

SUBMISSION

TELEPHONE 0800 327 646 | WEBSITE WWW.FEDFARM.ORG.NZ



To: MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT

On: EXPOSURE DRAFT: INCORPORATED SOCIETIES BILL

Date: 30 June 2016

Contact: Richard Gardner
Senior Policy Advisor
Federated Farmers of New Zealand

Private Bag 92-066
AUCKLAND 1142

P: 09 379 0057
F: 09 379 0782
E: rgardner@fedfarm.org.nz

SUBMISSION TO MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT

ON: EXPOSURE DRAFT: INCORPORATED SOCIETIES BILL

KEY SUBMISSIONS

- Federated Farmers acknowledges the work the Law Commission and the Ministry have put into reviewing the Incorporated Societies Act 1908.
- Federated Farmers generally supports the reform of the Incorporated Societies Act.
- Federated Farmers considers that the proposed infringement offences regime is too heavy handed.
- Federated Farmers considers that more work needs to be done on the relationship between the Incorporated Societies Act and the Charitable Trusts Act.
- Federated Farmers acknowledges that there are some inadequacies around the functioning of the existing provisions relating to branch societies, but supports the proposals that will allow that both parent and branch societies which operate under the existing provisions to continue to do so if they so choose, and it is also suggested that those provisions should be extended by allowing for alterations to be made to the parent and branch societies' structures.

SUMMARY OF RECOMMENDATIONS

Federated Farmers **recommends** that:

Ministry of Business, Innovation & Employment receive and take account of the Federated Farmers submission.

EXECUTIVE SUMMARY

Federated Farmers acknowledges the work that the Law Commission and the Ministry have put into reviewing the Incorporated Societies Act 1908. Nevertheless, although Federated Farmers considers that the present Act is working satisfactorily, the reforms proposed to the incorporated societies legislation are generally supported.

Federated Farmers makes extensive use of the provisions in the present legislation which allow the establishment of branch societies. Although there are some deficiencies in the legislation, for example regarding what happens to a branch society if its relationship with the parent society becomes severed, Federated Farmers considers that societies which rely on the legislation as it stands at present should be able to continue under that legislation, without becoming subject to any reforms that might be introduced in any replacement legislation.

Thus Federated Farmers supports the proposals that will allow both parent and branch societies that operate under the existing provisions to continue to do so if they so choose. It is suggested that existing entities operating under this existing type of regime should be able to alter their structures, including by setting up new branches under the existing regime.

Federated Farmers considers that the infringement offences regime is too heavy handed, and may have the effect of deterring people from participating in the governance of incorporated societies, which in turn may deter the incorporation of organisations that are doing useful works.

Federated Farmers is concerned about the relationship between the Incorporated Societies Act and the Charitable Trusts Act. The concern is that some incorporated societies which qualify as charitable trusts carry out activities which in large part are the same as the sorts of activities that are carried out by Federated Farmers, in particular those sorts of activities which are political in nature, yet Federated Farmers is not able to qualify as a charitable trust. Thus it is suggested that some work needs to be done on the relationship between the Incorporated Societies Act and the Charitable Trusts Act, to ensure that activities which are charitable in nature which are carried out by any incorporated society qualify as charitable activities under the Charitable Trusts Act.

With those points in mind, Federated Farmers generally supports the reforms to the Incorporated Societies Act proposed in the "Exposure Draft: Incorporated Societies Bill".

DISCUSSION

Introduction

Federated Farmers of New Zealand ("Federated Farmers" or "the Federation") welcomes the opportunity to make a submission to Ministry of Business, Innovation & Employment on its document "Exposure Draft: Incorporated Societies Bill" ("the Exposure Draft"), which requests submissions on the exposure draft of the Incorporated Societies Bill and standard provisions for society constitutions.

The Incorporated Societies Act is important to Federated Farmers because it is the legislation under which the Federation operates. Further, the Federation operates as a parent association with some 24 branches, which it calls provinces, which collectively form the identity that is Federated Farmers. This Federated Farmers "brand" has developed over many years, and is very important to the Federation.

Federated Farmers made extensive submissions to the Law Commission on its review of the Incorporated Societies Act 1908. In general terms, the view that Federated Farmers expressed was that the Act is working satisfactorily, albeit that the Federation has been involved in a considerable amount of litigation regarding it, and in particular litigation concerning the relationship between parent and branch societies. Despite this, the view the Federation expressed in its submissions was that the Act is working satisfactorily. Federated Farmers was particularly concerned to see that the parent / branch societies arrangement under which it operates would be retained in any reform of the legislation that might take place.

Thus Federated Farmers particularly welcomes and supports the proposals in the Exposure Draft that will allow both parent and branch societies that operate under the existing provisions to continue to do so if they so choose. Nevertheless, in the light of the Exposure Draft, it is now suggested that existing entities operating under this existing type of regime should be able to alter their structures, including by setting up new branches under the existing regime.

Federated Farmers has reviewed the Exposure Draft, and generally supports it. Federated Farmers agrees that the present Incorporated Societies Act 1908 is deficient in that it does not set out the obligations of those who are involved in the running of incorporated societies, and that it fails to give sufficient guidance to those who volunteer to run societies. There are deficiencies in that the present statute says little about how disputes should be dealt with, and that much of what is legally necessary for the running of incorporated societies is also not expressly set out in the statute. It is agreed that there are difficulties in that there is little guidance in or assistance from the current legislation and the often inadequate constitutions of organisations that operate under that legislation, and that the consequent difficulties in dealing with problems that arise disrupt the activities of those organisations and cause stress and unnecessary cost.

The Key Issues

Federated Farmers has identified, in broad terms, several key issues in the Exposure Draft. These are:

- That the legislation is generally working satisfactorily, but can be improved upon;
- That the legislation should continue to provide for branch societies;
- That the infringement offences regime is too heavy handed;
- That more work needs to be done on the relationship between the Incorporated Societies Act and the Charitable Trusts Act;
- That societies which rely on the legislation as it stands at present should be able to continue under that legislation.

These issues are discussed in greater detail below.

The present legislation is generally working satisfactorily, but can be improved upon

Federated Farmers agrees that there should be a statutory regime which enables community groups to incorporate as bodies corporate, separate from their membership. Federated Farmers considers that non-governmental and community based organisations are enormously important, with a vibrant, established and pluralistic society being an essential ingredient of a democracy. As a society incorporated under the present Incorporated Societies Act, the Federation considers that it plays a very important role representing farming interests at many levels in the country, and indeed overseas as well.

However, while it is recognised that the present legislation could usefully be brought more in line with the modern approach to corporate governance, Federated Farmers generally considers that the Act is working satisfactorily. It is noted that the Law Commission sought to establish where the appropriate balance lay between providing for a more modern approach to corporate governance, and retaining the flexibility and the ease community groups enjoy under the Act. Federated Farmers considers that one of the major virtues of the Act is that it largely leaves individuals who form incorporated societies to work

matters out for themselves. Nevertheless, Federated Farmers agrees that the public must take responsibility for the sorts of incorporated society they support and how they do so, with the empowering legislation aiming to do no more than create a climate of good governance and organisational credibility, with as little state interference as possible.

It seems that the community as a whole has given incorporated societies the benefit of legal personality, in return for there being minimum standards, with members of the societies able to enjoy some minimum legal protection of their status within societies. While there is little to indicate that there are problems that exist which would be solved by providing minimum governance rules that cannot be varied, Federated Farmers agrees that there may be some merit in including a draft standard constitution in the legislation.

Regarding the disciplining of members, it is considered that there is a danger that a more formal procedure than exists at present may generate more problems than it solves. Incorporated societies are generally comprised of like-minded people and, given that membership of any given society is voluntary, members are able to leave if they disagree with the direction the society might be taking, and perhaps even establish for themselves a new association with any other like-minded people. It is considered that such rules as are suggested for the disciplining of members leave little room for a flexible approach that is as important for large associations as it is for smaller ones.

Regarding the names of societies, Federated Farmers considers that its own name and brand is one of its greatest assets, and guards the use of that name jealously, as indicated by cases Federated Farmers has taken to the courts on the matter. Generally, Federated Farmers agrees that the legislation could do more than is the case under the present legislation to protect approved names.

The legislation should continue to provide for branch societies

The Law Commission's Report contains only a brief discussion of branch societies, which acknowledges their "hybrid" nature and the changes in the interpretation of their relationship with their parent association. Some inadequacies are also mentioned, and the discussion concludes with the question of whether there still is a need for branch societies.

To Federated Farmers, the existence of the ability to provide for branch societies is one of the most important aspects of the Act. As is noted in the case *Federated Farmers of New Zealand v Federated Farmers (Northland) Province* (CA 144/04), legislative provision for branches was made more than 80 years ago, at the behest of the then Farmers Union, which was a predecessor of Federated Farmers. The reasoning behind the move is documented in the case, and is just as true today as it was in 1920.

Nevertheless, Federated Farmers acknowledges that there are some inadequacies around the functioning of the provisions of the Act as it relates to branch societies. However, the Federation considers that any reform regarding arrangement between parent and branch societies should ensure that both parent and branch societies that operate under the provisions as they exist at present can continue to do so if they so choose.

The *Federated Farmers* case records how the legislators considered that the legislation they were making provided that relationship between parent and branch societies would be of a “top down” nature, with the parent society having primacy over the branch societies, and the branches subservient to the parent society.

This appears to have been the position assumed by those using the legislation, as well as those providing commentary on it, from the time the legislation was made until 2005 when, in *Federated Farmers*, the Court of Appeal determined that in most respects branches are completely autonomous and therefore independent of the parent organisation. The one area where the relationship is interlocking is that of membership, where membership of a branch society necessarily means membership of the parent society, and vice versa.

On the face of it, it might be considered by outsiders that this is an unsatisfactory situation, but in practice, for Federated Farmers as a whole, it seems to have worked satisfactorily. The tensions that exist between the parent organisation and the branches seem to be healthy tensions which, given that a lot of what Federated Farmers does is of the nature of policy work, lead to the development of robust policy that is accepted by members across the whole of the organisation.

Neither does the fact that branches are for the most part independent of their parent organisation mean that the parent organisation has no control over the branches. As the case subsequent on the earlier *Federated Farmers* case, *Federated Farmers of New Zealand v Federated Farmers (Northland) Province* (CA 162/05) demonstrates, when the relationship between a parent and a branch society breaks down, or indeed perhaps for any reason at all, the parent society has the ability to seek a name change for the branch society, thereby to all intents and purposes severing the relationship completely.

As regards the question of what becomes of branch associations when the parent is dissolved and the related question of what becomes of a branch association in situations where its relationship with the parent organisation is to all intents and purposes severed, it seems in practice that, in effect, the branch organisation becomes a fully autonomous society in its own right, and that this would also be the case should the parent society be dissolved.

It has been suggest that a more “federal” structure might avoid some of the problems implicit in the current regime. Federated Farmers surveyed its leading members on this point, and although the response was low, it was unanimous in saying that the independence of the branches from the parent organisation should be retained.

From this it follows that Federated Farmers considers that the branch societies regime should be continued.

The infringement offences regime is too heavy handed

Federated Farmers considers that the infringement offences regime is too heavy handed, and may have the effect of deterring people from participating in the governance of incorporated societies, which in turn may deter the incorporation of organisations that are doing the useful works that they do. It needs to be remembered that, for the most part, incorporated societies are made up of

volunteers, often with little experience of running organisations, and that little if any mischief eventuates if the organisations breach the provisions which are the subject of the infringement regime.

In many cases, incorporated societies are set up for “one-off” purposes, or perhaps for a small number of on-going purposes and, once those purposes are addressed, the society tends to fade away, rather than be formally wound up. In other cases societies have broader, on-going purposes, but sometimes those purposes lack any immediacy so the society tends to go into recess, and the administrative needs of the society overlooked. In both cases, no mischief occurs if those needs are overlooked for a time, so it is suggested that a regime under which the Registrar needs to remind organisations of their responsibilities and be satisfied that the organisations are still operating, before imposing an infringement offence penalty, would be a more appropriate regime to implement.

More work needs to be done on the relationship between the Incorporated Societies Act and the Charitable Trusts Act

Federated Farmers is concerned about the relationship between the Incorporated Societies Act and the Charitable Trusts Act. The concern is that some organisations which qualify as charitable trusts carry out activities which in large part are the same as the sorts of activities that are carried out by Federated Farmers. In particular, the sorts of activities which Federated Farmers is concerned about are those that are political in nature, and the concern is that Federated Farmers itself is not able to qualify as a charitable trust, so is not able to participate on an equal footing in the political debate in which those other organisations participate,.

Thus it is suggested that some work needs to be done on the relationship between the Incorporated Societies Act and the Charitable Trusts Act, to ensure that activities which are charitable in nature, and which are carried out by any incorporated society, qualify as charitable activities under the Charitable Trusts Act, and so qualify for the benefits that accrue to charitable trusts under that legislation.

Societies that rely on the legislation as it stands at present should be able to continue under that legislation

Regarding transitional issues, Federated Farmers considers that societies which rely on the legislation as it stands at present should be able to continue under that legislation, without becoming subject to any reforms that might be introduced in any new legislation.

There has not been any indication of the extent to which difficulties may or may not have arisen under the present legislation, which in itself suggests that there would not be a problem if existing societies were to be left to run as if under the present legislation. It is also suggested that existing entities operating under this type of regime should continue be able to alter their structures, including by setting up new branches under the existing regime.

CONCLUSION

Federated Farmers generally considers that the Act should not be reformed. While it is acknowledged that there are some inadequacies around the functioning of the provisions relating to branch societies, it is recommended that any reform in this regard ensure that both parent and branch societies that operate under the existing provisions can continue to do so if they so choose.

Federated Farmers recommends that Ministry of Business, Innovation & Employment receive and take account of the points advanced in Federated Farmers' submission.

THE ORGANISATION

Federated Farmers of New Zealand is a primary sector organisation that represents farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.

The Federation aims to add value to its members' farming business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members' families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.

Federated Farmers would welcome the opportunity to discuss this submission in greater detail with the Commission. Should the Commission be intending to hold hearings, Federated Farmers would welcome the opportunity to participate when the relevant hearings are held.



Richard Gardner
Senior Policy Advisor

Contact details for person making submission:

Richard Gardner
Senior Policy Advisor
Federated Farmers of New Zealand
Private Bag 92-066
Auckland

Ph: 379-0057

Fax: 379-0782

Email: rgardner@fedfarm.org.nz

