



Blind Foundation Submission

Replacement of the Incorporated Societies Act 1908

This is the Blind Foundation's submission on the replacement of the Incorporated Societies Act 1908 and we welcome any opportunity to participate further.

The Blind Foundation is the main provider of rehabilitative, support and advocacy services for blind and low vision New Zealanders.

Our Purpose

To enable people who are blind or have low vision to be self-reliant and live the life they choose.

Our Vision

Life without limits

Kahore e Mutunga ki te Ora

Four Key Priorities

1. Independent living
2. Access for all
3. Reach more people
4. Building a Foundation for the future

The Blind Foundation advises government, business and the community on inclusive standards to ensure that the people we represent can participate and contribute equally. We have four major contracts with government. We value our relationships with officials and Ministers. We seek to act as a trusted advisor and specialist on the blindness sector. We are a long serving and expert provider of services to the sector.

The Blind Foundation is an incorporated society (since 2012) and over its 125 years has developed a strong organisational culture which has responsiveness to its beneficiary members and clients as a guiding principle. The Blind Foundation has an annual turnover of \$30m, and employs 300 staff throughout the country.

The BF has about 11,500 clients, of whom 6,125 are governing members who elect a Board of Directors on a triennial rolling cycle. The BF has a comprehensive constitution and has made a practice of regularly updating its constitutional provisions as circumstances change. Over its long history the Blind Foundation has developed a variety of both informal and formal mechanisms for involving its members in the governance processes. For instance each year an election is held for a portion of Board Directors. All documentation such as candidates CVs and voting materials are prepared in accessible formats such as Braille. We are adapting our voting mechanisms to allow electronic voting and we expect to increasingly use digital technology in our member communications.

The Blind Foundation members generally join for life during which time they can have intense involvement with our councillors and rehabilitation experts. Accordingly the Foundation maintains very comprehensive and confidential client records.

The Foundation is one of New Zealand's premier charity funded public services but is by no means a monopoly. It has to safeguard its proprietary rights and intellectual property in what is becoming an increasingly competitive social services sector.

The Blind Foundation is currently undertaking a constitutional review and it is timely this coincides with the rewrite of the Incorporated Societies Act. (An extract of its terms of reference is attached for your interest). We very much agree with the principle behind the rewrite that the Act will provide a common baseline on which will allow individualised constitutional provisions.

The Blind Foundation has eleven items in the draft bill which we would like the Ministry to consider for further development. In some areas we are requesting clarification of the terms of the bill. In other areas we propose changes that we think will improve the Acts effectiveness for large and complex organisations such as the Blind Foundation.

Consent to become a member.

Currently people who are clinically eligible to become members of the Blind Foundation do formally consent to membership. Alternatively people can become clients and receive services without becoming full voting members. In the past the Blind Foundation had an "opt out" provision whereby people automatically became members when they registered for BF services and could opt out on request. It is possible the Foundation may wish to return to the "opt out" approach to ensure a full membership and ensuring a strong democratic base and a good talent pool for officers.

1. The Blind Foundation requests for clarification of the consent requirements.
2. The Blind Foundation requests for opt out provisions be included in the final bill.

Register of members

The Blind Foundation maintains a comprehensive membership record and is currently reviewing its information systems and the data it holds. It would be very useful to know the proposed detail of membership information in the new act.

3. Blind Foundation requests for clarification of the register data and reporting requirements in the exposure draft.

Access to Information

The draft bill is not specific on what information can as of right be requested by members. The Blind Foundation holds very confidential records and works in a competitive fund raising market for social services. We endorse the need for members to be informed about the Blind Foundations functioning but believe that aim is met by the Law Commissions comment when reviewing the existing Act. The Law Commissions view was that the Act should provide members with the minimum information necessary for members to hold the society to account at the annual general meeting. It considered the minimum information to be the financial statements presented to the AGM and minutes of previous AGM's.

4. The Blind Foundation request that the final wording of the Act include provision for members to access the minimum information necessary to enable them to hold the society to account at the AGM as outlined by the Law Commission; and the rules in a Societies constitution are to define what other information would be made available.

Duties of Officers

Conflict of interest: The draft bill only deals with conflicts of interest that are financially based. The Blind Foundation thinks this could be extended to cover other situations; for instance where officers have roles in other organisations that may have some potential for conflict.

5. The Blind Foundation request that the provisions for the requirements for conflicts of interest to be disclosed should extend beyond financial advantage, and cover other likely areas where conflict may exist.

An additional area in respect of the "duties of officers" is to ensure that governance and management roles are clear and separate. In many smaller incorporated societies these two functions may be very close. In an organisation the size and complexity of the Blind Foundation the roles have to be strictly separate but the draft bill is not clear on this division.

6. The Blind Foundation request more clarity on the governance role of Boards, with clear separation of management duties and responsibilities, to ensure effective and appropriate organisational structures and practices exist. (Any request should reference the best practice business and NFP guidelines for separation of management and governance).

Constitution Requirements – including complaints and grievance process

The Blind Foundation agrees with the general principle the Act should require minimum provisions and societies should then use their constitutions to meet specific requirements. That being said we feel this section of the bill needs some additional clarity.

7. The Blind Foundation request a tightening of the wording around "Minister issued standard provisions" to make the intent that these are to provide basic provisions for inclusion available and are not to alter the ability of incorporated societies to set their own provisions outside of those already mandated in the draft Bill.
8. The Blind Foundation request clarity on what is considered to be a 'complaint' or 'grievance' as neither term is well defined in the exposure draft and the vagueness could lead to costly and unnecessary action defending tenuous claims.
9. The Blind Foundation request a tightening of the wording related to sub-committees to reinforce the practice of good governance and the role of the Board in delivering on its fiduciary responsibilities, decision making role and strategic function.

General Meetings

The Blind Foundations constitution currently meets most of the proposed requirements. However in the areas noted below clarification is requested.

10. The Blind Foundation request clarity in the wording of the Bill on what is intended in the required Directors interests' disclosure – is this "conflicts of interest" or "interests". The latter may present a challenge in attracting suitably qualified Director candidates. If it is only conflicts of interest then Directors would only need to disclose any interest in another organisation that may cause a conflict. If they need to disclose interests then they would be disclosing publically all their interests in companies, trusts etc. etc. This can have an impact on attracting potential Directors with significant business interests and can also create a negative sentiment to otherwise well qualified potential Directors due to their wealth or position.
11. The Blind Foundation request clarity in the wording of the Bill on what is considered an appropriate form of "electronic communication" as this could apply to a wide range of technology from email to web conference. For instance does the electronic medium have to be fully interactive (two way communication or broadcast (one way).

Additional Comments

The Foundations current constitution makes provision that a resolution passed by Members at a meeting does not bind the Board unless the proposal is specifically allowed by the Constitution or the Incorporated Societies Act.

It reads:

9.11 Member Resolutions: A resolution of Members passed at a meeting of Members dealing with the management or affairs of the Foundation does not bind the Board unless this Constitution or the Incorporated Societies Act 1908 so provides.

We think it would be useful to have some similar device in the new act that made it clear that members could not act out side of either the constitution or the Act

Our final point is that the Blind Foundation constitution does permit the Board to make changes the constitution without calling a meeting of members where the changes are to correct a “manifest error” or are of a formal or technical nature.

The reasoning behind this is that calling a national meeting or a special AGM is not a trivial matter logistically and the expense is significant

Again we think this provision would be better in the Act rather than the constitution and recommend that it be considered for inclusion

END

CONSTITUTIONAL REVIEW COMMITTEE

Established as an ad hoc Committee in September 2015

TERMS OF REFERENCE

(Adopted by the Board on 6 November 2015)

Purpose:

This Committee has been established to review the RNZFB objects, governance structure and rules and make recommendations for updating these if this is desirable to ensure they:

- are consistent with the needs and the expectations of the blind, low vision and deafblind community and other stakeholders;
- are consistent with and look to implement modern disability philosophy on an on-going basis;
- adhere to the principles of self-determination;
- ensure the Foundation's objects can and will be achieved;
- ensure the Foundation's affairs can and will be administered effectively;
- are easy to understand and apply;
- enhance and safeguard member and stakeholder participation in the Foundation's affairs;
- are lawful and include proper processes, checks and balances; and
- accommodate the requirements of future generations of blind, low vision and deafblind people.

Process and Responsibilities:

- To communicate the fact and nature of this review to, and obtain feedback from, interested clients and stakeholders about their constitutional experiences, expectations and requirements;
- To evaluate the RNZFB constitution's current expression and performance relative to the best international standards;
- To recommend new/improved objects, governance structure and rules for the consideration of the Board, members and clients;
- To implement effective, appropriate and transparent communication channels;

- To ensure that recommendations and advice to the Board, members and clients on process and changes to the objects, governance structure and rule changes are based on an informed understanding of the perspectives and needs of members, clients and stakeholders.