Submission of National Distribution Union: Statutory framework for financial reporting

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1. The National Distribution Union welcomes the opportunity to provide a submission to the review of the Financial Reporting Framework.

2. The National Distribution Union has 20,000 members, and covers a wide range of industries. Workers organised by the Union include retail and supermarket workers, storeworkers, bus and truck drivers, butchers, clothing and textile workers, energy workers, sawmill and pulp mill workers, bakers, and ambulance officers.

3. A significant amount of the work of the union involves bargaining with employers on behalf of our members. We often make use of financial reports to gain a greater understanding of the financial position of the companies we bargain with, and their position in their respective industries. We also file financial reports to the register of unions as an incorporated society.

4. The NDU welcomes the proposal of the Ministry of Economic Development that significant ‘non-issuer’ or for profit private companies be required to file audited General Purpose Financial Reports (GPFR). We believe such a move is long overdue. Over the past two years the NDU and its members have faced the fallout from the demise of the clothing manufacturer Lane Walker Rudkin, leading to many of our members losing both their jobs and the redundancy money they were entitled to.

5. A key purpose of GPFR is to promote accountability by requiring the disclosure of information about the entity’s financial performance and position. As the discussion document states: “The overarching reason for imposing financial reporting obligations is to provide information to external users who have a need for an entity’s GPFR but are unable to demand them.”

6. A spokesperson for Ministry of Economic Development, Geoff Connor put the issues into the following nutshell.

“The essence of the argument is that when large entities fail, it comes out of the blue and tends to have quite a harmful effect on a lot of people. If you think about creditors, people who pay for services and goods in advance and employees who have some of their remuneration delayed till later years, they are in effect providing capital to companies ... therefore there should be the same accountability as there is for people who seek money direct from the public in an IPO or whatever. We just want to see whether people agree with that proposition or not.”

7. The NDU strongly agrees with the proposition and presents some case studies to demonstrate the benefits of requiring private companies to publically file General Purpose Financial Reports.

Unions have a need for an entity’s GPFR but are often unable to demand them

8. While unions have the ability to request information during bargaining for a collective agreement under section 34 of the Employment Relations Act, this is not specific to financial reporting and it would be unlikely that a company would release an entire GPFR in this context. For example a request for information regarding profitability may only provide information regarding the current year, and would not give the wider context that GPFR provides.

9. It is important to note that the provision of section 34 of the Employment Relations Act is also subject to significant limitations meaning that it should not be regarded as an alternative to requiring non issuing companies to issue public GPFR.
9.1. S34 is only available during bargaining for a collective agreement. There are other times unions and their employees have a legitimate reason for seeking financial information but may not be able to access such information. One example would be when a company announces a closure, downsizing and/or restructuring and requests ‘alternative proposals’ on short notice.

9.2. The Act only allows unions and employer involved in bargaining to make requests – not individual employees.

9.3. The information can be given to an independent reviewer under S34(3b) if the party providing the information ‘reasonably considers’ that it should be treated as commercially sensitive. Companies that do not currently publish GPFR voluntarily are likely to regard such information as commercially sensitive. Under S34(6) where a reviewer decides such information should be treated as confidential the requesting party does not gain access to the information directly.

9.4. Under S34(7) the information can only be used for the purposes of the bargaining concerned and cannot be disclosed to anyone else, including the persons who would be bound by the collective agreement being bargaining for. Thus it does not meet the same purpose as making financial information more available by requiring non issuing companies to file public GPFR.

10. While s34 has been a useful aid in helping union and employer parties conclude bargaining, at times some employers have attempted to play games to make it more difficult to find the requested information. In one notorious case another union (not the NDU) make a S34 request to an employer, only to be locked in a room full of file boxes for a couple of hours and told to hunt for the requested information themselves.

11. This is one of the reasons why the NDU opposes the MED proposal to remove the requirement for medium and small companies to prepare financial reports. Without a clear understanding that each company must prepare financial reports, some employers may attempt to claim the information requested under s34 is not available.

12. The NDU has also encountered situations where an employer party claims poverty during bargaining for a collective agreement, yet when the relevant GPFR are uncovered this tells an entirely different story.

13. There have also been occasions where an employer party has provided the union with financial information to demonstrate the company is experiencing genuine difficulty. It is not in the interests of our members and the union to force an otherwise good employer out of business. Our union has worked successfully with a number of employers to implement ‘9 day fortnight’ type arrangements under the Government Job Support Scheme. Having greater access to relevant GPFR would assist the union in gaining a more accurate assessment of the financial position of an employer that may be in trouble and would make it easier to make a case for alternative working arrangements.

**The application of the indicators to private non-profit entities**

14. At first glance it would appear the proposals of the MED would have little impact on the financial reporting obligations of the National Distribution Union. We already publically file audited accounts through the register of unions and these are made available on the companies office website.

15. We note that the MED is proposing that the economic significance be measured on the basis of annual expenditure. This may be a workable approach in some circumstances. The NDU
believes that as we receive fees from members it is only right that we spend this money for the benefit of our current members, as well as building a solid base for the future.

16. The National Technical Director of Grant Thornton New Zealand, Mark Hucklesby, highlighted how the MED proposal changes could affect not-for-profit organisations

“The MED is proposing that if a not-for-profit organisation issues a set of financial statements that do not comply with the applicable financial reporting standards approved for not-for-profit organisations by the ASRB, then all members of the not-for-profit’s governing body might end up being individually prosecuted for failing to comply with the Financial Reporting Act 1993. And the consequence of failing to comply with the act if financial reporting breaches are not corrected will either be significant fines, imprisonment or, in extreme cases, both.”

17. We were unable to establish whether or not this is the case from the MED discussion document, but it would be of concern to us if it were so. Unfortunately Hucklesby does not make it clear whether the above scenario would also apply to incorporated societies. We would welcome further clarification on this issue. While there needs to be some consequences for organisations that fail to comply with financial reporting standards, we wonder if individual prosecution is the correct approach, particularly in the cases of less than total negligence, such as making an effort to file financial statements only to be informed those statements do not meet the ASRB standards. Due to the voluntary nature of many organisations it could well be that non-profits generally possess less technical and practical knowledge of accounting standards than a typical for-profit company.

18. The MED proposals may have other implications that we are not aware of but we feel we need more information on the potential ramifications for unions, whether they be large or small. The NDU has raised this issue with the Council of Trade Unions. For example we are concerned if potential changes in the accounting standards could lead to significantly greater costs if a higher standard of auditing was required. As the union movement is funded by membership fees does this constitute raising funds from the public, and thus bring unions within the public accountability measure? The Council of Trade Unions and the National Distribution Union welcome further discussion with officials on how the proposals could affect the union movement.

Improving Public Accountability

19. The discussion document claims that three types of entities that are publically accountable, Non-profit public sector entities, issuers and charities. The NDU believes that for-profit private companies should also be assessed on a public accountability indicator as they are also members of society and it is a fiction that such companies can operate somehow independent of the wider society of which they are a part. Many companies are recognising this through reporting on their social and environmental impact through initiatives such as triple bottom line reporting. We believe public accountability arises when an entity makes any contact with the public, another business or any public institution.

20. The discussion document says public accountability arises when an entity receives money directly from the public. Yet even under this definition it could be argued many private for-profit companies who receive public money for providing services would qualify.

21. Under the Public Transport Management Act transport companies make bids to provide public transport services on behalf of regional councils. Approximately two thirds of the funding for urban bus transport comes from the government or regional councils demonstrating that bus companies are heavily reliant on public money for their income.

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1 NZ Herald (13/1/10), “Mark Hucklesby: Speak now not-for-profits, or forever hold your peace”
22. Despite this, the vast majority of public transport companies are very secretive when it comes to revealing relevant financial information though GPFR or other means. The NDU regularly research companies across a wide range of industries. It often seems like it is far easier to find relevant financial information in just about any other industry, whereas privately owned public transport companies are the least likely to voluntarily disclose anything.

23. This was one of the reasons why regional authorities, in particular the Auckland Regional Transport Authority (ARTA) sought changes to the Public Transport Management Act in order that they could obtain relevant financial information from bus and ferry companies that wished to run services and could opt for a fully contracted model if it felt this was in the best interests of public transport users in the region.

24. Eight out of the nine bus companies who run services under contract from ARTA do not publish any form of GPFR. While the major bus company in New Zealand, NZ Bus does make some disclosures on the basis of being owned by a publically owned company, Infratil, this same company has recently been lobbying the new Government with the aim of weakening the PTMA and in effect the ability of regional councils offer effective oversight of public transport systems.

25. There are also implications for the reliable provision of transport services. If a public transport company suddenly went into receivership or liquidation large numbers of passengers may be left with no way of getting to work causing significant social and economic costs. So the suggested economic significant indicator is also relevant in this case.

26. There may be a number of reasons why public transport companies fear greater transparency. One reason may be that they do not want to disclose their financial information if their competitors do not. If all private companies were required to file GPFR then this perceived competitive pressure would be removed as well as offering benefits in terms of greater public transparency.

27. While regional councils, for now, may be able to access some relevant financial information on public transport companies, there are many other stakeholders who have a legitimate interest in the same information.

27.1. Public transport workers and their unions would use such information to make economic decisions about positions they take in wage bargaining.

27.2. Community groups who look after the interests of public transport users would be able to use this information when assessing whether fare rises are justified or not. In 2008 the Waiheke island based Campaign for Fair Ferry Fares questioned the need for fare increases of up to 14.7% and asked operator Fullers Ferries to open its books to prove it’s case for a fare increase. Fullers, then owned by Infratil refused the request. The other ferry operator travelling to Waiheke, Sealink, also refuses to release GPFR as they are a private “family” company.

28. Concerns have been also raised by the practices of some private equity firms where they buy a company, hold it for a few years and then sell it through an Initial Public Offering (IPO). In the case of Feltex Carpets there were clear signs of trouble before the collapse of the company in September 2006. In 1996 private equity firm Credit Suisse First Boston Asian Merchant Partners (CSFBAMP) bought 80% of Feltex for $19.5m. CSFBAMP then bought the Australian operations of carpet firm Shaw Industries, bought the 20% of Feltex it did not own, and merged it with Feltex. As of 2001 Feltex’s debts were $172 million. In 2004 CSFBAMP

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2 NZ Herald (2/9/08), “Protesters cry foul over fare hikes”
sold out of Feltex in a $254 million IPO largely aimed at “Mum and Dad” investors. Reputable business journalists calculate that around $200 million was expropriated from the company by CSFBAMP, before, during and after this IPO. Workers and New Zealand shareholders were the losers. If potential investors in an IPO are able to access GPFR that cover the time in which a company was held in private hands this may assist them in making more informed decisions about their investments.

Case Study: Lane Walker Rudkin

29. It may be claimed that only direct owners of a private business should be able to access GFPR, and that no changes are necessary as banks and other lending institutions have the ability to request financial information that they need. The NDU believes the tragic demise of the clothing manufacturer Lane Walker Rudkin provides a strong example of why the status quo is insufficient. The LWR case demonstrates how a mixture of poor management, poor corporate governance, substandard financial reporting and greedy banking practices led to significant economic and social harm.

30. Prior to the collapse of the company, Lane Walker Rudkin was Australasia’s second largest underwear and hosiery manufacturer and the largest rugby jersey manufacturer in the world. LWR started as a family business of Alfred and Sarah Rudkin in the 1880s, passed into the hands of Brierley Investments in the 1980s, and returned to family ownership under Ken and Patricia Andersen in 2001.

31. Lane Walker Rudkin was placed in receivership on April 28 2009, after Westpac New Zealand Ltd demanded the repayment of banking facilities. The receivership was instigated under the powers included in a General Security Agreement with the bank.

31.1. As of August 2009 228 workers have lost their jobs, and as a result of the receivership the workers also lost most of the redundancy and holiday pay owed to them. It is not ever certain if the workers employed in the Wairarapa by LWR subsidiary Bouzaid and Ballaben will receive their preferential holiday and redundancy pay capped at $16,420.

31.2. On 15 May 2009 then NDU National Secretary Laila Harré highlighted the situation of LWRs workers: "This is a dreadful situation and the workers and their union are very angry. How the bank allowed LWR to continue to trade and build up so much debt for so long is beyond belief. Yet today, that same bank, Westpac, washes its hands of its responsibility to the workers and refuses to even meet with the NDU and Council of Trade Unions to discuss the situation.”

32. Prior to the start of the recession in mid 2008 it was common for the banks to encourage their customers into greater levels of debt, as this ultimately drove the large profits of the banks during this period.

32.1. In November 2005 the Reserve Bank Governor Alan Bollard accused the banks of pressuring inflation through their lending practices, and urged them to look beyond short term profits and market share. He also warned that the interests of the larger banks would not be served by the banks promoting loans to people who could not afford them. In response, Westpac and the Bank of New Zealand (BNZ) claimed

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3 Parts of this section were taken from Joe Hendren (2006), “Roger Award Report 2005: Bank of New Zealand and Westpac”, published by CAFCA.

4 Dr Alan Bollard, 2/11/05, “Housing debt, inflation and the exchange rate”, speech to EMA AGM, http://www.rbnz.govt.nz/speeches/2157629.html#TopOfPage
they were only responding to customer demand and rejected Bollard’s view they were playing a role in fuelling inflation. BNZ managing director Peter Thodey said the “very competitive mortgage market” in New Zealand was “healthy for consumers and providers alike”

32.2. Given the relatively cheap credit that was available prior to the recession that began in the middle of 2008 it is likely similar profit seeking incentives existed in commercial banking.

33. In August 2007 Lane Walker Rudkin bought out the public company Pod Ltd, including Design Textiles International, Michelle Ann and Mollers Homewares. Pod added around $65 million in sales and virtually doubled the number of employees of the LWR group. A former employee believes the Pod purchase was a mistake, as it added to LWR’s already sizable debt and staved the company of capital that needed to be spent elsewhere. Funding such an acquisition may have been in the short term interests of the bank, but it could be argued by funding such purchases the banks created unsustainable debt obligations. It may be significant that the General Security Agreement between Westpac New Zealand Ltd and the company was last signed on the 4 September 2007.

34. The NDU questions whether Westpac failed to do its job of understanding its client and determining whether it had the management capability and could afford to service the proposed debt under likely circumstances.

34.1. BDO Spicers, appointed as receivers of LWR comment: “The standard of financial reporting and corporate governance have, in our view, been inadequate for a company of this size and have been significant factors in the Company’s underperformance and entry into receivership.” The receivers also note that it is unlikely there will be any funds left for unsecured creditors.

34.2. The estimated debts of Lane Walker Rudkin and associated companies are estimated to be well over $120 million. Six months after entering receivership, the sale of stock and equipment and an associate company had only raised just over $10 million, with Westpac still owed $110.27 million, unsecured creditors $6.7 million, Inland Revenue $578,172 and employees $830,658.

34.3. A business journalist at the NZ Herald, Karyn Scherer, has questioned “how on earth its problems were ever allowed to grow so large”.

34.4. The NDU have heard on good authority that the bank were prevented by the owner of LWR from accessing relevant financial information about Lane Walker Rudkin Industries Ltd until the receivership was instigated. This raises the question as to whether banks should have been lending to fund a significant acquisition when they were prevented, or did not insist upon, adequately assessing the financial health of the company. According to the receivers Lane Walker Rudkin has not made money “for years”. Yet it appears the owner of the business persuaded the bank to keep supporting him.

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5 The Press (10/11/05), “BNZ rejects accusation over credit cards”
6 Scherer, Karyn (25/5/09), “The Unkindest Cut”, NZ Herald
8 NZ Herald (28/1/10), “Little progress on LWR debts”, NZPA
9 Scherer, Karyn (25/5/09), “The Unkindest Cut”, NZ Herald
35. It is clear that Lane Walker Rudkin continued to trade while insolvent. Had general financial information been available to a wider group of stakeholders, such as government agencies, workers and LWR’s other creditors, it is possible that concerns about LWR’s financial reporting and corporate governance may have been raised at an earlier stage, and the social and economic consequences of poor management decisions could have been minimised.

36. The NDU believes LWR provides a strong example of why significant private companies should be required to publish GFPR. It demonstrates how there is a broader stakeholder interest in the financial position of significant companies beyond that of the business owner and their bankers. It also gives reason to question the assumption that family owned companies with little or no management-ownership separation should be treated any different to other companies.

What comments do you have on the Australian ‘grandfathering’ provision, exempting existing large companies at the time of the law change, from lodging financial statements with the ASIC?

37. When the Australian Parliament introduced a requirement for large proprietary companies to file with ASIC, it only applied this to companies incorporated after 1995. The NDU fails to see any policy advantages to ‘grandparenting’ and believes this threatens to undermine the stated objective of greater transparency. There may be a case to provide existing companies a limited grace period in complying with the new requirements, say one or two years, with universal application of the new rules as the ultimate goal.

37.1. Equity: There are some companies who would regard not having to file GFPR as a commercial advantage over those that do. Why should the fact a company was incorporated on a particular date confer any perceived advantage? While 70% of large proprietary companies now have to file with ASIC, this still leaves 30% of companies that do not have to meet the requirements after 15 years. Will the Australian approach ever lead to 100% compliance with changes introduced in 1995?

37.2. Potential for loopholes: A company could potentially avoid the new requirements by reusing and renaming another company that was no longer trading but remained on the company register.

37.3. Less effective: It is quite possible that the public would gain the greatest benefit from disclosure from the very companies who would make the most effort to avoid the new requirements. LWR would be a good example.

Effect on companies who operate under a co-operative or franchise structure

38. It may be argued that it is not appropriate to require individual members of a co-operative or owners of a franchise to publically file individual accounts. But if it is the case that individual members are economically significant enough to reach the threshold of being a large company the NDU believe it is only reasonable that they do so. Examples could include individual Pak ‘N Save supermarkets or Mitre 10 Mega Stores. It would seem strange to exempt companies based on their membership of a co-operative or a franchise when an external independent competitor of a similar size could conceivably be required to file financial accounts. At the end of the day a company that has chosen to structure itself as a co-operative of separately registered companies already follows other legislative requirements of such a structure (such as maintaining up to date corporate information with the companies office).
39. Mitre 10 operate as a co-operative of over a hundred hardware and home improvement stores. Most are owner operated, with some owners owning more than one store in a regional area. In January 2010 three Wellington Mitre 10 stores went into receivership. While all three stores are expected to be sold as going concerns, this does demonstrate how individual members of a co-operative can get into trouble independently of the co-operative body.

40. Those considering whether to join a co-operative or start a franchised business may benefit from being able to access the GPFR of other individual members in order to more accurately ascertain the costs of running such a business.

**Case study of effect on a co-operative: Foodstuffs NZ**

41. Foodstuffs have claimed that the disclosure of financial information of its members would put it at a disadvantage as its competitor Progressive would not have to disclose information at a store level as it operates its supermarkets on a national basis. On the same token it could be argued the status quo provides Foodstuffs with an advantage as it not required to file public accounts, whereas Progressive as an overseas owned company is so required to. It is also likely large subsidiaries of Progressive that would also have to file their own accounts, such as the Supply Chain Ltd (the distribution centres) and General Distributors (the supermarkets).

42. Foodstuffs have claimed the disclosure of financial information by Foodstuffs individual members would impede the development and maintenance of competition. In the case where Foodstuffs possess 56% of market share in the New Zealand supermarket industry, and their only competitor Woolworths owned Progressive Enterprises controls the remaining 44% the NDU does not believe an argument for the status quo based on the maintenance of competition holds much weight. Progressive and Foodstuffs are an effective duopoly.

43. The Commerce Commission has regularly expressed concern at the high concentration of the New Zealand supermarket industry and has called for greater competition in the sector. In 2008 the Commission declined applications from Foodstuffs and Woolworths to take over the Warehouse on the grounds the acquisition would substantially reduce competition in the market by creating significant barriers to entry and gain substantial market power. A recent Australian study from Professor Frank Zumbo of NSW University found the price of food in New Zealand had gone up more than 42% since 2000, the second highest increase amongst OECD countries, so it also can be questioned whether consumers are benefiting from what Foodstuffs refers to as “intense competition” under the status quo.

44. While Foodstuffs release audited accounts publically on a regional basis for Foodstuffs (Auckland), Foodstuffs Wellington Co-operative Society and Foodstuffs South Island this is entirely on a voluntary basis, meaning it is entirely up to the company what information they wish to disclose. In the last two years Foodstuffs have released less information than in previous years, only releasing ‘summary’ annual reports to the public.

45. It is clear that Foodstuffs have opted for their current structure as they believe this offers the greatest financial benefit to members of the co-operative – supermarket owners. While Foodstuffs refuse to release financial information relating to individual operators they steadfastly maintain that employment relations is only dealt with at the operator level as a single site collective agreement. As a result the NDU has over 30 collective agreements with Foodstuffs. Despite their employees and their union making it clear their preference for a

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10 Dominion Post (18/1/10), “Mitre 10 stores in receivership as focus goes on ‘Mega’”
regional or national collective agreement, Foodstuffs continue to refuse to even consider the wishes of their employees. In contrast Progressive supermarket employees are covered by a single national collective agreement.

46. Thus there are circumstances where Foodstuffs employees and their union are unable to access GPFR often of most relevance to negotiations, those being the GPFR of the individual supermarkets. While some information has been made available under s34 of the Employment Relations Act this is subject to the limitations discussed above.

47. Some Pak N Save owners have told us that they regard other Pak N Save’s as their competition in the first instance, rather than Progressive stores. The NDU regards arguments against transparency based on competitive pressures as having little merit given that the New Zealand supermarket industry operates as a duopoly. It may even be that requiring individual supermarket owners to publically file their accounts would improve competition by lowering the barriers to market entry of a third supermarket group. It also raises the question as to whether Pak ‘n Save supermarkets are acting as a price fixing cartel since they claim to be individually owned independent supermarkets.

Greater access to GPFR of significant companies may assist those seeking to improve New Zealand’s economic performance.

48. GPFR are currently used by academics, researchers and public officials to gain a better understanding of the New Zealand economy and its key industries. Requiring large non-issuer companies to file financial statements will mean more accurate data and industry information can be collated, and thus improve the quality of economic development planning and analysis.

49. A requirement for companies to file GPFR may also assist the tax assessment efforts of the IRD and the detection of serious fraud.

What comments do you have on the proposal to remove filing requirements for overseas-incorporated companies whose New Zealand businesses are not large?

50. The NDU does not believe that the current filing requirements for overseas incorporated companies carrying on business in New Zealand is excessive. Operating as a overseas incorporated company should be regarded as a privilege, not a right, and there should be some assessment as to the various reasons companies may have for operating as overseas owned entities. While some will have legitimate reasons, other situations may deserve more scrutiny, such as a company setting up a ‘parent’ company in a known tax haven.

51. The discussion document suggests GPFR should only be required to be filed if the New Zealand business of the overseas company is large. Yet there is a question as to whether using a measure based solely on the New Zealand side of the business is adequate in this situation. It is possible the New Zealand business would have greater market influence and or potential for market influence and access to capital given its relationship to a (presumably larger) overseas parent. There may also be situations where companies are structured in a way that would make accurate assessment of the size of the New Zealand operation difficult, for example if practices like transfer pricing are in effect.

52. There should be some encouragement for overseas companies to also incorporate their activities in New Zealand. While the vast majority of the banking sector would be above the suggested test for ‘large’, the following example demonstrates some of the policy issues that may be at stake. In 2004 Westpac was the only Australian owned bank not to be incorporated in New Zealand, and dismissed the possibility of a bank failure as a “one in 900 year”
likelihood. Westpac was eventually forced to incorporate in New Zealand by the Reserve Bank as it believed incorporation offered New Zealand depositors with greater protection in the event of an Australian bank failure, as current Australian law gives priority to Australian customers.

53. Changing the filing requirements for overseas owned and/or overseas incorporated companies has trade policy implications and should also be considered in this context. Former Prime Minister Helen Clark stated in 2000, “We have unilaterally disarmed ourselves on trade but very few others have been so foolish.”

What are your views on the issues relating to remuneration disclosures for key management personnel?

54. The NDU opposes the MED proposal to substantially increase the employee remuneration threshold. While we can appreciate that $100,000 may not mean the same thing as when the legislation was enacted, $100,000 is well over two and a half times the average personal income of $37,543 for wage and salary earners as measured by Statistics New Zealand in June 2009. Figures from Budget 2009 shows only 3% of New Zealanders paid income tax on income over $100,000.

55. The NDU also opposes the proposal to increase the size of the income bands. The MED discussion document claims the “$10,000 bands disaggregate the information to a level of detail that is unnecessary from an accounting perspective”. This seems an unusually narrow definition of the purpose of this disclosure when the entire object of the MED proposals is to increase public accountability. The significant public concern over the issue of executive salaries has been highlighted by the recession where many employers have demanded zero wage rises at the same time their own much larger salaries continue to increase dramatically.

56. It could even be said that much of the case that could be made for increasing the employee remuneration threshold and widening the bands is in itself an acceptance of growing income inequality in New Zealand. The United Nations Development Programme Human Development Report 2009 showed New Zealand now has the sixth largest gap between rich and poor among countries with very high human development, with a similar inequity score to India and Russia. Growing inequity has not only limited the wages of workers, it has also decreased the potential returns available to shareholders.

57. The NDU also asks the MED consider the operation of section 211(3) of the Companies Act in the context of this review. This allows a company to exclude important items in their annual report in the case all shareholders agree that the report need not comply with S211(1). Over the past two years we have noted that more and more companies are using this section of the act in order that they do not have to disclose information relating to executive pay in particular. While companies can claim in their annual reports that shareholders have agreed to this, there is no way for external stakeholders to question whether the legislation has been complied with.

13 NZ Herald (10/4/00)
14 Statistics New Zealand (June 2009), Household Economic Survey (Income). Figure is a median. The median personal income including those without an income is $30,224.
15 The number of people with actual incomes over $100,000 is likely to be more than 3% - the difference between the two is a measure of tax avoidance. http://www.treasury.govt.nz/budget/2009/taxpayers/b09-taxpayers.pdf
57.1. While Foodstuffs as a private company is not currently required to comply with section 211 of the legislation it does provide an instructive example. It was noted above that Foodstuffs now only publish ‘summary’ annual reports that include a lot less information than they reported in previous years. We believe the information relating to executive pay was removed in 2007/8 after the NDU questioned publically how Foodstuffs could continue to pay its executives higher and higher salaries but refuse to address long standing issues over low pay. Foodstuffs pay significantly lower wages in their distribution centres and un-unionised supermarkets compared to those doing the same job working for Progressive Enterprises.

57.2. The last time Foodstuffs (Auckland) reported on executive salaries, for the year ending February 2007, their Managing Director and Chief Executive Officer Tony Carter received remuneration and benefits of $1.363 million, a 6.3% increase from the previous year. Despite Foodstuffs having their “most profitable year in history”, supermarket workers gained nothing like a 6.3% increase that year, at the same time consumers raised concerns about fast rising food prices.

57.3. The pay of the CEO of Foodstuffs South Island Steve Andersen in 2008 was between $910,000 and $920,000. This represented a 8.3% pay rise, on top of a 9% pay rise in 2007, on top of a massive 16.5% in 2006. His pay has virtually doubled since 2002. At the same time a distribution centre worker on the top pay rate only received $29,886 a year, representing a 5% pay rise in 2008, a 6% increase in 2007 and a 4.5% increase in 2006. These increases for workers were achieved following difficult negotiations between the union and the company, and suffice to say if the workers had not been represented by a union they would have received far less.

57.4. The NDU can only assume that the pay of Foodstuffs executives has continued to increase significantly in the past two years, otherwise they would not have taken steps to ensure their pay remained a secret.

58. The NDU recommend that section 211(3) of the Companies Act be repealed as a matter of consistency. If private companies are to be required by legislation to file GPFR then it follows that such companies should not be able to decide for themselves which information they wish to exclude.

59. Given the growing concerns about the noticeable lack of women in senior executive and company board positions the NDU believe it would be a positive step to require companies to report on gender equity issues in annual reports. Some companies already do so. One means to do this would be to require companies to report separately for male and female employees when listing the employees who received over $100,000 under S211(1)(g).

Concluding thoughts

60. The economic activity of for-profit entities has an inevitable impact on the society in which it operates. Meaningful and significant financial reporting is a useful benchmark to assess that impact.

61. The NDU agrees that requiring private companies to file public GPFR should be regarded as a quid pro quo for granting the benefits of incorporation. As former head of accounting at Canterbury University, Alan Robb said: “In many cases they expect some sort of support and I
think there’s a social obligation to make some information available.”¹⁶ He said this should include the amount of tax and wages paid. We support that.

62. If it is the case that individual members of a co-operative or franchise structure are economically significant enough to reach the threshold of being a large company the NDU believe it is only reasonable that they do so.

63. Given the scale of many for-profit entities in New Zealand relative to the provincial communities in which they reside, the NDU believe lower thresholds for the definition of larger entities should be considered.

64. The NDU does not support grandparenting the rules for existing companies or allowing companies to opt out of the proposed new rules through a shareholder vote. This only threatens to limit the effectiveness of a new policy that aims to achieve greater transparency. It is quite possible that the public would gain the greatest benefit from disclosure from the very companies who would make the most effort to avoid the new requirements.

65. The NDU believes LWR provides a strong example of why significant private companies should be required to publish GFPR. It demonstrates how there is a broader stakeholder interest in the financial position of significant companies beyond that of the business owner and their bankers. It also gives reason to question the assumption that family owned companies with little or no management-ownership separation should be treated any different to other companies. The tragic fate of LWR should not be allowed to happen again.

¹⁶ NZ Herald (22/10/09), “Big private firms in spotlight”, Adam Bennett