

# Takeovers Panel

## HALF YEAR REPORT

for the period ended 31 December 2017

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## 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 2017 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 2017 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 2018 is included in these statements.

## Summary of performance to date

Under the Panel's 2017/2018 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2018, to produce services related to the following outputs:

Output 1	Services for transactions under the Code
Output 2	Services under the Companies Act 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 6,051 hours of time to Panel work in the six months, which was similar to the 6,510 committed in the equivalent period last year.

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

- (a) Output 1: The Panel reviewed nine transaction documents (i.e., for takeovers and shareholder meetings) (7). The Panel undertook no formal investigations into possible breaches of the Code during the six months (4). Two preliminary investigations were undertaken into a possible breach of the Code (3). There were no section 32 meetings held during the six months (0).  
The Panel processed 15 requests for approval of independent advisers during the six months (15). The Panel also processed three exemption applications for the six months (8).
- (b) Output 2: The Panel reviewed four Code company schemes and gave two no-objection statements in accordance with the procedure set out in its published guidance (1). The Panel's published guidance on schemes of arrangement was updated in August 2017 to incorporate the Panel's experience applying the no-objection statement process under the Companies Act 1993.
- (c) Output 3: The Panel's main focus for policy work related to working closely with the Ministry of Business, Innovation and Employment to implement the Panel's February 2017 recommendations for amendments to the Code and the Takeovers Act.
- (d) Output 4: The Panel published its periodic news bulletin, *CodeWord*, in December 2017 (1) and started work on updating its brand and website to improve awareness of the Panel, access to the Panel's information, and improve the website's mobile responsiveness and search functionality.

Of the outputs listed above, Output 1 involved the greatest resource commitment of 52% by cost. Last year, Output 1 involved commitment of 65% by cost. The decrease from the previous year largely related to the heavy resource input required in the previous period for monitoring and responding to issues relating to three takeovers. In this period there was one contested takeover (with two offerors competing to acquire one target).

### The Panel's financial position and outlook

The Panel's operating income, at \$830,232, was \$46,266 or approximately 5% lower than budget, while operating expenditure for the six months, at \$813,662, was \$72,897 or approximately 8%, lower than budget. The Panel also earned interest income of \$10,243 on litigation fund deposits and incurred no litigation fund expense.

The overall result for the Panel was made up of an operating surplus of \$16,570 for the six months and a surplus for the litigation fund of \$10,243. The Panel budgeted for the six months an operating deficit of \$10,061 and a surplus of \$9,498 in the litigation fund.

A summary of the figures to date is as follows:

	Period ended 31 December 2017	Budget to 31 December 2017	Period ended 31 December 2016
	\$	\$	
<b>Operating revenue</b>	830,232	876,498	862,844
<b>Operating expenditure</b>	813,662	886,559	815,336
<b>Operating surplus/(deficit)</b>	16,570	(10,061)	47,508
<b>Litigation fund surplus/(deficit)</b>	10,243	9,498	12,812
<b>Net surplus/(deficit)</b>	26,813	(563)	60,320

The following summarises the Panel's completed actions and the allocations of resources for the year to 31 December 2017:

<b>Quantity of Work</b>	<b>Actual 6 months to 31 December 2017</b>	<b>Actual 6 months to 31 December 2016</b>	<b>Actual 12 months to 30 June 2017</b>	<b>Budget 12 months to 30 June 2018</b>
<b>Services for transactions</b>				
Adviser applications received	15	15	21	-*
Final documents received	9	7	16	22
Section 32 meetings held	0	0	0	0
<b>Services under Companies Act for Code company schemes</b>				
Number of Code company scheme notifications received	2	1	4	4-6
<b>Review takeovers law and practice</b>				
Policy projects completed	0	1	3	2
<b>Public understanding</b>				
CodeWords published	1	2	3	3
Engagement with stakeholders per Stakeholder Engagement Plan	23 individual	34 individual	62 individual 4 seminars	60-70
Public enquiries responded to	37	50	109	120-150

\*The Panel did not forecast the number of adviser applications it might receive in the 2017/2018 financial year.

## Cost Allocation

	Actual 6 months to 31 Dec 2017		Actual 6 months to 31 Dec 2016		Actual 12 months to 30 June 2017		Budget 12 months to 30 June 2018	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	423,104	52%	529,969	65%	972,922	58%	713,600	40%
Schemes	48,820	6%	48,920	6%	184,520	11%	446,000	25%
Law and Policy	65,093	8%	97,840	12%	218,069	13%	249,760	14%
Public understanding	276,645	34%	138,607	17%	301,941	18%	374,640	21%
<b>Cost Allocation</b>	<b>813,662</b>	<b>100%</b>	<b>815,336</b>	<b>100%</b>	<b>1,677,452</b>	<b>100%</b>	<b>1,784,000</b>	<b>100%</b>

**STATEMENT OF FINANCIAL PERFORMANCE**

*for the period ended 31 December 2017*

<i><b>Budget</b></i> <i><b>12 months to</b></i> <i><b>30 Jun 2018</b></i> \$	<i><b>Budget</b></i> <i><b>6 months to</b></i> <i><b>31 Dec 2017</b></i> \$		<i><b>Actual</b></i> <i><b>6 months to</b></i> <i><b>31 Dec 2017</b></i> \$	<i><b>Actual</b></i> <i><b>6 months to</b></i> <i><b>31 Dec 2016</b></i> \$
		<b>Revenue - operating</b>	<b>Note</b>	
1,494,000	747,000	Government grant – baseline funding		747,000
25,000	12,498	Interest		15,405
218,000	109,002	Application fees and costs recoverable		67,571
16,000	7,998	Other revenue		256
<u>1,753,000</u>	<u>876,498</u>	Total operating revenue		<u>830,232</u>
		<b>Revenue – litigation fund</b>		
19,000	9,498	Interest		10,243
<u>19,000</u>	<u>9,498</u>	Total litigation fund revenue		<u>10,243</u>
<u>\$1,722,000</u>	<u>\$885,996</u>	Total revenue		<u>\$840,475</u>
		<b>Operating expenditure</b>		
785,000	385,559	Services and supplies		357,318
999,000	501,000	Personnel costs		458,018
<u>1,784,000</u>	<u>886,559</u>	Total operating expenditure		<u>815,336</u>
0		Expenditure – litigation fund		0
<u>\$1,784,000</u>	<u>\$886,559</u>	Total expenditure		<u>\$815,336</u>
<u>\$(12,000)</u>	<u>\$(563)</u>	Net Surplus/Deficit		<u>\$60,320</u>
		<b>This is comprised of:</b>		
(31,000)	(10,061)	Revenue – operating / (deficit)		47,508
19,000	9,498	Revenue - litigation / (deficit)		12,812
<u>\$(12,000)</u>	<u>\$(563)</u>			<u>\$60,320</u>



**STATEMENT OF FINANCIAL POSITION**

*as at 31 December 2017*

<b><i>Budget as at 30 Jun 2018</i></b> \$		<b><i>Actual as at 31 Dec 2017</i></b> \$	<b><i>Actual as at 31 Dec 2016</i></b> \$	<b><i>Actual as at 30 Jun 2017</i></b> \$
	<b>Current assets</b>			
92,000	Bank accounts and cash – operations	104,506	171,020	179,689
123,000	Bank accounts and cash – litigation fund	122,022	142,347	121,961
875,000	Short term deposits – operations	859,039	828,147	838,430
567,000	Short term deposits – litigation fund	556,025	759,433	550,187
13,000	Interest receivable – operating	8,295	9,071	13,614
6,000	Interest receivable – litigation fund	7,286	11,860	2,942
86,000	Debtors and prepayments	89,163	91,958	65,410
<u>\$1,762,000</u>	<b>Total current assets</b>	<u>\$1,746,336</u>	<u>\$2,013,836</u>	<u>\$1,772,233</u>
	<b>Non-current assets</b>			
39,000	Property, plant and equipment	40,683	44,354	48,513
<u>39,000</u>	<b>Total non-current assets</b>	<u>40,683</u>	<u>44,354</u>	<u>48,513</u>
<u>\$1,801,000</u>	<b>Total assets</b>	<u>\$1,787,019</u>	<u>\$2,058,190</u>	<u>\$1,820,746</u>
	<b>Current liabilities</b>			
57,000	Creditors and accrued expenses	25,642	47,514	53,954
51,000	Employee costs payable	30,051	30,343	62,279
<u>\$108,000</u>	<b>Total current liabilities</b>	<u>\$55,693</u>	<u>\$77,857</u>	<u>\$116,233</u>
	<b>Equity</b>			
150,000	Capital contribution	150,000	150,000	150,000
847,000	Operating funds	895,993	916,693	879,423
696,000	Litigation fund	685,333	913,640	675,090
<u>\$1,693,000</u>	<b>Total equity</b>	<u>\$1,731,326</u>	<u>\$1,980,333</u>	<u>\$1,704,513</u>
<u>\$1,801,000</u>	<b>Total equity and liabilities</b>	<u>\$1,787,019</u>	<u>\$2,058,190</u>	<u>\$1,820,746</u>

**STATEMENT OF CASH FLOWS**  
for the period ended 31 December 2017

<i>Budget</i> <i>12 months to</i> <i>30 Jun 2018</i> \$		<i>Actual</i> <i>6 months</i> <i>to 31 Dec</i> <i>2017</i> \$	<i>Actual</i> <i>6 months</i> <i>to 31 Dec</i> <i>2016</i> \$	<i>Actual</i> <i>12 months</i> <i>to 30 Jun</i> <i>2017</i> \$
	<b>Cash flows from operating activities</b>			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
223,000	Application fees and costs recoverable	51,000	158,772	244,247
43,000	Interest	26,623	13,286	44,362
16,000	Other income	256	10,407	6,978
	Goods and Services Tax (net)	2,646		
	Cash was applied to:			
(530,000)	Suppliers	(309,950)	(250,787)	(495,656)
(1,253,000)	Employees and members	(561,524)	(595,573)	(1,152,324)
(3,000)	Goods and Services Tax (net)		(6,475)	(10,349)
<u>\$(10,000)</u>	Net cash flows from operating activities	<u>\$(43,949)</u>	<u>\$76,630</u>	<u>\$131,258</u>
	<b>Cash flows from investing and financing activities</b>			
	Cash was applied to:			
(30,000)	Payments to acquire property, plant and equipment	(4,726)	(29,713)	(45,021)
(46,000)	Payments to purchase investments	(26,447)	(361,306)	(162,343)
0	Return of litigation funds to the Crown	0	0	(250,000)
<u>\$(76,000)</u>	Net cash flows from investing and financing activities	<u>\$(31,173)</u>	<u>\$(391,019)</u>	<u>\$(457,364)</u>
(86,000)	Net increase (decrease) in cash	(75,122)	(314,389)	(326,106)
301,000	Add opening cash	301,650	627,756	627,756
<u>\$215,000</u>	Closing cash	<u>\$226,528</u>	<u>\$313,367</u>	<u>\$301,650</u>

## NOTES TO THE FINANCIAL STATEMENTS

*for the period ended 31 December 2017*

### 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 \$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 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 2017.

#### **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 11 April 2017 and published in the Panel's Statement of Performance Expectations 2017/2018. 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 in respect of schemes of arrangement involving Code companies, or as it 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 2018 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. As a result of interest received over a number of years, the fund had achieved a significant surplus. The Panel therefore agreed to return \$250,000 to the Crown during the 2017 financial year.

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

	<b>6 months to 31 Dec 2017 \$</b>	<b>6 months to 31 Dec 2016 \$</b>	<b>12 months to 30 June 2017</b>
Interest received	2,957	952	21,320
Interest accrued	7,286	11,860	2,942
Expenditure on approved litigation	0	0	0
Surplus /(deficit) for the year	<u>10,243</u>	<u>12,812</u>	<u>24,262</u>
Opening balance	<u>675,090</u>	<u>900,828</u>	<u>900,828</u>
Funds returned to the Crown			<u>(250,000)</u>
Closing balance	<u>\$685,333</u>	<u>\$913,640</u>	<u>\$675,090</u>
This is comprised of:			
Cash and cash equivalents			
- Call account	122,022	142,347	121,961
- Short term deposits	556,025	759,433	550,187
Term deposits		0	0
Interest receivable	<u>7,286</u>	<u>11,860</u>	<u>2,942</u>
	<u>\$685,333</u>	<u>\$913,640</u>	<u>\$675,090</u>

**NOTE 4 Accumulated Funds**

<b>At December 2017</b>	<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	879,423	16,570	895,993
Accumulated litigation surpluses/deficits	675,090	10,243	685,333
Reserves	<u>0</u>		<u>0</u>
Total	<u>\$1,704,513</u>	<u>\$26,813</u>	<u>\$1,731,326</u>

<b>At December 2016</b>	<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	869,186	47,508	916,693
Accumulated litigation surpluses/deficits	900,828	12,812	913,640
Reserves	0		0
Total	\$1,920,013	\$60,320	\$1,980,333

#### **NOTE 5 BUDGET VARIANCES**

Significant variances from budget were:

##### **Revenue**

Revenue from application fees and costs recoverable was \$41,431 lower than budgeted. This largely relates to schemes revenue being \$36,063 lower than expected.

##### **Expenditure**

Total operating expenditure for the period was \$72,897 lower than budgeted with a number of differences in balances offsetting each other, but not fully.

Services and supplies were \$58,599 above budget. This largely relates to recruitment costs for a new Chief Executive and General Counsel.

Members' fees were \$23,198 below budget. This is the corollary of lower than expected work on enforcing the Code and considering exemption applications.

Personnel expense was \$63,508 below budget, which relates to a staff change early in the year.

Training and memberships were \$18,410 lower than budgeted. This mostly relates to training budget and opportunities not yet taken.

##### **Net operating surplus**

The Panel recorded an operating surplus of \$16,570 when a deficit of \$10,061 had been expected. While recoveries from operational activities are slightly lower than budget there was lower operational expenditure than budgeted.

### **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 (for Code company schemes), corporate activity has continued at similar levels to the previous year. This continued level of corporate activity is expected to require ongoing Panel involvement in enforcement as well as approvals and exemptions.

The Panel intends to maintain its current complement of eight staff. Currently all positions are filled. One lawyer joined the Panel in July 2017 and a new Chief Executive was appointed in December 2017.

Policy/law reform resources will focus particularly on progressing the technical amendments to the Code and Takeovers Act.

The Panel's strong co-regulatory relationships with NZX Limited and the FMA will be maintained, under the organisations' respective MoUs, through regular engagements between the respective teams. Similar relationships are also being fostered with the Commerce Commission and Overseas Investment Office.

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 will continue its work programme to improve the accessibility of information on its website, not only for practitioners and other business people with an interest in Code matters and schemes of arrangement, but also for other interested stakeholders.

The Panel consistently receives very positive feedback from takeovers practitioners and representatives about its responsiveness and approachability, as well as about the value of its published guidance. The Panel intends to continue to rise to the challenge of meeting the market's high expectations.