

ANNUAL REPORT

2005

Laid before the House of Representatives pursuant  
to section 44A Public Finance Act 1989.

CONTENTS

Functions and Powers of the Panel ...	2
Chairman's Review .....	3
Financial Report.....	11
Report of the Auditor-General .....	20
Members of the Takeovers Panel.....	22
Executive of the Takeovers Panel ....	24
How to Contact Us .....	24

## FUNCTIONS AND POWERS OF THE PANEL

The functions of the Takeovers Panel are set out in section 8 of the Takeovers Act 1993. In summary the Panel's functions are:

- > To keep under review the law relating to takeovers of specified companies and to recommend to the Minister any changes to that law it considers necessary;
- > For the purposes of its review of the law, to keep under review practices relating to takeovers of specified companies;
- > To investigate any act or omission or practice for the purpose of exercising its powers under the enforcement provisions of the Act;
- > To make determinations and orders and make applications to the Court under the enforcement provisions of the Act;
- > To co-operate with any overseas regulator and for that purpose to communicate to that regulator information obtained by the Panel in the performance of its functions and powers which the Panel considers may assist that regulator in the performance of its functions;
- > To promote public understanding of the law and practice relating to takeovers.

In exercising its functions and powers the Panel shall comply with the principles of natural justice.

The powers of the Panel are set out in Part 3 of the Takeovers Act 1993. In summary the powers of the Panel are:

- > To issue summonses and to take evidence on oath;
- > To carry out inspections and obtain evidence at the request of overseas regulators;
- > To make confidentiality orders;
- > To accept undertakings that are enforceable by the Courts;
- > To inspect documents, and to authorise the Registrar of Companies or any other person to undertake inspections;
- > To grant exemptions from the Code;
- > To enforce the Takeovers Code by:
  - making determinations on whether a person is complying with the Code;
  - issuing restraining orders; and
  - applying for Court orders.

Under the Takeovers Code the Panel has powers to approve independent advisers and appoint independent experts.



## CHAIRMAN'S REVIEW

**John King**

The over-riding value of the New Zealand Takeovers Code is that it allows parties to compete for control of code companies while giving all shareholders the opportunity to take part in the takeover process. The Code encourages and facilitates takeovers on the basis of equal treatment and full disclosure which benefits competing bidders and target company shareholders.

The operation of the Code prevents changes of control of a code company from occurring without the approval and participation of its shareholders. A person wishing to acquire more than 20% of the voting securities of a code company can only do so in compliance with the Code. Broadly this means an offer to all shareholders or an acquisition approved by non-associated shareholders.

The Code applies equally to all market participants involved with code companies. All market participants are obliged to conduct their affairs on the basis of the Code, and conversely, they and investors are entitled to rely on the protections contained in the Code.

Because the Code applies equally, regardless of whether the bidder is a New Zealand company or a company from overseas, bidders and code companies have certainty as to how changes of control can occur. This contributes significantly to the integrity of the markets making them more attractive to a wide range of investors.

Before it was introduced some critics suggested that the Code would discourage takeover activity. This has not occurred. In the past year the Panel has received 19 takeover notices relating to New Zealand code companies. This volume of takeover activity, the biggest since the Code came into force, has made 2004-2005 an extremely busy year for the Panel. This year there were some significant developments in the enforcement and exemption activities of the Panel.

### ENFORCEMENT

One of the Panel's functions is to investigate any act or omission relating to a takeover of a code company in order to enforce the Code. One issue in particular that has led to a number of investigations and enforcement actions in the past year is the concept of "association".

The Code's fundamental rule is triggered when a person or associated parties acquire ownership of, or control of, voting rights above 20% in a code company. The concept of "association" is included as an anti-avoidance provision as the Code could easily be circumvented if it concentrated only on voting rights held or controlled by any one company or individual.

Market participants need to understand the concept of association so that they do not risk breaching the Code. Enforcement actions which the Panel has had to take in the past year suggest that the two aspects of association - when parties are associates and the consequences that can result from being associates - are not well understood.

Persons who act jointly or in concert are associates. If one person acts or is accustomed to act in accordance with the wishes of another person they are associates. Related companies are associates.

Parties that have a business, personal or ownership relationship will not necessarily be associates for the purposes of the Code. To determine whether such parties are associated the Panel considers all facets of the relationship and all the circumstances surrounding the relationship. A relationship is likely to be considered an association for Code purposes where it concerns the future control of voting rights of the code company.

In one meeting held by the Panel this year under section 32 of the Takeovers Act the parties were held to be associates; in another section 32 meeting parties were held not to be associates.

The first section 32 meeting concerned Dorchester Pacific Limited where the Panel determined that Bridgecorp Capital Limited and Brent King were associates because they had an ongoing contractual relationship relating to the future control of voting rights in Dorchester. Bridgecorp acquired 19.99% of the voting rights in Dorchester from a number of parties including Brent King. Mr King retained 5.05% of Dorchester. Bridgecorp and King considered that they did not breach the Code on the basis that they were not associates and neither held more than 20% of Dorchester. However, the Panel determined that they were associates because the agreements between them created ongoing relationships respecting the control of Dorchester. As associates their combined holdings exceeded the permitted threshold of 20%.

This was quite different from the situation considered by the Panel in the Calgary Petroleum Limited determination. A number of shareholders increased their voting rights in Calgary by taking up an over-acceptance facility of a pro rata offer. Another shareholder complained to the Panel that these shareholders were associates because they had personal and business relationships, and had voted the same way on a resolution to remove a director of the company. The Panel decided that a number of shareholders agreeing to exercise their votes in a particular way does not necessarily make them associates. The Panel considered the nature of the relationship between the shareholders and determined that they were not associated. Although many of the shareholders had personal and business relationships, in contrast to the Dorchester case, their relationships did not involve the control of voting rights in Calgary.

The second aspect of association is that associate status of itself is not a breach of the Code. It is only if an

associate becomes the holder or controller of voting rights, and together the associates hold, or will hold, more than 20% of the total voting rights in the code company, that the Code will be breached. In the case of Dorchester the fact that Bridgecorp and King were associates did not breach the Code. It was the acquisition that took their combined holding to more than 20% of Dorchester when they were associates, that breached the Code.

Code Word No 14, published in April 2005, gives a detailed explanation of the associate issue to assist market participants to understand this aspect of the Code. The Panel considered, and issued press releases, in relation to the associate issue in two other matters which did not need to be dealt with by a formal meeting under section 32 of the Act. These involved the acquisition of shares in Powerco Limited and Northland Port Corporation (NZ) Limited.

Although section 32 meetings are the most high profile of the Panel's enforcement activities, enforcement work is carried out on a day-to-day basis. The Panel's executive reviews offer documents, target company statements and notices of meeting for all takeover transactions. The executive also follows up issues arising from company announcements and shareholder complaints. Issues arising from these sources often require further action. In some cases non-compliance can be avoided or remedied if the parties amend documents, dispose of shares or issue correcting statements. This is an important part of the Panel's work and is essential for an efficient takeovers market.

In some instances, parties providing incomplete or incorrect information have hindered the Panel's ability to investigate takeover activity or consider applications under the Code. It is an offence to mislead the Panel. The Panel has needed to remind some market participants of the importance of candour in their dealings with the Panel.

## **EXEMPTIONS**

The Panel's decisions on some exemption applications attracted some controversy during the year. A number of applications related to the treatment of overseas shareholders in the case of scrip offers.

Scrip offers are an important part of the takeovers market. However the cost of making a scrip offer for a code company is increased by the need to comply with securities laws in every country where shareholders reside. The Panel's policy is to grant exemptions which enable different treatment of overseas shareholders under scrip offers but only if it is satisfied that the number of overseas shareholders in the jurisdiction in question is extremely small and the offer documents cannot be used in that jurisdiction. As a condition of the exemption, the Panel generally requires that overseas shareholders be offered a cash equivalent which is the net proceeds of the sale of the scrip they would have received. This puts overseas shareholders in the same position as a New Zealand shareholder who immediately sold the scrip received under the takeover offer. Unfortunately with the takeover offer for Powerco Limited the exemption granted in accordance with this principle was able to be exploited in an unexpected manner because of the unusual terms of the offer.

However, the Panel's policy is valid and the conditions of future exemptions will ensure that the problem does not arise again.

The second type of exemption application which attracted some comment during the year related to upstream acquisitions. The Code was deliberately constructed to capture the change of control of voting rights in code companies by means of a transaction upstream from the direct holder of the voting rights in the code company. However, shareholders can approve upstream transactions under the provisions of rule 7(c).

The Panel's stance on exemptions for upstream acquisitions was made clear in its rejection of an application made by Vector Limited. Vector wished to acquire 64.25% of the voting rights in NGC Holdings Limited by purchasing a holding company of The Australian Gas Light Company. AGL did not wish to sell the NGC shares held by its holding company into a direct takeover because it would have had tax disadvantages for AGL, and did not wish to go through the shareholder approval process under rule 7(c). However, the Panel's exemption power is not intended to enable market participants to structure a transaction in a manner that does not comply with the Code to achieve a particular commercial outcome or benefit. There was no reason why the alternatives provided by the Code could not be utilised and accordingly the exemption application was declined.

This year the Panel received more exemption applications than usual. The volume and nature of these applications indicate that the purpose of, and limitations on, the Panel's exemption powers are not fully understood. There will be cases where the Code may have unintended consequences or may not adequately provide for unexpected or unusual circumstances. It is to deal with these situations that the exemption power is required to ensure that the Code operates effectively and efficiently and fulfils its objectives.

The Panel issued a guidance note in January 2005 to clarify the Panel's exemption power and to assist market participants in their appreciation of when exemptions are likely to be granted.

#### **HARMONISATION WITH AUSTRALIA AND INTERNATIONAL LIAISON**

Harmonisation of the New Zealand Takeovers Code with Australian takeovers law was addressed when the New Zealand Code was formulated. At that time section 24 of the Takeovers Act provided that:

*"In formulating a takeovers code the Panel shall have regard, as far as practicable, to the principles applying to the harmonisation of business law contained in the Memorandum of Understanding between the Governments of Australia and New Zealand on the Harmonisation of Business Law signed at Darwin on the 1st day of July 1988".*

The Panel's approach to the formulation of the Code was to produce a Code which was appropriate for the New Zealand takeovers market, taking into account the requirements of section 24.

The legal framework governing takeovers in Australia is very different from the framework provided by our Takeovers Act. There are differences in the legislation and in the roles of the Panels. The Australian Securities and Investments Commission fulfils some of the functions performed by our Panel. Furthermore, the Australian Panel has a much wider jurisdiction in that it can deal with situations which are described as “unacceptable circumstances”.

Harmonisation does not require either country to follow blindly in the footsteps of the other. The aim is to have a common purpose and similar principles. Differences in approach arise for historical reasons and because of the particular requirements of each jurisdiction.

It is in this sense that there is “harmonisation” between the takeovers regimes in New Zealand and Australia. They both seek to place a framework over takeover activity to ensure an orderly process where shareholders are treated equally and, on the basis of proper disclosure, are able to make informed decisions. In particular we have adopted a common threshold of 20%.

For Australian investors interested in New Zealand companies the introduction of the New Zealand Code meant that the basically uncontrolled nature of the takeovers market in New Zealand had come to an end. Australian investors now participate with all other shareholders in the takeover process in a manner that in principle produces outcomes similar to the outcomes under Australian law.

An aspect of harmonisation is being addressed by the Securities Legislation Bill now before Parliament. At present the New Zealand Panel has no power to deal with situations where the Code has been complied with but the parties in the takeover contest engage in misleading or deceptive conduct. The new law will amend the Code to prohibit, and give the Panel powers to deal with, such conduct.

We continue to maintain a close relationship with the Australian Panel. In May 2005 the Minister of Commerce, Hon Pete Hodgson, reappointed Denis Byrne, a member of the Australian Panel, to the New Zealand Takeovers Panel. My appointment to the Australian Takeovers Panel was also extended. These appointments are extremely helpful in keeping each Panel well informed about takeovers matters in the other jurisdiction. Liaison with other takeovers regulators from around the world is important to ensure an understanding of current issues and the approaches to them. Deputy Chairman David Jones and Counsel to the Panel Marion Hemphill attended a meeting of representatives of Takeovers Panels from around the world held in Johannesburg during the year.

## **LAW REFORM**

We expect to see our recommended technical amendments to the Code come into force later in the 2005 calendar year. We have been concerned at the time taken to achieve changes to the Code, most of which were first recommended more than 18 months ago. We need to find ways in which improvements to the Code, identified from our experience with the takeovers market, can become law more quickly.

The Securities Legislation Bill, currently before the House, makes significant changes to the Code and the Act. Among other things, the Bill removes the \$20 million asset test for a code company that is unlisted and broadens the scope of the Code to cover misleading or deceptive conduct, not just misleading or deceptive statements in the offer documents and the target company statement. On the other hand the Code will no longer apply to companies that are listed only in respect of non-voting securities.

This year has seen the passage of the Crown Entities Act. Significant Panel resources had to be diverted to ensure that the Panel's independence was preserved and its processes accommodated during the consultation on this legislation.

#### **PANEL RESOURCING**

The Panel's income is divided between a Government grant and third party income received under the Takeovers (Fees) Regulations 2001. It is difficult to estimate the Panel's income because third party payments depend on the level of takeover activity and the outcome of enforcement action.

For the last two years the Panel has met its deficits from accumulated funds, but warned in the 2004 annual report that surpluses were not at a level to absorb continuing deficits. This year a loss of approximately \$160,000 was avoided by an additional Government grant. Government has also increased funding for the new financial year which will put the Panel in a good position to carry out its current and new responsibilities under the Securities Legislation Bill. However, it may well be appropriate to consider an increase in the size of the Panel itself to cope with the increased workload expected from the anticipated law changes.

#### **CONCLUSION**

The Panel continued to keep market participants well informed during the year by face to face meetings and via the website [www.takeovers.govt.nz](http://www.takeovers.govt.nz). Two issues of Code Word addressed the specific matters that we thought needed clarification for market participants and their advisers.

Panel Members have made significant contributions to the Panel's work, often at times and for periods that were personally inconvenient. I am grateful to them. Their willingness to make themselves available enables the Panel to respond to market issues in a timely way. I am also grateful to the highly skilled Panel executive for their dedication and hard work which makes a significant contribution to a well-regulated takeovers market in this country.



J.C. King  
Chairman



FINANCIAL REPORT

2005

CONTENTS

Sources of Funding .....	11
Statement of Responsibility .....	11
Statement of Financial Performance ..	12
Statement of Financial Position ....	13
Statement of Movements in Equity....	14
Statement of Cash Flows .....	15
Notes to the Financial Statements ...	16



## FINANCIAL REPORT

### SOURCES OF FUNDING

The Panel is funded by the appropriation of money by Parliament and the payment of fees by the users of its services, and parties to its enforcement actions. It is responsible for the allocation of the money. It sets priorities with care and reviews them continually to ensure that the money is used to best advantage.

### STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgements used in them.

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.

In our opinion these annual financial statements fairly reflect the financial position as at 30 June 2005 and the operations of the Takeovers Panel for the year ended 30 June 2005.



J.C. King

CHAIRMAN

18 October 2005



D.M.D. Rawstorne

CHAIRMAN, AUDIT COMMITTEE

18 October 2005

## STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2005

<i>Budget</i> 2005 \$		<i>Note</i>	<i>Actual</i> 2005 \$	<i>Actual</i> 2004 \$
	<b>Operating income</b>			
904,889	Government grant – baseline funding		1,072,000	904,889
8,700	Interest		9,427	8,700
412,000	Application fees and costs recoverable	6	483,492	410,839
5,000	Bad debts and associated costs recoverable		2,292	33,438
<u>1,330,589</u>	Total operating income		<u>1,567,211</u>	<u>1,357,866</u>
	<b>Income for litigation fund</b>			
38,000	Interest		48,594	37,378
<u>38,000</u>	Total litigation fund income		<u>48,594</u>	<u>37,378</u>
<u>1,368,589</u>	Total income		<u>1,615,805</u>	<u>1,395,244</u>
	<b>Operating expenditure</b>			
3,500	Audit fees		5,500	3,500
1,000	Debt collection fees		3,164	12,981
26,000	Communication charges		38,584	26,322
305,000	Members' fees	4	364,592	288,283
23,500	Printing and stationery		27,754	22,792
72,000	Consultants and legal		117,498	72,701
33,300	Services and supplies		28,972	32,469
58,000	Travel and accommodation		91,083	57,608
-	Use of assets	1	-	25,177
886,600	Securities Commission services	3	888,626	842,339
<u>1,408,900</u>	Total operating expenditure		<u>1,565,773</u>	<u>1,384,172</u>
-	Expenditure on litigation fund matters	5	-	23,386
<u>1,408,900</u>	Total expenditure		<u>1,565,773</u>	<u>1,407,558</u>
<u>\$(40,311)</u>	Net surplus / (deficit) including litigation fund net income/(expenditure)		<u>\$50,032</u>	<u>\$(12,314)</u>
	<b>This is comprised of:</b>			
(78,311)	Operating surplus / (deficit)		1,438	(26,306)
<u>38,000</u>	Litigation fund surplus		<u>48,594</u>	<u>13,992</u>
<u>\$(40,311)</u>			<u>\$50,032</u>	<u>\$(12,314)</u>

*The accompanying notes form part of these financial statements.*

## STATEMENT OF FINANCIAL POSITION

as at 30 June 2005

<i>Budget</i> 2005 \$		<i>Note</i>	<i>Actual</i> 2005 \$	<i>Actual</i> 2004 \$
<b>Current assets</b>				
13,159	Cash		9,610	6,959
190,705	Short-term deposits – other		322,897	235,024
791,277	Short-term deposit – litigation fund		700,707	747,448
87	Interest receivable – other		-	87
-	Interest receivable – litigation fund		8,164	5,829
80,000	Sundry debtors and prepayments		111,075	120,192
(10,000)	Less provision for bad debts		(10,000)	(10,000)
<u>1,065,228</u>	Total current assets		<u>1,142,453</u>	<u>1,105,539</u>
<u>\$1,065,228</u>	Total assets		<u>\$1,142,453</u>	<u>\$1,105,539</u>
<b>Current liabilities</b>				
40,270	Creditors and accruals		105,800	40,270
7,028	GST payable		21,380	7,028
<u>47,298</u>	Total current liabilities		<u>127,180</u>	<u>47,298</u>
<b>Equity</b>				
226,653	Accumulated funds		306,402	304,964
791,277	Litigation fund	5	708,871	753,277
<u>1,017,930</u>	Total equity		<u>1,015,273</u>	<u>1,058,241</u>
<u>\$1,065,228</u>	Total equity and liabilities		<u>\$1,142,453</u>	<u>\$1,105,539</u>

*The accompanying notes form part of these financial statements.*

## STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2005

<i>Budget</i> 2005 \$		<i>Note</i>	<i>Actual</i> 2005 \$	<i>Actual</i> 2004 \$
	<b>Equity at start of year</b>			
304,964	Accumulated funds		304,964	331,270
753,277	Litigation fund		753,277	739,285
<u>\$1,058,241</u>	<b>Equity at start of year</b>		<u>\$1,058,241</u>	<u>\$1,070,555</u>
(78,311)	Operating surplus		1,438	(26,306)
38,000	Litigation fund surplus/(deficit)		48,594	13,992
(40,311)	Total recognised revenues and expenses		50,032	(12,314)
-	Part return of litigation fund to the Crown		(93,000)	-
(40,311)	Increase/(reduction) in equity		(42,968)	(12,314)
<u>\$1,017,930</u>	<b>Equity at end of year</b>		<u>\$1,015,273</u>	<u>\$1,058,241</u>
	<b>Comprising:</b>			
226,653	Accumulated funds		306,402	304,964
791,277	Litigation fund	5	708,871	753,277
<u>\$1,017,930</u>	Equity at end of year		<u>\$1,015,273</u>	<u>\$1,058,241</u>

*The accompanying notes form part of these financial statements.*

## STATEMENT OF CASH FLOWS

for the year ended 30 June 2005

Budget 2005 \$	Note	Actual 2005 \$	Actual 2004 \$
	<b>Cash flows from operating activities</b>		
	Cash was provided from:		
904,889	Government grant	1,072,000	904,889
-	Government litigation fund	-	-
424,897	Application fees and costs recoverable	487,498	469,851
5,000	Bad debts recovered	2,292	33,438
46,700	Interest	55,773	46,360
	Cash was disbursed to:		
(1,396,219)	Suppliers	(1,480,780)	(1,371,653)
(14,733)	Net cash inflow (outflow) from operating activities 7	136,783	82,885
	<b>Cash flows from financing activities</b>		
	Cash was disbursed to:		
	Part return of litigation fund to the Crown	(93,000)	-
-	Net cash inflow (outflow) from financing activities	(93,000)	-
	<b>Cash flows from investing activities</b>		
	Cash was provided from:		
-	Net decrease in bank deposits	46,741	-
	Cash was applied to:		
(23,386)	Net increase in bank deposits	-	(13,539)
(23,386)	Net cash inflow (outflow) from investing activities	(46,741)	(13,539)
(38,119)	Net increase (decrease) in cash balance	90,524	69,346
241,983	Add opening cash balance	241,983	172,637
\$203,864	Closing cash balance carried forward	\$332,507	\$241,983

*The accompanying notes form part of these financial statements.*

## NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2005

### NOTE 1 STATEMENT OF ACCOUNTING POLICIES

#### Reporting Entity

The Takeovers Panel is a body corporate established by the Takeovers Act 1993. The financial statements presented here are prepared pursuant to section 16 of the Takeovers Act 1993 and section 41 of the Public Finance Act 1989.

#### 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.

#### Specific Accounting Policies

##### *Budget Figures*

The budget figures are those approved by Panel members on 28 September 2004. The budget figures are prepared in accordance with generally accepted accounting practice.

##### *Short Term Deposits*

Short term deposits are shown at cost.

##### *GST*

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

##### *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.

##### *Income Tax*

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

##### *Sundry Debtors*

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

##### *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.

##### *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. Reimbursements from the Crown to top-up the fund are reported as income in the period in which the Panel's claim for reimbursement is accepted by the Crown. The balance of the fund is disclosed as a component of equity in the statement of financial position.

##### *Prepayment for Use of Assets*

This represents amounts paid to the Securities Commission to finance the purchase of assets required by the Commission to service the requirements of the Panel.

The small remaining balance was amortised last year.

### NOTE 2 CHANGES IN ACCOUNTING POLICIES

There have been no changes in the Panel's accounting policies.

All policies have been applied on bases consistent with those used last year.



**NOTE 3 SECURITIES COMMISSION SERVICES**

Although the Panel is an independent Crown entity it does not have its own premises or equipment and does not employ its own staff. Instead these services are provided by the Securities Commission in terms of an agreement negotiated between the Panel and the Commission on an arm's length basis. The Panel pays the Commission on the basis of the hours worked by the Commission staff on Panel business. Payments are at a rate that covers the cost of overheads including the use of premises and equipment.

**NOTE 4 REMUNERATION OF MEMBERS OF THE PANEL**

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2005 were:

	2005 \$	2004 \$
J.C. King (Chairman)	84,500	81,223
D.O. Jones (Deputy Chairman)	69,024	50,935
D.M. Byrne	15,000	13,312
A.N. Frankham	22,900	19,361
C.G. Giffney	33,236	26,652
A. Lawrence	29,580	15,832
K.J. O'Connor	31,784	22,800
D.J. Quigg	44,528	29,193
D.M.D. Rawstorne	20,040	15,033
S. Suckling	14,000	13,942
Total	<u>\$364,592</u>	<u>\$288,283</u>

**NOTE 5 LITIGATION FUND**

The Panel has established a litigation fund from an appropriation of \$675,000 (GST not applicable) made by Parliament. The fund is to be used solely for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or responds to litigation brought against it. It is being held on short term deposit. Parliament has made a further appropriation of \$675,000 (GST inclusive) for the year ending 30 June 2005 to top-up the fund to the set level of \$675,000. The Panel has not drawn on this appropriation during the year ended 30 June 2005. The Panel returned \$93,000 of accumulated interest to the Crown during the year. The outcome was a reduction in the litigation fund of \$44,406 over the year.

A summary of the movements in the fund during the year is as follows:

	2005 \$	2004 \$
Interest received	40,430	31,549
Interest accrued	8,164	5,829
Expenditure on approved litigation	-	(23,386)
Surplus/(deficit) for the year	<u>48,594</u>	<u>13,992</u>
Opening balance 1 July 2004	753,277	739,285
Part return of litigation fund to the Crown	<u>(93,000)</u>	<u>-</u>
Balance at 30 June 2005	<u>\$708,871</u>	<u>\$753,277</u>

**NOTE 6 APPLICATION FEES AND COSTS RECOVERABLE**

The Takeovers (Fees) Regulations 2001 enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement action pursuant to the Takeovers Act. An analysis of the amounts received for the year ended 30 June 2005 is as follows:

	2005 \$	2004 \$
Exemptions	295,254	200,260
Approvals	89,641	90,173
Enforcement – section 32	94,951	131,645
Miscellaneous	3,646	-
Adjustment to prior year income	-	(11,239)
<b>Total</b>	<b>\$483,492</b>	<b>\$410,839</b>

**NOTE 7 RECONCILIATION OF STATEMENT OF FINANCIAL PERFORMANCE WITH STATEMENT OF CASH FLOWS**

	2005 \$	2004 \$
Net surplus (deficit)	50,032	(12,314)
Movement in working capital:		
Increase (decrease) in creditors	79,882	7,327
(Increase) decrease in receivables	6,869	87,872
	86,751	95,199
<b>Net cash flows from operating activities</b>	<b>\$136,783</b>	<b>\$82,885</b>

**NOTE 8 CASH FLOWS****Cash**

This means cash balances on hand, held in bank accounts, and short-term deposits in which the Panel invests as part of its day-to-day cash management. Some of the prior year's comparative figures have been amended to reflect this updated definition of cash.

**Investing Activities**

Investing activities are those activities relating to the movements in short-term deposits. The cash flows relating to the Panel's investing activities are reported on a net basis in the statement of cash flows. The amounts involved are held in short-term deposits which are rolled over frequently through the year.

**Financing Activities**

Financing activities are those activities relating to changes in equity structure of the Panel.

**Operating Activities**

Operating activities include all activities other than investing and financing activities.

**NOTE 9 FINANCIAL INSTRUMENTS****Credit Risk**

Financial instruments which potentially subject the Panel to credit risk consist of bank balances, bank short-term deposits, sundry debtors, and accrued interest receivable.

The Panel's investments are deposited with a registered bank in New Zealand.

The Panel does not require collateral or security to support financial instruments.

There are no concentrations of credit risk.

**Fair Values**

All financial instruments are recognised in the statement of financial position and are stated at fair values.

**Currency Risk**

The Panel does not hold any overseas securities or deposits and is therefore not exposed to any currency risk.

**Interest Rate Risk**

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Panel invests only in short-term bank deposits for which there is no interest rate risk. The weighted average effective interest rate on short-term deposits was 6.85% (2004 - 5.46%).

**NOTE 10 COMMITMENTS**

There were no lease commitments at balance date. (2004 – no commitments)

The Panel has no capital commitments at balance date. (2004 – no commitments)

**NOTE 11 CONTINGENT LIABILITIES**

There were no contingent liabilities at balance date. (2004 – no contingent liabilities)

**NOTE 12 TRANSACTIONS WITH RELATED PARTIES**

The Panel is an independent Crown entity for the purposes of the Crown Entities Act 2004. The Crown is its major source of revenue.

The Panel has entered into a number of transactions with other entities within the Crown on an arm's length basis. Where those parties are acting in the course of their normal dealings with the Panel, related party disclosures have not been made for transactions of this nature.

**NOTE 13 SUBSEQUENT EVENTS**

There were no material events subsequent to balance date that would affect the interpretation of the financial statements or the performance of the Panel. (2004 – no subsequent events)

**NOTE 14 SEGMENTAL INFORMATION**

The Takeovers Panel operates in one industry segment administering the Takeovers Act and Code and is based in one geographical segment, which is New Zealand.

**NOTE 15 BUDGET VARIANCES**

Significant variances from budget were:

**Income**

Total operating income was \$236,622 higher than budgeted, primarily because of the additional funding provided by the Crown in the final month of the year, and the higher than expected level of exemption work.

**Expenditure**

Total operating expenditure for the year was \$156,873 higher than budgeted, primarily because of higher expenditure on outside experts, members' fees, and travel relating to the higher level of activity including exemption and enforcement work.

**Net Operating Surplus**

The Panel recorded a small operating surplus when a large deficit had been expected. This was a combination of the increased income and expenditure discussed above. The activities of the Panel are influenced significantly by the level of takeover activity and the needs of the market for exemptions and approvals. The Panel also has obligations to keep the Code under review and to review market practices.

## AUDIT REPORT

### TO THE READERS OF THE TAKEOVERS PANEL'S FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2005

The Auditor-General is the auditor of the Takeovers Panel. The Auditor-General has appointed me, Robert Cox, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements of the Takeovers Panel on his behalf, for the year ended 30 June 2005.

#### **Unqualified opinion**

In our opinion the financial statements of the Takeovers Panel on pages 12 to 19:

- ▲ comply with generally accepted accounting practice in New Zealand; and
- ▲ fairly reflect:
  - the Takeovers Panel's financial position as at 30 June 2005; and
  - the results of its operations and cash flows for the year ended on that date.

The audit was completed on 27 October 2005, and is the date at which our opinion is expressed.

The basis of the opinion is explained below. In addition, we outline the responsibilities of the Members of the Takeovers Panel and the Auditor, and explain our independence.

#### **Basis of opinion**

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed our audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements. If we had found material misstatements that were not corrected, we would have referred to them in the opinion.

Our audit involved performing procedures to test the information presented in the financial statements. We assessed the results of those procedures in forming our opinion. Audit procedures generally include:

- ▲ determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- ▲ verifying samples of transactions and account balances;
- ▲ performing analyses to identify anomalies in the reported data;
- ▲ reviewing significant estimates and judgements made by the Members of the Takeovers Panel;
- ▲ confirming year-end balances;
- ▲ determining whether accounting policies are appropriate and consistently applied; and
- ▲ determining whether all financial statement disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements.

We evaluated the overall adequacy of the presentation of information in the financial statements. We obtained all the information and explanations we required to support the opinion above.

#### **Responsibilities of the Members of the Takeovers Panel and the Auditor**

The Members of the Takeovers Panel are responsible for preparing financial statements in accordance with generally accepted accounting practice in New Zealand. Those financial statements must fairly reflect the financial position of the Takeovers Panel as at 30 June 2005. They must also fairly reflect the results of its operations and cash flows for the year ended on that date. The Members of the Takeovers Panel's responsibilities arise from the Public Finance Act 1989.

We are responsible for expressing an independent opinion on the financial statements and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and the Public Finance Act 1989.

#### **Independence**

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the Institute of Chartered Accountants of New Zealand.

Other than the audit, we have no relationship with or interests in the Takeovers Panel.



Robert Cox  
Audit New Zealand  
On behalf of the Auditor-General  
Wellington, New Zealand

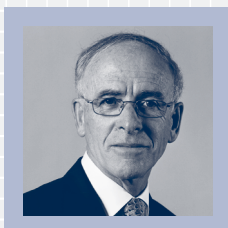
#### **Matters relating to the electronic presentation of the audited financial statements**

The audit report relates to the financial statements of the Takeovers Panel for the year ended 30 June 2005 included on the Takeovers Panel's website. The Members of the Panel are responsible for the maintenance and the integrity of the Takeovers Panel's website. We have not been engaged to report on the integrity of the Takeovers Panel's website. We accept no responsibility for any changes that may have occurred to the financial statements since there were initially presented on the website.

The audit report refers only to the financial statements named above. It does not provide opinion on any other information which may have been hyperlinked to/from these financial statements. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and related audit report dated 27 October 2005 to confirm the information included in the audited financial statements presented on this website.

Legislation in New Zealand governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

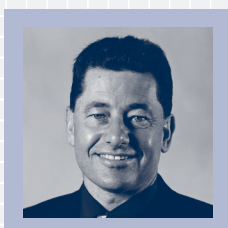
## MEMBERS OF THE TAKEOVERS PANEL



### CHAIRMAN

#### John King

Consultant with Russell McVeagh. Chairman of the Panel since it was created in 1994 and previously of the Takeovers Panel Advisory Committee. Member of the Australian Takeovers Panel. Director of Westpac (NZ) Investments Limited and The New Zealand Guardian Trust Company Limited and former director of Telecom Corporation of New Zealand Limited and a number of other public and private companies. Vice President of the Employers & Manufacturers Association (Northern) Inc., member of the Council of Business New Zealand and Deputy Chairman of the Spirit of Adventure Trust.



### DEPUTY CHAIRMAN

#### David Jones

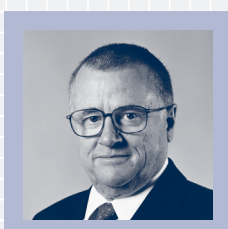
Principal of Jones Young, Auckland, specialising in commercial and company law. Personal adviser to the Minister of Justice on the company law reform programme 1991. Member of the Company Law Monitoring Group 1993. Lecturer in company law for the Institute of Directors. Member of the Panel from its inception as an advisory group.



### MEMBERS

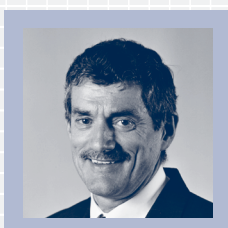
#### Denis Byrne

Brisbane-based company director. Member of the Australian Takeovers Panel since 1997. Chair of the Fisheries Research & Development Corporation, Director of Australian Magnesium Corporation Limited, the Ball Solutions Group of Companies (Australia) and Birkdale Nursery Holdings Pty Limited. Member of the Starlight Children's Foundation Advisory Board. First appointed to the New Zealand Takeovers Panel in 2001 and reappointed in 2005.



#### Anthony Frankham

Auckland-based independent financial analyst. Director of Frankham Lyne Limited, Director of Auckland International Airport Limited and Capital Properties Limited. Director and Chairman of New Zealand Experience Limited. Chairman of the Audit Office's New Zealand Audit Committee. Life Member of the Institute of Chartered Accountants. Appointed to the Panel in 2002.



#### Colin Giffney

Principal of Giffney & Jones, specialist corporate advisers. NZX Adviser and a founding Member of the Market Surveillance Panel. Appointed to the Takeovers Panel in 2001.



**Alastair Lawrence**

Auckland-based investment banker. Principal of Antipodes, a private investment bank which provides specialist mergers and acquisitions advice, in addition to private equity for emerging New Zealand companies. Director of Landcare Research, and a number of private companies. Member of the Panel since 1994 and prior to that a member of the Takeovers Panel Advisory Committee.



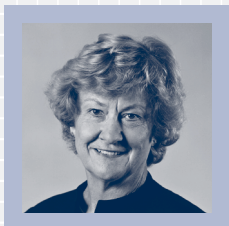
**Kevin O'Connor**

Wellington company director. Director of Utilico Emerging Markets Limited, and a range of private companies and charitable organisations. Former Chairman of the Market Surveillance Panel of the New Zealand Stock Exchange. Member of the Panel since 1994.



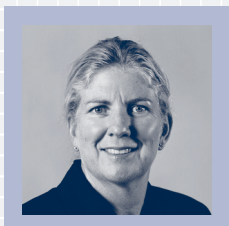
**David Quigg**

Partner of Quigg Partners, barristers and solicitors of Wellington, specialising in mergers and acquisitions, takeovers and corporate law. Lecturer in takeovers and mergers and acquisitions law for the Institute of Directors. Member of the National Board of the Institute of Directors. Appointed to the Panel in 2001.



**Daphne Rawstorne**

Wellington-based accountant, former Managing Partner of Deloitte, and Fellow of the Institute of Directors. Company director and business consultant. Member of the Panel since 1999.



**Sue Suckling**

South Island company director and business consultant. Chair of the National Institute of Water & Atmospheric Research, AgriQuality New Zealand Limited, Baker Fruit Processors Limited, Carsons (SI) Limited, The Oxford Clinic Limited, and HSR Governance Limited. Director of Westpac (NZ) Investments Limited. Appointed to the Panel in 2002.

## **EXECUTIVE OF THE TAKEOVERS PANEL**

Kerry Morrell, Senior Executive Officer

Marion Hemphill, Counsel to the Panel

Margaret Bearsley, Senior Solicitor

Graham Miller, Solicitor

David Tsai, Solicitor

Nigel Brunson, Accountant

Catherine Chapman, Communications Manager

## **HOW TO CONTACT US**

Takeovers Panel

Level 8, Unisys House

56 The Terrace

Wellington

Phone (04) 471 4618

Fax (04) 471 4619

Email [takeovers.panel@takeovers.govt.nz](mailto:takeovers.panel@takeovers.govt.nz)

Website [www.takeovers.govt.nz](http://www.takeovers.govt.nz)