

Takeovers Amendment Act 2002

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The Parliament of New Zealand enacts as follows:

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.

3 Title repealed

The Title of the principal Act is repealed.

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **Court**, and substituting the following definition:

“**Court** means, in relation to any matter, the Court before which the matter is to be determined”.

- (2) Section 2(1) of the principal Act is amended by repealing the definition of the term **document**, and substituting the following definition:

“**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”.

- (3) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

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

“**takeovers code** means the regulations made under section 19”.

- (4) Section 2 of the principal Act is amended by repealing subsection (2).

5 Object of this Act

- (1) Section 4(a) of the principal Act is amended by omitting the words “for the purpose of formulating and recommending rules in the form of a proposed code applying to takeovers of specified companies”.
- (2) Section 4 of the principal Act is amended by repealing paragraphs (b) to (e), and substituting the following paragraphs:
“
“(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 specified companies):
“(c) provide for the administration and enforcement of the takeovers code:
“(d) empower the Panel to keep under review, and promote public understanding of, the law relating to takeovers of specified companies:
“(e) empower the Panel to co-operate with overseas regulators.”

6 Membership of Panel

- (1) Section 6(1) of the principal Act is amended by omitting the expression “8”, and substituting the expression “11”.
- (2) Section 6(3) of the principal Act is amended by omitting the words “barrister or solicitor”, and substituting the words “barrister, a solicitor, or a barrister and solicitor”.

7 Section 7 repealed

- (1) The principal Act is amended by repealing section 7 (which relates to associate members).
- (2) Subsection (3) applies to the appointment of an associate member that, immediately before this section comes into force, has not expired in accordance with that associate member’s instrument of appointment.
- (3) Despite the repeal of section 7 of the principal Act,—
 - (a) the appointment continues until the appointment expires in accordance with the instrument of appointment; and

- (b) sections 7 and 11(2) of the principal Act continue to have effect as if section 7 had not been repealed and section 11(2) had not been amended by this Act until the appointment expires in accordance with the instrument of appointment.

8 New section 7A substituted

The principal Act is amended by repealing section 7A, and substituting the following section:

“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)(b).
- “(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.”

9 Membership and Chairperson of division

- (1) Section 7B of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(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) Section 7B(2) of the principal Act is amended by inserting, before the word “Chairperson” in the third place where it occurs, the words “Panel or”.
- (3) Section 7B of the principal Act is amended by adding the following subsection:
- “(4) Clauses 4, 5(1) and (5), 6, and 7 of the Schedule apply to a meeting of a division as if—

“ “

- “(a) it were a meeting of the entire Panel; and
“(b) all references to the Chairperson in those clauses were references to the Chairperson of the division.” ”

10 Powers of division

- (1) Section 7C(1) of the principal Act is amended by omitting the word “direction” in both places where it occurs, and substituting in each case the word “determination”.
- (2) Section 7C(1)(a) of the principal Act is amended by omitting the words “is deemed to consist”, and substituting the word “consists”.

11 Functions of Panel

- (1) Section 8(1) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraph:

“

- “(a) to keep under review the law relating to takeovers of specified companies and to recommend to the Minister any changes to that law that it considers necessary:”.

- (2) Section 8(1)(c) of the principal Act is amended by omitting the words “paragraphs (a) and (b) of this section”, and substituting the words “paragraph (a)”.

- (3) Section 8(1) of the principal Act is amended by inserting, after paragraph (e), the following paragraph:

“

- “(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:”.

12 Sections 9 and 10 repealed

The principal Act is amended by repealing sections 9 and 10 (which relate to powers of the Panel to take evidence and proceedings before the Panel).

13 Proceedings privileged

- (1) Section 11 of the principal Act is amended by omitting the heading, and substituting the heading “Protection from liability for Panel and members, officers, and employees”.
- (2) Section 11(2) of the principal Act is amended by omitting the words “or associate member”.
- (3) Section 11 of the principal Act is amended by repealing subsections (4) to (9).

14 Sections 12 and 13 repealed

The principal Act is amended by repealing sections 12 and 13 (which relate to meetings of the Panel and the power of the Panel to prohibit disclosure of information, documents, and evidence).

15 Delegation of certain powers by Panel

Section 14(1) of the principal Act is amended by omitting the expression “section 8”, and substituting the expression “section 8(1)”.

16 New section 19 substituted

The principal Act is amended by repealing section 19, and substituting the following section:

“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 specified companies (a **takeovers code**).
- “(2) The Minister must formulate and make his or her recommendations in accordance with this Part.”

17 Objectives of takeovers code

- (1) Section 20(1) of the principal Act is amended by omitting the words “a takeovers code the Panel”, and substituting the words “recommendations concerning a takeovers code, the Minister”.
- (2) Section 20 of the principal Act is amended by repealing subsections (2) to (4), and substituting the following subsection:

- “(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).”

18 Matters to be considered by Panel in formulating takeovers code

- (1) The heading to section 21 of the principal Act is amended by omitting the words “**Panel in formulating**”, and substituting the words “**Minister in making recommendations concerning**”.
- (2) Section 21 of the principal Act is amended by omitting the words “Without limiting the matters that the Panel may consider, the Panel shall, in formulating”, and substituting the words “Without limiting the matters that the Minister may consider, the Minister must, in formulating recommendations concerning”.

19 Specific provisions applying to takeovers code

Section 22 of the principal Act is amended by omitting the words “Without limiting the power to formulate a takeovers code, but subject to section 23 of this Act, the Panel may”, and substituting the words “Without limiting section 19, but subject to section 23, regulations under that section may”.

20 Takeovers code not to apply in certain cases

Section 23(b) of the principal Act is amended by omitting the words “under section 28(4) of this Act”.

21 New sections 24 and 25 substituted

The principal Act is amended by repealing sections 24 to 31, and substituting the following sections:

“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.

“25 Minister to consult Panel

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

22 New headings and sections 31A to 31BB substituted

The principal Act is amended by repealing the Part 2A heading, the heading before section 31A, and sections 31A and 31B, and substituting the following headings and sections:

“Part3

“Investigation and enforcement

“Panel’s powers of inspection

“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.

“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.

“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).

“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.”

23 New section 31C substituted

The principal Act is amended by repealing section 31C, and substituting the following section:

“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 Securities Act 1978, the Securities Markets Act 1988, or any of the Acts listed in the First Schedule of the Securities Act 1978:
 - “(b) detecting and prosecuting offences against any other Act, 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.
- “(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 69N of the Securities Act 1978.”

24 Powers not limited

Section 31D of the principal Act is amended by omitting the word “Registrar”, and substituting the words “Panel, Registrar.”.

25 Non-disclosure of information from inspection

- (1) Section 31E(b) of the principal Act is amended by adding the words “, the Securities Act 1978, the Securities Markets Act 1988, or any of the Acts listed in the First Schedule of the Securities Act 1978”.

- (2) Section 31E(d) of the principal Act is amended by adding the words “(but subject to the limitation in section 31C(1)(b))”.

26 New sections 31EA and 31EB inserted

The principal Act is amended by inserting, after section 31E, the following sections:

“31EA No privilege against self-incrimination

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

“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.”

27 Heading before section 31F repealed

The principal Act is amended by repealing the heading before section 31F.

28 New section 31F inserted

The principal Act is amended by repealing section 31F, and substituting the following section:

“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 summary 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.”

29 Heading before section 31G repealed

The principal Act is amended by repealing the heading before section 31G.

30 Rights of appeal

Section 31G of the principal Act is amended by inserting, before the word “Registrar” in both places where it occurs, the words “Panel or”.

31 Situation while appeal pending

- (1) Section 31I(a) of the principal Act is amended by inserting, before the word “Registrar” in both places where it occurs, the words “Panel or”.
- (2) Section 31I(a) of the principal Act is amended by omitting the words “his or her”, and substituting the word “the”.

32 Requirements where appeal allowed

Section 31K of the principal Act is amended by inserting, before the word “Registrar” in each place where it occurs, the words “Panel or”.

33 New heading and sections 31L to 31X inserted

The principal Act is amended by inserting, after section 31K, the following heading and sections:

*“Panel’s powers for receiving evidence***“31L Power of Panel to receive evidence not otherwise admissible**

The Panel may receive in evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with any matter before it or that it may receive under section 31P, whether or not it would be otherwise admissible in a court of law.

“Compare: 1978 No 103 ss 18(1) 18A(1); 1993 No 107 s 9(1)

“31M Method of receiving evidence

“(1) The Panel may receive evidence on oath and, for that purpose, a member, officer, or employee of the Panel may administer an oath.

“(2) The Panel may permit a person appearing as a witness to give evidence by providing a written statement and, if the Panel thinks fit, verifying that statement by oath.

“(3) The Panel must, if a meeting is requested by a person who is summoned to give evidence under section 31N, receive the evidence at a meeting of the Panel.

“(4) If a meeting is requested under subsection (3), that meeting must not be held by a method under clause 4(2A)(b) of the Schedule except with the consent of the person summoned.

“Compare: 1978 No 103 s 18(2), (4); 1993 No 107 s 9(2), (4)

“31N Power to summon witnesses

“(1) A member of the Panel may issue a summons to a person requiring that person to appear before the Panel, or a member, officer, or employee of the Panel, in relation to any matter before the Panel and to do all or any of the following things:

“ “

“(a) give evidence:

“(b) give evidence under oath:

“(c) provide any documents or information in his or her possession or control 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 he or she 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 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.
- “Compare: 1978 No 103 s 18(3); 1993 No 107 s 9(3)

“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)

“Exercise of inspection and evidence powers for overseas regulators

“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.

“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.

“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.

“**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.

“Panel’s power to accept undertakings

“**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.

“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.

*“Proceedings before Panel***“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

“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

“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

34 Part III heading repealed and new heading inserted

- (1) The principal Act is amended by repealing the Part III heading.
- (2) The principal Act is amended by inserting, before section 32, the following heading:

“Enforcement of takeovers code by Panel”.

35 Panel’s powers in respect of compliance with takeovers code

Section 32 of the principal Act is amended by adding the following subsections:

- “(5) A restraining order made under this section may be made on any terms and conditions that the Panel thinks fit.
- “(6) The Panel may vary the restraining order in the same way as it may be made under this section.
- “(7) The Panel may revoke the restraining order or suspend the restraining order on the terms and conditions it thinks fit.”

36 New heading and sections 33A to 33E inserted

The principal Act is amended by inserting, after section 33, the following heading and sections:

“Miscellaneous provisions for investigation and enforcement by Panel

“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.

“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)

“33C Restrictions on use of evidence obtained by summons

The testimony of the person summoned under section 31N in the course of answering a question before, or providing any information or document to, the Panel, or a member, officer, or employee of the Panel, is not admissible as evidence in criminal proceedings against that person (except in a proceeding in respect of the falsity of the testimony).

“Compare: 1993 No 107 s 11(5), (6)

“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 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
 - “(ii) the offence of conspiring to commit an offence against section 78 or section 78A(1) or section

105 or section 105A or section 105B of the Crimes Act 1961; or

“(iii) the offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 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)

“Enforcement by Court

“33E 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 proceedings for offences against this Act.”

37 Panel may grant exemptions

Section 45(1)(a) and (b) and (4A) of the principal Act is amended by omitting the words “Takeovers Code” in each place where they occur, and substituting in each case the words “takeovers code”.

38 Consequential amendments

The enactments specified in Schedule 2 are amended as set out in that schedule.

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).

Schedule

s 38

Consequential amendments to Takeovers Act 1993 and other enactments

1

Takeovers Act 1993 (1993 No 107)

Omit from section 14(2) the expression “section 13” and substitute the expression “section 31X”.

Omit from section 44(3) the expression “section 13” and substitute the expression “section 31X”.

2

Other Acts

Companies Act 1993 (1993 No 105)

Omit from the notes to the Fourth Schedule the words “has been approved by Order in Council under section 28 of the Takeovers Act 1993 and is in force” and substitute the words “is in force under the Takeovers Act 1993”.

Securities Markets Act 1988 (1988 No 234)

Omit from section 8(2)(b) the words “section 28 of”.

Omit from section 12(1)(b) the words “section 28 of”.

Omit from section 31(e)(ii) the words “section 28 of”.

Omit from section 34(4)(a) the words “section 28 of”.

Legislative history

19 November 2002

Divided from Securities Markets and Institutions Bill (Bill 170-2), third reading
