



Royal Federation of New Zealand Justices' Associations Inc.

Submission to the Ministry of Business, Innovation and Enterprise

On

Exposure Draft of Incorporated Societies Bill

Royal Federation of New Zealand Justices' Associations Inc.

The Royal Federation of NZ Justices' Associations Inc. (RFNZJA Inc.) is the national body of the 29 affiliated Justices of the Peace Associations. 28 out of the 29 member associations are themselves Incorporated Societies. Individual membership of these Associations is around 6,800 of the total of approximately 9,000 Justices of the Peace appointed in New Zealand.

Introduction

1. This submission is from the Royal Federation of NZ Justices' Associations Incorporated, 43 Ballance St, Wellington (P O Box 5005, Wellington 6140).
2. The Royal Federation of New Zealand Justices' Associations Inc. (RFNZJA Inc.) welcomes the opportunity to comment on the exposure draft of the Incorporated Societies Bill.
3. This submission has been prepared by RFNZJA Inc. on behalf of the 29 member Associations. RFNZJA Inc. has endeavoured to discuss this Bill with its members and establish a sector view within the timeframe for public consultation.
4. Royal Federation is a non-partisan and non-sectarian society, concerned with the pure and impartial administration of the law.
5. Justices of the Peace comprise the largest single group of Judicial Officers in this country with some 250 currently serving the community through the District Courts of New Zealand.
6. Royal Federation of New Zealand Justices' Associations (Incorporated), being incorporated under the Incorporated Societies Act 1908 has been an Incorporated body since 1927. Incorporation number 220001.

Overview

Royal Federation of NZ Justices' Associations Inc. supports in principle the overall aim of the Bill to modernise the legal framework for Incorporated Societies. With the Incorporated Societies Act dating back to 1908, we are cognisant and supportive of the need to bring legislation into the 21st Century environment within which we now operate.

While we will specifically comment on the new enforcement powers prescribed by the draft Bill we will separately address other individual clauses of the draft Bill where we emphasise our support for the aim of the Bill to:

- better reflect current good governance practices for administering societies, including greater emphasis on accountability and transparency.
- retain the self-governing, private nature of a society enabling each society to operate in a way that suits their purpose.
- provide clarity and protection for members.
- require better processes for how societies deal with member grievances and complaints.

In our General Comments, we do raise a concern over adding compliance to the leadership expectations of elected officers and the possibility that will provide a further disincentive for volunteers to serve on boards.

Specific Comments

Royal Federation operates as a national focus for all matters concerning the functions, operations and jurisdiction of Justices of the Peace. Its prime role from its establishment in 1924 has been predicated to ensuring all Justices of the Peace receive sufficient training and support to discharge their duties to the peoples of New Zealand wherever they may be and whatever the specific need might be.

For over 200 years Justices of the Peace have played an active role working in a judicial capacity in New Zealand's court system. During this time they have contributed to their community by hearing many of the high volume of cases at the lower end of the District Court.

Section 4(b) of the Justices of the Peace Act 1957, as amended in 2007, provides that: *The functions and powers of Justices shall be to carry out such functions and exercise such powers as are conferred on Justices by the Criminal Procedure Act 2011 or by any other enactment.*

We note that the draft Bill contains provisions for a new regime of enforcement offences, as commented on below. In support of these 'Specific Comments', Royal Federation would encourage the committee to not overlook the significant role that Justices of the Peace play in the judicial framework and the ways in which they may be involved in dealing with the new offences.

A. Clauses 120 -124 Infringement Offences

Despite having clearly defined limits to their jurisdiction, Justices of the Peace by virtue of s355 (2) (b) of the Criminal Procedures Act 2011 have jurisdiction over all infringement offences.

Like all judicial officers, Justices of the Peace are faced with the challenge of understanding, interpreting and applying the requirements of legislation whether current or new. When new legislation is enacted it is only fitting that literature and training material is updated to incorporate new legislation.

Under its contract with the Ministry of Justice and with the approval of the Chief District Court Judge as required by Section 3B of the Justice of the Peace Act 1957, Royal Federation is responsible for supplying the academic, practical and ongoing education of Justices of the Peace. We anticipate that the changes recommended by the draft Bill may require that our training material is updated to include the new infringement offences outlined in clauses 120 -124.

Any revisions to the training material for Justices of the Peace that may come about through this Bill are details that we would work on with the Ministry of Justice and we can assure you of our willingness to work with the Ministry officials as required.

B. Clause 190 Jurisdiction of District Courts

Clause 190 clearly outlines the jurisdiction of District Courts for hearing and determining applications for orders, or for the court to exercise any other power, under any of the provisions of the Act.

Generally speaking, Justices of the Peace have jurisdiction to conduct Judge-alone trials for Category 1 offences, where the statute creating the offence specifically provides for them to do so or where jurisdiction is expressly given. The jurisdiction conferred by s 355 Criminal Procedure Act 2011 includes the power to deal with fine only matters, all infringement offences and to find a defendant guilty or not guilty and the power to sentence.

It is very important to Justices of the Peace to ensure that they have jurisdiction to preside over the charge/s and that the determinations they make are within their statutory jurisdiction. Therefore, Royal Federation will be seeking clarification as to whether Justices of the Peace will have any jurisdiction for dealing with the provisions outlined in **Clause 21** and **Clauses 125 -127**

We believe that Justices of the Peace serving in District Courts in New Zealand have always discharged their role with integrity, impartiality and expertise in accordance with the Judicial Oath. Royal Federation can assure the committee of the availability of Justices of the Peace to fulfil any enforcement role contained in the Bill once the committee has established the levels of jurisdiction.

General Comments

1. Clause 22 Financial gain

- Being a Not-for-profit organisation and not engaging in any trade, Royal Federation supports the inclusion of this clause in the new Bill.
- As an organisation with a federal structure, Royal Federation is simply focused on using funds to cover the day to day expenses and costs incurred by associations.

2. Clause 24 What Constitution must contain

- Royal Federation supports the inclusion of clause 24 as we believe it supports the intent of the Bill to improve accountability and transparency requirements for all Incorporated Societies.
- We acknowledge that insisting on what a constitution must contain will require most Incorporated Societies to review their governing documents and to substantially update constitutions. Royal Federation regards this as a healthy, positive step towards considering the fundamentals of any organisation.
- Royal Federation supports the inclusion of clause 24(1) (j) putting emphasis on establishing robust disputes resolution procedures in the rules of each incorporated society. We believe this new requirement will help create certainty as to how a dispute can be properly resolved both from the society and a member's point of view.

- Royal Federation agrees that the rules covered in Clause 24 outlining what a constitution must contain are simplistic and not overly prescriptive. We believe that provides room for societies to add 'flesh' to the minimum criteria, and to be adaptable to differing and developing circumstances.
- We note that there is reference to sub-committees in Clause 5 of Schedule 2 in the draft Bill but no reference to branches or sub-committees in Clause 24. We submit that it would be desirable to include in the Constitution a reference to branches or sub-committees.
- Refer to comments under No.5 relating to Officers' duties.

3. Clauses 31 – 32 Grievances and Complaints

- We are cognisant of the fact that it is common for disputes to arise between members of societies and that often a society's rules prove to be inadequate to properly deal with those disputes. The consequence of this often exacerbates the disputes because members are not treated fairly or they have not been properly heard. Therefore we are delighted to note that the new minimum requirements of the Bill follow the rules of natural justice. However in order to truly reflect the fairness outlined in the natural justice model, Royal Federation believes that *Schedule 2: Complaints and grievances procedures* should include an indication of an acceptable timeframe to deal with any grievance.
- We remain to be convinced that the clauses relating to Grievances and Complaints are designed for Federal models of governance. The provisions of these clauses appear to be designed for organisations with branch structures.
 - a. Under the federal structure of Royal Federation, each of the 29 associations are autonomous. Royal Federation as a central body, controlled by a Board elected by its member Associations, acts on behalf of all Justices of the Peace and represents them when negotiations with Government Ministries and the Judiciary are necessary. As a national body Royal Federation does have some control over individual associations, but on other issues the local associations have autonomy i.e. even though Royal Federation might be seen to be the head of the overall organisational structure, its authority is restricted
 - b. Federations are based on the principles of cooperation, collaboration and the 'sum of the parts being greater than the whole'. When relationships between the 'parts' of the federation break down, the effects can be damaging and time consuming.
 - c. We acknowledge that each of our member associations would be required to cover grievances and complaints under their own constitutions, but the Bill is not clear as to how a National body might be seen to include those rules in their own constitution when that specific constitution is approved by the member associations. In the past associations have negatively viewed any effort by members of the Royal Federation Board to become involved in resolving internal disputes. At this stage it is difficult to determine how member associations will regard a ruling which could determine that the Board does become involved in resolving internal disputes. The benefits of the Royal Federation national body carrying out specialist governance roles can only work well where there is agreement and understanding throughout each level of the organisation.

4. Clause 33 Standard Provisions for Constitutions

- Royal Federation supports the inclusion of standard provisions for constitutions. However, we note that the draft Bill provides that “*The Minister may, on the recommendation of the Registrar, issue standard provisions*”. Royal Federation would prefer to see that this clause allows for consultation before such provisions were included as part of any further legislation.

5. Clauses 48 – 55 Officers’ duties

- Royal Federation does support in principle the aims of Clauses 48-55, but we do have concerns that the imposition of further duties on committee members and officers, similar to those presently imposed on company directors, including increased disclosure obligations, and a range of criminal offences (with fines up to a maximum of \$200,000 or five years’ imprisonment); may discourage volunteers from serving on Boards.
- Even though Royal Federation does have a strong focus in governance and management, our core tasks involve elements of volunteering, driven by service delivery under our Contract for Services with the Ministry of Justice.
- We agree with the recommendations made by the Law Commission in the 2013 report “*A new Act for Incorporated Societies*” which identifies that currently legal duties and obligations of officers of societies are created by common law and can be difficult to find and apply without legal assistance. We also understand the logic and case law behind suggesting that the same or similar duties required of directors, as defined in the Companies Act 1993, should apply to directors of incorporated societies and trusts. However Incorporated societies are not companies, and responsibilities and processes need to be thought about differently. We consider that the Companies Act model is too strict.
- Like many other not-for-profit organisations Royal Federation is heavily reliant on volunteers. Most are more concerned with serving their community without the pressure of attached liabilities. We believe that if we are to impose compliance duties to the leadership expectations of elected officers it will be much more difficult to attract people to fill the officer roles. Royal Federation would prefer to see that the new Act encouraged the development of a strong organisation based on good governance and sound management without discouraging volunteering in the service of its members and for the benefit of society as a whole.
- Royal Federation is in support of the exposure draft’s assistance in clarifying the roles and responsibilities of officers. However if the intent of the Bill is to improve transparency and accountability we question why there is not more specific emphasis in Clause 24(1) (g) about the expectation of role descriptions.
 - a. There is often a presumption made that many committees have the roles and responsibilities covered in policies and other documents. We suspect that is often not the case.
 - b. We have identified within our own organisation that members do not always understand their duties or obligations when taking on governance roles
 - c. A considerable amount of time can be taken up in resolving personnel issues which often relate directly to a partial or complete misunderstanding about role responsibilities. Royal Federation considers that if societies were required to

include more specific detail about officer roles in their constitutions this would assist in dealing with grievances and complaints as outlined in clauses 32-32.

- d. If adopted, the new Bill will require all Incorporated Societies to review their constitutional documents so that they comply with the new requirements. Royal Federation would like to see this as a providing a positive opportunity for societies to clearly define the various governance roles and responsibilities. While we agree that a model constitution would be too prescriptive for the diverse range of societies in New Zealand, we consider that the standard provisions outlined in many of the clauses encourages greater clarification around officer roles, yet this is not clearly defined by Clause 24(1)(g).

6. Clause 51 Officers' duty of care

- Clause 51 states *"An officer, when exercising powers or performing duties as an officer, must exercise the care and diligence that a reasonable person with the same responsibilities"* We understand that there can often be a wide variety of opinion around what constitutes "a reasonable person". Royal Federation believes that it would be desirable to have an explanation or interpretation about what is meant by 'degree of care and diligence that a reasonable person would exercise'. We also question whether the implications of not exercising care and diligence should be spelt out.

7. Clause 55 Duties owed to society

- Human nature tells us that people often make decisions based on what they personally believe is best, instead of focusing on what is best for the organisation. Therefore, Royal Federation supports the intent of clause 55 and considers that these details need to be picked up in any constitutional review and job descriptions for officers.
- The concept of duty being owed to the society not the members is in line with the principles behind the new XRB financial reporting standards. As outlined elsewhere in this submission, Royal Federation is fully in favour of all organisations having the same Public Benefit Entity accounting standards.

8. Clauses 56-65 Relating to conflicts of interest

- Royal Federation fully supports the purpose of Clauses 56-65 to define what a conflict of interest is, and make it clear what an officer needs to do if their duties of loyalty to a society come into conflict with a competing personal interest. We see value in committees being encouraged through the legislation to have a register of conflicts of interest.

9. Clause 73 Annual General Meetings

A. Support for Clause 73:

- Royal Federation supports the intent behind insisting that an Incorporated Society must hold an Annual General Meeting (AGM) and what business must be conducted at the AGM. We believe it promotes constitutional and procedural conformity consistent with other clauses in the draft Bill.
- Increasingly we hear of organisations with members spread throughout the country finding it logistically difficult and increasingly expensive to bring members together for an Annual General Meeting. Therefore we are delighted that Clause 75 provides for AGMs to be held using modern technology.

B. Concern about Clause 73:

We acknowledge that for any organisation with members spread throughout the country, the requirement to hold an Annual General Meeting every year may be seen as being unnecessarily restrictive because it does not allow for societies to structure their organisation in the manner best suited to that society.

10. Clause 75 Method of holding meetings

- Royal Federation supports in principle the inclusion of audio, audio and visual, or electronic communication as a means for participating in a meeting. We do believe that it provides more opportunities for a greater and truer representation of all Justices of the Peace at meetings.
- Our only concern is that this clause presumes that modern technology is equitably available throughout the country. We have had reports from our members that this is not the reality. Not until there are faster and more reliable connectivity initiatives 'rolled-out' throughout the country we consider that this option for holding a meeting may only work for those societies that are not geographically spread.
- We note that there is no provision for electronic polling. In order to be consistent with the requirements of voting procedures identified in many of the clauses of the draft Bill (e.g. Clauses 24, 27), we would encourage the committee to consider including a clause about electronic voting.

11. Clauses 77- 80 Indemnities or insurance for officers, members, or employees

- In respect to clause 80 we accept that in order for indemnification to be valid it must be provided for in the societies constitution. We expect that many societies will need to seek direct legal advice to ensure they have a clear understanding of their legal and constitutional responsibilities and liabilities.

12. Clause 83 Financial Reporting

- Royal Federation is pleased to see that the Clause 83 of the draft Bill is consistent with the requirements covered by the Financial Reporting Act 2013, although we do acknowledge that for small societies this can be a significant compliance burden.
- Royal Federation has among its members associations which are incorporated and have turnovers less than \$5000. While the financial reporting requirements might appear onerous for a society with a small turnover, Royal Federation believes there are greater advantages and protection associated with the requirements of the Bill.
- As with the Bills requirement of what a constitution must contain, Royal Federation regards the financial reporting requirements as a healthy, positive step towards accountable, transparent practices.
- Royal Federation supports the draft Bills requirements that incorporated societies meet the same accounting standards as registered charities.
- Royal Federation supports the need for more consistent financial reporting for all organisations.

13. Other

- Although change is constant, being able to respond to change effectively is often challenging and takes time. Royal Federation supports the suggested transition time of four years. We believe that this should provide sufficient time for societies to understand and review their legal structure, constitutional and financial requirements in order to transition to the new legislation.

Thank you for the opportunity to submit on the Exposure Draft of the Incorporated Societies Bill. Royal Federation regards this positively as an opportunity to encourage greater performance efficiency and more robust Incorporated Societies throughout New Zealand.