



Submission to the Economic Development, Science and Innovation Committee for the Incorporated Societies Bill

Contact details

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This submission has been prepared by Volunteering New Zealand

Please note we would like the opportunity to speak to our submission.

About us

Volunteering New Zealand (VNZ) represents the ‘voice of volunteering’ and the 2.5 million people who volunteer within our communities across Aotearoa. VNZ is the only national organisation in New Zealand that focuses purely on volunteering. We focus on the ‘big picture’ as we are in a position to liaise, work with, and advise volunteers, our members, community and voluntary organisations, government and business sectors. This helps ensure that volunteering occurs within a positive environment where it is encouraged, fostered, and valued.

VNZ represents all volunteers who participate in volunteering activities within Aotearoa. VNZ has 90 national members, which represent 10,000 organisations. Our strategic plan has a new focus to recognise, support and measure the contribution of Mahi Aroha. Over the past 20 years, VNZ has raised the profile of volunteering, volunteer groups, and volunteer management. We promote tools to help organisations evaluate and improve volunteer involvement and effectiveness, and have best practice guidelines and competencies for managers of volunteers. Through advocacy and sharing stories we promote volunteering and its value to New Zealand society.

Introduction

Volunteering New Zealand appreciates the opportunity to make a submission to the Economic Development, Science and Innovation Committee for the Incorporated Societies Bill. In this submission, we present robust evidence to support our position on various provisions of this Bill.

This Bill directly impacts on VNZ’s work and mandate through its impact on volunteer-involving organisations, non-profit organisations, and charities that are established as incorporated societies. The overwhelming majority of community organisations (89.2%) do not have any paid employees (i.e., they are staffed only by volunteers). Of those organisations that have paid staff, 7.3% have fewer than 5 employees (measured in total headcount, not FTE). Only 3.5% of community organisations have more than 5 employees¹. This puts considerable onus on volunteers and the small number of employees.

VNZ recommends that the Bill be altered to assist in the good governance of incorporated societies without imposing unnecessary burden on small community organisations, especially in terms of compliance and reporting. We support some parts of the Bill but find some to be excessively demanding on small, volunteer-run organisations:

We support the Bill’s core principles that:

- Societies are organisations with members who have the primary responsibility for holding the society to account.
- Societies should operate in a manner that promotes the trust and confidence of their members.

¹ Statistics New Zealand (2018). Non-Profit Institutions Satellite Account report 2018

- Societies are independent bodies that should be self-governing and free from unnecessary Government regulation.
- Societies should not distribute profits or financial benefits to their members.

We support the improved clarity about the implications of incorporation, the responsibilities of Members, and definition of an Officer. We also support clause 28 which allows for tikanga and culture to be recognised in an organisation’s constitution.

Our key feedback:

- The legislation should not add governance standards to existing frameworks.
- Additional governance and compliance burden – the Bill in its current form goes too far in imposing obligations on incorporated societies in New Zealand. The new requirements will be onerous for many societies, and this may prompt many existing incorporated societies to reconsider their legal status.
- Reduce the reporting requirements on small charities. Additional reporting can make many charities fail to file their reports, and hence become liable for deregistration. (clauses 95-101)
- Clause 9: Application for incorporation: 9(e) is onerous burden for small organisations and clubs where there is no public interest in their activities; this excessive regulation undermines the principles above whereby members are responsible for holding the organisation and the officers to account.

Context

The Non-for-profit (NFP) sector in New Zealand is vibrant, diverse and active. According to Statistics New Zealand², NFP sector’s contribution to GDP in 2018 was \$8.1 billion. From over 97,000 NFP organisations, 22% – over 21,000 – are registered as incorporated societies and therefore use the Act as their legal framework³. Over 89 percent of NFPs do not have any paid staff; they completely rely on the work done by volunteers. Hence, there are a large number of volunteers in incorporated societies. However, there are challenges in the volunteering sector, with a decrease in the number of volunteers, from 1.2 million in 2013 to 1million in 2018, and concern about an ageing volunteer workforce⁴. Due to the size of this sector, incorporated societies play an important role in New Zealand communities which has been recognised by the Law Commission.

² Statistics New Zealand (2020). Non-profit institutions satellite account: 2018
<https://www.stats.govt.nz/reports/non-profit-institutions-satellite-account-2018>

³ Scott Riordan (2016). Typical Transactions in Incorporated Societies that are not Registered Charities

⁴ Volunteering New Zealand (2020) State of Volunteering Report 2020

VNZ is committed to the promotion, support and representation of volunteers and volunteering in New Zealand⁵. As most incorporated societies are made up of dedicated volunteers, VNZ supports the Bill's intention to provide clear legal guidance for the governance of incorporated societies in New Zealand.

Clause 12- Conflict of Interest

Volunteering New Zealand agrees that some provision for conflict of interest is necessary. As many small societies are generally run entirely by volunteers who have a shared interest, aspiration or hobby, the proposed requirements seem to be disproportionate. They impose an excessive burden for small societies that lack the extra energy and resources required, and hence, may be unlikely to be followed as intended by the lawmaker.

We recommend that the proposed requirements be simplified, at least for smaller societies.

Clause 28 – Bylaws, tikanga or culture, and other matters

Volunteering New Zealand supports the recognition of tikanga and culture in Clause 28 as matters that can be included in an organisation's constitution. This allows organisations to benefit from incorporating tikanga Māori concepts. Could this be further extended, with an option to include beliefs and values/Kaupapa to reflect Te Ao Māori and honour Te Tiriti o Waitangi, as VNZ has done in its Constitution?

Clause 33 – Society must give Register copy of amendment and amended constitution

Clause 33 of the Bill requires a society to ensure that a copy of an amendment of its constitution, and a copy of the constitution as amended, is given to the Registrar of Incorporated Societies within 20 working days after the amendment is approved at the general meeting. On the other hand, Section 40(1)(e) of the Charities Act requires all registered charities to notify changes to their constituting document to Charities Services within 3 months of the effective date of the change. This requirement to notify two government agencies appears to be counterintuitive in practice and many incorporated societies that are also registered charities only notify one government agency of changes to their constitutions.

We recommend that Charities Services and the Registrar of Incorporated Societies explore possible frameworks that allow single notification of amendments to the constitutions of incorporated societies that are also registered charities.

Clause 47 – Notice of appointment and of other changes relating to officers

Clause 47 of the Bill allows 20 working days for a society to notify the Registrar of any changes relating to officers. On the other hand, Section 40(1)(c) and (c)(a) of the Charities Act require

⁵ VNZ's Constitution

all registered charities to notify changes relating to their officers to Charities Services within 3 months of the effective date of the change.

We recommend that Charities Services and the Registrar of Incorporated Societies explore possible frameworks that allow single notification of changes in officers of incorporated societies that are also registered charities.

Clause 52 – Officer’s duty of care

Clause 52 of the Bill requires an officer to exercise the “care and diligence” that a reasonable person would exercise in the same circumstances. This is comparable to the “care, diligence and skill” for directors in the Companies Act, and to “the care and skill that is reasonable in the circumstances” in the Trusts Act 2019.

We support the omission of the word “skill” from clause 52. As has previously stated by the Law Commission, many governance roles in societies are taken up by volunteers who are not necessarily trained for these roles. While it is reasonable to assume those running the society meet an objective test of diligence and care, officers of societies may be chosen for reasons other than their management competence and skills. For instance, officers might be elected or appointed because of the support of the members, because it is their turn, or simply because no one else is willing or available for the role.

Clause 57-67– Conflict of interest disclosure rules

The Bill is heavily focused on financial conflicts of interest. **We recommend** inclusion of other types of (personal) interests which can, and often do, lead to conflict within organisations.

Clause 87-91– Conflict of interest disclosure rules

These sections are relatively technical. Committee members and officers of small incorporated societies might face difficulties in interpreting and applying technical aspects of this section.

We recommend this section be clarified and re-written in plain English starting with allowed types of insurance and then the exceptions; this way, the committee members and officers of small incorporated societies (volunteers who do not necessarily have extensive technical knowledge and skills) can comply with these provisions.

Clause 95 to 101 – accounting and reporting standards

Volunteering New Zealand recommends a clarification that incorporated societies that are also Registered Charities do not need to report to the Registrar of Incorporated Societies as well as Charities Services. This should be explicitly mentioned much earlier in this section. In addition, the term “charitable entity” should be replaced by “registered charity” which is easier to understand and more relatable by the sector.

We do not support additional requirements of accounting and financial reporting for incorporated societies, especially the smaller ones. This would be an unnecessary compliance burden for these organisations that might not necessarily have the required skills, resources, and time amongst their volunteer committee members and officers.

General comments re- financial reporting

- In practice, additional financial reporting will result in higher noncompliance. Some community organisations will fail to provide compliant reports to the government not because they have anything to hide, but because of lack of skills and confidence in filling government forms.
- Some of the provisions of the Bill increase the risk of misappropriation of funds; the additional requirement to provide reports to government may result in community groups to decide not to register or to cease registration. Due to current Anti Money-Laundering legislation, these groups are not able to open a bank account. Running community groups with a personal account – or reliance on cash transactions – will increase the risks of misappropriation or loss.
- The additional burdens may create a disincentive to form societies. The majority of organisations (89%) are staffed entirely by volunteers. Volunteers aspire to help and improve their communities; financial and governance reporting acts as a barrier especially for small societies.

Specific comments re- Clauses 95 to 101: the proposed requirements re accounting and reporting standards

- Volunteering New Zealand appreciates the changes compared to the Exposure Draft of this Bill with the intention of recognising the difficulties of financial reporting for small community organisations. However, the threshold of \$10,000 for total operating payments in (2)(b)(i) is not realistic.
- In order to increase simplicity, clarity and consistency across different pieces of legislation, we recommend that small societies financial reporting be aligned to the External Reporting Board's Tier 4 amount of \$125,000 annual operating payments. Alternatively, small societies can be compared to small businesses, that are only required to register for GST for annual turnover of \$60,000 or more.

Concluding comments

In summary, Volunteering New Zealand supports the intention of the Bill to update the outdated legislation governing incorporated societies. We request that the Committee considers the specific circumstances of small community organisations and charities that are registered as incorporated societies. These organisations are almost entirely powered by volunteers. Of those who have paid staff, staffing levels are low. Smaller incorporated

societies are run by passionate, committed people who want to focus on their work and not be faced with excessive reporting and administrative burdens. Hence, we request that the proposed Bill does not impose any unnecessary new or additional reporting and administrative requirements on these organisations.