

HALF YEAR REPORT

► For the period ended 31 December 2021



**TAKEOVERS
PANEL**
TE PAE WHITIMANA

www.takeovers.govt.nz



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1 Financial Report

Status

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

This report refers to comparison figures from the Panel's 2021 Annual Report. Audit of the Panel's financial statements for the year ending 30 June 2021 has been delayed and the Panel's 2021 Annual Report has not been published as at the date of this report. The comparison figures used in this report have not been reviewed or audited by Audit New Zealand.

Statement of responsibility

These financial statements have been prepared for the purpose of the 31 December 2021 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.

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 2022 is included in these statements.

Summary of performance to date

Under the Panel's 2021/2022 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2022, to produce services related to the following outputs:

Output 1: Services for transactions under the Code

Output 2: Services under the Companies Act 1993 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 5,706 hours of time to Panel work in the six months, which was lower than the 6,869 committed in the equivalent period last year. Of the outputs listed below, Output 1 involved the greatest resource commitment of 73% by cost. Last year, Output 1 involved commitment of 68% by cost.

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., takeovers and shareholder meetings) (1). The Panel commenced six preliminary investigations into possible breaches of the Code (1) and commenced one formal investigation (1). There was one section 32 meeting held during the six months (1).¹

The Panel processed three requests for approval of independent advisers during the six months (3).² The Panel also processed three individual exemption applications for the six months (4).

Output 2

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

¹ The Panel discontinued its formal investigation on 20 August 2021 when the original complainant withdrew their complaint.

² The Panel also approved an amendment to a class exemption: the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Amendment Notice 2021.



Output 3

The Panel continued working closely with the Ministry of Business, Innovation and Employment (**MBIE**) to implement the last of the Panel's 2017 recommendations for amendments to the Code and the Takeovers Act. The Panel also continued the policy review work for the next round of potential technical amendments and continued its review of schemes of arrangement under the Companies Act 1993.

Output 4

The Panel published two editions (0) of its periodic news bulletin, [CodeWord](#), and updated two guidance note (5).

The Panel's financial position and outlook

The Panel's operating income, at \$802,390, was \$64,100 or approximately 7%, lower than budget, while operating expenditure for the six months, at \$876,993, was \$33,539 or approximately 4%, higher than budget. The Panel also earned interest income of \$735 on litigation fund deposits and incurred \$73,413 in litigation fund expenses.

The overall result for the Panel was made up of an operating deficit of \$74,603 for the six months and a deficit for the litigation fund of \$72,678. The Panel budgeted an operating surplus of \$23,036 and a deficit of \$221,002 in the litigation fund for the six months.

A summary of the figures to date is as follows:

	Period ended 31 Dec 2021 \$	Budget to 31 Dec 2021 \$	Period ended 31 Dec 2020 \$
Operating revenue	802,390	866,490	865,051
Operating expenditure	876,993	843,454	866,477
Operating surplus/(deficit)	(74,603)	23,036	(1,426)
Litigation revenue	735	31,998	3,702
Litigation expenditure	73,413	253,000	163,249
Litigation fund surplus/(deficit)	(72,678)	(221,002)	(159,547)
Net surplus/(deficit)	(147,281)	(197,966)	(160,973)



The following summarises the Panel's completed actions and the allocations of resources for the half year to 31 December 2021:

Quantity of Work	Actual 6 months to 31 Dec 2021	Actual 6 months to 31 Dec 2020	Actual 12 months to 30 Jun 2021	Budget 12 months to 30 Jun 2022
Services for transactions				
Draft documents reviewed for Code regulated transactions	3	1	5	8-12
Section 32 meetings held	1	1	1	1
Services under Companies Act for Code company schemes				
Draft scheme documents reviewed	1	2	3	4-6
Review takeovers law and practice				
Policy projects that arise out of market practice	0 projects commenced 0 completed 3 continuing	1 project commenced 0 completed 2 continuing	2 projects commenced 1 completed 3 continuing	1 project commenced 2 completed 2 continuing
Public understanding				
Guidance Notes updated or published	2	New measure for 2021/2022	New measure for 2021/2022	4
Engagement with stakeholders per Stakeholder Engagement Plan	8 individual	20 individual 2 seminars	41 individual 2 seminars	25-40 individual 2 seminars
Public enquiries responded to	26	39	67	70-90



Cost allocation

	Actual 6 months to 31 Dec 2021		Actual 6 months to 31 Dec 2020		Actual 12 months to 30 Jun 2021		Budget 12 months to 30 Jun 2022	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	690,631	73	700,214	68	1,303,779	65	1,465,400	74
Schemes	17,131	2	113,270	11	220,640	11	173,000	9
Law and Policy	137,128	14	92,675	9	240,698	12	156,000	8
Public understanding	105,516	11	123,567	12	240,698	12	191,000	10
Cost Allocation	950,406	100	1,029,726	100	2,015,358	100	1,985,400	100



2 Statement of Financial Performance

For the period ended 31 December 2021

Budget 12 months to 30 Jun 2022 \$	Budget 6 months to 31 Dec 2021 \$		Actual 6 months to 31 Dec 2021 \$	Actual 6 months to 31 Dec 2020 \$
		Revenue - operating		
		Notes		
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
14,000	6,996	Interest	4,095	8,262
205,000	102,498	Application fees and costs recoverable	51,295	109,789
20,000	9,996	Other income	0	0
1,733,000	866,490	Total operating revenue	802,390	865,051
		Revenue – litigation fund		
30,000	30,000	Cost Recovery		
4,000	1,998	Interest	735	3,702
34,000	31,998	Total litigation fund revenue	735	3,702
1,767,000	898,488	Total revenue	803,125	868,753
		Operating expenditure		
699,000	335,954	Services and supplies	375,318	368,677
1,033,000	507,500	Personnel costs	501,675	497,800
1,732,000	843,454	Total operating expenditure	876,993	866,477
253,000	253,000	Expenditure – litigation fund	73,413	163,249
1,985,000	1,096,454	Total expenditure	950,406	1,029,726
(218,000)	(197,966)	Net surplus/(deficit)	(147,281)	(160,973)
		This is comprised of:		
1,000	23,036	Operating surplus /(deficit)	(74,603)	(1,426)
(219,000)	(221,002)	Litigation surplus /(deficit) 3	(72,678)	(159,547)
(218,000)	(197,966)		(147,281)	(160,973)



3 Statement of Financial Position

As at 31 December 2021

Budget as at 30 Jun 2022 \$		Actual as at 31 Dec 2021 \$	Actual as at 31 Dec 2020 \$	Actual as at 30 Jun 2021 \$
	Current assets			
	Notes			
172,000	Bank accounts and cash – operations	381,213	232,893	180,286
50,000	Bank accounts and cash – litigation fund	477,647	58,694	148,424
1,189,000	Short term deposits – operations	970,261	960,546	965,541
365,000	Short term deposits – litigation fund	264,221	512,658	263,578
1,000	Interest receivable – operating	16	3,319	2,182
1,000	Interest receivable – litigation fund	1,461	254	34
112,000	Debtors and prepayments	100,477	85,008	597,692
0	Debtors - Litigation	0	0	200,000
1,890,000	Total current assets	2,195,296	1,853,372	2,357,737
	Non-current assets			
15,000	Property, plant and equipment	25,286	49,144	34,175
15,000	Total non-current assets	25,286	49,144	34,175
1,905,000	Total assets	2,220,582	1,902,516	2,391,912
	Current liabilities			
98,000	Creditors and accrued expenses	101,248	87,816	82,535
60,000	Employee entitlements	60,772	86,834	103,534
158,000	Total current liabilities	162,020	174,650	186,069
	Equity			
150,000	Capital contribution	150,000	150,000	150,000
1,181,000	Operating fund	1,172,580	1,024,251	1,247,183
416,000	Litigation fund 3	735,982	553,615	808,660
1,747,000	Total equity 4	2,058,562	1,727,866	2,205,843
1,905,000	Total equity and liabilities	2,220,582	1,902,516	2,391,912



4 Statement of Cash Flows

For the period ended 31 December 2021

Budget 12 months to 30 Jun 2022 \$		Actual 6 months to 31 Dec 2021 \$	Actual 6 months to 31 Dec 2020 \$	Actual 12 months to 30 Jun 2021 \$
	Cash flows from operating activities			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
595,000	Application fees and costs recoverable	762,063	184,937	198,740
18,000	Interest	5,569	16,149	22,161
20,000	Other income	0	0	0
5,000	Goods and Services Tax (net)	0	0	0
	Cash was applied to:			
(749,000)	Suppliers	(348,734)	(381,688)	(774,723)
(1,243,000)	Employees and members	(627,056)	(613,904)	(1,189,082)
	Goods and Services Tax (net)	(704)	(3,224)	(8,789)
140,000	Net cash flows from operating activities	538,138	(50,730)	(257,693)
	Cash flows from investing and financing activities			
	Cash was received from:			
0	Receipts from sale of investments	0	83,939	328,024
	Cash was applied to:			
0	Payments to acquire property, plant and equipment	(2,625)	(24,550)	(24,549)
(176,000)	Payments to purchase investments	(5,363)	0	0
(176,000)	Net cash flows from investing and financing activities	(7,988)	59,389	303,475
(36,000)	Net increase (decrease) in cash	530,150	8,659	45,782
258,000	Add opening cash	328,710	282,928	282,928
222,000	Closing cash	858,860	291,587	328,710



5 Notes to the Financial Statements

For the period ended 31 December 2021

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 to the Panel's accounting policies in the six months since 30 June 2021.

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 31 May 2021 and published in the Panel's Statement of Performance Expectations 2021/2022. 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 with the Companies Act for Code company schemes or responds to litigation brought against it.

The Panel budgeted a deficit of \$221,000 for the period. The result was a deficit of \$72,678. This was because the Panel budgeted for a potential section 32 meeting and for High Court proceedings. The section 32 meeting was discontinued and the High Court proceedings were delayed while potential settlement was negotiated.

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

	6 months to 31 Dec 2021 \$	6 months to 31 Dec 2020 \$	12 months to 30 June 2020 \$
Grant	0	0	200,000
Cost recovery	0	0	205,000
Interest received	719	3,448	4,391
Interest accrued	16	254	34
Expenditure	(73,413)	(163,249)	(314,520)
Surplus /(deficit) for the year	(72,678)	(159,547)	(1,530)
Opening balance	808,660	713,162	713,162
Closing balance	735,982	553,615	808,660
This is comprised of:			
Cash and cash equivalents			
- Call account	477,647	58,694	148,424
- Short term deposits	264,221	512,659	263,577
Interest receivable	16	254	34
Accounts receivable	0	0	405,593
Accounts payable	(5,902)	(36,654)	(8,968)
Closing balance	735,982	553,615	808,660



Note 4 Accumulated funds

At 31 December 2021	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	1,247,183	(74,603)	1,172,582
Accumulated litigation surpluses/(deficits)	808,660	(72,678)	735,982
Total	2,205,843	(147,281)	2,058,562

At 31 December 2020	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	1,025,677	(1,426)	1,024,251
Accumulated litigation surpluses/(deficits)	713,692	(159,547)	553,615
Total	1,838,381	(160,917)	1,727,866

Note 5 Budget variances

Significant variances from budget were:

Revenue

Revenue from independent adviser and no-objection applications was \$51,203 lower than budgeted. This was a result of fewer transactions than budgeted. Mitigating this slightly, revenue from exemptions was higher than expected because more exemption applications were received than were budgeted.

Expenditure

Total operating expenditure for the period was \$33,539 higher than budgeted. The key variances from budget were:

- Recruitment expenditure was \$15,650 above budget because of higher than expected staff turnover.
- Computer costs were \$13,608 above budget. This was because the cost of a planned project to move the Panel's data from onsite servers to cloud servers was budgeted across the year while this work was largely completed in the first 6 months. This variance should normalise as the year continues.
- Communication charges were \$7,886 above budget. This was mostly related to website enhancement work which was budgeted for in the prior year, but finished at the beginning of the current financial year.
- Printing and publications expenditure was \$6,401 above budget. This related to unbudgeted redesign work on the 2021 Annual Report.



- Members fees were \$7,380 below budget. This was a result of lower than expected transactional work.
- Travel costs were \$6,399 below budget because of restrictions on travel due to Covid-19.
- Salaries were \$5,754 below budget. This was a result of staff turnover and government mandated limitations on salary increases.

Net operating surplus

The Panel recorded an operating deficit of \$74,603 when a surplus of \$23,036 had been expected. Recoveries from operational activities have been lower than budgeted, and operational expenditure is tracking higher than budgeted.

6 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 is expected to increase over the second half of the year.

The Panel intends to maintain its current complement of eight staff. Currently all positions are filled. The Panel's strong co-regulatory relationships with NZX Limited and the Financial Markets Authority will be maintained through regular engagements between the respective teams.

The Panel has rebalanced its non-transaction resources now that its work programme to improve accessibility of information on its website for interested stakeholders has concluded. The Panel will continue to focus on public understanding services through ongoing meetings with stakeholders, public speeches and presentations, and market updates. The Panel will focus more resources on policy and law projects. The Panel will progress the final law reform recommendations from 2017 and will focus on progressing a new round of recommended law reform recommendations to be made later this financial year.

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