

SUBMISSION TO THE MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT

EXPOSURE DRAFT: INCORPORATED SOCIETIES BILL

1 The New Zealand Council for Civil Liberties Inc makes 3 points in relation to the Exposure Draft, as follows:

1 clause 24(4) defines “not-for-profit entity”. The practice of defining something in terms of what it is not, is both contradictory and inaccurate. In order to remain in business, or as a viable entity, it is essential for a society [or trust] to make a profit, which is usually described as a “surplus”. The difference between a company and a society is that a company has the making of a profit as its primary purpose, whereas a society has the making of a profit as a secondary (or even tertiary) purpose. A better, and more understandable, definition for a society is to describe it in affirmative terms as a community organisation [or something similar]. I appreciate that this perspective is probably viewed by a minority, and is thus likely to gain little traction. Even so, it is useful to draw attention to this strange situation.

A possible “compromise” is to restate clause 24(4)(c) as follows: “a society ... etc... whose funds are appliedetc....in New Zealand, and is not carried on primarily for the private benefit of an individual”. In essence, this has simply transposed the order in which the definition has been couched, but its effect is to relegate private benefit to a secondary position within it.

2 clause 75 sets out how a quorum for holding general meetings is determined. When a society has a relatively small membership [as NZCCL does], and those members are spread around the country [as applies to NZCCL], it will be too challenging to get them together, even when using audio, audio and visual, or electronic communication, in sufficient numbers to ensure that a quorum is achieved [10% of members as set out in the standard provisions draft]. Our reading of clause 75(2) is that participation in [and/or attendance at] the AGM by electronic communication can be achieved by means of a proxy, sent by electronic means, indicating that the member signifies their agreement to their attendance at the meeting by virtue of that proxy. Where there is any specific matter to be dealt with at the meeting, and which requires prior notification to be given to all the membership, such a matter can be incorporated into the proxy arrangement when it is appropriate. In the event that there may be any doubt about this practical possibility, we suggest that the situation be made clear by including a further sub-clause as follows: “for the purpose of signifying attendance at the annual general meeting a member may do so by proxy sent by electronic means”.

While it lies within a society's power to write its own rules as to how a quorum is determined, it is also appropriate to comment on the Annex containing the Standard provisions for constitutions. In those circumstances where the Registrar declares, in terms of clause 13(2) of Schedule 1, that a society must be treated as having adopted standard provisions, the impact of Standard provision 9.7 will set a difficult requirement, particularly for a society which has circumstances similar to those which apply to NZCCL. A lower figure than the 10% indicated will be less oppressive, although we make no specific suggestion as to what that figure might be. The same rationale also applies to the preceding Standard provision 9.6.

3 Standard provision 5.3 also appears to place a potentially oppressive regime on a small society in circumstances similar to those of NZCCL. While the primary requirement set out in clause 37.1, that every society must have a committee of at least 3 members, Standard provision 5.3 describes 4 positions that must be held by a committee member. One way to lessen any oppression in this regard is to state that the Secretary and the Treasurer positions may be held by the

same committee member.

2 We are available to discuss these 3 proposals further in the event that is considered desirable.