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LAWYERS

Questions From the Reforming the Incorporated Societies Act 1908 Law Commission Paper

CHAPTER 1 — INTRODUCTION

- Q1 Do you agree that a review of the legal structure for incorporation of non-profits, and the requirements on those running such societies, would be a useful step in strengthening the non-profit sector?
- Q2 Is the current limitation of liability sufficient?
- Q3 Do you agree that there should only be one statute for the incorporation of not-for-profits in New Zealand? If not, why not?
- Q4 Do you think that for some purposes it might be advisable to divide societies between members' benefit and public benefit societies? If so, in what circumstances?
- Q5 Should Agricultural and Pastoral Societies be incorporated under the new statute?
- Q6 Can Industrial and Provident Societies that are conducted for business purposes be incorporated under the new statute?

CHAPTER 2 — THE CONSTITUTION OF SOCIETIES

- Q7 Do the New South Wales' requirements for matters that must be dealt with by a constitution offer a good starting point for New Zealand legislation? Have you any other suggestions about other types of rules that might be required?
- Q8 Australian jurisdictions provide for model rules that an incorporated association is deemed to have accepted unless it expressly decides to derogate from a rule by providing its own version. Do you agree that New Zealand should adopt this approach?
- Q9 If there is to be a division between members' benefit and public benefit societies, should there be different generic codes of rules?
- Q10 If model rules are implemented, when a rule has been superseded by a new rule, should the society to be deemed to be governed by the new rule as opposed to the old one?
- Q11 Whereas, in New South Wales, rules are merely required that govern discipline, the Victorian legislation explicitly sets out certain natural justice aspects (for example, the disciplinary procedure is handled by an unbiased decision maker). Do you agree that the Victorian approach is the preferable one for New Zealand? If not, why not?

- Q12 How should the requirement be phrased?
- Q13 Should a society require a minimum number of members, to be incorporated? If yes, what minimum number of members do you consider would be appropriate? The current number is 15. Australian statutes require five.
- Q14 Do you have views on whether it might be advantageous to require societies to form governance committees, or appoint any particular type of officer?
- Q15 Is it appropriate to move towards a name regime similar to that in the Companies Act?
- Q16 Does your experience suggest that there is a greater role for a regulator of this sector, beyond the role currently played by the Charities Commission, or the Registrar of Incorporated Societies? If so, what should that role be?
- Q17 Is a general variation power justified? Who would appropriately exercise it and what safeguards ought to exist to prevent its misuse?

CHAPTER 3 — GOOD GOVERNANCE

- Q18 Do you agree that the new Act should provide a ‘code’ of duties that committee members must observe in their decisions?
- Q19 If so, what duties ought to be included in the code?
- Q20 In what respects might the Companies Act obligations need to be altered if included in a new Incorporated Societies Act?
- Q21 Our preliminary view is that some minimum standards of conflict of interest rules ought to be part of the new statutory regime, as they are in the Companies Act. Do you agree?
- Q22 Do you agree that there should be a requirement for the disclosure of financial interests? Do you agree there should be a further requirement to disclose other material personal interest?
- Q23 What should be the consequences of a disclosure of either financial or other material personal interest? The Companies Act requires disclosure only, but there are other options: recusal from voting, or recusal from the meeting. Which do you consider appropriate, and why? Should there be different types of consequences, depending on whether the matter disclosed is financial, or other material personal interest? Q24 What are your views on the criminalisation of failure to disclose a conflict of interest? Might civil penalties be preferable, for failures under the Act that do not amount to deliberate dishonesty?
- Q25 Does there need to be a general prohibition on the “dishonest use of position”?

- Q26 Would it be useful to allow courts to consider banning individuals from being committee members of incorporated societies in the same way as individuals can be barred from being directors?
- Q27 Would enabling the Registrar to take actions on behalf of the society to recover compensation or seek an account of profits be appropriate?
- Q28 Does there need to be greater rigour than currently, around requirements for auditing and appropriate accounting standards? If not, why not? Do you agree that the new Act should provide for the imposition of audit and accounting standards by regulation that might be varied in accordance with the size of the society, and how ought that size be judged?

CHAPTER 4 — THE LEGAL DEALINGS OF AN INCORPORATED SOCIETY

- Q29 Should the new Act grant incorporated societies the powers and privileges of a natural person, in the same way as is done in the Companies Act?
- Q30 Do you agree that the new statute should limit the ultra vires doctrine, and if so, how? Which model is preferred, the Companies Act one, or the New South Wales' one?

CHAPTER 5 — RESOLVING DISPUTES BETWEEN MEMBERS AND THEIR SOCIETIES

- Q31 Do you agree that the Victorian model should be adopted, which gives wide powers to the court to make orders, plus the ability to decline to make an order on the grounds that the application was trivial, or the matter could have been more reasonably resolved in other ways?
- Q32 Do you agree that the Act should provide for disciplinary procedures to be kept separate from those designed to resolve disputes between members, with members being prevented from taking a grievance procedure until any disciplinary procedures have been concluded?
- Q33 Should there be any limits on the types of cases with which a court can deal? If so, what types, and why?
- Q34 Should the new legislation include provision for derivative actions by society members, similar to section 165 of the Companies Act?
- Q35 Do you agree that a general remedial power should be given to the court to do what is "just and equitable"?
- Q36 Have the current provisions about branches created any problems, and how might the provisions be altered to avoid those problems?
- Q37 Is there still a need for branch societies?

CHAPTER 6 — THE LIQUIDATION AND DISSOLUTION OF SOCIETIES

- Q38 Have you experienced problems with the liquidation or dissolution provisions?
- Q39 In what ways can the procedure for liquidation and dissolution be improved?
- Q40 In particular, should the double meeting requirement for members' liquidation be altered?
- Q41 What are your views on the division of incorporated societies into two types, requiring them to register for either members' benefit or public benefit? If this is not supported, how should the distribution of assets on dissolution be dealt with? Should it never be permitted?
- Q42 Should there be a provision for mergers of societies?

CHAPTER 7 — TRANSITIONAL ISSUES

- Q43 What are your views on workable transitional arrangements? Do you support the Companies Act approach, which enabled re-registration of existing companies, and provided that those that did not would be deemed to have done so? Should there be a longer transitional period relation to the adoption of model rules?
- Q44 How can we minimise the costs for societies in the transitional period?