



**National Council of
Women of New Zealand**

Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04)473 76 23
office@ncwnz.org.nz
www.ncwnz.org.nz

30 June 2016

S16.11

Submission to the Ministry of Business, Innovation and Employment on the Incorporated Societies Bill – Exposure Draft

The National Council of Women of New Zealand, Te Kaunihera Wahine O Aotearoa (NCWNZ) is an umbrella group representing 288 organisations affiliated at either the National level or to one of our 20 branches. In addition to our organisational membership about 260 women are individual members of branches.

NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action.

This submission has been prepared by the NCWNZ Justice and Law Reform Convenor in consultation with the Parliamentary Watch Standing Committee and the NCWNZ membership.

1. Introduction

- 1.1. The Incorporated Societies Bill exposure draft (the Bill) proposes to modernise and change the regulation of incorporated societies.
- 1.2. NCWNZ, some of the NCWNZ branches, and some of our affiliated organisations are (or may want to become) incorporated societies so will be affected by the changes proposed under the Bill. In particular, there are changes to the requirements for the constitutions of incorporated societies and new membership requirements and duties that are being proposed.
- 1.3. NCWNZ agrees that all legislation should be accessible, available, navigable and clear. Improving the language used will make this Act more user friendly and easy to understand. This will enable everyone to have a clear understanding of its intentions.
- 1.4. We do, however, have some concerns about the scope and effect of the policy changes that are proposed in the Bill.

2. Policy Changes

- 2.1. The New Zealand Law Society provided a useful summary of the key proposals in the Bill, as follows:
 - societies will continue to be prohibited from operating for the financial gain of members;
 - the minimum number of members will be 10 (corporate members counting as three individuals) on and after incorporation;
 - members will not be liable for a society's obligations;

- societies will be deemed to have full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction;
- the list of what must be included in society constitutions has been expanded and “standard” recommended provisions are likely to be provided;
- societies must have a committee of at least three “natural persons”;
- every incorporated society will have a Registrar’s “contact officer”;
- statutory duties will be imposed on society officers;
- there will be detailed requirements about complaints and grievances and conflicts of interest;
- there will be statutory powers to require compliance with society constitutions;
- all societies will file annual financial reports with the Registrar; and
- amalgamations and mergers of societies will be facilitated.

3. Principles

3.1. It is proposed that these three principles apply to incorporated societies:

- (a) societies are organisations with members who have the primary responsibility for holding the society to account; and
- (b) societies are private bodies that should be self-governing and free from inappropriate Government interference; and
- (c) societies should not distribute profits or financial benefits to their members.

3.2. In general, there was consensus on the proposed principles.

3.3. However, serious concern was raised about the impact of the financial benefits’ clauses (discussed in more detail below).

3.4. Given the level of regulation in the Bill, it is also hard to reconcile this with the proposed principle that “societies are private bodies that should be self-governing and free from inappropriate Government interference.”

4. Registration

4.1. It is proposed under the Bill that an organisation must be registered to be an incorporated society and that there be four key requirements as part of this application:

- (a) The organisation must have at least 10 members;
- (b) The name of the organisation must be accepted by the Registrar;
- (c) The Registrar must decide that the purposes of the organisation comply with the Act; and
- (d) The Registrar must decide that the constitution of the organisation complies with the Act.

4.2. Proposed restrictions on the name for registration include that:

- the use of the name would contravene any other enactment; or
- the name is identical or almost identical to the name of any other incorporated society, company carrying on business in New Zealand (whether incorporated in New Zealand or not), or other body corporate established or registered in New Zealand; or
- the name is identical or almost identical to a name that has already been reserved under the Companies Act 1993 and that is still available for registration under that Act; or

- the name is offensive; or
- Incorporated Societies Bill Part 2 cl 14 (b) the name does not include the word “Incorporated” or the word “Man-atōpū” (or both) as the last word or words of the name.

4.3. Even if the first application is unsuccessful, we note that it is proposed that an organisation has an opportunity to become an incorporated society if it amends its name, purposes, or constitution, as applicable, to the satisfaction of the Registrar. We acknowledge that the Bill also provides for other requirements for an application such as a prescribed fee and providing the name and contact details of the nominated officer of the organisation.

4.4. Suggested improvements and questions for this area of the Bill from NCWNZ members included:

- There needs to be more certainty about the membership requirements, for example, do members need to be financial members, can there be different classifications of members?
- There should be further clarity about the responsibilities of a member compared to an office holder;
- Why are the naming requirements so prescriptive? What issues have been caused in the past? Will there be additional costs for existing incorporated societies for making those changes and do you have any figures on this?
- The financial gain / benefit aspect of the constitution will cause some incorporated societies a lot of problems (discussed in more detail below).

5. Officers

5.1. Some member organisations of NCWNZ have indicated that the scope of the definition of “officer” is much too broad and will be unwieldy if the obligations were extended this far given the current structure and number of “officers” within their incorporated society. This could, for example, be limited to the governing body of an incorporated society – as many also have site, branch, and regional officers.

5.2. One member suggested that there should be a maximum and minimum number of officers drafted in statute.

5.3. Another branch advised that there should be clear “exiting” and “commencement” procedures in place so that a new officer of an incorporated society is not held liable for the actions of a previous officer.

6. Annual General Meeting Dates

6.1. Some member organisations of NCWNZ have indicated that the proposed dates for annual general meetings will cause unnecessary difficulties for the availability and engagement of their membership at these meetings. In particular, the proposed 6 month timeframe before the end of the financial year is not always possible given where the public holidays fall within the calendar year.

7. Financial Gain

7.1. Under the Bill, it is proposed that an incorporated society must not operate for financial gain. It would become an offence and an officer would be liable to a fine of up to \$50,000 if the Society does operate for financial gain and it is with the authority, permission or consent of that officer.

7.2. This is further explained in section 22, which states that:

A society (or proposed society) must be treated as having a purpose of financial gain if—

- a. it distributes, or may distribute, any gain, profit, dividend, or other financial benefit to any of its members (whether in money or in kind); or*
- b. it has, or may have, capital that is divided into shares or stock held by its members; or*
- c. it holds, or may hold, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the society or otherwise).*

However society (or proposed society) does not have a purpose of financial gain, and is not being carried on for the financial gain of any of its members, merely because it will or may—

- a. engage in trade:*
- b. pay a not-for-profit member for matters that are incidental to the purposes of the society (see subsection (4)):*
- c. reimburse a member for reasonable expenses legitimately incurred on behalf of the society or while pursuing the society's purposes:*
- d. provide benefits to members of the public or of a class of the public and those persons include members of the society or their families:*
- e. pay a member a salary or wages or other payments for services on arm's length terms (see subsection (5)):*
- f. enter into any other transaction with a member on arm's length terms (see subsection (5)):*
- g. provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society.*

7.3. We are aware that trade unions will be adversely affected by this proposed new definition of "financial gain" and recommend that a specific exemption for them be written into the Bill, as it is intrinsic for the way that they operate and core to the nature of those organisation to act in the best interests of their members. This should also apply to the conflict of interest provisions in the Bill.

7.4. One member also recommended that there should be some guidance available for incorporated society members on the appropriate funds to hold in reserve by the incorporated society.

8. Constitutions of Incorporated Societies

8.1. The Constitution for an Incorporated Society will need to have the following components:

- the name of the society;
- the purposes of the society;
- how a person becomes a member of the society, including a requirement that a person must consent to be a member;
- how a person ceases to be a member of the society;
- arrangements for keeping the society's register of members up to date;
- whether, and if so how, the society will provide access for members to the register of members;
- the composition, roles, and functions of the committee of the society, including—

- the number of members that must or may be on the committee; and
- the election or appointment of committee members;
- the terms of office of the committee members;
- the functions and powers of the committee;
- grounds for removal from office of committee members;
- how the contact officer will be elected or appointed;
- how the society will control and manage its finances;
- the control and use of the society's common seal (if it has one);
- procedures for resolving disputes between members (in their capacity as members) and between members and the society, including procedures for investigating and dealing with—
 - the grievances of members relating to their rights and interests as members;
 - complaints concerning the misconduct or discipline of members;
- arrangements and requirements for general meetings, including—
 - the intervals between general meetings;
 - the information that must be presented at general meetings;
 - when minutes are required to be kept;
 - the manner of calling meetings;
 - the time within which, and manner in which, notices of general meetings and notices of motion must be notified;
 - the quorum and procedure, including voting procedures, for general meetings;
- the method by which the constitution may be amended – including the method and arrangement of special general meetings;
- the nomination of a not-for-profit entity, or a class or description of not-for-profit entities, to which any surplus assets of the society should be distributed on a liquidation of the society or the removal of the society from the register.

8.2. In addition, a Constitution must not purport to confer on any member any right, title, or interest (legal or equitable) in the property of the society.

8.3. There were mixed views from NCWNZ members on these proposed changes to the constitutions of incorporated societies to incorporate these changes. For example, one member noted that:

“Although organisations have local and national by-laws as well as a constitution, the compliance with the new legislation may be costly and time consuming. It is difficult to tell at this stage just how much extra work will be involved and whether the local organisations may simply decide to “un-incorporate”.

8.4. Another member noted that:

“I personally do not think that the list [of new constitutional requirements, shown in bullet points above] is unreasonable, other than disputes between members. There haven't really need any in our organisation and we work largely through a consensus model so it seems rather “over the top” to start instituting “grievance procedures” for all small incorporated societies.”

9. Concluding Comments

- 9.1. Thank you for the opportunity to make a submission on this exposure draft of the Bill. We are available to respond to any questions that you may have on the submission.

Rae Duff
National President

Eva Hartshorn-Sanders
Convener, Justice & Law Reform