

TAKEOVERS PANEL

STATEMENT OF INTENT

2007/2008 - 2010

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

CONTENTS

1. KEY BACKGROUND INFORMATION ABOUT THE PANEL	3
2. THE NATURE AND SCOPE OF THE PANEL’S FUNCTIONS AND INTENDED OPERATIONS	5
3. THE PANEL’S SPECIFIC IMPACTS, OUTCOMES OR OBJECTIVES	7
The Panel’s contribution to the relevance and effectiveness of the Code	7
Enforcement of the Code	7
The granting of exemptions	8
The approval function	8
Promoting public understanding of the law and practice relating to takeovers	9
International liaison	9
4. HOW THE PANEL INTENDS TO PERFORM ITS FUNCTIONS AND CONDUCT ITS OPERATIONS TO MEET ITS OBJECTIVE AND ACHIEVE ITS IMPACTS	10
Framework of the Code (including review of market practices)	10
Enforcement of the Code	11
The power to grant exemptions	12
Approvals under the Code	13
Public education activities	14
International liaison	15
5. MANAGING THE PANEL’S ORGANISATIONAL HEALTH AND CAPABILITY	16
6. THE MAIN FINANCIAL AND NON-FINANCIAL MEASURES AND STANDARDS BY WHICH THE FUTURE PERFORMANCE OF THE PANEL MAY BE JUDGED	18
Financial measures	18
Non-financial measures	18
7. RELATIONSHIP WITH THE MINISTER AND MINISTRY	20
Consultation with Minister and Ministry	20
Reporting to Minister and Ministry	20
8. ACQUISITION OF SHARES OR OTHER INTERESTS	21
9. OTHER MATTERS REQUIRED TO BE DISCLOSED	21
FORECAST STATEMENT OF SERVICE PERFORMANCE	22
FORECAST FINANCIAL STATEMENTS	33

1. KEY BACKGROUND INFORMATION ABOUT THE PANEL

- 1.1 This Statement of Intent for the Takeovers Panel (“the Panel”) relates to the 2007/2008 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, share brokers, merchant bankers, accountants or financial advisers. One member is intended to be also a member of the Australian Takeovers Panel but at time of completion of this Statement the position was vacant.
- 1.3 These members are the governing body of the Panel, and exercise all the Panel’s powers.
- 1.4 The Panel is the regulator of the market for the control of “public” or larger companies in New Zealand (“Code companies”). It achieves this through the administration of the provisions of the Takeovers Code (“the Code”) and the Takeovers Act 1993 (“the Act”). It carries out a quasi-judicial function when exercising some of its powers.
- 1.5 Code companies comprise New Zealand incorporated companies whose voting securities are listed on the NZX, or that were so listed at any time in the previous 12 months, and those such companies with 50 or more shareholders.
- 1.6 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. 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.
- 1.7 Takeover activity covered by the Code has increased. In 2005/2006 the Panel reviewed 19 takeover notices and considered 34 applications for approval of independent advisers. By the end of the first nine months of 2006/2007 the Panel had already reviewed 20 takeover notices and considered 34 applications for approval of independent advisers.
- 1.8 Takeovers give rise to many regulatory issues. Sometimes they are simply procedural. Sometimes wider economic issues of resource use or regional employment can arise where a takeover involves infrastructure assets or assets in sectors undergoing significant restructuring. Such takeovers may contribute to the Government’s overall objective of economic transformation.
- 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 in the process 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.

- 1.10 One of the features of the Panel's operations is its ability to form "divisions", comprising a minimum of three members, to attend to most matters before the Panel. Under the Act the appointed division is "the Panel" for the particular matter.
- 1.11 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.
- 1.12 The Panel has no staff of its own, all of the Panel executive being employed by the Securities Commission. There are special provisions in the Securities Act to provide that the Commission can provide services to the Panel as one of its functions.
- 1.13 The Panel pays the Commission on the basis of the hours worked for the Panel by professional staff. The rate paid covers the overheads provided by the Commission such as library and secretarial support, premises, computer and phone systems as well as the salary and superannuation costs of staff.

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. The scope of its activities is limited to activities affecting Code companies.
- 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. 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.
- 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;
 - 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.

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

- 3.1 The "Vote Commerce" section of the Government's annual appropriation statement states that Crown entities "*assist economic growth by ensuring that businesses and consumers have confidence in the integrity and effectiveness of New Zealand markets and can make well informed decisions*". The Panel contributes to economic growth because "*enforcement of the Code ensures equal treatment of shareholders and a transparent takeover process, resulting in confidence of domestic and international investors in the integrity of our market.*" This is a Government **outcome**.¹
- 3.2 The Panel is a small body administering a specialised area of the law. The Panel aims to achieve a number of **impacts** on the Government's target outcome through its work.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**.

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

- 3.4 The effectiveness of the Code in promoting economic transformation 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.
- 3.5 The outcome 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.
- 3.6 The **impact** arising from the Panel's function of keeping the Code under review is improvements in the efficiency of the Code. 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.

Enforcement of the Code

- 3.7 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

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

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)*

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.

- 3.8 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.
- 3.9 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.
- 3.10 The Panel achieves this impact in a number of ways, detailed later.

The granting of exemptions

- 3.11 The Panel's second most significant output in resource terms relates to the granting of exemptions.
- 3.12 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.
- 3.13 This was recognised by giving the Panel the ability to grant both individual and class exemptions. Individual exemptions may be retrospective.
- 3.14 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.
- 3.15 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 strict application of the Code or allowing otherwise legitimate but Code non-compliant market transactions to occur while still being consistent with the objectives of the Code.

The approval function

- 3.16 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.
- 3.17 The Panel seeks to ensure that appointed advisers are both independent and competent to do the job required.
- 3.18 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

- 3.19 The Panel has as a function to promote public understanding of the law and practice relating to takeovers.
- 3.20 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.
- 3.21 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

- 3.22 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.
- 3.23 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.
- 3.24 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 following sections set out in broad terms how the Panel intends to perform its functions and conduct its operations to meet its objective and to achieve its impacts.

Framework of the Code (including review of market practices)

- 4.2 The Panel intends to undertake a number of policy and market review activities in 2007/2008 and beyond. The Panel is responsible for keeping under review the provisions of takeovers law and making recommendations to the Minister for changes to that law where appropriate. This will involve:
- a In response to the invitation from the Minister, undertaking further policy work to develop legislative solutions to the issue of amalgamations and schemes of arrangement under the Companies Act 1993 being used to effect changes in control in Code companies in ways that may not align with the Code; and
 - b Reviewing the terms of the Panel's class exemptions from time to time to ensure they remain relevant and appropriate.
- 4.3 The Panel will continue to draw on its experience with administration of the Code, including its enforcement functions and exemption activities, to identify aspects of the Code where amendment is considered urgent and/or essential. It will work with the Ministry in promoting desirable changes to the law.
- 4.4 The Panel is concerned at the process which seems to be required to bring about a change in the Code and intends to explore this issue with the Ministry. The outcome of some recent takeovers could well have been different, at least in terms of the consideration paid for compulsorily acquired shares, had the Panel's proposed technical amendments been put in place earlier.
- 4.5 If the Panel becomes aware of matters in the Code that need amendment it will develop proposals to solve the identified difficulty and circulate those proposals for public comment. Following a period of consultation the Panel would then make appropriate recommendations for change to the Minister.
- 4.6 The Panel has no current intention of promoting any further technical amendments to the provisions of the Code, but could do so. The Panel sees no need to undertake a review of the fundamental provisions of the Code other than in relation to the current interaction with the scheme of arrangement and amalgamation provisions of the Companies Act. The Panel also intends to review the Code's provisions relating to partial offers to ensure they remain appropriate.
- 4.7 The Panel will use its own executive, with external assistance if necessary, to develop policy papers, guidance notes and practice notes relating to issues affecting the Code.

- 4.8 All these activities are aimed to ensure the Code fulfills its purpose of providing an efficient basis on which to conduct takeover activity in New Zealand. The level of impact the Panel is able to achieve towards this purpose is affected by the level of resources the Panel is able to put into the activity.

Enforcement of the Code

- 4.9 The Panel makes extensive use of its executive resources for enforcing the provisions of the Code.
- 4.10 All the main takeover documents are reviewed by the Panel executive staff for compliance with the Code.
- 4.11 Once the prospective technical amendments to the Code come into force on 1 July 2007, takeover participants will be obliged to send the Panel any documents that are published or sent to shareholders relating to the takeover offer or other Code transaction. This development should be followed by the coming into force of the “misleading or deceptive conduct” provisions of the Code and the Act, which will add another dimension to the Panel’s review role.
- 4.12 The Panel executive routinely monitors NZX company announcements and (including through a news clipping service) major New Zealand newspapers for transactions which appear to have Code implications.
- 4.13 An enforcement issue that continues to involve the Panel concerns the complexities of associate relationships for Code purposes.
- 4.14 Where enforcement issues are relatively minor these are usually dealt with in discussion with the legal advisers to the party or parties involved. Appropriate correcting action may be taken by agreement and without recourse to the Panel’s formal powers.
- 4.15 If non-compliance appears to be reasonably serious and the issues cannot be resolved then the Panel is likely to exercise its formal powers and convene a meeting under section 32 of the Act. Market participants also have the right to request that the Panel convene meetings under section 32 of the Act where they consider a breach of the Code may have occurred. This is a right that has been exercised sparingly.
- 4.16 The Panel expects an increase in enforcement activity once the misleading and deceptive conduct prohibitions in the Code come into force.
- 4.17 A section 32 meeting must be held within seven days of being called and the Panel must reach a decision within two days of calling the meeting if restraining orders are to be made or continued. The Panel’s full decision will be advised to the parties and published as quickly as possible, usually within two days of the meeting.
- 4.18 If the Panel has determined that non-compliance has occurred then it is likely to issue restraining orders freezing the situation for up to 21 days. This period allows the parties to resolve the matter with the Panel or for the Panel to take the matter to Court to have the Court make final orders.

- 4.19 Under new powers introduced through the Takeovers Amendment Act 2006 the Panel is now able, where it has determined at a section 32 meeting that non-compliance with the Code has occurred, to make permanent compliance orders without recourse to the Courts. These powers are expected to be used primarily in relation to the new misleading or deceptive conduct prohibitions in the Code.
- 4.20 In 2007/08 and future years the Panel's enforcement role will, as noted, be significantly expanded by changes made to the Code through the Takeovers Amendment Act 2006 particularly concerning the prohibition on misleading or deceptive conduct in takeover transactions.
- 4.21 The Panel has been preparing for these changes by developing policies for dealing with complaints that may arise under the expanded provisions of the Code and by researching the law underlying the new provisions. When the new provisions come into force during 2007/2008 the Panel will be ready.
- 4.22 A new area of enforcement activity in 2007/2008 and beyond concerns intervention in transactions where the scheme of arrangement and amalgamation provisions of the Companies Act are used to attempt to effect changes of control of Code companies.
- 4.23 The Panel has a litigation fund of \$675,000 provided by the Crown to meet the costs of litigation it initiates or to which it has to respond. The Crown is committed to topping up this fund (within limits) as it is used.
- 4.24 As part of the Panel's 2006/2007 Output Agreement with the Minister of Commerce the terms of the Panel's litigation fund were amended so that the Crown would provide funding for the Panel to bring actions in the Courts where Code companies are using the provisions of the Companies Act to effect changes of control.
- 4.25 The aim of enforcement activity is to raise the standard of compliance with the Code and thus facilitate the operation of the takeovers market. Sometimes this may mean having share acquisitions that were made in breach of the Code reversed by a sale of shares. Often it means requiring documents corrected. In the more extreme cases it may be necessary to have recourse to the Courts in order to achieve an appropriate and effective solution.
- 4.26 The Panel believes that the resources it puts into enforcement of the Code provide a reasonable prospect that breaches of the Code, particularly where they involve listed companies, will be detected and investigated. Unfortunately there is no reliable way to measure precisely how compliance standards are improving. The evidence is anecdotal. From the feedback the Panel receives it is clear that the Panel is having a significant impact on the level of compliance with the Code.

The power to grant exemptions

- 4.27 Next to enforcement the Panel's highest priority activity relates to the exercise of the power to grant exemptions from the Code.
- 4.28 The Code is a reasonably brief document expressed in quite broad terms. This means that there are many occasions where its provisions do not "fit" a particular transaction or where its strict application would have unintended or unexpected consequences.

- 4.29 The Panel receives many requests for exemptions. A significant number are declined because they are either inappropriate or their granting would be inconsistent with the objectives of the Code. The Panel will not grant exemptions that attempt to alter any of the fundamental parameters of the Code.
- 4.30 When an exemption application is received the Panel executive analyses the issues arising from it. After clarifying any outstanding issues with the applicant the executive prepare a report for the responsible division appointed to deal with the matter. This report is then considered by the Panel and a decision made. If it is decided to grant an exemption instructions are given to Parliamentary Counsel Office to draft the particular exemption. After checking, this notice is signed by a member of the Panel (usually the Chairman) and published in the *Gazette*.
- 4.31 The Panel aims to meet the timing requirements of the market for exemptions. This can sometimes impose considerable strain on the Panel's resources. Exemptions are a significant area of work for the Panel's members and executive.
- 4.32 The Panel has the ability to make retrospective exemptions, in effect validating particular transactions that have occurred in the past. The Panel has used this power sparingly.

Approvals under the Code

- 4.33 A further important part of the Panel's activities involves the granting of approvals for independent advisers to carry out various roles under the Code and for the appointment of independent experts where required by rule 57 of the Code.
- 4.34 The Panel has published its policy for the approval of advisers on its website. Any time that an adviser is required under rule 18, rule 21, rule 22 or rule 57 of the Code the company that is required to appoint the adviser will go through a process to find a suitable adviser and then that adviser will apply to the Panel for approval.
- 4.35 The application is processed by the executive. If there are any queries about the independence or competence of the adviser these are taken up with the adviser. New advisers are asked to produce copies of their past work so that the Panel can assess their experience and competence. The executive then reports to the responsible division of the Panel, which will make a decision on the application.
- 4.36 The Panel published a guidance note about the role of independent advisers in July 2003. This is available on the Panel's website and outlines the Panel's expectations in relation to each type of report required under the code. This guidance note is currently being reviewed and a revised version is expected to be issued early in the new financial year.
- 4.37 The Panel also has a policy of having the executive review draft reports before they are sent to shareholders. Given the tight deadlines in the Code most often these reviews have to be undertaken in less than 48 hours. Many reports are of a high standard and require no comment or need correction only on a few points relating to Code matters. Other reports have required considerable executive input, sometimes resulting in the Panel seeing several successive drafts.

- 4.38 If appropriate the Panel may tell an adviser that, because of the quality of a report it has produced, the Panel is not prepared to approve the appointment of that adviser for preparation of future Code reports. Any such adviser will be given the right to be heard by the Panel on the issue. If suitable corrective action is taken by the adviser the Panel may approve the appointment of the adviser for reporting on later Code transactions.
- 4.39 The Panel itself has the responsibility of appointing independent experts where these are required for the purposes of the Code's compulsory acquisition provisions. When the Panel is required to appoint an independent expert it goes through a process of seeking expressions of interest from firms with valuation expertise that are not already conflicted by previous involvement with the transaction or any of the main parties. The Panel then chooses the most appropriate firm for the assignment.
- 4.40 The Panel does not review the independent expert's report before it is given to the bidder and the target company. This is to avoid any suggestion that the Panel has influenced the outcome of the valuation.

Public education activities

- 4.41 The Panel uses a number of means to promote public understanding of takeovers law. These include:
- a Publication of the Panel's newsletter *Code Word* as required, usually two to four times a year depending on what is occurring in relation to takeovers (changes in the law, Panel enforcement and exemption decisions), including distribution to a list of several hundred recipients;
 - b Maintenance of a website that is kept up-to-date with all Panel decisions, news releases, speeches, discussion papers, practice notes etc;
 - c Publication of practice notes and guidance notes explaining how market participants should relate to the Panel and how the Panel interprets various rules of the Code;
 - d Giving public speeches to relevant seminars explaining issues around the Panel's activities and takeovers law;
 - e Meeting with market participants in "feedback" sessions to both gauge the effectiveness of the Panel in dealing with its stakeholders and to explain issues which have arisen over the previous year;
 - f Communication with affected shareholders through telephone calls, email messages and correspondence explaining the application of the Code in particular circumstances.
- 4.42 During 2007/2008 it is intended to hold a range of meetings, involving three to four Panel members and a representative of the executive, with law firms, independent advisers and other market participants. These meetings will focus on changes to the law arising from the technical amendments to the Code and the new provisions

relating to the prohibition on misleading or deceptive conduct expected to come into force in the first part of the next financial year.

- 4.43 Takeovers tend to attract their own publicity, for a variety of reasons. It is on such occasions that questions about the application of the Code are often raised. The Panel is willing, through its senior personnel, to assist journalists with background information so that the public will get an accurate understanding of issues of public interest.
- 4.44 The Panel believes that its current approach to promoting public understanding of takeovers law is effective in raising the level of public understanding of takeover law and is appropriate given the level of the Panel's resources that it has available to put into this activity.

International liaison

- 4.45 The Panel co-operates with overseas takeovers regulators when asked to do so and within the limits of its powers. The Panel calls on assistance from overseas regulators when there is a need to do so. This has proved invaluable recently in relation to proposed merger transactions involving Australian and New Zealand companies.
- 4.46 The membership of the Australian Panel by the New Zealand Panel's Chairman, and of New Zealand's Panel by a member of the Australian Panel (a position currently not filled), ensure ongoing close linkages between the two regulators. These appointments were made pursuant to the Government's aims of progressing a single economic market with Australia within the framework of the Memorandum of Understanding on Business Law Coordination between the two countries.
- 4.47 The New Zealand Panel has been represented at two recent international conferences of takeovers regulators and will continue to support the formation of an informal grouping of takeovers regulators currently being promoted by Australia. The Panel's Counsel visited the Australian Takeovers Panel and the Australian Securities and Investments Commission during 2006/2007. No similar visits are currently planned for 2007/2008.
- 4.48 The Panel spends only a modest sum on this output. The principal expenditure is on participation in overseas conferences when these occur. The Panel has received no notification of the time or place of the next takeovers regulators conference.
- 4.49 The Panel is satisfied that its current activities enhance and improve the level of co-operation with overseas takeover regulators without the need for significant expenditure.

5. MANAGING THE PANEL'S ORGANISATIONAL HEALTH AND CAPABILITY

- 5.1 The Panel is a people organisation. It is also a relatively new organisation, having received its own funding only since late 2000 to function as the Crown entity administering the provisions of the Code. (Prior to that date the Panel was a policy-making body funded through the Ministry of Economic Development.)
- 5.2 At the time of its metamorphosis into a funded operating body the decision was made to have the Panel serviced both as to professional staff and also physical services such as offices, meeting rooms, computer systems, library and support services, by the Securities Commission.
- 5.3 There is a memorandum of understanding in place between the Panel and the Commission which governs the relationship between the two bodies. It also covers the arrangements for payments by the Panel to the Commission for the cost of the services provided.
- 5.4 The two main issues affecting the Panel's ongoing corporate health and capability are maintaining an effective membership and recruiting and retaining appropriately qualified and experienced staff.
- 5.5 The Panel has provision for 11 members 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 not currently filled.
- 5.6 Panel members must be qualified or experienced in business, law or accounting. The Panel has just gone through a period of significant change in membership. The terms of office of the former (and founding) Chairman, John King and of five other members, Daphne Rawstone, Tony Frankham, Colin Giffney, David Quigg and Denis Byrne (Australian member) all expired in 2006/2007.
- 5.7 David Jones, the incumbent Deputy Chairman, was appointed Chairman for a period of four years from March 2007. Alastair Lawrence was appointed Deputy Chairman. The terms of Colin Giffney and David Quigg were extended for a further five years. New members Pip Greenwood, Keith Taylor and John Waller were appointed for terms of five years. These appointments have provided a balance between continuity of existing knowledge and the introduction of new skills and experience. The Panel worked closely with the Ministry and with the Minister to manage the period of change in membership to minimise disruption to the operations of the Panel.
- 5.8 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.

- 5.9 All Panel staff are employees of the Commission. Currently there is a Senior Executive Officer, a Counsel, a Senior Lawyer, and three solicitors of varying levels of experience. 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.
- 5.10 The terms of employment of Panel staff are set by the Commission, not the Panel, although the Chairmen of the Panel and the Commission consult annually about the remuneration of the Senior Executive Officer.
- 5.11 The Senior Executive Officer is involved with the recruitment of new Commission staff to work for the Panel, and in the annual performance reviews of Panel staff.
- 5.12 In these ways the Panel has influence over, but not full control of, the recruitment and remuneration of its key personnel.
- 5.13 The Commission has modern premises and employs progressive management practices in the running of its business. This is evidenced, among other things, by the Commission being assessed as the winner in 2006 of all “Small Places to Work 20 – 49 employees” in New Zealand in the annual survey carried out by the “Unlimited” business magazine. The Panel staff have the benefit of access to activities and services which the Panel, if it were a stand-alone entity, could not provide without a significant increase in funding.
- 5.14 Panel staff have the opportunity to undertake appropriate training and to participate in relevant conferences and seminars. The Panel’s Counsel attended the Summer School conducted by the Australian Securities and Investments Commission in Sydney in March 2007.
- 5.15 The Panel uses the Commission’s IT systems. Part of those systems includes off-site back up for all computer files and records. The Panel’s key documents are recorded and stored off-site as back-up in the event of fire or earthquake affecting the Panel’s premises. The Commission has taken precautions to deal with a potential bird-flu pandemic. The Panel is currently reviewing 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.
- 5.16 Within the context of the governance arrangements outlined above, 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 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.
- 6.5 The Panel must accept, and work within, cost 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, track the Securities Commission's costs rather than its own. The cost of members' time is set by the Remuneration Authority, not by the Panel.
- 6.6 With the recent change in the Panel's chairmanship the opportunity has been taken to review the way the Panel operates, including the format, frequency and location of its regular meetings. Cost effectiveness for both the Panel and its members will be an important consideration in these decisions.
- 6.7 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

- 6.8 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 2007/2008 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 and to achieve a favourable balance of comments on the reports in the media.
- e Promoting public understanding of takeover law: measured by the extent to which Panel decisions, law changes and Panel policy statements are communicated effectively to the market; aim is to have information published within one month of the law being changed and within one week of decisions being made.

7. RELATIONSHIP WITH THE MINISTER AND MINISTRY

Consultation with Minister and Ministry

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

Reporting to Minister and Ministry

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

8. ACQUISITION OF SHARES OR OTHER INTERESTS

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

9. OTHER MATTERS REQUIRED TO BE DISCLOSED

- 9.1 There are no other matters that are required to be disclosed in this statement of intent as a result of any other Act of Parliament, including the Takeovers Act.
- 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 2008

FORECAST PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

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

- To keep under review the law relating to takeovers and to recommend to the Minister of Commerce changes as appropriate;
- To keep under review practices relating to takeovers of specified Code companies for the purpose of recommending changes to the law.

Impact:

Improvements in the efficiency of the Code through the making of recommendations to the Minister of Commerce to achieve changes to the Code and takeovers law more generally. These improvements will enhance the effectiveness of the Code in promoting economic growth and the Panel in administering the Code's provisions.

Activities and actions to include:

- reviewing the provisions of takeovers law;
- identifying areas of the Code which require correction or would benefit from improvement;
- reviewing the practices relating to the takeover of Code companies;
- developing policy papers, guidance notes and practice notes on issues arising under the Code and its administration;
- developing a further discussion paper, at the request of 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 using the Government's regulatory impact analysis framework, receiving and reviewing public submissions on the discussion paper, and making recommendations to the Minister;
- 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 2007/2008:

Quantity and Quality

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

Participate as required on projects and reviews.

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.

Keep under review practices relating to takeover activities.	Continuous
Inquiries into market practice with a view to recommending amendments to the Takeovers Code and to the Panel's policies and publishing proposed changes to the Code and Panel policies for public comment	2
<u>Timeliness</u> Recommendations for amendments to the Code will be made promptly.	1 per year
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

Cost: \$268,300

OUTPUT 2: Approvals:

The approval of the appointment of independent advisers, where required under Rules 18, 21 or 22 of the Code or by the terms of an exemption granted, and the appointment of independent experts where required by Rule 57 of the Code.

Impact:

The improvement in the quality of advice and independent adviser reports to recipients of takeover offers and to shareholders entitled to vote to approve Code-related allotments and acquisitions. Such improvements will further ensure the equal treatment of shareholders and a transparent takeovers process.

Activities and actions to include:

- processing applications from advisers for approval under the Code;
- ensuring that appointed advisers are both independent and competent to do the job required;
- assessing, where necessary, previous work of advisers to determine their experience and competence;
- reviewing draft independent advisers' reports and making suggestions for improvement;
- meeting with advisers on an ongoing basis to discuss and obtain feedback on any issues and concerns;
- appointing independent experts where required under the compulsory acquisition provisions of the Code;
- processing applications for consent to withdraw offers, and in relation to approval of defensive tactics.

*Planned performance standards and performance measures for 2007/2008⁵:***Quantity**

Applications for approval of independent advisors and independent experts. 40

Applications for consent to withdrawal of offers, and in relation to defensive tactics. 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 and achieve favourable balance of public comments about reports.

Timeliness

Within 3 working days of receipt of complete application. To be achieved in 80% of cases.

Revenue (from fees): \$89,000

Cost: \$154,400

OUTPUT 3: Exemptions:

The granting of individual and class exemptions for Code events where relief from the Code's requirements is appropriate and consistent with the purpose, intent and objectives of the Code.

Impact:

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

Activities and actions to include:

- considering applications for individual exemptions from the Code;
- considering applications for class exemptions from the Code;
- issuing exemption notices for individual exemptions;
- issuing exemption notices for class exemptions;
- gazetting the exemption notices;
- publishing guidance notes to explain the policies being applied by the Panel in relation to various types of exemption.

*Planned performance standards and performance measures for 2007/2008⁶***Quantity**

Applications for individual exemptions from the Takeovers Code. 30

Class exemptions from the Takeovers Code. 4

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.

Timeliness

Within timeframe agreed with applicants. 100%

Revenue (from fees): \$175,000

Cost: \$347,400

OUTPUT 4: Enforcement:

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

Impact:

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

Activities and actions to include:

- reviewing all main takeover offer documents;
- reviewing Code-related meeting documents;
- convening formal meetings to exercise the Panel's enforcement powers under sections 32 and 35 of the Code;
- making applications to the Court to seek orders from the Courts, as necessary;
- investigating possible Code breaches;
- investigating complaints by shareholders and other principal parties to a transaction;
- monitoring NZX company announcements, media and other public information for transactions with Code implications;
- accepting enforceable undertakings from the party or parties in breach of the Code;
- issuing determinations and Panel decisions;
- 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.

⁶ 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 2007/2008⁷:***Quantity**

Review of offer documents.	24
Review of meeting documents.	16
Section 32 meetings.	4
Section 35 actions.	1
Investigation of possible Code breaches.	35
Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies	2

Quality

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

Timeliness

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

Revenue (from fees): \$100,000**Cost:** \$965,800**OUTPUT 5: *Public Understanding:***

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

Impact:

The improvement in public understanding of takeovers law over time, in particular, the improvement in the public's knowledge of the provisions of the Code. Improving public

⁷ 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

understanding and knowledge of the Code will enhance the public's confidence in the transparency of the takeovers process and in the public's confidence in the integrity of the market.

Activities and actions to include:

- publishing the Panel's occasional newsletter, *Code Word* to explain changes to the Code and the Act and key Panel enforcement and exemption decisions;
- publishing practice notes and guidance notes to inform the market about the Panel's decisions and policies, to assist market participants to relate to the Panel and to explain how the Panel interprets various rules of the Code;
- improving the market's understanding of takeover matters and Panel activities through public speeches about the Code at relevant conferences and other meetings;
- receiving feedback from market participants about the Panel's performance through meetings with market participants to both gauge the effectiveness of the Panel in dealing with its stakeholders and to explain issues which have arisen;
- visiting the most active legal and advisory firms to obtain direct feedback;
- holding group meetings with other interested market participants;
- maintaining a website that is kept up-to-date with all Panel decisions, news releases, speeches, discussion papers, practice notes;
- communicating with affected shareholders through telephone and correspondence explaining the application of the Code in particular circumstances;
- assisting the media with background information to ensure that the public receives accurate reports on issues of public interest.

Planned performance standards and performance measures for 2007/2008:

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.
Issue policy statements, guidance notes and commentaries on current issues.	3 times a year
Interface with the market through public and private meetings.	16 meetings a year
Provide news media with relevant information about the Panel and the Takeovers Code.	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.
Receive miscellaneous enquiries from members of the public and professional firms.	Receive 200 enquiries. Respond to inquiries within 3 working days.

Revenue: Nil

Cost: \$212,300

OUTPUT 6: *International Liaison:*

To enhance and improve co-operation and liaison with overseas takeovers regulators on matters of mutual interest.

Impact:

The improvement in the level of co-operation, liaison and understanding between the Panel and other international takeovers regulators. Such improvements enhance international investors' and overseas takeovers regulators' confidence in the New Zealand market and enhance the Panel's administration of the Code's provisions.

Activities and actions to include:

- continuing the high level of contact with the Australian Takeovers Panel through the Panel Chairman's membership on the Australian Panel and membership of the New Zealand Panel by a member of the Australian Panel;
- continuing to maintain the good working relationships with the relevant staff of the Australian Panel and of the Australian Securities and Investments Commission by members of the Panel and executive;
- continuing to support the Australian Panel's promotion of the informal group of international takeovers regulators by attending the group's conferences;
- co-operating, on request, with overseas takeovers regulators on various regulatory matters within the Panel's powers.

Planned performance standards and performance measures for 2007/2008:

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.

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.

Timeliness

Panel representatives to meet regularly with overseas bodies.

1 time per year

Revenue: Nil

Cost: \$2,000

FORECAST FINANCIAL STATEMENTS OF THE PANEL FOR THE YEAR ENDING 30 JUNE 2008

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 2007/08 – 2009/10 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 31 May 2007.

FORECAST STATEMENT OF FINANCIAL PERFORMANCE
For the year ended 30 June 2008

	<i>Forecast 12 months to 30 June 2008 \$</i>	<i>Forecast 12 months to 30 June 2007 \$</i>
Revenue - Operating		
Government grant - baseline funding	1,344,000	1,344,000
Interest	26,500	26,860
Application fees and costs recoverable	364,000	261,400
Total operating revenue	<u>1,734,500</u>	<u>1,632,260</u>
Revenue - Litigation fund		
Government grant	-	49,669
Interest	44,900	44,880
Recoveries	-	55,000
Total litigation fund revenue	<u>44,900</u>	<u>149,549</u>
Total revenue	<u>1,779,400</u>	<u>1,781,809</u>
Operating Expenses		
Audit fees	11,000	10,455
Communication charges	18,700	18,710
Members' fees	380,000	335,150
Printing and stationery	30,300	29,890
Consultants and legal	101,000	41,250
Services and supplies	34,500	36,170
Travel and accommodation	62,700	62,485
Securities Commission services	1,242,000	1,108,070
Total operating expenses	<u>1,880,200</u>	<u>1,642,180</u>
Expenses - Litigation fund	70,000	90,210
Total expenses	<u>1,950,200</u>	<u>1,732,390</u>
Net surplus / (deficit)	<u>\$(170,800)</u>	<u>\$49,419</u>
This is comprised of:		
Operating surplus (deficit)	(145,700)	(9,921)
Litigation fund surplus / (deficit)	(25,100)	59,340
	<u>\$(170,800)</u>	<u>\$49,419</u>

FORECAST STATEMENT OF FINANCIAL POSITION

as at 30 June 2008

	<i>Forecast as at 30 June 2008 \$</i>	<i>Forecast as at 30 June 2007 \$</i>
Current assets		
Cash and cash equivalents	194,765	335,465
Cash and cash equivalents – litigation fund	76,392	76,392
Short term deposits – litigation fund	591,278	616,378
Interest receivable – other	1,440	1,440
Interest receivable – litigation fund	5,370	5,370
Trade and other receivables	102,395	92,395
Less provision for bad debts	(10,000)	(10,000)
	961,640	1,117,440
Total current assets	961,640	1,117,440
Total assets	\$961,640	\$1,117,440
Current liabilities		
Trade and other payables	86,115	71,115
GST payable	11,760	11,760
	97,875	82,875
Total current liabilities	97,875	82,875
Equity		
Accumulated funds	190,725	336,425
Litigation fund	673,040	698,140
	863,765	1,034,565
Total equity	863,765	1,034,565
Total equity and liabilities	\$961,640	\$1,117,440

FORECAST STATEMENT OF CHANGES IN EQUITY

For the year ended 30 June 2008

	<i>Forecast 12 months to 30 June 2008</i>	<i>Forecast 12 months to 30 June 2007</i>
	\$	\$
Equity at start of period		
Accumulated funds	336,425	346,362
Litigation fund	698,140	638,798
	1,034,565	985,160
Operating surplus (deficit)	(145,700)	(9,935)
Litigation fund surplus (deficit)	(25,100)	59,340
	(170,800)	49,405
Total recognised revenues and expenses	(170,800)	49,405
Increase / (reduction) in equity	(170,800)	49,405
	\$863,765	\$1,034,565
Equity at end of period		
Comprising:		
Accumulated funds	190,725	336,425
Litigation fund	673,040	698,140
	\$863,765	\$1,034,565
Equity at end of period		

FORECAST STATEMENT OF CASH FLOWS

For the year ended 30 June 2008

	<i>Forecast 12 months to 30 June 2008 \$</i>	<i>Forecast 12 months to 30 June 2007 \$</i>
Cash flows from operating activities		
Cash was provided from:		
Government grant	1,344,000	1,344,000
Government grant - litigation fund	-	49,669
Application fees & costs recoverable	354,000	382,997
Interest	71,400	69,051
Cash was disbursed to:		
Suppliers	(1,935,200)	(1,697,005)
Net cash inflow (outflow) from operating activities	(165,800)	148,712
Cash flows from investing activities		
Cash was provided from:		
Net decrease in bank deposits	25,100	
Cash was applied to:		
Net increase in bank deposits	-	(19,071)
Net cash inflow (outflow) from investing activities	25,100	(19,071)
Net increase (decrease) in cash balance	(140,700)	129,641
Add opening cash balance	411,857	282,216
Closing cash balance carried forward	\$271,157	\$411,857

**NOTES TO THE FORECAST FINANCIAL STATEMENTS
for the year ended 30 June 2008**

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 2006/2007*

The 2006/2007 forecast financial statements include actual results up to the end of April 2007 and an estimate of the outcome for the remaining two months of the year taking account of work on hand and expected developments in the final months of the financial year. These figures are not the same as those included for 2006/2007 in the Panel's 2006 forecast financial statements.

2. *Government grant*

The Government grant is as per the amount allocated to the Output Class "Administration of the Takeovers Code" for the year 2007/2008. We do not expect any change in that amount over the course of the year.

3. *Application fees and costs recoverable*

We assume third party income of \$364,000 in 2007/2008, an increase of around 39% over the expected level of third party income of \$261,400 in 2006/2007. This increase assumes a continuation of takeover activity at a similar level to that in the present year. Exemption and approval activity is expected to continue at a similar level to 2006/2007. However, there is expected to be increased enforcement activity, and therefore recoveries, arising from the coming into force of the "misleading or deceptive" conduct prohibitions in the Code in the first half of the reporting year.

4. *Payment for Securities Commission services*

The Panel expects to spend \$1,242,000 on the purchase of services from the Commission. This represents an increase of around 12.1% over the present year's likely expenditure of \$1,108,070. The forecast assumes that the Commission will be able to supply professional staff resources to the Panel at the rate of 6.3 full-time equivalents for the full year 2007/2008 at a price of \$115 per hour, the same rate as in 2006/2007. The level of demand for Commission services is a reflection of the changed environment following passage of the Takeovers Amendment Act 2006 as well as of the Courts' effective endorsement of the Panel's ability to be heard in

proceedings involving Code companies using the scheme of arrangement provisions of the Companies Act to effect changes of control.

5. *Members fees*

The Panel expects to spend \$380,000 on members' fees in 2007/2008, an increase of 13.4% over expected expenditure of \$335,150 in 2006/2007. This increase anticipates a heavier workload for members as a result of the changes being made to the Panel's enforcement powers by the Takeovers Amendment Act 2006 offset by lower fees as a result of delays in the appointment of an Australian member and the possibility of fewer Panel meetings in the second half of the year.

6. *Expenses - litigation fund*

The Panel anticipates expenditure of some \$70,000 from its policy of seeking to be heard in Court proceedings involving schemes of arrangement under the Companies Act 1993 that affect Code companies.

7. *Overall risk of 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 but is expected to be significant. 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 could be significantly affected.

If the Panel's third party revenue fell to \$260,000 rather than the predicted \$364,000, we would expect the Panel's forecast operating deficit of \$125,700 to be little affected. This is because the reduction in revenue is likely to be offset by the likely savings in members' fees, in the cost of Commission services, and in the cost of external legal counsel. At the current rates the Panel does not recover its costs from the fees it is able to charge under the current fees regulations.

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 2008. 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 first NZ IFRS forecast financial statements.

Measurement System

The forecast financial statements have been prepared on an historical cost basis

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 and reported as revenue on receipt of the grant at the beginning of each quarter to which it relates.

Revenue from application fees is recognised on receipt of an application. Costs recoverable are recognised as revenue on a monthly basis 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. The stage of completion is assessed by reference to the number of hours worked.

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

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

3. Taxation

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.

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

4. 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.

5. 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.

6. 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.

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. Explanation of application of NZ IFRS

These are the Panel's first 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 2008. 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 2007 has been restated to reflect the presentation and classification changes resulting from the application of NZ IFRS.

10. 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: