

Annual Report 2017

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

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REPORT OF THE CHAIRMAN AND CHIEF EXECUTIVE

We are pleased to present the annual report of the Takeovers Panel for the 2016/2017 year.

Who we are

The Panel is an independent Crown entity established under the Takeovers Act 1993 to administer and enforce the Takeovers Code. The Minister of Commerce and Consumer Affairs is the Panel's responsible Minister. Background information on the Panel and the Takeovers Code is set out in the section *About the Panel*, on page 14 below.

Where we fit in

A high-quality business environment in New Zealand is critical to strengthening economic growth and lifting productivity, and is an essential ingredient for building the economy. Investor confidence levels can have a major impact on investment activity.¹

Investors, large and small, who invest in the capital markets in New Zealand need to be confident that they have the right information in order to make their investment decisions. Investors also need confidence that the markets are well-regulated.

The integrity of the capital markets is supported by robust regulatory systems, the ethical standards of market participants, and by the agencies that regulate them. Key regulators in New Zealand's capital markets are the Financial Markets Authority, NZX Limited, the Overseas Investment Office, the Takeovers Panel and the Commerce Commission. Each has a different focus and purpose, and they all contribute to supporting the integrity of the markets so that investors can be confident that transactions occur in an appropriate and transparent fashion.

Through its role as a regulator in the capital markets, the Panel contributed to the high-level government goal for 2016/2017 of building a more competitive and productive economy.² The more immediate context for the Panel's work was provided by the government's Business Growth Agenda aims of lifting confidence in New Zealand's capital markets, achieving a better balance between access to capital and investor protection, and reducing business costs.

Our strategic goals

Contributing to the outcome of transparent and equitable takeover processes

Panel's role in takeovers and other changes of control

The Panel plays an important role in strengthening the integrity of the capital markets because it regulates changes of control in most of New Zealand's widely held companies.

Takeovers market is part of broader capital markets

Within the broad capital markets context, the Panel's role relates to mergers and acquisitions activity (**M&A**) such as takeovers. Most M&A activity is not subject to the Takeovers Code because only "Code companies" are subject to the Code and fewer than 1% of New Zealand's c.500,000 companies are Code companies.³

M&A activity will be subject to the Code when it involves a person increasing their shareholding in a Code company to more than 20% of the company's total voting rights.⁴

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.

¹ *Business Growth Agenda | Towards 2025*, Chapter 03, Building Investment, pp. 1 - 2.

² The government's four priorities were: build a more competitive and productive economy; manage the government's finances; deliver better public services to New Zealanders; and rebuild Christchurch.

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

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

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 contributes to these outcomes by providing services aimed at ensuring that the processes for Code-regulated transactions are transparent and equitable. The Statement of Service Performance, on pages 31 to 36, sets out the services that the Panel provided over the year.

Making an impact under the Takeovers Code

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

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, acquirers, and their advisers being well informed about the role of the Code and of the Panel.

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 ensuring Code-compliant disclosure for investors in Code companies.

The Panel's other key roles of undertaking policy development (including through granting class exemptions) and of improving public understanding of takeovers law, were also important areas of service delivery by the Panel.

Operating environment

The Panel manages its resources flexibly between its highest priority activity of enforcement, and its policy and public education activities. These latter two functions are important, but necessarily take second place to ensuring that all transactions are dealt with promptly. In terms of the Panel's performance framework on page 16, these activities are depicted under the impacts of, respectively, Enforcement, Efficiency and Knowledge.

Achievements for the reporting year

Enforcement

The total number of transactions for the year was slightly fewer than the previous year. Although the first eight months of the year were very busy with transactions, including several unsolicited transactions, the final third of the year was very quiet.

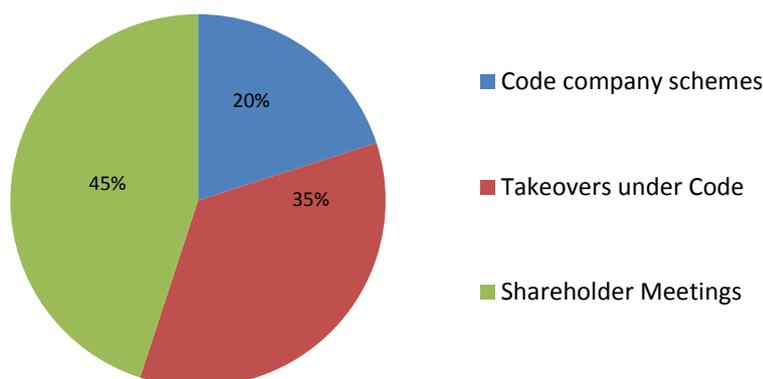
The number of Code-regulated transactions over the year, at 16, was lower than in 2015/2016 (20). Nine of these transactions were acquisitions or allotments of parcels of shares, approved by shareholders at a meeting of the Code company, and seven were takeover transactions.

In addition, there were four transactions structured as schemes of arrangement (**Code company schemes**) under the Companies Act 1993, taking the total number of transactions overseen by the Panel to 20.

The greater flexibility of the regulatory requirements for schemes, as compared with more prescriptive rules under the Takeovers Code, can make Code company schemes an attractive vehicle for complex transaction structures. The Panel has noted an increase in scheme related activity following the implementation of the Code company scheme provisions in the Companies Act in 2014. The Panel's role for Code company schemes is to ensure that shareholders in a scheme of arrangement receive a level of disclosure similar to that which they would have received in a takeover regulated by the Takeovers Code. Early engagement with the Panel's executive team helped applicants to meet the standards of disclosure required by the Panel for the Code company schemes.⁵ Accordingly, the Panel provided a No-objection Statement for all applicants. The Code company schemes regime has bedded in well and is functioning as expected.

⁵ An applicant can apply to the Panel for a statement in writing that the Panel has no objection to the proposed scheme (a No-objection Statement). The applicant presents the No-objection Statement to the Court as part of the process for seeking the Court's approval of the scheme.

Transactions by type



In terms of the Panel's other enforcement work, no major enforcement actions were taken over the year, even though a number of the takeover transactions were 'unsolicited' in that the target company board recommended that shareholders decline the respective offers. Although the unsolicited transactions were the subject of a high number of complaints, no complaints made to the Panel resulted in the holding of a hearing under section 32 of the Takeovers Act (none held in 2015/2016).

Having completed a Memorandum of Understanding (**MoU**) with NZX Limited in May 2015, the Panel has continued its efforts on joining up with fellow regulators in the capital markets. Involvement with the FMA regarding the entering into of an MoU has resulted in better engagement between the two organisations. The MoU with the FMA was completed in August 2016.

Efficiency – policy work and exemptions

The most significant amongst the policy initiatives undertaken by the Panel over the year was to make recommendations for amendments to the Takeovers Act and Code. Those recommendations were made by the Panel to the Minister of Commerce and Consumer Affairs in March 2017.

The recommendations covered a number of technical matters, but the key policy recommendations related to reducing the cost of Code compliance for 'small' Code companies, simplifying the Code's timing rules and encouraging electronic access to information in Code-regulated transactions.

In order to reduce the cost of Code compliance for 'small' Code companies the Panel recommended that an amendment to the definition of "Code company" in the Takeovers Act and Code be made. The Panel recommended that an additional threshold be included in the definition of Code company. Unlisted Code companies will have to have either annual revenue of at least \$15 million or total assets of at least \$30 million. This amendment would mean that companies that are not listed and do not meet the asset or revenue threshold would not be subject to the Code.

To simplify the Code's timing rules the Panel recommended that all timing rules in the Code be set by reference to 'working days'.

Finally, the Panel recommended changes to the Code to facilitate electronic communication with shareholders by offerors and target companies under a takeover, and by Code companies with shareholders for other Code-regulated transactions. The Panel also recommended amendments to facilitate the Panel's publication of Code-regulated documents on its website.

Knowledge – public education work

The Panel prepares a Stakeholder Engagement Plan each year to ensure it takes a planned approach to engaging with stakeholders to inform and educate them about the Takeovers Code and the role of the Panel.

A series of presentations were made over the year. Of particular interest to many stakeholders over the year were the lessons that could be taken from two unsolicited takeover offers. The presentations were made by the Panel's Chief Executive and General Counsel. The Panel also gave a market update presentation to market participants in Christchurch.

The Panel's administration – economy and efficiency

The Panel's operating income

Consistent with prior years, the Panel's funding for the financial year was 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.\$159,000 for its chargeable activities (c.\$252,000 in 2015/2016).

The Panel maintains robust controls on spending and a strong focus on internal efficiency to enable it to generally maintain a more or less break even position on its operating expenditure.⁶

Resources

The Panel used more resource than had been forecast on transactional work (25% of resource forecast, 58% expended), in large part because more resource was expended on monitoring several unsolicited takeover transactions. Less resource was used for processing Code company schemes than had been anticipated (30% forecast, 11% expended). This had flow-on effects on the resources available for policy projects (30% of resource forecast, 13% expended), and public understanding work (15% of resource forecast, 18% expended).

Panel members and the executive committed 12,706 hours of time to Panel work over the year, similar to 12,386 hours in the previous year.

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

Outputs

Utilising its income and resources, over the 2016/2017 financial year the Panel provided the outputs described in the Statement of Service Performance on pages 31 to 36.

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

However, the Panel does measure the impact it has in the segment of the takeovers market that is regulated by the Takeovers Code. The Panel's progress on these strategic aims is described under the section on pages 16 to 19, *Measuring the Panel's Performance - Impacts and Outcomes*. As this annual report indicates, the Panel is a well-respected and cost effective service provider.

Results of Panel's on-line survey

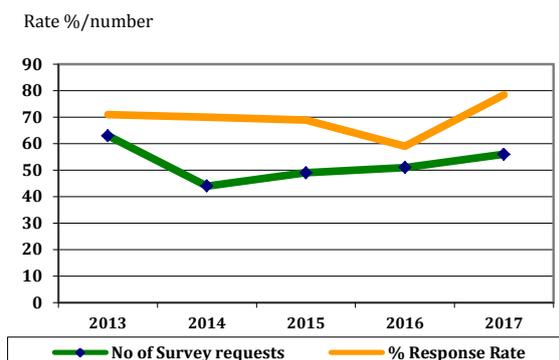
The Panel operates an on-line survey to collect data regarding its performance from the legal practitioners and independent advisers who advise Code companies and those involved in Code-regulated transactions. The graphs on page 6 show consistently high levels of satisfaction with the Panel's publications and processes and with the professionalism and timeliness of the Panel's work.

Over the 2016/2017 year the Panel sent 56 survey requests (51 in 2015/2016). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 44 responses, or a 78.5% response rate (30 responses, 58.8% response rate in 2015/2016) with very positive feedback and engagement. 100% of respondents were satisfied with the Panel executive's processes and professionalism (100% of 30 respondents in 2015/2016). All respondents found the Panel's publications overall to be useful (100% of 30 in 2015/2016).

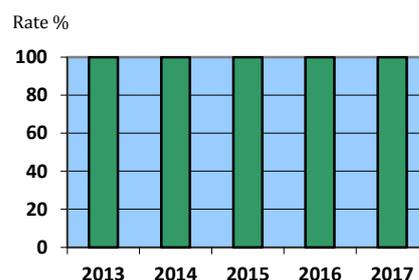
⁶ The most non-predictable factor for the Panel's annual financial position is whether it holds section 32 meetings and, if so, whether the outcome of a meeting enables the Panel to make cost recovery orders against any parties.

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

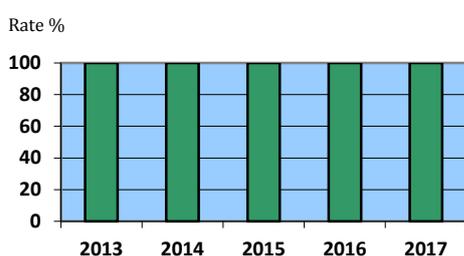
Response Rate



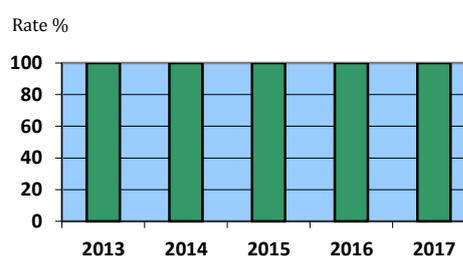
Overall satisfied with Panel's publications



Overall satisfied with process and professionalism



Overall satisfied with timeliness of processing applications⁷



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.

The Panel acknowledges David Jones, who retired as a member of the Panel on 30 September 2016. He made an enormous contribution to the development of company law in New Zealand and was a key figure in the implementation of the Takeovers Code, having sat on the Takeovers Panel Advisory Committee from its inception in 1991 and becoming Deputy Chairman of the Panel when it was established, and then Chairman in 2007.

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.

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.

The Panel acknowledges and thanks Margaret Bearsley, who resigned as Chief Executive and left the Panel in October 2017. Margaret was the Panel's General Counsel from 2008 to 2011, and was Chief Executive from July 2011. Margaret contributed greatly to the Panel's successes over the years and was an outstanding leader of the executive.

The Panel undertook a full recruitment process for the new Chief Executive, and appointed Andrew Hudson effective from 26 October 2017. The Panel looks forward to working with its new Chief Executive.

⁷ For the 2013 and 2014 years the survey question for applicants was worded differently, focusing on the executive meeting the agreed timeframe for processing application.

Finally, the Panel also wishes to acknowledge the willing assistance of market participants in their dealings with the Panel and acknowledges and thanks the Minister of Commerce and Consumer Affairs, and officials from the Ministry of Business, Innovation and Employment (MBIE), for their constructive support of the Panel during the year.



Andy Coupe
Chairman



Andrew Hudson
Chief Executive

MEMBERS OF THE TAKEOVERS PANEL AS AT 30 JUNE 2017

CHAIRMAN



Andy Coupe

Former investment banker and now professional company director, with extensive experience in public market takeovers and capital markets. Appointed to the Panel in 2008. Appointed Chairman from 1 October 2016.

DEPUTY CHAIRMAN



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. Appointed Deputy Chairman from 1 October 2016.

MEMBERS



Murdo Beattie

Investment banker. Partner of the investment banking firm of Cameron Partners Limited. Specialises in advising corporates on merger and acquisition transactions. Chairman of Audit & Risk Committee since 19 February 2013. Appointed to the Panel in 2008.



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.



Sacha Judd

Managing Director, Hoku Group. Formerly a partner at Buddle Findlay, specialising in corporate and securities law, and takeovers. Appointed to the Panel in 2015.



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.



Silvana Schenone

Lawyer. Partner of Minter Ellison Rudd Watts, specialising in mergers and acquisitions and equity capital markets. Extensive experience advising on corporate and securities law matters in Chile, New York and New Zealand. Appointed to the Panel in 2016.



Nathanael Starrenburg

Lawyer. Director of specialist corporate law firm, Harmos Horton Lusk Limited. Specialises in public and private mergers and acquisitions, securities offerings and other equity capital markets transactions. Appointed to the Panel in 2016.



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. The Panel has six Board meetings a year. All Panel members work part-time for the Panel. They are paid at an hourly rate or daily rate, depending on the type of work being done. These rates are set annually by the Remuneration Authority.

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

Committees and delegations

The Panel has an Audit and Risk Committee, chaired by Murdo Beattie. Its other two members are Andy Coupe (replacing David Jones on 1 October 2016) (ex officio) and Carl Blanchard. The Committee reviews the Panel's external reporting documents, financial forecasts and budgets, and 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 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 April 2016 to extend it to approving 'straightforward' adviser applications for Code company schemes. 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

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

Panel meetings

Panel member participation in Panel meetings, Division meetings, and Audit and Risk Committee meetings over the 2016/2017 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (53 during year)	Audit and Risk Committee (7 during year)	Written Resolutions (1 during year)
David Jones***	0 of 1	16	1	
Andy Coupe	6 of 6	26	7	
Murdo Beattie	5 of 6	8	7	
Carl Blanchard	5 of 6	33	7	
David Flacks***	1 of 1	1		
Simon Horner	6 of 6	26		1
Richard Hunt*	4 of 6	3		
Sacha Judd	5 of 6	21		1
Tony Pigou	6 of 6	30		1
Silvana Schenone**	5 of 5	12		
Nathanael Starrenburg**	3 of 4	8		
Tina Symmans	4 of 6	11		
Roger Wallis	6 of 6	8		

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

** Member since October 2016

*** Member until September 2016

Dealing with conflicts of interest

The ability to act by Division ensures that conflicted members do not form part of the Panel when dealing with matters in respect of which they have an interest. When matters are being dealt with that involve the full Panel, members who have an interest do not participate in the part of the meeting that relates to that matter, 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 member is not permitted to appear before the Panel. Alternative representation must be sought to represent the person or 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.

Directions issued by the Minister and Whole of Government Directions

The Panel was not given any directions under any enactment by the Minister during the year. As an independent Crown entity, the Panel cannot be directed to give effect to government policy. However, it is subject to Whole of Government Directions that do not affect its independence.

Permission to act when interested

There were no occasions during the year when permission was given to a member, in terms of section 68(6) of the Crown Entities Act, to act in a matter despite being interested in that matter.

Obligations to be a good employer

The Panel operates good employer policies and an equal employment opportunities programme. As with the Panel's governance and operational policies, these employee policies are reviewed regularly and are readily available to the Panel's employees through the Staff Handbook. The Panel values its employees and provides a supportive and stimulating work environment. The Panel has eight employees, equating to 7.8 FTEs.

Leadership, accountability and culture

Panel management is committed to leading by example. All staff participate in organisational decisions that impact on them. The Panel has a comprehensive Staff Handbook which sets out the organisation's expectations for professional and collegial behaviour, including a Staff Code of Conduct.

Recruitment, selection and induction

Employment decisions are based on merit. The Panel aims to be inclusive and it values diversity. The small size of the legal team and the specialised field of work means candidates must have appropriate tertiary qualifications and are selected on the basis of their academic record and their ability to work well within the team. In this context, diversity is a further positive element that candidates bring to the selection criteria.

As at 30 June 2017, 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-down of their work categories are shown in the table below.

Employee characteristics as 30 June 2017

Work category	Maori	Pakeha/European		Pasifika	Asian	Other ethnicity	Disability
	Full time	Full time	Part time				
Professionals	1	4	1				
Administration Officers		1					
Managers		1					
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 offered an exit interview.

Flexibility and work design

The Panel accommodates flexible working arrangements to the extent possible. Staff who activate the Panel's remote access for their work computers are able to work from home if necessary. 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 2016/2017 year was 38% in favour of women. This compares with 41% 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 and is particularly impacted by the small number of men on the Panel executive and their respective roles.

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.⁸

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 confidentiality orders. The Panel also has the power to issue temporary restraining orders that prevent share transactions from being undertaken. It can issue permanent orders requiring persons to publish statements or preventing persons from publishing statements. When exercising its enforcement powers, the Panel acts judicially, as a tribunal.

If the Panel's own enforcement actions are not sufficient to remedy a breach of the Code, the Panel takes action through the High Court to obtain permanent orders. In practice, this rarely needs to occur.

⁸ Bob Dugan, *Law, Economics and the Draft Takeovers Code*, (1996) 26 VUWLR 39.

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 understanding of capital markets so that they have the skills and knowledge to make informed decisions about control change transactions that affect them. The Panel's law reform function is aimed at ensuring the Code provides optimal protections for shareholders while operating efficiently and effectively as the capital markets innovate.

The Panel's approach facilitates integrity in the takeovers market

In the first few years of the Code's operation, the Panel held a significant number of section 32 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.

This published material, 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.

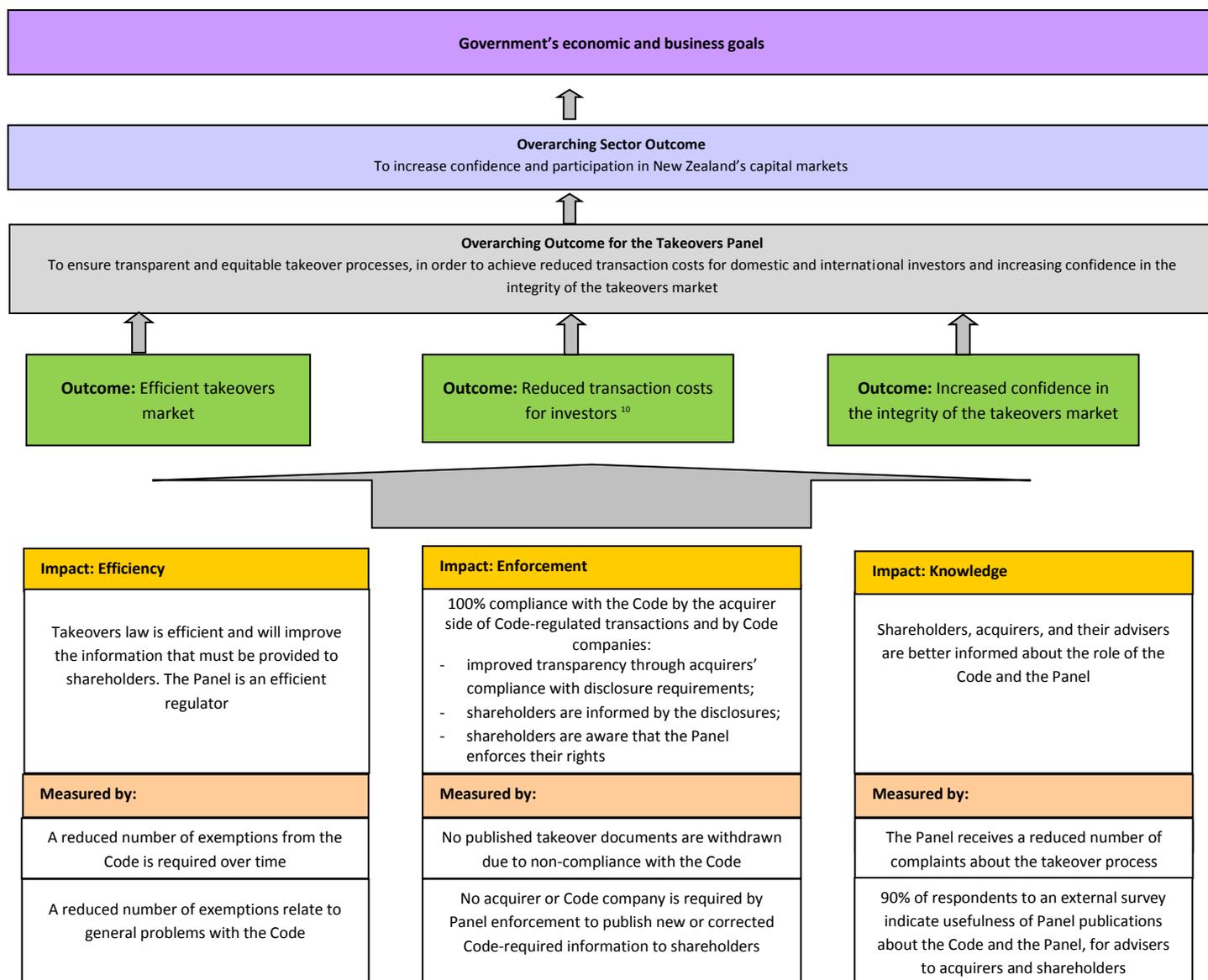
Most potential breaches of the Code are found and resolved while documents are still in draft. When an actual breach occurs, it is often voluntarily disclosed to the Panel and voluntarily remedied in accordance with Panel policy (usually requiring a prompt sale of the shares acquired in breach and, for 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 18 below shows the number of section 32 meetings that have been held since the Code came into force.

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:⁹



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.

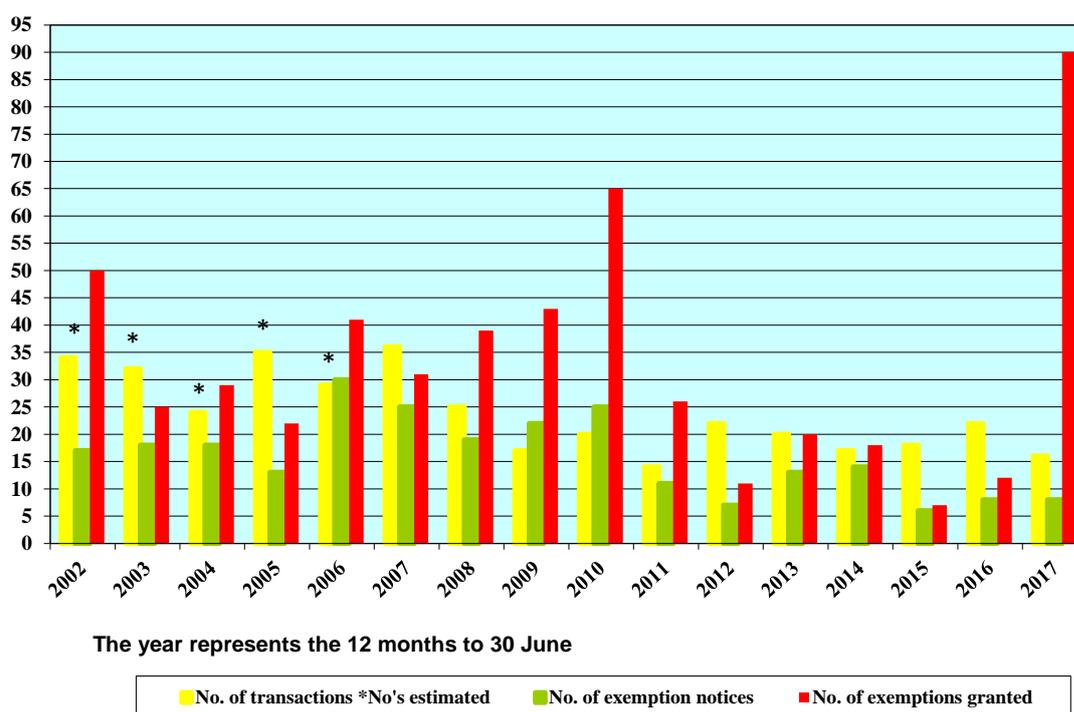
⁹ The Performance Framework has been updated in the Panel's next Statement of Intent for 2017/2018 – 2021, to take into account the Panel's role in Code company schemes of arrangement under the Companies Act

¹⁰ 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.

Although there will be some volatility relating to market specific or transaction specific circumstances (as evidenced in the 2010 and 2017 years in the graph below), the granting in 2010 of the class exemption from rule 7(d) and rule 16(b) has, from 2011, broadly reduced the number of exemptions and exemption notices.¹¹¹²

The volatility in the number of exemptions granted arises because an application for exemption can cover several different aspects of a transaction that require exemptions from the Code and can be required for any number of applicants. It is relatively common for the Panel to grant exemptions from several rules and to several persons in response to an application.¹³ Multiple exemptions granted to multiple persons are then reflected in an exemption notice which gives effect to the Panel’s decision to grant the exemptions. For these reasons, the graph shows fewer exemption notices than the number of exemptions granted.

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 18, 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 appropriate 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

¹¹ Exemptions from rule 7(d) and rule 16(b) of the Code were one of the most commonly granted exemptions.

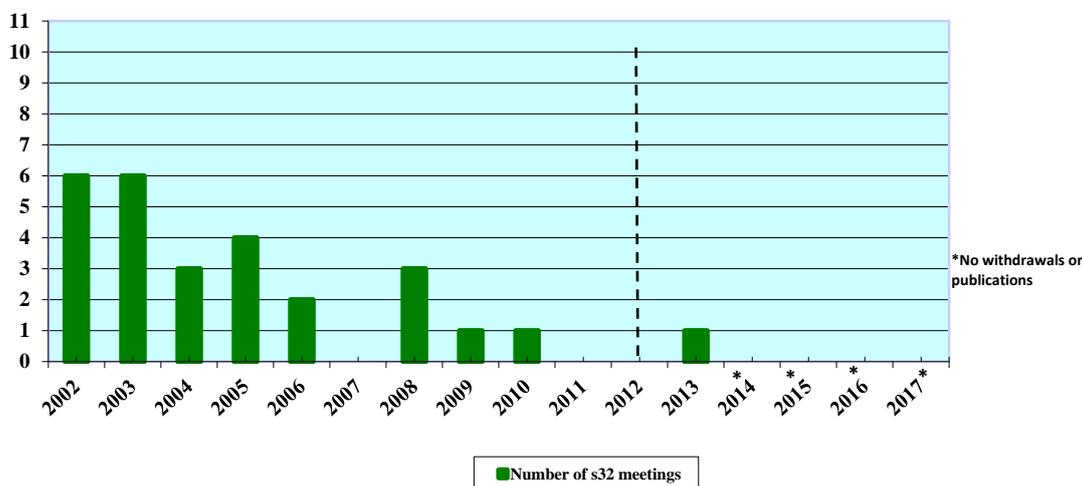
¹² For the purposes of measuring the impact, exemptions to amend previously granted exemptions are not counted, since they generally relate to an oversight in or change from the original exemption.

¹³ In 2017, a single exemption application sought an exemption on behalf of 81 applicants who had each potentially inadvertently breached a rule of the Code. The result was a very high number of exemptions granted in comparison to the number of exemption notices.

achieved to a very high level. The graph below 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.

Section 32 meetings

Number of Withdrawals of documents or publications of information – Performance measure commences from 1 July 2012 ¹⁴



The year represents the 12 months to 30 June

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.

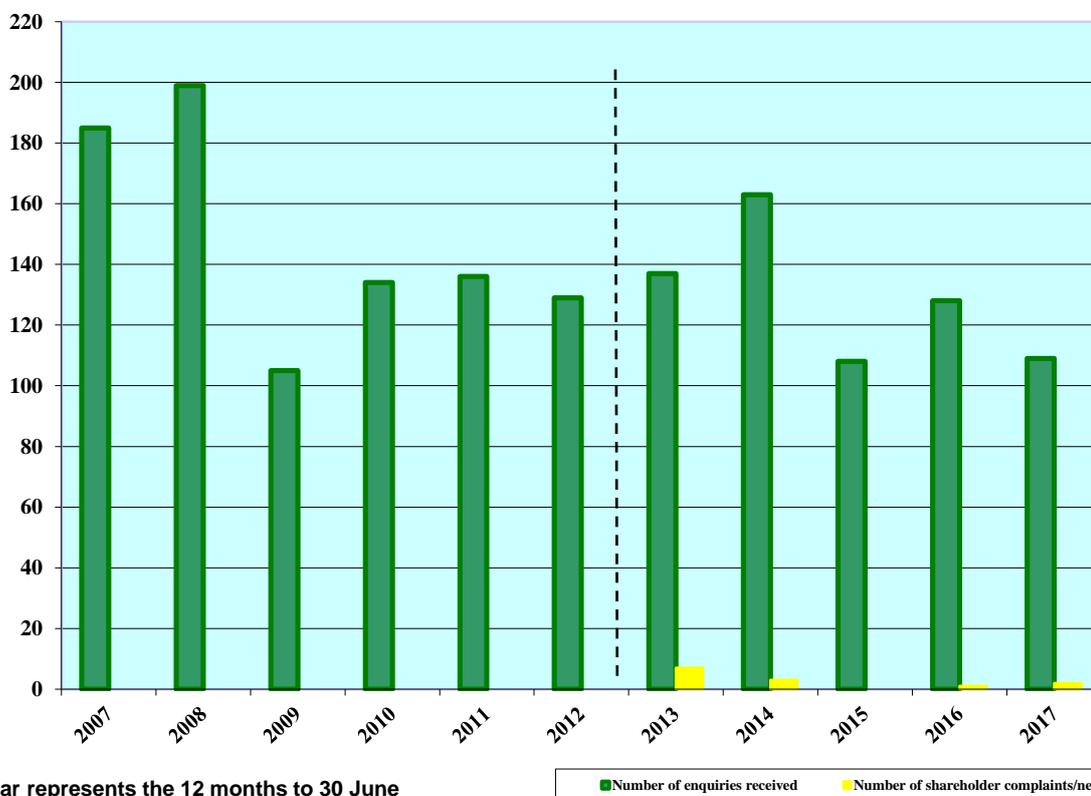
The Panel’s services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways, as shown in the graphs on page 19 below.

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 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.

¹⁴ The errors in this graph from previous years have been corrected.

Public enquiries to Panel / Enquiries involving Shareholders' complaints or negative comments about Code - Performance measure commences from 1 July 2012¹⁵

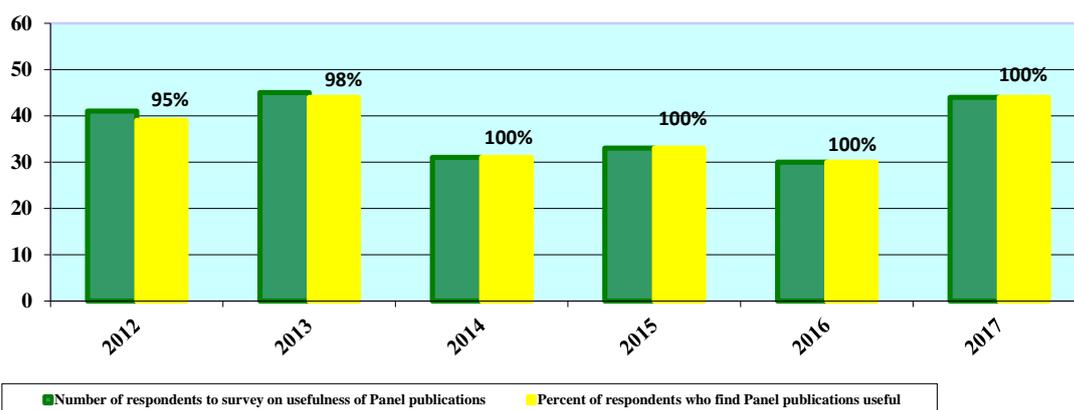


The year represents the 12 months to 30 June

■ Number of enquiries received ■ Number of shareholder complaints/negative comments re Code

% Takeovers Practitioners find Panel publications useful

No of respondents



The year represents the 12 months to 30 June

■ Number of respondents to survey on usefulness of Panel publications ■ Percent of respondents who find Panel publications useful

¹⁵ 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 2017 and the operations of the Takeovers Panel for the year ended 30 June 2017.

This annual report was approved by the Panel on 31 October 2017.

Signed on behalf of the Panel by:



R A Coupe
Chairman
Takeovers Panel

31 October 2017



M M Beattie
Chairman
Audit and Risk Committee

31 October 2017

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2017

Budget*			Actual	Actual
2017			2017	2016
\$			\$	\$
	Revenue - operating	Note		
1,494,000	Government grant – baseline funding		1,494,000	1,494,000
28,000	Interest		27,622	26,123
216,000	Application fees and costs recoverable	4	159,090	251,599
18,000	Other revenue		6,978	15,655
<u>1,756,000</u>	Total operating revenue		<u>1,687,690</u>	<u>1,787,377</u>
	Revenue – litigation fund			
32,000	Interest		24,262	30,699
<u>32,000</u>	Total litigation fund revenue		<u>24,262</u>	<u>30,699</u>
<u>\$1,788,000</u>	Total revenue		<u>\$1,711,952</u>	<u>\$1,818,076</u>
	Operating expenditure			
753,000	Services and supplies	5	716,197	722,148
990,000	Personnel costs	6	961,255	946,074
<u>1,743,000</u>	Total operating expenditure		<u>1,677,452</u>	<u>1,668,222</u>
0	Expenditure – litigation fund		0	0
<u>\$1,743,000</u>	Total expenditure		<u>\$1,677,452</u>	<u>\$1,668,222</u>
<u>\$45,000</u>	Net Surplus/Deficit		<u>\$34,500</u>	<u>\$149,854</u>
	This is comprised of:			
13,000	Revenue - operating /(deficit)		10,238	119,155
32,000	Revenue - litigation / (deficit)		24,262	30,699
<u>\$45,000</u>			<u>\$34,500</u>	<u>\$149,854</u>

*Budget figures are unaudited

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

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

STATEMENT OF FINANCIAL POSITION

as at 30 June 2017

Budget* 2017 \$		Actual 2017 \$	Actual 2016 \$
	Current assets		
	Notes		
467,000	Bank accounts and cash – operations	179,689	485,771
147,000	Bank accounts and cash – litigation fund	3 121,961	141,985
493,000	Short term deposits – operations	838,430	470,199
784,000	Short term deposits – litigation fund	3 550,187	756,075
5,000	Interest receivable – operating	13,614	6,266
4,000	Interest receivable – litigation fund	3 2,942	2,768
71,000	Debtors and prepayments	65,410	133,912
<u>\$1,951,000</u>	Total current assets	<u>\$1,772,233</u>	<u>\$1,996,976</u>
	Non-current assets		
27,000	Property, plant and equipment	7 48,513	26,354
<u>27,000</u>	Total non-current assets	<u>48,513</u>	<u>26,354</u>
<u>\$1,978,000</u>	Total assets	<u>\$1,820,746</u>	<u>\$2,023,330</u>
	Current liabilities		
56,000	Creditors and accrued expenses	53,954	55,389
59,000	Employee costs payable	62,279	47,928
<u>\$115,000</u>	Total current liabilities	<u>\$116,233</u>	<u>\$103,317</u>
	Equity		
150,000	Capital contribution	150,000	150,000
798,000	Operating funds	879,423	869,185
935,000	Litigation fund	3 675,090	900,828
<u>\$1,883,000</u>	Total equity	<u>\$1,704,513</u>	<u>\$1,920,013</u>
<u>\$1,998,000</u>	Total equity and liabilities	<u>\$1,820,746</u>	<u>\$2,023,330</u>

*Budget figures are unaudited

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

STATEMENT OF CASH FLOWS

for the year ended 30 June 2017

Budget* 2017 \$		Actual 2017 \$	Actual 2016 \$
	Cash flows from operating activities		
	Cash was received from:		
1,494,000	Government grant – operations	1,494,000	1,494,000
220,000	Application fees and costs recoverable	244,247	164,198
60,000	Interest	44,362	73,968
18,000	Other revenue	6,978	15,655
0	Goods and Services Tax (net)		5,773
	Cash was applied to:		
(522,000)	Suppliers	(495,656)	(472,980)
(1,175,000)	Employees and members	(1,152,324)	(1,151,610)
(3,000)	Goods and Services Tax (net)	(10,349)	0
\$92,000	Net cash flows from operating activities	\$131,258	\$129,004
	Cash flows from investing and financing activities		
	Cash was applied to:		
(0)	Payments to acquire property, plant and equipment	(45,021)	(4,880)
(42,000)	Payments to purchase investments	(162,343)	(62,471)
	Return of litigation funds to the Crown	(250,000)	
\$(42,000)	Net cash flows from investing and financing activities	\$(457,364)	\$(67,351)
50,000	Net increase (decrease) in cash	(326,106)	61,653
564,000	Add opening cash	627,756	566,103
\$614,000	Closing cash	\$301,650	\$627,756

*Budget figures are unaudited

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

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 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 a historical cost basis have been applied.

Functional and presentational currency

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

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 2016/2017 financial year.

Significant accounting policies

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

- a Bank accounts and cash
Bank accounts and cash balances comprise cash on hand, held in cheque or savings accounts, and deposits held at call with banks that form part of the Panel's day-to-day cash management.
- b Term deposits
This category includes all term deposits.
- c Trade and other receivables
Debtors and other receivables are initially measured at the amount owed. Impairment is recorded when it is likely that the amount owed will not be collected, in which case the loss is recorded as a bad debt expense.
- d GST
All items in the financial statements are exclusive of GST with the exception of trade and other receivables and trade and other payables which are stated with GST included.

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of 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,

Intangible assets - Computer software that is not integral to the operation of the hardware is recorded as an intangible asset and amortised on a straight line basis over a period of three years.
- j Short term employee benefits
Employee costs payable represent the Panel's liability for employee annual leave entitlements and salaries accrued up to balance date. This has been calculated on an accrued entitlement basis which involves recognising the undiscounted amount of short term employee benefits expected to be paid in exchange for service that an employee has already rendered. This is calculated at current remuneration rates.
- k Cost allocation policy
For the purposes of the statement of 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 14 April 2016 and published in the Panel's Statement of Performance Expectations 2016/2017. 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 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 2017 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, the fund had achieved a significant surplus. The Panel therefore agreed to return \$250,000 to the Crown during the year.

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

	2017	2016
	\$	\$
Interest received	21,320	27,931
Interest accrued	2,942	2,768
Expenditure on approved litigation	0	0
Interest revenue for the year	<u>24,262</u>	<u>30,699</u>
Opening balance	900,828	870,129
Funds returned to the Crown	<u>(250,000)</u>	<u></u>
Closing balance	<u>\$675,090</u>	<u>\$900,828</u>
This is comprised of:		
Bank accounts and cash		
- Call account	121,961	141,985
- Short term deposits	550,187	756,075
Term deposits	0	0
Interest receivable	<u>2,942</u>	<u>2,768</u>
	<u><u>\$675,090</u></u>	<u><u>\$900,828</u></u>

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. An analysis of the amounts invoiced for the year ended 30 June 2017 (on a GST exclusive basis) is as follows:

	2017	2016
	\$	\$
Exemptions	75,096	144,248
Approvals	30,371	28,497
Enforcement	1,000	0
Schemes	52,623	78,854
Total	<u>\$159,090</u>	<u>\$251,599</u>

NOTE 5 SERVICES AND SUPPLIES

	2017	2016
	\$	\$
Members' fees	205,420	199,932
Rent	139,100	134,025
Other	371,677	388,191
Total services and supplies	<u>\$716,197</u>	<u>\$722,148</u>

NOTE 6 PERSONNEL COSTS

	2017	2016
	\$	\$
Salaries	931,387	912,355
Employer contributions to defined contribution plans	28,014	28,221
Contractors	0	3,091
ACC	1,854	2,407
Total personnel costs	<u>\$961,255</u>	<u>\$946,074</u>

NOTE 7 PROPERTY, PLANT AND EQUIPMENT

	Office equipment	Office furniture	Software	Total
	\$	\$	\$	\$
Cost or valuation				
Balance at 1 July 2015	93,715	46,148	117,070	256,934
Balance at 30 June 2016	96,095	46,148	119,570	261,813
Balance at 1 July 2016	96,095	46,148	119,570	261,813
Additions	29,713	0	15,308	45,021
Disposals	(19,037)	0	0	(19,037)
Balance at 30 June 2017	<u>\$106,771</u>	<u>\$46,148</u>	<u>\$134,878</u>	<u>\$287,797</u>
Accumulated depreciation				
Balance at 1 July 2015	(82,326)	(25,085)	(87,677)	(195,088)
Balance at 30 June 2016	(90,462)	(29,597)	(115,400)	(235,459)
Balance at 1 July 2016	(90,462)	(29,597)	(115,400)	(235,459)
Depreciation	(14,211)	(4,512)	(4,139)	(22,862)
Elimination on disposal	19,037	0	0	19,037
Balance at 30 June 2017	<u>\$(85,636)</u>	<u>\$(34,109)</u>	<u>\$(119,539)</u>	<u>\$(239,284)</u>
Carrying amounts:				
At 30 June & 1 July 2016	<u>\$5,633</u>	<u>\$16,551</u>	<u>\$4,170</u>	<u>\$26,354</u>
At 30 June 2017	<u>\$21,135</u>	<u>\$12,039</u>	<u>\$15,339</u>	<u>\$48,513</u>

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 2017

	Opening balance	Surplus/ (deficit)	Capital returned to Crown – litigation	Closing balance
Capital contributed by owners	150,000			150,000
Funds returned to the Crown			(250,000)	(250,000)
Accumulated operating surpluses/deficits	869,185	10,238		879,423
Accumulated litigation surpluses/deficits	900,828	24,262		925,090
Total	<u>\$1,920,013</u>	<u>\$34,500</u>	<u>\$(250,000)</u>	<u>\$1,704,513</u>

	Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	750,030	119,155	869,185
Accumulated litigation surpluses/deficits	870,129	30,699	900,828
Total	<u>\$1,770,159</u>	<u>\$149,854</u>	<u>\$1,920,013</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.

	2017 \$	2016 \$
Not later than one year	139,100	139,100
Later than one year and not later than five years	440,483	556,400
Later than five years		23,184
	<u>\$579,583</u>	<u>\$718,684</u>

The Panel exercised a right of renewal of its operating lease agreement 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 2021.

The Panel had no capital commitments at balance date (2016 - no commitments).

NOTE 10 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date (2016 - no contingent liabilities).

NOTE 11 CONTINGENT ASSETS

There were no contingent assets at balance date (2016 - 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.

Board room facilities and hospitality for four of the Panel's Board meetings was provided by Simpson Grierson (1), Bell Gully (1), Minter Ellison Rudd Watts (1) and Mayne Wetherell (1). Simpson Grierson also hosted for the Panel's market update function on 30 June 2017.

Functions were held in Auckland and Wellington to farewell David Jones, the Panel's former Chairman. Russell McVeagh hosted the Auckland function and Cameron Partners provided facilities for the Wellington function.

NOTE 13 EMPLOYEE REMUNERATION

Key personnel comprise the members of the Panel and the senior management staff.

During the year, the number of employees of the Panel, not being members, who received remuneration and other benefits in excess of \$100,000 were:

	2017	2016
\$290,000-\$299,999	0	0
\$280,000-\$289,999	1	1
\$240,000-\$279,999	0	0
\$230,000-\$239,999	1	0
\$220,000-\$229,999	0	0
\$210,000-\$219,999	0	0
\$200,000-\$209,999	0	1
\$100,000-\$199,999	0	0
	2	2

NOTE 14 BOARD MEMBERS REMUNERATION

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2017 were:

	2017	2016
	\$	\$
D.O. Jones (Chairman until 30 September 2016)	22,952	57,493
R.A. Coupe (Deputy Chairman until 30 September 2016, Chairman from 1 October 2016)	32,328	21,242
M.M. Beattie	11,694	12,238
C.G. Blanchard (Deputy Chairman from 1 October 2016)	24,959	14,817
D.M. Flacks	3,142	13,453
S.M. Horner	22,429	23,340
R.A. Hunt	8,885	11,728
A.G. Pigou	15,510	12,402
S.H. Judd	15,561	12,481
S.G. Schenone	15,118	0
N.W. Starrenburg	10,000	0
S.H. Suckling	0	1,767
T.J. Symmans	8,264	6,271
R.F. Wallis	14,578	12,703
Total	\$205,420	\$199,932

NOTE 15 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 (2016- no material subsequent events).

NOTE 16 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$68,310 lower than budgeted, primarily because there were lower than forecast recoveries from schemes of arrangements (\$102,000 budgeted for while c.\$53,000 was recovered).

Expenditure

Total operating expenditure for the year was \$65,548 lower than budgeted primarily because \$51,027 less was expended on training than budgeted, due to staff not taking up the opportunities made available.

NOTE 17 PROFESSIONAL INDEMNITY INSURANCE

The Panel has a professional indemnity insurance policy to provide cover for members and employees of the Panel.

STATEMENT OF SERVICE PERFORMANCE

for the year ended 30 June 2017

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;¹⁶ and
- (c) the cost of service for each output class.

Assessment of Performance	2015/16		2016/17
	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.	90%	90%	90%

As shown on pages 32 to 36 below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

Assessment of Performance	2015/16		2016/17
	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 or Takeovers Code. No proceedings were required to be undertaken over 2016/2017.

¹⁶ See the Statement of Financial Performance on page 21.

OUTPUT 1: Services for transactions under Takeovers Code:

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

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

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

The Panel used its enforcement resources to:

- 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 2016/2017

Performance Measures	Performance Standards		
	Forecast 2016/2017	Actual 2016/2017	Actual 2015/2016
Quantity ¹⁷			
Adviser applications received	21-23	21	23
Draft documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on this 'soft' enforcement ¹⁸	21 taking 80% of resources	16 taking 88% of resources ¹⁹	19 taking 89% of resources
Final documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on review of final documents	21 taking 20% of resources	16 taking 12% of resources	19 taking 11% 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
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
The Regulations Review Committee does not recommend disallowance of any Panel exemptions	0 disallowed	0 disallowed	0 disallowed
Applicants (exemptions and advisers) are satisfied with the Panel's process, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents
Legal advisers (takeovers and shareholder meetings) are satisfied with the processes for the reviewing of draft meeting and takeover documents as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents
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
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

¹⁷ The number of applications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information.

¹⁸ 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).

¹⁹ As in previous years, the focus of the Panel's resources is aimed at 'soft' enforcement via review of draft documents, to help ensure compliance with the Code before parties have committed themselves to final published versions. This results in little resource having to be focused on final documents, and more importantly the Panel only rarely having to hold a section 32 meeting.

<i>Performance Measures</i>	<i>Performance Standards</i>		
	Forecast 2016/2017	Actual 2016/2017	Actual 2015/2016
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
All exemption applications (4-6 forecast) are processed within the timeframe agreed with the applicant	At least 90% of 4-6 applications	100% of 10 applications	93% of 14 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
Revenue	\$447,000 ²⁰ 25% of forecast revenue	\$992,932 58% of actual revenue	\$981,761 54% of actual revenue
Cost	\$435,750 25% of forecast expenditure	\$972,922 58% of actual expenditure	\$900,840 54% of actual expenditure

²⁰ A significant proportion of the resource spent under this output related to three unsolicited takeovers that occurred during the reporting period. Unsolicited takeovers have tended to be relatively rare, and therefore are not included in the forecast.

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.
- 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 2016/2017:

Performance Measures	Performance Standards		
	Forecast 2016/2017	Actual 2016/2017	Actual 2015/2016
Quantity ²¹			
Number of Code company schemes notifications received	3-5	4	2
Quality			
Applicants are satisfied with process for No-objection Statements as indicated by an external survey	At least 90% ²² of respondents	100% of respondents	100% of respondents
Applicants are satisfied with the professionalism of the executive as indicated by an external survey	At least 90% ²² of respondents	100% of respondents	100% of respondents
Timeliness			
Letters of Intention are issued to applicant by 1 working day after Panel decision to give the Letter of Intention	100% of 3-5 Letters of Intention	100% of 4 Letters of intention	100% of 2 Letters of Intention
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	At least 80% of respondents	50% of respondents ²³	100% of respondents
No-objection Statements are issued to applicants by 1 working day after Panel decision to give the No-objection Statement	100% of the time	100% of the time	100% of the time
Revenue	\$536,400 30% of forecast revenue	\$188,315 11% of actual revenue	\$199,988 11% of actual revenue
Cost	\$522,900 ²⁴ 30% of forecast expenditure	\$184,520 11% of actual expenditure	\$183,504 11% of actual expenditure

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

²² The figure of 90% matches the Vote figure in the Estimates information. The SPE showed a figure of 80% in error.

²³ Only two of the four scheme applicants completed the online survey.

²⁴ A considerable amount of the work for two of the schemes reported on was undertaken in the previous financial year (see Annual Report for 2015/2016), contributing to the lower than forecast revenue and cost.

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. Resources were also used to complete three policy projects: Technical Amendments to the Code,²⁵ the Small Code Companies class exemption was extended, and a review was undertaken of whether rule 20 of the Code should be amended to allow differential offer terms for sophisticated shareholders.

Actual performance against planned performance standards and performance measures for 2016/2017:

Performance Measures	Performance Standards		
	Forecast 2016/2017	Actual 2016/2017	Actual 2015/2016
Quantity			
2 policy projects planned to be commenced, noting that other policy projects may arise in response to market practice	2 projects completed	3 projects completed	3 projects commenced 1 project 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	N/A
Timeliness			
Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100% of the time	100% of the time	N/A
Revenue (Funded by government grant and other income, except fees)	\$536,400 30% of forecast revenue	\$222,554 13% of actual revenue	\$381,796 21% of actual revenue
Cost	\$522,900 30% of forecast expenditure	\$218,069 13% of actual expenditure	\$350,327 21% of actual expenditure

²⁵ The policy development processes were completed for the technical amendments project. The legislative process will occur in the 2017/2018 year.

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 2016/2017:

<i>Performance Measures</i>	<i>Performance Standards</i>		
	Forecast 2016/2017	Actual 2016/2017	Actual 2015/2016
Quantity			
Code Words published	3	3	2
Public enquiries responded to	120-150	109	128
Engagements with stakeholders undertaken	60-70	62 individual 4 seminars ²⁶	22 individual 3 seminars
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
Market participants found the website useful to a considerable or high degree, as indicated by an external survey	At least 90% of respondents	88.6% of respondents	100% of respondents
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved
Timeliness			
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	100% of the time	55% of the time ²⁷
Public enquiries are responded to within 3 working days of receiving them	100% of the time	100%	99.22% of the time
Revenue (Funded by government grant and other income except fees)	\$268,200 15% of forecast revenue	\$308,151 18% of actual revenue	\$254,531 14% of actual revenue
Cost	\$261,450 15% of forecast expenditure	\$301,941 18% of actual expenditure	\$233,551 14% of actual expenditure

²⁶ Four seminars were presented regarding various aspects of the Panel's role and of the Code, attended by c. 60 practitioners, regulators and other interested parties.

²⁷ Five of 11 documents for publication on the website did not meet the performance measure for timeliness. Of these, one was the 2014/2015 Annual Report which could not be published on the website until it had been tabled in the House, three were delayed due to the time it took to obtain final versions from external graphic designers, and one was temporarily put aside while the executive focused on transactions that required timely turnaround.

Independent Auditor's Report

To the readers of the Takeovers Panel's financial statements and performance information for the year ended 30 June 2017

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

Opinion

We have audited:

- the financial statements of the Panel on pages 21 to 30, that comprise the statement of financial position as at 30 June 2017, the statement financial performance and statement of cash flows for the year ended on that date and the notes to the financial statements including a summary of significant accounting policies and other explanatory information; and
- the performance information of the Panel on pages 16 to 19 and 31 to 36.

In our opinion:

- the financial statements of the Panel on pages 21 to 30:
 - present fairly, in all material respects:
 - its financial position as at 30 June 2017; and
 - its financial performance and cash flows for the year then ended; and
 - comply with generally accepted accounting practice in New Zealand in accordance with the Public Benefit Entity Simple Format Reporting – Accrual standard.
- the performance information on pages 16 to 19 and 31 to 36.
 - presents fairly, in all material respects, the Panel's performance for the year ended 30 June 2017, including:
 - for each class of reportable outputs:
 - its standards of delivery performance achieved as compared with forecasts included in the statement of performance expectations for the financial year; and

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

Our audit was completed on 31 October 2017. This is the date at which our opinion is expressed.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the members of the Panel and our responsibilities relating to the financial statements and the performance information, we comment on other information, and we explain our independence.

Basis for our opinion

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor-General's Auditing Standards.

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

Responsibilities of the members of the Panel for the financial statements and the performance information

The members of the Panel are responsible on behalf of the Takeovers Panel for preparing financial statements and performance information that are fairly presented and comply with generally accepted accounting practice in New Zealand. The members of the Panel are responsible for such internal control as they determine is necessary to enable them to prepare financial statements and performance information that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements and the performance information, the members of the Panel are responsible on behalf of the Takeovers Panel for assessing the Panel's ability to continue as a going concern. The members of the Panel are also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Panel, or there is no realistic alternative but to do so.

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

Responsibilities of the auditor for the audit of the financial statements and the performance information

Our objectives are to obtain reasonable assurance about whether the financial statements and the performance information, as a whole, are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor-General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of these financial statements and the performance information.

For the budget information reported in the financial statements and the performance information, our procedures were limited to checking that the information agreed to the Panel's statement of performance expectation.

We did not evaluate the security and controls over the electronic publication of the financial statements and the performance information.

As part of an audit in accordance with the Auditor-General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risks of material misstatement of the financial statements and the performance information, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Panel's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the members of the Panel.
- We evaluate the appropriateness of the reported performance information within the Panel's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by the members of the Panel and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Panel's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements and the performance information or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Panel to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the financial statements and the performance information, including the disclosures, and whether the financial statements and the performance information represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the members of the Panel regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

Other information

The members of the Panel are responsible for the other information. The other information comprises the information included on pages 2 to 15 and 20, but does not include the financial statements and the performance information, and our auditor's report thereon.

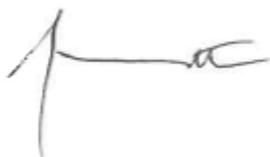
Our opinion on the financial statements and the performance information does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

In connection with our audit of the financial statements and the performance information, our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the financial statements and the performance information or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Independence

We are independent of the Panel in accordance with the independence requirements of the Auditor-General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1 (Revised): Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board.

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



John Whittal
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

How to contact us

Takeovers Panel
Level 3, Solnet House
70 The Terrace
Wellington
Phone (04) 815 8420
Fax (04) 815 8459
Email takeovers.panel@takeovers.govt.nz
Website www.takeovers.govt.nz