



Federated Mountain Clubs of NZ (Inc)

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Ministry of Business Innovation & Employment
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societies@mbie.govt.nz

Dear Sir

Submission on Exposure Draft of Incorporated Societies Bill

Federated Mountain Clubs of NZ (Inc) is an organization that represents the interests of trampers and climbers throughout NZ. Our membership is made up of 83 clubs, most of which are themselves Incorporated Societies, a variety of Associate Organisations and 750 Individuals. In total we represent 20,000 people.

General Comments:

Federated Mountain Clubs supports the intention to introduce updated legislation to govern Incorporated Societies and generally supports the proposals outlined in the bill. Identified below are particular clauses we wish to submit on:

Clause 8 Eligibility to become an Incorporated Society

Federated Mountain Clubs supports the reduction from 15 to 10 for the minimum number to become an Incorporated Society

Clause 22 (1) (a) Financial Gain

Federated Mountain Clubs submits that this clause needs amending to allow an Incorporated Society to distribute a financial benefit to its members where those members are themselves Incorporated Societies.

The intention of an Incorporated Society is that no single individual can benefit financially from the activities of the Society. Federated Mountain Clubs supports this. Federated Mountain Clubs is itself a federation of other Incorporated Societies. Therefore if Federated Mountain Clubs were to distribute any funds to its members it should be entitled to do so provided the distribution only goes to those members which are themselves Incorporated Societies.

This also applies to Clause 161 Division of assets on Winding Up

Clause 24 What Constitution must contain

Federated Mountain Clubs supports the items (a) to (f), (h) to (j) and (l) to (m) as listed.

Clause (g)

We submit that it would be desirable to include in the Constitution a reference to sub committees. This could be achieved by adding a sub clause (vii) to clause (g) reading:

Whether or not the committee may create sub committees and if so the method of election or appointment to such sub committee and any constraints placed on the power of any such sub committee.

Clause (k)

We note that (k) refers to “general meetings” and there is no definition in the Interpretation Clause 5(1) of what the term “meeting” or “general meeting” means.

We submit that there should be no requirement in the Act that refers to general meetings and that clause (k) should be deleted.

Sub clause (g) requires that a Constitution will state how the Committee is elected and sub clause (l) requires that a Constitution will state how the rules are amended. These clauses imply that it is over to each body to determine how to manage these processes. Federated Mountain Clubs agrees with this approach.

Neither of these subclasses refer to these two processes explicitly being done at a meeting. It is only necessary that the Constitution states how they will be done. The Act should allow societies flexibility in determining how these matters are dealt with.

Examples of methods that could be used are: A poll of members (electronic or otherwise) or an electronic conference.

This freedom to have processes that fit each body is contradicted in clauses 27 and 73 to 75.

Any requirement that imposes on every Incorporated Society a requirement to hold general meetings is an attempt to impose a “one size fits all” requirement. General meetings for a society whose members live in a common area is not a major cost or difficulty. For a nationwide organization a requirement to hold a general meeting imposes significant costs and logistical difficulties.

Clause 27 Society may amend Constitution

We submit that the reference to a general meeting in sub clause (2) (b) is unnecessarily restrictive for the same reasons stated in our submission on clause 24 above.

We submit that what sub clause (2)(b) should state is:

- (b) approved by a majority vote of members participating and voting according to the procedure stated in the Constitution

This wording leaves it to the discretion of each Society as to how to manage the vote, be it by calling a meeting if they wish or by some form of postal or electronic voting.

We submit that clause (2)(c) is no longer required.

If an officer of the society submits a rule change to the Registrar and signs a declaration that it has been approved by a majority of members following the procedure laid down in the society's rules then what is the point of requiring 3 members to sign the same declaration. It is also a logistical restriction on organisations whose membership is not in one geographical area – getting 3 signatures may not be easy.

Clauses 31 & 32 Grievances and Complaints

Federated Mountain Clubs supports the inclusion of these clauses in the new Bill.

Clauses 33 to 65 Subpart 4 Committee and Officers

Federated Mountain Clubs supports the proposals in these clauses but notes a contradiction between the age requirement in Clause 39 2(a) and clause 43 3(b)

Clause 39 2(a) requires that a committee member be at least 16 years old. Clause 43 3(b) requires that the Contact officer be at least 18. We can see no reason for a different age requirement for the Contact Officer. It should be sufficient that clause 43 3(a) requires that the Contact Officer be a member of the committee.

We submit that Clause 43 3(b) should be deleted.

Clause 73 to 76 Annual General Meetings

Federated Mountain Clubs submits that these clauses should not be included, as drafted, in the Bill

As we pointed out in our comments on Clause 24 a requirement in the Act to hold an Annual General Meeting of members is unnecessarily restrictive. It does not allow for societies to structure their organization in the manner best suited to that Society. An organization with members spread throughout NZ would find the holding of a General Meeting to be logistically difficult and considerably more expensive than a society serving a small community.

Clause 74 of the draft Bill states what information must be presented at an Annual General meeting.

Federated Mountain Clubs submits that the Act should require:

- 1 That an Annual Report on the affairs of the society during the most recently complete accounting period be prepared.
- 2 That Financial Statements covering the most recently complete accounting period be prepared
- 3 That any Disclosures of Interest, made under Section 57 of the Bill be declared and attached to the Financial statements

AND

- 4 That items 1,2 & 3 above must be made available to all members on request.

It should be left to the freedom of each Society to determine how best to make this information available to its members.

Clause 75 Methods of holding meetings

We submit that this clause should be deleted.

The wording of sub clause (b) is an attempt to provide for modern technology and allow remote participation in a meeting. This clause still presumes that this activity will take place at the same time. Holding an electronic conference is beyond the ability of many organisations in NZ and if they cannot utilise clause (b) then they are forced to hold a meeting as defined by clause (a).

The Act should apply equally to organizations which do not need to hold meetings in order to fulfill the purposes as required in clause 24 1(b)

Clause 75(b) does not provide for electronic polling of members over a defined period as a means of getting membership approval.

For Example:

XYZ Society is a national body with 2000 members. They must prepare an Annual Report , a set of Financial Statements, and a list of Section 57 disclosures. These three items are then circulated to their membership either electronically or by mail. The membership can then be given the opportunity to approve them. The Constitution can stipulate what % must vote and what % is required to support the reports.

None of this requires an Annual General Meeting as envisaged in clauses 73 to 76.

Clause 83 Financial Reporting

Federated Mountain Clubs supports the intention of Clause 83 (3) that every Incorporated Society must be required to submit a copy of its financial statements to the Registrar

Federated Mountain Clubs has among its members small clubs which are Incorporated and have turnovers less than \$5000. While it may appear onerous to require a return from small societies, Federated Mountain Clubs believes that if a club wants the protection and advantages of being an Incorporated Society then the club must accept some duties associated with this privilege.

Federated Mountain Clubs recommends that after the new Act is passed, the Registrar investigate the option of providing for Incorporated Societies which are Tier 4 societies according to the XRB classification a template on the Registrar's website to make it easier for small clubs to complete a return. These societies could then have the option of supplying a copy of their Annual Accounts or completing the template.

Clause 161 Division of Assets on Winding Up

Federated Mountain Clubs agrees with the restriction that surplus assets can only be disposed of to Not for Profit entities but we ask that the clause be clarified by the addition of :

- 1 A requirement that the "not for profit entity" must be an Incorporated Society
- 2 A clause affirming that where a member of a society that is winding up is itself an Incorporated Society then that member/society may receive surplus assets from the Society being wound up.

Federated Mountain Clubs submits that if our member clubs no longer want to maintain a federation organization in NZ then the assets of the Federated Mountain Clubs should be able to be returned to those member clubs which are Incorporated Societies. Such assets would not be going to individual people and if any single club subsequently chose to wind up then the clause preventing the distribution of surplus assets of an Incorporated Society to individuals would have its effect at that stage.

Clause 187 Appeals from Registrar's decision

Federated Mountain Clubs submits that the 15 days time frame for an appeal is too short.

Our members are voluntary clubs distributed right around NZ. Access to legal services can be limited in small towns and it would be difficult for volunteers in a local club to be sufficiently organized to be able to lodge an appeal to the High Court within 15 days.

We submit that a time frame of 100 days would be more realistic. This would give a club time to get its committee together for a meeting and get the necessary legal advice before proceeding with an appeal.

Thank you for the opportunity to submit on the Exposure Draft of this Bill.

If you have any queries related to this submission please contact our Executive member handling this matter: Phil Glasson, **Withheld**

Yours faithfully
Withheld

Jamie Stewart
Administrator