

Incorporated Societies - Exposure Draft

A civil society perspective

Hui E!

Community Aotearoa

- Hui E! Community Aotearoa seeks to promote, strengthen and connect the Community Sector;
- Tangata whenua organisations
- The broad voluntary and community sector – charities, incorporated societies, clubs, boards, trusts, and informal community groups
- Input to Government on key issues that affect the sector as a whole – a stronger collective voice
- Work with government agencies on issues where policy is being developed – better outcomes for the sector and the country

Hui E! Community Aotearoa – What we like about the Draft Bill

1. The core principles established by the Law Commission and confirmed here:
 - Societies are private bodies that are operated by their own members.
 - Societies should not distribute profits or financial benefits to members.
 - Societies should be free from inappropriate government interference.
2. The clarity around “financial gain” and what can be done if a Society fails to meet the criteria
3. The long introduction period, with a series of transition dates that give everyone the chance to do what is needed
4. The reduction from 15 to 10 in the number of members a society must have to register, and the requirement to maintain at least that number
5. The decision to provide “standard clauses” rather than a model constitution, recognising;
 - the diversity of the sector, and
 - the principle that civil society organisations are created to meet the needs and not the dictate of government

What we like about the Draft (continued)

5. The proposal that the minimum age for officers of a society be reduced from 18 to 16
6. The emphasis that officers' responsibility in decision-making is to the society. It is clear from case law that officers owe their duties to the society, but there is a widespread misunderstanding
7. A simple procedure for the amalgamation of two or more societies
8. Constitutions will be required to contain rules setting out the composition, roles and functions of the committee, including:
 - Number of committee members,
 - Election or appointment of committee members,
 - Terms of office of committee members,
 - Qualifications for appointment of committee members,
 - Grounds for removal of committee members from office, and
 - Means of resolving internal disputes

What we question (1)

Clause 83 – the requirement that all Incorporated Societies meet the same accounting standards as registered charities

- A major compliance burden for small societies
- Charities get a significant tax benefit, as do their donors – what's in it for incorporated societies?
- Undermines the basis of civil society by creating a disincentive to formation of societies
- Undermines an internationally recognised principle of NZ's legislation – ease of establishment of a community-based legal entity
- Increases risk of misappropriation of funds – Bank requirements for establishing a group account

What Hui E! recommends

Small incorporated societies – under \$25,000 total operating payments in either or both of the previous financial years – should be exempt from having to report according to the reporting standards.

- Many small societies come together around a shared principle or aspiration – reporting to government is not on their radar at all
- They should be encouraged and valued as the basis of potential major benefits for society at large – e.g. IHC
- Many may stay small, but we should not discourage them by imposing requirements they cannot hope to meet
- Can still opt to report according to the standard if the members choose

What we question (2)

Sub-committees: There is little mention of the ability of incorporated societies to form sub-committees

e.g a Finance Subcommittee of the main governance group

- Do we need a provision that requires a sub-group of the governance to report regularly to the main body?
- Sometimes people feel disempowered by the actions of a subcommittee - “they make all the decisions and I get no say”
- Should this be addressed in the Bill, or by societies in their constitutions?

What we Question (3)

Appeals from decisions of the Registrar have to go to the High Court within 15 days, although this can be extended by the Court if you apply

- As we have found with the Charities regulator – an expensive process, almost impossible for most organisations
- Impossible for a community organisation to gather material, meet, decide to lodge an appeal and lodge it within 15 days
- Effectively have to go to court twice – get an extension and then get the appeal heard
- Hui E! recommends – a lower level appeal process, before going to the High Court, for Inc Socs and for Charities