

# TAKEOVERS PANEL

ANNUAL REPORT 2023



**TAKEOVERS  
PANEL**  
TE PAE WHITIMANA

# TE WHAKAWHITI MANA I RUNGA I TE TIKA

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Transferring power and control  
according to what is good and right



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

# INTRODUCTION



# REPORT OF THE CHAIR AND CHIEF EXECUTIVE

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The Takeovers Panel is pleased to present its annual report for the 2022/2023 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.

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 RegCo 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.



“  
**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**

## 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”.<sup>1</sup>

This activity is subject to the Takeovers Code or is subject to the Panel’s oversight in a scheme of arrangement under the Companies Act 1993 when it involves a person increasing their voting control in a Code company to more than 20% of the company’s total voting rights.<sup>2</sup>

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 involving Code companies are conducted in a way that is transparent and equitable. The Panel’s Statement of Performance, on pages 61 to 71, sets out the services that the Panel provided over the year.

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 or carry out a scheme of arrangement in accordance with section 236A of the Companies Act 1993.



## Making an impact

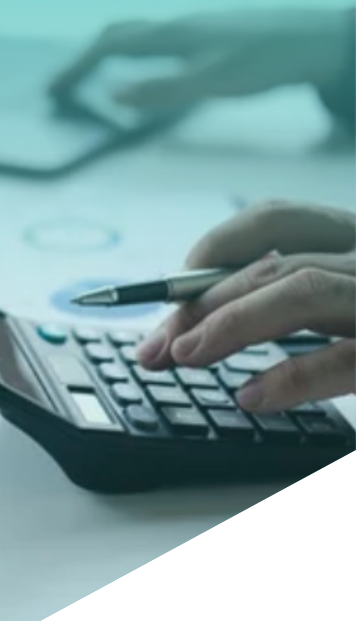
Enforcing the Takeovers Code and ensuring schemes of arrangement are conducted in a fair and transparent manner is the Panel's primary focus. Code-regulated transactions and schemes of arrangement that involve Code companies are actively monitored by the Panel executive.

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 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. This improves efficiency and ensures 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.



## 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 38, these activities are depicted under the respective impacts of Enforcement, Efficiency and Knowledge.

## Achievements for the reporting year

### Enforcement

There were six Code-regulated transactions during the 2022/2023 year, compared with five Code-regulated transactions in the 2021/2022 year. These six transactions comprised five 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. Together with the Code-regulated transactions, the Panel monitored a total of eight transactions (compared with seven in 2021/2022).

The Panel has previously 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 in 2014. This trend has continued this year. 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.<sup>3</sup>

The Panel's other enforcement work during the 2022/2023 year included conducting preliminary investigations. The Panel concluded four investigations, with one further investigation concluded post-balance date (eight in 2021/2022). All of the investigations were concluded without the need for formal enforcement proceedings (in the previous period one investigation resulted in a formal enforcement hearing under section 32 of the Takeovers Act).

Finally, the Panel continues to work with other capital markets regulators, including the NZX/NZX RegCo 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.

**“  
TOGETHER WITH THE CODE-REGULATED  
TRANSACTIONS, THE PANEL MONITORED  
A TOTAL OF EIGHT TRANSACTIONS  
(COMPARED WITH SEVEN IN 2021/2022)”**

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.



### Efficiency – policy work and exemptions

In April 2022, the Panel made a number of recommendations for law reform relating to the Takeovers Act and the Takeovers Code, as well as other legislation related to New Zealand’s capital markets.

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 these recommendations.

In addition, there remains one final recommendation made by the Panel in 2017. That recommendation was for an amendment to the definition of ‘unlisted Code company’ to remove the term ‘share parcels’, to align with section 199 of the Companies Act.<sup>4</sup>

Finally, the Panel continued its broad review of the Panel’s policy on granting no-objection statements for schemes of arrangement. The Panel’s review to consider if law reform recommendations might be appropriate is ongoing, with public consultation underway post-balance date.

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

### **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 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.



### **THE PANEL'S RELATIONSHIPS WITH OTHER REGULATORS, INCLUDING THE NZX/NZX REGCO, THE FINANCIAL MARKETS AUTHORITY AND THE COMMERCE COMMISSION, ARE STRONG**

The Panel also promotes public understanding by presenting information about the Code and schemes transactions to wider audiences. The Panel hosted two 'meet the market' functions in late 2022, one each in Auckland and Wellington. Presentations were made by the Chair and Chief Executive, followed by informal discussions with attendees. Together, approximately 90 market participants attended the functions. Also, the Chief Executive gave a presentation at the New Zealand Shareholders' Association National Investors Conference. Approximately 150 experienced retail investors attended the presentation.

The Panel's relationships with other regulators, including the NZX/NZX RegCo, the Financial Markets Authority and the Commerce Commission, are strong. 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'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 \$167,373 for its chargeable activities (\$185,789 in 2021/2022).

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.<sup>5</sup> However, last year, the Panel operated with a small deficit. The Panel has commenced work on a review of the fees it levies for certain activities. The Panel is funded through a mixture of Crown revenue and third-party fee revenue, along with minor sources of other revenue (such as interest from cash reserves). There have been minimal changes to the funding structure of the Panel for over a decade. For example, there was a regulatory amendment in 2018 which altered fees to ensure that they are presented within the Panel's fees regulations as GST-exclusive amounts. Potential changes to the fees charged by the Panel and the types of activities which attract fees may, if implemented, help to alleviate the Panel's deficits.

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.



### *Resources*

The Panel used less resource than had been forecast on transactional work (65% of resource forecast, 37% expended). This was primarily because of the small number of transactions and the significant resource expended on policy projects. Resource used for processing Code company schemes was above budget (10% forecast, 14% expended) and the Panel expended significantly more resource than forecast on policy projects (14% forecast, 36% expended). This was because the law reform recommendations project and the review of schemes of arrangement were complex in nature.

Panel members and the executive committed 10,636 hours of time to Panel work over the year (10,908 hours in the previous year).

The Panel's resources consist of the 11 Panel members and the executive team of eight staff, as well as office equipment and furniture.

### *Outputs*

Utilising its income and resources, over the 2022/2023 financial year the Panel provided the outputs described in the Statement of Performance on pages 61 to 71.



## **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.**

### **Cost effectiveness of the 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 37 to 45, *Measuring the Panel's Performance – Impacts and Outcomes*. As this annual report indicates, the Panel is a well-respected and cost-effective service provider.

#### *Results of the 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 2022/2023 year, the Panel sent 25 survey requests (24 in 2021/2022). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 15 responses, which is a response rate of 60% (54% response rate in 2021/2022). 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 2021/2022). All respondents found the Panel's publications overall to be useful (100% in 2021/2022).



Summary of Online Survey Results<sup>6</sup> from 2019 – 2023  
Year to 30 June

Overall satisfied with Panel's publications

100%

100%

Overall satisfied with  
processes and professionalism

100%

Overall satisfied  
with timeliness of  
processing applications

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.

## Our people

### Panel members

The Panel comprises 11 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.

The Panel welcomed three new Panel members in 2022/2023. Rachel Dunne, David Goatley and Sam Inglis joined the Panel on 7 June 2023.

Rachel Dunne is a partner at law firm Chapman Tripp. Ms Dunne specialises in corporate and securities law with particular expertise in equity capital markets, mergers and acquisitions and corporate governance.

David Goatley is a corporate advisor with significant New Zealand and international transaction experience across takeovers, mergers and acquisitions, financing including equity capital markets and corporate restructuring. Mr Goatley was formerly a New Zealand-based Managing Director with a global investment bank.

Sam Inglis (Ngāi Tahu – Puketeraki) is the Chief Operating Officer at Ngāi Tahu Holdings, having been the General Manager Investment for a number of years. Mr Inglis joined Ngāi Tahu from the New Zealand Superannuation Fund, where he was primarily in the International Direct Investment Team. He previously worked at the New Zealand Treasury.

The Panel acknowledges and thanks departing Panel members, Tony Pigou and Simon Horner, who had each contributed to the Panel's success over the last 10 years in promoting the strength of New Zealand's capital markets by ensuring transparent and equitable takeovers processes.

#### **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.

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.



**Carl Blanchard**  
Chair



**Andrew Hudson**  
Chief Executive

## **MEMBERS OF THE TAKEOVERS PANEL AS AT 30 JUNE 2023**

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### **Chair – Carl Blanchard**

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.



### **Deputy Chair – Anna Buchly**

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.



### **Rachel Dunne**

Partner at Chapman Tripp. Ms Dunne specialises in corporate and securities law with expertise in equity capital markets, mergers and acquisitions and corporate governance.



### Megan Glen

Director of Investment Banking at Forsyth Barr, previously Director at 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.



### David Goatley

Corporate advisor with significant New Zealand and international transaction experience across takeovers, mergers and acquisitions, financing including equity capital markets and corporate restructuring.



### Richard Hunt

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.



### Sam Inglis

Chief Operating Officer at Ngāi Tahu Holdings, having been the General Manager Investment for a number of years. Mr Inglis joined Ngāi Tahu from the New Zealand Superannuation Fund, where he was primarily in the International Direct Investment Team.



### **Sacha Judd**

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



### **Silvana Schenone**

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**

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**

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 AND DISCLOSURES

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# GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES

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## 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 receive an annual governance fee and are also paid at an hourly rate for ad hoc work, such as enforcement meetings or meetings to consider potential exemptions from the Code. These rates are set 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 Megan Glen. The other two members are Carl Blanchard and Martin Stearne. 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.

## Panel meetings

Panel member participation in Panel meetings, division meetings, and committee meetings over the 2022/2023 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (13 during year)	Audit and Risk Committee (5 during year)	Human Resources Committee (4 during year)
Carl Blanchard	6	8	5	4
Anna Buchly	5	6		4
Rachel Dunne*	0			
Megan Glen	6	6	5	
David Goatley*	0	1		
Simon Horner**	6	3		
Richard Hunt	5			
Sam Inglis*	0			
Sacha Judd	5	4		
Tony Pigou**	6	7	5	
Silvana Schenone	5	5		4
Nathanael Starrenburg	5	3		
Martin Stearne	6	7		

\*Rachel Dunne, David Goatley and Sam Inglis members from 7 June 2023.

\*\* Simon Horner and Tony Pigou left the Panel on 6 June 2023.

### 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.

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.

### 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.



## **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**

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.

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.

### **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, 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. 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.

### **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.

### **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.

# ABOUT US





## ABOUT THE PANEL

### The Takeovers Code came into force on 1 July 2001.

#### 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 takeovers 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.

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, 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.



**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**

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 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 ALSO PUBLISHES  
GUIDANCE ON HOW IT INTERPRETS  
AND ENFORCES THE CODE**

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 43 below shows the number of section 32 meetings that have been held since the Code came into force.

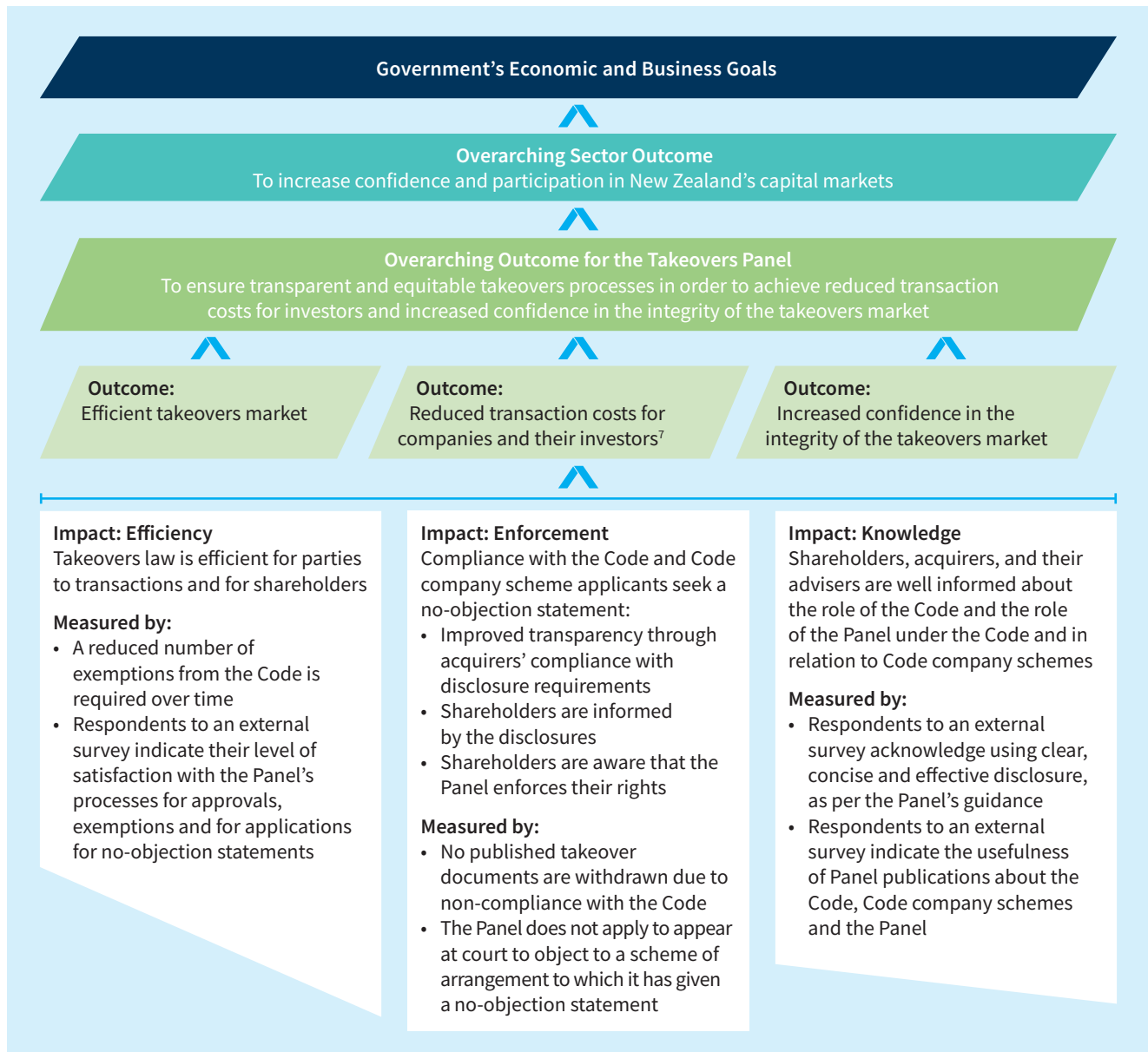
# PERFORMANCE



## **MEASURING THE PANEL'S PERFORMANCE - IMPACTS AND OUTCOMES**

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In the Panel's Statement of Intent for the period 1 July 2023 – 30 June 2027, 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 the following page.



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.



## 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.<sup>8</sup>

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, 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 on page 41), 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.<sup>9</sup>

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.



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.<sup>10</sup>

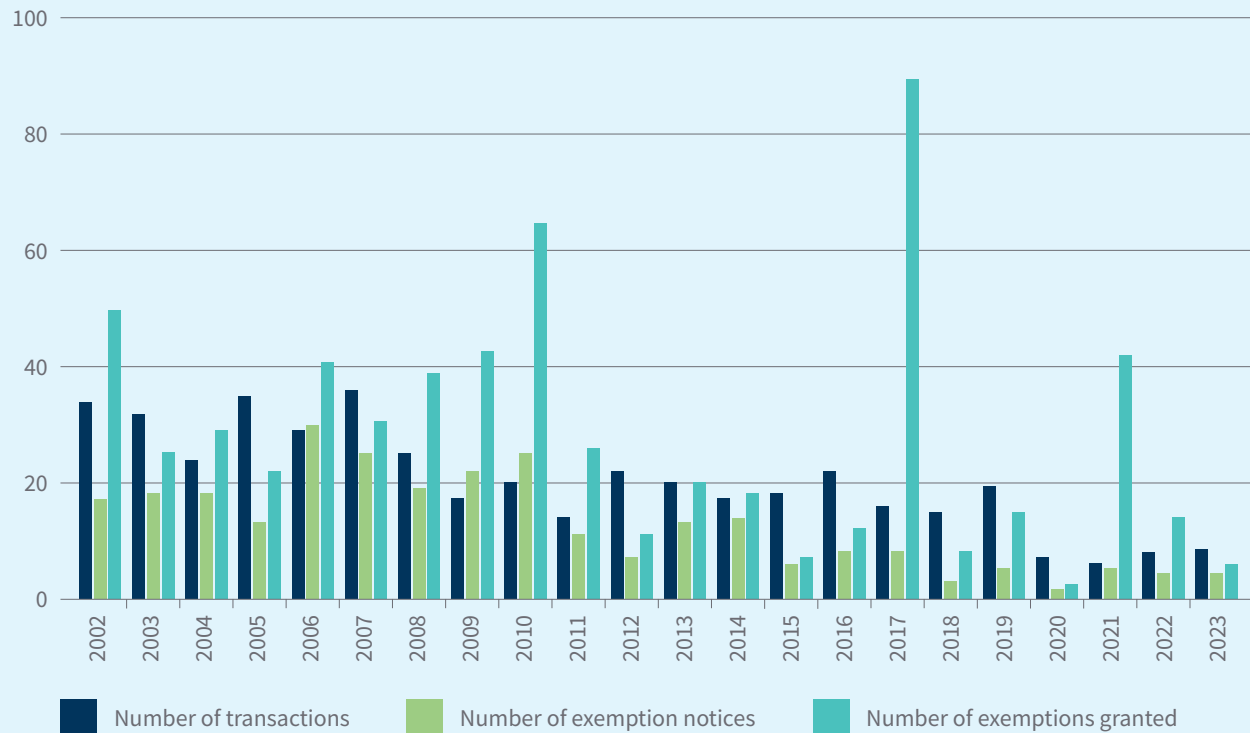
Multiple exemptions granted to multiple persons are then reflected in an exemption notice which gives effect to the Panel's decision to grant the exemptions. For these reasons, the graph shows fewer exemption notices than the number of exemptions granted.

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 45 show that the Panel's processes and professionalism are rated highly by stakeholders who complete the Panel's online survey.

10. For example, 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



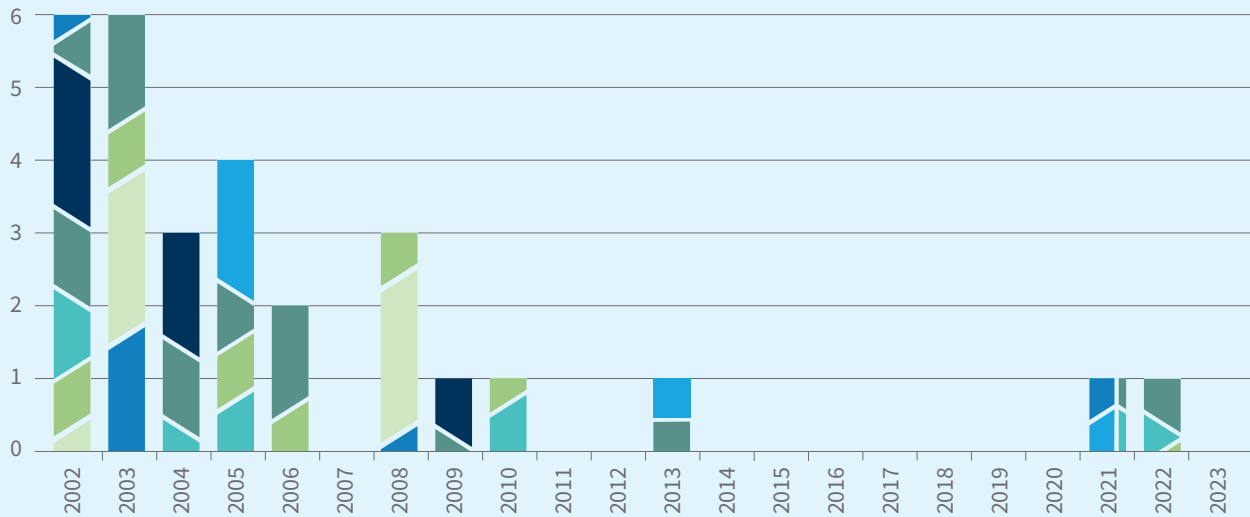
## Enforcement impact

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 following page). 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 2022/2023, 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 documents required to be withdrawn, due to non-compliance with the Code

0

Number of times Panel had to object to a scheme in court

0

## 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 *CodeWord* 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.

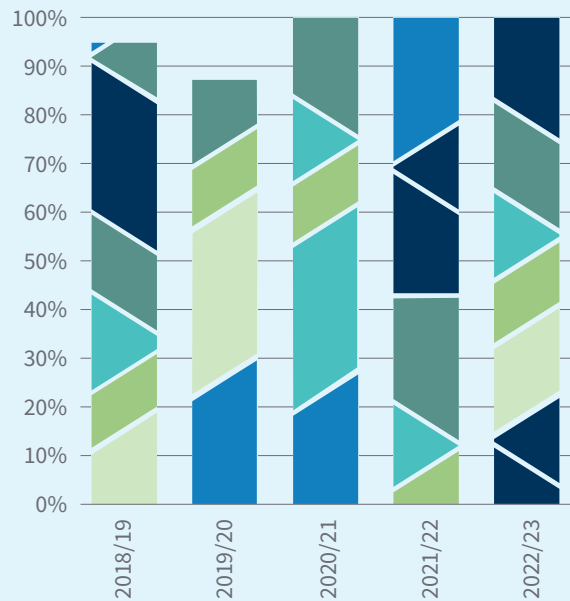
The Panel's services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways.

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 2022/2023, 100% of the Panel's respondents 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 2022/2023, 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



### Practitioners who find Panel publications useful<sup>11</sup> – to 30 June

**100%**

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.

# FINANCIAL REPORT





# STATEMENT OF RESPONSIBILITY

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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 2023 and the operations of the Takeovers Panel for the year ended 30 June 2023.

This annual report was approved by the Panel on 31 October 2023.

Signed on behalf of the Panel by:



**Carl Blanchard**  
Chair  
Takeovers Panel  
31 October 2023



**Megan Glen**  
Chair  
Audit and Risk Committee  
31 October 2023

# STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2023

Budget* 2023 \$		Note	Actual 2023 \$	Actual 2022 \$
	<b>Revenue – operating</b>			
1,494,000	Government grant – baseline funding		1,494,000	1,494,000
15,000	Interest		38,728	11,912
138,000	Application fees and costs recoverable	5	128,645	161,904
0	Court costs award	4	0	9,686
1,647,000	Total operating revenue		1,661,373	1,677,502
	<b>Revenue – litigation fund</b>			
0	Cost recovery		0	23,885
0	Court costs award	4	0	175,056
4,000	Interest		19,034	2,543
0	Other revenue		7,809	0
4,000	Total litigation fund revenue		26,843	201,484
1,651,000	Total revenue		1,688,216	1,878,986
	<b>Operating expenditure</b>			
635,000	Services and supplies	6	729,404	692,528
1,024,000	Personnel costs	7	997,466	999,451
1,659,000	Total operating expenditure		1,726,870	1,691,979
0	Expenditure – litigation fund		24,764	145,315
1,659,000	Total expenditure		1,751,634	1,837,294
(8,000)	Net surplus/(deficit)		(63,418)	41,692
	<b>This is comprised of:</b>			
(12,000)	Operating surplus		(65,497)	(14,477)
4,000	Litigation surplus		2,079	56,169
(8,000)			(63,418)	41,692

\*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

as at 30 June 2023

Budget* 2023 \$		Note	Actual 2023 \$	Actual 2022 \$
	<b>Current assets</b>			
273,000	Bank accounts and cash – operations		325,384	388,476
237,000	Bank accounts and cash – litigation fund	3	285,675	424,440
1,206,000	Short term deposits – operations		1,003,972	976,418
567,000	Short term deposits – litigation fund	3	571,846	265,259
3,000	Interest receivable – operating		9,308	2,899
1,000	Interest receivable – litigation fund	3	4,620	564
0	Court costs award receivable	4	0	1,500,000
118,000	Debtors and prepayments	8	113,359	220,970
2,405,000	Total current assets		2,314,164	3,779,026
	<b>Non-current assets</b>			
71,000	Property, plant and equipment	10	73,463	51,101
71,000	Total non-current assets		73,463	51,101
2,476,000	Total assets		2,387,627	3,830,127
	<b>Current liabilities</b>			
103,000	Creditors and accrued expenses	9	105,017	144,008
77,000	Employee entitlements		98,494	123,326
0	Court costs held in trust	4	0	1,315,258
180,000	Total current liabilities		202,268	1,582,592
	<b>Equity</b>			
150,000	Capital contribution		150,000	150,000
1,341,000	Operating funds		1,167,209	1,232,706
805,000	Litigation fund	3	866,907	864,829
2,296,000	Total equity	11	2,184,116	2,247,535
2,476,000	Total equity and liabilities		2,387,627	3,830,127

\*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 2023

Budget* 2023 \$		Actual 2023 \$	Actual 2022 \$
	<b>Cash flows from operating activities</b>		
	Cash was received from:		
1,494,000	Government grant – operations	1,494,000	1,494,000
471,000	Application fees and costs recoverable	209,664	815,222
13,000	Interest	47,297	13,208
0	Court costs award	192,551	0
0	Goods and Services Tax (net)	4,125	0
	Cash was applied to:		
(56,000)	Goods and Services Tax (net)	0	(8,984)
(444,000)	Suppliers	(578,475)	(633,608)
(1,179,000)	Employees and members	(1,199,321)	(1,137,180)
299,000	Net cash flows from operating activities	169,841	542,658
	<b>Cash flows from investing and financing activities</b>		
	Cash was applied to:		
(25,000)	Payments to acquire property, plant and equipment	(37,557)	(45,894)
(533,000)	Payments to purchase investments	(334,141)	(12,558)
(558,000)	Net cash flows from investing and financing activities	(371,698)	(58,452)
(259,000)	Net increase/(decrease) in cash	(201,857)	484,206
769,000	Add opening cash	812,916	328,710
510,000	Closing cash	611,059	812,916

\*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 2023

## Note 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*

There have been no changes to accounting policy in 2023.

##### *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.
- 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 is 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  |
- 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.

## Note 2 Budget Figures

The budget figures are those approved by the Panel on 4 May 2022 and published in the Panel's Statement of Performance Expectations 2022/2023. 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.

## Note 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.

Parliament approved an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2023.

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

	2023 \$	2022 \$
Opening balance	864,829	808,660
Cost recovery	0	23,885
Court costs awarded	0	175,056
Interest received	14,414	1,979
Interest accrued	4,620	564
Other revenue	7,809	0
Expenditure on approved litigation	(24,765)	(145,315)
Closing balance	866,907	864,829
This is comprised of:		
Bank accounts and cash		
- Call account	285,675	424,440
- Short term deposits	571,846	265,259
Cash to be transferred	4,766	0
Interest receivable	4,620	564
Accounts receivable	0	23,885
Court costs receivable	0	175,056
Accounts payable	0	(24,375)
Closing balance	866,907	864,829

#### Note 4 Court Costs Award

	2023	2022
	\$	\$
Court costs award receivable	0	1,500,000
Court costs income – litigation	0	(175,055)
Court costs income – operating	0	(9,686)
Court costs held in trust	0	(1,315,258)
<b>Total</b>	<b>0</b>	<b>0</b>

In 2022 the Panel was awarded a pecuniary penalty of \$1,500,000 by the High Court in proceedings relating to the Panel's 2019 determination of breaches of the Code in the New Image takeover transaction. The High Court ordered that the Panel recover its costs of litigation from the penalty. The balance of \$1,315,258 was remitted to the Crown via the Ministry of Business, Innovation and Employment.

#### Note 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:

	2023	2022
	\$	\$
Exemptions	32,360	63,533
Approvals	17,293	6,713
Enforcement	0	55,715
Schemes	78,992	35,943
<b>Total</b>	<b>128,645</b>	<b>161,904</b>



**Note 6**  
**Services and Supplies**

	2023 \$	2022 \$
Members' fees	201,346	118,558
Rent	100,560	135,542
Audit fees	35,982	33,360
Other	391,516	405,068
<b>Total services and supplies</b>	<b>729,404</b>	<b>692,528</b>

**Note 7**  
**Personnel Costs**

	2023 \$	2022 \$
Salaries	967,335	969,444
Employer contributions to defined contribution plans	28,678	28,078
ACC	1,453	1,929
<b>Total personnel costs</b>	<b>997,466</b>	<b>999,451</b>

**Note 8**  
**Debtors and Prepayments**

	2023 \$	2022 \$
Accounts receivable	10,521	91,540
Prepayments	64,174	62,318
Accounts receivable – related parties	14,640	38,963
GST receivable	24,023	28,149
<b>Total</b>	<b>113,358</b>	<b>220,970</b>

**Note 9**  
**Creditors and Accrued Expenses**

	2023 \$	2022 \$
Accounts payable	60,932	100,598
Accruals	44,085	43,410
<b>Total</b>	<b>105,017</b>	<b>144,008</b>

## Note 10 Property, Plant and Equipment

	Office equipment \$	Office furniture \$	Software \$	Total \$
<b>Cost or valuation</b>				
Balance at 1 July 2021	119,455	40,871	156,418 <sup>12</sup>	316,744
Balance at 30 June 2022	62,772	35,452	0	98,224
Additions	33,418	4,139	0	37,557
Disposals	(1,608)	0	0	(1,608)
Balance at 30 June 2023	94,582	39,591	0	134,173
<b>Accumulated depreciation</b>				
Balance at 1 July 2021	(97,137)	(37,471)	(147,961)	(282,569)
Balance at 30 June 2022	(46,502)	(621)	0	(47,123)
Depreciation	(10,700)	(4,120)	0	(14,821)
Elimination on disposal	1,233	0	0	0
Balance at 30 June 2023	(55,969)	(4,741)	0	(60,710)
<b>Carrying amounts:</b>				
At 30 June & 1 July 2022	16,270	34,831	0	51,101
<b>At 30 June 2023</b>	<b>38,613</b>	<b>34,850</b>	<b>0</b>	<b>73,463</b>

12. In accordance with the clarity provided by IFRIC agenda decisions relating to software as a service (SaaS), software that had previously been capitalised as intangible assets is now classified as SaaS and was removed from the balance sheet at the 30 June 2022 year end.

## Note 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.

<b>At 30 June 2023</b>	<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
Capital contributed by owners	150,000	0	150,000
Accumulated operating surpluses (deficits)	1,232,706	(65,497)	1,167,209
Accumulated litigation surpluses (deficits)	864,829	2,079	866,908
<b>Total</b>	<b>2,247,535</b>	<b>(63,418)</b>	<b>2,184,117</b>

<b>At 30 June 2022</b>	<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
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
<b>Total</b>	<b>2,205,843</b>	<b>41,692</b>	<b>2,247,535</b>

## Note 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.

	2023 \$	2022 \$
Not later than one year	105,172	105,360
Later than one year and not later than five years	386,249	491,240
Later than five years	0	0
	491,421	596,600

The Panel entered into a rental lease effective from 1 May 2022. The new rental for the Panel's 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 (2022 – no commitments).

## Note 13 Contingent Liabilities

There were no contingent liabilities at balance date (2022 – no contingent liabilities).

## Note 14 Contingent Assets

There were no contingent assets at balance date (2022 – no contingent assets).

## Note 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 Bell Gully (1) and Chapman Tripp (1).

Members' 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.

## Note 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:

	2023	2022
\$280,000-\$289,999	1	1
\$210,000-\$219,000	1	1
\$100,000-\$109,999	1	1
	3	3

## Note 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.

Members' fees:

	2023 \$	2022 \$
C.G. Blanchard (Chair from 1 April 2022)	29,951	19,290
A.E. Buchly (Deputy Chair from 1 April 2022)	25,951	13,083
R.M. Dunne (member since 7 June 2023)	0	0
M.D. Glen <sup>13</sup>	19,817	3,319
D.M. Goatley (member since 7 June 2023)	334	0
S.M. Horner (member until 6 June 2023)	17,223	7,973
R.A. Hunt	16,320	6,760
S.B. Inglis (member since 7 June 2023)	0	0
S.H. Judd	18,327	8,792
A.G. Pigou (member until 6 June 2023)	19,629	11,477
S.G. Schenone	17,625	8,193
N.W. Starrenburg	17,881	10,393
M.W. Stearne	18,327	8,424
R.A. Coupe (Chair until 30 March 2022)	0	20,854
<b>Total</b>	<b>201,346</b>	<b>118,558</b>

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.

## Note 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.

## Note 19

### Budget Variances

Significant variances from budget were:

#### Revenue

Total operating revenue was \$14,000 higher than budgeted, with the following key variances:

- Revenue from monitoring schemes of arrangement was \$11,000 lower than budgeted
- Revenue from exemptions was \$7,000 lower than budgeted
- Revenue from approvals was \$9,000 higher than budgeted
- Revenue from interest was \$23,000 higher than budgeted

Total litigation revenue was \$22,843 higher than budgeted, with the following key variances:

- Revenue from interest was \$15,000 higher than budgeted
- Other revenue relating to interest incurred and costs and disbursements for the Global Horticulture matter was \$8,000 higher than budgeted

### Expenditure

Total operating expenditure for the year was \$68,000 higher than budgeted, with the following key variances for services and supplies expenditure and personnel expenditure:

Services and Supplies	\$94,000 higher than budget	
Members' fees	\$31,000 higher than budget	A new salary rate is payable to members
Consultants	\$62,000 higher than budget	Extra work arising that was not budgeted including upgrades to document management software and development of new online stakeholder survey
Training	\$29,000 lower than budget	Fewer opportunities taken up for training than were budgeted for
Printing	\$11,000 higher than budget	Annual Report 2022
Personnel	\$26,000 lower than budget	Lower than budget due to staff changes and government constraints on pay

Total litigation expenditure for the year was \$24,764 higher than budgeted. The variance was spending on expert advice relating to the Global Horticulture section 32.

# STATEMENT OF PERFORMANCE

for the year ended 30 June 2023

## 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;<sup>14</sup> and
- (c) the cost of service for each output class.

### Critical reporting judgements, estimates and assumptions

In preparing the Statement of Performance, the Panel has made judgements on the application of reporting standards and has made estimates and assumptions concerning the future. The estimates and assumptions may differ from the subsequent actual results.

The main judgements, estimates and assumptions are discussed below.

#### Quantity measures

Quantity measures are used to provide context on the amount of work done by the Panel. This is entirely market driven and the assumption used is that the market will continue working in the future as it has been historically.

#### Survey response measures

The use of survey results is inherently at risk of low response rates, and low numbers of respondents asked to complete a survey. The survey has been designed by a professional firm and it goes out to all lawyers and advisers that work on a transaction with the Panel. The results are input into an excel spreadsheet before being collated into the Annual Report.

14. See the Statement of Financial Performance on page 48.

<b>Assessment of Performance</b>	<b>2021/22</b>		<b>2022/23</b>	
	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%

<b>Actual 2022/2023 \$000</b>	<b>Main Estimates 2022/2023 \$000</b>	<b>Supplementary Estimates 2022/2023 \$000</b>
\$1,494	\$1,494	\$1,494

As shown on pages 65 to 71 below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.



<b>Assessment of Performance</b>	<b>2021/22</b>		<b>2022/23</b>	
	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
	<b>Actual 2022/2023 \$000</b>	<b>Main Estimates 2022/2023 \$000</b>	<b>Supplementary Estimates 2022/2023 \$000</b>	
	\$200	\$200	\$200	

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.

# OUTPUT 1: SERVICES FOR TRANSACTIONS UNDER TAKEOVERS CODE

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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 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.

*Actual performance against planned performance standards and performance measures for 2022/2023*

Performance Measures	Performance Standards		
	Forecast 2022/2023	Actual 2022/2023	Actual 2021/2022
<b>Quantity<sup>15</sup></b>			
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 <sup>16</sup>	6-10 taking 80% of resources	6 taking 71% of resources	5 taking 49% of resources <sup>17</sup>
<b>Quality</b>			
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 <sup>18</sup>	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
<b>Timeliness</b>			
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
<b>Revenue</b>	\$1,073,000 65% of forecast revenue	\$619,568 37% of actual revenue	\$1,286,959 68% of actual revenue
<b>Cost</b>	\$1,079,400 65% of forecast expenditure	\$651,843 37% of actual expenditure	\$1,205,828 66% of actual expenditure

15. The number of applications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information.
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 Output 1 in terms of the percentage of resources spent on review of documents.
17. 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. 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.

## **OUTPUT 2: SERVICES UNDER COMPANIES ACT FOR CODE COMPANY SCHEMES**

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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

Actual performance against planned performance standards and performance measures for 2022/2023:

Performance Measures	Performance Standards		
	Forecast 2022/2023	Actual 2022/2023	Actual 2021/2022
<b>Quantity<sup>19</sup></b>			
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 2-4 scheme notifications	100% of 2 scheme notifications	100% of 2 scheme notifications
<b>Quality</b>			
Applicants are satisfied with process for no-objection statements as indicated by an external survey	100% of respondents	100% of respondents	100% of respondents
<b>Timeliness</b>			
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
<b>Revenue</b>	\$166,000 10% of forecast revenue	\$302,401 <sup>20</sup> 18% of actual revenue	\$122,585 7% of actual revenue
<b>Cost</b>	\$166,000 10% of forecast expenditure	\$251,269 <sup>20</sup> 14% of actual expenditure	\$96,335 5% of actual expenditure

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

20. Revenue derived from, and the cost of providing, these services was higher than forecast because of the unique nature of one of the schemes.

## **OUTPUT 3: REVIEW TAKEOVERS LAW AND PRACTICE; RECOMMEND ANY NECESSARY LAW CHANGES**

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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 ongoing policy projects, including the implementation of technical amendments to the Takeovers Act and other capital markets legislation. In addition, resources were used to review the Panel's approach to schemes of arrangement.

Actual performance against planned performance standards and performance measures for 2022/2023:

Performance Measures	Performance Standards		
	Forecast 2022/2023	Actual 2022/2023	Actual 2021/2022
<b>Quantity</b>			
Policy projects that arise out of market practice	1 project commenced 1 projects completed 2 continuing	3 projects continuing <sup>21</sup>	3 projects continuing
<b>Quality</b>			
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	100% of the time
<b>Timeliness</b>			
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	100% of the time
<b>Revenue</b> (Funded by government grant and other income, except fees)	\$231,000 14% of forecast revenue	\$607,793 <sup>22</sup> 36% of actual revenue	\$85,377 15% of actual revenue
<b>Cost</b>	\$232,000 14% of forecast expenditure	\$668,671 <sup>22</sup> 38% of actual expenditure	\$317,381 17% of actual expenditure

21. 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 recommendations, to remove reference to 'share parcels' from the definition of Code company, are included in a future bill. The Panel made further law reform recommendations in April 2022. The Panel is working with MBIE officials to find a legislative vehicle for these proposed amendments. 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.
22. The revenue and cost amounts were higher than forecast because more resource was put to policy development than budgeted.

## **OUTPUT 4: PUBLIC UNDERSTANDING**

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**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



Actual performance against planned performance standards and performance measures for 2022/2023:

Performance Measures	Performance Standards		
	Forecast 2022/2023	Actual 2022/2023	Actual 2021/2022
<b>Quantity</b>			
Guidance Notes updated and published	4	0	2
Public enquiries responded to	60-80	39	48
Engagements with stakeholders as per Stakeholder Engagement Plan	25-40 individual 2 seminars	27 individual 4 seminars	19 individual 2 seminars
<b>Quality</b>			
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 <sup>23</sup>	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	100% of respondents
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved
<b>Timeliness</b>			
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
<b>Revenue</b> (Funded by government grant and other income except fees)	\$181,000 11% of forecast revenue	\$158,455 9% of actual revenue	\$184,065 10% of actual revenue
<b>Cost</b>	\$182,000 11% of forecast expenditure	\$179,851 10% of actual expenditure	\$217,750 12% of actual expenditure

23. 100% of responses found the Panel's published documents helpful to a considerable or high degree

# INDEPENDENT AUDITOR'S REPORT

## To the readers of the Takeovers Panel's annual report for the year ended 30 June 2023

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 48 to 60, that comprise the statement of financial position as at 30 June 2023, 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 61 to 71.

In our opinion:

- the financial statements of the Takeovers Panel:
  - › present fairly, in all material respects:
    - its financial position as at 30 June 2023; 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 2023, 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 31 October 2023. This is the date at which our opinion is expressed.

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 Panel members for the financial statements and the performance information**

The Panel members are 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 members are responsible for such internal control as they determine is necessary to enable the Panel 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 members are responsible for assessing the entity's ability to continue as a going concern. The Panel members are also responsible 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 members' responsibilities arise from the Crown Entities Act 2004.

Baker Tilly Staples Rodway Audit Limited, incorporating the audit practices of Christchurch, Hawkes Bay, Taranaki, Tauranga, Waikato and Wellington. Baker Tilly Staples Rodway Audit Limited is a member of the global network of Baker Tilly International Limited, the members of which are separate and independent legal entities.

## **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.

## Other information

The Panel is responsible for the other information. The other information comprises the information included on pages 1 to 47, 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.



**Chrissie Murray**  
**Baker Tilly Staples Rodway Audit Limited**  
On behalf of the Auditor-General  
Wellington, New Zealand





**TAKEOVERS  
PANEL**

TE PAE WHITIMANA