

# **TAKEOVERS PANEL**

## **STATEMENT OF INTENT**

**2012/2013 – 2015**

# Table of contents

<b>Introduction.....</b>	<b>2</b>
<b>Background information and statutory framework.....</b>	<b>3</b>
<b>The Panel’s 2012/2013 – 2015 Performance Framework.....</b>	<b>9</b>
<b>The Panel’s medium term business strategy – how the Panel will achieve its performance impacts and outcomes.....</b>	<b>10</b>
<b>Managing the Panel’s organisational health and capability .....</b>	<b>16</b>
<b>Consulting with and reporting to the Minister of Commerce .....</b>	<b>18</b>
<b>Process for acquisitions .....</b>	<b>18</b>
<b>Other matters .....</b>	<b>18</b>
<b>Statement of responsibility .....</b>	<b>19</b>
<b>FORECAST STATEMENT OF SERVICE PERFORMANCE.....</b>	<b>20</b>
<b>FORECAST PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL .....</b>	<b>20</b>
<b>INTRODUCTION.....</b>	<b>31</b>
<b>FORECAST STATEMENT OF COMPREHENSIVE INCOME .....</b>	<b>32</b>
<b>FORECAST STATEMENT OF FINANCIAL POSITION.....</b>	<b>33</b>
<b>FORECAST STATEMENT OF CHANGES IN EQUITY .....</b>	<b>34</b>
<b>FORECAST STATEMENT OF CASH FLOWS.....</b>	<b>35</b>
<b>NOTES TO THE FORECAST FINANCIAL STATEMENTS .....</b>	<b>36</b>
<b>STATEMENT OF SIGNIFICANT ASSUMPTIONS .....</b>	<b>36</b>
<b>STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES .....</b>	<b>37</b>

## **Introduction**

1. The Takeovers Panel presents to the Minister of Commerce and to the House of Representatives the Panel's Statement of Intent for the period from 1 July 2012 to 30 June 2015.

### Why takeovers matter

2. Takeovers are an important feature of the capital markets. Generally speaking they occur because the prospective acquirer believes that he, she or it can achieve better value out of the target company than the company's current management is achieving. Accordingly, takeovers should result in the best use of the company's resources, increasing efficiency and improving the company's performance. This, in turn, has a positive impact on economic activity.
3. A related important economic activity is the capital that is made available to businesses when investors provide the business with cash, and in return are issued shares or other securities by the business. When the capital markets are well regulated, investors from overseas and those based domestically are more confident to invest their money in these wealth-generating markets.
4. Businesses need access to capital to support their development and innovation. The Ministry of Business, Innovation and Employment ("MBIE"), the Panel's monitoring department, is focused on contributing to the long term outcomes of *creating a world class business environment and ensuring productive and efficient businesses*. Although MBIE's focus is much broader than solely the capital markets, those markets, functioning well, are drivers for business growth and innovation.
5. The takeovers market, which is regulated by the Takeovers Code, falls within this business and capital markets environment, and the two main purposes of the Code, being *transparency* and *equitable processes*, support the integrity of that environment. While there are many contributors to the health of New Zealand's capital markets, the Panel and the Code play an important and active part in the matrix of regulation of those markets that is necessary to support investor confidence.

### Summary of Statement of Intent

6. This Statement of Intent includes a description of the Panel's strategic plan for the three year period on which it reports. It describes the three *outcomes* that the Panel seeks to achieve: an efficient takeovers market for acquirers of voting securities, reduced transaction costs for investors, and increased confidence in the integrity of the takeovers market. These outcomes are predicated on the Panel's role of ensuring that takeover processes are transparent and equitable.
7. The Statement of Intent also explains how the Panel will measure its performance on meeting the three planned *impacts* of the services it provides to the public of New Zealand. The intended impacts are: firstly, takeovers law will be efficient for acquirers in a takeover and will improve the information that

must be provided for shareholders, and the Panel will be an efficient regulator; secondly, there will be 100% compliance with the Code by the acquirer side of Code-regulated transactions and by companies that are subject to the Code; and thirdly, shareholders, acquirers, and their advisers will be better informed about the role of the Code and of the Panel.

8. Finally, the Statement of Intent provides information on the services (*outputs*) that the Panel intends to provide over the three year period of this Statement, and sets out how the Panel will measure its performance of those services for the next financial year. The required forecast financial information is also set out at the end of this Statement.

## **Background information and statutory framework**

### The Members of the Takeovers Panel

9. The Takeovers Panel is an independent Crown entity under the Crown Entities Act 2004. It is established under the Takeovers Act 1993 and its monitoring department is MBIE. The members of the Panel are the board for the purposes of the Crown Entities Act.
10. The Panel administers and enforces the Takeovers Code. The Code is described later on in this Background section.
11. The Panel has 11 members, the maximum number provided for by the Takeovers Act.<sup>1</sup> Members are appointed by the Governor-General on the recommendation of the Minister of Commerce. The Panel's members must include a Chairman and a Deputy Chairman. These roles are currently filled, respectively, by Mr David Jones MNZM, lawyer of Auckland, and Mr Colin Giffney, specialist corporate adviser of Auckland.
12. All Panel members must be qualified or experienced in business, accounting or law. Accordingly, members are active practitioners (lawyers, investment bankers, corporate advisers, company directors, etc) in the mergers and acquisitions market.

### Executive Team

13. The Panel is supported by a professional executive staff of 7.7 FTEs that consists of the Chief Executive (who is a lawyer), a General Counsel heading a specialist legal team of four lawyers, and two administration staff.

### Panel's Statutory Functions/Outputs

14. The functions and powers of the Panel are contained in the Takeovers Act and Code, as well as its general functions as a Crown entity that are contained in the Crown Entities Act. The Panel's core functions under the Takeovers Act and Code constitute the Panel's outputs.

---

<sup>1</sup> One member is appointed because he is a member of the Australian Takeovers Panel, under reciprocal arrangements between New Zealand and Australia. Likewise, the Chairman of the New Zealand Panel is also a member of the Australian Panel.

15. These outputs are:<sup>2</sup>

- (a) Output 1: reviewing takeovers law and takeovers practice, and recommending any law changes that the Panel considers necessary to the Minister of Commerce;
- (b) Output 2: approvals – approving the appointment of independent advisers – other approvals;
- (c) Output 3: the granting of exemptions from compliance with the Code;
- (d) Output 4: the regulation of takeover activity through the enforcement of the Code; and
- (e) Output 5: promoting public understanding of takeovers law and practice.

16. The role of each statutory function/output is described in turn below.

(a) Output 1: reviewing takeovers law and practice:

- The securities markets are constantly innovating in response to market dynamics. The Panel's policy function aids the adaptation of takeovers law to meet changing market behaviours.
- The Panel maintains a small staff of skilled specialist Takeovers Code lawyers who are also trained to undertake policy development.
- When undertaking policy work, the Panel's staff liaise closely with MBIE's policy officials. This has the double benefit of MBIE providing support for Panel staff on best practice policy processes, and of Panel staff assisting MBIE officials on the technicalities of the takeovers law, to inform their advice to the Minister.

As an expert body comprised of experienced, commercially-focused takeovers practitioners, the Panel is well placed to understand when there are problems with takeovers law that need to be resolved. The Panel's policy recommendations to the Minister of Commerce are, effectively, expert real-time advice to the Government of the day on takeovers law.

(b) Output 2: approvals:

- The Panel's approvals policy sets high standards for the independence and competence of independent advisers.

---

<sup>2</sup> Aside from the functions set out in this paragraph, the Panel also has a function of co-operating with overseas regulators (International Liaison). In previous years the Panel has reported on this function as an output. However, the resources expended on this function are minor and MBIE has agreed that the Panel should no longer report on it as a separate item. For the 2012/2013 year, and going forward, International Liaison has been assumed under Output 1 (the logic being that overseas takeovers law and practice, particularly that in Australia, informs the Panel's policy work).

- Every Code transaction requires an independent adviser to be approved by the Panel for giving advice on that transaction.
- These advisers are required to assess the merits of the transaction from the perspective of the shareholders. The shareholders can then make their decision, and seek personal professional advice if they require it, with the benefit of the general advice provided to them in the independent adviser's report on that transaction.

The Panel's approvals policy has set a benchmark amongst securities markets regulators for its stringency for the independence of the advisers. The Panel's aim with this policy is that shareholders receive independent advice that is given for *their* benefit, not for the benefit of an acquirer of shares in their company and not for the benefit of the company's directors. As a consequence, the shareholders can focus their attention on making the decision that is right for themselves with the benefit of an independent report on the merits of the transaction.

(c) Output 3: exemptions from compliance with the Code:

- The Panel is statute-bound to only grant exemptions that are appropriate and consistent with the objectives of the Code.
- Exemptions can be granted to individual acquirers of shares of Code companies,<sup>3</sup> and sometimes they are granted to Code companies, to assist with ensuring that the Code applies effectively and appropriately to the transaction to which the exemption relates.
- Class exemptions are granted to classes of persons or transactions. Class exemptions can improve the efficiency of the takeovers market because they provide a speedy method to modify the Code to the relevant circumstances. They can also resolve commonly encountered impediments to compliance with the Code.

Exemptions help acquirers to more effectively comply with the spirit of the Code. Exemptions can also help to improve the attraction of New Zealand as an investment destination by, e.g., reducing an unwarranted compliance burden for a particular type of transaction, or making it feasible to undertake a structure of transaction that would otherwise be prevented by a strict application of the Code.

(d) Output 4: enforcement of the Code:

- The Panel has robust investigative powers and the ability to make temporary restraining orders and some limited permanent orders

---

<sup>3</sup> The Code covers "Code companies". A Code company is a New Zealand registered company that –

- (a) is a party to a listing agreement with a registered exchange and that has securities that confer voting rights quoted on the registered exchange's securities market; or
- (b) was within paragraph (a) at any time during the 12-month period before any date or the occurrence of any event referred to in the Code; or
- (c) has 50 or more shareholders and 50 or more share parcels.

under section 32 of the Takeovers Act. When exercising its enforcement powers, the Panel acts judicially as a tribunal.

- The Panel also enforces Code compliance through the High Court when its own powers cannot resolve a Code breach or when full permanent or punitive orders need to be sought.
- The most efficient outcomes for enforcement are achieved through 'soft' enforcement actions. For some years the Panel's staff has been providing informal advice on drafts of Code-required documents. This Panel practice is widely respected by practitioners who appreciate the informal help to get their clients' compliance right. Only rarely now are Code-related documents published without having first been reviewed and commented on by the Panel executive. This practice was endorsed by the High Court in 2010, and recognised as a legitimate exercise of the Panel's enforcement jurisdiction.<sup>4</sup>

When acquirers and Code companies comply with their disclosure, notification, and timing obligations for a transaction under the Code, shareholders in Code companies are given the information they need to support their decisions for the transaction, and the processes are equitable to all who are involved.

(e) Output 5: promoting public understanding of takeovers law and practice:

- The Panel's main vehicle for publicising information about the Code and about the Panel's role is *Code Word*, the Panel's periodic publication. The Panel also operates a website through which it makes public all the information about its activities that it is appropriate to publish in a commercially sensitive market.
- Panel members and staff also deal directly with the public and with practitioners by responding to queries about the Code, the Panel and current transactions.
- The Panel keeps in touch with its market stakeholder base through hosting feedback meetings with large groups of market practitioners and advisory firms, and through engaging in one-to-one feedback with market representatives on topics of interest.

The Panel is committed to helping investors in Code companies to understand the rights and protections available under the Code. The Panel also serves the needs of advisers to acquirers and advisers to Code companies, thereby assisting their clients to comply with their obligations under the Code. This is important because when acquirers and Code companies comply with the Code the shareholders receive the information and equitable processes that they need to support their decision-making.

<sup>4</sup> *Marlborough Lines Ltd v Takeovers Panel & Anor* CIV-2010-485-001150, paras [5], [47] – [49].

The Takeovers Code

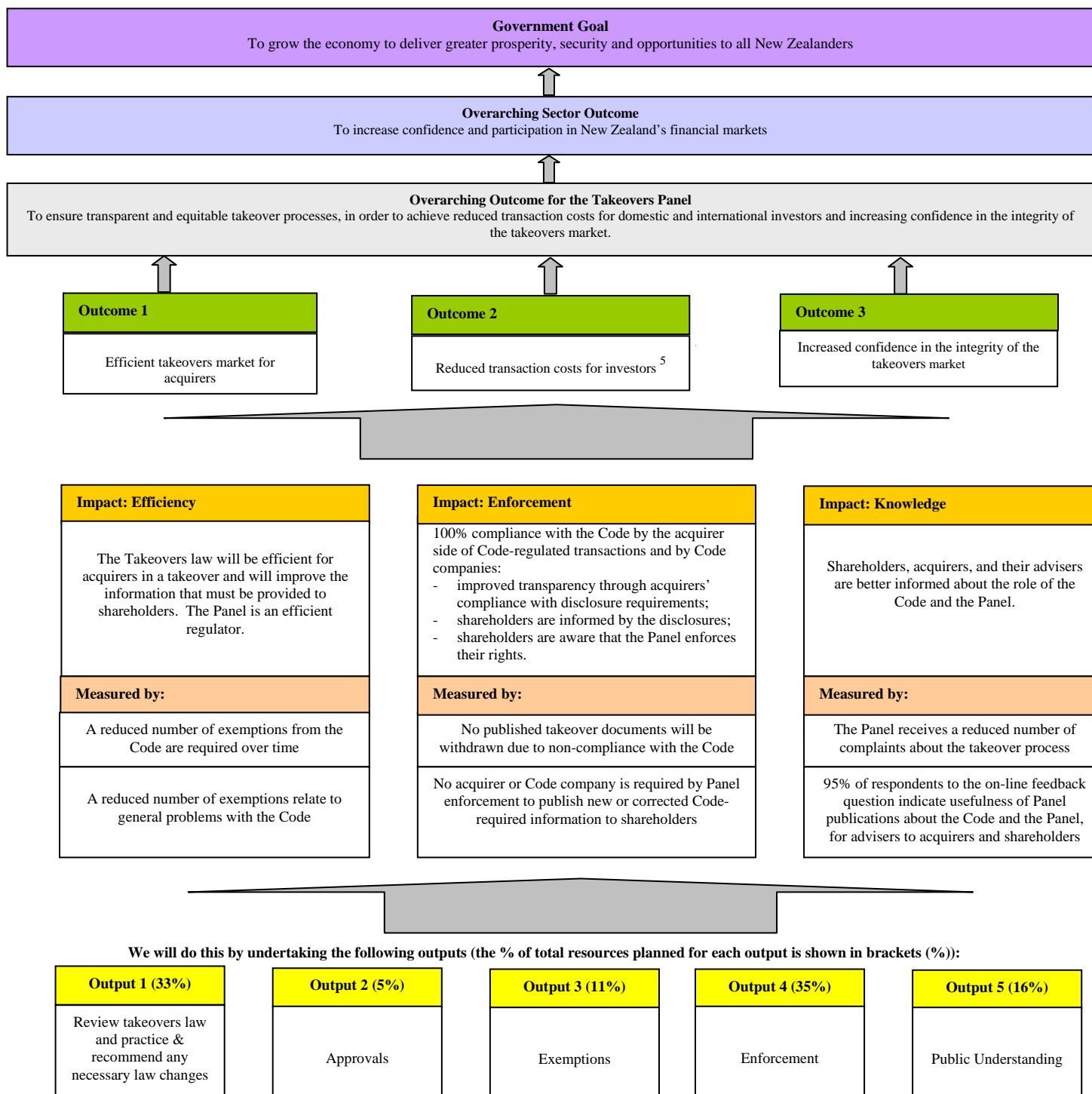
17. The Takeovers Code is a statutory regulation that is essentially a rule-book on process. It governs transactions and events that impact on the voting rights attaching to the shares owned by shareholders of Code companies. Code companies are New Zealand registered companies that are listed on the NZX or that have 50 or more shareholders and 50 or more share parcels.
18. The rules of the Code relate to transactions that engage shareholders in doing any of the three following things:
  - (a) deciding whether to accept a takeover offer (the offeror may be another shareholder in the Code company or may be a person outside of the company) for some or all of their shares;
  - (b) being subject to a compulsory acquisition process, if they are amongst the last 10% of shareholders of a Code company. Here, the 90% “dominant owner” of the company, on hitting 90%, must elect to either:
    - compulsorily acquire all of the remaining shares (and the Code regulates the acquisition process and the price-setting mechanism for determining the acquisition price per share); or
    - acquire the shares of any minority shareholder who now wants to sell up their shares and exit the company (and the Code regulates the sale process and the price-setting mechanism for determining the acquisition price per share);
  - (c) voting on a resolution at a shareholders’ meeting about whether a person should be allowed to increase his, her or its voting control percentage in the company. The increase in voting control will usually be through the acquisition of another shareholder’s shares or through an allotment to the person of a parcel of new shares issued by the company.
19. The Code supports the integrity of the takeovers market in New Zealand through its two main purposes: *transparency* and *equitable processes*.
20. The Code provides for *transparency* through disclosure of information to the shareholders of a company involved in a transaction or event that is regulated by the Code.
21. The rules of the Code ensure that shareholders will be given accurate and up-to-date information by a takeover offeror for their company’s shares and also by the Code company’s directors. The disclosure requirements are quite prescriptive. They cover past share trading in the company by the offeror and also by the board and management of the company. They also require disclosure of any relationships, arrangements or agreements between the offeror and the company’s directors or senior managers, all material financial information, etc.
22. The information is focused on helping shareholders to understand the background to the takeover and to participate in its outcome.



23. Importantly, the Code company's directors must, for every Code-regulated transaction, obtain for the company's shareholders an independent adviser's report on the merits of the transaction. The company's directors are also required to make a recommendation to the shareholders about how the shareholders should respond to the transaction.
24. The Code's second main purpose is to provide for *equitable processes*. It achieves this through constraining some, and mandating other, actions that acquirers of shares take during every transaction that is regulated by the Code.
25. The timeframes for a Code-compliant transaction are orderly because every step of a takeover has minimum and maximum time periods that must be adhered to. Thus, shareholders need not make a hasty decision; they will have adequate time for reflection and advice.
26. This serves all shareholders' interests, but particularly those of the small shareholders who may need time to weigh up their options and to seek their own advice. The Code has put a stop to 'midnight raids' on a company where the minority shareholders wake up to the news that a major shareholder has transferred control of the company to someone else and has made a significant personal profit under the deal without the other shareholders obtaining any benefit.
27. The Code's timing rules also ensure that in a 'competition for control', a competing offeror (that is, another person who wants to take over a company that is already the target of a takeover by someone else), has a level playing field. The equitable processes mean that all potential offerors know in advance that their takeover offer will be governed by the same rules as their competitor's offer.
28. Similarly, the Code ensures that all shareholders, no matter how large or small their percentage of share ownership, receive equitable opportunities. For example, for a vote at a shareholders' meeting regarding whether a person can increase their control percentage in the company, only the 'disinterested' shareholders get to participate in the vote.
29. In other words, the acquirer and his, her or its associates are prohibited from voting. So, the shareholders who will have no *direct* benefit from the transaction are the ones who decide on whether it should be allowed. They make this decision based on whether the deal is good for the company and therefore, *indirectly*, is good for their investment in the company.
30. There are many other process rules that ensure the equitable treatment of all parties to Code-regulated transactions. All shareholders affected by a control-change in a Code company are treated equally; the big players do not get special deals.
31. Neither the Panel nor the Code makes decisions about the *merits* of a transaction for shareholders. Shareholders must decide for themselves, because what may be a good investment outcome for one shareholder may not be good for another.

**The Panel's 2012/2013 – 2015 Performance Framework**

32. The diagram below represents the Panel's performance framework. It depicts the Panel's intended services (outputs) for the reporting period, the intended impacts of those services and the outcomes that they seek to achieve.



<sup>5</sup> The transaction costs for investors include access to information about Code-regulated transactions and about their rights and obligations as shareholders of Code companies, and also avenues for enforcing their rights.

**The Panel's medium term business strategy – how the Panel will achieve its performance impacts and outcomes**

Strategic plan

33. The Panel's strategic plan for the medium term recognises that the economy continues to make a slow and somewhat fragile recovery from the global financial crisis that began in late 2008. Accordingly, the Panel will continue, as it has since 2009, to focus a greater proportion of its resources to its Output 1 services (review of takeovers law and practice and recommending any necessary law changes). It has also decided to give greater attention to its Output 5 services (public understanding).
34. This strategic plan is based on current levels of market activity. Should the market significantly improve over the period to which this Statement relates, the Panel will adjust the proposed focus of its resources to ensure there is no lag in the oversight of transactions.
35. The Panel's strategic plan produces a more or less even three-way split of resources between the Panel's three main intended impacts of Efficiency, Enforcement and Knowledge.
36. These impacts all inter-relate in practice. For example, undertaking consultation for policy development (which aims at improved efficiency) results in the consultees, many of whom are legal advisers to acquirers and to Code companies, increasing their awareness about the Panel's approach to enforcement of the Code; similarly the Panel's 'soft' enforcement work has a strong focus on education about the Code's requirements.

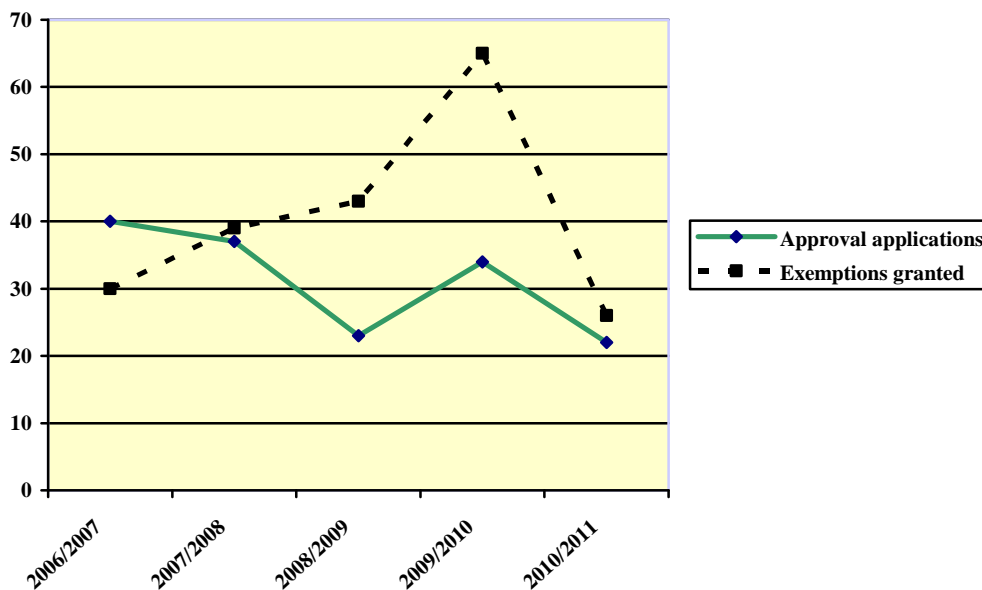
How to judge the Panel's performance

37. The Panel delivers a specialised range of regulatory services in the narrow field of takeovers law involving Code companies. The Outcomes Framework on page 9 shows how these services contribute to the Panel's intended impacts and outcomes.
38. The discussion below sets out the way the Panel intends to go about achieving its intended impacts and how it will measure this achievement.

*Impact Efficiency*

39. The Panel's policy function of reviewing takeovers law and market practice, and recommending changes to the law, is aimed at continually improving the efficiency of takeovers law. Exemptions can also contribute to an efficient market by, when appropriate, modifying the Code to meet the circumstances of transactions.
40. The Panel's policy function also balances efficiency for acquirers with protection for shareholders. Accordingly, recommendations for law change often include proposals for improving the disclosure of information to, and processes for, shareholders.

41. Over the next three years, the Panel intends to look more deeply at the policy of the Code to test the appropriateness of its coverage, and its impact on regulated transactions.
42. The Panel will measure the achievement of the Efficiency impact by the extent to which there is a reduction in the number of exemptions granted; in particular by there being a reduction in the number of exemptions granted that relate to drafting problems with the Code.
43. There are two main influences on the number of exemptions considered by the Panel. These are the level of Code-regulated activity (with higher levels of transactions normally being expected to result in higher levels of exemption applications),<sup>6</sup> and the extent to which improvements to the drafting of the Code reduce the need for exemptions to accommodate different transaction structures.
44. A reduction in the number of exemptions is expected to show over time as an overall gradual downwards trend, with occasional highs and lows resulting from particular market-specific or transaction-specific circumstances.<sup>7</sup>
45. The graph below has been developed using the *Approval applications* data (the solid green line) from past Statements of Intent. The *Exemptions granted* data (the black dotted line) was obtained by looking at past exemption notices.



46. The solid green line in the graph represents the number of independent adviser applications considered by the Panel each year, since 1 July 2006.<sup>8</sup>

<sup>6</sup> A notable exception to this expectation was the 2008/2009 year with the immediate impacts of the global financial crisis significantly reducing Code-regulated activities, but the number of exemptions granted being unusually high for that subdued environment.

<sup>7</sup> The 2009/2010 year was one such circumstances-specific year, with an unusually high number of exemptions granted. But just three exemption notices account for 32 of the 65 exemptions granted.

<sup>8</sup> This is the first year from which this data has been collected.

47. This gives a fairly good indication of the number of Code-regulated transactions that occurred in each year, but it is not completely accurate. This is because, firstly, occasionally the Panel declines to approve an adviser when the Panel considers either that the adviser is not competent to undertake the work or is not independent of a party to the transaction. Then a new adviser will apply for the role. Secondly, sometimes a Code transaction requires more than one type of adviser. Accordingly, the solid green line will indicate a slightly higher level of transaction activity than in fact occurred.
48. The dotted black line shows the number of exemptions that the Panel has granted, since 1 July 2006. Each exemption that has been granted from a Code rule is counted as one exemption.<sup>9</sup>

#### *Impact Enforcement*

49. The highest priority for the Panel's resources goes to responding to Code-regulated transactions as they occur. All Code-regulated transactions are monitored by the Panel's staff.
50. The practice of Panel staff reviewing Code-related documents in draft, and giving informal assistance on how to comply with the Code, provides a fence at the top of the cliff for those who have Code obligations.<sup>10</sup>
51. From the shareholders' perspective, because the Panel acts on their complaints, the Panel provides them with a potentially low cost avenue for enforcing their rights under the Code.
52. The Panel aims for 100% compliance with the Code so that shareholders are protected from 'wild west' practices by the deal-makers (the acquirers), and so that shareholders have a transparent process under which they make the decisions that lie before them in a Code-regulated transaction.
53. The Panel will measure the achievement of this impact by there being no Code-regulated takeover documents being withdrawn under a section 32 enforcement action, due to non-compliance with the Code. A related measure will be that no acquirer or Code company is required under a section 32 enforcement action to publish new or corrected information to shareholders. This impact is already achieved to a very high level.
54. The Panel aims to maintain this level although the market is constantly changing. For 2012/2013 it is forecast that 100% compliance will be maintained, in terms of there being no Code-regulated takeover documents being withdrawn under a section 32 enforcement action, due to non-compliance with the Code. The progress of this impact will be graphed from next year's Statement of Intent.

---

<sup>9</sup> Exemptions to amend previously granted exemptions are not counted, since they generally relate to an oversight or change from the original exemption. In any case they are quite rare (there was one exemption amendment notice in 2007/08 and two in 2009/2010).

<sup>10</sup> *Marlborough Lines Ltd v Takeovers Panel*, paragraph [47].

*Impact Knowledge*

55. The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication *Code Word* to broadcast its views on topical takeovers matters. The website provides a platform for access to the Panel's decisions and its views on Code matters, and other useful information for all sectors of the takeovers market.
56. Meetings by invitation to takeovers advisers, and making speeches and presentations, are other methods used by the Panel for disseminating information about the Code and about the Panel's role as a regulator.
57. With the ongoing fragility of the economy, signified by soft levels of takeover activity, the Panel intends to focus more resources on its public understanding output so that the Code is better understood and the Panel's role is better understood. This should contribute to better informed shareholders, thus reducing their transaction costs.
58. The Panel will measure the achievement of this impact in two ways, the first one measuring the shareholder side of the takeovers market, and the second one measuring the 'deal' side of the market. The progress of this impact will be graphed from the next financial year.
59. The indicator on the shareholder side of achieving an improvement in knowledge will be the Panel receiving a reduced number of complaints or negative comments about the process of Code-regulated transactions. The expectation is that the number of complaints will trend down over time. However, as shareholders become more aware of their rights there may be more complaints initially. Similarly, there will be fluctuations from year to year depending on the level of market activity.
60. The measure on the deal side of the market for meeting this impact will be that 95% of the respondents to an on-line survey will indicate that they find the Panel's publications about the Code and about the Panel useful to them.

Opportunities and risks

61. The level of takeover activity is greatly influenced by the health of the economy. This is because takeovers are very large transactions, costing acquirers tens of millions to hundreds of millions of dollars, which require both funding and confidence. These can be in short supply when the economy is not vibrant. Conversely, the level of capital raising activity by companies tends to be higher in this environment, as they find themselves needing to pay off debt or manage cash flow shortages due to reduced demand for their products or services.
62. The Panel intends to make the most efficient use of its resources during the continued expected low levels of takeover activity, by focusing the freed up resources from its enforcement function onto policy work. A significant aim of much of the planned policy work will be to ultimately improve the regulatory 'fit' of the Code for the New Zealand economy.

63. The Panel also intends to increase its and the Code's profile, and to improve the public's understanding of the Panel's role as a regulator of process, and of the Code's role as a facilitator of transparency and equitable process. This links well with the aims of many public sector agencies at this time that are seeking to improve investors' financial literacy and also their confidence in the capital markets as a sound investment destination.
64. The *Takeovers (Fees) Regulations 2001* ("fees regulations") prescribe the fees that the Panel can charge for some of its activities that relate to Code-regulated transactions.<sup>11</sup> Accordingly, the fees regulations set the level of third party funding that the Panel can receive.
65. The level of third party funding is also directly impacted by the level of transactional activity (which generates application fees for adviser approvals and exemptions) and the level of chargeable enforcement activity undertaken by the Panel.
66. The third party funding was only *c.* \$172,000 for the 2010/2011 year and may be around half that for the 2011/2012 year (depending on whether there is any chargeable enforcement activity). In all prior years third party funding has generated income of between approximately \$300,000 and \$600,000 per annum.
67. For the time being the reduced income is being managed through robust controls on spending and through a strong focus on internal efficiency.
68. If the Companies and Limited Partnerships Amendment Bill is passed, the Panel will have a new regulatory role for which it will not be able to charge third parties unless the fees regulations are amended. The Panel's role will be similar to that currently exercised in Australia by the Australian Securities and Investments Commission for takeovers that are undertaken by way of a Court approved scheme of arrangement. Under this role the Panel will respond to applications for a "no objection" statement for Court approved schemes of arrangement involving Code companies.<sup>12</sup>
69. The fees regulations have not been amended since they were enacted in 2001, and the Panel currently under-recovers for the resources it expends, by approximately 40%. The fees regulations have been under review by MBIE, with the assistance of accounting firm KPMG. It is hoped that they can be amended in the near term to improve the level of third party funding available to the Panel. The policy for the fees review is to achieve 100% cost recovery by the Panel for its chargeable activities.
70. The Panel values MBIE's co-operation and advice on its policy work and also on its Public Sector reporting obligations. The Panel executive continues to seek ways to engage more deeply with MBIE and to capitalise on its managers' willingness to share back-office support where appropriate.

---

<sup>11</sup> Under the fees regulations the Panel may charge the fees prescribed in the regulations for considering exemptions, adviser and other approvals, and for the 'hard' enforcement activity of holding a hearing under section 32 of the Takeovers Act.

<sup>12</sup> The new regime will be implemented in the Companies Act 1993.

Value for money approach

*Government's expectations*

71. The Panel is cognisant of the Government's expectations that Crown entities remain focused on value for money outcomes. The Panel believes it is well aligned with the three objectives of the Government's State Sector change programme:
- *Clear priorities: providing high quality, cost effective services* – the Panel has created a culture of cost effective and customer focused services, particularly through its approachability for public enquiries and its 'soft' enforcement practices, which promote Code compliance at low cost;
  - *High quality services: ensuring services are modern, responsive and provide value for money* – the Panel is bringing its technology capability up to modern standards. The Panel sets high standards for the efficient delivery of its 'customer' services;
  - *Reducing waste: ensuring administration is efficient, streamlined and well organised* – the Panel has consistently reflected this approach for its own administration.
72. The Panel's value for money consciousness and efficient approach to its provision of services is also consistent with the Government's goals for the Better Public Services Programme.

*Panel's value for money approach*

73. The Panel has always been mindful of making the most efficient use of its funding. It is aided in this goal by receiving a single unallocated Government appropriation. This supports the Panel's ability to match its resources to priorities as market activity levels wax and wane.
74. Maintaining strong disciplines on spending and looking for more efficient means of delivering its outputs remains a constant focus for the Panel. Recent fat-trimming exercises have included moving to digital-only dissemination of the Panel's regular publications in order to reduce printing and mailing costs, and to remove the design, printing and mailing costs of the annual report. The Panel anticipates savings equating to approximately 1% per annum of its funding, just from these two initiatives.
75. The new IT system, when it is implemented (expected to be in late 2012), will support the efficiency of the Panel's staff and will strengthen and secure the Panel's intellectual capital. This upgrade is urgent, as the Panel still operates with the system with which it was set up in 2001, which is heavily reliant on manual data manipulation and manual data collection, and on the corporate knowledge of personnel.
76. Similarly, the Panel's website is cumbersome for users, resulting in lost opportunities for improving the public's access to information about the Panel



and about the Code. In addition, the website cannot be internally administered, resulting in unacceptably high operating costs. The website upgrade will involve an upfront cost for design and implementation, but it is expected to both improve the user interface and to reduce operating costs into the future.

## **Managing the Panel's organisational health and capability**

### Operating capability

77. The Panel has few tangible assets and its main resource is its eight staff located in an office in Wellington, and its 11 part time members.
78. All members work for the Panel from their businesses or homes, and are paid for the hours worked. Panel work can involve a considerable imposition on members' professional and personal time. However, members are dedicated to proactively and pragmatically enforcing the Code, and they have been willing to act in this service to the public despite the significant impost to their, or their firms', income that this entails.
79. A concern for succession planning for Panel membership is that the level of remuneration for Panel work may impact on the willingness of future candidates to accept an appointment to the Panel. However, for the time being at least, suitable candidates are putting themselves forward to take up the public service role of the Panel.
80. The Panel's efficiency is supported by its ability to make most of its decisions by "divisions" of members. The Takeovers Act empowers the Panel's Chairman to appoint a minimum of three members to a division.
81. The ability to act in divisions also enables the Panel to effectively manage the conflicts of interest that inevitably arise where members work only part time for the Panel but full time in their own mergers and acquisitions-related professions. Members who would be conflicted in relation to a particular transaction are not appointed to the division that regulates that transaction. If a division member becomes conflicted during the course of a matter, he or she retires from the division and the division is reconstituted.

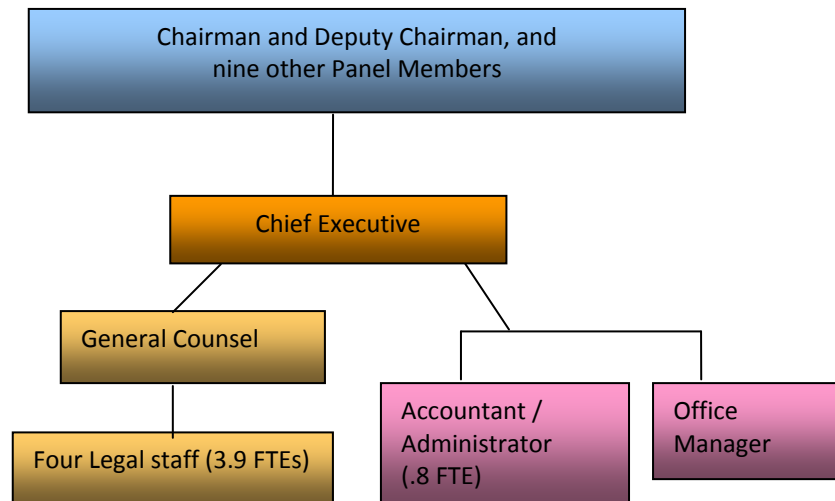
### Staff engagement and retention

82. The Panel's executive staff is comprised of 7.7 FTEs, of whom 6.7 FTEs are lawyers and accountants. The lawyers' skill mix enables the Panel to respond to changes in the market by reallocating resources at a moment's notice. However, the funding constraints in the public sector make maintaining appropriate remuneration packages an increasing challenge.
83. The Panel intends to keep its Chief Executive accountable for managing the work priorities of the staff on a daily basis and also their engagement and retention. In addition, the Chief Executive will be required to deliver on an upgrade of the Panel's IT system and website platform, to improve their utility, functionality and cost effectiveness.

84. The Panel utilises a conventional management structure, with the Panel responsible for the performance management, remuneration and succession planning of the Chief Executive, and the Chief Executive responsible to the board for the performance of the executive.

85. This is depicted in the diagram below:

Panel Organisation Structure



86. The Panel's organisational health and capability will be maintained over the next three years by valuing the Panel's people and at the same time holding them accountable for their behaviour and performance. The organisation is too small to have formal staff development programmes, but the following initiatives will be maintained by the Chief Executive:

- (a) The training and development needs of each staff member being identified and supported;
- (b) Remuneration being linked to performance and supporting professional progression;
- (c) Recruitment initiatives being adopted that aim to increase the diversity of the Panel executive;
- (d) Maintaining and improving flexible work practices that support the recruitment and retention of people with family and community commitments and that support work life balance;
- (e) Walking the talk on the Panel's Good Employer Policy with its focus on mutual respect, support, accountability, and team culture;
- (f) Maintaining wellness programmes such as free 'flu vaccinations for staff and the availability of counselling under an Employee Assistance Programme.

## **Consulting with and reporting to the Minister of Commerce**

### Consultation with Minister and Ministry

87. As an independent Crown entity, the Panel has a statutory safeguard of its independence from the Crown in all matters relating to the exercise of the Panel's powers and the carrying out of its functions.
88. The Panel enjoys a positive and productive relationship with MBIE. Ministry officials provide assistance and guidance for the Panel's preparation of various accountability documents, including this Statement of Intent. The Minister and MBIE consult with the Panel on appointments of new Panel members.
89. The Panel liaises closely with officials on its policy development work to ensure that MBIE is able to provide robust and timely advice to the Minister on any recommendations the Panel may make for law changes.
90. The Minister's expectations of 'no surprises' from the Panel is always respected, with the Panel apprising MBIE and the Minister of any relevant issues relating to the Panel's operations and sphere of responsibility.

### Reporting to Minister and Ministry

91. The Panel currently reports to the Minister on a six-monthly basis. This is specified in the annual Output Agreement with the Minister.
92. The matters that the Panel reports to the Minister include the Panel's financial performance, the achievement of its outputs, the use of its litigation fund and the outlook for the remainder of the financial year, in accordance with the Output Agreement. The six-monthly reports are provided to monitoring officials at MBIE, who brief the Minister as required.
93. This reporting timeframe is new. In previous years the Panel was required to report quarterly. The Panel is grateful for the attendant reduction in its compliance burden since the move to six-monthly reporting.

## **Process for acquisitions**

94. 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.

## **Other matters**

95. The Panel has included in this Statement of Intent information on all of the matters that are reasonably necessary to achieve an understanding of the Panel's intentions and direction.
96. 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.

**Statement of responsibility**

97. The information on future operating intentions of the Takeovers Panel for the year ending 30 June 2013 and the next two financial years contained in this Statement of Intent has been prepared in accordance with sections 141 and 142 of the Crown Entities Act.
98. We acknowledge responsibility for the preparation of these forecast financial statements and Forecast Statement of Service Performance and for the judgements used in them.
99. We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Panel's financial reporting.
100. In our opinion the information contained in this Statement of Intent fairly reflects the Takeovers Panel's operating intentions for the reporting period.

Signed on behalf of the Panel by:

---

**David Jones**  
**Chairman**  
**Takeovers Panel**

**Date:**

---

**Colin Giffney**  
**Deputy Chairman**  
**Takeovers Panel**

**Date:**

**FORECAST STATEMENT OF SERVICE PERFORMANCE  
FOR THE YEAR ENDING 30 JUNE 2013**

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

**OUTPUT 1: *Review law and practice, and recommend any necessary law changes:***

Ensuring that the provisions of the Takeovers Code and other takeovers law are effective and relevant, as assessed by review of law and practice, undertaking policy reviews and development ("policy projects"), and recommending amendments to takeovers law as necessary.

Over the three year period from 1 July 2012 – 30 June 2015, in addition to daily monitoring of market practice and routine or low level policy activities, as well as the policy activities that can arise in response to market practices, the major policy projects planned for completion are:

- supporting MBIE for passage of the Companies and Limited Partnerships Amendment Bill, which contains the Panel's policy recommendations made in 2008 to close a loophole in the law where Code companies are involved in amalgamations and arrangements under the Companies Act 1993;
- assisting MBIE with the associated necessary changes to the fees regulations so the Panel will be able to recover its costs for services under the new regime for schemes and amalgamations;
- reviewing the coverage of the Code, including projects relating to:
  - whether the Code's protections should be extended to the holders of voting securities in entities other than companies, like unit trusts;
  - whether all SMEs that are Code companies should have to bear the relatively high compliance burden of the Code;
  - whether there are weaknesses in the availability of Code-relevant information when limited partnerships (which afford some privacy to their owners) are used as shareholding vehicles for significant parcels of shares in Code companies; and
- reviewing the way Code transactions are done, including projects related to:
  - considering whether there are regulatory disincentives to making takeover offers with scrip consideration (i.e., shares or some other form of security are issued by the offeror or by another entity as the form of payment offered to shareholders for their Code company shares under the takeover offer);
  - whether offerors should be allowed to enter into 'lock up' agreements with shareholders in advance of making a takeover offer (as they currently do);
  - whether partial takeover offers give inappropriate benefits to offerors (by comparison to the process and outcomes from full takeover offers).

*Increasing confidence and participation in New Zealand's financial markets*

<i>Planned performance standards and performance measures for 2012/2013, and Forecast outcome for 2011/2012, using actual data to December 2011 and as estimated for the remainder of the year:</i>				
<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2012/2013</b>	<b>Estimated 2011/2012</b>	<b>Actual 2010/2011</b>	<b>Actual 2009/2010</b>
<b>Quantity</b> Percentage of total resources spent on reviewing market activity and recommending any necessary law changes <sup>13</sup>	33% of resources; <sup>14</sup> completion of 3 of the 8 listed projects	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b>Quality</b> Best practice policy development process has been followed <sup>15</sup>	100% of the time	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b>Timeliness</b> Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100%	100%	100%	100%
<b>Revenue:</b> (Funded by Government grant and other income, except fees)	\$581,000 33% of forecast revenue	\$548,000 31% of estimated revenue	Not Reported	Not Reported
<b>Cost:</b>	\$583,000 33% of forecast expenditure	\$522,000 31% of estimated expenditure	\$430,107	\$449,774

<sup>13</sup> A percentage of the Panel's resources is used as a quantitative measure, because a fundamental contributor to the Panel's and the Code's effectiveness is the review of takeovers law. However, a key principle of policy development is that good analysis can indicate that sometimes the legal status quo provides the best outcome, or that only the approach to enforcement should change, etc. Accordingly, it would not be appropriate to use, for example, the number of recommended changes to the law as a quantitative measure for these output services.

<sup>14</sup> In the Estimates for the Panel's Appropriation, it was estimated that 31% of total resources would be spent on Output 1. However, 33% is used in this Statement of Intent because it also incorporates the resources (rounded) to be expended on the former Output 6 services (see footnote 2, above).

<sup>15</sup> The Regulatory Impact Analysis framework provides the best practice model used in New Zealand for quality policy development. The Panel is applying that model as well as its own internal quality assurance steps, for its quality measure for Output 1 policy work. Accordingly, to meet the standard, every material policy proposal will have needed to meet all of the following seven criteria (as demonstrated by staff completing checklists for meeting the criteria):

- Discussion papers followed the Regulatory Impact Analysis framework;
- Panel approved content of discussion papers before their publication;
- Consultation period was at least 6 weeks long;
- Submissions from public were considered by the Panel;
- Any non-regulatory outcomes were approved by Panel before implementing them;
- Any recommendations for law change were approved by Panel before being sent to the Minister;
- Officials from [MBIE] were consulted before recommendations were sent to Minister.

<b>OUTPUT 2: Approvals:</b>				
The approval of the appointment of independent advisers under rules 18, 21, 22 or 57(1) of the Code or by the terms of an exemption granted, and the appointment of independent experts where required by rule 57(3) of the Code, and the consent of withdrawal of a takeover offer under rule 26, or consent for a defensive tactic under rule 39 of the Code.				
The Panel will use its approvals resources to consider applications from independent advisers and experts, and for considering requests for consents for withdrawal of takeover offers and for requests from Code companies to undertake a defensive tactic.				
<i>Planned performance standards and performance measures for 2012/2013, and Forecast outcome for 2011/2012, using actual data to December 2011 and as estimated for the remainder of the year:</i>				
<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2012/2013</b>	<b>Estimated 2011/2012</b>	<b>Actual 2010/2011</b>	<b>Actual 2009/2010</b>
<b>Quantity</b> Applications for approval of independent advisers and independent experts processed	22-28	22-28	22	34
Applications for consent of withdrawal of offers, and in relation to defensive tactics	1	1	0	0
<b>Quality</b> Adviser competence and independence was considered by the Panel prior to being approved	100% of advisers	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
No adviser approval was withdrawn by the Panel due to a failure of the Panel to comply with its approval standards	100% of the time	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b>Timeliness</b> For approvals of independent advisers, decision made by 3 working days after receipt of complete application	95%	95%	100%	100%
For other applications, decision made by 5 working days after receipt of complete application	95%	95%	100%	100%
<b>Revenue:</b> (Part funded by Government grant and part funded by fees)	\$87,000 5% of forecast revenue	\$88,000 5% of estimated revenue	\$40,951 (fees only; Govt grant not reported)	\$32,538 (fees only; Govt grant not reported)

*Increasing confidence and participation in New Zealand's financial markets*

<b><u>Cost:</u></b>	\$88,000 5% of forecast expenditure	\$84,000 5% of estimated expenditure	\$89,302	\$56,634
---------------------	--	---	----------	----------



**OUTPUT 3: Exemptions:**

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

The Panel will use its exemptions resources to consider exemption applications as they arise, and to consider possible class exemptions (which may be developed on the Panel's own initiative or may be applied for by acquirers).

*Planned performance standards and performance measures for 2012/2013, and Forecast outcome for 2011/2012, using actual data to December 2011 and as estimated for the remainder of the year:*

<i>Performance Measures</i>	<i>Performance Standards</i>			
	<i>For 2012/2013</i>	<i>Estimated 2011/2012</i>	<i>Actual 2010/2011</i>	<i>Actual 2009/2010</i>
<p><b>Quantity</b> Applications processed for individual exemptions from the Takeovers Code, categorised as:<sup>16</sup></p> <ul style="list-style-type: none"> <li>• straightforward</li> <li>• complex</li> </ul>	<p>8-12</p> <p>6-9</p> <p>2-3</p>	<p>8-11 breakdown to straightforward or complex is a new measure for 2012/2013</p>	<p>12 breakdown to straightforward or complex is a new measure for 2012/2013</p>	<p>27 breakdown to straightforward or complex is a new measure for 2012/2013</p>
<p>Class exemptions applied for, or initiated by the Panel, categorised as:</p> <ul style="list-style-type: none"> <li>• straightforward</li> <li>• complex</li> </ul>	<p>3-5</p> <p>2-3</p> <p>1-2</p>	<p>3-4 breakdown to straightforward or complex is a new measure for 2012/2013</p>	<p>2 breakdown to straightforward or complex is a new measure for 2012/2013</p>	<p>5 breakdown to straightforward or complex is a new measure for 2012/2013</p>
<p><b>Quality</b> The Regulations Review Committee does not recommend disallowance of Panel exemptions, and no Panel decision is successfully judicially reviewed</p>	<p>100% of the time</p>	<p>100% of the time</p>	<p>100% of the time</p>	<p>100% of the time</p>
<p>Applicants are satisfied with the process as indicated by an external survey</p>	<p>95% of applicants</p>	<p>New measure for 2012/2013</p>	<p>New measure for 2012/2013</p>	<p>New measure for 2012/2013</p>
<p><b>Timeliness</b> Exemptions are processed within the timeframe agreed with the applicant</p>	<p>90% of the time</p>	<p>90% of the time</p>	<p>81% of the time</p>	<p>87% of the time</p>

<sup>16</sup> The hours spent on an exemption by Panel members and staff is used as an indicator for complexity:

- straightforwardness is indicated by 50 hours or less
- complexity is indicated by more than 50 hours

*Increasing confidence and participation in New Zealand's financial markets*

Class exemptions (if granted) are published on the website within 10 working days of being signed	100%	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b>Revenue:</b> (Part funded by Government grant and part funded by fees)	\$193,000 11% of forecast revenue	\$195,000 11% of estimated revenue	\$135,898 (fees only; Govt grant not reported)	\$203,378 (fees only; Govt grant not reported)
<b>Cost:</b>	\$194,000 11% of forecast expenditure	\$185,000 11% of estimated expenditure	\$379,078	\$451,893

**OUTPUT 4: Enforcement:**

Maintaining oversight of takeover activity in the market by reviewing draft documentation informally, and published documentation, for compliance with Code, 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.

The Panel will use its enforcement resources to:

- provide assistance to those who have Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code;
- maintain the efficient 'soft' enforcement of Panel staff reviewing draft Code-related documentation, so that documents better comply with the spirit and intent of the Code, recognising that this collaborative approach is a legitimate and widely publicised use by the Panel of its enforcement powers, that ensures that most compliance issues are picked up early and are easily resolved;
- maintain other 'soft' enforcement activities that encourage voluntary rectification of potential Code breaches, so that compliance with the Code is achieved without the attendant costs and reputational loss associated with 'hard' enforcement actions;
- take 'hard' enforcement action, including holding hearings under section 32 of the Takeovers Act and, when necessary, taking Court proceedings for permanent or punitive orders, whenever it is warranted, recognising that 'hard' enforcement uses a high proportion of resources when it occurs, due to procedural intensity.

*Planned performance standards and performance measures for 2012/2013, and Forecast outcome for 2011/2012, using actual data to December 2011 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2012/2013</b>	<b>Estimated 2011/2012</b>	<b>Actual 2010/2011</b>	<b>Actual 2009/2010</b>
<b>Quantity</b>				
Number of: offer documents reviewed in draft	6-9	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
meeting documents reviewed in draft	10-14			
Percentage of enforcement resources spent on this 'soft' enforcement <sup>17</sup>	a minimum of 74%			
Final offer documents reviewed	6-9	6-9	7	7
Final meeting documents reviewed	10-14	10-14	7	13

<sup>17</sup> The executive often reviews several iterations of documents in draft, and also reviews accompanying or related documents that are not required by the Code but that an acquirer or Code company may wish to publish to shareholders. These interactions can occur rapidly, for example, several times a day, or may focus on a single paragraph etc. Accordingly, it is too onerous to collect data on each interaction, so the percentage of resources used provides supporting quantitative data.

*Increasing confidence and participation in New Zealand's financial markets*

Percentage of enforcement resources spent on review of final documents	1%	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
Number of: Section 32 meetings	1	1	0	1
Section 35 actions	1	1	0	0
Percentage of enforcement resources spent on this 'hard' enforcement	25%	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
Involvement in Court proceedings in relation to schemes of arrangement affecting Code companies	1	1	0	1 (Did not seek to appear in Court)
Number of "no objection" statement applications <sup>18</sup>	1	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b><u>Quality</u></b> Parties are satisfied with the processes for 'soft enforcement' as indicated by an external survey	90% of respondents	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
Parties are satisfied with the soft enforcement professionalism of the executive as indicated by an external survey	90% of respondents	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
No successful Court challenges to Panel decisions or actions taken under s32 or s35 of the Takeovers Act	100% of the time	100% of the time	100% of the time	1 successful Court challenge to 1 aspect of a s32 meeting conducted in 2010
<b><u>Timeliness</u></b> Review of documents is completed within Code timeframes or as agreed by applicants	100% of the time	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013

<sup>18</sup> This assumes that the Companies and Limited Partnerships Amendment Bill will be passed during the 2012/2013 year.

*Increasing confidence and participation in New Zealand's financial markets*

Enforcement work is completed within statutory timeframes	100% of the time	100% of the time	N/A	100% of the time
Operate within Court ordered timetables for schemes of arrangement under the Companies Act involving Code companies	100% of the time	N/A	N/A	N/A
<b>Revenue:</b> (Part funded by Government grant and part funded by fees)	\$615,000 35% of forecast revenue	\$637,000 36% of estimated revenue	(\$5,000) (fees only; Govt grant not reported)	\$200,796 (fees only; Govt grant not reported)
<b>Cost:</b>	\$618,000 35% of forecast expenditure	\$607,000 36% of estimated expenditure	\$694,369	\$657,481

**OUTPUT 5 : Public Understanding:**

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

The Panel will use its public understanding resources to:

- hold formal market feedback meetings, under which legal and financial practitioners engage with the Panel to listen to Panel information on topical issues and to give feedback to the Panel on its performance;
- undertake informal exchanges with market practitioners, company directors, market commentators, and other key stakeholders;
- disseminate written information about itself and the Code;
- upgrade the Panel's website to make it more functional and more intuitive for users to find the information they seek;
- courteously and responsively deal with public enquiries about takeovers law and processes and about the Panel's and the Code's roles.

*Planned performance standards and performance measures for 2012/2013, and Forecast outcome for 2011/2012, using actual data to December 2011 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2012/2013</b>	<b>Estimated 2011/2012</b>	<b>Actual 2010/2011</b>	<b>Actual 2009/2010</b>
<b>Quantity</b>				
Number of: <i>Code Words</i> published	3	3	2	2
Number of hits on the website	3,000-4,000	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
Number of: Public enquiries	130-150	100-120	136	134
Feedback meetings	2	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
<b>Quality</b>				
Feedback from market participants doing on-line survey indicates the documents published were useful to the reader	95% of respondents	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
A feedback field included on the website indicates the website was useful to the user	95% of respondents	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013

*Increasing confidence and participation in New Zealand's financial markets*

<b><u>Timeliness</u></b> Information is published on the website within 10 working days of final Panel sign-off	100% of the time	New measure for 2012/2013	New measure for 2012/2013	New measure for 2012/2013
Public enquiries are responded to within 3 working days of receiving them	100% of the time	100% of the time	100% of the time	99% of the time
<b><u>Revenue:</u></b> (Funded by Government grant and other income except fees)	\$281,000 16% of forecast revenue	\$248,000 14% of estimated revenue	Not reported	Not reported
<b><u>Cost:</u></b>	\$282,000 16% of forecast expenditure	\$236,000 14% of estimated expenditure	\$205,941	\$134,400

**NB:** The Statement of Intent for 2011/12 included a sixth output, International Liaison. This output is no longer reported on; see footnote 2, above.

**FORECAST FINANCIAL STATEMENTS OF THE TAKEOVERS PANEL  
FOR THE YEAR ENDING 30 JUNE 2013**

**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 judgements, 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 2012/13 - 2015 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 [24 April 2012]



**FORECAST STATEMENT OF COMPREHENSIVE INCOME**

*for the year ending 30 June 2013*

	<i>Forecast 12 months to 30 June 2013 \$</i>	<i>Notes</i>	<i>Forecast 12 months to 30 June 2012 \$</i>
<b>Revenue - Operating</b>			
Government grant-baseline funding	1,494,000		1,494,000
Interest	24,000		25,000
Application fees and costs recoverable	205,000	3	205,000
Other income	0		13,000
Total operating income	<u>1,723,000</u>		<u>1,737,000</u>
<b>Revenue - Litigation fund</b>			
Interest	34,000		32,000
Total litigation fund income	<u>34,000</u>		<u>32,000</u>
Total income	<u>1,757,000</u>		<u>1,769,000</u>
<b>Operating expenses</b>			
Audit fees	19,000	8	19,000
Communication charges	80,000		30,000
Training and memberships	25,000		18,000
Depreciation and amortisation	31,000		46,000
Members' fees	199,000	6	186,000
Printing and stationery	91,000		89,000
Consultants and legal	87,000		87,000
Services and supplies	136,000	4	163,000
Rent	132,000		132,000
Travel and accommodation	50,000		56,000
Personnel costs	895,000	5	839,000
Total operating expenses	<u>1,745,000</u>		<u>1,665,000</u>
Expenses - Litigation fund	<u>20,000</u>		<u>20,000</u>
Total expenditure	<u>1,765,000</u>		<u>1,685,000</u>
Total comprehensive income	<u><u>\$(8,000)</u></u>		<u><u>\$84,000</u></u>
<b>This is comprised of:</b>			
Comprehensive income-operating/(deficit)	(22,000)		72,000
Comprehensive income-litigation/(deficit)	14,000		12,000
	<u><u>\$(8,000)</u></u>		<u><u>\$84,000</u></u>

**FORECAST STATEMENT OF FINANCIAL POSITION**

*as at 30 June 2013*

	<i>Forecast as at 30 June 2013 \$</i>	<i>Forecast as at 30 June 2012 \$</i>
<b>Current assets</b>		
Cash and cash equivalents – operations	196,000	285,000
Cash and cash equivalents – litigation fund	154,000	154,000
Short term deposits – operations	433,000	434,000
Short term deposit – litigation fund	626,000	612,000
Interest receivable – operations	4,000	4,000
Interest receivable – litigation fund	12,000	12,000
GST receivable	8,000	0
Trade and other receivables	16,000	16,000
Prepayments	19,000	19,000
Total current assets	1,468,000	1,536,000
<b>Non current assets</b>		
Computer software	104,000	24,000
Less accumulated depreciation	(41,000)	(24,000)
Office equipment	141,000	141,000
Less accumulated depreciation	(136,000)	(127,000)
Office furniture	52,000	43,000
Less accumulated depreciation	(16,000)	(11,000)
Total non current assets	104,000	46,000
Total assets	\$1,572,000	\$1,582,000
<b>Current liabilities</b>		
Trade and other payables	101,000	97,000
GST payable	0	6,000
Total current liabilities	107,000	103,000
<b>Equity</b>		
Operating funds	679,000	701,000
Litigation fund	792,000	778,000
Total equity	1,471,000	1,479,000
Total equity and liabilities	\$1,572,000	\$1,582,000

**FORECAST STATEMENT OF CHANGES IN EQUITY**

*For the year ending 30 June 2013*

	<i>Forecast 12 months to 30 June 2013 \$</i>	<i>Notes</i>	<i>Forecast 12 months to 30 June 2012 \$</i>
<b>Equity at start of period</b>			
Operating funds	701,000		629,000
Litigation fund	778,000		766,000
Equity at start of year	<u>1,479,000</u>		<u>1,395,000</u>
Total comprehensive income-operating/ (deficit)	(22,000)		72,000
Total comprehensive income-litigation (deficit)	14,000		12,000
Total comprehensive income	<u>(8,000)</u>		<u>84,000</u>
Increase / (reduction) in equity	<u>(8,000)</u>		<u>84,000</u>
<b>Equity at end of period</b>	<u>\$1,471,000</u>		<u>\$1,479,000</u>
<b>Comprising:</b>			
Operating funds	679,000		701,000
Litigation fund	792,000		778,000
Equity at end of year	<u>\$1,471,000</u>		<u>\$1,479,000</u>

**FORECAST STATEMENT OF CASH FLOWS**

*For the year ending 30 June 2013*

	<i>Forecast 12 months to 30 June 2013 \$</i>	<i>Notes</i>	<i>Forecast 12 months to 30 June 2012 \$</i>
<b>Cash flows from operating activities</b>			
Cash was provided from:			
Government grant - operations	1,494,000		1,494,000
Application fees & costs recoverable	205,000		251,000
Interest	58,000		53,000
Other income	0		13,000
Goods and services tax (net)	0		22,000
Cash was disbursed to:			
Suppliers	(636,000)		(621,000)
Employees and Members	(1,094,000)		(1,057,000)
Good and Services Tax (net)	(14,000)		0
Net cash inflow (outflow) from operating activities	13,000	5	155,000
<b>Cash flows from investing activities</b>			
Cash was provided from:			
Net decrease in bank deposits	0		0
Cash was applied to:			
Acquisition of computer software	(80,000)		0
Acquisition of office equipment	-		0
Acquisition of office furniture	(9,000)		(1,000)
Net increase in bank deposits	(13,000)		(435,000)
Net cash inflow (outflow) from investing activities	(102,000)		(436,000)
<b>Cash flows from financing activities</b>			
Net cash flows from financing activities	0		0
Net increase (decrease) in cash balance	(75,000)		281,000
Add opening cash and cash equivalents	439,000		720,000
Closing cash and cash equivalents	\$364,000		\$439,000

## **NOTES TO THE FORECAST FINANCIAL STATEMENTS**

**For the year ending 30 June 2013**

### **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 2011/2012**

The 2011/2012 forecast financial statements include actual results up to the end of December 2011 and an estimate of the outcome for the remaining six 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 2011/2012 in the Panel's 2011 forecast financial statements.

#### **2 Government appropriation**

[The Government appropriation is as per the amount allocated to the Output Class "*Administration of the Takeovers Code*" for the year 2012/2013].

#### **3 Application fees and costs recoverable**

The Panel expects third party income of \$205,000 in 2012/2013, the same as the expected level of income in 2011/2012. This assumes section 32 revenue of \$100,000. The level of market activity is also assumed to remain at a similar level for 2012/2013 as it was for 2011/2012.

#### **4. Services and supplies**

The Panel expects a decrease in the cost of services and supplies of some \$27,000, or 17% in 2012/2013 compared with 2011/2012. This is because the Panel assumes a reduction in the higher than normal recruitment costs that were incurred in 2011/2012.

#### **5 Personnel Costs**

The Panel expects to spend \$895,000 on personnel costs in 2012/2013, an increase of around 7% over the expected personnel costs in 2011/2012. This is on the basis of a full year of a full staff complement; two legal positions were vacant, each for about three months, in 2011/2012.

## **6 Members' fees**

The Panel expects to spend \$199,000 on members' fees in 2012/2013, an increase of 7% over expenditure in 2011/2012 even though market activity is forecast to remain at the same levels. This increase relates to a change in strategic focus and planned work spent on Output 5, public understanding, involving members' time.

## **7 Audit**

The Panel expects audit fees to remain stable as new systems and staff have been embedded.

## **8 Overall risk of forecast revenue expectations not being met**

These forecast financial statements are presented on the basis that, other than matters stated above under the statement of significant assumptions, there will be no other significant change to the nature of the Panel's operations or its principal activities in the period covered by the forecast financial statements. As long as there is Code activity there will be a need for exemptions and approvals because the Code is expressed in reasonably general terms and exemptions are often needed to facilitate Code transactions. However the level of Panel income from these sources is difficult to predict with any reliability.

The level of the Panel's enforcement activity is dependent on the level and nature of takeover market activity. If takeovers are hostile or competitive this is likely to lead to a higher level of Panel involvement and possibly enforcement meetings. The 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 hostile takeovers then the level of the Panel's third party revenue would be significantly affected.

If the Panel's third party revenue fell to \$105,000 rather than the predicted \$205,000 with no reduction in staff costs, we would expect some reduction in members' fees and external legal costs, and the Panel's forecast operating loss of \$22,000 could increase by around \$30,000 to \$55,000.

## **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 ending 30 June 2013. 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 thousand dollars.

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

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 Explanation of application of NZ IFRS**

The accounting policies set out above will be applied in preparing the financial statements for the year ending 30 June 2012. The comparative forecast information presented in these financial statements for the year ending 30 June 2012 are stated in accordance with NZ IFRS.

## **16 Changes in Accounting Policies**

No changes in accounting policy are forecast.