



**TAKEOVERS
PANEL**
TE PAE WHITIMANA



STRIDES TOWARDS THE FUTURE

ANNUAL REPORT 2022
G.62



**CLARITY,
CERTAINTY
& FAIRNESS.**

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Laid before the House of Representatives pursuant to sections 150-157 of the Crown Entities Act 2004.

OUR VALUES

HOW WE SHAPE OUR BUSINESS



Integrity

Acting fairly, honestly and with transparency



Pragmatic

Ensuring effective outcomes for stakeholders



Responsive

Being available and responsive to stakeholders



Efficient

Achieving outcomes in a timely manner

REPORT OF THE CHAIR AND CHIEF EXECUTIVE

EMPOWERING THE BEST STEPS

The Takeovers Panel is pleased to present its annual report for the 2021/2022 year.

Who we are

The Takeovers Panel is an independent Crown entity established under the Takeovers Act 1993 to administer and enforce the Takeovers Code. The Minister of Commerce and Consumer Affairs is the Panel's responsible Minister. Background information on the Panel and the Code is set out below in the section *About the Panel*.

Where we fit in

To build a productive, sustainable and equitable business environment, investors in New Zealand's capital markets need to be confident that the markets are well-regulated and that they have the right information in order to make their investment decisions.

The Panel and the Code play a key role by ensuring that investors in publicly listed and widely held companies are provided with appropriate and timely information to make informed decisions about a change in the control of those companies.



Through its role as a regulator in the capital markets, the Panel contributes to the Government's high-level economic goal of building a productive, sustainable and equitable economy.

REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

The integrity of New Zealand's capital markets is supported by robust regulatory systems, the ethical standards of market participants, and by the agencies that regulate them. Key regulators in New Zealand's capital markets are the Financial Markets Authority, NZX Limited, the Commerce Commission and the Takeovers Panel. Each has a different focus and purpose, and they all contribute to supporting the integrity of the markets so that investors can be confident that regulated transactions occur in an appropriate and transparent fashion.

Through its role as a regulator in the capital markets, the Panel contributes to the Government's high-level economic goal of building a productive, sustainable and equitable economy.

Our strategic goals

Contributing to the outcome of transparent and equitable takeovers processes

The Panel plays an important role in strengthening the integrity of the capital markets because it regulates changes of control in publicly listed and widely held companies, known as "Code companies".¹

This activity is subject to the Takeovers Code when it involves a person increasing their voting control in a Code company to more than 20% of the company's total voting rights.²

The Panel is focused on contributing to the following outcomes over the medium term:

- > maintaining an efficient takeovers market
- > reducing transaction costs for companies and their investors
- > increasing confidence in the integrity of the takeovers market

The Panel contributes to these outcomes by providing services aimed at ensuring that Code-regulated transactions and schemes of arrangement under the Companies Act 1993 involving Code companies are conducted in a way that is transparent and equitable. The Panel's Statement of Performance, on pages 37 to 41, sets out the services that the Panel provided over the year.

Making an impact

Enforcing the Takeovers Code is the Panel's primary focus. Code-regulated transactions and schemes of arrangement that involve Code companies are actively monitored by the Panel executive.

The Panel's services aim to achieve the following impacts:

- > compliance with the Code and compliance with the Panel's guidance for seeking a no-objection statement for schemes of arrangement
- > takeovers law is efficient for parties to transactions and for shareholders
- > shareholders, acquirers, and their advisers are well informed about the role of the Code and of the Panel

A significant part of the Panel's enforcement resources goes to the Panel executive's review of Code-regulated documents and schemes of arrangement documents while they are still in draft. This review process aims to achieve resolution of potential non-compliance before it arises, thus improving efficiency and ensuring appropriate disclosure for investors in Code companies.

The Panel's other key roles of improving public understanding of takeovers law and of undertaking policy development are also important areas of service delivery by the Panel.

¹ A Code company is a New Zealand registered company that -

- has quoted voting securities (e.g., ordinary shares) on a licensed market's trading market (e.g., the NZX Main Board); or
- has 50 or more shareholders with voting rights and 50 or more share parcels and has either:
 - total assets of at least \$30 million at the end of the most recent accounting period; or
 - total revenue of at least \$15 million in the most recent accounting period.

² Under the Code's fundamental rule, rule 6, a person with less than 20% of the voting rights in a Code company cannot increase to more than 20% (taking into account also the percentage held or controlled by any associates), or if they already have more than 20%, cannot increase at all, unless they use one of the Code's mechanisms set out in rule 7 (e.g., making a takeover offer to all other shareholders, or making an acquisition or receiving an allotment that is approved at a meeting of the company's shareholders).



REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

COVID impact

Effect on transactions

When the COVID-19 pandemic began in March 2020, a number of Code-regulated transactions and schemes of arrangement transactions were withdrawn and renegotiated. Since then, there has been a decline in the number of Code-regulated and Code company scheme transactions monitored by the Panel in comparison to previous years. The Panel anticipates that activity may return to previous levels in the medium term.

Effect on the Panel

In 2021/2022, the Panel continued to hold board and division meetings via video conference and Panel staff worked remotely as required. The Panel's risk management and business continuity plans worked well. The Panel's procedures and technology enabled Panel members and Panel staff to work remotely with no reduction in productivity and no reduction in the Panel's capacity to meet its objectives.

Operating environment

The Panel manages its resources flexibly between its highest priority activity of enforcement and its policy and public education activities. Policy and public education functions are important but ensuring that all transactions are dealt with promptly takes priority. In terms of the Panel's performance framework on page 22, these activities are depicted under the respective impacts of Enforcement, Efficiency and Knowledge.

Achievements for the reporting year

Enforcement

Overall, transaction activity faced significant disruption from the COVID-19 pandemic, with fewer transactions overall compared with the previous year.

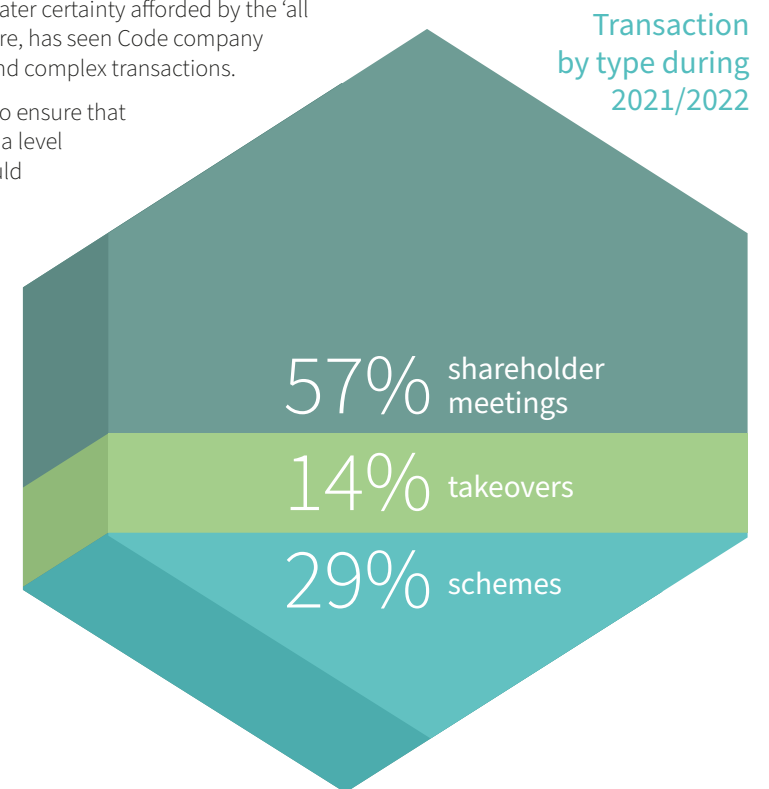
There were five Code-regulated transactions during the 2021/2022 year, compared with six Code-regulated transactions in the 2020/2021 year. These five transactions comprised four shareholder meetings to approve allotments or acquisitions of voting rights in accordance with the Code and one full takeover offer.

In addition, there were two Code company transactions structured as schemes of arrangement under the Companies Act 1993. Together with the Code-regulated transactions, the Panel monitored a total of seven transactions (compared with eight in 2020/2021).

The Panel has noted an increase in scheme-related activity relative to the number of takeovers under the Code following the implementation of the Code company schemes provisions in the Companies Act 1993 in 2014. This trend has accelerated in the last two years. The greater flexibility of the regulatory requirements for schemes of arrangement, as compared with more prescriptive rules under the Code, and greater certainty afforded by the 'all or nothing' shareholder approval procedure, has seen Code company schemes used more frequently for large and complex transactions.

The Panel's role in schemes is principally to ensure that the Code company's shareholders receive a level of disclosure equal to that which they would have received in a takeover regulated by the Code and to determine appropriate interest classes for shareholders voting on schemes (interest classes are not a factor that applies in Code-regulated takeovers). Early engagement with the Panel executive was integral to helping applicants meet the standards of disclosure required by the Panel for the Code company schemes.³

³ An applicant can apply to the Panel for a statement in writing that the Panel has no objection to the proposed scheme (a no-objection statement). The applicant presents the no-objection statement to the Court as part of the process for seeking the Court's approval of the scheme.



REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

The Panel's other enforcement work during the 2021/2022 year included conducting preliminary investigations. The Panel concluded eight investigations. Two of those investigations had started in the previous reporting period. Six of the investigations were concluded without the need for formal enforcement proceedings. One investigation resulted in a formal enforcement hearing under section 32 of the Takeovers Act 1993 (one held in 2020/2021) and one investigation was concluded when the offeror in the Blue Sky Meats Limited takeover gave an enforceable undertaking in accordance with section 31T of the Takeovers Act 1993 to resolve the Panel's concerns.

The section 32 meeting was called in respect of potential non-compliance in relation to Global Horticulture Limited. The meeting was later abandoned following the withdrawal of a complainant's request for a meeting, without the Panel making any decision as to compliance or non-compliance with the Code.

Finally, in the previous period, the Panel concluded at a section 32 meeting that it was not satisfied that certain parties involved in the 2013 takeover of New Image Group Limited had acted in compliance with the Code. In this period the Panel sought pecuniary penalties under the Takeovers Act 1993 through the High Court in respect of the non-compliance. In June 2022, the High Court made a declaration that New Image Group Limited and New Image Holdings Limited breached the Code in relation to the 2013 takeover and ordered New Image Group Limited to pay a pecuniary penalty of \$1.5 million in respect of the breaches of the Code.

This was an important decision, being the first pecuniary penalty imposed in respect of breaches of the Code. The decision demonstrates that the Panel takes Code compliance seriously and will take enforcement action where parties have failed to meet their obligations.

Finally, the Panel continues to work with other capital markets regulators, including the NZX and the Financial Markets Authority. The Panel has a Memorandum of Understanding with NZX Limited and NZX Regulation Limited, and with the Financial Markets Authority to facilitate the exchange of information and to improve the coordination of capital markets regulation.

Efficiency – policy work and exemptions

In June 2021, the Panel released a consultation paper seeking input on a range of proposed amendments to the Takeovers Act 1993 and the Takeovers Code, as well as proposed amendments to other legislation which relate to New Zealand's capital markets. The Panel carried out the policy review work over the course of the year and based on that work and consultation feedback received from market practitioners, the Panel made a number of recommendations for law reform in April 2022.

The recommendations include proposed amendments to the '12 month look back' in the definition of 'Code company', to remove the look back for listed companies that are taken private and de-listed and to apply the look back to some unlisted Code companies. The Panel also recommended amendments to provide increased disclosure and certainty around payment of consideration in takeovers and schemes of arrangement as well as a number of technical amendments intended to increase certainty and efficiency for the market.

The Panel continued to work with the Panel's monitoring agency, the Ministry for Business, Innovation and Employment (MBIE), to carry forward the Panel's recommendations for amendments to the Takeovers Act 1993 and the Code made in March 2017. Most of the Panel's 2017 recommended amendments came into force in October 2018 and January 2020.

There is one final recommendation from 2017 yet to be implemented. The recommendation is for a further amendment to the definition of 'unlisted Code company' to remove the term 'share parcels', to align with section 199 of the Companies Act 1993.⁴ The Panel is working with MBIE officials to ensure this recommendation is included in a future bill.

Finally, the Panel continued its broad review of the Panel's policy on granting a no-objection statement for schemes of arrangement. The Panel published an updated and consolidated Guidance Note on Schemes of Arrangement in May 2022. The Panel continues its review to consider if law reform recommendations might be appropriate. This review is ongoing.

⁴ Joint holders of shares will be counted as a single shareholder.

REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

Knowledge – public education work

The Panel prepares a Stakeholder Engagement Plan each year to ensure it takes a planned approach to engaging with stakeholders to inform and educate them about the Code and the role of the Panel. The Panel continued to focus on increasing awareness and understanding of the Code among stakeholders.

The Chief Executive and General Counsel met individually with interested market participants, including key persons from key corporate law firms and independent advisers who regularly carry out Code work, to provide information about the Panel and changes to the Code, and to receive feedback for the Panel. The Panel benefits from these interactions as market participants help it to identify current issues and provide different perspectives on them.

Panel staff gave two presentations, including one presentation to interested members of the Institute of Directors.

The Panel's relationships with other regulators, including the NZX, the Financial Markets Authority and the Commerce Commission, are strong and improving. Panel staff regularly meet with NZX staff and hold wider team meetings and exchanges of presentations. Panel staff meet with Financial Markets Authority and the Commerce Commission staff as needed.

The Panel continued to invite stakeholders to attend a portion of its board meetings for informal discussions and to allow for direct stakeholder feedback to Panel members.

The Panel revised and updated a number of its Guidance Notes.

The Panel's administration – economy and efficiency

The Panel's operating income

Consistent with prior years, the Panel's funding for the financial year was provided mostly by Parliament, being \$1,494,000 (Vote Commerce: Non Departmental Output – Administration of the Takeovers Code). In addition, the Panel received third-party income of \$185,789 for its chargeable

activities (\$416,150 in 2020/2021), including fee income from the New Image section 32 meeting, independent adviser approval applications, exemption applications, and no-objection statement applications. There was an additional \$9,686 of income relating to the New Image High Court proceedings.

The Panel maintains robust controls on spending and a strong focus on internal efficiency to enable it to generally maintain a break-even position on its operating expenditure.⁵ The Panel notes that its Crown appropriation has not changed for a number of years, and this break-even position is becoming increasingly difficult to maintain.

Resources

The Panel used slightly more resource than had been forecast on transactional work (53% of resource forecast, 65% expended). This was primarily because of the significant resources required for the New Image litigation and the Global Horticulture section 32 meeting. This had flow on effects as resource used for processing Code company schemes was below budget (18% forecast, 11% expended).

The Panel expended more resource than forecast on policy projects (8% forecast, 12% expended). This was because the law reform recommendations project and the review of schemes of arrangement were complex in nature. Again, the flow on effect was less resource available for public education work (21% forecast, 12% expended).

Panel members and the executive committed 10,908 hours of time to Panel work over the year (12,847 hours in the previous year).

The Panel's resources consist of the 10 Panel members and the executive team of eight staff, as well as office equipment and furniture.

Outputs

Utilising its income and resources, over the 2021/2022 financial year the Panel provided the outputs described in the Statement of Performance on pages 37 to 41.



⁵ The most non-predictable factor for the Panel's annual financial position is whether it holds section 32 meetings and, if so, whether the outcome of a meeting enables the Panel to make cost recovery orders against any parties.

REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

Cost effectiveness of Panel

Impacts and outcomes

The Panel's work contributes to the following outcomes:

- reducing transaction costs for investors; and
- increasing confidence in the integrity of New Zealand's takeovers market.

As one of a number of regulators active in this wide area of the capital markets, the Panel's contribution at the outcome level cannot realistically be measured.

However, the Panel does measure the impact it has in the segment of the takeovers market that is regulated by the Code. The Panel's progress on these strategic aims is described under the section on pages 21 to 25, Measuring the Panel's Performance. As this annual report indicates, the Panel is a well-respected and cost-effective service provider.

Results of Panel's online survey

The Panel operates an online survey to collect data regarding its performance from legal practitioners and independent advisers who advise Code companies and those involved in Code-regulated transactions. The data shows consistently high levels of satisfaction with the Panel's publications and processes, and with the professionalism and timeliness of the Panel's work.

Over the 2021/2022 year, the Panel sent 24 survey requests (18 in 2020/2021). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 13 responses, which is a response rate of 54% (10 responses, 55% response rate in 2020/2021). While the number of responses was low, the responses continued to indicate a high level of satisfaction with the Panel's work. 100% of respondents were satisfied with the Panel executive's processes and professionalism (100% in 2020/2021). All respondents found the Panel's publications overall to be useful (100% in 2020/2021).

Summary of Online Survey Results⁶ –
Percent Satisfied – Year to 30 June

100%
Panel's
publications

2018 – 2022



100%
process and
professionalism

2018 – 2022



100%
timeliness of
processing applications

2018 – 2022

⁶ Data based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.

REPORT OF THE CHAIR AND CHIEF EXECUTIVE Cont.

Our people

Panel members

The Panel comprises 10 members who are required to be qualified or experienced in business, law or accounting. One of the members is also a member of the Australian Takeovers Panel, appointed under a reciprocal arrangement made between the governments of Australia and New Zealand. The Chair of the New Zealand Takeovers Panel sits as a member of the Australian Takeovers Panel under the same arrangement.

Executive team

The Panel's executive team of specialist lawyers and administrative support performed ably throughout the year, working closely with the Panel members to maintain an effective relationship.

Acknowledgements

We thank the members of the Panel for their dedication and willingness to take part in Panel work, often at very short notice, and the executive team for their commitment and professionalism during the past year.

The Panel acknowledges and thanks Andy Coupe, a long-standing Panel member and Chair of the Panel who retired on 31 March 2022. Andy's commitment and service to the Panel over more than 13 years is greatly appreciated.

Finally, the Panel also wishes to acknowledge the willing assistance of market participants in their dealings with the Panel and acknowledges and thanks the Minister of Commerce and Consumer Affairs and MBIE officials for their constructive support of the Panel during the year.

|| We thank the members of the Panel for their dedication and willingness to take part in Panel work, often at very short notice, and the executive team for their commitment and professionalism during the past year.



A handwritten signature in blue ink, appearing to read 'Carl Blanchard'.

Carl Blanchard
Chair

A handwritten signature in blue ink, appearing to read 'Andrew Hudson'.

Andrew Hudson
Chief Executive

REPORT OF THE CHAIR & DEPUTY CHAIR

TOWARDS THE FUTURE WITH CONFIDENCE



|| We're very confident that we can continue to fulfil our role as the market evolves and help ensure that New Zealand's capital markets operate smoothly, efficiently and with certainty.

The 2021 Takeovers Panel Annual Report highlighted the last 20 years of the Panel's influence and the positive outcome for NZ's capital markets and shareholders alike.

This report is future-focused, assessing our role as both advisor and regulator, and monitoring how we respond to market evolution. The Takeovers Panel is working well, and we're excited about the future. We're very confident that we can continue to fulfil our role as the market evolves and help ensure that New Zealand's capital markets operate smoothly, efficiently and with certainty.

We're in a good place.

Moving forward in the changing landscape of capital markets

Capital markets play an important role in New Zealand's commercial landscape because they provide access to capital, giving companies the funds they need for growth initiatives. This is a key part of building a resilient and productive economy for New Zealand.

As New Zealand's capital markets continually evolve, the Takeovers Panel evolves with them. In fact, we must stay one or two steps ahead of the market, so there are no surprises when new terms and structures come along, as they inevitably will. This allows the Panel to make important decisions swiftly based on well-considered precedents.

REPORT OF THE CHAIR & DEPUTY CHAIR Cont.

As a market regulator, the composition of the Takeovers Panel is an important aspect of this. Having Panel members with practical experience in the capital markets, from both a legal and commercial perspective, means the Panel can respond quickly and efficiently to issues that arise, and we'll continue to ensure the Panel maintains that balance.

The Panel's role in the future of schemes of arrangement

With schemes of arrangement being used more frequently in New Zealand, it's important that we're clear on the different requirements for a takeover versus a scheme, including the voting threshold, board recommendations and due diligence requirements.

As the Panel deals with the unique circumstances of each scheme transaction, it refines its approach. The Panel's guidance has evolved as its experience with schemes broadens. The Panel expects that the changes to its approach to schemes and its resultant guidance, will settle over time. This is similar to the Panel's experience with Code transactions - changes to its approach were more common in the early years but settled over time as the market came to understand how the Code would work.

Although the Court is the primary regulator of schemes, the Panel also plays a major role, particularly around disclosure. We will continue to ensure that appropriate information is placed before shareholders and that the disclosures and level of transparency is appropriate.

The efforts of the Panel in continuing to lift the bar in terms of the transparency of information provided to shareholders, gives the market confidence that all shareholders will be treated fairly and consistently in any corporate change of control transaction.

Keeping a weather eye open

The Panel executive monitors what's happening in overseas jurisdictions, and we have a reciprocal arrangement with the Australian Takeovers Panel; one of their members sits on our Panel, and our Chair, on theirs. Most Panel members are market participants themselves, and the combination of reporting from the Panel executive and having market participants directly involved, means we can spot developments quickly.

We consult regularly with market participants. We can't assume what will or won't work, so consultation is very important, as is general stakeholder engagement. We'll continue to make sure stakeholders feel they can engage with the Panel. We'd rather they reach out and talk to us about potential issues. That benefits all stakeholders, whether on the bid side or the target side.

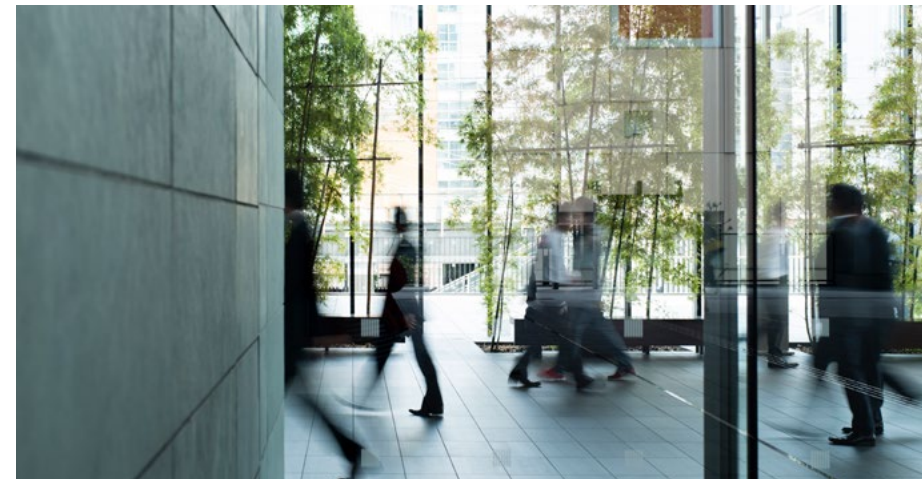
The Panel will also continue to engage with other market regulators in New Zealand. We have a no-surprises approach – if we're consulting on a particular issue, we make sure we've given other regulators a heads-up. We all have a role to play in maintaining stable, active, and efficient capital markets and the key is communicating with each other. The Panel executive maintains a good working relationship with other regulators and has established robust Memoranda of Understanding.

Capturing precedent, advice and enforcement

Capturing the precedent value, and history of transactions, and having them as reference points in the future, leads to consistency in decision making.

A great strength of the Panel is consistency in how it enforces the Takeover Code and supports its objectives whilst being pragmatic - not simply focusing on blackletter law when dealing with issues. We will continue to strengthen this approach.

From an advisory perspective the process is well-established. Market participants know they can engage with the Panel to talk through complex situations which don't need to be played out publicly. Being able to front-foot issues such as technical or legal points creates a more stable market and allows transactions to proceed smoothly.



REPORT OF THE CHAIR & DEPUTY CHAIR Cont.

There are times when the Panel must use its enforcement powers. A recent example of this was a 2021 investigation which identified a party in breach of its undertakings. Ultimately the party was fined a significant sum, which was a decision supported by the High Court.

Using our enforcement powers appropriately builds confidence that the Code is there for a reason, and breaching it comes with consequences.

Futureproofing the Takeovers Panel

Looking to the future in terms of the Takeovers Panel itself, a focus for us is ensuring that we have the right people with the right skills to deliver to the market. Again, consistency in how the Panel operates is key.



Andy Coupe, retired Chair of the Takeovers Panel

Like any business, some knowledge leaves when Panel members change. We face the same challenges as other organisations when it comes to keeping talent, around remuneration and workplace desirability. We're focused on developing people within our organisation; we've changed the look and feel of the organisation, and we're continuing to modernise.

The Panel will continue to aim for consistency and certainty in the way it applies the Code and deals with schemes. Rules and expectations that are well understood by the market will ensure that investors in listed and widely held companies will have the information they need to make informed decisions about their investments.

And finally

Both of us were appointed to our current roles in August of this year, and we would like to pay tribute to the retired Chair of the Takeovers Panel, Andy Coupe, for his dedication and commitment to the Takeovers Panel during his tenure.

|| Andy has led the Panel through a period of considerable change. Amendments to the Companies Act in late 2014 heralded changes to how takeovers were conducted in New Zealand. Schemes of arrangement under the Companies Act are now a well understood transaction structure and have over time become more prominent. Andy helped guide the Panel as it has developed its approach to monitoring those transactions. Andy's commitment and service to the Panel over more than 13 years is greatly appreciated.

A handwritten signature in black ink, appearing to read 'Carl Blanchard'.

Carl Blanchard
Chair

A handwritten signature in black ink, appearing to read 'Anna Buchly'.

Anna Buchly
Deputy Chair

MEMBERS OF THE TAKEOVERS PANEL

as at 30 June 2022



Carl Blanchard
Chair

Partner, Infrastructure and Mergers and Acquisitions at PwC New Zealand. Former Head of Direct Investments at the Accident Compensation Corporation. Appointed to the Panel in 2011.



Anna Buchly
Deputy Chair

Partner at Bell Gully, specialising in mergers, acquisitions, capital markets and joint ventures, with international experience advising clients in Dubai and Sydney. Appointed to the Panel in 2019.



Megan Glen
Member

Director at specialist private investment firm, Ascentro Capital Partners. Former portfolio manager at the NZ Super Fund and investment banker in New York and New Zealand with experience in merger and acquisition transactions and securities offerings. Appointed to the Panel in 2019.



Simon Horner
Member

Partner at Mayne Wetherell with extensive experience in mergers and acquisitions and securities offerings. Appointed to the Panel in 2011.



Richard Hunt
Member

Principal of Fort Street Advisers based in Sydney. A market leader in mergers and acquisitions, equity capital market and debt capital market transactions. Appointed to the Panel as the Australian Panel's representative in 2014.

MEMBERS OF THE TAKEOVERS PANEL Cont.



Sacha Judd
Member

Chief Executive Officer, Hoku Group. Former Partner at Buddle Findlay, specialising in corporate and securities law, and takeovers. Appointed to the Panel in 2015.



Tony Pigou
Member

Corporate adviser and consultant. Experienced adviser on takeovers, merger and acquisition transactions and equity capital markets. Former New Zealand head of investment banking and equity capital markets for major international investment banks. Appointed to the Panel in 2013.



Silvana Schenone
Member

Managing Director and Co-Head of Investment Banking at Jarden, specialising in mergers and acquisitions and equity capital markets. Former partner and head of corporate division at MinterEllisonRuddWatts. Extensive experience advising on corporate transactions in Chile, New York and New Zealand. Appointed to the Panel in 2016.



Nathanael Starrenburg
Member

Director of specialist corporate law firm, Harmos Horton Lusk Limited. Specialises in public and private mergers and acquisitions, securities offerings and other equity capital markets transactions. Appointed to the Panel in 2016.



Martin Stearne
Member

Corporate consultant, member of NZX Listing sub-committee and investment committee of Impact Enterprise Fund. Former investment banker with experience in equity capital markets and takeovers. Director of Argosy Property. Appointed to the Panel in 2019.

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES

The Board of the Panel

A meeting of all Panel members is a meeting of the board for the purposes of the Crown Entities Act 2004. The Panel has six board meetings a year. All Panel members work part-time for the Panel. They are paid at an hourly rate or daily rate, depending on the type of work being done. These rates are set annually by the Remuneration Authority.

The Panel sets the organisation's strategic goals and reviews management's performance. It is responsible for appointing the Chief Executive, setting his or her annual KPIs, monitoring his or her performance during the year and reviewing that performance at the end of the year. The Panel also sets the Chief Executive's remuneration, including an 'at risk' component linked to achieving KPIs.

Committees

The Panel has an Audit and Risk Committee, chaired by Tony Pigou. The other two members are Carl Blanchard and Megan Glen. The Committee reviews and makes recommendations to the full Panel about the Panel's external reporting documents, financial forecasts and budgets, and risk management planning.

The Panel also has a Human Resources and Remuneration Committee, chaired by Anna Buchly. The other two members are Carl Blanchard and Silvana Schenone. The Committee reviews and makes recommendations to the full Panel about remuneration policy and the Panel's Workplace Bullying and Harassment Policy, monitors the performance of the Chief Executive, reviews and makes recommendations about the remuneration of the Chief Executive, and ensures that appropriate professional development and succession plans are in place.

The Panel does not have a large enough staff to operate a separate internal audit process. However, strict separation of personnel is maintained between the banking, payments, and authorisation processes.

Divisions of the Panel

When exercising its statutory powers, the Panel usually meets by a division of members. A division must be constituted with at least three Panel members. The Chair appoints a division of non-conflicted members for each matter, as it arises. Divisions consider applications for exemption and for approvals to act as an independent adviser, enforcement issues, etc.

|| The Panel does not have a large enough staff to operate a separate internal audit process. However, strict separation of personnel is maintained between the banking, payments, and authorisation processes.

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES Cont.

Panel meetings

Panel member participation in Panel meetings, division meetings, and committee meetings over the 2021/2022 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (18 during year)	Audit and Risk Committee (7 during year)	Human Resources Committee (1 during year)
Carl Blanchard	6	10	7	1
Anna Buchly	5	6		
Andy Coupe*	4	13	4	1
Megan Glen	6	9	2	
Simon Horner	5	3		
Richard Hunt	5			
Sacha Judd	5	8		
Tony Pigou	6	12	7	
Silvana Schenone	6	3		1
Nathanael Starrenburg	6	4		
Martin Stearne	6	6		

*Andy Coupe retired from the Panel at the end of March 2022

Dealing with conflicts of interest

The ability to act by division ensures that conflicted members do not form part of the Panel when dealing with matters in respect of which they have an interest. When matters are being dealt with that involve the full Panel, members who have an interest do not participate in the part of the meeting that relates to that matter, nor do they receive the board papers about that matter. The Panel maintains an Interests Register for recording members' interests in accordance with the Crown Entities Act 2004.

Where an enforcement matter before the Panel involves a Panel member, either as a legal adviser to a person the subject of a Panel inquiry, or as a corporate representative of a company that is the subject of an inquiry, the member is not permitted to appear before the Panel. Alternative representation must be sought to represent the person or the company.

Delegations

In 2019, the Panel delegated authority to the Chief Executive to approve the issue of no-objection statements in respect of schemes of arrangement for applications that involve immaterial changes in voting control (as defined by the delegation).

In June 2020, a further delegation was made to the Chief Executive to approve the issue of no-objection statements in respect of straightforward schemes. The delegation is in respect of schemes for which the Panel has issued a letter of intention, where there have been no changes to the terms of the relevant scheme in any material respect, no changes to the disclosure provided to shareholders (other than immaterial consequential changes), and no changes to the composition of interest classes or any other relevant matters.

In 2011, the Panel delegated authority to the Chair and Chief Executive to accept on behalf of the Panel enforceable undertakings given to the Panel under section 31T of the Takeovers Act 1993.

In 2009, the Panel delegated authority to the Chief Executive to approve independent advisers under the Code for applications that are 'straightforward' (as defined by the delegation). This authority was updated and re-delegated in April 2016 to extend to straightforward adviser applications for Code company schemes.

Planning

The Panel's main planning documents are the Statement of Intent and Statement of Performance Expectations. The Panel develops a strategic plan each year and it keeps its business plans under review.

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES Cont.

Directions issued by the Minister and Whole of Government Directions

The Panel was not given any directions under any enactment by the Minister during the year. As an independent Crown entity, the Panel cannot be directed to give effect to government policy. However, it is subject to Whole of Government Directions that do not affect its independence.

Permission to act when interested

There were no occasions during the year when permission was given to a member, in terms of section 68(6) of the Crown Entities Act 2004, to act in a matter despite being interested in that matter.

No invalid acts

There were no acts of the Panel during the year that were invalid under section 19 of the Crown Entities Act 2004. Accordingly, there were no Panel transactions that were invalid, but enforced in reliance on section 20 of that Act.

Obligations to be a good employer

The Panel operates good employer policies and an equal employment opportunities programme. As with the Panel's governance and operational policies, these employee policies are reviewed regularly and are readily available to the Panel's employees through the Staff Handbook. The Panel values its employees and provides a supportive and stimulating work environment. The Panel has eight employees, equating to 7.8 FTEs.

Leadership, accountability and culture

Panel management is committed to leading by example. All staff participate in organisational decisions that impact on them. The Panel has a comprehensive Staff Handbook which sets out the organisation's expectations for professional and collegial behaviour, including a Staff Code of Conduct.

Recruitment, selection and induction

Employment decisions are based on merit and diversity. The small size of the legal team and the specialised field of work means candidates must have appropriate tertiary qualifications and are selected on the basis of their academic record and their ability to work well within the team. The Panel seeks a diverse range of candidates when hiring staff, and, diversity can be a positive element a candidate brings to the Panel.

|| All staff have regular mentoring and support from management and are encouraged to support each other in a strong team-based culture.

Employee development, promotion and exit

All staff have regular mentoring and support from management and are encouraged to support each other in a strong team-based culture. All staff have formal annual performance appraisals. The Panel makes internal promotions based on merit and recruits externally where positions cannot be filled internally. The Panel ensures all employees attend training and development opportunities in accordance with the Panel's Training and Development Policy. All leaving staff are offered an exit interview.

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES Cont.

**Flexibility and work design**

The Panel accommodates flexible working arrangements by design. All staff can utilise remote access for their work computers to work remotely as needed. This accommodates family and personal needs and also contributes to the Panel's business continuity resilience.

Remuneration, recognition and conditions

Staff salaries are reviewed by the Chief Executive annually, taking into account individual performance, movements of salary in the public and private sectors for comparable positions or experience, and any advice or directions from government relevant to remuneration setting.

The Panel does not calculate a gender or ethnicity pay gap. A median pay level for an entity the size of the Panel is not a meaningful measurement and can risk breaching the privacy of individuals. The Panel can and does ensure that new lawyers start on the same pay based on private and public sector market rates and allows flexible work for all employees.

Harassment and bullying prevention

The Panel has a Workplace Bullying and Harassment Policy. This policy encourages employees to take action against any form of workplace bullying or harassment. The Panel has zero tolerance for bullying and harassment.

Safe and healthy environment

The Panel promotes a positive and inclusive work environment. Staff have access to help when it is needed through an Employee Assistance Programme that provides confidential professional advice and counselling. The Staff Handbook includes advice on emergency procedures, and the usual office health and safety equipment is on site, as well as emergency provisions for disaster management.

|| The Panel accommodates flexible working arrangements by design. All staff can utilise remote access for their work computers to work remotely as needed.

ABOUT THE PANEL

The Takeovers Code came into force on 1 July 2001. Prior to the Code's introduction, New Zealand had been one of the few market economies without a modern takeovers regime.

Functions and powers

The main functions and powers of the Panel are set out in the Takeovers Act 1993. In summary, they are:

- To keep takeovers law and practice under review and to recommend to the Minister of Commerce and Consumer Affairs any changes to the law that the Panel considers necessary
- To consider applications for schemes of arrangement under Part 15 of the Companies Act 1993 and indicate whether the Panel has any objection to them
- To investigate any act or omission for the purpose of exercising its enforcement powers or making applications to the Court:
 - issuing summonses, taking evidence on oath and accepting enforceable undertakings
 - issuing restraining orders and making determinations
 - applying to the High Court for permanent orders and for penalties
- To promote public understanding of the law and practice relating to takeovers
- To grant exemptions from compliance with provisions of the Code

Under the Code, the Panel has the power to approve independent advisers and appoint independent experts.

As with other modern takeovers regimes, New Zealand's Code regulates the process of certain share transactions in the companies that are subject to the Code. These transactions then occur in an orderly fashion and all shareholders are subject to, and benefit from, transparent rules.

The Panel and the Code ensure transparent and equitable takeover processes

The role of the Panel and of the Code is to ensure that all shareholders in Code companies have a fair opportunity to participate in control-change transactions such as takeovers, allotments, and acquisitions of parcels of shares. The Code also ensures that shareholders have adequate information to assist their decision-making for these transactions.

The Code achieves this through its two main purposes of transparency and equitable processes.

Transparency is achieved through the disclosures that potential acquirers have to make to shareholders, and the advice that shareholders are given by the Code company's directors and by an independent adviser.

The equitable processes are supported by the Code because the Code requires equality of takeover offer terms and conditions for shareholders and mandates timeframes under which the steps of a takeover must occur. For shareholder meetings to approve allotments and acquisitions, the Code ensures that only 'disinterested' shareholders can approve the resolution; the allottee or acquirer and their associates are not allowed to vote to approve the resolution.

ABOUT THE PANEL Cont.

The Panel focuses a significant proportion of its resources on ensuring that the Code is complied with by investors in Code companies and by Code companies themselves. But compliance is not limited to these parties. Rule 64 of the Code, the ‘truth in takeovers’ rule that prohibits misleading or deceptive conduct in relation to Code-regulated transactions, applies to every person, including financial advisers and the media.

The Panel has strong enforcement powers under the Takeovers Act 1993, including the power (under section 32 of the Act) to hold hearings, take evidence under oath and make confidentiality orders. The Panel also has the power to issue temporary restraining orders that prevent share transactions from being undertaken. It can issue permanent orders requiring persons to publish statements or preventing persons from publishing statements. When exercising its enforcement powers, the Panel acts judicially, as a tribunal.

If the Panel’s own enforcement actions are not sufficient to remedy a breach of the Code, the Panel can take action through the High Court to obtain permanent orders.

In cases where persons have committed serious breaches of the Code that materially prejudice shareholders or other parties, or that are likely to materially damage the integrity or reputation of New Zealand’s securities markets, the Panel may apply to the High Court for a pecuniary penalty against the person in breach. A pecuniary penalty can be up to \$500,000 against an individual or \$5,000,000 against a body corporate, for each breach of the Code.

The Panel’s public education work contributes to improving the public’s understanding of capital markets so that they have the skills and knowledge to make informed decisions about control-change transactions that affect them. The Panel’s law reform function is aimed at ensuring the Code provides optimal protections for shareholders while operating efficiently and effectively as the capital markets innovate.

The Panel’s approach facilitates integrity in the takeovers market

In the first few years of the Code’s operation, the Panel held a significant number of section 32 meetings. The Panel’s published determinations set out full explanations of the matters considered at the meetings and established the Panel’s interpretation of the Code on a number of specific fact situations. The Panel also publishes guidance on how it interprets and enforces the Code.

Following amendments to the Companies Act 1993 in 2014 relating to Code company schemes, the Panel began monitoring different types of transactions structured as schemes of arrangement. Since 2014, the Panel has developed its guidance on Code company schemes with the aim of maintaining the flexibility of schemes, but to also ensure that shareholders have appropriate information, that interest classes are appropriately identified, and that other protections available to shareholders in schemes are appropriate.

The Panel’s published material, together with the informal assistance that is regularly offered to practitioners by the Panel executive, and the Panel’s reputation as a decisive regulator, have all combined to create an environment that reduces the Panel’s need to hold formal enforcement hearings.

Most potential breaches of the Code are found and resolved while documents are still in draft. When an actual breach occurs, it is often voluntarily remedied in accordance with Panel policy (usually requiring a prompt sale of the shares acquired in breach and in some cases, for listed companies, an announcement to the market).

Section 32 meetings can be expensive. The Panel’s full costs for holding them have in the past been in the order of \$250,000, and the costs could be higher depending on the complexity of the matter and the number of witnesses. In the New Image section 32 meeting, the Panel’s full costs exceeded \$400,000. The parties’ own costs could be as much as the Panel’s.

The graph on page 24 below shows the number of section 32 meetings that have been held since the Code came into force.



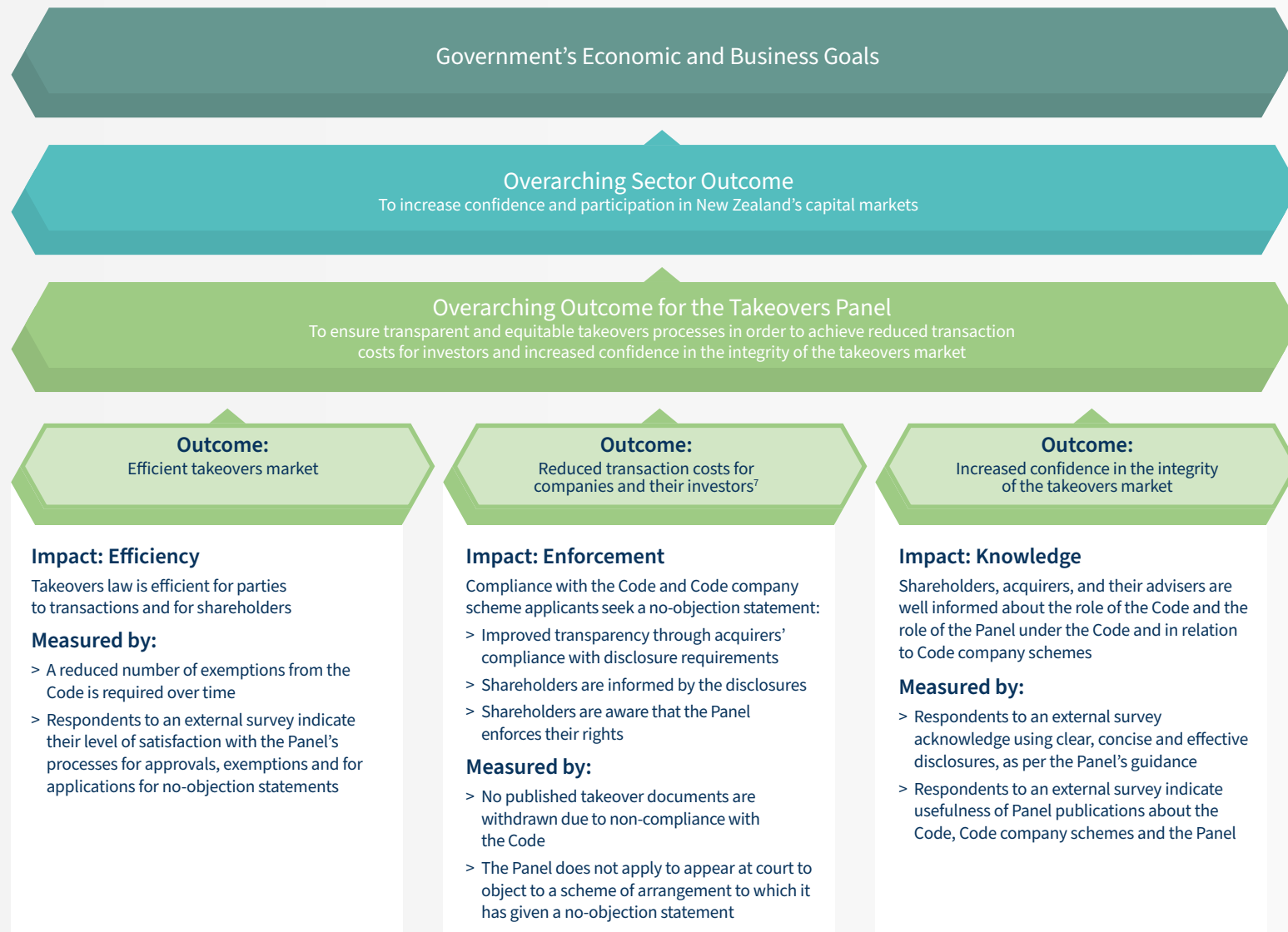
MEASURING THE PANEL'S PERFORMANCE

Impacts and outcomes

In the Panel's Statement of Intent for the period 1 July 2020 – 30 June 2024, the Panel identified three outcomes to which it contributes through the impacts the Panel expects to have in the takeovers market. The Panel also described how it would measure its achievement of the three impacts that its services are designed to attain. This is depicted on page 22.



MEASURING THE PANEL'S PERFORMANCE Cont.



⁷ The transaction costs for investors include access to information about potential and current investments. The Panel's services contribute to the reduction of transaction costs for investors by ensuring access to information about Code-regulated transactions and about investors' rights and obligations as shareholders of Code companies.

MEASURING THE PANEL'S PERFORMANCE Cont.

Efficiency impact

The Panel's policy function of reviewing takeovers law and market practice and recommending changes to the law is aimed at improving the efficiency and effectiveness of takeovers law. Exemptions can also contribute to an efficient market by, when appropriate, modifying the Code to better meet the circumstances of transactions.

The Panel measures the achievement of the efficiency impact in two ways. The first is by the extent to which there is a reduction in the number of exemptions granted.

This measure is chosen because amendments to the Code as a result of the Panel's policy work should result in there being a reduction in the number of exemptions granted that relate to the application of the Code to market practice. In addition, the class exemptions of a general nature that the Panel periodically grants are often designed to streamline compliance where it is recognised that the same type of individual exemption has been granted repeatedly for a recurring set of circumstances.⁸

The increased use of schemes of arrangement as a transaction structure has also reduced the number of exemptions granted by the Panel. Schemes are a flexible transaction structure carried out under the Companies Act 1993, often for more complex transactions, and, because the Code does not apply to schemes of arrangement, the transactions do not require exemption relief from the rules of the Code.

Although there will be some volatility relating to market specific or transaction specific circumstances (as evidenced in the 2010 and 2017 years in the graph below), the granting in 2010 of the class exemption from rule 7(d) and rule 16(b) and the increased use of schemes of arrangement since 2015 has tended to reduce the number of exemptions and exemption notices.⁹

The volatility in the number of exemptions granted arises because an application for exemption can cover several different aspects of a transaction that require exemptions from the Code and can be required for any number of applicants. It is relatively common for the Panel to grant exemptions from several rules and to several persons in response to an application.¹⁰

Multiple exemptions granted to multiple persons are then reflected in an exemption notice which gives effect to the Panel's decision to grant the exemptions. For these reasons, the graph shows fewer exemption notices than the number of exemptions granted.

Although each exemption related to unique circumstances, the Panel will continue to examine law reform and class exemption opportunities to reduce the need for individual exemptions and to increase the efficiency of the Code.

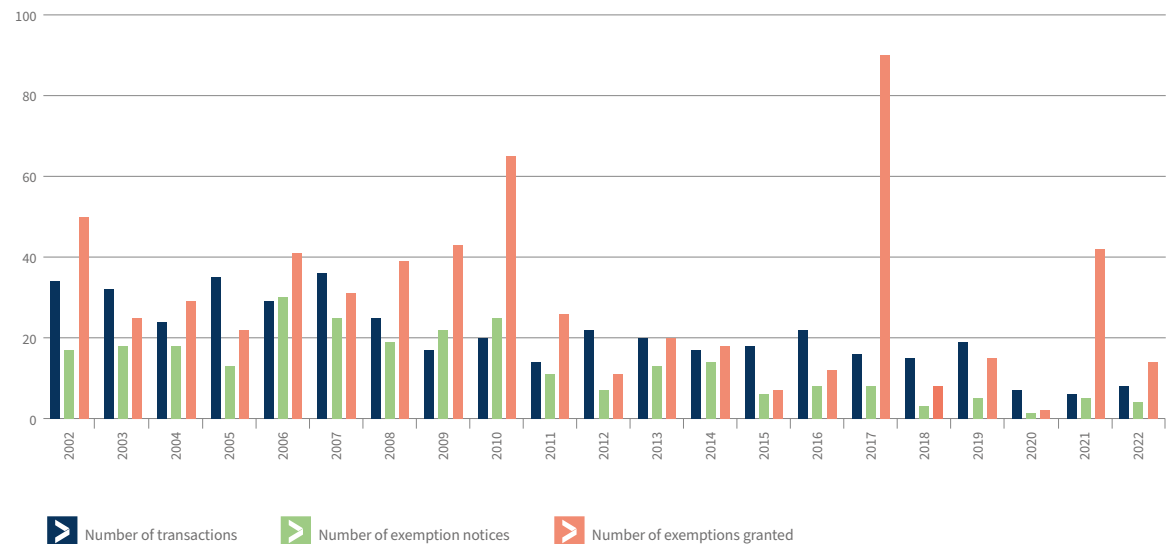
A second measure of the Panel's efficiency is the level of satisfaction of advisers and other people who engage with the Panel on Code exemption applications and on no-objection statement applications for Code company schemes. The data on page 25 show that the Panel's processes and professionalism are rated highly by stakeholders who complete the Panel's online survey.

⁸ For the purposes of measuring the impact, exemptions to amend previously granted exemptions are not counted.

⁹ Exemptions from rule 7(d) and rule 16(b) of the Code were one of the most commonly granted exemptions.

¹⁰ In 2017, a single exemption application resulted in an exemption for 81 applicants who had each potentially inadvertently breached a rule of the Code. The result was a very high number of exemptions granted in comparison to the number of exemption notices.

Number of exemptions granted to 30 June



MEASURING THE PANEL'S PERFORMANCE Cont.

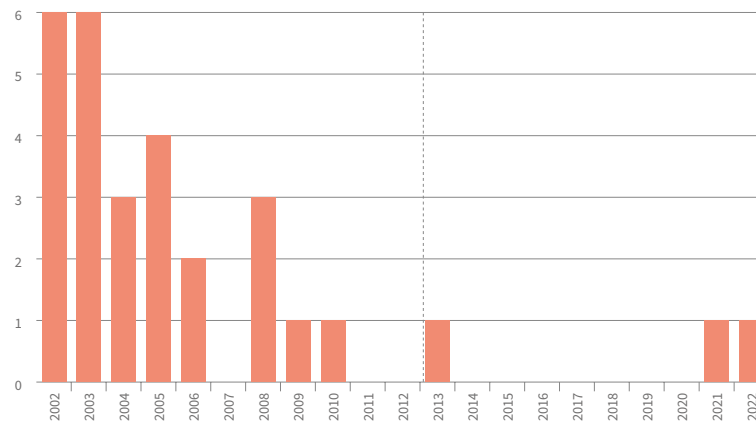
Enforcement impact


The highest priority for the Panel's resources goes to responding to Code-regulated transactions as they occur. Code-regulated transactions are monitored, and an important part of this occurs through the Panel executive reviewing Code-related documents in draft and giving informal assistance on how to comply with the Code.


This practice, which began around 2005, has contributed to the reduction in formal hearing processes (see the graph on the right). From 2015, the Panel extended this practice to applications for no-objection statements in respect of schemes of arrangement under Part 15 of the Companies Act 1993. The Panel aims for 100% compliance with the Code and with the Panel's guidance on schemes of arrangement so that shareholders, especially small shareholders, are protected from unfair practices and all shareholders have a transparent and appropriate process under which they make decisions about Code-regulated transactions.

The Panel measures the achievement of this impact in two ways. First, by there being no Code-regulated documents required to be withdrawn under a section 32 enforcement action, due to non-compliance with the Code. And secondly, by there being no scheme of arrangement for which the Panel had to object to at court where the scheme had received a no-objection statement from the Panel. In 2021/2022, no Code-regulated documents were required to be withdrawn due to non-compliance with the Code and the Panel did not appear at court to object to any scheme of arrangement that had received a no-objection statement from the Panel.

Number of section 32 meetings



 Number of section 32 meetings

 Number of requirements to withdraw documents, or amend or publish new documents, due to non-compliance with the Code*

* Since this measure was introduced in 2013, there have been no instances of non-compliance

|| The Panel aims for 100% compliance with the Code and with the Panel's guidance on schemes of arrangement so that shareholders, especially small shareholders, are protected from unfair practices and all shareholders have a transparent and appropriate process under which they make decisions about Code-regulated transactions.

MEASURING THE PANEL'S PERFORMANCE Cont.

Knowledge impact

The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication Code Word to communicate its views on topical takeovers matters. The Panel's website provides ready access to the Panel's decisions, Guidance Notes, and other useful information.

Holding meetings with legal and financial advisers and giving presentations are other methods used by the Panel to raise awareness about the Code and about the Panel's role as a regulator.

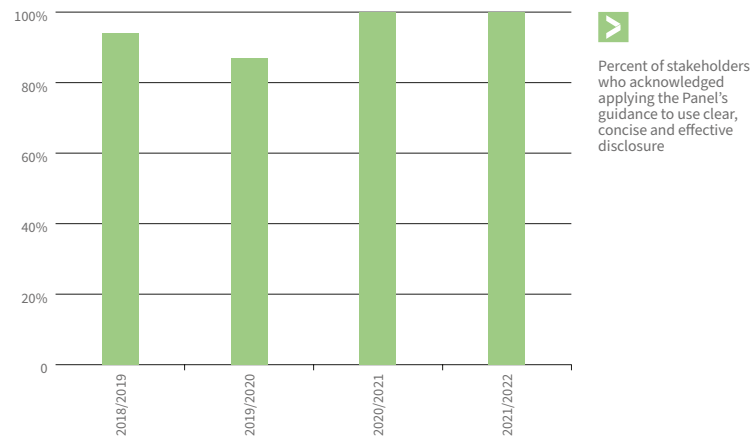
The Panel's services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways.

The first measure relates to the Panel's processes that are aimed at ensuring that Code companies and their advisers use clear, concise and effective disclosure when providing information to shareholders.

In 2021/2022, 100% of the Panel's stakeholders acknowledged applying the Panel's guidance to use clear, concise and effective disclosure.

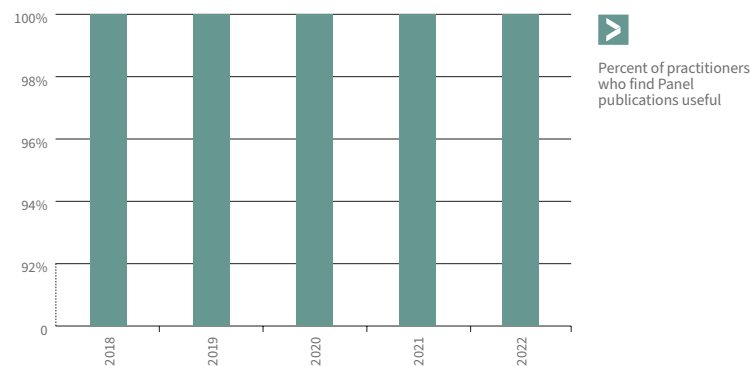
The second measure relates to how well the Panel informs takeover practitioners and advisers about the Code. The goal of this impact is that at least 90% of the respondents to the Panel's online survey indicate that they find the Panel's publications useful. In 2021/2022, 100% of the Panel's stakeholders indicated the Panel's publications were useful.

Applying the Panel's guidance to use clear, concise and effective disclosure



¹¹ Data based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.*

Practitioners who find Panel publications useful¹¹ – to 30 June



FINANCIAL REPORT



STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and Statement of Performance and for the judgements used in them.

We are responsible for any end-of-year performance information provided by the Panel under section 19A of the Public Finance Act 1989.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Panel's financial and non-financial reporting.

In our opinion these annual financial statements and Statement of Performance fairly reflect the financial position as at 30 June 2022 and the operations of the Takeovers Panel for the year ended 30 June 2022.

This annual report was approved by the Panel on 26 September 2023.

Signed on behalf of the Panel by:



Carl Blanchard
Chair
Takeovers Panel

26 September 2023



Megan Glen
Chair
Audit and Risk Committee

26 September 2023

STATEMENT OF FINANCIAL PERFORMANCE

For the year ended 30 June 2022

Budget* 2022 \$	Notes	Actual 2022 \$	Actual 2021 \$
Revenue – operating			
1,494,000		1,494,000	1,494,000
14,000		11,912	12,194
205,000	5	161,904	416,150
0	4	9,686	0
20,000		0	0
1,773,000		1,677,502	1,922,344
Revenue – litigation fund			
0		0	200,000
30,000		23,885	205,593
0	4	175,056	0
4,000		2,543	4,425
34,000		201,484	410,018
1,807,000		1,878,986	2,332,362
Operating expenditure			
699,000	6	692,528	701,868
1,033,000	7	999,451	998,970
1,732,000		1,691,979	1,700,838
253,000		145,315	314,520
1,985,000		1,837,294	2,015,358
(218,000)		41,692	317,004
This is comprised of:			
1,000		(14,477)	221,506
(219,000)		56,169	95,498
(218,000)		41,692	317,004

* Budget figures are unaudited. Explanations of major variances against budget are provided in note 16. The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

STATEMENT OF FINANCIAL POSITION

For the year ended 30 June 2022

Budget* 2022 \$	Notes	Actual 2022 \$	Actual 2021 \$
Current assets			
172,000		388,476	180,286
50,000	3	424,440	148,424
1,189,000		976,418	965,541
365,000	3	265,259	263,578
1,000		2,899	2,182
1,000	3	564	34
0		0	200,000
0	4	1,500,000	0
112,000	8	220,970	597,692
1,890,000		3,779,026	2,357,737
Non-current assets			
15,000	10	51,101	34,175
15,000		51,101	34,175
1,905,000		3,830,127	2,391,912
Current liabilities			
98,000	9	144,008	82,535
60,000		123,326	103,534
0	4	1,315,258	0
158,000		1,582,592	186,069
Equity			
150,000		150,000	150,000
1,181,000		1,232,706	1,247,183
416,000	3	864,829	808,660
1,747,000	11	2,247,535	2,205,843
1,905,000		3,830,127	2,391,912

* Budget figures are unaudited. The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

STATEMENT OF CASH FLOWS

For the year ended 30 June 2022

Budget* 2022 \$	Notes	Actual 2022 \$	Actual 2021 \$
Cash flows from operating activities			
Cash was received from:			
1,494,000	Government grant – operations	1,494,000	1,494,000
595,000	Application fees and costs recoverable	815,222	198,740
18,000	Interest	13,208	22,161
20,000	Other revenue	0	0
5,000	Goods and Services Tax (net)	0	0
Cash was applied to:			
0	Goods and Services Tax (net)	(8,984)	(8,789)
(749,000)	Suppliers	(633,608)	(774,723)
(1,243,000)	Employees and members	(1,137,180)	(1,189,082)
140,000	Net cash flows from operating activities	542,658	(257,693)
Cash flows from investing and financing activities			
Cash was received from:			
0	Receipts from sale of investments	0	328,024
Cash was applied to:			
0	Payments to acquire property, plant and equipment	(45,894)	(24,549)
(176,000)	Payments to purchase investments	(12,558)	0
(176,000)	Net cash flows from investing and financing activities	(58,452)	303,475
(36,000)	Net increase (decrease) in cash	484,206	45,782
258,000	Add opening cash	328,710	282,928
222,000	Closing cash	812,916	328,710

* Budget figures are unaudited. The Statement of Accounting Policies and Notes form an integral part of, and should be read in conjunction with, these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2022

1. STATEMENT OF ACCOUNTING POLICIES

Reporting entity

The Takeovers Panel is a body corporate established by the Takeovers Act 1993.

The Panel's primary function is the regulation of share transactions involving Code companies.

Sources of funding

The Panel is funded by the appropriation of money by Parliament, and the payment of fees by the users of its services and parties to its enforcement actions. It is responsible for the allocation of the money. It sets priorities with care and reviews them continually to ensure that the money is put to the best value for its use.

Basis of preparation

Statement of compliance

The Panel applies Public Benefit Entity Simple Format Reporting – Accrual (Public Sector) and is eligible to do so with total operating expenses below \$2 million. These condensed financial statements have been prepared in compliance with NZ Generally Accepted Accounting Practice (NZ GAAP). All transactions are reported using the accrual basis of accounting and on the assumption that the Panel is a going concern.

Basis of measurement

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

Functional and presentational currency

These financial statements are presented in New Zealand dollars (\$) which is the Panel's functional currency and rounded to the nearest dollar.

Use of estimates and judgements

The process of applying accounting policies requires the Panel to make judgements, estimates and assumptions that affect the reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on past experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

Changes in accounting policy

In line with IFRIC Agenda decision relating to IAS 38 Intangible Assets, the intangible assets previously held have been reassessed as software as a service and written off accordingly. Software at time of write off had a book value of \$8,457.

Significant accounting policies

Significant accounting policies set out below have been applied consistently to all periods presented in these financial statements.

a. Bank accounts and cash

Bank accounts and cash balances comprise cash on hand, held in cheque or savings accounts, and deposits held at call with banks that form part of the Panel's day-to-day cash management.

b. Term deposits

This category includes all term deposits.

c. Trade and other receivables

Debtors and other receivables are initially measured at the amount owed. Impairment is recorded when it is likely that the amount owed will not be collected, in which case the loss is recorded as a bad debt expense.

d. GST

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

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

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

e. Trade and other payables

Creditors and other payables are initially measured at the amount owing. If an invoice has not been received, an accrual for an estimate of the amount to be paid will be recorded.

f. Income tax

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

g. Revenue recognition

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

Interest is recorded as revenue as it is earned during the period.

h. Litigation fund

Interest revenue and expenditure on approved litigation fund matters are reported as revenue and expenditure of the Panel in the financial period in which they were derived or incurred. Reimbursements from the Crown to top up the fund are reported as income in the period to which the Panel's claim for reimbursement relates. The balance of the fund is disclosed as a component of equity in the statement of financial position.

i. Property, plant and equipment

Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses. The following classes of property, plant and equipment have been depreciated over their economic lives on the following basis:

Office furniture 8.5 – 10.5 percent straight line

Office equipment 17.5 – 40 percent straight line

Intangible assets - Computer software that is not integral to the operation of the hardware is recorded as an intangible asset and amortised on a straight line basis over a period of three years.

j. Short term employee benefits

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

k. Cost allocation policy

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

2. BUDGET FIGURES

The budget figures are those approved by the Panel on 31 May 2021 and published in the Panel's Statement of Performance Expectations 2021/2022. The budget figures are prepared in accordance with NZ GAAP and are consistent with the accounting policies adopted by the Panel for the preparation of the financial statements but have not been audited.

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

3. LITIGATION FUND

The litigation fund is to be used for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or with the Companies Act 1993 for Code company schemes, or responds to litigation brought against it. The fund has been operated in respect only of eligible cases. The Panel approved use of the litigation fund for costs involved in the Panel's investigation of potential Code non-compliance. As a result of this investigation the Panel held a section 32 meeting in December 2020.

Parliament approved an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2021. The Panel drew down \$200,000 from this appropriation during the year.

A summary of the movements in the fund during the year is as follows:

	2022 \$	2021 \$
Opening balance	808,660	713,162
Government Grant – litigation fund	0	200,000
Cost recovery	23,885	205,593
Court costs awarded	175,056	0
Interest received	1,979	4,391
Interest accrued	564	34
Expenditure on approved litigation	(145,315)	(314,520)
Closing balance	864,829	808,660
This is comprised of:		
Bank accounts and cash		
- Call account	424,440	148,424
- Short term deposits	265,259	263,577
Interest receivable	564	34
Court costs receivable	23,885	405,593
Accounts payable	(24,375)	(8,968)
Closing balance	864,829	808,660

4. COURT COSTS AWARD

	2022 \$
Court costs award receivable	1,500,000
Court costs income - litigation	(175,055)
Court costs income - operating	(9,686)
Court costs held in trust	(1,315,258)
Total	0

The Panel was awarded a pecuniary penalty of \$1,500,000 by the High Court in proceedings relating to Panel's 2019 determination of breaches of the Code in relation to the New Image takeover transaction. The High Court ordered that the Panel recover its costs of litigation from the penalty. Post balance date, the balance of \$1,315,258 was remitted to the Crown via the Ministry of Business Innovation and Employment.

5. APPLICATION FEES AND COSTS RECOVERABLE

Part 2 of the Takeovers Regulations 2000 (**Fees Regulations**) enables the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement actions pursuant to the Takeovers Act. Below is an analysis of the amounts:

	2022 \$	2021 \$
Exemptions	63,533	101,219
Approvals	6,713	10,235
Enforcement	55,715	197,945
Schemes	35,943	106,751
Total	161,904	416,150

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

6. SERVICES AND SUPPLIES

	2022 \$	2021 \$
Members' fees	118,558	214,019
Rent	135,542	149,000
Audit fees	33,360	24,785
Other	405,068	314,064
Total services and supplies	692,528	701,868

7. PERSONNEL COSTS

	2022 \$	2021 \$
Salaries	969,444	968,730
Employer contributions to defined contribution plans	28,078	28,371
ACC	1,929	1,869
Total personnel costs	999,451	998,970

8. DEBTORS AND PREPAYMENTS

	2022 \$	2021 \$
Accounts receivable	91,540	520,974
Prepayments	62,318	57,554
Accounts receivable – related parties	38,963	0
GST receivable	28,149	19,164
Total	220,970	597,692

9. CREDITORS AND ACCRUED EXPENSES

	2022 \$	2021 \$
Accounts payable	100,598	47,556
Accruals	43,410	34,980
Total	144,008	82,535

10. PROPERTY, PLANT AND EQUIPMENT

	Office equipment \$	Office furniture \$	Software \$	total \$
Cost or valuation				
Balance at 1 July 2020	124,669	40,871	171,726	337,266
Balance at 30 June 2021	119,455	40,871	156,418	316,744
Additions	10,442	35,452	0	45,894
Disposals	(67,125)	(40,871)	0	(107,996)
Changes in accounting policy	0	0	(156,418) ¹²	(156,418)
Balance at 30 June 2022	62,772	35,452	0	98,224
Accumulated depreciation				
Balance at 1 July 2020	(108,842)	(35,950)	(151,108)	(295,900)
Balance at 30 June 2021	(97,137)	(37,471)	(147,961)	(282,569)
Depreciation	(13,288)	(1,201)	0	(14,489)
Elimination on disposal	63,923	38,051	0	101,974
Change in accounting policy	0	0	147,961	147,961
Balance at 30 June 2022	(46,502)	(621)	0	(47,123)
Carrying amounts:				
At 30 June & 1 July 2021	22,318	3,400	8,457	34,175
At 30 June 2022	16,270	34,831	0	51,101

¹² In accordance with IFRIC agenda decisions relating to software as a service (SaaS), software that had previously been capitalised as intangible assets are now classified as SaaS and have been removed from the balance sheet for the 30 June 2022 year end. If this change wasn't made depreciation expense for software would have been \$5,466 accumulated depreciation of \$153,427 and book value on the balance sheet of \$2,991.

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

11. ACCUMULATED FUNDS

The Panel seeks to maintain sufficient equity to enable it to manage its ongoing operations and obligations. Surplus funds are invested having regard to the cash flow profile of future commitments. There have been no material changes in the Panel's management of equity during the period compared with the previous period.

The Panel is not subject to any externally imposed equity requirements.

	Opening balance	Surplus/ (deficit)	Closing balance
At 30 June 2022			
Capital contributed by owners	150,000	0	150,000
Accumulated operating surpluses/deficits	1,247,183	(14,477)	1,232,706
Accumulated litigation surpluses/deficits	808,660	56,169	864,829
Total	2,205,843	41,692	2,247,535
At 30 June 2021			
Capital contributed by owners	150,000	0	150,000
Accumulated operating surpluses/deficits	1,025,677	221,506	1,247,183
Accumulated litigation surpluses/deficits	713,162	95,498	808,660
Total	1,888,839	317,004	2,205,843

12. COMMITMENTS

The Panel has the following non-cancellable operating lease commitments. These amounts are the total of minimum future lease payments under the Panel's non-cancellable operating leases.

	2022 \$	2021 \$
Not later than one year	105,360	149,000
Later than one year and not later than five years	491,240	322,833
Later than five years	0	0
Total	596,600	471,833

The Panel entered into a new rental lease effective from 1 May 2022. The new rental for the Panel's new premises is \$100,560 (plus GST) per annum for a term of six years.

The Panel entered an agreement to lease a printer from 27 August 2019 for a term of 5 years.

The Panel had no capital commitments at balance date (2021 - no commitments).

13. CONTINGENT LIABILITIES

There were no contingent liabilities at balance date (2021 - no contingent liabilities).

14. CONTINGENT ASSETS

There were no contingent assets at balance date (2021 - no contingent assets).

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

15. RELATED PARTY TRANSACTIONS

Related party disclosures have not been made for transactions with related parties that are within the normal supplier or client/recipient relationship on terms and conditions no more or less favourable than those that it is reasonable to expect the Panel would have adopted in dealing with the party at arms' length in the same circumstances. Further, transactions with other government agencies (for example, government departments and Crown entities) are not disclosed as related party transactions when they are consistent with the normal operating arrangements between government agencies and undertaken on the normal terms and conditions for such transactions.

Boardroom facilities and hospitality for two of the Panel's board meetings were provided by Mayne Wetherell (1) and MinterEllisonRuddWatts (1).

Member's fees were incorrectly calculated resulting in an aggregate overpayment of \$38,963 in 2022. The Panel unanimously resolved to request repayment of this amount from Panel members. The amount is shown as accounts receivable – related parties in note 8.

16. EMPLOYEE REMUNERATION

Key personnel comprise the members of the Panel and the senior management staff.

During the year, the number of employees of the Panel, not being members, who received remuneration and other benefits in excess of \$100,000 were:

	2022	2021
\$280,000-\$289,999	1	0
\$270,000-\$279,999	0	1
\$210,000-\$219,000	1	0
\$200,000-\$209,999	0	1
\$100,000-\$109,999	1	1
Total	3	3

17. BOARD MEMBERS' REMUNERATION

Members are remunerated on the basis of time spent on the work of the Panel, including time spent on Panel division and committee meetings. The Panel has a professional indemnity insurance policy to provide cover for members and employees of the Panel.

Member's fees:	2022 \$	2021 \$
R.A. Coupe (Chair until 31 March 2022)	20,854	47,528
C.G. Blanchard (Chair from 1 April 2022)	19,290	32,172
A.E. Buchly (Deputy Chair from 1 April 2022)	13,083	16,980
M.D. Glen ¹³	3,319	0
S.M. Horner	7,973	22,459
R.A. Hunt	6,760	11,561
S.H. Judd	8,792	14,317
A.G. Pigou	11,477	22,712
S.G. Schenone	8,193	13,146
N.W. Starrenburg	10,393	11,553
M.W. Stearne	8,424	21,591
Total	118,558	214,019

¹³ In consultation with her former employer, the Guardians of New Zealand Superannuation, Ms Glen declined to receive Panel member fees. From April 2022, Ms Glen changed employers and began receiving Panel member fees.

18. SUBSEQUENT EVENTS

There were no material events subsequent to balance date that would affect the interpretation of the financial statements and/or the performance information.

NOTES TO THE FINANCIAL STATEMENTS CONTINUED

For the year ended 30 June 2022

19. BUDGET VARIANCES

Significant variances from budget were:

Debtors and prepayments

Debtors and prepayments are \$220,970, which is \$108,000 higher than budgeted. Of this balance, \$91,359 relates to debts arising from the Global Horticulture section 32 meeting.

Revenues

Total operating revenue was \$55,000 lower than budgeted, with the following key variances:

- Revenue from monitoring schemes of arrangement was \$114,000 lower than budgeted
- Revenue from exemptions was \$23,000 higher than budgeted
- Revenue from approvals was \$8,000 lower than budgeted
- Revenue from section 32 meeting was \$55,000 higher than budgeted
- Other revenue from a potential secondment was \$20,000 lower than budget

Total litigation revenue was \$167,000 higher than budgeted, with the following key variances:

- Revenue from cost recovery was \$6,000 lower than budgeted
- Revenue from court costs awarded was \$175,000 higher than budgeted

Expenditure

Total operating expenditure for the year was \$1,000 lower than budgeted, with the following key variances for services and supplies expenditure and personnel expenditure:

Services and Supplies	\$6,000 lower than budget	
Member's fees	\$61,000 lower than budget	Less member time was spent because there were fewer transactions
Recruitment	\$17,000 higher than budget	More staff were recruited than was budgeted
Rent	\$13,000 lower than budget	Less rent paid because a new lease on smaller premises was negotiated
Printing	\$13,000 higher than budget	Annual Report 2021
Travel and accommodation	\$10,000 lower than budget	Lower spending on travel was due to travel restrictions related to COVID-19 and increased use of video conference meetings
Assets not capitalised	\$11,000 higher than budget	Higher spending was the result of set up costs in the move to smaller premises
Personnel	\$33,000 lower than budget	Lower than budget due to staff changes and government constraints on pay

Total litigation expenditure for the year was \$108,000 lower than budgeted. The variance was spending on expert advice being lower than budget.

20. BREACH OF STATUTORY REPORTING DEADLINE

The Takeovers Panel was required under Section 156 of Crown Entities Act 2004 to complete its audited financial statements and service performance information by 31 October 2022. This timeframe was not met due to the late completion of the audit.

STATEMENT OF PERFORMANCE

For the year ended 30 June 2022

PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

Who we are and why we exist

The Panel ensures that investors in publicly listed and widely held companies are provided with appropriate and timely information so that they may make informed decisions about a change in the control of those companies. The Panel does this by enforcing the Takeovers Code and by its no-objection statement process for schemes of arrangement under the Companies Act 1993.

The delivery of the Panel’s services is funded under Vote Commerce and Consumer Affairs Non-Departmental Output Class – Administration of the Takeovers Code.

The end of year performance information for the Panel’s appropriations includes:

- (a) an assessment of what has been achieved with the appropriation in the financial year;
- (b) a comparison of the actual expenses or capital expenditure incurred in relation to the appropriation in the financial year with the expenses or capital expenditure that were appropriated or forecast to be incurred;¹⁴ and
- (c) the cost of service for each output class.

Assessment of Performance	2020/21		2021/22	
	Budgeted Standard	Actual	Budget Standard	Actual
Enforcement of Takeovers Code and of schemes of arrangement involving Code companies – percentage of practitioners satisfied overall with process and with professionalism of the Takeovers Panel executive.	90%	100%	90%	100%
Actual 2021/2022 \$000	Main Estimates 2021/2022 \$000		Supplementary Estimates 2021/2022 \$000	
\$1,494	\$1,494		\$1,494	

As shown on pages 37 to 41, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

Assessment of Performance	2020/21		2021/22	
	Budgeted Standard	Actual	Budget Standard	Actual
Ensuring adequate funding is available from time to time for the Takeovers Panel to undertake civil proceedings under the Takeovers Act 1993 or in relation to the Takeovers Code, which is unpredictable in both occurrence and extent.	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement
Actual 2021/2022 \$000	Main Estimates 2021/2022 \$000		Supplementary Estimates 2021/2022 \$000	
\$200	\$200		\$200	

¹⁴ See the Statement of Financial Performance on page 28

As shown in the Panel’s financial statements, the Panel maintains a Litigation Fund to enable it to undertake civil proceedings under the Takeovers Act or Takeovers Code. The Panel held a section 32 enforcement meeting in December 2020. The Panel is considering whether to seek remedies through the High Court.

STATEMENT OF PERFORMANCE CONTINUED

For the year ended 30 June 2022

OUTPUT 1: Services for transactions under Takeovers Code:

The consideration of applications for approval to act as an independent adviser or expert or for an exemption from compliance with the Code; the monitoring and enforcement of Code compliance in all Code-regulated transactions.

The Panel used its approval resources to consider applications, including from firms seeking to be approved to act as independent advisers for Code-regulated transactions or events.

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

The Panel used its enforcement resources to:

- Assist those with Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code
- Maintain voluntary vetting of draft transaction documents in order to ensure that they comply with the Code
- Encourage drafters of Code-regulated documents to apply the Panel's guidance on clear, concise and effective drafting
- Take enforcement action, including seeking enforceable compliance undertakings,
- Hold hearings under section 32 of the Takeovers Act and, where necessary, taking Court proceedings for permanent or punitive orders

¹⁵ The number of applications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information. This year the number of Code transactions was lower than forecast and the same as last year. Two potential reasons for the low number of transactions may be the effect of the COVID-19 pandemic and preference for structuring transactions as schemes of arrangement.

¹⁶ The level of the Panel's Output 1 resources spent on enforcement of the Code increases if the Panel holds a section 32 meeting (due to procedural intensity). This has a flow-on effect across all Outputs, and within Output1 in terms of the percentage of resources spent on review of documents.

¹⁷ While the Panel expected to spend more time reviewing draft documents, there was one transaction requiring a significant amount of time considering a potential enforcement matter. This reduced the percentage of resources spent on reviewing draft documents.

¹⁸ While the Panel expected to spend more time reviewing draft documents, there was one transaction requiring a significant amount of time considering a potential enforcement matter. This reduced the percentage of resources spent on reviewing draft documents.

¹⁹ All survey data in this statement of performance are based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.

Actual performance against planned performance standards and performance measures for 2021/2022

Performance Measures	Performance Standards		
	Forecast 2021/2022	Actual 2021/2022	Actual 2020/2021
Quantity¹⁵			
Draft documents reviewed, including for clear, concise and effective drafting as set out in the guidance notes, and percentage of enforcement resources spent on this review ¹⁶	8-12 taking 80% of resources	5 taking 49% of resources ¹⁷	6 taking 54% of resources ¹⁸
Quality			
The Regulations Review Committee does not recommend disallowance of any Panel exemptions	0 disallowed	0 disallowed	0 disallowed
Applicants (exemptions and advisers) are satisfied with the Panel's process, as indicated by an external survey ¹⁹	90% of respondents	100% of respondents	100% of respondents
Legal advisers (takeovers and shareholder meetings) are satisfied with the processes for the reviewing of draft meeting and takeover documents as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Timeliness			
Applicants are satisfied with the timeliness of the Panel's decisions regarding approval and exemption applications, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Revenue	\$1,247,100 71% of forecast revenue	\$1,286,959 68% of actual revenue	\$1,516,036 65% of actual revenue
Cost	\$1,465,400 74% of forecast expenditure	\$1,205,828 66% of actual expenditure	\$1,309,983 65% of actual expenditure

STATEMENT OF PERFORMANCE CONTINUED

For the year ended 30 June 2022

OUTPUT 2: Services under Companies Act for Code company schemes:

The Panel responds to notifications of schemes of arrangement being undertaken under the Companies Act that involve Code companies (Code company schemes) and considers applications for no-objection statements. The Panel issues letters of intention and no-objection statements in accordance with the Panel's published guidance and procedures.

The Panel used its Code company schemes resources to:

- Engage with practitioners on their draft proposals for undertaking a Code company scheme
- Assess the adequacy of scheme documents for shareholders and the proposed voting procedures, as against its published policy for the giving of a no-objection statement
- Encourage drafters of scheme documents to apply the Panel's guidance on clear, concise and effective disclosure
- Consider whether to give a no-objection statement or whether to appear in the High Court to object to a Code company scheme
- Approve independent advisers for Code company schemes

²⁰ The number of notifications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information.

²¹ Revenue derived from, and the cost of providing, these services was lower than forecast because the number of schemes was below the estimate.

Actual performance against planned performance standards and performance measures for 2021/2022:

Performance Measures	Performance Standards		
	Forecast 2021/2022	Actual 2021/2022	Actual 2020/2021
Quantity ²⁰			
Review of draft scheme documents including checking for clear, concise and effective drafting as set out in the Panel's <i>Guidance Note on Schemes of Arrangement</i>	100% of 4-6 scheme notifications	100% of 2 scheme notifications	100% of 2 scheme notifications
Quality			
Applicants are satisfied with process for no-objection statements as indicated by an external survey	100% of respondents	100% of respondents	100% of respondents
Timeliness			
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Revenue			
	\$173,300 10% of forecast revenue	\$122,585 ²¹ 7% of actual revenue	\$256,560 11% of actual revenue
Cost			
	\$173,000 9% of forecast expenditure	\$96,335 5% of actual expenditure	\$221,689 11% of actual expenditure

STATEMENT OF PERFORMANCE CONTINUED

For the year ended 30 June 2022

OUTPUT 3: Review takeovers law and practice; Recommend any necessary law changes:

Ensuring that the provisions of the Takeovers Code and other takeovers law are effective and relevant, as assessed by review of law and practice, undertaking policy development (policy projects), and recommending amendments to takeovers law as necessary.

The Panel used its policy resources to monitor market practice and undertake policy projects that arose in response to market practices. Resources were used to continue one ongoing policy project: implementation of technical amendments to the Takeovers Act. In addition, resources were used to start a project to consider the next round of 'technical' amendments to capital markets legislation and a review of the Panel's approach to schemes of arrangement

²² There are three ongoing policy projects. Most of the Panel's 2017 law reform recommendations were implemented in October 2018 and January 2020. The Panel is working with MBIE officials to ensure that the last recommendation, remove reference to 'share parcels' from the definition of Code company, is included in a future bill. The Panel began consulting on its next round of technical amendments in 2020/2021 and made a series of law reform recommendations in April 2022. Finally, the Panel's review of its schemes of arrangement policy continues. The Panel published updated and consolidated guidance on schemes of arrangement in February 2022 and its consideration of further guidance or potential law reform continues.

²³ The revenue and cost amounts were higher than forecast because more resource was put to policy development than budgeted.

Actual performance against planned performance standards and performance measures for 2021/2022

Performance Measures	Performance Standards		
	Forecast 2021/2022	Actual 2021/2022	Actual 2020/2021
Quantity			
Policy projects that arise out of market practice	1 project commenced 2 projects completed 2 continuing	3 projects continuing ²²	2 projects commenced 2 projects continuing
Quality			
Every policy project that involves a recommendation of law reform meets the Panel's quality assurance criteria (as demonstrated by performance checklists)	100% of the time	100% of the time	No policy project involved a recommendation of law reform
Timeliness			
Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100% of the time	100% of the time	No recommendations were sent to the Minister
Revenue			
(Funded by government grant and other income, except fees)	\$156,000 9% of forecast revenue	\$285,377 ²³ 15% of actual revenue	\$279,883 12% of actual revenue
Cost			
	\$156,000 8% of forecast expenditure	\$317,381 17% of actual expenditure	\$241,843 12% of actual expenditure

STATEMENT OF PERFORMANCE CONTINUED

For the year ended 30 June 2022

OUTPUT 4: Public Understanding:

Inform and educate shareholders, directors and other key stakeholders about the Code, schemes of arrangement and other relevant law and respond to public enquiries.

The Panel used its public understanding resources to:

- Undertake informal engagements with market practitioners, company directors, market commentators, and other key stakeholders
- Disseminate educational information about itself and the Code
- Enhance the Panel's website to inform stakeholders and the market
- Deal with public enquiries about Code matters

²⁴ Fewer individual engagements were a result of Covid-19 travel restrictions.

²⁵ In an effort to increase response rates, the Panel simplified the multiple-choice answers for some questions. Previously, all questions regarding the respondent's degree of satisfaction with the Panel's website had five answers to choose from: high, considerable, moderate, limited and very limited. The choices were simplified to three answers, being considerable, moderate, and limited. Website satisfaction rates in the past combined the results received for high satisfaction and considerable satisfaction (the highest and second highest rates of satisfaction to choose from). Over the last 5 years, 100% of responses had consistently indicated for high satisfaction and considerable satisfaction with the Panel's website. This year, results were impacted by a reduced number of answers to select from: 60% of respondents indicated a considerable degree of satisfaction with the Panel's the website. There is nothing that has changed with the Panel's website that could explain such a significant decline in satisfaction for users. A better comparison may be to combine the responses for considerable or moderate satisfaction. 100% indicated a considerable or moderate degree of satisfaction regarding the Panel's website.

Actual performance against planned performance standards and performance measures for 2021/2022:

Performance Measures	Performance Standards		
	Forecast 2021/2022	Actual 2021/2022	Actual 2020/2021
Quantity			
CodeWord issues published	4	2	1
Public enquiries responded to	70-90	48	67
Engagements with stakeholders as per Stakeholder Engagement Plan	25-40 individual 2 seminars	19 individual 2 seminars ²⁴	41 individual 2 seminars
Quality			
Market participants found the Panel's published documents, including updates and amendments to those documents made from time to time, were useful, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Market participants found the website useful to a considerable or high degree, as indicated by an external survey	90% of respondents	100% of respondents	60% of respondents ²⁵
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved
Timeliness			
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	100% of the time	100% of the time
Public enquiries are responded to within 3 working days of receipt	100% of the time	100% of the time	100% of the time
Revenue			
(Funded by government grant and other income except fees)	\$191,000 11% of forecast revenue	\$184,065 10% of actual revenue	\$279,883 12% of actual revenue
Cost			
	\$191,000 10% of forecast expenditure	\$217,750 12% of actual expenditure	\$241,843 12% of actual expenditure

INDEPENDENT AUDITOR'S REPORT



To the readers of the Takeovers Panel's annual report for the year ended 30 June 2022

The Auditor-General is the auditor of the Takeovers Panel. The Auditor-General has appointed me, Chrissie Murray, using the staff and resources of Baker Tilly Staples Rodway Audit Limited, to carry out the audit of the financial statements and the performance information of the Takeovers Panel on his behalf.

Opinion

We have audited:

- the financial statements of the Takeovers Panel on pages 28 to 36, that comprise the statement of financial position as at 30 June 2022, the statement of financial performance, and statement of cash flows for the period ended on that date and the notes to the financial statements including the statement of accounting policies; and
- the performance information of the Takeovers Panel, that comprises the statement of performance on pages 37 to 41.

In our opinion:

- the financial statements of the Takeovers Panel:
 - present fairly, in all material respects:
 - its financial position as at 30 June 2022; and
 - its financial performance and cash flows for the period then ended; and
 - comply with generally accepted accounting practice in New Zealand in accordance with the Public Benefit Entity Simple Format Reporting – Accrual (Public Sector); and
- the performance information:
 - presents fairly, in all material respects, the Takeovers Panel's performance for the period ended 30 June 2022, including:
 - for each class of reportable outputs:
 - its standards of delivery performance achieved as compared with outcomes included in the statement of performance expectations for the financial year; and

- its actual revenue and output expenses as compared with the forecasts included in the statement of performance expectations for the financial year;
 - what has been achieved with the appropriations; and
 - the actual expenses or capital expenditure incurred compared with the appropriated or forecast expenses or capital expenditure; and
- complies with generally accepted accounting practice in New Zealand.

Our audit was completed on 26 September 2023. This is the date at which our opinion is expressed. We acknowledge that our audit was completed later than required by s156(2)(b) of the Crown Entities Act 2004. This was due to the auditor shortage in New Zealand.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the members of the Takeovers Panel, our responsibilities relating to the financial statements and the performance information, we comment on other information, and we explain our independence.

Basis for our opinion

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor-General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of the Takeovers Panel for the financial statements and the performance information

The Panel is responsible on behalf of the Takeovers Panel for preparing financial statements and performance information that are fairly presented and comply with generally accepted accounting practice in New Zealand. The Panel is responsible for such internal control as it determines is necessary to enable it to prepare financial statements and performance information that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements and the performance information, the Panel is responsible for assessing the entity's ability to continue as a going concern. The Panel is also responsible

INDEPENDENT AUDITOR'S REPORT CONTINUED



for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Takeovers Panel, or there is no realistic alternative but to do so.

The Panel's responsibilities arise from the Crown Entities Act 2004.

Responsibilities of the auditor for the audit of the financial statements and the performance information

Our objectives are to obtain reasonable assurance about whether the financial statements and the performance information, as a whole, are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance but is not a guarantee that an audit carried out in accordance with the Auditor-General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of these financial statements and the performance information.

For the budget information reported in the financial statements, our procedures were limited to checking that the information agreed to the Takeovers Panel's statement of performance expectations.

We did not evaluate the security and controls over the electronic publication of the financial statements and the performance information.

As part of an audit in accordance with the Auditor-General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

We identify and assess the risks of material misstatement of the financial statements and the performance information, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Takeovers Panel's internal control.

We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Panel.

- We evaluate the appropriateness of the reported performance information within the Takeovers Panel's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by Panel and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Takeovers Panel's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements and the performance information or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Takeovers Panel to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the financial statements and the performance information, including the disclosures, and whether the financial statements and the performance information represent the underlying transactions and events in a manner that achieves fair presentation.
- We obtain sufficient appropriate audit evidence regarding the financial statements and the performance information of the entities or business activities within the Takeovers Panel to express an opinion on the consolidated financial statements and the consolidated performance information. We are responsible for the direction, supervision and performance of the Takeovers Panel audit. We remain solely responsible for our audit opinion.
- We communicate with the Panel regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

INDEPENDENT AUDITOR'S REPORT CONTINUED



Other information

The Panel is responsible for the other information. The other information comprises the information included on pages 02 to 25, but does not include the financial statements and the performance information, and our auditor's report thereon.

Our opinion on the financial statements and the performance information does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

In connection with our audit of the financial statements and the performance information, our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the financial statements and the performance information or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Independence

We are independent of the Panel in accordance with the independence requirements of the Auditor-General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1: *International Code of Ethics for Assurance Practitioners* issued by the New Zealand Auditing and Assurance Standards Board.

Other than the audit, we have no relationship with, or interests in, the Takeovers Panel.

A handwritten signature in blue ink, appearing to read "Chrissie Murray".

Chrissie Murray

Baker Tilly Staples Rodway Audit Limited

On behalf of the Auditor-General
Wellington, New Zealand

TAKEOVERS PANEL

Address

Level 3, Solnet House
70 The Terrace
PO Box 1171
Wellington 6011

Phone

(04) 815 8420

Email

takeovers.panel@takeovers.govt.nz

Website

takeovers.govt.nz



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PANEL**
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[TAKEOVERS.GOV.T.NZ](https://takeovers.govt.nz)