

TAKEOVERS PANEL

STATEMENT OF INTENT

2010/2011 - 2013

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

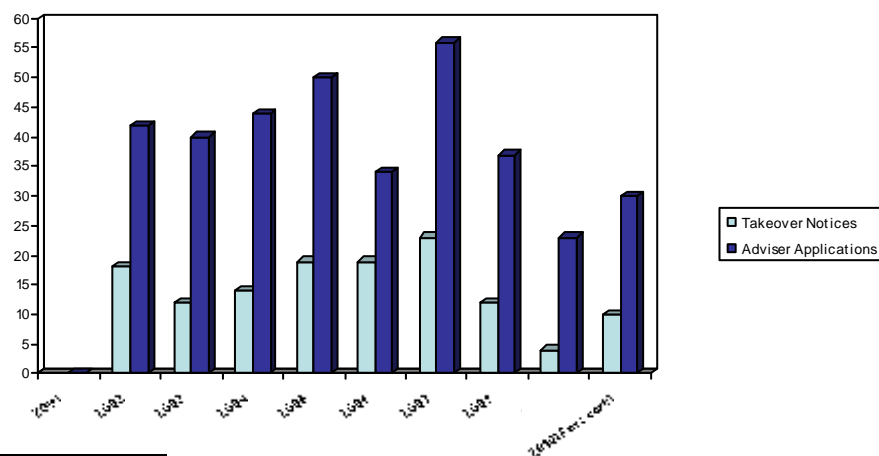
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1. KEY BACKGROUND INFORMATION ABOUT THE PANEL

- 1.1 This Statement of Intent for the Takeovers Panel (“the Panel”) relates to the 2010/2011 financial year and each of the following two reporting years.
- 1.2 The Panel is a committee of the market. It comprises eleven 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. One member is appointed because he is 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 division 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 generally 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 driving productive, non-inflationary growth because takeovers are an efficient market mechanism for shifting resources to their most productive use. The Panel’s enforcement activities promote confidence and certainty in markets.
- 1.6 Takeover activity covered by the Code has generally increased since the inception of the Code but began to slow in 2007/2008, slowed sharply in 2008/2009, but has now started to pick up again, as illustrated in the following table.

Chart 1: Indicators of Code Activity



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.

- 1.7 The recovery in the level of market activity in 2009/2010 was first noticed around October 2009. It has remained steady in the early part of 2010. Commentators are generally expecting an increase in merger and takeover activity in the year ahead.
- 1.8 During the period of relatively quiet corporate activity the Panel put greater emphasis on its policy functions. There are a number of important policy issues to address in relation to the operation of the Code and policy work has tended to fall behind when the executive has been heavily committed to transactional work.
- 1.9 The provisions of the Code are aimed at providing a transparent process for the change of control of Code 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.
- 1.10 At the time the Panel became separately funded in 2000 the Panel executive was employed by the Securities Commission and effectively seconded to the Panel. The Panel executive was also physically co-located with the Commission.
- 1.11 Following a governance review in 2007 the Panel decided that it should become the employer of its own staff and, ideally, physically separate from the Commission.
- 1.12 After a series of discussions with the Ministry, the then Minister, and the Commission, processes were put in place to manage the Panel's transition to a fully standalone entity.
- 1.13 The employment by the Panel of its own staff took place between April and September 2008, and the Panel relocated to its own premises in September 2009.
- 1.14 The Panel has a small executive staff of 8 employees. Given the current funding constraints imposed by the Government, this number is not expected to increase over the period of this Statement. The Panel expects to remain in its current premises through this period.

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. Its activities cover a range of different transactions affecting corporate control of New Zealand companies. It is involved in many of the major corporate transactions being undertaken in New Zealand. It must be professional and responsive to be effective.
- 2.2 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 their application would have unexpected or unintended consequences. The Panel approves the appointment of 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.
- 2.3 The Panel, through its executive, also provides informal assistance to market participants by reviewing draft takeover documents and draft notices of meeting for compliance with the Code. This service is provided free of charge, depending on availability of resources, and has both an educational benefit and an efficiency benefit because of the reduced possibility of enforcement action being necessary to remedy non-compliant documentation.
- 2.4 Where Code companies are proposing transactions involving a change of control carried out under the schemes of arrangement provisions of the Companies Act 1993 the Panel will seek to be heard in the High Court at the stage that initial orders are being sought. This is only an interim measure because of the unsatisfactory state of the law at the moment.
- 2.5 The Panel has made recommendations to the Minister of Commerce proposing changes to the law so that control change transactions affecting Code companies could no longer be carried out by amalgamations that are not subject to the approval of the Court. The Panel is also recommending that it should have greater involvement with such control change transactions, including by making comments to the Court on the affect of the proposed transaction on the position of shareholders. If these recommended changes are implemented this would have an impact on the operations of the Panel in the later years covered by this statement.
- 2.6 A feature of the Panel's operations is that it often has to operate under considerable time pressure. This is because of the tight timeframes for takeover procedures in the Code and the Act, the timetables requested from the Courts for Companies Act processes, and the size of many of the transactions involved.
- 2.7 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 Reviewing market practices relating to takeovers of Code companies and making recommendations to the Minister for changes to the law where appropriate. For this purpose the Panel will continue to issue consultation documents and seek market feedback on its proposals;
- c Participation in High Court proceedings where schemes of arrangement are being proposed under Part 15 of the Companies Act involving changes of control of Code companies. The Panel intends to participate in these proceedings. The exact form of the Panel's involvement will depend on the nature and extent of any changes that are made to that law following the Panel's recommendations to the then Minister of Commerce made in August 2008;
- d Approval activities, including the approval of independent advisers and the appointment of independent experts when required under the Code;
- e 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, or modification of, its requirements is appropriate;
- f 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;
- g International liaison activities, including participating in meetings of international takeovers regulators.

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

- 3.1 The intended impact of the Panel's operating outputs is an effective and efficient takeovers market that maintains the confidence of domestic and international participants by providing a transparent process which ensures equal treatment of shareholders.
- 3.2 The Panel is a small body administering a specialised area of the law and practice.
- 3.3 The overall **outcome**² that the Panel is aiming to contribute to is **increased confidence and participation in New Zealand's financial markets**.
- 3.4 The Panel aims to achieve this outcome through the **impact**³ it makes from being **an effective and efficient regulator of the takeovers market respected by domestic and international market participants, and enforcing a Takeovers Code that provides for fair treatment of shareholders and a transparent takeover process**.
- 3.5 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

- 3.6 The effectiveness of the Code in promoting market efficiency 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.
- 3.7 The objective sought by the Crown for its takeovers law is a subset of its overall goal of driving productive non-inflationary growth. Takeovers law aims to provide for equal treatment of shareholders and a transparent takeover process, leading to increased confidence and participation in New Zealand's financial markets.
- 3.8 The intended **impact** from the Panel's function of keeping the Code under review is improvements in the efficiency of the Code.
- 3.9 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 active in relation to undertaking research into, and proposing changes to, the provisions of the Companies Act as they apply to changes of control of code companies.

² "Outcome" is defined in section 2(1) of the Public Finance Act as (a) means a state or condition of society, the economy, or the environment; and (b) includes a change in that state or condition.

³ "Impact" is defined as: *The contribution made to an outcome by a specified set of outputs, or actions, or both* (s2(1) of the Public Finance Act)

Enforcement of the Code

- 3.10 The Panel has significant enforcement powers in relation to the Code. Enforcement of the Code's provisions is usually the largest of the Panel's outputs. In addition, the Courts have given support to the Panel's capacity to appear in the High Court when Court-approved schemes of arrangement and amalgamations are being used to effect changes in the control of Code companies.
- 3.11 The theoretical aim of enforcement is to achieve 100% compliance with the Code. While that is not a realistic goal, the Panel's enforcement activities can be expected to result in an improved level of compliance with the Code by market participants. This in turn will engender overall confidence that the market for corporate control is well-regulated.
- 3.12 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.
- 3.13 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 powers under that section.
- 3.14 The Panel also facilitates Code compliance by informally reviewing draft takeover documents for market practitioners before the documents are formally issued or released to the market. This service is well-received in the market and doubtlessly contributes to a higher level of Code compliance in the takeovers market.

The granting of exemptions

- 3.15 The Panel's second most significant output in resource terms relates to the granting of exemptions.
- 3.16 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.
- 3.17 This was recognised by giving the Panel the ability to grant both individual and class exemptions. Individual exemptions may be granted with retrospective effect.
- 3.18 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.
- 3.19 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.
- 3.20 The Panel has to be cognisant both of the application of the law to particular circumstances and of 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 as on the application of Panel policies and the existence of any relevant precedents. Staff processing exemptions are set milestones within which they are expected to complete work on each exemption.

- 3.21 The Panel is empowered to charge applicants fees at prescribed rates based on the amount of executive and members' time spent processing each application. This is a significant source of third party revenue for the Panel.

The approval function

- 3.22 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.
- 3.23 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. It is also trying to expand the available pool of independent advisers where it can.
- 3.24 The Panel is empowered to charge applicants fees at prescribed rates based on the amount of executive and members' time spent processing each application. This is a significant source of third party revenue for the Panel.
- 3.25 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

- 3.26 The Panel promotes public understanding of the law and practice relating to takeovers.
- 3.27 It carries out this function in a variety of ways, including by publishing a periodic newsletter, through maintaining its website, by explicitly seeking feedback on its performance from market participants, by public speeches to conferences and professional organisations, and by responding to market and media queries.
- 3.28 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

- 3.29 The Panel co-operates with overseas takeovers regulators on matters where it can use its powers to assist such regulators.
- 3.30 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.

- 3.31 The Chairman of the Panel is a member of the Australian Takeovers Panel and regularly attends meetings of that Panel. Likewise, a member of the Australian Panel is a member of the New Zealand Panel and regularly attends meetings in New Zealand.
- 3.32 The Panel also aims to be represented at international conferences of takeovers regulators. These are occurring every two to three years. The Panel offered, subject to funding, to host the next such conference in New Zealand in 2010. The Panel does not now intend to proceed with hosting this conference because of its likely cost during a time of fiscal stringency. The Panel is in the process of encouraging other regulators to host the next conference.
- 3.33 The intended **impact** of the Panel's international activities is the improvement in the level of co-operation and understanding between international takeovers regulators.

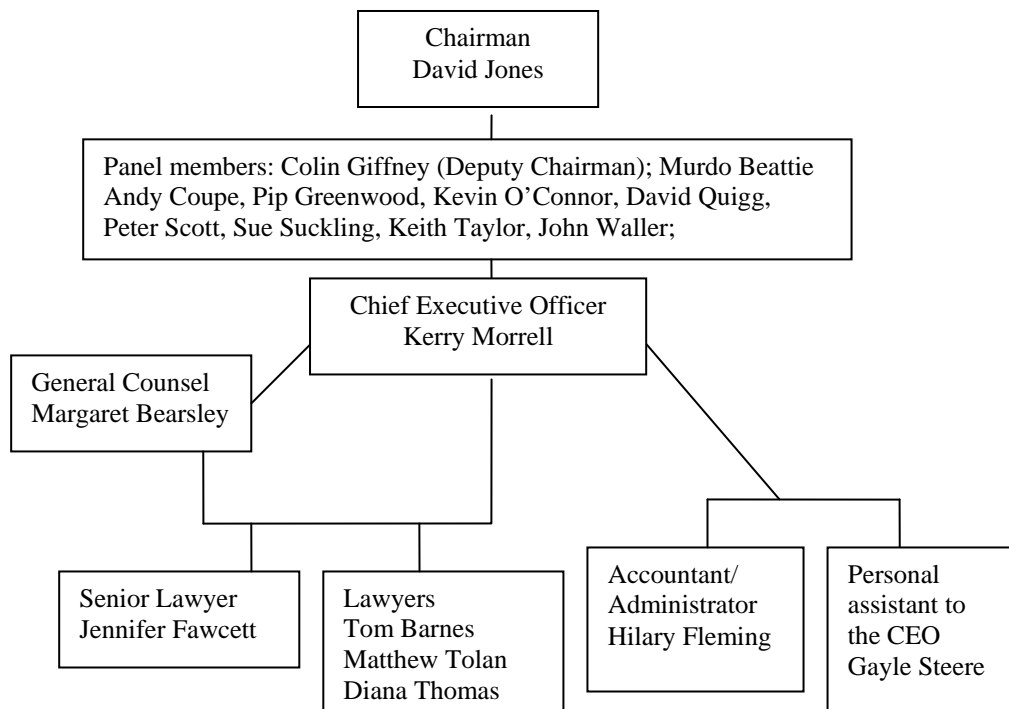
4. HOW THE PANEL INTENDS TO PERFORM ITS FUNCTIONS AND CONDUCT ITS OPERATIONS TO ACHIEVE ITS OUTCOME AND MAKE ITS INTENDED IMPACTS

- 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 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, share-brokers, 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 some regular governance meetings, are held by teleconference or video conference. The Panel has also decided to delegate its powers in relation to the appointment of independent advisers to the Panel’s Chief Executive in respect of certain classes of application.
- 4.4 To maintain the effectiveness of the Panel as a governing and decision-making body it meets six times a year, with two meetings in each of Wellington and Auckland and another two meetings held by video-conference. The purpose of these meetings is to discuss policy issues, exercise the Panel’s governance responsibilities, and ensure consistency of decision-making across divisions. Some matters, including class exemptions and the making of recommendations to the Minister 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.
- 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 unbiased advice on issues that come before the Panel.
- 4.7 The Panel considers it must maintain an executive of sufficient size that it is able to support the members with two high-level enforcement actions at any given 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 meetings and to advise it on legal issues affecting the subsequent determinations it makes. A concern to the Panel is the limited pool of experienced senior counsel that is 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 they apply to transactions coming within the Code.
- 4.10 The Panel is satisfied that the current executive structure is appropriate and provides the best value-for-money to enable the Panel to effectively carry out its statutory functions. It is important to maintain the executive at a sufficient level at all times, even if transaction levels are relatively low as they were in 2008/2009, so that the Panel is ready and able to process takeover transactions when the market picks up again, as it is now doing.
- 4.11 The Panel executive has a flexible management structure in keeping with its small size and the need to cover enforcement, approval and policy areas. 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. The Panel's administrative staff is kept to a minimum. The Panel has no separate public relations staff, either as employees or an retainer.

Panel Organisation Structure



- 4.12 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 Securities Commission.
- 4.13 The Panel, at both member and executive level, maintain good relations with other takeover regulators, particularly in Australia. These relationships prove invaluable when policy or transactional issues with trans-Tasman implications arise.

- 4.14 The principal risks to the Panel achieving its outcome and making its impacts are:
- a Difficulty in attracting members with appropriate backgrounds and skills and the 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 its key staff. The Panel mitigates this risk by paying competitive salaries and providing satisfactory working conditions and a stimulating environment for its employees;
 - c Potential difficulties in recruiting replacement or new professional staff when required. Although the current employment market in New Zealand is reasonably soft, this situation will not last indefinitely and the Panel must keep an eye to the future. It cannot ignore the need to retain key staff even in a soft employment market;
 - d Part reliance on third-party funding. The Panel receives a reasonable portion of its funding by way of third party income. The level of this income is determined by the relative portion of its costs covered by the fees it can charge, the level of market activity and hence advisers and exemptions that may be required, and the number and outcome of enforcement meetings that may be held by the Panel. Where the volume of activities funded by third party fees is lower than expected the Panel could experience a funding shortfall for any given year. The Panel's fee structure is currently under review. This is likely to result in an increase in the level of fees that the Panel will be able to charge, possibly from a date later in calendar year 2010. The Panel counters the risk of lower than expected fee revenue by aiming to maintain an appropriate level of working capital at all times. The greater the Panel's reliance on third party funding the more vulnerable the Panel will be to a fall-off in reimbursable activity and the more working capital it will require to protect its viability;
 - 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 adequate for the Panel's needs to date, which was recognised in the reduced appropriation for top-up funding provided in the 2009/10 Budget.
 - f Loss of records. The Panel is taking adequate precautions to protect both its electronic and physical records.

5. MANAGING THE PANEL'S ORGANISATIONAL HEALTH AND CAPABILITY

- 5.1 The Panel is a small Crown entity but it has a conventional management structure, with the Chief Executive Officer responsible to the board, the Panel's governing body, for the performance of the executive. The Panel is responsible for the performance management, remuneration and succession planning of its key executive. It carries out these responsibilities through a board sub-committee comprising the Chairman, David Jones, the Deputy Chairman, Colin Giffney, and member Sue Suckling. This committee is expanded on an ad hoc basis from time to time as particular issues arise.
- 5.2 The Panel, through its Chief Executive Officer, is responsible for the recruitment, performance management, remuneration and career planning of its executive staff. The training needs of each staff member are developed by the Chief Executive in discussion with the staff member concerned. Performance is managed by setting milestones in relation to each task undertaken. Remuneration is managed responsibly in a time of fiscal constraint but with a view to retention of skilled and experienced staff.
- 5.3 The Panel is complying with the State Services Commission's requirement to have a code covering all aspects of the conduct of the Panel's employees, including but not limited to a code of ethics, guidelines on sensitive expenditure, a fraud prevention policy, travel policy, a procurement policy and policies for the use of Panel ICT resources. The Panel is also currently exploring efficient ways of complying with the State Services Commission's expectation that it prepare a Governance Manual for the use and guidance of board members.
- 5.4 An important 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. Panel members must be qualified or experienced in business, law or accounting. This issue is particularly apposite at the present time because of the number of members whose terms expire in the next 18 months.
- 5.5 The Panel has provision for 11 members and all positions are currently filled. Members are appointed by the Governor-General on the recommendation of the Minister of Commerce. One member is appointed because he is a member of the Australian Takeovers Panel.
- 5.6 The current terms of office of eight Panel members, being the Chairman, David Jones, the Deputy Chairman, Colin Giffney, members Kevin O'Connor, David Quigg, Sue Suckling, John Waller, Peter Scott and Keith Taylor are scheduled to end between June 2010 and December 2011. Decisions will need to be made shortly on members whose terms of office are to be extended or renewed, and on those whose terms as members will lapse and need to be replaced with newly appointed members. These decisions will be crucial to the ongoing effectiveness of the Panel as a market regulator.

- 5.7 The level of remuneration paid to the Chairman and members of the Panel is set by the Remuneration Authority. Providing adequate remuneration for members is one part of ensuring the Panel maintains an effective membership to meet its responsibilities and fulfill its functions. For this reason the Panel generally supports the maintenance of relativity between the remuneration rates payable to members and those paid to members of similar statutory bodies and to senior market professionals. Despite this general approach, the Panel accepted the request from senior government Ministers made early in 2009 that it should exercise restraint with the setting of its own remuneration level. As such the Panel asked the Remuneration Authority that it make no increase in Panel members' remuneration for the 2009/2010 financial year. The Authority duly obliged.
- 5.8 While the Panel accepts the need for fiscal restraint at the present time it is important that remuneration levels for members are not allowed to slip to the point where the appointment of new members, or the retention of existing members, is jeopardised by the provision of inadequate remuneration.
- 5.9 The staff of the Panel comprises the Chief Executive Officer, General Counsel, Senior Lawyer, three Lawyers of varying levels of experience, an Accountant/ Administrator and a Personal Assistant to the Chief Executive.
- 5.10 To protect the integrity of the Panel's IT system there is a daily back-up of all computer files and records. The Panel's key documents are recorded and stored off-site in the event of a natural disaster affecting the Panel's premises. The Panel recently established its physical filing systems, including offsite storage of archived material, and is following protocols for storage and disposal of files that are in accordance with the requirements of the Chief Archivist.
- 5.11 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 As a market regulator the Panel is a demand-driven organisation. The amount of enforcement work and the time spent on processing exemption and adviser applications is a direct reflection of the level of market activity. These are the sources of the Panel's third party revenue. That revenue is outside of, and to a degree must be seen to be outside of, the Panel's control.
- 6.3 The Panel is cost conscious. Most Panel (division) meetings are held by telephone. The Panel 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. The Chief Executive Officer reports to members regularly on the executive's performance in relation to the Panel's agreed performance standards. Milestones are set for the completion of individual jobs.
- 6.4 The Panel must work within revenue and cost parameters largely set by external parties and circumstances. The cost of the Panel's staff resources, its major item of expenditure, is dictated by market conditions and the need to recruit and retain appropriate professional staff to undertake its functions. The employment package of the Panel's Chief Executive is approved by the State Services Commission. The fees paid to members for their work for the Panel are set by the Remuneration Authority, not by the Panel.
- 6.5 If the Panel's activities were to 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. This 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

- 6.6 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 2010/2011 in the Panel's forecast Statement of Service Performance included later in this Statement of Intent.
- 6.7 The Panel is committed to supporting the Government's initiative of achieving greater value for money from the resources provided to it by the Crown. The Panel realises the importance of demonstrating improvements in its efficiency and endeavours to illustrate these through the forecast SSP, in particular the textual explanation supporting each output. However, the Panel considers that due to its nature as a small market regulator making a limited number of high-end decisions it is not possible to

accurately demonstrate the effectiveness of the Panel’s activities through simple numeric measures alone.

- 6.8 The Panel aims to be an effective and efficient regulator respected by domestic and international market participants. Many Panel members are active participants in the takeovers market. As such they often seek feedback from other participants as to the performance of the Panel executive, and the Panel itself and the decisions it makes. The Panel puts a lot of store in what participants informally tell members but this information is not capable of easy quantification and nor can it be readily verified. In general terms market feedback on the Panel’s performance is very positive and the Panel strives to maintain this situation. The Panel is satisfied that it is performing well as an effective market regulator.
- 6.9 To the extent that non-financial measures can measure the Panel’s performance, the Panel considers that the main non-financial measures by which its future performance may be judged over the next three years in respect of its main “impacts” are set out in the table below. The measures have been chosen because they relate to three key areas of the Panel’s activities – the giving of policy advice, the quality of information given to participants in takeover transactions, and enforcement of the Code – and because they are measurable.

IMPACT	MAIN NON-FINANCIAL MEASURES BY WHICH THE FUTURE PERFORMANCE OF THE PANEL MAY BE JUDGED
The improvement in the efficiency of the Code	The Panel keeps market practices under review and makes recommendations to the Minister for changes to the Code where necessary. As a measure of the Panel’s impact on the efficiency of the Code the Panel aims to have its recommendations for changes to takeovers law accepted by the Minister of Commerce. (In the current year the Panel will make no new recommendations to the Minister for changes to takeovers law.)
The improved quality of advice given to recipients of takeover offers and to shareholders entitled to vote to approve Code related allotments and acquisitions	The Panel does this by setting high standards of independence and competence for advisers approved by the Panel while also promoting a larger pool of available advisers, and by reviewing and commenting on their draft reports. . As a proxy of a measure that reflects the impact the Panel makes on the quality of advice given to shareholders involved in code-related matters, the Panel aims to reduce the level of substantive comments on draft independent adviser reports to two comments per report. (In the current year we expect only 50% of reports to have two or less Panel staff comments on them. The rest will have more. “Substantive” comments may relate to the inaccurate description of Code rights, or an inadequate discussion of change of control consequences. They do not include typographical errors.)
The improvement in the level of compliance with the Code by market participants	The Panel aims to maintain compliance with the Code and domestic and international confidence in the integrity of the markets, by reviewing all takeover documentation and all documentation relating to shareholder meetings conducted for the purpose of approving Code transactions, and taking appropriate enforcement action where necessary. As a proxy of a measure that reflects the impact the Panel makes on the level of market compliance with the Code the Panel aims to reduce the material instances of non-compliance with the Code detected in the main takeover documents to four per document. (In the current year the average number of instances of non-compliance is expected to be 2 per

	<p>main takeover document. Material instances of non-compliance would include conditions in an offer which do not comply with rule 25 of the Code, terms of an offer that breach rule 20 of the Code, failure to sign the required certificate for an offer document or target company statement, failure to include details of an asset valuation if one is referred to in a target company statement, omission of material information from a target company statement)</p>
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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 under the Act and the Code.
- 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.

Reporting to Minister and Ministry

- 7.3 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.
- 7.4 The Panel will report to the Minister on a quarterly basis 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. These reports are provided in the first instance to the Ministry who will brief the Minister as required.
- 7.5 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 The Panel considers that 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 considers that there are no 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 2011**

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

<p>OUTPUT 1: <i>Recommendations for changes to takeovers law:</i> Ensuring that the provisions of the Takeovers Code are effective and relevant as assessed by conducting reviews, enquiring into market practice and recommending amendments to the Code and the Act as necessary.</p>		
<p><i>Impact:</i> 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.</p>		
<p><i>Activities and actions to include:</i></p> <ul style="list-style-type: none"> • 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. 		
<p><i>Planned performance standards and performance measures for 2010/2011 (Forecast outcome for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets):</i></p>		
<i>Performance Measures</i>	<i>Performance Standards</i>	
	<i>For 2010/2011</i>	<i>(Forecast 2009/2010)</i>
<p><u>Quantity and Quality</u> Keep the Takeovers Code and the Takeovers Act 1993 under review and recommend amendments to the Code and Act as necessary.</p>	<p>The Panel intends to make 20 recommendations to the Minister by June 2011 for technical (low policy content) changes to the Code and to have its recommendations approved by the Minister.</p>	<p>(Make one updated recommendation to the Minister for changes to the law)</p>
<p>Participate as required on projects and reviews.</p>	<p>To be invited to make 3 submissions or contributions on relevant issues</p>	<p>(3 submissions: On Capital Market Task Force Report, on proposals for drafting exemptions, and on summary offence provisions)</p>
<p>Keep under review practices relating to takeover activities by observing market activity through various media each working day.</p>	<p>Continuous</p>	<p>(Continuous)</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.	Complete 3 inquiries into market practice.	(5 inquiries completed)
<u>Timeliness</u> Recommendations for amendments to the Code will be made in accordance with Work Programme.	20 recommendations for changes to the law to be made by 30 June 2011.	(No recommendations for changes to the law made during the year)
<u>Revenue:</u> Nil (Nil) <u>Cost:</u> \$362,000(\$445,000)		

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.		
<i>Impact:</i> 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.		
<i>Activities and actions to include:</i> <ul style="list-style-type: none"> • 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. • 		
<i>Planned performance standards and performance measures for 2010/2011⁴: (Forecast outcome for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets)</i>		
<i>Performance measures</i>	<i>Performance standards</i>	
	<i>For 2010/2011</i>	<i>(Forecast 2009/2010)</i>
<u>Quantity</u> Applications for approval of independent advisers and independent experts.	(Demand driven) 40-45	(30)
Applications for consent to withdrawal of offers, and in relation to defensive tactics.	(Demand driven) 2	(0)

⁴Although 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

<p><u>Quality</u></p> <p>The Panel aims to improve the quality of independent advice given to shareholders involved in code transactions by setting high standards of independence and competence for advisers approved by the Panel and by reviewing and commenting on their draft reports.</p>	<p>As quality proxy, to reduce Panel executive comments on draft independent adviser reports to two substantive comments per report</p>	<p>(50% of draft reports have two or less substantive comments made by Panel executive)</p>
<p><u>Timeliness</u></p> <p>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.</p>	<p>To be achieved in 90% of cases.</p>	<p>(95%)</p>
<p><u>Revenue (from fees):</u> \$37,000 (\$34,000)</p> <p><u>Cost:</u> \$109,000 (\$94,000)</p>		

<p>OUTPUT 3: Exemptions:</p> <p>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.</p>		
<p><i>Impact:</i></p> <p>The improvement in the functioning of the market by alleviating unintended or unreasonable consequences arising from the application of the Code</p>		
<p><i>Activities and actions to include:</i></p> <ul style="list-style-type: none"> • 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. • 		
<p><i>Planned performance standards and performance measures for 2010/2011⁵ (Forecast outcome for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets)</i></p>		
<p><i>Performance measures</i></p>	<p><i>Performance standards</i></p> <p><i>For 2010/2011</i> <i>(Forecast 2009/2010)</i></p>	
<p><u>Quantity</u></p> <p>Applications for individual exemptions from the Takeovers Code will be processed as received.</p> <p>Class exemptions from the Takeovers Code when applied for or at Panel initiative</p>	<p>(Demand driven)</p> <p>28 – 36</p> <p>(Demand driven)</p> <p>2 – 4</p>	<p>(22)</p> <p>(6)</p>

⁵ 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

<p>Quality The Regulations Review Committee does not recommend disallowance of notices, and notices are not successfully judicially reviewed.</p>	100%.	(100%)
<p>Timeliness Within timeframe agreed with applicants This may vary from 2 days to three months depending on the needs of the applicant and the complexity of the exemption sought</p>	90%	(90%)
<p>Revenue (from fees): \$185,000 (\$159,000) Cost: \$544,000 (\$552,000)</p>		

<p>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.</p>
<p><i>Impact:</i> The continuing improvement in the level of compliance with the Takeovers Code by market participants.</p>
<p><i>Activities and actions to include:</i></p> <ul style="list-style-type: none"> • 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.
<p><i>Planned performance standards and performance measures for 2010/2011⁶ (Forecast outcome for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets):</i></p>

⁶ 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

<i>Performance measures</i>	<i>Performance standards</i>	
	<i>2010/2011</i>	<i>(Forecast 2009/2010)</i>
<u>Quantity</u>	(All demand driven)	
Review all offer documents.	12	(10)
Review all meeting documents.	24	(20)
Section 32 meetings.	3	(2)
Section 35 actions.	1	(0)
Investigation of possible Code breaches.	25	(15)
Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies	2	(1)
<u>Quality</u>		
Documents reviewed for compliance with the law. The effectiveness of the review function is indicated by the reduction in the number of material instances of non-compliance in formal takeover documents	The Panel aims to review all takeover documentation and all documentation relating to shareholder meetings conducted for the purpose of approving Code transactions. The average number of material instances of non-compliance with the Code to be no more than 1 per formal takeover document.	(All documents reviewed and appropriate enforcement action initiated where identified. The average number of material instances of non-compliance with the Code in formal takeover documents is 2 per document)
Enforcement meetings conducted in accordance with the Panel's procedures with no Court challenges or, where challenged, Court endorsement.	100% as demonstrated by lack of legal challenge to conduct of meetings	(100%)
<u>Timeliness</u>		
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%)
<u>Revenue (from fees):</u> \$129,000 (\$180,000)		
<u>Cost:</u> \$661,000 (\$569,000)		

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.

Impact:

The improvement in public understanding of takeovers law over time.

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;
- obtaining 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 2010/2011 (Forecast outcomes for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets):

<i>Performance measures</i>	<i>Performance standards</i>	
	<i>For 2010/2011</i>	<i>(Forecast 2009/2010)</i>
<u>Quantity, Quality and Timeliness</u>		
Publish a publication designed to provide information about the Takeovers Code and relevant law.	3 times a year, with publication within one month of significant changes to the law affecting takeovers.	(3)
Issue policy statements, guidance notes and commentaries on current issues.	4 times a year	(4)
Interface with the market through public and private meetings.	12 occasions	(12)
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	(5 working days)

Receive miscellaneous enquiries from members of the public and professional firms.	working days of the event or decision. Receive 160 enquiries. Respond to inquiries within 3 working days.	(120 enquiries, respond within 3 working days).
Revenue: Nil (Nil)		
Cost: \$127,000 (\$112,000)		

OUTPUT 6: <i>International Liaison:</i> To enhance and improve co-operation and liaison with overseas takeovers regulators on matters of mutual interest.		
<i>Impact:</i> The improvement in the level of co-operation and understanding between the Panel and other international takeovers regulators.		
<i>Activities and actions to include:</i> <ul style="list-style-type: none"> 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 but withdrawing its offer 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. 		
<i>Planned performance standards and performance measures for 2010/2011 (Forecast outcome for 2009/2010, using actual data to March 2010 and a forecast for the remainder of the year, in brackets):</i>		
Performance measures	Performance standards <i>For 2010/2011 (Forecast 2009/2010)</i>	
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. Maintain reciprocal membership between Australian and New Zealand Takeovers Panels.	Respond to all enquiries within five working days. 2 enquiries. One member of each Panel on the other Panel	(No enquiries received. 3 enquiries made). (1, 1)
Timeliness Panel representatives to meet regularly with overseas bodies.	1 time per year	(1 time).
Revenue: Nil (Nil)		
Cost: \$9,000 (\$7,000)		

**FORECAST FINANCIAL STATEMENTS OF THE TAKEOVERS PANEL
FOR THE YEAR ENDING 30 JUNE 2011**

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 2010/11 - 2013 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 7 May 2010

FORECAST STATEMENT OF COMPREHENSIVE INCOME*for the year ending 30 June 2011*

	<i>Forecast 12 months to 30 June 2011 \$</i>	<i>Notes</i>	<i>Forecast 12 months to 30 June 2010 \$</i>
Revenue - Operating			
Government appropriation	1,494,000		1,494,000
Interest	16,531		11,531
Application fees and costs recoverable	350,325	3	373,325
Other income	11,349		11,018
Total operating revenue	<u>1,872,205</u>		<u>1,889,874</u>
Revenue - Litigation fund			
Interest	38,196		32,999
Total litigation fund revenue	<u>38,196</u>		<u>32,999</u>
Total revenue	<u>1,910,401</u>		<u>1,922,873</u>
Operating expenses			
Audit fees	12,015	8	10,015
Communication charges	57,352		56,227
Training and memberships	20,291		19,893
Depreciation	67,913		51,139
Members' fees	245,562	6	237,562
Printing and stationery	82,428		83,620
Consultants and legal	134,774		126,774
Services and supplies	116,992	4	101,080
Rent	131,616		109,677
Travel and accommodation	30,037		26,547
Personnel costs	892,862	5	855,862
Securities Commission services	-	7	80,527
Total operating expenses	<u>1,791,842</u>		<u>1,758,923</u>
Expenses - Litigation fund	20,000		20,000
Total expenses	<u>1,811,842</u>		<u>1,778,923</u>
Total comprehensive income	<u>\$98,559</u>		<u>\$143,950</u>
This is comprised of:			
Operating surplus (deficit)	80,363		130,951
Litigation fund surplus / (deficit)	18,196		12,999
	<u>\$98,559</u>		<u>\$143,950</u>

FORECAST STATEMENT OF FINANCIAL POSITION

as at 30 June 2011

	<i>Forecast as at 30 June 2011 \$</i>	<i>Forecast as at 30 June 2010 \$</i>
Current assets		
Cash and cash equivalents – operations	491,394	219,897
Cash and cash equivalents – litigation fund	511,997	489,481
Short term deposits – operations	122,807	119,907
Short term deposit – litigation fund	316,543	320,863
Interest receivable – operations	816	816
Interest receivable – litigation fund	5,618	5,618
Sundry debtors and prepayments	68,616	235,694
Total current assets	1,517,791	1,392,276
Non current assets		
Computer software	38,968	23,968
Less accumulated depreciation	(25,269)	(10,791)
Office equipment	142,635	138,604
Less accumulated depreciation	(87,918)	(39,752)
Office furniture	40,832	39,907
Less accumulated depreciation	(7,196)	(3,311)
Total non current assets	100,669	148,625
Total assets	\$1,618,460	\$1,540,901
Current liabilities		
Trade and other payables	111,721	109,721
GST payable	2,852	25,852
Total current liabilities	114,573	135,573
Equity		
Equity capital	150,000	150,000
Accumulated funds	519,729	439,366
Litigation fund	834,158	815,962
Total equity	1,503,887	1,405,328
Total equity and liabilities	\$1,618,460	\$1,540,901

FORECAST STATEMENT OF CHANGES IN EQUITY

For the year ending 30 June 2011

	<i>Forecast 12 months to 30 June 2011 \$</i>	<i>Notes</i>	<i>Forecast 12 months to 30 June 2010 \$</i>
Equity at start of period			
Equity capital	150,000		-
Accumulated funds	439,366		308,415
Litigation fund	815,962		802,963
Equity at start of year	1,405,328		1,111,378
Operating surplus (deficit)	80,363		130,951
Litigation fund surplus (deficit)	18,196		12,999
Total recognised revenues and expenses	98,559		143,950
Equity capital	-		150,000
Increase / (reduction) in equity	98,559		293,950
Equity at end of period	\$1,503,887		\$1,405,328
Comprising:			
Equity capital	150,000		150,000
Accumulated funds	519,729		439,366
Litigation fund	834,158		815,962
Equity at end of period	\$1,503,887		\$1,405,328

FORECAST STATEMENT OF CASH FLOWS

For the year ending 30 June 2011

	<i>Forecast</i> <i>12 months to</i> <i>30 June 2011</i> \$	<i>Notes</i>	<i>Forecast</i> <i>12 months to</i> <i>30 June 2010</i> \$
Note			
Cash flows from operating activities			
Cash was provided from:			
Government appropriation	1,494,000		1,494,000
Application fees & costs recoverable	498,562		284,276
Interest	54,727		40,474
Other income	11,349		11,018
Goods and services tax (net)	-		1,346
Cash was disbursed to:			
Suppliers	(879,960)		(862,501)
Employees	(866,129)		(842,804)
Net cash inflow (outflow) from operating activities	312,549		125,809
Cash flows from investing activities			
Cash was provided from:			
Net decrease in bank deposits	1,420		-
Cash was applied to:			
Acquisition of computer software	(15,000)		(9,968)
Acquisition of office equipment	(4,031)		(138,604)
Acquisition of office furniture	(925)		(39,907)
Net increase in bank deposits	-		(14,290)
Net cash inflow (outflow) from investing activities	(18,536)		(202,769)
Cash flows from financing activities			
Cash was provided from:			
Capital contribution	-		150,000
Net cash inflow (outflow) from financing activities	-		150,000
Net increase (decrease) in cash balance	294,013		73,040
Add opening cash balance	709,378		636,338
Closing cash balance carried forward	\$1,003,391		\$709,378

NOTES TO THE FORECAST FINANCIAL STATEMENTS

For the year ending 30 June 2011

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 2009/2010

The 2009/2010 forecast financial statements contained in these statements include actual results up to the end of March 2010 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 forecast for 2009/10 in the Panel's 2009 Statement of Intent.

2 Government appropriation

The Government appropriation is as per the amount allocated to the Output Class "*Administration of the Takeovers Code*" for the year 2010/2011.

3 Application fees and costs recoverable

We assume third party income of \$350,325 in 2010/2011, a decrease of around 6.1% from the expected level of income in 2009/2010. This decrease assumes a reduction of section 32 revenue after a larger than expected level in the present year. The expected reduction in section 32 revenue is partially offset by an expected increase in other fee revenue as a result of a likely rise in market activity.

4. Services and supplies

We assume an increase in the cost of services and supplies of some \$16,000, or 15.4% in 2010/11 compared with 2009/10. This reflects the fact that for the first two months of 2009/10 the Panel was co-located with the Securities Commission.

5 Personnel Costs

The Panel expects to spend \$892,862 on personnel costs in 2010/11, an increase of around 4.3% over the expected personnel costs in 2009/10. This includes salaries, ACC, contractors and recruitment costs.

6 Members' fees

The Panel expects to spend \$245,562 on members' fees in 2010/2011, an increase of 3.4% over expected expenditure in 2009/2010. This increase anticipates an increased workload for members as market activity increases.

7 Payment for Securities Commission Services

The Panel physically separated from the Commission on 1 September 2009. This payment is for the final two months of service from the Commission.

8 Audit fees

The Panel expects an increase in audit fees of \$2,000, or 20%, to \$12,015, reflecting the increasing scope of the Audit Office's review work in the coming year.

9 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 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 \$250,805 rather than the predicted \$350,325, with no reduction in staff costs, we would expect some reduction in members' fees and external legal costs, and the Panel's forecast operating profit of \$80,363 could reduce by around \$30,000 to \$50,363. The decrease in profit 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 2010. 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.

Measurement System

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

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

Government grant is recognised as revenue when earned and is reported in the financial period to which it relates. Revenue from application fees and costs recoverable is recognised when the relevant services are provided or when the Panel has made the relevant determination under section 32 of the Takeovers Act 1993.

Interest income is recognised as it accrues, based on the effective interest rate inherent in the respective financial instrument. The effective interest rate exactly discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount. The method applies this rate to the principal outstanding to determine interest income each period.

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. Reimbursements from the Crown to top-up the fund are reported as income in the period in which the Panel's claim for reimbursement relates.

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

3 GST

All items in financial statements are exclusive of GST with the exception of trade and other receivables and trade and other payables which are stated with GST included.

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of comprehensive income and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.

4 Financial Instruments

A financial instrument is recognised when the Panel becomes party to a financial contract. All financial instruments are recognised in the statement of financial position and all revenues and expenses in relation to financial instruments are recognised in the statement of comprehensive income.

Financial instruments comprise trade and other receivables, cash and cash equivalents, term deposits and trade and other payables.

5 Cost Allocation Policy

For the purposes of the statement of service performance direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

6 Income Tax

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

7 Trade and other receivables

Debtors and other receivables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method, less any provision for impairment.

8 Trade and other payables

Creditors and other payables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method.

9 Cash and cash equivalents

Cash and cash equivalents comprise cash balances on hand, held in bank accounts and short term deposits that form part of the Panel's day-to-day cash management. They are short term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in values. They are held

for the purpose of meeting short term cash commitments and have short maturities of three months or less.

10 Term Deposits

This category only includes term deposits with maturities greater than three months. These deposits are loans and receivables under NZ IFRS. Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are recognised initially at fair value plus transaction costs and subsequently measured at amortised cost using the effective interest rate method.

11 Impairment

At each balance date financial assets such as receivables are assessed for impairment. Trade and other receivables are individually assessed for impairment. This assessment is also made with reference to previous experience with debtors. The recoverable amount is the present value of the estimated future cash flows. An impairment loss is recognised in the statement of financial performance whenever the carrying amount of an asset exceeds its recoverable amount. Any reversal of impairment losses is also recognised in the income statement.

12 Depreciation

The following classes of property, plant and equipment have been depreciated over their economic lives on the following bases:

- office furniture - 8.5 – 10.5 percent straight line,
- office equipment - 17.5 – 40 percent straight line,
- computer software - 36 percent straight line.

13 Short term employee benefits

Employee entitlements represent the Panel's liability for employee annual leave entitlements and salaries accrued up to balance date. This has been calculated on an accrued entitlement basis which involves recognising the undiscounted amount of short term employee benefits expected to be paid in exchange for service that an employee has already rendered. This is calculated at current remuneration rates.

14 Contingent assets and contingent liabilities

Contingent liabilities are disclosed if the possibility that they will crystallise is not remote. Contingent assets are disclosed if it is probable that the benefits will be realised.

15 Application of NZ IFRS

The accounting policies set out above will be applied in preparing the financial statements for the year ended 30 June 2011.

16 Changes in Accounting Policies

The measure of depreciation in the forecast financial statements for 2010 was diminishing value. This has been changed to straight line to retain consistency with the method of depreciation used in the 2009 financial statements.

David Jones
Chairman
Takeovers Panel

Date:

Colin Giffney
Deputy Chairman
Takeovers Panel

Date: