

904 Highfield Road
RD 1
Christchurch 7671

13 July 2016

Draft: Incorporated Societies Bill

To whom it may concern,

I currently hold positions with Incorporated Societies and a charitable trust. I also spend significant amounts of my own time and money doing volunteer work maintaining our back country huts and tracks. I hold roles as Secretary - Malvern Branch- New Zealand Deerstalkers Association, President - Darfield Smallbore Rifle Club, executive member – Darfield Shooting Centre and Permolat Trust. I have been involved in registering an Incorporated Society, re-writing constitutions and providing reporting for our registered Incorporated Societies. I have had enough experience of running organisations under the Incorporated Societies Act that I felt confident in what I was doing and that the organisations were fulfilling their roles to the best of their abilities. Unfortunately I became aware of the newly drafted bill only recently and my input is somewhat reactionary to what is proposed. I read the exposure draft and could not help but feel somewhat dismayed at what was being presented and proposed. Contrary to the opinions of legal entities quoted in the report I am not aware of significant problems with the current legislation and feel the current law, while outdated, still serves us well. It was clear, concise and un-hindering. The changes made to require updated constitutions recently had clarified the requirements and reaffirmed the roles and obligations of officers very well.

As I began to read this new bill it quickly became clear this act will put in place an unnecessarily complex legalise that most laymen will find difficult to understand and most likely incredibly difficult to actually operate under.

I am no lawyer but I understand and appreciate what it takes to operate an Incorporated Society for community benefit. The entire basis of these organisations is simplicity and trust. They need to operate on a shoestring budget with fluctuating numbers of members and little to no support from any form of government. Despite these huge barriers they continue to deliver community good extremely efficiently and reliably. They need to be cherished and supported in their roles not faced with exposure to punitive measures brought down on them by officials who have no investment or knowledge of the good they provide. I sincerely believe this act, in its current form, if allowed to pass into law, will mark the end of most community good groups that do not have access to the funds required to protect their officers from the culpability being laid upon them. I for one would find it extremely difficult to remain in my positions under this law. The exposure is too great and I am not willing to put my life's work at risk to continue fulfilling those roles. I have spoken to others who share the same view.

In my experience most Incorporated Societies wish to spend their hard earned cash on the things specified in their mission statements within their constitutions. Anything other than that reduces community good. This draft bill seeks to prevent officers being protected from litigation brought upon them from acts of law that seek to apportion blame. That is an affront to common decency when an individual puts themselves forward for public service at no cost. It would be an absolute obscenity to see someone who is attempting to complete some task or support others to complete a task for community gain thrown in front of the judiciary to answer charges brought against them for a breach of health and safety law or some other offence that is not fraud or an act of deceit or theft. This act should provide additional protections for officers not punitive mechanisms to assist legal actions against them. I find the way the bill is formed to be completely at odds with what I feel it should be providing.

Existing criminal statutes should contain all the means and methods to deal with any acts deemed

unlawful in completion of an officers tasks for an Incorporated Society. I find it odd that specific terms related to Incorporated Societies need to be introduced. Surely they are unnecessary duplication. I lack the time to go through this bill line by line but that is what is necessary. This act should be like its predecessor, straightforward, succinct, relevant and efficient.

In particular I find Subpart(6) utterly unacceptable and unnecessary. Even if an organisation could afford insurance to indemnify officers the whole role has reached a point it is untenable for candidates. One has to wonder if this bill hasn't been drafted in parallel to the health and safety regime that seems to be favouring a path of litigation to somehow apportion blame or extract financial recourse. In a country that elected in 1967 to provide no fault accident insurance for all to eliminate litigation, that failed to provide those in need with the funds needed to recover or sustain them following work and non-work accidents, putting in place legal means to punish community contributors indicates a failure to respect the will of the people being served by those people. If more were aware of what is proposed in this bill I think opposition to it would be quite strongly voiced.

48(1)

Duty of officers to act in good faith and in best interests of society

An officer, when exercising powers or performing duties, must act in good faith and in what the officer believes to be the best interests of the society.

I suggest this is altered to put the objectives of the society at an equal importance hence:

An officer, when exercising powers or performing duties, must act in good faith and in what the officer believes to be the best interests of the society and consistent with the objectives of the society.

This entire section focuses on an individual and I wonder if that is necessary. Clearly individuals can make decisions on day to day items without committee involvement but in my experience committee involvement usually ensures decisions are made after discussion and based on consensus or majority views at least. It may be useful to consider how a constitution is formed and what that requires in terms of decision making processes. The draft constitution under “Functions and powers of the committee” appears to cover that quite well so I'm again unsure the focus on individuals decisions is appropriate or necessary.

66(1)

Subpart 5—Members

Requirement to have at least 10 members

A society must continue to have at least 10 members.

It has been my experience that many societies will from time to time have significant variance in membership numbers. I think a requirement to have at least 10 members would put many of our societies in a position where they cannot comply with the act. I suggest this number be reduced to 5 members or a number at least equal to a quorum specified in the societies constitution. Consequently clauses 2 & 3 following should be altered to 5 members.

70 Register of members

(1) *Every society must keep a register of its members.*

(2) *The register must contain—*

(a) the name and contact details of each member; and

(b) the date when each person became a member; and

(c) all other prescribed information (if any).

Compare: 1908 No 212 s 22

This requirement is quite an undertaking and keeping records of members and when they became members can be quite challenging when officers change etc. No standardised, secure and accessible systems are generally available and I expect many organisations may well start out fulfilling this obligation but fail as time goes on. I see this register as troublesome and wonder at its merit. While various lists of members will be kept to facilitate communication of activities, meetings and announcements by organisations a more detailed database would not commonly be held or its existence even authorised by members. The intent of this requirement is unclear. A requirement to keep an annually updated contact list would make a lot more sense and be in keeping with common practise already in place.

76

Right of access to financial statements and minutes of meeting

(1)

A member may, at any time, make a written request to the society for either or both of the following:

- (a) the financial statements of the society that were presented at the most recent annual general meeting of the society;*
- (b) the minutes of the most recent annual general meeting of the society.*

(2)

The society must, within a reasonable period after receiving the request and without charge, provide the requested information to the member.

(3)

Section 71 does not limit this section.

This seems superfluous when a society is required to submit its financial records to the registrar for display on the website. Minutes of the AGM could also be displayed on that website but that requires a level of disclosure of activity that some societies may not be willing to provide depending on their activities. I support the information being made available but do not support it having to be supplied expressly for the requester when it is already publicly available.

83

Annual financial statements must be prepared and registered

(1)The committee of a society must ensure that, within 6 months after the end of the accounting period of the society, financial statements are—

- (a) completed in relation to the society and that accounting period; and*
- (b) dated and signed by or on behalf of the committee by 2 members of the committee.*

I do not support part (b) as currently drafted.

Part (b) must require “presentation to the Annual General Meeting in the form the financial statements will be supplied to the Registrar and a minuted acceptance of the accounts as a true and accurate record of the societies financial activities over the past financial year” Only requiring sign-off by two committee members is fraught with risk in my opinion and would significantly weaken the rigour in which financial matters are scrutinised.

94 Part 4 Enforcement

I find this part of the draft out of step completely with the role and function of Incorporated Societies. While I understand the need for provision of some form of enforcement of society rules

significant parts of what is proposed in this section appear incredibly heavy handed and authoritarian when the nature of a society is to have simple rules in a constitution that all members agree to uphold and if they fail in that obligation the constitution should have rules and powers in place to deal with that. Anything further would be entering the realm of common law and criminal proceedings amply covered under those statutes. I think there should be a method to seek mediation in the event of a disagreement that reaches an impasse but again that should be in the constitution and not seek court intervention. I note also that there is provision for claiming costs from a society for legal intervention. That would effectively remove funds from the organisation and for most end any activity they currently undertake. I see in this section again an approach that is simply wrong when you consider the role of these societies. I would need to see this section significantly altered to even consider supporting its inclusion in an actual bill.

I see little in the rest of the bill that I expressly object to although the modifications I have suggest previously will obviously have some impact on how things are formed in this later part of the bill. It remains unclear what specific changes will need to be made to existing constitutions and agreement to considerable changes in obligations, culpability and submission to compliance with altered rules. The time an effort to make changes and comply is more time away from core functions and while some may see the increase in litigious exposure as perceived I expect significant numbers of existing society committee members and officers to seriously reconsider their involvement when they truly understand what they may be held responsible for.

Closing remarks

I accept the 1908 Act is outdated and the new world requires changes to enable generally accepted practises to be applicable to Incorporated Societies. While clearly a lot of effort has gone into preparation of this draft I sincerely feel the objectives and roles of Incorporated Societies along with any real appreciation of the commitment and dedication of those societies members has been largely ignored in preference for points of law. I cannot state clearly enough that people working in organisations that benefit communities and the populace at large should be assisted by the laws governing their activities not hindered or threatened by them. I feel a lot of what is presented in this bill is threatening to capable, hard working individuals who give their time freely to support and enhance their communities. As I have stated earlier I find it obscene that those people would somehow be subjected to requirements and scrutiny of their activities like never before. Looking at the past 108 years of performance of Incorporated Societies completing all manner of tasks you must consider, is this proposed bill just and appropriate. In its current form I can only conclude it is clearly not and I do not support its progression until the general intent and specific clauses are corrected.

Thank you for the opportunity to respond to this proposed bill. I trust you will consider carefully what I have stated here and act accordingly.

Yours Sincerely,

Craig Benbow