

2016 review of Inc Socs Act

Submission from

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Withheld

Committee member and office-holder in a variety of local, regional, and national organisations , continuously over the past 40 plus years

<u>Section</u>	<u>Issue</u>
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| General | <p>I do not believe most of the proposed requirements are overly onerous, even for very small Societies. A group either wants the limited liability protection of being an Inc Soc, and fulfils its obligations accordingly; or it is prepared to take its chances on liability while incurring no governmental obligations.</p> <p>However the 15 day limit for filing court documents is completely unreasonable; because most societies are run by volunteers in their spare time. Few have full time managers, let alone paid staff. It's a struggle to get Board members together for routine meetings, especially for regional and national bodies.</p> <p>Modern communications help, but are not an entire answer since most employers limit internet use by employees, and other non-work communications, during work hours. Additionally, the society's Rules may require minimum Notice for even an urgent Board meeting, which eats into the time allowed. 2 weeks' notice would consume most of the 15 days,.A much longer period for action is required.</p> <p>I would suggest (6 weeks) would be a reasonable minimum. This is the usual period for public comment on Standards and on Regulations; and in fact is often insufficient for that purpose. Amendments to Regulations are often published just before Christmas, at a time when members of national organisations are likely to be unavailable to participate in making submissions. However for an Inc Soc with urgent business, 6 weeks should allow for the calling of a special Board meeting, the circulation of relevant documents, and the putting into effect of resulting decisions.</p> |
| 5 | <p>(2) Requirement to provide both telephone number and email address is overly restrictive. Persons without either one will be effectively disbarred from being a contact officer. Not everyone has a telephone. Not everyone has email. But everyone lives somewhere.</p> <p>Contact officers change frequently, and to avoid constantly having to advise new contact officer details organisations should be free to choose to be contacted through the organisation rather than via any individual for example via the secretary" rather than via the particular individual who currently holds that position. Many organisations have no physical address, telephone, or email.</p> <p>Accordingly a postal address (eg PO box) should be the minimum, with telephone and / or email as optional extras. This would be consistent with rules for Companies.</p> |

- 8 (1) I support the change from minimum 15 members to 10
- 10 I support the continuation of the requirement that a society's name not be similar to a company's name. However there is no similar provision in the Companies Act, and that anomaly allows a company to be registered in the name of an existing Inc Soc I am on the Board of a national organisation who has had their name hi-jacked in this manner. The offender also trade-marked the society's logo.
- It would be a very good idea to use the revision of this Act to also amend the Companies Act to provide reciprocity of protection of names. The legislation governing trademarks should also be looked at.
- 13 I support body corporate counting as several members; 3 seems about right.
- 20 If a constitution is available via Registrar; any person should be treated as having knowledge of it.
- 21 I support the rule, but the heading is misleading; any society must be free to operate for the financial gain of that society.
- 24 (1) I support ALL of the listed things that must be included in a constitution.
- However the constitution should also be required to include provisions governing the establishment, disestablishment, and powers of subcommittees. In the absence of such Rules, no subcommittees should be permitted.
- 25 I support that constitution may also include (bylaws & equivalent), provided that the procedures for making amending, & revoking bylaws are spelt out clearly. There must also be provision for having bylaws (& similar) not included in the constitution, again provided as above.
- 28 (2) I support that amendments not take effect until registered.
- 36 I support that ALL members of the governing body shall be Officers of the Society. This will remove the current unfair situation where all committee members make a decision but only those specifically designated as "officers" are legally liable for that decision.
- 39 (2) I support the principle that certain types of person should not be Officers; however in practice this will impose considerable hardship on small organisations because they will have to vet nominations prior to any election. Nominations from the floor of an AGM - by far the most common form - will become impossible to use. Since most Members will not know of the facts in relation to a particular potential nominee's eligibility; the nomination process will inevitably have to include a declaration by the nominee that they are eligible.

A further problem is that many organisations do not require nominees for office to be members of the organisation. It is possible in many organisations for a non-member to become an Officer. In some cases, this is deliberate; eg where an organisation desires to have the ability to ‘manpower’ persons with suitable particular skills onto their Boards. However in such cases the number of non-member directors is usually limited to less than a majority of the Board. However mostly this problem arises from over-sight, where the organisation has simply never considered the possibility of some or even an entire Committee of non-members being elected. This would be best achieved by amending Section 24(1) so that for the avoidance of doubt, if a constitution does not specifically allow for non-member Officers, then it shall be assumed that non-members are not eligible for office.

40 (1) The prescribed manner for application for waiver of disqualifying factors should include that any such application should be made by resolution of the Board of the organisation, and not simply by an individual on their own or another’s behalf.

46 I support that former Officers should not be able to resign and thus avoid liability for their previous actions as an Officer.

48 - 55 I support these provisions.

57 & 65 I support requirement for formal register of interests.

66 (1) I support new requirement that society must continue to have minimum number of members.

(2) However it would be untenable to require recruitment of new members merely in order, for example, to pass a motion of winding up.

67 I support that there should need to be formal consent to becoming a member.

68 This should not need to be said - unfortunately history shows that it does.

69 I support limited liability for members, because in many cases this is the primary purpose of having an Inc Soc.

70 I support requirement for formal register of Members; and the minimum data to be kept therein (including the dropping of current requirement to include “occupation”).

Unfortunately many current Inc Socs fail to do so - the current Registrar appears to be uninterested in societies’ complying with their Rules, as long as papers are filed on time.

Where , under (c), the Registrar amends the type(s) of information to be recorded, formal notice must be given to all affected societies, and time granted to permit them to comply

71 What constitutes “written” request must be defined clearly. Some people believe email is OK, others don’t. Similar for “texts” sent by telephone. I believe email, to a previously published and current email address for the society, is OK; but that a text to the Secretary or other Officer is not.

This issue of “written” comes up in several other contexts as well, so a definition in Section 5 would be useful.

75 I support the provisions for AGM to be by, or partly by, electronic communications. This is especially useful for a national body whose members may be unable or unwilling to travel to attend the AGM due to cost, time, or other considerations.

76 Financial statements should be required to be

- provided in advance of the AGM to all Members; and
- if modified before formal acceptance, a copy of the modification must also be provided promptly thereafter.

Without access in good time to the financial statements, members cannot exercise due diligence in either accepting or rejecting them, and also in voting for Officers.

77 - 80 I support these provisions.

81 (2)(b) Some IRD employees have shown a reluctance to allow alternative dates for Inc Socs that engage in taxable activity. Societies should be free to adopt balance dates to suit themselves, without IRD influence. This Law should over-ride both the personal preferences of IRD employees and the departmental preferences of the IRD itself.

82 I support these provisions.

83 (4) The concept of GAAP is fundamentally flawed. What is “generally accepted varies from place to place, situation to situation, and especially from time to time. As example, it was common for Inc Socs to have their accounts “audited”; and this could be done by any suitable person. However changes within the accounting profession have included a change in what accountants mean by :audit” with the old style audit now being called a ‘review”. Neither passes any responsibility to the reviewer / auditor, but the fact of Rules requiring an “audit” and or the appointment of an “auditor” has caused massive increases in costs for many societies. This illustrates that what is “generally accepted” now may not be “generally accepted” in future.

It is a fundamental principle of law that what is meant be clearly stated in the law; without resort to sloppy weasel-words such as “generally accepted”. The cross reference to the Financial Reporting Act is of no use, since the definition there is equally open to personal interpretation.

This Act must specify exactly what documents are to be prepared and presented; and this should be exactly as it is in the current Inc Socs Act ; viz

- income and expenditure (NOT receipts and payments)
- assets & liabilities
- mortgages, charges.

The requirements of the Charities Commission to record & present receipts may suit for detecting fraud within charities, but must NOT be allowed to spread to non-charity Inc Socs, under the guise of being “generally accepted”. Inc Socs that are also charities should present BOTH receipts / payments AND income /expenditure. The majority of Inc Socs are not registered charities, and should not have to jump through hoops that have little relevance. If the reporting obligations for Charities who are also Inc Socs are too onerous, then the proper course of action would be to amend the Charities Commission requirements rather than to impose Charities’ additional requirements on Inc Socs.

Charities are given significant tax breaks, and must be accountable to their donors and the government. Companies whose shares are traded publicly must provide financial data publicly to facilitate a fair market. Inc Socs get little if anything by way of government dispensation (beyond the limitation of liability), and only need to be accountable to their own members. Any third-party funders are free to - and usually do - impose additional reporting obligations for the funding provided. There is NO need for this Act to impose more than minimal financial reporting requirements.

Sched 1 support the proposed transition arrangements

Proposed Standard Provisions for Constitutions

I generally support the draft standard provisions, provided they are not cast in stone (ie may be altered to suit the particular society). I make the following observations.

5.2

I agree that only a natural person should be eligible to be an Officer. However it is unreasonable to preclude natural persons who are not members of the society from being Officers. Many Societies struggle to have a suitable range of skills on their Boards. When relying solely on their membership as candidates. To fill skills gaps, they allow for a limited number of non-member directors to be appointed (rather than elected. Where the constitution has provision for this, it must be allowed. Where the constitution fails to govern such appointments, Officers should all be Members.

5.6 & 5.7

The intent is fine; however for most small groups, requirements to nominate in writing ahead of the AGM / SGM will be completely impracticable; and 5 days is utterly

insufficient to perform background checks necessary to avoid election of a disqualified person.

If a Society wants to go to the trouble of undertaking checks, or requiring nominees to make a declaration, well and good. If not, there is really no justification for imposing such procedures by law. Considering that no-one outside the membership can possibly be disadvantaged by election of a disqualified person, it should be a case of "on your own head be it". This provision is not to protect the public, and members should be trusted to look after their own interests.

5.8

Nominations from the floor should not be precluded.

5.13

This is not a matter for standard provisions and where such a provision is included in a constitution, it should be not left to one individual to decide; such a decision should be made by the Committee as a whole.

9.5

Election at AGM may be the norm, but it must be acceptable for a society to elect their committee prior to or after, their AGM rather than at the AGM, should they so desire.

9.18

The constitution should state whether the casting vote must be used to support the status quo, or whether it may be used freely by the chairperson.