



# HALF YEAR REPORT

> For the period ended 31 December 2018



**TAKEOVERS  
PANEL**

TE PAE WHITIMANA

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## FINANCIAL REPORT

### Status

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

### Statement of responsibility

These financial statements have been prepared for the purpose of the 31 December 2018 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 2018 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 2019 is included in these statements.

### Summary of performance to date

Under the Panel's 2018/2019 Statement of Performance Expectations, the Panel is required, in the period up to 30 June 2019, 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 6,092 hours of time to Panel work in the six months, which was similar to the 6,051 committed in the equivalent period last year.

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

#### *Output 1*

The Panel reviewed seven transaction documents (i.e., for takeovers and shareholder meetings) (9). The Panel undertook no formal investigations into possible breaches of the Code during the six months (0). No preliminary investigations were undertaken into a possible breach of the Code (2). There were no section 32 meetings held during the six months (0).

The Panel processed 12 requests for approval of independent advisers during the six months (15). The Panel also processed four exemption applications for the six months (3).

#### *Output 2*

The Panel reviewed two Code company schemes and gave one no-objection statement in accordance with the procedure set out in its published guidance (4,2). The application for the second no-objection statement was withdrawn by the applicant before completion.

### Output 3

The Panel's main focus for policy work related to working closely with the Ministry of Business, Innovation and Employment to implement the Panel's February 2017 recommendations for amendments to the Code and the Takeovers Act. Amendments to the Code came into force on 29 October 2018. The Panel's recommended amendments to the Act continue to be advanced through the legislative process.

### Output 4

The Panel published its periodic news bulletin, *CodeWord*, in October 2018 (1) and completed work on updating its brand and website to improve public awareness of the Panel and access to the Panel's information, and to improve the website's search functionality and mobile responsiveness.

Of the outputs listed above, Output 1 involved the greatest resource commitment of 55% by cost. Last year, Output 1 involved commitment of 52% by cost.

## The Panel's financial position and outlook

The Panel's operating income, at \$854,007, was \$16,017 or approximately 2% higher than budget, while operating expenditure for the six months, at \$852,618, was \$23,426 or approximately 3%, higher than budget. The Panel also earned interest income of \$9,755 on litigation fund deposits and incurred no litigation fund expense.

The overall result for the Panel was made up of an operating surplus of \$1,389 for the six months and a surplus for the litigation fund of \$9,755. The Panel budgeted an operating surplus of \$8,798 and a surplus of \$9,498 in the litigation fund for the six months.

A summary of the figures to date is as follows:

	Period ended 31 Dec 2018 \$	Budget to 31 Dec 2018 \$	Period ended 31 Dec 2017 \$
Operating revenue	854,007	837,990	830,232
Operating expenditure	852,618	829,192	813,662
Operating surplus/(deficit)	1,389	8,798	16,570
Litigation fund surplus/(deficit)	9,755	9,498	10,243
<b>Net surplus/(deficit)</b>	<b>11,144</b>	<b>18,296</b>	<b>26,813</b>

The following summarises the Panel's completed actions and the allocations of resources for the half year to 31 December 2018:

Quantity of Work	Actual 6 months to 31 Dec 2018	Actual 6 months to 31 Dec 2017	Actual 12 months to 30 Jun 2018	Budget 12 months to 30 Jun 2019
<b>Services for transactions</b>				
Adviser applications received	12	15	21	-*
Final documents received	7	9	15	-*
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	2	2	3	2-3
<b>Review takeovers law and practice</b>				
Policy projects completed	0	0	4	2
Public understanding				
<i>CodeWord</i> published	1	1	2	3
Engagement with stakeholders per Stakeholder Engagement Plan	16 individual 5 seminars	23 individual	46 individual 4 seminars	60-70 3 seminars
Public enquiries responded to	56	37	80	120-150

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

**Cost allocation**

	Actual 6 months to 31 Dec 2018		Actual 6 months to 31 Dec 2017		Actual 12 months to 30 Jun 2018		Budget 12 months to 30 Jun 2019	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	68,940	55	423,104	52	732,428	45	825,000	49
Schemes	42,631	5	48,820	6	146,486	9	236,000	14
Law and Policy	51,157	6	65,093	8	133,684	8	202,000	12
Public understanding	289,890	34	276,645	34	634,999	38	420,000	25
<b>Cost Allocation</b>	<b>852,618</b>	<b>100</b>	<b>813,662</b>	<b>100</b>	<b>1,627,618</b>	<b>100</b>	<b>1,683,000</b>	<b>100</b>

## > STATEMENT OF FINANCIAL PERFORMANCE

For the period ended 31 December 2018

Budget 12 months to 30 Jun 2019 \$	Budget 6 months to 31 Dec 2018 \$		Actual 6 months to 31 Dec 2018 \$	Actual 6 months to 31 Dec 2017 \$
		<b>Revenue - operating</b>		
		<b>Notes</b>		
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
26,000	12,996	Interest	13,590	15,405
156,000	77,994	Application fees and costs recoverable	93,417	67,571
16,000	0	Other revenue	0	256
1,676,000	837,990	Total operating revenue	854,007	830,232
		<b>Revenue – litigation fund</b>		
19,000	9,498	Interest	9,755	10,243
19,000	9,498	Total litigation fund revenue	9,755	10,243
1,695,000	847,488	Total revenue	863,762	840,475
		<b>Operating expenditure</b>		
729,000	361,190	Services and supplies	419,798	376,170
954,000	468,002	Personnel costs	432,820	437,492
1,683,000	829,192	Total operating expenditure	852,618	813,662
0	0	Expenditure – litigation fund	0	0
1,683,000	829,192	Total expenditure	852,618	813,662
<b>12,000</b>	<b>18,296</b>	<b>Net surplus/(deficit)</b>	<b>11,144</b>	<b>26,813</b>
		<b>This is comprised of:</b>		
(7,000)	8,798	Operating surplus /(deficit)	1,389	16,570
19,000	9,498	Litigation surplus /(deficit)	9,755	10,243
<b>12,000</b>	<b>18,296</b>		<b>11,144</b>	<b>26,813</b>

## > STATEMENT OF FINANCIAL POSITION

As at 31 December 2018

Budget as at 30 Jun 2019 \$		Actual as at 31 Dec 2018 \$	Actual as at 31 Dec 2017 \$	Actual as at 30 Jun 2018 \$
	<b>Current assets</b>			
	<b>Notes</b>			
130,000	Bank accounts and cash – operations	173,578	104,506	234,223
122,000	Bank accounts and cash – litigation fund	122,145	122,022	122,083
816,000	Short term deposits – operations	809,528	859,039	794,392
584,000	Short term deposits – litigation fund	580,366	556,025	567,675
4,000	Interest receivable – operating	5,348	8,295	7,040
9,000	Interest receivable – litigation fund	2,372	7,286	5,370
72,000	Debtors and prepayments	82,725	89,163	82,816
<b>1,737,000</b>	<b>Total current assets</b>	<b>1,776,062</b>	<b>1,746,336</b>	<b>1,813,599</b>
	<b>Non-current assets</b>			
53,000	Property, plant and equipment	67,447	40,683	36,350
53,000	Total non-current assets	67,447	40,683	36,350
<b>1,790,000</b>	<b>Total assets</b>	<b>1,843,509</b>	<b>1,787,019</b>	<b>1,849,949</b>
	<b>Current liabilities</b>			
62,000	Creditors and accrued expenses	59,843	25,642	67,797
60,000	Employee costs payable	24,578	30,051	34,208
<b>122,000</b>	<b>Total current liabilities</b>	<b>84,421</b>	<b>55,693</b>	<b>102,005</b>
	<b>Equity</b>			
150,000	Capital contribution	150,000	150,000	150,000
803,000	Operating funds	904,205	895,993	902,816
715,000	Litigation fund	704,883	685,333	695,128
1,668,000	Total equity	1,759,088	1,731,326	1,747,944
<b>1,790,000</b>	<b>Total equity and liabilities</b>	<b>1,843,509</b>	<b>1,787,019</b>	<b>1,849,949</b>



## > STATEMENT OF CASH FLOWS

For the period ended 31 December 2018

Budget 12 months to 30 Jun 2019 \$		Actual 6 months to 31 Dec 2018 \$	Actual 6 months to 31 Dec 2017 \$	Actual 12 months to 30 Jun 2018 \$
	<b>Cash flows from operating activities</b>			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
160,000	Application fees and costs recoverable	106,288	51,000	107,381
45,000	Interest	28,035	26,623	53,853
0	Other income	0	256	257
2,000	Goods and Services Tax (net)	4,917	2,646	
	Cash was applied to:			
(479,000)	Suppliers	(326,116)	(309,950)	(545,211)
(1,141,000)	Employees and members	(544,759)	(561,524)	(1,067,963)
	Goods and Services Tax (net)			(2,222)
<b>81,000</b>	<b>Net cash flows from operating activities</b>	<b>15,365</b>	<b>(43,949)</b>	<b>40,095</b>
	<b>Cash flows from investing and financing activities</b>			
	Cash was received from:			
0	Receipts from sale of investments	0	0	26,550
	Cash was applied to:			
(60,000)	Payments to acquire property, plant and equipment	(48,121)	(4,726)	(11,989)
(37,000)	Payments to purchase investments	(27,827)	(26,447)	0
<b>(97,000)</b>	<b>Net cash flows from investing and financing activities</b>	<b>(75,948)</b>	<b>(31,173)</b>	<b>14,561</b>
(16,000)	Net increase (decrease) in cash	(60,583)	(75,122)	54,656
268,000	Add opening cash	356,306	301,650	301,650
<b>252,000</b>	<b>Closing cash</b>	<b>295,723</b>	<b>226,528</b>	<b>356,306</b>

## ➤ NOTES TO THE FINANCIAL STATEMENTS

For the period ended 31 December 2018

### **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 \$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 2018.

#### 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 9 May 2018 and published in the Panel's Statement of Performance Expectations 2018/2019. The budget figures are prepared in accordance with NZ GAAP and are consistent with the accounting policies adopted by the Panel for the preparation of the interim financial statements.

## Note 3 Litigation fund

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

Parliament approved an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2019 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:

	6 months to 31 Dec 2018 \$	6 months to 31 Dec 2017 \$	12 months to 30 June 2018 \$
Interest received	7,383	2,957	14,668
Interest accrued	2,372	7,286	5,370
Surplus /(deficit) for the year	9,755	10,243	20,038
Opening balance	695,128	675,090	675,090
Closing balance	<b>704,883</b>	<b>685,333</b>	<b>695,128</b>
<b>This is comprised of:</b>			
Cash and cash equivalents			
- Call account	122,145	122,022	122,083
- Short term deposits	580,366	556,025	567,675
Interest receivable	2,372	7,286	5,370
Closing balance	<b>704,883</b>	<b>685,333</b>	<b>695,128</b>

**Note 4 Accumulated funds**

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

At 31 December 2017	Opening balance \$	Surplus/(deficit) \$	Closing balance \$
Capital contributed by owners	150,000		150,000
Accumulated operating surpluses/(deficits)	879,423	16,570	895,993
Accumulated litigation surpluses/(deficits)	675,090	10,243	685,333
<b>Total</b>	<b>1,704,513</b>	<b>26,813</b>	<b>1,731,326</b>

**Note 5 Budget variances**

Significant variances from budget were:

Revenue

Revenue from application fees and costs recoverable was \$15,423 higher than budgeted. This relates to revenue from exemption applications and adviser approvals being \$27,277 higher than expected. This has been partially offset by schemes revenue being \$11,854 lower than expected.

Expenditure

Total operating expenditure for the period was \$23,426 higher than budgeted with a number of differences in balances partially offsetting each other.

Communication charges were \$36,605 above budget. This largely relates to work completed on updating the Panel's website.

Consultants and legal costs were \$36,323 above budget. This largely relates to a mandated external Board evaluation completed for c.\$29,000 that was not included in the budget.

Personnel expense was \$35,182 below budget, which relates to staff changes at the end of last year.

Training and memberships were \$24,543 lower than budgeted. This mostly relates to training budget and opportunities not yet taken.

### Net operating surplus

The Panel recorded an operating surplus of \$1,389 when a surplus of \$8,798 had been expected. Recoveries from operational activities have been slightly higher than budgeted, but operational expenditure is also tracking slightly higher 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 continued at similar levels to the previous year. 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. Two lawyers joined the Panel in August and September 2018 respectively.

Policy/law reform resources will focus particularly on progressing the technical amendments to the Takeovers Act.

The Panel's strong co-regulatory relationships with NZX Limited and the FMA will be maintained, under the organisations' respective MoUs, through regular engagements between the respective teams, including staff secondment arrangements. Similar relationships are also being fostered with the Commerce Commission and Overseas Investment Office.

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

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