

**TAKEOVERS PANEL**  
**STATEMENT OF INTENT**  
**2013/2014 – 2016**

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## **Introduction**

1. The Takeovers Panel presents to the Minister of Commerce and to the House of Representatives the Panel's Statement of Intent for the period from 1 July 2013 to 30 June 2016.

### Why takeovers matter to New Zealand

2. Takeovers are an important feature of New Zealand's capital markets. Generally speaking they occur because the prospective acquirer believes that he, she or it can create better value out of the target company than would be achieved under the company's current management or capital structure. Accordingly, takeovers should result in the best use of the company's resources, increasing efficiency and improving the company's performance. This, in turn, has a positive impact on the economy.
3. A related important economic activity is the ability of businesses to raise capital to fund their R & D, expansions, or cash-flow issues. Typically, investors provide the business with cash, and in return are issued shares or other securities by the business.
4. When the capital markets are well regulated, investors from overseas and those based domestically are more confident to invest their money in these wealth-generating markets.
5. The takeovers market, which is regulated by the Takeovers Act 1993 and the Takeovers Code, falls within this business and capital markets environment. The two main purposes of the Code, being *transparency* and *equitable processes*, support the integrity of that environment. Schemes of arrangement undertaken under the Companies Act 1993 that involve Code companies will also be more transparent, with more equitable processes, and will involve the Panel, on the passage of the Companies and Limited Partnerships Amendment Bill.
6. While there are many contributors to the health of New Zealand's capital markets, the Panel and the Code play an important and active part in the matrix of regulation of those markets that is necessary to support investor confidence. The Code only regulates relatively large companies,<sup>1</sup> leaving small new businesses and small well established companies free of the compliance burden that comes with regulation under the Code.

### Summary of Statement of Intent

7. This Statement of Intent includes a description of the Panel's strategic plan for the three year period on which it reports. It describes the three *outcomes* that the Panel seeks to achieve: an efficient takeovers market, reduced transaction costs for investors, and increased confidence in the integrity of the takeovers market. These outcomes are

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<sup>1</sup> The Code covers "Code companies". A Code company is a New Zealand registered company that –

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

predicated on the Panel's role of ensuring that the processes for transactions and events that are regulated by the Code are transparent and equitable.

8. This Statement of Intent also explains how the Panel will measure its performance on meeting the three intended *impacts* of the services it provides to the public of New Zealand. The intended impacts are:
  - (a) takeovers law will be efficient and will improve the information that must be provided for shareholders, and the Panel will be an efficient regulator;
  - (b) there will be 100% compliance with the Code by the acquirer side of Code-regulated transactions and by companies that are subject to the Code; and
  - (c) shareholders, acquirers, and their advisers will be better informed about the role of the Code and of the Panel.
9. The last part of this Statement of Intent provides information on the services (*outputs*) that the Panel intends to provide, and sets out how the Panel will measure its performance of those services for the next financial year. The required forecast financial information is also set out at the end of this Statement.

## **Background information and statutory framework**

### The Members of the Takeovers Panel

10. The Takeovers Panel is an independent Crown entity under the Crown Entities Act 2004. It is established under the Takeovers Act and its monitoring department is the Ministry of Business, Innovation and Employment ("MBIE"). The members of the Panel are the board for the purposes of the Crown Entities Act.
11. The Panel administers and enforces the Takeovers Code. The Code is described later on in this Background section.
12. The Panel has 11 members, the maximum number provided for by the Takeovers Act.<sup>2</sup> Members are appointed by the Governor-General on the recommendation of the Minister of Commerce. The Panel's members must include a Chairman and a Deputy Chairman. These roles are currently filled, respectively, by Mr David Jones MNZM, lawyer of Auckland, and Mr Andy Coupe, investment banker of Auckland.
13. All Panel members must be qualified or experienced in business, accounting or law. Accordingly, members are active practitioners (lawyers, investment bankers, corporate advisers, company directors, etc) in the mergers and acquisitions market or in the corporate market.

### Executive Team

14. The Panel is supported by a professional executive staff of 7.8 FTEs that consists of the Chief Executive (who is a lawyer), a General Counsel heading a specialist legal team of four lawyers, and two administration staff.

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<sup>2</sup> One member is appointed because he is a member of the Australian Takeovers Panel, under reciprocal arrangements between New Zealand and Australia. Likewise, the Chairman of the New Zealand Panel is also a member of the Australian Panel.

Panel's Statutory Functions/Outputs

15. The core functions and powers of the Panel are contained in the Takeovers Act and Code, and they constitute the Panel's outputs.
16. These outputs are:<sup>3</sup>
  - (a) Output 1: reviewing takeovers law and takeovers practice, and recommending any law changes that the Panel considers necessary to the Minister of Commerce;
  - (b) Output 2: approvals – approving the appointment of independent advisers, and other approvals;
  - (c) Output 3: the granting of exemptions from compliance with the Code;
  - (d) Output 4: the regulation of takeover activity through the enforcement of the Code; and
  - (e) Output 5: promoting public understanding of takeovers law and practice.
17. A sixth output will be undertaken by the Panel, should its proposals for the giving of 'no-objection' statements for schemes of arrangement involving Code companies come into force.<sup>4</sup>
18. The Panel's role for each output is described in turn below.
  - (a) Output 1: reviewing takeovers law and practice:
    - This policy function enables the Panel to recommend law changes to deal with changing market behaviours and also to facilitate innovation in the market.
    - When undertaking policy work, the Panel's staff liaise closely with MBIE's policy officials. MBIE provides support regarding best practice policy processes, and Panel staff assist MBIE officials on the technicalities of the takeovers law, to inform their advice to the Minister.

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

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<sup>3</sup> Aside from the outputs set out in this paragraph, the Panel also has a function of co-operating with overseas regulators (International Liaison). The resources expended on this function are very minor.

<sup>4</sup> The Panel's proposals for schemes of arrangement undertaken under the Companies Act 1993 are contained in the Companies and Limited Partnerships Amendment Bill 2012. This Bill may be passed into law during the 2013/2014 year. Accordingly, the new output 6 for schemes of arrangement is included in the Forecast Statement of Service Performance in anticipation of the passage of the Bill.

(b) Output 2: approvals:

- The Panel's approvals policy sets high standards for the independence and competence of the independent advisers who provide advice to shareholders about the merits of Code-regulated transactions.

Shareholders in Code companies receive independent advice that is given solely for the shareholders' benefit, about the merits of the transaction for them as a group. As a consequence, each shareholder can focus on making their own decision, with the benefit of independent advice. Shareholders can also use the Independent Adviser's Report when consulting with their personal financial advisers.

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

- The Panel can only grant exemptions that are appropriate and consistent with the objectives of the Code.<sup>5</sup> Without the ability for the Panel to grant exemptions, the Code would be inflexible and innovation in the takeovers market would be stifled.
- Exemptions can be granted to individuals, to assist with ensuring that the Code applies effectively and appropriately to the particular transaction to which the exemption relates. Exemptions can also be granted to modify the application of the Code to classes of persons or transactions. Class exemptions can improve the efficiency of takeovers law because they provide a speedy method to modify the application of the Code in a manner that is consistent with the Code's principles, across a broad range of circumstances.

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

(d) Output 4: enforcement of the Code:

- The Panel has robust investigative powers and the ability to make temporary restraining orders and some limited permanent orders.<sup>6</sup> While the Panel generally takes a commercially pragmatic approach to enforcement issues, it also acts swiftly to exercise its statutory enforcement powers for current transactions when necessary to protect the rights of shareholders and other interested parties, or when formally requested.

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<sup>5</sup> Section 45(4A) Takeovers Act.

<sup>6</sup> Part 3 of the Takeovers Act.

- Efficient enforcement is usually achieved through 'soft' enforcement actions such as the Panel's staff giving informal advice on Code compliance, when reviewing draft documents. This practice is widely utilised by practitioners. Code-related documents are rarely published without having first been reviewed and commented on by the Panel's staff.<sup>7</sup>

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

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

- The Panel's main vehicle for publicising information about the Code and about the Panel's role is *Code Word*, the Panel's periodic publication. The Panel also operates a website on which it publishes relevant non-sensitive information about its activities.
- Panel members and staff also assist the public and practitioners by responding to phone and email queries and by meeting with market stakeholders to discuss their interests and concerns.

The Panel is committed to educating investors and practitioners, to increase their understanding of the obligations, rights and protections under the Code. This directly contributes to the goal of the broader financial sector to increase investors' financial literacy, thereby contributing to confidence and participation in New Zealand's capital markets.

(f) Output 6: considering applications for schemes of arrangement:

- This new output assumes the passage of the Companies and Limited Partnerships Amendment Bill. The Panel has consulted on, and will publish when the Bill is passed, a Guidance Note setting out the processes and decision making criteria for this new service.
- The Panel anticipates a transfer of some of its output 2, 3, and 4 services to this output 6 service, as some potential takeovers will likely be undertaken as schemes (as occurs in Australia). However, this may be off-set, to some extent, by some transactions that could have been undertaken as amalgamations under Part 13 of the Companies Act having, once the Bill is passed, to be undertaken as takeovers (or as schemes of arrangement that involve the Panel).<sup>8</sup>

<sup>7</sup> This practice was endorsed by the High Court in 2010, and recognised as a legitimate exercise of the Panel's enforcement jurisdiction (*Marlborough Lines Ltd v Takeovers Panel & Anor* CIV-2010-485-001150, paras [5], [47] – [49]).

<sup>8</sup> See the Panel's 19 August 2008 Recommendations on Schemes and Amalgamations Involving Code companies, which is available on the Panel's website [www.takeovers.govt.nz](http://www.takeovers.govt.nz).

- The Panel's role in objecting or not objecting to schemes of arrangement involving Code companies provides an assurance to shareholders that they will be provided with clear information about the scheme proposal.<sup>9</sup> The requirement under the Bill's provisions for majority approval of scheme proposals by shareholders means that company boards and scheme promoters will be incentivised to ensure that shareholders understand and participate in the decisions that affect their investment.

### The Takeovers Code

19. The Takeovers Code is a statutory regulation that is essentially a rule-book on process. It governs transactions and events that impact on the voting rights attaching to the shares owned by shareholders of Code companies. Broadly, Code companies are New Zealand registered companies that are listed or that have 50 or more shareholders and 50 or more share parcels (see footnote 1, above, for a precise definition).
20. The rules of the Code relate to transactions that engage shareholders in doing any of the three following things:
  - (a) deciding whether to accept a takeover offer for some or all of their shares;
  - (b) being subject to a compulsory acquisition process, if they are amongst the last 10% of shareholders of a Code company. The 90% "dominant owner" of the company, on reaching 90%, must elect to either:
    - compulsorily acquire all of the remaining shares (and the Code regulates the acquisition process and the price-setting mechanism for determining the acquisition price per share); or
    - acquire the shares of any minority shareholder who now wants to sell their shares and exit the company (and the Code regulates the sale process and the price-setting mechanism for determining the acquisition price per share);
  - (c) voting on a resolution at a shareholders' meeting about whether a person should be allowed to increase his, her or its voting control percentage in the company. The increase in voting control will usually be through the acquisition of another shareholder's shares or through an allotment to the person of a parcel of new shares issued by the company.
21. The Code supports the integrity of the takeovers market in New Zealand through its two main purposes: *transparency* and *equitable processes*.<sup>10</sup>
22. The Code provides for *transparency* through mandating the disclosure of information to shareholders about the transaction or event. The information is focused on helping shareholders understand the background to and rationale for the transaction. The relevant agreements and arrangements put in place by the key parties involved have to be

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<sup>9</sup> The Panel would be likely to object to a scheme proposal that failed to meet the Panel's criteria for shareholder information.

<sup>10</sup> Similarly, the new provisions for schemes of arrangement that involve Code companies will ensure greater transparency and more equitable processes for shareholders involved in those transactions.

disclosed, and the shareholders can fully participate in the transaction because they have all information that is material to their decision.

23. Importantly, the Code company's directors must, for every Code-regulated transaction, obtain for the company's shareholders an independent adviser's report on the merits of the transaction. The company's directors are also required to make a recommendation to the shareholders about how the shareholders should respond to the transaction.
24. The Code's second main purpose is to provide for *equitable processes*. It achieves this through constraining some, and mandating other, actions that acquirers of shares take during every transaction that is regulated by the Code. The Code also stipulates the timeframes for every step of a takeover. Minimum and maximum time periods must be adhered to. Thus, shareholders need not make a hasty decision; they will have adequate time for reflection and advice.
25. The Code's timing rules also ensure that in a 'competition for control', a competing offeror (that is, another person who wants to take over a company that is already the target of a takeover by someone else), has a level playing field. The equitable processes mean that all potential offerors are governed by the same rules as a competitor's offer.
26. Similarly, the Code ensures that all shareholders, no matter how large or small their percentage of share ownership, are given the same offer (including the price per share) in a takeover.
27. Neither the Panel nor the Code makes decisions about the *merits* of a transaction for shareholders. Shareholders must decide for themselves, because what may be a good investment outcome for one shareholder may not be good for another.<sup>11</sup>
28. The purpose of the Code and the Panel is to provide and maintain the framework for transparent and equitable processes for share transactions in large companies. This reduces the transaction costs for investors because the Panel will act on their behalf to protect their Code-given rights. The transparency and equitable processes underpin the integrity of the takeovers market. This, in turn, contributes to the goal of increasing investors' confidence and participation in New Zealand's capital markets.<sup>12</sup>

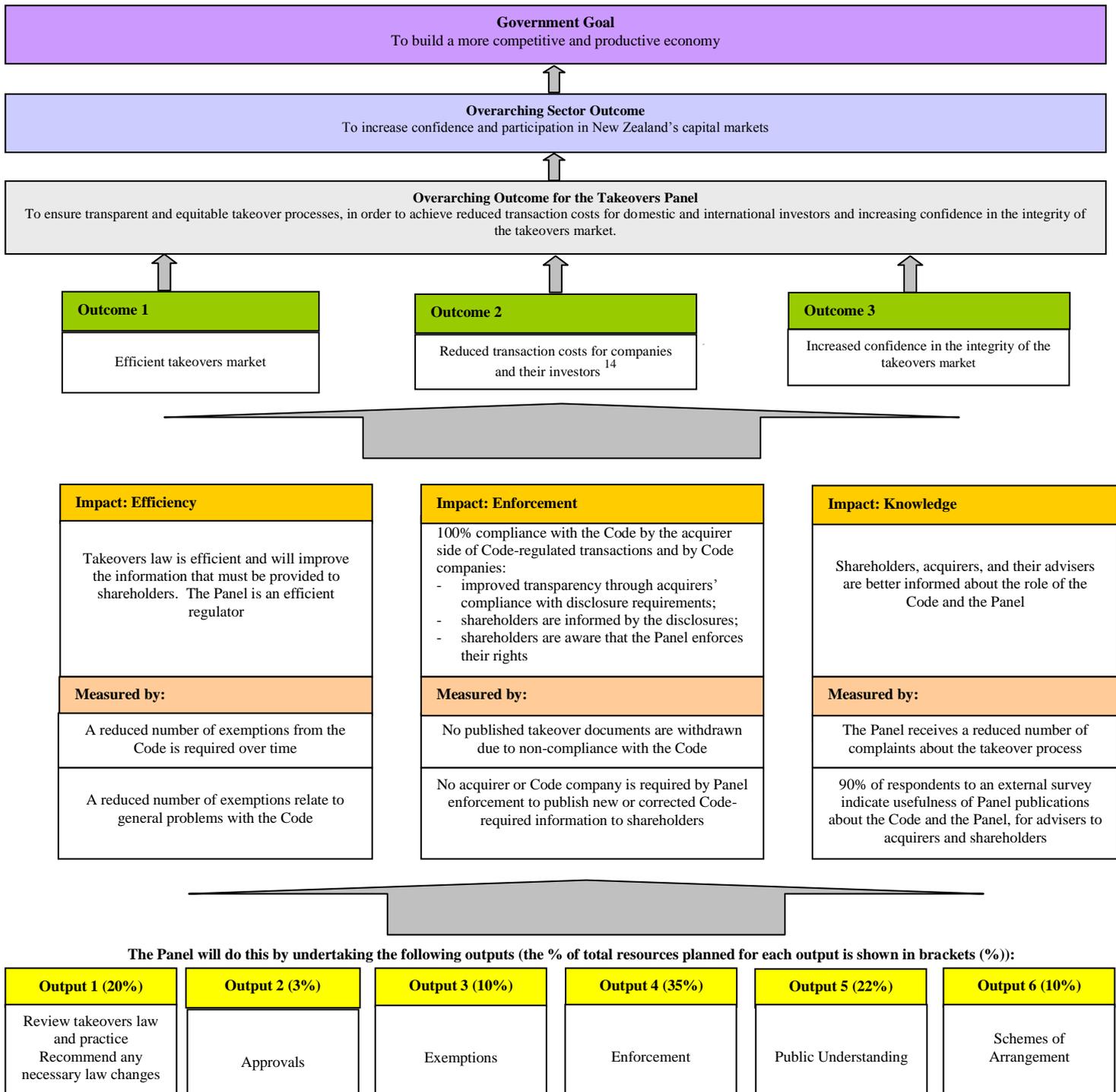
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<sup>11</sup> Similarly, the new provisions for schemes of arrangement that involve Code companies will leave the decision about the *merits* of the scheme to the shareholders (with the benefit of advice from the company's directors and an independent adviser approved by the Panel).

<sup>12</sup> During the Panel's 2011/2012 Financial Review by the Commerce Committee, the Committee noted the Panel's view that it would be difficult to measure the extent to which the Panel's role contributes to the outcome of integrity and confidence in New Zealand's capital markets. The Committee asked the Panel to undertake research regarding outcome measures for takeovers panels in other jurisdictions. The Panel will undertake this research as soon as possible.

**The Panel's 2013/2014 – 2016 Performance Framework**

29. The diagram below represents the Panel's performance framework. It depicts the Panel's intended services (outputs) for the reporting period, the intended impacts of those services and the outcomes that they seek to achieve.<sup>13</sup>



<sup>13</sup> The allocation of Panel resources to the outputs at the bottom of the Performance Framework assumes the passage of the Companies and Limited Partnerships Amendment Bill during the 2013/2014 year. If the Bill is not passed, the 10% of resources allocated to output 6 would be instead allocated across the Panel's other outputs, mainly across outputs 2, 3 and 4.

<sup>14</sup> The transaction costs for investors include access to information about Code-regulated transactions and about their rights and obligations as shareholders of Code companies, and also avenues for enforcing their rights.

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

Strategic plan

30. The Panel's strategic plan for the medium term recognises that the recovery from the global financial crisis that began in late 2008 has improved but remains somewhat volatile. This has been evidenced by a significant increase in Code-regulated transactions in the last quarter of 2012 but more subdued transaction levels in the first quarter of 2013.
31. Accordingly, the Panel will continue to expend some of its resources on its output 1 services (review of takeovers law and practice). It will also give as much attention as it can to its output 5 services (public understanding). However, its services under outputs 2 (approvals), 3 (exemptions), 4 (enforcement of Code-regulated transactions), and 6 (schemes of arrangement)<sup>15</sup> are anticipated to generate the bulk of its resource expenditure while the economy is more buoyant.
32. Should the market significantly decline again over the period to which this Statement relates, the Panel will adjust the proposed focus of its resources to ensure that freed-up resources are again focused on policy and public education work.
33. The Panel's strategic plan produces a slightly uneven three-way split of resources between the Panel's three main intended impacts of Efficiency, Enforcement and Knowledge. These impacts all inter-relate in practice. For example, undertaking consultation for policy development (which aims at improved efficiency) results in the consultees, many of whom are legal advisers to acquirers and to Code companies, increasing their awareness about the Panel's approach to enforcement of the Code; similarly the Panel's 'soft' enforcement work has a strong focus on education about the Code's requirements.

Government's priorities

34. The Government has indicated that it has four priorities: responsibly manage the Government's finances; build a more competitive and productive economy; deliver better public services to New Zealanders; and rebuild Christchurch. The Minister of Commerce has asked the Panel to identify the areas where its operations contribute to these priorities.<sup>16</sup>
35. As depicted in the Performance Framework on page 9, the Panel's impacts and outcomes all clearly contribute to the Government's priority to build a more competitive and productive economy. Moreover, the Government's objective under its Business Growth Agenda for the capital markets is to build confidence and participation in those markets.<sup>17</sup> Again, the Panel's impacts and outcomes directly relate to this Government objective for the capital markets. The Panel's *Efficiency* and *Knowledge* impacts also contribute to the Government's priorities for managing its finances and for better public services.

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<sup>15</sup> This assumes the passage of the Companies and Limited Partnerships Amendment Bill.

<sup>16</sup> Letter of Expectations from Minister of Commerce to the Panel, dated 5 February 2013.

<sup>17</sup> See the February 2013 *Building Capital Markets Progress Report*, available on MBIE's website [www.mbie.govt.nz](http://www.mbie.govt.nz).

36. The *Efficiency* impact does this by improving takeovers law in a way that reduces the number of exemptions that individuals need to seek from the Panel. That means a direct reduction in businesses' transaction costs and also a reduction in compliance costs for their commercial transactions.<sup>18</sup>
37. Similarly, the Panel's *Knowledge* impact reduces transaction costs for investors, because they have better access to information. In this regard, the Panel has upgraded its website to improve its customer interface. The *Efficiency* and *Knowledge* impacts thus reduce the effort required by commercial parties who deal with the Panel and by domestic and international investors seeking information about how their rights are protected.
38. The Panel's *Enforcement* impact supports the Government's goal for a more productive and competitive economy because a well-regulated takeovers market contributes to confidence and participation in New Zealand's capital markets.
39. The Panel has always been a cost-conscious public body. Its Annual Reports describe its on-going efforts at improving its internal efficiencies to ensure that it operates within budget and is financially sustainable. These on-going initiatives contribute to the management of the Government's finances, in that the Panel does not expect to seek additional Government funding, at least over the medium term.

#### How to judge the Panel's performance

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

#### *Impact Efficiency*

42. The Panel's policy function of reviewing takeovers law and market practice, and recommending changes to the law, is aimed at improving the efficiency of takeovers law. Exemptions can also contribute to an efficient market by, when appropriate, modifying the application of the Code, in accordance with the principles of the Code, to better meet the circumstances of transactions.
43. The Panel's policy function also balances efficiency for acquirers with protection for shareholders. Accordingly, recommendations for law change often include proposals for improving the disclosure of information to, and processes for, shareholders.
44. The most significant improvements to the efficiency of the Code have occurred already with a number of class exemptions having been granted and two significant rounds of

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<sup>18</sup> There is no contradiction between this impact measure and the statement at paragraph 18(c), above, regarding the importance of the Panel's function to grant exemptions. The Panel's policy/law reform output can result in streamlining the application of the Code where the modification to the law does not need to be fact specific. This reduces compliance costs, as otherwise exemptions would have to be sought to deal with the issue. However, it can take a number of years to achieve a law change, so exemptions can be granted as an interim measure. On the other hand, for novel situations, exemptions provide a means of modifying the application of the law, in accordance with the principles of the Code, for a specific fact scenario.

technical amendments to the Code having been made. The first round of technical amendments came into effect in 2007, and the most recent round is anticipated to come into effect at about the date of this Statement of Intent. However, the Panel will continue to undertake law reform initiatives whenever problems with the Code are identified or are brought about by innovations in the takeovers market.<sup>19</sup>

45. There are two main influences on the number of exemptions considered by the Panel. These are the level of Code-regulated transactions (with more transactions raising the possibility of more exemption applications),<sup>20</sup> and the extent to which improvements to the drafting of the Code reduce the need for exemptions to accommodate innovative transaction structures.
46. The Panel measures the achievement of the *Efficiency* impact by the extent to which there is a reduction in the number of exemptions granted (see the graph on page 13).<sup>21</sup> The recent granting of several class exemptions and the coming into effect of the regulations for the latest technical amendments to the Code should result in there being a reduction in the number of exemptions granted that relate to drafting problems with the Code.
47. Although there will be occasional highs and lows relating to market specific or transaction specific circumstances (and this is particularly apparent in the 2010 year when just three exemption applications related to 32 of the 65 exemptions granted) the impact should begin to show quite clearly from the 2011 year when the class exemptions from rule 7(d) and rule 16(b) were granted.<sup>22</sup>

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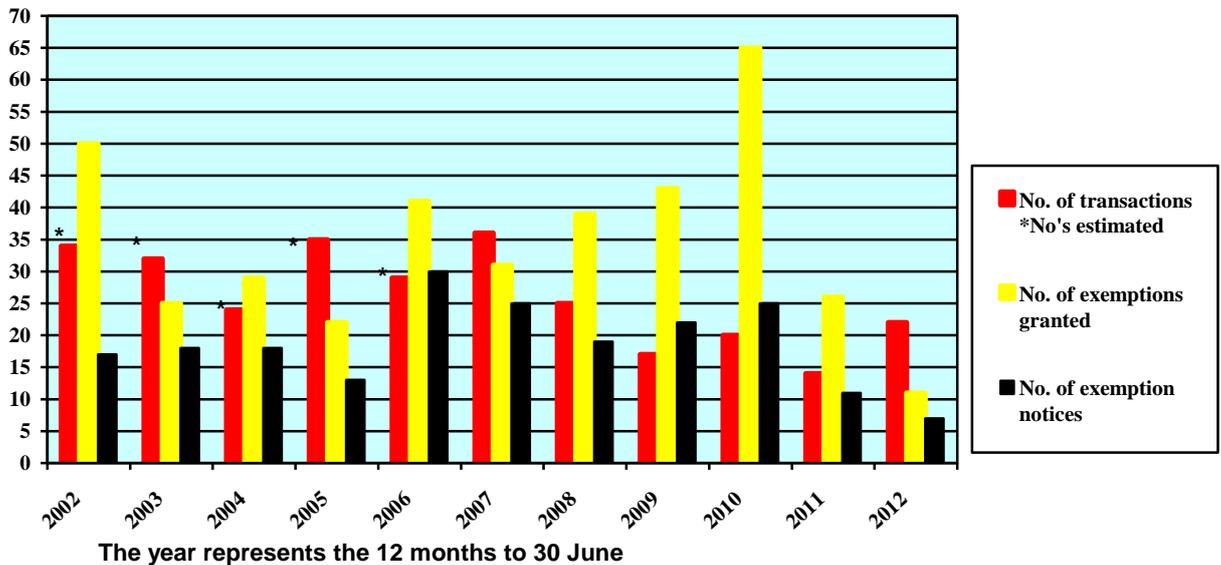
<sup>19</sup> In the Panel's 2012/2013-2015 Statement of Intent, the Panel stated that it intended to undertake a broad policy review of the Code's coverage and of the partial takeover offers regime. The recent increase in transactions has meant that the Panel no longer has the resources for such an undertaking, because the Panel's highest priority is to ensure that transactions are properly monitored and enforced. The Panel anticipates that, if a broad policy review of the Code becomes imperative, MBIE would undertake it, with technical support from the Panel.

<sup>20</sup> But note there is no direct correlation between transaction levels and exemptions applied for, as the graph on page 13 shows.

<sup>21</sup> Each exemption that has been granted to a person or class of persons from a Code rule is counted as one exemption for the purposes of measuring the impact. However, in reality, an application for exemption often covers several different aspects of a transaction that require exemptions from the Code. Hence, it is relatively common for the Panel to grant exemptions from several rules in response to an application. This is then reflected in the exemption notice which gives effect to the Panel's decision to grant the exemptions. For these reasons, the graph below shows fewer exemption notices than the number of exemptions granted. Note that, also for the purposes of measuring the impact, exemptions to amend previously granted exemptions are not counted, since they generally relate to an oversight in or change from the original exemption.

<sup>22</sup> Exemptions from rule 7(d) and rule 16(b) of the Code have been amongst the most commonly granted exemptions.

**Number of exemptions granted**



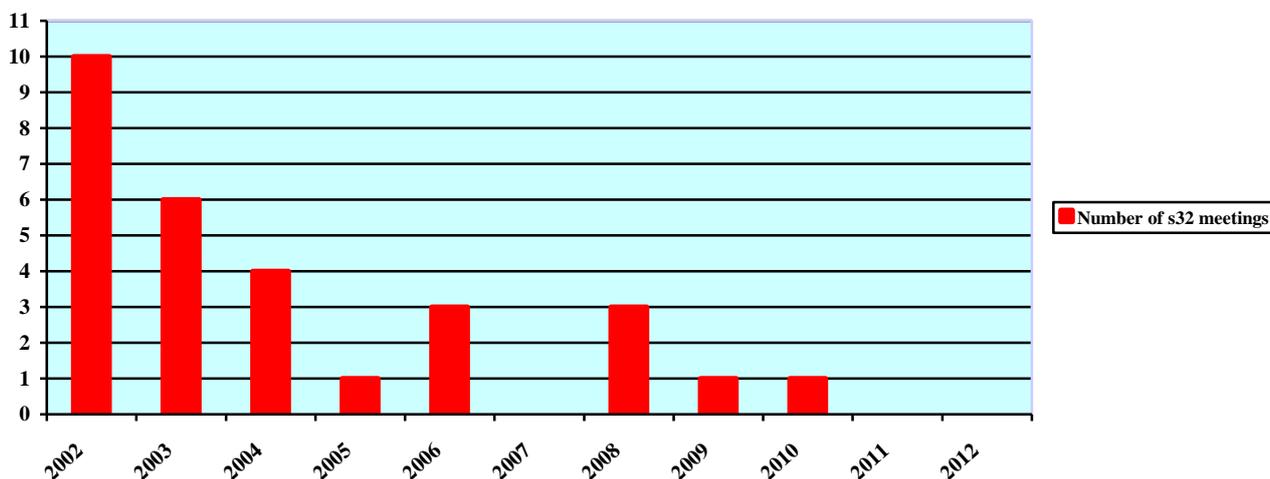
*Impact Enforcement*

48. The highest priority for the Panel's resources goes to responding to Code-regulated transactions as they occur.<sup>23</sup> All Code-regulated transactions are monitored, and an important part of this occurs through the Panel's staff reviewing Code-related documents in draft, and giving informal assistance on how to comply with the Code. This practice of 'soft' enforcement, which began around 2005, together with the Code's bedding in and the respect of practitioners for the Panel, has largely contributed to the reduction in formal hearing processes (see the graph on page 14). The Panel aims for 100% compliance with the Code so that shareholders, especially small shareholders, are protected from unfair practices and so that all shareholders have a transparent and orderly process under which they make the decisions that lie before them in a Code-regulated transaction.
49. The Panel uses two measures for the achievement of this impact: no Code-regulated documents being withdrawn under a section 32 enforcement action, due to non-compliance with the Code, and no acquirer or Code company being required under a section 32 enforcement action to publish new or corrected information to shareholders.<sup>24</sup> This impact is already achieved to a very high level, as can be inferred from the graph on page 14 since section 32 meetings arise out of a potential breach of the Code. Note that, although the graph shows the number of section 32 meetings held since the Code came into effect, the measurements for the *Enforcement* impact were instigated only from the 2012/2013 year.

<sup>23</sup> The Minister's 2013 Letter of Expectations makes explicit that monitoring and enforcing transactions remains the Panel's highest priority.

<sup>24</sup> The publication of new or corrected information is not necessarily related to the withdrawal of non-compliant documents. For example, new or corrected information may be required to be published due to an omission by a person to provide material information for shareholders or to the market.

### Section 32 Meetings



The year represents the 12 months to 30 June

50. The Panel aims to maintain 100% achievement of this impact in a constantly changing market.

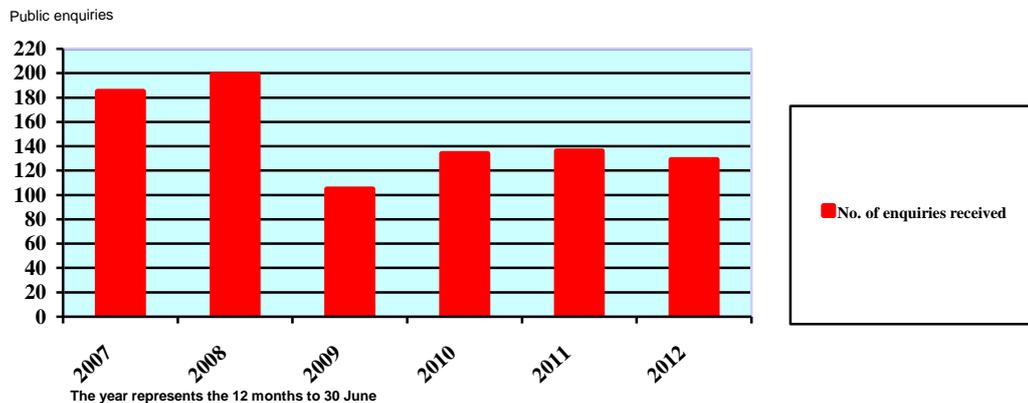
#### *Impact Knowledge*

51. The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication *Code Word* to broadcast its views on topical takeovers matters. The Panel's website provides a platform for access to the Panel's decisions, Guidance Notes, and other useful information.
52. Holding meetings with legal and financial advisers, and making speeches and giving presentations, are other methods used by the Panel for disseminating information about the Code and about the Panel's role as a regulator.
53. The Panel's strategy for obtaining market feedback about its performance changed in the 2011/2012 year with the introduction of an external on-line survey. Practitioners and independent advisers involved in every Code-regulated transaction are invited to participate in the survey. The Panel publishes the survey results in its Annual Reports. In addition, the Panel's Chief Executive periodically undertakes one-to-one meetings and teleconferences with company directors, market commentators and practitioners about a current issue of takeovers law and practice. These two initiatives provide platforms for frank exchanges which the Panel greatly appreciates. They have to a great extent obviated the need for the Panel's former approach of undertaking large, formal, seminar-style feedback engagements in the main centres.
54. Although the economy has shown some real improvement since the latter part of 2012, signified by increased levels of takeover activity, the Panel intends to continue to focus as

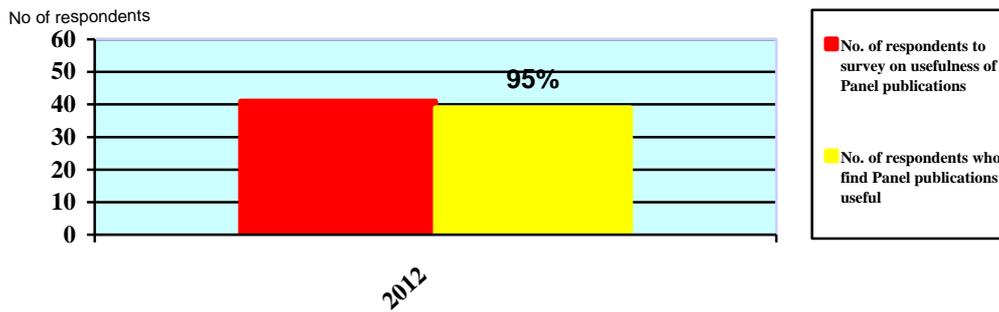
much resource as possible on its public understanding output so that the Code is better understood and the Panel's role is better understood.

55. This is intended to contribute to better informed investors, thus reducing their transaction costs. To this end, the Panel is working on increasing the level of information for shareholders on its website and improving its outreach to shareholders through the use of brochures and publishing information via shareholder networks such as the Shareholders' Association.
56. The Panel measures the achievement of its *Knowledge* impact in two ways, the first one measuring the shareholder side of the takeovers market, and the second one measuring the market participant/practitioner side of the market. The two graphs below deal with each measure, respectively.
57. The indicator for shareholders improving their knowledge is the Panel receiving a reduced number of complaints or negative comments that show misunderstandings about the process of Code-regulated transactions. The expectation is that the number of these types of complaints will trend down over time. However, as shareholders become more aware of the Code there may be more complaints initially. Note that this measurement for the *Knowledge* impact was instigated only from the 2012/2013 year, so the data will show, as against the total number of public enquiries, from next year's Statement of Intent.
58. The measure on the practitioner side of the market for meeting the *Knowledge* impact is that at least 90% of the respondents to an external on-line survey indicate that they find the Panel's publications about the Code and about the Panel useful.

### Public Enquiries to the Panel



**% Takeovers Practitioners find Panel publications useful**



The year represents the 12 months to 30 June

Value for money approach

*Government's expectations*

59. The Panel is cognisant of the Government's expectations that Crown entities remain focused on value for money outcomes. The Panel believes it is well aligned with the goals of the Government's Better Public Services programme:

- *Clear priorities: providing high quality, cost effective services* – the Panel has created a culture of cost effective and customer focused services, particularly through its accessibility for public enquiries and its 'soft' enforcement practices, which promote Code compliance at low cost;
- *High quality services: ensuring services are modern, responsive and provide value for money* – the Panel is improving its technology, and sets high standards for the efficient delivery of its customer services;
- *Reducing waste: ensuring administration is efficient, streamlined and well organised* – the Panel has consistently reflected this approach for its own administration.

*Panel's value for money approach*

60. The Panel has always been mindful of making the most efficient use of its funding. It is aided in this goal by receiving a single unallocated Government appropriation. This supports the Panel's ability to match its resources to its priorities in a volatile market environment.

61. Recent cost effectiveness measures taken by the Panel have included digital-only dissemination of all Panel publications in order to eliminate printing and mailing costs, and no longer having the Annual Report professionally designed. These initiatives alone reduced the Panel's costs by \$12,500 (equivalent to almost 1% of its total expenditure) in the 2012/2013 year. The Panel has signed up to relevant All of Government contracts. Due to the volatility in the Panel's work, it is not possible to identify the extent to which these contracts will provide savings to the Panel but it is anticipated that overall they will have a beneficial effect.

62. The Panel completed the implementation of a new IT system in early 2013 to support the efficiency of the Panel's staff and to strengthen and secure the Panel's intellectual capital. The previous system was heavily reliant on manual data manipulation and manual data collection, and on the corporate knowledge of personnel. The Panel funded the upgrade from its reserves, as it has managed to maintain a strong balance sheet in recent years due in large part to having been able to make costs orders at the last two section 32 meetings.
63. The Panel has also upgraded its website to improve the public's access to information about the Panel and about the Code. The website upgrade involved upfront costs for design and implementation, but it is expected to reduce the operating costs.

#### Opportunities and risks

64. The level of takeover activity is greatly influenced by the state of the economy. This is because takeovers are usually very large transactions, typically costing acquirers tens of millions to hundreds of millions of dollars, which require both funding and confidence. While these were in short supply during the global financial crisis there have been significant improvements in market sentiment since late 2012.
65. The Panel intends to focus its resources largely on its enforcement output to ensure that all Code-regulated transactions are conducted in compliance with the Code. If the Companies and Limited Partnerships Amendment Bill comes into effect during the 2013/2014 year, as is anticipated, the Panel expects that acquirers will undertake some transactions that would have been undertaken under the Code, instead as schemes of arrangement under the new provisions in the Companies Act. This will involve a transfer of Panel resources from services under outputs 2 (approvals), 3 (exemptions) and 4 (enforcement) to new output 6 (schemes of arrangement).
66. The Panel is aware that since 2005 (when the gap in takeovers law was first identified), a number of transactions have been undertaken under the current Companies Act provisions that would otherwise have come before the Panel. Accordingly, once the new provisions in the Companies Act come into force, the Panel may experience increased pressure on its resources.
67. The *Takeovers (Fees) Regulations 2001* ("fees regulations") prescribe the fees that the Panel can charge for some of its activities that relate to Code-regulated transactions.<sup>25</sup> Accordingly, the fees regulations set the level of third party funding that the Panel can receive.
68. The level of third party funding is also directly impacted by the level of transactional activity (which generates modest application fees for adviser approvals and modest to significant fees for exemptions depending on their level of complexity). The extent to which chargeable enforcement activity is undertaken by the Panel has a significant impact on its expenses and potentially on its third party funding (depending on whether the Panel is able to make costs orders).

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<sup>25</sup> Under the fees regulations the Panel may charge the fees prescribed in the regulations for considering exemptions, adviser and other approvals, and for the 'hard' enforcement activity of holding a hearing under section 32 of the Takeovers Act.

69. The fees regulations have not been amended since they were enacted in 2001, and the Panel has been under-recovering for the resources it expends, by approximately 40%. The fees regulations have been under review by MBIE, with the assistance of accounting firm KPMG. It is hoped that they can be amended in the near term to improve the Panel's third party funding.
70. The Panel's third party funding was only \$104,000 for the 2011/2012 year. It may be around twice that for the 2012/2013 year due to the recent increase in market activity and to one small enforcement hearing having been held. In 2010/2011 third party funding was \$172,000. In all prior years third party funding has generated income of between approximately \$300,000 and \$600,000.
71. The Panel's third-party income continues to be managed through robust controls on spending and through a strong focus on internal efficiency.
72. The fees regulations may be amended in conjunction with the passage of the Companies and Limited Partnerships Amendment Bill to enable the Panel to charge for its role under the new Companies Act provisions. This should mitigate the risk identified above regarding the potential for the new Companies Act provisions to result in increased pressure on Panel's resources.
73. The Panel has several policy initiatives that are either part-way through the legislative process (such as the schemes proposals) or are awaiting a legislative vehicle to begin the legislative process. The Panel hopes that its proposals to provide a new process under the Takeovers Act, to enable the Panel to resolve costs disputes between offerors and target companies after a takeover, will soon begin the legislative process.
74. The Panel values MBIE's co-operation and advice on its policy work and also on its public sector reporting obligations. The Panel executive and MBIE officials engage as often as possible to keep each other informed on matters of mutual interest and concern. The Panel also appreciates the willingness of Departments and other Government agencies to share their back-office expertise with the Panel's administration staff.

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

#### Operating capability

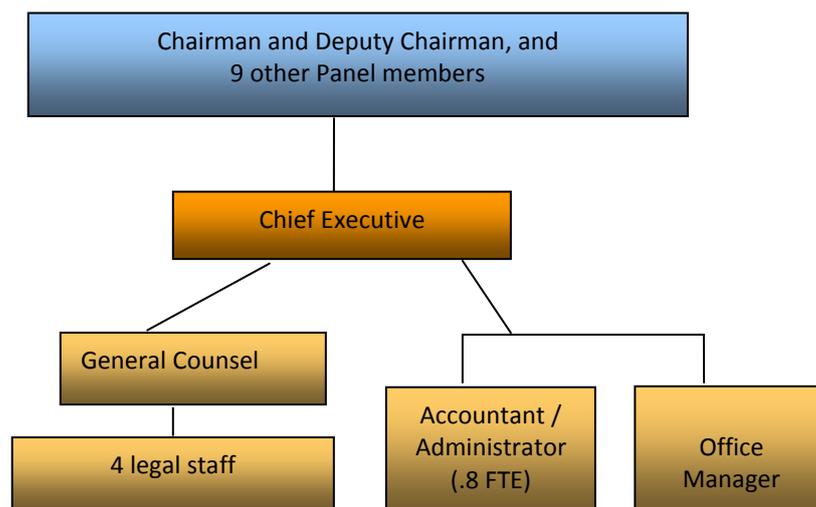
75. The Panel has few tangible assets and its main resource is its eight staff located in an office in Wellington, and its 11 part-time members.
76. All Panel members work for the Panel from their businesses or homes, and are paid only for the hours worked. Panel work can involve a considerable imposition on members' professional and personal time. However, members are committed to proactively and pragmatically enforcing the Code, and they have been willing to act in this service to the public despite the significant impost to their, or their firms', income that this entails.
77. A concern for succession planning for Panel membership is that the level of remuneration for Panel work may impact on the willingness of future candidates to accept an appointment to the Panel. However, for the time being at least, suitable candidates are putting themselves forward to take up the public service role of the Panel.

78. The Panel's efficiency is supported by its ability to make most of its decisions by "divisions" of members. The Takeovers Act empowers the Panel's Chairman to appoint a minimum of three members to a division.
79. The ability to act in divisions also enables the Panel to effectively manage the conflicts of interest that inevitably arise where members work only part time for the Panel but full time in their own practices. Members who would be conflicted in relation to a particular transaction are not appointed to the division that regulates that transaction. If a division member becomes conflicted during the course of a matter, he or she retires from the division and the division is reconstituted.

Staff engagement and retention

80. The Panel's executive staff is comprised of 7.8 FTEs, of whom 6.8 FTEs are lawyers and accountants. The lawyers' skill mix enables the Panel to respond to changes in the market by instantly reallocating resources as necessary. The funding constraints in the public sector make maintaining appropriate remuneration packages an increasing challenge. Nevertheless, robust controls on spending, and on-going improvements in efficiency are still proving to be effective tools for the Panel's sustainability.
81. The Panel keeps its Chief Executive accountable for managing the work priorities of the staff on a daily basis and also their engagement and retention.
82. The Panel utilises a conventional management structure, with the Panel responsible for the performance management, remuneration and succession planning of the Chief Executive, and the Chief Executive responsible to the board for the performance of the executive.

Panel Organisation Structure



83. The Panel's organisational health and capability will be maintained over the next three years by valuing the Panel's people and at the same time holding them accountable for their behaviour and performance. The organisation is too small to have formal staff development programmes, but the following initiatives will be maintained by the Chief Executive:
- (a) The training and development needs of each staff member being identified and supported;
  - (b) Remuneration being linked to performance and supporting professional progression;
  - (c) Recruitment initiatives that aim to increase the diversity of the Panel executive;
  - (d) Maintaining and improving flexible work practices that support the recruitment and retention of people with family and community commitments and that support work life balance;
  - (e) Maintaining the Panel's Good Employer Policy with its focus on mutual respect, support, accountability, and team culture;
  - (f) Maintaining wellness programmes such as employer-funded 'flu vaccinations for staff and the availability of counselling under an Employee Assistance Programme.

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

#### Consultation with Minister and Ministry

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

#### Reporting to Minister and Ministry

88. The Panel reports to the Minister on a six-monthly basis. This used to be specified in an annual Output Agreement with the Minister. However, in 2011/2012 the Minister

decided to discontinue future Output Agreements. Instead, the six-monthly reporting is now maintained by a less formal agreement with the Minister.

89. The matters that the Panel reports to the Minister include the Panel's financial performance, the achievement of its outputs, the use of its litigation fund and the outlook for the remainder of the financial year. The Panel's Half-Year Reports are provided to monitoring officials at MBIE, who brief the Minister as required.<sup>26</sup>

#### **Process for acquisitions**

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

#### **Other matters**

91. The Panel has included in this Statement of Intent information on all of the matters that are reasonably necessary to achieve an understanding of the Panel's intentions and direction.
92. The Panel has not sought any exemptions under section 143 of the Crown Entities Act in relation to the contents of the Panel's forecast Statement of Service Performance.

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<sup>26</sup> In line with the Government's expectations for transparency of Crown entity performance, the Panel now publishes its Half-Year Reports to the Minister on its website.

**Statement of responsibility**

93. The information on future operating intentions of the Takeovers Panel for the year ending 30 June 2014 and the next two financial years contained in this Statement of Intent has been prepared in accordance with sections 141 and 142 of the Crown Entities Act.
94. We acknowledge responsibility for the preparation of these forecast financial statements and Forecast Statement of Service Performance and for the judgements used in them.
95. 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.
96. In our opinion the information contained in this Statement of Intent fairly reflects the Takeovers Panel's operating intentions for the reporting period.

Signed on behalf of the Panel by:

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

**Date:**

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**Andy Coupe**  
**Deputy Chairman**  
**Takeovers Panel**

**Date:**

**FORECAST STATEMENT OF SERVICE PERFORMANCE  
FOR THE YEAR ENDING 30 JUNE 2014**

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

<b>OUTPUT 1: Review law and practice, and recommend any necessary law changes:</b>				
Ensuring that the provisions of the Takeovers Code and other takeovers law are effective and relevant, as assessed by review of law and practice, undertaking policy development ("policy projects"), and recommending amendments to takeovers law as necessary.				
In addition to daily monitoring of market practice and routine or low level policy activities, as well as the policy activities that can arise in response to market practices, the major policy projects planned for completion are:				
<ul style="list-style-type: none"> <li>• To assist officials with a review of the Takeovers (Fees) Regulations 2001;</li> <li>• To consider a class exemption for the offering of scrip consideration for a takeover offer;</li> <li>• To review two exemptions in the Takeovers Code (Class Exemptions) Notice (No.2) 2001;</li> <li>• To review the use of limited partnerships as shareholding vehicles in Code companies.</li> </ul>				
<i>Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:</i>				
<i>Performance Measures</i>	<i>Performance Standards</i>			
	<i>For 2013/2014</i>	<i>Estimated 2012/2013</i>	<i>Actual 2011/2012</i>	<i>Actual 2010/2011</i>
<b>Quantity</b> The Panel's Business Plan identifies 4 policy projects as detailed above, provided the level of takeover transactions is low enough to free up resource for policy work	complete 4 projects	3 projects completed	New measure for 2012/2013	New measure for 2012/2013
<b>Quality</b> Best practice policy development process has been followed <sup>27</sup>	100% of the time	100% of the time	New measure for 2012/2013	New measure for 2012/2013
<b>Timeliness</b> Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100%	100%	100%	100%
<b>Revenue:</b> (Funded by Government grant and other income, except fees)	\$367,000 20% of forecast revenue	\$536,000 31% of estimated revenue	Not Reported	Not Reported
<b>Cost:</b>	\$340,000 20% of forecast expenditure <sup>28</sup>	\$509,000 31% of estimated expenditure	\$504,538	\$430,107

<sup>27</sup> The Regulatory Impact Analysis framework provides the best practice model used in New Zealand for quality policy development. The Panel applies that model as well as its own internal quality assurance steps, for its quality measure for output 1 policy work. To meet the standard, every material policy project will have met the following criteria (as demonstrated by performance checklists):

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

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<b>OUTPUT 2: Approvals:</b>				
The approval of the appointment of independent advisers under rules 18, 21, 22 or 57(1) of the Code or by the terms of an exemption granted, and the appointment of independent experts where required by rule 57(3) of the Code.				
The Panel will use its approvals resources to consider applications from firms seeking to be approved to act as independent advisers and experts for Code-regulated transactions or events.				
<i>Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:</i>				
<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2013/2014</b>	<b>Estimated 2012/2013</b>	<b>Actual 2011/2012</b>	<b>Actual 2010/2011</b>
<b>Quantity</b> 20-26 applications are considered for adviser competence and independence by the Panel. NB: the number of applications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information	100% of applications	100% of 18-24 applications	New measure for 2013/2014	New measure for 2013/2014
<b>Quality</b> Failures by the Panel to comply with its own approval standards resulted in adviser approvals being withdrawn	0% of the time <sup>29</sup>	0% of the time	New measure for 2012/2013	New measure for 2012/2013
<b>Timeliness</b> Decision made by 3 working days after receipt of complete application	100% of the time	100% of the time	100% of the time	100% of the time
<b>Revenue:</b> (Part funded by Government grant and part funded by fees)	\$55,000 3% of forecast revenue	\$52,000 3% of estimated revenue	\$31,453 (fees only; Govt grant not reported)	\$40,951 (fees only; Govt grant not reported)
<b>Cost:</b>	\$51,000 3% of forecast expenditure	\$49,000 3% of estimated expenditure	\$65,102	\$89,302

<sup>28</sup> The reduction to 20% of forecast expenditure for output 1 is based on the Panel's expectations of an increase in transactions and the Panel's resources therefore being directed to services under outputs 2, 3, 4 and 6.

<sup>29</sup> Effectively, this measure is the same as indicated for the 2012/2013-2015 Statement of Intent, however, it is now expressed in the positive rather than the negative. Hence it has been changed from 100% as the performance standard, to 0%.

**OUTPUT 3: Exemptions:**

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

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

*Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2013/2014</b>	<b>Estimated 2012/2013</b>	<b>Actual 2011/2012</b>	<b>Actual 2010/2011</b>
<p><b>Quantity</b> Applications processed for individual exemptions from the Takeovers Code, categorised as:<sup>30</sup></p> <ul style="list-style-type: none"> <li>straightforward</li> <li>complex</li> </ul> <p>NB: This is entirely market driven. The inclusion of estimated quantities is to provide contextual information</p>	7-11  c.72%	9-12  7-9  2-3	10  breakdown to straightforward or complex is a new measure for 2012/2013	12  breakdown to straightforward or complex is a new measure for 2012/2013
<p>Class exemptions applied for, or initiated by the Panel, categorised as:</p> <ul style="list-style-type: none"> <li>straightforward</li> <li>complex</li> </ul>	2-4  c.75%	3-4  2-3  1-2	1  breakdown to straightforward or complex is a new measure for 2012/2013	2  breakdown to straightforward or complex is a new measure for 2012/2013
<p><b>Quality</b> The Regulations Review Committee does not recommend disallowance of Panel exemptions</p>	100% of the time	100% of the time	100% of the time	100% of the time
Applicants are satisfied with the process as indicated by an external survey	90% of applicants <sup>31</sup>	90%	New measure for 2012/2013	New measure for 2012/2013

<sup>30</sup> The hours spent on an exemption by Panel members and staff is used as an indicator for complexity:

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

<sup>31</sup> This performance standard has been reduced to 90% from 95% in the 2012/2013-2015 Statement of Intent because the relatively small numbers of survey respondents means the percentage value per person is significant.

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<b><u>Timeliness</u></b> Exemptions are processed within the timeframe agreed with the applicant	90% of the time	90% of the time	81% of the time	87% of the time
Class exemptions (if granted) are published on the website within 10 working days of being signed	100%	100%	New measure for 2012/2013	New measure for 2012/2013
<b><u>Revenue:</u></b> (Part funded by Government grant and part funded by fees)	\$184,000 10% of forecast revenue	\$190,000 11% of estimated revenue	\$72,771 (fees only; Govt grant not reported)	\$135,898 (fees only; Govt grant not reported)
<b><u>Cost:</u></b>	\$170,000 11% of forecast expenditure	\$181,000 11% of estimated expenditure	\$227,859	\$379,078

**OUTPUT 4: Enforcement:**

Maintaining oversight of takeover activity in the market by reviewing draft documentation informally, and published documentation, for compliance with Code, intervening where necessary in accordance with the Panel's statutory powers, investigating any possible breaches of the Code in accordance with the law and the rules of natural justice.

The Panel will use its enforcement resources to:

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

*Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2013/2014</b>	<b>Estimated 2012/2013</b>	<b>Actual 2011/2012</b>	<b>Actual 2010/2011</b>
<b>Quantity</b>				
Number of draft documents reviewed for Code-regulated transactions <sup>32</sup>	19-24	20-24	New measure for 2012/2013	New measure for 2012/2013
Percentage of enforcement resources spent on this 'soft' enforcement <sup>33</sup>	74%	74%		
NB: This is entirely market driven. The inclusion of estimated quantities is to provide contextual information				
Final documents reviewed for Code-regulated transactions	19-24	20-24	New measure for 2012/2013	New measure for 2012/2013
Percentage of enforcement resources spent on review of final documents	3%	3%	New measure for 2012/2013	New measure for 2012/2013

<sup>32</sup> This figure now combines the estimated quantities of takeover documents and shareholder meeting documents. In the 2012/2013-2015 Statement of Intent the figures were estimated separately between takeovers and shareholder meetings.

<sup>33</sup> The executive often reviews several iterations of documents in draft, and also reviews accompanying or related documents that are not required by the Code but that an acquirer or Code company may wish to publish to shareholders. These interactions can occur rapidly, for example, several times a day, or may focus on a single paragraph etc. Accordingly, it is too onerous to collect data on each interaction, so the percentage of resources used provides supporting quantitative data.

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Number of section 32 meetings	1	1	0	1
Percentage of enforcement resources spent on this 'hard' enforcement	23%	23%	New measure for 2012/2013	New measure for 2012/2013
<b>Quality</b> Parties are satisfied with the processes for 'soft' enforcement as indicated by an external survey	90% of respondents	90% of respondents	New measure for 2012/2013	New measure for 2012/2013
Parties are satisfied with the 'soft' enforcement professionalism of the executive as indicated by an external survey	90% of respondents	90% of respondents	New measure for 2012/2013	New measure for 2012/2013
No successful Court challenges to Panel decisions or actions taken under s32 of the Takeovers Act	100% of the time	100% of the time	100% of the time	100% of the time
<b>Timeliness</b> Review of documents is completed within Code timeframes or as agreed by applicants	100% of the time	100% of time	New measure for 2012/2013	New measure for 2012/2013
'Hard' enforcement work is completed within statutory timeframes	100% of the time	100% of the time	N/A	100% of the time
<b>Revenue:</b> (Part funded by Government grant and part funded by fees)	\$643,000 35% of forecast revenue	\$605,000 35% of estimated revenue	\$0 (fees only; Govt grant not reported)	(\$5,000) (fees only; Govt grant not reported)
<b>Cost:</b>	\$595,000 35% of forecast expenditure	\$575,000 35% of estimated expenditure	\$488,262	\$694,369

**OUTPUT 5 : Public Understanding:**

Regularly publish information about the Code and relevant law, make media statements, issue policy statements, guidance notes and commentaries on current issues, liaise with stakeholders, give speeches, webinars, respond to public enquiries.

The Panel will use its public understanding resources to:

- undertake informal engagements with market practitioners, company directors, market commentators, and other key stakeholders;
- disseminate written information about itself and the Code;
- maintain the Panel's website to inform stakeholders and the market;
- deal with public enquiries about Code matters.

*Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2013/2014</b>	<b>Estimated 2012/2013</b>	<b>Actual 2011/2012</b>	<b>Actual 2010/2011</b>
<b>Quantity</b>				
Number of: <i>Code Words</i> published	3	3	2	2
Number of hits on the website	3,000-4,000	3,000 (for 9 months new website has been operational)	New measure for 2012/2013	New measure for 2012/2013
Number of: Public enquiries	130-150	100-120	136	134
Informal engagements with stakeholders	10-20	10-20 <sup>34</sup>	New measure for 2012/2013	New measure for 2012/2013
<b>Quality</b>				
Market participants found documents published were useful, as indicated by an external survey	90% of respondents	90%	New measure for 2012/2013	New measure for 2012/2013
A feedback field included on the website indicates the website was useful to the user	90% of respondents	80%	New measure for 2012/2013	New measure for 2012/2013
<b>Timeliness</b>				
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	90% of the time	New measure for 2012/2013	New measure for 2012/2013
Public enquiries are responded to within 3 working days of receiving them	100% of the time	100% of the time	100% of the time	99% of the time

<sup>34</sup> This performance standard now reflects the Panel's changed strategy for engaging with stakeholders on a one-to-one basis on topical Code matters, as opposed to its former approach of holding annual or biennial large seminar-style meetings.

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<b>Revenue:</b> (Funded by Government grant and other income except fees)	\$404,000 22% of forecast revenue	\$346,000 20% of estimated revenue	Not reported	Not reported
<b>Cost:</b>	\$374,000 22% of forecast expenditure	\$328,000 20% of estimated expenditure	\$292,957	\$205,941

**OUTPUT 6 : Schemes of Arrangement:**

Panel responds to notifications of schemes of arrangement being undertaken under the Companies Act that involve Code companies, and considers applications for no-objection statements.

The Panel will use its schemes of arrangement resources to:

- engage with practitioners on their draft proposals for undertaking a scheme of arrangement;
- assess the quality of the scheme documents for shareholders and the proposed voting procedures, as against its published policy for the giving of a no-objection statement;
- decide whether to give a no-objection statement or whether to appear in the High Court to object to a scheme of arrangement;
- approve independent advisers for schemes of arrangement.

*Planned performance standards and performance measures for 2013/2014, and Forecast outcome for 2012/2013, using actual data to December 2012 and as estimated for the remainder of the year:*

<b>Performance Measures</b>	<b>Performance Standards</b>			
	<b>For 2013/2014</b>	<b>Estimated 2012/2013</b>	<b>Actual 2011/2012</b>	<b>Actual 2010/2011</b>
<b>Quantity</b> Number of: schemes  no-objection statements	2-5  2-5	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014
<b>Quality</b> Parties are satisfied with process for no-objection statements as indicated by an external survey	90% of respondents	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014
Parties are satisfied with the professionalism of the executive as indicated by an external survey	90% of respondents	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014
<b>Timeliness</b> Processed within timeframe agreed with the applicant	90% of the time	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014
<b>Revenue:</b>	\$183,000 10% of forecast revenue	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014
<b>Cost:</b>	\$171,000 10% of forecast expenditure	New Output for 2013/2014	New Output for 2013/2014	New Output for 2013/2014

**FORECAST FINANCIAL STATEMENTS OF THE TAKEOVERS PANEL  
FOR THE YEAR ENDING 30 JUNE 2014**

**INTRODUCTION**

The forecast financial statements presented here for the reporting entity, the Takeovers Panel, are prepared pursuant to section 142 of the Crown Entities Act 2004. The Panel is a Crown entity for legislative purposes and a public benefit entity for financial reporting purposes.

The Panel is responsible for the forecast financial statements presented, including the appropriateness of the assumptions underlying the forecast financial statements and all other required disclosures.

These forecast financial statements have been prepared in accordance with New Zealand Financial Reporting Standard No. 42: Prospective Financial Statements (FRS-42).

The preparation of forecast financial statements in conformity with FRS-42 requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. Actual financial results achieved for the period covered are likely to vary from the information presented, and the variations may be material.

These forecast financial statements have been prepared for the purpose of the 2013/14 - 2016 Statement of Intent of the Takeovers Panel. They are not prepared for any other purpose and should not be relied upon for any other purpose.

The forecast financial statements were authorised for issue by the Takeovers Panel on 23 April 2013.

**FORECAST STATEMENT OF COMPREHENSIVE INCOME**

*for the year ending 30 June 2014*

	<i>Forecast 12 months to 30 June 2014 \$</i>	<i>Notes</i>	<i>Estimated 12 months to 30 June 2013 \$</i>
<b>Revenue - Operating</b>			
Government grant-baseline funding	1,494,000	2	1,494,000
Interest	26,000		26,000
Application fees and costs recoverable	283,000	3	176,000
Total operating income	<u>1,803,000</u>		<u>1,696,000</u>
<b>Revenue - Litigation fund</b>			
Interest	<u>33,000</u>		<u>33,000</u>
Total litigation fund income	<u>33,000</u>		<u>33,000</u>
Total income	<u><u>1,836,000</u></u>		<u><u>1,729,000</u></u>
<b>Operating expenses</b>			
Audit fees	20,000		19,000
Communication charges	38,000	4	78,000
Training and memberships	71,000	5	26,000
Depreciation and amortisation	58,000		28,000
Members' fees	193,000		193,000
Printing and stationery	11,000		11,000
Consultants and legal	34,000	6	38,000
Services and supplies	176,000		168,000
Rent	133,000		132,000
Travel and accommodation	29,000		24,000
Personnel costs	918,000	7	898,000
Total operating expenses	<u>1,681,000</u>		<u>1,615,000</u>
Expenses - Litigation fund	<u>20,000</u>		<u>27,000</u>
Total expenditure	<u>1,701,000</u>		<u>1,642,000</u>
Total comprehensive income	<u><u>\$135,000</u></u>		<u><u>\$87,000</u></u>
<b>This is comprised of:</b>			
Comprehensive income-operating/(deficit)	122,000		81,000
Comprehensive income-litigation/(deficit)	<u>13,000</u>		<u>6,000</u>
	<u><u>\$135,000</u></u>		<u><u>\$87,000</u></u>

**FORECAST STATEMENT OF FINANCIAL POSITION**

*as at 30 June 2014*

	<i>Forecast as at 30 June 2014 \$</i>	<i>Estimated as at 30 June 2013 \$</i>
<b>Current assets</b>		
Cash and cash equivalents – operations	157,000	116,000
Cash and cash equivalents – litigation fund	132,000	132,000
Short term deposits – operations	626,000	470,000
Short term deposit – litigation fund	669,000	656,000
Interest receivable – operations	5,000	5,000
Interest receivable – litigation fund	16,000	16,000
GST receivable	16,000	14,000
Trade and other receivables	24,000	39,000
Prepayments	25,000	25,000
Total current assets	1,670,000	1,473,000
<b>Non current assets</b>		
Computer software	138,000	138,000
Less accumulated depreciation	(78,000)	(37,000)
Office equipment	151,000	151,000
Less accumulated depreciation	(144,000)	(132,000)
Office furniture	46,000	46,000
Less accumulated depreciation	(21,000)	(16,000)
Total non current assets	92,000	150,000
Total assets	\$1,762,000	\$1,623,000
<b>Current liabilities</b>		
Trade and other payables	100,000	96,000
GST payable	0	0
Total current liabilities	100,000	96,000
<b>Equity</b>		
Operating funds	845,000	723,000
Litigation fund	817,000	804,000
Total equity	1,662,000	1,527,000
Total equity and liabilities	\$1,762,000	\$1,623,000

**FORECAST STATEMENT OF CHANGES IN EQUITY**

*For the year ending 30 June 2014*

	<i>Forecast 12 months to 30 June 2014 \$</i>	<i>Estimated 12 months to 30 June 2013 \$</i>
<b>Equity at start of period</b>		
Operating funds	723,000	642,000
Litigation fund	804,000	798,000
Equity at start of year	1,527,000	1,440,000
Total comprehensive income-operating/ (deficit)	122,000	81,000
Total comprehensive income-litigation (deficit)	13,000	6,000
Total comprehensive income	135,000	87,000
Increase / (reduction) in equity	135,000	87,000
<b>Equity at end of period</b>	\$1,662,000	\$1,527,000
<b>Comprising:</b>		
Operating funds	845,000	723,000
Litigation fund	817,000	804,000
Equity at end of year	\$1,662,000	\$1,527,000

**FORECAST STATEMENT OF CASH FLOWS**

*For the year ending 30 June 2014*

	<i>Forecast 12 months to 30 June 2014 \$</i>	<i>Estimated 12 months to 30 June 2013 \$</i>
<b>Cash flows from operating activities</b>		
Cash was provided from:		
Government grant - operations	1,494,000	1,494,000
Application fees & costs recoverable	298,000	158,000
Interest	59,000	47,000
Goods and services tax (net)	0	4,000
Cash was disbursed to:		
Suppliers	(532,000)	(542,000)
Employees and Members	(1,107,000)	(1,112,000)
Good and Services Tax (net)	(2,000)	0
Net cash inflow (outflow) from operating activities	210,000	49,000
<b>Cash flows from investing activities</b>		
Cash was provided from:		
Net decrease in bank deposits	0	11,000
Cash was applied to:		
Acquisition of computer software	0	(114,000)
Acquisition of office equipment	0	(17,000)
Acquisition of office furniture	0	0
Net increase in bank deposits	(169,000)	0
Net cash inflow (outflow) from investing activities	(169,000)	(120,000)
<b>Cash flows from financing activities</b>		
Net cash flows from financing activities	0	0
Net increase (decrease) in cash balance	41,000	(71,000)
Add opening cash and cash equivalents	248,000	319,000
Closing cash and cash equivalents	\$289,000	\$248,000

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

**For the year ending 30 June 2014**

### **STATEMENT OF SIGNIFICANT ASSUMPTIONS**

The Panel is responsible for the forecast financial statements presented, including the appropriateness of the assumptions underlying the forecast financial statements and all other required disclosures. The preparation of these forecast financial statements requires the Panel to make judgements, estimates and assumptions that affect the application of accounting policies and the forecast amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates and the variation may be material.

Estimates and assumptions used in these forecast financial statements are based on the best information available to the Panel at the time of their preparation. Information about significant areas of estimation uncertainty and critical judgements in applying accounting policies that have the most significant effect on the amount recognised in the forecast financial statements are described in the following significant assumptions. It is not intended to update the forecast financial statements subsequent to publication of these statements.

#### **1 Forecast financial statements for 2012/2013**

The 2012/2013 forecast financial statements include actual results up to the end of December 2012 and an estimate of the outcome for the remaining six months of the year taking account of work on hand and expected developments in the final months of the financial year. These figures are therefore not the same as those included for 2012/2013 in the Panel's 2012 forecast financial statements.

#### **2 Government appropriation**

The Government appropriation is as per the amount allocated to the Output Class "*Administration of the Takeovers Code*" for the year 2013/2014.

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

The Panel expects third party income of \$283,000 in 2013/2014. This assumes section 32 revenue of \$100,000. In addition the Companies and Limited Partnerships Amendment Bill is expected to pass in 2013/2014, providing income from the Panel's no-objections statement activities for schemes of arrangement. Revenue of \$70,000 is forecast from this activity. It is expected that the number of approvals and exemptions for Code transactions will fall slightly as the schemes of arrangement regime beds in. More revenue is anticipated to be earned from processing applications for schemes than is lost for Code activities.

#### **4. Communication charges**

The Panel expects a decrease in communication charges of some \$40,000, or 51% in 2013/2014 compared with 2011/2012. This is because the Panel undertook expenditure on developing its website over 2011/2012 - 2012/2013 and these extra costs will not be incurred in 2014.

## **5 Training and memberships**

The Panel expects to spend \$71,000 on training and membership costs in 2013/2014, an increase of around 173 % over the expected training and memberships costs in 2012/2013. This is on the basis of the Panel's leadership development goals for the Chief Executive, and to better support the continuing legal/accounting education of the Panel's six other professional staff.

## **6 Consultants and legal**

The Panel expects to spend \$34,000 on consultants and legal fees in 2014. This is on the basis of one section 32 meeting being held and other enforcement services.

## **7 Personnel costs**

The Panel expects to spend \$918,000 on personnel costs in 2013/2014, an increase of around 2% over the expected personnel costs in 2012/2013. This is on the basis of current staff receiving a pay increase and increased Kiwisaver contributions.

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

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

The level of the Panel's enforcement activity is dependent on the level and nature of takeover market activity. If takeovers are hostile or competitive this is likely to lead to a higher level of Panel involvement and possibly enforcement meetings. The Panel cannot always recover its costs from the enforcement meetings it holds.

If there is a lower level of exemptions and approvals than expected and an absence of contested or hostile takeovers then the level of the Panel's third party revenue would be significantly affected.

If the Panel's third party revenue fell to \$198,000 rather than the predicted \$298,000 with no reduction in staff costs, we would expect some reduction in members' fees and external legal costs, and the Panel's forecast operating profit of \$122,000 could decrease by around \$30,000 to \$92,000.

## **STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES**

### **Basis of preparation**

The separate forecast financial statements presented here are for the reporting entity, the Takeovers Panel, for the year ending 30 June 2014. The forecast financial statements have been prepared in accordance with New Zealand Generally Accepted Accounting Practice (NZ GAAP) and are consistent with the accounting policies to be adopted by the Panel for the preparation of financial statements.

They comply with New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS) and other applicable Financial Reporting Standards, as appropriate for public benefit entities.

### **Measurement System**

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

### **Functional and presentation currency**

These forecast financial statements are presented in New Zealand dollars (\$), which is the Panel's functional currency. All financial information presented in New Zealand dollars has been rounded to the nearest thousand dollars.

### **Specific Accounting Policies**

#### **1 Revenue Recognition**

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

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

#### **2 Litigation Fund**

Interest income and expenditure on approved litigation fund matters are reported as income and expenditure of the Panel in the financial period in which they were derived or incurred. Costs awarded by the Court are recognised in the financial period during which the Court gives its judgment or the parties agree. Reimbursements from the Crown to top-up the fund are reported as income in the period in which the Panel's claim for reimbursement relates.

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

#### **3 GST**

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

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

#### **4 Financial Instruments**

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

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

#### **5 Cost Allocation Policy**

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

#### **6 Income Tax**

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

#### **7 Trade and other receivables**

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

#### **8 Trade and other payables**

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

#### **9 Cash and cash equivalents**

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

#### **10 Term Deposits**

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

#### **11 Impairment**

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

**12 Depreciation**

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

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

**13 Short term employee benefits**

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

**14 Contingent assets and contingent liabilities**

Contingent liabilities are disclosed if the possibility that they will crystallise is not remote. Contingent assets are disclosed if it is probable that the benefits will be realised. There are no contingent assets or liabilities forecast in 2013/2014.

**15 Changes in accounting policies**

No changes in accounting policy are forecast.