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Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
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By email: edsi@parliament.govt.nz

Submission in Response to: **Incorporated Societies Bill**
From: **Australasian Society of Association Executives (AuSAE)**

Introduction
The Australasian Society of Association Executives (AuSAE) is grateful for the opportunity to make a submission on the Incorporated Societies Bill (the Bill) on behalf of our members, and generally supports the intent to address the fact that the Incorporated Societies Act 1908 (the 1908 Act) is out of date and insufficient in some respects.

Background
AuSAE is the peak not-for-profit professional society for association executives operating in New Zealand and Australia. AuSAE represents over 10,000 individual leaders working in a wide variety of not-for-profit organisations throughout both countries.

AuSAE's purpose is to foster a strong and robust Associations' sector in New Zealand and Australia, through providing professional development, support and networking opportunities for existing and emerging Association leaders. In New Zealand, AuSAE currently represents over 2,000 individuals and over 300 professional associations in the not-for-profit sector. An outline of the extent of AuSAE's membership is attached to this submission as Appendix 1.

The majority of AuSAE's member associations in New Zealand are set up as incorporated societies and therefore AuSAE has a strong interest in the Bill on behalf of our members.

General policy statement
The Bill's Introduction makes the point that incorporated societies and their members make a major contribution to civil society and to New Zealanders' well-being. AuSAE strongly agrees with this assertion as our members cover every segment of New Zealand's society, its communities and the economy. They are not only vitally important for ensuring New Zealanders' health and wellbeing, but also the financial wellbeing of the country through the management of every sector of the economy, and in providing the assurance of professional standards of competence and conduct that apply to their members.

AuSAE supports the intent of the Bill that aims to implement a more modern framework of basic legal, governance, and accountability obligations for incorporated societies and those who

run them. However, AuSAE notes that implementing the provisions of the Bill will provide more work for the legal profession in the short term as societies engage professional advice to ensure they are in compliance with the Bill's requirements. AuSAE submits that many smaller or community-based volunteer-run societies will not have the resources to be able to access this advice.

The Bill's Introduction also points out that there are about 24,000 incorporated societies currently on the Incorporated Societies Register (the Register). The range of incorporated societies within those 24,000 is vast. There are many that are professionally run by association executives who have developed robust careers within the sector, such as those who are AuSAE members. However, there are many more societies that are being run for the good of their local communities by people who are volunteers and who give up their time to provide amenities and services to those communities.

AuSAE is concerned that the Bill, in its current form, is very prescriptive and applies a one-size-fits-all approach to the control of incorporated societies that largely removes the ability that exists under the 1908 Act for societies to manage their own affairs.

AuSAE therefore submits that a more nuanced approach to the regulation of incorporated societies should be seriously considered to allow for the Bill to apply less onerous requirements on smaller or more volunteer-based societies. This is particularly so when the penalties for offences under the Bill, even those of more minor infringements, are substantial particularly for societies run by volunteers.

Specific feedback on the Bill:
With respect to the contents of the Bill itself, AuSAE has the following specific feedback to offer:

5(1) Interpretation:
AuSAE suggests that the definition of the word "committee" in the Bill's Interpretation section is too narrow. Many professional societies, such as those represented within the membership of AuSAE, are also governed professionally with the establishment of a Board and clear delineation between the governance of the organization and its management.

AuSAE therefore submits that the definition of "committee" or the governing body of the society should also allow for the society to be governed by a Board as defined in S127 of the Companies Act 1993 and that the Bill should be amended throughout to refer to both a "committee" or a "Board" as the governing body of the society.

AuSAE submits that the interpretation of what constitutes a person who is an "officer" of the society is too prescriptive in its current definition in the Bill.

At present, the requirement is that an "officer" is "*a natural person who is a member of the committee; **and** a person occupying a position in the society that allows the person to exercise*

significant influence over the management or administration of the society (for example, a treasurer or a chief executive);".

AuSAE submits that the requirement should be that the "officer" is a natural person who is a member of the committee; **or** a person occupying a position in the society that allows the person to exercise significant influence etc. The basis for this submission is to allow for the wide range of ways in which the 24,000 New Zealand societies currently manage themselves.

Smaller societies may well have natural persons who are both members of the committee and someone who occupies a position in the society that allows them to exercise significant influence over the management or administration of the society by being the society's Treasurer for example.

Larger societies, however, will have persons who occupy a position in the society that allows them to exercise significant influence on the management or administration of the society by being the society's Chief Executive for example but who does not hold a position on the society's committee or Board.

The definition should therefore allow for the officer to be either a member of the committee or Board of the society **or** an officer or employee who does not sit on the society's committee or Board.

Part 3: Administration of societies Subpart 2 financial gain

22 Society must not be carried on for financial gain of its members
Once again AuSAE has concerns with the way in which this clause is worded where it states in S22(2) that "*An **officer** of a society commits an offence*…" given the concern stated above with respect to the interpretation of the word "officer" in the Bill. AuSAE believes it should be clear that "an officer" in this section refers both to committee or Board members of the society and an officer or employee who does not sit on the society's committee or Board.

24 When society does not have financial gain purpose
AuSAE appreciates the inclusion of S24 specifying when a society does not have a financial gain purpose. However, AuSAE suggests that S24(1)(b)(i) would provide for more clarity if it was worded as follows: "*a body corporate that is not carried on for the **financial gain** of any individual;"* rather than using the words "*private pecuniary profit*".

30 Society may amend constitution
AuSAE submits that the wording of S30 is not entirely consistent with the Bill's stated purpose of bringing the legislation of the governance of New Zealand's incorporated societies more up to date than is the case under the 1908 Act.

Specifically, AuSAE submits that the requirement in S30(2)(a) that every amendment to a society's constitution must be "*in writing"* and S30(2)(c) that every amendment must be

"signed by at least 2 members of the society" is not consistent with the aim of modernizing the governance of New Zealand incorporated societies or recognizing the way in which societies are run in the 21st Century.

On this basis, AuSAE suggests that the way in which a society may amend its constitution should recognize that the constitution will likely be held electronically and that therefore proposed amendments will be advised to society members electronically, that it is likely that the proposed amendments will be approved by a general meeting of the society that may be held electronically and that, on this basis, it is not possible for the amended constitution to be signed by at least 2 members of the society. AuSAE therefore suggests the following changes to the wording of S30(2):

Every amendment to a society's constitution must be—
(a) ***provided to members either electronically or*** *in writing; and*
(b) approved at a general meeting of the society by a resolution passed by the relevant majority; and
~~*(c) signed by at least 2 members of the society; and*~~
(d) otherwise made in the accordance with its constitution.

Further, AuSAE submits that all reference to requirements in the Bill for any procedures of incorporated societies to be provided "*in writing"* should either be deleted in their entirety or replaced with the wording: ***"either electronically or*** *in writing".*

AuSAE suggests that it would also therefore be helpful to include a definition in S5(1) of "*in writing"* as meaning that includes "***letters, electronic mail or similar means of communication***" in order to make it clear that societies have a choice in the way they communicate with their members and conduct the business of the society that is not limited only to "*in writing"* communications.

AuSAE does not believe there is any need for S30(3) to describe what is a relevant majority. S26 describes what the constitution of a society must contain and S26(1)(k)(vii) allows for the constitution to specify: *"the quorum and procedure for general meetings, including voting procedures and procedures for proxies (if any)".* AuSAE suggests that, S30(3) should be deleted in its entirety and S26(1)(k)(vii) should be amended to say:

"the quorum and procedure for general meetings, including voting procedures ***and what constitutes a relevant majority of votes,*** *and procedures for proxies (if any)".*

S33 Society must give Registrar copy of amendment and amended constitution
AuSAE submits that compliance with the requirement of S33(1) that a society must ensure that a copy of an amendment to its constitution and a copy of the constitution as amended are given to the Registrar within 20 working days after the amendment is a very tight timeframe within which to comply, particularly for smaller societies and those that are operated by volunteers.

AuSAE therefore submits that S33(1) should be reworded to say:

"A society must ensure that a copy of an amendment to its constitution and a copy of the constitution as amended are given to the Registrar within 20 working days after the amendment ***or as soon as is reasonably practicable".***

Disputes between members and between members and society
AuSAE notes the requirement in S26(1)(j) that societies' constitutions must contain procedures for resolving disputes between members (in their capacity as members) and between members and the society.

S38 details the requirements for the procedures in the constitution for disputes and specifies that these must be *"consistent with the rules of natural justice"* and that the procedures presumed to be consistent with the rules of natural justice are set in Schedule 2 of the Bill. AuSAE notes that Schedule 2 allows for a member's right to be heard in a complaint, disciplinary matter or a grievance. It requires a society to investigate and determine the dispute and that these must be dealt with by the society in a fair, efficient and effective manner. Then Schedule 2 allows for the society to decide not to progress the matter or to refer it to a subcommittee or an external person or to an arbitral tribunal, or to refer the dispute to mediation – all of which AuSAE accepts are entirely consistent with the rules of natural justice.

However, AuSAE is concerned that S39 Constitution may provide for arbitration, requires that *"a society's constitution may provide that all or certain kinds of disputes referred to in S26(1)(j) must or may be submitted to arbitration under the Arbitration Act 1995"* etc. AuSAE believes that arbitration should be the last resort if a society is unable to resolve disputes using all the processes allowed for in Schedule 2 of the Bill.

On this basis, AuSAE suggests that S39(1) should be reworded as follows:

"Once all other means of resolving a dispute between members and between members and the society, as described in Schedule 2, have been exhausted or have been deemed to be impractical, *a society's constitution may provide that all or certain kinds of disputes referred to in S26(1)(j) must or may be submitted to arbitration under the Arbitration Act 1996."*

S42 Qualifications of officers
AuSAE notes that the requirement in S42(1)(a) is that a person may be appointed as an officer of the society, so long as that person *"has consented in writing to be an officer".* AuSAE submits that this is a further example where clarity is required that the requirement for the consent to be in writing also includes by electronic means.

AuSAE also submits that with respect to S42(1)(b) where a person is required to certify that they are not disqualified from being appointed or holding office as an officer of the society, this

should be broadened to include that they are not disqualified from being appointed or holding officer of any other societies.

AuSAE also notes that there is some inconsistency between the requirement of S42(2)(a) that a person under the age of 16 years is disqualified from being appointed or holding office as an officer of a society and S107(1)(a) which requires that a contact person must be at least 18 years of age. AuSAE therefore submits that, for the sake of clarity and consistency, all references to a person's age as a criterion for holding office in a society should be to a person who is at least 16 years of age.

S46 Former officer remains liable for past acts, omissions and decisions
AuSAE has some concern with respect to S46 and the liability it places on former officers of a society. Many societies struggle to attract good people to act as officers on committees, particularly where those societies are operated by volunteers. In those situations, this ongoing liability that may arise long after the officer ceased to have any connection with the society appears to AuSAE to be extremely draconian and would certainly deter people from volunteering to become an officer in a society.

AuSAE therefore submits that this clause be amended to read:

"Despite vacating office as an officer, a person who has held office as an officer remains liable under the provisions of this Act that impose liabilities on officers for acts and omissions and decisions made while that person was an officer, ***where it can be shown that the person was not acting in good faith or in the best interests of the society whilst they held office as an officer.****"* This would also align with the provisions of S49 requiring officers to act in good faith and in the best interests of the society.

S47 Notice of appointments and of other changes relating to officers
AuSAE submits that compliance with the requirement of S47(2) that notice be provided to the Registrar within 20 working days after the society first becomes aware of the matters raised in S47(1)(a)-(c) is a very tight timeframe within which to comply, particularly for smaller societies that may struggle to find good people to fill the role of an officer as was raised in the submission above with respect to S33. AuSAE therefore suggests that the requirement should be for the notification to the Registrar to be made "***as soon as is reasonably practicable"*** following any of the matters relating to S47(1)(a)-(c).

Conflict of interest disclosure rules
S57 When officer has interest
AuSAE notes that S57(1)(a)-(e) specifies the instances where an officer is interested in a matter and the fact that all of these specify that a financial benefit or interest exists. AuSAE submits that there are other situations where an officer may have an interest that may not result in a financial benefit or interest to them, for example where there is a conflict of loyalty or conflict of non-specific commitments and suggests that this Section could usefully be widened to also include such other possible conflicts of interest.

S70 Consent to become member

AuSAE is concerned by the requirement in S70(2) that the consent of a body corporate to become a member of a society must be given by 2 directors. Firstly, this is the first place within the Bill where the reference is to "directors" rather than "officers" and therefore suggests that, for the sake of clarity and consistency, the reference should be to "officer(s)", particularly given AuSAE's previously expressed suggestions with respect to the definition of the word "officer" in S5 Interpretation.

Secondly, AuSAE believes that the requirement for the consent to become a member of a society to be given by 2 directors is too onerous. AuSAE suggests instead that the consent should be given by an "authorized person" or an "officer" who has the authorization to commit the body corporate to membership of the society.

Subpart 6—Indemnities or insurance for officers, members, or employees of society

S87 Society restricted from indemnifying or effecting insurance for its own officers, members, and employees

AuSAE has considerable concern with respect to the contents of this Section. As previously stated, societies, particularly those that are small and those that are run by volunteers, can struggle to attract people to fulfil the roles of officers within the organization. This clause will further deter people from stepping up to such roles, particularly where there is no limitation put on their liability.

AuSAE therefore submits that the clause be amended to include some form of limitation of liability, for example 7 years from the time that the person ceased being an officer, member or employee of the society.

S108 Vacancy in position of contact person

AuSAE has similar concerns with respect to this requirement as those expressed in the submission made regarding S33 and S47 above. That is, that small societies may struggle to fill the vacant position of contact person within such a tight timeframe as 20 working days and therefore this clause should also include the words ***"or as soon as is reasonably practicable"*** to allow for this.

Subpart 3—Prejudiced members

S133 Prejudiced members

AuSAE would be concerned that S133 could be used to apply to a court for an order under this subpart by a member or former member vexatiously. It must be remembered that many societies are small, operated by volunteers, and are therefore not well resourced to be able to defend such an application. AuSAE is therefore pleased that S143 allows a court to refuse to consider an application if they believe that this is the case. However, AuSAE suggests that S143 should be moved up in the order of the Bill to immediately follow S133 to make it clear that the court has the ability to refuse to consider such an application and on what grounds the court could do so.

S146 dishonest use of position

AuSAE notes that the Crimes Act 1961 does include as offences the activities described in S146 of the Bill and, on this basis the offence described in S146 could be seen to be excessively harsh. However, officers of societies, particularly those which are small or operated by volunteers, are subject to a high degree of trust. There is often not the capacity or resource for appropriate oversight or arms-length authorization of an officer's activities and therefore societies can be a target for fraudulent or dishonest behaviour.

Obtaining a conviction under the Crimes Act for such offences can often be difficult to prosecute and very time-consuming for the society to manage through to conviction.

On that basis, AuSAE supports the inclusion in the Bill of the offences described in S146 but suggests that an amendment be made to the wording of the clause to make it clear that, if an officer is convicted under the offences described in S146, they cannot also be prosecuted for the same offences under the Crimes Act 1961.

High Court may put society into liquidation

S203 High Court may put society into liquidation

AuSAE has a concern with S203(b) that allows for the High Court to put a society into liquidation if the society suspends its operations for 1 year or more as this seems to be too short a period if, for some reason, the society has gone into hiatus but may wish to still continue operating beyond that period. On that basis, AuSAE suggests that S203(b) could be reworded to say:

"the society suspends its operations for 1 year or more ***and a majority of remaining members certify that the society will not recommence operations."***

Once again, AuSAE is grateful for the opportunity to make this submission on behalf of our members. If the Committee requires any further information from AuSAE with respect to the Bill, please do not hesitate to contact either Lyn McMorran, AuSAE President, or Brett Jeffery, General Manager, New Zealand.

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