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ANNUAL REPORT 2016

Ensuring transparent and equitable takeover processes

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

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REPORT OF THE CHAIRMAN AND CHIEF EXECUTIVE

We are pleased to present the annual report of the Takeovers Panel for the 2015/2016 year.

Who we are

The Panel is an independent Crown entity established under the Takeovers Act 1993 to administer and enforce the Takeovers Code. The Minister of Commerce and Consumer Affairs is the Panel's responsible Minister. Background information on the Panel and the Takeovers Code is set out in the section *About the Panel*, on page 16 below.

Where we fit in

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

Investors, large and small, who invest in the capital markets need to be confident that they have the right information in making their investment decisions. Investors need confidence that the markets are well-regulated, when making their investment choices.

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

Through its role as a regulator in the capital markets, the Panel contributed to the high-level government goal for 2015/2016 of building a more competitive and productive economy.² The more immediate context for the Panel's work was provided by the government's Business Growth Agenda aims of lifting confidence in New Zealand's capital markets, achieving a better balance between access to capital and investor protection, and reducing business costs.

Our strategic goals

Contributing to the outcome of transparent and equitable takeover processes

Panel's role in takeovers market

The Panel plays an important role in strengthening the integrity of the capital markets because it regulates changes of control in New Zealand's largest and most widely held companies, some of which have tens of thousands of shareholders.

Takeovers market is part of broader capital markets

Within the broad capital markets context, the Panel's role relates to the takeovers market. The takeovers market is not a market *per se*, but a term used to describe mergers and acquisitions activity (**M&A**) such as takeovers and acquisitions of business assets. Much of this activity is not subject to the Takeovers Code because only "Code companies" are subject to the Code and fewer than 1% of

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

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

Ensuring transparent and equitable takeover processes

New Zealand's c.500,000 companies are Code companies.³ M&A activity will be subject to the Code when it involves a person increasing their shareholding in a Code company to a percentage above 20% of the company's total voting rights (i.e., above 20% of the company's ordinary shares).⁴

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

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

The Panel contributes to these outcomes through providing services aimed at ensuring that the processes for Code-regulated transactions are transparent and equitable. The Statement of Service Performance, on pages 34 to 37 below, sets out the services that the Panel provided over the year.

Making an impact under the Takeovers Code

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

- 100% compliance with the Code by Code companies and by those who acquire shares in them;
- takeovers law being efficient, with improved information for shareholders, and the Panel being an efficient regulator; and
- Shareholders, 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 and all Code-regulated transactions are actively monitored by the Panel's executive staff.

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

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

Operating environment

The Panel manages its resources flexibly between its highest priority activity of enforcement, and its policy and public education activities. These latter two functions are important, but necessarily take second place to ensuring that all transactions are dealt with promptly. In terms of the Panel's performance framework on page 18, these activities are depicted under the impacts of, respectively, Enforcement, Efficiency and Knowledge.

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

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

⁴ Under the Code's fundamental rule, rule 6, a person with less than 20% of the voting rights in a Code company cannot increase to above 20% (taking into account also the percentage held or controlled by any associates), or if they have already more than 20%, cannot increase at all, unless they use one of the Code's mechanisms set out in rule 7 (making a takeover offer to all other shareholders, or making an acquisition or receiving an allotment that is approved at a meeting of the company's shareholders).

Achievements for the reporting year

Enforcement

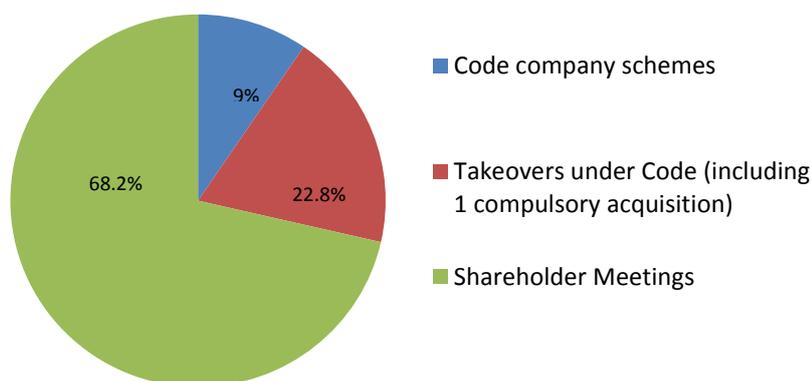
The number of Code-regulated transactions over the year, at 20, was slightly higher than in 2014/2015 (18). Fifteen of these transactions were acquisitions or allotments of parcels of shares, approved by shareholders at a meeting of the Code company, and five other Code transactions were completed, being four takeovers and one compulsory acquisition following from an overseas upstream acquisition.

In addition, Code companies Scott Technology Limited and Michael Hill International Limited each undertook a scheme of arrangement (**Code company scheme**) under the Companies Act 1993, taking the total number of transactions overseen by the Panel to 22. The Panel's involvement in two other Code company schemes was also largely completed during the reporting period (Nuplex Industries Limited and Trustpower Limited), but they will be counted in next year's annual report. Three of these four Code company schemes were very complex transactions. By contrast, the Nuplex scheme was a straightforward cash takeover, undertaken as a Code company scheme.

Early engagement with the Panel's executive team helped applicants to meet the standards of disclosure required by the Panel for the Code company schemes.⁵ Accordingly, the Panel provided a No-objection Statement for all applicants.

The greater flexibility of the regulatory requirements for schemes, as compared with the stricter rules under the Takeovers Code, can make Code company schemes an attractive vehicle for complex transaction structures. The Panel has noted an increase in scheme related activity following the implementation of the Code company scheme provisions in the Companies Act in 2014. The Panel's role for Code company schemes is to ensure that shareholders that are subject to the scheme receive a level of disclosure similar to that which they would have received in a takeover regulated by the Takeovers Code. The Code company schemes regime has bedded in well and is functioning as expected.

Transactions by type



In terms of the Panel's other enforcement work, no major enforcement actions were taken over the year, with all transactions running smoothly. No complaints made to the Panel resulted in the holding of a hearing under section 32 of the Takeovers Act (none held in 2014/2015).

Having completed a Memorandum of Understanding (**MoU**) with NZX Limited in May 2015, the Panel has continued its efforts on joining up with fellow regulators in the capital markets. Involvement with the

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

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FMA regarding the entering into of an MoU has resulted in better engagement between the two organisations. The MoU with the FMA was completed in August 2016.

Efficiency – policy work and exemptions

Amongst the policy initiatives undertaken by the Panel over the year was to respond to what had become a growing trend whereby a group of shareholders in a Code company would form an unincorporated joint venture to make a takeover offer to all the company's other shareholders. This caused the Panel disquiet that the policy of the Code was being undermined by these types of offers. In December 2015 the Panel provided certainty to the market by publishing its views on how to comply with the Code for such transactions.⁶

In response to requests for an early review, the Panel prepared a consultation paper on whether a class exemption for small Code companies, granted in 2015, should be extended to include a broader range of transactions. The purpose of the class exemption is to reduce the compliance burden for small Code companies when raising capital. The exemption enables Code company directors to resolve to opt out of compliance with the Code for a capital raising, if they believe it is in the best interests of the company to do so. The Panel anticipates making a decision on the outcome of the review by the end of December 2016.

Knowledge – public education work

In order to help shareholders to understand the implications of common types of crowdfunding capital-raising, the Panel published a plain-English Fact-Sheet about Crowdfunding to explain the effects of crowdfunding structures on the availability of Code protections for shareholders.

The Panel prepares a Stakeholder Engagement Plan each year to ensure it takes a planned approach to engaging with stakeholders to inform and educate them about the Takeovers Code and the role of the Panel. Of particular interest to many stakeholders over the year was the Code company schemes provisions in the Companies Act.

A series of seminars were presented over the year regarding the Panel's role in Code company schemes. The seminars were presented by the Panel's General Counsel, several of them in conjunction with Silvana Schenone, Partner at Minter Ellison Rudd Watts (which acted for Scott Technology, the first applicant for a No-objection Statement for a Code company scheme).⁷ The seminars were attended by around 130 practitioners, regulators and other interested parties.

The Panel's administration – economy and efficiency

The Panel's operating income

Consistent with prior years, the Panel's funding for the financial year was mostly provided by Parliament, being \$1,494,000 (Vote Commerce: Non Departmental Output – Administration of the Takeovers Code). In addition, the Panel received third-party income of c.\$252,000 for its chargeable activities (c.\$130,000 in 2014/2015).

The Panel maintains robust controls on spending and a strong focus on internal efficiency to enable it to generally maintain a more or less break even position on its operating expenditure.⁸

⁶ The Panel's guidance on multiple offerors is in CodeWord 41 on the website www.takeovers.govt.nz.

⁷ The Scott Technology No-objection Statement was provided by the Panel in December 2015, and the presentations on schemes were given after completion of that process, over February and March 2016.

⁸ 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

Resources

The Panel used 12% more resource than had been forecast on transactional work (53% of resource forecast, 65% expended), in large part because of more resource expended on processing Code company schemes than had been anticipated (4% forecast, 11% expended). This had flow-on effects on the resources available for policy projects (26% of resource forecast, 21% expended), and public understanding work (21% of resource forecast, 14% expended).

Panel members and the executive committed 12,386 hours of time to Panel work over the year, as compared with 11,864 in the previous year. The increase in hours was largely due to having secondments of Panel staff to NZX in the prior year but none in the 2015/2016 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 \$26,354 of software, office equipment and furniture.

Outputs

Utilising its income and resources, over the 2015/2016 financial year the Panel provided the outputs described in the Statement of Service Performance on pages 34 to 39 below.

Cost effectiveness of Panel

Impacts and outcomes

The outcome that the Panel's work contributes to is: reducing transaction costs for domestic and international investors and increasing confidence in the integrity of New Zealand's takeovers market. As one of a number of regulators active in this wide area of the capital markets, the Panel's contribution at the outcome level cannot realistically be measured.

However, the Panel does measure the impact it has in the segment of the takeovers market that is regulated by the Takeovers Code. The Panel's progress on these strategic aims is described under the section on pages 18 to 21 below, *Measuring the Panel's Performance - Impacts and Outcomes*. As this annual report indicates, the Panel is a well-respected and cost effective service provider.

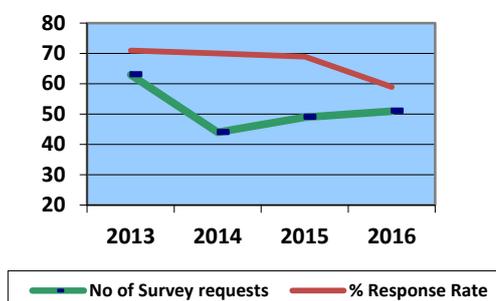
Results of Panel's on-line survey

The Panel operates an on-line survey to collect 'client' data regarding its performance from the legal practitioners and independent advisers with whom it deals. The graphs on page 7 show consistently high levels of satisfaction with the Panel's publications and processes and with the professionalism and timeliness of the Panel's work (ranging from 96% to 100% across all measures every year).

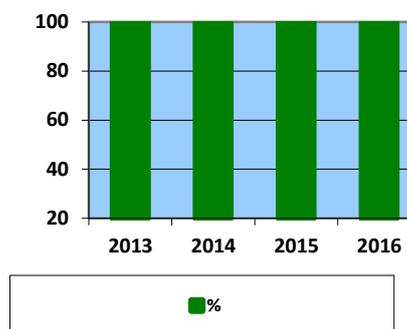
Over the 2015/2016 year the Panel sent 51 survey requests (48 in 2014/2015). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 30 responses, or a 58.8% response rate (33 responses, 68.75% response rate in 2014/2015) with very positive feedback and engagement. 100% of respondents were satisfied with the Panel executive's processes and professionalism (100% of 33 respondents in 2014/2015). All 30 respondents found the Panel's publications overall to be useful (100% of 33 in 2014/2015).

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

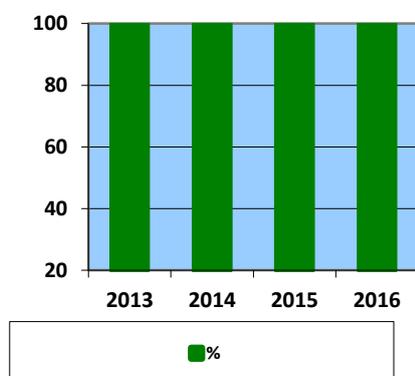
Response Rate



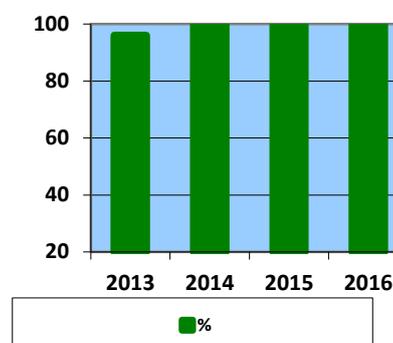
Overall satisfied with Panel's publications



Overall satisfied with process and professionalism



Overall satisfied with timeliness of processing applications⁹



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.

David Jones MNZM

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

⁹ For the 2013 and 2014 years the survey question for applicants was worded differently, focusing on the executive meeting the agreed timeframe for processing application.

Ensuring transparent and equitable takeover processes

David chaired the very first meeting of a Division of the Takeovers Panel, which was held on the day the Code came into force (Sunday, 1 July 2001). That meeting resulted in the Panel notifying a hearing under section 32 of the Takeovers Act, the Panel's main enforcement power.¹⁰ Over the many years of David's involvement with and leadership of the Panel, its policies and practices have become established and widely accepted by the market.

Executive team

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

Acknowledgements

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

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



Andy Coupe
Chairman



Margaret Bearsley
Chief Executive

¹⁰ The Panel issued a restraining order on 1 July and the hearing was held on 6 July 2001. At the hearing, the Panel determined that Allied Domecq Plc, and its wholly-owned subsidiary Millstream Equities Limited, intended not to comply with the Code in relation to proposed acquisitions of voting securities in Montana Group (NZ) Limited.

MEMBERS OF THE TAKEOVERS PANEL AS AT 30 JUNE 2016

CHAIRMAN



David Jones

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

DEPUTY CHAIRMAN



Andy Coupe (Chairman Designate)

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. Appointed Chairman from 1 October 2016.

MEMBERS



Murdo Beattie

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



Carl Blanchard (Deputy Chairman Designate)

Investment manager. Head of direct investments at the Accident Compensation Corporation, having previously been a managing director of investment banking at First NZ Capital. Appointed to the Panel in 2011. Appointed Deputy Chairman from 1 October 2016.

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David Flacks

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



Simon Horner

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



Richard Hunt

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



Sacha Judd

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



Tony Pigou

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



Tina Symmans

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



Roger Wallis

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

GOVERNANCE REPORT AND ADDITIONAL DISCLOSURES

The Board of the Panel

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

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

Committees and delegations

The Panel has an Audit and Risk Committee, chaired by Murdo Beattie. Its other two members are Andy Coupe (replacing David Jones on 1 October 2016) (ex officio) and Carl Blanchard. The Committee reviews the Panel's external reporting documents, financial forecasts and budgets, and Risk Management Plan and makes recommendations about them to the full Panel.

The Panel does not have a large enough staff to operate a separate internal audit process. However, strict separation of personnel is maintained between the banking, payments, and authorisation processes.

In 2009 the Panel delegated authority to the Chief Executive to approve independent advisers under the Takeovers Code for applications that are 'straightforward' (as defined by the delegation). This authority was updated and re-delegated in April 2016 to extend it to approving 'straightforward' adviser applications for Code company schemes. In 2011 the Panel delegated authority to the Chairman and Chief Executive to accept on behalf of the Panel enforceable undertakings given to the Panel under section 31T of the Takeovers Act.

Divisions of the Panel

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

Panel meetings

Panel member participation in Panel meetings, Division meetings, and Audit and Risk Committee meetings over the 2015/2016 year was as follows:

Member	Panel meetings (6 during year)	Division meetings (52 during year)	Audit and Risk Committee (6 during year)	Written Resolutions (2 during year)
David Jones	5 of 6	45	6	2
Andy Coupe	6 of 6	36		2
Murdo Beattie	6 of 6	8	6	
Carl Blanchard	5 of 6	14	6	1
David Flacks	6 of 6	17		1
Simon Horner	6 of 6	29		1
Richard Hunt*	6 of 6	0		
Sacha Judd**	5 of 5	12		
Tony Pigou	5 of 6	19		1
Sue Suckling***	1 of 1	0		
Tina Symmans	3 of 6	7		
Roger Wallis	5 of 6	6		

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

** Member since October 2015

*** Member until October 2015

Dealing with conflicts of interest

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

Where an enforcement matter before the Panel involves a Panel member, either as a legal adviser to a person the subject of a Panel enquiry, or as a corporate representative of a company that is the subject of an enquiry, the member is not permitted to appear before the Panel. Another partner of the member's firm must represent the client or another of the company's corporate representatives must represent the company.

Planning

The Panel's main planning documents are the Statement of Intent and Statement of Performance Expectations. The Panel develops a strategic plan each year and it keeps its business plans under review.

Directions issued by the Minister and Whole of Government Directions

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

Permission to act when interested

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

Obligations to be a good employer

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

Leadership, accountability and culture

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

Recruitment, selection and induction

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

As at 30 June 2016, the Panel's staff comprised six women and two men. Half of the Panel's eight staff were aged 40 or younger, two were in the 41 to 50 age bracket and two were over 51. The ethnicity and disability profile of the staff, together with the break-down of their work categories are shown in the table below.

Employee characteristics as 30 June 2016

Work category	Maori	Pakeha/European		Pasifika	Asian	Other ethnicity	Disability
	Full time	Full time	Part time				
Professionals		5	1				
Administration Officers		1					
Managers		1					
TOTAL		7	1	0	0	0	0

Employee development, promotion and exit

All staff have regular mentoring and support from management and are encouraged to support each other in a strong team-based culture. All staff have formal annual performance appraisals. The Panel makes internal promotions based on merit, and recruits externally where positions cannot be filled internally. The Panel encourages all employees to attend training and development opportunities in accordance with the Panel's Training and Development Policy. All leaving staff are offered an exit interview.

Flexibility and work design

The Panel accommodates flexible working arrangements to the extent possible. Staff who activate the Panel's remote access for their work computers are able to work from home if necessary. This accommodates family and personal needs and also contributes to the Panel's Business Continuity Plan.

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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 2015/2016 year was 41% (i.e., in favour of men). This compares with 4% (in favour of men) the previous year. The use of the median figure for establishing the gender pay gap in such a small organisation as the Panel can produce significant swings and is particularly impacted by the small number of men on the Panel executive and their respective roles.

Harassment and bullying prevention

The Panel has a Workplace Bullying and Harassment Policy. This policy encourages employees to take action against any form of workplace bullying or harassment. The Panel has zero tolerance for bullying and harassment.

Safe and healthy environment

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

ABOUT THE PANEL

The Takeovers Code came into force on 1 July 2001. Prior to the Code's introduction, New Zealand had been one of the few market economies without a modern takeovers regime.¹¹

Functions and powers

The main functions and powers of the Takeovers Panel are set out in the Takeovers Act. In summary they are:

- To keep takeovers law and practice under review and to recommend to the Minister of Commerce and Consumer Affairs any changes to the law that the Panel considers necessary;
- To consider applications for schemes of arrangement under Part 15 of the Companies Act and indicate whether the Panel has any objection to them;
- To investigate any act or omission for the purpose of exercising its enforcement powers or making applications to the Court:
 - issuing summonses and taking evidence on oath and accepting enforceable undertakings;
 - issuing restraining orders and making determinations;
 - applying to the High Court for permanent orders and for penalties;
- To promote public understanding of the law and practice relating to takeovers;
- To grant exemptions from compliance with provisions of the Takeovers Code.

Under the Code the Panel has the power to approve independent advisers and appoint independent experts.

As with other modern takeovers regimes, New Zealand's Code regulates the process of certain share transactions in the companies that are subject to the Code. These transactions then occur in an orderly fashion and all shareholders are subject to transparent rules.

The Panel and the Code ensure transparent and equitable takeover processes

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

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

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

The equitable processes supported by the Code relate to the mandated timeframes under which the steps of a takeover must occur, and to the rules about the equality of offer terms and conditions for shareholders. For shareholder meetings at which approval is sought for allotments and acquisitions, the Code ensures that only 'disinterested' shareholders can approve the resolution; the allottee or acquirer and their associates are not allowed to vote to approve the resolution.

The Panel focuses a significant proportion of its resources on ensuring that the Code is complied with by investors in Code companies and by Code companies themselves. But compliance is not limited to these parties. Rule 64 of the Code, the 'truth in takeovers' rule that prohibits misleading or deceptive conduct

¹¹ Bob Dugan, *Law, Economics and the Draft Takeovers Code*, (1996) 26 VUWLR 39.

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in relation to Code-regulated transactions, applies to every person, including financial advisers and the media.

The Panel has strong enforcement powers under the Takeovers Act, including the power (under section 32 of the Takeovers Act) to hold hearings, and the power to take evidence under oath and to make confidentiality orders. The Panel also has the power to issue temporary restraining orders that prevent share transactions from being undertaken. It can issue permanent orders requiring persons to publish statements or preventing persons from publishing statements. When exercising its enforcement powers, the Panel acts judicially, as a tribunal.

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

In cases where persons have committed serious breaches of the Code that materially prejudice shareholders or other parties, or that are likely to materially damage the integrity or reputation of New Zealand's securities markets, the Panel may apply to the High Court for a pecuniary penalty against the person in breach. A pecuniary penalty can be up to \$500,000 against an individual or \$5,000,000 against a body corporate, for each breach of the Code. To date, this remedy has not been sought.

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

The Panel's approach facilitates integrity in the takeovers market

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

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

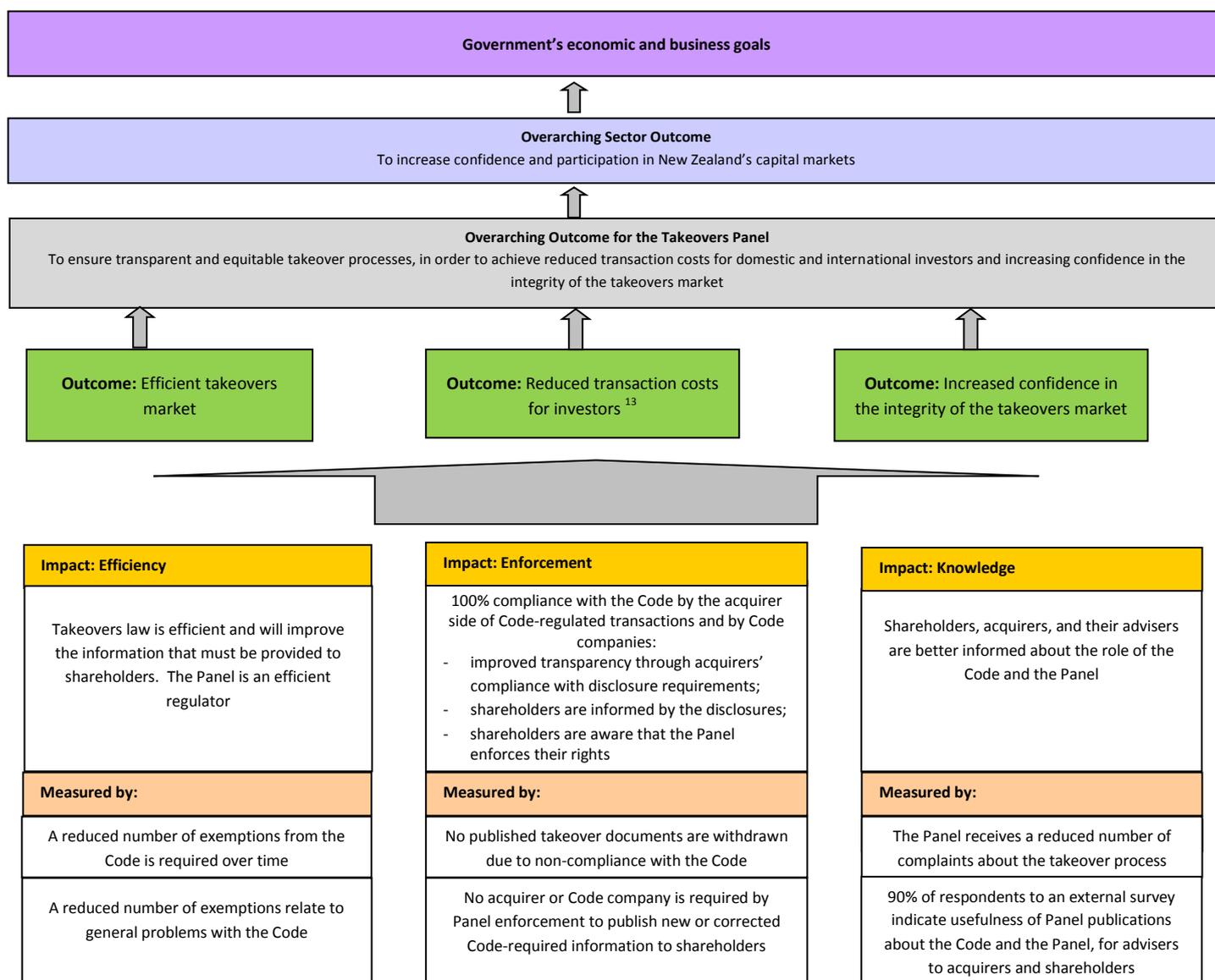
Most potential breaches of the Code are found and resolved while documents are still in draft. When an actual breach occurs, it is often voluntarily disclosed to the Panel and voluntarily remedied in accordance with Panel policy (usually requiring a prompt sale of the shares acquired in breach and, for listed companies, an announcement to the market).

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

The graph on page 20 below shows the number of section 32 meetings that have been held since the Code came into force.

MEASURING THE PANEL'S PERFORMANCE – IMPACTS AND OUTCOMES

In the Panel's 2014/2015 – 2018 Statement of Intent, the Panel identified three outcomes to which it contributes through the impacts the Panel expects to have in the takeovers market. The Panel also described how it would measure its achievement of the three impacts that its services are designed to attain. This is depicted below:¹²



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.

¹² The Performance Framework will be updated in the Panel's next Statement of Intent for 2016/2017-2021, to take into account the Panel's role in Code company schemes under the Companies Act.

¹³ The transaction costs for investors include access to information about potential and current investments. The Panel's services contribute to the reduction of transactions costs for investors by ensuring access to information about Code-regulated transactions and about investors' rights and obligations as shareholders of Code companies, and also avenues for enforcing their rights.

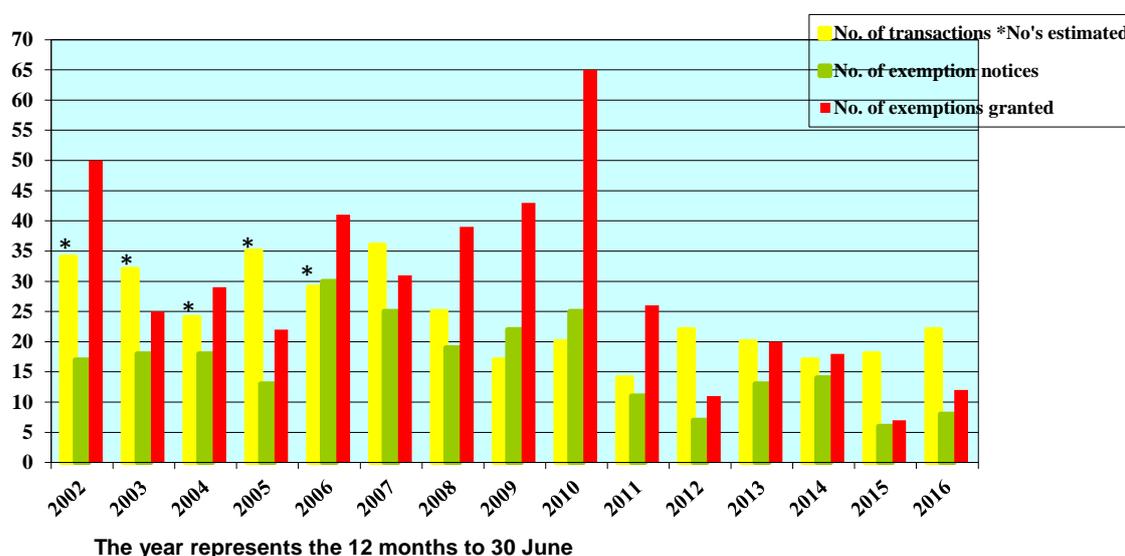
Ensuring transparent and equitable takeover processes

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

This measure is chosen because amendments to the Code as a result of the Panel's policy work should result in there being a reduction in the number of exemptions granted that relate to drafting problems with the Code. In addition, the class exemptions of a general nature that the Panel periodically grants are often designed to streamline compliance where it is recognised that the same type of individual exemption has been granted repeatedly for a recurring set of circumstances.

Although there will be occasional highs and lows relating to market specific or transaction specific circumstances (as evidenced in the 2010 year in the graph below), the impact begins to show from 2012 following the granting in 2010 of the class exemption from rule 7(d) and rule 16(b).¹⁴

Number of exemptions granted



Enforcement Impact

The highest priority for the Panel's resources goes to responding to Code-regulated transactions as they occur. Code-regulated transactions are monitored, and an important part of this occurs through the Panel's staff reviewing Code-related documents in draft, and giving informal assistance on how to comply with the Code.

This practice, which began around 2005, together with the Code's bedding in and the respect of practitioners for the Panel, has largely contributed to the reduction in formal hearing processes (see the graph on page 20, below). The Panel aims for 100% compliance with the Code so that shareholders, especially small shareholders, are protected from unfair practices and so that all shareholders have a transparent and appropriate process under which they make the decisions that lie before them in a Code-regulated transaction.

The Panel measures the achievement of this impact by there being no Code-regulated documents being required to be withdrawn under a section 32 enforcement action, due to non-compliance with the Code.

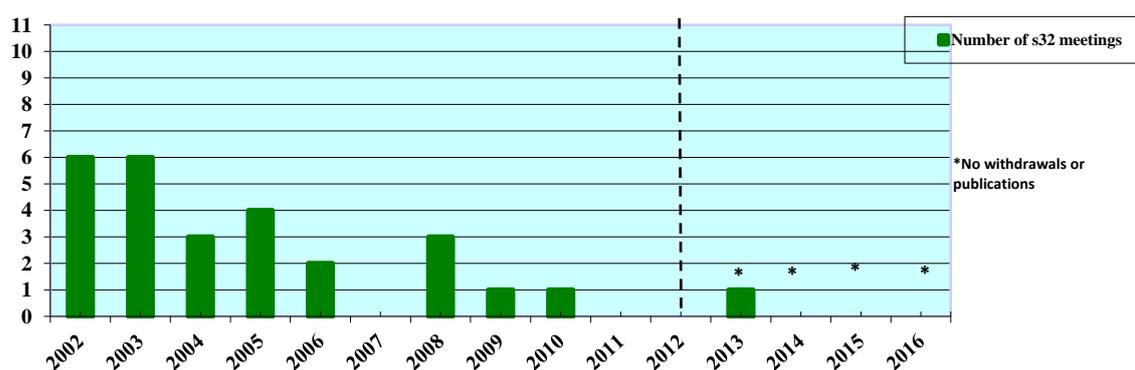
¹⁴ Exemptions from rule 7(d) and rule 16(b) of the Code have been one of the most commonly granted exemptions. Each exemption that has been granted from a Code rule is counted for the purposes of measuring the impact. However, in reality, an application for exemption can cover several different aspects 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.

Ensuring transparent and equitable takeover processes

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 below records it as a formal measure, beginning with the 2013 year. The Panel aims to maintain 100% achievement of this impact although the market is constantly changing.

Section 32 meetings

Number of Withdrawals of documents or publications of information –Performance measure commences from 1 July 2012¹⁵



The year represents the 12 months to 30 June

Knowledge Impact

The Panel's function of promoting public understanding of takeovers law and practice is aimed at all sectors of the takeovers market. The Panel uses its publication *Code Word* to broadcast its views on topical takeovers matters. The Panel's website provides ready access to the Panel's decisions, Guidance Notes, and other useful information.

Holding meetings with legal and financial advisers and making speeches and giving presentations are other methods used by the Panel for disseminating information about the Code and about the Panel's role as a regulator.

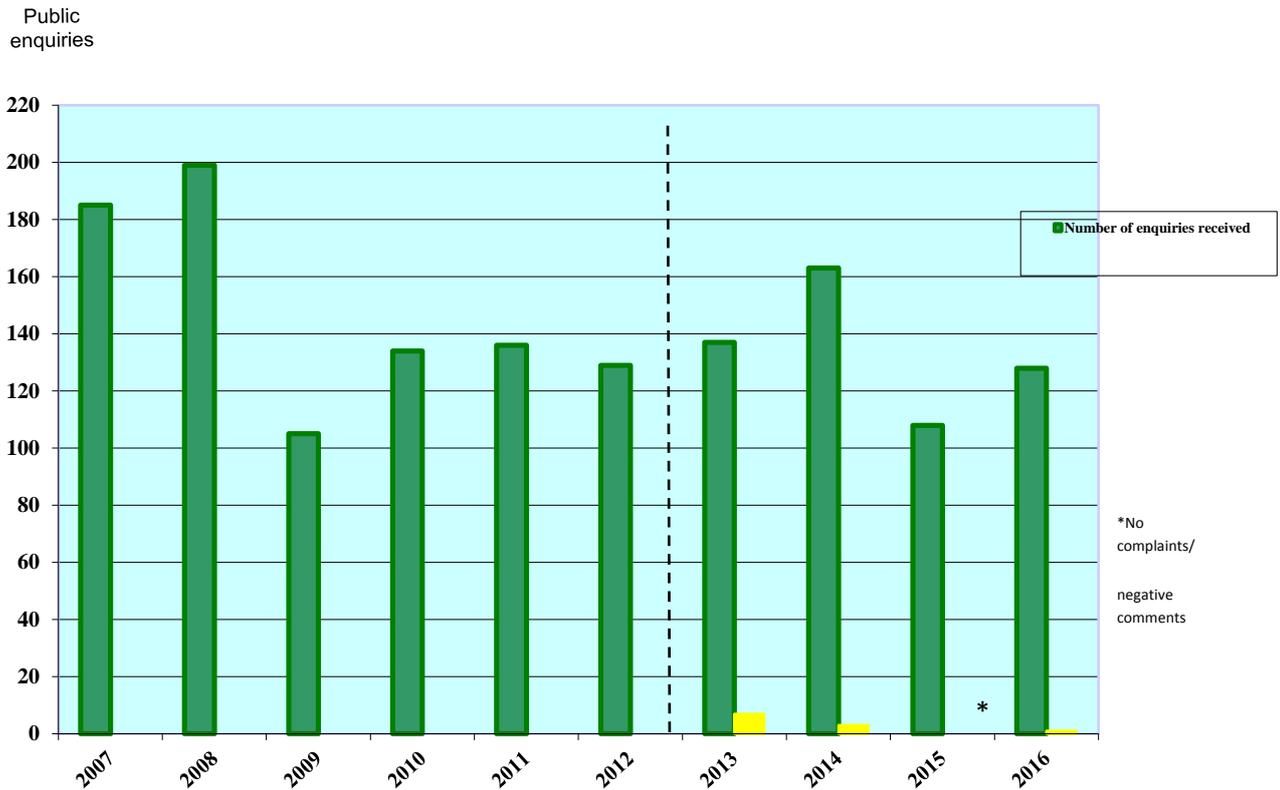
The Panel's services for the promotion of public understanding contribute to better informed shareholders, thus reducing their transaction costs. The Panel measures the achievement of this impact in two ways, as shown in the graphs on page 21 below.

The first measure relates to improving shareholders' knowledge about the Code, and thus the Panel receiving a reduced number of complaints or negative comments about the process of Code-regulated transactions.

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

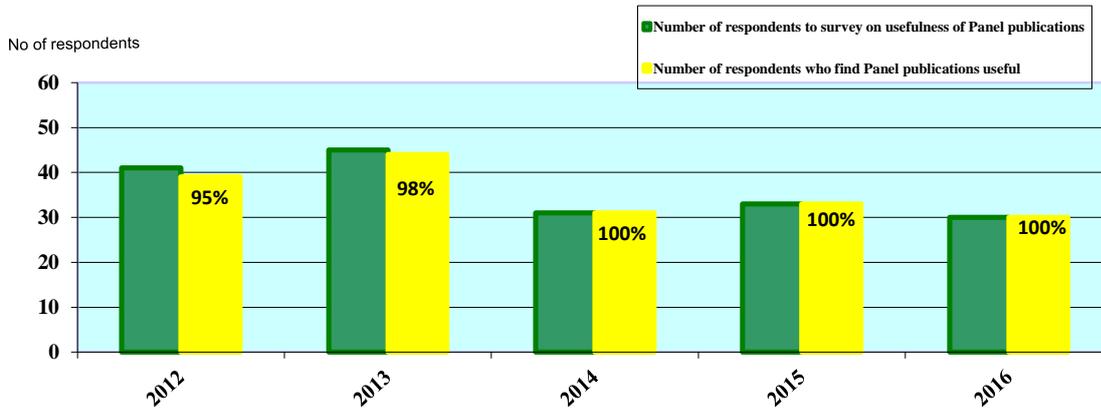
¹⁵ The errors in this graph from previous years have been corrected.

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



The year represents the 12 months to 30 June

% Takeovers Practitioners find Panel publications useful



The year represents the 12 months to 30 June

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

FINANCIAL REPORT

Statement of Responsibility

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

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

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

In our opinion these annual financial statements and Statement of Performance fairly reflect the financial position as at 30 June 2016 and the operations of the Takeovers Panel for the year ended 30 June 2016.

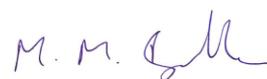
This annual report was approved by the Panel on 11 October 2016.

Signed on behalf of the Panel by:



R A Coupe
Chairman,
Takeovers Panel

31 October 2016



M M Beattie
Chairman,
Audit and Risk Committee

31 October 2016

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2016

Budget* 2016 \$		Note	Actual 2016 \$	Actual 2015 \$
	Revenue - operating			
1,494,000	Government grant – baseline funding		1,494,000	1,494,000
31,000	Interest		26,123	33,594
210,000	Application fees and costs recoverable	4	251,599	129,513
15,000	Other revenue		15,655	45,330
<u>1,750,000</u>	Total operating revenue		<u>1,787,377</u>	<u>1,702,437</u>
	Revenue – litigation fund			
36,000	Interest		30,699	36,696
<u>36,000</u>	Total litigation fund revenue		<u>30,699</u>	<u>36,696</u>
<u>\$1,786,000</u>	Total revenue		<u>\$1,818,076</u>	<u>\$1,739,133</u>
	Operating expenditure			
727,000	Services and supplies	5	722,148	671,392
998,000	Personnel costs	6	946,074	954,305
<u>1,725,000</u>	Total operating expenditure		<u>1,668,222</u>	<u>1,625,697</u>
0	Expenditure – litigation fund		0	0
<u>\$1,725,000</u>	Total expenditure		<u>\$1,668,222</u>	<u>\$1,625,697</u>
<u>\$61,000</u>	Net Surplus/Deficit		<u>\$149,854</u>	<u>\$113,436</u>
	This is comprised of:			
25,000	Revenue - operating / (deficit)		119,155	76,740
36,000	Revenue - litigation / (deficit)		30,699	36,696
<u>\$61,000</u>			<u>\$149,854</u>	<u>\$113,436</u>

*Budget figures are unaudited

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

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

STATEMENT OF FINANCIAL POSITION

as at 30 June 2016

Budget*			Actual	Actual
2016			2016	2015
\$			\$	\$
	Current assets	Notes		
419,000	Bank accounts and cash – operations		485,771	426,394
153,000	Bank accounts and cash – litigation fund	3	141,985	139,709
539,000	Short term deposits – operations		470,199	448,782
743,000	Short term deposits – litigation fund	3	756,075	715,021
5,000	Interest receivable – operating		6,266	10,781
10,000	Interest receivable – litigation fund	3	2,768	15,399
87,000	Debtors and prepayments		133,912	60,080
\$1,956,000	Total current assets		\$1,996,976	\$1,816,166
	Non-current assets			
27,000	Property, plant and equipment	7	26,354	61,845
27,000	Total non-current assets		26,354	61,845
\$1,983,000	Total assets		\$2,023,330	\$1,878,011
	Current liabilities			
49,000	Creditors and accrued expenses		55,389	54,320
68,000	Employee costs payable		47,928	53,532
\$117,000	Total current liabilities		\$103,317	\$107,852
	Equity			
150,000	Capital contribution		150,000	150,000
810,000	Operating funds		869,185	750,030
906,000	Litigation fund	3	900,828	870,129
\$1,866,000	Total equity	8	\$1,920,013	\$1,770,159
\$1,983,000	Total equity and liabilities		\$2,023,330	\$1,878,011

*Budget figures are unaudited

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

STATEMENT OF CASH FLOWS

for the year ended 30 June 2016

Budget*		Actual	Actual
2016		2016	2015
\$		\$	\$
Cash flows from operating activities			
Cash was received from:			
1,494,000	Government grant – operations	1,494,000	1,494,000
201,000	Application fees and costs recoverable	164,198	129,885
73,000	Interest	73,968	54,161
15,000	Other revenue	15,655	45,330
0	Goods and Services Tax (net)	5,773	1,376
Cash was applied to:			
(481,000)	Suppliers	(472,980)	(440,996)
(1,202,000)	Employees and members	(1,151,610)	(1,161,246)
(3,000)	Goods and Services Tax (net)	0	0
<u>\$97,000</u>	Net cash flows from operating activities	<u>\$129,004</u>	<u>\$122,510</u>
Cash flows from investing and financing activities			
Cash was applied to:			
(10,000)	Payments to acquire property, plant and equipment	(4,880)	(22,595)
(118,000)	Payments to purchase investments	(62,471)	(36,626)
<u>\$(128,000)</u>	Net cash flows from investing and financing activities	<u>\$(67,351)</u>	<u>\$(59,221)</u>
(21,000)	Net increase (decrease) in cash	61,653	63,289
603,000	Add opening cash	566,103	502,814
<u>\$572,000</u>	Closing cash	<u>\$627,756</u>	<u>\$566,103</u>

*Budget figures are unaudited

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

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2016

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

Reporting entity

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

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

Sources of Funding

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

Basis of preparation

Statement of compliance

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

Basis of measurement

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

Functional and presentational currency

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

Use of estimates and judgements

The process of applying accounting policies requires the Panel to make judgements, estimates and assumptions that affect the reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on past experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

Changes in accounting policy

There have been no changes in accounting policy during the 2015/2016 financial year.

Significant accounting policies

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

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

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of comprehensive income and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.
- e Trade and other payables
Creditors and other payables are initially measured at the amount owing. If an invoice has not been received an accrual for an estimate of the amount to be paid will be recorded.
- f Income tax
The Panel is exempt from income tax under the Income Tax Act 2007.
- g Revenue recognition
The government grant is recognised as revenue when earned and is reported in the financial period to which it relates. Revenue from application fees and costs recoverable is recognised when the relevant services are provided or when the Panel has made the relevant determination under section 32 of the Takeovers Act.

Interest is recorded as revenue as it is earned during the period.
- h Litigation fund
Interest revenue and expenditure on approved litigation fund matters are reported as revenue and expenditure of the Panel in the financial period in which they were derived or incurred. Reimbursements from the Crown to top up the fund are reported as income in the period to which the Panel's claim for reimbursement relates. The balance of the fund is disclosed as a component of equity in the statement of financial position.
- i Property, plant and equipment
Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses. The following classes of property, plant and equipment have been depreciated over their economic lives on the following basis:

Office furniture	8.5	-	10.5 percent straight line,
Office equipment	17.5	-	40 percent straight line,

Intangible assets -Computer software that is not integral to the operation of the hardware is recorded as an intangible asset and amortised on a straight line basis over a period of three years.

- j Short term employee benefits
Employee costs payable represent the Panel's liability for employee annual leave entitlements and salaries accrued up to balance date. This has been calculated on an accrued entitlement basis which involves recognising the undiscounted amount of short term employee benefits expected to be paid in exchange for service that an employee has already rendered. This is calculated at current remuneration rates.
- k Cost allocation policy
For the purposes of the statement of service performance direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

NOTE 2 BUDGET FIGURES

The budget figures are those approved by the Panel on 14 April 2015 and published in the Panel's Statement of Performance Expectations 2015/2016. The budget figures are prepared in accordance with NZ GAAP and are consistent with the accounting policies adopted by the Panel for the preparation of the financial statements.

NOTE 3 LITIGATION FUND

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

Parliament agreed to an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2016 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:

	2016	2015
	\$	\$
Interest received	27,931	21,297
Interest accrued	2,768	15,399
Expenditure on approved litigation	0	0
Surplus /(deficit) for the year	<u>30,699</u>	<u>36,696</u>
Opening balance	<u>870,129</u>	<u>833,433</u>
Closing balance	\$900,828	\$870,129
This is comprised of:		
Bank accounts and cash		
- Call account	141,985	139,709
- Short term deposits	756,075	715,021
Term deposits	0	0
Interest receivable	<u>2,768</u>	<u>15,399</u>
	<u>\$900,828</u>	<u>\$870,129</u>

NOTE 4 APPLICATION FEES AND COSTS RECOVERABLE

The Takeovers (Fees) Regulations 2001 (**Fees Regulations**) enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement action pursuant to the Takeovers Act. An analysis of the amounts invoiced for the year ended 30 June 2016 (on a GST exclusive basis) is as follows:

	2016	2015
	\$	\$
Exemptions	144,248	107,954
Approvals	28,497	21,559
Enforcement	0	0
Schemes	78,854	0
Total	<u>\$251,599</u>	<u>\$129,513</u>

NOTE 5 SERVICES AND SUPPLIES

	2016	2015
	\$	\$
Members' fees	199,932	180,637
Rent	134,025	132,650
Other	388,191	358,105
Total services and supplies	<u>\$722,148</u>	<u>\$671,392</u>

NOTE 6 PERSONNEL COSTS

	2016	2015
	\$	\$
Salaries	912,355	923,095
Employer contributions to defined contribution plans	28,221	28,478
Contractors	3,091	503
ACC	2,407	2,229
Total personnel costs	<u>\$946,074</u>	<u>\$954,305</u>

NOTE 7 PROPERTY, PLANT AND EQUIPMENT

	Office equipment	Office furniture	Software	Total
	\$	\$	\$	\$
Cost or valuation				
Balance at 1 July 2014	151,864	46,148	122,098	320,110
Balance at 30 June 2015	93,715	46,148	117,070	256,934
Balance at 1 July 2015	93,715	46,148	117,070	256,934
Additions	2,380	0	2,500	4,880
Disposals	0	0	0	0
Balance at 30 June 2016	\$96,095	\$46,148	\$119,570	\$261,813
Accumulated depreciation				
Balance at 1 July 2014	(144,858)	(20,573)	(64,447)	(229,878)
Balance at 30 June 2015	(82,326)	(25,085)	(87,677)	(195,088)
Balance at 1 July 2015	(82,326)	(25,085)	(87,677)	(195,088)
Depreciation	(8,136)	(4,512)	(27,724)	(40,372)
Elimination on disposal	0	0	0	0
Balance at 30 June 2016	\$(90,462)	\$(29,597)	\$(115,400)	\$(235,459)
Carrying amounts:				
At 30 June & 1 July 2015	\$11,389	\$21,063	\$29,393	\$61,845
At 30 June 2016	\$5,633	\$16,551	\$4,170	\$26,354

NOTE 8 ACCUMULATED FUNDS

The Panel seeks to maintain sufficient equity to enable it to manage its ongoing operations and obligations. Surplus funds are invested having regard to the cash flow profile of future commitments. There have been no material changes in the Panel's management of equity during the period compared with the previous period.

The Panel is not subject to any externally imposed equity requirements.

At 30 June 2016	Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	750,030	119,155	869,185
Accumulated litigation surpluses/deficits	870,129	30,699	900,828
Total	<u>\$1,770,159</u>	<u>\$149,854</u>	<u>\$1,920,013</u>

At 30 June 2015	Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/deficits	673,290	76,740	750,030
Accumulated litigation surpluses/deficits	833,433	36,696	870,129
Reserves	<u>0</u>		<u>0</u>
Total	<u>\$1,656,723</u>	<u>\$113,436</u>	<u>\$1,770,159</u>

Note 9 COMMITMENTS

The Panel has the following non-cancellable operating lease commitments. These amounts are the total of minimum future lease payments under the Panel's non-cancellable operating leases.

	2016 \$	2015 \$
Not later than one year	139,100	22,108
Later than one year and not later than five years	556,400	0
Later than five years	23,184	0
	<u>\$718,684</u>	<u>\$22,108</u>

The Panel exercised a right of renewal of its operating lease agreement for a further six years from 1 September 2015. The Panel signing of the renewal committed the Panel to pay rental of \$139,100 (plus GST) per annum during the renewed term of 1 September 2015 to 31 August 2021.

The Panel had no capital commitments at balance date (2015 - no commitments).

NOTE 10 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date (2015 - no contingent liabilities).

NOTE 11 CONTINGENT ASSETS

There were no contingent assets at balance date (2015 - no contingent assets).

NOTE 12 RELATED PARTY TRANSACTIONS

Related party disclosures have not been made for transactions with related parties that are within the normal supplier or client/recipient relationship on terms and condition no more or less favourable than those that it is reasonable to expect the Panel would have adopted in dealing with the party at arm's length in the same circumstances. Further, transactions with other government agencies (for example, government departments and Crown entities) are not disclosed as related party transactions when they are consistent with the normal operating arrangements between government agencies and undertaken on the normal terms and conditions for such transactions.

Board room facilities and hospitality for five of the Panel's Board meetings was provided by Chapman Tripp (3), Bell Gully (1) and UBS (1).

NOTE 13 EMPLOYEE REMUNERATION

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

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

	2016	2015
\$290,000-\$299,999	0	1
\$280,000-\$289,999	1	0
\$270,000-\$279,999	0	0
\$210,000-\$269,999	0	0
\$200,000-\$209,999	1	0
\$190,000-\$199,999	0	1
\$110,000-\$189,999	0	0
\$100,000-\$109,999	0	2
	2	4
	2	4

NOTE 14 BOARD MEMBERS REMUNERATION

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2016 were:

	2016	2015
	\$	\$
D.O. Jones (Chairman)	57,493	51,428
R.A. Coupe (Deputy Chairman)	21,242	16,901
M.M. Beattie	12,238	13,703
C.G. Blanchard	14,817	13,599

	2016	2015
	\$	\$
D.M. Flacks	13,453	13,423
S.M. Horner	23,340	19,669
R.A. Hunt	11,728	9,408
A.G. Pigou	12,402	10,358
S.H. Judd	12,481	0
S.H. Suckling	1,767	10,006
T.J. Symmans	6,271	9,573
R.F. Wallis	12,703	12,570
Total	\$199,932	\$180,637

NOTE 15 SUBSEQUENT EVENTS

There were no material events subsequent to balance date that would affect the interpretation of the financial statements or the performance of the Panel (2015 – no material subsequent events).

NOTE 16 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$37,377 higher than budgeted, primarily because there were higher than forecast recoveries from schemes of arrangements (\$40,000 budgeted for while c.\$79,000 was recovered).

Expenditure

Total operating expenditure for the year was \$56,778 lower than budgeted primarily because \$51,926 less was expended on personnel than budgeted, due to staff turnover.

NOTE 17 PROFESSIONAL INDEMNITY INSURANCE

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

STATEMENT OF SERVICE PERFORMANCE

for the year ended 30 June 2016

PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE PANEL

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

The end of year performance information for the Panel’s appropriations includes:

- (a) an assessment of what has been achieved with the appropriation in the financial year;
- (b) a comparison of the actual expenses or capital expenditure incurred in relation to the appropriation in the financial year with the expenses or capital expenditure that were appropriated or forecast to be incurred;¹⁷ and
- (c) the cost of service for each output class.

	2014/15		2015/16
	Budgeted Standard	Estimated Actual Standard	Budget Standard
Assessment of Performance			
Enforcement of Takeovers Code and of Schemes of Arrangement involving Code companies – Practitioners are satisfied overall with process and with professionalism of the Takeovers Panel executive.	90%	90%	90%

As shown on pages 35 to 39 below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

	2014/15		2015/16
	Budgeted Standard	Estimated Actual Standard	Budget Standard
Assessment of Performance			
Ensuring adequate funding is available from time to time for the Takeovers Panel to undertake civil proceedings under the Takeovers Act 1993 or in relation to the Takeovers Code, which is unpredictable in both occurrence and extent.	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the Output Agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the Output Agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the Output Agreement

As shown in the Panel’s financial statements, the Panel maintains a Litigation Fund to enable it to undertake civil proceedings under the Takeovers Act or Takeovers Code. No proceedings were required to be undertaken over 2015/2016.

¹⁷ See the Statement of Financial Performance on page 23.

OUTPUT 1: *Services for transactions under Takeovers Code:*

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

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

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

The Panel used its enforcement resources to:

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

Actual performance against planned performance standards and performance measures for 2015/2016

Performance Measures	Performance Standards			
	Forecast 2015/2016	Actual 2015/2016	Actual 2014/2015	Actual 2013/2014
Quantity ¹⁸				
Adviser applications received	22-26	23	19	21
Draft documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on this 'soft' enforcement ¹⁹	24 taking 80% of resources	19 taking 89% of resources	18 taking 87% of resources	17 taking 80% of resources
Final documents reviewed for Code-regulated transactions, and percentage of enforcement resources spent on review of final documents	24 taking 20% of resources	19 taking 11% of resources	18 taking 13% of resources	17 taking 20% of resources
Quality				
All adviser applications are considered by the Panel for advisers' competence and independence	100% of the time			
No failures by the Panel to comply with its own approval standards; as a result no adviser approvals being withdrawn by the Panel	0 failures, 0 withdrawals	0 failures, 0 withdrawals	0 failures, 0 withdrawals	0 failures, 0 withdrawals
The Regulations Review Committee does not recommend disallowance of any Panel exemptions	0 disallowed	0 disallowed	0 disallowed	0 disallowed
Applicants (exemptions and advisers) are satisfied with the Panel's process, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
Legal advisers (takeovers and shareholder meetings) are satisfied with the processes for the reviewing of draft meeting and takeover documents as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
No successful Court challenges as a result of the Panel failing to comply with its statutory obligations or proper process	0 challenges	0 challenges	0 challenges	0 challenges
Timeliness				
Decision made for adviser applications given by 3 working days after receipt of complete application	90% of the time	100% of the time	100% of the time	100% of the time

¹⁸ The number of applications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information.

¹⁹ The level of the Panel's overall resources spent on enforcement of the Code increases if the Panel holds a section 32 meeting (due to procedural intensity). This has a flow-on effect across all outputs, and within output 1 (as is evidenced by the percentage figures).

Performance Measures	Performance Standards			
	Forecast 2015/2016	Actual 2015/2016	Actual 2014/2015	Actual 2013/2014
Parties are satisfied with the timeliness of the Panel's decisions, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
All exemption applications (7-11 forecast) are processed within the timeframe agreed with the applicant	At least 90% of 7-11 applications	93% of 14 applications	100% of 8 applications	100% of 12 applications
Review of documents is completed within Code timeframes or as agreed by applicants	100% of the time	100% of the time	100% of the time	100% of the time
Revenue	\$875,140 49% of forecast revenue	\$981,761 54% of actual revenue	\$747,827 43% of actual revenue	\$697,590 41% of actual revenue
Cost:	\$845,250 49% of forecast expenditure	\$900,840 54% of actual expenditure	\$699,050 43% of actual expenditure	\$666,055 41% of actual expenditure

OUTPUT 2: Services under Companies Act for Code company schemes:

The Panel responds to notifications of schemes of arrangement being undertaken under the Companies Act that involve Code companies (Code company schemes), and considers applications for No-objection Statements. The Panel issues Letters of Intention and No-objection Statements in accordance with the Panel's published guidance and procedures.

The Panel used its Code company schemes resources to:

- Assess the quality of scheme documents for shareholders and the proposed voting procedures, as against its published policy for the giving of a No-objection Statement;
- Consider whether to give a No-objection Statement or whether to appear in the High Court to object to a Code company scheme.
- Engage with practitioners on their draft proposals for undertaking a Code company scheme;
- Approve independent advisers for Code company schemes.

Actual performance against planned performance standards and performance measures for 2015/2016:

Performance Measures	Performance Standards			
	Forecast 2015/2016	Actual 2015/2016	Actual 2014/2015	Actual 2013/2014
Quantity ²⁰				
Number of Code company schemes notifications received	1-3	2	0 ²¹	0
Quality				
Applicants are satisfied with process for No-objection Statements as indicated by an external survey	At least 90% of respondents	100% of respondents	N/A	N/A
Applicants are satisfied with the professionalism of the executive as indicated by an external survey	At least 90% of respondents	100% of respondents	N/A	N/A
Timeliness				
No-objection Statement applications are considered within timeframe agreed with the applicant	At least 90% of 1-3 applications	50% of 2 applications ²²	N/A	N/A
Letters of Intention are issued to applicant by 1 working day after Panel decision to give the Letter of Intention	At least 90% of 1-3 Letters of Intention	100% of 2 Letters of Intention	N/A	N/A
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	At least 90% of respondents	100% of respondents	N/A	N/A
No-objection Statements are issued to applicants by 1 working day after Panel decision to give the No-objection Statement	At least 90% of the time	100% of the time	N/A	N/A
Revenue:				
	\$71,440 4% of forecast revenue	\$199,988 11% of actual revenue	\$34,783 2% of actual revenue	\$0 0% of actual revenue
Cost:				
	\$69,000 4% of forecast expenditure	\$183,504 11% of actual expenditure	\$32,514 2% of actual expenditure	\$0 0% of actual revenue

²⁰ The number of notifications received is entirely market-driven. The inclusion of estimated quantities is to provide contextual information.

²¹ Although the Panel received no applications for a No-objection Statement, the Panel considered and responded to one Code company scheme that was caught by the Code company scheme requirements on one very minor aspect of the scheme proposal.

²² Agreed date for one of the two schemes was not met because the applicant provided the necessary documentation to the Panel after the date it had initially requested to be the agreed date.

OUTPUT 3: Review takeovers law and practice; Recommend any necessary law changes:

Ensuring that the provisions of the Takeovers Code and other takeovers law are effective and relevant, as assessed by review of law and practice, undertaking policy development (“policy projects”), and recommending amendments to takeovers law as necessary.

The Panel used its policy resources to monitor market practice and undertake policy activities that arose in response to market practices. Resources were also used to commence three policy projects: Technical Amendments to the Code, clause 8 class exemption review and Small Code Companies class exemption, and to commence and complete one policy project: Clause 23 class exemption review.

Actual performance against planned performance standards and performance measures for 2015/2016:

Performance Measures	Performance Standards			
	Forecast 2015/2016	Actual 2015/2016	Actual 2014/2015	Actual 2013/2014
Quantity 2 policy projects planned to be commenced, noting that other policy projects may arise in response to market practice	2 projects commenced	3 projects commenced 1 project completed	3 projects completed	4 projects completed
Quality Every material policy project meets the following criteria (as demonstrated by performance checklists): <ul style="list-style-type: none"> • Discussion papers followed the Regulatory Impact Analysis framework; • Panel approved content of discussion papers before their publication; • Consultation period was at least 6 weeks long; • Submissions from public were considered by the Panel; • Any non-regulatory outcomes were approved by Panel before implementing them; • Any recommendations for law change were approved by Panel before being sent to the Minister; Officials from MBIE were consulted before recommendations were sent to Minister	100% of the time	N/A	100% of the time	100% of the time
Timeliness Recommendations to the Minister (if any) sent to Ministry within 10 working days of Panel approval of the recommendations	100% of the time	N/A	N/A	100% of the time
Revenue (Funded by government grant and other income, except fees)	\$464,360 26% of forecast revenue	\$381,796 21% of actual revenue	\$539,131 31% of actual revenue	\$391,330 23% of actual revenue
Cost:	\$448,500 26% of forecast expenditure	\$350,327 21% of actual expenditure	\$503,966 31% of actual expenditure	\$373,640 23% of actual expenditure

OUTPUT 4: Public Understanding:

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

The Panel used its public understanding resources to:

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

Actual performance against planned performance standards and performance measures for 2015/2016:

Performance Measures	Performance Standards			
	Forecast 2015/2016	Actual 2015/2016	Actual 2014/2015	Actual 2013/2014
Quantity				
Number of:				
Code Words published	3	2	3	2
Public enquiries responded to	120-150	128	108	163
Engagements with stakeholders undertaken	70-80	22 individual 3 seminars ²³	2 ²⁴	27
Quality				
Market participants found documents published were useful, as indicated by an external survey	At least 90% of respondents	100% of respondents	100% of respondents	100% of respondents
Market participants found the website useful to a considerable or high degree, as indicated by an external survey	At least 90% of respondents	100% of respondents	91% of respondents	New measure for 2014/2015
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved	Achieved
Timeliness				
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	55% of the time ²⁵	100% of the time	92% of the time
Public enquiries are responded to within 3 working days of receiving them	100% of the time	99.22% of the time	100% of the time	100% of the time
Revenue: (Funded by government grant and other income except fees)	\$375,060 21% of forecast revenue	\$254,531 14% of actual revenue	\$417,392 24% of actual revenue	\$612,518 36% of actual revenue
Cost:	\$362,250 21% of forecast expenditure	\$233,551 14% of actual expenditure	\$390,167 24% of actual expenditure	\$584,827 36% of actual expenditure

²³ Three seminars were presented regarding the Panel's role for Code company schemes, attended by c.130 practitioners, regulators and other interested parties.

²⁴ In response to practitioner suggestions in late 2013/2014, the Panel decided, instead of undertaking a programme of one-to-one engagements, to engage with stakeholders via law firm-hosted functions, one held in Auckland on 20 October 2014, the other in Wellington on 30 June 2015. Approximately 40 stakeholders attended the Auckland function and 30 the Wellington function.

²⁵ Five of 11 documents for publication on the website did not meet the performance measure for timeliness. Of these, one was the 2014/2015 Annual Report which could not be published on the website until it had been tabled in the House, three were delayed due to the time it took to obtain final versions from external graphic designers, and one was temporarily put aside while the executive focused on transactions that required timely turnaround.

Independent Auditor's Report

To the readers of the Takeover Panel's financial statements and performance information for the year ended 30 June 2016

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

Opinion on the financial statements and the performance information

We have audited:

- the financial statements of the Panel on pages 23 to 33, that comprise the statement of financial position as at 30 June 2016, the statement of financial performance and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information; and
- the performance information of the Panel on pages 18 to 21 and 34 to 39.

In our opinion:

- the financial statements of the Panel:
 - present fairly, in all material respects:
 - its financial position as at 30 June 2016; and
 - its financial performance and cash flows for the year then ended; and
 - comply with generally accepted accounting practice in New Zealand and have been prepared in accordance with the Public Benefit Entity Simple Format Reporting Standard – Accrual (Public Sector).
- the performance information:
 - presents fairly, in all material respects, the Panel's performance for the year ended 30 June 2016, including:
 - for each class of reportable outputs:
 - its standards of performance achieved as compared with forecasts included in the statement of performance expectations for the financial year; and

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

Our audit was completed on 31 October 2016. This is the date at which our opinion is expressed.

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

Basis of opinion

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

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

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

An audit also involves evaluating:

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

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

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

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

Responsibilities of the members of the Panel

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

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

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

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

Responsibilities of the Auditor

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

Independence

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

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



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

Executive of the Takeovers Panel as at 30 June 2016

Margaret Bearsley, Chief Executive
Andrew Hudson, General Counsel
Rebecca McAllum, Lawyer
Joanna Lambert, Lawyer
Nicola Lawrence, Communications Officer/Lawyer
Stuart Peters, Law Clerk
Hilary Fleming, Accountant/Administrator
Gayle Steere, Office Manager

How to contact us

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