



SUBMISSION

to the

Ministry of Business, Innovation and Employment

on the

EXPOSURE DRAFT –

INCORPORATED SOCIETIES BILL

Introduction

1. PPTA has serious concerns about the proposals in the exposure draft of the Incorporated Societies Bill (“**the Bill**”).
2. PPTA supports the points made in the submission by the New Zealand Council of Trade Unions (“**NZCTU**”).

Context

3. The NZCTU has provided a useful history of how trade unions in New Zealand came to be covered by the Incorporated Societies Act 1908, following the passage of the Employment Contracts Act 1991, and the dual regulation of trade unions in statute. PPTA was constituted in 1951 and was subsequently one of the trade unions that had its constitution recognised through the savings provisions in the Employment Contracts Act 1991.
4. PPTA represents over 17,500 secondary teachers, principals, and manual and technology teachers in New Zealand; this is the majority of teachers engaged in secondary education – approximately 90% of eligible teachers choose to join PPTA. PPTA is an affiliate member of the NZCTU and a national organisation member of NCWNZ.
5. Under our constitution, all PPTA activity is guided by the following objectives:
 - (a) To advance the cause of education generally and of all phases of secondary and technical education in particular.
 - (b) To uphold and maintain the just claims of its members individually and collectively.
 - (c) To affirm and advance Te Tiriti O Waitangi.
6. PPTA is not affiliated to a political party and our members individually support a broad spectrum of political parties in Parliament. However, PPTA have consistently promoted policies that promote progressive economics, social policy and employment relations policy. At our 2012 Annual Conference, PPTA members endorsed the following alternative economic model:
 - (a) A fairer tax system;
 - (b) Effective public services;
 - (c) Addressing the public debt myth;
 - (d) Investing heavily in education and training;
 - (e) Regulating financial markets and limiting corporate excess;
 - (f) Respect for the rights of workers (paid and unpaid) and learners; including:
 - (i) Legislation that promotes union membership and collective bargaining;

- (ii) Avoiding a unilateralist approach to employment relations by engaging employees, employers and those not yet in employment in ways which add value to the economy and society;
- (iii) Engaging in employment relationships that outlive economic cycles and extend beyond the walls of individual organisations;
- (iv) Rejecting a low wage economy (which will help to stop the outflow of skilled labour from Aotearoa / New Zealand).
- (g) Retaining New Zealand's state assets in full public ownership;
- (h) Promoting the idea that we are cultural citizens not just economic citizens;
- (i) Closing the pay gap between the minimum and maximum wages paid across a workforce or industry; and
- (j) Fiscal policy that acknowledges the importance of the environment.

Concerns with the Bill

Clauses 20 to 22 – Financial gain

7. Clauses 21 to 22 of the Bill state that:

21 Society must not operate for financial gain

- (1) *A society must not be carried on for the financial gain of any of its members.*
- (2) *An officer of a society commits an offence and is liable on conviction to a fine not exceeding \$50,000 if—*
 - (a) *the society contravenes subsection (1); and*
 - (b) *the contravention took place with the officer's authority, permission, or consent.*
- (3) *See subpart 4 of Part 4 (which allows a society to recover a financial gain from a member).*

22 Financial gain

- (1) *A society (or proposed society) must be treated as having a purpose of financial gain if—*
 - (a) *it distributes, or may distribute, any gain, profit, dividend, or other financial benefit to any of its members (whether in money or in kind); or*
 - (b) *it has, or may have, capital that is divided into shares or stock held by its members; or*
 - (c) *it holds, or may hold, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the society or otherwise).*

- (2) *A society must be treated as being carried on for the financial gain of any of its members if it acts as referred to in any of paragraphs (a) to (c) of subsection (1).*
- (3) *However, a society (or proposed society) does not have a purpose of financial gain, and is not being carried on for the financial gain of any of its members, merely because it will or may—*
- (a) *engage in trade:*
 - (b) *pay a not-for-profit member for matters that are incidental to the purposes of the society (see subsection (4)):*
 - (c) *reimburse a member for reasonable expenses legitimately incurred on behalf of the society or while pursuing the society's purposes:*
 - (d) *provide benefits to members of the public or of a class of the public and those persons include members of the society or their families:*
 - (e) *pay a member a salary or wages or other payments for services on arm's length terms (see subsection (5)):*
 - (f) *enter into any other transaction with a member on arm's length terms (see subsection (5)):*
 - (g) *provide a member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the society.*
- (4) *In subsection (3)(b), not-for-profit member means a member of the society that is a body corporate that is not carried on for the private pecuniary profit of any individual.*
- (5) *In subsection (3)(e) and (f), salary, wages, or other payments for services, and other transactions, are on arm's length terms if—*
- (a) *the terms—*
 - (i) *would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or*
 - (ii) *are less favourable to the member than the terms referred to in subparagraph (i); and*
 - (b) *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.*

8. PPTA agrees with the NZCTU's analysis that the proposed clauses relating to financial gain are inconsistent with the nature of unions. As noted earlier, one of the constitutional objects of PPTA is to "uphold and maintain the just claims of members individually and collectively."¹ This results in financial gain, within the proposed definition, for members individually through settlements and collectively through the settlement of the PPTA collective agreements.
9. Such a proposal would make it unnecessarily disruptive to the core business of a trade union, like PPTA and needs to be changed. We agree with the NZCTU's proposal that there be a new subclause 22(3) that specifically covers union activities in accordance with the Employment Relations Act 2000.

Clause 36 – Officers

10. Clause 36 of the Bill states that:

36 Definition of officer

- (1) *In this Act, officer, in relation to a society, means a natural person who—*
 - (a) *is a member of the committee (including the society's contact officer):*
 - (b) *holds any other office provided for in the society's constitution.*
 - (2) *For the purposes of sections 21 and 48 to 55 and subpart 6 of Part 4, officer also includes a natural person—*
 - (a) *in accordance with whose directions or instructions a person referred to in subsection (1) may be required or is accustomed to act; and*
 - (b) *in accordance with whose directions or instructions the committee may be required or is accustomed to act; and*
 - (c) *who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers that, apart from the constitution, would fall to be exercised by the committee; and*
 - (d) *to whom a power or duty of the committee has been directly delegated by the committee with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the committee.*
 - (3) *Subsection (2) does not include a person to the extent that the person acts only in a professional capacity.*
11. Like the NZCTU, we believe that this is a very broad and far-reaching definition; in particular, clause 36(1)(b) of the Bill extends the definition of "officer" to mean

¹ Clause 4(b) of the PPTA Constitution (2015).

“any natural person who holds any other office provided for the in society’s constitution.”

12. PPTA would find such a definition completely impractical. Currently we have over 1,000 officers in over 350 branches. In addition, one of the three objects in our constitution is to “Affirm and advance Te Tiriti O Waitangi (the Treaty of Waitangi) as embodied in the First Schedule of these rules.”² This object includes our Māori partnership – Te Huarahi Māori Motuhake structures, with up to 30 additional officers.
13. We recommend that the definition of “officer” in the Bill should be limited to persons acting in a similar capacity to company directors.

Clauses 56-65 – Conflicts of interest and interest registers

14. Clauses 55 to 65 in the Bill relate to a regime to regulate conflicts of interests of officer holders.
15. As above, the number of people who would fall into the proposed definition of “officer” within our organisation would make this proposal completely unworkable.
16. In addition, the Bill is drafted so that a “financial interest” in a matter automatically assumes that there is a conflict of interest. One of the core functions of PPTA is to bargain collective agreements for members. Collective agreements set out the terms and conditions of employment. This includes negotiating increases to salary and allowances. This is a financial interest for all of the members of PPTA, including those members who hold positions of responsibility.
17. It is not right or appropriate that those members should be excluded from decisions relating to the ratification of a collective agreement simply because they have taken on voluntary positions within PPTA. Nor should they be required to add their names to a register of interests – that would be a nonsense situation.
18. We support the exemption amendment proposed by the NZCTU, as follows:

That clause 56(3) be amended so that there is an exemption for “the activities of unions in advocating for the collective interests of their members (including collective bargaining, dispute resolution and legal action).”

² Clause 4(c) of the PPTA Constitution (2015).

Clause 73 – Financial Statements approved by AGM

19. Clause 73 of the Bill states that:

(1) Every society must call an annual general meeting of members to be held—

(a) not later than 6 months after the balance date of the society; and

(b) not later than 15 months after the previous annual general meeting.

(2) However, a society does not have to hold its first annual general meeting in the calendar year of its incorporation but must hold that meeting within 18 months after its incorporation.

(3) The society must—

(a) hold the meeting on the date on which it is called to be held; and

(b) ensure that minutes of the meeting are kept.

20. Each year PPTA holds its Annual General Meeting in the September / October school holidays. This timing allows members to attend and participate in the professional development, debate and decisions of the Conference with minimal disruption to their position and classes at school. It also helps to set the policy and direction for the year ahead.

21. If the proposal in clause 73 of the Bill became law this year, then PPTA could comply with the proposed 6 month deadline for financial statements. However, most years this proposed timing would cause an issue because if the school holidays fell during October, the AGM would not meet the proposed 6-month deadline for financial statements (our balance date for these is 31 March of each year).

22. This appears to be an arbitrary and unnecessary change that would cause both financial cost to our members and unnecessary disruption to schools. We do not support the proposed timeframe in clause 73.