

Takeovers Panel

HALF YEAR REPORT

for the period ended 31 December 2016



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 2016/2017 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 2016 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 2017 is included in these statements.

Summary of performance to date

Under the Panel's 2016/2017 Statement of Service Performance, the Panel is required, in the period up to 30 June 2017, 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 6,510 hours of time to Panel work in the six months, which was similar to the 6,170 committed in the equivalent period last year.

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

- (a) Output 1: The Panel reviewed 7 transaction documents (i.e., for takeovers and shareholder meetings) (12). The Panel undertook 4 formal investigations into possible breaches of the Code during the six months (0). Three preliminary investigations were undertaken into a possible breach of the Code (1). There were no section 32 meetings held during the six months (0).

The Panel processed 15 requests for approval of independent advisers during the six months (14). The Panel also processed 8 exemption applications for the six months (4).

- (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 (1). That guidance was redrafted to reflect the Panel's practice and experience of operating under the, still relatively new, no-objection statement process under the Companies Act 1993.

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

- the extension of a class exemption to reduce the compliance burden for small unlisted Code companies to cover a wider range of transaction types (the extended exemption came into force on 1 December 2016);
- completing the policy development work and completing consultation on a raft of proposed technical amendments to the Code and the Takeovers Act;

- (d) Output 4: The Panel published its periodic news bulletin, CodeWord, in each of October and December 2016 (1) and created and installed on the Panel's website a 'Timing Rules Calculator' that allows users to calculate and see, on a digital calendar, the actual dates that result from applying the Code's timing rules to their transactions.

Of the outputs listed above, Output 1 involved the greatest resource commitment of 65% by cost (Output 1, 54%). The increase from the previous year largely related to the heavy resource input required from monitoring and responding to issues relating to three hostile takeovers that commenced late in the reporting period, as well as dealing with a higher than usual number of exemption applications.

The Panel's financial position and outlook

The Panel's operating expenditure for the six months, at \$815,336 was \$28,652 or approximately 3%, lower than budget while operating income, at \$862,844, was \$15,154 or approximately 2% lower than budget. The Panel also earned interest income of \$12,812 on litigation fund deposits and incurred no litigation fund expense. The overall result for the Panel was made up of an operating surplus of \$60,320 for the six months and a surplus for the litigation fund of \$12,812. The Panel budgeted for the six months an operating surplus of \$34,010 and a surplus of \$16,000 in the litigation fund. A summary of the figures to date is as follows:

| | Period ended 31 December 2016 | Budget to 31 December 2016 | Period ended 31 December 2015 |
|--|-------------------------------------|----------------------------------|-------------------------------------|
| | \$ | \$ | |
| Operating revenue | 862,844 | 877,998 | 875,239 |
| Operating expenditure | 815,336 | 843,988 | 835,691 |
| Operating surplus/(deficit) | 47,508 | 34,010 | 39,548 |
| Litigation fund surplus/(deficit) | 12,812 | 16,000 | 17,158 |
| Net surplus/(deficit) | 60,320 | 50,010 | 56,706 |

The following summarises the Panel's completed actions and the allocations of resources for the year to 31 December 2016:

| Quantity of Work | Actual 6 months to 31 December 2016 | Actual 6 months to 31 December 2015 | Actual 12 months to 30 June 2016 | Budget 12 months to 30 June 2017¹ |
|--|--|--|---|---|
| Services for transactions | | | | |
| Adviser applications received | 15 | 14 | 23 | 21-23 |
| Final documents received | 7 | 12 | 19 | 21 |
| Section 32 meetings held | 0 | 0 | 0 | 0 |
| Services under Companies Act for Code company schemes | | | | |
| Number of Code company scheme notifications received | 1 | 1 | 2 | 3-5 |
| Review takeovers law and practice | | | | |
| Policy projects completed | 1 | 0 | 1 | 2 |
| Public understanding | | | | |
| CodeWords published | 2 | 2 | 2 | 3 |
| Engagement with stakeholders per Stakeholder Engagement Plan | 34 individual | 28 | 22 individual 3 seminars | 60-70 |
| Public enquiries responded to | 50 | 73 | 128 | 120-150 |

¹ The differences of percentage of costs expended as between Budget to 30 June 2017 and Actual to 31 December 2017 occur because responding to transactions is the Panel's highest priority for use of its resources, and the number and timing of transactions occurring is entirely market driven.

Cost Allocation

| | Actual | | Actual | | Actual | | Budget | |
|----------------------|----------------------------|------|----------------------------|------|------------------------------|------|------------------------------|------|
| | 6 months to 31 Dec 2016 | | 6 months to 31 Dec 2015 | | 12 months to 30 June 2016 | | 12 months to 30 June 2017 | |
| | \$ | % | \$ | % | \$ | % | \$ | % |
| Code Transactions | 529,969 | 65% | 451,273 | 54% | 900,840 | 54% | 435,750 | 25% |
| Schemes | 48,920 | 6% | 58,498 | 7% | 183,504 | 11% | 522,900 | 30% |
| Law & Policy | 97,840 | 12% | 217,280 | 26% | 350,327 | 21% | 522,900 | 30% |
| Public understanding | 138,607 | 17% | 108,640 | 13% | 233,551 | 14% | 261,450 | 15% |
| Cost Allocation | 815,336 | 100% | 835,691 | 100% | 1,668,222 | 100% | 1,743,000 | 100% |

STATEMENT OF FINANCIAL PERFORMANCE

for the period ended 31 December 2016

| Budget 12 months to 30 Jun 2017 \$ | Budget 6 months to 31 Dec 2016 \$ | | Actual 6 months to 31 Dec 2016 \$ | Actual 6 months to 31 Dec 2015 \$ |
|--|---|--|---|---|
| | | Revenue - operating | Note | |
| 1,494,000 | 747,000 | Government grant – baseline funding | 747,000 | 747,000 |
| 28,000 | 13,998 | Interest | 12,371 | 15,089 |
| 216,000 | 108,000 | Application fees and costs recoverable | 93,066 | 98,031 |
| 18,000 | 9,000 | Other revenue | 10,407 | 15,119 |
| <u>1,756,000</u> | <u>877,998</u> | Total operating revenue | <u>862,844</u> | <u>875,239</u> |
| | | Revenue – litigation fund | | |
| 32,000 | 16,000 | Interest | 12,812 | 17,158 |
| <u>32,000</u> | <u>16,000</u> | Total litigation fund revenue | <u>12,812</u> | <u>17,158</u> |
| <u>\$1,788,000</u> | <u>\$893,998</u> | Total income | <u>\$875,656</u> | <u>\$892,397</u> |
| | | Operating expenditure | | |
| 753,000 | 360,488 | Services and supplies | 357,318 | 358,771 |
| 990,000 | 483,500 | Personnel costs | 458,018 | 476,920 |
| <u>1,743,000</u> | <u>843,988</u> | Total operating expenditure | <u>815,336</u> | <u>835,691</u> |
| 0 | 0 | Expenditure – litigation fund | 0 | 0 |
| <u>\$1,743,000</u> | <u>\$843,988</u> | Total expenditure | <u>\$815,336</u> | <u>\$835,691</u> |
| <u>\$45,000</u> | <u>\$50,010</u> | Net Surplus/Deficit | <u>\$60,320</u> | <u>\$56,706</u> |
| | | This is comprised of: | | |
| 13,000 | 34,010 | Revenue - operating / (deficit) | 47,508 | 39,548 |
| 32,000 | 16,000 | Revenue - litigation / (deficit) | 12,812 | 17,158 |
| <u>\$45,000</u> | <u>\$50,010</u> | | <u>\$60,320</u> | <u>\$56,706</u> |

STATEMENT OF FINANCIAL POSITION

as at 31 December 2016

| Budget as at 30 Jun 2017 \$ | | Actual as at 31 Dec 2016 \$ | Actual as at 31 Dec 2015 \$ | Actual as at 30 Jun 2016 \$ |
|--|--|--|--|--|
| | Current assets | | | |
| | Notes | | | |
| 467,000 | Bank accounts and cash – operations | 171,020 | 429,523 | 485,771 |
| 147,000 | Bank accounts and cash – litigation fund | 142,347 | 141,274 | 141,985 |
| 493,000 | Short term deposits – operations | 828,147 | 461,761 | 470,199 |
| 784,000 | Short term deposits – litigation fund | 759,433 | 743,036 | 756,075 |
| 5,000 | Interest receivable – operating | 9,071 | 6,596 | 6,266 |
| 4,000 | Interest receivable – litigation fund | 11,860 | 2,977 | 2,768 |
| 71,000 | Debtors and prepayments | 91,958 | 67,168 | 133,912 |
| <u>\$1,971,000</u> | Total current assets | <u>\$2,013,836</u> | <u>\$1,852,335</u> | <u>\$1,996,976</u> |
| | Non-current assets | | | |
| 27,000 | Property, plant and equipment | 44,354 | 42,653 | 26,354 |
| <u>27,000</u> | Total non-current assets | <u>44,354</u> | <u>42,653</u> | <u>26,354</u> |
| <u>\$1,998,000</u> | Total assets | <u>\$2,058,190</u> | <u>\$1,894,988</u> | <u>\$2,023,330</u> |
| | Current liabilities | | | |
| 56,000 | Creditors and accrued expenses | 47,514 | 48,164 | 55,389 |
| 20,000 | Provision for retention of staff | | | |
| 39,000 | Employee costs payable | 30,343 | 19,959 | 47,532 |
| <u>\$115,000</u> | Total current liabilities | <u>\$77,857</u> | <u>\$68,123</u> | <u>\$103,317</u> |
| | Equity | | | |
| 150,000 | Capital contribution | 150,000 | 150,000 | 150,000 |
| 798,000 | Operating funds | 916,693 | 789,578 | 869,185 |
| 935,000 | Litigation fund | 3 | 887,287 | 900,828 |
| <u>\$1,883,000</u> | Total equity | <u>\$1,980,333</u> | <u>\$1,826,865</u> | <u>\$1,920,013</u> |
| <u>\$1,998,000</u> | Total equity and liabilities | <u>\$2,058,190</u> | <u>\$1,894,988</u> | <u>\$2,023,330</u> |

STATEMENT OF CASH FLOWS

for the period ended 31 December 2016

| <i>Budget 12 months to 30 Jun 2017</i> | | <i>Actual 6 months to 31 Dec 2016</i> | <i>Actual 6 months to 31 Dec 2015</i> | <i>Actual 12 months to 30 Jun 2016</i> |
|---|---|--|--|---|
| <i>\$</i> | | <i>\$</i> | <i>\$</i> | <i>\$</i> |
| | Cash flows from operating activities | | | |
| | Cash was received from: | | | |
| 1,494,000 | Government grant – operations | 747,000 | 747,000 | 1,494,000 |
| 220,000 | Application fees and costs recoverable | 158,772 | 105,353 | 164,198 |
| 60,000 | Interest | 13,286 | 48,854 | 73,968 |
| 18,000 | Other income | 10,407 | 15,119 | 15,655 |
| 0 | Goods and Services Tax (net) | | | 5,773 |
| | Cash was applied to: | | | |
| (522,000) | Suppliers | (250,787) | (253,230) | (472,980) |
| (1,175,000) | Employees and members | (595,573) | (608,720) | (1,151,610) |
| (3,000) | Goods and Services Tax (net) | (6,475) | (3,808) | 0 |
| <u>\$92,000</u> | Net cash flows from operating activities | <u>\$76,630</u> | <u>\$50,568</u> | <u>\$129,004</u> |
| | Cash flows from investing and financing activities | | | |
| | Cash was received from: | | | |
| 0 | Receipts from sale of investments | 0 | 0 | 0 |
| | Cash was applied to: | | | |
| 0 | Payments to acquire property, plant and equipment | (29,713) | (4,880) | (4,880) |
| (42,000) | Payments to purchase investments | (361,306) | (40,994) | (62,471) |
| <u>\$(42,000)</u> | Net cash flows from investing and financing activities | <u>\$(391,019)</u> | <u>\$(45,874)</u> | <u>\$(67,351)</u> |
| 50,000 | Net increase (decrease) in cash | (314,389) | 4,694 | 61,653 |
| 564,000 | Add opening cash | 627,756 | 566,103 | 566,103 |
| <u>\$614,000</u> | Closing cash | <u>\$313,367</u> | <u>\$570,797</u> | <u>\$627,756</u> |

NOTES TO THE FINANCIAL STATEMENTS

for the period ended 31 December 2016

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 2016.

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 14 April 2016 and published in the Panel's Statement of Performance Expectations 2016/2017. The budget figures are prepared in accordance with 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 agreed to an appropriation, if required, of up to \$200,000 (GST inclusive) for the year ended 30 June 2017 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 2016 \$ | 6 months to 31 Dec 2015 \$ | 12 months to 30 June 2016 |
|------------------------------------|---|---|--|
| Interest received | 952 | 14,181 | 27,931 |
| Interest accrued | 11,860 | 2,977 | 2,768 |
| Expenditure on approved litigation | 0 | 0 | 0 |
| Surplus /(deficit) for the year | <u>12,812</u> | <u>17,158</u> | <u>30,699</u> |
| Opening balance | <u>900,828</u> | <u>870,129</u> | <u>870,129</u> |
| Closing balance | <u>\$913,640</u> | <u>\$887,287</u> | <u>\$900,828</u> |
| This is comprised of: | | | |
| Cash and cash equivalents | | | |
| - Call account | 142,347 | 141,274 | 141,985 |
| - Short term deposits | 759,433 | 743,036 | 756,075 |
| Term deposits | 0 | 0 | 0 |
| Interest receivable | <u>11,860</u> | <u>2,977</u> | <u>2,768</u> |
| | <u>\$913,640</u> | <u>\$887,287</u> | <u>\$900,828</u> |

NOTE 4 Accumulated Funds

| At December 2016 | Opening balance | Surplus/(deficit) | Closing balance |
|--|----------------------------|--------------------------|----------------------------|
| Capital contributed by owners | 150,000 | | 150,000 |
| Accumulated operating surpluses/deficits | 869,185 | 47,508 | 916,693 |
| Accumulated litigation surpluses/deficits | 900,828 | 12,812 | 913,640 |
| Reserves | <u>0</u> | | <u>0</u> |
| Total | <u>\$1,920,013</u> | <u>\$60,320</u> | <u>\$1,980,333</u> |

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

NOTE 5 BUDGET VARIANCES

Significant variances from budget were:

Expenditure

Total operating expenditure for the period was \$28,652 lower than budgeted with a number of differences in balances offsetting each other, but not fully.

Communication charges were \$11,314 above budget. This largely relates to development of the website for the Timing Rules Calculator.

Members' fees were \$13,970 (13%) above budget. This is the corollary of higher than expected work on enforcing the Code and considering exemption applications.

Personnel expense was \$25,483 below budget, related to a staff change early in the year.

Training and memberships were \$22,137 lower than budgeted. This mostly relates to training budget and opportunities not yet taken.

Net operating surplus

The Panel recorded an operating surplus of \$47,508 when a surplus of \$34,010 had been expected. While recoveries from operational activities are slightly lower than 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 (**Code company schemes**).

The level of Code regulated and Companies Act regulated (for Code company schemes), corporate activity has remained at similar strong 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. After a 50% turnover in the Panel's staff during 2015/2016, retention was back to its usual steady state, with just one departure in the current year. By comparison, there was only one staff departure in each of the three financial years before 2015/2016.

Policy/law reform resources will focus particularly on progressing the technical amendments to the Code and Takeovers Act. The Panel expects to exercise its power under section 8(1)(a) of the Takeovers Act before the end of the year, to make recommendations to the Minister regarding the proposed technical amendments.

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. 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, 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.

The Panel consistently receives very positive feedback from takeovers practitioners and representatives about its responsiveness and approachability, as well as about the value of its published guidance. The Panel intends to continue to rise to the challenge of meeting the market's high expectations.