

Takeovers Panel

ANNUAL REPORT

for the year ended 30 June 2015



TAKEOVERS PANEL

Ensuring transparent and equitable takeover processes

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

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

REPORT OF THE CHAIRMAN AND CHIEF EXECUTIVE

We are pleased to present the annual report of the Takeovers Panel for the 2014/2015 year.

The Panel is an independent Crown entity established under the Takeovers Act 1993. The Minister of Commerce and Consumer Affairs is the Panel's responsible Minister. Background information on the Panel and the Takeovers Code is set out in the section *About the Panel*, on page 13 below.

Minister's expectations of the Panel for 2014/2015

In the Minister's letter of expectations to the Panel for the 2014/2015 year, the Panel was expected to contribute to: the Government's four priorities,¹ the Business Growth Agenda, and the objectives identified in the Panel's performance framework (which is set out on page 15 below). The Minister noted that effective enforcement of the Code should be a continued focus for the Panel. The Panel's role under the new regime for schemes of arrangement involving Code companies (**Code company schemes**) was also to be a particular focus for the Panel's operational performance for the year.²

The Minister asked the Panel to ensure that it provides services that focus on the things that matter to New Zealanders, including providing a high quality, cost effective and customer focused frontline service, and that it constantly looks for ways to improve service delivery. A further expectation was that the Panel would collaborate with other relevant organisations.

The Statement of Performance, on pages 30 to 35 below, sets out in full the services that the Panel provided over the year, in accordance with the Government's expectations.

Our strategic goals

Contributing to the outcome of transparent and equitable takeover processes

Through its role as a regulator in the capital markets, the Panel contributed to the high-level Government goal for 2014/2015 of building a more competitive and productive economy. The more immediate context for the Panel's work was provided by the Business Growth Agenda's aims of lifting confidence in New Zealand's capital markets, making capital raising easier and reducing business costs.

The takeovers market is part of the broader capital markets

Within the broad capital markets context, the Panel's role relates to the regulation of a range of takeover and share acquisition transactions and associated mergers and acquisitions activity (**M&A**) with respect to New Zealand companies that are 'Code companies'.³ Generally, M&A activity will be subject to the Takeovers Code when it involves a person seeking to acquire more than 20% of a Code company's total voting rights.⁴ Code companies are estimated to be less than 1% of New Zealand's c.500,000 companies, but they include nearly all listed companies and a range of other widely held companies that are not listed.

The Panel's role in the takeovers market

While the Panel has a narrow field of operation, it plays an important role in strengthening the integrity of the broader takeovers market because it regulates changes of control in New Zealand's largest and most widely held companies.

¹ The Government's four priorities were: responsibly manage the Government's finances; build a more competitive and productive economy; deliver better public services to New Zealanders; and rebuild Christchurch.

² The Companies Act 1993 was amended, effective on 3 July 2014, giving the Panel a role to consider schemes of arrangement under Part 15 of the Companies Act involving Code companies.

³ A Code company is a New Zealand registered company that -

- has listed voting securities (e.g., ordinary shares) on a registered exchange's trading market (e.g., the NZX Main Board); or
- has 50 or more shareholders with voting rights, and 50 or more share parcels.

⁴ 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 above 20% (taking into account also the percentage held or controlled by any associates), or if they have already more than 20%, cannot increase at all, unless they use one of the Code's mechanisms set out in rule 7 (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).

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

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

The Panel contributes to these outcomes through providing services aimed at ensuring that the processes for Code-regulated transactions are transparent, consistent and equitable.

Making an impact under the Takeovers Code

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

- 100% compliance with the Code by Code companies and by those who acquire shares in them;
- takeovers law being efficient, with improved information for shareholders, and the Panel being an efficient regulator; and
- Shareholders, directors, acquirers, and their advisers being well informed about the role of the Code and of the Panel.

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

The most significant part of the Panel's enforcement resources goes to the Panel's 'soft' enforcement activity whereby the Panel executive reviews and provides informal advice on Code-regulated documents while they are still in draft. This practice is well-received by the practitioners who advise those with obligations under the Code. This informal review process aims to achieve resolution of potential non-compliance before it arises, thus improving efficiency and encouraging Code-compliant disclosure for investors in Code companies.

With transactional work having been relatively light over the reporting period, the Panel's other statutory roles of undertaking policy development (including through granting class exemptions) and of improving public understanding of takeovers law, were key areas of service delivery by the Panel.

Operating environment

The number of Code-regulated transactions over the 2014/2015 year, at 18, was similar to the prior year (17). This continued a trend of lower M&A activity that began with the global financial crisis in late 2008, although expectations for the year had been for a greater increase in Code-regulated M&A.

The Panel manages its resources flexibly between its highest priority activity of enforcement, and its policy and public education activities. These latter two functions are important, but necessarily take second place to ensuring that all transactions are dealt with responsively. In terms of the Panel's performance framework on page 15, these activities are depicted under the impacts of, respectively, Enforcement, Efficiency and Knowledge.

Achievements for the reporting year

Enforcement

There were no significant enforcement actions taken over the year, with all Code-regulated transactions running relatively smoothly. No complaints made to the Panel resulted in the holding of a hearing under section 32 of the Takeovers Act (none held in 2013/2014). No applications were made to the Panel for a No-objection statement under the new Code company scheme regime. However, one such scheme was considered by the Panel. It had been caught by the new provisions on a very minor aspect of the scheme proposal. The Panel filed memoranda expressing its views to the Court on matters of process relating to the scheme, but did not object to the scheme.⁵

⁵ *In re New Zealand Oil and Gas Limited* CIV-2014-485-11462 [2015] NZHC39.

Ensuring transparent and equitable takeover processes

The Panel's enforcement role was enhanced over the year through completion of a Memorandum of Understanding with NZX Limited and instigating a secondment programme under which Panel staff work at NZX for a three-month period. This has significantly improved each organisation's understanding of the other's role as a market regulator, resulting in more effective co-operation.

Efficiency – policy work and exemptions

The most significant policy initiative undertaken by the Panel over the year involved consulting on and settling the terms of a class exemption the purpose of which is to reduce the compliance burden of the Code for small Code companies raising capital.⁶ The exemption enables Code company directors to resolve to opt out of compliance with the Code for a capital raising if they believe it is in the best interests of the company to do so. However, shareholders can require the company to opt back into compliance with the Code. They might do this if, for example, they had concerns about their shareholdings being diluted by the capital raising. The exemption came into force on 14 July 2015.

The Panel's other significant policy initiative involved a reconsideration of the Panel's position in respect of lock-up agreements.⁷ The initial position of the Panel was taken after a 2004 meeting held under section 32 of the Takeovers Act in respect of Bridgecorp Capital Limited.⁸ A comment in the Panel's written decision that a "*lock-up will generally constitute the parties as associates*" impacted market behaviour for the next 11 years. This is because a number of the Code's rules require that the percentage of shares held or controlled by the associates of a person who is involved in a Code-regulated transaction either must or must not, depending on the particular rule, be taken into account for the purposes of the rule. Practitioners asked the Panel to reconsider its view, as it effectively made the Code more restrictive for persons undertaking takeover offers than had been the case prior to the Bridgecorp Capital decision.

The Panel's revised position is that it is the terms and nature of a lock-up agreement and the surrounding circumstances that will determine whether the parties are associates under the Code, not the mere fact of being parties to a lock-up agreement. The Panel published this revised position in April 2015 in *CodeWord* 39, noting that the revised position would probably make it easier to complete takeovers, and the likelihood of shareholders having the right to object to the compulsory acquisition price would be lower.⁹ Accordingly, the revised position leans more towards the market efficiency aspect of the Code's compulsory acquisition regime.

The mid-2015 takeover offer by Eastern Bay Energy Trust (**EBET**) for Horizon Energy Distribution Limited showed the impact of this change. A lock-up agreement with Marlborough Lines Limited took EBET's ownership immediately to more than 90% of the shares, giving it the right to compulsorily acquire the remaining shares. Whereas, previously, shareholders would have had a right under the Code to object to the compulsory acquisition price, they no longer had that right because the lock-up agreement between EBET and Marlborough Lines did not itself create a relationship of association.

Knowledge – public education work

Building on its earlier year's work on producing plain-English information for shareholders and a *Basic Guide for Directors about the Takeovers Code*, the Panel co-produced a two-page [Quick guide for directors](#) which provides an at-a-glance overview of the Code for directors. This was undertaken in conjunction with the Institute of Directors.

In order to make a more 'customer focused' website, the Panel uploaded template application forms. These will make it easier for applicants to interact with the Panel, and make clear to applicants the information that the Panel requires for considering an application.

⁶ Under the exemption, a small Code company is defined as an unlisted Code company that had total assets of \$20 million or less at the balance date of its most recent accounting period.

⁷ A lock-up agreement in a takeover relates to a shareholder contractually agreeing to accept the takeover offer.

⁸ Panel determination, *Bridgecorp Capital Limited* 8 September 2004; statement of reasons 14 September 2004.

⁹ The Code's compulsory acquisition rules have two main objectives. One objective relates to market efficiency by allowing for minorities to be compulsorily acquired; it is inefficient for a 90%+ owner of a company to have business decisions hampered by a small minority of shareholders. The other objective protects the small minority from being trapped in a company with no fair-value means of exiting.

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The Panel's administration – economy and efficiency

The Panel's operating income

The Panel's funding for the financial year was mostly provided 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 c.\$130,000 for its chargeable activities.

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.¹⁰

Resources

The Panel used less resources than had been forecast on transactional work, because the expected increase in Code-regulated M&A and Code company schemes did not occur (55% of resource forecast, 45% expended). The Panel focused the freed-up resource on policy projects, undertaking two un-forecasted significant projects (10% of resource forecast, 31% expended). The completion of these projects (the class exemption for small Code company capital raisings and the revised position on association) has been received positively by the market, but it impacted on the level of resource available for public understanding work (35% of resource forecast, 23% expended).

Panel members and the executive committed 11,864 hours of time to Panel work over the year, as compared with 13,086 in the previous year. The reduction in hours was largely due to secondments of Panel staff to NZX (two Panel lawyers each spent three months at NZX during the year).

The Panel draws on the resources of the Panel members and the executive team of eight staff. The Panel's capital resources consist of \$61,845 of software, office equipment and furniture.

Outputs

Utilising its income and resources, over the 2014/2015 financial year the Panel provided the outputs described in the Statement of Performance on pages 30 to 35 below.

Cost effectiveness of Panel

Impacts and outcomes

The outcome that the Panel's work contributes to is 'reducing transaction costs for domestic and international investors and increasing confidence in the integrity of New Zealand's takeovers market'. As one of several 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 Takeovers Code. The Panel's progress on these strategic aims is described under the section on pages 15 to 18 below, *Measuring the Panel's Performance - Impacts and Outcomes*. As this annual report indicates, the Panel is a well-respected and cost effective service provider.

Results of the Panel's on-line survey

The Panel operates an on-line survey to collect 'client' data regarding its performance from the legal practitioners and independent advisers with whom it deals. The graphs on page 6 show consistently high levels of satisfaction with the Panel's publications and processes and with the professionalism and timeliness of the Panel's work (95-100% across all measures for the three years tracked (four years tracked for satisfaction with Panel publications)).

Over the 2014/2015 year the Panel sent 48 survey requests (44 in 2013/2014). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel

¹⁰ The least 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.

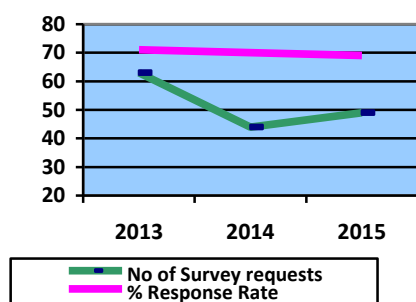
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received 33 responses, or a 68.75% response rate (31 responses, 70% response rate in 2013/2014) with very positive feedback and engagement.

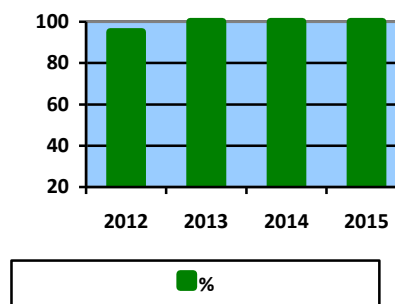
For the 2014/2015 year, 100% of respondents were satisfied with the Panel executive's processes and professionalism (100% of 31 respondents in 2013/2014), 100% of the 12 independent adviser respondents were satisfied with the timeliness of processing their applications (100% of 10 in 2013/2014), and 100% of the 7 exemption applicant respondents were satisfied with the timelines of processing their applications (100% of 7 in 2013/2014). All 33 respondents found the Panel's publications overall to be useful (100% of 31 in 2013/2014).

Summary of On-Line Survey Results – Year to 30 June

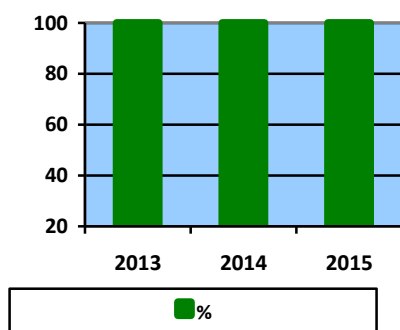
Response Rate



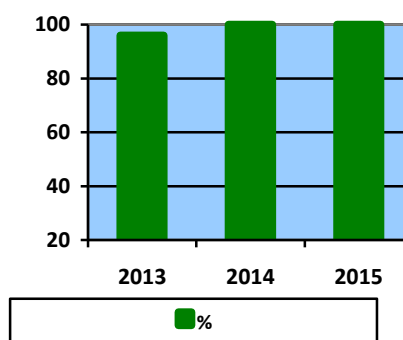
Overall satisfied with Panel's publications



Overall satisfied with process and professionalism applications¹¹



Overall satisfied with timeliness of processing



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 Chairman of the New Zealand Panel sits as a member of the Australian Takeovers Panel under the same arrangement.

Executive team

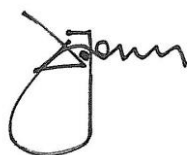
The Panel's executive team of specialist lawyers and administrative support performed ably throughout the year, working closely with the Panel to maintain an effective relationship.

¹¹ For the 2013 and 2014 years the survey question for applicants was worded differently, focusing on the executive meeting an agreed timeframe for processing application.

Acknowledgements

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

We also wish to acknowledge the willing assistance of market participants in their dealings with the Panel. Finally, we acknowledge and thank the Minister of Commerce and Consumer Affairs and officials from the Ministry of Business, Innovation and Employment for their constructive support of the Panel during the year.



David Jones
Chairman



Margaret Bearsley
Chief Executive

MEMBERS OF THE TAKEOVERS PANEL

CHAIRMAN



David Jones

Lawyer. Partner of Jones Young, Barristers and Solicitors, Auckland, specialising in mergers and acquisitions and corporate law. Member of the Panel from its inception as an advisory group. Member of the Australian Takeovers Panel.

DEPUTY CHAIRMAN



Andy Coupe

Former investment banker and now professional company director, with very extensive experience in public market takeovers and capital markets. Appointed to the Panel in 2008.

MEMBERS



Murdo Beattie

Investment banker. Partner of the investment banking firm of Cameron Partners Limited. Specialises in advising corporates on merger and acquisition transactions. Appointed to the Panel in 2008.



Carl Blanchard

Investment manager. Head of direct investments at the Accident Compensation Corporation, having previously been a managing director of investment banking at First NZ Capital. Appointed to the Panel in 2011.



David Flacks

Lawyer. Director of a number of companies, including Vero Insurance and Harmony, lawyer at Flacks & Wong, previously a corporate partner at Bell Gully. Chair of NZ Markets Disciplinary Tribunal and of AFT Pharmaceuticals. Appointed to the Panel in 2011.

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Simon Horner

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



Richard Hunt

Investment banker. 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.



Tony Pigou

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.



Sue Suckling

Fellow of the NZ Institute of Directors with over 20 years' experience covering sectors spanning: agriculture, international marketing, electricity, education, health, banking, science and technology, manufacturing, education, service sectors, communications and government. Appointed to the Panel in 2002.



Tina Symmans

Experienced adviser to Boards of Directors and CEOs, through senior management positions within large corporations as well as independent consultancy. Experienced at managing significant commercial projects encompassing challenging negotiations with capital markets and government relations dimensions. Appointed to the Panel in 2013.



Roger Wallis

Lawyer. Partner of Chapman Tripp. Specialising in corporate and securities law. Member of the Listed Companies Association executive, the Institute of Directors, and former Chairman of the NZX Legal and Regulatory Advisory Board. Appointed to the Panel in 2011.

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 functions and powers of the Panel are set out at page 13 below.

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.

The full Panel meets six times a year to conduct the governance functions of the Panel. 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.

Committees and delegations

The Panel has an Audit and Risk Committee, chaired by Murdo Beattie. Its other two members are David Jones (*ex officio*) and Carl Blanchard. The Committee reviews the Panel's external reporting documents, financial forecasts and budgets, and the Panel's Risk Management Plan and makes recommendations about them to the full Panel.

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 payment authorisation processes.

In 2009 the Panel delegated authority to the Chief Executive to approve independent advisers under the Takeovers Code for applications that are 'straightforward' (as defined by the delegation). This authority was updated and re-delegated in June 2015. In 2011 the Panel delegated authority to the Chairman and Chief Executive to accept on behalf of the Panel enforceable undertakings given to the Panel under section 31T of the Takeovers Act.

Divisions of the Panel

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

Panel meetings

Panel member participation in Panel meetings, Division meetings, and Audit and Risk Committee meetings over the 2014/2015 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (35 during year)	Audit and Risk Committee (6 during year)
David Jones	5 of 6	26	6
Andy Coupe	5 of 6	22	
Murdo Beattie	6 of 6	7	6
Carl Blanchard	6 of 6	14	5
David Flacks	6 of 6	11	
Simon Horner	6 of 6	18	
Richard Hunt*	5 of 6	0	
Tony Pigou	4 of 6	16	
Sue Suckling	5 of 6	4	
Tina Symmans	5 of 6	8	
Roger Wallis	6 of 6	6	

* Based in Australia and is not asked to sit on Divisions.

Dealing with conflicts of interest

The ability to act by Division ensures that conflicted members do not form part of the Panel for 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, and 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 enquiry, or as a corporate representative of a company that is the subject of an enquiry, the Panel's governance rules require that the member does not appear before the Panel. Another partner of the member's firm must represent the client or another of the company's corporate representatives must represent the company.

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 at each Board meeting.

Directions issued by the Minister and Whole of Government Directions

The Panel was not given any directions under any enactment by the Minister of Commerce and Consumer Affairs 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 the Panel's statutory independence. In April 2014 the Panel received a Whole of Government Direction to apply the Government Rules of Sourcing to its procurement practices, with effect from February 2015.

Permission to act when interested

There were no occasions during the year when the Chairman of the Panel gave permission 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.

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 in the work environment. 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 solid 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 2015, the Panel's staff comprised five women and three men. Half of the Panel's eight staff were aged 40 or younger, two were in the 41 to 50 age bracket and two were over 51. The ethnicity and disability profile of the staff, together with the break-downs of their work categories are shown in the table below.

Employee characteristics as 30 June 2015

Work category	Maori	Pakeha/European		Pasifika	Asian	Other ethnicity	Disability
	Full time	Full time	Part time				
Professionals	1	3	1				
Administration Officers		1					
Managers		2					
TOTAL	1	6	1	0	0	0	0

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 encourages all employees to attend training and development opportunities in accordance with the Panel's Training and Development Policy. All leaving staff are given an exit interview, providing an opportunity to comment frankly on their work experience.

Flexibility and work design

The Panel accommodates flexible working arrangements to the extent possible. All staff have remote access capability to their work computers and are able to work from home. This accommodates family and personal needs and also contributes to the Panel's Business Continuity Plan.

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 2014/2015 year was 4% (i.e., in favour of men). This compares with 4% (in favour of men) the previous year. The use of the median figure for establishing the gender pay gap in such a small organisation as the Panel can produce significant swings (it was 28% in favour of men in the 2011/2012 year).

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 work environment that celebrates achievements and important events in its people's lives. Staff have access to help when it is needed through an Employee Assistance Programme that provides confidential professional advice and counselling. The Staff Handbook includes advice on emergency procedures, and the usual office health and safety equipment is on site, as well as emergency provisions for disaster management.

ABOUT 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.¹³

Functions and powers

The main functions and powers of the Takeovers Panel are set out in the Takeovers Act. 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 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 and 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 Takeovers 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 transparent rules.

The Panel and the Code ensure transparent and equitable takeover processes

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

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

Transparency is achieved through the disclosures that potential acquirers have to make to shareholders. The advice that shareholders are given by the Code company's directors and by an independent adviser also contribute to the transparency of Code-regulated transactions.

The equitable processes supported by the Code relate to the mandated timeframes under which the steps of a takeover must occur, and to the rules about the equality of offer terms and conditions for shareholders. For shareholder meetings at which approval is sought for 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 Takeovers Act) to hold hearings, and the power to take evidence under oath and to make

¹³ Bob Dugan, *Law, Economics and the Draft Takeovers Code*, (1996) 26 VUWLR 39.

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confidentiality orders. The Panel also has the power to issue temporary restraining orders that prevent share transactions from being undertaken. It can also 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 takes action through the High Court to obtain permanent orders. In practice, this rarely needs to occur.

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. To date, this remedy has not been sought.

The Panel's public education work contributes to improving the public's financial literacy. The Panel's law reform function is aimed at ensuring the Code provides optimal protections for shareholders while operating efficiently and effectively as the capital markets innovate.

The Panel's approach facilitates integrity in the takeovers market

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

These published 'rulings', together with the informal assistance that is regularly offered to practitioners by the Panel's staff, along with the Panel's reputation as a decisive regulator, have all combined to create an environment under which it is now rare that the Panel needs to hold a formal enforcement hearing. This environment is supported by the generally co-operative nature of New Zealand's takeovers practitioners.

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 disclosed to the Panel and voluntarily remedied in accordance with Panel policy (usually requiring a prompt sale of the shares acquired in breach and, for listed companies, an announcement to the market).

Hearings under section 32 of the Takeovers Act are relatively expensive. The Panel's full costs for holding them have generally been between \$90,000 and \$250,000, depending on the complexity of the matter and the number of witnesses. The parties' own costs would likely be at least as much as the Panel's.

The graph on page 17 below shows the number of section 32 meetings that have been held since the Code came into force.

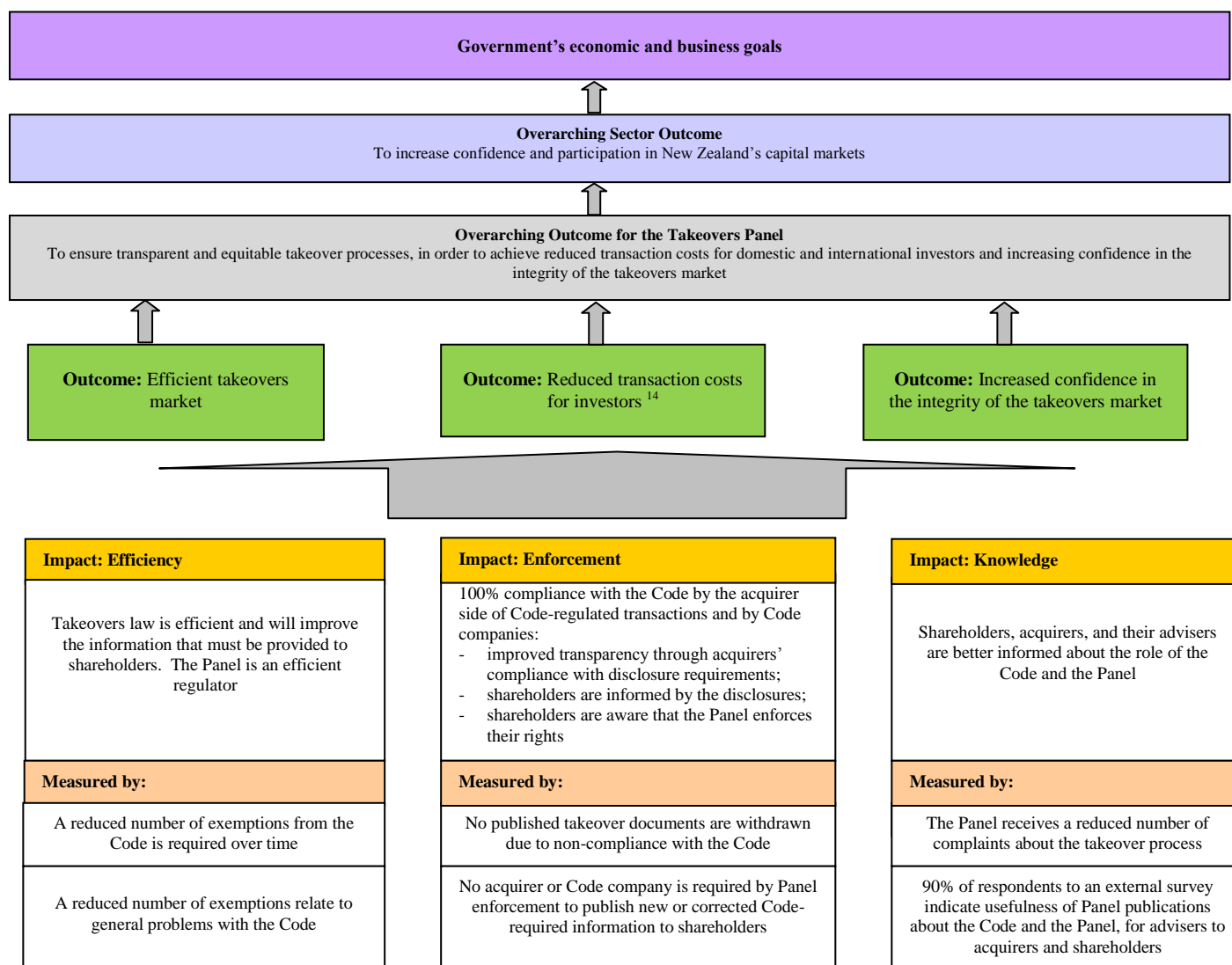
The Panel's role within the broader financial markets

The Panel's role (takeovers law and practice) fits within a broad matrix of prudential and financial markets regulation, including that exercised by the Reserve Bank, the Financial Markets Authority and the Registrar of Companies. In addition, NZX undertakes a supervisory role of its listed entities and market participants. Other regulators whose roles also impact on the financial markets include the Overseas Investment Office and the Commerce Commission.

The Panel's work is significant within its own sphere of takeovers activity, but it provides just one of the building blocks in the whole financial sector's regulatory framework for increasing confidence in New Zealand's financial markets. This is reflected in the Panel's performance framework below.

MEASURING THE PANEL'S PERFORMANCE – IMPACTS AND OUTCOMES

In the Panel's 2014/2015 – 2018 Statement of Intent, 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 below:



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 by the extent to which there is a reduction in the number of exemptions granted.

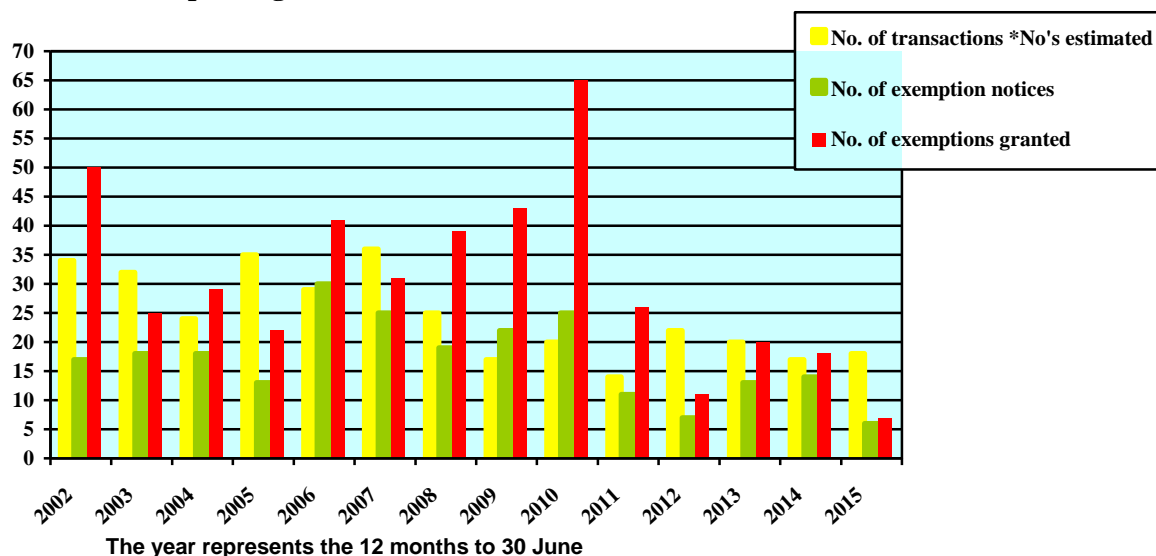
This measure is chosen because amendments to the Code as a result of the Panel's policy work should result in there being a reduction in the number of exemptions granted that relate to drafting problems with the Code. In addition, the class exemptions of a general nature that the Panel periodically grants 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.

¹⁴ The transaction costs for investors include access to information about potential and current investments. The Panel's services contribute to the reduction of transactions costs for investors by ensuring access to information about Code-regulated transactions and about investors' rights and obligations as shareholders of Code companies, and also avenues for enforcing their rights.

Ensuring transparent and equitable takeover processes

Although there will be occasional highs and lows relating to market specific or transaction specific circumstances (as evidenced in the 2010 year in the graph below), the impact begins to show from 2012 following the granting in 2010 of the class exemption from rule 7(d) and rule 16(b).¹⁵

Number of exemptions granted



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's staff reviewing Code-related documents in draft, and giving informal assistance on how to comply with the Code.

This practice, which began around 2005, together with the Code's bedding in and the respect of practitioners for the Panel, has largely contributed to the reduction in formal hearing processes (see the graph on page 17, below). The Panel aims for 100% compliance with the Code so that shareholders, especially small shareholders, are protected from unfair practices and so that all shareholders have a transparent and orderly process under which they make the decisions that lie before them in a Code-regulated transaction.

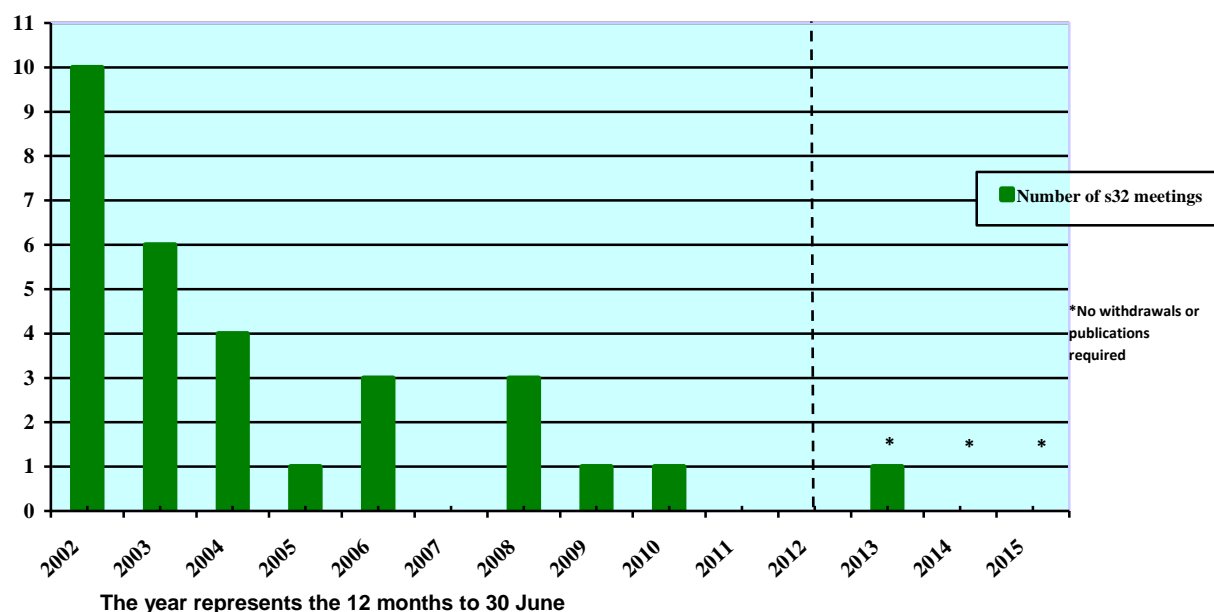
The Panel measures the achievement of this impact by there being no Code-regulated documents being required to be withdrawn under a section 32 enforcement action, due to non-compliance with the Code. A related measure is that no acquirer or Code company is required under a section 32 enforcement action to publish new or corrected information to shareholders. The Panel's view is that this impact is already achieved to a very high level. The graph on page 17 records it as a formal measure, beginning with the 2013 year.

The Panel aims to maintain 100% achievement of this impact although the market is constantly changing.

¹⁵ Exemptions from rule 7(d) and rule 16(b) of the Code have been one of the most commonly granted exemptions. Each exemption that has been granted from a Code rule is counted for the purposes of measuring the impact. However, in reality, an application for exemption can cover several different aspects of a transaction that require exemptions from the Code. Hence, it is relatively common for the Panel to grant exemptions from several rules in response to an application. This is then reflected in the 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. Note that, also for the purposes of measuring the impact, exemptions to amend previously granted exemptions are not counted, since they generally relate to an oversight in or change from the original exemption.

Section 32 meetings

Number of Withdrawals of documents or publications of information –Performance measure commences from 1 July 2012



Knowledge Impact

The Panel’s function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication *Code Word* to broadcast 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 making speeches and giving presentations are other methods used by the Panel for disseminating information about the Code and about the Panel’s role as a regulator.

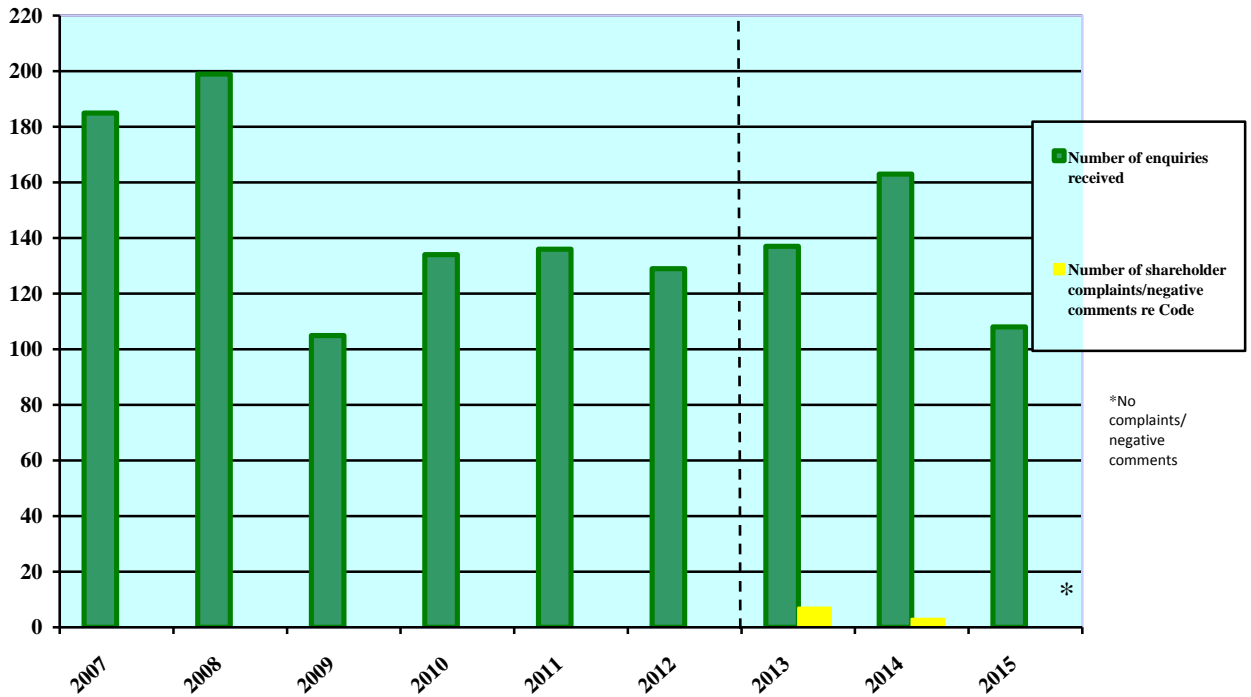
The Panel’s services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways, as shown in the graphs on page 18, below.

The first measure relates to improving shareholders’ knowledge about the Code, and thus the Panel receiving a reduced number of complaints or negative comments about the process of Code-regulated transactions. The expectation is that the number of complaints will trend down over time. However, as shareholders become more aware of their rights there may be more complaints initially.

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 on-line survey indicate that they find the Panel’s publications useful.

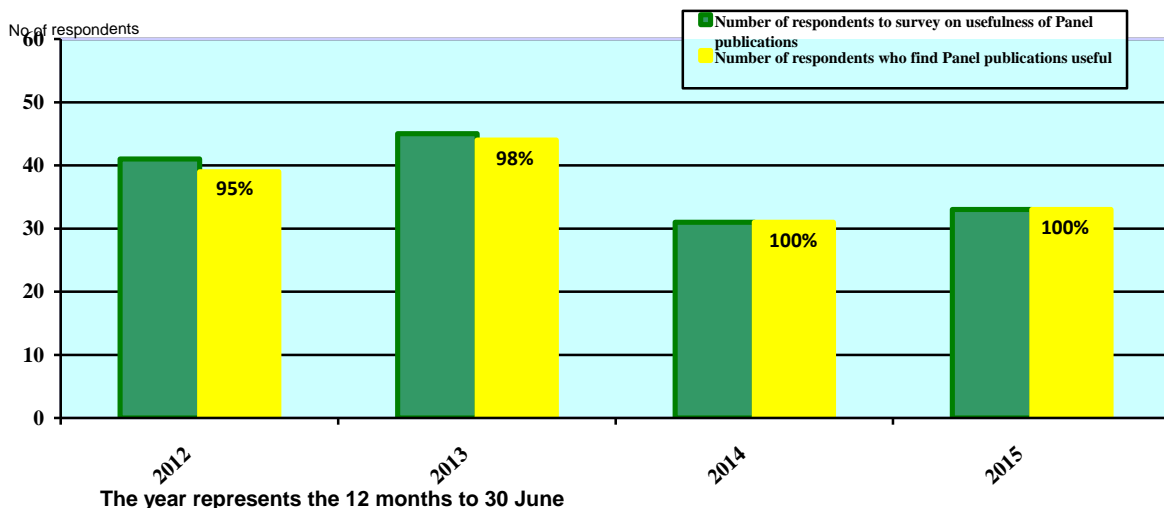
Public enquiries to Panel / Enquiries involving Shareholders' complaints or negative comments about Code - Performance measure commences from 1 July 2012¹⁶

Public enquiries



The year represents the 12 months to 30 June

% Takeovers Practitioners find Panel publications useful



The year represents the 12 months to 30 June

¹⁶ Data on the number of shareholder complaints or negative comments about the Code has only been gathered since 1 July 2012. However, data regarding the number of enquiries received has been available since 2006/2007 and is therefore shown in the graph.

FINANCIAL REPORT

Statement of Responsibility

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

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

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

In our opinion these annual financial statements and Statement of Performance fairly reflect the financial position as at 30 June 2015 and the operations of the Takeovers Panel for the year ended 30 June 2015.

Signed on behalf of the Panel by:



D O Jones
Chairman,
Takeovers Panel

29 October 2015



M M Beattie
Chairman,
Audit and Risk Committee

29 October 2015

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2015

Budget* 2015 \$		Note	Actual 2015 \$	Actual 2014 \$
	Revenue - operating			
1,494,000	Government grant – baseline funding		1,494,000	1,494,000
28,000	Interest		33,594	28,437
285,000	Application fees and costs recoverable	4	129,513	147,293
0	Other revenue		45,330	7
<u>1,807,000</u>	Total operating revenue		<u>1,702,437</u>	<u>1,669,737</u>
	Revenue - litigation fund			
33,000	Interest		36,696	31,701
<u>33,000</u>	Total litigation fund revenue		<u>36,696</u>	<u>31,701</u>
<u>\$1,840,000</u>	Total revenue		<u>\$1,739,133</u>	<u>\$1,701,438</u>
	Operating expenditure			
807,000	Services and supplies	5	671,392	720,091
948,000	Personnel costs	6	954,305	904,430
<u>1,755,000</u>	Total operating expenditure		<u>1,625,697</u>	<u>1,624,521</u>
20,000	Expenditure – litigation fund		0	0
<u>\$1,775,000</u>	Total expenditure		<u>\$1,625,697</u>	<u>\$1,624,521</u>
<u>\$65,000</u>	Net Surplus/Deficit		<u>\$113,436</u>	<u>\$76,917</u>
	This is comprised of:			
52,000	Revenue - operating / (deficit)		76,740	45,216
13,000	Revenue - litigation / (deficit)		36,696	31,701
<u>\$65,000</u>			<u>\$113,436</u>	<u>\$76,917</u>

* unaudited

Explanations of major variances against budget are provided in note 14.

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

STATEMENT OF FINANCIAL POSITION

as at 30 June 2015

Budget* 2015 \$		Actual 2015 \$	Actual 2014 \$
	Current assets		
	Notes		
251,000	Bank accounts and cash – operations	426,394	367,228
120,000	Bank accounts and cash – litigation fund	3 139,709	135,586
565,000	Short term deposits – operations	448,782	432,632
705,000	Short term deposits – litigation fund	3 715,021	694,545
6,000	Interest receivable – operating	10,781	6,749
2,000	Interest receivable – litigation fund	3 15,399	3,302
70,000	Debtors and prepayments	60,080	54,763
<u>\$1,719,000</u>	Total current assets	<u>\$1,816,166</u>	<u>\$1,694,805</u>
	Non-current assets		
58,000	Property, plant and equipment	7 61,845	90,232
58,000	Total non-current assets	61,845	90,232
<u>\$1,777,000</u>	Total assets	<u>\$1,878,011</u>	<u>\$1,785,037</u>
	Current liabilities		
60,000	Creditors and accrued expenses	54,320	48,478
48,000	Employee costs payable	53,532	79,836
<u>\$108,000</u>	Total current liabilities	<u>\$107,852</u>	<u>\$128,314</u>
	Equity		
150,000	Capital contribution	150,000	150,000
692,000	Operating funds	750,030	673,290
827,000	Litigation fund	3 870,129	833,433
<u>\$1,669,000</u>	Total equity	<u>\$1,770,159</u>	<u>\$1,656,723</u>
<u>\$1,777,000</u>	Total equity and liabilities	<u>\$1,878,011</u>	<u>\$1,785,037</u>

* unaudited

STATEMENT OF CASH FLOWS

for the year ended 30 June 2015

Budget* 2015 \$		Actual 2015 \$	Actual 2014 \$
Cash flows from operating activities			
Cash was received from:			
1,494,000	Government grant – operations	1,494,000	1,494,000
300,000	Application fees and costs recoverable	129,885	253,676
61,000	Interest	54,161	67,332
0	Other revenue	45,330	7
0	Goods and Services Tax (net)	1,376	0
Cash was applied to:			
(525,000)	Suppliers	(440,996)	(481,528)
(1,194,000)	Employees and members	(1,161,246)	(1,116,771)
(2,000)	Goods and Services Tax (net)	0	(7,079)
<u>134,000</u>	Net cash flows from operating activities	<u>122,510</u>	<u>209,637</u>
Cash flows from investing and financing activities			
Cash was received from:			
0	Receipts from sale of investments	0	0
Cash was applied to:			
(20,000)	Payments to acquire property, plant and equipment	(22,595)	0
(138,000)	Payments to purchase investments	(36,626)	(189,512)
<u>(158,000)</u>	Net cash flows from investing and financing activities	<u>(59,221)</u>	<u>(189,512)</u>
(24,000)	Net increase (decrease) in cash	63,289	20,125
395,000	Add opening cash	502,814	482,689
<u>\$371,000</u>	Closing cash	<u>\$566,103</u>	<u>\$502,814</u>

* 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 2015

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

Reporting entity

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

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

Sources of Funding

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

Basis of preparation

Statement of compliance

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

Basis of measurement

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

Functional and presentational currency

These financial statements are presented in New Zealand dollars (\$) which is the entity's functional currency.

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 2015 financial year.

Adjustments arising on transition to the new Public Benefit Entity accounting standards

In accordance with the requirements of Public Benefit Entity Simple Format Reporting – Accrual (Public Sector), the Panel is using the descriptor 'bank accounts and cash' which replaces 'cash and cash equivalents' and removes short term deposits of 3 months or less from the balance. Consequently the policy for term deposits now includes all term deposits regardless of maturities. These changes have been applied from 1 July 2014. There are no restatements required in these accounts as there were no term deposits of less than 3 months in the December 2013 and June 2014 cash and cash equivalents.

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 comprehensive income and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.

- e Trade and other payables
Creditors and other payables are initially measured at the amount owing. If an invoice has not been received an accrual for an estimate of the amount to be paid 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.
- j 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.

k. 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.

l. Cost allocation policy

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

NOTE 2 BUDGET FIGURES

The budget figures are those approved by the Panel on 23 May 2014 and published in the Panel's Statement of Performance Expectations 2014/2015. 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.

NOTE 3 LITIGATION FUND

The litigation fund is to be used for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or with the Companies Act 1993 for Code company schemes, or responds to litigation brought against it.

Parliament agreed to an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2015 to top-up the fund to the set level of \$675,000. The Panel has not had to draw from this appropriation during the year.

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

	2015	2014
	\$	\$
Interest received	21,297	28,399
Interest accrued	15,399	3,302
Expenditure on approved litigation	0	0
Surplus /(deficit) for the year	<u>36,696</u>	<u>31,701</u>
Opening balance	<u>833,433</u>	<u>801,732</u>
Closing balance	\$870,129	\$833,433
This is comprised of:		
Bank accounts and cash		
- Call account	139,709	135,586
- Short term deposits	715,021	0
Term deposits	0	694,545
Interest receivable	<u>15,399</u>	<u>3,302</u>
	<u>\$870,129</u>	<u>\$833,433</u>

Ensuring transparent and equitable takeover processes

NOTE 4 APPLICATION FEES AND COSTS RECOVERABLE

The Takeovers (Fees) Regulations 2001 (**Fees Regulations**) enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement action pursuant to the Takeovers Act.¹⁷ An analysis of the amounts invoiced for the year ended 30 June 2015 (on a GST exclusive basis) is as follows:

	2015	2014
	\$	\$
Exemptions	107,954	115,397
Approvals	21,559	31,896
Enforcement	0	0
Schemes	0	0
Total	<u>\$129,513</u>	<u>\$147,293</u>

NOTE 5 SERVICES AND SUPPLIES

	2015	2014
	\$	\$
Members' fees	180,637	209,245
Rent	132,650	132,650
Other	358,105	378,196
Total services and supplies	<u>\$671,392</u>	<u>\$720,091</u>

NOTE 6 PERSONNEL COSTS

	2015	2014
	\$	\$
Salaries	923,095	876,218
Employer contributions to defined contribution plans	28,478	25,857
Contractors	503	0
ACC	2,229	2,355
Total personnel costs	<u>\$954,305</u>	<u>\$904,430</u>

¹⁷ When charging fees for exemptions and other chargeable activities allowed by the Fees Regulations, the Panel has, since its establishment in 2001, unintentionally overcharged by \$0.11 per hour (excluding GST) for Panel staff time. The Panel estimates a total of \$2,115 has been overcharged over a 15 year period. The error in the hourly rate was identified, and immediately rectified, in May 2015.

NOTE 7 PROPERTY, PLANT AND EQUIPMENT

	Office equipment	Office furniture	Software	Total
	\$	\$	\$	\$
Cost or valuation				
Balance at 1 July 2013	151,864	46,148	122,098	320,110
Balance at 30 June 2014	151,864	46,148	122,098	320,110
Balance at 1 July 2014	151,864	46,148	122,098	320,110
Additions	17,655	0	4,940	22,595
Disposals	(75,804)	0	(9,968)	(85,771)
Balance at 30 June 2015	\$93,715	\$46,148	\$117,070	\$256,934
Accumulated depreciation				
Balance at 1 July 2013	(133,478)	(16,061)	(32,064)	(182,203)
Balance at 30 June 2014	(144,858)	(20,573)	(64,447)	(229,878)
Balance at 1 July 2014	(144,858)	(20,573)	(64,447)	(229,878)
Depreciation	(13,264)	(4,512)	(33,198)	(50,974)
Elimination on disposal	75,796	0	9,968	85,764
Balance at 30 June 2015	(82,326)	(25,085)	(87,677)	(195,088)
Carrying amounts:				
At 30 June & 1 July 2014	\$7,006	\$25,575	\$57,651	\$90,232
At 30 June 2015	\$11,389	\$21,063	\$29,393	\$61,845

NOTE 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.

At 30 June 2015	Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners	150,000		150,000

Ensuring transparent and equitable takeover processes

Accumulated operating surpluses/deficits	673,290	76,740	750,030
Accumulated litigation surpluses/deficits	833,433	36,696	870,129
	<hr/>	<hr/>	<hr/>
Total	<u>\$1,656,723</u>	<u>\$115,079</u>	<u>\$1,770,159</u>

At 30 June 2014	Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	628,074	45,216	673,290
Accumulated litigation surpluses/deficits	801,732	31,701	833,433
Reserves	<u>0</u>	<hr/>	<u>0</u>
Total	<u>\$1,579,806</u>	<u>\$76,917</u>	<u>\$1,656,723</u>

Note 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.

	2015	2014
	\$	\$
Not later than one year	22,108	132,650
Later than one year and not later than five years	0	22,108
Later than five years	<u>0</u>	<u>0</u>
	<u>\$22,108</u>	<u>\$154,758</u>

The Panel entered into a six year operating lease agreement for its new premises that commenced 1 September 2009. After balance date the Panel exercised a right of renewal of the lease for a further six years from 1 September 2015. The Panel signing of the renewal committed the Panel to pay rental of \$139,100 (plus GST) per annum during the renewed term of 1 September 2015 to 31 August 2018.

The Panel had no capital commitments at balance date (2014 - no commitments).

NOTE 10 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date (2014 - no contingent liabilities).

NOTE 11 CONTINGENT ASSETS

There were no contingent assets at balance date (2014 - no contingent assets).

NOTE 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 condition no more or less favourable than those that it is reasonable to expect the Panel would have adopted in dealing with the party at arm's 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.

NOTE 13 SUBSEQUENT EVENTS

There were no material events subsequent to balance date that would affect the interpretation of the financial statements or the performance of the Panel (2014 - no material subsequent events).

NOTE 14 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$104,563 lower than budgeted, primarily because there were none of the forecast recoveries from section 32 meetings (i.e., no such meetings held) and none from schemes of arrangement (\$170,000 budgeted for these two items), offset by higher than budgeted income on some miscellaneous items, including \$45,000 reimbursement of salaries for staff seconded to NZX Ltd.

Expenditure

Total operating expenditure for the year was \$129,303 lower than budgeted primarily because \$135,608 less was expended on services and supplies than budgeted. In particular, members' fees were \$69,363 lower than budgeted, due to lower than budgeted transactional work requiring fewer members' hours. Training and membership costs were \$21,600 lower than budgeted, due to a lower uptake of training opportunities than budgeted. Communication costs were \$15,659 lower than budgeted, due to some improvements to the website being completed in-house rather than by an external provider.

STATEMENT OF PERFORMANCE

For the year ended 30 June 2015

PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

The delivery of the Takeovers Panel 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;¹⁸ and
- (c) the cost of service for each output class.

Assessment of Performance	2013/14		2014/15
	Budgeted Standard	Estimated Actual Standard	Budget Standard
Enforcement of Takeovers Code and of Schemes of Arrangement involving Code companies – Practitioners are satisfied overall with process and with professionalism of the Takeovers Panel executive.	New measure	New Measure	90%

As shown on pages [31 to 35] below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

Assessment of Performance	2013/14		2014/15
	Budgeted Standard	Estimated Actual Standard	Budget Standard
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 Output Agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the Output Agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the Output Agreement

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 1993 or Takeovers Code. No proceedings were required to be undertaken over 2014/2015.

¹⁸ See the Statement of Financial Performance on page 20.

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 and experts for Code-regulated transactions or events.

The Panel used its exemption resources to consider exemption applications as they arose, and to consider possible 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:

- Provide assistance to those with Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code;
- Maintain 'soft' enforcement of Panel staff reviewing draft documents so that they better comply with the principles of the Code, enabling most compliance issues to be easily resolved;
- The Panel used no resources to take 'hard' enforcement action, including holding hearings under section 32 of the Takeovers Act and, when necessary, taking Court proceedings for permanent or punitive orders, whenever it is warranted, recognising that 'hard' enforcement uses a high proportion of resources, due to procedural intensity.

Actual performance against planned performance standards and performance measures for 2014/2015

<i>Performance Measures</i>	<i>Performance Standards</i>			
	<i>Forecast 2014/2015</i>	<i>Actual 2014/2015</i>	<i>Actual 2013/2014</i>	<i>Actual 2012/2013</i>
Quantity ¹⁹				
Adviser applications received	22-26	19	21	24
Draft documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on this 'soft' enforcement ²⁰	24 taking 74% of resources	18 taking 87% of resources	17 taking 80% of resources	21 taking 71% of resources
Final documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on review of final documents	24 taking 3% of resources	18 taking 13% of resources	17 taking 20% of resources	21 taking 3% of resources
Section 32 meetings held, and percentage of enforcement resources spent on this 'hard' enforcement	1 taking 23% of resources	0 taking 0% of resources	0 taking 0% of resources	1 taking 26% of resources
Quality				
All adviser applications are considered by the Panel for advisers' competence and independence	100% of the time	100% of the time	100% of the time	New measure for 2012/2013
No failures by the Panel to comply with its own approval standards; as a result no adviser approvals being withdrawn by the Panel	0 failures, 0 withdrawals	0 failures, 0 withdrawals	0 failures, 0 withdrawals	0 failures, 0 withdrawals
The Regulations Review Committee does not recommend disallowance of any Panel exemptions	0 disallowed	0 disallowed	0 disallowed	0 disallowed
Applicants (exemptions and advisers) are satisfied with the Panel's process, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
Parties are satisfied with the processes for 'soft' enforcement as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
No successful Court challenges as a result of the Panel failing to comply with its statutory obligations or proper process	0 challenges	0 challenges	0 challenges	0 challenges
Timeliness				
Decision made for adviser applications given by 3 working days after receipt of complete application	90% of the time	100% of the time	100% of the time	100% of the time

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

²⁰ The level of the Panel's overall resources spent on enforcement of the Code increases if the Panel holds a section 32 meeting (due to procedural intensity). This has a flow-on effect across all outputs, and within output 1 (as is evidenced by the percentage figures).

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Performance Measures	Performance Standards			
	Forecast 2014/2015	Actual 2014/2015	Actual 2013/2014	Actual 2012/2013
Parties are satisfied with the timeliness of the Panel's decisions, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
All exemption applications (7-11 forecast) are processed within the timeframe agreed with the applicant	At least 90% of 7-11 applications	100% of 8 applications	100% of 12 applications	92% of 13 applications
Review of documents is completed within Code timeframes or as agreed by applicants	100% of the time	100% of the time	100% of the time	100% of the time
'Hard' enforcement work is completed within statutory timeframes	100% of the time	N/A	N/A	100% of time
<u>Revenue</u>	\$736,000 40% of forecast revenue	\$747,827 43% of actual revenue	\$697,590 41% of actual revenue	\$903,310 51% of actual expenditure
<u>Cost:</u>	\$710,000 40% of forecast expenditure	\$699,050 43% of actual expenditure	\$666,055 41% of actual expenditure	\$831,867 51% of actual expenditure

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:

- Assess the quality of scheme documents for shareholders and the proposed voting procedures, as against its published policy for the giving of a No-objection Statement;
- Consider whether to give a No-objection Statement or whether to appear in the High Court to object to a Code company scheme.

The Panel used no resources to:

- Engage with practitioners on their draft proposals for undertaking a Code company scheme;
- Approve independent advisers for Code company schemes.

Actual performance against planned performance standards and performance measures for 2014/2015:

Performance Measures	Performance Standards			
	Forecast 2014/2015	Actual 2014/2015	Actual 2013/2014	Actual 2012/2013
Quantity ²¹ Number of Code company schemes notifications received	1-3	0 ²²	0	New Output for 2013/2014
Quality Applicants are satisfied with process for No-objection Statements as indicated by an external survey	At least 90% of respondents	N/A	N/A	New Output for 2013/2014
Applicants are satisfied with the professionalism of the executive as indicated by an external survey	At least 90% of respondents	N/A	N/A	New Output for 2013/2014
Timeliness No-objection Statement applications are considered within timeframe agreed with the applicant	At least 90% of 1-3 applications	N/A	N/A	New Output for 2013/2014
Letters of Intention are issued to applicant by 1 working day after Panel decision to give the Letter of Intention	At least 90% of 1-3 Letters of Intention	N/A	N/A	New Output for 2013/2014
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	At least 90% of respondents	N/A	N/A	New Output for 2013/2014
No-objection Statements are issued to applicant by 1 working day after Panel decision to give the No-objection Statement	At least 90% of the time	N/A	N/A	New Output for 2013/2014
Revenue:	\$276,000 15% of forecast revenue	\$34,783 2% of actual revenue	\$0 0% of actual revenue	New Output for 2013/2014
Cost:	\$266,000 15% of forecast expenditure	\$32,514 2% of actual expenditure	\$0 0% of actual revenue	New Output for 2013/2014

²¹ The number of notifications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information.

²² Although the Panel received no applications for a No-objection Statement, the Panel considered and responded to one Code company scheme that was caught by the Code company scheme requirements on one very minor aspect of the scheme proposal.

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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 activities that arose in response to market practices. There were no major policy projects planned the 2014/2015 year. However an outstanding policy project from 2013/2014 was completed (review of the use of limited partnerships as shareholding vehicles in Code companies).				
<i>Actual performance against planned performance standards and performance measures for 2014/2015:</i>				
Performance Measures	Performance Standards			
	Forecast 2014/2015	Actual 2014/2015	Actual 2013/2014	Actual 2012/2013
Quantity 1 policy project planned for completion, noting that other policy projects may arise in response to market practice	1 project completed	3 projects completed	4 projects completed	3 projects completed
Quality Every material policy project meets the following criteria (as demonstrated by performance checklists): <ul style="list-style-type: none"> • Discussion papers followed the Regulatory Impact Analysis framework; • Panel approved content of discussion papers before their publication; • Consultation period was at least 6 weeks long; • Submissions from public were considered by the Panel; • Any non-regulatory outcomes were approved by Panel before implementing them; • Any recommendations for law change were approved by Panel before being sent to the Minister; Officials from MBIE were consulted before recommendations were sent to Minister	100% of the time	100% of the time	100% of time	100% of time
Timeliness Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100% of the time	N/A	100% of the time	100% of the time
Revenue (Funded by Government grant and other income, except fees)	\$184,000 10% of forecast revenue	\$539,131 31% of actual revenue	\$391,330 23% of actual revenue	\$478,223 27% of actual revenue
Cost:	\$178,000 10% of forecast expenditure	\$503,966 31% of actual expenditure	\$373,640 23% of actual expenditure	\$440,401 27% of actual expenditure

OUTPUT 4: Public Understanding:

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

The Panel used its public understanding resources to:

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

Actual performance against planned performance standards and performance measures for 2014/2015:

Performance Measures	Performance Standards			
	Forecast 2014/2015	Actual 2014/2015	Actual 2013/2014	Actual 2012/2013
Quantity				
Number of Code Words published	3	3	2	3
Public enquiries responded to	130-150	108	163	137
Engagements with stakeholders undertaken	25	2 ²³	27	10
High quality website is indicated by number of hits on the website	10,000-12,000	6,502	5,776	8,932
Quality				
Market participants found documents published were useful, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	98% 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	91% of respondents	New measure for 2014/2015	New measure for 2014/2015
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved	New measure for 2013/2014
Timeliness				
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	100% of the time	92% of the time	100% of the time
Public enquiries are responded to within 3 working days of receiving them	100% of the time	100% of the time	100% of the time	100% of the time
Revenue: (Funded by Government grant and other income except fees)	\$644,000 35% of forecast revenue	\$417,392 24% of actual revenue	\$612,518 36% of actual revenue	\$389,663 22% of actual revenue
Cost:	\$621,000 35% of forecast expenditure	\$390,167 24% of actual expenditure	\$584,827 36% of actual expenditure	\$358,845 22% of actual expenditure

²³ In response to practitioner suggestions in late 2013/2014, the Panel decided, instead of undertaking a programme of one-to-one engagements, to engage with stakeholders via law firm-hosted functions, one held in Auckland on 20 October 2014, the other in Wellington on 30 June 2015. Approximately 40 stakeholders attended the Auckland function and 30 the Wellington function.

Independent Auditor's Report

To the readers of the Takeover Panel's financial statements and performance information for the year ended 30 June 2015

The Auditor-General is the auditor of the Takeover Panel (the Panel). The Auditor-General has appointed me, Chrissie Murray, 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 her behalf.

Opinion on the financial statements and the performance information

We have audited:

- the financial statements of the Panel on pages 20 to 29, that comprise the statement of financial position as at 30 June 2015, the statement of financial performance and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information; and
- the performance information of the Panel on pages 15 to 18 and 30 to 35.

In our opinion:

- the financial statements of the Panel:
 - present fairly, in all material respects:
 - its financial position as at 30 June 2015;
 - its financial performance and cash flows for the year then ended; and
 - comply with generally accepted accounting practice in New Zealand and have been prepared in accordance with the Public Benefit Entity Simple Format Reporting Standard – Accrual (Public Sector).
- the performance information:
 - presents fairly, in all material respects, the Panel's performance for the year ended 30 June 2015, including:
 - for each class of reportable outputs:
 - its standards of performance achieved as compared with forecasts included in the statement of performance expectations for the financial year;

Ensuring transparent and equitable takeover processes

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

Our audit was completed on 29 October 2015. This is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the members of the Panel and our responsibilities, and explain our independence.

Basis of opinion

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and carry out our audit to obtain reasonable assurance about whether the financial statements and the performance information are free from material misstatement.

Material misstatements are differences or omissions of amounts and disclosures that, in our judgement, are likely to influence readers' overall understanding of the financial statements and the performance information. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the financial statements and the performance information. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the financial statements and the performance information, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of the Panel's financial statements and performance information 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.

An audit also involves evaluating:

- the appropriateness of accounting policies used and whether they have been consistently applied;
- the reasonableness of the significant accounting estimates and judgements made by members of the Panel;
- the appropriateness of the reported performance information within the Panel's framework for reporting performance;
- the adequacy of the disclosures in the financial statements and the performance information; and
- the overall presentation of the financial statements and the performance information.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and the performance information. Also, we did not evaluate the security

and controls over the electronic publication of the financial statements and the performance information.

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

Responsibilities of members of the Panel

The members of the Panel are responsible for preparing financial statements and performance information that:

- comply with generally accepted accounting practice and public benefit entity accounting standards in New Zealand;
- present fairly the Panel's financial position, financial performance and cash flows; and
- present fairly the Panel's performance.

The members of the Panel's responsibilities arise from the Crown Entities Act 2004, the Takeovers Act 1993 and the Public Finance Act 1989.

The members of the Panel are responsible for such internal control as it determines is necessary to enable the preparation of financial statements and performance information that are free from material misstatement, whether due to fraud or error. The members of the Panel are also responsible for the publication of the financial statements and the performance information, whether in printed or electronic form.

Responsibilities of the Auditor

We are responsible for expressing an independent opinion on the financial statements and the performance information and reporting that opinion to you based on our audit. Our responsibility arises from the Public Audit Act 2001.

Independence

When carrying out the audit, we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the External Reporting Board.

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



Chrissie Murray
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

Executive of the Takeovers Panel

Margaret Bearsley, Chief Executive
Andrew Hudson, General Counsel
Matthew Tolan, Senior Associate (until 9 October 2015)
Lauren Donnellan, Senior Associate (until 6 November 2015)
Rachael Watene (nee Hayes), Solicitor
Matthew Skinner, Solicitor
Nicola Lawrence, Communications Officer/Lawyer (from 2 November 2015)
Hilary Fleming, Accountant/Administrator
Gayle Steere, Office Manager

How to contact us

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