

HALF YEAR REPORT

▶ For the period ended 31 December 2020



**TAKEOVERS
PANEL**
TE PAE WHITIMANA

www.takeovers.govt.nz



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1 Financial Report

Status

The financial statements in this report have not been reviewed or audited by the Panel's auditors, Audit New Zealand.

Statement of responsibility

These financial statements have been prepared for the purpose of the 31 December 2020 Half Year Report of the Takeovers Panel to the Minister of Commerce and Consumer Affairs. They are not prepared for any other purpose and should not be relied upon for any other purpose. They should be read in conjunction with the 2020 Annual Report.

In the course of preparing these financial statements the Panel has complied with NZ GAAP. The budget of the Takeovers Panel for the year ending 30 June 2021 is included in these statements.

Summary of performance to date

Under the Panel's 2020/2021 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2021, to produce services related to the following outputs:

Output 1: Services for transactions under the Code

Output 2: Services under the Companies Act 1993 for Code company schemes

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

Output 4: Public understanding

Overview of the Panel's outputs for the first six months of the year

Members and the executive committed 6,869 hours of time to Panel work in the six months, which was higher than the 6,380 committed in the equivalent period last year. Of the outputs listed below, Output 1 involved the greatest resource commitment of 68% by cost. Last year, Output 1 involved commitment of 48% by cost.

The Panel's work related to the outputs as follows (with the equivalent measures for the same period last year in brackets):

Output 1

The Panel reviewed documents for one Code-regulated transaction (i.e., takeovers and shareholder meetings) (3). The Panel commenced one preliminary investigation into a possible breach of the Code (1) and commenced one formal investigation (1). There was one section 32 meeting held during the six months (0).

The Panel processed three requests for approval of independent advisers during the six months (7). The Panel also processed four individual exemption applications for the six months (2) and approved one class exemption (1).¹

Output 2

The Panel reviewed two Code company schemes of arrangement (1) and gave two no-objection statements (1) in accordance with the procedure set out in its published guidance.

¹ The Panel also amended the Takeovers Code (Facilitation of Capital Raising in Response to COVID-19) Exemption Notice 2020.



Output 3

The Panel continued working closely with the Ministry of Business, Innovation and Employment to implement the last of the Panel's 2017 recommendations for amendments to the Code and the Takeovers Act. The Panel also commenced the policy review work for the next round of potential technical amendments and has begun a review of schemes of arrangement under the Companies Act 1993.

Output 4

The Panel published one edition (2) of its periodic news bulletin, [CodeWord](#), and updated five guidance notes.

The Panel's financial position and outlook

The Panel's operating income, at \$865,051, was \$69,951 or approximately 7%, lower than budget, while operating expenditure for the six months, at \$866,477, was \$7,473 or approximately 1%, lower than budget. The Panel also earned interest income of \$3,702 on litigation fund deposits and incurred \$163,249 in litigation fund expenses.

The overall result for the Panel was made up of an operating deficit of \$1,426 for the six months and a deficit for the litigation fund of \$159,547. The Panel budgeted an operating surplus of \$61,052 and a deficit of \$96,000 in the litigation fund for the six months.

A summary of the figures to date is as follows:

	Period ended 31 Dec 2020 \$	Budget to 31 Dec 2020 \$	Period ended 31 Dec 2019 \$
Operating revenue	865,051	935,002	821,465
Operating expenditure	866,477	873,950	812,756
Operating surplus/(deficit)	(1,426)	61,052	14,304
Litigation revenue	3,702	9,000	9,658
Litigation expenditure	163,249	105,000	5,595
Litigation fund surplus/(deficit)	(159,547)	(96,000)	4,063
Net surplus/(deficit)	(160,973)	(34,948)	18,367



The following summarises the Panel's completed actions and the allocations of resources for the half year to 31 December 2020:

Quantity of Work	Actual 6 months to 31 Dec 2020	Actual 6 months to 31 Dec 2019	Actual 12 months to 30 Jun 2020	Budget 12 months to 30 Jun 2021
Services for transactions				
Adviser applications received	3	7	15	*
Final documents received	1	3	10	*
Section 32 meetings held	1	0	0	1
Services under Companies Act for Code company schemes				
Number of Code company scheme notifications received	2	1	6	3-4
Review takeovers law and practice				
Policy projects completed	0	1	2	3
Public understanding				
<i>CodeWord</i> published	1	2	2	2
Engagement with stakeholders per Stakeholder Engagement Plan	20 individual 2 seminars	22 individual 1 seminar	30 individual 1 seminar	30-40 4 seminars
Public enquiries responded to	39	34	90	70-90

*The Panel does not now forecast the number of adviser applications or the number of final documents it might receive.



Cost allocation

	Actual 6 months to 31 Dec 2020		Actual 6 months to 31 Dec 2019		Actual 12 months to 30 Jun 2020		Budget 12 months to 30 Jun 2021	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	700,214	68	390,123	48	815,247	48	948,000	53
Schemes	113,270	11	186,934	23	390,639	23	322,000	18
Law and Policy	92,675	9	65,020	8	254,765	15	143,000	8
Public understanding	123,567	12	170,679	21	237,781	14	375,000	21
Cost Allocation	1,029,726	100	812,756	100	1,698,432	100	1,893,000	100



2 Statement of Financial Performance

For the period ended 31 December 2020

Budget 12 months to 30 Jun 2021 \$	Budget 6 months to 31 Dec 2020 \$		Actual 6 months to 31 Dec 2020 \$	Actual 6 months to 31 Dec 2019 \$
		Revenue - operating		
		Notes		
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
27,000	13,500	Interest	8,262	15,152
249,000	174,502	Application fees and costs recoverable	109,789	59,313
20,000	0	Other income	0	0
1,790,000	935,002	Total operating revenue	865,051	821,465
		Revenue – litigation fund		
18,000	9,000	Interest	3,702	9,658
18,000	9,000	Total litigation fund revenue	3,702	9,658
1,808,000	944,002	Total revenue	868,753	831,123
		Operating expenditure		
783,000	369,450	Services and supplies	368,677	329,345
1,005,000	504,500	Personnel costs	497,800	477,816
1,788,000	873,950	Total operating expenditure	866,477	807,161
105,000	105,000	Expenditure – litigation fund	163,249	5,595
1,893,000	978,950	Total expenditure	1,029,726	812,756
(85,000)	(34,948)	Net surplus/(deficit)	(160,973)	18,367
		This is comprised of:		
2,000	61,052	Operating surplus /(deficit)	(1,426)	14,304
18,000	(96,000)	Litigation surplus /(deficit)	(159,547)	4,063
20,000	(34,948)		(160,973)	18,367



3 Statement of Financial Position

As at 31 December 2020

Budget as at 30 Jun 2021 \$		Actual as at 31 Dec 2020 \$	Actual as at 31 Dec 2019 \$	Actual as at 30 Jun 2020 \$
	Current assets			
127,000	Bank accounts and cash – operations	232,893	152,871	172,390
169,000	Bank accounts and cash – litigation fund	58,694	118,616	110,538
1,002,000	Short term deposits – operations	960,546	941,116	948,336
421,000	Short term deposits – litigation fund	512,658	591,742	608,807
3,000	Interest receivable – operating	3,319	1,980	7,328
6,000	Interest receivable – litigation fund	254	10,341	430
74,000	Debtors and prepayments	85,008	68,916	161,405
1,802,000	Total current assets	1,853,372	1,885,582	2,009,234
	Non-current assets			
28,000	Property, plant and equipment	49,144	45,153	41,366
28,000	Total non-current assets	49,144	45,153	41,366
1,830,000	Total assets	1,902,516	1,930,735	2,050,600
	Current liabilities			
86,000	Creditors and accrued expenses	87,816	30,232	82,134
54,000	Employee entitlements	86,834	43,755	79,627
140,000	Total current liabilities	174,650	73,987	161,761
	Equity			
150,000	Capital contribution	150,000	150,000	150,000
944,000	Operating fund	1,024,251	987,993	1,025,677
596,000	Litigation fund 3	553,615	718,755	713,162
1,690,000	Total equity 4	1,727,866	1,856,748	1,888,839
1,830,000	Total equity and liabilities	1,902,516	1,930,735	2,050,600



4 Statement of Cash Flows

For the period ended 31 December 2020

Budget 12 months to 30 Jun 2021 \$		Actual 6 months to 31 Dec 2020 \$	Actual 6 months to 31 Dec 2019 \$	Actual 12 months to 30 Jun 2020 \$
	Cash flows from operating activities			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
229,000	Application fees and costs recoverable	184,937	73,617	136,433
48,000	Interest	16,149	18,307	48,363
20,000	Other income	0	0	0
18,000	Goods and Services Tax (net)	0	2,946	2,085
	Cash was applied to:			
(633,000)	Suppliers	(381,688)	(238,295)	(461,754)
(1,202,000)	Employees and members	(613,904)	(567,654)	(1,136,401)
	Goods and Services Tax (net)	(3,224)		
(26,000)	Net cash flows from operating activities	(50,730)	35,921	82,726
	Cash flows from investing and financing activities			
	Cash was received from:			
131,000	Receipts from sale of investments	83,939	0	0
	Cash was applied to:			
(11,000)	Payments to acquire property, plant and equipment	(24,550)	(6,929)	(47,985)
0	Payments to purchase investments	0	(23,700)	(18,008)
120,000	Net cash flows from investing and financing activities	59,389	(30,629)	(65,993)
94,000	Net increase (decrease) in cash	8,659	5,292	16,733
202,000	Add opening cash	282,928	266,195	266,195
296,000	Closing cash	291,587	271,487	282,928



5 Notes to the Financial Statements

For the period ended 31 December 2020

Note 1 Statement of accounting policies

Reporting entity

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

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

Sources of funding

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

Basis of preparation

Statement of compliance

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

Basis of measurement

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on an 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 in the 6 months since 30 June 2020.



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 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 1993.

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

(h) Litigation fund

Interest income 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.

Note 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 2019/2020. 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 interim 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 for Code company schemes, or responds to litigation brought against it.

In the previous year 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 called a section 32 meeting in August 2020 and held the meeting in December 2020.

The Panel budgeted a deficit of \$96,000 for the period. The result was a deficit of \$159,547. This was because the process for the section 32 meeting took longer and was more complicated than expected. This resulted in the costs for expert advice being higher than anticipated. Finally, although the Panel has the power under clause 5 of the Takeovers Regulations 2000 to recover those costs, no cost recovery was recognised in the period.



A summary of the movements in the fund for the year to date is as follows:

	6 months to 31 Dec 2020 \$	6 months to 31 Dec 2019 \$	12 months to 30 June 2020 \$
Interest received	3,448	(683)	16,428
Interest accrued	254	10,341	430
Expenditure	(163,249)	(5,595)	(18,388)
Surplus /(deficit) for the year	(159,547)	4,063	(1,530)
Opening balance	713,162	714,692	714,692
Closing balance	553,615	718,755	713,162
This is comprised of:			
Cash and cash equivalents			
- Call account	58,694	118,616	110,538
- Short term deposits	512,659	591,743	608,807
Interest receivable	254	10,341	430
Payables	(36,654)	(2,420)	(6,613)
GST	0	476	0
Closing balance	553,615	718,755	713,162

Note 4 Accumulated funds

At 31 December 2020	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	1,025,677	(1,426)	1,024,251
Accumulated litigation surpluses/(deficits)	713,692	(159,547)	553,615
Total	1,838,381	(160,917)	1,727,866



At 31 December 2019	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	973,689	14,304	987,993
Accumulated litigation surpluses/(deficits)	714,692	4,063	718,755
Total	1,838,381	18,367	1,856,748

Note 5 Budget variances

Significant variances from budget were:

Revenue

Revenue from application fees and costs recoverable was \$64,713 lower than budgeted. The key reason is that the budgeted revenue from a section 32 meeting was not recognised in this period. Outside of this variance, revenue from each of schemes and exemptions has been higher than expected with revenue from adviser approvals being lower than expected.

Expenditure

Total operating expenditure for the period was \$7,473 lower than budgeted with a number of differences in balances:

- (a) Members fees were \$22,313 above budget. This relates to higher than expected transactional work, mainly on enforcement matters. This additional work was set off to an extent by a reduction in the rates of Panel member fees as a result of the Covid-19 pandemic;
- (b) Consultants and legal costs were \$12,750 below budget, although several experts have been used in relation to an enforcement matter for which the litigation fund has been used. Litigation expenditure is consequently \$58,249 above budget; and
- (c) Training and memberships were \$14,332 lower than budgeted. This relates to training budget and opportunities not yet taken.

Net operating surplus

The Panel recorded an operating deficit of \$1,426 when a surplus of \$61,052 had been expected. Recoveries from operational activities have been lower than budgeted, but operational expenditure is also tracking slightly lower than budgeted.



6 Projected Level of Operation for the Rest of the Financial Year

Over the remainder of the financial year the Panel will continue to carry out its responsibilities for administration of the Code and reviewing schemes of arrangement involving Code companies. The level of Code-regulated and Companies Act-regulated schemes activity has been slower than the previous year, and this is expected to continue.

The Panel intends to maintain its current complement of eight staff. Currently all positions are filled.

Policy/law reform resources will focus on progressing the final recommended amendments to the Takeovers Act and consideration of whether recommendations for future technical amendments should be made.

The Panel's strong co-regulatory relationships with NZX Limited and the FMA will be maintained through regular engagements between the respective teams.

The Panel is continuing to focus its non-transaction resources on its public understanding services in order to better inform shareholders about their rights, and directors about their obligations, under the Code. The Panel's work programme includes continued improvements to the accessibility of information on its website for interested stakeholders and ongoing stakeholder engagement, including meetings with stakeholders, public speeches and presentations, and market updates.

The Panel receives consistently positive feedback from takeovers practitioners and market participants about its responsiveness and approachability, as well as about the value of its published guidance. The Panel receives this feedback through its stakeholder engagement and through its online survey. The Panel intends to continue to rise to the challenge of meeting the market's high expectations.