



26 April 2016

Review Committee
Ministry of Business, Innovation and Employment
15 Stout Street
WELLINGTON, 6011

Cc: societies@mbie.govt.nz

Dear Review Committee

The following submission has been approved by the Board and Management of the New Zealand National Fieldays Society Incorporated ("the Society"). The Society appreciates the opportunity to comment on the exposure draft of the Incorporated Societies Bill ("the Bill").

The Society's comments address the following matters in the Bill:

1. Financial Gain – Part 3, Subpart 2
2. Committee and Officers – Part 3, Subpart 4
3. Other Miscellaneous Provisions – Various

Society's Background

The New Zealand National Fieldays Society Inc TM. is an incorporated society registered on the 16th March 1970. The Society is a not-for-profit organisation that relies heavily on volunteer contribution for its sustainability. The Society has extensive land holdings of over 113 hectares and a total asset base valued at over \$31m.

The organisation is primarily an event business, being hosts, promoters and owners of the New Zealand National Agricultural Fieldays[®] ("Fieldays"), Equidays and the Transport and Heavy Equipment Expo ("THE Expo").

The Fieldays event is the Society's cornerstone event, which is now the largest agricultural event in the southern hemisphere and is well regarded and recognised on the world stage. The annual economic impact of the event contributes over \$398m to the New Zealand economy.

In addition to its event hosting, the Society also makes substantial monetary donations and in kind activities to worthwhile beneficiaries and organisations in line with its strategy to promote and advance agriculture and education within New Zealand.

1. Financial Gain – Part 3, Subpart 2

1.1. Preamble

The Bill proposes to clarify the definition of 'Financial Gain' by its members, expanding on the Incorporated Societies Act 1908 ("the Act") definition of 'pecuniary gain'. The Society acknowledges that the clarification of what constitutes financial gain needs to be addressed.

1.2. Submission One

The bill in its current drafted form ignores the fact that the vast majority of incorporated societies are volunteer based, with the volunteers being the heart of a society, which is paramount to their sustainability within a community. These volunteers are often defined as being members of the society under the society's constitution.

1.3. Section 22(3)(c) – relates to what does not constitute a financial gain of any of its members under the Bill, stating:

1.3.1. *"reimburse a member for reasonable expenses legitimately incurred on behalf of the society or while pursuing the society's purposes"*

1.4. How does the application of this section impact on how societies will look to retain and attract new members, particularly volunteer members?

1.5. In many instances, societies may reimburse volunteers/members for services with vouchers. Typically, a voucher may be given to acknowledge the contribution provided and the costs of volunteering. Accordingly, this voucher may not directly relate to the expenditure type that has been 'legitimately incurred' by that volunteer/member. Nor does the perceived interpretation of 'incurred' include forgiven time and exertion. Typically, vouchers provided to volunteers far underweigh the actual costs of volunteering. However, acknowledgement and tracking of actual costs incurred would be onerous.

1.6. Recommendation

The Society recommends that consideration be given on how societies can use a mechanism to acknowledge and attract new members without being in breach of the proposal Bill.

1.7. The Society proposes that a de minimis (proposed \$5,000 per annum) threshold per member be included in subsection (3) for avoidance of doubt.

- 1.8. For transparency purposes, we further recommend that financial disclosure or resolution should be passed for any member that is provided benefits greater than this de minimis threshold.
- 1.9. **Submission Two**
Section 22(3)(e) - relates to what does not constitute a financial gain of any of its members under the Bill, stating:
- 1.9.1. *“pay a member a salary or wages or other payments for services on arm’s length terms (see **Subsection (5)**)”.*
- With subsection (5)(b) stating that payments are on arm’s length if:
- 1.9.2. *“the salary, wages, or other payment for services, or other transaction, does not include any profit share, percentage of revenue, or other reward in connection with the activities of the society”.*
- 1.10. We seek clarification as to how does the application of this section impact on existing paid employees of the Society whom have bonus provisions aligned to the activities of the Society?
- 1.11. For societies, attraction and retention of talented and highly skilled employees can be difficult. Being able to offer market competitive employment packages – enables a society to attract and retain talented and highly skilled employees.
- 1.12. As the relief, under the exclusion provision of section 36(3) does not and is not intended to apply to members whom also may be employees for the purposes of section 22, the Society’s view is that there appears to be an issue with the application of 22(3)(e).
- 1.13. **Recommendation**
The Society recommends that consideration be given to entitle societies to continue to offer employment packages to member-employees which are akin to market offerings.
- 1.14. This could be achieved by expanding on section 36(3) and its relief for section 22(3)(e) in particular.
- 1.15. **Submission Three**
How does the application of section 22 in general apply to providing upskilling and training



incentives to Board members of a society, whereby the reimbursements are not incurred 'while pursuing the society's purpose' or 'incidental to the purposes of the society'?

1.16. **Recommendation**

As previously recommended at point 1.7 above, the Society's view is that a de minimis threshold would remove any doubt for members and the society whereby they may unknowingly be committing a crime under section 66 of the Crimes Act 1961.

1.17. **Submission Four**

Does section 22(3)(g) extend to the provision of incidental benefits that a third party wishes to provide a member/volunteer?

1.18. In particular, it is not uncommon for membership organisations to provide their members with benefits as being part of the membership. What implications or limitations does this have on a society's ability to retain or attract members?

1.19. **Recommendation**

The Society seeks clarification, as to the extent of the proposed application of section 22(3)(g).



2. Committee and Officers – Part 3, Subpart 4

2.1. Submission Five

The Society acknowledges that the definition of officer has been drawn from that of the Companies Act approach. However, the interpretation of the definition of an officer is confusing when dealing with executive management, whom have delegated authorities.

2.2. Section 36(2)(d) – states that a natural person whom has delegated authorities is also included as an officer for the purposes of section 21 and 48 to 55 and subpart 6 of Part 4. Where an employee (such as a Chief Executive Officer or Chief Financial Officer) has been delegated authorities of the Committee it is unclear whether these positions within the Society become ‘Officers’.

2.3. Recommendation

The Society recommends that consideration be given to the definition of an Officer be explicit in defining whether an employee is or is not an Officer of the Society.

2.4. Submission Six

Section 43 deals with the Society being required to appoint a ‘Contact Officer’ for the purposes of the Registrar.

2.5. The proposed Bill does not allow for an employee of the Society to be the Contact Officer for this purpose.

2.6. Recommendation

The Society recommends that section 43(3)(a) be amended to read as follows:

2.6.1. *“The Society’s contact officer must be –*

*(a) An employee of the Society or a member of the Society’s committee (and, accordingly, must not be disqualified under **section 39(2)**); ...”*

If an employee is provisioned to be the ‘Contact Officer’ reasonable provisions, if required, would need to be put in place to protect that employee from other obligations and/or duties of Officers.



3. Other Miscellaneous Provisions

3.1. **Submission Seven**

In accordance with section 31 of the Bill, the Society seeks clarification as to whether the existing employee and volunteer grievances and complaints processes can be utilised and have the constitution refer to an internal policy document.

3.2. Enabling an internal policy document, the Board/committee of the Society can periodically review and approve a procedural document that can be kept relevant rather than having a constitutional vote on any changes, amendments or revocations.

3.3. **Recommendation**

The Society recommends that consideration be given to allow for the disputes processes to be referenced in the constitution rather than contained within.

3.4. **Submission Eight**

Section 82 Accounting records must be kept – Currently has no time limit on the length of time that these accounting records must be kept, other than the reference to “*at all times*”.

3.5. **Recommendation**

The Society recommends that this section be updated to reflect those provisions within Section 189 of the Companies Act 1993.

3.6. **Submission Nine**

Part 5, Subpart 2 deals with the amalgamations of Societies. The Society sees this as a welcomed addition within the proposed Bill.

3.7. Under the current Bill there is still no mechanism for amalgamating a registered Company with a Society. This can exist whereby a Society has in the past owned a company that is no longer trading, requiring a liquidation of that company in order to repatriate the corpus back to Society.

3.8. In addition to the above, where a society wishes or seeks to purchase a registered company, there are no provisions within the proposed Bill to amalgamate the assets of that company into the society. This has implications on the legal requirements for a society to acquire assets or investments in accordance with its constitution and purpose.



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3.9. **Recommendation**

An extension of Part 5, Subpart 2 should be made to include a short form process for amalgamating a company into a society.

The Society welcomes the opportunity to discuss this submission with the review committee if they are seeking clarification on any areas. Please do not hesitate to contact Peter Nation or Anthony Burman on +64 7 843 4497.

Additionally, if the exposure draft is taken to the select committee, we would appreciate the opportunity to be heard.

Withheld

Peter Nation
Chief Executive Officer

Warwick Roberts
Chairman

Peter Carr
Vice President

Withheld

Anthony Burman
Chief Financial Officer

John Gallagher
Director