

28th June 2016

MBIE
<societies@mbie.govt.nz>

Re: Submission on the Incorporated Societies Bill

Dear Sir or Madam

I wish to make the following submissions on the draft Incorporated Societies Bill.

Membership Types or Classes

The consultation draft has no obvious reference to the different types or classes of membership common to Incorporated Societies, and thus no provision for defining their rights, privileges and responsibilities. These will of course vary from one society to the next but I feel should be allowed for in the Act as well as in the draft standard provisions for constitutions.

Common classes of membership include Normal or Full (adult, fee paying), Life, Associate, Honorary, Junior or Student, Family, etc. While few if any societies would have all of these many would have three or more. It would also be normal for voting members to be defined, commonly as Life Members and currently financial Full Members. Meeting attendance and quorums would be determined on the number of voting members present either in person, by electronic means or, if permitted, by proxy.

A club (which calls itself a chapter, which it technically isn't) of which I am a member currently has three levels of membership and is proposing to add a fourth, Student Membership, the next time it amends its constitution. Clause 5 of the club's constitution is attached as Appendix A as an example of the above.

Number of Members

Clause 8(1) requires that there be a minimum of 10 persons to form an Incorporated Society while clause 66(1) requires the minimum number to be maintained at 10. While these numbers are practical for larger societies they inhibit the ability of smaller groups to obtain the privileges and legal protection of incorporation. In my experience this particularly applies to special interest groups which may attract only limited membership within a practical geographic area.

An example of this is the smaller groups of recreational aircraft builders. There is a national body, Sport Aircraft Association NZ Inc, to which enthusiasts belong, and a series of local clubs or Chapters, but only the larger ones of these have the numbers to incorporate. The smaller, normally semi-rural, groups cannot incorporate. This means that if they run an event, such as a fly-in, and there is an accident they could be legally exposed as individuals rather than protected as members of an incorporated body. Even if proven innocent the legal fees alone could be ruinous for an individual.

There is also the situation where a club may lose membership due to outside forces rather than any loss of interest on the part of members. A common situation with model aircraft clubs in the Auckland Region has been triggered by the loss of flying fields to expanding urbanisation. This inevitably causes a dramatic decrease in membership until the club either obtains a new flying site or amalgamates with another club to share their site.

From personal experience in both situations I request that the number of persons required to form an incorporated society be reduced to 8 and the number to maintain it before the Registrar takes any interest be reduced to 4 voting members.

Constitution and Disputes

Clause 24(1)(j) of the consultation draft requires that procedures for resolving disputes shall be included in a society's constitution. This is reinforced by clause 8 of the Standard Provisions. The provision in the Act of a detailed disputes resolution procedure is good and overcomes a significant shortfall in the 1908 Act. However formal disputes are rare so I suggest that it should be adequate for constitutions to contain something like:

***Complaints and Grievances Procedures.** Complaints or grievances by, from, or about a member or group of members shall be processed in accordance with Schedule 2 of the Incorporated Societies Act 2016 and amendments thereto.*

Register of Members

Clause 70(2)(b) of the draft requires that the register of members must contain the date on which each person became a member. There appears to be neither need nor logical reason for this requirement. Indeed compliance will often be impossible as the joining dates for many longer term members will be hidden in the archives, if such records even still exist.

While clause 70 makes no reference to who should be responsible for maintaining the register the draft Standard Provisions 3.1 suggests the secretary. This would be better as 'The committee shall appoint a person . . .'. A club of which I am a member (80+ members) allocates maintenance of the register/membership list to the treasurer who also collects the subscriptions and maintains the club's email system, making a package of 3 logically related tasks.

IRD Requirements

In 2014 I was involved in the amendment of the constitution of an Inc. Soc. to fully meet IRD requirements for exemption from RWT. IRD recommended the inclusion of two clauses which were included verbatim. These clauses are included below for your consideration as it may be appropriate to include them in future Standard Provisions to ensure societies meet IRD requirements as well as those of the Registrar.

PAYMENT TO MEMBERS (new clause)

No member of the organisation or any person associated with a member shall participate in or materially influence any decision made by the organisation in respect of the payment to or on behalf of that member or associated person of any income, benefit, or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value). The provisions and effect

of this clause shall not be removed from this document, and shall be included and implied into any document replacing this document.

ALTERATION OF THE CONSTITUTION (additional sub-clause)

c) No addition to or alteration of the Objectives, Payments to Members clause or the Liquidation clause shall be approved without the approval of Inland Revenue. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

Wrap-up or Referral Clause

The majority of people shy clear of reading legal documents but the proposed Act is well written in (mostly) plain English so can be readily followed. It may therefore be appropriate to include a clause in the Standard Provisions directing officers and members of an Incorporated Society to the Act where additional guidance or detail is required, the Act being the superior document to the society's constitution.

Thank you for your consideration of these matters. I would be happy to answer any questions you may have and have no objection to the publication of this submission.

Yours faithfully
Withheld

Gordon Sanders

Appendix A

Extract from the Constitution of: Sport Aircraft Association (Auckland Chapter) Inc

5. MEMBERSHIP

a) In this constitution, unless a contrary intention appears:

Full Member means any adult person who has constructed or restored a sport aircraft, is in the process of so doing, is flying such an aircraft, or has a strong interest in sport aviation, and who has been accepted for membership in accordance with the constitution and rules of the Chapter.

Life Member means any person who has provided over the years special services or support to the Chapter and/or the National Body and has been elected to life membership in accordance with the constitution and rules of the Chapter. Nomination for Life Membership shall be forwarded by the Committee to an Annual General Meeting or Special General Meeting for consideration. A vote of at least 75% of members present and entitled to vote is required to approve any such nomination.

***Student Member** means any person who is a full-time student at a recognised educational institute, is under 25 years of age, has a strong interest in sport aviation, and who has been accepted for membership in accordance with the constitution and rules of the Chapter. Student members shall be exempt from paying any membership subscription.

Honorary Member may be appointed by the committee for a period not exceeding 12 months and in all cases terminating at the next ensuing AGM.

b) Only full members and life members shall have the right to vote.

c) Mode of becoming a member:

Application for membership shall be in writing on the applicable application form and shall include agreement to abide by the rules of the Chapter. The Committee shall have the power to accept or refuse membership at its discretion.

d) Modes of ceasing to be a member:

i) Any member may resign at any time by notifying the Secretary in writing of their intention to do so.

ii) The membership of a Full member may be cancelled by the Chapter if such member fails to pay within 3 months after due demand of the Annual Subscription has been made.

iii) Any member may be expelled if in the opinion of the Chapter such member acts in such a manner as to bring the Chapter into disrepute or who wilfully disobeys rules as laid down by the Chapter. Such expulsion shall require at least a 75% majority vote of members present and entitled to vote at an AGM or SGM. The member concerned shall be advised at least 14 days prior to this meeting and shall have the right of reply but no voting rights.

*** Proposed to be added when the constitution is next amended.**