

**Takeovers Panel**

**ANNUAL REPORT**

**for the year ended 30 June 2007**



TAKEOVERS PANEL

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## **FUNCTIONS AND POWERS OF THE PANEL**

The functions of the Takeovers Panel are set out in section 8 of the Act 1993 (“the Act”) and section 14 of the Crown Entities Act 2004. 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;
- Any functions that are incidental and related to, or consequential on the other functions set out above.

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

The Panel is a body corporate and is a separate legal entity from its members, officers, employees and the Crown (section 15 Crown Entities Act).

The Panel’s main powers are set out in Parts 3 and 4 of the Act and sections 16 and 17 of the Crown Entities Act. In summary these powers of the Panel are:

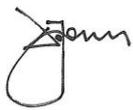
- To issue summonses and to take evidence on oath;
- To carry out inspections and obtain evidence at the request of overseas regulators;
- To make confidentiality orders;
- To accept undertakings that are enforceable by the Courts;
- To inspect documents, and to authorise the Registrar of Companies or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

- To do anything that a natural person of full age and capacity may do, for the purpose of performing the Panel's functions (e.g., making applications to Court in respect of matters that are relevant to its functions and powers).

The main statutory powers dealing with the Panel's governance, operation, reporting and financial obligations are set out in the Crown Entities Act.

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

This Annual Report was approved by the Takeovers Panel on 7 August 2007



D O Jones  
Chairman



A R Lawrence  
Deputy Chairman

## **CHAIRMAN'S REVIEW**

This has been a significant year for the Takeovers Panel. It marked the end of John King's tenure as Chairman of the Panel. There were changes to takeovers legislation including technical amendments to tidy up some anomalies and inconsistencies in the Code, and reconsideration of policy issues on amalgamations and schemes of arrangement under the Companies Act involving code companies.

### **John King**

John King retired as Chairman in March 2007 after 16 years of involvement with the regulation of takeovers. John had a key role from the initial Panel set up in 1991, through the development and drafting of the Code, the reactivation of the Panel in 2000 and the introduction of the Code in 2001. He chaired the Panel through almost six years of operation during which time the Code was tried and tested, and proved its worth. Takeovers in the New Zealand market now take place in an orderly way and shareholders are kept well informed of, and involved in, the takeover process. We are grateful to him for his foresight, his leadership, and his determination to see the Code in force and accepted by the market.

The change of Chairman does not herald major change. The manner in which the Code is applied and its provisions are interpreted is largely settled. The market understands the Code and the Panel's approach to interpretation and enforcement well. We recognise the importance to the market of maintaining consistency in this approach.

That is not to say that there will not be changes in the future. Commerce and the takeovers market is a dynamic environment where change is a part of the landscape. In the face of change the Code will be tested and the Panel may need to respond. Any response will be made in a manner consistent with the objectives underlying the Code and, to the extent possible, in consultation with the market. The Panel will continue to work with the market as it has always done. It prides itself on providing certainty and, subject to the legal limitations of the Act and the Code, will always strive for sensible commercial outcomes.

### **Changes to legislation**

The Takeovers Amendment Act, passed in October 2006, amended the Act and Code in a number of areas.

#### *Code company definitions*

Under the new definitions the Code applies to companies with listed securities that confer voting rights and to companies of that type that have been listed on the exchange in the preceding 12 months. Companies with only non-voting securities quoted on the NZDX, some of which are wholly-owned subsidiaries of overseas companies, are no longer code companies.

The asset threshold has been removed for unlisted companies so the Code now applies to every company with 50 or more shareholders. Consequently some companies which were code companies are no longer subject to the Code, and some small non-listed companies that were not subject to the Code now come under its jurisdiction.

#### *Panel's enforcement powers*

The new legislation gives the Panel power to make permanent compliance orders. The permanent orders give the Panel power to deal decisively with any kind of misleading conduct including misleading or deceptive, or otherwise defective, takeover documents. The orders enable the Panel (without recourse to the Courts) to prohibit or restrict persons from making statements or distributing documents, and to direct those persons to disclose information or to publish, at their own expense, corrective statements. The Panel can make restraining orders and compliance orders against the principal party to a breach of an exemption as well a breach of the Code itself, and also against any person with a secondary involvement in the breach.

### *Civil remedies and penalties*

The new regime includes new pecuniary penalties as well as a power for the High Court to make compensatory orders which may be awarded to a person for loss or damage caused by a contravention of the Code. The fines for general offences under the Act are increased. In addition, the Court can make management banning orders against persons convicted of misleading the Panel or of making or disseminating materially false or misleading statements or information. Company directors who persistently contravene the Act or Code, the Companies Act, the Securities Markets Act or the Securities Act may also be subject to management banning orders.

### *Misleading conduct*

The law on misleading conduct relating to takeovers has been passed and is awaiting regulations to be settled before coming into effect later in 2007. The new rule 64 of the Code effectively imports section 9 of the Fair Trading Act 1986 into the Code. This will enable the Panel to take action in respect of any misleading conduct relating to takeovers. Currently the Panel can only deal with misleading conduct in takeover documents. Misleading conduct includes a failure to observe "last and final statements" such as extending an offer period after a statement that the offer period will not be extended, raising the offer price after a statement that the price will not be raised, and making a second offer after the first offer is represented as being the only offer that will be made. The Panel is developing policies for enforcing the new rule 64 and will take into account policies in Australia where 'truth in takeovers' has received considerable attention.

### *Technical amendments to the Code*

The technical amendments to the Code came into force on 1 July 2007. These address a large number of issues that arose in the first years of operation of the Code. They improve efficiency in some areas, address drafting anomalies that became apparent during the early years of operation of the Code, and clarify some rights and obligations of parties to takeovers.

### **Amalgamations and schemes of arrangement**

A significant policy issue confronting the Panel continues to be amalgamations and schemes of arrangement under Parts 13 and 15 of the Companies Act which involve code companies. The Panel's concern has been the use of these mechanisms to achieve a similar outcome to a takeover offer made under the Takeovers Code, viz control changes of code companies but without affording to shareholders the same protections they would have under the Code. This was raised as a matter of urgency by John King in his Chairman's Review in last year's annual report.

In October and November 2006 the Panel was involved in proceedings in the High Court and the Court of Appeal over a scheme of arrangement promoted by the Dominion Funds Group of companies. The scheme included the amalgamation of three companies. Under the scheme (based on the Court's initial orders) the amalgamations could have been approved by a small number of shareholders in each company.

The Panel believed the scheme should require the support of the holders of a majority of the voting rights in each company. The Panel applied to the High Court for leave to be heard as to the adequacy of the initial orders relating to the process to be followed, submitting that the Court should amend its earlier initial orders to include this additional voting requirement. The Court granted the orders sought by the Panel.

However, the Court of Appeal reversed the order made by the High Court. The main reason was a practical concern that the scheme could receive overwhelming approval from those shareholders who vote on it, but fail to secure support from the holders of a majority of the voting rights in each amalgamating company. The Court considered this to be an orthodox amalgamation and not a device to avoid the Code. Under new orders made by the High Court, and modified by the Court of Appeal, the Panel was advised of the outcome of the shareholder vote on the scheme shortly after

voting was concluded. It then had two business days to apply to be heard when the High Court considered the final approval of the scheme. When the shareholder vote was analysed, it was clear that a majority of the holders of voting rights in each company supported the amalgamation. The Panel therefore decided it did not need to be heard at the final High Court approval of the scheme and advised the Court accordingly.

The Panel will continue to seek to be heard on schemes of arrangement involving code companies when appropriate.

In August 2006, after wide public consultation, the Panel recommended to the Minister of Commerce changes to the law relating to schemes and amalgamations under the Companies Act. At the same time, the Panel made submissions to the Parliamentary Select Committee considering the 2006 Business Law Reform Bill. However, the Panel's recommendations could not be included in the 2006 Bill. Subsequently the Minister asked the Panel to look at the issue of schemes and amalgamations again. She asked that the Panel develop proposals using the Regulatory Impact Analysis framework and provide a Regulatory Impact Statement with its recommendations. A consultation document will be released soon. When submissions have been considered the Panel will report to the Minister.

### **Appreciation**

I would like to thank Alastair Lawrence for taking the role of Deputy Chairman, and welcome the new members of the Panel – Pip Greenwood, Keith Taylor and John Waller. Thanks go also to all members who served on the Panel this year including Denis Byrne, Anthony Frankham and Daphne Rawstone who have now left the Panel. The contribution of these retiring members has been valuable to the Panel, and is much appreciated. I would also like to record my appreciation, and that of all Panel members, for the highly professional work and commitment of Senior Executive Officer, Kerry Morrell, and his staff.



D. O. Jones  
Chairman

## MEMBERS OF THE TAKEOVERS PANEL

### Chairman

David Jones

*Principal of Jones Young, Barristers and Solicitors, Auckland, specialising in mergers and acquisitions and corporate 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. Member of the Australian Takeovers Panel.*

### Deputy Chairman

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.*

### Members

Colin Giffney

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

Pip Greenwood

*Auckland based Partner of Russell McVeagh and member of the firm's Board of Management. Specialising in securities offerings, mergers and acquisitions, takeovers and general corporate advisory work. Former member of the NZX Legal & Regulatory Advisory Board and Chairperson of NZX Unit Trust and Managed Fund Working Group. Appointed to the Takeovers Panel in 2006.*

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 Wellington Committee of the Institute of Directors. Appointed to the Panel in 2001.*

Sue Suckling

*South Island company director and business consultant. Chair of the National Institute of Water & Atmospheric Research, New Zealand Qualifications Authority, Baker Fruit Processors Limited, Carsons (SI) Limited, The Oxford Clinic Limited, HSR Governance Limited, and a director of Restaurant Brands Limited. Appointed to the Panel in 2002.*

Keith Taylor

*Wellington-based director and consultant. Former Group Managing Director of Tower Limited. Director of the Earthquake Commission and a range of private companies and charitable organisations. Appointed to the Panel in 2006.*

John Waller

*John Waller is a partner of PricewaterhouseCoopers based in Auckland. He heads the firm's Advisory Line of Service and is a member of the firm's New Zealand Board. John specialises in corporate restructuring and general corporate advisory work. He was appointed to the Panel in 2006.*

## **THE PANEL'S PERFORMANCE IN 2006/2007**

The Panel's overall objective is to be an effective and efficient regulator of the takeovers market in New Zealand, respected by market participants. The Panel believes it has achieved that objective in 2006/2007 by its performance in the areas described below.

### **Improving the relevance and effectiveness of the Code**

The impact the Panel is seeking to achieve by its policy review work is to improve the relevance and effectiveness of the Code. It has achieved this in the past year by working very closely with the Ministry of Economic Development and Parliamentary Counsel Office to finalise and refine a large number of technical amendments to the Code. These technical amendments finally came into force on 1 July 2007.

The Panel also worked closely with the Ministry of Economic Development and the Securities Commission to provide input into aspects of the Securities Legislation Bill (which later became the Takeovers Amendment Act 2006) providing for a number of new powers for the Panel and the extension of the scope of takeovers law to specifically deal with misleading and deceptive conduct in takeovers.

Some of these provisions have not yet come into force because they await enabling regulations affecting various securities law aspects of market manipulation. The Panel will continue to support the promulgation of these regulations by providing input and comment to officials on various draft regulations.

The Panel also responded promptly to the transaction in the market involving the effective takeover of Waste Management Limited by Transpacific Group of Australia, using a cash takeover effected under the amalgamation provisions of the Companies Act.

The Panel initiated an urgent review of the law governing schemes of arrangement and amalgamations under the Companies Act as it applies to the change of control of code companies. The Panel issued a consultation paper and subsequently made recommendations to the Minister of Commerce and to the Select Committee of Parliament considering the 2006 Business Law Reform Bill. Unfortunately the Panel's proposals were considered outside the scope of the Bill. The Minister has since asked the Panel to undertake further policy work on the issue.

The effectiveness of the Panel's contribution to this law reform function is demonstrated by the fact that 95% of the Panel's recommendations have been converted into law.

The Panel supported its efforts on law reform by undertaking ongoing monitoring of developments in the takeover market both in New Zealand and overseas.

### **Enforcement of the Code**

The intended impact of the Panel's work on enforcement of the Code is the overall improvement in compliance with the Code. The purpose of this work is so that market participants can be confident that they are operating in a well-regulated market. Efficient market mechanisms to achieve changes of control of companies in a fair and efficient way are an important element of the Government's economic transformation objective.

One measure of the Panel's role as an enforcer of takeovers law is that there were no section 32 meetings held during the year. Where compliance issues were identified by or to the Panel that had the potential to lead to a meeting under section 32 of the Act, the market participants involved

tended to amend their behaviour or approach to a particular matter such that the Code no longer had the potential to be breached.

At a detailed level the Panel reviewed all formal takeover documents, often at a draft stage, which contributed to a high level of compliance with the law by the time documents were formally sent to shareholders. The Panel was also actively involved in the review of notices of meeting and reports where Code transactions were being put to a company meeting for approval by shareholders under the Code.

There was an unprecedented number of takeover notices received during the year (23).

In the broader field of enforcement the Panel carried out its policy of intervening where a scheme of arrangement involving the change of control of code companies came before the Courts. While ultimately unsuccessful, the hearings in the High Court and subsequently in the Court of Appeal relating to the Dominion Funds Group in general terms confirmed that the Panel had a right to appear and be heard in Court or to make submission on such proposals.

Although the Panel is aware, in some instances from exemption applications covering past breaches, that breaches of the Code have occurred, this is likely to be because many shareholders of listed and unlisted companies covered by the Code do not realise the way in which the Code can apply to quite small transactions affecting quite small shareholdings.

The Panel is confident that its enforcement activities are resulting in improved levels of compliance with takeovers law.

### **The granting of exemptions**

The intended impact of the Panel's exemption function is the improvement in the functioning of the takeovers market by alleviating unintended or unreasonable consequences arising from strict application of the Code or allowing otherwise legitimate but Code non-compliant transactions to proceed in ways that are consistent with the objectives of the Code.

The Panel has granted a range of exemptions during the year. It has also declined a number of exemptions, although fewer than in some previous years. We expect this is because the market is now more aware of the Panel's approach to the granting of exemptions (which must be both appropriate and consistent with the objectives of the Code before they can be granted).

In exercising its exemption function the Panel aims to meet the timing needs of the market. In the past year it has managed to achieve this in most instances. Some exemption applications are processed within one week. Other applications may take many weeks to process, often because of their complexity and the need to obtain additional information.

There were 29 exemption applications processed during the year.

Overall the Panel is of the view that the responsible exercise of its powers is contributing to a more efficient market. Some takeovers would not have been able to proceed in their final form without a Panel exemption.

### **The approval function**

The Panel is required to approve the appointment of independent advisers for takeovers and other transactions effected under the Code. The intended impact of the Panel's approval function is the improvement in the quality of advice given to recipients of takeover offers and to shareholders entitled to vote to approve Code-related acquisitions and allotments.

The Panel applies criteria relating to both competence and independence before approving advisers to prepare reports under the Code. The Panel also reviews all adviser reports in draft form before they are sent to shareholders to assess their quality and to see if they adequately address relevant Code and other merits issues.

During the year the Panel processed 56 applications for approval as independent adviser, of which 4 were declined. This was a high number of applications, reflecting the level of takeover activity underway in the final months of the financial year. The Panel had anticipated processing 40 applications. The Panel aims to process 80% of these applications within 3 working days of receiving a complete application. It achieved this in 91% of cases through the year.

During the year the Panel has been taking an initiative to remove references to “fairness” from independent adviser reports on takeover offers and other Code transactions. This initiative has been largely successful. Reports now concentrate on merits and target company directors can no longer rely on the adviser concluding that an offer is fair or otherwise when formulating their recommendations to shareholders.

This initiative is part of the reason why the Panel is developing a third edition of its Guidance Note about the role of Independent Advisers for the purposes of the Code. This Note is expected to be published early in 2007/2008.

The Panel is measuring its impact on the quality of adviser reports by tracking the number of comments it makes on each draft adviser report. The aim is to reduce the number of comments to 2 per report. Over the year as a whole the average number of comments on each report has been 2.44 comments per report. However, only 55% of draft reports reviewed by the Panel executive had 2 or fewer comments made on them. This is disappointing.

### **Promoting public understanding of the law and practice relating to takeovers**

The intended impact of the Panel’s function of promoting public understanding of takeovers law is the improvement in public understanding of takeovers law over time.

In the past year the Panel has published four editions of its newsletter *Code Word*. One issue was devoted to the changes arising from the Takeovers Amendment Act 2006, one to the technical changes to the Code and one to the Panel’s court proceedings involving the scheme of arrangement promoted by the Dominion Funds group. The remaining edition dealt with a number of exemption matters and included a tribute to the former Chairman of the Panel, John King, who retired from the chairmanship of the Panel in March 2007.

The Panel aims to publish information about significant changes to the law within a month of those changes occurring and has met that objective in the past year.

The Panel also keeps its website up to date with a complete record of all its exemptions, policies, publications and important enforcement decisions.

The Panel is confident that the resources it is putting into promoting public understanding of takeovers law is improving the public’s knowledge of takeovers law.

### **International liaison**

The intended impact of the Panel’s international activities is the improvement in the level of co-operation and understanding between international takeovers regulators.

The Panel’s Chairman is a member of the Australian Takeovers Panel and a member of the Australian Panel has been a member of the New Zealand Panel through most of the financial year. In addition,

the Panel's Counsel visited the Australian Panel and the offices of the Australian Securities and Investments Commission in March 2007.

These arrangements and visits help promote a greater level of understanding between the trans-Tasman takeovers regulators.

### **Achievement of the Panel's financial goals**

The main measure by which the Panel's financial performance can be judged was described in last year's Statement of Intent as the achievement of ongoing financial viability.

For the year ended 30 June 2007 the Panel recorded an overall deficit of \$12,640, leaving operating reserves of \$333,721 at year end. This is a viable position. The Panel has therefore **met** its main financial objective for the year.

### **Achievement of the Panel's non-financial goals**

The Panel set a number of key non-financial measures by which its performance could be judged in 2006/2007.

In the area of *improvement in the law relating to takeovers* the Panel set itself the objective of having the Minister of Commerce accept 95% of the Panel's proposals for changes to the law. The Panel considers that it has **met** this standard in relation to its proposals for technical amendments to the Code.

In relation to the *exercise of the Panel's enforcement powers* the ultimate measure of the Panel's effectiveness is the extent to which the Panel's decisions were challenged in Court and, if challenged, the degree to which the Panel's decisions were endorsed by the Court. The Panel's aim is to have no challenges to its decisions in Court and, if challenged, to have 100% endorsement by the Court. In the event no formal enforcement meetings were held by the Panel and therefore there were no decisions made by the Panel that could be challenged in Court.

In relation to the exercise of the Panel's exemptions powers, the aim is to have the Panel's decisions endorsed or accepted by market participants and the media, and for the absence of adverse market comment. During the year there was no adverse public comment on exemptions granted by the Panel. Although the Panel did decline a number of exemption applications in the course of the year generally the applicants for those exemptions understood and accepted the Panel's reasons for their applications being declined. The Panel therefore **met** this objective.

In relation to the *exercise of the Panel's approval powers*, which are aimed at improving the standard of independent adviser reports provided to participants in Code transactions, the aim of reducing to two the number of comments by the Panel per report has **not been met**. This standard was met in respect of 55% of the reports reviewed during the year. Unfortunately some reports have required a significant number of comments.

The Panel has also aimed for a balance of favourable comments in the media about adviser reports. The Panel was not able to measure compliance with this objective.

In relation to the Panel's function of *promoting public understanding of takeovers law*, the aim is to have information about law changes published within one month of the law being changed, and within one week of decisions being made. The Panel has **met** this target in relation to the two major law changes in the past year and in relation to each exemption promulgated by the Panel.

## **OTHER MATTERS**

### **Directions issued by the Minister**

The Panel has not been given any directions under any enactment by the Minister of Commerce during the course of the past year. Because the Panel is an independent Crown entity for the purposes of the Crown Entities Act the Minister is constrained in her ability to give the Panel any formal directions.

### **Obligations to be a good employer**

The Panel does not currently employ any staff of its own. All professional and support staff working for the Panel are employees of the Securities Commission. Readers are therefore referred to the Annual Report of the Commission for reference to how the Commission, as employer of Panel staff, has met its good employer obligations.

### **Permission to act when interested**

There were no occasions during the year when the Chairman of the Panel gave permission to a member, in terms of section 68(6) of the Crown Entities Act, to act in a matter despite being interested in that matter.

## **FINANCIAL REPORT**

### **SOURCES OF FUNDING**

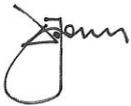
The Panel is funded by the appropriation of money by Parliament and the payment of fees by the users of its services, and parties to its enforcement actions. It is responsible for the allocation of the money. It sets priorities with care and reviews them continually to ensure that the money is used to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

### **STATEMENT OF RESPONSIBILITY**

We acknowledge responsibility for the preparation of these financial statements and statement of service performance 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 and statement of service performance fairly reflect the financial position as at 30 June 2007 and the operations of the Takeovers Panel for the year ended 30 June 2007.



**D O Jones**  
**Chairman**

**7 August 2007**



**K J O'Connor**  
**Chairman, Audit Committee**

**7 August 2007**

## STATEMENT OF FINANCIAL PERFORMANCE

*for the year ended 30 June 2007*

<b>Budget 2007 \$</b>		<b>Actual 2007 \$</b>	<b>Actual 2006 \$</b>
	<b>Operating income</b>	<b>Note</b>	
1,344,000	Government grant – baseline funding		1,344,000
23,000	Interest		23,133
441,000	Application fees and costs recoverable	6	399,896
<u>1,808,000</u>	Total operating income		<u>1,767,029</u>
	<b>Income for litigation fund</b>		
-	Government grant		35,000
60,000	Recovery of costs		-
47,000	Interest		47,439
<u>107,000</u>	Total litigation fund income		<u>82,439</u>
<u>\$1,915,000</u>	Total income		<u>\$1,849,468</u>
	<b>Operating expenditure</b>		
7,500	Audit fees		6,755
18,000	Communication charges		21,498
380,000	Members' fees	4	337,373
24,000	Printing and stationery		24,853
150,000	Consultants and legal		123,998
42,000	Services and supplies		40,340
66,000	Travel and accommodation		56,297
1,230,040	Securities Commission services	3	1,115,956
<u>1,917,540</u>	Total operating expenditure		<u>1,727,070</u>
30,000	Expenditure on litigation fund matters	5	152,513
<u>1,947,540</u>	Total expenditure		<u>1,879,583</u>
<u>\$(32,540)</u>	Net surplus (deficit) including litigation fund net income (expenditure)		<u>\$(30,115)</u>
	<b>This is comprised of</b>		
(109,540)	Operating surplus (deficit)		39,959
77,000	Litigation fund surplus / (deficit)		(70,074)
<u>\$(32,540)</u>			<u>\$(30,115)</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

## STATEMENT OF FINANCIAL POSITION

*as at 30 June 2007*

<b>Budget 2007 \$</b>		<b>Actual 2007 \$</b>	<b>Actual 2006 \$</b>
	<b>Current assets</b>		
362	Cash	96,357	17,333
-	Cash – litigation fund	24,865	3,484
250,000	Short term deposits - operating	226,379	261,399
688,871	Short term deposit – litigation fund	669,630	597,308
-	Interest receivable – operating	1,570	1,112
3,000	Interest receivable – litigation fund	2,337	3,005
122,000	Sundry debtors and prepayments	1	81,998
(10,000)	Less provision for bad debts	1	(10,000)
-	GST receivable	-	35,439
<u>1,054,233</u>	Total current assets	<u>1,093,136</u>	<u>1,055,725</u>
<u>\$1,054,233</u>	Total assets	<u>\$1,093,136</u>	<u>\$1,055,725</u>
	<b>Current liabilities</b>		
80,000	Creditors and accruals	61,500	70,567
40,000	GST payable	1,083	-
<u>120,000</u>	Total current liabilities	<u>62,583</u>	<u>70,567</u>
	<b>Equity</b>		
242,362	Accumulated funds	333,721	346,361
691,871	Litigation fund	5	696,832
<u>934,233</u>	Total equity	<u>1,030,553</u>	<u>985,158</u>
<u>\$1,054,233</u>	Total equity and liabilities	<u>\$1,093,136</u>	<u>\$1,055,725</u>

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

## STATEMENT OF MOVEMENTS IN EQUITY

*for the year ended 30 June 2007*

<b>Budget 2007 \$</b>		<b>Actual 2007 \$</b>	<b>Actual 2006 \$</b>
	<b>Equity at start of period</b>		
351,902	Accumulated funds	346,361	306,402
614,871	Litigation fund	638,797	708,871
966,773	Equity at start of year	985,158	1,015,273
(109,540)	Operating surplus (deficit)	(12,640)	39,959
77,000	Litigation fund surplus (deficit)	58,035	(70,074)
(32,540)	Total recognised revenues and expenses	45,395	(30,115)
(32,540)	Increase (reduction) in equity	45,395	(30,115)
\$934,233	<b>Equity at end of period</b>	\$1,030,553	\$985,158
	<b>Comprising:</b>		
242,362	Accumulated funds	333,721	346,361
691,871	Litigation fund	696,832	638,797
\$934,233	<b>Equity at end of period</b>	\$1,030,553	\$985,158

## STATEMENT OF CASH FLOWS

*for the year ended 30 June 2007*

<b>Budget 2007 \$</b>		<b>Actual 2007 \$</b>	<b>Actual 2006 \$</b>
	<b>Cash flows from operating activities</b>		
	Cash was provided from:		
1,344,000	Government grant	1,344,000	1,344,000
-	Government grant – litigation fund	84,669	-
485,000	Application fees & costs recoverable	365,970	407,888
73,000	Interest	73,254	74,619
	Cash was disbursed to:		
(1,950,540)	Suppliers	(1,730,186)	(1,980,197)
(48,540)	Net cash inflow (outflow) from operating activities	7 137,707	(153,690)
	<b>Cash flows from investing activities</b>		
	Cash was provided from:		
-	Net increase in bank deposits	-	103,399
	Cash was applied to:		
(78,000)	Net increase in bank deposits	(72,322)	-
(78,000)	Net cash inflow (outflow) from investing activities	(72,322)	103,399
(126,540)	Net increase (decrease) in cash balance	65,385	(50,291)
376,902	Add opening cash balance	282,216	332,507
\$250,362	Closing cash balance carried forward	8 \$347,601	\$282,216

The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

## NOTES TO THE FINANCIAL STATEMENTS

*for the year ended 30 June 2007*

### NOTE 1 STATEMENT OF ACCOUNTING POLICIES

#### **Reporting Entity**

The Takeovers Panel is a body corporate established by the Takeovers Act 1993 (the Act). The financial statements presented here are prepared pursuant to section 154 of the Crown Entities Act 2004.

#### **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 the Panel on 27 June 2006 and published in the Panel's Statement of Intent.

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 2004.

##### *Sundry Debtors*

Sundry debtors are stated at their net realisable value after providing for doubtful and uncollectible 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 Act.

### *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 to which the Panel's claim for reimbursement relates. The balance of the fund is disclosed as a component of the equity in the statement of financial position.

#### **NOTE 2 CHANGES IN ACCOUNTING POLICIES**

All accounting policies have been applied on a consistent basis with those applied in the previous 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 Commission staff on Panel business. Payments are at a rate that covers the cost of overheads including the use of premises and equipment and totalled \$1,124,316 for the year (2006 \$1,115,956).

The payments to the Commission are paid in advance at the start of each quarter and are reconciled to actual usage at the end of the quarter. The amount of the unused portion of the advance to the Commission at 30 June 2007 was \$3,413 (2006 \$10,396). This is included in sundry debtors and prepayments in the Statement of Financial Position.

#### **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 2007 were:

	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
D.O. Jones (Chairman)	76,625	45,115
J.C. King (Former Chairman)	78,445	84,970
A. Lawrence (Deputy Chairman)	26,544	33,182
D.M. Byrne	11,500	14,751
A.N. Frankham	11,360	23,631
C.G. Giffney	27,700	23,832
P.M. Greenwood	3,686	-
K.J. O'Connor	26,517	36,675
D.J. Quigg	24,460	34,202
D.M.D. Rawstorne	2,699	14,288
S. Suckling	28,657	26,727
K. Taylor	10,580	-
J.A. Waller	6,700	-
Total	<u>\$335,473</u>	<u>\$337,373</u>

## NOTE 5 LITIGATION FUND

The Panel operates a litigation fund started with an appropriation of \$675,000 (GST not applicable) made by Parliament several years ago. The fund is to be used for litigation costs that are incurred by the Panel as it enforces compliance with the Code or responds to litigation brought against it. In the 2006/07 Output Agreement with the Minister the scope of the litigation fund was widened to include involvement in Court proceedings under the scheme of arrangement or amalgamation provisions of the Companies Act affecting Code companies. It is being held on short term deposit.

Parliament made a further appropriation of \$500,000 (GST inclusive) for the year ended 30 June 2007 to top-up the fund to the set level of \$675,000. The Panel has drawn a total of \$49,669 + GST from this appropriation during the year.

During the course of the year the Panel initiated litigation in the High Court in relation to a scheme of arrangement involving 3 companies of the Dominion Funds Group. The initial High Court decision in favour of the Panel was successfully appealed in the Court of Appeal. The Panel's expenditure includes an amount for settlement of costs.

The Panel reached an agreement on costs with the other parties involved in the Oyster Bay litigation matter. The Panel received a total of \$55,000 as a contribution to the Panel's costs.

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

	2007	2006
	\$	\$
Government grant received	49,669	35,000
Recovery of costs	55,000	-
Interest received	43,292	44,434
Interest accrued	2,337	3,005
Expenditure on approved litigation	<u>(92,263)</u>	<u>(152,513)</u>
Surplus (deficit) for the year	58,035	(70,074)
Opening balance	<u>638,797</u>	<u>708,871</u>
Closing balance	<u>\$696,832</u>	<u>\$638,797</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 2007 is as follows:

	2007	2006
	\$	\$
Exemptions	193,353	232,704
Approvals	96,786	60,382
Enforcement – section 32	-	106,810
Total	<u>\$290,139</u>	<u>\$399,896</u>

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

	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Net surplus (deficit)	45,395	(30,115)
Movement in working capital:		
Increase (decrease) in creditors	(7,984)	(56,613)
(Increase) decrease in receivables	100,296	(66,962)
	<u>92,312</u>	<u>(123,575)</u>
Net cash flows from operating activities	<u>\$137,707</u>	<u>(\$153,690)</u>

**NOTE 8 CASH FLOWS**

**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 the equity structure of the Panel.

**Operating activities**

Operating activities for the purposes of the Statement of Cash Flows include all activities other than investing and financing activities. Activities funded from the litigation fund are included in this category.

**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.

The closing balance of cash reported in the Statement of Cashflows is comprised of:

	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Cash	96,357	17,333
Cash – litigation fund	24,865	3,484
- Short term deposits – operating	226,379	261,399
Closing cash balance	<u>\$347,601</u>	<u>\$282,216</u>

Short term deposits held on behalf of the litigation fund are not included in this total as they are not used as part of the Panel's day-to-day cash management.

## **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 carrying amounts that are reasonable approximation to their 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 7.74% (2006 – 6.90%).

## **NOTE 10 COMMITMENTS**

There were no lease commitments at balance date. (2006 – no commitments) The Panel had no capital commitments at balance date. (2006 – no commitments)

## **NOTE 11 CONTINGENT LIABILITIES**

There were no contingent liabilities at balance date. (2006 – no contingent liabilities)

## **NOTE 12 CONTINGENT ASSETS**

There were no contingent assets at balance date. (2006 – estimated at a minimum \$45,000)

## **NOTE 13 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.

The Panel has a special relationship with the Securities Commission, another independent Crown Entity and therefore also a related party. This is referred to in Note 3 above.

The Panel has processed a number of exemption and adviser applications from firms where a member of the Panel was a partner in the firm. Those applications were processed and invoiced using the Panel's standard procedures.

No related party debts have been written off or forgiven during the year.

**NOTE 14 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. (2006 – no subsequent events)

**NOTE 15 SEGMENTAL INFORMATION**

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

**NOTE 16 BUDGET VARIANCES**

Significant variances from budget were:

**Income**

Total operating income was \$146,446 lower than budgeted, primarily because of the lower than expected level of exemption work, the nil recoveries from enforcement action (no section 32 meetings were held during the year) offset by higher than expected income from approvals (much higher number of approvals than expected).

**Expenditure**

Total operating expenditure for the year was \$243,346 lower than budgeted, primarily because of lower than expected expenditure on consultants and legal experts, members' fees, and Securities Commission services. The lack of any enforcement meetings was the main reason for reduced expenditure on experts and members' fees.

**Net operating surplus**

The Panel recorded an operating deficit of \$12,640 when a deficit of \$109,540 had been expected. The main contributor to the lower than expected deficit was the lack of any activity under section 32 of the Act. Another contributor was the reduced expenditure on Securities Commission services, reflecting reduced availability of staff. The activities of the Panel are influenced significantly by the level of takeover activity and the needs of the market for exemptions and approvals.

**NOTE 17 PROFESSIONAL INDEMNITY INSURANCE**

The Panel has effected a professional indemnity insurance policy to provide cover for members of the Panel and employees of the Securities Commission working for the Panel as the Panel performs its duties and statutory functions.

**NOTE 18 INTERNATIONAL FINANCIAL REPORTING STANDARDS**

The Accounting Standards Review Board has issued replacement New Zealand Financial Reporting Standards to apply to periods beginning on or after 1 January 2007 but

entities may choose to elect adoption for up to 2 years earlier. The new standards are the New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS).

The Panel has elected to publish its first full NZ IFRS financial statements for the year ending 30 June 2008.

For the purposes of FRS-41 Disclosing the Impact of Adopting New Zealand Equivalents to IFRS the Panel discloses the following:

**Management of the transition to NZ IFRS**

The Audit Committee is overseeing the transition to and implementation of the NZ IFRS on behalf of the Panel.

To comply with NZ IFRS for the first time, the Takeovers Panel will restate the comparative balances applying NZ IFRS. This will require a restatement of the opening balances as at 1 July 2006 to reflect any accounting policies required by the new standards.

**Major changes in accounting policy and their impacts**

Changes in accounting policies under NZ IFRS are applied retrospectively i.e. as if the new policy had always applied, except as permitted in particular circumstances by NZ IFRS 1 First-time Adoption of New Zealand Equivalents to International Financial Reporting Standards. An opening balance sheet prepared under NZ IFRS will be required as at 1 July 2006. This will also enable the 2007/08 financial statements to report comparatives under NZ IFRS.

**Conclusion on impacts**

From an initial review of the transactions and balances of the Panel it would appear that NZ IFRS is unlikely to have a material impact on the 1 July 2006 opening balances, the 2006/07 financial performance, or the 30 June 2007 balances.

The actual impact of adopting NZ IFRS may vary from the information presented, and the variation may be material.

## Statement of Service Performance

*Performance standards and measures for the outputs of the Panel  
for the year ended 30 June 2007*

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

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

#### *Impact:*

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

#### *Activities and actions to include:*

- reviewing the provisions of takeovers law;
- identifying areas of the Code which require modification or would benefit from improvement;
- reviewing the practices relating to the takeover of code companies;
- developing policy papers, guidance notes and practice notes on issues arising under the Code and its administration;
- working with key market participants to investigate and develop responses to issues, including the inter-relationship between the Securities Act and the Takeovers Act when takeover offers involving scrip as consideration are involved;
- analysing comments received on a discussion paper issued by the Panel on the interaction between the provisions of company law and takeovers law as they apply to schemes of arrangement effected under part 15 of the Companies Act;
- making recommendations to the Government relating to the use of the amalgamations provisions in part 13 of the Companies Act by code companies;
- developing proposals for public comment on proposed recommendations to the Minister, as necessary;
- making recommendations to the Minister for changes to that law, where appropriate.

#### *Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures <b>Takeovers Code</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
<p><i>Quantity and Quality</i></p> <p>Keep the Code and the Act under review and recommending amendments to the Code as necessary.</p> <p>Participate as required on projects and reviews.</p>	<p>42 recommendations regarding technical amendments made.</p> <p>Securities Legislation Bill. Provided</p>	<p>The Panel will comply with its obligations under the Act and with other relevant legislation. It will aim to ensure that the provisions of the Code</p>

Performance measures <b>Takeovers Code</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
<p>comment and input into proposals promoted by the Ministry relating to "truth in takeovers" and expanding the Panel's powers.</p> <p>Achieved 95% success with recommendations on the technical amendments.</p> <p>Keep under review practices relating to takeover activities.</p> <p>Inquiries into market practice with a view to recommending amendments to the Code and to the Panel's policies and publishing proposed changes to the Code and Panel policies for public comment</p> <p><i>Timeliness</i></p> <p>Recommendations for amendments to the Code will be made promptly.</p> <p>Complete inquiry work promptly</p> <p><i>Cost</i> - Expenditure allocated to Code review.</p> <p><i>Revenue</i></p>	<p>are effective and relevant to market practice. It will base its work on accurate research into, and analysis of, the existing law and practice. It aims to achieve 95% acceptance of its proposals by the Minister.</p> <p>Continuous daily monitoring of markets and newspapers.</p> <p>1 (Schemes of Arrangement)</p> <p>1</p> <p>A discussion paper was issued in June 2006. Following extensive market consultation recommendations were forwarded to the Minister in August 2006.</p> <p>\$319,707</p> <p>Nil</p>	<p>Continuous through daily monitoring of market activity.</p> <p>3 per year</p> <p>1 per year</p> <p>Review work to be based on accurate research into, and review of, existing practices, including feedback from market participants.</p> <p>\$262,900</p> <p>Nil</p>

**OUTPUT 2: Approvals:**

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

*Impact:*

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

*Activities and actions to include:*

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

*Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures	Performance standards	
	Actual 2006/07	Forecast 2006/07
<b>Code Approvals</b>		
<i>Quantity</i>		
Applications for approval of independent advisers and independent experts.	56	40
Applications for consent to withdrawal of offers, and in relation to defensive tactics.	1	2
<i>Quality</i>		
Applications processed in accordance with the law, the Panel's published policies, the rules of natural justice and having regard to feedback from market participants.	100% in accordance with Panel policies. 19 out of 34 reports received two comments or less. Not measured.	100%. Reduce Panel comments to two per report and achieve favourable balance of public comments about reports.
<i>Timeliness</i>		
Decisions made within 3 working days of receipt of complete application.	Achieved in 91% of cases.	To be achieved in 80% of cases
<i>Cost</i> - Expenditure allocated to approvals work.	\$152,885	\$107,100
<i>Revenue</i> - Application fees for approvals work	\$ 96,786	\$ 58,000

**OUTPUT 3: Exemptions:**

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

*Impact:*

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

*Activities and actions to include:*

- considering applications for individual exemptions from the Code;
- considering applications for class exemptions from the Code;
- issuing exemption notices for individual exemptions;
- issuing exemption notices for class exemptions;
- gazetting the exemption notices.

*Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures	Performance standards	
	Actual 2006/07	Forecast 2006/07
<b>Exemptions</b>		
<i>Quantity</i>		
Consider applications for individual exemptions from the Takeovers Code	29	30
Panel to formulate class exemptions from the Code on own initiative or in response to applications	3	4
<i>Quality</i>		
Applications processed in accordance with the law, the rules of natural justice and having regard to feedback from market participants.	100% based on acknowledgements from applicants, comments from Parliamentary Counsel, and market comments.	100% acceptance or endorsement by market participants and the media.
<i>Timeliness</i>		
Decisions made within timeframe agreed with applicants	100%	100%
<i>Cost</i> - Expenditure allocated to exemption work.	\$364,589	\$389,500
<i>Revenue</i> – Application fees for exemption work.	\$193,353	\$233,000

**OUTPUT 4: Enforcement:**

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

*Impact:*

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

*Activities and actions to include:*

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

*Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures <b>Enforcement</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
<i>Quantity</i>		
Review of offer documents	23	20
Review of meeting documents	13	12
Section 32 meetings	0	8
Section 35 actions	0	1
Investigation of possible breaches of the Code	16	35
Initiate Court Actions in relation to Schemes of Arrangement involving Code companies	1	0 (new item)
<i>Quality</i>		
Documents reviewed for compliance with the law.	98% of documents reviewed.	90% of all potential documents.
Remedial action initiated to correct deficiencies.	100% based on review of all substantive documents.	100% of incidents of non-compliance that warrant correction
Action taken in accordance with the law.	100%. No formal section 32 actions so no challenges.	100% with no Court challenges or Court

Performance measures <b>Enforcement</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
Meetings conducted in accordance with the law and the rules of natural justice.	No meetings were held	endorsement, where challenged 100%
<i>Timeliness</i> Complete enforcement work within the timeframes specified in the Takeovers Act 1993	No meetings were held	100%
<i>Cost</i> - Expenditure allocated to enforcement work.	\$718,388	\$954,240
<i>Revenue</i> – Revenue from enforcement activities including litigation fund.	\$ 55,000	\$150,000

**OUTPUT 5: Public Understanding:**

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

*Impact:*

The improvement in public understanding of takeovers law over time, in particular, the improvement in the public's knowledge of the provisions of the Code. Improving public understanding and knowledge of the Code will enhance the public's confidence in the transparency of the takeovers process and in the public's confidence in the integrity of the market.

*Activities and actions to include:*

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

*Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures <b>Public understanding</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
<i>Quantity, quality and timeliness</i>		
Publish a publication designed to provide information about the Code and relevant law.	4	3 times a year, with publication within one month of significant changes to the law affecting takeovers.
Issue policy statements, guidance notes and commentaries on current issues.	3	3 times a year
Interface with the market through public and private meetings.	Nil. Meetings deferred to 2007/08.	16 meetings a year
Provide news media with relevant information about the Panel and the Code.	Continuous, by involvement of senior Panel personnel in all media content.	Continuous by press releases and direct contact with media.
Maintain a web-site with relevant information about the Code and Act and activities of the Panel	100% achievement	All relevant material posted promptly to the

Performance measures <b>Public understanding</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
Receive miscellaneous inquiries from members of the public and professional firms	185 enquiries. (part estimate) Responded within 3 working days on 100% of occasions.	website, within 5 working days of the event or decision. Receive 200 enquiries. Respond to inquiries within 3 working days.
<i>Cost</i> - Expenditure allocated to public understanding	\$207,541	\$214,200
<i>Revenue</i> – Revenue from public understanding.	Nil	Nil

**OUTPUT 6: International Liaison:**

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

*Impact:*

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

*Activities and actions to include:*

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

*Planned and actual performance standards and performance measures for 2006/2007:*

Performance measures <b>International liaison</b>	Performance standards	
	Actual 2006/07	Forecast 2006/07
<i>Quantity and quality</i> Liaise with comparable overseas bodies, particularly in Australia, to improve the administration and enforcement of takeovers law, and to promote international understanding of New Zealand's laws. Maintain reciprocal membership between Australian and New Zealand Takeovers Panels.	None received  Yes	Respond to enquiries from overseas bodies within five working days. Maintain one Australian Panel member on New Zealand Panel and one New Zealand Panel member on Australian Panel.
<i>Timeliness</i>  Panel representatives to meet regularly with overseas bodies	  Panel Counsel met with the Australian Panel executive in Melbourne in March 2007.	  <i>1 per year</i>
<i>Cost</i> - Expenditure allocated to international liaison work.	\$3,347	\$19,500
<i>Revenue</i> – Revenue from international liaison work.	Nil	Nil

**Audit Report**

**To the readers of  
The Takeovers Panel's  
financial statements and statement of service performance  
for the year ended 30 June 2007**

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 on his behalf. The audit covers the financial statements and statement of service performance included in the annual report of the Takeovers Panel for the year ended 30 June 2007.

**Unqualified opinion**

In our opinion:

- The financial statements of the Panel on pages 15 to 25 :
  - comply with generally accepted accounting practice in New Zealand; and
  - fairly reflect:
    - the Takeovers Panel's financial position as at 30 June 2007; and
    - the results of its operations and cash flows for the year ended on that date.
- The statement of service performance of the Panel on pages 26 to 34 :
  - complies with generally accepted accounting practice in New Zealand; and
  - fairly reflects for each class of outputs:
    - its standards of delivery performance achieved, as compared with the forecast standards outlined in the statement of forecast service performance adopted at the start of the financial year; and
    - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses outlined in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 7 August 2007, and is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Members of the 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 the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance 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 and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. 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 Panel;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement and statement of service performance disclosures are adequate.

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

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

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

The Members of the Takeovers Panel are responsible for preparing the financial statements and statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of the Panel as at 30 June 2007 and the results of its operations and cash flows for the year ended on that date. The statement of service performance must fairly reflect, for each class of outputs, the Takeovers Panel's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year. The Members of the Panel's responsibilities arise from the Crown Entities Act 2004.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

## **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 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 and statement of service performance**

This audit report relates to the financial statements and statement of service performance of the Takeovers Panel for the year ended 30 June 2007 included on the Takeovers Panel's website. The Takeovers Panel's Governing Body is responsible for the maintenance and 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 and statement of service performance since they were initially presented on the website.

The audit report refers only to the financial statements and statement of service performance named above. It does not provide an opinion on any other information which may have been hyperlinked to or from the financial statements and statement of service performance. 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 statement of service performance as well as the related audit report dated 7 August 2007 to confirm the information included in the audited financial statements and statement of service performance presented on this website.

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

### **Executive of the Takeovers Panel**

Kerry Morrell, Senior Executive Officer  
Marion Hemphill, Counsel to the Panel  
Margaret Bearsley, Senior Solicitor  
Jennifer Fawcett, Solicitor  
Keegan Toft, Solicitor  
Tom Barnes, Lawyer  
Nigel Brunnsden, Accountant & IT Manager  
Gayle Steere, Secretary  
Catherine Chapman, Communications Manager

### **How to contact the Panel**

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