

28 May 2021

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

Emailed to: [edsi@parliament.govt.nz](mailto:edsi@parliament.govt.nz)

Dear Committee Members,

## **ICNZ submission on the Incorporated Societies Bill**

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Thank you for the opportunity to submit on the Incorporated Societies Bill (**the Bill**).

ICNZ represents general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

Please note that these are ICNZ's views alone, as an incorporated society, and are not the views of our members.

Contact Jane Brown ([jane@icnz.org.nz](mailto:jane@icnz.org.nz) or 04 495 8008) if you have any questions on our submission or require further information.

### **Submission**

ICNZ welcomes the introduction of the Bill to update and improve the Incorporated Societies Act (**the Act**). We agree that the Act is now out-of-date and long overdue for review. While ICNZ does not have any concerns about our own ability to meet the proposed obligations in the Bill, we set out several matters below which we believe are worthy of further consideration to ensure that the legislation is fit for all manner of incorporated society without being unduly onerous on some.

We also take this opportunity to address the indemnity and insurance provisions in the Bill which we do not believe are drafted with sufficient clarity.

#### *The Bill is more prescriptive than the current Act*

ICNZ is pleased with the addition of clause 3 which sets out the purposes of the legislation and in particular, the goal of achieving high-quality governance for societies. Members of a society must be able to trust that the society is being run appropriately, and society committees must feel confident in their roles and responsibilities. Accordingly, we believe that the inclusion of obligations about dispute resolution and conflicts of interest, and the new section on officers' duties, are sensible and appropriate additions to the legislation.

Despite the above comments, we note that the Bill is very prescriptive in comparison to the Act. For example, there are far more requirements as to what a constitution must contain under clause 26 than is currently required under section 6 of the Act. There are also a number of wholly new obligations such as those already mentioned in the paragraph above. While this should not be problematic for an industry body such as ICNZ, we question whether the obligations could be particularly onerous for those societies which are smaller or who do not have the same resources at their disposal (for example, ICNZ has the ability to draw on expertise and resources from our members to assist in managing our governance obligations). The level of prescriptiveness also appears to conflict with the purpose set out in clause 3(d)(iii) of the Bill which states that societies should be self-governing. Contrary to the purpose in clause 3(d)(iii), we would expect that because of the increased legislative requirements, the remaining areas for self-governance would correspondingly decrease.

In relation to the increased prescriptiveness of the proposed legislation, the explanatory note to the Bill says that, on a direct comparison with the Act, the Bill's obligations might appear onerous. This is due to the incorporation of case law which has built up during the Act's lifetime. We note however, that this is the opportunity to depart from that case law if it is not deemed appropriate. Drafters should ensure that they are not including provisions in the Bill simply because they were considered by a court, but because they will be meaningful additions to the regulation of incorporated societies.

We also question whether the Government's intention is that the duties and obligations of officers of an incorporated society will eventually mirror those of company directors under the Companies Act 1993. On the basis of this Bill, it appears that there is a definite move towards greater alignment between the two regimes. Given the types of entities that would structure themselves as an incorporated society rather than a company, we would have expected that the incorporated society regime would be subject to less onerous obligations and greater flexibility in their ability to self-govern.

#### *Further clarity is needed around the definition of "officer"*

One area of the Bill which ICNZ has identified as requiring further clarification is the definition of "officer" in clause 5. The second part of the definition states that "a person occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society" would be considered an officer under the Bill. It goes on to give two examples of a treasurer or a chief executive. ICNZ has a generally linear structure with a chief executive, five managers, a legal counsel, and one administrative support person. While the chief executive would clearly be considered an officer, it is not clear whether the remaining staff would also fall within the definition. While the job titles might not necessarily suggest that they meet the definition, the tasks they carry out, combined with the level of engagement with ICNZ members and directors of the ICNZ Board, could be seen as an ability to exercise significant influence over the management or administration of the organisation.

For clarity, it would be helpful if the Bill could include further examples of what would meet the definition of "officer", particularly as incorporated societies' size and structure will vary enormously. As there are considerable responsibilities on an officer, it is imperative that who will be considered an officer for the purposes of the legislation is clear.

#### *Indemnities or insurance for officers, members, or employees of society*

The indemnity and insurance provisions in Part 3, Subpart 6 of the Bill are new and appear to be based on the equivalent provisions in the Companies Act. While we appreciate that there is a need for consistency, we do not believe that it should override clarity, and at present, we do not believe that this subpart is easily comprehensible. Unless the indemnity and insurance provisions are clearly

drafted, some society members may struggle to understand their intent and the limitations they place on indemnification and insurance. On our reading, indemnity and insurance is permissible other than for where there are claims between the society and a member, officer, employee etc. (which in insurance terminology, is commonly excluded from cover via what is known as an insured versus insured exclusion). If this is the intention behind the provisions, we believe that it should be more clearly expressed so as to avoid any confusion or misplaced belief that a society holds insurance for something which is not permitted to be insured at law.

#### *Directors and Officers insurance costs may increase*

It is possible that with the introduction of additional duties for officers of incorporated societies in the Bill, that Directors and Officers insurance premiums may increase. Insurers will need to price for both the increased level of risk created by additional statutory duties and the uncertainty that will exist until it is clearer how the new obligations will be applied and what the costs involved might be.

#### *Time will be needed to ensure compliance with the new requirements*

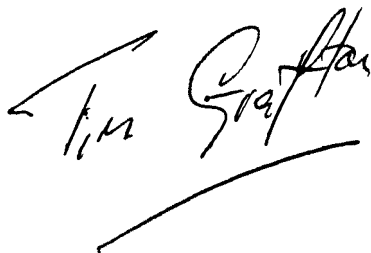
While ICNZ is comfortable with the proposed changes under the Bill, and already has some of the requirements incorporated into our processes, the time that will be required to review and update the existing ICNZ Rules should not be underestimated. ICNZ is therefore appreciative of the transition period under Schedule 1 of the Bill, as the extensive changes to the legislation will require a thorough review of the current Rules.

We hope that the Ministry of Business, Innovation, and Employment's Constitution Builder will be updated to reflect the proposed new requirements in a timely manner as it will be important to provide resources to help incorporated societies, particularly small societies or those with less resources, to comply with the legislative requirements for a constitution. We also believe that efforts should be made to educate societies about their new obligations rather than taking a punitive approach to initial transgressions.

## **Conclusion**

Thank you again for the opportunity to submit on the consultation document. If you have any questions, please contact our Legal Counsel on (04) 475 8008 or by emailing [jane@icnz.org.nz](mailto:jane@icnz.org.nz).

Yours sincerely,



**Tim Grafton**  
Chief Executive



**Jane Brown**  
Legal Counsel