

# Fair play.

Takeovers Panel  
Annual Report 2021



**TAKEOVERS  
PANEL**  
TE PAE WHITIMANA

# For 20 years the Takeovers Code has provided a level playing field for all shareholders.

While the Code has evolved, the core of its intent has remained solidly intact – stability, certainty and fairness for the protection of investors’ interests and our sharemarket’s integrity. Long may it continue.

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

# How we shape our business.

**Integrity**  
Acting fairly, honestly  
and with transparency

**Pragmatic**  
Ensuring effective  
outcomes for stakeholders

**Responsive**  
Being available and  
responsive to stakeholders

**Efficient**  
Achieving outcomes  
in a timely manner

In the spotlight.

# Reflections on 20 years.

In this report, we invited several people to share their experiences of the Takeovers Code since it came into force twenty years ago.

They come from all walks and perspectives: a shareholder, company director, lawyer, adviser, and past Panel Chair.

Each account is a personal narrative, a reflection on what the Code means to them and how it has contributed to a more stable and certain sharemarket.



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**Grant Graham**

INDEPENDENT ADVISER  
Calibre Partners



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**Martin Watson**

PRINCIPAL  
MJW Funds Management Ltd



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**Fiona Oliver**

COMPANY DIRECTOR



21  
**Andrew Harnos**

LAWYER  
Harnos Horton Lusk



26  
**John King**

CORPORATE LAWYER, FORMER CHAIR  
Takeovers Panel

In the spotlight.

## Grant Graham

INDEPENDENT ADVISER  
Calibre Partners

Grant Graham is a principal at Calibre Partners, a well-established commercial and financial advisory firm specialising in business restructuring. He's written Independent Adviser's reports for many Code-regulated transactions over the last 20 years.



**As the market has evolved, the Panel and the Code have moved with it... it's pointless working with an antiquated set of rules, as any rugby ref knows.**

One of the primary tasks of the Takeovers Panel is to make sure that all shareholders have full, impartial, and accurate information, so they can make informed decisions about any takeover offer. Independent Adviser's reports are a key element of that process.

Whilst our role is largely unchanged, how the Panel operates has certainly evolved over the last 20 years. In the early days it was somewhat distanced, and operated more like the Supreme Court, adjudicating on the "finished product" (i.e., the proposed takeover structure) pretty much as it was presented.

Now, the Panel is far more interactive throughout the transaction process – more open to enquiry and approachable when we, as advisors and counsel, seek to understand how an issue may be interpreted.

As the market has evolved, the Panel and the Code have moved with it, and that should continue – it's pointless working with an antiquated set of rules, as any rugby ref knows!

Change is everywhere – in our daily lives and in market conditions. In the takeovers market, for example, schemes of arrangement have become the preferred methodology for acquisitions. I doubt anybody anticipated that when the Takeovers Act was introduced in 1993.

Another good example of change is the use of material adverse change (MAC) clauses in takeover proposals. Prior to COVID-19 most of us glossed over these clauses, but now they influence takeover activity much more often as recent cases have shown.



# **Report of the Chair and the Chief Executive**

# Constant in a changing landscape.

The Takeovers Panel is pleased to present its annual report for the 2020/2021 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 sustainable and inclusive business environment, investors, large and small, who invest in the capital markets in New Zealand 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 Regulation 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 resilient, adaptable, productive and inclusive economy.

## Our strategic goals

### Contributing to the outcome of transparent and equitable takeovers processes

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

This activity is subject to the Takeovers Code when it involves a person increasing their voting control in a Code company to more than 20% of the company's total voting rights.<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 are conducted in a way that is transparent and equitable. The Panel's Statement of Performance, on pages 43 to 47, sets out the services that the Panel provided over the year.

<sup>1</sup> 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:
  - 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.

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

## Report of the Chair and Chief Executive.

### Making an impact under the Takeovers Code

Enforcing the Takeovers Code is the Panel's primary focus and Code-regulated transactions are actively monitored by the Panel executive.

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

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

A significant part of the Panel's enforcement resources goes to the Panel executive's review of Code-regulated documents and schemes of arrangement documents while they are still in draft. This practice is valued by the practitioners who advise those with obligations under the Code. This review process aims to achieve resolution of potential non-compliance before it arises, thus improving efficiency and ensuring Code-compliant 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.

### COVID-19 impact

#### Effect on transactions

When the COVID-19 pandemic began in March 2020, a number of Code-regulated transactions and schemes of arrangement transactions were withdrawn. These transactions were eventually renegotiated and completed in the 2020/2021 reporting period on different terms than had been originally agreed.

This year, there was a decline in the number of Code-regulated and schemes transactions monitored by the Panel when compared to previous years. The Panel anticipates that activity may return to previous levels in the medium term.

#### Effect on the Panel

In 2020/2021, the Panel continued to hold board and division meetings via video conference and Panel staff worked remotely as required. The Panel's risk management and business continuity plans worked well. The Panel's procedures and technology enabled Panel members and Panel staff to work remotely with no reduction in productivity and no reduction in the Panel's capacity to meet its objectives.

### Operating environment

The Panel manages its resources flexibly between its highest priority activity of enforcement, and its policy and public education activities. Policy and public education functions are important, but ensuring that all transactions are dealt with promptly takes priority. In terms of the Panel's performance framework on page 28, these activities are depicted under the respective impacts of Enforcement, Efficiency and Knowledge.



### Achievements for the reporting year

#### Enforcement

Overall, transaction activity faced significant disruption from the COVID-19 pandemic and was lower compared with the previous year.

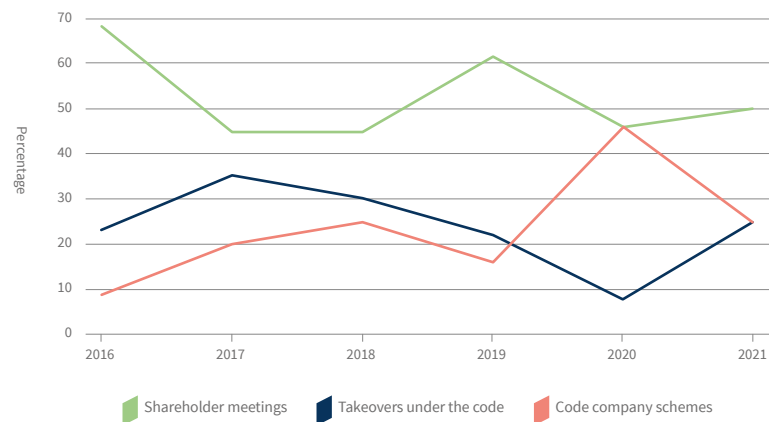
There were six Code-regulated transactions during the 2020/2021 year, compared with seven Code-regulated transactions in the 2019/2020 year. Four of these transactions were acquisitions or allotments of parcels of shares approved by shareholders at a meeting of the Code company, and two were takeovers.

In addition, there were two transactions structured as schemes of arrangement under the Companies Act 1993. These schemes were, in essence, renegotiated schemes that had been abandoned in the previous reporting period because of the COVID-19 pandemic. Together with the Code-regulated transactions, the Panel monitored a total of 8 transactions (compared with 13 in 2019/2020).

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

The Panel's role in schemes is principally to ensure that the Code company's shareholders receive a level of disclosure equal to that which they would have received in a takeover regulated by the Code and to determine appropriate interest classes for shareholder 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 Code company schemes.<sup>3</sup>

### Transaction by type during 2020/2021



The Panel's other enforcement work during the 2020/2021 year included conducting preliminary investigations. The Panel concluded five investigations. Three of those investigations had started in the previous reporting period. Four of those investigations were concluded without the need for formal enforcement proceedings. One investigation resulted in formal enforcement hearing under section 32 of the Takeovers Act (none held in 2019/2020). As a result of the section 32 meeting, the Panel concluded that it was not satisfied that certain parties involved in the 2013 takeover of New Image Group Limited had acted in compliance with the Code. The Panel was considering whether to seek remedies in respect of the non-compliance under the Takeovers Act through the High Court. Post balance date the Panel commenced proceedings in the High Court in respect of the non-compliance seeking pecuniary penalties under the Takeovers Act.

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

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

## Report of the Chair and Chief Executive.

### Efficiency – policy work and exemptions

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

There are two final recommendations yet to be implemented. The first is for legislative amendments to give the Panel the power to publish Code-regulated documents on its website. This will facilitate electronic access to information by the public. The second recommendation is for a further amendment to the definition of unlisted Code company to remove the term ‘share parcels’ to align with section 199 of the Companies Act.<sup>4</sup> The Panel is working with MBIE officials to ensure these recommendations are included in a future bill.

The Panel started two policy projects during the year.

In June 2021, the Panel released a consultation paper seeking input on a range of proposed amendments to the Takeovers Act and the Takeovers Code, as well as proposed amendments to other legislation which relate to New Zealand’s capital markets. The Panel carried out the policy review work over the course of the year, and based on that work and consultation feedback received from market practitioners, the Panel will likely make a number of recommendations for law reform in the next 12 months.

The second project involved a broad review of the Panel’s policy on granting no-objection statements for schemes of arrangement. This review is ongoing, but the Panel expects that following the completion of that review, it will provide updated guidance to the market.

During the year, the Panel approved a class exemption for specified companies listed on the licensed market operated by Catalist Markets Limited and extended the expiry date of a temporary class exemption to facilitate the raising of capital by Code companies following the onset of the COVID-19 pandemic. The Panel also approved five individual exemptions during the year.

### 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 to provide information about the Panel and changes to the Code, and to receive feedback for the Panel. In addition, Panel staff gave presentations, including one to FMA staff about the Panel, the Code and schemes of arrangement.

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

The Panel revised and updated a number of its Guidance Notes and updated its basic guides for directors and shareholders.



**During the year, the Panel approved a class exemption for specified companies listed on the licensed market operated by Catalist Markets Limited and extended the expiry date of a temporary class exemption to facilitate the raising of capital by Code companies following the onset of the COVID-19 pandemic.**

<sup>4</sup> Joint holders of shares will be counted as a single shareholder.

## Report of the Chair and Chief Executive.

### 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 \$416,150 for its chargeable activities (\$210,182 in 2019/2020), including fee income from the New Image section 32 meeting, independent adviser approval applications, exemption applications, and no-objection statement applications.

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>

#### > Resources

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

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

Panel members and the executive committed 12,847 hours of time to Panel work over the year (12,853 hours in the previous year).

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

#### > Outputs

Utilising its income and resources, over the 2020/2021 financial year the Panel provided the outputs described in the Statement of Performance on pages 43 to 47.

### Cost effectiveness of Panel

#### > Impacts and outcomes

The Panel's work contributes to the following outcomes:

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

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

However, the Panel does measure the impact it has in the segment of the takeovers market that is regulated by the Code. The Panel's progress on these strategic aims is described under the section on pages 27 to 31, 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 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 2020/2021 year, the Panel sent 18 survey requests (29 in 2019/2020). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 10 responses, which is a response rate of 56% (18 responses, 62% response rate in 2019/2020). The number of survey requests sent this year was lower than last year as a result of fewer transactions closing in the period. 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 2019/2020). All respondents found the Panel's publications overall to be useful (100% in 2019/2020).

<sup>5</sup> 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.

## Overall satisfaction

– Year to 30 June



# 100%

### Panel's publications

2017 – 2021



# 100%

### process and professionalism

2017 – 2021



# 100%

### timeliness of processing applications

2017 – 2021

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

## Report of the Chair and Chief Executive.

### 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.

#### 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**  
Acting Chair



**Andrew Hudson**  
Chief Executive

In the spotlight.

## Martin Watson

PRINCIPAL

MJW Funds Management Ltd

Martin is a private investor and a director of the NZ Shareholders Association. He started investing in the 1980s and in the early 2000s established a discretionary investment management service for wholesale clients. In 2011, this business became MJW Funds Management Ltd.



The introduction of the Takeovers Code in 2001 brought with it necessary and much improved protections for minority shareholders.

Prior to the introduction of the Code, many bids for control of listed companies were made through ‘stands’ in the market – the buyer would announce their desire to purchase shares in the target company and if the offer price was attractive, it was often “first in best dressed”, with others missing out.

Smaller shareholders often did not have the information they needed to access the bid, or have the time to respond. Their shares were not seen as having equal value. There was a view amongst some large shareholders, that minority shareholders could be treated with disdain.

At times it felt like the law of the jungle applied and that the market was simply a playground for the well placed and well connected. There’s no question this deterred smaller investors from participating in the market.

This all changed with the introduction of the Code. It ensures minority shareholders are treated equitably and have adequate time to consider the merits of an offer. Now other potential acquirers can enter into the process too. The Code has created a much more level playing field.

That’s important. High standards of market integrity are essential if public investors are to have confidence in equity markets. Human behaviour and opportunism make it certain that new challenges to market integrity will arise in the future. In my view, the Takeovers Panel has an important ongoing role in responding to these challenges.



**There is no doubt that the protections offered by the Takeovers Code provide a much better framework to protect the rights of all shareholders of companies that become targets.**

# Members of the Takeovers Panel.

As at 30 June 2021



**Andy Coupe**

**CHAIR**

Professional company director with extensive experience in public market takeovers and capital markets.

*Appointed to the Panel in 2008. Appointed Chair from 1 October 2016. Retired from 31 March 2022.*



**Carl Blanchard**

**DEPUTY CHAIR**

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

*Appointed to the Panel in 2011. Appointed Deputy Chair from 1 October 2016. Acting Chair from 1 April 2022.*



**Anna Buchly**

**MEMBER**

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

*Appointed to the Panel in 2019.*



**Megan Glen**

**MEMBER**

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

*Appointed to the Panel in 2019.*



**Simon Horner**

**MEMBER**

Partner at Mayne Wetherell with extensive experience in mergers and acquisitions and securities offerings.

*Appointed to the Panel in 2011.*



**Richard Hunt**

**MEMBER**

Principal of Fort Street Advisers based in Sydney. A market leader in mergers and acquisitions, equity capital market and debt capital market transactions.

*Appointed to the Panel as the Australian Panel's representative in 2014.*

# Members of the Takeovers Panel (continued).

As at 30 June 2021



## Sacha Judd

### MEMBER

Managing Director, Hoku Group. Formerly Partner at Buddle Findlay, specialising in corporate and securities law, and takeovers.

*Appointed to the Panel in 2015.*



## Tony Pigou

### MEMBER

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

*Appointed to the Panel in 2013.*



## Silvana Schenone

### MEMBER

Partner at MinterEllisonRuddWatts, specialising in mergers and acquisitions and equity capital markets. Extensive experience advising on corporate and securities law matters in Chile, New York and New Zealand.

*Appointed to the Panel in 2016.*



## Nathanael Starrenburg

### MEMBER

Director of specialist corporate law firm, Harnos Horton Lusk Limited. Specialises in public and private mergers and acquisitions, securities offerings and other equity capital markets transactions.

*Appointed to the Panel in 2016.*



## Martin Stearne

### MEMBER

Corporate consultant, member of NZX Listing sub-committee and investment committee of Impact Enterprise Fund. Former investment banker with experience in equity capital markets and takeovers. Chair of Capital Markets 2029 review committee.

*Appointed to the Panel in 2019.*





## Fiona Oliver

COMPANY DIRECTOR

Fiona Oliver has extensive experience with the Takeovers Panel. As a director of Tilt Renewables Limited, she was part of a board which navigated some high-profile Code transactions including an on-market takeover bid, a capital return to shareholders, and in 2021, the successful sale of the company.

The last few years have seen an increase in the use of schemes of arrangement for major corporate transactions, and the Panel's oversight of them.

Such schemes allow more flexibility – terms between the parties are negotiated in advance and in detail. In an on-market takeover the parties enter into open dialogue where (reasonable) conditions for an on-market takeover are subject to ongoing scrutiny by stakeholders and regulators. There is anecdotal evidence that retail investors are wary of schemes, citing lack of transparency. Conversely, an on-market takeover is a public process from the outset, but arguably the considerable and unlimited information that can be provided to shareholders in the process is more confusing than informative. It is a difficult balance.

In 2020, the board of Tilt Renewables chose to use a scheme for the return of capital to shareholders as we believed it delivered the most equitable outcome for all shareholders. A scheme was subsequently also used in the successful sale of the company in 2021. The terms with the potential purchaser were negotiated with the clear objective of protecting the interests of shareholders.

As events transpired, a new bid for the company emerged during negotiations. The pre-closure terms allowed us to attract an enhanced offer to the benefit of all stakeholders. It is likely that an open market (hostile or otherwise) event would not have allowed the target company the same flexibility.

During these events, and in tandem with our professional advisers, we worked closely with the Takeovers Panel. The Panel is both accessible and commercially timely in its responses. I recall they worked over the weekend following an issue that arose on a Friday evening so that by Monday we had and could act on their decision. It will be appreciated that this level of responsiveness is crucial for market players in a takeover situation where the clock is always ticking and timeliness is crucial.

In summary, directors need to be confident that requests made to the Panel will be reviewed and responded to in line with the Takeover Code's stated purpose, delivering clarity and timely outcomes for all parties. My experience in these major transactions confirmed that confidence.



# **Governance and disclosures**

# Governance report and additional disclosures.

## The Board of the Panel

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

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

## Committees

The Panel has an Audit and Risk Committee, chaired by Carl Blanchard. The other two members are Andy Coupe and Tony Pigou. 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 Andy Coupe. 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.

## Governance report and disclosures.

### Panel meetings

Panel member participation in Panel meetings, division meetings, and committee meetings over the 2020/2021 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (30 during year)	Audit and Risk Committee (8 during year)	Human Resources Committee (2 during year)
Andy Coupe	5	28	8	2
Carl Blanchard	5	21	8	2
Anna Buchly	6	7		
Megan Glen	6	7		
Simon Horner	5	11		
Richard Hunt	6	0		
Sacha Judd	6	11		
Tony Pigou	6	19	8	
Silvana Schenone	6	3		2
Nathanael Starrenburg	6	5		
Martin Stearne	6	12		

### 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 to represent the person or the company.

### Delegations

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

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

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

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

### Planning

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

## Governance report and disclosures.

### 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. The Panel aims to be inclusive and it values 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. In this context, diversity is a further positive element that candidates bring to the selection criteria.

As at 30 June 2021, the Panel's staff comprised five women and three men. Three of the Panel's eight staff were aged 40 or younger, two were in the 41 to 50 age bracket and three were over 50. The ethnicity and disability profile of the staff, together with the break-down of their work categories, is shown in the table on the following page.

## Governance report and disclosures.

### Employee characteristics as at 30 June 2021

Work category	Māori	Pākehā/European		Pasifika	Asian	Other ethnicity	Disability
		Full time	Part time				
Professionals	1	2	1		1	1	
Administration Officers		1					
Managers		1					
<b>Total</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>

### 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. 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 gender pay gap of the Panel executive for the 2020/2021 year was 59% in favour of men. This is the same gender pay gap (59%) as the previous year. The use of the median figure for establishing the gender pay gap in such a small organisation as the Panel is particularly impacted by the respective roles of men and women on the Panel executive. In the 2020/2021 year, the Chief Executive and General Counsel, the two roles with the highest salaries, were held by men. This affected the Panel's gender pay gap.

### 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.

In the spotlight.



## Andrew Harmos

LAWYER

Harmos Horton Lusk

Andrew Harmos specialises in public company takeovers and has been dealing with the Takeovers Panel since its inception.

From the outset we thought we'd be "frequent flyers" with the Panel, and we needed its intervention literally on the day of its birth.

We made a complaint for our client on some tricky maneuverings in the Lion/Montana takeover, which was in full flight at the time, and which the Panel upheld.

We haven't always been on the winning side with the Panel – we've pushed the envelope for clients and at times haven't agreed with the Panel's decisions, but we've always had a fair hearing and I've always found the Panel genuinely considers opposing views.

I think there are several reasons why the Panel and its application of the Code is seen as so successful. It's administered by market participants from complementary disciplines, not solely "black letter" practitioners. They are people who do this stuff every day and understand market dynamics.



**... a masterpiece of craftsmanship that has provided a really good guide to market participants.**

The Code and the Panel are flexible. Precedent is important but as decisions are principles-based, and market practice changes, a decision on an issue years ago may be different to one on a similar issue today. As the market has grown to understand how the Panel thinks and applies principle, there's a high degree of confidence in its consistency.

That's reflected in the longevity of the Code. Substantively, it is virtually unchanged since it was first established. Not that much has lasted 20 years without substantive overhaul – you could say the Code is a well thought through masterpiece of craftsmanship.

The Takeovers Panel also now oversees schemes of arrangement. Having a specialist regulator in charge of schemes is a huge positive for the market – schemes are more flexible, and can deliver outcomes that might be close to impossible under a conventional takeover structure.

Oversight from the Panel gives the Courts a lot more confidence that schemes are legitimate and it gives market participants belief that, on bidder and target side, commercial nous and specialist experience will be applied.



# About the Panel



# About the Panel.

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

## Functions and powers

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

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

> To promote public understanding of the law and practice relating to takeovers

> To grant exemptions from compliance with provisions of the Code

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

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

## About the Panel.

### The Panel and the Code ensure transparent and equitable takeover processes

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

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

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

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

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.

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 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.**

## About the Panel.

### 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'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.

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

In the spotlight.

## John King

CORPORATE LAWYER,  
FORMER CHAIR  
Takeovers Panel

An experienced New Zealand corporate lawyer, John was the inaugural Chair of the Takeovers Panel and played a key role in formulating the Takeovers Code.



The Takeovers Code has been a great success. It came into force in July 2001 and has remained in place and largely unchanged, ever since.

Before its inception, the unregulated nature of New Zealand's takeovers market was causing significant criticism. Some believed regulation would unnecessarily restrict takeover activity, and others thought that it was needed to ensure that small shareholders would be part of takeovers. My belief was that fairness and equity demanded that they should.

I was part of the Panel which the government established to resolve the problem. It was a unique Panel, in that all its members were from the private sector, and the Takeovers Act 1993 gave us a free hand to draft a Takeovers Code as we saw fit. The government could either approve or reject it, but not alter it. It may well be the only regulation that had no input or oversight from the bureaucracy.

We wanted to write a code for New Zealand and New Zealand conditions, not adapt one from another country's model, so we started with a clean sheet of paper.

The market liked the Code and 20 years on, still does. It is accepted. One of the main reasons for that is the Code and the Takeovers Act gave us the ability to react quickly and resolve issues promptly. People will often accept decisions they don't like if they get a fast decision and can get on with business.

The Takeovers Code came into force on 1 July 2001 and the first case came up only a few days later. The Panel moved with speed and issued its first restraining order on a Sunday. It showed we meant business. While over the last 20 years the Companies Act and other statutes have been substantially altered, no government has sought to interfere with the principles and operation of the Takeovers Act and the Code.



**The Code came into force on 1 July 2001 and the first case came up only a few days later. The Panel moved with speed and issued its first restraining order on a Sunday. It showed we meant business.**



# Performance

# Measuring the Panel's performance.

## Impacts and outcomes

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



<sup>7</sup> 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.

## Performance.

### 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 below), the granting in 2010 of the class exemption from rule 7(d) and rule 16(b) and the increased use of schemes of arrangement since 2015 has tended to reduce the number of exemptions and exemption notices. This year however, there were an increased number of exemption notices and 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.

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.

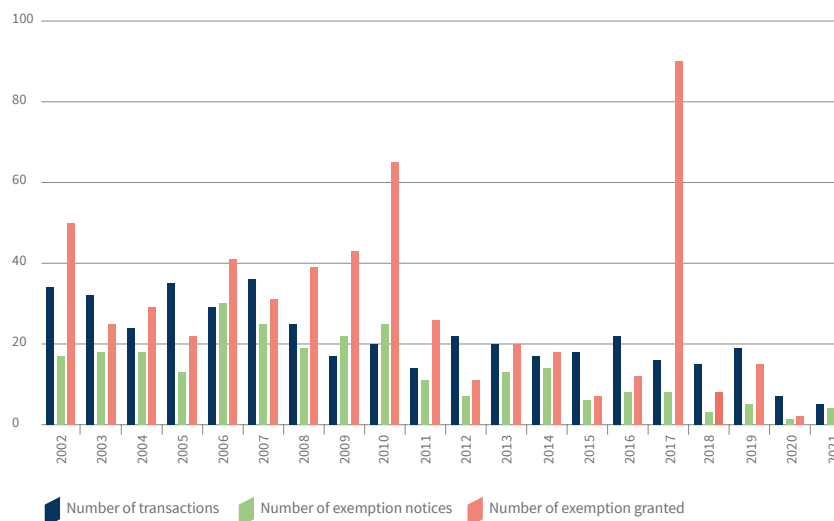
A second measure of the Panel's efficiency is the level of satisfaction of advisers and other people who engage with the Panel on Code exemption applications and on no-objection statement applications for Code company schemes. The data on page 10 show that the Panel's processes and professionalism are rated highly by stakeholders who complete the Panel's online survey.

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

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

<sup>10</sup> 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



## Performance.

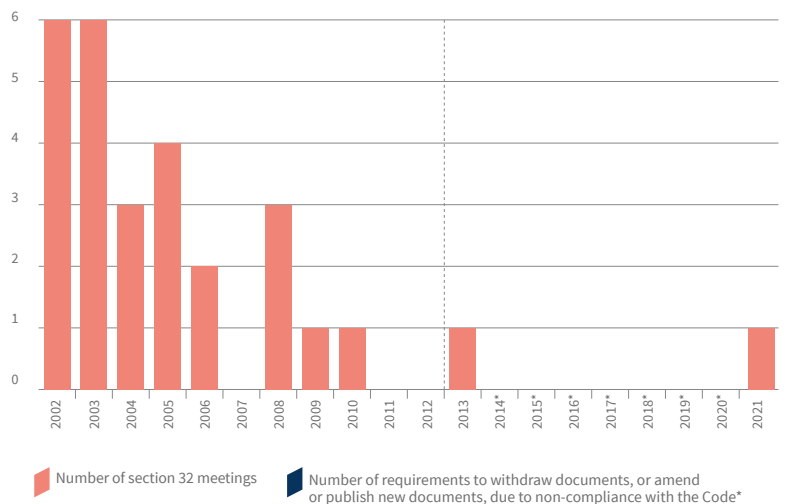
### Enforcement impact

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 below). 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 2020/2021, 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



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



## Performance.

### 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.

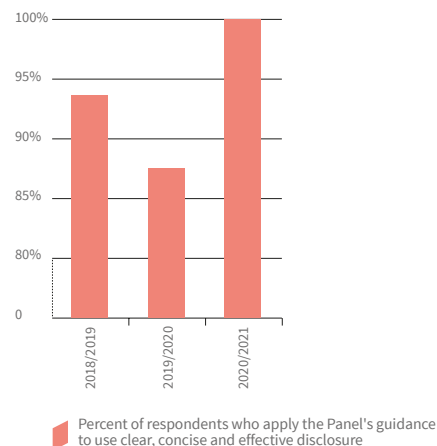
The first measure relates to the Panel's processes that are aimed at ensuring that Code companies and their advisers use clear, concise and effective disclosure when providing information to shareholders.

In 2019/2020, 87% of the Panel's stakeholders that completed the Panel's online survey acknowledged applying the Panel's guidance to use clear, concise and effective disclosure in their communications with shareholders. Those that did not apply the Panel's guidance commented that they used the Financial Market Authority's drafting guidance instead or that they needed to explain technical matters.

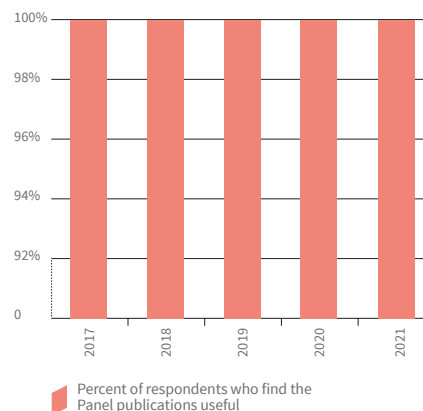
In 2020/2021, 100% of the Panel's stakeholders acknowledged applying the Panel's guidance to use clear, concise and effective disclosure.

The second measure relates to how well the Panel informs takeover practitioners and advisers about the Code. The goal of this impact is that at least 90% of the respondents to the Panel's online survey indicate that they find the Panel's publications useful. In 2020/2021, 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



<sup>11</sup> 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.

For the year ended 30 June 2021

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 2021 and the operations of the Takeovers Panel for the year ended 30 June 2021.

This annual report was approved by the Panel on 23 June 2022.

Signed on behalf of the Panel by:



**Carl Blanchard**  
Acting Chair  
Takeovers Panel

23 June 2022



**Tony Pigou**  
Chair  
Audit and Risk Committee

23 June 2022

## Statement of Financial Performance.

For the year ended 30 June 2021

Budget* 2021 \$	Notes	Actual 2021 \$	Actual 2020 \$
<b>Revenue – operating</b>			
1,494,000	Government grant – baseline funding	1,494,000	1,494,000
27,000	Interest	12,194	27,850
249,000	Application fees and costs recoverable	416,150	210,182
20,000	Other revenue	0	0
1,790,000	Total operating revenue	1,922,344	1,732,032
<b>Revenue – litigation fund</b>			
0	Government grant – litigation	200,000	0
0	Cost recovery	205,593	0
18,000	Interest	4,425	16,858
18,000	Total litigation fund revenue	410,018	16,858
1,808,000	Total revenue	2,332,362	1,748,890
<b>Operating expenditure</b>			
781,000	Services and supplies	701,868	700,859
1,007,000	Personnel costs	998,970	979,185
1,788,000	Total operating expenditure	1,700,838	1,680,044
105,000	Expenditure – litigation fund	314,520	18,388
1,893,000	Total expenditure	2,015,358	1,698,432
(85,000)	Net surplus	317,004	50,458
<b>This is comprised of:</b>			
2,000	Operating surplus	221,506	51,988
(87,000)	Litigation surplus	95,498	(1,530)
(85,000)		317,004	50,458

\*Budget figures are unaudited

Explanations of major variances against budget are provided in note 16.

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

## Statement of Financial Position.

For the year ended 30 June 2021

Budget* 2021 \$	Notes	Actual 2021 \$	Actual 2020 \$
<b>Current assets</b>			
127,000	Bank accounts and cash – operations	180,286	172,390
169,000	Bank accounts and cash – litigation fund	148,424	110,538
1,002,000	Short term deposits – operations	965,541	948,336
421,000	Short term deposits – litigation fund	263,578	608,807
3,000	Interest receivable – operating	2,182	7,328
6,000	Interest receivable – litigation fund	34	430
0	Accruals – litigation grant	200,000	0
74,000	Debtors and prepayments	597,692	161,405
1,802,000	Total current assets	2,357,737	2,009,234
<b>Non-current assets</b>			
28,000	Property, plant and equipment	34,175	41,366
28,000	Total non-current assets	34,175	41,366
1,830,000	Total assets	2,391,912	2,050,600
<b>Current liabilities</b>			
86,000	Creditors and accrued expenses	82,535	82,134
54,000	Employee entitlements	103,534	79,627
140,000	Total current liabilities	186,069	161,761
<b>Equity</b>			
150,000	Capital contribution	150,000	150,000
944,000	Operating funds	1,247,183	1,025,677
596,000	Litigation fund	808,660	713,162
1,690,000	Total equity	2,205,843	1,888,839
1,830,000	Total equity and liabilities	2,391,912	2,050,600

\*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 2021

Budget 2021 \$		Actual 2021 \$	Actual 2020 \$
<b>Cash flows from operating activities</b>			
Cash was received from:			
1,494,000	Government grant – operations	1,494,000	1,494,000
229,000	Application fees and costs recoverable	198,740	136,433
48,000	Interest	22,161	48,363
20,000	Other revenue	0	0
18,000	Goods and Services Tax (net)	0	2,085
Cash was applied to:			
(633,000)	Suppliers	(774,723)	(461,754)
(1,202,000)	Employees and members	(1,189,082)	(1,136,401)
(26,000)	Net cash flows from operating activities	(257,693)	82,726
<b>Cash flows from investing and financing activities</b>			
Cash was received from:			
131,000	Receipts from sale of investment	328,024	0
Cash was applied from:			
(11,000)	Payments to acquire property, plant and equipment	(24,549)	(47,985)
0	Payments to purchase investments	0	(18,008)
120,000	Net cash flows from investing and financing activities	303,475	(65,993)
94,000	Net increase (decrease) in case	45,782	16,733
202,000	Add opening cash	282,928	266,195
296,000	Closing cash	328,710	282,928

\*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 2021

## 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.

The Panel was required under section 156(3)(a) of the Crown Entities Act 2004 to complete the audited financial statements and statements of performance by 31 December 2021. The timeframe was not met because Audit New Zealand was unable to complete the audit within this timeframe due to an auditor shortage and the consequential effects of COVID-19 including lockdowns.

#### 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 in accounting policy during the 2020/2021 financial year.

### Significant accounting policies

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

#### a. Bank accounts and cash

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

#### b. Term deposits

This category includes all term deposits.

#### c. Trade and other receivables

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

#### d. GST

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

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

# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## **e. Trade and other payables**

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

## **f. Income tax**

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

## **g. Revenue recognition**

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

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

## **h. Litigation fund**

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

## **i. Property, plant and equipment**

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

Office furniture 8.5 – 10.5 percent straight line

Office equipment 17.5 – 40 percent straight line

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

## **j. Short term employee benefits**

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

## **k. Cost allocation policy**

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

## **2. Budget figures**

The budget figures are those approved by the Panel on 3 June 2020 and published in the Panel's Statement of Performance Expectations 2020/2021. The budget figures are prepared in accordance with NZ GAAP and are consistent with the accounting policies adopted by the Panel for the preparation of the financial statements but have not been audited.

# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## 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 Panel approved use of the litigation fund for costs involved in the Panel's investigation of potential Code non-compliance. As a result of this investigation the Panel held a section 32 meeting in December 2020.

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

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

	2021 \$	2020 \$
Opening balance	713,162	714,692
Grant	200,000	0
Cost recovery	205,593	0
Interest received	34	16,428
Interest accrued	4,391	430
Expenditure on approved litigation	(314,520)	(18,388)
Closing balance	808,660	713,162
This is comprised of:		
Bank accounts and cash		
– Call account	148,424	110,538
– Short term deposits	263,577	608,807
Interest receivable	34	430
Accounts receivable	405,593	0
Accounts payable	(8,968)	(6,613)
Closing balance	808,660	713,162

## 4. 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:

	2021 \$	2020 \$
Exemptions	101,219	39,202
Approvals	10,235	17,321
Enforcement	197,945	0
Schemes	106,751	153,659
Total	416,150	210,182

## 5. Services and supplies

	2021 \$	2020 \$
Members' fees	214,019	194,135
Rent	149,000	149,000
Audit fees	24,785	24,258
Other	314,064	333,466
Total services and supplies	701,868	700,859

## 6. Personnel costs

	2021 \$	2020 \$
Salaries	968,730	950,197
Employer contributions to defined contribution plans	28,371	27,404
Contractors	0	0
ACC	1,869	1,584
Total personnel costs	988,970	979,185



# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## 7. Property, plant and equipment

	Office equipment \$	Office furniture \$	Software \$	Total \$
<b>Cost or valuation</b>				
Balance at 1 July 2019	119,660	40,871	163,586	324,117
Balance at 30 June 2020	124,669	40,871	171,726	337,226
Additions	24,549	0	0	24,549
Disposals	(29,763)	0	(15,308)	(45,071)
<b>Balance at 30 June 2021</b>	<b>119,455</b>	<b>40,871</b>	<b>156,418</b>	<b>316,744</b>
<b>Accumulated depreciation</b>				
Balance at 1 July 2019	(98,683)	(34,246)	(137,890)	(270,819)
Balance at 30 June 2020	(108,842)	(35,950)	(151,108)	(295,900)
Depreciation	(18,059)	(1,521)	(12,160)	(31,740)
Elimination on disposal	29,764	0	15,307	45,071
<b>Balance at 30 June 2021</b>	<b>(97,137)</b>	<b>(37,471)</b>	<b>(147,961)</b>	<b>(282,569)</b>
<b>Carrying amounts:</b>				
<b>At 30 June &amp; 1 July 2020</b>	<b>15,827</b>	<b>4,921</b>	<b>20,618</b>	<b>41,366</b>
<b>At 30 June 2021</b>	<b>22,318</b>	<b>3,400</b>	<b>8,457</b>	<b>34,175</b>

## 8. Accumulated funds

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

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

	Opening balance	Surplus/ (deficit)	Closing balance
<b>At 30 June 2021</b>			
Capital contributed by owners	150,000	0	150,000
Accumulated operating surpluses/deficits	1,025,677	221,506	1,247,183
Accumulated litigation surpluses/deficits	713,162	95,498	808,660
<b>Total</b>	<b>1,888,839</b>	<b>317,004</b>	<b>2,205,843</b>

	Opening balance	Surplus/ (deficit)	Closing balance
<b>At 30 June 2020</b>			
Capital contributed by owners	150,000	0	150,000
Accumulated operating surpluses/deficits	973,689	51,988	1,025,677
Accumulated litigation surpluses/deficits	714,692	(1,530)	713,162
<b>Total</b>	<b>1,838,381</b>	<b>50,458</b>	<b>1,888,839</b>

# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## 9. 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.

	2021 \$	2020 \$
Not later than one year	149,000	149,000
Later than one year and not later than five years	322,833	471,833
Later than five years	0	0
	471,833	620,833

The Panel signed a deed of extension and variation of lease on its office accommodation lease agreement for a further six years from 1 September 2018. Under a deed of extension and variation of lease the Panel committed to pay rental of \$149,000 (plus GST) per annum from 1 October 2018 to 31 August 2024. Post balance date, a rent review in accordance with the terms of the lease resulted in an increase in total annual rental from \$149,000 (plus GST) to \$167,149.95 (plus GST) effective from 1 October 2021. Following negotiations with the landlord, the Panel surrendered this lease effective from 31 March 2022 and entered into a new lease effective from 1 May 2022. The new rental for the new smaller premises is \$100,560 (plus GST) per annum for a term of six years.

The Panel had no capital commitments at balance date (2020 – no commitments).

## 10. Contingent liabilities

There were no contingent liabilities at balance date (2020 – no contingent liabilities).

## 11. Contingent assets

There were no contingent assets at balance date (2020 – no contingent assets).

## 12. 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 three of the Panel's board meetings were provided by Harnos Horton Lusk (1), Bell Gully (1), and PwC (1).

## 13. 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:

	2021	2020
\$270,000 – \$279,999	1	1
\$210,000 – \$269,999	0	0
\$200,000 – \$209,999	1	1
\$110,000 – \$199,999	0	0
\$100,000 – \$109,999	1	1
	3	3

# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## 14. 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:

	2021 \$	2020 \$
R.A. Coupe (Chair)	47,528	42,636
C.G. Blanchard (Deputy Chair)	32,172	26,442
A.E. Buchly	16,980	14,654
M.D. Glen <sup>12</sup>	0	0
S.M. Horner	22,459	21,423
R.A. Hunt	11,561	12,614
S.H. Judd	14,317	15,326
A.G. Pigou	22,712	12,463
S.G. Schenone	13,146	16,984
N.W. Starrenburg	11,553	13,719
M.W. Stearne	21,591	17,874
<b>Total</b>	<b>214,019</b>	<b>194,135</b>

## 15. Subsequent events

Except as set out in Note 9, there were no material events subsequent to balance date that would affect the interpretation of the financial statements and/or the performance information (2020– no material subsequent events).

<sup>12</sup> In consultation with her employer, the Guardians of New Zealand Superannuation, Ms Glen declined to receive Panel member fees.

## 16. Budget variances

Significant variances from budget were:

Debtors and prepayments are \$597,692 (\$524,000 higher than budgeted). Of this balance, \$464,068 relates to debtors from the New Image section 32 meeting.

### Revenue

Total operating revenue was \$132,000 higher than budgeted, with the following key variances:

- > Revenue from monitoring schemes of arrangement was \$17,000 higher than budgeted
- > Revenue from exemptions was \$66,000 higher than budgeted
- > Revenue from approvals was \$14,000 lower than budgeted
- > Revenue from section 32 meeting was \$98,000 higher than budgeted

These variances were primarily a result of the work being more complicated and taking more resource than budgeted. The section 32 meeting investigation considered a number of interrelated potential breaches of the Code and was complicated by the passage of time. The number of schemes was below the number forecast, but each transaction took more resource than budgeted. Some of this additional resource related to the nature of the schemes – they were renegotiated following withdrawal after the COVID-19 pandemic began. Finally, the number of exemptions was in line with the number forecast, but some related to complicated enforcement matters that took more resource than anticipated.

Total litigation revenue was \$392,000 higher than budgeted, with the following key variances:

- > Revenue from cost recovery was \$206,000 higher than budgeted
- > Revenue from government grant was \$200,000 higher than budgeted
- > Revenue from interest was \$14,000 lower than budgeted

Overall revenue was not affected by the COVID-19 pandemic. The Panel continued operations at full capacity throughout this period.

# Notes to the Financial Statements continued.

For the year ended 30 June 2021

## Expenditure

Total operating expenditure for the year was \$88,000 lower than budgeted, with the following key variances for services and supplies expenditure and personnel expenditure:

<b>Services and supplies</b>	<b>\$79,000 lower than budget</b>	
Training and memberships	\$30,000 lower than budget	Lower spending on training was the result of COVID-19 related cancellations
Travel and accommodation	\$40,000 lower than budget	Lower spending on travel was due to travel restrictions related to COVID-19 and increased use of video conference meetings
Consultants and legal costs	\$16,000 lower than budget	Lower spending on review of exemption notices
<b>Personnel</b>	<b>\$8,000 lower than budget</b>	Lower than budget due to government constraints on pay

Total litigation expenditure for the year was \$210,000 higher than budgeted. The key variance was spending on expert advice being \$202,000 higher than budget.

# Statement of Performance.

For the year ended 30 June 2021

## Performance standards and measures for the outputs of the Panel

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>13</sup> and
- (c) the cost of service for each output class.

Assessment of performance	2019/20		2020/21	
	Budgeted standard	Actual	Budget Standard	Actual
Enforcement of Takeovers Code and of Schemes of Arrangement involving Code companies – percentage of practitioners satisfied overall with process and with professionalism of the Takeovers Panel executive.	90%	100%	90%	100%

Actual 2020/2021 \$000	Main estimates 2020/2021 \$000	Supplementary estimates 2020/2021 \$000
\$1,494	\$1,494	\$1,494

As shown on pages 44 to 47 below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

<sup>13</sup> See the Statement of Financial Performance on page 34.

Assessment of performance	2019/20		2020/21	
	Budgeted standard	Actual	Budget standard	Actual
Ensuring adequate funding is available from time to time for the Takeovers Panel to undertake civil proceedings under the Takeovers Act 1993 or in relation to the Takeovers Code, which is unpredictable in both occurrence and extent.	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement

Actual 2020/2021 \$000	Main estimates 2020/2021 \$000	Supplementary estimates 2020/2021 \$000
\$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.

# Statement of Performance continued.

For the year ended 30 June 2021

## Output 1:

### Services for transactions under Takeovers Code:

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

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

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

The Panel used its enforcement resources to:

- > Assist those with Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code
- > Maintain voluntary vetting of draft transaction documents in order to ensure that they comply with the Code, enabling most compliance issues to be easily resolved
- > 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, holding hearings under section 32 of the Takeovers Act and, when necessary, taking Court proceedings for permanent or punitive orders

<sup>14</sup> The number of applications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information. This year the number of Code transactions was lower than forecast and lower than last year. Two potential reasons for the reduction in number of transactions may be the effect of the COVID-19 pandemic and preference for structuring transactions as schemes of arrangement.

<sup>15</sup> While the Panel expected to spend more time reviewing draft documents, there was one transaction requiring a significant amount of time considering a potential enforcement matter. This reduced the percentage of resources spent on reviewing draft documents.

<sup>16</sup> As in previous years, the focus of the Panel's enforcement resources was aimed at review of draft documents to help ensure compliance with the Code before parties have committed themselves to final published versions. This resulted in little resource having to be focused on final documents.

<sup>17</sup> All survey data in this statement of performance are based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.

Actual performance against planned performance standards and performance measures for 2020/2021.

Performance measures	Performance standards		
	Forecast 2020/2021	Actual 2020/2021	Actual 2019/2020
<b>Quantity<sup>14</sup></b>			
Draft documents reviewed, including for clear, concise and effective drafting as set out in the Guidance Notes relating to Code documents, and the percentage of enforcement resources spent on this review	12-16 taking 80% of resources	6 taking 54% of resources <sup>15</sup>	7 taking 95% of resources <sup>16</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>17</sup>	At least 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	At least 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	At least 90% of respondents	100% of respondents	100% of respondents
<b>Revenue</b>	\$958,000 53% of forecast revenue	\$1,516,036 65% of actual revenue	\$839,467 48% of actual revenue
<b>Cost</b>	\$948,000 53% of forecast expenditure	\$1,309,983 65% of actual expenditure	\$815,247 48% of actual expenditure

# Statement of Performance continued.

For the year ended 30 June 2021

## Output 2: Services under Companies Act for Code company schemes:

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

The Panel used its Code company schemes resources to:

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

<sup>18</sup> The number of notifications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information.

<sup>19</sup> Six scheme applications were received by the Panel. One was discontinued before draft scheme documents were provided to the Panel. This was for reasons unrelated to the COVID-19 pandemic. Two further applications were withdrawn. The Panel was advised that the two applications were withdrawn as a direct result of the COVID-19 pandemic. One of those was withdrawn prior to review of draft documents, and one was withdrawn after the Panel had reviewed the documents and indicated it was minded to provide a no-objection statement, but prior to the application for a no-objection statement.

<sup>20</sup> Revenue derived from, and the cost of providing, these services was lower than forecast because the number of schemes was below the estimate.

<sup>21</sup> Revenue derived from, and the cost of providing, these services involved a high number of complex and novel issues, including issues arising from the withdrawal of transactions because of the effect of the COVID-19 pandemic.

Actual performance against planned performance standards and performance measures for 2020/2021.

Performance measures	Performance standards		
	Forecast 2020/2021	Actual 2020/2021	Actual 2019/2020
<b>Quantity<sup>18</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 3-5 scheme notifications	100% of 2 scheme notifications	100% of 6 scheme notifications <sup>19</sup>
<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>			
	\$325,000 18% of forecast revenue	\$256,560 <sup>20</sup> 11% of actual revenue	\$402,245 <sup>21</sup> 23% of actual revenue
<b>Cost</b>			
	\$322,000 18% of forecast expenditure	\$221,689 11% of actual expenditure	\$390,639 23% of actual expenditure

# Statement of Performance continued.

For the year ended 30 June 2021

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

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

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

Actual performance against planned performance standards and performance measures for 2020/2021.

Performance measures	Performance standards		
	Forecast 2020/2021	Actual 2020/2021	Actual 2019/2020
<b>Quantity</b>			
Policy projects that arise out of market practice	3 projects commenced 3 projects completed	2 projects commenced 3 projects continuing <sup>22</sup>	2 projects commenced 2 projects completed 1 project 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	No policy project involved a recommendation of law reform	No policy project involved a recommendation of law reform
<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	No recommendations were sent to the Minister	No recommendations were sent to the Minister
<b>Revenue</b>			
(Funded by government grant and other income, except fees)	\$145,000 8% of forecast revenue	\$279,883 <sup>23</sup> 12% of actual revenue	\$262,334 15% of actual revenue
<b>Cost</b>			
	\$143,000 8% of forecast expenditure	\$241,842 12% of actual expenditure	\$254,765 15% of actual expenditure

<sup>22</sup> The policy development processes for the technical amendments project were completed in 2017. Most of the Panel's recommended amendments came into force in October 2018 and January 2020. The Panel is working with MBIE officials to ensure that the last of the recommendations, to facilitate the Panel's publication of Code-regulated documents on its website and to remove reference to 'share parcels' from the definition of Code company, are included in a future bill. The Panel is consulting on its proposals for the next round of technical amendments and its review of its schemes of arrangement guidance continues.

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



# Statement of Performance continued.

For the year ended 30 June 2021

## Output 4: Public Understanding:

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 Code company schemes 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

<sup>24</sup> Fewer seminars were held than anticipated. The COVID-19 pandemic contributed to this outcome, because the pandemic restricted the Panel's ability to engage in person with groups of market participants.

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

<sup>26</sup> Expenditure on public understanding was lower than budgeted because more time was spent on output one as a result of time spent on enforcement matters, namely the section 32 held for New Image Group Limited. This left less time available for public understanding matters.

Actual performance against planned performance standards and performance measures for 2020/2021.

Performance measures	Performance standards		
	Forecast 2020/2021	Actual 2020/2021	Actual 2019/2020
<b>Quantity</b>			
CodeWord issues published	2	1	2
Public enquiries responded to	70-90	67	90
Engagements with stakeholders as per Stakeholder Engagement Plan	30-40 individual 4 seminars	41 individual 2 seminars <sup>24</sup>	30 individual 1 seminar
<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	At least 90% of respondents	100% of respondents	100% of respondents
Market participants found the website useful to a considerable or high degree, as indicated by an external survey	At least 90% of respondents	60% of respondents <sup>25</sup>	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)	\$380,000 21% of forecast revenue	\$279,883 12% of actual revenue	\$244,844 14% of actual revenue
<b>Cost</b>			
	\$375,000 21% of forecast expenditure	\$241,843 12% of actual expenditure <sup>26</sup>	\$237,781 14% of actual expenditure

# Independent Auditor's Report.

To the readers of the Takeovers Panel's financial statements and performance information for the year ended 30 June 2021

The Auditor-General is the auditor of the Takeovers Panel (the Panel). The Auditor-General has appointed me, Karen Young, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements and the performance information, including the performance information for appropriations, of the Panel on his behalf.

## Opinion

### We have audited:

- the financial statements of the Panel on pages 34 to 42, that comprise the statement of financial position as at 30 June 2021, the statement of financial performance, statement of changes in equity and statement of cash flows for the year ended on that date and the notes to the financial statements including a summary of significant accounting policies and other explanatory information; and
- the performance information of the Panel on pages 28 to 31 and 43 to 47.

### In our opinion:

- the financial statements of the Panel on pages 34 to 42:
  - present fairly, in all material respects:
    - its financial position as at 30 June 2021; and
    - its financial performance and cash flows for the year 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 on pages 28 to 31 and 43 to 47:
  - presents fairly, in all material respects, the Panel's performance for the year ended 30 June 2021, including:
    - for each class of reportable outputs:
      - its standards of delivery performance achieved as compared with forecasts 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; and
    - 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.
  - complies with generally accepted accounting practice in New Zealand.

### Our audit was completed late

Our audit was completed on 23 June 2022. This is the date at which our opinion is expressed. We acknowledge that our audit was completed later than required by the Crown Entities Act 2004, section 156(3)a. This was due to an auditor shortage in New Zealand and the consequential effects of COVID-19, including lockdowns.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the Members of the Takeovers Panel and 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 audit opinion.

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

The Members of the Takeovers Panel are responsible on behalf of the Panel for preparing financial statements and performance information that are fairly presented and comply with generally accepted accounting practice in New Zealand. The Members of the Takeovers Panel are responsible for such internal control as they determine is necessary to enable them 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 Members of the Takeovers Panel are responsible on behalf of the Panel for assessing the Panel's ability to continue as a going concern. The Members of the Takeovers Panel 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 Panel, or there is no realistic alternative but to do so.

The Members of the Takeovers Panel's responsibilities arise from the Crown Entities Act 2004 and the Public Finance Act 1989.

# Independent Auditor's Report continued.

To the readers of the Takeovers Panel's financial statements and performance information for the year ended 30 June 2021

## 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 and the performance information, our procedures were limited to checking that the information agreed to the Panel's 2021 – 2024 Statement of Intent, 2021/22 Statement of Performance Expectations, and Estimates and Supplementary Estimates of Appropriation 2020/21 for Vote Business, Science and Innovation.

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 Panel's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Members of the Takeovers Panel.

- We evaluate the appropriateness of the reported performance information within the Panel's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by the Members of the Takeovers 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 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 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 communicate with the Members of the Takeovers 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 Members of the Takeovers Panel are responsible for the other information. The other information comprises the information included on pages 1 to 50, 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.

# Independent Auditor's Report continued.

To the readers of the Takeovers Panel's financial statements and performance information for the year ended 30 June 2021

## 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 in our capacity as auditor, we have no relationship with, or interests, in the Panel.

*Karen Young*

**Karen Young**

Audit New Zealand

On behalf of the Auditor-General  
Wellington, New Zealand



# TAKEOVERS PANEL

TE PAE WHITIMANA

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