

HALF YEAR REPORT

► For the period ended 31 December 2022



**TAKEOVERS
PANEL**
TE PAE WHITIMANA



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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 2022 Annual Report. Audit of the Panel's financial statements for the year ending 30 June 2022 has been delayed, and the Panel's 2022 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 2022 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 2023 is included in these statements.

Summary of performance to date

Under the Panel's 2022/2023 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2023, 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 4,827 hours of time to Panel work in the first six months of the year, which was lower than the 5,706 committed in the equivalent period last year. Of the outputs listed below, Output 1 involved the greatest resource commitment of 51% by cost. In the first six months of last year, Output 1 involved commitment of 73% 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) (2). The Panel commenced two preliminary investigations into possible breaches of the Code (6) and commenced zero formal investigations (1). There were no section 32 meetings held during the six months (0).

The Panel processed six requests for approval of independent advisers during the six months (6). The Panel also processed two individual exemption applications during the six months (2).



Output 2

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

Output 3

The Panel continued working closely with the Ministry of Business, Innovation and Employment (**MBIE**) to implement the Panel's April 2022 recommendations for amendments to the Code and the Takeovers Act and other legislation, as well as the last of the Panel's 2017 recommendations. The Panel completed its review of institutional investor acceptance facilities and continued its review of schemes of arrangement under the Companies Act.

Output 4

The Panel published no editions (0) of its periodic news bulletin, [CodeWord](#), and updated no guidance notes (0). The Panel continued to provide public understanding services, including presentations to market participants in Auckland and Wellington and other stakeholder engagements. The Panel continued to maintain and enhance its website and online profile.

The Panel's financial position and outlook

The Panel's operating revenue for the six months, at \$819,808, was \$3,686 or approximately 1% lower than budget, while operating expenditure for the six months, at \$822,776, was \$12,810 or approximately 2% higher than budget. The Panel also earned interest income of \$6,465 on litigation fund deposits and incurred \$18,352 in litigation fund expenses.

The overall result for the Panel for the six months was made up of an operating deficit of \$2,968 and a deficit for the litigation fund of \$11,887. The Panel budgeted an operating surplus of \$13,528 and a surplus of \$1,998 in the litigation fund for the six months.

A summary of the figures to date is as follows:

	Period ended 31 Dec 2022 \$	Budget to 31 Dec 2022 \$	Period ended 31 Dec 2021 \$
Operating revenue	819,808	823,494	802,390
Operating expenditure	822,776	809,966	876,993
Operating surplus/(deficit)	(2,968)	13,528	(74,603)
Litigation revenue	6,465	1,998	735
Litigation expenditure	18,352	0	73,413
Litigation fund surplus/(deficit)	(11,887)	1,998	(72,678)
Net surplus/(deficit)	(14,855)	15,526	(147,281)

¹ The Panel reviewed the scheme documents for the Pushpay Holdings Limited scheme of arrangement and issued a Letter of intention on 23 December 2022. The shareholder meeting to consider the scheme is scheduled for March 2023.



The following summarises the Panel's completed actions and the allocations of resources for the half year to 31 December 2022:

Quantity of Work	Actual 6 months to 31 Dec 2022	Actual 6 months to 31 Dec 2021	Actual 12 months to 30 Jun 2022	Budget 12 months to 30 Jun 2023
Services for transactions				
Draft documents reviewed for Code-regulated transactions	3	2	5	2-4
Section 32 meetings held	0	1	1	0
Services under Companies Act for Code company schemes				
Draft scheme documents reviewed	1	1	2	2-4
Review takeovers law and practice				
Policy projects that arise out of market practice	0 commenced 1 completed 2 continuing	0 commenced 0 completed 3 continuing	3 continuing	1 commenced 1 completed 2 continuing
Public understanding				
Guidance Notes updated or published	0	2	2	4
Engagement with stakeholders per Stakeholder Engagement Plan	4 individual 2 market presentations	8 individual	19 individual 2 seminars	25-40 individual 2 seminars
Public enquiries responded to	22	26	48	60-80



Cost allocation

	Actual 6 months to 31 Dec 2022		Actual 6 months to 31 Dec 2021		Actual 12 months to 30 Jun 2022		Budget 12 months to 30 Jun 2023	
	\$	%	\$	%	\$	%	\$	%
Code transactions	412,153	49	690,631	73	1,230,428	66	1,073,000	65
Schemes	92,524	11	17,131	2	98,573	5	166,000	10
Law and policy	243,927	29	137,128	14	324,752	17	232,000	14
Public understanding	92,524	11	105,516	11	222,504	12	182,000	11
Cost allocation	841,128	100	950,406	100	1,876,257	100	1,659,000	100



2 Statement of Financial Performance

For the period ended 31 December 2022

Budget 12 months to 30 Jun 2023 \$	Budget 6 months to 31 Dec 2022 \$		Actual 6 months to 31 Dec 2022 \$	Actual 6 months to 31 Dec 2021 \$
		Revenue - operating		
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
15,000	7,500	Interest	14,008	4,095
138,000	68,994	Application fees and costs recoverable	58,800	51,295
1,647,000	823,494	Total operating revenue	819,808	802,390
		Revenue – litigation fund		
4,000	1,998	Interest	6,465	735
4,000	1,998	Total litigation fund revenue	6,465	735
1,651,000	825,492	Total revenue	826,273	803,125
		Operating expenditure		
635,000	306,966	Services and supplies	345,774	375,318
1,024,000	503,000	Personnel costs	477,002	501,675
1,659,000	809,966	Total operating expenditure	822,776	876,993
0	0	Expenditure – litigation fund	18,352	73,413
1,659,000	809,966	Total expenditure	841,128	950,406
(8,000)	15,526	Net surplus/(deficit)	(14,855)	(147,281)
		This is comprised of:		
(12,000)	13,528	Operating surplus /(deficit)	(2,968)	(74,603)
4	1,998	Litigation surplus /(deficit)	(11,887)	(72,678)
(8,000)	15,526		(14,855)	(147,281)



3 Statement of Financial Position

As at 31 December 2022

Budget as at 30 Jun 2023 \$		Actual as at 31 Dec 2022 \$	Actual as at 31 Dec 2021 \$	Actual as at 30 Jun 2022 \$
	Current assets			
	Notes			
273,000	Bank accounts and cash – operations	225,546	381,213	384,300
237,000	Bank accounts and cash – litigation fund	561,576	477,647	424,440
1,206,000	Short term deposits – operations	987,054	970,261	976,418
567,000	Short term deposits – litigation fund	267,692	264,221	265,259
3,000	Interest receivable – operating	5,087	16	2,899
1,000	Interest receivable – litigation fund	1,328	1,461	564
0	Court costs receivable	0	0	1,500,000
118,000	Debtors and prepayments	205,828	100,477	182,007
2,405,000	Total current assets	2,254,111	2,195,296	3,735,887
	Non-current assets			
71,000	Property, plant and equipment	46,076	25,286	51,101
71,000	Total non-current assets	46,076	25,286	51,101
2,476,000	Total assets	2,300,187	2,220,582	3,786,988
	Current liabilities			
103,000	Creditors and accrued expenses	77,897	101,248	139,832
77,000	Employee entitlements	28,573	60,772	123,326
0	Court costs held in trust	0	0	1,315,258
180,000	Total current liabilities	106,470	162,020	1,578,416
	Equity			
150,000	Capital contribution	150,000	150,000	150,000
1,341,000	Operating fund	1,214,660	1,172,580	1,217,628
805,000	Litigation fund 3	829,057	735,982	840,944
2,296,000	Total equity 4	2,193,717	2,058,562	2,208,572
2,476,000	Total equity and liabilities	2,300,187	2,220,582	3,786,988



4 Statement of Cash Flows

For the period ended 31 December 2022

Budget 12 months to 30 Jun 2023 \$		Actual 6 months to 31 Dec 2022 \$	Actual 6 months to 31 Dec 2021 \$	Actual 12 months to 30 Jun 2022 \$
	Cash flows from operating activities			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
471,000	Application fees and costs recoverable	16,085	762,063	815,222
13,000	Interest	17,521	5,569	13,208
0	Court costs award	184,742	0	0
	Cash was applied to:			
(444,000)	Suppliers	(316,407)	(348,734)	(637,784)
(1,179,000)	Employees and members	(671,592)	(627,056)	(1,137,180)
(56,000)	Goods and Services Tax (net)	18,240	(704)	(8,984)
299,000	Net cash flows from operating activities	(4,411)	538,138	538,482
	Cash flows from investing and financing activities			
	Cash was applied to:			
(25,000)	Payments to acquire property, plant and equipment	(4,138)	(2,625)	(45,894)
(533,000)	Payments to purchase investments	(13,069)	(5,363)	(12,558)
(558,000)	Net cash flows from investing and financing activities	(17,207)	(7,988)	(58,452)
(259,000)	Net increase/(decrease) in cash	(21,618)	530,150	480,030
769,000	Add opening cash	808,740	328,710	328,710
510,000	Closing cash	787,122	858,860	808,740



5 Notes to the Financial Statements

For the period ended 31 December 2022

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 2022.

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 (if any) 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

Note 2 Budget figures

The budget figures are those approved by the Panel on 4 May 2022 and published in the Panel's Statement of Performance Expectations 2022/2023. 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 surplus of \$1,998 for the period. The result was a deficit of \$11,887. This was because the Panel approved unbudgeted expenditure to enforce payment of unpaid fees owing to the Panel from a section 32 meeting in the prior financial year.

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

	6 months to 31 Dec 2022 \$	6 months to 31 Dec 2021 \$	12 months to 30 June 2022 \$
Opening balance	840,944	808,660	808,660
Court costs awarded	0	0	175,056
Interest received	5,137	719	1,979
Interest accrued	1,328	16	564
Expenditure on approved litigation	(18,352)	(73,413)	(145,315)
Closing balance	829,057	735,982	840,944
This is comprised of:			
Cash and cash equivalents			
- Call account	561,576	477,647	424,440
- Short term deposits	267,692	264,221	265,259
Interest receivable	1,328	16	564
Court costs receivable	0	0	175,056
Accounts payable	(1,539)	(5,902)	(24,375)
Closing balance	829,057	735,982	840,944



Note 4 Accumulated funds

At 31 December 2022	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	1,217,628	(2,968)	1,214,660
Accumulated litigation surpluses/(deficits)	840,944	(11,887)	829,057
Total	2,208,572	(14,855)	2,193,717

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)	1,172,580
Accumulated litigation surpluses/(deficits)	808,660	(72,678)	735,982
Total	2,205,843	(147,281)	2,058,562

Note 5 Budget variances

Significant variances from budget were:

Revenue

Revenue from no-objection statement applications was \$18,639 lower than budgeted. This was a result of fewer transactions than budgeted. Mitigating this slightly, revenue from exemptions and independent adviser applications was higher than expected.

Expenditure

Total operating expenditure for the period was \$12,810 higher than budgeted. The key variances from budget were:

- Printing and publications expenditure was \$19,199 above budget. This related to higher than budget expense for the Panel's Annual Report for 2022.
- Consultants and legal expenditure was \$15,317 above budget. This related to legal and technical advice that was required but unbudgeted.
- Members' fees were \$11,839 above budget. This variance was primarily as a result of a change in the way Panel member fees are calculated as set by the Remuneration Authority.
- Salaries were \$25,998 below budget. This was a result of staff turnover and government mandated limitations on salary increases.



- Training and memberships were \$17,435 below budget with some training opportunities yet to be taken up.

Net operating surplus

The Panel recorded an operating deficit of \$2,968 when a surplus of \$13,528 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 similar to the previous year, and activity is expected to remain steady 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 will continue to focus on public understanding services through ongoing meetings with stakeholders, public speeches and presentations, and market updates. The Panel will continue to focus more resources on policy and law projects. The Panel completed its update of its market guidance on schemes of arrangement and made recommendations for law reform in the first half of 2022. The Panel will progress these law reform recommendations as well as the final law reform recommendations from 2017.

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.