



Incorporated Societies Bill: Exposure Draft

**Submission to the Ministry of Business, Innovation
and Employment by the New Zealand Public Service
Association: Te Pūkenga Here Tikanga Mahi**



For a better working life
New Zealand Public Service Association
Te Pūkenga Here Tikanga Mahi

To: The Ministry of Business, Innovation and Employment

From: The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi

Dated: 30 June 2016

Introduction

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 62,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities, state owned enterprises), local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.

We welcome the opportunity to submit on the exposure draft of the Incorporated Societies Bill (the Bill).

Currently unions must be registered as incorporated societies, but are unusual in that we are also subject to registration and regulation under other statutes such as the Employment Relations Act 2000 (ERA). While we agree that the Incorporated Societies Act requires modernisation, we believe any changes must take into account the particular context in which unions exist and operate. In our view the current Bill does not do this. From this perspective we make the following comments on the Incorporated Societies Bill Exposure Draft:

Clauses 21, 22 – Financial Gain

Under clause 21 a society will continue to be prohibited from operating for the financial gain of its members, with clause 22 setting out a number of protected activities which are considered not to amount to financial gain.

Under the ERA, unions are required to have as an object the promotion of their members' collective employment interests, and this in practice includes collectively bargaining pay rates, and seeking arrears of wages and other monetary claims. We are concerned that these union activities could be construed as operating for the financial gain of members, and that clause 22 does not adequately protect these activities. Given the importance of and protection afforded to collective bargaining and union activity in both the ERA and ILO Conventions, we would like to see express protection of the activities of unions in this regard.

Clauses 31, 32 – Grievances and complaints

A society's constitution will be required to include a procedure for dealing with grievances and complaints which complies with Schedule 2 of the Bill.

While we agree that this is in general a reasonable requirement, it should be noted that unions already owe a duty of good faith to their members, and are subject to the enforcement and penalty procedures set out in the ERA in this regard. They also commonly already have internal processes for dealing with complaints, which in combination with the statutory provisions afford sufficient protection to members, in our view.

We suggest that the specific situation of unions with regard to the duty of good faith be taken into account in the Bill.

Clause 36 – Officers

Clause 36 defines an “officer” in relation to a society as a natural person who is a member of the committee, or who holds “any other office provided for in the society’s constitution”. Union rules commonly refer to offices such as union delegates, union convenors and other representatives, and we are concerned that the breadth of this definition could potentially capture a large number of individuals within a union. For example, the PSA has over five thousand delegates. These individuals would all be subject to the substantial statutory duties of officers that are set out in clauses 48 to 55.

We are concerned that the large number of individuals who would owe these duties could expose a union to wide and unmanageable liability. These duties could also deter union members from stepping up to become union delegates, as this role often involves participation in difficult conflict and disputes, and delegates can sometimes bear the brunt of a disgruntled member’s dissatisfaction with an outcome. This in turn would and weaken union organisation in the workplace and make it far harder for us to fulfil our aim.

These concerns are particularly significant as the Bill allows a society, a member, or the Registrar to apply to a court for orders for redress for officers’ breaches of duties and other sanctions.

Officers would also be subject to the obligation upon officers to disclose conflicts of interest and for a society to maintain a register of officers’ disclosures (clauses 56-65). Officers who disclose a conflict of interest are unable (under clause 58) to vote or take part in decision making, and strictly read this could remove a significant number of union members from the democratic and bargaining processes of the union. It could also impose near impossible recording requirements upon a large union such as the PSA.

We suggest that the term “officer” be more narrowly defined for unions.

Clauses 71, 72 - Access to information for members

Unions are democratic organisations whose members participate in decision making. We are subject to a duty of good faith towards our members, and this requires, amongst other things, that we be responsive and communicative. We have financial reporting obligations and commonly have existing information disclosure provisions in our rules, and must also comply with the Privacy Act 1993. The new provisions relating to members’ requests for information, combined with the ability to seek a court order to enforce a request, add another largely unnecessary layer of obligation and one which could be misused in the context of industrial relations. Just like employers, unions have, for example, political strategies that they do not wish to share widely, and there are valid and reasonable reasons why they should be kept private. In our view the “commercial position”

protections provided in clause 71 do not go far enough, and we suggest that clauses 71 and 72 should be removed from the Bill, the existing protections being sufficient.

Sanctions and Powers

The Bill provides for infringement offences, and a range of new offences with significant penalties. It also provides the Registrar with powers to require a society to provide information about its business, operation, or management, to require audits, to enter and search society premises, to investigate a society, and to “freeze” property and funds for 21 days.

These sanctions and powers are significant, and serve to highlight the need for the above points to be addressed so that unions are not unfairly at risk of sanction.

Withheld