



31 October 2011

S11.17

Reforming the Incorporated Societies Act 1908

Response to Issues Paper 24 issued by the Law Commission, June 2011

The National Council of Women of New Zealand (**NCWNZ**) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. NCWNZ's function is to represent and promote the interests of New Zealand women through research, study, discussion and action.

This submission has been prepared by the NCWNZ Justice and Law Reform Standing Committee after consultation with the membership of NCWNZ.

Introduction

NCWNZ supports the Law Commission's review of the Incorporated Societies Act 1908 as this Act is outdated and it does not reflect the current operating environment of Not for Profit Organisations.

NCWNZ urges that the review should consider the wide variation in the role and nature of organisations to be covered by the legislation. One standard for all would impose costly compliance requirements on organisations with fewer resources. Grounds for differentiation could include:

- Public benefit or private benefit
- Size of the organisation in terms of financial position

NCWNZ invited comments from its member on some of the questions posed by the Issues Paper and we summarise these comments here:

Q13 Should a society require a minimum number of members, to be incorporated?

All of the responses agreed that there should be a minimum number.

If yes, what minimum number of members do you consider would be appropriate?

The most favoured minimum number of members was 15, closely followed by 10.

Q14 Do you have views on whether it might be advantageous to require societies to form governance committees, or appoint any particular type of officer?

The majority responded that it would be advantageous to require societies to form governance committees, or appoint a particular type of officer.

One response was that there is a need to ensure suitable mechanisms for the correct holding of monies, including job descriptions and good practice guidelines. The good governance procedures from the Companies Act could be applied and the executive members required to act in good faith and in the interests of the society, with care and diligence and skill to effect the aims and purpose of the society.

Other responses mentioned that the 'particular type of officer' should be three main office bearers such as Chair, Treasurer and Secretary.

Q16 Does your experience suggest that there is a greater role for a regulator of this sector, beyond the role currently played by the Charities Commission, or the Registrar of Incorporated Societies?

If so, what should that role be?

Slightly over half of the responses were in favour of no change to the role currently played by the Charities Commission, or the Registrar of Incorporated Societies.

The other responses favoured a greater role for a regulator and in particular for resolving disputes. However there was concern about the compliance cost and a request for modest fees to be charged.

Q19 Do you agree that the new Act should provide a "code" of duties that committee members must observe in their decisions?

The majority agreed that the new Act should provide a "code" of duties.

If so, what duties ought to be included in the code?

Several suggested the duties outlined in the Companies Act for directors. Also suggested were the duties of accountability, a code of conduct, a code for conflicts of interest, good governance, ensure financial viability, similar to any professional code eg legal, moral, procedural, values etc.

Q28 Does there need to be greater rigour than currently, around requirements for auditing and appropriate accounting standards? If not, why not? Do you agree that the new Act should provide for the imposition of audit and accounting standards by regulation that might be varied in accordance with the size on the society, and how ought that size be judged?

Half of the responses agreed that there needs to be more rigorous requirements for auditing and appropriate accounting standards, but some said that it depended on the turnover and the size and assets of the society. One respondent said that there should be different requirements for a society with a turnover under \$500,000 compared with a society with a turnover exceeding \$500,000.

The other half of respondents were concerned at the cost of auditing and the difficulty of obtaining an auditor. One respondent suggested that so long as there were procedures in place, such as double signatures for the bank account, passing accounts for payment at committee meetings and not pre-signing cheques, this could be adequate protection.

Q36 Have the current provisions about branches created any problems, and how might the provisions be altered to avoid those problems?

The majority of responses were mainly about the need for clear procedures on dissolution of the branch or the national organisation and also depending on whether the society is for private or public benefit.

Q37 Is there still a need for branch societies?

The majority replied that there is still a need for branch societies, for instance to enable the assets to remain localised, and it is advantageous in the situation where the nationally organised society is liquidated and assets can be transferred to a branch society.

Q38 Have you experienced problems with the liquidation or dissolution provisions?

One respondent said there had been a problem where a national organisation had closed.

Another had experienced problems where a national body had forced a branch to amalgamate with another less successful branch.

Q39 In what ways can the procedure for liquidation and dissolution be improved?

Suggested ways to improve the procedure for liquidation and dissolution are to have a clear framework and to have guidelines for dispute resolution.

Q40 In particular, should the double meeting requirement for members' liquidation be altered?

The majority agreed that the double meeting requirement should not be altered. One commented that it was desirable that the committee confirm the extent of attempts to contact all members or former members of the meetings.

Others commented that clear provisions for liquidation should be included in the new Act to detail what is to happen to the society's assets and depending on whether the society is for public benefit or the members' benefit.

Summary

There is major agreement that changes are required but there must be a balance in imposing compliance costs with the size of the society. The new legislation should address matters relating to disclosure and conflicts of interest and committee members' duties, and establish a code of obligations.

Elizabeth Bang

National President

Cleone Campbell

Justice and Law Reform SC Convenor