

# **Submission**

By The



**Early Childhood  
Council**

to the

**Ministry of Business, Innovation and Employment**

on the

**Proposed re-write of the Incorporated Societies Act**

**June 2016**

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## SUBMISSION BY THE EARLY CHILDHOOD COUNCIL

### 1 INTRODUCTION

- 1.1 The Early Childhood Council (ECC) would like to make a submission on the Consultation Draft of the new Incorporated Societies Act.
- 1.2 The ECC general supports the proposed changes detailed in the consultation draft, but with a number of minor issues as detailed in this submission. In particular, we support the principle of aligning the expectations of the Incorporated Societies Act with the Companies Act and the clear intent of improving the quality of governance in incorporated societies.
- 1.3 The Ministry of Education reports there are 4,546 licensed early childhood education (ECE) services in New Zealand of which 2,438 (53.6%) are community-owned. 2,500 of the 4,546 are licensed childcare centres (55%). Of these, 815 (32.6%) are community-owned. The Ministry of Education does not report publically on the proportion of these community-owned childcare centres that are incorporated societies, charitable trusts, or those that hold both status.
- 1.4 Community-owned childcare centres operate under volunteer parent boards generally elected from the parents who enrol their children at the service. These services are not-for-profit, operating under constitutions and, like many not-for-profits, struggling to survive in a commercially-challenging world.
- 1.5 The ECC is a membership body for childcare centres, drawing its membership from the 2,500 licensed childcare centres mentioned in 1.3 above. The membership of the ECC currently stands at just under 1,200 centres, making it the largest membership body for childcare centres in the country. The proportion of the ECC's membership that are community-owned centres is 30.1%.
- 1.6 The ECC surveyed its community-owned members to solicit views and data in preparation of this submission on the consultation draft of the Bill. This submission reflects the views of our members.

### 2 RECOMMENDATIONS

#### 2.1 The Early Childhood Council recommends that the Ministry of Business, Innovation and Employment:

- a) Liaise with the Ministry of Education to encourage new childcare centres/societies being formed now to anticipate the changes by adopting constitutions that comply with the provisions in the Consultation Draft of the Bill,
- b) Note that the ECC will be encouraging existing societies to review their constitutions now to anticipate the changes proposed in the Consultation draft of the Bill, and
- c) Note that it is our belief that all community-owned childcare centres will find it necessary to change their constitutions in some form to comply with the changes recommended in the consultation draft of the Bill
- d) Note that the ECC supports the proposal for standard provisions for constitutions
- e) Seek to simplify the proposed change to the relationship between a parent society and its "branches", given that the proposed change is unnecessary and administratively cumbersome

- f) Amend the proposal regarding who can and cannot be a society contact officer to enable a paid staff member to undertake this role if this is the desire of the society board
- g) Expand the provisions concerning conflicts of interest to make it clear that paid staff should not also be voting members of the society or elected members of the Board
- h) Liaise with the Ministry of Education to streamline and align the financial reporting expectations of community-owned childcare centres with their privately-owned counterparts.

### 3 ECC Survey of Community-Owned Members

3.1 The ECC surveyed its community-owned members on the proposed changes contained in the Consultation Draft Bill.

3.2 A response of 190 was achieved, representing 17.32% of the ECC's total membership; 57.75% of the ECC's community-owned members; and 23.31% of the total licensed community-owned childcare centres (see 1.3 above).

3.3 The geographic spread of responses is shown in the following table:

Region	Response %
Northland	5.26%
Auckland	42.11%
Hawke's Bay	5.26%
Taranaki	5.26%
Wellington	15.79%
Canterbury/South Canterbury	10.53%
Otago	15.79%

3.4 68.42% of centres responding are located in city regions.

3.5 All the respondents were sole operators, ie: the societies in question operated one childcare centre as opposed to part of a larger corporate entity.

3.6 37% of respondents advised their constitution did not clearly define who could be a member of their society and who could not.

3.7 In terms of constitutional content, the respondents detailed as follows:

Constitutions contain...	Yes –	No –	Don't know –
Name and purpose	100.00%	0.00%	0.00%
How people become members/cease to be members	91.67%	0.00%	8.33%
Provisions to keep an up-to-date register of members	58.33%	25.00%	16.67%
Provisions for the composition, roles and functions of committees	91.67%	8.33%	0.00%
How the society enters into legal obligations, controls and manages its finances, and keeps	92.31%	0.00%	7.69%

Constitutions contain...	Yes –	No –	Don't know –
financial records			
Members' rights to access financial reports presented to an AGM and access minutes of previous AGMs	83.33%	16.67%	0.00%
Arrangements and requirements for general meetings	100.00%	0.00%	0.00%
A provision for members to raise grievances about their treatment as a member by the centre?	33.33%	66.67%	0.00%
A provision for the public to make complaints about the centre (includes about staff) or about a member (usually parent) of the centre/society?	25.00%	58.33%	16.67%
The statutory (and other?) duties of committee members?	25.00%	33.33%	41.67%
What conflicts of interest are and how your centre will deal with these if they arise?	33.33%	66.67%	0.00%
In its definition of who can be a full member your centre manager or other paid staff	58.33%	41.67%	0.00%
The number of committee members (minimum and maximum)	66.67%	33.33%	0.00%
How committee members are elected or appointed	100.00%	0.00%	0.00%
The term of office for committee members	75.00%	25.00%	0.00%
Qualification requirements for committee members	8.33%	83.33%	8.33%
Grounds for removing committee members	58.33%	33.33%	8.33%
the circumstances under which a committee member would be disqualified (undischarged bankrupt, or an individual prohibited under the Companies Act, Securities Act, Securities Markets Act or the Takeovers Act)	16.67%	58.33%	25.00%

3.8 The average childcare centre committee has 5 to 10 elected members. In the opinion of the centre manager, 41.67% of the elected committee members are familiar with the childcare centre's constitution and 33.33% are not. 41.67% of community-owned childcare centres provide a formal induction process for new committee members and 58.33% of centres offer their committee members a governance manual containing relevant documents.

## 4 DISCUSSION

### 4.1 Report Recommendations (now reflected in Clauses 21-22 of the Consultation Draft of the Bill): *Pecuniary/Financial gain*

4.1.1 The ECC agrees with the proposed changes outlined.

### 4.2 Report Recommendations (now reflected in Clauses 66, 67 and 13 of the Consultation Draft of the Bill): *Membership*

4.2.1 The ECC agrees with the proposed changes outlined.

**4.3 Report Recommendations (now reflected in Clauses 23-24 and 71-72 of the Consultation Draft of the Bill): *Minimum in constitutions and member access to information***

4.3.1 The ECC agrees with the proposed changes outlined.

**4.4 Report Recommendations (now reflected in Clauses 23-30 and 33-35 of the Consultation Draft of the Bill): *Society constitutions***

4.4.1 The ECC agrees with the proposed changes outlined.

**4.5 Report Recommendations and Clauses 33-35 of the Consultation Draft of the Bill): *Model constitution – now standard provisions***

4.5.1 The ECC considers that the standard provisions should be supported with practical guidance material on the Registrar’s website. We also consider that there is a role for the ECC to assist individual centres/societies. We do so already, through training and individual support, as do many other national bodies across the New Zealand commercial sector. While the ECC has a model centre constitution template on its website, along with model disciplinary and other governance templates, these are available (deliberately) in Word format so that centres can modify and add their own “flavour” to the document to better meet their individual needs.

**4.6 Report Recommendations (now reflected in Clauses 86-87 of the Consultation Draft of the Bill): *Registered Office***

4.6.1 The ECC agrees with the proposed changes outlined.

**4.7 Report Recommendations (now reflected in Clause 15 of Schedule 1 of the Consultation Draft of the Bill): *Branches***

4.7.1 Under the proposed Consultation draft Bill parent society relationships with branches will be defined by those entities, not by legislation. This will, it is proposed, entail contractual relationships between the parent society and subsequent branches formed as independent societies.

4.7.2 There will be no separate provision for incorporation of branches, but a branch may be incorporated as a society in the normal way, and existing registered branches will be “grand-parented.”

4.7.3 The ECC believes this approach to be a rather cumbersome approach for larger community-owned childcare organisations and the impact of this approach should be considered thoroughly. We do not see clearly what problem is being solved by this approach and regard the present system of a parent society expanding its organisation with the addition of branches to the parent a more reasonable way forward. We do accept there should be a clear requirement on societies to notify the Registrar of any additional branches or changes to the society’s organisational structure.

**4.8 Report Recommendations (now reflected in Clauses 69-80 of the Consultation Draft of the Bill): *Limitation of member liability***

4.8.1 The ECC agrees with the proposed changes outlined.

**4.9 Report Recommendations (now reflected in Clauses 17 and 91-92 of the Consultation Draft of the Bill): *Legal capacity of societies***

4.9.1 The ECC agrees with the proposed changes outlined.

**4.10 Report Recommendations (now reflected in Clauses 18-20 of the Consultation Draft of the Bill): *Ultra vires actions***

4.10.1 The ECC agrees with the proposed changes outlined.

**4.11 Report Recommendations (now reflected in the Consultation Draft of the Bill): *Costs in legal proceedings***

4.11.1 The ECC agrees with the proposed changes outlined.

**4.12 Report Recommendations (now reflected in Clauses 36-41 of the Consultation Draft of the Bill): *Society committees***

4.12.1 The ECC agrees with the proposed changes outlined.

4.12.2 We believe these provisions should go further to make it explicit that voting membership of the society should not extend to paid staff and that elected, voting membership of the Society Committee should also not extend to paid staff.

4.12.3 In our experience a number of community-owned childcare centres find themselves dealing with unnecessary conflicts of interest and dysfunction as a consequence of extending full voting membership and/or voting membership of the Society Committee to paid staff. In a small business structure that generally involves the Society Committee, a paid centre manager and other paid staff, the risk to the governance of the centre is unnecessarily increased by providing opportunities for paid staff to “influence” the oversight of the paid manager to whom they report in an employment sense.

**4.13 Report Recommendations (now reflected in Clauses 42-47 of the Consultation Draft of the Bill): *Society contact officer***

4.13.1 We acknowledge the sense and value of every incorporated society having a statutory “contact officer” (with whom the Registrar may communicate) at all times but we fail to see the sense in the requirement that this “contact officer” must always be a member of the society’s committee.

4.13.2 Some childcare centres will have, however, placed this responsibility in their centre manager, who is (by definition) a paid servant and not normally a full society member. This prompts the question why is this contact person being defined in such a way and why can a paid staff member, such as the centre manager, not continue to fulfil that contact person role?

4.13.3 Community-owned childcare centre committees are made up of volunteers, many of whom lack commercial expertise or possess the level of knowledge in detail of the Societies activities such that acting as the contact person for the Registrar may not prove to be as efficient as it could be.

4.13.4 We believe the requirement for this function of contact person should allow for the Society to choose whether it is a committee member or a paid staff member. 83% of our survey respondents agree.

**4.14 Report Recommendations (now reflected in Clauses 45-47 of the Consultation Draft of the Bill): *Officers, duties, etc***

4.14.1 The ECC agrees with the proposed changes outlined.

**4.15 Report Recommendations (now reflected in Clauses 39-40 of the Consultation Draft of the Bill): *Committee member disqualification***

4.15.1 The ECC agrees with the proposed changes outlined.

**4.16 Report Recommendations (now reflected in Clauses 48-55 of the Consultation Draft of the Bill): *Officers' statutory duties***

4.16.1 The ECC agrees with the proposed changes outlined.

**4.17 Report Recommendations (now reflected in Clauses 56-65 and 36 of the Consultation Draft of the Bill): *Conflicts of interest***

4.17.1 The ECC believes this area requires further consideration. Governance-Management issues are commonplace within community-owned ECE centres and are one of the most common causes of concern raised by ECC community-owned members. We contend that financial interest is not the only way in which a conflict of interest may arise, but abuse of power is equally an issue, represented by committee members with external agendas and conflict between elected board members and paid staff. Another frequent issue is that of community-owned centres with paid staff in elected governance roles, creating an immediate conflict of interest with the centre manager or administrator and exposing the committee/board to significant employment risks.

**4.18 Report Recommendations (now reflected in Clauses 74 and 81-85 of the Consultation Draft of the Bill): *Annual reporting***

4.18.1 The ECC agrees with the proposed changes outlined in the consultation Bill, but invites the Ministry of Business, Innovation and Employment to liaise with the Ministry of Education in order to ensure the future financial reporting requirements placed on community-owned childcare centres comply with the new "Accounting Standards Framework" and are treated equitably with the financial reporting requirements for privately-owned childcare centres.

**4.19 Report Recommendations (now reflected in Clauses 24(1)(j), 31 and 32 and Schedule 2 of the Consultation Draft of the Bill): *Complaints and grievances***

4.19.1 The ECC agrees with the proposed changes outlined.

**4.20 Report Recommendations (now reflected in Clauses 94-127 of the Consultation Draft of the Bill): *Enforcement of obligations***

4.20.1 The ECC agrees with the proposed changes outlined.

**4.21 Report Recommendations (now reflected in Clauses 94-127 of the Consultation Draft of the Bill): *Sanctions and powers***

4.21.1 The ECC agrees with the proposed changes outlined.

**4.22 Report Recommendations (now reflected in Clauses 128-169 of the Consultation Draft of the Bill): *Terminating, restructuring and rescuing societies***

4.22.1 The ECC agrees with the proposed changes outlined.

**4.23 Report Recommendations (now reflected in Clauses 6 and Schedule 1 of the Consultation Draft of the Bill): *Transition***

4.23.1 The ECC agrees with the transition period proposed.

## **5 Background**

The ECC was formed in 1990 from the amalgamation of the Licensed Childcare Centres Federation and the Associated Childcare Council. It became an officially incorporated society in 1991.

The ECC is the largest representative body of quality, licensed early childhood centres in New Zealand. We have more than 1,100 member centres, 30% of which

are community-owned and 70% of which are privately-owned. Our membership employs thousands of teachers, and educates tens of thousands of children. We have Pasifika and Maori members, Christian, Montessori and Steiner, and many with no special affiliation. We believe families have the right to choose from this educational diversity that which they believe is best for their own children.

Our member centres range from providing quality early childhood education services for six child places to over 150 child places and are spread throughout the country. Membership is voluntary, and open to all licensed independent early childhood centres.

We offer members up-to-the-minute information, support and advice as well as representing their views with those who influence our sector.