

BRIEFING

for the incoming
Minister of Commerce and Consumer Affairs

▶ 24 April 2026



**TAKEOVERS
PANEL**
TE PAE WHITIMANA



1 Executive summary

- 1.1 The purpose of the Takeovers Code (the **Code**) is to provide for transparent and equitable processes for mergers, acquisitions and other changes of control¹ of New Zealand's largest and most widely held companies (**Code companies**). Code companies are either listed on the NZSX, the main board for shares, or are unlisted but widely held by shareholders and exceed prescribed minimum financial thresholds.²
- 1.2 The Takeovers Panel (the **Panel**) is responsible for enforcing the Code. The Panel's services contribute to an efficient takeovers market and support investor confidence in the integrity of New Zealand's capital markets.
- 1.3 Section 3 of this briefing highlights priority matters that you may need to make a decision on before the general election on 7 November 2026. In summary:
 - (a) **Law reform** – In 2022 and 2024, the Panel made law reform recommendations to update and amend the Code and other legislation to remove uncertainty and increase the efficient regulation of takeovers and to provide greater alignment between the regulation of schemes of arrangement under the Companies Act 1993 (the **Companies Act**) and takeovers under the Code. These two sets of recommendations are to be included in 'phase 2' of the Government's suite of capital markets reforms.
 - (b) **Panel funding** – The Panel is working with officials from its monitoring department, the Ministry of Business, Innovation and Employment (**MBIE**), on a review of the structure of the Panel's funding. The outcome of this project may result in fundamental changes to the Panel's funding sources, potentially including a reduction in the Panel's Crown appropriation.

2 Organisation

- 2.1 The Panel is an independent Crown entity established under the Takeovers Act 1993 (the **Takeovers Act**). The Panel consists of 11 members who are appointed by the Governor-General on the recommendation of the Minister of Commerce and Consumer Affairs and must, in the opinion of the Minister, be qualified or experienced in business, accounting or law. The members of the Panel are the Board for the purposes of the Crown Entities Act 2004 and can act via divisions of three or more members in respect of certain matters.
- 2.2 Panel members are closely attuned to market practices as they are all currently expert advisers on capital market transactions and/or active market participants. This helps to ensure that the Panel utilises its enforcement and exemption powers to promote the efficient application of the Code and investor confidence in the takeovers market.³
- 2.3 One Panel member is a member of the Australian Takeovers Panel and is appointed to the Panel under reciprocal arrangements between New Zealand and Australia. The Chair of the Panel is also a member of the Australian Takeovers Panel under these arrangements. Both Panels benefit from the cross-appointee's contributions at their respective Board meetings.
- 2.4 The composition of the Panel's Board and the retention of the Panel's institutional knowledge are critical to the Panel's role in New Zealand's capital markets. The Panel's succession plan for members is built around these objectives. Due to the highly specialised nature of the Panel's work, finding suitable candidates for the role is essential.

¹ 'Control change transactions' include takeover offers under the Code, schemes of arrangement under the Companies Act 1993, as well as certain shareholder-approved share allotments and share acquisitions.

² Unlisted Code companies are companies that have 50 or more shareholders with voting rights and have either total assets of at least \$30 million at the end of the most recent accounting period or total revenue of at least \$15 million in the most recent accounting period.

³ Having a Panel of active market practitioners means that conflicts of interest have to be carefully managed. The Panel operates under a robust Conflicts of Interest for Members Policy to ensure that only non-conflicted members act in relation to any matter that comes before the Panel.



- 2.5 The current Panel members and the expiry of their terms are set out in **Appendix A**. A summary of the Panel's functions and powers is set out in **Appendix B**.

The Panel executive

- 2.6 The Panel's staff (the **Panel executive**) consists of a team of specialist lawyers and administrative support, totalling 6.8 FTE. The Panel executive is based in Wellington and led by the Panel's Chief Executive, Andrew Hudson.
- 2.7 The Panel utilises a conventional management structure, with the Panel Board being responsible for the performance management, remuneration and succession planning of the Chief Executive, and the Chief Executive being responsible to the Board for the performance of the Panel executive.

3 Pending decisions for the Minister

Law reform

- 3.1 The Panel is seeking your support to progress the following law reform projects:

(a) *2022 recommendations*

In April 2022, the Panel made recommendations for law reform relating to the Takeovers Act and the Code. These recommendations are focused on technical updates to remove uncertainty and increase the efficient regulation of takeovers.

For example, the Panel proposes to remove the '12 month look-back'⁴ in the definition of Code company for listed companies that are taken private and de-listed. Purchasers that acquire 100% of a Code company would no longer have unnecessary obligations under the Code. Conversely, the Panel proposes to apply the 12-month look-back to some unlisted Code companies. This will provide increased certainty and confidence for investors in unlisted companies so that they can be sure that unlisted Code companies do not manipulate shareholder numbers or financial results to circumvent Code protections.

The Panel understands that these recommendations are to be included in 'phase 2' of the Government's suite of capital markets reforms. The Panel asks the Minister to prioritise the work required for Cabinet approval.

(b) *2024 recommendations*

In July 2024, the Panel made recommendations for amendments to the regulation of schemes of arrangement to provide greater alignment between the regulation of schemes of arrangement and Code takeovers as alternative mechanisms to achieve a change of control transaction. The Panel also recommended regulation of 'deal protection devices'⁵ in takeovers and schemes. Unlike the 2022 recommendations that were focused on technical amendments to increase certainty and efficiency, these recommendations address potential circumstances that could negatively affect shareholders in a change of control transaction.

⁴ A company will remain a Code company for 12 months after delisting from the NZSX. The 12-month look-back restriction was originally an anti-avoidance measure to stop listed companies from delisting and then immediately undertaking a control-change transaction. This is no longer possible under the NZX Listing Rules.

⁵ Deal protection devices are obligations that, in a scheme or Code offer, restrict the target's ability to engage with competing offerors and/or impose consequences on a party for not complying with that obligation or otherwise not proceeding with the transaction.



For example, the Panel recommends that its jurisdiction to regulate misleading or deceptive conduct be extended to include conduct in schemes of arrangement. While the Panel regulates this sort of conduct in a takeover, it is the Financial Markets Authority that has primary responsibility in a scheme of arrangement. This bifurcation of jurisdiction may result in unnecessary and potentially prejudicial delay in dealing with misleading statements made during a high-stakes takeover.

Again, the Panel understands that these recommendations are to be included in 'phase 2' of the Government's suite of capital markets reforms. The Panel asks the Minister to prioritise the work required for Cabinet approval.

(c) *2025 recommendations*

Finally, in September 2025, the Panel published law reform recommendations in respect of Court-ordered enforcement measures that may apply in response to breaches of the Code, including injunctions, civil remedy orders, compensatory orders and pecuniary penalties. The Panel recommended strengthening the current enforcement regime, addressing technical matters and modernising other aspects of the regime.

These recommendations have not yet been taken up by MBIE and may be a lesser priority prior to the election.

Panel funding and fees

- 3.2 In late 2022, the Panel commenced a review of its revenue streams with a focus on updating hourly rates for fees that the Panel charges for certain activities. The Panel's fee levels have not been increased since their introduction on 1 July 2001.⁶ The Panel carried out analysis of its fees and concluded that there was a compelling case for updates to the Panel's fee rates and the range of fee-chargeable activities and provided submissions to MBIE for an hourly rate fee review. The project went into abeyance from mid-2023.
- 3.3 Recently, MBIE has begun work on a wider review of the structure of the Panel's funding as well as the level of its fees. Over the past two months the Panel has been consulting with MBIE officials in the early phases of this project as potential fundamental changes to the Panel's funding sources are being considered.
- 3.4 In March 2026, the Panel met with MBIE officials to have initial discussions about the process being undertaken and the assumptions being used to determine potential changes to the Panel's funding model. The discussion was positive and consultative. In April 2026, the Panel provided additional written information for MBIE's consideration.
- 3.5 It is early days for this project, and the Panel will continue working closely with MBIE with the aim of ensuring:
- (a) any assumptions made regarding the Panel's funding requirements are well-founded and appropriately reflect the Panel's role in delivering wider public good;
 - (b) any potential funding model options that are developed reflect the nature of the Panel's operating cost base, which is predominantly fixed and requires predictable funding arrangements over the long term;
 - (c) ease of imposing and collecting any levy funding; and

⁶ See the Takeovers (Fees) Regulations 2001 available [here](#). There was a very minor reduction in fee rates in 2018 to make the Panel's fees GST-exclusive amounts.



(d) the Panel remains an efficient and credible regulator with appropriate financial capacity to undertake litigation as the Panel deems justified.

3.6 The Panel seeks the Minister's support to prioritise this work.



Appendix A – Current Panel members

Panel member	Expertise	Term expiry
Anna Buchly (Chair)	Corporate lawyer	30 January 2028
David Goatley (Deputy Chair)	Corporate consultant (former investment banker)	6 June 2028
Stephanie Charles (Australian Takeovers Panel representative)	Corporate adviser	29 April 2027
Rachel Dunne	Corporate lawyer	6 June 2028
Megan Glen	Investment banker	19 May 2024 ⁷
Sam Inglis	Investment adviser	6 June 2028
Sarah McEwan	Corporate lawyer	19 October 2030
Michael Pollard	Corporate lawyer	19 October 2030
Silvana Schenone	Investment banker	28 August 2027
Nathanael Starrenburg	Corporate lawyer	28 August 2027
Martin Stearne	Corporate consultant (former investment banker)	6 June 2028

⁷ In accordance with section 32(3) of the Crown Entities Act 2004, a Panel member continues in office despite the expiry of their term until they are reappointed, or their successor is appointed, or the Governor-General informs the member by written notice that the member is not to be reappointed and no successor is to be appointed at that time. Ms Glen continues in office on this basis.



Appendix B – Takeovers Panel’s functions and powers

1 The Panel’s responsibilities

The Panel’s role

- 1.1 The Panel’s core function is the regulation of takeovers⁸ of Code companies. The Panel’s role is to ensure that the process of a proposed transaction is transparent for shareholders and that shareholders have all the information that they need (and adequate time to consider that information) in order to decide for themselves whether to accept or approve a transaction.
- 1.2 The Panel does not regulate the ‘merits’ of a proposed takeover or decide whether a transaction should be accepted or approved by shareholders. The Code sets out the process that allows shareholders to decide for themselves the merits of a transaction and the Panel’s role is to ensure that this process is followed.
- 1.3 When a Code company undertakes a change of control transaction via scheme of arrangement⁹ the Panel’s role is to ensure that the scheme is transparent (in terms of the disclosures made for shareholders) and is conducted with equitable voting processes for shareholders.

Core functions and powers of the Panel

- 1.4 The core functions and powers of the Panel include the following:

- (a) *Regulation of changes of control of Code companies through the enforcement of the Code:*

The Code requires that shareholders have adequate disclosure to enable them to decide how to respond to a transaction and sufficient time to make that decision. To promote compliance with Code disclosure rules, the Panel executive reviews and comments on draft transaction documents. This allows potential disclosure or other compliance issues to be resolved before documents are provided to shareholders.

The Panel actively monitors transactions as they proceed in order to ensure that the integrity of disclosure for shareholders and compliance with timing rules are maintained. Where enforcement of the Code is necessary, the Panel has robust investigation and enforcement powers and the ability to act promptly including the making of temporary restraining orders and some limited permanent orders. When exercising its enforcement powers, the Panel acts judicially as a tribunal.

- (b) *Considering no-objection statement applications for Code company schemes:*

The Panel monitors Code company schemes of arrangement under the Companies Act to ensure that shareholders will not be adversely affected by the use of a scheme to acquire control rather than a takeover offer mechanism under the Code to effect a transaction.¹⁰ The Panel’s role is to ensure that disclosure to shareholders is equivalent to disclosure mandated by the Code and that shareholder ‘interest classes’ for the purposes of voting to approve or decline the scheme of arrangement are comprised fairly.¹¹

⁸ And other change of control transactions, including schemes of arrangement.

⁹ A scheme of arrangement is a statutory Court-approved procedure under the Companies Act that allows for the reorganisation of the rights and obligations of shareholders and companies. A takeover of a company can be conducted via a scheme of arrangement.

¹⁰ The Panel’s jurisdiction to issue a no-objection statement in relation to Code company schemes is contained in section 236A of the Companies Act.

¹¹ The Panel may inform the Court that it objects to a scheme proposal that failed to meet the Panel’s criteria set out in the Panel’s [Guidance Note on Schemes of Arrangement](#).



(c) *Giving approvals for the appointment of independent advisers, and other approvals:*

Independent advice on the merits of any proposed control-change transaction is a fundamental part of the information required for shareholders. The Panel approves the adviser for each transaction on the basis of their independence and competence.¹²

(d) *Granting of exemptions from compliance with the Code:*

The Panel has the power to grant individual exemptions to ensure that the Code applies effectively and appropriately to any particular transaction. ‘Class exemptions’ may also be granted to modify the application of the Code to classes of persons or transactions. The Panel can grant exemptions only if they are appropriate and consistent with the objectives of the Code.

(e) *Reviewing takeovers law and takeovers practice, and recommending to the Minister of Commerce and Consumer Affairs any law changes that the Panel considers necessary:*

As an expert body comprised of experienced takeovers practitioners and corporate advisers, the Panel is well placed to understand problems with takeovers law that need to be resolved. This enables the Panel to recommend law reform to deal with changing market behaviours and to facilitate the international competitiveness of New Zealand’s capital markets.

(f) *Promoting public understanding of takeovers law and practice:*

The Panel is committed to educating investors, directors and practitioners to improve their understanding of the obligations, rights and protections under the Code and under the Companies Act for control-change transactions. This contributes to increased confidence and participation in New Zealand’s capital markets.

2 Control-change transactions

Overview of the Code

- 2.1 As noted above, the Code ensures that a Code company’s shareholders have the opportunity to participate in control-change transactions on an equitable basis, including by specifying the processes that must be followed in a control-change transaction and the information that must be provided to shareholders to assist their decision-making.
- 2.2 The Code sets the control-change threshold at 20% of the company’s voting rights. If a shareholder owns 20% or more of a Code company’s voting rights, then any increase in that shareholder’s ownership of voting rights must be carried out in compliance with the Code.¹³ The Code prescribes rules that provide all shareholders with the opportunity to participate in the transaction on equitable terms.

Takeover offers

- 2.3 A takeover offer can be made by any person for all or some of the shares in the Code company. The Code requires that the offer be made to all shareholders and on the same terms. To enable shareholders to make

¹² The Panel may also approve minor variations to takeover offers to correct obvious errors, and may approve certain actions by directors of a target company that would otherwise be prohibited defensive tactics (under rules 44(4)(c) and 39 of the Code).

¹³ For some transactions, an exemption may provide relief from some of the Code’s requirements. This relief may be subject to conditions. In addition, shareholders who hold or control more than 50% and less than 90% of a company’s voting rights may acquire up to 5% of the company’s voting rights over any 12-month period under a Code-permitted exception.



their decision on whether to accept the offer, adequate disclosure, including advice from the company's directors and an assessment of the merits of the transaction from an independent adviser, must be provided. In addition, the Code also mandates the timing for each step of an offer to ensure that shareholders have adequate time to make their decision.

- 2.4 If the person making the offer receives enough acceptances of the offer to reach 90% ownership of the company's voting rights, the Code provides for the compulsory acquisition of the rest of the voting rights. This ensures a fair 'exit' for the minority shareholders and efficient outcomes for the acquirer.

Acquisitions or allotments approved by shareholders

- 2.5 If an acquisition of some or all of an existing shareholder's shares or an allotment of new shares would result in a person holding more than 20% of the voting rights in a Code company, the Code requires prior transaction approval by shareholders who are not involved in the acquisition or allotment by a majority vote. The Code prescribes the disclosures that must be provided to shareholders, including advice from an independent adviser on the merits of the transaction.

Schemes of arrangement under the Companies Act

- 2.6 A scheme of arrangement is a statutory Court-approved procedure that allows for the reorganisation of the rights and obligations of shareholders and companies. Change of control transactions can be conducted via a scheme of arrangement as an alternative to takeover offers under the Code. Code company schemes are schemes of arrangement that affect the voting rights of a Code company. Unlike a takeover offer under the Code, where shareholders decide whether to accept or reject the offer, change of control via a scheme requires shareholders to vote whether to approve the scheme.
- 2.7 The High Court has the ultimate authority over the conduct and approval of a scheme of arrangement. The Panel's role is to assist the High Court by reviewing scheme documents to ensure that:
- (a) appropriate information is given to shareholders (including advice from an independent adviser);
 - (b) voting classes of shareholders with similar interests have been adequately identified; and
 - (c) other protections available to shareholders under the scheme are appropriate.
- 2.8 The Panel also helps to ensure that other matters that are relevant to the Court's decision are properly brought to the Court's attention.
- 2.9 If the Panel is satisfied with these matters, it can issue a 'no-objection statement'.¹⁴ However, the Court has the power to approve a scheme without the Panel having provided a no-objection statement, if the Court is satisfied that the shareholders of the Code company will not be adversely affected by the use of a scheme rather than a takeover under the Code.

¹⁴ Section 236A(2)(b)(ii) of the Companies Act provides the Panel's jurisdiction to issue a no-objection statement in respect of a Code company scheme.