

# Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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16 June 2016

Dear Sir/Madam

## Submission – Exposure Draft – Incorporated Societies Bill

I submit this submission on the above in my capacity as President of the Kenepuru and Central Sounds Residents' Association (**KCSRA**). In short, we are very concerned that many of these reforms appear to be targeted at large, national, well-funded and resourced societies with fulltime professional staff and/or professional or other occupational bodies exercising a degree of supervision/accountability over their members. This focus, **it is submitted**, is to the detriment of small voluntary community organisations such as KCSRA.

### Background

1. **Who we are:** KCSRA was established in 1991, and currently has approximately 250 household members whose residents live fulltime or part-time in the Kenepuru and Pelorus Sounds. The KCSRA's objects include, among others, to coordinate dealings with central and local government and promote the interests of residents of Kenepuru Sound and adjacent areas, and to promote and act in the best interests of residents, ratepayers, and persons associated with the Kenepuru and Central Sounds area.
2. As can be seen from our financial statements filed with the Registrar of Societies, we are an organisation of very modest financial means but our voluntary committee members work hard to make every cent count and be an effective voice for our members.
3. **What we do:** Our website ([www.kcsra.org.nz](http://www.kcsra.org.nz)) demonstrates that KCSRA is very busy representing the interests of members in a wide variety of matters. For example, advocating for better and safer roads and provision of public toilets in places of high visitor

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### Kenepuru & Central Sounds Residents Association Inc.

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use, liaison and representations to the local council, and involvement in local environmental/conservation issues. These are the sorts of issues that voluntary organisations such as KCSRA address in order to develop and maintain a strong community.

4. We are confident that across New Zealand there are many such small organisations with dedicated voluntary committee members working hard to maintain the reputation of New Zealand as a decent civil society. This massive voluntary effort needs to be recognised for what it is – part of the fabric of our society – and carefully encouraged and supported by central government. This is the standard by which this exposure draft Bill must be considered.
5. **Why we are interested:** For my hard-working voluntary committee besieged on a regular basis to make a submission on this or that to local or central government, it is always tempting to cross your fingers and hope that something as boring as updating a fairly straightforward piece of legislation such as the Incorporated Societies Act can be safely left in the hands of competent officials with a bit of oversight from the relevant Minister and, ultimately, Parliament.
6. However, when one of the committee gently pointed out that the proposed Bill was taking us from an Act of some 30 sections and 20 pages to one with over 200 clauses and 100 pages, we decided we needed to sit up and take notice. Accordingly, a committee member attended one of the consultative seminars organised by MBIE.
7. At that seminar, officials assured attendees that all was well, there was nothing to fear and the importance of this sector with some 23,000 registered societies would be both protected and enhanced. However, comments from one of the community representatives on the seminar organising committee very briefly touched on some of the downsides of the proposed reforms. That presenter expressed a concern that some of the reforms proposed could well have a “**chilling effect**” on the willingness of members of the community to volunteer to become committee members of organisations such as ours.
8. Alarmed by this, we decided to review the paperwork - namely, the Exposure Bill, the MBIE “Request for Submissions” document and the Law Commissions report “A New Act for Incorporated Societies”. Seeing cause for **real concern**, we decided to make this submission.

### **Structure of this Submission**

9. In the balance of this brief submission, we briefly outline what we see as the problem with the thrust of the reforms from a policy perspective for small voluntary organisations such as ourselves. We then briefly touch on some of the more alarming provisions from the perspective of a member of the community considering becoming a committee member. Finally, we make some suggestions and draw some conclusions.

## The Policy Focus – One Size Fits All

10. The foresight of Parliament in 1908 in setting up a simple and accessible legal structure for community groups was revolutionary. As noted, we understand that there are now over 23,000 registered societies. They cover a huge range of activities and come in all shapes and sizes. Many are nationally important bodies such as the Automobile Association and New Zealand Rugby Union with very large revenue flows and large numbers of fulltime professional staff. Many occupational groups have used the structure to improve the image of a particular occupational group and provide professional guidance, and set and enforce standards.
11. On the other hand, many societies (we submit the majority) are **small, local community** or sports and cultural groups. There are no doubt hundreds of small local community organisations with similar aims and aspirations as KCSRA. We submit that this group will not have large balance sheets, will be funded from modest member subscriptions (\$20 per annum in our case) and will not have fulltime staff. Organisations such as this who make an undoubted accumulative positive contribution to New Zealand society depend upon willing volunteers prepared to give up their time and serve on the committee. We query if they will want to volunteer if it means negotiating a raft of **complex potential personal liability issues** as seem to be advocated in the Bill.
12. In other words, a major policy defect with the proposed Bill is that it has at a policy level adopted a “**one size fits all**” approach. It appears to be targeted at ensuring greater accountability for large national organisations or societies looking to enforce occupational standards. It seeks to impose concepts and provisions largely taken from the business focussed Companies Act, eg director’s duties and liabilities, on a non-profit voluntary sector. It seems telling that the Ministry tasked with progressing the Bill is itself one with a focus on business and employment.
13. To illustrate, at the MBIE seminar referred to earlier, our representative noted the various financial reform provisions and asked the officials present whether they had carried out a review of the Societies Register to ascertain just how many societies had operating revenues of over \$50,000. The answer was “No”!
14. When asked why, the response was that it would have been too large an exercise. As to why they had not undertaken a sample approach, there was no satisfactory reply. **We submit** that your officials should be directed to do such a survey/large scale sample as soon as possible and the results sent to all submitters.

## Comments on the Bill and some of its Provisions

15. **Plain English Please:** As currently drafted, the Bill is excessively long, difficult to follow, contains a number of confusingly cross links to other enactments, has a complicated and complex layout and badly needs a makeover from an experienced and competent plain English legal expert. Happy to **recommend** some. For an important piece of supposedly modernised social legislation we submit there is a positive educative effect to be gained if a reasonably literate reader can follow the same instead of immediately having to seek expert legal advice/guidance.
16. **Financial Statements:** Currently societies are required to file a compliant annual financial statement. However, clause 83 of the Bill sets out a whole new ballgame. For starters it requires a fair degree of familiarity with, and is cross-referenced to the Financial Reporting

Act 2013, and GAAP standards. Enough to scare off a lot of would-be voluntary Treasurers! Then there is the cost to the society of meeting those new standards and ensuring that at all times their financial records can be readily and properly audited (clause 82(c)).

17. Much of this concern **we submit** could be quite easily addressed by the simple process of setting a more accessible and less scary or expensive standard for societies whose operating revenue **is less than, say, \$30,000 per annum**. Such entities could continue to be bound by the current and straightforward reporting requirements of section 23 of the Act. **We submit** to that effect.
18. **Annual Return/Report**: Clause 85 of the Bill somewhat ominously signals that a whole new round of reporting requirements to central government (the Registrar) will be required at some point in the future. Currently, societies are required to file financial statements and must upon request supply the Registrar with a list of members. **We submit** that for societies with operating revenue of less than \$30,000, **nothing more** should be required. If, however, there is some wider surveillance objective, then this, **we submit**, should be stated openly.
19. **Constitution – Disciplinary Procedures**: As currently drafted clause 24(j)(ii) of the Bill seems to require that societies **must** in their constitution have a misconduct/disciplinary process. Your suggested standard draft constitution (rule 8) reinforces this interpretation. For societies like KCSRA this is a most unwarranted **and even ridiculous** imposition. The problem seems to arise because the drafter has conflated a complaints process with a disciplinary one. **We submit** this should be reworked to the effect “*That where a society has a misconduct or disciplinary procedure it must have a procedure to investigate or deal with....*”. A link to clause 31 and Schedule 2 would also be useful to the ordinary reader. In passing we applaud the intent of Schedule 2, a plain English guide to the requirements of “natural justice”.
20. **Conflicts of Interest**: We cautiously (not wishing to highlight an unintended oversight) **submit** that the focus (at clause 56) on what could constitute a Conflict of Interest is correctly confined to focussing on financial interests/benefits. Stating some “safe harbour” exclusions at clause 56(3) is also useful but we submit that clause 56(3) (b) should have the words “*...all or most other members ..*” **deleted** and the words “*...a majority of members ...*” **substituted**. After all, members at a society meeting could by simple majority approve the subject matter so why the higher and ambiguous standard?
21. **Once an Officer Always an Officer**: Clause 46 of the Bill as currently drafted is an “evergreen” liability provision. We understand that this clause may be for “educative effect” and merely repeats the law – that is, serious yet to be detected criminal offences may have no end date as far as prosecution is concerned. However, in terms of an ex-officer being open to a civil action for some past-alleged breach of a duty, would it really harm the desire for the legislation to have a strong educative/deterrent effect if the clause confirmed that the usual limitation period applies to civil actions, or is that not the intention/effect of this clause? Stepping back, from a policy perspective we submit that there is a strong argument, in the circumstances, that a shorter period be expressly stated – say 2 years. See the Fair Trading Act for a precedent. **We submit** some clarity or better still revision as we suggest is required.
22. **Criminal Offences**: The Law Commission set great store in its report for the need for a **detailed and sweeping set of criminal sanctions** and Court orders to deliver the required educative effect or deterrent to officers of a society. The fact that many of the offences in

the Bill cover behaviour already captured by the Crimes Act 1961 was brushed aside. Well, the Bill delivers on the Commission's wishes in spades with, by our count, some 12 pages covering a suite of Court orders, offences and infringement notices! This seems to be all justified on the basis that company directors face a similar array of educative spurs so why not volunteers? **We submit** this is overkill.

23. **Dishonestly:** However, to be fair, a careful read of clauses 113 to 118 suggests that the focus here is dishonesty offences. That does provide some comfort to a person seeking to explain to a prospective volunteer officer that the chances of her going to prison are not as dire as might appear. Nevertheless we still query the need to double up in the Bill with what already exists in the Crimes Act 1961.
24. In any event, clause 113 contains a definition of dishonestly by reference to Section 217 of the Crimes Act. We were surprised that this confusing cross-link was required rather than simply inserting the definition given the effort directed to explicitly inserting a whole set of offences. However, upon tracking down **Section 217 of the Crimes Act** we suspect that definition is at odds with what most ordinary people might consider dishonesty meant, so it was left out. **We submit** that if it is deemed necessary/desirable to create a bunch of tailor made criminal offences for officers of societies then **we deserve a plain English definition of dishonesty.**
25. We also query why the current cumbersome definition of dishonestly is not repeated in clause 117, in other words the Crimes Act definition seems only applicable to clause 113 and not applicable to all of Subpart 6 of the Bill. We **submit** that a small drafting change would usefully tidy that up.
26. **Strict Liability Offences:** The MBIE document refers to the matters covered by the infringement offences provisions as "simple and comparatively minor". Accordingly it seems draconian to make them criminal offences with a fine of up to \$5,000 or a fee of \$1,000. Cannot a non-criminal penalty be investigated? It is also unclear if only the society is liable or are the references to "any person" intended to catch an officer? **We submit** some clarity/further work required.
27. **A Public Register or Not:** A simple but good example of the confusion and complexity of the Bill is sections 176-178. On the face of it, there will continue to be a searchable electronic public register of societies. If this is correct, then what on earth is section 177 and 178 designed to do? The contents of the publicly available register is either searchable or not. Why does an individual accessing the public electronic register from their home first have to confirm they fit into one of the purposes under section 177 or face a possible action under the Privacy Act? **We submit that some explanation is required.**

## Conclusion

28. The draft Bill is presented as an exposure draft and it certainly highlights that volunteering to be the officer of a voluntary, but worthy community group with a very modest operating revenue may no longer be a straightforward assessment of the time commitment required but may also require a personal liability risk assessment together with some careful legal advice. This seems **most unfortunate**.
29. What was required was recognition from the Law Commission and officials that a radical restructuring of this very important piece of social legislation deserved a more innovative approach. For example, even a simple tiered approach based upon operating revenue would have been a good start. That in turn would have provided a useful conceptual platform to tackle what is now a very large and diverse group of entities using this operating model and structure. Sadly **we submit** this draft has failed to do this. **We recommend** that a more focussed and representative group be set up to explore alternatives to the current approach of one size fits all and address some of the shortcomings we have briefly discussed. The Association is happy to assist.
30. Hopefully Parliament will grasp the basic difficulty of having a blunt “one size fits all” approach to this very large, diverse but fabric of society group and require a more nuanced response to the issues this Bill attempts to confront.

Yours sincerely

  
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