

Takeovers Panel

SIX MONTH REPORT

for the period ended 31 December 2014



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 2014/2015 Six Month Report of the Takeovers Panel to the Minister of Commerce. 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 2014 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 2015 is included in these statements.

Summary of performance to date

Under the Panel's 2014/2015 Statement of Service Performance, the Panel is required, in the period up to 30 June 2015, 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 6019 hours of time to Panel work in the six months, as compared with 6,784 in the equivalent period last year. The reduction in hours worked this year reflects less work undertaken by staff and members of the Panel on Public Understanding than in the previous year.

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

- (a) Output 1: The Panel reviewed 11 transaction documents (i.e. for takeovers and shareholder meetings) (8). The Panel undertook no new formal investigations into possible breaches of the Code during the six months (0), however 2 preliminary investigations were undertaken into possible breaches of the Code (4). There were no section 32 meetings held during the six months (0).

The Panel processed 11 requests for approval of independent advisers during the six months (10). The Panel also processed 6 exemption applications for the six months (3).

- (b) Output 2: The Panel reviewed one scheme which was caught by the new provisions under the Companies Act on a very minor aspect of the scheme proposal. However, the Panel's no-objection statement process was not undertaken by the scheme promoters. The Panel took external advice for the Court process; the Panel did not object to the scheme.
- (c) Output 3: The Panel's main focus for policy work related to the completion of proposals for disclosure of equity derivative positions in the new substantial holder regime under the Financial Markets Conduct Act and in the Code for takeovers. Work was also commenced on a proposal to reduce the compliance burden for small Code companies, and the Panel began a review of its position regarding when certain agreements or arrangements result in the creation of an "association" for the purposes of 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 are able to access these documents on-line without needing to go through an Official Information Act request. The Panel published its periodic news bulletin, CodeWord, in October 2014 (1).

Of the outputs listed above, Output 1 involved the greatest resource commitment of 49% by cost (Prior year outputs adjusted for 2015 groupings - Output 1, 45%)

The Panel's financial position and outlook

The Panel's operating expenditure for the six months, at \$807,230 was \$46,243, or approximately 5%, lower than budget while operating income, at \$880,082, was \$23,410 or 2%, lower than budget. The Panel also earned interest income of \$18,208 on litigation fund deposits and incurred no litigation fund expense. The overall result for the Panel was made up of an operating surplus of \$72,852 for the six months and a surplus for the litigation fund of \$18,208. The Panel has budgeted for the six months an operating surplus of \$50,019 and a surplus of \$6,501 in the litigation fund. A summary of the figures to date is as follows:

	Year to date	Budget to date
	\$	\$
Operating income	880,082	903,492
Operating expenditure	807,230	853,473
Operating surplus/(deficit)	72,852	50,019
Litigation fund surplus/(deficit)	18,208	6,501
Net surplus/(deficit)	91,060	56,520

The following summarises the Panel's completed actions and the allocations of resources for the year to 31 December 2014:

Quantity of Work	Actual 6 months to 31 December 2014	Actual 6 months to 31 December 2013	Actual 12 months to 30 June 2014	Budget 12 months to 30 June 2015
Services for transactions				
Adviser applications received	11	10	21	22-26
Final documents received	11	8	13	24
Section 32 meetings held	0	0	0	1
Services under Companies Act for Code company schemes				
Number of Code company scheme notifications received	1	0	0	1-3
Review takeovers law and practice				
Policy projects completed	1	2	4	1
Public understanding				
Code Words published	1	1	2	3
Engagement with stakeholders	3 individual, 1 group function(c. 40 attendees)	14	27	25
Public enquiries responded to	61	68	163	130-150

Cost Allocation

	Actual		Actual		Actual		Budget	
	6 months to 31 Dec 2014		6 months to 31 Dec 2013		12 months to 30 June 2014		12 months to 30 June 2015	
	\$	%	\$	%	\$	%	\$	%
Code Transactions	395,543	49%	372,450	45%	666,055	41%	710,000	40%
Schemes	32,289	4%	0	0	0	0	266,000	15%
Law & Policy	209,880	26%	148,980	18%	373,640	23%	178,000	10%
Public understanding	169,518	21%	306,236	37%	584,827	36%	621,000	35%
Cost Allocation	807,230	100%	827,666	100%	1,624,522	100%	1,775,000	100%

STATEMENT OF FINANCIAL PERFORMANCE

for the period ended 31 December 2014

Budget 12 months to 30 Jun 2015 \$	Budget 6 months to 31 Dec 2014 \$		Actual 6 months to 31 Dec 2014 \$	Actual 6 months to 31 Dec 2013 \$
		Revenue - operating	Note	
1,494,000	747,000	Government grant – baseline funding	747,000	747,000
28,000	13,998	Interest	16,018	13,333
285,000	142,494	Application fees and costs recoverable	92,815	82,060
0	0	Other income	24,249	0
<u>1,807,000</u>	<u>903,492</u>	Total operating income	<u>880,082</u>	<u>842,393</u>
		Revenue – litigation fund		
<u>33,000</u>	<u>16,500</u>	Interest	<u>18,208</u>	<u>15,599</u>
<u>33,000</u>	<u>16,500</u>	Total litigation fund income	<u>18,208</u>	<u>15,599</u>
<u>\$1,840,000</u>	<u>\$919,992</u>	Total income	<u>\$898,290</u>	<u>\$857,992</u>
		Operating expenditure		
807,000	389,476	Services and supplies	335,271	384,080
948,000	463,997	Personnel costs	471,959	443,586
<u>1,755,000</u>	<u>853,473</u>	Total operating expenditure	<u>807,230</u>	<u>827,666</u>
20,000	9,999	Expenditure – litigation fund	0	0
<u>\$1,775,000</u>	<u>\$863,472</u>	Total expenditure	<u>\$807,230</u>	<u>\$827,666</u>
<u>\$65,000</u>	<u>\$56,520</u>	Net Surplus/Deficit	<u>\$91,060</u>	<u>\$30,326</u>
		This is comprised of:		
52,000	50,019	Income - operating /(deficit)	72,852	14,727
<u>13,000</u>	<u>6,501</u>	Income - litigation / (deficit)	<u>18,208</u>	<u>15,599</u>
<u>\$65,000</u>	<u>\$56,520</u>		<u>\$91,060</u>	<u>\$30,326</u>

STATEMENT OF FINANCIAL POSITION

as at 31 December 2014

Budget as at 30 Jun 2015 \$		Actual as at 31 Dec 2014 \$	Actual as at 31 Dec 2013 \$	Actual as at 30 Jun 2014 \$
	Current assets			
	Notes			
251,000	Bank accounts and cash – operations	358,146	240,199	367,228
120,000	Bank accounts and cash – litigation fund	137,751	133,797	135,586
565,000	Short term deposits – operations	442,046	423,723	432,632
705,000	Short term deposits – litigation fund	710,157	680,640	694,545
6,000	Interest receivable – operating	7,432	6,491	6,749
2,000	Interest receivable – litigation fund	3,733	2,894	3,302
70,000	Debtors and prepayments	66,046	75,599	54,763
<u>\$1,719,000</u>	Total current assets	<u>\$1,725,311</u>	<u>\$1,563,343</u>	<u>\$1,694,805</u>
	Non-current assets			
58,000	Property, plant and equipment	83,804	114,182	90,232
58,000	Total non-current assets	83,804	114,182	90,232
<u>\$1,777,000</u>	Total assets	<u>\$1,809,115</u>	<u>\$1,667,525</u>	<u>\$1,785,037</u>
	Current liabilities			
60,000	Creditors and accrued expenses	30,729	38,548	48,478
48,000	Employee costs payable	30,603	28,845	79,836
<u>\$108,000</u>	Total current liabilities	<u>\$61,332</u>	<u>\$67,393</u>	<u>\$128,314</u>
	Equity			
150,000	Capital contribution	150,000	150,000	150,000
692,000	Operating funds	746,142	642,801	673,290
827,000	Litigation fund	851,641	817,331	833,433
<u>\$1,669,000</u>	Total equity	<u>\$1,747,783</u>	<u>\$1,610,132</u>	<u>\$1,656,723</u>
<u>\$1,777,000</u>	Total equity and liabilities	<u>\$1,809,115</u>	<u>\$1,677,525</u>	<u>\$1,784,037</u>

STATEMENT OF CASH FLOWS

for the period ended 31 December 2014

<i>Budget 12 months to 30 Jun 2015</i>		<i>Actual 6 months to 31 Dec 2014</i>	<i>Actual 6 months to 31 Dec 2013</i>	<i>Actual year ended 30 Jun 2014</i>
\$		\$	\$	\$
	Cash flows from operating activities			
	Cash was received from:			
1,494,000	Government grant – operations	747,000	747,000	1,494,000
300,000	Application fees and costs recoverable	94,606	184,958	253,676
61,000	Interest	33,112	36,792	67,332
0	Other income	24,249	0	7
0	Goods and Services Tax (net)	2,290	0	0
	Cash was applied to:			
(525,000)	Suppliers	(245,964)	(283,252)	(481,528)
(1,194,000)	Employees and members	(618,069)	(620,680)	(1,116,771)
(2,000)	Goods and Services Tax (net)		(6,813)	(7,079)
<u>134,000</u>	Net cash flows from operating activities	<u>37,224</u>	<u>58,005</u>	<u>209,637</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:			
(20,000)	Payments to acquire property, plant and equipment	(19,115)	0	0
(138,000)	Payments to purchase investments	(25,026)	(166,698)	(189,512)
<u>(158,000)</u>	Net cash flows from investing and financing activities	<u>(44,141)</u>	<u>(166,698)</u>	<u>(189,512)</u>
(24,000)	Net increase (decrease) in cash	(6,917)	240,199	20,125
395,000	Add opening cash	502,814	133,797	482,689
<u>\$371,000</u>	Closing cash	<u>\$495,897</u>	<u>\$373,996</u>	<u>\$502,814</u>

NOTES TO THE FINANCIAL STATEMENTS

for the period ended 31 December 2014

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 corporate takeovers of New Zealand companies.

Basis of preparation

Statement of compliance

The Panel has elected to report as a Tier 3 entity and is eligible to do so with total operating expenses below \$2million. These condensed interim 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

In accordance with the requirements of Public Benefit Entity Simple Format Reporting – Accrual (Public Sector) – (PBE SFR-A (PS)) the Panel is using the descriptor 'bank accounts and cash' which replaces 'cash and cash equivalents' and removes short term deposits of 3 months or less from the balance. Consequently the policy for term deposits now includes all term deposits regardless of maturities. These changes have been applied from 1 July 2014. There are no restatements required in these accounts as there were no term deposits of less than 3 months in the December 2013 and June 2014 cash and cash equivalents.

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. Short term deposits have a maturity of 1 year or less. Long term deposits have a maturity of more than 1 year.

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
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 income 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 23 May 2014 and published in the Panel's Statement of Performance Expectations 2014/2015. 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 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 2015 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 2014 \$	6 months to 31 Dec 2013 \$	12 months to 30 June 2014
Interest received	14,475	12,705	28,399
Interest accrued	3,733	2,894	3,302
Expenditure on approved litigation	0	(28,656)	0
Surplus /(deficit) for the year	18,208	15,599	31,701
Opening balance	833,433	801,732	801,732
Closing balance	\$851,641	\$817,331	\$833,433
This is comprised of:			
Cash and cash equivalents			
- Call account	137,751	133,797	135,586
- Short term deposits	710,157	200,136	0
Term deposits	0	480,504	694,545
Interest receivable	3,733	2,894	3,302
Trade payables	0	0	0
	\$851,641	\$817,331	\$833,433

NOTE 4 Accumulated Funds

At December 2014	Opening balance	Surplus/(deficit)	Closing balance
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	0		0
Total	\$1,656,723	\$91,060	\$1,747,783

At December 2013		Opening balance	Surplus/(deficit)	Closing balance
Capital contributed by owners		150,000		150,000
Accumulated surpluses/deficits	operating	628,074	14,727	642,801
Accumulated surpluses/deficits	litigation	801,732	15,599	817,331
Reserves		<u>0</u>		<u>0</u>
Total		<u>\$1,579,806</u>	<u>\$82,012</u>	<u>\$1,610,132</u>

NOTE 5 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$23,410 lower than budgeted, primarily because there were none of the forecast recoveries from section 32 meetings (i.e., no such meetings held) and none from schemes of arrangement work (\$85,000 budgeted). This was partially offset by c.\$24,000 unbudgeted income from a secondment programme undertaken with NZX Limited.

Expenditure

Total operating expenditure for the period was \$46,243 lower than budgeted primarily because of lower than budgeted expenditure on members' fees, services and supplies and communication charges.

In particular, members' fees were \$28,121 lower than budgeted. This relates to little members' time being required on schemes of arrangement and none on section 32 work, and also members having less involvement in Public Understanding work.

Services and supplies costs were \$4,504 lower than budgeted. Approximately \$3,600 of this relates to office administration costs.

Communication costs were \$7,527 lower than budgeted but this is expected to even out as intended work on the website will be progressed over the 2nd half of the year.

Net operating surplus

The Panel recorded an operating surplus of \$73,286 when a surplus of \$40,020 had been expected. While there were lower than expected recoveries from operational activities there was significantly 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 corporate activity appears to have picked up, in line with predictions from market commentators, after several subdued years. This is expected to require ongoing Panel involvement in enforcement as well as approvals and exemptions. A strongly developing co-regulatory relationship with NZX Limited is intended to be further strengthened through a further secondment of a Panel executive staff member to NZX during the second half of the year. This follows a secondment earlier in the financial year which achieved its goal of increasing staff expertise in capital markets regulation and policy in relation to listed Code companies. An MOU between NZX and the Panel is being developed and, once completed, may be published on the Panel's website to signal the respective regulators' level of co-operation and to promote confidence in the integrity of the takeovers market.

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 works with the Institute of Directors to increase the 'visibility' of the Code with directors.

The Panel intends to maintain its current complement of eight staff. Currently all positions are filled.

Amendments to the Companies Act and Takeovers Act through the passage of the Companies and Limited Partnerships Amendment Bill in mid-2014 brought into effect the Panel's new role of giving 'no-objection statements' to applicants for schemes of arrangement involving Code companies. The Panel anticipates that once the new regime beds in, a significant proportion of takeovers is likely to be undertaken under that regime. The reason for this expectation is that the new law is closely aligned with the regime that has operated in Australia for several decades, and around half of takeovers are undertaken as schemes of arrangement in that jurisdiction.

The Panel publishes its periodic news bulletin, Code Word, from time to time as news arises. Guidance on the procedures for applying to the Panel for a no-objection statement under the new Companies Act regime for schemes involving Code companies has been published. 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 will be investigating introducing on-line applications as part of its website development.

The changes to workplace health and safety legislation is an important issue for the Panel. An appropriate level of the Panel's resources will be focused on understanding the new regime and ensuring that the Panel meets its obligations so that its employees and all others for whom it has responsibility on its premises are kept safe and well.