



27 May 2021

Committee Secretariat  
Economic Development, Science and Innovation Committee  
Parliament Buildings  
Wellington

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## **Submission on the Incorporated Societies Bill**

The Institute of Directors (IoD) appreciates the opportunity to comment on the Incorporated Societies Bill (the Bill). The IoD is committed to raising governance standards in all areas of New Zealand business and society and we welcome efforts to modernise the legal framework for incorporated societies and the obligations of those who run them.

### **About the Institute of Directors**

The IoD is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities. Many of our members serve in the leadership of incorporated societies.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

### **Background**

Incorporated societies are an integral part of New Zealand society. Thousands of incorporated societies across New Zealand exist to promote a broad range of activities including, sport, social services, education and environmental protection.

Many societies have considerable trust reposed in them warranting high levels of probity and accountability. They are often funded by contributions from members, donors, grants or with the assistance of tax concessions. Many societies are also registered charities.

Work to update the 1908 Act began in 2010 with a review by the Law Commission. The IoD submitted on this review and also on the Exposure Draft of the Incorporated Societies Bill in 2016.

We are pleased to see the Bill progressing through Parliament as it plays an important role in supporting good governance of incorporated societies.

### General Comments

The IoD's support for the Bill is premised on the following principles:

- societies are organisations with members who have the primary responsibility for holding the society to account
- societies are private bodies that should be self-governing and, as far as possible, free from government interference and
- societies should not distribute profits or financial benefits to their members.

The changes proposed in the Bill are significant and it will be a challenge for many incorporated societies (particularly small societies) to transition to the new regime. It will be essential for the leaders of societies (and people considering those roles) to have sufficient guidance and support to ensure a successful transition for the sector and to ensure volunteers are not deterred from serving on committees and contributing to community activities.

### Specific Comments

#### **Officers' qualifications: clause. 42**

The IoD supports robust criteria against which to assess the qualifications of officers of incorporated societies. Further consideration could be given to:

- capturing a broader range of serious offences leading to disqualification (eg sexual offences). This is something that the Department of Internal Affairs is considering as part of the Charities Act review
- extending the scope of clause 42(2)(f) to include:
  - persons subject to an enforceable undertaking (provided to any relevant regulator) not to act in a governance role and
  - persons subject to orders imposed in a country other than New Zealand but in all material respects equivalent to those set out at subclauses (i) – (iv).

#### **Officers' duties: clauses. 49 - 56**

The IoD supports the expression of clear statutory duties for those who govern incorporated societies. We note the officers' duties set out in the Bill are broadly the same as directors' duties under the Companies Act 1993 (with some contextual modifications) and essentially codify the position at common law.

It will be important to communicate the nature and extent of these duties to those involved in the sector as part of any transition.

It will also be important that if/when there are changes to directors' duties under the Companies Act that (where applicable) any reforms flow through to other governance contexts such as incorporated societies.

### **Conflicts of interest disclosures: clauses. 57 – 67**

The IoD generally supports the Bill's regime for conflicts of interest disclosure. Under the Bill:

- a member of the committee who is 'interested' in a matter must disclose details of the nature and extent of the interest to the committee and in an interests register to be kept by the committee
- a person is interested if they have a direct or indirect financial interest or benefit (or if the society's rules provide that they are interested in the matter – allowing for non-financial conflicts of interests to be addressed)
- there are exclusions to being interested including if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the person
- a member who is 'interested' in a matter generally cannot vote or take part in any decision relating to the matter but can take part in any committee discussion and be present when the decision is being made (unless the committee decides otherwise)
- there is an exception that allows an interested member to vote and take part in a decision relating to the relevant matter and sign a document relating to it where all members of the committee not interested in the matter consent. If 50% or more of the members of the committee are prevented from voting, a special general meeting will be required to determine the matter
- there are consequences of failing to disclose an interest (eg members must be notified about the failure).

It is generally considered good practice for a conflicted officer not to vote on a conflicted matter (irrespective of whether this is mandated in the relevant legislation) or sign a document relating to the entry of a transaction. As noted above, the Bill allows for an exception to this where all members of a committee not interested in a matter consent. From a good governance perspective, it is critical to ensure that the use of this exception does not become the norm by default or overuse, and the importance of this needs to be highlighted in guidance for leaders of societies.

### **Financial reporting: clauses. 95 – 101**

The IoD supports flexibility in relation to the financial reporting requirements of small societies having regard to the disproportionate compliance burden that would otherwise be imposed. The minimum requirements set out in clause 97 of the Bill (which requires statements addressing income and expenditure, assets and liabilities and mortgages, charges or security interests over property) appear to provide that flexibility. However, the definition of a "small society" in clause 97(2)(b) sets the monetary thresholds too low (currently less than \$10,000 in operating payments and total assets of less than \$30,000) and the threshold should be increased. This part of the Bill should also include a mechanism that allows for further increases in the threshold over time (tracking CPI).

### **Conclusion**

We support the introduction of the Bill as a way to update and clarify the operation of incorporated societies. In particular we support the introduction of clear officers' duties and a robust conflict of interest disclosure regime. These changes should help raise the standard of governance in the

sector.

We encourage the Government to provide clear guidance material and assistance to the committees of incorporated societies on their rights, duties and responsibilities.

We appreciate the opportunity to comment on behalf of our members.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'SE', written in a cursive style.

**Selwyn Eathorne**

Manager, Governance Leadership Centre