

Takeovers Panel

ANNUAL REPORT

for the year ended 30 June 2014

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

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CHAIRMAN'S REPORT

Our work

I am pleased to present the annual report of the Takeovers Panel for the 2013/2014 year.

It was a relatively quiet year for transactions regulated by the Takeovers Code, with occasional busy periods of corporate activity.

The Panel manages the unpredictable nature of Code-regulated activity, in terms of resource pressures on the Panel members and the executive, through its flexible approach to work streaming. The Panel's team can switch from monitoring and enforcement work to policy development work or to a public education focus as the need arises or the resource allows. This enables the Panel to manage its resources efficiently, to achieve its goals, and to keep its skilled executive team focused and productive.

With only moderate levels of monitoring and enforcement work required over the year, the Panel made a strong push into public education, publishing basic guidance information for shareholders and for directors of Code companies. These booklets explain the role of the Code and of the Panel in non-legal language. The Panel's main operational objective is promoting a transparent and equitable takeovers market. All of the Panel's work is undertaken with this objective in mind.

Our strategic goals

Through its role as a regulator within the capital markets, the Panel contributed to the high-level government goal for 2013/2014 of building a more competitive and productive economy. Meanwhile, the government's sector-goal of increasing confidence and participation in New Zealand's capital markets provided the more immediate context for the Panel's work.

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

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

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

To achieve these outcomes, the Panel's services aim to accomplish the following three impacts:

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

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

The most significant part of the Panel's enforcement resource 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 a good level of disclosure for investors in Code companies.

With transactional activity in the market for corporate control having been at times relatively light over the reporting period, one of the Panel's other key roles, improving public understanding of takeovers law, was, as noted above, a key area of service delivery by the Panel. Feedback indicates that these services

Ensuring transparent and equitable takeover processes

have really hit the mark in terms of the usefulness and accessibility of information provided by the Panel for shareholders and for directors of Code companies.

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.

Australian member, Peter Scott, retired from his New Zealand Panel position in March 2014. Peter had been a member since 2008. On behalf of the Panel I express my deep appreciation for the significant contribution Peter made over the years, especially to the Panel's policy work.

A new Australian member, Richard Hunt, was appointed to the Panel on 1 May 2014 for a term of 10 months. The term of office of Murdo Beattie, who has been a Panel member since 2008, was extended for five years, until September 2018.

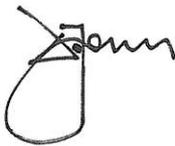
Executive team

The Panel's executive team of specialist lawyers and administrative support was ably led throughout the year by Chief Executive Margaret Bearsley. Margaret has worked closely with me over the year to provide the key link between the Panel and its executive staff.

Acknowledgements

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

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



D O Jones
Chairman

MEMBERS OF THE TAKEOVERS PANEL

CHAIRMAN



CHAIRMAN David Jones

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

DEPUTY CHAIRMAN



DEPUTY CHAIRMAN Andy Coupe

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

MEMBERS



Murdo Beattie

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



Carl Blanchard

Investment Banker. Director of investment banking at First NZ Capital. Specialises in advising on utilities, government and property transactions. Appointed to the Panel in 2011.



David Flacks

Lawyer. Partner of Bell Gully experienced in takeovers, mergers, securities law, and corporate governance. Chair NZ Markets Disciplinary Tribunal. Appointed to the Panel in 2011.



Simon Horner

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



Richard Hunt

Investment Banker. Principal of Fort Street Advisers based in Sydney. A market leader in mergers and acquisitions, equity capital market and debt capital market transactions. Appointed to the Panel as the Australian Panel's representative in 2014.



Tony Pigou

Corporate adviser and consultant. Experienced adviser on takeovers, merger and acquisition transactions and equity capital markets. Former New Zealand head of investment banking and equity capital markets for major international investment banks. Appointed to the Panel in 2013.



Sue Suckling

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



Tina Symmans

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



Roger Wallis

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

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES

The Board of the Panel

The members of the Panel comprise the governing body of the organisation. A meeting of all the members is a meeting of the Board for the purposes of the Crown Entities Act 2004. The functions and powers of the Panel are set out at page 15 below.

The Panel sets the organisation's strategic goals and reviews management's performance. It is responsible for appointing the Chief Executive, negotiating 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 specified goals for the Panel.

The full Panel meets six times a year to conduct the governance functions of the Panel including reviewing the performance of the Panel executive, reviewing the work of the various Divisions of the Panel, and considering policy and public education issues and relationships with stakeholders.

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

Committees and delegations

The Panel has an Audit and Risk Committee with authority to make some decisions on behalf of the Panel. The Committee comprises:

Chairman: Murdo Beattie

Members: David Jones (*ex officio*)
Carl Blanchard

The Audit and Risk Committee reviews the Panel's external reporting documents, financial forecasts and budgets, and the Panel's Risk Management Plan.

The Panel does not have a large enough staff to operate a separate internal audit process. However, strict separation of personnel is maintained between the banking, payments, and payment authorisation processes. External review of receipts and payments is provided by the Chairman of the Audit and Risk Committee undertaking periodic spot checks.

The Panel's Chief Executive and Accountant/Administrator attend the Committee's meetings but are not members of the Committee. The Audit and Risk Committee meets with the Panel's auditors, Audit New Zealand, following each annual audit. For part of that meeting, management may be excluded from the discussions.

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 under the terms of the delegation). Most adviser approvals are completed under the delegation. Since a meeting of a Division of Panel members is no longer required to decide these straightforward applications, this has resulted in speedier decisions at less cost to the applicants.

Divisions of the Panel

For exercising most of its statutory powers the Panel meets by a Division of non-conflicted members. The Chairman appoints a Division for each matter, as it arises. This includes the consideration of applications for exemption, applications from advisers for approval to act as an independent adviser, enforcement issues, etc.

A Division must be constituted with at least three Panel members. An appointed Division is "the Panel" for the purposes of the matter it is appointed to consider, and only that Division can exercise the Panel's powers in respect of that matter.

Panel meetings

Panel member participation in Panel meetings, Division meetings, and Audit and Risk Committee meetings over the 2013/2014 year was as follows:

Member	Panel meetings †	Division meetings (41 during year)	Audit and Risk Committee (7 during year)
David Jones	6 of 6	31	7
Andy Coupe	6 of 6	30	
Murdo Beattie	6 of 6	5	7
Carl Blanchard	6 of 6	19	7
David Flacks	6 of 6	15	
Simon Horner	6 of 6	16	
Richard Hunt*	1 of 1	0	
Tony Pigou	4 of 6	8	
Peter Scott**	4 of 4	0	
Sue Suckling	3 of 6	7	
Tina Symmans	5 of 6	8	
Roger Wallis	5 of 6	8	

† Maximum number of Panel meetings that Members could attend is shown.

* Member since 1 May 2014. Based in Australia and is not asked to sit on Divisions.

** Member until 8 March 2014. Based in Australia and is not asked to sit on Divisions.

Dealing with conflicts of interest

The ability to act by Division ensures that conflicted members do not form part of the Panel for dealing with matters in respect of which they have an interest. When matters are being dealt with that involve the full Panel, members who have an interest do not participate in the part of the meeting that relates to that matter, and nor do they receive the Board papers about that matter. The Panel maintains an Interests Register for recording members' interests in accordance with the Crown Entities Act.

Where an enforcement matter before the Panel involves a Panel member, either as a legal adviser to a person the subject of a Panel enquiry, or as their corporate representative (for example, as a director of a company that is the subject of a Panel enquiry), the Panel's governance rules require that the member does not appear before the Panel. Another partner of the member's firm must represent the client or another of the company's corporate representatives must represent the company.

Planning

The Panel's main planning document is the annual Statement of Intent required to be prepared under the Crown Entities Act. The Panel develops a strategic plan each year in preparation for its Statement of Intent, and it keeps its business plans under review at each Board meeting.¹

Directions issued by the Minister and Whole of Government Directions

The Panel was not given any directions under any enactment by the Minister of Commerce during the 2013/2014 year. As an independent Crown entity, the Panel cannot be directed to give effect to government policy. However, it is subject to whole of government directions that do not affect the Panel's statutory independence. In April 2014 the Panel received a Whole of Government direction to apply the Government Rules of Sourcing to its procurement practices, with effect from February 2015.

¹ The Panel complied with the new requirements under the Crown Entities Act to prepare a four-year Statement of Intent for 2014/2015 - 2018 and a Statement of Performance Expectations for 2014/2015. These changes will be reflected in the Panel's 2015 Annual Report.

Permission to act when interested

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

Obligations to be a good employer

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

Leadership, accountability and culture

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

Recruitment, selection and induction

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

As at 30 June 2014, the Panel's staff comprised five women and three men. Half of the Panel's 8 staff are aged 40 or younger, two are in the 41 to 50 age bracket and two are over 51. The ethnicity and disability profile of the staff, together with the break-downs of their work categories are shown in the table below.

Employee characteristics as 30 June 2014

Work category	Maori	Pakeha/European		Pasifika	Asian	Other ethnicity	Disability?
	Full time	Full time	Part time		Full time		
Professionals	1	2	1		1		
Administration Officers		1					
Managers		2					
TOTAL	1	5	1		1		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.

Flexibility and work design

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

Ensuring transparent and equitable takeover processes

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 2013/2014 year was 4% (i.e., in favour of men). This compares with 5% (in favour of men) the previous year. The use of the median figure for establishing the gender pay gap in such a small organisation as the Panel can produce significant swings (it was 28% in favour of men in the 2011/2012 year).

Harassment and bullying prevention

The Panel has a Workplace Bullying and Harassment Policy. This policy encourages Panel 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.

CHIEF EXECUTIVE'S REPORT

The Panel is an independent Crown entity established under the Takeovers Act. The Minister of Commerce is the Panel's responsible Minister. A brief background on the Panel and the Code is set out in the section entitled *About the Panel*, on page 15 below.

Minister's expectations of the Panel for 2013/2014

For the 2013/2014 year the Panel was expected to contribute to the government's four priorities² and the objectives identified in the Panel's performance framework which is set out on page 17 below. The Minister noted that monitoring and responding to Code-regulated transactions is the highest priority for the Panel's operational performance.

The Minister also expected the Panel to work with MBIE officials on changes to the Takeovers (Fees) Regulations 2001, to keep the Code under review and to prepare for an expanded role for the Panel on the passage of the Companies and Limited Partnerships Amendment Bill.

Finally, the Minister asked the Panel to ensure that it operated within budget, to be fiscally prudent and, in line with the government's Better Public Services programme, to provide services that focus on the things that matter to New Zealanders, including providing a high quality, cost effective and customer focused frontline service.

The Statement of Service Performance, on pages 40 to 45 below, sets out in full the services that the Panel provided over the year, in accordance with the government's expectations.

Operating environment

The number of transactions regulated by the Code over the 2013/2014 year, at 17, was down on the previous year (21). This continued a trend that had begun in the 2012/2013 year where on-going low levels of Code-regulated activity was understood to be less a sign of an acquisitions market lacking in confidence (as has been apparent in the years since the global financial crisis) and more a sign of a market focusing its energy on capital raisings and on undertaking initial public offerings and listings.

The Panel manages its resources between its highest priority and (usually) highest resource activity of enforcement, and its policy and public education activities. These latter two functions are important, but necessarily take second place to ensuring that all transactions are dealt with responsively. In terms of the Panel's performance framework on page 17, these activities are depicted under the impacts of, respectively, Enforcement, Efficiency and Knowledge.

Achievements for the reporting year

Enforcement

Every transaction that is regulated by the Code is monitored by the Panel executive. A high priority is given to reviewing draft documentation to assist practitioners with the Code's disclosure and other obligations, and to ensure that the Panel's role causes no undue delay to the transaction timetable.

There were no significant enforcement actions taken over the year, with all Code-regulated transactions running fairly smoothly. No complaints made to the Panel resulted in the holding of a hearing under section 32 of the Takeovers Act (one hearing was held in 2012/2013). Overall, the Panel's enforcement activities used less resource than had been forecast (35% of resource forecast, 25% expended).

Efficiency – policy work and exemptions

The Panel focused more resources than forecast on policy projects (20% of resource forecast, 23% expended) and exemptions from compliance with the Code (10% of resource forecast, 13% expended).

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

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This occurred largely because of the lower than forecast level of enforcement work, which enabled more time to be given to policy and, especially, to public education (discussed below). The number of exemption applications considered over the year was a little higher than anticipated, partially due to several of the year's initial public offerings needing exemptions from the Code to accommodate their offering and listing structure.

The Companies and Limited Partnerships Amendment Bill completed its passage through the House at the end of June 2014. The Bill amends the Companies Act 1993, implementing the Panel's proposals for dealing with schemes of arrangement and amalgamations that involve Code companies. To assist the market to prepare for the law changes, in April 2014 the Panel published its Guidance Note setting out the process and requirements for obtaining from the Panel a 'no objection statement' for a scheme of arrangement under the new provisions.

The Panel had been assisting MBIE officials with a review of the fees that the Panel is able to charge under the *Takeovers (Fees) Regulations 2001*. The review was put on hold during the year.

Knowledge – public education work

As the Chairman's report indicates, the Panel took the opportunity to allocate a significant portion of its resources to improving shareholders' knowledge about the Code and the Panel. In the past the Panel has tended to focus its public understanding efforts on legal advisers and the advisers who act as independent advisers for Code-regulated transactions. However, in 2013/2014 the Panel decided to produce educational guides specifically for shareholders.

The *Basic Guide for Shareholders about the Takeovers Code* and seven Fact-Sheets for shareholders were produced in-house and published in November 2013. The goal of producing these guides was to provide basic information in plain English for shareholders, to help them to understand what they should do, and who to turn to for advice, during Code-regulated transactions.

The Panel was very pleased that the Shareholders Association supported the distribution of these publications to its members. It is hoped that directors and management of Code companies will also encourage the company's shareholders to go to the Guide and Fact-Sheets for information about their rights under the Code and about how the Code works.

After completing the *Basic Guide for Shareholders*, the Panel decided to produce a guide for directors of Code companies, publishing the *Basic Guide for Directors about the Takeovers Code* in February 2014. Again, the Panel was pleased to gain a wider distribution network through the support of the Institute of Directors.

Directors of large Code companies, especially those listed on the NZX, tend to be well-served by their legal and financial advisers, while the directors of smaller companies can be less aware of the Code. Bearing this in mind, after completing the *Basic Guide for Directors*, the Panel decided to write to all of the unlisted potential Code companies to draw their directors' attention to the Code and to the new Guide for directors.

There is no register of Code companies. Accordingly, the Panel decided that the most cost-effective way to communicate with all unlisted potential Code companies was to cast the net widely by writing to all companies that had self-identified on the Companies Register as having an 'extensive shareholding'. In May 2014 the Panel wrote to 1,431 such companies. Responses to this exercise resulted in 51 email and phone enquiries to the Panel executive and increased traffic to the Panel's website over May 2014.

This was an economical and effective means of raising the awareness of Code company directors about their obligations, as well as raising the awareness of directors of smaller non-Code companies that their company might one day become subject to the Code.

In addition to the above, the Panel's General Counsel and I together undertook around 25 'one-to-one' interviews with a range of stakeholders over the year. These discussions provided an informal forum for these stakeholders to discuss the operation of the Code and also for the Panel to gain candid feedback about its performance. In response to these discussions and various other interactions with stakeholders over the year, the Panel has significantly enlarged its policy and law reform work programme and over the next year or two will consider all of the issues raised.

Ensuring transparent and equitable takeover processes

To improve the accessibility of information for the public, all of the Panel's published guidance information has been re-organised on the Panel's website into specific topics. Consolidating and updating all of the information into a single guidance document under each topic has almost been completed.

The Panel's administration – Economy and efficiency

The Panel's operating income

The Panel's funding for the financial year was mostly provided by Parliament, being \$1,494,000 (through Vote Commerce: Non Departmental Output – Administration of the Takeovers Code). In addition, the Panel received income of c.\$147,000 from third party funding for its chargeable activities.

Third party funding was low for the year, having rebounded in 2012/2013 to c.\$218,000 from low levels the previous two years (c.\$104,000 in 2011/2012 and c.\$170,000 in 2010/2011). In all prior years, third party funding generated income for the Panel of between \$300,000 and \$600,000 per annum.

The Panel continues to maintain 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.³

Resources

Panel members and the executive committed 13,086 hours of time to Panel work over the year, as compared with 12,364 in the previous year.

The Panel's intellectual resources consist of the Panel members and the executive team of eight staff. The Panel's capital resources consist of \$90,233 of software, office equipment and furniture.

Outputs

Utilising its income and resources, over the 2013/2014 financial year the Panel provided the outputs described in the Statement of Service Performance on pages 40 to 45 below.

Cost effectiveness of Panel

Impacts and outcomes

The Chairman's Report describes the three impacts that the Panel's services are designed to achieve (see page 2 above).

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. The Panel's progress on these strategic aims is described under the section on pages 17 to 20 below, entitled *Measuring the Panel's Performance - Impacts and Outcomes*.

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 with whom it deals.

Over the 2013/2014 year the Panel sent 44 survey requests (63 in 2012/2013). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel executive reached its conclusion. The Panel received 31 responses, or a 70% response rate, (45 responses, 71% response rate in 2012/2013) with very positive feedback and engagement. The graph on page 14 below provides a summary of the survey results. The survey has had the added benefit of providing a forum for respondents to raise any concerns that might not otherwise be brought to the Panel's attention, such as suggestions for improving the website or delivery of other services. The Panel has been able to act quickly on this feedback after it is received.

³ 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.

Ensuring transparent and equitable takeover processes

Market feedback

The results of the on-line survey for 2013/2014 show that 100% of the 31 respondents were satisfied with the Panel executive's processes and professionalism (100% of 45 respondents in 2012/2013), 100% of the 10 independent adviser respondents were satisfied with the timeliness of having their applications processed by the Panel executive (94.4% of 18 in 2012/2013), and 100% of the 7 exemption applicants who responded to the survey were satisfied with the timelines of having their applications processed by the Panel (100% of 7 in 2012/2013). All respondents found the Panel's guidance and other communications to the market overall to be useful (97.8% in 2012/2013).

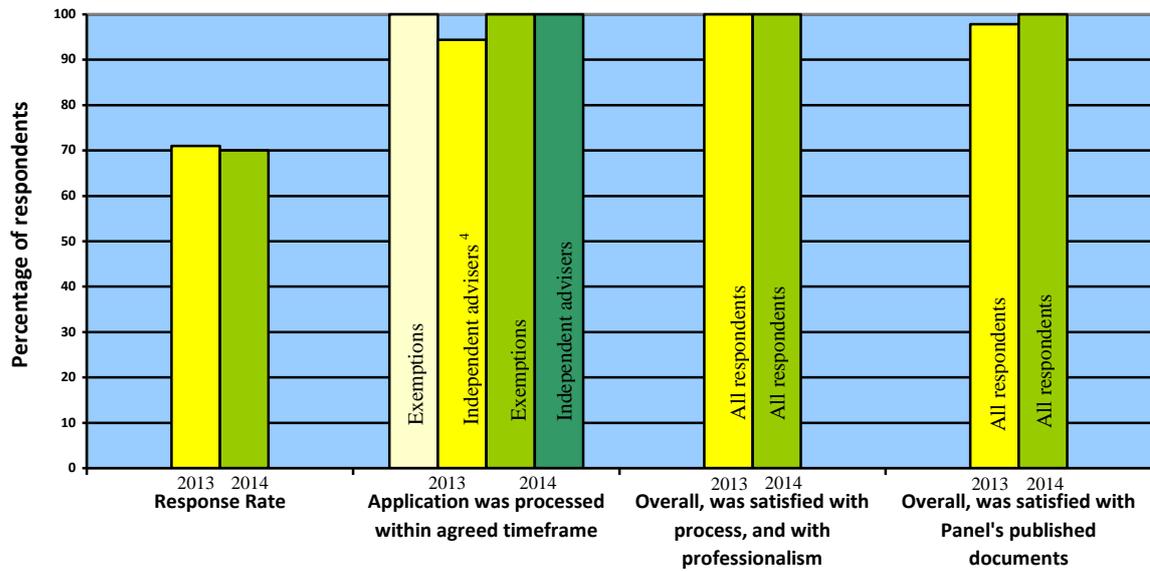
The information set out in the next section of this Annual Report, coupled with the positive feedback that the Panel has received through its on-line survey, provides data that shows the Panel to be a cost effective service provider that is achieving its expected impacts and outcomes.

The Panel's executive staff are committed to supporting the Panel's achievement of its goals. I am privileged to be leading a team of dedicated people who believe in giving excellent service to the Panel, the market and the public of New Zealand.



Margaret Bearsley
Chief Executive

Summary of On-Line Survey Results for 2013/2014



The year represents the 12 months to 30 June

⁴ The 94.4% indicated for the timeliness, in 2012/2013, of processing independent adviser applications related to the perception of the adviser respondents. Note that this figure differed from the percentage reported in the Statement of Service Performance at page 41 which was based on internal records.

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.⁵

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 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 the same 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 vote on the resolution; the allottee or acquirer and their associates are not allowed to vote.

The Panel focuses a significant proportion of its resources on ensuring that the Code is complied with by investors in Code company shares 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

⁵ Bob Dugan, *Law, Economics and the Draft Takeovers Code*, (1996) 26 VUWLR 39.

Ensuring transparent and equitable takeover processes

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

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

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.

As well as enforcing the Code, the Panel undertakes public education activities about takeovers law and practice, and the Panel also has a law reform function. The Panel's public education work contributes to the goal of many financial sector regulators, to improve the public's financial literacy. The Panel's law reform function is aimed at ensuring the Code provides optimal protections for shareholders while operating efficiently and effectively as the capital markets develop and change.

The Panel's approach facilitates integrity in the takeovers market

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

These published 'rulings', together with the informal advice 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.

As a result, most potential breaches of the Code are found and resolved while documents are still in draft. In the now rare case where an actual breach has occurred, it is almost always 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 19 below shows the number of section 32 meetings that have been held since the Code came into force.

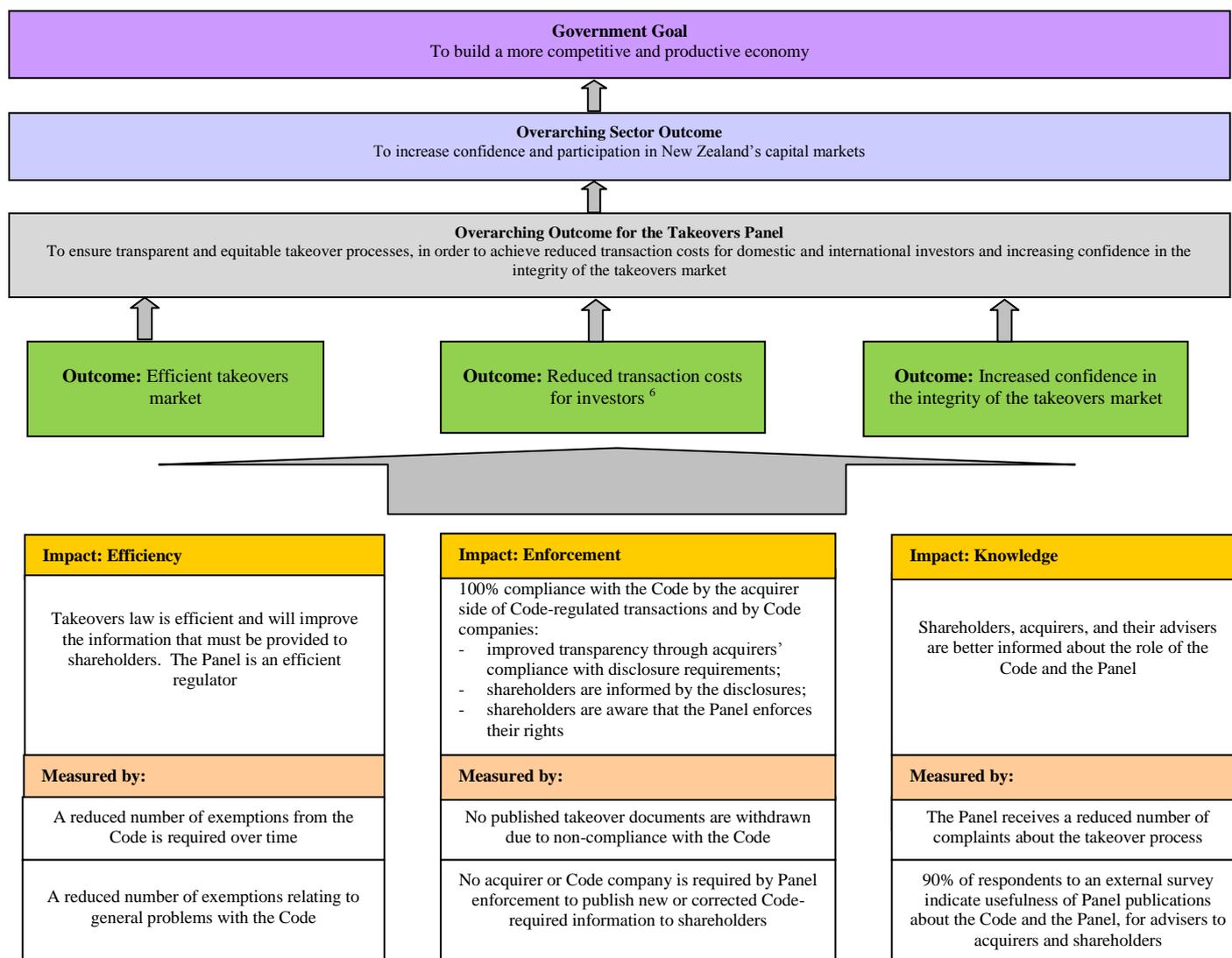
The Panel's role within the broader financial markets

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

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

MEASURING THE PANEL'S PERFORMANCE – IMPACTS AND OUTCOMES

In the Panel's 2013/2014 – 2016 Statement of Intent, the Panel identified three outcomes to which it contributes through the impacts the Panel expects to have in the takeovers market. The Panel also described how it would measure its achievement of the three impacts that its services are designed to attain. This is depicted below:



Efficiency Impact

The Panel's policy function of reviewing takeovers law and market practice and recommending changes to the law, is aimed at improving the efficiency and effectiveness of takeovers law. Exemptions can also contribute to an efficient market by, when appropriate, modifying the Code to better meet the circumstances of transactions.

The Panel measures the achievement of the efficiency impact by the extent to which there is a reduction in the number of exemptions granted.

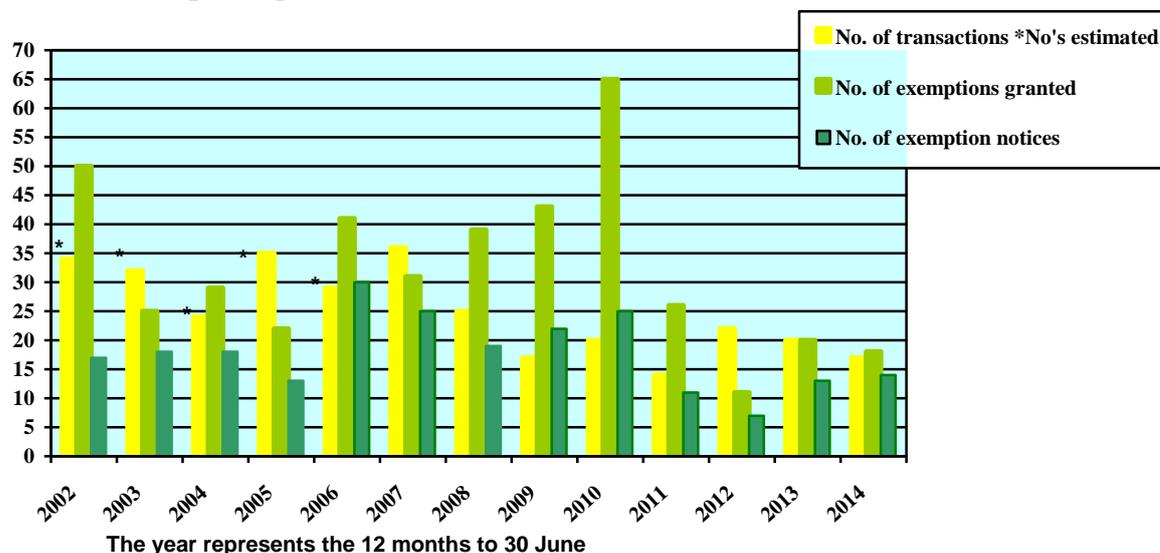
This measure is chosen because amendments to the Code as a result of the Panel's policy work should result in there being a reduction in the number of exemptions granted that relate to drafting problems with the Code. In addition, the class exemptions of a general nature that the Panel periodically grants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

⁶ The transaction costs for investors include access to information about Code-regulated transactions and about their rights and obligations as shareholders of Code companies, and also avenues for enforcing their rights.

Ensuring transparent and equitable takeover processes

Although there will be occasional highs and lows relating to market specific or transaction specific circumstances, the impact begins to show from the 2012 year following the granting in the 2010/2011 year of the class exemption from rule 7(d) and rule 16(b).⁷

Number of exemptions granted



Enforcement Impact

The highest priority for the Panel's resources goes to responding to Code-regulated transactions as they occur. All 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 19, below). The Panel aims for 100% compliance with the Code so that shareholders, especially small shareholders, are protected from unfair practices and so that all shareholders have a transparent and orderly process under which they make the decisions that lie before them in a Code-regulated transaction.

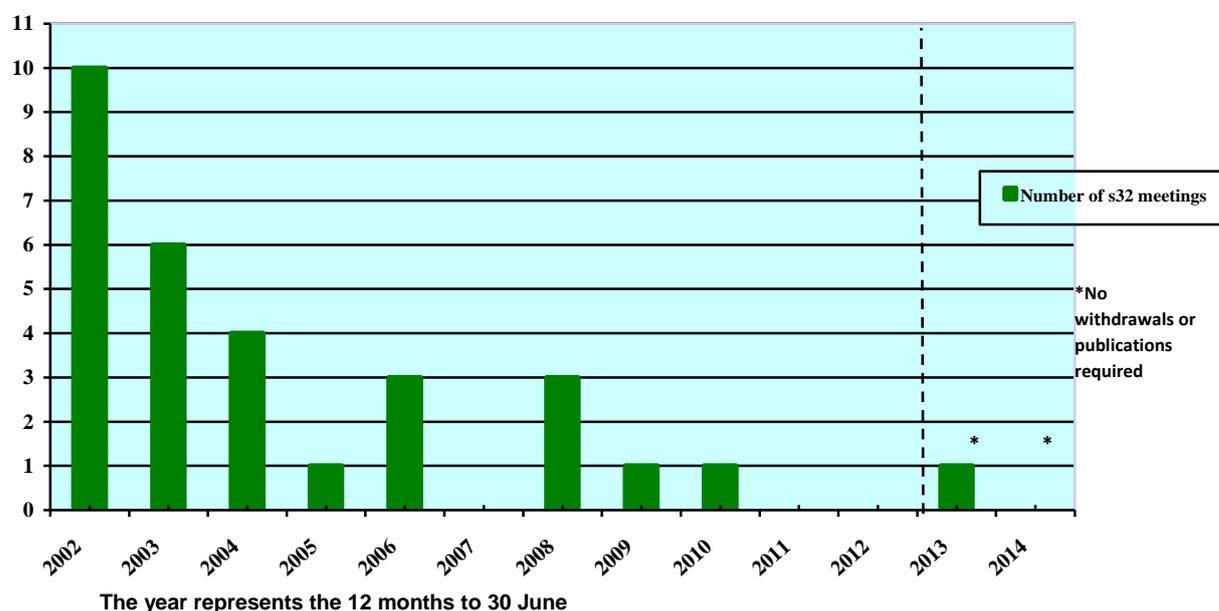
The Panel measures the achievement of this impact by there being no Code-regulated documents being required to be withdrawn under a section 32 enforcement action, due to non-compliance with the Code. A related measure is that no acquirer or Code company is required under a section 32 enforcement action to publish new or corrected information to shareholders. The Panel's view is that this impact is already achieved to a very high level. The graph on page 19 records it as a formal measure, beginning from 1 July 2012.

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

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

Section 32 meetings

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



Knowledge Impact

The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication *Code Word* to broadcast its views on topical takeovers matters. The Panel's website provides ready access to the Panel's decisions, Guidance Notes, and other useful information, including the newly published *Basic Guide for Directors about the Takeovers Code*, *Basic Guide for Shareholders about the Takeovers Code* and shareholders Fact-Sheets.

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.

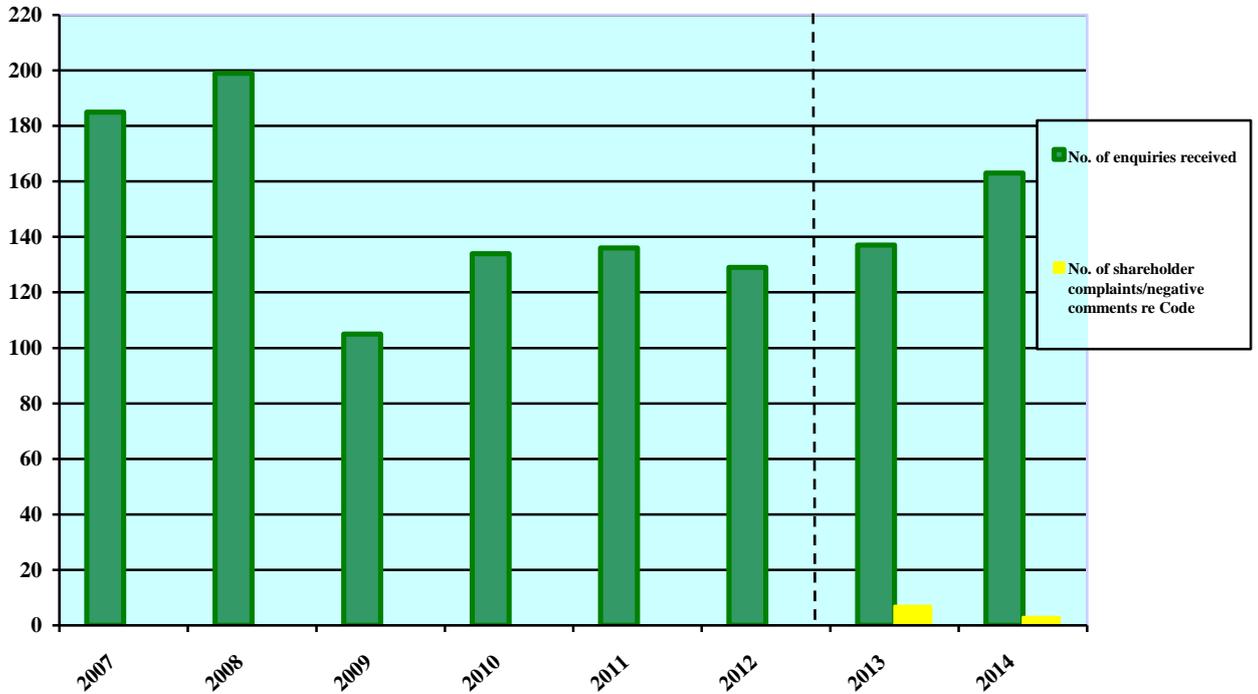
The Panel's services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways, as shown in the graphs on page 20, below.

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

The second measure relates to how well the Panel informs takeovers practitioners and advisers about the Code. The goal of this impact is that at least 90% of the respondents to the Panel's on-line survey indicate that they find the Panel's publications useful.

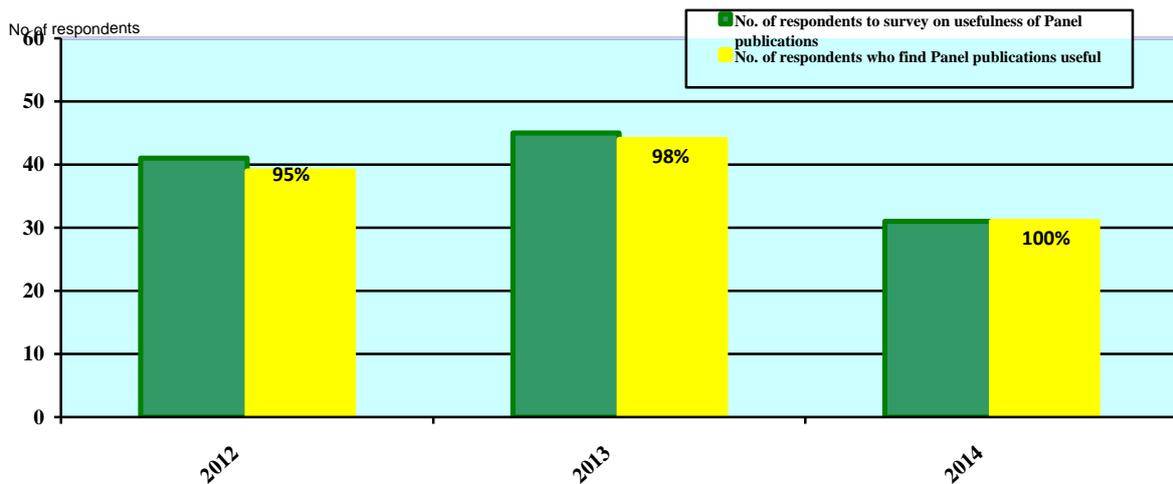
Public enquiries to Panel / Enquiries involving Shareholders' complaints or negative comments about Code - Performance measure commences from 1 July 2012⁸

Public enquiries



The year represents the 12 months to 30 June

% Takeovers Practitioners find Panel publications useful



The year represents the 12 months to 30 June

⁸ Note that data regarding 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

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.

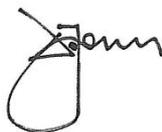
Statement of Responsibility

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

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.

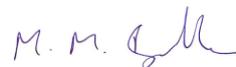
In our opinion these annual financial statements and Statement of Service Performance fairly reflect the financial position as at 30 June 2014 and the operations of the Takeovers Panel for the year ended 30 June 2014.

Signed on behalf of the Panel by:



D O Jones
Chairman,
Takeovers Panel

29 October 2014



M M Beattie
Chairman,
Audit and Risk Committee

29 October 2014

STATEMENT OF COMPREHENSIVE INCOME

for the year ended 30 June 2014

Budget 2014 \$		Actual 2014 \$	Actual 2013 \$
	Revenue - operating	Note	
1,494,000	Government grant – baseline funding		1,494,000
26,000	Interest	11	26,765
283,000	Application fees and costs recoverable	4	217,949
0	Other income		19
<u>1,803,000</u>	Total operating income		<u>1,738,733</u>
	Revenue – litigation fund		
0	Government grant		0
0	Recovery of costs		0
33,000	Interest	11,3	32,463
<u>33,000</u>	Total litigation fund income		<u>32,463</u>
<u>\$1,836,000</u>	Total income		<u>\$1,771,196</u>
	Operating expenditure		
20,000	Audit fees		19,703
38,000	Communication charges		59,069
71,000	Training and memberships		31,195
58,000	Depreciation and amortisation		25,291
193,000	Members’ fees	22	189,559
11,000	Printing and stationery		55,877
34,000	Consultants and legal		38,866
176,000	Services and supplies		127,853
133,000	Rent		132,477
29,000	Travel and accommodation		22,650
918,000	Personnel costs	10	899,919
<u>1,681,000</u>	Total operating expenditure		<u>1,602,459</u>
20,000	Expenditure – litigation fund	3	28,656
<u>1,701,000</u>	Total expenditure		<u>1,631,115</u>
<u>\$135,000</u>	Net Surplus/Deficit		<u>\$140,081</u>
0	Other comprehensive income		0
<u>\$135,000</u>	Total comprehensive income		<u>\$140,081</u>
	This is comprised of:		
122,000	Comprehensive income -operating /(deficit)		136,274
13,000	Comprehensive income -litigation / (deficit)	3	3,807
<u>\$135,000</u>			<u>\$140,081</u>

STATEMENT OF FINANCIAL POSITION

as at 30 June 2014

Budget 2014			Actual 2014	Actual 2013
\$			\$	\$
	Current assets	Note		
157,000	Cash and cash equivalents – operations		367,228	350,690
132,000	Cash and cash equivalents – litigation fund	3	135,586	131,999
626,000	Term deposits – operations		432,632	280,264
669,000	Term deposits – litigation fund	3	694,545	657,401
5,000	Interest receivable – operating		6,749	4,913
16,000	Interest receivable – litigation fund	3	3,302	12,332
24,000	Trade and other receivables	12	22,437	128,820
25,000	Prepayments		24,497	19,475
16,000	GST receivable		7,829	750
<u>\$1,670,000</u>	Total current assets		<u>\$1,694,805</u>	<u>\$1,586,644</u>
	Non-current assets			
32,000	Property, plant and equipment	13	32,581	48,473
60,000	Software	14	57,651	90,034
<u>92,000</u>	Total non-current assets		<u>90,232</u>	<u>138,507</u>
<u>\$1,762,000</u>	Total assets		<u>\$1,785,037</u>	<u>\$1,725,151</u>
	Current liabilities			
49,000	Trade and other payables	16	48,478	62,413
51,000	Employee entitlements	15	79,836	82,932
0	GST payable		0	0
<u>\$100,000</u>	Total current liabilities		<u>\$128,314</u>	<u>\$145,345</u>
	Equity			
845,000	Operating funds		823,290	778,074
817,000	Litigation fund	3	833,433	801,732
<u>\$1,662,000</u>	Total equity		<u>\$1,656,723</u>	<u>\$1,579,806</u>
<u>\$1,762,000</u>	Total equity and liabilities		<u>\$1,784,037</u>	<u>\$1,725,151</u>

STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2014

Budget 2014 \$		Actual 2014 \$	Actual 2013 \$
	Equity at start of year	Note	
723,000	Operating funds	778,074	641,800
804,000	Litigation fund	801,732	797,925
<u>\$1,527,000</u>	Equity at start of year	<u>\$1,579,806</u>	<u>\$1,439,725</u>
122,000	Total comprehensive income- operating/(deficit)	45,216	136,274
13,000	Total comprehensive income-litigation/ (deficit)	31,701	3,807
<u>135,000</u>	Total comprehensive income	<u>76,917</u>	<u>140,081</u>
0	Capital contribution	0	0
<u>135,000</u>	Increase (reduction) in equity	<u>76,917</u>	<u>140,081</u>
<u>\$1,662,000</u>	Equity at end of year	<u>\$1,656,723</u>	<u>\$1,579,806</u>
	Comprising:		
845,000	Operating funds	823,290	778,074
<u>817,000</u>	Litigation fund	<u>833,433</u>	<u>801,732</u>
<u>\$1,662,000</u>	Equity at end of year	<u>\$1,656,723</u>	<u>\$1,579,806</u>

STATEMENT OF CASH FLOWS

for the year ended 30 June 2014

Budget 2014 \$		Actual 2014 \$	Actual 2013 \$
	Cash flows from operating activities		
	Note		
	Cash was provided from:		
1,494,000	Government grant – operations	1,494,000	1,494,000
0	Government grant – litigation fund	0	0
298,000	Application fees and costs recoverable	253,676	110,549
59,000	Interest	67,332	50,529
0	Other income	7	19
0	Goods and Services Tax (net)		17,171
	Cash was disbursed to:		
(532,000)	Suppliers	(481,528)	(515,854)
(1,107,000)	Employees and members	(1,116,771)	(1,074,402)
(2,000)	Goods and Services Tax (net)	(7,079)	0
<u>210,000</u>	Net cash inflow (outflow) from operating activities	<u>209,637</u>	<u>82,012</u>
	Cash flows from investing activities		
	Cash was provided from:		
0	Receipts from sale of bank deposits	0	199,009
	Cash was applied to:		
0	Purchase of computer software	0	(98,130)
0	Purchase of office equipment	0	(16,405)
0	Purchase of office furniture	0	(2,688)
(169,000)	Acquisition of bank deposits	(189,512)	
<u>(169,000)</u>	Net cash inflow (outflow) from investing activities	<u>(189,512)</u>	<u>81,786</u>
	Cash flows from financing activities		
	Cash was provided from:		
0	Capital contribution	0	0
<u>0</u>	Net cash inflow (outflow) from financing activities	<u>0</u>	<u>0</u>
41,000	Net increase (decrease) in cash and cash equivalents	20,125	163,798
248,000	Add opening cash and cash equivalents	482,689	318,892
<u>\$289,000</u>	Closing cash and cash equivalents	<u>\$502,814</u>	<u>\$482,689</u>

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2014

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

Reporting entity

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

The Panel is an independent Crown entity for legislative purposes and a public benefit entity for the purposes of New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS).

The financial statements of the reporting entity, the Panel, for the year ended 30 June 2014 were authorised for issue by the Panel on 29 October 2014.

The Panel's primary function is the regulation of corporate takeovers of New Zealand companies.

Basis of preparation

Statement of compliance

These financial statements have been prepared in accordance with the Crown Entities Act 2004, which includes the requirement to comply with generally accepted accounting practice in New Zealand (NZ GAAP)

They comply with NZ IFRS and other applicable Financial Reporting Standards, as appropriate for public benefit entities.

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.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimates are revised and in any future periods affected.

Changes in accounting policy

There have been no changes in accounting policies during the financial year.

Standards, amendments and interpretations issued that are not yet effective and have not been early adopted

The Minister of Commerce has approved a new Accounting Standards Framework (incorporating a Tier Strategy) developed by the External Reporting Board (XRB). Under this Accounting Standards Framework, the Panel is classified as a Tier 3 reporting entity and it will be required to apply simple format accrual accounting. These standards have been developed by the XRB based on current international Public Sector Accounting Standards. The effective date for the new standards for public sector entities is for reporting periods

beginning on or after 1 July 2014. This means the Panel expects to transition to the new standards in preparing its 30 June 2015 financial statements. Changes will include a reduced Statement of Financial Performance replacing the Statement of Comprehensive Income, the Statement of Movements in Equity no longer being prepared and reduced reporting in the note to the financial statements.

Due to the change in the Accounting Standards Framework for public benefit entities, it is expected that not all new NZ IFRS and amendments to existing NZ IFRS will be applicable to public benefit entities. Therefore, the XRB has effectively frozen the financial reporting requirements for public benefit entities up until the new Accounting Standard Framework is effective. Accordingly, no disclosure has been made about new or amended NZ IFRS that exclude public benefit entities from their scope.

Significant accounting policies

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

- a Cash and cash equivalents
Cash and cash equivalents comprise cash balances on hand, held in bank accounts and short-term deposits that form part of the Panel's day-to-day cash management. They are short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in values. They are held for the purpose of meeting short-term cash commitments and have short maturities of three months or less.
- b Term deposits
This category only includes term deposits with maturities greater than three months. These deposits are loans and receivables under NZ IFRS. Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are recognised initially at fair value plus transaction costs and subsequently measured at amortised cost using the effective interest method.
- c Trade and other receivables
Debtors and other receivables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method, less any provision for impairment.
- 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 fair value and subsequently measured at amortised cost using the effective interest method.
- f Financial instruments
A financial instrument is recognised when the Panel becomes party to a financial contract. All financial instruments are recognised in the statement of financial position and all revenues and expenses in relation to financial instruments are recognised in the statement of comprehensive income.

Financial instruments comprise trade and other receivables, cash and cash equivalents, term deposits and trade and other payables.

Ensuring transparent and equitable takeover processes

- g **Income tax**
The Panel is exempt from income tax under the Income Tax Act 2007.
- h **Revenue recognition**
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 income is recognised as it accrues, based on the effective interest rate inherent in the respective financial instrument. The effective interest rate discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount. The method applies this rate to the principal outstanding to determine interest income each period.
- i **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.
- j **Litigation fund**
Interest income and expenditure on approved litigation fund matters are reported as income 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.
- k **Impairment**
The Panel considers at each reporting date whether there is any indication that a non-financial asset may be impaired. If any such indication exists, the asset's recoverable amount is estimated.
- Given that the future economic benefits of the Panel's assets are not directly related to the ability to generate net cash flows, the value in use of these assets is measured on the basis of depreciated replacement cost.
- At each balance date financial assets such as receivables are assessed for impairment. Trade and other receivables are individually assessed for impairment. This assessment is also made with reference to previous experience with debtors. The recoverable amount is the present value of the estimated future cash flows.
- An impairment loss is recognised in the statement of comprehensive income whenever the carrying amount of an asset exceeds its recoverable amount. Any reversal of impairment losses is also recognised in the statement of comprehensive income.
- l **Short term employee benefits**
Employee entitlements 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.
- m **Property, plant and equipment**
Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses (see note 1(k)). 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. |
- n **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.

Ensuring transparent and equitable takeover processes

- o Contingent assets and contingent liabilities
Contingent liabilities are disclosed if the possibility that they will crystallise is not remote. Contingent assets are disclosed if it is probable that the benefits will be realised.
- p Superannuation schemes
Obligations for contributions to Kiwisaver are accounted for as defined contribution superannuation schemes and are recognised as an expense in the statement of comprehensive income as incurred.
- q Leases
Operating leases – an operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset. Lease payments under an operating lease are recognised as an expense on a straight line basis over the lease term.

NOTE 2 BUDGET FIGURES

The budget figures are those approved by the Panel on 23 April 2013 and published in the Panel's Statement of Intent 2013/2014-2016. The budget figures are prepared in accordance with generally accepted accounting practice 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 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 2014 to top-up the fund to the set level of \$675,000. The Panel has not had to draw from this appropriation during the year.

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

	2014	2013
	\$	\$
Government grant received	0	0
Recovery of costs	0	0
Interest received	28,399	20,131
Interest accrued	3,302	12,332
Expenditure on approved litigation	0	(28,656)
Comprehensive income /(deficit) for the year	<u>31,701</u>	<u>3,807</u>
Opening balance	<u>801,732</u>	<u>797,925</u>
Closing balance	<u>\$833,433</u>	<u>\$801,732</u>
This is comprised of:		
Cash and cash equivalents		
- Call account	135,586	131,999
- Short term deposits		
Term deposits	694,545	657,401
Interest receivable	<u>3,302</u>	<u>12,332</u>
Trade payables	<u>0</u>	<u>0</u>
	<u><u>\$833,433</u></u>	<u><u>\$801,732</u></u>

NOTE 4 APPLICATION FEES AND COSTS RECOVERABLE

The Takeovers (Fees) Regulations 2001 enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement

Ensuring transparent and equitable takeover processes

action pursuant to the Takeovers Act. An analysis of the amounts invoiced for the year ended 30 June 2014 (on a GST exclusive basis) is as follows:

	2014	2013
	\$	\$
Exemptions	115,397	114,670
Approvals	31,896	26,162
Enforcement	0	77,117
Total	<u>\$147,293</u>	<u>\$217,949</u>

NOTE 5 MANAGEMENT OF EQUITY

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.

NOTE 6 RECONCILIATION OF STATEMENT OF COMPREHENSIVE INCOME WITH STATEMENT OF CASH FLOWS

	2014	2013
	\$	\$
Net surplus (deficit):	76,917	140,081
Movement in non cash items		
Depreciation / amortisation	48,275	25,291
Movement in working capital:		
Increase (decrease) in creditors	(17,031)	(2,075)
(Increase) decrease in receivables and prepayments	<u>101,476</u>	<u>(81,285)</u>
	<u>132,720</u>	<u>(58,069)</u>
Net cash flows from operating activities	<u>\$209,637</u>	<u>\$82,012</u>

NOTE 7 CASH FLOWS

Investing activities

Investing activities are those activities relating to the movements in short term deposits and the purchase of property, plant and equipment. The cash flows relating to the Panel's investing activities are reported on a gross basis in the statement of cash flows. The amounts held in term deposits are rolled over frequently through the year.

Financing activities

Financing activities are those activities relating to changes in the equity structure of the Panel.

Operating activities

Operating activities for the purposes of the statement of cash flows include all activities other than investing and financing activities. Activities funded from the litigation fund are included in this category.

Cash

This means cash balances on hand, held in bank accounts, and short term deposits in which the Panel invests as part of its day-to-day cash management.

The closing balance of cash reported in the statement of cash flows is comprised of:

	2014	2013
	\$	\$
Cash and cash equivalents – operations		
- Cash	367,228	214,285
- Short term deposits	0	136,405
Cash and cash equivalents – litigation fund		
- Cash	135,586	131,999
- Short term deposits	0	0
Closing cash balance	<u><u>\$502,814</u></u>	<u><u>\$482,689</u></u>

NOTE 8 CATEGORIES OF FINANCIAL ASSETS AND LIABILITIES

The carrying amounts of financial assets and liabilities in each of the NZ IAS 39 categories are as follows:

	2014	2013
	\$	\$
Loans and receivables		
Cash and cash equivalents	502,814	482,689
Trade and other receivables	32,488	146,065
GST receivable	7,829	750
Term deposits	1,127,177	937,665
Total loans and receivables	<u><u>\$1,670,308</u></u>	<u><u>\$1,567,169</u></u>
Financial liabilities measured at amortised cost		
Trade and other payables	48,478	62,413
GST payable	0	0
Employee entitlements	79,836	82,932
Total financial liabilities measured at amortised cost	<u><u>\$128,314</u></u>	<u><u>\$145,345</u></u>

NOTE 9 FINANCIAL INSTRUMENTS

Credit risk

Credit risk represents the risk that a counterparty will default on its contractual obligations to the Panel. Financial instruments which potentially subject the Panel to credit risk consist of bank balances, bank term deposits, interest receivable, and trade and other receivables. The maximum exposure to credit risk at the reporting date is the carrying amount of those instruments as detailed below.

There is limited credit risk for the Panel because most of the financial assets are the Panel's cash or investments. These are deposits with Bank of New Zealand which is a registered bank in New Zealand and is rated by Moody's Aa3, Standard & Poors AA- as at July 2014.

The Panel does not require collateral or security to support financial instruments.

Other than balances with the BNZ, there are no concentrations of credit risk.

Ensuring transparent and equitable takeover processes

Fair values

All financial instruments are recognised in the statement of financial position and are stated at carrying amounts. Given their short term nature, the carrying amounts are considered a reasonable approximation of their fair values. There has been no change from the previous period in the Panel's exposure to risks, how they arise or the Panel's objectives, policies and processes for managing the risk and the methods used to measure the risks.

Liquidity risk

Liquidity risk represents the Panel's ability to meet its contractual obligations associated with financial liabilities. The Panel evaluates its liquidity requirements on an ongoing basis. The Panel's creditors are mainly those reported as trade and other payables. The Panel aims to pay these within normal commercial terms: that is, by the 20th of the month following invoice.

Currency risk

The Panel does not hold any overseas securities or deposits and is therefore not exposed to any currency risk.

Market risk

The only market risk to which the Panel is subject is interest rate risk. Interest rate risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Fair value interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Panel's exposure to fair value interest rate risk is limited to its bank deposits which are held at fixed rates of interest.

Cash flow interest rate risk is the risk that the cash flows from a financial instrument will fluctuate because of changes in market interest rates. The Panel's exposure to cash flow interest rate risk is limited to its bank deposits which are held at fixed rates of interest.

Ensuring transparent and equitable takeover processes

Details are as follows:

	Effective Interest Rate	Total \$	Maturities 3 months or less \$	Maturities greater than 3 months \$
2014				
Cash and cash equivalents – operations				
- Current account		68,877	68,877	0
- Call account	3.1%	298,351	298,351	0
Term Deposits	4.36-4.52%	432,632	0	432,632
		<u>\$799,860</u>	<u>\$367,228</u>	<u>\$432,632</u>
Cash and cash equivalents – litigation fund				
- Call account	3.1%	135,586	135,586	0
Term deposits	8.25-8.53%	694,545	0	694,545
		<u>\$830,131</u>	<u>\$135,586</u>	<u>\$694,545</u>
2013				
Cash and cash equivalents – operations				
- Current account	0.00%	62,394	62,394	0
- Call account	2.80%	151,891	151,891	0
Short term deposits	4.00%	136,405	136,405	0
Term deposits	4.13%	280,264	0	280,264
		<u>\$630,954</u>	<u>\$350,690</u>	<u>\$280,264</u>
Cash and cash equivalents – litigation fund				
- Call account	2.80%	131,999	131,999	0
Term deposits	4.00 - 4.20%	657,401	0	657,401
		<u>\$789,400</u>	<u>\$131,999</u>	<u>\$657,401</u>

The Panel's interest rate risk is limited to interest on call accounts and term investments, the maturity profiles of which are shown above.

Sensitivity analysis

As at 30 June 2014, if the floating interest rate on call deposits had been 100 basis points higher or lower throughout the year, with all other variables held constant, the surplus/deficit for the year would have been \$4,339 (2013 \$2,839) higher or lower.

NOTE 10 PERSONNEL COSTS

	2014 \$	2013 \$
Salaries	876,218	876,720
Employer contributions to defined contribution plans	25,857	19,070
ACC	2,355	2,825
Contractors	0	1,304
Total personnel costs	<u>\$904,430</u>	<u>\$899,919</u>

NOTE 11 INCOME FROM FINANCIAL ASSETS

	2014	2013
	\$	\$
Loans and Receivables		
Interest – operations	28,437	26,765
Interest – litigation fund	31,701	32,463
Total interest income from loans and receivables	\$60,138	\$59,228

NOTE 12 TRADE AND OTHER RECEIVABLES

	2014	2013
	\$	\$
Trade receivables	22,437	128,820
Total trade and other receivables	\$22,437	\$128,820

The status of trade and other receivables as at 30 June 2014 is as follows:

	Total	Not past due	Up to 30 days past due	Over 30 days past due
	\$	\$	\$	\$
2014				
Gross receivables	22,437	5,043	12,683	4,711
Impairment	0	0	0	0
	\$22,437	\$5,043	\$12,683	\$4,711
2013				
Gross receivables	128,820	30,302	87,124	11,394
Impairment	0	0	0	0
	\$128,820	\$30,302	\$87,142	\$11,394

NOTE 13 PROPERTY PLANT AND EQUIPMENT

	Office equipment	Office furniture	Total
	\$	\$	\$
Cost or valuation			
Balance at 1 July 2012	141,105	43,460	184,565
Additions	16,405	2,688	19,093
Disposals	(5,646)	0	(5,646)
Balance at 30 June 2013	\$151,864	\$46,148	\$198,012
Balance at 1 July 2013	151,864	46,148	198,012
Additions	0	0	0
Disposals	0	0	0
Balance at 30 June 2014	\$151,864	\$46,148	\$198,012

Ensuring transparent and equitable takeover processes

	Office equipment	Office furniture	Total
Accumulated depreciation			
Balance at 1 July 2012	(126,372)	(11,619)	(137,991)
Depreciation	(12,753)	(4,442)	(17,195)
Elimination on disposal	5,647	0	5,647
Balance at 30 June 2013	(133,478)	(16,061)	(149,539)
Balance at 1 July 2013	(133,478)	(16,061)	(149,539)
Depreciation expense	(11,380)	(4,512)	(15,892)
Elimination on disposal	0	0	0
Balance at 30 June 2014	(144,858)	(20,573)	(165,431)
Carrying amounts:			
At 30 June 2012	14,733	31,841	46,574
At 30 June and 1 July 2013	18,386	30,087	48,473
At 30 June 2014	\$7,006	\$25,575	\$32,581

NOTE 14 COMPUTER SOFTWARE

	Computer software
	\$
Cost or valuation	
Balance at 1 July 2012	23,968
Additions	98,130
Disposals	0
Balance at 30 June 2013	122,098
Balance at 1 July 2013	122,098
Additions	0
Disposals	0
Balance at 30 June 2014	\$122,098
Accumulated amortisation	
Balance at 1 July 2012	(23,968)
Amortisation	(8,096)
Balance at 30 June 2013	(32,064)
Balance at 1 July 2013	(32,064)
Amortisation	(32,383)
Balance at 30 June 2014	(64,447)
Carrying amounts:	
At 30 June 2012	0
At 30 June and 1 July 2013	90,034
At 30 June 2014	\$57,651

NOTE 15 EMPLOYEE ENTITLEMENTS

	2014	2013
	\$	\$
Accrued salaries and wages	55,316	46,658
Annual leave	24,520	36,274
Total employee entitlements	<u>\$79,836</u>	<u>\$82,932</u>

NOTE 16 TRADE AND OTHER PAYABLES

	2014	2013
	\$	\$
Trade payables	31,866	53,139
Accrued expenses	16,612	9,274
Total trade and other payables	<u>\$48,478</u>	<u>\$62,413</u>

NOTE 17 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.

	2014	2013
	\$	\$
Not later than one year	132,650	132,650
Later than one year and not later than five years	22,108	154,758
Later than five years	0	0
	<u>\$154,758</u>	<u>\$287,408</u>

The Panel entered into a six year operating lease agreement for its new premises that commenced 1 September 2009. This lease gives the Panel the right to renew the lease for six years subject to a mutually agreed redetermination of the lease rental.

The Panel had no capital commitments at balance date. (2013 - no commitments).

NOTE 18 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date. (2013 - no contingent liabilities).

NOTE 19 CONTINGENT ASSETS

There were no contingent assets at balance date. (2013- no contingent assets).

NOTE 20 TRANSACTIONS WITH RELATED PARTIES

All related party transactions have been entered into on an arms length basis

The Panel is an independent Crown entity for the purposes of the Crown Entities Act 2004. The Crown is its major source of revenue.

Significant transactions with government related entities

The Panel has been provided with funding from the Crown of \$1,494,000 (2013 \$1,494,000) for specific purposes as set out in the Takeovers Act 1993 and the scope of the relevant government appropriations.

Collectively, but not individually, significant, transactions with government related entities

In conducting its activities, the Panel is required to pay various taxes and levies (such as GST, PAYE and ACC levies) to the Crown and entities related to the Crown. The payment of these taxes and levies, other than income tax, is based on the standard terms and conditions that apply to all tax and levy payers. The Panel is exempt from paying income tax.

The Panel also purchases goods and services from entities controlled, significantly influenced or jointly controlled by the Crown. Purchases from these government-related entities for the year ended 30 June 2014 totalled \$22,747 (2013 \$15,230). These purchases included air travel from Air New Zealand and postal services from New Zealand Post.

Transactions with firms of Panel members

The Panel has processed a number of exemption applications from firms where a member of the Panel was a partner in the firm making the application. The affected members are legally not part of the Panel for the purposes of considering any exemption applications from their firm. Those applications were processed and invoiced using the Panel's standard procedures.

No related party debts have been written off or forgiven during the year.

NOTE 21 KEY MANAGEMENT PERSONNEL COMPENSATION

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

	2014	2013
	\$	\$
Short term employee benefits:		
- Members' fees	209,245	189,559
- Senior management team remuneration	455,395	435,655
	<u>\$664,640</u>	<u>\$625,214</u>

Employee remuneration

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:

	Number of Employees 2014 \$	Number of Employees 2013 \$
270,001 to 280,000	1	0
260,001 to 270,000	0	0
250,001 to 260,000	0	1
240,001 to 250,000	0	0
230,001 to 240,000	0	0
220,001 to 230,000	0	0
210,001 to 220,000	0	0
200,001 to 210,000	0	0
190,001 to 200,000	0	0
180,001 to 190,000	1	0
170,001 to 180,000	0	0
160,001 to 170,000	0	1
	<u>2</u>	<u>2</u>

NOTE 22 BOARD MEMBER REMUNERATION

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2014 were:⁹

	2014 \$	2013 \$
D.O. Jones (Chairman)	82,594	57,603
R.A. Coupe (Deputy Chairman)	18,344	15,938
C.G. Giffney	0	18,920
M.M. Beattie	12,472	11,385
C.G. Blanchard	18,028	15,410
D.M. Flacks	14,891	16,773
S.M. Horner	24,614	28,219
R A Hunt	1,367	0
A.G. Pigou	10,287	3,896
P.J.M. Scott	0	0
S.H. Suckling	6,135	7,156
T.J. Symmans	10,167	1,932
K.B. Taylor	0	2,577
R.F. Wallis	10,346	9,750
Total	<u>\$209,245</u>	<u>\$189,559</u>

⁹Mr Giffney resigned on 6 January 2013, Mr Scott resigned on 8 March 2014 and Mr Taylor resigned on 2 April 2013. Mr Hunt was appointed to the Panel on 1 May 2014.

NOTE 23 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. (2013 – no material subsequent events).

NOTE 24 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$133,263 lower than budgeted, primarily because there were none of the forecast recoveries from section 32 meetings (i.e., no such meetings held) and none from schemes of arrangement work due to the legislation not being passed.

Expenditure

Total operating expenditure for the year was \$56,479 lower than budgeted primarily because of lower than expected expenditure on training and memberships, services and supplies and personnel costs.

In particular, training and memberships were \$38,250 lower than budgeted. This relates to less of the training budget being utilised than expected.

Services and supplies costs were \$19,855 lower than budgeted. Approximately \$10,185 of this relates to computer costs.

Personnel costs were \$13,570 lower than budgeted. Payment for a contractor was not required as expected.

These reductions in expenditure were somewhat offset by an increase in printing and stationery costs of \$19,903 primarily related to the unbudgeted printing of new shareholder guidance. However, the expenditure for this printing was approved by the Panel.

Net operating surplus

The Panel recorded an operating surplus of \$45,216 when a surplus of \$122,000 had been expected. This is a result of the lower than expected recoveries from operational activities not being fully offset by the lower operating expenditure.

NOTE 25 PROFESSIONAL INDEMNITY INSURANCE

In relation to the Panel's performance of its statutory duties and functions, the Panel has a professional indemnity insurance policy in place to provide cover for members and employees of the Panel

STATEMENT OF SERVICE PERFORMANCE

For the year ended 30 June 2014

PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

The delivery of the Takeovers Panel services is funded under Vote Commerce Non-Departmental Output Class – *Administration of the Takeovers Code*.

OUTPUT 1: <i>Review law and practice, and recommend any necessary law changes:</i>				
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 reviews and development (“policy projects”), and recommending amendments to takeovers law as necessary.				
In addition to daily monitoring of market practice and routine or low level policy activities, as well as the policy activities that can arise in response to market practices, the major policy projects planned for completion were:				
<ul style="list-style-type: none"> • to assist officials with a review of the Takeovers (Fees) Regulations 2001; • to consider a class exemption for the offering of scrip consideration for a takeover offer; • to review two exemptions in the Takeovers Code (Class Exemptions) Notice (No.2) 2001; • to review the use of limited partnerships as shareholding vehicles in Code companies. 				
<i>Actual performance against planned performance standards and performance measures for 2013/2014</i>				
Performance Measures	Performance Standards			
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity The Panel’s Business Plan identifies 4 policy projects as detailed above, provided the level of takeover transactions is low enough to free up resource for policy work	Complete 4 projects	4 projects completed	3 projects completed	New measure for 2012/2013
Quality Best practice policy development process has been followed ¹⁰	100% of the time	100% of the time	100% of the time	New measure for 2012/2013
Timeliness Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations. ¹¹	100%	100%	100%	100%
Revenue	\$367,000 20% of forecast revenue	\$391,330 23% of actual revenue	\$478,223 27% of actual expenditure	Not reported*
Cost:	\$340,000 20% of forecast expenditure	\$373,640 23% of actual expenditure	\$440,401 27% of actual expenditure	\$504,538

* In this prior year, only the third-party fee income (and not also a proportion of the Government grant) was reported as revenue against its relevant output.

¹⁰ The Regulatory Impact Analysis framework provides the best practice model used in New Zealand for quality policy development. The Panel applies that model as well as its own internal quality assurance steps, for its quality measure for output 1 policy work. To meet the standard, every material policy project will have met the following criteria (as demonstrated by performance checklists):

- 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.

¹¹ None of the completed projects resulted in proposals for law changes. Accordingly, there were no recommendations made to the Minister.

Ensuring transparent and equitable takeover processes

OUTPUT 2: Approvals:				
The approval of the appointment of independent advisers under rules 18, 21, 22 or 57(1) of the Code or by the terms of an exemption granted, and the appointment of independent experts where required by rule 57(3) of the Code.				
The Panel used its approval resources to consider applications from firms seeking to be approved to act as independent advisers. No applications were received for experts.				
<i>Actual performance against planned performance standards and performance measures for 2013/2014:</i> ¹²				
Performance Measures	Performance Standards			
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity 20-26 applications are considered for adviser competence and independence by the Panel NB: the number of applications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information	100% of applications	100% of 21 applications	New measure for 2013/2014 24 applications	New measure for 2013/2014 25 applications
Quality Failures by the Panel to comply with its own approval standards resulted in adviser approvals being withdrawn	0% of the time	0% of the time	0% of the time	New measure for 2012/2013
Timeliness Decision made by 3 working days after receipt of complete application	100% of the time	100% of the time	100%	96%
Revenue: (Part funded by Government grant and part funded by fees)	\$55,000 3% of forecast revenue	\$51,043 3% of actual revenue	\$53,136 3% of actual revenue	\$31,453 (fees only; Govt grant not reported)
Cost:	\$51,000 3% of forecast expenditure	\$48,736 3% of estimated expenditure	\$48,933 3% of actual expenditure	\$65,102

¹² Although described as “planned”, the number of independent adviser applications reviewed by the Panel is dependent on the level of market activity.

Ensuring transparent and equitable takeover processes

OUTPUT 3: Exemptions:				
The granting of individual and class exemptions for Code transactions or events where relief from the Code's requirements is appropriate and consistent with the objectives of the Code.				
The Panel used its exemption resources to consider exemption applications as they arose, and to consider class exemptions.				
<i>Actual performance against planned performance standards and performance measures for 2013/2014:</i>				
Performance Measures	Performance Standards			
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity				
Applications processed for individual exemptions from the Takeovers Code, categorised as ¹³	7-11	12	13	10
• straightforward	c.72%	58%	11	breakdown to straightforward or complex is a new measure for 2012/2013
• complex	c.28%	42%	2	
Class exemptions applied for, or initiated by the Panel, categorised as:	2-4	1	3	1
• straightforward	c.75%	0%	1	breakdown to straightforward or complex is a new measure for 2012/2013
• complex	c.25%	100%	2	
Quality				
The Regulations Review Committee does not recommend disallowance of Panel exemptions	100% of the time (i.e., none disallowed)	100% of the time (i.e. none disallowed)	100% of the time (i.e. none disallowed)	100% of the time
Applicants are satisfied with the process as indicated by an external survey ¹⁴	90% of applicants	100% of applicants	100% of applicants	New measure for 2012/2013
Timeliness				
Exemptions are processed within the timeframe agreed with the applicant	90% of the time	100% of the time	92% of the time	100% of the time
Class exemptions (if granted) are published on the website within 10 working days of being signed	100% of the time	100% of the time	100% of the time	New measure for 2012/2013
Revenue (Part funded by Government and part funded by fees)	\$184,000 10% of forecast revenue	\$221,187 13% of actual revenue	\$265,679 15% of actual revenue	\$72,771 (fees only; Govt grant not reported)
Cost:	\$170,000 10% of forecast expenditure	\$211,188 13% of actual expenditure	\$244,667 15% of actual expenditure	\$227,856

¹³ The hours spent on an exemption by Panel members and staff is used as an indicator for complexity:

- straightforwardness is indicated by 50 hours or less
- complexity is indicated by more than 50 hours

¹⁴ This measure relates to respondents to the external survey (8 respondents out of 12 exemption applicants).

Ensuring transparent and equitable takeover processes

OUTPUT 4: Enforcement:				
Maintaining oversight of takeover activity in the market by reviewing draft documentation informally, and published documentation, for compliance with Code, intervening where necessary in accordance with the Panel's statutory powers, investigating any possible breaches of the Code in accordance with the law and the rules of natural justice.				
The Panel used its enforcement resources to:				
<ul style="list-style-type: none"> provide assistance to those who have Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code; maintain the efficient 'soft' enforcement of Panel staff reviewing draft Code-related documentation, so that documents better comply with the principles of the Code, recognising that this collaborative approach is a legitimate and widely publicised use by the Panel of its enforcement powers, that ensures that most compliance issues are easily resolved; maintain other 'soft' enforcement activities that encourage voluntary rectification of potential Code breaches, so that compliance with the Code is achieved without the attendant costs and reputational loss associated with 'hard' enforcement actions. 				
No 'hard' enforcement action (hearing under section 32 of the Takeovers Act or Court proceedings) was undertaken.				
<i>Actual performance against planned performance standards and performance measures for 2013/2014:</i>				
Performance Measures	Performance Standards			
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity				
Number of draft documents reviewed for Code-regulated transactions: ¹⁵	19-24	17	21	New measure for 2012/2013
Percentage of enforcement resources spent on this 'soft' enforcement	74%	80%	71%	
NB: This is entirely market driven. The inclusion of estimated quantities is to provide contextual information.				
Final documents reviewed for Code-regulated transactions	19-24	17	21	22
Percentage of enforcement resources spent on review of final documents	3%	20%	3%	New measure for 2012/2013
Number of section 32 meetings	1	0	1	0
Percentage of enforcement resources spent on this 'hard' enforcement	23%	0%	26%	New measure for 2012/2013
Quality				
Parties are satisfied with the processes for 'soft enforcement' as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents	New measure for 2012/2013
Parties are satisfied with the soft enforcement professionalism of the executive as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents	New measure for 2012/2013
No successful Court challenges to Panel decisions or actions taken under s32 or s35 of the Takeovers Act	100% of the time	100% of the time	100% of the time	100% of the time
Timeliness				
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	New measure for 2012/2013
'Hard' enforcement work is completed within statutory timeframes	100% of the time	N/A	100% of the time	N/A
Revenue (Part funded by Government grant and part funded by fees)	\$643,000 35% of forecast revenue	\$425,360 25% of actual revenue	\$584,495 33% of actual revenue	\$0 (fees only; Govt grant not reported)
Cost:	\$595,000 35% of forecast expenditure	\$406,131 25% of actual expenditure	\$538,267 33% of actual expenditure	\$488,262

¹⁵ The executive often reviews several iterations of documents in draft, and also reviews accompanying or related documents that are not required by the Code but that an acquirer or Code company may wish to publish to shareholders. These interactions can occur rapidly, for example, several times a day, or may focus on a single paragraph etc. Accordingly, it is too onerous to collect data on each interaction, so the percentage of resources used provides supporting quantitative data.

Ensuring transparent and equitable takeover processes

OUTPUT 5 : Public Understanding:				
Regularly publish information about the Code and relevant law, make media statements, issue policy statements, guidance notes and commentaries on current issues, liaise with stakeholders, give speeches, webinars, respond to public enquiries.				
The Panel used its public understanding resources to:				
<ul style="list-style-type: none"> • undertake informal engagements with market practitioners, company directors, market commentators, and other key stakeholders; • disseminate written information about itself and the Code; • maintain the Panel's website to inform stakeholders and the market; • deal with public enquiries about Code matters. 				
<i>Actual performance against planned performance standards and performance measures for 2013/2014:</i>				
Performance Measures		Performance Standards		
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity				
Number of:				
Code Words published	3	2	3	3
Number of hits on the website	3,000-4,000	5,776	8,932(since September 2012 when new website was operational and reporting started)	New measure for 2012/2013
Number of:				
Public enquiries	130-150	163	137	129
Informal engagements with stakeholders	10-20	27	10	New measure for 2012/2013
Quality				
Market participants found documents published were useful, as indicated by an external website	90% of respondents	100% of respondents	98% of respondents	New measure for 2012/2013
A feedback field included on the website indicates the website was useful to the user	90% of respondents	100% of 3 respondents	25% of 4 respondents	New measure for 2012/2013
Timeliness				
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	92% of the time	100% of the time	New measure for 2012/2013
Public enquiries are responded to within 3 working days of receiving them	100% of the time	100 % of the time	100% of the time	100% of the time
Revenue: (Funded by Government grant and other income except fees)	\$404,000 22% of forecast revenue	\$612,518 36% of actual revenue	\$389,663 22% of actual revenue	Not reported*
Cost:	\$374,000 22% of forecast expenditure	\$584,827 36% of actual expenditure	\$358,845 22% of actual expenditure	\$292,957

* In this prior year, only the third-party fee income (and not also a proportion of the Government grant) was reported as revenue against its relevant output.

Ensuring transparent and equitable takeover processes

OUTPUT 6 : Schemes of Arrangement:				
Panel responds to notifications of schemes of arrangement being undertaken under the Companies Act that involve Code companies, and considers applications for no-objection statements.				
As the legislation to bring into effect the Panel's role for schemes of arrangement was not passed during the year, the Panel expended no resources on this output.				
<i>Actual performance against planned performance standards and performance measures for 2013/2014:</i>				
Performance Measures	Performance Standards			
	Forecast 2013/2014	Actual 2013/2014	Actual 2012/2013	Actual 2011/2012
Quantity Number of: schemes no-objection statements	2-5 2-5	0 0	New Output for 2013/2014	New Output for 2013/2014
Quality Parties are satisfied with process for no-objection statements as indicated by an external survey	90% of respondents	N/A	New Output for 2013/2014	New Output for 2013/2014
Parties are satisfied with the professionalism of the executive as indicated by an external survey	90% of respondents	N/A	New Output for 2013/2014	New Output for 2013/2014
Timeliness Processed within timeframe agreed with the applicant	90% of the time	N/A	New Output for 2013/2014	New Output for 2013/2014
Revenue:	\$183,000 10% of forecast revenue	\$0 0% of actual revenue	New Output for 2013/2014	New Output for 2013/2014
Cost:	\$171,000 10% of forecast expenditure	\$0 0% of actual expenditure	New Output for 2013/2014	New Output for 2013/2014

**Independent Auditor's Report
To the readers of the
Takeover Panel's
financial statements and non-financial performance information
for the year ended 30 June 2014**

The Auditor-General is the auditor of the Takeover Panel (the Panel). The Auditor-General has appointed me, Clare Helm, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements and non-financial performance information of the Panel on her behalf.

We have audited:

- the financial statements of the Panel on pages 22 to 39, that comprise the statement of financial position as at 30 June 2014, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year ended on that date and notes to the financial statements that include accounting policies and other explanatory information; and
- the non-financial performance information of the Panel that comprises the report about impacts and outcomes on pages 17 to 20 and the statement of service performance on pages 40 to 45.

Opinion

In our opinion:

- the financial statements of the Panel on pages 22 to 39:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect the Panel's:
 - financial position as at 30 June 2014; and
 - financial performance and cash flows for the year ended on that date.
- the non-financial performance information of the Panel on pages 17 to 20 and 40 to 45:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects the Panel's service performance and outcomes for the year ended 30 June 2014, including for each class of outputs:
 - its service performance compared with forecasts in the statement of forecast service performance at the start of the financial year; and

- its actual revenue and output expenses compared with the forecasts in the statement of forecast service performance at the start of the financial year.

Our audit was completed on 29 October 2014. This is the date at which our opinion is expressed.

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

Basis of opinion

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

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

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the financial statements and non-financial performance information. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the financial statements and non-financial performance information, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of the Panel's financial statements and non-financial performance information that fairly reflect the matters to which they relate. We consider internal control in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Panel's internal control.

An audit also involves evaluating:

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

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

Ensuring transparent and equitable takeover processes

We have obtained all the information and explanations we have required and we believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion.

Responsibilities of the Board

The Members of the Panel is responsible for preparing financial statements and non-financial performance information that:

- comply with generally accepted accounting practice in New Zealand;
- fairly reflect the Panel's financial position, financial performance and cash flows; and
- fairly reflect its service performance and outcomes.

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

The Members of the Panel's responsibilities arise from the Crown Entities Act 2004 and the Takeovers Act 1993.

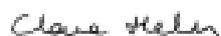
Responsibilities of the Auditor

We are responsible for expressing an independent opinion on the financial statements and non-financial performance information and reporting that opinion to you based on our audit. Our responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

Independence

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

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



Clare Helm
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

Executive of the Takeovers Panel

Margaret Bearsley, Chief Executive
Andrew Hudson, General Counsel
Matthew Tolan, Senior Associate
Lauren Donnellan, Senior Associate
Rachael Hayes, Solicitor
Ashiq Hamid, Solicitor (until 4 July 2014)
Matthew Skinner, Law Clerk (from 4 August 2014)
Hilary Fleming, Accountant/Administrator
Gayle Steere, Office Manager

How to contact us

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