

TAKEOVERS PANEL

STATEMENT OF INTENT

2008/2009 - 2011

*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 2008/2009 financial year and each of the following two reporting years.
- 1.2 The Panel is a committee of the market. It comprises nine members, all of whom are currently active participants in the corporate world. Members are variously lawyers, company directors, sharebrokers, merchant bankers, accountants or financial advisers. A tenth member, expected to be appointed in July 2008, will be appointed because he is also a member of the Australian Takeovers Panel.
- 1.3 These members are the governing body of the Panel, and exercise all the Panel’s powers. 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. 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.
- 1.4 The Panel is the regulator of the market for the control of “public” or larger companies in New Zealand (“Code companies¹”). 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 its enforcement powers.
- 1.5 An efficient market for corporate control, with broad participation by investors both large and small, is an important element of the Government’s objective of promoting economic transformation through globally competitive companies. Resources must be able to move to where they are used most efficiently. Corporate takeovers are one means by which this is able to occur. The Panel contributes to the Government’s objective by administering takeover laws efficiently and without fear or favour.
- 1.6 Takeover activity covered by the Code has generally increased but may now be slowing. In 2005/2006 the Panel reviewed 19 takeover notices and considered 34 applications for approval of independent advisers. In 2006/2007 the Panel received 23 takeover notices and considered 56 applications for approval of independent advisers. In the first nine months of 2007/2008 the Panel had reviewed 18 takeover notices and considered 28 applications for approval of independent advisers.
- 1.7 The recent slowdown in market activity appears to reflect the current global uncertainties. It is difficult to predict how long the reduced level of activity may endure.
- 1.8 The provisions of the Code are aimed at providing a transparent process for the change of control of affected companies with adequate time allowed to ensure that the various issues are properly addressed and considered. They do not allow the Panel to intervene in takeovers on the basis of their perceived merits or lack thereof.

¹ “Code companies” are defined as New Zealand incorporated companies with voting securities listed on a registered exchange, or that had had such securities listed in the previous 12 months, and those New Zealand incorporated companies with 50 or more shareholders.

- 1.9 Since the Panel became separately funded in 2000 and up to March 2008 it had no staff of its own, the entire Panel executive being employed by the Securities Commission and effectively seconded to the Panel. The Panel executive has been physically co-located with the Commission in Wellington over this period.
- 1.10 The Panel has been paying the Commission on the basis of the hours worked for the Panel by professional staff. The rate paid covered 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.
- 1.11 Following a governance review undertaken in 2007 the Panel decided that it needed to become the employer of its own staff and move to its own premises. The transition of the Panel's operations started in April 2008 with the employment of the Panel's own Chief Executive Officer. This is being followed by the Panel becoming the employer of the remainder of its seconded staff, identifying new premises, and physically relocating. Subject to funding, the Panel anticipates remaining co-located with the Commission for the first few months of 2008/2009 but then moving to its own premises in late 2008. The two outer years covered by this statement should see the Panel employing all its own staff and being located in its own premises.

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

- 2.1 The Panel is the regulator of the corporate takeovers market.
- 2.2 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.
- 2.3 The Panel administers the rules (i.e. the Code) under which the market operates. This includes reviewing all the main takeover documents for compliance. It may include 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 unexpected or unintended consequences. The Panel approves the independent advisers who must report to shareholders 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.
- 2.4 Where Code companies are proposing transactions involving a change of control effected under the scheme of arrangement provisions of the Companies Act 1993 the Panel will seek to be heard in the High Court when initial orders are being sought. It has made recommendations proposing changes to the law so that the Panel has greater involvement with such transactions in the later years covered by this statement.
- 2.5 Given the tight timeframes for takeover procedures in the Code, the timetables requested from the Courts for Companies Act processes, and the size of the transactions involved, the Panel has to operate under considerable time pressure in many of the activities it undertakes.
- 2.6 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;
 - b Interventions in the High Court where schemes of arrangement are being proposed under Part 15 of the Companies Act involving changes of control of Code companies, the exact form of intervention to depend on the nature and extent of changes that may be made to that law following the Panel's recommendations;
 - c Approval activities, including the approval of independent advisers and the appointment of independent experts when required under the Code;
 - d 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;

- e Promoting public understanding, 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.
- f International liaison activities, including undertaking planning to host the next meeting of international takeovers regulators in New Zealand in 2010.

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

- 3.1 The “High-Level Objective” of “Vote Commerce” in the Government’s annual appropriation statement is that *“One of the government’s priorities is working to progress New Zealand’s economic transformation to a high income, knowledge-based market economy, which is both innovative and creative, and provides a unique quality of life to all New Zealanders.”* “Vote Commerce provides the government with enforcement, administration, and policy advice activities that help ensure New Zealand’s legal and regulatory environments support sustainable business growth and innovation.” This is a Government **objective**.
- 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 objective through its work.²
- 3.3 The Panel’s overall objective is that of being **an effective and efficient regulator of the takeovers market respected by market participants and enforcing a Takeovers Code that provides for equal treatment of shareholders and a transparent takeover process, to foster confidence in the integrity of our markets**.
- 3.4 The class of outputs which the Panel proposes to supply is the non-departmental output expense in Vote Commerce “Administration of the Takeovers Code”.

The Panel’s contribution to the relevance and effectiveness of the Code

- 3.5 The effectiveness of the Code in promoting economic transformation towards an environment that supports globally competitive firms 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 objective sought by the Crown for its takeovers law is a subset of its overall goal of economic transformation through 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 in the integrity of the market to domestic and international investors. This is particularly important at a time when there is a loss of confidence in global credit and equity markets.
- 3.7 The **impact** from the Panel’s function of keeping the Code under review is improvements in the efficiency of the Code.
- 3.8 The Panel achieves this 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. The Panel has been particularly active in relation to undertaking research into, and proposing

² “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)*

changes to, the provisions of the Companies Act as they apply to changes of control of code companies.

Enforcement of the Code

- 3.9 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. In addition, the Courts have recently given support to the Panel's capacity to intervene in the High Court when schemes of arrangement and amalgamations are being used to change the control of Code companies.
- 3.10 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.
- 3.11 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.
- 3.12 The Panel achieves this impact in a number of ways, starting with the review of most takeover documents to check for their compliance with the law. In some instances individual market transactions are investigated. On other occasions the Panel follows up on complaints made to it about the actions of other parties. Where necessary the Panel convenes meetings under section 32 of the Act to determine whether to use its enforcement powers.

The granting of exemptions

- 3.13 The Panel's second most significant output in resource terms relates to the granting of exemptions.
- 3.14 The Code is a relatively brief document, with far-reaching provisions. As a result there are occasions where the Code's provisions do not appropriately cover particular transactions or circumstances, or where strict application of the Code would produce unintended or unreasonable consequences.
- 3.15 This was recognised by giving the Panel the ability to grant both individual and class exemptions. Individual exemptions may be retrospective.
- 3.16 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.
- 3.17 The intended **impact** of the Panel's exemption function is the improvement in the functioning of the market by alleviating unintended or unreasonable consequences arising from the application of the Code.
- 3.18 The Panel has to be cognisant both of the application of the law to particular circumstances but also the impact on the rights of various parties caused by any exemptions it may grant. It is the task of the Panel executive to advise the Panel on these issues as well on the application of Panel policies and the existence of any relevant precedents.

The approval function

- 3.19 The Panel is required to approve the appointments of independent advisers where these are needed under various rules 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. In future years it is possible the Panel could have a similar role in relation to some transactions affecting Code companies carried out under the provision of the Companies Act 1993.
- 3.20 The Panel seeks to ensure that appointed advisers are both independent and competent to do the job required. It has published policies to explain to the market how it administers its approval role.
- 3.21 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

- 3.22 The Panel has as a function to promote public understanding of the law and practice relating to takeovers.
- 3.23 It carries out this function in a variety of ways, including by publishing a periodic newsletter, through maintaining its website, by public speeches, and by responding to market queries.
- 3.24 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

- 3.25 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.
- 3.26 This can be important because takeovers of New Zealand Code companies may impact on shareholders domiciled in other countries, and vice versa with foreign takeovers. We can also test our Code and policies underlying the Code against international practice and achieve improvements in the efficiency of the Code.
- 3.27 The Chairman of the Panel is a member of the Australian Takeovers Panel, while it is intended that a member of that Panel should be a member of the New Zealand Panel.
- 3.28 The Panel also aims to be represented at international conferences of takeovers regulators. These are occurring every two to three years, with a conference in Washington DC in May 2008 which was attended by the Panel's Chief Executive. The Panel has offered, subject to funding, to host the next such conference in New Zealand in 2010.
- 3.29 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 members are both the governing body and the decision-making body of the Panel. Members have a wide range of skills and experience which ensures that the Panel is truly a “committee of the market”.
- 4.2 The requirements of the Act can be very demanding, particularly in relation to enforcement meetings conducted under section 32 of the Act. Members often have to balance the demands of their work commitments as lawyers, merchant bankers, business advisers and company directors with the need to be available when the Panel is required to act in the market on a critical exemption or enforcement matter, often at short notice.
- 4.3 To minimise the Panel’s costs and the amount charged to fee-paying applicants for exemptions and approvals, and potentially to the parties subject to enforcement proceedings, the Panel acts by divisions of three or four members for nearly all matters before it. Almost all meetings, except formal enforcement meetings and regular governance meetings, are held by teleconference.
- 4.4 To maintain the effectiveness of the Panel as a governing and decision-making body it meets physically eight times a year, alternating between Wellington and Auckland for its meetings. The purpose of these meetings is to discuss policy issues, exercise its governance responsibilities, and ensure consistency of decision-making across divisions. Some matters, including class exemptions and the making of recommendations for changes to the law, must be dealt with by the full Panel.
- 4.5 One of the issues concerning the Panel is that it always has sufficient non-conflicted members available to deal with matters requiring attention. This sometimes can be challenging because most of its members are active participants in the market. As noted earlier, one way of trying to ensure it will always have a quorum of members to deal with any particular issue is that there is one position on the Panel left vacant which can be filled for a short term to cover the handling of a matter where there are insufficient members otherwise available.
- 4.6 The second essential to the effective operation of the Panel is that of maintaining a skilled executive with the experience and expertise to give members high quality advice on issues that come before the Panel.
- 4.7 The Panel must maintain an executive of sufficient size that it is able to support the members with two high-level enforcement actions at the same time. The section 32 meeting procedure is very intensive, with meetings having to be held within 7 days of being called and then decisions having to be reached and published within 2 days of the meeting being held. This timetable is demanding on members and the executive.
- 4.8 Because the Panel is exercising judicial powers when conducting its section 32 proceedings the Panel almost always retains senior counsel to assist it with the conduct of its meeting and to advise it on the subsequent determinations it makes. A

concern to the Panel is the limited pool of experienced senior counsel who are available to assist it with the conduct of these meetings.

- 4.9 The Panel executive contains a mix of skills, experience and background that enables the Panel to make an effective contribution to policy development while also administering the provisions of the Code as it applies to transactions coming within the Code.
- 4.10 The Panel executive has a flat management structure. It works in a collegial way where appropriate. The quality of advice given to the Panel is maintained by having the work of less experienced staff always reviewed by more senior staff.
- 4.11 The Panel's administrative staff is kept to a minimum. Under current arrangements it generally shares most administrative staff with the Commission. In future, if the Panel relocates, it will increase its dedicated administrative staff but will also outsource many functions and services.
- 4.12 The Panel ensures that its staff are given training opportunities to maintain their skill levels. If the Panel relocates it aims to have premises that are eco-friendly and conducive to staff retention and the efficient operation of the Panel.
- 4.13 To keep abreast of developments in the law and the academic literature the Panel maintains a small specialist library of its own as well as having access to and receiving assistance from the library and staff of the Commission.
- 4.14 The Panel, at both member and executive level, maintain good relations with other takeover regulators, particularly in Australia. These relationships prove invaluable when issues with trans-Tasman implications arise.
- 4.15 The principal risks to the Panel achieving its objectives are:
 - a Inability to attract members with appropriate backgrounds and skills and time available to contribute to the effective functioning of the Panel. The Panel works actively to identify potential new members when a vacancy on the Panel arises. The Panel also makes submissions to the Remuneration Authority when members' remuneration is reviewed by the Authority each year;
 - b Loss of key staff. The Panel is a small, people-based organization and as such is vulnerable to the loss of any of those staff. Its new working arrangements are intended to minimise the risk;
 - c Difficulties in recruiting replacement or new professional staff when required. The market for the types of professional staff the Panel needs to carry out its functions has been very tight over recent years, with high levels of demand from both New Zealand and overseas legal firms. The Panel mitigates this risk by paying competitive salaries and providing satisfactory working conditions for its employees.
 - d Reliance on third-party funding. The Panel is dependent on the level of market activity to determine its third party income. However, to the extent that reduced market activity means a reduced need for Panel intervention and therefore members' involvement, as well as that of external counsel, the

overall impact on net income is reduced. The Panel counters this risk by aiming to maintain an appropriate level of working capital at all times;

- e Inability to meet the costs of litigation it wishes to bring, or is brought against it, as it administers and enforces the provisions of the Code and the Act. This risk is largely mitigated by the Government providing the Panel with a litigation fund of \$675,000 (GST not applicable) and providing moneys each year to top-up the fund during the year when it is used to meet litigation costs. The litigation fund and the provision for top-up finance have been quite adequate for the Panel's needs to date.
- f Loss of records. The Panel, through the Commission, is taking adequate precautions to protect both its electronic and physical records. The Panel will ensure this issue is properly addressed if it moves to its own premises.

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.
- 5.3 There is a memorandum of understanding in place between the Panel and the Commission which has guided the relationship between the two bodies. It also covers the arrangements for payments by the Panel to the Commission for the cost of the services provided.
- 5.4 The Panel undertook a governance review in 2007 in order to satisfy itself that the current arrangements with the Commission remained appropriate. The Panel concluded that as the result of its more defined obligations as an independent Crown entity under the Crown Entities Act, conventional good governance principles, as well as its own growth since 2001 and its anticipated future responsibilities, it had to become the employer of its own staff. This would establish a conventional relationship between the Panel's governing body and its Chief Executive Officer, and ensure that the Panel could take responsibility for the performance management, remuneration and succession planning for its key executive.
- 5.5 By becoming the employer of its own staff the Panel, through its Chief Executive Officer, then takes responsibility for the recruitment, performance management, remuneration and career planning of its whole executive.
- 5.6 The Panel had a number of discussions with the Securities Commission and Ministry of Economic Development on the outcome of its governance review including its wish to become the employer of its own professional staff. The Panel formally appointed Kerry Morrell as its first employee and Chief Executive Officer in April 2008. This appointment was followed by the appointment of Daryl Owen as a Senior Lawyer and in May 2008 by that of Margaret Bearsley as the Panel's first General Counsel.
- 5.7 Other Panel staff were offered employment contracts with the Panel on terms no less favourable than those then provided by the Commission. The retention of these staff by the Panel is very important to the Panel's ongoing viability given the tightness of the labour market. It is intended that by 1 September 2008 the Panel will be the employer of all its full-time staff.
- 5.8 As part of the governance review, and in consultation with the Commission, it became apparent that it would be in the interests of the Panel for the Panel's operations to be physically separated from those of the Commission. After further discussions it was

agreed that, subject to securing the finances, the target date for the Panel's relocation would be August 2008.

- 5.9 Physical relocation requires additional funding for premises fit-out. The Ministry is working to obtain extra one-off funding to finance a change in premises. The Panel will continue to purchase services from the Commission, including those of some part-time staff, while it remains physically co-located.
- 5.10 Within the time horizon of this Statement of Intent the Panel expects to be moving to its own premises and physically separating from the Commission.
- 5.11 Another issue affecting the Panel's ongoing corporate health and capability is that of maintaining an effective membership to enable the Panel to meet its responsibilities and fulfill its role in the market for corporate control.
- 5.12 The Panel has provision for 11 members and currently has 9 appointed. Members are 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. The position for an Australian member is expected to be filled during July 2008.
- 5.13 The Australian member intends to attend half the Panel's regular meetings in person, attending the others by video or telephone link if required.
- 5.14 Panel members must be qualified or experienced in business, law or accounting. The term of office of Kevin O'Connor expired during the year and he was reappointed for a period of two years. The term of office of the Panel's Deputy Chairman, Alastair Lawrence, expires later in 2008. Mr Lawrence has been a Panel member since 1993 and is not seeking reappointment to the Panel. The Ministry has started the process of appointing a new member and a new Deputy Chairman during 2008/2009.
- 5.15 The level of remuneration paid to the Chairman and members is set by the Remuneration Authority, effective from the time the Crown Entities Act 2004 came into force in January 2005.
- 5.16 The staff of the Panel comprises the Chief Executive Officer, General Counsel, Senior Solicitor employed by the Panel and three solicitors of varying levels of experience currently employed by the Commission. The Panel has been funded for an additional lawyer to cope with its increased enforcement responsibilities under the "truth in takeovers" provisions of the Code which came into force on 29 February 2008. Panel staff are supported by a full-time personal assistant. The Panel also has a Communications Manager and an accountant who are shared with the Commission.
- 5.17 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. The Panel recently reviewed its physical filing systems and will ensure it follows protocols for storage and disposal of files that are in accordance with the

requirements of the Chief Archivist. The Panel will be implementing these storage arrangements if it moves to its own premises.

- 5.18 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 financial goals such as a level of third party income, a return on accumulated funds or even a financial break even. The Panel's third party revenue is driven by the market and is outside of the Panel's control.
- 6.3 It is not possible to provide an accurate indication of the trend in the cost of each of the Panel's outputs from year to year because, apart from a few adviser applications, no two jobs are the same.
- 6.4 The Panel is very cost conscious. It uses the minimum number of members and staff appropriate for each matter before it. The work programme is closely monitored by the Panel and updated through the year. Most meetings are held by telephone. The Chief Executive Officer reports to members regularly on the executive's performance in relation to the agreed performance standards.
- 6.5 The Panel must accept, and work within, cost and revenue parameters set by external parties. Its workload is to a considerable extent market driven and this determines its cost outcomes. The cost of its staff resources, its major item of expenditure, have in the past tracked the Securities Commission's costs rather than its own. This is now changing, with the Panel becoming the employer of its own staff. The employment package of the Panel's Chief Executive is approved by the State Services Commission. The cost of members' time is set by the Remuneration Authority, not by the Panel.
- 6.6 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 or a reduction in the Panel's level of activity and therefore capability to carry out its enforcement or policy roles.

Non-financial measures

- 6.7 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 2008/2009 in the Panel's forecast Statement of Service Performance included later in this Statement of Intent. The Panel considers that the main non-financial 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.
- 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 statutory functions on which the Panel would consult with the Minister or Ministry or notify the Minister or Ministry before making a decision.
- 7.2 In the normal course the Ministry provides assistance and guidance to the Panel with its preparation of various accountability documents, including this statement of intent. 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 provide to 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 During the course of 2007/08 the Panel has consulted the Minister and the Ministry over its relationship with the Securities Commission, as described in the preceding sections of this Statement. As noted, there are funding implications for the Crown arising from the prospective physical relocation of the Panel and this will involve ongoing discussions with the Minister and Ministry as well as with the Commission.

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 specified in 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. The Panel will also report on the progress of its staff retention and physical relocation as it separates from the Commission. 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.
- 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.
- 9.3 The Panel has not sought any exemptions under section 143 of the Crown Entities Act in relation to the contents of the Panel's forecast Statement of Service Performance. It covers all the Panel's outputs.

**FORECAST STATEMENT OF SERVICE PERFORMANCE
FOR THE YEAR ENDED 30 JUNE 2009**

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

OUTPUT 1: *Recommendations for changes to takeovers law:*

Ensuring that the provisions of the Takeovers Code are effective and relevant by keeping the Code under review and enquiring into market practice and recommending amendments to the Code and the Act as necessary.

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.

Planned performance standards and performance measures for 2008/2009 (Forecast outcome for 2007/2008 in brackets):

Quantity and Quality

Keep the Takeovers Code and the Takeovers Act 1993 under review and recommend amendments to the Code as necessary.

Participate as required on projects and reviews.

Keep under review practices relating to takeover activities.

Inquiries into market practice with a view to recommending amendments to the

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 practice. It aims to achieve 95% acceptance of its proposals by the Minister.

Continuous (Continuous)

2 (2)

Takeovers Code and to the Panel's policies and publishing proposed changes to the Code and Panel policies for public comment

Timeliness

Recommendations for amendments to the Code will be made promptly. 1 per year (1)

Complete inquiry work promptly.

Review work to be based on accurate research into, and review of, existing practices, including feedback from market participants.

Revenue: Nil (Nil)

Cost: \$291,260 (\$269,520)

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 approvals 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 2008/2009³: (Forecast outcome for 2007/2008 in brackets)

Quantity

Applications for approval of independent advisors and independent experts. 35 (35)

Applications for consent to withdrawal of offers, and in relation to defensive tactics. 2 (2)

Quality

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.

Timeliness

For approvals of independent advisers within 3 working days of receipt of complete application. For other applications within 5 days of receipt of complete application. To be achieved in 80% of cases. (80%)

Revenue (from fees): \$80,000 (\$80,022)

Cost: \$135,225 (\$124,247)

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.

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.

³Although characterised as "planned", the number of approval applications is similar to those for the current year but the final outcome is dependent on the level of market activity

Planned performance standards and performance measures for 2008/2009⁴ (Forecast outcome for 2007/2008 in brackets)

Quantity

Applications for individual exemptions from the Takeovers Code. 30 – 35 (35)

Class exemptions from the Takeovers Code. 2 – 4 (2)

Quality

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. (100%)

Timeliness

Within timeframe agreed with applicants. 100% (100%)

Revenue (from fees): \$221,000
(\$216,103)

Cost: \$395,275 (\$361,272)

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 improvement in the standard of compliance with the Takeovers Code and facilitation of the operation of the takeovers market.

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 a 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.

⁴ Although characterised as "planned", the number of exemption applications is similar to those for the current year but the final outcome is dependent on the level of market activity

Planned performance standards and performance measures for 2008/2009⁵ (Forecast outcome for 2007/2008 in brackets):

Quantity

| | | |
|---|----|------|
| Review of offer documents. | 24 | (20) |
| Review of meeting documents. | 18 | (18) |
| Section 32 meetings. | 6 | (3) |
| Section 35 actions. | 2 | (2) |
| Investigation of possible Code breaches. | 30 | (20) |
| Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies | 2 | (1) |

Quality

| | | |
|--|--|--------|
| Documents reviewed for compliance with the law. Remedial action initiated to correct deficiencies. | 90% of all potential documents. (90%) | |
| Action taken in accordance with the law. | 100% with no Court challenges or Court endorsement, where challenged. (100%) | |
| Meetings conducted in accordance with the law and the rules of natural justice. | 100% | (100%) |

Timeliness

| | | |
|---|------|--------|
| Complete enforcement work within timeframes specified in the Takeovers Act 1993 | 100% | (100%) |
| Comply with Court-ordered timetables for legal proceedings under the Companies Act involving Code companies | 100% | (100%) |

Revenue (from fees): \$150,000
(\$247,716)

Cost: \$1,040,200 (\$948,100)

OUTPUT 5: Public Understanding:

Regularly publish information about the Code and relevant law, media statements, policy statements, guidance notes and commentaries on current issues, public meetings, and speeches. Respond to public enquiries.

⁵ Although described as “planned”, the number of offer documents and meeting documents reviewed by the Panel is similar to those for the current year but the outcome is dependent on the level of market activity

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.

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;
- obtain direct feedback from the most active legal and advisory firms;
- 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.

Planned performance standards and performance measures for 2008/2009 (Forecast outcomes for 2007/2008 in brackets):

Quantity, Quality and Timeliness

| | |
|--|--|
| Publish a publication designed to provide information about the Takeovers Code and relevant law. | 3 times a year, with publication within one month of significant changes to the law affecting takeovers. (3) |
| Issue policy statements, guidance notes and commentaries on current issues. | 3 times a year (3) |
| Interface with the market through public and private meetings. | 10 occasions (10) |
| Provide news media with relevant information about the Panel and the Takeovers Code. | Continuous (Continuous) |
| Maintain a web-site 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. (5 working days) |
| Receive miscellaneous enquiries from members of the public and professional firms. | Receive 200 enquiries. Respond to inquiries within 3 working days. (200 enquiries, respond within 3 working days). |

Revenue: Nil (Nil)

Cost: \$208,040 (\$198,795)

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.

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 promotion of the informal group of international takeovers regulators by attending the group's conferences and planning to host a conference in New Zealand in 2010;
- co-operating, on request, with overseas takeovers regulators on various regulatory matters within the Panel's powers.

Planned performance standards and performance measures for 2008/2009 (Forecast outcome for 2007/2008 in brackets):

Quantity and Quality

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 enquiries from overseas bodies within five working days. Initiate enquiries of other bodies as required. (No enquiries received. 2 enquiries made).

Maintain reciprocal membership between Australian and New Zealand Takeovers Panels.

Maintain one Australian Panel member on New Zealand Panel and one New Zealand Panel member on Australian Panel

Prepare to host conference of regulators in New Zealand in 2010

Undertake initial planning for conference in 2010, including seeking funding

Timeliness

Panel representatives to meet regularly with overseas bodies.

1 time per year (1 time).

Revenue: Nil (Nil)

Cost: \$10,400 (\$9,557)

**FORECAST FINANCIAL STATEMENTS OF THE TAKEOVERS PANEL
FOR THE YEAR ENDING 30 JUNE 2009**

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.

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

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 for the purpose of the 2008/09 - 2011 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 June 2008.

FORECAST STATEMENT OF FINANCIAL PERFORMANCE

for the year ending 30 June 2009

| | <i>Forecast 12 months to 30 June 2009 \$</i> | <i>Forecast 12 months to 30 June 2008 \$</i> |
|--|--|--|
| Revenue - Operating | | |
| Government appropriation | 1,494,000 | 1,444,000 |
| Interest | 21,000 | 21,051 |
| Application fees and costs recoverable | 451,000 | 543,844 |
| Total operating revenue | 1,966,000 | 2,008,895 |
| Revenue - Litigation fund | | |
| Interest | 58,600 | 58,538 |
| Total litigation fund revenue | 58,600 | 58,538 |
| Total revenue | 2,024,600 | 2,067,433 |
| Operating expenses | | |
| Audit fees | 17,000 | 16,000 |
| Communication charges | 33,000 | 31,728 |
| Members' fees | 400,000 | 393,591 |
| Printing and stationery | 31,100 | 31,354 |
| Consultants and legal | 110,000 | 297,807 |
| Services and supplies | 44,700 | 34,337 |
| Travel and accommodation | 70,000 | 84,013 |
| Staff salaries | 783,000 | 107,292 |
| Securities Commission services | 591,600 | 915,371 |
| Total operating expenses | 2,080,400 | 1,911,493 |
| Expenses - Litigation fund | 20,000 | 20,000 |
| Total expenses | 2,100,400 | 1,931,493 |
| Net surplus / (deficit) | \$(75,800) | \$135,940 |
| This is comprised of: | | |
| Operating surplus (deficit) | (114,400) | 97,402 |
| Litigation fund surplus / (deficit) | 38,600 | 38,538 |
| | \$(75,800) | \$135,940 |

FORECAST STATEMENT OF FINANCIAL POSITION*as at 30 June 2009*

| | <i>Forecast as at 30 June 2009 \$</i> | <i>Forecast as at 30 June 2008 \$</i> |
|---|---|---|
| Current assets | | |
| Cash and cash equivalents – operations | 142,286 | 233,841 |
| Cash and cash equivalents – litigation fund | 446,595 | 446,595 |
| Short term deposits – operations | 105,228 | 105,228 |
| Short term deposit – litigation fund | 321,800 | 283,200 |
| Interest receivable – operations | - | 1,559 |
| Interest receivable – litigation fund | 5,575 | 5,575 |
| GST receivable | 999 | 999 |
| Sundry debtors and prepayments | 142,579 | 162,579 |
| Less provision for bad debts | (10,000) | (10,000) |
| Total current assets | 1,155,062 | 1,229,576 |
| Total assets | \$1,155,062 | \$1,229,576 |
| Current liabilities | | |
| Trade and other payables | 64,369 | 63,083 |
| Total current liabilities | 64,369 | 63,083 |
| Equity | | |
| Accumulated funds | 316,723 | 431,123 |
| Litigation fund | 773,970 | 735,370 |
| Total equity | 1,090,693 | 1,166,493 |
| Total equity and liabilities | \$1,155,062 | \$1,229,576 |

FORECAST STATEMENT OF CHANGES IN EQUITY

For the year ending 30 June 2009

| | <i>Forecast 12 months to 30 June 2009 \$</i> | <i>Forecast 12 months to 30 June 2008 \$</i> |
|--|--|--|
| Equity at start of period | | |
| Accumulated funds | 431,123 | 333,721 |
| Litigation fund | 735,370 | 696,832 |
| Equity at start of year | 1,166,493 | 1,030,553 |
| Operating surplus (deficit) | (114,400) | 97,402 |
| Litigation fund surplus (deficit) | 38,600 | 38,538 |
| Total recognised revenues and expenses | (75,800) | 135,940 |
| Increase / (reduction) in equity | 75,800 | 135,940 |
| Increase / (reduction) in equity | (75,800) | 135,940 |
| Equity at end of period | \$1,090,693 | \$1,166,493 |
| Comprising: | | |
| Accumulated funds | 316,723 | 431,123 |
| Litigation fund | 773,970 | 735,370 |
| Equity at end of period | \$1,090,693 | \$1,166,493 |

FORECAST STATEMENT OF CASH FLOWS

For the year ending 30 June 2009

| | Note | Forecast 12 months to 30 June 2009 \$ | Forecast 12 months to 30 June 2008 \$ |
|---|-------------|--|--|
| Cash flows from operating activities | | | |
| Cash was provided from: | | | |
| Government appropriation | | 1,494,000 | 1,444,000 |
| Application fees & costs recoverable | | 451,000 | 462,264 |
| Interest | | 81,158 | 76,362 |
| Payment for Securities Commission services | | | |
| Suppliers | | (2,079,113) | (1,930,993) |
| Net cash inflow (outflow) from operating activities | 5 | (52,955) | 51,633 |
| Cash flows from investing activities | | | |
| Cash was provided from: | | | |
| Net decrease in bank deposits | | - | 7,581 |
| Cash was applied to: | | | |
| Net increase in bank deposits | | (38,600) | - |
| Net cash inflow (outflow) from investing activities | | (38,600) | 7,581 |
| Net increase (decrease) in cash balance | | (91,555) | 59,214 |
| Add opening cash balance | | 680,436 | 621,222 |
| Closing cash balance carried forward | | \$588,881 | \$680,436 |

NOTES TO THE FORECAST FINANCIAL STATEMENTS**For the year ending 30 June 2009****STATEMENT OF SIGNIFICANT ASSUMPTIONS**

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 these forecast financial statements requires the Panel to make judgements, estimates and assumptions that affect the application of accounting policies and the forecast amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates and the variation may be material.

Estimates and assumptions used in these forecast financial statements are based on the best information available to the Panel at the time of their preparation. Information about significant areas of estimation uncertainty and critical judgements in applying accounting policies that have the most significant effect on the amount recognised in the forecast financial statements are described in the following significant assumptions. It is not intended to update the forecast financial statements subsequent to publication of these statements.

1 Forecast financial statements for 2007/2008

The 2007/2008 forecast financial statements include actual results up to the end of March 2008 and an estimate of the outcome for the remaining three months of the year taking account of work on hand and expected developments in the final months of the financial year. These figures are not the same as those included for 2007/08 in the Panel's 2008 forecast financial statements.

2 Government appropriation

The Government appropriation is as per the amount allocated to the Output Class "*Administration of the Takeovers Code*" for the year 2008/2009.

3 Application fees and costs recoverable

We assume third party income of \$451,000 in 2008/2009, a decrease of around 17% over the expected level of income in 2007/2008. This decrease assumes a continuation of takeover activity at a similar level to that in the present year. It reflects an expected decrease in the level of recoveries from Section 32 hearings from the relatively high level recorded in 2007/08.

4 Payment for Securities Commission services

The Panel currently has an agreement with the Securities Commission to purchase professional staff time from the Commission but these arrangements are being changed. The Panel is now working towards becoming the employer of all its own staff. As a result the level of services purchased from the Commission for 2007/08 is forecast to be lower than the amount budgeted. The Panel expects to spend \$591,600 on the purchase of services from the Commission during 2008/09. This assumes a price of \$91 per hour for staff employed by the Commission and \$55 per hour for staff employed by the Panel.

5 Payment for staff salaries

The Panel engaged a new senior employee and two senior staff members transferred from the Commission to direct employment by the Panel in April 2008. It is expected that further staff will transfer from the Commission during 2008/09. The Panel expects to spend \$783,000 on staff payments in 2008/09.

6 Members fees

The Panel expects to spend \$400,000 on members' fees in 2008/2009, an increase of 1.6% over expenditure in 2007/2008. This increase anticipates a similar workload for members.

7 Relocation and premises costs

The Panel expects to incur one-off fit-out and set up costs arising from its relocation. It is planned that this will be in the first half of the year. No allowance has been made for this expenditure in these draft forecast accounts, pending confirmation that funding for the Panel's relocation will be made available by the Crown.

8 Overall risk of forecast revenue expectations not being met

These forecast financial statements are presented on the basis that, other than matters stated above under the statement of significant assumptions, there will be no other significant change to the nature of the Panel's operations or its principal activities in the period covered by the forecast financial statements. 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 \$451,000, with no reduction in staff costs, we would expect some reduction in members' fees and external legal costs, and the Panel's forecast operating deficit of \$114,400 to increase by around \$90,000 to close to \$200,000. The increase in possible loss is less than the loss of revenue because of likely savings in members' fees and external legal counsel.

STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

Basis of preparation

The separate forecast financial statements presented here are for the reporting entity, the Takeovers Panel, for the year ended 30 June 2009. The forecast financial statements have been prepared in accordance with New Zealand Generally Accepted Accounting Practice (NZ GAAP) and are consistent with the accounting policies to be adopted by the Panel for the preparation of financial statements. They comply with New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS) and other applicable Financial Reporting Standards, as appropriate for public benefit entities. These are the Panel's second NZ IFRS forecast financial statements.

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.

Functional and presentation currency

These forecast financial statements are presented in New Zealand dollars (\$), which is the Panel's functional currency. All financial information presented in New Zealand dollars has been rounded to the nearest dollar.

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 based on the stage of completion of the transaction 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.

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 judgement or the parties agree on a settlement amount. 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.

3 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.

4 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.

A financial instrument is recognised when the Panel becomes a party to the contractual provisions of the instrument. Financial assets are derecognised when the Panel's contractual rights to the cash flows from the financial assets expire or when the Panel transfers the financial asset to another party without retaining control or substantially all risks and rewards of the asset. Regular way purchases and sales of financial assets are accounted for at trade date, the date the Panel commits itself to the purchase or sale of the asset. Financial liabilities are derecognised when the Panel's obligations specified in the contract expire or are discharged or cancelled.

5 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.

6 Income Tax

The Panel is exempt from income tax under the Income Tax Act 2007.

7 Trade and other receivables

Trade and other receivables and GST receivable are stated at cost less impairment losses. Given their short-term nature, the carrying values of trade and other receivables and GST receivable are considered reasonable approximations of their fair values. Appropriate allowances for estimated irrecoverable amounts are recognised in the statement of financial performance when there is objective evidence that the asset is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and its estimated future cash flows.

8 Trade and other payables

Trade and other payables and GST payable are stated at cost. Given their short-term nature, the carrying values of trade and other payables and GST payable are considered a reasonable approximation of their fair values.

9 Cash and cash equivalents

Cash and cash equivalents comprise cash balances on hand and short term deposits held by the Panel. 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 from the date of their acquisition. Short-term deposits are shown at cost.

10 Explanation of application of NZIFRS

These are the Panel's second forecast financial statements prepared in accordance with NZ IFRS. The accounting policies set out above will be applied in preparing the financial statements for the year ended 30 June 2009. The application of NZ IFRS is consistent with the requirement for all entities in New Zealand to apply NZ IFRS for accounting periods beginning on or after 1 January 2007. Other than presentational and classification differences, the change to NZ IFRS has no other impact on the forecast financial statements. The comparative forecast information presented in these financial statements for the year ended 30 June 2008 has been restated to reflect the presentation and classification changes resulting from the application of NZ IFRS.

11 Changes in Accounting Policies

There have been no changes to accounting policies since the date of the last forecast financial statements prepared under NZ GAAP other than the application of NZ IFRS.

David Jones
Chairman
Takeovers Panel

Date:

Alastair Lawrence
Deputy Chairman
Takeovers Panel

Date: