



27th June 2016

By Email: societies@mbie.govt.nz

Dear Sir/Madam,

Submission: Incorporated Societies Consultation Draft

Thank you for the opportunity to provide this submission.

- This submission is made by Site Safe New Zealand Incorporated, CC26956
- Site Safe is a national membership organisation. It is governed by a Board of Directors which is elected by the members.
- Site Safe is a registered charity which promotes a culture of health and safety across New Zealand's construction and related industries, and represents 5,000 businesses. The membership reflects the national profile of business sizes with over 80% small to medium enterprises (SMEs) as members.

Site Safe supports the need for an update of the Incorporated Societies Act, and welcomes many of the changes put forward in the Bill. The clarity that the draft bill brings to a number of areas associated with the running of an Incorporated Society is a positive move to provide clearer guidance to the many societies operating in New Zealand.

Site Safe welcomes the proposal to provide standard constitutional provisions as opposed to model constitutions. This recognizes the variation in incorporated societies instead of advocating a "one size fits" all approach. We do note however that a number of provisions imply a potentially higher level of knowledge than may be actual for smaller societies. In particular, we are referring to the references to other pieces of legislation such as the Companies Act 1993. We suggest that there will need to be wider engagement with societies to ensure that members and officers understand their obligations under this and other relevant pieces of legislation and to ensure that an increased financial and risk burden is not placed on smaller societies.

We also note that there does not appear to be any specific reference to appropriate financial reporting that is in line with New Zealand reporting standards and suggest that this may result in some non-registered charities not even complying with Generally Accepted Accounting Standards.

We generally support the expanded list of constitutional requirements as necessary to improve the current governance practices of societies. We have made some comments below regarding specific clauses in the Bill.

Specific Comments

Section 24(1)(J)

The inclusion of a dispute resolution process as a requirement in the constitution is a positive step. However, it is unclear whether this procedure must be documented in full in the constitution, or whether it would suffice to outline where the full procedures are located.

Including the full outline of the complaints procedure may lead to the constitution becoming overly lengthy and in some cases may pose issues for incorporated societies, which rely on external codes of practice for their complaints procedures.

Recommendation

It would be preferable to exclude from the constitution full details surrounding the complaints. Instead, the constitution should outline where the full policy can be found.

Section 36 (1-2)

The definition of an Officer differs from that in other Acts such as the Health and Safety at Work Act (Section 18(a)). This could lead to someone being classed as an officer under one Act but not the other, which could be confusing, particularly given the recent emphasis on officer duties under the new Health and Safety at Work Act (2015).

Recommendation

It would be useful to link the definition of Officer in this bill to the Companies Act definition, to reduce the confusion around potentially having multiple definitions of Officer.

Section 36 (1) (b)

Section 36 (1)(b) extends the definition of officer to include anyone who 'holds any other office provided for in the societies constitution.' The clause unnecessarily extends the definition of officer, and has the potential to place duties upon those who have little influence on the management and operation of a society.

Recommendation

Site Safe recommends removing subsection 36(1)(b) from the bill. We recommend restricting the definition of officer to include only committee members, and those who inform committee members.

Section 39

Section 39(2) describes those persons who are disqualified from being appointed or holding office as an officer of a society. The following sub-section (Section 39(3)) states that if a person who is disqualified from being an officer but who acts as an officer is still considered to be an officer under the Act. It is our view that this is confusing and will create risk for societies who may be exposed to actions from a disqualified person acting without authority.

Recommendation

Remove subpart 39(3) as persons who have been disqualified from being officers should not be acting in this capacity and their actions should not be considered as so, noting that a society must take all reasonable steps to ensure that a disqualified person is not acting on the society's behalf.

Section 39(3) and Section 45

Section 39(3) states that a disqualified officer who acts as an officer is still considered to be an officer. This section conflicts with Section 45, which states that an officer vacates their position if they are disqualified from being an officer.

Recommendation

We recommend, as above, that Sub Section 39(3) be removed from the Act.

Section 43 (3)(a)

This section outlines that each society must have a contact officer, who also must be a member of the committee. We understand the need for a contact officer however suggest that a committee member may not always be the best point of contact for a society, particularly with larger organisations who have staff delegated to carry out the functions of the society.

Recommendation

Revise the section to allow societies to elect a contact officer who is not a committee member but who is associated with or employed by the society.

Section 56 (2)

This section outlines when conflicts of interest need to be declared, but describes mostly financial conflicts of interest. Not all conflicts are finance related and could include an interested party giving preferential treatment to another party for example, which does not result in personal financial gain.

Recommendation

Add a further clause to Section 56(2), which outlines that a person may have a conflict of interest in a matter that relates to a close party when that party receives a benefit they would not otherwise have received.

Section 57

Section 57 states that an officer must disclose the 'details of the nature and extent of the interest,' to both the committee and record the conflict in the interest register. Provisions need to be made to ensure that committee members are not forced to divulge commercially sensitive information through their disclosures.

Recommendation

A provision needs to be included whereby, with permission of the chair, a committee member may refuse to disclose the nature of a conflict, based on the potential to prejudice himself, or herself, or another person.

Section 102

This section stipulates that the court must order that the cost of action (in whole or part) by member, officer, or Registrar be met by the society. Although there is a later subsection, which suggests this will not always apply, it should be more clearly outlined when the exceptions apply.

Recommendation

This section needs to be clarified, so it is clear as to when exceptions apply to a society so they can avoid paying the cost of action against them.

Section 103

This section states that a society may only settle, compromise or withdraw derivative action with the approval of the court. This could cause unnecessary delays, and prevent matters being quickly settled outside of the courts. This could easily become too costly for many incorporated societies.

Recommendation

There needs to be a process in place, which prevents delays to reaching solutions for derivative action.

Section 144

Section 144 states that amalgamation proposals must set out the terms of amalgamation, and all other prescribed information. It is unclear what 'all other prescribed information' means.

Recommendation

Section 144 needs to clarify what is meant by 'all other prescribed information', and include further information as to what other information needs to be included in an amalgamation proposal.