



28 October 2106

Mr Hamish Macdonald
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Dear Hamish

**SUBMISSION ON CONSULTATION PAPER:
Review of the NZX Corporate Governance Code**

This submission is made by the Listed Companies Association (LCA) in response to the Consultation Paper.

The LCA has circulated draft submissions to all of its members comprising a full range of NZX listed companies from the largest companies to the smallest. The Paper has been discussed at the full Executive Committee and by a sub-committee who have consolidated inputs from members.

Following our consultation, we are comfortable that the submission is well-supported. We have however included in the column "Individual LCA Member Comments" a diversity of views. We consider it will be helpful to NZX to understand the different views of members in reaching your own conclusions and want to avoid representing as impliedly "unanimous", comments where there is reasoned and reasonable disagreement. Many members are also likely to offer their own submissions direct to NZX.

Thank you for the opportunity to provide these comments, and for the extension of time allowed.

As always, we are happy to discuss these matters further with you if you think that would be helpful in reaching your own views.

Yours faithfully,

A handwritten signature in black ink that reads "J. H. Blair".

John Blair
Chairman
Listed Companies Association Inc.

About the LCA

Established in 1981 the LCA (listedcompanies.co.nz) is an independent, voluntary non-profit organisation providing a forum for discussion and exchange of views on issues of importance to New Zealand listed companies. The LCA's main purposes are to:

- (a) help issuers further the long-term interests of their shareholders by working for a fair, adequate, and efficient regulatory system;
- (b) help issuers maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
- (c) promote confidence in, and growth of, business and capital markets in New Zealand.

The LCA's members are NZX Main Board, NXT, NZAX, NZDX and dual listed issuers.

LCA Submission to NZX on Review of NZX Corporate Governance Code: Response to specific feedback requested about the proposed outcome

#	Question	LCA Submissions	Individual LCA Member comments
Principle 1: Ethical Standards			
1	Do stakeholders agree that a more detailed recommendation about ethics is useful?	We agree with the recommendation to adopt a code of ethics, but feel that it would be better to address what the code of ethics should address in the commentary rather than the recommendation.	
2	Is there anything further that should be recommended in the code of ethics or discussed in commentary?	We would like to see some flexibility as to whether the matters specified in Recommendation 1.1 are dealt with in the Code of Ethics itself or in other corporate policies.	
Principle 2: Board Composition and Performance			
1	Are there any further matters in relation to board composition that stakeholders would like covered?	We feel that there should be a recommendation to have a Board skills matrix and for the Board to consider whether it has the relevant skills covered by the current Board composition and comment on any identified gaps.	<p>Do not agree with introducing a skills matrix for the Board. Flexibility in approach is important, and generally we support less new rules than more. One day it will be a "skills matrix", the next it will be called something else.</p> <p>We consider that NZX has adequately covered the skills matrix in the commentary to recommendation 2.2 and do not believe that it should be a recommendation to have a skills matrix. The enhanced requirements for greater transparency in appointing directors to the Board, as well as enhanced diversity requirements, mean that issuers will be aware of the need to appoint a diverse range of directors with diverse skills and will implement some form of skills assessment when considering appointments. We think commentary around the skills matrix is enough to ensure issuers consider such matters, but a requirement to have a skills matrix may provide inflexibility, particularly in the event that a director needs to be appointed quickly to fill a sudden departure.</p>
		Recommendation 2.3 should only apply to new directors appointed after the Code comes into force. We wouldn't expect that issuers would have to enter into new agreements with all existing directors.	Agree that existing directors should not have to have new agreements documented.

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		<p>Consideration could be given to a recommended maximum term or re-elections, for example a 10 year maximum unless re-elected by special (75%) majority. This would encourage boards to develop more directors capable of serving on listed company boards.</p>	<p>Disagree with the maximum tenure of 10 years suggestion, and the logic behind it. I have not read any evidence to support the idea that tenure reduces effectiveness - many long serving chairs work on boards in NZ that have produced the highest TSR by far as an example. Do not support the idea of a 75% threshold for continued shareholder support of long tenure.</p> <p>We think it would be a good idea to include commentary that companies should consider an appropriate maximum term for their directors, but would not advocate specifying a time period or requiring a special majority for re-election after a certain tenure. The make-up of the NZX is obviously very diverse and some companies may, for example, be going through a period of transition whereby stability of the board is critical, or may be in a specialist industry where the unique expertise required is not as readily available.</p>
2	Do stakeholders consider a recommendation that directors undertake training to be important?	Yes, we support ongoing training as it is important that all directors are up-to-date and well equipped to perform their duties as a director. It also supports diversity of the Board and diversity of thought.	
3	Do stakeholders consider that the board should establish a formal procedure to regularly assess director, board and committee performance?	Yes, regular evaluations are important to ensure the board is working effectively with management.	
Principle 3: Board Committees			
1	Do stakeholders consider it is still appropriate to include a recommendation that directors who are not members of the audit committee, and employees, should only attend audit committee meetings at the invitation of the audit committee? Alternatively, is this something that would be better in commentary?	We feel that while this is appropriate for employees we do not think it is appropriate for directors – all directors should all be permitted to attend committee meetings as they wish, unless there is a conflict.	We agree with the LCA's assertion that employees should only attend audit meetings at the invitation of the committee, however we think that directors who are not part of the committee should not be given free rein to attend – we think they should at least provide sufficient notice to the committee of their intention to attend.

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2	Do you consider that the level of overlap between the mandatory Listing Rules and the Code is appropriate? Would submitters prefer some of the other committee related matters to be covered in the NZX Code as opposed to the mandatory Listing Rules? Note that this would have the impact of making these requirements non-mandatory.	Yes this is appropriate.	We think that Listing Rule 3.6.3 should be moved to the Code.
	Additional comments	We suggest that the recommendation to have a nominations committee is removed, as many issuers either do not have such a committee, or the committee comprises of all of the directors. Instead there could be commentary which notes that it is at each issuers' discretion whether to have a separate Nominations committee, or whether this role is undertaken by the full Board.	We agree with the LCA's submission that the nominations committee recommendation should be removed. Instead, nominations committees can be covered by commentary under recommendation 3.5. We agree that the having a separate nominations committee is redundant as most boards consider board composition a matter for the full board.
Principle 4: Reporting and Disclosure			
1	Do you agree with the proposed recommendations?	Yes, we agree with the proposed recommendations and support increased reporting and disclosure. However, we believe that the commentary supporting Rec 4.1 which specifies the need for an "explanation of how information is vetted" is getting too granular – how information is vetted will depend on the particular situation. Accordingly, we think that it is unnecessary (and potentially unhelpful) to include "an explanation of how the information is vetted" in the policy itself. We suggest the words "and should indicate how non-financial targets are measured" be removed from Recommendation 4.3, with commentary to cover that. Where there are measurable non-financial targets these should be explained.	
2	Do you agree with the proposal to address ESG reporting within commentary?	Yes	We agree with the proposal to address ESG reporting within commentary only, and support NZX drafting guidance on ESG reporting.

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3	Do you agree NZX should develop its own ESG reporting guidance based on the SSEI's model guidance or alternatively allow for issuers to use the GRI framework?	<p>We support having a consistent standard across issuers, and further guidance around the kind of material which NZX and investors are looking for would be helpful to include in the commentary, noting that there needs to be flexibility as what is relevant will differ from issuer to issuer.</p> <p>We do not think that GRI framework should be mandatory but accept the proposal that issuers can opt to use it at their discretion.</p> <p>Do members have views on the suitability of the suggested SSEI model guidance?</p>	<p>We have begun delving into ESG and reporting thereon, and note that this is an incredibly complex area. I would favour this area being stripped out of the current review and being given the proper attention it deserves.</p> <p>In our view, any ESG framework that NZX develop should not be inconsistent with the GRI framework. Our understanding is that the SSEI model guidance is not as widely followed by overseas issuers compared to GRI. Adding another guideline or framework could cause confusion among international shareholders and increase compliance costs for issuers (attempting to essentially report against two frameworks). Reporting against the GRI framework is a challenge for a number of NZ issuers (we are currently working towards it ourselves), but we think it would be useful if the NZX framework provided a stepping stone for NZX-listed issuers to work towards GRI.</p>
4	Do you think another framework should be used instead?	We suggest that Integrated Reporting (IR) is added as a third alternative.	
5	Do you agree that issuers should make key governance documents available to interested investors and stakeholders?	Yes, we are in support of greater transparency amongst issuers. It would be helpful to clarify which documents are considered to be "key" governance documents.	
Principle 5: Remuneration			
1	Do you agree with the proposals outlined above?	Yes, however we do not think it is necessary to cover the use of remuneration consultants.	We agree with the LCA's view on remuneration consultants and also agree with the view that a definition of 'senior executive' should be provided.
2	Do you agree that it is appropriate to require heightened disclosure in respect of CEO remuneration as proposed?	Yes, and we think that detailed disclosure of remuneration paid to executives below CEO level is not appropriate.	Disclosure of remuneration packages should be limited to CEO level only.

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Principle 6: Risk Management			
1	Are there any other risk concerns you think should be specifically addressed in commentary?	<p>Yes, with respect to Health and Safety. New Zealand has one of the worst work place fatality rates in the OECD and listed companies should be taking a leading role on health and safety reporting and risk management in order to ultimately reduce this. Health and safety is something that all Boards should have regard to, and should be a key governance focus. Our position is that this should be addressed with more emphasis in the commentary. Some issuers currently report TRIFR, but as best practice in Health and Safety reporting moves on, issuers may choose to report different indicators that are more relevant and meaningful and NZX should acknowledge this in the Code. The guidance should refer to companies reporting stats they consider relevant (and why so) as well as qualitative statements about resources and efforts around improvements of Health and safety.</p> <p>We recommend that the commentary be more generic rather than specifically calling out cyber security which is currently a hot topic – the commentary could include a list of possible key risks, one of which could be cyber security. The Code should consistently refer to “key risks” rather than “potential” or “relevant” risks.</p>	<p>Strongly disagree with LTIFR and TRIFR required reporting. Those indicators can lead to perverse consequences - for example reporting of issues can be driven underground, and time frames for injury duration can be manipulated. Again we would encourage a flexible approach that the board views as most appropriate to the company and its risks.</p> <p>We agree with LCA’s view that more emphasis should be placed on health and safety and that a list of key risks could be included, one of which can include cyber security.</p> <p>Agree that cyber security is oddly specific - there are so many other risks a business can face.</p>
Principle 7: Auditors			
1	Are there any other concerns you think should be specifically addressed in commentary about audit requirements?	We recommend requiring the external auditor or lead audit partner to rotate at least every 7 years (rather than 5 years), given the time it takes auditors to fully understand the business they are auditing, and given that this would align with the underlying professional standards established by the External Reporting Board and the equivalent Australian requirement.	We have no objection to increasing the rotation requirement to 7 years, but are comfortable with a 5 year period.
		Do members have any views on whether a CEO/CFO declaration in relation to financial statements as currently covered by ASX should be included here, or are the management/director sign-offs required by the auditors considered sufficient? One view is that the Board have the responsibility and are entitled to assurance, but the CEO/CFO Declarations amount to an abrogation of responsibility and	<p>We believe that a CEO/CFO declaration should not be required.</p> <p>We are supportive of the inclusion of a CEO/CFO declaration in commentary rather than as a recommendation.</p> <p>I agree that the CEO / CFO sign off is not right. Our processes include us signing off to the Board to allow the</p>

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		inappropriately mix the board/management responsibilities.	Board to sign the FS. Asking us to sign the FS too is not necessary and I agree that it blurs the lines.
Principle 8: Shareholder Rights and Relations			
1	Do you have any concerns about principle 8 and 9 being merged into a single recommendation regarding shareholder interests?	We support the principles being merged as this reflects our previous submission that the focus should be on security holders rather than stakeholders.	
2	Are there any other concerns you think should be specifically addressed in relation to shareholder rights and relations?	No	
Transition and implementation arrangements			
1	Do submitters agree with the proposed time frame for implementation of an updated regime of Q1 2017 ie for balance dates falling in 2017?	Yes	We view it as entirely inappropriate to go with Q1 2017 as the implementation timeframe. No rules have been finalised, and in reality the Xmas break in NZ occurs within that timeframe. Matters such as ESG are new to most companies in terms of reporting frameworks - even considering the approach will take time. There should be at least a six month period for adoption from the point that the rules are finalised. The review has been many years in the making after all.
2	Do you consider NZX should take any other steps to assist issuers to comply with the new regime? Will any of the proposals create particular problems in terms of compliance costs?	The proposals will not create problems for large issuers, but it may take some time for smaller issuers to come up to speed.	
General			
	Do you consider there are any other additional matters that have not been adequately covered? If so, NZX welcomes any further feedback.	It would be worthwhile looking into helpful templates and resources for reporting, to assist issuers with reporting against the new Code, and to enable investors to review and compare corporate governance reporting	We agree with LCA's view on creating templates. We also reiterate that NZX needs to make it clear when the final Code is published whether all information can be disclosed on an issuer's website, or whether some must be disclosed in the issuer's annual report.