



COMMUNITY WAIKATO

"Supporting strong communities"

Hei tautoko kia tuu pakari ai ngaa haapori

28 June 2016

Ministry of Business, Innovation & Employment
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Email: societies@mbie.govt.nz
Submission Due: Thursday 30 June 2016

Submission on the Exposure Draft of the Incorporated Societies Bill

1. Community Waikato appreciates this opportunity to make a submission on the Incorporated Societies Bill – Exposure draft.

Background – Community Waikato

2. Community Waikato is a charitable organisation that provides capacity and capability building services to enhance the strengths and effectiveness of community organisations¹ throughout the districts of the Waikato region. We provide support, mentoring, training, coordination, information, connections and advocacy for community organisations. As a developing, flexible and dynamic organisation, we also work one-to-one with community organisations providing advice and information on core topics, including governance, management, planning, financial systems, legal entities, risk management and compliance.
3. We define community development as strengthening the capacity of communities to identify and work towards their own outcomes and solutions based on equality, democracy, social justice and mutual respect. We start from the principle that local communities have a wealth of knowledge, skill and experience and can use our services to resource themselves to clarify and progress their aspirations, goals and development. We engage with over 1500 organisations and encourage networking and collaborations amongst the community sector.

¹ "Community organisations" includes, for example: charitable trusts, incorporated societies, not-for-profit organisations, marae, social services organisations, and community centres.

We submit as follows:

General Comments on the Incorporated Societies Bill

4. We support and agree with:

- The **consultation process** undertaken since 2011, especially the efforts made to engage with the community sector.
- The **adopted principles** for societies, and the governance principles, because they provide context and a foundation base for the new Act.
- The **proposed timeframe and process** leading to the Incorporated Societies Act being enacted, within the next four to six years.

5. We acknowledge and appreciate:

- That the Draft Bill brings together in one place, the major components for running societies as it combines the common law elements, the best features of the 1908 Act, and the 'gap-fillers' that were identified as a result of the review process.
- That maintaining a dedicated statute recognises the major difference in purpose, need and function that incorporated societies serve.
- That the inclusion of the Māori term, "Manatōpū" highlights that it is a term to be used in place of, and/or alongside the term "Incorporation", in the name of an incorporated society.

6. We contend that ongoing information support will be necessary for societies and their members during the lead-up, introduction and on-going compliance with the upcoming new Act.

Comments on specific clauses

We submit further views, as follows:

The constitution of societies (Part 3 – subpart 3 and other clauses)

7. We agree with the rules outlined for inclusion in a society's constitution (clause 24). We also agree with having standard provisions as a clear guide and starting point for the content of any constitution of any society. These provide a consistent expression of key standard features and user-friendly language and format is timely (i.e., the MBIE Exposure Draft, pp 31-36).

8. We welcome the reduction to 10, from 15, as the minimum membership number of a society (clause 66).

9. We appreciate there is still flexibility for each society to express their own focus and 'unique' features according to their own needs, size, purpose and functions. As well, the content of the constitution enables societies to introduce good practice in terms of the systems, policies and processes they may want or need to use.
10. We agree with the reference to 'tikanga or culture' (at clause 25). It highlights the importance of its inclusion in constitutions for societies where such content is relevant to their purpose and/or membership. As well, its inclusion highlights to societies that they can choose to describe in their constitutions the tikanga/culture of their values, principles, purposes and functions so that members of their own society, the general public and their array of stakeholders, may understand more about them as well.
11. We do question whether the Māori term, "Manatōpū" ought to be specifically defined in the 'Interpretation' clause 3 along with the current references already made to it in the Bill.

Good governance & legal dealings of an incorporated society

12. We welcome the clear details indicated about:
 - Expectations of officers' duties and the disclosure of conflict of interest (at Part 3, subpart 4).
 - The power to enforce officers' duties particularly if any offences are committed (Part 4, subparts 2 and 6).
 - Societies not operating for financial gain (Part 3, subpart 2) and the proceedings to recover financial gain made by any member (Part 4, subpart 4).
 - The impact of the capacity, powers and privileges of a natural person (Parts 1 & 2).
 - The validity of actions that may be undertaken in relation to a natural person's capacity and powers (Part 3 (clauses 18 to 20)).

Resolving disputes between members and their societies

13. We agree that a society's rules should outline the procedures for resolving disputes between members and their societies, and that the procedures for investigating and dealing with members' grievances and complaints also be included. (Parts 3 & 4).
14. It is also helpful to know that the arbitration option is available for inclusion in a society's constitution, along with what the implications will be if that option is used (Part 3, clauses 31 & 32).

Liquidation and dissolution of societies

15. Concerning the Registrar's powers, we note that six (6) months is a key timeframe for societies to comply with the minimum membership rule (Part 3, clause 66(3)-(4)). This can be threatening for societies whose numbers may have dwindled, therefore, it is vital that societies and their members are well-aware of this requirement and the potential consequences that 'liquidation' could occur. It is a new, essential and unfamiliar condition for societies that could impact on their longevity.
16. We note a proposed 'double-meeting process' procedure is available if it is included in a society's constitution (Part 5, clause 168(1)(b)). It relates to a resolution that may remove a society from the register, or distribute a society's surplus assets, or to appoint a liquidator. It seems an important procedure that could accommodate more time for a society to take stock of the circumstances it is facing. So, it is important that societies know about this discretion, and the consequences of 'including or excluding' it in their constitution.
17. We support the addition of amalgamation provisions because it will provide an improved, simple one-step system for amalgamating two or more societies to form one new society, or one or more societies to become part of an existing society (Part 5, clauses 143-154).
18. A clear indication is required under clause 161 (Part 5) that societies identify a not-for-profit entity, or class of not-for-profit entity for the transfer of any surplus assets on or before the removal of a society from the register or on its liquidation. We view this as an improvement to the process and that it is an important decision-making power afforded to societies.

Transitional provisions

19. We agree with the proposed transition dates and pace of the indicated timeframe. It suits the time needed for the remaining stages to pass the Bill, as well as the transition time needed to establish the necessary resources (e.g., on-line registration system set-up), and it enables existing societies to transition and amend their rules/constitutions, as required, following the enactment of the Bill.

Comments regarding Hui E! Recommendations

20. Our further comments to this submission are made with reference to questions and recommendations that Hui E! Community Aotearoa have raised and shared during the consultation process of March/April 2016 and in their Briefing Paper by Dave Henderson (23 May 2016).

21. **Clause 83** – We do accept that having accounting standards is a good practice to introduce for societies generally. Concerning the current charities “Tier 4 Standard” template, we note and support the usefulness of reporting ‘entity information’ and the ‘statement of receipts and payments’. However, we query the relevance of reporting on the ‘statement of service performance’ because outputs and outcomes are not necessarily the drivers for why all societies are established.
22. We share a similar concern with Hui E! that clause 83 of the Bill could impose an unnecessary ‘compliance burden’ and that such imposition may “create a disincentive to forming societies”. Also, as mentioned by Hui E! we note that “charities get a significant tax benefit, as do their donors” however such benefit would be absent for incorporated societies that do not have charitable purposes.
23. **Small incorporated societies** – We agree with the Hui E! recommendation that “small incorporated societies should be exempt from having to report according to the reporting standards” of the NZ Charities Services. We contend the exemption ought to apply to societies with under \$25,000 total operating payments in either or both of their previous financial years.
24. We further suggest that the option to “choose to report according to the standard” be available generally as a reporting guide for small societies (under \$25,000). We reiterate though, it ought not to be imposed on them.
25. **Sub-committees** – We share the view that more clarity about forming sub-committees is important for incorporated societies and that highlighting the need for process and decision-making, in relation to the main governance group, could be a positive addition to a society’s constitution.
26. **Appeals from Registrar decisions to the High Court** – Finally too, we agree with the Hui E! recommendation that a lower level appeal process be adopted concerning appeals, and at a minimum, we suggest that the timeframe of 15 days be extended to at least 30 days, concerning appeals from decisions of the Registrar that go to the High Court.

We thank you again for this opportunity to contribute our submission.

Withheld

Holly Snape
Chief Executive

Withheld

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