



1 February 2010

Geoff Connor
Review of the Financial Reporting Framework
Competition, Trade and Investment Branch
Ministry of Economic Development
PO Box 1473
WELLINGTON 6140

By email: financialreporting@med.govt.nz

Dear Mr Connor

Review of the Financial Reporting Framework

The New Zealand Law Society (the Society) welcomes the opportunity to comment on the discussion document referred to above.

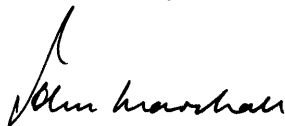
1. Disclosure requirements for large entities are inappropriate and will have a negative impact. The Society is particularly concerned that some law firms might fall within the “large” criterion. For law firms and more generally disclosure of information as proposed would be an invasion of personal and business privacy without any substantive countervailing public benefit. It would also add cost. The discussion document says that disclosure of financial statements might contribute to good decision-making, ensure greater financial discipline and allow creditors, employees and other stakeholders useful information for legitimate reasons. That, however, is unproven and without substance. There is no evidence to suggest there is a demand for this information from the public. The more general argument against the introduction of this obligation to disclose is set out below.
2. The Economic Significance Indicator does not justify the imposition of public reporting requirements on entities because they are considered large. Personal privacy (for individuals who are shareholders in a private company) and business privacy (because financial information is commercially sensitive information) are reasons against disclosure. Public accountability for charities, government-owned entities and issuers is sufficient to over-ride the policy of protecting privacy, but being “large” is not sufficient.
3. Other reasons for extending disclosure requirements as proposed include:
 - (a) large entities are less likely to fail than small entities.
 - (b) disclosure of financial statements under the current regime mainly attracts enquiry from competitors rather than genuine stakeholders. Suppliers, customers, employees and other groups are able to request financial information from an entity if they wish to do so. If such a request is granted, it will often be following the execution of a confidentiality agreement. The major beneficiaries of such disclosure are likely to be competitors to the business which will create a disadvantage for “large” entities, over those that are not “large”. Financial statements that are filed with the Companies Registrar (e.g. because the entity has

overseas ownership) are used by competitors and other potential acquirers and not by suppliers, customers or employees, so there appears to be no evidence that customers or employees use financial statements that are published publicly now.

- (c) the publication of financial information on a public register does not lessen the risk of corporate failure and is unlikely to be used by those for whom it has been designed.
 - (d) there appears to have been no cost benefit analysis carried out in respect of the imposition of the requirement to publicly disclose financial statements.
4. The “grandfathering” proposal at paragraph 82, while politically appealing to those that would otherwise be impacted by the new law, is difficult to justify on a logical or rational basis. It is, however, understandable from a political perspective (i.e. to appease those who would otherwise be impacted). Either the obligation on large entities is a good idea and should be applied to all those considered to be “large” or it is not. In the Society’s view it is not.
 5. The Society supports the proposal that removes differentiation between NZ incorporated entities that have 25% or more overseas ownership and those that do not. Either the entity is an issuer or “large” (if the latter is adopted) and should therefore publish accounts, or it is not.
 6. The Society supports the proposal that removes differentiation between a New Zealand incorporated entity and an overseas incorporated entity for the purposes of financial reporting – disclosure should be based on whether an entity is an issuer (in New Zealand) or not.
 7. For profit making entities that are not issuers, financial reporting should continue to be targeted towards shareholders only. The opt out proposal to address the separation of management indicator is appropriate.

This submission has been prepared by the Society’s Commercial and Business Law Committee, the Convener of which is John Horner. If you have any queries regarding this submission please contact Diana Brown, the committee secretary, by telephone (04) 463 2967 or email diana.brown@lawsociety.org.nz.

Yours sincerely



John Marshall QC
President