



NEW ZEALAND ASSOCIATION RESOURCE CENTRE TRUST

Te Ope Rauemi O Aotearoa

## **Draft Incorporated Societies Bill**

### **Submission from**

### **New Zealand Association Resource Centre Trust**

Trustees of the New Zealand Association Resource Centre Trust are generally satisfied that the Bill covers the situations and contingencies in membership based entities to enable New Zealand incorporated societies to function as intended without being overly prescriptive, but with one exception.

#### **Removal of Secretary**

The Bill extinguishes the position of Secretary and in this respect follows the example of the Companies Act. While there are some similarities in the administrative and compliance functions, the distinguishing features are the predominance of privately held companies employing below twenty and accountable to a small number of stakeholders with low compliance thresholds. Voluntary associations have more in common with public companies, are member owned and more complex administratively. Unlike for-profit corporations they frequently lack the capability of experienced company directors in the make-up of their elected boards. Voluntary governance is often devoid of the essential skill sets and is more reliant on competent executive support and advice in direction and compliance than the average small to medium enterprise. It requires a suitably prepared executive officer with responsibility for the organisation's management and regulatory compliance that is unlikely to be achieved by a panel of volunteers more concerned with the interest sector as members and beneficiaries. These functions are better served with the appointment of an Executive Officer, who is not a voting member of the Board.

#### **Executive Trustee Option**

Many incorporated societies are registered charities. Charitable trusts can be held up as examples of collective responsibility and there is no executive prescription in the Charitable Trusts Act or the Charities Act. Many charities have adopted a voluntary defining governance structure with an executive trustee and the employment of a chief executive. This may be worthy of consideration in a future review.

#### **Succession of Board Members**

Another consideration deserving attention is that of succession in voluntary organisations. With shorter terms of office becoming the norm rather than the exception it impacts on the ability of boards to maintain continuity in environmental awareness, key services and relationships. There are similarities with the Government political system that depends heavily on the continuity provided by civil servants both in providing ongoing of public services regardless of changes in ministerial portfolio holders and in acting as advisers to new appointees.

It requires an employed or contracted person working with the board in the overall management of the organisation to ensure that they receive the necessary strategic information and comply with statutory and member requirements. It demands a structure that allows for regular meetings, reporting and effective communication with stakeholders be they members, supporters, sponsors or government regulatory agencies. There is sufficient practical experience among NZARC trustees to show that this is not achievable in an entirely volunteer driven arrangement.

Most non-profit sectors are heavily reliant on volunteers. This can be a challenge in dealing with compliance issues and would place additional legal responsibilities on volunteer directors more concerned with serving their industry or special interest in which they are experienced without sharing the additional compliance responsibilities with its attached liabilities. While the appointment of a Compliance Officer would not absolve the board from ultimate responsibility in the event of serious defaults by the appointee, his/her role with support from a better qualified executive officer will go some way to mitigate the level of non-performance risk.

It can be argued that many small incorporated clubs and community organisations cannot afford a secretary outside the board. It is not intended that what is suggested necessitates a salaried position. As is the case with many small entities, and is prescribed in the existing Act, is to have a position by this name occupied if necessary by a volunteer member of the committee entrusted with its executive function. What is envisaged in these recommendations is the retention of this office by a different name and the holder of the office acting as a link between the board or committee and the appointed Executive Officer, who can be a member of the society serving in a voluntary capacity. What it aims to achieve is a separation of the governance and executive functions, which has its foundations in the political system of most democratic countries.

### **Recognition of Volunteers and Board Members**

Given the size, diversity of interest and revenue flows of the third sector, there must be clear rewarding career opportunities with proper recognition given to the people employed in it. To achieve this involves the achievement of a formal qualification specific to the management of a non-profit voluntary association as is the case in the USA and Canada with the attainment of the CAE certification. Much has been achieved in this regard by the Australasian Society of Association Executives, the New Zealand Trustees Association and Governance New Zealand (formerly Institute of Chartered Secretaries and Administrators) in providing professional development opportunities with attached membership benefits to their members. Eliminating the statutory office of association secretary and substituting it with a collective Committee, whose functions and duties are not described in the Bill, must be seen as a retrograde step. It amounts to shedding all responsibility and making no one or everyone accountable.

The Draft Bill also does not state specifically that every elected board or committee member for the purpose of directing and managing the affairs of the society is an Officer. In this regard it falls short of recognition of responsibility pursuant to definition in the current Act and deserves further consideration. As matters stand many incorporated societies are experiencing difficulties in filling governance positions on account of perceived time commitments. Adding compliance to the leadership expectations of elected officers will provide a further disincentive to serve on boards.

The new Act should be a vehicle for encouraging the development of a strong association sector based on a prescription for solid foundations, good governance and sound management, without discouraging volunteering in the service of its constituents and for the benefit of our wider society.

The trustees of the New Zealand Association Resource Centre submit that there is room for improvement with

- The addition under s.37(1) of ***who shall be its Officers***
- A rewording to ***Compliance Officer*** under s.37 (2) and in subsequent clauses 43 and 44.
- It is further recommended that s.38 (1) be amended with insertions to read: The operations and affairs of the Society may be managed by an ***Executive Officer appointed by the Committee and Working under its supervision.***

It is appreciated that the Bill makes allowance for a greater break-down in definition specific to the needs and preferences of a society in its constitution. However, understanding of its provisions by volunteer directors should not require interpretation by professional consultants and advisers. We applaud other contributors and the drafters of the Bill for producing a prescription that covers most situations in the life of an incorporated society. Favourable consideration for inclusion of these and other constructive recommendations will achieve the desired outcome to the satisfaction of most practitioners and advisers in all branches of the voluntary sector.