



HALF YEAR REPORT



For the period ended 31 December 2019



**TAKEOVERS
PANEL**

TE PAE WHITIMANA

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FINANCIAL REPORT

Status

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

Statement of responsibility

These financial statements have been prepared for the purpose of the 31 December 2019 Half Year Report of the Takeovers Panel to the Minister of Commerce and Consumer Affairs. They are not prepared for any other purpose and should not be relied upon for any other purpose. They should be read in conjunction with the 2019 Annual Report.

In the course of preparing these financial statements the Panel has complied with NZ GAAP. The budget of the Takeovers Panel for the year ending 30 June 2020 is included in these statements.

Summary of performance to date

Under the Panel's 2019/2020 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2020, to produce services related to the following outputs:

Output 1: Services for transactions under the Code

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

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

Output 4: Public understanding

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

Members and the executive committed 6,380 hours of time to Panel work in the six months, which was similar to the 6,092 committed in the equivalent period last year.

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

Output 1

The Panel reviewed documents for three Code-regulated transactions (i.e., for takeovers and shareholder meetings) (7). The Panel conducted one preliminary investigation into a possible breach of the Code (2) and commenced one formal investigation (0). There were no section 32 meetings held during the six months (0).

The Panel processed seven requests for approval of independent advisers during the six months (12). The Panel also processed two individual exemption applications for the six months (4) and approved one class exemption (0).

Output 2

The Panel reviewed one Code company scheme of arrangement and gave one no-objection statement in accordance with the procedure set out in its published guidance (2,1).

Output 3

The Panel's main focus for policy work related to working closely with the Ministry of Business, Innovation and Employment to implement the Panel's recommendations for amendments to the Code and the Takeovers Act. The Regulatory Systems (Economic Development) Amendment Act (No 2) 2018 received Royal assent on 13 November 2019 and took effect from 13 January 2020. That Act amends the Takeovers Code and the Takeovers Act, the key change being to introduce an income and asset threshold to the definition of unlisted Code company. The Panel continues to work with MBIE officials to advance the balance of the Panel's recommendations for amendments to the Takeovers Act.

In addition, the Panel, in response to the Capital Markets 2029 report, released in September 2019, carried out a policy review of rule 7(e) of the Code (the **creep rule**). The outcome of that review was that the Panel remained satisfied with the operation of the creep rule as it stands and no recommendations for reform were made.

Output 4

The Panel published two editions of its periodic news bulletin, *CodeWord*, and published four updated guidance notes.

Of the outputs listed above, Output 1 involved the greatest resource commitment of 48% by cost. Last year, Output 1 involved commitment of 55% by cost.

The Panel's financial position and outlook

The Panel's operating income, at \$821,465, was \$28,027 or approximately 3%, lower than budget, while operating expenditure for the six months, at \$807,161, was \$29,833 or approximately 4%, lower than budget. The Panel also earned interest income of \$9,658 on litigation fund deposits and incurred \$5,595 in litigation fund expenses.

The overall result for the Panel was made up of an operating surplus of \$14,304 for the six months and a surplus for the litigation fund of \$4,063. The Panel budgeted an operating surplus of \$12,498 and a surplus of \$8,498 in the litigation fund for the six months.

A summary of the figures to date is as follows:

	Period ended 31 Dec 2019 \$	Budget to 31 Dec 2019 \$	Period ended 31 Dec 2018 \$
Operating revenue	821,465	849,492	830,232
Operating expenditure	807,161	836,994	813,662
Operating surplus/(deficit)	14,304	12,498	16,570
Litigation revenue	9,658	8,498	26,813
Litigation expenditure	5,595	0	0
Litigation fund surplus/(deficit)	4,063	8,498	10,243
Net surplus/(deficit)	18,367	20,996	26,813

The following summarises the Panel's completed actions and the allocations of resources for the half year to 31 December 2019:

Quantity of Work	Actual 6 months to 31 Dec 2019	Actual 6 months to 31 Dec 2018	Actual 12 months to 30 Jun 2019	Budget 12 months to 30 Jun 2020
Services for transactions				
Adviser applications received	7	12	22	-*
Final documents received	3	7	18	-*
Section 32 meetings held	0	0	0	0
Services under Companies Act for Code company schemes				
Number of Code company scheme notifications received	1	2	4	3-5
Review takeovers law and practice				
Policy projects completed	1	0	1	2
Public understanding				
<i>CodeWord</i> published	2	1	2	2
Engagement with stakeholders per Stakeholder Engagement Plan	22 individual 1 seminar	16 individual 5 seminars	34 individual 10 seminars	30-40 4 seminars
Public enquiries responded to	34	56	95	80-100

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

Cost allocation

	Actual 6 months to 31 Dec 2019		Actual 6 months to 31 Dec 2018		Actual 12 months to 30 Jun 2019		Budget 12 months to 30 Jun 2020	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	390,123	48	468,940	55	772,050	46	847,000	50
Schemes	186,934	23	42,631	5	251,756	15	237,000	14
Law and Policy	65,020	8	51,157	6	100,702	6	170,000	10
Public understanding	170,679	21	289,890	34	553,862	33	441,000	26
Cost Allocation	812,756	100	852,618	100	1,678,370	100	1,695,000	100

> STATEMENT OF FINANCIAL PERFORMANCE

For the period ended 31 December 2019

Budget 12 months to 30 Jun 2020 \$	Budget 6 months to 31 Dec 2019 \$		Actual 6 months to 31 Dec 2019 \$	Actual 6 months to 31 Dec 2018 \$
		Revenue - operating		
		Notes		
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
24,000	12,000	Interest	15,152	13,590
181,000	90,492	Application fees and costs recoverable	59,313	93,417
1,699,000	849,492	Total operating revenue	821,465	854,007
		Revenue - litigation fund		
17,000	8,498	Interest	9,658	9,755
17,000	8,498	Total litigation fund revenue	9,658	9,755
1,716,000	857,990	Total revenue	831,123	863,762
		Operating expenditure		
757,000	366,994	Services and supplies	329,345	419,798
938,000	470,000	Personnel costs	477,816	432,820
1,695,000	836,994	Total operating expenditure	807,161	852,618
0	0	Expenditure – litigation fund	5,595	0
1,695,000	836,994	Total expenditure	812,756	852,618
21,000	20,996	Net surplus/(deficit)	18,367	11,144
		This is comprised of:		
4,000	12,498	Operating surplus /(deficit)	14,304	1,389
17,000	8,498	Litigation surplus /(deficit)	4,063	9,755
21,000	20,996		18,367	11,144

> STATEMENT OF FINANCIAL POSITION

As at 31 December 2019

Budget as at 30 Jun 2020 \$		Actual as at 31 Dec 2019 \$	Actual as at 31 Dec 2018 \$	Actual as at 30 Jun 2019 \$
	Current assets			
	Notes			
234,000	Bank accounts and cash – operations	152,871	173,578	143,991
122,000	Bank accounts and cash – litigation fund	118,616	122,145	122,204
870,000	Short term deposits – operations	941,116	809,528	924,111
602,000	Short term deposits – litigation fund	591,742	580,366	585,047
3,000	Interest receivable – operating	1,980	5,348	3,972
8,000	Interest receivable – litigation fund	10,341	2,372	7,441
72,000	Debtors and prepayments	68,916	82,725	98,658
1,911,000	Total current assets	1,885,582	1,776,062	1,885,424
	Non-current assets			
37,000	Property, plant and equipment	45,153	67,447	53,298
37,000	Total non-current assets	45,153	67,447	53,298
1,948,000	Total assets	1,930,735	1,843,509	1,938,722
	Current liabilities			
65,000	Creditors and accrued expenses	30,232	59,843	57,633
50,000	Employee costs payable	43,755	24,578	42,708
115,000	Total current liabilities	73,987	84,421	100,341
	Equity			
150,000	Capital contribution	150,000	150,000	150,000
951,000	Operating funds	987,993	904,205	973,689
732,000	Litigation fund	718,755	704,883	714,692
1,833,000	Total equity	1,856,748	1,759,088	1,838,381
1,948,000	Total equity and liabilities	1,930,735	1,843,509	1,938,722

> STATEMENT OF CASH FLOWS

For the period ended 31 December 2019

Budget 12 months to 30 Jun 2020 \$		Actual 6 months to 31 Dec 2019 \$	Actual 6 months to 31 Dec 2018 \$	Actual 12 months to 30 Jun 2019 \$
	Cash flows from operating activities			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
185,000	Application fees and costs recoverable	73,617	106,288	228,097
39,000	Interest	18,307	28,035	47,499
0	Other income	0	0	20,000
2,000	Goods and Services Tax (net)	2,946	4,917	790
	Cash was applied to:			
(510,000)	Suppliers	(238,295)	(326,116)	(607,033)
(1,132,000)	Employees and members	(567,654)	(544,759)	(1,076,880)
78,000	Net cash flows from operating activities	35,921	15,365	106,473
	Cash flows from investing and financing activities			
	Cash was applied to:			
(19,000)	Payments to acquire property, plant and equipment	(6,929)	(48,121)	(49,493)
(63,000)	Payments to purchase investments	(23,700)	(27,827)	(147,091)
(82,000)	Net cash flows from investing and financing activities	(30,629)	(75,948)	(196,584)
(4,000)	Net increase (decrease) in cash	5,292	(60,583)	(90,111)
360,000	Add opening cash	266,195	356,306	356,306
356,000	Closing cash	271,487	295,723	266,195

➤ NOTES TO THE FINANCIAL STATEMENTS

For the period ended 31 December 2019

Note 1 Statement of accounting policies

Reporting entity

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

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

Sources of funding

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

Basis of preparation

Statement of compliance

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

Basis of measurement

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

Functional and presentational currency

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

Use of estimates and judgements

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

Changes in accounting policy

There have been no changes in accounting policy in the 6 months since 30 June 2019.

Significant accounting policies

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

(a) Bank accounts and cash

Bank accounts and cash balances comprise cash on hand, held in cheque or savings accounts, and deposits held at call with banks that form part of the Panel's day-to-day cash management.

(b) Term deposits

This category includes all term deposits.

(c) Trade and other receivables

Debtors and other receivables are initially measured at the amount owed. Impairment is recorded when it is likely that the amount owed will not be collected, in which case the loss is recorded as a bad debt expense.

(d) GST

All items in financial statements are exclusive of GST with the exception of trade and other receivables and trade and other payables which are stated with GST included.

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of comprehensive income and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.

(e) Trade and other payables

Creditors and other payables are initially measured at the amount owing. If an invoice has not been received an accrual for an estimate of the amount to be paid will be recorded.

(f) Income tax

The Panel is exempt from income tax under the Income Tax Act 2007.

(g) Revenue recognition

The Government grant is recognised as revenue when earned and is reported in the financial period to which it relates. Revenue from application fees and costs recoverable is recognised when the relevant services are provided or when the Panel has made the relevant determination under section 32 of the Takeovers Act 1993.

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

(h) Litigation fund

Interest income and expenditure on approved litigation fund matters are reported as revenue and expenditure of the Panel in the financial period in which they were derived or incurred. Reimbursements from the Crown to top up the fund are reported as income in the period to which the Panel's claim for reimbursement relates. The balance of the fund is disclosed as a component of equity in the statement of financial position.

(i) Property, plant and equipment

Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses. The following classes of property, plant and equipment have been depreciated over their economic lives on the following basis:

Office furniture - 8.5 – 10.5 percent straight line

Office equipment - 17.5 – 40 percent straight line

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

Note 2 Budget figures

The budget figures are those approved by the Panel on 30 April 2019 and published in the Panel's Statement of Performance Expectations 2019/2020. The budget figures are prepared in accordance with NZ GAAP and are consistent with the accounting policies adopted by the Panel for the preparation of the interim financial statements.

Note 3 Litigation fund

The litigation fund is to be used for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or in respect of schemes of arrangement involving Code companies, or as it responds to litigation brought against it.

Parliament approved an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2020 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 to date.

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

	6 months to 31 Dec 2019 \$	6 months to 31 Dec 2018 \$	12 months to 30 June 2019 \$
Interest received	(683)	7,383	12,123
Interest accrued	10,341	2,372	7,441
Expenditure	(5,595)	0	0
Surplus /(deficit) for the year	4,063	9,755	19,564
Opening balance	714,692	695,128	695,128
Closing balance	718,755	704,883	714,692
This is comprised of:			
Cash and cash equivalents			
- Call account	118,616	122,145	122,204
- Short term deposits	591,743	580,366	585,047
Interest receivable	10,341	2,372	7,441
Payables	(2,420)	0	0
GST	476	0	0
Closing balance	718,755	704,883	714,692

Note 4 Accumulated funds

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

At 31 December 2018	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	902,816	1,389	904,205
Accumulated litigation surpluses/(deficits)	695,128	9,755	704,883
Total	1,747,944	11,144	1,759,088

Note 5 Budget variances

Significant variances from budget were:

Revenue

Revenue from application fees and costs recoverable was \$31,179 lower than budgeted. Revenue from each of schemes, adviser approvals and exemptions has been lower than expected with revenue from scheme applications and adviser approvals being \$24,689 lower than expected. This is because the Panel received fewer applications for approval than expected.

Expenditure

Total operating expenditure for the period was \$29,833 lower than budgeted with a number of differences in balances:

- (a) Members fees were \$11,115 below budget. This largely relates to lower than expected transactional work;
- (b) Consultants and legal costs were \$14,323 below budget, although several experts have been used in relation to an enforcement matter for which the litigation fund has been used. Litigation expenditure is consequently \$5,595 above budget; and
- (c) Training and memberships were \$24,616 lower than budgeted. This mostly relates to training budget and opportunities not yet taken.

Net operating surplus

The Panel recorded an operating surplus of \$14,304 when a surplus of \$12,498 had been expected. Recoveries from operational activities have been slightly lower than budgeted, but operational expenditure is also tracking slightly lower than budgeted.

> PROJECTED LEVEL OF OPERATION FOR THE REST OF THE FINANCIAL YEAR

Over the remainder of the financial year the Panel will continue to carry out its responsibilities for administration of the Code and reviewing schemes of arrangement involving Code companies. The level of Code-regulated and Companies Act-regulated schemes activity has been slower than the previous year, but activity post-31 December 2019 has increased to levels similar to last year. This level of corporate activity is expected to require ongoing Panel involvement in enforcement as well as approvals and exemptions.

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

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

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

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

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