



## Submission on the Exposure Draft of the Incorporated Societies Bill

### Introduction to Alzheimers NZ

1. Alzheimers NZ represents people affected by dementia at a national level, by: raising awareness of dementia; providing information and resources for people with and affected by dementia; advocating for high quality services for people with and affected by dementia; and promoting research about prevention, treatment, cure and care of people affected by dementia.
2. We support a federation of 21 local Alzheimers NZ organisations throughout New Zealand, each of which is a member of Alzheimers NZ; and each of our 21 members is a separate legal entity.
3. Alzheimers NZ in an Incorporated Society, as are 19 of the 21 local Alzheimers NZ organisations throughout New Zealand. The remaining two Members are Charitable Trusts

### Executive summary

4. Alzheimers NZ recommends that in drafting the Incorporated Societies Bill:
  - i. the Exposure Draft and the scheme of standard provisions, in particular, be enhanced to provide for a more comprehensive and sophisticated regime, through a tiered approach to mandatory constitutional provisions and optional standard provisions, to better reflect the range of New Zealand's incorporated societies;
  - ii. the core definitions in the Exposure Draft be reviewed to include broader concepts such as 'governing body' and 'board member', as well as 'committee' and 'officer', as direct equivalents – other than for specific concepts such as the proposed new 'contact officer'; and
  - iii. the Exposure Draft be reviewed and modified to deliver language that is plain English and fit for purpose, with a particular focus on accessibility for smaller societies.
  - iv. explicit provision be made to enable an incorporated society with members that are themselves incorporated entities to provide shared services, contracting donor programmes and to support the ongoing financial viability of their members, as long as the financial benefit that accrues to those members is a means to furthering the charitable purpose of those societies (members); and
  - v. provision be made requiring each society to have sufficient members to govern the society and hold it to account, taking into account the size, purpose and nature of the organisation – with the current approach of an arbitrary number of members as the default position only.

## Alzheimers NZ submission is in three parts

5. We welcome the opportunity to participate in the consultation process on this exposure draft.
6. Incorporated Societies play an essential role in New Zealand's civil society. They allow for a sense of participation and belonging in local community affairs, provide the corporate and legal structure to support significant service provision, without which our communities would be poorer and the burden on the taxpayer considerably greater, and provide some legal protection for those involved.
7. Alzheimers NZ has endeavoured to reflect this wider perspective in its submission, as well as the particular needs of Alzheimers NZ and its 21 members.
8. Our submission is in three parts. In the first part, we provide an overall comment on the direction of the changes set out in the exposure draft. In the second part, we set out a small number of reservations that we have about some aspects of the approach adopted in the exposure draft. In the third part, we identify some problems created through the Exposure Draft for incorporated societies that are 'federations', where we consider changes to the Bill are required in order to improve its effectiveness for Alzheimers NZ and other incorporated societies whose members are incorporated entities, rather than individuals.

### Part One – we support the general direction of the changes set out in the Exposure Draft

9. Alzheimers NZ supports the direction of reform, and is pleased to see the clear 'line of sight' between the Law Commission's findings, the Government's response to the Law Commission's findings, and the content of the Exposure Draft. There is no doubt that there is a need to replace the 1908 legislation.
10. We agree with the principles behind the law of incorporated societies – that societies:
  - are organisations run by their members;
  - should not distribute profits or financial benefits directly to members ... [and] ... that individuals should not personally profit financially from the activities of societies; and
  - are private bodies that should be self-governing and free from unnecessary state interference.<sup>1</sup>
11. Alzheimers NZ supports the recognition that the task of organisational governance – the maintenance of public trust and confidence in decisions made by and for organisations – is in many respects the same whether in the private sector, the public sector, or the not-for-profit sector.
12. This recognition leads us to general support for most provisions in the Exposure Draft, including those relating to: the duties of the 'officers' of incorporated societies; dealing with conflicts of interest; personal liability; the consequences for third parties who deal in good

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<sup>1</sup> Office of the Minister of Commerce *A New Act for Incorporated Societies – Government response to the Law Commission's report* [Cabinet paper, 2014]

faith with societies that act outside their rules; arrangements for merger and dissolution; financial reporting; and processes for the resolution of complaints and grievances.

13. We understand that individual incorporated societies will need time to make the transition to the new legislation, and agree with the proposed transition timing. We, along with our members, are already working to modernise our constitutions in line with the approach outlined in the Exposure Draft, and at our AGM last weekend, our members adopted a new constitution for Alzheimers NZ drawing heavily from the Exposure Draft and draft standard provisions, replacing the previous outdated constitution in its entirety.

## **Part Two – we have reservations about some aspects of the Exposure Draft**

14. Alzheimers NZ has reservations about the ‘one-size-fits-all’ approach adopted in the Draft.
15. The Exposure Draft correctly makes the point that among the 23,000 registered incorporated societies are organisations as diverse as community and health service providers, such as Alzheimers NZ and its members, religious groups, citizens advice bureaux, child care centres, residents associations, sports clubs and political parties (see Annex, p30). That diversity of focus and purpose is just as wide when the relative size of registered incorporated societies is considered, from very small (less than \$20,000 annual turnover) to multi-million dollar enterprises.
16. As a consequence of this diversity, the Draft goes on to say that a consequence is that determining a single model constitution would be too hard, and that instead the Minister may issue standard constitutional provisions which *may* be used by societies (clause 33, our emphasis).
17. Similarly, and sensibly, differences in the financial size of societies will give rise to different financial reporting responsibilities (clause 83 and 84, para 103 of the Draft).
18. These features of the approach in the Exposure Draft are helpful, but in our view are also limited. Alzheimers NZ considers that a more ambitious approach for reflecting the wide diversity of the organisations incorporated under this legislation would pay dividends.
19. There is a tension in reforming the legislation – to accommodate the large, often New Zealand-wide societies whose governance standards should be equivalent to corporate bodies in the private and public sectors; and at the same time not to make the obligations for the small and perhaps less formal societies too onerous.
20. The External Reporting Board has promulgated a tiered approach to accounting standards for not-for-profits, which came into effect from April 2015.
21. Application of this general approach for incorporated societies would be of great benefit in supporting good governance across the wide range of incorporated societies – retaining the essential principles of change relating to the domains outlined above in para 13 (the duties of the ‘officers’ of incorporated societies, dealing with conflicts of interest, etc), but expressing them in ways that better reflect the nature and size of the risks involved.
22. This could – and in our view should – be reflected in tiered sets of standard requirements and provisions to be applied and drawn on by organisations of sharply different size, which may be included in the legislation itself or in optional standard provisions. Tiered standard

requirements could – and should –also include standard provisions for those organisations that are (or seek to be) both incorporated societies and registered charities.

23. The single, broad approach set out in the Exposure Draft creates the risk of endeavouring to suit all (across the broad diversity that is already acknowledged) but in practice suiting few. The underlying issues behind the that concern that determining a single model constitution would be too hard still remain in proposed legislation and draft standard provisions – there is no ‘permission’ or guidance as to what might be appropriate across the range of standard provisions for societies of different size.
24. The following two examples serve to illustrate the problem that the current singular approach creates.

***Example One – the language of governance***

25. The language of the sections of the Bill relating to governance diminishes the contribution of larger or more complex societies, in particular, by intentionally reducing all to the ‘lowest common denominator’. The language of ‘committees’ and ‘officers’ does not recognise the equivalence of the company director and members of the governing bodies of incorporated societies. Similarly, the implied proposal that all committees (boards) have a secretary and treasurer drawn from their members fails to recognise the critical importance of maintaining a strong, visible separation between governance and management, especially in larger organisations. Even though the Exposure Draft states that the role of an officer is “closely aligned’ to the meaning of director in the Companies Act 1993” (para 61), the language and some of the proposed officer positions sit quite some distance from those of comparably sized, and smaller, companies.
26. The standard provisions, while optional, exacerbate this concern by offering a ‘committee’ composition that is well out of step with modern corporate governance arrangements, and in addition does not recognise the role that organisational managers, chief executives, chief financial officers etc (rather than governors) play. (p32 of the draft)
27. In our experience, to get the skill set needed by incorporated societies, we need good governance experience to meet societies’ serious and important governance obligations. ‘Committee member’ and implying that good practice for incorporated societies is for committee members also act as the committee secretary send the wrong signal.
28. Further, New Zealand needs people to see serving on not-for-profit boards as comparable to, or at least as a stepping stone towards serving on corporate boards – and vice versa. The proposed legislation in the Exposure Draft (and draft standard provisions) is not consistent with this.
29. There is also a risk with the language used in the Exposure Draft and draft standard provisions that it sends a strong message to the very people we want to attract into significant not-for-profit governance roles that those roles are not of the same order as the equivalent ones in the private and public sectors.

### ***Example Two – the need for plain English and less complexity***

30. By contrast, our reading of the Exposure Draft (and draft standard provisions) is that, overall, much of the language and some content is difficult and complex (or highly detailed) and may be too much so for lay readers, with the risk of the unintended consequence of discouraging smaller societies from retaining registration and new groups from seeking the protection of incorporation.

### **Alzheimers NZ recommendations 1-3**

31. Alzheimers NZ recommends that in drafting the Incorporated Societies Bill:
- i. the Exposure Draft and the scheme of standard provisions, in particular, be enhanced to provide for a more comprehensive and sophisticated regime, through a tiered approach to mandatory constitutional provisions and optional standard provisions, to better reflect the range of New Zealand’s incorporated societies;
  - ii. the core definitions in the Exposure Draft be reviewed to include broader concepts such as ‘governing body’ and ‘board member’, as well as ‘committee’ and ‘officer’, as direct equivalents – other than for specific concepts such as the proposed new ‘contact officer’; and
  - iii. the Exposure Draft be reviewed and modified to deliver language that is plain English and fit for purpose, with a particular focus on accessibility for smaller societies.

### **Part Three – problems created for ‘federations’**

32. Alzheimers NZ is a federation and its purpose and governance arrangements do not fit easily with the Exposure Draft’s general model of an incorporated society, which comprises individual members. This underlying presumption that members are individual has the unintended consequence of creating problems for us and all other umbrella organisations for incorporated entities, in at least two ways, as below.

#### ***Prohibition on operating for the financial benefit of members***

33. We agree that *individual members* should not personally profit financially from the activities of societies.
34. As other umbrella societies for federal structures will, Alzheimers NZ provides a range of services and activities that have financial benefits for our members. These services range through shared service initiatives, such as insurance policies, technology and telecommunications contracts, co-ordination of web-based donations, and the infrastructure to co-ordinate and support a donor programme.
35. Indeed, we have made a commitment to our members to explore further opportunities for shared revenue generation, including raising and distributing funds. In addition to those developments, it is also conceivable that Alzheimers NZ might be involved in negotiating national-level contracts for services to be delivered by members, as already occurs in some federations.

36. The financial benefits involved, while critical to our shared successful operation, are not our *raison d'être*; they are means to the end of strengthening members so that they (and therefore we) are better positioned to deliver on our core business, which remains charitable.
37. Although we note that the Exposure Draft allows for the kinds of shared services we provide, the language of the Draft in terms of financial gain generally is difficult to follow, and particularly difficult to follow and consider the implications of applying it to umbrella organisations like Alzheimers NZ.
38. We refer in particular to the interaction between clauses 22(1), (2) (3) and (4). If not clarified to enable umbrella organisations to undertake revenue generation activities on behalf of (or in co-operation with) its members will create considerable viability risks for a number of incorporated societies.

#### ***Minimum number of members***

39. We recognise the intention that there are sufficient individual members to govern each society and to hold its governing body to account. Alzheimers NZ however, has no individual members, comprising only incorporated entities.
40. We also recognise that the Exposure Draft regards each corporate member, such as the 21 members of Alzheimers NZ, in a sense as 'equivalent' to three individual members, meaning that a minimum of four incorporated members are required in order to meet the minimum membership test (clause 13 refers).
41. It is conceivable however, that our members could, for sound reasons, decide to merge to the extent that there are (say) only three – one for the South Island and two for the North Island. That change in the structure of our members would have the unintended consequence of putting Alzheimers NZ outside the law, as it would then have only nine 'equivalent' members, even though it operated appropriately according to its constitution.
42. It is difficult to settle on a defensible formula for member numbers – whether individuals or incorporations – without appearing arbitrary. We urge instead consideration of a principled approach, which should include a legislative requirement that each society must have sufficient members to govern the society and hold it to account, taking into account the size, purpose and nature of the organisation.

#### **Alzheimers NZ recommendations 4-5**

43. Alzheimers NZ recommends that in drafting the Incorporated Societies Bill:
  - iv. explicit provision be made to enable an incorporated society with members that are themselves incorporated entities to provide shared services, contracting donor programmes and to support the ongoing financial viability of their members, as long as the financial benefit that accrues to those members is a means to furthering the charitable purpose of those societies (members); and
  - v. provision be made requiring each society to have sufficient members to govern the society and hold it to account, taking into account the size, purpose and nature of the organisation – with the current approach of an arbitrary number of members as the default position only.