

SUBMISSION TO MBIE ON EXPOSURE DRAFT OF INCORPORATED SOCIETIES BILL 2016

9 May 2016

Thank you for the opportunity to comment on the exposure draft of the Incorporated Societies Bill 2016 (“the draft Bill”). The Health and Safety Association of New Zealand (HASANZ) is pleased to present this submission on the draft Bill.

HASANZ is the umbrella organisation for workplace health and safety professions in New Zealand. It is an incorporated society that was launched on 10 September 2014. HASANZ represents ten diverse organisations with a shared purpose – to raise professional standards to provide healthier and safer workplaces for New Zealanders. We promote excellence in workplace health and safety practice.

Our founding member organisations include:

- Australian/New Zealand Society of Occupational Medicine (ANZSOM)
- Human Factors and Ergonomics Society of New Zealand (HFESNZ)
- Maintenance Engineers Society of New Zealand (MESNZ)
- NZ Institute of Hazardous Substances Management (NZIHSM)
- New Zealand Institute of Safety Management (NZISM)
- NZ Occupational Health Nurses Association (NZOHNA)
- NZ Occupational Hygiene Society (NZOHS)
- New Zealand Safety Council (NZSC)
- Physiotherapy New Zealand (Occupational Health Group) (NZSP)
- Occupational Therapy New Zealand (OTNZ).

This letter contains all our comments on the exposure draft. Where we have not specifically commented on a part or clause of the draft Bill, we are generally supportive of the proposed content.

Meaning of “financial gain” (incl offence provision) CI22

HASANZ supports the proposed definition of financial gain. HASANZ notes the proposal to include the offence provision in the event that an officer knowingly contravened the provision. However, HASANZ finds it difficult to see how this clause could be breached without any of the other provisions relating to fraud and dishonesty also being breached. In this case, HASANZ questions why an additional offence provision here would be necessary.

Winding up CI24(1)(m) and CI161

The Bill requires that a society’s constitution contain provisions to nominate a not-for-profit entity to which the society’s surplus assets are transferred upon removal from the register. This provision does not acknowledge societies whose members are themselves all body corporates and not-for-profit entities. **HASANZ suggests** that this provision be modified to allow societies to distribute any surplus assets to not-for-profit members (as this is defined in CI22(4)) upon removal from the register.

Definition of not-for-profit entity CI24(4) – define ‘public purposes’

The Bill includes a definition of a not-for-profit entity and that definition refers to “public purposes in New Zealand”. HASANZ would suggest that either the term ‘public purposes’ should be defined, or good guidance should be provided by the Registrar or MBIE about what this means.

Dispute provisions CI31 and Schedule 2

The Bill requires that a society’s constitution contain procedures for resolving disputes, and for investigating and resolving grievances and complaints. **HASANZ supports this requirement but would suggest** that it be modified to ensure that those societies whose members include or are all

body corporates rather than natural persons can adapt the provisions in Schedule 2 accordingly. HASANZ also notes that some incorporated societies, including HASANZ member associations, represent professionals that already have significant complaints and disciplinary procedures set out for them in regulations or by other statutory bodies¹ – these include engineers, doctors, nurses, occupational therapists and physiotherapists. It may be impractical for such associations to do anything else other than reference these existing procedures in their constitutions.

Standard provisions for constitutions CI33 and Annex 1

The draft Bill provides that the Minister can issue standard provisions for the content of a society's constitution rather than provide this through regulations. HASANZ supports this change, but would be concerned if these were issued without consultation. The regulation-making process requires a period of consultation and **HASANZ suggests** that the Registrar be required to consult with affected parties before making a recommendation to the Minister. **HASANZ also suggests** that a number of example templates or frameworks could be prepared as part of the guidance material provided by the Registrar to assist societies to draft a comprehensive constitution.

Contact officer required to be a committee member CI37, and CI43(3)

The Bill requires that the contact officer be one of the members of the committee. In some larger organisations, the day to day affairs of the society are run by a Chief Executive Officer or Executive Director (and sometimes also by associated staff). If the purpose of the contact officer is for MBIE, or any members of the public, to contact the society, then it is more appropriate that someone who is best able to assist the public or MBIE be the contact officer. **HASANZ suggests** that the contact officer be a member of the committee or an executive officer appointed by the committee.

Financial reporting requirements CI83

The draft Bill requires that all incorporated societies meet the same accounting standards as registered charities. HASANZ supports the need for better reporting (and has used the External Reporting Board templates itself this year for the first time) but agrees with the views of Hui E! that a threshold should apply here. **HASANZ suggests** that small incorporated societies (for example, those with under \$15,000 total operating payments in either or both of the previous financial years) should be exempt from having to report according to the reporting standards.

Amalgamations CI146(3)

The Bill states that a simple majority of members voting will be sufficient for an amalgamation resolution to be passed. **HASANZ suggests** that this clause provide for a higher percentage than a simple majority, if this is specified in the constitution. This then would mirror the provisions in CI168(1)(a). If a higher percentage is required to dissolve the society then the same should apply in the case of amalgamations. Consequential amendments may then be necessary elsewhere in this Part 5 to reflect this change, e.g. CI166.

Unclear or confusing drafting: CI19 dealings between society and other persons; CI60-63 avoidance of transactions and fair value; CI77-80 Indemnities or insurance clauses

Whilst many of these provisions have been lifted from the Companies Act, HASANZ considers that many of them are impenetrable for most societies. **HASANZ suggests** that this drafting is simplified or the concepts explained in more plain English to assist understanding.

¹ Such as through the Health Practitioners' Competence Assurance Act or the IPENZ Disciplinary Regulations.

Concluding remarks

Thank you for providing the opportunity to comment on the draft Bill.

For any questions in relation to this submission, please contact info@hasanz.org.nz.

Yours sincerely

Withheld

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HASANZ Secretary