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Commercial, Consumers and Communications Branch
Ministry of Business, Innovation and Employment (MBIE)
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Tēnā koe

Exposure draft: Incorporated Societies Bill

The Professional Historians' Association of New Zealand/Aotearoa (PHANZA) appreciates the opportunity to comment on the exposure draft of the Incorporated Societies Bill ('the draft Bill'). We welcome MBIE's decision to allow incorporated societies and other interested parties to contribute to shaping the Bill while it is still in draft form.

About this submission

This submission is made by PHANZA's Executive Committee on behalf of the PHANZA membership. We have no objections to the public release of this submission, in whole or in part.

About PHANZA

PHANZA is an incorporated society registered in 1995. PHANZA represents historians who work for a wide variety of organisations and individuals, including government departments, statutory authorities, historical societies, heritage groups, universities, museums, research institutions, Māori Treaty claimants, libraries, archives and private companies. PHANZA exists to represent the interests of professional historians and to provide information and advice about the employment of professional historians, among other aims.

PHANZA is a small national organisation, which currently (June 2016) has 150 members around the country and funds of under \$15,000. PHANZA's main source of income is the membership subscription paid by members. PHANZA is not a registered charity. It undertakes no commercial activities.

General comments on the draft Bill

PHANZA generally supports the intent and approach of the draft Bill. The current Incorporated Societies Act is old and in need of revision, and the draft Bill draws on a thorough review of incorporated societies legislation by the Law Commission. We also support the proposal to allow plenty of time for incorporated societies to make the necessary changes before the new legislation comes fully into force.

The draft Bill would introduce new, and arguably more stringent, compliance requirements for incorporated societies. On the whole, and subject to our submissions on particular points below, we think these requirements are appropriate to ensure that incorporated societies operate transparently and in the best interests of their members.

However, we would like to stress that incorporated societies vary greatly in their resources and capacity. This makes it challenging to ensure that regulatory settings are appropriate for the full range of incorporated societies. PHANZA is a relatively small organisation, with limited resources and no paid staff, and our submission is written from that perspective.

Clauses 120 to 124: infringement offences

PHANZA is concerned about the clauses in the draft Bill providing for infringement offences for failure by an incorporated society to comply with certain statutory requirements. These requirements relate to administrative matters such as notifying the Registrar of changes to the society's constitution; maintaining a register of members; and so on. A society could be liable on conviction to a fine not exceeding \$5000; or to a fine of up to \$1000 if the society is issued with an infringement notice.

These provisions seem to us to be somewhat heavy-handed for what are administrative deficiencies rather than cases of genuine wrong-doing. For organisations like PHANZA with a small, all-volunteer committee whose membership changes (at least in part) after each Annual General Meeting, it could be relatively easy to overlook administrative compliance requirements, or to be late in complying. While we recognise that there would be discretion to impose significantly less than the maximum fine, we are concerned that these types of fines could have a significant impact on a small organisation like PHANZA, while for some larger organisations they could have a much lesser impact.

As mentioned above, PHANZA is a small organisation which, like many such bodies, sometimes struggles to find office-holders from its membership. The potential to impose fines on small organisations for what may be an administrative oversight could further stifle volunteer participation. There needs to be greater calibration of the proposed enforcement regime to take account of the huge variety of incorporated

societies, their scale and capacity. Voluntary action is a social good and a measure like this should support, not discourage, social participation.

At the least, we suggest the Bill should set out some matters to be taken into account in deciding whether to proceed against an organisation and in setting the level of any fines imposed for infringement offences. These matters could include the size and nature of the organisation, and whether it is a repeat offence.

Clause 172: contents of register

The discussion document invites comment on three options for clause 172(d) and the requirement that the register should list all current and former officers of the society.

PHANZA considers that Option B (requiring the society to provide the names of all officers in annual returns, and requiring only the name of the contact officer for the public register) is a reasonable compromise. We assume that any requirement to list all persons who have been officers of the society since it was first registered would apply only to the time since the society was registered under the new legislation (not since its registration under the Incorporated Societies Act 1908).

Conclusion

Thank you again for the opportunity to comment on the draft Bill. We look forward to the opportunity to have further input as the legislation progresses.

Yours sincerely

Withheld