

Takeovers Amendment Bill

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Takeovers Code (Implementation and Enforcement) Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and has divided it as follows:

- The Securities Amendment Bill (No 3), comprising Part 1
 - This bill, comprising Part 2.
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Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Paul Swain

Takeovers Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Takeovers Amendment Act **2001**.
- (2) In this Act, the Takeovers Act 1993 is called "the principal Act".

2 Commencement

- (1) This Act (except **section 16**) comes into force on **1 June 2001**.
- (2) **Section 16** comes into force on **1 July 2001**.

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- 9 Short Title and commencement**
 Section 1 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
 “(3) Section 17 and Part III come into force on **1 June 2001**.” 5
- 10 Interpretation**
 Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
 “**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 10
 “**Securities Commission** means the Securities Commission established by section 9 of the Securities Act 1978”.
- 11 New sections 7A to 7C inserted**
 (1) The principal Act is amended by inserting, after section 7, the following sections: 15
 “**7A Chairperson may direct Panel to sit in divisions**
 “(1) Subject to **subsection (2)**, the Chairperson may direct that the powers of the Panel in relation to any matter or class of matter be exercised by separate divisions of the Panel. 20
 “(2) The Chairperson must not direct a separate division of the Panel to exercise—
 “(a) any power in connection with the performance of its functions under paragraph (a) or paragraph (b) of section 8(1): 25
 “(b) the power of the Panel to grant an exemption under **section 45(1)(b)**.
 “(3) The Chairperson may revoke or amend a direction given under **subsection (1)**.
 “(4) Every direction, amendment, or revocation, of a direction must be in writing signed by the Chairperson. 30
- “**7B Membership and Chairperson of division**
 “(1) Each division must consist of members assigned to it by the Chairperson.
 “(2) If the members appointed to a division do not include either the Chairperson or the Deputy Chairperson, the Chairperson 35

must nominate 1 of those members as Chairperson of that division.

- “(3) If the Chairperson of a division is absent from a meeting of the division, the members present must appoint 1 of themselves as Chairperson of the division for the purposes of that meeting. 5

“7C **Powers of division**

- “(1) For the purposes of determining any matter or class of matter specified in a direction under **section 7A**,—

“(a) the Panel is deemed to consist of the division of the Panel specified in the direction; and 10

“(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.” 15

- (2) Section 10 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) Every meeting of the Panel or of a division of the Panel held for the purposes of section 13 or section 32 must be chaired by— 20

“(a) the Chairperson of either the Panel or the division of the Panel (as the case may be) if the person is a barrister or solicitor of at least 7 years’ practice; or

“(b) a member of the Panel or the division of the Panel (as the case may be) who is a barrister or solicitor of at least 7 years’ practice if **paragraph (a)** is not applicable.” 25

New (unanimous)

11A Delegation of certain powers by Panel

Section 14(2) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “or **section 45(1)**”. 30

12 New section 15A inserted

The principal Act is amended by inserting, after section 15, the following section:

- “15A Sharing of information with Securities Commission**
- “(1) The Takeovers Panel may communicate to the Securities Commission any information that the Takeovers Panel—
- “(a) holds in relation to the exercise of the Panel’s powers or the performance of its functions and duties; and 5
- “(b) considers may assist the Securities Commission in the exercise of the Commission’s powers or the performance of its functions and duties.
- “(2) The Takeovers Panel may use any information communicated to it by the Securities Commission under **section 17A** of the Securities Act 1978 in the Panel’s exercise of its powers or the performance of its functions and duties. 10
- “(3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.”

New (unanimous)

- 12A New section 17A inserted** 15
- The principal Act is amended by inserting, after section 17, the following section:
- “17A Panel deemed to be public authority**
- “(1) The Panel is deemed to be a public authority for the purposes of the Inland Revenue Acts. 20
- “(2) In this section, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.”

- 13 New Part 2A inserted**
- The principal Act is amended by inserting, after section 31, the following Part: 25

“Part 2A
“Registrar’s powers of inspection

“Inspection

- “31A Power of Registrar to inspect documents**
- “(1) The Registrar, or any person authorised by the Registrar, may, 30
- “(a) require any person to produce for inspection any document kept by that person:
- “(b) inspect and make records of a document referred to in **paragraph (a)**: 35

- “(c) for the purpose of making records of any such document, take possession of the document and remove it from the premises where it is kept, for such period of time as is reasonable in the circumstances.
- “(2) The Registrar must not authorise a person to carry out an inspection under **subsection (1)** unless the 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. 5
- “(3) A person authorised by the Registrar to carry out an inspection under **subsection (1)** must, if requested at the time of carrying out the inspection, produce evidence of that person’s authority to carry out the inspection. 10

Compare: 1978 No 103 s 67(1)

- “**31B Panel to request or approve inspection** 15
- “(1) The Registrar, or any person authorised by the Registrar, must not do any of the things listed in **section 31A(1)(a) to (c)** without the request or approval of the Panel.
- “(2) A request or approval of the Panel under **subsection (1)**— 20
- “(a) must be made for the purposes of Part III; and
- “(b) may relate to a particular case or limited class or classes of cases specified by the Panel.
- “(3) In determining whether to make a request or approval under **subsection (1)**, the Panel must consider, 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. 25
- “(4) The fact that the Registrar, or any person authorised by the Registrar for the purposes of **section 31A**, requires the production of a document, or makes or attempts to make an inspection, is sufficient evidence that **subsection (1)** has been complied with, unless there is evidence to the contrary. 30

Compare: 1978 No 103 s 67(2), (4)

- “**31C Disclosure of information from inspection** 35
- “(1) On the direction of the 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—

- “(a) any person specified by the Registrar for the purposes of—
- “(i) Part III:
 - “(ii) exercising powers conferred by this Act:
 - “(iii) detecting and prosecuting offences against any other Act; but 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 they relate: 5
- “(b) a liquidator for the purposes of the liquidation of a company: 10
- “(c) the Official Assignee for the purposes of a bankruptcy.
- “(2) The Minister or the Panel may, by written notice, require the Registrar to give a direction under **subsection (1)**; and the Registrar must comply with that requirement. 15
- “(3) This section is subject to section 13.
- Compare: 1978 No 103 s 67(5), (6)
- “31D **Powers not limited** 20
- Sections 31A, 31B, and 31C** do not limit any power that the Registrar or any other person has under the Companies Act 1993 or any other enactment.
- Compare: 1978 No 103 s 67(7)
- “31E **Non-disclosure of information from inspection** 25
- 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; or
 - “(c) in accordance with the Official Information Act 1982 or the Privacy Act 1993; or 30
 - “(d) in the course of any criminal proceedings.
- Compare: 1978 No 103 s 67A(1)

*“Offences***“31F Offences**

- “**(1)** Every person commits an offence who—
- “**(a)** refuses or fails to produce any document for inspection when required to do so under **section 31A**: 5
 - “**(b)** resists, obstructs, deceives, or attempts to deceive the Registrar, or any person authorised by the Registrar, in carrying out an inspection under **section 31A**:
 - “**(c)** is not authorised by the Registrar to make an inspection under **section 31A** and who communicates to any other person information acquired in the course of an inspection under that section: 10
 - “**(d)** contravenes **section 31E** (which relates to communicating information acquired in the course of an inspection).
- “**(2)** Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,000. 15
- Compare: 1978 No 103 ss 60(1)(a)–(c), 67A(2)

*“Appeals***“31G Rights of appeal**

A person who is aggrieved by an act or decision of the Registrar, or of any person authorised by the Registrar, under any of **sections 31A to 31C** may appeal against the act or decision to the Court. 20

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

“31H Time for appeal

An appeal under **section 31G** must be made— 25

- “**(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)

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“31I Situation while appeal pending

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

- “**(a)** the Registrar, or any person authorised by the Registrar, may continue to exercise his or her powers under any of **sections 31A to 31C** as if no appeal had been made; and 35

“(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.

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Compare: 1978 No 103 s 68(3)

“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.

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

“31K Requirements where appeal allowed

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

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“(a) the Registrar must ensure that, as soon as practicable after the decision on the appeal is given, all records made by the Registrar, or by a person authorised by the Registrar, under **section 31A(1)(c)** in respect of the act or decision are destroyed; and

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“(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.

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Compare: 1978 No 103 s 68(3)”.

14 Panel may grant exemptions

(1) Section 45 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Panel may, in its discretion and on such terms and conditions (if any) as it thinks fit,—

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“(a) exempt any person from compliance with any provision of the Takeovers Code; and

“(b) exempt, from compliance with any provision of the Takeovers Code,—

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“(i) any class of persons;

“(ii) any class of transactions;

“(iii) any class of offers.”

- (2) Section 45(2) of the principal Act is amended by inserting, after the words “An exemption”, the words “under **subsection (1)(a)**”.
- (3) Section 45 of the principal Act is amended by inserting, after subsection (2), the following subsection: 5
- “(2A) An exemption under **subsection (1)(b)** may be granted in respect of proposed acts or omissions.”

New (unanimous)

- (4) Section 45 of the principal Act is amended by inserting, after subsection (4), the following subsection: 10
- “(4A) The Panel’s reasons for granting an exemption under **subsection (1)** 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.”

15 Regulations 15

- (1) Section 46(a) of the principal Act is repealed.
- (2) Section 46 of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs: 20
- “(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: 20
- “(ca) without limiting **paragraph (c)**, prescribing fees and charges that the Panel may require to be paid to it— 25
- “(i) in connection with the exercise by the Panel of any power or function conferred on it by this Act: 25
- “(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.”

16 New sections 47 to 49 substituted 30

- (1) The principal Act is amended by repealing Part IV, and substituting the following sections:

- “47 **Amendment to Official Information Act 1982**
The Official Information Act 1982 is amended by inserting in the First Schedule, in their appropriate alphabetical order, the words “Takeovers Panel”.
- “48 **Amendment to Public Finance Act 1989** 5
The Public Finance Act 1989 is amended by inserting in the Fourth and Sixth Schedules, in their appropriate alphabetical order, the words “Takeovers Panel”.
- “49 **Repeal of Companies Amendment Act 1963**
“1) The Companies Amendment Act 1963 is repealed. 10
“2) Despite **subsection (1)**, Part I of the Companies Amendment Act 1963 continues in force in respect of the acquisition of shares in a company in any case where notice of a takeover scheme has, before the commencement of this section, been served on the company under section 4 of the Companies Amendment Act 1963.” 15
(2) Section 3(2)(c) and (d) of the Securities Act 1978 is repealed.
- 17 Schedule amended**
(1) Clause 4 of the Schedule of the principal Act is amended by revoking subclause (2), and substituting the following subclauses: 20
“2) Meetings of the Panel must be held at such places, dates, and times, and by such methods, as the Chairperson determines.
“(2A) A meeting of the Panel may be held either— 25
“a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or
“b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.”
- New (unanimous)**
- (2) Clause 6(3) of the Schedule of the principal Act is amended by inserting, after the word “Panel,” in the first place where it appears, the words “or, of a division of the Panel, as the case may be,”. 30

Takeovers Amendment

Legislative history

9 May 2001

Divided from Takeovers Code (Implementation and Enforcement) Bill (Bill 83-3B)
