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ANS743/1
R D Anstice

Commercial, Consumers & Communications Branch
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington
New Zealand

By Email: societies@mbie.govt.nz

RE: Incorporated Societies Bill – Exposure Draft –Submission

1 *Submission Overview*

- 1.1 Partners and staff at Maude & Miller advise, support and act as officers in a wide range of incorporated societies and charities throughout the Wellington region and New Zealand.
- 1.2 We have reviewed the consultation draft Incorporated Societies Bill ('the Bill') published by MBIE. In general, the Bill improves guidance to societies on governance. In particular, we support the inclusion of explicit officers' duties and conflict of interest rules that are broadly in line with the duties imposed on company directors by the Companies Acts of 1955 and 1993.
- 1.3 We agree with the Bill's approach to society constitutions. We support the default provisions. We agree with the MBIE's position that a comprehensive default constitution for societies would not be helpful. The variation between societies is too great.
- 1.4 Below, we recommend two amendments to the bill:
- (a) Dispute Resolution – give jurisdiction to Disputes Tribunal to hear minor disputes.
 - (b) Default rule that society officers be at least 18 years old.

2 *Dispute Resolution*

- 2.1 In the Bill, certain provisions specify a jurisdiction for the District Court or the High Court (e.g. clause. We agree with this approach for those specific clauses..
- 2.2 However, we recommend an additional, limited jurisdiction for the Disputes Tribunal in relation to:

- (a) complaints and grievances under clauses 95 and 96 of the Bill; and
- (b) Enforcing Officers Duties under clause 98.
- (c) Prejudiced members under clause 104.

- 2.3 These are matters where the Bill provides a comprehensive account of the applicable rules to the Disputes Tribunal Referee. They do not require detailed procedures. The orders would not have wide application beyond the parties (e.g. there is no power to amend a society's constitution).
- 2.4 Access to Disputes Tribunals would provide a low-cost forum for achieving speedy resolution of minor disputes relating to incorporated societies. The Disputes Tribunal Act 1988 provides a mechanism to add a new jurisdiction for the tribunals, which would be defined by the Incorporated Societies Bill.
- 2.5 Under the current Act, and the Bill, many disputes must be heard by a Court. This involves substantial legal and litigation costs, beyond the means of many individuals and societies. The consultation Bill includes a partial fix – requirements for societies constitutions to include dispute resolution rules and jurisdiction for the District Court.
- 2.6 Societies need a further cost-effective means to take smaller disputes to an independent outsider. An independent decision-maker gives a final ruling with certainty and finality. In contrast, parties are often unwilling to accept internal rulings by societies' officials as final.
- 2.7 The Disputes Tribunal is well placed to act as an independent decision maker for many disputes involving societies; the core jurisdiction for the Disputes Tribunal is to hear claims between private individuals, worth up to \$15,000 (or \$20,000 if both parties agree).
- 2.8 If the Bill provides a jurisdiction for the Disputes Tribunal, then s37 of the Disputes Tribunal Act 1988 empowers the High Court and the District Court to transfer appropriate claims to the Disputes Tribunal, meaning that those courts can triage minor claims to a cheaper, quicker form of dispute resolution.

RECOMMENDATION

Included as **Schedule A** is

- a new clause 189A to provide for the jurisdiction of the Disputes Tribunal and consequential amendments to the Disputes Tribunal Act 1988.
- A list of clauses where the term 'court should be substituted with 'court or Disputes Tribunal'.

Note: We have chosen not to give Tribunals jurisdiction under clauses 100 to 103, regarding derivative actions. Instead, a Court could grant the order to allow a derivative action, and then make an order referring a minor matter to the Disputes Tribunal for hearing.

3 *Minimum age for society officers – default of 18 years of age*

- 3.1 In consultation seminars, MBIE officials indicated the desire to enable the participation of young people in the governance of societies.

- 3.2 One important function for an officer of a society is to commit the society to legally binding contracts. Therefore, it is logical for the default age for acting as an officer should match the age when a person is allowed to enter into legally binding contracts: 18 years old. The default minimum age in clause 39(2)(a) of the Bill should be 18 years old, to match the provisions of the Minors Contracts Act 1969.
- 3.3 In seminars, officials acknowledged that for younger officers, the oversight of the Registrar would be needed to ensure appropriate checks and balances were in place. For younger officers, the Registrar would be able to develop standard requirements as part of a waiver under clause 40 to enable younger officers. This might include terms in the society's constitution that limit the minors' ability to enter contracts on behalf of the society.

RECOMMENDATION

Clause 39(2)(a) of the Bill be amended to say "a person who is under 18 years of age:"

Yours faithfully
MAUDE & MILLER
Withheld

Richard Anstice
Solicitor

SCHEDULE A: Amendments to give jurisdiction to the Disputes Tribunal

Amend clause 5 definition of "court"

"... (see **subpart 2 of Part 6**, which relates to the jurisdiction of the High Court, the District Courts and the Disputes Tribunal)"

Insert into the Bill new clause 189A

"189A Jurisdiction of Disputes Tribunal

- (1) A Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 has jurisdiction to hear and determine claims by a member of a society against the society, or by a society against a member of that society if –
 - (a) the amount claimed or the value of the property in dispute does not exceed \$15,000; or
 - (b) all parties agree that the Disputes Tribunal should hear the claim and the amount claimed or the value of the property in dispute does not exceed \$20,000; or
 - (c) no amount is claimed or there is no property in dispute; or
 - (d) the claim is to seek a ruling on how the society should apply its own rules or its constitution to a member that is party to the claim.
- (2) However, a Disputes Tribunal does not have jurisdiction to hear and determine an application or other matter if this Act expressly provides that the District Court or the High Court is to exercise the power in relation to the matter.
- (3) The Disputes Tribunals Act 1988 is amended by adding **[The name of this Act]** to part 2 of Schedule 1 of that Act."

Replace the word 'court' with the phrase 'court or Disputes Tribunal' in the following clauses:

Clause 95

Clause 96

Clause 97

Clause 98

Clause 99

Clause 104

Clause 105