

DIRECT IMPACT GROUP

SUBMISSION

This is the direct impact group's submission on the **Exposure Draft of the Incorporated Societies Bill**, presented by the Ministry of Business Innovation and Employment as a replacement to the Incorporated Societies Act 1908.

1. Background

- 1.1. The direct impact group is a consultancy that works with civil society organisations to facilitate change in the increasingly disruptive environment they find themselves working in. Our consultancy covers strategy development and implementation, accountability and organisational improvement. We work globally from offices in New Zealand, Germany and India.
- 1.2. As a consultancy working with organisations who are structured as Incorporated Societies we welcome the review of the 1908 Incorporated Societies Act and the development of the Exposure Draft Bill. The current Act does not adequately provide for the level of structure, definition and accountability that the modern environment demands of organisations that undertake activities with donated or granted money, or enter into service provision contracts with private or government agencies.
- 1.3. In reviewing the Exposure Draft we have drawn on our international and domestic experience and have taken into consideration the changes that the civil society sector is facing globally. These changes impact on organisations in all sectors, and civil society organisations are no exception.
- 1.4. It is with this view to the future that we have some areas we would like to see the Ministry review from the current draft and make further provisions to future proof the Act. The changes we suggest will enable New Zealand Incorporated Societies to engage in new operating models, practices and activities that will increase cross sector engagement and build sustainability.

2. Financial Gain Provisions

- 2.1. The current wording of the draft Bill restricts the commercial activity of an Incorporated Society in a way that may limit innovation and development of revenue streams that enhance both the provision of the charitable / common good purpose of the organisation and its financial sustainability.
- 2.2. As social enterprise and commercial activity become more a part of the operations of Incorporated Societies the demands for investment capital to fund innovation and activity will increase. Restricting in any way the ability of Societies to access investment capital, including

from individual or corporate members, will unnecessarily limit access to this capital.

- 2.3. Members are a likely source of capital particularly for innovation activities where the risk to investors is higher and the ability to attract capital more difficult.
- 2.4. We recommend the ability for an Incorporated Society to enter into financing arrangements with Members be included in the Bill. This provision should not enable any Member to gain beyond what is a fair return on their investment but should not limit the ability to finance growth and innovation.

3. Consent Requirements

- 3.1. We recommend that the consent requirements for membership be better defined in the Bill.
- 3.2. Member based organisations are facing increasing difficulties in attracting members and engaging the people they provide services to, or on behalf of, in the governance of organisations.
- 3.3. We believe that Incorporated Societies would be at risk of factions within membership being able to dominate the governance and political structures of organisations if membership is limited to opt in only. This may have the effect of reducing their effectiveness at delivering their objectives and engaging as wide a base of support as possible. Flow on effects could be service reduction, funding reduction and viability issues.
- 3.4. The current provision in the draft Bill which requires all Members to consent to membership may limit this engagement further. Whilst we agree that no person should be subjected to any function or liability they do not wish to engage in, we would like to suggest the Bill be reworded to allow for opt out clauses to be included as a way of managing membership.

4. Register of Members

- 4.1. The requirements for Incorporated societies to keep a register of members lacks clarity and we would recommend the provisions in the draft Bill be tightened to clearly state what data is required.

5. Access to information

- 5.1. The current wording of the draft Bill contains very broad definitions of the information members can request access to.
- 5.2. Many Incorporated Societies operate in complex and competitive environments where certain information can have a high level of commercial, personal privacy or organisational sensitivity.
- 5.3. The nature of Incorporated Societies can, at times, mean that members will use any means possible to delay, distract or disrupt activities that are in the interests of the society. A broad ability to request information and instigate protracted processes to access this information can be counterproductive to the effectiveness and stability of the Society.

5.4. We recommend that the wording of the final Bill 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 for rules in a Societies constitution to define what other information would be made available.

6. Duties of Officers – Conflict of Interest

6.1. Incorporated Societies have objectives and activities that predominantly sit outside of the area of financial and commercial benefit. Whilst it is likely that we will see a growing social enterprise sector and increased engagement of Incorporated Societies in commercial activities, limiting the application of conflict of interest to just financial conflicts will put Societies at increased risk.

6.2. We recommend the requirements for conflicts of interest to be disclosed beyond financial advantage to cover other likely areas where conflict may exist.

7. Defining the roles of Governance and Management

7.1. We make the comment that the wording of the exposure draft Bill seems to confuse governance and management in various areas. It is difficult for a Bill such as this to provide easily interpreted and broad requirements that cover organisations of a huge range of size variations, however the current wording does implicate a higher than optimal level of operational function and control by Boards rather than a proper governance role. If this wording was taken at face value it could result in Boards taking too much interest and control in operational / management matters to the detriment of good and effective governance. Given the level of influence members can have, both in terms of shaping policy and roles and in guiding the activity of Boards, this level of possible confusion between management and governance responsibilities is of concern.

7.2. We recommend more clarity is provided in the wording of the Bill 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 not-for-profit guidelines for separation of management and governance.

8. Governance Capability Requirements

8.1. Further to the clarity of separation between governance and management we would like to see that the increased duties of officers be reinforced with increased enforcement of the duty of care required in governing an organisation.

8.2. Whilst for many small Societies this is arguably not applicable, in large and complex Societies the capabilities required at governance level are significant. As identified in the Law Commission Review of the Incorporated Societies Act 1908 there remains significant concern at the low level of capacity and capability of many in governance within Incorporated Societies. We do not believe this concern is adequately addressed in the proposed Bill.

8.3. We recommend guidance provisions be built into the Bill that provide for increased professional capacity at Board level and include expectations of Board members having sufficient capability to make the decisions required of them by the organisation.

9. Complaints and grievances process

9.1. The definition of what is a genuine dispute or grievance is not defined in the draft Bill and the current wording leaves a lot of room for fringe or activist groups to use the process to delay, control or disrupt the effective operation of a society. To this end we would recommend 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.

9.2. The area of committee composition is poorly defined in the draft Bill. Good governance practice would suggest that at a minimum a society, other than a very small one, should have a finance, audit and risk committee along with other specific committees targeted at providing expertise and insight to the Board on areas of specific interest to the organisation.

9.3. We recommend 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.

10. Minister Issued Standard Provisions

10.1. The ability for the Minister to issue standard provisions seems to be designed to provide a simple solution for societies to incorporate standardised provisions into constitutions. There is, under the current wording of the exposure draft, a reasonably high level of ambiguity as to the breadth and nature of the provisions to be issued. This opens up the ability for political interference into the process of governing incorporated societies, particularly if the standardised provisions are applied mandatorily, although this is not likely the intent, or considered the norm.

10.2. We recommend a tightening of the wording around Minister issued standard provisions to make clear 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 exposure draft Bill.

11. General Meetings – Directors Interests Disclosure Requirements

11.1. The draft Bill is unclear 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. We request greater clarity on this issue.

12. General Meetings – Electronic Communications

12.1. The use of electronic communication tools for Annual General Meetings is welcomed.

12.2. The current wording of what form this could take is very vague however and may lead to confusion or poor practice.

12.3. We recommend 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.

13. Presenting to our submission

13.1. We would welcome the opportunity to talk to this submission when the Ministry of Business Innovation and Employment considers submissions.

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