



**TAKEOVERS
PANEL**
TE PAE WHITIMANA

G.62

TAKEOVERS PANEL

ANNUAL REPORT 2024



TE WHAKAWHITI MANA I RUNGA I TE TIKA

Transferring power and control
according to what is good and right



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

INTRODUCTION



REPORT OF THE CHAIR AND CHIEF EXECUTIVE

The Takeovers Panel is pleased to present its annual report for the 2023/2024 year.

Who we are

The Takeovers 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 Code is set out below in the section *About the Panel*.

Where we fit in

To improve outcomes for all New Zealanders, improve productivity, grow the economy and enable private enterprise, investors in New Zealand's capital markets need to be confident that the markets are well-regulated and that they have the right information in order to make their investment decisions.

The Panel and the Code play a key role by ensuring that investors in publicly listed and widely held companies are provided with appropriate and timely information to make informed decisions about changes in the control of those companies.

**“THROUGH ITS ROLE AS A REGULATOR
IN THE CAPITAL MARKETS, THE PANEL
CONTRIBUTES TO THE GOVERNMENT’S
HIGH-LEVEL ECONOMIC GOAL OF
BUILDING A PRODUCTIVE, SUSTAINABLE
AND EQUITABLE ECONOMY.”**

The integrity of New Zealand’s capital markets is supported by robust regulatory systems, the ethical standards of market participants, and by the agencies that regulate them. Key regulators in New Zealand’s capital markets are the Financial Markets Authority, NZX RegCo Limited, the Commerce Commission and the Takeovers Panel. 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 regulated transactions occur in an appropriate and transparent fashion.

Through its role as a regulator in the capital markets, the Panel contributes to the Government’s high-level economic goal of building a productive, sustainable and equitable economy.



Our strategic goals

Contributing to the outcome of transparent and equitable takeovers processes

The Panel plays an important role in strengthening the integrity of the capital markets because it regulates changes of control in publicly listed and widely held companies, known as “Code companies”.¹

This activity is subject to the Takeovers Code or is subject to the Panel’s oversight in a scheme of arrangement under the Companies Act 1993 when it involves a person increasing their voting control in a Code company to more than 20% of the company’s total voting rights.²

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

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

The Panel contributes to these outcomes by providing services aimed at ensuring that Code-regulated transactions and schemes of arrangement under the Companies Act involving Code companies are conducted in a way that is transparent and equitable. The Panel’s Statement of Performance, on pages 53 to 63, sets out the services that the Panel provided over the year.

1. A Code company is a New Zealand registered company that –
 - has quoted voting securities (e.g., ordinary shares) on a licensed 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 and has either:
 - › total assets of at least \$30 million at the end of the most recent accounting period; or
 - › total revenue of at least \$15 million in the most recent accounting period.
2. 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 more than 20% (taking into account also the percentage held or controlled by any associates), or if they already have more than 20%, cannot increase at all, unless they use one of the Code’s mechanisms set out in rule 7 or carry out a scheme of arrangement in accordance with section 236A of the Companies Act 1993.

Making an impact

Enforcing the Takeovers Code and ensuring schemes of arrangement are conducted in a fair and transparent manner is the Panel's primary focus. Code-regulated transactions and schemes of arrangement that involve Code companies are actively monitored by the Panel executive.

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

- compliance with the Code and compliance with the Panel's guidance for seeking a no-objection statement for schemes of arrangement
- takeovers law is efficient for parties to transactions and for shareholders
- shareholders, acquirers, and their advisers are well informed about the role of the Code and of the Panel

A significant part of the Panel's enforcement resources goes to the review of Code-regulated documents and schemes of arrangement documents while they are still in draft. This review process aims to achieve resolution of potential non-compliance before it arises. This improves efficiency and ensures appropriate disclosure for investors in Code companies.

The Panel's other key roles of improving public understanding of takeovers law and of undertaking policy development are 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. Policy and public education functions are important but ensuring that all transactions are dealt with promptly takes priority. In terms of the Panel's performance framework on page 34, these activities are depicted under the respective impacts of enforcement, efficiency and knowledge.

Achievements for the reporting year

Enforcement

There were seven Code-regulated transactions during the 2023/2024 year, compared with six Code-regulated transactions in the 2022/2023 year. These transactions were all shareholder meetings to approve allotments or acquisitions of voting rights in accordance with the Code.

In addition, there were two Code company transactions structured as schemes of arrangement under the Companies Act. Together with the Code-regulated transactions, the Panel monitored a total of nine transactions (compared with eight in 2022/2023).

The Panel has previously noted an increase in scheme-related activity relative to the number of takeovers under the Code following the implementation of the Code company schemes provisions in the Companies Act in 2014. The trend has continued this year. The greater flexibility of the regulatory requirements for schemes of arrangement, as compared with more prescriptive rules under the Code, and greater certainty afforded by the 'all or nothing' shareholder approval procedure, has seen Code company schemes used more frequently for large and complex transactions.

The Panel's role in schemes is principally to ensure that the Code company's shareholders receive a level of disclosure equal to that which they would have received in a takeover regulated by the Code and to determine appropriate interest classes for shareholders voting on schemes. Early engagement with the Panel executive was integral to helping applicants meet the standards of disclosure required by the Panel for Code company schemes.³

3. 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.

**“ALL FOUR INVESTIGATIONS WE
CONDUCTED IN 2023/24 WERE
CONCLUDED WITHOUT THE NEED FOR
FORMAL ENFORCEMENT PROCEEDINGS.”**

The Panel’s other enforcement work during the 2023/2024 year included conducting preliminary investigations. The Panel concluded four investigations (four in 2022/2023). All the investigations were concluded without the need for formal enforcement proceedings (in the previous period there were no enforcement hearings under section 32 of the Takeovers Act).

Finally, the Panel continued to work with other capital markets regulators, including NZX RegCo and the Financial Markets Authority. The Panel has a Memorandum of Understanding with NZX Limited and NZX Regulation Limited, and with the Financial Markets Authority to facilitate the exchange of information and to improve the coordination of capital markets regulation.

Efficiency – policy work and exemptions

In April 2022, the Panel made a number of recommendations for law reform relating to the Takeovers Act and the Takeovers Code, as well as other legislation related to New Zealand’s capital markets.

The recommendations included proposed amendments to the ‘12 month look back’ in the definition of ‘Code company’, to remove the look back for listed companies that are taken private and de-listed, and to apply the look back to some unlisted Code companies. The Panel also recommended amendments to provide increased disclosure and certainty around payment of consideration in takeovers and schemes of arrangement as well as a number of technical amendments intended to increase certainty and efficiency for the market.

The Panel continued its broad review of the operation of schemes of arrangement. The Panel published updated guidance to the market in November 2023 and made further additions to that guidance, post balance date, in July 2024.

“OUR INTERACTIONS WITH MARKET PARTICIPANTS HELP US TO IDENTIFY CURRENT ISSUES AND PROVIDE DIFFERENT PERSPECTIVES ON THEM.”

The Panel published two consultation papers in September 2023. The first paper considered a number of law reform proposals that would better align the operation of schemes of arrangement and the Takeovers Code. The second paper considered potential law reform to address how ‘deal protection devices’⁴ operate in schemes of arrangement and in Code-regulated transactions.

Following these two consultation processes, in July 2024, post-balance date, the Panel made recommendations for law reform to better align the operation of the schemes of arrangement with the Takeovers Code and to restrict the operation of deal protection devices.

Knowledge – public education work

The Panel prepares a Stakeholder Engagement Plan each year to ensure it takes a planned approach to engaging with stakeholders to inform and educate them about the Code and the role of the Panel. The Panel continued to focus on increasing awareness and understanding of the Code among stakeholders.

The Chief Executive and General Counsel met individually with interested market participants, including key persons from corporate law firms and independent advisers who regularly carry out Code work, to provide information about the Panel and changes to the Code, and to receive feedback for the Panel. The Panel benefits from these interactions as market participants help it to identify current issues and provide different perspectives on them.

4. Deal protection devices are obligations that, in a scheme or Code offer, restrict the target’s ability to engage with competing offerors and/or impose consequences on a party for not complying with that obligation or otherwise not proceeding with the transaction.



The Panel also promotes public understanding by presenting information about the Code and schemes transactions to wider audiences.

The Panel's relationships with other regulators, including the NZX/NZX RegCo, the Financial Markets Authority and the Commerce Commission, are strong. Panel staff regularly meet with NZX staff and hold wider team meetings and exchanges of presentations. Panel staff meet with Financial Markets Authority and the Commerce Commission staff as needed.

The Panel continued to invite stakeholders to attend a portion of its board meetings for informal discussions and to allow for direct stakeholder feedback to Panel members.

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 provided mostly 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 \$200,603 for its chargeable activities (\$128,648 in 2022/2023).

The Panel maintains robust controls on spending and a strong focus on internal efficiency with the aim of maintaining a break-even position on its operating expenditure. However, the Panel's third-party fees can vary from year to year. This year, the Panel operated with a small deficit.

The Panel has commenced work on a review of the fees it charges for certain activities. There have been minimal changes to the funding structure of the Panel for over a decade. Potential changes to the fees charged by the Panel may, if implemented, increase the income the Panel receives for its chargeable work.



Resources

The Panel used less resource than had been forecast on transactional work (50% of resource forecast, 41% expended). This was primarily because of the small number of transactions and the significant resource expended on policy projects. Resource used for processing Code company schemes was above budget (8% forecast, 16% expended) and the Panel expended significantly more resource than forecast on policy projects (29% forecast, 36% expended). This was because the law reform recommendations project and the review of schemes of arrangement were complex in nature.

Outputs

Utilising its income and resources, over the 2023/2024 financial year the Panel provided the outputs described in the Statement of Performance on pages 53 to 63.

Cost effectiveness of the Panel

Impacts and outcomes

The Panel's work contributes to the following outcomes:

- reducing transaction costs for 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 Code. The Panel's progress on these strategic aims is described under the section on pages 33 to 40, *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 the Panel's online survey

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

Over the 2023/2024 year, the Panel sent 27 survey requests (25 in 2022/2023). Each request was sent shortly after the practitioner's or adviser's involvement with the Panel reached its conclusion. The Panel received 17 responses, which is a response rate of 63% (60% response rate in 2022/2023). The responses continued to indicate a high level of satisfaction with the Panel's work. 100% of respondents were satisfied with the Panel executive's processes and professionalism (100% in 2022/2023). All respondents found the Panel's publications overall to be useful (100% in 2022/2023).

5. Data based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.

Summary of Online Survey Results⁵ 2020 – 2024 Year to 30 June

100%

Overall satisfied with
Panel's publications

100%

Overall satisfied with processes
and professionalism

100%

Overall satisfied with timeliness
of processing applications

Our people

Panel members

The Panel comprises 10 members who are required to be qualified or experienced in business, law or accounting. Usually, 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 Australian appointee, Richard Hunt left the Panel in April 2024. The new Australian appointee joined the Panel post-balance date. The Chair of the New Zealand Takeovers Panel sits as a member of the Australian Takeovers Panel under the same arrangement.

The Panel acknowledges and thanks departing Panel member, Richard Hunt who, as the Australian appointee, has provided a vital link to the Australian Takeovers Panel and provided expert insight into developments in equity capital markets in Australia over the last 10 years.

Executive team

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

Acknowledgements

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

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



Carl Blanchard
Chair



Andrew Hudson
Chief Executive

MEMBERS OF THE TAKEOVERS PANEL AS AT 30 JUNE 2024



Chair – Carl Blanchard

Partner, Infrastructure and Mergers and Acquisitions at PwC New Zealand. Former Head of Direct Investments at the Accident Compensation Corporation. Appointed to the Panel in 2011.



Deputy Chair – Anna Buchly

Partner at Bell Gully, specialising in mergers, acquisitions, capital markets and joint ventures, with international experience advising clients in Dubai and Sydney. Appointed to the Panel in 2019.



Rachel Dunne

Partner at law firm Chapman Tripp. Ms Dunne specialises in corporate and securities law with expertise in equity capital markets, mergers and acquisitions and corporate governance. Appointed to the Panel in 2023.



Megan Glen

Director of Investment Banking at Forsyth Barr, previously Director at Ascentro Capital Partners. Former portfolio manager at the NZ Super Fund and investment banker in New York and New Zealand with experience in merger and acquisition transactions and securities offerings. Appointed to the Panel in 2019.



David Goatley

Corporate advisor with significant New Zealand and international transaction experience across takeovers, mergers and acquisitions, financing including equity capital markets and corporate restructuring. Mr Goatley was also a former New Zealand-based Managing Director with a global investment bank. Appointed to the Panel in 2023.



Sam Inglis

Chief Operating Officer at Ngāi Tahu Holdings, having been the General Manager Investment for a number of years. Mr Inglis joined Ngāi Tahu from the New Zealand Superannuation Fund, where he was primarily in the International Direct Investment Team, and also previously worked at the New Zealand Treasury. Appointed to the Panel in 2023.



Sacha Judd

Chief Executive Officer, Hoku Group. Former Partner at Buddle Findlay, specialising in corporate and securities law, and takeovers. Appointed to the Panel in 2015.



Silvana Schenone

Managing Director and Co-Head of Investment Banking at Jarden, specialising in mergers and acquisitions and equity capital markets. Former partner and head of corporate division at MinterEllisonRuddWatts. Extensive experience advising on corporate transactions in Chile, New York and New Zealand. Appointed to the Panel in 2016.



Nathanael Starrenburg

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



Martin Stearne

Corporate consultant, member of NZX Listing sub-committee and investment committee of Impact Enterprise Fund. Former investment banker with experience in equity capital markets and takeovers. Director of Argosy Property. Appointed to the Panel in 2019.

GOVERNANCE AND DISCLOSURES



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 2004. The Panel has six board meetings a year. All Panel members work part-time for the Panel. They receive an annual governance fee and are also paid at an hourly rate for ad hoc work, such as enforcement meetings or meetings to consider potential exemptions from the Code. These rates are set 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

The Panel has an Audit and Risk Committee, chaired by Megan Glen. The other two members are Carl Blanchard and Martin Stearne. The Committee reviews and makes recommendations to the full Panel about the Panel's external reporting documents, financial forecasts and budgets, and risk management planning.

The Panel also has a Human Resources and Remuneration Committee, chaired by Anna Buchly. The other two members are Carl Blanchard and Silvana Schenone. The Committee reviews and makes recommendations to the full Panel about remuneration policy and the Panel's Workplace Bullying and Harassment Policy, monitors the performance of the Chief Executive, reviews and makes recommendations about the remuneration of the Chief Executive, and ensures that appropriate professional development and succession plans are in place.



From 1 April 2024, the Panel established a Legislative Amendment and Capital Markets Reform Committee to support the Panel to progress the capital markets reform objectives of the Minister of Commerce and Consumer Affairs (as set out in the Panel's Statement of Performance Expectations). The Committee is tasked with assisting the progression of legislative reform matters outside of regular Panel meetings, along with matters relating to broader capital markets reform.

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.

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 Chair 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 committee meetings over the 2023/2024 year was as follows:

Member	Panel meetings (6)	Division meetings (13)	Audit and Risk Committee (5)	Human Resources Committee (2)	Capital Markets Reform Committee (1)
Carl Blanchard	6	6	5	2	1
Anna Buchly	5	12		2	1
Rachel Dunne	5	3			1
Megan Glen	6	4	5		
David Goatley	6	2			
Richard Hunt*	4	0			
Sam Inglis	6	5			
Sacha Judd	5	5			
Silvana Schenone	5	0		2	
Nathanael Starrenburg	6	7			
Martin Stearne	6	3	5		1

*Richard Hunt left the Panel on 30 April 2024

Board Members' Remuneration

Members are remunerated on the basis of time spent on the work of the Panel, including time spent on Panel division and committee meetings. The Panel has a professional indemnity insurance policy to provide cover for members and employees of the Panel.

	2024	2023
Members' Fees:		
C.G. Blanchard	25,129	29,951
A.E. Buchly	28,679	25,951
R.M. Dunne	14,609	-
M.D. Glen	17,095	19,817
S.M. Horner (Member until 6 June 2023)	-	17,223
D.M. Goatley	17,352	334
R.A. Hunt (Member until 30 April 2024)	16,460	16,320
S.B. Inglis	15,947	-
S.H. Judd	18,132	18,327
A.G. Pigou (Member until 6 June 2023)	-	19,629
S.G. Schenone	14,083	17,625
N.W. Starrenburg	20,518	17,881
M.W. Stearne	16,790	18,327
Total Members' Fees:	204,794	201,385

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, 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 inquiry, or as a corporate representative of a company that is the subject of an inquiry, the member is not permitted to appear before the Panel. Alternative representation must be sought.

Delegations

In 2019, the Panel delegated authority to the Chief Executive to approve the issue of no-objection statements in respect of schemes of arrangement for applications that involve immaterial changes in voting control (as defined by the delegation).

In June 2020, a further delegation was made to the Chief Executive to approve the issue of no-objection statements in respect of straightforward schemes. The delegation is in respect of schemes for which the Panel has issued a letter of intention, where there have been no changes to the terms of the relevant scheme in any material respect, no changes to the disclosure provided to shareholders (other than immaterial consequential changes), and no changes to the composition of interest classes or any other relevant matters.

In 2011, the Panel delegated authority to the Chair and Chief Executive to accept on behalf of the Panel enforceable undertakings given to the Panel under section 31T of the Takeovers Act.

In 2009, the Panel delegated authority to the Chief Executive to approve independent advisers under the Code for applications that are ‘straightforward’ (as defined by the delegation). This authority was updated and re-delegated in April 2016 to extend to straightforward adviser applications for Code company schemes.

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.

No invalid acts

There were no acts of the Panel during the year that were invalid under section 19 of the Crown Entities Act. Accordingly, there were no Panel transactions that were invalid, but enforced in reliance on section 20 of that Act.

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:

	2024	2023
\$270,000 – \$279,999	1	1
\$210,000 – \$219,999	1	1
\$100,000 – \$109,999	-	1
	2	3



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 seven employees, equating to 7 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 and 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. The Panel seeks a diverse range of candidates when hiring staff, and diversity can be a positive element a candidate brings to the Panel.

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 ensures all employees 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 by design. All staff can utilise remote access for their work computers to work remotely as needed. This accommodates family and personal needs and also contributes to the Panel's business continuity resilience.

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 Panel does not calculate a gender or ethnicity pay gap. A median pay level for an entity the size of the Panel is not a meaningful measurement and can risk breaching the privacy of individuals. The Panel can and does ensure that new lawyers start on the same pay based on private and public sector market rates and allows flexible work for all employees.

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 and inclusive work environment. 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 US



ABOUT THE PANEL

The Takeovers Code came into force on 1 July 2001.

Functions and powers

The main functions and powers of the Panel are set out in the Takeovers Act 1993. 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 1993 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, 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 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, and benefit from, transparent rules.



The Panel and the Code ensure transparent and equitable takeovers 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, and the advice that shareholders are given by the Code company's directors and by an independent adviser.

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

The Panel focuses a significant proportion of its resources on ensuring that the Code is complied with by investors in Code companies and by Code companies themselves. But compliance is not limited to these parties. Rule 64 of the Code, the 'truth in takeovers' rule that prohibits misleading or deceptive conduct in relation to Code-regulated transactions, applies to every person, including financial advisers and the media.

The Panel has strong enforcement powers under the Takeovers Act, including the power (under section 32 of the Act) to hold hearings, take evidence under oath and 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 can take action through the High Court to obtain permanent orders.

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.

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

The Panel's approach facilitates integrity in the takeovers market

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

Following amendments to the Companies Act in 2014 relating to Code company schemes, the Panel began monitoring different types of transactions structured as schemes of arrangement. Since 2014, the Panel has developed its guidance on Code company schemes with the aim of maintaining the flexibility of schemes, but to also ensure that shareholders have appropriate information, that interest classes are appropriately identified, and that other protections available to shareholders in schemes are appropriate.

The Panel's published material, together with the informal assistance that is regularly offered to practitioners by the Panel executive, and the Panel's reputation as a decisive regulator, have all combined to create an environment that reduces the Panel's need to hold formal enforcement hearings.

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 remedied in accordance with Panel policy (usually requiring a prompt sale of the shares acquired in breach and in some cases, for listed companies, an announcement to the market).

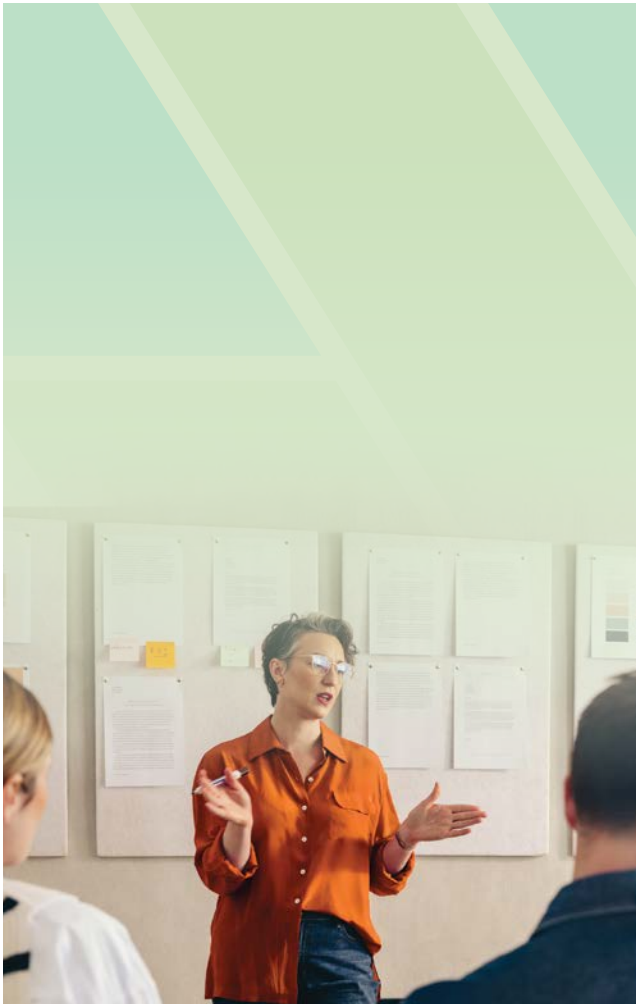
Section 32 meetings can be expensive. The Panel's full costs for holding them have in the past been in the order of \$250,000, and the costs could be higher depending on the complexity of the matter and the number of witnesses. In the New Image section 32 meeting, the Panel's full costs exceeded \$400,000. The parties' own costs could be as much as the Panel's.

The graph on page 39 shows the number of section 32 meetings that have been held since the Code came into force.

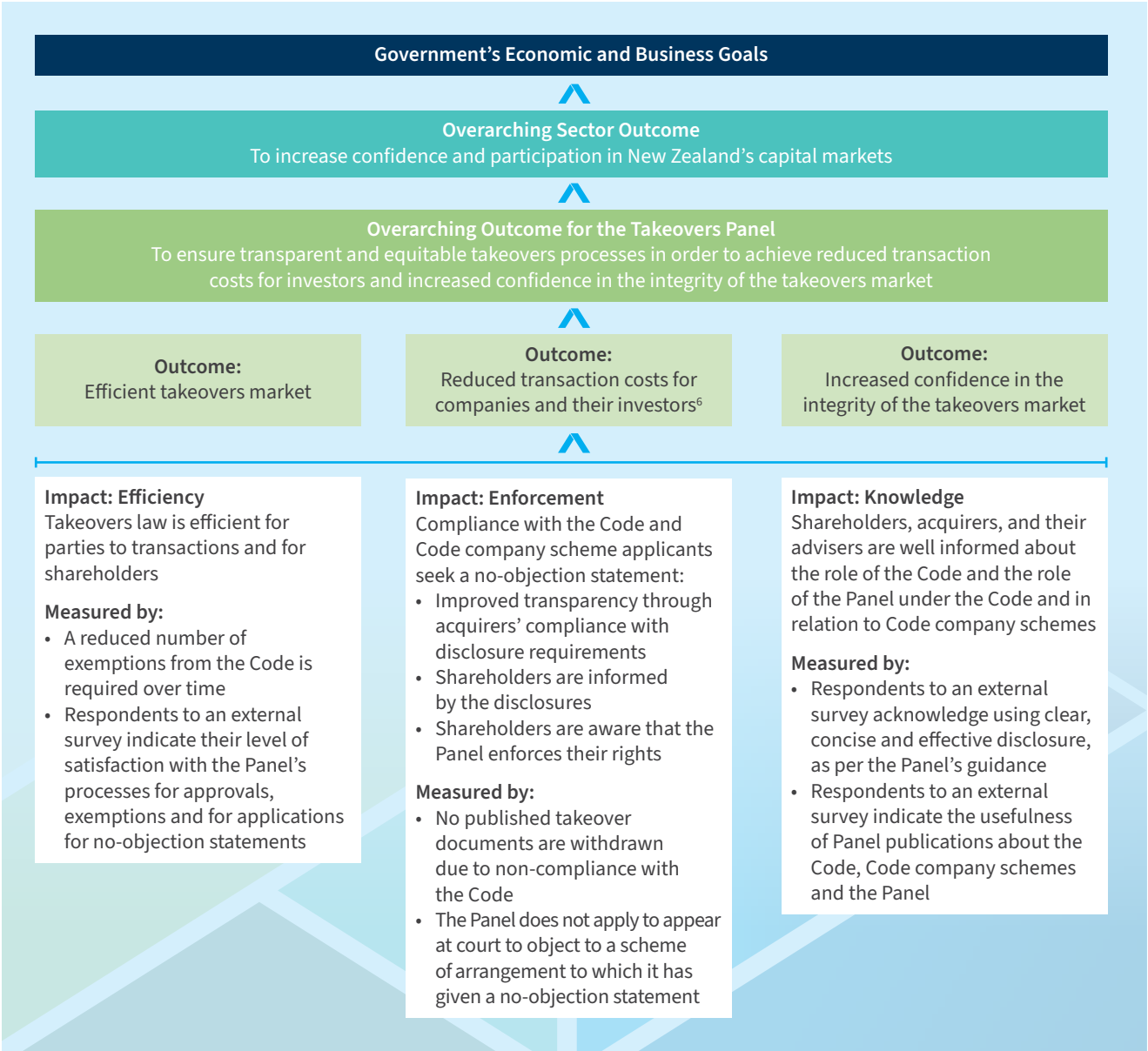
PERFORMANCE



MEASURING THE PANEL'S PERFORMANCE



In the Panel's Statement of Intent for the period 1 July 2023 – 30 June 2027, 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 on the following page.



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

Efficiency impact

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

The Panel measures the achievement of the efficiency impact in two ways. The first is 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 the application of the Code to market practice. 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.⁷

The increased use of schemes of arrangement as a transaction structure has also reduced the number of exemptions granted by the Panel. Schemes are a flexible transaction structure carried out under the Companies Act, often for more complex transactions, and, because the Code does not apply to schemes of arrangement, the transactions do not require exemption relief from the rules of the Code.

Although there will be some volatility relating to market specific or transaction specific circumstances (as evidenced in the 2010 and 2017 years in the graph on page 37), the granting in 2010 of the class exemption from rule 7(d) and rule 16(b) and the increased use of schemes of arrangement since 2015 have tended to reduce the number of exemptions and exemption notices.⁸

7. For the purposes of measuring the impact, exemptions to amend previously granted exemptions are not counted.

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

“THE INCREASED USE OF SCHEMES OF ARRANGEMENT HAS REDUCED THE NUMBER OF EXEMPTIONS GRANTED.”

The volatility in the number of exemptions granted arises because an application for exemption can cover several different aspects of a transaction that require exemptions from the Code and can be required for any number of applicants. It is relatively common for the Panel to grant exemptions from several rules and to several persons in response to an application.⁹

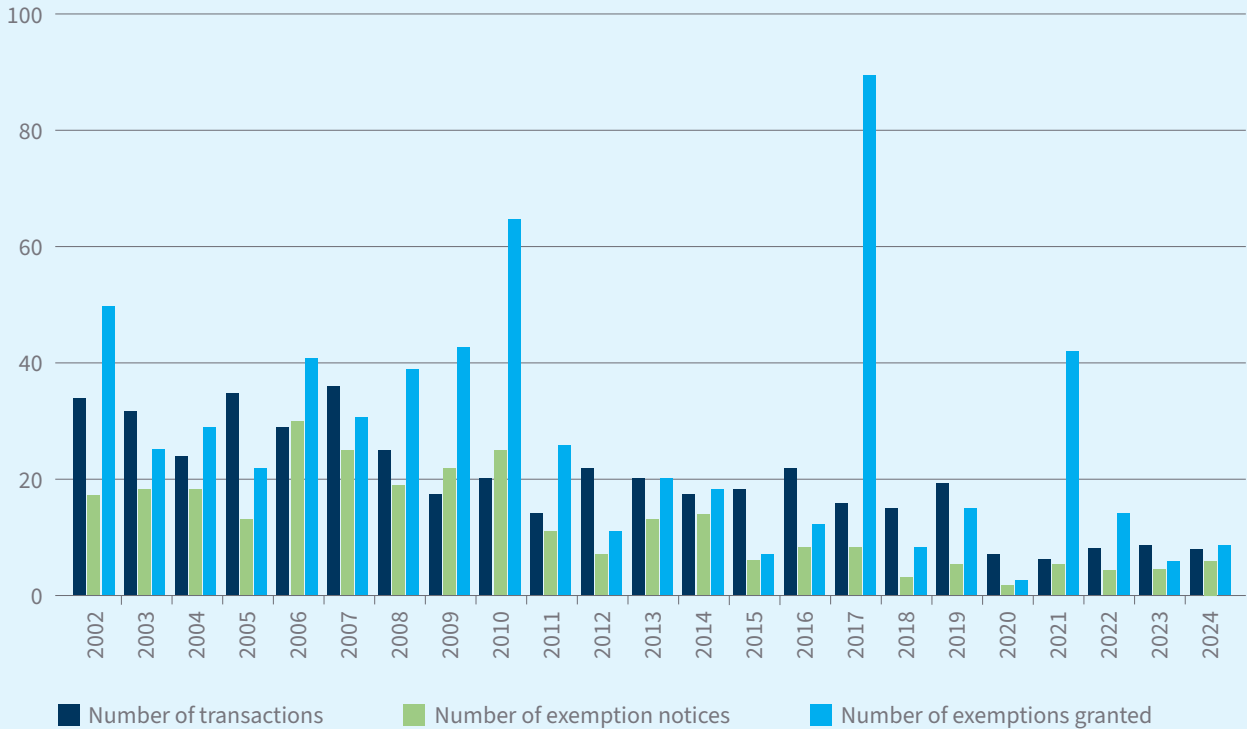
Multiple exemptions granted to multiple persons are then reflected in an exemption notice which gives effect to the Panel’s decision to grant the exemptions. For these reasons, the graph shows fewer exemption notices than the number of exemptions granted.

Although each exemption related to unique circumstances, the Panel will continue to examine law reform and class exemption opportunities to reduce the need for individual exemptions and to increase the efficiency of the Code.

A second measure of the Panel’s efficiency is the level of satisfaction of advisers and other people who engage with the Panel on Code exemption applications and on no-objection statement applications for Code company schemes. The data on page 13 show that the Panel’s processes and professionalism are rated highly by stakeholders who complete the Panel’s online survey.

9. For example, in 2017, a single exemption application resulted in an exemption for 81 applicants who had each potentially inadvertently breached a rule of the Code. The result was a very high number of exemptions granted in comparison to the number of exemption notices.

Number of exemptions granted to 30 June



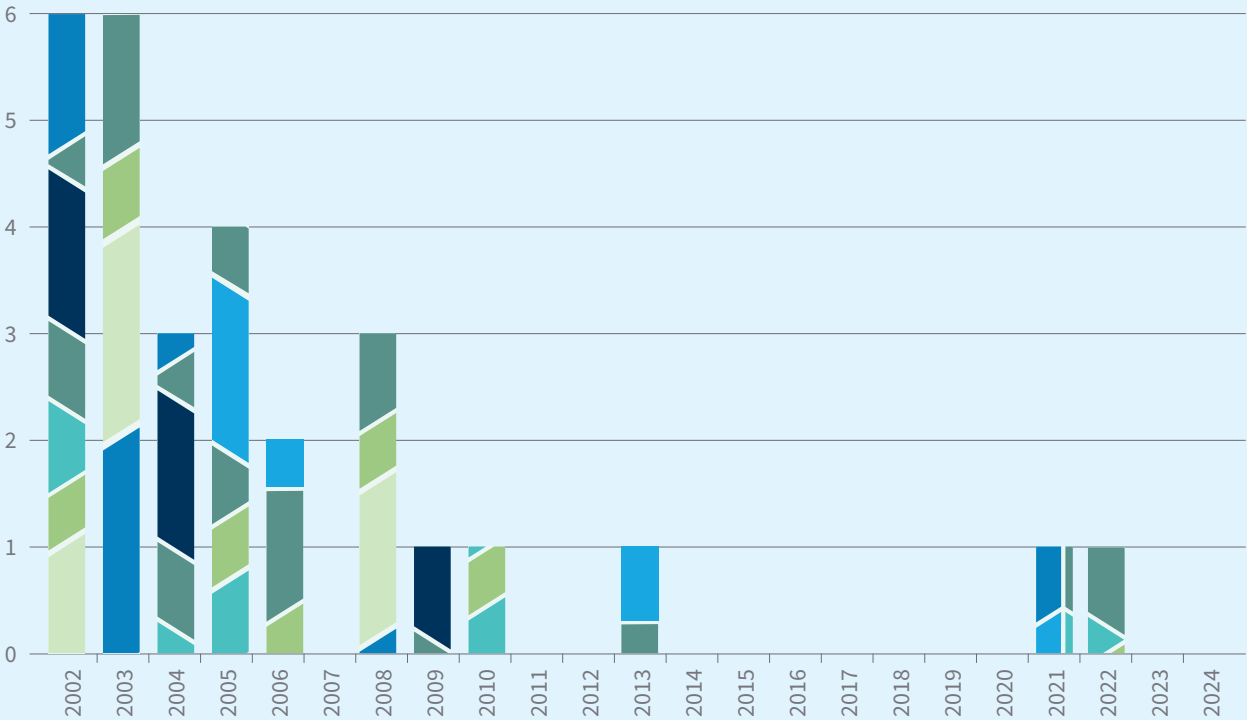
Enforcement impact

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 executive reviewing Code-related documents in draft and giving informal assistance on how to comply with the Code.

This practice, which began around 2005, has contributed to the reduction in formal hearing processes (see the graph on the following page). From 2015, the Panel extended this practice to applications for no-objection statements in respect of schemes of arrangement under Part 15 of the Companies Act 1993. The Panel aims for 100% compliance with the Code and with the Panel's guidance on schemes of arrangement so that shareholders, especially small shareholders, are protected from unfair practices and all shareholders have a transparent and appropriate process under which they make decisions about Code-regulated transactions.

The Panel measures the achievement of this impact in two ways. First, by there being no Code-regulated documents required to be withdrawn under a section 32 enforcement action, due to non-compliance with the Code. And secondly, by there being no scheme of arrangement for which the Panel had to object to at court where the scheme had received a no-objection statement from the Panel. In 2023/2024, no Code-regulated documents were required to be withdrawn due to non-compliance with the Code and the Panel did not appear at court to object to any scheme of arrangement that had received a no-objection statement from the Panel.

Number of section 32 meetings



“IN 2023/2024, 100% OF THE PANEL’S RESPONDENTS ACKNOWLEDGED APPLYING THE PANEL’S GUIDANCE TO USE CLEAR, CONCISE AND EFFECTIVE DISCLOSURE.”

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 *CodeWord* to communicate 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 giving presentations are other methods used by the Panel to raise awareness 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.

The first measure relates to the Panel’s processes that are aimed at ensuring that Code companies and their advisers use clear, concise and effective disclosure when providing information to shareholders.

In 2023/2024, 100% of the Panel’s respondents acknowledged applying the Panel’s guidance to use clear, concise and effective disclosure.

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 online survey indicate that they find the Panel’s publications useful. In 2023/2024, 100% of the Panel’s stakeholders indicated the Panel’s publications were useful.

FINANCIALS



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 2024 and the operations of the Takeovers Panel for the year ended 30 June 2024.

This annual report was approved by the Panel on 30 October 2024.

Signed on behalf of the Panel by:



Carl Blanchard
Chair
Takeovers Panel
30 October 2024



Megan Glen
Chair
Audit and Risk Committee
30 October 2024

STATEMENT OF FINANCIAL PERFORMANCE

For the year ended 30 June 2024

	Notes	2024	2023	Budget for 2024
Revenue – operating				
Government grant baseline funding		1,494,000	1,494,000	1,494,000
Application fees and costs recoverable	4	200,603	128,645	91,000
Other revenue		28,616	-	-
Interest Income		64,891	38,728	50,000
Total revenue – operating		1,788,110	1,661,373	1,635,000
Revenue – litigation				
Interest		41,555	19,034	14,000
Other revenue		-	7,809	-
Total revenue – litigation		41,555	26,843	14,000
Total revenue		1,829,665	1,688,216	1,649,000
Operating expenditure				
Services and supplies	5	826,524	729,404	758,000
Personnel costs	6	992,358	997,466	1,014,000
Total operating expenditure		1,818,882	1,726,870	1,772,000
Expenditure – litigation fund				
Experts – litigation		25,724	24,764	-
Total expenditure		1,844,606	1,751,634	1,772,000
Net surplus/(deficit)		(14,941)	(63,418)	(123,000)
This is comprised of:				
Operating surplus/(deficit)		(30,772)	(65,497)	(137,000)
Litigation surplus/(deficit)		15,831	2,079	14,000
Total		(14,941)	(63,418)	(123,000)

Explanations of major variances against the budget are provided in Note 16. The accompanying notes form part of these financial statements.

*Budgeted figures are unaudited.

STATEMENT OF FINANCIAL POSITION

As at 30 June 2024

	Notes	30 Jun 2024	30 Jun 2023	Budget as at 30 June 2024
Assets				
Current assets				
Bank accounts – operations		300,546	325,384	82,000
Bank accounts – litigation	3	147,976	285,675	469,000
Short term deposits – operations		1,060,592	1,003,972	1,055,000
Short term deposits – litigation	3	604,212	571,846	283,000
Interest receivable – operations		12,481	9,308	5,000
Interest receivable – litigation	3	6,274	4,620	2,000
Debtors and prepayments	7	129,008	113,359	124,000
Total Current assets		2,261,090	2,314,164	2,020,000
Non-current assets				
Property, plant and equipment	9	55,804	73,463	42,000
Total non-current assets		55,804	73,463	42,000
Total assets		2,316,894	2,387,627	2,062,000
Liabilities				
Current liabilities				
Creditors and accrued expenses	8	77,242	105,017	116,000
Employee entitlements		70,477	98,494	71,000
Total current liabilities		147,719	203,511	187,000
Total liabilities		147,719	203,511	187,000
Equity				
Capital contribution		150,000	150,000	150,000
Operating fund		1,136,437	1,167,209	971,000
Litigation fund		882,738	866,907	754,000
Total equity	3	2,169,175	2,184,116	1,875,000
Total liabilities and equity		2,316,894	2,387,627	2,062,000

Explanations of major variances against the budget are provided in Note 16. The accompanying notes form part of these financial statements.

*Budgeted figures are unaudited.

STATEMENT OF CASH FLOWS

For the year ended 30 June 2024

	2024	2023	Budget for 2024
Cash flow			
Cash flows from operating activities			
<i>Cash was received from:</i>			
Government grant – operations	1,494,000	1,494,000	1,494,000
Application fees & costs recoverable	130,947	209,664	88,261
Interest	101,619	47,297	56,928
Court costs recovered	-	192,551	-
Other income	28,615	-	-
GST	17,589	4,125	-
<i>Cash was applied to:</i>			
Suppliers	(617,877)	(578,475)	(510,841)
Employees and members	(1,225,169)	(1,199,321)	(1,261,494)
GST	-	-	(5,977)
Net cash flows from operating activities	(70,276)	169,841	(139,124)
Cash flows from investing and financing activities			
<i>Cash was received from:</i>			
Receipts from sale of property, plant and equipment	985	-	8,173
<i>Cash was applied to:</i>			
Payments to purchase investments	(88,987)	(334,141)	(312,182)
Payments to acquire property, plant and equipment	(4,259)	(37,557)	-
Total cash flows from investing and financing activities	(92,261)	(371,698)	(304,009)
Net increase/(decrease) in cash	(162,537)	(201,857)	(443,132)
Opening cash	611,059	812,916	610,958
Closing cash	448,522	611,059	167,826

Explanations of major variances against the budget are provided in Note 16. The accompanying notes form part of these financial statements.

*Budgeted figures are unaudited.

NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2024

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

The Panel applies Public Benefit Entity Simple Format Reporting – Accrual (Public Sector) and is eligible to do so with total operating expenses below \$5 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 a 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 and rounded to the nearest dollar.

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 policies

There have been no changes to accounting policies in 2024.

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 is 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 – 67 percent straight line

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 performance direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output

2. Budget Figures

The budget figures are those approved by the Panel on 4 May 2023 and published in the Panel's Statement of Performance Expectations 2023/2024. 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 but have not been audited.

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 1993 for Code company schemes, or responds to litigation brought against it. The fund has been operated in respect only of eligible cases.

Parliament approved an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2024.

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

	2024	2023
Litigation Fund		
Opening balance	866,907	864,829
Interest received	35,281	14,414
Interest accrued	6,274	4,620
Other revenue	-	7,809
Expenditure on approved litigation	(25,724)	(24,765)
Closing balance	882,738	866,907
This is comprised of:	-	-
Call account	147,976	285,675
Short term deposits	604,212	571,846
Cash to be transferred	124,276	4,766
Interest receivable	6,274	4,620
Closing balance	882,738	866,907

4. Application Fees and Costs Recoverable

Part 2 of the Takeovers Regulations 2000 (Fees Regulations) enables the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement actions pursuant to the Takeovers Act.

Below is an analysis of the amounts:

	2024	2023
Application Fees and Costs Recoverable		
Fees – Exemptions	66,529	32,360
Fees – Approvals	9,462	17,293
Fees – Schemes	124,612	78,992
Total Application Fees and Costs Recoverable	200,603	128,645

5. Services and Supplies

	2024	2023
Member Fees	204,794	201,346
Rent	100,560	100,560
Audit Fees	39,042	35,982
Depreciation	20,868	14,821
Consulting & Accounting	45,670	-
Training	55,236	11,340
Insurance	32,935	32,834
Computer Costs	84,749	89,442
Fees – Experts	68,116	82,291
Other	174,553	160,789
Total Services and Supplies	826,524	729,404

6. Personnel Costs

	2024	2023
Salaries	964,968	967,335
Employer contributions to defined contribution plans	25,856	28,678
ACC	1,534	1,453
Total Personnel Costs	992,358	997,466

7. Debtors and Prepayments

	2024	2023
Accounts receivable	94,817	10,521
Prepayments	27,756	64,174
Accounts receivable – related parties	-	14,640
GST receivable	6,435	24,023
Total Debtors and Prepayments	129,008	113,358

8. Creditors and Accrued Expenses

	2024	2023
Accounts payable	41,259	60,932
Accruals	35,982	44,085
Total Creditors and Accrued Expenses	77,242	105,017

9. Property, Plant and Equipment

	2024	2023
Office Equipment		
Opening balance	38,613	16,270
Additions	4,259	33,418
Disposals	(1,050)	(1,608)
Depreciation	(16,711)	(10,700)
Elimination on disposal	-	1,233
Total Office Equipment	25,111	38,613
Office Furniture		
Opening balance	34,850	34,831
Additions	-	4,139
Disposals	-	-
Depreciation	(4,157)	(4,120)
Total Office Furniture	30,693	34,850
Total Property, Plant and Equipment	55,804	73,463

10. 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.

	2024	2023
Accumulated Funds		
Accumulated funds		
Capital contributed by owners	150,000	150,000
<i>Accumulated operating surpluses/(deficits)</i>		
Opening balance	1,167,209	1,232,706
Surplus/(deficit)	(30,772)	(65,497)
Total accumulated operating surpluses/(deficits)	1,136,437	1,167,209
<i>Accumulated litigation surpluses/(deficits)</i>		
Opening balance	866,908	864,829
Surplus/(deficit)	15,831	2,079
Total accumulated litigation surpluses/(deficits)	882,738	866,908
Total Accumulated Funds	2,169,175	2,184,117

11. Commitments

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

	2024	2023
Leases		
Not later than one year	102,461	105,172
Later than one year and not later than five years	292,426	386,249
Later than five years	-	-
Total Leases	394,887	491,421

The Panel entered into a rental lease effective from 1 May 2022. The new rental for the Panel's premises is \$100,560 (plus GST) per annum for a term of six years.

The Panel entered an agreement to lease a printer from 27 August 2019 for a term of 5 years.

The Panel had no capital commitments at balance date (2023 – no commitments).

12. Contingent Liabilities

There were no contingent liabilities at balance date (2023 – no contingent liabilities).

13. Contingent Assets

There were no contingent assets at balance date (2023 – no contingent assets).

14. 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 conditions no more or less favourable than those that it is reasonable to expect the Panel would have adopted in dealing with the party at arms' 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.

Boardroom facilities and hospitality for three of the Panel's board meetings were provided by Chapman Tripp Auckland (1) and PWC Auckland (2).

These are related parties due to Panel member Carl Blanchard who is a partner of PWC Auckland and Panel member Rachel Dunne who is a partner of Chapman Tripp Auckland.

15. Subsequent Events

There were no material events subsequent to balance date that would affect the interpretation of the financial statements and/or the performance information.

16. Budget Variances

Explanations of major variances from the Takeovers Panel's budgeted figures in the Statement of Performance Expectations are as follows:

Statement of Financial Performance

Application fees and costs recoverable were over budget due to the following:

- Exemptions was \$34,529 above budget due to more exemptions than anticipated.
- Schemes was \$74,612 above budget due to the novel aspects of the schemes. This made them more complicated and required more Panel time than anticipated.

Other revenue is over budget by \$28,616 due to an unbudgeted secondment to NZX.

Services and Supplies were over budget due to the following:

- Consulting & Accounting were \$45,670 above budget as it was not initially budgeted for.
- Training was \$21,236 above budget with majority of that coming from the Chief Executive training programme.

Experts – Litigation were \$25,724 above budget as no litigation expenses were budgeted for.

Statement of Financial Position

Bank accounts – litigation was below budget and bank accounts – operations was above budget due a transfer that was made to the operations bank account from the litigation bank account which was not transferred back until post balance date.

Short term deposits – litigation was over budget by \$321,212 due one of the deposits getting an unbudgeted top up of \$300,000.

Statement of Cash Flows

Interest received is \$44,691 over budget due there being higher interest rates than budgeted.

Suppliers is \$107,036 over budget mainly due to unbudgeted Consulting & Accounting fees of \$45,670 and Training being over budget by \$21,236.

Payments to purchase investments was \$223,825 lower than budgeted due to no new term deposits being purchased during the year.

STATEMENT OF PERFORMANCE

for the year ended 30 June 2024

Performance Standards and Measures for the Outputs of the Panel

Who we are and why we exist

The Panel ensures that investors in publicly listed and widely held companies are provided with appropriate and timely information so that they may make informed decisions about a change in the control of those companies. The Panel does this by enforcing the Takeovers Code and by its no-objection statement process for schemes of arrangement under the Companies Act 1993.

The delivery of the Panel's 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;¹⁰ and
- c. the cost of service for each output class.

Critical reporting judgements, estimates and assumptions

In preparing the Statement of Performance, the Panel has made judgements on the application of reporting standards and has made estimates and assumptions concerning the future. The estimates and assumptions may differ from the subsequent actual results.

The main judgements, estimates and assumptions are discussed below.

Quantity measures

Quantity measures are used to provide context on the amount of work done by the Panel. This is entirely market driven and the assumption used is that the market will continue working in the future as it has been historically.

Survey response measures

The use of survey results is inherently at risk of low response rates, and low numbers of respondents asked to complete a survey. The survey has been designed by a professional firm and it goes out to all lawyers and advisers that work on a transaction with the Panel. The results are input into an excel spreadsheet before being collated into the Annual Report.

10. See the Statement of Financial Performance on page 43.

Operational appropriation

	2022/23		2023/24	
Assessment of Performance	Budgeted Standard	Actual	Budget Standard	Actual
Enforcement of Takeovers Code and of Schemes of Arrangement involving Code companies – percentage of practitioners satisfied overall with process and with professionalism of the Takeovers Panel executive.	90%	100%	90%	100%

Actual 2023/2024	Main Estimates 2023/2024	Supplementary Estimates 2023/2024
\$1,494,000	\$1,494,000	\$1,494,000

As shown on pages 57 to 63 below, more than 90% of practitioners are satisfied overall with the process and professionalism of the Panel executive.

Litigation Fund appropriation

	2022/23		2023/24	
Assessment of Performance	Budgeted Standard	Actual	Budget Standard	Actual
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 funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement	Litigation is undertaken with respect to eligible cases, according to criteria as set out in the funding agreement

Actual 2023/2024	Main Estimates 2023/2024	Supplementary Estimates 2023/2024
\$200,000	\$200,000	\$200,000

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.

OUTPUT 1: SERVICES FOR TRANSACTIONS UNDER TAKEOVERS CODE

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

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

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

The Panel used its enforcement resources to:

- Assist those with Code obligations to understand their obligations and understand the Panel's likely approach to enforcing the Code
- Maintain voluntary review of draft transaction documents in order to ensure that they comply with the Code
- Encourage drafters of Code-regulated documents to apply the Panel's guidance on clear, concise and effective drafting
- Take enforcement action, including seeking enforceable compliance undertakings; hold hearings under section 32 of the Takeovers Act and, where necessary, taking Court proceedings for permanent or punitive orders

Actual performance against planned performance standards and performance measures for 2023/2024

Performance Measures	Performance Standards		
	Forecast 2023/2024	Actual 2023/2024	Actual 2022/2023
Quantity¹¹			
Draft documents reviewed, including for clear, concise and effective drafting as set out in the guidance notes, and percentage of enforcement resources spent on this review	5-9 taking 80% of resources	7 taking 50% of resources	6 taking 71% of resources
Quality			
The Regulations Review Committee does not recommend disallowance of any Panel exemptions	0 disallowed	0 disallowed	0 disallowed
Applicants (exemptions and advisers) are satisfied with the Panel's process, as indicated by an external survey ¹²	90% of respondents	100% of respondents	100% of respondents
Legal advisers (takeovers and shareholder meetings) are satisfied with the processes for the reviewing of draft meeting and takeover documents as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Timeliness			
Applicants are satisfied with the timeliness of the Panel's decisions regarding approval and exemption applications, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Revenue	\$819,000 50% of forecast revenue	\$745,120 41% of actual revenue	\$619,568 37% of actual revenue
Cost	\$891,400 50% of forecast expenditure	\$692,460 41% of actual expenditure	\$651,843 37% of actual expenditure

11. The number of applications received is entirely market driven. The inclusion of estimated quantities is to provide contextual information.
12. All survey data in this statement of performance are based on voluntary survey responses from lawyers and independent advisers who advised on a transaction. Links to the survey are sent at the completion of each transaction.

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:

- Engage with practitioners on their draft proposals for undertaking a Code company scheme
- Assess the adequacy of scheme documents for shareholders and the proposed voting procedures, as against its published policy for the giving of a no-objection statement
- Encourage drafters of scheme documents to apply the Panel's guidance on clear, concise and effective disclosure
- Consider whether to give a no-objection statement or whether to appear in the High Court to object to a Code company scheme
- Approve independent advisers for Code company schemes

Actual performance against planned performance standards and performance measures for 2023/2024

Performance Measures	Performance Standards		
	Forecast 2023/2024	Actual 2023/2024	Actual 2022/2023
Quantity¹³			
Review of draft scheme documents including checking for clear, concise and effective drafting as set out in the Panel's <i>Guidance Note on Schemes of Arrangement</i>	100% of 2-4 scheme notifications	100% of 2 scheme notifications	100% of 2 scheme notifications
Quality			
Applicants are satisfied with process for no-objection statements as indicated by an external survey	100% of respondents	100% of respondents	100% of respondents
Timeliness			
Applicants are satisfied with timeliness of Panel's decision, as indicated by an external survey	90% of respondents	100% of respondents	100% of respondents
Revenue			
	\$175,000 11% of forecast revenue	\$381,491 ¹⁴ 21% of actual revenue	\$302,401 18% of actual revenue
Cost			
	\$141,000 8% of forecast expenditure	\$265,629 16% of actual expenditure	\$251,269 14% of actual expenditure

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

14. Revenue derived from, and the cost of providing, these services was higher than forecast because of the unique nature of one of the schemes and the complexities of a third scheme that did not complete prior to balance date. Both required more Panel resource than anticipated.

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 projects that arose in response to market practices.

Actual performance against planned performance standards and performance measures for 2023/2024

Performance Measures	Performance Standards		
	Forecast 2023/2024	Actual 2023/2024	Actual 2022/2023
Quantity			
Policy projects that arise out of market practice	1 project commenced 1 project completed 2 continuing	1 project commenced 1 project completed ¹⁵ 3 continuing ¹⁶	3 projects continuing
Quality			
Every policy project that involves a recommendation of law reform meets the Panel's quality assurance criteria (as demonstrated by performance checklists)	100% of the time	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	100% of the time	100% of the time
Revenue			
(Funded by government grant and other income, except fees)	\$452,000 27% of forecast revenue	\$591,594 32% of actual revenue	\$607,793 36% of actual revenue
Cost			
	\$510,000 29% of forecast expenditure	\$612,221 36% of actual expenditure	\$668,671 38% of actual expenditure

15. The Panel published updated and consolidated guidance on schemes of arrangement in November 2023.

16. There are three ongoing policy projects. First, most of the Panel's 2017 law reform recommendations were implemented in October 2018 and January 2020. The last recommendation, to remove reference to 'share parcels' from the definition of Code company, is included in a current bill, the Regulatory Systems (Economic Development) Amendment Bill 50-1 (2024). Secondly, the Panel made law reform recommendations in April 2022. The Panel is working with MBIE officials to find a legislative vehicle for these proposed amendments. Finally, in September 2023, the Panel published two consultation papers. The papers related to the alignment of schemes of arrangement and the Code and to 'deal protection devices'. Post balance date, the Panel made recommendations for law reform following consideration of feedback from both consultation papers.

OUTPUT 4: PUBLIC UNDERSTANDING

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

The Panel used its public understanding resources to:

- Undertake engagements with market practitioners, company directors, market commentators, shareholders and other key stakeholders
- Disseminate educational information about itself and the Code and schemes of arrangement
- 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 2023/2024

Performance Measures	Performance Standards		
	Forecast 2023/2024	Actual 2023/2024	Actual 2022/2023
Quantity			
Guidance Notes updated and published	2	2	0
Public enquiries responded to	30-50	33	39
Engagements with stakeholders as per Stakeholder Engagement Plan	15-30 individual 2 seminars	29 individual 2 seminars	27 individual 4 seminars
Quality			
Market participants found the Panel's published documents, including updates and amendments to those documents made from time to time, were useful, as indicated by an external survey	90% of respondents	100% of respondents ¹⁷	100% of respondents
Market participants found the website useful to a considerable or high degree, as indicated by an external survey	90% of respondents	88% of respondents	100% of respondents
A Stakeholder Engagement Plan was approved by the Panel	Will be achieved	Achieved	Achieved
Timeliness			
Information is published on the website within 10 working days of final Panel sign-off	100% of the time	100% of the time	100% of the time
Revenue			
(Funded by government grant and other income except fees)	\$203,000 12% of forecast revenue	\$111,661 6% of actual revenue	\$158,455 9% of actual revenue
Cost	\$231,000 13% of forecast expenditure	\$115,554 7% of actual expenditure	\$179,851 10% of actual expenditure

17. 100% of responses found the Panel's published documents helpful to a considerable or high degree.

INDEPENDENT AUDITOR'S REPORT

To the readers of the Takeovers Panel's annual report for the year ended 30 June 2024

The Auditor-General is the auditor of the Takeovers Panel. The Auditor-General has appointed me,

Chrissie Murray, using the staff and resources of Baker Tilly Staples Rodway Audit Limited, to carry out the audit of the financial statements and the performance information of the Takeovers Panel on his behalf.

Opinion

We have audited:

- the financial statements of the Takeovers Panel, that comprise the statement of financial position as at 30 June 2024, the statement of financial performance, and statement of cash flows for the period ended on that date and the notes to the financial statements including the statement of accounting policies; and
- the performance information of the Takeovers Panel, that comprises the statement of performance

In our opinion:

- the financial statements of the Takeovers Panel:
 - › present fairly, in all material respects:
 - its financial position as at 30 June 2024; and
 - its financial performance and cash flows for the period then ended; and
 - › comply with generally accepted accounting practice in New Zealand in accordance with the Public Benefit Entity Simple Format Reporting – Accrual (Public Sector); and

- the performance information:
 - › presents fairly, in all material respects, the Takeovers Panel's performance for the period ended 30 June 2024, including:
 - for each class of reportable outputs:
 - its standards of delivery performance achieved as compared with outcomes 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 2024. This is the date at which our opinion is expressed.

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

Baker Tilly Staples Rodway Audit Limited, incorporating the audit practices of Christchurch, Hawkes Bay, Taranaki, Tauranga, Waikato and Wellington.

Baker Tilly Staples Rodway Audit Limited is a member of the global network of Baker Tilly International Limited, the members of which are separate and independent legal entities.

Basis for our opinion

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

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

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

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

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

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

The Panel members' responsibilities arise from the Crown Entities Act 2004.

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

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

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

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

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

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

- We identify and assess the risks of material misstatement of the financial statements and the performance information, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Takeovers Panel's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Panel.
- We evaluate the appropriateness of the reported performance information within the Takeovers Panel's framework for reporting its performance.

- We conclude on the appropriateness of the use of the going concern basis of accounting by Panel and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Takeovers Panel's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements and the performance information or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Takeovers Panel to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the financial statements and the performance information, including the disclosures, and whether the financial statements and the performance information represent the underlying transactions and events in a manner that achieves fair presentation.
- We obtain sufficient appropriate audit evidence regarding the financial statements and the performance information of the entities or business activities within the Takeovers Panel to express an opinion on the consolidated financial statements and the consolidated performance information. We are responsible for the direction, supervision and performance of the Takeovers Panel audit. We remain solely responsible for our audit opinion.
- We communicate with the Panel regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

Other information

The Panel is responsible for the other information. The other information comprises the information included in the annual report but does not include the financial statements and the performance information, and our auditor's report thereon.

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

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

Independence

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

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



Chrissie Murray
Baker Tilly Staples Rodway Audit Limited
On behalf of the Auditor-General
Wellington, New Zealand



**TAKEOVERS
PANEL**
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