

# **Takeovers Panel**

## **HALF YEAR REPORT**

**for the period ended 31 December 2015**



**TAKEOVERS PANEL**

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## FINANCIAL REPORT

### **Status**

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

### **Statement of Responsibility**

These financial statements have been prepared for the purpose of the 2015/2016 Half Year Report of the Takeovers Panel to the Minister of Commerce and Consumer Affairs. They are not prepared for any other purpose and should not be relied upon for any other purpose. They should be read in conjunction with the 2015 Annual Report.

In the course of preparing these financial statements the Panel has complied with NZ GAAP.

The budget of the Takeovers Panel for the year ending 30 June 2016 is included in these statements.

### Summary of performance to date

Under the Panel's 2015/2016 Statement of Service Performance, the Panel is required, in the period up to 30 June 2016, to produce services related to the following outputs:

Output 1	Services for transactions under the Code;
Output 2	Services under the Companies Act for Code company schemes;
Output 3	Review takeovers law and practice; recommend any necessary law changes;
Output 4	Public understanding.

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

Members and the executive committed 6,170 hours of time to Panel work in the six months, which was very similar to the 6,019 committed in the equivalent period last year.

The Panel's work related to the outputs as follows:

- (a) Output 1: The Panel reviewed 12 transaction documents (i.e. for takeovers and shareholder meetings) (11). The Panel undertook no new formal investigations into possible breaches of the Code during the six months (0). One preliminary investigation was undertaken into a possible breach of the Code (2). There were no section 32 meetings held during the six months (0).

The Panel processed 14 requests for approval of independent advisers during the six months (11). The Panel also processed 4 exemption applications for the six months (6).

- (b) Output 2: The Panel reviewed one Code company scheme and gave a no-objection statement in accordance with the procedure set out in its published guidance. The bulk of the work on this transaction was completed during the reporting period, although the final Court orders for the scheme are not expected to be made until later.

- (c) Output 3: The Panel's main focus for policy work related to the following:

- completion of a class exemption to reduce the compliance burden for small unlisted Code companies (which came into force on 14 July 2015);
- in response to a growing trend of groups of shareholders acting together to make a combined takeover offer, the Panel published its view on certain features which must be included in such an offer in order to comply with the Code, and;
- commencing the policy development work on a number of proposed technical amendments to the Code.

- (d) Output 4: The Panel has created a database of Code regulated transactions and key documents. This database is accessible to the public via the Panel's website and is becoming a valuable tool for market participants who can access these documents on-line without needing to go through an Official Information Act request. The Panel published its periodic news bulletin, CodeWord, in each of September and December 2015 (1) and published a brochure-type Factsheet for shareholders about crowd-funding.

Of the outputs listed above, Output 1 involved the greatest resource commitment of 54% by cost (Output 1, 49%).

### The Panel's financial position and outlook

The Panel's operating expenditure for the six months, at \$835,691 was \$13,799 or approximately 2%, lower than budget while operating income, at \$875,239, was \$242, effectively at budget. The Panel also earned interest income of \$17,158 on litigation fund deposits and incurred no litigation fund expense. The overall result for the Panel was made up of an operating surplus of \$39,548 for the six months and a surplus for the litigation fund of \$17,158. The Panel budgeted for the six months an operating surplus of \$25,528 and a surplus of \$18,000 in the litigation fund. A summary of the figures to date is as follows:

	Year to date	Budget to date
	\$	\$
<b>Operating revenue</b>	875,239	874,997
<b>Operating expenditure</b>	835,691	849,469
<b>Operating surplus/(deficit)</b>	39,548	25,528
<b>Litigation fund surplus/(deficit)</b>	17,158	18,000
<b>Net surplus/(deficit)</b>	56,706	43,528

The following summarises the Panel's completed actions and the allocations of resources for the year to 31 December 2015:

<b>Quantity of Work</b>	<b>Actual 6 months to 31 December 2015</b>	<b>Actual 6 months to 31 December 2014</b>	<b>Actual 12 months to 30 June 2015</b>	<b>Budget 12 months to 30 June 2016</b>
<b>Services for transactions</b>				
Adviser applications received	14	11	19	22-26
Final documents received	12	11	18	24
Section 32 meetings held	0	0	0	0
<b>Services under Companies Act for Code company schemes</b>				
Number of Code company scheme notifications received	1	0 <sup>1</sup>	0	1-3
<b>Review takeovers law and practice</b>				
Policy projects completed	0	1	3	1
<b>Public understanding</b>				
CodeWords published	2	1	3	3
Engagement with stakeholders per Stakeholder Engagement Plan	28	New measure for 2015/2016	New measure for 2015/2016	70-80
Public enquiries responded to	73	61	108	120-150

<sup>1</sup> Although the Panel received no applications for a No-objection Statement, the Panel considered and responded to one Code company scheme that was caught by the Code company scheme requirements on one very minor aspect of the scheme proposal.

### Cost Allocation

	Actual		Actual		Actual		Budget	
	6 months to 31 Dec 2015		6 months to 31 Dec 2014		12 months to 30 June 2015		12 months to 30 June 2016	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	451,273	54%	395,543	49%	669,050	43%	710,000	40%
Schemes	58,498	7%	32,289	4%	32,514	2%	266,000	15%
Law & Policy	217,280	26%	209,880	26%	503,966	31%	178,000	10%
Public understanding	108,640	13%	169,518	21%	390,167	24%	621,000	35%
Cost Allocation	835,691	100%	807,230	100%	1,595,697	100%	1,775,000	100%

**STATEMENT OF FINANCIAL PERFORMANCE**

*for the period ended 31 December 2015*

<b>Budget 12 months to 30 Jun 2016 \$</b>	<b>Budget 6 months to 31 Dec 2015 \$</b>		<b>Actual 6 months to 31 Dec 2015 \$</b>	<b>Actual 6 months to 31 Dec 2014 \$</b>
		<b>Revenue - operating</b>	<b>Note</b>	
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
31,000	15,498	Interest	15,089	16,018
210,000	104,999	Application fees and costs recoverable	98,031	92,815
15,000	7,500	Other revenue	15,119	24,249
<u>1,750,000</u>	<u>874,997</u>	Total operating revenue	<u>875,239</u>	<u>880,082</u>
		<b>Revenue – litigation fund</b>		
<u>36,000</u>	<u>18,000</u>	Interest	<u>17,158</u>	<u>18,208</u>
<u>36,000</u>	<u>18,000</u>	Total litigation fund revenue	<u>17,158</u>	<u>18,208</u>
<u>\$1,786,000</u>	<u>\$892,997</u>	Total income	<u>\$892,397</u>	<u>\$898,290</u>
		<b>Operating expenditure</b>		
727,000	349,967	Services and supplies	358,771	335,271
998,000	499,502	Personnel costs	476,920	471,959
<u>1,725,000</u>	<u>849,469</u>	Total operating expenditure	<u>835,691</u>	<u>807,230</u>
0	0	Expenditure – litigation fund	0	0
<u>\$1,725,000</u>	<u>\$849,469</u>	Total expenditure	<u>\$835,691</u>	<u>\$807,230</u>
<u>\$61,000</u>	<u>\$43,528</u>	Net Surplus/Deficit	<u>\$56,706</u>	<u>\$91,060</u>
		<b>This is comprised of:</b>		
25,000	25,528	Revenue - operating /(deficit)	39,548	72,852
<u>36,000</u>	<u>18,000</u>	Revenue - litigation / (deficit)	<u>17,158</u>	<u>18,208</u>
<u>\$61,000</u>	<u>\$43,528</u>		<u>\$56,706</u>	<u>\$91,060</u>



## STATEMENT OF FINANCIAL POSITION

*as at 31 December 2015*

<b>Budget as at 30 Jun 2016 \$</b>		<b>Actual as at 31 Dec 2015 \$</b>	<b>Actual as at 31 Dec 2014 \$</b>	<b>Actual as at 30 Jun 2015 \$</b>
	<b>Current assets</b>			
419,000	Bank accounts and cash – operations	429,523	358,146	426,394
153,000	Bank accounts and cash – litigation fund	141,274	137,751	139,709
539,000	Short term deposits – operations	461,761	442,046	448,782
743,000	Short term deposits – litigation fund	743,036	710,157	715,021
5,000	Interest receivable – operating	6,596	7,432	10,781
10,000	Interest receivable – litigation fund	2,977	3,733	15,399
87,000	Debtors and prepayments	67,168	66,046	60,080
<u>\$1,956,000</u>	Total current assets	<u>\$1,852,335</u>	<u>\$1,725,311</u>	<u>\$1,816,166</u>
	<b>Non-current assets</b>			
27,000	Property, plant and equipment	42,653	83,804	61,845
<u>27,000</u>	Total non-current assets	<u>42,653</u>	<u>83,804</u>	<u>61,845</u>
<u>\$1,983,000</u>	Total assets	<u>\$1,894,988</u>	<u>\$1,809,115</u>	<u>\$1,878,011</u>
	<b>Current liabilities</b>			
49,000	Creditors and accrued expenses	48,164	30,729	54,320
68,000	Employee costs payable	19,959	30,603	53,532
<u>\$117,000</u>	Total current liabilities	<u>\$68,123</u>	<u>\$61,332</u>	<u>\$107,852</u>
	<b>Equity</b>			
150,000	Capital contribution	150,000	150,000	150,000
810,000	Operating funds	789,578	746,142	750,030
906,000	Litigation fund	887,287	851,641	870,129
<u>\$1,866,000</u>	Total equity	<u>\$1,826,865</u>	<u>\$1,747,783</u>	<u>\$1,770,159</u>
<u>\$1,983,000</u>	Total equity and liabilities	<u>\$1,894,988</u>	<u>\$1,809,115</u>	<u>\$1,878,011</u>

**STATEMENT OF CASH FLOWS**

*for the period ended 31 December 2015*

<b>Budget 12 months to 30 Jun 2016</b>		<b>Actual 6 months to 31 Dec 2015</b>	<b>Actual 6 months to 31 Dec 2014</b>	<b>Actual year ended 30 Jun 2015</b>
\$		\$	\$	\$
	<b>Cash flows from operating activities</b>			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
201,000	Application fees and costs recoverable	105,353	94,606	129,885
73,000	Interest	48,854	33,112	54,161
15,000	Other income	15,119	24,249	45,330
0	Goods and Services Tax (net)		2,290	1,376
	Cash was applied to:			
(481,000)	Suppliers	(253,230)	(245,964)	(440,996)
(1,202,000)	Employees and members	(608,720)	(618,069)	(1,161,246)
(3,000)	Goods and Services Tax (net)	(3,808)		0
97,000	Net cash flows from operating activities	50,568	37,224	122,510
	<b>Cash flows from investing and financing activities</b>			
	Cash was received from:			
0	Receipts from sale of investments	0	0	0
	Cash was applied to:			
(10,000)	Payments to acquire property, plant and equipment	(4,880)	(19,115)	(22,595)
(118,000)	Payments to purchase investments	(40,994)	(25,026)	(36,626)
(128,000)	Net cash flows from investing and financing activities	(45,874)	(44,141)	(59,221)
(21,000)	Net increase (decrease) in cash	4,694	(6,917)	63,289
603,000	Add opening cash	566,103	502,814	502,814
\$582,000	Closing cash	\$570,797	\$495,897	\$566,103

## NOTES TO THE FINANCIAL STATEMENTS

*for the period ended 31 December 2015*

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

##### Basis of measurement

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

##### Functional and presentational currency

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

##### Use of estimates and judgements

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

##### Changes in accounting policy

There have been no changes in accounting policy in the 6 months since 30 June 2015.

#### **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.

j 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 14 April 2015 and published in the Panel's Statement of Performance Expectations 2015/2016. The budget figures are prepared in accordance with generally accepted accounting practice and are consistent with the accounting policies adopted by the Panel for the preparation of the interim financial statements.

**NOTE 3 LITIGATION FUND**

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

Parliament agreed to an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2016 to top-up the fund to the set level of \$675,000. The Panel has not had to draw from this appropriation during the year.

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

	<b>6 months to 31 Dec 2015 \$</b>	<b>6 months to 31 Dec 2014 \$</b>	<b>12 months to 30 June 2015</b>
Interest received	14,181	14,475	21,297
Interest accrued	2,977	3,733	15,399
Expenditure on approved litigation	0	0	0
Surplus /(deficit) for the year	17,158	18,208	36,696
Opening balance	870,129	833,433	833,433
Closing balance	\$887,287	\$851,641	\$870,129
This is comprised of:			
Cash and cash equivalents			
- Call account	141,274	137,751	139,709
- Short term deposits	743,036	710,157	715,021
Term deposits	0	0	0
Interest receivable	2,977	3,733	15,399
	<u>\$887,287</u>	<u>\$851,641</u>	<u>\$870,129</u>

**NOTE 4 Accumulated Funds**

<b>At December 2015</b>		<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
Capital contributed by owners		150,000		150,000
Accumulated surpluses/deficits	operating	746,142	39,548	789,578
Accumulated surpluses/deficits	litigation	851,641	17,158	887,287
Reserves		0		0
Total		<u>\$1,747,783</u>	<u>\$91,060</u>	<u>\$1,826,865</u>

<b>At December 2014</b>		<b>Opening balance</b>	<b>Surplus/(deficit)</b>	<b>Closing balance</b>
Capital contributed by owners		150,000		150,000
Accumulated surpluses/deficits	operating	673,290	72,852	746,142
Accumulated surpluses/deficits	litigation	833,433	18,208	851,641
Reserves		<u>0</u>		<u>0</u>
Total		<u>\$1,656,723</u>	<u>\$91,060</u>	<u>\$1,747,783</u>

#### **NOTE 5 BUDGET VARIANCES**

Significant variances from budget were:

##### **Expenditure**

Total operating expenditure for the period was \$13,779 lower than budgeted with a number of differences in balances offsetting each other, but not fully.

Consultants were \$24,750 higher than budgeted. This largely relates to expert advice required to deal with the Panel's taxation and conflicts of interest obligations and also expert advice on exemptions, one in particular of which required significant input.

Personnel expense was \$22,582 below budget, related to a number of staff changes early in the year.

Services and supplies were \$14,112 above budget. Approximately \$11,206 of this relates to recruitment costs.

Training and memberships were \$11,115 lower than budgeted. This mostly relates to training budget and opportunities not yet taken.

##### **Net operating surplus**

The Panel recorded an operating surplus of \$39,548 when a surplus of \$25,528 had been expected. While recoveries from operational activities are close to budget there was lower operational expenditure than budgeted.

## **Projected level of operation for the rest of the financial year**

Over the remainder of the financial year the Panel will continue to carry out its responsibilities for administration of the Code and reviewing schemes of arrangement involving Code companies.

The level of Code-regulated and Companies Act regulated (for Code company schemes) corporate activity has remained steady, in line with predictions from market commentators of a pick-up in 2014/2015, which has been continuing into 2015/2016. Previously, activity had been subdued following the 2008/2009 global financial crisis. This continued level of corporate activity is expected to require ongoing Panel involvement in enforcement as well as approvals and exemptions.

The Panel intends to maintain its current complement of eight staff. Currently all positions are filled. However, a 50% turnover in the Panel's staff over a five month period is putting some pressure on capacity and capability, which is being closely monitored by senior management. By comparison, there was only one staff departure in each of the previous three financial years.

Exit interviews provide reassurance that the close timing of these recent departures is coincidental, with two senior lawyers leaving in the last quarter of 2015 to further their respective careers (one in private practice, one in a non-law role), and two junior lawyers leaving in the first quarter of 2016 to travel overseas. The recruitment processes in place ensure there is no time-delay between departures and new staff joining. However, the reality is that it takes time for new staff to build up expertise in the Panel's specialised field of law and regulatory oversight.

Policy/law reform resources will focus on a review of the small Code companies class exemption that came into force on 14 July 2015. The Panel intends to commence consultation on the extent to which the exemption is achieving the desired reduction in compliance costs for small unlisted Code companies through making it easier, in terms of Code compliance, to raise capital, or whether the exemption should be extended to other types of transactions for these companies. It is likely that consultation will commence at the end of the current financial year or early in 2016/2017. The Panel is also aiming to consult on technical amendments to the Code in a similar timeframe. Accordingly, much of the preparatory work for both these significant policy projects is expected to be undertaken over the rest of the current financial year.

The Panel's strong co-regulatory relationship with NZX Limited, built up over 2014/2015, will be maintained through regular engagements between the organisations' respective teams. Similar engagements with Commerce Commission staff began to take place in the reporting period and will be continued over the rest of the financial year.

The Panel is continuing to focus its non-transaction resources on its Public Understanding services in order to better inform shareholders about their rights, and directors about their obligations, under the Code, and the Panel will continue its work programme to improve the accessibility of information on its website for practitioners and other business people with an interest in Code matters and schemes of arrangement. On-line application forms which were published in late 2014/2015 have proved popular with the Panel's clients, with the vast majority of applications being presented on the new forms.

The changes to workplace health and safety legislation are an important issue for the Panel. An external review of the Panel's health and safety related policies and procedures was undertaken in late 2015 and completed in early 2016. The resulting changes being implemented will ensure that the Panel meets its obligations and that its workers and all others for whom it has responsibility on its premises are kept safe and well.