

Ministry of Business, Innovation and Employment

PO Box 1473

Wellington 6140

societies@mbie.govt.nz

Rural Women New Zealand Submission on the Exposure Draft of the Incorporated Societies Bill 2016

1. Rural Women New Zealand ("RWNZ") welcome the opportunity to provide a submission to the Ministry of Business, Innovation and Employment ("MBIE") on the exposure draft of the Incorporated Societies Bill 2016 ("the draft Bill").

Introduction to RWNZ

2. RWNZ is a not-for-profit member based organisation that reaches into all rural communities and advocates on issues that impact on those communities. We are a registered charity and an incorporated society with over 3,000 members, operating through branches across the country. Several of these branches are also set up as incorporated societies and report to our Wellington-based national office. Aside from the Incorporated Societies Act 1908, our organisation is also subject to the Financial Reporting Act 2013 and the Charities Act 2005. We follow IRS reporting rules.

General views on the exposure draft

3. RWNZ supports the introduction of updated legislation to govern incorporated societies. The current Act is outdated in many ways and is silent on a number of important governance matters. This does create legal uncertainty and additional costs for incorporated societies, often diverting them away from achieving their core objectives and towards a focus on trying to work through and understand their legal rights and obligations.
4. We generally support the proposals outlined in the Bill. However, we wish to make a number of specific comments on some of the key clauses in the Bill. These comments reflect our fundamental view that reform of the Act must achieve the right balance between providing legal certainty, whilst not being overly prescriptive and restrictive. After-all, incorporated societies are independent, community-driven organisations, set up to express and act on community aspirations and needs. They need to be able to participate in a wide range of activities, to be flexible, and to encourage community action and resilience, rather than being bureaucratic and overly concerned with compliance

issues. They also need to be able to evolve alongside the evolving needs and aspirations of their members.

5. In addition we think it is important that compliance costs are kept to a minimum, particularly, for smaller incorporated societies. RWNZ are aware of many small incorporated societies that operate in rural communities and that achieve great things for these communities. Assisting these smaller societies to transition to the new Act and ensuring that they can continue to remain viable under the new framework must be a key focus of the Bill.
6. Our comments on specific clauses in the Bill are set out below, in clause order.

Clause 8 Eligibility to become an Incorporated Society

7. RWNZ does not have a strong view on the proposal to reduce the minimum number of required members to become an incorporated society. However, it is worth noting that this change does open the door to the formation of even smaller societies than are currently in existence. As already discussed, the viability of these smaller societies will depend on a legislative framework that provides the right balance of legislative guidance, while ensuring that compliance costs are set in a way that is appropriate to different organisational sizes.

Clause 22 (1) (a) Definition of “Financial Gain”

8. RWNZ supports the views put forward by the Federated Mountain Club that this clause (along with clause 161 Division of assets on winding up) should be amended to allow an incorporated society to distribute a financial benefit to its members where those members are themselves incorporated societies or some other form of not-for-profit body corporate. RWNZ has several branches which are both members and also incorporated societies in their own right.

Clause 33 Standard provisions for Constitutions and Annex 1

9. RWNZ support the proposal for a set of standard provisions for the content of a society's constitution. We expect this will greatly assist societies in transitioning to the new legislation, as well as improving the quality and consistency of constitutions. In particular, we strongly support the need for standardised dispute resolution provisions. The current lack of guidance in this area is a major area of concern for many societies. When such disputes arise they can be extremely disruptive to the work of the organisation, and can lead to expensive court proceedings.
10. We also agree with MBIE that a set of standard provisions would be preferable to a default constitution model (as originally suggested by the Law Commission). We agree that it would be difficult to develop a default model that could be usefully applied to the wide variety of incorporated societies in New Zealand, all of which have their own unique objectives. Allowing incorporated societies to pick and choose from a set of standardised provisions as they see fit is a better approach.

Clause 37 and Clause 43(3) Contact Officer Required to be a Committee Member

11. The person best placed to fulfil the role of contact officer may not necessarily be a committee member. For example, in RWNZ our Chief Executive Office is the person most involved in the day-to-day affairs of the society and would be best placed to handle enquiries from MBIE, and/or the Registrar. We think these clauses should be amended so that it is up to the Committee to decide who is designated to this role.

Clause 39 and Clause 40 Qualifying Factors for Officers

12. RWNZ support the need for prescribed disqualifying factors for officers of societies. However, we support this only on the basis that clause 40, which enables the Registrar to waive the application of a disqualifying factor, is retained in the Bill. It is important that exemptions can be made and judged on a case-by-case basis by the Registrar. As acknowledged by MBIE, there may be circumstances where a person normally ineligible under the Act could provide valuable to a specific committee. For instance, having an ex-addict committee member within an organisation devoted to reducing the problem of drug addiction.

Clause 56-65 Conflict of Interest Provisions

13. RWNZ support the minimum conflict of interest standards set out in these clauses. In particular, we think that Clause 56(2)(e) is particularly valuable as it provides scope for a society to protect against conflicts of interest that are specific to that organisation and that may also relate to non-financial matters. In small community-based societies for example, non-financial conflicts of interest can be as potentially destructive as financial conflicts of interest.
14. However, RWNZ believe clause 58 'Consequences of being interested in a matter' should be removed from the Bill. We think that the consequences of an officer declaring a conflict should be determined by the society as it sees fit. Again, there needs to be some flexibility in the Act to recognise the variation in circumstances and different sizes of incorporated societies. For example, in smaller organisations, it may not be practicable or desirable to always preclude an officer from voting on an issue because of a declared conflict. Depending on the circumstances, it may be that the experience and knowledge of that member, should have greater bearing on their ability to vote against what may be deemed a relatively minor conflict. Having a prescribed set of rules about recusal from voting might actually end up limiting access to valuable experience and information from committee members, particularly for smaller organisations.

Clause 71 Access to Information for Members

15. As currently drafted clause 71 provides little or no guidance around what is a "reasonable" timeframe for a society to respond to information requests. While, Clause 72 provides for the Court to make a decision on what is "reasonable" all this does is expose societies to the risk of future legal challenge and legal costs over an issue that could be resolved through clearer legislative direction. For example, the Act could prescribe a set-time frame in the same way as the Official Information Act 1982. Alternatively, the rules

around access to information could be removed from the Act altogether and individual societies could be left to prescribe rules as they see fit in their constitutions.

Clause 73 Annual General Meetings and Clause 75 Methods of Holding Meetings

16. RWNZ do not support the inclusion of these clauses. We think that individual societies should have the independence to decide the method and frequency with which they meet through their constitutions. Again, variations in the size and geographic spread of different incorporated societies, will affect the costs and practicalities involved in the ability to hold an AGM in the manner stipulated by Clause 73. A requirement to meet annually may not be realistic, or particularly helpful, for a society whose members are geographically dispersed.

Clause 83 Financial Reporting

17. We support the proposal for all incorporated societies to follow appropriate XRB accounting standards and templates based on the size and tier of the organisation. This will result in standards that are cost appropriate relative to the incorporated society size as well as improving the consistency of financial reporting between entities. However, we also think that entities with very small annual turn-overs should be made exempt from these financial reporting standards. While, we do not have a clear view on what would be an appropriate threshold, we are aware of incorporated societies that have turn-overs of less than \$500 per year.

Auditing standards.

18. RWNZ support the decision by MBIE not to include mandatory audit or assurance requirements in the Bill. Unlike registered charities that are accountable to wider society due to their tax exemptions, most incorporated societies are only accountable to their members. The decision as to whether to obtain independent assurance is a governance decision that should be determined by the society, with reference to the costs involved and factors such as the number of members, the types and level of assets & liabilities and the activity of the particular society. We suspect that for many smaller incorporated societies the costs involved in obtaining an audit would be an unnecessary/unjustifiable expense.

Clause 161 Division of Assets on Winding Up

19. RWNZ supports the intention of this clause to ensure that societies are not dissolved for the financial benefit of their current members. However, as per our discussion of Clause 22 above, we think there should be provision for the remaining assets of the society to be disposed of to a member of the society that is itself an incorporated society.

Clause 187 Appeals from Registrar's decision

20. We agree with the submission put forward by the Federated Mountain Club that the 15 day-time frame to lodge an appeal to the High Court is too short. Many of RWNZ branches are located in small rural towns, where access to legal services may be limited. We think a 90-day period would be more achievable and would better accommodate small and remote organisations.

Comments on Agricultural and Pastoral Societies

21. RWNZ are well aware of the important and significant contribution that Agricultural and Pastoral (A&P) societies make to rural communities in New Zealand. However, we do not have a strong view, on whether such societies should continue to be governed by stand-alone A&P legislation, or whether they should be migrated to the new Incorporated Societies Act. We note MBIE's comments that the majority of A&P societies have indicated through submissions to the Law Commission that they would not support such a transition. Given this opposition, we think the correct approach forward would be for MBIE to work directly with A&P societies to better understand and address their concerns with transition. Collaborative consultation should take place before any further recommendations are made to the Minister on this matter.
22. Thank you for the opportunity to submit. We would be pleased to discuss our submission you.



Penelope England
Chief Executive Officer
Rural Women New Zealand
penelope.england@ruralwomen.org.nz

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