



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Review of Incorporated Societies Act 1908

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The Law Commission

- Funded by government to review areas of the law that need updating, reforming or developing
- Forms its views independently of government
- Makes recommendations to Parliament
- Consults widely with the sector and key interest groups and the public.
- Overall objective is to improve the quality, relevance and effectiveness of New Zealand law



The Reference

The Incorporated Societies Act 1908 is uncomfortably old and has been little amended since its enactment. Yet the rich tapestry of community organisations that use this legal form is extensive in New Zealand. Practising lawyers are often called upon for advice concerning incorporated societies. They are asked for advice on whether to set one up, how to set one up, how to register it and what to include in the documents. Difficult questions frequently arise around the governance and administration of such organisations and the resolution of their internal disputes. Many of the reported cases revolve around such disputes. This review will take a first principles look at the Act.



Rich tapestry of organisations

Reform must take into account the diversity of sector:

- 45 % are Cultural, sporting, recreational bodies
- Remaining 55% –broad range of community activities (social service providers, religion, development and housing, educational and environmental interest groups, business and professional groups)
- 24000 odd Incorporated Societies and 20000 odd Charitable Trusts (registered but may not all be operating)



Principles for reform

What is special about this kind of corporate form, and how are they different

- Societies should be established for a public purpose and/or non-financial benefit of members (as now)
- Self-governing and “democratic” – members determine how to govern themselves

but

- Must meet some minimum standards
- Possible public interest in larger incorporations/those getting public funding donations



What is wrong with the Act?

1. Lack of guidance for those managing/ governing societies
2. Problems with corporate constitution
 - No or inappropriate rules to deal with current problems
 - Other incorporation vehicles, relationship with incorporation under the Charitable Trusts Act
 - Corporate capacity issues
3. Need to make mechanisms for dispute resolution clear



Committee Members' Duties

- Restating existing duties enforceable by the society
 - Act in good faith and in the best interests of the society and use his or her powers for a proper purpose;
 - Not act, or agree to act, in contravention of the Incorporated Societies Act or the society's constitution;
 - Exercise the care, diligence and skill that a reasonable person would exercise in the same circumstances;
 - Not allow the business of the society to be carried on in a manner that is likely to create a substantial risk of serious loss to the society's creditors; and
 - Not allow the society to incur obligations that the officer does not reasonably believe will be fulfilled.



Mandatory Rules

- Society will have to particular rules, including
 - Name
 - Purposes
 - How you alter the constitution
 - Dispute resolution
 - AGM
- There will be some minimum requirements for some
 - Dispute resolution and grievances



Model Rules

- Either as in Australia as regulations or guidance
- Societies
 - could “pick and choose” model rules to add to the society’s own rules or
 - could select the full set of model rules



Dispute resolution

- No provisions currently in the Act
- Other mechanisms
 - Judicial review
 - Declaratory Judgments
 - Contract theory
- Proposal is to require rules about dispute resolution and discipline
 - But how to set minimum standards?
 - Unlikely to be one size fits all – societies will have to develop procedures that suit them



Progress of the Review

- Issues Paper published in July 2011
- Submissions Closed in October 2011
- Currently drafting of the report
- Aim to have report tabled in Parliament by the end of June 2012



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