

Reprint  
as at 13 January 2020



## Takeovers Act 1993

Public Act      1993 No 107  
Date of assent    28 September 1993  
Commencement    see section 1

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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#### **Title** *[Repealed]*

Title: repealed, on 1 December 2002, by section 3 of the Takeovers Amendment Act 2002 (2002 No 45).

#### **1 Short Title and commencement**

- (1) This Act may be cited as the Takeovers Act 1993.
- (2) Except as provided in subsection (3), this Act shall come into force on 1 July 1994.
- (3) Section 17 and Part 3 come into force on 1 June 2001.

Section 1(3): replaced, on 1 June 2001, by section 3 of the Takeovers Amendment Act 2001 (2001 No 30).

## 2 Interpretation

(1) In this Act, unless the context otherwise requires,—

**accounting period** has the same meaning as in section 5(1) of the Financial Reporting Act 2013

**code company**—

- (a) has the meaning given to it in section 2A; and
- (b) includes, for the purpose set out in section 2AB, a company for the time being treated as a code company under that section

**company** has the same meaning as in section 2(1) of the Companies Act 1993

**court** means, in relation to any matter, the court before which the matter is to be determined

**director**,—

- (a) in relation to a company, means a person occupying the position of a director of the company, by whatever name called; and
- (b) in relation to a partnership (other than a special partnership or a limited partnership), means a partner; and
- (c) in relation to a special partnership or a limited partnership, means a general partner; and
- (d) in relation to a body corporate or unincorporate not referred to in paragraphs (a) to (c), means a person occupying a position in the body corporate or unincorporate that is comparable with that of a director of a company; and
- (e) in relation to any other person, means that person; and
- (f) includes a person in accordance with whose directions or instructions a person referred to in paragraphs (a) to (e) may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, or comparable to those of, a director

**document** means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

**financial product**, in relation to a code company,—

- (a) means—
  - (i) an equity security within the meaning of section 8 of the Financial Markets Conduct Act 2013, whether or not the security carries voting rights:

- (ii) a debt security, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company;
  - (iii) a managed investment product, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company; and
- (b) includes a financial product that is convertible, at the option of the product holder, into a financial product of the type referred to in paragraph (a)(i), (ii), or (iii)

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

**licensed market** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**licensed market operator** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**listed issuer** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**overseas regulator** means a body in another country with functions corresponding to those of the Panel

**Panel**—

- (a) means the Takeovers Panel established under Part 1; or
- (b) for the purposes of determining any matter or class of matter specified in a determination under section 7A, means the division of the Panel specified in the determination in accordance with section 7C(1)(a)

**quoted**, in relation to financial products of a person, means financial products of the person that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those financial products is suspended)

**Registrar** means a person who for the time being holds the office of Registrar of Companies or Deputy Registrar of Companies in accordance with the Companies Act 1993

**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993

**takeovers code** means the regulations made under section 19



**voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists:
  - (b) on a proposal that affects rights attached to the financial product that confers the voting right:
  - (c) on a proposal to put the company into liquidation:
  - (d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company:
  - (e) during the liquidation of the company:
  - (f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company.
- (2) In sections 32, 33, and 33AA and in subpart 2 of Part 3 (which contain the enforcement powers of the Panel and the court), unless the context otherwise requires, **contravene the takeovers code** or **not act in compliance with the takeovers code** includes—
- (a) a contravention of the takeovers code or a term or condition of an exemption from the takeovers code; or
  - (b) an attempt to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
  - (c) aiding, abetting, counselling, or procuring any other person to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
  - (d) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of the takeovers code or a term or condition of an exemption from the takeovers code; or
  - (f) conspiring with any other person to contravene the takeovers code or a term or condition of an exemption from the takeovers code.

Section 2(1) **accounting period**: inserted, on 13 January 2020, by section 116(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2(1) **code company**: replaced, on 13 January 2020, by section 116(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2(1) **company**: replaced, on 25 October 2006, by section 4(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 2(1) **court**: replaced, on 1 December 2002, by section 4(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 2(1) **director**: replaced, on 3 July 2014, by section 31(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **director** paragraph (d): amended, on 31 March 2017, by section 126 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 2(1) **document**: replaced, on 1 December 2002, by section 4(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 2(1) **financial product**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **licensed market**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **licensed market operator**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **listed issuer**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **Minister**: replaced, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2(1) **overseas regulator**: inserted, on 1 December 2002, by section 4(3) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 2(1) **Panel**: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **public issuer**: repealed, on 25 October 2006, by section 4(4) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 2(1) **quoted**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **registered exchange**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **registered exchange's market**: repealed, on 24 November 2009, by section 23(1) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **registered exchange's securities market**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **Registrar**: inserted, on 1 June 2001, by section 4 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 2(1) **Securities Commission**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **security**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **specified company**: repealed, on 7 July 2010, by section 4(3) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 2(1) **stock exchange**: repealed, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 2(1) **subsidiary**: inserted, on 13 January 2020, by section 116(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2(1) **takeovers code**: inserted, on 1 December 2002, by section 4(3) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 2(1) **voting right**: inserted, on 25 October 2006, by section 4(3) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 2(1) **voting right** paragraph (a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **voting right** paragraph (b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(2): replaced, on 25 October 2006, by section 4(5) of the Takeovers Amendment Act 2006 (2006 No 48).

## 2A Meaning of code company

- (1) **Code company** means a company—
  - (a) that is a listed issuer that has financial products that confer voting rights quoted on a licensed market; or
  - (b) that was within paragraph (a) at any time during a period specified in the takeovers code (being a period not exceeding 12 months before any date or the occurrence of any event referred to in the code); or
  - (c) that—
    - (i) has 50 or more shareholders and 50 or more share parcels; and
    - (ii) is at least medium-sized.
- (2) *[Repealed]*
- (3) In this section, **shareholder** means a shareholder holding a financial product that confers a voting right.
- (4) In this section, a company is **at least medium-sized** if—
  - (a) the company has completed 1 or more accounting periods and either or both of the following are true:
    - (i) on the last day of the company's most recently completed accounting period, the total assets of the company and its subsidiaries (if any) are at least \$30 million;
    - (ii) in the most recently completed accounting period, the total revenue of the company and its subsidiaries (if any) is at least \$15 million; or
  - (b) the company has not completed its first accounting period and on the last day of the most recently completed month the total assets of the company and its subsidiaries (if any) are at least \$30 million.

Section 2A: inserted, on 31 August 2012, by section 5 of the Takeovers Amendment Act 2012 (2012 No 68).

Section 2A(1): amended, on 13 January 2020, by section 117(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2A(1)(a): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2A(1)(a): amended, on 13 January 2020, by section 117(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2A(1)(b): amended, on 13 January 2020, by section 117(3) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2A(1)(c): replaced, on 13 January 2020, by section 117(4) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2A(2): repealed, on 13 January 2020, by section 117(5) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 2A(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2A(4): inserted, on 13 January 2020, by section 117(6) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

## **2AB Extended meaning of code company for purpose of completing code-regulated transactions**

- (1) This section applies if a company ceases to be a code company within the meaning of section 2A(1) as the result of, or during, a transaction or an event regulated under the takeovers code.
- (2) The company continues to be treated as a code company for the purpose of completing the transaction or event, until the transaction or event is complete and all requirements of the code in relation to the transaction or event have been complied with.
- (3) For the purposes of subsection (2), if, as a result of the transaction or event, a person becomes a dominant owner in the company, **completing the transaction or event** includes applying the compulsory acquisition rules in Part 7 of the code (and the transaction or event is not complete until those rules are applied).
- (4) Subsection (2) does not prevent the company from again becoming a code company under section 2A(1).
- (5) In this section,—
  - (a) **dominant owner**, in relation to a company, means a person who becomes the holder or controller, or 2 or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the voting rights in the company (whether by reason of acceptances of an offer or otherwise):
  - (b) words or expressions used in the definition of dominant owner have the same meanings as they have in the takeovers code:
  - (c) a reference to rules in Part 7 of the code includes any other rules that, with or without modification, replace or correspond to those rules.

Section 2AB: inserted, on 13 January 2020, by section 118 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

## **2B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2B: inserted, on 31 March 2017, by section 127 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

### **3 Act to bind the Crown**

This Act binds the Crown.

### **4 Object of this Act**

The object of this Act is to—

- (a) establish a panel to be called the Takeovers Panel:
- (b) empower the Minister, in consultation with the Panel, to formulate and make recommendations concerning the takeovers code (which sets out the rules applying to takeovers of code companies):
- (c) provide for the administration and enforcement of the takeovers code:
- (ca) provide criminal liability for false or misleading statements or information in relation to takeovers of code companies:
- (d) empower the Panel to keep under review, and promote public understanding of, the law relating to takeovers of code companies:
- (e) empower the Panel to co-operate with overseas regulators.

Section 4(a): amended, on 1 December 2002, by section 5(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Sections 4(b): replaced, on 1 December 2002, by section 5(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 4(b): amended, on 7 July 2010, by section 5 of the Takeovers Amendment Act 2010 (2010 No 88).

Sections 4(c): replaced, on 1 December 2002, by section 5(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 4(ca): inserted, on 25 October 2006, by section 5 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 4(ca): amended, on 7 July 2010, by section 5 of the Takeovers Amendment Act 2010 (2010 No 88).

Sections 4(d): replaced, on 1 December 2002, by section 5(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 4(d): amended, on 7 July 2010, by section 5 of the Takeovers Amendment Act 2010 (2010 No 88).

Sections 4(e): replaced, on 1 December 2002, by section 5(2) of the Takeovers Amendment Act 2002 (2002 No 45).

## **Part 1 Takeovers Panel**

### **5 Establishment of Takeovers Panel**

- (1) There is hereby established a panel to be called the Takeovers Panel.
- (2) The Panel is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Panel except to the extent that this Act expressly provides otherwise.

- (4) Members of the Panel are the board for the purposes of the Crown Entities Act 2004.

Section 5(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Sections 5(3): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Sections 5(4): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **6 Membership of Panel**

- (1) The Panel shall consist of not less than 5 and not more than 11 members.
- (2) Despite clause 1(2) of Schedule 5 of the Crown Entities Act 2004, 1 member must be appointed by the Governor-General, on the recommendation of the Minister, as chairperson of the Panel, and another must be appointed by the Governor-General, on the recommendation of the Minister, as deputy chairperson of the Panel.
- (2A) The chairperson and any deputy chairperson of the Panel may only be removed from office as chairperson or deputy chairperson for just cause.
- (3) At least 1 member of the Panel must be a barrister, a solicitor, or a barrister and solicitor of the High Court of not less than 7 years' practice.
- (4) The Minister must not recommend a person for appointment as a member of the Panel unless, in the opinion of the Minister, that person is qualified or experienced in business, accounting, or law.
- (5) Subsection (4) does not limit section 29 of the Crown Entities Act 2004.

Section 6(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(1): amended, on 1 December 2002, by section 6(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 6(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(3): amended, on 1 December 2002, by section 6(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 6(4): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 6(5): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **7 Associate members**

*[Repealed]*

Section 7: repealed, on 1 December 2002, by section 7(1) of the Takeovers Amendment Act 2002 (2002 No 45).

#### **7A Panel may act by divisions**

- (1) The Panel or chairperson may determine that the powers of the Panel in relation to any matter or class of matters may be exercised by separate divisions of the Panel.
- (2) However, the Panel or chairperson must not determine that a separate division of the Panel may exercise—
  - (a) any power in connection with the performance of its functions under section 8(1)(a):
  - (b) the power of the Panel to grant an exemption under section 45(1)(c).
- (3) The Panel or chairperson may revoke or amend a determination made under subsection (1).
- (4) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members or the chairperson.
- (5) The powers in this section are an exception to clause 14 of Schedule 5 of the Crown Entities Act 2004.
- (6) Clause 7 of Schedule 5 of that Act applies to meetings of a special division of the Panel.

Section 7A: replaced, on 1 December 2002, by section 8 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7A(2)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 7A(5): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7A(6): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **7B Membership and chairperson of division**

- (1) Each division consists of the members who are assigned to it for the time being by the Panel or the chairperson.
- (1A) Each division must have at least 3 members.
- (2) If the members appointed to a division do not include either the chairperson or the deputy chairperson, the Panel or chairperson must nominate one of those members as chairperson of that division.
- (3) *[Repealed]*
- (4) *[Repealed]*

Section 7B: inserted, on 1 June 2001, by section 5(1) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 7B(1): replaced, on 1 December 2002, by section 9(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7B(1A): inserted, on 1 December 2002, by section 9(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7B(2): amended, on 1 December 2002, by section 9(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7B(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 7B(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **7C Powers of division**

- (1) For the purposes of determining any matter or class of matter specified in a determination under section 7A,—
  - (a) the Panel consists of the division of the Panel specified in the determination; and
  - (b) the powers of any such division are not affected by any changes or vacancies in its membership.
- (2) A division of the Panel may exercise powers of the Panel under this Act even though another division of the Panel is exercising powers of the Panel at the same time.
- (3) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members of a division is as valid and effectual as if it had been passed at a meeting of that division duly called and constituted.
- (4) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.

Section 7C: inserted, on 1 June 2001, by section 5(1) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 7C(1): amended, on 1 December 2002, by section 10(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7C(1)(a): amended, on 1 December 2002, by section 10(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7C(1)(a): amended, on 1 December 2002, by section 10(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 7C(3): inserted, on 31 August 2012, by section 6 of the Takeovers Amendment Act 2012 (2012 No 68).

Section 7C(4): inserted, on 31 August 2012, by section 6 of the Takeovers Amendment Act 2012 (2012 No 68).

## **8 Functions of Panel**

- (1) The Panel has the following functions:
  - (a) to keep under review the law relating to takeovers of code companies and to recommend to the Minister any changes to that law that it considers necessary;
  - (b) *[Repealed]*
  - (c) for the purposes of paragraph (a), to keep under review practices relating to takeovers of code companies:



- (d) to investigate any act or omission or practice for the purpose of exercising its powers and functions under Parts 3 and 4:
  - (e) to make determinations and orders and make applications to the court in accordance with Part 3:
  - (eaa) to make determinations in relation to the reimbursement of expenses under sections 47 to 53:
  - (ea) to co-operate with any overseas regulator and, for that purpose (but without limiting this function), to communicate, or make arrangements for communicating, to that overseas regulator information obtained by the Panel in the performance of its functions and powers (whether or not confidential) that the Panel considers may assist that overseas regulator in the performance of its functions:
  - (eb) to consider applications for an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in section 236A of the Companies Act 1993), and to indicate whether or not it has an objection to such an order:
  - (f) to promote public understanding of the law and practice relating to takeovers:
  - (g) to perform such other functions as are conferred on it by this Act.
- (2) In the exercise of its functions and powers under Parts 3 and 4 and the takeovers code, the Panel shall comply with the principles of natural justice.
- (3) Except as expressly provided otherwise in this or any other Act, the Panel must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
- (a) this Act; and
  - (b) any other Act that expressly provides for the functions, powers, or duties of the Panel (other than the Crown Entities Act 2004).

Section 8(1)(a): replaced, on 1 December 2002, by section 11(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 8(1)(a): amended, on 7 July 2010, by section 6(1) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 8(1)(b): repealed, on 1 December 2002, by section 11(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 8(1)(c): amended, on 7 July 2010, by section 6(1) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 8(1)(c): amended, on 1 December 2002, by section 11(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 8(1)(d): amended, on 7 July 2010, by section 6(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 8(1)(eaa): inserted, on 31 March 2017, by section 128 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 8(1)(ea): inserted, on 1 December 2002, by section 11(3) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 8(1)(eb): inserted, on 3 July 2014, by section 31(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 8(2): amended, on 7 July 2010, by section 6(3) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 8(3): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Powers of Panel to take evidence**

*[Repealed]*

Section 9: repealed, on 1 December 2002, by section 12 of the Takeovers Amendment Act 2002 (2002 No 45).

## **10 Provisions relating to certain proceedings before Panel**

*[Repealed]*

Section 10: repealed, on 1 December 2002, by section 12 of the Takeovers Amendment Act 2002 (2002 No 45).

## **11 Protection from liability for Panel and members, officers, and employees**

- (1) No proceedings, civil or criminal, shall lie against the Panel for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Panel acted without reasonable care or in bad faith.
- (2) No proceedings, civil or criminal, lie against any member of the Panel, or any officer or employee of the Panel, or any member of a committee of the Panel, for anything that person may do or say or fail to do or say in the course of the operations of the Panel, unless it is shown by the Panel that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
  - (a) an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (b) the offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (c) the offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.
- (3A) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown that the person acted in bad faith.
- (3B) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (3C) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (4) *[Repealed]*

- (5) *[Repealed]*
- (6) *[Repealed]*
- (7) *[Repealed]*
- (8) *[Repealed]*
- (9) *[Repealed]*
- (10) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any statement, document, determination, order, or decision made by the Panel in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.
- (11) *[Repealed]*
- Compare: 1986 No 5 s 106; 1990 No 41 s 39
- Section 11 heading: replaced, on 1 December 2002, by section 13(1) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 11(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 11(3B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 11(3C): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 11(4): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(5): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(6): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(7): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(8): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(9): repealed, on 1 December 2002, by section 13(3) of the Takeovers Amendment Act 2002 (2002 No 45).
- Section 11(11): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **12 Meetings**

*[Repealed]*

Section 12: repealed, on 1 December 2002, by section 14 of the Takeovers Amendment Act 2002 (2002 No 45).

**13 Power to prohibit disclosure of information, documents, and evidence**

*[Repealed]*

Section 13: repealed, on 1 December 2002, by section 14 of the Takeovers Amendment Act 2002 (2002 No 45).

**14 Delegation**

- (1) The Panel may not delegate the powers in sections 31A, 31X, 32, and 45(1).
- (2) In other respects, section 73 of the Crown Entities Act 2004 applies.

Section 14: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 14(1): amended, on 25 October 2006, by section 6 of the Takeovers Amendment Act 2006 (2006 No 48).

**15 Powers**

*[Repealed]*

Section 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**15A Sharing of information and documents with FMA**

- (1) The Panel may provide to the FMA any information, or a copy of any document, that the Panel—
  - (a) holds in relation to the exercise of the Panel’s powers or the performance of its functions and duties; and
  - (b) considers may assist the FMA in the exercise of the FMA’s powers or the performance of its functions and duties under any enactment.
- (2) The Panel may use any information, or a copy of any document, provided to it by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Panel’s exercise of its powers or the performance of its functions and duties.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

Section 15A: replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

**15B Sharing of information and documents with Commerce Commission**

- (1) The Panel may provide to the Commerce Commission any information, or a copy of any document, that the Panel—
  - (a) holds in relation to the exercise of the Panel’s powers, or the performance of its functions and duties; and
  - (b) considers may assist the Commerce Commission in the exercise of the Commerce Commission’s powers, or the performance of its functions and duties, in respect of the Fair Trading Act 1986.

- (2) The Panel may use any information, or a copy of any document, provided to it by the Commerce Commission under section 48A of the Fair Trading Act 1986 in the Panel's exercise of its powers, or the performance of its functions and duties.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

Section 15B: replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **15C Sharing of information and documents with licensed market operators**

- (1) The Panel may provide to a licensed market operator any information, or a copy of any document, that the Panel—
  - (a) holds in relation to the exercise of the Panel's powers, or the performance of its functions and duties; and
  - (b) considers may assist the licensed market operator in the exercise of the operator's powers, or the performance of its functions and duties, under any enactment or any market rules (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- (2) The Panel may use any information, or a copy of any document, provided to it by a licensed market operator under section 357 or 358 of the Financial Markets Conduct Act 2013 in the Panel's exercise of its powers, or the performance of its functions and duties.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

Section 15C: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **16 Annual reports**

*[Repealed]*

Section 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **17 Annual fee in respect of funding of Panel**

- (1) Each code company shall pay such annual fee in respect of the funding of the Panel as may be prescribed by regulations made under this Act.
- (2) Any such fee shall be—
  - (a) payable to the Registrar of Companies upon delivery to the Registrar of the company's annual return; and
  - (b) payable in addition to any fee payable in respect of the annual return; and

- (c) recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Crown.
- (3) The Registrar of Companies shall, as soon as practicable, remit to the Panel the fees paid under this section.

Section 17(1): amended, on 7 July 2010, by section 7 of the Takeovers Amendment Act 2010 (2010 No 88).

#### **17A Panel deemed to be public authority**

*[Repealed]*

Section 17A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **18 Further provisions applying to Panel**

The provisions set out in Schedule 1 apply in respect of the Panel.

Section 18: amended, on 31 March 2017, by section 129 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **Part 2 Takeovers code**

#### **19 Power to make takeovers code**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out the rules applying to takeovers of code companies (a **takeovers code**).
- (2) The Minister must formulate and make his or her recommendations in accordance with this Part.

Section 19: replaced, on 1 December 2002, by section 16 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 19(1): amended, on 7 July 2010, by section 8 of the Takeovers Amendment Act 2010 (2010 No 88).

#### **20 Objectives of takeovers code**

- (1) In formulating recommendations concerning a takeovers code, the Minister shall consider the following objectives as the objectives for the code, namely,—
- (a) encouraging the efficient allocation of resources:
  - (b) encouraging competition for the control of code companies:
  - (c) assisting in ensuring that the holders of financial products in a takeover are treated fairly:
  - (d) promoting the international competitiveness of New Zealand's capital markets:
  - (e) recognising that the holders of financial products must ultimately decide for themselves the merits of a takeover offer:

- (f) maintaining a proper relation between the costs of compliance with the code and the benefits resulting from it.
- (2) In formulating recommendations concerning a takeovers code, it is for the Minister to determine the weight that should be given to any particular objective or objectives referred to in subsection (1).
- (3) *[Repealed]*
- (4) *[Repealed]*

Section 20(1): amended, on 1 December 2002, by section 17(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 20(1)(b): amended, on 7 July 2010, by section 9 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 20(1)(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 20(1)(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 20(2): replaced, on 1 December 2002, by section 17(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 20(3): repealed, on 1 December 2002, by section 17(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 20(4): repealed, on 1 December 2002, by section 17(2) of the Takeovers Amendment Act 2002 (2002 No 45).

## **21 Matters to be considered by Minister in making recommendations concerning takeovers code**

Without limiting the matters that the Minister may consider, the Minister must, in formulating recommendations concerning a takeovers code, consider whether the code should provide—

- (a) that advance notice and publicity should be given of takeovers:
- (b) that in a takeover, the code company and its financial product holders should be fully informed:
- (c) that in a takeover, offers should be made to all financial product holders, that the consideration offered should be the same for all financial product holders, and that all financial product holders should have the same opportunity for acceptance:
- (d) that incremental acquisitions and partial bids should be permitted:
- (e) that there should be rules to determine the price or prices payable for the acquisition of financial products in a takeover:
- (f) for the compulsory acquisition of financial products in a code company at the option of offerors or financial product holders, or both:
- (g) for the regulation of defensive tactics.

Section 21 heading: amended, on 1 December 2002, by section 18(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 21: amended, on 1 December 2002, by section 18(2) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 21(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 21(b): amended, on 7 July 2010, by section 10 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 21(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 21(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 21(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 21(f): amended, on 7 July 2010, by section 10 of the Takeovers Amendment Act 2010 (2010 No 88).

## **22 Specific provisions applying to takeovers code**

Without limiting section 19, but subject to section 23, regulations under that section may—

- (a) define the transactions or classes of transactions in relation to which the code applies and for that purpose define terms and expressions used in the code in such manner as it thinks fit;
- (b) prescribe the requirements in relation to offers and the making of offers to acquire financial products in a code company in a takeover including requirements as to the form and content of those offers, variations of those offers, the time during which those offers are to remain open for acceptance, the persons to whom those offers are to be made, and the manner of acceptance;
- (c) prescribe the information, statements, certificates, and documents or other matters that must be supplied to a code company and the financial product holders of the code company in a takeover;
- (d) prescribe requirements for the registration by the Registrar of Companies of documents in connection with a takeover;
- (e) prescribe the duties and obligations of a code company and the directors of the code company and other persons in a takeover.

Section 22: amended, on 1 December 2002, by section 19 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 22(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(b): amended, on 7 July 2010, by section 11 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 22(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).



Section 22(c): amended, on 7 July 2010, by section 11 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 22(e): amended, on 7 July 2010, by section 11 of the Takeovers Amendment Act 2010 (2010 No 88).

### **23 Takeovers code not to apply in certain cases**

Nothing in the takeovers code shall require any person to comply with the code—

- (a) by reason only of the fact that, on the coming into force of the code, a particular proportion of financial products have been acquired in a code company, whether by that person or any other person, before the code comes into force; or
- (b) by reason of the acquisition of financial products in a code company, whether by that person or any other person, on or after the coming into force of the code, if the acquisition arises from the performance of a contractual obligation incurred, or the exercise of a right acquired, before the date on which an approved takeovers code comes into force.

Section 23(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(a): amended, on 7 July 2010, by section 12 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 23(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(b): amended, on 7 July 2010, by section 12 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 23(b): amended, on 1 December 2002, by section 20 of the Takeovers Amendment Act 2002 (2002 No 45).

### **23A Takeovers code does not apply where court order under section 236 of Companies Act 1993**

The takeovers code does not apply where the court has made an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in section 236A of the Companies Act 1993).

Section 23A: inserted, on 3 July 2014, by section 31(4) of the Companies Amendment Act 2014 (2014 No 46).

### **24 Co-ordination with Australia**

In formulating recommendations concerning a takeovers code, the Minister must have regard, as far as practicable, to any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the Governments of Australia and New Zealand.

Section 24: replaced, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**25 Minister to consult Panel**

The Minister must, in formulating recommendations concerning a takeovers code, consult the Panel.

Section 25: replaced, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**26 Panel to consult with Minister**

*[Repealed]*

Section 26: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**27 Action taken by Takeover Panel Advisory Committee**

*[Repealed]*

Section 27: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**28 Approval of takeovers code**

*[Repealed]*

Section 28: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**29 Order in Council deemed to be regulation**

*[Repealed]*

Section 29: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**30 Minister may request formulation of further takeovers code**

*[Repealed]*

Section 30: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

**31 Revocation of takeovers code**

*[Repealed]*

Section 31: repealed, on 1 December 2002, by section 21 of the Takeovers Amendment Act 2002 (2002 No 45).

## Part 3

### Investigation and enforcement

Part 3: inserted, as Part 2A, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Part 3 Part number and heading: replaced, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

#### Subpart 1—Investigation and enforcement by Panel

Subpart 1 heading: inserted, on 25 October 2006, by section 8 of the Takeovers Amendment Act 2006 (2006 No 48).

#### *Panel's powers of inspection*

Heading: replaced, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

#### **31A Power to inspect documents**

- (1) The Panel may, in accordance with section 31BA,—
  - (a) require any person to produce for inspection any document kept by that person:
  - (b) if necessary, require any person to reproduce, or assist in reproducing, in usable form, information recorded in that document:
  - (c) inspect and make records of that document:
  - (d) for the purpose of making records of that document, take possession of that document, or any article or thing that the Panel reasonably requires to make a record of that document, and remove the document, article, or thing from the premises where it is kept for the period of time that is reasonable in the circumstances.
- (2) Documents may be required under this section either specifically, generally, or by class, nature, content, or effect.

Section 31A: replaced, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

#### **31B Power to request or approve Registrar or authorised person to inspect documents**

- (1) The Panel may, in accordance with sections 31BA and 31BB, request or approve the Registrar, or any other person authorised by the Panel or Registrar, to carry out an inspection by doing any of the things in section 31A(1).
- (2) A request or approval under subsection (1) may relate to a particular case, or a class or classes of cases, specified by the Panel.
- (3) The fact that the Registrar, or any person authorised by the Panel or Registrar, does, or attempts to do, any of the things in section 31A(1) is sufficient evidence that that inspection has been requested or approved by the Panel unless there is evidence to the contrary.

- (4) This section applies despite section 73 of the Crown Entities Act 2004.

Section 31B: replaced, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31B(4): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **31BA Limits on exercise of power to inspect documents**

The Panel may only carry out an inspection under section 31A, or request or approve the Registrar or any other person under section 31B to carry out an inspection, if—

- (a) the inspection is for the purposes of—
  - (i) this Act:
  - (ii) complying with the request of an overseas regulator under section 31P or otherwise co-operating with an overseas regulator; and
- (b) the Panel first considers, along with any other relevant matters, any matters relating to the necessity or expediency of carrying out an inspection (for example, whether it is practicable to obtain the information from other sources or by other means in the time available).

Section 31BA: inserted, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31BB Requirements for persons authorised to inspect documents**

- (1) The Panel or Registrar must not authorise a person to carry out an inspection under section 31A unless the Panel or Registrar is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to carry out an inspection.
- (2) A person authorised by the Panel or Registrar to carry out an inspection under section 31A must, if requested at the time of carrying out the inspection, produce evidence of that person's authority to carry out the inspection.

Section 31BB: inserted, on 1 December 2002, by section 22 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31C Disclosure of information from inspection**

- (1) On the direction of the Panel or Registrar, a person who has made an inspection under section 31A must give all records and disclose all information acquired in the course of the inspection to any person specified by the Panel or Registrar for the purposes of—
  - (a) this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act:
  - (b) detecting and prosecuting offences against any enactments other than those referred to in paragraph (a), but, in this case, those records and information are not admissible in any criminal proceedings against the

person from whom the records or information were acquired or any person to whom the records or information relate:

- (c) assisting the Panel to comply with the request of an overseas regulator under section 31P or otherwise co-operate with an overseas regulator.
- (2) The Minister may, by written notice, require the Panel or Registrar to give a direction under subsection (1), and the Panel or Registrar must comply with that requirement.
- (2A) Section 115 of the Crown Entities Act 2004 does not apply to that requirement.
- (3) The Panel may, by written notice, require the Registrar to give a direction under subsection (1), and the Registrar must comply with that requirement.
- (4) This section is subject to section 31X of this Act and to section 44 of the Financial Markets Authority Act 2011.

Section 31C: replaced, on 1 December 2002, by section 23 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31C(1)(a): replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31C(1)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31C(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 31C(4): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **31D Powers not limited**

Sections 31A, 31B, and 31C do not limit any power that the Panel, Registrar, or any other person has under the Companies Act 1993 or any other enactment.

Compare: 1978 No 103 s 67(7)

Section 31D: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 31D: amended, on 1 December 2002, by section 24 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31E Non-disclosure of information from inspection**

A person must not communicate to any other person any information acquired in the course of an inspection under section 31A except—

- (a) in accordance with section 31C; or
- (b) for the purposes of this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act; or
- (c) in accordance with the Official Information Act 1982 or the Privacy Act 1993; or
- (d) in the course of any criminal proceedings (but subject to the limitation in section 31C(1)(b)).

Compare: 1978 No 103 s 67A(1)

Section 31E: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 31E(b): replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31E(d): amended, on 1 December 2002, by section 25(2) of the Takeovers Amendment Act 2002 (2002 No 45).

### **31EA No privilege against self-incrimination**

Section 33B applies to information and documents provided under section 31A.

Section 31EA: inserted, on 1 December 2002, by section 26 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31EB Protections from liability for persons exercising powers of inspection**

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by the person in the performance or intended performance of the person's powers under section 31A, section 31C, or section 31E unless the person acts in bad faith.

Section 31EB: inserted, on 1 December 2002, by section 26 of the Takeovers Amendment Act 2002 (2002 No 45).

### *Offences*

#### *[Repealed]*

Heading: repealed, on 1 December 2002, by section 27 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31F Offences**

- (1) Every person commits an offence who—
  - (a) refuses or fails, without reasonable excuse, to produce any document for inspection, or reproduce or assist in reproducing, in usable form, information recorded in that document, when required to do so under section 31A; or
  - (b) wilfully resists or obstructs, or deceives or attempts to deceive, the Panel or Registrar, or any person authorised by the Panel or Registrar, in carrying out an inspection under section 31A; or
  - (c) is not the Panel, the Registrar, or a person authorised by the Panel or Registrar to carry out an inspection under section 31A and who wilfully communicates to any other person information acquired in the course of an inspection under that section; or
  - (d) wilfully contravenes section 31E.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

Section 31F: replaced, on 1 December 2002, by section 28 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31F(2): amended], on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Appeals*  
*[Repealed]*

Heading: repealed, on 1 December 2002, by section 29 of the Takeovers Amendment Act 2002 (2002 No 45).

**31G Rights of appeal**

A person who is aggrieved by an act or decision of the Panel or Registrar, or of any person authorised by the Panel or Registrar, under any of sections 31A to 31C may appeal against the act or decision to the court.

Compare: 1978 No 103 ss 68(1), 69A(1)

Section 31G: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 31G: amended, on 1 December 2002, by section 30 of the Takeovers Amendment Act 2002 (2002 No 45).

**31H Time for appeal**

An appeal under section 31G must be made—

- (a) within 21 days of the date on which the person was notified of the act, decision, or refusal; or
- (b) within any longer time allowed by the court.

Compare: 1978 No 103 ss 68(1), 69A(1)

Section 31H: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

**31I Situation while appeal pending**

While any appeal made under section 31G is pending,—

- (a) the Panel or Registrar, or any person authorised by the Panel or Registrar, may continue to exercise the powers under any of sections 31A to 31C as if no appeal had been made; and
- (b) no person is excused from fulfilling his or her obligations under any of those sections by reason of the appeal; and
- (c) information that is obtained as a result of an inspection to which the appeal relates is not admissible as evidence in any criminal proceedings against the person to whom the information relates.

Compare: 1978 No 103 s 68(3)

Section 31I: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 31I(a): amended, on 1 December 2002, by section 31(1) of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31I(a): amended, on 1 December 2002, by section 31(2) of the Takeovers Amendment Act 2002 (2002 No 45).

### **31J Determination of appeal**

The court must determine the appeal by either dismissing the appeal or giving such directions or making such determination in the matter as it thinks fit.

Compare: 1978 No 103 ss 68(2), 69A(2)

Section 31J: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

### **31K Requirements where appeal allowed**

To the extent that an appeal in respect of an act or decision of the Panel or Registrar, or any person authorised by the Panel or Registrar, under any of sections 31A to 31C is allowed or granted—

- (a) the Panel or Registrar must ensure that, as soon as practicable after the decision on the appeal is given, all records made by the Panel or Registrar, or by a person authorised by the Panel or Registrar, under section 31A(1)(c) in respect of the act or decision are destroyed; and
- (b) no information acquired under paragraph (a) or paragraph (b) of section 31A(1) in respect of the act or decision is admissible in evidence in any proceedings.

Compare: 1978 No 103 s 68(3)

Section 31K: inserted, on 1 June 2001, by section 9 of the Takeovers Amendment Act 2001 (2001 No 30).

Section 31K: amended, on 1 December 2002, by section 32 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31K(a): amended, on 1 December 2002, by section 32 of the Takeovers Amendment Act 2002 (2002 No 45).

#### *Panel's powers for receiving evidence*

Heading: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31L Who may receive evidence**

- (1) The Panel may receive evidence through a member, officer, or employee of the Panel, or any 2 or more of them.
- (2) However, if a person who is summoned to give evidence under section 31N requests that the evidence be received at a meeting of the Panel, then—
  - (a) subsection (1) does not apply, and the evidence must be received at a meeting of the Panel; and
  - (b) the meeting must not be held by a method under clause 8(b) of Schedule 5 of the Crown Entities Act 2004 except with the consent of the person summoned.



Section 31L: replaced, on 25 October 2006, by section 9 of the Takeovers Amendment Act 2006 (2006 No 48).

### **31M Admissibility of evidence**

The Panel may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—

- (a) in the opinion of the person receiving it, may assist the Panel in dealing effectively with any matter before it; or
- (b) the Panel may receive under section 31P.

Section 31M: replaced, on 25 October 2006, by section 9 of the Takeovers Amendment Act 2006 (2006 No 48).

### **31MA How evidence may be given**

- (1) The Panel may receive evidence—
  - (a) given on oath:
  - (b) given not on oath:
  - (c) if the person receiving the evidence permits it, given by a written statement:
  - (d) if the person receiving the evidence thinks it is appropriate, given by a written statement verified on oath:
  - (e) given by audio-visual communication, if the Panel and the person giving the evidence agree.
- (2) A member, officer, or an employee of the Panel may administer an oath for the purpose of a person giving evidence on oath.

Section 31MA: inserted, on 25 October 2006, by section 9 of the Takeovers Amendment Act 2006 (2006 No 48).

### **31N Power to summon witnesses**

- (1) A member of the Panel may issue a summons to a person requiring that person to appear (in the case of a body corporate, to appear by its authorised representative) before the Panel, or a member, officer, or employee of the Panel, in relation to any matter before the Panel and to do any of the following things:
  - (a) give evidence:
  - (b) give evidence under oath:
  - (c) provide any documents or information that are in the person's possession or control and that are relevant to the matter.
- (2) The summons must be in writing, be signed by a member of the Panel, and state—
  - (a) the date and time when, and the place where, the person must attend; and
  - (b) the documents or information that the person is required to provide (either generally, specifically, or by class, nature, content, or effect); and

- (c) the person's right to request that the person give evidence at a meeting of the Panel; and
  - (d) the penalty for failing to attend under section 44.
- (3) A summons may be served,—
- (a) in the case of a natural person, by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least 24 hours before his or her attendance is required:
  - (b) in the case of a body corporate, by leaving it at the body corporate's usual place of business at least 24 hours before its attendance is required.

Compare: 1978 No 103 s 18(3); 1993 No 107 s 9(3)

Section 31N: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 31N(1): replaced, on 25 October 2006, by section 10(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 31N(2)(c): amended, on 25 October 2006, by section 10(2) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 31N(3): replaced, on 25 October 2006, by section 10(3) of the Takeovers Amendment Act 2006 (2006 No 48).

### **31O Witnesses' expenses**

- (1) If a person has appeared as a witness (whether summoned or not), the Panel may, if it thinks fit, order any sum to be paid to that witness for his or her expenses.
- (2) That sum must not exceed the amount that would be payable to the witness if his or her attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Compare: 1978 No 103 s 18(5); 1993 No 107 s 9(5)

Section 31O: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

#### *Exercise of inspection and evidence powers for overseas regulators*

Heading: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31P Power of Panel to act on requests of overseas regulators**

- (1) An overseas regulator may request the Panel to inquire into any matter related to the functions of that overseas regulator.
- (2) The Panel may obtain information, documents, or evidence that, in the Panel's opinion, is likely to assist the Panel in complying with that request by—
  - (a) exercising its powers of inspection under this Part:
  - (b) exercising its powers to receive evidence and summon witnesses under this Part.

- (3) The Panel may transmit the information, documents, or evidence obtained by it to the overseas regulator in the manner that the Panel thinks fit.

Section 31P: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

**31Q Panel's consideration of requests**

- (1) The Panel may comply with a request under section 31P only if the Panel is satisfied that—
- (a) compliance will not substantially affect the performance of its other functions; and
  - (b) it is appropriate to do so after taking into account any matters the Panel thinks relevant; and
  - (c) the Minister has given his or her approval for the Panel to comply with the request.
- (2) The Minister's approval may relate to a particular request, or a class or classes of requests, specified by the Minister.
- (3) The matters the Panel may take into account under subsection (1) include, without limitation,—
- (a) whether the Panel is likely to be able to obtain the requested information, documents, or evidence:
  - (b) the cost to the Panel of complying with the request:
  - (c) whether the overseas regulator could more conveniently have the request satisfied from another source:
  - (d) the extent to which the functions of the overseas regulator correspond with the functions of the Panel:
  - (e) whether the overseas regulator would be likely to comply with a similar request made by the Panel and whether any arrangement with the overseas regulator to that effect exists:
  - (f) whether, in the Panel's opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

Section 31Q: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

**31R Conditions that may be imposed on providing information to overseas regulators**

- (1) The Panel may impose any conditions in relation to providing information, documents, or evidence to an overseas regulator (whether in compliance with a request of an overseas regulator or otherwise).
- (2) Those conditions may include, without limitation, conditions relating to—

- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- (b) the storing of, use of, or access to anything provided:
- (c) the copying, returning, or disposing of copies of documents provided:
- (d) payment of the costs incurred by the Panel in providing anything or in generally complying with a request.

Section 31R: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31S Undertakings to be obtained before providing certain information to overseas regulators**

The Panel must not provide any information, evidence, or documents obtained from a person by a summons under section 31N to an overseas regulator (whether in compliance with the request of an overseas regulator or otherwise) unless the Panel has received in writing an undertaking by the overseas regulator to the effect that the information, evidence, or documents—

- (a) will not be used by the overseas regulator as evidence in criminal proceedings against the person (other than a proceeding in respect of the falsity of the person's testimony); and
- (b) to the extent to which it is within the ability of the overseas regulator to ensure, will not be used by any other person, authority, or agency as evidence in proceedings of that kind.

Section 31S: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

#### *Panel's power to accept undertakings*

Heading: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31T Panel may accept undertakings**

- (1) The Panel may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the Panel is exercising any of its powers or performing any of its functions under this Act or any other Act.
- (2) The person may withdraw or vary the undertaking with the consent of the Panel.

Section 31T: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31U Enforcement of undertakings**

- (1) If the Panel considers that a person who has given an undertaking under section 31T has breached a term of that undertaking, the Panel may apply to the court for an order under subsection (2).

- (2) The court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
- (a) an order directing the person to comply with that term:
  - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:
  - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach:
  - (d) an order for any consequential relief that the court thinks appropriate.

Section 31U: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

#### *Proceedings before Panel*

Heading: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

### **31V Right to be heard and represented at proceedings before Panel**

- (1) At any meeting of the Panel held for the purposes of section 32, the Panel must allow to be heard and represented any person who applies to the Panel for leave to be heard and represented and who is a person to whom notice of a meeting of the Panel is given under section 32(1).
- (2) Subject to subsection (1), at any meeting of the Panel held for the purposes of this Act, the Panel must allow to be heard and represented any person who applies to the Panel for leave to be heard and represented and who, in the opinion of the Panel, is a person who ought to be heard or whose appearance or representation will assist the Panel in its consideration of the matter before it.
- (3) Every meeting of the Panel or of a division of the Panel that is held for the purposes of section 31X or section 32 must be attended by at least 1 person—
- (a) who is a barrister, a solicitor, or a barrister and solicitor of the High Court of New Zealand of not less than 7 years' practice; or
  - (b) who—
    - (i) is enrolled as a barrister, as a solicitor, as a barrister and solicitor, or as a legal practitioner of the High Court of Australia, of any federal court of Australia, or of the Supreme Court of any State or Territory of Australia; and
    - (ii) has not less than 7 years' practice.

Compare: 1978 No 103 s 19(1), (2); 1993 No 107 s 10

Section 31V: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

**31W Panel to hear proceedings in private**

The Panel may decide whether to hold any meeting or any part of a meeting in public or in private.

Compare: 1993 No 107 s 12

Section 31W: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

**31X Power to make confidentiality orders**

- (1) The Panel may, on its own initiative or on the application of any person, make an order prohibiting—
  - (a) the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry or other proceedings of the Panel:
  - (b) the giving of evidence involving any such information, document, or evidence.
- (2) The Panel may make the order on the terms and conditions (if any) that it thinks fit.
- (3) An order under subsection (1) may be expressed to have effect from the commencement of any inquiry or other proceedings of the Panel to the end of that inquiry or proceedings.
- (4) At the end of the inquiry or proceedings, the Official Information Act 1982 applies to any information or document or evidence that was the subject of the order.

Compare: 1978 No 103 s 19(5)(b), (6); 1993 No 107 s 13

Section 31X: inserted, on 1 December 2002, by section 33 of the Takeovers Amendment Act 2002 (2002 No 45).

*Enforcement of takeovers code by Panel*

Heading: replaced, on 1 December 2002, by section 34 of the Takeovers Amendment Act 2002 (2002 No 45).

**32 Panel's powers in respect of compliance with takeovers code**

- (1) The Panel may at any time, if it considers that a person may not have acted or may not be acting or may intend not to act in compliance with the takeovers code, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding 7 days, hold a meeting for the purpose of determining whether to exercise its powers under this section.
- (2) Where the Panel gives a notice under subsection (1), it may make a temporary restraining order that is expressed to expire with the close of the second day after the date for which the meeting was convened.
- (3) Following the meeting specified in subsection (1), the Panel may make a determination—

- (a) that it is satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code; or
  - (b) that it is not satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code.
- (3A) If the Panel makes a determination under subsection (3), the Panel must, as soon as reasonably practicable, give written notice of its reasons for the determination to the person the determination concerns.
- (4) Where the Panel makes a determination on reasonable grounds under subsection (3)(b), the Panel may, at any time before the close of the second day after the date for which the meeting was convened,—
- (a) make a temporary restraining order (relating to the non-compliance with the takeovers code) that is expressed to expire with the close of such day as shall be specified in the order, not being a day that is later than 21 days after the date on which the temporary restraining order is made:
  - (b) make an order continuing any temporary restraining order (relating to the non-compliance with the takeovers code) made under subsection (2) until the close of such day as may be specified in the order, not being a day that is later than 21 days after the date on which the temporary restraining order is made:
  - (c) make a permanent compliance order (relating to the non-compliance with the takeovers code):
  - (d) if it makes any order under this subsection, also make an order extending, for a reasonable time, the period for which a takeover offer must remain open.
- (4A) If the Panel makes an order under this section, the Panel—
- (a) must immediately give written notice to the person to whom the order is directed of the terms and conditions of the order; and
  - (b) must, as soon as is reasonably practicable, also give that person written notice of the reasons for the order; and
  - (c) may also give notice to any other person of those matters.
- (5) An order made under this section may be made on any terms and conditions that the Panel thinks fit.
- (6) The Panel may vary the order in the same way as it may be made under this section.
- (7) The Panel may revoke the order or suspend the order on the terms and conditions it thinks fit.

Section 32(2): amended, on 25 October 2006, by section 11(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(3A): inserted, on 25 October 2006, by section 11(2) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(4)(a): amended, on 25 October 2006, by section 11(3) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(4)(b): amended, on 25 October 2006, by section 11(3) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(4)(c): inserted, on 25 October 2006, by section 11(4) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(4)(d): inserted, on 25 October 2006, by section 11(4) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(4A): inserted, on 25 October 2006, by section 11(5) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(5): inserted, on 1 December 2002, by section 35 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 32(5): amended, on 25 October 2006, by section 11(6) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(6): inserted, on 1 December 2002, by section 35 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 32(6): amended, on 25 October 2006, by section 11(7) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 32(7): inserted, on 1 December 2002, by section 35 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 32(7): amended, on 25 October 2006, by section 11(7) of the Takeovers Amendment Act 2006 (2006 No 48).

### 33 Temporary restraining orders

For the purposes of section 32, a temporary restraining order is an order for 1 or more of the following:

- (a) restraining a person from acquiring financial products in the code company concerned or any interest in or rights relating to such financial products:
- (b) restraining a person from disposing of financial products in the code company concerned or any interest in or rights relating to such financial products:
- (c) restraining a person from exercising the right to vote attaching to financial products in the code company concerned or any other right relating to such financial products:
- (d) restraining a person from taking any action (including from making any statement or distributing any document) that is or that may reasonably be expected to constitute a contravention of the takeovers code (*see* section 2(2) for the definition of contravention of the takeovers code):
- (e) directing the code company concerned not to make any payments in respect of any financial products:
- (f) directing the code company concerned not to register the transfer or transmission of any financial products:



- (g) directing the code company concerned not to issue or allot financial products to any person:
- (h) for the purpose of securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

Section 33 heading: amended, on 25 October 2006, by section 12(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33: amended, on 25 October 2006, by section 12(2) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(a): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(b): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(c): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33(d): replaced, on 25 October 2006, by section 12(3) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(e): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(f): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33(g): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(g): amended, on 7 July 2010, by section 13 of the Takeovers Amendment Act 2010 (2010 No 88).

### 33AA Permanent compliance orders

For the purposes of section 32, a permanent compliance order is an order for 1 or more of the following:

- (a) prohibiting or restricting a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the takeovers code (*see* section 2(2) for the definition of contravention of the takeovers code):
- (b) directing a person to disclose in accordance with the order information for the purpose of securing compliance with the takeovers code:

- (c) directing a person to publish, at the person's own expense, in the manner and at the times specified in the order corrective statements that are specified in, or are to be determined in accordance with, the order:
- (d) for the purpose of securing compliance with any of those orders, an order directing a person to do or refrain from doing a specified act.

Section 33AA: inserted, on 25 October 2006, by section 13 of the Takeovers Amendment Act 2006 (2006 No 48).

*Miscellaneous provisions for investigation and enforcement by Panel*

Heading: inserted, on 1 December 2002, by section 36 of the Takeovers Amendment Act 2002 (2002 No 45).

**33A Witnesses and counsel to have privileges of witnesses and counsel in court**

- (1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the Panel, a member, officer, or employee of the Panel, or a person authorised by the Panel under section 31B, as witnesses have in proceedings before a court.
- (2) Every person appearing as counsel before the Panel, or a member, officer, or employee of the Panel, has the same privileges as counsel have in proceedings before a court.
- (3) Every person has the same privileges in relation to providing information and documents to the Registrar, or a person authorised by the Registrar under section 31B, as witnesses have in proceedings before a court.
- (4) This section is subject to section 33B.

Section 33A: inserted, on 1 December 2002, by section 36 of the Takeovers Amendment Act 2002 (2002 No 45).

**33B No privilege against self-incrimination**

No person is excused from answering any question or providing any information or document under this Act on the ground that to do so would or might incriminate or tend to incriminate that person.

Compare: 1993 No 107 s 11(4)

Section 33B: inserted, on 1 December 2002, by section 36 of the Takeovers Amendment Act 2002 (2002 No 45).

**33C Restrictions on use of self-incriminating statements obtained by summons**

- (1) A self-incriminating statement made orally by a person summoned under section 31N (whether or not the statement is recorded in writing) in the course of answering any question before, or providing any information or document to, the Panel, or a member, officer, or employee of the Panel,—
  - (a) subject to paragraph (b), is not admissible in—
    - (i) criminal proceedings against that person; or

- (ii) proceedings under this Act or the Financial Markets Conduct Act 2013 for a pecuniary penalty order against that person; but
  - (b) is admissible against that person in any proceeding in respect of the falsity of the person's testimony, for example, in a prosecution for perjury or for an offence under section 44(1).
- (2) In addition,—
  - (a) a refusal or failure to answer a question or provide information or a document or comply with any other requirement may be used in evidence against that person in proceedings for an offence under section 44(1) arising from that refusal or failure; and
  - (b) the answering of a question in a way that is false, deceptive, or misleading or the providing of information or a document that is false, deceptive, or misleading may be used in evidence against that person in proceedings for an offence under section 44(1) arising from that act.

Section 33C: replaced, on 25 October 2006, by section 14 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33C(1)(a)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **33D Limitation on disclosure of information obtained in Panel's operations**

- (1) No court or other person may require a member, an officer, or an employee of the Panel, any delegate of the Panel, any expert appointed by the Panel, or any other person present at a meeting of the Panel to—
  - (a) give evidence in court or in any proceedings of a judicial nature of anything coming to his or her knowledge in connection with the operations of the Panel; or
  - (b) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the Panel.
- (2) Subsection (1) does not apply to—
  - (a) proceedings in respect of the falsity of any testimony; or
  - (b) proceedings to which the Panel is a party; or
  - (c) proceedings in respect of—
    - (i) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
    - (ii) the offence of conspiring to commit an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
    - (iii) the offence of attempting to commit an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961.
- (3) This section does not limit the application of the Official Information Act 1982.  
Compare: 1978 No 103 s 28(4), (5); 1993 No 107 s 11(7), (8)

Section 33D: inserted, on 1 December 2002, by section 36 of the Takeovers Amendment Act 2002 (2002 No 45).

Section 33D(2)(c)(i): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 33D(2)(c)(ii): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 33D(2)(c)(iii): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

## Subpart 2—Enforcement by court

Subpart 2 heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### *Overview of enforcement powers and civil remedies*

Heading: replaced, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **33E Overview of enforcement powers and civil remedies**

- (1) The following enforcement orders and remedies (**civil remedy orders**) are available under this subpart for a contravention of the takeovers code:
  - (a) an injunction:
  - (b) a civil remedy order under section 33I:
  - (c) a compensatory order:
  - (d) a pecuniary penalty order and declaration of contravention (on application by the Panel only).
- (2) *See* section 2(2) for the definition of contravention of the takeovers code in this subpart.
- (3) This section is a guide only to the general scheme and effect of this subpart.

Section 33E: replaced, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### *Injunctions*

Heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **33F What court may injunct**

The court may, on application by any person in accordance with section 35, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of the takeovers code.

Section 33F: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **33G When court may grant injunctions and interim injunctions**

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—

- (a) it is satisfied that the person has engaged in conduct of that kind; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Subsections (1)(b) and (2) apply whether or not—
- (a) the person has previously engaged in conduct of that kind;
  - (b) there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

Section 33G: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **33H Undertaking as to damages not required by Panel**

- (1) If the Panel applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Panel to give an undertaking as to damages.
- (2) However, in determining the Panel's application for the grant of an interim injunction, the court must not take into account that the Panel is not required to give an undertaking as to damages.

Section 33H: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### *Various civil remedy orders*

Heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **33I When court may make various civil remedy orders**

The court may, on application by any person in accordance with section 35, make 1 or more of the civil remedy orders described in section 33J if the court is satisfied on reasonable grounds that a person has contravened or is contravening or intends to contravene the takeovers code.

Section 33I: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **33J Terms of various civil remedy orders**

A civil remedy order under section 33I may—

- (a) restrain the exercise of rights attaching to financial products or declare an exercise of those rights to be void and of no effect;
- (b) restrain the issue or allotment of financial products or restrain any distribution due in relation to financial products:

- (c) restrain the acquisition or disposal of financial products or of interests in or rights relating to them or restrain the registration of any transfer or transmission of financial products:
- (d) direct the disposal of financial products or of interests in or rights relating to them (including the person or class of persons to which they must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:
- (e) require financial products to be forfeited and require the issuer to cancel the forfeited financial products:
- (f) cancel an agreement for the acquisition or disposal of financial products or interests in or rights relating to them:
- (g) vest financial products or interests in or rights relating to them in a trustee for sale on the terms and conditions the court thinks fit:
- (h) declare an agreement for the acquisition of financial products or interests in or rights relating to them to be voidable at the option of the person from whom the financial products or interests or rights were acquired:
- (i) if a contract is entered into in contravention of the takeovers code, or a contract contains a provision which, if given effect to, would contravene the takeovers code,—
  - (i) vary the contract, in such manner as the court thinks fit:
  - (ii) cancel the contract:
  - (iii) require any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract:
- (j) prohibit or restrict a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the takeovers code:
- (k) direct a person to disclose in accordance with the order information for the purpose of securing compliance with the takeovers code even though the time for doing so may have expired:
- (l) direct a person to publish, at the person's own expense, in the manner and at the times specified in the order corrective statements that are specified in, or are to be determined in accordance with, the order:
- (m) require a person to comply with any provision of the takeovers code even though the time for doing so may have expired.

Section 33J: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33J(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(g): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33J(h): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### *Compensatory orders*

Heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **33K When court may make compensatory orders**

- (1) The court may make a compensatory order, on application by any person in accordance with section 35, if the court is satisfied that—
  - (a) there is a contravention of the takeovers code; and
  - (b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage because of the contravention.
- (2) The court may make a compensatory order whether or not the aggrieved person is a party to the proceedings.

Section 33K: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **33L Terms of compensatory orders**

If section 33K applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce that loss or damage, including an order (without limitation) to—

- (a) direct the person in contravention to pay to the aggrieved person the amount of the loss or damage;
- (b) direct the person in contravention to refund money or return property to the aggrieved person;
- (c) if a contract has been entered into between the person in contravention and the aggrieved person,—
  - (i) vary the contract or any collateral arrangement as specified in the order and, if the court thinks fit, declare the contract or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order:

- (ii) cancel the contract and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:
- (iii) require the person in contravention to take any action the court thinks fit to reinstate the parties as near as may be possible to their former positions.

Section 33L: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

*Pecuniary penalty orders and declarations of contravention*

Heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

**33M When court may make pecuniary penalty orders and declarations of contravention**

If the Panel applies for a pecuniary penalty order against a person under this Act in accordance with section 35, the court—

- (a) must determine whether the person has contravened the takeovers code; and
- (b) must make a declaration of contravention (*see* sections 33N and 33O) if satisfied that the person has contravened the takeovers code; and
- (c) may order the person to pay a pecuniary penalty that the court considers appropriate to the Crown (*see* sections 33P and 33Q) if satisfied that the person has contravened the takeovers code, that the person knew or ought to have known of the conduct that constituted the contravention, and that the contravention—
  - (i) materially prejudices the interests of offerees, the code company, the offeror or acquirer, competing offerors, or any other person involved in or affected by a transaction or event that is or will be regulated by the takeovers code, or that is incidental or preliminary to a transaction or event of that kind; or
  - (ii) is likely to materially damage the integrity or reputation of any of New Zealand’s financial markets; or
  - (iii) is otherwise serious.

Section 33M: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33M(c)(i): amended, on 7 July 2010, by section 14 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 33M(c)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).



### **33N Purpose and effect of declarations of contravention**

- (1) The purpose of a declaration of contravention is to enable an applicant for a civil remedy order under section 33I or a compensatory order under section 33K to rely on the declaration of contravention in the proceedings for that order, and not be required to prove the contravention.
- (2) Accordingly, a declaration of contravention is conclusive evidence of the matters that must be stated in it under section 33O.

Section 33N: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **33O What declarations of contravention must state**

A declaration of contravention must state the following:

- (a) the court that made the declaration; and
- (b) the provision of the takeovers code to which the contravention relates or, if the contravention is of an exemption, both the term or condition contravened and the takeovers code provision to which the exemption relates; and
- (c) the person in contravention; and
- (d) the conduct that constituted the contravention and, if a transaction constituted the contravention, the transaction; and
- (e) the code company to which the conduct related.

Section 33O: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33O(e): amended, on 7 July 2010, by section 15 of the Takeovers Amendment Act 2010 (2010 No 88).

### **33P Maximum amount of pecuniary penalty**

The maximum amount of a pecuniary penalty is \$500,000 for an individual and \$5,000,000 for a body corporate, for each contravention.

Section 33P: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **33Q Considerations for court in determining pecuniary penalty**

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—

- (a) the principles contained in the takeovers code; and
- (b) the nature and extent of the contravention; and
- (c) the likelihood, nature, and extent of any damage to the integrity or reputation of any of New Zealand's financial markets because of the contravention; and
- (d) the nature and extent of any loss or damage suffered by a person referred to in section 33M(c)(i) because of the contravention; and

- (e) the circumstances in which the contravention took place; and
- (f) whether or not the person in contravention has previously been found by the court in proceedings under this Act to have engaged in any similar conduct.

Section 33Q: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 33Q(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **33R Court must order that recovery from pecuniary penalty be applied to Panel's actual costs**

If the court orders that a person pay a pecuniary penalty, and the proceedings were brought (in whole or in part) by the Panel, the court must also order that the penalty must be applied first to pay the Panel's actual costs in bringing the proceedings.

Section 33R: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

#### *General*

Heading: inserted, on 25 October 2006, by section 16 of the Takeovers Amendment Act 2006 (2006 No 48).

### **34 Court may make orders**

*[Repealed]*

Section 34: repealed, on 25 October 2006, by section 15 of the Takeovers Amendment Act 2006 (2006 No 48).

### **35 Persons who may apply**

- (1) Where the Panel makes a determination under section 32(3)(b) (a determination that the Panel is not satisfied that a person has acted or is acting or intends to act in compliance with the takeovers code) the following persons may, subject to subsection (2), make an application to the court under section 33F, 33I, or 33K:
  - (a) the Panel:
  - (b) if the code company's financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:
  - (c) the code company concerned:
  - (d) a member or financial product holder of the code company concerned:
  - (e) a person who was a member or financial product holder of the code company concerned at the time that the conduct to which the application relates occurred:

- (f) a person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire financial products in the code company in accordance with the takeovers code:
  - (g) with the leave of the court, any other person.
- (2) A person referred to in any of paragraphs (b) to (f) of subsection (1) is not entitled to make an application to the court unless—
- (a) the Panel has consented to the making of the application; or
  - (b) that person has requested the Panel in writing to make an application to the court itself and the Panel has not made such an application before the expiration of 10 days after receiving the request.
- (3) Where a request is made to the Panel to hold a meeting under section 32(1) and the Panel does not, within 14 days after receiving the request, make a determination under section 32(3), the following persons may make an application to the court under section 33F, 33I, or 33K—
- (a) if the code company's financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:
  - (b) the code company concerned:
  - (c) a member or financial product holder of the code company concerned:
  - (d) a person who was a member or financial product holder of the code company concerned at the time that the conduct to which the application relates occurred:
  - (e) a person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire financial products in the code company in accordance with the takeovers code:
  - (f) with the leave of the court, any other person.
- (4) If the Panel makes a determination under section 32(3)(b) (a determination that the Panel is not satisfied that a person has acted or is acting or intends to act in compliance with the takeovers code), the Panel may make an application to the court under section 33M.

Section 35(1): amended, on 25 October 2006, by section 17(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 35(1)(b): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(1)(c): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(1)(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(1)(d): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(1)(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(1)(e): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(1)(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(1)(f): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(3): amended, on 25 October 2006, by section 17(2) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 35(3)(a): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(3)(b): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(3)(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(3)(c): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(3)(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(3)(d): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(3)(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 35(3)(e): amended, on 7 July 2010, by section 16(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 35(4): replaced, on 25 October 2006, by section 17(3) of the Takeovers Amendment Act 2006 (2006 No 48).

### **36 Orders**

*[Repealed]*

Section 36: repealed, on 25 October 2006, by section 18 of the Takeovers Amendment Act 2006 (2006 No 48).

### **37 Interim orders**

*[Repealed]*

Section 37: repealed, on 25 October 2006, by section 18 of the Takeovers Amendment Act 2006 (2006 No 48).

### **38 Court may have regard to determinations and recommendations by Panel**

- (1) The court may, in determining any application under this subpart, have regard to any determination made by the Panel under section 32(3) relating to the matter concerned.
- (2) The court may, in determining whether to make any order under section 33I or 33K and the type of any such order, have regard to any recommendation made by the Panel either at any meeting of the Panel held for the purposes of section 32 or at the request of the court.

Section 38(1): amended, on 25 October 2006, by section 19(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 38(2): amended, on 25 October 2006, by section 19(2) of the Takeovers Amendment Act 2006 (2006 No 48).

### **39 Orders directing disposal of securities**

*[Repealed]*

Section 39: repealed, on 25 October 2006, by section 20 of the Takeovers Amendment Act 2006 (2006 No 48).

### **40 Revocation, variation, and suspension of orders**

*[Repealed]*

Section 40: repealed, on 25 October 2006, by section 20 of the Takeovers Amendment Act 2006 (2006 No 48).

### **41 Court may excuse contravention**

- (1) If the court is satisfied that a person has, by any act or omission, contravened the takeovers code, but that the contravention ought to be excused, the court may (by order) declare that the act or omission was not a contravention of the code.
- (2) In considering whether the contravention should be excused, the court may have regard to—
  - (a) inadvertence or mistake on the part of the person concerned;
  - (b) whether the person was aware of a relevant factor or circumstance;
  - (c) circumstances beyond that person's control;
  - (d) any other matters that the court thinks fit.
- (3) The order has effect according to its tenor.

Section 41: replaced, on 25 October 2006, by section 21 of the Takeovers Amendment Act 2006 (2006 No 48).

### **42 Court may require person to give evidence or produce documents relating to interests in financial products**

- (1) The court may, in any application under this subpart, for the purpose of ascertaining whether any person—
  - (a) has or had any direct or indirect interest in or right to any financial product in the code company concerned; or
  - (b) has or had any direct or indirect right to exercise any voting rights attaching to any such financial product,—order any person to—
  - (c) attend before the court and be examined on oath or affirmation; or
  - (d) produce documents in that person's possession or under that person's control.

- (2) An order under subsection (1) may be made on the application of any person who is a party to the application under this subpart.

Section 42 heading: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 42(1): amended, on 25 October 2006, by section 22(1) of the Takeovers Amendment Act 2006 (2006 No 48).

Section 42(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 42(1)(a): amended, on 7 July 2010, by section 17 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 42(1)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 42(2): amended, on 25 October 2006, by section 22(2) of the Takeovers Amendment Act 2006 (2006 No 48).

#### **43 More than 1 civil remedy order may be made for same conduct**

The court may make a civil remedy order of one kind against a person even though the court has made another civil remedy order of a different kind against the person for the same conduct.

##### **Examples**

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

The court may make a civil remedy order requiring forfeiture of financial products and declaring a previous exercise of voting rights attaching to those financial products to be void.

Section 43: replaced, on 25 October 2006, by section 23 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 43 examples: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **43A Only 1 pecuniary penalty order may be made for same conduct**

If conduct by a person constitutes a contravention of 2 or more provisions of the takeovers code, proceedings may be brought against that person for the contravention of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

Section 43A: inserted, on 25 October 2006, by section 23 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **43B Standard of proof for civil remedies**

The proceedings under this subpart are civil proceedings and the usual rules of the court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Section 43B: inserted, on 25 October 2006, by section 23 of the Takeovers Amendment Act 2006 (2006 No 48).

### **43C Time limit for applying for civil remedies**

- (1) An application for a civil remedy order under section 33I or a pecuniary penalty order under section 33M may be made at any time within 2 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) The usual time limits apply to all applications for other civil remedy orders.
- (3) However, an application for a compensatory order in respect of a contravention may be made at any time within 6 months after the date on which a declaration of contravention is made, even if the usual time limit has expired.

Section 43C: inserted, on 25 October 2006, by section 23 of the Takeovers Amendment Act 2006 (2006 No 48).

## **Subpart 3—Offences**

Subpart 3 heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

### *General offences*

Heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

### **44 General offences**

- (1) A person must not—
  - (a) furnish information, produce a document, or give evidence to the Panel or a member, officer, or employee of the Panel knowing it to be false or misleading; or
  - (b) attempt to deceive or knowingly mislead the Panel or a member, officer, or employee of the Panel in relation to any matter before it.
- (2) A person who has been summoned to appear before the Panel or a member, officer, or employee of the Panel must not—
  - (a) refuse or fail to appear before the Panel to give evidence:
  - (b) refuse to take an oath or affirmation as a witness:
  - (c) refuse to answer any question:
  - (d) refuse or fail to provide any document or information that the person is required to provide.
- (3) A body corporate contravenes subsection (2) if its representative refuses or fails to appear before the Panel to give evidence, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide.
- (4) A person must not act in contravention of any order made by the Panel under section 31X or section 32.

- (5) Every person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is committed.

Section 44: replaced, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 44(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **44A Conviction of offence under section 44 excluded in certain cases**

- (1) A person must not be convicted of an offence under section 44 if, in the opinion of the court dealing with the case,—
- (a) the contravention related to matters that were immaterial to the relevant matter before the Panel; or
  - (b) the contravention ought reasonably to be excused, having regard to all the circumstances of the case.
- (2) A director of a body corporate must not be convicted of an offence under section 44 in relation to a contravention by the body corporate if, in the opinion of the court dealing with the case, the contravention took place without the director's knowledge and consent.
- (3) In proceedings for an offence against section 44, the burden of proving any of the matters described in subsections (1) and (2) lies on the defendant.

Section 44A: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44A(3): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### *False or misleading statement or information*

Heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44B False or misleading statement or information**

- (1) A person must not make a statement or disseminate information, in relation to any transaction or event regulated by the takeovers code or incidental or preliminary to a transaction or event that is or is likely to be regulated by the takeovers code, if—
- (a) a material aspect of the statement or information is false or the statement or information is materially misleading; and
  - (b) the statement or information is likely to—
    - (i) induce a person to trade, or hold, the financial products of a code company; or



- (ii) have the effect of increasing, reducing, maintaining, or stabilising the price for trading in those financial products; or
- (iii) induce a person to vote for, or to vote against, a transaction that is or is likely to be regulated by the takeovers code, or to abstain from voting in respect of that transaction.

(2) In this section, **trade** means to acquire or dispose of financial products.

Section 44B: inserted, on 29 February 2008, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44B(1)(b)(i): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44B(1)(b)(i): amended, on 7 July 2010, by section 18 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 44B(1)(b)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44B(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**44C Criminal liability for false or misleading statement or information**

- (1) A person who contravenes section 44B commits an offence if the person has actual knowledge that the statement or information is false in a material aspect or is materially misleading.
- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
  - (a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or to both:
  - (b) in the case of a body corporate, a fine not exceeding \$1,000,000.

Section 44C: inserted, on 29 February 2008, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44C(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**44D Exception for disclosure by investment advisers or brokers**

*[Repealed]*

Section 44D: repealed, on 1 July 2011, by section 50 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**44E Fair Trading Act 1986 excluded**

The Fair Trading Act 1986 does not apply to conduct in relation to any transaction or event regulated by the takeovers code or incidental or preliminary to a transaction or event that is or is likely to be regulated by the takeovers code.

Section 44E: inserted, on 29 February 2008, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

## Subpart 4—Other court orders

Subpart 4 heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

### *Management bans*

Heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44F When court may make management banning orders**

The court may, on application by any person referred to in section 35(1)(a) to (g), make a management banning order against a person (A) if—

- (a) A has been convicted of an offence against either section 44 or section 44C or a pecuniary penalty order has been made against A under this Act for a contravention of the takeovers code; or
- (b) A has, while a director of an incorporated or unincorporated body,—
  - (i) persistently contravened this Act, the Companies Act 1993, the Financial Markets Conduct Act 2013, the Financial Markets Supervisors Act 2011, or the takeovers code; or
  - (ii) if the incorporated or unincorporated body has so contravened, persistently failed to take all reasonable steps to obtain compliance with those Acts or the code; or
- (c) A has been prohibited in an overseas jurisdiction from carrying on activities that the court is satisfied are substantially similar to any of the activities referred to in section 44G in connection with a contravention of any law relating to takeovers.

Section 44F: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44F(b)(i): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **44G Terms of management banning orders**

- (1) A management banning order may, permanently or for a period specified in the order, prohibit or restrict the person (without the leave of the court) from being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).
- (2) The court may make a management banning order permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.

Section 44G: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44G(1): amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44G(2): inserted, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **44H Offence of contravening management banning order**

An individual who acts in contravention of a management banning order under section 44F commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both.

Section 44H: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44H: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **44I Only 1 management banning order may be made for same conduct**

If conduct by a person constitutes grounds for making an order under any 1 or more of section 44F of this Act, subpart 6 of Part 8 of the Financial Markets Conduct Act 2013, and section 383 of the Companies Act 1993, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

Section 44I: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44I: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **44J Persons automatically banned from management**

- (1) This section applies to a person if the person has been convicted of an offence against either section 44 or section 44C or a pecuniary penalty order has been made against the person under this Act for a contravention of the takeovers code.
- (2) The person must not, for the period of 5 years after the conviction or making of the order (without the leave of the court) be a director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).
- (3) An individual who acts in contravention of this section commits an offence and is liable, on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both.

Section 44J: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44J(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**44K General provisions for bans and banning orders**

- (1) The Registrar of the court must, as soon as practicable after the making of a management banning order under section 44F,—
  - (a) give notice to the Registrar of Companies and the Panel that the order has been made; and
  - (b) give notice in the *Gazette* of the name of the person against whom the order is made and the period or dates for which the ban applies.
- (2) A person intending to apply for the leave of the court under section 44G or section 44J must give to the Panel not less than 10 days' written notice of that person's intention to apply.
- (3) The Panel, and any other person that the court thinks fit, may attend and be heard at the hearing of the application.

Section 44K: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

*Orders to preserve assets to satisfy claims*

Heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

**44L When court may prohibit payment or transfer of money, financial products, or other property**

- (1) This section applies if—
  - (a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act or the takeovers code; or
  - (b) a prosecution has begun against a person for a contravention of this Act; or
  - (c) a civil proceeding has begun against a person under this Act.
- (2) The court may, on application by the Panel or by an aggrieved person, make 1 or more of the orders listed in section 44M if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.
- (3) In this section and section 44M,—

**aggrieved person** means any person to whom a relevant person is liable

**associated person** has the same meaning as in section 12(1) of the Financial Markets Conduct Act 2013

**liable** means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for financial products or other property

**relevant person** means a person referred to in subsection (1).

Compare: Corporations Act 2001 s 1323(1) (Aust)

Section 44L: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44L heading: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44L(3) **associated person**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44L(3) **liable**: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### 44M What orders may be made

- (1) The orders that may be made under section 44L are—
- (a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, financial products, or other property held or controlled by the relevant person:
  - (b) an order prohibiting a person who is indebted to the relevant person or to an associated person of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed:
  - (c) an order prohibiting a person holding money, financial products, or other property, on behalf of the relevant person, or on behalf of an associated person of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products, or other property, is or are held:
  - (d) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associated person of the relevant person:
  - (e) an order prohibiting the taking, sending, or transfer by a person of financial products or other property of the relevant person, or of an associated person of the relevant person from a place in New Zealand to a place outside New Zealand (including the transfer of financial products from a register in New Zealand to a register outside New Zealand):
  - (f) an order requiring the relevant person, or any person holding money, financial products, or other property on behalf of the relevant person or an associated person of the relevant person, to pay or transfer money, financial products, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceeding:
  - (g) an order appointing,—
    - (i) if the relevant person is a natural person, a receiver or trustee, having any powers that the court orders, of the property or of part of the property of that person; or

- (ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the court orders, of the property or of part of the property of that person:
  - (h) if the relevant person is a natural person, an order requiring that person to deliver up to the court his or her passport and any other documents that the court thinks fit:
  - (i) if the relevant person is a natural person, an order prohibiting that person from leaving New Zealand, without the consent of the court.
- (2) A reference in subsection (1)(e) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—
  - (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
  - (b) in a fiduciary capacity.
- (3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: Corporations Act 2001 s 1323(1), (2A), (6) (Aust)

Section 44M: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44M(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44M(1)(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44M(1)(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44M(1)(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **44N Interim orders**

- (1) If an application is made to the court for an order under section 44L, the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (2) The court must not require the applicant or any other person, as a condition of granting an interim order under this section, to give an undertaking as to damages.
- (3) In determining an application for the grant of an interim order, the court must not take into account that the applicant is not required to give an undertaking as to damages.

Compare: Corporations Act 2001 s 1323(3), (4) (Aust)

Section 44N: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44O Relationship with other law**

- (1) Nothing in sections 44L to 44N affects the powers that the court has apart from those sections.
- (2) This section has effect subject to the Insolvency Act 1967.

Compare: Corporations Act 2001 s 1323(7), (8) (Aust)

Section 44O: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44P Offence**

A person commits an offence who contravenes an order by the court under section 44M or section 44N that is applicable to the person and is liable on conviction,—

- (a) in the case of an individual, to imprisonment to a term not exceeding 3 years or to a fine not exceeding \$100,000, or both:
- (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Compare: Corporations Act 2001 s 1323(9), (10) (Aust)

Section 44P: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44P: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **Subpart 5—General**

Subpart 5 heading: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44PA Time limit for commencing proceedings for offence under section 44H, 44J, or 44P**

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a charging document may be filed at any time in respect of an offence against section 44H, 44J, or 44P of this Act.

Section 44PA: inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **44Q Jurisdiction of courts in New Zealand**

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than the following:

- (a) proceedings for offences against this Act:
- (b) proceedings in relation to recovery or enforcement as referred to in sections 52 and 53:
- (c) proceedings for appeals under section 31G.

Section 44Q: replaced, on 31 March 2017, by section 130 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**44R Court may order payment of Panel's costs**

If the Panel brings proceedings under this Part and the court makes any order against a person under this Part, the court may also order that person to pay the Panel's costs and expenses in bringing the proceedings.

Section 44R: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

**44S Orders to secure compliance**

The court may, for the purpose of securing compliance with any order it makes under this Part, direct a person to do or refrain from doing a specified act.

Section 44S: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

**44T Giving notice of applications for court orders**

Before making an order under this Part, the court may direct the person making the application for the order to—

- (a) give notice of the application to those persons the court thinks fit:
- (b) publish notice of the application in the manner the court thinks fit.

Section 44T: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

**44U General provisions as to court's orders**

- (1) An order under this Part may be made on the terms and conditions the court thinks fit.
- (2) The court may revoke, vary, or suspend an order made under this Part on the terms and conditions the court thinks fit.

Section 44U: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

**44V Persons entitled to appear before court**

The following persons are entitled to appear and be heard at the hearing of an application to the court under this Part:

- (a) the applicant:
- (b) the Panel:
- (c) if the code company's financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:
- (d) the code company:
- (e) a person who is alleged to have suffered, or to be likely to suffer, loss or damage because of an alleged contravention of this Act or the takeovers code (whether that person or another person makes the allegation):
- (f) a person who was a financial product holder of the code company at the time that the conduct to which the application relates occurred:



- (g) a person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire financial products in the code company in accordance with the takeovers code:
- (h) a person directed to be given notice of the application:
- (i) with the leave of the court, any other person.

Section 44V: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

Section 44V(c): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44V(d): amended, on 7 July 2010, by section 19(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 44V(f): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44V(f): amended, on 7 July 2010, by section 19(2) of the Takeovers Amendment Act 2010 (2010 No 88).

Section 44V(g): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 44V(g): amended, on 7 July 2010, by section 19(2) of the Takeovers Amendment Act 2010 (2010 No 88).

#### **44W Knowledge of matters presumed if employee or agent knows matters**

In any proceedings under this Act, it is presumed, in the absence of proof to the contrary established on the balance of probabilities, that a person knew, at a material time, of any matter if, at that time, an employee or agent of that person knew of the matter in his or her capacity as employee or agent.

Section 44W: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

#### **44X No pecuniary penalty and fine for same conduct**

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act for the same conduct.

Section 44X: inserted, on 25 October 2006, by section 24 of the Takeovers Amendment Act 2006 (2006 No 48).

## Part 4

### Miscellaneous

Part 4 heading: replaced, on 25 October 2006, by section 25 of the Takeovers Amendment Act 2006 (2006 No 48).

#### *Exemptions and regulations*

Heading: inserted, on 31 March 2017, by section 131 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### **45 Panel may grant exemptions**

- (1) The Panel may, in its discretion and subject to such terms and conditions (if any) as it thinks fit, exempt from compliance with any provision of the takeovers code—
  - (a) any person, transaction, or offer:
  - (b) any class of persons, transactions, or offers associated with or involving a particular code company or entity:
  - (c) any class of persons, transactions, or offers that is not associated with or does not involve a particular code company or entity.
- (2) An exemption may be granted in respect of past acts or omissions only under subsection (1)(a).
- (3) An exemption under this section is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) An exemption under subsection (1)(a) or (b) must, as soon as practicable after being granted, be—
  - (a) published on an Internet site maintained by or on behalf of the Panel; and
  - (b) notified (without incorporating the exemption) in the *Gazette*; and
  - (c) made available in printed form for purchase on request by members of the public.
- (5) An exemption under subsection (1)(c) is of general application and must be published under section 6 of the Legislation Act 2012.
- (6) The Panel's reasons for granting an exemption under this section must be published together with the exemption, and the reasons must include—
  - (a) why it is appropriate that the exemption is granted; and
  - (b) how the exemption is consistent with the objectives of the takeovers code.
- (7) Subsections (4) and (6) are subject to section 45A.

Section 45: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **45A Deferral of obligations, and variation or revocation of exemptions**

- (1) The Panel may defer complying with section 45(4) if the Panel is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.
- (2) The Panel may defer publishing, and need not publish, under section 45 the reasons for granting an exemption if the Panel is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.
- (3) The Panel may vary or revoke an exemption granted under section 45.
- (4) Section 45(1) to (5) and this section apply, with necessary modifications, in all respects to a variation or revocation under this section.

Section 45A: inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **46 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) *[Repealed]*
- (b) prescribing an annual fee in respect of the funding of the Panel that is payable in accordance with section 17:
- (c) prescribing the fees and charges payable, or the rate at which fees and charges are to be calculated, for the purposes of this Act:
- (ca) without limiting paragraph (c), prescribing fees and charges that the Panel may require to be paid to it—
  - (i) in connection with the exercise by the Panel of any power or function conferred on it by this Act:
  - (ii) on an application to the Panel to exercise any power or function conferred on it by this Act:
- (cb) authorising the Panel to require payment of any costs incurred by the Panel:
- (d) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Section 46(a): repealed, on 1 June 2001, by section 11(1) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 46(c): replaced, on 1 June 2001, by section 11(2) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 46(ca): inserted, on 1 June 2001, by section 11(2) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 46(cb): inserted, on 1 June 2001, by section 11(2) of the Takeovers Amendment Act 2001 (2001 No 30).

*Reimbursement of expenses incurred in connection with offer or takeover notice*

Heading: inserted, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**47 Interpretation for sections 48 to 53**

In sections 48 to 53, the following terms have the same meanings as in the takeovers code:

- (a) equity security:
- (b) offer:
- (c) offeror:
- (d) takeover notice:
- (e) target company.

Section 47: replaced, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**48 Reimbursement of directors**

- (1) Despite anything in the constitution of a target company, each director of the target company is entitled to be reimbursed by the target company for any expenses properly incurred by the director on behalf, and in the interests, of holders of equity securities of the target company in relation to the offer or takeover notice.
- (2) The amount to be reimbursed to a director is the amount—
  - (a) agreed between the director and the target company; or
  - (b) determined by the Panel on an application made by the director or the target company (*see* section 50).

Section 48: replaced, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

**49 Reimbursement of target company**

- (1) A target company is entitled to be reimbursed by the offeror for any expenses properly incurred by the target company in relation to the offer or takeover notice, whether as a result of section 48 or otherwise.
- (2) The amount to be reimbursed to the target company is the amount—
  - (a) agreed between the target company and the offeror; or
  - (b) determined by the Panel on an application made by the target company or the offeror (*see* section 50).

Section 49: replaced, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **50 Determinations by Panel of amount to be reimbursed**

If the Panel receives an application under section 48(2)(b) or 49(2)(b), the Panel must (unless an agreement is reached beforehand under section 48(2)(a) or 49(2)(a))—

- (a) determine the amount to be reimbursed for the purposes of section 48(2)(b) or 49(2)(b); and
- (b) order that amount to be paid, as the case may be,—
  - (i) by the target company to the director; or
  - (ii) by the offeror to the target company.

Section 50: replaced, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **51 Appeals against Panel's determination**

- (1) The director or the target company may appeal to the High Court against the Panel's determination for the purposes of section 48(2)(b).
- (2) The target company or the offeror may appeal to the High Court against the Panel's determination for the purposes of section 49(2)(b).
- (3) An appeal under this section must be made—
  - (a) within 21 days of the date on which the appellant was notified of the Panel's determination; or
  - (b) within any longer time allowed by the High Court.
- (4) The High Court must determine the appeal by either dismissing the appeal or giving such directions or making such determination in the matter as it thinks fit.

Section 51: inserted, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **52 Enforcement of agreement of amount to be reimbursed**

If the amount to be reimbursed is agreed, the amount is recoverable as a debt due in any court of competent jurisdiction, as the case may be,—

- (a) by the director from the target company; or
- (b) by the target company from the offeror.

Section 52: inserted, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## **53 Enforcement of Panel's order for payment of amount to be reimbursed**

- (1) If the amount to be reimbursed is determined by the Panel, the Panel's order under section 50 may be enforced as if it were a judgment by the court for the payment of a sum of money.
- (2) In this section, **court** means—

- (a) the District Court, if the amount to be reimbursed is no more than \$350,000; or
- (b) the High Court, if the amount to be reimbursed is more than \$350,000.

Section 53: inserted, on 31 March 2017, by section 132 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

## Schedule 1AA

### Transitional, savings, and related provisions

s 2B

Schedule 1AA: inserted, on 31 March 2017, by section 133 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### Part 1

### Provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

Schedule 1AA Part 1: inserted, on 31 March 2017, by section 133 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### 1 Application of sections 47 to 53

- (1) Sections 47 to 53 apply in relation to an offer or a takeover notice only if the takeover notice is received by the target company on or after the date on which this clause comes into force (and rule 49 of the takeovers code continues to apply in any other case accordingly).
- (2) In this clause, **offer**, **takeover notice**, and **target company** have the same meanings as in the takeovers code.

Schedule 1AA clause 1: inserted, on 31 March 2017, by section 133 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### Part 2

### Provision relating to Regulatory Systems (Economic Development) Amendment Act 2019

Schedule 1AA Part 2: inserted, on 13 January 2020, by section 119 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

#### 2 Existing transactions unaffected

- (1) This Act, the takeovers code, and any relevant exemptions from the takeovers code, as in force immediately before commencement, continue to apply to every transaction and event regulated under the code (or that would be regulated under the code but for an exemption) that has started but is not completed before commencement (an **existing transaction**), until the existing transaction is complete and all requirements of the code and any exemptions (as relevant) have been complied with.
- (2) In particular, a company that, because it is not at least medium-sized, ceases to be a code company on commencement continues to be treated as a code company for the purpose of completing existing transactions (if any).
- (3) For the purposes of this clause, if, as a result of an existing transaction, a person becomes a dominant owner in the company, **completing existing transac-**

**tions** includes applying the compulsory acquisition rules in Part 7 of the code (and the existing transaction is not complete until those rules are applied).

(4) Subclause (2)—

(a) does not limit subclause (1); and

(b) does not prevent the company from again becoming a code company.

(5) In this clause,—

**commencement** means commencement of Part 12 of the Regulatory Systems (Economic Development) Amendment Act 2019

**dominant owner**, in relation to a company, means a person who becomes the holder or controller, or 2 or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the voting rights in the company (whether by reason of acceptances of an offer or otherwise); and words or expressions used in the definition of dominant owner have the same meanings as they have in the takeovers code.

Schedule 1AA clause 2: inserted, on 13 January 2020, by section 119 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).



## Schedule 1

### Provisions applying to Takeovers Panel

s 18

Schedule 1 heading: amended, on 31 March 2017, by section 134 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

#### 1 Term of office

*[Repealed]*

Schedule 1 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 2 Continuation in office after term expires

*[Repealed]*

Schedule 1 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 3 Extraordinary vacancies

*[Repealed]*

Schedule 1 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 4 Meetings of Panel

(1) *[Repealed]*

(2) *[Repealed]*

(2A) *[Repealed]*

(3) At any meeting of the Panel the quorum shall be 3 members.

(4) Subclause (3) applies despite clause 9 of Schedule 5 of the Crown Entities Act 2004.

Schedule 1 clause 4(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 4(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 4(2A): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 4(4): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 5 Chairperson

*[Repealed]*

Schedule 1 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**6 Voting at meetings***[Repealed]*

Schedule 1 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**7 Procedure***[Repealed]*

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**8 Employees of Panel***[Repealed]*

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**9 Employment of experts***[Repealed]*

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**10 Remuneration and travelling allowances***[Repealed]*

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## Takeovers Amendment Act 2002

Public Act	2002 No 45
Date of assent	26 November 2002
Commencement	see section 2

### **1 Title**

- (1) This Act is the Takeovers Amendment Act 2002.
- (2) In this Act, the Takeovers Act 1993 is called “the principal Act”.

### **2 Commencement**

This Act comes into force on 1 December 2002.

### **39 Transitional provision relating to existing takeovers code**

- (1) The takeovers code approved by the Takeovers Code Approval Order 2000—
  - (a) continues in force as if it had been made under Part 2 of the principal Act as amended by this Act; and
  - (b) may be amended or revoked as if it had been made under Part 2 of the principal Act as amended by this Act.
- (2) Unless the context otherwise requires, every reference to a takeovers code approved by an Order in Council under section 28 of the principal Act must be read as a reference to any takeovers code that is in force under the principal Act (whether or not by virtue of this section).

## Takeovers Amendment Act 2006

Public Act	2006 No 48
Date of assent	24 October 2006
Commencement	see section 2

### 1 Title

This Act is the Takeovers Amendment Act 2006.

### 2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, the following provisions only come into force on a date to be appointed by the Governor-General by Order in Council:
  - (a) new sections 44B, 44C, 44D, and 44E of the Takeovers Act 1993 as inserted by section 24:
  - (b) section 29.
- (3) For the purposes of subsection (2), 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(2)(a): sections 44B to 44E of the Takeovers Act 1993 as inserted by section 24 brought into force, on 29 February 2008, by clause 2(1) of the Takeovers Amendment Act 2006 Commencement Order 2007 (SR 2007/368).

Section 2(2)(b): section 29 brought into force, on 29 February 2008, by clause 2(2) of the Takeovers Amendment Act 2006 Commencement Order 2007 (SR 2007/368).

### *Transitional provisions*

### 31 Transitional provision for acquisitions made or committed to before commencement of this section

No amendment made by this Act requires a person to comply with the principal Act or the code—

- (a) by reason only of the fact that, on the commencement of this section, a particular proportion of securities have been acquired in a code company, whether by that person or any other person before the commencement of this section; or
- (b) by reason of the acquisition of securities in a code company, whether by that person or any other person, on or after the commencement of this section, if the acquisition arises from the performance of a contractual obligation incurred, or the exercise of a right acquired, before the commencement of this section.

Section 31(a): amended, on 7 July 2010, by section 20 of the Takeovers Amendment Act 2010 (2010 No 88).

Section 31(b): amended, on 7 July 2010, by section 20 of the Takeovers Amendment Act 2010 (2010 No 88).

### **32 Transitional provision for existing offences and contraventions**

- (1) The principal Act and the code continue to have effect as if they were not amended by this Act for the purpose of—
  - (a) investigating an existing offence or contravention:
  - (b) commencing or completing proceedings for an existing offence or contravention:
  - (c) imposing a penalty or other remedy, or making an order, in relation to an existing offence or contravention.
- (2) In this section, **existing offence or contravention** means an offence under, or contravention of, the principal Act or the code that was committed or done before the commencement of this Act.

## Reprints notes

### 1 *General*

This is a reprint of the Takeovers Act 1993 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62): Part 12

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 12

Intelligence and Security Act 2017 (2017 No 10): section 335

Companies Amendment Act 2014 (2014 No 46): section 31

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Legislation Act 2012 (2012 No 119): section 77(3)

Takeovers Amendment Act 2012 (2012 No 68)

Criminal Procedure Act 2011 (2011 No 81): section 413

Financial Markets Authority Act 2011 (2011 No 5): section 82

Takeovers Amendment Act 2010 (2010 No 88)

Financial Advisers Amendment Act 2010 (2010 No 40): section 50

Securities Markets Amendment Act 2009 (2009 No 54): section 23(1)

Takeovers Amendment Act 2006 (2006 No 48)

Crown Entities Act 2004 (2004 No 115): section 200

Takeovers Amendment Act 2002 (2002 No 45)

Securities Markets Amendment Act 2002 (2002 No 44): section 30

Takeovers Amendment Act 2001 (2001 No 30)

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)