



PALMERSTON NORTH
COMMUNITY SERVICES COUNCIL
Sharing strengths - empowering community

**Submission
on the
Exposure Draft:
Incorporated Societies
Bill
*June 2016***

**Submission to the Ministry of Business, Innovation & Employment (MBIE)
From the Palmerston North Community Services Council (PNCSC)
For and on behalf of the Palmerston North Community Sector.**

INTRODUCTION

Palmerston North Community Services Council (PNCSC) welcomes this opportunity to make a submission to MIBE on the Exposure Draft of the Incorporated Societies Bill, both from our own perspective and as an advocate for the community sector of Palmerston North.

The Mission of PNCSC is ***"To take a lead role in facilitating the empowerment of community groups to participate in and contribute to the community and its wellbeing"***

"Sharing Strengths, Empowering Community"

PNCSC is an umbrella organisation for over 110 community groups, individuals and public bodies across our city. We are an incorporated society and a registered charity. Being a membership based organisation is a key part of our identity. We exist because of, and for, our members.

For over 40 years we have worked to ensure that community organisations in Palmerston North get the support they need. We provide members with a range of services and development support, are a positive leadership and advocacy voice for the local community sector, and seek to identify common issues and coordinate a collaborative response. We work to understand the diverse needs of our members, including identifying gaps in capacity and skills to address challenges, and then provide training opportunities and comprehensive resources to address them.

PNCSC's membership reflects the diverse range of organisational forms present in the sector. Most our members are corporate bodies. Currently, 60 of our members are incorporated societies. Most of these are registered charities. Incorporated Charitable Trusts represent the next largest section of our membership. Business and for profit organisations (with a community focus) may become non-voting members. This balancing act of interests and membership types has informed the following submissions.

FORMAT OF SUBMISSION

This submission has two parts. The first provides our overall response to the proposals.

The second part addresses some specific aspects of the Exposure Draft including issues related to corporate membership.

As part of the process of preparing this submission, representatives of PNCSC attended the consultation roadshow hosted by MBIE, Charities Services and Hui E. The content of the roadshow presentation and

discussion, alongside the Exposure Draft itself and the MBIE Request for Submissions have informed this submission.

We have also read a number of submissions on the Exposure Draft from a variety of representative bodies, including the draft submission of Hui E.

GENERAL INTRODUCTION

It is widely accepted that the Incorporated Societies Act 1908 ('the Act') is in need of replacement for the reasons set out in the Law Commissions review. The proposed changes are important and will have a significant effect upon the operations of organisations. Greater clarity around the powers of societies, obligations of officers and the resolution of disputes will assist in the more effective and efficient operation of societies, provided that they are not overburdened by the compliance requirements.

PNCSC endorses the general tenor and content of the Hui E! Draft Submission referred to above, in particular those comments relating to the wider implications of the proposed legislation upon civil society. The correct balance must be struck between providing a strong framework for the formation, recognition and management of incorporated societies and ensuring their independence from unnecessary and potentially damaging government interference.

PNCSC is committed to the principles of good governance and administration of not for profit bodies, as are our members. However, the voluntary nature of governance can make recruitment of quality governance members difficult, especially for smaller societies who lack a public profile or wider membership base. Those who take on governance roles are often already stretched and many report feeling overwhelmed by what they perceive to be the increased expectations that are placed upon them, including the measurement of outcomes, managing of health and safety and charities reporting. While the need to reform the Act is accepted, some are worried about the additional burden any changes may place upon them. This includes the perception that rather than just clarifying roles and responsibilities, the Bill imposes new ones that are potentially onerous for smaller societies. Smaller, service focused clubs with ageing memberships are particularly concerned that this perception of new burdens and risks of penalty may deter members from participating in the club.

In the words of one small society "We feel that this is an attempt by government to exercise greater control over organisations that are meant to be free of government control. This "weeding exercise" is also seen as an attempt to get rid of many smaller societies that do an excellent job in the community. However, with these proposed changes many will find the administrative burdens imposed will be far too great and they will be forced to close."

While the latest statistics continue to show a high level of public involvement with civil society organisations, the way that people rally around interests and causes, and commit their time, money and expertise is changing. Any new Incorporated Societies Act must be flexible enough to respond to these changing needs and be designed with them in mind. It is very likely that by 2022 the operating environment of many organisations will have changed substantially, particularly with reference to how technology is used to manage them and communicate with members. Important decisions will

increasingly be made collectively but not necessarily contemporaneously. Already, Boards and staff may collaborate on writing and approving key documents and overseeing financial management using cloud-based applications. Group decisions may be made using tools such as Loomio, which allows for the proposal of motions and voting upon them. It is unclear if such a regular, open and collective, but not necessarily contemporaneous review of the affairs of a society would meet the definition of 'participating in' an Annual General Meeting pursuant to clause 75(b).

Part One

As above, PNCSC supports the comments made by Hui E! in its' Draft Submission regarding the purposes and principles of incorporated societies.

Part Two

Body Corporate Membership

The wording of clause 13 (or related clauses) may require clarification. It is unclear if the requirement that "every body corporate....must be treated as being 3 members for the **purpose of determining the number of members under this Act**" is meant to apply to clause 37(1). This requires that "every society must have a committee of at least 3 members". On the face of it this means that a committee could be comprised solely of one representative of a body corporate. See also clause 27 (2)(c), where the signature of just one body corporate member may be sufficient to support an amendment to a constitution (provided other requirements are complied with).

The relationship between body corporate membership and committee representation may also benefit from additional clarification. One reading of the Bill is that committee members must be both members (cl 24(g) and cl 37(1)) and natural persons (cl 39(1)). There is no explicit recognition that body corporate members will need to nominate a natural person to act as their representative if they are to fill committee positions. Unless it is intended that the officers representing body corporates sit outside the core committee in constitutionally created positions as per cl 35(1)(b). If this is the case, how would a society comprised solely of body corporates form a membership committee? It is recognised that this may be just a matter of semantics but semantics can matter.

Following from this, the Bill quite rightly imposes obligations upon officers. If a body corporate appoints a natural person to act as representative to act as an officer, and obligations are breached, then in what circumstances will the officer or the body corporate instructing them be held liable? While the Bill includes provisions relating to the indemnification of officers and members by a society, can a body corporate indemnify its' representative on a committee pursuant to cl 78 (1)(a)?

Part Three

Clause 17: Capacity and Powers

PNCSC notes that this clause is drawn from the Companies Act 1993. At the Palmerston North roadshow there was discussion as to whether the effect of cl 17(3) is strictly as described in the

presentation being that “A society can do things a natural person can do...but is limited by its’ constitution.” The example provided at the roadshow directly related to the consistency of an exercise of power by a society with the *purposes* for which it existed. Companies do not share the same requirement to explicitly state their purposes in their constitutions. As such, this Companies Act provision is arguably not directly transferable to incorporated societies without amendment.

Clause 24: Contents of the Constitution

PNCSC welcomes the requirement to have rules relating to the resolution of disputes, grievances and complaints (cl 24(1)(j)).

Further comments:

Cl 24(1)(g) - We agree with other submitters that it is worthwhile considering the need to explicitly empower the creation of sub-committees, and to make clear the obligation of sub-committees to regularly report to the committee.

Cl 24(1)(k)– The issue of proxy voting at general meetings can be a potential source of conflict. Would there be value in explicitly requiring societies to state if proxies will be accepted, and in what circumstances?

Cl 24(1)(m) & 24 (4) - The requirement to nominate a not-for-profit entity for the distribution of surplus funds upon liquidation or removal is an important one. The definition of ‘not-for-profit entity’ may need work if this provision is to have its’ intended effect. There is no requirement that a nominated organisation or association be incorporated. As such, there is nothing stopping a group of individuals, possibly society members, from forming an unincorporated association for purported “benevolent, philanthropic, cultural or public purposes’ and then seeking the dissolution of the society for their own private benefit. Such funds may be hard to claw back.

Clauses 27 – 28: Amendment to the Constitution.

See Comments under Part 6.

Clauses 33 – 35: Standard Provisions

The rationale for using “standard provisions” rather than a “model constitution” makes sense in light of the diverse nature of societies. The guidance and tools provided to support the use of these standard provisions is crucial. Currently, those seeking to form a new society or amend the rules of an existing one will trawl the societies or charities websites to find precedents to adapt or copy. Many sets of rules are ‘Frankensteins’, cobbled together from selections of rules from other organisations. While these constitutions may contain all the mandatory rules, there are often contradictions or gaps in them that only become apparent when a difficult question or dispute arises. This confusion is exacerbated when rules are amended on an often piecemeal and ad hoc basis without full consideration on their likely wider effect.

Not all societies seek legal advice regarding their constitutions. Many will consider such advice unnecessary, inconvenient, or too expensive, and rely upon a 'DIY' approach. Not all societies are members of umbrella bodies or organisations who will be able to provide a model constitution. There are also often tensions between national offices and regional societies meaning that a regional society may be skeptical that adopting rules created by their national body are in their best interests.

It is important that societies do not pick and choose between standard provisions and alternatives without understanding the context in which they are doing so. At the Palmerston North roadshow it was suggested that the recently revised MIBE employment agreement builder be used as a model for guiding organisations through this process. This tool distinguishes between mandatory and optional clauses, provides a number of variations where appropriate (for example, full-time versus part-time employment), and allows for the printing of guidance notes. An additional benefit is that it is usually very clear to advisors when an employment agreement has been created using the tool. This streamlines the advice process. It is also relatively straightforward to find case law as to the interpretation and application of key clauses. With better provision for the enforcement of constitutions could come a body of case law on the standard clauses of societies. This can then influence the outcome of internal dispute resolution mechanisms or arbitration as required.

Clause 39: Qualifications of Officers.

Clause 32(f)(iv) – It is noteworthy that persons subject to property orders and property management under the Protection of Personal and Property Rights Act 1988 (PPPR Act) may not hold office in a society. However, there is not equivalent disqualification for those who have been assessed to have lost capacity and are therefore subject to an Enduring Power of Attorney relating to property under Part 9 of the PPPR Act.

Contact Officers

PNCSC supports the requirement for a Contact Officer.

The importance of a Contact Officer goes beyond the needs of the Registrar. It is often helpful for members and interested parties to have a contact person to whom they can direct queries, concerns and requests for information.

PNCSC welcomes the rights of members to request information and financial records from societies (cls 71 and 76) as well as to make or raise a grievance. The Contact Officer would be the likely person to receive these communications on behalf of the society, particularly where no other contact details are available. The use of an address for service or registered office would appear to be an overly informal way of seeking information to which a member is ordinarily entitled.

Officers' Duties

PNCSC welcome the clarification of officers' duties to act in good faith and in the best interests of the society. Despite the inclusion in the Bill and the explanatory information, some are still confused about what these duties would entail and the implications of breaching them. When asked for feedback on

the Bill one member stated: “It was felt that this will mean organisations, depending on volunteers, will have increasing difficulties in obtaining officers willing to serve.” They also stated that “breach of duty” needs to have a clearer definition as this could be open to wide interpretation. PNCSC believes that this refers directly to the commentary provided on clause 98 at the roadshow. It appears to highlight, the need to clear and accessible guidance for all organisations about how these duties will (and do) apply using examples of day-to-day governance activities and what a breach looks like. This educative function is not explicitly provided to the Registrar under cl 180. It is acknowledged that such a function may, if improperly exercised, be seen as excessive interference into the operations of societies. However, it is consistent with powers such as that of promulgating standard provisions.

Conflict of Interest Rules

PNCSC welcomes the inclusion of rules relating to this.

Financial Reporting Requirements

PNCSC acknowledges the general concerns regarding the imposition of financial reporting standards upon all incorporated societies as eloquently outlined in the HuiE! Draft Submission. As noted above, most of our members are registered charities and so are already subject to the new financial reporting requirements, predominantly Tier 3 and Tier 4. This is the first year of reporting against these standards and we have anecdotal reports that many still feel uncertain about proper compliance.

PNCSC also runs a Community Accounting project advising a wide range of community groups about good financial practice. This includes small incorporated societies such as sports clubs, service groups and hobby clubs. The current level of financial knowledge of Treasurers and Boards varies greatly, with many Treasurers only taking on the position reluctantly and doing the best they can. Financial reporting varies widely, including monthly reporting to the Board. The standard of this reporting appears to rely upon the nature of the systems that are inherited by a society. Societies that have previously had an accountant as a Treasurer may have quite detailed reporting, but a Treasurer that struggles to understand it. Other societies may have very basic reporting that does little to inform the committee or wider membership of the true financial status of the organisation. Because they ‘don’t know what they don’t know’, many societies do not know what ‘best practice’ looks like and there is little impetus to improve these systems. Funders who have had some interaction with Community Accounting report concern about this quality of financial reporting but can only often recommend that new systems be considered and that uptake of this may have little overall impact upon funding decisions for small amounts.

For this reason, PNCSC has no fixed position about whether financial reporting requirements should be imposed upon all incorporated societies no matter their size or source of income. It is true that the imposition of reporting against the tiers is likely to cause worry and some difficulty for smaller clubs, particularly in the recruitment of Treasurers. However, the introduction of a financial reporting standard, if done correctly can improve the overall financial systems of a society and therefore ensure its’ membership is better informed. As noted above, there is a role for technology to assist in easier financial management of societies, including compliance with reporting standards. The need to comply

is likely to drive many societies to adopt such systems. Currently the major barriers are a lack of digital literacy and the ongoing cost of such systems.

Part 6

CI 170 -175 and CI 27-28 [Part One]

The experience of the Charities Register provides a lesson for how a well-designed Incorporated Societies Register can have wider benefits for organisations.

Consistent with cl 171, one benefit of the Charities Register has been to provide a central place for not only the general public but organisation members to store and locate key information about their organisation. While many large organisations may have annual reports on their website, for members and prospective members of small organisations the Register allows for access to key documents in a straightforward manner. The failure to file these documents in a timely manner is strong indicator of possible administrative or governance difficulties.

The current Societies Register is harder to navigate. Of value is the attachment of key documents in PDF form allowing inspection of who has signed and witnessed key documents, including applications for registration, and when. In circumstances of possible disputes relating to the society, access to these documents is important. The way amendments to constitution are filed is less helpful. Many societies will advise the Registrar of only the rule(s) that have been changed, they do not file the complete constitution with revisions included. In practicality this means that the constitution of an organisation may exist in up to 5 or 6 PDF documents attached to the Register and take some time to decipher.

An updated Incorporated Societies Register is likely to become the first port of call for anyone with an interest in a society seeking to access key information. It is important that the information on it is not only accurate but accessible and readily understandable. While it may be a matter more suited for the regulations, the Register should hold copies of not only the current, consolidated constitution but also earlier versions for comparison.