close linkages between the two regulators. These appointments were made pursuant to the Government's aims of progressing a single economic market with Australia within the framework of the Memorandum of Understanding on Business Law Coordination between the two countries.
- 4.64 The New Zealand Panel has been represented at two recent international conferences of takeovers regulators and will continue to support the formation of an informal grouping of takeovers regulators currently being promoted by Australia. Relationships

with other regulators are enhanced by participating in these conferences and by being part of the informal grouping of regulators.

- 4.65 The Panel spends only a modest sum on this output. The principal expenditure is on participation in overseas conferences when these occur. The Panel has received no notification of the time or place of the next takeovers regulators conference.
- 4.66 The Panel is satisfied that its current activities enhance and improve the level of co-operation with overseas takeover regulators without the need for significant expenditure.

## **5. MANAGING THE PANEL'S ORGANISATIONAL HEALTH AND CAPABILITY**

- 5.1 The Panel is a people organisation. It is also a relatively new organisation, having received its own funding only since late 2000 to function as the Crown entity administering the provisions of the Code. (Prior to that date the Panel was a policy-making body funded through the Ministry of Economic Development.)
- 5.2 At the time of its metamorphosis into a funded operating body the decision was made to have the Panel serviced both as to professional staff and also physical services such as offices, meeting rooms, computer systems, library and support services, by the Securities Commission. This arrangement has undoubtedly saved the Crown considerable start-up costs and there are also ongoing savings through shared premises and services.
- 5.3 There is a memorandum of understanding in place between the Panel and the Commission which governs the relationship between the two bodies. It also covers the arrangements for payment by the Panel to the Commission for the cost of the services provided. Each year a rate is agreed between the Panel and the Commission as to the amount which will be paid by the Panel to the Commission for each professional staff hour in the coming year.
- 5.4 The two main issues affecting the Panel's ongoing corporate health and capability are maintaining an effective membership and recruiting and retaining appropriately qualified and experienced staff.
- 5.5 The Panel has provision for 11 members but currently has 10 appointed. Members are now appointed by the Governor-General on the recommendation of the Minister of Commerce. There is one position left deliberately vacant in case a matter arises where there are insufficient non-conflicted members to enable the Panel to exercise its statutory powers and functions. In such an instance, a new, suitably qualified member would be appointed for an appropriate period.
- 5.6 Panel members must be qualified or experienced in business, law or accounting. The Panel currently has a group of members with considerable experience in the operation of the Code and the Panel, a number of whom were involved with the drafting of the Code in the mid-1990's. The terms of a number of members, including that of the Chairman, expire in the 2006/2007 financial year. The Panel is working closely with the Ministry and with the Minister to manage the period of change in membership to minimise disruption to the operations of the Panel.
- 5.7 One factor which may make it difficult to attract members of the calibre the Panel needs to be an effective regulator is the level of remuneration paid to members. This level is set by the Remuneration Authority, effective from the time the Crown Entities Act 2004 came into force in January 2005.
- 5.8 The Panel believes that unless the rate of members' remuneration is increased to a level equivalent to that paid to members of comparable bodies there is a risk of not

being able to attract appropriate people to become Panel members. This has important implications for the effectiveness of the Panel as the regulator of the takeovers market.

- 5.9 All Panel “staff” are employees of the Commission. Currently there is a Senior Executive Officer, a Counsel, a Senior Lawyer, a Solicitor and a Law Clerk. There is one vacancy for a solicitor. Panel staff are supported by a full-time personal assistant. The Panel also has a Communications Manager who it shares with the Commission, and an accountant who is also shared. Additional Commission staff have assisted the Panel from time to time during very busy periods.
- 5.10 Remuneration and terms of employment of Panel “staff” are set by the Commission, not the Panel, although the Chairmen of the Panel and the Commission consult about the remuneration of the Senior Executive Officer.
- 5.11 The Senior Executive Officer is involved with the recruitment of new staff to work for the Panel, and in the annual performance reviews of Panel staff.
- 5.12 In these ways the Panel has influence over, but not full control of, the recruitment and remuneration of key personnel.
- 5.13 The Commission has modern premises and employs progressive management practices in the running of its business. This is evidenced, among other things, by the Commission being assessed as the second-best of all “small places to work” in New Zealand in the annual survey carried out by the “Unlimited” business magazine. The Panel staff have the benefit of access to activities and services which the Panel, if it were a stand-alone entity, could not provide.
- 5.14 Panel staff have the opportunity to undertake appropriate training and to participate in relevant conferences and seminars.
- 5.15 The Panel uses the Commission’s IT systems. Part of those systems includes off-site back up for all computer files and records. The Panel’s key documents are recorded and stored off-site as back-up in the event of fire or earthquake affecting the Panel’s premises. The Commission has taken precautions to deal with a potential bird-flu pandemic.
- 5.16 The Panel is satisfied that it is effectively managing the Panel’s ongoing organisational health and capability.

## **6. THE MAIN FINANCIAL AND NON-FINANCIAL MEASURES AND STANDARDS BY WHICH THE FUTURE PERFORMANCE OF THE PANEL MAY BE JUDGED**

### *Financial measures*

- 6.1 The main financial measure by which the Panel believes that it may be judged is the achievement of ongoing viability in terms of section 51 of the Crown Entities Act.
- 6.2 Because of the nature of the Panel's revenue and expenditure it is not appropriate to set more specific goals such as a level of third party income, a return on accumulated funds or a financial break even.
- 6.3 The Panel is very cost conscious. It uses a minimum number of members and staff on each matter before it. The work programme is closely monitored by the Panel and updated through the year. Most meetings are held by telephone although the Panel has 8 scheduled full meetings a year and formal enforcement meetings are always physical meetings where all parties are present.
- 6.4 If the Panel's activities appear to be jeopardising its financial viability then, in terms of its Output Agreement with the Minister of Commerce, it would notify the Ministry promptly and seek an appropriate solution, which may entail additional Crown funding.

### *Non-financial measures*

- 6.5 The Panel is given funding from the Crown on the basis of a range of performance measures and performance standards. These are set out in detail for 2006/2007 in the Panel's forecast Statement of Service Performance included later in this Statement of Intent. The Panel considers that the main non-performance measures by which its performance can be judged over the next three years are:
  - a Proposals for changes to the Code and takeovers law: measured by the extent of acceptance of the Panel's recommendations by the Minister of Commerce; aim is for 95% acceptance of proposals.
  - b Exercising of enforcement powers: measured by the extent to which Panel decisions are challenged in Court and, if challenged, by the degree of endorsement by the Court of the Panel's decisions; aim is to have no challenges to the decisions in Court and, if challenged, to have 100% endorsement by the Court.
  - c Exercising of exemption powers: measured by the extent to which Panel decisions are endorsed or accepted by market participants and the media; aim is for 100% endorsement or acceptance by market participants (through feedback) and for absence of adverse market comment.

- d Exercising of approval powers: measured by the quality of independent advisers' reports as assessed internally and in published media; aim is to reduce the level of Panel comment on draft reports to two comments per report and to achieve a favourable balance of comments on the reports in the media.
- e Promoting public understanding of takeover law: measured by the extent to which Panel decisions, law changes and Panel policy statements are communicated effectively to the market; aim is to have information published within one month of the law being changed and within one week of decisions being made.

## **7. RELATIONSHIP WITH THE MINISTER AND MINISTRY**

### *Consultation with Minister and Ministry*

- 7.1 The Panel is an Independent Crown Entity with a statutory guarantee of its independence in all matters relating to the exercise of its powers and the carrying out of its functions. There are therefore no matters relating to the exercise of its powers or the carrying out of its functions on which the Panel would consult with the Minister or Ministry or notify the Minister or Ministry before making a decision.
- 7.2 However, the Panel is involved in a consultation process with the Minister and the Ministry in relation to the appointment of new members. The Panel is also likely to give the Minister and the Ministry an indication of its thinking on policy issues before making any final decisions because its recommendations could have implications for the Government's legislative programme. They may also impact on other Government initiatives.
- 7.3 If issues arose of a fundamental nature about the Panel's operations, for example concerning its relationship with the Securities Commission, this would have significant funding implications for the Crown. Accordingly it is unlikely that any decision would be made on such matters without first consulting with the Minister and the Ministry.

### *Reporting to Minister and Ministry*

- 7.4 The Panel currently reports to the Minister on a quarterly basis and expects to continue with this level of reporting in future years. This is determined by the annual Output Agreement with the Minister.
- 7.5 The Panel proposes to report to the Minister on its:
- a Financial performance;
  - b Achievement of outputs;
  - c Use of its litigation fund;
  - d Outlook for the remainder of the financial year,
- on a quarterly basis through the year in accordance with its Output Agreement with the Minister. These reports are provided in the first instance to the Ministry who will brief the Minister as required.
- 7.6 The Panel maintains an ongoing relationship with the Ministry on current issues. It provides responses to Ministerial correspondence and questions in the House as required.

**8. ACQUISITION OF SHARES OR OTHER INTERESTS**

- 8.1 The Panel has no intention of acquiring any shares or interests in any partnership, joint venture or other association of persons, or any other interest in a company, for the purposes of section 100 of the Crown Entities Act in the next three years.

**9. OTHER MATTERS REQUIRED TO BE DISCLOSED**

- 9.1 There are no other matters that are required to be disclosed in this statement of intent as a result of any other Act of Parliament, including the Takeovers Act 1993.
- 9.2 The Panel does not consider that there are any other matters that should be disclosed that are reasonably necessary to achieve an understanding of the Panel's intention and direction.

## FORECAST STATEMENT OF SERVICE PERFORMANCE

For the year ended 30 June 2007

### FORECAST PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

#### **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 specified 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. These improvements will enhance the effectiveness of the Code in promoting economic growth and the Panel in administering the Code's provisions.

#### *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;
- working with key market participants to investigate and develop responses to issues, including the inter-relationship between the Securities Act and the Takeovers Act when takeover offers involving scrip as consideration are involved;
- analysing comments received on a discussion paper issued by the Panel on the interaction between the provisions of company law and takeovers law as they apply to schemes of arrangement effected under part XV of the Companies Act 1993;
- making recommendations to the Government relating to the use of the amalgamations provisions in part XIII of the Companies Act 1993 by Code companies;
- 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.

#### *Planned performance standards and performance measures for 2006/2007:*

<p><b><u>Quantity and Quality</u></b> Keep the Takeovers Code and the Takeovers Act 1993 under review and recommending amendments to the Code as necessary.</p> <p>Participate as required on projects and reviews.</p>	<p>The Panel will comply with its obligations under the Takeovers Act 1993 and with other relevant legislation. It will aim to ensure that the provisions of the Code are effective and relevant to market practice. It will base its work on accurate research into, and analysis of, the existing law and</p>
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<p>Keep under review practices relating to takeover activities.</p> <p>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</p>	<p>practice. It aims to achieve 95% acceptance of its proposals by the Minister.</p> <p>Continuous</p> <p>3</p>
<p><b><u>Timeliness</u></b> Recommendations for amendments to the Code will be made promptly.</p> <p>Complete inquiry work promptly.</p>	<p>1 per year</p> <p>Review work to be based on accurate research into, and review of, existing practices, including feedback from market participants.</p>
<p><b><u>Revenue:</u></b> Nil</p> <p><b><u>Cost:</u></b> \$262,900</p>	

**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. Such improvements will further ensure the equal treatment of shareholders and a transparent takeovers process.

*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.

*Planned performance standards and performance measures for 2006/2007:*

<b><u>Quantity</u></b> Applications for approval of independent advisors and independent experts.	40
Applications for consent to withdrawal of offers, and in relation to defensive tactics.	2
<b><u>Quality</u></b> Applications processed in accordance with the law, the Panel's published policies, the rules of natural justice and having regard to feedback from market participants.	100%. Reduce Panel comments to two per report and achieve favourable balance of public comments about reports.
<b><u>Timeliness</u></b> Within 3 working days of receipt of complete application.	To be achieved in 80% of cases.
<b><u>Revenue:</u></b> \$58,000	
<b><u>Cost:</u></b> \$107,100	

### **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 purpose, intent and objectives of the Code.

#### *Impact:*

The improvement in the functioning of the Code as the regulatory mechanism for corporate takeovers and the improvement in the functioning of the market by removing impediments in the Code or by providing a framework within which transactions can be undertaken. Proper functioning of the Code and market will result in a takeovers market that has the confidence of market participants, both domestic and international.

#### *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.

*Planned performance standards and performance measures for 2006/2007:*

<b><u>Quantity</u></b> Applications for individual exemptions from the Takeovers Code.	30
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Class exemptions from the Takeovers Code.	4
<b>Quality</b> Applications processed in accordance with the law, the rules of natural justice and having regard to feedback from market participants.	100% acceptance or endorsement by market participants and the media.
<b>Timeliness</b> Within timeframe agreed with applicants.	100%
<b>Revenue:</b> \$233,000  <b>Cost:</b> \$389,500	

**OUTPUT 4: Enforcement:**

To maintain oversight of takeover activity in New Zealand and to intervene, where necessary, in accordance with the Panel's statutory powers.

*Impact:*

The improvement in the standard of compliance with the Takeovers Code and facilitation of the operation of the takeovers market. Non-compliance with the Code is undesirable as it results in unequal treatment of shareholders and a non-transparent takeover process.

*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.

*Planned performance standards and performance measures for 2006/2007:*

<b>Quantity</b> Review of offer documents.	20
Review of meeting documents.	12
Section 32 meetings.	8
Section 35 actions.	1

Investigation of possible Code breaches.	35
<b><u>Quality</u></b> Documents reviewed for compliance with the law.	90% of all potential documents.
Remedial action initiated to correct deficiencies.	100%
Action taken in accordance with the law.	100% with no Court challenges or Court endorsement, where challenged.
Meetings conducted in accordance with the law and the rules of natural justice.	100%
<b><u>Timeliness</u></b> Complete enforcement work within timeframes specified in the Takeovers Act 1993.	100%
<b><u>Revenue:</u></b> \$150,000	
<b><u>Cost:</u></b> \$954,240	

#### **OUTPUT 5: *Public Understanding:***

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

##### *Impact:*

The improvement in public understanding of takeovers law over time, in particular, the improvement in the public's knowledge of the provisions of the Code. Improving public understanding and knowledge of the Code will enhance the public's confidence in the transparency of the takeovers process and in the public's confidence in the integrity of the market.

##### *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 sections 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 of issues of public interest.

*Planned performance standards and performance measures for 2006/2007:*

<p><b><u>Quantity, Quality and Timeliness</u></b> Publish a publication designed to provide information about the Takeovers Code and relevant law.</p> <p>Issue policy statements, guidance notes and commentaries on current issues.</p> <p>Interface with the market through public and private meetings.</p> <p>Provide news media with relevant information about the Panel and the Takeovers Code.</p> <p>Maintain a web-site with relevant information about the Takeovers Code and Takeovers Act 1993 and activities of the Panel.</p> <p>Receive miscellaneous enquiries from members of the public and professional firms.</p>	<p>3 times a year, with publication within one month of significant changes to the law affecting takeovers.</p> <p>3 times a year</p> <p>16 meetings a year</p> <p>Continuous.</p> <p>All relevant material posted promptly to the website, within 5 working days of the event or decision.</p> <p>Receive 200 enquiries. Respond to inquiries within 3 working days.</p>
<p><b><u>Revenue:</u></b> Nil</p> <p><b><u>Cost:</u></b> \$214,200</p>	

**OUTPUT 6: *International Liaison:***

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, 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;
- co-operating, on request, with overseas takeovers regulators on various regulatory matters within the Panel's powers.

*Planned performance standards and performance measures for 2006/2007:*

<p><b><u>Quantity and Quality</u></b>          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.</p> <p>Maintain reciprocal membership between Australian and New Zealand Takeovers Panels.</p>	<p>Respond to enquiries from overseas bodies within five working days.</p> <p>Maintain one Australian Panel member on New Zealand Panel and one New Zealand Panel member on Australian Panel.</p>
<p><b><u>Timeliness</u></b>          Panel representatives to meet regularly with overseas bodies.</p>	<p>1 time per year</p>
<p><b><u>Revenue:</u></b> Nil</p> <p><b><u>Cost:</u></b> \$19,500</p>	

## **FORECAST FINANCIAL STATEMENTS OF THE PANEL FOR THE YEAR ENDING 30 JUNE 2007**

### **INTRODUCTION**

The forecast financial statements presented here for the reporting entity, the Takeovers Panel, are prepared pursuant to section 142 of the Crown Entities Act 2004. The Panel is a Crown entity for legislative purposes and a public benefit entity for financial reporting purposes.

The Panel is responsible for the forecast financial statements presented, including the appropriateness of the assumptions underlying the forecast financial statements and all other required disclosures.

The preparation of forecast financial statements in conformity with FRS-42 requires management to make judgments, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. Actual financial results achieved for the period covered are likely to vary from the information presented, and the variations may be material.

These forecast financial statements have been prepared in accordance with New Zealand Financial Reporting Standard No. 42: Prospective Financial Statements (FRS-42).

These forecast financial statements have been prepared for the purpose of the 2006/07 – 2007/09 Statement of Intent of the Takeovers Panel. They are not prepared for any other purpose and should not be relied upon for any other purpose.

The forecast financial statements were authorised for issue by the Takeovers Panel on 30 May 2006.

**FORECAST STATEMENT OF FINANCIAL PERFORMANCE**  
*For the year ended 30 June 2007*

	<i>Forecast 12 months to 30 June 2007 \$</i>	<i>Forecast 12 months to 30 June 2006 \$</i>
<b>Operating income</b>		
Government appropriation	1,344,000	1,344,000
Interest	23,000	24,000
Application fees and costs recoverable	441,000	387,000
Total operating income	1,808,000	1,755,000
<b>Income for litigation fund matters</b>		
Litigation fund revenue	107,000	49,000
Total litigation fund income	107,000	49,000
Total income	1,915,000	1,804,000
<b>Operating expenditure</b>		
Audit fees	7,500	6,500
Communication charges	18,000	18,000
Members' fees	380,000	330,000
Printing and stationery	24,000	24,000
Consultants and legal	150,000	146,000
Services and supplies	42,000	40,000
Travel and accommodation	66,000	62,000
Securities Commission services	1,230,040	1,083,000
Total operating expenditure	1,917,540	1,709,500
Expenditure on litigation fund matters	30,000	143,000
Total expenditure	1,947,540	1,852,500
Net surplus / (deficit)	\$(32,540)	\$(48,500)
<b>This is comprised of:</b>		
Operating surplus (deficit)	(109,540)	45,500
Litigation fund surplus / (deficit)	77,000	(94,000)
	\$(32,540)	\$(48,500)

## FORECAST STATEMENT OF FINANCIAL POSITION

*as at 30 June 2007*

	<i>Forecast as at 30 June 2007 \$</i>	<i>Forecast as at 30 June 2006 \$</i>
<b>Current assets</b>		
Cash	362	25,902
Short term deposits – other	250,000	351,000
Short term deposit – litigation fund	688,871	610,871
Interest receivable – other	-	1,000
Interest receivable – litigation fund	3,000	4,000
Sundry debtors and prepayments	122,000	104,000
Less provision for bad debts	(10,000)	(10,000)
	1,054,233	1,086,773
Total current assets	1,054,233	1,086,773
Total assets	\$1,054,233	\$1,086,773
<b>Current liabilities</b>		
Creditors and accruals	80,000	75,000
GST payable	40,000	45,000
	120,000	120,000
Total current liabilities	120,000	120,000
<b>Equity</b>		
Accumulated funds	242,852	351,902
Litigation fund	691,871	614,871
	934,233	966,773
Total equity	934,233	966,773
Total equity and liabilities	\$1,054,233	\$1,086,773

## FORECAST STATEMENT OF MOVEMENTS IN EQUITY

*For the year ended 30 June 2007*

	<i>Forecast 12 months to 30 June 2007 \$</i>	<i>Forecast 12 months to 30 June 2006 \$</i>
<b>Equity at start of period</b>		
Accumulated funds	351,902	306,402
Litigation fund	614,871	708,871
	966,773	1,015,273
Operating surplus (deficit)	(109,540)	45,500
Litigation fund surplus (deficit)	77,000	(94,000)
	(32,540)	(48,500)
Total recognised revenues and expenses	(32,540)	(48,500)
Increase / (reduction) in equity	(32,540)	(48,263)
	\$934,233	\$966,773
<b>Equity at end of period</b>		
<b>Comprising:</b>		
Accumulated funds	242,362	351,902
Litigation fund	691,871	614,871
	\$934,233	\$966,773

## FORECAST STATEMENT OF CASH FLOWS

*For the year ended 30 June 2007*

	<i>Forecast 12 months to 30 June 2007 \$</i>	<i>Forecast 12 months to 30 June 2006 \$</i>
<b>Cash flows from operating activities</b>		
Cash was provided from:		
Government appropriation	1,344,000	1,344,000
Government litigation fund	-	-
Application fees & costs recoverable	486,000	412,891
Interest	73,000	76,164
Cash was disbursed to:		
Suppliers	(1,950,540)	(1,878,495)
Net cash inflow (outflow) from operating activities	48,540	(45,440)
<b>Cash flows from investing activities</b>		
Cash was provided from:		
Net decrease in bank deposits	-	89,836
Cash was applied to:		
Net increase in bank deposits	(78,000)	-
Net cash inflow (outflow) from investing activities	(78,000)	89,836
Net increase (decrease) in cash balance	(126,540)	44,396
Add opening cash balance	376,902	332,506
Closing cash balance carried forward	\$250,362	\$376,902

**NOTES TO THE FORECAST FINANCIAL STATEMENTS  
for the year ended 30 June 2007**

**STATEMENT OF SIGNIFICANT ASSUMPTIONS**

- 1. *Forecast financial statements for 2005/2006***  
The 2005/2006 forecast financial statements include actual results up to the end of April 2006 and an estimate of the outcome for the remaining two months of the year taking account of work on hand and expected developments in the final months of the financial year.
- 2. *Government appropriation***  
The Government appropriation is as per the amount allocated to the Output Class "*Administration of the Takeovers Code*" for the year 2006/2007. We do not expect any change in that amount over the course of the year.
- 3. *Application fees and costs recoverable***  
We assume third party income of \$441,000 in 2006/2007, an increase of around 14% over the expected level of income in 2005/2006. This increase assumes a continuation of takeover activity at a similar level to that in the present year. It also reflects changes which will follow from the passage of the Securities Legislation Bill. These changes include higher exemption and approval income as a result of the expanded coverage of the Code and more cost recoveries from enforcement meetings as a result of the expanded enforcement powers of the Panel expected to occur later in the year.
- 4. *Payment for Securities Commission services***  
The Panel expects to spend \$1,230,040 on the purchase of services from the Commission. This represents an increase over the present year of around 13.5%. It assumes that the Commission will be able to supply professional staff resources to the Panel at the rate of 6.9 full-time equivalents for the full year 2006/2007 at a price of \$115 per hour, approximately \$4 per hour higher than in 2005/2006. The increased demand for Commission services is also a reflection of the changed environment following passage of the Securities Legislation Bill.
- 5. *Members fees***  
The Panel expects to spend \$380,000 on members' fees in 2006/2007, an increase of 15% over expenditure in 2005/2006. This increase anticipates a heavier workload for members as a result of the changes being made to the coverage of the Code and the Panel's enforcement powers by the Securities Legislation Bill.
- 6. *Expenditure on litigation fund matters***  
The Panel expects to receive cost recoveries from its successful proceedings involving Oyster Bay Marlborough Vineyards Limited and Deleat's Wine Estate Limited during 2005/2006. The Panel also anticipates some expenditure from its announced policy of seeking to be heard in Court proceedings involving schemes of arrangement under the Companies Act 1993 that affect Code companies.
- 7. *Overall risk of prospective revenue expectations not being met***  
As long as there is code activity there will be a need for exemptions and approvals because the Code is expressed in reasonably general terms and exemptions are often

needed to facilitate code transactions. However the level of Panel income from these sources is difficult to predict with any reliability.

The level of the Panel's enforcement activity is dependent on the level and nature of takeover market activity. If takeovers are hostile or competitive this is likely to lead to a higher level of Panel involvement and possibly enforcement meetings. The impact of the Panel's expanded enforcement powers is difficult to predict. The Panel cannot always recover its costs from the enforcement meetings it holds.

If there is a lower level of exemptions and approvals than expected and an absence of contested or opposed takeovers then the level of the Panel's third party revenue would be significantly affected.

If the Panel's third party revenue fell to \$300,000 rather than the predicted \$441,000, with no reduction in Commission staff costs, we would expect the Panel's forecast operating deficit of \$108,040 to increase by around \$95,000 to close to \$200,000. The increase in possible loss is less than the reduction in revenue because of likely savings in members' fees and the cost of external legal counsel.

## **STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES**

### **Measurement System**

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

### **Forecast Figures**

The forecast 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 financial statements. The Panel is responsible for the forecast financial statements presented, including the appropriateness of the assumptions underlying the forecast financial statements and all other required disclosure. It is not intended to update the forecast financial statements subsequent to publication of these statements.

### **Specific Accounting Policies**

#### **1. Revenue Recognition**

Funds from Government appropriation are recognised as revenue when received and are reported in the financial period to which they relate. 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.

#### **2. 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. Costs awarded by the Court are recognised in the financial period during which the Court gives its judgment or the parties agree. Reimbursements from the Crown to top-up the fund are reported as income in the period in which the Panel's claim for reimbursement is accepted by the Crown.

The balance of the fund is disclosed as a component of equity in the statement of financial position.

**3. Changes in Accounting Policies**

All accounting policies have been applied on a consistent basis with those applied in the previous year.

**4. Short Term Deposits**

Short-term deposits are shown at cost.

**5. GST**

All items in the financial statements are exclusive of GST with the exception of sundry debtors and prepayments and creditors and accruals which are stated with GST included.

**6. Financial Instruments**

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 financial performance.

**7. Cost Allocation Policy**

Direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

**8. Income Tax**

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

**9. Sundry Debtors**

Sundry debtors are stated at their net realisable value after providing for doubtful and uncollectible debts.

.....  
John King  
Chairman  
Takeovers Panel

Date:

.....  
David Jones  
Deputy Chairman  
Takeovers Panel

Date: