



The Girl Guides Association of New Zealand Submission to the Ministry of Business, Innovation and Employment – Incorporated Societies Bill

Dated: 29 June 2016

Overview

1. The Girl Guides Association of New Zealand (**GGANZ**) is an incorporated society and registered charity, which also has an act of incorporation, being the Girl Guides Association (New Zealand Branch) Incorporation Act 1942 (the **GG Act**).
2. GGANZ frequently deals with governance issues including the management of its property and voting rights of members. Accordingly, GGANZ is grateful for this opportunity to submit to the Ministry of Business, Innovation and Employment on the Incorporated Societies Bill (the **Bill**). GGANZ, comments here only on selected aspects of the Bill.
3. GGANZ does not wish to appear before the Ministry of Business, Innovation and Employment to speak to this submission. However, GGANZ would be happy to answer any questions in relation to it. Please contact:

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Further Facts About GGANZ

4. GGANZ began in 1908 and was incorporated in 1942 through the GG Act, being a private Act. On 26 August 1971, GGANZ registered as an incorporated society under the Incorporated Societies Act 1908 (the **1908 Act**). Since this time, GGANZ has been governed by and operated within the parameters of both Acts.
5. GGANZ is the largest girls only membership based organisation in New Zealand. The organisation's mission is "enabling girls and young women to reach their full potential and make a difference in the world".
6. With around 8,700 girl members, GGANZ delivers on its mission through a membership pool of around 1,300 leaders who have the necessary credentials.
7. At the start of 2016, GGANZ moved from being a girl-focused organisation to a girl-led organisation. GGANZ's new structure enables girls to express their opinions nationally and locally. The centralisation of administrative, financial and property management has enabled the organisation to operate in a more efficient and girl-focused manner.
8. GGANZ is a founder member of the World Association of Girl Guides and Girl Scouts. We adhere to the Fundamental Principles and undertake to work for the object and abide by the Terms of Membership as set out from time to time, in the Constitution of the World Association of Girl Guides and Girl Scouts.

General observations

9. GGANZ supports the intent of the Bill especially for larger organisations. Several provisions, including those concerning the regulation of conflicts of interest, bring the law regarding the operation of societies into line with best practice and create a framework relevant to the 21st century.

The GG Act is not spent

10. GGANZ has seen some commentary to the Bill suggesting that the GG Act could be repealed if the Bill is enacted. GGANZ maintains that the GG Act is not spent and its repeal would create significant issues for two distinct reasons.

The GG Act is crucial to GGANZ remaining part of the worldwide Girl Guiding Movement

11. First, s 4 of the GG Act is central to GGANZ being part of the worldwide Girl Guiding Movement. As outlined below, if s 4 is repealed, there is a real risk that the Girl Guiding movement would legally cease to exist.
12. Section 4 of the GG Act provides as follows:

4 Powers of Corporation

The control of the Girl Guide movement in all its activities in New Zealand shall be vested in the Corporation, which, subject to the constitution and bylaws, shall have power to provide and maintain such organisation in New Zealand as the Corporation deems necessary or desirable for the performance and exercise of such duties or powers as may be delegated to it by the Association in Great Britain under the provisions of the Royal Charter, and shall also have power to do all things which the Corporation may in its discretion consider necessary or desirable for promoting the welfare of the New Zealand Branch.

13. GGANZ is a founding member of the World Association of Girl Guides and Girl Scouts (**WAGGGS**) and, in part, derives its powers from the Girl Guides Association incorporated in Great Britain by Royal Charter, dated 14 December 1922. The Royal Charter is still in existence although has been amended from time to time.
14. Over time, responsibility for governing the use of the Girl Guiding movement across countries has shifted between the Girl Guides Association and WAGGGS. At present, all national Girl Guiding associations must be a member of WAGGGS in order to be part of the formal movement.
15. If the GG Act is repealed and GGANZ ceases to be incorporated under that Act (and needs to rely on incorporation as a society to exist), there is a real risk that GGANZ would cease to be a member of WAGGGS.
16. WAGGGS' constitution is publicly available. Clause 10 concerns the criteria for membership. Membership of WAGGGS cannot be transferred to anyone else: clause 10.2. WAGGGS' World Board must consider removing a member of WAGGGS if the member ceases to exist or a change occurs with the member such that it no longer complies with the conditions of membership as set out in clause 10.1.2 and 10.9 of WAGGGS' constitution.
17. WAGGGS' constitution is not clear on whether membership must be terminated if a member ceases to exist. Clauses 10.4.2 and 10.4.3 in essence provide as follows:

- 10.4.2 Following consideration by the World Board, the World Board must inform the member why it is prepared to remove the member from membership of WAGGGS.
- 10.4.3 Should the member fail to comply with any advice given to it by the World Board or should the member not be able to comply with the membership conditions, the World Board shall consider whether its membership should be terminated. If so, the matter must be referred to the full members of WAGGGS at the next world conference who may then terminate the member's membership by way of a resolution passed by a majority of 75% of votes of full members.
18. Given cl 10.2, GGANZ considers the better view is that a member which ceases to exist automatically ceases to become a member of WAGGGS even if they are promptly reconstituted as a new entity. The new entity would need to apply for membership of WAGGGS if it wanted to be a member of the organisation and "readmission" is not guaranteed. Further, the process is likely to be time consuming and costly.
19. If GGANZ is unable to adhere to WAGGGS' membership requirements, Girl Guiding would no longer be offered to girls and young women in New Zealand. The Girl Guiding movement is a positive for New Zealanders, including young women, and should not be abolished.
20. Given the unique situation of its organisation, GGANZ contends that its Act of Incorporation remains relevant and must be retained in order to fulfil its obligations to its global body and also to protect its assets.

Asset ownership

21. Secondly, as a result of organisational restructures over the years, GGANZ is still in the process of consolidating ownership of all Girl Guiding assets in New Zealand into one entity, being GGANZ.
22. Section 6 of the GG Act is particularly relevant in this regard and provides as follows:

6 Transfer of property to Corporation

The Corporation shall have power to require that all real and personal property, stock, funds, securities, and other assets of every description belonging to the New Zealand Branch or held in trust for or for the use of the same or of any group or unit thereof shall be transferred to or otherwise vested in the Corporation by any person holding the same, and on any such transfer or vesting the Corporation shall thereafter execute and perform any trust or conditions affecting any of such assets and shall defray or provide for any debts or liabilities to the discharge of which the said assets or any of them shall at the time of transfer or vesting be applicable, and shall give any trustees in whom any such assets may be vested a valid receipt, discharge, and indemnity for and in respect of the transfer or vesting of the same in the Corporation. The rights of the Corporation under this section may be enforced by action in any court of competent jurisdiction.

23. Section 6 of the GG Act reflects the decentralised origins of the Girl Guiding movement in New Zealand. Trusts were (and, to a lesser extent, still are) established to hold property in trust for the benefit and use of their local Girl Guides.
24. Section 6 of the GG Act gives GGANZ the ability and power to centralise the ownership of Girl Guiding assets in New Zealand, by requiring that all assets either belonging to the NZ Branch; or held in trust for the use and benefit of local groups be transferred to the GGANZ. The process is far from complete. To give the Ministry some perspective on the scale of the issue, there are known trusts

still in place. Further, GGANZ has recently become aware that in all likelihood, several trusts holding GirlGuiding property exist which are unbeknown to GGANZ. This process will take several years to resolve.

25. This section is still relevant today and crucial as without the power given to GGANZ in this section it will have no legal right or mechanism to transfer GirlGuiding assets still held in trust to the GGANZ. Accordingly GGANZ maintains that s6 of the GG Act (and the Act as a whole) is valid and still has a role.

The Act going forward

26. To be clear, GGANZ is not seeking a broad exemption from the duties and procedures in the Bill.
27. Section 7 of the GG Act currently provides that certain provisions of the Incorporated Societies Act 1908 apply to GGANZ. Section 7 will require amendment if the Bill is enacted. All six of the sections referred to have comparable sections in the Bill. Assuming GGANZ's proposed amendments to specific sections of the Bill (as set out below) are made, most of the proposed substantive incorporated societies framework could apply in parallel with the GG Act.
28. Assuming the GG Act is not repealed, at least the following clauses of the Bill will have no application to GGANZ:
 - (a) cl 9 to 13 (which concern applications for incorporation); and
 - (b) Part 5 (which concerns removal and dissolution).

Comments on Specific Clauses

Clause 2

29. GGANZ is troubled by the broad definition of "member" in clause two of the Bill. The term member is defined as "a member of a society". Under the Bill, all members would have rights to vote and access information regarding the society of which they are a member.
30. In GGANZ's view, the Bill should be amended to permit incorporated societies to distinguish between classes of members for the purposes of voting and standing rights. GGANZ queries, for example, whether a young child can independently form a reasoned view as to whether a particular set of accounts should be adopted at incorporated society's annual general meeting. It is essential for GGANZ to be able to differentiate between girl and adult members.
31. There should, of course, be statutory safeguards. The basis for distinguishing between voting and non-voting members should be reasonable, consistent with the Human Rights Act 1993, and approved by a majority of the incorporated society's existing members by way of an appropriate amendment to its constitution.

Clause 24

32. Clause 24 of the Bill outlines the requirements for an incorporated society's constitution.
33. GGANZ considers cl 24 should be amended to expressly permit an incorporated society to define categories of membership through the Constitution.

Clause 27 and 75

34. Clauses 27 and 75 of the Bill raise related issues for GGANZ. Clause 27 outlines how a society may amend its Constitution while cl 75 concerns incorporated societies' annual general meetings.
35. GGANZ maintains that cl 27 should be amended to allow incorporated societies to expressly confer voting and standing rights on some classes of members and not others.
36. GGANZ needs the ability to define through its Constitution as to who can participate in voting sessions held either at the Annual General Meeting or between meetings.
37. GGANZ currently holds an Annual General Meeting. GGANZ operates a system whereby delegates are appointed as a result of their role or elected by the members they represent. This is deliberate to ensure that as a national body we have proportional representation. Currently, the Association pays the costs associated with delegates attending the AGM. Members are welcome to come but only delegates are entitled to vote.
38. Issues that GirlGuiding faces vary around the country and the potential solutions can depend on whether it is a rural or urban location, a metropolitan city versus a small city, city versus town and the like. If we allowed all members to vote on every decision, potentially one large urban centre and the views of the members that live there would be over represented while others would be disadvantaged. This would be considered unfair and undemocratic.
39. We also have a requirement to send out voting information at least 30 days before the meeting to give delegates the time required to collect the views of the members they represent.

Recommendations

40. GGANZ recommends that, due to the unique nature of the organisation and its connection with its global body, the GG Act should be retained and amended to incorporate the relevant parts of the Bill by reference. For the avoidance of doubt, GGANZ considers the GG Act should be amended to reflect that:
 - (a) cl 9 to 13 and Part 5 of the Bill should not apply to GGANZ because the relevant issues are already addressed in the GG Act; and
 - (b) in the event of express or implied inconsistency between the GG Act and the Bill, the GG Act will prevail.
41. It is also requested that the Bill does not include a clause to revoke the GG Act.
42. It is further recommended that clauses 24, 27 and 75 are amended to acknowledge the diversity that occurs within the membership of societies and to provide flexibility to enable societies to be truly representative.

Dated 29 June 2016



Susan Coleman
The Girl Guides Association of New Zealand